



## Obama praises himself on criminal justice reform, but he could have done so much more

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January 6, 2017

On Thursday, *Harvard Law Review* published an article by its most famous former editor-in-chief, President Obama. The piece is titled “The President’s Role in Advancing Criminal Justice Reform.”

For those who have followed the debate over criminal justice reform for the past eight years, there was very little new information in the more than 50 pages of text and notes. Indeed, what was left out of the article speaks as much to the dim prospects of comprehensive federal criminal justice reform as it does the administration’s recent accomplishments. Moreover, the article glosses over the many ways the government works at cross-purposes against itself to the detriment of the country.

Perhaps the most glaring omission from the article was the federal response to the growing liberalization of state marijuana laws. More than half of the states in the Union now allow medical use of cannabis. This past election cycle saw several more states join Colorado, Washington, and the District of Columbia in legalizing recreational use of cannabinoids. After a rough beginning, Obama’s Justice Department tolerated the sale and distribution of cannabis by businesses and individuals who were in compliance with state laws. Obama should be proud of that cooperation, as marijuana-related arrests have plummeted where it is legal for adult consumption, yet that success goes unmentioned.

That omission may be in part because marijuana is still classified as a Schedule I drug. A Schedule I designation means the federal government does not recognize any legitimate use of the drug — recreational or medical — and thus it remains fully illegal under federal law. While rescheduling would likely require congressional legislation, executive agencies like the Drug Enforcement Administration and the Food and Drug Administration block most of the medical research that could help bring federal policy in line with the majority of states. To underscore how out of step federal policy is on cannabis, some may recall Obama’s first head of the DEA refused to tell Congress that marijuana was less dangerous than heroin, cocaine, or methamphetamine.

Obama’s commentary is fully in line with the kinder, gentler rhetoric of the past eight years that might lead people to think the federal Drug War is over: don’t believe it. While federal drug

sentences are less draconian than they used to be, law enforcement is still throwing people in cages for drug crimes and subsidizing local governments to do the same. What's more, the federal government provides a large cash incentive via civil asset forfeiture for police to seize cars, homes, and cash linked to drugs without even filing criminal charges, let alone securing a conviction. Senator Jeff Sessions (R-S.C.), the nominee to be the next U.S. Attorney General, is famously supportive of civil asset forfeiture as a weapon in the government's Drug War and very well may expand its use in the next administration.

Several times in his piece, the president boasted that he used his commutation power for more than 1,000 federal nonviolent drug offenders. Obama's actions for so many people are welcomed acts of mercy, but thousands of prisoners who meet the qualifications will probably not see relief in the closing days of his term. There is also a flip side to this administration's singular focus on "nonviolent" offenders: people who committed violent crimes are effectively deemed *unworthy* of mercy.

More than half of the 2.2 million people incarcerated are serving sentences for some variant of violent crime. Thus, the implicit assumption that nonviolent offenders should be the sole beneficiaries of criminal justice reform ignores a majority of people who are incarcerated. If mass incarceration is a problem, then our solutions to that problem must include a broader range of criminal offenders than simply those caught in the Drug War. Violent and nonviolent offenders should be punished for their crimes, but that punishment doesn't always have to mean being locked in a cage for years at a time. For young men who can get trapped in the system at an early age, incarceration can lead to an endless cycle in and out of the justice system.

President Obama cited evidence that the earlier in life that a child comes into contact with the criminal justice system, the more likely they are to face long-term consequences (like recidivism) from that contact. He also recognized that many of these interactions stem from unnecessary contact with officers who may over-police neighborhoods and approach young men of color. But this is the same president who proposed more resource officers in schools in the wake of tragic school shootings in 2013. Research indicates that school safety is not markedly improved by resource officers, while officers' presence makes arrests of students more likely, thus feeding the "school-to-prison pipeline." Putting more police in schools is precisely the wrong way to diminish unnecessary police contact with young people.

To be fair, the president's article highlighted some good ideas and included some genuine accomplishments. The Obama Administration should be commended for removing the DOJ directive for federal prosecutors to charge the maximum allowed under the law before offering plea bargains in certain nonviolent drug cases. Likewise, he is right to draw attention to the lower federal prison population, the deleterious effects of solitary confinement, the punitive administrative fines that functionally criminalize poverty, and the urgent need for bail reform. (Indeed, the same day the article was published, his former Attorney General Eric Holder argued for cash bail reform before the Maryland Court of Appeals.) The president also reiterated the obscene price tag of America's incarceration regime — an estimated \$81 billion per year locking people up at the local, state, and federal levels — which should serve as a reminder to budget-conscious politicians that reducing our jail and prison populations makes fiscal sense.

But in the end, Obama's article is a political document to justify his legacy in criminal justice before the new administration takes over. The president clearly did some good in the criminal justice realm, but he could have done so much better. To be sure, failure to pass legislation was not all Obama's fault: Congress let decent bills die for reasons both parties should be ashamed of. Hopefully, the next four years will see more reform at the local levels, where it is most needed and most effective.

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