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Trump's "law and order" executive orders, explained

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President Donald Trump wants to do something about crime in America. He just doesn't know what, exactly, he wants to do yet.

On Thursday, the day Jeff Sessions was sworn in as Trump's attorney general, Trump signed a series of executive orders that deal with these issues. But the orders don't change laws or even really create new policy. Instead, they amount to vague demands that federal agencies establish task forces to investigate and combat crime, anti-police violence, and international drug cartels — with a hint that these task forces could lead to a new push for the types of "tough on crime" policies Trump campaigned on.

Here's what each of the orders do:

1. The first tasks the attorney general with setting up a "Task Force on Crime Reduction and Public Safety" that will work to reduce crime, particularly "illegal immigration, drug trafficking, and violent crime." From this task force, the president expects an annual report with findings and recommendations.
2. The second tasks the attorney general with developing a strategy, in coordination with local, state, and federal agencies, to prosecute individuals who commit violent crimes against police, as well as reviewing whether existing laws go far enough in protecting police from violent crimes. Again, the attorney general will report his findings and recommendations, potentially including the need for new legislation or more funding, to the president.
3. The third tasks the secretary of state, attorney general, secretary of homeland security, and director of national intelligence to co-chair and direct the existing interagency Threat

Mitigation Working Group with a broad review of policies to make sure the US is adequately detecting and prosecuting international drug cartels. Once again, the group will report its findings and recommendations to the president — at first 120 days after the order, then annually.

On one hand, this is just standard political fare — setting up a task force to “solve” a problem is something politicians like to do. But the fact that Trump signed three executive orders to set up three different task forces is notable, showing that the president wants to make these issues a big part of his presidency — even though the statistics show that crime is still near historic lows.

So what will the executive orders do? The likeliest reading, according to the experts I talked to, is the orders are just signaling — a first step before Trump ramps up a push for “tough on crime” policies, including possibly new legislation.

Or the orders could amount to, really, nothing. “I’m simply not clear on what problem they solve,” John Roman, a criminal justice researcher at NORC at the University of Chicago, told me. “Most of what is in the three orders describes process and operations that exist today. All of which can of course be improved. But we are actively engaged in protecting our law enforcement, fighting violent crime, and investigating and prosecuting violent drug cartels. All that’s ongoing.”

Trump has been vague about his criminal justice plans, but he has long held “tough on crime” views that call for longer prison sentences, aggressive policing, and broader use of the death penalty. On the campaign trail, Trump justified his views by exaggerating the scale of crime in America — claiming, falsely, that the murder rate is at a 45-year high.

“I’m tough on crime,” Trump told MSNBC in 2015. “You look at what’s going on in the inner cities right now, it’s unbelievable. ... It’s like the Wild West.”

The reality is that crime is not increasing, and in fact the 2015 murder rate — the latest numbers available — was lower than the rate was at any point during the 44-year period from 1965 to 2009, despite an increase from 2014.

Yet that hasn’t stopped Trump from fashioning himself as tough on crime in the same way many politicians, both Republican and Democrat, did in the 1980s and ’90s during that previous era’s crime wave. That worries many criminal justice activists that Trump, despite his conflicts with reality, could try to send the country back to the policies that led to mass incarceration and overly aggressive police tactics just as some of the reforms of the past few years are leading to a drop in the incarceration rate after decades of increases.

Trump ran on a “tough on crime” platform

To understand the context for these orders, you need to understand what Trump said on the campaign trail about crime.

Trump ran a 1980s-style “tough on crime” campaign. He advocated for raising mandatory minimum sentences for drug offenses as a response to the opioid painkiller and heroin epidemic. He said police should be far more aggressive than they are today, particularly by using the

controversial “stop and frisk” strategy that a court struck down in New York City because it was used to target minority Americans. Time and time again, he lied about the murder rate, suggesting it’s at a 45-year high to make the case for his “tough on crime” policies.

And although we don’t know much about the specifics here or Trump’s policy ideas in general, his “tough on crime” views seem to be genuine. Trump dedicated an entire chapter in his 2000 book, *The America We Deserve*, to promoting “tough on crime” ideas. He wrote about a looming crime wave (which never happened). And he discussed in detail his support for aggressive policing, longer prison sentences, and broader use of the death penalty. He framed all of these ideas as part of “the most important form of national defense”:

Tough crime policies are the most important form of national defense. Government's number-one job is to ensure domestic tranquillity [sic], and that means tranquilizing the criminal element as much as possible. Aggressive anticrime policies are the best social program, because they allow citizens in all neighborhoods, and especially the tougher ones, to live and work in a safe environment. They also protect children from the predatory mob that brutalizes them at every turn.

We see some of this in Trump’s executive orders as president. One of the orders in particular subtly hints at new mandatory minimum sentences for anti-police crimes, calling for the attorney general to decide if the US needs “legislation defining new crimes of violence and establishing new mandatory minimum sentences for existing crimes of violence against Federal, State, tribal, and local law enforcement officers, as well as for related crimes.”

And we saw it in who Trump chose to head the US Department of Justice, the nation’s top law enforcement agency. Attorney General Sessions, who was just sworn in, has a long history of “tough on crime” views.

As a senator, for example, Sessions opposed and effectively killed legislation that would reduce mandatory minimum prison sentences for nonviolent offenders and give judges more sentencing discretion in cases involving low-level drug offenders. By putting Sessions in charge of the Justice Department, Trump indicated that he isn’t interested in this kind of legislation either.

There’s long been a racial element to Trump’s history: By suggesting that inner cities are out of control with crime, Trump effectively dog-whistled to white Americans that black communities are out of control — and they need a strongman like him to fix them up and keep all of America safe from them. This is a tactic that Republican presidents have used again and again, from Richard Nixon’s “Southern strategy” to Ronald Reagan’s own “tough on crime” campaign to Trump himself. It’s one way that Republicans, including Trump, have held on to the white vote as they’ve lost minority voters.

The result, however, is there are massive racial disparities in the criminal justice system — from police shootings to incarceration rates. And Republicans like Trump don’t seem very interested in resolving these disparities or other issues that have popped up as a result of decades of “tough on crime” policies.

Experts have pushed back against Trump’s “tough on crime” approach

Trump's views are in conflict with both expert and public opinion on these issues.

For one, experts argue that longer prison sentences — which turned America into the world's leading prisoner — have little effect on crime. A 2015 review of the research by the Brennan Center for Justice estimated that more incarceration explained 0 to 7 percent of the crime drop since the 1990s, while other researchers estimate it drove 10 to 25 percent of the crime drop since the '90s. At the same time, mass incarceration costs the US an estimated \$182 billion a year — suggesting that the US isn't getting much bang for its buck.

Criminologists have also pushed against aggressive policing strategies, arguing that they lead to so much distrust within the community (“legal cynicism”) that they end up leading to *more* crime, as people are less likely to turn to police for help and instead resolve interpersonal conflicts on their own — sometimes with violence.

Criminal justice experts have pointed to all sorts of other strategies to combat crime, from new policing strategies to expanding community-based anti-violence programs with strong evidence behind them. Whatever approach one takes, the general point is that a harsher approach to criminal justice just doesn't seem to do much good.

The public increasingly agrees, according to decades of polling from Gallup: In 1992, 83 percent of Americans said the justice system's handling of crime wasn't tough enough. In 2016, only 45 percent said it wasn't tough enough — a 46 percent decline.

Recent polling by Vox and Morning Consult told a similar story. About 51 percent said there are too many people in prison in the US, while just 19 percent said there were not enough. And although most still don't want to reduce prison sentences for violent offenders (who make up about 40 percent of the prison system), 78 percent said they support reducing prison time for nonviolent offenders with a low risk of committing another crime.

Other polls have found broad agreement on some policing reforms. A 2015 survey from the libertarian Cato Institute and the polling firm YouGov, for example, found that 92 percent of Americans support equipping police with body cameras, and 55 percent said they would be willing to see an increase in their personal tax bill to pay for police-worn body cameras. And a 2015 survey by the Progressive Change Institute found that 61 percent of likely 2016 voters support requiring special prosecutors to investigate and prosecute killings by police.

Yet Trump has repeatedly supported his assertions for harsh policies by pointing to fabricated crime statistics.

Crime is not anywhere near as high as Trump seems to think

As president and a candidate, Trump has repeated the same false claim in front of his audiences: “The murder rate in the United States is the highest it's been in 45 years.”

That would be very worrying if it were true. Thankfully, it's not. At all.

According to the FBI's Uniform Crime Report, the murder rate was 4.9 per 100,000 people in 2015, the latest year of data available. That is a nearly 11 percent increase from 2014. But it is

lower than it was in 1970, 45 years before, when the murder rate was 7.9. It was also lower than it was at any point from 1965 to 2009 — making the 2015 rate, at worst, a six-year high. And it's half the rate of what it was 25 years ago, in 1991, and less than half of what it was at several periods in the 1970s and 1980s.

So no, murder is not at the highest it's been in the US in 45 years. Not even remotely close.

One possibility is Trump has been trying to say that murder in 2015 saw its highest increase in 45 years, which he also said at the second presidential debate. As PolitiFact found, this is mostly accurate: The number of murders rose by 10.8 percent from 2014 to 2015, the highest since an 11.1 percent spike from 1970 to 1971.

But it's important to put this in context. Back when the number of murders increased by more than 11 percent in 1971, the rate rose from 7.9 to 8.6. This not only continued what was already a near-decade of increases, but it was part of a huge crime wave that lasted all the way to the 1990s, when the crime and murder rates began to drop.

By contrast, the 2015 increase in the murder rate came after decades of drops. The 2015 uptick is in comparison to 2014, which, at 4.4 murders per 100,000 people, had the lowest murder rate tracked by the FBI since at least 1960. We also have no idea if the 2015 murder rate spike constitutes a shift in crime's long-term trend downward; it is entirely possible, as was the case in 2005 and 2006, that the murder rate merely rose temporarily in 2015 only to later continue the long-term trend down.

Other crime rates reported by the FBI also didn't see nearly such pronounced changes: The violent crime rate went up by 3 percent (to 372.6 per 100,000 people, which is still below 2012's levels), rape by 4 percent, aggravated assault by 4 percent, and robbery by less than 1 percent. Burglary and larceny rates dropped — with property crime rates falling to levels lower than any point after 1966. (One caveat is the murder rate is more accurate than other crime figures; it's more likely police and victims are underreporting other types of crime, whereas a dead body is difficult to ignore.)

Along the same lines, Trump has repeatedly argued that America's police officers are increasingly under attack. It's why he signed an executive order explicitly dealing with anti-police violence, which cited a recent rise in on-duty deaths among officers. Yet while on-duty police officer deaths did go up in 2015 compared with 2014 (these deaths tend to follow broader murder rate patterns), they're still historically lower than they were in the past few decades.

That's not to say the 2015 murder rate and rise in on-duty police deaths increase aren't alarming. Criminologists say the crime rate in particular is worth paying attention to, although we don't really know why the rate increased in 2015 just yet. As John Jay College criminologist Jeffrey Butts put it to the Guardian, "You lost 50 pounds. You gained back a couple. You're not fat. That doesn't mean you shouldn't look at your behavior, because the trend is not good."

And it's true that America has more violent crime than other developed nations, which the research suggests is in large part due to America's extraordinary levels of gun ownership.

But Trump seems intent on scaring the public about a nonexistent crisis — to build support for “tough on crime” policies. “The orders send a strong but outdated ‘law and order’ message that seems unconnected with the current reality of crime in the US,” Thomas Abt, a criminologist at Harvard University, told me. “Violent crime and violence against law enforcement spiked last year but both are still near historic lows, and there is simply no evidence that transnational gangs are driving either increase.”

No matter what Trump does, it likely won’t have a huge overall impact on the US

Taking all of this together, it seems plausible that Trump — and Sessions — will use these task forces to push for “tough on crime” legislation: longer prison sentences, more prosecutions, more aggressive policing, no more investigations into local police departments (which the Obama administration used to push for reform), and so on.

John Pfaff, criminologist at Fordham University, said he suspects the orders seek to do just those kinds of things, even down to granular funding levels. “My guess is that provisions F and G, buried deep in the [anti-police violence executive order], are aimed at defunding research into police violence, and at defunding the new effort to have the FBI better track police shootings. More broadly, I think this [order] is part of a broader rhetorical push to justify scaling back or eliminating the various [Justice Department] consent decrees under which many local police departments currently operate,” he told me.

This has some criminal justice reform advocates worried. The good news for them, however, is that the federal government’s role in the justice system is actually fairly small.

Consider incarceration, the big target of reform efforts. In the US, federal prisons house only about 13 percent of the overall prison population. That is, to be sure, a significant number in such a big system. But it’s relatively small in the grand scheme of things, as this chart from the Prison Policy Initiative shows:

One way to think about this is what would happen if President Trump used his pardon powers to their maximum potential — meaning the president pardoned every single person in federal prison right now. That would push down America’s overall incarcerated population from about 2.2 million to 2 million.

That would be a hefty reduction. But it also wouldn’t undo mass incarceration, as the US would still lead all but one country in incarceration — with an incarceration rate of about 629 per 100,000 people, only the tiny island country of Seychelles would come ahead.

And while the federal government can incentivize states to adopt specific criminal justice policies, studies show that previous efforts — such as the 1994 federal crime law — had little to no impact. By and large, it seems states will only embrace federal incentives on criminal justice issues if they actually want to adopt the policies being encouraged.

So to really pull back mass incarceration, states will need to make changes. (And that will likely involve more than reforming drug laws: About 53 percent of state prisoners are in for violent crimes, and just 16 percent are in for drug offenses.)

Similarly, almost all police work is done at the local and state level. There are nearly 18,000 law enforcement agencies in America — only a dozen or so of which are federal agencies.

The tasks of ending mass incarceration and reforming the police, then, are going to fall almost wholly to cities and states. And there's evidence that cities and states want to continue doing that work: Even some of the counties and states that voted for Trump supported ballot initiatives that shortened prison sentences and prosecutors who took softer views on crime, conservative organizations like the partially Koch-funded Right on Crime have continued to push for reform, and Republican governors like Georgia's Nathan Deal and Oklahoma's Mary Fallin have trumpeted reform efforts.

So while it's hard to say exactly what actions Trump's orders will lead to, it seems very unlikely that these alone will change the bipartisan tide toward reform that has come up over the past few years.