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**HOUSTON  
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For Race & Justice



**LAWYERS FOR  
CIVIL RIGHTS**  
BOSTON



April 6, 2019

Governor Baker  
Massachusetts State House  
24 Beacon St.  
Boston, MA 02133

Dear Governor Baker:

We the undersigned civil rights and advocacy organizations write to express our concerns with a letter issued by your Secretary of Public Safety and Security, Thomas A. Turco III, that mischaracterizes a range of reform policies announced by District Attorney for Suffolk County, Rachael Rollins.

Secretary Turco's letter wrongly suggests that DA Rollins is putting the people of Suffolk County at risk with her reform efforts. Indeed, the voters overwhelmingly elected DA Rollins to office because of her promise to revise current ineffective practices that have failed to address public health and public safety concerns. The voters clearly demand a new approach to public safety. And it wasn't just a few voters: Rollins won 185,133 votes—a 31 percent increase from her predecessor's best year, when he ran uncontested in 2014.

Secretary Turco's assertion that not prosecuting certain misdemeanors and low-level felonies will undermine public safety is wrong on its face. It ignores the fact that Rollins' predecessor in the office, Dan Conley, dismissed the majority of these types of cases—with no ascertainable impact on public safety. The ACLU's recent report, *Facts Over Fear*, analyzed data from the Suffolk County District Attorney's Office during the years 2013 and 2014, and found that DA Conley's office dismissed 60 percent of these cases. Moreover, of the cases that actually went to trial during that period, 72 percent resulted in acquittals. Evidence thus shows that prosecuting these cases was a waste of scarce public resources and did little to protect public safety. The data from the Conley era also reflect racial disparities in his approach: Black people were more likely to be charged with these lower-level offenses, and were more likely to face an adverse outcome when the cases were prosecuted. Simply put, it is time for a new approach.

Public safety must include a racial equity analysis at every stage. Ill-advised prosecutions put people and entire communities in danger, and undermine trust in law enforcement. Disappointingly, Secretary Turco's letter completely ignores the gross racial disparities that persist in the Massachusetts criminal legal system, particularly with regard to prosecution of these low-level offenses.

Worse still, his letter raises the opioid crisis as justification for a "tough on crime" approach that flies in the face of evidence and contradicts your administration's public statements that opioid use is a public health—not criminal legal—issue. We must not continue to pursue the same failed "war on drugs" policies that have decimated Black and Latinx communities without advancing public safety. Moreover, repeating such outmoded tropes actively endangers people living with substance use disorders. Your own Department of Public Health has found that, in Massachusetts, the opioid-related overdose death rate for people released from incarceration is

120 times higher than the rest of the adult population. Facts show that incarcerating drug users can kill them.

Despite Secretary Turco's spurious charge that DA Rollins' policy will exacerbate the opioid crisis, some law enforcement actions do in fact exacerbate the crisis. Eighth Amendment and Americans with Disabilities Act violations occur every day in Massachusetts, when prisons and jails deny medication-assisted treatment to people with opioid use disorder. Secretary Turco would be wise to use his substantial authority to address that problem, instead of challenging the harm reduction policies of a district attorney who is trying to make things better.

In response to other assertions in Secretary Turco's letter:

- **A rule presumptively limiting review of a defendant's criminal history to 36 months:** When 67 percent of people currently incarcerated in Massachusetts were previously committed, it is time for a different approach to dealing with people who have lengthy criminal records.. Secretary Turco stokes unwarranted fears by invoking the specter of a person recently released after a lengthy prison sentence and whose prior criminal history is overlooked because they served a prison sentence of more than three years. In fact, DA Rollins' policy includes provisions, such as supervisor review, that guard against such unlikely outcomes.
- **Marijuana sales of large amounts:** Here, too, Secretary Turco raises the most unlikely and extreme example, while ignoring supervisory review and other safeguards that are in place to protect public safety in rare instances when people are arrested for possessing "20, 30, or even 40 pounds of marijuana."
- **A rule discouraging pre-trial conditions of release:** In America, people who have been charged with criminal offenses are presumed innocent until proven guilty. This includes a presumption that they will return to court on their next court date. The Suffolk County District Attorney's Office policy ensures that prosecutors respect the presumption of innocence by requiring supervisory approval to deviate from the presumption of least-restrictive conditions. This is particularly important to address the disproportionate number of poor people and people of color who are charged with offenses in Suffolk County—a fact that Secretary Turco's letter ignores.
- **Economic harms:** Prosecuting people for shoplifting, receiving stolen property, and misdemeanor larceny has been shown not to prevent or deter such crimes—and certainly has not done enough to protect the "shopkeepers and business owners struggling to build prosperity in economically challenged neighborhoods." In contrast, DA Rollins' policy provides alternative means of ensuring accountability and public safety by using evidence-based restorative justice practices, treatment, and counseling to protect our local communities and businesses. Most people who are prosecuted return to and remain in our communities. We need long-term solutions to ensure their success and the safety of our community.
- **Motor vehicle offenses:** Suffolk County prosecution data show that 76 percent of motor vehicle offenses were dismissed in 2013 and 2014—suggesting they should not

have been brought in the first place, particularly given the striking racial disparities in charging decisions for these offenses. In the Central division of the Boston Municipal Court, for example, Black motorists are 15 times more likely to be charged with a motor vehicle offense than their similarly-situated white counterparts. Secretary Turco's assertions regarding license suspensions for drunk driving ignores the safeguards against this that are part of DA Rollins' policies.

Indeed, for every "worst case scenario" your administration presents, DA Rollins' policy provides clear exceptions and opportunities for supervisory review. Secretary Turco's letter ignores these facts. In so doing, it reflects the worst kinds of regressive fear-mongering of the 1990s: painting a distorted picture of dangerous offenders benefitting from criminal policy reform, while making no mention of the countless number of people and families who will benefit from diversion and treatment, rather than dismissed prosecutions or needless incarceration.

Finally, Secretary Turco's letter deepens concerns that your administration has so few people of color in cabinet positions or in positions of authority within the Executive Office of Public Safety and Security. Suffolk County includes two majority-minority cities—Boston and Chelsea—where close to 90 percent of the County's prosecutions originate.

As the first Black woman elected district attorney in Massachusetts, DA Rollins was elected with 80 percent of the vote—in a county with a significant concentration of people of color and a powerful mandate from voters of all races to reduce racial disparities in the system. Suffolk County voters made their choice clear when they overwhelmingly elected a district attorney who promised to reform our criminal legal system that, for far too long, has been unfair, racially biased, and harmful to communities of color and poor people.

We urge you to work with Secretary Turco and all members of your administration to review the evidence-based approaches proposed by DA Rollins, to incorporate racial impact assessments when reviewing policies, and to put facts over fear when developing your own policy prescriptions.

Sincerely,

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