

# Loosening the reins: overcriminalization, business crimes and bipartisan reform



## Legal Matters

Stephen Ross Johnson  
Guest columnist

There is an adage about the intersection of criminal law and politics that Republicans generally emphasize prosecution of guns, drugs and violent crimes while Democrats focus on investigation, enforcement, and prosecution of business or financial crimes. There is truth to that.

The Obama administration focused on prosecution of civil and criminal health care fraud and the banking industry while granting executive clemency – reduced sentences – for nonviolent drug offenders and examining flawed forensic science in older cases.

The Trump administration has concentrated federal prosecution efforts on violent offenses and drug trafficking crimes. That is not to say Democrats don't prosecute drug and

violent crimes and Republicans don't prosecute business crimes – that's an oversimplification. But there is an observable shift in focus when administrations change.

No matter the party or the type of criminal conduct, it has been good politics to be tough on crime. As a result, the United States imprisons more people per capita than any other country in the world, and a significant amount of people in prison are there not just for violent crimes but also for non-violent offenses and financial crimes.

The tough-on-crime politics that resulted in the war on drugs and the crackdown on business and health care offenses led to a ballooned alphabet soup of federal and state agencies with overlapping administrative and criminal enforcement powers, which in turn have grown the federal prison population about 800 percent since the 1980s.

The pendulum is swinging. The general public, to include a vocal business community, is making its

voice heard to elected officials, emphasizing that the government's criminal enforcement and prosecution power is too broad, there are too many crimes, sentences are too long, and the fiscal and human cost of the prosecution and prison machine is too high.

Congress passed and the President signed the First Step Act in 2018, which lowers sentences for drug offenses, lessens penalties for white-collar crimes, and increases opportunities for early release.

For white-collar offenses, such as tax, securities, healthcare, and other financial crimes, there is the greater potential for home confinement instead of prison. In addition, the U.S. Sentencing Commission amended federal sentencing guidelines effective Nov. 1, 2018. Federal judges consult the guidelines in deciding whether someone should go to prison and for how long after a guilty plea or jury trial conviction. The new guidelines advise against prison for many nonviolent first of-

fenders.

Criminal justice reform was a campaign topic of both parties in Tennessee's 2018 elections. Several reform measures will be considered during this state legislative session.

Change wouldn't be occurring absent a vibrant business community that is vocal about the need for federal and state governments to loosen the reins and fix the overcriminalization problem.

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