JOINT STATEMENT FROM ELECTED PROSECUTORS

June 2019

As elected prosecutors, we are committed to protecting the safety and well-being of all individuals in our communities. We are also charged with protecting the integrity of our justice system and upholding the Constitution and rule of law. Fulfilling these obligations goes hand-in-hand. We know from our collective experience that when communities trust us and see the fair, equitable, and sensible exercise of prosecutorial discretion, they are more inclined to work with all parts of our justice system as we seek to promote safer and healthier communities.

Several states have recently passed, or are considering the passage of, broad restrictions on abortion. Many of these new enactments are ambiguous or silent as to whom they would hold criminally responsible, leaving open the potential for criminalizing patients, medical professionals, healthcare providers, and possibly others who assist in these medical procedures. By way of example:

- Alabama’s recently passed law imposes penalties of a minimum of 10 years and up to 99 years imprisonment for doctors who perform abortions – and contains no carve out for victims of rape or incest.¹
- Missouri’s law bans abortion starting at around eight weeks of pregnancy, which is often before a woman even knows she is pregnant, with no exceptions for rape or incest – and doctors face between 5 to 15 years in prison.²
- Under Georgia’s recent measure, a District Attorney would have the discretion to bring criminal charges and seek imprisonment against anyone and everyone involved in performing and assisting with an abortion; moreover, there is no explicit prohibition under this law against criminalizing women and patients who make these medical choices.³

Doctors, nurses, anesthetists, health care providers, office receptionists – virtually anyone who either performs or assists in performing or arranging what is currently a legal medical procedure based on precedent for almost a half century – and in some states, even the patient herself, could face criminal liability under these statutes.

As elected prosecutors, we took an oath to uphold both the U.S. Constitution and the Constitutions of our individual states. Our U.S. Supreme Court, in deciding Roe v. Wade, determined that every woman has a fundamental right to privacy which is “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”⁴ As some elected prosecutors have noted, the broad restrictions in the laws passed by these states appear to be unconstitutional under Roe v. Wade.⁵ Many of us share those legal views, but our commitment to not prosecute women who obtain abortions and health care professionals who provide treatment is not predicated on these concerns alone.

Not all of us agree on a personal or moral level on the issue of abortion. And not all of us are in states where women’s rights are threatened by statutes criminalizing abortion. What brings us together is our view that as prosecutors we should not and will not criminalize healthcare
decisions such as these – and we believe it is our obligation as elected prosecutors charged with protecting the health and safety of all members of our community to make our views clear.

Prosecutors are entrusted with immense discretion. With this discretion, comes the obligation to use it wisely to seek justice. And, at the heart of the pursuit of justice, must necessarily be the furtherance of policies and practices that protect the well-being and safety of all members of our community.

Resources in our criminal justice system are inherently limited. We believe that the wise use of discretion requires balancing these limited resources, while meeting the safety needs of our communities. In our view, resources are better utilized to prevent and address serious crimes that impact our community rather than enforcing laws such as these that divide our community, create untenable choices for women and healthcare providers, and erode trust in the justice system.

Further, these measures fail to consider the needs and suffering of victims of child molestation, rape, incest, human trafficking, or domestic violence, many of whom experience long-term trauma. Over the past several decades, law enforcement has rightly worked to adopt evidence-based, trauma-informed approaches that include recognizing that not all victims of such crimes are able or willing to immediately report them, and that delays in reporting, or a reticence to report, are consistent with the experience of trauma. We also know, as prosecutors, that all too often the process of reporting is retraumatizing and not consistent with the needs of victims. Although some states have carved out exceptions for victims of rape and incest, these recent enactments by and large ignore the reality and suffering of victims. These laws do not take into account that victims may not report an incident of sexual assault within the laws’ specified time, or even report at all, and essentially force victims to live with the choice of reporting and disclosing the details of their sexual assault, or risk being connected to their abuser for life.

Laws that revictimize and retraumatize victims are unconscionable. It is a prosecutor’s obligation to protect and seek justice on behalf of all members of our community, including victims who are often the most vulnerable and least empowered. The wise exercise of discretion suggests focusing prosecutorial resources on the child molester or rapist, and not on prosecuting the victim herself, or the healthcare professionals who provide that victim with needed care and treatment.

Keeping communities safe inherently requires promoting trust, which would be deeply eroded by the enforcement of these laws. To best promote public safety, prosecutors must be perceived by their communities as trustworthy, legitimate, and fair – values that would be undermined by the enforcement of laws which harm and force unnecessarily difficult and traumatizing decisions on many in our community.

In sum, as elected prosecutors with charging discretion, we choose not to prosecute individuals pursuant to these deeply concerning laws. Legal precedent, as established by the highest court in the land, has held for nearly 50 years that women have a right to make decisions about their own medical care including, but not limited to, seeking an abortion. Enforcement of laws that criminalize healthcare decisions would shatter that precedent, impose untenable choices on
victims and healthcare providers, and erode trust in the integrity of our justice system. To fulfill our obligations as prosecutors and ministers of justice to preserve the integrity of the system and keep our communities safe and healthy, it is imperative that we use our discretion to decline to prosecute personal healthcare choices criminalized under such laws.

Respectfully,

**Xavier Becerra**
Attorney General, California

**Diana Becton**
District Attorney, Contra Costa County, California

**Sherry Boston**
District Attorney, DeKalb County, Georgia

**Danny Carr**
District Attorney, Jefferson County, Alabama

**John T. Chisholm**
District Attorney, Milwaukee, Wisconsin

**David Cooke**
District Attorney, Macon Judicial Circuit, Georgia

**John Creuzot**
District Attorney, Dallas County, Texas

**Satana Deberry**
District Attorney, Durham County, North Carolina

**Thomas J. Donovan, Jr.**
Attorney General, Vermont

**Michael Dougherty**
District Attorney, 20th Judicial District, Colorado

**Mark Dupree**
District Attorney, Wyandotte County, Kansas

**Keith Ellison**
Attorney General, Minnesota
Aaron Ford
Attorney General, Nevada

Brian E. Frosh
Attorney General, Maryland

George Gascón
District Attorney, City and County of San Francisco, California

Sarah George
State’s Attorney, Chittenden County, Vermont

Sim Gill
District Attorney, Salt Lake County, Utah

Joe Gonzales
District Attorney, Bexar County, Texas

Eric Gonzalez
District Attorney, Kings County, New York

Mark Gonzalez
District Attorney, Nueces County, Texas

Andrea Harrington
District Attorney, Berkshire County, Massachusetts

Maura Healey
Attorney General, Massachusetts

Paul Howard
District Attorney, Fulton County, Georgia

Kathleen Jennings
Attorney General, Delaware

Zachary Klein
City Attorney, Columbus, Ohio

Lawrence S. Krasner
District Attorney, Philadelphia, Pennsylvania

Beth McCann
District Attorney, Second Judicial District, Colorado
Brian Middleton
District Attorney, Fort Bend County, Texas

Stephanie Morales
Commonwealth’s Attorney, Portsmouth, Virginia

Marilyn J. Mosby
State’s Attorney, Baltimore City, Maryland

Dana Nessel
Attorney General, Michigan

Karl A. Racine
Attorney General, District of Columbia

Kwame Raoul
Attorney General, Illinois

Rachael Rollins
District Attorney, Suffolk County, Massachusetts

Jeff Rosen
District Attorney, Santa Clara County, California

Ellen Rosenblum
Attorney General, Oregon

Marian T. Ryan
District Attorney, Middlesex County, Massachusetts

Dan Satterberg
Prosecuting Attorney, King County, Washington

Josh Shapiro
Attorney General, Pennsylvania

Carol A. Siemon
Prosecuting Attorney, Ingham County, Michigan
Raúl Torrez  
District Attorney, Bernalillo County, New Mexico

Cyrus R. Vance, Jr.  
District Attorney, New York County, New York

**Additional elected prosecutors interested in joining the statement should contact FJP Executive Director Miriam Krinsky at mkrinsky@fairandjustprosecution.org to be added.**


