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FJP and Fair Trials Urge Prosecutors to Protect Fundamental Rights in Plea Bargaining

Today, Fair and Just Prosecution (FJP) and global criminal watchdog Fair Trials called on elected prosecutors to address flaws and deep-rooted concerns in the use of plea bargaining to resolve criminal cases.

A [new brief](#) published by the organizations offers clear guidelines for prosecutors, as well as recommendations for systemic change, to ensure that plea bargaining does not undermine the fundamental rights of accused people.

Around 97 percent of federal cases and 94 percent of state felony cases in the U.S. are resolved through plea bargaining, and it is widely accepted that this system too often reinforces and worsens existing problems in the criminal legal system, including racial disparities, overcriminalization, mass incarceration and wrongful convictions. Prosecutors can play a crucial role in addressing the misuse of plea bargaining, protecting due process and ensuring that justice is served.

“There are few areas where an elected prosecutor’s obligation as a minister of justice is more significant or critical than in the context of plea bargaining,” said **Miriam Krinsky, Executive Director of Fair and Just Prosecution** and a former federal prosecutor. “All too often in the United States, the plea process implicates due process concerns, fuels mass incarceration and exacerbates racial disparities. Prosecutors have the power to make plea bargaining more fair and just, and we need more leaders to step up and take action.”

One of the organizations’ [key recommendations](#) is ending, or at minimum capping, the “trial penalty,” which is the significant increase in sentence length that can result when a defendant declines a plea offer and instead exercises their constitutional right to a trial. The need to challenge this practice was highlighted recently by the [case of Pamela Moses](#), who was sentenced to six years in prison for voter fraud. When asked about the severity of this sentence, the local elected prosecutor defended the decision, saying, “I gave her a chance to plead to a misdemeanor with no prison time. She requested a jury trial instead. She set this unfortunate result in motion and a jury of her peers heard the evidence and convicted her.” People accused of crimes like Moses should not fear harsher and unjust punishment simply for exercising their right to a trial.

Global CEO of Fair Trials, Norman L Reimer, said: “There is no question that prosecutors have a key role to play in reining in coercive plea practices that undermine the assertion of fundamental constitutional rights. This brief provides sound principles for prosecutors to

promote transparency and fairness in plea bargaining and restore balance to a process that has virtually eliminated trials in the United States. But we should not lose sight of the fact that mandatory sentencing and judicial involvement in penalizing the assertion of basic rights must also be addressed.”

Other recommendations set forth in the [issue brief](#) from FJP and Fair Trials include:

- **Instituting policies to ensure that plea bargaining does not cause harsh, unjust and/or arbitrary case outcomes**, including not using the threat of harsh penalties or enhancements to leverage a plea; holding plea offers open for as long as feasible; and not relying on plea bargaining to manage case volume or reduce caseloads.
- **Increasing transparency and procedural safeguards**, including providing access to all available evidence, especially any potentially exculpatory material, to defendants before requiring them to accept a plea offer; collecting and maintaining data on plea bargaining; and ensuring defendants have had time and access to a lawyer as they consider a plea disposition.
- **Promoting and protecting avenues for justice and mercy**, including by making sure charges reflect the underlying facts and circumstances (and not just all possible charges); having mechanisms in place for careful screening of cases and charges filed; creating procedures for defense attorneys to appeal to a supervising prosecutor if they think a charge or plea offer is unfair; considering collateral consequences (such as impact on immigration status) in plea discussions; and not requiring waivers of key rights (such as the right to litigate constitutional violations) as part of a plea deal.

“As an elected prosecutor, I am entrusted by my community to pursue justice, and using plea bargaining to rack up convictions and unnecessarily put people behind bars goes against that responsibility,” said **Philadelphia District Attorney Larry Krasner**. “It’s past time for reforms that will address coercive plea practices and strengthen due process while still keeping our communities safe and providing justice for victims and survivors. Prosecutors can and must act now to bring about these long-overdue changes.”

Read the full brief [here](#).

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Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP’s work, visit our [website](#) and follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#).

Fair Trials is the global criminal justice watchdog, campaigning for fairness, equality and justice. To learn more about Fair Trials’ work, visit their [website](#).