

A New D.A.'s Plan to Curb Incarceration

By JONAH E. BROMWICH

Manhattan's new district attorney began this week to adopt the lenient policies he campaigned on, setting the stage for potential conflict inside and outside his office as he tries to change the way criminal justice is administered in the borough.

The district attorney, Alvin Bragg, told prosecutors in his office in a memo that they should ask judges for jail or prison time only for the most serious offenses — including murder, sexual assault and economic crimes involving vast sums of money — unless the law requires them to do otherwise.

The crimes he instructed prosecutors to avoid seeking jail time for include certain robberies and assaults, as well as gun possession in cases where no other crimes are involved. He also directed that they no longer request prison sentences of more than 20 years absent “exceptional circumstances.”

Mr. Bragg's goal is to find alternatives to incarceration, especially for first-time offenders, an aim he seeks to balance with the need to keep the public safe. In the way they take into account the experiences of those who are charged, his policies resemble those of several prosecutors in big cities around the country who have been elected over the past five years.

Those prosecutors — who include Larry Krasner in Philadelphia, Marilyn Mosby in Baltimore, George Gascon in Los Angeles, Kim Foxx in Chicago and Chesa Boudin in San Francisco — have frequently faced vocal opposition. The three who have run for second terms have been successful. Mr. Gascon and Mr. Boudin are each facing recall efforts, after having already survived one apiece.

Eric Gonzalez, the Brooklyn district attorney, has also instituted similar policies. His office grants its prosecutors some autonomy in decision-making; it remains to be seen to what degree

Mr. Bragg will do the same.

Although Mr. Bragg's policies had long been expected — he released a draft version during the campaign — their immediate adoption caused some confusion within his office. About 500 prosecutors must now decipher a complicated legal memo and figure out how to apply it to their active cases. Adding to the confusion is the fact that much of the office is working remotely.

The policies, which prompted an immediate backlash among conservative critics and in some law enforcement circles, may prove difficult to champion politically with New York City continu-

Seeking jail or prison time for only the most serious crimes.

ing to experience a sharp increase in murders and shootings.

In a statement, the Detective's Endowment Association, which represents 5,000 active police detectives in the city, said the changes would “undermine the ability of the police to make arrests that lead to reduction of crime.”

James McGuire, who worked as a prosecutor in Manhattan and was chief counsel to Gov. George E. Pataki, a three-term Republican, said Mr. Bragg's policies might bring him into conflict with other elected leaders, including Mayor Eric Adams, who ran, in part, on a law-and-order platform.

“These policies may be a challenge to the mayor and what he's campaigned on,” Mr. McGuire said.

Asked about the district attorney on Wednesday in an interview with CBS, Mr. Adams said he knew and respected him, calling him “a great prosecutor.”

Mr. Bragg defended his plan in a Twitter thread on Wednesday. “These policy changes not only

will, in and of themselves, make us safer; they also will free up prosecutorial resources to focus on violent crime and bigger cases that make us safer,” he wrote.

In an interview before he took office, he said he had used the transition period since the election to “stress-test” the policies.

“There will be gaps and gray areas and people who don't agree,” he said, adding that he was happy to discuss the new guidelines with members of his staff but that he would be less tolerant of “recalcitrance” on the part of prosecutors who are not interested in adhering to the underlying principles.

Mr. Bragg has said he would not prosecute some misdemeanors, including prostitution and fare evasion, that his predecessor, Cyrus R. Vance Jr., had already stopped charging as crimes.

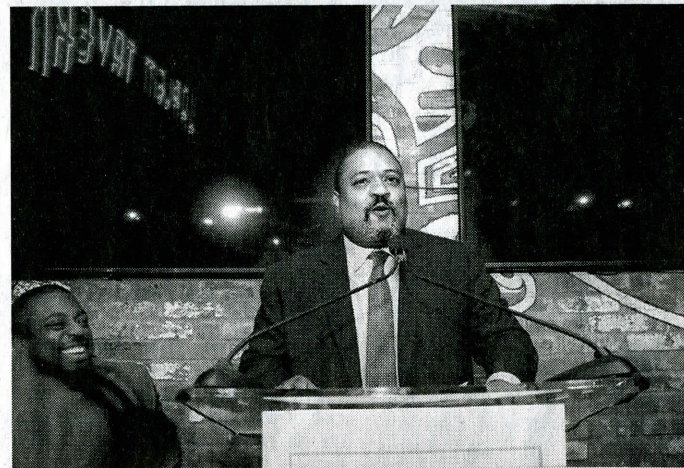
But he is adding several misdemeanors to the list, including the stand-alone charge for resisting arrest. Those who resist arrest by attacking police officers will still be charged.

Some former prosecutors say that while the changes related to felony charges are significant, they may not be quite as sweeping as they seem.

Mr. Bragg's memo includes the caveat that sentencing requests must adhere to the law, and New York law requires that any person who has previously been convicted of a felony must be imprisoned if found guilty of a second such crime. Other state sentencing laws are also likely to limit the impact of Mr. Bragg's policy changes.

Tess M. Cohen, who prosecuted drug crimes in Manhattan for eight years and is now a defense lawyer, said Mr. Bragg's personnel and policies suggest that he intends to seriously intervene in the lives of first-time offenders without necessarily seeking to put them behind bars.

“He's thinking about this in terms of not letting them go, but letting them go into a program that will address the reasons why they committed this violent



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crime,” she said.

Mr. Bragg's supporters — and public defenders, his institutional adversaries — say that his policies are a necessary corrective in a borough where prosecutors have historically charged defendants harshly.

“It is far, far worse to be arrested in Manhattan than it is in the Bronx for the exact same facts,” said Alice Fontier, the managing director of the Neighborhood Defender Service of Harlem, who was a member of Mr. Bragg's transition committee.

In November, Manhattan accounted for over 30 percent of those who were held at the Rikers Island jail complex, where a crisis of absenteeism among correction officers has resulted in chaos, violence and inhumane conditions

Alvin Bragg, Manhattan's district attorney, has said addressing the crisis at the Rikers Island jail complex, below, is one of his top priorities.

my head, and a homicide victim on my doorstep.”

Some former prosecutors urged a measure of caution as Mr. Bragg begins his tenure.

“Progressive criminal justice reform has to find a balance,” said Karen Friedman Agnifilo, a former deputy to Mr. Vance. “Old-school law enforcement went too far in one direction, but lessons we're learning in some big cities suggest that others may have gone too far in the other direction.”

“I'm confident that Alvin can find that balance,” she said.

In the Democratic primary for district attorney, Mr. Bragg, a former federal prosecutor, represented an ideological middle ground. His competitors included three lawyers without prosecutorial experience, two of whom pledged to cut the office's budget in half if elected. Some of his rivals who did have prosecutorial experience suggested they would make fewer sweeping changes to the office than Mr. Bragg pledged to.

In an interview, Mr. Krasner, the Philadelphia district attorney who was re-elected to a second term in November, said Mr. Bragg would undoubtedly encounter resistance, from within the district attorney's office and from institutions outside it, including the courts, the police, the news media and even elements of the Democratic Party.

“There is always going to be some confusion and resistance to change even among people who are operating in good faith,” Mr. Krasner said.

Many of Mr. Bragg's peers in other cities have faced fierce criticism from victims' rights groups, traditional law enforcement authorities and others in their communities as they seek to change the justice system from within. It remains to be seen whether Mr. Bragg will receive a similar greeting in his first months on the job.