



CONSERVATIVE SOLUTIONS FOR REFORMING CRIMINAL JUSTICE



FAITH & FREEDOM COALITION

ABOUT THE FAITH & FREEDOM COALITION

The Faith and Freedom Coalition is a non-profit organization committed to educating, equipping and mobilizing people of faith and like-minded individuals to be effective citizens. As Alexis de Tocqueville observed in *Democracy in America*:

"Freedom regards religion as the companion in all its battles and all its triumphs as the very cradle of its infancy and the source of all its claims ... because religion alone is the safeguard of morality, and morality is the best and surest pledge for the survival of freedom."

The Faith & Freedom Coalition promotes public policy that protects the dignity of life and marriage, strengthens families, promotes time-honored values, lowers the tax burden on families and small businesses, and requires government to perform its elemental functions of defending our nation, providing for a just society and otherwise living within its means.

Today the Faith & Freedom Coalition has over one million members and chapters in almost all fifty states. In 2014, Faith & Freedom Coalition created the largest midterm election voter education and Get Out the Vote (GOTV) effort directed at faith-based voters in modern political history. We made 102 million voter contacts in key states, including over 10 million GOTV calls and deployed hundreds of volunteers who visited more than 500,000 homes of identified faith-based voters.

Conservatives approach the issue of criminal justice as a matter of respecting the sanctity and dignity of human life, defending the family, encouraging hard work, personal responsibility and helping the least among us.

Unfortunately, our justice system too often undermines the sanctity and dignity of human life. It often demeans individuals, who rot in jail rather than undergo the rehabilitation that would allow them to return to society and live normal, productive lives.

Worse yet, it creates a vicious cycle of incarceration as young children grow up in homes with one or both parents missing. We know these children are far more likely to be incarcerated themselves. Finally, the system does little to restore the lives of victims of crime. America incarcerates a far higher percentage of our citizens than similar nations. For instance, in England, 147 out of every 100,000 individuals are incarcerated. In Canada, the figure is 114 out of every 100,000. In Australia, the figure is 152. In the United States, meanwhile, a staggering 693 out every 100,000 people are incarcerated. That statistic should worry anyone who cares about the size, scope and cost of government.

America's high incarceration rate not only takes a human toll – it takes a financial toll as well. Federal prison spending has risen 595 percent since 1980—from \$970 million to more than \$6.7 billion today. In many states, it costs taxpayers over \$30,000 per year to incarcerate one person. This represents a large, expensive and ever growing government bureaucracy.

Just like any other government program, criminal justice spending deserves scrutiny from conservatives. For all the increased spending, many of our prisons still resemble a revolving door with almost 7 in 10 inmates rearrested within three years of being released from prison.¹ Within the same time span, 4 in 10 offenders are sentenced to return to prison.² Taxpayers deserve better than a 40 percent failure rate.

However, things are changing for the better because conservatives at the state-level are leading the way. Since 2007, more than thirty states have passed significant reforms designed to prioritize prison beds for serious offenders, reduce incarceration, reduce recidivism rates and contain costs. Red states like Texas, Georgia, South Carolina, Utah and others have seen real results. Texas, for example, saved taxpayers over \$2 billion while dropping its crime rate to its lowest level since 1968.³

Conservatives are proving you can be both “smart on crime” and “tough on crime.” Similar to efforts to reform education and welfare – on criminal justice conservatives are the leaders in bringing innovative fixes to a broken government program.

Conservatives must continue to lead on criminal justice reform because our solutions have increased public safety, saved taxpayer dollars and restored the lives of both offenders and victims.

Sincerely,

Timothy Head

A handwritten signature in black ink that reads "Timothy R Head". The signature is written in a cursive, flowing style.

Executive Director

CONSERVATIVES LEADING ON CRIMINAL JUSTICE REFORM

“I was in prison and you came to visit me ... I tell you the truth, whatever you did for one of the least of these brothers of mine, you did for me.” – Matthew 25:36, 40

A healthy and functioning criminal justice system consists of five core elements: retribution, deterrence, incapacitation, rehabilitation and restitution.⁴

Punishment is retribution for the crime that was committed and serves as a deterrent to those who may be tempted to commit future crimes. Incarceration is used to incapacitate dangerous offenders. Rehabilitation prevents crime by altering a criminal's behavior through educational and vocational programs. Finally, restitution forces a financial penalty on offenders for physical or financial harm done to a victim.

Until recently, the Left dominated the issue of criminal justice reform with misguided ideas that often placed the blame for crime upon society, rather than the individual who committed the crime. Criminals are often portrayed as simply another group that has been victimized by society. The Left regularly attacks and seeks to undermine the whole criminal justice system with blanket charges of systemic racism. These efforts polarize Americans and make real reform more difficult to achieve.

As conservatives, Faith & Freedom Coalition approaches criminal justice as a matter of ensuring public safety, respecting the sanctity and dignity of human life, defending the family, encouraging personal responsibility and helping the least among us. We believe the criminal justice system is failing in each of these areas. Reforms can and should coincide with a renewed respect for police and other law enforcement and prison officials who do courageous work to keep us safe. We must create a more effective criminal justice system for police, prosecutors, prison officials, victims and communities.

BACKGROUND

Beginning in the mid-1960s and peaking in the early 1990s, our nation suffered through a crime wave, with record numbers of violent crimes and a deluge of drugs on the streets of major American cities. Washington, D.C. was dubbed the “Murder Capital of the World.” Popular culture was filled with movies like Charles Bronson's *Death Wish* about a vigilante fighting criminals in his neighborhood. In response, lawmakers at both the state and federal level, from both political parties, passed tough sentencing laws and limited or eliminated parole. At the same time, innovators like New York Mayor Rudy Giuliani and his police commissioners William Bratton and Bernie Kerik were reinventing policing practices and restoring communities by taking all crime seriously and making data-driven policing decisions.

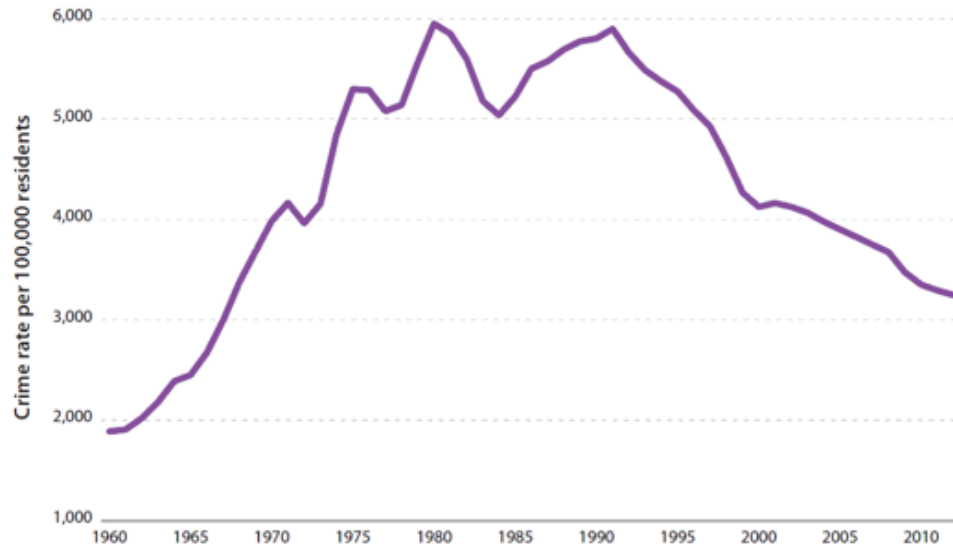
Since the mid 1990's we have continued to see a dramatic reduction in crime. In 1990 there were 2,245 murders in New York City; today the number of homicides is a little over 300.⁵ Reductions in violent crime are not unique to New York City—today the crime rate nationally is half of what it was in 1991 and the violent crime rate is at the lowest level since 1970.⁶ Some urban areas like Baltimore and St. Louis remain the exception to this trend. However, crime rates nationwide have continued to make dramatic declines since the 1990's.

But, even after the crime rate fell, spending on prisons continued to climb. In 1987, the states spent \$10.6 billion on incarceration. But, by 2008, prison spending had increased by 315 percent to \$44 billion a year.⁷ In many states, spending on criminal justice is now the fastest growing item in state budgets, behind only education and healthcare. At the federal level, the incarceration rate has increased 518 percent and the costs have increased 595 percent since 1981.⁸

FIGURE 1.

Crime Rate in the United States, 1960–2012

After being particularly elevated during the 1970s and 1980s, the crime rate fell nearly 45 percent between 1990 and 2012.



Sources: DOJ 2010b; authors' calculations.

Note: The crime rate includes all violent crimes (i.e., aggravated assault, forcible rape, murder, and robbery) and property crimes (i.e., burglary, larceny-theft, and motor vehicle theft).

THE
HAMILTON
PROJECT
BROOKINGS

While this massive increase of spending on incarceration has helped lower crime rates, evidence suggests it accounted for only about 20 percent of the decrease in the crime rate. The decrease in the crime rate can also be explained by better policing, modeled after New York City's success in the 1990's and societal changes like the aging of the population.⁹

Incarceration only gets partial credit because it has diminishing returns. For example, to stop a crime wave the first group of people you jail are usually the really bad actors, but as time goes on you end up locking up petty criminals who do not require lengthy prison stays. In fact these petty criminals are usually made worse by serving prison time with hardened criminals. It is little surprise that with limited job prospects upon leaving prison, they rely on the habits they learned in prison to live on the outside and therefore return to crime.

With crime rates at historic lows and prison costs exploding, conservative lawmakers and groups like Faith & Freedom Coalition are looking at the prison population and evaluating who we should incarcerate and for how long.



RED STATES LEAD THE WAY ON SMART REFORMS

“During my leadership as governor, Texas shut down three prisons, and we saved taxpayers \$2 billion. When I left office, Texas had the lowest crime rate in our state since 1968. My administration started treatment programs and drug courts for people who wouldn’t be served well by sitting behind bars. We made sure our parole and probation programs were strong. Most of all, we evaluated prisons based on whether they got results. Did an ex-offender get locked up again? Did he get a job? Is he paying restitution to his victims? In Texas, we believe in results.” Governor Rick Perry (TX)

TEXAS GOES BIG ON CRIMINAL JUSTICE REFORM

In 2007, in order to deal with a burgeoning prison population, the State of Texas projected they would have to build two new prisons at a cost of over \$2 billion. This was due to the inmate population increasing from 64,000 in 1993 to 154,000 in 2007.¹⁰ The Chairman of the Texas House Corrections Committee was a Republican Representative Jerry Madden, a former engineer who had been given a mandate by the Speaker of the House not to build new prisons because they were too expensive. Looking for answers, Madden met with his counterpart in the opposing chamber, Democrat Senator John Whitmire. This odd couple teamed up and found that groups on both the Right and the Left agreed on a number of affordable alternatives to building new prisons. Madden and Whitmire instead convinced Texas legislators to spend just over \$200 million in drug and mental health treatment in lieu of incarceration.

Texas also implemented more specialty courts like drug courts, which focus on smaller caseloads of drug addicted offenders who are made to report to judges frequently on their progress in staying off drugs, finding a job and interacting with their families. Drug courts usually end with a graduation ceremony for successful participants who are recognized and applauded for turning their lives around.

Texas also reformed their parole and probation programs to hold offenders to higher standard of accountability, which ultimately helped to reform offender behavior and reduced recidivism and incarceration rates. Also, instead of having taxpayers continually fund failing programs, Texas gave incentives to counties that reduced the incarceration of non-violent offenders and increased victim restitution payments -- a financial incentive for local governments to implement reforms.

According to the National Association of Drug Court Professionals these reforms “[S]aved an estimated \$2 billion in new prison spending since 2007, led to the closure of three prisons and six juvenile lock-ups, brought about a 39 percent reduction in the parole failure rate and reduced the statewide crime rate to levels not seen since the 1960s.”¹¹

The Texas experiment was based on the idea of “justice reinvestment,” which means reducing the incarceration of non-violent offenders and reinvesting the savings in rehabilitative programs in the community and preserving prison beds for the most violent offenders. At the federal level it costs over eight times more to keep someone in a prison cell versus community supervision.¹² Instead of having family members or the government take over their responsibilities, serving a sentence in the community allows offenders to continue to raise a family and pay taxes.

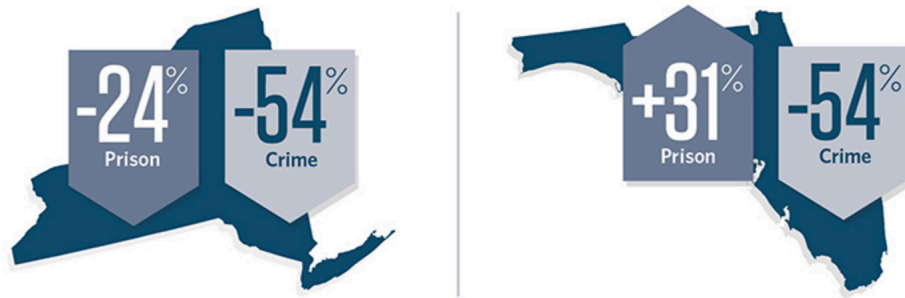
This isn’t to say that many criminal do not belong behind bars or that they should not be punished -- because they should. Dangerous and violent offenders belong in prison. However, we have learned a lot since 1975 when the popular book *Nothing Works* theorized that all rehabilitative programs were a waste of money. We now are able to utilize risk assessments in order to keep high-risk offenders behind bars, while allowing low-risk offenders to serve their sentences under community supervision. More

important than theory, we have proven results of lower crime rates and saved taxpayer dollars from the over 30 states that have already implemented Texas-style reforms.

In 2011, Georgia was facing growing incarceration rates that were going to cost taxpayers \$264 million over five years. Instead of building new prisons they, like Texas, implemented justice reinvestment principles and between 2012 and 2014 the state's crime rate and prison population both dropped by 3 percent.¹³ In fact between 2008 and 2013, 32 states reduced both their crime and incarceration rates.¹⁴

Different Paths, Same Result

New York and Florida had divergent imprisonment rates, but both cut crime rates by the same amount



Similar reforms have been enacted in red states like Alabama, Louisiana, Oklahoma, Mississippi, South Carolina and Utah just to name a few. In fact blue states like Hawaii, Oregon, and Maryland only enacted criminal justice reforms after following the lead of conservative states. One of the bluest states, California, refused to reform their criminal justice system and prison overcrowding got so bad that federal judges ordered the release of thousands of offenders back onto the streets. Clearly, California should have followed the lead of conservative leaning states and implemented reforms before they were forced to release potentially violent offenders back into the streets.



Following the success of reforms in Texas, the center-right non-profit Texas Public Policy Institute formed *Right on Crime*, which is a group of conservatives dedicated to criminal justice reform. They have established a set of principles for criminal justice reform, which include signatories like the late Chuck Colson, former Reagan Attorney General Ed Meese, Grover Norquist of Americans for Tax Reform, Speaker Newt Gingrich, Michael Reagan and many more.

RIGHT ON CRIME PRINCIPLES

Applying the following conservative principles to criminal justice policy is vital to achieving a cost-effective system that protects citizens, restores victims, and reforms wrongdoers.

- 1.** As with any government program, the criminal justice system must be transparent and include performance measures that hold it accountable for its results in protecting the public, lowering crime rates, reducing re-offending, collecting victim restitution and conserving taxpayers' money.
- 2.** Crime victims, along with the public and taxpayers, are among the key “consumers” of the criminal justice system; the victim’s conception of justice, public safety, and the offender’s risk for future criminal conduct should be prioritized when determining an appropriate punishment.
- 3.** The corrections system should emphasize public safety, personal responsibility, work, restitution, community service, and treatment—both in probation and parole, which supervise most offenders, and in prisons.
- 4.** An ideal criminal justice system works to reform amenable offenders who will return to society through harnessing the power of families, charities, faith-based groups, and communities.
- 5.** Because incentives affect human behavior, policies for both offenders and the corrections system must align incentives with our goals of public safety, victim restitution and satisfaction, and cost-effectiveness, thereby moving from a system that grows when it fails to one that rewards results.
- 6.** Criminal law should be reserved for conduct that is either blameworthy or threatens public safety, not wielded to grow government and undermine economic freedom.

These principles are grounded in time-tested conservative truths—constitutionally limited government, transparency, individual liberty, personal responsibility, free enterprise, and the centrality of the family and community. All of these are critical to addressing today’s criminal justice challenges. It is time to apply these principles to the task of delivering a better return on taxpayers’ investments in public safety. Our security, prosperity, and freedom depend on it.

ARE WE ALL CRIMINALS?

OVER-CRIMINALIZATION OF AMERICAN LIFE

“Aggressive over-criminalization in this country over the past three decades has left us with a bloated criminal code that makes honest Americans and small businesses vulnerable to the legal repercussions of unintentional violations. Reform is necessary to improve our current standards, reduce our overbearing criminal code, and protect the freedoms of hard working American citizens.” Congressman James Sensenbrenner (WI)

CRIMINALIZING DAIRY FARMERS

In rural Maryland, Karen and Randy Sowers built their dairy farm with a \$100,000 loan into a thriving company that now employs over 70 people. The Sowers’ sell and deliver milk to homes all around Maryland and host festivals at the farm, where they sell ice cream and other dairy products. With this type of business their deposits usually consist of cash. One day, while making a deposit, a bank teller advised them if they deposited less than \$10,000 they wouldn’t have to fill out a bunch of federal forms.

The \$10,000 limit on deposits, stems from a 1970 law known as the Bank Secrecy Act. The law requires those who make large cash deposits to go through extra scrutiny and fill out federal forms. The purpose of the law is to target those who launder money like drug dealers and the mafia. The effect is if you consistently deposit \$9,999 in order to purposely avoid the federal paperwork you are guilty of a crime known as “structuring,” which is a felony and carries up to a five-year prison sentence.

In the Sowers’ case, like most Americans, they had never heard of the Bank Secrecy Act until armed federal agents appeared at their door. The Sowers were threatened with felony criminal charges and \$63,000 was seized from their bank account. They were never charged with a crime, but for four years the federal government kept nearly \$30,000 of their money.

BACKGROUND

The government has no greater power than to take a person’s life and freedom. The reason we have a central government is to guard and protect our God-given liberties. Unfortunately, big government tramples on our rights and freedoms, when they create thousands of criminal penalties, some regulatory in nature, which criminalize what would otherwise be simple mistakes. This problem is often called over criminalization, and has been summarized by the Heritage Foundation as *“the trend to use the criminal law rather than the civil law to solve every problem, to punish every mistake, and to compel compliance with regulatory objectives.”*¹⁵

Every year congress and state legislatures across the country pass hundreds of new criminal laws. While these laws are often well intentioned, many lack a criminal intent standard, which means that an otherwise law-abiding person can become a criminal by unknowingly breaking one of thousands of federal or state laws. The federal government has so many laws and regulations with criminal penalties it is unable to figure exactly how many there are. With this massive number of laws, it’s easy to see how a law-abiding citizen could make a mistake and accidentally break one. Many of these criminal penalties are attached to regulations and represent mistakes that the average American would not conceive as criminal.

Additionally, regulations with criminal penalties are created by unelected bureaucrats who are never held accountable by the public. Every year, Americans are locked up for regulatory violations like professional

fishermen who catch the wrong size fish. While these individuals should be fined and receive some sort of punishment, prison cells should be reserved for criminals who actually pose a threat to the public.

Indianapolis 500 Champion Survives a Blizzard, but Loses to the Feds

Three time Indianapolis 500 Champion Bobby Unser was snowmobiling with a friend in the New Mexico wilderness, when their snowmobiles broke and they spent two harrowing nights in a blizzard. Unser and his friend had to build a makeshift shelter and eat snow to survive. Fortunately, they found a cabin with a phone and were able to call for help. After being rescued, Unser contacted local authorities in order to help locate the lost snowmobiles, who suggested he contact federal authorities to avoid trouble, as some of the land was protected wilderness area. Due to a 2005 federal regulation, it is illegal to use snowmobiles on federally protected lands. During the meeting, Unser and forest officials were unable to locate exactly where he had lost his snowmobiles and whether Unser had ever even ventured onto federal land. Despite his cooperation, forest officials believed he may have been in a national wilderness area and therefore violated federal law.

Despite surviving a blizzard, Unser now faced federal charges that carried up to one year in prison and a \$500 fine. At the trial, prosecutors said the law did not require criminal intent. Meaning even if Unser accidentally wandered onto federal property during a blizzard attempting to save his life – he was still in violation of the law. Unser lost the criminal trial, even though the charges were based on a “best guess” that he had ventured into federally protected land. Unser was so angered by the charges that he appealed them all the way to the U.S. Supreme Court, who ultimately refused to hear the case. Now this racing champion, who made a mistake while trying to save his and his friend’s life, has a criminal record.

SOLUTIONS

REQUIRE CRIMINAL INTENT

Lawmakers should require criminal intent when writing laws that include criminal penalties. This typically requires the term “knowingly” to be added to criminal law – meaning an individual knew or should have known they would be breaking a criminal law. This simple addition will help prevent the prosecution of law abiding citizens who make simple mistakes.

MINOR REGULATORY OFFENSES SHOULD BE CIVIL RATHER THAN CRIMINAL OFFENSES

Many minor crimes can be handled with a civil penalty instead of a criminal penalty. Government has no greater power than to deprive an individual of their liberty, and that power should be used sparingly. For the most part, in crimes where there is no criminal intent – there should be no jail time attached.

RESERVE FELONIES FOR THE MOST SERIOUS OFFENSES

Common law felonies are murder, rape, manslaughter, robbery, sodomy, larceny, mayhem and burglary. Felonies carry the heaviest penalties and collateral consequences, like losing the ability to own a firearm or vote. Between 2008 and 2013, the State of North Carolina created more than 85 new felonies.¹⁶ With this many felonies being enacted, there are a number of questionable ones created like a felony punishment for the theft of Ginseng.¹⁷ At the federal level, it is estimated there are over 4,000 criminal laws, which is a one-third increase since 1980.¹⁸ This growth in crimes cost taxpayers and, for those with felony records, it is often difficult to reintegrate back into society and gain lawful employment. Felony punishments should be reserved for the most serious offenders.



TARGETED SENTENCING THAT IS TOUGH AND SMART

“We must decide if we will continue to pay the high fiscal and social costs that mandatory minimums impose. Or if we would rather try something smarter.” Senator Mike Lee (UT)

THE ACCOMPLICE GETS THE LONGER SENTENCE

Mandy Martinson, grew up in a happy home in Mason City, Iowa. She was on the high school honor roll and earned her bachelor’s degree. She had a fulltime job as a dental hygienist, when she began dating an abusive man and her life took a turn for the worse. In the aftermath of this abusive relationship, she went from a casual drug user to a meth addict. Her addiction became so bad that she was fired from her job and ultimately began dating and moved in with a drug dealer.

For five weeks, Mandy lived with her drug dealer boyfriend and her main role was usually to count the money and sometimes transport his drugs. Police eventually raided their home and charged both Martinson and her boyfriend with possession of large amounts of methamphetamines, marijuana and two guns.

Because Mandy’s boyfriend was the actual organizer and main participant in the drug deals, he had information he could trade with prosecutors on his co-conspirators in order to receive a lesser sentence. Unfortunately for Mandy, as she was little more than a bit player, she had no information to share and as a result received a mandatory sentence of fifteen years, while her boyfriend who took the plea bargain only received 12 years. The Judge stated, *“The Court does not have any particular concern that Ms. Martinson will commit crimes in the future.”* The Judge noted the basic unfairness in the length of the sentence given her minor role, but his hands were tied due to mandatory sentencing laws.

Martinson for her part has been a model prisoner, is now drug-free and works to mentor other prisoners.

BACKGROUND

Just as society is ill-served when a violent offender receives a light sentence, we should also acknowledge we are ill-served when individuals are punished too harshly—especially non-violent offenders. Criminal sentences should match the actual crime.

Prosecutors often use mandatory minimum sentences as leverage to persuade an offender to take a plea bargain and become an informant, which translates into a lighter sentence. Unfortunately, this means more serious offenders, who typically have more information to exchange with law enforcement, can receive lighter sentences than low-level co-conspirators.

Congress has used mandatory minimum sentences since the enactment of the first crime bill in 1790. For much of our history, mandatory minimum sentences were reserved for crimes like murder, treason, rape, slave trading and counterfeiting.

In 1994, President Bill Clinton and then Senator Joe Biden greatly expanded mandatory minimum sentences when they passed the Violent Crime and Law Enforcement Act. In addition to a ban on so-called “assault weapons,” the law gave money to the states to build new prisons and financial rewards for enacting tougher, i.e. “longer,” sentencing laws. In part because of the Clinton/Biden crime bill, the incarceration rate rose by 60 percent during Clinton’s time in office.¹⁹ According to U.S. Senator Mike Lee, from 1995-2010, the number of federal prisoners serving a mandatory minimum sentence grew from 29,603 to 75,579 – a 155 percent increase.²⁰

SOLUTION

THE SAFETY VALVE

In order to fix unfair sentences, like that of Mandy Martinson, while still ensuring rogue judges don't refuse to punish criminals, many states have established "safety valves" which permit judges to depart from mandatory minimum sentences for certain nonviolent offenders. Using the safety valve, a judge can depart from a mandatory minimum sentence when the imposition of the sentence would *"result in a substantial injustice to the defendant and the imposition of the mandatory minimum sentence is unnecessary for the protection of the public."*

Dealing drugs, in any amount, is a serious offense. That is why the safety valve approach leaves in place all of the mandatory minimum penalties for drug dealing and does not lower the maximum sentence allowed. However, the safety valve permits a judge to better distinguish between drug kingpins and manufacturers, who should still face stiff mandatory minimum sentences, and lower level street dealers, who are often addicts themselves trying to support their drug habits. The safety valve permits the judge to send a low-level, non-violent offender to a shorter sentence or to home confinement that includes mandatory drug testing and treatment to end their addiction and help them become a contributing member of society.

In 2015, Mary Fallin, the conservative Republican Governor of Oklahoma, signed safety valve legislation into law. Fallin said the following about the legislation, *"Personal and community safety remain top priorities, and violent criminals will continue to be incarcerated. But the fact is, one in eleven Oklahomans serve time in prison at some point in their lives. Many of our current inmates are first time, nonviolent offenders with drug abuse and alcohol problems. Many also have mental health issues they need treatment. For some of these offenders, long sentences in state penitentiaries increase their likelihood of escalated criminal behavior."*²¹

At the federal level, efforts to reform mandatory minimum sentences have been led in part by conservatives like Senators Mike Lee and Rand Paul. The safety valve strikes a balance by maintaining tough penalties for serious drug offenders, who must be behind bars to protect our communities, and restoring judicial power to depart from overly harsh mandatory penalties in egregious circumstances. In our criminal justice system, looking at the individual and the crime committed prevents doling out one-size fits all punishments that lead to a shortage of prison beds for violent criminals and turns low level offenders, who serve lengthy prison stays with violent offenders, into more dangerous criminals who are then returned to our communities.



REFORMING LIVES AND COMMUNITIES: CARROTS AND STICKS

*“Conservatives should recognize that the entire criminal justice system is another government spending program fraught with the issues that plague all government programs. Criminal justice should be subject to the same level of skepticism and scrutiny that we apply to any other government program.” Richard Vigurie,
Chairman ConservativeHQ.com*

THE HAWAII HOPE COURT

In Hawaii, Judge Steven Alm was frustrated with the traditional method of probation, which left individuals failing at a high rate. Judge Alm teamed up with the U.S. Marshalls to reform probation. Judge Alm took on meth users, who were the worst performing probationers. The program is called HOPE court, which stood for Hawaii Opportunity Probation with Enforcement. In Judge Alms' program, meth users who skipped appointments or who tested positive for drugs were brought into court within 72 hours by U.S. Marshalls and received immediate sanctions like a few days in jail. Alm's HOPE court replaced the old system where offenders were allowed to fail five to ten times before facing punishment.

Judge Alm explained the commonsense principles behind his Hope Court this way, *“I thought to myself, well, what would work to change behavior? And I thought of the way I was raised, the way my wife and I would were trying to raise our son. You tell him what the family rules are, and then, if there's misbehavior, you do something immediately. Swift and certain is what's gonna get people's attention and help them tie together bad behavior with a consequence and learn from it.”*²²

Even taking on the worst of the worst, Judge Alm's program was a great success in reducing probation violations. Independent studies of the HOPE Court found that participants were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, and 53 percent less like to have their probation revoked.²³

BACKGROUND

The vast majority of convicted criminals do not reside in prisons, but out on the streets under some form of community supervision like parole or probation. Community supervision, like parole and probation, is a vastly less expensive than incarceration, with the cost savings in most states usually over \$20,000 annually per inmate. Community supervision also allows individuals to continue to work, pay taxes, raise their family and pay restitution to victims. On the other hand, when an individual is incarcerated, they are relieved from the responsibility of having a job and raising their families – a responsibility that often falls to family members or the government.

However, community supervision programs are badly in need of an overhaul. Currently four in ten offenders in community supervision fail within three years of their release and return to prison. Often these programs are understaffed and fail to utilize performance measurements or evidence-based programs that have proven to reduce recidivism. Officers often supervise between 100 to 200 offenders and this leads to less supervision and more crime. Community supervision must be fixed to better protect our communities and to slow the revolving door between prisons and neighborhoods.

Many states have improved parole and probation by introducing a system of evidence-based practices, which include positive incentives for good behavior and consequences for bad behavior. Funds to improve community supervision, generally come from savings in reducing incarceration.

SOLUTIONS

CARROT AND STICKS

In a number of states, lawmakers have introduced a carrot and stick approach to get offenders to toe the line. A structured program that relies on rewards and punishments has proven to reform criminal, anti-social behavior.

THE STICK: SWIFT AND CERTAIN SANCTIONS

When an individual on parole or probation has a “technical violation,” meaning they didn’t get arrested for a new crime, but instead violated the terms of their supervision by missing an appointment or using drugs or alcohol, the sanction the officer often has to rely on is revoking the individual’s parole or probation. This means a costly prison cell for a couple years. Typically the choice is made to simply ignore small infractions, until multiple infractions happen and an officer or judge throws up their hands and says enough and sends the individual back to prison.

The current system doesn’t work because it empowers the criminal to continue his or her anti-social behavior as they see no real consequences for their rule breaking until it is too late and they are sent back to prison to serve the remainder of their sentence. It also means our current system does little to stop criminals from breaking the rules. Evidence from the states shows the best answer is to empower officers with the ability to implement immediate and proportionate sanctions for violations. For example, offenders who commit technical violations, will have to undergo increased drug testing, more meetings, or even serve a few days in jail. Most offenders get the message when they face swift punishments that fit the crime.

THE CARROT: EARNED COMPLIANCE CREDITS

The earned compliance credit is the “carrot” to the swift and certain sanctions “stick.” Research shows that those in the criminal justice system respond generally better to positive reinforcement than to negative. Earned compliance credits give parolees and probationers the opportunity to earn time off of their active supervision by complying with the rules, staying out of trouble and paying required fines and restitution to victims. For example, some states provide credits for non-violent, non-sex offenders, who are fully compliant with their parole or probation. If they earn enough credits, compliant offenders will be moved to an inactive supervision status -- meaning they will still have to serve their full parole or probation time and can still be revoked if they get in trouble, but they don’t have to check in with an officer. This gives offenders a positive incentive to follow the rules. An additional positive side effect is officer caseloads are reduced as compliant offenders leave active supervision and officers are able to concentrate on high-risk offenders. The payment of restitution to victims should also be a requirement to receive credits.

Having an additional 10 to 20 percent of offenders staying out of trouble and being removed earlier from supervision has the potential to save states millions of dollars. It also means more compliant offenders who are following the rules and committing less crimes. Currently 12 states have some version of earned compliance credits: Arkansas, Arizona, Delaware, Kentucky, Maryland, Nebraska, Nevada, Oregon, Pennsylvania, South Carolina, Texas and Wyoming.

Nevada implemented a number of reforms, including earned compliance credits and saved \$38 million, lowered parole revocations and increased successful supervision completions.²⁴ Arizona also implemented earned compliance credits and probation revocations dropped by 29 percent.²⁵



RESTORING THE LIVES OF CRIME VICTIMS

“For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet the protection of our citizens -- to guard them from becoming victims -- is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.”
President Ronald Reagan 1981

A VICTIM HEALS

On February 12, 1993 Mary Johnson received a call at work that her son's body was in the morgue. Her only child Laramiun Byrd, age 20, had been shot to death at a party by a 16 -year old named Oshea Israel. Johnson's sadness soon turned to anger at the killer who she viewed as an animal who had killed her son. To her dismay Israel was sentenced to a lesser 2nd degree murder charge and ultimately served 17 years in prison.

After years of suffering in anger about her son's death, Johnson made the fateful decision to visit her son's killer in prison. To her surprise, Israel expressed remorse for his actions and the meeting ended in a hug. She continued to visit Israel in prison and they formed a friendship. When Israel was released from prison, Johnson threw a welcome home party for him and even convinced her landlord to rent him an apartment right next door to hers. Israel is now like a second son to Johnson. Today Johnson is the founder of an organization, *From Death to Life*, which helps victims of crime following tragic events. Across the country there are thousands of victim-offender mediation services that seek to heal the wounds caused by crime. Most often, mediation services are used for more minor offenses and for juveniles, but in some cases like Mary Johnson they are used in violent crimes as well.

BACKGROUND

Restorative justice seeks to restore the lives of both the offender and victim. Too often our criminal justice system fails to address the struggles faced by victims who have to overcome the physical, emotional, and financial damage caused by crime. Victims of crime have to overcome a sluggish and bureaucratic criminal justice system, fight to have their voices heard, and face little chance of receiving restitution payments they were promised.

Nationally less than 50 percent of restitution that is ordered is actually paid.²⁶ In some cases the numbers are much worse than that and victims often run into an uncaring government bureaucracy. When Louisiana's Department of Corrections was faced with the lack of restitution payments victims were receiving, a spokesperson's response was *“That's just the way it is.”*²⁷

SOLUTIONS

VICTIM OFFENDER MEDIATION PROGRAMS

In English common law, breaking the law was considered a crime against the King. In America, as a carryover from the English legal system, crime is considered to be committed against the State. That is why criminal charging documents are titled *State vs. John Doe*. Of course, the crime was really committed against an individual who is now a victim. A victim who will have to wait through what can be a long and arduous court process, where at the end they may not receive so much as an apology – let alone justice. Victim offender mediation programs can be very effective, especially for low-level offenders. For

example, if a juvenile steals a lawnmower, in the traditional court system the victim has to attend multiple court hearings and at the end restitution may or may not be ordered and the offender will most likely receive no real punishment. In a victim/offender mediation program, both parties sit together in a room with a professional mediator. The victim is able to articulate the harm the crime caused by the crime, which forces the offender to stare their victim in the eye and understand the pain they have caused. Also, unlike the traditional court system, the victim and the offender can work out an agreement to repair the damage. So in the case of the stolen lawnmower, the juvenile can agree to mow the victim's lawn all summer for restitution.

According to the Texas Public Policy Foundation, at least 14 states have laws authorizing victim/offender mediation programs.²⁸ A study of mediation programs showed the terms of these agreements are completed almost 90 percent of the time, which compares very favorable to the typical restitution repayment rate which can be as low as 30 percent.²⁹ Multiple studies have also shown that these programs reduce recidivism and help victims to find forgiveness.³⁰

PRIORITIZING RESTITUTION

The percentage of victims that actually receive the full amount of restitution that was ordered is shockingly low. Lawmakers must make payment of restitution a priority in order to help restore the lives of victims.

When an offender is sentenced, they generally are ordered to pay a number of different fines and fees. They have a fine that must be paid to the State, court fees, supervision fees for probation and the list goes on and on. Victim restitution should not simply be lumped in with other fees, instead it should be viewed by courts and supervision officers as the first priority of payments to be made every month.

CHANGE OFFENDER BEHAVIOR

Good time credits, earned compliance credits and other incentives should be tied to the payment of restitution. Additionally for inmates that participate in work release programs, victim restitution payments should be automatically deducted from their paychecks. Finally parole and probation officers should be trained on best practices to improve restitution payment.



RESTORING LIVES AND COMMUNITIES THROUGH FAITH

*“Continue to remember those in prison as if you were together with them in prison, and those who are mistreated as if you yourselves were suffering” Hebrews 13:3
“I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me” Matthew 25:36,40*

“Governments can hand out money. But Governments cannot put love in a person’s life. The truth of the matter is that comes when a loving citizen puts their arm around a brother and sister in need and says, I love you, and God loves you, and together we can perform miracles” President George W. Bush

BROWNBACK’S PRISON MENTORS

Kansas Governor Sam Brownback is both a conservative and a man of faith. As Governor he created Mentoring4Success, a program that seeks to match every inmate coming out of prison with a faith-based mentor. To date, Kansas has matched over 4,000 inmates with mentors. Mentors are matched with inmates six months prior to their release and stay with them for one year to provide counsel and guidance. Mentoring4Success has cut recidivism rates by more than half.³¹

Gov. Brownback explained the program this way, *“The key is that you’ve got to have a good match. We organize that. You’ve got to have somebody on the outside with a good heart and wants to do good for the community. You need to have a match before the guy leaves prison. You need to have a match at least six months before he comes out so that they can start building that relationship. They have got to be somebody that 24/7 is available because we all have problems.”*³²

BACKGROUND

Faith-based groups are the unsung heroes when it comes to working with inmates and mentoring convicts to change their hearts. These groups, with little to no cost to taxpayers, provide many crucial services, both inside and outside of prisons. Unfortunately, the work of faith-based groups is often hindered by discrimination by hostile groups and government red tape.

Judeo-Christian scriptures like the Ten Commandments are foundational for our laws today. Sculptures of Moses grace both the U.S. Capitol and Supreme Court buildings. In addition to a system of laws and punishment, Judeo-Christian values also recognize the need for forgiveness and mercy, with an emphasis on care and ministry for prisoners. Every one of the apostles was persecuted and jailed at some point, with St. Paul spending years in prison. In St. Paul’s letter to Philemon he asked him to welcome back a former slave who had been imprisoned for stealing from him as *“no longer as a slave, but better than a slave as a dear brother.”*

Christians have worked in prison ministries for years. In 1976, Chuck Colson formed Prison Fellowship Ministries. Colson worked in the Nixon Administration, where he was dubbed a “hatchet man” and was later convicted and sentenced to prison for crimes committed during the Watergate era. Colson became a devout Christian and wrote his bestselling book *Born Again* about his religious awakening and the need to reform America’s prisons. He dedicated the rest of his life to reforming the criminal justice system. His prison ministry programs became popular with wardens after they saw the dramatic behavioral improvements in inmates.

In 1997, Prison Fellowship partnered with the Texas Department of Corrections to form the InnerChange Freedom Initiative (IFI). The program consists of 16 – 24 months of value based training from a biblical perspective. Once released from prison, offenders continue to work with a mentor for six to twelve months. The program relies on restorative justice, which means offenders are restored through biblical teachings that change their hearts. Participation in the program is voluntary and inmates are offered no incentives for joining. The program proved to be very successful with IFI graduates 50 percent less likely to be rearrested and 60 percent less likely to be re-incarcerated.³³

SOLUTIONS

EMPOWERING FAITH-BASED SERVICES

While big government proponents believe that government programs can replace fathers in the home and fill every social need, the truth is there is not enough government money to replace the work of faith-based organizations. In 1997, Ram Cnann, a professor at the University of Pennsylvania, conducted a study of volunteer work done by churches in Philadelphia. Cnann found that congregations were providing preschools, prison ministries, food pantries, health clinics and many more services.³⁴ The value of these services could be conservatively estimated at a quarter of a billion dollars.³⁵ The primary beneficiary of these services were youths, who were not members of a congregation and a profession of faith was almost never required for services.

Instead of discriminating against faith-based providers, government should allow faith-based service providers to compete equally for government grants. When other businesses and entities leave crime-ridden areas, churches remain. Across the nation and especially in inner-cities, churches provide many essential services. Despite the fact that many of these faith-based providers are already deeply rooted in communities and can provide services at a little to no cost to taxpayers, they are discriminated against simply because faith is a component of their program.

The Left has argued against supporting faith-based institutions because they claim government funds will be used to promote religion. In reality, groups like Catholic Charities and the Salvation Army have for years provided community service with little to no controversy. The Left also attempts to add requirements that would force faith-based organizations to hire individuals who do not share their views, which bars faith-based groups from providing services.

Lawmakers should remove red tape and partner with faith-based service providers. In Texas, TeenChallenge works to provide youths with a Christian, faith-based solution to drug rehabilitation. Despite having a success rate of 86 percent of rehabbing teens off drugs, they were denied operating licenses due to violations as minor as frayed carpets and torn shower curtains. As a result, then Governor George W. Bush exempted many faith-based service providers from these types of licensing requirements and they were able to continue their good work.

Finally, work still must be done to expand prison ministries. Many wardens often limit the services and work that can be done in prisons. States like Minnesota have taken the opposite approach and allowed 24/7 access for faith-based ministers to work with and counsel inmates. These kinds of partnerships help to rehabilitate offenders and reduce prison violence. Minimum statewide standards should be established so that the good work of prison ministry is not stopped.

VOLUNTEER

Many Faith & Freedom Coalition members volunteer for prison ministry programs and for programs to help those who have been recently released from prison. Mentors and volunteers are needed outside of the prison to assist ex-offenders with everything from helping with resumes, providing a ride to job interviews or doctor appointments, or simply helping to provide life advice.

Consider starting a prison ministry program if your church doesn't have one. There are a number of established organizations you can volunteer with, here are just a few:

PRISON FELLOWSHIP MINISTRIES

1-800-206-9764

www.prisonfellowship.org

KAIROS PRISON MINISTRY

(407) 629-4948

www.kairosprisonministry.org

CATHOLIC CHARITIES, WELCOME HOME REENTRY PROGRAM

(202) 772-4300 ext. 040

www.catholiccharitiesdc.org/welcomehome

CONCLUSION

Government has no greater power than to deprive someone of their life and liberty. People who break the law should be punished, but it's important that the punishment fits the crime. Costly prison beds should be reserved for dangerous offenders. The rapid growth of criminal laws threatens the liberty of law-abiding citizens and the poor performance of our criminal justice system harms public safety. Conservatives have led the charge at the state-level, with over 30 states enacting "smart on crime" policies that reduce recidivism and help provide non-violent offenders a second chance. States like Texas and Georgia have proven that you can decrease prison population and cut crime rates at the same time.

We must continue to promote laws that punish lawbreakers, while leaving a path for rehabilitation and second chances. As Christians, we believe in the ability of the sinner to repent and gain forgiveness. We must end the problem of over-criminalization and instead reserve prison beds for deserving lawbreakers. We must fix our broken community corrections programs that are not holding offenders accountable. Finally we must build a criminal justice system that adequately punishes lawbreakers, restores the lives of victims and does not trample on the civil liberties of the accused.

The trail blazed by red states like Texas has been replicated in states across the nation. These reforms can only continue if conservatives continue to lead and implement commonsense solutions that reform criminal justice.



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