



PolicyPerspective

What Conservatives Are Saying About Criminal Justice Reform

by Marc Levin, Esq., Director, Center for Effective Justice

The Texas Public Policy Foundation is at the forefront of a broad reexamination of the criminal justice system by advocates of policies that emphasize limited government and personal responsibility. There is an increased recognition that policymakers must think outside the cell and embrace approaches that reduce crime, restore victims, reform offenders, and control costs to taxpayers. Policymakers must also rein in the ever-growing body of criminal law so it focuses on its traditional mission of addressing serious wrongdoing that harms individual victims and degrades neighborhoods.

Texas Governor Rick Perry, 2007 State of the State Address:

“I believe we can take an approach to crime that is both tough and smart. ... [T]here are thousands of non-violent offenders in the system whose future we cannot ignore. Let’s focus more resources on rehabilitating those offenders so we can ultimately spend less money locking them up again.”

Since Texas strengthened supervision and treatment for adult offenders in 2007 instead of spending \$1 billion to build and operate 17,000 new prison beds that were projected to have been needed, there have been more than 1,000 fewer annual crimes alleged against parolees. Following the 2007 changes to redirect youth misdemeanants from more costly state lockups into local probation programs that emphasize rehabilitation, preserve families, and restore victims, juvenile adjudications have declined 10.3 percent. Since Texas’ reforms began with a measure in 2003 to divert drug possession offenders with less than a gram of a controlled substance and no prior felony from state jails, the state’s crime rate per 100,000 residents has declined 12.8 percent.



Louisiana Governor Bobby Jindal, March 2009 statement announcing a plan for work release, day reporting centers, and reentry initiatives:

“Without education, job skills, and other basic services, offenders are likely to repeat the same steps that brought them to jail in the first place. This not only affects the offender, but families and our communities as well. This is a problem that needs to be addressed head-on. We cannot say we are doing everything we can to keep our communities and our families safe if we are not addressing the high rate at which offenders are becoming repeat criminals. By implementing this re-entry program, we can curb the cycle of repeat offenders and thereby reduce the burden on our prisons and help offenders create a place in society that adds value to their lives while keeping our communities safe for our families.”

In this release, Corrections Secretary Jimmy LeBlanc noted multiple state agencies must join with the private sector and faith-based communities so Louisiana “can hammer away at its dubious distinction of having the highest incarceration rate in the world.”



Georgia Governor Sonny Perdue, statement signing the Crime Victims Restitution Act of 2005 to strengthen restitution laws:

“The restitution principle should be much more than an ideal we rarely meet. It should be a reality that we routinely enforce for the benefit of crime victims in Georgia.”

In 2008, Texas probationers paid \$46.8 million in victim restitution and performed 9.7 million community service hours valued at \$63.3 million. In 2008, the state’s prison inmates paid a total of \$501,000 in victim restitution, fines, fees, and court costs.

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Connecticut Governor Jodi Rell, December 2009 press release:

“We are closing a prison because of “a decline in the inmate population, the agency’s success with a number of post-release programs, and the need to find savings and efficiencies in state government . . . Any decision such as this must always be made with public safety foremost in our minds . . . We face an extraordinarily difficult budget situation—a challenge unlike any we have known in modern memory . . . While other states—including states facing even more severe budget problems than our own—are being forced to build new prisons, we can make the most of our successes by building on these achievements.”

This prison closure, which will save \$3.4 million, is a result of Connecticut’s effective policies to reduce re-offending. Since the state began its justice reinvestment initiative in 2003 to strengthen probation supervision and treatment, more offenders are successfully completing their probation and the crime rate has declined 6.3 percent.



Ed Meese, former U.S. Attorney General under President Reagan and Senior Fellow at the Heritage Foundation:

“I think mandatory minimum sentences for drug offenders ought to be reviewed. We have to see who has been incarcerated and what has come from it.”



John Stossel, Fox News and Fox Business commentator, December 2009:

“Have you been prosecuted by the Feds? If not, consider yourself lucky. The U.S. Criminal Code has now reached 27,000 pages. Thanks to Congress, there is an ever-expanding number of laws for us to break. . . . There are now more than 4,000 federal crimes, spread out through some 27,000 pages of the U.S. Code. . . . You can serve federal time for interstate transport of water hyacinths, trafficking in unlicensed dentures, or misappropriating the likeness of Woodsy Owl and his associated slogan, ‘Give a hoot, don’t pollute.’ Some years ago, analysts at the Congressional Research Service tried to count the number of separate offenses on the books, and gave up. If teams of legal researchers can’t make sense of the federal criminal code, obviously, ordinary citizens don’t stand a chance. It’s for good reason that our Constitution mentions only three federal crimes (treason, piracy, and counterfeiting). The Founders viewed the criminal sanction as a last resort, reserved for serious offenses, clearly defined, so ordinary citizens would know whether they were violating the law.”

Texas state law encompasses more than 1,700 criminal offenses, including catch-all statutes that authorize state agencies to impose a criminal penalty—sometimes with the possibility of jail time—for rules they regularly promulgate.



Oklahoma U.S. Senator Tom Coburn, December 2006 *New York Times Magazine* article “The Right Has a Jailhouse Conversion:”

“As a physician, I believe that we ought to be doing drug treatment rather than incarceration”



George L. Kelling, Scholar at the conservative Manhattan Institute:

“What, over the last thirty years, has the “system” produced? An endless temptation to spend money. The image of a system induces us to try to create a fiscal balance between the parts. More police mean more criminals arrested, more arrestees mean more prosecutors and judges to convict, more convicts mean more prisons and more parole and probation offices. But perhaps that idea is wrong. Perhaps instead of spreading resources evenly over a system to process criminals, we need to concentrate them on the agencies that prevent crime. Perhaps, to put it bluntly, we need fewer prisons and far more cops—not cops who will feed the system, but cops who will starve it by helping communities protect themselves.”

Kelling helped develop Mayor Giuliani’s criminal justice policies that led to 64 percent drop in crime and 42 percent fewer inmates.

President George W. Bush, 2004 State of the Union Address:

“We know from long experience that if [former prisoners] can’t find work, or a home, or help, they are much more likely to commit more crimes and return to prison. . . . America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life.”



Kansas U.S. Senator Sam Brownback, December 2006 *New York Times Magazine* article “The Right Has a Jailhouse Conversion:”

“We should not be resigned to allowing generation after generation to return to prison because they don’t have the tools to break the cycle. I personally favor a number of these faith-based approaches. But if there are other approaches, let’s try them. This is an enormous problem, and since the ’70s, we have basically just said we’ll lock people up.”



Eli Lehrer, Visiting Fellow at the Heritage Foundation writing in *The National Review*, 2001:

“Conservatives should support four policies: improved follow-up, better drug treatment, in-prison work programs, and faith-based rehabilitation.”



Grover Norquist, President of Americans for Tax Reform, in July 2009 testimony before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security:

“The biggest problem from the perspective of the taxpayer, however, is that mandatory minimum sentencing policies have proven prohibitively expensive. In 2008, American taxpayers spent over \$5.4 billion on federal prisons, a 925 percent increase since 1982. This explosion in costs is driven by the expanded use of prison sentences for drug crimes and longer sentences required by mandatory minimums. Drug offenders are the largest category of offenders entering federal prisons each year. One third of all individuals sentenced in federal courts each year are drug offenders. And these convicts are getting long sentences. In 2008, more than two-thirds of all drug offenders receive a mandatory minimum sentence, with most receiving a ten-year minimum. . . . The benefits, if any, of mandatory minimum sentences do not justify this burden to taxpayers. Illegal drug use rates are relatively stable, not shrinking. It appears that mandatory minimums have become a sort of poor man’s Prohibition: a grossly simplistic and ineffectual government response to a problem that has been around longer than our government itself. Viewed through the skeptical eye I train on all other government programs, I have concluded that mandatory minimum sentencing policies are not worth the high cost to America’s taxpayers.”



Former Florida Governor Jeb Bush, Chairman of the Foundation for Excellence in Education:

“The ability of ex-offenders to obtain employment after incarceration and become productive members of their communities is essential to reducing recidivism rates, but due to employers’ concerns about liability, the honest completion of job applications often results in ex-offenders being unable to find work.”

“Agencies shall report to the Executive Office of the Governor reform efforts including eliminated or modified ex-offender employment disqualifications, draft legislation for a case-by-case exemption or review mechanism, and modified criteria and procedures used in relation to ex-offender employment restrictions.”

These statements were in executive orders issued in 2005 and 2006. The orders created a commission that issued recommendations to increase the employment of ex-offenders and directed state agencies to reduce occupational licensing barriers.

Cal Thomas, former Vice President of the Moral Majority and Fox News commentator, November 2009 syndicated column:

“Perhaps if we focused more on redemption, rather than detention, the results would be different. . . . Over the years we’ve managed to get the punishment part right, but what about the redemption part? Prisoners have few advocates and often feel abandoned and without hope. Clearly there must be a better way when the number of incarcerated grows every year, along with the cost of warehousing them in places that serve as hot houses of despair and training academies for hardened criminals.

In 22 states plus the District of Columbia, children as young as seven can be prosecuted and tried in adult court, where they would be subjected to harsh adult sanctions, including long prison terms, mandatory sentences, and placement in adult prison. Surely this is cruel and unusual punishment for all but the most violent and psychotic killers.

One size fits all sentencing doesn’t and it shouldn’t. Isn’t it better to attempt to reclaim children who are headed in the wrong direction than to doom them to life in prison without parole? I think it is.”

In 2008, there were 246 Texans age 17 or younger were certified to stand trial as adults, which results in an adult prison sentence upon conviction. Some were certified for non-violent offenses.



Sarah Palin, Former Alaska Governor and Wasilla Mayor, January 2001:

“As I look at the money that government spends on projects, programs, personnel, and facilities to ‘fix’ society’s ills and I realize that it’s [be]come more politically correct and accepted for government to throw money towards ‘after-the-fact [services]’, instead of preventive measures that a community could take to support and promote . . . family oriented, positive, constructive activities and lifestyles. Even on the local level we [spend] hundreds of thousands of dollars on our Police Department, Youth Court, DARE Program, etc. . . . ‘after the fact’ fixes for juvenile problems. We are in a position to help *prevent* [emphasis in the original] the problems that we are now forced to pay to attempt to remedy.”



Dick Thornburgh, Former U.S. Attorney General under Presidents Reagan and Gorge H.W. Bush and Pennsylvania Governor, Testimony before Congress at a July 2009 hearing on overcriminalization and overfederalization:

“Congress needs to rein in the continuing proliferation of criminal regulatory offenses. Regulatory agencies routinely promulgate rules that impose criminal penalties that are not enacted by Congress. Indeed, criminalization of new regulatory provisions has become seemingly mechanical. One estimate is that there are a staggering 300,000 criminal regulatory offenses created by agencies.”



Tony Blankley, former Press Secretary for U.S. House Speaker Newt Gingrich and *Washington Times* columnist, October 2009 Cato Institute forum on overcriminalization:

“I was a prosecutor in Los Angeles for eight years in the 1970s and even then, which was by comparison a more innocent time, I was shocked at the power that we had and the ease of abusing it, and the system that was slowly getting out of control. So, even if you had good faith and you intended to be an honorable prosecutor, the very process by which you exercised discretion [was strained by] the increasing ambiguity of the law. It was harder and harder for people to know what was a crime. The criminal law used to be a series of oak trees that reached up into the sky and you would see them and behold them and contemplate on it—and they were usually descriptions of the Ten Commandments—don’t kill, don’t rape, don’t steal, don’t give false witnesses. Now, the law is like the blades of grass in a meadow—you can’t see them, you don’t identify with them and yet they have poisonous tips. If you just innocently walk along the field, you can end up legally poisoned—put in a cage.”

North Carolina U.S. Congressman Howard Coble, December 2006 *New York Times Magazine* article “The Right Has a Jailhouse Conversion:”

“I still embrace the theory of locking the cell door if an offender has been convicted of a crime. But I don’t say throw the key away. I say, keep the key handy, so the same key that locked that door can also unlock it.”



Former Utah U.S. Congressman Chris Cannon, Co-Founder of the Congressional Caucus to Fight and Control Methamphetamine, December 2006 *New York Times Magazine* article “The Right Has a Jailhouse Conversion:”

“In this whole thing, nobody is being soft on crime. ... The system has a very strong tendency to change them [offenders] for the worse. Everybody knows that, I think. Our current system is fundamentally immoral.” ☆

About the Author

Marc A. Levin, Esq., is the director of the Center for Effective Justice at the Texas Public Policy Foundation. Levin is an Austin attorney and an accomplished author on legal and public policy issues.

Levin has served as a law clerk to Judge Will Garwood on the U.S. Court of Appeals for the Fifth Circuit and Staff Attorney at the Texas Supreme Court.

In 1999, he graduated with honors from the University of Texas with a B.A. in Plan II Honors and Government. In 2002, Levin received his J.D. with honors from the University of Texas School of Law.

Levin's articles on law and public policy have been featured in publications such as *The Wall Street Journal*, *USA Today*, *Texas Review of Law & Politics*, *National Law Journal*, *New York Daily News*, *Jerusalem Post*, *Toronto Star*, *Atlanta Journal-Constitution*, *Philadelphia Inquirer*, *San Francisco Chronicle*, *Washington Times*, *Los Angeles Daily Journal*, *Charlotte Observer*, *Dallas Morning News*, *Houston Chronicle*, *Austin American-Statesman*, *San Antonio Express-News* and *Reason Magazine*.

About the Texas Public Policy Foundation

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The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach. Our goal is to lead the nation in public policy issues by using Texas as a model for reform.

The work of the Foundation is primarily conducted by staff analysts under the auspices of issue-based policy centers. Their work is supplemented by academics from across Texas and the nation.

Funded by hundreds of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

