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Texas conservatives lead reassessment of 'war on crime' Conservatives drop 'lock 'em up' approach as prison costs rise

By Kevin Diaz and Siobhan O'Grady
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Melissa Phillip, Staff

U.S. Senator John Cornyn (R-TX) speaks with the Houston Chronicle editorial board shown Thursday, Jan. 17, 2013, in Houston. (Melissa Phillip / Houston Chronicle)

There was a time when Texas conservatives like U.S. Sen. John Cornyn, a former judge and state attorney general, used to tout their tough-on-crime credentials, much like in the cowboy-themed 2008 campaign video, "Big Bad John."

Now Cornyn and many other Republicans across the country are singing a different tune on crime and punishment - this time invoking costs, redemption and second chances.

"We tried the lock 'em all up and keep them locked up philosophy, but sooner or later many of these folks are going to be released from prison," Cornyn said in an interview. "Traditional criminal justice policy called for rehabilitation to be one of the elements of our criminal justice system, but we kind of forgot about that."

Some traditional conservatives have come to the view that treatment and rehabilitation programs - long the province of liberal prison reformers - cost a fraction of mandating long, hard time, and have shown better results with low-level offenders, particularly drug offenders, who make up about half of all federal inmates.

The upshot is a pair of broadly-backed criminal justice reform bills in the Senate - one with Cornyn's name on it - now being hailed as a major transformation in a failed criminal justice system. Even in an election year of a famously gridlocked Congress, Cornyn and others give the legislation a better than even chance of getting to President Barack Obama's desk this year.

The Recidivism Reduction and Public Safety Act, introduced by Cornyn and Sen. Sheldon Whitehouse, D-R.I., would provide early releases to low-risk federal inmates who go through job training, education and drug treatment programs, something Texas has been doing for years. It could be paired with the Smarter Sentencing Act, a bill by Sens. Richard Durbin, D-Ill., and Mike Lee, R-Utah, , which would give judges more discretion and scale back minimum sentences for nonviolent drug crimes.

Cornyn, the No. 2 Republican in the Senate, has yet to fully climb on board with the Durbin bill reducing mandatory sentences, but he said "I'm more than happy to continue the conversation."

Bipartisan approach

That there's even a bipartisan conversation about a highly-charged issue like crime is generating an unusual buzz in Washington. In the past, if there was any consensus on sentencing reform, it was about who could be tougher in the "war on drugs."

"It echoed the mood nationally," said Texas native Jeremy Haile, federal advocacy counsel for the Sentencing Project, a Washington advocacy group. "Now there's a similar dynamic, but in reverse."

The momentum behind the prison reform movement in the Senate can be seen from the wide spectrum of supporters, from Texas tea party champion Ted Cruz on the right to New York Democrat Chuck Schumer on the left.

Cornyn's bill whizzed through the Judiciary Committee this month on a 15-2 vote. The absence of partisanship also could be seen in the two dissenters - California Democrat Dianne Feinstein, and Alabama Republican Jeff Sessions - who represent opposite ends of the political spectrum.

Feinstein's objections were based on what she sees as a one-size-fits-all fix to a one-size-fits-all problem. If current sentencing practices are too rigid, she argues, so is the possibility of releasing an estimated 34,000 inmates over the next decade "by matrix and computer" calculations of their relative risk levels.

Under Cornyn's bill, for example, a first-time, nonviolent drug offender who passes regular risk assessments could knock off as much as 60 days for each year of his total sentence by taking part in a recidivism reduction program like a prison job. Treatment programs would be provided by faith-based groups and other nonprofits, paid for with savings generated by the early releases.

The conservative turnabout is based on lessons learned in Texas and other Republican-led states which saw that locking up prisoners and throwing away the key was leading to overcrowded prisons and unsustainable costs.

Prison reform advocates point to success stories like Boyd Harrell, a Houston prison minister who was one of the first Texans to receive a second chance under a 1991 Texas law that provided in-prison drug treatment for eligible offenders.

Faith-based rehab

After his release from prison in 1998, he completed his bachelor's degree at the University of Houston and now runs a full-time church and prison ministry project called Christ Over Our Life (C.O.O.L.) Ministries. His faith-based rehabilitation program is partnered with drug courts and a parole office in Houston, and has reached thousands of inmates across Texas and the surrounding states.

"If I help one person that has a family then I can help feasibly 1,000 people," said Harrell, 54. "I can understand why incarceration is a part of the equation, but across the board we got way too many people who are being shoved in prison because others don't have enough time to give them the help they need."

Harrell, who was arrested for the first time when he was 18, represents a bridge between a tough-as-nails era in Texas criminal justice and the new way of doing things. A self-described junkie who had done several stints in prison, he was faced the possibility of a 25 year sentence in 1993 after a retail robbery while he was on parole.

But because of a law signed by Gov. Ann Richards in 1991, Harrell got a reduced five-year sentence with credit for a six-month drug rehabilitation program.

Conservatives who have joined with liberal allies like the American Civil Liberties Union in pressing for reform note that money has been a central driver on the right.

The incarceration binge of the war on drugs filled state and federal prisons with nonviolent and often-times low-level drug offenders. States like Texas hit a financial wall, said former FBI agent Donald DeGabrielle, who became the U.S. attorney for the Southern District of Texas in Houston under President George W. Bush. "We found out that there is not so much room at the inn," he said.

The United States still locks up more individuals per capita than any other nation in the world, with costs per prisoner averaging over \$18,000 a year in Texas and upwards of \$30,000 in other states. Altogether, the U.S. Bureau of Prisons consumes almost \$7 billion a year, about a quarter of the Justice Department's budget. About half of those federal inmates are in for nonviolent drug offenses.

But the search for alternatives to prison has already produced change. The total U.S. prison population - federal and state - declined for the third consecutive year in 2012, from a high of 1,615,487 in 2009 to 1,571,013 at last count at the end of 2012.

A GOP themes

Derek Cohen, a criminal justice analyst at Right on Crime and the Texas Public Policy Foundation, a conservative think tank in Austin, is not surprised that Republicans moved away from their tough on crime rhetoric when they saw a lot of spending and not a whole lot of results.

"You talk about conservative values, well there's nothing less conservative than plowing money into a wasteful government program," Cohen said. "And the criminal justice program when run inefficiently is a wasteful government program."

But money is not the whole story. Heather Rice-Minus, a lawyer with the Justice Fellowship, a group founded by the late evangelist Chuck Colson, sees traditional values at work. "We may use different language," she said. "But whether it's, quote, social or racial justice on the left, or quote, redemption and government accountability on the right, we're uniting on reform based on different but complementary values."

For Cornyn, too, it's more than just dollars and cents.

"I've long despaired over the fact that we sort of give up on people, or we have historically given up on people," he said. "Rehabilitation, alternative approaches, or at least giving people a second chance is the right thing to do, the humane thing to do, and it's a whole lot more cost-effective."