

# The Texas Crime Initiative

It led the way to justice reform in states across the nation.

by ALAN GREENBLATT

**T**hough Jerry Madden had no prior background in corrections or law enforcement, he helped change the course of both fields. Madden was serving in the Texas House in 2005 when he got called into the speaker's office. Speaker Tom Craddock, a fellow conservative Republican, told Madden he would be chairing the corrections committee. Madden asked Craddock what he should do. Craddock uttered eight words that changed Madden's life and altered the course of American corrections policy: "Don't build new prisons, they cost too much."

Texas, even more than most other states at the time, had been on a prison-building spree. It had reached a point where the return on investment was low. Madden used his training as a statistical engineer to hunt down the data about what wasn't working, or could easily be changed, throughout the corrections system. Along with his counterpart in the state Senate, John Whitmire, Madden put together a package to overhaul parts of the state's criminal justice system.

A lot of it was simple stuff. By expanding a drug treatment program that was already in place, for instance, they were able to cut the waiting time from a year to four months. That took two thirds of the people—or a thousand prisoners—off the waiting list and got them into treatment, after which they were let go. Simply being able to treat and release them earlier, rather than having them kill time by waiting around in prison beds for an openings, saved the state \$35,000 a head. "We were just as safe as if they waited eight more months," Madden says.

The vast majority of incarcerated individuals will be released from prison before their natural lives are over. Too many of them get sent back to

prison, with recidivism rates—the number of people who commit new offenses and get sent back to prison within three years of release—nearing 70 percent. Simply by cutting down on that percentage, states can save huge

amounts of money. And since the ultimate goal of drug treatment and employment programs and the like is to prevent the same people from committing more crimes, public safety is enhanced. "Certainly prisoners should be punished for their crimes, but if you reduce recidivism rates, you reduce incarceration rates and ultimately make communities safer," says Ronald J. Lampard, director of the criminal justice task force for the American Legislative Exchange Council (ALEC), a conservative group that brings state legislators together with businesses to craft policy.

Such efforts have come to be known as criminal justice reform. The evidence shows that they work. Back in 2007, when Madden and Whitmire introduced their legislation, the state prison population had more than doubled over the previous 14 years. The state Department of Criminal Justice then asked legislators for an additional \$523 million to build three



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*Alan Greenblatt, former reporter for Congressional Quarterly and NPR, writes about politics and policy for Governing magazine. This article was supported by a grant from the R Street Institute.*

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more prisons. But Madden and Whitmire persuaded colleagues that it would be a better investment to spend roughly half that amount, or \$241 million, on treatment, mental health, and rehabilitation. Almost immediately, the state's prison population growth slowed to a trickle and, after reaching a peak in 2010, started to come down. Since then, instead of building new prisons, the state has closed four, with plans to close four more, saving an estimated \$3 billion.

Recidivism fell quickly in Texas. Back in 2005, the state was paroling 21,000 prisoners, 11,000 of whom returned. A decade later, the state paroled 28,000 prisoners and about 4,500 came back. "It's an effort to continue getting the gains in public safety we've been getting for 20 years now, while also reducing our extraordinarily high levels of incarceration," says Vikrant Reddy, a senior fellow at the Charles Koch Institute.

The success of the Texas model stirred other states to replicate it, beginning with Kansas, Ohio, and South Carolina. The fact that Texas had a "hang 'em high" reputation, built not just on high incarceration rates but also on its status as the nation's

*After Texas passed criminal justice reform legislation, the state has closed four prisons, with plans to close four more, saving an estimated \$3 billion.*

most active executioner, helped convince conservative legislators in other states that the idea of providing treatment for prisoners wasn't some bleeding-heart proposal. Rather it was a skeptical redirection of government funds away from a strictly brick-and-mortar approach that demonstrably had not worked.

And so the Texas experiment became a model elsewhere. Cost savings and statistics that might on paper have been just as impressive out of California or Vermont wouldn't have swayed so many red-state legislators, Reddy says, particularly the Deep South converts the criminal justice reform movement has found in places such as Louisiana, Mississippi, and Georgia. "It was a tremendous stroke of luck for the country that Texas was the first to step out of the gate," says Adam Gelb, who directs the Pew Charitable Trusts' public safety performance project, which provides technical assistance to states on criminal justice policies.

Nearly three-dozen states have now enacted policies that mirror, to a greater or lesser extent, the Texas template. Every state has done something to address prisoner reentry programs and

employment. The impact of these efforts is now being felt in Washington.

In May, the U.S. House overwhelmingly passed a bill that would provide \$250 million to the Bureau of Prisons over the next five years for education, drug treatment, and job-skills training. The legislation is supported by President Trump, but it faces an uncertain future in the Senate. In addition to prison programs, Senate Judiciary Committee Chair Charles Grassley, an Iowa Republican, wants to make changes to sentencing guidelines, which remain a tougher sell.

The course of congressional action will be the subject of a feature in *TAC*'s next issue. For now, it's worth delving deeper into the history of criminal justice reform in the states. It's been one of the greatest policy success stories of the past decade. And, in a highly polarized era, it represents a rare arena where members of the two parties have found common ground.

Incarceration rates held remarkably steady throughout most of the 20th century. From the 1920s, when national prison statistics were first captured, and into the 1970s, roughly 110 individuals for every 100,000 residents were in jail or prison. But what criminologists call "stability of punishment" was suddenly disrupted during the 1970s. Prison rates rose and then continued to climb without cessation until the first reductions in incarceration came on the heels of the 2007 law in Texas.

Certainly increases in crime were part of the explanation. The crack epidemic of the 1980s contributed mightily to spikes in homicide and violent crime overall. (Homicides using handguns rose by about 40 percent between 1985 to 1990 alone.) In response to the crime wave, states passed changes to sentencing laws, including determinant sentencing guidelines (which gave judges less discretion toward leniency) and "three strikes" laws, which sent repeat offenders to prison without possibility of parole. Inevitably, such policies meant more convicts went to prison, often to serve longer sentences.

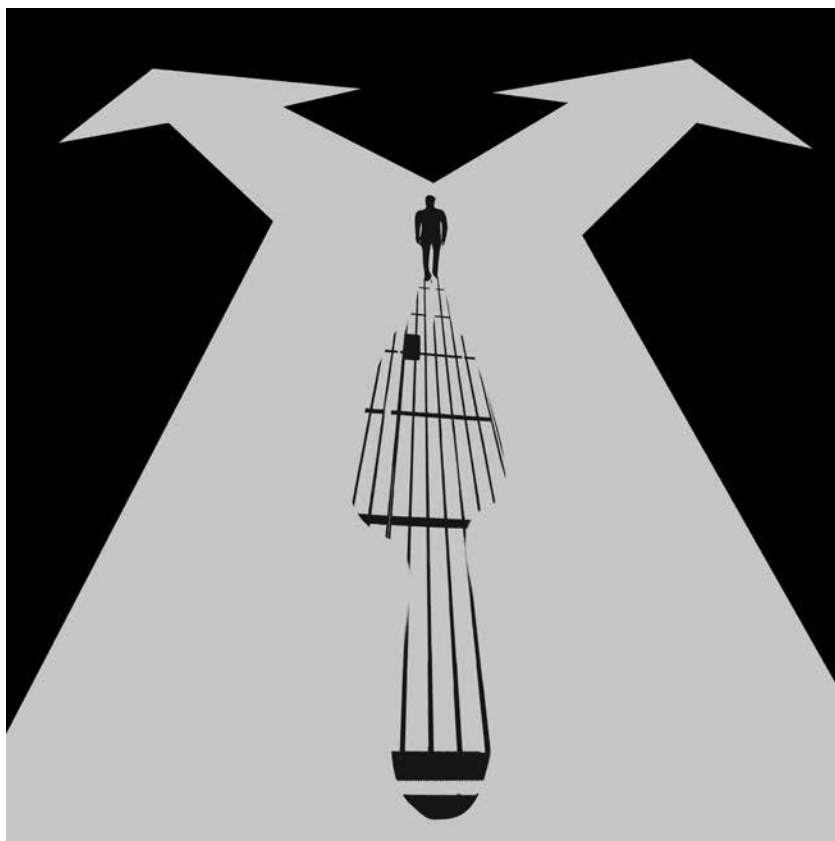
Still, even then, one of the huge drivers of the prison population came from the feedback loop of parolees violating the terms of their supervision. At the time, however, there was little interest in the problems of convicted felons. The idea of rehabilitating prisoners fell deeply out of fashion.

It would be hard to overstate how politically salient the issue of crime was in the 1980s and early 1990s, on both sides of the aisle. Everyone wanted to be tough on crime and come up with new ways to lock prisoners up and throw away the key. At the national level Democrat Thomas P. (“Tip”) O’Neill Jr., the House speaker from Massachusetts, led the bidding wars for increased crack penalties in Congress. In part, he was angry that Len Bias, a prime recruit for his beloved Boston Celtics, dropped dead from an overdose in 1986.

Clayton Williams, the Republican nominee for Texas governor in 1990, drew national attention with a campaign pledge to introduce young drug offenders to “the joy of busting rocks.” After Democrat Ann Richards beat Williams, she in turn bragged about the number of prisons she opened. Back then, the media talked about “double-death Democrats” who supported both abortion and the death penalty. The desire in those days among Democrats to enact the ultimate penalty was perhaps most dramatically demonstrated by Bill Clinton in 1992. He left the presidential campaign trail to fly home to Arkansas and preside as governor over the execution of a mentally ill cop killer named Ricky Ray Rector.

As president, Clinton in 1994 signed a massive crime bill that set the tone of thinking on the criminal justice issue throughout the nation. Among other things, it directed funding to states and localities so they could put 100,000 new cops on the beat. The law created 60 new crimes for which the death penalty could be imposed in federal cases. It was also the vehicle for the federal ban on 19 assault-style weapons, which expired in 2004, and the Violence Against Women Act, which was ruled partially unconstitutional by the Supreme Court in 2000.

Those were huge issues, but one minor provision of the bill also proved controversial at the time—namely, funding for midnight basketball programs that were meant to build a sense of community



Michael Hogue

in locales and keep primarily minority youth out of trouble. That money was stripped from the final package, as was authorization for Pell Grants to fund higher education for inmates. Part of the negotiations in Congress turned on two simple words: “and programs.” The prison funding section made clear that money was going to states for facilities. Adding “and programs” meant they could spend some of the dollars not just on construction of prisons but also programs within them. That phrase didn’t make it into law. Rehabilitation and alternatives to incarceration were simply too far out of favor. “This was about locking people up and getting them off the street,” recalls Gelb, who worked at the time as an aide to Delaware Senator Joe Biden, the lead sponsor of the 1994 law.

It’s worth recalling, Gelb notes, that although Democratic members of Congress successfully pushed for some rehab money, they supported the package as a whole, sharing the popular desire to increase the numbers of police and the magnitude of punishment for offenders. Although liberals have since come to characterize the 1994 crime law as a taproot for mass incarceration in this country, a majority of the Congressional Black Caucus at the time voted in favor of the bill.

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One of the other ironies of the 1994 law is that by the time it passed, the great national crime wave was receding. The violent crime rate peaked in 1991 at 716 per 100,000 population. By 2016, it was about half that, at 366 per 100,000, according to the Brennan Center for Justice at New York University. The decline has been both consistent and dramatic, despite a few blips along the way.

Although polls show that public perceptions of crime don't always track the actual numbers exactly, crime soon lost its salience as a political issue. "When pollsters asked what issues were salient, crime, drugs, and violence were an asterisk," Gelb says.

The altered environment made it politically possible to talk about responses other than prison construction and harsher sentences. And, as the new century got underway, there were reasons to rethink the strictly tough on crime approach. For one thing, there was a growing public awareness about the ancillary costs associated with mass incarceration. More people knew someone who had gone to prison and came to understand the difficulties ex-convicts face when they want to find a job and housing.

Some religious conservatives, notably those associated with the Prison Fellowship, began pushing for the possibility not just of redemption for prisoners but forgiveness—or, at least, fewer obstacles blocking them from finding work or housing or pursuing an education. To the surprise of many, President George W. Bush, who had been a classic tough on crime politician as Texas governor, endorsed the idea of giving ex-offenders a "second chance." "America is the land of second chances, and when the gates of the prison open, the path ahead should lead to a better life," he said during his 2004 State of the Union address. The Second Chance Act of 2008 created a grant program for state and local governments and nonprofits that help offenders reenter society and avoid further criminality through programs such as mental health counseling, housing assistance, and substance-abuse treatment.

**T**he scope of the issue of prisoners and ex-prisoners was enormous. The media frequently reported that the United States had one of the highest incarceration rates in the world—at times the highest. The prison population had increased 800 percent between 1970 and 2008. Pew found in 2008 that "for the first time, more than one in every 100 adults is now confined in an American jail or prison."

Pew's "One in 100" report was widely covered at the time, appearing on the front pages of

more than 80 newspapers. It was a number and concept that was simple to grasp and made some think that America was putting too many behind bars.

**B**ut it wasn't just statistics or sympathy that convinced many people it was time to pursue a new course. With the rise in the prison population, the cost of housing all those prisoners had also grown exponentially. There was a time when corrections were a relatively negligible part of state budgets. By 2008, five states were spending more on corrections than on higher education. From 1988 to 2009, state spending on corrections increased from \$12 billion to \$52 billion a year. By any measure—prison spending per capita, the size of state inmate populations—prisons were an enormous growth industry.

State budgets were being buffeted anyway by the Great Recession of 2007-2009. Unlike Congress, states are legally mandated to balance their budgets annually. Spending on corrections was unprecedentedly high and continuing to grow. "That is a reason why fiscal conservatives can come to the table, but you don't have to be a fiscal conservative to ask questions about something that is burdening your budget," says Megan Quattlebaum, who directs the Council of State Governments Justice Center.

If budget pressures were enough to help bring policymakers to the table, it didn't necessarily get them to pursue new directions. There was a readiness around the country for strategies that cost less and worked better than simply putting prisoners away, but what would work better?

Back in 1974, a sociologist named Robert Martinson wrote a highly influential study called "What Works?," examining prison rehabilitation programs. His conclusion: nothing works. The "nothing works" doctrine dominated policy discussion during the 1994 crime bill. It was impossible to rehabilitate criminals, so you just have to lock them up.

It turned out, though, that there were some promising new approaches. Cognitive-behavioral therapy helped prisoners come up with practical strategies about identifying the people and places that might trigger their criminal or addictive behavior. Dealing with patterns and cravings, it turned out, offered a lot more practical help than the old psychoanalytic approach of exorcising the demons of youth, or having people sit in a circle and be shamed. States found it made sense to handle different offenders differently. They began setting up specialized courts to deal with cases involving, for instance, drug abuse or mental

health issues. The aim was to address the underlying causes of criminal behavior—for example, to get prisoners into drug treatment programs before they went before the parole board, rather than waiting until they were ready for parole to prepare them to leave. “If you have a druggie that comes to prison and you don’t treat them, that’s called stupid,” says Madden, the former Texas state representative. “They’re a captive audience.” If they’re not treated, he says, “they’ll be in prison and come out and commit crimes caused by the need for drugs.”

The 2007 Whitmire-Madden bill attempted to put prisoners into two basic categories: the violent offenders of whom people are right to be afraid; and others who, due to drug addiction or mental-health issues, commit minor crimes that make people angry. Although the first camp should be locked up until they’re unlikely to do rotten things, the others can be given alternatives to sentencing that may help change their behaviors.

But the bill included a fail-safe: if the new program wasn’t working, the governor was authorized to build new prisons. That never happened. Over the next two years, the state added just 529 new prisoners, a tenth of what had been projected. After peaking in 2010, the prison population started to come down, despite the state’s rapid growth in population overall. Nothing showed the effectiveness of the alternative treatments and punishments more than these results.

Texas did essentially nothing to change its sentencing laws. Instead, it changed the way it handled people once they were within the corrections system. Criminal justice reform seeks to address an inherent inefficiency in the prisons business—namely, its tendency to do a lot of repeat business. Lots of convicts got out of prison only to be sent back due to some relatively trivial offense that violated the terms of their parole. In Kentucky, for example, two thirds of convicts entering prison had previously been on probation or parole. Nearly all of them—96 percent—were imprisoned for technical violations, such as skipping a probation appointment or failing drug tests.

But individuals guilty of fairly minor infractions can cost just as much to house as more violent offenders (excluding those at supermax security prisons or on death row). States have discovered that good risk assessments can help them identify and target individuals who can be rehabilitated; when they present these prisoners with well-conceived treatment or counseling, the results can be

encouraging. This approach has resulted in reductions of recidivism rates of up to 30 percent.

Once Texas and other early adopting states such as Kansas started posting impressive results, other states took note. Madden and officials from the Texas Public Policy Foundation initiated Johnny Appleseed efforts to spread their ideas from state to state. Not everyone wanted to concede that Texas had cornered the market on a good idea, so the Texas Public Policy Foundation spun off a group called Right on Crime, which garnered support from conservative luminaries such as Grover Norquist and Newt Gingrich. They didn’t have a Texas pedigree but had come to believe that criminal justice reform saved money and helped bring down barriers to ex-offenders leading more productive lives. “People are

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skeptical,” says Derek Cohen, director of Right on Crime. “They say this may have worked in Texas, but it doesn’t work in Georgia and Alabama.”

It turned out, though, that it did work in such places. Some states have enacted comprehensive bills to address criminal justice reform, while others have taken an incremental approach. Texas expanded its efforts with a 2011 law that allows prisoners to earn back time by completing programs associated with reduced recidivism. In March, building on changes adopted four years ago, Mississippi enacted a new law that retroactively expands parole eligibility for some nonviolent offenders, offering help with reentry into their communities, and preventing people from being locked up because they’re unable to pay fines.

There are many examples of programs that have worked in multiple states. Since passing a criminal justice reform law in 2013, South Dakota has devoted its savings from a reduced prison population to more drug- and alcohol-abuse programs. (Such repurposing of funds is why criminal justice reform laws are often called “justice reinvestment” acts.) Kentucky’s 2011 law, directing judges to release defendants without bail if they are assessed as low or moderate flight risks, has become a model for other states. Local experiments in Washington State known as Law Enforcement Assisted Diversion, or LEAD, under which police take



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low-level drug offenders not to jail but to treatment, have led to impressive reductions in recidivism.

The result is that decades of rapid incarceration growth rates have been halted. Only about half the states now are projecting near-term growth in their prison populations. The rest are flat or declining. “Over the past decade, incarceration has been declining, while we’ve been getting safer and safer,” says Reddy, the Charles Koch Institute fellow.

Success breeds success, which is why these ideas and approaches continue to spread to new states. But, given the natural tendency to doubt that crime rates can be cut by reserving prison beds for the worst offenders, it still matters who endorses the strategy. Conservative advocates stress that this approach isn’t soft on crime but in fact prevents crime. “Initially, people gave some pushback to having programs in place to support folks on their way out of incarceration,” says Tarrah Callahan, executive director of Conservatives for Criminal Justice Reform in North Carolina. “But when we limit folks’ ability to find housing and employment, we’re only setting them up for failure, which hurts public safety.”

Conservatives are seeking to reduce prison populations in part to save money, in part to help offenders find a better path, and in part simply to keep them from committing crime. They come at it from a different angle than liberals, who often complain about racial disparities or get frustrated when conservative justice reformers also seek to toughen sentences for rapists and murderers. Some believe that the whole business of mass incarceration is suspect and want to see prison populations brought down not through successful program changes, but simply as a mathematical exercise—a reverse-quota reduction in the numbers. “We’re not seeking from our end to reduce the prison population by a certain percentage,” says Lampard, the ALEC criminal justice director. “If you set hard goals, say, 25 percent, you may have started with nonviolent offenders but then you get into violent offenders.”

Still, liberals and conservatives have found unusual common ground on the broad justice reform issue. They may come at it with different motivations that generate different goals, but there is enough overlap in what they want—less crime, fewer people in prison—that they have been able to work together. The cause of criminal justice reform has led to all sorts of odd-bedfellow alliances—Van Jones and Jared Kushner, the American Civil Liberties Union and Americans for Prosperity. They have come together through a shared

belief that the 1990s tough on crime approach didn’t work and that criminal justice reform does work.

It doesn’t feel like a compromise because it hasn’t been a compromise. They have been able to agree on and promote strategies that suit them almost equally well, notwithstanding that they come at it from different perspectives. Nexus might be a better word than alliance, Reddy suggests. “You had two very different groups that were making very different arguments to their own bases,” he says. “In pursuing criminal justice reform, neither group was pursuing moderates. They were pursuing their own bases, but somehow got to the same place.”

**W**ithout doubt, there is no universal agreement that this is the right approach, and certainly no one thinks it’s foolproof. Alaska approved a major overhaul of its criminal justice approach in 2016. Just a few months later regretful legislators rolled back many of the law’s provisions and increased penalties for minor felonies. State Senator Mia Costello, a cosponsor of the 2016 law, now favors its entire repeal because, she says, it gave criminals a green light. “One of the reasons for having laws on the books is to send a message to the community about what is and what isn’t acceptable,” she says. “We’ve gone [in] the opposite direction, where criminals are feeling emboldened by this law.”

The bones of the law remain intact, however, and plenty of Alaskans still believe legislators were too hasty in expressing doubts, since many of its provisions hadn’t even taken effect before they were repealed. But the quick backlash amidst an uptick in some categories of crime points to a potential danger for the criminal justice reform movement. It has enjoyed great success, but it emerged at a time of falling crime rates. Would a fresh crime wave generate a new political bidding war to signal anti-crime toughness?

Perhaps. But there is plenty of evidence in plenty of localities around the country that the solution to crime and drug problems is not always found in the construction of more prisons. For now, it’s criminal justice reform, not prisons, that appears to be a growth industry. Law enforcement officers and prosecutors remained skeptics long after legislators bought into the idea, but now even some of them are becoming proponents. “It’s hard to believe that the pendulum will not swing back at some point,” says Pew’s Gelb. “But it’s also hard to believe that it will swing back anywhere near as far as it was in the 1980s and 1990s.” ■