

Criminal Justice Reform & the 2020 Election

Reading One

Criminal Justice: A Changing Debate

In years past, Democratic politicians, fearful of accusations that they were “soft on crime,” supported harsh policies that resulted in a massive increase in the U.S. prison population.

Times have changed, and public understanding has grown about the devastating impact of “mass incarceration,” the extreme rates of imprisonment concentrated among young, African-American men. The Brennan Center for Justice [notes](#) that the U.S. prison population “began to grow in the 1970s, when politicians from both parties used fear and thinly veiled racial rhetoric to push increasingly punitive policies. Nixon started this trend, declaring a ‘war on drugs’ and justifying it with speeches about being ‘tough on crime.’ But the prison population truly exploded during President Ronald Reagan’s administration. When Reagan took office in 1980, the total prison population was 329,000, and when he left office eight years later, the prison population had essentially doubled, to 627,000. This staggering rise in incarceration hit communities of color hardest: They were disproportionately incarcerated then and remain so today.”

Leading Democrats of the 1990s championed the 1994 Violent Crime Control and Law Enforcement Act (usually known as the 1994 Crime Bill), which was part of the Democrats’ attempt to appear “tough on crime.” But by the time the bill was passed, crime rates were already dropping.

Today, public opinion has shifted greatly, and the 1994 Crime Bill has come under fire for being racist and unduly punitive. This shift in opinion reflects research and analysis by such scholars as Michelle Alexander, author of the 2010 book *The New Jim Crow*. Alexander argues that “it is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion, and social contempt. So we don’t. Rather than rely on race, we use our criminal justice system to label people of color ‘criminals’ and then engage in all the practices we supposedly left behind.... As a criminal, you have scarcely more rights, and arguably less respect, than a Black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it.”

Democrats now unapologetically advocate ideas such as getting rid of cash bail, eliminating private prisons, and ending mandatory minimum sentences. Those who previously called for tougher punishment now face criticism. On the other side of the aisle, Republicans are also divided in their policy approaches to addressing the crisis of “mass incarceration.” These shifting views on criminal justice reform are evident during the 2020 election season.

In a June 2019 article in the *Los Angeles Times*, staff writer Mark Barabak [looked](#) at this historical shift. After Congress passed the crime bill – with the help of 2020 Democratic presidential candidate Joe Biden – Democrats were “ecstatic.” But a quarter century later, Barabak writes:

Some consider the law too tough and many, including President Trump, blame it for a wave of mass incarceration that has filled prisons with a flood of Black and brown inmates.

“It destroyed entire neighborhoods, destroyed entire communities and we’re still paying the price and suffering from it,” said Patrisse Cullors, a Los Angeles activist who co-founded the

Black Lives Matter movement. “What people need to say is, we made a mistake. A very big one.” ...

It also [underscores the generation gap](#) between the 76-year-old Biden and younger rivals focused on the racial and social injustices that grew from the push for stiffer punishment.... The legislation came at a time when crime, fueled by street gangs and the crack cocaine epidemic, was seen as spiraling out of control — including in Washington, D.C., under the very noses of congressional lawmakers.

Democrats were acutely sensitive to the issue. Bill Clinton ended the party’s exile from the White House by running in 1992 as a “different kind of Democrat,” with a tougher approach to law enforcement — the Arkansas governor even briefly dropped off the campaign trail to preside over the execution of a cop-killer with severely diminished mental capacity. When the bill finally passed, after several close calls, Democrats exulted.

“This could be one of those turning points in history,” the Senate majority leader, George Mitchell of Maine, told reporters. “I think ... the time is over when, in fact or perception, the Republicans are seen as the party that’s tougher on crime. It’s the Democrats.” ...

<https://www.latimes.com/politics/la-na-pol-2020-democrats-crime-bill-biden-20190626-story.html>

The Democratic Party’s stances of the 1990s now feel out of step with public opinion, and with a party base that wants to see solutions to the problem of mass incarceration. Joe Biden, who championed the 1994 crime bill, is not the only Democratic presidential candidate to feel the heat. Sen. Kamala Harris has been criticized for her actions as San Francisco district attorney and California attorney general. In a September 2019 article in Vox, Senior correspondent German Lopez [documented](#) Harris’s past positions:

At Thursday night’s Democratic debate, Sen. Kamala Harris (D-CA) was questioned for her record on criminal justice issues — a record that’s led some critics to describe her not as a progressive reformer but as a relic of a “tough on crime” era going back to the 1990s and 2000s... Harris argues that her views align with the new progressive movement. But her record in California, where she was a prosecutor, district attorney, and state attorney general before representing the state in the U.S. Senate, is likely to come in for harsh scrutiny and debate in the coming months....

A close examination of Harris’s record shows it’s filled with contradictions. She pushed for programs that helped people find jobs instead of putting them in prison, but also fought to keep people in prison even after they were proved innocent. She refused to pursue the death penalty against a man who killed a police officer, but also defended California’s death penalty system in court. She implemented training programs to address police officers’ racial biases, but also resisted calls to get her office to investigate certain police shootings....

“There’s been incredibly rapid change in public opinion, in attention to criminal justice,” Silard said, citing his decades-long experience in the criminal justice system and current experience as president of the reform-minded Rosenberg Foundation. “Bringing a reverse lens to that is not fair, and also doesn’t recognize folks who were courageous at that time.”

Still, Harris did embrace some “tough” policies while in the district attorney’s office, such as an [anti-truancy program](#) that targeted parents of kids who skipped school and threatened them

with prosecution and punishment to push them to get their children to class.

<https://www.vox.com/future-perfect/2019/1/23/18184192/kamala-harris-president-campaign-criminal-justice-record>

As the context of the criminal justice debate changes, and as the public insists on reform, candidates and elected officials are shifting their positions in an effort to match the demands of the time.

For Discussion:

1. How much of the material in this reading was new to you, and how much was already familiar? Do you have any questions about what you read?
2. What was the 1994 Crime Bill? Why did leading Democrats support it then, and why do many oppose it now?
3. Why have the past records of candidates such as Joe Biden and Kamala Harris been criticized by criminal justice reform advocates during the campaign? What do you think of these criticisms?
4. Do you think candidates should try to present themselves as “tough on crime”? What might be the appeal of this framing, and what are some of the problems that might come with focusing primarily on punitive policies to address criminal justice issues?

Reading Two

Three Big Ideas for Criminal Justice Reform

The shift in views on crime and punishment has been accompanied by new policy ideas. Here are three policy ideas that the experts – and the 2020 presidential candidates – are now debating.

Mandatory minimum sentences were once popular with politicians who wanted to appear tough on crime. A “mandatory minimum sentence” is a legal requirement that someone convicted of a particular offense must be imprisoned for a certain minimum period of time. Minimum mandatory sentences contributed to the rapid rise of the U.S. prison population in the past several decades.

Ten 2020 Democratic presidential candidates have vowed to get rid of mandatory minimum sentencing entirely. Politico reporter Caitlin Oprysko [summarized](#) the issue:

Mandatory minimum sentences for drug offenses were significantly expanded at the federal level via a 1986 bill aimed at addressing drug abuse. The law required that certain offenses be punishable with a minimum sentence regardless of the circumstances of a case or an individual, which, advocates of reform say, have been a major contributing factor to mass incarceration in the U.S.

Reform advocates also say prosecutors often use the threat of charges that carry steep minimum sentences to elicit a guilty plea to lesser charges regardless of a defendant’s guilt. While the 2018 criminal justice bill signed by President Trump enacted some reforms to federal mandatory minimum guidelines, many 2020 Democrats say it didn’t go far enough.

<https://www.politico.com/2020-election/candidates-views-on-the-issues/criminal-justice-reform/mandatory-minimum-sentences-reform/>

Cash bail. A second leading reform is to end or restrict the use of cash bail. “Cash bail” is the requirement that someone who is charged with a crime (but not yet convicted) must make a deposit of money in order to be released before their trial. The stated purpose of cash bail is to ensure that the defendant will return to court for their trial. In their 2016 document entitled “A Vision for Black Lives: Policy Demands for Black Power, Freedom and Justice,” the Movement for Black Lives coalition [described](#) the problem of cash bail:

Low-income people who are arrested spend an average of 23 days in a cage before their day in court simply because they often cannot afford to pay bail. For people who live paycheck to paycheck, even a short stint in jail can have devastating consequences including job loss, eviction, or having their children taken away. This is true even when they are not convicted. According to a 2010 Human Rights Watch report, for 72 percent of misdemeanor cases in New York, bail was set at \$1,000 or less and still defendants could not pay the bail amount.

Bail is not only inhumane, it is costly. A 2010 Human Rights Watch report calculated that New York City was paying \$42 million a year to incarcerate non-felony defendants. Local jurisdictions now spend \$22.2 billion every year on correctional institutions.

Bail, like all things criminal justice related, is also racially discriminatory. Black defendants have 44 percent higher odds of being denied bail and kept in jail pretrial than white defendants with similar legal circumstances....

The U.S. should initiate legislation to eliminate the bail system and capture the billions of dollars in savings to support more effective and humane alternatives to criminalization.

<https://policy.m4bl.org/end-war-on-black-people/>

According to a [summary](#) of candidate positions for Politico, as of October 2019, ten Democratic candidates have vowed to end cash bail entirely and three have vowed to reform or reduce it.

Roll back private prisons. A third idea for criminal justice reform is to curtail or end the use of private prisons. So far, eleven Democratic candidates have come out in favor of ending federal contracts with private prisons entirely. In a June 2019 article in the Los Angeles Times, staff writer Evan Halper [highlighted](#) the growing consensus within the party:

Democratic presidential candidates, seizing on anger over the mistreatment of immigrants at privately run detention centers, are pushing to outlaw them — and private prisons altogether, moving the issue to prominence in the 2020 primary race.

The demand for a ban on private lockups is becoming an increasingly potent campaign issue, as the [private prison industry flourishes](#) under a Trump administration eager to provide it with inmates and lucrative federal contracts. As the population housed in private lockups grows, a [steady stream of government investigations and media reports](#) has documented abuses and called into question whether they are saving taxpayers any money.

[In mid June 2019], Sen. Elizabeth Warren of Massachusetts rolled out a detailed critique of the facilities as well as her blueprint for getting rid of them. She joined other candidates who are vowing to phase out all private immigrant detention centers and prisons operated for the federal government, including Sens. Kamala Harris of California and Bernie Sanders of Vermont. “The companies running prisons and detention centers regularly sacrifice safety to boost their bottom line,” Warren wrote in a Medium post published Friday morning.

“Washington hands billions over to corporations profiting off of inhumane detention and incarceration policies while ignoring the families that are destroyed in the process. We need to call that out for what it is: corruption.”

<https://www.latimes.com/nation/la-na-pol-presidential-candidates-push-private-prison-ban-20190621-story.html>

For Discussion:

1. How much of the material in this reading was new to you, and how much was already familiar? Do you have any questions about what you read?
2. The websites below provide overviews of the candidates’ platforms on criminal justice. Spend some time looking at their proposals. What ideas stand out? Which policies do you support, and why?
 - <https://www.axios.com/2020-democrats-criminal-justice-9dc0df63-b2ae-41bf-8374-27b3ed1b9667.html>
 - <https://www.politico.com/2020-election/candidates-views-on-the-issues/criminal-justice-reform/>

Reading Three

Changing Republican Positions on Criminal Justice

In December 2018, President Trump signed into law the First Step Act, which aims to support people reentering society from prison. The bill gained wide bipartisan support. While some reformers have debated whether the measure will meaningfully address mass incarceration, many have expressed surprise that a Republican White House and Senate—which might normally be expected to advocate bigger prisons and longer jail sentences—have come to support some measure of reform.

In a December 2018 article in the *New Yorker*, contributor Osita Nwanevu [explained](#) how the passage of the legislation reflects changes within the Republican party—with at least some prominent conservatives joining the push for reform:

That the [First Step Act] has advanced this far under the Trump Administration reflects the purchase criminal-justice reform has gained not only among Democrats but also among conservative Republicans. The bill’s list of supporters includes Ted Cruz and Kirsten Gillibrand, the Koch brothers and the American Civil Liberties Union. The significant buy-in from the right is the culmination of years of effort from a cadre of libertarian-leaning conservatives, like the anti-tax zealot Grover Norquist, and evangelicals, such as Chuck Colson, the founder of the Christian nonprofit organization Prison Fellowship, who have worked to convince others that the prison system has become too costly, punitive, and government-empowering.

Most of their successes have come at the state level, in places like Georgia and Texas, where Republicans have worked to reduce the incarceration of nonviolent offenders and boost anti-recidivism efforts. In Georgia, the incarceration rate for Black males has declined by thirty per cent over the past eight years, and recidivism rates for those who complete vocational training or a G.E.D. while imprisoned have also dropped sharply—which the outgoing Republican governor Nathan Deal notes happened under his tenure.

In a piece for *National Review*, published in late November, Senator Mike Lee, a Republican from Utah and one of the First Step Act’s leading advocates, neatly made the conservative case for the bill and for federal-level criminal justice reform. “Unlike some reformers, I don’t think our justice system is fundamentally broken, unjust, or corrupt,” Lee wrote. “I know from experience that dangerous criminals exist—individuals who are incapable of or uninterested in rehabilitation and change. . . . But my time as a prosecutor also tells me that not every criminal is dangerous or incapable of living a productive life,” he wrote. “My faith as a Christian teaches me that many people are capable of redemption. And my instincts as a conservative make me believe that the government can be reformed to work better.”

The act’s major reforms include making the 2010 Fair Sentencing Act’s reduction in the disparities between sentences for crack and powdered cocaine retroactive, granting judges more freedom from mandatory-minimum sentences, and expanding the time credits that prisoners can earn and put toward reducing their sentences or qualifying for release into transitional programs. The bill’s supporters [estimate](#) that as many as four thousand prisoners could immediately qualify for early release once the bill takes effect.

<https://www.newyorker.com/news/news-desk/the-improbable-success-of-a-criminal-justice-reform-bill-under-trump>

Not all conservatives are in agreement about reform initiatives, however, and the First Step Act continues to receive strong pushback from many Republicans. Also, it is not clear that the reforms brought about by the legislation will be all that dramatic. In a December 2018 article in the New Republic entitled “The Criminal-Justice Reform Bill is Both Historic and Disappointing,” staff writer Matt Ford [analyzed](#) some of the limitations:

This unusual coalition is one of many reasons why the First Step Act might be the strangest piece of legislation in the Trump era. It’s both groundbreaking and meager, both heartening and disappointing—a long-overdue retreat from decades of inhumane policy, but also an insufficiently small step toward a more conscientious approach to crime and punishment. One of the bill’s central provisions expands what’s known as the “safety valve,” which allows federal judges to ignore mandatory minimums in sentencing defendants who commit nonviolent, low-level crimes. Another provision reworks the three-strikes requirement for drug-related felonies: Instead of a life sentence, someone sentenced under it would receive only 25 years in prison. Modest though these changes are, they would not apply retroactively....

There will always be tough-on-crime politicians like [Arkansas Senator and strong opponent of the legislation, Tom] Cotton who push for a maximally punitive system. One of the more heartening aspects of the First Step Act, however, is how vociferously many conservatives have countered Cotton’s claims. In a November op-ed in National Review, Cotton [resorted to familiar tropes](#) by arguing the bill would let government bureaucrats and liberal judges release violent felons into American communities. Utah Senator Mike Lee, one of the Senate’s key figures on criminal justice reform, [wrote](#) an op-ed that dismantled his claims point-by-point. He also challenged Cotton on ideological grounds. “Conservatives have a rich history as reformers,” he argued.

<https://newrepublic.com/article/152647/criminal-justice-reform-bill-historic-disappointing>

While a significant portion of the Republican Party remains resistant to calls for reform, the fact that some conservatives have shifted their policy positions has contributed to changes in the national conversation.

For Discussion:

1. How much of the material in this reading was new to you, and how much was already familiar? Do you have any questions about what you read?
2. How have some Republicans shifted their views on mass incarceration in the past thirty years? How do conservative arguments for reform overlap with those made by progressives, and how are they different?
3. Can you think of other issues that have created unusual alliances across party lines? On what other matters might people who are often political rivals find common ground?