

Is criminal justice reform inevitable?

February 11, 2011 | 3:22 PM | By Rina Palta

FILED UNDER: Politics, Right on Crime, Smart on Crime Coalition

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Nationally, we've had two major developments in recent weeks that give whiffs of shifting political winds when it comes to what our criminal justice system should look like. Once thought of as liberal policies, calls for funding rehabilitation programs, keeping low-level offenders out of prison, and shrinking the size and scope of the criminal justice system are starting to come from some unexpected places.

First, there's "Right on Crime," an initiative launched in late 2010 by the Texas Public Policy Foundation that's building a case for criminal justice reform from traditional conservative principles like small government and a heavy focus on program outcomes.

Then, this week, another group emerged in the national spotlight called the "Smart on Crime Coalition." Smart on Crime unites some traditionally unallied entities: the ACLU, the CATO institute, Heritage Foundation, and the National Association of Criminal Defense Lawyers among them. Their report, a series of policy recommendations to Congress is about 317 pages long and covers almost any crime policy you can imagine. The basic message? That our national patchwork of courts, prisons, and policies has not produced a sufficiently fair and effective criminal justice system. Among the recommendations are reducing the use of mandatory minimum sentences, increasing funding for rehabilitation programs, and ending the use of long term solitary confinement.

At the roots of both of these odd movements is the economic crisis. In a recent series of coming out op-eds, former House Speaker Newt Gingrich, of all people, articulated his reasoning for joining with the "Right on Crime" campaign. Gingrich, a possible presidential candidate for 2012, seems to have completely left his calls in the 1990s for building more prisons and toughening criminal sentences behind:

"There is an urgent need to address the astronomical growth in the prison population, with its huge costs in dollars and lost human potential. We spent \$68 billion in 2010 on corrections – 300 percent more than 25 years ago. The prison population is growing 13 times faster than the general population. These facts should trouble every American.

Our prisons might be worth the current cost if the recidivism rate were not so high, but, according to the Bureau of Justice Statistics, half of the prisoners released this year are expected to be back in prison within three years. If our prison policies are failing half of the time, and we know that there are more humane, effective alternatives, it is time to fundamentally rethink how we treat and rehabilitate our prisoners."

Already, this message is catching on with conservative politicians. Indiana Governor Mitch Daniels has proposed cutting prison sentences and reducing parole supervision for lower level offenders. Florida Governor Rick Scott has proposed pouring money into rehabilitation programs aimed at keeping offenders from returning to prison—which would eventually save the state money.

Will the public go along with it? Polling seems to suggest that when couched under the auspices of cost-savings, efficiency, and government accountability, the public is pretty warm to the idea of softening the national focus on incarceration and punishment. Combine that with the face of the message—those same Republicans who pushed for tougher sentencing and more prisons and have an almost untouchable “tough on crime” credibility—and criminal justice reform starts to seem inevitable.

Is it? That may actually be up to liberals—who on a national level are not taking up the issue with comparable force. And it may be up to the economy: if the money comes back, the public may lose their ambition for the hard work of cuts and reforms.