TPM Livewire

How Donald Trump Threatens To Blow Up Bipartisan Criminal Justice Reform

By Tierney SneedPublishedSeptember 10, 2015, 6:00 AM EDT 7542 views

A long-awaited, hard-fought criminal justice reform push is coming to Washington this fall, with lawmakers of both parties making progress on legislation to curb mass incarceration. But after spending years convincing lawmakers that tackling the issue of mass incarceration would not make America more dangerous or put their political careers in jeopardy, advocates are now watching with growing dread as the GOP primary veers back toward the usual tough on crime rhetoric.

Just a few months ago, reformers were celebrating that most of the 2016 GOP pack had signaled that, at least in theory, they supported retooling America's justice system. But, as has been the case with so many other sensitive issues, the entrance of Donald Trump has changed the dynamic. Now instead of talking about criminal justice reform, the GOP primary contenders are warning of a supposed nationwide crime spike, touting the mandatory-minimums in "Kate's Law," and lobbing "soft on crime" accusations.

"I'm concerned about the impact on the push for justice reform because we're expecting a bill at some point this month," Jason Pye, director of Justice Reform at the conservative FreedomWorks, told TPM. "I'm concerned about the impact of the rhetoric on that."

Trump may not solely be to blame for the shift in tone. But in interviews with TPM before his entrance in to the race, justice reform advocates expressed cautious optimism that the GOP field had more or less coalesced around curbing mass incarceration, and they believed it was unlikely to become a flashpoint in the primary.

Trump may have conflated the issue, they now contend, by linking illegal immigration and violent crime, thus prompting many of his rivals to take harder lines, too. Coupled with warnings of a summer crime spike, the campaign trail has taken a turn back to the '90s, with candidates falling into old patterns of invoking crime fears to rile their constituencies.

"For the most part these candidates aren't talking about these issues right now, it's largely focused one person and we know who that person is, for better or for worse," said Pye of FreedomWorks, the major DC advocacy outfit with Tea Party roots that plays an important role in pushing criminal justice reform from the right.

Trump's over-the-top appeal to nativist resentments has fired up the language around immigration. In his June launch speech, he warned of undocumented immigrant "rapists." In July, he went further: "The Mexican Government is forcing their most unwanted people into the United States. They are, in many cases, criminals, drug dealers, rapists."

Facing a backlash over the comments, Trump seized on the July death of Kathryn Steinle as exemplifying his point. Steinle, a young woman, was murdered in San Francisco by an undocumented immigrant who had returned to the United States after multiple deportations. In Trump's immigration rhetoric are many of the elements of the late 20th century "war on crime" rhetoric, including its link to racial divisions.

Last week, Trump released an ad attacking former Gov. Jeb Bush that critics said echoed the notorious Willie Horton ad that Bush's father used against Michael Dukakis in the 1988 presidential race. The ad flashes the mugshots of undocumented immigrants charged or convicted of murder over Jeb Bush's infamous immigration is an "act of love" comments, and ends with placards saying "Love? Forget Love. It's Time Get Tough!" Bush's spokesperson responded by calling Trump a "soft on crime liberal."

"They look like tweedledum and tweedle dumber in terms of this very retro style of exploiting these old arguments," liberal justice reform leader Van Jones said in an interview with TPM last week, referring to the Trump and Bush spat.

Meanwhile, conservatives have taken a harsh line on Black Lives Matter, a movement that includes calls for overhauling law enforcement and justice policies. Led by Fox News, conservatives have accused the protest movement, without basis, of inciting violence against police officers. Trump accused Black Lives Matter this week of "looking for trouble" and suggested they were being "catered to" by Democrats.

The rhetoric has spread beyond Trump, which is of particular concern to criminal justice reform advocates. A few high-profile police deaths have prompted candidates like Sen. Ted Cruz (R-TX) and Wisconsin Gov. Scott Walker (R) to blame the Obama administration for, as Walker put it, "a tendency to use law enforcement as a scapegoat." New Jersey Gov. Chris Christie (R) has called for the return of stop and frisk, vowed to crack down on marijuana legalization, and blamed "liberal-leaning mayors and cities" and their "lax criminal justice policies" for the stabbing death of a former intern in Washington, D.C.

“There are two things that are troubling,” said Inimai Chettiar, director of Justice at the Brennan Center. “One, that people are saying that there is a crime wave now and they’re implying that crime is going to be going up as a permanent trajectory -- which is wrong-- and that second people are blaming criminal justice policies and particularly policing policies for this.”

In recent months, the bipartisan coalition that has formed around pushing changing to the federal justice system has grown impressively broad, diverse and well-monied, ranging from the ACLU and NAACP to the Koch brothers and Grover Norquist.

But each of those interest groups bring their own priorities to the issue. Fiscal conservatives focus on the cost of a bloated prison population. Civil rights groups highlight mass incarceration’s disproportionate impact on minority communities. The uniting goal of those groups is reducing the U.S. prison population in a way that also reduces the likelihood that a wrong-doers go back to committing crime. Additionally, efforts to address police accountability, drug legalization and civil asset forfeiture have been thrown into the mix.

Already, balancing the various concerns of those interest groups was a delicate dance for lawmakers hammering out federal legislation. But heated campaign claims -- be it about Black Lives Matter, undocumented immigrants or police fatalities -- isn’t helping to smooth over tensions.

According to Jones, the “first domino” of the movement is to push through the national bipartisan legislation currently being hashed out.

“The second domino should be, as the field narrows down, leaders on both sides talking about smarter ways to get to community safety that respects our constitution, our notions of fairness and our pocketbooks,” Jones said.

The criminal justice reform community have always been skeptical of politicians like Walker and Christie, who as governors have been resistant to state justice reform efforts.

“These people have always been out of touch on criminal justice,” said Lauren Galik the Director of Criminal Justice Reform at Reason Foundation. Instead, reformers point to early embracers like Sen. Rand Paul (R-KY).

But even Paul has reportedly backed away from the current Senate efforts on a compromise bill. Nevertheless, Senate advocates for reform insist legislative progress can be made despite the campaign trail rhetoric.

“There’s been heated rhetoric for decades around justice reform,” said Ben Marter, a spokesman for Sen. Dick Durbin (D-IL), who is involved in crafting the anticipated compromise bill. “But the senators negotiating this legislation have put their partisan differences aside to negotiate a solution in good faith.”

Likewise, advocates are hopeful the most ardent justice reformers in the GOP field will resist relying on such language.

“I would get worried if suddenly other candidates less desperate and flailing than Governor Bush started jumping on that bandwagon,” Jones said.

But the proposal known as Kate’s Law shows how easily legislative progress can be undercut by the kind of the knee-jerk reactions to sensationalized tragedies that contributed to the creation of mass incarceration policies in the first place.

The legislation, inspired by Steinle's murder, would impose mandatory sentencing minimums on undocumented immigrants who return to U.S. after being deported and, according to Families Against Mandatory Minimums, would add nearly 60,000 people to the federal prison population.

Trump has made Steinle’s murder a focal point of his campaign (despite the desires of her family), and conservative media have fanned the flames. Cruz -- who has previously touted his interest in criminal justice reform -- has embraced the measure, while other candidates have also expressed support. So far, cooler heads in Congress have prevented Kate’s Law from gaining traction there.

“Watching Kate’s Law unfold is like watching history repeat itself,” FAMM government affairs counsel Molly Gill told TPM, comparing it to 1986 drug overdose by college basketball star Len Bias that led to federal mandatory drug sentencing. “We’ve come a long way in the last 30 years in our understand of crime and recidivism and using evidence-based approaches. But a lot of times we’re still legislating like that never happened."

For years, criminal justice reformers have labored to convince politicians that dismantling ‘80s and ‘90s era crime legislation -- through cutbacks on mandatory minimums or softening of drug laws -- will not making them look “soft on crime.” The best proof they had was the success of a number of state lawmakers -- especially in red states -- in curbing mass incarceration without facing political consequences. They have also had to do this working within a tenuous coalition balancing competing priorities.

“With consensus around criminal justice reform from both sides of the aisle that hasn’t been seen for a generation, it would be a shame for presidential candidates to undermine this by exploiting negative imagery and stereotypes for mere political gain,” said Janai Nelson, associate director-counsel of the NAACP Legal Defense and Educational Fund, in a statement to TPM.

The Collateral Victims of Criminal Justice
By SHAILA DEWANSEPT. 5, 2015
SundayReview | NEWS ANALYSIS
SINCE the financial crisis, complaints that corporate wrongdoers suffer light penalties have become routine. One reason is the Department of Justice’s longstanding policy that prosecutors must consider the “collateral consequences” that pursuing a corporation might have on innocent employees, shareholders, pensioners and even the financial system at large.
Amid public outrage, Congress has hauled in prosecutors to ask precisely how often collateral consequences have led them to give the banks a pass. Last spring, when four of the country’s biggest banks pleaded guilty to felonies, raising the issue again, I had a different question. As a reporter covering the criminal justice system’s impact on both the accused and their families, I wondered why we don’t give more consideration to collateral consequences when prosecuting individuals.
We think of punishment as calibrated to the offense, measured out in fines levied and time served. But collateral damage begins for many defendants and their families at the time of arrest, not conviction, and continues long afterward. And it does not spare those with minor charges, including many that do not result in conviction.
My notebooks are filled with stories like that of Markeisha Brown, forced to drop out of school when her boyfriend, who took care of her kids, was held on bail he could not afford, for a case that was later dismissed. I met Ryleigh, 9 months old, whose mother, a McDonald’s worker, served 40 days for failure to pay a $432 fine. I read a handwritten plea for help from Lakayla Evans, a 17-year-old held in an adult jail for more than four months awaiting the resolution of charges that she trespassed on a high school campus.
“We’ve got to start being at least as interested in helping people reform and get their lives back as we are in this concept of permanent punishment,” said Gov. Dannel P. Malloy of Connecticut, who has enacted reforms under an initiative called Second Chance Society. “If somebody makes a stupid mistake when they’re young, why should they be denied a decent job for the rest of their life, be denied housing for the rest of their life and not even be eligible for astudent loan?”
“It is the rough equivalent,” he continued, “of cutting off your own nose to spite your face, but society is doing it to itself on a mass basis.”
Collateral damage is not limited to the guilty party. When money for fines or bail is needed, often a relative pays. When prisoners are released, often with no job prospects, no driver’s license, and crippling court debt, their families bear the burden.
“Prosecutors are attuned to collateral consequences in prosecuting a corporation because of the unfair economic consequences that it can have on third parties,” said Jenny Roberts, a law professor at American University who has studied the repercussions of misdemeanor charges. “It’s not exactly the same for individuals — but remember that an individual is part of a family, a community, a society and a country.”
There has been a gradual move toward addressing the issue. More than a dozen states, most recently Georgia, Oregon, Ohio and Virginia, have limited the use of criminal background checks in hiring. Some, including Colorado and Maryland, are allowing more criminal records to be suppressed. But such remedies often remain out of reach for those who need them most — in Tennessee, for example, expunging a conviction costs $450 — and they ignore what many critics say is the root problem: too many arrests and too little due process.
Some collateral consequences make obvious sense, like barring a violent felon from possessing a gun, or a child molester from working as a teacher. In other cases the connection to public safety is less clear. The American Bar Association has compiled a database of 45,000 regulations that prohibit individuals with criminal histories from civic activities like voting and jobs like cutting hair. Oregon is considering a bill on collateral consequences — not to make them less harsh, but simply to list them all in one place.
The word “collateral” means “secondary,” but millions of children affected by incarceration suffer a primary loss. Between 1991 and 2007, the percentage of children with mothers in prison more than doubled, according to federal data — and that does not count the many more mothers who spent time in jail. It doesn’t take statistics to grasp how damaging separation can be, but even so, the data shows these children have more depression, aggression, delinquency, absenteeism, asthma and migraines. As adults, their earnings are reduced and their chances of homelessness are higher. The problem is so pervasive that “Sesame Street” produced a series of videos to help children cope with a parent’s incarceration.
Collateral effects can rear up years later, said Patricia Warth, an advocate for indigent defense in New York. “I can’t tell you how many times I’ve gotten a call from someone who says, ‘I’m a parent; my daughter’s 10 years old; she’s in the school ballet, but the school says I can’t volunteer because I have a conviction from 15 years ago,’ ” Ms. Warth said.
Some argue that offenders should weigh the harm to their families before breaking the law rather than expecting prosecutors to consider it. But that does not make a child any guiltier than a corporate shareholder. True, the downfall of a low-income parent is not going to bring down the world financial system. But consider the aggregate: Almost one in three Americans has a rap sheet of some kind, according to a 2001 federal estimate, and even an arrest that does not result in conviction can reduce the chances of finding work or an apartment. The harm disproportionately affects African-Americans, who are routinely stopped more, arrested more and receive higher bails and longer sentences.

Then there is the collateral damage to public safety. Study after study has shown that punishment can backfire, increasing the chances that low-risk offenders will commit new crimes. One study by the Arnold Foundation of 150,000 pretrial defendants — who are legally innocent — found that even a brief stay in jail increased their chances of rearrest, most likely because it disrupted the very factors, such as stable housing and employment, that made them lower risk in the first place.

At a Pennsylvania legislative hearing in June, Ms. Roberts of American University raised an economic argument for more forgiving policies. She pointed out that neighboring Maryland was about to allow many misdemeanor convictions to be suppressed, giving that state's workers an edge. "Other countries incarcerate far less," Ms. Roberts said. "When we think about who's going to be able to get jobs and who's going to be able to work, I think we better think about that in light of the competition we're going to have in a global economy, and every state needs to think about it in light of what's going on across the border."Punishment is supposed to be proportional to the severity of the offense, but collateral consequences are often unmoored from such considerations, obscuring their true cost. "We're just beginning to acknowledge the extent to which we're not just punishing individuals, we're punishing entire communities," Ms. Warth said. "Sometimes we become so harsh that we're punishing ourselves."

Shaila Dewan is a national correspondent for The New York Times.

Yes, One Book Can Change Your Life, Even In Prison

A book of black poetry slides under a cell door in solitary confinement. And it changes everything. Sasha BronnerSenior Reporter

Posted: 09/02/2015 04:12 PM EDT | Edited: 09/02/2015 04:33 PM EDT

Reginald Dwayne Betts Jr. goes by the name Dwayne. But for the majority of the nine years he spent in prison, he gave himself the name Shahid. It means "the witness" in Arabic.

At 16, Betts pled guilty to carjacking in Virginia and was in prison until he was 24. For many years, cultivating his identity -- hard stuff for any teenager -- was a mostly solitary endeavor. Books, and later poetry, became his teacher, his classroom and his peer. "I read anything I could find. Poetry makes you reflect. Joseph Brodsky once wrote: 'I have braved, for want of wild beasts, steel cages.' That shit says everything that I would ever want to say about mass incarceration," he told The Huffington Post in an interview last week.

In the decade since his release from prison, Betts, now 34, has published an award-winningmemoir about coming of age in prison, written two books of poetry, received undergraduate and MFA degrees and is currently in his final year at Yale Law School. His upcoming book of poetry, *Bastards of the Reagan Era,* will be released in October.

I don't have any illusions that the penitentiary is going to help you, but you can get something out of it if you want to."

Learning has always been deeply important to Betts. He dreamed of playing point guard at Georgia Tech and becoming an engineer. He says numbers came easily to him and that as he grew, the two most important things to him were math and philosophy.

He started hanging out with a bad crew in his hometown of Suitland, Maryland and sneaking out of class at 16. At the time, he was taking a full load of challenging classes, including Physics, French 4 and AP U.S. History.

Everything changed on December 7, 1996. On a visit to the Springfield Mall in suburban Virginia about 20 miles from their hometown, Betts and a friend came across a man asleep in his car in the parking lot. They impulsively carjacked him and took off on what would prove to be one of the quickest roads to stalling one's life as a teen.

At the time, carjacking in Virginia carried a maximum penalty of life in prison and the state had done away with parole. On December 8, one day after the carjacking, Betts stood before a judge and was charged with six felonies and nine years in prison. The presiding judge had wise words for Betts, who recalled what he was told in a 2010 New Yorker article. The words are seared in his mind: "I don't have any illusions that the penitentiary is going to help you, but you can get something out of it if you want to," the judge said to the 16-year-old.

Due to lack of space for incoming juveniles, Betts was thrown into solitary confinement without a mattress, blanket or pillow. When he was pulled out 10 days later and moved to his cell block, Betts carried the only thing he had shown up with: a book by James Baldwin.

Betts poured himself into reading. He turned page after page of *The Confessions of Nat Turner*, *Go Tell It on the Mountain* and *A Lesson Before Dying*. He read George Orwell and every book by Charles Dickens. He inhaled classics like *Of Mice and Men*, *The Grapes Of Wrath* and *The Jungle*. He read the philosophy of Max Weber, Franz Fanon and C.L.R. James.

The first time he read William Styron's *Sophie's Choice* was by mistake. He was looking for a lesser-known philosophy book called *Sophie's World,* but *Sophie's Choice* ended up striking a profound chord within him. It wasn't until someone slipped him a book of poetry that his purpose suddenly became clearer.

Over the course of his sentence, Betts served time in five different prisons. He was sent to solitary confinement three separate times. One of the only things he did was read. On one trip to "the hole," as he calls it, prisoners were allowed to bring a book with them. When they finished reading, they came up with a system for passing the books along.

“Someone would ask for it and you would either give it to the houseman -- the prisoner who is back there cleaning up and helping the guards -- or depending on where the person’s cell was, you could get it directly to them by lying on the ground and sliding it under your door into their door,” Betts said.

I had never thought about poetry as a way to communicate. I never thought about it as a way to talk about things other than love."

One day when Betts was 18, *The Black Poets* by Dudley Randall came sliding under his door in solitary. “I had read poetry before in school and I had written some for girls. I liked poetry. Or at least I liked the stuff I was writing to girls,” he said, chuckling. “But I had never thought about poetry as a way to communicate. I never thought about it as a way to talk about things other than love,” he added.

The Black Poets introduced Betts to famous African-American writers like Etheridge Knight (who had also spent time in prison), Robert Hayden, Sonia Sanchez, Amiri Baraka and Lucille Clifton. Clifton especially blew Betts’ mind with the sheer devastation in her writing.

“From that point on, I decided that I was going to be a poet. I had models and an understanding of what I wanted my writing to look like,” he said. Betts figured that he couldn’t train himself to be an engineer, but he could train himself to be a writer.

That’s what writers do. They pay witness to the world."

Changing his name was part of his reinvention. According to Betts, the prisoners who were most deeply engaged in thinking and talking about education were Muslims or members of the Nation of Islam -- and that most of them changed their names. “They had a desire to know more than what they walked into prison with. Knowledge was important,” he said.

As a teenager locked up, he looked for a way to identify himself. “In a way, this was like the 1960s. All of the young men were basically abandoning their birth names. Part of it was wanting to re-imagine who we were. And part of it was that people were becoming Muslim or joining the Nation of Islam," he explained. "I never ended up joining anything -- but I liked naming myself.” He called himself Shahid. “I thought that was perfect. I was in a situation where I was seeing things that I never had any expectation of seeing. That’s what writers do. They pay witness to the world.”

By the time Betts was released from Coffeewood Correctional Center in 2005, he was 24-years-old and had already published two poems.

He received his high school diploma at 17 in prison; once he was released, he started community college. By this point, he already identified as a writer.

He attended some of the most prestigious writing workshops in the country -- including the Fine Arts Work Center in Provincetown, Massachusetts, the Bread Loaf Writer’s Workshop in Vermont and Cave Canem in New York.

While working as an intern at The Atlantic in 2007, he found out that he got his first book deal for *A Question of Freedom: A Memoir of Learning, Survival, and Coming of Age in Prison*. He had a year to write it. His first book of poems, *Shahid Reads His Own Palm*, was accepted for publication that same year.

Betts applied to the University of Maryland to finish his undergrad degree and simultaneously applied to the MFA writing program at Warren Wilson College. Both schools offered him full scholarships and he said yes to both.

It was nice to be in a space where the way you garnered recognition was really just based on what you had in your head.”

Working hard was the only option for Betts. In some ways, his drive was a direct result of his incarceration, but in other ways, it was a reflection of his love of learning. He wanted the classroom to define him more than the jail cell had.

“I only took classes that I liked. I had professors I respected and who I wanted to impress,” he said. “It was nice to be in a space where the way you garnered recognition was really just based on what you had in your head.”

Poetry has been his vehicle. “I think about myself as a poet because there’s a kind of freedom in it. I get to do more things at once. I like the brevity of it. I like the compactness of it,” he said.

Now everyone calls him Dwayne again. “But Shahid is still here,” he said. “It’s in that first book of poems, *Shahid Reads His Own Palm*. But Dwayne never left -- and I realized that my name has always been more than I understood it to be.”

He chooses to use his father's name when he publishes anything -- Reginald Dwayne Betts. He leaves out the Junior on purpose. He says it’s his way of acknowledging his father.

“We aren’t book publishing people,” Betts said. “By publishing under the name we share, it's a nod to what I've accomplished in my life.”

His upcoming book of poetry, *Bastards of the Reagan Era*, was recently described as “elegy after elegy” and “devastatingly beautiful” in a Publisher’s Weekly review. Betts says that he gave the book its title because it “captures all that was lost and all that disintegrated in the chaos of drug laws and violence in the 1980s.”

He also says it’s the story of what happens when a generation of men are displaced. “Displaced by crack cocaine, by prison, by the grave. These poems are about what happened to the children of my father’s generation and to a large degree what still happens to the children of my son’s generation. It is about loss and hurt,” he said.

He applied to law school, in part, to do the same thing he has done with his writing: to understand the predicament he ended up in as a teen. After being released from prison, he spoke on many panels about his experience and was appointed to the Coordinating Council on Juvenile Justice and Delinquency Prevention by President Obama in 2012. He is also a national spokesperson for the Campaign for Youth Justice.

But after a while, he realized that speaking about these issues didn't allow him to have the kind of impact he wanted. "I wasn't able to develop strategy, wasn't about to represent people -- whether at the front end or at the back end in parole hearings," he said. "I had little say in what kind of policy changes people pursued. And I felt that my value hinged too much on my experience." He got into law schools all around the country, including Harvard, Columbia and Georgetown. He chose Yale. Today he lives in New Haven, Connecticut with his wife and two sons.

There always just seems to be more possibilities for change, forgiveness and redemption."

Back in 2007, at the end of his summer internship at The Atlantic in Washington D.C., one of the managing editors invited Betts to lunch. The editor told Betts that he had been carjacked at gunpoint in his driveway. They spoke about both of their experiences -- true flip sides of a coin -- for a long while.

Looking back, Betts sees the meal as a symbol. "It reminded me that, one, you don't really run away from harm that you've done. It's always there," he said. "But two, the world isn't as bad as it seems. I imagine that my victim will probably never see me. In some vicarious way, maybe I got to be a stand-in for him. There always just seems to be more possibilities for change, forgiveness and redemption."

The Pointless Banishment of Sex Offenders

MONICA RAMOS

By THE EDITORIAL BOARD

SEPTEMBER 8, 2015

It's a chilling image: the sex predator skulking in the shadows of a swing set, waiting to snatch a vulnerable child.Over the past two decades, that scenario has led to a wave of laws around the country restricting where people convicted of sex offenses may live — in many cases, no closer than 2,500 feet from schools, playgrounds, parks or other areas where children gather. In some places, these "predator-free zones" put an entire town or county off limits, sometimes for life, even for those whose offenses had nothing to do with children.

Protecting children from sexual abuse is, of course, a paramount concern. But there is not a single piece of evidence that these laws actually do that. For one thing, the vast majority of child sexual abuse is committed not by strangers but by acquaintances or relatives. And residency laws drive tens of thousands of people to the fringes of society, forcing them to live in motels, out of cars or under bridges. The laws apply to many and sometimes all sex offenders, regardless of whether they were convicted for molesting a child or for public urination.

Lately, judges have been pushing back. So far in 2015, state supreme courts in California, Massachusetts and New York have struck down residency laws.

The Massachusetts ruling, issued on Aug. 28, invalidated a residency restriction in the town of Lynn — and by extension, similar restrictions in about 40 other communities statewide — in part because it swept up so many offenders, regardless of the actual risk they posed. Acting against a whole class presents "grave societal and constitutional implications," the justices wrote. That unanimous ruling was based on the State Constitution.

The California Supreme Court went further, holding that a San Diego residency restriction, which effectively barred paroled sex offenders from 97 percent of available housing, violated the United States Constitution.

Far from protecting children and communities, the California court found, blanket restrictions in fact create a greater safety risk by driving more sex offenders intohomelessness, which makes them both harder to monitor and less likely to get essential rehabilitative services like medical treatment, psychotherapy and job assistance.

Residency laws often lead people to live apart from their families, obliterating what is for many the most stabilizing part of their lives.

If the state wants to block someone from living in certain areas, the California court said, it must make that decision on a case-by-case basis.

The United States Supreme Court has not yet weighed in on residency restrictions, although a 2003 ruling upholding mandatory registration for sex offenders suggested that such laws may violate the Constitution.

It is understandable to want to do everything possible to protect children from being abused. But not all people who have been convicted of sex offenses pose a risk to children, if they pose any risk at all. Blanket residency-restriction laws disregard that reality — and the merits of an individualized approach to risk assessment — in favor of a comforting mirage of safety.

Stop thinking nonviolent drug offenders are better than people who committed other crimes(I may have sent this already)

Updated by Dara Lind on August 18, 2015, 12:51 p.m. ET @DLind dara@vox.com

From President Obama on down, politicians are saying that America needs to stop locking up so many people. And from President Obama on down, they're saying that the way to do that is to reconsider the way we treat nonviolent drug offenders — to stop giving them long sentences, and to offer them alternatives, like drug treatment, so they can deal with the underlying problems that drove them to crime.

It's a view that has long had public support (even **at the height of the war on drugs**). The public believes that "nonviolent drug offenders" are just a different kind of person than real criminals, and politicians are playing into that to encourage criminal justice reforms that target nonviolent offenders and rely heavily on a treatment-heavy approach to drug prisoners.

If you believe all that, it's easy to believe that the prison problem is easy to fix. But it isn't — because there aren't that many nonviolent drug offenders in the grand scheme of the criminal justice system, and because there isn't as firm a distinction between "nonviolent drug offenders" and everyone else as the public likes to believe.

Only 20 percent of prisoners in the United States are serving time for drug offenses. The number of prisoners that politicians are willing to consider "low-level, nonviolent" drug offenders is far smaller. And those offenders often aren't addicted to drugs, so drug treatment programs won't help them.

If the problem is that too many people are in prison, focusing on nonviolent drug crimes isn't going to get very far toward addressing it. To really address America's over-incarceration problem, politicians and the public need to stop thinking that "nonviolent drug offenders" are different from, and safer than, people who have committed other kinds of crimes.

Drug offenders are only 20 percent of prisoners — and they're not all nonviolent

The majority of prisoners in the US are in state prisons. The majority of state prisoners are in prison for violent crimes. Drug offenders simply aren't the majority of American prisoners. They're about 20 percent.

Drug offenders are a plurality of *federal* prisoners, which is one reason politicians and the press focus on them so much: If Congress wanted to reduce the federal prison population, it would get the biggest bang for its buck by reducing drug sentences. But politicians at the state level often focus on drug offenders, as well, even though they make up only about 16 percent of people in state prisons. That's because they know the public is more sympathetic toward low-level drug offenders than to other types of criminals.

In 2013 there were about 308,000 people serving state or federal sentences for drug crimes, according to the **Bureau of Justice Statistics** — about 20 percent of the total US prison population. But how many of those count as "low-level," "nonviolent" drug offenders, in the eyes of policymakers or the public? How many of them are the prisoners who America has agreed aren't a threat?

Unfortunately, federal statistics don't provide a precise answer to this question. But the statistics we do have can give us a rough estimate. The government's prison statistics count people based on the most serious crime for which they're serving a sentence. So by definition, none of the 308,000 drug prisoners in the US are currently in prison for committing a violent crime. For sentencing reform advocates, that's the same as saying they're nonviolent. But many politicians disagree.**Prosecutors emphasize** that many drug offenders are in prison for drug trafficking (which they consider "inherently violent"), and some are high-level operatives. Other government officials, including **those working on sentencing reform in the Senate**, think that "nonviolent" should exclude inmates whose crimes involved a weapon (which often just means they had weapons on them when arrested).

How many people does that leave? Here's one clue: When the US Sentencing Commission considered allowing drug prisoners to appeal for shorter sentences last year, the Obama administration urged them to limit it to certain nonviolent offenders without significant criminal histories — and the exclusions they included would have cut the eligible number of prisoners from 51,000 to **20,000**. While that doesn't encompass all federal drug prisoners, it seems that as many as half of federal drug prisoners wouldn't count as "low-level, nonviolent." At the state level, a 2002 study by **the Sentencing Project** found that 58 percent of state drug prisoners had "no history of violence or high-level criminal activity."

Let's assume, conservatively, that only 40 percent of drug prisoners would be considered "high-level" or "violent," or have long criminal histories. That still means that America's "nonviolent drug offenders" account for a paltry 12 percent of America's prisoners.

Drug treatment won't help drug prisoners who aren't addicted

Identifying who should benefit from more lenient criminal treatment is only half the battle. Figuring out how to deal with those prisoners instead is the other half. And when it comes to drug offenders, the primary answer offered by politicians and the public alike is "drug treatment." Drug courts, which provide an alternative to prison for some drug offenders who agree to rehab and intensive probation, have been around since the late 1980s. It's taken them a very long time to catch on, or to be expanded beyond the most minor cases, but they've hit the mainstream as part of the current wave of state criminal-justice reforms. Some states, like New Jersey (under a plan **championed by Gov. Chris Christie**), make treatment mandatory for people convicted of drug crimes.

But drug treatment only makes sense as an alternative for prisoners who are addicted to drugs. And we don't know how many nonviolent drug offenders are also drug addicts. There are plenty of drug offenders out there — including small-time dealers, who are often the people who get incarcerated — who are in the drug industry to make money, whether it's their only path to making a living or they're simply hoping to get rich. Those people aren't motivated to commit crimes by their addictions. They don't benefit from treatment-focused interventions: The **National Association of Drug Court Professionals**encourages drug courts for people who were "dealing drugs to support an addiction," but not those dealing "solely for the purposes of financial gain." And we just don't know how many people fall into each of those camps.

So while legislators are finally coming around on the "low-hanging fruit," we don't actually know how many people fall into that category — as opposed to the politically more problematic categories of drug addicts who've convicted violent crimes, or drug offenders who were simply involved in the business for the money.

IF DRUG ADDICTS GET LIGHTER PENALTIES, PRISONERS WHO AREN'T ADDICTS HAVE AN INCENTIVE TO LIE

At a glance, it looks like most prisoners are tied up in drug use: A majority of state and federal prisoners tested positive for using drugs or alcohol in the 30 days before they were arrested. But not everyone who uses drugs or alcohol once a month is an addict.

The most recent statistics on drug dependence (using the psychological definition from the Diagnostic and Statistical Manual) come from a **study of prisoners in 2006 from anti-drug group CASAColumbia**. It found that while about half of all federal prisoners have been convicted for drugs, only 37 percent of all federal prisoners were substance-dependent (on illegal drugs or

alcohol). In state prisons, meanwhile, only 16 percent of prisoners were serving time for drugs — but 48 percent were substance-dependent. That raises big questions about just how much overlap there is between "nonviolent drug offenders" and the drug addicts who could benefit from treatment.

In fact, there's some evidence that if prisoners know that drug addicts get lighter penalties or access to more prison services, they have an incentive to say they're addicted to drugs — even if, by medical standards, they're not. The CASAColumbia study found that 163,196 federal, state and local inmates with "substance use disorders" (including both dependence and abuse) had gotten professional services for their addictions in the last year. Meanwhile, 23,498 inmates who *didn't* have a substance disorder had gotten addiction services. Since not everyone who qualifies for "substance abuse" may actually be addicted, that probably understates the amount of non-addicted inmates getting treatment. And the more that individual prisoners are incentivized to seek drug treatment as a path to an easier sentence, the more possible that is.

What if the people who really need drug treatment are violent offenders?

The premise of favoring treatment over prison is that drug addicts will commit crimes to support their addictions, so curing the addiction is the best way to prevent future crime. But the crimes that addicts commit aren't just drug crimes. **CASAColumbia's** study found that 77 percent of prisoners who'd committed property crimes, and 65 percent of prisoners who'd committed violent crimes, were either under the influence of alcohol and drugs when they committed the crime, were committing the crime to support their addiction, or had a history of drug and alcohol abuse.

But the public's interest in lighter penalties and alternatives to incarceration for nonviolent offenders doesn't extend to violent offenders at all. Studies have found that Americans take a punitive attitude toward drug trafficking when it's connected to violence, and that the same people who want alternatives to incarceration for nonviolent offenders want longer prison sentences for violent ones. And criminal justice reformers have often reduced sentences for nonviolent offenders, or provided them with alternatives to prison, while keeping the status quo for violent crimes.

As both **Vox's German Lopez** and I have pointed out before, it's going to be nearly impossible to reduce state prison populations substantially without cutting prison sentences for violent offenders. The hypothetical, drug-addicted "nonviolent drug offender" is the archetype politicians and the public have used to pursue criminal justice reform. But there simply aren't enough of them to save America from mass incarceration. And they may not be the ones who most need to be guided to treatment.