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How Donald Trump Threatens To Blow Up Bipartisan Criminal Justice Reform

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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.