



VIOLENCE AND REDEMPTION

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Oklahoma State Penitentiary in McAlester, Oklahoma. (Image: Getty Images)

Oklahoma Struggles With Its Tough-on-Crime Past

In an effort to stem prison overcrowding and its expenses, the state tries a policy change—but implementing it hasn't been easy.



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In his first eight sessions as a member of the Oklahoma House of Representatives, Kris Steele paid scant attention to crime and punishment. But, in 2008, Steele's work on the state budget put Oklahoma's prison system in his sights for the first time. What he saw, he says, "puzzled and dismayed" him.

Annual prison spending approached half a billion dollars and, that decade alone, was in the midst of a 41 percent growth spurt, fueled by a quadrupling of prisoners since 1978. For all that spending, though, the prisons were overcrowded, understaffed, and woefully out of date, with pressure building to pour even more money into them. Violent crime in Oklahoma was on the rise, while in most other places it was falling. The system, Steele realized, was fundamentally broken. "The obvious takeaway," he says, "was that at the very least it's a poor return on investment if the name of the game is increasing public safety."

So Steele decided to educate himself about criminal justice policy. Since then, he has been the de facto leader of the Oklahoma criminal justice reform movement, both from inside government—the ordained Southern Baptist minister and Republican legislator from the small city of Shawnee served as Speaker of the House in 2011-12—and from outside, after term limits put him out of office in 2013.

Throughout that process, he has tried to steer the debate beyond its roots in fiscal prudence to deeper questions about whether more prison really means less crime. Now that debate is headed for a climactic battle, one that tests the effectiveness of criminal justice reform in the reddest of red states.



Former state Rep. Kris Steele is the executive director of The Education and Employment Ministry. (Photo: Brett Deering)

Steele's debut at age 37 as House Speaker in 2011 coincided with the start of Mary Fallin's two terms as Oklahoma governor and with the GOP's completion of a task it set out to accomplish beginning a decade earlier: the takeover of all of state government from Democrats.

Politics helps explain the state's crime policies. "The tough-on-crime message is never a hard sell in Oklahoma," notes University of Oklahoma political communication expert Patrick Meirick, but the sentiment transcends party. Under Democrats and Republicans alike, Oklahoma's laws evolved over the years into some of the most punitive in the nation.

Drug crimes receive harsh punishment, including mandatory prison time and felony-level treatment for crimes that in many other states are treated much more leniently or are not even crimes at all. At the front end of the prison pipeline, Oklahoma does a poor job separating the truly dangerous from the addicted and mentally ill. Then, at the other end of the process, the state's stingy approach toward parole effectively tells inmates serving long sentences for violent crimes and other

serious offenses not to bother behaving well or trying to better themselves while in prison, and it hardly supervises them once they're released.

Thanks to such laws, Oklahoma has the highest rates in the nation for imprisoning women and black people. It regularly ranks among the top five states for overall incarceration rates. Its proportion of prisoners who committed nonviolent offenses, slightly more than half the total population, is much higher than in most other states.



One of Fallin's first moves as governor was to enlist outside help to tame the prisons beast. She did that by applying to include her state in the Justice Reinvestment Initiative, [a program financed by federal grants and largely operated by The Pew Charitable Trusts](#) to study a state's criminal justice system and recommend cost-saving changes. Those savings then get reinvested in crime prevention and offender-rehabilitation programs.

Fallin's application set off a scramble throughout 2011, as JRI researchers from the Council of State Governments Justice Center interviewed hundreds of Oklahoma officials and activists and crunched reams of data. That led to [a January 2012 report and set of recommendations](#) designed to save \$250 million from the anticipated increase in prison costs over the next eight years, of which \$110 million would be plowed back into programs aimed at lessening the need for prisons.

With Steele leading the effort, the legislature within months enacted some of the plan into law. Fallin promptly signed the bills and appointed Steele to shepherd them into effect, even though he had left the legislature.

Oklahoma Gov. Mary Fallin listens as Kris Steele speaks during a press conference on prison reform at the Oklahoma State Capitol in Oklahoma City on Aug. 31, 2016. (Photo: Brett Deering)

The new laws imposed stricter supervision of people released from prison, better screening of criminal defendants to spot those who needed treatment more than a prison cell, and alternatives to prison—treatment and lesser forms of detention—for parolees and probationers whose drug problems might otherwise put them back in prison. The legislature rejected recommended reductions in drug sentences and easing the rules for holding violent offenders in prison for longer than necessary.

But even the modest measures that passed proved difficult to swallow. State agencies' follow-through on the new policies foundered, and funding failed to materialize. The net result was inertia, says Ryan Gentzler, a criminal justice policy analyst at the Oklahoma Policy Institute, a pro-reform think tank. "There just wasn't a lot of buy-in, it seemed, from the people who actually had to implement," he says.

Meanwhile, the legislature wasn't just resisting an easing of tough-on-crime sentencing. It was making Oklahoma's laws tougher by adding to the long list of crimes categorized as violent under state law (a distinction that can move the goalposts as prisoners seek early parole and complicate their reintegration to society by placing them on the state's violent-criminal registry).

The final blow to Oklahoma's first-round reforms came in early 2013, when Steele angrily walked away from the justice reinvestment program, denouncing Fallin's reform rhetoric as disingenuous. The spark was Fallin's decision to reject federal aid to pay for a staff person to coordinate the rollout, a key part of the program. Oklahoma journalists later dug up emails among Fallin's staff to paint [a more complete picture](#) of political maneuvers aimed at protecting Fallin's right flank in her upcoming 2014 reelection bid. In one message, the governor's chief of staff wondered, "Why further tie ourselves to liberal corrections reform groups?" Other emails revealed backbiting, rivalries, and worries about Tea Party claims that Fallin had shown weakness by supporting justice reinvestment.

With the reform program left leaderless, Oklahoma continued on autopilot toward the fate that had prompted the flurry of concern in the first place. Today, annual prison spending is set at \$485 million, unchanged from last year and about 7 percent of the state's overall budget. That's considered a positive at a time when most of state government saw major cuts to close a \$1.3 billion budget gap, but it doesn't begin to show progress toward reducing the size of the prison system.

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In July 2016, the state's prison population of 27,200 was at 122 percent of the system's capacity and almost on pace with where the 2012 justice reinvestment study said it would be by now if legislators' response to the crisis was to do absolutely nothing.

Oklahoma may have gotten ahead of itself in its first dalliance with sentencing reform, but its impulse to act hardly marked it as radical, even among red states.

Over the past decade, according to [a recent Brennan Center report](#), 27 states have managed to decrease both imprisonment and crime, in part because JRI and other reform efforts have enjoyed bipartisan support. Voices for reform include [police](#), [crime victims](#), and [alliances of left and right](#) that would have been unthinkable amid higher crime rates a generation ago. The group Right on Crime, which sprang from Texas' early reform debate, has made criminal justice reform politically safer for conservatives by attracting support from such prominent figures on the right as Newt Gingrich, Edwin Meese, Grover Norquist, and the Koch brothers. The various strains of conservative reform thinking include small-government advocacy (prisons are an ineffective and overly expensive government program), libertarianism (targeting over-criminalization), and Evangelical Christians' belief in redemption and desire to prevent the social devastation of over-imprisonment.

The “genius” of justice reinvestment, says Ohio State University sentencing expert Douglas Berman, is that it sidesteps tired crime-and-punishment debates from the political left and right by adopting the unassailable logic of evidence: This works. But the political risks of supporting anything perceived as soft on crime, Berman cautions, are real. “Only if you get absolute consensus is it now everybody’s shared responsibility,” he says. That renders legislators bulletproof from tough-on-crime blowback if things go wrong. “If anybody were ever to attack you as a politician for having voted for this, you say, ‘Well, everybody voted for this,’ ” Berman says.

The politics of reform in red states aren’t necessarily more difficult than in blue states. Exhibit A: Liberal New York state [lags far behind](#) many conservative Southern states in enacting reform legislation. Right on Crime’s Marc Levin cites relatively liberal Oregon as having an especially tough battle and says a red state like Oklahoma offers “more low-hanging fruit” in the form of policies so extreme that it’s easier to begin pruning them back. Still, Levin says, it helps to promote reform in a language Republicans understand. “Oklahoma is one of the most conservative states in the United States, obviously, so it’s really important to have conservative voices in the lead,” he says.



The Lexington Assessment & Reception Center in Lexington, Oklahoma, is seen through a fence. (Photo: Brett Deering)

After a 2014 campaign in which she hardly mentioned criminal justice issues and handily won election to her second and final term (Oklahoma governors are limited to two four-year terms), Fallin rediscovered reform—but mainly for low-level drug offenders. In her 2015 inaugural speech, she [announced](#) the state would “redouble our efforts to pursue smart-on-crime solutions and offer commonsense paths to help people with mental health and substance abuse problems get their lives back on track” without sending them to prison. Two days later, she created a justice reform steering committee to recommend new legislation for the 2016 legislative session.

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Even without Fallin’s reelection worries, the politics of these moves might have been tricky, given that outside the criminal justice policy realm, this year’s session produced laws considered “some of the most rightward leaning we’ve seen in a long time, and that’s saying something,” says the University of Oklahoma’s Meirick. But Fallin’s steering committee, made up of key criminal justice and civic affairs players from inside and outside government, developed legislation using a process that guaranteed broad consensus.



Subcommittees, consulting the many interest groups and agencies with a stake in the issues, developed compromise plans through unanimous consent in closed-door meetings, says Adam Luck, the former Oklahoma director for Right on Crime who has advised Fallin on criminal justice policy and who attended all the subcommittee meetings over six months in 2015. Then the full committee of more than three dozen members had to sign off unanimously on the proposed legislation.

Whatever its failings as a model for transparent governance, the tactic paid off with passage of the legislation by wide margins, generating little controversy.

The committee-backed bills—all focus on drug offenses, with one exception—would

- eliminate mandatory minimum sentences for first- and second-time drug possession;
- expand the use of drug courts and diversion of cases from prosecution into treatment;
- give prosecutors more discretion to charge certain drug cases as misdemeanors instead of felonies; and
- raise the dividing line between misdemeanor and felony theft from \$500 to \$1,000.

No one expects these actions alone will turn the ship around. The state produced no hard numbers on what effect the bills would have on prison population or spending. But at the national level, focusing sentencing reform on drug offenders fails at [the basic math of reducing imprisonment](#) to more reasonable levels, according to some scholars, and it frustrates more radical reformers seeking [reductions in incarceration of 50 percent](#) or advocating [abolishing prisons altogether](#). Despite some states' bigger cuts in prison population, the nation as a whole has seen only [the slightest dip in the numbers after decades of steep increases](#). At this rate, [critics argue](#), the nationwide prison population won't return to 1980 levels until the 22nd century.





Luck concedes that the 2016 legislation took “ground that everybody knew could be taken.” But, he says, “we created a process. We got people around the table for the first time in a long time, maybe the first time in their careers, and came to an agreement that basically showed us how we can move legislation through the legislative process.”

Fallin’s next move is a task force that will take the state through another round of justice reinvestment study and legislation. Once again, the governor has devised a process designed to avoid the pitfalls of the first round. Instead of creating the impression that outsiders are dictating policy to Oklahomans, she replaced the previous research team with a different group and will confine its work to number crunching and analysis rather than recommending policy changes.

“We don’t call it justice reinvestment anymore,” says the governor’s general counsel, former prosecutor Jennifer Chance. “The stakeholders that are on the task force will make the policy recommendations. So it’s your Oklahoma stakeholders, your legislators, your prosecutors, your public defenders, victims’ representatives, business community, et cetera, making those recommendations based on never-had-before data.”

While Fallin’s [marching orders for the task force](#) did not limit its study to any category of crime, reformers aren’t banking on seeing its recommendations—due in December—take on the more daunting challenges of reducing sentences for violent offenders.

Even more extensive drug-law reform seems a stretch, given Fallin’s track record for waffling, says one reformer, Norma Sapp, of the Oklahoma branch of the National Organization for the Reform of Marijuana Laws. Fallin embraces change “only out of necessity,” namely to solve a budget problem, and not out of deeper principles, Sapp says.

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For his part, Steele—who served on one of the 2015 policy subcommittees and now will serve on the task force—praises the governor while declining to relive past disagreements. “It’s a new day, and I am honored to get to work with her” on new reforms, he says.

New day or not, Steele has created a point of friction by pushing a pair of ballot initiatives that go to voters in November. Bypassing the legislature to propose measures going well beyond where the legislature has been willing to go thus far, the campaign by Steele’s Oklahomans for Criminal Justice Reform would reduce all drug possession crimes to misdemeanors and mandate reinvesting savings from cuts in imprisonment into programs to prevent crime and treat drug addiction and mental health.

Steele’s group did extensive public opinion polling before moving forward. He declines to share specifics, other than that 65 percent of likely voters surveyed voiced support for the two initiatives. “If we’re successful in November,” Steele says, “I really feel like we’ll see a bit of a paradigm shift in Oklahoma,” one that tells legislators they are “expected to take a smarter approach to criminal justice matters.”

The message could cut the other way, stampeding legislators away from reform, if voters reject the ballot initiatives. Already, the powerful District Attorneys Council is gearing up to oppose a yes vote, as is Rep. Scott Biggs, a former prosecutor who is the legislature’s most vocal tough-on-crime advocate. Labeling both Fallin and Steele as “soft on crime” and favoring “criminal welfare,” Biggs opposed most of the 2016 reforms. But the bigger fight, he says, is coming with the November ballot initiative, which would “make our drug laws more liberal than California’s.”



Even if a drug focus barely puts a dent in Oklahoma’s prison numbers, there’s no lack of work to be done at the lower end of the crime spectrum. The 2012 justice reinvestment study estimated from a sampling of prisoners that 27 percent of people imprisoned for drug possession had no criminal record or just one prior

drug conviction or nonviolent felony. Steele claims his ballot initiatives could lop off a quarter of new prison admissions just by focusing on drug possession and other nonviolent crimes.

While Fallin will remain neutral on the ballot initiatives, she agrees something must be done first about over-punishing nonviolent offenders, says Chance, the governor's criminal justice aide. "They haven't shot at anybody, and they haven't hurt anybody," she says. "I think we would miss the entire boat if we weren't looking at that population."

The start-small approach has its defenders. Ohio State's Berman sees it as a beginning to lowering prison sentences overall. "We move the entire scale down" by dropping the bottom rungs, he says.

Right on Crime's Levin sees another sort of ripple effect. "I know people are always worried that incremental reform will forestall more sweeping changes," he says. "But if you look at Georgia, every session they come back and do more. So we find it's self-reinforcing, that politicians essentially discover they don't lose their jobs, they don't get voted out of office, when they do criminal justice reform. So then the next time, they're more willing to take bolder and bolder steps."

As Steele enters his ninth year of fighting the fight in Oklahoma, he says that what's been done or talked about thus far is modest. "These initiatives establish a foundation to build on," he says. The shift toward seeing prison as the solution to so many problems was decades in the making, and so will be the rollback of those ideas. "I believe that one day we'll look back at our current policies and question how we ever got to this point," Steele says.

That may well be. But when that day comes the more pertinent question might be to wonder why they never found their way past this point.

Correction: Sept. 20, 2016—5:20 PT

An earlier version of this article imprecisely described Jennifer Chance's position in Gov. Mary Fallin's office. At the time she was interviewed, she was the governor's deputy general counsel; she is now her general counsel.

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