

Criminal Justice in 2015: The Year In Review

By L.J. Williamson

Reasonable minds can differ about whether the pendulum swing is permanent, but there is little doubt that in 2015, the "tough on crime" wave - which crested in the 1990s - crashed.

It wasn't just one moment - several during the year pointed to that era's demise, or at least its dormancy.

New state regulations seemed to prepare for marijuana's eventual win in the war on pot. Proposition 47 took the wobble out of several wobblers, moving their needle from felony to misdemeanor.

A transparency-demanding public made grand juries a thing of the past in California police misconduct cases. A bipartisan Senate committee passed the Sentencing Reform and Corrections Act.

President Barack Obama became the first sitting president to visit a federal prison and, most recently, commuted the sentence of 95 federal prisoners, more than doubling the number of commuted sentences since he's taken office.

The movement toward criminal justice reform made its presence known in many ways. Here are three of this year's the biggest:

Proposition 47

No other criminal justice measure comes close to California's Prop. 47 - which celebrated its first anniversary in November - in impact or in divisiveness.

While some see the initiative as crucial in transitioning drug addiction from the criminal to the public health realm, others want nothing more than to 86 Prop. 47, blaming it for a rise in crime, killing the drug courts, and creating a population of "frequent flyers" who are booked for misdemeanors and quickly released again and again.

Worse, opponents say, the measure has emboldened criminals who know they won't face serious consequences for lesser offenses.

"Talk to a cop about Prop. 47 and they will tell you that the criminals have figured it all out and a misdemeanor is no big deal," said retired Santa Clara County Superior Court Judge Eugene Hyman.

"But it isn't as if you can't face jail time," Hyman added. "Part of the problem is the judges haven't made a big stink about giving a year and getting a week."

A report from Stanford University's Justice Advocacy Project, which helped create the initiative, found that "since the enactment of Proposition 47, the number of people incarcerated in California's prisons and jails has decreased by approximately 13,000 inmates."

Further, Prop. 47 has also "reduced the number of jail inmates released from custody early due to overcrowding and should generate over \$150 million in state savings this fiscal year."

Outspoken opponent Marc Debbaudt, president of the Association of Deputy District Attorneys, said Prop. 47, known as The Safe Neighborhoods and Schools Act, is "deceitfully named." He is one of many who have said the measure's reduction in consequences is directly to blame for an increase in crime.

The monetary rewards promised by Prop. 47's backers, as the result of reduced incarceration costs, are expected to be tallied by mid-2016, and the sum may silence skeptics if it approaches the promised numbers, or if underwhelming, may provide more ammunition for the argument that the measure is a failure.

Criminal Justice Reform

Obama visited El Reno Federal Penitentiary in Oklahoma, becoming the first sitting president to visit a federal penitentiary.

While it may have been nothing more than a symbolic gesture that illustrates a commitment to reform mass incarceration, an even more striking achievement came when a bipartisan committee of the divided U.S. Senate successfully crafted the Sentencing Reform and Corrections Act, undoing mandatory minimum sentencing for some low-level drug offenders and establishing recidivism reduction programs.

Though far from a panacea, many saw the bill as an encouraging first step in the right direction: away from large-scale incarceration of small-scale offenders. The bill also seeks to end solitary confinement for juveniles.

But doubters see another Prop. 47, on a nationwide scale.

"The premise of the sentencing reform movement is that 'the system is in crisis,' but that's simply not so," said William Otis, adjunct professor of law at Georgetown University Law Center.

"To the contrary, our sentencing system, including the federal system has helped bring crime rates down 50 percent in a generation," Otis added. "If one were to measure the system's health by the crime rate, rather than the incarceration rate, it's one of the most successful domestic programs since World War II."

"We have a Congress that mires in the minutiae, but the fact that this bill has already garnered bipartisan support speaks to the possibility of it getting significant traction in the House [of Representatives] and Senate," said Michele Goodwin, professor of law at University of California, Irvine.

The financial realities behind the bill, including a trillion dollars on a largely unsuccessful drug war and cash-strapped states that can no longer afford incarceration costs also enhance the bill's appeal, Goodwin said, as does the nation's greater sensitivity to the disproportionate impact of mass incarceration on people of color.

"I think that 20 or 30 years ago, it seemed logical to incarcerate people who were brown and black for their use of drugs," Goodwin said. "Now, members of Congress see the wrongheadedness of it."

Police Misconduct

Frequently topping headlines in 2015 were stories of police brutality and shootings, and the protests that followed. California responded by changing its laws for how such incidents may be handled in courts.

In August, Gov. Jerry Brown signed first-of-its-kind legislation that banned grand juries in hearings for killings by on-duty police officers.

The governor also signed legislation that made it clear that photographing or videotaping police officers in public places is legal. Both bills came after multiple waves of civic unrest following a string of police shootings of unarmed black men, several of which were caught on video.

The secret grand jury proceedings that followed the shootings often contributed to the unrest and sense of frustration, but Yuba County District Attorney Patrick McGrath said that grand juries have a value that will now be lost.

"The perception is that people were not happy with the results of the decisions of grand juries, so let's remove their availability," said McGrath, who is also president of the California District Attorney's Association.

Yet when a witness is subpoenaed to testify before a grand jury, having the "cloak of secrecy" decreases the pressure and fear such witnesses might feel in a public setting - especially in cases being closely scrutinized by the public.

"There could be a significant amount of pressure on folks, so if you can put somebody in basically a quiet environment where grand jurors could ask questions, it can be useful," McGrath said. "If the desired result is a search for the truth, a grand jury can be a valuable tool."

lj_williamson@dailyjournal.com