

## **Smart-on-Crime: How a Shift in Political Attention is Changing Penal Policy in the U.S. States**

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Abstract: After decades of witnessing increasingly punitive sanctions to combat crime, penal policy in the U.S. States has begun to reverse itself in the 2000s. Policy is trending toward “softer” alternatives that reduce criminal penalties, invest in human capital, and rely less on the prison as the primary mode of punishment. Incorporating a case study of penal reforms in Texas, I ask how this unlikely set of policy reversals reached the governing agenda and were adopted when policymakers for the past generation have rejected softer reform alternatives because of a pervasive fear of being labeled “soft-on-crime.” Guided by theories of agenda setting I place emphasis on the emergence of what I call a “smart-on-crime” frame of American penology. Content analysis of newspaper coverage of the Texas penal system from 1991-2009 shows a clear shift in the tone of prison coverage over this time. I show coverage in the 1990s predominately supported a tough-on-crime frame while, by the early 2000s, arguments and attention focused on broad failures of the prison boom and the benefits of expert-informed prison alternatives. The paper concludes with an examination of what specific forces are shifting the politics of crime and punishment in this mostly unlikely contextual environment.

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Marking a most unlikely turn of events, crime politics and penal policy in the U.S. states are undergoing a substantial shift in the 2000s. For a generation, many states' penal systems have been dominated by a "tough-on-crime" governance that has tackled crime and social deviancy using policy instruments focused on custodial control and increasing punitiveness. After decades that witnessed stagnant prison populations in the middle period of the 20th century, the politics of crime shifted in the 1960s as the issue became defined in emotionally and morally-laden terms: crime, criminals, drugs, and drug users all became understood as clear-cut matters of good versus evil. As the politics of crime shifted, the U.S. prison population swelled dramatically beginning in the late 1970s—a trend toward mass incarceration that today has ensnared a record number of Americans while disproportionately impacting racial minorities and the urban poor. Today, the criminal justice system reaches so deeply into American life that one in 31 Americans are in prison, jail, on probation or parole—a rate that places the United States in the unenviable position as the world's leader in incarceration.

In this paper I seek to explain why in the most punitive era in American history appears to have reached its apex and why the trend has begun to reverse itself in recent years. For the first time in decades, states' reform efforts have led to the adoption of a slew of meaningful "softer" alternatives to those policies epitomizing the get-tough years. Policies that define this nascent era of reform in the 2000s share a common bond in that they are each designed to produce a reduction in states' use of the prison as the primary instrument of punishment and public safety. Reform can be seen in form of new statutes, regulations, and legal decisions that are reducing criminal penalties for drug use, diverting offenders away from prison and into community corrections programs, returning parole and probation to their original goal of reforming and reintegrating prisoners into mainstream society, and marking new investments in prisoner rehabilitation and human capital development

(Travis 2005).

Remarkably, reform can be found in what experts consider to be some of the “toughest” of states that, in both their political discourse and policy actions, were some of the leading cheerleaders for tough-on-crime politics and policy. In Texas, for example, a state with one of the highest imprisonment rates in the nation, policymakers in recent years have dramatically increased spending on drug treatment and adopted a variety of alternative sentencing statutes designed to divert non-violent offenders to community corrections programs rather than prison (Fabelo 2010). Prison numbers are on the decline for the first time in forty years and estimates predict the state will save two billion dollars by 2012 because of reductions in correctional expenditures (ACLU 2011). In New York, the legislature rid the state of its 1970s era Rockefeller Drug laws—some of the most punitive in the nation (Peters 2009). Others such as Kansas, Kentucky, Michigan, Ohio, Mississippi, and Rhode Island (among others), have adopted reforms long repudiated by political leaders in the 1980s and 1990s. A recent report by the National Conference of State Legislatures found that in 2009 there were 28 major correctional policy revisions adopted across the U.S. States (National Conference of State Legislatures, 2010).

My central goal in this paper is to lay out an explanation for what is driving the reforms underway in states’ penal systems. This is important because at first blush serious penal reform would seem to be near impossible given the politics surrounding the issue. And this is because crime is a valence issue—it is a policy domain where putatively only one side of the debate is viewed as legitimate. Public attitudes toward crime, and policy elites’ understanding of the crime problem, tend to be driven by single sensationalist crime events in the news media that play to people’s emotional fears that put pressure on lawmakers “to do something” about crime (Gilliam, Valentino, and Beckmann 2002). On top of this, crime produces what are unquestionably deleterious effects;

for this reason no one is “for criminals” in the way they might be “for guns” in debate about the meaning of the 2<sup>nd</sup> Amendment, or “pro-choice” in relation to the abortion issue. And people who would be most in-line to directly gain from reform, moreover, are already at the margins of society and have little influence in the power centers of American politics.

These barriers, then, present an intriguing crime-like puzzle in their own right: How has this unlikely set of penal policy reversals managed to reach the governing agenda when policymakers for the past generation have rejected “softer” policy alternatives because of a pervasive fear of being labeled “soft-on-crime”? Recent journalistic accounts of penal reform tend to offer an economic explanation. Economic conditions are indeed part of the story. But an economics story alone, in the end, is deeply unsatisfying. This is primarily because states have been through recessions in the past but witnessed had no reduction their inmate population. In fact, in many recession years over the tough-on-crime period, the inmate population increased unabatedly, seemingly irrespective of what it cost in dollars or lives. Guided by theories of agenda setting and policy change, my central explanation is placed on the emergence of what I call the “smart-on-crime” frame of American penology. The smart-on-crime frame involves a collective shift in elite attention and understanding of crime and the larger penal system in the 2000s. It is a frame that moves attention *away* from a tough-on-crime frame that carried an emotionally-based and overly simplistic understanding of crime and criminals and one that saw the prison and incapacitation as essential crime fighting instruments. It does this by emphasizing the failings of the carceral boom on the one hand, and, on the other, the promotion of softer data-driven policy alternatives designed to be more effective and efficient in delivering public safety outcomes, while, at the same time, doing much less harm.

Using Texas as a case study, I show how the emergence of the smart-on-crime frame over the past decade has shifted political debate and policy on crime and punishment in fundamental

ways. Debate over the penal system is taking on a very different tone. No longer is it a guarantee that the penal system will be dominated by talk of “locking them up and throwing away the key,” or talk of criminals as “animals” or “super-predators.” Politicians, judges, corrections professionals, and concerned citizens are asking far different questions: Are extremely punitive sanctions effective? Is the imprisonment of more people for more types of activities worth the financial and human cost? Can penal policies be designed in ways that improve public safety but also give criminal offenders a second chance? As a result, old coalitions are fracturing and new opportunities for policy reform are opening in legislative, bureaucratic, and judicial policymaking. Whereas policies that once diverted offenders from prison or invested in human capital were nearly universally understood in get-tough states as “coddling criminals,” with the rise of smart-on-crime frame, such alternatives are increasingly understood by lawmakers in these same states as good public policy. It’s causing politicians to begin casting aside their longstanding fear of the soft-on-crime label, allowing them come to the issue of reform from a position of electoral strength rather than a position of weakness.

This paper will proceed in three sections. In the first section I lay out some of the key elements of the smart-on-crime frame, couching the discussion within theories of agenda setting and attention shifting in the policymaking process. In the second section I present the results of a content analysis of newspaper coverage in Texas which shows the shifting nature of the debate on prisons and the larger penal system in the 2000s. I argue that the broader shifter along dimensions of the smart-on-crime frame has opened significant windows of opportunity for reform. In the third section I offer some explanations of how and why the smart-on-crime emerged in this “most important state.”

## **The Multidimensional Nature of the Penal Policy Debate**

The story behind the rise in the smart-on-crime frame is best understood within theories of agenda setting and collective attention-shifting developed by political scientists and public policy scholars over the past 20 years. This body of work developed extensively Frank Baumgartner and Bryan Jones (1993), and other scholars working in a social constructionist tradition (Schneider and Ingram 1993; Stone 1989), advances the argument that policy change is a function of a combination of the rise in attention to an issue and a change in the framing or understanding of that issue. The concept of framing itself has received a lot of attention and can be conceptualized and measured in a number of ways (see Druckman 2001 for a good review). But on a whole, scholars agree that framing involves the presentation or discussion of an issue from a particular viewpoint to the exclusion of alternative viewpoints (Baumgartner, DeBoef, and Boydston 2008).

Issue frames are themselves comprised of information that comes into the political system. Information, however, is ambiguous; it has a dimensionality that can be interpreted in a variety of ways by individuals, groups, and organizations operating in the political system, each having their own agendas and ideological biases, and limited attention spans (Jones and Baumgartner 2005). And thus a dimension of an issue can be seen as more or less prevalent, more or less persuasive, or more or less relevant to policy decision making. When dealing with complex multi-dimensional issues, political institutions will be affected by over-attention to the status-quo definition of an issue, which will inevitably be incomplete rather than comprehensive. In these cases, other dimensions of an issue can be effectively ignored. This is important because it can generate stability in policy outputs. At a later time, however, a dimension may be “rediscovered” again by policymakers. When this occurs, attention can shift to this new dimension of evaluation, changing the way the issue is understood as it rises on the crowded governing agenda, sending policy down a significantly

different path (Jones and Baumgartner 2005).

Within any single dimension of the crime issue, a variety of specific arguments may coexist in political debate (Schneider and Ingram 1993; Stone 1989). These arguments may be either complimentary to one another or, they may be contradictory. Within a debate about the efficacy of the prison, for example, it can be argued that heavy use of the prison reduces crime and protects public safety. Just as importantly, it can also be argued that it doesn't. Other individual arguments can then be made in political discourse that reinforce or contradict different sides of the larger crime debate. The tough-on-crime frame that came to dominate crime politics and policy in just about every state, albeit to different degrees since about 1980, enforced a fidelity to the efficacy of deterrence and incapacitation theories of crime control. The question for policymakers throughout the get-tough era was not *whether* more prisons should be built, but rather, *how many* prisons and how tough should the prison experience be?

The emergence of the get-tough frame piggy backed on a real rise in crime rates in the late 1960s and early 1970s but, more importantly, a much larger social debate about the very nature of contemporary citizenship in the neo-liberal era that came to rise with the Reagan presidency and the modern conservative movement (Fording, Schram, and Soss 2009). The neo-liberal era ushered in a new politics—a politics where individual rights could no longer be overtly stripped in the post-civil rights world. Instead, citizenship rights became tied to a person's ability to meet a certain set of societal obligations (Fording, Soss and Schram 2009). And thus it came to be understood that “good citizens”—the self-reliant, self-disciplined market actors who showcased individual responsibility needed to be protected from the “bad citizens”—the drug users and criminals who chose not to play by the rules. The get-tough movement articulated through politics the understanding that: 1) crime was a result of moral failing of individuals (many of them black and poor) who were at once

supremely violent, reprehensible and incapable of being rehabilitated, 2) criminals were deserved of the strongest retributive policy responses, and 3) deterrence and incapacitation policy instruments (i.e. the prison) served as the most rational deterrent to criminal behavior. Once the ball got rolling, lawmakers seeking reelection and powerful organized interests including corrections unions, law enforcement, district attorneys organizations, victims' rights groups, and private prison firms (among others) reinforced the get-tough frame by talking tough and raising fears as they pushed for tougher criminal sanctions and a continuance of "law and order" policies (see Miller 2008).

### **Conceptualizing the Smart-on-Crime Frame**

The smart-on-crime frame brings new relevance and attention to three primary dimensions--*effectiveness, efficiency, and morality*--surrounding the penal policy debate. When viewed through the attention-shifting and agenda setting framework, it is the collective shift in political discourse and understanding along these three main dimensions that have significantly reshaped state policymakers' understanding of crime and punishment in the 2000s, helping to set penal policy down a different but heretofore largely underappreciated path. What follows has been informed by over forty field interviews with some of the leading correctional practitioners in the country, interviews with criminal justice and legal scholars researching in the area, in addition to my own study of newspaper articles, published reports, and scholarly books on the subject.

The effectiveness dimension brings new weight to arguments that an effective pursuit of crime control and public safety is about more than simply locking up offenders and throwing away the proverbial key. It focuses renewed attention to evidence that the prison and the perniciousness of the prison experience has only a small impact on public safety and, in fact, in many ways, prepares offenders to commit *more* crimes, not less. It focuses attention on the broad failings of the system insofar as the system does nothing to prepare offenders to return successfully back into the



community (given that almost all prisoners are released back to their communities), and the system's high rates of recidivism that churns prisoners in and out of the system in an endless cycle.

The tough-on-crime frame paid little attention to questions of financial cost. If prisons became full, policymakers would just build new ones. With the efficiency dimension of smart-on-crime frame, new weight is being given to arguments about the financial costs and diminishing marginal returns (in public safety) of mass incarceration—most notably costs associated with locking up many non-violent offenders.

Although the smart-on-crime frame shifts the political debate within these two dimensions by underlining the ineffectiveness and inefficiencies of the get-tough regime, it also shifts debate via a full-throttled promotion of softer evidence-based policy alternatives developed and refined in research and evaluative studies over the past two decades. The frame's emphasis on "what works"—serves as information shortcut telling of the renewed credibility of expert-informed alternatives in probation and parole policies and practices, prison diversion programs, criminal sentencing reforms, and prison programming. It leads to a more contextualized and nuanced understanding of the characteristics of the criminal population behind bars, and a new appreciation for the many barriers offenders face upon return to their communities.

As the smart-on-crime frame forces a shift in attention within these two dimensions, it is causing policymakers to ask a far different set of questions than those associated with the tough-on-crime paradigm: Does building more prisons and reliance on incapacitation actually reduce criminal activity and improve public safety? Can alternative policies be designed that bring a greater return in public safety for every dollar invested?

No less important is a shift along a moral dimension. Under the get-tough frame, the moral debate was almost universally understood in the context of a biblically-based good versus evil.

Criminals, it was believed, suffered from moral depravity and lack of self-discipline. From this view, no amount punishment was ostensibly tough enough--retribution served as an overt expression of rage toward criminals. The moral dimension of the smart-on-crime frame shifts the debate in subtle but significant ways. Rather than focus on concepts such as good versus evil and innate moral depravity and inherent violence of criminal offenders, the frame brings attention to arguments about retributive fairness; it brings to bear arguments that lawbreakers should be disciplined for their actions, but that penalties imposed should be proportionate to the crime that was committed. It advocates the idea that prisoners retain and share a common humanity who should be treated with shared sense of dignity given they are members of a larger society and that those who have paid their debt to society (by serving their sentence) *should have real opportunities for a second chance* at a better life. The frame also brings a more serious acknowledgment of the disproportionate harm the carceral system has had on racial and ethnic minorities and the urban poor. It brings into focus the deleterious effects that criminal justice contact has on families—on divorce rates (as spouses of the incarcerated become separated from for prolonged periods), on truancy and urban child poverty (as children of the incarcerated grow up in households devoid of male role models and the added earning capacity of a two parent household) and on communities' declining social capital (Clear 2008).

Longtime observers of the criminal justice system will no doubt notice that the smart-on-crime frame, as I conceptualize it, is comprised of a lot of old arguments. The argument that the criminal justice system disproportionately harms racial minorities, for example, was made repeatedly in the 20th century (Garland 2001). Moreover, when the get-tough movement got seriously underway, academic literature, government-issued reports, and left-leaning advocacy groups all provided signals about the ineffectiveness and high social and economic costs of punitive crime

measures. Yet each and every time during the get-tough era, these signals failed to move elite opinion and, as a result, they had little impact on the trajectory of penal policy. The problem, in part, was that each of these “smaller” arguments was presented independently of each other. Groups primed to support punitive measures could easily resist such arguments in political debate.

Overall, it should be expected that the relative weight given to each dimension of the smart-on-crime frame will vary across different state context. But a crucial argument I make here is that the coupling of related smaller arguments into a much larger and more coherent smart-on-crime frame is as important component behind penal policy change as any single argument taken separately could ever be. If morally-based arguments of social injustice in (or a result of) the criminal justice system are understood in the context of a larger failing and ineffective system, a system that punishes harshly too many non-violent offenders, a system that costs tax payers billions but does little to actually deter crime then, *collectively*, these arguments build a much larger frame that tells a very different story. No longer is it just about who is toughest or who is weakest on crime, but rather who is the smartest—that is, who can design a penal system that improves public safety, can do it at a lower cost, and importantly, do it in a morally just way?

### **Investigating Penal Policy Reform in Texas**

Rather than conducting a 50 state multi-regression analysis of reform bills introduced or adopted in state legislatures, this paper examines the rise of penal reform and the shifting politics on crime and punishment in only one state—the state of Texas. Why a case study of Texas? State politics scholars have long recognized that the U.S. States’ policy outputs and outcomes vary considerable across a whole range of substantive policy issues. And so it is with criminal justice policy. Although all states ramped up their arrest and imprisonment rates over the get-tough era, there remains a wide degree of variation between states and the degree to which they

institutionalized formal means of social control. California, Louisiana, Michigan, and New York, for example, all saw their imprisonment rates prison rates skyrocket over the past decades, while other states such as Minnesota and Washington State, largely avoided dramatic increases in their prison population (Barker 2009).

Here, I pay close attention to Texas because I am centrally interested in understanding how and why reform successfully rose on the agenda in those states where it was least likely given their past trajectory. Indeed, reviewing the distribution of prisoners across the U.S. states suggests that scholars and would-be reformers should be paying special attention to reform in those state penal systems that represent the “hardest cases” in both their crime politics and policy. Using 2006 data collected from the Bureau of Justice Statistics, Figure 1 shows that just six states: California, Georgia, Florida, Michigan, New York, and Texas house roughly 35% of the entire U.S. prison population.

(Insert Figure 1 about Here)

This does not warrant discounting the rise of the prison population in remaining 44 states (of the federal penal system for that matter), but explaining reform in these hardest cases is not only the most interesting theoretically, but finding a successful path forward also promises to bring the greatest reduction in the overall prison population.

Texas’s reforms came in two waves in the 2000s. The first smaller wave covered the 2001-2003 period, and the second more significant wave occurred in 2007. The first wave followed a particularly ugly event in 2001 when dozens of African Americans were convicted of low-level cocaine offenses who were sentenced to anywhere from 20 and 90 years. After extensive litigation it was determined that their convictions were based on false law enforcement testimony and Governor Rick Perry pardoned the defendants in 2003 (ACLU 2011). With attention seemingly focused on

issues of proportionality, mistreatment, and prisoner rights, the legislature passed HB 2351, a bill that required corroboration of confidential informants' testimony, SB 1074, which prohibited racial profiling, and SB 7 which set new requirements for public legal defense for poor defendants (ACLU 2011). In 2003, the legislature took its first significant step toward lessening drug penalties with the adoption HB 2668 which mandated probation (instead of prison) for first time low-level drug possession, for small amounts of cocaine and other drugs.

The second, much more sweeping package of reforms took place in 2007. At the front end of Texas's criminal justice system, HB 530 expanded the Texas's drug court system by increasing the number of county drug courts, increasing funding for those courts, while also expanding the jurisdictions of drug courts to include more crimes. At the back end of the system, the legislature adopted HB1 which "reinvested" \$241 million from the corrections budget to fund new parole and probation treatment programs (Fabelo 2010). These programs included new beds in halfway houses for prisoners reentering free society, more residential and outpatient beds for substance abuse treatment for people on probation, and more substance abuse treatment programs for those in prisons and jails (Fabelo 2010). In addition to these, the legislature also enacted a package of bills making important changes to probation and parole. HB 1678 shortened probation terms, *reducing* the maximum probation term for drug and felony offenses from 10 to 5 years, required judges to review probation lengths after two years, and added earned credit for participation in treatment programs. SB 166 created financial incentives for local probation departments to create graduated sanctions programs allowing non-prison sentences for a whole host of technical probation violations (Fabelo 2010).

These reforms, as well as others that made changes to juvenile justice system has stabilized the prison population. Prisons are closing, and, as noted above, the state is saving billions. Perhaps

most importantly over the long run fewer people are going to prison and the crime rate continues to drop. Other states are taking notice helping to diffuse Texas-style reforms across the U.S. states. If Texas can do it, anybody can do it, or so the thinking goes.

Texas of course, has long been the poster-child of tough-on-crime politics and policy. Texas represents the very core of the southern prison philosophy which used the prison to extract black labor in the post-Civil War period. Since that time, the system has continued to serve as a tool of black subjugation (Perkinson 2010). Texas's reputation for getting tough on criminals is, to a large extent, shaped by its outlier position in its use of the death penalty. Between 1976 Texas and 2010 the state executed 476 people (deathpenaltyinfo.org). The state of Virginia, (with a total of 135 executions over that same period) ranks a distant second. In 2011 alone, Texas carried out 31% of the nation's executions. Yet above and beyond the death penalty, which relatively speaking affects few people, on a whole host of measures Texas ranks near the top in its allegiance to the politics and policies associated with the tough-on-crime paradigm. A few statistics bear this out, but the list if one were to just let loose, seems almost endless. Between 1980 and 2004 Texas built a total of 94 prisons, a number that equals its number of higher education institutions. The state's incarceration rate of 704 per 100,000 ranks it second to only Louisiana. Texas ranks first among the fifty states in the number of people housed in supermax prisons, first in the number juveniles incarcerated in adult prisons, first in the number of prisoners shipped off to for-profit prisons, and first in executing juveniles and mentally impaired inmates before the Supreme Court put a halt to the practices earlier this decade (Perkinson 2010). On the issue of racial equality, blacks are about seven times more likely to be incarcerated than whites. Toward this end, there are 4 African American males in prison for every one in college (Perkinson 2010).

And so on. One can't read this list and see that even with the slate of reforms underway they

seem to only scratch the surface given the size and scope of the Texas penal population built over the past generation. But as I argued more extensively elsewhere (see Percival 2011), the structure of the policy reforms themselves have the capacity to continue reshaping politics of crime, lending themselves to further, even larger changes in the years ahead. For all these reasons: the state's extremely punitive crime politics, the sheer size of the state's custodial population, and the fact that the state has served as something of a bellwether—diffusing reform ideas to other states—are reasons why state politics scholars interested in issues of criminal justice should work to explain what might be best described as the “Texas Miracle.”

### **Using Media Coverage to Track the Rise of the Smart-on-Crime Frame**

My central argument then is that these most unlikely reforms adopted in Texas are a byproduct of rise of the smart-on-crime frame in the 2000s, shifting attention toward the failings of the prison boom and the benefits of expert-shaped reform alternatives. To trace the evolution of public debate surrounding the Texas penal system I conduct a content analysis of the *tone* of newspaper coverage of the prison system between the early 1990s and 2009. The tone of media coverage is subjective. But at its center it is evaluative in nature, having positive (supportive) or negative components (Baumgartner and Jones 1993). My main goal here is not to trace the quantity of coverage on prisons, but how newspaper coverage of the penal system has changed over time, if at all. That is, my goal is to test whether media coverage of the penal system moved from periods where newspaper stories largely supportive of a tough-on-crime frame (stories focused on punishment, imprisonment; stories raising fear of crime/violence, or stories contributing to a violent image of criminals), to a period where the smart-on-crime frame (stories on the ineffectiveness, inefficiency, and moral injustice of the prison boom; stories on the benefits of research-based prison alternatives) gained saliency and importance. Finding evidence of a shift in the tone of prison

coverage, away from the hallmarks of a tough-on-crime frame and toward the smart-on-crime frame is important insofar as the debate changes, and as attention shifts to different dimensions of the issue, it provides openings to new a understanding of the issue and opportunities to change the direction policy.

Given time and resource constraints I constructed a random stratified sample (by year) of newspaper stories on the prison system (using search terms *prison*, *prisoners*, *inmates* in Lexis-Nexis) in two major Texas newspapers—the Houston Chronicle and the Austin-American Statesman—between 1991 and 2009. These two papers are different in a variety of respects. The Austin-American Statesman (circulation of about 173,000 in 2009), located in the state capitol, offers extensive coverage of public policy issues of relevance to state lawmakers ([austin360.com](http://austin360.com)). The paper’s editorial page generally takes more progressive stances on criminal justice policy. The Houston Chronicle, with a circulation of about 470,000 ([chron.com](http://chron.com)) operates in a more conservative contextual environment—a point reflected in its more conservative editorial positions on criminal justice matters. Moreover, juries in the Houston area have long produced some of the highest number of death sentences within the state and a significant share of state prisoners come from Houston neighborhoods (Baumgartner, DeBoef, and Boydston 2008). To the extent that the editorial views or the different contextual environments the papers operate within shape the kinds of stories each paper chooses to run, analyzing prison coverage in these two papers, should adequately capture these differences.

To keep the search manageable I limited the search to only those stories the involving the U.S. carceral system, but overwhelmingly the stories covered topics of relevance to the Texas prison system. In order to ensure the prison system was the main focus of the story and that the story had sufficient depth of coverage, I directed the search software to include only those stories that were at



least 400 words long. A total of thirty five stories were randomly sampled in each year (using a random number generator) for a total sample size of 665.

The overall tone of a story, of course, is subjective. Here, I use a broad coding scheme similar to previous work by Jones and Baumgartner (1993). In this case I followed a fairly simplistic rule: if you were a leader of the prison industry, law enforcement, or other organized group that wanted to see a continuance of punitive penal policies that used the prison as a primary tool to punish, would you be pleased or unhappy to see the story? For each article in the sample I coded whether the story had an overall tone that supported dimensions broadly connected to the tough-on-crime frame, whether the story had an overall tone that lent itself to the smart-on-crime frame, or whether it was neutral/uncodeable (for stories that had no clear frame). Following a similar approach taken by Baumgartner, DeBoef, and Boydston (2008), the tone did not necessarily refer to any editorial stance of the paper or journalist, but rather to whether decisions, actions, events, or opinions portrayed in the article lent support to what I conceptualize here as a tough-on-crime or a smart-on-crime frame.

The main topic of each story (measured by a reading of the story's headline) was placed into any one of seventeen different topical categories all having some connection to the penal system (a complete list of the topic categories are listed in the paper's Appendix). Placing stories into different topical categories allowed me to track the degree to which the overall tone of the story changes with the primary topic. So an article, say, covering the opening of a new prison in south Texas (coded into a *prison construction* topical category) would be coded as "supportive" of the tough-on-crime frame given the story's coverage of the act of building a prison lends to incapacitation and custodial control which is central to the larger tough-on-crime frame. A story about violence in prison (coded into the topical category *prison violence*) that also mentions the putative dangerous, threatening, or

out-of-control nature of inmates—the overarching dehumanizing image of the tough-on-crime era—would also be coded as supportive of the tough-on-crime frame. So too would a story on community support for a new prison because citizens see the prison as a boon to the area’s economy.

In contrast, stories highlighting the failings, inefficiencies, or injustice of prisons, including stories on recidivism, the high financial or social costs associated with incarceration, the mistreatment of prisoners, or stories on inadequate prisoner health care, would all be coded as supportive of the smart-on-crime frame. Stories discussing the benefits of alternatives to prison, or stories documenting new rehabilitation programs, successful prisoner reintegration efforts, the expansion of drug courts or reentry programs, or parole or probation reforms would also be coded as supportive of the smart-on-crime frame (topic category *rehabilitation/prison alternatives*). It should be noted that while the smart-on-crime frame, as I conceptualize it, is comprised of arguments across three main dimensions (effectiveness, efficiency, and morality), I am most interested in the content analysis in identifying the rise of the larger frame rather than its individual “smaller” parts. This follows my argument that it is the merging of smaller components into one larger frame that provide its power and appeal in the contemporary policymaking environment.

### **The Shifting Nature of Media Coverage on Texas Prisons**

The content analysis was used to create a “net tone” of prison coverage in every year. The net tone of coverage is simply the percentage of total stories in any one year that depicted a tough-on-crime frame minus the percentage of stories depicting a smart-on-crime frame. Positive values represent a net surplus of tough-on-crime stories and negative values represent a net surplus of smart-on-crime stories. Media coverage that changes little over the twenty year period would suggest there is little change in the overall nature of the debate on the Texas penal system, while periods of coverage where smart-crime-on stories show greater importance would suggest the

attention of policymakers and the broader public has shifted to these new dimensions of the policy, helping to lead policy down a different path.

In Figure 2, the data reveal significant differences in the overall coverage on prison system over the 19 year time period studied. Although the confidence intervals within each year are fairly high because of the small sample size within each year, the results show that in 1991, the first year of stories sampled, tough-on-crime stories had a net surplus of 52% over stories supportive of the smart-on-crime frame. This increased to a net surplus of 64% in 1995.

(Insert Figure 2 about Here)

Stories supportive of the smart-on-crime frame were never completely absent in the 1990s, they were just largely engulfed by stories depicting a tough-on-crime frame throughout most of the decade. In the early to mid-1990s media coverage had a clear trend of tough-on-crime stories. But by the late 1990s, however, the trend appears to begin reversing itself as the net surplus of tough-on-crime stories declines. What is important is that coverage appears to completely shift in the 2000s. While not all years reach statistical significance (for example the 2001 and 2004 years I cannot not reject a one-tailed hypothesis that the proportion of smart on crime stories is greater than tough-on-crime stories) in most years, significant attention was placed on the broad failings of the prison system, mistreatment of prisoners, and alternatives to prison—those dimensions that contribute to the smart-on-crime frame. A shift in attention was ongoing by the early 2000s, a trend that strengthened in through the decade.

The same data are presented in Figure 3, but here I include a secondary y-axis which measures of the state's prison population (excluding jail) over the same period. Interestingly, when media coverage depicted a strong net surplus of tough-on-crime stories the incarceration rate increased dramatically over that period. Texas's incarceration rate increased nearly 100% in 1993

and 1994 as Governor Ann Richards took extremely punitive stances on crime in these years, dramatically shifting stances on parole and protecting her right flank by talking tough-on-crime. This broader political environment is reflected in the media coverage here. Media coverage and the state's incarceration rate seem to track closely in the 2000s as well. As media coverage shifted to those dimensions of the smart-on-crime frame—the imprisonment rate has held steady for the better part of the decade and, in fact, is beginning to decline.

(Insert Figure 3 about Here)

Figure 4 shows the tone of various different topics coded and whether media coverage took on a smart-on-crime, tough-on-crime, or more neutral tone on each of the 17 coded topics. Some topics, such as institutional issues, have a relatively high percentage of neutral or uncodeable stories connected to them. That is, they were less likely to have a clear frame. Many topics, however, had an almost built-in bias toward either the tough-on-crime or smart-on-crime frames. Stories covering topics like prison gangs, inmate violence, criminal sentencing, community issues, and drugs in prison all had a decidedly tough-on-crime tone. Topics of rehabilitation/prison alternatives, prisoner treatment/rights, prison overcrowding, and the prison system each had an overwhelmingly smart-on-crime tone. While theoretically at least stories in the rehabilitation/prison alternatives category could have produced a tough-on-crime frame—say, stories attacking the effectiveness of such programs, or stories documenting program failures—there was little evidence of this in the stories sampled.

(Insert Figure 4 about Here)

Figure 5 helps show the shifting nature of discourse and on the Texas penal system over the 1990s and 2000s was largely a function of the shifting topic of debate. In this figure I track the percentage of sampled stories where the main topic dealt with rehabilitation/prison alternatives, prisoner treatment/ rights, prison overcrowding (the three topical categories most dominated by a

smart-on-crime frame in Figure 4). In the early 1990s stories on these topics were evident, but comprised only 20-25% of the total in any one year. However, by the early to mid-2000s, stories on these topics consistently reached 40-45% of all stories, peaking at 50% of sampled stories in 2003 and 2008. From this data, it appears the shift in attention occurred because the subjects changed—prisoner rehabilitation, prisoner rights, overcrowding and the broader failures of the system were all major topics of debate in the 2000s—opening up a political environment much more conducive to reform.

(Insert Figure 5 about Here)

### **Explaining the Rise in the Smart-on-crime Frame in Texas**

While the media coverage provides evidence of shifting attention because the topics of debate changed, a key question is why? That is, why did attention move to these dimensions of the issue? Movement to new dimensions of a policy issue does not happen in a political vacuum; it is shaped and constrained by political institutions and changes in the larger problem and political environments (Baumgartner and Jones 1993; Kingdon 1989; Stone 1989). John Kingdon's (1989) influential theory of agenda setting and policy change shows that in order for policy issues to reach the governing agenda and get successfully adopted, three separate streams—evidence of a problem, viable policy solutions to those problems, and a receptive political environment—need to converge at particular points in time to open “windows of opportunity” for policy change.

Evidence of a problem is an integral part of the agenda setting process, as Kingdon suggests, but we also know that just because a problem exists does not necessarily mean it will be attended to. Simon (1994) explains how government, even with its large number of professional staff, and institutions, must prioritize problems; attention is given to some problems, while other (perhaps equally important) problems are ignored. Once a problem is recognized by governing leaders, at the

next stage of the process, a key question becomes how that problem is characterized and understood. As explained previously, this is based on the relative weight given to different dimensions of an issue in the aggregate policy process. How a policy is characterized not only affects the search for policy alternatives and solutions, but it also structures the final set of choices from which policymakers choose.

I place attention here on the coalescence of four sets of forces in the 2000s: 1) the growth in the absolute size of the custodial population 2) a decline in states' revenue base 3) the rise of a new coalition of multiply situated advocacy groups who strategically worked to re-frame and shift attention within the penal policy debate; 4) important developments in penal policy research. My goal here is not to provide an exhaustive analysis of each factor, but rather provide a broad overview of the different forces and actors that have reshaped the criminal justice debate in Texas, and how the interaction between them has set the stage for significant reform opportunities.

Political scientists and public policy scholars have long recognized that for a problem to reach the governing agenda, not only must there be evidence of a problem, but decision makers must also choose to pay attention to it. Yet, frustratingly, at least from the perspective of would-be reformers in Texas, there has long been evidence of a growing "corrections problem." In the 1970s the long saga surrounding the *Ruiz vs. Estelle* case, a class action lawsuit filed in federal court on the basis that overcrowded prisons, lack of health care, and abusive security practices violated the Constitution's 8<sup>th</sup> Amendment, shook the Texas Department of Corrections at its roots (Perkinson 2010). The 1979 ruling in favor of the prisoners put serious limitations on prison overcrowding. But the early 1990s prison overcrowding was again becoming a significant worry among policymakers. The choice about what to do about the problem, in the midst of the tough-on-crime years, came down heavily on the side of punishment and building more prisons.

The decision to build more prisons may appear peculiar when there was strong evidence coming out of academia and even some conservative circles as well, that simply building more prisons did little to actually deter criminal activity—the ostensible purpose behind punitive policy approaches. James Q. Wilson, one of the most prominent intellectual supporters of deterrence based models during the Reagan administration wrote a 1994 piece in *The Public Interest* that captured a lot of attention. He noted that “very large increases in the prison population can produce only modest reductions in crime rates.” The problem for reformers in Texas or elsewhere for that matter, was that either too few were paying attention or too few cared to make much of a difference. A key question is why are now enough important people paying attention to the failures of the prison system and the benefits of reform. I argue that part of the explanation must be placed on the interaction between the sheer size of the Texas custodial population by the dawn of the new millennium and the economic downturns of the 2000s.

The first of these--the sheer largesse of the Texas custodial control population—can in some ways be understood as simply a product of time given the policies that have been erected. For illustrative purposes Figure 6 shows the growth in the Texas prison population (but not jail) between 1985 and 2009. Data are drawn from the Council of State Governments. In 1985, Texas had a prison population of about 39,000, with an incarceration rate of 210 persons per 100,000 population. When Texas officials were growing concerned with overcrowding in the early 1990s the state still have a (relatively) scant 60,000 offenders in state prisons. Although Texas had long imposed relatively stiff prison sentences, especially for drug offenses, sentencing took an even more punitive turn in the early 1990s with the election of Democratic governor Ann Richards.

(Insert Figure 6 about Here)

In the aftermath of the *Ruiz* decision that put hard caps on prison crowding, a historically

high number convicts were being released on parole. A number of these turned out to be violent offenders, a few of whom ended up committing new crimes. With the TDC receiving pressure from counties to accept their backlogged felons, and to protect her right flank, Governor Richards cracked down on parole and went on a massive prison construction escapade (Perkinson 2010). Parole rates dropped from 79% in 1989 to only 29% in 1994 (Perkinson 2010: 322). Like California Governor Jerry Brown did years before, Richards signed a bill revoking the discretionary sentencing code in favor of fixed mandatory sentences. She signed bills doubling the sentences of “aggravated offenders” and stripped a variety of good time credits. In 1991 Richards approved prison construction for another 25,000 new prisoners and added 22,000 new beds for a new felony state jail system (Perkinson 2010: 323). This meant, not surprisingly, that as the years have gone by, more people have come under custodial supervision. Under Richards the Texas penal population more than doubled and, by the mid-1990s, Texas had a prison population of over 150,000.

The real significance though is not just about how many people are behind bars but rather *who* is behind bars. Offender populations are less educated, sicklier, and have higher degrees of substance abuse problems than the general population (Petersilia 2003). Prisons are around-the-clock operations. The growth in the number of prisoners has also meant states like Texas not only have more people to feed, clothe, house, but also are having to control a population with a confluence of complex social disorders that are extremely costly to monitor and cope with. Imprisonment costs vary across the states, but the average per prisoner operating cost in 2005 was \$23,876 (Pew Center for the States 2008). On average, states’ corrections-related expenditures increased 315 percent between 1987 and 2007, representing the fastest growing portion of states’ general fund budgets except for Medicaid (Pew Center for the States 2008). In Texas the numbers were far more astounding; between 1980 and 2004 corrections spending increased 1,600%. The



broad failure of the system was perhaps best exemplified by its high rate of recidivism. For the approximately 40,000 offenders returning home each year, many of whom had addiction problems, few marketable job skills, and who faced a variety of discriminatory policies as they tried to reintegrate (Texas, like many other states strips criminal offenders of their rights to food stamps, welfare assistance, public housing), found themselves right back in prison within in two to three years' time (Travis 2005).

The economic downturns of the 2000s, first marked by the 2001-2003 recession in the aftermath of the 9/11 attacks, and the much deeper Great Recession of 2007-2009, serve as the second contributing factor to the rise in attention paid to the corrections problem in Texas and elsewhere. Over time the financial costs of incarceration were taking an increasingly large slice of states' general budgets. In 2005 alone, Texas spent over 3 billion in corrections-related costs and these costs became magnified as Texas's tax receipts declined in the ensuing Great Recession (ACLU 2011). And, unlike rising expenditures with Medicaid, a federal entitlement program, rising costs with incarceration are not mostly reimbursed by the federal government (Pew Center for the States 2008). A crucial period in Texas occurred in 2007 as Governor Rick Perry submitted a budget with \$500 million in new correctional spending for the purpose of building more prisons to meet a projected shortfall of about 17,000 prison beds by 2012 (Savage 2011). This reality helped cause a surge in attention to the corrections problem and a new appreciation for what taxpayers *were not* getting for their money. For the first time, the failure and high cost of the prison boom captured the attention of *fiscally conservative* lawmakers who saw cutting general fund correctional expenditures as a ripe target to help balance the state's budget. In sum, the economic recessions of the 2000s have played an important role in shifting the political debate—away from the belief that crime was about incarcerating at any cost, to one where it was becoming too costly to incarcerate.

But what is important to reaffirm is that the economic recessions of the 2000s, a popular explanatory factor in the mainstream press coverage of prison reform in Texas and elsewhere, cannot on its own explain the emergence of reform on governing agenda. This is because the state had gone through previous recessions before (most notably the 1981-1982 recession and ongoing oil glut that trounced much of the Texas economy in the early 1980s, and the 1991-1992 recession under George H.W. Bush), and any who was concerned about prison costs in these tough economic times made little headway in getting serious reforms on the agenda (see Gottschalk 2009). As prisons became filled in bad economic times Texas decided to build new ones, in many cases with the help of federal dollars (Travis 2005). Rather it is the absolute size of the custodial population and the complexities and costs that population brings, evidence of the failure of the system to effectively reintegrate offenders into the community, in combination with economic recessions of the 2000s that helps explain attention to the “corrections problem” unlike at any time in the previous four decades. Put simply, the 150,000 plus prisoners locked up (not to mention thousands more in county jails) in 2001-2002 recession, or for that matter the 155,000 plus in the 2007-2009 Great Recession, was much larger and much more costly than the roughly 30,000 offenders locked up in 1981-1982 recession, or the 60,000 offenders behind bars in the 1991-1992 downturn.

Even as these forces combined to bring attention to the corrections problem, the shift in debate was not guaranteed by any means. A variety of organized groups including the national level organizations like Council of State Governments, along with state groups like the Texas chapter of the ACLU, the Texas Criminal Justice Coalition, and the Texas Public Policy Foundation (a libertarian research institute) worked strategically within the shifting political and economic environment to construct and reinforce a new understanding of the issue along the lines of the smart-on-crime frame. It is easy to over-inflate the importance of any one group (or groups) in producing

policy change, but the Council of State Government's (CSG) Justice Center bears a special mention here because it represents the important role that organized groups have played in this story. The CSG along with a reinvigorated NAACP, and the ACLU, Families Against Mandatory Minimums, Pew's Public Safety Performance Project, are all examples of groups that Hacker and Pierson (2011) call "multiply-situated" organizations in the federalist system. They are well funded, well organized, and capable of sustained lobbying efforts at multiple venues in the federalist system. Such groups have proven critical in light of the fact that for years the issue was dominated by only organized interests representing law enforcement, victim's rights groups, the gun lobby, prison guards, and private prison firms who were powerful not only because of their wealth but because they could organize at just about any time and in any place. Organized groups like the CSG and others have served as an important counterweight to law and order interest groups. They have played a crucial role in re-framing the debate within the efficacy and efficiency dimension of the smart-on-crime frame but, also, just as importantly, supplied technical and policy expertise to overwhelmed state policymakers.

The exact genesis of CSG's work on penal reform is difficult to trace, but it without doubt took on a more substantial role in the mid-2000s in response to the growing alarm among state officials about their rising prison populations and the number of prison beds being filled by returning prisoners picked up on new crimes or violating their terms of parole. Chief among these were Texas officials who, as noted above, were faced with a ballooning corrections budget and overcrowded prisons. This concern from the bottom up eventually led to the CSG's groundbreaking Re-Entry Policy Council—a study group comprised of 100 policymakers, including many elected officials. Their 2005 report, titled "New Strategies for Curbing Recidivism" focused attention on the idea that the prison boom was largely due to high rates of prisoner recidivism and the imprisonment of many non-

violent offenders. The report called on states to “reinvent” their correctional systems and to begin concentrating efforts across the fractured governing landscape on reducing prison populations by advocating for services (i.e. drug treatment, mental health) that would aid in that effort (Council of State Governments 2005).

In Texas, the CSG played a critical role in advising and supplying valuable information about what exactly was causing the Texas’s burgeoning prison population. While difficult to understand for casual observers, many states, including Texas during the massive prison build up, had by the 1990s no real understanding of the interconnections between the sprawling parts of criminal justice system. What types of prisoners were making up the bulk of the prison population? To what extent were prisons being filled up by parole violators, or for drug crimes, or violent offenses? These were important questions that few, if any, had any answers to. People were coming in so fast that Texas prison officials, like their counterparts in many other states, were effectively flying by the seat of their pants. CSG officials, most notably Tony Fabelo (a long time expert in Texas crime politics and policy, and by 2006 working for the CSG’s Justice Center), did in Texas what CSG would later do in a whole host of other states, which was to dig deep into their vast criminal justice databases to determine what was causing prison rates and prison costs to remain so high.

Their answer was that there were three major drivers: increased probation and parole revocations, fewer individuals receiving parole, and a reduced capacity to residential treatment.<sup>1</sup> In a remarkable presentation to the state legislature in 2007 representatives of the CSG and other reform advocacy organizations spelled out in very clear terms the costs and benefits of a variety of alternative approaches. A diversion from prison of X number of offenders would save X many dollars; expansion of X many treatment beds would save the X many dollars and so forth. Overall,

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<sup>1</sup> Personal Interview with Tony Fabelo, February 17, 2010.

the CSG was preaching a “justice reinvestment” strategy that encouraged lawmakers to allocate scarce criminal justice dollars where they could best be used. This meant greater use of treatment, less reliance on the prison, and an expanded role for community corrections and drug courts. Jerry Madden, the Republican Chairman of the Texas House Corrections Committee said the plan was to turn the debate from one that says “be tough-on-crime to one that says be smart-on-crime” (ACLU 2011). In a system so accustomed to just locking people away and hoping for the best, this was a lesson in rationality perhaps never seen before in Texas crime politics.

While CSG (along with other groups) worked to bring attention to the ineffectiveness and inefficiency of the penal system, others worked to reframe the debate along moral lines. Perhaps no organization has played a bigger role in shifting attention along the moral dimension, especially among the political right, than the Prison Fellowship Ministries. The Prison Fellowship Ministry and its public policy arm (the Justice Fellowship) is a Christian organization founded by former Congressman Chuck Colson in the 1970s (see [justicefellowship.org](http://justicefellowship.org)). Without extensive elaboration, The Prison Fellowship’s mission is to reform correctional system based on restorative ideals. To this end, the organization has conducted traditional lobbying efforts to educate policymakers on the necessity of reform at both the national and state levels of government. But central to their mission is the transformation of the offender himself through the power of Jesus Christ and through the construction of a large national network of support services and programming inside prison and out in the community that prepare offenders for successful reintegration and a second chance.

Successful lobbying requires resources, a coherent message, and the ability to persuade powerful actors within governing institutions to take on your cause. By the early part of the decade Prison Fellowship was progressively becoming successful in getting leading conservatives to give credence to their core mission. The most prominent of these early conservative voices was U.S.

Senator from Kansas, Sam Brownback, who made prison reform one of his leading domestic causes and was one of the lead sponsors of the 2007 Second Chance Act. As a fiscal conservative Brownback came to the issue out of concern of the rising costs, but as a Christian conservative and after working closely with Colson and the Prison Fellowship, Brownback came to see the plight of prisoners returning home as a moral injustice (Suellentrop 2006). For Brownback, prison reform meant keeping people not yet in prison, out, and for those in prison, returned home successfully for a second chance at life. In short, prison reform was about saving lives.

By the mid-2000s, Prison Fellowship Ministries found a sympathetic ear in Texas governor Rick Perry. A staunch fiscal conservative and a prominent member of the evangelical movement, he came to the idea that (mostly non-violent) criminal offenders deserved a second chance. Perhaps most important, by 2007, as the reform organizations were lobbying the legislature, Perry came to understand reform through the lens of fiscal savings, but also through a moral lens. Understanding reform through both a fiscal and more compassionate moral lens effectively took away the veto (something he wielded in a similar set of reform package in 2005) providing a clear path to passage of the 2007 package of reforms.

### **How Developments in Penal Policy Research Contributes to the Shifting Political Debate**

As Kingdon (1989) noted many years ago, a problem can successfully reach the governing agenda, but to successfully adopt solutions to that problem requires a set of policy ideas and solutions readily at hand. The role of ideas in the story of reform in Texas and elsewhere has been largely overlooked. Trying to find the genesis of policy ideas is a fruitless exercise, but it is without doubt that policy research coming out of think tanks, academia, and the like, play a crucial role in shaping ideas that eventually come part of legislative statutes and bureaucratic regulations aimed at solving problems. When considering the forces that shape the politics surrounding in an issue,

policy research itself is rarely understood as a causal driver. When scholars do examine the politics of policy research it generally presented in the form of organized interest groups attempting to manipulate research findings as a tool to achieve their self-interests in the legislative process (for a critique, see Esterling 2004).

Yet, a growing literature broadly conceptualized in the category of “policy feedback” gives both policy research and policy design a central place in shaping politics surrounding an issue ( Soss and Mettler 2004). It is from this literature that I generate the argument that important theoretical developments in corrections evaluative policy research has played an important role in reshaping the politics of crime and punishment, and thus should be considered an important component behind the smart-on-crime movement. Policy feedback is the idea that the design of a policy itself can shift on-going politics surrounding an issue, leading to future (even larger) changes through a self-reinforcing process. The traditional approach in political science is one that sees policy choice as the *end result* of a complex political process. While this is true, it is also incomplete. Policy feedback forces us to consider a different causal relationship in that the design of a policy itself is understood to structure on-going political contestation (Hacker and Pierson 2010). Distinct features of a public policy’s design can shape politics by incentivizing collective action of groups in particular ways.

To understand the how recent developments in corrections policy research has helped propel the smart-on-crime frame in Texas, it is helpful to take a quick review of the attack on prisoner rehabilitation programming as the tough-on-crime paradigm took hold in the late 1970s. In the 1950s and 1960s correctional practices in the U.S. followed what David Garland (2001) calls a “penal welfare” model. Penal-welfarism’s central axiom was that where possible penal measures should be rehabilitative in nature rather than retributive and punitive. Treatment was (or could be) individualized and institutional arrangements gave expert decision makers wide latitude in devising

effective treatment regimens. Although for different reasons, this model came under attack from both the political left and right in the 1970s. From the left it was believed that too much individualized treatment led to racial bias in the justice system. The political right attacked the rehabilitative model on the grounds that it was too soft on criminals (see Garland 2001).

These criticisms were given critical momentum by correctional evaluative and effectiveness research conducted in the 1970s. Perhaps no report had any larger impact than Robert Martinson's (1974) endlessly cited article titled "What Works? Questions and Answers in Prison Reform." After reviewing over 200 studies, Martinson came to the conclusion that "with few isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism." Not long after, the common refrain was that "nothing works" in the area of prisoner rehabilitation programming. As a number of scholars have since noted, Martinson's report did not say nothing worked, but that characterization of the report gained so much traction because it fit nicely within the broader political narrative about crime and the penal system percolating at the time (Garland 2001). The full assault on prisoner rehabilitation served as a focal component in the early years of the get-tough movement.

Despite all this, the smart-on-crime movement in Texas and elsewhere has benefited greatly from the fact that even in the height of the get-tough era, program evaluation and studies of what works and what doesn't in alternative correctional practices never went away completely. The federal government, namely through the National Institute of Justice and the National Institute of Corrections continued quietly funded pilot rehabilitative and reentry programs (Travis 2005). State legislative research agencies such as Washington State's Public Policy Institute, non-partisan research groups like the Urban Institute and the Center for Effective Public Policy, along with a slew of new academic studies, continued to compile research on best practices in correctional programming



through much of the 1990s and into the 2000s (see Aos, Phipps et al 2006; Andrews and Bonta 1998). While scholars continue to note the need for many more evaluative studies using robust experimental designs (Weisburd et al. 2001), researchers have made a significant degree of progress in understanding “what works” in prisoner reentry and prison programming (see Petersilia 2003; Travis 2005). Without elaboration these advances include but are not limited to:

- A new understanding of the barriers to successful reentry, including the expansion of supervision and invisible punishments barring offenders from access to welfare benefits, drivers licenses, and many jobs upon their release
- Improved knowledge of effective interventions including in-prison treatment, community treatment, cognitive behavioral therapies, and correctional industry programs, among others
- The development of about essential set of guidelines for effective practices including: targeting high risk offenders; using positive reinforcement; use of updated risk assessment instruments; beginning treatment in prison and provide continuity in the community; providing interventions for at least six months
- A greater knowledge of what doesn't work in the parole system. Supervision by itself does not reduce recidivism rates. Individuals placed on parole supervision after prison are no more likely to be rearrested that those without supervision.

Even with these advancements in knowledge there remain significant practical obstacles in the implementation of effective programming. Joan Petersilia (2004) examined the existing literature on what works in prisoner reentry programming and came to the conclusion that researchers have developed a better understanding of what works in reentry, but that there remained a large divide between theoretical knowledge and practice. The key to successful reentry and reintegration programs appears to be a fidelity to essential evidence based practices developed over the past fifteen years.

The work of the CSG's Justice Center along with other national level organizations play a crucial role in bridging the gap between theory and practice by diffusing expert-based practices

within and across a variety of states considering reform. As Texas House Republican Jerry Madden, one of the leading authors of the 2007 reform said to me in an interview in February 2010, “I came at this issue [reform] like an engineering problem....we knew from the research that this [alternative programming] works if done right.”

From this, it is but a short step then to see how the developments in corrections policy research can help solve the important electoral puzzle surrounding reform. While a level of uncertainty surrounds the implementation of reform alternatives, developments in theory about what works in prison programming, how to reinvest scarce correctional resources, and how to redesign probation and parole policies that divert non-violent offenders from prison, have collectively provided to lawmakers a greater degree of certainty that softer alternatives hold the promise of aggregate-level improvements in public safety at a much lower financial and human cost. Advocating for expertly designed alternatives allows lawmakers, especially conservative lawmakers facing a more skeptical constituency, to sell themselves as producers of innovative and effective public policy that provide tangible public safety benefits for the public. This builds lawmakers’ professional reputation within the legislative chamber and helps build trust with their constituents. At the same time, expertise causes groups traditionally opposed to softer alternatives, namely prosecutors, prison guards, and victims’ rights groups, to have a more difficult time attacking alternative reentry and prison diversion programming (or just as importantly, the politicians who support them). This is due in part because they can no longer do so credibly.

When one state lawmaker was asked by me in an interview whether he feared being labeled soft on crime by potential political opponents while pushing for reform not in Texas but Ohio, he responded, “no, absolutely not. I will just tell them they are dumb on crime; we are being smart-on-

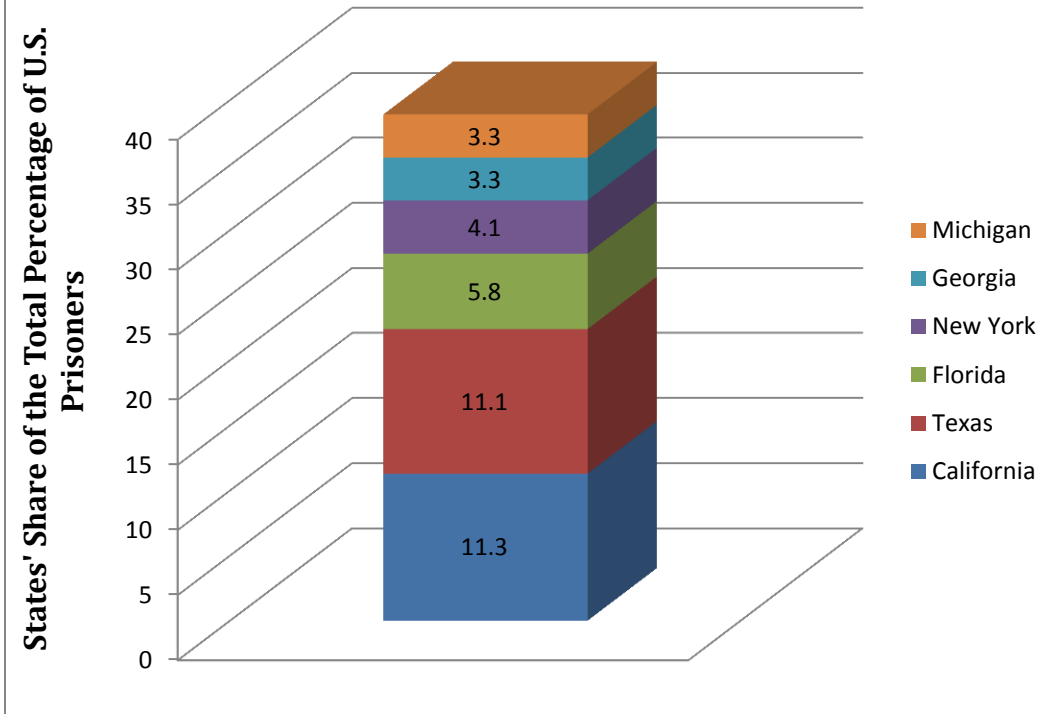
crime.”<sup>2</sup> In mainstream political discourse, hearing lawmakers like Jerry Madden selling “smart” effective reforms, is a clear indicator that expertise plays a prominent role in guiding lawmakers penal policy choices and that opportunities to be seen as “smart” help supply that bucket of courage long missing from this most important issue.

In closing, it is important to note that there remain a number of criticisms waged at the reform movement underway in Texas and elsewhere (see Alexander 2010). Among these are that it places too much focus on the economics of the penal system and not enough on racial injustice, that the scope of the conflict is narrow and substantive change is too little given the scope and magnitude of the problem; and that there remains too little discussion about policies designed to attack the root causes of crime. Although there are justifiable reasons to be deeply cynical about the reforms witnessed given the Texas criminal justice system’s long history of punitiveness and racial oppression, the evidence presented suggests that collective attention is shifting. So long as the penal policy debate continues to be understood along dimensions associated with the smart-on-crime frame, a trend should continue toward less punitive crime policies that have become so draconian they are anathema to every other democratized state in the world.

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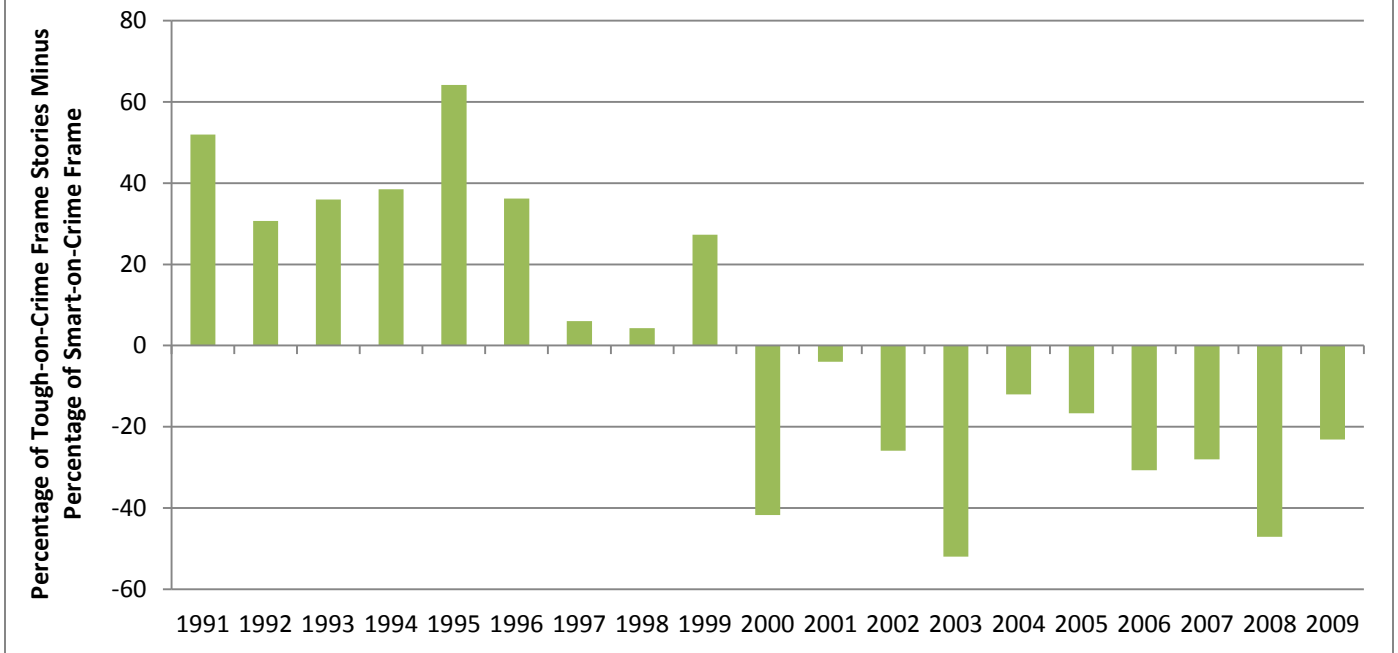
<sup>2</sup> Interview with Ohio State Representative Mike Moran (D), February 20, 2010.

**Figure 1. Just Six States House Nearly 40% of U.S. Prisoners**



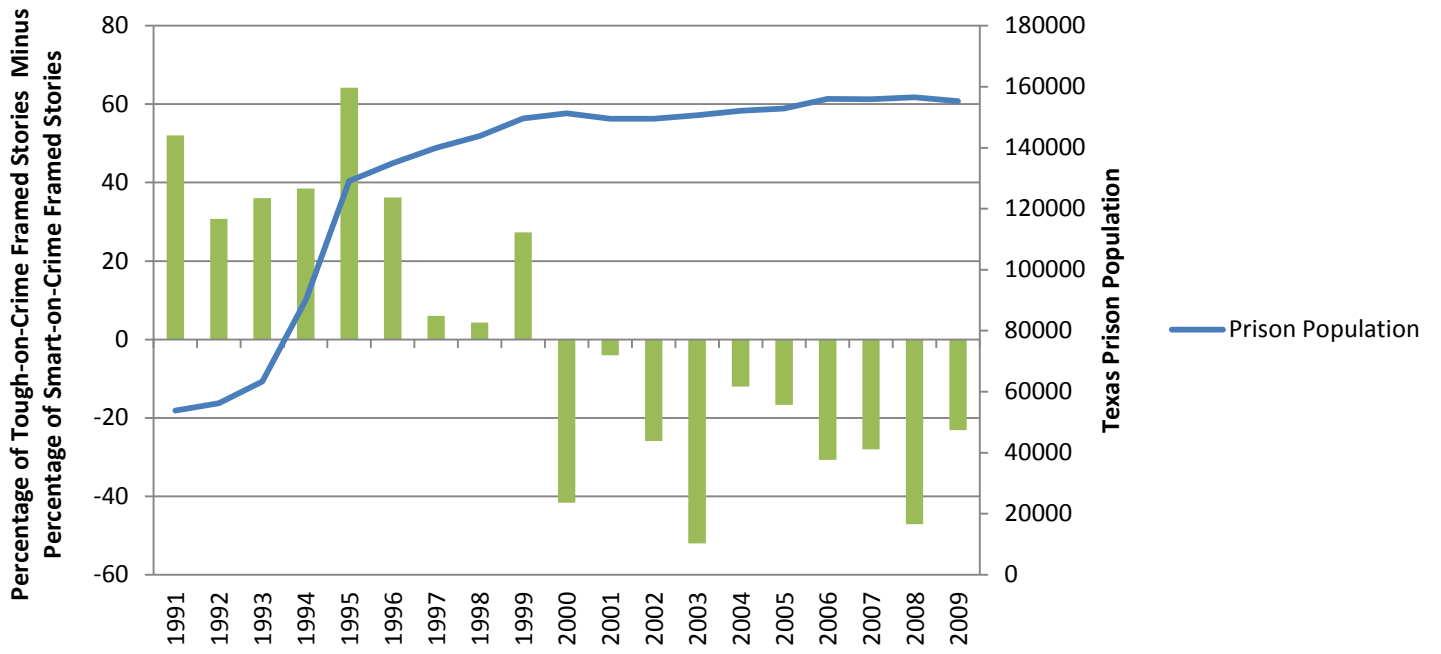
Source: 2006 Bureau of Justice Statistics Midyear Report.

**Figure 2. The Net Tone of Houston Chronicle and Austin American Statesman News Coverage on the Texas Penal System**

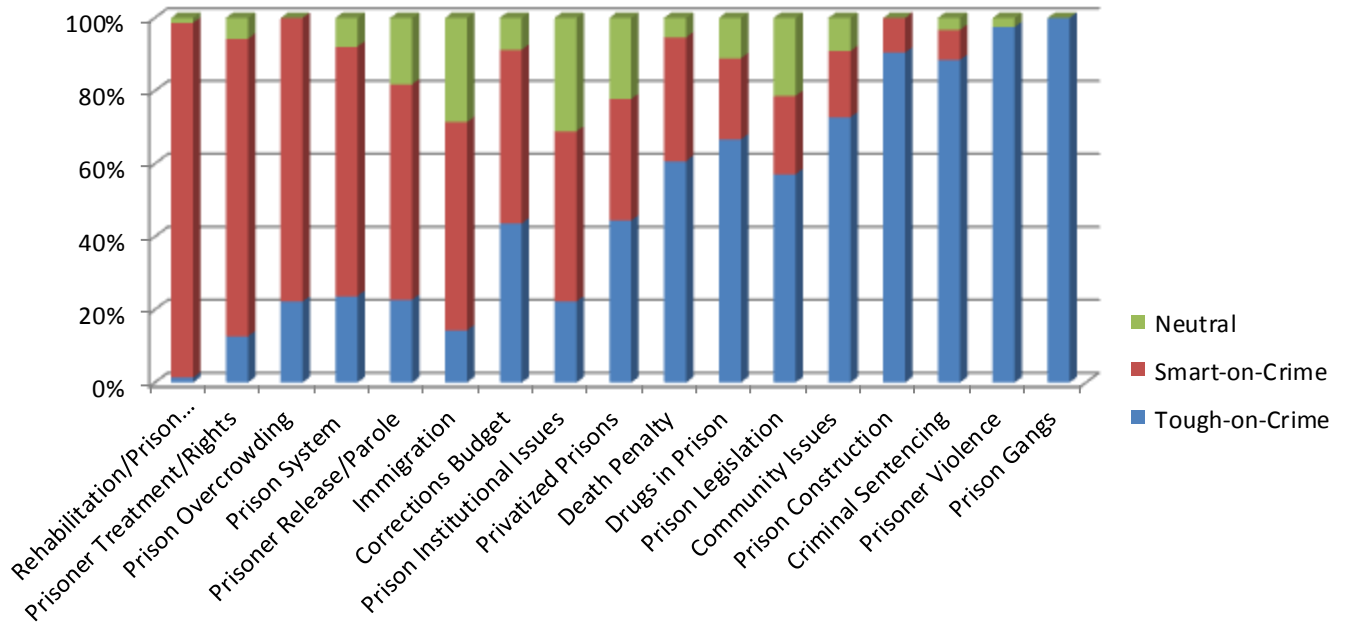


Note: With the small samples sizes drawn in each year, 1997 and 1998 failed to reach standard levels of statistical significance. In these years, I cannot reject the one sided hypothesis that the proportion of tough-on-crime stories would be greater than the proportion of smart-on-crime stories in the more punitive era of the 1990s. The same is true in 2001 and 2004, although here, the one sided hypothesis is that the proportion of smart-on-crime stories would be greater than the proportion of tough-on-crime stories.

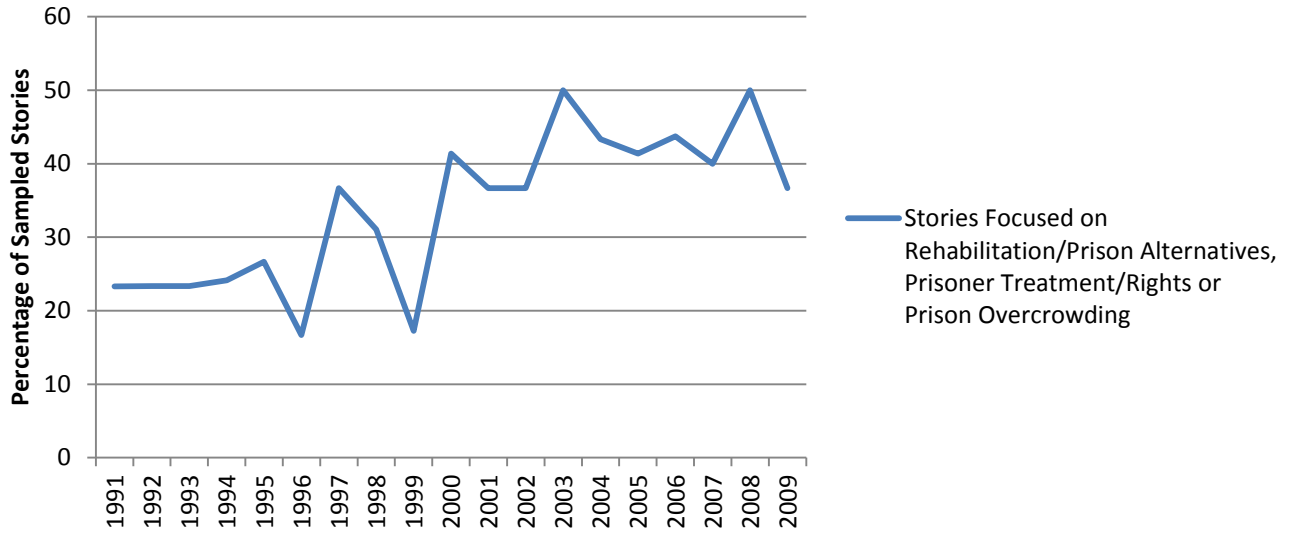
**Figure 3. Examining Net Tone of Texas Newspaper Coverage on Prisons and Change in the Texas Prison Population**



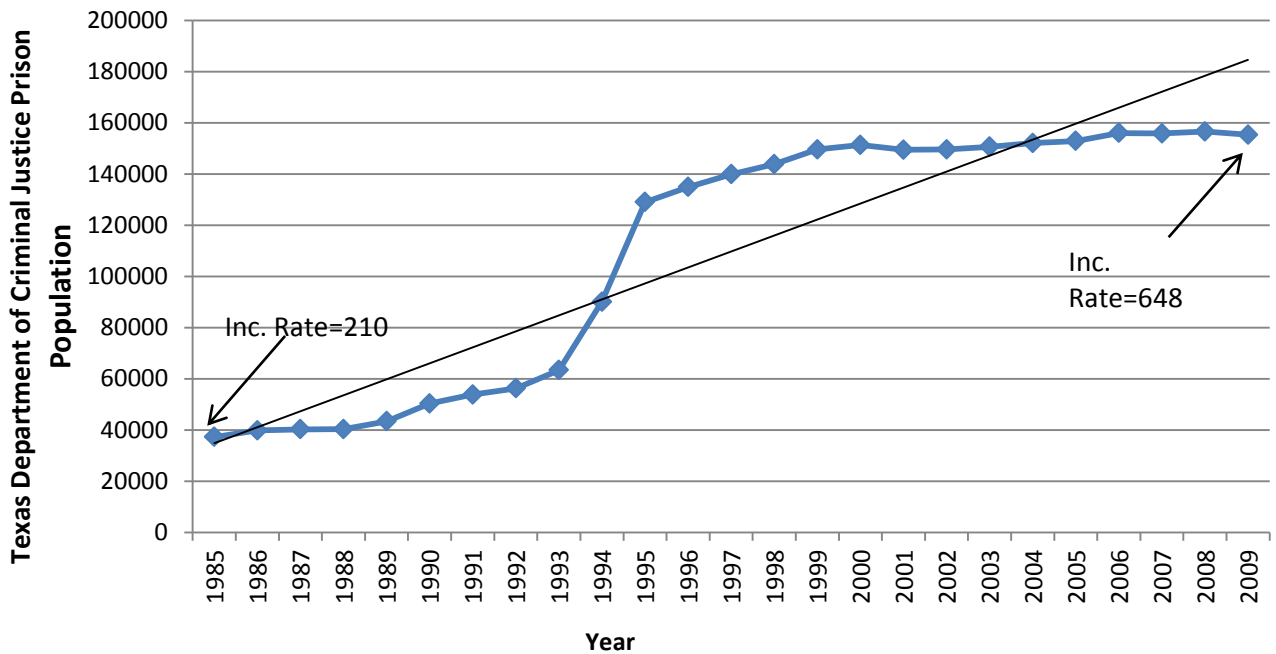
**Figure 4. The Topic Determines the Tone of Media Coverage on the Texas Penal System**



**Figure 5. Stories Focused on Prisoner Rehab, Prisoner Treatment/Rights, or Prison Overcrowding**



**Figure 6. Texas Prison Population 1985-2009**





## References

- Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York, NY: The New Press.
- American Civil Liberties Union. 2011. "Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities." [www.aclu.org](http://www.aclu.org)
- Aos, S., P. Phipps, et al. 2006. Evidence-Based Adult Corrections Programs: What Works and What Does Not. Olympia: Washington State Institute for Public Policy. Available at <http://www.wsipp.wa.gov/rptfiles/06-01-1201.pdf>.
- Barker, Vanessa. 2009. *The Politics of Punishment: How the Democratic Process Shapes how America Punishes Offenders*. New York: Oxford University Press.
- Baumgartner, Frank, R. and Bryan Jones. 1993. *Agendas and Instability in American Politics*. Chicago, IL: University of Chicago Press.
- Baumgartner, Frank R., Suzanna L. DeBoef, and Amber E. Boydston. 2008. *The Decline of the Death Penalty and the Discovery of Innocence*. Cambridge, MA: Cambridge University Press.
- Esterling, Kevin M. 2004. *The Political Economy of Expertise*. Ann Arbor, MI: University of Michigan Press.
- Fabelo, Tony. 2010. "Texas Justice Reinvestment: Be More Like Texas." *Justice Research and Policy*, 12, 1: 1-18.
- Fording, Richard, Sanford F. Schram, and Joe Soss. 2009. Governing the Poor: The Rise in the Neoliberal Paternalist State." Paper presented at the Annual Meeting of the American Political Science Association, Toronto Canada.
- Garland, David. 2001. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago, IL: University of Chicago Press.
- Gottschalk, Maria. 2006. *The Prison and the Gallows: The Politics of Mass Incarceration in America*. Cambridge, MA: Cambridge University Press.
- Gottschalk, Maria. 2009. "Money and Mass Incarceration: The Bad, the Mad, and Penal Reform." *Criminology and Public Policy* 8: 1201-1213.
- Hacker, Jacob, and Paul Pierson. 2011. "A Case for Policy-Focused Political Analysis." Working Paper.
- Jones, Bryan D., and Frank R. Baumgartner. 2005. *The Politics of Attention: How Government Prioritizes Problems*. Chicago, IL: University of Chicago Press.

- Kingdon, John W. 1989. *Agenda's Alternatives, and Public Policies*. New York: Harper Collins Publishing.
- Martinson, Robert. 1974. "What Works? Questions and Answers in about Prison Reform." *Public Interest* 35: 22-35.
- Miller, Lisa. 2008. *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control*. Oxford: Oxford University Press.
- Percival, Garrick L. 2011. "Smart on Crime: How a Shift in Political Attention is Changing Penal Policy in America." Paper presented at the American Political Science Association annual meeting. September, 2011.
- Perkinson, Robert. 2010. *Texas Tough: The Rise of America's Prison Empire*. Metropolitan Books.
- Petersilia, Joan. 2003. *When Prisoners Come Home: Parole and Prisoner Reentry*. New York: Oxford University Press.
- Petersilia, Joan. 2004. "What works in prisoner reentry? Reviewing and Questioning the Evidence." *Federal Probation* 68: 4-8.
- Peters, Jeremy. 2009. "Albany Reaches Deal to Repeal '70s Drug Laws." *New York Times* March 25.
- Pew Center on the States. 2008. "One in 100: Behind Bars in American in 2008." Washington D.C.: Pew Charitable Trusts.
- Pew Center on the States. 2009. "One in 31: The Long Reach of American Corrections." Washington D.C.: Pew Charitable Trusts.
- Savage, Charlie. 2011. "Trend to Lighten Sentences Catches on in Conservative State." *New York Times*, August 13.
- Schneider, Anne L., and Helen M. Ingram. 1993. "The Social Construction of Target Populations." *American Political Science Review* 87, 2: 334-346.
- Suellentrop, Chris. 2006. "The Right has a Jailhouse Conversion: How Conservatives Came to Embrace Prison Reform," *The New York Times Magazine*, December 24, 46.
- Stone, Deborah A. 1989. *Policy Paradox: The Art of Political Decision Making*. W.W. Norton.
- Tonry, Michael. 1995. *Malign Neglect: Race, Crime, and Punishment in America*. New York: Oxford University Press.
- Travis, Jeremy. 2005. *But They All Come Back: Facing the Challenges of Prisoner Reentry*. Washington D.C.: The Urban Institute Press.

## Appendix

The coding scheme included documenting the main topic and tone of each news story, letter to the editor, or editorial sampled in the Houston Chronicle of Austin American Statesman between 1991 and 2009. The main topic of each article was taken from each story's headline. A story may have had more than one topical category. For example, a story's headline that mentions funding for prisoner rehabilitation would be categorized be coded in the topical category of *Corrections Budget* and *Rehabilitation/Alternatives to prison*. 1991 is the earliest year of coverage available in the on-line archives. Search terms entered into Lexis-Nexis included prisons, prisoners, and inmates. Articles sampled had a word count of at least 400 words to assure depth of coverage. Stories on prisons in other nations were excluded. Stories on the Guantanamo Bay detention facility had a significant presence in news coverage in 2002, 2003, and 2004, but because these stories primary dealt with the treatment of detainees in the larger "war on terror" I excluded these stories from the analysis.

### **Tone:**

The overall tone of coverage was documented from skimming the entirety of each article. In most cases, if there was a clear frame, the frame was clear.

Tough-on-crime frame: stories on punitive sanctions and sentencing, incarceration/prison, stories fear of crime, depiction of violent nature of criminals

Smart-on-Crime: stories on the ineffectiveness, inefficiency, and moral injustice of the prison boom; stories on the benefits of research-based prison alternatives.

### **Topic Category:**

#### 1) *Rehabilitation/Prison Alternatives*

Tough-on-crime: Stories on the failure of rehabilitation, failure of community corrections or in-prison education courses; stories on the inability of prisoners to be rehabilitated.

Smart-on-crime: Stories on benefits rehabilitation programs in prison; community rehabilitation; education courses; community corrections; drug courts; stories of individuals successfully reentering free society, "turning their life around."

#### 2) *Criminal Sentencing*

Tough-on-crime: stories include covering people getting sentenced to prison, people sentenced for drug use or drug trafficking (not including sentences for the death penalty).

Smart-on-crime: Stories arguing against punitive criminal sanctions, stories documenting people acquitted of crime, or stories on judges overturning harsh sentences

#### 3) *Prisoner Violence*

Tough-on-crime: Stories on prisoner violence, riots, and dangers inside prison; stories focused on crimes caused by released prisoners or paroled prisoners.

Smart-on-crime: No stories on prisoner violence were identified as smart-on-crime in the sample.

#### 4) *Prison System*

Tough-on-crime: Stories covering *academic, research institute, or government* backed studies illustrating the growth in the size penal system or benefits of punitive policy on public safety.

Smart-on-crime: Stories *academic, research institute, or government* studies highlighting the failures or shortcomings of the prison system including racial disparity/bias; stories on declining.

#### 5) *Prison Gangs*

Tough-on-crime: Stories covering growth in prison gangs, violent nature of prison gangs, or gang related violence.

Smart-on-crime: No stories on prisoner violence were identified as smart-on-crime in the sample.

#### 6) *Prison Overcrowding*

Tough-on-crime: Stories on prison overcrowding and linking overcrowding with the need to build more prisons.

Smart-on-crime: stories on prison overcrowding leading to planned prisoner release; stories linking prison overcrowding with poor conditions for prisoners or staff.

#### 7) *Prison Construction*

Tough-on-crime: Stories documenting the planning or building of new prisons.

Smart-on-crime: Stories covering the decision not build new prisons or a delay in prison construction.

#### 8) *Corrections Budget*

Tough-on-crime: Stories on the state legislature appropriating money for prisons and corrections; stories on budget increases for prisons and corrections.

Smart-on-crime: Stories covering the rising/high financial costs of incarceration; budgets increases in for prisoner rehabilitation, community corrections programs or drug courts.

#### 9) *Institutional Issues*

Tough-on-crime: rules on lock down, officials appointed or elected to correctional positions talking tough-on-crime; new rules restricting substantive benefits offered to prisoners such as the use of tobacco or exercise equipment, or lunch rules etc.

Smart-on-crime: scandals affecting prison officials.

#### 10) *Privatized Prisons*

Tough-on-crime: Stories on the opening of a new private prison; expansion of private prison contracts; reports about any financial savings that come from private prison operations.

Smart-on-crime: inefficiencies/high cost of private prisons; lack of oversight within private prisons; poor treatment of prisoners in private facilities; scandals within private prisons.

11) *Drugs and Prison*

Tough-on-crime: stories on the nexus between drug use and criminal behavior/violence in prison/in-prison drug busts.

Smart-on-crime: stories on the rehabilitation of prisoners with special emphasis placed on prisoner drug addiction.

12) *Immigration*

Tough-on-crime: immigrants sentenced to prison; immigration causing the need for more prisons; transferring of immigrants from one prison to another

Smart-on-crime: Stories of immigrants being released from detention or stories on being wrongly imprisoned.

13) *Prisoner Treatment/ Rights*

Tough-on-crime: Stories of prison mistreatment being false or overblown.

Smart-on-crime: prisoner beatings, poor prisoner health care, filthy prison conditions, poor legal representation, legal challenges to false imprisonment; non-guilty stuck in prison; prisoner disease because of squalid conditions or inadequate health care; prisoner beatings by guards or staff.

14) *Prisoner Release/Parole*

Tough-on-crime: stories on prison escapees; parolees revoked back to prison on technicality or commitment of new crimes.

Smart-on-crime: prisoners released to community corrections, early release; good time credits and early release.

15) *Death Penalty*

Tough-on-crime: stories on death sentences; executions carried out.

Smart-on-crime: stories on DNA evidence leading to exoneration; stays of execution; death row inmate innocence.

16) *Community issues*

Tough-on-crime: stories on community support for new prisons (jobs); community fear of prisoner; escapee crime.

Smart-on-crime: community support for rehabilitation; community reintegration of prisoners or family members.

17) *Prison Legislation*

Tough-on-crime: stories on specific legislative bills or bureaucratic rules that increased criminal penalties, expanded correctional budgets or the types of behaviors considered criminal.

Smart-on-crime: stories on specific legislative bills or specific bureaucratic rules that expanded prison alternatives, community corrections programs, or prisoner rehabilitation opportunities.