

Ken Cuccinelli isn't alone. Lots of conservatives want to shrink America's prisons.

By Brad Plumer, Updated: August 19, 2013

Few people would question Ken Cuccinelli's right-wing credentials. The outspoken attorney general of Virginia, now running for governor, [has staked out firmly conservative stances](#) on everything from abortion to gay rights to transportation funding.

But there's one big exception here — crime. Cuccinelli seems to be highly skeptical of harsher sentences and endlessly expanding [America's prison system](#), which now puts 2.4 million people behind bars. And that sets him apart from the Republicans of yesteryear.

“There is an expectation that the generic Republican position is tough on crime,” Cuccinelli [told my colleagues](#) Jerry Markon and Frederick Kunkle last week. “But even that has budget limits, particularly on the prison side.” To that end, Cuccinelli has said he wants to revisit some of the long sentences given out for minor offenses — and even re-examine the disparity in sentencing between crack and cocaine.

Yet Cuccinelli's stance shouldn't come as too much of a surprise. As a [long recent feature](#) in the Washington Monthly by David Dagan and Steve Teles detailed, conservatives have been softening their “tough-on-crime” positions for more than a decade now.

Some, like Cuccinelli, want to do so to ease the pressure on state budgets — after all, it's expensive to maintain prisons. But it's not *entirely* about money. In 2007, the GOP-run Texas legislature passed a bill to alleviate prison overcrowding by going easier on people who violated probation and by boosting funds for addiction treatment. At the time, the state had a huge budget surplus and easily could have built more prisons. But the Republican speaker of the state legislature wanted to reduce the incarceration rate instead.

Or take the American Legislative Exchange Council (ALEC), a group that drafts model legislation for state legislature. During the 1990s, ALEC was a major proponent of tougher sentences, while taking lots of money from the private-prison industry. But that's changed. The group has now abandoned its support for privatization and, this August, adopted model legislation [to reform mandatory minimum prison sentences](#) at the state level.

Data points are popping up everywhere. The GOP added opposition to “overcriminalization” to its [2012 platform](#). The reform group Right on Crime has [a growing number](#) of high-profile supporters, from Newt Gingrich to Jeb Bush. At this year's Conservative Political Action

Conference (CPAC) in March, a small band of conservatives [were even seen promoting](#) abolition of the death penalty.

Dagan and Teles attribute the shift among conservatives to a couple of different factors. Violent crime in the United States has dropped precipitously since the 1990s, which has “drawn the venom out of the issue”:

(See [here for an argument](#) that the drop in lead pollution might be responsible for the fall in crime.)

“And since the 1990s,” Dagan and Teles write, “terrorism has displaced crime as the nation’s top security preoccupation and honeypot for law-and-order zealots.” That gave space for libertarians and religious conservatives to push the GOP in different direction. (The religious conservative push has been led by two ex-convicts: Pat Nolan, a former California legislator who also served time on corruption charges, and Charles Colson, a former Nixon aide convicted for his role in Watergate.)

The upshot is that America’s incarceration rate — still the highest in the world — has been growing more slowly over the past decade, and even started shrinking in the past few years:

The big question, however, is whether this drop will continue. There are certainly some signs that it could. The Urban Institute [recently described](#) how 17 states around the country are now pursuing a number of criminal-justice reforms that will cut their incarceration rates and save some \$3.3 billion over 10 years. That includes deep red states like Georgia, Oklahoma and South Carolina.

And there’s movement on the federal level too. The Justice Department [recently announced](#) that it will no longer pursue steep mandatory-minimum prison sentences for many low-level, nonviolent drug offenders who aren’t affiliated with gangs or larger organizations. While that will only affect federal prisons — and the 219,000 federal inmates make up just 13.9 percent of all U.S. prisoners — it’s a sign that momentum is growing for further reform.

Still, as Mike Konczal [pointed out recently](#), the flip side is that many state budgets are starting to stabilize as the economy improves. And that means there could be less pressure on legislatures to pursue further sentencing reforms in the years ahead. So there’s no guarantee that the drop will be permanent.

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