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Public attitude softens toward criminal rehabilitation

By Henry Meier, Daily Journal Staff Writer

Progressive criminal justice reform has been taboo in California for decades with increased penalties and sentences consistently winning out over attempts at rehabilitating offenders. But as concerns mount over the fiscal health of state government and decreased fear of crime and stagnant recidivism rates, those entrenched attitudes have begun to thaw.

Structural changes to the system have not happened quickly, but the public attitudes have changed dramatically over the last two decades. That sentiment finally reached fruition during the past two years with the enactment of several highly visible criminal justice reforms.

"It's overwhelmingly clear that a vast majority of Californians are demanding the politics of fear be done away with in favor of more rehabilitative and fiscally responsible criminal justice policies," said Allen Hopper, the American Civil Liberties Union of Northern California's director of drug policy and criminal justice.

However, the transition in public sentiment has happened gradually.

Between 1994 and 1998, Americans polled by Gallup overwhelmingly listed crime and violence as the most important problem facing the nation, with at least 20 percent of respondents marking it as their primary concern.

By 2001, with crime rates in steep decline and concerns over a bursting tech bubble and the Al-Qaeda attacks of Sept. 11, those numbers plummeted, replaced by fears about the economy, terrorism and jobs. Those economic worries, after a brief dip during the mid-2000s housing boom, reached a peak in 2009 when 86 percent of the populace listed economic matters as the primary problem, according to Gallup's numbers.

Indeed, there's little doubt policies in the state have begun to reflect the shift in public sentiment over the past 20 years. After decades of prison construction to house a booming inmate population, state lawmakers - with more than a gentle nudge from the federal judiciary - passed AB 109 in 2011, which radically changed the state's strategy of dealing with its overflowing lockups.

"If you go back 30 years and asked if we were going to build prisons or universities, the overwhelming sentiment would have been prisons," said John Abrahams, the former Sonoma County public defender and current legislative director of the California Public Defenders Association. "That's changed."

Realignment, as the legislation's been deemed, instead steered offenders toward local control with the intent of reducing both the overall incarceration rate through more rehabilitative programs and saving the state billions in expenses.

Most of the structural changes of realignment were implemented in October 2011. The past year has been more notable for what didn't occur, said Abrahams. Despite calls from victims' rights groups to return to more punitive, incarceration-based policies, no substantive modifications to the new laws occurred.

"The governor has resisted changes to realignment in the past year," Abrahams said. "He's said, 'Give it a chance to work. Don't tinker with it yet.'"

That might not have been possible even a decade ago when the "soft on crime" label could have been a death knell for many politicians. Now, with state budgets in almost perpetual crisis-mode, "smart on crime" has emerged as a rallying cry for criminal justice reformers who have embraced the cost savings rehabilitation offers over incarceration.

"We're moving away from the old tough vs. soft on crime rhetoric," said Lenore Anderson, executive director of Californians for Safety and Justice, a group which advocates for a fiscally responsible approach to criminal justice in the state.

"Californians are smarter on some of these issues than they have been historically," she said. "There's an increased understanding in people's minds about how their tax dollars are spent on public safety."

This focus on the financial burden was on full display during the lead up to the November election, with advocates for two criminal justice ballot initiatives appealing to voters' pocketbooks.

Proposition 34 sought to replace capital punishment with life in prison. Unlike past campaigns to abolish the death penalty, the 2012 campaign focused on the financial drain the practice put on the state. Advocates' efforts were bolstered by a study by 9th U.S. Circuit Court of Appeals Judge Arthur L. Alarcon and Loyola Law School professor Paula Mitchell that found the state had spent some $4 billion since the death penalty was re-established in 1978 to execute just 13 offenders. Additionally, they projected the state would spend another $5 billion to $8 billion to keep the practice in place until 2050.

While the initiative ultimately failed, the final margin of 52 percent to 48 percent was surprisingly close according to many criminal justice insiders. The ACLU's Hopper called a repeal of the death penalty "inevitable" in the coming years.

The other referendum this year, Proposition 36, which rolled back some of the more draconian parts of California's notorious three-strikes law, was wildly successful, with voters approving it by a more than two to one margin. Hopper said that margin was even more impressive when closely studied.

"The three-strikes vote is a really good example of [shifting attitudes on crime]," he said. "Not only did it win by a huge margin, but every single county in the state voted for it."

The public support for measures like propositions 34 and 36 has emboldened players within the criminal justice system to seriously look at rehabilitative measures as well, according to public defender lobbyist Abrahams.

"Inside the system, people are thinking in a more rehabilitative manner," he said. "There's been a realization that policy was overly punitive as applied and - as is on everyone's mind these days - how much money [those policies] were costing us."

Despite the optimism by reform advocates about the populace's changing attitudes, Abrahams also cautioned that apathy could be part of the equation.

"What's a big deal inside the halls of justice, well, the majority of people don't give a rat's ass," he said. "They don't think about this very much."

henry_meier@dailyjournal.com