



# MAKING THE CASE FOR RETHINKING JAILS TO POLICYMAKERS IN AN AGE OF POLARIZATION

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# Back to the Future: Before the Incarceration Boom

- **Gov. Reagan in 1971: “Our rehabilitation policies and improved parole system are attracting nationwide attention. Fewer parolees are being returned to prison than at any time in our history, and our prison population is lower than at any time since 1963.”**



# The Politics of Criminal Justice

- Starting in the mid 1970's, politicians of both parties largely pushed for harsher penalties and more prisons, but as exemplified by Willie Horton liberal politicians in particular began to fear the “soft-on-crime” label.
- More recently, bipartisan progress has been made, though survey research indicates conservatives respond best to themes focused on public safety and tax dollars from trusted messengers.



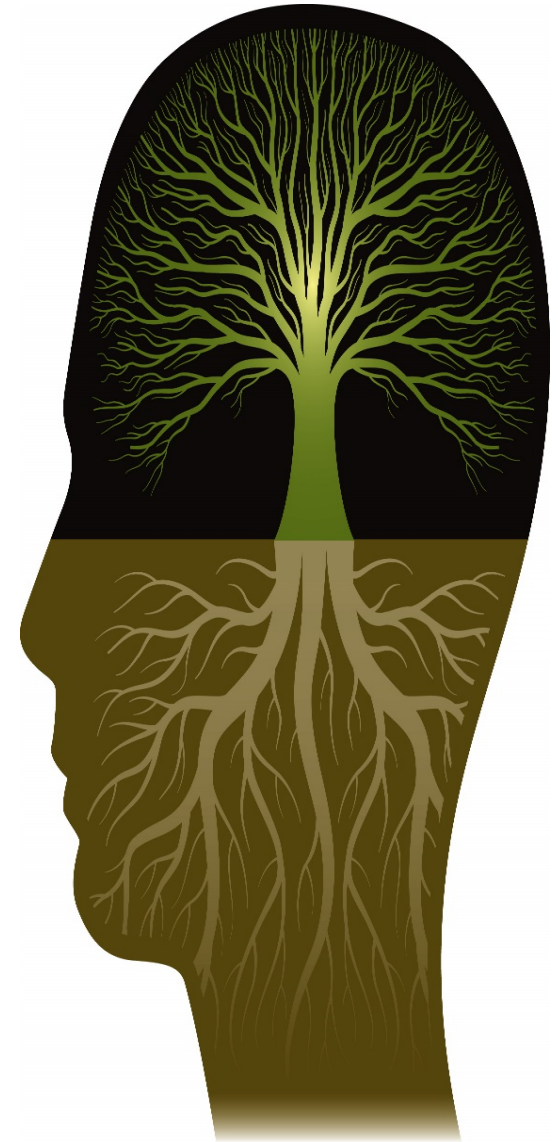
# TPPF Launched Right on Crime in 2010

- **Speaker Newt Gingrich, Jeb Bush, Mike Huckabee, J.C. Watts, Rick Perry, Grover Norquist, and Other Conservative Leaders Have Endorsed Right on Crime Statement of Principles**
- **Statement Supports Reining in Growth of Non-Traditional Criminal Laws, Cost-Effective Alternatives for Nonviolent Offenders, Emphasis on Restitution and Treatment, and Performance Measures.**



# Limited Government Concepts

- Role for government should focus on addressing cases where one person harms another
- Least restrictive alternative to liberty necessary to address harm
- Prioritize public safety, victims
- Redemption, family preservation, workforce reintegration
- Not too tough on taxpayers
- Accountability for results





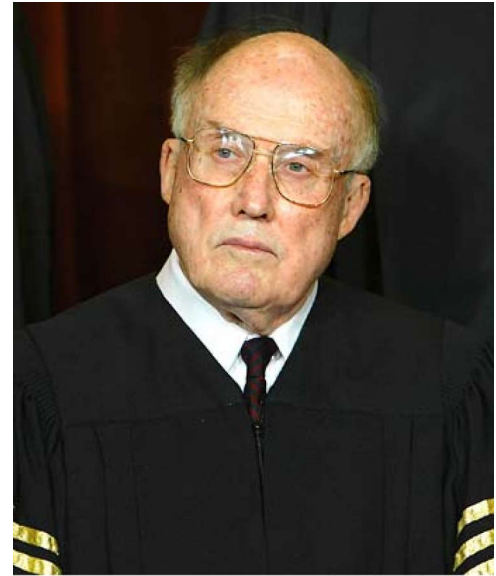
# Legal & Constitutional Framework

- Given that defendants are innocent until proven guilty, pretrial detention must occur only in exceptional cases
- Compelling interest to detain satisfied only by public safety, not money
- Must ensure due process, access to counsel



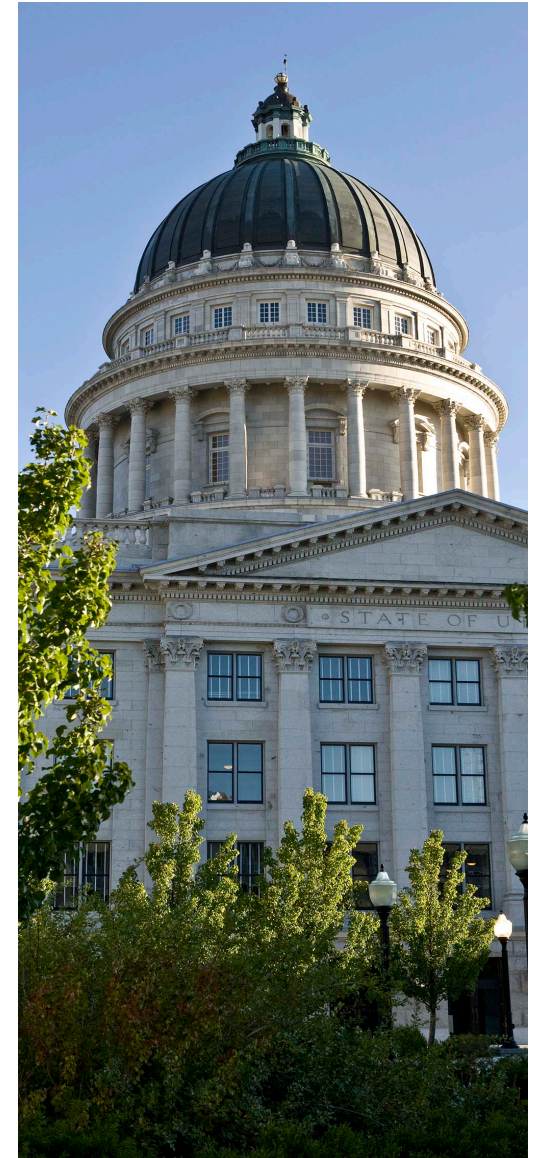
# Conservative Voices on Pretrial Justice

- Chief Justice Rehnquist in *Salerno* “In our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception.”
- Koch Industries General Counsel Mark Holden: “We need to be risk-based, and not resource-based in how we decide who gets out after they’re arrested. There’s no way on earth that the amount of money you have is a proxy for public safety.”



# Tips for Communicating with Policymakers

- ▣ Identify supporters who are in the member's district
- ▣ Distinguish between changes that require legislation and those that can be done administratively
- ▣ Seek opportunities for longer meetings when legislature is not in session
- ▣ Cultivate allies, including non-traditional such as business and religious community, so not just a government actor making the ask





# Focusing on Themes that Resonate

- ▣ Prioritizing limited jail space for people we are afraid of, not those we are mad at.
- ▣ 2018 Public Opinion Strategies poll found 80% of GOP voters back shifting some funds spent on locking up nonviolent individuals to alternatives.
- ▣ 2017 Lake Partners poll: 79% of voters say job training and employment programs are effective in preventing crime, 71% say this for drug and mental health treatment, only 19% for jails.



# Utilizing Trusted Messengers

% Much More Likely	All	Undecided with leans	White	Non-white	Dem	Ind.	GOP
Police	47	40	49	40	39	49	55
Formerly incarcerated people who have completed community programs	43	25	38	53	44	49	40
Crime victims	40	25	38	46	45	36	38
Your local church	37	28	33	46	35	36	40
Judges	32	32	31	33	35	34	27
Your Congressman	29	21	29	26	32	28	27
Your Governor	29	10	27	35	28	34	27

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Prosecutors	29	10	27	35	33	35	23
Local non-profit organizations	28	17	30	26	38	25	22
Business leaders	26	15	26	27	29	27	23
The ACLU	25	15	23	32	38	18	15
Your Mayor	24	9	21	34	31	27	19
Your state representative	24	9	24	25	31	22	19
Black Lives Matter	23	7	19	33	39	21	8

# Leveraging Right-of-Center Groups

- In addition to national groups like ROC which has state directors covering 7 states and R Street, there are state-based, free-market think tanks in all 50 states.
- Groups engaged on criminal justice reform include Mackinac, GPPF, Locke/CCJR, Badger, Commonwealth, Pelican Inst., James Madison Inst. & Beacon Ctr.





# Amplifying Law Enforcement Voices

- Two national groups – Law Enforcement Action Partnership and Law Enforcement Leaders to Reduce Crime & Incarceration can assist with placing op-eds, speakers, etc. Each has more than current and former officials.
- Emphasize that controlling jail populations frees up more resources in sheriff's office for patrol and solving crimes



# Engage with Statewide Associations

- Ask your prosecutors, judges, probation chiefs, law enforcement, and public defenders to contact their respective associations.
- Seek to hold a seminar at regular association meetings/CLE events
- Ensure legislative agenda of association reinforces SJC site work in areas such as bail reform, fines/fees, and diversion.



# Provide Metrics on Outcomes

- Quantify savings from reduced jail costs.
- Compare with jurisdictions that have not made similar reforms which are struggling with jail overcrowding, litigation costs.
- Track recidivism, including distinguishing re-arrests for serious offenses from those for petty ones.
- Share positive metrics with policymakers, such as employment rates for defendants, victim restitution, and family preservation.



# Share Stories of Success

- In St. Mary's County, MD, the Sheriff's new pretrial services program obtained coverage in the Baltimore Sun spotlighting participants like DeShawn Lawson who not only avoided jail for unpaid misdemeanor fines but was placed in an apprenticeship with an insulators' union.





# Ensuring Sustainability

- ▣ Inform candidates, especially when there is an open seat for D.A. or county supervisor, about program.
- ▣ Develop crisis response plan so all leaders are prepared if a participant in a pretrial program is re-arrested for a serious or high-profile offense.
- ▣ Avoid officials blaming one another; focus on redoubling efforts to learn from the crisis, overall success to date, and higher prior failure rates.

