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Jim Webb's Criminal-Justice Crusade

One in 31 Americans is lost in the criminal-justice system. As his senate career winds down, Webb is determined to change that.

by [Andrew Romano \(/contributors/andrew-romano.html\)](/contributors/andrew-romano.html) | September 11, 2011 11:0 AM EDT

[Jim Webb \(/articles/2011/02/10/jim-webbs-senate-career-ends-peter-j-boyer-on-the-real-reason.html\)](/articles/2011/02/10/jim-webbs-senate-career-ends-peter-j-boyer-on-the-real-reason.html) is in jail. This is not because an aide to the combustible Virginia senator was caught carrying his boss's loaded 9mm semiautomatic pistol into a congressional office building, which actually happened in 2007. Nor is it because Webb "slugged" [President Bush \(/articles/2011/04/29/george-w-bush-lance-armstrong-lead-afghanistan-iraq-veterans-in-texas-ride.html\)](/articles/2011/04/29/george-w-bush-lance-armstrong-lead-afghanistan-iraq-veterans-in-texas-ride.html) on a White House receiving line, which he was once reportedly tempted to do. Today's visit is voluntary—and that's why it's so remarkable.

As Republicans in Washington waste yet another summer afternoon whining about Democrats, and Democrats play rubber to their glue, Webb has skipped town and driven west, 30 minutes down I-66, to Fairfax County's juvenile detention center. There are no TV crews to dazzle. No local leaders to praise. And no voters to persuade. Just Webb doing what he's been doing for nearly three decades now: touring a prison and asking a lot of questions.

Webb is as much a hero as any nonfictional person can be. In 1969, he shielded a fellow soldier from a grenade and caught a back full of shrapnel as he singlehandedly destroyed three Viet Cong bunkers, earning a Navy Cross for his valor. (He later wrote several novels about the war.) But what Webb has accomplished over the past two years has been as brave, in its own quiet way, as what he did that day in the An Hoa Basin: he has transformed criminal-justice reform from a fringe concern—an issue his own advisers called "political suicide," he tells *Newsweek*—into a real possibility. "Once a kid is incarcerated, that's it for him," Webb says. "We need smarter ways of dealing with people at apprehension, and even whether you decide to arrest. The types of courts they go into—drug courts, as opposed to regular courts. How long you sentence them. How you get them ready to return home."



Jim Webb, Khue Bui for Newsweek

Webb, a law-and-order type who once derided affirmative action as “state-sponsored racism,” is an unlikely crusader for a cause typically championed by civil-rights activists and drug-war opponents. And yet, in 2009, the senator introduced legislation that would create the first comprehensive national review of crime policy in 45 years—legislation that he has been fighting, with plenty of “stress, insanity, and gnashing of teeth,” as one aide puts it, to pass, in vain, ever since. Now Webb, who recently announced that he will not seek a second term in 2012, thinks he may have finally found his moment. “The timing is right,” says Jeremy Travis, president of John Jay College of Criminal Justice. “We have millions of people in prison when states are struggling to balance their budgets, and, for the first time, a vibrant, nonideological middle ground on crime policy. This is a moral *and* fiscal problem now..”

Hence Webb’s field trip to Fairfax. As the superintendent flaunts his pet innovations—a family-style cafeteria, two-teacher classrooms, a teen lending library—the senator nods his approval, fists clenched, jaw jutting, grumbling an occasional query. Part of him, however, is somewhere else. At one point, Webb spots some speakers on the wall (for eavesdropping), and returns, as he often does, to Vietnam, noting how Saigon’s Rex Hotel had a similar setup. But the place he can’t stop thinking about, the place that really gnaws at him, isn’t quite so far away. Along one carpeted, sunlit hallway—the facility looks more like a suburban middle school than a prison—Webb pauses and turns to his tour guide.

“Ever been to the Richmond city jail?” he asks, referring to Virginia’s most notorious (and notoriously overcrowded) prison, where one inmate recently died of heat exposure and others were busted dealing heroin. “This is the same state. But I have visited at least a dozen prisons in my life, and I’ve never seen anything as bad. Go from there to here, and it’s like two different countries.”

There are two types of people in America: those, like Webb, who think the criminal-justice system desperately needs to be fixed, and those who haven't been paying attention. In 1980, fewer than 500,000 Americans were in prison; today, the number is 2.3 million. To put that statistic in perspective, the median incarceration rate among all countries is 125 prisoners for every 100,000 people. In England, it's 153; Germany, 89; Japan, a mere 63. In America, it's 743, by far the highest in the world. Include all the U.S. residents currently on probation or parole, and our country's correctional population soars to about 7.2 million—roughly one in every 31 Americans. All told, the U.S. incarcerates nearly 25 percent of the world's prisoners, even though it's home to only 5 percent of the world's inhabitants.

The cost of our prison addiction is staggering. In recent years, America's total criminal-justice tab—state, local, and federal—has ballooned to more than \$200 billion a year, draining government resources at the worst possible moment. Meanwhile, millions of men—fathers, brothers, wage earners—have been consigned to a vicious cycle of absence, stigmatization, and recidivism. If you're black and you haven't finished high school, you now have a 60 percent chance of going to jail—an experience that will reduce your annual employment by nine weeks and lower your yearly earnings by 40 percent. As Webb likes to put it, “Either we have the most evil people on earth living in the U.S., or we are doing something dramatically wrong in terms of how we approach the issue of criminal justice.”

The answer, of course, is the latter. Americans aren't 12 times as evil as the Japanese, and they certainly aren't any more evil than they were in 1980. The truth is that America's three-decade-long incarceration boom hasn't “really [been] about increasing crime” at all, as Allen J. Beck of the Bureau of Justice Statistics, recently admitted—it's been about “how we chose to respond to crime.” In 1986, President Reagan signed a \$1.7 billion bill that created mandatory minimum penalties for drug offenses, and “when you increase the likelihood of a person going to prison for a conviction, and then you increase how long you keep them there,” Beck explained, “it has a profound effect.” In this case, Reagan's legislation, and an epidemic of similar state laws passed around the same time, sparked a 1,200 percent increase in the number of people jailed for drug violations, most of whom have been low-level users with no history of violence or dealing, and most of whom have been black. Today, African-Americans represent 74 percent of those sent to prison for drug possession, even though they make up only 14 percent of users.

The abysmal condition of our criminal-justice system is mortifying on many fronts: fiscal, moral, social. But our knottiest problem is political. While there is no shortage of solutions to America's incarceration overload—state and local authorities have spent years experimenting with innovative sentencing and reentry programs—politicians have developed an allergy to any reform that could get them tagged as “soft on crime.” They're afraid of becoming Michael Dukakis.

Webb is the exception. In 1984, he traveled to Japan to report a story for *Parade* magazine about an American citizen imprisoned for two years for pot possession. Despite the draconian sentence, Webb concluded that Japan's system was still fairer than ours. “At the time, we had 600,000 people in jail,” he says. “But even with half our population, Japan had only 40,000.” A military man by trade and tradition, Webb had always been “interested in preserving fairness while also preserving discipline.” Now he began to wonder if America's metastasizing prison-industrial complex could ever strike the same balance. By the time he ran for the Senate in 2006, Webb had decided to make criminal-justice

reform one of his signature issues. “I got a lot of advice not to talk about it,” he says. “But no matter where I went, heads would nod. People understood that our system had gone too far.”

The trick was figuring out how a single senator could rein it in. Soon after arriving in Washington, Webb proposed and passed a new bipartisan GI bill, despite opposition from President Bush—a significant achievement for a junior member. Emboldened, he quickly ruled out a piecemeal approach to criminal-justice reform, citing the long clash over crack sentencing as a cautionary tale. “The problem with Congress is that you can get stalled solving any one small aspect of this problem,” Webb says. “Crack alone took 16 years.” At the same time, he reasoned that sweeping legislation would polarize rather than galvanize, and would become a target for Republicans and an albatross for Democrats. Webb settled, instead, on a stepping-stone strategy: a bipartisan panel tasked with conducting a head-to-toe review of the U.S. criminal-justice system and then recommending cost-effective, data-driven, state-based reforms. Asked about the obvious objection—that legislators will simply ignore whatever inconvenient truths his blue-ribbon board exhumes—Webb is unmoved. “We’re not looking for a debating society here,” he snaps. “This is a \$14 million bet. And the alternative—addressing one piece at a time—doesn’t work.”

For the past two and a half years, Webb’s legislation has lingered in Senate limbo; Oklahoma Sen. Tom Coburn blocked the initial version, and a later iteration was included in last year’s failed omnibus spending package. (A mirror bill passed the House in 2010.) But time may be on Webb’s side. Initially, conservatives “assumed this was all about drugs,” the senator says, “so there was hesitation.” As the recovery faltered, however, Republicans began to realize that prison spending, which is the fastest-growing state budget item behind Medicaid, was ripe for a trim. As a result, influential GOP governors such as Bobby Jindal and Mitch Daniels are now working to reduce recidivism, soften sentences, and save money in their home states, while Right on Crime, a new conservative group backed by Newt Gingrich, Jeb Bush, and Grover Norquist, is championing reform on the national stage. “People who would’ve been skeptical have gotten on board,” says Webb, noting that he has convinced Republican Sens. Lindsey Graham, Jeff Sessions, and Orrin Hatch to support his bill. “And deficits brought them in.” The fact that America’s violent-crime rate has continued to decline during the recession—it’s now at its lowest level in 40 years—only helps Webb’s cause, as does his looming retirement. “There was a lot of concern among Republicans about whether passing this bill would help me win reelection,” he says, grinning. “So that’s off the table.”

As Webb wanders through the Fairfax detention center, he can’t help but marvel at its most impressive achievement: the Post-D (or Dispositional) Program. To minimize recidivism, the Fairfax facility funnels 11 nonviolent detainees into a separate wing of the building, where they receive up to six months of therapy and substance-abuse treatment, followed by six months of postconfinement “aftercare.” “[Fairfax has] 110 beds but only 45 kids,” Webb says. “You treat the people who need to be treated and incarcerate the people who need to be incarcerated.” One “graduate” now works at the CIA; another is employed at the detention center itself.

Webb is reluctant to discuss his vision for the criminal-justice system—he’d rather his commission come to its own conclusions—but when pressed, he paints a picture that resembles the facility he’s touring today: parole and probation policies that no longer drive hundreds of thousands of people back to jail every year for nonthreatening, technical violations; work-release programs, educational opportunities, and looser custody levels for prisoners preparing to reenter society; and, most

important, fewer arrests and shorter sentences for nonviolent drug users. “Drug convictions are like playing Russian roulette,” Webb says. “Usage is pretty wide, and yet the people who are convicted carry a stigma for the rest of their lives.”

Webb believes he has “two thirds” of the Senate on his side, and that his only remaining roadblock is “getting the bill to the floor.” He’s probably right: so far, his plan has earned the backing of 39 cosponsors and more than 100 outside organizations, including the National Sheriff’s Association, and President Obama has been “supportive.” (In February they “discussed doing it as a presidential commission” should the bill fail.) But even if the National Criminal Justice Commission Act were to pass tomorrow, its author would leave office long before any recommendations rolled in. The timing suggests a last crusade of sorts: an old soldier’s final fight. On his way out of the Fairfax facility, Webb dismisses this interpretation with a characteristic grunt. “I don’t do last acts,” he says. But it is clear, as he continues, that criminal-justice reform has, for him, become something larger than just another piece of legislation. “I didn’t do this for political reasons,” Webb says. “I’m a novelist, basically. What do you do with a novel? You take a complex issue and you think your way through it. I’ve taken on the same types of issues as a senator and worked to sort them out. This is one that needs to be done.”

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