



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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COVID-19 and the Criminal Justice System | March 1, 2021 | OAS Episode 123

Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith.

“So, from the moment COVID-19 arrived in the United States, its spread and prevalence in correctional settings has been a crisis within a crisis. Some of our nation’s most severe outbreaks of the virus were linked directly to jails and prisons.”

That was Abby Walsh, Vice President for Strategy and Operations at the Council on Criminal Justice, a nonpartisan thinktank that works to advance understanding of the criminal justice system and help inform the development of public policy. She’s one of my guests on the podcast.

Like many areas of society, the criminal justice system has struggled to deal with the pandemic. The Council formed a taskforce in mid-2020 to examine how the criminal justice system has responded to the pandemic, offer guidance in the short term on how to deal with those challenges, and a longer-term assessment to help criminal justice leaders develop policies for the future.

Walsh discusses why the Council decided to focus on the pandemic, the type of guidance offered to people in the criminal justice system over the last several months, and some of the issues that are especially challenging.

My second guest is Thomas Abt, director of the taskforce and an expert on criminal justice policy. He is the author of “Bleeding Out: The Devastating Consequences of Urban Violence – and a Bold New Plan for Peace in the Streets.”

Abt explains the work of the taskforce, its interim and final reports, and the work ahead to deal with the pandemic's effects on the criminal justice system and what's needed to prepare for the next catastrophe.

Let's start with Abby. Welcome to the podcast.

Abby: Thanks so much for having me.

Time Marker (TM): 02:15

Ed: So, let's start with the basics. Can you tell us a little bit about the Council on Criminal Justice?

Abby: Sure. The Council is an independent, nonpartisan thinktank and an invitational membership organization. Through our membership and our analyses and our taskforces, the Council serves as a center of gravity for the criminal justice field.

We like to think of ourselves as a place where leaders, regardless of sector, ideology or experience, can come together to work in good faith toward policy solutions that are based in facts, evidence and fundamental principles of justice.

When we founded the Council back in 2019, the field had already seen over a decade of reform, largely driven by the states, but also including the recent passage of the first STEP act (??). We hope to guide the next era of reform, but we never could have imagined that so many facets of criminal justice policy would come to a head in 2020.

So, while we're a young organization – we're just two years old – we've jumped into action to provide the field evidence-based, expert guidance on federal priorities, racial disparities, policing and, of course, on COVID-19.

TM: 03:38

Ed: Well, let's talk a little bit about COVID-19. It has affected every segment of our society. And I know that the National Commission on COVID-19 and Criminal Justice has issued an interim report, a final report and a number of individual reports on aspects of the system.

Why did the pandemic prompt you to take this approach?

Abby: So, from the moment COVID-19 arrived in the United States, its spread and prevalence in correctional settings has been a crisis within a crisis. Some of our nation's most severe outbreaks of the virus were linked directly to jails and prisons.

With data and research evolving on a daily basis, the Council recognized that policymakers and practitioners needed a quick and concrete guidance that was based on facts, science, sound judgment and trusted experience to control the spread of COVID-19, both within correctional settings and into the surrounding communities.

So, back in July, we tapped some of the foremost experts and the most experienced leaders in the justice system, in public health, in criminology, in advocacy, as well as directly impacted

people and elected officials to form the commission. Their mission had three elements. First was to assess the impact of COVID-19 on the four major areas of the criminal justice system, what we call the four Cs: cops, courts, corrections, and community programs.

Second was to identify the most effective steps leaders and policymakers can take right now to control the spread of the virus in the justice system. And third was to establish a priority agenda for a post-pandemic justice system.

We knew that this was a crisis that demanded experienced leadership, and the membership of the Commission is truly second to none. We included two former U.S. Attorneys General, Alberto Gonzalez and Lorretta Lynch, as cochairs. As far as we could tell, it's the first time that two AGs of opposing parties have come together to work shoulder-to-shoulder on an initiative like this, and I think that it shows just how seriously they took this issue and this Commission.

Time Marker (TM): 06:00

Ed: Now, I know that it took a lot of research to be able to create these reports and provide this information to people in the criminal justice system, and I've got to imagine it was not the easiest thing in the world to get accurate data and an accurate picture of what's going on, particularly in the middle of the pandemic. Can you talk about that a little?

Abby: You're absolutely right. It is no secret that accurate data on COVID-19 cases, deaths and testing in the justice system has been really difficult to come by. So, rather than recreate the wheel, we were fortunate to have the resources to go directly to the top experts with the most reliable data and research available.

The Commission partnered with teams at NYU's Public Safety Lab, at the University of Missouri at St. Louis, at John Hopkins School of Public Health, and many other places to get as accurate a snapshot as possible of how COVID-19 was impacting people in the justice system and effective means to control it.

We continue to update those analyses as the research has evolved, which is nearly daily. Just last month we released our fourth update on crime trends during COVID-19, sadly showing a 30% increase in homicides compared to 2019.

So, through the work of our research partners, we were able to put the best available data into the hands of our expert commissioners who truly understand how the system works and the factors at play. And I should add that we felt it was important to hear directly from people on the frontlines in the system.

So, we held public hearings and we gathered testimony from more than 50 individuals. Those included correctional staff, formerly incarcerated people including some who have become infected with coronavirus while in prison and then been released into the midst of the pandemic, relatives of people who had died of COVID while they were in the system, health experts, researchers, and many more.

We feel that this added another dimension to our work and truly grounded the findings and recommendations in reality, in actual experience.

Time Marker (TM): 08:16

Ed: So, my understanding was that a goal of the interim and individual reports was to provide criminal justice leaders with actual guidance that they could use while the pandemic was still going on. What were the key points from the interim report?

Abby: The Commission's interim report was released back on October 1st, just as the second wave of the coronavirus was taking off. It included 33 action steps for practitioners in law enforcement, courts, corrections, and community-based organizations. I definitely encourage your listeners to check out the full report for a detailed explanation of all 33 steps. We also offer recorded web briefings. Both are available at our website: covid19.counciloncj.org.

But the Commission's advice followed five general themes. First was to stop exponential growth by consistently implementing and enforcing scientifically proven measures like physical distancing, universal masking and mass testing.

Second was to communicate transparently, and that was both by readily sharing accurate information to the directly impacted people, both living and working in the justice system, but also collecting and distributing critical data on infections and deaths that we know just haven't been keeping up with the need.

Third was to limit contact, maximize distance and reduce density. This has included limiting arrests, reducing admissions to prisons and jail, and increasing releases from prisons and jails, amongst many other policy options that help take the pressure off the system and allow us to safely distance the people who are within it.

Fourth is to allocate resources strategically. We know state and local jurisdictions are facing an incredible budget crisis at this moment. They need to put their resources where they are going to be most effective at controlling the impacts of COVID-19.

And finally, to engage impacted communities and consider the people who are most directly impacted by the justice system and by COVID-19 in all decision making.

So, I know that's a lot to absorb, but it does boil down to this. State, local and federal policymakers and practitioners do not need to wait for full vaccine availability or broad federal action to take control of the coronavirus. These concrete steps can effectively limit the spread and impact of the disease within the corrections system.

Time Marker (TM): 10:59

Ed: So, you set this guidance out. Did people take it? Do you have examples of where the guidance was put into action?

Abby: We are happy to see that the guidance is being put into action in a number of different ways across the country. One example that's getting a lot of attention today is vaccine deployment.

People who are incarcerated are unable to physically distance in the way that you and I can as we freely move about society. It's complicated by the flow of correctional staff and others in and out of facilities, which can bring COVID-19 in or can bring COVID-19 back out into the surrounding community. So, vaccinating people who are incarcerated and who work in jails and prisons is critical to controlling the pandemic both behind the walls and in the community.

The Commission recommended that staff and incarcerated people be vaccinated in priority groups to protect their health and public health, and many states and jurisdictions have been doing just that. But we do hope to see many more follow suit.

Time Marker (TM): 12:08

Ed: One thing I have found in doing a lot of podcasts about the COVID-19 crisis is the degree to which problems that already existed in segments of society, whether it was education or healthcare or others, were amplified. They weren't new, but they were made much worse.

And I'm wondering if you've found that that was true in the criminal justice system – was it amplifying existing problems or creating new ones, or was it a combination of both things?

Abby: That's a great question and we cover it quite a bit in the Commission's final report. It is well-known that the criminal justice system has disproportionately impacted Black, brown and poor people in America. These same communities have been hit hardest by the coronavirus in infections, in deaths, in economic impacts and in justice system impacts.

Data shows that we have made progress in correctional racial disparities in recent years, but we still have so much work left to do, and COVID-19 only complicated that. A recent analysis for the Commission looked at jail populations since the start of the pandemic. The pandemic fell swiftly this summer as jurisdictions worked to increase physical distancing and that's good, but when we looked at who was left behind bars, the population had grown blacker; those disparities had increased, and that's not good.

I think our cochair, Loretta Lynch, put this best: COVID brought many longstanding issues in the justice system to the fore. We knew these problems were there, but COVID made us realize how bad it truly is and how vulnerable our system really is.

Time Marker (TM): 13:49

Ed: So, you know most of our listeners are state legislators, legislative staff and other policymakers at the state level, and I'm wondering before we wrap up if there's anything else you would like to share with them.

Abby: If your listeners are like me, they are likely exhausted from this long crisis and the many difficult decisions that we've all needed to make to protect both ourselves and our communities. But this pandemic is not out of our hands. While we wait for full vaccine access, there are concrete steps state leaders can take right now to bring COVID-19 under control because COVID-19 is about much more than just the virus.

This crisis has amplified disparities that have long existed in our criminal justice system. We must move swiftly and learn from this experience if we want to keep progressing against those inequities.

Thankfully, the Commission's work is there to guide the work of state leaders, and all of our reports and analyses are available on our website: covid19.counciloncj.org.

Ed: Abby, thanks so much for taking the time to discuss this. Please stay safe.

I'll be right back after this with Thomas Abt.

MUSIC

Ed: I'm back with Thomas Abt. Welcome to the program.

TA: Happy to be here.

Time Marker (TM): 15:21

Ed: This is probably a tough question given how complex our criminal justice system is, but overall, how successful do you think the system has been in responding to the COVID-19 pandemic?

TA: Well, this is obviously something that the Commission members discussed, and I think we would be less than candid if we didn't tell your audience that the Commission members, pretty much without exception, believe that the criminal justice system was significantly under-prepared for the pandemic, and I don't think that's really a surprise to anyone.

Every criminal justice agency has some form of emergency planning, but those plans usually contemplate short-term emergencies, not the long-term crises that the coronavirus pandemic presented. And so, unfortunately, I think that the criminal justice system as a whole and in its parts was caught unprepared.

Time Marker (TM): 16:19

Ed: Well, given that, did you see a difference in responses among jurisdictions? Were there things that distinguished states that appeared to be handling the pandemic well versus those that didn't?

TA: I think that ultimately, in reviewing the research about how best to stop the spread of COVID-19 and reviewing various responses at the federal, state and local levels, we didn't come up with a panacea or a sort of silver bullet solution. And ultimately, I believe that the jurisdictions that performed better than others really, the lesson was more perspiration than inspiration. They took the pandemic more seriously, more quickly. They responded more robustly. They were proactive, and they remained vigilant. They didn't let up when there was a temporary decline in case or death rates.

And so, ultimately, many states had a combination of the same policies, but it was really more how much effort they threw against that and how early they did that that seemed to be the difference maker.

Time Marker (TM): 17:31

Ed: In doing podcasts on COVID-19 in other areas of society, it does seem that those who worked the problem aggressively had better results.

In our first segment, we discussed the interim report and some of the immediate steps the Commission advised criminal justice leaders to take. Now, let's dive into the final report. What's the difference between the interim and the final reports?

TA: Well, the purpose of the interim report was to provide criminal justice decisionmakers with immediate guidance on how best to stop the spread of COVID-19. The purpose of the final report is quite different. It's really a forward-looking document intended to help us understand, based on the quite difficult lessons learned, how the criminal justice system can be more effective, more fair and healthier moving forward.

So, that's really what the difference is, is in the posture – the posture is a forward-looking posture.

Time Marker (TM): 18:31

Ed: And what are the key points in that final report?

TA: In the report we had five findings and five recommendations. The recommendations really flowed from the findings.

The first finding really goes back to the beginning of our interview. We found that criminal justice agencies across the board were not sufficiently prepared for a large-scale public health crisis like the pandemic. Not surprisingly, a recommendation that flowed from that was that all sectors of the criminal justice system, including public health authorities and community-based organizations, need to be involved in better crisis planning, specifically with regard to public health.

We really need to create integrated crisis response plans with coordinating panels to make sure that all the right people are at the table and to build in community-based capacity, because one thing we believe is that community-based organizations can provide flexible support during these crises.

The second finding and resulting recommendation was that the scale and the scope of the criminal justice system itself posed an obstacle to handling COVID-19 appropriately. The system was just too big and too unwieldy. So, we have a series of recommendations to rebalance the criminal justice and public health responses in order to limit contact with the system, maximize distance for people in the system, and reduce density.

And that's including everything from expanding emergency release mechanisms to investing in public health alternatives for addressing mental illness, substance abuse and things like homelessness, and ensuring adequate access to behavioral health treatment and adequate medical care and stable housing for those who are returning from incarceration.

Essentially, we need to de-densify our system wherever possible.

And our third finding was that there was tremendous inconsistency among criminal justice agencies. There were some jurisdictions and agencies that really performed quite well in response to the pandemic, but of course there were others that simply did not.

And so, one of our recommendations is encouraging the adoption of shared standards and best practices for criminal justice agencies responding to public health emergencies. And this includes a wide variety of things across policing, courts, corrections, and community-based organizations. This involves things like issuing citations in lieu of arrest, identifying court proceedings that need to take place in person versus court proceedings that are appropriate for video conference, and mandating national basic standards of care for correctional healthcare.

There are standards of care out there, but they're not well enforced. And so, we need to develop some strategies to ensure compliance.

Another recommendation is that we need to collect and transparently report standardized aggregated public health data concerning justice-involved populations and staff. And this recommendation comes out of a finding that our public health responses were slowed by a lack of relevant, trustworthy and comparable data and, in fact, when the Commission members themselves set out to explore the impact of the pandemic, we were deeply frustrated by the lack of good data out there.

And so, we just have to do a better job. You can't manage what you don't measure. So, agencies need to report on public health information such as case rates, test rates, positivity rates, hospitalization and mortality rates, and importantly, those have to be broken down by age, gender, race and ethnicity. We need to be able to track any potential disparities in treatment throughout the system.

And finally, I would just say transparency, transparency, transparency. I think one of the lessons learned in the pandemic is that it was better to be as transparent as possible as early as possible and trust that the public would understand what you were doing. Jurisdictions got themselves into a lot of trouble if they sort of hid the ball, especially early on in the pandemic.

So, I think it's important to be transparent about data, but also about your policies. Tell people what you're doing and why you're doing it.

And then finally, our last recommendation talked about relatedly a lack of communication and transparency that really frustrated the collective response to the pandemic. We have to improve communication and increase transparency, and that's not just by saying that. It's by developing reliable channels of communication in advance, creating liaisons in criminal justice agencies to facilitate the flow of information, creating new channels of communication, especially in

correctional facilities, so that correctional staff, people in custody and their families and counsel can all be in communication.

I think an especially important point is to partner with and equip community-based organizations to engage those disconnected populations. We have a real issue right now with vaccines getting to certain populations that, for understandable historical reasons, don't really trust a lot of central authorities. And so, we need to reach out to those communities via intermediaries, via people they understand, and community-based organizations are often in a position to help there.

Time Marker (TM): 24:30

Ed: So, we're now looking in the United States... I'm not sure what the number is today – somewhere between 475,000 and 500,000 people dead. When you are talking to state lawmakers, state policymakers, what would your advice be to them to help the criminal justice system prepare for the next catastrophe, whether it's a pandemic or takes some other form?

TA: I think that the top recommendation is prepare, prepare, prepare. Do not be caught unawares as we were at the onset of this pandemic. We have to begin preparing for the next pandemic now, and that means obviously engaging in the integrated planning processes that we recommended. It means thinking about ways to scale down and scale back the criminal justice system and ways to reduce density.

It means having some shared understanding of what's the right way and the wrong way to respond. That can come in the form of not necessarily federal mandates, but federal guidance that is created with the input of states and localities.

And then, it's not sexy and, unfortunately, it's resource-intensive, but states and localities have to invest in better data, both in terms of quality and quantity. We are living in a modern era and good data is essential to criminal justice management. If you don't have the data, you simply are flying blind.

And so, I would urge those who are listening to this to start contemplating how they can make the resources available to move their criminal justice systems into a 21st century data environment.

Time Marker (TM): 26:19

Ed: So, for our audience, which is state lawmakers, other policymakers at the state level, legislative staff, it seems very important to share this information with them. What do you think is the best way to get that information to them other than a podcast or trying to circulate the report?

TA: Besides the obvious of reading the report itself, and we've also generated I would say more than 10 impact reports addressing various parts of the pandemic and the criminal justice response to it, is just come and talk to us. The Council on Criminal Justice and the National Commission are still up and running. While we're not producing any more recommendations, we are ready and willing to talk to whoever wants to talk about these recommendations in greater depth.

And so, they can reach out to me. They can reach out to Andrew Page, our head of outreach and engagement. And we'd love to talk with your audience about these important issues.

Ed: Well, that's great. I'll make sure that we link to the Council so that people will be able to get that information and get in touch with you folks if they're so inclined, and we hope they are.

Time Marker (TM): 27:30

Ed: Before we wrap up, is there anything else you'd like to share with our listeners?

TA: Sure. I think one final takeaway I would have is on the Commission, we have criminal justice leaders, but we also have public health leaders as well. Tom Inglesby, who is a leader in the field of public health from Johns Hopkins University, was on the Commission, and one thing that really struck me is that we simply have to do a better job of creating channels of communication between our public health systems and our criminal justice systems in-between crises.

We need to create relationships, regular meetings, ongoing flows of information between these two systems so that the two systems, when a crisis strikes, are not meeting or engaging with one another for the first time. And so, I would say for folks who are in the criminal justice system or lawmakers, let's create some regular channels of communication between our criminal justice and public health practitioners.

Ed: Thomas, thanks for taking the time to discuss this important issue. Please stay safe.

MUSIC

Ed: And that concludes this edition of our podcast. We encourage you to review and rate our episodes on iTunes, Google Play or Spotify. You may also go to Google Play, iTunes or Spotify to have these episodes downloaded directly to your mobile device when a new episode is ready. For the National Conference of State Legislatures, this is Ed Smith. Thanks for listening and being part of "Our American States."