



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, the politics that compel them, and the important work of democracy.

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### **Criminal Justice Reform | OAS Episode 68**

Welcome to “Our American States,” a podcast of meaningful conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy. For the National Conference of State Legislatures, I’m your host, Gene Rose.

While bipartisan divides in policy issues generate many headlines, there’s an incredible development going on across the country on criminal justice reform. The issue is generating notable bipartisan cooperation.

To illustrate that point, we will get perspectives on two states, Mississippi and Colorado, where bipartisan support is producing wide-reaching legislation. Later in the program we will talk with Colorado State Representative Leslie Herod (D) about major and even unconventional legislation she has guided through the legislature.

First we have a conversation with Mississippi Governor Phil Bryant (R), who got bipartisan support for legislation to make major reforms on how the state works with former inmates, and we learn how his thinking on criminals has changed since his days being a deputy sheriff early in his career. Here is our conversation with the Governor.

*Time Marker (TM): 1:19*

Gene: Governor, in 2014 Mississippi led the nation in incarceration. Since then you’ve had an 11% decrease in the number of people in prison, you’ve cut your recidivism rate by about half, and you’ve reported a savings of about 48 million dollars. Tell us how this came about and what is in the legislation that made this work.

Gov: Well, there were a number of things that we looked at: 1) just the cost of incarceration. It was so unbearable, particularly here in the state of Mississippi where we have so many needs like most states. So we looked at what we were spending in public education and what we were spending in the Department of Corrections and realizing that there was so much being taken out of the budget for those that were being incarcerated that it was hard for us to care for the children in public schools.

So we said we had to do something. I was part of the 1990s movement when everyone said we've got to make sure that they are locked up, that they stay in jail, they serve 85% of their sentence, so we had those maximum sentences. So whatever a judge gave, whatever the sentence was to that particular inmate for a nonviolent offense, drug-related perhaps, they had to do 85% of it.

So 85% of every sentence began to just stack up the inmate population; no one was getting out of prison. Even those nonviolent individuals that had been trapped in the cycle of addiction were still spending 85% of the time and it was so unfair because some counties, for example, for possession of narcotics, were giving one year and another county right next door was giving 10 years. So the disproportionate sentencing was another eye opening event for me.

And so as Governor I said: We've got to do something about it and the first thing we're going to do is work on those maximum/minimums. So we said stop spending 85% of the time that you have in prison and let's look at reducing that to 50% for some violent offenses. Now other violent offenses like murder and rape and kidnapping and those, maximum sentences still worked. But 25% would be a maximum for a nonviolent.

We began to see those numbers come down. We just had a reduction of about 11% across our prison population. A lot of these inmates now are going into what we thought were reentry programs. We found out we really were doing a terrible job of helping anyone that was released from prison reenter society. But even with doing away with that 85% where we were reducing it to 50 and 25% saved us over 40 million dollars in our correctional budget that we were able to apply to education, to healthcare, to transportation and public safety.

So it was a big success in 2014 and encouraged us to do more as we progressed.

*TM: 4:10*

Gene: Now Governor, I understand that you worked as a deputy sheriff early in your career where essentially you were locking people up. Now you're working to help former inmates get a job and even earning a professional license. ("That's right.") Has your thinking changed about prisoners and, if so, what caused it?

Gov: It has. It was a real metamorphosis, if I could use that term, of growing into the realization that the way we were managing inmates for state government, and federal government as well, but here in the state was my first concern in 2014 and later in 2018 and 2019 when other bills were passed, but realizing that about 33% of those inmates were going to go back in prison. We knew it.

Every year, every one of them, they were going to be released. Every inmate that's in nonviolent, the nonviolent offender just now will someday be released from prison. We knew that and then we realized that 33% of them were going to be right back in prison. So as a former law enforcement officer, I had seen a lot of young people go to jail; I put some of those young people in jail in the 1970s for violation of a drug act for a very small amount of drugs. Even marijuana in the 1970s, you could go to prison for an ounce of marijuana in 1976 when I started working at the sheriff's department in drug enforcement.

And so I looked back and thought, you know, these 22-year-old kids, 21/22-year-old kids that I sent to prison will have that the rest of their lives and, unfortunately, as they went into prison they could be there with a population that was violent... terrible things happen to inmates in prison...

And so I realized that my entire idea of what was I thought a good law and order platform was doing just the opposite – it was sending people to prison that had made a simple mistake as a young person, was trapped in the cycle of addiction, or that had mental health issues, that had been abused as children and therefore they began to express themselves in more violent ways as they got older – all of these social problems that could occur to any individual was happening to these individuals that I had put in jail and that others had put in jail.

So we said look, I'm a conservative Republican. I want government to work and government is not working in corrections, and so we need to change it. And so I think my feelings of compassion for people who had made a simple mistake, a nonviolent offender... a lot of these are women... so as I began to grow and realize that my involvement with the Department of Corrections in Mississippi, I realized that the female population was specifically large and directly related to drugs. About 99% of those women that we were incarcerating were related to a drug offense, and their children were in the foster care program.

So I just grew into the realization that we had to do a better job, that people were not necessarily evil because they were in jail. There were people that need to be in jail and need to stay in jail, those violent offenders, and there were people we were just mad at. We were mad at them because they made a mistake, because they broke into our car and stole something out of our car to help their drug addiction, or they went and falsified a prescription to get more opioids.

And then we began to see the opioid addiction. So it was no longer some drug dealer in the alley; it was our neighbors, it was our sons, it was our husbands and wives, our brothers who were now addicted to these opioids. So all of that combined to help change the way I looked as a former law enforcement officer at corrections and how we could do a better job of not only managing the population, but stopping them from going out and committing another crime because they couldn't find a job, couldn't get a driver's license and had no place to live.

*TM: 8:08*

Gene: Now given the success that you have, do you have other areas of criminal justice reform that you're hoping to enact? Are there things that you're doing administratively?

Gov: Oh absolutely. I mean administratively we've taken a whole new look at the way we do it. Our Department of Corrections Executive Director is managing it now all towards reentry in that nonviolent population. I keep saying that because that's so critical – you don't want the people of your state to believe that you're going to unleash violent criminals into the population. We're not doing that.

We're putting more effort into counseling, for example. We know so many of the inmates have a psychological/emotional problem, so we've got to get counselors in there and we're doing a much better job of finding qualified counselors, involving the Department of Mental Health,

bringing them into the arena of corrections, trying to deal with the drug addictions, making sure that there is some path for these inmates to get clean and sober.

We are now looking at how we can help completely reenter with that reentry opportunity for every inmate that's nonviolent. Just last week, for example, the Department of Corrections hosted a jobs fair. We contacted companies and said: If you'd like to come and hire these formerly incarcerated individuals who are nonviolent, we will sponsor this job fair. Over 150 former inmates and their family members came. Many companies and organizations around the state came to set up booths to interview these individuals so we can get them a job.

We make sure now that you can get a driver's license. You see in the past before we passed a bill in 2019, our new Criminal Justice Reform Act, before we did that, it would be impossible for you to get a driver's license. So how would you drive to work?

We established intervention courts so that when you go before the judge, the judge can not only sentence you early to a correctional facility, but can also use treatment as an alternative for sentencing. So you might be ordered to go to a treatment program, go to an intervention center.

We've looked at professional licensures. So if I'm a plumber and I've got to have a plumber's license in the state of Mississippi, if I go to jail for using opioids, when I get out they take my plumber's license away from me and never give it back to me. So in our bill we said you've got to have an opportunity to reapply for these professional licensures. You just can't automatically turn them down because they were convicted of a nonviolent offense.

We restored the SNAP benefits, so these ladies, these women that are in prison, still are trying to take care of their children back home; that's usually a grandmother or other relatives or foster care. So we said they've got to have the SNAP benefits, the food stamp benefits, or TANF benefits, aid for those dependent children that they have. So trying to get them closer now to their families, not moving an inmate 300 miles away so he never sees his children, never sees his wife or his family.

And so all of those things have really had a dramatic effect. And we get this from law enforcement, from prosecutors that are coming forward now saying: This system is working. We're seeing inmates getting out of prison, finding a job, getting clean and sober, able to get their driver's license, able to get a professional licensure certificate and going back to work.

*TM: 11:33*

Gene: Now at the NCSL Legislative Summit in August you, as a confirmed conservative, are going to share a stage with a noted liberal, CNN Commentator Van Jones, and it appears that you're both happy with what's going on in Mississippi. In this current political environment where everyone seems so divisive, how have you two joined forces on criminal justice reform?

Gov: Well, it started when we began to work with the president and Jarod Kushner and their team at the White House when Jared called me initially and said: We see what's happened in Mississippi since you all began criminal justice reform in 2014. The president wants to explore this possibility on a federal level. Would you come and help? And I said: Absolutely.

And one of the first meetings I came to, there was Van Jones and he and I began to talk. As a matter of fact, he came to Jackson with Matt Schlapp. And so Matt and Van and I were on a panel in Jackson, Mississippi, at the Governor's Criminal Justice Reform. Matt and Van and I came back to my home and visited for the next hour and a half about this issue and how this is how it should work.

You've got conservatives and liberals, Democrats, Republicans coming together for the common good of the people of this nation. Criminal justice reform is not Democratic, it's not Republican; it is common sense. And the president of the United States seized on this issue as I worked with him for months and as we began to approach the conservatives, we had help. The American Conservative Union, for example, was there in Washington helping us; the Right on Crime. Prison Ministries Foundation was all a part of this... Americans for Prosperity; the United Pentecostal Church here in Mississippi, and the ACLU.

So as we brought all of those people together, we were able to go to legislative leadership... and that's the thing I would say and hopefully at NCSL we'll be able to emphasize – you've got to have legislative leadership, somebody in the House or the Senate has got to step forward and say: I will introduce that bill. I will lobby my colleagues. I will educate the public to get this done.

We had tremendous champions like Representative Jason White, a Republican, Senator Juan Barnett, a Democrat African-American working together with Briggs Hopson and Angela Cockerham, another white Republican and African-American Democrat – all of us working together to get this bill passed.

It really helped bring our legislators together and not separate them among race or gender or party. They all came together for criminal justice reform and so have the people of the state of Mississippi.

*TM: 14:14*

Gene: And Governor, we'll get you out on this: What advice would you have for other states across the country who are looking at criminal justice reform issues?

Gov: I would say you've got to take that first step. You've got to get your conservatives comfortable with it, because they've got to go out and campaign in an area that is normally voting for people who are perceived to be tough on crime, and this is tough on crime. This is a Right on Crime issue... while at the same time you have an opportunity to work with your Democratic legislators who will find common ground.

Take this on. Believe me, it will work. I will come to their state; so will Van Jones. Have a summit on criminal justice reform and tell the people, articulate what will happen. You will get a population that will not commit another crime. They will go back into society and be productive citizens. You'll save millions upon millions of tax dollars that you'll be able to reinvest in education and health care, public safety.

It is a system that works and now is the time to go and achieve this criminal justice reform in their own states.

Gene: We've been talking with Mississippi Governor Phil Bryant. Governor, thank you for taking time to talk with us on "Our American States."

Gov: Absolutely. Glad to do it. Look forward to seeing you in Nashville.

Gene: We'll be back with Colorado State Representative Leslie Herod right after this short break.

MUSIC and Female VO (not transcribing)

Gene: So we have with us today Representative Leslie Herod from Colorado. Representative, Welcome to our program.

Herod: Happy to be on.

*TM: 16:09*

Gene: You've been a strong advocate for criminal justice reform and in 2016 you were elected to the Colorado House. Why don't you tell us why you focused on criminal justice reform issues?

Herod: Yeah. Well, I'm glad you asked me that question. I will say that since running for office and then entering into the legislature, it's been interesting to me how many folks have not talked about criminal justice reform on the campaign trail.

And so when I decided to run I knew I was going to tackle this issue 1) because it means so much to my community; but also because it means so much to me personally and my family. The effects of the criminal justice system have really ravished communities of color and low-income communities. We have seen how an unjust system has really broken apart families and left communities un-whole I will say.

And so for me specifically, my sister has actually been in and out of the criminal justice system, so our family saw firsthand what the impacts of policies like zero tolerance or three strikes you're out, or not being treated with dignity when you are incarcerated, or a judicial system that fails to understand your culture, your background, where you are.

That has been a huge problem and something that we as legislators really need to address, and that's why I decided to start working on this issue.

*TM: 17:29*

Gene: Now you successfully passed legislation in a number of criminal justice reform areas and I'd like to focus on a couple of them. First talk to us about a bill you guided through the legislature last year on improving educational opportunities for children and adults in Colorado prisons. Give us the highlights of this bill and tell us why you sponsored it.

Herod: Yeah. So there were a couple of bills that I worked on specifically regarding academic achievements. We know that if you have access to education, be it higher education or even completing your high school degree and getting your diploma, that has a huge impact on

whether or not you are going to be successful in reentry, whether or not you're going to recidivate, even commit another crime. And so we wanted to make sure that we lifted any prohibition on having access to educational services while incarcerated.

So specifically we looked at 1) the juvenile justice system. What we found was that while young people, if you can believe this... while young people were in our custody, they were going to school and then their credits when they got out wouldn't transfer back to their home school. So they would go back to school feeling deflated, being left behind, and the schools really shutting the door on them saying that all the work that you did doesn't matter.

A lot of those kids ended right back up in the juvenile justice system, right back into places of confinement because of the frustration that they felt, that basically everything that they did didn't matter.

And so what we did was we looked at changing the law to say that school districts must accept these credits and, not only must they accept these credits, they must accept them as those academic credits, so not just saying that they were elective credits. So if it was a science credit, it went to science.

I mean, we're paying for these young people to be in school. We're paying for that education. We have standards for that education that meet the statewide standards. There's no reason why districts should be able to say: Nope, we're not accepting those credits. So we went and changed that and that is now the law.

The other thing that we did was for the adults in the Department of Corrections. So for adults we said... we actually had a prohibition in Colorado on state funding going to programs of higher education for those who were incarcerated. So we lifted that ban and said that the state can and should support educational programs for inmates. Not only does it ensure better behavior actually of inmates while they're incarcerated, but we know it leads to better outcomes when they are transitioning back into the community.

And so we also passed that bill, both with bipartisan support, and I'm proud to say that they are both in effect now in Colorado.

*TM: 20:11*

Gene: Now you've also addressed the rights of crime victims. What did you hope to accomplish with this legislation?

Herod: I'm glad you asked about this one. This is one of the bills that I'm really excited about because, you know, we have this thing in society where we see crime victims as being, let's be honest with you, white women, right... typically white women who are survivors of sex assault. That is what a crime victim is. That is kind of who goes to some of these programs.

And what we don't see enough of is people being honest about being survivors of crime who are, say, men of color, or men. So, for instance, if you had your best friend who was shot and you held him while he was dying, right, you are definitely a victim of a crime; you've been traumatized. But it's very rare that you actually get access to any type of mental health or

treatment services, much less any type of treatment from someone who comes from your community who understands your background.

And so we created this grant program that specifically would go into affected communities to specifically look at treatment and care for men and men of color who are crime survivors who wouldn't typically identify as such.

What we're trying to do is break the cycle of violence, so that when people have access to someone who they can talk to about what happened, they can process it in a way that is healthy, they are then less likely to also commit crimes. And so we wanted to build up that community resource and we've been able to put this grant program into place with funding, and that's also available now in Colorado communities across the state.

*TM: 21:48*

Gene: What else has the Colorado legislature done in the past two/three/four/five years that is important in terms of criminal justice reform?

Herod: Well, we had a banner year this year I will say. We passed over a dozen criminal justice reform bills just this past year that I sponsored, and my colleagues also sponsored bills. And so what we found this year was there was a lot of bipartisan support for criminal justice reform.

We passed things like bail reform, so we got rid of cash bail for low-level offenses. We passed drug sentencing reform, so folks who have been convicted of simple possession, that's no longer a felony offense, so we de-felonized that and made that a misdemeanor offense, so that folks could have access to treatment when they're ready.

We banned the box on employment applications and college applications because, again, they go hand-in-hand – it's important to consider education. And then we did some work also on dignity within corrections and ensuring things like access to tampons for women.

And so I'm really proud of the progress that Colorado has made when it comes to radically reforming our criminal justice system, and very much look forward to seeing where we go.

*TM: 22:57*

Gene: For those that may not know, could you give us a little description on what "ban the box" is?

Herod: Oh sure. Ban the box is basically a law that says that on an initial job application... in Colorado this is how we framed it... on an initial job application you can no longer have a box that says: check this box if you have a criminal history. What those boxes do is 1) it dis-encourages people to apply for jobs in the first place; but also doesn't give people the opportunity to tell their own story, to say, you know: Here is the crime that I committed. Here's where I am today. Here's why I want to get to work.

I think it's really important that if your criminal history has nothing to do with the job that you are applying for, you have the opportunity to really, really compete for that job. And so we

passed a bill saying that while yes, employers can run background checks and yes, they can ask criminal history questions, they can't do it on the initial application, and that's really important.

*TM: 23:50*

Gene: And you've mentioned getting bipartisan support on these bills. I would say that ten years ago that probably wasn't really something that both parties were focused on. What do you attribute to Republicans and Democrats working together on criminal justice reform issues now?

Herod: I think it's about having intentional conversations about where we want to see our state going. I know there has been a lot of education on criminal justice reform from a lot of different people in the past few years. We've seen a shift even with folks like Right on Crime getting involved in this space more.

I believe that when it comes down to it, we have a broken criminal justice system, there are not many people who think that it's working the way that it should, no matter what your party is, and it's sucking up a lot of our state resources. So whether you're a fiscal conservative or you're a social progressive, you find common ground in criminal justice reform.

What we are doing does not work, it's a waste of taxpayer dollars, and it doesn't keep our communities any safer. And so it's really important for us to be smart on these issues, to be thoughtful on these issues, and remember that people are people and that they deserve a chance to be successful.

*TM: 25:00*

Gene: Okay, I'm going to ask you to look into your crystal ball here. What other trends do you see coming out of state legislatures in the next few years regarding criminal justice reform?

Herod: Yeah, I think we're going to see a shift towards more of a conversation regarding dignity for those who are incarcerated. So as I mentioned, we passed tampons for inmates who need them. But I also think we're going to be talking more about programs that support women and mothers, more programs that talk about the treatment of trans people who are incarcerated, also fathers and family connections and how important that is to rehabilitation. So I think we're going to be talking more about the rehabilitative side of corrections and incarceration.

But most importantly I think we're going to be having much broader conversations about: Is incarceration the right solution in the first place? Are incarceration and our length of sentencing the right ratio for the crime and for what we want to see our society build towards?

We know that the longer someone is in prison the less likely they are to be successful when they reenter, and even not to recommit a crime. And so we need to make sure that our sentencing scheme actually aligns with what we're looking for as our vision for our state and our country, which means having a safe society, people who can reenter and be successful, folks who are working and contributing and giving back to their homes and their communities.

And so I think we're going to see a radical shift in how we even think about criminal justice reform and incarceration, and even community safety.

Gene: We've been talking with Representative Leslie Herod from Colorado. Representative, thanks for being a guest on "Our American States."

Herod: Thanks for having me.

Music and Gene VO:

And that concludes this edition of "Our American States." We invite you to subscribe to this podcast on iTunes and Google Play. Until our next episode, this is Gene Rose for the National Conference of State Legislatures. Thanks for listening.