



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: Juvenile Justice Reform and the Pandemic | June 8, 2020 | OAS Episode 96

Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. On this podcast, we’re all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith. Thanks for joining us.

This podcast is one in a series NCSL is producing to focus on how states are responding to the coronavirus pandemic. You can find links to podcasts, webinars and other resources at www.ncsl.org/coronavirus.

Today our focus is on the juvenile justice system in the U.S. Efforts to reform the system have been going on for the past 20 years, driven by research, court decisions and other factors. We’re going to talk about where the reform effort stood before the pandemic, how Covid-19 has affected the juvenile justice system, and how this crisis may change the system down the road.

Our first guest is Anne Teigen, an expert on juvenile justice with NCSL’s criminal justice program. She’ll give us an overview of juvenile justice reform efforts and also a rundown on actions the states have taken.

Our second guest is Nate Balis, who is the director of the Juvenile Justice Strategy Group at the Anne E. Casey Foundation. Nate will discuss where spending is most effective in the juvenile justice system, how Covid-19 is affecting the system right now, and what the system may look like post-pandemic.

Anne, welcome to “Our American States.”

Anne: Thank you, Ed. I’m really excited to be here.

Time Marker (TM): 01:42

Ed: So, Anne, let’s start with the big picture. How have the courts and research on brain development and other factors brought us to where we are now in the efforts to reform juvenile justice in this country?

Anne: Well, Ed, the big picture is we really are at an historical and exciting time in juvenile justice in this country as state after state continues to study and work to improve their justice systems for

youth. And this marks a dramatic departure from the punitive policies of the 1980s and '90s, when after a high spike in juvenile crime and violence, legislators moved away from the traditional emphasis on rehabilitation and moved toward tougher, more punitive treatment of youth.

But at the dawn of the 21st century, juvenile crime rates have declined, and state legislatures are reexamining juvenile justice policies, and rebalancing approaches to juvenile crime and delinquency.

They're really looking for the appropriate balance between the protection of public safety and the welfare of young people, and this sea change in the last 15 years or so is because we know so much more from researchers about brain science and adolescent development.

And what researchers found in these collaborative, multi-site, longitudinal studies, really seminal research, is that adolescent brains do not fully develop until about age 25, and the immature emotional and impulsive nature characteristic of young people make them more susceptible to committing crimes.

The research also has shown that juveniles who commit crimes or engage in socially deviant behavior are not necessarily destined to be adult criminals. Many grow out of their antisocial activity as they transition into adulthood. And this research makes sense to anyone who looks back at the things they did in high school like, say, starting a ketchup packet fight in the cafeteria and wondering: Why did I do that and what was I thinking? Not that I know that anybody has ever done that, Ed, but anyways...

So, this growing body of research has received national attention and attention from the highest court in the land. In the last 15 years, the Supreme Court has prohibited the death penalty for a young person who was under the age of 18 at the time of his or her crime. The court has also abolished mandatory life sentences without the possibility of parole.

And central to and cited in at least four of these big cases and decisions was the latest science on adolescent development that distinguishes juveniles from adult offenders, what the Court called "the mitigating qualities of youth."

Now, that isn't to say that there aren't young offenders who can be dangerous, or to say that all culpability goes out the window. The highest court really recognized the need for judicial discretion and an examination of all the circumstances. They recognized that because juveniles have diminished culpability and greater prospects for reform, they "are less deserving of the most severe punishments."

TM: 04:50

Ed: Well, Anne, I have to say thinking back on my teenage years, I think I did do a few things that might have even crossed the line into minor criminality.

So, the research on adolescent brain development has shed light on delinquency in general. An effective response is to prevent reoffending and improved outcomes for youth. How has that and other research played into these reform efforts?

Anne: With the Supreme Court rulings and all the information on brain science, there is now a heightened interest for the field and state policymakers to use this research and data to improve the system as a whole, and extensive research has been done and it has shown a number of things.

First, relying solely on removing youth from their homes and into out-of-home placement like group homes or detention may not be the best response for some offenders. Studies have found that putting a young person in detention, even for short stays, does not reduce the likelihood of reoffending, but it does increase the chance that the young person will not graduate from high school.

It can increase the likelihood of substance abuse, and it absolutely increases the chance the child will end up in the adult system. And, in light of that research, states are starting to enact policies that prevent out-of-home placement, except for the highest-risk and most serious offending youth.

Second, research indicates that longer stays in juvenile detention or corrections do not reduce recidivism. And in one study by the University of Cincinnati, juveniles placed in state facilities for longer periods had higher rates of reincarceration than those held for shorter periods.

Essentially, there is no benefit or net gain by sentencing a child to 12 months of out-of-home placement just for punishment, but there is evidence that it does more harm.

And a number of states, including Utah, South Dakota and Kansas, have included statutory limits on length of stay in out-of-home placement in response to this research. Utah, for example, passed legislation to limit the time a youth can spend in out-of-home placement to six months in most cases.

There has also been a lot of research on diversion. And diversion programs typically allow a juvenile to complete certain requirements in lieu of being placed in the system, and to hold young people accountable through options other than confinement. And if that young person completes diversion, they can go on with their lives without a conviction.

A lot of times, diversion programs hold young people accountable, but also address the reasons the young person found themselves afoul of the law in the first place. A meta-analysis of studies of 73 pre- and post-charge diversion programs found that: "diversion is more effective in reducing recidivism than conventional judicial interventions."

So, research as a whole has really served as a guidepost for lawmakers who are seeking to create effective juvenile justice policies that will reduce recidivism and keep the communities safe.

TM: 07:54

Ed: Well, speaking of those lawmakers, I know that you follow state legislation in this area very carefully. What have the trends been there, and has this been a bipartisan effort?

Anne: There are a number of trends in juvenile justice legislation that I would love to mention, and as I mention all of these, keep in mind that these reforms have become bipartisan and cross-branch issues. Lawmakers are working across the aisle and across all three branches of government all around the country to develop these new policies that align sound fiscal responsibility, community safety and better outcomes for youth.

One trend that we have seen is states are restoring jurisdiction to the juvenile court, what is known as “raising the age.” Twenty years ago, people as young as 15 were automatically tried as adults in adult court. Now, 47 states have enacted laws that give the juvenile court jurisdiction until the young person’s 18th birthday.

And policymakers are also amending direct file and transfer laws. States like Maryland and Nebraska require juvenile court judges to take into account factors such as age, physical and mental health, and the possibility of rehabilitation when considering transferring a youth up to adult court.

Another trend going on in state legislatures is passing legislation related to preventing formal and long-term involvement in the system for low-level offenders. Kentucky, for example, in 2014 created an enhanced diversion program designed for low-level offenders and status offenders.

Now, for those of you who are not entrenched deeply in criminal justice jargon, status offenders are young people that committed an offense that would not be a crime if committed by an adult: examples such as running away from home, truancy and some alcohol violations.

So, this new law in Kentucky in 2014 allows that before these low-level cases are referred to a county attorney, court-designated workers using evidence-based assessment tools make referrals to appropriate services. And after making those referrals, the court-designated workers are responsible for working with the youth and the families to ensure accountability and help the young people complete program requirements.

Detention reform has also been a big trend in the last 15 years. The primary purpose of secure detention is to ensure that a young person appears in court and to minimize the risk of re-arrest while current charges are pending. And many states are rethinking the use of detention and passing laws that clarify that a child should only be detained if detention is absolutely necessary and the physical safety of the community would be threatened if the juvenile was not detained.

And for many young people, alternatives to detention are more effective. These alternatives include supervised release programs such as home detention, electronic monitoring, day and evening reporting centers, and local treatment programs. These programs have an increased level of supervision to ensure that the young person will return to court pending disposition of the case, and it also costs much less than detention.

And finally, speaking of costs, the biggest trend we are seeing is that state legislatures are shifting state resources from incarceration to community-based alternatives to incarceration. Amid all the research that community-based alternatives are more effective at reducing recidivism and getting better outcomes, states are investing in these alternatives.

Ohio and Illinois were really pioneers early on, but many states have enacted reinvestment strategies and are seeing results.

In the years after Georgia's comprehensive 2013 reforms, the state's juvenile residential population fell 35% and the state closed three facilities. Lawmakers reinvested 30 million dollars of the savings into community programs, which gave judges and probation departments across the state greater access to evidence-based options for youth.

In 2016, about 2,000 young people underwent evidence-based interventions in Georgia, supported through the new grants, with nearly two-thirds successfully completing the programs.

So, all of these reforms are showing better results so far. But I want to underscore that state innovation is not finished, and states are looking ahead at probation reform, access to counsel, and reducing racial and ethnic disparities right now, and especially in light of the Covid-19 pandemic.

TM: 12:37

Ed: Well, Anne, thank you for filling us in on this. I don't think this is something that most of us are too well-tuned into, so this has been very helpful.

Now, before we wrap up, is there anything else you've like to share?

Anne: No thank you, Ed. But if anybody else has any more questions about juvenile justice policy, please contact me or visit our website at ncsl.org.

Ed: Well, Anne, thank you very much, and we will be right back after this with Nate Balis.

MUSIC

Ed: Welcome back. Now we're going to speak with Nate Balis, director of the Juvenile Justice Strategy Group at the Anne E. Casey Foundation. Nate, welcome to "Our American States."

Nate: Thank you so much for having me.

TM: 13:30

Ed: Now, Nate, I know you're talking regularly with people responsible for juvenile justice in states and counties across the country. Can you give our listeners a sense of how things stand as they try to cope with this pandemic?

Nate: I think it's a good place to start because I think it has really been a mixed bag. Juvenile justice systems are having to reinvent themselves on the fly: How do they support young people in the community with a workforce now that is mostly at home and is not visiting young people in their homes?

On the other hand, Anne spoke about the efforts across the country to reduce the use of confinement for kids, and this has taken place over two decades now and especially in the last decade, but we're seeing an unprecedented drop in youth incarceration right now.

The Casey Foundation surveyed the field to understand trends and the use of local juvenile detention centers where many youths are held after being arrested, but prior to being adjudicated and sentenced in court. And what we found was in survey responses covering more than a third of the youth population in the country, we found that admissions to juvenile detention were down 52% between February and April, while the number of youth in detention centers was down 32% from March 1st to May 1st.

This suggests that far fewer youths are being arrested right now, but also that systems are struggling to get kids out of detention who are already there. And I think this gets to the other side of this, and that's that getting out of facilities has to be the top priority. There has been so much good advocacy going on in our field right now. To date, at least 520 youths have tested positive for Covid-19 in juvenile justice facilities, along with well over 600 staff.

Young people are being put in isolation for health reasons, which only exacerbates the trauma that many of them have experienced, and young people are being disconnected from school, they've not had family visits. So, there are lots of problems. There are always problems with locking kids up, but right now it's even worse and systems are really struggling with that.

TM: 15:35

Ed: Let me switch over to the fiscal side of this, given that our audience is largely legislators and legislative staff. We've all read these stories about some of the brutal budget cutting that legislators are at least discussing as they anticipate drops in revenue.

Since this is really a time to get the most bang for the buck, I guess, what does the research in your experience say is the best way to spend money in the juvenile justice system?

Nate: I'm really glad you asked this, Ed, because it feels like juvenile justice is at a critical moment where state legislatures and state legislators specifically will play a huge role in defining what the system is about in the future.

Now, as Anne mentioned, we know from study after study after study that locking kids up is more likely to do harm than good. It disconnects young people from their school, from their family, and increases the likelihood that they'll end up in the criminal justice system as an adult.

We have plenty of evidence that alternatives to confinement simply do better, whether that's therapeutic models like multi-systemic therapy, or intensive mentoring models including those that use credible messengers, those people who themselves have experienced the criminal justice system.

Now, right now, legislators really should look at their own systems and look at the results. How much does it cost to lock up a kid in a state facility and what are the results that you're getting for it? The research tells us that legislators are unlikely to be happy with the answer they get,

especially when you consider that in most states, the vast majority of youth in custody are not even there for the most serious offenses.

TM: 17:13

Ed: As I understand it, some states are more effective than others in how they deal with young people when they violate the law in using local services rather than locking kids away in facilities. Can you talk some about those efforts, the good, the bad, the ugly?

Nate: Absolutely. This has been a huge success in some ways in states around the country. There have been plenty of states that have developed policies aimed at incentivizing community-based services and treatment, and/or disincentivize, sending youth to state facilities.

There are too many to name, whether it was early efforts in places like Ohio and Illinois, or more recent efforts in Texas and California, Virginia and Kansas, West Virginia and South Dakota. It's really been all across the country, red states, blue states and everything in-between. We've seen legislatures prioritizing keeping kids in the community, and that's a really, really good thing – investing in services that support young people rather than just simply surveil them or incarcerate them.

Our organization has worked directly with juvenile justice systems around the country and we've seen the practice reform efforts up close that follow, oftentimes, those policy efforts. And I'll say that there's a lot of great progress that's happened in investing in alternatives, investing in services, investing in probation practices, rather than confinement.

But I'll also say that in spite of those successes, there is a long, long way to go. Far too many young people are locked up when they could be safely served in their home communities and, when we look at the racial disparities, it makes this situation seem even worse. And all too often, I believe, that the gravity of incarcerating a child is not given the weight that it deserves. It's far too routine still, too accepted as just another option, when everything tells us we should do something else.

TM: 19:06

Ed: I know that you've identified transforming juvenile probation as the greatest opportunity for improving the entire juvenile justice system. Can you explain to me what you mean by that and why it's so crucial?

Nate: So, let me start here. I think when people think of the justice system, or when they think of the juvenile justice system, they have this sense of juvie: of a kid being locked up in a detention center, a kid being locked up in a youth correctional facility, and that's real.

But the truth is that the more common experience, the experience that most young people have when they enter the juvenile justice system, is juvenile probation, whether they're formally placed on juvenile probation after being found guilty in court, or whether they haven't even been found guilty in court, but they're placed on some kind of informal probation.

So, probation is really the center of juvenile justice around the country. But what we know is that all too often, probation is both, on the one hand, serving the wrong kids, meaning it's working with young people who would be better off if we kept them away from the juvenile justice system, which I'll talk about in a second, or they're working with young people who have really serious needs and they don't have the time to work with them in the way that they need to, so it's not intensive enough.

So, probation kind of finds itself in this no-man's land where it has too many young people on its caseload and is not giving enough to the kids who really need it and giving too much to the kids who don't need it at all.

So, we are really suggesting that there should be two pillars which define what probation ought to be like going forward, two pillars for probation transformation.

The first is to keep far more young people away from probation, diverting young people, keeping them informally away from the juvenile justice system. And what I mean by that is when young people are arrested, that police have the ability to refer young people to a community organization that supports young people in the community, that connects them to services, that connects their family to services, that potentially has restorative justice programs which make sure that young people can be held accountable, even when they've done harm to somebody else, without there having to be this formal system involvement that sucks kids in.

And the reason that that matters is because far too often, instead of being an alternative to confinement, probation ends up being the pathway to confinement, because kids get on probation, they're handed a laundry list of rules that they're supposed to follow... The very kid who wasn't following rules in the first place, which put them on probation, gets this laundry list of rules that he has to follow and when he breaks the rules, then we lock him up.

So, the second part of this... this is why the second piece... first of all, again, keep kids away from probation. But the second part is to transform juvenile probation into a purposeful intervention that's actually targeted for young people with serious offenses who pose a serious risk for future reoffending.

We should partner with families and communities to promote personal growth, to promote positive behavioral change and long-term success. So, we shouldn't be focusing on just short-term compliance and surveillance; we actually have to focus on long-term success as a means to protect public safety.

And we always need to be doing this while thinking about racial and ethnic equity. What we know right now is that young people of color are more likely to be put on probation than they are in the general population in general, and once on probation, they're more likely to be violated on probation and put in custody for violating the terms of probation.

Now, the other thing I just want to mention here, and this is really important I think in understanding why probation transformation is that the way it works now is typically focused on sanctions, that when a young person breaks the rules, then we punish them for breaking the rules. But Anne mentioned adolescent brain research earlier and I want to mention two parts about this.

The first is that we know from the adolescent brain research that incentives for young people work way better than sanctions, and anyone who was a teenager knows this, right – we might incentivize young people getting good grades; we might buy them something because they've done that.

We know that kids on probation need that same kind of approach. We need to incentivize good behavior. We need to say when they've done well, when they've achieved; we need to be able to give them rewards as opposed to just thinking that we can punish them when they do bad.

The second thing here I think is understanding the importance of fairness. The adolescent brain research tells us that young people, and we know this intuitively, it matters that the system is fair. And what we're seeing right now in protests around the country is young people, more than anyone, how they react when a system is on-its-face unfair. And when we see a system that continues to incarcerate black youth and Latino youth and Native American youth at way higher rates than their white peers, people know on their face, young people know on their face, that the system isn't fair. So, all of that needs to be built into how we're thinking about probation.

TM: 24:10

Ed: Connecting young people to some opportunity, some sense of hope, is something that you've brought up both today and in a previous conversation we had. Why is that so important for young people, particularly in the juvenile justice system?

Nate: It's a great point and, Ed, I almost wish I had brought it up more, because I think when we're imagining our own lives or imagining young people who we care about, we're not just looking for the absence of doing bad. Right? We want to see them achieve. We want to see them succeed. Young people need purpose.

And young people, in so many of the communities that we work with in juvenile justice, simply don't have a lot of opportunity. And the juvenile justice system has to be one that actually connects them to opportunities so that they can grow. If we just tell somebody don't do bad, that's not good enough. We need to actually show them pathways to be successful in life, and all too often young people haven't had that, and it's what got them into the juvenile justice system in the first place.

So, to me, again, this is where the idea of protecting public safety and advancing youth wellbeing go hand-in-hand.

TM: 25:20

Ed: So, as I've done this series of podcasts about Covid-19... I think I've done a dozen now... one clear thing that has come out is that some of the inequities in our society, be it in food or broadband access for students or health challenges in rural areas, and there are more, have been amplified by the pandemic.

Is that true in the juvenile justice area and does it leave you pessimistic or optimistic that maybe things can change as a result of this?

Nate: Well, on the one hand, remember the survey I mentioned earlier. We found that racial disparities, which, I mean, to be very clear, define our juvenile justice system more than anything else, have actually narrowed somewhat during the pandemic. But the starting point is so ugly, with black youth four and a half times more likely than white youth to be locked up, Native American youth nearly three times as likely, and Latino youth one and a half times more likely to be incarcerated than white youth.

And just to be clear, the national juvenile court statistics data tells us that at each offense level... so, when it's a violent offense, whether it's a property offense, whether it's a drug offense, black and Latino youth are more likely to be locked up or tried as an adult than their white peers.

So, equity is a huge problem in juvenile justice in the first place, in spite of what we are seeing as some success right now.

Also, the broadband and technology issues are proving to be huge. Some systems are making this a priority in ensuring that youth have access to Wi-Fi hotspots, devices and phones to connect with service providers and probation, and to make sure that when young people are in custody, that they can be connected to their families.

But the same inequities that we see in our society all the time are surely an issue right now and it's encouraging to see some juvenile justice systems really taking note of this and trying to do better.

TM: 27:21

Ed: Well, Nate, this has been very educational for me and I think for many of our listeners, so I want to first thank you for that, and then ask you if there's anything else you'd like to share before we wrap up.

Nate: Ed, this has been great for me as well. I just want to say that Anne mentioned earlier the balance that systems must have between promoting public safety and promoting the welfare of young people.

I think the good news, and the truth is that these are one and the same. We are at our safest when we invest in our young people, when we believe that promoting their wellbeing is at the core of what it means to keep them and their communities safe.

And until we do that for all young people, especially black and brown youth whose wellbeing has all too often been seen as a secondary or optional concern, we will not have the justice system that our young people and our citizens deserve.

Ed: Well, Nate, thank you again and stay safe.

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."

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