2021 Policy Week Review Call
Nov. 3-5, 2021

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COMMITTEE: LAW, CRIMINAL JUSTICE & PUBLIC SAFETY

POLICY: CRIMINAL JUSTICE

TYPE: EXISTING POLICY DIRECTIVE

It is the policy of the National Conference of State Legislatures to advance and defend a balanced, dynamic criminal justice partnership between governments at the local, state, and federal levels while preserving traditional areas of state authority in this area of the law.

NCSL urges Congress and the Administration to avoid federalizing crime policy and substituting national laws for state and local policy decisions affecting criminal and juvenile justice. Federal jurisdiction should be reserved for areas where a national problem has been identified and states are unable to adequately provide solutions due to scope, or is required to protect federal constitutional rights. The federal government should partner with states to examine ways to avoid unnecessary preemption of state laws; and should strive to maintain its current financial commitments to existing state-federal partnership programs.

NCSL believes that federal actions must recognize that states and local governments have the predominant responsibility to ensure public safety and the administration of justice, and must adhere to fundamental principles of federalism in all areas of criminal justice, including but not limited to:

Imagination of the Structure of State Criminal Justice Systems

NCSL urges the federal government to include states in the development stages and on the board of any commissions or task forces that work to improve or review state criminal justice structures. NCSL insists that the federal government not infringe on the legitimate rights of the states to determine their own criminal laws, but shall include them in the process of working to create better state criminal justice systems overall.

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As states strive to improve policies and practices related to criminal justice, NCSL supports direct participation by state policymakers in any federal policy efforts or proposed legislation to redefine how those relationships should be strengthened.

**Federal Financial Assistance**

States continue to improve criminal justice systems and policies and recognize that federal funding is sometimes necessary to implement state reforms in this area. Funding levels for Department of Justice grants and reimbursements to states should be maintained or increased. These programs include the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) grant program, the Second Chance Act grant program, the State Criminal Alien Assistance state reimbursement program (SCAAP), the Violence Against Women grant programs (VAWA), and the Community Oriented Policing Services grant programs (COPS). NCSL also supports any other federal grant program that seeks to assist states in addressing state criminal justice issues, such as school violence or opioid abuse reduction.

NCSL opposes Congressional proposals or federal regulations that would withhold a portion of state Byrne/JAG funds, COPS funds, SCAAP funds, or any other state criminal justice funds as a penalty for noncompliance with federal criminal justice policies. NCSL opposes the withholding of any federal criminal justice funding as a penalty for state policy choices. NCSL urges the federal government to respect state criminal justice priorities and advance change through partnerships rather than mandates. Where new federal grant programs to states are created, NCSL maintains that funding should be directed to states rather than pass directly to local governments.

**Sex Offender Registration**

NCSL opposes federal mandates concerning registration of sex offenders, in particular those contained in the Title I SORNA provisions of the Adam Walsh Child Protection and Safety Act of 2006. The mandates imposed by this Act are not only preemptive, but they are also inflexible and in some instances not able to be implemented by states. States should be permitted to classify and penalize sex offenders and establish
registration and notification requirements in accordance with their own state laws, particularly with respect to juveniles. States should define and decide which juvenile offenders meet criteria for sex offender registration and be afforded the flexibility to implement state procedures that best address this population.

The federal government should provide technological support and federal funding assistance to states with regard to sex offender registration and public notice systems, including cooperation with the federal National Sex Offender Public Website (NCOPW). NCSL supports frequent and meaningful communication between the Department of Justice and state policymakers and implementing agencies so that information on procedures that meet or fail to meet federal guidelines and statutory requirements are effectively conveyed to the states.

NCSL urges the federal government to interpret "substantial compliance" as called for in the SORNA provisions of the Adam Walsh Act to allow state flexibility for matters such as tier systems, retroactivity, and juvenile registration, and allow for substantial implementation as long as a state’s compliance efforts have not frustrated the primary purpose of the Act. NCSL calls upon the federal government to exercise the utmost flexibility in determining whether to penalize states that are working in good faith toward compliance with federal law. States should not be responsible and penalized for absence of compliance by sovereign tribal jurisdictions.

Juvenile Justice

States must preserve authority to determine which juveniles involved with the justice system offenders are treated like adults, under what circumstances, and for how long, with regard to sex offender registration and all other matters of juvenile and criminal justice policy.

NCSL supports the goals of the Juvenile Justice and Delinquency Prevention Act, and urges the federal government to provide state flexibility in achieving these objectives.

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NCSL also supports the role of the federal government in providing states with financial resources to strengthen juvenile justice systems. This includes federal funding for state juvenile justice programs. Federal involvement should be confined to providing grants and technical assistance to states that facilitate effective juvenile justice policies; and the federal government should not attach mandates to the receipt of related federal funds, but should encourage states to implement effective policies and techniques for addressing juvenile delinquency, crime and justice.

**Drug Control**

NCSL supports a strong intergovernmental partnership to fight the illegal use of drugs; and asks that development of broad federal drug control strategies seek and include NCSL and other state and local consultation. NCSL supports a balanced federal approach for interdiction, law enforcement, prevention, education and treatment. NCSL encourages the federal government to take a proactive role in securing United States borders against importation of illicit drugs; substance misuse prescription drug abuse and in detection and deterrence of interstate drug trafficking, including cooperation with state and local law enforcement. While money for law enforcement is critical, federal dollars also should help support diversion, treatment and prevention efforts, including but not limited to interdisciplinary drug court funding unaccompanied by testing or other mandates.

NCSL supports federal demonstration, funding and training roles that assist states in implementation and use of modern information systems that aid in detection and prevention of drug abuse, and for remediation of sites that have been used in illegal drug manufacture. NCSL encourages federal leadership and resources that assist state and local governments in other activities that address education, prevention, enforcement, and treatment related to illicit drugs, substance misuse, and emerging drug threats, including but not limited to synthetic drugs and opioid abuse. NCSL opposes federal mandates or other preemptive policies with regard to addressing drug abuse and related drug crimes.
Sentencing, Corrections and Recidivism Reduction

Federal jurisdiction for crimes also covered under state law can create competition to escalate punishments and build more prisons. This competition is shortsighted, expensive and unnecessary. The national government should refrain from making federal crimes of state offenses or from enhancing sentences for crimes that are more properly the domain of states. NCSL supports federal leadership and funding for state criminal offender-reentry and reintegration initiatives and criminal justice reinvestment approaches. These initiatives assist states in addressing recidivism and reentry, and of offenders back into healthy communities in meaningful, cost-effective ways. State and local governments should be afforded maximum flexibility in using federal funds that support within criminal justice systems, including but not limited to offender needs for drug treatment and mental health services. NCSL opposes any legislation that would restrict state flexibility in sentencing and corrections policy. NCSL recognizes the importance of resources to address the mental health and substance misuses cases facing many states and local communities. NCSL urges the federal government to address federal expungement requirements which can impede reentry and job security. NCSL also supports full funding of the Second Chance Act which provides grants to states that are used to promote the safe and successful re-integration of individuals who have been incarcerated. This in turn reduces recidivism, increases public safety and assists states in better responding to the growing numbers of people released from prisons and jails who are returning to the community.

The issues surrounding the creation of sound state policy with respect to justice involved individuals with behavioral health needs is of growing importance to states. Congress has also become aware of this issue and hopes to address it. NCSL supports federal legislation that would enhance state research and implementation of sound policies that address behavioral health needs of justice-involved in prisons. NCSL also supports federal legislation that seeks to partner with states as they create policy decisions regarding the mentally ill. NCSL supports federal legislation that seeks to enhance state treatment courts (mental health courts, drug courts, and veteran’s reintegration courts) in states and as they look to the future to enhance the reintegration of their justice-involved population.
courts), training for state professionals that work with the justice involved with
behavioral health needs, and funding that will complement state innovative programs in
this area.

**Crime Records and Information**

NCSL supports such state-federal information systems and sharing partnerships in the
states; and asserts that records available via such systems should continue to be
predominately state-maintained and that state policies for dissemination of those
records should be recognized and adhered to under the systems. NCSL supports
federal assistance in improving state criminal history records and related information
systems. NCSL opposes preemption of state authority related to crime records and
information.

NCSL supports the use of all federal databases including, but not limited to the
interstate Identification Index (III) for exchange of criminal history record information; and
the National Criminal Information Center (NCIC) for crime record and other criminal
justice information including fugitives, stolen properties and missing persons. These
systems provide means for information sharing under interstate compacts such as the
National Crime Prevention and Privacy Compact, the Interstate Compact for Adult
Offender Supervision, and the Interstate Compact for Juveniles. NCSL supports such
state-federal information systems and sharing partnerships in the states; and asserts
that records available via such systems should continue to be predominately state
maintained and that state policies for dissemination of those records should be
recognized and adhered to under the systems. NCSL supports federal assistance in
improving state criminal history records and related information systems. NCSL
opposes any preemption of state authority related to crime records and information.

**DNA Records**

NCSL supports federal non-preemptive initiatives that use DNA records in crime-solving
and the administration of justice, including the Combined DNA Index System (CODIS).
Federal funds, including those for DNA analysis backlog elimination, should support the
use of DNA as an interstate investigative tool while adhering to state law and placing no
mandates on states regarding collection, dissemination or use of records.

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Victims

NCSL supports a strong state-federal partnership to assist crime victims; and urges continued federal assistance to states provided for in the Victims of Crime Act (VOCA). NCSL encourages the Congress to preserve this primary means by which the federal government provides support to crime victims and their families, via state crime victims and assistance programs. NCSL opposes arbitrary caps which result in diminished services and assistance for crime victims.

Law Enforcement

NCSL supports means for enhanced cooperation between state and federal law enforcement. NCSL opposes proposals that blur jurisdictional lines of responsibility and serve to disrupt rather than support efforts of state and local law enforcement. NCSL opposes proposals that seek to remove from states and communities the responsibility for determining disciplinary procedures for state and local law enforcement.

NCSL supports the full funding of the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) grant program and the Community Oriented Policing Services (COPS) Act. COPS Hiring Grants have been instrumental in enhancing the effectiveness of community policing in America. Federal funding for the COPS program relieves the strain on state budgets to provide adequate and effective law enforcement personnel.

NCSL opposes proposals to shift traditional federal responsibility for civil immigration enforcement to state or local law enforcement agencies and personnel. State and local jurisdictions should have the authority to enter into cooperative, voluntary agreements with the federal government for this or other traditionally federal enforcement matters, but should not be compelled by federal law to do so.
The National Conference of State Legislatures (NCSL) recognizes the contributions immigrants and refugees make to our state economies, cultures and communities while also recognizing the challenges facing our country in matters related to immigration. Federal immigration policy must strike a balance among core principles of our democracy: preserving the safety and security of our nation, encouraging the economic strength of our states and communities, and recognizing our history as a nation of immigrants. The impact of the federal government’s immigration policy decisions is directly felt by the states who not only implement programs required by federal law but also encourage the integration of immigrants into the economic, social and civic life of their adopted communities. States bear the costs of immigration in many areas including education, health and law enforcement systems, with limited federal reimbursement.

**Immigration Reform**

State legislators call on Congress and the Administration to enact immigration reform that enhances our border security and addresses the imbalance in the state-federal relationship. Immigration reform and implementation requires true collaboration between state and federal leaders. Our nation’s immigration laws must not contain unfunded mandates nor preempt areas of existing state authority. Federal immigration reform will not be comprehensive unless it addresses the fiscal and economic impact of immigration on the states.

Federal immigration reform legislation must also provide a path to citizenship for Deferred Action for Childhood Arrivals (DACA) immigrants and immigrants who were brought to the U.S. as children (DREAMers), have lived most of their lives in the U.S., and Identify as American. These immigrants have contributed to our economy through work and have paid taxes and have been productive members of society.
SECURITY AND LAW ENFORCEMENT

Border Security & Enforcement

Securing all of America’s borders, ports, and airports is essential to preserving our national security and maintaining the safety of all Americans. NCSL urges the federal government to fulfill its responsibilities with regard to border security and encourages a renewed state-federal cooperation in countering human trafficking, weapons and drug smuggling. NCSL urges the federal government to increase its enforcement of these crimes.

NCSL supports full, federal funding for increases in Department of Homeland Security border enforcement systems and processes personnel where they are most needed and necessary improvements in facilities, technology and infrastructure. to create a plan for the effective use of new technologies and infrastructure at the borders.

The Role of State and Local Law Enforcement

NCSL is strongly opposed to any efforts to shift enforcement of civil immigration law to state and local law enforcement agencies. State legislators believe that enforcement of federal civil immigration law is a federal responsibility and that state involvement in immigration enforcement activities should only be a state option be discretionary with each state.

NCSL opposes efforts to criminalize violations of civil federal immigration law in an effort to shift federal enforcement responsibilities to state and local law officers. State and local government law enforcement and public safety personnel must already incarcerate, detain and transport illegal immigrants who have committed crimes, without adequate federal funding. NCSL strongly supports full reimbursement to states for the State Criminal Alien Assistance Program (SCAAP). The current SCAAP program only provides 17% reimbursement of current costs, according to a recent General Accountability Office study. NCSL also opposes any effort to coerce state participation in enforcement of federal immigration law by withholding SCAAP program funds.

EMPLOYMENT VERIFICATION RELATED MIGRATION

Workforce Visa Reforms
NCSL supports workforce immigration reforms that improve the current worker visa programs, increase the number of H-1B visa admissions based on need, streamline the employer sponsorship process, and guide the nation towards economic recovery. Many states rely on migrant labor for key industries such as agriculture and farm work. The federal government should implement immigration reforms that provide temporary or permanent legal status to these workers in order to stabilize the workforce in these affected industries.

Worksite Enforcement

NCSL believes that while employment verification—worksite employment verification is a critical component of overall immigration enforcement, it is an area that requires reform and improvements in order to maximize effectiveness and efficient use of resources. NCSL opposes federal efforts to treat state governments differently from the private sector in meeting federal employment verification requirements designed to identify workers who are not authorized to work, as well as employers who knowingly hire unauthorized workers.

Enforcement Activities

NCSL believes that federal enforcement activities—whether at the worksite or in communities—must be coordinated with state and local government. NCSL urges the federal government to be mindful that the states bear the primary responsibility for the children who are separated from their families as a result of federal enforcement activities. NCSL supports federal coordination with child welfare and law enforcement agencies to end the policy of family separation, take swift action to locate and reunite families, including families that may have been separated by deportation and guarantee that children are not endangered, and that their best interests are protected.

ELIMINATING COST-SHIFTS TO THE STATES

State Impact Assistance

NCSL supports the provision of flexible federal financial resources to states in order to implement and execute immigration reform efforts. While states have been able to serve immigrant populations with COVID-19 stimulus resources for health care,
cash assistance, and food assistance, these funds are temporary. State impact grants continue to be an important component of the state-federal partnership in immigration reform as these represent a critical component for NCSL support is state impact grants, a reliable, guaranteed funding stream for the provision of sources to ameliorate the costs states and localities bear in health, including public health services, and education, including English language acquisition, to immigrant populations. State impact grants must require state legislative appropriation, while providing needed flexibility and accountability.

PERMANENT, TEMPORARY IMMIGRANTS AND REFUGEES

Temporary Worker Program

NCSL supports comprehensive immigration reform that includes a temporary worker program and the creation of an earned legalization program for immigrants currently in the country without authorization. Such reform would increase productivity and wages for our entire economy, stimulating job growth and increasing tax revenue. NCSL opposes outright amnesty and Earned legalization should include appropriate fines and penalties that are proportional to the violation. NCSL opposes as well as federal efforts to deny benefits to legal immigrants and to citizens who are foreign born.

Refugee Assistance

NCSL supports federal efforts to assist individuals and families forced to flee their native land in fear for their personal safety. The United States has a long history of welcoming refugees and is one of the largest refugee resettlement countries in the world. The problem of political refugees is an international one, and consequently demands the cooperative efforts of many countries.

Federal support for refugees and integration services is critical for the to states must not shift costs to states and must provide provision of income and medical assistance, social services, education, employment and training and other services as needed. NCSL believes that funding should be more flexible to allow states to respond to changing needs.
The federal government should provide English and citizenship instruction as well as job training to refugees, where possible, before they arrive in the United States.

NCSL strongly urges the federal government to avoid further placements in areas that are already heavily impacted with refugee or Entrant populations, experiencing a shortage of rental housing for low-income households, and experiencing overcrowding in the local school system. NCSL supports refugee placement policies that promote successful integration of refugees in the placement community. Placement should be tailored to give refugees economic, affordable housing, educational, language access, and community engagement opportunities in their new area. NCSL urges the federal government to continue to work with states on the issue of secondary migration.

NCSL urges the federal government to continue the health screening that is currently provided to the refugees, where possible, before they arrive in the United States and to improve follow-up such as providing instruction for continued medical care to refugees in the home and increasing outreach to bridge language and cultural differences. State health screening support is critical and should not be eliminated.

NCSL urges the federal government to coordinate and consult with state and local governments as an integral component of a successful placement policy and we urge the federal government to improve its efforts in this area. It is equally important to have the voluntary agencies and organizations representing refugees participate in this coordinated effort. NCSL supports extended protection for victims of trafficking, victims of domestic violence, and unaccompanied minors. NCSL supports continuing trafficking and domestic violence victim assistance programs through VOCA and other federal grants. -

CITIZENSHIP AND INTEGRATION

Naturalization and Integration

NCSL supports the promotion of citizenship and reducing institutional barriers to citizenship as a national priority. Delays in citizenship applications are unjustified and costly to applicants. The federal government should allocate sufficient resources for more efficient citizenship adjudication and integration processes. The costs of becoming
a citizen are excessive and a barrier to those working families who seek citizenship.

NCSL strongly urges the federal government to assist the states in their efforts to promote naturalization and to address all barriers to naturalization.
State legislators recognize that data collection and infrastructure supporting it in the criminal justice field, including the ability to track and understand information about the people who go through state criminal justice systems, is an important component for state legislatures when making policy decisions and allocating state resources to their criminal justice, juvenile justice, and court systems. States could benefit from consultation with the U.S. Department of Justice regarding best practices in data collection and strategies for streamlining state practices to collect the best and most comprehensive information.

The federal government is in the best position to coordinate collection and distribution of state data. Similarly, the federal government can assist states through federal grants that support state data infrastructure and collection. States would like to provide input to the U.S. Department of Justice on the data that is the most useful and ideas on how data collection can be improved and timely released. States rely on these statistics to assess and make decisions regarding their criminal justice, juvenile justice and court systems, and compare with other state’s systems and therefore want to collect the most comprehensive and standardize data possible.

The National Conference of State Legislatures supports efforts by the U.S. Department of Justice for collection of state and local criminal justice, juvenile justice, and court data that is useful for cross-state comparison in the least burdensome manner possible and public dissemination of the data in a timely and useful manner. NCSL urges U.S. Department of Justice to provide funding for and technical assistance to states, localities, and criminal and juvenile justice agencies and courts for data collection, including infrastructure and best practices.
WHEREAS, Hurricanes Harvey, Irma, and Maria, along with devastating Western wildfires and other natural catastrophes, totaling over $300 billion in damage made 2017 the costliest year on record for disasters in the United States, according to the National Oceanic and Atmospheric Administration; and

WHEREAS, Hurricane Michael on the east coast, the Camp Fire in California, and other major disasters made 2018 a deadly and expensive year from coast to coast; and

WHEREAS, Congress in 2019 took over six months to appropriate long overdue disaster aid. The delay featured a government shutdown, focus on tangential policy priorities, and a general absence of productive compromise; and

WHEREAS, even when Congress appropriates needed assistance in a relatively timely manner, the funds are further delayed due to inefficient disbursement to states and territories. In 2019, the Department of Housing and Urban Development took more than a year to provide guidance to disaster-stricken states and territories like Texas, Florida, California, and Puerto Rico which delayed the grant application process. Negotiations on aid for the next disaster season began and concluded before these funds were disbursed; and

WHEREAS, Disasters affect states and territories in every corner of the nation, from wildfires in California, Montana, Utah, and others to hurricanes in Florida, Texas, the Midwest and more; and

WHEREAS, Disasters affect every corner of affected communities – from homes, schools, roads, farms, prisons, electrical grids and hospitals suffering structural
damage, to the affected populations displaced across the country and the states that receive them, and more; and

NOW, THEREFORE, BE IT RESOLVED, that the National Conference of State Legislatures (NCSL) implores Congress to remain united in prioritizing the efficient appropriation of needed aid to disaster-stricken states and territories; and

BE IT FURTHER RESOLVED, that NCSL urges the administration to make every effort to streamline their procedures to deliver appropriated funds to governments and individuals struggling to recover from devastating disasters.