

News From The States

EVENING WRAP

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By [Kate Queram](#)

This is basically a criminal justice newsletter now, or at least it is [lately](#). This is a surprising turn of events, particularly for me, a reporter who never covered cops, courts or crime and frankly finds the entire subject matter intimidating. (I've said it before and I'll say it again: There is nothing more awkward than me at a crime scene.) We're learning together, you and me. One slightly-less-awkward step at a time.



The Big Takeaway

"Criminal justice system" is somewhat of a misnomer, as it's less a centralized network than a patchwork of policies and agencies spread across the federal government, all 50 states and thousands of counties and cities. This is partly why wholesale reform has proven so elusive. Without a real *system*, it's pretty hard to enact system-wide changes.



Temporarily vacant.
(Photo by Andy Sacks/Getty Images)

The scattershot nature affects everything. Policies at the federal level do not always coordinate with state-level measures, which often conflict with municipal guidelines and also with other states. None of it is subject to any sort of consolidated or coordinated oversight, in part because there are no national reporting standards for most of the metrics that might prove useful for crafting policy proposals or gauging the impact of improvement efforts. In many cases, different jurisdictions can't even agree on which data should be reported in the first place.

All of which leaves us mostly in the dark about mostly everything.

Sometimes, the data is lacking; other times, the data lacks context. This year, for example, several states reported declines in convicted offenders being re-arrested, known as recidivism. It's a positive development but a relatively useless statistic, experts said. Because states differ in the ways they track and report recidivism, you can't compare one jurisdiction to another. Often, officials can't even definitively explain the reasons for fluctuations within their own system, [per Stateline](#).

"You have to be very, very careful," said Charis Kubrin, a criminology, law and society professor at the University of California, Irvine. "You have to compare apples to apples and oranges to oranges."



*“Question: How do you sort the apples from the oranges when they all sort of look like pears?”
(Photo via Stateline)*

You also have to view data with a healthy dose of skepticism, particularly when it’s highlighted by politicians. In May, Kentucky Gov. Andy Beshear touted the state’s lowest-ever [recidivism rate](#) — 27.15% for individuals in state custody — as a boon for public safety, [telling reporters](#) that the decline “means fewer crimes are happening,” which “makes our communities safer.” In truth, recidivism has very little to do with public safety; the only thing it measures is whether an individual reoffends.

Within a single corrections system, the statistics can be a useful tool for evaluating the success of rehabilitative programs and post-release probation periods. Even then, officials should consider other factors, including population shifts and, for now, the lingering effects of large-scale release efforts during the COVID-19 pandemic, experts said.

Absent a national reporting standard, officials should also be transparent about the way they calculate rates of recidivism, said Elsa Chen, a professor and the chair of the political science department at Santa Clara University. At a minimum, the public should be aware of any gaps in the data and whether banal offenses,

like missing a meeting with a parole officer, count as recidivism, she added.

“When somebody has recidivated, it doesn’t necessarily mean that they’ve committed any new crimes,” said Chen. “That’s something that is not obvious to most people in the public.”



*Free opioid reversal kits at the Clackamas County Jail in Oregon.
(Photo by Ben Botkin/Oregon Capital Chronicle)*

Things are also perplexing in Oregon, where jails are largely ill-equipped to provide addiction treatment services despite regularly housing large numbers of people in desperate need of treatment for serious drug addictions. Mostly, it’s a question of funding, which remains in short supply three years after voters approved a ballot referendum that has so far allocated \$265 million in cannabis revenue to addiction services, [the Oregon Capital Chronicle reported](#).

Jails don’t receive any money from the program, known as [Measure 110](#). Instead, the funding goes toward community-based treatment and harm reduction services that are designed in part to keep drug users out of the criminal justice system entirely. That stipulation leaves jail-based programs at the mercy of state and local government budgets, which must also pick up the tab for inmates’ general medical care. The result is (you guessed it!) a patchy network of care, much of it inconsistent.

A proposed bill would narrow the funding gap by allowing jails to apply for grants to offset the cost of medication treatment, screenings and mobile services. The program, which could allocate as much as \$10 million through June 2025, would be overseen by the state's nine-member Criminal Justice Commission. Broadly, the proposal aims to bolster access for people incarcerated in the state's jails, said state Rep. Pam Marsh, a Democrat and the measure's lead sponsor. But she's also exploring other long-term solutions, like negotiating with federal officials to allow reimbursement for jail-based treatment programs via the state's Medicaid waiver. Typically, inmates are not eligible for coverage.

"Our program is: Let's get things up and running and look for ways to bring in federal funding in an ongoing way," Marsh said.



Lawyerly stroll.

(Photo by Liam DeBonis for Source New Mexico)

State prosecutors in New Mexico would also like some ongoing funding, please and thank you. Specifically, they would like more money than public defenders, because it is way harder to be a prosecutor than a public defender. Frankly, they'd also appreciate it if you'd stop comparing the two, [Source New Mexico reported](#).

“Our justice system requires that the prosecution do more work because we are required to bear the burden of proof beyond a reasonable doubt,” District Attorneys Sam Bregman and Marcus Montoya wrote in [an opinion piece](#) published last week by the Albuquerque Journal. “It is a burden that requires a different type of budget and not simply one that should be equal across the board.”

To bolster their claim, Bregman and Montoya listed, in excruciatingly boring detail, a handful of excruciatingly boring tasks regularly performed by district attorneys. They must provide “notice and assistance to crime victims”! They “often present cases to a grand jury”! Some district attorneys *take calls at night!* Public defenders are not subjected to this “massive amount of workload”!

The piece, which reads mostly like a cautionary tale to anyone who’s ever considered law school, was penned in response to [a Source New Mexico story](#) detailing a 20% budget increase requested by the Law Offices of the Public Defender, which needs nearly 900 additional employees to handle current caseloads. That story, published Nov. 16, doesn’t focus at all on DA salaries, except for one line in a sidebar noting that the budget request includes “\$2.1 million for pay equity and parity with prosecutors and other state attorneys.”



Barbed wire is kind of a public defender, if you don't think about it too much.

(Photo by David McNew/Getty Images)

But that was enough to trigger Bregman and Montoya, who claimed “anyone who read that article could be left with the impression that, somehow, the two budgets should be equal because they perform the same duties — just on different sides of the courtroom.”

“That’s inaccurate,” they continued. “Comparing the two is like comparing apples to oranges.”



Big newsletter day for apples and oranges!
(Photo by Kokhanchikov/Adobe Stock)

On this, they’re correct — the jobs are different, according to Jennifer Burrill, president of the New Mexico Criminal Defense Lawyers Association. (Because: They are literally different jobs.) But that doesn’t make one more difficult than the other, she added.

“I think both of the jobs are hard. They’re both very taxing and stressful on the people in those positions,” Burrill said. “Nobody gets paid enough, and I hope that they’re still on board with the entire system needing funding.”

To be fair, Montoya and Bregman aren’t haters, really — they’re part of the

state's big lawyer team, same as the public defenders. To that end, Bregman told lawmakers last month he hoped they'd "give as much money to the public defenders as they need," a sentiment echoed this week by Montoya.

"When it comes to the budget, the PD's office and the DA's office are in step," Montoya said. "We both recognize they need to get their resources to provide their constitutional obligations to the citizens of New Mexico and defendants here, as do we."

We're all friends here, maybe: [Arkansas Corrections Board hires attorney, approves some new prison beds ... Connecticut's incarcerated seek say in debate over assaults on prison staff ... Pingree among Maine lawmakers asking credit card companies to flag suspicious gun purchases ... Oxford High School shooter sentenced by Michigan judge to life without parole ... Lewd, unconstitutional police training could threaten criminal prosecutions across New Jersey, attorneys warn ... New Orleans teens convicted as adults force transfer of women prisoners to all-male Angola ... Owner of twice-sunken Michigan barge bound over on felony pollution charges ... Inmate sentenced to 40 years for role in South Carolina's 2018 deadly prison riot ... 'Hope for the best': Experience down, turnover up in South Dakota law enforcement ... Why Wyoming sent 240 inmates to a Mississippi prison](#)



State of Our Democracy

Department of Justice Special Counsel Jack Smith on Monday asked the U.S. Supreme Court to decide — quickly — whether Donald Trump is immune from prosecution for his alleged role in interfering with the 2020 election, [our D.C. bureau reported](#). The request would require the high court to bypass a federal appeals court but would allow the federal trial to move forward as scheduled in March, which Smith said was "of imperative public importance."



"Please." — Jack Smith.

(Photo by Chip Somodevilla/Getty Images)

"This case presents a fundamental question at the heart of our democracy: Whether a former President is absolutely immune from federal prosecution for crimes committed while in office," Smith wrote in the court filing.

The court has no obligation to accept the case, though I would wager it probably will, if only for the sake of optics. Rejecting the request would delay the inevitable Supreme Court hearing until the beginning of September, placing the justices — already [under fire](#) for [gestures vaguely](#) generally being [The Worst](#) — in the unenviable position of dealing with a Trump-meddling-with-election-results case during another election in which Trump [is likely](#) to be on the ballot. If the court decides to step in, it could hear arguments before the end of the year.

The request is unusual, but not unprecedented, even in terms of presidential litigation. In 1974, the court expedited a decision in the case against former President Richard Nixon, requiring him to relinquish tape recordings related to the Watergate scandal. He resigned soon after.

Smith's request comes days after a district court judge denied Trump's motion to dismiss the indictment on the grounds of presidential immunity, prompting his attorneys to appeal and request that the case be put on hold.

Gaveled in: [Florida Democrats won't have a vote in presidential primary in '24; what about voters in other states?](#) ... [\(Georgia\) Fulton 19 update: Witness list emerges, flirtation with bond revocation, Trump trial date wrangling](#) ... [Nikki Haley says she and Trump will run a two-way race after Iowa caucuses](#) ... [In Iowa, GOP presidential candidate Vivek Ramaswamy talks about Libertarian past, eminent domain](#) ... [Planned Parenthood backs Crystal Quade with abortion a focus of Missouri governor race](#) ... [Ahead of Biden write-in effort, New Hampshire towns and cities issue calls for more poll workers](#) ... [NASCAR legend Richard Petty endorses Castelli for NC-6](#) ... [Nearing the end of its first year, the Pennsylvania Legislative Latino Caucus sees more work ahead](#) ... [Deadlines loom for South Carolina's presidential primary ballots](#) ... [Tim Dunn, the powerhouse GOP donor, sells his West Texas oil company for \\$12 billion](#) ... [Wisconsin Secretary of State calls for removal of election commissioner who served as fake elector](#)



From The Newsrooms

- [For a while, a series of measures protected renters from Nevada's harsh eviction laws. Not anymore.](#)
- [GOP leaders 'demonize the poor' in Medicaid expansion debate while working Kansans struggle](#)
- [Rosa Parks statue for Alabama State Capitol grounds gets final approval](#)
- [In North Carolina, one man — Gov. Roy Cooper — has the power to empty death row. But will he do it?](#)
- [Despite state law, dozens of West Virginia's public schools haven't numbered windows to help emergency responders](#)



One Last Thing

Did Prince William and Kate Middleton [accidentally photoshop](#) their kid's finger out of their Christmas card, or is the finger just ... bent, in the way that fingers are meant to bend? These are the questions that matter, people. (People did not weigh in, but did dissect the "meaning" of the photo in an [overly detailed analysis](#) that, full disclosure, I did not read, because *oh my god.*)

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