

Webinar Transcript

State Approaches to Juvenile Justice

Hosted by the NGA and NCJA

December, 2018

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Elise Simonsen:

Hello. My name is Elise Simonsen. I am a policy analyst at the National Governors Association Center for Best Practices in the Homeland Security and Public Safety Division. On the Public Safety team, we support two networks of governors' staffs. First, the criminal justice policy advisors are individuals that may be cabinet secretaries, members of the governor's legal team, or policy staff. Every state has a CJPA. Our second network is the Public Safety Consortium. In about 32 states, a governor-appointed cabinet secretary, commissioner, director, or public safety czar is the central authority overseeing an array of public safety functions within the executive branch.

We partner with the National Criminal Justice Association as their members' lead criminal justice agencies in the states, and are typically appointed by a governor and work with the governor's policy advisors or are located in the department of public safety. Today I'll be presenting a webinar on juvenile corrections and state approaches to juvenile corrections. Here at NGA we just want to thank the National Criminal Justice Association and the Bureau of Justice Assistance at DOJ for inviting us to present this webinar.

In this webinar there will be four key themes that are discussed. First we'll go over a historical approach to juvenile justice and juvenile corrections dating back to the 1500s, and then the purpose of the juvenile justice system, then reviewing the present juvenile justice system here in the United States, and then state approaches to community-based alternatives.

Starting with that historical approach, we will discuss the development of the juvenile justice system in the United States. But we'll also cover the treatment in later Middle Ages in England, which led to the development here in the United States for a juvenile justice system, eventually. Just as a history, while not the system today, rather 500 or so years ago, the ages of zero to seven was considered infancy, and individuals were seen as exempt from criminal responsibility during this time. From really age seven to 14, there was more of this gray zone, but it's when an individual would be considered a child.

If suspected of a crime under English common law at this time, the burden of proof was on the state to demonstrate that the child could understand the difference between right and wrong and was capable of understanding their actions. Under English common law as well, there was this concept called *parens patriae*, which is the common law doctrine of the right of the state to intercede and act in the best interest of a child, including when parents were unable or unwilling to provide for the child. In chancery courts, jurisdictions also included child welfare cases and guardianship, including orphans.

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But later in the 1500s, in the late 1500s, Parliament established this concept of bridewells, which were effectively precursors to prisons. These were places for smaller crimes that children would be sent to, and the idea was reform through labor. In the late 1500s, laws were starting to be made that were directed specifically toward children, but besides the chancery court jurisdiction, there was no dedicated system for juveniles as we know today.

Moving into the United States, knowing that that's our background in England, the first juvenile reform establishment was in Manhattan in 1825. Differing from the English models, the New York House of Refuge housed orphans and juvenile offenders for petty crimes. Sentences or commitments were indefinite, and this indeterminate nature allowed for a great deal of latitude in treatment. Children were highly disciplined and required to work at jobs, which supported the operating expenses for the facility. This style actually drew praises from famous figures, such as Dorothy Dix to Charles Dickens.

In the case highlighted here on the slide, *Ex parte Crouse*, a mother sent away their child, who was placed in a house of refuge against the father's wishes. At the time, the Pennsylvania Supreme Court applied the common law doctrine of *parens patriae* to claim that the state has an obligation to protect her if the parents were unable to. This meant really that parental control was not an absolute right, and that the state had the ability to intercede. This case expanded not only *parens patriae*, but was later used to support the expansion of juvenile court powers.

Continuing with juvenile justice or juvenile courts in the United States, around the late 1800s, there was more support for a separate system for juveniles within the justice system. New York and Massachusetts had already passed laws for separate trials for juveniles, but in 1899, that's when the first separate state system was created. That was in Cook County, Illinois. Originally this system was set up on the basis of rehabilitation. These courts were intentional in their shift from punishment to rehabilitation. Now all states and DC have juvenile justice systems.

Within our juvenile justice systems at the state level, you'll see a focus in softer terminology within the JJ systems. The federal government, though, in recent years has provided suggestions on language to use and language to avoid, but states maintain and apply terminology as they see fit. Some of those examples are here presented on the slide. Instead of "taken under arrest" or "placed under arrest", you'll see terms like "taken into custody". These are just intended to be a softer nature with juvenile aged offenders.

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Shifting next, for the next key theme we'll be discussing the purpose of a juvenile justice system. All right. In this purpose of a juvenile justice system, there's really three prongs. As I mentioned, it was set up on the basis of rehabilitation. This was to be a balanced approach to correction, in which there's protection of the community, holding the youth accountable, and also providing treatment and positive role models for juveniles. The pendulum has swung since this initial model of rehabilitation for juvenile justice was set up, as we saw throughout the 1900s, but we're really seeing a shift back to this more balanced approach for juveniles.

All right. There are some unique elements of a juvenile justice system that I did want to highlight. There are some offense that can only be committed by juveniles or minors. These are known as status offenses. What are some examples of this? These are crimes like drinking. Of course, if the legal limit or age is 21, you can only do that until 21, which of course would affect predominately juveniles. Smoking, most states age 18. Gambling, curfew, and so on. Those are just some examples of what would be considered a status offense.

States also vary in their classification, but there are known classifications of CHINS and PINS, and what that means is child in need of supervision or person in need of supervision. These labels are used in some states to differentiate status and delinquent offenders. Some states may also use CHINS or PINS petitions as civil proceedings, and these proceedings can be filed when there's a serious conflict that has occurred in the family, and they would discuss this between the family and the parent for a potential out-of-home placement for a child. You can't just stop parenting. This would be a system that would go through the courts, and it falls within the juvenile jurisdiction.

Now getting into, now that we have definition from England to the US, and some unique elements of the juvenile justice system and its purpose, talking about really present day juvenile justice systems, [inaudible 00:10:09] the system. I wanted to highlight some landmark juvenile justice cases in the past 50 years or so. There have been several cases that really have shaped our current juvenile justice system. The first case here, in Kent, Kent is a crucial example in which a case was waived to the adult court, and I'll be touching on juvenile waiver in a few slides. In this case, SCOTUS ruled that juveniles should receive due process, just as adults do, which really set up for future cases that defined the rights of juveniles and what it means to have that due process clause applied to juveniles.

The next case listed here, In re Gault, extended Kent's ruling by providing five basic rights to juveniles through due process rights. First, that's the right to proper notification of charges, the right to legal counsel, the right to confront

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witnesses, the right to privilege against self-incrimination, and the right to appellate review. Prior to this case, although some states had been standing up juvenile justice systems for about 60, 70 years at this point, we hadn't extended all these due process rights that are available in the adult system to juveniles yet, until this case.

And then moving to some more recent cases that revolve around really age for a juvenile offender with a death penalty or life without parole, that's what these last few cases are. In *Simmons*, we have ... Sorry, I had *Sanford* here. In *Sanford*, which should be on the slide, we see that the death penalty was ruled unconstitutional for 16- and 17-year-old juveniles, but 16 years later, the Court applied the evolving standards of decency in *Roper*. In that *Roper* case, we see that the death penalty was then ruled unconstitutional for juveniles.

Then within the past decade, the Court further established that juveniles are different than adults when considering age. In *Graham*, SCOTUS ruled that life without parole for a juvenile in a non-homicide crime is unconstitutional. This recognizes that juveniles are amenable to rehabilitation. Social and medical sciences joined in their amicus briefs to SCOTUS, condoning life without parole for non-homicide crimes, as the juvenile brain is not fully developed and matured. Further, identity is not fully formed, so it's not just quote-unquote "bad character", which supports really the idea for rehabilitation. It's not ingrained, they're not so far gone, if you will. That's what the ruling, based in social and medical sciences in those amicus briefs, and SCOTUS was able to use those briefs to support their decision within *Graham v. Florida*.

And then finally, to highlight *Miller*, *Miller* was the most recent landmark case, which eliminated life without the possibility of parole for juveniles, but also noted the difference between kids and adults in why sentencing consideration should be different.

Those most recent cases really led to this question of raising the age. With increased understanding of the brain, and more specifically the juvenile brain, since *Roper* and *Graham* decisions, and also *Miller v. Alabama*, many states have moved the age of jurisdiction back up to age 18. Previously, some states were automatically moving 16- and 17-year-olds to the adult system. However, raise the age legislation, with this legislation, only four states still have that age below 18. And there's actually been some debate in academia on how high the age should go. Some bio-social criminologists have argued it should go even up to age 24, as the prefrontal cortex, which is the subsection of the brain that controls judgment, isn't fully developed until the mid-20s. You have a picture on the screen here, which shows the various mappings and thought regions of the

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brain, if you will, mapping the cortical development of the brain through the 20s.

Beyond neurobiological evidence of structural changes in the brain, other biological considerations include the role of puberty and teenage development. The hormonal changes and influxes promote reckless or risk-seeking behaviors; however, as mentioned, the area of the brain that controls judgment isn't fully formed yet by that age. So beyond that, with puberty, there is an element of social-emotional feeling and physical maturity that occurs. It's hypothesized that a maturity gap exists, in that teenagers feel more mature than they are, but they aren't fully socially mature yet, nor is their brain.

Given SCOTUS's decision on juveniles and neurobiological research on youth and amenability to change, there should be certain considerations for juveniles. Within the past decade, we really have seen some states that have re-conceptualized youth offenders and raised the age for youth offending. It's really based in this research. But there are some youths that will be transferred to the adult system.

That's where juvenile waiver comes in. Juvenile waiver is when juveniles are transferred to adult court, and they lose their status as a minor. They're legally culpable for their crimes, and they're subject to criminal prosecution and punishment as an adult. States vary in the age in which juveniles can be waived, as I was discussing before with our raise the age legislation. Some ages depend by type of crime, which you can see in this graphic, but approximately 1% of cases, again, which varies by age, are waived to the adult court. This is generally reserved for the most serious offenses, but it can also be for repeat offenders, so if they've come in contact with the JJ system just so many times, and it's felt that all resources have been exhausted within the JJ system, that's when a waiver may occur as well.

There are three ways juveniles can be waived, and state laws can have more than one form, which can be seen on this graphic in the slide. It's in the color coding. Juvenile judicial waiver, there are various roles that a judge can play within this type of waiver. A judge can question the juvenile to determine if the juvenile should be waived, and 48 states use this. In some states, there are mandatory waivers, but the judge decides whether the mandatory minimums for that waiver are met. There are also some states that have preemptive waivers, where the burden of proof is on the juvenile, and they must show that they're amenable to treatment and shouldn't be waived.

And then the purple you see on the screen here, they are states that only have judicial-controlled waiver. Because not all cases start in a juvenile court, a

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petition is filed, asking the judge to waive juvenile court jurisdiction. Judges can deny this waiver, though.

In the next type of waiver, prosecutorial discretion, in prosecutorial waivers, 14 states and DC have this, prosecutors can file directly with the adult court and bypass the juvenile system. This occurs when a case has both juvenile and adult jurisdiction, based on the crime. These states allow the prosecutor to make the decision of where to file.

The final type of waiver we'll be discussing is statutory exclusion. 31 states have automatic waivers, and certain serious offenses and certain ages means that they can be waived automatically. It's in statute, if you commit X crime, and you at least this age, you're automatically waived. Again, this is going to vary greatly by state.

All right. In the final section for today, we'll be discussing the states' approaches to community-based alternatives to incarceration. While we discuss community-based alternatives, I did want to highlight some states that are rethinking correctional placement. First, Georgia is using risk to confine just medium- and high-risk individuals, and these efforts of using risk-based assessment have cut the number of youths in confinement by 17%. It also cut those awaiting placement by more than half, 51%, and have reduced the overall commitments by 31%. That's just Georgia using their risk assessment tool to consider the number of youths in confinement.

Next, there's Virginia. Virginia has closed an institutional facility and focused on local centers to provide tailored service and programs. Alabama, their youths who commit status offenses, the types of offenses that can only be committed by juveniles, can no longer be placed in a correctional facility if they've only committed a status offense. Beyond limiting correctional placement, there is also positive youth development. Oregon has focused on a cultural shift within their juvenile facilities, promoting security and safety, while developing caring and supportive relationships, accountability, participation, and a community connection.

We have seen states, there have been changes in their facilities, but less than a quarter of adjudicated juveniles go to residential facilities, so there are alternative options, which could be deferred adjudication, formal probation, ISP, community service, or community-based programming. Some states have turned to various programs that are certified or that are evidence-based interventions. Some states have turned to the Blueprints program, and Blueprints for Healthy Youth Development focuses on identifying evidence-based programs that are either promising or model programs. It's an inventory

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of programs that can be a really great resource for states interested in positive youth development.

Additionally, outside of just Blueprints, Washington has partnered with Washington State's Institute of Public Policy to evaluate juvenile justice interventions for recidivism outcomes, through a cost-benefit analysis. Those are just some evidenced-based interventions and a place states can look to, a website they can go as a resource, or a state example. Additionally, Utah has passed legislation to expand and strengthen early intervention and diversion programs. I just wanted to highlight some of that state care. There's many other states that we can list between correctional placement and community-based alternatives. We're seeing a lot of great work in the states for these areas, but for the purposes of time, just wanted to highlight those few states.

Thank you so much for joining this webinar on juvenile justice and some state approaches.