



Justice Counts

ACTIONABLE DATA TO BOLSTER PUBLIC SAFETY



Policymaker's Use of Data to Inform Criminal Justice Decisions

A Briefing from Justice Counts Partner, the National Conference of State Legislatures



NATIONAL CONFERENCE OF STATE LEGISLATURES

INTRODUCTION

Criminal justice reform efforts are underway across the country, and good data are key to their success. Legislatures are examining every part of the system. They are seeking to improve pretrial practices, refine sentencing laws, and align corrections and supervision practices with evidence-based principles. Using data, lawmakers are learning more about factors driving people's involvement in the criminal justice system, population trends, and operational costs. They are seeing where inequities exist in the system and how to identify who is incarcerated, how long they have been in, and whether they should be there in the first place.

Despite the momentum of reform efforts and the appetite for data, state legislators face a variety of challenges that hinder access to, and effective use of, data. To learn more about these barriers and opportunities for addressing

them, the National Conference of State Legislatures (NCSL) analyzed an array of resources, including NCSL interviews and meeting transcripts, legislator and legislative staff requests for research, legislator social media communications, and state legislative actions. When quotations are used, legislator names, states, and other identifying information have been removed, unless they have been cleared and permitted by legislators. NCSL prepared this brief to share policymaker insights as part of the [Justice Counts](#) initiative, a project of the U.S. DOJ's Office of Justice Programs, Bureau of Justice Assistance (BJA), which is designed to help policymakers make better decisions with criminal justice information that is more timely, less disjointed, and as useful as possible. The initiative is led by BJA and The Council of State Governments (CSG) Justice Center in partnership with 21 national organizations.

Justice Counts Partners

- American Jail Association
- American Probation and Parole Association
- The Council of State Governments Justice Center
- Correctional Leaders Association CNA
- International Association of Chiefs of Police
- Justice Management Institute Measures for Justice
- National Association of Counties Research Foundation
- National Association of State Budget Officers
- National Association of State Mental Health Program Directors NRI
- National Criminal Justice Association
- National Center for State Courts
- National Conference of State Legislatures
- National District Attorneys Association
- National Governors Association
- National Legal Aid & Defender Association
- National Sheriffs' Association
- RAND Corporation
- Recidiviz
- University of Cincinnati Corrections Institute
- U.S. Department of Justice's Office of Justice Programs' Bureau of Justice Assistance

OVERVIEW: STATE LEGISLATURES' USE OF DATA TO GUIDE CRIMINAL JUSTICE DECISIONS

Using data to inform criminal justice policy decisions gained momentum in the early 2010s with the Justice Reinvestment Initiative (JRI), a public-private partnership between [BJA](#) and [The Pew Charitable Trusts](#) along with national partners to provide technical assistance, coordination, and program assessment. This [initiative](#) uses a data-driven process to help states analyze the factors driving criminal justice trends and costs, develop and adopt policies addressing these factors, and measure the impact of policy changes.

To date, approximately 30 states have adopted laws using this process. One was Mississippi, which enacted JRI-derived laws in both 2015 and 2019. [Senator Briggs](#)

[Hopson](#) (R) [said](#) the measures were successful because they relied on data rather than emotion. “We’ve got the evidence to support what we’ve done in Mississippi,” he said. “It has been critical to maintaining the positive momentum.”

In addition, as [described](#) in a 2020 NCSL State Legislatures magazine article, legislatures are taking up a wide range of strategies to support data-driven reforms, including adopting online dashboards; tracking performance measures; collecting local data; and partnering with academic researchers and other expert organizations to advance data-driven decisions. These actions are discussed in detail later in this brief.

LEGISLATIVE CONTEXT

The state legislative environment is fast-paced and intense. Thirty-nine states conduct their work within a certain time frame dictated by statute or constitution, with only 11 states allowed to be in session year-round. Within a regular legislative session, individual legislators consider hundreds of bills that cover many areas of state government. Demands on legislators’ time are great, and decisions on public safety and criminal justice are but one slice of a policymaker’s legislative and other responsibilities.

Legislatures are organized by committees and governed by a set of rules and procedures that direct the process in the most efficient manner. Legislators and staff benefit from information and assistance that reflects understanding of, and deference to, the legislative process. Informational needs of state legislatures also are affected by turnover in membership. Nearly 80 percent of legislators—5,876 people—were up for election in 2020. Using recent elections as a guide, about one-quarter of state legislative seats will be held by new legislators for the January 2021 biennium. With new legislative members and leaders come both new informational needs and policy opportunities.

KEY CHALLENGES AND BARRIERS TO ACCESSING AND USING CRIMINAL JUSTICE DATA

When it comes to choosing which programs to fund or policies to enact, lawmakers do not always have up-to-date or reliable data at the ready to inform their decisions. NCSL analyzed state legislative actions, legislators’ remarks and communications, and other sources to identify the following five challenges and barriers that hinder legislators’ use of data to guide criminal justice policy decisions.

1. Lack of high-quality, comparable, and relevant data.

Legislators depend on access to reliable, digestible, and comparable data to guide a wide range of budget and policy decisions. However, obtaining such data about the criminal justice system is a challenge, largely due to the fragmented nature of the system in most

states. Data quality challenges also impact the ability of legislative or agency staff to create accurate financial impact reports that can help to inform decisions, compounding the difficulty of forecasting criminal justice costs and populations. States often lack uniform, comparable criminal justice data due to several factors, including differences in what information is collected by local-level agencies, varying definitions of key terms, and technological barriers that inhibit effective release or sharing of data.

Core functions of the U.S. justice system—policing, prosecuting, and jailing—are commonly funded and performed by municipal and county governments. Data generated by these local agencies can be difficult to obtain and the data points often differ significantly, making it difficult to compare from one jurisdiction to

another.

Legislators expressed the difficulty of making decisions without access to reliable data. When Utah began reform efforts years ago, then-Utah Representative Eric Hutchings (R) [told](#) NCSL that “it was shocking how precious little data we had.” While certain data existed, such as how many Utahns were incarcerated and how the numbers were trending, he lacked information about essential questions such as who went to prison and why. Recognizing the significant public investments, Hutchings added that “it was distressing to realize how little we know about what we were doing and why we were doing it.”

Legislators have cited the need for accurate cost data to help inform policy decisions and priorities. According to one legislator at NCSL’s 2021 data roundtable meeting, “The number one thing on my wish list right now is to try and figure out if we’re correctly allocating taxpayer dollars.”

Others emphasized the need for digestible and actionable data. They stressed the importance of communicating data clearly by distilling complex information for policy decisions. Policymakers favor concise and visual data presentations that are easy to understand and relevant to core policy objectives. One legislator offered a concrete example of how a simple graphic told a compelling story about who went to prison and why. “The data rolled into one pie chart that drove our entire criminal justice reform package,” they explained. “Because of that simple, original pie chart, we are so far ahead of our starting point.”

2. Lack of timely and responsive data when they are most needed.

In recent NCSL roundtables and interviews, legislators reinforced the importance of the adage “don’t let the perfect be the enemy of the good.” While policymakers require the right information, it is equally important to have it at the right time. State agencies often release data on an annual basis, which often may not align with the timeline of legislative session when policymakers are making decisions. During NCSL’s 2021 data roundtable meeting, for example, one legislator explained that “a timely turnaround [of data from state agencies], even if it’s not perfect, is going to give us something that we just don’t have access to now.”

Policymakers also rely on performance tracking and reporting over time to assess whether funded programs are achieving their desired results and to identify

SNAPSHOT OF WHAT LEGISLATORS AND LEGISLATIVE STAFF WANT TO KNOW

In the last year, legislators and legislative staff have reached out to NCSL for the following types of data requests:

- Percentage of people in a state with drug offense charges on their criminal record
- Number of people sentenced for specific types of crimes, such as felony murder
- Crime statistics, including number committed, average sentence for convictions, racial breakdown of those convicted
- Number of people incarcerated annually, amount spent on incarceration annually, recidivism rates and cost of recidivism, demographics of incarcerated population
- Laws requiring courts to compile and publish racial and demographic data for all offenses
- Racial and correctional impact statements
- Information about data sharing systems and privacy concerns
- Correctional officer vacancy rates
- Definition of recidivism

opportunities for improvement. Once a program is funded or legislation has been enacted, policymakers do not always receive data or performance reporting that shows how well the program is working. In addition to lacking data needed to review program results, legislators also have concerns about using and interpreting data. After legislating data collection requirements, one legislator noted concerns about the use of the data, saying, “It’s important not only that we collect the data, but we make sure the data is utilized and we get the data we need to make the proper decisions as we go forward.”

3. Need for context and return-on-investment data to help prioritize resource allocations.

In recent meetings, legislators have expressed a need for analytical tools that can help them understand the impact of policy decisions and decide which investments or decisions are most likely to help achieve specific policy goals. Legislators lack contextual data that can help inform decisions about rebalancing public safety priorities. Beyond the fundamental need for data points about numbers of arrests or prison or jail populations, policymakers say they lack background information and perspective about what data points mean and what connection they have to policy levers, how they compare with prior years or with other jurisdictions, and whether there have been notable changes and why.

Case in point: former Utah Representative Hutchings [told NCSL](#) that analysis of the reasons behind prison admissions revealed that two-thirds of individuals who were incarcerated in the prior year had violated parole or probation. According to Hutchings, previously, “We had never really dug into the why” behind those admissions.

Legislators are also seeking data and resources that can help them realign their policies to focus dollars on the highest public safety return on investment. They expressed interest in interactive, diagnostic tools that can help them understand how they can make policies that achieve the greatest impact.

TACKLING BARRIERS: STATE ACTIONS TO INTEGRATE DATA INTO POLICY DECISIONS

NCSL’s analysis identified several key strategies states have used to address barriers and facilitate data-driven decisions. Examples of these strategies are outlined below.

In one policymaker roundtable discussion, legislators mentioned the need for customized policy analyses, such as those that model the cost and human impacts of specific policies. Examples include policy impact memos and tools, such as the CSG Justice Center’s [cost calculator](#), which shows how supervision revocations can affect state budgets, or [this one](#) from Recidiviz, which analyzed the ramifications of reducing caps on felony probation sentences in Michigan.

4. Data silos and lack of data sharing.

Legislators report that data silos—where individual state or local agencies maintain their own data systems—and lack of integration impede policy decisions and broad reform efforts. One legislator at NCSL’s Justice Reinvestment and sentencing reform roundtable explained that “there’s a real fear of sharing data between parole, pardon, legislature, the ombudsman, and people in the governor’s office.” They added that “silo systems don’t work in prison reform.”

Other legislators have reinforced this theme in various NCSL meetings. Prior to one state’s recent reform efforts, a legislator explained that “there was no system, we didn’t have the conglomerate of data together, and they weren’t sharing information.” Lack of coordination made it difficult to identify “where the trigger points were” and where policy changes could help.

5. Difficulty obtaining stakeholder engagement and buy-in.

Stakeholder engagement is key to many states’ reforms, but several legislators have expressed that bringing the right stakeholders to the table and keeping them engaged can be a challenge. One legislator urged caution when bringing in stakeholders, reminding others, “Don’t just ask for their data, and don’t just tell them you want to look at their programs, because they’ll see that as a threat.” In addition to bringing in stakeholders early on, they stressed the importance of keeping them engaged as policies are implemented and refined.

1. Develop data and performance measurement capacity.

Several states have taken steps to increase the

uniformity and comparability of criminal justice data. Colorado and Connecticut both enacted legislation in 2019 requiring that certain local data be collected. [Colorado's law](#) focused on jails and jail populations, and [Connecticut's](#) on prosecutorial decisions. These approaches reflect lawmakers' interest in knowing whether specific policy changes are working. For example:

- South Dakota lawmakers created a council to track the progress of the [Public Safety Improvement Act](#), which they authorized in 2013. The act required the collection of performance data for provisions it created, such as earned discharge credits, which allow people on probation and parole who comply with their supervision to earn time off their sentences. In the law's first five years, people on probation and parole have earned credits taking 7,500 years and more than 9,500 years, respectively, off their sentences.

2. Engage stakeholders and partner with experts.

As described above, combining data-driven reforms with committed stakeholder engagement is a key factor in policy development and sustaining reforms over time. By bringing stakeholders to the table early in the process, one legislator at NCSL's data roundtable reflected that "by the time the legislation was introduced, we didn't have associations out there screaming about what we were doing."

Legislators also cited engagement with experts as a key facilitating factor for data-driven reforms. Because legislators often do not have time or resources to conduct their own research, partnering with researchers, nonprofit organizations, and philanthropies can extend government's capacity. Representative Hutchings said, "Having someone to come in and help us to gather that data and put it in an easily recognizable format has been critical." Because of partnerships with national organizations, such as the CSG Justice Center and NCSL, and the state's institutions of higher education, he explained, "We have made more progress in the last decade than I think we've made in the last 100 years in criminal justice."

Higher education institutions can lend students, professors, and other resources to analyze whether reforms are responsive to needs identified in data. Clemson University's Institute for Economic and Community Development, which did an [economic impact study](#) on the first three years of South Carolina's

2010 reform law, had the expertise to perform detailed research, according to South Carolina Senator Gerald Malloy (D). "The study dug deep to find how many children [of incarcerated parents] were not placed into foster care," Malloy said. "That's what I call a victory lap."

Universities also can help set up data systems. The City University of New York's [Institute for State and Local Government](#) is working in 20 cities and counties that are part of the [John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge](#). The institute has helped cities and towns create and track performance measures related to the goals of the foundation's challenge, namely reducing jail populations and the disparities within them.

3. Fund programs, policies, and practices that are seeing success and backed by research.

As states build their data capacity, they are looking for ways to invest in programs and services that have been proven effective by rigorous research. Customized and real-time research resources, including policy impact memos and timely, accessible data, help leaders make informed budget and policy decisions that produce better outcomes and are a more efficient use of public resources.

For example, as part of their partnership with the [Pew Results First Initiative](#), the Iowa Department of Corrections (DOC) inventoried current programs, collected data on the evidence of effectiveness, and used research studies to categorize programs based on their likelihood of reducing recidivism. As a result, the DOC shifted resources to proven programs that support the department's goals.

4. Display data in a way that can guide policy decisions.

Using data and evidence to inform policy decisions can help policymakers invest wisely and achieve meaningful results. To reach their full potential, data must be communicated clearly, and research findings must be accessible and meaningful to policymakers and address key policy objectives.

To share the right information at the right time in the decision-making process, many states have taken steps to deliver data dashboards that communicate timely and actionable data. For example, after the [Oregon](#)

[Legislative Assembly](#) passed reforms in 2013, lawmakers wanted a way to monitor the changes and their effects on the system. The state’s Criminal Justice Commission created online dashboards to graphically display measures such as prison population, jail and community supervision populations, prison composition, crime and recidivism rates, and corrections spending.

[Senator Floyd Prozanski](#) (D) [explained](#) to NCSL that he watches the measures closely. “If we start seeing

numbers not hitting specific targets,” he said, “then we can start looking at why and getting into underlying factors that could be affecting the situation.” After data revealed a small population was cycling in and out of local jails and emergency rooms, for example, the legislature responded during the 2019 session with the Improving People’s Access to Community-based Treatment, Supports, and Services program, which was the result of the state’s JRI project supported by BJA and The Pew Charitable Trusts.

CONCLUSION

Policymakers need timely and meaningful criminal justice data to help guide decisions. The work of Justice Counts will address many of the challenges noted above, answer many of the questions policymakers have about the criminal justice system, and help to drive data-led decisions.

Data-driven policymaking can help stakeholders across government allocate resources to programs that are effective, promote innovation, and build and sustain a culture of improvement. Having quality, timely

data enables conversations to identify root causes of problems and develop evidence-based solutions. Policymakers have told NCSL that focusing on data can reduce partisanship, promote stakeholder buy-in, and ultimately guide better decisions that are likely to improve lives. As one legislator put it, “People now have the mindset that what we do has to be based on research. To continue any of these changes, we will need good research to back them up and cooperative partners to help us gather the data.”



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About Justice Counts

Justice Counts is a national initiative designed to help policymakers make better-informed decisions with criminal justice data. Launched in 2020 by the U.S. DOJ’s Office of Justice Programs, Bureau of Justice Assistance, the initiative brings together an unprecedented coalition of state and local leaders who are working to enhance policymaking by ensuring that criminal justice data is more timely, less disjointed, and as useful as possible.

[Visit justice-counts.org to learn more.](https://justice-counts.org)

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