



Prosecutor Perspectives on Juvenile Justice

Attorneys from 3 states discuss recent policy reforms

Overview

Prosecutors serve on the front lines of the justice system, holding offenders accountable for their actions. Cases involving juvenile offenders present prosecutors with a unique set of challenges and opportunities.

In recent years, a number of states have made policy changes to improve outcomes for youth offenders, and prosecutors have been important players in the deliberations. The Pew Charitable Trusts' public safety performance project interviewed three elected prosecuting attorneys about their involvement in their states' juvenile justice reforms.

The Prosecutors



Steve Gold
Kentucky



Mark Vargo
South Dakota



Mitch Roth
Hawaii

Q: What motivated you to get involved in juvenile justice reform in your state?

Roth: Our office started working on juvenile justice reform in the late 1990s, so this concept was nothing new for us. My predecessor had a passion for helping at-risk youth and really changed the way we do things, with a focus on trying to solve problems rather than just locking people up. I was a community-oriented prosecutor, so I continued that approach. There's a Frederick Douglass quote we modified that sort of sums it up: It's far easier to build strong youth than it is to fix broken adults.



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Mitch Roth, *prosecuting attorney, Hawaii County, Hawaii*

Gold: Prosecutors in Kentucky rarely get involved in policy, because we have a healthy deference to the Legislature and its role. But this process had the potential to institutionalize changes that could make our community safer, so we definitely wanted to be involved in that. That's another way of saying that if we didn't have a role in the reform effort, we'd have to deal with the effects anyway, so it made sense to have a say. More personally, my interest comes from having a passion for my job and for doing it right, which I believe to be seeking justice and making my county a safer place to live and grow up.

Vargo: The only thing worse than new legislation is new legislation that you don't have a hand in forming, so it wasn't a difficult decision to get involved. It's always better to have a seat at the table. And honestly, it was not so much a motivation as it was a protective mechanism. We had adult criminal justice reform three years earlier in our state, and some of what passed didn't leave the prosecutors very pleased. So even though we had a seat at the table for the adult reform process, I was still a bit hesitant in terms of trusting where the juvenile initiative would lead and wanted to make sure we were involved.

Hawaii

In 2013, taxpayers spent about \$200,000 for each juvenile offender committed to the Hawaii Youth Correctional Facility, but the state still struggled to control recidivism. Three in 4 youth were readjudicated as delinquent or convicted of new crimes as adults within three years of their release.

In a review of the state's juvenile justice system, the Hawaii Juvenile Justice Working Group found that from 2004 to 2013, commitments to youth facilities declined by 41 percent, but the average length of stay nearly tripled, increasing from 2.5 months to 7.2 months. It also found that a greater proportion of adjudicated new offenses in 2013 were misdemeanors (61 percent, up from 47 percent in 2004), and nearly half of committed youth had no prior felony record. Forty-one percent of commitments resulted from probation violations or revocations. The working group also determined that much of the state lacked effective community-based alternatives to incarceration, leaving courts with few options. Based on its findings, the working group proposed that the state decrease the use of secure confinement for lower-level offenders, increase community-based options, and strengthen probation supervision.

Hawaii's Legislature accepted the recommendations by unanimously passing House Bill 2490, which then-Governor Neil Abercrombie (D) signed into law on July 2, 2014. The law is expected to reduce the correctional facility population by 60 percent, enable the closure of two facilities on the campus, and save taxpayers \$11 million by 2019. It directs those savings into community-based alternatives and provides an upfront investment of \$1.26 million, including funds for mental health and substance abuse treatment.

Q: What were the major juvenile justice issues facing your state when the reform effort began?

Vargo: One serious challenge was the difficulty of providing rehabilitative services in communities. We are so rural, so widely dispersed in South Dakota, that when you're trying to treat a child, your options are severely limited, and some smaller communities have virtually nothing they can do with juveniles other than send them to the Department of Corrections. So we end up taking kids away from their families and putting them into a Department of Corrections bed or some kind of residential youth facility, many of which are very far from the home. And then after a period of time, we send them back to the home environment, which is completely unchanged. So even if you've made progress with the child, backsliding is almost inevitable. They end up going back to doing what they were doing before. We were also spending a lot of money and not achieving great results. I'm not as worried about the expense as I am about the outcome. And if we've had a chance to deal with a kid intensively and that kid comes back to us as an adult, then that is absolutely a failure.

Roth: We had large numbers of our kids going through the juvenile justice system only to eventually end up in the adult correctional system. Nobody was happy about that, and we realized that if we kept doing the same thing, then we were going to keep getting the same results. We also had a real shortage of community services for youth, like mental health treatment, substance abuse programs, and other interventions. This meant kids weren't getting help early when their behaviors could be addressed more successfully. In many communities, judges also had few options, so they relied heavily on incarceration, even if that wasn't the best response for certain kids.

Gold: I think one of the biggest drivers pushing Kentucky toward reform was that we were second or third among states in the incarceration of status offenders [those whose offenses would not be crimes if committed by adults]. That means we had a lot of what I'll call harmless kids, for lack of a better word, ending up in court and then being placed out of home. There were some successful truancy diversion programs around the state, but we also had many places where the theory was, get them into court and let the judge steer them into staying in school—basically the “scared straight” approach. The problem is, while that approach may feel good for some adults, it's really contrary to what social science says. Beyond that, we also had a serious lack of risk and need assessment on the front end of our system, so we had very little information about how best to handle incoming kids.

Q: What was the most important part of the prosecuting attorneys' role in the reform effort?

Gold: Fortunately I had already been involved in some pretty radical reform of our juvenile system in my county, so I'd like to think that experience had a positive influence on what we came up with statewide. Locally, we got started in 2010 after the Annie E. Casey Foundation found that Henderson County had the highest per-capita juvenile offense rate in Kentucky. Basically we were throwing the book at kids, and it just wasn't working. So after gathering stakeholders together, collecting data, and asking for help from anybody who would listen, we decided to put a heavy focus on early interventions—especially in the schools—to address troubling behaviors even before a crime has been committed. By assessing the risk and needs of these youth very early, and then front-loading services to them, we've seen a nearly 70 percent decrease in referrals to court over the past three years.

Kentucky

More than half of the Kentucky Department of Juvenile Justice's \$102 million budget went toward residential correctional facilities in 2013, costing taxpayers an estimated \$96,000 per committed youth.

In an evaluation of the state's juvenile justice system, the Kentucky Task Force on the Unified Juvenile Code found that secure facilities primarily housed lower-level offenders. Juveniles who had been committed for misdemeanors or for violating the terms of community supervision accounted for 55 percent of the out-of-home population in 2012, up from 39 percent in 2002. During the same period, the average length of stay in residential facilities increased sharply for these lower-level offenders. Based on these findings, the task force recommended that Kentucky focus its costliest sanctions on the most serious offenders by restricting the commitment of lower-level youth, expanding and strengthening evidence-based programs, authorizing a fiscal incentive program to help counties keep youth in local programs, and establishing an oversight council to monitor the reforms.

Kentucky's Legislature approved the task force's plan in Senate Bill 200, which passed both houses and was signed into law by Governor Steve Beshear (D) on April 25, 2014. The law is projected to reduce residential placement by more than a third while saving taxpayers as much as \$24 million over five years. The legislation also allows for the savings to be invested in community-based programs to improve outcomes for children and families.

Vargo: I think one role we shared with the courts was as a counterbalance to the fiscal focus. I understand we certainly don't have unlimited budgets in this state, but I think our job was to say, "Wait a minute, outcomes are still the most important thing here," and to resist the reflexive pressure to drive the number of cases in the system down as an end in and of itself. One example was the policy regarding the list of offenses that can get you sent to the Department of Corrections. Our position was that you can't just rely on a checklist of offenses, and we wanted judges to retain some authority. So we ended up with an escape valve that allows the court to order a commitment if the child poses a significant risk of physical harm to another person.

Roth: I think our approach was quite different than the typical prosecutor's office in the nation. Beginning with my predecessor, we had already been leading efforts on our island to keep kids out of the juvenile justice system by applying for grants, working with the schools, and doing whatever we could to ensure that kids will succeed rather than fail in life. This statewide reform effort fit in with that vision, and I think the relationships we had built with stakeholders through our earlier work were essential in getting our bill passed.

Q: What policy reforms were you advancing and why?

Gold: The big one for me was ensuring that kids receive a validated risk and needs assessment at the first contact point with the Kentucky system, well before they get to court. Even if the case ends up going to court, this assessment helps prosecutors, defense attorneys, judges, and everyone else understand what kind of youth we're dealing with. Is this a child in some sort of mental health distress? Are there substance abuse issues? Where do



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Steve Gold, *county attorney, Henderson County, Kentucky*

they fit on the continuum? Before this reform, we often had to go on gut feelings as we tried to figure out what sort of interventions each youth needed, and we got a lot of kids in court who shouldn't have been there at all. The other thing I pushed for was the requirement that interventions be evidence-based. Before our reforms, there was a lack of confidence that certain interventions were succeeding, so it was perceived that we could often do better by sending kids to court. That's changing now.

Roth: The biggest problem everybody faced was a lack of services and alternatives for dealing with kids, because that meant judges were left with limited options, and often incarceration seemed like the only good choice. It costs about \$199,000 a year to incarcerate a juvenile in Hawaii, and if you looked at the number of kids who came back to us either as juveniles or adults, we were definitely not getting a good bang for our buck. So our goal was to develop more treatment options and other tools to help us deal more effectively and creatively with kids before they got deeper into the system.

Vargo: One of our biggest goals was just to get more options for handling kids closer to home, which is a huge challenge in a rural state. There are county seats in this state where the population is between 500 and 1,000, so you can't have family-focused therapy and other outpatient services in every town. I'm hopeful that the money that's supposed to flow from these reforms will help counties create diversion programs so we can target kids on the very lowest level of criminality and get to them early before they go too far down the wrong road. Based on my experience in our county, we also pushed for the creation of teams that include the prosecution, the defense, and a variety of other players, like school personnel and probation representatives, and meet ahead of sentencing to decide what we can do with a certain kid short of detention. Sometimes there's nothing, but other times if you include the right people on that team, you get more ideas allowing you to treat more kids closer to home. I advocated for that.

Q: What efforts are being made to educate prosecuting attorneys, who will be crucial to successful implementation, about the changes in the system?

Vargo: We are using our normal meetings to accomplish that. I gave a presentation to the State Bar, and we added a juvenile justice component to the State Bar curriculum as well. I also gave a presentation to the State's Attorneys Association at our annual meeting. In my corner of the state, we have prosecutor training sessions once a month where we cover a variety

of topics, so we went over this subject there, too. And honestly, in South Dakota we're small enough that most of us know each other, so I imagine I'll get a lot of calls on this when the implementation dates come around. [The next key implementation date is Jan. 1, 2016.]



What we want above all is to not see these kids back in the system again, ideally not as juveniles, but definitely not as adults."

Mark Vargo, state's attorney, Pennington County, South Dakota

Roth: We've done a lot of training of prosecutors at regularly scheduled meetings, but we have much more to do. One area we've particularly focused on because of its importance is the use of assessment tools. We had one of our judges, one of our public defenders, one of our prosecutors, and a representative from probation conduct a daylong training for attorneys on the use of the assessment tools. We've also been speaking and spreading the word in the community and using the partnerships we built through the reform process to help with education.

Gold: We have held multiple training sessions on both the legislative reforms and the proposed juvenile court rules at our annual prosecutors conference, our training for newly elected prosecutors, and our Kentucky Prosecutors Institute, which is a weeklong trial advocacy "boot camp." In addition, we have sent out summaries of the law and materials from other stakeholders to increase awareness and understanding.

South Dakota

South Dakota had one of the highest juvenile commitment rates in the nation in 2011 (the most recent year for which data were available). And even though the state spent up to \$144,000 a year to house each juvenile offender, recidivism remained high, with nearly half of all committed youth returning to the custody of the Department of Corrections within three years.

In a review of the youth corrections system, the state's Juvenile Justice Reinvestment Initiative Work Group found that few evidence-based community interventions existed in much of the state. Most committed youth were removed from their homes for misdemeanors, probation violations, and status offenses, such as truancy. Although commitments declined 20 percent from 2004 to 2013, the average length of stay in out-of-home placements increased by 27.5 percent to 15.3 months. The task force recommended that the state encourage diversion from the juvenile justice system, expand access to community-based interventions, and focus residential placements on youth who pose a public safety risk.

These recommendations were codified in Senate Bill 73, which Governor Dennis Daugaard (R) signed into law on March 12, 2015. By 2020, the bill is projected to shrink South Dakota's committed juvenile population by more than 50 percent and reduce its youth probation population by nearly 30 percent. The reforms are expected to save \$32 million, with savings redirected to expand evidence-based interventions and provide counties with incentives to divert youth from the juvenile justice system.

Q: What have you learned through your work on this reform? Were there any surprises?

Roth: It really boils down to relationships between the stakeholders. If you look at the people on our task force, they did not share one philosophy, and sometimes reaching consensus was difficult. But everybody wants a safer environment for our kids, and everyone wants a safer community. We may disagree about how you get there, but if your only solution is to lock kids up, then what do you do when that doesn't work? I think the biggest surprise is the counterintuitive reality that sometimes you're going to do more harm by locking a kid up than by not locking him up.

Vargo: One thing I found striking was the correlation between juvenile probation success and the length of probation, and that they are inversely related. There comes a moment when extending a kid's probation doesn't help but actually hurts. Kids just can't wrap their heads around the idea of serving probation for a year. If you give a kid three months' probation, then even if you wind up extending it another three months, you're better off than if you had told him six months from the beginning. It's amazing how the human brain works. That's one reason I did not object to the shorter periods of probation we installed, even though I got some flak from other state's attorneys.

Gold: Change doesn't happen overnight, especially on a statewide level. But this process has strengthened my passion for juvenile justice and has really driven home the point that being tough on crime is not always the same as being smart on crime. At the end of the day, my duty to the people of my community is to be as smart on crime as I possibly can. That's why I've personally gotten so much out of this journey. Now that my county is several years down the road with juvenile justice reform, I feel like we have a safer community. The numbers are bearing that out, so there's a sense of accomplishment there. There really is.

Q: What advice would you give to prosecutors in other states who are hesitant about engaging in juvenile justice reform?

Gold: Call those of us who have been through it. I'm serious. Even more than that, be aware of the fact that our duty as prosecutors is to justice. And when you look at your juvenile justice system and at the available social science out there, it's pretty clear that there is definitely room for more justice to occur. So if we're going to have reform, prosecutors have a duty to be involved and advocate for a system that protects the rights of everyone—the victims, the innocent, and, yes, the guilty. And, frankly, if you can get juvenile justice reform right, you won't need adult reform as much, because it's a lot easier and more cost-effective to implement successful interventions with juveniles than it is to do it on the back end with adults.

Vargo: Keep an open mind. I know everyone's agenda differs and there are people whose agenda you might not agree with, but it doesn't make them inherently wrong. It means you should trust and verify, and I spent a bit of time between meetings doing that. No government system is perfect, and the juvenile justice system appears to be particularly flawed nationwide. So prosecutors should be willing to look for new solutions. Because what we want above all is to not see these kids back in the system again, ideally not as juveniles, but definitely not as adults.

Roth: I'd say they should really think about their philosophy or approach to their job. A lot of prosecutors say my job is to do justice. What is justice? Is your job just to punish people and lock people up or is it to make your community safer and healthier? If your recidivism rate is 75 percent, then you have to wonder, "How's that working for you?" If you still have a lot of crime in your community, then how's that working for you? You have to be willing to understand your situation and realize that what your intuition says and what the evidence shows may not be the same. If your intuition says lock the kid up and the evidence shows that if you do that, the kid is more likely to commit more crimes and more dangerous crimes in the future, then you need to make a different choice. I'm a firm believer in consequences. But they have to be the right consequences and timely consequences.

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Steve Gold, county attorney, Henderson County, Kentucky

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