

North Dakota's Justice Reinvestment Approach:

Investing in Community-Based Behavioral Health Services Instead of Prisons

JUNE 2017

Overview

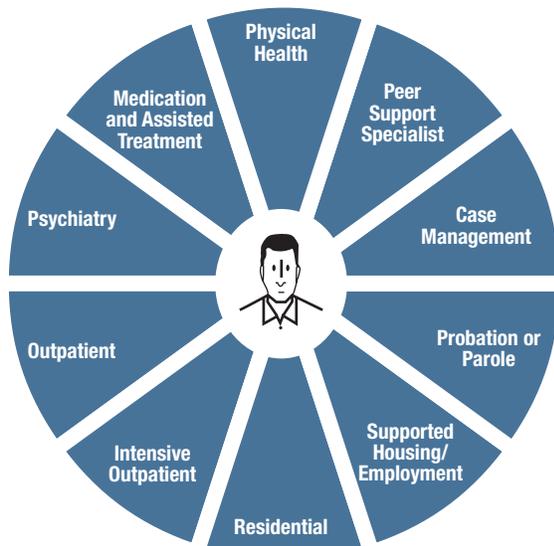
Over the past decade, the number of people in North Dakota's prisons and jails and on probation and parole increased at some of the fastest rates in the country. To accommodate this growth, the state and county governments have spent tens of millions of dollars expanding the capacity of existing correctional facilities and building new facilities. Without action, the prison population was projected to grow 29 percent between 2018 and 2022, requiring \$115 million in new state funding to cover the cost of the contract beds that would be necessary to accommodate this growth.¹

To address these challenges, state policymakers enacted House Bill (HB) 1041 and Senate Bill (SB) 2015 in April 2017. HB 1041 will curb prison population growth by reducing the use of incarceration for people who have committed low-level felony offenses and who have violated the conditions of their supervision, while SB 2015 will ensure that people with serious behavioral health needs and those assessed as being at a high risk of reoffending receive effective post-release supervision programming and treatment, as necessary. [See Figure 1]

FIGURE 1. NORTH DAKOTA'S BEHAVIORAL HEALTH POLICY AND REINVESTMENT PACKAGE

As part of SB 2015, the state appropriated \$7 million to improve the quality of community-based behavioral health services for people in the criminal justice system and an additional half a million dollars to increase the number of treatment providers that are able to serve this population. Increased treatment availability can significantly reduce recidivism and improve public health outcomes.

Improve Quality of Services



Create a service delivery partnership between private health care providers and the Department of Human Services (DHS) to ensure that people in the criminal justice system have access to a full continuum of support services. To encourage quality of care, private health care providers will have an opportunity to earn additional compensation for exceeding key outcomes set by DHS.

Expand Provider Workforce



Increase utilization of key paraprofessionals, specifically peer support specialists, and case management services.



Require the development of a statewide workforce strategic plan for increasing the number of community-based behavioral health care providers who are able to work effectively with criminal justice populations.



Provide sufficient funding to implement the workforce strategic plan.

Summary of the Justice Reinvestment Process

CHALLENGES

North Dakota's prison and jail populations are among the fastest growing in the country. Between 2005 and 2015, North Dakota's prison population increased 32 percent, from 1,329 to 1,751 people.² Between the biennial budget years 2005 to 2015, general fund appropriations to the Department of Corrections and Rehabilitation (DOCR) more than doubled, from \$83 million to \$178 million.³

FINDINGS

In January 2016, at the request of state leaders, the U.S. Department of Justice's Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts asked The Council of State Governments (CSG) Justice Center to provide intensive technical assistance using a data-driven justice reinvestment approach to determine the drivers of the state's rapidly growing prison population and develop policy options to address that growth and increase public safety. Under the direction of the Incarceration Issues Committee (IIC), which was established to guide the justice reinvestment process, staff from the CSG Justice Center conducted a comprehensive analysis of extensive data collected from various state agencies. From these analyses, the committee found that

- People convicted of lower-level nonviolent offenses and people who fail on supervision are substantial drivers of prison population growth in the state;
- The growing prison population is stretching corrections resources that could otherwise be used to improve the probation system; and
- The shortage of community-based behavioral health service providers willing or able to serve people with behavioral health disorders in the criminal justice system limits the state's ability to reduce recidivism for people on supervision.

SOLUTIONS

Between August 2015 and September 2016, the IIC met eight times to review data analyses and develop and approve a policy framework designed to hold people accountable for their crimes, strengthen community supervision, and improve the quality of community-based behavioral health services for people in the criminal justice system. The IIC's legislation (HB 1041) was introduced in January 2017, and the behavioral health recommendations followed as part of SB 2015.

HB 1041 includes policies to increase the use of probation for people convicted of low-level offenses, respond to probation violations with sanctions that are more effective and less costly than existing sanctions, and apply the state's existing good time policy to time served in jail as well as prison. HB 1041 passed through the House with an 88–2 majority, and through the Senate with a 42–0 vote.

SB 2015, which lays out the DOCR's budget for the biennium, improves the quality and increases the number of community behavioral health services available to people in the criminal justice system. The legislation passed through Senate committees and on the floor by a unanimous 46–0 vote, and in the House by an 85–7 vote.

Governor Doug Burgum signed HB 1041 and SB 2015 into law on April 21, 2017. To support implementation of the justice reinvestment legislation, the state made an upfront investment of \$7.5 million for the 2018–2019 biennium to fund community-based services.



“Building new jails and incarcerating people with the chronic disease of addiction and in desperate need of help is the most expensive and least effective course of action. With this legislation, we can give those dealing with substance abuse and other behavioral health issues who become entangled in the legal system an opportunity to recover successfully and return to their communities.”

— GOVERNOR DOUG BURGUM

Highlights of HB 1041 and SB 2015

Prioritize jail and prison space for people who are convicted of serious and violent offenses and pose a public safety risk.

- Authorize state and local agencies to prioritize prison and jail admissions based on a person's sentence, offense, and risk of reoffending if the state's correctional facilities are at maximum operational capacity.
- Use probation instead of prison for people who are convicted of certain Class A misdemeanors and low-level, nonviolent Class C felony offenses.
- Apply the state's existing good time policy to time served in jail as well as prison.
- Reclassify sentences for drug possession and ingestion offenses and reduce the size of drug penalty enhancement zones.
- Establish medical parole for people in prison with terminal medical conditions.

Increase the quality and number of community-based behavioral health services.

- Expand the availability of community-based behavioral health services for people in the criminal justice system by creating a partnership between DOCR and DHS to establish contracts with community-based treatment providers across the state to deliver specialized services.
- Increase the capacity of batterers' intervention programs (BIP) to serve more people.



“The justice reinvestment policies are based on an exhaustive review of North Dakota’s criminal justice system and effective approaches that have been tested in states across the country. These data-driven, smart-on-crime policies make better use of taxpayer dollars and will increase public safety.”

—REPRESENTATIVE KIM KOPPELMAN



“The behavioral health package dovetails with the policies in HB 1041 to transform our community behavioral health system and enable life-saving treatment for people who are desperate for the services so they can become crime-free members of society. Increasing access to high-quality treatment will be remembered as a landmark achievement of the legislative session.”

—ATTORNEY GENERAL WAYNE STENEHJEM

Reduce the collateral consequences for criminal convictions.

- Repeal the denial of Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits for people with certain drug offense convictions.

Assess, track, and ensure the impact of North Dakota’s justice reinvestment policy framework.

- Establish an oversight committee of policymakers and officials from the three branches of state government to study and track the implementation of the policies.
- Require the committee and state agencies to report implementation progress to state leaders before the convening of the 66th Legislative Assembly in January 2019.

In addition, the state adopted changes to drug sentencing policies by passing HB 1269 and HB 1341, which reduce the minimum mandatory penalties for offenses involving a controlled substance and narrow the penalty enhancements for selling or possessing drugs in school zones, respectively.

LOOKING AHEAD

Implementing HB 1041 and SB 2015 will require continued bipartisan, interbranch support. State agencies, including DOCR and DHS, will need to engage in administrative rulemaking to establish procedures for implementing various aspects of the bills.

DOCR will collaborate with DHS to establish and implement a community behavioral health program to provide comprehensive community-based services for people in the criminal justice system who have serious behavioral health needs. As part of that process, DOCR and DHS will identify a target population to receive a comprehensive array of treatment and recovery support services and will develop corresponding levels of service based on needs. DHS will be responsible for contracting with provider agencies and providing program oversight and evaluation.

The CSG Justice Center will continue to work with officials and local stakeholders from across North Dakota's criminal justice system for a period of 12



“These new laws put North Dakota on the right track for achieving greater public safety by focusing supervision and behavioral health interventions on people returning to the community from prison so that they can succeed, all at less cost to the taxpayer.”

— CHIEF JUSTICE GERALD VANDEWALLE

to 24 months to assist in implementing the new policies and tracking their outcomes. CSG Justice Center staff will develop implementation plans with state and local officials, provide policymakers with frequent progress reports, and deliver testimony to relevant legislative committees. The state can request funding from BJA to support additional capacity-building efforts, such as information technology upgrades, training, and ongoing quality assurance efforts.

Endnotes

1. DOCR emails (2015–2017 contract facility budget information and DOCR facility cost-per-day figures); DOCR housing data; DOCR inmate projections; “Locking Up North Dakota,” DOCR 2015.
2. CSG Justice Center analysis of DOCR prison one-day snapshot data files by fiscal year.
3. Biennial budgets run on a two-year cycle. Budget information cited here is from July 1, 2003 to June 30, 2005 with the most recent running from July 1, 2013 to June 30, 2015. Actual General Fund appropriations were \$83,458,031 for 2005 and \$178,475,785 for 2015. DOCR, Biennial Report 2003–2005. (Bismarck: DOCR, 2005); DOCR, Biennial Report 2013–2015.



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The Council of State Governments (CSG) Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The CSG Justice Center provides practical, nonpartisan, research-driven strategies and tools to increase public safety and strengthen communities. Points of view, recommendations, or findings stated in this document are those of the authors and do not necessarily reflect the official position or policies of The Pew Charitable Trusts, The Council of State Governments Justice Center, or The Council of State Governments' members. For additional information about Justice Reinvestment in North Dakota, please visit csgjusticecenter.org/jr/nd.