

Justice Reinvestment in North Dakota

Policy Framework

JANUARY 2017

Overview

Over the past decade, the number of people in North Dakota's prisons and jails, on probation, and on parole has increased, and the state and county governments have spent tens of millions of dollars expanding the capacity of existing correctional facilities and building new facilities to accommodate this growth. Unless action is taken, the prison population is projected to grow by 36 percent by FY2022 at a cost of \$130 million to accommodate the projected growth.¹

The increasing numbers of people admitted to prison for lower-level nonviolent offenses and people revoked from supervision are substantial drivers of prison population growth in the state. Together, these populations make up almost three-quarters of all prison admissions.² The use of prison for people who violate the conditions of their supervision and people convicted of lower-level nonviolent offenses is stretching corrections resources and limiting the state's ability to use effective sanctions to hold its supervision population accountable. These criminal justice system challenges are exacerbated by the fact that people supervised in the community do not have access to sufficient treatment for mental illnesses and substance use disorders, which

hampers the state's ability to reduce recidivism. North Dakota policymakers have reached a crossroads: if the state does not address the factors contributing to crime and recidivism, it will be forced to spend tens of millions more to accommodate prison population growth.

In January 2016, the state embarked on a justice reinvestment approach, and key stakeholders began working together to develop policies that will curb prison population growth by reducing the number of people in prison who have committed lower-level felony offenses and who have violated the conditions of their supervision. These policies will also 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. By implementing these proposed policies, the state will avert a minimum of \$63.8 million by 2022 in costs for the contract beds that would be necessary to accommodate the projected prison population growth, and will be able to reinvest those savings in strategies that can reduce recidivism and increase public safety.

THE INCARCERATION ISSUES COMMITTEE

In October 2015, Governor Jack Dalrymple, Chief Justice Gerald VandeWalle, Attorney General Wayne Stenehjem, Senate Majority Leader Rich Wardner, House Majority Leader Al Carlson, Senate Minority Leader Mac Schneider, House Minority Leader Kenton Onstad, and Legislative Management Chairman Raymond Holmberg requested intensive technical assistance from The Council of State Governments (CSG) Justice Center with support from The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance to use a data-driven justice reinvestment approach to help the state reduce the corrections population, contain corrections spending, and reinvest a portion of the savings in strategies that can reduce recidivism and increase public safety.

Passed by the North Dakota legislature and signed in 2015, HB 1165 and HB 1015 established the interbranch Incarceration Issues Committee (IIC), which was composed of state lawmakers, judiciary members, corrections officials, county attorneys, and local law enforcement executives, to study the state's criminal justice system. The 16-member committee met five times between January and September 2016 to review analyses conducted by the CSG Justice Center and discuss policy options, and has since disbanded.

The IIC developed legislation that sought to use taxpayer dollars more effectively to make the state safer. In addition to the policy framework presented in this report, members of the IIC put forth recommendations that would prioritize treatment over incarceration for people convicted of crimes related to drug use; establish medical parole for people in prison with a terminal medical condition; and modify the certification requirements for a Licensed Addiction Counselor (LAC).³

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Wayne Stenehjem, Attorney General

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Data Collection

An extensive amount of data was provided to the CSG Justice Center by the North Dakota Attorney General Bureau of Criminal Investigation, the Administrative Office of the Courts, and the Department of Corrections and Rehabilitation (DOCR). In total, more than 1.5 million individual data records were analyzed, including: supervision and prison populations; length of time served in prison and on supervision; statutory and administrative

policies; and availability of treatment and programs designed to reduce recidivism. More than 160 in-person meetings and conference calls with judges, state's attorneys, public defenders, law enforcement officials, supervision officers, behavioral health service providers, victims and their advocates, advocates for people involved in the criminal justice system, local officials, and others helped provide context for the data.

Summary of Challenges and Findings

Through its comprehensive review of state data, the Incarceration Issues Committee identified three key challenges and related findings.

KEY CHALLENGES

- 1. Growth in prison and jail populations.** North Dakota's prison and jail populations are among the fastest growing in the country. Unless state policymakers act, the prison population is projected to increase 36 percent by FY2022. Accommodating this growth would cost at least \$115 million in new contract beds.
- 2. Ineffective and costly responses to supervision violations.** Probation and parole officers lack the means to hold people accountable by responding to violations swiftly and cost effectively and connecting people with behavioral health needs to high-quality treatment. As a result, people commit numerous violations before being revoked to prison, which is expensive and does not improve their access to treatment or other resources upon release.
- 3. Inadequate substance use treatment.** State's attorneys, judges, and other stakeholders report that drug use is common among people who commit crimes and violate the terms of their supervision, but treatment is not readily available. A shortage of community treatment options and providers impedes people's access to needed services that, when combined with effective supervision, are proven to reduce recidivism.

KEY FINDINGS

- **North Dakota's prison population and corrections spending have grown substantially in recent years.** Between FY2005 and FY2015, the state's prison population increased 32 percent, from 1,329 to 1,751 people.⁴ From the biennial budget years 2005 to 2015, general fund appropriations to the DOCR more than doubled, from \$83 million to \$178 million.⁵
- **The county jail population has nearly doubled in the past decade.** From 2005 to 2015, North Dakota's county jail population one-day count rose 83 percent, from 959 to 1,754 people. The sharpest increase occurred between 2012 and 2015, when the population shot up by 40 percent, from 1,250 people to 1,754 people.⁶
- **In recent years, North Dakota has spent tens of millions of dollars expanding existing prison capacity, but the state's prisons are full again, and hundreds of people are housed in contract facilities.** Although the FY2009–2011 state budget provided \$64 million for expansion of the North Dakota State Penitentiary, the prison reached capacity less than five years after construction was completed. Moreover, the state has established contracts for beds in the North Dakota State Hospital, county jails, and facilities operated by nonprofit agencies.⁷ In FY2016, 16 percent of the prison population, or 278 people, were housed in contract beds at an estimated annual cost of \$7.6 million.⁸
- **Of North Dakota's 53 counties, 9 are currently engaged in construction or expansion projects for their jails.** Once completed, these new facilities will provide an anticipated 48-percent increase in statewide jail capacity.⁹
- **Native Americans are disproportionately represented in North Dakota's prisons.** In FY2014, Native Americans accounted for 5 percent of the state's general population but constituted 21 percent of the state's prison population.¹⁰

- **Domestic violence presents a significant threat to public safety, and current programming to address it is inadequate.** Between 2006 and 2014, 44 percent of all homicides (54 of 122 homicides) in North Dakota involved domestic violence.¹¹ Moreover, a review of domestic violence-involved fatalities identified one or both parties as having a history of alcohol or substance use, sometimes with a history of co-occurring mental illnesses, a common factor across these cases.¹² There are nine batterers' intervention programs across the state, but they operate with minimal oversight, and the quality of treatment varies from program to program.¹³
- **The number of people on probation and parole in North Dakota grew substantially in the last decade.** From FY2006 to FY2015, North Dakota's probation population increased by 39 percent (from 5,466 to 7,613 active cases), and the parole population increased 55 percent (from 484 to 751 active cases).¹⁴
- **People who fail on supervision and are revoked to prison and jail are creating a strain on county and state facilities.** In FY2014, 45 percent of probation revocations were the result of supervision violations and did not involve new criminal offenses. Of people who were revoked from probation, 33 percent were required to serve terms in jail, and another 51 percent were required to serve time in prison. In that same year, people who had been revoked from probation or parole occupied 27 percent of North Dakota's prison beds.¹⁵
- **People admitted to prison for drug and property offenses and people revoked from probation and parole make up almost three-quarters of all prison admissions.** In FY2014, convictions for drug and property offenses accounted for 33 percent of prison admissions and cost the state approximately \$19.5 million, while probation and parole revocations accounted for 38 percent of admissions and cost the state approximately \$16.7 million.¹⁶ Of the total admissions to prison for new offenses, 62 percent were for Class C felonies, consisting mostly of lower-level drug and property crimes.¹⁷
- **A substantial percentage of people sentenced to prison for low-level, nonviolent offenses have not served a prior felony probation sentence.** There is no structure in place to help courts choose among prison, probation, and other sentencing options based on felony class and type of offense. In FY2014, 36 percent of people admitted to prison for nonviolent Class C felony offenses had not served a prior probation term.¹⁸
- **Many people in the criminal justice system need substance use treatment.** Supervision officers in the state estimate that 75 percent of people on supervision are in need of substance use treatment, but there are long wait periods to access these services. From FY2006 to FY2014, the number of felony sentences for drug offenses increased by 51 percent, with the sharpest increase occurring between FY2011 and FY2014 (148 percent). In FY2014, four out of five felony drug sentences were for possession.¹⁹
- **The availability of substance use treatment is not keeping pace with the level of need for all North Dakota residents.** North Dakota has the sixth-highest rate of alcohol and drug abuse in the country but is ranked 43rd in availability of treatment.²⁰ Participation in substance use treatment decreased 15 percent between 2009 and 2013 for the general population.²¹

Summary of Policy Options and Impacts

The policy options listed below are designed to achieve the following goals:

- Prioritize jail and prison space for people who are convicted of serious and violent offenses.
- Strengthen supervision by focusing supervision and programming resources on people who are most likely to reoffend.
- Increase the capacity and effectiveness of community-based behavioral health services and batterers' intervention programs.

Icons appear in the policy options section of this report to indicate which options will avert prison population growth, provide tools to reduce pressure on jails, and increase public safety and reduce recidivism.

POLICY OPTIONS

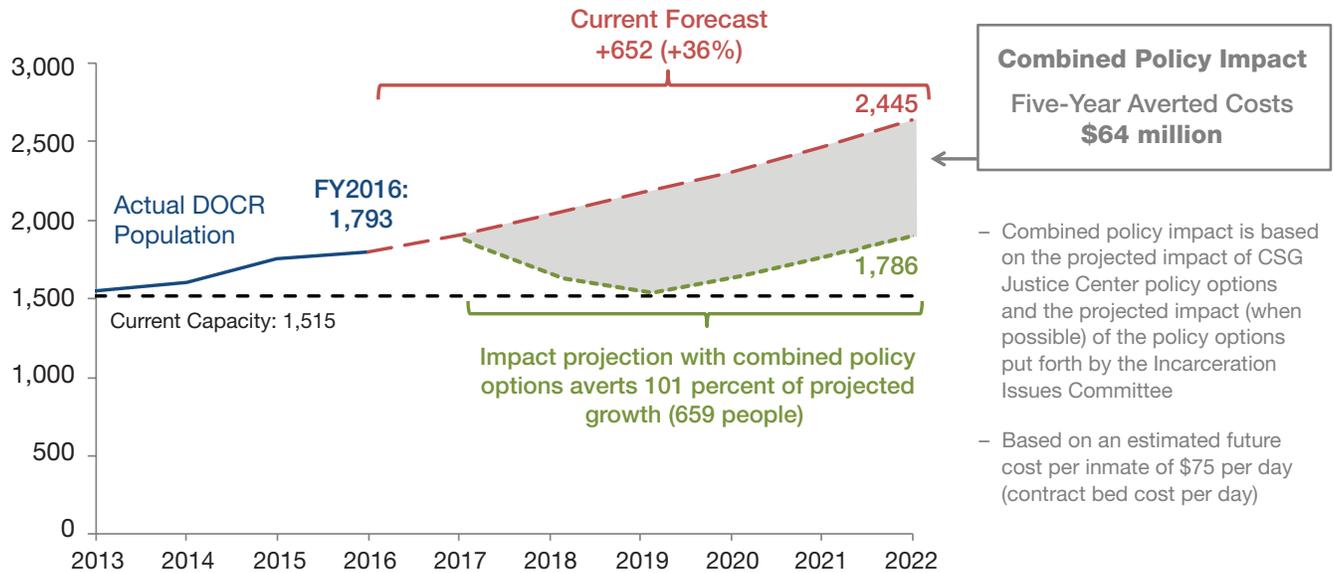
1. Use probation instead of prison to hold people who are sentenced for nonviolent Class C felony offenses accountable.
2. Respond to probation and parole violations with more effective and less costly sanctions that can reduce further violations.
3. Provide the most intensive supervision at the beginning of a person's probation term, as necessary, when risk of reoffending is highest.
4. Expand the availability of and access to community-based behavioral health services for people in the criminal justice system.
5. Establish a pretrial supervision pilot program and adopt a pretrial risk assessment tool.
6. Apply the state's existing good time policy to time served in jail as well as prison.
7. Improve the quality of and access to batterers' intervention programs.
8. Improve the ability to collect and analyze outcome and demographic data.
9. Assess, track, and ensure the sustainability of recidivism-reduction strategies and increase statewide data collection and analysis efforts.

PROJECTED IMPACT

As a package, the policies described in this report have the potential to generate substantial savings and lower recidivism for North Dakota. By averting the projected growth in the state prison population, effective implementation of the policy framework will help the state avoid up to \$63.8 million in contract bed costs to accommodate the growing prison population by FY2022. While the DOCR currently projects the prison population to grow 36 percent, from 1,793 people in FY2016 to 2,445 people in FY2022, this policy framework is projected to avert the forecasted growth by as many as 659 people. (See Figure 1)

The CSG Justice Center projection impact analysis is based on FY2006–FY2015 DOCR prison population and admission data, DOCR probation and parole data, and court sentencing data for the same time period. Operating cost estimates are based on the DOCR FY2016 average, per-day contract bed cost of \$75. The baseline population projection assumes a rate of growth in prison admissions of 10 percent per year, based on the average rate of growth in admissions in prior years.

FIGURE 1. PROJECTED IMPACT OF POLICY OPTIONS ON DOCR PRISON POPULATION PROJECTIONS



RECOMMENDED REINVESTMENT

As the state begins to implement the legislation, it is projected to avert \$4.2 million in costs by the end of FY2018, increasing to \$63.8 million by FY2022. Averting costs associated with additional contract beds enables North Dakota’s policymakers to reinvest in expanding community-based treatment and services to address mental illness, substance use, and criminal behavior. These reinvestments will impact both public safety and public health and will contribute to sustained reductions in state general fund expenditures on corrections.²²

In FY2018, an upfront investment of \$4.2 million in community-based programs and treatment and sustainability policies is recommended, growing to \$8.7 million in FY2022. The cost savings and proposed levels of reinvestment are based on a projected impact to the prison population as calculated by the CSG Justice Center in comparison to the DOCR population forecast. (See Figure 2)

FIGURE 2. SUMMARY OF JUSTICE REINVESTMENT POLICY FRAMEWORK AVERTED COSTS AND REINVESTMENTS

		FY2018	FY2019	FY2020	FY2021	FY2022	TOTAL
Total Averted Costs		\$4.2M	\$11.3M	\$14.8M	\$16.1M	\$17.4M	\$63.8M
Reinvestments	Behavioral health reinvestment	\$3.2M	\$4.7M	\$6.4M	\$7.1M	\$7.7M	\$29.0M
	Pretrial pilot program	\$265K	\$265K	\$265K	\$265K	\$265K	\$1.3M
	Improved Batterers’ Intervention Programs	\$585K	\$585K	\$585K	\$585K	\$585K	\$2.9M
	Sustainability package	\$150K	\$150K	\$150K	\$150K	\$150K	\$750K
	Total Reinvestment	\$4.2M	\$5.7M	\$7.4M	\$8.1M	\$8.7M	\$34.0M
Projected Net Savings		\$0M	\$5.6M	\$7.4M	\$8.0M	\$8.7M	\$29.8M

Policy Options

POLICY OPTION 1:

Use probation instead of prison to hold people who are sentenced for nonviolent Class C felony offenses accountable.



A Class C felony encompasses more than 350 different criminal offenses, the majority of which are drug and property offenses, and carries a maximum sentence of five years.²³ In FY2014, 62 percent of people admitted to prison for new offenses were sentenced for a Class C felony offense.²⁴

Outcomes for people sentenced to probation are slightly better than outcomes for people sentenced to prison: 27 percent of people who are sentenced to prison return within three years of release, and 24 percent of people sentenced to probation have their supervision revoked and are admitted to prison for a new offense or for a violation of the conditions of their supervision within the same time period.²⁵ Not only can effective probation supervision help to address a person's criminogenic needs and improve outcomes (coupled with treatment, if necessary), but probation is considerably less expensive than prison: \$4 per day per person compared to \$114 per day per person, respectively.

This policy option creates a statutory presumption that people convicted of Class C felonies, excluding violent or sex offenses, will be sentenced to probation rather than incarceration, although judicial discretion will be retained in individual cases. Courts will have the discretion to override the presumption if the person is sentenced to a consecutive term in prison on a more serious charge or if there are substantial and compelling reasons the defendant cannot be effectively and safely supervised in the community.

States are increasingly adopting policies to reserve prison space for people convicted of serious and violent offenses while using probation for people convicted of lower-level, nonviolent felony offenses. If a greater share of people with Class C nonviolent felony offenses received probation sentences, it would avert prison population growth and generate savings that could be reinvested in more effective supervision and community behavioral health treatment to lower recidivism.

POLICY OPTION 2:

Respond to probation and parole violations with more effective and less costly sanctions that can reduce further violations.



Revoking people from parole and probation puts a strain on jail and prison populations. In FY2014, 58 percent of parolees and probationers who were revoked in North Dakota were sentenced to prison and 29 percent were sentenced to jail.²⁶ In the same year, parolees and probationers who were revoked to prison spent an average of 178 days and 391 days in prison, respectively, prior to being released, and made up 27 percent of the prison population.²⁷

This policy option limits to 90 days the time that people can be incarcerated as a sanction for a technical violation. A technical violation of probation or parole is misconduct by a person under supervision that is not a criminal offense and generally does not result in arrest, such as failing to report for a scheduled meeting with the probation officer, missing a curfew, or testing positive for

drug or alcohol use. This option also allows people who have committed technical violations to be sanctioned in jails and alternative facilities, funded by the state, in lieu of prison. The 90-day limitation to incarceration does not apply to a probationer or parolee who commits a new crime.

Limiting the term of incarceration for people who violate conditions of their supervision but are not charged with a new crime can curb prison and jail population growth while ensuring that the degree of punishment is proportionate to the seriousness of the violation. The 90-day limitation to incarceration as a result of a technical violation provides probation officers with an intermediate sanction that can help increase accountability for people on supervision, deter recidivism, and reduce the cost of responding to supervision violations with lengthy periods of incarceration.

POLICY OPTION 3:

Provide the most intensive supervision at the beginning of a person's probation term, when risk of reoffending is highest.



Increase public safety and reduce recidivism

From FY2006 to FY2015, North Dakota's probation population increased by 39 percent (from 5,466 to 7,613 active cases) and its parole population increased 55 percent (from 484 to 751 active cases), straining supervision resources across the state.²⁸ Because officers supervise both probationers and parolees, increases in either population often make it difficult for officers to provide adequate supervision for the people on their caseloads and for community-based treatment and service providers to meet the needs of the supervision population due to their limited capacity.

The likelihood of failing on supervision is greatest within the first two years a person is on probation, which emphasizes the need to focus supervision and program resources on people at the beginning of their supervision terms. Fifty-one percent of people who began their probation terms in FY2012 and were admitted to prison within three years (either for a new offense or for violating conditions of

supervision) were admitted in the first year of probation. In the second year, the percentage fell to 35 percent, and in the third year the percentage fell to 14 percent.²⁹

This policy option requires the DOCR to systematically transition probationers to the lowest possible level of supervision (known as "diversion caseload") according to risk level and compliance.

Probationers on a low supervision level will be transferred to a diversion caseload after successfully serving 6 months, and those on a medium supervision level will be transferred after successfully serving 12 months.

People on diversion caseloads receive minimal administrative supervision. Transitioning probationers to a diversion caseload will enable supervision officers to target resources to people who are at the highest risk of reoffending during the first two years after their release.³⁰

POLICY OPTION 4:

Increase the availability of and access to effective community-based behavioral health treatment for people in the criminal justice system.



Increase public safety and reduce recidivism

Stakeholders report that people on community supervision—especially those who live in rural areas—have difficulty accessing behavioral health treatment due to insufficient service capacity and an inadequate number of providers. Seventy percent of judges reported sentencing people to prison in order to connect them with mental health or substance use treatment. Probation and parole officers reported that 75 percent or more of their clients needed substance use treatment but struggled to find those services in the community.³¹ Insufficient community-based treatment resources greatly limit the state's ability to address treatment needs, improve outcomes, and reduce recidivism, and therefore pose a challenge to public safety.

A. Cultivate a network of community-based behavioral health care providers to serve people in the criminal justice system.

Across the state, access to community-based treatment has decreased, while the need for treatment has increased.

North Dakota has the sixth-highest rate of alcohol and drug abuse in the country but is ranked 43rd in availability of treatment. In order to increase the network of community behavioral health care providers, the state must implement short-, medium-, and long-term strategies.

SHORT-TERM STRATEGY

This policy option funds and requires the Department of Human Services (DHS) and DOCR to establish a case manager position. A case manager is responsible for delivering community-based treatment for people with serious behavioral health needs who are also at a high risk of reoffending. Case managers typically do not require a specialized degree or certification but are entry-level positions in the professional behavioral health field. Their responsibilities include assessing and monitoring people, organizing reentry services, and coordinating care among multiple service providers, including clinicians and probation officers. Case managers are focused on

improving care coordination and eliminating gaps in care that lead to unnecessary readmissions to prison.

This policy option also requires DHS to establish training and certification processes for peer support specialists to work in criminal justice settings.

Peer support specialists are people recovering from severe mental illnesses or substance use disorders who are trained as counselors to help others with similar conditions. Through their experiential knowledge and familiarity with a patient's culture or community, peer support specialists can provide unique insights and assistance that professional health care providers cannot, and they can potentially reduce the use of crisis intervention services. DHS will be required to establish the basic qualifications of the peer support specialist position and develop a training module that prepares peer support specialists to deliver recovery-oriented services in partnership with professional treatment providers.

MEDIUM-TERM STRATEGY

This policy option requires the development of a statewide strategic plan for increasing the number of community-based behavioral health care providers who have received the necessary education and training to work with criminal justice populations. The strategic plan should analyze barriers to recruitment of behavioral health care providers, propose strategies for recruitment and retention, and identify key outcome metrics to be reported to the legislature on an annual basis. Community-based behavioral health care providers include certified peer support specialists, community engagement specialists, licensed substance use counselors, psychiatric nurses, and psychiatrists. By developing a strategic plan to cultivate an adequate network of appropriately trained community-based behavioral health care providers in rural areas, the state can begin to meet the behavioral health needs of people in the criminal justice system and reduce recidivism.

LONG-TERM STRATEGY

This policy option requires DHS to manage the implementation of strategies to increase the number of community behavioral health providers in the

state, especially in rural areas. Strategies may include the development of specialized curricula in higher education for health care workers in preparation for working with criminal justice populations. Specialized curricula can help health care workers increase their competency in working with criminal justice populations, and may attract students who have an interest in addressing both the health care and criminal justice needs of the state. Additional strategies may include: conducting outreach to promote interest in behavioral health professions in rural areas; developing scholarships and loan forgiveness programs; creating distance learning opportunities; or bolstering out-of-state recruitment and retention.

B. Increase access to effective community-based behavioral health treatment for people in the criminal justice system.

Untreated mental illnesses and substance use disorders contribute significantly to people's ongoing involvement in the criminal justice system. Research suggests that for adults with mental illnesses and substance use disorders, supervision combined with treatment is more effective at reducing recidivism than supervision alone.³²

This policy option increases access to effective community-based behavioral health treatment by establishing incentives for private health care providers 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 value-based incentives, where they receive additional funding for meeting target outcomes set by DHS.

People in the criminal justice system who have substance use and mental health treatment needs have a high likelihood of failing on probation at great cost to themselves and society. Yet many people transitioning from incarceration to probation who have behavioral health needs do not have timely access to treatment, a key component to successful reentry. By increasing access to community-based treatment services and programs, the state can help reduce recidivism and improve public health outcomes for people in the criminal justice system.

POLICY OPTION 5:

Establish a pretrial supervision pilot program and adopt a pretrial risk assessment tool.



Increase public safety and reduce recidivism

Provide tools to reduce pressure on jails

From 2005 to 2015, North Dakota’s county jail population one-day count rose 83 percent, from 959 to 1,754 people. The sharpest increase occurred between 2012 and 2015, when the population spiked 40 percent, from 1,250 to 1,754 people.³³ Local criminal justice stakeholders, including sheriffs, judges, and jail administrators, identify growth in the pretrial detention population as a substantial driver of this increase.

Use of pretrial risk assessments is inconsistent in counties across the state, and, as a result, decisions to detain or release people pretrial are not always based on a defendant’s risk for failure to appear in court or risk of reoffending.

This policy option creates a pretrial supervision pilot project. Administrators of the pilot program will be required to adopt a pretrial risk assessment tool as well as a dangerousness and/or lethality assessment for people charged with domestic violence offenses. The results of the assessment would be used to inform pretrial decisions to reduce unnecessary detentions and prioritize jail beds for people who are at a high risk of reoffending. Pretrial risk assessment results can be used to identify defendants who can be released pretrial and under what conditions, and help identify people who should be connected to

services in the community. Requiring a dangerousness and/or lethality assessment for people charged with domestic violence offenses gives judges the information they need to mandate supervision of high-risk domestic violence defendants upon their release. At the end of the 2017–2019 biennium, DOCR will be required to report outcomes from the program, including the number of and outcomes for pretrial detainees placed on supervision, disaggregated by assessed risk level.

A pretrial risk assessment can help determine a person’s risk of failure to appear in court and risk of reoffending during the pretrial stage, and can also help identify people who are appropriate for release. Research shows that time in jail can increase a person’s likelihood of engaging in criminal behavior: low-risk defendants have a 40-percent higher chance of committing a new crime before trial when held for 2 or 3 days compared to those held 1 day or less, and a 51-percent higher chance of committing a new crime within 2 years when held for 8 to 14 days compared to 1 day or less.³⁴ By helping counties adopt a pretrial risk assessment tool and provide pretrial supervision, the state will improve public safety, reduce jail populations, and aid counties in averting spending associated with a growing jail population.

POLICY OPTION 6:

Apply the state’s existing good time policy to time served in jail as well as prison.



Avert prison population growth

The North Dakota Century Code (12-54.1-01) authorizes DOCR to grant good time credits, which can subtract up to five days per month from a prison sentence, according to eligibility criteria established by the agency. People are not currently eligible to accrue good time credits during the time they spend in jail awaiting trial, however. For example, a person currently sentenced to five years in prison, after having spent one year in jail awaiting the conclusion of his or her criminal case, would be transferred to DOCR to serve the remainder of his or

her sentence—four years in this case. Under the current system, the person in this example would be eligible to accrue good time credits during the four years spent in DOCR custody, but not for the entire five-year sentence.

This policy option ensures that the state’s existing good time policy applies to the total sentence imposed, including time served pretrial in jail and time served in prison. Good time credits would be awarded to people in prison based on their participation

in court-ordered or staff-recommended treatment and education programs and good behavior exhibited while they were in county jail prior to going to prison.

Good time credits allow correctional facilities to incentivize good behavior, creating a safe and efficient way

to reduce the prison population. Further, good time credits enhance public safety by encouraging rehabilitation and discouraging rule-breaking, while allowing the state to avert the cost of housing people for their entire sentence.

POLICY OPTION 7:

Improve the quality of and access to batterers' intervention programs.



Increase public safety and reduce recidivism

Batterers' intervention programs (BIPs) are court-ordered programs for people convicted of domestic violence offenses. They are neither funded by the state nor covered by traditional insurance, however, which forces participants to either pay out-of-pocket to attend or fail to follow the orders of the court. The nine BIPs throughout the state vary in quality. Although courts occasionally order anger management courses as an alternative to BIPs, these courses neither serve as an appropriate substitute for BIPs nor address the underlying issues contributing to a person's history of domestic violence.³⁵

This policy option provides state funding for BIPs and establishes a standards oversight committee to ensure the quality and consistency of this programming. Increasing the number and quality of BIPs ensures that people convicted of domestic violence offenses are held accountable to court orders to participate in programs that address their risk factors. Ensuring that probationers and parolees participate in court-ordered programs is a key part of delivering effective supervision and holding people accountable.

POLICY OPTION 8:

Improve the ability to collect and analyze outcome and demographic data.



Increase public safety and reduce recidivism

Each person in the North Dakota criminal justice system is assigned a statewide identification number (SID number) upon entering the criminal justice system, but this number is inconsistently used across agencies and not usually entered into the court data system. Demographic information is also missing from court records. Data collection on race and gender in North Dakota has increased in recent years, but 80 percent of sentencing records from FY2006 to FY2014 do not include the defendant's race, and 52 percent do not specify gender.

corrections agencies are able to promptly determine prior criminal history, allowing them to develop better case plans for each person. SID numbers also allow analysts to track the outcomes of each person in the system and ultimately evaluate the effectiveness of policies and practices.

A. Require all criminal justice agencies to use the SID number assigned to each person who enters the criminal justice system.

SID numbers allow for prompt and efficient communication among criminal justice agencies in the state regarding the activities of people in the system. When each person who enters the criminal justice system is assigned a unique identification number,

This policy option recommends that the court enter a person's SID number into the court's case management system. A SID number field already exists in the court case management system. This policy option simply encourages court clerks to systematically enter this information into the system.

B. Recommend that the courts enter demographic information into the court data system for each case.

Demographic data are collected by DOCR. Analysis of the FY2014 prison population showed that 21 percent of the state's prison population was Native American,

while only 5 percent of the state's total resident population was Native American. Preliminary analysis suggests that Native Americans are overrepresented at other points in the state's criminal justice system and a dedicated effort to track and monitor the movement of people at various stages in the system is necessary to gain insight into the factors that may contribute to this disproportionality.

Currently, court staff have the capability to enter demographic information that exists in the judgment or other documents into the court data system when they receive a case filing, however are not required to do so, which results in high rates of incomplete data. The lack of demographic data in the court data system hinders the state's ability to understand the demographic composition of its criminal justice population and identify disproportionalities in the criminal justice system.

This policy option recommends that the courts enter the demographic information that exists in case filing documents, including race and gender, into the court data system. This policy option simply encourages court clerks to systematically enter this information into demographic fields that already exist in the court data system.

In taking a more targeted approach to data collection by adopting SID numbers and collecting demographic information, North Dakota will strengthen its ability for future analysis, enable cross-agency information sharing, and gain an understanding of the demographic composition of the criminal justice population. As North Dakota grows and diversifies, it will become even more important for researchers to be able to evaluate the effectiveness of various policies and practices and their impact on different populations.

POLICY OPTION 9:

Assess, track, and ensure the sustainability of recidivism-reduction strategies, and increase statewide data collection and analysis efforts.



Increase public safety and reduce recidivism

A. Create a centralized interagency oversight body to guide and track the implementation of justice reinvestment policies.

The Incarceration Issues Committee disbanded in September 2016 without establishing an entity to oversee the implementation of justice reinvestment policies; consequently, the state may encounter implementation challenges.

This policy option establishes an interbranch, interagency committee to oversee the successful implementation of justice reinvestment policies in the years following enactment of legislation. The committee will monitor implementation efforts and require the development of outcome measures and regular reporting from all agencies and stakeholders involved. The committee will also be required to review the annual impact reports from DOCR and ensure the sustained reinvestment of savings generated from the implementation of the justice reinvestment initiative.

B. Require DOCR to report annual data on the impact of justice reinvestment legislation.

In order to ensure that the justice reinvestment legislation is meeting the goals set forth by the commission, North Dakota must establish a means of monitoring and reporting outcomes. Currently, there is one part-time employee who is dedicated to performing data analysis for DOCR. Various department employees, whose primary roles are not related to data or research, conduct other reporting, as assigned. This stopgap effort has resulted in unclear methodologies and conflicting numbers.

This policy option requires DOCR to produce an annual report on the impact of the state's justice reinvestment legislation, including the extent to which the department has met implementation goals and projections concerning the prison population, the statewide recidivism rate, and other key public safety metrics. DOCR will also be required to communicate additional fiscal needs to the legislature based on these reports.

The effective implementation of justice reinvestment policies is critical for the state to meet its goals, including averted growth in the prison population and correctional spending, and reduced recidivism. By requiring DOCR to report annually on the impact of the legislation, the interagency oversight committee will receive substantive and measurable data to track and guide the implementation of the legislation.

C. Recommend that the Administrative Office of the Courts publish a comprehensive annual report on court activities.

The Administrative Office of the Courts in North Dakota currently publishes an annual report that provides minimal statistics on court activity. The annual report typically includes the number of cases filed, number of cases in each court (traffic, criminal, juvenile, etc.), and number of jury trials.

This policy option recommends that the Administrative Office of the Courts expand its annual report to provide statistical analyses of case hearings, dispositions, and sentences, as resources allow. The courts will be encouraged to work with the provider of their case management system to develop system-generated reports on a regular and an ad-hoc basis.

D. Require state and local criminal justice agencies to adopt standardized offense codes.

North Dakota has created a multi-agency task force to develop standardized offense codes, which are numerical references used to categorize crimes. The task force has developed a common statute table, which is scheduled for release in June 2017. But because the task force's efforts are still underway, agencies currently use varying offense codes for the same crime, complicating data collection and analysis. For example, there are more than 6,000 different DUI offense descriptions in the court data system because court administrators enter different descriptions of the offense each time, as opposed to using a standardized code to describe these DUI offenses. Some state and local agencies in North Dakota have adopted offense codes

published by the National Crime Information Center, while others use less widely accepted code references.

This policy option requires the multi-agency task force to complete the standardization of offense codes and requires all law enforcement and criminal justice agencies to adopt and use these codes. Once the standardization is completed, the task force is required to disseminate the offense codes to all state and local criminal justice agencies for statewide adoption. All agencies will be required to keep up with the codes and make adjustments as laws change.

Standardized offense codes will enhance the quality and timeliness of the crime data collected by criminal justice agencies as well as enable the prompt analysis of criminal justice trends.

E. Require all county jails to submit an annual census data report.

The North Dakota Criminal Justice Information Sharing (ND-CJIS) program is dedicated to providing comprehensive data to criminal justice agencies in North Dakota. ND-CJIS has developed a data management system for local jails to use to track and share information about people in jail, such as demographics, charges, and booking and release dates. This is a system that is accessible to all counties at no cost and allows for reporting and analysis. Currently, only 12 out of 23 jails in North Dakota are using this data system. It is unknown what data, if any, non-participating jails are collecting or how they are collecting it.

This policy option requires all county jails to submit an annual census data report to ND-CJIS. Information provided would include, but not be limited to, one-day counts of jail population, demographics, average daily population, number of admissions, and estimated average length of stay. ND-CJIS will be required to synthesize the census data received from each jail into a statewide annual jail census report.

ENDNOTES

1. North Dakota Department of Corrections and Rehabilitation (DOCR) estimated prison population projection. DOCR one-day inmate population snapshots for 2005–2007 are as of January 1 of each fiscal year. DOCR one-day inmate population snapshots for 2008–2015 and projected population snapshots for 2016–2022 are as of the last day of each fiscal year (June 30). Email correspondence between CSG Justice Center and DOCR, 2015 and 2016.
2. CSG Justice Center analysis of DOCR prison admission data files.
3. The ILC bill contained the following policies: (1) reclassify first time ingestion of a controlled substance as a class B misdemeanor, (2) reclassify first time ingestion of a controlled substance analog offense as a class B misdemeanor, (3) remove mandatory minimum sentences for drug offenses, (4) reclassify drug paraphernalia possession as a class B misdemeanor, (5) establish medical parole for certain people in prison with a terminal medical condition, (6) increase the threshold for Class C felony theft offenses, (7) reduce distance for drug offenses near a school from 1,000 to 500 feet, (8) authorize drug court to terminate probation following completion of a drug treatment program, (9) modify the credentials required to deliver addiction counseling, and (10) repeal the law preventing people with felony convictions from receiving food stamps.
4. CSG Justice Center analysis of DOCR prison one-day snapshot data files.
5. 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: NDOCR, 2005); DOCR, Biennial Report 2013–2015.
6. One-day population counts as of September 1 of each year. 2015 jail survey population information was used because it included more detailed information than previous years' surveys. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
7. Most of DOCR's contract-bed population is housed in six minimum-security transitional facilities operated by nonprofit agencies providing residential programs to people in DOCR custody who are preparing to return to the community from prison. The remaining contract-bed population is housed in county jails and the North Dakota State Hospital.
8. CSG Justice Center analysis of DOCR prison population data files; correspondence with DOCR (facility capacities and contract cost per day); this estimate assumes a daily contract bed cost of \$75.
9. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
10. Census definitions for Hispanic and Latino ethnic categories are updated from census to census, and are therefore not comparable across years. A snapshot of the 2014 population is provided to show racial/ethnic composition based on the most recent census definitions. U.S. Census Bureau, "State & County QuickFacts" retrieved on December 22, 2015, from <http://quickfacts.census.gov/qfd/states/38000.html>; CSG Justice Center analysis of DOCR prison one-day snapshot data files.
11. *Homicide in North Dakota*, reports covering years 2006 to 2014. www.ag.nd.gov/Reports/BCIReports/CrimeHomicide/HomicideND.htm.
12. *North Dakota Domestic Violence Fatality Report*, 2014. <https://www.ag.nd.gov/Reports/2014DVFR.pdf>.
13. *Making a Case for Batterer Treatment in North Dakota: A Judicial Resource* CAWS North Dakota.
14. CSG Justice Center analysis of DOCR supervision data.
15. CSG Justice Center analysis of DOCR supervision data and DOCR prison population snapshot data files. Of the remaining 16 percent of people whose supervision was revoked, 11 percent were returned to supervision and 5 percent had their supervision terminated.
16. CSG Justice Center analysis of DOCR prison admission and release data files and DOCR cost-per-day estimates.
17. CSG Justice Center analysis of DOCR prison admission data files.
18. CSG Justice Center analysis of DOCR prison admission data files and DOCR supervision data.
19. CSG Justice Center analysis of Administrative Office of the Courts felony sentencing data.
20. Based on state rankings of percentages of the adult population with reported dependence or abuse of illicit drugs or alcohol and mental health workforce availability. Mental Health America. "Parity of Disparity: The State of Mental Health in America," 2015. [http://www.mentalhealthamerica.net/sites/default/files/Parity or Disparity 2015 Report.pdf](http://www.mentalhealthamerica.net/sites/default/files/Parity%20or%20Disparity%202015%20Report.pdf).
21. Single-day counts reflect the number of persons who were enrolled in substance use treatment on March 31, 2009; March 31, 2010; March 31, 2011; March 30, 2012; and March 29, 2013. Substance Abuse and Mental Health Services Administration. "Behavioral Health Barometer North Dakota, 2014" <http://store.samhsa.gov/shin/content//SMA15-4895/BHBarometer-ND.pdf>.

22. The combined federal match for Medicaid eligible services for the target population is estimated to be 85 percent.
23. CSG Justice Center analysis of Class C Felony categories; North Dakota Century Code 12.1-32: Penalties and Sentencing.
24. CSG Justice Center analysis of DOCR prison admission data files.
25. For people released from prison in FY2012 and felony probations beginning in FY2012. CSG Justice Center analysis of DOCR supervision and prison sentence data.
26. The remaining people revoked from probation or parole were returned to supervision (9 percent) or terminated from supervision (4 percent). CSG Justice Center analysis of DOCR supervision data.
27. CSG Justice Center analysis of DOCR prison one-day snapshot and release data files.
28. CSG Justice Center analysis of DOCR supervision data.
29. Based on a cohort of probation admissions in FY2012 tracked for three years. CSG Justice Center analysis of DOCR supervision data.
30. Patrick A. Langan and David J. Levin, *Recidivism of Prisoners Released in 1994* (NCJ 193427) (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2002); Matthew Durose, Alexia Cooper, and Howard Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (NCJ 244205) (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2014).
31. 2016 CSG Justice Center North Dakota Judicial Survey; CSG Justice Center Probation and Parole Officer Survey.
32. National Institute on Drug Abuse, *Principles of Drug Addiction Treatment* (2009).
33. One-day population counts as of September 1 of each year. 2015 jail survey population information was used because it included more detailed information than previous years' surveys. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
34. Lowenkamp, Christopher T, VanNostrand, Marie, and Holsinger, Alexander, "The Hidden Costs of Pretrial Detention," (Laura and John Arnold Foundation, 2013).
35. Andrew Klein, *Practical Implications of Current Domestic Violence Research for Probation Officers and Administrators* (Minneapolis, MN: Advocates for Human Potential, March, 2015).



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Project Contacts:

Michelle Rodriguez
Policy Analyst
mrodriguez@csg.org