Justice Reinvestment in North Dakota
Second Presentation to the Incarceration Issues Committee: Interim Report

Second Presentation to the Incarceration Issues Committee: Sentencing Analysis

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National nonprofit, nonpartisan membership association of state government officials that engage members of all three branches of state government.

Justice Center provides practical, nonpartisan advice informed by the best available evidence.
What is Justice Reinvestment?

A data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety.

The Justice Reinvestment Initiative is supported by funding from the U.S. Department of Justice’s Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts.
Justice reinvestment includes a two-part process spanning analysis, policy development, and implementation

I. Pre-Enactment

<table>
<thead>
<tr>
<th></th>
<th>Bipartisan, Interbranch Working Group</th>
<th>Assemble practitioners and leaders; receive and consider information, reports, and policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Data Analysis</td>
<td>Data sources should come from across the criminal justice system for comprehensive analysis</td>
</tr>
<tr>
<td>3</td>
<td>Stakeholder Engagement</td>
<td>Complement data analysis with input from stakeholder groups and interested parties</td>
</tr>
<tr>
<td>4</td>
<td>Policy Options Development</td>
<td>Present a policy framework to reduce corrections costs, increase public safety, and project the impacts</td>
</tr>
</tbody>
</table>

II. Post-Enactment

<table>
<thead>
<tr>
<th></th>
<th>Policy Implementation</th>
<th>Identify needs for implementation and deliver technical assistance for reinvestment strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Monitor Key Measures</td>
<td>Monitor the impact of enacted policies and programs, adjust implementation plan as needed</td>
</tr>
</tbody>
</table>
CSG has worked on justice reinvestment in 21 states, with five underway in 2016.
## Overview

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>01</strong></td>
<td>Review of Big-Picture Trends</td>
</tr>
<tr>
<td><strong>02</strong></td>
<td>Project Update</td>
</tr>
<tr>
<td><strong>03</strong></td>
<td>Sentencing Analysis</td>
</tr>
<tr>
<td><strong>04</strong></td>
<td>Next Steps</td>
</tr>
</tbody>
</table>
North Dakota’s jail and prison populations are experiencing some of the largest rates of growth in the country.

The North Dakota prison population had the **FOURTH HIGHEST percent increase** in the country between 2005 and 2014.

The North Dakota jail population had the **THIRD HIGHEST percent increase** in the country between 2006 and 2013.

*The 2006–2013 timeframe is the most recent data available for national data comparisons on jail populations.
The state’s correctional system is at capacity and is forecasted to grow significantly over the next decade.

DOCOR Historical and Projected One-Day Inmate Counts, 2005–2025

- Actual Prison Population: 1,329
- Projected Growth: +75%
- Current Prison Capacity: 1,479 Beds

**Source:** Email correspondence between CSG Justice Center and DOCR, 2015 and 2016.
Without action, public safety dollars will be consumed trying to keep up with growth rather than investing in crime and recidivism-reduction strategies.

The FY2009–11 state budget provided $64 million ($22.5 million from the General Fund) for construction and renovation at the North Dakota State Penitentiary.

DOCR also receives special funding allocations.

General Fund Corrections Appropriations (in millions), FY2007–2017

<table>
<thead>
<tr>
<th>Year</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY07–09</td>
<td>$131</td>
</tr>
<tr>
<td>FY09–11</td>
<td>$144</td>
</tr>
<tr>
<td>FY11–13</td>
<td>$160</td>
</tr>
<tr>
<td>FY13–15</td>
<td>$181</td>
</tr>
<tr>
<td>FY15–17</td>
<td>$215*</td>
</tr>
</tbody>
</table>

*Budgeted, not spent for 2016 and 2017.

Increases in resident population and front-end system pressures are some of the factors contributing to increases in sentences.
County population and index crime changes create a more complex picture, especially in the east, than state-level trends.

Population Growth by County, 2005–2013
- Decrease
- 5% to 10% Increase
- More than 10% Increase

Reported Index Crime Growth by County, 2005–2013
- Decrease
- Up to 10% Increase
- More than 100% Increase
- Missing 1 or more years of data

North Dakota’s index crime rate is consistently below the national total

Index Crimes per 100,000 Population, 1960–2013

North Dakota has the 9th lowest property crime rate and the 16th lowest violent crime rate

Overview

01 Review of Big-Picture Trends

02 Project Update

03 Sentencing Analysis

04 Next Steps
Justice reinvestment involves reviewing the entire system to identify opportunities to reduce pressure and increase public safety

<table>
<thead>
<tr>
<th>Data Requested</th>
<th>Source</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal History Information</td>
<td>Attorney General Bureau of Criminal Investigation</td>
<td>Received</td>
</tr>
<tr>
<td>Filing, Disposition, &amp; Sentencing</td>
<td>Administrative Office of the Courts</td>
<td>Received; Analyzed</td>
</tr>
<tr>
<td>Probation and Parole Supervision</td>
<td>Department of Corrections and Rehabilitation</td>
<td>Received; Analysis pending</td>
</tr>
<tr>
<td>Prison Population, Admissions, &amp; Releases</td>
<td>Department of Corrections and Rehabilitation</td>
<td>Received; Analysis pending</td>
</tr>
<tr>
<td>County Jail Population, Admissions, &amp; Releases</td>
<td>Criminal Justice Information Sharing</td>
<td>Requested</td>
</tr>
</tbody>
</table>

Common roadblocks in states

- Agencies unaccustomed to sharing data with outside groups
- Data is insufficient for analysis
- Challenges creating a research-ready dataset
- Shortage of data, IT, and research staff
Today’s analysis focuses on sentencing, with a review of other areas to be addressed in future presentations

<table>
<thead>
<tr>
<th>TOPIC OF ANALYSIS</th>
<th>WHEN ANALYSIS WILL BE COVERED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentencing policy</td>
<td>Today</td>
</tr>
<tr>
<td>Sentencing practices</td>
<td>Today</td>
</tr>
<tr>
<td>Statute review</td>
<td>Today</td>
</tr>
<tr>
<td>Probation</td>
<td>June</td>
</tr>
<tr>
<td>Parole</td>
<td>June</td>
</tr>
<tr>
<td>Prison</td>
<td>June</td>
</tr>
<tr>
<td>Recidivism/outcomes</td>
<td>June</td>
</tr>
<tr>
<td>Front-end pressures</td>
<td>July</td>
</tr>
<tr>
<td>County Jails</td>
<td>July</td>
</tr>
<tr>
<td>Pretrial processes (pretrial release, length of stay, bail, etc.)</td>
<td>July</td>
</tr>
</tbody>
</table>
North Dakota’s rich sentencing data powered the analysis in today’s presentation

336,387 records received from the FY2006–FY2014 timeframe

Data records include case filings, dispositions, and sentences

Key Analysis Terms Used in Today’s Presentation

Sentence Event: Unit of sentencing data analysis representing the event at which a charge, or group of charges, reaches conviction. Sentence events are based on sentencing date and judge. Sentence events can include multiple cases and charges, if they were sentenced in the same court on the same day. The outcome of a sentence event is defined using the following hierarchy: life sentence, state prison sentence, jail sentence, probation sentence, and deferred imposition.

Governing Offense: The single charge associated with a sentence event. If there are multiple charges in an event, the governing offense is the offense associated with the most severe sentence in a sentence event.
Some analysis could not be completed due to challenges in the source data

- No standardized offense codes.
  - There was a large amount of variation in the way that offense descriptions and statutes were entered, which prevented a more detailed analysis of offenses.
  - Example: Over 6,000 different offense descriptions for DUI offenses because offense descriptions are written in as opposed to having a standardized code.

| DR OR APC M/V UNDER INFLUENCE ALCOHOL OR AC OF .08% OR >   |
| DR OR APC M/V WHILE UNDER INFLUENCE ALCOHOL OR WITH AC .08 OR > |
| DR OR APC M/V WHILE UNDER INFLUENCE &/OR AC OF .08% OR >    |
| DR OR APC M/V WHILE UNDER INFLUENCE &/OR BAC .08 OR GREATER  |
| DR OR APC M/V WHILE UNDER INFLUENCE ALCOHOL OR BAC .08% OR >|
| DR OR APC M/V WHILE UNDER INFLUENCE OF ALCOHOL OR AC .08 OR>  |
| DR OR APC M/V WHILE UNDER INFLUENCE OR AL OF .08% OR >      |
| DR OR APC M/V WHILE UNDER INFLUENCE OR BAC .08% OR >        |
| DR OR APC OF M/V WHILE UNDER INFLUENCE &/OR AC .08 OR >     |
| DR OR IN APC M/V WITH ALCOHOL CONCENTRATION .08% OR GREATER  |

- Local differences in the way court data is entered—including offense descriptions, sentence information, and restitution for cases—make it difficult to analyze trends statewide.
Data analysis identified three key challenges in the source data

Demographic information missing from most court records

80% of race information missing from sentencing data
52% of gender information missing from sentencing data

Sentencing information incomplete for some court records

Some criminal judgment records did not have specific sentencing information attached. For example, these records showed a disposition for a misdemeanor or felony conviction, but they did not show if the sentence was to jail, prison, or probation. These unspecified sentences were labeled as “Not Specified” when such details were not available.

No differentiation between consecutive and concurrent sentences

The use of the “Concurrent” and “Consecutive” fields is not consistent. Often, it appears that the “Consecutive” field is used to add notes for the “Concurrent” field. As such, CSG Justice Center research staff were unable to analyze concurrent/consecutive sentences.
Stakeholder input informs the data analysis presented today

**Incarceration Issues Committee**
Individual meetings/calls with working group members and their staff

**Courts**
Meetings/calls with individual judges, state attorneys, and the Attorney General’s Office; administration of a judicial survey; and court observations

**Law Enforcement**
Meetings with Burleigh County Police Department, Bismarck Police Department, Ward County Police Department, Cass County Police Department, and Minot Police Department

**North Dakota Legislature**
Meetings with Senators and House Representatives

**Other Organizations**
Department of Human Services, DOCR, Association of Justice, Centre Inc., NDACo, Indian Affairs Commission, Three Affiliated Tribes, Ruth Meiers Hospitality Center, and CAWS North Dakota
CSG Justice Center staff are pursuing regional perspectives in stakeholder engagement, reflecting the state’s size and diversity.
Overview

01 Review of Big-Picture Trends

02 Project Update

03 Sentencing Analysis

04 Next Steps
Glossary of terms used in this presentation

**Disposition**—Post-arraignment court appearance with the outcome of a guilty or not guilty finding, or Deferred Imposition of Judgment.

**Conviction**—A type of disposition resulting in a guilty finding either through a plea deal, trial, or the revocation of a Deferred Imposition of Judgment.

**Suspended Sentence**—A sentence in which a fixed period of incarceration is postponed while an individual is on an accompanying probation sentence. Sentences can be either fully or partially suspended.

- *Fully suspended sentence*: the individual will not be incarcerated if the probationary period is successfully completed.
- *Partially suspended sentence*: an initial period of incarceration is imposed, followed by a period of probation. If the probation is completed successfully, the remainder of the period of incarceration is not served.

**Deferred Imposition of Sentence**—A diversion disposition in which there is a finding of guilty but imposition of a sentence is suspended. The defendant is placed on probation and if he or she successfully completes probation, the guilty finding is dismissed.

**Probation**—A sentence to community supervision. Judges may assign conditions of probation, including use of the 24/7 program. Beginning last year, individuals can be sentenced to either supervised or unsupervised felony probation. Deferred Impositions of Sentence and suspended sentences are both supervised by probation.
Definitions of offense categories used in this analysis

<table>
<thead>
<tr>
<th>Person</th>
<th>Property</th>
<th>Drug</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Aggravated Assault</td>
<td>• Theft of Property/Service</td>
<td>• Possession</td>
<td>• Disorderly conduct</td>
</tr>
<tr>
<td>• Robbery</td>
<td>• Insufficient Funds</td>
<td>• Distribution (includes</td>
<td>• Criminal Trespass</td>
</tr>
<tr>
<td>• Homicide</td>
<td>• Possession of Stolen Property</td>
<td>possession with intent to distribute)</td>
<td>• Resisting/Evading Arrest</td>
</tr>
<tr>
<td>• Manslaughter</td>
<td>• Burglary</td>
<td>• Manufacturing</td>
<td>• Reckless Driving</td>
</tr>
<tr>
<td>• Assault</td>
<td>• Criminal Mischief</td>
<td>• Drug paraphernalia</td>
<td>• Leaving the Scene of an Accident</td>
</tr>
<tr>
<td>• Kidnapping</td>
<td>• Forgery/fraud</td>
<td>• Forged prescription</td>
<td>• Minor in possession of alcohol</td>
</tr>
<tr>
<td>• Domestic Violence</td>
<td>• Motor Vehicle Theft</td>
<td>• Controlled substance at school</td>
<td>• Contributing to the delinquency of a</td>
</tr>
<tr>
<td>• Child Abuse</td>
<td></td>
<td></td>
<td>minor</td>
</tr>
<tr>
<td>• Sexual Assault</td>
<td></td>
<td></td>
<td>• Driving without Insurance/Registration</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Cruelty to animals</td>
</tr>
<tr>
<td>Driving Under the Influence</td>
<td></td>
<td></td>
<td>• Hunting offenses</td>
</tr>
<tr>
<td>• Driving Under the Influence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Driving Under the Influence Resulting in</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injury or Death</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Operating a Boat/Watercraft Under the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Influence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driving with Suspended License</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Driving while License Suspended</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Driving after License Revoked</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Driving in Violation of License Restriction</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Driving without a Valid License</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Violations of sex offender registration were categorized as “Person” offenses, and accounted for less than one percent of all offenses sentenced.
Offense classes set the maximum confinement and probation lengths as well as fines

<table>
<thead>
<tr>
<th>CLASS</th>
<th>MAX CONFINEMENT</th>
<th>MAX PROBATION TERM</th>
<th>MAX FINE</th>
<th>EXAMPLE OFFENSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infraction</td>
<td>N/A</td>
<td>N/A</td>
<td>$1,000</td>
<td>Sale of tobacco to minors</td>
</tr>
<tr>
<td>Misdemeanor B</td>
<td>30 days</td>
<td>360 days</td>
<td>$1,500</td>
<td>DUI, disorderly conduct, prostitution</td>
</tr>
<tr>
<td>Misdemeanor A</td>
<td>1 year</td>
<td>2 years</td>
<td>$3,000</td>
<td>Ingesting a controlled substance, larceny (under $1,000)</td>
</tr>
<tr>
<td>Felony C</td>
<td>5 years</td>
<td>3 years; 5 years for certain offenses/offenders</td>
<td>$10,000</td>
<td>Theft, failure to appear, Possession of a Controlled Substance Other than Marijuana (first offense)</td>
</tr>
<tr>
<td>Felony B</td>
<td>10 years</td>
<td>3 years; 5 years for certain offenses/offenders</td>
<td>$20,000</td>
<td>Manslaughter, aggravated assault (aggravated circumstances)</td>
</tr>
<tr>
<td>Felony A</td>
<td>20 years</td>
<td>3 years; 5 years for certain offenses/offenders</td>
<td>$20,000</td>
<td>Robbery with a dangerous weapon, human trafficking of someone over 18</td>
</tr>
<tr>
<td>Felony AA</td>
<td>Life (with or without parole)</td>
<td>Not specified</td>
<td>$20,000</td>
<td>Murder; Gross sexual imposition; Human trafficking of someone under the age of 18</td>
</tr>
</tbody>
</table>
 Judges estimate that the vast majority of cases involve plea deals, and the agreed-upon sentence is often or always imposed

**Most judges responded that plea deals resolved cases and the deals were accepted**

75% of cases in their courts involve plea deals

90% of the time a plea agreement is accepted and the identical sentence is imposed

Responses varied concerning the frequency of imposition of a lower sentence or rejected plea deals

- A plea agreement is accepted and a lesser sentence is imposed: 44%
- A plea deal is rejected and the individual withdraws his or her guilty plea: 58%
- A plea deal is rejected and the court goes on to impose a more stringent sentence: 65%

Source: 2014 CSG Justice Center North Dakota Judicial Survey
Drivers of the increase in felony sentence events

Felony sentence events doubled between 2011 and 2014

Drug offenses were the primary driver of increases in felony sentence events, and most were sentenced to incarceration

Lowest-level felonies (Class C) comprise 83 percent of felony sentence events
After years of decline, felony sentence events doubled between 2011 and 2014.

Between FY2013 and FY2014, the number of misdemeanor sentence events dropped by 1,200.

Note: Between 1–3% of sentence events are for infractions or unknown level offenses each fiscal year.

The offense level shown here represents the offense associated with the most severe sentence within a sentence event.

Type of Offense

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Misd.</td>
<td>–3%</td>
<td>18%</td>
<td>14%</td>
</tr>
<tr>
<td>Felony</td>
<td>–19%</td>
<td>101%</td>
<td>62%</td>
</tr>
</tbody>
</table>

Source: CSG Justice Center analysis of Administrative Office of the Courts sentencing data
The number of sentence events climbed 23 percent, with larger increases coming from the western part of the state.

*Between 1 and 3% of sentence events are missing judge or district information in each fiscal year.

Source: CSG Justice Center analysis of Administrative Office of the Courts sentencing data
Share of sentence events is largely split between the western and eastern judicial districts

*2% of sentence events were missing judge or district information in fiscal year 2014

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentencing data
Felony sentence events for drug offenses increased 2.5 times between 2011 and 2014

Felony Sentence Events by Offense Type, FY2006–FY2014

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug</td>
<td>−39%</td>
<td>148%</td>
<td>51%</td>
</tr>
<tr>
<td>Property</td>
<td>−21%</td>
<td>57%</td>
<td>91%</td>
</tr>
<tr>
<td>Person</td>
<td>37%</td>
<td>101%</td>
<td>176%</td>
</tr>
<tr>
<td>Other</td>
<td>−1%</td>
<td>93%</td>
<td>24%</td>
</tr>
</tbody>
</table>

*"Other" felony offenses include: DUI, Criminal Trespass, Reckless Endangerment, Terroristic Threat, Weapon offenses, and other offenses that did not fit into the above categories.

The offense shown here represents the offense associated with the most severe sentence within a sentence event.

Source: CSG Justice Center analysis of Administrative Office of the Courts sentencing data
40 percent of felony sentence events were for drug offenses, 79 percent of which were for possession

<table>
<thead>
<tr>
<th>Drug</th>
<th>Property</th>
<th>Person</th>
<th>Other*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Possession (79%)</td>
<td>Theft (77%)</td>
<td>Sex Offenses (34%)</td>
<td></td>
</tr>
<tr>
<td>Delivery** (20%)</td>
<td>Burglary (19%)</td>
<td>Aggravated Assault (27%)</td>
<td></td>
</tr>
<tr>
<td>Manufacture (1%)</td>
<td>Criminal Mischief (3%)</td>
<td>Child Abuse (17%)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Arson (1%)</td>
<td>Assault (13%)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Robbery (5%)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Murder (4%)</td>
<td></td>
</tr>
</tbody>
</table>

*“Other” felony offenses include: DUI, Criminal Trespass, Reckless Endangerment, Terroristic Threat, Weapon offenses, and other offenses that did not fit into the above categories.

**Includes “possession with intent to deliver” charges.

Source: CSG Justice Center analysis of Administrative Office of the Courts sentencing data
79 percent of felony drug sentence events are for possession, 71 percent of which were sentenced to incarceration.

In 2014, 51% of felony drug sentence events lacked information indicating what type of drug was involved in the offense description and were categorized as “Unspecified.”

*“Other Drugs” include cocaine, opiates, methamphetamines, and other types of drugs.

Drug offenses account for the largest portion of felony sentence events in each judicial district

Felony Sentence Events, by Judicial District, FY2014

<table>
<thead>
<tr>
<th>District</th>
<th>Drug</th>
<th>Property</th>
<th>Person</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>NW District (N=164)</td>
<td>39%</td>
<td>24%</td>
<td>20%</td>
<td>17%</td>
</tr>
<tr>
<td>NC District (N=347)</td>
<td>47%</td>
<td>24%</td>
<td>15%</td>
<td>13%</td>
</tr>
<tr>
<td>NE District (N=264)</td>
<td>35%</td>
<td>33%</td>
<td>20%</td>
<td>13%</td>
</tr>
<tr>
<td>NEC District (N=316)</td>
<td>31%</td>
<td>25%</td>
<td>27%</td>
<td>17%</td>
</tr>
<tr>
<td>EC District (N=538)</td>
<td>44%</td>
<td>25%</td>
<td>17%</td>
<td>13%</td>
</tr>
<tr>
<td>SE District (N=261)</td>
<td>39%</td>
<td>27%</td>
<td>21%</td>
<td>12%</td>
</tr>
<tr>
<td>SC District (N=891)</td>
<td>39%</td>
<td>22%</td>
<td>22%</td>
<td>16%</td>
</tr>
<tr>
<td>SW District (N=125)</td>
<td>39%</td>
<td>25%</td>
<td>19%</td>
<td>17%</td>
</tr>
</tbody>
</table>

“Other” felony offenses include: DUI, Criminal Trespass, Reckless Endangerment, Terroristic Threat, Weapon offenses, and other offenses that did not fit into the other listed categories.

Approximately 1% of sentence events were missing judge or district information.

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentencing data
Drug offenses make up a larger share of felony sentence events in North Dakota than other states, and a smaller proportion of drug sentence events are to probation.

Kansas’s sentencing data categorizes person and property into the same category ("non-drug").

Restitution orders, which are attached to 14 percent of sentence events, are most common for property offenses.

For Felony Sentence Events, FY2014 (N=2,943):
- Property: 46%
- Person: 10%
- Other: 14%
- DUI: 10%
- Drug: 7%
- Total: 18%

For Misd. Sentence Events, FY2014 (N=14,351):
- Property: 68%
- Person: 10%
- Other: 9%
- DUI: 8%
- Drug: 4%
- Total: 13%

Future analysis will explore whether restitution collection data are available, and stakeholder engagement will explore opportunities to improve the management of victim restitution.

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentence conditions and fees data
76 percent of felony sentence events are to incarceration

Probation is used for 20 percent of lowest-level felony sentence events

Felony sentence events vary considerably across judicial districts
Distribution of felony sentence event types varies considerably by judicial district, especially percent sent to probation, which ranges from 7 percent to 45 percent.

“Probation” includes straight probation, fully suspended sentences to either prison or jail, and deferred impositions.

“Not Specified” sentences include cases with no specified sentence in the court data.

Less than 1% of sentence events were to a treatment or other privately operated facility.

Approximately 1% of sentence events were missing judge or district information.

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentencing data
Class C offenses account for four out of five felony sentence events, with slight variation across the judicial districts.

Felony Sentence Events by Judicial District, FY2014

<table>
<thead>
<tr>
<th>Felony Class</th>
<th>SW District</th>
<th>SC District</th>
<th>SE District</th>
<th>EC District</th>
<th>NEC District</th>
<th>NE District</th>
<th>NC District</th>
<th>NW District</th>
</tr>
</thead>
<tbody>
<tr>
<td>C</td>
<td>84%</td>
<td>83%</td>
<td>77%</td>
<td>83%</td>
<td>91%</td>
<td>77%</td>
<td>86%</td>
<td>84%</td>
</tr>
<tr>
<td>B</td>
<td>15%</td>
<td>9%</td>
<td>15%</td>
<td>9%</td>
<td>4%</td>
<td>16%</td>
<td>9%</td>
<td>10%</td>
</tr>
<tr>
<td>A</td>
<td>7%</td>
<td>1%</td>
<td>7%</td>
<td>7%</td>
<td>2%</td>
<td>1%</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>AA</td>
<td>9%</td>
<td>10%</td>
<td>15%</td>
<td>9%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

Felony Sentence Event State Totals, FY2014

<table>
<thead>
<tr>
<th>Felony Class</th>
<th>Number</th>
<th>Percent Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>37</td>
<td>1%</td>
</tr>
<tr>
<td>A</td>
<td>163</td>
<td>6%</td>
</tr>
<tr>
<td>B</td>
<td>297</td>
<td>10%</td>
</tr>
<tr>
<td>C</td>
<td>2,446</td>
<td>83%</td>
</tr>
<tr>
<td>Total</td>
<td>2,943</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentencing data
In 2014, 76 percent of felony sentence events were to incarceration (jail or prison)

Felony Sentence Events, FY2014
N=2,943

- **Prison** (60%)
  - Straight Prison: 1,776 (49%)
  - Partially Suspended Prison: 900 (51%)

- **Jail** (16%)
  - Straight Jail: 247 (48%)
  - Partially Suspended Jail: 217 (52%)

- **Probation** (19%)

- **Unspecified** (5%)

“Not specified” sentences were cases with a sentence type entered, but with no other information indicative of confinement, supervision, or sentence length provided. Less than 1% of felony convictions were for confinement to a facility not operated by DOCR or local jail.

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentencing data
North Dakota sentences a smaller proportion of felony sentence events to probation than the national average and most justice reinvestment states.

<table>
<thead>
<tr>
<th>State</th>
<th>Prison/Jail</th>
<th>Probation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington</td>
<td>88%</td>
<td>10%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>76%</td>
<td>19%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>74%</td>
<td>22%</td>
</tr>
<tr>
<td>Michigan</td>
<td>76%</td>
<td>23%</td>
</tr>
<tr>
<td>National</td>
<td>69%</td>
<td>27%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>66%</td>
<td>34%</td>
</tr>
<tr>
<td>Idaho</td>
<td>42%</td>
<td>58%</td>
</tr>
<tr>
<td>Kansas</td>
<td>31%</td>
<td>69%</td>
</tr>
</tbody>
</table>

In 2014, 41 percent of misdemeanor sentence events were to incarceration (jail or prison)

Misdemeanor Sentence Events, FY2014
N=14,351

- Jail: 38% (5,436)
  - Straight Jail (2,631)
  - Partially Suspended Jail (2,805)
- Probation: 34% (4,838)
- Prison: 3% (464)
- Unspecified: 25% (3,616)

“Not specified” sentences were cases with a sentence type entered, but with no other information indicative of confinement, supervision, or sentence length provided. Less than 1% of misdemeanor convictions were for confinement to a facility not operated by DOCR or local jail.

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentencing data
53 percent of felony probation sentence events, and 83 percent of misdemeanor probation sentence events include periods of suspended incarceration.

Less than 1% of sentence events to supervision were suspended sentences from a facility other than prison or jail.

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentencing data
**SUMMARY:** Community treatment capacity and strategies to reduce recidivism

Perceptions of community program and treatment infrastructure may impact sentencing decisions.

Effective supervision combined with treatment is the key to holding offenders accountable and reducing recidivism.

The Risk-Need-Responsivity model focuses treatment and supervision to have greatest impact on recidivism.
A common theme among stakeholders was concern regarding a lack of treatment options to address mental health and substance use needs.

Concerns heard across the criminal justice system:

- Rural communities reported a lack of local health care services.
- Some professionals reported that services were generally available, but justice system individuals could not access them.
- Long wait times to access services were reported in several jurisdictions.
A majority of judges have sentenced individuals to prison in order to connect them with mental health or alcohol and drug programming.

Have you ever sentenced someone to prison in order to connect him/her with needed mental health, alcohol or drug addiction programming, or other treatment even when he/she is not considered high risk?

- **YES**: 70%
- **NO**: 30%

Judges noted that these sentences are reserved for specific instances with extenuating circumstances, such as:

- Inadequate services in the local area
- Community-based drug or alcohol treatment programs have failed or been exhausted
- Defendant has no ability to pay for treatment

Source: 2014 CSG Justice Center North Dakota Judicial Survey
Judges seemed more confident that substance use treatment is more often available than mental health treatment, and that treatment is most available in state prison.

Percentage of Judges Responding that Treatment Is Often Available as Compared to Always, Sometimes, or Never

- **Mental Health Treatment**
  - In prison: 53%
  - Parole or probation in the community: 19%
  - Inpatient treatment on parole or probation: 31%

- **Substance Use Treatment**
  - In prison: 31%
  - Parole or probation in the community: 44%
  - Inpatient treatment on parole or probation: 45%

**Judges identified the following as needed criminal justice resources:**

- Credible treatment
- Inpatient and outpatient drug and alcohol treatment
- HOPE probation program
- Half-way houses
- Additional SCRAM bracelets
- Mandatory treatment provided as part of sentence

*Source: 2014 CSG Justice Center North Dakota Judicial Survey*
Probation can provide states with support in addressing these behavioral health challenges by using Risk, Need, and Responsivity principles

- **Risk**: Focus resources on people most likely to reoffend. Match level of supervision and programming to risk.

- **Need**: Target factors that can change a person’s likelihood of committing a new crime.

- **Responsivity**: Refers to individual and group characteristics that present barriers to treatment or supervision. Work to mitigate barriers, where possible.
Effective probation applies the risk, need, and responsivity principles

**Traditional Approach**

- Supervise everyone the same way
- Assign programs that feel or seem effective
- Deliver programs the same way to every offender

**Evidence-Based Practices**

- Assess risk of recidivism and focus supervision on the highest-risk offenders
- Prioritize programs addressing the needs most associated with recidivism
- Deliver programs based on offender learning style, motivation, and/or circumstances
Identifying risk levels is about sorting and tailoring resources to higher-risk people

Without Risk Assessment...
Identifying risk levels is about sorting and tailoring resources to higher-risk people

Assess risk of reoffense and **focus** supervision on the **highest-risk** offenders

...and Focus Accordingly

<table>
<thead>
<tr>
<th>Risk of Reoffending</th>
<th>LOW 10% re-arrested</th>
<th>MODERATE 35% re-arrested</th>
<th>HIGH 70% re-arrested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Supervision/ Program Intensity</td>
<td>Moderate Supervision/ Program Intensity</td>
<td>High Supervision/ Program Intensity</td>
<td></td>
</tr>
</tbody>
</table>
Target the factors that evidence shows are most central to criminal behavior

<table>
<thead>
<tr>
<th>Antisocial Risk Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Big Four</strong>—Major drivers in criminality</td>
</tr>
<tr>
<td>Higher-risk offenders are likely to have more of the Big Four</td>
</tr>
</tbody>
</table>

*Past antisocial behavior cannot be changed*
To reduce recidivism, focus programs and treatment on higher-risk offenders and address criminogenic needs.

Prioritize programs for higher-risk offenders

The same “Risk Principle” for supervision also applies to programs.

Higher-risk offenders are more likely to have more, and more serious, criminogenic needs.

Programs targeting these needs can significantly lower recidivism rates.

Some programs receiving higher-risk offenders produced significantly better outcomes.

Program outcomes for lower-risk offenders.

Program outcomes for higher-risk offenders.
Where and how treatment is delivered impacts the degree of recidivism reduction.

Research on the impact of treatment intervention on recidivism rates:
- Drug Treatment in Prison: -17%
- Drug Treatment in the Community: -24%
- Supervision with Risk, Need, Responsivity: -30%

Supervision with effective “RNR” yields the largest recidivism reduction.

Overview

01 Review of Big-Picture Trends

02 Project Update

03 Sentencing Analysis

04 Next Steps
Challenges identified by sentencing analysis

- Felony sentence events doubled between 2011 and 2014, primarily due to drug offenses.
- Three-quarters of lowest-level felony sentence events (Class C) were to incarceration.
- Over half of sentence events to probation included suspended periods of incarceration.
Opportunities for North Dakota to address these challenges

- Avert significant increases in corrections spending by prioritizing incarceration for highest-risk people convicted of the most serious offenses.

- Lower recidivism by focusing effective supervision plus treatment on higher-risk probationers and parolees.

- Increase stakeholder confidence by improving community-based treatment capacity.
DISCUSSION
North Dakota Justice Reinvestment Timeline

Press Conference & Project Launch

Meeting 1
Initial Analysis

Meeting 2
April 20
Interim Report

Meeting 3
June 7
Interim Report

Meeting 4
TBD
Final Analysis

Meeting 5
TBD
Policy Options Discussed

Meeting 6
TBD
Policy Options Discussed

Legislation
Pre-Filed

Final Report

Jan 2017

Initial Analysis

Detailed Data Analysis

Impact Analysis

Data Analysis

Stakeholder Engagement

Policymaker & Stakeholder Engagement, Briefings
Policy Development

Ongoing Engagement
Thank You

Michelle Rodriguez, Program Associate
mrodriguez@csg.org

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