

North Dakota Justice Reinvestment Policy Framework

Background

Between 2005 and 2015, North Dakota's prison population increased 32 percent, from 1,329 to 1,751 people.¹ From 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.²

North Dakota stands at a crossroads. Unless state policymakers address the factors driving growth in corrections spending and population, the prison population is projected to grow by 1,310 people by 2025, a 75-percent increase. Accommodating the growth would cost \$485 million.³

In January 2016, North Dakota state leaders launched a data-driven justice reinvestment approach to determine the drivers of the state's rapidly growing prison population and develop policy options to contain rising costs and increase public safety. State leaders requested assistance from The Council of State Governments (CSG) Justice Center to collect and analyze data, consult criminal justice system stakeholders, and develop effective policy options to address the challenges identified in North Dakota's criminal justice system. The Incarceration Issues Committee, established to guide the process, held five full-day meetings between January and September of this year to review the analysis and discuss policy options.

Between these meetings, CSG Justice Center staff crisscrossed the state and met individually with committee members and criminal justice system stakeholders. These discussions informed development of policy options that are based on the data analysis, are responsive to North Dakota's unique challenges, and substantially avert the stark increase projected in the prison population. **This document presents four data-driven, pragmatic policy options that are projected to reduce the forecasted prison population in 2022 by 13 percent, avoiding \$36.3 million in contract prison bed costs, and providing state policymakers with the financial flexibility to reinvest in community-based substance use treatment.**

This data-driven justice reinvestment policy framework serves as a foundation for North Dakota state policymakers to consider as they seek to regain control over the unsustainable prison population growth and skyrocketing cost of corrections. At the Incarceration Issues Committee's September 19 meeting, members will consider these policy options, alongside recommendations committee members put forward, in the form of a bill draft. In the weeks and months ahead, state and local agencies will need to develop a thorough implementation plan and budget that can address questions about how these policies can be effectively put into practice. At the request of state leaders, and with support from the U.S. Department of Justice's Bureau of Justice Assistance and The Pew Charitable Trusts, CSG Justice Center staff will provide the ongoing technical assistance required to help North Dakota design and implement a successful justice reinvestment policy framework.

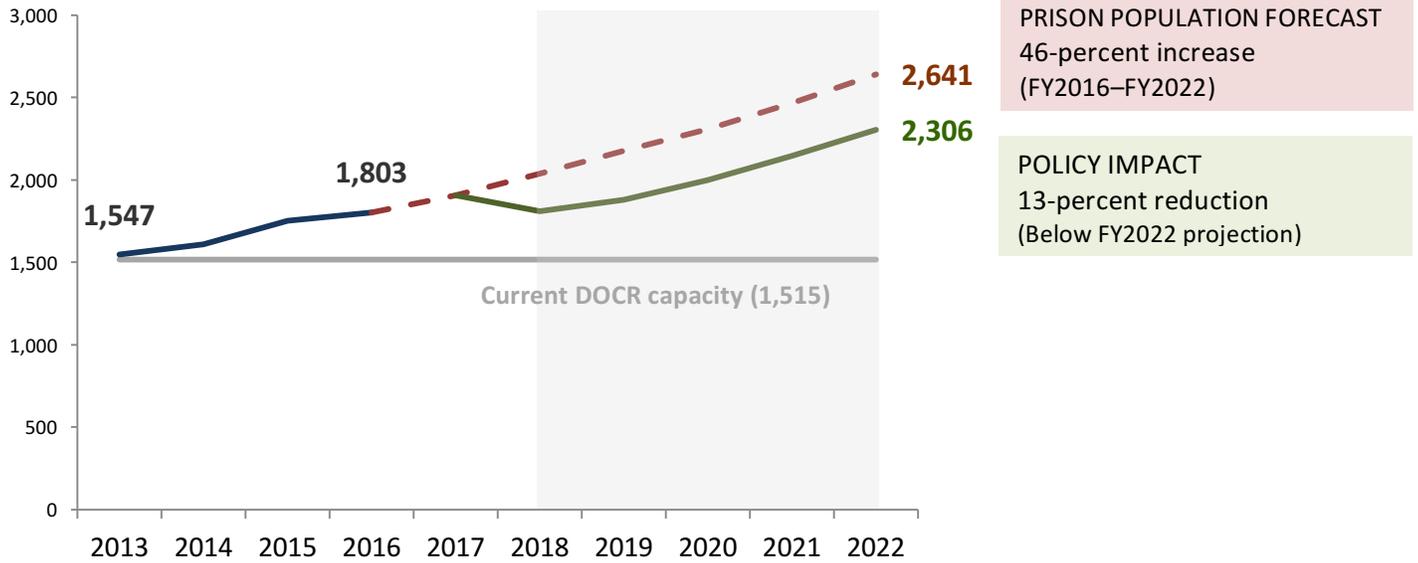
Drivers of Prison Population and Cost

- 1. Property and drug offenses and supervision revocations are driving prison population growth.** In FY2014, 72 percent of people were admitted to prison for either a new property and drug offense or a supervision revocation.⁴ Between FY2010 and FY2014, new prison admissions for property and drug offenses increased 42 percent, driving half the total increase in new offense admissions.⁵ The cost of incarcerating these populations in FY2014 was \$22 million.⁶
- 2. Supervision violations receive slow and costly responses.** Probation and parole officers lack the sanction and treatment options to respond to violations swiftly and cost-effectively. As a result, people acquire numerous violations before being revoked to costly and lengthy sanctions in prison, where they occupied 27 percent of beds in FY2014.⁷
- 3. Substance use underlies many supervision violations and property and drug offenses.** Between FY2010 and FY2014, there was a 141-percent increase in felony sentencing events for drug offenses.⁸ Moreover, probation and parole officers reported that 75 percent of people on supervision are in need of substance use treatment, but there are long wait periods to access these services.⁹ Rural and urban communities alike lack the trained workforce and services necessary to meet the needs of their residents.

Data-driven Justice Reinvestment Policy Framework

1. Avert growth by diverting people convicted of low-level drug and property offenses to probation rather than prison or jail.
2. Reduce recidivism cost-effectively by holding supervision violators accountable with swift, certain, and proportional sanctions followed by supervision and treatment as needed.
3. Increase public safety by focusing supervision and program resources on probationers and parolees at a high risk of reoffending.
4. Reinvest in expanding effective behavioral health treatment for probationers and parolees with substance use and/or mental health needs.

The policy framework would reduce the forecasted prison population by 13 percent in five years.



The policy framework could avert \$36.3 million in costs by avoiding additional contract beds.

	FY2018	FY2019	FY2020	FY2021	FY2022
Prison Population Projection	2,039	2,176	2,307	2,468	2,641
Projected Prison Beds Saved	-230	-298	-310	-322	-335
Projected Prison Population with JR	1,809	1,878	1,997	2,146	2,306
Averted Contract Bed Costs (\$75/day)	\$3.2 M	\$7.2 M	\$8.3 M	\$8.6 M	\$9.0 M
Cumulative Savings					\$36.3 M

Averted costs can be reinvested into community-based behavioral health treatment.

Averting costs associated with additional contract beds enables North Dakota policymakers to reinvest in expanding community-based treatment to address mental illness, substance use, and criminal behavior. These investments impact both public safety and public health and contribute to sustained reductions in state general fund expenditures on corrections while leveraging a significant combined federal match to support the needed investments in behavioral health care treatment services.¹⁰

Policy Options

1. Avert growth by diverting people convicted of low-level drug and property offenses to probation rather than prison or jail.

In FY2014, 62 percent of people admitted to prison for a new crime were convicted of a Class C felony offense.¹¹ More than one-third of these people had not been sentenced to felony probation prior to their admission to prison.¹²

Curbing growth in the state's prison population and prioritizing space in prison for people convicted of the most serious and violent offenses require the use of probation for lower-level offenses.

This policy option creates a statutory presumption that people convicted of Class C property and drug offenses be sentenced to probation rather than incarceration. Courts retain the ability to override the presumption if the person is concurrently or consecutively sentenced to imprisonment on a more serious charge or if there are substantial and compelling reasons why the defendant cannot be effectively and safely supervised in the community.

2. Reduce recidivism cost-effectively by holding supervision violators accountable with swift, certain, and proportional sanctions followed by supervision and treatment as needed.

Probation and parole officers lack the necessary array of swift, certain, and proportional sanctions necessary to provide accountability to probationers and parolees who violate the conditions of their supervision. When people are revoked from supervision, jails and prison bear considerable cost. In FY2014, 51 percent of people revoked from probation were sentenced to prison and another 33 percent were sentenced to jail.¹³

This policy option structures responses to supervision violations using the following three categories:

- A. *Compliance Violation Responses* are used to respond to technical violations and include a range of community sanctions or short doses of incarceration of up to 48 hours for probationers and 72 hours for parolees.
- B. *Risk Violation Responses* are applied following repeated technical violations or new misdemeanor arrests. Appropriate interventions for repeated technical violations include periods of incarceration of up to 30 days. Longer incarceration periods of up to 90 days are applied following absconding or new misdemeanor arrests.
- C. *Revocation Violation Responses* are applied following a new felony arrest, violation of a protective order, or both, and are to result in revocation hearings before the sentencing court or the parole board.

Other states—including Kansas, Idaho, North Carolina, and West Virginia—have moved away from applying lengthy intermittent sanctions toward using swifter, more cost-effective sanctions. States applying these approaches have seen reductions in bed use and cost without increases in crime.

3. Increase public safety by focusing supervision and program resources on probationers and parolees at a high risk of reoffending.

Data analysis in North Dakota confirmed what other states have found: Half of all probationers admitted to prison on a revocation or new offense conviction within three years of the start of their probation

term do so within the first year of their term.¹⁴ The rate of unsuccessful discharge for people on probation at the maximum supervision level was twice as high as that of people on probation at the minimum supervision level.¹⁵ Frontloading supervision and program resources by risk level can have the largest impact on recidivism reduction.

This policy option focuses probation resources on the time when people are at the greatest risk of reoffending or violating the conditions of their supervision. To best target time, energy, and resources on these people, Parole and Probation Services would notify the sentencing court for earned discharge from supervision after a probationer is found to have committed no risk or revocation violations for a set period of time based on the assigned supervision level of each probationer: 12 months for those assigned to a low supervision level, 18 months for medium supervision level, and 2 years for maximum supervision level.

Notification is to be provided to the victim, the state's attorney, the probationer, and defense counsel. Unless the court calls a hearing, or there is an objection and a request for a hearing from the state's attorney, the remaining portion of the deferred or suspended sentence will be terminated 61 days following the notification.

4. Reinvest to expand effective behavioral health treatment for probationers and parolees with substance use and/or mental health needs.

Across the state, the availability of treatment for addictions and mental illness is failing to keep pace with the level of need. North Dakota has the sixth-highest rate of alcohol and drug abuse in the country but is ranked 43rd in behavioral health workforce availability.¹⁶

Insufficient community-based treatment resources greatly limit the state's ability to address behavioral health needs, improve health care outcomes, and reduce recidivism. By increasing access to community-based treatment services and programs and strengthening continuity of care as people transition from institutional placements to the community, the state can help reduce the human and financial costs associated with recidivism.

Strengthening behavioral health care across North Dakota for higher-risk justice-involved people will require a number of interconnected policies. A broadened and well-trained workforce is necessary to provide interventions tailored to these populations. New standards are needed to guide the provision of effective services for challenging populations, and enhanced rates are needed to compensate providers for more expensive care and to encourage development of the required array of services.

This policy option expands the availability and effectiveness of and access to community-based behavioral health services through the following measures:

- Require the Department of Human Services (DHS) and DOCR to develop and promulgate standards for delivering an array of community behavioral health services tailored for higher-risk probationers and parolees with serious behavioral health needs.
- Require Medicaid to create enhanced rates with performance-based incentives to support enhanced service delivery.
- Expand cognitive-behavioral interventions for probationers and parolees.

This policy option also cultivates an adequate network of community behavioral health care practitioners in the following ways:

- Require DHS and DOCR to jointly establish training and certification processes for peer support specialists to work in criminal justice settings.
- Require Medicaid to recognize the services of peer support specialists as billable under Medicaid.
- Require DHS and DOCR to establish the parameters of a case manager position specific to provision of community behavioral health services for higher-risk people with severe disorders.
- Fund and require the Center for Rural Health to facilitate the creation of a statewide system that fosters the development of behavioral health paraprofessionals and professional positions across all relevant behavioral health disciplines.

Additional Policies to Consider

1. Establish the use of a pretrial assessment tool along with a supervision pilot program.
2. Expand the use of good time sentence reductions for people in county jails and on pretrial status.
3. Increase the quality and capacity of services for victims of crime.
4. Assess, track, and ensure the sustainability of recidivism-reduction strategies, and increase statewide data collection and analysis efforts.

¹ E. Ann Carson, Prisoners in 2013 (Washington, DC: Bureau of Justice Statistics, September 30, 2014), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5109>; U.S. Department of Justice and Federal Bureau of Investigation, "Unified Crime Report Data Online," accessed January 22, 2016, <http://www.ucrdatatool.gov/Search/Crime/State/StateCrime.cfm>;

**The 2006-2013 timeframe is the most recent data available for national data comparisons on jail populations.* Source: U.S. Department of Justice, Bureau of Justice Statistics (BJS) Census of Jails: Population Changes, 1999-2013 (Washington DC: BJA, 2015). Excludes the unified jail and prison systems in Alaska, Connecticut, Delaware, Rhode Island, Hawaii and Vermont. BJS, "Correctional Statistical Analysis Tool (2005–2014)," retrieved on January 21, 2016, from <http://www.bjs.gov/index.cfm?ty=nps>

² Biennial budgets run on a two-year cycle. Budget information cited here is from July 1, 2003 to June 30, 2005 and 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.

³ DOCR emails (2015-17 contract facility budget information and DOCR facility cost-per-day figures); DOCR housing data; DOCR inmate projections; "Locking Up North Dakota," DOCR 2015.

⁴ CSG Justice Center analysis of DOCR prison admission data files.

⁵ *Ibid.*

⁶ CSG Justice Center analysis of DOCR prison admission and release data files and DOCR cost-per-day estimates.

⁷ CSG Justice Center analysis of DOCR prison one-day snapshot and release data files.

⁸ CSG Justice Center analysis of Administrative Office of the Courts sentencing data.

⁹ CSG Justice Center Probation and Parole Officer Survey.

¹⁰ The combined federal match for Medicaid eligible services for the target population is estimated to be 85 percent.

¹¹ CSG Justice Center analysis of DOCR prison admission data files.

¹² CSG Justice Center analysis of DOCR prison admission data files and DOCR supervision data.

¹³ The remaining people revoked from probation were returned to supervision (10 percent) or terminated from supervision (5 percent). CSG Justice Center analysis of DOCR supervision data.

¹⁴ CSG Justice Center analysis of DOCR prison admission and release data files and DOCR supervision data.

¹⁵ "Unsuccessful exit" is defined as probationers exiting supervision for one or more of the following reasons: revocation, negative termination, and absconding. CSG Justice Center analysis of DOCR supervision data.

¹⁶ Mental Health America. "Parity of Disparity: The State of Mental Health In America," 2015.

<http://www.mentalhealthamerica.net/sites/default/files/Parity%20or%20Disparity%202015%20Report.pdf>. This figure measures the ratio of the state's population against the number of behavioral health professionals. North Dakota's ratio is 1,033 professionals per resident. By comparison, the states with the top-ten smallest ratios are 500 or fewer to one.

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