Justice Reinvestment in North Dakota

First Presentation to the Incarceration Issues Committee: Initial Analysis

January 26, 2016

The Council of State Governments Justice Center

Marc Pelka, Deputy Director, State Division
Katie Mosehauer, Project Manager
Rachael Druckhammer, Senior Research Associate
Cassondra Warney, Policy Analyst
David Sisk, Policy Analyst
The Council of State Governments Justice Center

- National nonprofit, nonpartisan membership association of state government officials
- Engages members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence
Justice reinvestment goals

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
Presentation overview

Justice Reinvestment Overview

North Dakota System Trends

Next Steps
North Dakota has enacted policies to address several criminal justice system areas in recent years

- Reclassify some felony and misdemeanor offenses
- Allow some exemptions from mandatory minimum sentences
- Create a distinction between supervised and unsupervised probation
- Create 10 new residential crisis treatment beds
- Other recent policy changes made

Source: North Dakota letter to the Bureau of Justice Assistance and The Pew Charitable Trusts requesting technical assistance from the Council of State Governments Justice Center.
North Dakota state policymakers enacted legislation and formally requested technical assistance for justice reinvestment

The State Legislature was joined by the Executive and Judicial branches to request technical assistance from the CSG Justice Center to use a data-driven justice reinvestment approach. The formal request was issued by:

Governor Dalrymple  
Chief Justice VandeWalle  
Attorney General Stenehjem  
House Majority Leader Carlson  
Senate Majority Leader Wardner  
Senate Minority Leader Schneider  
House Minority Leader Onstad  
Legislative Management Chairman Holmberg

HB 1165 and HB 1015 created an interim committee to guide a justice reinvestment approach
The Incarceration Issues Committee will help guide the justice reinvestment process

**LEADERSHIP**
- Senator Ron Carlisle, Chairman
- Representative Jon O. Nelson, Vice Chairman

**LEGISLATIVE MEMBERS**
- Representative Ron Guggisberg
- Representative Kim Koppelman
- Senator John Grabinger
- Senator Terry M. Wanzek

**MEMBERS**
- Wayne Stenehjem, Attorney General
- Chief Justice Gerald W. VandeWalle, Supreme Court
- Leann K. Bertsch, Department of Corrections and Rehabilitation
- Thomas Erhardt, Department of Corrections and Rehabilitation
- Judge Douglas Mattson, District Court
- Presiding Judge Frank Racek, District Court
- Aaron Roseland, Adams County State's Attorney
- Rozanna Larson, Ward County State's Attorney
- Art Walgren, Chief of Watford City Police Department
- Randy Ziegler, Deputy Chief of Bismarck Police Department
Justice reinvestment includes a two-part process spanning analysis, policy development, and implementation

**PHASE I**

<table>
<thead>
<tr>
<th>Step</th>
<th>Activity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bipartisan, Interbranch Working Group</td>
<td>Assemble practitioners and leaders; receive and consider information, reports, and policies</td>
</tr>
<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 Option Development</td>
<td>Present a policy framework to reduce corrections costs, increase public safety, and project the impacts</td>
</tr>
</tbody>
</table>

**PHASE II**

<table>
<thead>
<tr>
<th>Step</th>
<th>Activity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Policy Implementation</td>
<td>Identify needs for implementation and deliver technical assistance for reinvestment strategies</td>
</tr>
<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>
Along with data analysis, justice reinvestment assesses core correctional practice and reviews subject-matter areas

**Analyze Criminal Justice System Data**
- Crime & arrest
- Sentencing
- Probation & parole
- Jail
- Prison
- Treatment and programs to reduce recidivism
- Recidivism

**Assess Risk Assessment, Program, and Supervision Systems**
- System-wide assessment & analysis
- On-site observation of current practice
- Administrative policy review & redesign
- Retraining, revalidation, & quality assurance
- Implementation

**Focus on Diverse Criminal Justice Subject-Matter Areas**
- Prosecutors
- Victim advocates & service providers
- Parole board members
- Law enforcement
- Sentencing policies & case law
- Behavioral health state officials and providers

**Focus Resources**
- based on risk & need

**Generate Savings**
- resulting from more effective practice

**Reinvest**
- in public safety strategies
North Dakota is the 25th state to use the justice reinvestment approach with CSG Justice Center assistance.
States using justice reinvestment have achieved gains across multiple criminal justice indicators

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime Rate</td>
<td>Down</td>
<td>Down</td>
<td>Down</td>
</tr>
<tr>
<td>Recidivism Rate</td>
<td>Down</td>
<td>Down</td>
<td>Down</td>
</tr>
<tr>
<td>Prison Population</td>
<td>Down</td>
<td>Down</td>
<td>Down</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Index Reported Crimes</td>
<td>−16%</td>
<td>−22%</td>
<td>−14%</td>
</tr>
<tr>
<td>Prison Population</td>
<td>−8%</td>
<td>−17%</td>
<td>−9%</td>
</tr>
</tbody>
</table>

Four aspects of justice reinvestment that help tackle criminal justice system challenges

**Intensive data analysis helps uncover previously unexplored challenges**

Nebraska discovered a prison “revolving door” of people convicted of low-level offenses, mostly for nonviolent offenses, serving short sentences before returning to the community.

**Stakeholder input critical to defining the challenge and reaching consensus solution**

In West Virginia, prosecutors, judges, and law enforcement championed a reinvestment package that has led to $9M over 3 years in expanded community-based substance use treatment.

**Large bipartisan majorities lead legislative approval**

In 30 states, justice reinvestment reforms have received more than 5,700 “aye” votes in state legislatures, compared with fewer than 500 “no” votes.*

**Sustained state leadership through implementation**

Pennsylvania’s corrections and parole agencies maximized impacts, generating millions of additional savings for reinvestment in victim services, probation, and law enforcement.

South Dakota’s 2011 “Public Safety Improvement Act” is showing promising results

“Basically, these weren’t people we were afraid of; these were people we were mad at. So we asked, ‘Is there a way other than incarceration to hold them accountable?’”
—South Dakota Governor Daugaard

Findings

• People convicted of nonviolent offenses make up a large percentage of prison admissions
• Parole violators occupy a growing number of prison beds
• High rate of recidivism

Policy Solutions

• Focus prison space on violent and career criminals
• Strengthen supervision and interventions
• Focus supervision resources on those most at risk to reoffend

Impact

• Stabilized the prison population—averting growth and avoiding new construction
• Expansion of problem-solving courts, funding to offset potential jail impacts, a tribal-parole pilot project, and more

Although this presentation is based largely on published reports, independent analyses will drive future presentations.

---

**Data Type** | **Source**
--- | ---
Crime and Arrests, Criminal History Information | Attorney General Bureau of Criminal Investigation
Filing, Disposition, and Sentencing | Administrative Office of the Courts
Probation Supervision, Problem Solving Courts, Community-Based Programs | Department of Corrections and Rehabilitation
Prison, Parole Supervision | Department of Corrections and Rehabilitation
County Jail Population and Trends | North Dakota Association of Counties
County Jail Booking and Releases | North Dakota Association of Counties

---

**Roadblocks that sometimes arise**

- Agencies unaccustomed to sharing data with outside groups
- Data is insufficient for analysis
- Shortage of “data staff”
- Challenges creating a research-ready dataset
Presentation Overview

Justice Reinvestment Overview

North Dakota System Trends

Next Steps
Initial analysis will address three key questions

1. What elements of the criminal justice system have changed over the last decade?

2. How have these changes impacted pressures in the system, public safety, and state spending?

3. What opportunities are there for justice reinvestment to help reduce critical pressures and costs and improve public safety?
Initial analysis

1. What elements of the criminal justice system have changed over the last decade?

2. How have these changes impacted pressures in the system, public safety, and state spending?

3. What opportunities are there for justice reinvestment to help reduce critical pressures and costs and improve public safety?
After decades of minimal growth, North Dakota’s resident population became one of the fastest-growing nationally.

While resident population growth outpaced regional and national growth, changes varied from county to county.

Population Growth by County, 2005–2013

Despite an increase in index crime rate, North Dakota remains below the national average.

County population and index crime changes create a more complex picture, especially in the east, than state-level trends make.

While population changes coincided with increases in index crime, population changes alone are not the cause of changes in crime.

While total arrests decreased slightly, arrests for violent crimes doubled.
The county jail population has nearly doubled in the past decade

County jails report the number of individuals physically present in their facilities, including individuals who are held awaiting transport to DOCR or under contract for DOCR. As DOCR prison population counts include all individuals sentenced to DOCR and not just those present in traditional facilities, there may be some overlap in individuals represented in this chart and those counted by DOCR.

The county jail population is composed of a diverse set of subgroups.

### County Jail Population Composition, September 2015

- **Awaiting Trial**: 47%
- **Awaiting Probation Revocation Hearing**: 7%
- **Sentenced to Jail**: 18%
- **Sentenced to NDDOCR/Awaiting Transport**: 3%
- **Held under contract for another jurisdiction**: 24%
- **Other**: 1%

**Source:** NDACo survey of Grade 1 & 2 county jail facilities in North Dakota, September 2015.
North Dakota’s prison population is up 32 percent since 2005

**DOCRA One-Day Inmate Counts, 2005–2015**

Prison population counts include all individuals sentenced to DOCR custody, including individuals in traditional state prison beds, those in non-traditional beds such as a bed in a treatment facility, and individuals in contract beds at county jails or other facilities. County jails report the number of individuals physically present in their facilities, so there may be some overlap in individuals represented in this chart and those counted by county jails.

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 are as of the last day of each fiscal year (June 30). Source: Email correspondence between CSG Justice Center and DOCR, 2015 and 2016.
Incarceration populations in North Dakota increased at one of the highest rates 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 length of some sentences to prison imposed by North Dakota courts has increased.

North Dakota Average Prison Sentence Imposed by Court in Months, 2008–2014

The length of sentences may change for a number of reasons:

- Statutory discretion in sentencing options
- Seriousness of offense
- Changes to available length of sentence in statute

The “average length of sentence imposed by courts” is the average sentence imposed by the court. It does not consider mechanisms that may shorten a sentence such as good time, credit for time served, parole relief, or any other method of shortening a sentence except Pardon Advisory Board recommendations adopted by the Governor, which can change the sentence.

The number of probationers and parolees grew significantly in the last decade.


Interstate compact transfers to North Dakota are included in this population.

Source: Email correspondence between CSG Justice Center and DOCR, 2005 and 2015. Dates are January 1.
## Initial analysis

<table>
<thead>
<tr>
<th></th>
<th>What elements of the criminal justice system have changed over the last decade?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>How have these changes impacted pressures in the system, public safety, and state spending?</td>
</tr>
<tr>
<td>3</td>
<td>What opportunities are there for justice reinvestment to help reduce critical pressures and costs and improve public safety?</td>
</tr>
</tbody>
</table>
Recidivism climbed 5 percentage points over 10 years

Technical violations account for most of the people who are reincarcerated

Since 2005, at least 60% of people returning to prison were technical parole violators

The methodology for calculating recidivism rates changed in 2004; breakdowns between technical violations and new crime are not available for 2001 through 2003.

Corrections appropriations increased 64 percent in the last decade

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.

*Budgeted, not spent for 2016 and 2017.
North Dakota’s prison population is projected to grow by three-fourths by 2025

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

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 one-day inmate population projections for 2016-2025 are as of the last day of each fiscal year (June 30). Source: Email correspondence between CSG Justice Center and DOCR, 2015 and 2016.
County jail capacity could increase by almost half after the completion of current construction projects.

Nine counties are currently engaged in construction or expansion projects for their jails. Once completed, these new facilities will provide an anticipated 48% increase in statewide jail capacity.

Initial analysis

1. What elements of the criminal justice system have changed over the last decade?

2. How have these changes impacted pressures in the system, public safety, and state spending?

3. What opportunities are there for justice reinvestment to help reduce critical pressures and costs and improve public safety?
Key takeaways from ten-year trends

1. North Dakota’s jail and prison populations are experiencing some of the largest rates of growth in the country.

2. The state’s correctional system is over capacity and has significant growth forecasted over the next decade.

3. Without action, public safety dollars will be consumed trying to keep up with growth rather than invested in crime and recidivism reduction strategies.
Key questions justice reinvestment can help to address

What strategies can reduce crime and recidivism and improve public safety?

What factors explain the growth in jail and prison populations?

What options are there for the state to avert growth in incarcerated populations?
The Incarceration Issues Committee will help establish priorities for the scope of the project

Of all the possible issues, which feel the most pressing and important?
Presentation Overview

Justice Reinvestment Overview

North Dakota System Trends

Next Steps
Subsequent presentations will be based on independent analyses of case-level data submitted by North Dakota Council of State Governments Justice Center.

<table>
<thead>
<tr>
<th>Data</th>
<th>Source</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime and Arrests, Criminal History Information</td>
<td>Attorney General Bureau of Criminal Investigation</td>
<td>Pending</td>
</tr>
<tr>
<td>Filing, Disposition, &amp; Sentencing</td>
<td>Administrative Office of the Courts</td>
<td>Received</td>
</tr>
<tr>
<td>Probation Supervision, Problem Solving Courts, Community Based Programs</td>
<td>Department of Corrections and Rehabilitation</td>
<td>Pending</td>
</tr>
<tr>
<td>Prison, Parole Supervision</td>
<td>Department of Corrections and Rehabilitation</td>
<td>Pending</td>
</tr>
<tr>
<td>County Jail Population &amp; Trends</td>
<td>North Dakota Association of Counties</td>
<td>Pending</td>
</tr>
<tr>
<td>County Jail Bookings &amp; Releases</td>
<td>North Dakota Association of Counties</td>
<td>Scoping</td>
</tr>
</tbody>
</table>

Roadblocks that sometimes arise:

- Agencies unaccustomed to sharing data with outside groups
- Data is insufficient for analysis
- Shortage of “data staff”
- Challenges creating a research-ready dataset
Examples of analyses that typically appear in presentations

Data analysis of trends from across the criminal justice system

Impact of correctional interventions on reducing cost, recidivism, and crime

Review of statutory and administrative policy

Analysis of supervision and programs according to “what works” to change offender behavior

Benchmark policies and systems against other states and national averages

Qualitative input from survey and focus groups
Types of Justice Reinvestment publications and reports

Overview Publication
Introductory report released at project launch to provide big-picture overview of system trends

Working Group Presentations
Interim reports illustrating data and policy analysis, and stakeholder input

Analyses and Policy Framework Publication
Report that summarizes analysis, presents policy options, projects impacts of reinvestments
North Dakota justice reinvestment timeline

- Press Conference & Project Launch
- Meeting 1 Initial Analysis
- Meeting 2 Interim Report
- Meeting 3 Interim Report
- Meeting 4 Final Analysis
- Meeting 5 Policy Options Rollout
- Meeting 6 Policy Options Finalized
- Justice Reinvestment Legislation Pre-Filed
- Final Report

Timeline:
- Jan
- Feb
- Mar
- Apr
- May
- June
- July
- Aug
- Sept
- Jan 2017

Data Analysis:
- Initial Analysis
- Detailed Data Analysis
- Impact Analysis

Stakeholder Engagement:
- Policymaker & Stakeholder Engagement, Briefings
- Policy Development
- Ongoing Engagement
Outside of the Incarceration Issues Committee process, criminal justice system stakeholders will be engaged in discussions through various formats:

- Statewide Forums
- Regional Meetings
- Focus Groups
- Discussion Panels
- Public Meetings
Thank You

Cassondra Warney, Policy Analyst
cwarney@csg.org

This material was prepared for the State of North Dakota. The presentation was developed by members of the Council of State Governments Justice Center staff. Because presentations are not subject to the same rigorous review process as other printed materials, the statements made reflect the views of the authors, and should not be considered the official position of the Justice Center, the members of the Council of State Governments, or the funding agency supporting the work.
This project was supported by Grant No. 2015-ZB-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice’s Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.