

**Draft**

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Ms. Juliene James  
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Bureau of Justice Assistance  
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Mr. Adam Gelb  
Project Director  
Pew Center on the States  
901 E Street NW, 10<sup>th</sup> Floor  
Washington, DC 20004-1409

Dear Ms. James and Mr. Gelb:

North Dakota political leaders and criminal justice system stakeholders have long been willing to explore the system's performance and to suggest changes to laws and policies to make the system operate efficiently, fairly, and with public safety as a primary concern. Our previous work in this area demonstrates North Dakota's ongoing commitment to understanding the current pressures on the criminal justice system and to using evidence-based, data-driven models to create solutions specific to North Dakota.

North Dakota has recently experienced rapid population growth as a result of the success of the oil and gas industry in the Bakken Formation. At the same time, North Dakota has experienced an increase in crime, particularly violent crime, which has put a strain on all public safety, education, and human service agencies.

The timing of this request could not be better as the North Dakota Legislative Assembly passed several criminal justice reforms during the 2015 Legislative Assembly. Over the past several bienniums, the North Dakota Legislative Assembly has studied sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other issues related to alternatives to incarceration. Sentencing alternatives to incarceration for first time offenses that are nonviolent, excluding the distribution of drugs, have also been studied. The 2013-14 interim Commission on Alternatives to Incarceration recommended seven bills to the 2015 Legislative Assembly, all of which passed and became law on August 1, 2015. The commission recommended and the 2015 Legislative Assembly passed Senate Bill No. 2028, eliminating the mandatory transfer of a juvenile to adult court for offenses related to manufacture, delivery, or possession of controlled substances. The commission recommended and the 2015 Legislative Assembly passed House Bill No. 1029, separating the offenses of abuse of a child and neglect of a child into different statutory provisions and eliminating the Class B felony penalty for the offense of neglect of a child. The commission recommended and the 2015 Legislative Assembly passed Senate Bill No. 2029, removing the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession, and to provide a judge discretion with respect to the length of the probation within those statutory limits. The commission recommended 2015 Senate Bill No. 2027, which

was amended into 2015 House Bill No. 1367, and passed. As enacted, the bill creates a distinction between supervised and unsupervised probation. Under the bill, the length of supervised probation from the later of the date of the order imposing probation, the defendant's release from incarceration, or termination of the defendant's parole is up to five years for a felony, two years for a Class A misdemeanor, and 360 days for a Class B misdemeanor. The bill also authorizes the court to impose additional probation if the defendant has not served the maximum sentence of imprisonment available to the court at the time of initial sentencing or deferment. The bill includes the option of up to five nonsuccessive periods of incarceration during any 12-month period, not to exceed 48 hours each, as an intermediate measure a court may use to avoid a revocation of probation.

The commission recommended and the 2015 Legislative Assembly passed Senate Bill No. 2030, reducing the penalty for possession of paraphernalia intended for the use of controlled substances from a Class C felony to a Class A misdemeanor and reduced the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor. As enacted, the bill also makes it a Class A misdemeanor to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana. The commission recommended and the 2015 Legislative Assembly passed House Bill No. 1030 allowing a court to depart from a mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public. The commission recommended the Governor contact The Pew Charitable Trusts to propose a collaborative effort to implement a justice reform study in the state. The 2015 Legislative Assembly passed House Bill No. 1165 and House Bill No. 1015, which provided that the Legislative Management study justice reinvestment reforms through the creation of an incarceration issues committee.

The commission recommended the Governor include additional funding for the 2015-17 biennium to provide residential treatment program beds statewide, with an emphasis on additional beds in the western portion of the state. The 2015 Legislative Assembly provided the Department of Human Services an additional \$903,983 for a 10-bed crisis residential and transitional living unit in the north central region and \$283,500 for a 4-bed unit to provide alternate care services for the west central region. The commission recommended the Governor include funding to replicate the Cass County Jail diversion project in other areas of the state. The 2015 Legislative Assembly approved an additional \$1,705,382 for an adult recidivism reduction reentry program. In addition, pretrial services received 3 full-time equivalent (FTE) positions and approximately \$530,000. The commission recommended the Governor include funding for a study of evidence-based practices used by the Department of Corrections and Rehabilitation in meeting identified treatment service gaps and expressed its support to increase funding of community service supervision grants.

With the passage of 2015 House Bill No. 1015, North Dakota committed to a statewide review through the creation of the 2015-16 Incarceration Issues Committee, in conjunction with representatives of the executive and judicial branches and other stakeholders, of justice reinvestment reforms to seek cost-effective and evidence-based strategies to enhance public safety and properly manage corrections and supervision populations. Understanding that this analysis is needed, North Dakota requests formal justice reinvestment technical assistance from the Bureau of Justice Assistance, the Pew Center on the States, and the Council of State Governments (CSG) Justice Center to ensure North Dakota has the best opportunity to achieve the goals of increasing public safety while lowering corrections costs and reinvesting the savings in proven measures that help reduce crime.

The Incarceration Issues Committee will undertake work that aligns closely with justice reinvestment goals: increasing public safety while reducing corrections and related criminal justice spending and reinvesting resources in strategies to reduce crime and create stronger communities. North Dakota is not unique in its challenge to balance public safety, criminal justice, and budgetary concerns. However, the

more recent rapid population growth, in addition to the Native American population, present unique challenges for the state moving forward.

The 2013 Legislative Assembly appropriated \$180,915,389 from the general fund for the Department of Corrections and Rehabilitation, which was an increase of approximately 13 percent over the 2011-13 biennium. The 2015 Legislative Assembly appropriated \$177,774,343 from the general fund and \$37,612,899 for other funds to the Department of Corrections and Rehabilitation for an increase of 22 FTE positions, which increased the total number of FTE positions within the department to 836.29. Inmate counts documented by the North Dakota Department of Corrections and Rehabilitation indicate that after an average inmate decline between 2011 and 2012, North Dakota has experienced an increase in average prison population since 2013. The average daily inmate population during the 2013-15 biennium was 1,447 males and 185 females.

As a result of these trends and our desire to reverse the trend of rising prison populations and corresponding costs while making North Dakota a safer place to live and do business, we support using the justice reinvestment process to analyze our criminal justice system and to develop evidence-based policies to address our corrections challenges. We also understand the importance of dedicating a portion of any savings identified through this process to investments in criminal justice programs and projects that are proven to reduce recidivism.

The Incarceration Issues Committee provides the perfect vehicle to work closely with CSG during the justice reinvestment process. The 16 members of the committee represent a wide range of stakeholders in the North Dakota criminal justice system including legislators, district court judges, the Chief Justice of the North Dakota Supreme Court, the Director of the Department of Corrections and Rehabilitation and other corrections professionals, law enforcement representatives from state and local agencies, the Attorney General, and two county states attorneys. All of the members will provide engaged, enthusiastic direction, and input for the CSG team.

If our request is granted we commit to:

- Providing CSG and its partners timely access to complete, accurate data about the corrections and criminal justice system;
- Supporting the work of the Incarceration Issues Committee to ensure CSG has an effective working group to provide stakeholder input and bipartisan guidance as the study progresses;
- Providing staff support to CSG as it provides technical assistance to the committee, including qualitative and quantitative research, policy analysis, stakeholder engagement, communications support, targeted training, and project management;
- Coordinating in-state meetings, focus groups, and interviews with state leaders and other stakeholders; and
- Using the committee's recommendations as the catalyst for legislative proposals to be considered by the 2017 Legislative Assembly and for administrative actions that could further our goals of increased public safety, reduced corrections populations and costs, and increased commitment to and investment in data-driven criminal justice policies.

Because of our biennial legislative sessions, North Dakota's timeline to initiate and complete justice reinvestment differs from many other states that have sought justice reinvestment assistance. We believe that the Incarceration Issues Committee and CSG can complete the justice reinvestment process in a manner that takes into account North Dakota's biennial legislative sessions and respects the demands for CSG time and staff assistance. We propose that initial work begin the fall of 2015, with intense engagement in the process starting in early spring of 2016. Our goal is to have legislation completed by November 2016.

If North Dakota's request for technical assistance is accepted, the initial news conference to launch the justice reinvestment process to the public and signal our commitment to this intensive review of North

Dakota's criminal justice system can occur in 2015. Another option is to hold the official launch in early 2016 before the bulk of the work with CSG would occur. Either way, we commit to providing communications support to engage stakeholders in the process and to communicate to the public the importance of the justice reinvestment goals and study process.

Although North Dakota has made and continues to make strong efforts to ensure we have a criminal justice system that uses evidence-based best practices to create an efficient and predictable corrections system while balancing public safety and budget realities, we know there is always more work to do. We believe justice reinvestment technical assistance will help us greatly in this work.

As state leaders, we are committed to working with the Bureau of Justice Assistance, the Pew Center on the States, and CSG to provide complete and accurate data and research and to ensure that the policy options that result from the effort are data-driven, state-based, and supported by the criminal justice community as a whole. Thank you for this opportunity to demonstrate how North Dakota meets the criteria to request justice reinvestment assistance and for your consideration of our request.

Sincerely,

Senate Majority Leader

Governor

Senate Minority Leader

Chief Justice

House Majority Leader

Attorney General

House Minority Leader

Legislative Management Chairman