

JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS

Justice Reinvestment in North Dakota

Presentation to North Dakota Judiciary Committee

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The Council of State Governments Justice Center

Corrections 	Justice Reinvestment
Mental Health 	Reentry
Substance Abuse 	Youth
Courts 	Law Enforcement



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

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The Justice Center provides **practical, nonpartisan advice** informed by the best available evidence.

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What is Justice Reinvestment?



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**

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North Dakota state policymakers enacted legislation and formally requested technical assistance for justice reinvestment



HB 1165 and HB 1015 created an interim committee to guide a justice reinvestment approach

North Dakota state leaders requested assistance from Pew and BJA to receive technical assistance from the CSG Justice Center to use a data-driven justice reinvestment approach

Governor Dairymple

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

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State leaders are demonstrating support for North Dakota's justice reinvestment approach

Governor Jack Dalrymple

"We welcome this opportunity to further review our criminal justice system and build on our work to reduce recidivism and to ensure that spending on corrections is as cost-effective as possible, while adhering to our high standards of public safety."

Attorney General Stenehjem

"North Dakota remains one of the safest states in the nation. Our statewide efforts to address recent increases in violent crime are producing results. As our state continues its historic population growth, we must assess our criminal justice system to ensure it has the tools and capacity to provide the type of public safety outcomes our residents deserve."

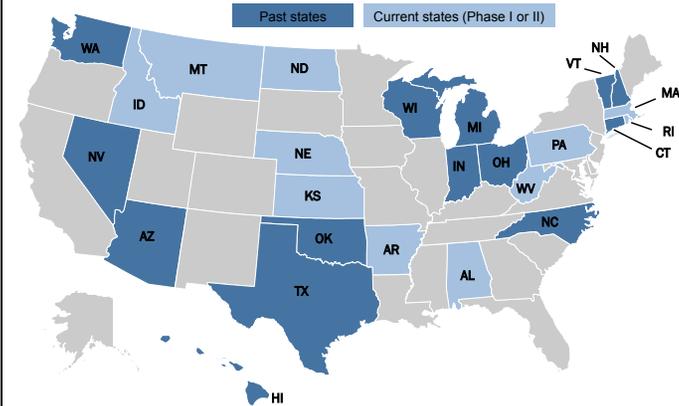
House Minority Leader Kenton Onstad

"Both political parties are eager to work together on this Justice Reinvestment Initiative to bolster public safety and fine tune our criminal justice system as the state continues to grow."



Incarceration Issues Committee January 26, 2016

States using the justice reinvestment approach with CSG Justice Center



Justice reinvestment includes a two-part process spanning analysis, policy development, and implementation

I. Pre-Enactment

- 1 **Bipartisan, Interbranch Working Group** Assemble practitioners and leaders; receive and consider information, reports, and policies
- 2 **Data Analysis** Analyze data sources from across the criminal justice system for comprehensive analysis
- 3 **Stakeholder Engagement** Complement data analysis with input from stakeholder groups and interested parties
- 4 **Policy Options Development** Present a policy framework to reduce corrections costs, increase public safety, and project the impacts

II. Post-Enactment

- 5 **Policy Implementation** Identify needs for implementation and deliver technical assistance for reinvestment strategies
- 6 **Monitor Key Measures** Monitor the impact of enacted policies and programs, adjust implementation plan as needed

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

- Intensive data analysis helps uncover previously unexplored challenges**

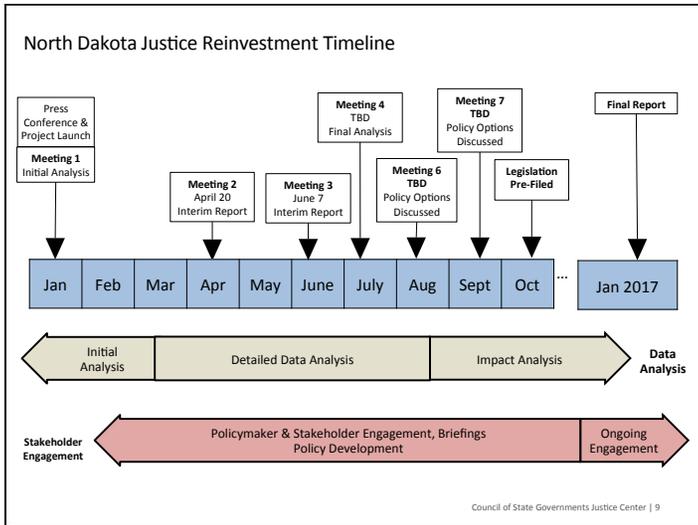
▶ Nebraska discovered a prison "revolving door" of people convicted of low-level offenses, mostly for offenses not including violence, serving short sentences before returning to the community.
- Stakeholder input critical to defining the challenge and reaching consensus solution**

▶ 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.

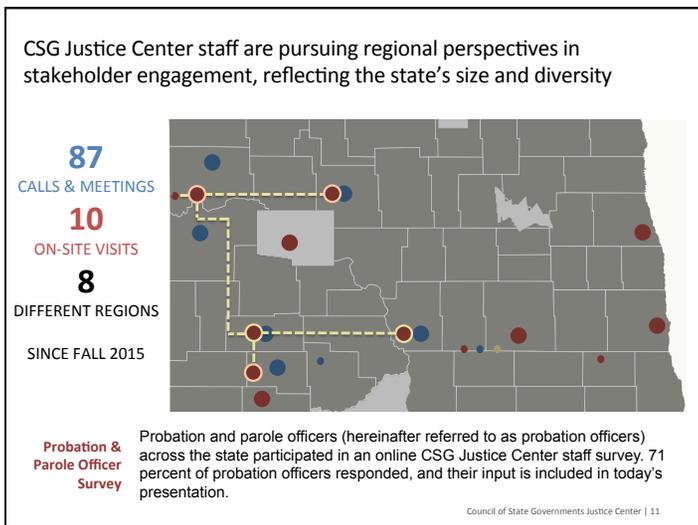
Source: *New Charitable Trusts, "Bipartisan Support for Justice Reinvestment Legislation," June 27, 2015, <http://www.newcharitabletrusts.org/press-releases/press-releases/2015/bipartisan-support-for-justice-reinvestment-legislation>



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

TOPIC OF ANALYSIS	WHEN ANALYSIS WILL BE COVERED
Sentencing policy	April
Sentencing practices	April
Statute review	April
Probation	June 7
Prison	June 7
Recidivism/outcomes	June 7
Parole	June/July
Front-end pressures	July
County Jails	July
Pretrial processes (pretrial release, length of stay, bail, etc.)	July

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Stakeholder input informs the data analysis presented today

- Incarceration Issues Committee**
 Individual meetings/calls with working group members and their staff
- North Dakota Legislature**
 Meetings with Senators and House Representatives
- Courts**
 Meetings/calls with individual judges, state attorneys, and the Attorney General's Office; administration of a judicial survey; and court observations
- Community and Tribal Organizations**
 NDACO, Indian Affairs Commission, Three Affiliated Tribes, CAWS North Dakota, North Dakota Council on Abused Women Services Coalition, and North Dakota Board of Addiction Counseling Services
- Behavioral Health**
 DHS, Regional Human Services Centers, Ruth Meiers Hospitality Center, ADAPT Inc., Heartview Foundation, Heart River Alcohol and Drug Abuse Services, Native American Resource Center, and Choice Recovery Counseling
- Law Enforcement**
 Burleigh, Ward, and Cass County Police Department; Bismarck and Minot Police Department; Stark and Williams County Sheriff's Office; Southwest Multi Correction Center; and presented at the joint Chiefs and Sheriffs Associations meeting
- Corrections**
 Meetings with DOCR staff, Centre Inc., and the Dakota Women's Correctional Rehab Center; probation officers survey; and observation of probation reporting sessions

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- 01 Review of Big-Picture Trends
- 02 Project Update
- 03 Example of Justice Reinvestment in Action

North Dakota's jail and prison populations are growing faster than nearly every other state

The North Dakota prison population was the **FOURTH HIGHEST percent increase** in the country between 2005 and 2014. **32%**

The North Dakota jail population was the **THIRD HIGHEST percent increase** in the country between 2006 and 2013. **83%**

*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: BJS, 2015). Excludes the unified jail and prison systems in Alaska, Connecticut, Delaware, Rhode Island, Hawaii and Vermont. BJS, "Correctional Statistical Analysis Tool (2009-2014)", retrieved on January 21, 2016, from <http://www.bjs.gov/index.cfm?ty=tda>.

The state's correctional system is at capacity and is forecasted to grow significantly over the next decade

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

Actual Prison Population **+32%**

Projected Growth **+75%**

Current Prison Capacity **1,479 Beds**

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.

Without action, public safety dollars will be consumed trying to keep up with growth rather than investing in crime and recidivism-reduction strategies

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

Corrections Spending Increase, FY07-09 to FY15-17 **64%**

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. 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. Source: DOCR, Biennial Report 2003-2005, (Bismarck: DOCR, 2005); DOCR, Biennial Report 2013-2015. Actual General Fund appropriations were \$83,458,031 for 2005 and \$178,475,785 for 2015.



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Definitions of offense categories used in this analysis

Person <ul style="list-style-type: none"> Aggravated Assault Robbery Homicide Manslaughter Assault Domestic Violence Child Abuse Sexual Assault 	Property <ul style="list-style-type: none"> Theft of Property/Service Insufficient Funds Possession of Stolen Property Burglary Criminal Mischief Forgery/fraud Motor Vehicle Theft 	Drug <ul style="list-style-type: none"> Possession Distribution (includes possession with intent to distribute) Manufacturing Drug paraphernalia Forged prescription Controlled substance at school 	Other <ul style="list-style-type: none"> Disorderly conduct Criminal Trespass Resisting/Evading Arrest Reckless Driving Leaving the Scene of an Accident Minor in possession of alcohol Contributing to the delinquency of a minor Driving without Insurance/Registration Cruelty to animals Hunting offenses
Driving Under the Influence <ul style="list-style-type: none"> Driving Under the Influence Driving Under the Influence Resulting in Injury or Death Operating a Boat/Watercraft Under the Influence 		Driving with Suspended License <ul style="list-style-type: none"> Driving while License Suspended Driving after License Revoked Driving in Violation of License Restriction Driving without a Valid License 	

Note: Violations of sex offender registration were categorized as "Person" offenses, and accounted for less than one percent of all offenses sentenced.

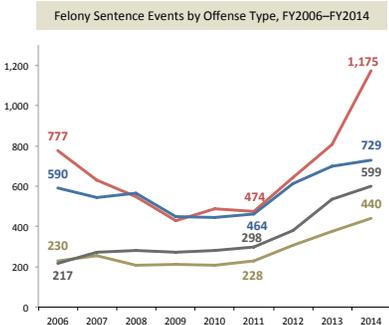
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Offense classes set the maximum confinement and probation lengths as well as fines

CLASS	MAX CONFINEMENT	MAX PROBATION TERM	MAX FINE	EXAMPLE OFFENSES
Infraction	N/A	N/A	\$1,000	Sale of tobacco to minors
Misdemeanor B	30 days	360 days	\$1,500	DUI, disorderly conduct, prostitution
Misdemeanor A	1 year	2 years	\$3,000	Ingesting a controlled substance, larceny (under \$1,000)
Felony C	5 years	3 years; 5 years for certain offenses/offenders	\$10,000	Theft, failure to appear, Possession of a Controlled Substance Other than Marijuana (first offense)
Felony B	10 years	3 years; 5 years for certain offenses/offenders	\$20,000	Manslaughter, aggravated assault (aggravated circumstances)
Felony A	20 years	3 years; 5 years for certain offenses/offenders	\$20,000	Robbery with a dangerous weapon, human trafficking of someone over 18
Felony AA	Life (with or without parole)	Not specified	\$20,000	Murder; Gross sexual imposition; Human trafficking of someone under the age of 18

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Felony sentence events for drug offenses increased 2.5 times between 2011 and 2014



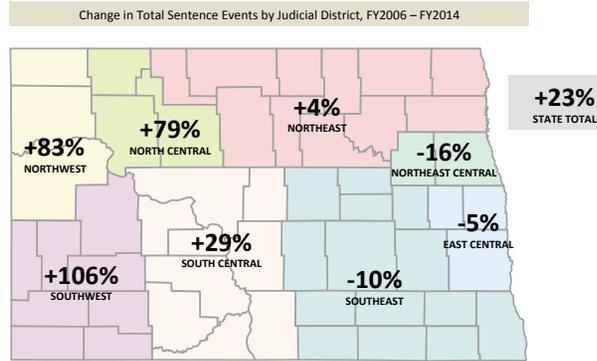
Type of Offense	2006–2011 Difference	2011–2014 Difference	2006–2014 Difference
Drug	-39%	148%	51%
Property	-21%	57%	91%
Person	37%	101%	176%
Other	-1%	93%	24%

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

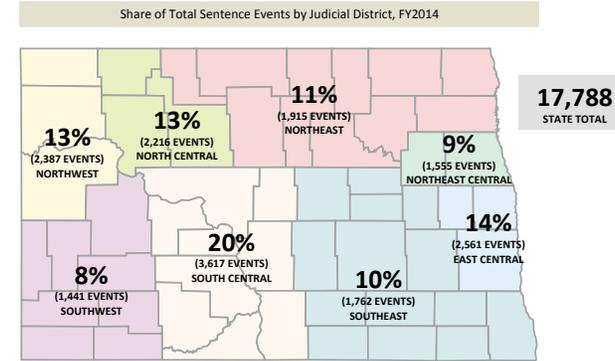
***Other** felony offenses include: DUI, Criminal Trespass, Reckless Endangerment, Terroristic Threat, Weapon offenses, and other offenses that did not fit into the above categories.*

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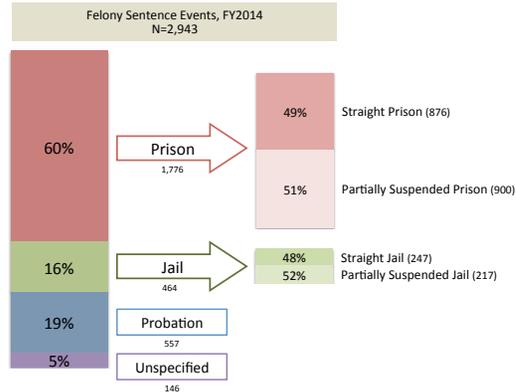
The number of sentence events climbed 23 percent, with larger increases coming from the western part of the state



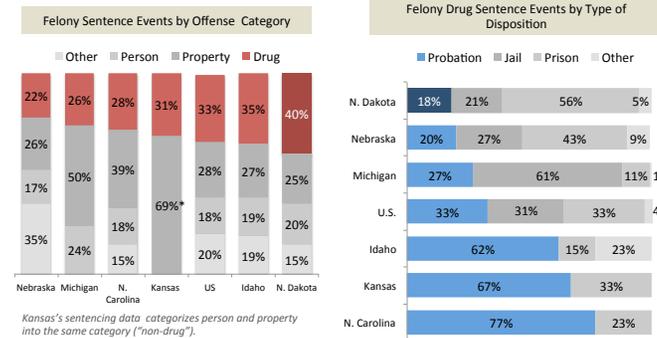
Share of sentence events is largely split between the western and eastern judicial districts



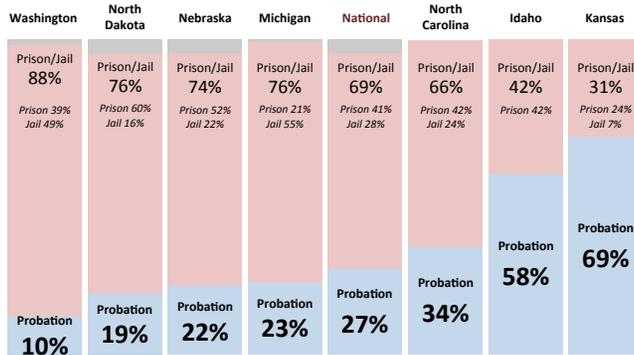
In 2014, 76 percent of felony sentence events are to incarceration (jail or prison)



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

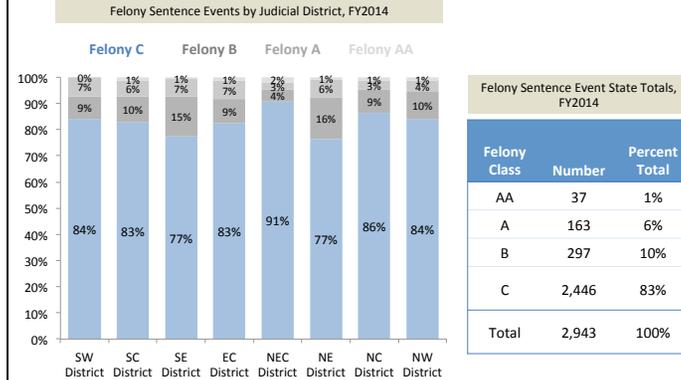


North Dakota sentences a smaller proportion of felony sentence events to probation than the national average and most justice reinvestment states



Source: Statewide Dispositions - Fiscal Year 2012, Office of Community Alternatives, MI Dept. of Corrections, November 2012; KS Felony Sentencing Data; Structured Sentencing Statistical Report FY 2011/12; NC Sentencing and Policy Advisory Commission; BS Felony Sentencing Council of State Governments Justice Center | in State Courts, 2008 - Statistical Tables; Nebraska JUSTICE sentencing data; CSG Justice Center analysis of Administrative Office of the Courts' FY2014 sentencing data. 25

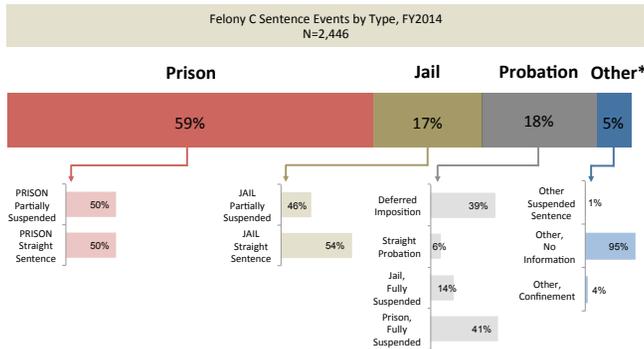
Class C offenses account for four out of five felony sentence events, with slight variation across the judicial districts



Felony Class	Number	Percent Total
AA	37	1%
A	163	6%
B	297	10%
C	2,446	83%
Total	2,943	100%

Source: CSG Justice Center analysis of Administrative Office of the Courts FY2014 sentencing data. Council of State Governments Justice Center | 26

76 percent of Class C sentence events were to incarceration in either jail or prison



Source: CSG Justice Center analysis of Administrative Office of the Courts sentencing data. Council of State Governments Justice Center | 27

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

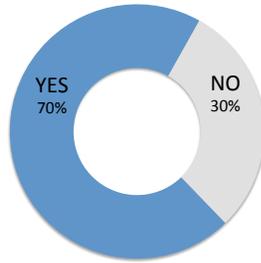
Some professionals reported that services were generally available, but that justice system individuals could not access them

Long wait times to access services were reported in several jurisdictions

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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?

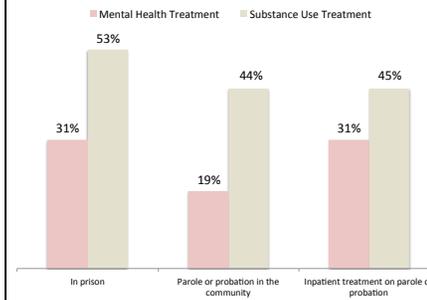


Judges noted that these sentences are reserved for specific instances with extenuating circumstances, such as:

- 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

Judges seemed more confident that substance use treatment is available than mental health treatment, and that treatment was most available in state prison

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



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

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
- ❖ North Dakota sentences a smaller proportion of felony sentence events to probation than many other states

Challenges identified by ten year review

- ❖ North Dakota's jail and prison populations are experiencing some of the largest rates of growth in the country
- ❖ The state's correctional system is over capacity and has significant growth forecasted over the next decade
- ❖ Without action, public safety dollars will be consumed trying to keep up with growth rather than invested in crime and recidivism reduction strategies

North Dakota's criminal justice system poses significant financial challenges unless policy action is taken

Ten-year cost of relying on contracted capacity to accommodate projected prison growth

Current contract beds (530) carried forward through 2025 **\$220 M**

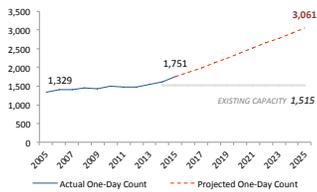
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Population growth (1,310) carried through 2025 **\$265 M**

=

Total Estimated Cost of Accommodating Prison Growth Through Contract Beds daily rate estimate is \$114/day **\$485 M**

HISTORICAL AND PROJECTED ONE-DAY TOTAL INMATE COUNTS, FY2005-2025



Building a **NEW STATE PRISON** would add costs above the contract beds

OUT-OF-STATE CONTRACT BEDS likely would be needed, possibly increasing collateral costs

Contract beds within the state of North Dakota are **NOT ADEQUATELY EQUIPPED** to handle inmates' special needs

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

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

Overview



01 Review of Big-Picture Trends

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Transforming probation supervision

PROBLEM → **DATA** → **POLICY CHANGE**

Supervision violation hearings are time-consuming, frequently delayed, and often result in reinstatement on supervision

53% of prison admissions are **probation revocations**

Administrative Jail Sanctions

&

Tailored Prison Sanctions

↓
2-3 day sanction "quick dip"

↓
90 day sanction "CRV"

There are few meaningful graduated sanctions for minor condition violations

75% of revocations are for **condition violations** (drug use, absconding)

Policy designed to:

- Reduce violation hearings
- Reduce time in court
- Reduce jail time spent awaiting hearings

Reinventing how treatment is funded and delivered

PROBLEM → DATA → POLICY CHANGE

Funding by an outdated formula and resources spread thinly across entire population instead of being targeted toward those with the greatest need for treatment

50% of probationers need substance use or mental health services, but only **25%** received services

Focus treatment resources on high-risk individuals
Use cognitive behavioral approach focusing on changing the characteristics associated with recidivism

Crafting a win-win for counties and the state

PROBLEM → DATA → POLICY CHANGE

Misdemeanor offenders were difficult to deal with efficiently in prisons designed for more serious felons with longer sentences

1/4 of prison admissions were **misdemeanor offenders**

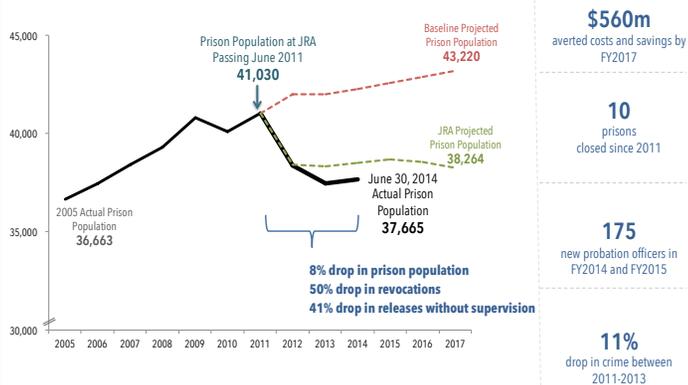
3 months average length of stay



Statewide Misdemeanor Confinement Program
Policy allows misdemeanor offenders in county jails with:

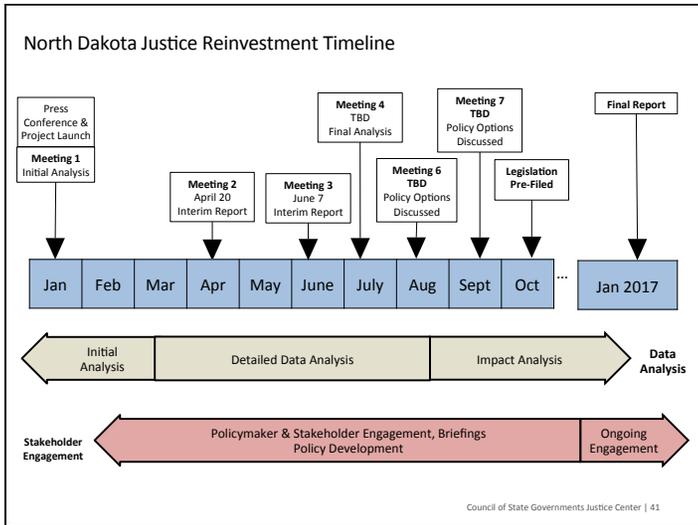
- Sheriff approval
- Bed space capacity
- Reimbursement from new state fund, supported by fees

Key public safety and corrections trends since justice reinvestment legislation was enacted



CSG helps states craft reinvestment strategies that are responsive to localized needs and priorities

STATE	APPROACH	POLICY
West Virginia	Up-front investment	Reinvested in first two years in substance use treatment for supervision population
North Carolina	Maximize impact of existing investments	Reallocated existing behavioral health resources based on evidence-based practices
Pennsylvania	Require reinvestment in statute over time	Created four-year reinvestment schedule to support law enforcement, victim services, and risk assessment
Ohio	Create incentive for additional reinvestment based on performance	Counties that reduced probation revocations eligible for incentive funding



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Thank You

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