

# JUSTICE REINVESTMENT - JUVENILE JUSTICE - OPERATION AND MANAGEMENT OF CORRECTION FACILITIES BACKGROUND MEMORANDUM

## ALTERNATIVES TO INCARCERATION - BEHAVIORAL HEALTH

Section 11 of 2017 Senate Bill No. 2015 ([Appendix A](#)) provided for a study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system, which must include caseload data, any recognized savings to the Department of Corrections and Rehabilitation (DOCR), and an overview of the training requirements for contract behavioral health service providers.

### Background

Inmate counts documented by DOCR indicate that after a decline in the average number of inmates in 2011 and 2012, North Dakota has experienced an increase in average prison population since 2013. The 2015-16 average male inmate population for all facilities was 1,567. The 2015-16 average female inmate population for all facilities was 223.

In 2005 the Legislative Assembly created the Commission on Alternatives to Incarceration through 2005 House Bill No. 1473, codified as North Dakota Century Code Section 54-35-24, to study sentencing alternatives, mandatory sentences, treatment options, and various criminal justice-related issues. After the commission studied various criminal justice-related issues during each interim since 2005-06, Section 54-35-24 expired on August 1, 2017.

The 2015 Legislative Assembly established an Incarceration Issues Committee which, during the 2015-16 interim, studied pretrial sentencing alternatives, treatment options, and other related issues, which included an analysis of justice reinvestment reforms to seek cost-effective and evidence-based strategies to enhance public safety and properly manage corrections and supervision populations. The committee received reports from representatives of numerous state agencies, local government officials, and other entities, including the Council of State Governments' Justice Center. The committee recommended 2017 House Bill No. 1041, which authorized sentence reductions for good conduct and medical paroles, authorized a court to use incarceration for a period not to exceed 30 days in lieu of a petition for revocation of probation, and required a sentencing court to sentence an individual who has pled guilty to, or has been found guilty of, a Class C felony offense or Class A misdemeanor offense to a term of probation at the time of initial sentencing, except for a violent offense.

The 2015-16 interim Human Services Committee studied behavioral health. The committee reviewed behavioral health-related information, including an overview of behavioral health, an overview of a behavioral health system of care, key legal obligations related to behavioral health services, and the Department of Human Services behavioral health services delivery system. The committee recommended 2017 Senate Bill No. 2038 relating to extending the holding period from 24 to 72 hours for emergency involuntary commitments for individuals with a serious physical condition or illness and 2017 House Bill No. 1040, which would have appropriated funds to the Department of Human Services to allow for drug and alcohol programming, support services, and targeted case management services for individuals with severe mental illness and severe emotional disturbance. Although House Bill No. 1040 was amended to remove a \$12 million appropriation for targeted case management services, the bill included funding for children's prevention and early intervention behavioral health services, peer-to-peer support services, and family-to-family support services.

Senate Bill No. 2015 (2017) which directed DOCR to establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions, as a term and condition of parole and probation and as a sentencing alternative under Section 12.1-32-02. The bill appropriated \$7 million to the Department of Human Services for the purpose of implementing the community behavioral health program during the 2017-19 biennium and created the Justice Reinvestment Oversight Committee to study the implementation of the community health behavioral health program and justice reinvestment policies. The Justice Reinvestment Oversight Committee is staffed by the Governor's office and consists of the Governor's general counsel, the Director of the Department of Human Services, the Director of the Behavioral Health Division of the Department of Human Services, the Director of DOCR, the Chief Justice of the North Dakota Supreme Court or a designee, the Attorney General or a designee, and a member of the Senate and a member of the House of Representatives appointed by the Majority Leaders. The committee is required to report its findings and recommendations to the Legislative Management by July 1, 2018.

## JUVENILE JUSTICE SYSTEM

House Concurrent Resolution No. 4003 (2017) ([Appendix B](#)), provides for a study of the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

### Background

Section 27-20-03 provides the juvenile court has exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 years and is not married or under the age of 20 years with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 creates the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

### Juvenile Services in Other States

According to data from the United States Office of Juvenile Justice and Delinquency, in 2013 North Dakota ranked 6<sup>th</sup> highest in the nation for the number of youth placed in the juvenile justice system per 100,000 youth in the state with 253 youth per 100,000. According to an analysis of the same data by The Sentencing Project, the overall juvenile sentencing rate per 100,000 youth in the United States is 173 while the rate for American Indian youth is 334 per 100,000.

In 2016 Kansas enacted reforms intended to improve its juvenile justice system by reducing the use of out-of-home placements and investing in community supervision and rehabilitative services. According to a June 2017 analysis provided in *Juvenile Justice Reforms in Kansas Show Early Signs of Success*, by The PEW Charitable Trusts, the reforms restrict the placement of certain juveniles in correctional facilities, focus the system's most intensive responses on the highest-risk juveniles, and shift significant resources toward evidence-based alternatives that allow youth to be supervised safely while remaining at home. At the time of enactment, Kansas projected the new policies would cut juvenile residential placements approximately 60 percent by 2022, at a savings of \$72 million to be reinvested in alternatives to incarceration over 5 years.

On June 16, 2017, Nevada Governor Brian Sandoval signed the Juvenile Justice System Reform Act that calls for Nevada to adopt a statewide validated risk and needs assessment tool, requires state funding be used for evidence-based practices, establishes better data collection, and creates a single juvenile justice oversight body to guide and oversee the reforms.

## OPERATION AND MANAGEMENT OF CORRECTIONAL FACILITIES

House Concurrent Resolution No. 3002 (2017) ([Appendix C](#)), provides for a study of the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from DOCR to the Attorney General.

### Background

Section 12-44.1-02 authorizes the governing body of a county or city to establish and maintain a correctional facility, contract for correctional facility services and use of correctional facilities with another county or city, or establish and maintain a correctional facility in conjunction with other counties and cities. Section 12-44.1-06 requires DOCR to grade correctional facilities as to the length of allowable inmate confinement based on

construction, size, and usage. Under that section, a grade one facility means a facility for confining inmates not more than 1 year, a grade two facility means a facility for confining inmates not more than 90 days, a grade three facility means a facility for confining inmates not more than 96 hours, and a grade four facility means an adult lockup or court holding facility in which individuals may not be detained overnight. According to data from DOCR, there are 30 correctional facilities in the state varying from grade one to grade three--20 grade one facilities, 7 grade two facilities, and 3 grade three facilities. Inmate counts documented by DOCR indicate the average length of time individuals spend in county jails is 90 days and approximately 7,600 individuals are under supervision, of which roughly 900 are on parole.

Section 12-44.1-24 requires DOCR to prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private correctional facilities, prescribe rules for the care and treatment of inmates, cause rules and regulations to be made available to inmates or be posted, and appoint a correctional facility inspector to inspect each correctional facility at least once each year. For the purposes of correctional facility rules, DOCR is exempt from the Administrative Agencies Practice Act under Chapter 28-32 and is therefore not required to follow the same procedures as other state agencies with regard to adopting and publishing the rules for correctional facilities.

### **Oversight in Other States**

Data collected by the National Conference of State Legislatures indicates the majority of states use a similar method for jail oversight as North Dakota. According to a June 2014 publication entitled *Jail Oversight* by the National Conference of State Legislatures, few states have separate commissions that provide the oversight for local jails. In states in which there are state commissions, the duties of the commissions include developing policies that must be followed by jails, with some of the oversight commissions being legislative committees and others being part of a state corrections department. States having separate commissions to develop policies generally provide a report to the Governor and legislative body or develop and implement rules and policies without reporting to a governing body. The majority of states use a similar method as North Dakota, whereby the director of the state corrections agency or department establishes rules and standards for the correctional facilities in the state.

### **Parole and Probation**

According to a September 2015 publication entitled *Location of Offender Supervision in State Governments* ([Appendix D](#)) by the National Conference of State Legislatures, the amount and type of responsibility assumed by state and local governments for offender supervision varies among states. According to the National Conference of State Legislatures, in 45 states jails are locally operated and in 5 states the state oversees a combined jail and prison system. Probation and parole supervision may be provided by local courts, local or state community corrections departments, state corrections departments or parole boards, or a combination of these. In most states, the authority to release offenders onto parole and the authority to supervise those offenders is the responsibility of different departments.

## **PROPOSED APPROACH FOR STUDIES**

The committee may wish to proceed with the studies as follows:

1. With respect to the behavioral health and alternatives to incarceration study, the committee may consider inviting members of the Justice Reinvestment Oversight Committee and representatives from the Department of Human Services and DOCR to provide a review of the ongoing implementation of the community behavioral health program.
2. With respect to the juvenile justice system study, the committee may consider inviting representatives from DOCR, specifically the Division of Juvenile Services, and representatives from juvenile court to provide a review of the delivery of services in the juvenile justice system.
3. With respect to the operation of correctional facilities study, the committee may consider inviting representatives from DOCR and the Attorney General's office to provide insight on the responsibilities and areas needing improvement in the oversight of jails.

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