

# North Dakota

## Justice Reinvestment Initiative Reentry Study Work Group

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October 2024



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# Work Group Membership

The North Dakota Justice Reinvestment Reentry Study Work Group (Work Group) included 15 members representing many different agencies, organizations, partnerships, and leaders involved in reentry work throughout the state. The members listed below were involved in evaluating key criminal justice data findings, research, and best practices in other states to ultimately form recommendations for improving reentry outcomes in North Dakota.

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## **Sister Kathleen Atkinson**

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# Acknowledgements

With the support of the Crime and Justice Institute (CJI), the Work Group conducted interviews and roundtable discussions with more than 100 stakeholders across North Dakota to learn more about pressing reentry needs and opportunities in the state. Representatives from the following groups provided critical information, insight, and assistance throughout the Justice Reinvestment Initiative process:

**Bismarck Police Department**

**Bismarck Transition Center**

**Burleigh County Sheriff Office**

**Burleigh-Morton Detention Center**

**Cass County Jail**

**Center Inc., Fargo**

**Center Inc., Mandan**

**Commission on Legal Counsel for Indigents**

**F5 Project**

**Free Through Recovery**

**Good Road Recovery Center**

**Heart River/Bridges of Hope**

**Hope Manor**

**Human Services Research Institute**

**Job Service North Dakota**

**Management and Training Corporation**

**Ministry on the Margins**

**Minot Area Recovery Community Organization**

**NATIVE, Inc.**

**North Dakota Council on Abused Women's Services**

**North Dakota Department of Corrections and Rehabilitation**, including the offices of Administrative Services, the Special Assistance Unit, Education Services, Parole and Probation, Pre-trial Services, Specialty Court Coordination, and Transitional Planning Services

**North Dakota Department of Health and Human Services** including Behavioral Health Division, Regional Human Service Centers

**North Dakota Indian Affairs Commission**

**North Dakota Peace Officers Association**

**Office of Governor Doug Burgum**

**Office of the Cass County State's Attorney**

**Office of the North Dakota Attorney General Criminal Division**

**State of North Dakota Courts** including State Court Administration, Specialty Court Judges, and District Court Judges

# Executive Summary

North Dakota’s prison population is growing at an alarming rate, against national trends. As the number of incarcerated adults in the U.S. declined by approximately 25 percent between 2011 and 2021, North Dakota’s prison population increased by over 18 percent.<sup>1</sup> More pressingly, much of North Dakota’s prison population growth has occurred in just the past few years. According to data from the Department of Correction and Rehabilitation (DOCR), from 2020 to 2023, the prison population climbed from 1,401 to 1,899—an increase of 36 percent.<sup>2</sup> As a result, DOCR facilities have become overwhelmed, leading county jails to operate as overflow centers for state-sentenced individuals.

Recognizing the urgency of this issue, the 68<sup>th</sup> Legislative Assembly passed House Concurrent Resolution (HCR) 3026 in 2023 authorizing an interim study to assess the landscape of reentry services in the state and identify research-based strategies to improve reentry outcomes.<sup>3</sup> To implement the mandates of HCR 2036, North Dakota Governor Doug Burgum, Senator Donald Schaible, Representative Dennis Johnson, and Supreme Court Chief Justice Jon Jensen, requested technical assistance through the Justice Reinvestment Initiative (JRI) grant funded by the Bureau of Justice Assistance (BJA), a component of the Department of Justice’s Office of Justice Programs, to establish the North Dakota Justice Reinvestment Initiative Reentry Study Work Group (“Work Group”). With assistance from the Crime and Justice Institute (CJI), the Work Group discovered:

- North Dakota’s prison population growth is driven by a 10 percent increase in admissions over the past decade.
- Admissions are largely comprised of community supervision violations (48 percent in 2023) and alcohol and drug offenses (36 percent in 2023).
- Significantly, Black and Native American individuals are entering DOCR and beginning community supervision at higher rates, as well as have higher percentages of supervision revocations.
- Unmet behavioral health needs drive the majority of community supervision revocations as well as admissions to prison.

These findings are the foundation of the Work Group’s 26 comprehensive recommendations outlined in the following report. Their recommendations are encompassed by five central goals:

1. **Expanding pathways to alternatives to incarceration** including diversion programs for courts and deflection protocols for law enforcement;
2. **Decreasing the number of individuals entering prison due to a drug or alcohol offense, or revocation from supervision** including tiered sentencing for low-level offenses,

graduated sanctions for community supervision, and expanded presumption of probation to allow for community-based treatment;

3. **Reducing racial disparities in the criminal justice system** including collection of data about racial disparities and recruitment of community liaisons;
4. **Further supporting successful transition back into the community by increasing access to housing and healthcare** including expanded access to Medicaid for justice-involved people, and more housing resources for reentering North Dakotans; and
5. **Increasing cross-agency collaboration between system partners** including streamlined data collection across agencies and improved coordination between service providers and community supervisors.

## Work Group Background

The North Dakota Justice Reinvestment Initiative Reentry Study Work Group (“Work Group”) included 15 stakeholders representing the state’s legislature, DOCR, the Department of Health & Human Services (DHHS), as well as courts, county jails, and direct service providers.

The group first convened in the fall of 2023 and met five times throughout 2024 to conduct a rigorous review of statewide prison and community supervision data, evaluate existing policies and programming, identify research-based practices, and engage in detailed policy discussions.

From the outset, the Work Group followed a wholistic approach when considering “reentry.” Rather than proceeding with the traditional understanding that reentry occurs upon release from prison, the group expanded their reentry definition to include productive reengagement with the community after *any* level of involvement with the criminal justice system. To discuss the complexities of reentry across North Dakota’s justice system, the Work Group split into two subcommittees focusing on (1) the front-end of system, including responses to crime and crises, pretrial diversion, and court system processing, and (2) the back-end of the system, including programming and treatment opportunities for people in custody, release planning, housing, healthcare, and the general transition from custody back to the community.

By examining the multiple entry points into the system, the Work Group was able to identify evidence-based alternatives to incarceration at every level of interaction that served the goals of accountability, public safety, and rehabilitation.

## National/State Context

While most state prison populations across the country are decreasing, North Dakota's prison population is increasing.<sup>4</sup> Between 2020 and 2021, North Dakota had the largest percent increase in prison population in the country, slightly over 20 percent.<sup>5</sup> From 2011 to 2021, state prison populations in the United States fell by about 25 percent, but North Dakota's grew by just over 18 percent.<sup>6</sup> This growth has continued with a 36 percent increase from December 31, 2020, to December 31, 2023.<sup>7</sup> These trends are also reflected in imprisonment rates, with North Dakota's adult imprisonment rate increasing since 2013, compared to the nation's decreasing rate.<sup>8</sup> As North Dakota's incarcerated population increased, defying national trends, the state's community supervision population also displayed different changes than those found nationally. On December 31, 2021, North Dakota's parole population declined more than the national average (about 11 percent compared to about seven percent), and the probation population increased almost three percent while the national average decreased nearly three percent compared to December 30, 2020.<sup>9</sup>

Despite the prison population trends in North Dakota, crime rates have remained relatively stable and have followed overall national trends.<sup>10</sup> From 2013 to 2022, both North Dakota and the United States saw slight increases in their violent crime rates, an increase of approximately two percent for North Dakota and three percent nationally.<sup>11</sup> However, violent crime rates have decreased for both North Dakota and the United States since their peak in 2020, with North Dakota's violent crime rate decreasing 15 percent, and the national rate decreasing four percent. In 2022, North Dakota's violent crime rate ranked 35<sup>th</sup> out of all states, lower than their neighbors Minnesota (33<sup>rd</sup>), South Dakota (22<sup>nd</sup>), and Montana (16<sup>th</sup>). From 2013 to 2022, the national property crime rate decreased 28 percent, while North Dakota's property crime rate decreased six percent.<sup>12</sup>

As a result of its swelling prison population, North Dakota's correction's budget has increased 64 percent over the past four years, reaching upwards of \$445 million.<sup>13</sup> The major increases in the most recent biennium budget are due to a \$131.2 million allocation for building a new women's facility and \$2.05 million to remodel and improve other facilities.<sup>14</sup> Excluding these special funds, however, the budget has still increased approximately 16 percent since the 2017-2019 biennium.<sup>15</sup>

Another critical consideration to make when evaluating prison population trends is the composition of the incarcerated population compared to the general population. Nationally, certain racial groups are overrepresented within the incarcerated population. Black individuals had an incarceration rate of 1,196 per 100,000 residents and Native American individuals had

an incarceration rate of 1,042 per 100,000 residents in 2022.<sup>16</sup> However, these rates have steadily declined since 2012, by about 36 percent for Black individuals and about 18 percent for Native Americans.<sup>17</sup> In contrast, North Dakota has experienced increasing rates of incarceration for their Black and Native American populations. By 2022, Black North Dakotans were incarcerated at rates five times higher than white North Dakotans and Native Americans were incarcerated at eight times the rate.<sup>18</sup> The increasing presence of people of color, specifically Native Americans, within DOCR highlights North Dakota's unique challenges compared to national trends.

Lastly, another significant factor where North Dakota distinguishes itself, is the prevalence of behavioral health needs across the state. DHHS estimated in 2021 that approximately 21 percent of North Dakota adults met the criteria for a substance use disorder (SUD) in the last year, putting North Dakota in the top 10 states in the nation for rates of SUD and higher than the national rate (18 percent).<sup>19</sup> This rate was also highest amongst its neighbors in the Midwest region, as other states had a prevalence between 18 and 20 percent.<sup>20</sup> State mental health data displayed similar trends, as North Dakota's rates of any mental illness and serious mental illness were higher than the national average in 2021. Approximately 26 percent of the state population met the criteria for having any mental illness compared to 23 percent for the nation.<sup>21</sup> In addition, about 6.5 percent met the criteria for having a serious mental illness within the past year in 2021 compared to roughly 5.9 percent nationally.<sup>22</sup>

## Key Findings

Despite having similar crime trends to the United States, North Dakota's prison population grew over the past decade. Focusing on the most recent decade of data, the Work Group identified the key characteristics of North Dakota's prison population and recent growth. These include:

- An increase in admissions to state prison, and a growth of the community supervision population;
- A high prevalence of individuals incarcerated for drug- and alcohol-related offenses;
- A steady growth in admissions for community supervision revocations, particularly probation revocations;
- An over-representation of Black and Native American populations within DOCR prisons, on community supervision, and with their supervision cases<sup>i</sup> revoked to prison; and
- A high prevalence of behavioral health needs, specifically substance use, across all levels of North Dakota's criminal justice system.

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<sup>i</sup> Supervision cases refer to an individual's specific parole or probation term, which can overlap with others.



## Prison Admissions and Community Supervision Population Grew

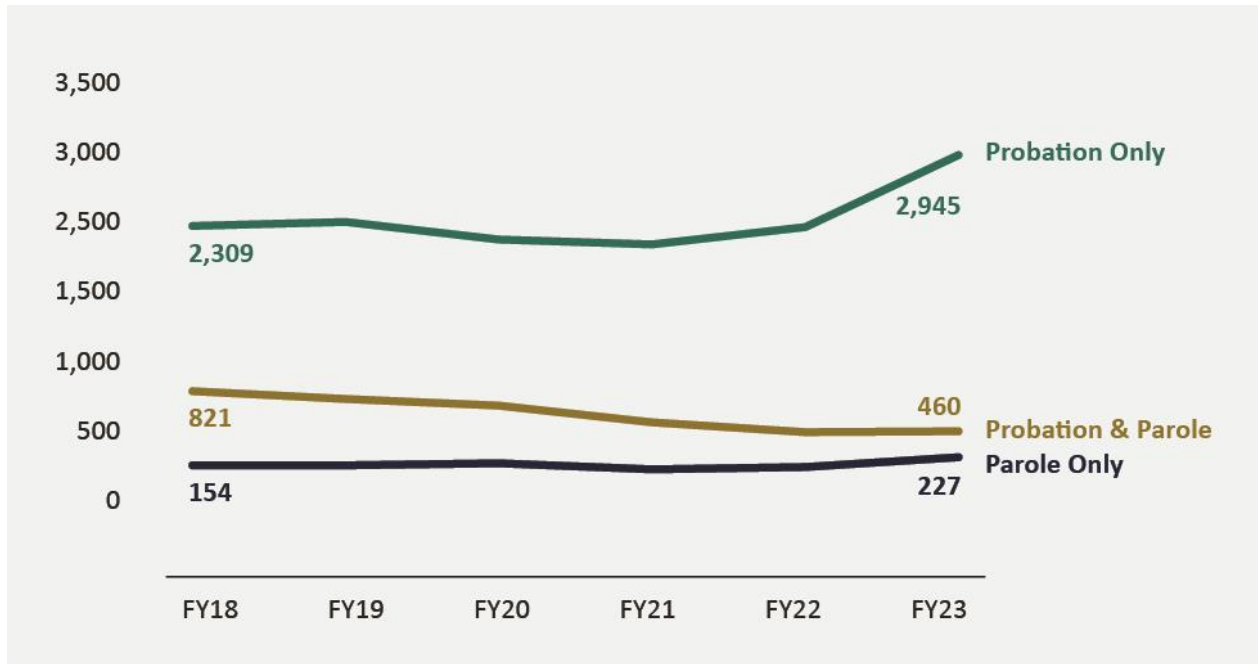
As noted above, North Dakota’s prison population has grown significantly over the past several years. The Work Group determined that this growth is largely driven by increased admissions into state prisons. From 2014 to 2023, admissions to DOCR fluctuated, as shown in Figure 1 below. The increase, however, is most pronounced in the years following the COVID-19 pandemic, a growth of approximately 24 percent. Overall, from 2014 to 2023, admissions to prison increased approximately 10 percent.

**Figure 1.** Admissions by FY, 2014-2023



Like prison admissions, the community supervision population also grew over the years as displayed in Figure 2 below. For all years, probation-only supervision periods were the most common form of community supervision and grew from 2018 to 2023. Probation-only supervision periods accounted for two-thirds of all supervision cases and grew 28 percent from 2018 to 2023. While supervision terms that include both supervision types (parole and probation) decreased 44 percent since 2018, parole-only periods nearly doubled since 2021 and were the highest in 2023 since 2014.

**Figure 2.** Supervision Cases by Supervision Type per FY, 2018-2023



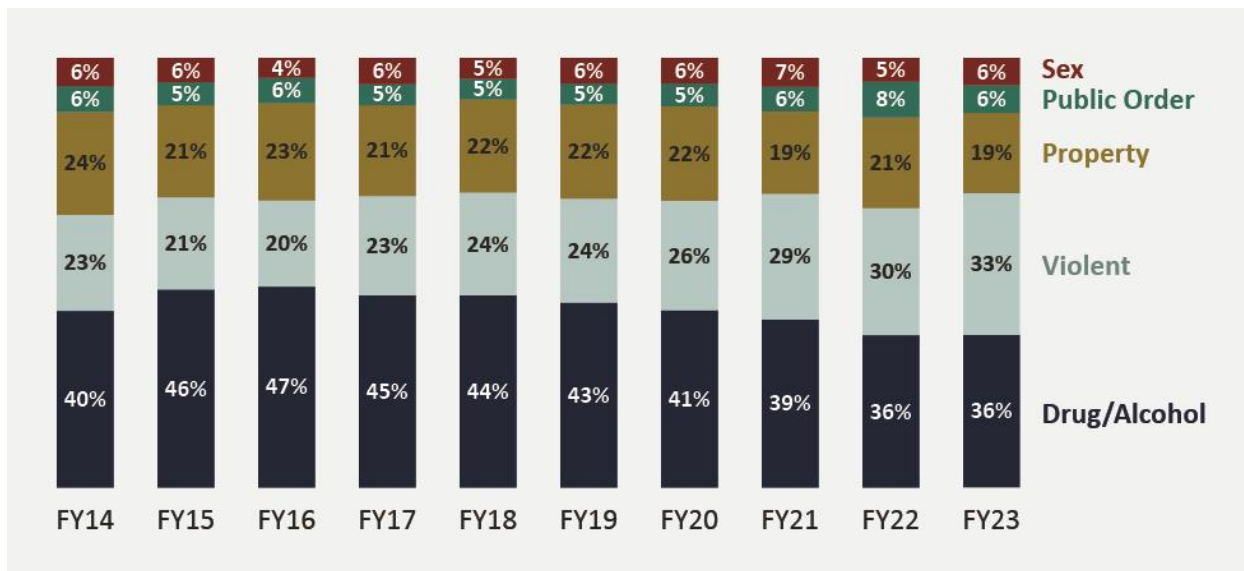
Understanding prison admission and community supervision growth trends inherently involves evaluating the intercepts of the criminal justice system that happen prior to sentencing. In North Dakota, there are notably few standardized offramps directing people away from criminal justice system involvement, which is significant. Statewide guidance for using alternative responses (i.e. citation or summons) in lieu of arrest is limited. As a result, some law enforcement agencies in the state use arrest-alternatives for a broader range of low-level offenses, particularly in areas of the state where the local jail is at capacity, while others do not.

There are also no laws or statewide standards monitoring deflection or encouraging law enforcement to divert people with behavioral health needs to treatment rather than relying on legal system resources. Deflection practices across the state are not standard and ultimately depend on the relationships established between local law enforcement, regional Human Service Centers, and other detoxification centers and crisis stabilization centers (where available), which vary by jurisdiction. With few formal protocols offering guidance to law enforcement officers, often the only option for responding to someone whose behavioral health issues lead to disruptive or illegal conduct is arrest, detention and, ultimately, increased exposure to the correctional system.

## High Prevalence of Individuals Incarcerated for Drug- and Alcohol-related Offenses

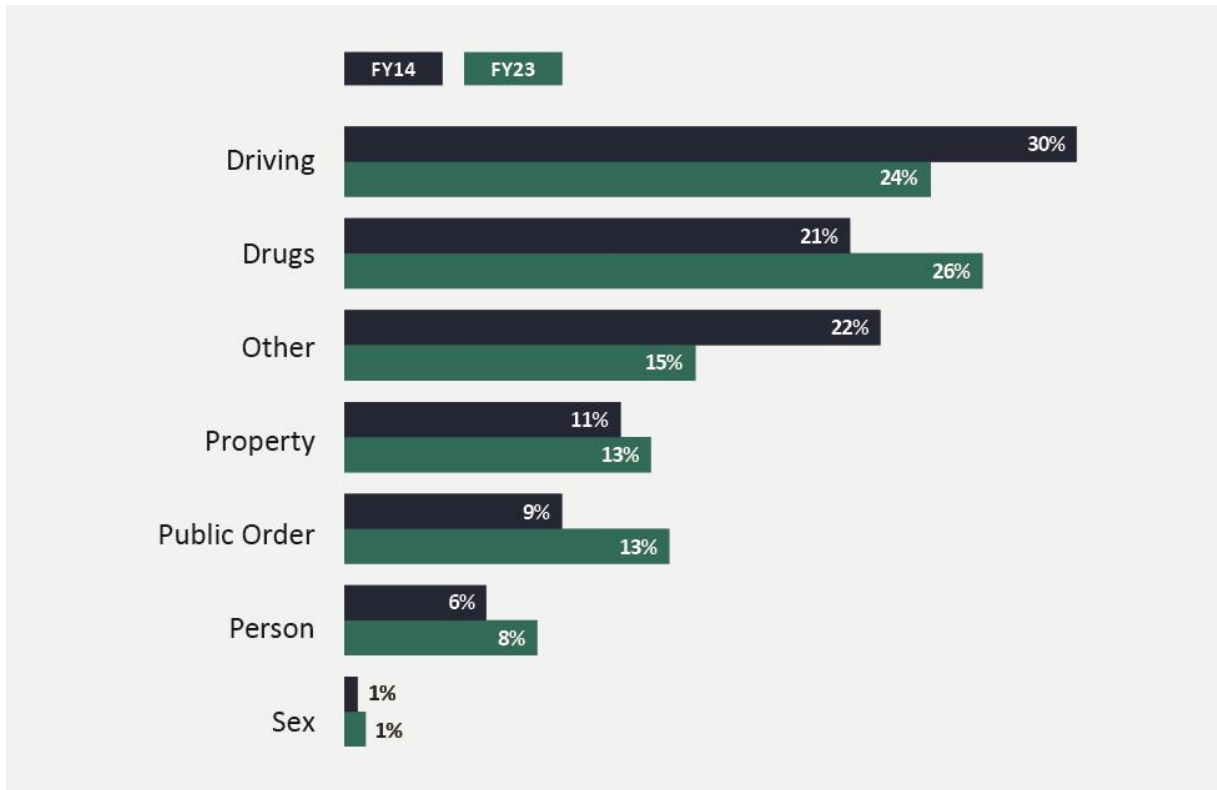
The Work Group looked closer to see what types of offenses comprised most admissions into prison shown in Figure 3 below. Drug and alcohol offenses were consistently the largest proportion of admissions, accounting for anywhere from over one-third to nearly half of all admissions in every year of analysis. Admissions for violent offenses increased over the past decade, up 58 percent; however, alcohol and drug offenses remain the largest category of offenses admitted to state prisons.

**Figure 3.** Admissions by Most Serious Offense per FY, 2014-2023



In addition, court filings also indicate a higher prevalence of drug-related cases in 2023 compared to 2014. As seen in Figure 4 below, cases with a drug offense as the most serious offense increased from 2014 to 2023, accounting for more than one-quarter of cases in 2023. While driving offenses were most common in 2014, accounting for just under one-third of cases filed, they accounted for less than one-quarter of cases in 2023.

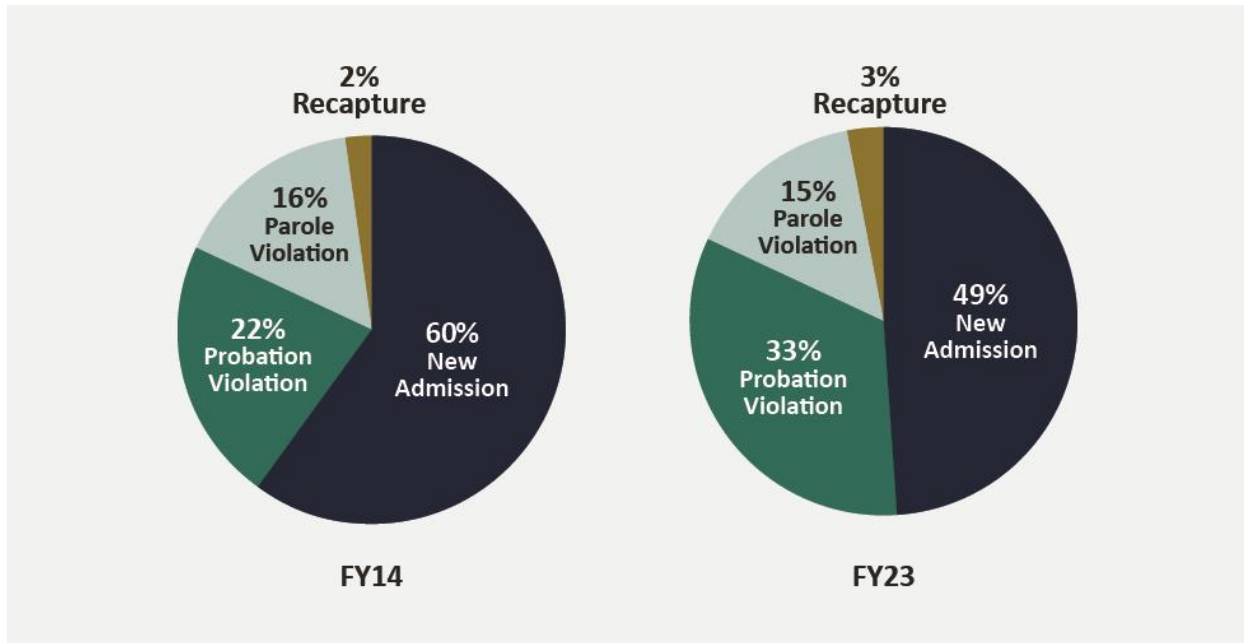
**Figure 4.** Most Serious Offense Category at Filing, FY14 (N = 58,113) & FY23 (N = 46,430)



### Community Supervision Violations Drive Admissions Growth

The other significant trend the Work Group discovered related to prison admissions was the growth in the number of admissions that were due to community supervision violations, displayed in Figure 5 below. From 2014 to 2023, admissions for probation violations increased approximately 65 percent, accounting for one-third of admissions in 2023. Combined with parole violations, violations for community supervision comprised about 38 percent of admissions in 2014 and increased to almost half of admissions in 2023.

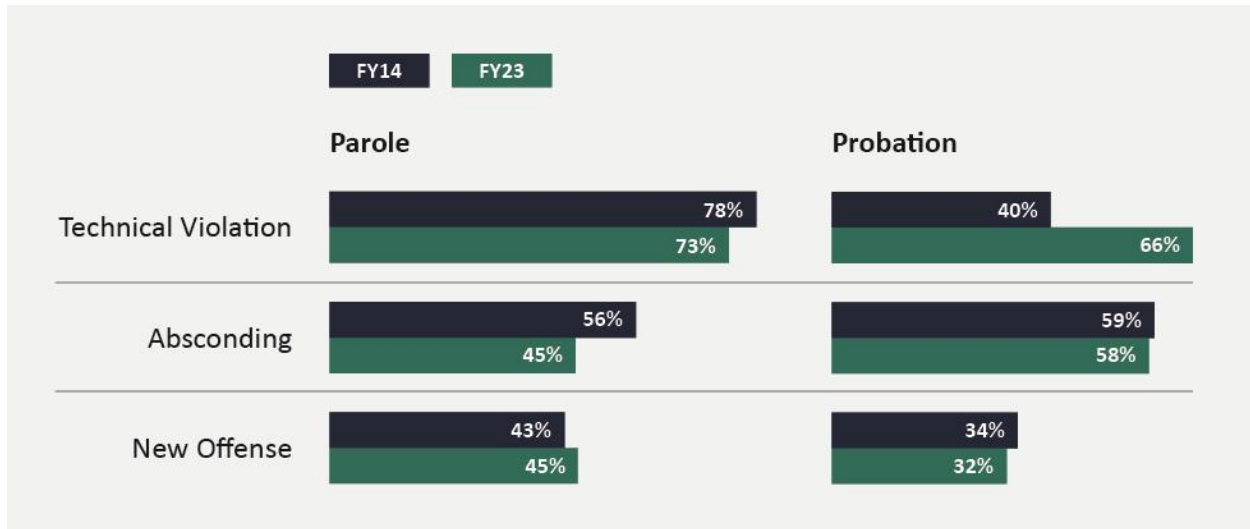
**Figure 5.** Admissions by Admission Type per FY, 2014-2023



*Revocations Primarily for Absconding and Technical Violations.*

For both probation and parole cases, new offenses were the least frequent reason for revocation, as seen in Figure 6 below. Technical violations represented nearly three-quarters of parole revocations and two-thirds of probation revocations in 2023. However, their frequency decreased slightly for parole cases and increased for probation cases from 2018 to 2023. New offenses remained relatively steady for both parole and probation cases and were more common for parole cases, comprising slightly under half of parole revocations and about a third of probation revocations. In 2023, absconding was more common than new offenses for probation revocations, but about the same for parole revocations. As supervising officers can select multiple reasons for revocations, many cases are revoked on more than one revocation type. For probation in 2023, the most common reason for revocation was a combination of technical violations and absconding, comprising 24 percent of revocations. Technical violation-only revocations were also common at 20 percent and absconding only revocations at 23 percent. In contrast, only three percent were due to a new offense-only, and a third of total probation revocations involved a new offense.

**Figure 6.** Revocations by Supervision Type and Reason, FY18 & FY23



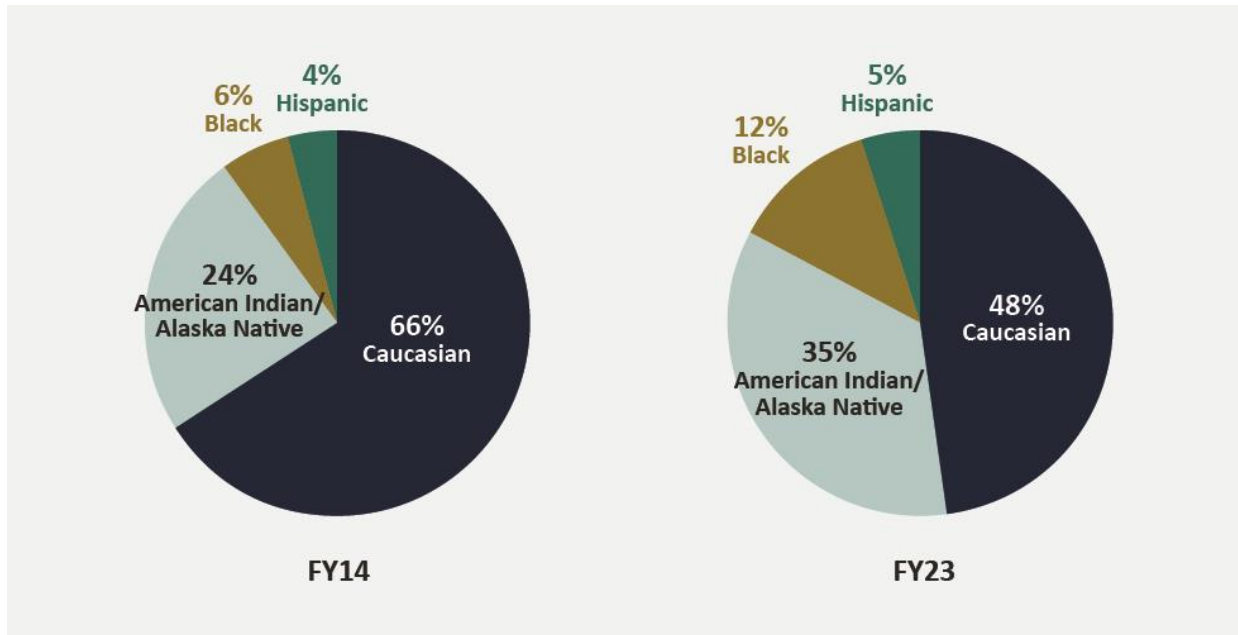
### Increasing Presence of Black and Native Individuals in Prison and on Community Supervision

From 2014 to 2023, North Dakota’s general population experienced shifts in demographics, as there was a slight decrease in those who identified as white (not Hispanic or Latino) and slight increases in people of color.<sup>23</sup> Despite these shifts, North Dakota’s criminal justice system displays certain racial disparities that outpace the general population trends.

#### *More People of Color Were Admitted to Prison and Started Supervision Periods.*

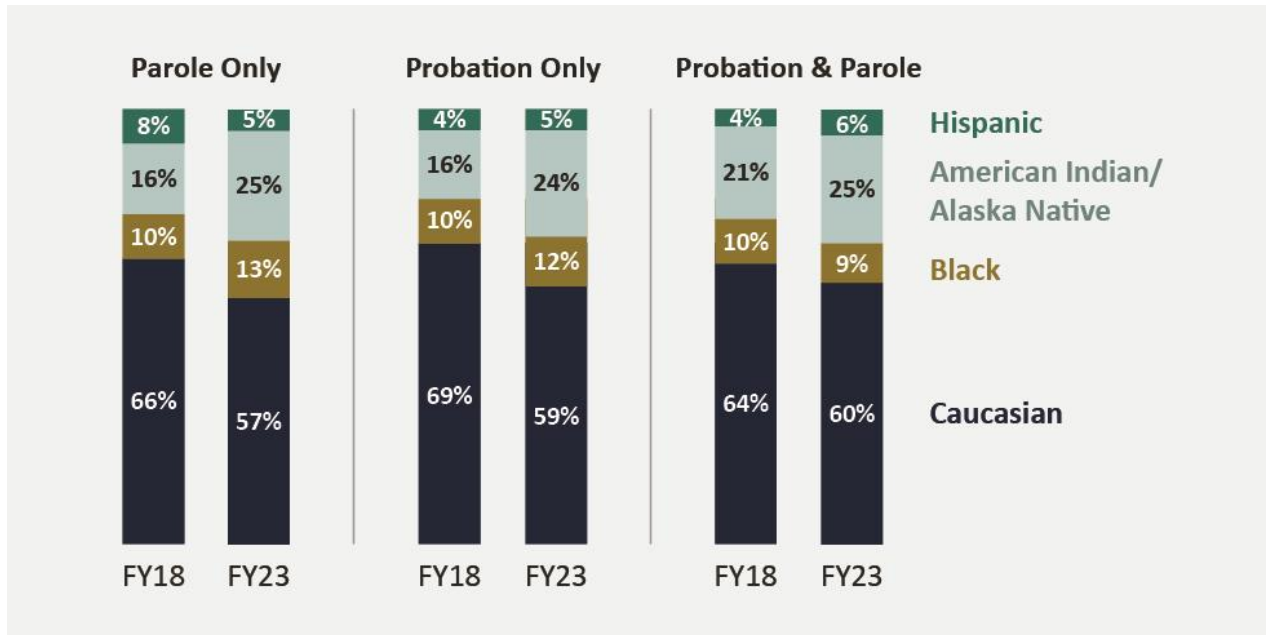
As prison admissions increased over the years, more people of color were admitted in 2023 than 2014, shown in Figure 7 below. While white admissions were the majority for every year, their proportion decreased across the decade with 21 percent fewer white admissions in 2023 than in 2014. At the same time, admissions for people of color, specifically Black and Native individuals, increased. Admissions for Native individuals increased approximately 61 percent from 2014 to 2023 and admissions for Black individuals were 120 percent higher in 2023 than 2014.

**Figure 7.** Admissions by Race per FY, 2014-2023



In addition to making up a larger proportion of prison admissions, there were more people of color on supervision in 2023 than in 2018, shown in Figure 8 below. A greater proportion of Native individuals were on every type of supervision in 2023 than in 2018 and represented a quarter of all supervision cases in 2023, even as Native individuals represented about 5 percent of North Dakota’s general population in 2023.<sup>24</sup> In addition, a higher proportion of Black individuals began parole- or probation-only supervision periods in 2023 compared to 2018. Like Native individuals, Black individuals are overrepresented in the supervision population as they accounted for about 3 percent of North Dakota’s general population in 2023.<sup>25</sup>

**Figure 8.** Supervision Period Starts by Supervision Type and by Race, FY18 & FY23



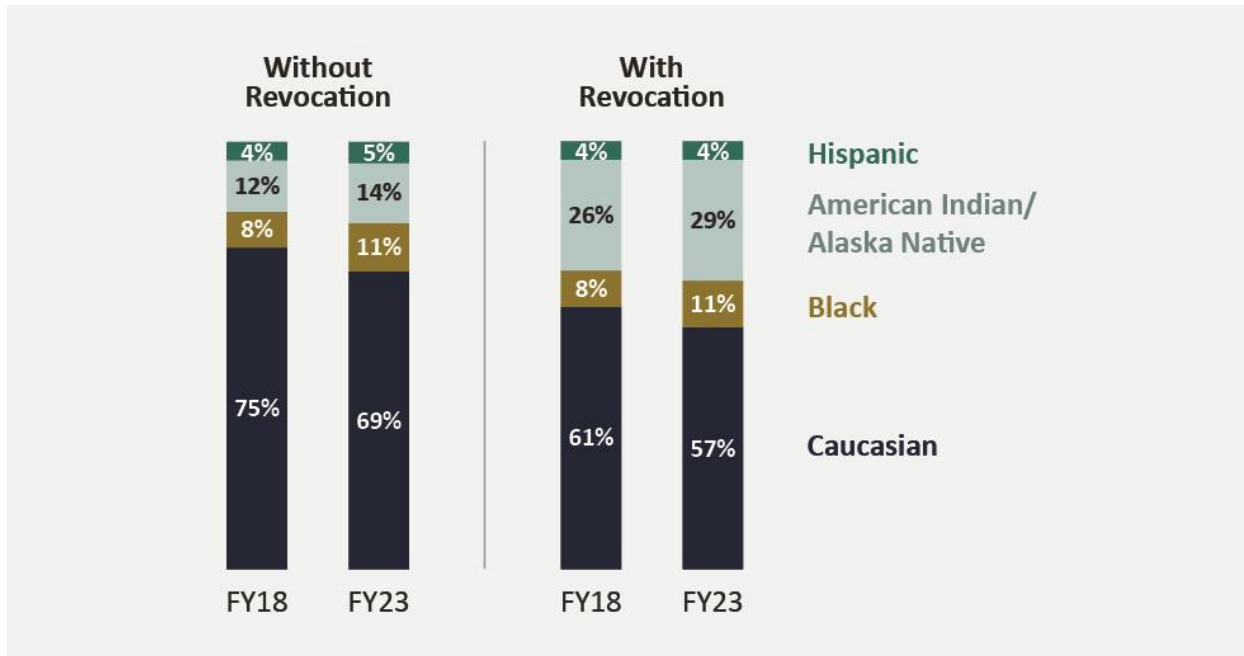
*Supervision Revocations More Prominent for People of Color.*

In addition, probation revocations were more frequent for Native individuals compared to other racial groups as displayed in Figure 9 below. For every year from 2018 to 2023, white individuals were more successful completing supervision than Native individuals. Specifically, more than twice as many Native individuals terminated supervision<sup>ii</sup> with a revocation than those who successfully completed supervision. This compares to White individuals who more successfully terminated their supervision without a revocation more frequently in 2023 than 2018.

<sup>ii</sup> Termination indicates the end of an individual’s time on supervision, when all their supervision cases have terminated. Terminations include expirations (also known as positive terminations), revocations (also known as negative terminations), absconders, returned to the original state, and others.



**Figure 9.** Probation Period Ends by Race, 2018 & 2023



## High Prevalence of Behavioral Health Needs Contributes to System Involvement

In general, North Dakota has a high need for behavioral health treatment. DHHS estimated in 2021 that within the last year 21 percent of North Dakota adults met the criteria for a SUD.<sup>26</sup> In addition, North Dakota experienced a 214 percent increase in the drug overdose mortality rate from 6.3 per 100,000 individuals in 2014 to 19.8 per 100,000 individuals in 2022.<sup>27</sup> While this rate is lower than the national rate (32.6 per 100,000 individuals<sup>28</sup>), North Dakota’s rate has increased more since 2014 than all three of its neighbors (i.e., South Dakota, Montana, and Minnesota).<sup>29</sup> DHHS also estimated in 2021 that within the last year 26 percent of North Dakota adults met the criteria for any mental illness and 6.5 percent of North Dakota adults met the criteria for having a serious mental illness.<sup>30</sup> These behavioral health needs were emphasized throughout areas of North Dakota’s criminal justice system.

### *Substance Use Issues Are a Major Underlying Concern for Community Supervision Population.*

A common theme found amongst those under supervision was the significance of substance use issues. These issues were highlighted in every facet of an individual’s supervision period, from their underlying offense to their new offense revocation.

For both parole and probation cases in 2023, possession of either drug paraphernalia or controlled substances were the most common underlying offenses. Drug-related offenses were the most common offense type for those on supervision in 2023, with about half of the 20 most

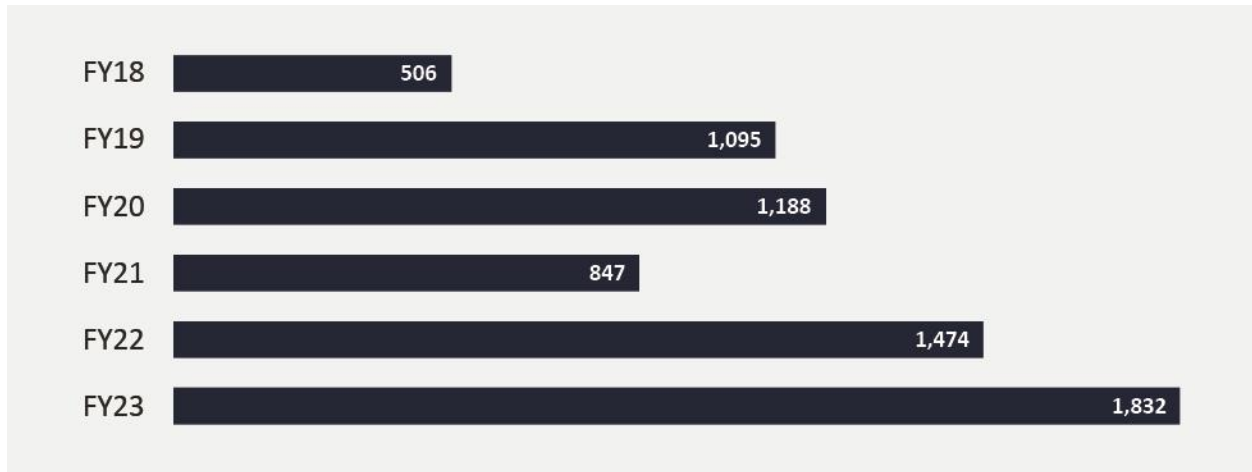
common offenses being drug- or alcohol-related and the next most common offense being property offenses at 20 percent.

Another relevant finding is that in-prison behavioral health treatment programming is prioritized in the months leading up to an individual's release or their review by the parole board. This is done, in part, to help residents transfer the skills learned in treatment to the community setting. While DOCR does ensure that residents receive access to their ordered treatment prior to their release, access to treatment is based on a recommendation made by the DOCR Case Planning Committee and is often dependent on the timeline of an individual's stay. This means that residents may be waiting to access programming for an extended period before their release date nears. Once their programming begins, individuals can also be removed from programming in response to certain institutional behavior, which may result in being placed on a waitlist to regain access to treatment.

Substance use issues were also identified as a need within a person's Level of Service Inventory-Revised (LSI-R) case plan. The LSI-R is a risk/needs assessment tool used to identify an individual's criminogenic risk to recidivate.<sup>31</sup> Research has found that a substance use disorder is a criminogenic risk factor that increases the likelihood of someone to reengage with the criminal justice system. In an LSI-R case plan, the case manager will select the most relevant risk domain to address from an individual's LSI-R assessment. Alcohol/Drugs and Accommodation were the most common risk domains selected for those starting supervision in 2023, indicating that substance use needs were a prevalent risk factor. Alcohol/Drugs was selected for about two-thirds of probation cases and about 13 percent of parole cases. These findings highlight that regardless of the underlying offense, substance use needs are identified by case managers as primary areas to address to reduce recidivism.

In addition, substance use needs were identified in those who engage in Free Through Recovery (FTR). FTR is a community-based behavioral health program designed to increase recovery support services to individuals involved with the criminal justice system with behavioral health concerns. FTR participants are referred by their supervising officer and must meet eligibility requirements before admittance to the program. To be eligible for FTR, individuals must be 18 years old, be involved with the criminal justice system or at risk for future involvement, have a behavioral health condition, and display concerns or challenges in areas of daily living (housing, employment, recovery support, etc.). FTR admissions, shown in Figure 10 below, increased around 263 percent, from 506 admissions in 2018 to 1,832 admissions in 2023. Of those admitted to FTR, 88 percent received a substance use diagnosis in 2019 and 94 percent received a substance use diagnosis in 2023. FTR discharges also increased from 2019 to 2023, and 94 percent of discharges in 2023 were given a substance use diagnoses at some point during their time in FTR. These findings emphasize the continued and growing prevalence of substance use needs within the supervision population.

**Figure 10.** Number of FTR Admissions by FY, 2018-2023



Finally, substance use issues among the community supervision population can manifest in the types of new offenses for which individuals' cases are revoked. In 2023, 29 percent of parole revocations and 17 percent of probation revocations involved a new drug or alcohol offense. For specific types of offenses, about half of all parole cases and almost one-third of all probation cases revoked in 2023 were for possession/ingestion of a controlled substance, as shown in Table 1. Most often, amphetamines were the primary drug involved in the new offense, accounting for 24 percent of new offenses for parole revocations and 9 percent of new offenses for probation revocations. The new offenses that are primarily drug- or alcohol-related, especially possession, underline the importance of addressing substance use needs to reduce individuals' risk of recidivism and reentry into the DOCR.

**Table 1.** New Offenses for Revoked Parole and Probation Cases, FY23

<b>New Offense</b>	<b>Offense Type</b>	<b>Number of Offenses in 2023</b>	<b>% of Offenses in 2023</b>	<b>% of Cases with New Offenses Revoked in 2023</b>
<b>Parole</b>				
Possession/Ingestion of Controlled Substance	Drug/Alcohol	72	26%	49%
Delivery of Controlled Substance	Drug/Alcohol	31	11%	21%
Narcotic Equip-Possess	Drug/Alcohol	25	9%	17%
Flight To Avoid/Escape	Public Order	19	7%	13%
Reckless Endangerment	Violent	19	7%	13%
<b>Probation</b>				
Possession/Ingestion of Controlled Substance	Drug/Alcohol	220	17%	31%
Narcotic Equip-Possess	Drug/Alcohol	131	10%	18%
Theft	Property	86	7%	12%
Simple Assault	Violent	59	5%	8%
Drive Under Suspension	Public Order	55	4%	8%
Criminal Trespass	Property	52	4%	7%

### *Possession and Low-Level Drug Offenses Driving DOCR Admission.*

In addition to drug and alcohol offenses being prevalent in the community supervision population, these trends were also evident in the prison population. As previously noted, the Work Group found that drug and alcohol offenses were the most common for admissions in every year from 2014 to 2023 (Figure 3). Specifically, drug possession offenses accounted for approximately 42 percent of all drug and alcohol admissions and for 21 percent of all admissions to DOCR in 2023. In addition, about 19 percent of admissions in 2023 had more than one prior admission for possession, indicating several individuals returning to DOCR with multiple possession offenses. Combining possession with other low-level drug offenses (e.g., ingesting a controlled substance, conspiracy to deliver a controlled substance, attempt to acquire controlled substance by deception, etc.) indicated that 15 percent of total admissions entered DOCR in 2023 for the first time. These offenses accounted for 43 percent of all admissions for drug and alcohol offenses in 2023, indicating their prevalence for admissions to DOCR.

Jails are an additional avenue for behavioral health support, as they are a common sentencing facility<sup>iii</sup> for drug cases. In 2023, approximately 42 percent of drug cases were sentenced to only a jail facility, while nearly half of drug cases were sentenced to a jail facility in addition to some other facility, such as a corrections facility, probation, or all three. In 2023, drug cases also made up almost one-quarter of all sentences to a jail facility (22 percent). For all sentences, drug cases represented 22 to 48 percent of all cases sentenced to jail and some other combination of sentencing facility.

### *Limited Options for Diversion into Treatment Across the State.*

A comprehensive evaluation of reentry in a criminal justice system involves exploring the pathways into the criminal justice system and what offramps exist to connect people to treatment and community support before they reach incarceration. Pre-adjudication and diversion options are notably limited across the state. Pretrial diversion is authorized by North Dakota's Rules of Criminal Procedure, and rehabilitative programming and treatment may be ordered as an agreed upon condition of diversion.<sup>32</sup> However, there are few robust programs in place for diversion, and there is an emphasized need for diversion programs tailored to addressing mental illness and chemical dependency – to meet the needs of the population that is entering the court system.

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<sup>iii</sup> Sentencing facilities include any venue an individual has been sentenced to by a judge, with the most common being jails, corrections facilities, and probation. Judges can also sentence individuals to any combination of these venues.

# Recommendations

In addition to these system findings, the Work Group examined evidence-based best practices and real-world examples from other states and jurisdictions to develop recommendations tailored to the needs of North Dakotans. Their analysis resulted in 26 recommendations intended to advance the following five overarching goal areas:

1. Expand Pathways to Alternatives to Incarceration;
2. Decrease the Number of Individuals Entering Prison Due to a Drug or Alcohol Offense, or Revocation from Supervision;
3. Reduce Racial Disparities in the Criminal Justice System;
4. Further Support Successful Transition Back into the Community by Increasing Access to Housing and Healthcare; and
5. Increase Cross-agency Collaboration Between System Partners.

It is important to acknowledge that the Work Group's efforts exist on the latest end of a continuum of reentry improvements in North Dakota. The recommendations in this report not only illuminate models and approaches that have yet to be implemented in North Dakota but build on the years of work that state and local officials have invested in constructing successful reentry initiatives. The Work Group recognizes the steadfast commitment of state leaders to utilizing evidence-based reentry policy to reduce recidivism and improve public safety.

## Goal 1: Expand Pathways to Alternatives to Incarceration

### Recommendation 1: Authorize citations in lieu of arrest for non-traffic offenses in statute and create presumption for misdemeanor offenses

North Dakota's Century Code only authorizes officers to issue citations in lieu of arrest for certain traffic violations.<sup>iv33</sup> Many states, such as Minnesota, Tennessee, and Kentucky have enacted policies that expand the use of citations to misdemeanor offenses to ensure that law enforcement resources are reserved for serious and violent individuals.<sup>34</sup> Research has found that standardizing practices for the use of citations both enhances officer efficiency<sup>35</sup> and creates greater consistency in law enforcement responses.

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<sup>iv</sup> N.D.R. Crim. P. Rule 5(e) permits the court to accept a compliant or summons in lieu of requiring an appearance before a magistrate "whether an arrest is made or not, for an offense that occurs in an officer's presence or for a motor vehicle or game and fish offense."

### The Work Group Recommends:

- *Codifying authority in Century Code for law enforcement to issue citation in lieu of arrest for misdemeanor offenses.*
- *Creating a statutory presumption of citation in lieu of arrest for misdemeanor offenses.*

### **Recommendation 2: Establish statewide deflection<sup>v</sup> standards for law enforcement agencies**

North Dakota currently provides limited guidance on law enforcement-led deflection practices.<sup>36</sup> Through interviews, law enforcement officers expressed a desire for more clarity in applying deflection practices, particularly the roles and responsibilities of different crisis response collaborators (law enforcement, healthcare professionals, and other community support entities). Research finds that law enforcement-led deflection efforts both effectively support individuals in crisis and often prevent the need for a carceral response but also function to reduce the likelihood of future offending.<sup>37</sup> In response to these findings, jurisdictions such as Illinois have defined the term “deflection programs” in statute to clarify the goals of these programs<sup>38</sup> and others, such as Ohio, have created statewide standards to support local agencies in developing their own crisis response policies.<sup>39</sup> Many states have partnered with the Treatment and Alternatives for Safe Communities (TASC) national organization to create such standards and assistance in implementing them.<sup>40</sup>

### The Work Group Recommends:

- *Codifying authority in Century Code for law enforcement to deflect individuals in crisis to hospitals, treatment centers or other locations for stabilization purposes.*
- *Establishing statewide guidelines recommending all North Dakota law enforcement agencies to create written standard operating procedures for crisis response and the use of arrest alternatives.*

### **Recommendation 3: Formalize local coalitions involved in responses to crises and low-level crime in the community**

Currently, there is inconsistent collaboration among local crisis response partners due to factors such as resource availability and law enforcement practices in different regions of the state. Interviews suggest that the result is often additional burdens on law enforcement. A specific example noted was the current lack of awareness of program bed space or eligibility criteria. This in turn makes it difficult to identify options when law enforcement encounters a person in crisis.

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<sup>v</sup> Deflection, also known as “pre-arrest diversion,” is an approach to either community-based or law enforcement-based intervention that is designed to reduce criminal justice system exposure for individuals with behavioral health needs.

To improve collaborations, many jurisdictions have formalized coalitions to enhance communication and streamline processes. A common example of this is the Law Enforcement Assisted Diversion/ Let Everyone Advance with Dignity (LEAD) Program, established in King County, Washington and now implemented in over fifty local jurisdictions across the country. Studies have demonstrated that effective partnerships, specifically for individuals with substance use disorder, can reduce the strain on law enforcement officers and can also reduce the harm and stigma associated with being in crisis.<sup>41</sup>

#### **The Work Group Recommends:**

- *Incentivizing the creation of formal partnerships between local partners including law enforcement, mental health service providers, housing officials, hospital and emergency room administrators, advocacy groups, other criminal justice personnel, community members, etc.*
- *Developing guidelines, standards of practice, or other agreements to govern collaboration among the partners involved.*

#### **Recommendation 4: Expand presumptive probation policy**

In North Dakota, there is a presumption of probation for eligible individuals convicted of first-time class C felony and class A misdemeanor offenses.<sup>42vi</sup> However, class C felony convictions are responsible for the majority of prison admissions in North Dakota – they accounted for about 65 percent of admissions in 2023.

Other states have addressed growing prison admissions by widening eligibility criteria with respect to presumptive sentences for community supervision. For example, Nevada law authorizes probation for any first or second class E felony conviction.<sup>43</sup>

#### **The Work Group Recommends:**

- *Expanding presumptive probation to second class C felonies and class A misdemeanor convictions.*

#### **Recommendation 5: Establish court-led pre-adjudicatory diversion programs & incentivize counties to establish prosecution-led diversion programs**

Pre-adjudication diversion programs in North Dakota are scarce. While court rule authorizes the use of pretrial diversion,<sup>44</sup> State’s Attorney offices, even in the areas of the state with the most

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<sup>vi</sup> This presumption notably excludes offenses involving domestic violence, firearm or weapons offenses, offenses against children and sexual offenses, and other more serious or dangerous convictions. Even for eligible offenses, judges can depart from the presumption and sentence someone to prison, if “aggravating factors” are present, for example, if the individual has pleaded guilty to, or been found guilty of, a prior felony or class A misdemeanor.



resources, do not have robust prosecutor-led diversion programs to connect people to treatment and support in lieu of formal prosecution. Moreover, virtually all court-based treatment options occur only after adjudication.<sup>45</sup> As North Dakota has a high prevalence of SUD and a large majority of individuals who enter the state’s criminal justice system are convicted of an alcohol or drug offense, it is notable that treatment opportunities are not available for people entering the court system until after they have been sentenced.

In other states and jurisdictions, pre-adjudicatory diversion options are used as an incentive for participation. District Attorney’s offices in Texas and Arizona, have established prosecutor-led diversion programs for individuals with drug or alcohol abuse or mental health issues, alongside other specific needs, and offenses.<sup>46</sup> The national Association of Prosecuting Attorneys has even developed prosecution-led diversion tool kit to help local offices establish such programs.<sup>47</sup> Additionally, Ramsey County, Minnesota and Bernalillo County, New Mexico are examples of local court systems that offer treatment courts access both pre- and post-adjudication.<sup>48</sup>

#### **The Work Group Recommends:**

- *Incentivizing counties to establish prosecutor-led diversion opportunities through State’s Attorney Offices.*
- *Authorizing pre-disposition use of treatment courts in statute.*

#### **Recommendation 6: Limit the use of cash bail for cases released to pretrial supervision and evaluate savings from pretrial supervision program**

Under North Dakota’s Rules of Criminal Procedure, judges can impose a range of pretrial release conditions to reasonably assure an individual appears in court, including ordering supervision.<sup>49</sup> Interviews indicate that, while judges are increasingly utilizing this option, there are many cases where cash bond is ordered in addition to pretrial supervision. This is in turn leading to fewer individuals being released because they cannot afford the bond and more individuals entering North Dakota’s jails. North Dakota’s jail population increased by 56 percent between 2005 and 2019,<sup>50</sup> and by 2019, 76 percent of the state’s jail population was held pretrial.<sup>51</sup>

Many states and jurisdictions have stopped relying on financial conditions like bail, aligning with research findings that the practice of imposing money bond does not increase the likelihood of court appearances and is associated with a higher rate of rearrest.<sup>52</sup> In Arkansas, for example, state law requires that money bail may only be set after the judicial officer determines that no other conditions can reasonably ensure the defendant’s appearance in court.<sup>53</sup> Nine states, including Alaska, Illinois, Iowa, Nebraska, New Mexico, Tennessee, and Wyoming have adopted either a presumption or requirement of release on the least restrictive conditions possible.<sup>54</sup>

### The Work Group Recommends:

- *Limiting the imposition of financial conditions in pretrial decisions and creating the presumption that pretrial supervision will not be coupled with money bond.*
- *Educating court actors (trainings, guidelines, etc.) on pretrial supervision uses and best practices; specifically, materials on how to release people pretrial with the least restrictive means possible to ensure safety.*
- *Conduct an updated outcomes study of DOCR's pretrial services supervision program.*

## Goal 2: Decrease the Number of Individuals Entering Prison Due to a Drug or Alcohol Offense, or Revocation from Supervision

### Recommendation 7: Make the second instance of drug possession a class A misdemeanor, in order to reduce prison admissions

Under current law, the first instance of possession of a controlled substance under a certain amount is a class A misdemeanor offense, the maximum penalty for which is 360 days in a county jail.<sup>55</sup> The second and subsequent offense, however, is a class C felony - which can result in up to five years in prison.<sup>56</sup> Individuals convicted of felony possession continue to comprise a large portion of DOCR's prison admissions. In 2023, 36 percent of admissions to DOCR custody were for a drug or alcohol offense, 43 percent of which were due to a possession offense. Research has overwhelmingly demonstrated that particularly for individuals convicted of drug offenses, incarceration does not reduce recidivism more effectively than non-custodial responses.<sup>57</sup>

Other states, like Utah, have addressed the problem of possession offenses driving prison admissions by establishing a tiered approach to how possession offenses are classified that includes more than a single misdemeanor offense. In Utah, the first two offenses are misdemeanors, and then subsequent offenses are higher felonies. As a result of this policy, Utah's state prison system saw an 88 percent decrease in the number of admissions for felony drug possession between 2015-2021,<sup>58</sup> accompanied by a declining number of drug cases brought in lower courts and in jails.<sup>59</sup>

### The Work Group Recommends:

- *Making the second instance of drug possession a class A misdemeanor, in order to reduce prison admissions.*

### Recommendation 8: Develop a tiered response model to supervision violations that includes sanctions and incentives

Currently, North Dakota law contains some intermediate sanctions in response to community supervision violations - including incarceration for up to 30 days, or up to five 48-hour periods

of incarceration per 12 months.<sup>60</sup> While DOCR’s behavior modification manual contains a range of responses that officers can use, it doesn’t consider responsivity factors that present barriers to success on supervision or many rewards for pro-social conduct. Revocations are a main driver of DOCR prison admissions; in 2023, nearly half of prison admissions were for community supervision revocations. Additionally, admissions for revocations have increased 65 percent between 2014 and 2023.

To more effectively respond to supervision violations, many states such as Nevada have created a tiered approach to violations that includes an escalation of carceral days after a certain number of violations.<sup>61</sup> Nevada also requires that a risk and needs assessment be conducted for each person entering probation in order to determine responsivity factors.<sup>62</sup> Research shows that sanctions which are swift, certain, and proportionate are the most effective method of changing behavior during community supervision.<sup>63</sup>

### **The Work Group Recommends:**

- *Adopting a graduated response matrix with escalating periods of detention beyond the current 30 days for an initial violation, to be used in conjunction with responsivity factors identified in a risk and needs assessment.*
- *Offering training to court practitioners including judges, prosecutors, defense counsel, and DOCR P&P supervisors on violation intervention best practices including intermediate sanctions and graduated responses.*

### **Recommendation 9: Establish clear definitions of “absconding” and “technical violations” in statute**

Under current law, North Dakota has no consistent definition for absconding or technical violations – agencies have their respective definitions. For example, DOCR’s absconding definition is based on an interstate compact agreement, which considers someone absconded when they no longer reside at their last known address and have not been located 72 hours after staff has investigated all reasonable leads.<sup>64</sup> This definition is not mirrored in statute and there is also no statutory definition for technical violations of supervision.

The lack of statutory guidance for absconding and other technical violations is leading to inconsistent identification and tracking of these supervision failures. This is significant as technical violations and absconding are the primary drivers of probation revocations resulting in prison admission; in 2023, 66 percent of revocation prison admissions were for technical violations, and 58 percent were for absconding.

Montana and North Carolina laws state that, in order to abscond, the supervisee must “deliberately” and “willfully” avoid supervision.<sup>65</sup> Virginia specifies instances of conduct which amount to technical violations in its revocation statute, including failure to report a new arrest, failure to follow instructions, and failure to refrain from substance use.<sup>66</sup> Defining technical violations and absconding in century code, and distinguishing willful avoidance of obligations

from mere non-reporting, allows judges to respond with precision and apply an appropriate intervention or sanction, rather than a blanket revocation.

#### **The Work Group Recommends:**

- *Adopting definitions of technical violations into Century Code for probation and parole supervision.*
- *Adopting a statutory definition of absconding for probation and parole supervision that includes a willful intent to evade supervision.*
- *DOCR evaluate the 72-hour minimum timeline for the absconding definition in DOCR internal policy to determine if an extended timeline is necessary.*

#### **Recommendation 10: Update data collection practices relating to violations**

The Work Group noted that accurately tracking data to identify trends and challenges as they emerge is an important criminal justice practice. DOCR staff have identified opportunities to track technical violations through the system with greater precision. This is significant given the prevalence of North Dakotans entering prison because of supervision revocations.

#### **The Work Group Recommends:**

- *DOCR identify data collection needs and implement collection best practices related to revocation in its case-management system.*
- *Tracking revocation admissions data to distinguish between technical violation admissions and new offense admissions to identify trends.*

#### **Recommendation 11: Limit or eliminate imposition of court fines and fees, with the exception of victim restitution**

In North Dakota, Century Code requires that in all criminal cases except infractions, an administration fee of \$125-\$900 will be imposed based on the level of offense, in addition to monthly supervision fee of \$55.<sup>xxviii</sup> The Code additionally requires individuals seeking indigent defense services to pay a \$35 application fee for their representation – and potentially additional reimbursement to the state, county, or city providing the indigent defense support.<sup>67</sup>

Research shows that court fines and fees can act as a barrier to reentry by reducing a person's ability to afford housing and necessities, and that these hardships disproportionately affect minority communities.<sup>xxix</sup> States like Washington,<sup>68</sup> New Jersey,<sup>69</sup> and New Mexico have passed legislation to eliminate some or all post-adjudication fines and fees.<sup>70</sup> In some states that have maintained financial obligations for supervision, policies have been implemented to limit the use of continued supervision or incarceration as a response to failure to pay. Virginia, for example, prohibits extension of supervision due to failure to make full payment of fines and fees.<sup>71</sup>

### **The Work Group Recommends:**

- *Eliminating probation fees and defense application fees.*
- *Prohibiting extended supervision terms due to failure to pay fines and fees.*
- *Prohibiting incarceration due to failure to pay fines and fees.*

### **Recommendation 12: Evaluate current practices and the programming needs of the jail population across the state**

The Work Group recognized that jails play a vital role in reentry efforts by providing programming and services to people who will return to the community after a relatively short period of confinement. However, the group found that programming and treatment are inconsistently available in jails across North Dakota. Some states, like Tennessee, have addressed this challenge by providing grant funding to local jails for the purpose of implementing and improving evidence-based programming.<sup>72</sup> In states like Maryland, some jails operate therapeutic housing units that provide comprehensive behavioral health services including peer counseling.<sup>73</sup> Research has found that investing in evidence-based correctional programs, particularly education and vocational programs, is one of the most effective methods to reduce recidivism.<sup>74</sup>

### **The Work Group Recommends:**

- *Establishing a statewide grant program to provide evidence-based programming to county jails.*
- *Creating a uniform evaluation and validation process, data collection methodology and standards for jail programming.*
- *Expanding culturally-responsive treatment alternatives, like sweat lodges, to local jails.*

## **Goal 3: Reduce Racial Disparities in the Criminal Justice System**

### **Recommendation 13: Require the Minority Justice Implementation Committee to annually report to the North Dakota Supreme Court and the Legislature their recommendations for mitigating racial disparities in the court system**

Both Native and Black individuals are overrepresented in North Dakota's criminal justice system. Between 2014 and 2023, prison admissions increased from 24 percent to 35 percent for Native individuals and from 6 percent to 12 percent for Black individuals. These disparities are not limited to admissions, as revocations from community supervision are also significantly higher for Native individuals.

State leaders have recognized the need to study these trends and address racial disparities at the initial stages of North Dakota's system to mitigate its adverse effects. Over a decade ago,

the state Supreme Court established a Minority Justice Implementation Committee made up of representatives from various agencies and justice system roles, including DOCR and the Indian Affairs Commission. The Committee's responsibilities include developing recommendations related to studying racial bias, monitoring progress, and seeking funding sources for the implementation of recommendations.<sup>75</sup> Other states have created similar groups; Vermont established the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel through legislation in 2017.<sup>76</sup>

#### **The Work Group Recommends:**

- *Updating committee duties to include a report to the North Dakota Supreme Court and the Legislature on findings from this study and recommendations to mitigate racial disparities.*

#### **Recommendation 14: Employ a Native liaison or liaisons within Parole and Probation**

While there is at least one probation officer in North Dakota whose primary role is to supervise individuals on the Standing Rock Reservation, there is a lack of a consistent, coordinated approach between the state's tribes and DOCR's Parole and Probation Services. This has manifested in more than twice as many Native individuals having at least one revocation than other racial groups.

Surrounding states have begun considering how to effectively supervise and improve supervision outcomes for Native individuals. South Dakota has reimaged parole supervision through a pilot program that hinges on a partnership between the South Dakota Department of Corrections and Sisseton-Wahpeton Oyate (SWO) reservation. This partnership allows a tribal parole agent to oversee a caseload of individuals residing on SWO tribal lands and has produced positive outcomes, including an increase in the parole success rate for this population.<sup>77</sup>

#### **The Work Group Recommends:**

- *In conjunction with tribal partners, designing an enhanced community supervision model that employs a Native liaison or liaisons to North Dakota's five tribes.*
- *Standardizing this model within DOCR agency policy.*
- *Identifying intended outcomes from use of this model and a plan for measuring progress.*

#### **Recommendation 15: Identify culturally responsive training opportunities for officers through consultation with tribal system partners**

Currently, DOCR encourages the use of guest speakers and supplementary sessions with guest lecturers on culturally responsive trainings. However, there is a lack of a strong partnership between DOCR and tribal representatives to ensure consistent and robust training efforts for staff. This is apparent in the experiences of individuals who have had contact with North

Dakota's justice system, who report a lack of access or awareness to culturally responsive services and support.

According to the American Probation and Parole Association's national supervision standards, case planning, interventions, and treatment options "should be chosen for individuals based on their responsibility factors," including cultural background.<sup>78</sup> This is particularly important in North Dakota, as demonstrated by the data above, as both Native and Black individuals are overrepresented in the state's justice system.

#### **The Work Group Recommends:**

- *Identifying culturally responsive training opportunities for parole and probation officers through consultation with tribal partners and other identified community groups.*
- *Incorporating culturally responsive approaches into DOCR policies and standard practices.*

#### **Recommendation 16: Design a reentry program in conjunction with tribal partners that is responsive to the specific needs of the Native population and rural communities**

There is a lack of coordinated effort between DOCR and tribal partners to support reentry, despite the specific reentry challenges for the Native population referenced in qualitative interviews. For example, many Native Americans who are released from incarceration must decide between returning to reservations, which can make meeting supervision requirements difficult (e.g., reporting to a supervising officer), or remaining in urban communities without familial and cultural supports. Compounding this issue is the rural nature of many of North Dakota's communities (including tribal lands). Stakeholders identified transportation as a common barrier in these regions.

Other states have responded to these challenges through implementation of reentry programs specific to the needs of Native populations. Arizona's Pascua Yaqui Tribe Reentry Program helps participants integrate Yaqui culture and traditions into the reentry process through reentry planning while incarcerated and continued support upon release. The program's team collaborates with other system stakeholders (e.g., parole/probation officers) to support reentry success.<sup>79</sup>

#### **The Work Group Recommends:**

- *Establishing a partnership between DOCR, tribal agencies, and rural community partners to identify the specific needs of Native individuals and North Dakotans in rural communities, including barriers upon reentry.*
- *Develop a pilot reentry program that is responsive to these needs.*

## **Goal 4: Further Support Successful Transition Back into the Community by Increasing Access to Housing and Healthcare**

### **Recommendation 17: Provide vouchers for people exiting DOCR custody to pay for housing**

In North Dakota, most system stakeholders recognized lack of housing as one of the most prevalent barriers to successful reintegration. Data showed that a growing number of individuals are unhoused at the start of periods of community supervision.

The North Dakota Rent Help (NDRH) Housing Stabilization Program provides up to six months of rental assistance for eligible households based on the median income for the county and household size. However, housing assistance that specifically targets the justice system involved population is lacking. Research consistently points to the lack of safe and stable housing as a major barrier to success upon reentry.<sup>80</sup>

#### **The Work Group Recommends:**

- *Expanding the eligibility criteria and funding for the existing Rent Help program to explicitly include those leaving incarceration.*

### **Recommendation 18: Improve coordination between housing providers for justice-involved individuals, increase education about available housing, and establish a pilot housing program for people with sex offenses**

While there is some housing assistance available for the justice-involved population in North Dakota, including the Housing Stabilization Program referenced above, there is a lack of consistent knowledge of available opportunities for this population among system stakeholders. Specifically, the Work Group noted that there is a dearth of housing options for individuals with sex offenses in the state.

#### **The Work Group Recommends:**

- *Improving coordination between housing providers across the state.*
- *Developing educational materials for incarcerated individuals and the general public about available housing assistance.*
- *Developing a pilot housing program for individuals with sex offenses.*

### **Recommendation 19: Reduce liability for landlords to lease dwellings to people with criminal convictions**

In North Dakota, the Opening Doors Landlord Risk Mitigation Fund allows participating landlords to claim up to \$2,000 for qualifying damages or unpaid rent losses. However, this program is not specific to the justice-involved population.



Other states have adopted statutes to address barriers to housing specifically for the justice-involved population by reducing liability for landlords renting to individuals with criminal convictions. Texas law provides that a landlord is not liable for leasing a dwelling to someone convicted of nonviolent offenses.<sup>81</sup>

#### **The Work Group Recommends:**

- *Adopting a statute that reduces liability for landlords to incentivize them to rent to justice-involved individuals.*

#### **Recommendation 20: Expand access to expungement**

North Dakota has a mechanism for requesting the sealing of criminal records for any misdemeanor three years after conviction when someone has not been convicted of new offenses, or five years after felony conviction with no subsequent convictions (excluding violent felonies and sex offenses).<sup>82</sup> Century Code also allows for the sealing upon request of convictions for certain specific offenses or circumstances, like crimes of prostitution committed by victims of trafficking,<sup>83</sup> operating a vehicle under the influence,<sup>84</sup> or possession of small amounts of marijuana.<sup>85</sup> This process is not automatic, and individuals who qualify must navigate the application process through the court system.<sup>86</sup>

Research finds that a criminal record can be a barrier in all aspects of reentry, including applying for a job and accessing housing.<sup>87</sup> Other states, such as Michigan, have taken steps to automate expungement to increase access to record clearing for certain offense types.<sup>88</sup>

#### **The Work Group Recommends:**

- *Developing educational materials to inform individuals with a criminal record about the process of record sealing.*
- *Conducting a legislative study to examine the possibility of automating this process.*

## **Goal 5: Increase Cross-agency Collaboration Between System Partners**

#### **Recommendation 21: Reinstate Medicaid benefits for incarcerated individuals earlier and create a data sharing portal to ensure DHHS is promptly notified when someone's Medicaid is suspended due to incarceration and when they have been released**

Federal law has historically prohibited enrolling incarcerated people in Medicaid.<sup>89</sup> However, the federal government has increasingly acknowledged the critical need of Medicaid for such individuals. As such, the Consolidated Appropriations Act of 2024 has since prohibited states from terminating Medicaid during periods of confinement instead of terminating coverage and encouraged states to instead only suspend it.<sup>90</sup> In North Dakota, interviews note that DOCR re-

enrolls eligible individuals seven days prior to their release, but there are often delays in coverage between someone's release date and their re-enrollment. Research has shown that continuity of care is important for avoiding recidivism<sup>91</sup>, particularly when someone is struggling with substance use disorder – delays in care and treatment can be a criminogenic risk.

States and Counties have begun to explore different solutions to this challenge. Bernalillo County Jail, New Mexico's largest jail, established a data portal system that alerts the state's Department of Health and Human Services when someone is released from jail and needs their Medicaid benefits reactivated – automating this process results in less wait times for re-enrollment, which leads to better health outcomes and less recidivism. Establishing the infrastructure for data sharing with statewide Medicaid agencies will also assist in the required implementation of Section 5121 of the Consolidated Appropriations Act of 2023 which provides Medicaid coverage for young adults formerly in foster care (aged 18-26) who are incarcerated.<sup>92</sup>

#### **The Work Group Recommends:**

- *Adopting a policy that allows incarcerated North Dakotans to apply for Medicaid coverage sooner to address barriers to accessing care upon release.*
- *DOCR and DHHS partner to create an automated notification system informing DHHS when a qualifying individual is within 45 days of their release date, so that their Medicaid Special Enrollment Period (SEP) form can be filled out and processed more timely, in order to ensure that their re-admission to Medicaid occurs as close to their release date as possible.*

#### **Recommendation 22: Apply for the Medicaid Section 1115 Reentry Waiver**

National statistics highlight the prevalence of behavioral health needs among the justice-involved population. In a 2016 study, the Bureau of Justice Statistics estimated that more than half of state prisoners in the U.S. had some indication of a mental health problem and about half met the criteria for substance use disorder within the 12 months prior to entering prison.<sup>93</sup>

Through use of the Section 1115 Reentry Waiver, states like Montana, Illinois, Kentucky, Oregon, Utah, and Vermont have been authorized to provide Medicaid coverage to incarcerated persons prior to their impending release.<sup>94</sup> Workgroup members recognized the benefit of potential use of this waiver in ensuring continuity of care for individuals preparing to leave incarceration.

#### **The Work Group Recommends:**

- *Initiating the Medicaid Section 1115 Reentry Waiver.*
- *Applying for federal technical assistance designed to prepare states to implement changes related to the Section 1115 Reentry Waiver.*

**Recommendation 23: Partner with the Department of Transportation to provide access to driver’s licenses for incarcerated individuals**

In North Dakota, 37 percent of individuals released from custody in 2023 did not have a driver’s license. Women were far more likely to be released without a license than men; just 10 percent of women versus 73 percent of men were released with a license in 2023. Native people had the lowest proportion of individuals released with licenses of any ethnic group – 44 percent of Native people released in 2023 had no driver’s license, versus 33 percent of White North Dakotans.

Research has shown that individuals who are released lacking identification and the ability to legally drive face significant obstacles to securing employment, housing, benefits, banking, and medical care.<sup>95</sup> Stakeholders reported that a lack of drivers’ licenses in North Dakota is significantly acute in rural areas, where court appointments, access to treatment, and proximity to employment opportunities necessitated the use of a vehicle. Georgia addressed this challenge by passing legislation allowing for coordination between the state motor vehicle and correctional departments to issue IDs to people leaving custody.<sup>96</sup>

**The Work Group Recommends:**

- *Requiring in statute that North Dakota Department of Transportation (NDDOT) and DOCR partner to provide North Dakotans leaving custody with a driver’s license or other state-issued identification upon release.*
- *Ensuring a consistent practice across DOCR where staff work with incarcerated people whose release date is approaching to determine license eligibility, address any existing obstacles, and assist with applications.*

**Recommendation 24: Develop a standard practice of coordination between probation or parole officers, care coordinators, and peer supporters to support people on supervision and respond to supervision challenges in the Free Through Recovery (FTR) Program**

While the FTR program has grown considerably since it was established in 2018 with increased program completions, completion rates remain lowest for individuals whose supervision periods included both parole and probation (P&P). The Work Group identified opportunities to increase coordination between P&P agents supervising FTR participants and staff.

**The Work Group Recommends:**

- *Developing standards and practices for P&P supervisors for coordinating responses to FTR participant supervision violations with the supervisee’s assigned behavioral healthcare providers and peer support specialists.*

**Recommendation 25: Create a statewide commission to serve as a clearinghouse for criminal justice data and facilitate data-sharing and uniform practices between state and local partner agencies**

The Work Group identified multiple opportunities to improve data collection practices at criminal justice and partnering agencies. System partners use a wide variety of content management systems – sometimes even within the same agency, which impedes data sharing capability.

This challenge is not unique to North Dakota and has been a barrier for states and jurisdictions across the nation that are looking to use data to inform criminal justice system decisions. Utah created a Criminal Justice Data Management Task Force, consisting of representatives from many agencies, to address data interoperability and tracking issues across the state.<sup>97</sup> The Task Force was charged with making recommendations related to improving and standardizing data retention and collection. A data management task force in North Dakota could similarly study opportunities for improved data collection, with the goal of improving reentry outcomes.

**The Work Group Recommends:**

- *Forming a Criminal Justice Data Management Task Force charged with making recommendations related to:*
  - *Identifying and updating data points that need to be tracked by criminal justice and partner agencies, including the Department of Health and Human Services' Behavioral Health Division.*
  - *Standardizing the format of data collection and retention.*
  - *Automating the collection, storage, and dissemination of the data.*
  - *Connecting the various records systems used throughout the state so that data can be shared between criminal justice agencies and with policymakers.*

**Recommendation 26: Create regional reentry coordinating councils**

In North Dakota, stakeholders reported significant regional variation regarding coordination between system partners throughout the experience of reentry. Interviews noted that in particularly more urban locations like Fargo, there is some level of regular communication between agencies, behavioral health providers, and treatment services, but in other more rural areas regular coordination is uncommon. States like Utah have responded to the challenge of irregular collaboration by instituting local criminal justice coordinating councils (CJCCs).<sup>98</sup> These CJCCs collect, share and analyze data related to the criminal justice system, including arrest, jail and prison admission rates, court case resolution times, and community supervision outcomes, so that local stakeholders can discuss and identify emerging issues and formulate policy accordingly.

The Work Group agreed unanimously that using data to drive criminal justice policymaking at both the state and local level was the best practice. Regional CJCCs could create a statewide data-driven framework for addressing issues related to crime and justice at the local level.

### **The Work Group Recommends:**

- *Creating local CJCCs in every judicial district, consisting of stakeholders from law enforcement, courts, jail administration, behavioral health professionals, and community reentry support partners.*
- *Creating uniform standards for data collection for each criminal justice coordinating council.*
- *Requiring regular meetings by CJCCs to review and analyze data in their communities.*

## **Conclusion**

While North Dakota has spent the last decade making transformative changes to its justice system, with a particular focus on rehabilitation, the state continues to experience growth in its prison population. In recognition of this, the Work Group dedicated hours to reviewing best practices, research findings, relevant state examples, and data findings from the state criminal justice system – culminating in the 26 responsive solutions outlined above to improve reentry outcomes across the state.

The Work Group’s findings and recommendations reflect the fact that the comprehensive nature of reentry requires an equally comprehensive approach to improving outcomes. As this report demonstrates, reentry is not solely the province or responsibility of law enforcement, the courts, and corrections. Instead, improved outcomes for people exiting the criminal justice system require a lasting partnership between state agencies responsible for portfolios that range from healthcare to housing, law enforcement officers, court practitioners, legislators, and service providers – as well as a commitment to collecting and analyzing data that informs appropriate interventions.

North Dakota is well-positioned to further the improvements made to the state’s criminal justice system over the last decade through advancement of these comprehensive, data-and research-driven recommendations.

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<sup>3</sup> ND HCR 3026 (2023).

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- <sup>4</sup> Bureau of Justice Statistics (BJS), *Prisoners in 2021 – Statistical Tables* (Washington, D.C.: 2020), Figure 3, [Prisoners in 2021 – Statistical Tables \(ojp.gov\)](#).
- <sup>5</sup> BJS, *Prisoners in 2021*, Table 2.
- <sup>6</sup> Bureau of Justice Statistics (BJS), *Prisoners in 2011*. Table 2; Bureau of Justice Statistics (BJS), *Prisoners in 2021*, Table 2. [Prisoners in 2011 \(ojp.gov\)](#); [Prisoners in 2021 – Statistical Tables \(ojp.gov\)](#)
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- <sup>14</sup> North Dakota Office of Management and Budget, *2023-2025 Approved State Budget*, 109.
- <sup>15</sup> North Dakota Office of Management and Budget, *2023-2025 Approved State Budget*, 4.
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- <sup>18</sup> “Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin: April 1, 2010 to July 1, 2019,” United States Census Bureau, accessed October 2024, [State Population by Characteristics: 2010-2019 \(census.gov\)](#); “Our Changing Population: North Dakota,” USA Facts, accessed October 2024, [North Dakota population by year, county, race, & more | USAFacts](#); BJS, *Prisoners in 2015 and 2022*, Appendix Table 3 and 1.
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