



**Date:** June 1, 2020

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**Re: Preliminary Assessment of North Dakota's Juvenile Justice System**

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**Background, Purpose, and Methodology**

The Council of State Governments (CSG) Justice Center partnered with the North Dakota Juvenile Justice State Advisory Group, in collaboration with the Commission on Juvenile Justice and Interim Judiciary Committee, to conduct a preliminary qualitative assessment of North Dakota's juvenile justice system.<sup>1</sup> The goal is to identify shared priorities for improvement and opportunities to align state policy, practice, and funding with what research shows works to protect public safety, reduce disparities, and improve youth outcomes. In addition, this process is designed to promote stakeholder buy-in and momentum for conducting a more comprehensive, data-driven assessment that would support a cross-branch, consensus-based system improvement initiative.

To conduct the preliminary assessment, the CSG Justice Center engaged in the following activities:

- Aggregated and reviewed analyses and reports related to past and current juvenile justice system improvement efforts, annual reports, strategic plans, and other available information.
- Conducted extensive on-site and virtual focus groups with state and local leaders across the juvenile justice continuum including: state policymakers, Governor's Office staff, the Department of Juvenile Services, Juvenile Court judges and referees, court officers staff/managers, prosecutors, public defenders, law enforcement, school resource officers, community-based providers, educators, child welfare, behavior health, and tribal community representatives.

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<sup>1</sup> The "juvenile justice system" as defined here does not represent a single agency, but instead, the collection of agencies, court actors, law enforcement, schools, other youth-family service systems, service providers, and branches of government that collectively shape the policies, practices, funding, values, and cultural norms that impact youth at risk of or who become involved in the juvenile justice continuum.

- Conducted focus groups specifically with state agency research and information technology staff on data collection and management.

Based on these assessment activities, this memo summarizes preliminary takeaways regarding system strengths and challenges, offers recommendations for improvement, and proposes next steps.

### **Research Framework Guiding the Preliminary System Assessment**

This analysis of North Dakota’s juvenile justice system is based on what rigorous research shows works to protect public safety and improve outcomes for youth,<sup>2</sup> including:

1. Use of risks and needs screening and assessment tools to match youth with the appropriate level/type of supervision and services, including minimizing system involvement for youth at low risk of reoffending and prioritizing system supervision and interventions for high risk youth.
2. Providing services that are research-based and that address individual youth’s criminogenic and behavioral health needs, and collecting data on system performance and youth outcomes and using this data to guide system decisions.
3. Collaborating across systems to assess and address the full range of youth’s needs including behavioral health, education, child welfare, and others.
4. Employing a developmentally appropriate approach, including family engagement; positioning probation/parole officers as agents of positive youth behavior change; employing incentives, graduated responses, and restorative justice practices to hold youth accountable and repair harm caused to victims and communities; and ongoing efforts to assess and address racial, ethnic, gender, and other form of system bias and disproportionality.

### **North Dakota Juvenile Justice System Strengths**

North Dakota’s juvenile justice system has made significant progress in the last five years. System referrals, detentions, adjudications, and dispositions to community supervision and out-of-home placement have all declined substantially. In addition, the Division of Juvenile Services (DJS) and Juvenile Court (Court) are committed to youth rehabilitation and ongoing system improvement. Both DJS and the Court have established a foundation of research-based policies and practices, including:

- Use of risk and needs screening and assessment tools pre and post disposition to match youth with the appropriate level of supervision based on their risk of reoffending, and significant effort to divert unruly and low risk youth from formal court involvement;
- Case planning processes based on youth’s assessed risks and needs;
- Growing effort to establish a continuum of services to meet youth and their families’ needs such as in-home therapy;

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<sup>2</sup> Elizabeth Seigle, Nastassia Walsh, and Josh Weber, *Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System* (New York: Council of State Governments Justice Center, 2014)

- Increased attention to data collection and using data to guide system decisions;
- Increased cross-systems collaboration through the dual-status youth initiative and establishment of the Children’s Cabinet and Commission on Juvenile Justice;
- Initial adoption of a statewide incentives and graduated response process, and growing commitment to positioning Court/DJS staff as agents of positive youth behavior change;
- Ongoing efforts to reduce system disparities, including recent enactment of a Memorandum of Understanding with Spirit Lake designed to improve service access for tribal youth.

### **Key System Challenges**

While North Dakota has established a foundation of research-based policies and practices, the juvenile justice system faces three broad challenges—agreed upon by most stakeholders—that undermine system efficacy, the efficient use of resources, and improved public safety and youth outcomes:

#### *Lack of Statewide Vision, Policies and Practices, and Agreed-Upon Roles and Responsibilities*

North Dakota lacks a statewide vision, purpose, and set of research-based principles to guide its juvenile justice system. This lack of a statewide approach means that the administration of justice, adherence to research, services, and ultimately, system performance, equity, and outcomes differs across the state in important ways, including:

- *By agency:* Some schools believe they are responsible for reducing truancy and addressing unruly/low-level delinquent behaviors that take place on school grounds while other schools are quick to involve law enforcement. Some law enforcement agencies operate youth bureaus and offer civil citations in lieu of an arrest while many others offer no pre-arrest diversion opportunities. And some court staff are able to focus on populations of youth and related issues that pose a risk to public safety while others are forced to take on a broader set of health and human service responsibilities.
- *By region:* Urban and rural jurisdictions have different populations, values and norms, challenges, and resources that may necessitate different approaches. At the same time, without a statewide commitment to principles such as the “least restrictive alternative” or “evidence-based practices,” youth from rural and urban areas who have the same risks and needs are often treated differently (i.e. justice by geography).
- *By population:* Despite ongoing attention and remediation efforts, youth of color and tribal youth are disproportionately involved in the juvenile justice system and often don’t have access across the state to the same level, type, and quality of services compared to their peers.

North Dakota is hampered from establishing an effective, statewide approach to juvenile justice in part due to limited knowledge across agencies and branches of government on how the juvenile justice system functions and research/best practice. Focus group participants confused the roles of the Court vs. DJS; lacked knowledge of juvenile court processes; were unaware of how the policies of their

counterparts in neighboring regions differed from their own; and shared that training on juvenile justice research and best practice, as well as peer and cross-systems sharing, is limited. As a result, many stakeholders are not familiar with and committed to research-based practices that are foundational in other states such as maintaining youth safely in the community and using community-based instead of residential services whenever possible, and employing incentives/graduated responses and motivational techniques to promote youth and family engagement rather than sanction-based approaches.

*Limited Access to Services Without System Involvement and Overreliance on Residential Services*

Families, school personnel and resource officers, law enforcement, and others refer youth that are young, unruly, and/or that have committed low level offenses to the juvenile justice system, not because these young people are a public safety risk, but to get them services. Most of these youth are diverted from court involvement. However, the perceived or actual inability for youth and families to obtain services without an arrest results in potential trauma, and as shown by research, may actually increase the likelihood of youth reoffending while decreasing their likelihood of school completion.<sup>3</sup> Pushing low risk youth into the justice system also takes up police, court officer, and Court staff's time and resources better spent on youth that are a risk to public safety.

Perceived or actual gaps in service availability/access result not only in youth being unnecessarily involved in the juvenile justice system, but also in youth being placed out of home. Despite progress, North Dakota still has the tenth highest state commitment rate in the country. While North Dakota has a relatively low detention rate compared to other states, there are limited, non-residential alternatives to secure detention other than Attendant Care. In addition, all stakeholders agree that North Dakota lacks sufficient mental health and substance use services to meet youth's needs. However, in many quarters, there is an automatic default to wanting to refer youth to residential treatment despite research having shown that community-based services are generally more effective at a fraction of the cost.

Finally, service challenges at both the front and deeper ends of the system are more acute in rural, poorer, and tribal communities, likely a key factor driving the disproportionate representation of youth of color and tribal youth across the juvenile justice continuum, particularly at arrest and in detention.

The forthcoming behavioral health system expansion could serve as a critical way to build statewide service capacity that does not require system involvement. Yet, it's unclear to what extent juvenile justice agencies and the Department of Human Services (DHS) are active partners in shaping this system to ensure it is tailored to meet the needs of youth at risk of or in contact with the juvenile justice system. Likewise, the nascent Children's Cabinet could offer an important forum for fostering a cross-systems approach to developing a service system that is more prevention oriented, community-based,

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<sup>3</sup> Anthony Petrosino, Carolyn Turpino-Petrosino, and Sarah Guckenbug, [Formal System Processing of Juveniles: Effects on Delinquency](#) (Washington, DC: Campbell Systemic Reviews, 2010); David S. Kirk and Robert J. Sampson, "Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood," *Sociology of Education* 86 (2012): 36–62; Jon G. Bernburg and Marvin D. Krohn, "Labeling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood," *Criminology* 41, no. 4 (2003): 1287–1318.

and includes intentional efforts to address service gaps for particular populations/communities. However, formal, ongoing, cross-systems efforts to explicitly address these challenges and build service capacity accordingly have been limited to date.

#### Limited Capacity for Evidence-Based Service Delivery, Quality Assurance, and Data-Driven Decisions

Finally, North Dakota's juvenile justice systems lacks a commitment to evidence-based services, quality assurance, and data-driven decision making. It's unclear whether North Dakota has limited program, provider, workforce, and technological capacity in these areas because of limited resources or whether limited resources have been invested in building this capacity because it isn't an expressed priority in state statute, appropriations, contracts, or agency funding/policy. Regardless, North Dakota offers limited evidence-based, community-based cognitive behavioral therapy, family therapy, and behavioral health treatment demonstrated by research as effective specifically for justice-involved youth. Most residential programs also serve a mix of youth in both the child welfare and juvenile justice systems and are not required to tailor their services to the needs of these different populations. Additionally, both community and residential providers do not routinely receive information on youth's risk and needs from referring justice agencies, report that collaboration around case planning and service delivery with justice agencies is sporadic, and receive limited training on juvenile justice research and best practice.

Despite limited use of formal, evidence-based models, service providers in North Dakota working with justice-involved youth may in fact be effective. However, North Dakota lacks formal, ongoing quality assurance activities to assess service matching, dosage, and implementation fidelity, and data on service participation, completion, and outcomes is tracked in informal ways that don't allow for regular and accurate reporting. As a result, North Dakota can't fully evaluate service provider effectiveness, support and expand strong providers, hold poor performers accountable, and ensure limited resources are used as efficiently as possible for service delivery.

More generally, North Dakota has not established system-wide performance and youth outcomes measures to track and use to evaluate whether agencies, service providers, and other key partners are effectively protecting public safety and improving youth outcomes. Even if such measures existed, the Court, and to a lesser extent DJS, lack the data collection and reporting technology, processes, and research staff required to collect and analyze the data needed to report on these measures. As a consequence, data is not routinely used to guide statewide system policy and funding decisions.<sup>4</sup>

#### **Statutory Analysis**

As part of the preliminary assessment, the CSG Justice Center reviewed state statute to assess to what extent statute is aligned with research and best practice and whether statute provides the necessary framework to address the challenges detailed above. The following statutes were reviewed:

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<sup>4</sup> See Appendix A for a more detailed assessment of the capacity of North Dakota's juvenile justice system to collect, analyze, report, and use data on system practices, performance, and youth outcomes, including what data would be available for a more comprehensive, data-driven system assessment.

- Chapter 27-20 – Uniform Juvenile Court Act;
- Chapter 27-21 – Division of Juvenile Services;
- Chapter 12-46 – North Dakota Youth Correctional Center;
- Chapter 12-52 – Aftercare Program for Youth Correctional Center;
- Title 12.1 – Criminal Code

In sum, North Dakota statute related to juvenile justice is overly general, vague, and largely bereft of research-based principles and practices. Specific findings include the following key gaps and challenges:

1. *Lack of statutory framework specific to the juvenile justice system.* The Uniform Juvenile Court Act encompasses three different populations—children/youth in the child welfare system, unruly youth, and delinquent youth—in an intertwined and non-specific way that often does not acknowledge their distinct risks and needs as well as the specific goals, processes, and research-based practices of the systems that serve them. Additionally, North Dakota Criminal Code generally does not distinguish between juvenile and adult offenders.
2. *No guiding statement of purpose or principles.* Statute lacks a statement of purpose and principles that guide the administration of justice and juvenile justice supervision and services statewide, such as a commitment to rehabilitation, evidence-based practices, the least restrictive alternative, and balanced and restorative justice.
3. *Limited mention of and specificity on roles and responsibilities and research-based practices:* Statute speaks only generally to the roles and responsibilities of DJS and the Court (as well as schools, law enforcement, and other relevant parties). There is limited or no mention in statute of research-based policies or practices in the areas of risk and need screening and assessment, diversion and dispositional decision making, case planning, reentry planning, supervision, service delivery, use of incentives/graduated responses, family engagement, and cross-systems information sharing and collaboration.
4. *Broad discretion on placing youth out-of-home.* Limited criteria or processes exist to guide out-of-home placement decisions, including use of risk and offense-based criteria, assessment and review processes, and required efforts to exhaust available and appropriate community-based alternatives. Instead, youth can be detained or incarcerated for a variety of reasons not directly related to public safety; placed out of home with DJS for 60 days for the sole purpose of diagnostic testing; and detained if participating in drug court without a hearing/due process.
5. *No dispositional guidelines.* While sentencing guidelines are detailed in the Criminal Code, no guidelines exist specifically for youth adjudicated of delinquent offenses, including risk/offense criteria for community supervision, state commitment, and other dispositions as well as minimum/maximum lengths of time on community supervision, in facilities, and on parole.

6. *Lack of emphasis on evidence-based services and corresponding appropriations.* Statute does not touch on the use of state funding for evidence-based services, required quality assurance assessments/processes, or data collection for services or state-operated facilities. Statute also lacks any related block formula or competitive appropriations to incentivize, reward, or support statewide/local adoption of best practices or innovations in areas such as diversion, restorative justice, use of evidence-based service models, detention alternatives, community-based alternatives to incarceration, tele-services, or reducing system disparities.
7. *Use of sanctions-based approaches.* Statute is occasionally overly specific in ways that are not reflective of research/best practice and are punitive in nature such as the ability to detain youth participating in drug court as a sanction; required participation in the 24-hour sobriety program without identifying whether youth have a substance use problem necessitating such an intervention; license suspension for offenses that don't involve a motor vehicle; and the ability to hold parents in contempt of court if they don't participate in services.
8. *No distinction between youth and adults on the imposition of long-term legal consequences of an offense.* Statute lacks a developmentally appropriate approach to the imposition of collateral consequences for committing an offense generally, and specifically for registerable offenses.
9. *No mention of performance measures or reporting requirements.* Statute does not establish or define system performance or youth outcome measures (such as recidivism) nor require any reporting of outcome data to the legislature or other branches of government.
10. *Limited focus on special populations.* Statute generally does not provide specific provisions or processes for promoting system equity for youth of color, tribal youth, and youth from rural communities as well as policies, programs, or initiatives to improve service access and delivery.

### **Initial Recommendations for System Improvement**

Based on this preliminary qualitative assessment, the CSG Justice Center has identified the below overarching opportunities to align system policies, practices, and funding with research/best practice. It is important to note that many of these broad system improvement recommendations, as well as the specific statutory recommendations, may require additional resources to implement statewide with fidelity and high quality. Given likely agency budget cuts and a lack of discretionary resources available from the legislature for appropriation due to the economic impact of COVID-19, North Dakota should carefully assess the potential benefits, resource requirements, and timeframes involved with each recommendation and prioritize system changes accordingly.

#### *Decriminalize unruly behaviors and develop pathways to serve these youth outside of the justice system*

Unruly youth pose little to no risk to public safety but are generally a population of youth (and families) in need of services. North Dakota should restrict these youth from being arrested or court involved to obtain these services. Instead, an agency/entity—potentially still the Juvenile Court—should have case planning/management oversight for these young people with the primary goal of assessing their needs and referring them to appropriate services. In parallel, North Dakota should establish clearer statewide

policies on the roles and responsibilities of schools, law enforcement, the child welfare system, service providers, and other entities for managing, on their own, disruptive youth behaviors that don't rise to the level of public safety risks (e.g. truancy, school infractions, etc.) as opposed to using the juvenile justice system to address these issues.

*Establish more stringent criteria and research-based processes for system decisions, particularly detention and out-of-home placement*

North Dakota should establish statute that restricts youth from being detained or incarcerated unless public safety is threatened—as evidenced primarily by their assessed risk of reoffending—and unless no other viable community alternatives exist. In addition, court officers should be required to provide judges/attorneys with a brief report on youth's risk and needs prior to disposition, and North Dakota should establish at least general statutory guidelines for determining dispositions as well as the specific level and lengths of community supervision, incarceration, and total time in DJS custody based on this information as well as youth's offenses. Finally, North Dakota should validate its current detention screening tool and establish more robust training and quality assurance protocols on its use, including override criteria, as well as related performance measures that are reported to all stakeholders.

*Invest limited resources into building a more robust continuum of community-based services statewide as well as for specific populations/communities.*

While stakeholders generally support the first two recommendations, their support is often contingent upon the development of more robust services statewide, particularly in rural communities. North Dakota should use the Children's Cabinet and/or Juvenile Justice Commission as the forum for requiring DJS, Court, DHS, and other partners as needed to develop a cross-systems/branches plan for building a service continuum designed to prevent youth at risk of justice involvement from ever coming into contact with the system as well as to safely maintain youth under system supervision in the community. The plan should facilitate the expansion/strengthening of cognitive behavioral, family therapeutic, mental health and substance use, restorative justice, and other needed community services.

North Dakota may already possess the foundations of this plan and just need to specify it for justice-involved youth in a coordinated way across systems/branches through the forthcoming behavioral health system and changing child welfare approach to service delivery. In addition, more efforts are likely needed to fully map and better use services that do exist; blend/braid funding across systems/branches; and establish a shared commitment from DJS, the Court, and DHS to reduce residential capacity, such as group homes, and reinvest resources into community services. In addition, the service plan should encompass strategies for improving service access in rural communities and for tribal populations through innovations such as tele-services, shared service agreements, and treatment-oriented supervision models such as EPICS and Functional Family Probation, including resources needed from the legislature to fill service gaps and/or pilot new programs/initiatives. Likely budget cuts across agencies resulting from COVID-19 will make the development of such a plan and the allocation of additional resources more challenging; at the same time, coordination across systems/branches to use limited resources in an efficient, research-based way is more important than ever.

*Strengthen statewide commitment to and capacity for evidence-based services, quality assurance, and data collection.*

As a central part of the above service plan, North Dakota should commit to building statewide capacity to provide evidence-based services proven effective for youth in the juvenile justice system. Part of this approach may include the adoption of “gold-standard” models such as Multisystemic Therapy and Functional Family Therapy. However, such programs are expensive and challenging to implement with fidelity and at scale, particularly in more rural areas. Thus, the plan should include a general strategy for expanding research-based, community-based family therapy, cognitive behavioral, and mental health and substance use services, fidelity monitoring and quality assurance assessments, continuous quality improvement and accountability processes, provider training, and establishing standardized information sharing/case planning protocols between providers and justice partners.

North Dakota should also include, as part of this plan, the establishment of specific performance and youth outcomes measures for the juvenile justice system, including for service providers, and required data analysis and reporting on these measures annually to leadership across branches of government. To meet this goal, additional resources are likely needed to build the Court’s technological infrastructure to capture and report this data as well as to hire research staff that can analyze this data.

Finally, North Dakota should require at least annual training for the various entities that comprise the juvenile justice system, and more frequent training for those directly operating the system, on how the system functions as well as research-based policies and practices.

*Align statute with the above recommendations, and more generally, research and best practice.*

There are extensive opportunities, as detailed below, to revise statute to better align with research and best practice. However, it’s important to note that the CSG Justice Center is not recommending, nor would it be advisable, to make all or even most of these changes in the immediate future given that many have significant policy, practice, and resource implications for a range of agencies and entities.

The CSG Justice Center’s experience working with an array of states on juvenile justice statutory reform is that new or revised legislative mandates do not, by themselves, transform system performance or improve public safety or youth outcomes. Instead, to fully reap expected benefits, states must support an extensive, structured implementation process that facilitates agency buy-in, policy and protocol development, staff training, quality assurance, data collection, and ongoing cross-systems collaboration, support, monitoring, and accountability. The many ramifications of COVID-19, including increased intensity/complexity of youth/family needs and reduced agency resources, is only likely to make the implementation of new policies and practices more challenging. Thus, it should ultimately be up to the agencies and entities responsible for implementing legislative mandates, in partnership with leadership across branches of government, to determine, through a consensus- based process, what level and type of statutory changes that they support; in what ways; by when they should be enacted; by when the changes must be implemented; and to what extent additional resources, analysis, and support are needed to implement these changes effectively.

With this context in mind, key opportunities to revise and strengthen North Dakota juvenile justice statute include the following:

1. Establish a stand-alone juvenile justice statute that is separate from child welfare statute and the Criminal Code (for dispositions, supervision lengths, etc.), which details the purpose of the juvenile justice system, principles, agency roles and responsibilities, decision making criteria and processes, and best practice guidelines on the provision of community supervision, case planning, and services.
2. 27-20-03 and all related: Establish separate statute that pertains to “unruly” youth; decriminalize unruly behaviors such that these youth receive a summons or civil citation/referral to services rather than are arrested; and eliminate the jurisdiction of the juvenile court to adjudicate, dispose, detain, or incarcerate them. Instead, establish the Court (or other entity as appropriate) as responsible for providing case management, oversight, and service coordination for this population.
  - a) Require the Children’s Cabinet/Commission on Juvenile Justice to develop, and submit to leadership across branches of government for approval, a cross-systems service plan for improving service access and quality for unruly youth—and particularly for youth in rural areas and tribal communities—to be ready for implementation in conjunction with when the above statutory change would take effect. This plan should seek to build upon/incorporate plans related to the forthcoming behavioral health system as well as Families First, rather than duplicate or replace them.
  - b) Specify the definition of “disorderly conduct” and related offenses for juveniles and require that law enforcement/the Court report the number of youth arrested/referred for such offenses at least annually to help ensure that youth are not arrested for other offenses for behaviors historically classified as unruly as a way to encourage system supervision/services.
  - c) Specify the responsibility of schools to address truancy and low-level disruptive behaviors “in-house” through the required development and implementation of school-led, community-based intervention plans, and require schools to document the implementation of these plans for individual youth before an “unruly” referral is made to the juvenile court.
    - Establish a pilot program/appropriation that incentives and/or directs, trains, funds, and supports schools to adopt restorative justice and Positive Behavioral Interventions and Supports in lieu of unruly referrals and school-based arrests.
3. Establish a purpose clause for the juvenile justice system that reflects goals such as protecting public safety, youth rehabilitation, and balanced and restorative justice, as well as guiding principles such as use of the least restrictive alternative, evidence-based practices, and system equity.
4. 27-20-10: Establish risk/need criteria for guiding diversion and informal adjustment decisions with the goal of diverting all low risk youth from formal court involvement, and limit the total time on diversion/informal adjustment, including extensions, to 3-9 months.
5. 27-20-13: Eliminate the discretion to take youth into custody for reasons not directly related to public safety, and establish non-justice system service alternatives including clear guidelines, criteria, and points of contact for whom families can reach out to, rather than contacting law enforcement, when they are having challenges with their children that are not public safety related.

6. 27-20-14: Eliminate the discretion to detain youth for reasons not directly related to public safety or flight risk, as guided through the results of a validated detention screening.
  - a) Establish a realistic timeframe, and corresponding appropriation as needed, to validate the current detention screening tool to ensure its appropriateness for North Dakota's juvenile justice population overall, and specifically for youth of color and tribal communities.
  - b) Establish statutory requirements, and appropriate supports, related to the detention screening tool training, quality assurance protocols, override criteria, and required data collection and reporting to all branches of government to ensure the detention screening is used with fidelity.
    - Despite recent legislation, North Dakota should consider whether law enforcement is best equipped to meet these requirements—an unusual delegation of responsibilities compared to other states—or whether responsibility for the tool and associated requirements should be with court officers.
7. 27-20-14/27-20-17: Eliminate the discretion of the Court to detain youth participating in drug court for reasons that don't reflect the above criteria and without a detention hearing with counsel.
8. 27-20-17: Require that a detention hearing is held within 24 hours rather than 96 hours of youth being detained.
9. 27-20-26: Establish a presumption that all youth are considered indigent regardless of parent's ability to pay. In addition, when representing an indigent juvenile, the state public defender or contract attorney must defend the juvenile at every stage of the proceedings following arrest, and counsel must be assigned by the time of a detention hearing. Finally, establish provisions that sets a specific age limit on the waiver of right to counsel or that a juvenile's age is one factor considered.
10. 27-20-28: Establish specific statutory guidelines for making dispositional decisions, including the requirement that court officers conduct, and the Court receives, a brief report and recommendations on supervision/services based on the results of a post-adjudication, pre-disposition validated risk assessment as well as the results of needs assessments, as screening results necessitate, such as mental health, substance use, and/or trauma assessments.
11. 27-20-36: Establish more specific supervision length guidelines that identify minimum and maximum ranges, including extensions, for dispositions to different levels of community supervision as well as out of home placement based on youth's assessed risk of reoffending and nature of their offenses. These lengths should include maximum time that youth can spend in a facility and on after care, including provisions/criteria for early release and associated dispositional reductions.
12. 27-20-31: Establish specific risk and offense-based criteria for placing youth out of home, including that youth must be high risk and/or have committed a serious, violent offense. Consider requiring court officers to host a multi-system meeting and/or consult with other systems to ensure all intensive, community-based treatment alternatives have been exhausted or are deemed insufficient before recommending out-of-home placement for any youth.

- a) Require the Children’s Cabinet/Commission on Juvenile Justice to develop, and submit to leadership across branches of government for approval, a cross-systems/branches service plan for establishing intensive, evidence-based community services that can serve as alternatives to secure and non-secure out-of-home placement, including secure detention. The plan should include provisions for expanding the availability of, access to, funding for, and quality of community-based cognitive behavioral, substance use, mental health, and family therapy services. The plan should also include specific strategies for building statewide service provider capacity, workforce, training, quality assurance, and data collection with particular strategies for rural and tribal communities. In addition, the plan should detail the steps that all agencies will take to reexamine their current resource allocation strategies and reallocate/reinvest funding as possible away from residential services and for intensive community-based services, as well as identifying additional appropriations as needed to fill service/resource gaps. This plan should seek to build upon/incorporate plans related to the forthcoming behavioral health system as well as Families First, rather than duplicate or replace them.<sup>5</sup>
  - b) To improve service access for unruly and delinquent youth from tribal communities, establish a pilot program/appropriation that designates and supports Court “Resource Officers” that are assigned as liaisons to each recognized tribe and that can also staff Tribal Court for the purposes of ensuring that youth from tribal communities (whether disposed in tribal or state court), as well as their families and tribal probation officers, have information on and access to the same services as all other North Dakota youth.
  - c) To improve service access for unruly and delinquent youth from rural and tribal communities, establish a pilot program/appropriation that supports increased provider/Court/DJS capacity to provide tele-services to these populations, including cognitive behavioral therapy, behavioral health treatment, and family counseling.
13. 27-20-31: Restrict youth adjudicated as delinquent from being subjected to any order authorized by section 27-20-30 for the disposition of a deprived child including placed under the supervision of the director of the human service zone or committed to the custody of DHS, unless a separate finding of deprivation has been made.
14. 27-20-31/12-52-03: Restrict youth from being detained or committed to DJS custody directly as a result of a technical violation of the conditions of supervision that does not constitute a new offense and/or behaviors that don’t directly threaten public safety. Likewise, eliminate the broad and sole discretion of the DJS director to determine whether youth have violated any parole rules or regulations and to order youth returned to the North Dakota youth correctional center. Instead,

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<sup>5</sup> This memo proposes two service planning processes, potentially tied to associated legislative mandates, focused on: 1) unruly youth and 2) alternatives to incarceration/development of evidence-based, community services. For efficiency, North Dakota should centralize these efforts into one comprehensive planning process with all necessary stakeholders conducted through the Commission/Cabinet.

require both the Court and DJS to establish a system of incentives and graduated responses and to demonstrate that this system was followed before a formal violation/revocation is authorized.

15. 27-21-03: Eliminate the authority of DJS to place youth in the temporary care of the correctional center or other institution for the sole purposes of diagnostic testing and evaluation.
16. 27-21-06: Establish more specific criteria and requirements for placing delinquent youth out of state, including requiring DJS and/or DHS to host a multi-system meeting and/or consult with other systems to ensure that no appropriate in-state residential options are available.
17. 27-21-11: Establish more specific criteria and requirements for DJS transferring students of the North Dakota youth correctional center to the state hospital, including use of validated assessments indicating that youth have behavioral health needs beyond the treatment capacity/expertise of DJS as well as how families are engaged and consulted in the decision-making process.
18. 27-20, 27-21, 12-46, 12-52: Establish general research-based guidelines for how the Court and DJS should engage in case planning, supervision, and services including use of risk and needs assessment to guide key decisions, engagement of youth/families in case/reentry planning and service delivery, and cross-systems collaboration.
19. Establish guidelines that encourage/require the use of state funding for services that are based on what research shows works to improve outcomes for youth in the juvenile justice system and directs that these guidelines are reflected in service provider contracts, training, quality assurance activities, and data collection requirements that involve the use of state funding.
  - a) Establish a pilot program/appropriation that supports the Court/DJS to adopt a validated service quality assurance instrument for use in assessing provider adherence to research-based elements of service quality for justice-involved youth; conduct annual assessments; and work with providers to develop improvement/corrective action plans accordingly.
20. 27-20-27.1. Eliminate the authority of the Court to hold any parent or guardian who willfully fails to participate in treatment in contempt of court.
21. 27-20-32.4: Eliminate the requirement for a child who is found to have committed an alcohol-based offense to attend the 24-7 sobriety program. Instead, require that a substance use screening is conducted, and if warranted, a fuller assessment. If indicated, the youth should be referred to an appropriate community-based substance use education/intervention program.
22. 27-20-31.1: Eliminate the provision that juvenile's driving privileges can be suspended for a period of up to six months if a juvenile is adjudicated delinquent of an offense that would be a class A misdemeanor or a felony, unless the offense committed or cause of the offense is directly related to operating a motor vehicle.
23. 27-20-31.2: Require that all youth that are ordered to pay restitution are offered the opportunity for a formal restorative justice/mediation conference with the victim to determine if restitution is necessary, and if so, the specific type/amount. If the victim refuses to meet with the youth or the mediation is unsuccessful than the initial amount set by the court becomes binding.

24. 27-20-31.2: Restrict restitution payments from ever being the sole reason to continue or extend a term of community supervision or DJS commitment, and instead, require that restitution is converted to a civil judgement if not already done so when a case is closed.
25. Establish provisions—distinct from the criminal code, guided by a developmental approach, and limited to the extent agreeable—for any long-term collateral consequences imposed on youth that are arrested for or adjudicated of a delinquent offense, including registerable offenses.
26. Review existing staff training requirements for system stakeholders and require that all system stakeholders provide at least annual training for their staff—whether through their own training, joint training with other agencies, or through outside vendors— on how the juvenile justice system functions and/or juvenile justice research/best practices.
27. Identify and define a set of system performance, service provider, and youth outcome measures-- including recidivism, positive youth outcomes, and equity—that the Court and DJS must report at least annually to the state legislature, governor’s office, and Court leadership.
  - a) Require the Court/DJS and other entities as needed to partner to identify the performance measures, develop a data collection/analysis/reporting plan, and identify current gaps in system-wide and agency-specific technological and staffing infrastructure to meet these data requirements and corresponding resources required from the legislatures accordingly.

### **Next Steps**

Based on this memo, the CSG Justice Center recommends the following next steps for improving North Dakota’s juvenile justice system:

1. Review and discuss the key findings and recommendations detailed in this memo with the Juvenile Justice State Advisory Group, Commission on Juvenile Justice, Interim Judiciary Committee, Court, DJS, and other agencies and entities as appropriate.
2. Establish a small working group, including legislators, the Court, DJS, and Governor’s Office, to engage in a consensus building process to identify, based on this memo, short-term priorities for system improvement likely to have the most significant impact on public safety, equity, and youth outcomes, and that are also the most feasible for implementation given likely reductions in agency capacity and resources.
3. Once priorities are established, this working group should determine the most effective way to advance associated policy, practice, and funding changes, including legislative, administrative, and court rule strategies as appropriate. The working group should review these priorities and identified strategies with the larger Commission, as well as potentially the Children’s Cabinet and other bodies, for feedback.
4. The working group should craft revised, added, deleted legislative language to 27-20 and other statute in preparation for the 2021 legislative session as well as court rule and agency

administrative and funding changes. The CSG Justice Center can support this process by identifying best practice models from across the country.

5. Establish medium and longer-term priorities for system improvement that require data analysis, further stakeholder input and discussion, policy option development, and formal consensus building and approval, and develop an action plan with timelines and deliverables for this process, potentially supported by the CSG Justice Center if resources are available.

## Appendix A: Assessment of North Dakota’s Juvenile Justice Data Collection and Use

This appendix provides an overview of strengths and challenges with North Dakota’s collection, analysis, reporting, and use of data to evaluate juvenile justice system performance and guide system decisions. To perform the assessment, the CSG Justice Center conducted focus groups with the Juvenile Court (Court), the Department of Human Services (DHS), the Department of Corrections and Rehabilitation—Division of Juvenile Services (DJS), the Office of the Attorney General, State Bureau of Investigation (SBI), the Information Technology Department (NDIT) and the North Dakota Association of Counties (NDACo). Across all agencies, staff expressed a commitment to using data to improve outcomes for youth and inform decision making. While agencies capture a wealth of data, most agencies identified key areas in which improvement was needed. Overall, the collection of juvenile justice system data is fragmented and in need of a coordinated effort to improve efficiency, increase cross-system data sharing, and create the analytical capacity to measure juvenile justice system performance and youth outcomes.

### Juvenile Court

The Court collects a substantial amount of data through its three data systems but struggles to use it for analysis and reporting. The Court uses three data systems to manage information: Case Management System (CMS), Odyssey, and the Youth Assessment and Screening Instrument (YASI). The systems are not integrated with one another requiring staff to access different data systems at different points in a case. CMS contains information on youth from the point of referral through supervision, including cases diverted from formal court involvement. Odyssey is used by the Court to track formally processed cases and to access information needed in hearings. YASI is the risk assessment system.

**Table 1: CMS**

<b>Data Elements</b>	<b>Types of information available</b>
Demographics	Gender, Date of birth
Screenings	Detention, trauma (TSSCA), human trafficking, mental health (MAYSI-2)
Referral	Primary charge, location of delinquent or unruly act
Disposition	Diversion, informal adjustment, formal
Supervision	Start and end dates
Programs	Participation, Provider
Dual Status Indicator	Dual Status Youth case
Other	Gang affiliation, drug testing, community service, restitution

**Table 2: Odyssey**

<b>Data Elements</b>	<b>Types of information available</b>
Hearing Type	All formal hearings: disposition, judgement, child welfare-permanency
Dual Status Indicator	Dual Status Youth case

**Table 3: YASI**

<b>Data Elements</b>	<b>Types of information available</b>
Risk Level	Pre-screen, full assessment, and re-assessment

Although the Court has developed metrics for court processes and juvenile court officer functions, it has limited capacity to produce outcome measures, including recidivism. Metrics used by the department are mostly limited to producing counts of youth at various points in the system such as referrals or dispositions. The entire Court has a business analyst, internal information technology department, and data-savvy staff who can access information from the databases, but no research staff dedicated to looking at juvenile justice outcomes. To produce performance measures, staff reported using inefficient methods to access data needed and the need to work around pre-programmed reports provided by software vendors. The Court has a publicly available annual report (<https://www.ndcourts.gov/other-courts/juvenile-court/annual-reports>) containing trend and demographic information on referrals and dispositions. Within the Court regions, a monthly caseload report provides leadership with key measures of risk level of youth, the number of pending cases, and admissions to detention, attendant care, and shelter care. The reports currently available are valuable for managing workloads but lack information on outcomes that could guide supervision, service, and funding decisions.

Developing more robust outcome measures would also require additional attention to quality assurance of the data. For example, race, ethnicity, and service data are captured but not currently used in analysis and would need further exploration and/or development to be included in performance measures. Similarly, a recidivism report was developed in past collaboration with the CSG Justice Center, but the accuracy of the report has never been verified, and as a result, court leadership lack confidence to use it for outcome measurement.

### **Department of Human Services**

Within DHS, the Division of Children and Family Services has a direct role in providing placements for adjudicated youth, but youth involved in the juvenile justice system are served in all areas, including in-home and behavioral health services. Data on dually involved youth is available through the Dual Status Youth Initiative, to which DHS contributes data as part of a data sharing agreement with the Court and DJS. Behavioral health information is tracked separately in Electronic Health Records (EHR). Within DHS, FRAME is the data system used to track placement and most services. FRAME collects a great deal of information, including youth outcome information, but identifying youth involved in the juvenile justice system within FRAME is limited to adjudicated youth who are court ordered to placement. The adjudication status of youth receiving in-home services is not captured within FRAME. Additionally, the in-home service data currently tracked only includes children served in DHS regional zones and does not include DJS participants or youth served by Tribes.

**Table 4: FRAME**

<b>Data Elements</b>	<b>Types of information available</b>
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Demographics	Gender, race, ethnicity, age
Adjudicated Status	Deprived, unruly, delinquent
Placement	Entry and exit dates, location

With resources available through North Dakota’s Information Technology Department and its data analysts, DHS has real-time access to information and publishes reports on a variety of metrics. Overall, the agency makes extensive use of data but does not report measures exclusive to juvenile justice. For example, DHS examines metrics for placements, such as length of stay, reason for entry, and location, but despite providing placements for adjudicated youth and tracking information on adjudication status, there are no routine reports to look at the outcomes of adjudicated youth in placement.

### Secure and Non-Secure Detention

Data collection for secure detention and attendant care facilities has been consolidated under NDACo, which developed a web-based application, the Juvenile Detention Record System, for collecting information from the state’s nine attendant care sites and the three secure juvenile detention sites.

**Table 5: Juvenile Detention Record System**

Data Elements	Types of information available
Demographics	Gender, race, ethnicity, age
Detention screening	Score, override reason, mandatory hold reason
Type	Secure or attendant care
Detention	Admission and release dates

NDACo uses detention data in the state’s *Plan for Compliance with the Disproportionate Minority Contact (DMC) Core Requirement* and *North Dakota’s Three-Year Juvenile Justice Plan*. Other than these reports, detention data are not reported regularly but are available for ad-hoc reports or through requests for information.

### Department of Corrections and Rehabilitation, Division of Juvenile Services

DJS has two primary data sources for information about youth in its custody, ELITE and the Northpointe Suite. In addition to these systems, DJS maintains several other supplemental data systems. DJS tracks case managers’ time spent with youth in a system called TIMELOGS and has access to DHS placement records through FRAME for youth placed in foster homes, Qualified Residential Treatment Programs (QRTP), Psychiatric Residential Treatment Facilities (PRTF), and Independent Living (IL) services. Facility outcome information is tracked using Performance-based Standards (PbS), a system for tracking outcomes based on national standards for youth in correctional facilities. Outcomes of services provided in the community come from Positive Youth Outcome (PYO) surveys.

**Table 6: ELITE**

Data Elements	Types of information available
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Demographics	Gender, race, ethnicity, age
Charges	Prior to entry and new charges during DJS custody, received from juvenile court
Screenings	Mental health (MAYSI-2)
Placement Location	Youth Correctional Center, group home and other residential
Positive Youth Outcomes	Family and youth development outcomes, including service participation, tracked at three points: post-assessment; life of case; and post-discharge

**Table 7: Northpointe Suite**

<b>Data Elements</b>	<b>Types of information available</b>
Risk Level	COMPAS (delinquent youth only)
Needs	CANS (unruly youth only)
Trauma	Adverse Childhood Experiences (ACE)

Despite having no dedicated research staff, DJS regularly reviews data on agency performance and outcomes. DJS depends on staff processing data for their own use and provides additional analysis on statewide custody and recidivism. The statewide custody analysis shows a one-day census by placement location and caseload information. The recidivism analysis is an annual report tracking discharged youth into both the juvenile and adult systems. DJS has established processes for reviewing performance measures for youth in facilities and the community. Performance-based Standards are reviewed every six months as part of ongoing efforts to improve quality within facilities, and results from PYO surveys are reviewed at regional staffings every six months. The PYO review informs the deployment of services in the community and examines the use of resources for education, health, and mental health.

#### **Office of the Attorney General, State Bureau of Investigation**

Reports on aggregate juvenile arrests are available in a self-serve format based on North Dakota Incident-Based Reporting System (ND IBRS) data, but case level arrest data is not available.

#### **Data Available for Comprehensive System Assessment and Analysis**

While some data limitations exist, an in-depth analysis of North Dakota’s juvenile justice system could better inform the adoption and effective implementation of new policies, practices, and funding. In particular, analysis of risk and need data could help evaluate and improve decisions for the Court, DJS, and other system stakeholders related to matching youth with the appropriate level, type, length, and quality of supervision and services across the juvenile justice continuum (diversion, detention, community supervision, and placement). In addition, this analysis could be conducted by race, ethnicity, gender, tribal youth, rural vs. urban communities, dually involved youth, and other key demographics to better understand and identify where to target efforts to improve system equity and youth outcomes.