



# North Dakota Legislative Council

Prepared for the Acute Psychiatric Treatment Committee  
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## BEHAVIORAL HEALTH NEEDS OF INCARCERATED ADULTS - BACKGROUND MEMORANDUM

[House Bill No. 1470 \(2021\)](#) provides for a study during the 2021-22 interim regarding behavioral health needs of incarcerated adults. The study must consider the behavioral health needs of incarcerated adults, including access, availability, and delivery of services. The study also must include input from stakeholders, including representatives of law enforcement, social and clinical service providers, educators, medical providers, mental health advocacy organizations, emergency medical service providers, tribal government, state and local agencies and institutions, and family members. The Legislative Management has assigned the responsibility for this study to the Acute Psychiatric Treatment Committee.

### DEPARTMENT OF CORRECTIONS AND REHABILITATION

#### Adult Services Division

North Dakota Century Code Section 12-47-01 provides for the establishment of the North Dakota State Penitentiary (NDSP). The main prison complex in Bismarck houses maximum and medium security male inmates. The James River Correctional Center (JRCC) in Jamestown houses medium security male inmates. The Missouri River Correctional Center (MRCC) in Bismarck houses minimum security male inmates whose sentences are not less than 30 days or more than 1 year. The Adult Services Division of the Department of Corrections and Rehabilitation (DOCR) offers addiction treatment services, a sex offender treatment program, and mental health programs through its treatment department. The division's education program offers a variety of education programs, skills training, and vocational programs. In addition, the division offers work experience through Roughrider Industries.

#### Parole and Probation Division

The Department of Corrections and Rehabilitation has 16 offices across the state staffed by parole and probation officers who manage offenders on parole or supervised probation and complete presentence investigations ordered by courts. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services. The division operates or participates in drug court programs, GPS monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sex offenders, and contracts for services with privately operated facilities to provide transition services.

#### Dakota Women's Correctional and Rehabilitation Center

During the 2003-05 biennium, DOCR began to contract with the Dakota Women's Correctional and Rehabilitation Center (DWCRC) in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board. The prison at DWCRC consists of a 70-bed minimum security unit, a 45-bed medium security unit, and a 16-bed orientation unit. In May 2006, a 5-bed high security unit was added to the facility. The 2021 Legislative Assembly provided \$11,050,000 from the general fund for a contract to house female inmates at DWCRC, a decrease of \$855,311 from the 2019-21 biennium appropriation of \$11,905,311.

#### Division of Juvenile Services

The Division of Juvenile Services has eight regional offices serving the eight human service regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division also oversees the Youth Correctional Center (YCC), which is located west of Mandan and is the state's secure juvenile correctional institution.

Juvenile programming at YCC includes drug and alcohol programming; child psychiatric and psychological services; sex offender programming; a pretreatment program for juveniles who are difficult to manage; and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and

gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence through an accredited junior high and high school.

### Tompkins Rehabilitation and Corrections Center

The Tompkins Rehabilitation and Corrections Center (TRCC) is located on the State Hospital campus and historically was operated by the Department of Human Services (DHS) in collaboration with DOCR. The center provides a cognitive behavioral treatment approach utilizing cognitive restructuring groups to reduce risks to reoffend. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males. The 2019 Legislative Assembly provided for DOCR to assume control of the 60-bed male unit of TRCC. The department renamed the 60-bed male unit the James River Minimum Unit.

### Free Through Recovery Program

The 2017 Legislative Assembly provided for the establishment of a community behavioral health program as a term of parole or an alternative to incarceration. The Department of Corrections and Rehabilitation, in cooperation with DHS, developed and implemented the free through recovery program. Free through recovery began taking referrals on January 10, 2018, and became operational on February 1, 2018. During the 2019-20 interim, DOCR reported the program should grow to serve 600 people, but there is a lack of services available in certain geographic areas. The 2021 Legislative Assembly appropriated \$11.3 million for the program for the 2021-23 biennium, of which \$8 million is from the general fund and \$3.3 million is from federal funds.

### Pretrial Services

The 2019 Legislative Assembly appropriated ongoing funding of \$755,034 from the general fund and 7 full-time equivalent (FTE) positions for a pretrial services pilot program in three judicial districts. The 2021 Legislative Assembly added an additional \$882,352 from the general fund for 5 new FTE positions to expand pretrial services to provide a total of \$1,637,386 from the general fund for 9 FTE positions for the program during the 2021-23 biennium.

### Inmate Population

The following table shows the estimated and actual average male and female inmate populations for the 2019-21 biennium as estimated during the 2021 legislative session:

	Male Inmate Population Estimated Versus Actual			Female Inmate Population Estimated Versus Actual		
	Legislative Estimated Population	Actual Population	Actual Above (Below) Estimate	Legislative Estimated Population	Actual Population	Actual Above (Below) Estimate
<b>Fiscal year 2020</b>						
July	1,482	1,552	70	203	236	33
August	1,486	1,548	62	205	227	22
September	1,490	1,570	80	207	221	14
October	1,495	1,592	97	209	216	7
November	1,499	1,587	88	211	212	1
December	1,503	1,588	85	213	209	(4)
January	1,507	1,572	65	215	214	(1)
February	1,511	1,575	64	217	215	(2)
March	1,515	1,515	0	219	201	(18)
April	1,519	1,430	(89)	221	174	(47)
May	1,524	1,383	(141)	223	163	(60)
June	1,528	1,356	(172)	225	153	(72)
<b>Fiscal year 2021</b>						
July	1,532	1,342	(190)	227	149	(78)
August	1,536	1,333	(203)	228	150	(78)
September	1,541	1,334	(207)	229	149	(80)
October	1,545	1,348	(197)	229	152	(77)
November	1,549	1,357	(192)	229	168	(61)
December	1,554	1,369	(185)	229	166	(63)
January	1,558	1,374	(184)	229	168	(61)
February	1,562	1,401	(161)	229	177	(52)
March	1,565	1,412	(153)	229	182	(47)
April	1,565	1,432	(133)	229	190	(39)
May	1,565			229		
June	1,565			229		

The following table summarizes the 2021-23 biennium inmate population projections used to develop the 2021-23 biennium legislative appropriation:

	Male	Female	Total
<b>Fiscal year 2022</b>			
July	1,451	182	1,633
August	1,454	183	1,637
September	1,457	184	1,641
October	1,460	185	1,645
November	1,463	185	1,648
December	1,466	186	1,652
January	1,469	187	1,656
February	1,472	188	1,660
March	1,475	188	1,663
April	1,478	189	1,667
May	1,482	190	1,672
June	1,485	191	1,676
<b>Fiscal year 2023</b>			
July	1,488	191	1,679
August	1,491	192	1,683
September	1,494	193	1,687
October	1,497	194	1,691
November	1,500	194	1,694
December	1,503	195	1,698
January	1,506	196	1,702
February	1,508	196	1,704
March	1,511	197	1,708
April	1,514	198	1,712
May	1,517	198	1,715
June	1,520	199	1,719

### Budget

The schedule below provides a recent history of the DOCR budget.

Biennium	FTE Positions	General Fund	Other Funds	Total
2011-13	794.29	\$159,565,919	\$31,606,150	\$191,172,069
2013-15	814.29	\$182,050,936	\$36,134,922	\$218,185,858
2015-17	836.29	\$204,510,187	\$38,362,706	\$242,872,893
2017-19	845.29	\$214,336,704	\$39,264,160	\$253,600,864
2019-21 <sup>1</sup>	899.79	\$229,678,076	\$96,814,143	\$326,492,219
2021-23 <sup>2</sup>	907.79	\$218,165,809	\$66,647,615	\$284,813,424
Increase (decrease) from 2019-21 biennium	8.00	(\$11,512,267)	(\$30,166,528)	(\$41,678,795)

<sup>1</sup>The 2019-21 biennium budget for DOCR includes \$54,858,254 provided by the 2021 Legislative Assembly as a deficiency appropriation from the federal Coronavirus Relief Fund.

<sup>2</sup>The 2021 Legislative Assembly adjusted the funding source for payroll costs of law enforcement-related employees for July through December 2021 by removing funding from the general fund and adding funding from the federal Coronavirus Relief Fund in the amount of \$18,371,718.

### PREVIOUS STUDIES

#### 2015-16 Interim - Human Services Committee

The 2015-16 interim Human Services Committee reviewed behavioral health-related information, including an overview of behavioral health, an overview of a behavioral health system of care, key legal obligations related to behavioral health services, and the DHS behavioral health services delivery system.

The committee recommended Senate Bill No. 2038 (2017), which extended the holding period from 24 to 72 hours for emergency involuntary commitments for individuals with a serious physical condition or illness, and House Bill No. 1040 (2017), which would have appropriated funds to DHS to allow for drug and alcohol programming, support services, and targeted case management services for individuals with severe mental illness and severe emotional disturbance. Although House Bill No. 1040 was amended to remove a \$12 million appropriation for targeted case management services, the bill included funding for children's prevention and early intervention behavioral health services, peer-to-peer support services, and family-to-family support services.

Senate Bill No. 2015 (2017) directed DOCR to establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions as a term and condition of parole and probation and as a sentencing alternative under Section 12.1-32-02. The bill appropriated \$7 million to DHS for the purpose of implementing the community behavioral health program during the 2017-19 biennium and created the Justice Reinvestment Oversight Committee to study the implementation of the community behavioral health program and justice reinvestment policies. Section 5 of the bill appropriated \$500,000 from the general fund to be used by DHS to contract with public or private entities to create, initiate, and facilitate a strategic plan to increase all types of behavioral health services across the state.

### **2017-18 Interim - Justice Reinvestment Committee**

The 2017-18 interim Justice Reinvestment Committee was assigned a study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study was to include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system, which must include caseload data, any recognized savings to DOCR, and an overview of the training requirements for contract behavioral health service providers.

The committee received a report and testimony from representatives of the Justice Reinvestment Oversight Committee, Governor's office, DOCR, and DHS regarding the community-based behavioral health program, also known as the free through recovery program. The program's community-based behavioral health programs are designed to increase recovery support services to individuals involved with the criminal justice system who have behavioral health concerns by matching participants with local community providers for care coordination, recovery, and peer support services. The information indicated the dual-agency approach facilitates both correctional and clinical best practices in a multidisciplinary integration of key systems. Although the free through recovery program was intended to be four pilot projects in Bismarck, Fargo, Devils Lake, and Dickinson, the public response highlighted the need for services across the state and the plan was expanded to a statewide program.

Testimony indicated requirements of the free through recovery program include:

- A referral and evaluation process for program access;
- Eligibility criteria, including risk of recidivism and severity of behavior health diagnosis; and
- Program oversight, such as auditing and case management for seamless transition to post-program services, outcome and provider reporting metrics, and annual reports to Legislative Management and the Governor.

To qualify as a contract provider, a behavioral health provider must:

- Accept all referrals and provide care through a multidisciplinary care team on an ongoing basis until discharge;
- Receive payments on a per-month, per-referral basis; and
- Bill third parties for services and direct payment to the general fund.

According to the testimony, free through recovery providers must participate in training and certification programs and collect and share data regarding program participants; services and outcomes relating to housing, employment, substance abuse, criminal activity, law enforcement involvement, incarceration, and treatment services; and discharge planning. Services are reimbursed monthly on a per participant basis, with incentives available for each participant who meets target outcomes including:

- Progress toward ongoing, meaningful employment;
- Residence in supportive, safe, long-term housing;
- Progress toward recovery from alcohol or illicit substances;
- Engaging in mental health recovery, evidenced by a decrease in mental health symptoms; and
- Absence of criminal violations.

Testimony from a representative of the Governor's office indicated it was the position of the Justice Reinvestment Oversight Committee that the issuance of any findings and recommendations would be premature and would not provide Legislative Management with a true or accurate picture of the benefits of the project.

The committee did not make a recommendation with respect to the study and reports on the implementation of justice reinvestment policies in the state.

### **2017-18 Interim - Human Service Committee**

The 2017-18 interim Human Services Committee received information regarding DHS actions relating to behavioral health. The Department of Human Services contracted with the Human Services Research Institute (HSRI) for \$160,000 to conduct a review of the state's behavioral health system. The goals of the study were to conduct an in-depth review of the state's behavioral health system; to analyze current utilization and expenditure patterns by payer source; to provide recommendations for enhancing the integration, cost-effectiveness, and recovery orientation of the system to effectively meet community needs; and to establish strategies for implementing the recommendations. The study gathered data by reviewing existing reports and documents, by conducting stakeholder interviews, and by reviewing Medicaid claims and state service utilization data for behavioral health services.

The committee received the final HSRI report, which included 13 recommendations and 65 specific strategies to direct future behavioral health policy and services in the state. The committee was informed DHS contracted with HSRI for \$178,000 to begin implementing the recommendations. The Department of Human Services estimated the implementation process would be completed in June 2019.

The committee recommended Senate Bill No. 2030 (2019) which included a general fund appropriation of \$408,000 and 1.5 FTE positions for the purpose of coordinating the implementation of recommendations of the study of the state's behavioral health system. The bill was not approved but Senate Bill No. 2012 (2019), which was approved by the Legislative Assembly, included a \$300,000 general fund appropriation for the implementation of study recommendations.

### **2019-20 Interim - Human Services Committee**

The 2019-20 interim Human Services Committee studied the implementation of the recommendations of the HSRI study of North Dakota's behavioral health system. The committee received updates regarding the status of implementation of recommendations included in the HSRI study of the state's behavioral health system. The Behavioral Health Planning Council, in conjunction with behavioral health stakeholders, was coordinating the development of a strategic plan to implement the recommendations. In December 2018, 570 individuals completed a survey to prioritize the implementation of strategies included in the HSRI report. The top five strategies ranked in the survey were included in the 2019 behavioral health strategic plan.

The top five strategies were:

1. To implement training on trauma-informed approaches for criminal justice staff;
2. To expand in-home community supports;
3. To implement crisis intervention team training for law enforcement officers and emergency medical responders;
4. To review behavioral health treatment capacity in jails and develop a plan to address needs; and
5. To expand school-based mental health and substance use disorder treatment services for youth.

The strategic planning process identified an implementation plan with four phases:

1. Strategic planning.
2. Prioritization and refinement of goals and objectives.
3. Initiate the implementation of goals and objectives.
4. Monitor and sustain the implemented efforts.

As of October 2020, the state was in Phases 3 and 4 of the implementation plan. The committee was informed dashboards were being developed to allow the public to view the implementation progress and that the dashboards will be updated quarterly.

The committee did not make recommendations regarding the study of the implementation of recommendations included in the HSRI report on the state's behavioral health system.

**2019-20 Interim - Department of Corrections and Rehabilitation Review Committee**

The 2019-20 interim Department of Corrections and Rehabilitation Review Committee was assigned two studies:

1. Section 9 of House Bill No. 1015 (2019) directed a comprehensive study of DOCR. The study was to include:
  - a. A review, with input from a consultant engaged by DOCR, of gender-responsive correctional and rehabilitation facility and service needs;
  - b. An assessment of facilities at MRCC, JRCC, and the State Hospital, with input from a consultant engaged by DOCR; and
  - c. A review of vocational opportunities, educational opportunities, workforce development, and medical and behavioral health treatment for those committed to the care, custody, and control of DOCR.
2. House Concurrent Resolution No. 3015 (2019) directed a study of best practices to reduce offender recidivism, increase educational opportunities, prepare incarcerated offenders to rejoin their communities, establish and implement a community transitional housing program, including independent host homes, and encourage communities to reintegrate previously incarcerated individuals into society.

**Comprehensive DOCR Study**

The committee received two options from a consultant regarding facility needs of DOCR. The committee recommended the following option:

Description	2021-23 Biennium	2023-25 Biennium	2025-27 Biennium	2027-29 Biennium	2029-31 Biennium	Total Estimated Cost
Develop regional reporting centers for females	\$500,000	\$250,000				\$750,000
Improve Hickory and Maple Cottages at YCC	3,781,800					3,781,800
Upgrade YCC to include a vocation and employment center	1,612,250					1,612,250
Deferred maintenance at YCC	1,332,985	1,332,985				2,665,970
Expand community reporting centers for males	750,000	750,000				1,500,000
Deferred maintenance at JRCC	2,332,470	2,332,470				4,664,940
Renovate JRCC			\$12,441,150			12,441,150
Upgrade MRCC		15,563,000				15,563,000
Deferred maintenance at NDSP	1,772,020	886,010	886,010			3,544,040
Renovate NDSP for special beds		1,911,000				1,911,000
Renovate or replace west housing unit at NDSP				\$4,170,000		4,170,000
Construct new 20-bed juvenile facility		6,000,000				6,000,000
Construct two new 8-bed juvenile residential centers			1,680,000		\$1,680,000	3,360,000
<b>Total</b>	<b>\$12,081,525</b>	<b>\$29,025,465</b>	<b>\$15,007,160</b>	<b>\$4,170,000</b>	<b>\$1,680,000</b>	<b>\$61,964,150</b>

The 2021 Legislative Assembly did not appropriate funding related to the study; however, Section 9 of Senate Bill No. 2015 provides authority for DOCR to continue up to \$6 million appropriated from the general fund for the 2019-21 biennium and use the funds for deferred maintenance, capital planning, and extraordinary repairs.

**Best Practices to Reduce Recidivism Study**

The committee received information and testimony from representatives of DOCR which indicated DOCR provides a multitude of options in terms of educational and vocational opportunities for individuals incarcerated within DOCR facilities. In addition to various educational and enrichment programs, testimony indicated DOCR offers general education degree testing, adult basic education, high school education, and career and technical education. According to testimony, although the availability of community-based treatment has increased, certain individuals still may be sentenced to DOCR to receive treatment. Testimony also indicated DOCR is continuing to engage outside behavioral health providers for treatment services.

The committee did not make a recommendation regarding the study of the best practices to reduce recidivism.

## STUDY PLAN

The following is a proposed study plan for the committee's consideration in its study regarding behavioral health needs of incarcerated adults:

1. Receive and review information from representatives of DOCR regarding:
  - a. Behavioral health services available to incarcerated adults and the delivery of these services at NDSP, JRCC, MRCC, DWCRC, YCC, and TRCC;
  - b. Historical information regarding behavioral health services available to incarcerated adults, including participation rates of inmates utilizing behavioral health services;
  - c. Current and future behavioral health needs of inmates, including any recommendations to improve behavioral health services in correctional facilities; and
  - d. Current and historical information regarding behavioral health staff in correctional facilities, including training requirements of behavioral health staff.
2. Receive and review information from representatives of the following organizations regarding behavioral health needs of incarcerated adults, including access, availability and delivery of services, any additional behavioral health needs of inmates, and how representatives of each organization collaborate with correctional staff to provide behavioral health services to incarcerated adults:
  - a. Law enforcement;
  - b. Social and clinical service providers;
  - c. Educators;
  - d. Medical providers;
  - e. Mental health advocacy organizations;
  - f. Emergency medical service providers;
  - g. Tribal governments;
  - h. State and local agencies and institutions; and
  - i. Family members.
3. Receive and review information from interested persons regarding the committee's study of behavioral health needs of incarcerated adults.
4. Develop recommendations and any bill drafts necessary to implement the recommendations.
5. Prepare a final report for submission to the Legislative Management.