

Violent Crime Has Increased Under the “Norway Model” / “Justice Reinvestment”

From December 2014 to December 2024:

The **rate** of violent crime¹ per 100,000 North Dakota residents **increased 30.0%**.

From 1,192 per 100,000 residents to 1,550 per 100,000 residents

The **number** of violent crimes each year in North Dakota **increased 40.1%**.

From 8,811 to 12,343

Just since 2017, when some of the state’s JRI legislation was adopted:

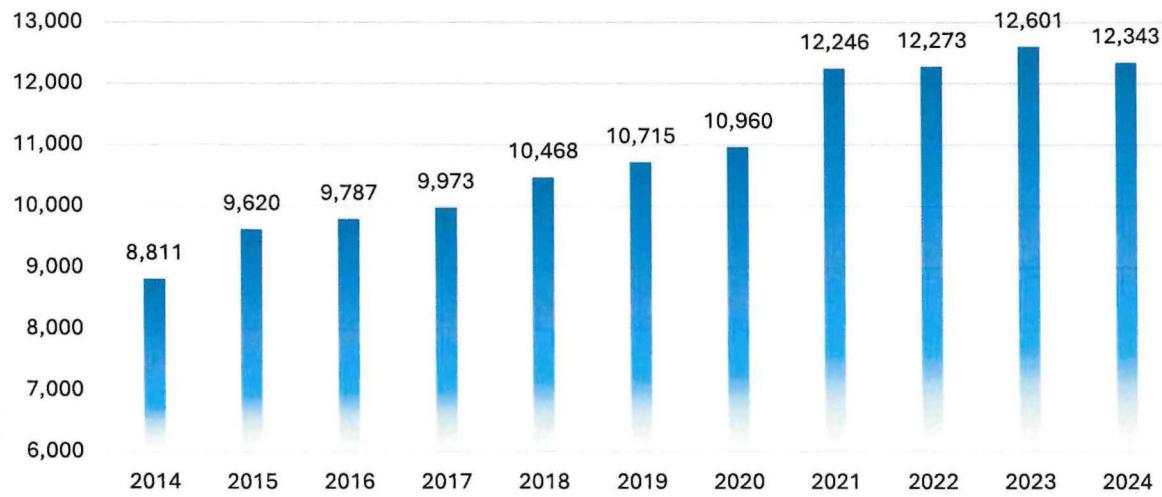
The **rate** of violent crime per 100,000 North Dakota residents **increased 17.3%**.

From 1,321 per 100,000 residents to 1,550 per 100,000 residents

The **number** of violent crimes each year in North Dakota **increased 23.8%**.

From 9,973 to 12,343

VIOLENT CRIME IN NORTH DAKOTA SINCE 2014



¹ Violent crime defined as Group A Crimes Against Persons plus Robbery as reported by ND law enforcement agencies to the FBI and Attorney General’s Office using the FBI’s reporting requirements

North Dakota policymakers deserve transparent, objective information tailored to your decisions.

1. DEFINITIONS

Definitions should be useful to you, communicated clearly, and used consistently.

2. DATA AND STATISTICS

Information that you need should be available in transparent, understandable formats with supporting documentation or citations.

3. OUTCOMES

The objective, identifiable outcomes to be met by the state's correctional system should be established by elected policymakers who are accountable to the public.

DEFINITIONS

Some Questions to Consider When Defining Terms for State Laws

“Recidivism”

- Should it include individuals who are reincarcerated in federal prison and county jails after being release from DOCR custody?
- Should it be limited to offenses that occur within 3 years after release from the prison?

“Incarcerated” / “Inmate” / “Inmate Status”

- Should it include individuals in unsecured halfway houses?
- Should it include individuals who spend most of the day in the community for work release or education release?
 - For example, should it include someone who is still technically serving their sentence but works as a housekeeper in a hotel during the day on work release and then returns to a halfway house at night?

“Successful completion” / “Successfully completed” / “Success rate”

- Should it include inmates who abscond and then are recaptured?
- Should it include individuals who are sent to federal prison or county jail during their probation or parole?
- Should it include individuals who commit parole or probation violations?
 - If so, how many and what kind of violations?
 - Who will track the violations, and who should be made aware of them?
- Should the success rate be calculated based on offenses or offenders?
 - In other words, imagine that an individual who was in prison for 3 crimes is let out on probation. The individual commits a felony while on probation, and he is sent back to prison. DOCR requests that his probation for only 1 of the 3 original crimes be revoked. So his probation is revoked for 1 of the original crimes but not for the other 2 original crimes. Should this be considered a 66.7% success rate (probation for 1 of 3 crimes was revoked) or a 0% success rate (1 of 1 individuals failed probation)?

“Abscond” / “Walk away” / “Escape”

- Should it include all individuals who are missing or unreachable while they are inmates or on parole or probation?
 - Assume a parolee is unreachable, in violation of their parole conditions. Also assume they do not have a prescheduled meeting with a parole officer in the near future. Does the fact that they have not missed a prescheduled meeting mean they have not absconded, even though their location cannot be determined? What if they are unreachable for weeks or months without missing a prescheduled meeting?
- How long do they have to be missing or unreachable before they are labeled as an absconder?

“Violent Crimes”

- Should it include all crimes in which a victim is physically harmed or threatened with bodily injury?
 - Should it include felony child abuse?
 - Should it include all or most sex crimes?
 - What about sex crimes against children such as continuous sexual abuse of a minor?
 - What about gross sexual imposition against children?
 - What about gross sexual imposition against unconscious or incapacitated victims?
 - What about felony sexual imposition?
 - What about sexual assault?
 - Should it include assaults and aggravated assaults in which a victim sustains bodily injury?
 - What if a weapon is used to inflict the injury?
 - What if the victim sustains several fractures and internal injuries, but they heal?
 - Should it include terrorizing a victim?
 - Should it include human trafficking or kidnapping?
 - Should it include homicide while fleeing an officer?

“Good Time”

- Should it be awarded month-by-month or in a lump sum at the beginning of a sentence?
 - If it is granted as a lump sum, but the amount of time served is less than the sentence imposed, should the calculation of “good time” be adjusted?
- Should it be awarded for time that was not actually served?
 - For example, if an offender is sentenced to 5 years in prison but is paroled after 1 year, should the offender receive “good time” based on the 5 years of incarceration that the court anticipated or should the offender receive “good time” based on 1 year of actual incarceration?
- Should it be awarded for time spent on parole or probation?
 - If so, should that be recorded differently from good time awarded for time spent in the prison or a jail?

“Time Served”

- Should it include time spent outside confinement such as in a transitional facility?
- Should it include “good time” that is awarded as a lump sum based on the totality of the judge’s sentence even if the inmate does not actually serve all of that sentence?
 - Should it include only the “good time” that the inmate earns for months actually served in custody?
 - Should it not include “good time”?

“Meritorious Conduct”

- Should there be a definition for this type of sentence credit?
- Who decides whether the definition has been met?

“Truth in Sentencing”

- Many studies have been portrayed as evaluating “truth in sentencing” when they did not include anything similar to the Attorney General’s policy proposals.

DATA AND STATISTICS TO CONSIDER

1. How much of each sentence (*other than the portion of the sentence that mandates parole or probation*) is actually being served in prison or jail, and not in halfway houses, transitional facilities, or unsecured buildings?
 - a. Which definitions of “good time” and “time served” are being used in the calculation?
2. What is the true recidivism rate in North Dakota when offenders who are released from DOCR custody and then reincarcerated in county jails, federal prison, and other states’ prisons are included in the rate (*not just offenders who are reincarcerated in the North Dakota state prison*)?
3. How many crimes are being committed by individuals residing in transitional facilities?
 - a. How are those data collected?
 - b. Are parole and probation violations that constitute crimes included in the data even if the crimes are not reported to prosecutors?
4. Are parole and probation violations being reported to prosecutors?
 - a. What about violations that constitute crimes?
 - b. Who has access to this data?
5. How many parole and probation violations can an offender commit before a request to revoke the parole or probation is made to a prosecutor or court?
 - a. What administrative hurdles are there to requesting a revocation?
 - b. Are parole and probation officers penalized formally or informally for requesting revocations?
6. How are recommendations to the Parole Board developed and presented?
 - a. Who decides which cases are presented each month, including which individuals are on the “miscellaneous docket”?

7. How are entities calculating the statistics they present to you? Do they show their work?
8. Should DOCR have to assess whether it is in the best interests of the public / community before allowing inmates to be in the community on work release?
9. How many individuals on “inmate status” are on work release or education release in the community, and what crimes did they commit before being incarcerated?
 - a. How many individuals who committed violent crimes (*as appropriately defined, not limited to the few crimes in N.D.C.C. 12.1-32 -09.1*) are on work release or education release?
10. When study results are presented to you, what are the limitations of the study?
 - a. What definitions were used?
 - b. How representative was the sample?
 - c. How long was the follow-up period?
 - d. How big was the sample size?
 - e. What new information is available since the study was completed?
11. How many felonies are automatically reclassified as misdemeanors?
12. How is the “success rate” calculated?
13. North Dakota has a statutory presumption that the sentences for most C felonies and A misdemeanors will be probation only (regardless of the sentencing range) unless there are specified “aggravating factors” in addition to the crimes committed.
 - a. How many C felonies and A misdemeanors result in actual prison or jail sentences each year?
 - b. Which crimes are subject to the presumption of a probation sentence only?

14. North Dakota has a statutory presumption that sentences for multiple crimes will be “merged” so they run concurrently, not consecutively. This applies to offenders who commit crimes on probation or parole too. *A felon sentenced for 4 separate crimes with 2-year sentences for each crime will presumptively have a combined sentence of 2 years, not 8 years.* Judges can deviate from this.
- What is the purpose of the statutory presumption?
 - What percentage of sentences are merged this way?
 - Does this undermine accountability for escaping / absconding?
15. For offenders who wear ankle monitors, what is DOCR doing to make sure the state knows what they are doing while wearing the monitors. It is not difficult for individuals wearing ankle monitors to deal narcotics and commit other crimes.

OUTCOMES TO CONSIDER FOR EVALUATING NORTH DAKOTA'S CORRECTIONS SYSTEM

What objective criteria do elected officials believe is important for measuring the success or failure of criminal justice policies?

- Less violent crime (as appropriately defined)?
- Less drug trafficking?
- Less recidivism (as appropriately defined)?
- More public safety?
- More consideration for law enforcement officers?
- More consideration for judges' sentencing decisions?
- More transparency?

Financial Incentives for the Council on State Governments (CSG) to Advocate in Support of Justice Reinvestment Initiative (JRI) Efforts

- The JRI program is big business. Hundreds of millions of dollars have been awarded to consultants, advisors, and grant recipients.ⁱ
- The United States Bureau of Justice Assistance (BJA) provides federal funding for the JRI program, and private entities provide additional support for the program.ⁱⁱ
- CSG is centrally involved in (and compensated for) the selection, development, and implementation of state JRI programs supported with JRI funds, and then CSG issues reports on these programs.ⁱⁱⁱ
 - This means CSG plays a significant role in identifying the problems to address, the policies to implement, and the metrics to evaluate them.^{iv}
- CSG is one of two paid technical advisors that “provide intensive training and technical assistance to the state-level JRI program,” including North Dakota.^v
 - According to researchers, the BJA awarded \$265 million in JRI grants just in the 5 years between 2019 and 2024. Of the \$265 million awarded in those 5 years, \$169 million (64% of the total) went to technical assistance providers and organizations that assisted in analyzing and reporting on states’ JRI experiences.^{vi}
- CSG financially benefits from the continuation of the JRI program and has built up staff and resources to continue its work as a paid JRI technical advisor.^{vii}
- If JRI is shown to be ineffective or unsuccessful in accomplishing its objectives:
 - The JRI program funding, including the funding for CSG, may be reduced or terminated;
 - The work that CSG has performed to develop and implement JRI policies and practices would be called into question; and
 - States may no longer turn to CSG to steer their criminal justice legislation, which would reduce the amount of funding CSG receives from conferences, training, social media,^{viii} and other activities in this area geared toward public officials.^{ix}

The Predicted Results of JRI in North Dakota Have Not Been Achieved.

After collecting and reviewing “1.5 million individual data records” from North Dakota in 2016-17, CSG stated that, if the state followed its recommended policies, the state would save millions of dollars and reduce recidivism.^x

However, despite years of investment in the policies, the Department of Corrections and Rehabilitation has testified that the prison population has increased to the point of having to institute prioritization measures^{xi}, the use of contracted bed space is high, and recidivism (*even under the Department’s narrow definition that excludes many recidivists*) is still 40 percent.^{xii}

Additionally, the metrics that CSG chose to evaluate the JRI policies do not indicate that violent crime has diminished. Instead, the JRI policies prioritize (1) diversion of criminals to programs other than incarceration and (2) giving many chances to offenders who violate parole and probation conditions before reincarcerating them. This reduces the number of criminals who would otherwise be in jail or prison after committing a crime – even though the number and rate of violent crimes in North Dakota have increased significantly (by 23.8% and 17.3% respectively) just since CSG’s predictions, and true recidivism is significantly more than 40%.^{xiii}

ⁱ United States Department of Treasury, Bureau of the Fiscal Service, at <https://usaspending.gov>.

ⁱⁱ United States Department of Justice, Bureau of Justice Assistance, at <https://bja.ojp.gov/program/justice-reinvestment-initiative/overview> (“The Justice Reinvestment Initiative (JRI) is funded by the Bureau of Justice Assistance (BJA)—with support from The Pew Charitable Trusts (Pew) and Arnold Ventures...”); and Council of State Governments, Justice Center, <https://csgjusticecenter.org/projects/justice-reinvestment/>.

ⁱⁱⁱ United States Department of Justice, Bureau of Justice Assistance, at <https://bja.ojp.gov/program/justice-reinvestment-initiative/overview> (see sections on “Launching a JRI”); and Council of State Governments, Justice Center, <https://csgjusticecenter.org/projects/justice-reinvestment/about/> (“Launching a Justice Reinvestment Initiative” and disclosure of the Bureau of Justice Assistance and other JRI funders as funding sources for CSG; Council of State Governments, Justice Reinvestment in North Dakota Policy Framework, at https://csgjusticecenter.org/wp-content/uploads/2020/01/JR-in-North-Dakota_FINAL.pdf; Council on State

Government, Justice Center, state-by-state reports at <https://csgjusticecenter.org/projects/justice-reinvestment/about/>.

^{iv} The metrics often are reductions in prison population, reductions in actively supervised probations, and reductions in probation or parole revocations based on new definitions, policies, or laws about when those remedies are available to the criminal justice system rather reductions in crime or reductions in probation and parole violations. The Council on State Government provides state-by-state reports including these metrics at <https://csgjusticecenter.org/projects/justice-reinvestment/about/>.

^v The other technical advisor is the Crime and Justice Institute at Community Resources for Justice. United States Department of Justice, Bureau of Justice Assistance, at <https://bja.ojp.gov/program/justice-reinvestment-initiative/training-technical-assistance> ("The Crime and Justice Institute at Community Resources for Justice and the Council of State Governments Justice Center provide intensive training and technical assistance to the state-level JRI program."); and Council on State Governments, Justice Center, at <https://csgjusticecenter.org/projects/justice-reinvestment/past-states/north-dakota/> ("Justice Reinvestment in North Dakota") and at <https://csgjusticecenter.org/projects/justice-reinvestment/funders-and-partners/>.

^{vi} Sabol, Wallace, Johnson, Hartman, *Sentencing Reform and the Justice Reinvestment Initiative: Reserving Prison Space for the Most Serious Offenses*, based on data available at the federal government website U.S.A. Spending (www.usaspending.gov).

^{vii} Council of State Governments, Justice Center, at <https://csgjusticecenter.org/about-us/yearly-look-back/2024-look-back/> (The CSG Justice Center alone has 195 staff members.).

^{viii} Council of State Governments, Justice Center, at <https://csgjusticecenter.org/about-us/yearly-look-back/2024-look-back/> (including social media statistics).

^{ix} The U.S. Department of Treasury, Bureau of the Fiscal Services lists the American Probation and Parole Association as one of the "other names for the Council of State Governments Ltd." If CSA operates this trade association, as it appears to do, then CSG and the association seem form a mutually reinforcing partnership through which their aligned advocacy efforts support the continued operations – and incomes – of both entities.; American Probation and Parole Association webpages, at <https://www.appa-net.org/eweb/DynamicPage.aspx?webcode=Membership>.

^x Council on State Governments, Justice Reinvestment in North Dakota Policy Framework, pp. 2, 5-6 (January 2017), at https://csgjusticecenter.org/wp-content/uploads/2020/01/JR-in-North-Dakota_FINAL.pdf.

^{xi} North Dakota Department of Corrections press release, "ND DOCR Enters Prioritization of Inmates as Admissions Continue to Exceed Capacity at State-run Correctional Facilities," October 28, 2024, at <https://www.nd.gov/news/nd-docr-enters-prioritization-inmates-admissions-continue-exceed-capacity-state-run>.

^{xii} The DOCR definition of "recidivism" does not include criminals who commit new crimes if they are sentenced to federal prison, a county jail, or another state's prison system. DOCR includes only criminals who commit new crimes and are resentenced to a North Dakota state prison facility within 3 years of their release from the prison. DOCR Public Dashboard, <https://dashboard.docr.nd.gov/us-nd/narratives/prison/7> (also see the Methodology section of that dashboard); and Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee on SB 2128 (Jan. 22, 2025).

^{xiii} Just since 2017, the rate of violent crime per 100,000 North Dakotans has increased 17.3%, and the number of violent crimes committed each year in North Dakota has increase 23.8%. These data are from the standardized reports submitted by law enforcement agencies in North Dakota to the Attorney General's Office and the FBI.