

Increasing Transparency in North Dakota's Sentencing System

Presentation to the Interim Judiciary Committee
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Section 1: Is North Dakota's sentencing system transparent (and if not, should it be)?

What is Transparency in Sentencing?

The 2023 revision to the Model Penal Code: Sentencing, published by the American Law Institute, provides that “[i]n addition to producing good results in individual cases, the system’s workings must be visible and knowable to the public and all affected constituencies (‘transparency’), adequate information must be generated to allow for scrutiny of how well the system is performing (‘accountability’), and continuous attention must be given to the question of public trust in the system’s fairness and intentions (‘legitimacy’).”

Source: MODEL PENAL CODE: SENTENCING § 1.02(2) cmt. o (AM. LAW INST. 2023).

What is Transparency in Sentencing?

According to the American Law Institute, one of the purposes of a sentencing system is “to **increase the transparency** of the sentencing and corrections system, its **accountability** to the public, and the **legitimacy** of its operations as perceived by all affected communities.”

Source: MODEL PENAL CODE: SENTENCING § 1.02(2)(b)(vii) (AM. LAW INST. 2023) (emphasis added).

Transparency must be a bedrock concern.

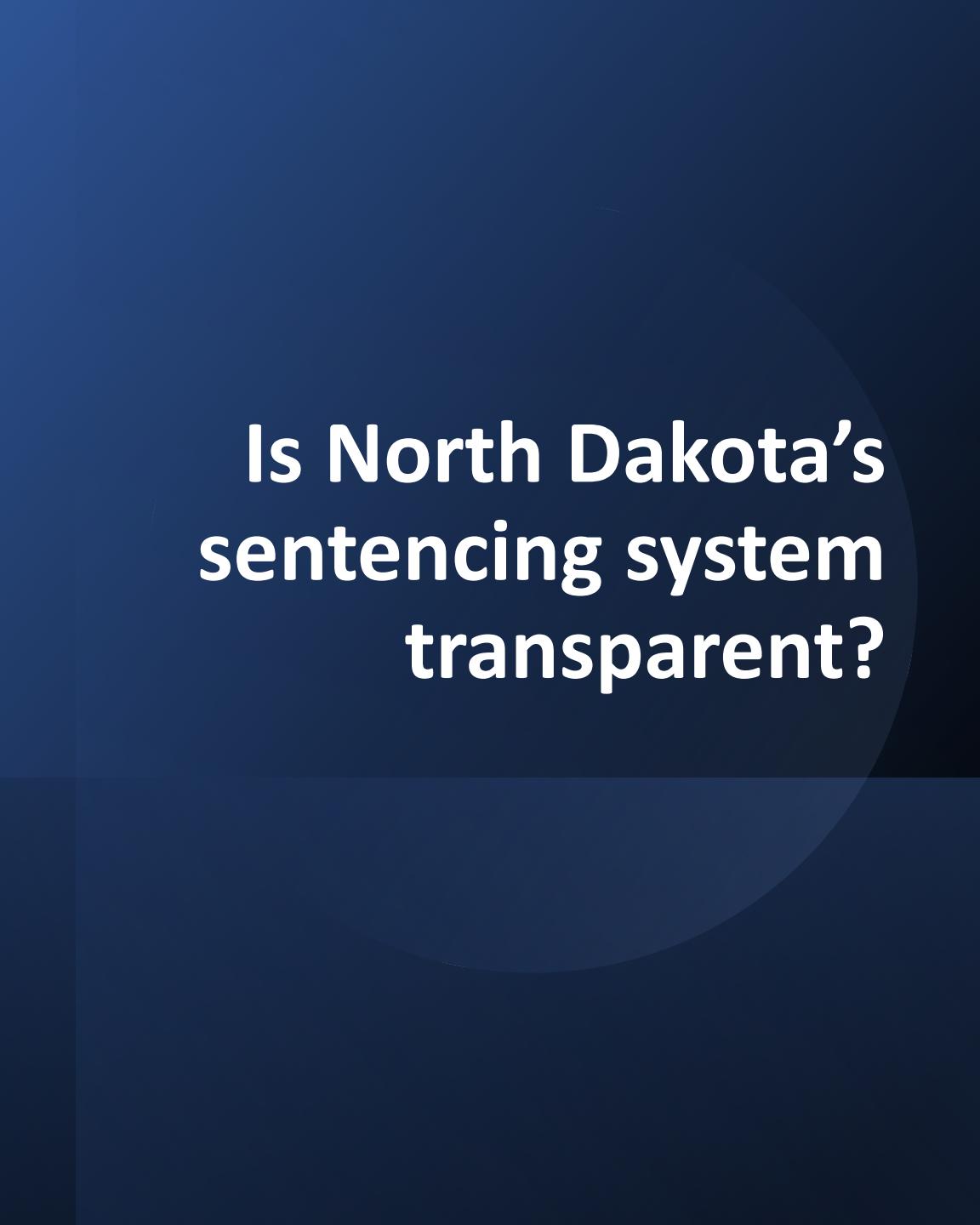
“The goals of transparency, accountability, and legitimacy given voice in Subsection (2)(b)(vii) were not explicit in the original Code. Indeed, those values held low priority in the indeterminate-sentencing systems of mid-20th-century America, including the 1962 Code. The most important sentencing decisions in such systems were made in the discretion of judges, correctional officials, and parole boards, all subject to little regulation, burden of explanation, or review. Sentencing was a **‘black box’ process** of invisible acts of discretion and power. Much of this reality remains in place as of the revised Code’s approval. Most American states have failed to meet the aspirations of transparency, accountability, and legitimacy in the past several decades and—more critically—have failed to regard them as bedrock concerns. In many sectors of U.S. criminal-justice systems, shortfalls in transparency, accountability, and legitimacy can be said to exist at crisis levels.”

Source: MODEL PENAL CODE: SENTENCING § 1.02(2) cmt. o (AM. LAW INST. 2023).

A large, abstract graphic on the left side of the slide features a dark blue circle that overlaps a lighter blue circle, creating a layered, semi-transparent effect.

“In many sectors of U.S. criminal-justice systems, shortfalls in transparency, accountability, and legitimacy can be said to exist at crisis levels.”

Source: MODEL PENAL CODE: SENTENCING § Section 1.02(2) cmt. o (AM. LAW INST. 2023).



**Is North Dakota's
sentencing system
transparent?**

**Do sentences served
by offenders resemble
sentences imposed in
court?**

Do sentences served by offenders resemble sentences imposed in court ?

In case 08-2013-CR-00547, a sex offender is sentenced to 5 years' imprisonment for possessing child sexual abuse material. The sentence is ***consecutive*** to two other felony cases in which the offender is sentenced to prison.

According to DOCR records, the offender served 45 days of his 1,826-day sentence, or **2.5%** on a ***consecutive*** sentence. From publicly-available DOCR documents, it appears that this offender was revoked at least twice on parole and then re-paroled.

**Possession of Child Sexual Abuse Material
(i.e. Possession of Certain Materials Prohibited)**

**Court-imposed
sentence:
1,826 days**

**Days served in
jail or prison:
45 days**

2.5%

Do sentences served by offenders resemble sentences imposed in court ?

In case 18-2018-CR-00338, an offender is sentenced to 3 years imprisonment for Aggravated Assault. He had served 49 days in jail.

According to DOCR records, the offender served 41 days at DOCR. As such, he served 90 days of his 1,096-day sentence in jail or prison, or **8.2%** for Aggravated Assault.

According to DOCR records, this offender received 175 days good time.

Aggravated Assault

Court-imposed
sentence:
1,096 days

Days served in
jail or prison:
90 days

8.2%

Case No. 18-2018-CR-00338

Do sentences served by offenders resemble sentences imposed in court ?

In case 18-2019-CR-01198, an offender is sentenced to 1 year's imprisonment for Aggravated Assault. He had credit for 0 days in jail. The sentence was to run **consecutive** to a 4-year sentence in another felony case.

According to DOCR records, the offender served 0 days at DOCR. As such, he served 0 days of his 1-year sentence, or **0.0%** for Aggravated Assault.

At the time of sentencing, this offender had been convicted of felony offenses in at least **15** prior cases.

After his parole in early 2023, this offender committed a burglary within about six months. He has since committed felonies in **four more cases**, including assaults on peace officers, burglary, theft, and reckless endangerment.

Aggravated Assault

Court-imposed
sentence:
365 days

Days served in
jail or prison:
0 days

0.0%

A large, abstract graphic on the left side of the slide, consisting of overlapping blue circles of varying sizes and shades of blue, creating a dynamic and modern look.

“The data suggest that in all but a few states, whenever a person hears of a sentence imposed in court, they should probably assume that the actual time served in prison is likely to be significantly and even dramatically less.”

Source: Robinson, Paul H. and Rennie, Hugh, Truth and Deception in Criminal Sentencing (January 30, 2025). U of Penn Law School, Public Law Research Paper No. 25-03, University of Illinois Law Review, Forthcoming, 2025, Available at SSRN: <https://ssrn.com/abstract=5118333> or <http://dx.doi.org/10.2139/ssrn.5118333>.

Escape

Court-imposed
sentence:
366 days

Days served in
jail or prison:
24 days

6.6%

**Court-imposed
sentence:
366 days**

**Days served in
jail or prison:
0 days**

0.0%

Endangerment of a Child
Possession of a Controlled Substance with Intent
to Deliver
Felon in Possession of a Firearm

**Court-imposed
sentence:
365 days**

**Days served in
jail or prison:
0 days**

0.0%

Endangerment of a Child
Child Neglect

**Court-imposed
sentence:
1,096 days**

**Days served in
jail or prison:
0 days**

0.0%

Fleeing a Peace Officer
Preventing Arrest

**Court-imposed
sentence:
365 days**

**Days served in
jail or prison:
0 days**

0.0%

Escape

Court-imposed
sentence:
365 days

Days served in
jail or prison:
0 days

0.0%

Possession of Methamphetamine with
Intent to Deliver

**Court-imposed
sentence:
1,096 days**

**Days served in
jail or prison:
90 days**

8.2%

Duty in Accident Involving Death or Injury -
Serious Personal Injury

**Court-imposed
sentence:
426 days**

**Days served in
jail or prison:
49 days**

11.5%

Escape

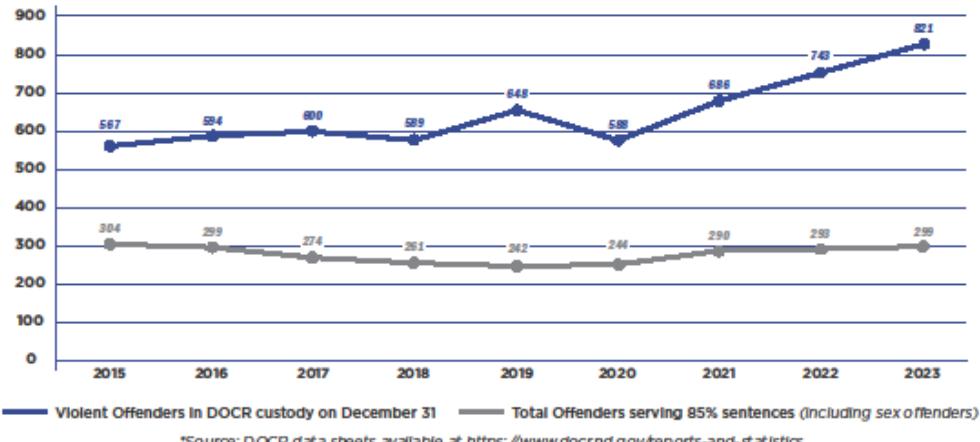
Court-imposed
sentence:
426 days

Days served in
jail or prison:
37 days

8.7%

Are all violent offenders required to serve 85% of their sentences in North Dakota?

NO! Most violent offenders are NOT required to serve 85% of their sentence!



*Source: DOCR data sheets available at <https://www.docr.nd.gov/reports-and-statistics>

- The North Dakota Department of Corrections and Rehabilitation submitted written testimony in opposition to Senate Bill 2128 in the 69th Legislative Assembly in which it claimed that "In fact, we have laws on the books that [the] legislature has already implemented: violent offenders in North Dakota are already required to serve 85% of their sentences in prisons."
- https://ndlegis.gov/assembly/69-2025/testimony/HJUD-2128-20250324-43616-A-BRAUN_COLBY.pdf
- And in oral testimony in opposition to Senate Bill 2128 in the 69th Legislative Assembly, the Director of the North Dakota Department of Corrections and Rehabilitation told the House Judiciary Committee that, "People already have to serve 85% of that sentence if they committed a violent crime."
- <https://video.ndlegis.gov/en/PowerBrowser/PowerBrowserV2/20250327/-1/33712?startposition=20250324090713 at 10:07:34>
- A North Dakota Department of Corrections and Rehabilitation spokesperson told the Forum that a bill requiring violent offenders to serve at least 50% of their sentence "would impact violent offenders the least, since they have to serve 85% of their sentences already."
- <https://www.inforum.com/news/north-dakota/truth-in-sentencing-bill-could-cost-north-dakota-roughly-269-million-prison-leaders-say>
- In a document circulated by the North Dakota Department of Corrections and Rehabilitation entitled "Return on Investment of 2128," the DOCR claimed that "Per ND law, violent offenders and offenders who use firearms and weapons while committing crimes subject to the current statute already serve 85% of their sentence. The DOCR cannot and does not release them early. This would be unlawful."

Only a small subset of violent crimes are 85% crimes!

If what DOCR says is true (that all violent offenders must serve 85% of their sentence), why aren't all violent offenders serving 85% sentences?

Class C Felony Aggravated Assault - NOT an 85% crime.

Class C Felony Child Abuse - NOT an 85% crime.

Class C Felony Felonious Restraint - NOT an 85% crime.

Class C Felony Assault on a Peace Officer - NOT an 85% crime.

Class C Felony Domestic Violence with Serious Bodily Injury - NOT an 85% crime.

Class C Felony Terrorizing - NOT an 85% crime.

Only the small subset of violent crimes referenced in N.D.C.C. § 12.1-32-09.1 are 85% crimes.

Even though the number of violent offenders in DOCR custody increased 45% from December 31, 2015 to December 31, 2023, the number of offenders, including sex offenders, serving 85% sentences decreased during that time. This is because most violent crimes are not 85% crimes.

What is the opposite of sentencing transparency?

“The data suggest that in all but a few states, whenever a person hears of a sentence imposed in court, they should probably assume that the actual time served in prison is likely to be significantly and even dramatically less.”

Source: Robinson, Paul H. and Rennie, Hugh, Truth and Deception in Criminal Sentencing (January 30, 2025). U of Penn Law School, Public Law Research Paper No. 25-03, University of Illinois Law Review, Forthcoming, 2025, Available at SSRN: <https://ssrn.com/abstract=5118333> or <http://dx.doi.org/10.2139/ssrn.5118333>.

The opposite of transparency is deception.

“The argument here is rather for more transparency. Thoughtful criminal justice reform requires an accurate understanding of how the system actually works. Transparency is essential for formulating enlightened reform. Unfortunately, perceptions of the current system by the public as well as by many activists and reformers is highly distorted because the system is constructed for constant and routine deception. The ‘minimum sentence’ imposed publicly in court is rarely that. Further, the current institutionalized deception undermines general deterrence and, perhaps more importantly, has serious criminogenic effects as the community discovers that the publicly advertised sentence is not to be trusted, and that other forces outside of public view are actually determining the length of an offender’s imprisonment.”

Source: Robinson, Paul H. and Rennie, Hugh, Truth and Deception in Criminal Sentencing (January 30, 2025). U of Penn Law School, Public Law Research Paper No. 25-03, University of Illinois Law Review, Forthcoming, 2025, Available at SSRN: <https://ssrn.com/abstract=5118333> or <http://dx.doi.org/10.2139/ssrn.5118333>.

A large, abstract graphic on the left side of the slide consists of several overlapping dark blue circles of varying sizes, creating a sense of depth and motion.

**Do courts see North Dakota's
sentencing system as transparent?**

1 being in prison for several years. Counts Five, Six, and
2 Seven, you'll have to be fingerprinted. And we'll waive all
3 of the fees on all of the counts.

4 The truth of the matter, Mr. Cramer, is Mr. Schwarz
5 is correct, the Department of Corrections has their own
6 policy on how much time you're going to serve. These are not
7 mandatory minimums, which means that you're probably going to
8 serve a small portion of that 28 years and be out on parole.
9 So that will give you a chance to have a -- or give you an
10 opportunity to have a second chance that Deputy Martin does
11 not have, nor does his family have.

12 Conditions of probation will be Number 1: You cannot
13 violate any criminal law or ordinance. Number 2: You cannot
14 use or possess any type of firearm, destructive device, or
15 dangerous weapon. 3A: You cannot use any alcoholic
16 beverages or enter into any place licensed to serve alcoholic
17 beverages.

18 4: You cannot use or possess a controlled substance
19 which has not been prescribed to you, or misuse any that have
20 been prescribed to you. 5: You cannot use or possess
21 surveillance equipment or counter-surveillance equipment.

22 Number 8: You can't willfully defraud a urine test.
23 9: Report to probation within 24 hours after your release
24 from custody. 10: Stay in contact with your probation
25 officer as they instruct. 11: Allow your probation officer

4 The truth of the matter, Mr. Cramer, is Mr. Schwarz
5 is correct, the Department of Corrections has their own
6 policy on how much time you're going to serve. These are not
7 mandatory minimums, which means that you're probably going to
8 serve a small portion of that 28 years and be out on parole.
9 So that will give you a chance to have a -- or give you an
10 opportunity to have a second chance that Deputy Martin does
11 not have, nor does his family have.

22 THE COURT: Mr. Walker, on April 17 of 2025 you pled
23 guilty to Counts Two, Three, and Five of a federal indictment
24 charging you with Possession with Intent to Distribute
25 Methamphetamine (50 Grams or More - Mixture); Possession with

4

1 Intent to Distribute Fentanyl (40 Grams or More - Mixture); and
2 Possession of a Firearm by a Prohibited Person.

21 THE COURT: With no objection, the Court will adopt
22 the presentence report that's been prepared and filed. The
23 Court will further adopt the sentencing guideline calculation.
24 We have a total offense level of 34, Criminal History Category
25 of VI, based upon 12 points, and a career offender designation,

6

1 the guideline range is 262 to 327 months.

2 Moving forward, again in Washington State he's really
3 struggling. He's got substance issues and, again, he has
4 conspiracy to deliver, 36 days in jail. Here in North Dakota,
5 possession with intent to deliver, five years' custody but
6 paroled after just less than a year.

7 THE COURT: That's the nature of our state Department
8 of Corrections.

9 MS. BOLINGER: Correct.

10 THE COURT: They spin people out too early and as a
11 result, they commit more crimes and more serious crimes and
12 that's why Mr. Walker is here.

1 THE COURT: And the other thing he needed is, at a
2 time earlier than he was a career offender, he needed to face a
3 stiff enough sentence that shook him to the point where he
4 realized he needed to clean himself up.

5 MS. BOLINGER: Right.

6 THE COURT: Because by sending somebody to prison for
7 36 days or something like that or paroling them after a year,
8 they just do not come to the realization that they need to make
9 a significant change in their life.

10 I see those realizations all the time in federal
11 court as does Mr. Volk because people are looking at sentences
12 like 262 to 327 months and they go holy -- fill in the blank.

10 I see those realizations all the time in federal
11 court as does Mr. Volk because people are looking at sentences
12 like 262 to 327 months and they go holy -- fill in the blank.

13 MS. BOLINGER: I think that my trouble, and this is
14 how I explained it to Mr. Walker when we first met a couple
15 years ago -- we understand this case has been pending for quite
16 some time -- it was incredulous that all of a sudden he was
17 looking at potentially life. And I explained it's like a
18 bait-and-switch game. You get slapped on the wrist, slapped on
19 the wrist, slapped on the wrist, the feds come in, oh, you're
20 looking at 30 years.

21 THE COURT: Well, that's the problem with --

22 MS. BOLINGER: Correct.

23 THE COURT: -- the state system currently.

24 MS. BOLINGER: Correct.

25 THE COURT: And the legislature has not dealt with

3 THE COURT: All right. Best of luck, Mr. Walker.
4 Again, as I indicated in the in camera discussion, I am proud
5 of what you have done. I gave you some additional
6 accommodation for that. You're obviously not particularly
7 happy because I know you were asking Ms. Bolinger -- she
8 indicated in her sentencing memorandum that you were asking for
9 probation and you just couldn't understand why this type of
10 sentence would be imposed but that's the nature of the business
11 in this courtroom. Federal court requires federal sentencing
12 and it is stiff sentences.

13 I wish something like this had happened to you at an
14 earlier time in your life. It might have changed the
15 trajectory of your life at that time.

Sentence Imposed: 180 months

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Do defendants see North Dakota's sentencing system as transparent?

Do defendants see North Dakota's sentencing system as transparent?

"Im waiting to go too prison shiid just on soon as I can get there Ill be right out..I only got to serve 35 percent of 18months then Ill go to the halfway house"

"I got sentenced to 10 first to serve 8 but its just a c felony agg assault so i only gotta serve 30 percent of 8"

"Had court yesterday went hood judge was nice i got what i wanted on the gun charge year and a day at 35 percent thats 3 half months now i just got get the other"

"But whatever the state give me ima only have to do 35 percent of it but if they come whatever the feds come with ima have to do 85 percent of it but"

"2 years just have to do 30 percent of that and b back out"

"3 years straight time only, but they say you only gotta do 35 percent of your time here when your noneviolent offender"

"And bc i got a 6 year deal and have to do 33 percent which is 2 years and i can parole out after a year, and my time served is only 2 months atm"

"Orinertion and then probobly get sent to btc idk i have to so 35 percent so 8.5 monthes i have two down already so like five and half my next court date is feb"

Why should we increase transparency?

“With greater transparency, the public and the politicians can know what is really going on in their criminal justice system, and reforms can be based upon facts rather than mirages. In other words, ‘truth in sentencing’ is not only more likely to avoid the societal costs of institutionalized deception, but also likely to produce more rational and informed policymaking.”

Source: Robinson, Paul H. and Rennie, Hugh, Truth and Deception in Criminal Sentencing (January 30, 2025). U of Penn Law School, Public Law Research Paper No. 25-03, University of Illinois Law Review, Forthcoming, 2025, Available at SSRN: <https://ssrn.com/abstract=5118333> or <http://dx.doi.org/10.2139/ssrn.5118333>.

Section 2: Solutions to increase transparency

American Law Institute recommendation:
Define “Incarceration.”

American Law Institute recommendation: Define “Incarceration.”

American Law Institute's recommended language:

Section 6.11. Incarceration.

- (1) A person convicted of an offense may be sentenced to incarceration as authorized in this Section. “Incarceration” in this Code includes confinement in prison or jail.
- (2) The court may impose incarceration:
 - (a) when necessary to incapacitate dangerous offenders, provided a sentence imposed on this ground is not disproportionately severe; or
 - (b) when other sanctions would depreciate the seriousness of the offense, thereby fostering disrespect for the law. When appropriate, the court may consider the risks of harm created by an offender’s criminal conduct, or the total harms done to a large class of crime victims.

Source: MODEL PENAL CODE: SENTENCING § 6.11 (AM. LAW INST. 2023).

American Law Institute recommendation:
Require offenders sentenced to incarceration to serve
at least 70% of their sentences.

**American Law
Institute
recommendation:**
Require offenders
sentenced to
incarceration to serve
at least 70% of their
sentences.

American Law Institute's recommended language:

- (9) Offenders sentenced to a term of incarceration shall be released after serving the term imposed by the court reduced by credits for time served and good behavior as provided in Sections 6.12 and 11.01, unless sentence is modified under Sections 11.02 and 11.03.
- [(10) For offenses committed after the effective date of this provision, the authority of the parole board to grant parole release to incarcerated offenders is abolished.]

Source: MODEL PENAL CODE: SENTENCING § 6.11 (AM. LAW INST. 2023).

American Law Institute recommendation:

Time served = sentence – good time (no more than 15%) – credits for successful completion of programming (no more than 15%)

American Law Institute's recommended language:

Section 11.01. Good-Time Reductions of Prison Terms; Reductions for Program Participation

- (1) Prisoners shall receive credits of [15] percent of their full terms of incarceration as imposed by the sentencing court, including any portion of their sentence served in jail rather than prison, and any period of detention credited against sentence under Section 6.12. Prisoners' dates of release under this Subsection shall be calculated at the beginning of their term of incarceration.
- (2) Prisoners shall receive additional credits of up to [15 percent] [120 days] for satisfactory participation in vocational, educational, or other rehabilitative programs.
- (3) Credits under this provision shall be deducted from the term of incarceration to be served by the prisoner, including any mandatory-minimum term.
- (4) Credits under this provision may only be revoked upon a finding by a preponderance of the evidence that the prisoner has committed a criminal offense or a serious violation of the rules of the institution, and the amount of credits forfeited shall be proportionate to that conduct.

Source: MODEL PENAL CODE: SENTENCING § 11.01 (AM. LAW INST. 2023).

Why a determinate sentencing system?

The American Law Institute now recommends that states adopt a determinate sentencing system, where sentence lengths are determined by judges, not parole boards. In studying the effectiveness of parole boards and indeterminate sentencing systems (like North Dakota's), the ALI found:

“Research, historical inquiry, and the firsthand experience of practitioners support the judgment that parole boards, when acting as prison-release agencies, have never been successful institutions in the United States.”

In recommending the elimination of parole-release authority, the ALI noted that “[a] parole board is more poorly positioned than a sentencing court to determine proportionate lengths of prison terms in specific cases. Judicial determinations of proportionality, especially when aided by sentencing guidelines and subject to appellate review, should not be supplanted by a parole board’s different view.”

Source: MODEL PENAL CODE: SENTENCING § 6.11 cmt. a (AM. LAW INST. 2023).

What about post-release supervision?

American Law Institute's recommended language:

Section 6.13. Postrelease Supervision.

- (1) When the court sentences an offender to incarceration, the court may also impose a term of postrelease supervision.
- (2) The purposes of postrelease supervision are to hold offenders accountable for their criminal conduct, promote their rehabilitation and reintegration into law-abiding society, reduce the risks that they will commit new offenses, and address their needs for housing, employment, family support, medical care, and mental-health care during their transition from prison to the community.

...

Source: MODEL PENAL CODE: SENTENCING § 6.13 (AM. LAW INST. 2023).

What about post-release supervision?

American Law Institute's recommended language:

Section 6.13. Postrelease Supervision.

(8) The court may impose conditions of postrelease supervision when necessary to further the purposes in Subsection (2). Permissible conditions include, but are not limited to:

- (a) compliance with the criminal law;
- (b) completion of a rehabilitative program that addresses the risks or needs presented by individual offenders;
- (c) performance of community service;
- (d) drug testing for a substance-abusing offender;
- (e) technological monitoring of the offender's location, through globalpositioning-satellite technology or other means, but only when justified as a means to reduce the risk that the probationer will reoffend;
- (f) reasonable efforts to find and maintain employment, except it is not a permissible condition of postrelease supervision that the offender must succeed in finding and maintaining employment;
- (g) reasonable efforts to obtain housing, or else residence in a postrelease residential facility;
- (h) intermittent confinement in a residential treatment center or halfway house; and
- (i) good-faith efforts to make payment of victim restitution under Section 6.07, but compliance with any other economic sanction shall not be a permissible condition of postrelease supervision.

Source: MODEL PENAL CODE: SENTENCING § 6.13 (AM. LAW INST. 2023).

American Law Institute recommendation:

Give “as little power as possible to departments of corrections to override the judgments of sentencing courts.”

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The new Model Penal Code recommends that offenders earn up to 15% for good time and up to 15% (or 120 days) for completing programming. This “recognizes that prison officials require a degree of authority over prison durations as a tool to manage the in-prison behavior of inmates. In recognition of the perils of back-end discretion, and to avoid undue dilution of judicial sentencing authority, this power should be granted sparingly, in an amount sufficient but not greater than needed for its purposes.”

Source: MODEL PENAL CODE: SENTENCING § 11.01 cmt. a (AM. LAW INST. 2023).

American Law Institute recommendation:

Form a permanent sentencing commission
to create presumptive sentencing guidelines.

Presumptive sentencing guidelines

“The [Model Penal Code: Sentencing] provides an institutional framework for all major forms of punishment. It consists of a sentencing commission, sentencing guidelines, abolition of parole release discretion, appellate sentence review, and controls on correctional population size.”

“On matters of institutional structure, the [Model Penal Code: Sentencing] recommends that every state should create a permanent sentencing commission with authority to develop ‘presumptive’ sentencing guidelines—that is, guidelines with a degree of legal force but subject to judicial departures based on ‘substantial reasons.’”

“On average, states with determinate systems and sentencing guidelines experienced the least growth in prison rates during the buildup years (Stemen and Rengifo 2010; American Law Institute 2011, app. B).”

Source: Reitz, Kevin R., and Cecelia M. Klingele. “Model penal code: Sentencing—Workable limits on mass punishment.” *Crime and Justice* 48.1 (2019): 255-311.

Example: Minnesota drug offender grid

4.C. Drug Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denotes range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subjected to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Aggravated Controlled Substance Crime, 1st Degree Manufacture of Any Amt. Meth</i>	D9	86 74*-103	98 84*-117	110 94*-132	122 104*-146	134 114*-160	146 125*-175	158 135*-189
<i>Controlled Substance Crime, 1st Degree</i>	D8	65 56*-78	75 64*-90	85 73*-102	95 81*-114	105 90*-126	115 98*-138	125 107*-150
<i>Controlled Substance Crime, 2nd Degree</i>	D7	48	58	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Controlled Substance Crime, 3rd Degree Failure to Affix Stamp</i>	D6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Possess Substances with Intent to Manufacture Meth</i>	D5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Controlled Substance Crime, 4th Degree</i>	D4	12	15	18	21	24 21-28	27 23-32	30 26-36
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	D3	12	13	15	17	19 17-22	21 18-25	23 20-27
<i>Controlled Substance Crime, 5th Degree</i>	D2	12	12	13	15	17	19	21 18-25
<i>Sale of Simulated Controlled Substance</i>	D1	12	12	12	13	15	17	19 17-22

* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).



Presumptive commitment to state imprisonment.



Presumptive stayed sentence; at the discretion of the court, up to 364 days of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

American Law Institute recommendation:
Mandate *transparent* data reporting.

American Law
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“The public is entitled to information necessary to appraise the workings of the system in the aggregate, as well as disclosures of the rationales for decisions in particular cases. Independent researchers must be allowed to study the operation of every part of the system, so that the public is not held hostage by official governmental reporting.”

Source: MODEL PENAL CODE: SENTENCING § 1.02(2) cmt. o (AM. LAW INST. 2023).

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“The DOCR does not track prison time percentages but estimates inmates on average serve 50% of their sentences in its facilities, including transitional housing.”

Source: April Baumgarten, ‘*Truth in sentencing*’ bill could cost North Dakota roughly \$269 million, prison leaders say, INFORUM, (February 12, 2025), <https://www.inforum.com/news/north-dakota/truth-in-sentencing-bill-could-cost-north-dakota-roughly-269-million-prison-leaders-say>.

Section 3: Addressing concerns

What about the Parole Board?

The American Law Institute recommends that states abolish parole:

“There is little evidence that a parole board can better effectuate the utilitarian goals of the sentencing system than a sentencing court. In particular, there is no persuasive evidence that parole boards can separate those inmates who have been rehabilitated from those who have not. Likewise, there is no persuasive evidence that parole boards can assess the risk of future offending in individual cases with greater accuracy than sentencing courts.”

Source: MODEL PENAL CODE: SENTENCING § 6.11 cmt. a (AM. LAW INST. 2023).

What about the Parole Board?

“If we are trying to decide in a particular case whether a prisoner should be released after serving 2 years in prison, and we are committed to an evidence-based approach to risk of serious recidivism, the trial court already has the best information available to make a decision. There is no reason to wait 2 years for the parole board. Over years of prediction science, the addition of ‘dynamic’ factors concerning an inmate’s progress in prison has not been shown to add predictive value. Such factors exist in theory, of course, but have never been nailed down (Wong and Gordon 2006, p. 279; LeBel et al. 2008, p. 133; Skeem et al. 2017). Indeed, the notion of parole boards’ special competency to discern, person-by-person, which prisoners have been rehabilitated and which have not has never gotten a whiff of empirical support.”

Source: Reitz, Kevin R., and Cecelia M. Klingele. "Model penal code: Sentencing—Workable limits on mass punishment." *Crime and Justice* 48.1 (2019): 255-311

What about the Parole Board?

American Law Institute's recommended language:

“For offenses committed after the effective date of this provision, the authority of the parole board to grant parole release to incarcerated offenders is abolished.”

Source: MODEL PENAL CODE: SENTENCING § 6.11 (AM. LAW INST. 2023).

North Dakota has an exceptionally high parole grant rate.

According to data published by the Prison Policy Initiative, North Dakota had the ***highest*** parole grant rate in the country in 2019, at **80%**.

According to that same date, North Dakota had the ***second-highest*** parole grant rate in the country in 2020, at **80%**.

According to that same date, North Dakota had the ***highest*** parole grant rate in the country in 2021, at **78%**.

According to that same date, North Dakota tied Wyoming for the ***highest*** parole grant rate in the country in 2022, at **78%**.

Source: https://www.prisonpolicy.org/data/parolerates_2019_2022.html.

The DOCR's role in parole.

The Department of Corrections decides who sees the Parole Board (and when), and the Department makes recommendation for each offender:

- “The Director of the Department or the Director’s Designee shall serve as the clerk to the Parole Board.” Parole Board – 1A – 13, page 4, no. 5.
- “The clerk shall set parole review dates for parole-eligible adults in custody who have less than three years to serve from the date of arrival in prison to the longest, good time release date.” Parole Board – 1A – 13, page 6, no. 1c.
- “The clerk shall establish a tentative docket approximately two weeks prior to the Parole Board meeting. The clerk shall provide the Parole Board with recommendations for action and all necessary documents to aid their decision-making process.” Parole Board – 1A – 13, page 8, no. 6.

Source: https://www.docr.nd.gov/sites/www/files/documents/parole_pardon/Parole/Parole%20Board%20Policy%20-%20202021.pdf

What about halfway houses?

“Halfway houses operate as a form of community supervision, offering a unique opportunity for individuals who have offended to receive housing, support, and other resources to aid in navigating the challenges of re-entry from closed custody. Despite being controversial in the eyes of the public, they have long been viewed by stakeholders as a worthwhile intervention. However, existing literature presents mixed findings on their utility. The current study provides a systematic review and meta-analysis of nine studies providing 17 effect sizes on the effects of halfway houses on recidivism. Findings indicate that halfway houses do not result in any differences for treatment versus comparison group participants with respect to outcomes of arrest ($k = 6$), conviction ($k = 5$), or incarceration ($k = 6$).”

Source: Wong, J. S., Neilsen, K., Gushue, K., & Lee, C. (2025). The Effects of Halfway Houses on Criminal Recidivism: An Updated Systematic Review and Meta-Analysis. *International Journal of Offender Therapy and Comparative Criminology*, 69(12), 1781-1804.
<https://doi.org/10.1177/0306624X251327574> (Original work published 2025).

Are halfway houses and transitional facilities “our most effective crime fighting tool?”

The North Dakota Department of Corrections and Rehabilitation submitted written testimony in opposition to Senate Bill 2128 in the 69th Legislative Assembly in which it claimed that “SB 2128 would also require the DOCR to minimize its use of our most effective crime-fighting tool: our transition centers.”

- https://ndlegis.gov/assembly/69-2025/testimony/HJUD-2128-20250324-43616-A-BRAUN_COLBY.pdf

“Current evidence suggests no notable effects of halfway houses on outcomes of recidivism.”

- Wong, J. S., Neilsen, K., Gushue, K., & Lee, C. (2025). The Effects of Halfway Houses on Criminal Recidivism: An Updated Systematic Review and Meta-Analysis. International Journal of Offender Therapy and Comparative Criminology, 69(12), 1781-1804.

“I find no evidence that Iowa’s costly investment in residential housing results in reduced reincarceration relative to parole.”

- Lee, Logan M. 2023. "Halfway Home? Residential Housing and Reincarceration." American Economic Journal: Applied Economics 15 (3): 117–49.

“We find the presence of an active [halfway house] is associated with an increase in crime within the immediate vicinity.”

- Hyatt, J.M., Han, S. Expanding the focus of correctional evaluations beyond recidivism: the impact of halfway houses on public safety. J Exp Criminol 14, 187–211 (2018).

“Findings indicate that halfway houses do not result in any differences for treatment versus comparison group participants with respect to outcomes of arrest[,] conviction[,] or incarceration[.]”

- Wong, J. S., Neilsen, K., Gushue, K., & Lee, C. (2025). The Effects of Halfway Houses on Criminal Recidivism: An Updated Systematic Review and Meta-Analysis. International Journal of Offender Therapy and Comparative Criminology, 69(12), 1781-1804.

“Consistent with a growing body of literature on intensive supervision strategies, I find that residential housing fails to reduce and may even increase reincarceration.”

- Lee, Logan M. 2023. "Halfway Home? Residential Housing and Reincarceration." American Economic Journal: Applied Economics 15 (3): 117–49.

“Consistent with our last report, reentrants who are released straight home from prison are less likely to recidivate than those released to a halfway house.”

- Pennsylvania 2022 Recidivism Report, available at <https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/resources/statistics/reports-and-dashboards/Recidivism%202022%20Report.pdf>.

What about the Justice Reinvestment Initiative?

“Overall, JRI reforms do not seem to have achieved their goals. While the current state of the literature is limited, there is no solid indication that JRI reforms have led to reductions in prison populations, cost savings, or improvements in public safety. The evidence is particularly lacking for the most important of the three: public safety. The available research lacks meaningful effectiveness outcomes and relies heavily on anecdotes. Most analysis on recidivism rates associated with the JRI is shallow and uninformative, and the existing reports on JRI programs stop short of examining causal relationships with recidivism. Peer-reviewed research on JRI reforms also remains scarce. Overlooking factors such as recidivism rates when determining program ‘success’ is a major concern.”

Source: Berger, Elizabeth. “JUSTICE REINVESTMENT INITIATIVE FALLS SHORT OF ACHIEVING PUBLIC SAFETY GOALS.” (2025).

What is JRI?

“Justice Reinvestment has been practiced in the United States for 20 years (Tucker and Cadora 2003), and **there is scarce agreement on what is meant by ‘justice reinvestment’** both within the United States and throughout the world.”

Source: Dollar, Christopher W. “Policy Reforms of Justice Reinvestment: Differences Between a Sample of US States’ Implementations.” *Sociology Compass* 18, no. 11 (2024): e70016 (emphasis added).

Are JRI “successes” supported by peer-reviewed evidence?

Dollar's article “Policy Reforms of Justice Reinvestment: Differences Between a Sample of US States' Implementations” traces the history of Justice Reinvestment from an idea in an Open Society publication in 2003 to a federal Justice Reinvestment Initiative. In a section titled “Basics of Justice Reinvestment,” Dollar notes:

“In 2010 justice reinvestment was taken up in the United States by the Bureau of Justice Assistance in a program called Justice Reinvestment Initiative (JRI) that provided technical assistance to evaluate individual state’s data to identify critical criminal justice inefficiencies and suggest policy changes (La Vigne et al. 2014). Proposed policy changes focused criminal justice reforms to create JR funds and suggested ways to use those funds to make criminal justice more efficient rather than solving community issues (Sabol and Baumann 2020). Since then, numerous states have implemented recommendations of JRI despite little peer-reviewed evidence supporting these claims.”

Source: Dollar, Christopher W. “Policy Reforms of Justice Reinvestment: Differences Between a Sample of US States' Implementations.” *Sociology Compass* 18, no. 11 (2024): e70016.

Are JRI “successes” supported by peer-reviewed evidence?

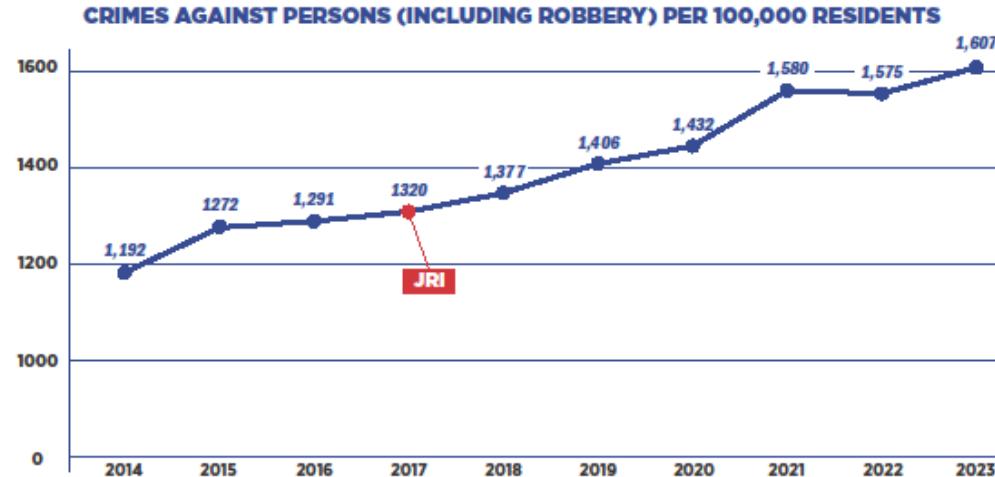
- “Evaluations on the effectiveness of justice reinvestment have been limited despite its widespread adoptions. Though numerous state agency evaluations exist, they often lack the same measurement definitions, methodological approaches, and application context critical for comparing justice reinvestment efforts across the nation.”
- “Of the few peer-reviewed studies, there is disagreement in justice reinvestment’s impact.”
- “Technical reports from the BJA (La Vigne et al. 2014), the Council of State Governments (2017b), and the Urban Institute (Harvell et al. 2016) all indicate some successes in select states, but these findings have been called into question based on their methodology.”

Source: Dollar, Christopher W. “Policy Reforms of Justice Reinvestment: Differences Between a Sample of US States’ Implementations.” *Sociology Compass* 18, no. 11 (2024): e70016.

Return on Justice Reinvestment

North Dakota implemented Justice Reinvestment in 2017. The stated goals of justice reinvestment were to increase public safety and reduce recidivism. Has that happened?

NO! Despite implementation of JRI in 2017, the rate of crimes against persons has continued to rise:



Source: <https://attomeygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/>

Nor has JRI reduced recidivism. Despite the implementation of JRI in 2017, the recidivism rate remained unchanged at **40%**. Source: <https://dashboard.docrnd.gov/us-nd/narratives/prison/7>. And that is only the recidivism rate for offenders who were released from a North Dakota prison and returned to a North Dakota prison. This does not include offenders who re-offended and were sentenced to county jails, federal prison, or prisons/jails in other states.

Should we ignore the failure of JRI to reduce the rate of violent crime or recidivism? No! "Recidivism is a very important measure when it comes to determining 'success' of a criminal justice policy, as high recidivism rates contribute to increased crime rates and risks to public safety. Recidivism rates indicate a system's success in promoting rehabilitation, reducing repeat offenses, and facilitating the successful reintegration of individuals into society. High recidivism rates indicate the opposite, resulting in increased economic and social costs. **Thus, the rampant tendency to overlook recidivism rates when determining the 'success' of JRI programs is a major concern.**" https://www.cjlf.org/publications/JRIReport_2025.pdf

Is there consensus that JRI is achieving its stated goals? No. A recent study by the Criminal Justice Legal Foundation noted that, "While some reform measures may have had moderate success in reducing the prison population or improving reentry services, crime rates and recidivism rates remained largely unaffected with no meaningful reductions." https://www.cjlf.org/publications/JRIReport_2025.pdf

That is true in North Dakota. The goals of JRI in North Dakota were to increase public safety and reduce recidivism. Neither has happened. Recidivism remains unchanged at **40%**, and crimes against persons (including robbery) have **increased 22%** since JRI was enacted in 2017.

Won't this
result in
harsh/long
sentences?

According to a 2023
study by the Council on
Criminal Justice, North
Dakota had the *shortest
average prison sentence
per offender.*

Source: Gaes, G. & Laskorunsky, J. (2023). The relationship between sentence length, time served, and state prison population levels. Council on Criminal Justice. <https://counciloncj.foleon.com/tfls/long-sentences-by-the-numbers/the-relationshipbetween-sentence-length-time-served-and-state-prison-population-levels>.

States With *Longest* Average Sentence per Offender

1. Michigan	14.76 years
2. Mississippi	14.76 years
3. Georgia	10.75 years
4. Montana	10.13 years
5. Utah	8.37 years
LAST. North Dakota	2.35 years

Source: Gaes, G. & Laskorunsky, J. (2023). The relationship between sentence length, time served, and state prison population levels. Council on Criminal Justice. <https://counciloncj.foleon.com/tfls/long-sentences-by-the-numbers/the-relationshipbetween-sentence-length-time-served-and-state-prison-population-levels>.

Average Prison Sentence - Midwest

1. Michigan 14.76 years
2. Iowa 7.84 years
3. Wisconsin 6.84 years
4. Missouri 6.75 years
5. Nebraska 6.74 years
6. South Dakota 5.86 years
7. Indiana 5.22 years
8. Minnesota 4.03 years
9. Ohio 2.75 years
10. Kansas 2.57 years
- 11. North Dakota 2.35 years**

Illinois – did not report sufficient data

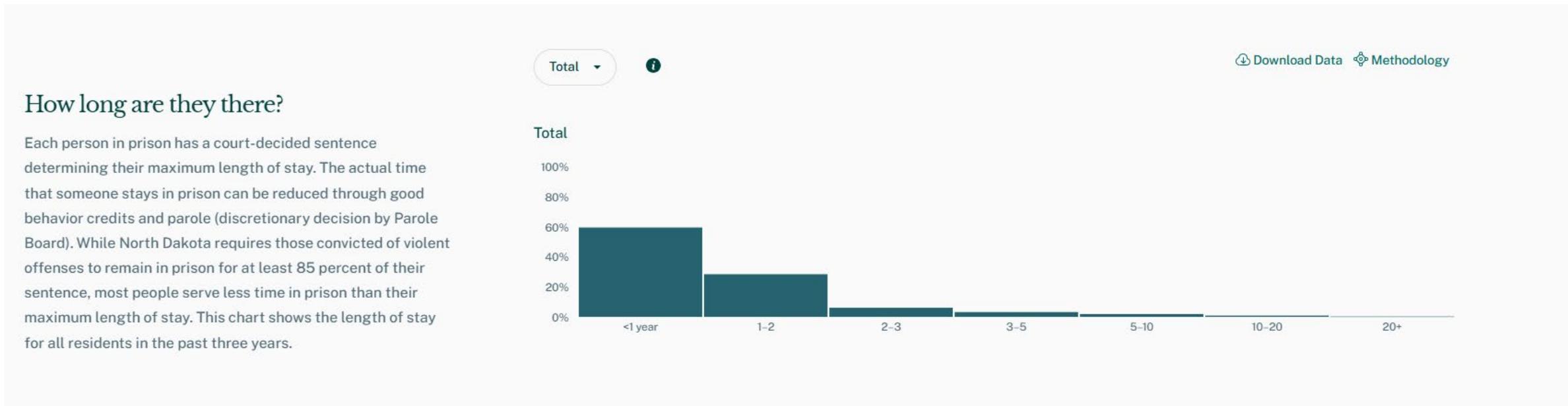
Source: Gaes, G. & Laskorunsky, J. (2023). The relationship between sentence length, time served, and state prison population levels. Council on Criminal Justice. <https://counciloncj.foleon.com/tfls/long-sentences-by-the-numbers/the-relationshipbetween-sentence-length-time-served-and-state-prison-population-levels>.

States With *Longest* Average Time Served per Offender

1. Michigan	4.24 years
2. Mississippi	4.24 years
3. Oregon	3.46 years
4. New York	3.43 years
5. Massachusetts	3.12 years
LAST. North Dakota	1.18 years

Source: Gaes, G. & Laskorunsky, J. (2023). The relationship between sentence length, time served, and state prison population levels. Council on Criminal Justice. https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/41697/the_relationship_between_sentence_lengtha26f7d63f89c.d4968b850a83.pdf.

87% of offenders sentenced to prison in North Dakota serve *less than two years*.



Source: <https://dashboard.docr.nd.gov/us-nd/narratives/prison/5>

Conclusion – Increase Transparency

“The reforms needed to provide greater transparency include, first and foremost, a shift to ‘truth in sentencing,’ where the sentence publicly imposed really is the sentence that will be served or, in very least, public disclosure of when, where, by [whom], and under what criteria, the actual time-serve decision will be made.”

Source: Robinson, Paul H. and Rennie, Hugh, Truth and Deception in Criminal Sentencing (January 30, 2025). U of Penn Law School, Public Law Research Paper No. 25-03, University of Illinois Law Review, Forthcoming, 2025, Available at SSRN: <https://ssrn.com/abstract=5118333> or <http://dx.doi.org/10.2139/ssrn.5118333>.

Links to Publications/Resources

- <https://www.ali.org/publications/model-penal-code/sentencing>
- <https://www.annualreviews.org/content/journals/10.1146/annurev-criminol-011419-041407>
- <https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/41697/the relationship between sentence lengtha26f7d63f89c.d4968b850a83.pdf>
- <https://www.cjlf.org/publications/JRIRReport.2025.pdf>
- <https://compass.onlinelibrary.wiley.com/doi/pdf/10.1111/soc4.70016>
- <https://www.docr.nd.gov/reports-and-statistics>
- <https://law.stanford.edu/wp-content/uploads/2016/01/Rhine-Petersilia-Reitz-Improving-Parole-Release-in-America.pdf>
- <https://media4.manhattan-institute.org/wp-content/uploads/why-rehabilitating-repeat-criminal-offenders-often-fails.pdf>
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5118333
- <https://www.prisonpolicy.org/data/parolerates 2019 2022.html.>
- <https://pubmed.ncbi.nlm.nih.gov/40108973/>