

2022 BIENNIAL REPORT

North Dakota Juvenile Justice State Advisory Group

About the JJSAG

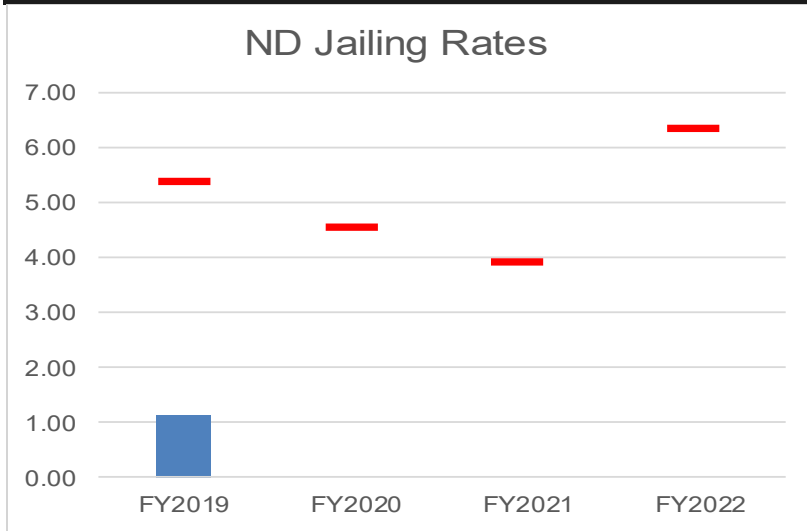
In 1989, Governor George Sinner signed an Executive Order which established North Dakota's Juvenile Justice State Advisory Group (JJSAG) pursuant to Section 223(a) of Part B of the Juvenile Justice and Delinquency Prevention Act. The Act specifies requirements regarding the composition of the JJSAG, including representation of the individuals that should be appointed. North Dakota's JJSAG includes 20 members either involved in the juvenile justice system and/or interested in the prevention of juvenile delinquency. A list of the SAG members is maintained on the Office of the Governor's web site at www.governor.nd.gov/boards.

Appointed by the Governor to study juvenile justice issues and make recommendations with regard to policy. The JJSAG has the overall responsibility to develop and implement the State's juvenile justice plan.

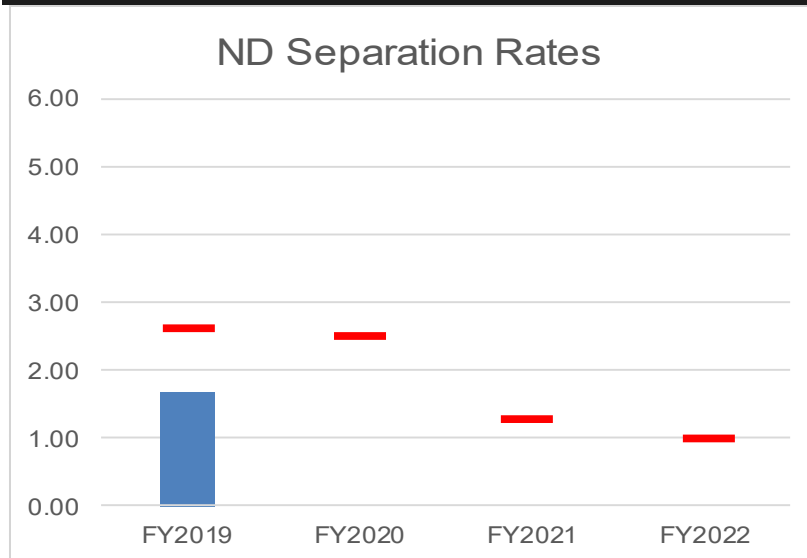
The Juvenile Justice and Delinquency Prevention Act (JJDPA) was enacted by Congress in 1974 to address problems associated with children in adult jails and the disorganized nature of federal efforts to assist states and local government in addressing juvenile crime. To be eligible for funding under the JJDPA, states must satisfy 33 state plan requirements. Within the requirements are four "core" protections, of which state's funding will be reduced for each requirement it is found not in compliance:

1. **Jail Removal** – No juvenile shall be securely detained in adult jails or lockups.
2. **Sight and Sound Separation** – During the temporary period for which a juvenile may be held in an adult jail or lockup (less than 6 hours under the Reporting Exception), the juvenile must be held "sight and sound" separated from adult offenders.
3. **Deinstitutionalization of Status Offenders (DSO)** – Juveniles charged with status offenses, offenses that would not be criminal if committed by an adult, should not be placed in secure detention or correctional facilities.
4. **Reducing Racial and Ethnic Disparities (RRED)** – States must address minority youth populations involved at a decision point in the juvenile justice system at higher rates than non-minority youth at that decision point.

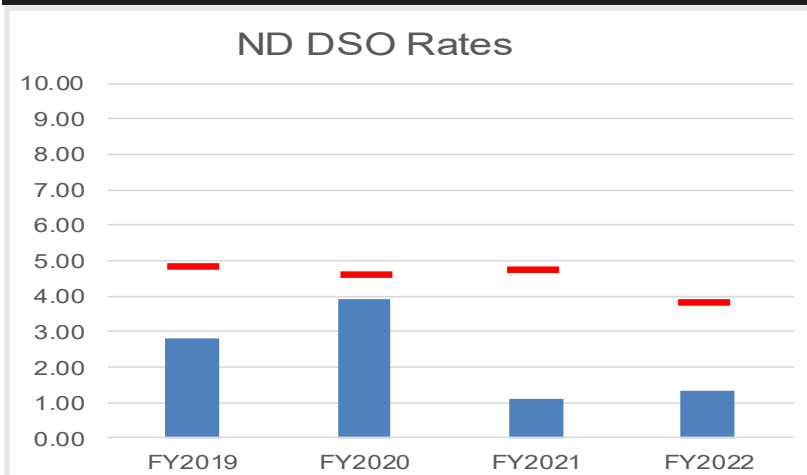
Compliance with Jail Removal



Compliance with Sight and Sound Separation



Compliance with Deinstitutionalization of Status Offenders



Compliance with the First Three Mandates

The first three mandates of the JJDPa are based on numerical standards, whereas the fourth mandate (RRED) requires continuous identification and monitoring, as more fully discussed on page 3. North Dakota has demonstrated compliance with the numerical standards since its participation in the JJDPa began, with the number of violations below the federally established de minimis. New rules effective in Fiscal Year (FY) 2017 significantly decreased the allowable de minimis, intensifying compliance efforts. Violations associated with the first three mandates of the JJDPa (jail removal, separation and DSO) since the new rules is detailed graphically to the left. North Dakota has been in compliance with all of the mandates since its participation in the JJDPa began in 1989.

Maintaining a stable network of non-secure supervision options through North Dakota's Attendant Care Program is critical to maintaining compliance with the JJDPa and thus, continues to be one of the main priorities of the funding North Dakota receives, as discussed on page 4.

RRED Compliance Plan

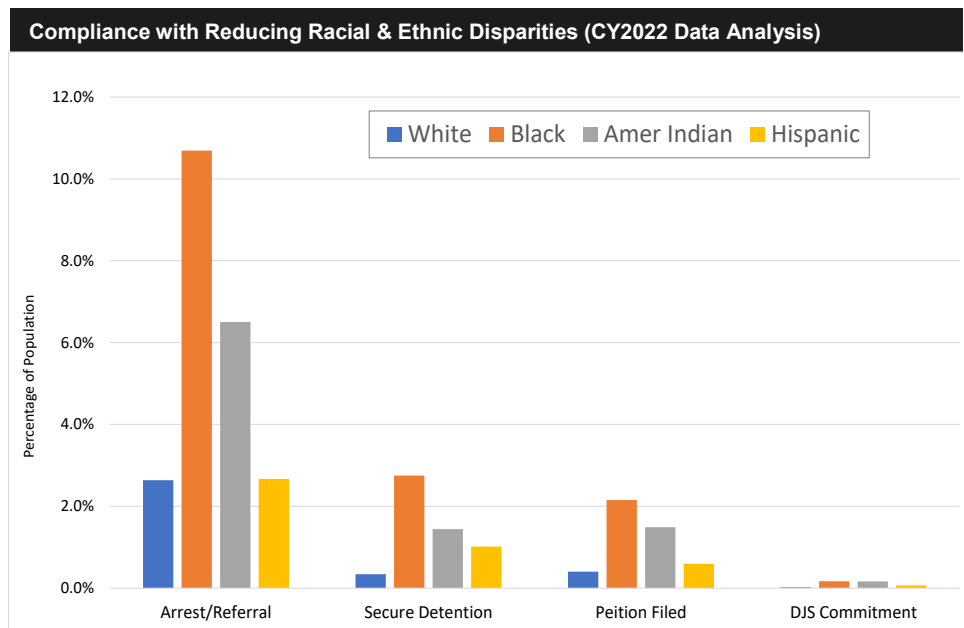
In order to achieve compliance with the RRED core requirements, states must implement policy, practice, and system improvement strategies at the state and local level to identify and reduce racial and ethnic disparities among youth who come into contact with the juvenile justice system, without establishing or requiring numerical standards, by:

- (A) Establishing coordinating bodies composed of juvenile justice stakeholders to advise efforts;
- (B) Identify and analyze data on race and ethnicity at decision points in the juvenile justice system to determine which points create disparity;
- (C) Develop and implement a work plan that includes measurable objectives for policy, practice, or other system

Compliance with RRED

Pursuant to the fourth mandate of the JJDP, states must work to reduce racial and ethnic disparities in the juvenile justice system at each stage of processing (i.e. arrest, detention, referral to juvenile court, petition, etc.). An analysis of RRED is required for those counties that have a higher concentration of minority youth.

North Dakota's most recent RRED analysis shows that disproportionality is the most significant at the points of arrest, as indicated by the chart below, with Black and Native youth being arrested at much higher percentages than white youth.



A statewide racial equity workgroup was established with a focus on ways to keep minority youth out of the juvenile justice system by developing alternatives to court and reducing barriers to service. The workgroup made the following recommendations:

- Establish youth & family engagement activities to pilot culturally aligned prevention services;
- Develop a statewide restorative practices council with a particular focus on ensuring equal access to services for minority youth;
- Reduce barriers to preventative service delivery for minority youth;
- Establish a committee of minority representatives to guide the development of policies, training, funding and/or capacity-building.

ND Three-Year Plan (FY2021-23)

1. Alternatives to Detention/Community-Based Services

North Dakota's Attendant Care Program, which was implemented in 1989, moved North Dakota into compliance with the core requirements of the JJDP. The program supports alternatives to the secure holding of juveniles. The JJSAG also sees the need to build other community-based services that can work in conjunction with Attendant Care services by providing family intervention services and preventing out-of-home placement.

2. Reducing Racial and Ethnic Disparities (RRED)

North Dakota's RRED analysis clearly indicates that disproportionality exists with minority youth in the North Dakota's juvenile justice system, particularly at the front end of the system. The JJSAG is working to develop a multi-pronged collaborative approach to addressing issues related to RED.

3. Positive Youth Development Opportunities

The JJSAG is prioritizing programs and services that provide opportunities for youth to build skills and foster positive relationships, as well as engage family and community partners as the research indicates its importance for reducing juvenile justice system involvement.

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JJDP Title II Formula Funding

North Dakota's allocation of JJDP Title II funds for Fiscal Year 2022 is approximately \$600,000. The Act contains restrictions that a maximum of 10% be used for planning and administration, up to 5% for support of the JJSAG, and 66% of the balance be awarded to local public, private and/or non-profit agencies. Funding has been allocated for the continued operation of the Attendant Care Program, as well as for youth and family engagement activities and to expand and enhance restorative justice services. Priority in funding decisions was given to those programs and services that promote racial equity, remove barriers to accessing services, and increase community connection for minority youth and families.

Juvenile Justice Reform

North Dakota passed significant bipartisan legislation during the 2021 legislative session to improve outcomes for youth involved in its juvenile justice system, as well as to keep certain youth out. House Bill 1035 provided needed improvements to North Dakota's juvenile justice system, updating outdated language and better organizing statute, but most notably, moving North Dakota toward practices that research has shown to be effective. The bill is the culmination of five years of discussion and study on improving outcomes.

To identify opportunities for reform, the state contracted with The Council of State Governments (CSG) Justice Center to conduct an in-depth analysis of its current policies and practices. CSG Justice Center staff conducted reviews of data, statute and policy, as well as focus groups with stakeholders from across the state. Findings from the analysis and a series of policy recommendations was presented to members of a newly formed Commission on Juvenile Justice, which then used those recommendations to create House Bill 1035.

In approaching such a large statute change, the group working on the bill draft recognized the importance of ensuring that all stakeholders understood the need for the changes and had the opportunity to provide feedback during the process. Separate meetings were held with various stakeholder groups, including law enforcement, probation officers, court staff, states attorneys, public defenders, educators, tribal representatives, and child welfare officials. In addition, system practitioners provided testimony on the bill and its impact. This process helped to ensure that the bill passed with near unanimous support.

Overall, House Bill 1035 provides a much-needed reorganization of statute, formerly known as the North Dakota Uniform Juvenile Court Act. The bill created chapters that provide clear guidelines for the different populations of youth (youth in the child welfare system, unruly youth, and delinquent youth), and in doing so, more clarity around definitions, the availability of incentives and graduated sanctions, and the identification of youth's distinct risks and needs.

One of the more significant changes as a result of the bill is the designation of "unruly youth" as a new legal category considered "Children in Need of Services", and for those youth to receive the services they may need outside of the juvenile justice system. These youth will no longer be arrested and referred to the juvenile court. This category includes behaviors such as an unruly, ungovernable behavior, truancy, runaway and the use of tobacco under the age of 14. Unruly youth pose little or no risk to public safety but are generally a population of youth (and families) in need of services. The inability for these youth and families to obtain services without an arrest has caused parents and schools to seek an arrest or citation of a child, and thereby increasing the likelihood of future delinquent behaviors. In addition, pushing these low risk youth into the justice system took up law enforcement and court staff's time better spent on youth that truly are a risk to public safety.

Juvenile Justice Reform (Continued)

After a statutorily imposed delay in order to allow for transition planning, Children in Need of Services youth will be referred to North Dakota's human service zones (formerly county social service offices) in lieu of an arrest and court referral. In addition, schools will be required to document sufficient efforts to resolve any "unruly" behaviors through available educational approaches, and to engage the parent, guardian, or legal custodian in such efforts prior to making the Children in Need of Services referral to the human service zones.

Regarding delinquent children, the bill strengthens the dispositional process through the required use of risk and needs assessment tools, mental health and trauma screens, and an investigation and report prior to disposition. Research has shown that to reduce recidivism and increase positive outcomes it is necessary to properly match youth with the correct level of supervision and services based on validated risk and needs assessment tools, and adding the requirement prior to disposition strengthened the importance of this practice as well as made the process more transparent to families, attorneys, and judges. The bill also sets very clear limits on the use of secure detention by requiring the use of a detention screening tool and ensuring detention is reserved for only those youth identified as a risk to public safety.

School-based referrals comprised over 20% of all referrals to North Dakota's juvenile court, primarily for truancy and low-level misdemeanors. These students were disproportionately of color and from Native American populations. Allowing for a delayed implementation for planning, House Bill 1035 limits schools from making court referrals for youth that commit infractions and minor misdemeanor offenses on school grounds during hours of operation unless school-related interventions have been sufficiently attempted and shown to be unsuccessful. Youth with low risk behaviors are more likely to recidivate and less likely to complete high school if they are arrested and referred to court as opposed to being diverted from formal juvenile justice system involvement, and the changes with this bill take that into account.

The right to counsel has been expanded so that all youth have access to representation at key decision-making points by presuming that they are indigent rather than basing access to counsel on their parent's ability to pay. Prior to the bill's passage, a youth alleged to have committed a delinquent act often admitted to an offense without the assistance of counsel, which can have lifelong consequences, including issues gaining employment, entry into military service, access to financial aid, etc. Therefore, having the youth advised of the legal consequences by an attorney is ultimately in their best interest.

In order to support effective implementation, the bill provided for delayed implementation dates of the major changes, allowing time to ensure gaps in service delivery and planning could be addressed. A companion bill was also passed to ensure a plan for cross-system collaboration in order to build the necessary service continuum designed to prevent at-risk youth from justice involvement as well as to safely maintain youth under supervision in the community, close to home.