



# South Dakota's 2015 Juvenile Justice Reform

## Overview

Two years after adopting broad adult criminal justice reforms, South Dakota in 2015 passed comprehensive, bipartisan legislation to overhaul its juvenile justice system. The law, S.B. 73, prioritizes space in residential facilities for youth who are considered a public safety threat and significantly expands local programs that reduce recidivism and more effectively hold young offenders accountable. The new policies are expected to cut in half the number of youth committed to state facilities, producing savings that will be reinvested in those research-based community interventions.

## Highlights

### Problem

South Dakota had the second-highest juvenile commitment rate in the country in 2011.<sup>1</sup> Although the number of committed youth was declining, the reduction lagged the national average and that of neighboring states.<sup>2</sup> Despite high costs—up to \$144,000 per juvenile annually—nearly half of youth released from state facilities returned within three years.

### Findings

An interbranch work group found that most committed youth were confined for misdemeanors, probation violations, and status offenses such as truancy. Burglary was the only felony among the top 10 offenses of commitment. From 2007 to 2013, the average stay in out-of-home placements increased by 27.5 percent, to 15.3 months.

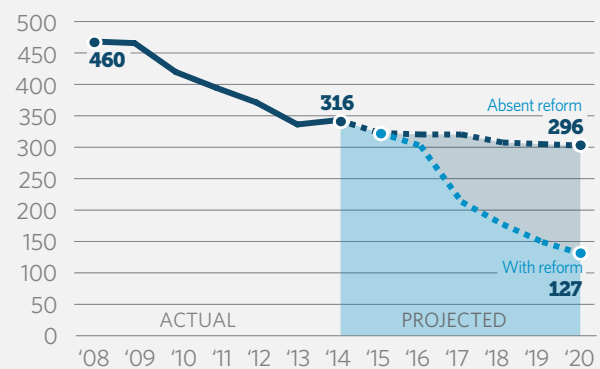
### Reforms

The work group developed recommendations to encourage the use of diversion strategies, expand access to evidence-based interventions, prioritize residential placements for youth who pose a public safety risk, and create an oversight council to monitor the reforms. S.B. 73 codified these recommendations; it passed with strong majorities in both legislative chambers and was signed into law by Governor Dennis Daugaard (R) on March 12, 2015.

### Impact

The law is projected to reduce the committed population by more than 50 percent by 2020 and save more than \$32 million, which the state is expected to use to expand community-based interventions. S.B. 73 is also projected to reduce the probation population by 29 percent by 2020.

Figure 1  
S.B. 73 Is Expected to Accelerate Decline in Youth Commitments  
South Dakota is projected to save \$32 million because of the reforms



Sources: South Dakota Department of Corrections (historical commitments); Pew analysis of state data (projected commitments)

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## Background

In 2012, South Dakota leaders launched a comprehensive review of the state’s criminal sentencing and corrections system with the goal of increasing the public safety return on corrections spending. The result was a set of reforms known as the Public Safety Improvement Act, which became law in 2013. The new policies were projected to reduce prison growth by more than 700 inmates over 10 years; avert \$207 million in prison construction and operating costs; and improve public safety through policies, practices, and programs designed to increase offender accountability and reduce recidivism. Since the act took effect, prison population growth has leveled off, and the number of parolees and probationers returning to prison—once a key driver of that growth—has dropped as more offenders complete their supervision terms without revocation.<sup>3</sup>

Following the successful adult initiative, state leaders turned to the juvenile system. South Dakota was a national outlier, with the second-highest youth commitment rate in the country (385 per 100,000) in 2011 and annual costs of up to \$144,000 per juvenile annually.<sup>4</sup> To assess the system and develop recommendations for reform, Gov. Daugaard, legislative leaders, and Chief Justice David Gilbertson created the Juvenile Justice Reinvestment Initiative Work Group in May 2014. The bipartisan, 17-member group included stakeholders from across state government as well as a prosecutor, a public defender, and representatives of law enforcement and education.

The work group was charged with developing strategies to enhance public safety by improving outcomes for youth in the juvenile justice system; holding young offenders more accountable; and reducing costs by prioritizing residential facilities for juveniles who pose a public safety risk and expanding evidence-based community alternatives. The Pew Charitable Trusts and its partner, the Crime and Justice Institute at Community Resources for Justice, provided technical assistance to the work group by analyzing state data and facilitating the development of policy options. The work group received input from more than 200 stakeholders across the state and submitted its recommendations to the governor, chief justice, and legislative leadership in November 2014.

“ The goal is to have fewer youth coming into our court system while at the same time providing more resources for our court services officers to hold juvenile probationers accountable and address their behaviors in the community, rather than in expensive residential facilities.”

—Chief Justice David Gilbertson, Jan. 14, 2015

## Key findings

The work group’s analysis of juveniles in the custody of the South Dakota Department of Corrections and under the supervision of the state court system yielded a set of findings that were used to develop policy recommendations. The work group found that:

### Pre-court diversion was used inconsistently across the state

Through a statutory review, stakeholder input, and their own knowledge of the system, work group members found that diversion for youth facing formal court processing was not used consistently across the state. Statutes lacked standardized criteria to guide the referral of youth to diversion services, and county practices varied

widely: some counties rarely referred youth to diversion, others relied only on diversion services offered by the courts, and still others routinely referred a wide array of youth to well-established programs.

## Most commitments were for misdemeanor and status offenses or probation violations

The work group found that most juveniles sent to the Department of Corrections were committed for lower-level offenses, such as marijuana possession and petty theft. In 2013, 7 in 10 youth placed in department custody were committed for probation violations, misdemeanors, or Children in Need of Supervision (CHINS) violations such as truancy, running away, or other status offenses that would not be crimes if committed by adults.<sup>5</sup> More than a quarter of commitments resulted from probation violations. Of the top 10 commitment offenses, nine were misdemeanors or probation or CHINS violations. (See Figure 2.)

Figure 2

### Low-Level Offenses Dominated South Dakota's 2013 Juvenile Commitments

Burglary was the only felony among top 10 offense types

Offense type	Number of commitments	Share of commitments
Probation violation	74	27%
Marijuana possession, less than 2 ounces	24	9%
Simple assault (first or second offense)	23	8%
Ingesting an illegal substance	15	5%
CHINS (status offense)	12	4%
Petty theft	11	4%
Third-degree burglary	10	4%
Ingesting an illegal nonalcoholic substance	7	3%
Criminal entry of a motor vehicle	6	2%
Second-degree property damage	6	2%

Misdemeanors made up the largest share of commitments



Source: Pew analysis of data from South Dakota Department of Corrections

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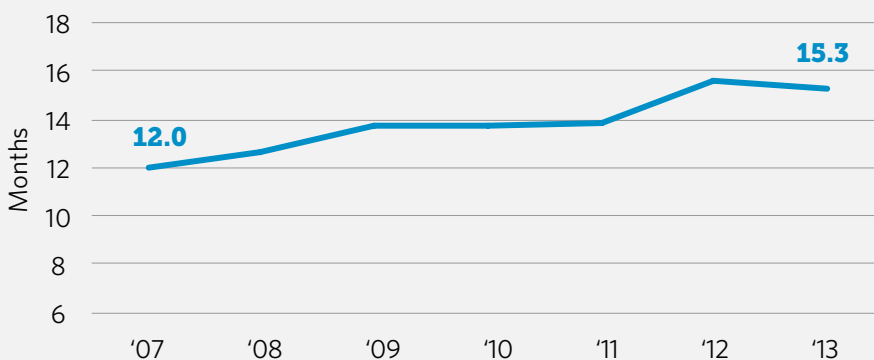
## Fewer youth were committed to the Department of Corrections, but lengths of stay increased

Two factors determine the size of the committed youth population: the number of juveniles placed in state facilities and the length of time they remain in custody. The work group found that even as new commitments declined 20 percent from 2004 to 2013, youth were staying in facilities longer. Despite research indicating that increased length of stay does not reduce recidivism,<sup>6</sup> those released by the department in 2013 had been in out-of-home placement for an average of 15.3 months, up from 12 months in 2007, an increase of 27.5 percent. (See Figure 3.)

Figure 3

### More Time Out of Home

Length of commitment increased 27.5% between 2007 and 2013



Source: Pew analysis of data from South Dakota Department of Corrections  
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## Lower-risk youth made up a growing share of probation admissions

Admissions to juvenile probation in South Dakota fluctuated from 2004 to 2013, but overall they declined 24 percent during that period. At the same time, the makeup of the population shifted toward lower-risk youth and those who had committed less serious offenses. From 2004 to 2013, the proportion of admissions to probation for misdemeanor offenses increased from 52 to 60 percent.

## Length of probation supervision increased

Despite the trend toward lower-level offenses, both the initial terms of probation given to youth at the time of disposition and the actual time spent under probation supervision increased, the work group found. The average term of probation reached a high of 22.2 months in 2013, with wide variation across circuits.

## Few evidence-based interventions for juvenile and status offenders were available in the community

The work group found that South Dakota's juvenile justice system lacked programs shown to reduce delinquency, particularly in rural areas. The state also did not have adequate systems in place to ensure that youth were placed

in interventions that matched their risk factors. Although some important tools, such as validated risk and needs assessments, did exist, improved oversight was needed to ensure that staff members were properly trained to use them.

## Legislative package: Senate Bill 73

Based on its findings, the work group developed a set of recommendations to help South Dakota get better results from its juvenile justice system at less cost to taxpayers. S.B. 73 reflects those recommendations. The legislation passed the Senate unanimously and cleared the House on a 60-7 vote; Gov. Dugaard signed it into law March 12, 2015. The law advances policy changes in four priority areas, consistent with the goals and recommendations of the work group:

### Prevent deeper involvement in the juvenile justice system

**Make diversion the presumptive (default) sanction for many lower-level offenses.** New criteria compel diversion from formal court processing for youth charged with nonviolent misdemeanors or CHINS violations who have no previous adjudications and no diversions over the past year. For good cause, the state's attorney may file a petition explaining why diversion is not appropriate and seeking to bypass it. The youth offender may challenge this petition in court. If the court finds no good cause to bypass, it has the ability to divert the youth over the prosecutor's objection.

**Provide fiscal incentives to counties that expand the use of diversion.** S.B. 73 requires the Department of Corrections to award funding to counties based on the number of youth who successfully complete diversion. To be eligible for the funds, a county must submit an application that includes the type of court-approved diversion to which each youth is referred, the name and location of the provider, and documentation that the youth completed the program. The incentive is set at \$250 per juvenile unless the total requests exceed the annual budget. In that case, the incentive will be prorated.

**Create a citation process for lower-level offenses.** A new procedure for certain delinquency and status offenses addresses low-level violations, such as petty theft, with citations—similar to those given for adult municipal violations such as traffic tickets—while maintaining the protections of confidentiality offered by the juvenile system.

### Prioritize space in residential facilities for youth who pose a risk to public safety

**Create a presumptive community-based sanction for juvenile offenders.** The law allows commitment of youth to the Department of Corrections under the following conditions: when no viable alternatives are available; when commitment is the least restrictive option; and when the offender is adjudicated delinquent for a crime that is transferable to adult court, a violent crime, a felony sex offense, a felony sexual registry offense, or burglary in the second degree, or the offender is determined by a court to present a significant risk of physical harm to another person.

**Establish community response teams.** The law establishes specialized teams within the court system to help judges identify appropriate community-based alternatives to commitment for at-risk youth. Judges have the flexibility to tailor these teams to best fit their jurisdictions, but they must include representatives from Court Services, the Departments of Corrections, and Social Services and may include educators and representatives of the public. To prevent delays in court processing, the teams are expected to return a recommendation within seven days of referral.

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### Broad Support for S.B. 73:

- Governor Dennis Daugaard
- Chief Justice David Gilbertson
- Attorney General Marty Jackley
- South Dakota State’s Attorneys Association
- South Dakota Sheriffs’ Association
- South Dakota Association of County Commissioners
- South Dakota Association of Criminal Defense Lawyers
- South Dakota Network Against Family Violence and Sexual Assault
- South Dakota Association of Youth Care Providers
- South Dakota Chamber of Commerce and Industry
- South Dakota Voices for Children
- South Dakota Juvenile Justice Reinvestment Initiative Work Group
- Family Heritage Alliance Action
- South Dakota Teen Court Association
- South Dakota Family Policy Council
- South Dakota Council of Mental Health Centers
- South Dakota Council of Substance Abuse Directors

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**Institute performance-based contracting.** Residential-treatment and group-care providers will receive increased payments when treatment goals, such as improvement on a specific behavior and completion of a substance abuse curriculum, are met within established time frames that allow youth to be released from placement. For group care, for example, the provider will receive the maximum performance-based payment when treatment goals are substantially accomplished within three months and youth are ready to be discharged. A performance-based payment in a lesser amount is provided if that is accomplished in four months.

**Mandate new length-of-stay requirements.** The law requires the Department of Corrections to plan to release juveniles to aftercare—the juvenile justice system’s equivalent of parole—within three months of admission. A youth in aftercare may be supervised while residing at home, in foster care, or in an independent living program. As with performance-based contracting, the actual length of time a youth spends in a facility depends on progress made on the individual case plan. The new length-of-stay requirement is consistent with research showing that longer periods of confinement do not reduce recidivism.<sup>7</sup>

**Require courts to justify extended detention of juveniles.** If judges choose to detain children for more than 14 days over the course of any 30-day period, they must justify in writing why it is necessary as part of a dispositional decree.

## Improve outcomes for youth supervised in the community

**Invest in community-based programs across the state.** The fiscal year 2016 budget includes an upfront investment of nearly \$3 million to provide evidence-based treatment in the community, and the state plans to appropriate twice that amount from the projected facility savings in subsequent fiscal years. The Department of Social Services, in coordination with the Department of Corrections and the Unified Judicial System, is charged with identifying programs based on the risk factors of the juveniles in their systems. Together, the departments and the courts are required to establish a referral process that incorporates risk and needs assessments and

supplemental substance abuse and mental health screening instruments. Additionally, the Department of Social Services must develop a quality assurance infrastructure to ensure that treatment providers are trained properly and deliver programs effectively. Treatment data must be collected and reported to the Oversight Council, courts, and Department of Corrections.

**Establish new probation guidelines.** The law creates a presumptive four-month regular probation term for most youth and an eight-month term for those on intensive supervised probation (a program for high-risk, high-need juveniles). Courts may not extend the regular term unless youth are enrolled in intervention programs that last longer than four months. The law also prevents youth from being placed in out-of-home facilities solely for technical probation violations.

**Develop a graduated response matrix.** Juvenile probationers will be held accountable in the community through swift, certain, and proportionate responses to violations, combined with positive reinforcement for constructive behavior.

**Evaluate strategies to improve outcomes for Native American youth.** The law requires the Department of Tribal Relations, in coordination with other state agencies and stakeholders, to make policy recommendations to improve outcomes for Native American juvenile offenders

## Ensure the quality and sustainability of reforms

**Establish an oversight council.** The law establishes an official body to monitor and evaluate the implementation of the reforms. The bipartisan, interbranch, 19-member council will meet within 90 days of appointment and semiannually for five years thereafter. In addition to reviewing the performance of the agencies and the court system with respect to the law, the council will produce an annual report for the governor, Legislature, chief justice, and public.

**Provide funding to counties to offset increased detention costs.** The law is designed to reduce detention, but it also includes a safeguard for counties concerned about possible increases in local use of detention resulting from new restrictions on commitment to state facilities. In the event that counties face higher costs for detaining youth locally, they may take advantage of a new \$500,000 fund managed by the Department of Corrections to offset those expenses.

**Require the Department of Corrections to improve staff training.** The law requires department staff to be appropriately trained to effectively participate in regular meetings that review whether juveniles are progressing toward treatment goals, with the aim of releasing youth as early as possible.



I am grateful that the state Senate and House voted in support of this groundbreaking legislation. Senate Bill 73 represents an important step forward for juvenile justice in South Dakota. The passage of this bill will lead to less crime, lower costs for taxpayers, and better outcomes for South Dakota's youth and families."

—Gov. Dennis Daugaard  
(R), March 12, 2015

## South Dakota Juvenile Justice Reinvestment Initiative Work Group

**Jim D. Seward**, general counsel to the governor, chair

**Nancy Allard**, director of trial court services, Unified Judicial System

**Representative Julie Bartling** (D-District 21)

**Kristi Bunkers**, director of juvenile community corrections, Department of Corrections

**Brian Gosch**, House majority leader (R-District 32)

**Doug Herrmann**, director of juvenile services, Department of Corrections

**Steven Jensen**, presiding judge, First Judicial Circuit

**Mike Leidholt**, Hughes County sheriff

**Larry Long**, presiding judge, Second Judicial Circuit

**Scott Myren**, presiding judge, Fifth Judicial Circuit

**Terry Nebelsick**, superintendent, Huron School District

**Angel Runnels**, Minnehaha County public defender

**Senator Alan Solano** (R-District 32)

**Senator Billie Sutton** (D-District 21)

**Mark Vargo**, Pennington County state's attorney

**Bob Wilcox**, executive director, South Dakota Association of County Commissioners

**Tiffany Wolfgang**, director, Division of Behavioral Health, Department of Social Services

## Endnotes

- 1 South Dakota Public Safety Improvement Act Oversight Council, *2014 Annual Report*, <http://psia.sd.gov/PDFs/2014AnnualReportwithAppendices.pdf>.
- 2 U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Statistical Briefing Book: Juvenile Residential Placement Rates by State, 2011*, <http://www.ojjdp.gov/ojstatbb/corrections/qa08601.asp?qaDate=2011>.
- 3 Sixty-two of 74 probation violators (84 percent) committed to the Department of Corrections in 2013 were originally placed on probation for a CHINS violation or nonsex misdemeanor adjudication, accounting for 22 percent of new commitments that year.
- 4 Paula Smith, Claire Goggin, and Paul Gendreau, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences*, Public Safety Canada (January 2002), <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ffcts-prsn-sntnscs/index-eng.aspx>.
- 5 Thomas A. Loughran et al., "Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders," *Criminology* 47, no. 3 (2009), 699-740, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2801446/>.

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