



Justice Reinvestment Working Group

Second Meeting

August 26, 2014

Council of State Governments Justice Center

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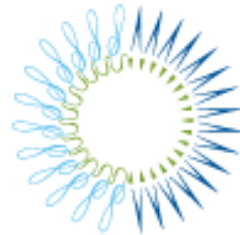
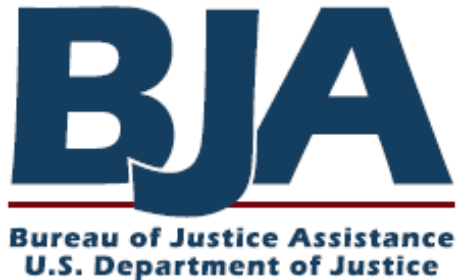
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Justice Reinvestment

*a data-driven approach to reduce corrections spending
and reinvest savings in strategies that can
decrease recidivism and increase public safety*



Council of State Governments Justice Center

- National nonprofit, nonpartisan membership association of state government officials
- Engages members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence



Two phases of justice reinvestment

Phase I

Analyze Data and Develop Policy Options

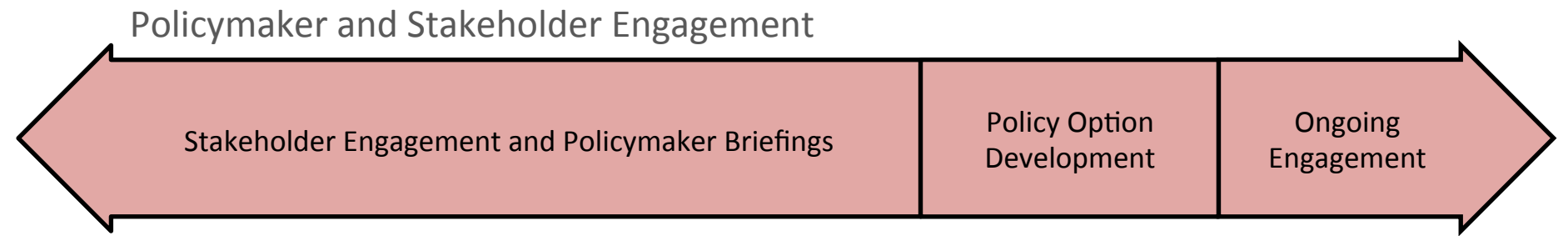
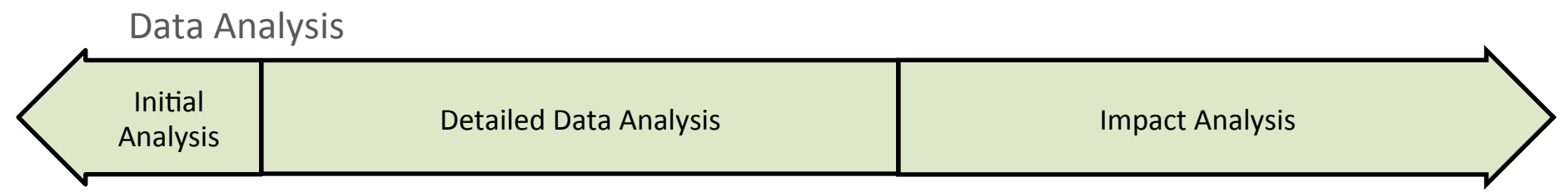
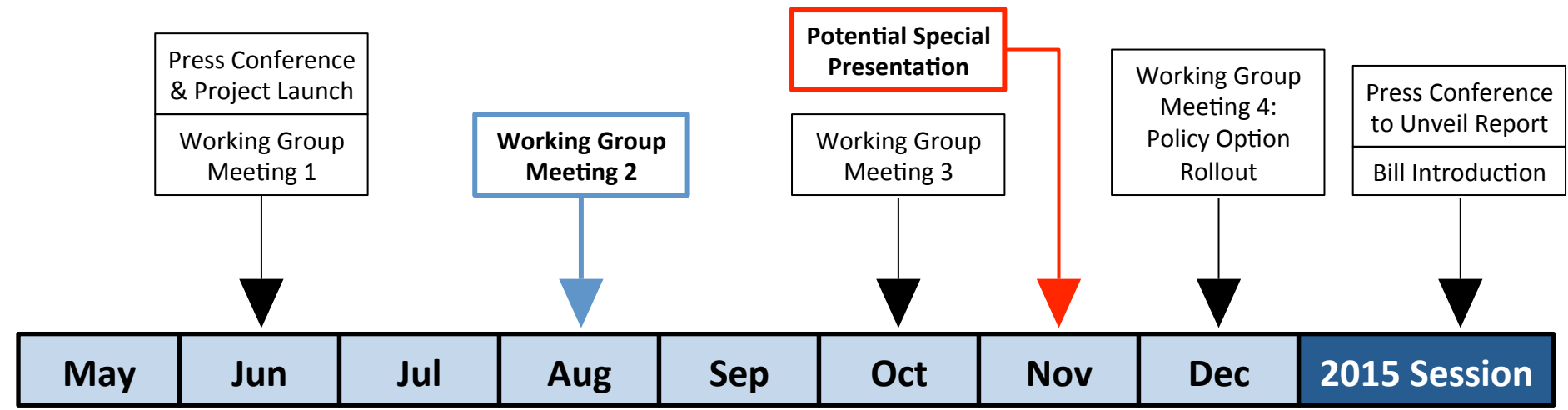
- Analyze data
 - Look at crime/arrests, courts, corrections, and supervision trends
- Solicit input from stakeholders
- Assess behavioral health treatment capacity
- Develop policy options and estimate cost savings

Phase 2

Implement New Policies

- Identify assistance needed to implement policies effectively
- Deploy targeted reinvestment strategies to increase public safety
- Track the impact of enacted policies/programs
- Monitor recidivism rates and other key measures

Justice reinvestment project timeline



Data requests to state agencies have largely been fulfilled

Data Type		Source
<ul style="list-style-type: none"> - Crime and Arrests - Jail 	<ul style="list-style-type: none"> ✓ ✓ 	Crime Commission
<ul style="list-style-type: none"> - Sentencing 	<ul style="list-style-type: none"> ✓ 	Administrative Office of the Courts
<ul style="list-style-type: none"> - Probation Supervision - Problem-Solving Courts - Community-Based Programs 	<ul style="list-style-type: none"> ✓ ✓ P 	Office of Probation Administration
<ul style="list-style-type: none"> - Prison - Parole Decision-Making - Parole Supervision 	<ul style="list-style-type: none"> ✓ ✓ ✓ 	Department of Correctional Services
<p><u>Other</u></p> <ul style="list-style-type: none"> - Population Data - Behavioral Health Data - Criminal History Information 	<ul style="list-style-type: none"> ✓ ✓ P 	<ul style="list-style-type: none"> Census/State Data Center Cross-System Sources State Police

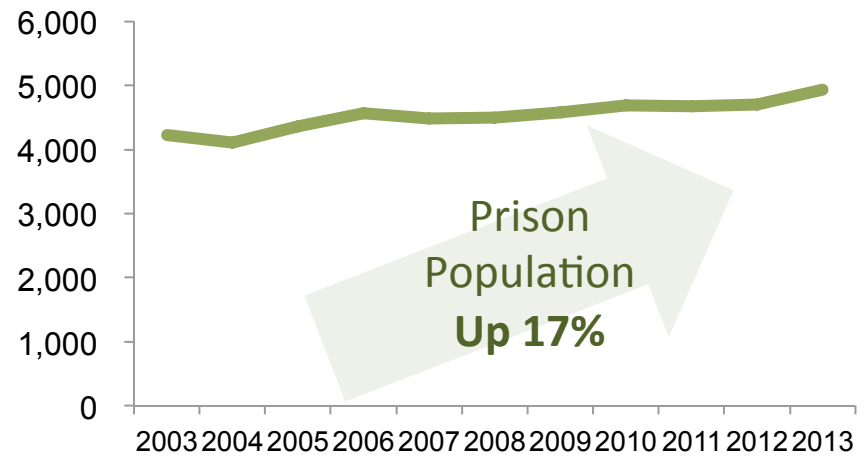
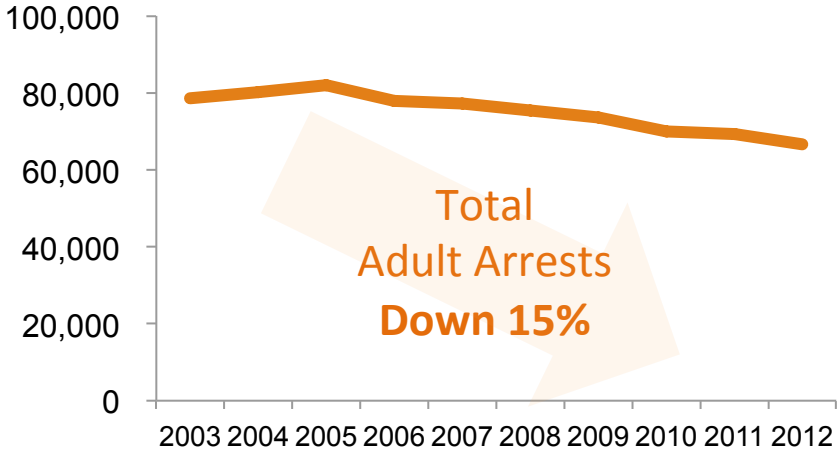
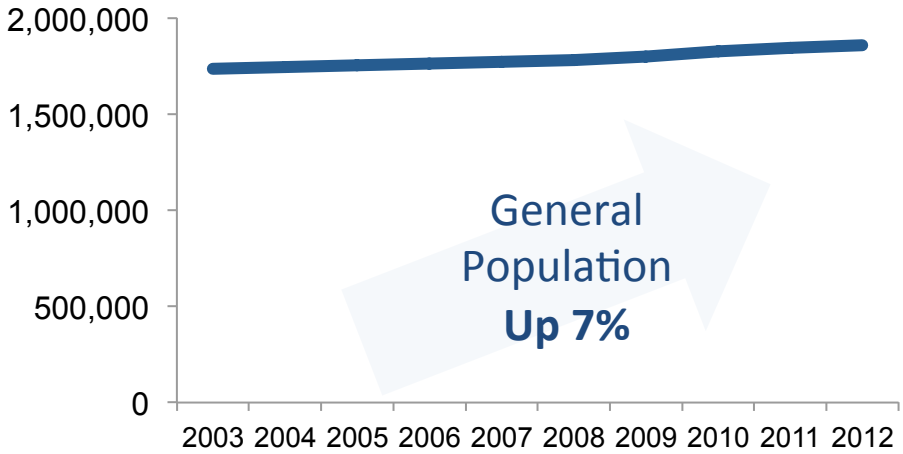
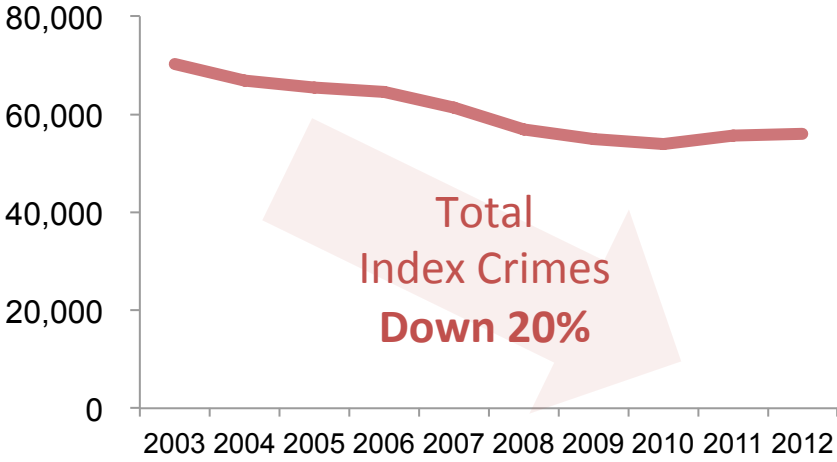
Update on criminal justice system stakeholder engagement since June working group meeting

County Officials	➔	Workshop with ~30 county commissioners, county attorneys, public defenders, sheriffs, and mental health professionals
Reentry Alliance	➔	Discussion with reentry service providers
Probation Officers and Parole Officers	➔	Three days of focus groups with probation officers and PSI writers, and with parole officers
Law Enforcement	➔	Visit to the Omaha Police Department to meet with Crime Analysis Unit and a police officer ride-along
District Judges	➔	Lancaster and Douglas County District Court Judges lunch meeting, and survey to be distributed in coming weeks

Upcoming Meetings

- Discussion organized by Nebraska Coalition for Victims of Crime
- Visit to Tecumseh prison
- Conference presentations to county attorneys, defense attorneys, sheriffs, and district judges

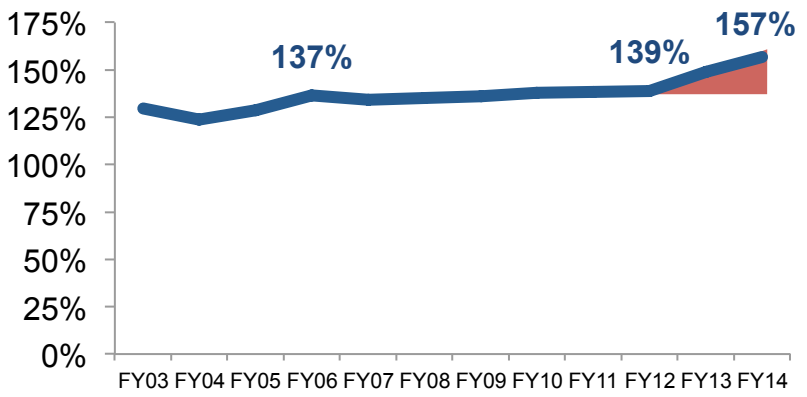
Recap of Nebraska trends reported at June meeting



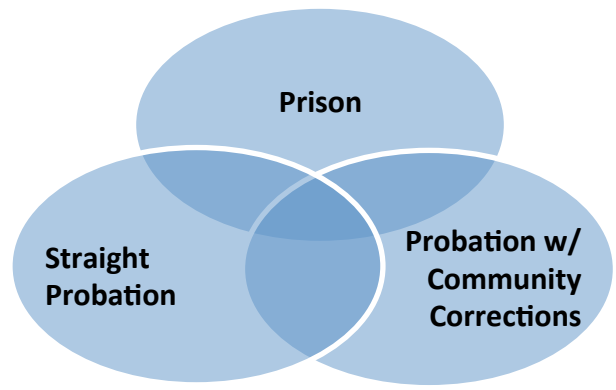
Source: FBI UCR Online Data Tool, Nebraska Crime Commission Online Data Tool, U.S. Bureau of Census, NDCS snapshot data

Three questions posed at June's presentation that will be explored in August and October working group meetings

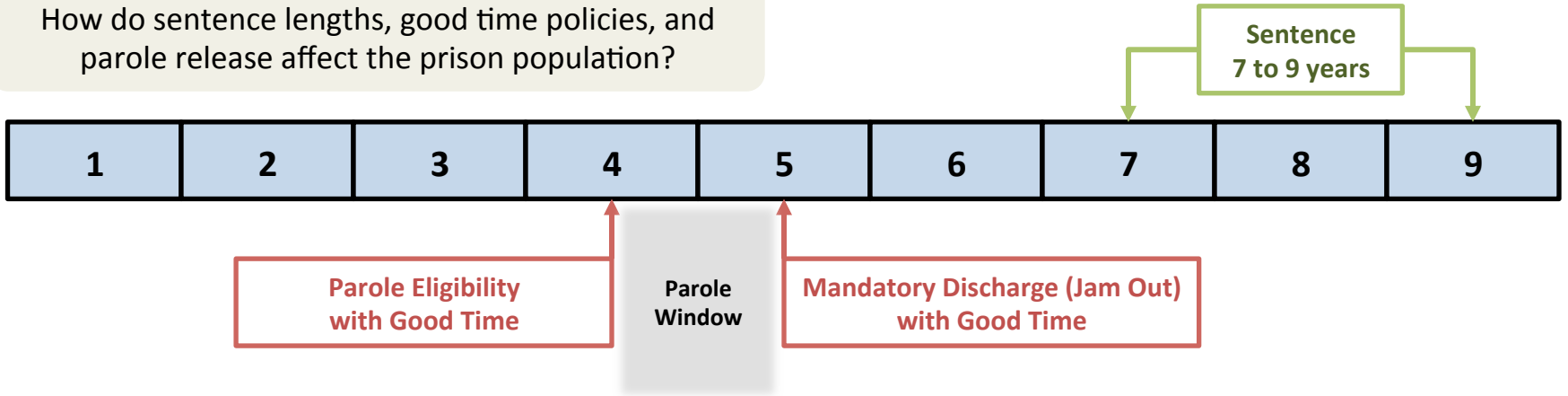
What are underlying drivers in the recent surge in prison growth?



How are probation and community corrections diverting from prison and reducing recidivism?



How do sentence lengths, good time policies, and parole release affect the prison population?



Source: NDCS release data

Presentation overview



**Contributors to Nebraska
Prison Crowding**

Felony Sentencing Distribution

**Effective Strategies to
Reduce Offender Risk**

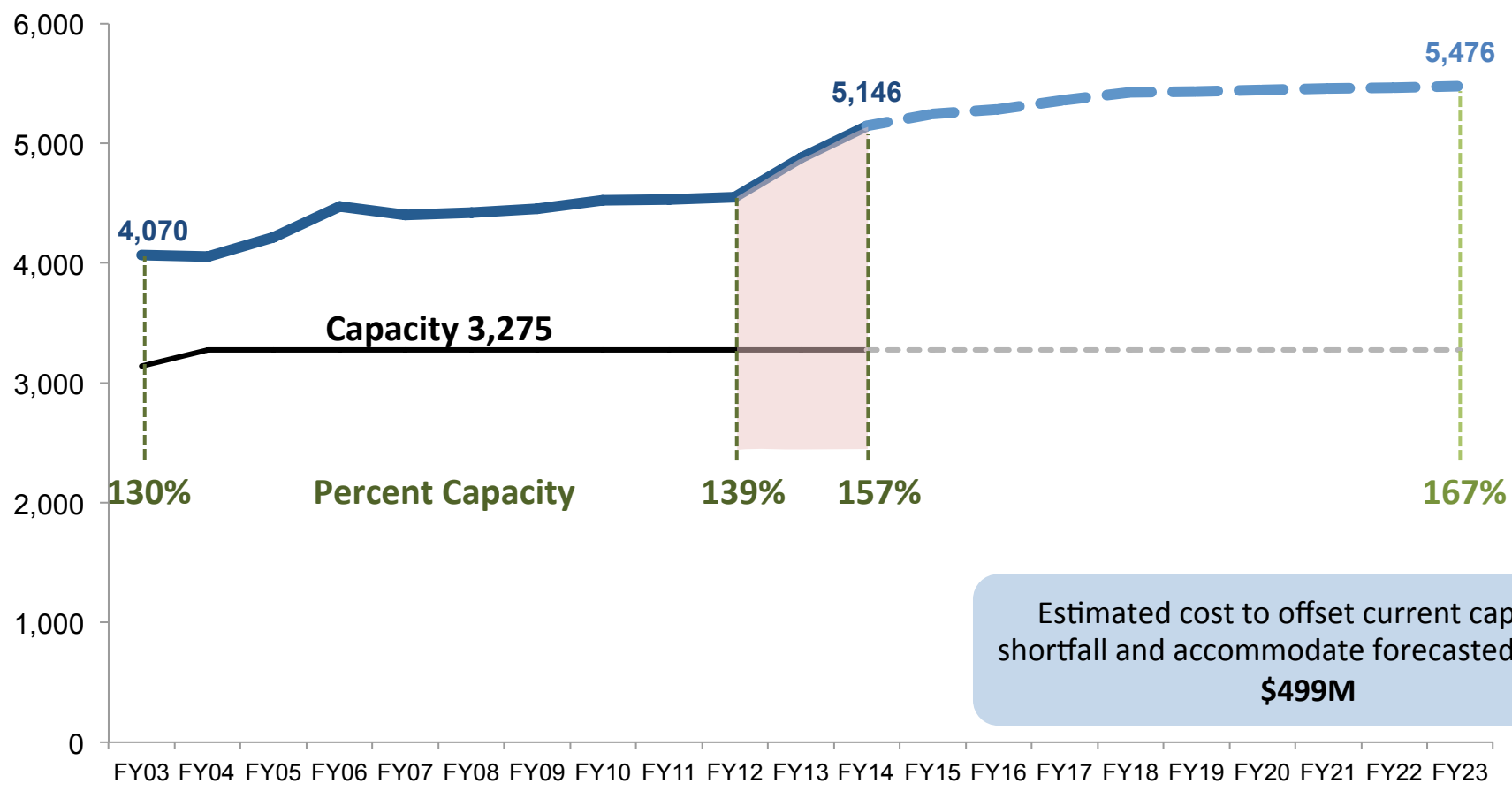
In Nebraska, felony offenses are divided into levels with sentence length ranges, from which courts determine prison term

Felony Level	1, 1A, 1B, 1C, 1D	2	3	3A	4
Sentence Range	1 – Death 1A – Life 1B – 20 years to life 1C – 5 mand. min. to 50 years 1D – 3 mand. min. to 50 years	1 to 50 years	1 to 20 years	Up to 5 years	Up to 5 years
Common Offenses	<ul style="list-style-type: none"> • Murder • Kidnapping • Sexual assault • Use of a firearm to commit a felony • Possession of a firearm by prohibited person • Possession with intent to distribute 	<ul style="list-style-type: none"> • Attempt/Aid Class 1 felony • Hazardous drug delivery • Robbery • Sexual assault 1st degree • Assault 1st degree 	<ul style="list-style-type: none"> • Controlled substance delivery • Burglary • Attempt/Aid Class 2 felony • Theft over \$1,500 • Assault 2nd degree • Forgery 1st degree • Repeat DUI offenders • Possession of a deadly weapon by prohibited person 	<ul style="list-style-type: none"> • Repeat DUI offenders • Child abuse • Assault on officer 3rd degree • Sexual assault on child 3rd degree 	<ul style="list-style-type: none"> • Possession of controlled substance • Attempt/Aid Class 3 or 3A felony • Drive while suspended • Theft \$500-\$1,500 • Forgery 2nd degree • Terroristic threats • Sex offender registry violations • Operate motor vehicle to avoid arrest

Sentence lengths determine whether the sentence is served in jail (if less than 1 year) or prison (one year or more)

At the June presentation, we Indicated we would explore contributors to prison population increase after 2012

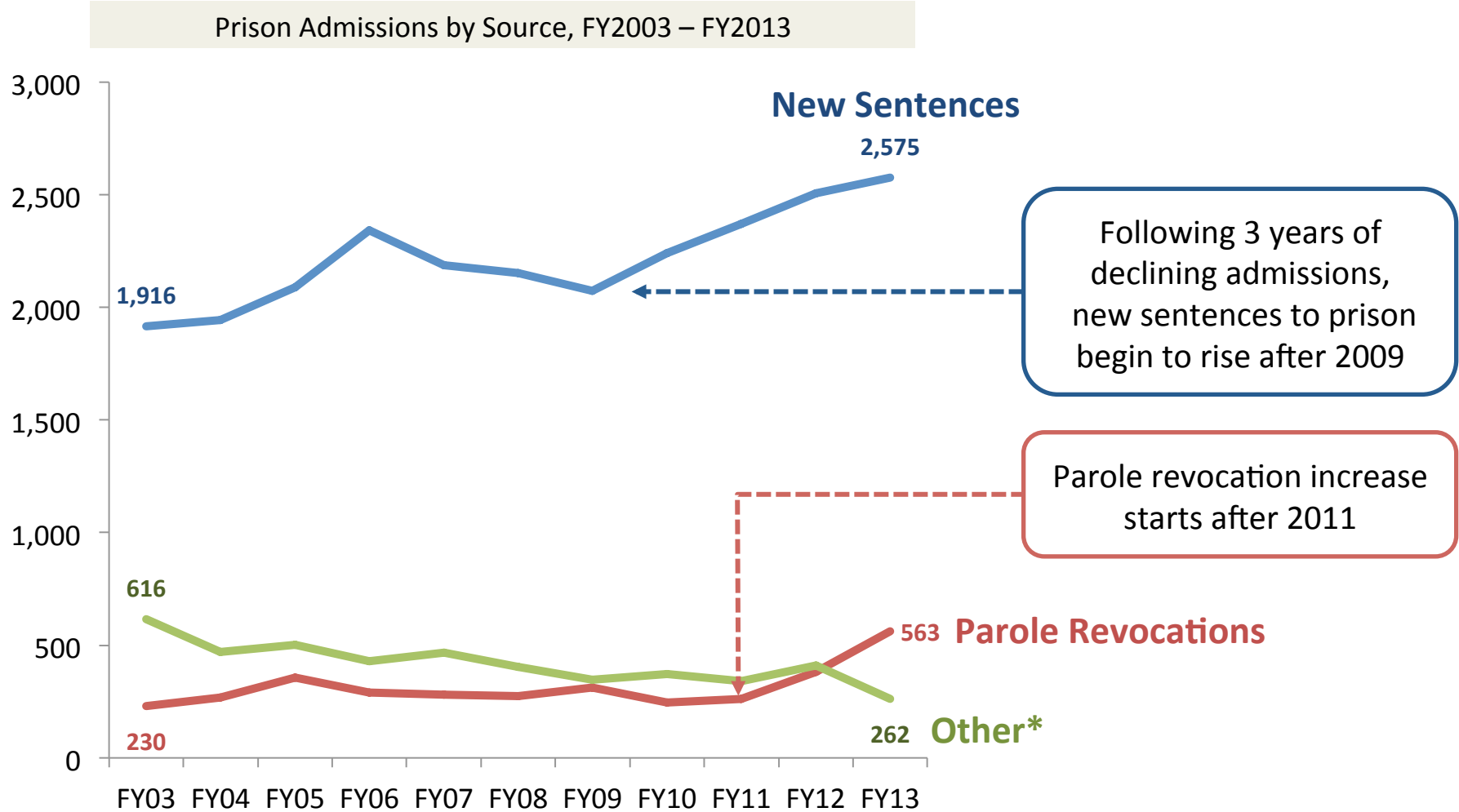
Nebraska Prison Snapshot Populations and Projected Growth, FY2003 – FY2023



Estimated cost to offset current capacity shortfall and accommodate forecasted growth **\$499M**

Source: NDCS Annual Reports; JFA Institute, NDCS Ten-Year Prison Population Projections, FY2012-2022
 Estimated operating and construction costs from CSG Nebraska Working Group Presentation 1, June, 2014

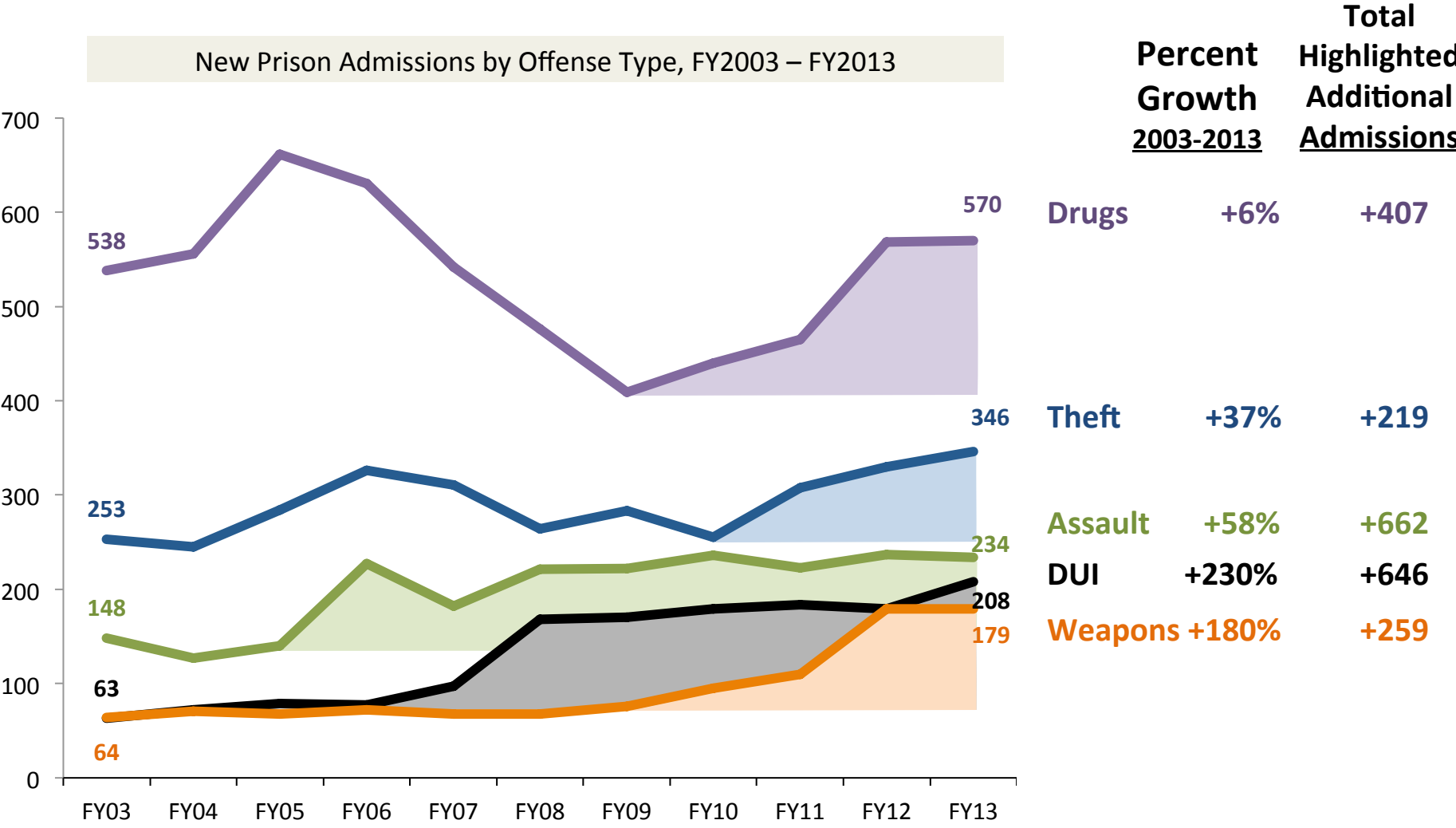
Since 2009, new sentence and parole violator admissions to prison together climbed 30 percent



*Other includes Evaluator, Safekeeper, and Work Ethic Camp admissions

Source: NDCS admission data

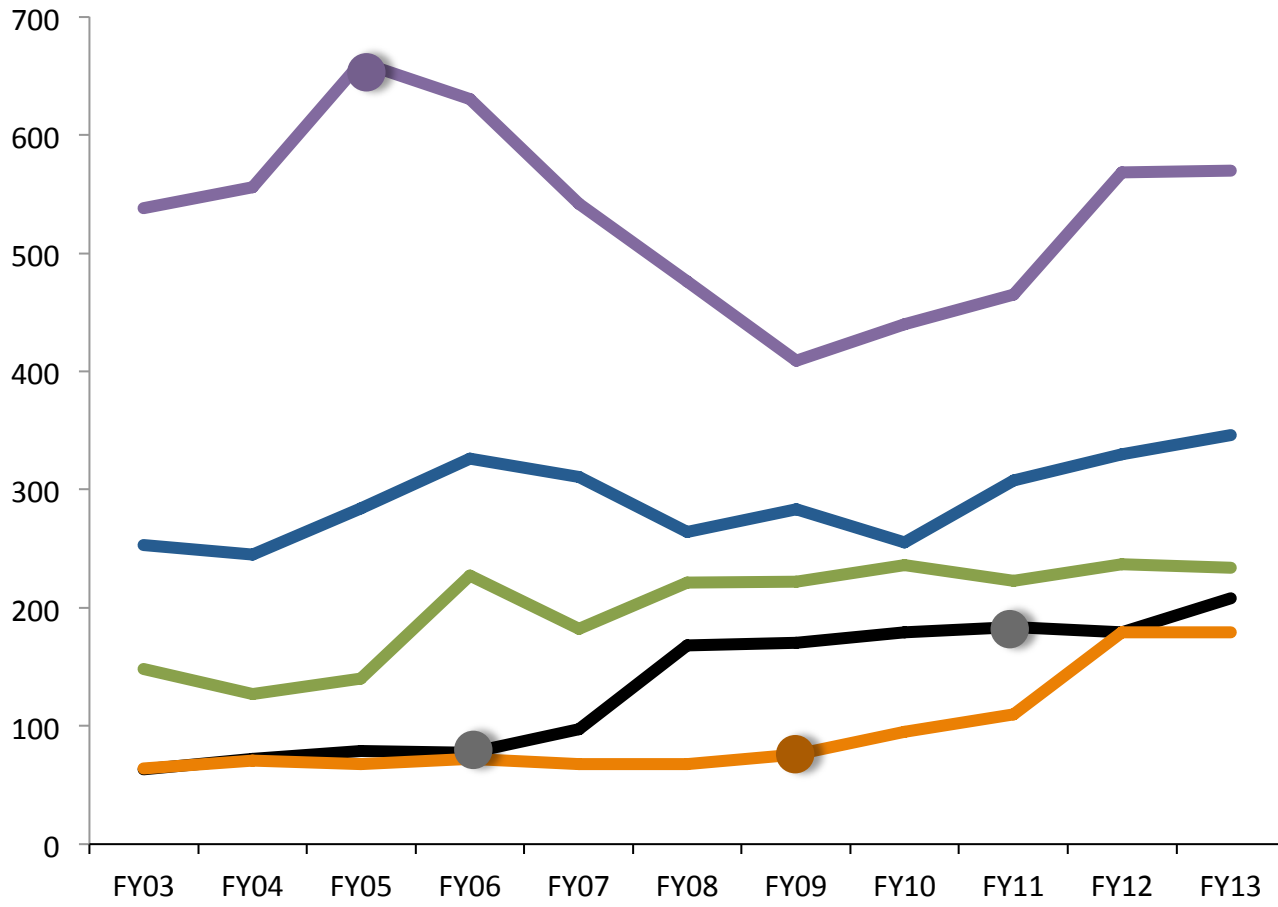
Certain offenses contributed disproportionately to the increase among new prison admissions



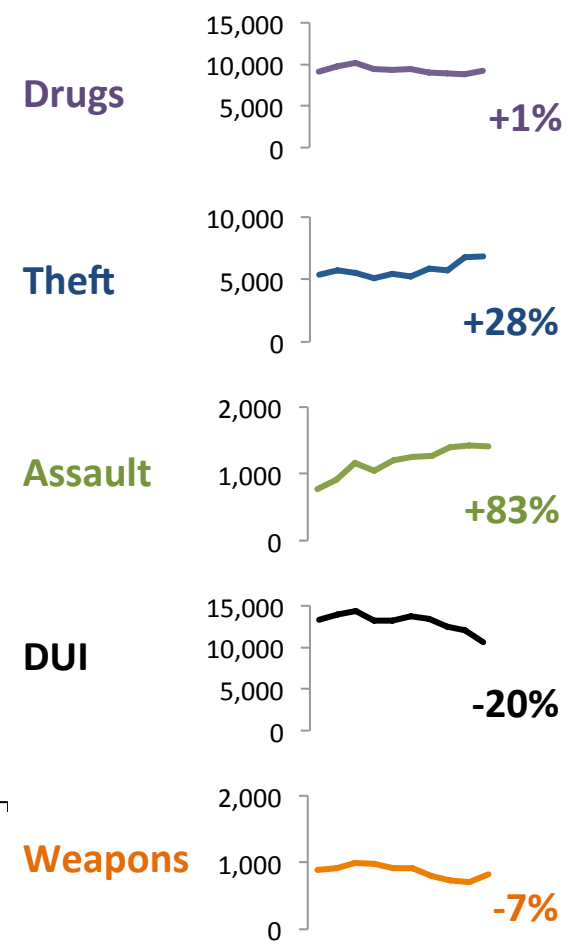
Source: NDCS admission data

Apparent increase in admissions for certain offenses following penalty enhancements

New Prison Admissions by Offense Type, FY2003 – FY2013 and Total Adult Arrests by Offense Type, 2003 – 2012



Adult Arrest Trend 2003-2012



Source: NDCS admission data, Nebraska Crime Commission Online Data Tool

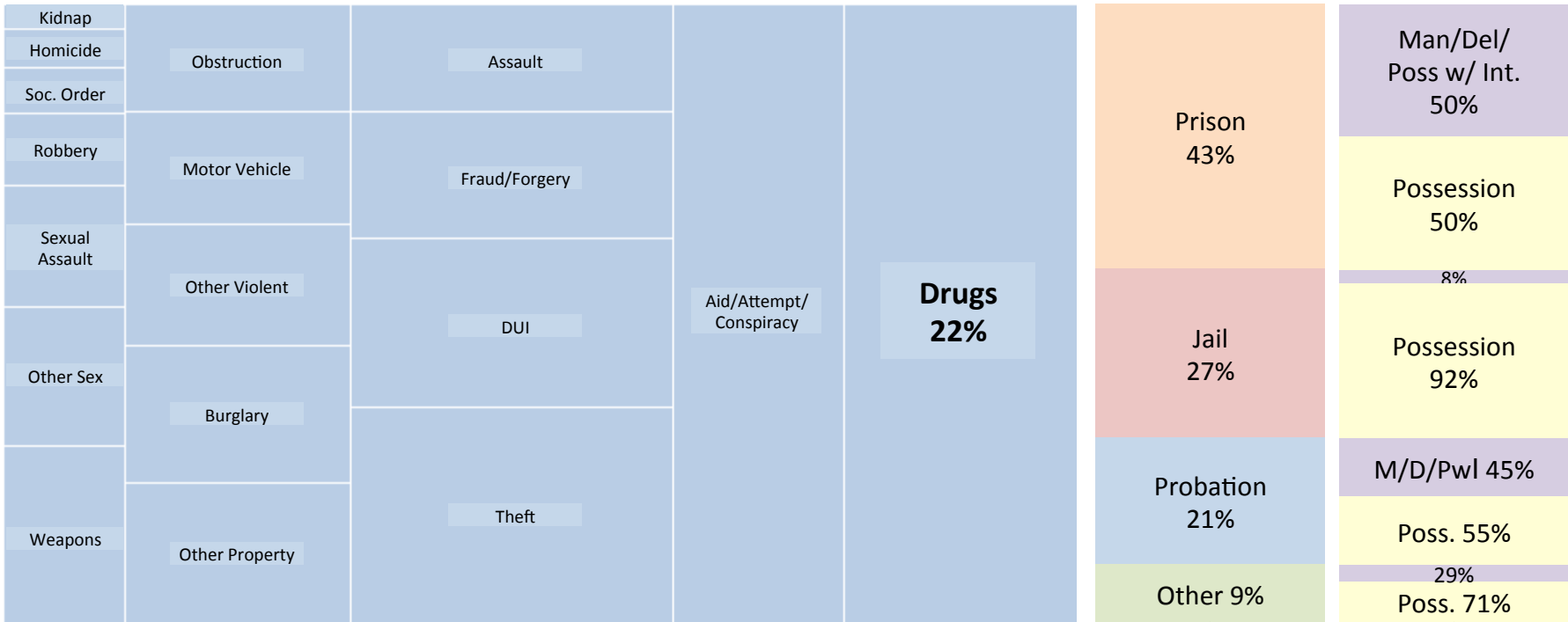
Examples of recent criminal penalty enhancements

Drugs	
2005 (LB 117)	<ul style="list-style-type: none"> Added meth to “extremely hazardous substances” list, making possession, etc., of less than 10 grams a Class II rather than Class III felony. Adjusted felony amounts and levels for meth and heroin possession. Upgraded knowingly selling ephedrine to someone for making meth from Class III misdemeanor to Class IV felony.
DUI	
2006 (LB 925)	<ul style="list-style-type: none"> Increased penalty for motor vehicle homicide under the influence from Class IIIA to Class III felony. Second offenses raised to Class II felony. Increased penalty for most varieties of DUI—some up to Class II felonies.
2011 (LB 675)	<ul style="list-style-type: none"> Increased many repeat DUI penalties.

Weapons	
2009 (LB 63)	<ul style="list-style-type: none"> Stronger penalties for transferring a firearm to a juvenile, possession of a weapon on school grounds, use of a deadly weapon, and possession of deadly weapon during commission of felony. Possession of stolen or defaced firearm upgraded from Class IV to Class III felony. Discharging a weapon from or after exiting a motor vehicle made Class IC Felony. Adds felons and those convicted of misdemeanor domestic violence in the last seven years as people prohibited from possessing deadly weapons.

Possession accounts for at least half of all felony drug sentences

Offense Type Among All Felony Sentences, FY2012 – FY2013



Drug crime is the most common felony offense in District Courts

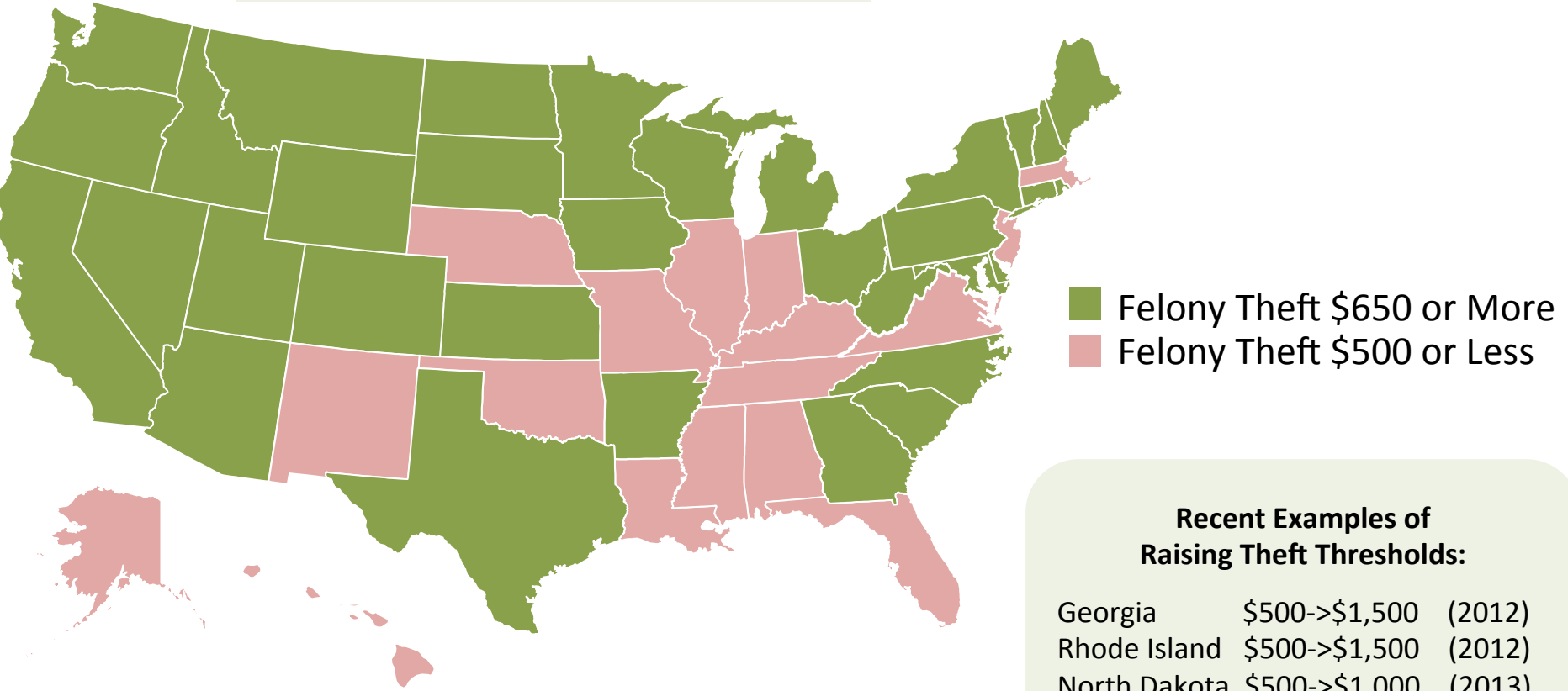
70% of drug crimes are sentenced to prison or jail

52% of all drug crimes are possession cases

Source: JUSTICE sentencing data

Nebraska is one of 17 states with a felony theft threshold of \$500 or less

Felony Theft Thresholds by State, 2014

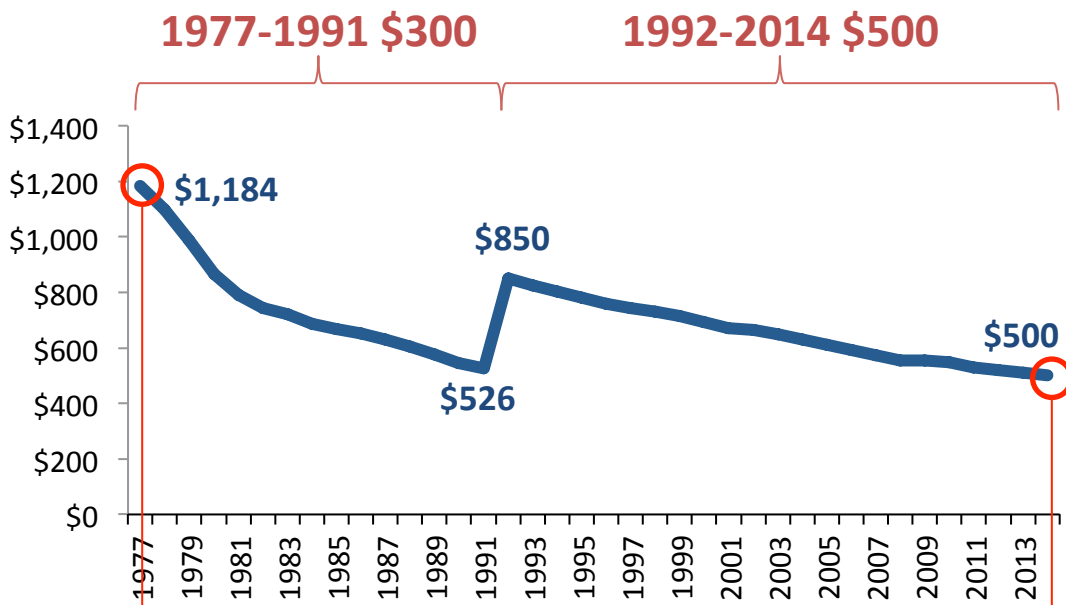


Recent Examples of Raising Theft Thresholds:

Georgia	\$500->\$1,500	(2012)
Rhode Island	\$500->\$1,500	(2012)
North Dakota	\$500->\$1,000	(2013)
Arkansas	\$500->\$1,000	(2011)

Recalibrating felony theft threshold amounts could save Nebraska millions of dollars per year

Value of Nebraska's Historical Felony Theft Threshold in 2014 Dollars, 1977 – 2014



In 1977, felony theft was like stealing a 21" iMac
 In 2014, it's like stealing the lowest end iPhone



Number of sentences to prison for theft in the \$500 to \$1,500 range
175 per year

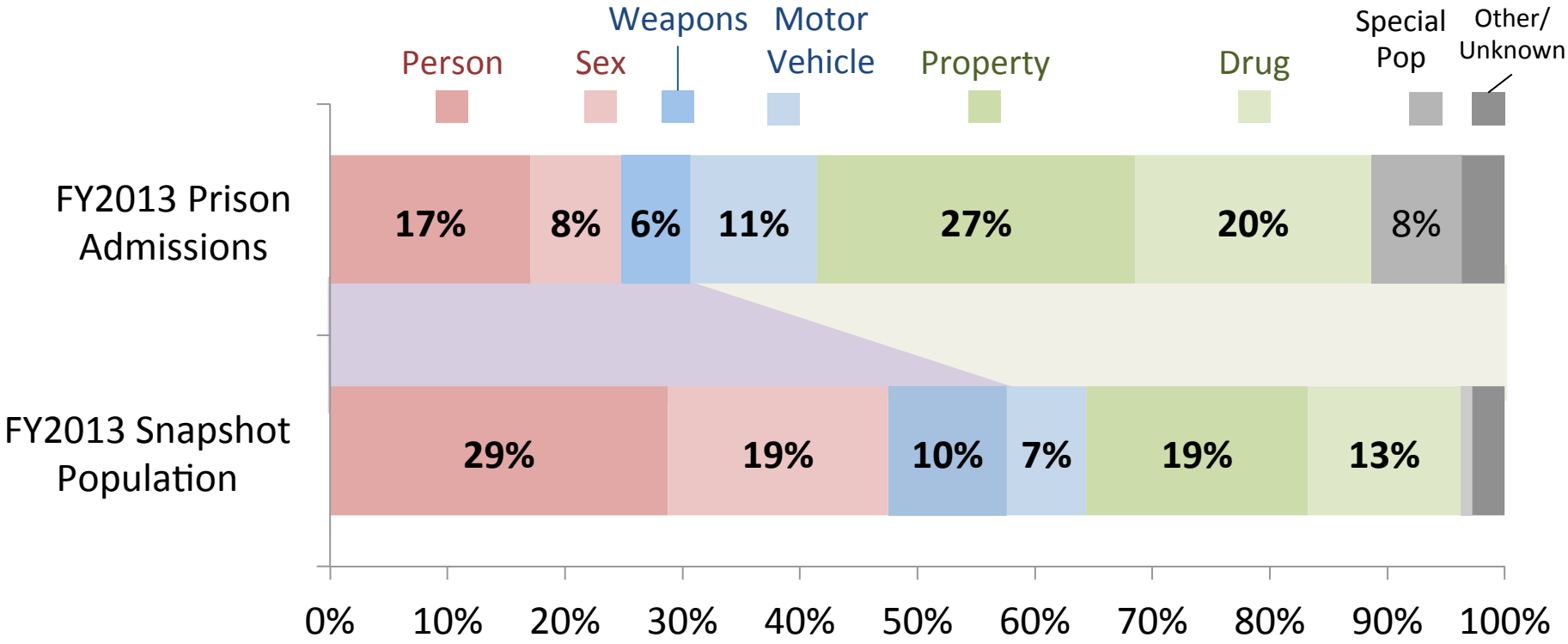
Average minimum sentence length
1.5 years

Cost to incarcerate a one-year cohort of \$500-\$1,500 theft offenders
\$8.5M

Source: JUSTICE sentencing data

Despite fewer admissions, more serious offenses accumulate in the snapshot population

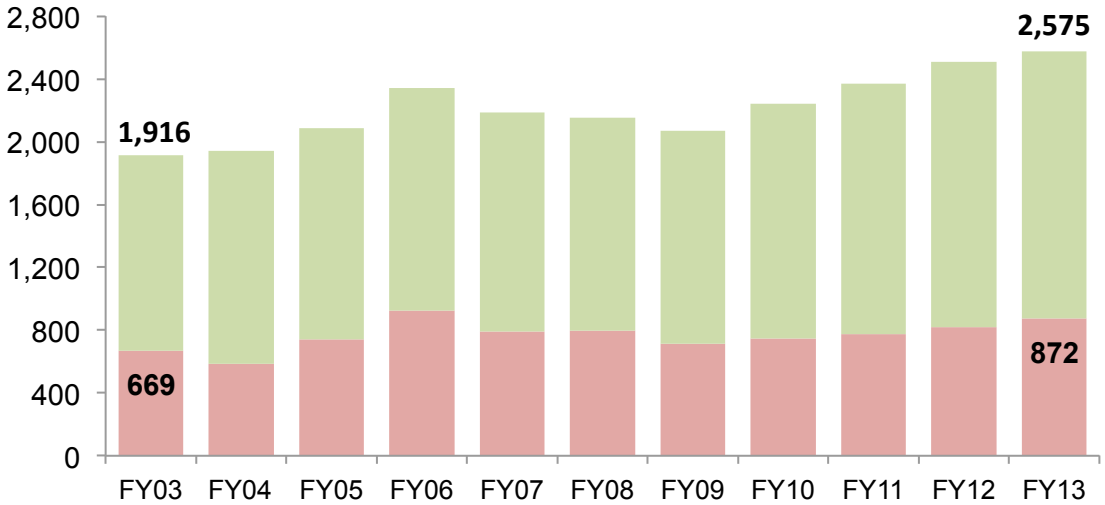
Prison Admissions and Snapshot Population, FY2013



Source: NDCS admission and snapshot data

“Short Max” sentences represent about one third of all new admissions and consume considerable resources

New Admissions to Prison, FY2003 – FY2013



Non-Short Max Admissions

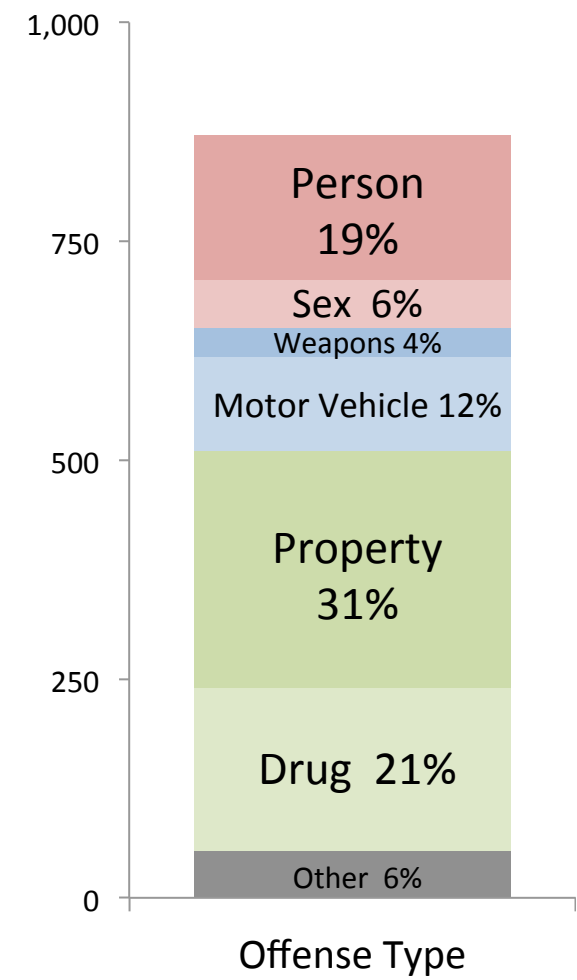
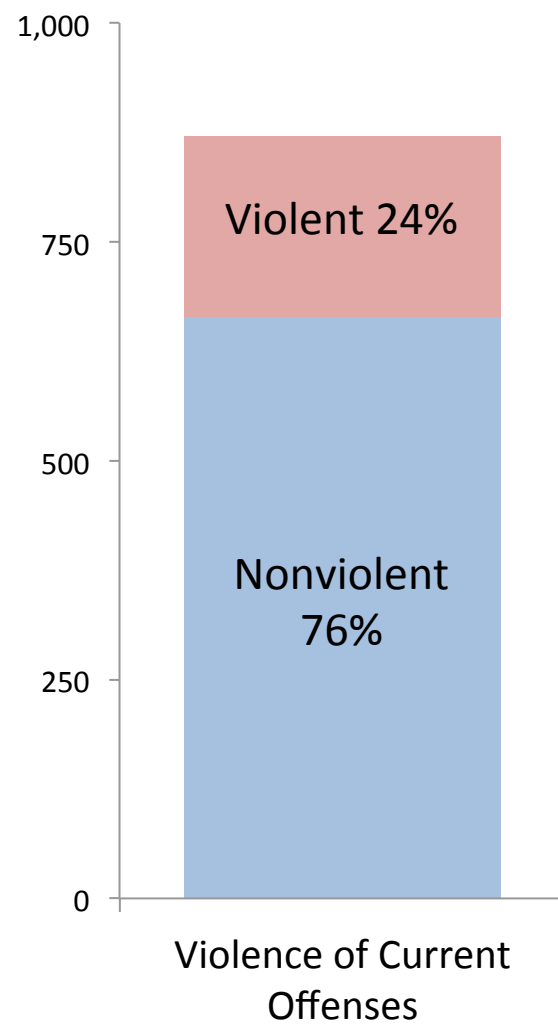
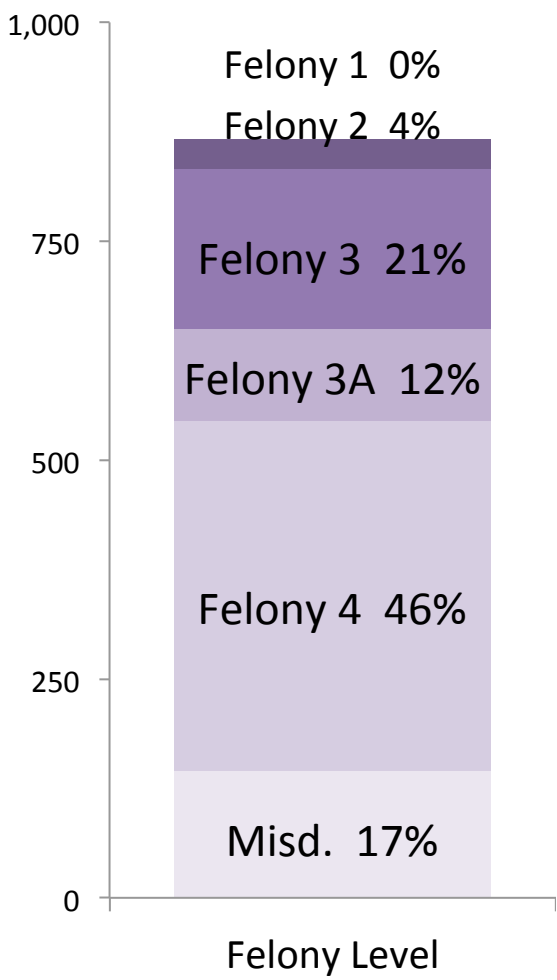
Short Max
New admissions that will jam out in 1 year or less
Up 30% since 2003

$$\begin{array}{|c|} \hline \text{2013 New Short Max Admissions} \\ \hline \mathbf{872} \\ \hline \end{array}
 \times
 \begin{array}{|c|} \hline \text{Average Length of Stay} \\ \hline \mathbf{4.8 \text{ months}} \\ \hline \end{array}
 \times
 \begin{array}{|c|} \hline \text{Current Average Cost per Inmate} \\ \hline \mathbf{\$32,600/\text{year}} \\ \hline \end{array}
 =
 \begin{array}{|c|} \hline \text{Cost to House 2013 Short Max Sentences} \\ \hline \mathbf{\$11 \text{ million}} \\ \hline \end{array}$$

Source: NDCS admission data

Short Max admissions to prison are frequently lower level, nonviolent offenders

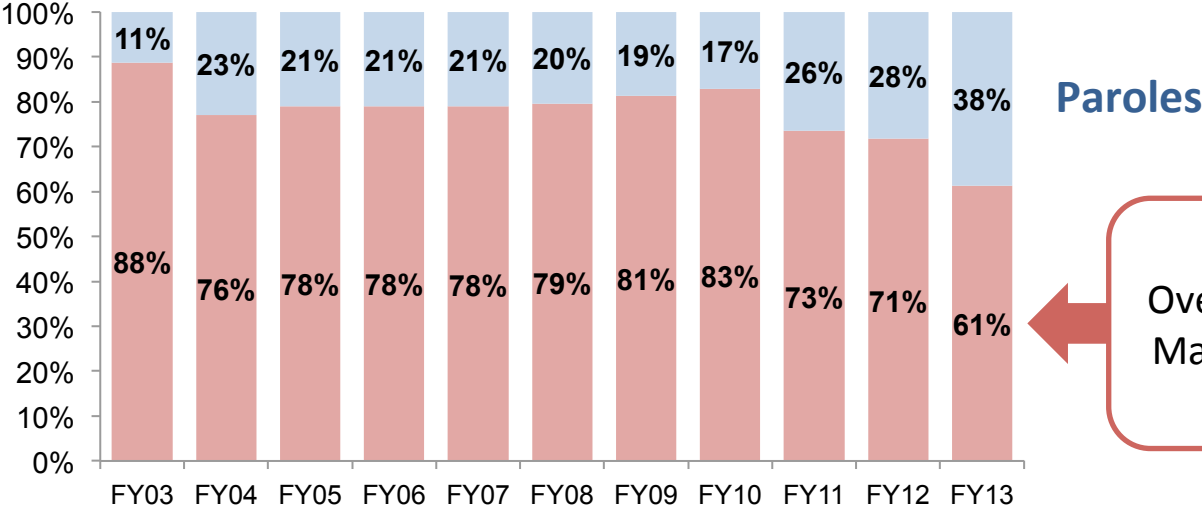
Short Max Admissions to Prison, FY2013



Source: NDCS admission data

Short Max prisoners jam out to no supervision twice as often as those with longer stays

Short Max Releases By Type, FY2003 – FY2013



Jam Outs
Over the past 10 years 77% of Short Maxes have jammed out compared to 37% of non-Short Maxes

The average Short Max admission is parole eligible in 3 months
Average length of sentence 4.8 months

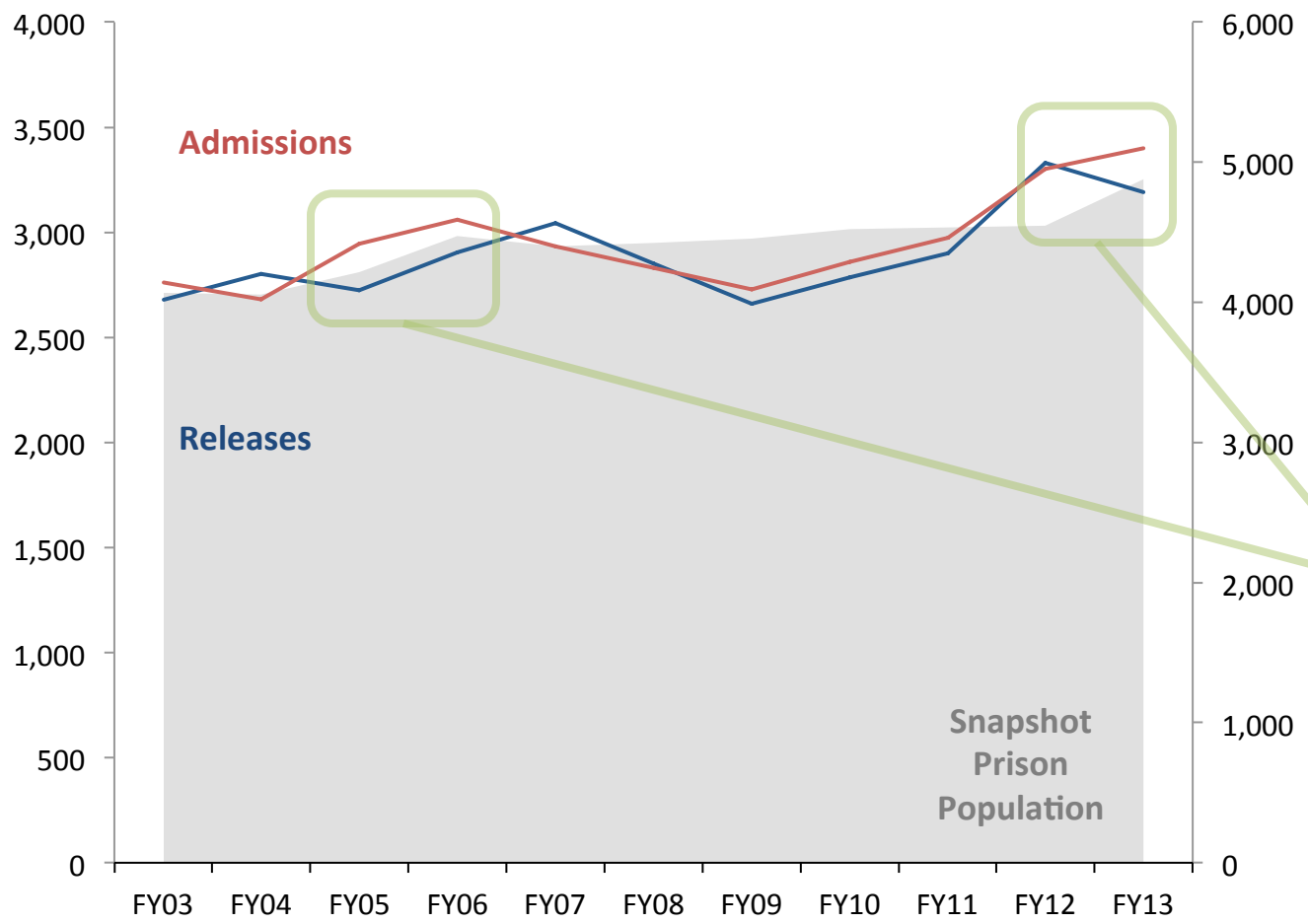


Given short time frames, entry into programming is unlikely and completion is nearly impossible

Source: NDCS release data

Unless releases can keep up with or exceed admissions, the prison population will climb

Prison Admissions, Releases and Total Population, FY2003 – FY2013

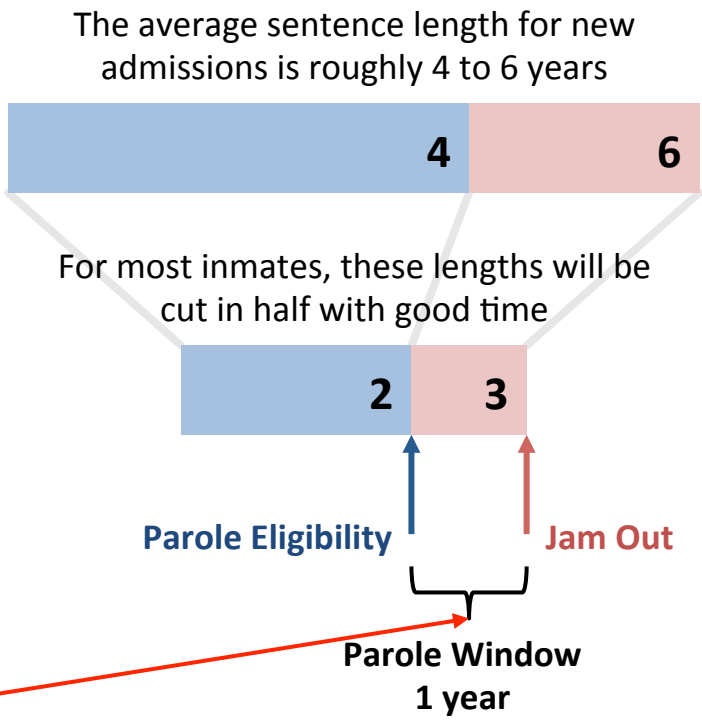
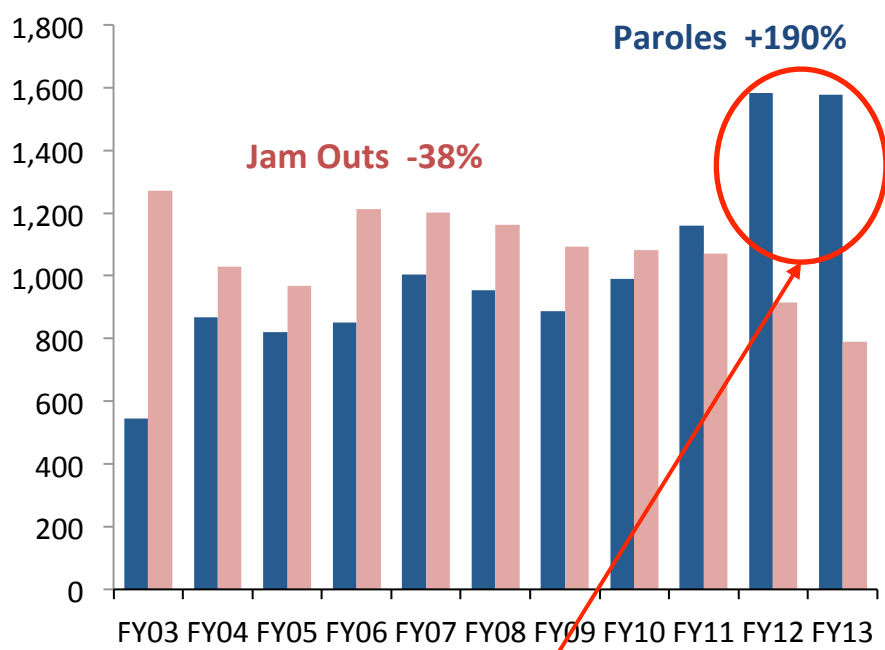


Two periods in which the prison population spiked when admissions substantially outpaced releases

Source: NDCS admission and release data

Despite increase in parole releases over jam outs, bed savings are restricted due to narrow parole windows

New Commitment Releases by Type, FY2003 – FY2013



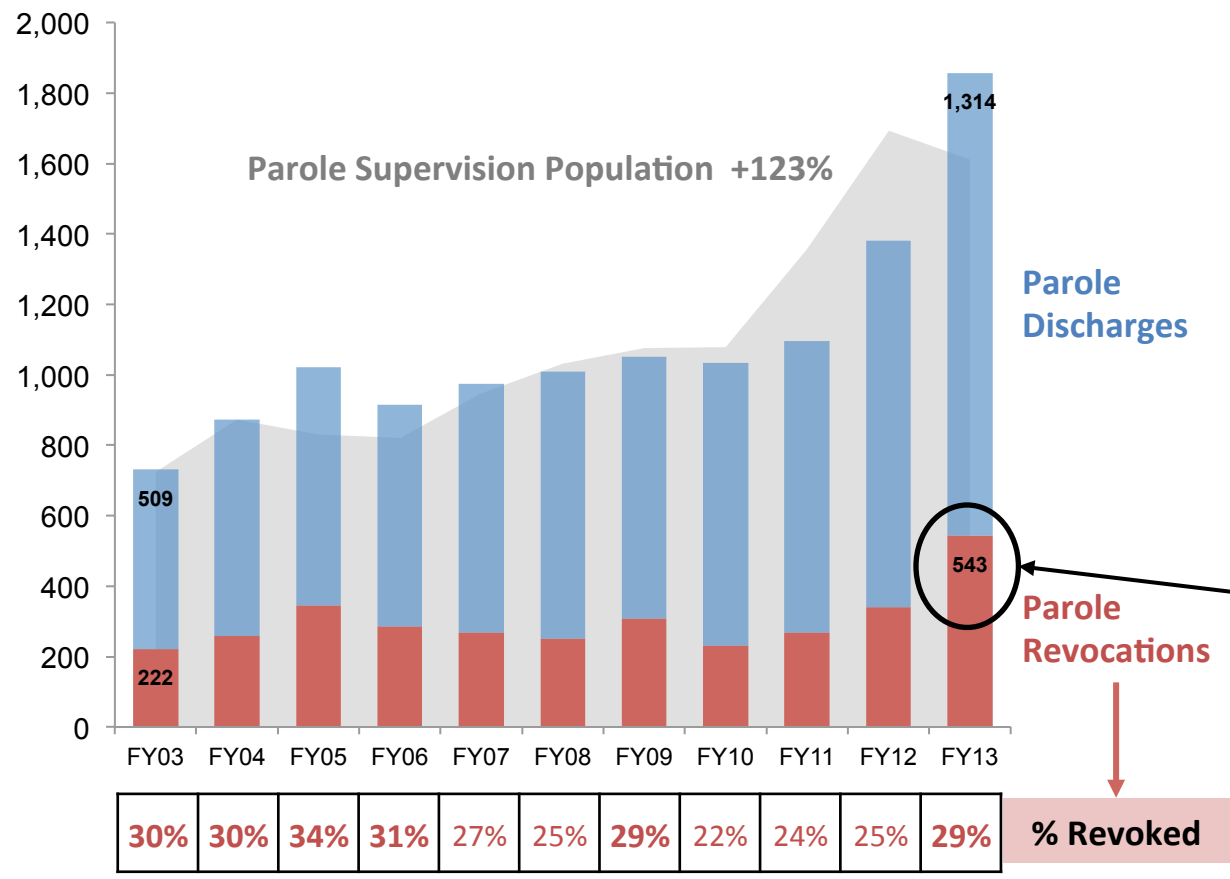
500 additional parolees released 6 months before jam out yields only 250 beds for one year

Narrow parole windows means less time saved per parole grant and little post-release supervision time

Source: NDCS release data

Higher volume of parole revocations to prison also mitigates the impact of increased parole release

Parole Snapshot Population and Parole Terminations by Type, FY2003 – FY2013



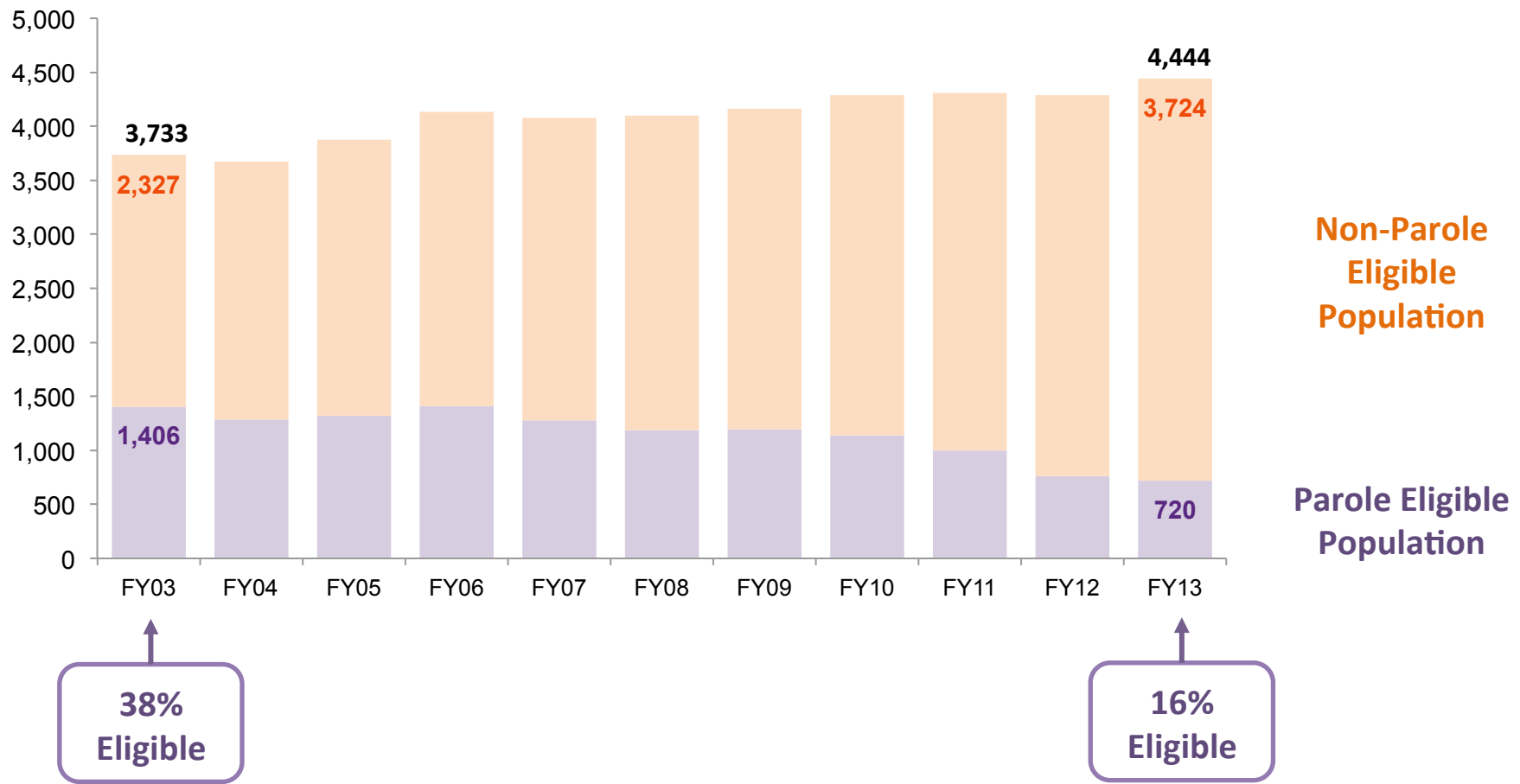
As more parolees were placed on supervision, the volume of revocations spiked

200 additional parolees revoked and returned for 6 months in prison consuming 100 beds for one year

Source: NDCS parole snapshot and release data

As the volume of parole releases rises, the pool of eligible parole candidates recedes

New Commitment Snapshot Population, FY2003 – FY2013



Source: NDCS snapshot data

Presentation overview

**Contributors to Nebraska
Prison Crowding**

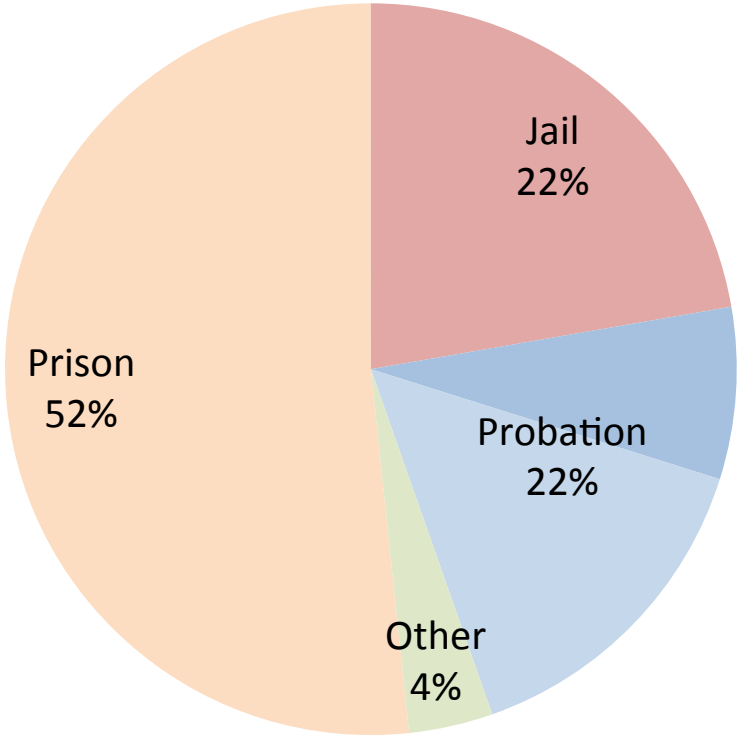


Felony Sentencing Distribution

**Effective Strategies to
Reduce Offender Risk**

Sentencing in Nebraska tilts heavily toward incarceration

Felony Sentencing Distribution,
FY2012 – FY2013



Expanded Detail on Probation Sentences with Jail Time

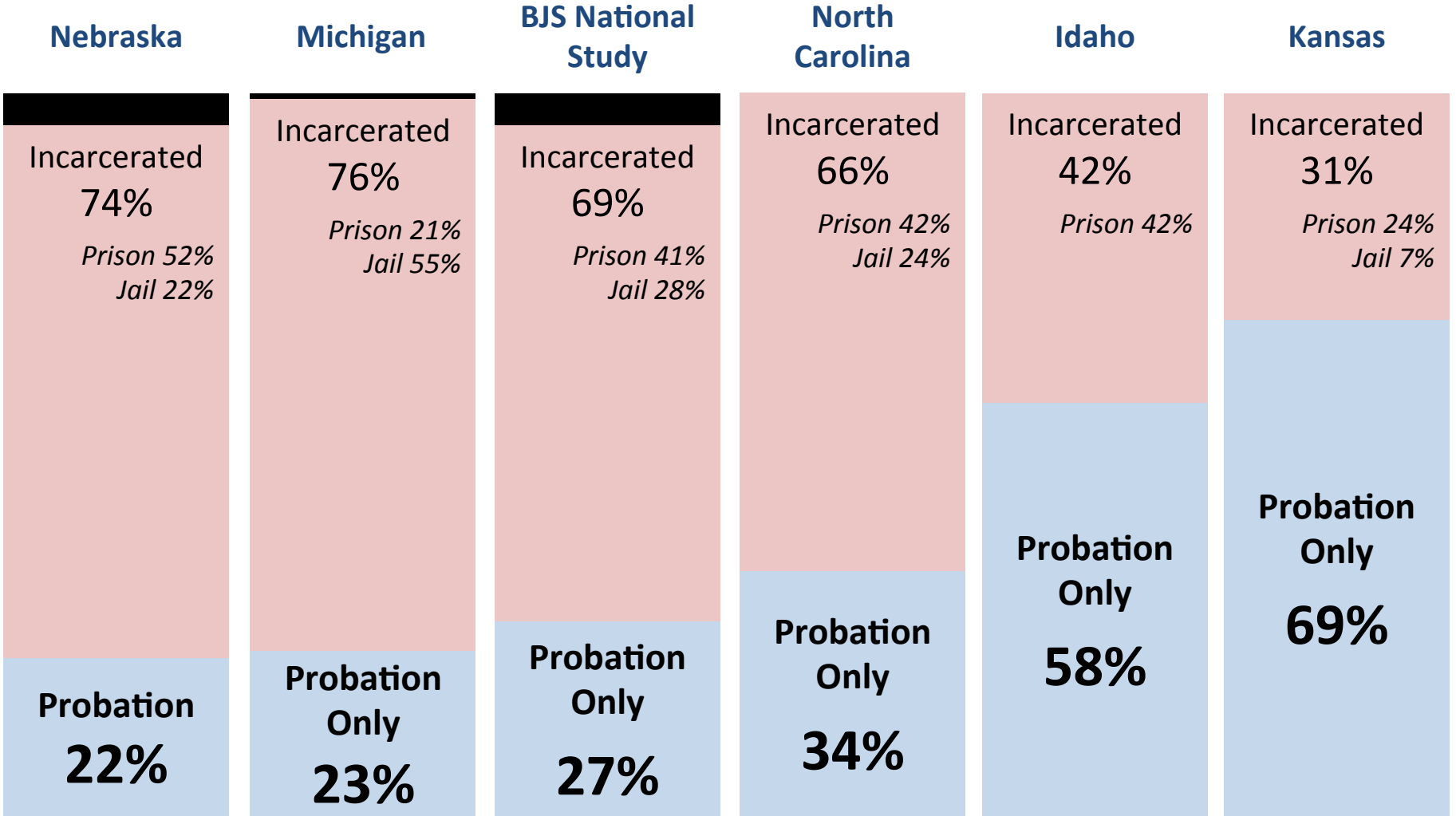
§29-2262 enable courts to impose up to 6 months of jail time at any point during the probation term.

The average jail order with a probation sentence is 3 months

34% of probation sentences include jail time

Source: JUSTICE sentencing data

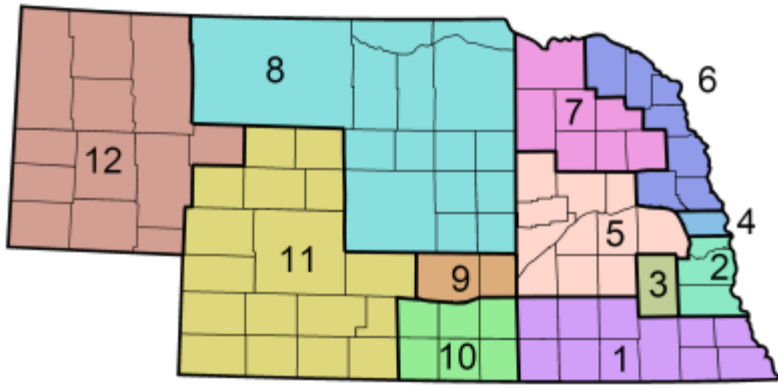
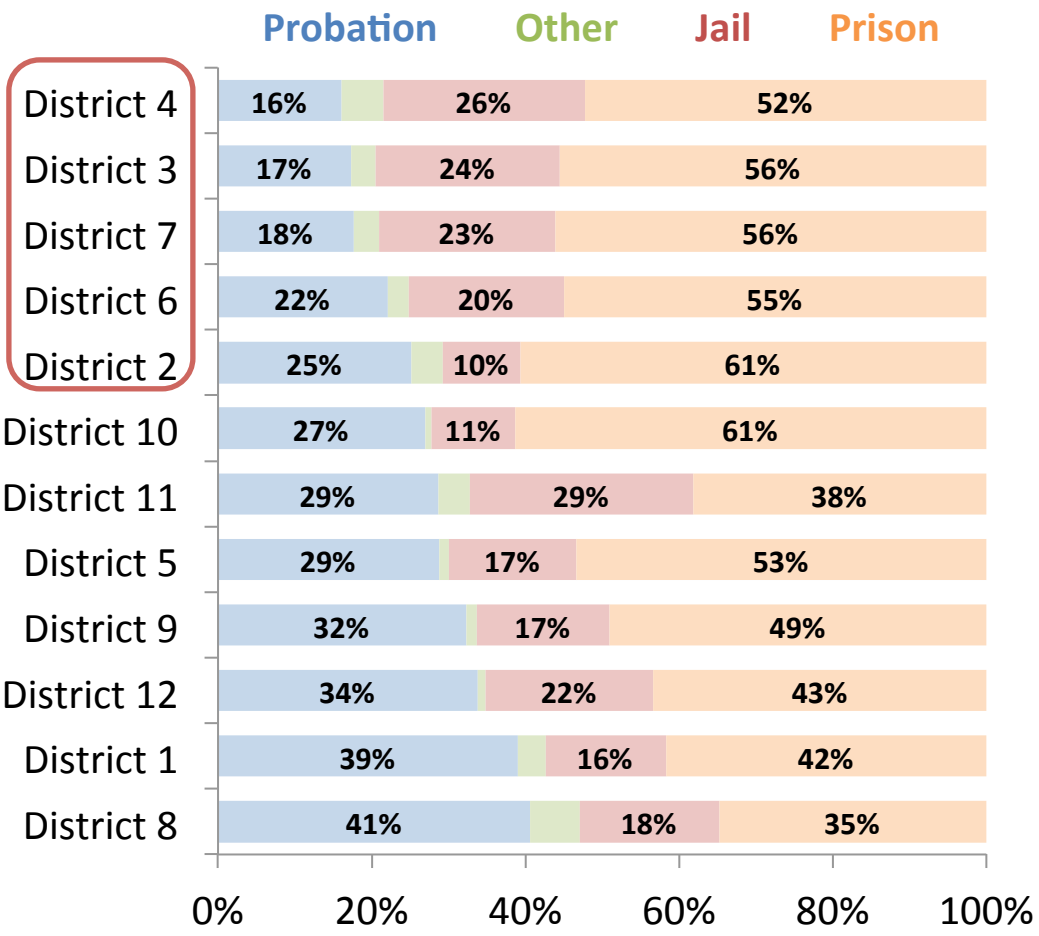
Nebraska utilizes probation less often than the national average and several other recent JR states



Source: *Statewide Dispositions – Fiscal Year 2012*, Office of Community Alternatives, MI Dept. of Corrections, November 2012; *KS Felony Sentencing Data*; *Structured Sentencing Statistical Report FY 2011/12*, NC Sentencing and Policy Advisory Commission; *BJS Felony Sentences in State Courts, 2006 – Statistical Tables*; Nebraska JUSTICE sentencing data

Percent of felony sentences to probation is lowest in Nebraska's most populous judicial districts (4 and 3)

Felony Sentencing by Judicial District, FY2012 – FY2013

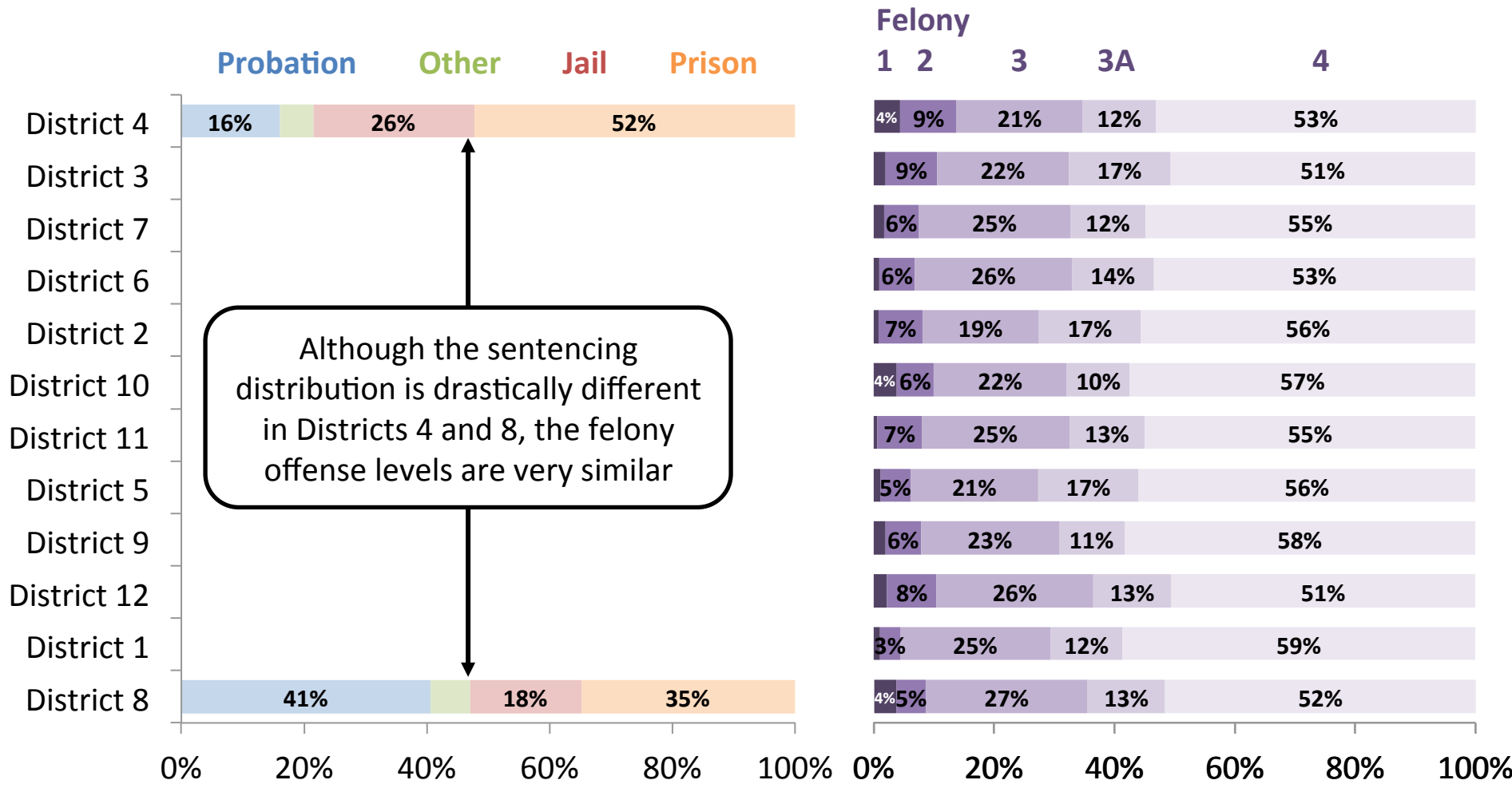


Hypothetical Scenario:
 If Districts 2, 3, 4, 6 and 7 sentenced felonies at same rate as the national average, prison admissions would drop by 500 per year

Source: JUSTICE sentencing data

Variation in felony offenses across judicial districts fails to explain differences in sentencing distribution

Felony Sentencing by Judicial District and Felony Level, FY2012 – FY2013

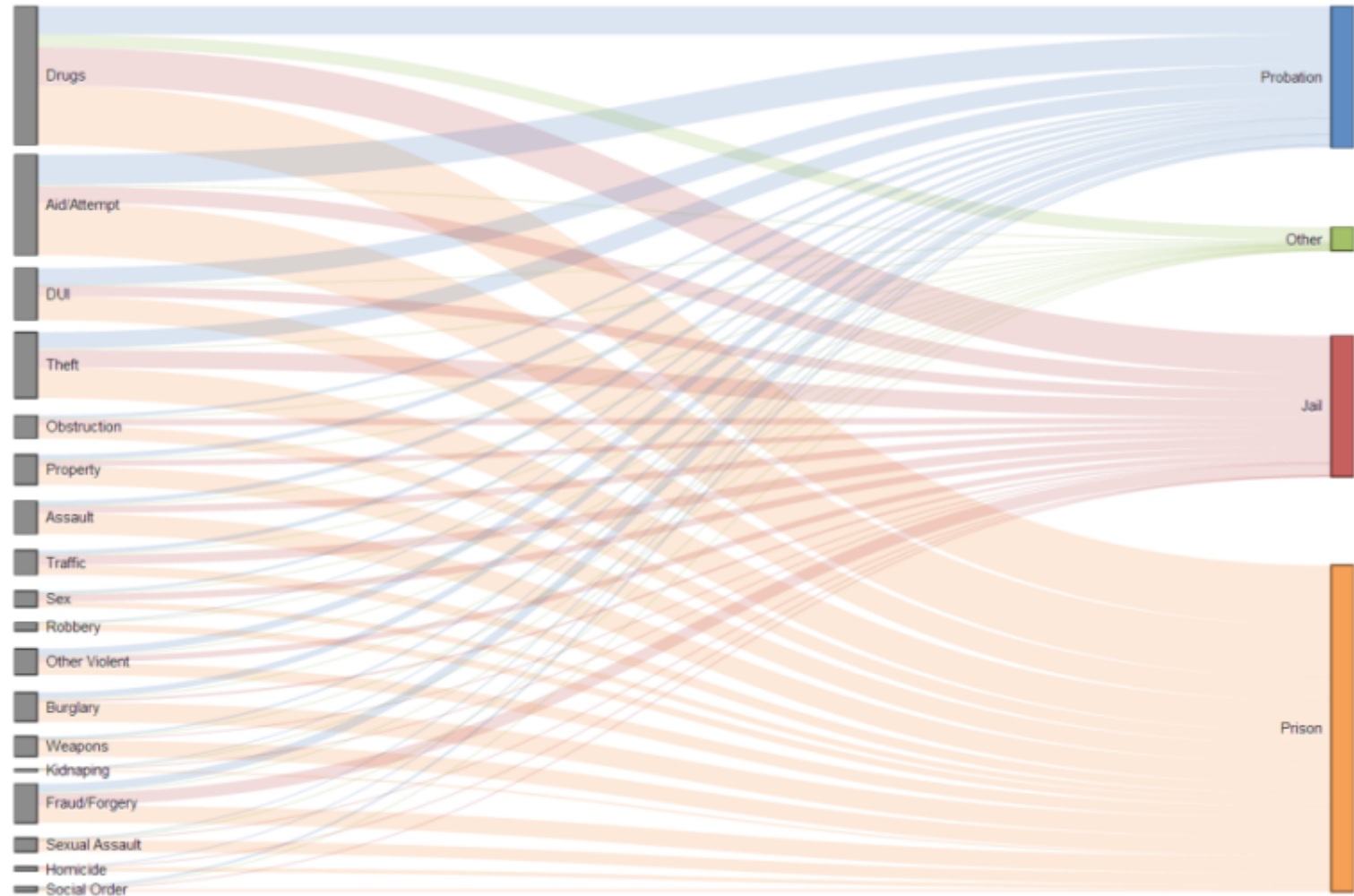


Although the sentencing distribution is drastically different in Districts 4 and 8, the felony offense levels are very similar

Source: JUSTICE sentencing data

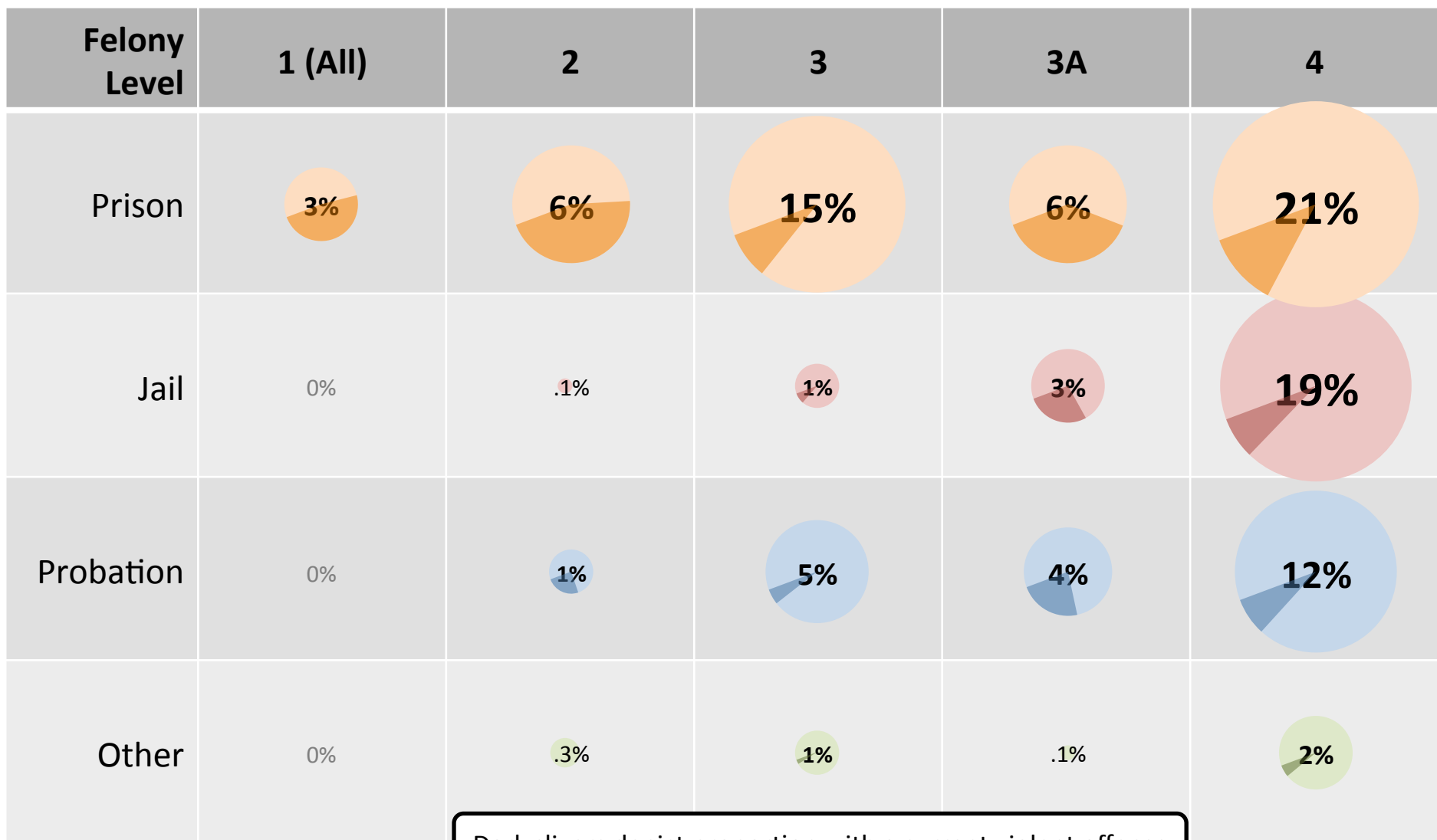
Although probation receives a smaller share than prison, it receives a portion of all offense types

Felony Sentencing Distribution by Offense Type, FY2012-FY2013



Source: JUSTICE sentencing data

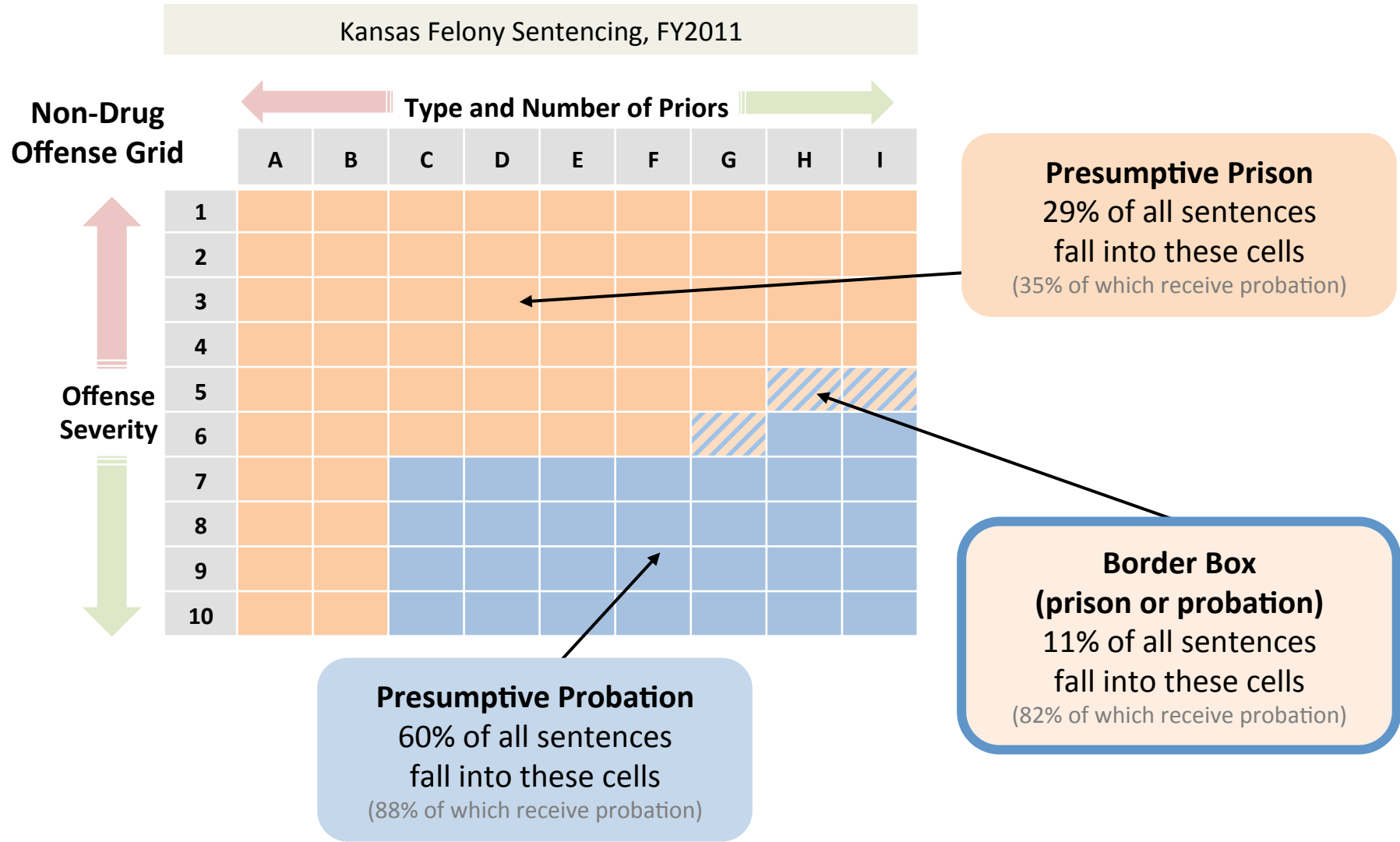
Majority of lower-level felony sentences are disposed to jail or prison



Dark slivers depict proportion with a current violent offense

Source: JUSTICE sentencing data

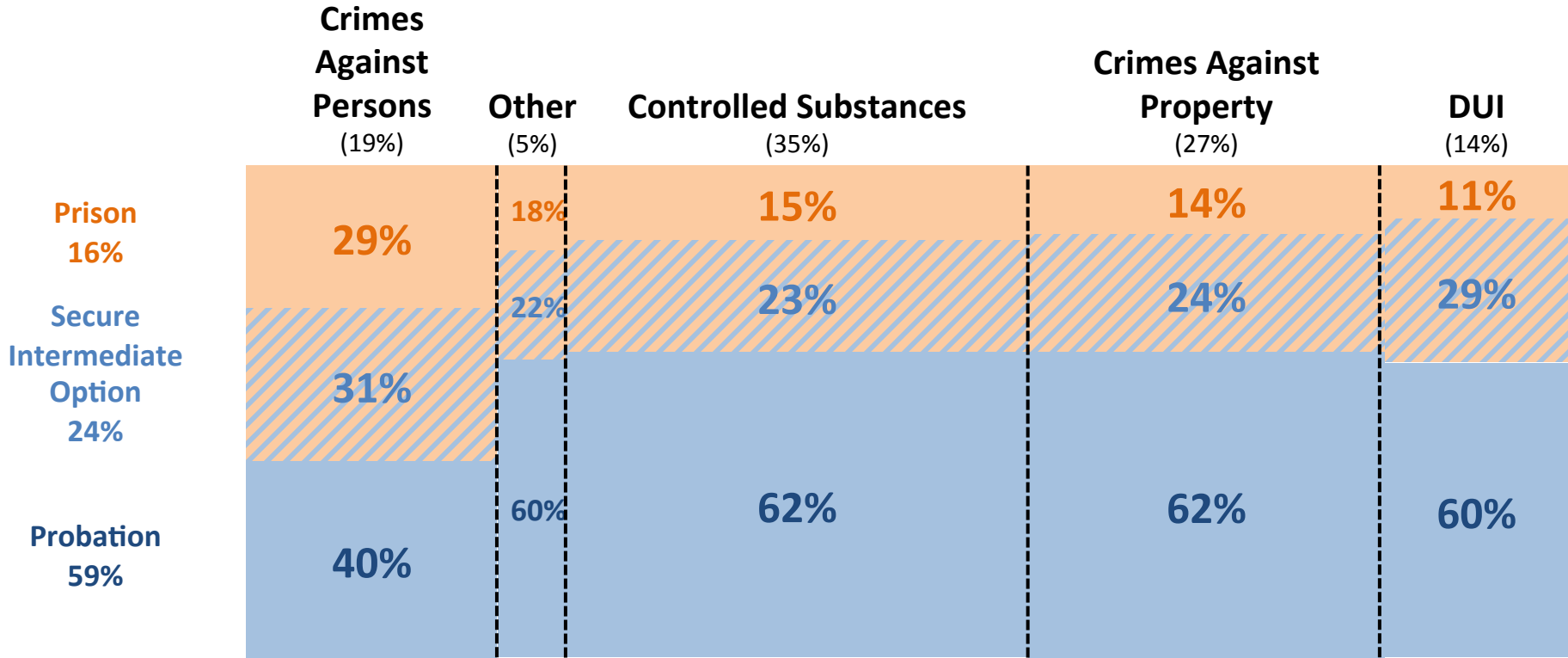
In Kansas, sentencing guidelines create a structure that yields a higher percentage of sentences to probation



Source: Kansas sentencing data

In Idaho, probation receives almost 60% of felony sentences

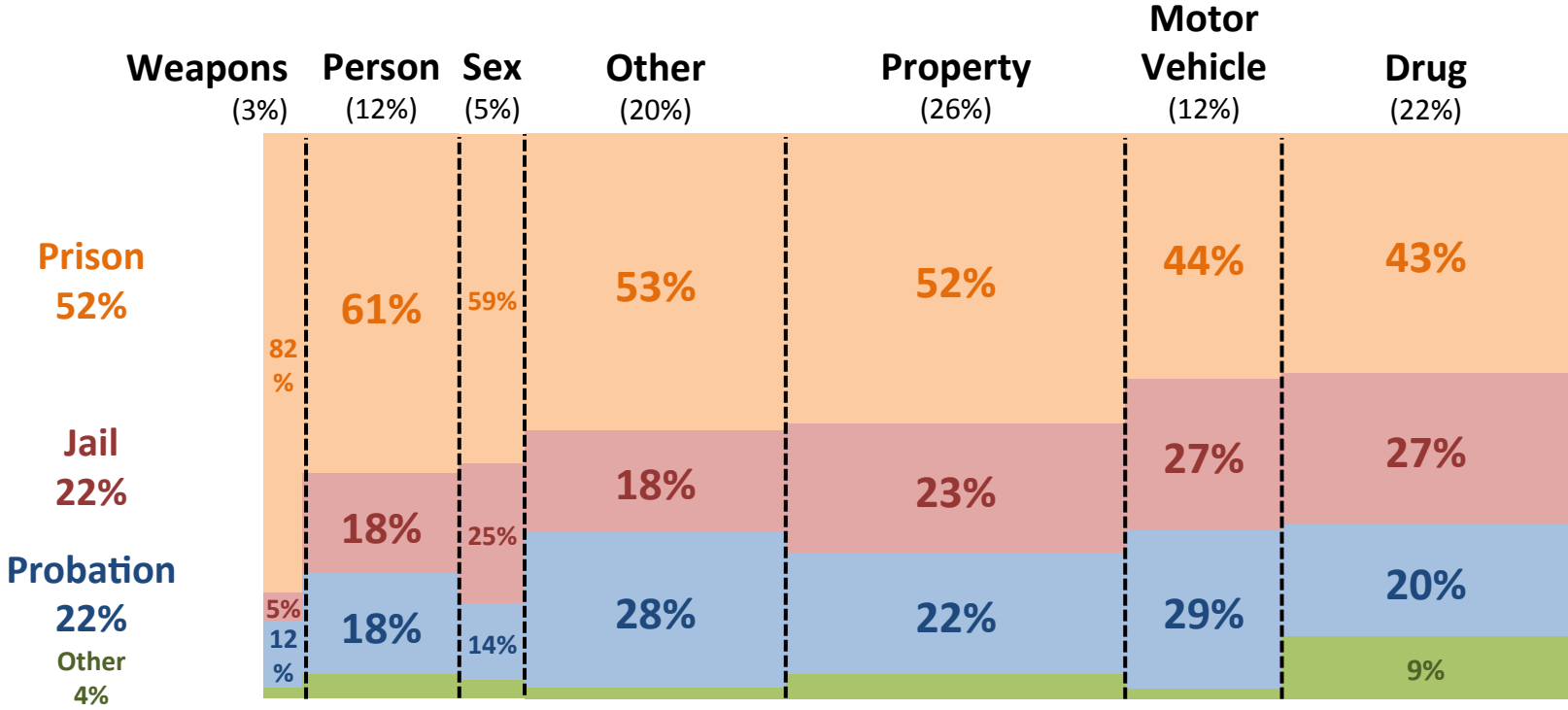
New Felony Sentences by Offense Type, FY2012



Source: Idaho DOC admission data

While in Nebraska, the proportion of felony sentences to probation falls in the 20% range or less

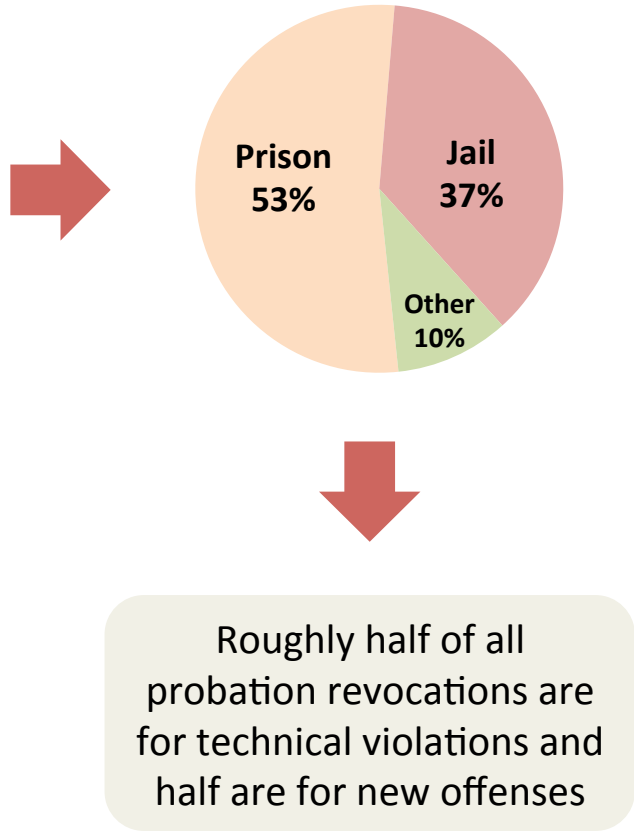
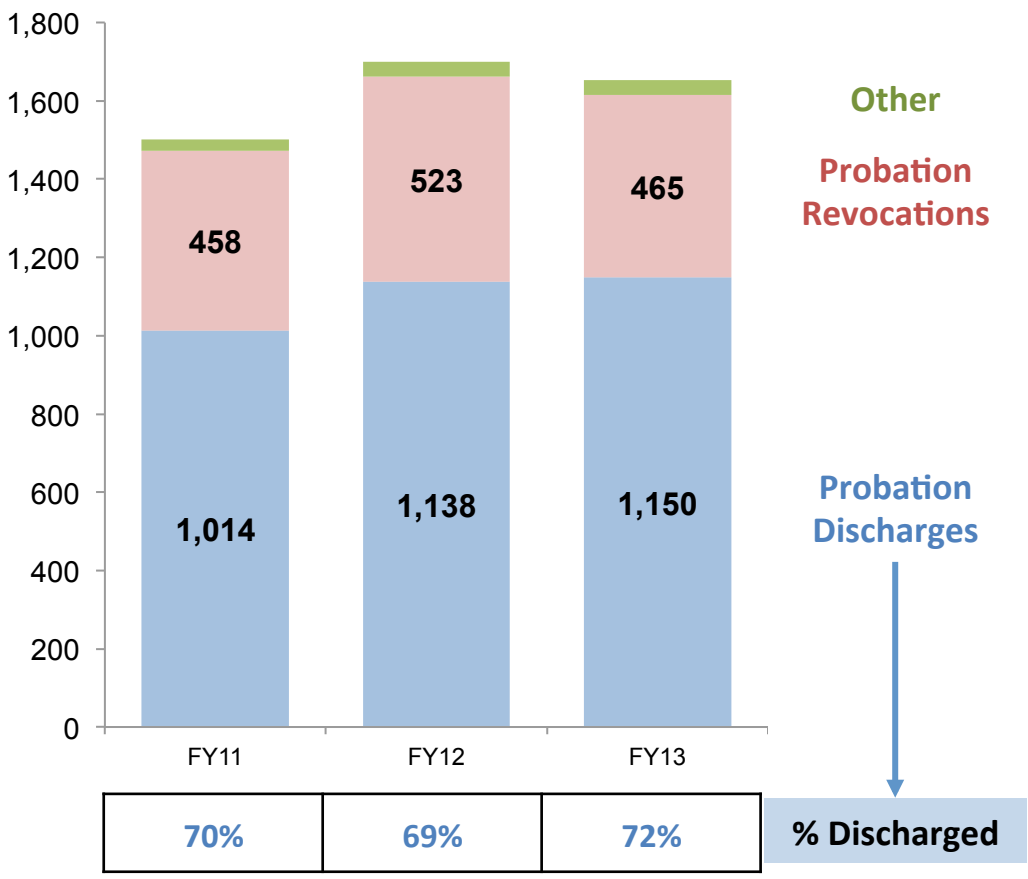
Felony Sentences by Type and Offense Type, FY2012 – FY2013



Source: JUSTICE sentencing data

70 percent of Nebraska probationers successfully complete probation supervision terms

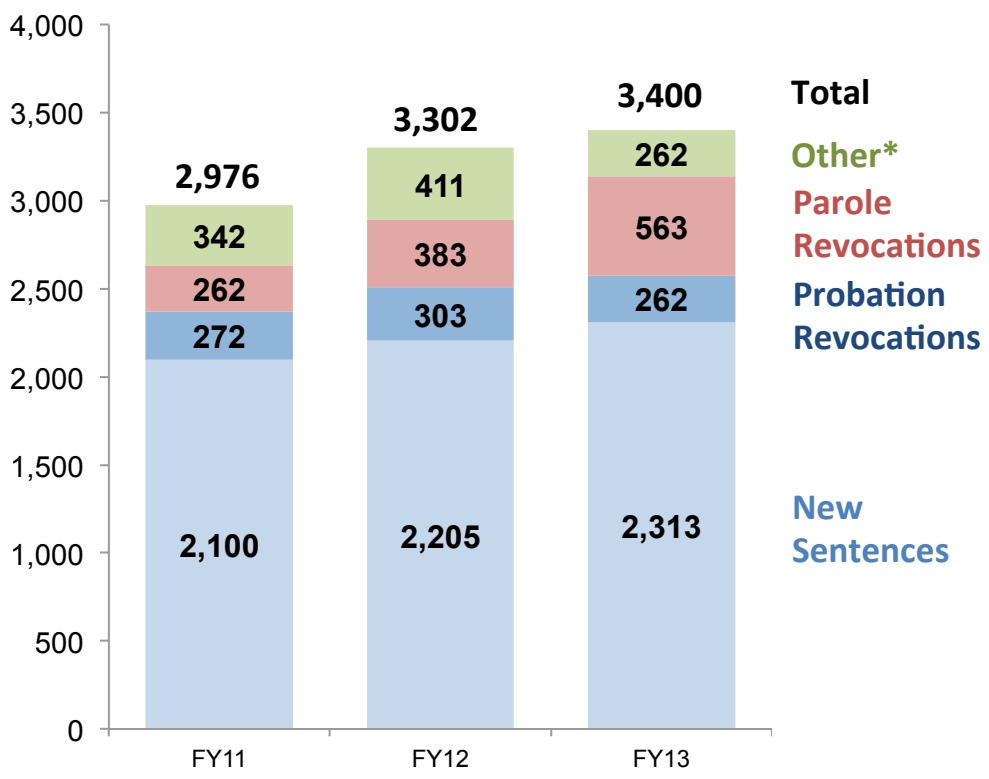
Probation Terminations by Type, FY2011 – FY2013



Source: Nebraska Probation Administration release data

Probation revocations represent a small portion of total prison admissions

Prison Admissions by Type, FY2011 – FY2013



Probation revocations represent only about 11% of new admissions and 9% of total admissions



Probation revocation average sentence length **3.4 years**

Source: Nebraska Probation Administration release data and NDCS admission data

Presentation overview

**Contributors to Nebraska
Prison Crowding**

Felony Sentencing Distribution



**Effective Strategies to
Reduce Offender Risk**

Risk, need, and responsiveness (RNR) forms the foundation of effective supervision and programming

Risk

Focus resources on people most likely to reoffend
Match level of supervision and programming to risk

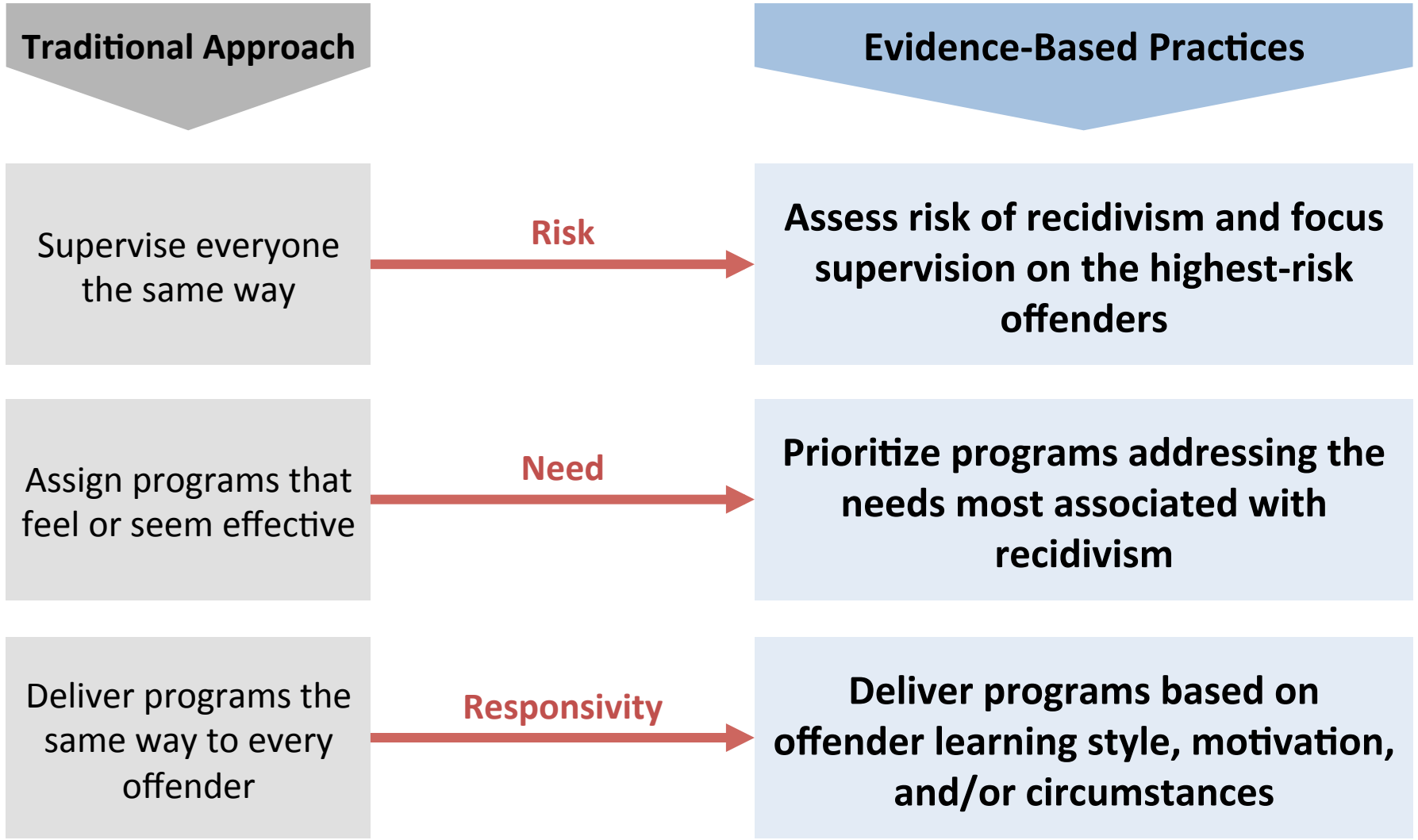
Need

Target factors that can change a person's likelihood of committing a new crime

Responsivity

Refers to individual and group characteristics that present barriers to treatment or supervision
Work to mitigate barriers, where possible

RNR principles are the essential components of effective supervision



Characteristics of effective responses to probationer risk and adherence to conditions of supervision

Dosage

Focus supervision officer time and program resources on the highest-risk offenders

Swiftness

Enable officers to respond meaningfully to violations without delay or time-consuming processes

Consistency

Use a graduated range of sanctions and incentives to guide specific type of response to violations

Cost-effectiveness

Prioritize the most expensive, restrictive sanctions for offenders committing the most serious violations

Initial observations of probation policies are positive and identify opportunity for further strengthening supervision

Dosage



Probationers are assessed for risk and assigned to caseloads accordingly. Supervision/program resources then are focused on higher-risk probationers. Caseloads vary based on probationer risk, enabling higher-quality engagement of higher-risk cases.

Swiftiness



Statutes specify administrative responses to violations that may be imposed without a court hearing. Hearings are required for custodial sanctions, such as for show cause terms. Delays between probable cause and revocation hearings often last two or more months.

Consistency



Policies specify levels of administrative responses that may be applied to violations. Although officer training includes use of the sanctions matrix, policies do not structure responses in a graduated fashion based on risk, violation severity, and other criteria.

Cost-effectiveness



Although administrative responses are permitted and longer jail sanctions are used, policy doesn't authorize short (2- to 3-day) jail stays as more restrictive behavioral response. Certain courts apply short jail stays but the practice is inconsistent statewide.

Probation could generate greater recidivism impact and cost-effectiveness than short maxes to prison


Probation  Up to 5 years of supervision

Access to programs based on assessed risk and need

Respond to probationer behavior with administrative responses

Recidivism Reduction*
~ **30%**

Cost per year
\$800
(Supervision only)

Short Max Prison Stay  ← Average 4.8 months in prison

Access to prison-based programs unlikely

Supervision upon release to monitor and mitigate risk unlikely

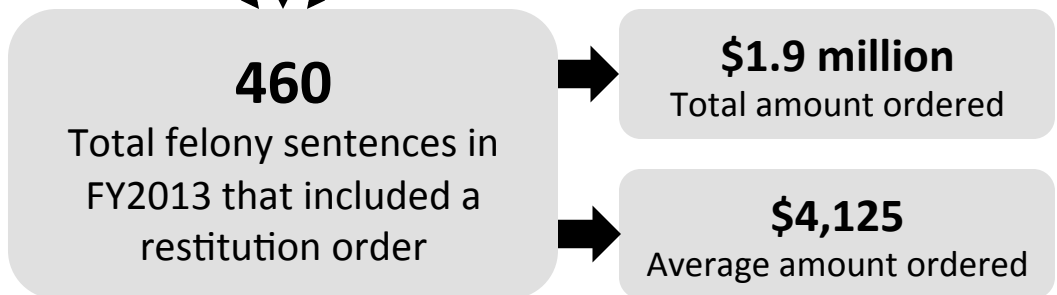
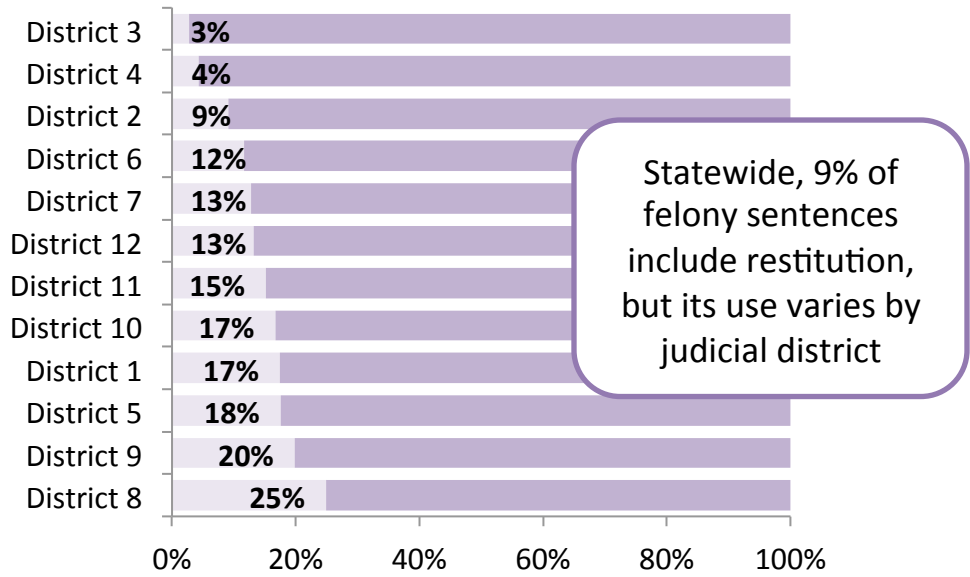
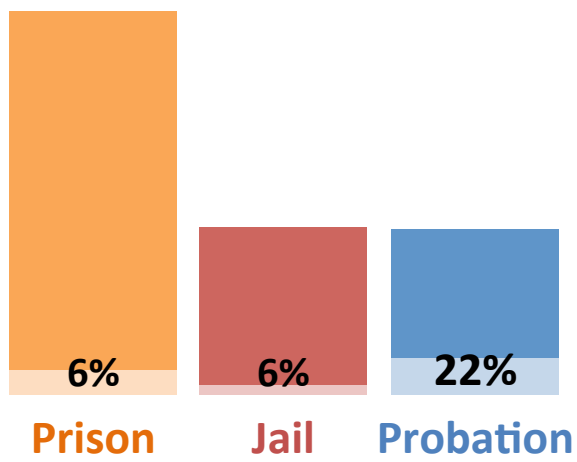
Recidivism Reduction*
~ **0%**

Cost per year
\$32,600

* Based on Washington State Institute for Public Policy analysis of return on investment from evidence based intervention programs and policies.

Source: Lee, S., Aos, S., Drake, E., Pennucci, A., Miller, M., & Anderson, L. (2012). *Return on investment: Evidence-based options to improve statewide outcomes*, April 2012 (Document No. 12-04-1201). Olympia: Washington State Institute for Public Policy

Courts much more likely to attach restitution orders to probation than to jail or prison sentences

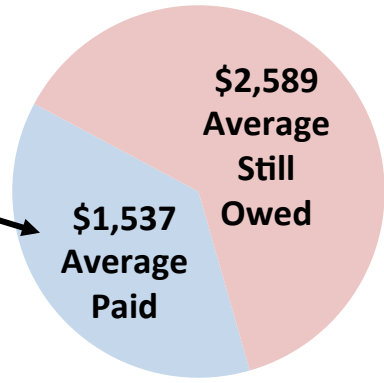


Source: JUSTICE sentencing data

Restitution collections much more likely for people on probation than for people in jail or prison

In FY2013, the average felony restitution order was \$4,125

An average \$1,537 (37%) had been collected through July 2014 (1 to 2 year follow up period)



Of all restitution orders (460):

- 28% paid in full (129)
- 23% made partial payments (106)
- 55% paid none (225)



In the last 5 years, as few as 25 DCS inmates have been ordered to pay restitution in prison and total collections have amounted to less than \$2,800

Probationers are given the largest restitution dollar amounts and they pay more within the 1-2 year follow-up period

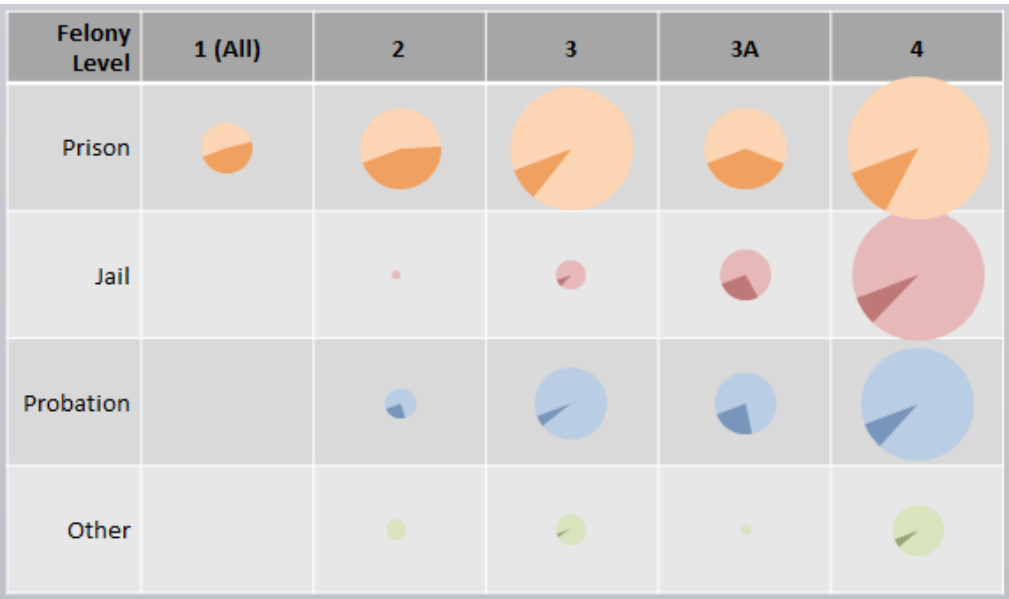
	Prison	Jail	Probation
Average Amount	\$3,177	\$1,449	\$5,342
Total Orders	151	41	246
Paid All	23 (15%)	8 (20%)	89 (36%)
Paid Some	14 (9%)	3 (7%)	84 (34%)
Paid None	114 (75%)	30 (75%)	73 (30%)

Source: JUSTICE sentencing data and NDCS restitution report

(1) Presentation Recap

54 percent of people sentenced for felonies are convicted of offenses at the lowest level (F4)

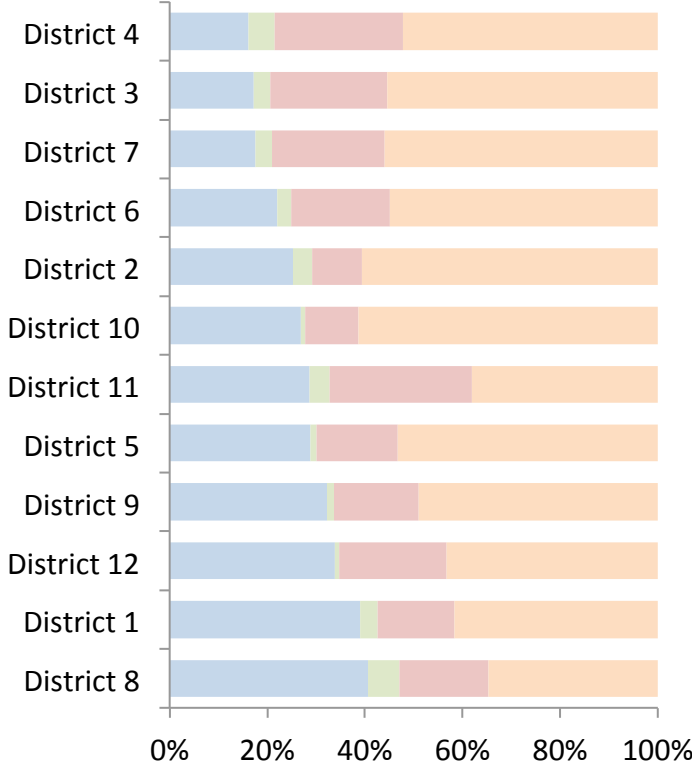
- 87 percent of these convictions were for nonviolent offenses
- One factor is Nebraska's lower felony theft threshold (\$500) compared to most states



(2) Presentation Recap

73 percent of Felony 4s are sanctioned with prison and jail terms, rather than probation

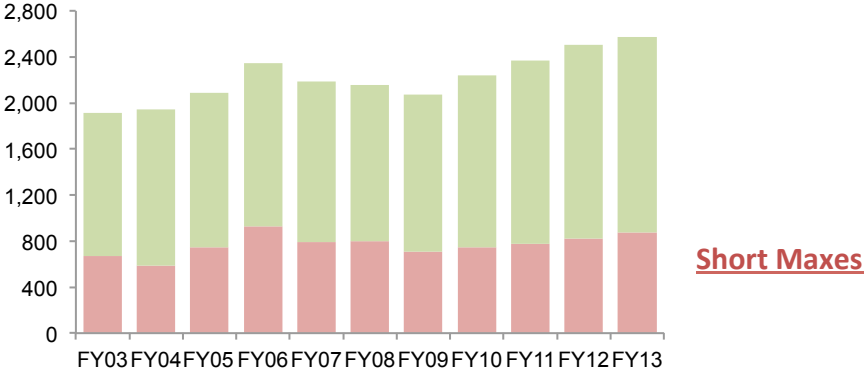
- Within Nebraska the rate of felonies sentenced to probation varies considerably, from as low as 16 percent (District 4) to as high as 41 percent (District 8)
- In contrast, other states have and the US as a whole have higher rates of sentences to probation



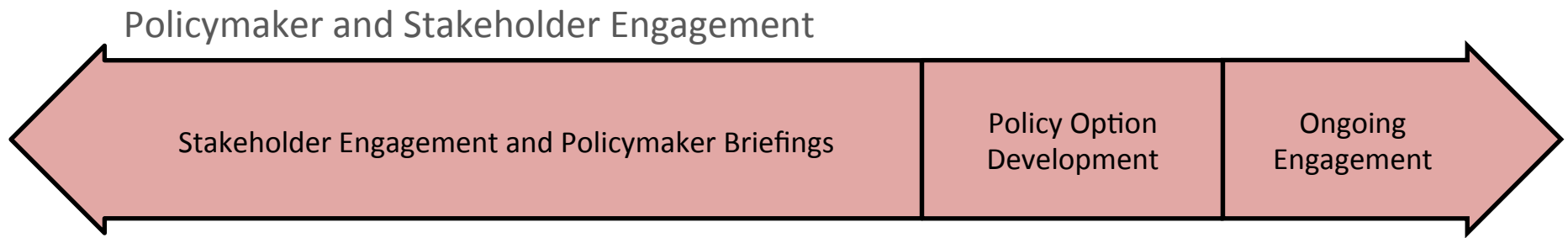
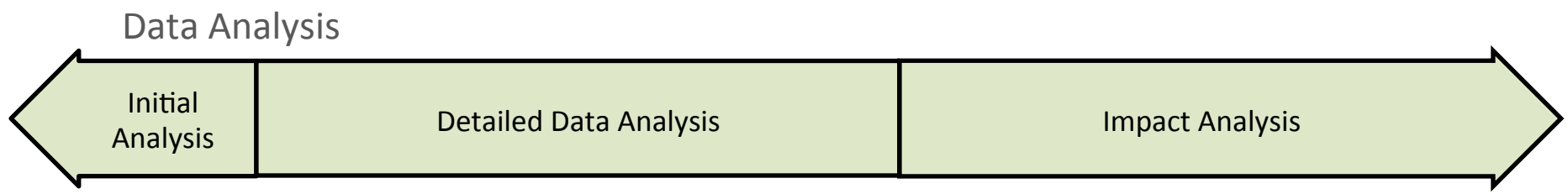
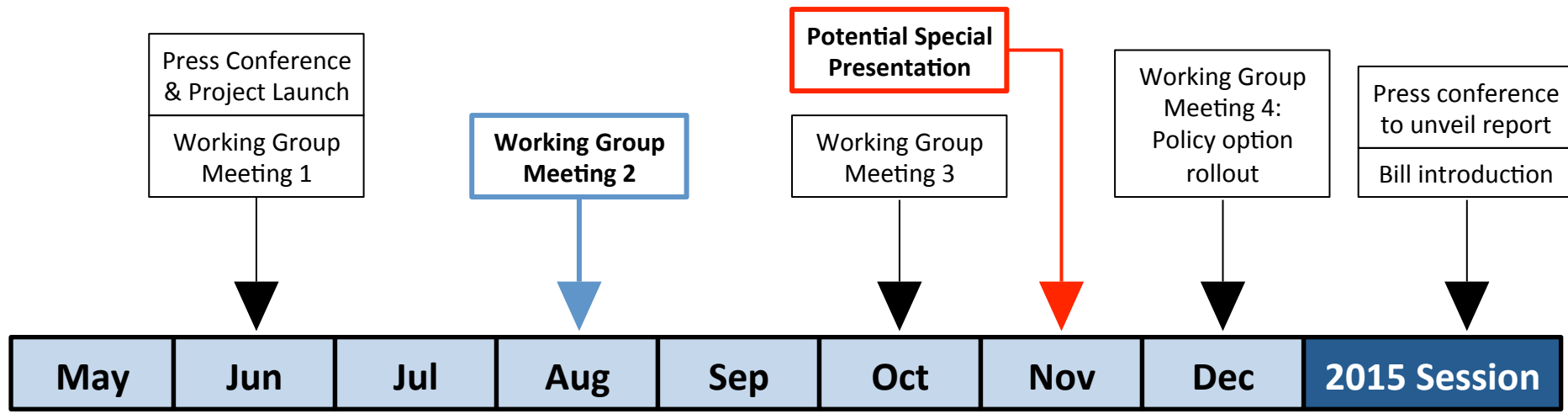
(3) Presentation Recap

Short Max prison terms do not provide much accountability during or after the brief lock up

- Short Max prison stays are shorter than allowable probation terms, and more in line with a misdemeanor jail sentence
- Short incarceration periods are more costly and less effective at reducing recidivism than longer periods of community supervision and treatment
- Most don't receive supervision and programming upon release
- Restitution among those ordered to probation is far more likely to be collected than those sentenced to prison



Proposed timeline



Thank You

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