

Committee on Justice Reinvestment Oversight Annual Report

September 2017

Prepared and Submitted pursuant to Neb. Rev. Stat. § 50-434(6)

Committee Members:

Sen. Laura Ebke, Chair
Sen. Kate Bolz
Sen. Steve Halloran
Sen. Bob Krist
Sen. Patty Pansing Brooks

I. Introduction

The Nebraska Legislature established the Committee on Justice Reinvestment Oversight (hereinafter, the “Committee”) with the passage of LB 605 in 2015.¹ The Committee is charged with “maintain[ing] continuous oversight of the Nebraska Reinvestment Initiative and related issues,”² and has spent the last few years working with the Council of State Governments Justice Center, the Governor, the Chief Justice of the Nebraska Supreme Court, and various other stakeholders to ensure the complete and effective implementation of Nebraska’s justice reinvestment efforts. The Committee submits this third annual report of its work as required by statute to provide an update about the state of Nebraska’s criminal justice system.³

II. Update on Committee Review of Nebraska’s Criminal Justice System

The Committee held one formal meeting this year to obtain an update and overview of the status of Nebraska’s justice reinvestment initiative and to obtain a briefing on certain issues related to the Nebraska Department of Correctional Services.

The meeting was held on April 21, 2017, and all members of the Committee were in attendance. Because the Committee received an informational briefing on certain sensitive personnel and inmate issues, part of the Committee’s meeting was closed to the public. During the meeting, the Committee received an update on the progress of the implementation of justice reinvestment efforts in the wake of LB 605 from Amy Prenda, Justice Reinvestment Implementation Coordinator. The Committee then received an update from Doug Koebernick, the Inspector General for Corrections, and from representatives of the Ombudsman’s office. Finally, the Committee received a briefing from Scott Frakes, Director of the Department of Correctional Services.

Although the April meeting was the only formal meeting of the Committee during the 2017 calendar year, the work of the Committee continued informally throughout the year. Members of the Committee have been intimately involved in monitoring the state of Nebraska’s justice system and the impact of Nebraska’s justice reinvestment efforts. Members of the Committee serve on the Judiciary Committee of the 105th Nebraska Legislature, which is generally tasked with reviewing legislation that might impact Nebraska’s criminal justice system. Members of the Committee also serve on the Nebraska Justice System Special Oversight Committee established with the passage of LR 127 in 2017. The LR 127 Committee is tasked with oversight of the adult justice system in the state,⁴ and is presently working on a comprehensive review of the operations of the Department of Correctional Services, the Office of Parole Administration, the Board of Parole, and the Office

¹ Legislative Bill 605 (2015), *available online at* <http://nebraskalegislature.gov/FloorDocs/104/PDF/Slip/LB605.pdf>.

² Neb. Rev. Stat. § 50-434(3).

³ Two reports have been submitted by the Committee pursuant to Neb. Rev. Stat. § 50-434(6). The first was issued in September 2015, and can be found online at http://nebraskalegislature.gov/pdf/reports/committee/select_special/jro/jro_2015.pdf. The second was issued in September 2016, and can be found online at http://nebraskalegislature.gov/pdf/reports/committee/select_special/jro/jro_2016.pdf.

⁴ *See generally* Legislative Resolution 127 (2017), *available online at* <http://nebraskalegislature.gov/FloorDocs/105/PDF/Enroll/LR127.pdf>.

of Probation Administration.⁵ Considering the in-depth involvement of the individual members of the Committee across all facets of the Legislature’s oversight of the Nebraska criminal justice system, the Committee continues to pursue its work as instructed by statute in various ways.

III. Update on Work with the Council of State Governments Justice Center

Nebraska statute instructs the Committee to “work cooperatively with the Council of State Governments Justice Center”⁶ (hereinafter, “CSG”) in pursuing its justice reinvestment oversight mission. It is worth acknowledging that as of this fall, the state’s formal relationship with CSG with respect to Nebraska’s justice reinvestment effort is complete.

On August 22, 2017, CSG reported⁷ to the Justice Reinvestment Implementation Coordinating Committee⁸ that many of the various aspects of Nebraska’s justice reinvestment strategy have been implemented. Notably, CSG highlighted efforts on behalf of the Nebraska Department of Correctional Services, the Board of Parole, the Administrative Office of Probation, and the Administrative Office of the Courts to utilize evidence-based practices, develop system-wide collaboration, and streamline processes to align with best practices.⁹ These efforts were undertaken in an effort to ultimately reduce Nebraska’s prison population.¹⁰ And although the state has not quite met projections for where the numbers were expected to be, “Nebraska’s prison population has stopped increasing and is trending downward.”¹¹

Initial projections for the impact of Nebraska’s justice reinvestment efforts expected a reduction of Nebraska’s prison population from 5,392 inmates to 4,471 inmates by July of 2017.¹² As of July 2017, unfortunately, the population has only been reduced to 5,250 inmates, for a total reduction since passage of LB 605 of 142 inmates.¹³ Because actual numbers differ from projections, CSG made some suggestions for further policy adjustments that it believes will help reduce the prison population moving forward.¹⁴ The Committee will give consideration to these recommendations.

The numbers presented by CSG show progress, though admittedly slight, and there is undoubtedly more work to be done. Regrettably, however, CSG will no longer be available to assist the state directly in its justice reinvestment effort. As of this year, funding for CSG’s direct support for and implementation of justice reinvestment in Nebraska will expire, and any future

⁵ A complete report of the work of the LR 127 Committee will be submitted to the Legislature in December 2017. It is also worth noting that the Committee will hold a public hearing on October 20, 2017, at which time further discussion about Nebraska’s adult criminal justice system will take place.

⁶ Neb. Rev. Stat. § 50-434(2).

⁷ Presentation at the Justice Reinvestment Implementation Coordinating Committee Meeting on August 22, 2017, Sara Friedman, Senior Policy Analyst, State Initiatives, Council for State Governments Justice Center, attached hereto as Attachment “A” (hereinafter, the “Presentation”) and incorporated herein by this reference.

⁸ Members of the Committee also serve on the Justice Reinvestment Implementation Coordinating Committee and attended its meeting on August 22, 2017.

⁹ Presentation at pg. 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 7.

¹³ *Id.*

¹⁴ *Id.* at 30–33.

support from CSG will come in the form of general assistance at stakeholders' requests. Even though the state's formal relationship with CSG is coming to an end, it must be noted that the Committee intends to use CSG as an important resource in pursuing its statutory mission.

IV. Conclusion

The Committee's work through calendar year 2017 has consisted of its members making efforts to oversee and review Nebraska's criminal justice system in various ways. From formal meetings of the Committee, to individual members' work on issues impacting the justice system, the Committee is confident that the Legislature's intent in creating the Committee on Justice Reinvestment Oversight is being achieved. The Committee will continue its work so long as the statutory framework underpinning it remains in effect, and the Committee is dedicated to looking for ways to ensure that it continues to appropriately and completely monitor the status of Nebraska's justice reinvestment efforts and the state's criminal justice system.

Submitted on behalf of the Committee on Justice Reinvestment Oversight by:



Sen. Laura Ebke, Chair

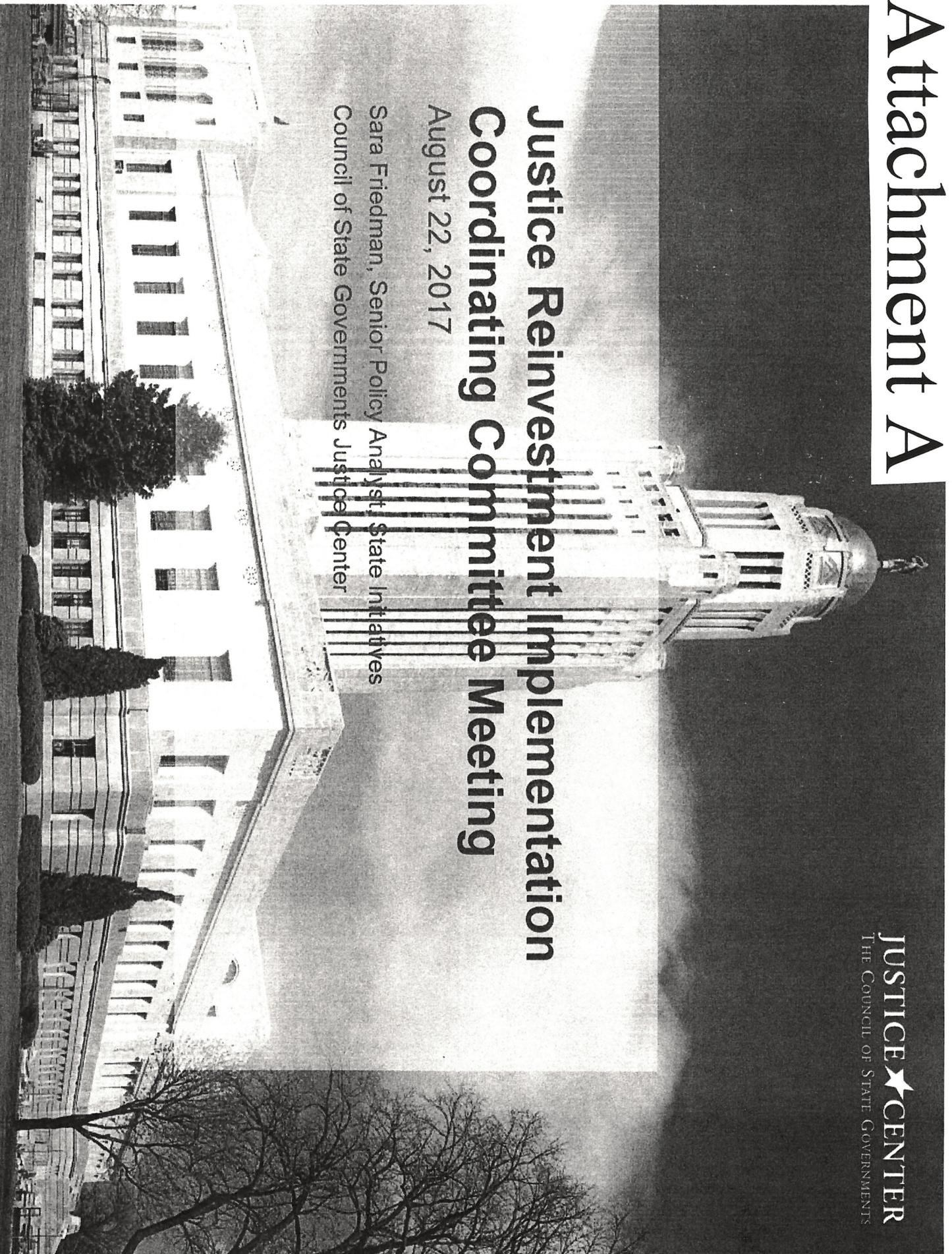
Attachment A

JUSTICE★CENTER
THE COUNCIL OF STATE GOVERNMENTS

Justice Reinvestment Implementation Coordinating Committee Meeting

August 22, 2017

Sara Friedman, Senior Policy Analyst, State Initiatives
Council of State Governments Justice Center



Overview

01 System Overview

02 Implementation Analysis

03 Key Takeaways and
Recommendations



Summary of implementation progress



NDCS, AOP, the Board of Parole, and AOC undertook numerous projects aimed at ultimately reducing the prison population, including:

- Increasing the use of evidence-based practices
- Collaborating system-wide
- Streamlining processes to align with best practices



Public safety measures are trending in the right direction:

- Fewer people are leaving prison unsupervised.
- NDCS, AOP, and Parole continue to provide training for staff that strengthens evidence-based practices.

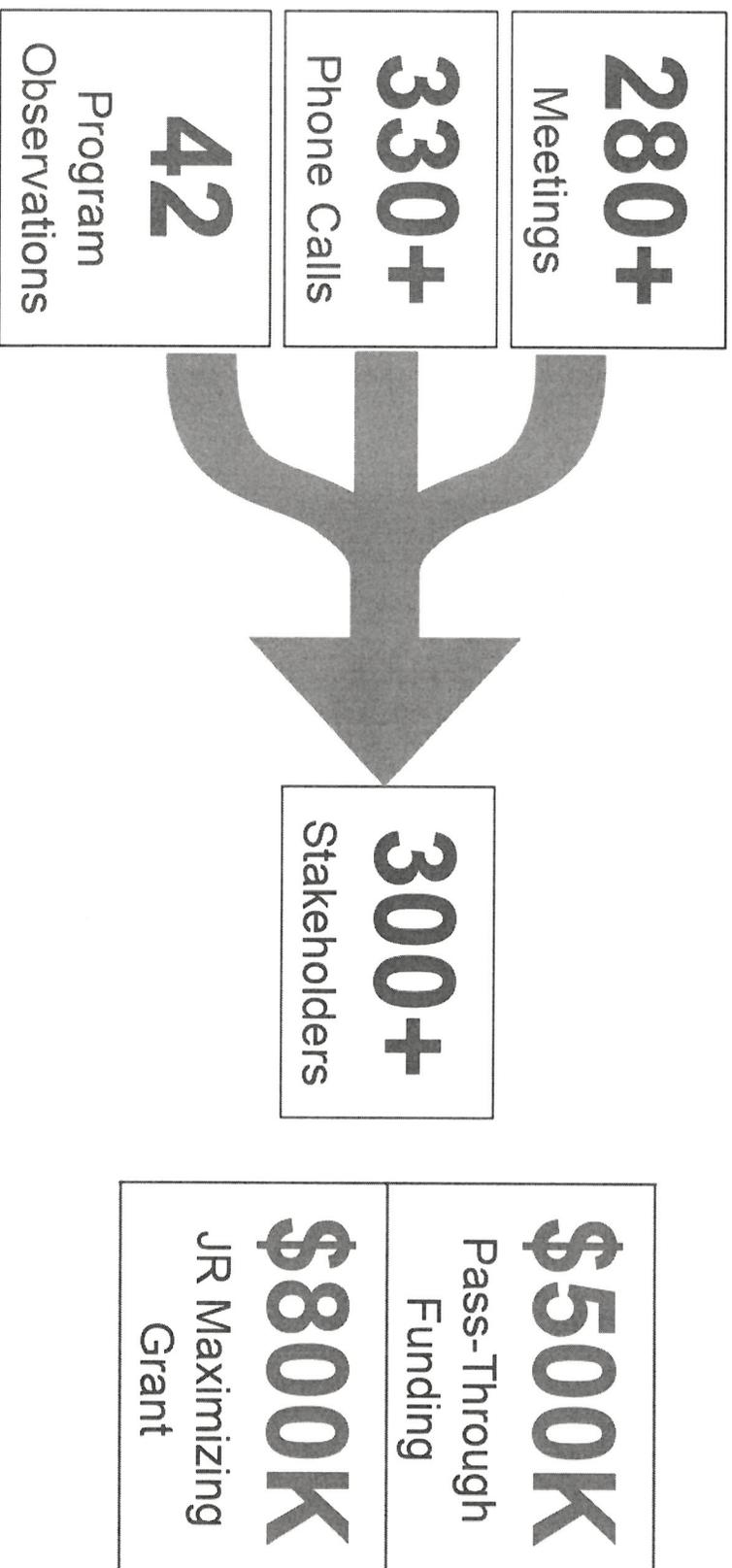


Most importantly, Nebraska's prison population has stopped increasing and is trending downward.

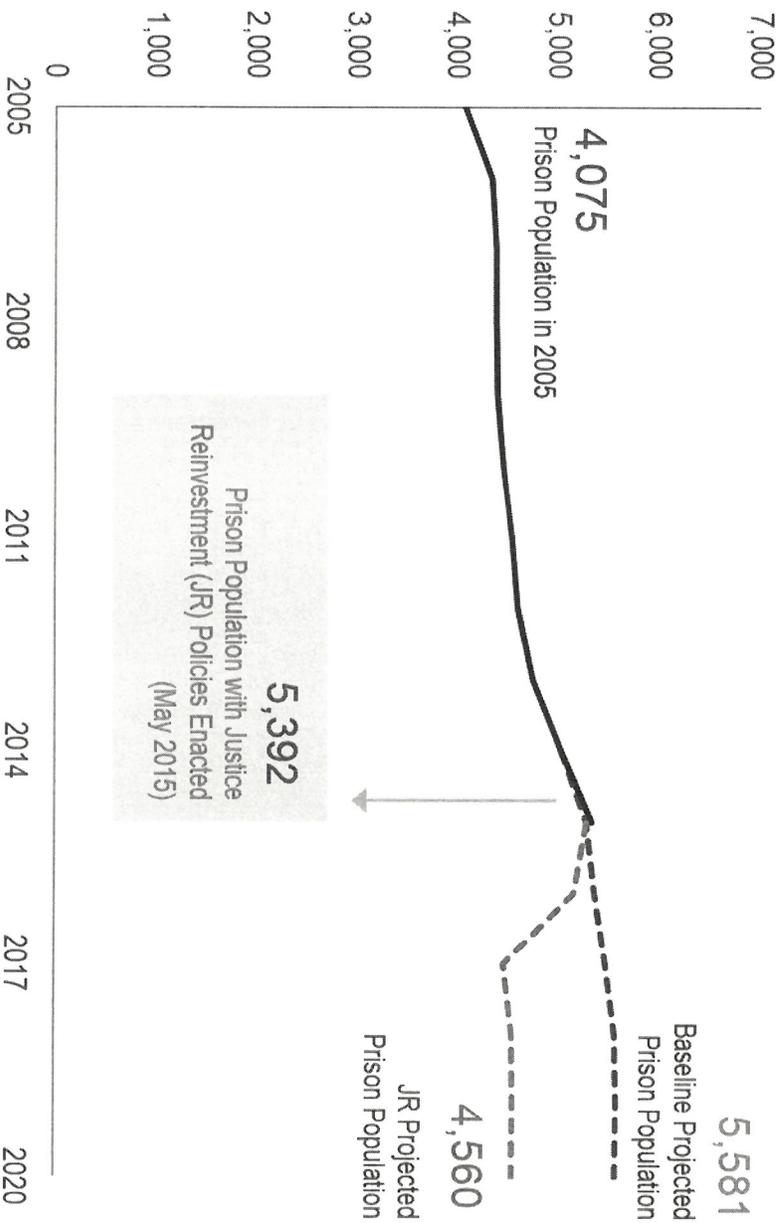


However, the state has not met its projections and continues to experience ramifications of a severely overcrowded prison system.

Summary of CSG Justice Center technical assistance since May 2015 when LB 605 was enacted



At time of enactment, justice reinvestment was projected to reduce the prison population by 1,021 by FY2020



Source: Baseline projections were provided by the Nebraska Department of Correctional Services and represent fiscal year estimates. The actual population figures include state-sentenced inmates housed in county jails.

PROJECTED OUTCOMES

\$302M

averted construction and operations costs by FY2020

1,021

fewer people in prison than the projected FY2020 population

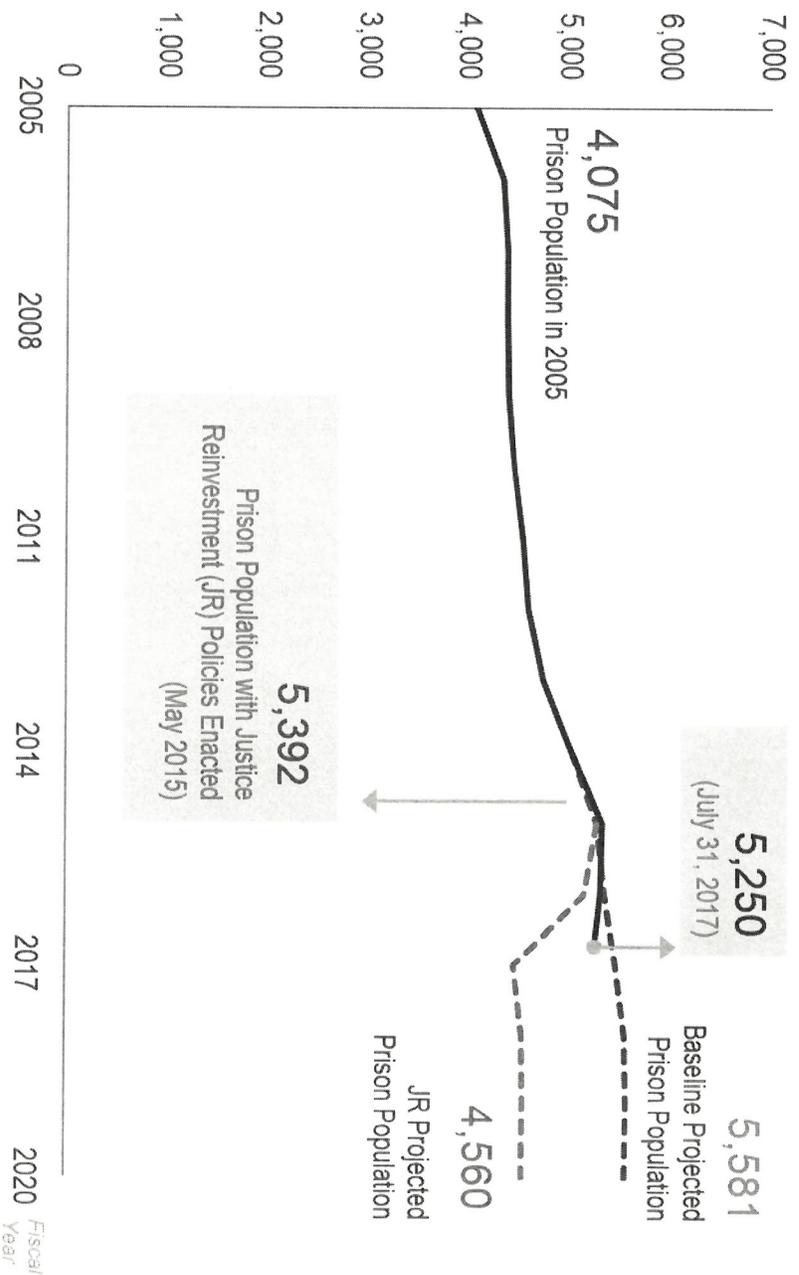
300

more people supervised on release each year

\$33M

recommended reinvestment in strategies to reduce recidivism (FY2016–FY2021)

Nebraska's prison population has decreased by 142 thus far



Source: Baseline projections were provided by the Nebraska Department of Correctional Services and represent fiscal year estimates. The actual population figures include inmates in NDCS facilities and state-sentenced inmates housed in county jails.

PROJECTED OUTCOMES

\$302M

Averted construction and operations costs by FY2020

1,021

Fewer people in prison than the projected FY2020 population

REALIZED OUTCOMES

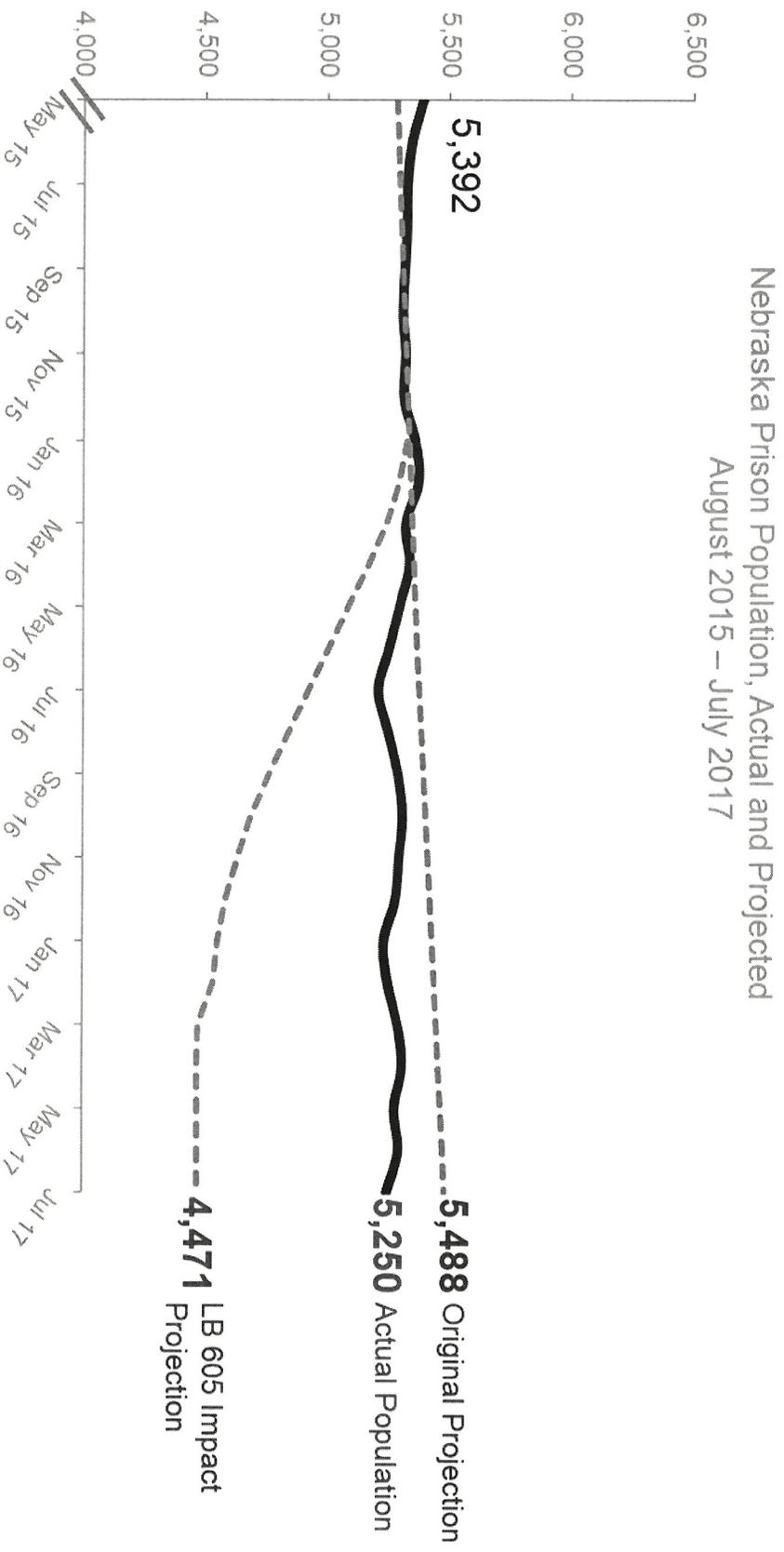
\$14.7M

upfront reinvestments in FY2016 and FY2017

1,000+

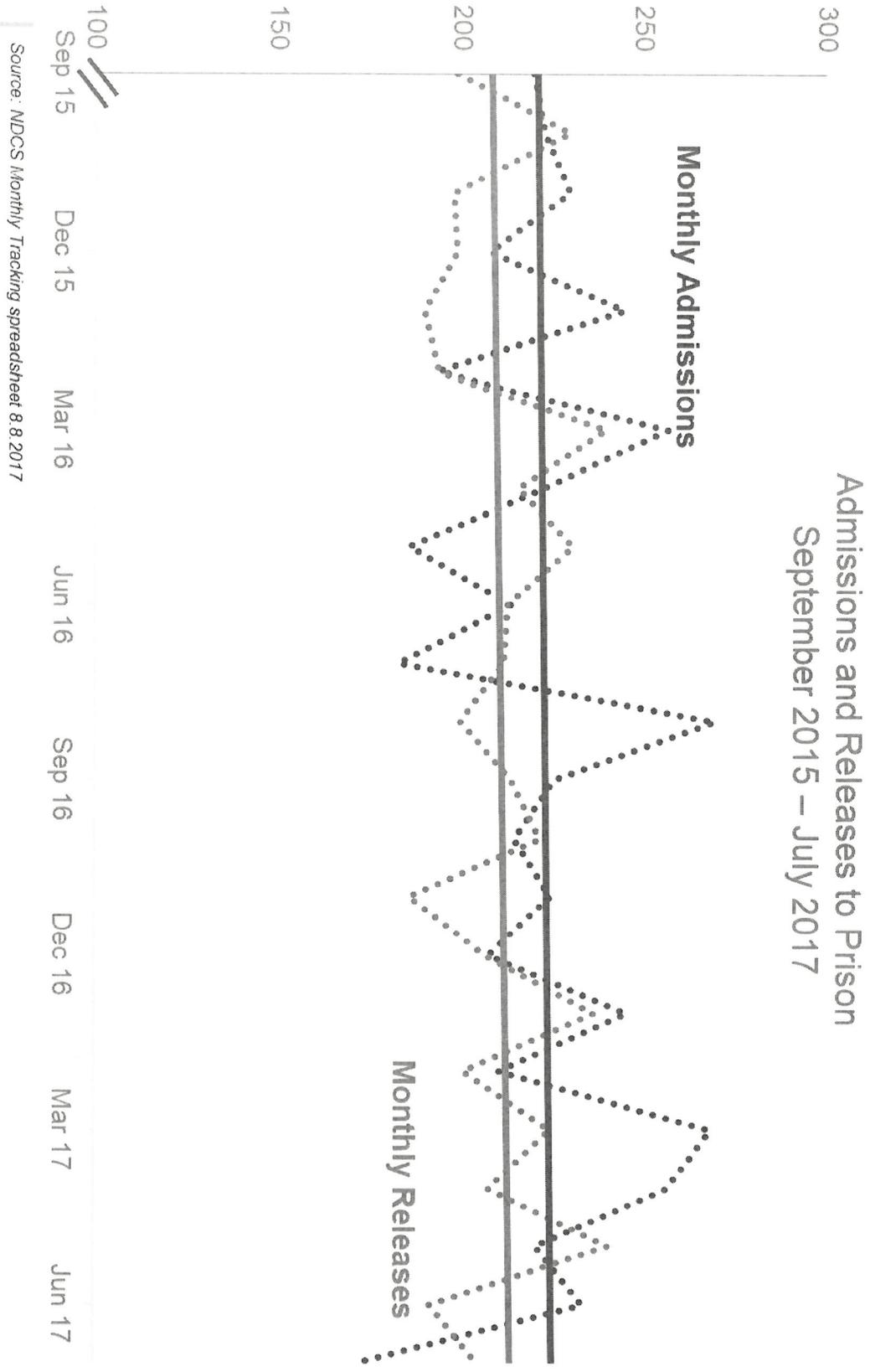
more people supervised on release each year

To zoom in on the trend, the prison population has fluctuated since LB 605 was enacted, but remains below the baseline projection

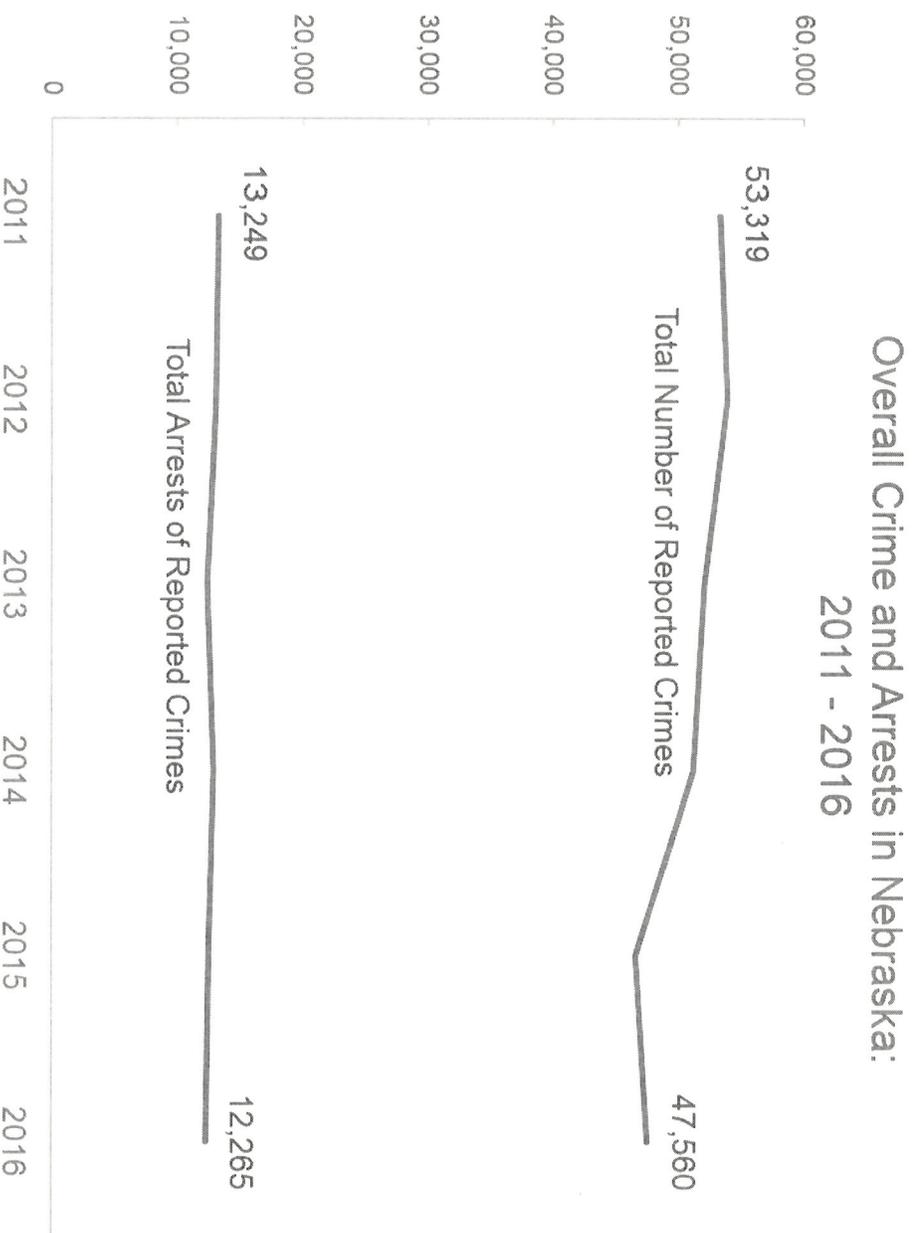


Source: NDCS Population from monthly Director's Report, last day of month

Both NDCS admissions and releases are flat, although LB 605 should have led to decreased admissions and increased releases

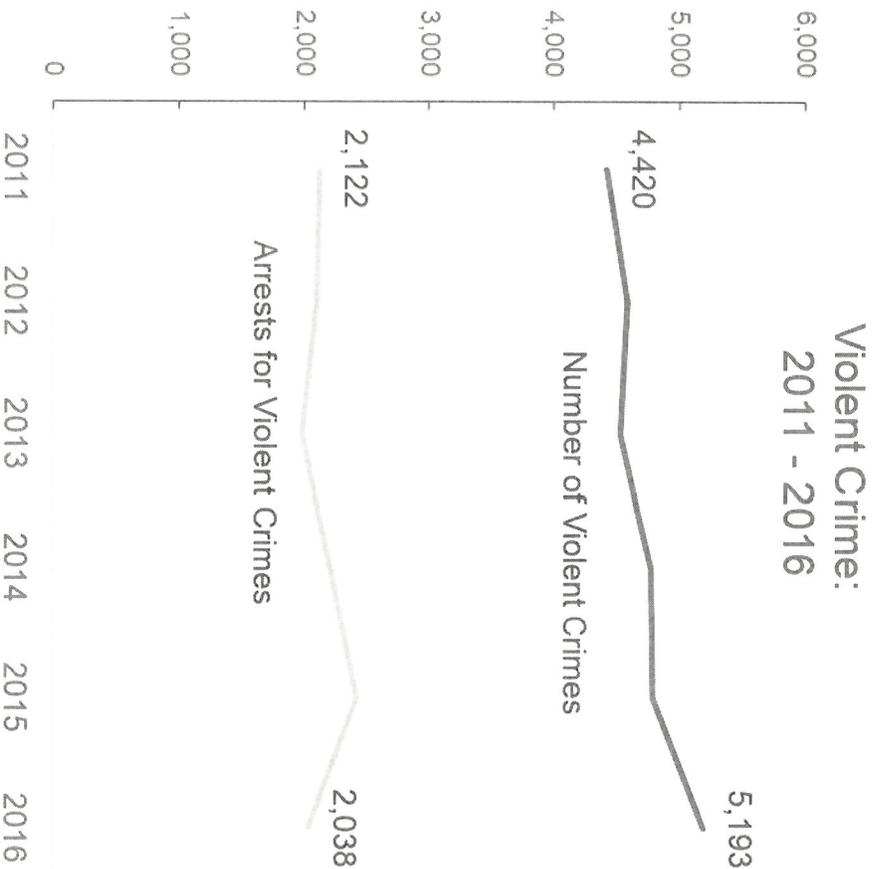


Total reported crimes and arrests have fallen since 2011



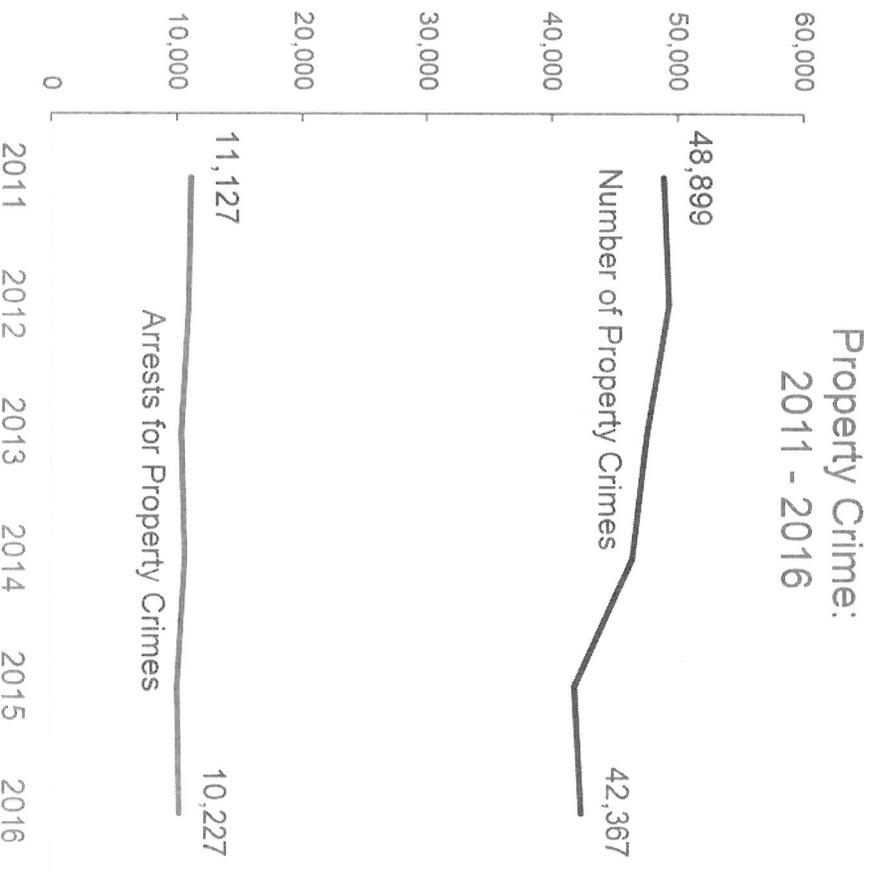
Source: Nebraska Crime Commission's Crime in Nebraska series, 2012, 2014, and 2016

Overall trends are declining, but the violent crime rate increased 13% over this six year period



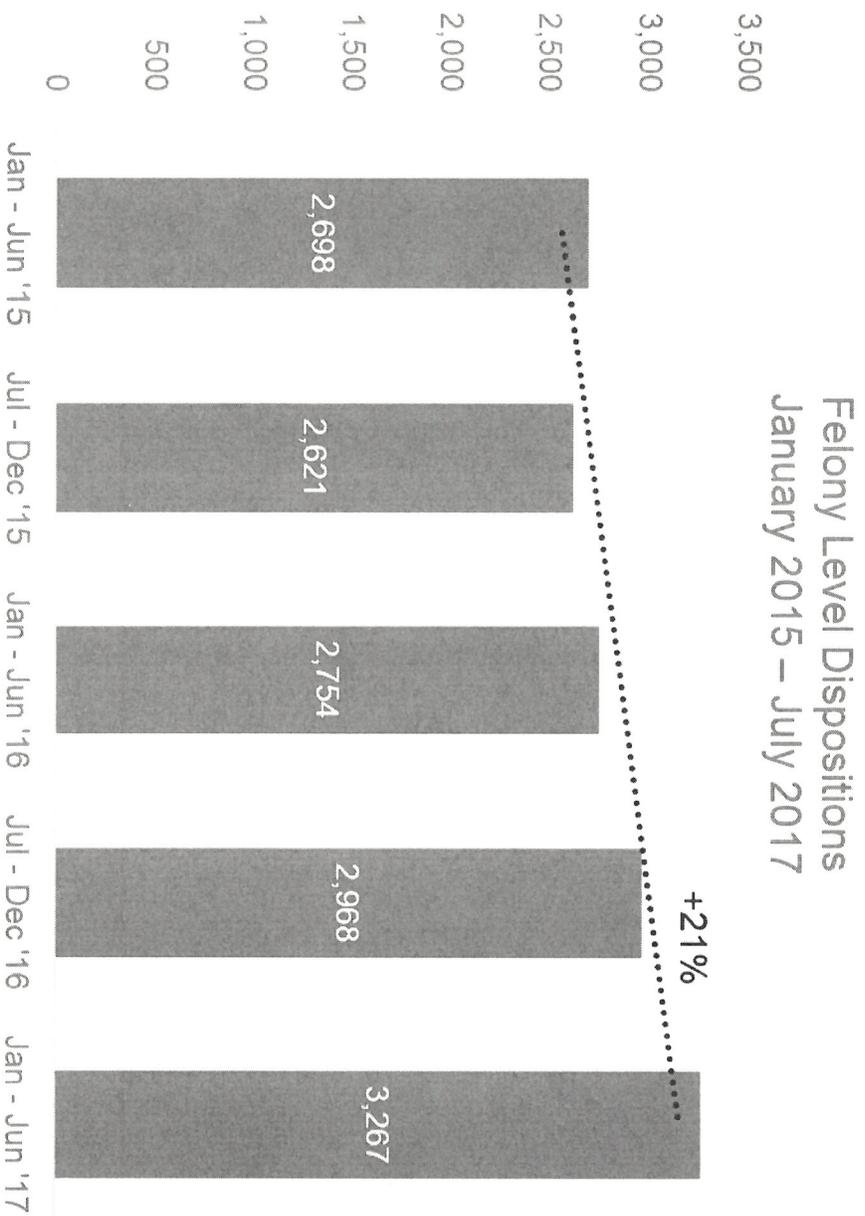
✓ Majority of increase in violent crimes is attributable to aggravated assaults (up 26% compared to 2011)

Source: Nebraska Crime Commission's Crime in Nebraska series, 2012, 2014, and 2016



✓ Majority of decrease in property crimes is attributable to declines in burglary (-24%) and larceny/theft (-14%)

There has been a larger than expected increase in the total number of felony cases in the court system



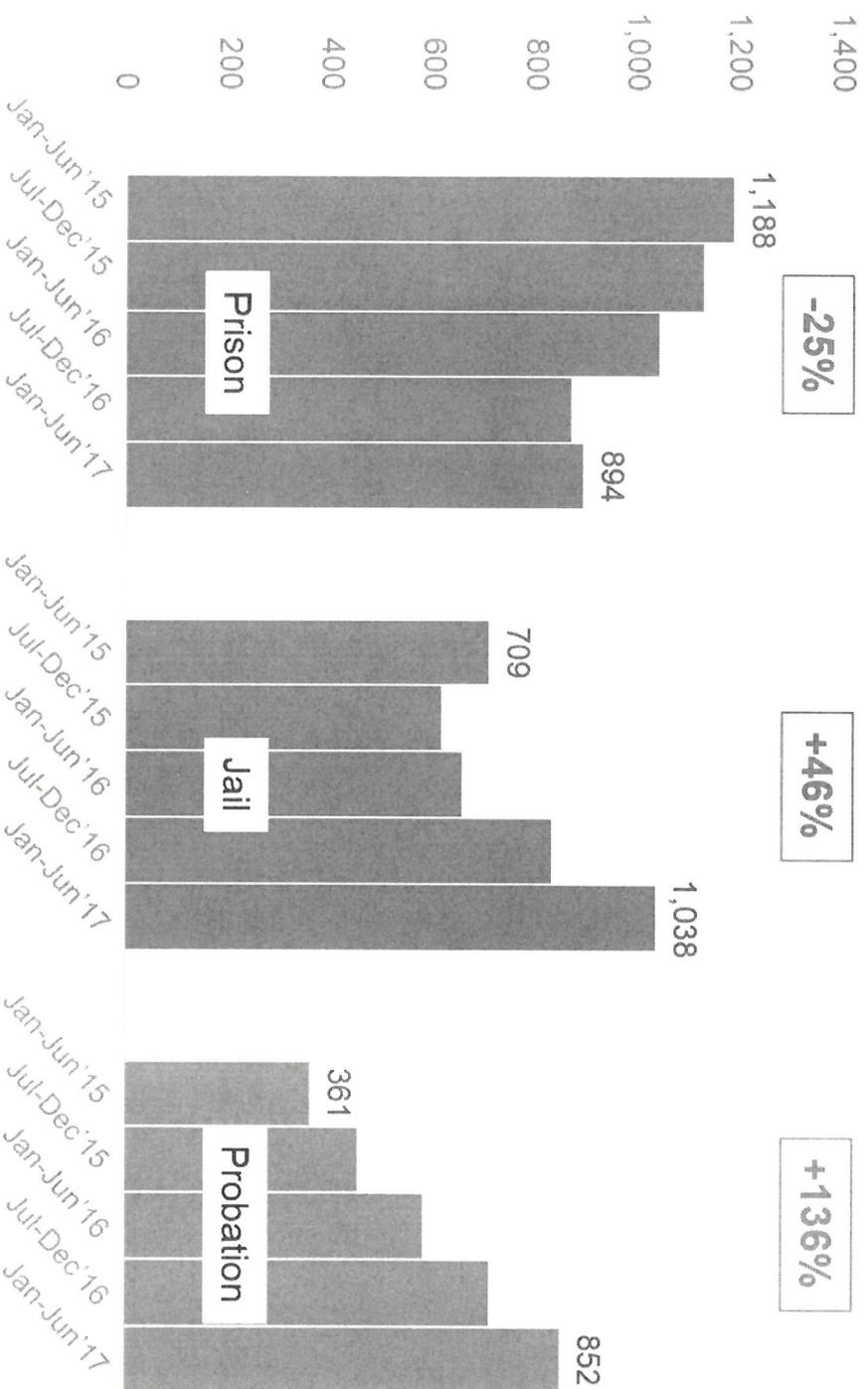
Felony dispositions over the most recent six months are 21% higher than the same time period is 2015

Source: Nebraska Crime Commission report, "Sentencing_JUSTICE_Data_csg_08182017.pdf"

Sentencing data for felony convictions shows a decrease in prison dispositions and an increase in dispositions to jail and probation

Felony Level Dispositions to Prison, Jail, or Probation

January 2015 – July 2017



Source: Nebraska Crime Commission report, "Sentencing_JUSTICE_Data_csg_08182017.pdf"

Overview

01 System Overview

02 Implementation Analysis

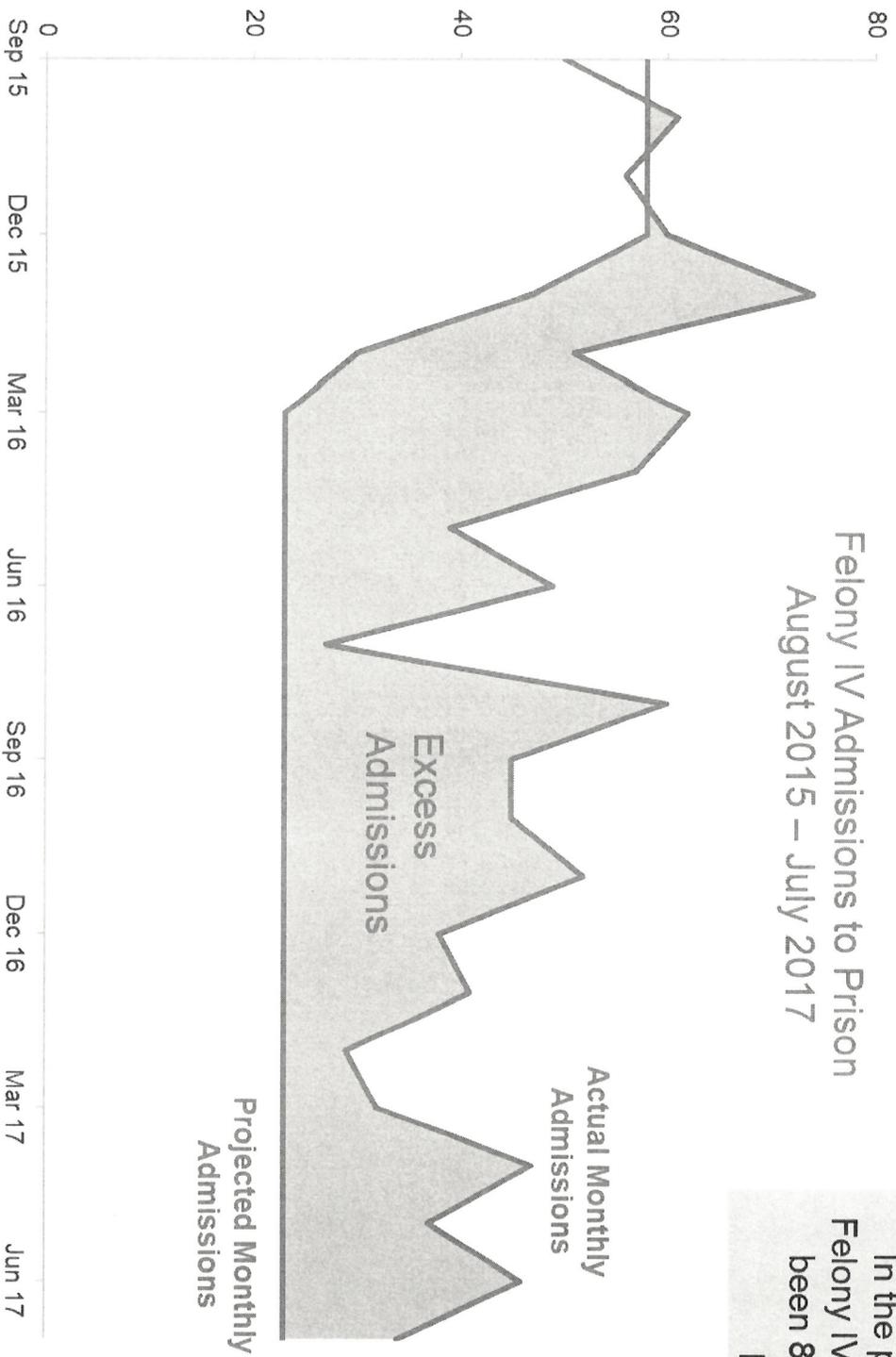
03 Key Takeaways and
Recommendations



CSG projected the impact of seven main policies on Nebraska's prison population

- 1 **Divert nonviolent, low-level offenses** (felony IV) to probation rather than prison or jail
- 2 **Increase thresholds** for property offenses to account for inflation
- 3 **Adopt parole guidelines** to ensure that parole-eligible Class I, II, and IIIA felons receive at least 9 months of supervision on parole
- 4 **Use graduated sanctions** (including short periods of incarceration) in response to non-compliance on parole to reduce revocations to prison
- 5 Respond to major probation violations with **short periods of incarceration** followed by **supervision in lieu of revocation**
- 6 Require that **misdemeanor sentences to incarceration be served in jail** rather than prison
- 7 Provide periods of incarceration followed by **post-release supervision** for people convicted of Class III, IIIA, and IV felonies

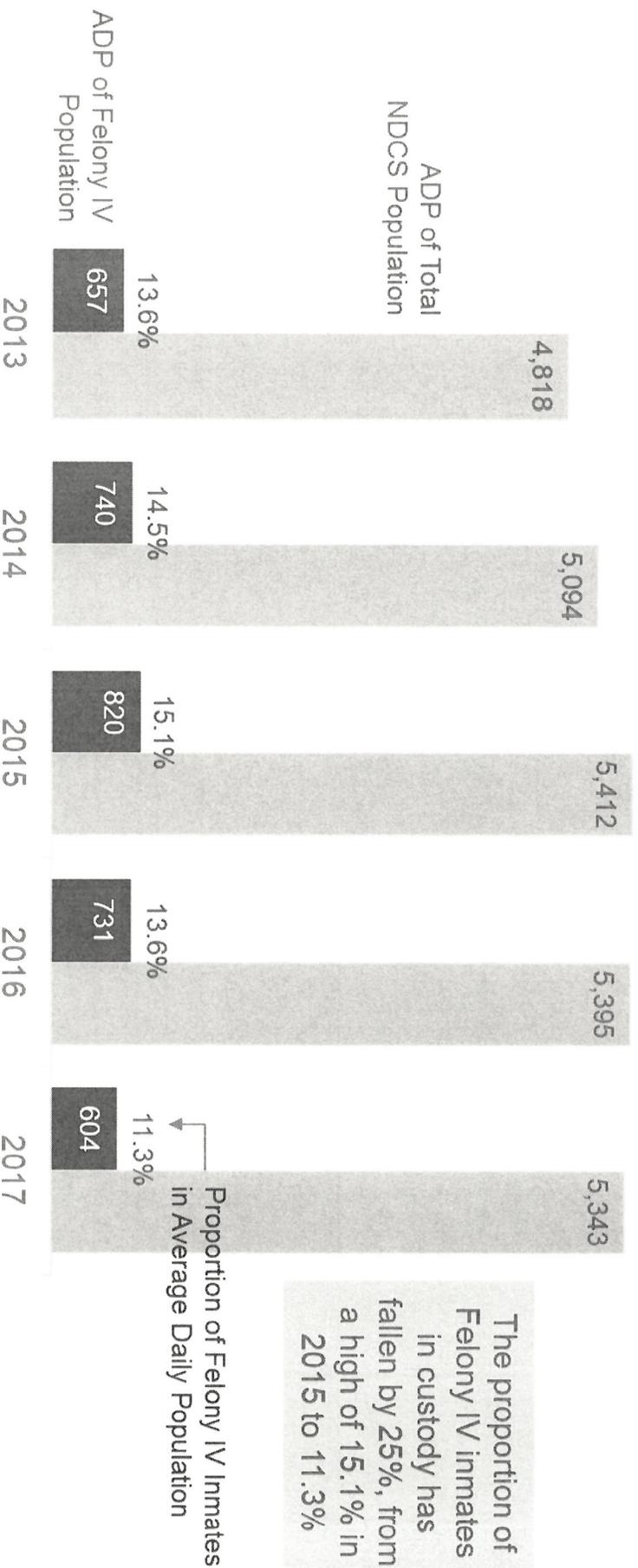
Policies 1 & 2 account for 48% of the 5-year projected prison bed impacts, but admissions to prison have not declined as anticipated



Source: NDCS Monthly Tracking spreadsheet 8-8-2017

1 & 2: Felony IV's are making up less of the prison population under the sentencing changes

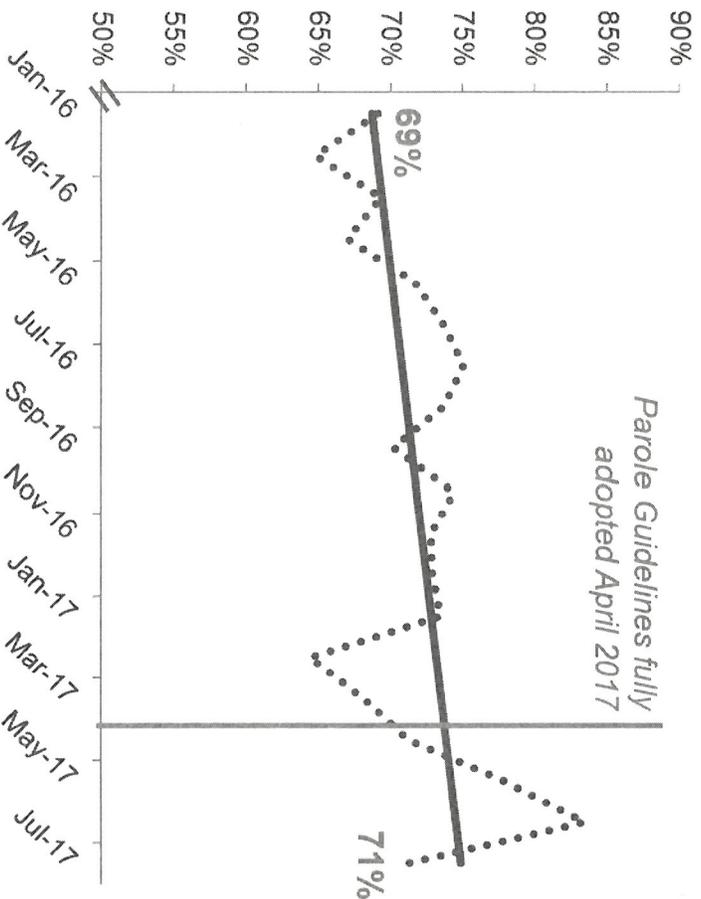
Average Daily Populations 2013 - 2017:
Total and Felony IV Populations



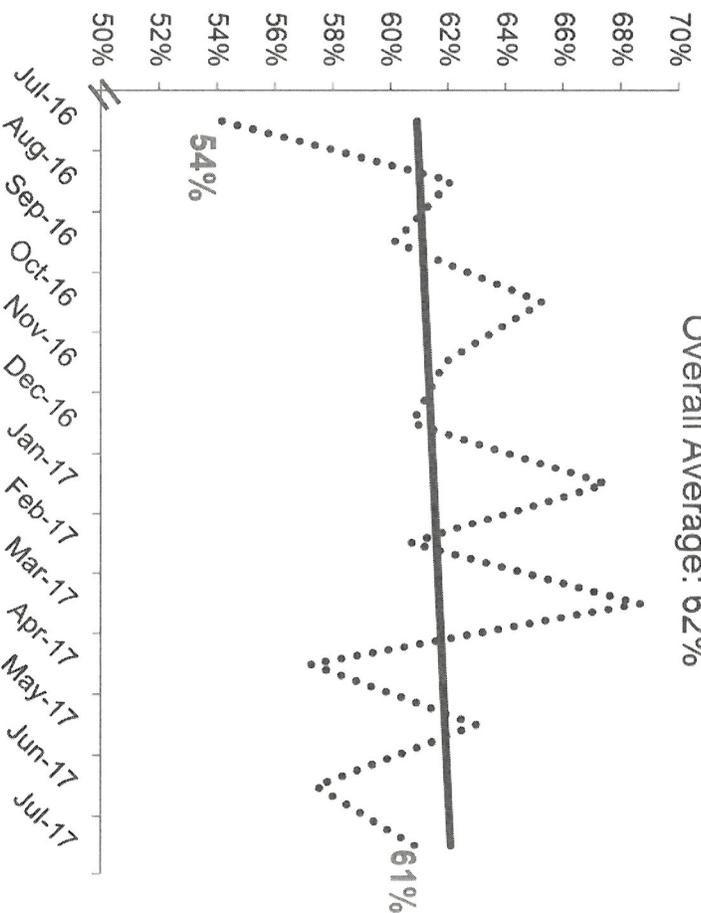
Source: NDCS email from Abby Carbaugh, 8.18.2017

3: The parole grant rate grew as the Board worked to release people with at least 9 months of supervision

Parole Grant Rate by Month:
January 2016 – July 2017



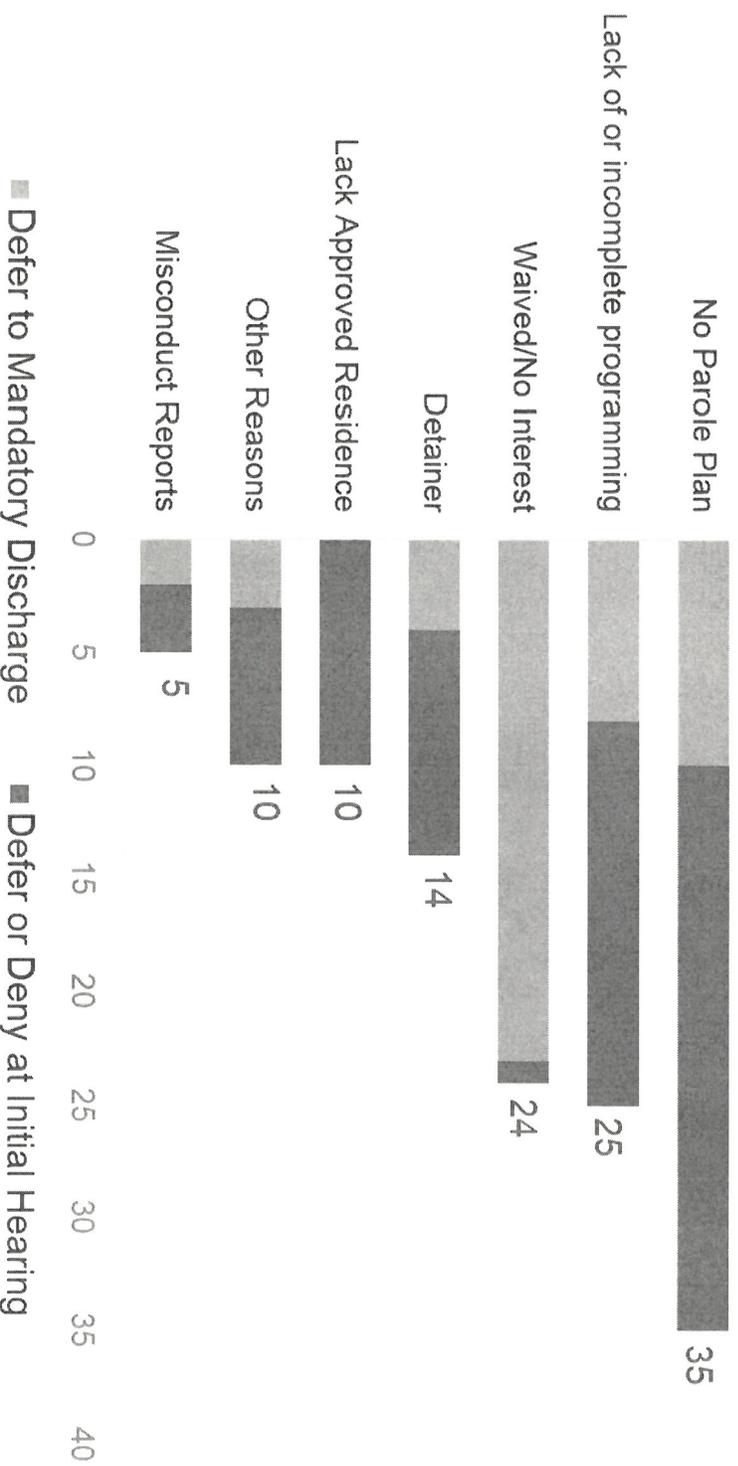
Percentage of People Paroled with
at least 9 Months of Supervision
Overall Average: 62%



Source: Board of Parole, July 2017

3: Although the Parole Board has made improvements, many people are denied parole for reasons that could be addressed

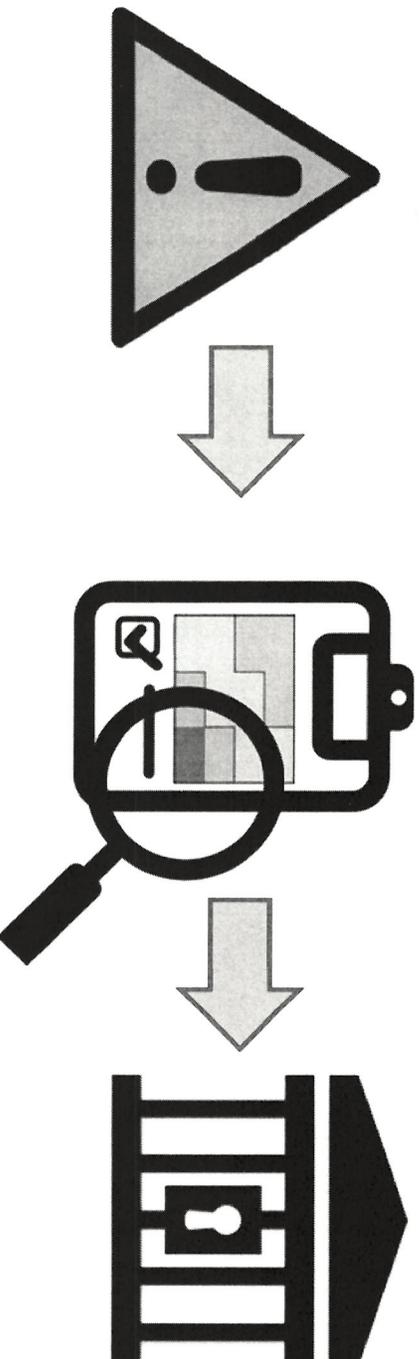
Reasons Board of Parole Denied Parole, January – July 2017



Source: Board of Parole, January 2017 – July 2017 (Reasons for denying or deferring parole)

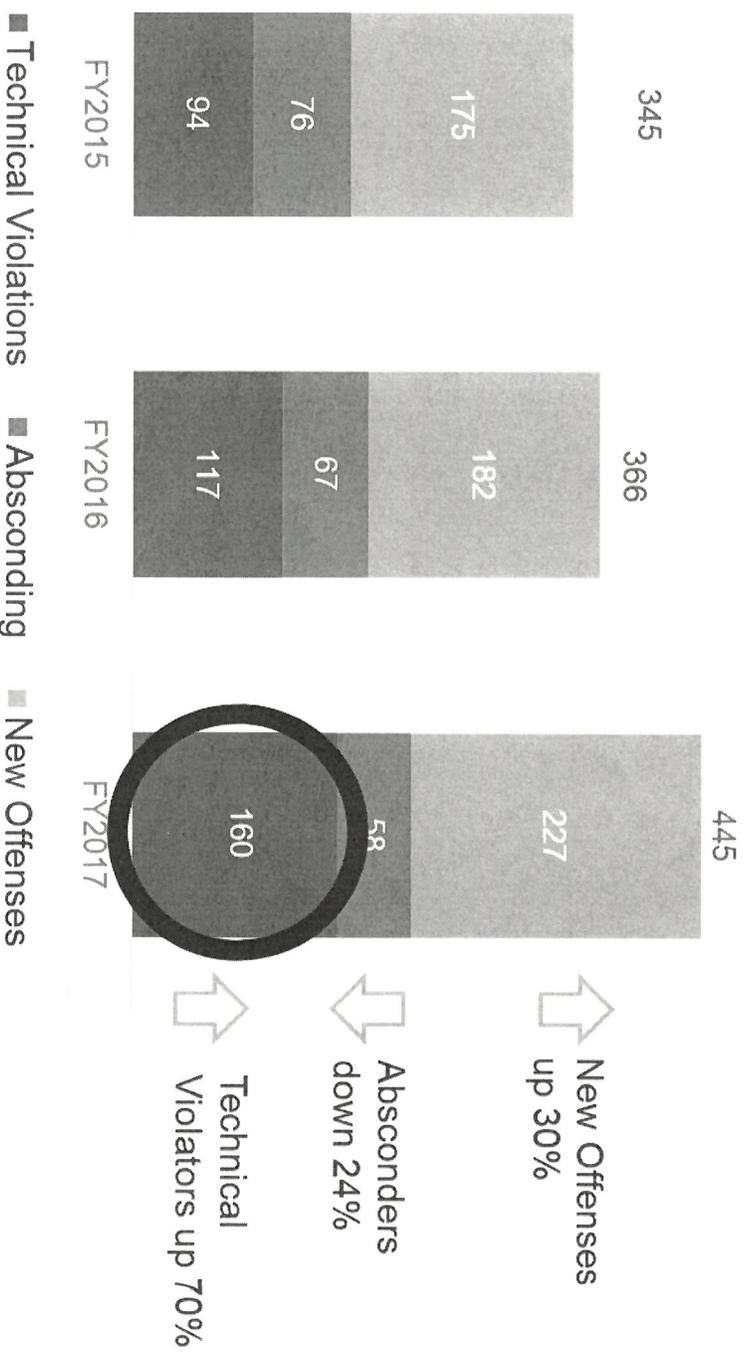
4: Parole officers began using the new supervision matrix on July 1, 2017

- Gives officers guidance on how to sanction parole violations or incentivize good behavior
- Aims to reduce the number of people on parole who revoked back to prison on technical violations
- Uses short periods of incarceration followed by resumed supervision (custodial sanctions)
- Projected to reduce the prison population by 126 beds over 5 years
- Originally projected to start having an impact in February 2016



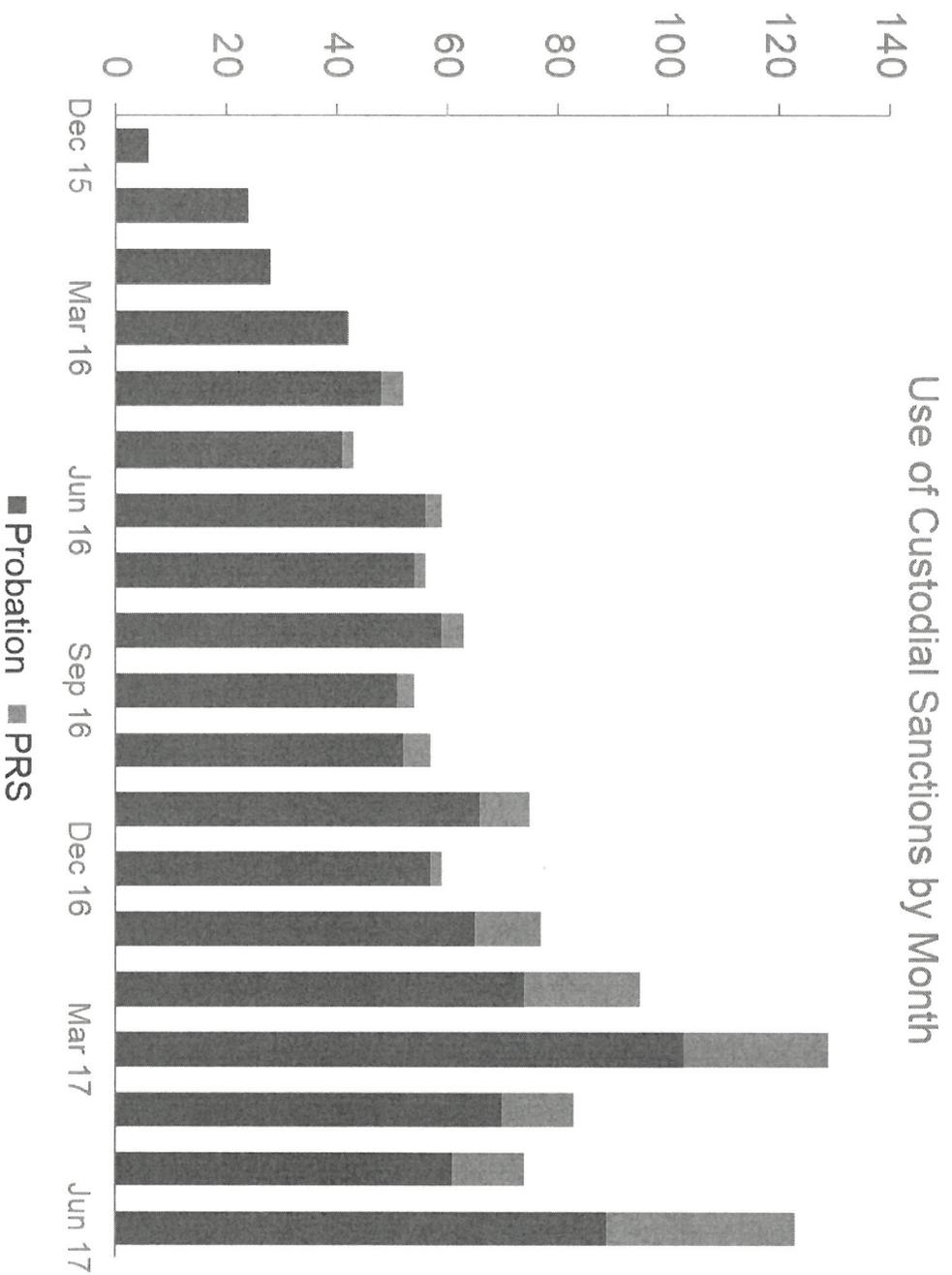
4: Parole revocations overall have increased 29% from FY 2015, largely due to technical violations and new offenses

Parole Revocations by Reason:
FY 2015 – FY 2017



Source: Parole email from Jennifer Miller, 8.21.17

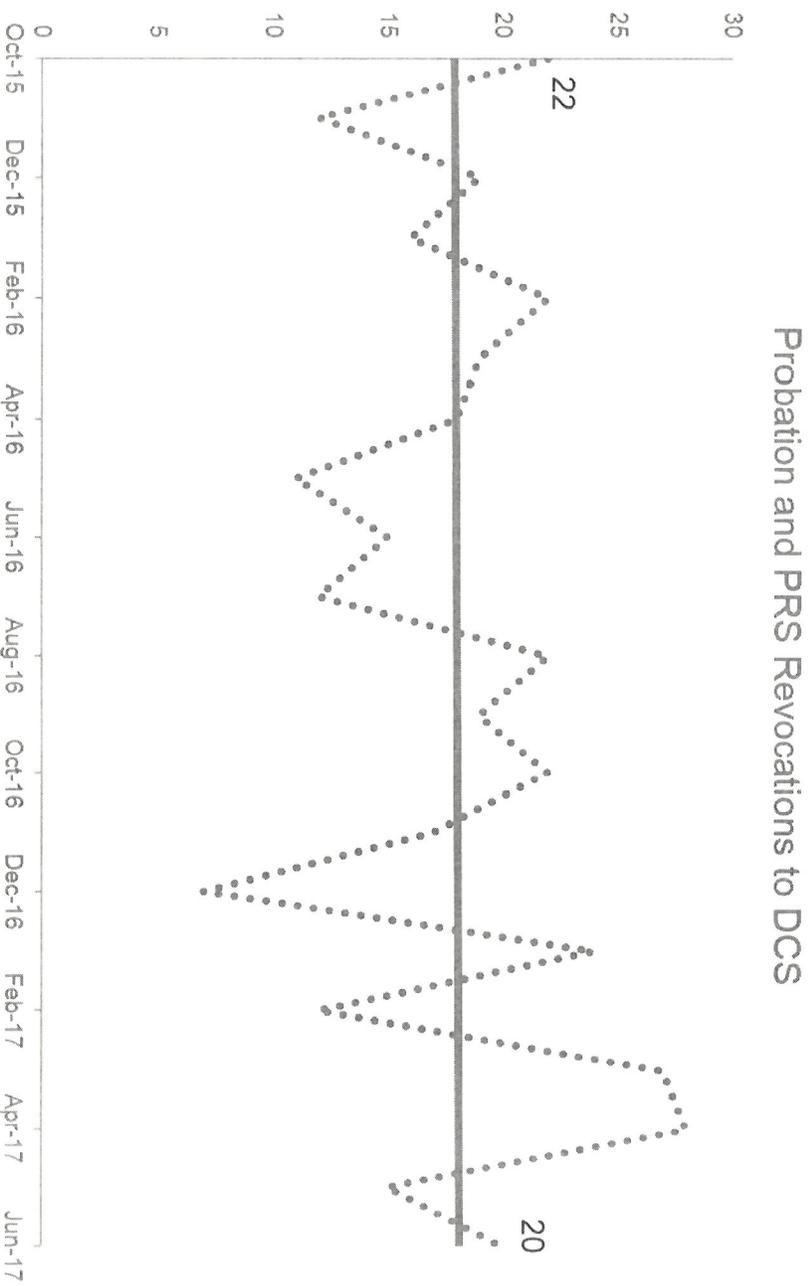
5: Probation is using custodial sanctions widely, a policy that accounts for 12% of projected impacts



Average length of stay for sanctions:
 3 days: Short term
 8 days: Mid term
 24 days: Long term

Source: AOP's "Phase 2 data tracking version 2" spreadsheet

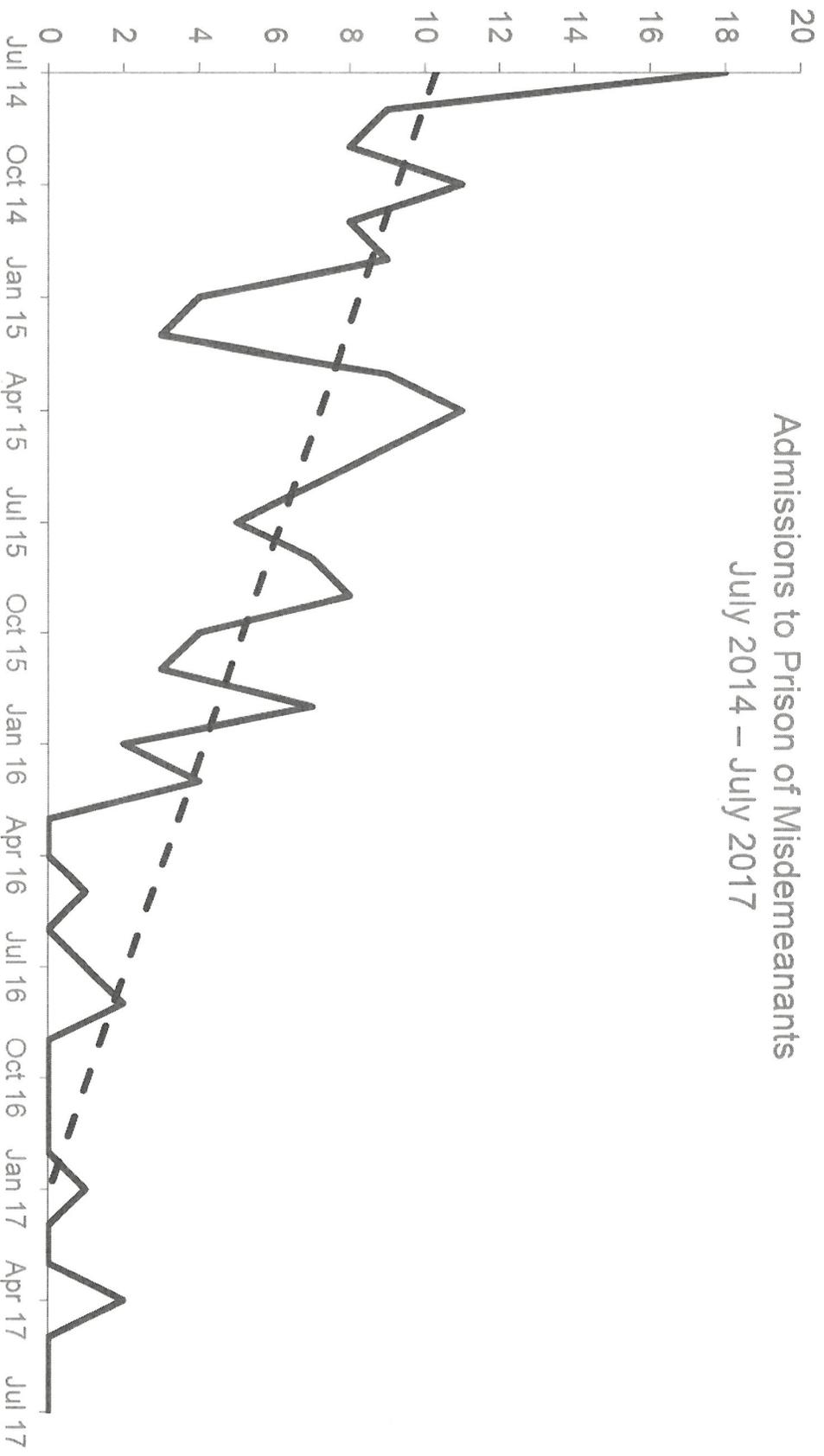
5: Felony probation revocations back to prison are flat



Average length of stay in prison for a probation revocation is 17.5 months

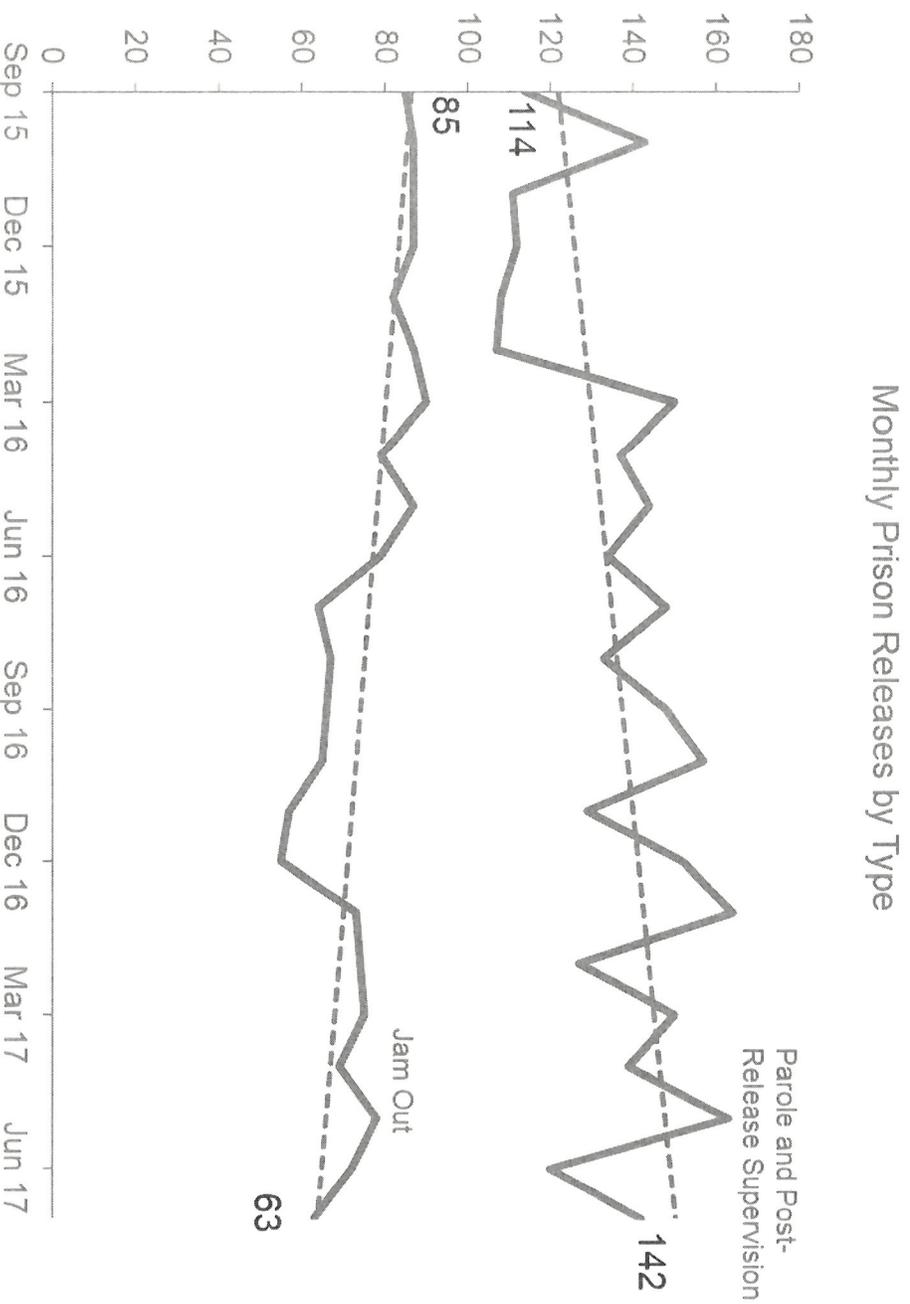
Source: AOP's "Phase 2 data tracking version 2" spreadsheet. Average length of stay from Phase I data analysis by the CSG Justice Center

6: Misdemeanant admissions to prison decreased from 106 in FY 2015 to 41 in FY 2016 to just six in FY 2017



Source: NDCS Monthly Tracking spreadsheet 8.8.2017

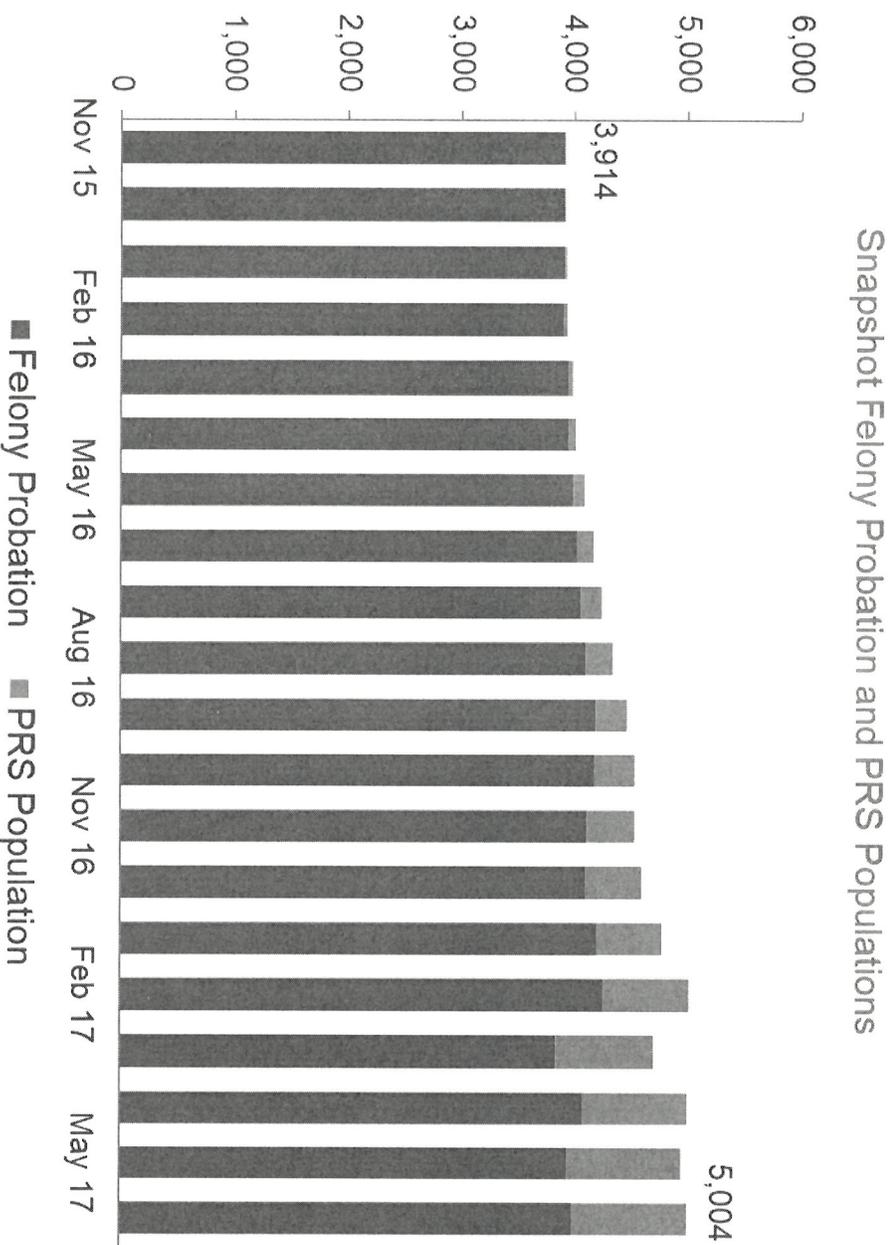
7: Jam outs are decreasing as an increasing proportion of people are being released from prison on supervision



Jam outs declined 20% since Sept 2015

Source: NDCS Monthly Tracking spreadsheet 8.8.2017

7: The total felony population supervised by AOP grew by 1,090 between November 2015 and June 2017



Felony population supervised by AOP increased by **28%** since Nov 2015

AOP used LB605 upfront reinvestment funds to open **5** new reporting centers and hire **68** field and administrative staff

Source: AOP's "Phase 2 data tracking version 2" spreadsheet

Overview

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Implementation leaders have taken steps toward JR sustainability

- **A justice reinvestment data analyst position has been created at the Nebraska Crime Commission**, funded by NDCS, at the request of the justice reinvestment steering committee who will be responsible for analyzing and reporting on criminal justice data
- **The steering committee has committed to continue to meet and collaborate** - Crime Commission Director Darrell Fisher and HHS Behavioral Health Director Sheri Dawson will join meetings moving forward to add additional perspective to the committee's work
- **Seamless System of Services meetings are held on a regular basis** and allow for agency leaders and staff to work in partnership across branches of government
- **The legislative Committee on Justice Reinvestment Oversight continues to meet**

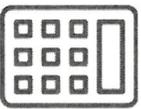
More can be done to sustain LB 605 policies



Sustain funding for probation and parole



Develop opportunities to strengthen evidence-based practices and quality assurance for risk assessment and programming



Put protections in place to ensure accuracy of agency data reports

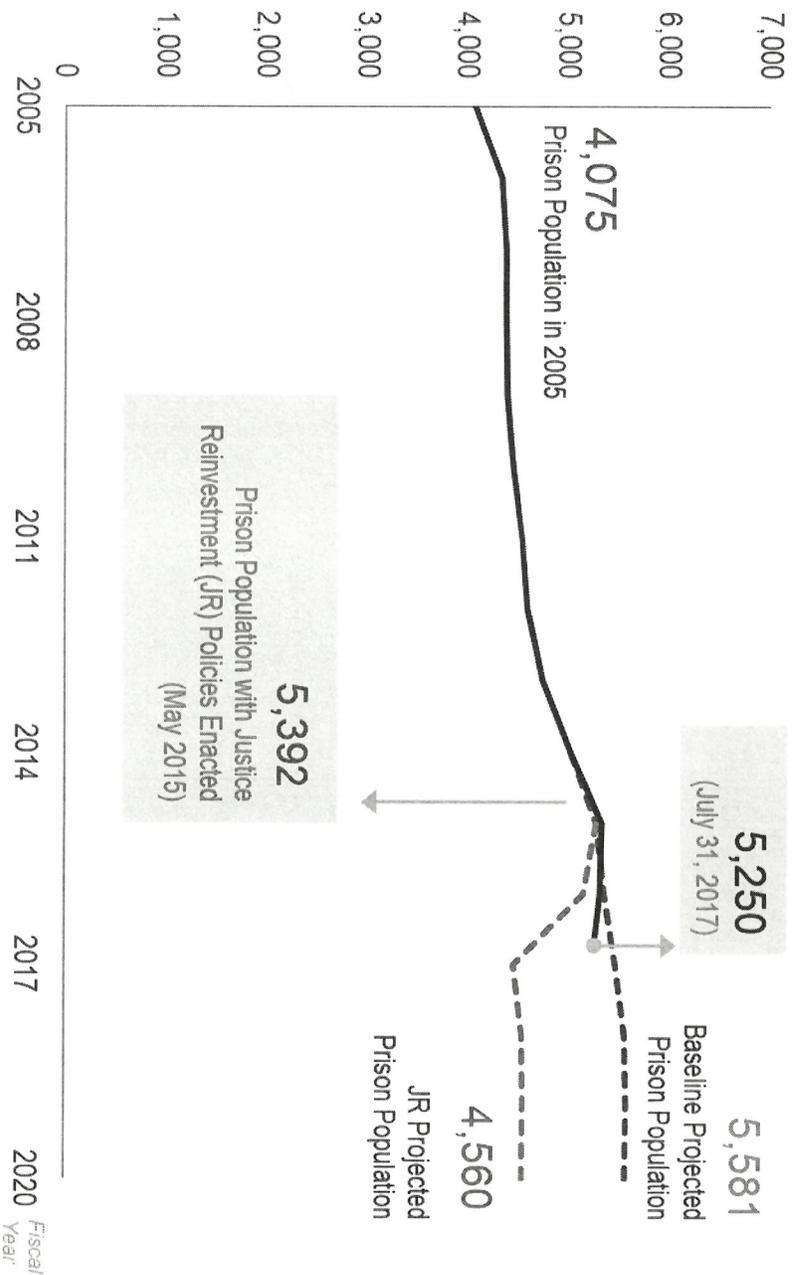


State leaders, policymakers and agency staff need to continue to work in partnership across branches of government



Nebraska is required by the Bureau of Justice Assistance to continue to report monthly data metrics to CSG for the next two years

Nebraska's prison population has decreased by 142 thus far



Source: Baseline projections were provided by the Nebraska Department of Correctional Services and represent fiscal year estimates. The actual population figures include inmates in MDCCS facilities and state-sentenced inmates housed in county jails

PROJECTED OUTCOMES

\$302M

Averted construction and operations costs by FY2020

1,021

Fewer people in prison than the projected FY2020 population

REALIZED OUTCOMES

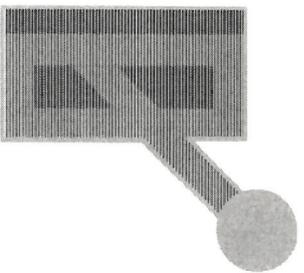
\$14.7M

upfront reinvestments in FY2016 and FY2017

1,000+

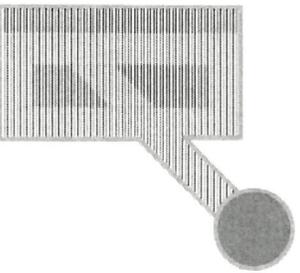
more people supervised on release each year

Focus on these three metrics to maximize impact and reduce overcrowding



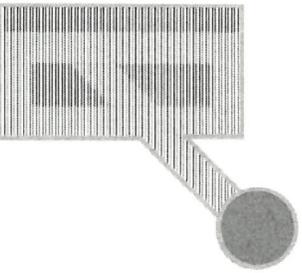
Admissions to prison by felony class

Felony dispositions to prison fell **25%** since January 2015, while prison admissions have remained flat over a similar time period



Parole grant rate

Of people denied parole in the past seven months, **42%** lacked a parole plan or institutional core risk reducing programming



Parole and probation revocations to prison

In FY 2017, **36%** of parole revocations were for technical violations; moving forward similar violations should be diverted from prison in accordance with the new supervision matrix and custodial sanctions

Source: Nebraska Crime Commission report, "Sentencing_JUSTICE_Data_csg_08182017.pdf",
NDCS Monthly Tracking spreadsheet 8.8.2017; Board of Parole, January 2017 - July 2017
(Reasons for denying or deferring parole); Parole email from Jennifer Miller, 8.21.17

Continue to look for ways to divert low-level, nonviolent felonies away from prison and increase opportunities for community supervision



Modify statutory language to add more structure to felony sentencing: encourage probation for low-level felonies and meaningful parole windows for high-level felonies



Conduct further analysis on charging, case filings, and length of stay to use the results to **design targeted strategies** to increase judicial and prosecutorial buy-in to community supervision



Create a sentencing information database to help analyze sentencing practices throughout the state, as recommended during Phase I of justice reinvestment

Ensure more people are parole ready in the institutions to foster more timely release from prison

Follow CSG's Justice Program Assessment recommendations and ensure that people are receiving **core risk reducing programming** prior to their parole eligibility date



Commit resources to **complete parole plans** in a more timely manner prior to parole board hearings



Expand the responsibilities of the Office of Parole Administration to encourage the agency to grow and build on its new foundation of evidence-based practices



Accelerate work to reduce probation and parole revocations to prison



Ensure **administrative policies** emphasize using custodial sanctions in lieu of revocation, rather than in addition to it, to decrease the likelihood of net widening



Implement **regular booster trainings** for parole and probation officers on using the supervision matrix and appropriate sanction responses to violation behavior



Expand **behavioral health treatment** and programming for people on probation and parole

- Increase wraparound services for people in danger of going back to prison on a revocation
- Adopt long-term efforts to increase the behavioral health workforce in the state
- Incentivize community treatment providers to work with the criminal justice population

Thank You

Sara Friedman, Senior Policy Analyst,
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