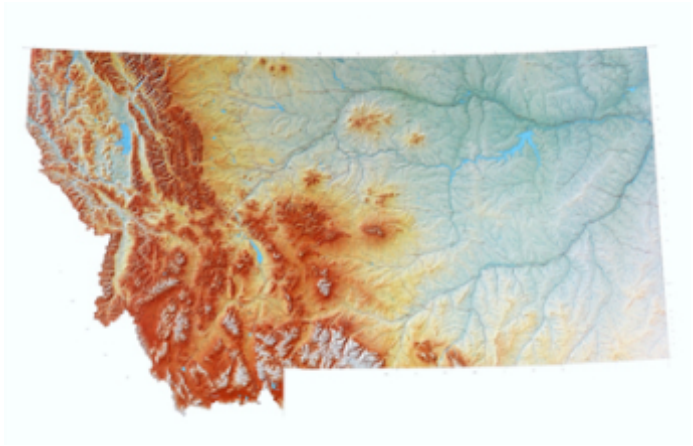
JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS



Montana Commission on Sentencing: Applying Justice Reinvestment

September 2, 2015

Council of State Governments Justice Center

Carl Reynolds, Senior Legal & Policy Advisor
Karen Chung, Policy Analyst
David Sisk, Policy Analyst

Presentation Overview

Justice Reinvestment

- Justice Reinvestment Process
- State Experiences with Justice Reinvestment

Criminal Justice Trends in Montana

- Key Challenges in Montana
- Questions for Commission on Sentencing

Council of State Governments Justice Center

- National non-profit, non-partisan 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

Funding and Partners for Justice Reinvestment

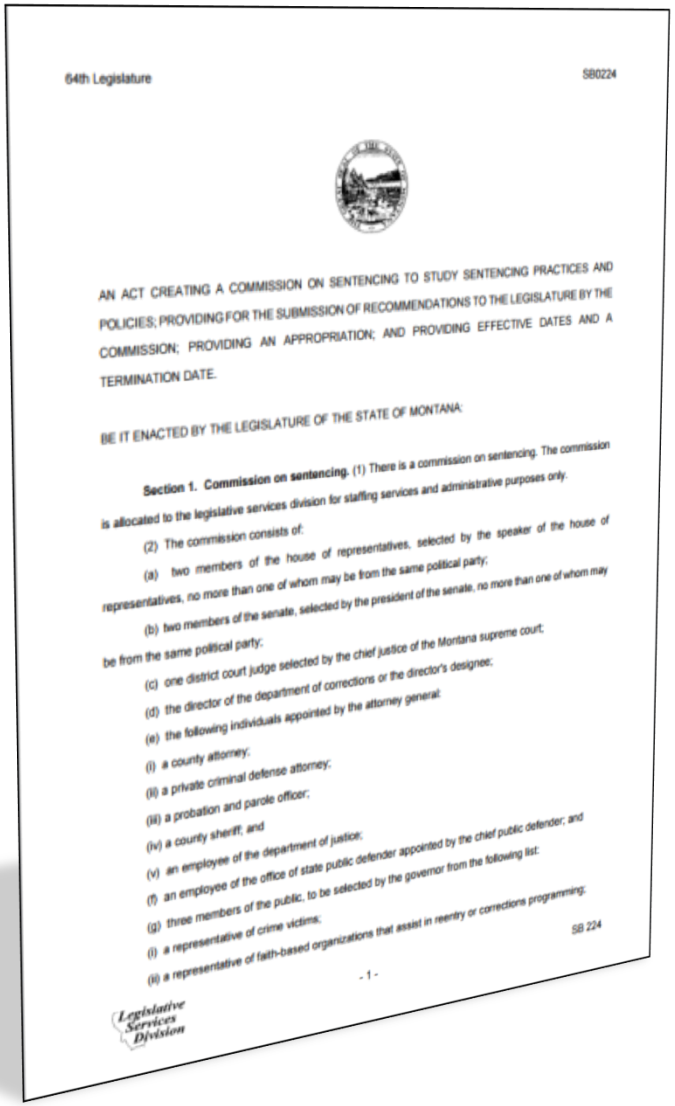
Justice Reinvestment

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

BJA
Bureau of Justice Assistance
U.S. Department of Justice

THE PEW CHARITABLE TRUSTS

SB 224 created Montana Commission on Sentencing with a mandate for empirical study and evidence-based practices.



64th Legislature SB0224

AN ACT CREATING A COMMISSION ON SENTENCING TO STUDY SENTENCING PRACTICES AND POLICIES; PROVIDING FOR THE SUBMISSION OF RECOMMENDATIONS TO THE LEGISLATURE BY THE COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Commission on sentencing. (1) There is a commission on sentencing. The commission is allocated to the legislative services division for staffing services and administrative purposes only.

(2) The commission consists of:

(a) two members of the house of representatives, selected by the speaker of the house of representatives, no more than one of whom may be from the same political party;

(b) two members of the senate, selected by the president of the senate, no more than one of whom may be from the same political party;

(c) one district court judge selected by the chief justice of the Montana supreme court;

(d) the director of the department of corrections or the director's designee;

(e) the following individuals appointed by the attorney general:

(i) a county attorney;

(ii) a private criminal defense attorney;

(iii) a probation and parole officer;

(iv) a county sheriff; and

(v) an employee of the department of justice;

(f) an employee of the office of state public defender appointed by the chief public defender; and

(g) three members of the public, to be selected by the governor from the following list:

(i) a representative of crime victims;

(ii) a representative of faith-based organizations that assist in reentry or corrections programming;

SB 224

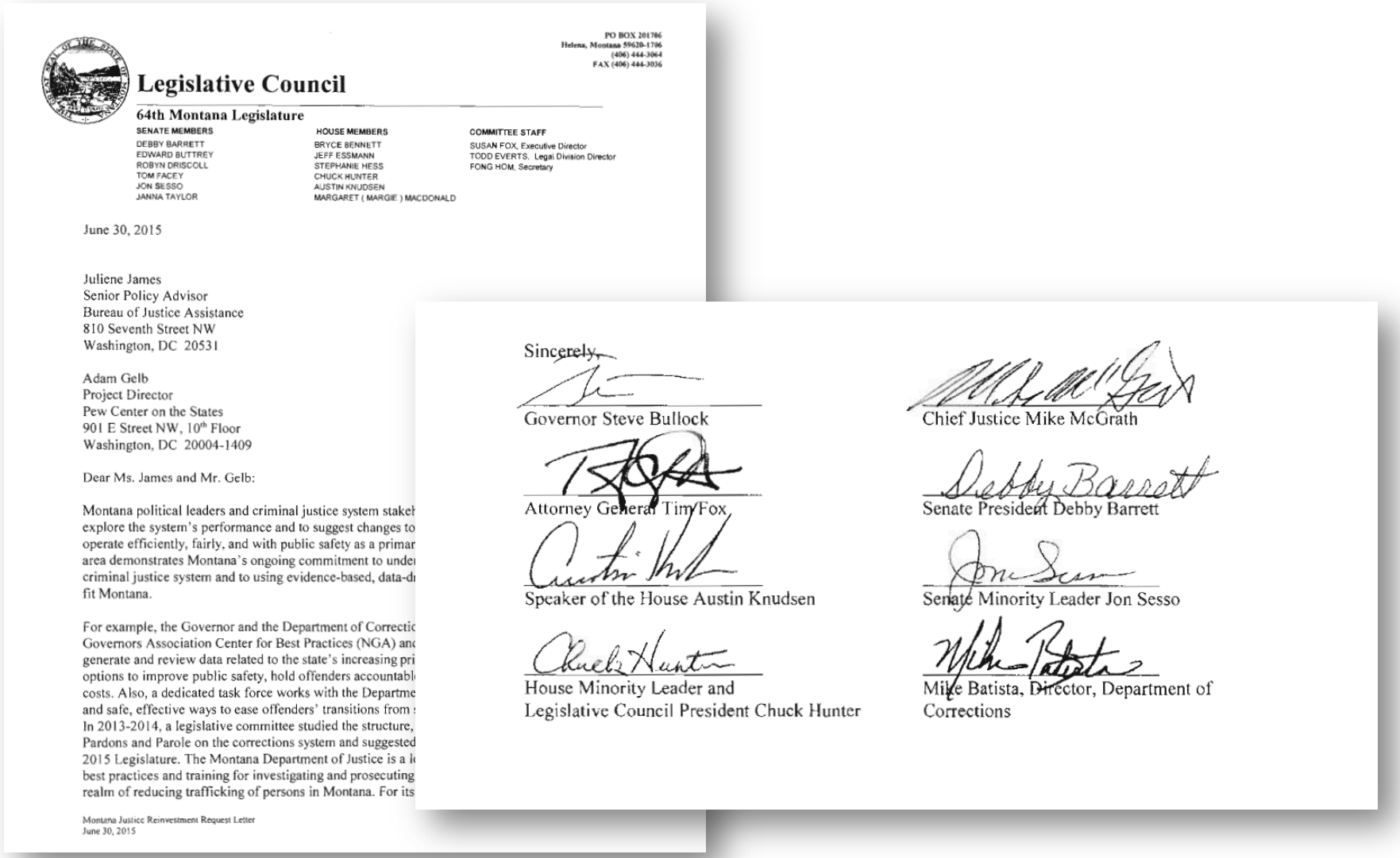
- 1 -

Legislative Services Division

Created an inter-branch commission of criminal justice system stakeholders to (among other things):

- "identify strategies to **safely reduce incarceration** in state prisons and to promote **evidence-based diversion** programs and other effective alternatives to incarceration"
- "**balance sentencing practices and policies with budget constraints**"
- report recommendations, including data analysis, to 65th legislature (December 2016)

State leaders requested assistance to conduct a comprehensive analysis of Montana's criminal justice system.



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Legislative Council

64th Montana Legislature

SENATE MEMBERS	HOUSE MEMBERS	COMMITTEE STAFF
DEBBY BARRETT	BRYCE BENNETT	SUSAN FOX, Executive Director
EDWARD BUTTREY	JEFF ESSMANN	TODD EVERTS, Legal Division Director
ROBYN DRISCOLL	STEPHANIE HESS	FONG HOM, Secretary
TOM FACEY	CHUCK HUNTER	
JON SESSO	AUSTIN KNUDSEN	
JANNA TAYLOR	MARGARET (MARGIE) MACDONALD	

June 30, 2015

Juliene James
Senior Policy Advisor
Bureau of Justice Assistance
810 Seventh Street NW
Washington, DC 20531

Adam Gelb
Project Director
Pew Center on the States
901 E Street NW, 10th Floor
Washington, DC 20004-1409

Dear Ms. James and Mr. Gelb:

Montana political leaders and criminal justice system stakeh
explore the system's performance and to suggest changes to
operate efficiently, fairly, and with public safety as a primar
area demonstrates Montana's ongoing commitment to unde
criminal justice system and to using evidence-based, data-dr
fit Montana.

For example, the Governor and the Department of Correctic
Governors Association Center for Best Practices (NGA) and
generate and review data related to the state's increasing pri
options to improve public safety, hold offenders accountabl
costs. Also, a dedicated task force works with the Departme
and safe, effective ways to ease offenders' transitions from
In 2013-2014, a legislative committee studied the structure,
Pardons and Parole on the corrections system and suggested
2015 Legislature. The Montana Department of Justice is a l
best practices and training for investigating and prosecuting
realm of reducing trafficking of persons in Montana. For its

Montana Justice Reinvestment Request Letter
June 30, 2015

Sincerely,

Governor Steve Bullock

Chief Justice Mike McGrath

Attorney General Tim Fox

Senate President Debby Barrett

Speaker of the House Austin Knudsen

Senate Minority Leader Jon Sesso

House Minority Leader and
Legislative Council President Chuck Hunter

Mike Batista, Director, Department of
Corrections

Key Characteristics about Justice Reinvestment Process

Intensity of the approach	**Comprehensive data analyses**	**Extensive stakeholder engagement**
Broad scope of policy options	**Consensus reflected in policy packages**	**Reinvestment and improving current spending**
Focus on improving public safety	**Hold offenders accountable**	**Direct resources towards greatest recidivism reduction**

Justice reinvestment project partners enable two phases of technical assistance to states.

1. **Analyze Data**
2. **Engage System Stakeholders**
3. **Develop Policy Options & Estimate Impacts**

Phase I

6 – 9 months

BJA Bureau of Justice Assistance U.S. Department of Justice

THE PEW CHARITABLE TRUSTS

4. **Implement New Policies**
5. **Target Reinvestment Strategies & Monitor Key Measures**

Phase II

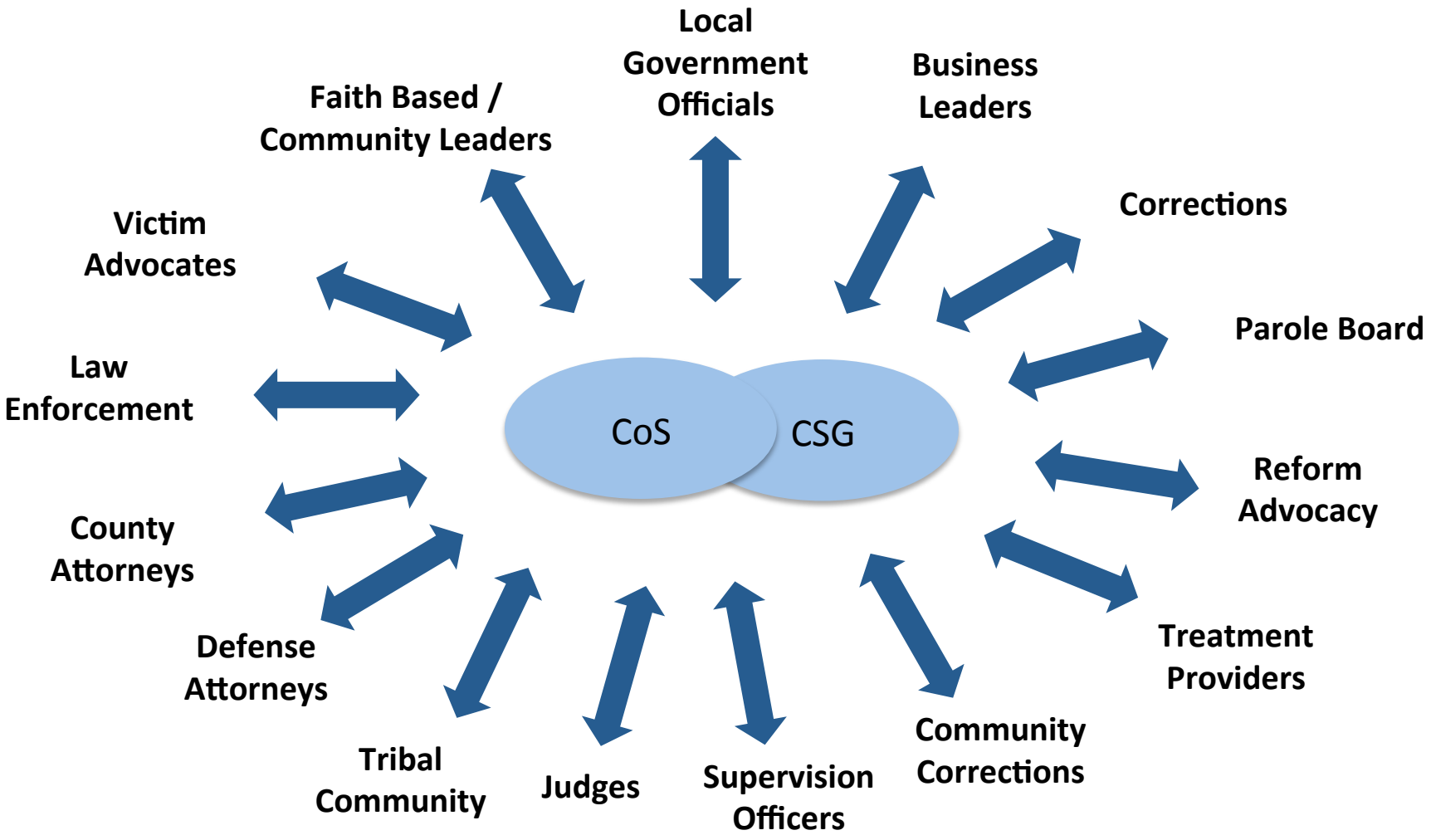
12 – 24 months

BJA Bureau of Justice Assistance U.S. Department of Justice

Justice reinvestment data requests are comprehensive.

	Case-Level Data	Typical Sources
1.	Criminal Court Filings and Dispositions	Administrative Office of Courts or Sentencing Commission
2.	Jail Data	Jail Authority or Sheriffs' Departments
3.	Problem Solving Court Data	Administrative Office of Courts
4.	Probation and Other Community Corrections Data	Probation Department/Community Corrections Agencies – Local, County or State
5.	Prison Data	Department of Corrections
6.	Parole Data	Department of Corrections
7.	Parole Board Hearing/Decision Data	Parole Board
8.	Criminal History Data	State Police (as requested for specific cohorts)
9.	Behavioral Health Data on Criminal Justice Population in Community	Department of Corrections/Department of Health
	Aggregate Data / Summary Reports	**Typical Sources**
1.	Crime and Arrest Data	State Police or FBI
2.	Criminal Justice Population Forecasts	Department of Corrections or SAC
3.	Recidivism Studies	Department of Corrections or SAC
4.	Budget/Spending/Cost Data	Legislative Budget Office/Criminal Justice Agencies

The process will complement data analysis with input from stakeholder groups and interested parties.



Along with comprehensive data analysis, justice reinvestment involves extensive statutory and policy review.

Pretrial	Typical bail statutes, no indication of supervisory authority
Felony Classes	No uniform classification in spite of Model Penal Code roots
Notable Offenses	Property offense < $1500 = six months max; property offense > $1500 = 10 years max burglary of a building v. dwelling is unclear; statute uses "occupied structure" Robbery (2-40) is undifferentiated, has no "aggravated" version
Felony Probation	> 3 years for deferred imposition > Maximum sentence for suspended execution
Mandatory Minimums	No deferred or suspended for first 2 years for 11 violent offenses
Habitual/Extended Terms	Persistent offender, two strikes if less than 5 years have elapsed
Time Served Requirement	Parole eligibility after ¼ of prison sentence; good time pre-1997
Parole Decision-making	§ 46-23-201, amended in 1989 to eliminate liberty interest in parole
Notable Statutes	§ 46-18-201 Sentences that may be imposed § 46-18-202 judicial denial of parole eligibility § 46-18-225 criteria and alternatives for sentencing non-violent offenders § 46-18-901 Sentence Review Division § 46-23-1011 requires probation officer caseload balancing, 'one on, one off'

Bipartisan, interbranch state leaders provide support at the project launch and at key points during the process.

Alabama Launches Justice Reinvestment Initiative

June 10, 2014

Montgomery, AL — Alabama's state prisons are America's most crowded, currently operating at approximately 190 percent of capacity. The state has the third-highest incarceration rate in the country and a corrections budget that has increased from $309 million to $460 million over the past decade.

Washington Lawmakers, Judicial Leaders Endorse Proposal for Justice System Reform

January 14, 2015

Olympia, WA — A bipartisan group of state leaders accepted a justice reinvestment policy framework for the state's criminal justice and corrections systems on Jan. 14, capping a year of inter-branch research and cooperation.

Sources: csgjusticecenter.org/jr/alabama/posts/alabama-launches-justice-reinvestment-initiative, and csgjusticecenter.org/jr/washington/posts/washington-lawmakers-judicial-leaders-endorse-proposal-for-justice-system-reform.

Examples of Justice Reinvestment Publications and Reports

Overview Publication

Introductory report released at project launch to provide big-picture overview of system trends

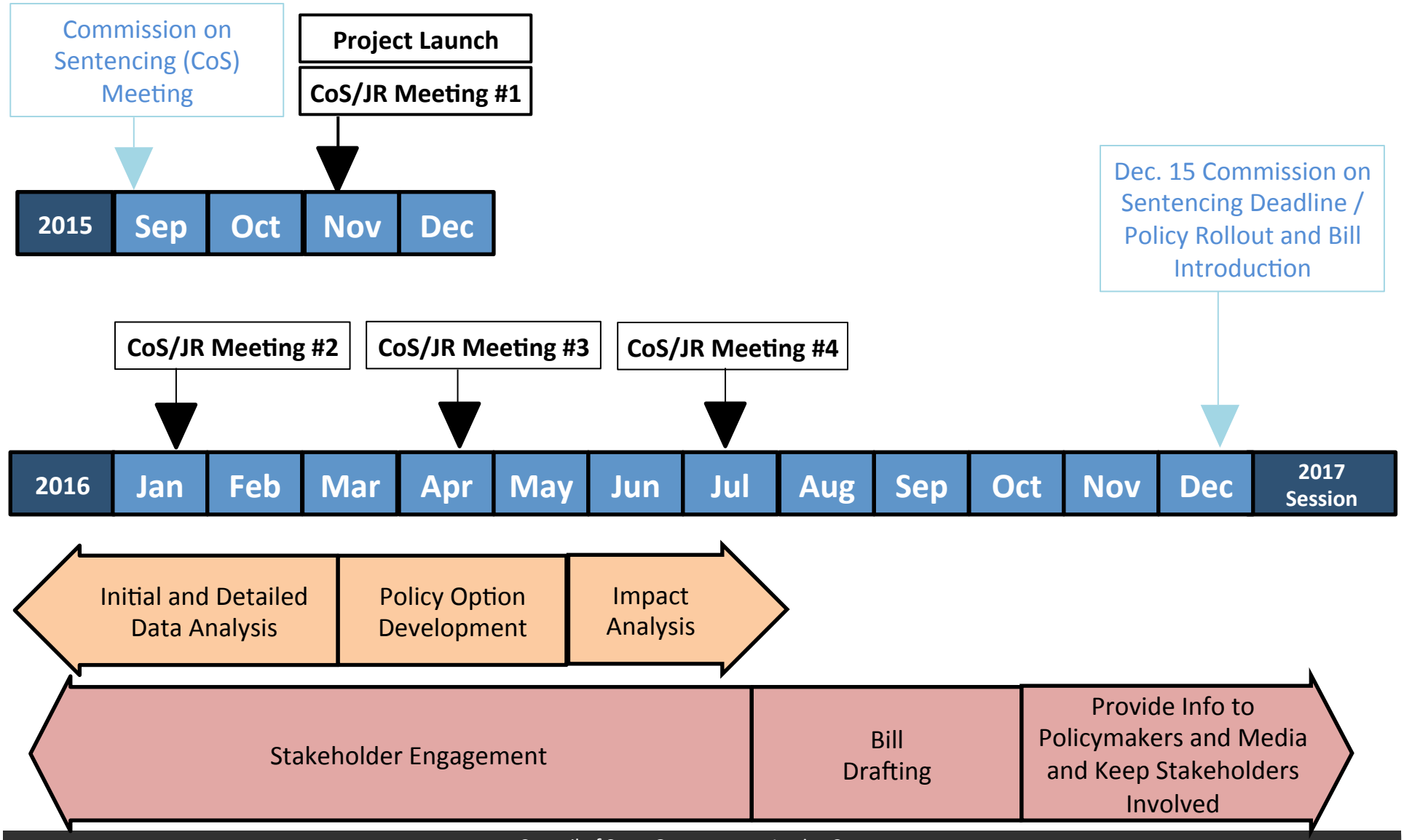
Working Group Presentations

Interim reports illustrating data and policy analysis, and stakeholder input

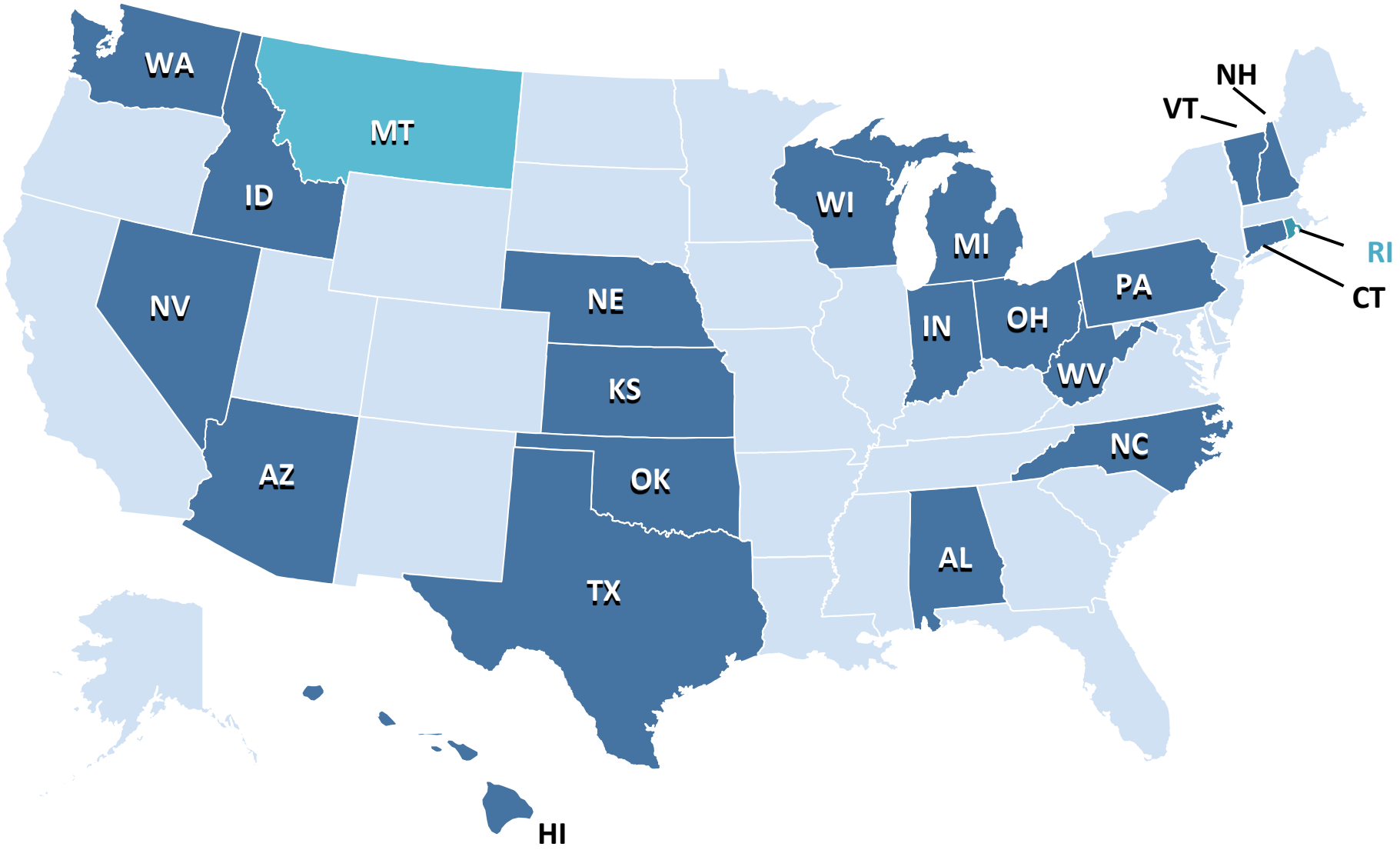
Final Report

Comprehensive report summarizing analysis and presenting policies, impacts, and reinvestments

Proposed project timeline would entail intensive work in 2016 leading into the 65th legislative session.



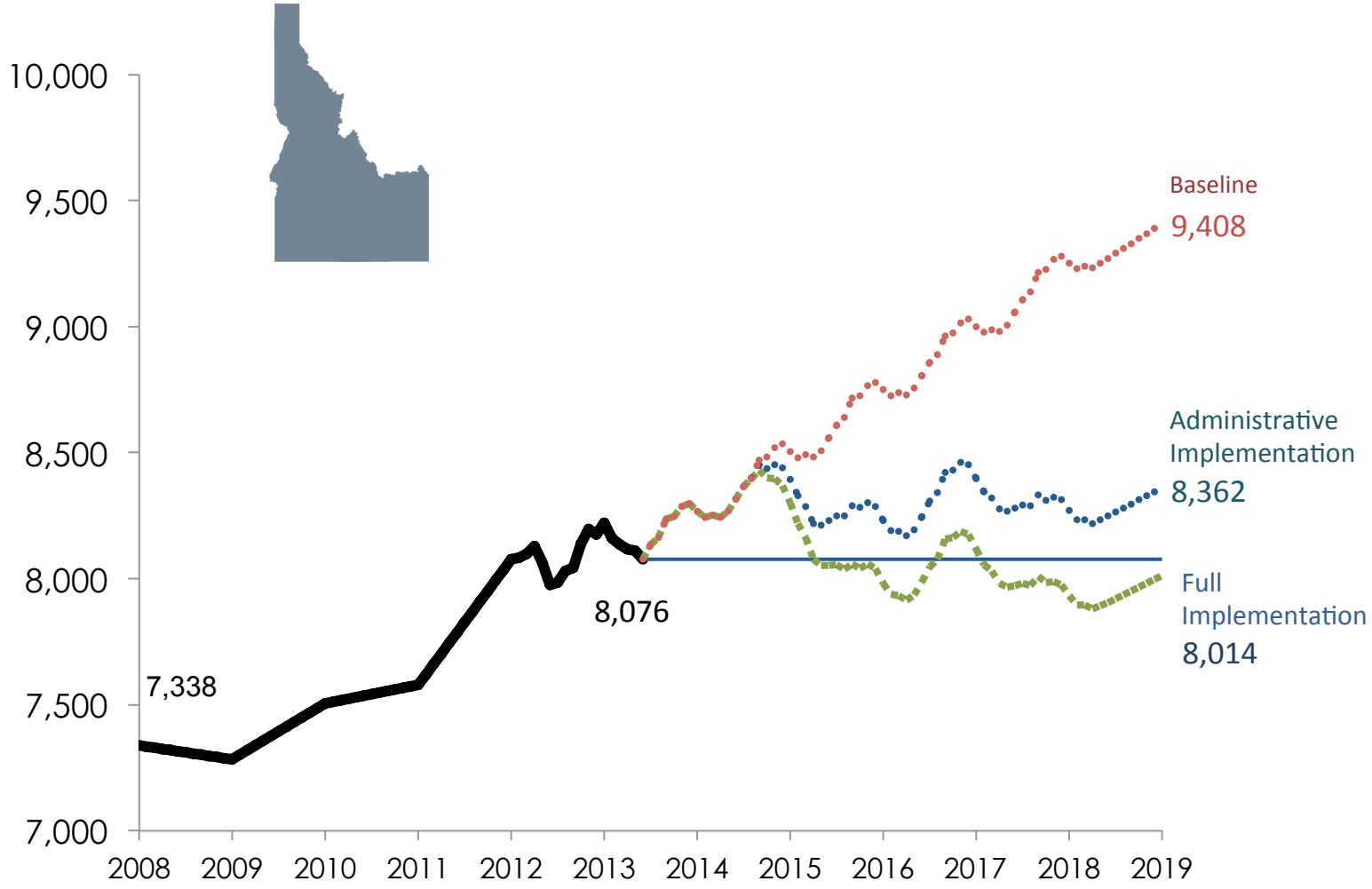
Twenty one states have used a justice reinvestment approach with the CSG Justice Center.



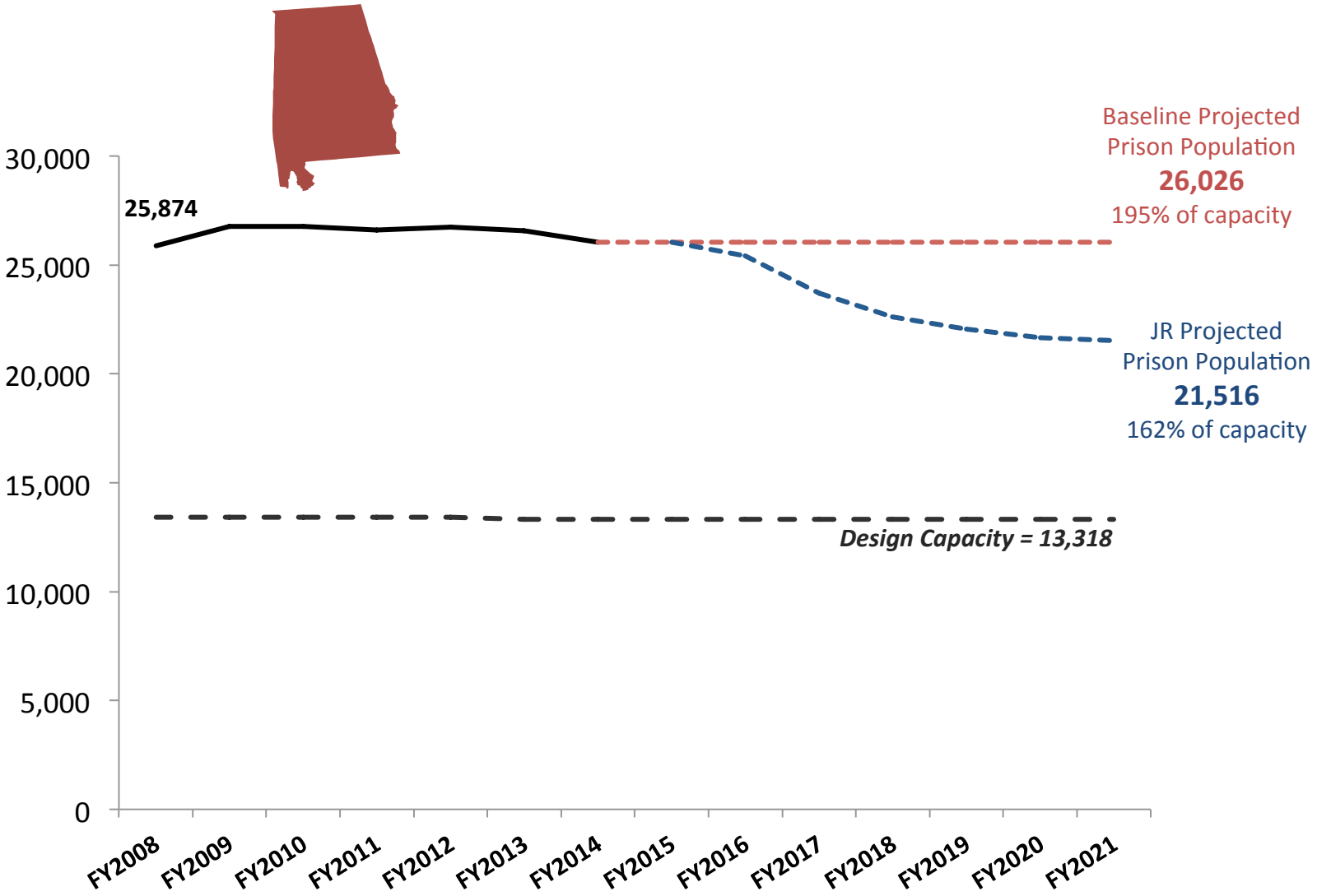
State policymakers are using the justice reinvestment approach to tackle a broader range of strategies and policies.

2006 – 2010	2010 – 2012	2012 – 2015
Fund more treatment programs	Fund more treatment programs	Fund more treatment programs
Reduce revocations to prison and jail	Reduce revocations to prison and jail	Reduce revocations to prison and jail
Focus on statewide recidivism reduction	Focus on statewide recidivism reduction	Focus on statewide recidivism reduction
	Improve supervision quality	Improve supervision quality
	Realign sentencing and parole policies	Realign sentencing and parole policies
	Structure supervision sanctions based on risk	Structure supervision sanctions based on risk
	Better targeting for treatment programs	Better targeting for treatment programs
		Improve restitution collection
		Craft win-wins for state and counties
		Improve pre-trial assessment & supervision
		Redesign programs and training strategies
		Assess/validate risk assessment practices
		Support data-driven law enforcement strategies
		Integrate evidence-based practices in treatment programs

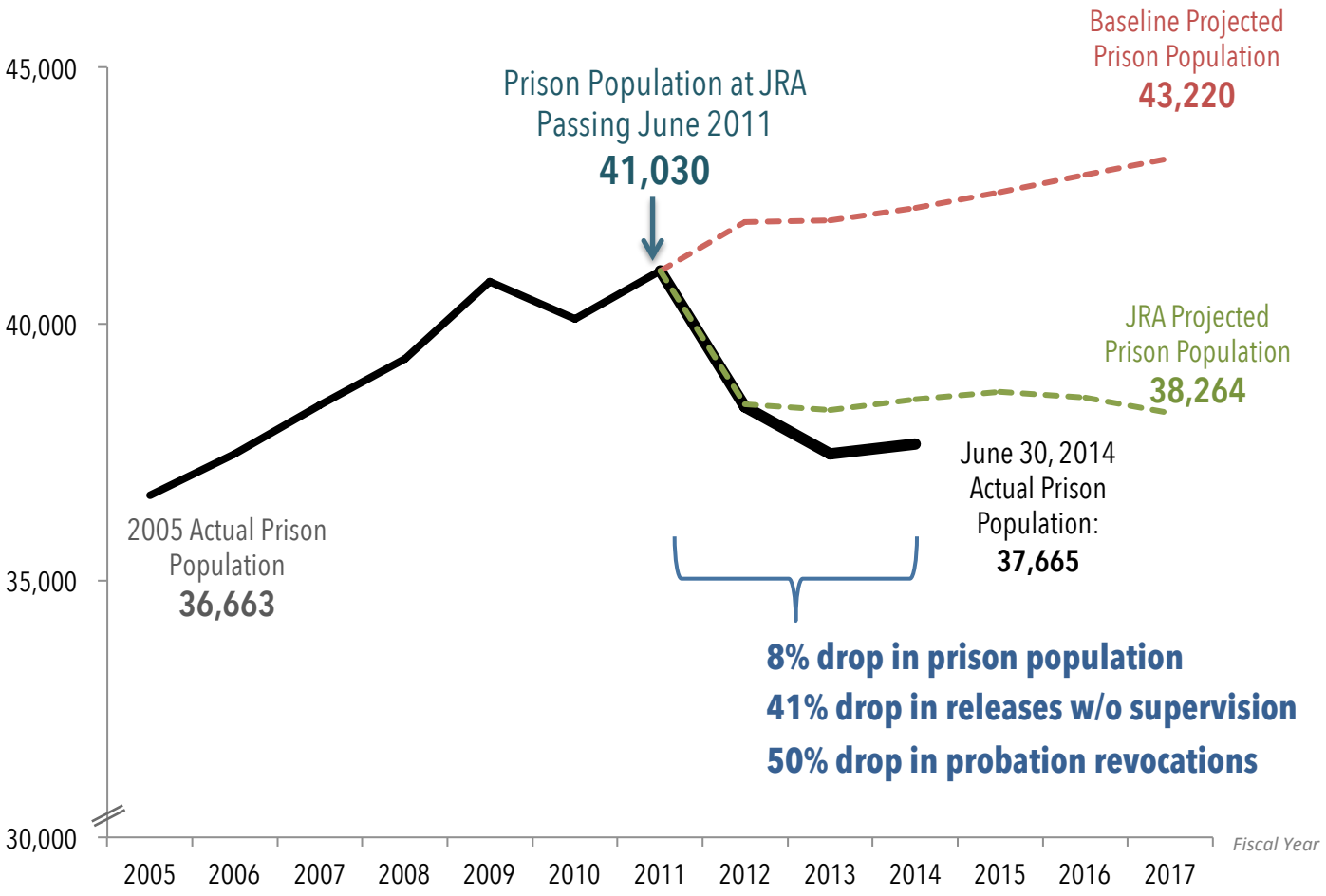
Idaho's legislation tailors sanctions for supervision violations, structures parole, and tracks recidivism-reduction strategies to ensure impact.



Alabama's JR process yielded policies to establish parole guidelines and increase supervision for those leaving prison.



Impacts of North Carolina's Justice Reinvestment policies have exceeded projections.



$560m
averted costs and savings by FY2017

10
prisons closed since 2011

175
new probation officers in FY2014 & FY2015

11%
drop in crime between 2011-2013

Updates in the Field of Sentencing Policy

(1) New Framework: American Law Institute Model Penal Code - comprehensive sentencing sections

(2) Old Debate: "Determinate v. indeterminate"

(3) New Debate: "[T]he idea of sentencing defendants based on risk factors may help to reduce the prison population, but in certain circumstances it may run the risk of imposing drastically different punishments for the same crimes." [AG Holder]

(4) New Research: on components and scoring of criminal history.

(5) Old and New Caselaw: developments on topics such as right to a jury, "inherent" judicial authority to sanction, due process for sanctions and for financial obligations, sentencing based on risk factors, etc.

1. Authorized Dispositions of Offenders
- -Deferred Prosecution
- -Deferred Adjudication
- -Probation
- -Economic Sanctions
- -Collateral Consequences

2. Authority of Sentencing Commission

3. Sentencing Guidelines

4. Authority of the Court in Sentencing

5. Research and Evaluation

6. Prison Release and Postrelease Supervision

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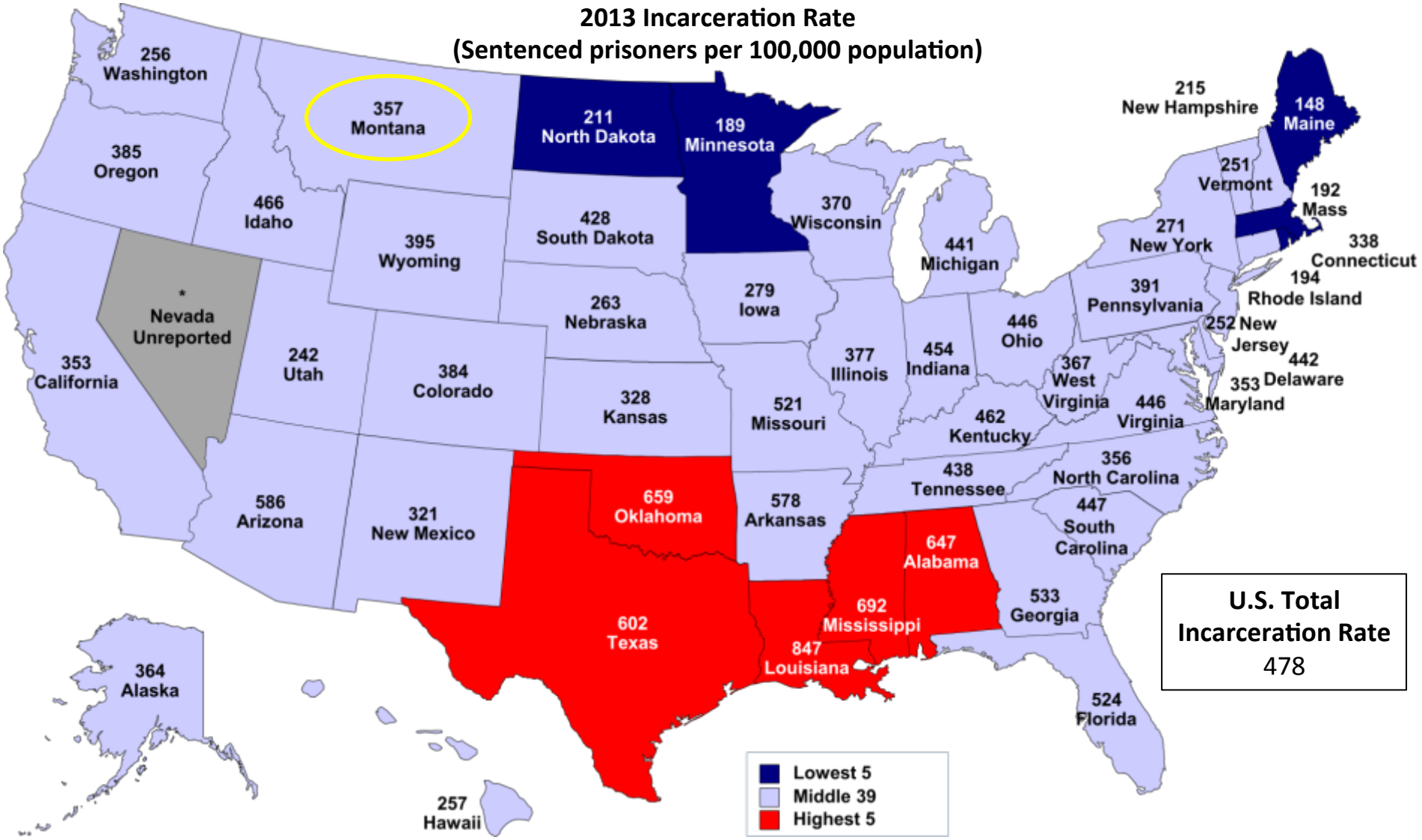
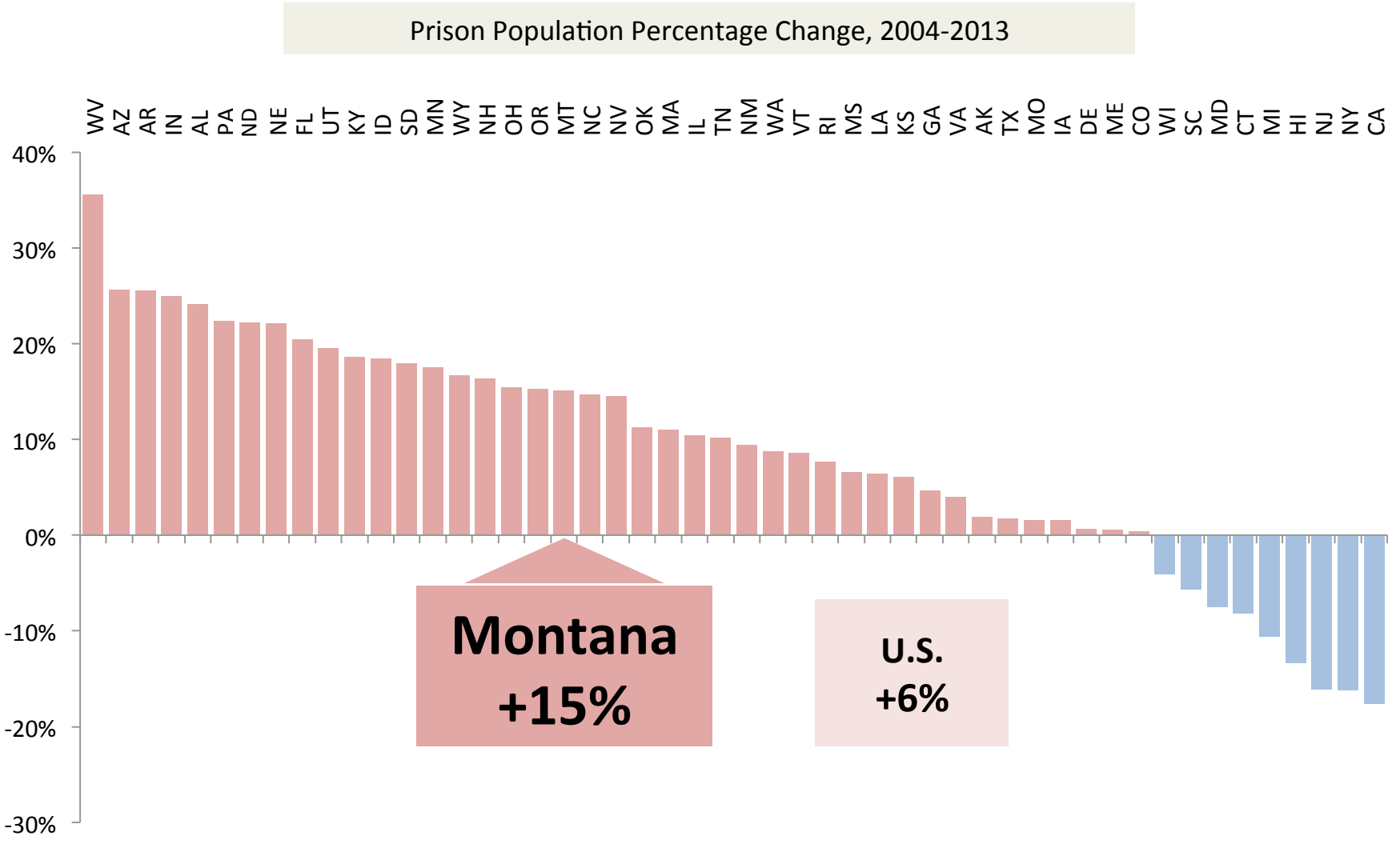
Montana had the 29th highest incarceration rate in 2013.



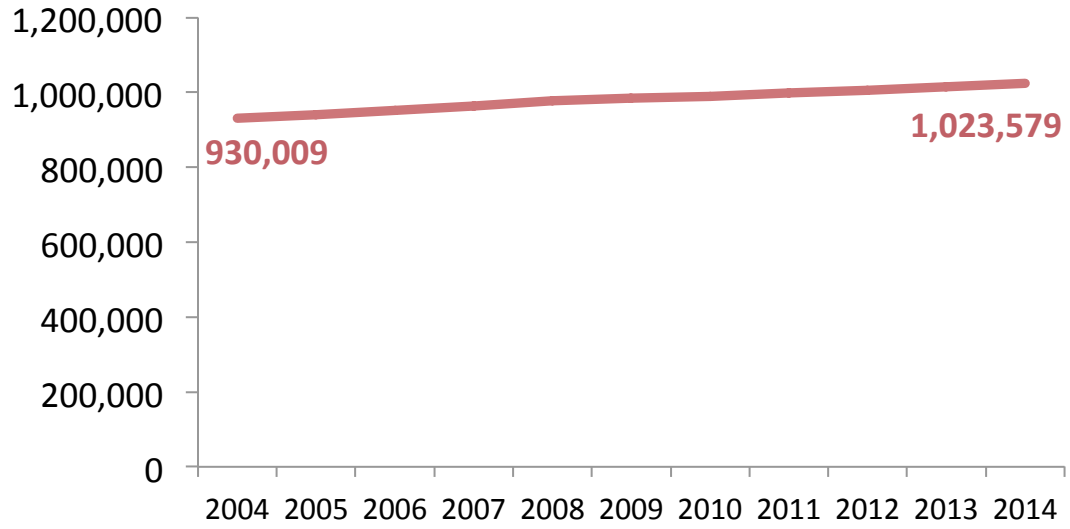
Source: Bureau of Justice Statistics, Prisoners in 2013.

Montana is among states with prison population percentage increases exceeding the national average growth of 6 percent.



Source: BJS, Prisoners reports http://www.bjs.gov/index.cfm?ty=pbse&sid=40

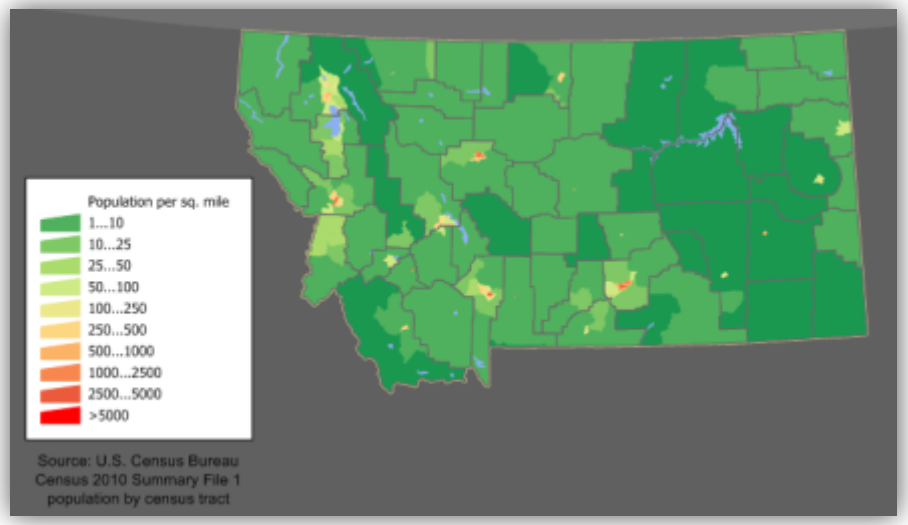
Montana's population is growing steadily and concentrated in a few counties.



Population Change
2004-2014
+10%

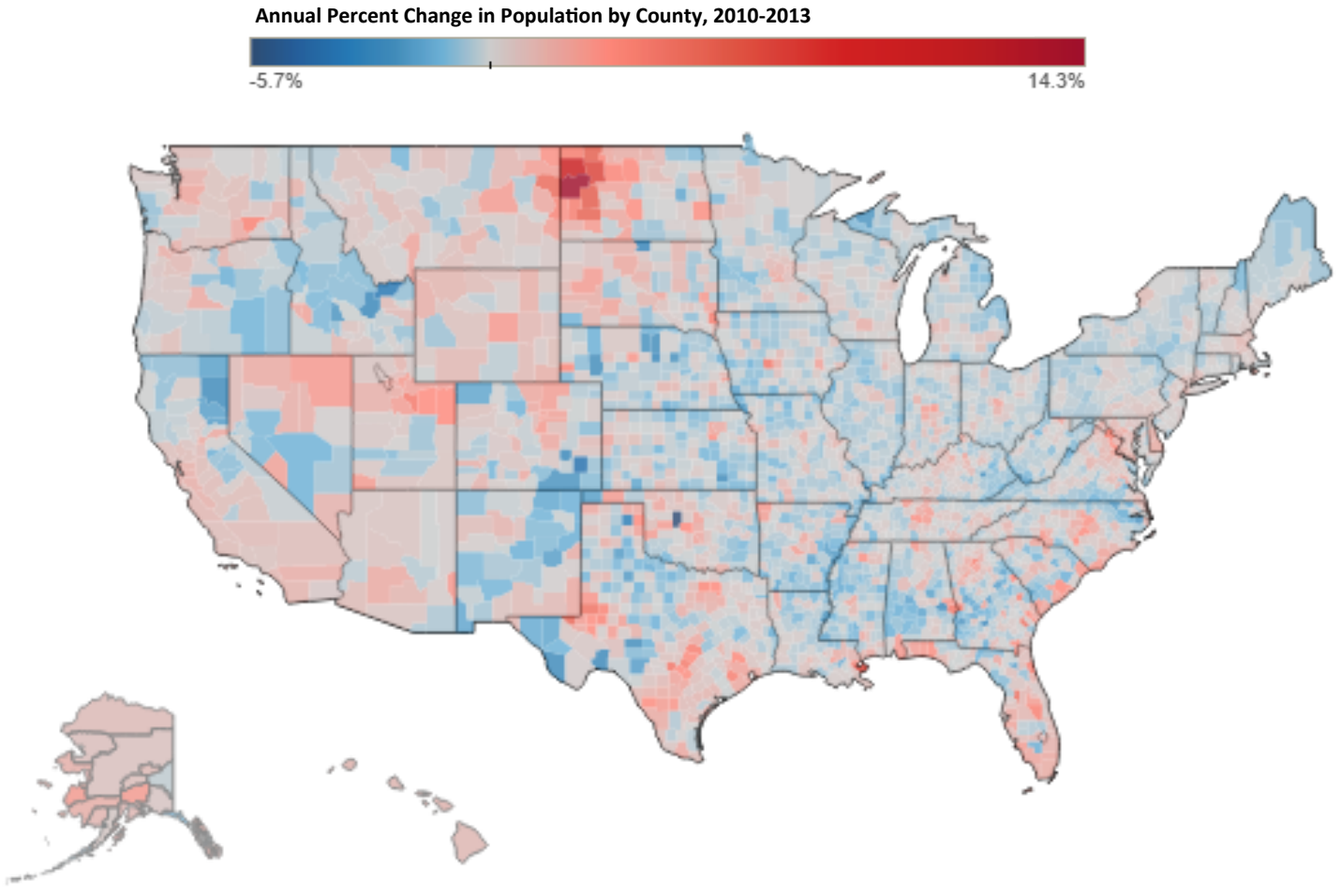
2010 Population Density

- 59% of the state population lived in the six largest counties, each with over 50,000 residents (Yellowstone, Missoula, Gallatin, Flathead, Cascade, Lewis and Clark)
- 47 of Montana's 56 counties have less than 20,000 residents



Source: US Census Bureau

Montana's eastern border is on the oil patch, the fastest growing area of the country.

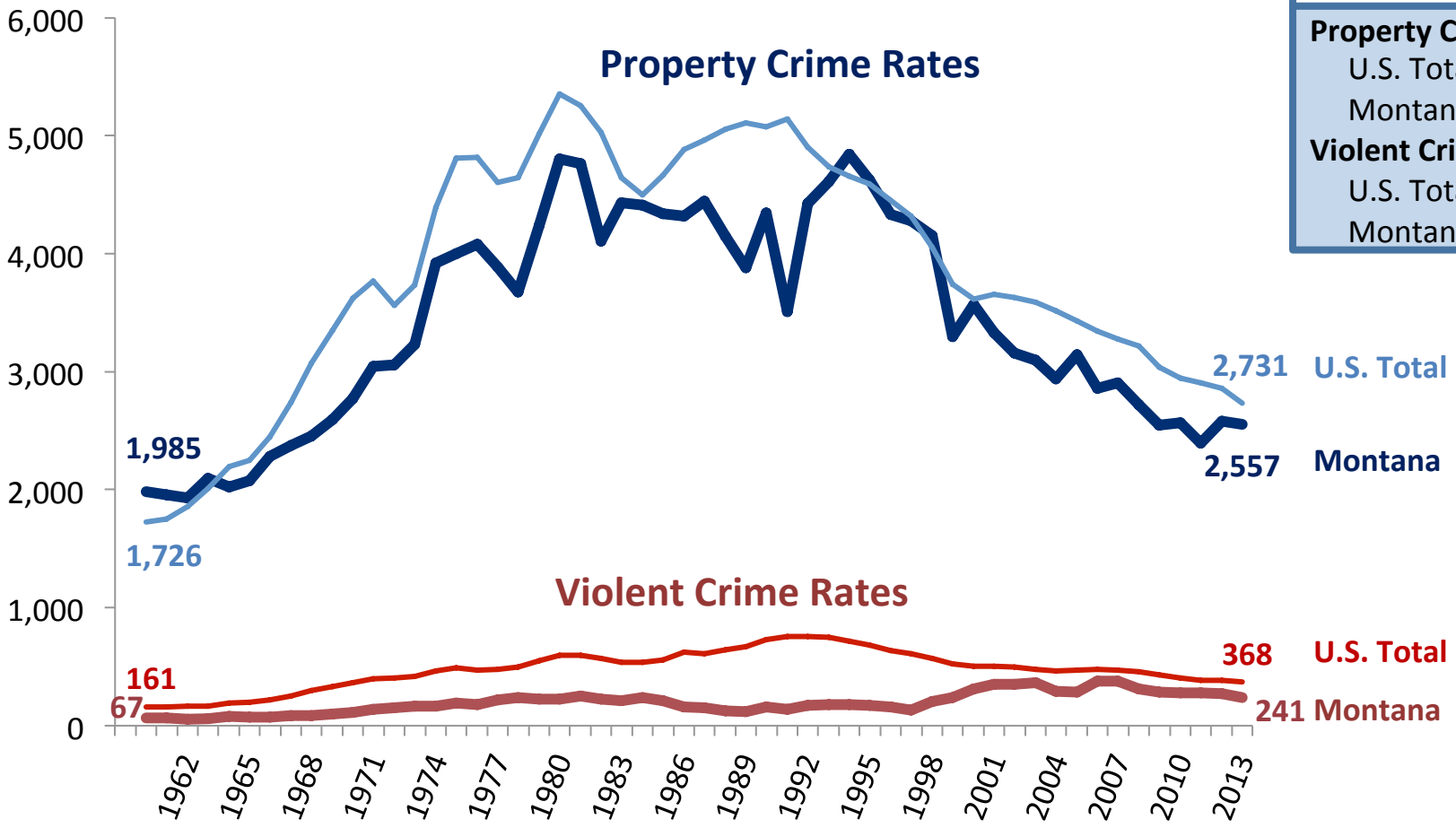


Source: U.S. Census Bureau Current Population Estimates, "Population, Population Change and Estimated Components of Population Change: April 1, 2010 to July 1, 2013," County Totals: Vintage 2013. http://www.prb.org/Publications/Articles/2014/us-oil-rich-counties.aspx

Office of the Attorney General, Crime in North Dakota, 2009 and 2013.

Crime rates are lower than the U.S. total and generally follow national trends, but violent crime increased in the late 1990s.

Index Crimes per 100,000 Population, 1960-2013

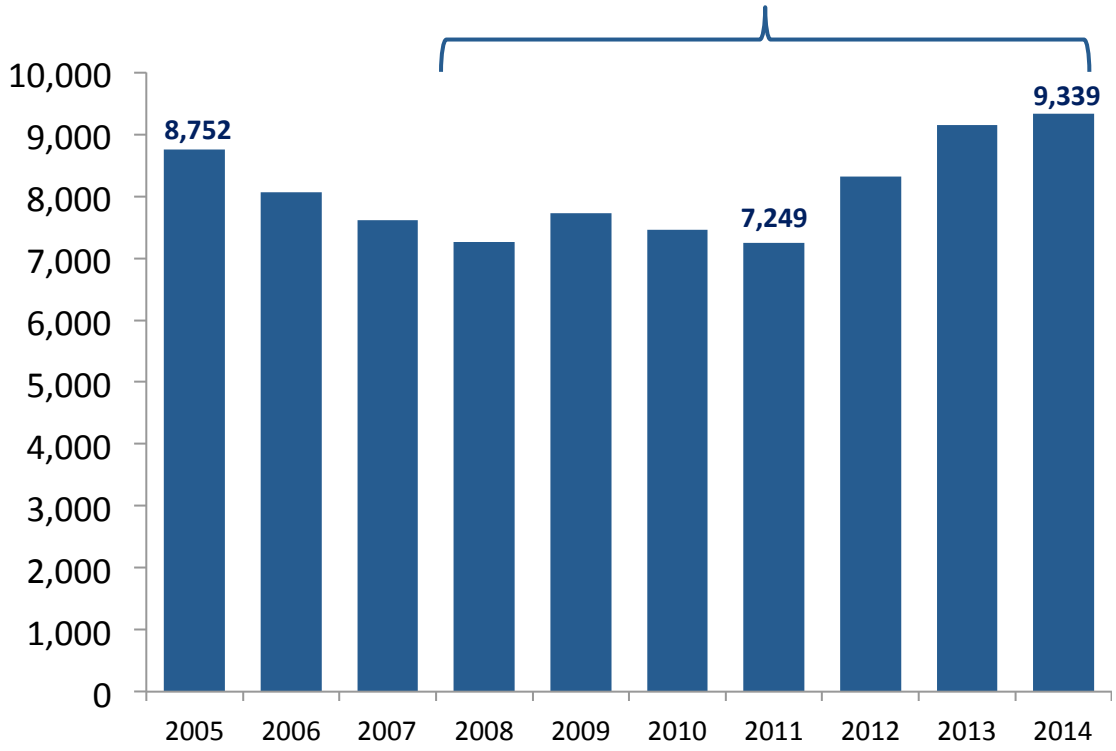


Change in Crime Rates since 1990	
Property Crime	
U.S. Total	-46%
Montana	-41%
Violent Crime	
U.S. Total	-50%
Montana	+51%

Source: FBI UCR Online Data Tool and Crime in the U.S., 2013.

Felony case filings are up sharply in the last six years following a period of decline.

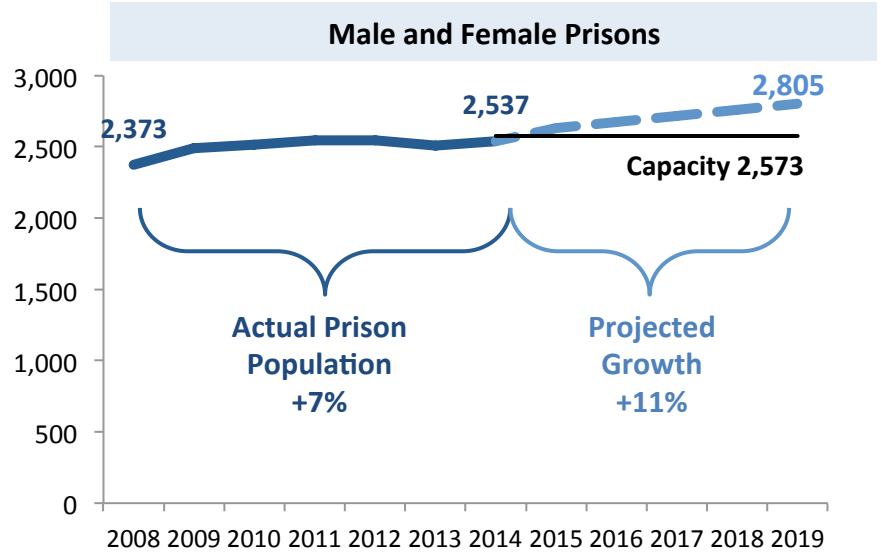
District Court
Felony Case Filings
2008-2014
+29%

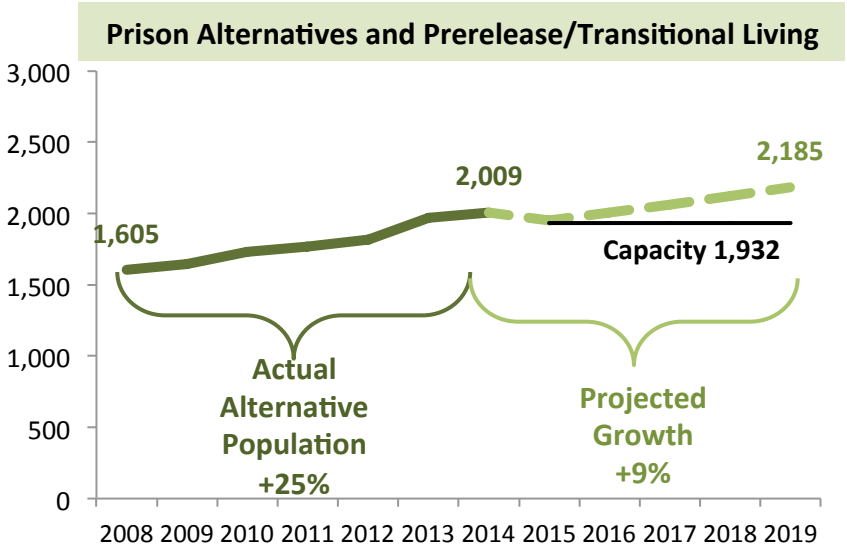


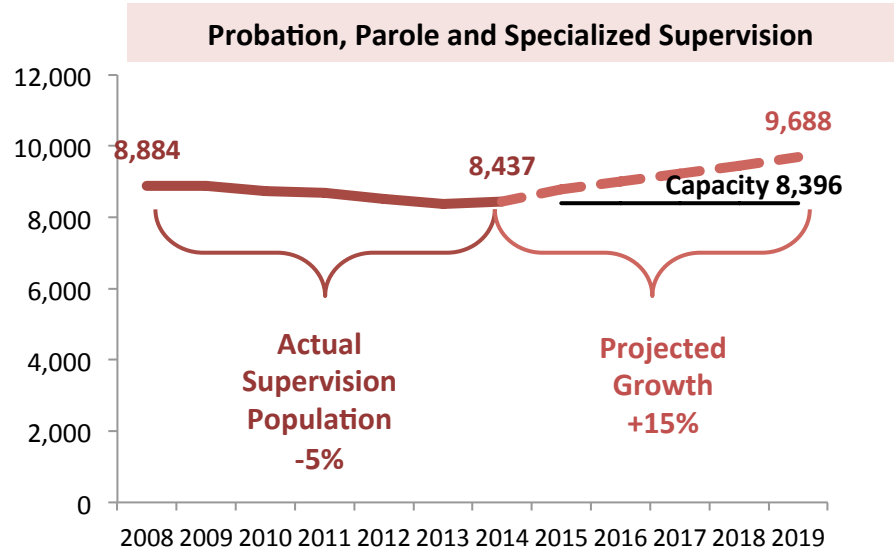
Montana Judicial Districts

Source: Montana District Court Case Filings and Dispositions, 2005-2014.

Steady growth is projected for correctional populations.



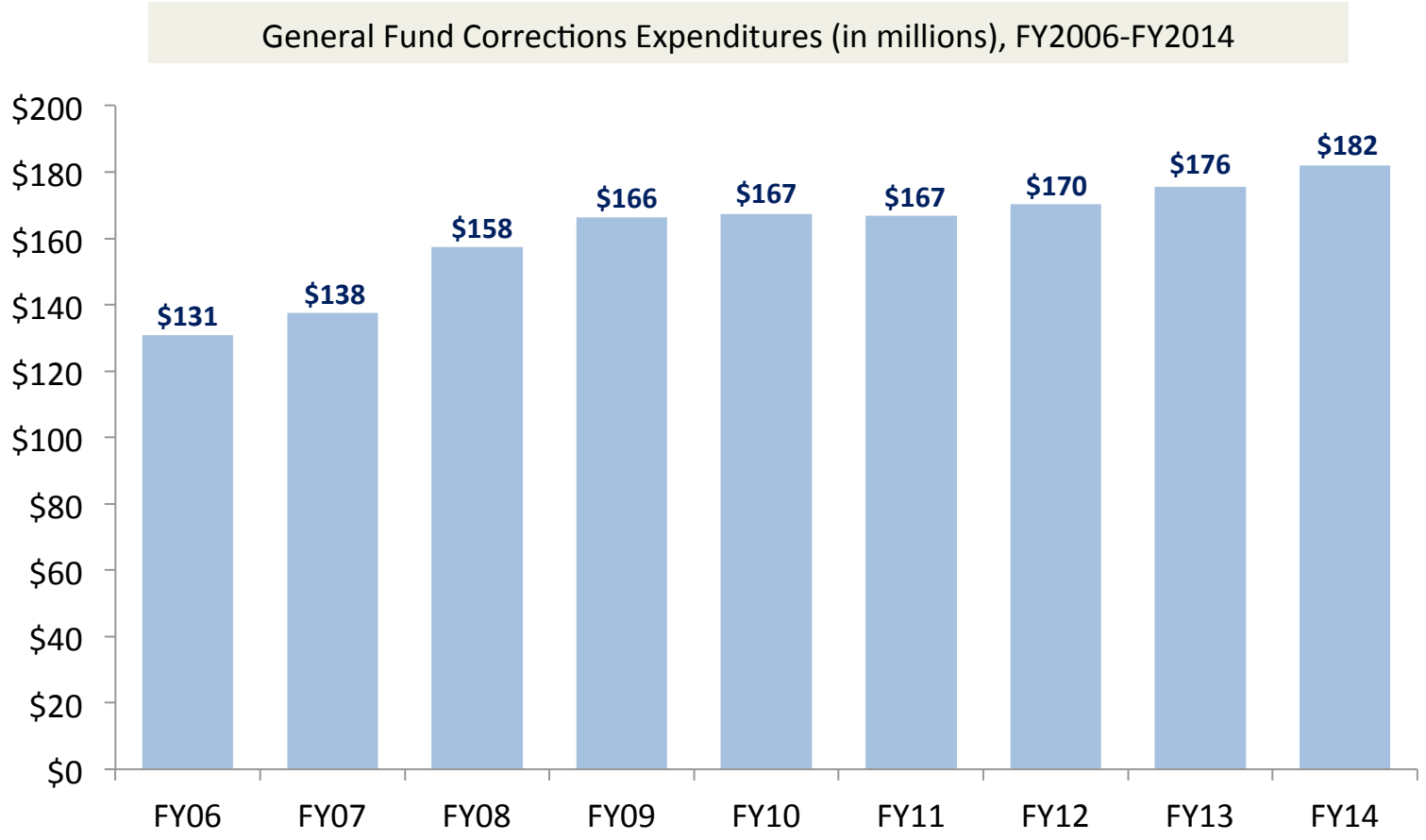




Prison population is projected to be at 109% of capacity at the end of FY2019

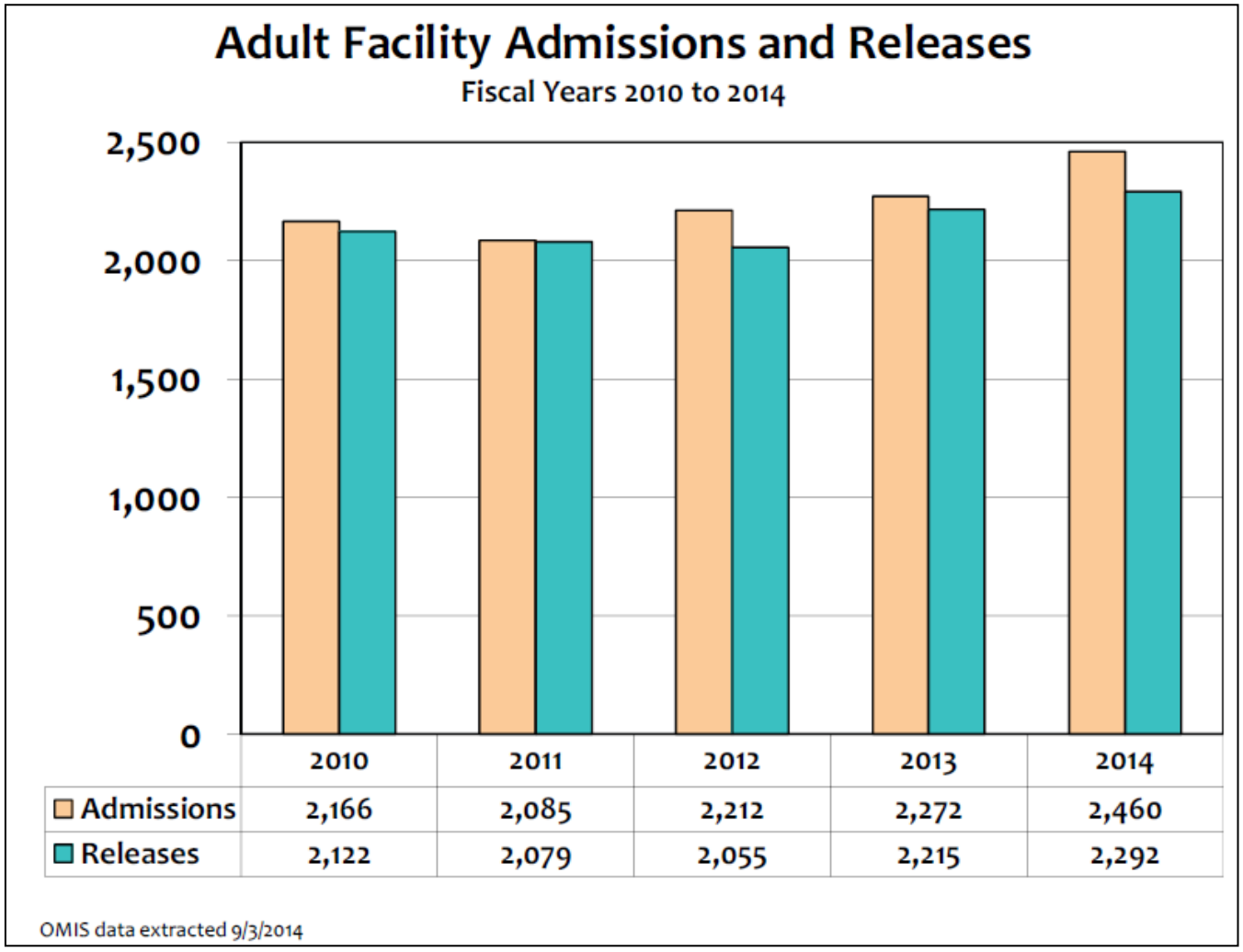
Source: Department of Corrections Population Projection, Version 13F - 8/19/2013

General fund corrections spending has increased 39 percent since 2006.



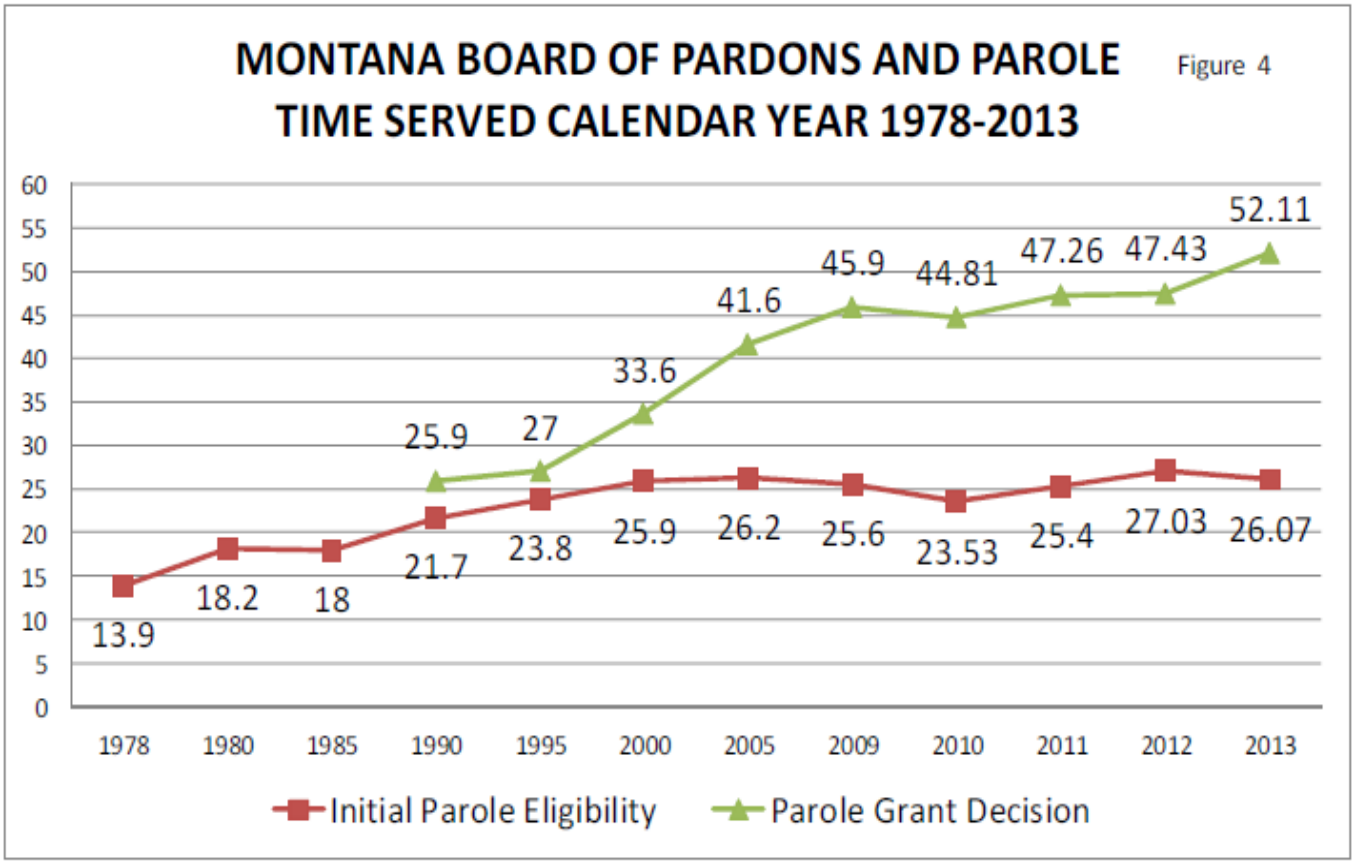
Source: Montana Department of Corrections 2011, 2013, 2015 Biennial Reports.

Admissions to adult facilities have outpaced releases.



Source: Montana Department of Corrections 2015 Biennial Report.

Time served before parole release has grown by 16 percent since 2010.

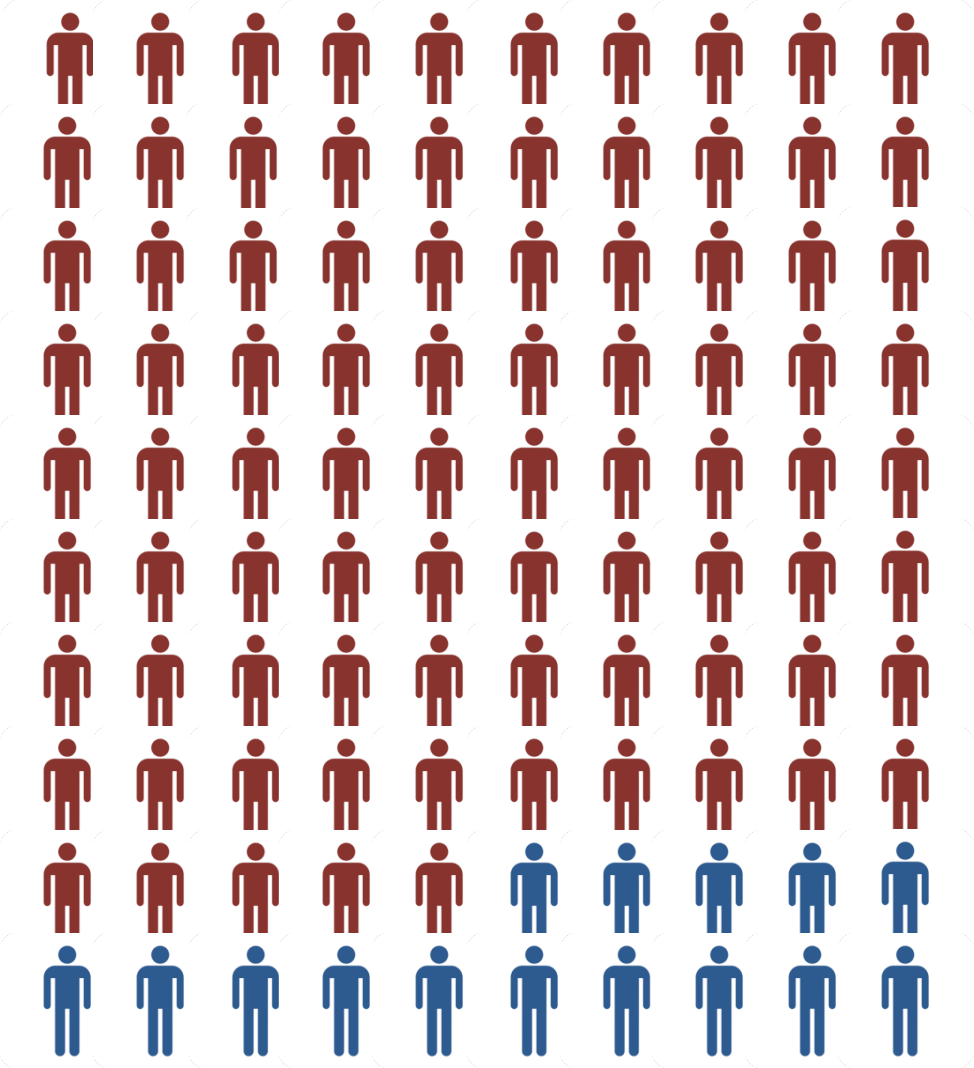


In 2014, parole was granted in 42% of initial parole appearances.

At reappearance hearings, 75% were granted parole.

Source: Montana Board of Pardons and Parole 2015 Biennial Report.

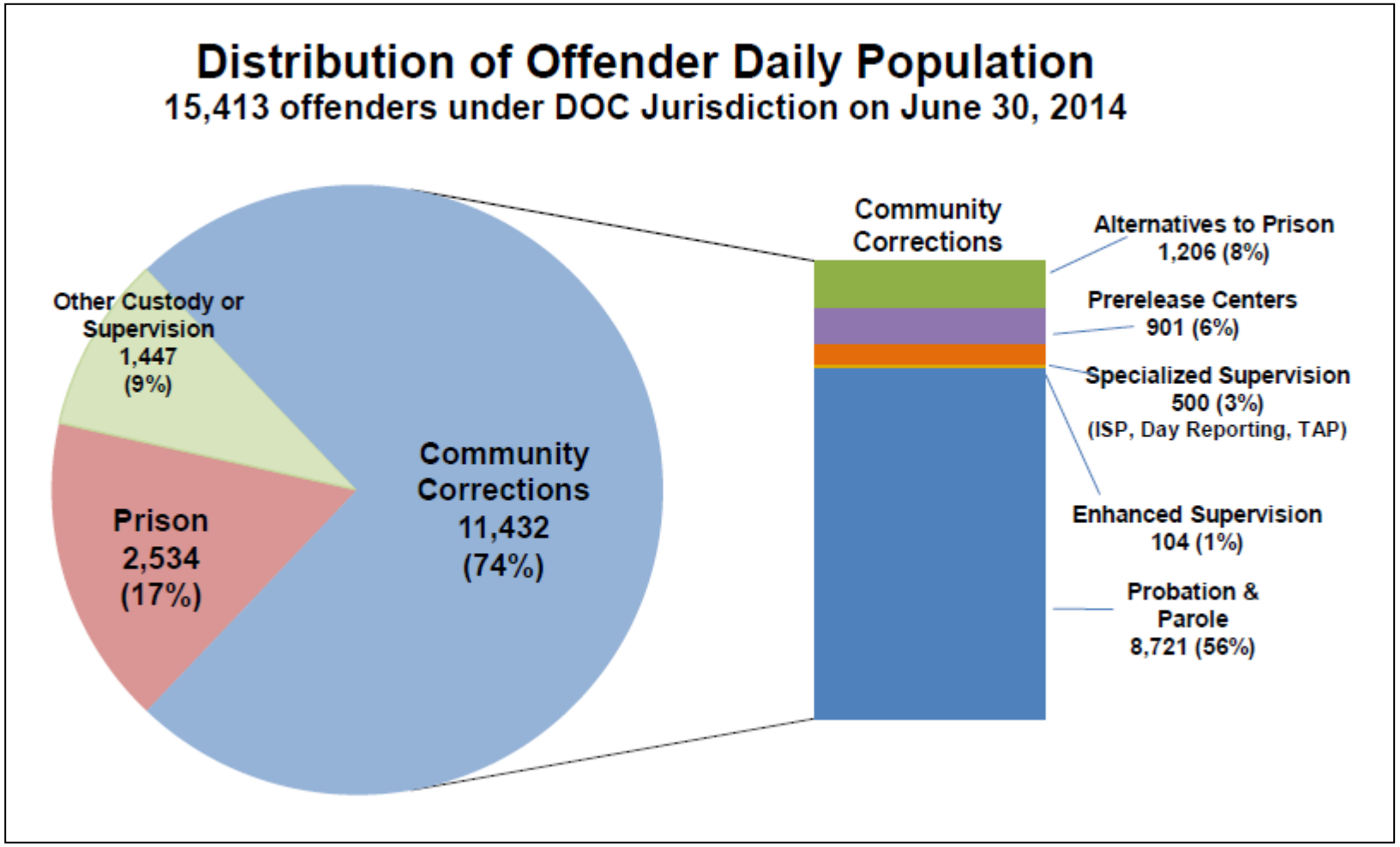
The majority of all prison intakes have been for revocations since 1998.



In FY13, 85 percent of all prison intakes were for revocations from community supervision and other alternative placements, rather than new court commitments.

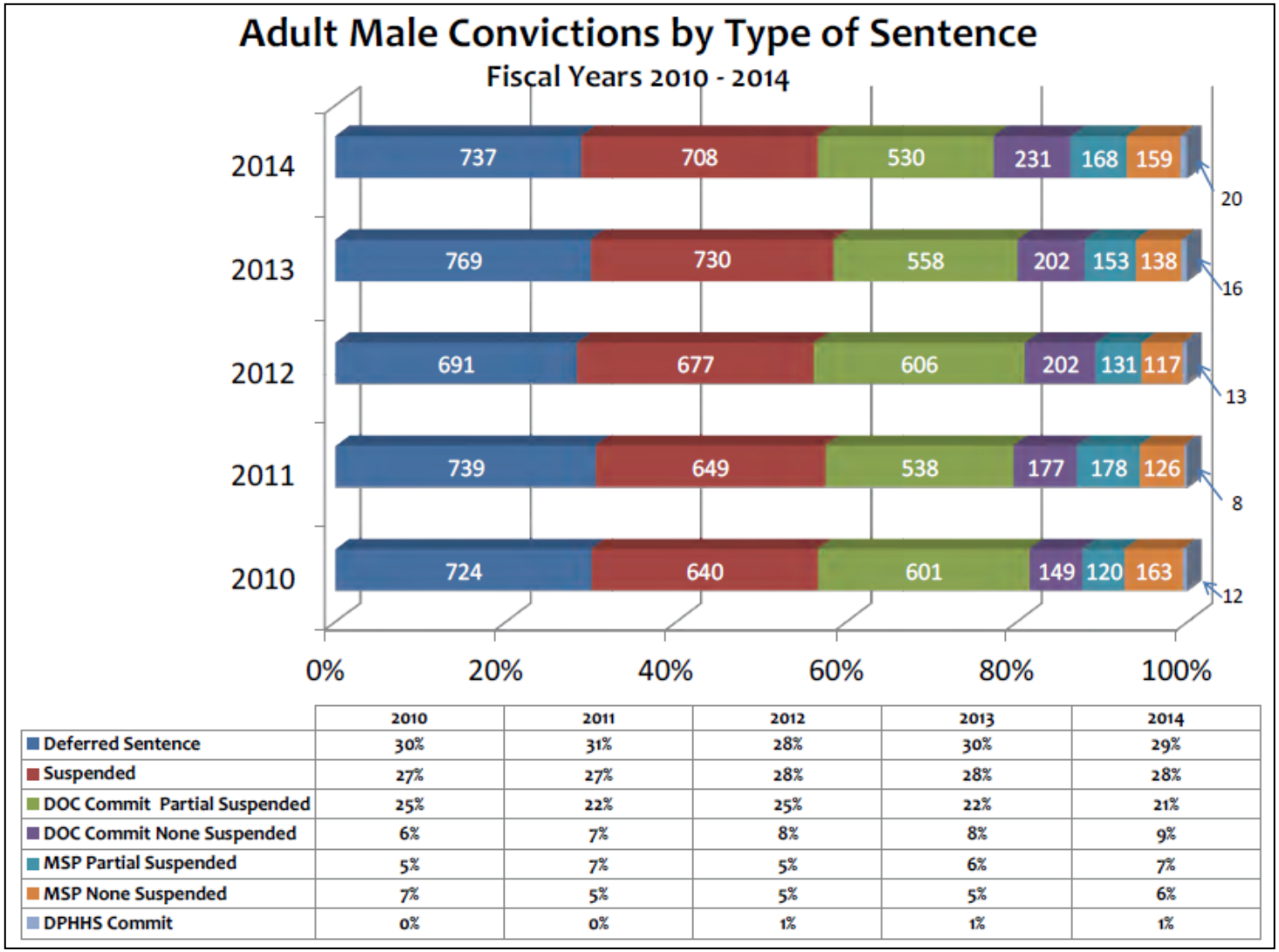
Source: National Governors Association. Pew Charitable Trusts. Michigan Council on Crime and Delinquency, "Policy Options for Improving Public Safety, Holding Offenders Accountable, and Containing Corrections Costs in Montana

Three quarters of the correctional population is in community corrections, mostly on probation or parole.



Source: Montana Department of Corrections 2015 Biennial Report.

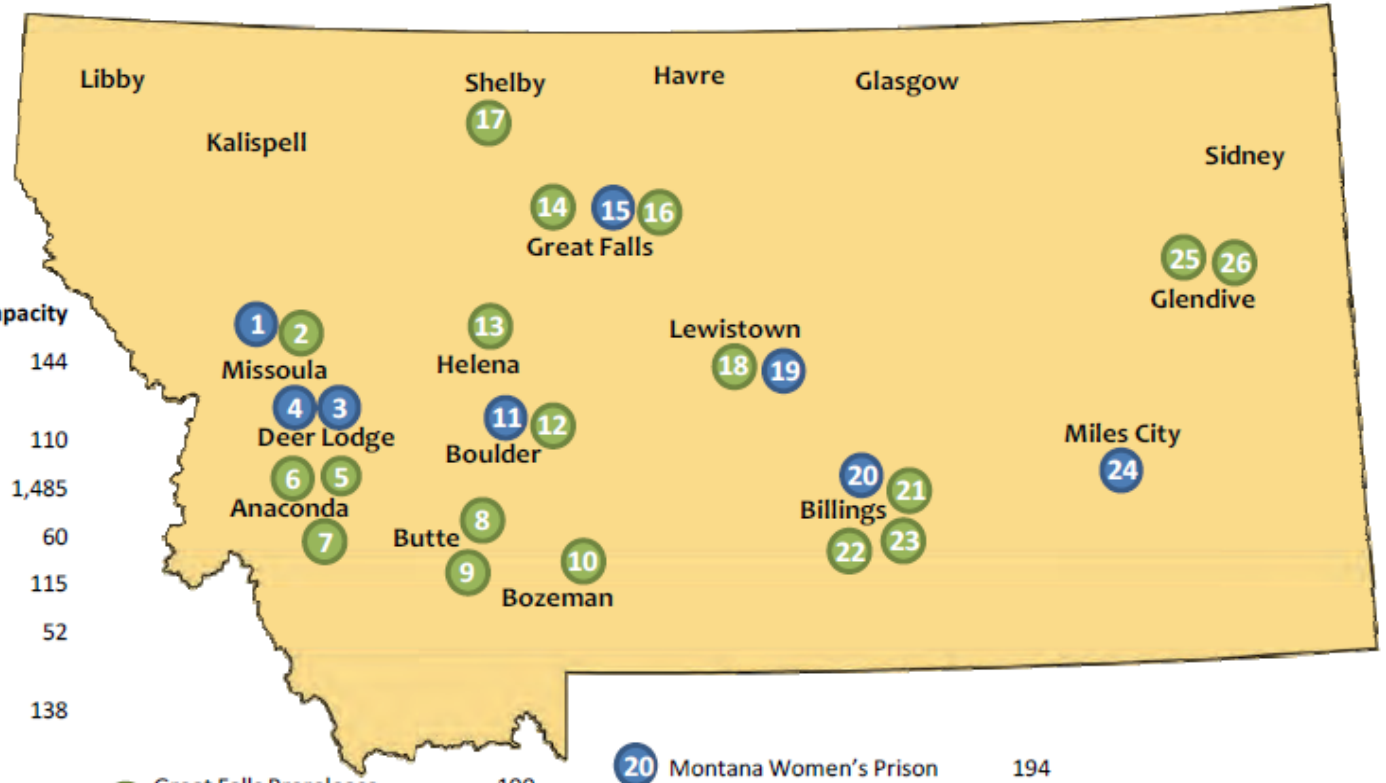
Montana sentencing law allows for several permutations in sentence type, and the DOC has notable discretion.



	2010	2011	2012	2013	2014
Deferred Sentence	30%	31%	28%	30%	29%
Suspended	27%	27%	28%	28%	28%
DOC Commit Partial Suspended	25%	22%	25%	22%	21%
DOC Commit None Suspended	6%	7%	8%	8%	9%
MSP Partial Suspended	5%	7%	5%	6%	7%
MSP None Suspended	7%	5%	5%	5%	6%
DPHHS Commit	0%	0%	1%	1%	1%

Source: Montana Department of Corrections 2015 Biennial Report.

Montana has numerous state and contract correctional programs and facilities, and anecdotally, moves people around a lot.



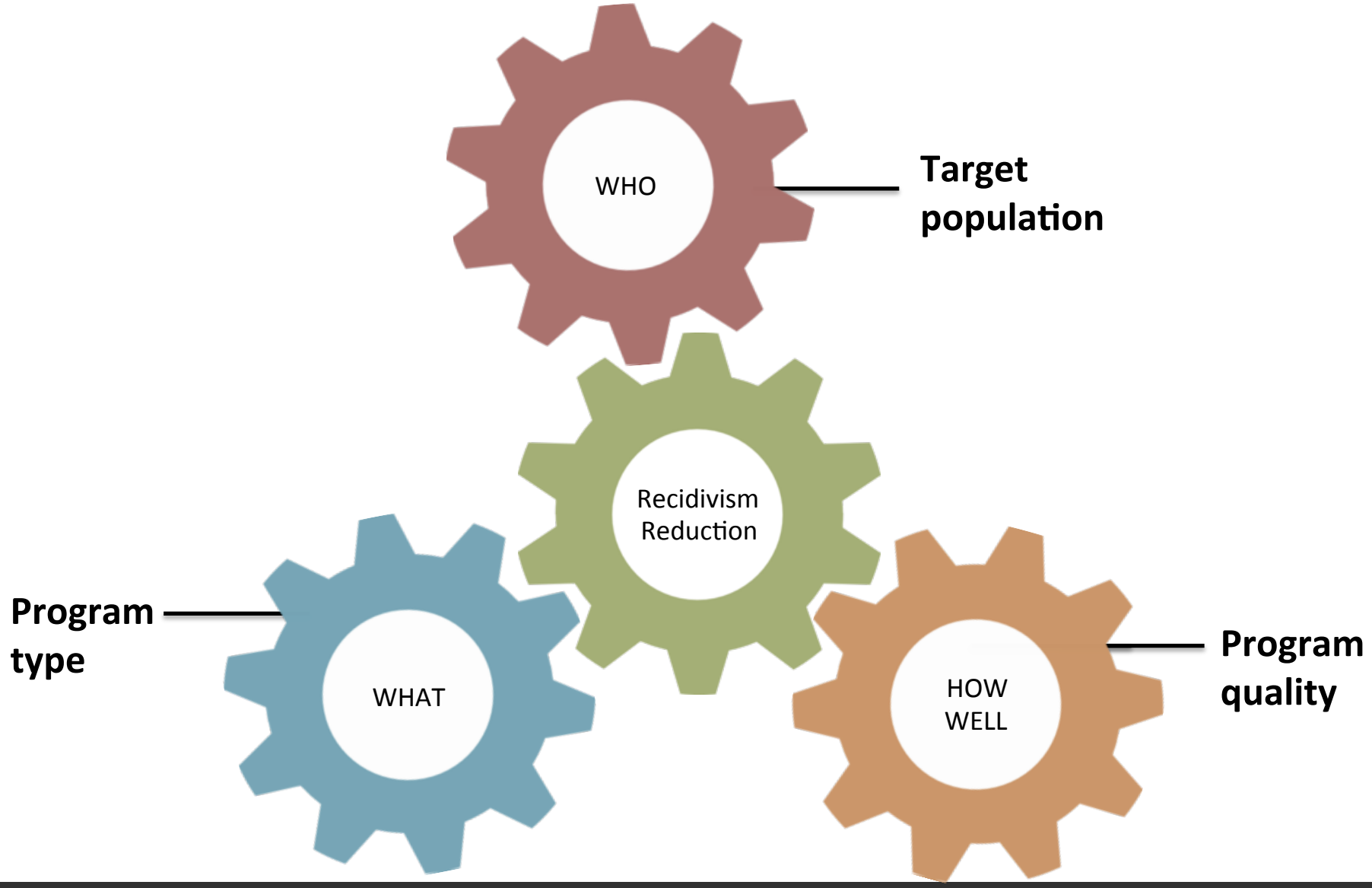
	Facility	Capacity
1	Missoula Assessment & Sanction Center (MASC)	144
2	Missoula Prerelease Center	110
3	Montana State Prison	1,485
4	Treasure State/Boot Camp	60
5	WATCh West	115
6	Chemical Dependency Treatment (CCP West)	52
7	Sanction, Treatment, Assessment & Revocation Center (START)	138
8	Butte Prerelease Center	175
9	Chemical Dependency Treatment (CCP East)	52
10	Bozeman Prerelease Center	34
11	Riverside Youth Facility	19
12	Elkhorn Meth Treatment	42
13	Helena Prerelease Center	105
14	Great Falls Prerelease Center	199
15	Great Falls Youth Transition Center	7
16	Great Falls Regional Prison	152
17	Crossroads Correctional Center	550
18	Nexus Meth Treatment	82
19	Lewistown Infirmary	25
20	Montana Women's Prison	194
21	Billings Prerelease Centers	239
22	Assessment, Sanction & Revocation Center (ASRC)	50
23	Passages Alcohol & Drug Treatment (ADT)	45
24	Pine Hills Youth Facility	96
25	Glendive Regional Prison	141
26	WATCh East	50

State-run Facility
Contract Facility

December 2014

Source: Montana Department of Corrections 2015 Biennial Report.

An assessment of providers and programs can help determine whether they are effective in reducing recidivism.



The Justice Center can conduct some quality assessments in the process.

	WHO	WHAT	HOW WELL
Data Analysis	• Case-level risk/need data for MDOC offenders • Parole releases	• Program cost • Program dosage	• Recidivism rates for program participants
Direct Observation	• Admissions process • Risk assessments and reassessments	• In-prison programs • Community-based programs	• In-prison programs • Community-based programs
Outreach & Interviews	• Assessment staff • Probation and Parole Officers	• CSG expert review of program curricula • Program facilitators, participants, and facility management staff	• Program staff • MDOC research staff
Qualitative Review	• Parole hearing case files	• Program curricula	• Program assessment results • Current QA process

Key Criminal Justice Challenges in Montana

- Montana's prison population has grown and is projected to grow to 109% of capacity at the end of FY2019.
- Felony case filings have increased sharply in recent years, and although Montana's crime rates have decreased, the violent crime rate has increased over the long-run.
- Length of stay in prison has increased significantly in recent years.
- Revocations for technical violations are a big driver of prison admissions.
- There are numerous state and contract programs and providers, and the state can benefit from an assessment of how effective they are in reducing recidivism.
- The sentencing system has unique features, and effects, that have not been systematically examined in two decades.

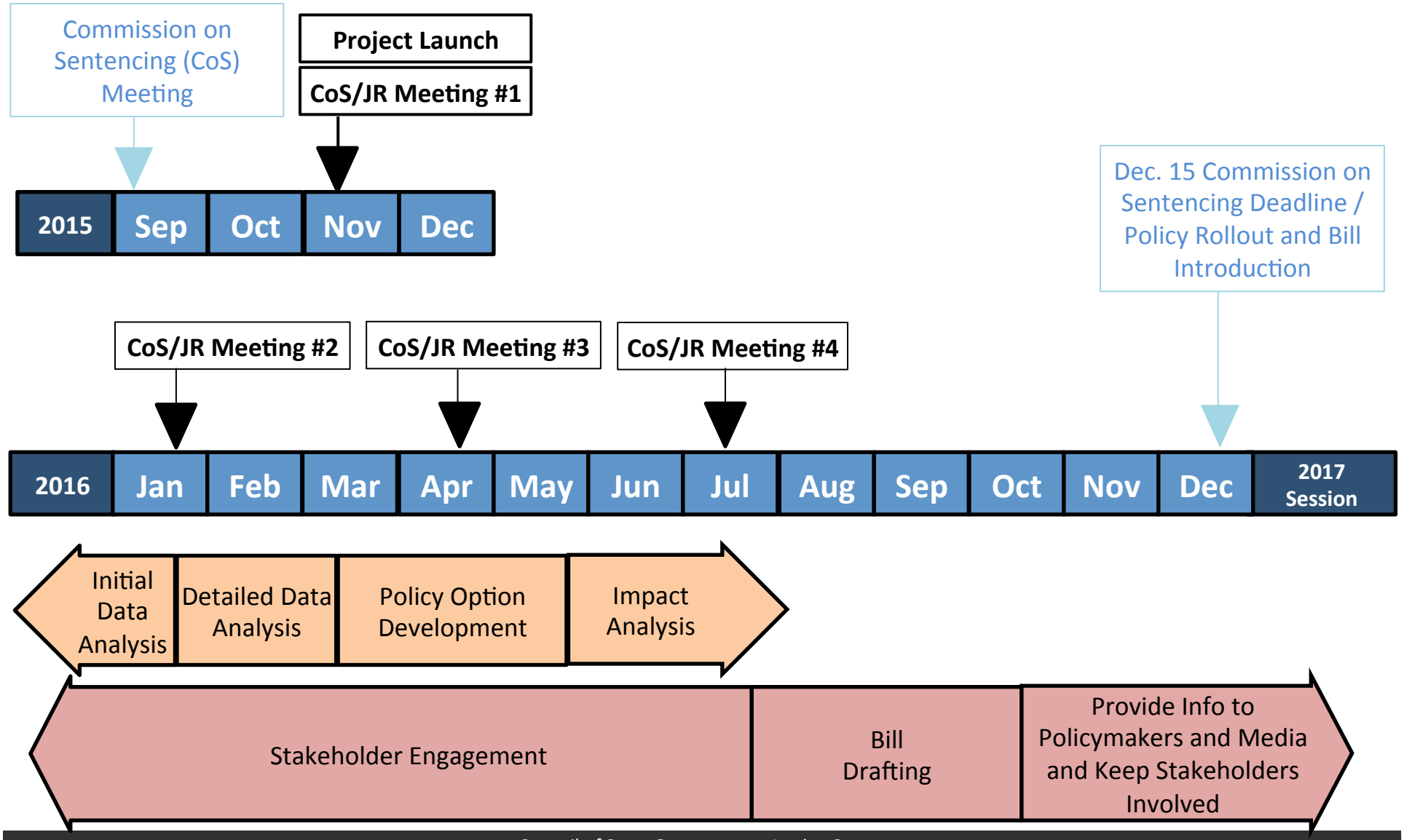
Key Questions for Commission on Sentencing

- Key priorities for the Commission on Sentencing?
  - Goals
  - Areas for analysis
  - Stakeholders

- Potential topics to cover in future presentations?
  - "What works" to reduce recidivism
  - JR experiences in other states
  - Other state sentencing policies and systems

- Questions about justice reinvestment?

Proposed project timeline would entail intensive work in 2016 leading into the 65th legislative session.



Thank You

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