APPENDIX B

Justice Reinvestment in North Dakota

Third Presentation to the Incarceration Issues Committee: Prison Populations, Probation Supervision, and What Works

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National nonprofit, nonpartisan membership association of state government officials that engages members of **all three branches** of state government.

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Justice Center provides **practical, nonpartisan advice** informed by the best available evidence.

What is 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

The Justice Reinvestment Initiative is supported by funding from the **U.S. Department of Justice's Bureau of Justice Assistance (BJA)** and **The Pew Charitable Trusts**

Justice reinvestment includes a two-part process spanning analysis, policy development, and implementation

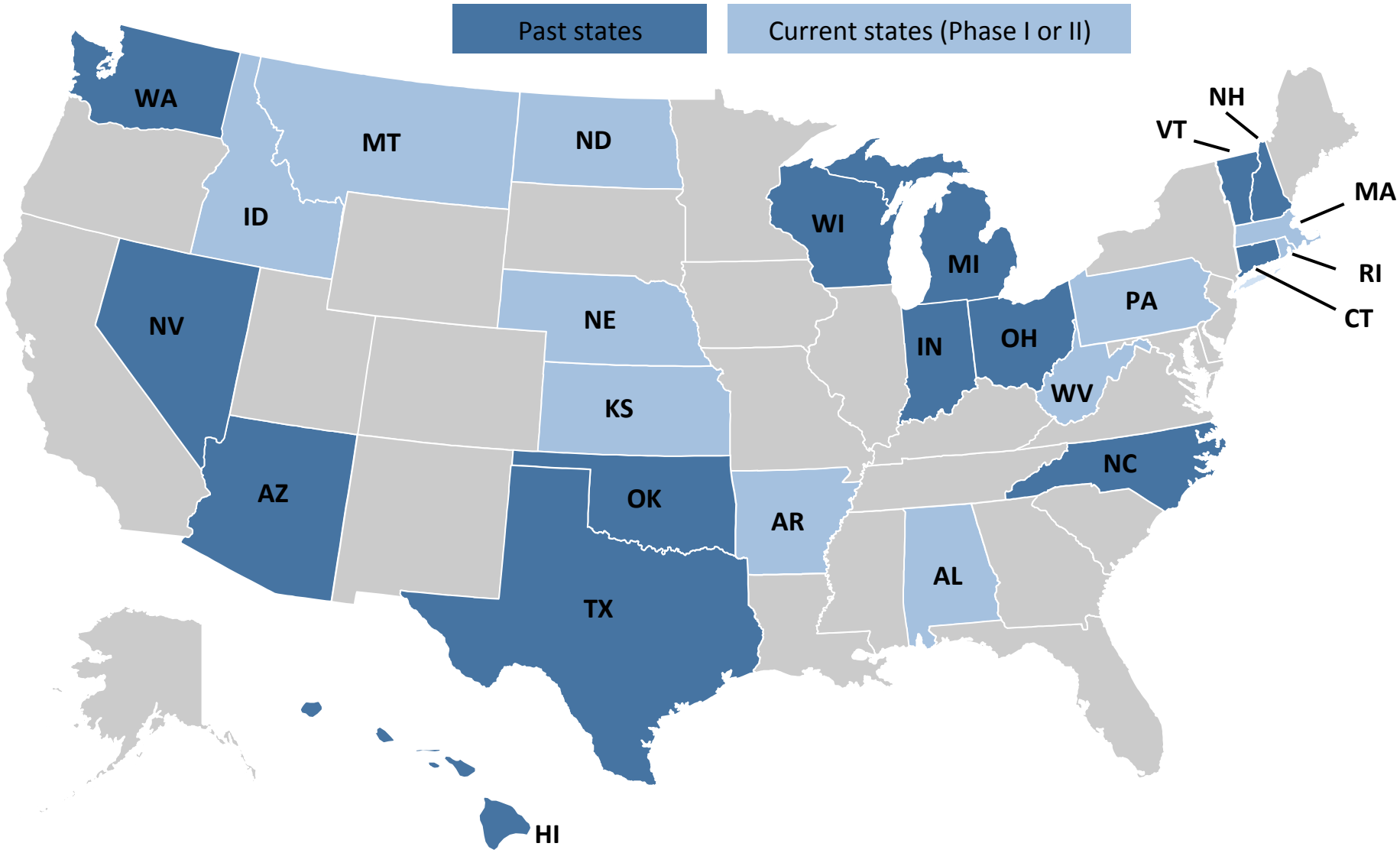
I. Pre-enactment

1	**Bipartisan, Interbranch Working Group**	Assemble practitioners and leaders; receive and consider information, reports, and policies
2	**Data Analysis**	Analyze data sources from across the criminal justice system for a comprehensive perspective
3	**Stakeholder Engagement**	Complement data analysis with input from stakeholder groups and interested parties
4	**Policy Options Development**	Present a policy framework to reduce corrections costs, increase public safety, and project the impacts

II. Post-enactment

5	**Policy Implementation**	Identify needs for implementation and deliver technical assistance for reinvestment strategies
6	**Monitor Key Measures**	Monitor the impact of enacted policies and programs; adjust implementation plan as needed

States using the justice reinvestment approach with CSG Justice Center



Overview

01 Project Update

02 Prison Populations

03 Supervision Populations

04 What Works – Supervision Best Practices

05 Next Steps

Data analysis update, and challenges identified in source data used in today's presentation

Justice Reinvestment Data Request Update		
Data Requested	Source	Status
Criminal History Information	Attorney General Bureau of Criminal Investigation	Received; Analyzed
Filing, Disposition, & Sentencing	Administrative Office of the Courts	Received; Analyzed
Probation and Parole Supervision	Department of Corrections and Rehabilitation	Received; Analysis pending
Prison Population, Admissions, & Releases	Department of Corrections and Rehabilitation	Received; Analysis pending
County Jail Population, Admissions, & Releases	Criminal Justice Information Sharing	Requested

Challenges with Source Data Used in Today's Presentation

Lack of detailed prison admission information for supervision violators

- Prison admission data does not include information on the type of violation for inmates admitted for violations of probation or parole. CSG Justice Center research staff were unable to differentiate between inmates admitted for violations due to a new offense, a technical violation, or absconding.

Lack of detailed offense information for supervision records

- The degree of offense is not tracked in the supervision case management system, so CSG Justice Center research staff could not provide a detailed analysis of supervision activity for low-level felony offenders.

North Dakota's rich prison and supervision data powered the analysis in today's presentation

1.4 million records received from DOCR

Probation/parole admission: Unit of supervision data analysis representing the event at which a person begins either probation or parole supervision. Admissions are based on case number and supervision start date, and can include multiple charges within a case.

Prison release: Unit of prison data analysis representing the event at which a person is released from a DOCR or contracted facility. Prison release counts are based on release date and can include multiple cases and charges, if the sentences ended on the same day.

Probation/parole one-day snapshot: Unit of supervision data analysis representing all active probation and/or parole cases on the last day of a fiscal year (June 30th).

Prison one-day snapshot: Unit of prison data analysis representing the standing population in DOCR or contracted facilities as of the last day of a fiscal year (June 30th).

Prison admission: Unit of prison data analysis representing the event at which a person is admitted to a DOCR or contracted facility. Prison admission counts are based on admission date and reason and can include multiple cases and charges if the sentences began on the same day.

Governing Offense: The single charge associated with a prison inmate or supervision case. If there are multiple charges, the governing offense is categorized by the most serious charge based on a prioritized scale. For prison length of stay analysis, the controlling offense is used as the governing offense.

Probation/parole termination: Unit of supervision data analysis representing the event at which a person ends either probation or parole supervision. Terminations are based on case number and termination date and can include multiple charges within a case.

Definitions of offense categories used in this analysis

Person

- Aggravated Assault
- Robbery
- Homicide
- Manslaughter
- Assault
- Kidnapping
- Domestic Violence
- Child Abuse
- Sexual Assault

Property

- Theft of Property/Service
- Insufficient Funds
- Possession of Stolen Property
- Burglary
- Criminal Mischief
- Forgery/fraud
- Motor Vehicle Theft

Drug

- Possession
- Distribution (includes possession with intent to distribute)
- Manufacturing
- Drug paraphernalia
- Forged prescription
- Controlled substance at school

Other

- Disorderly conduct
- Criminal Trespass
- Resisting/Evading Arrest
- Reckless Driving
- Leaving the Scene of an Accident
- Minor in possession of alcohol
- Contributing to the delinquency of a minor
- Driving without Insurance
- Court offenses
- Cruelty to animals
- Hunting offenses
- Driving Under the Influence
- Driving while License Suspended

Source: NCIC offense information from BCI

Today's analysis focuses on prison and probation supervision, with a review of other areas to be addressed in future presentations

TOPIC OF ANALYSIS	WHEN ANALYSIS WILL BE COVERED
Sentencing policy	April
Sentencing practices	April
Statute review	April
Probation	Today
Prison	Today
Recidivism/outcomes	Today
Parole	Today/July
Front-end pressures	July
County Jails	July
Pretrial processes (pretrial release, length of stay, bail, etc.)	July

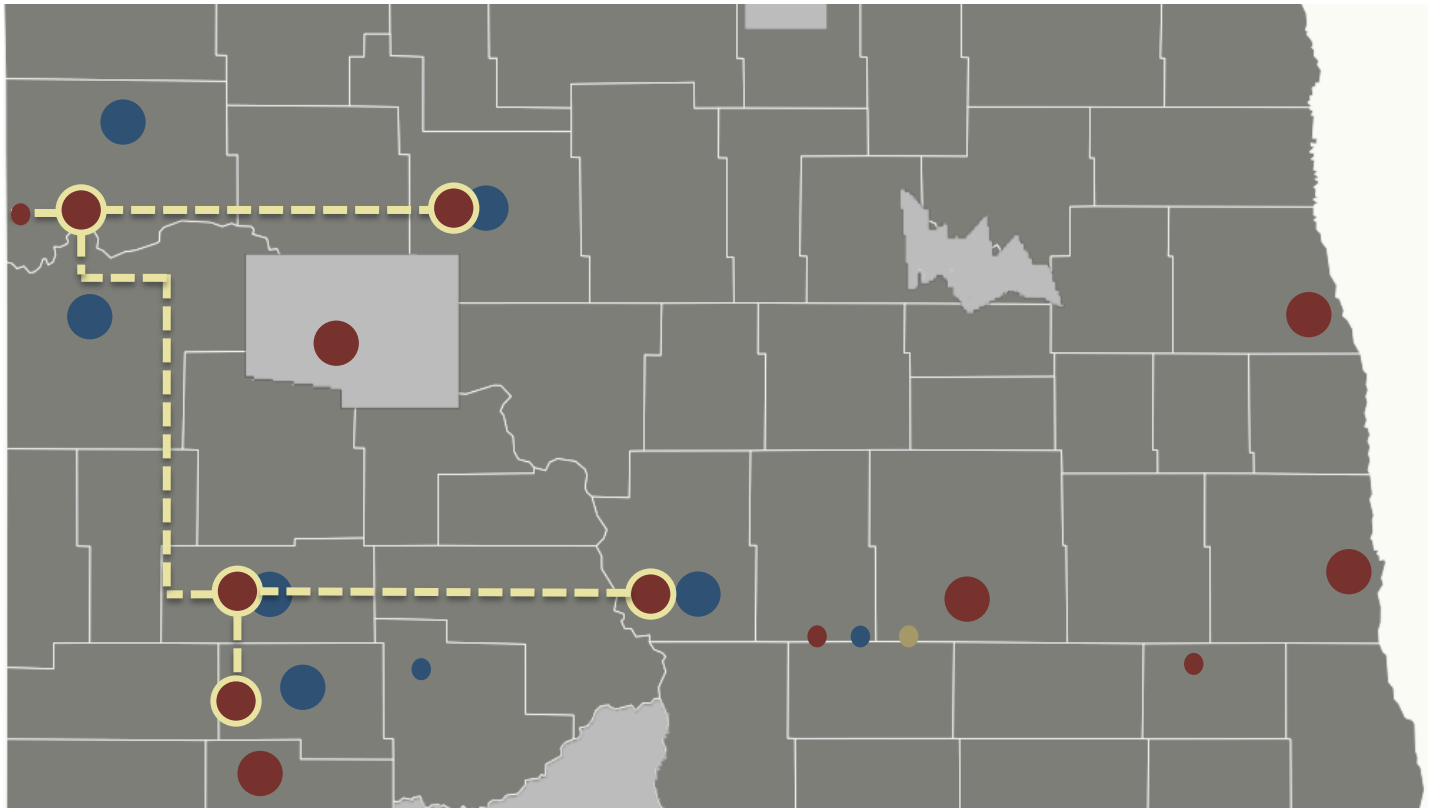
CSG Justice Center staff are pursuing regional perspectives in stakeholder engagement, reflecting the state's size and diversity

87
CALLS & MEETINGS

10
ON-SITE VISITS

8
DIFFERENT REGIONS

SINCE FALL 2015



Probation & Parole Officer Survey

Probation and parole officers across the state participated in an online CSG Justice Center staff survey. 71 percent of probation officers responded, and their input is included in today's presentation.

Stakeholder input informs the data analysis presented today

Incarceration Issues Committee

Individual meetings/calls with working group members and their staff

Corrections

Meetings with DOCR staff, Centre Inc., and the Dakota Women's Correctional Rehab Center; probation officers survey; and observation of probation reporting sessions

North Dakota Legislature

Meetings with Senators and House Representatives

Behavioral Health

DHS, Regional Human Services Centers, Ruth Meiers Hospitality Center, ADAPT Inc., Heartview Foundation, Heart River Alcohol and Drug Abuse Services, Native American Resource Center, and Choice Recovery Counseling

Courts

Meetings/calls with individual judges, state attorneys, and the Attorney General's Office; administration of a judicial survey; and court observations

Law Enforcement

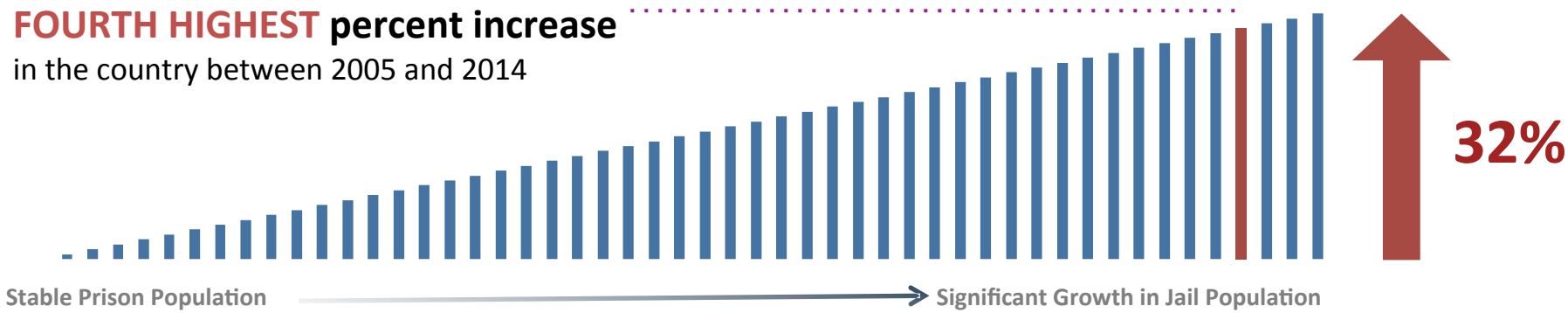
Burleigh, Ward, and Cass County Police Department; Bismarck and Minot Police Department; Stark and Williams County Sheriff's Office; Southwest Multi Correction Center; and presented at the joint Chiefs and Sheriffs Associations meeting

Community and Tribal Organizations

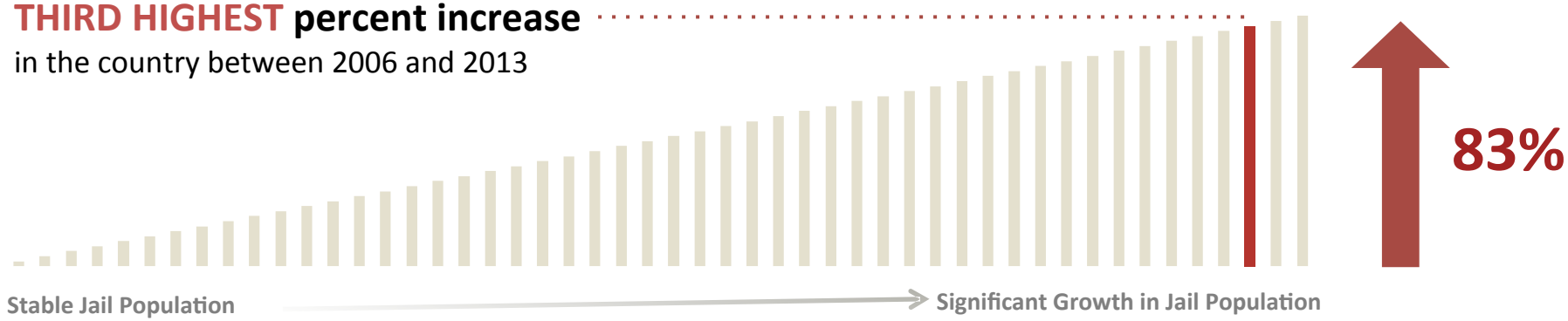
NDACo, Indian Affairs Commission, Three Affiliated Tribes, CAWS North Dakota, North Dakota Council on Abused Women Services Coalition, and North Dakota Board of Addiction Counseling Services

1 North Dakota's jail and prison populations are growing faster than nearly every other state

The North Dakota prison population had the
FOURTH HIGHEST percent increase
in the country between 2005 and 2014



The North Dakota jail population had the
THIRD HIGHEST percent increase
in the country between 2006 and 2013

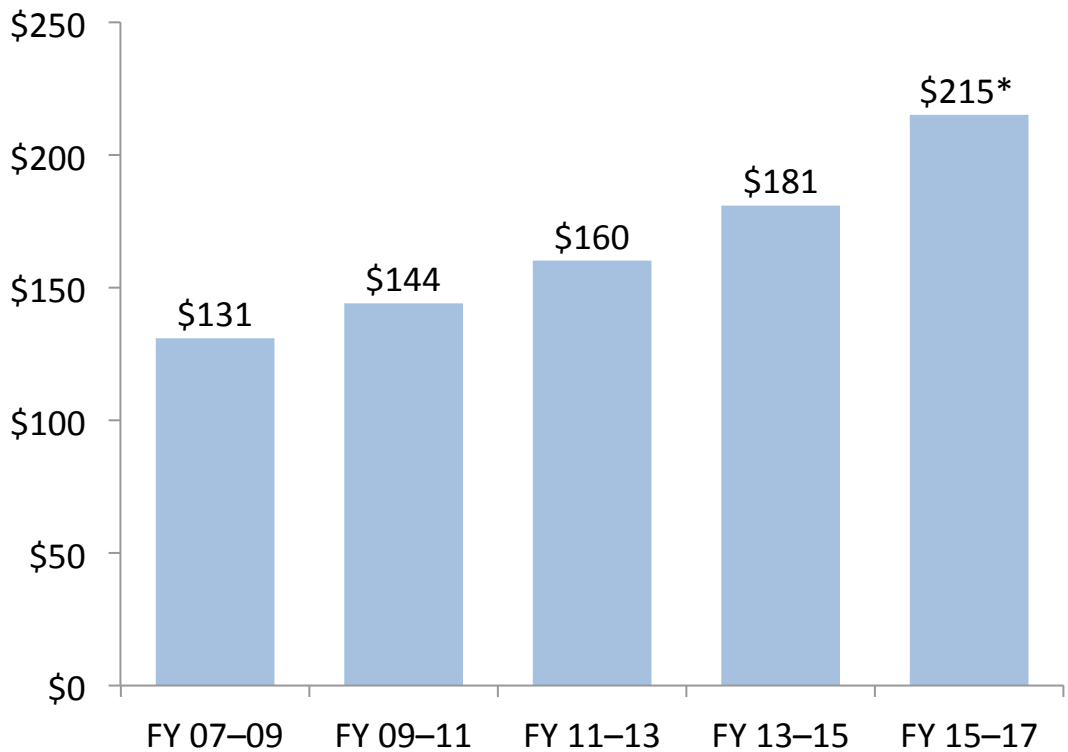


**The 2006–2013 timeframe is the most recent data available for national data comparisons on jail populations.*

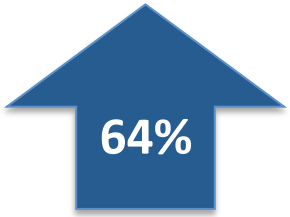
Source: U.S. Department of Justice, Bureau of Justice Statistics (BJS) Census of Jails: Population Changes, 1999–2013 (Washington DC: BJA, 2015). Excludes the unified jail and prison systems in Alaska, Connecticut, Delaware, Rhode Island, Hawaii, and Vermont. BJS, "Correctional Statistical Analysis Tool (2005–2014)," retrieved on January 21, 2016, from http://www.bjs.gov/index.cfm?ty=nps.

2 Without action, public safety dollars will be consumed trying to keep up with growth rather than investing in crime and recidivism reduction strategies

General Fund Corrections Appropriations (in millions), FY2007 - 2017



Corrections Spending Increase, FY07–09 to FY15–17



The FY2009–11 state budget provided **$64 million** ($22.5 million from the General Fund) for construction and renovation at the North Dakota State Penitentiary.

DOCR also receives special funding allocations.

**Budgeted, not spent for 2016 and 2017.*
Biennial budgets run on a two-year cycle. Budget information cited here is from July 1, 2003 to June 30, 2005 and the most recent running from July 1, 2013 to June 30, 2015. Source: DOCR, Biennial Report 2003–2005. (Bismarck: DOCR, 2005); DOCR, Biennial Report 2013–2015. Actual General Fund appropriations were $83,458,031 for 2005 and $178,475,785 for 2015.

3 Maintaining the status quo will cost North Dakota a minimum of $485 million in additional spending over the next decade

Ten-year cost of relying on contracted capacity to accommodate projected prison growth

Current contract beds (530) *carried forward through 2025* **$220M**

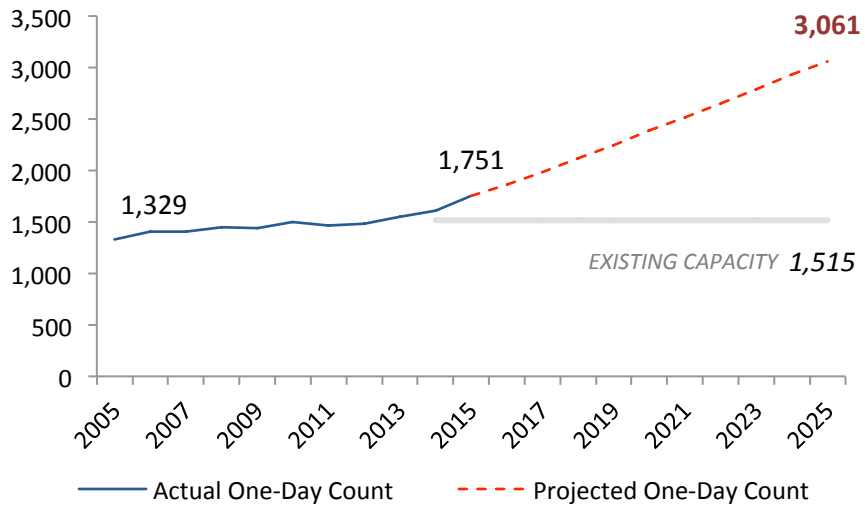
+

Population growth (1,310) *carried through 2025* **$265M**

=

Total Estimated Cost of Accommodating Prison Growth Through Contract Beds *daily rate estimate is $114/day* **$485M**

HISTORICAL AND PROJECTED ONE-DAY TOTAL INMATE COUNTS, FY2005–2025



Building a **NEW STATE PRISON** would add costs above the contract beds

OUT-OF-STATE CONTRACT BEDS likely would be needed, possibly increasing collateral costs

Contract beds within the state of North Dakota are **NOT ADEQUATELY EQUIPPED** to handle inmates' special needs

Source: DOCR emails (2015-17 contract facility budget information and DOCR facility cost-per-day figures); DOCR housing data; DOCR inmate projections; "Locking Up North Dakota," DOCR 2015.

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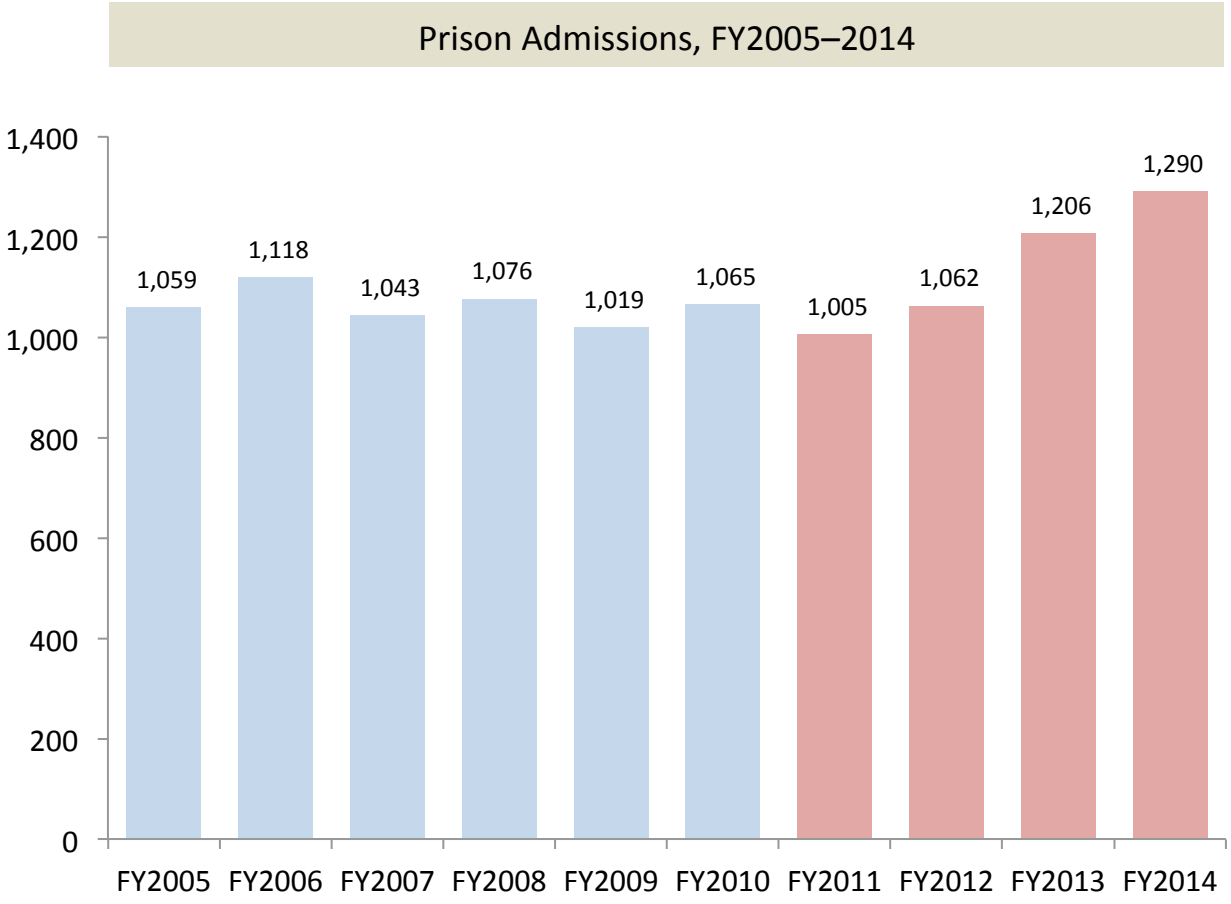
Section Preview: Supervision failures and lowest-level property and drug offenses are creating prison population pressure

Property and drug offenses and probation and parole revocations make up 72 percent of all prison admissions

62 percent of new offense admissions are from the lowest felony class; most are for property and drug offenses

27 percent of people in prison on any given day are there following a probation or parole revocation

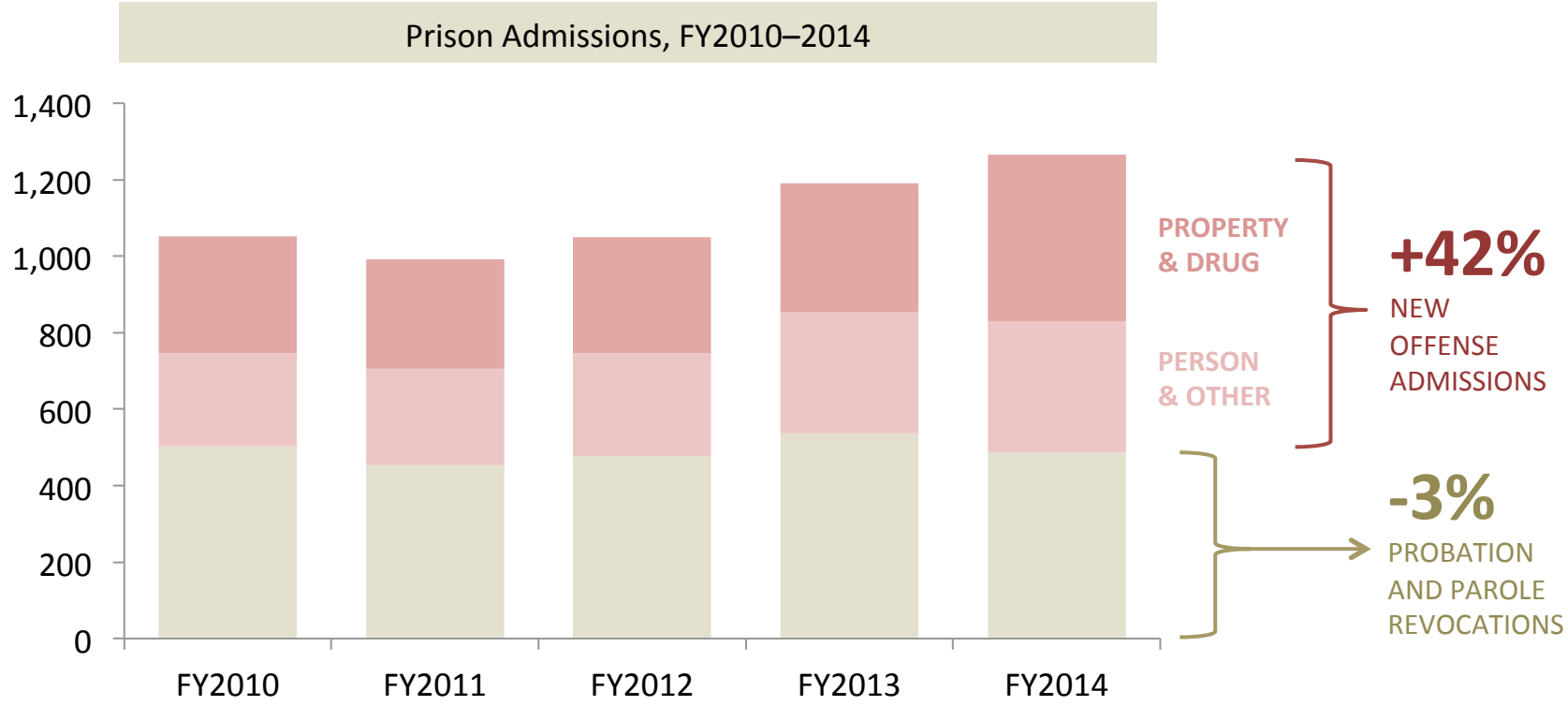
Prison admissions spiked 21 percent between 2011 and 2014



	2005–2011 Difference	2011–2014 Difference
Prison Admissions	–5%	+21%

Source: DOCR prison admission data files

New offense admissions drove the increase in prison admissions, with property and drug offenses accounting for over half the growth



	FY2010	FY2011	FY2012	FY2013	FY2014	2010 to 2014 DIFFERENCE
PERSON & OTHER	242	253	270	317	341	99
PROPERTY & DRUG	307	286	303	338	436	129
REVOCATIONS	503	453	476	536	488	–15
TOTAL	**1,052**	**992**	**1,049**	**1,191**	**1,265**	**213**

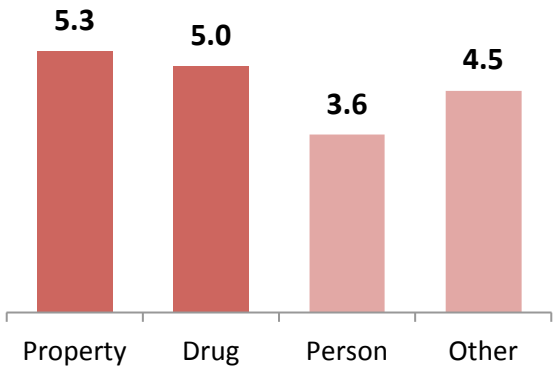
Source: DOCR prison admission data files

People sentenced for property and drug offenses present the biggest challenge—and opportunity—for recidivism reduction

What we know about people convicted of property and drug offenses

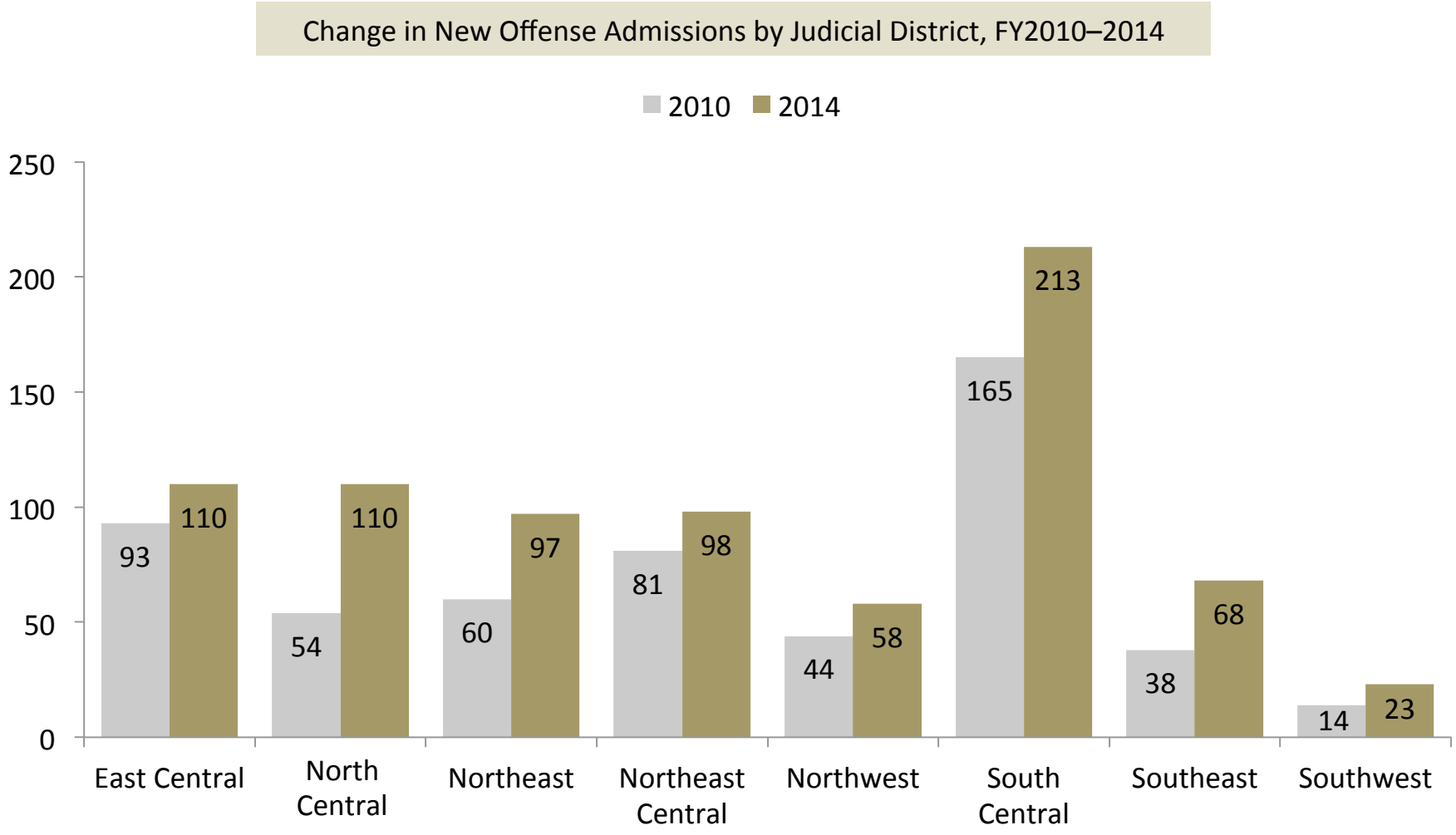
- Property and drug crimes represent a large share of arrests and sentences, consuming law enforcement and court resources.
- These people tend to have criminal records (more prior arrests) but are convicted of nonviolent offenses.
- They may have significant criminogenic needs, including substance use and criminal attitudes, that must be addressed to prevent future criminal behavior.
- A combination of effective supervision and treatment is shown to produce the largest reductions in recidivism.

Average Number of Prior Arrests, FY2014 New Offense Admissions



Source: DOCR prison admission data files; BCI criminal history data

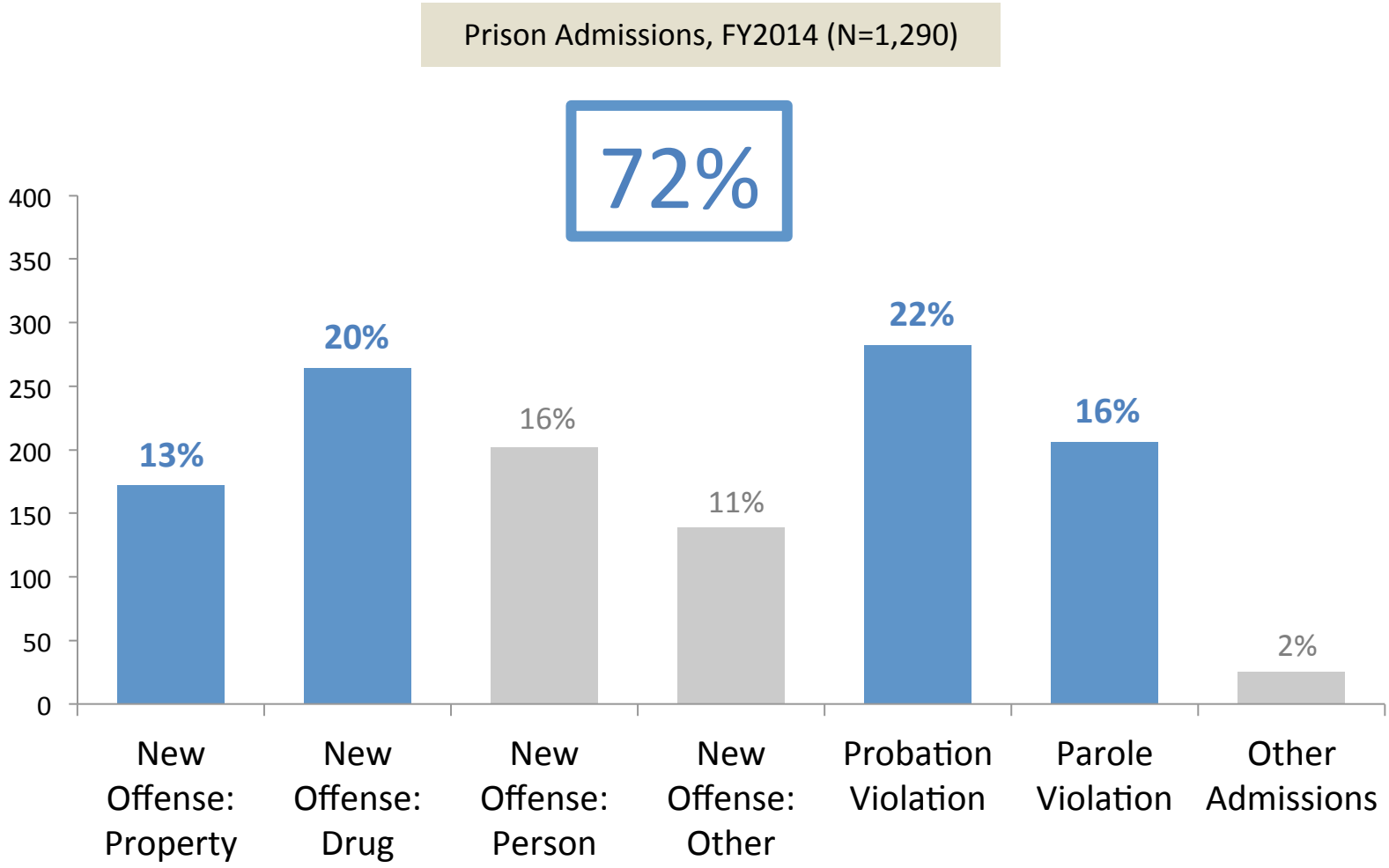
New offense admissions to prison increased in every judicial district



**Less than 1% of prison admissions are missing district information in each fiscal year*

Source: DOCR prison admission data files

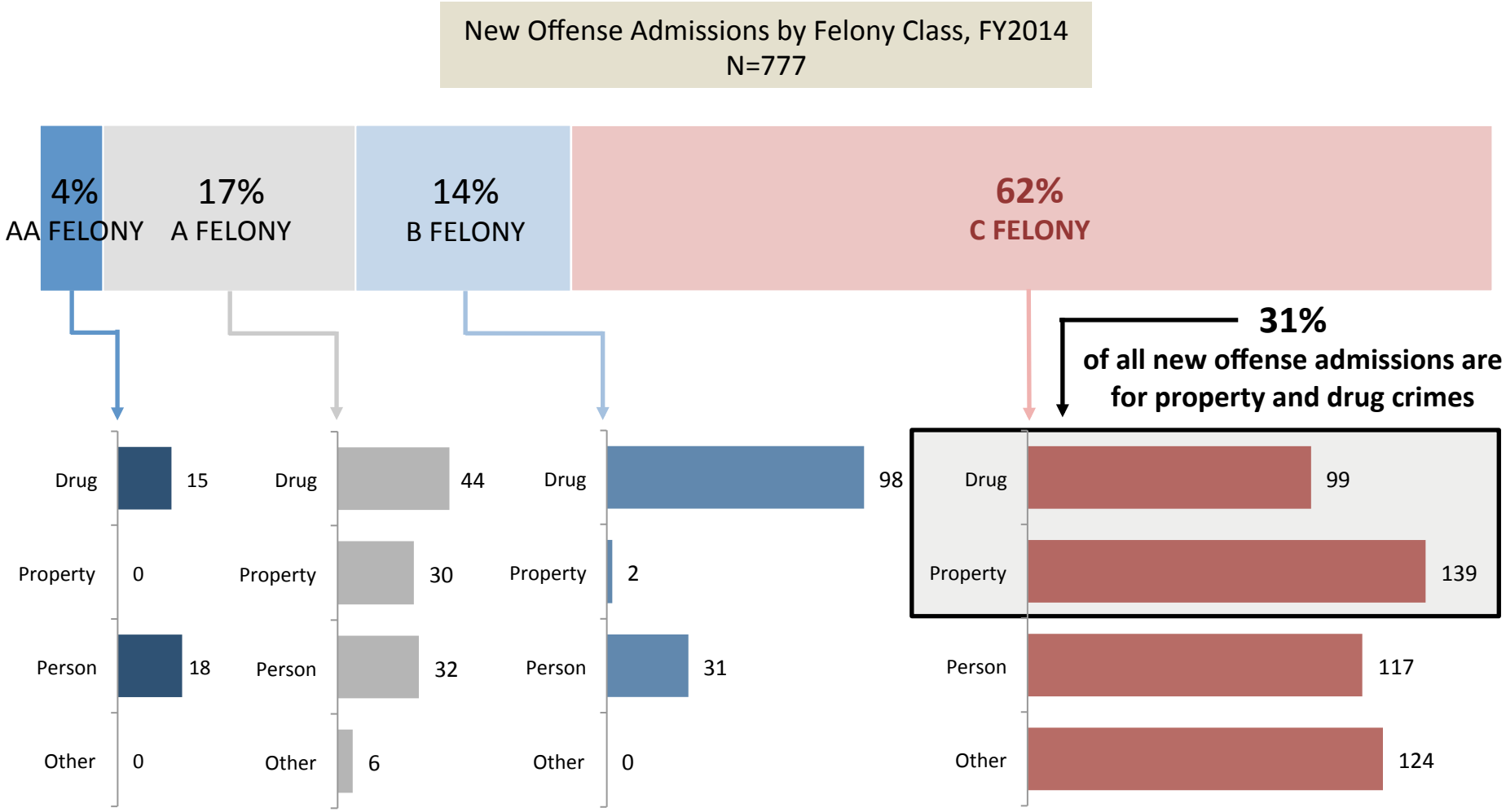
Admissions for new drug and property offenses, probation violations, and parole violations make up almost three-fourths of all prison admissions



"Other admissions" include Appeal Bond, Federal Authorities, Out of State, Recapture, and Transfer admissions.
"Other" offenses include DUI, traffic offenses, obstruction, escape, and other offenses.

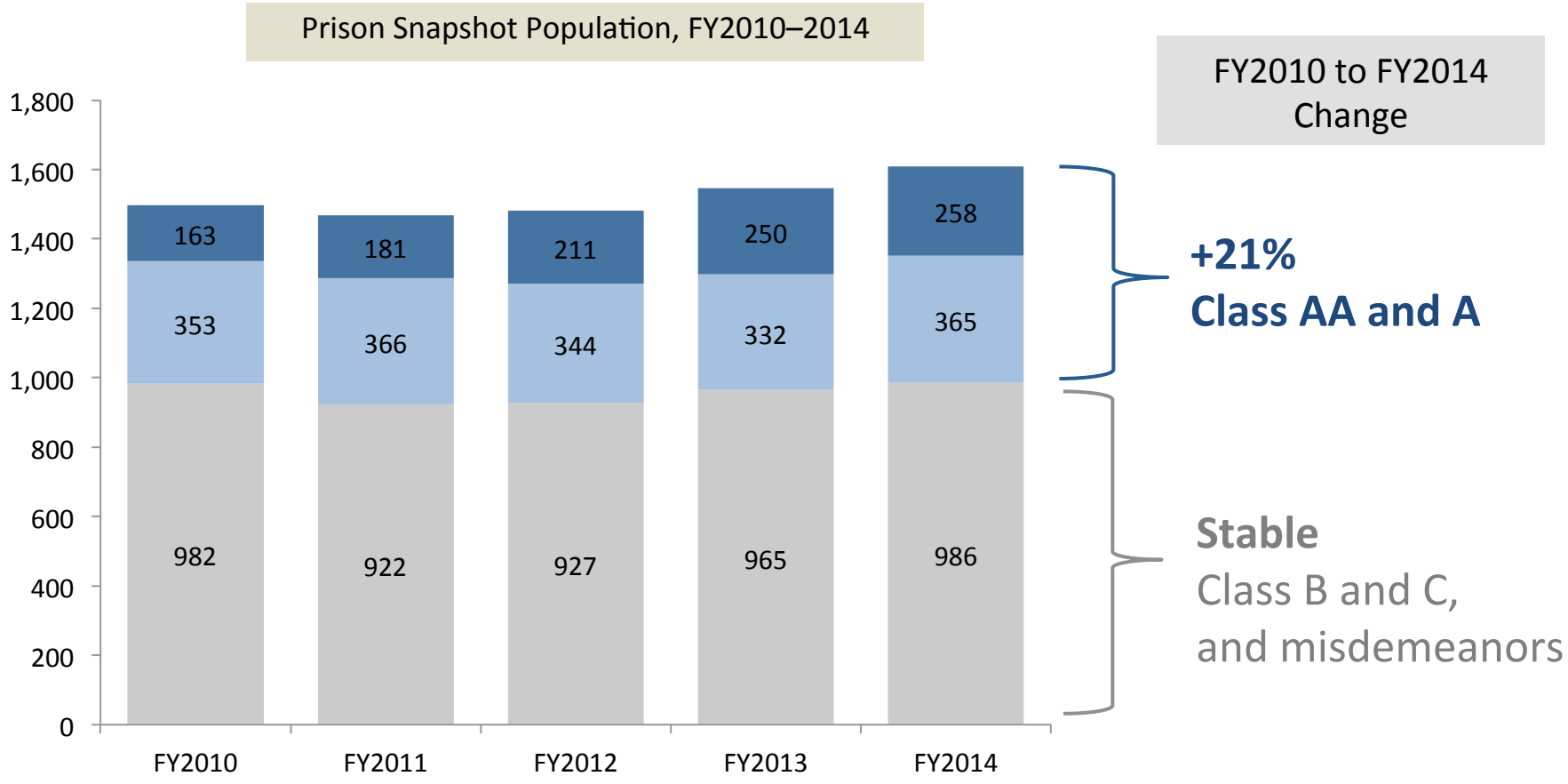
Source: DOCR prison admission data files

62 percent of new offense admissions are from the lowest felony class, mostly property and drug offenses



Source: DOCR prison admission data files

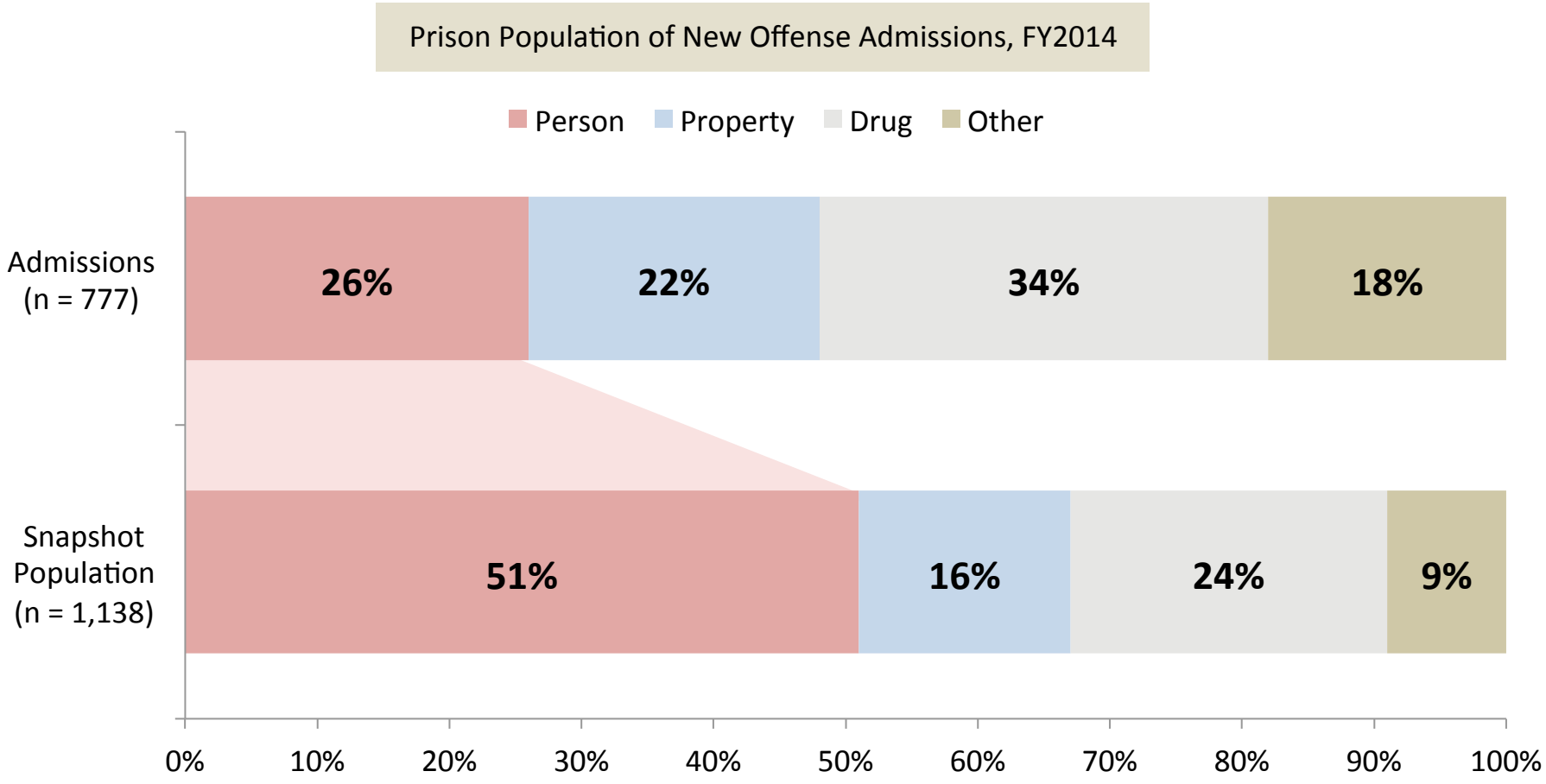
The share of the prison population serving sentences for the most serious offenses (Class AA and A) increased 21 percent



**Inmate population as of 6/30/2014.*

Source: DOCR prison one-day population snapshot data files

Individuals with person offenses have an outsized representation in the snapshot population due to longer lengths of stay

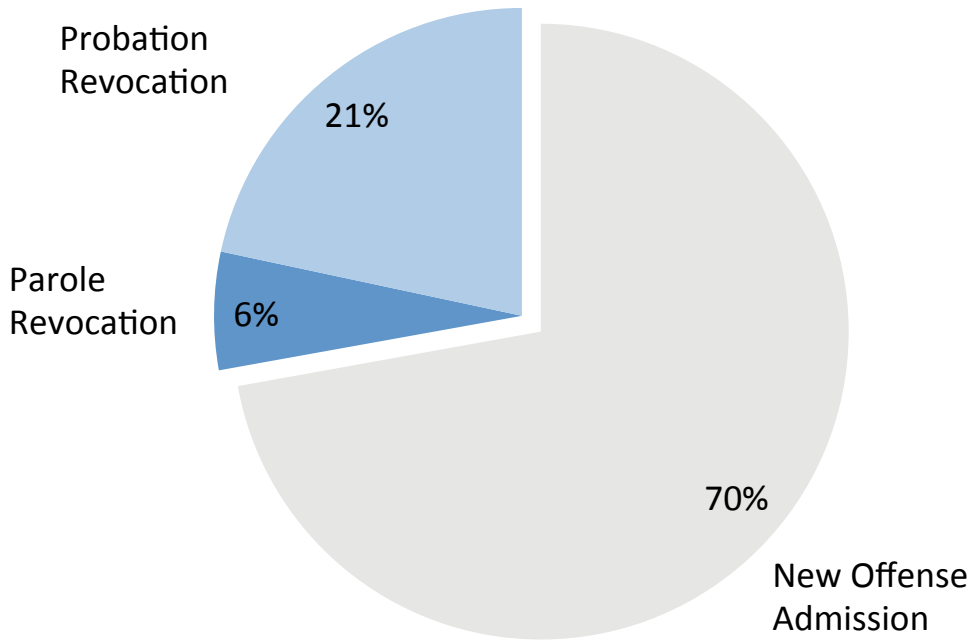


**As of 6/30/2014. Population admitted for new offenses only. Probation violations, parole violations, and other admission types are excluded.*

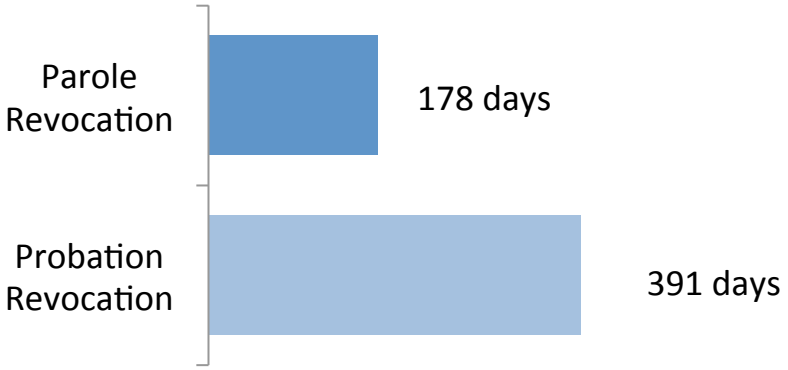
Source: DOCR prison admission and one-day population snapshot data files

One in four people in prison was revoked from probation and parole supervision

Prison Snapshot Population, FY2014*
N=1,609



Length of Stay Following a Probation or Parole Revocation



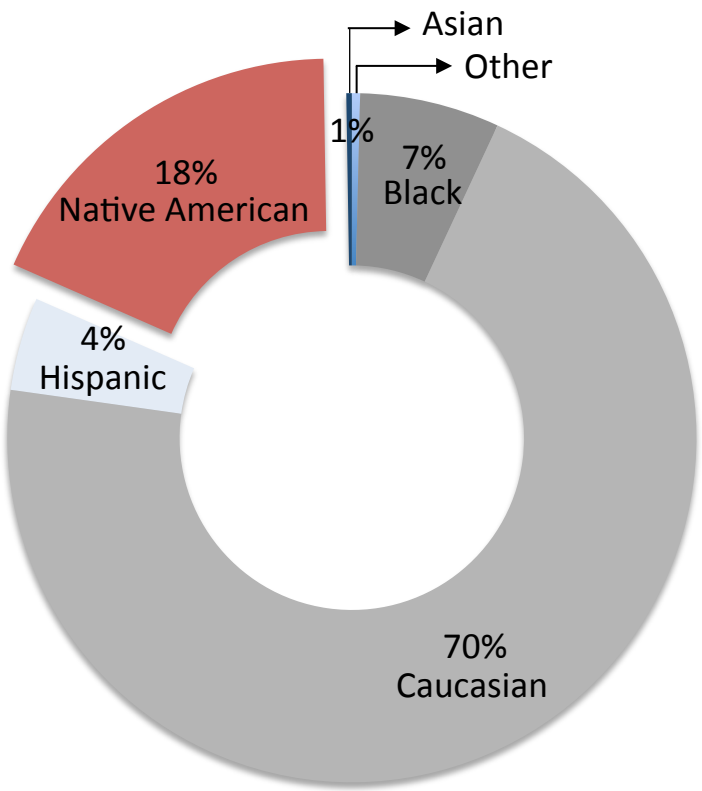
Some "New Offense Admissions" are likely individuals who were on community supervision but were convicted of a new offense without having their supervision terminated.

**Prison population on June 30, 2014. 1% of the prison population had an admission type of "Other."*

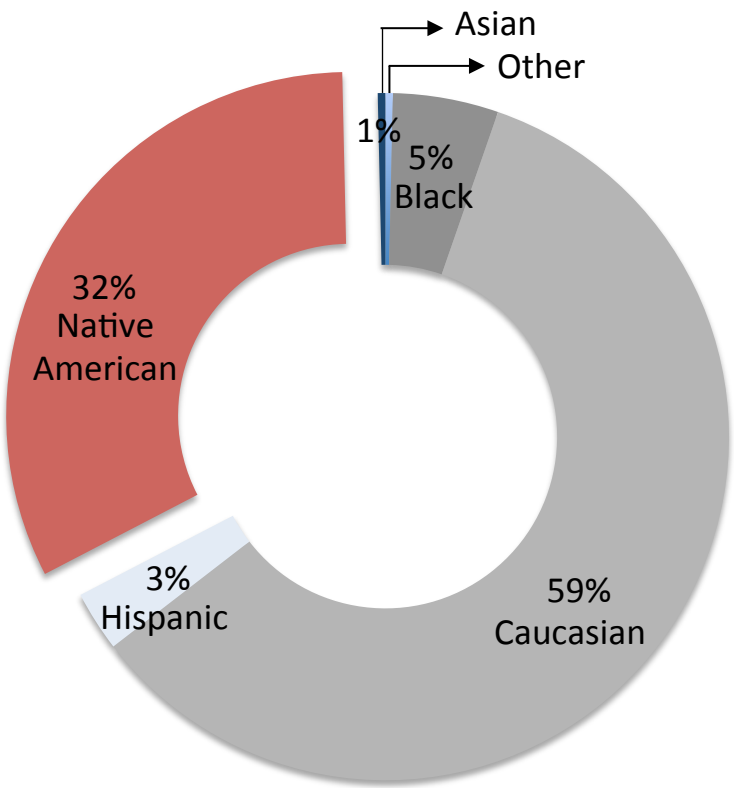
Source: DOCR prison one-day snapshot and release data files

Native Americans make up a much larger portion of prison admissions from probation revocations than new offense admissions

NEW OFFENSE ADMISSIONS
N = 777



ADMISSIONS FOR PROBATION REVOCATIONS
N = 282



Rates shown are for FY2014
In 2014, the Native American population made up 5.4% of North Dakota's resident population.
Source: DOCR prison admission data files

North Dakota spends $25 million incarcerating lowest-level property and drug offenders and people revoked from probation and parole

NEW OFFENSE ADMISSIONS (FY2014)

	Admissions	Average LOS	Cost Per Day	Total
Drug Offense (Class C)	99	233 days	$113.59	$2.6M
Property Offense (Class C)	139	349 days	$113.59	$5.5M

+

PROBATION AND PAROLE REVOCATIONS (FY2014)

	Admissions	Average LOS	Cost Per Day	Total
Parole Revocations	206	178 days	$113.59	$4.2M
Probation Revocations	282	391 days	$113.59	$12.5M

$25 Million

Spent on lowest-level felony property and drug offenses and probation and parole revocations (FY2014)

Source: DOCR prison admission and release data files; DOCR cost-per-day estimates

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Section Preview: Failures on probation and parole supervision add significant cost to the prison system

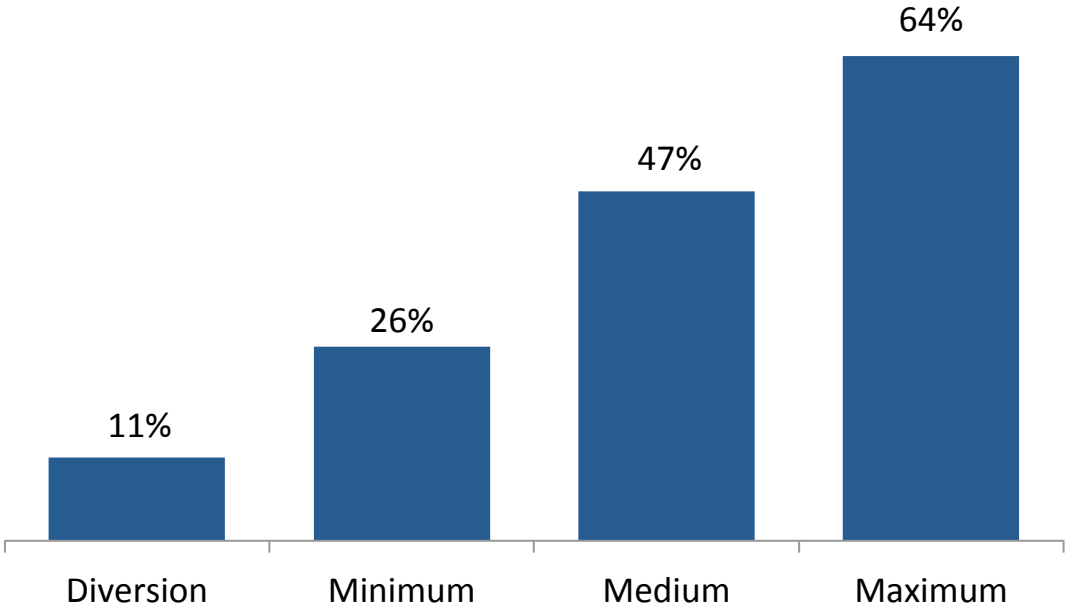
46 percent of probation revocations involve noncriminal violations of supervision conditions

There is a substantial need for substance use treatment, and barriers exist to accessing adequate care

Half of people revoked from probation are sent to prison and another third are sent to jail, creating state and local costs

Revocation rates climb as supervision levels increase, indicating a need to shift resources to higher supervision levels

Percent of unsuccessful exits from probation, FY2014
N = 3,209*



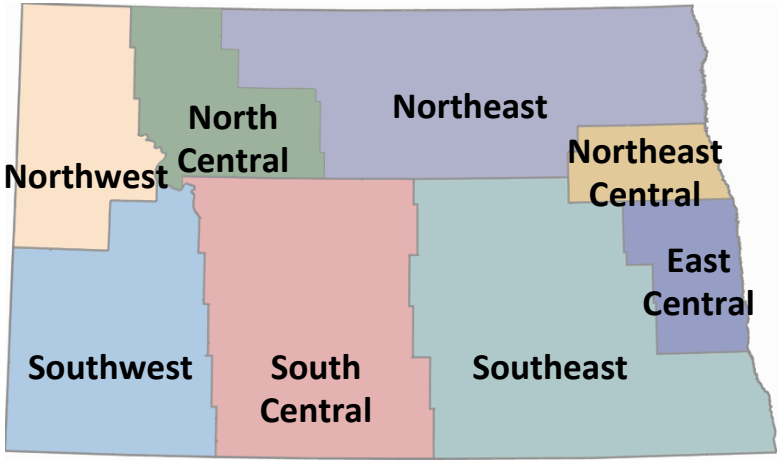
Higher-risk probationers require more intensive supervision and programs to reduce recidivism.

Applying similar supervision and program intensities to lower-risk probationers can have the reverse effect, increasing recidivism.

**979 probationers were categorized as "Not Classified" and are not represented in this chart because they are incarcerated or out of state and not actively overseen by the North Dakota probation department. Less than 1% of probation cases were missing classification levels.*
2% of probation cases had an outcome of "Death" or "Other."

Source: DOCR supervision data

Twice as many probationers, 2.5 times as many high-risk probationers, live in the South Central judicial district than anywhere else in the state



	Total Probationers	High/Moderate-High Probationers
East Central	984	295
North Central	668	276
Northeast	591	218
Northeast Central	711	288
Northwest	402	129
South Central	**2,202**	**938**
Southeast	581	177
Southwest	369	109

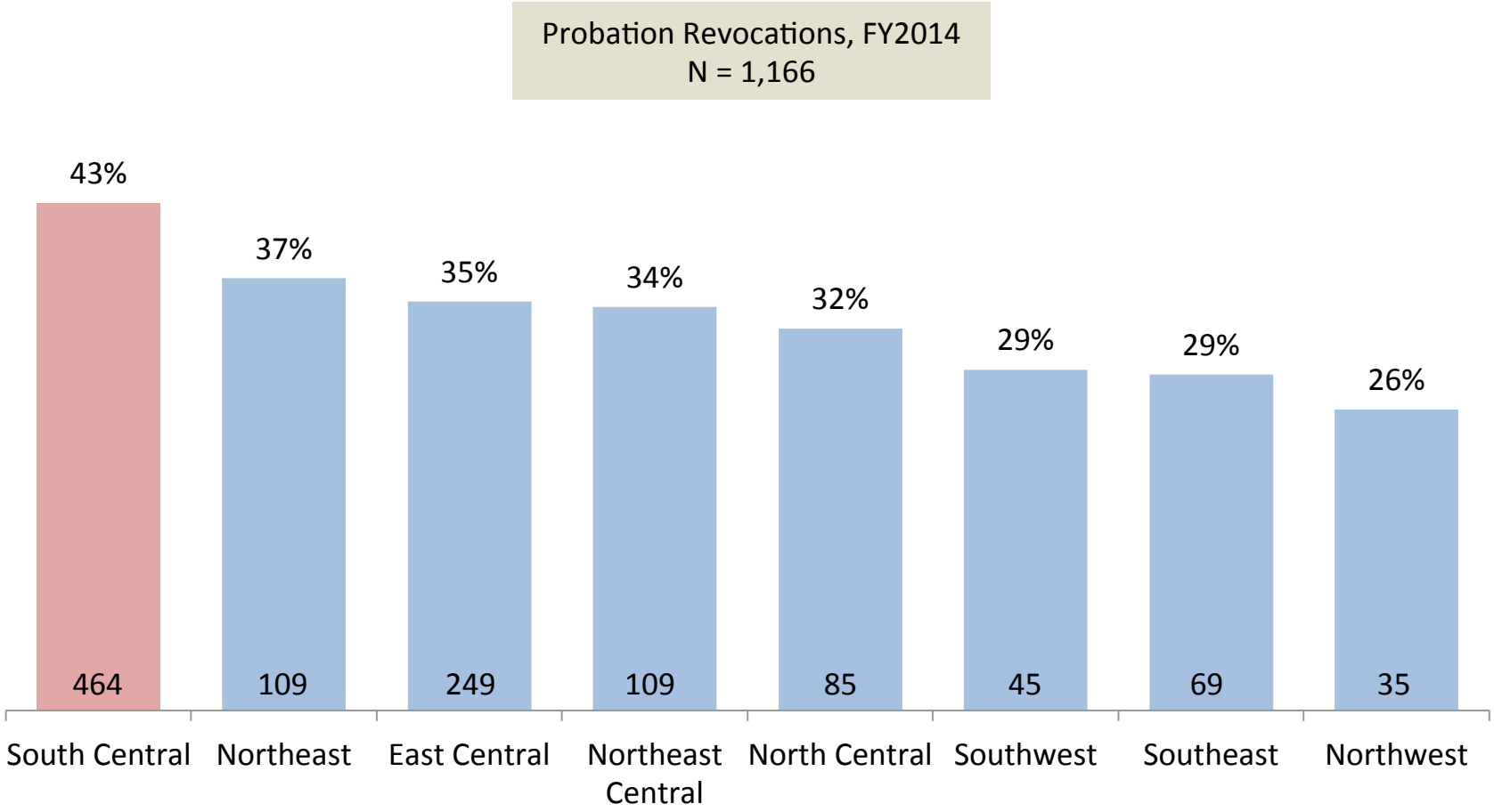
Rates shown are based on probation one-day snapshot population on 6/30/2014

Source: DOCR supervision data; CSG Justice Center Probation and Parole Officer Survey

PO's in many areas of the state reported that their caseloads allowed time to regularly employ supervision best practices

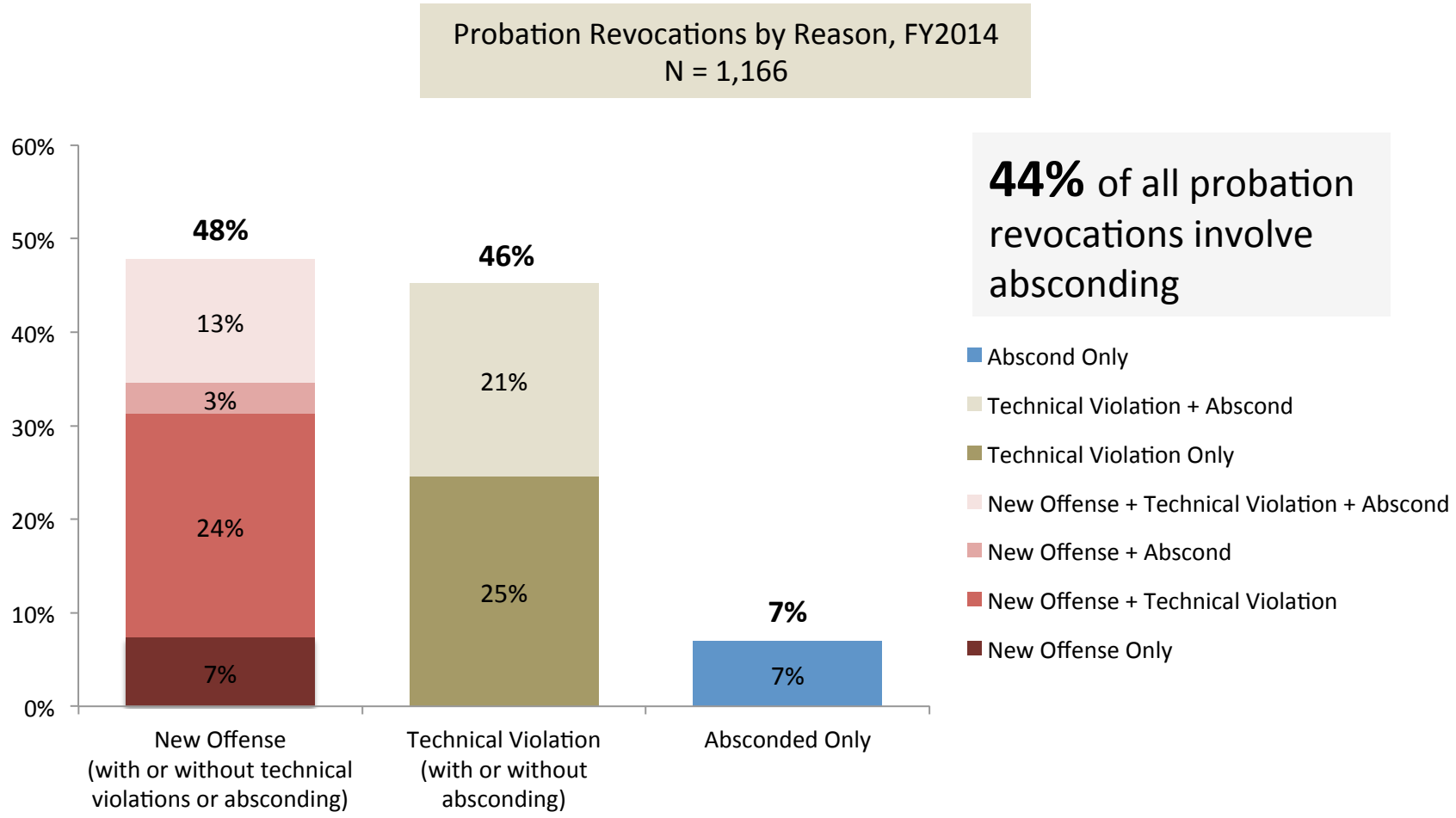
75 PERCENT of PO's in the South Central district reported having challenges employing best practices due to the high volume of higher-risk individuals (and associated higher contact standards) on their caseloads.

South Central had both the highest rate and the largest number of probation revocations



Source: DOCR supervision data

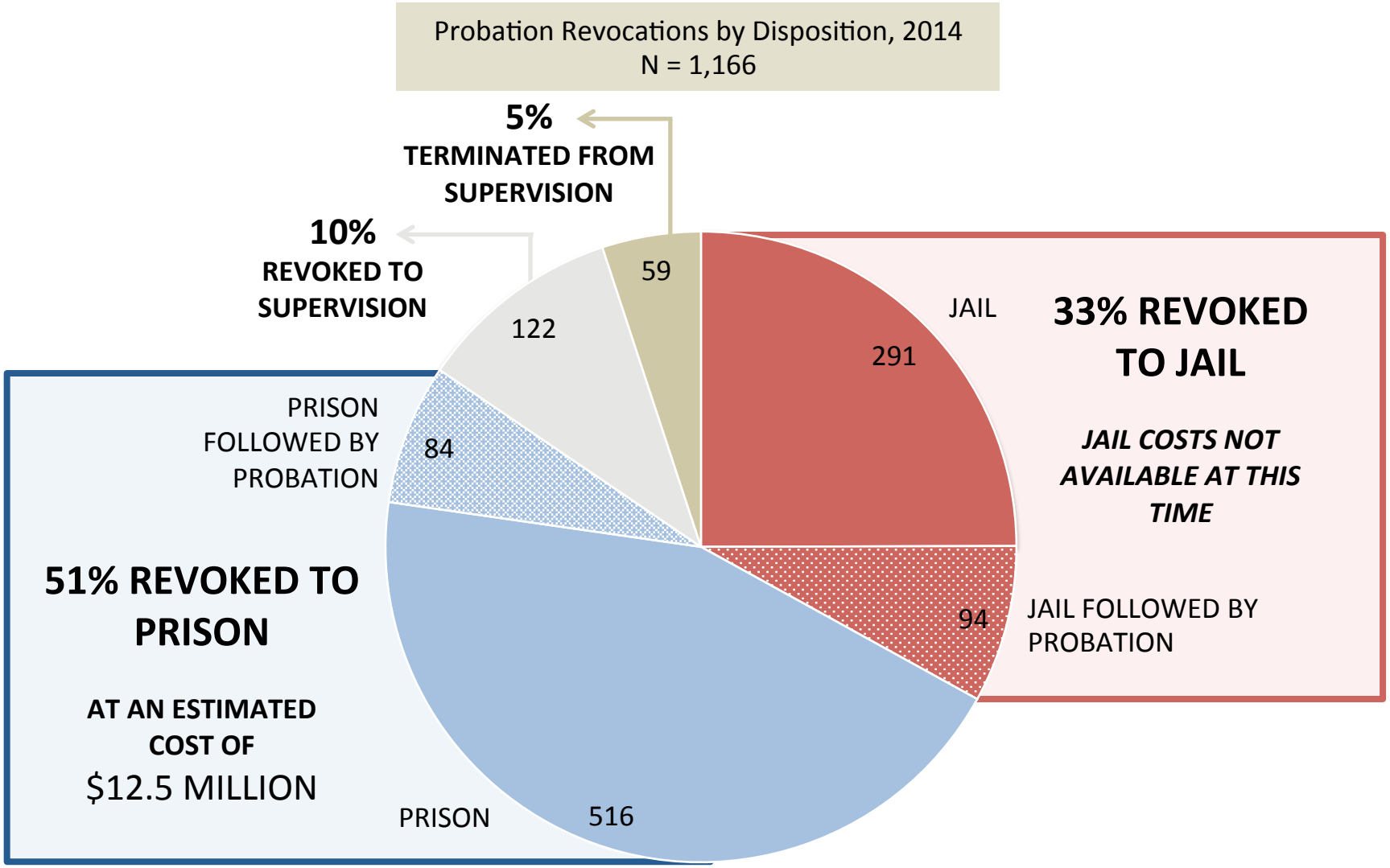
46 percent of probation revocations across the state were for noncriminal violations of supervision conditions



One case was missing revocation information.

Source: DOCR supervision data

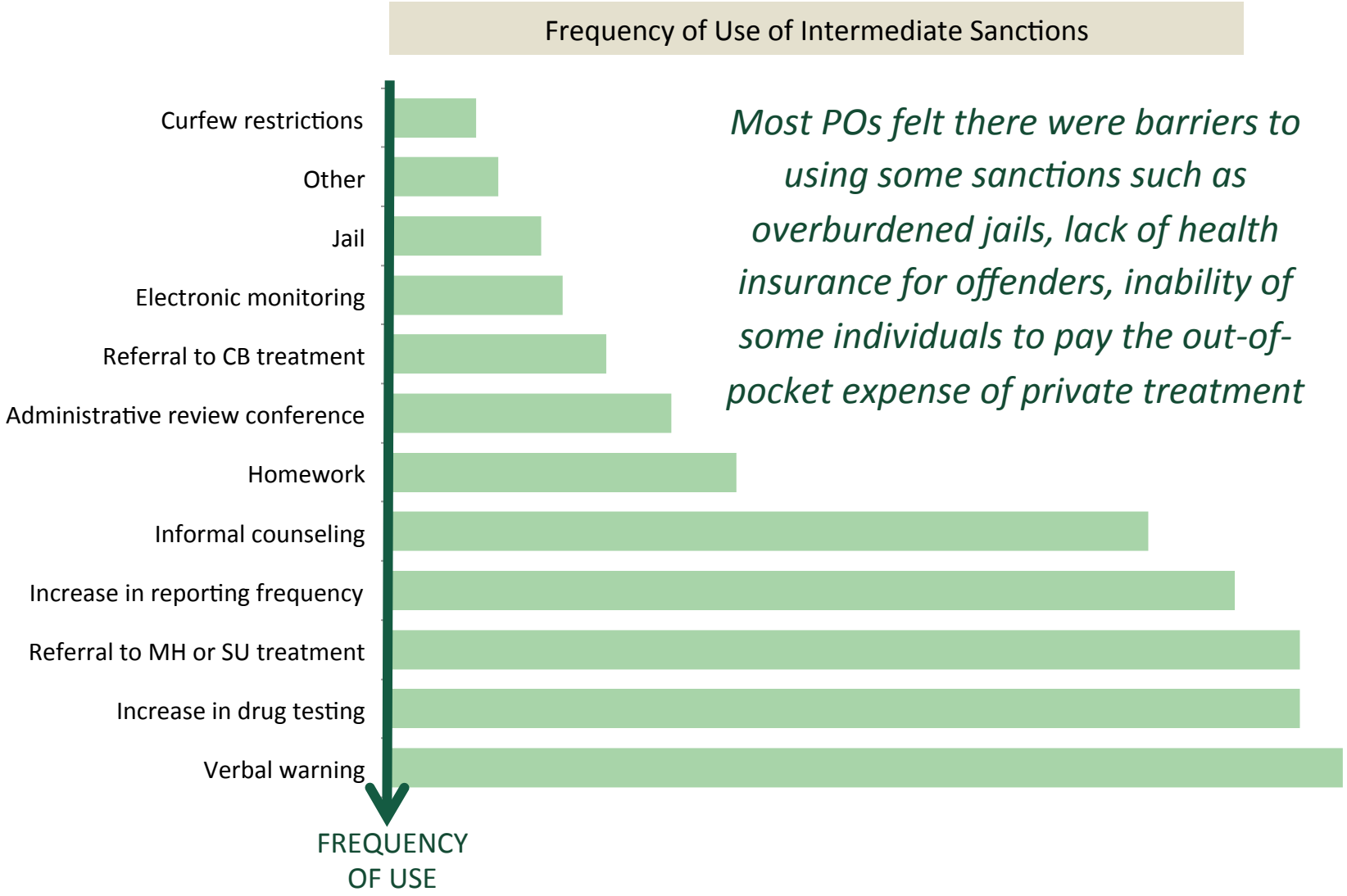
Half of revoked probationers were sent to prison, and one in three were sent to county jails



Includes revocations for any reason.

Source: DOCR supervision data

POs work extensively with probationers and parolees to address behavior before moving to revoke community supervision



Most POs felt there were barriers to using some sanctions such as overburdened jails, lack of health insurance for offenders, inability of some individuals to pay the out-of-pocket expense of private treatment

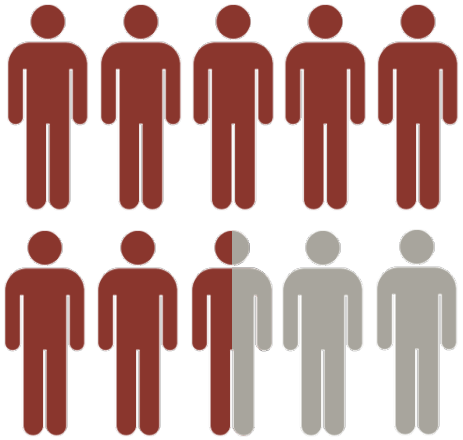
Source: CSG Justice Center Probation and Parole Officer Survey

Probation and parole officers reported an acute need for substance use services in the community

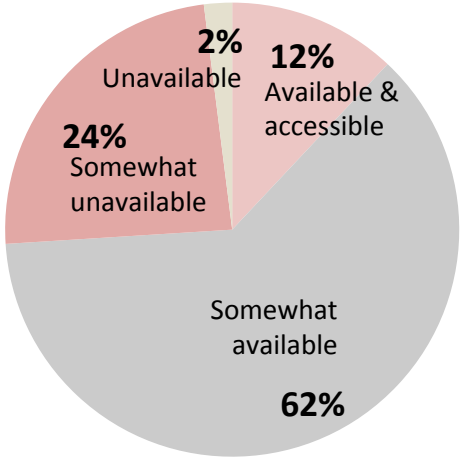
SUBSTANCE USE

Half of POs reported that 75% or more of their clients needed substance use treatment

NEED FOR TREATMENT



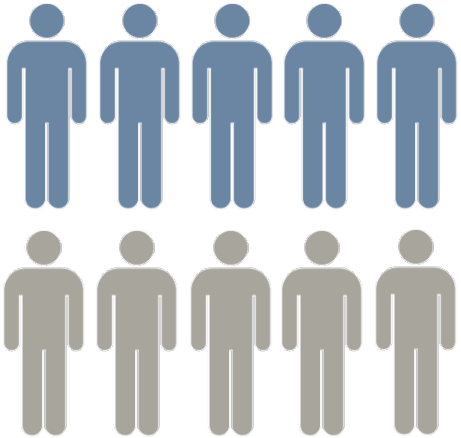
AVAILABILITY OF TREATMENT



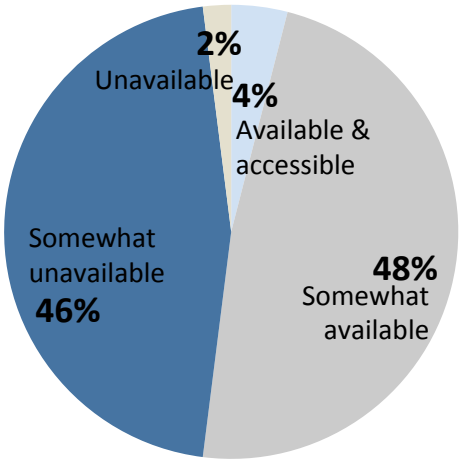
MENTAL HEALTH

Half of POs reported that fewer than 50% of their clients needed mental health treatment

NEED FOR TREATMENT

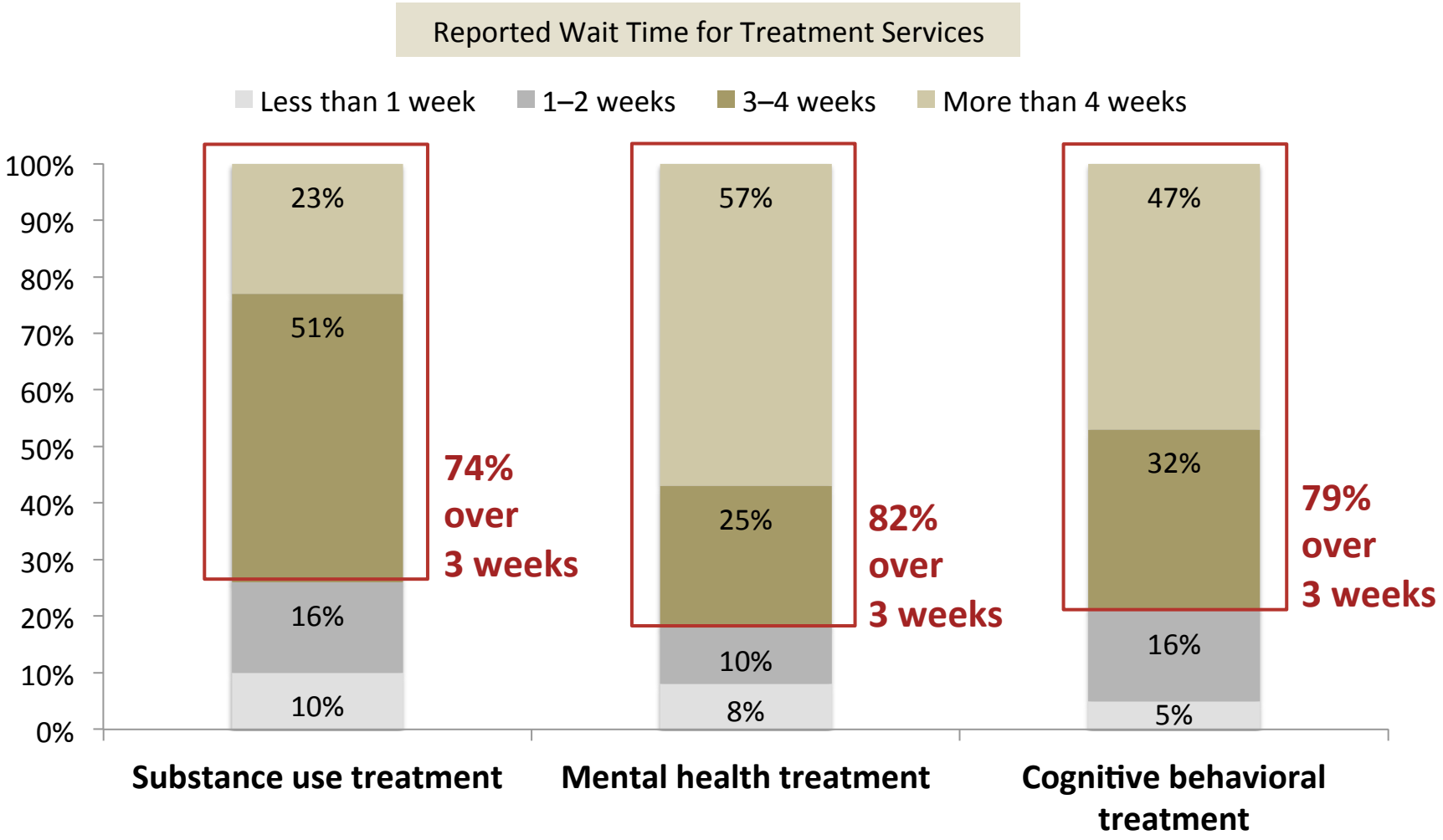


AVAILABILITY OF TREATMENT



Source: CSG Justice Center Probation and Parole Officer Survey

A majority of POs observed wait times of at least three weeks to access all forms of community treatment



Source: CSG Justice Center Probation and Parole Officer Survey

Barriers to treatment and effective sanctions left POs feeling only moderately confident in their ability to hold offenders accountable

The lack of treatment results in a number of violations for substance use while an individual is waiting for access.

As a result, most PO's ultimately end up recommending about **one third** of their caseloads for revocation each year.

Source: CSG Justice Center Probation and Parole Officer Survey

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05 Next Steps

Section Preview: DOCR utilizes many evidence-based practices, but systemic challenges impede maximum impact

Risk assessment informs access to programs within DOCR facilities and supervision intensity in the community.

Individuals at higher supervision levels are revoked at higher rates, suggesting that additional supports and services are needed earlier in their supervision period.

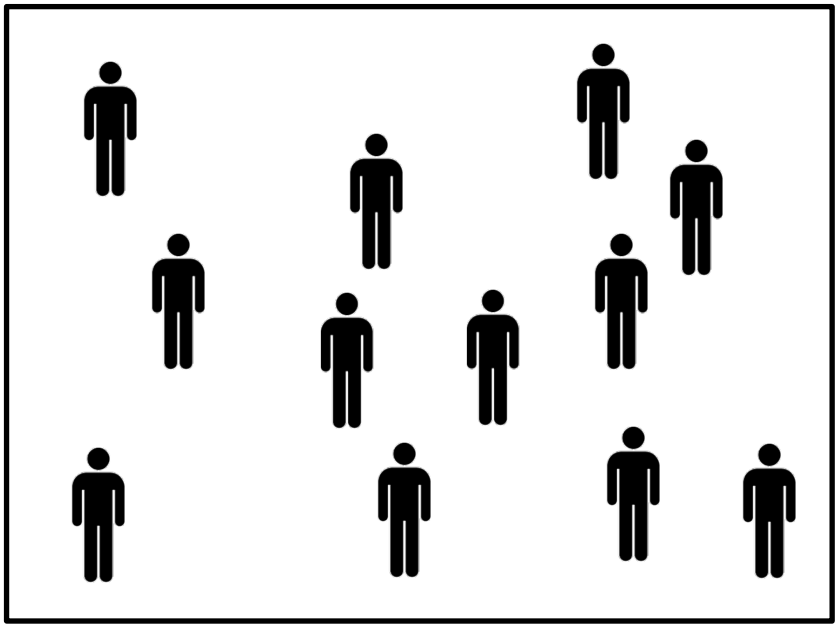
Supervision, programs, and treatment that adhere to evidence-based practices are able to reduce recidivism at lower cost than interventions in prison.

SYSTEM CHECKLIST: Reducing recidivism and promoting recovery

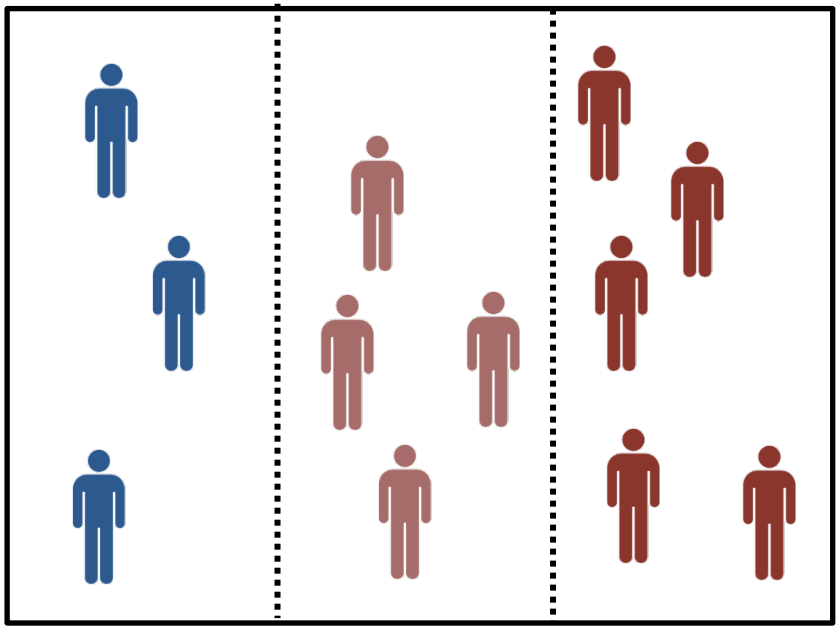
1	Assess risk and need
2	Target the right people
3	Frontload supervision and treatment
4	Implement proven programs
5	Address criminal thinking
6	Hold individuals accountable
7	Measure and incentivize outcomes

1. ASSESS: Efforts to reduce recidivism fall short unless driven by high-quality risk and needs assessments

Without Risk Assessment…

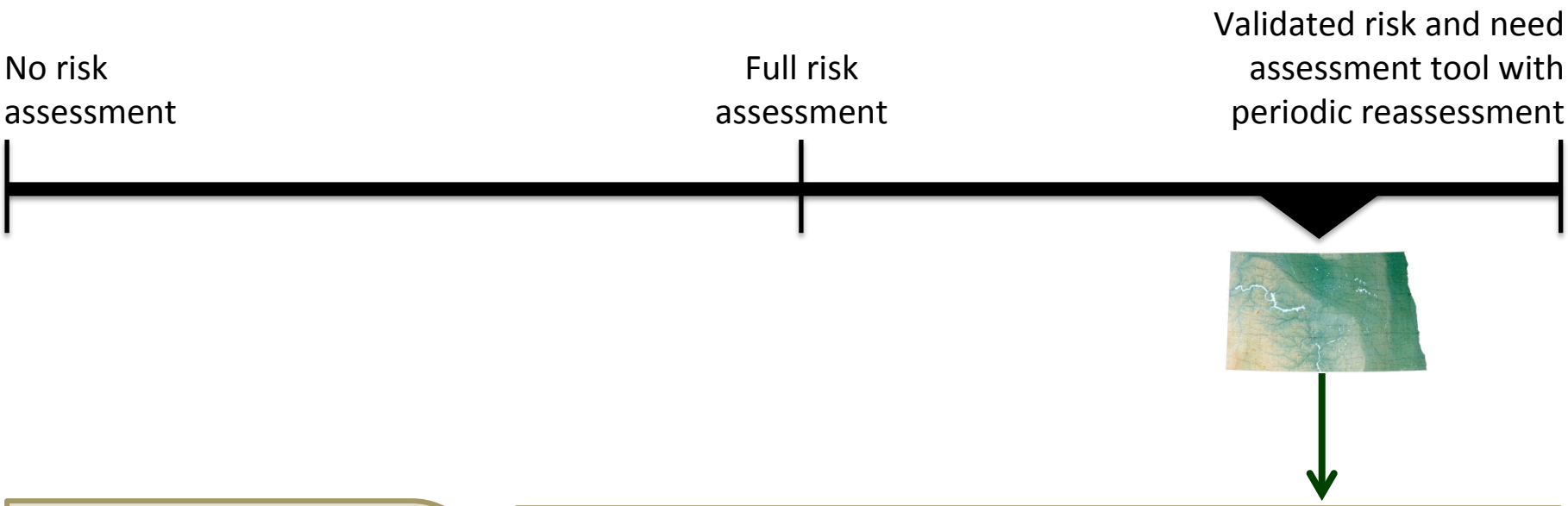


With Risk Assessment…



Risk of Reoffending		
Low **10%** **re-arrested**	**Moderate** **35%** **re-arrested**	**High** **70%** **re-arrested**

1. ASSESS RISK AND NEED: North Dakota has adopted and consistently uses a modern risk and need assessment tool



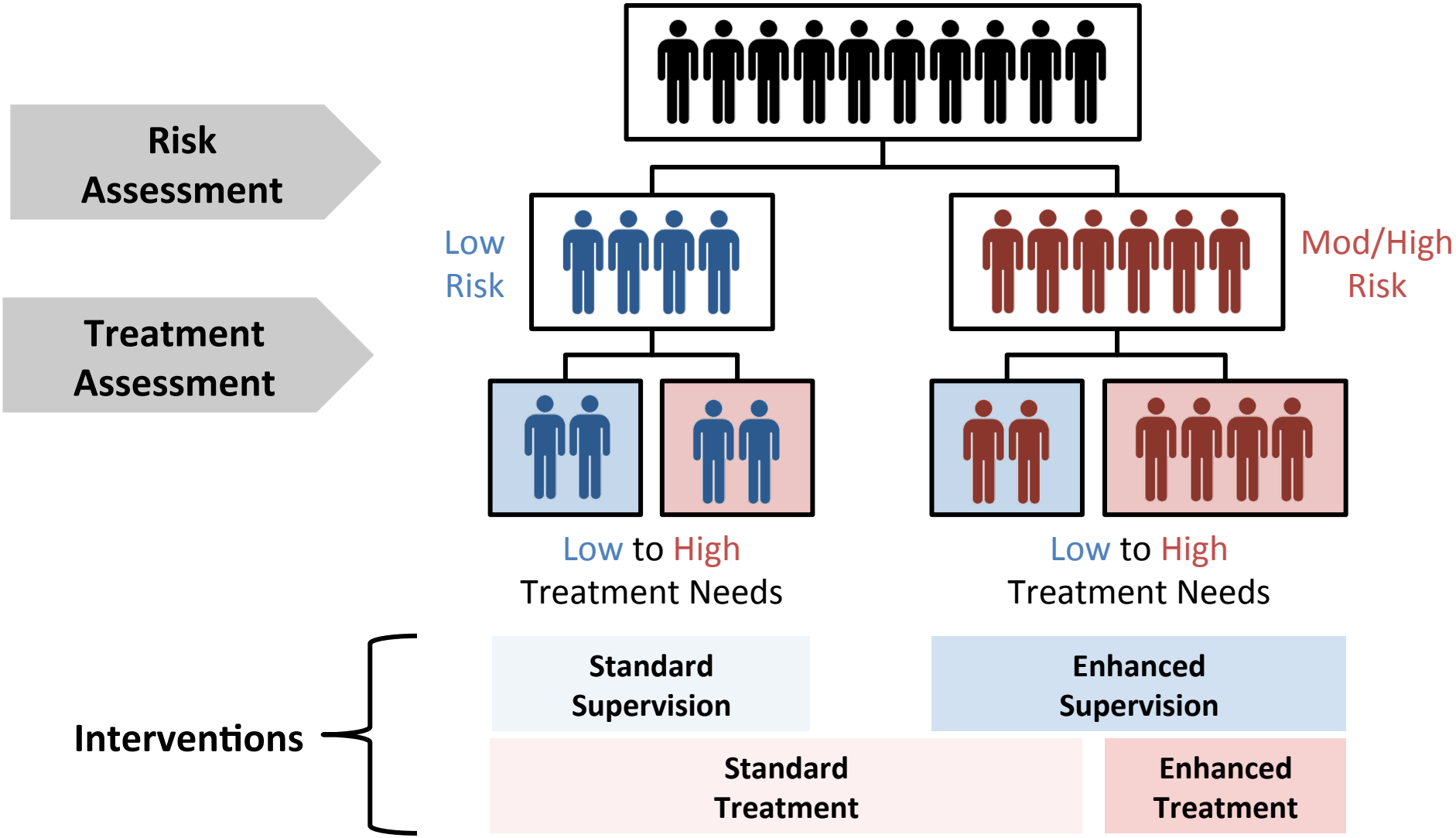
CURRENT PRACTICE

Probation and parole officers are regularly trained on and consistently use a validated risk tool. Officers conduct re-assessments on the LSI-R every 6 months.

GOING FORWARD

- Conduct a validation study every 5 years
- Implement recommendations of 2011 validation study
- Consider adopting the Woman's Risk Needs Assessment (WRNA) to add predictive validity of the LSI-R for women
- Examine the predictive validity of the current LSI-R for Native Americans

2. TARGET: To reduce recidivism, supervision and programs must be focused on people with higher risk/need

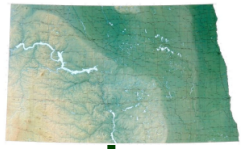


2. TARGET THE RIGHT PEOPLE: Officers consider risk levels when setting supervision contacts and developing supervision plans

Supervision not differentiated by risk

Supervision differentiated by risk

Supervision and programs focused on high risk



CURRENT PRACTICE

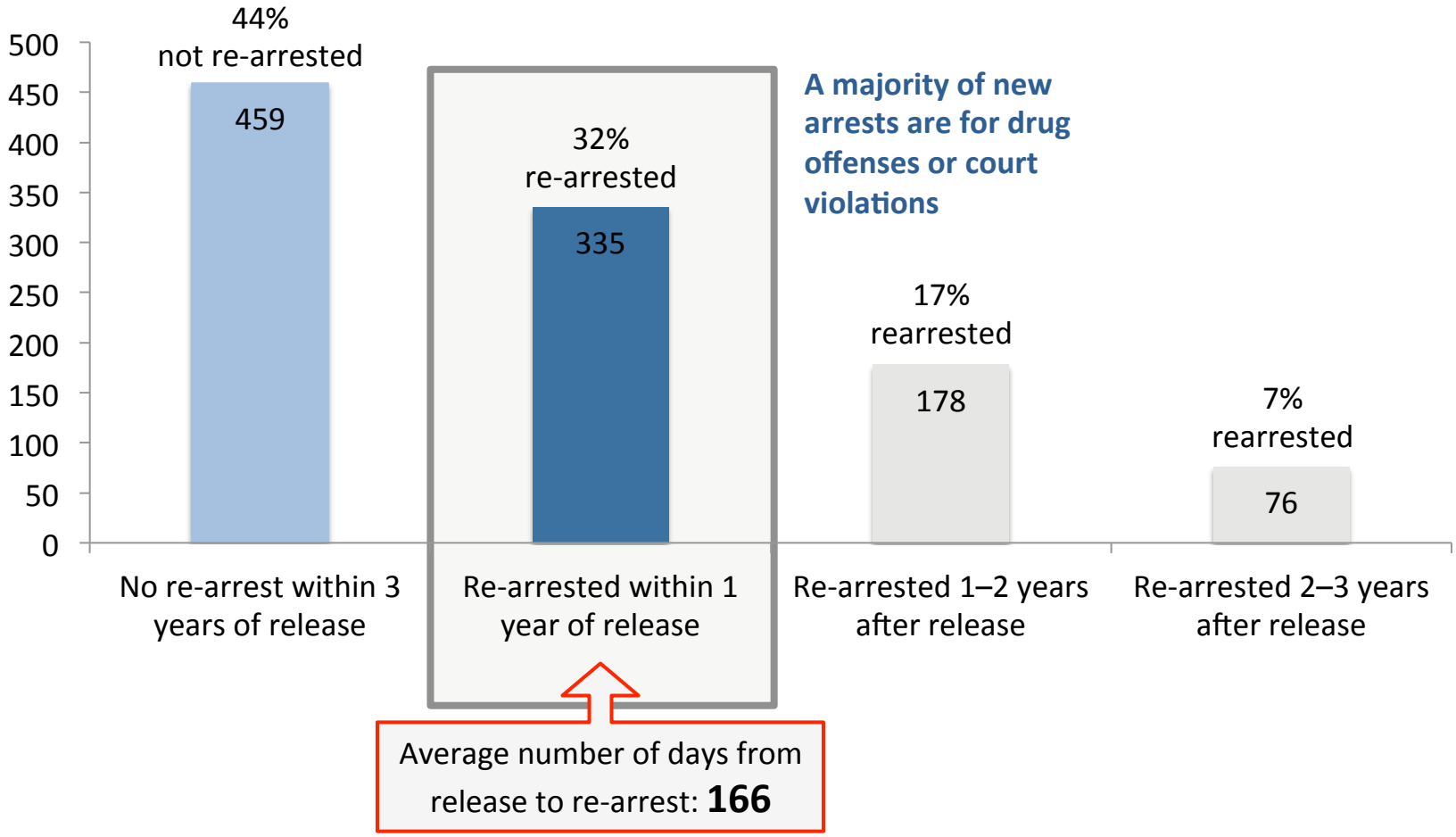
Officers conduct the LSI-R and use risk levels to determine contact standards and supervision plans

GOING FORWARD

- Ensure that risk levels are used to prioritize access to community programs and treatment
- Step down felony probationers from active to diversion caseload based on risk level and demonstrated compliance

3A. FRONTLOAD: Supervision and supports should be focused on the period when people are most likely to reoffend

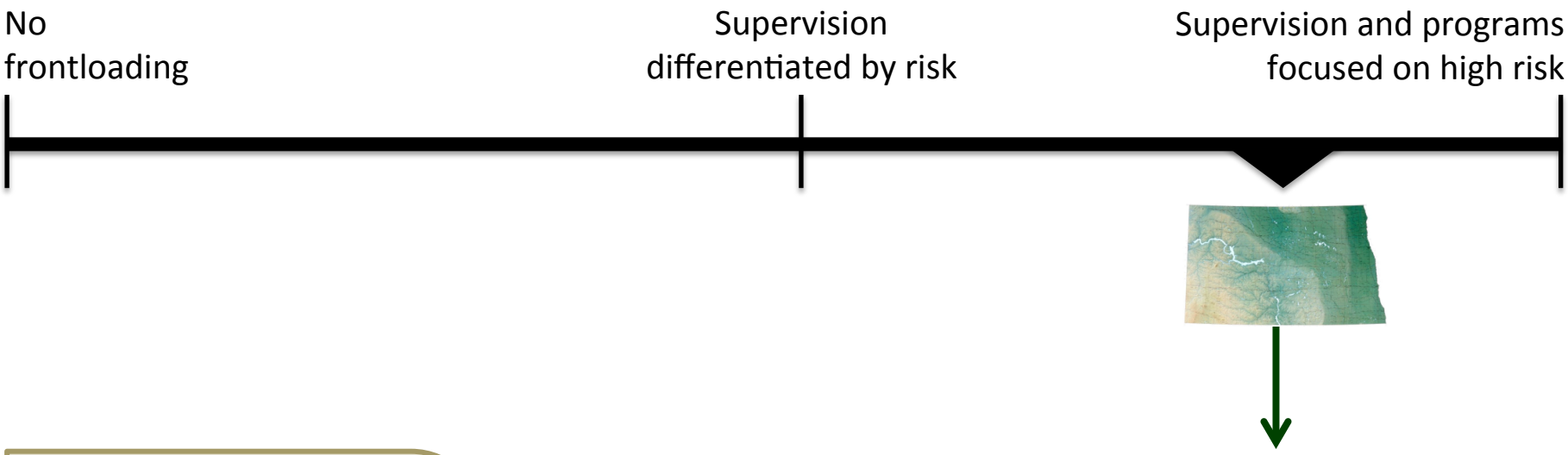
North Dakota Three-year re-arrest rates among prison releases, FY2012
N = 1,048



FY2012 releases are used to allow for three full years from the date of release

Source: DOCR prison release data files; BCI criminal history data

3A. FRONTLOAD SUPERVISION: Probation officers prioritize contact with individuals at the onset of probation



CURRENT PRACTICE

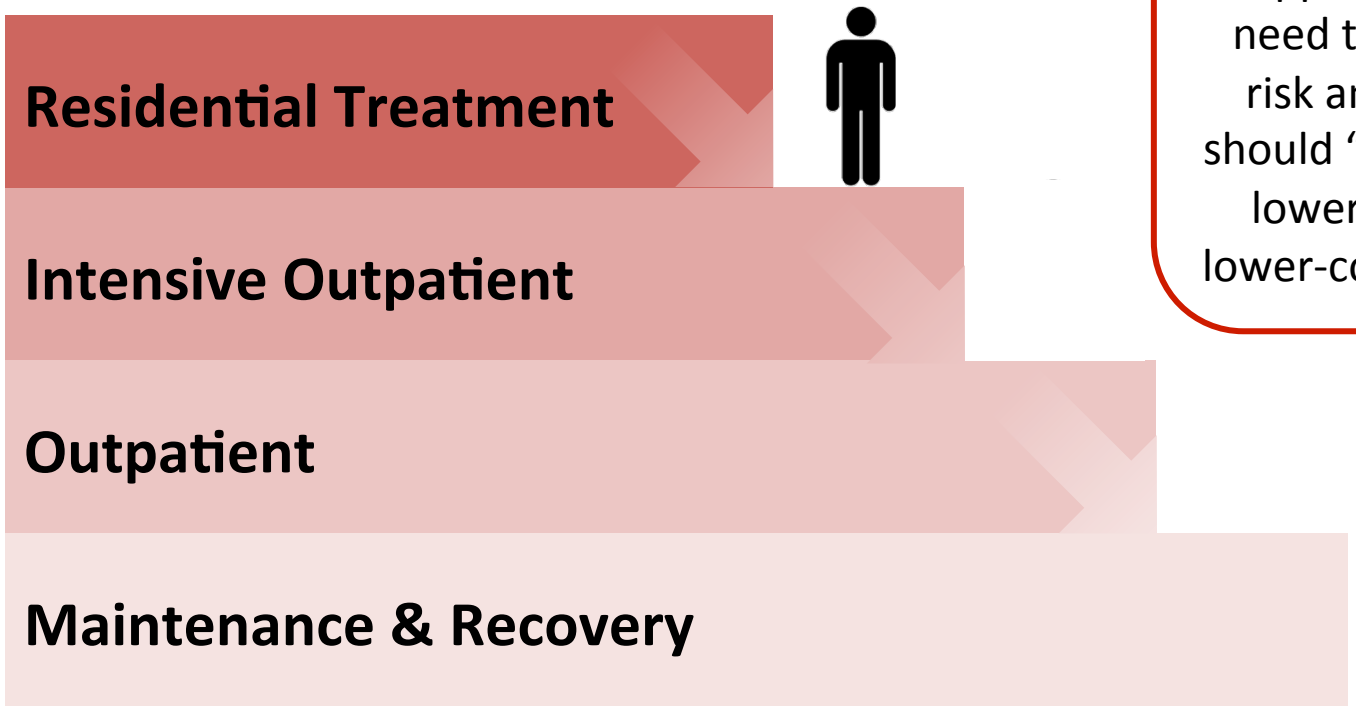
At the onset of probation, officers make referrals to programs and treatment and initiate case planning. After a proven period of compliance, contact standards may be decreased.

GOING FORWARD

- Clarify the step-down processes to diversion and other supervision levels
- Expand treatment and programing available to probationers

3B. FRONTLOAD SUPPORTS: A continuum of services must be able to provide the right services at the right time

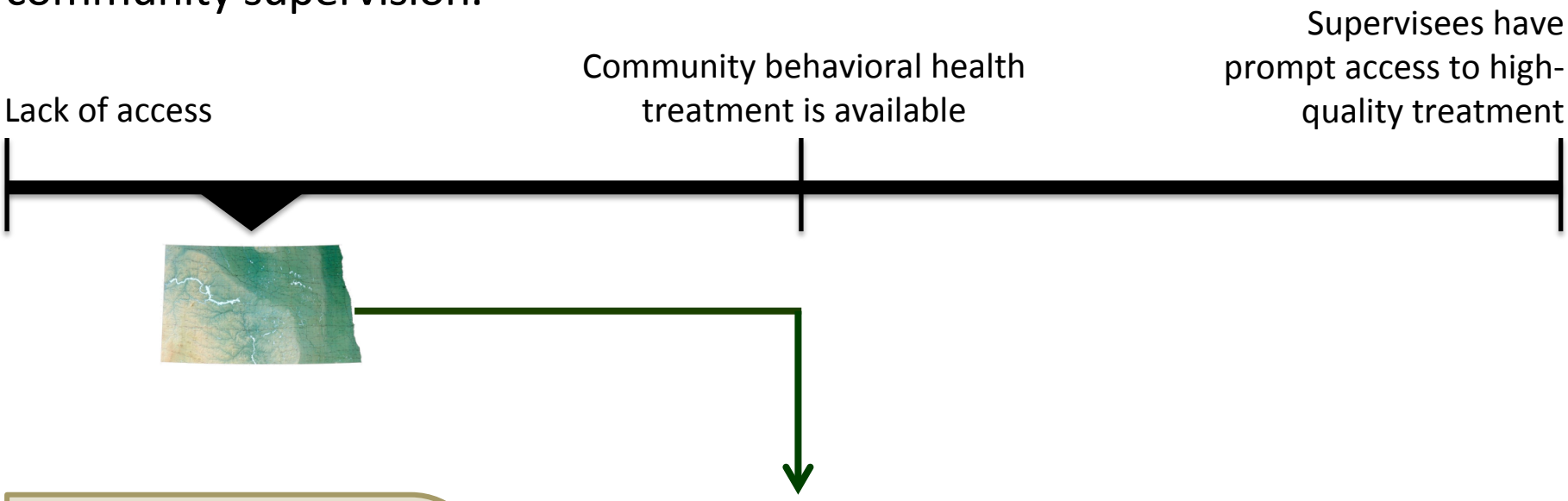
High Risk, High Need
High Level of Supports



Low Risk, Low Need
Low Level of Supports

While people should start at the level of supports they initially need to address their risk and needs, they should "step down" into lower-intensity and lower-cost interventions

3B. FRONTLOAD ACCESS TO EVIDENCE-BASED TREATMENT: Individuals have prompt access to treatment services that will support their success on community supervision.



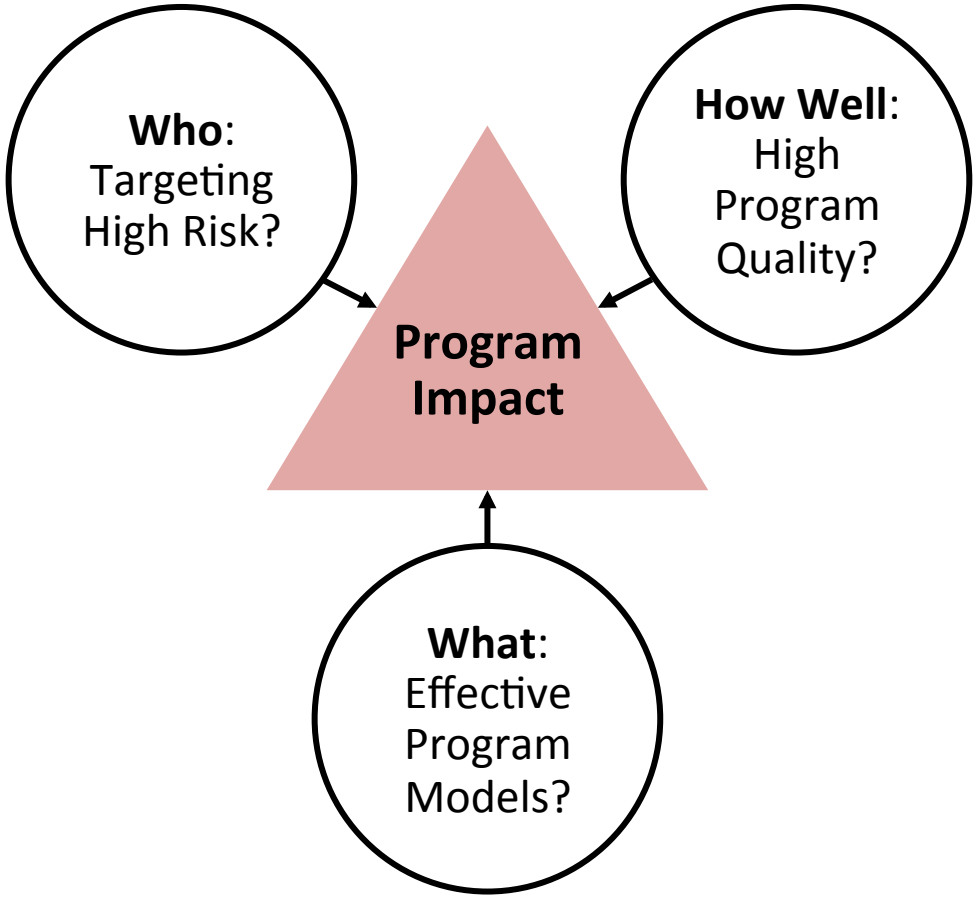
CURRENT PRACTICE

Judges report sentencing to prison to access treatment that is not currently available in the community. Officers report that a lack of treatment options contributes to a high supervision failure rate.

GOING FORWARD

- Expand availability of treatment services for individuals in the community
- Ensure individuals have needed health care coverage
- Ensure timely access to effective services

4. IMPLEMENT: Selecting and implementing proven programs helps ensure resources are expended wisely



Cost/Benefit ratios

Intervention	ROI
Cognitive behavioral treatment (for high and moderate risk offenders)	$24.01
Therapeutic communities for drug offenders (community)	$7.39
Outpatient drug treatment (community)	$5.46
High quality community supervision (for high- and moderate-risk offenders)	$3.42
Intensive supervision (surveillance only)	($0.77)

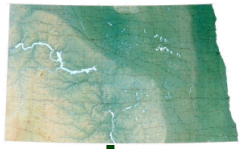
Source: Lee, S., Aos, S., Drake, E., Pennucci, A., Miller, M., & Anderson, L. (2012). Return on investment: Evidence-based options to improve statewide outcomes, April 2012 (Document No. 12-04-1201). Olympia: Washington State Institute for Public Policy.

4. IMPLEMENT PROVEN PROGRAMS: Some programming is offered in the community, but availability fluctuates by region

Programs do not adhere to best practices

Programs based on what works

Programs based on what works and regularly assessed for quality



CURRENT PRACTICE

The only programming provided through probation is at transitional centers like BTC or Centre Inc., though some offices are conducting T4C pilots. There is limited access available through Human Service Centers or private providers.

GOING FORWARD

- Options should be explored that look at the ability for community providers to adopt cognitive-behavioral programs like Thinking for a Change
- Examine whether probation and parole officers have the capacity to offer groups in the probation offices
- Identify opportunities to expand capacity with existing providers

5. CRIMINAL THINKING: Programs intended to reduce recidivism must address needs as well as criminal thinking

Examples of Types of Criminal Thinking

Denial of Injury
"No one really got hurt here."
"They have insurance for that."

Denial of Victim
"I'm the one who is getting messed with."
"They had it coming."

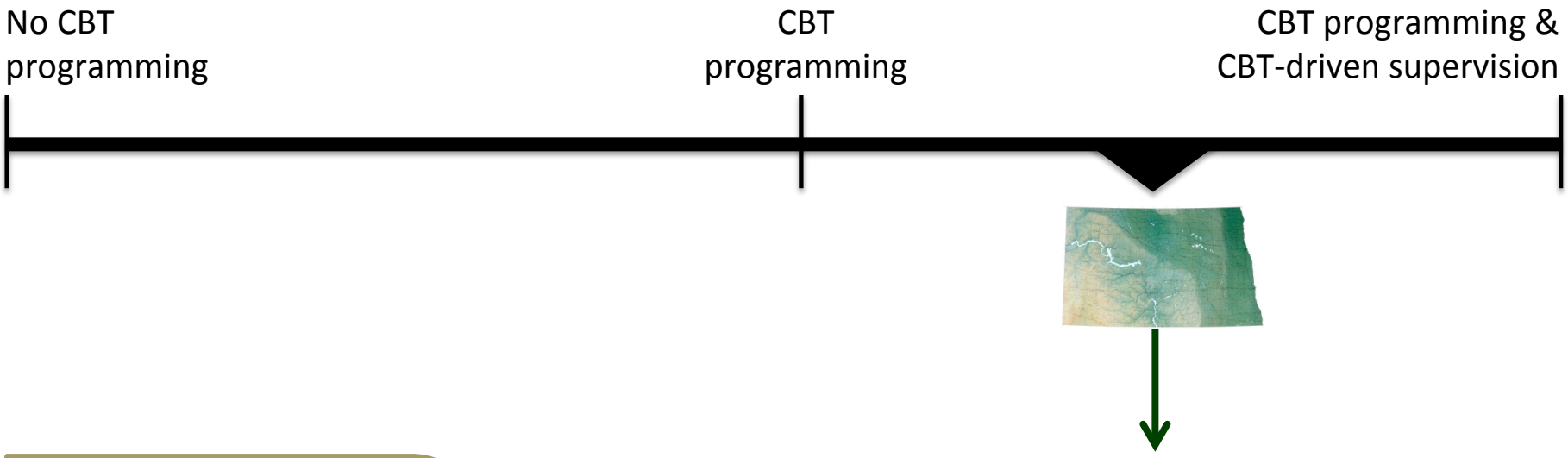
Denial of Responsibility
"I didn't do it."
"I had no choice!"

The Condemnation of the Condemners
"The cops are just out to get me."
"You do the same things. You just haven't been caught."

Appeal to Higher Loyalties
"My friends needed me. What was I going to do?"
"I didn't do it for myself."

Source: Sykes GM, Matza D. Techniques of Neutralization: A Theory of Delinquency. American Sociological Review 1957, Volume 22, Issue 6.

5. CRIMINAL THINKING: Probation and parole officers target criminogenic needs of the people they supervise



CURRENT PRACTICE

Officers integrate cognitive-behavioral interventions during reporting and target the thoughts, values, and attitudes that contribute to the criminal behavior of individuals under supervision.

GOING FORWARD

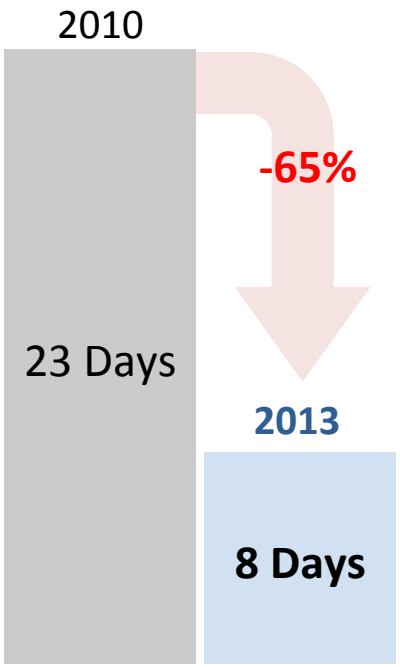
- Fully implement EPICS across all districts
- Options should be explored that look at the ability for community providers to adopt cognitive-behavioral programs like Thinking for a Change
- Examine whether probation and parole officers have the capacity to offer groups in the probation offices

6. ACCOUNTABILITY: Swift, certain, and fair responses to violation behavior are critically important

Washington

Technical violators can be held for 2–3 days for low-level violations and up to 30 days for high-level violations

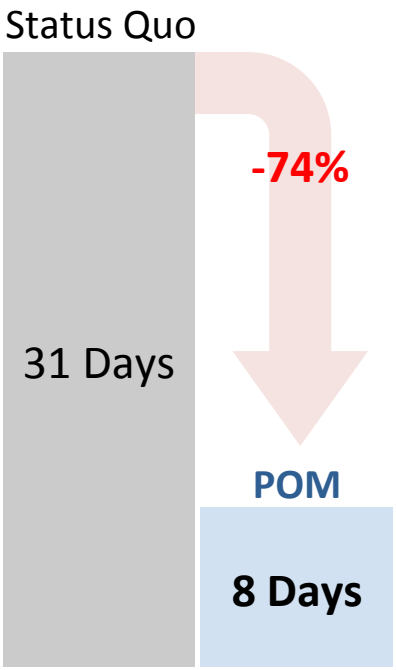
Days Incarcerated



Georgia

Prompt sanctions to correct behavior of troublesome probationers

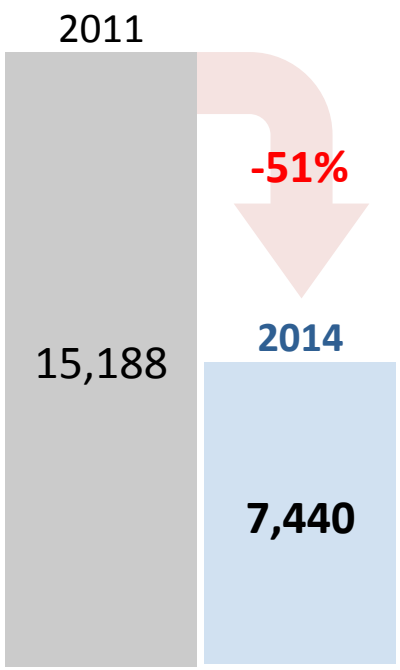
Days in Jail



North Carolina

Swift and certain "dips" of brief jail sanctions and "dunks" of prison sanctions in response to violations

Prison Admissions



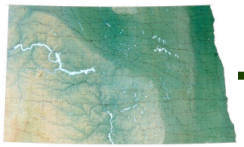
Source: : Washington Department of Corrections; An Evaluation of Georgia's Probation Options Management Act, Applied Research Services, October 2007; .

6. ACCOUNTABILITY: While policies provide guidance on violation responses, system challenges limit the ability to hold offenders accountable

Delayed, inconsistent, and severe sanctions

Use of consistent responses to non-compliance

Applying swift, certain, and fair sanctions



CURRENT PRACTICE

Officers struggle to hold offenders accountable due to limitations of resources in the community. Officers do reinforce positive behavior, but there are not formalized incentives defined in policy.

GOING FORWARD

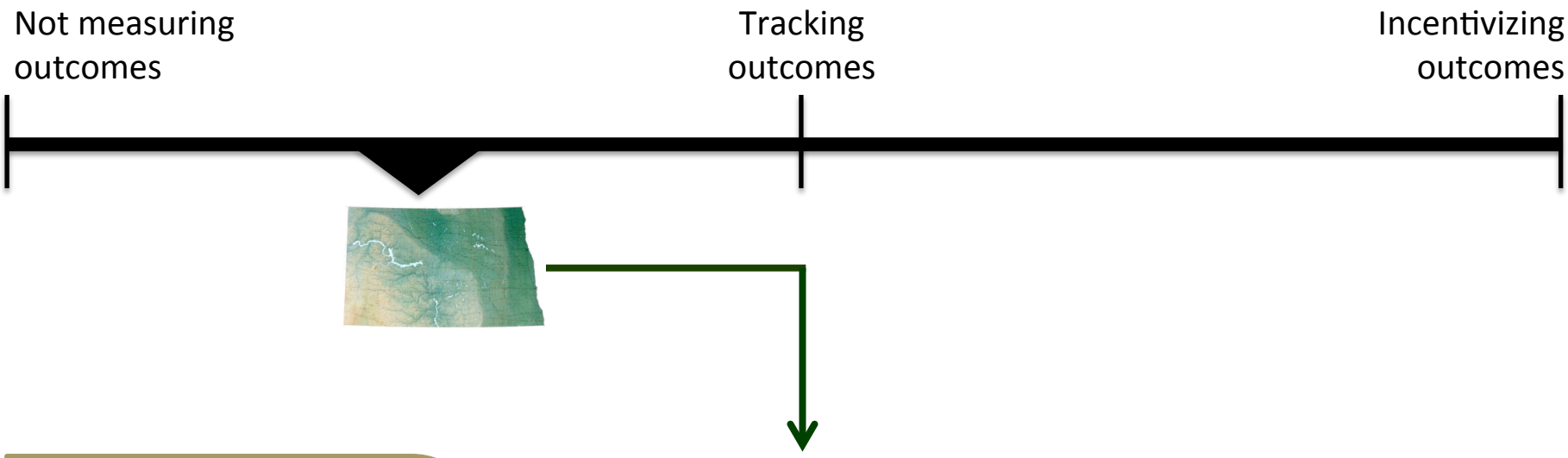
- Revise policies on offender management with input of officers across the state to reflect regional differences
- Update the offender management policy to include more detail on incentives and reinforcement
- Improve collaboration between DOCR, the courts, and jails to develop solutions that allow officers to use the jails consistently in order for jail sanctions to work as a deterrent

7. MEASURE OUTCOMES: Agencies and program providers must be held accountable for demonstrating results

Are key outcomes identified and measured across all systems?

- Tracking recidivism rates over time at each part of the system
- Creating incentives to drive performance, especially by program providers
- Assessing how well agencies are coordinating efforts with shared populations

7. MEASURE OUTCOMES: While DOCR collects internal data, there are no formal mechanisms in place to monitor the quality of services of outside providers



CURRENT PRACTICE

DOCR collects data on revocation rates and risk assessment overrides and conducts QA on contract facilities. Officers reported a wide variety of quality of services, but no formal assessment of services exists.

GOING FORWARD

- Develop mechanisms to collect data on quality assurance from community programming
- Assess the quality of community providers and identify whether they use cognitive-behavioral interventions
- Analyze trends to monitor recidivism rates, identify training opportunities, and assess the efficacy of treatment and programming

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Key challenges identified by sentencing analysis

- Felony sentence events doubled between 2011 and 2014, primarily due to drug offenses
- Three-quarters of lowest-level felony sentence events (Class C) were to incarceration
- Over half of sentence events to probation included suspended periods of incarceration

Key challenges identified by prison population and probation supervision analysis

- Probation and parole revocations and lowest-level felony property and drug offenses account for nearly three-quarters of all admissions to prison
- Probation revocations cost the state more than $9 million each year in state prison costs, plus additional costs at the county level
- Probation supervision policies are based on best practices but face real-world challenges in being carried out effectively

North Dakota's criminal justice system poses significant financial challenges unless policy action is taken

Ten-year cost of relying on contracted capacity to accommodate projected prison growth

Current contract beds (530) *carried forward through 2025* **$220 M**

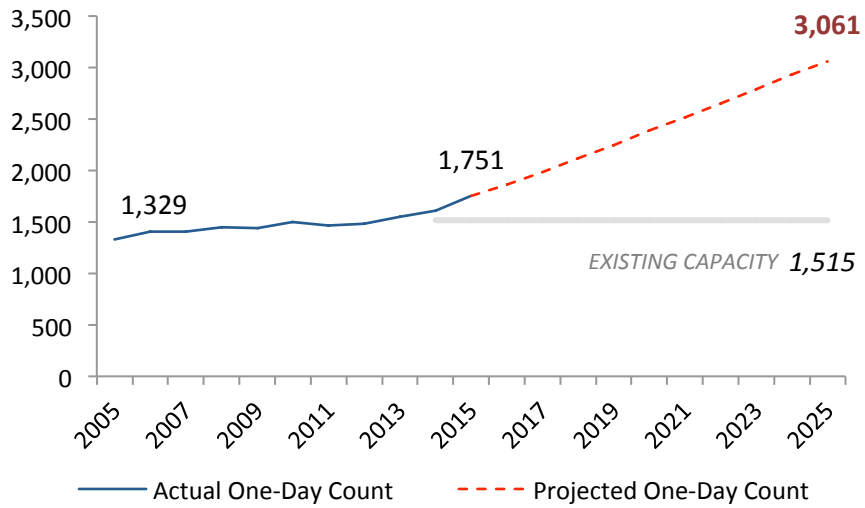
+

Population growth (1,310) *carried through 2025* **$265 M**

=

Total Estimated Cost of Accommodating Prison Growth Through Contract Beds *daily rate estimate is $114/day* **$485 M**

HISTORICAL AND PROJECTED ONE-DAY TOTAL INMATE COUNTS, FY2005-2025



Building a **NEW STATE PRISON** would add costs above the contract beds

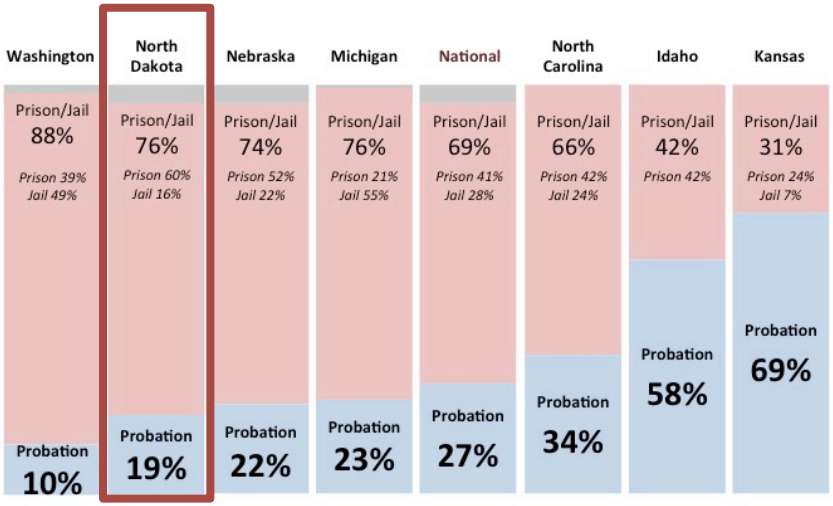
OUT-OF-STATE CONTRACT BEDS likely would be needed, possibly increasing collateral costs

Contract beds within the state of North Dakota are **NOT ADEQUATELY EQUIPPED** to handle inmates' special needs

Source: DOCR emails (2015-17 contract facility budget information and DOCR facility cost-per-day figures); DOCR housing data; DOCR inmate projections; "Locking Up North Dakota," DOCR 2015.

North Dakota relies more heavily on incarceration for lower-level felonies than most states

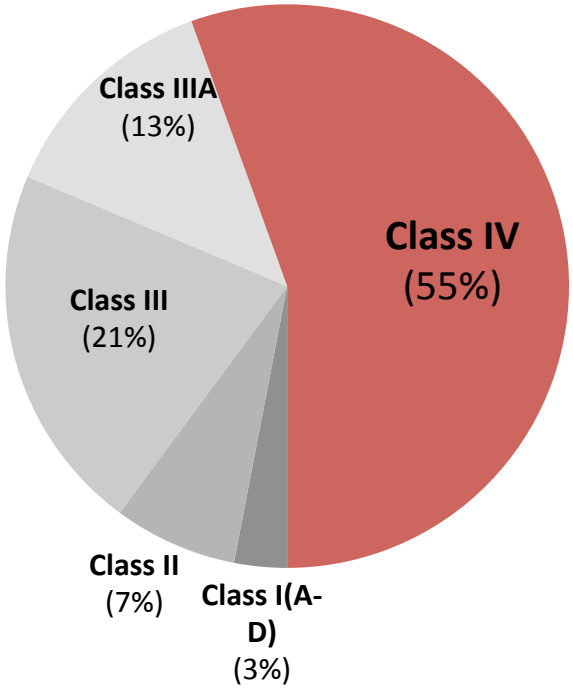
In FY2014, just **19 PERCENT** of felony sentences were to probation. In other states, this rate is higher: nationally, it is 27 percent; in Idaho, 58 percent, and in Kansas, 69 percent.



The majority of people sentenced for offenses under the lowest felony class (Class C) receive sentences to prison, where their average length of stay is 10 months, a costly sanction that provides limited options for programs that can lower recidivism. Sentencing people convicted of a Class C offense to probation, however, enables a sentence of up to 5 years that provides longer periods of accountability and monitoring. Probationers can receive treatment as needed, be sanctioned for failure to comply with conditions, and be revoked and sentenced to prison.

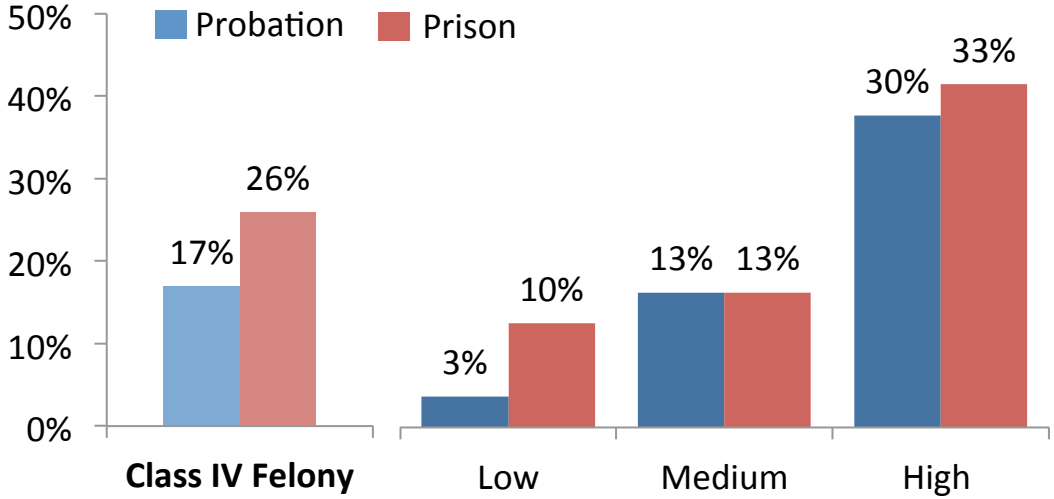
Similar dynamics existed in Nebraska, where a majority of sentences to prison were for lowest-level felonies

Justice reinvestment research found that **55%** of felony sentences were for class IV convictions
(FY2012–FY2013)



90 percent of Class IV offenses were nonviolent, 73 percent of Class IV sentences were to incarceration, the average time served was 10 months, and one-third were released without supervision. People with sentences for low-level felony offenses had lower recidivism rates on probation than following prison.

2-Year Recidivism Rates for Probation (FY2011) and Prison (FY2010) by Sentence Type



Source: NDCS prison admission and release data, JUSTICE FY2012–FY2013 sentencing data

Use probation + treatment for people with non-violent, low-level offenses

Nebraska

Reclassified felony offenses according to whether they involve violence or are sex offenses. This enhanced the rationality of the state's felony classifications by more uniformly **grouping offenses by the severity** of the conduct involved.

Ohio

Requires people convicted **of first-time, low-level property and drug offenses** to serve probation terms.

Alabama

Created a **new felony category** for the lowest-level property and drug offenses for which sentences to community corrections programs or intensive probation may be imposed.

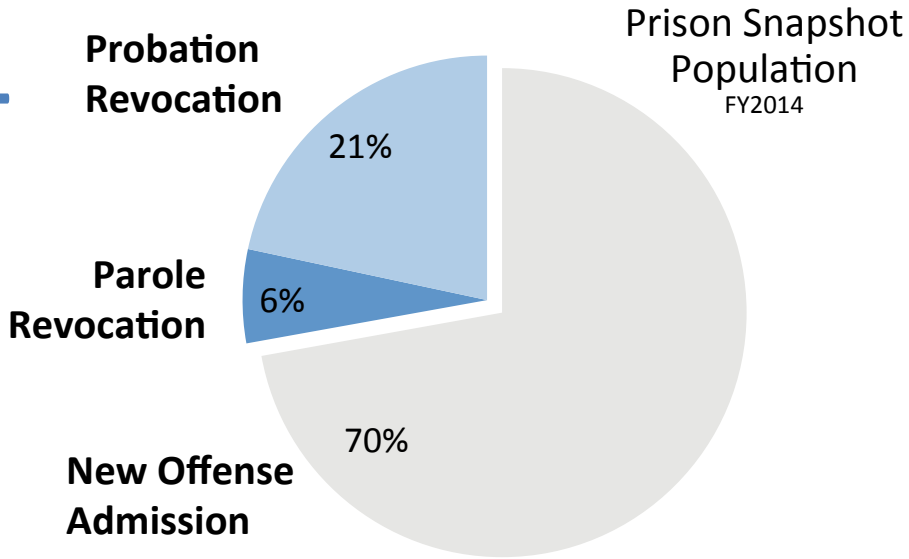
Use probation + treatment for people with non-violent, low-level offenses

APPROACHES FOR THE INCARCERATION ISSUES COMMITTEE TO CONSIDER

- Provide greater structure in statute regarding populations that should be sentenced to probation rather than incarceration.
- Distinguish offenses within felony classes according to whether they contain violence or are sex offenses.

Individuals failing on community supervision put significant pressure on county and state facilities.

On any given day, **27 PERCENT** of North Dakota's prison beds are occupied by people who were on probation and parole supervision prior to being revoked and required to serve a term in prison.



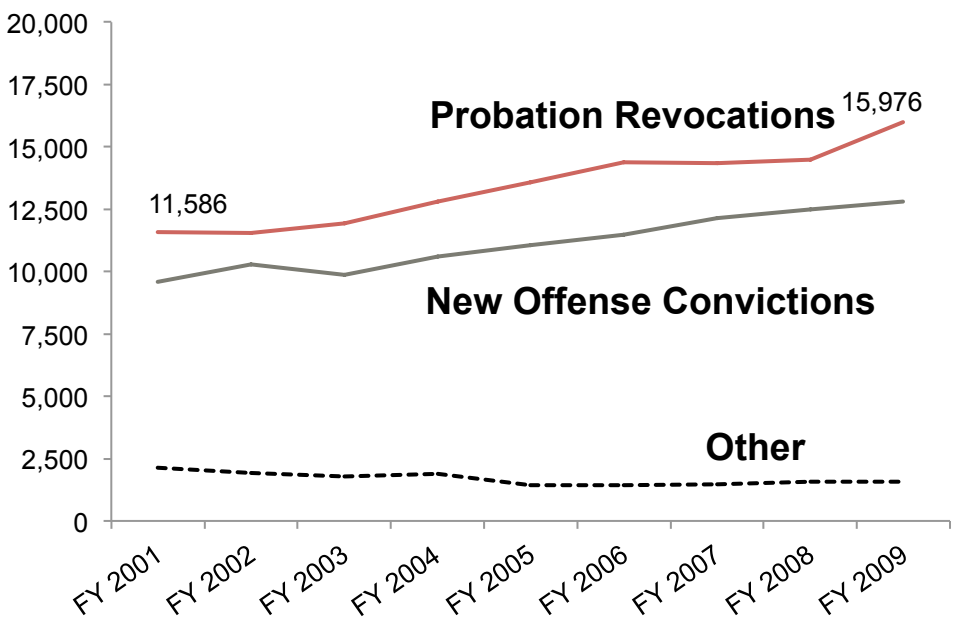
Probation and parole revocations impose substantial costs for county governments as well: 33 percent of people revoked from probation are required to serve terms in jail. 45 percent of revocations from probation involved no new criminal offenses; the probationer violated the conditions of his or her supervision. In surveys, probation and parole officers indicated they are seeking additional tools—sanctions, incentives, and treatment where needed—to hold probationers and parolees accountable.

In North Carolina, more than half of prison admissions to prison were probation revocations

Challenge

76% of probation revocations to prison were for violating the conditions of supervision

North Carolina Prison Admissions FY2001–2009



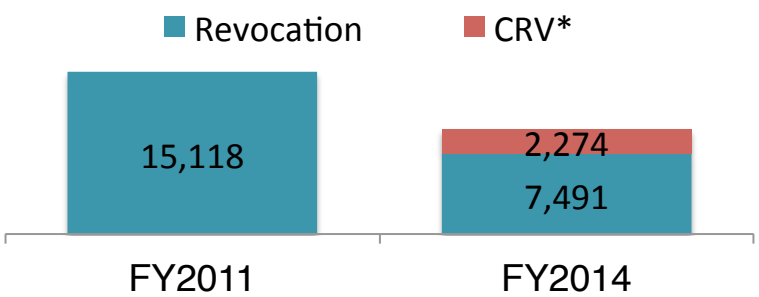
Source: North Carolina Department of Correction Annual Statistical Reports

Impact

Since policy enactment, probation revocations fell by half

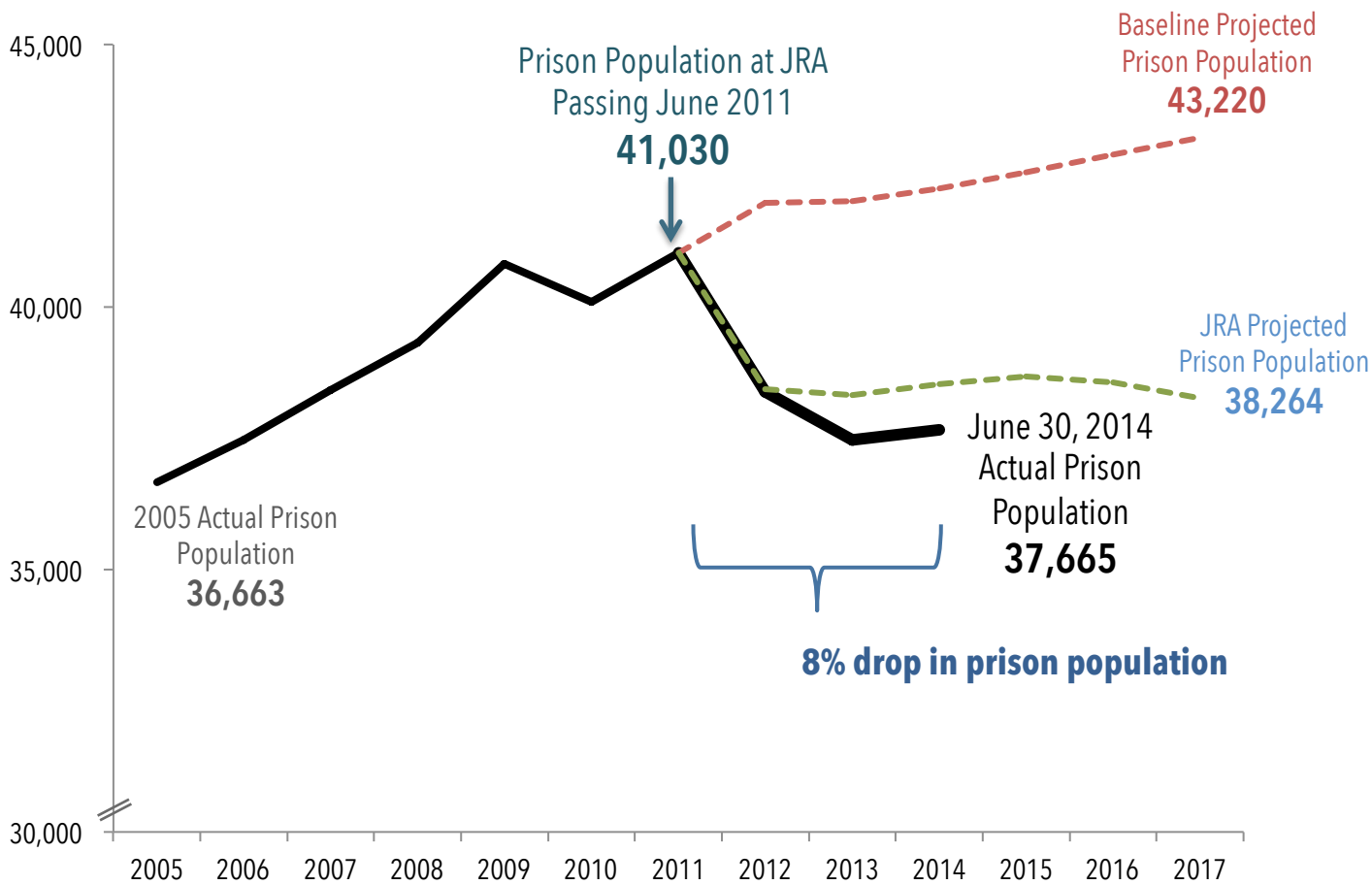
- In FY2011, probation revocations accounted for **52%** of prison admissions
- In FY2014, probation revocations accounted for **33%** of prison admissions

Probation Revocations



*Confinement in response to a violation is a flat period of confinement that probation violators may be required to serve as a sanction.

Public safety and corrections trends following enactment of the justice reinvestment statutes



$560m
averted costs and savings by FY2017

10
prisons closed since 2011

175
new probation officers in FY2014 and FY2015

11%
drop in crime between 2011–2013

Strengthen Supervision

North Carolina

Provides probation officers with tools to **respond immediately to supervision violations**, including short, cost-effective periods of incarceration.

New Hampshire

Frontloads supervision by focusing resources on individuals early in their supervision periods, when risk is highest.

Arizona & Nevada

Developed **earned-time policies** to incentivize success on probation and focus supervision on people who are at high risk of reoffending

Idaho

Created a violation response matrix to **sanction supervision violations and provide incentives** for positive behavior.

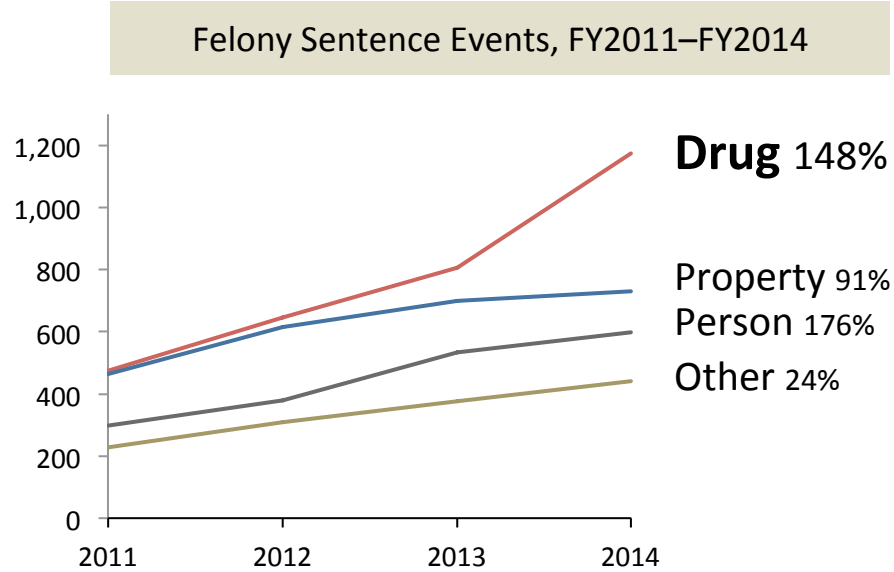
Strengthen Supervision

APPROACHES FOR THE INCARCERATION ISSUES COMMITTEE TO CONSIDER

- Focus supervision resources on higher-risk probationers and parolees
- Improve probation and parole officers' ability to respond to violations with swiftness and certainty
- Respond to major violations with cost-effective periods of incarceration followed by supervision

There is a substantial need for substance use treatment, and barriers exist to accessing adequate care

POs believe that **75 PERCENT** of people on probation or parole have a need for substance use treatment, and probation and parole officers indicate long wait periods to access behavioral health treatment.



A shortage of behavioral health treatment is a factor underpinning many of North Dakota's criminal justice challenges. This issue has been raised by numerous criminal justice system stakeholders, including local law enforcement, prosecutors, judges, and defense attorneys. Over a three-year period, from 2011 to 2014, the number of felony sentences for drug offenses increased two-and-a-half times. In 2014, four out of five felony drug sentences were for possession.

Before justice reinvestment, WV provided few substance use services for the probation and parole population

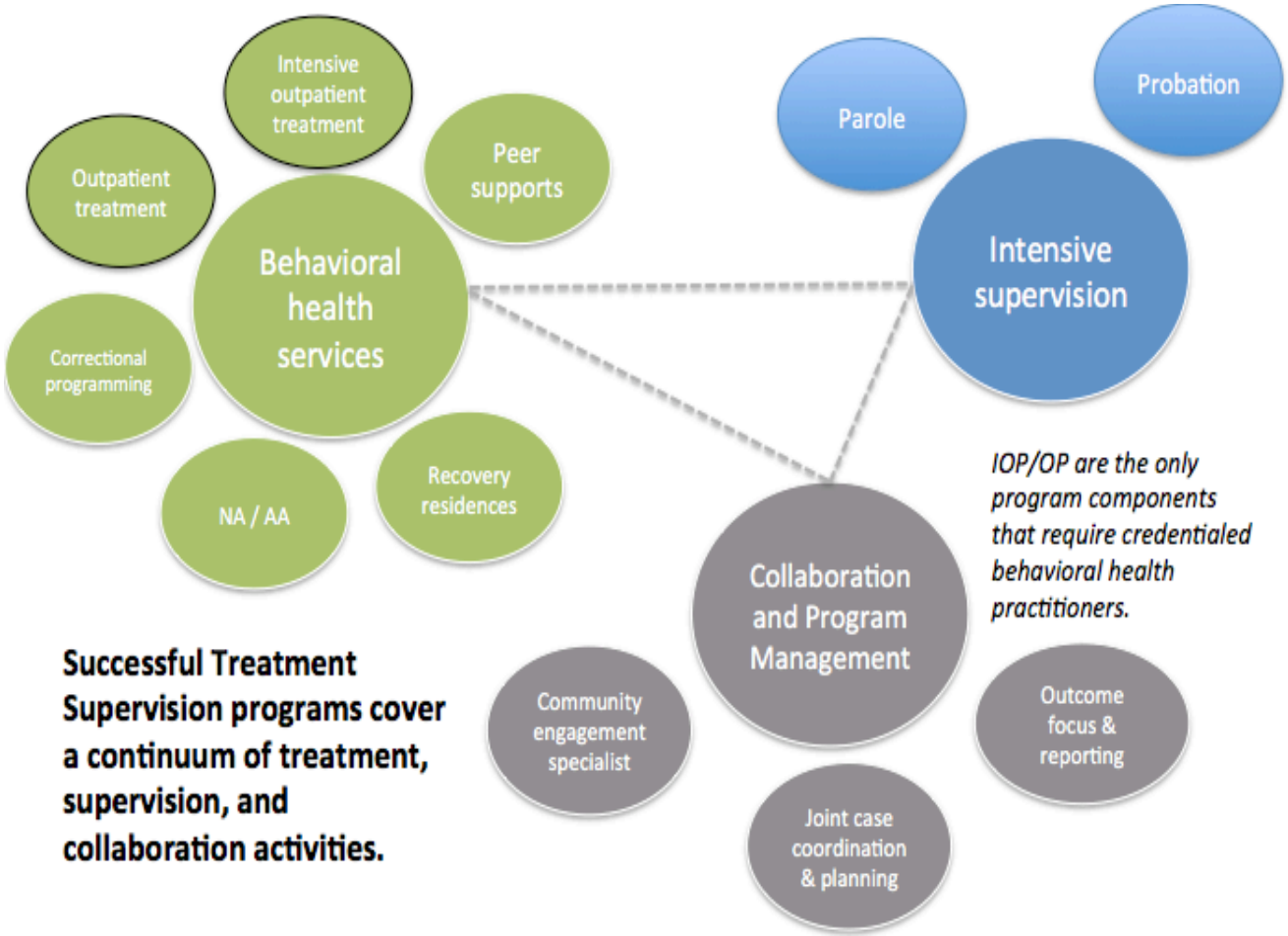
Justice reinvestment research found that:

- 22% of new commitments are for drug offenses
- 62% of probation revocations to prison had a substance score indicating abuse or addiction
- Alcohol and drug use cited in 78% of technical parole revocations and 65% of revocations for new crimes

	Probation	Parole
Funding for services	$0	$0
Capacity to provide services	None	None
Estimated demand for services – Total	1,449	492
Outpatient	580	197
Intensive Outpatient	580	197
Residential with step down	290	98

Source: D.A. Andrews & James Bonta, "ColorPlpt Profile Form for Men," The Level of Service Inventory - Revised: U.S. Norms, 2003 Steven Belenkoa & Jordon Peugh "Estimating Drug Treatment Needs Among State Prison Inmates." Drug and Alcohol Dependence 77, no. 3 (2005): 269–281. Conversation with Alexa Eggleston and Fred Osher, November, 2012

In the three years after enacting policies, West Virginia has reinvested $9 million in substance use treatment



Also recommended investments to grow the provider base and improve rural treatment access

Successful Treatment Supervision programs cover a continuum of treatment, supervision, and collaboration activities.

Increase Behavioral Health Treatment Capacity

West Virginia

Allocated $9 million between FY2014 and FY2016 to **expand access to substance use treatment** for people on supervision, with **county-level grants** awarded for treatment services and more.

Alabama

$12 million over two years for **behavioral health treatment** for people on supervision.

Kansas

$5 million added over two years in **behavioral health treatment** for people on supervision.

Wisconsin

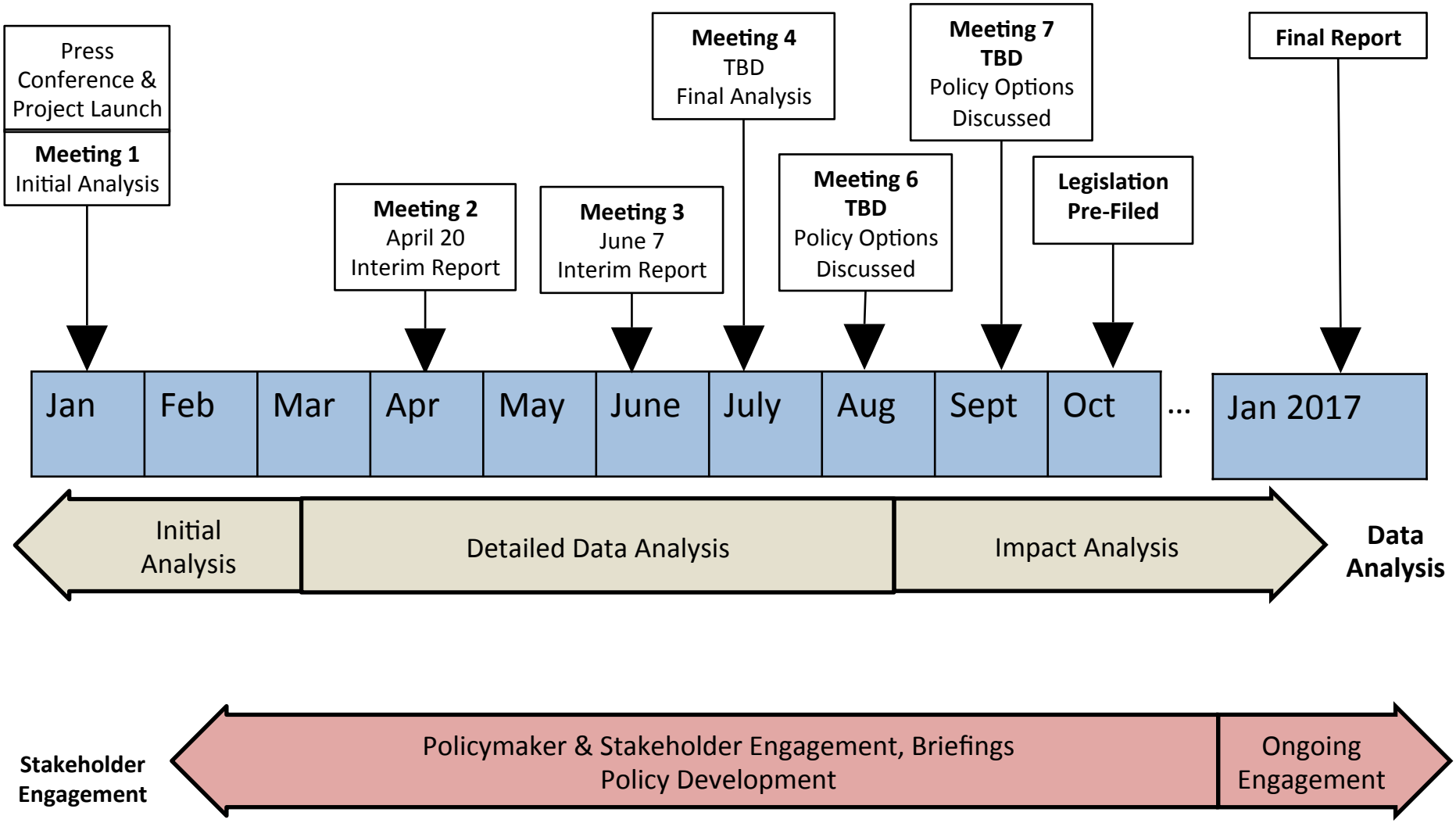
$10 million over two years to expand **community-based recidivism reduction programs** including mental health services, substance use treatment, and employment services

Increase Behavioral Health Treatment Capacity

APPROACHES FOR THE INCARCERATION ISSUES COMMITTEE TO CONSIDER

- Reinvest savings in community-based behavioral health treatment
- Expand the base of treatment providers and provide training to providers who treat people involved in the criminal justice system
- Maximize existing opportunities under Medicaid expansion

North Dakota Justice Reinvestment Timeline



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Thank You

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