



Montana Commission on Sentencing

Third Meeting: System Analyses
March 1 and 2, 2016

The Council of State Governments Justice Center

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The Council of State Governments Justice Center

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



Justice Reinvestment in Montana



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**


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

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

Sincerely,

Governor Steve Bullock

Attorney General Tim Fox

Speaker of the House Austin Knudsen

House Minority Leader and
Legislative Council President Chuck Hunter


Chief Justice Mike McGrath

Senate President Debby Barrett

Senate Minority Leader Jon Sessa

Mike Batista, Director, Department of
Corrections

Justice Reinvestment Timeline

Following the Second Montana Commission on Sentencing meeting, CSG Justice Center staff conducted visits to facilities and with stakeholders to gain greater insight into the Montana justice system.

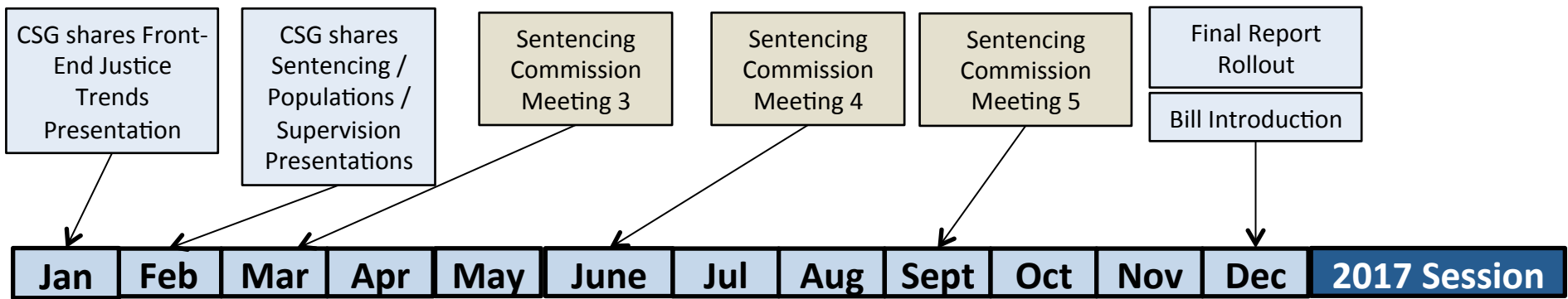
CSG Justice Center staff received a large amount of quantitative and qualitative data from various sectors of the justice system and provided early versions of some analyses to the Commission. The remaining analyses will be presented and discussed during this meeting.

Current system trends and strategies used in other states will be shared with the Commission during this presentation. CSG Justice Center staff anticipate that the Commission will highlight areas for deeper analysis and policy exploration at the conclusion of this meeting.



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



Since the Last Meeting

Stakeholder Engagement	<p>Behavioral Health: Helena Indian Alliance, DPHHS, Western Montana Mental Health Center, DOC clinical staff and leadership</p> <p>Law Enforcement: Helena Police Department, Lewis and Clark County Sheriff’s Office, Butte-Silver Bow Sheriff’s Office; presentation to Sheriffs and Peace Officers’ Association; survey distributed and 12 responses received</p> <p>County Attorneys: Presentation to MCAA; survey distributed and 13 responses received</p> <p>Victims: Ryan United, Victims Compensation, DOC Victims Program</p> <p>Probation and Parole: Focus groups and meetings with field probation officers and supervisors, institutional probation and parole officers, parole board analysts, and 3 parole board members</p> <p>Community Corrections: Toured Missoula Prerelease Center, Helena Prerelease Center, Billings Prerelease Center (Passages), Elkhorn Treatment Center, Warm Springs Addiction and Treatment for Change (WATCH), and Sanction Treatment Assessment Revocation and Transition (START)</p>
Facility and Program Observation	<ul style="list-style-type: none">• Chemical Dependency Group at Elkhorn• Relapse Prevention Group at START• Thinking for a Change at WATCH• Cognitive Principles and Restructuring at Missoula Prerelease Center• Therapeutic Communities Groups at WATCH and Connections Corrections Program• Intake at Missoula Assessment and Sanctions Center (MASC)• Parole Board hearings at Montana State Prison• Tour of Butte-Silver Bow Jail• Conversations with residents of various facilities and participants of various programs

Summary of Last Meeting

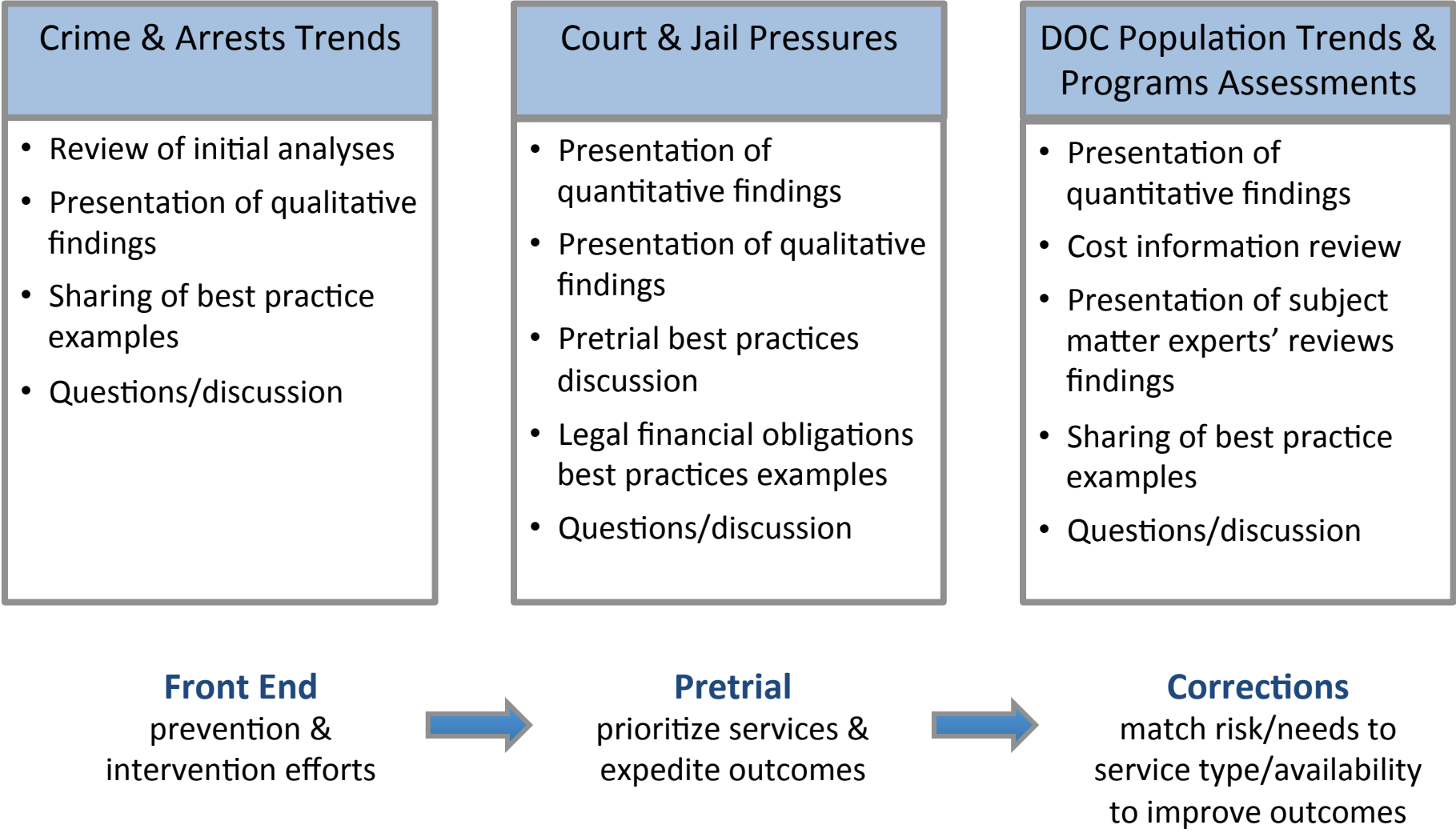
Risk Assessment: Reducing criminal behavior requires focusing on risk, need, and responsivity (RNR); not adhering to the RNR principles can increase recidivism.

Behavioral Health: Mental health and chemical dependency complexities impact successful reentry and length of stay. Effective behavioral health interventions require coordinated system responses and enhance motivation to change.

Supervision: Best practices include assessing for risk and need, targeting high-risk individuals, frontloading supervision and treatment, implementing proven programs, addressing criminal thinking, holding individuals accountable, and measuring outcomes.

Local-Level Criminal Justice Challenges: Local governments face many criminal justice pressures and challenges. CSG has helped states craft policy and reinvestment strategies that are responsive to local needs and priorities.

Presentation Overview



Overall Crime and Arrest Findings

*Montana has fewer Part I index crimes today than in 2000.
In the face of a large decrease in these crimes, driven by a
consistent decrease in property crime matched against a small increase in violent
crime, arrests have consistently increased.*

Overall Part I crime has decreased

18 %

from 2000 to 2014.

Property crime has decreased by 31%, while violent crime increased by 4%. Property crime is at its lowest rate in more than 25 years. Violent crime has recently increased but remains under the levels of the early- to mid-2000s.

Total reported arrests have increased

12%

from FY2009 to FY2015.

Between FY2009 and FY2015, arrests increased by 4,000. During the same period, Part I crimes decreased by 1,000 reported incidents.

64%

of arrests are for misdemeanor charges.

Drug-related charges account for about one-fifth of all misdemeanor arrests, as well as 24% of felony arrests.

American Indians account for

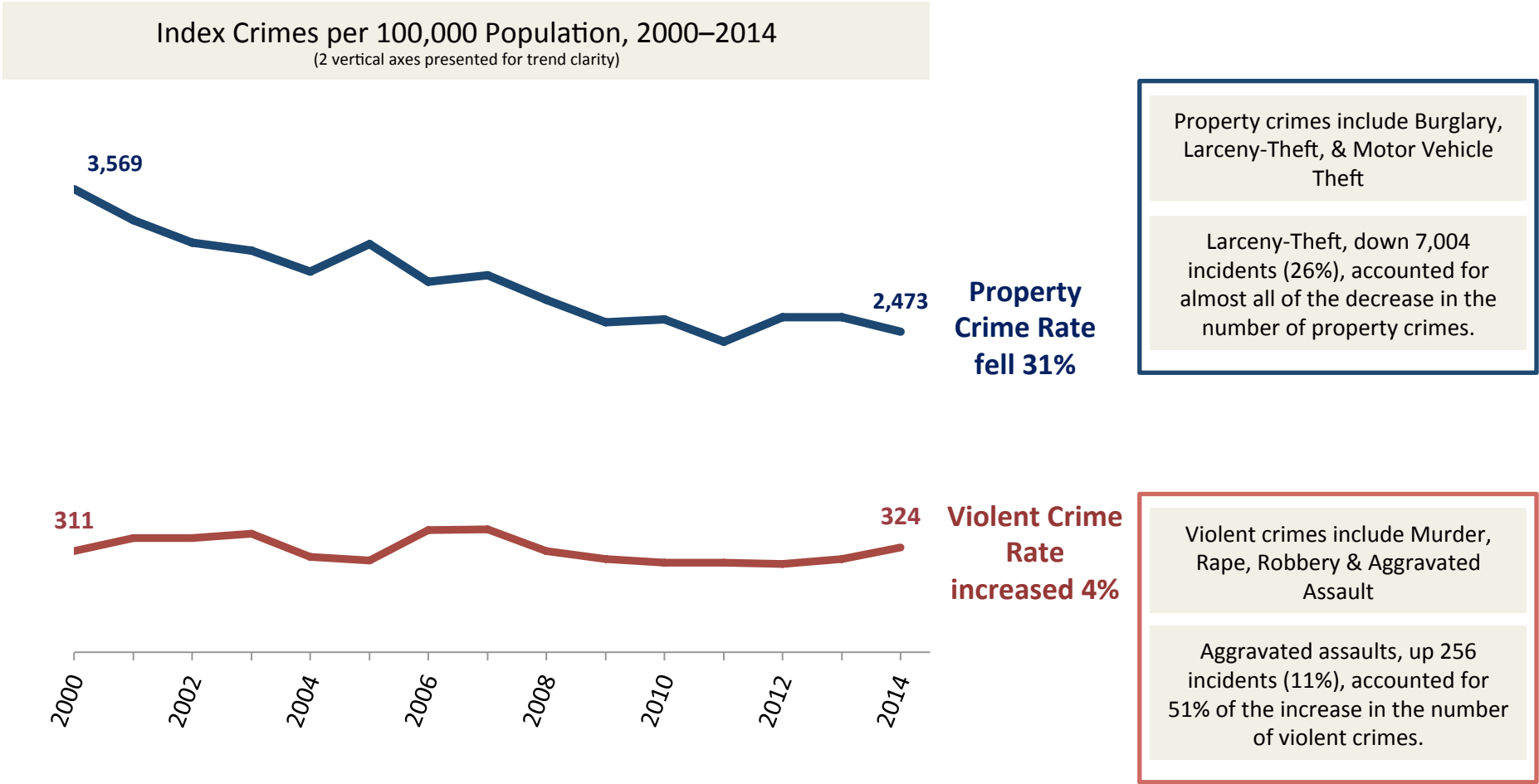
27%

of arrests related to supervision/FTA.

American Indians/Alaskan Natives are 7% of the Montana population, 19% of all arrests, and 27% of supervision and failure to appear (FTA) arrests.

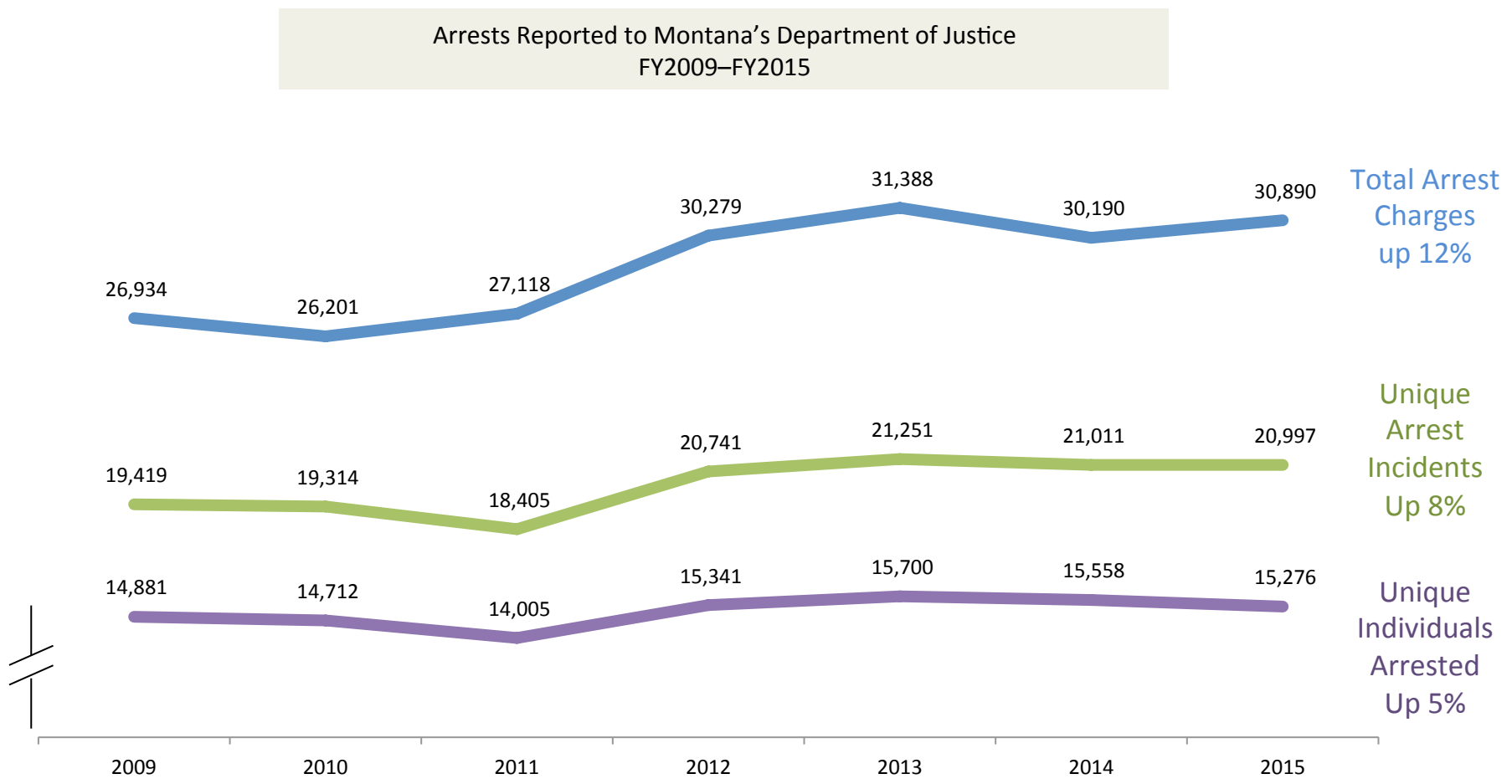
Part I reported crimes have decreased so consistently that they likely are not exerting pressure on front-end resources. The relationship between drugs and misdemeanor crimes is playing a key role in the pressure that front-end law enforcement is experiencing.

Overall, reported index crime is down 18 percent as a result of a steady decrease in property crimes.



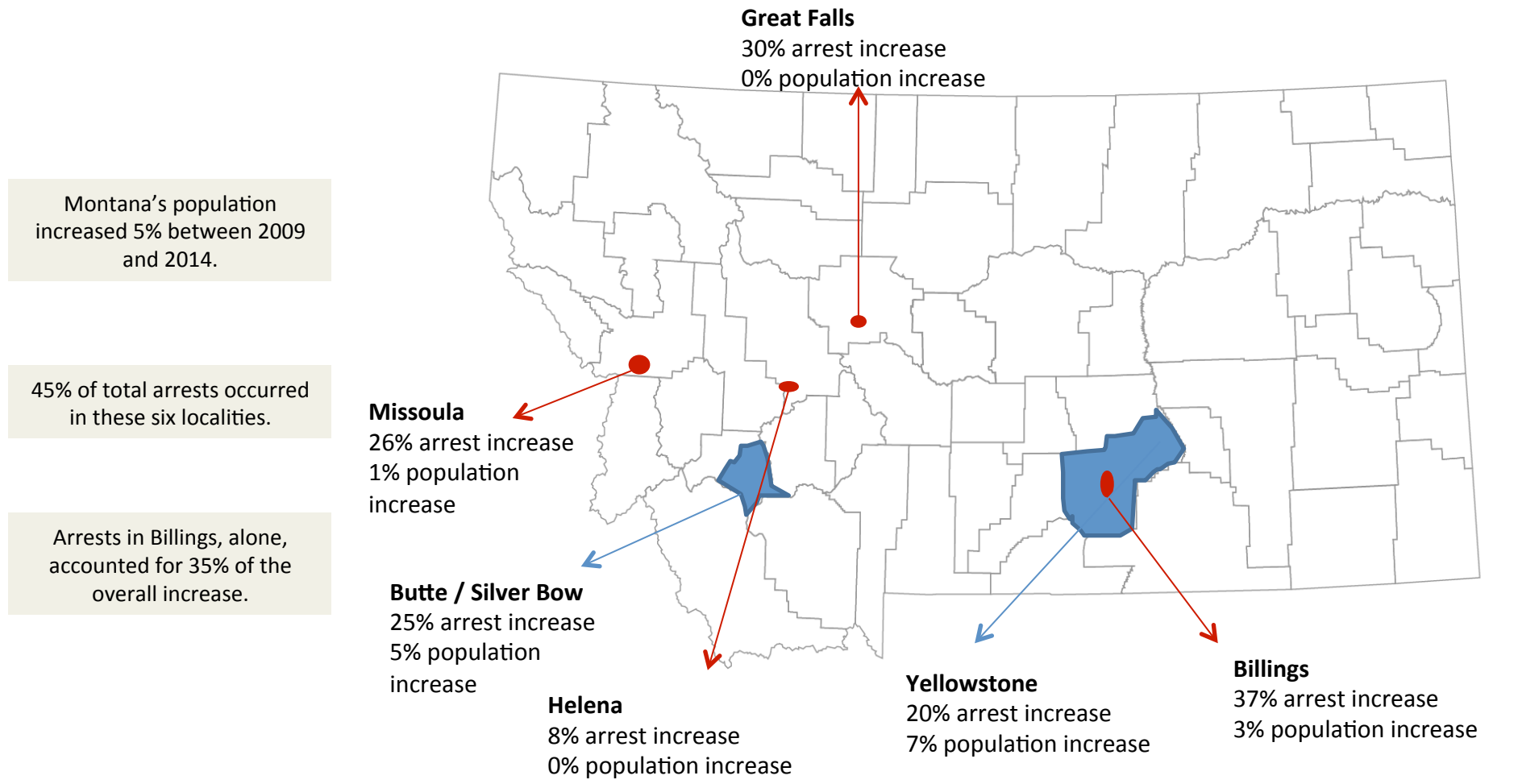
Source: FBI UCR Online Data Tool and Crime in the U.S., 2014. “Legacy” rape definition selected.

Despite the decline in reported crimes, total arrests have increased 12 percent (4,000 arrests) between FY2009 and FY2015.



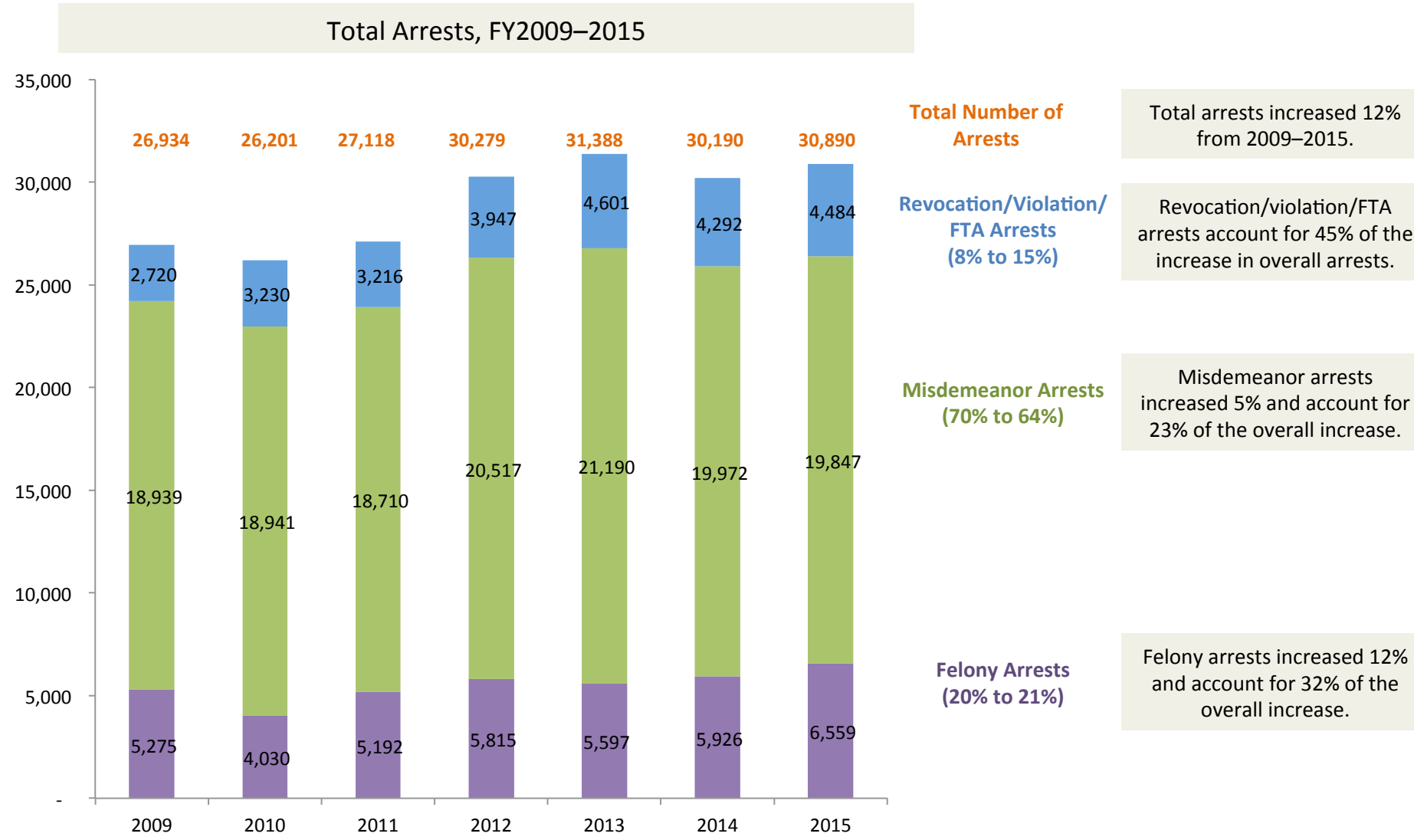
Source: Montana Department of Justice Arrest Data, FY2009–FY2015

45% of the population growth between 2009 and 2014 and 76% of the increase in arrests between FY2009 and FY2015 occurred in 6 localities.



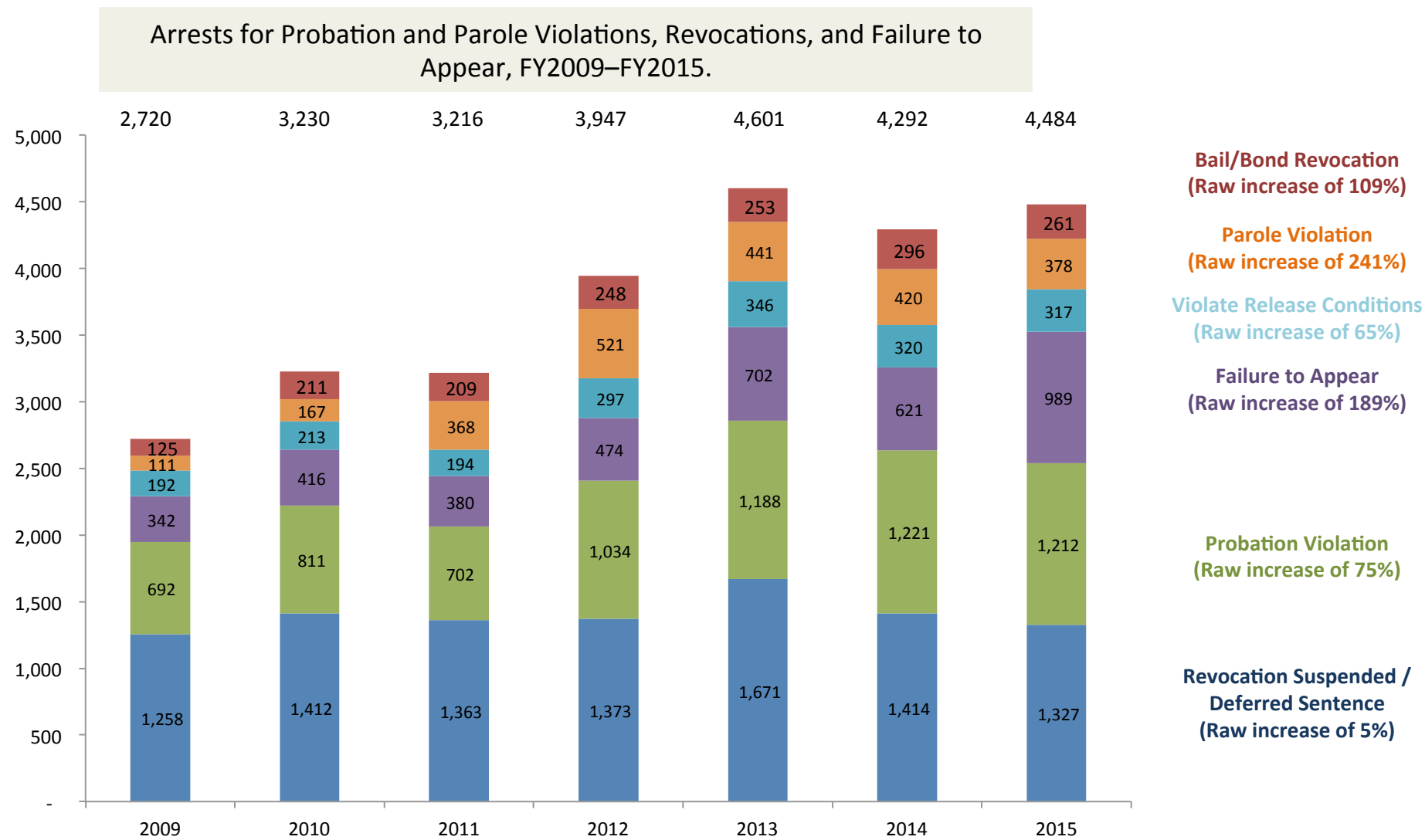
Source: Montana Department of Justice Arrest Data, FY2009 – FY2015

The number and proportion of arrests involving revocations/violations/FTAs have increased and account for 45% of the increase in total arrests.



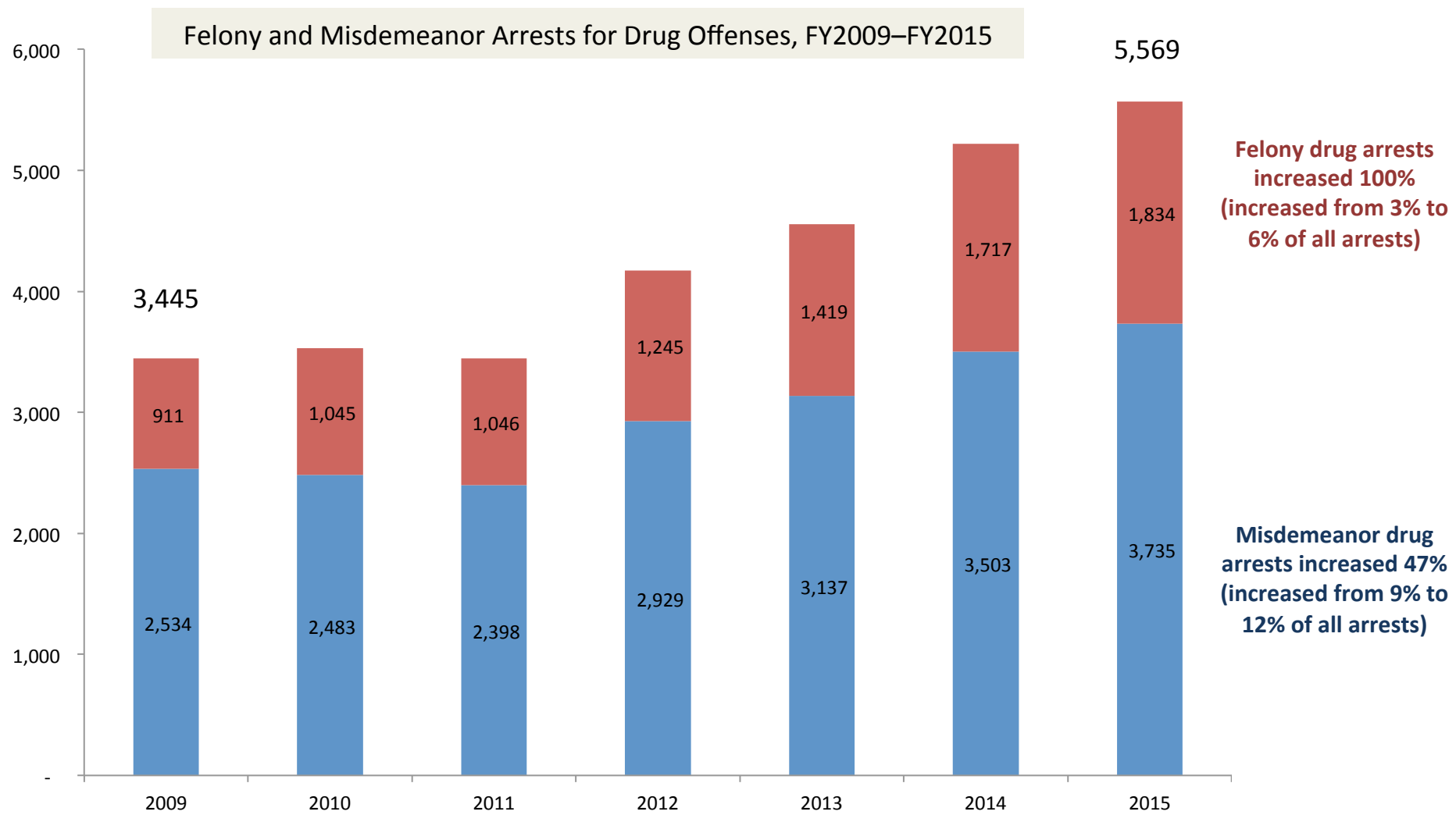
Source: Montana Department of Justice Arrest Data, FY2009–FY2015

The increase in arrests for violations/revocations/FTAs is driven by recent steep increases in parole violations, probation violations, and especially failures to appear.



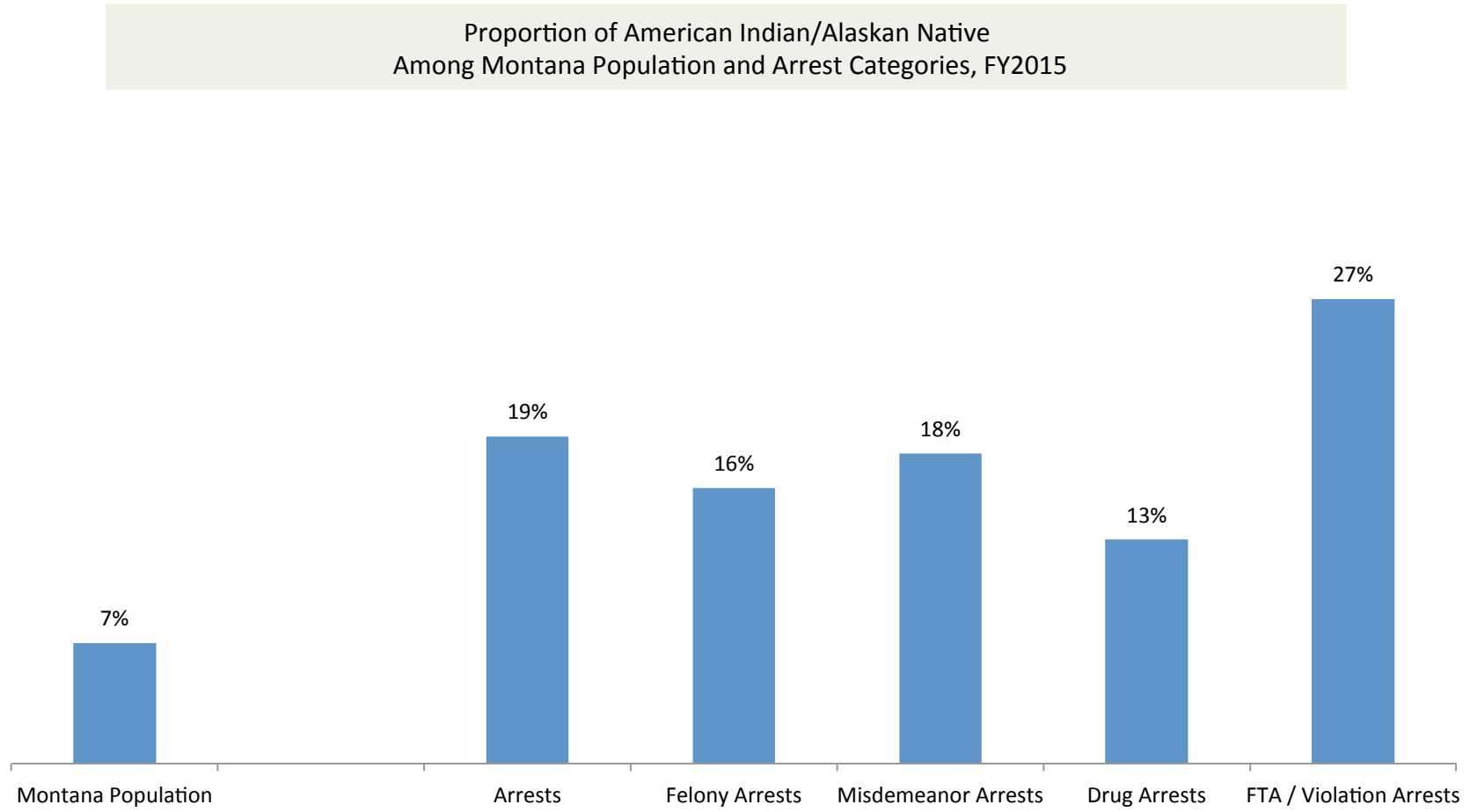
Source: Montana Department of Justice Arrest Data, FY2009– FY2015

Drug-related arrests have increased 62% and now account for 18% of all arrests.



Source: Montana Department of Justice Arrest Data, FY2009–FY2015

Arrests for American Indian/Alaskan Native people are driven by higher rates for arrests for failure to appear or supervision violations.



Source: Montana Department of Justice Arrest Data, FY2009 – FY2015

Initial Survey Results–Sheriffs

Crime Concerns (12 respondents)

- Primary crime and enforcement concerns are drugs, sex offenses, theft, DUI, and domestic violence. The most frequent top concerns were drugs followed by sexual assault.
- Among the respondents, an average of 35% of calls for service involve a behavioral health need, with the highest being 80%.
- Among the respondents, an average of 24% of calls for service involve a person on DOC supervision, with the highest being 50%, and an average of 36% are for arrests, with the highest being 80%.

Initial Survey Results—County Attorneys

Crime Concerns (13 respondents)

- Primary crime concerns are drugs, domestic violence, burglary, and parole/probation violations. Drugs (RX and meth) were the most frequent top concerns among respondents.
- Among respondents, an average of 26% of cases involve an alleged offender with a mental health need, with the highest being 90%.
- Among respondents, an average of 70% of cases involve an alleged offender with a substance use disorder, with the highest being 90%, and 45% of cases involve an alleged offender with a co-occurring disorder, with the highest being 90%.

Front-End Justice Best Practices



- Reclassify selected low-level misdemeanors to civil statutes
- Increase police opportunities to cite and release; issue appearance tickets in lieu of detention



- Police-assisted diversion to treatment for offenses driven by substance use issues (Seattle, WA; Albany, NY; Santa Fe, NM; Portland, ME)



- Single Point of Entry (SPOE) pre-booking assessment and diversion center



- Outsourcing fine collection and reduction programs; community service/sliding scale

Comments and Discussion

Stakeholder Responses

- Mark Murphy on behalf of Police Chiefs and County Attorneys
- Sheriff T.J. McDermott, Missoula County
- Sheriff Donna Whitt, Toole County

2. Court and Jail Pressures

The increasing trend in arrests appears to be driving an increase in case filings in district court, lengthier case processing, and pressure on county jails.

District court case filings increased

20%

between FY2009 and FY2015.

Between FY2011 and FY2015, case filings increased 29 percent.

Time from case filing to disposition increased

18%

between FY2012 and FY2015.

Between FY2012 and FY2015, time from case filing to disposition increased from 181 days to 213 days.

Time from plea to disposition increased

60%

between FY2012 and FY2015.

Between FY2012 and FY2015, time from plea to disposition increased from 77 days to 123 days.

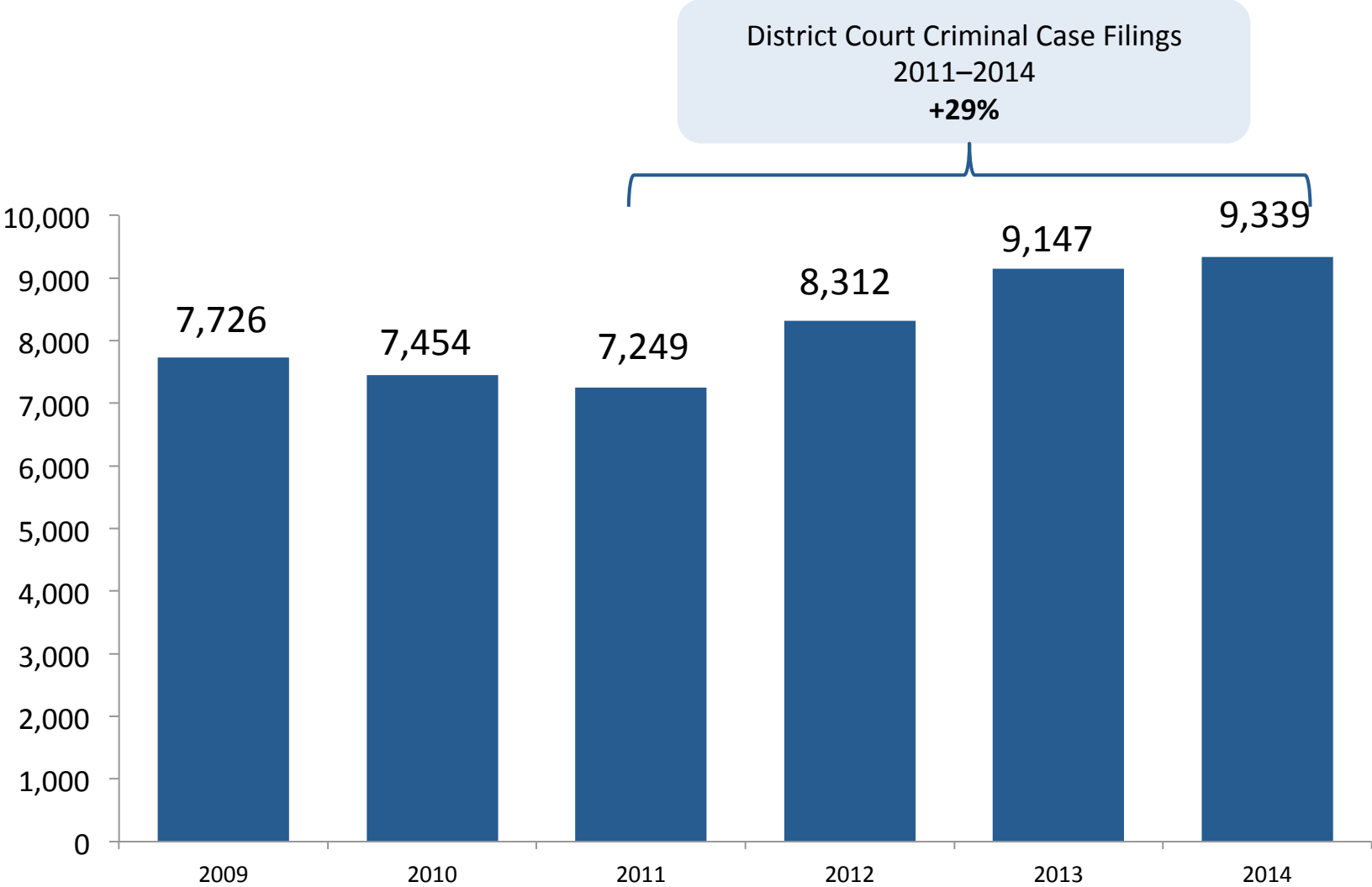
Montana's jail incarceration rate increased

67%

between 2011 and 2013.

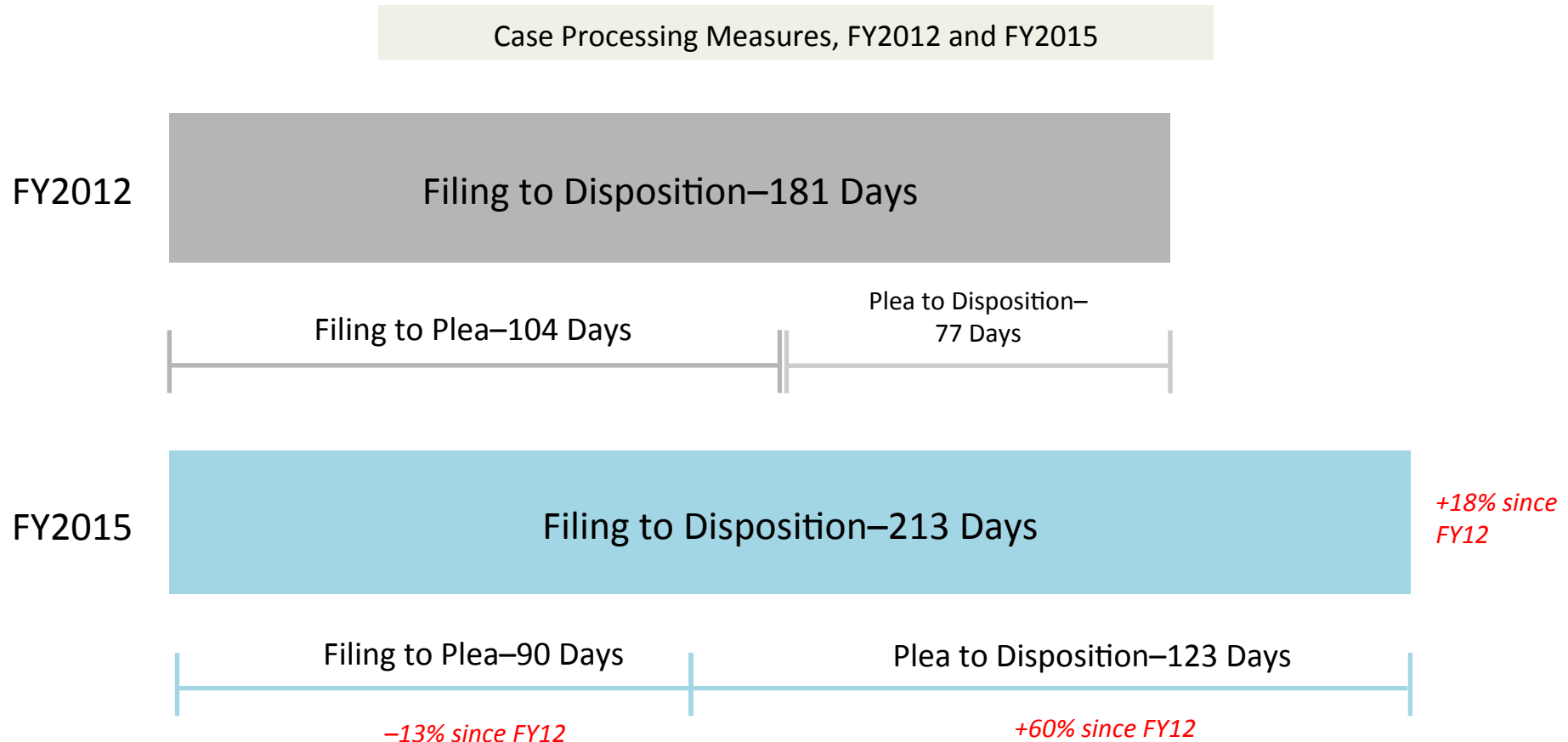
Montana's jail incarceration rate grew significantly faster than other states in the region and at 360 is the highest in the region.

District court case filings have risen sharply in the last four years. Almost half of the increase appears to be driven by a rise in felony drug possession filings.



Source: Montana District Court Case Filings and Dispositions, 2005-2014. Cases include new offenses and “re-openings.”

The time it takes for a case in district court to reach disposition from various stages has increased.

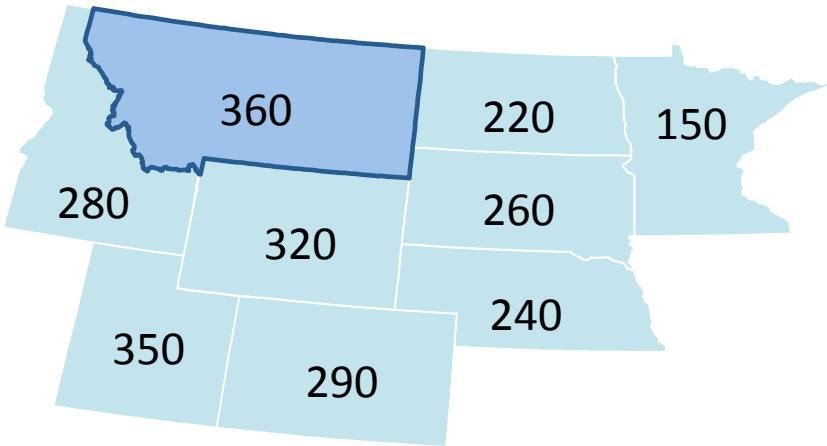


Source: Montana District Court Case Filings and Dispositions, 2005-2014

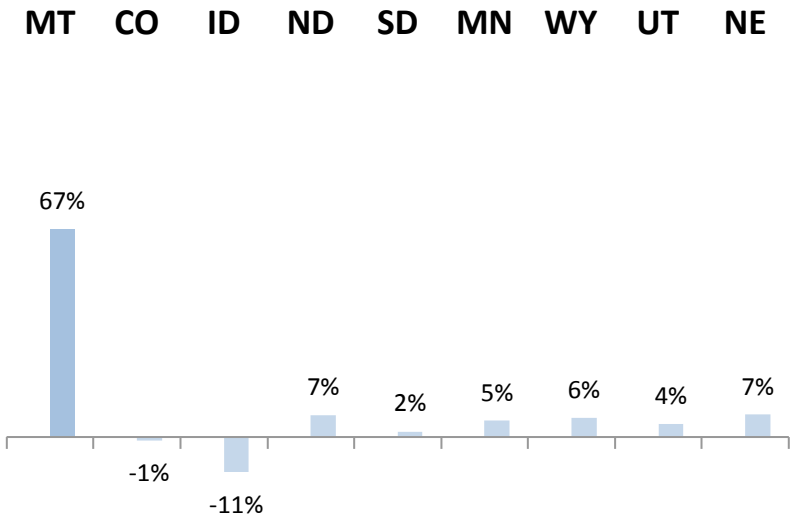
*Time calculations are based on the “oldest” filing for each unique filing. To attempt to control for abscond-delayed cases, those with a time to disposition over 500 days were excluded. Revocation proceedings also were excluded for this analysis.

Montana's jail incarceration rate increased significantly in recent years, and is the highest of its neighbors. Jail length of stay is above average.

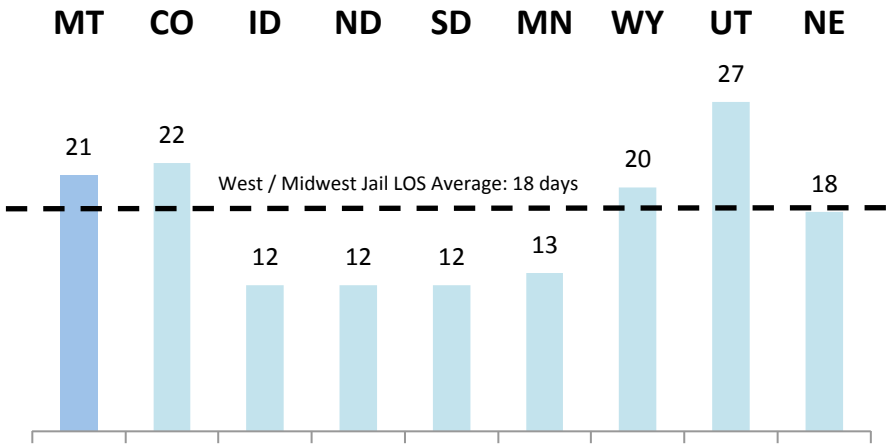
2013 Jail Incarceration Rate
Per 100,000 residents



Percent Change in Jail Incarceration Rate, 2011–2013



Jail Average Length of Stay, 2013



Source: US. Department of Justice, *Census of Jails: Population Changes, 1999-2013*

Initial Survey Results—Sheriffs

System Concerns (12 respondents)

- Average jail capacity is at 86%, with 5 jails close to or significantly over capacity.
- Among respondents, 34% of the jail population were pretrial felony offenders (peak of 69%) and 28% were pretrial misdemeanor offenders (peak 70%).
- Among respondents, 17% of the jail population were state holds and 10% were violations.
- Most sheriffs are administering medical, mental health, substance, suicide, and general risk instruments in jail.
- Sheriffs report training needs for crisis intervention, use of force, and violent crime prevention strategies.
- Sheriffs report that DOC commitments are “ready” for too long and consume bed days while waiting for placement.

Initial Survey Results—County Attorneys

System Concerns (13 respondents)

- Close to 50% of cases involve the crime lab.
- Up to 10% of misdemeanors are offered diversion (5% or less for felonies).
- Almost all report a lack of behavioral health resources to support case needs.
- 24/7 and SCRAM are reported as top tools to protect the public without adding to correction population.
- Many report probation as a vital tool, but some say they don't have enough officers (PSIs take months).
- Pretrial services consistently identified as a strongly needed tool, in addition to aftercare for substance use.

Eight Pretrial Best Practices

Risk Assessment

Conduct a risk assessment, using a pretrial risk assessment tool, on all defendants in custody to inform release decisions.

Pretrial Supervision

Create a pretrial supervision program that supervises and monitors defendants released by the court and reminds them of court dates.

Citation Release

Use citation releases by law enforcement in lieu of custodial arrests for nonviolent offenses when there is no reasonable cause to suggest a risk to the community.

Eliminate Schedules

Eliminate bond schedules and replace them with validated pretrial risk assessments.

Early Screening

Ensure an experienced prosecutor conducts early screenings of criminal cases before the initial court appearance to allow for appropriate charging and timely dismissals as well as early diversion.

Defense Counsel

Ensure that defense counsel is engaged prior to the initial appearance and is prepared to represent the defendant on the issue of bail.

Preventive Detention

Allow for risk-based preventive detention, using risk as the basis for allowing pretrial detention for those who pose unmanageable risks to public safety.

Data Collection

Collect and analyze pretrial performance and outcome measures.

Pretrial Best Practices—Examples



- Use a pretrial risk instrument to inform release and detention decisions.
- Support a pretrial monitoring unit to supervise the completion of service and fine and program requirements.
- Implement an automated court date reminder system and a tracker system for those who are difficult to reach.
- Implement presumptive deferred sentencing for low-level, limited-history offenders.
- Utilize pretrial monitoring to increase deferred prosecution.
- Implement an accelerated misdemeanor system in which pre-plea cases are dismissed upon the completion of community service.
- Increase the utilization of community court and dismiss charges upon completion.
- Utilize swift, certain, and fair sanctions for violations of diversion and deferral conditions.

Comments and Discussion

Stakeholder Responses

- Judge Ingrid Gustafson, Yellowstone County
- Commissioner Peter Ohman
- Commissioner Mary Ann Ries, Pondera County

Research on Policing

- Increasing the visibility of police and the **perceived risk of apprehension** through intelligent allocation can have substantial marginal effects on crime.
 - Increasing incarcerative sanctions has a modest effect at best, while non-custodial sanctions are more likely to prevent reoffending.
- **Smarter policing** involves using crime analysis, technology, alternative responses, and procedural justice to make the right arrests.
 - “Sentinel vs. Apprehension” or “Guardian vs. Warrior”
- **Broken windows** or **zero tolerance** policing have been effective for imposing order in specific areas where social control has completely failed; however, these methods bring high costs if implemented over prolonged periods of time.
- Economic models have found that for every dollar spent on police, approximately **\$1.60 is saved** through reduced victimization costs.

3. DOC Population Trends & Programs Assessments

Courts in Montana direct most new placements to a probation placement, with a large portion of those placements assessed as high/very-high risk. A quarter of exits from Alternatives have a subsequent admission to prison.

People on community supervision average

68%

of the DOC population.

People in prison make up 20%, and people in Alternatives make up 12% of the daily population.

Violent offenders make up

41%

of the prison population.

People on probation spend an average of just under 3 years on supervision, with sexual offenders, property offenders, and DUI offenders on supervision the longest.

Probation placements make up

~62%

of initial placements for original sentences.

Prison placements are 8%, but have grown 42% between FY2012 and FY2015. Probation placements have the highest rate of high/very high risk offenders (44%).

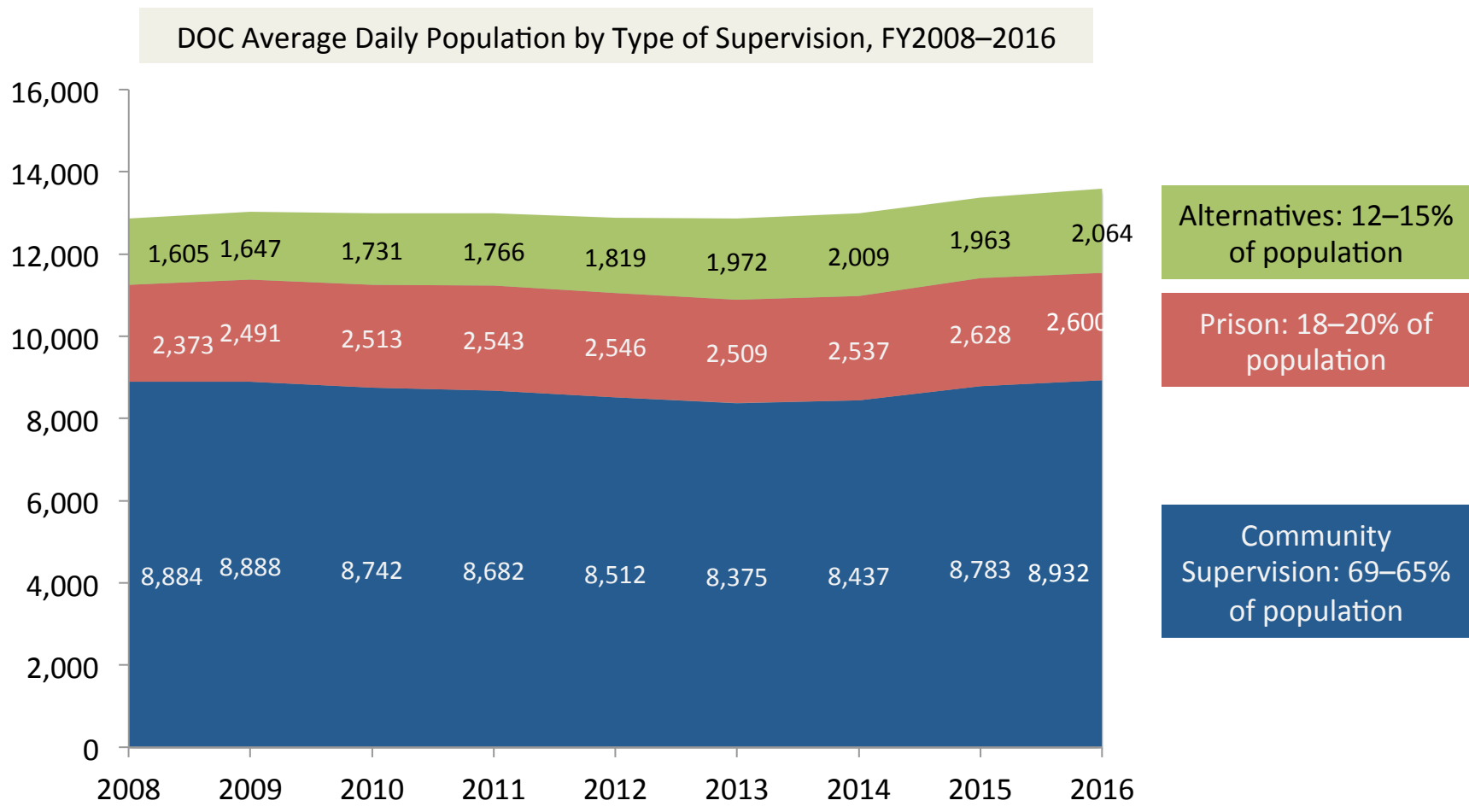
Of those originally placed to an alternative,

26%

went to prison within the next 3 years.

199 people with an original sentence in FY2012 had 5 or more subsequent system admissions by the end of FY2015.

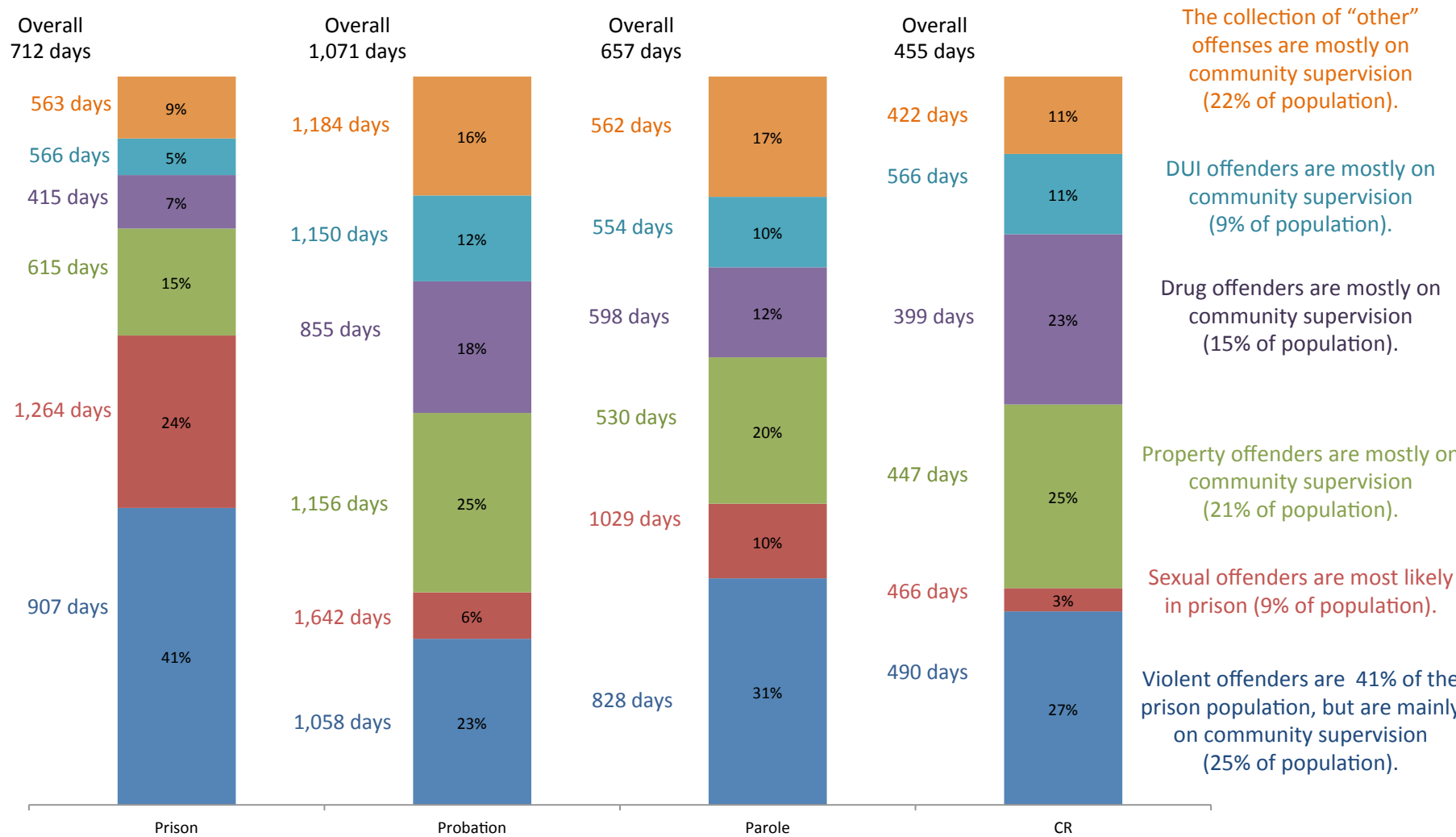
Supervision population up 1%, prison up 10%, alternatives up 29%.



Source: Montana Department of Corrections – Adult Population Summary – Actual FY2008 to 2014; email communication with DOC on February 26, 2016. Figures for 2016 represent cumulative ADP through January 2016.

Violent offenses constitute 25% of the overall DOC population. Most prison sentences last less than 2 years, except for sexual offenses.

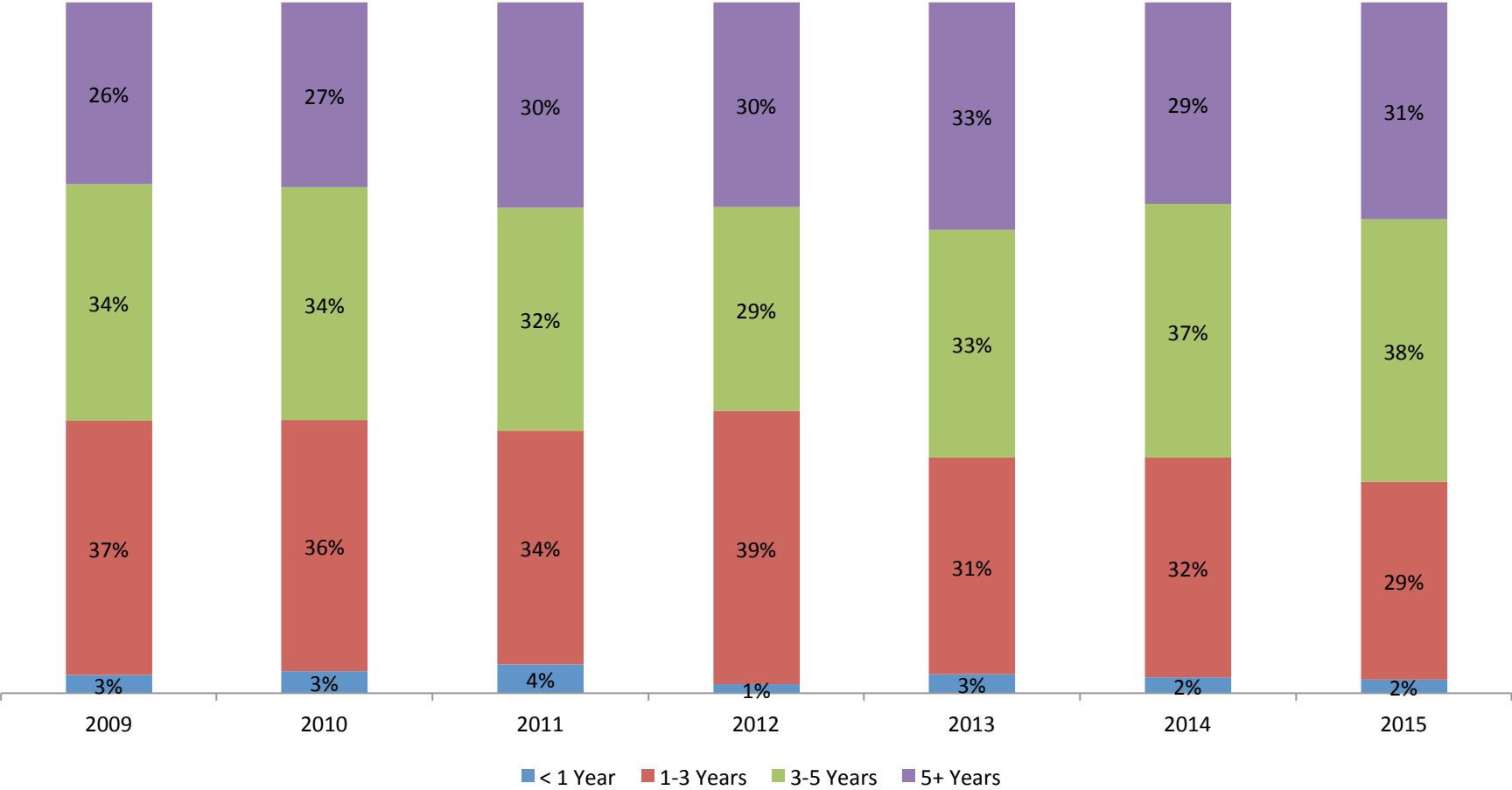
DOC Stock Population by Supervision Type, Charge, & Release Length of Stay, FY2015



Source: Montana Department of Corrections Stock Population Data

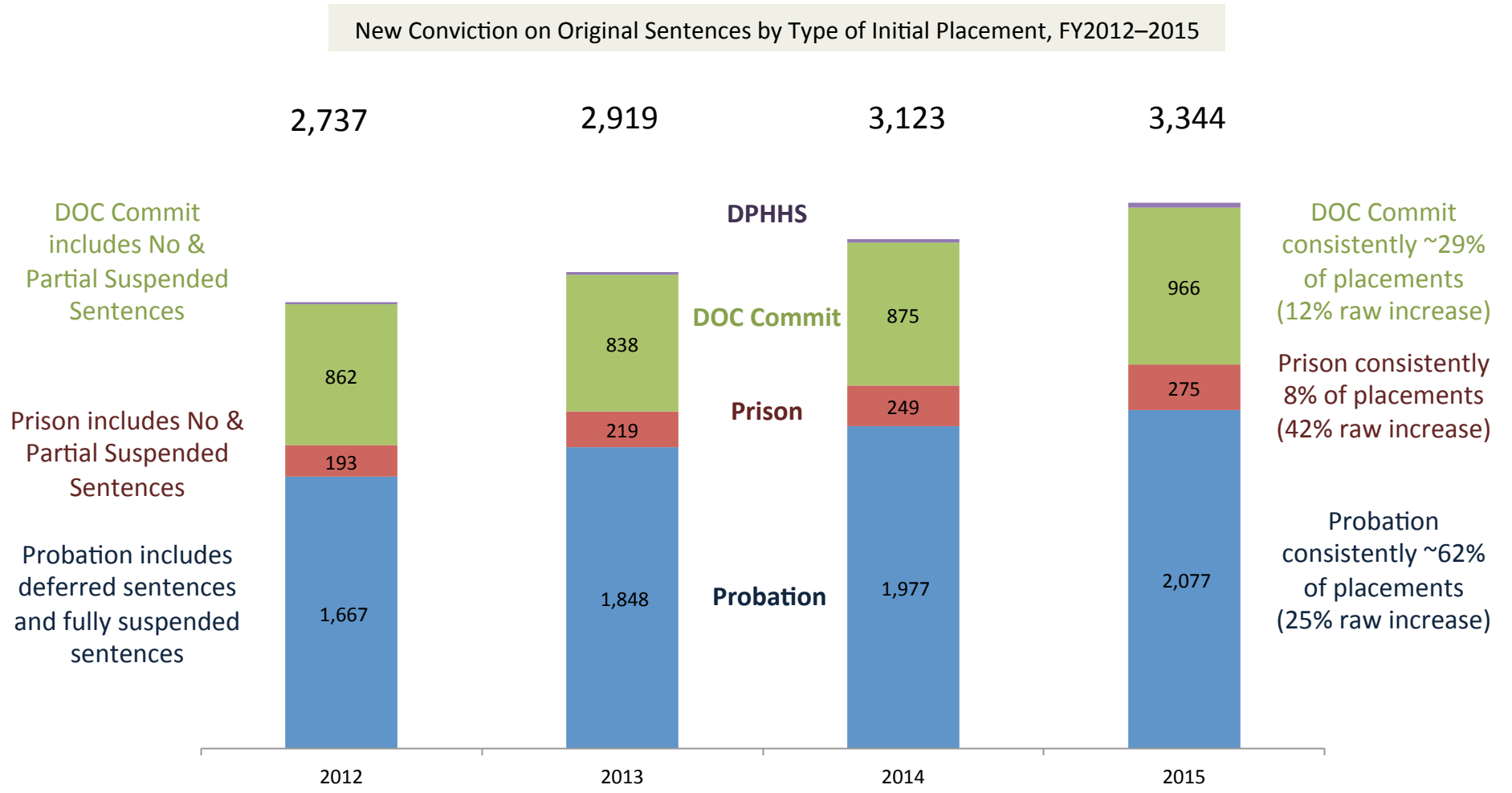
More than 60% of individuals successfully completing probation do so after serving more than three years on supervision.

FY2015 Probation Releasee Length of Stay for Successful “Completers”



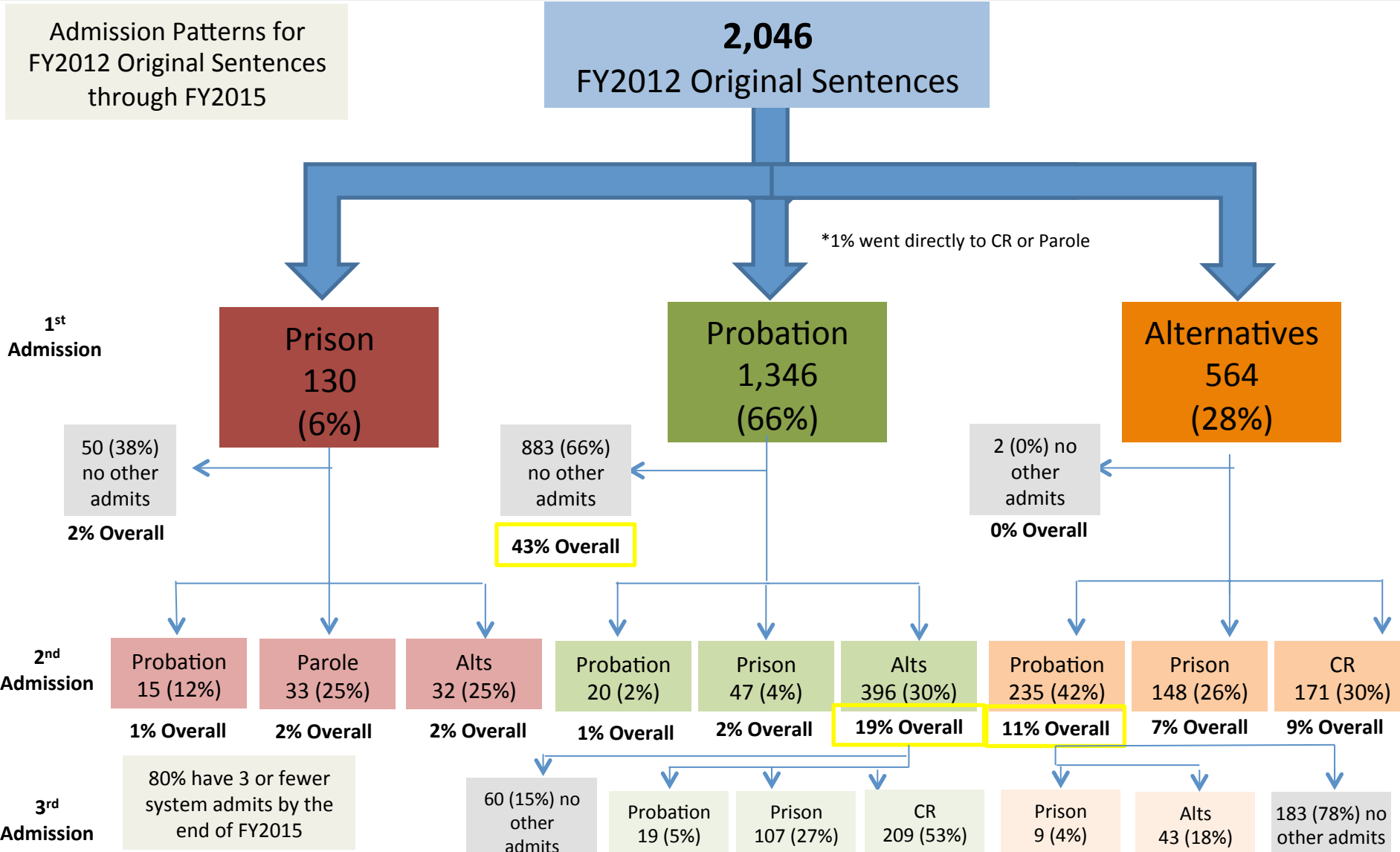
Source: Montana Department of Corrections FY Release Data

Placements into prison on original sentences have increased, though probation continues to receive a majority of placements.



Source: Montana Department of Corrections Offense History Data

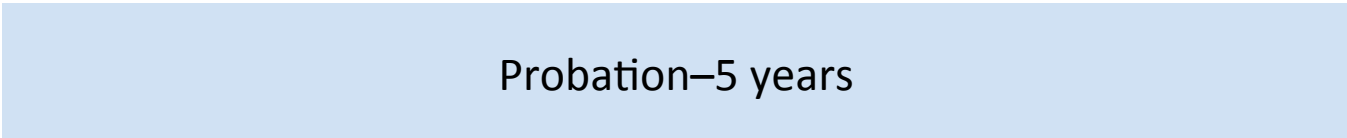
A majority of new “entrances” to the system either enter probation and remain there for the duration, or proceed to alternatives after probation. Most “entrances” have an average of just over 2 system admits in the time period, though 199 have 5 or more.



Source: Montana Department of Corrections Sentencing Data

The use of multiple systems, as opposed to one, accrues significantly higher costs although outcomes are similar.

Estimated Costs of Typical System Patterns



Total Costs

\$9,398



\$72,542

1 year:
\$1,880

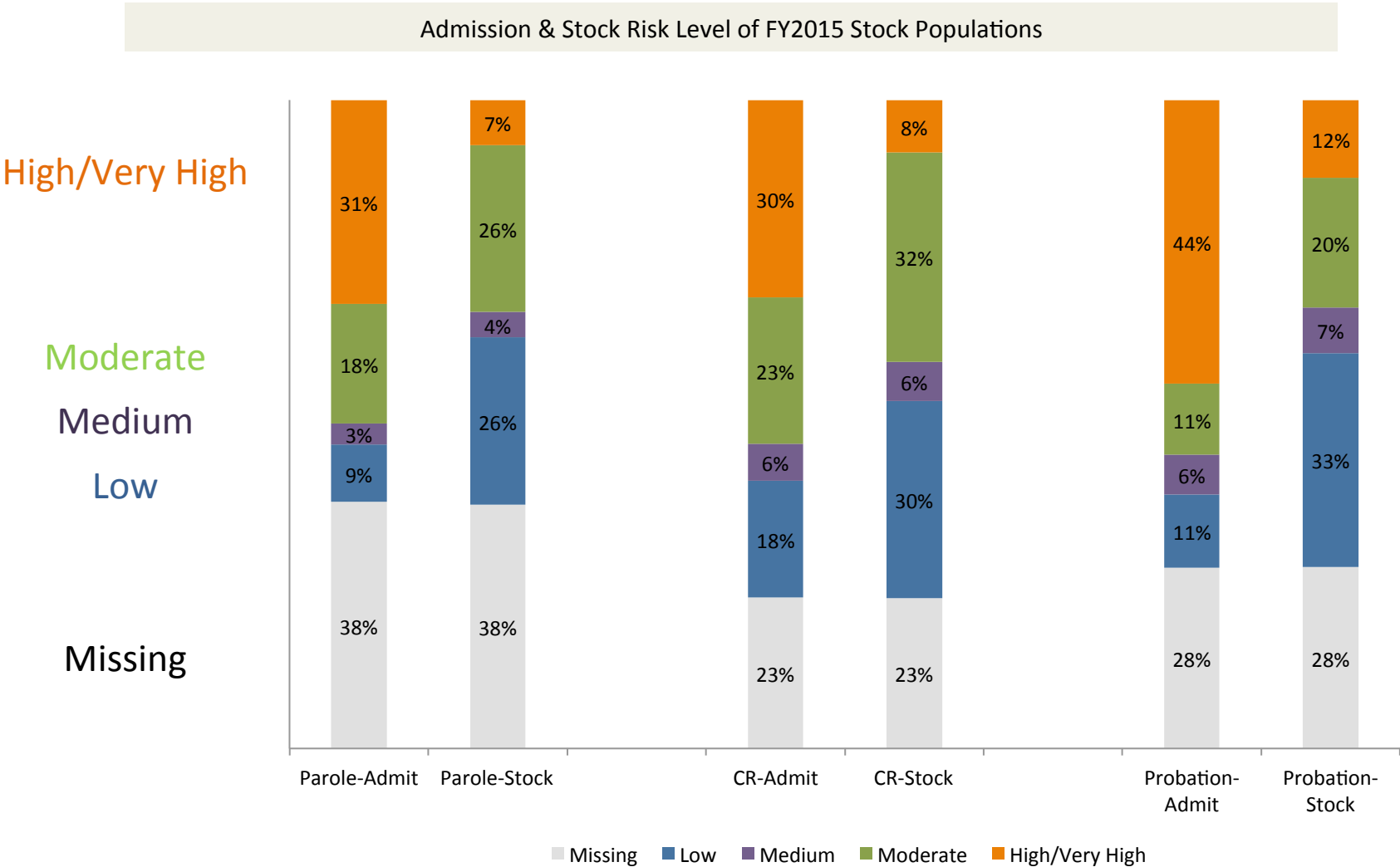
180 days:
\$10,969

1.5 years:
\$55,954

2 years:
\$3,739

Source: Costs calculated using FY2015 Average Offender Costs Per Day and hypothetical lengths of stay. Montana Department of Corrections, “2015 Biennial Report.”

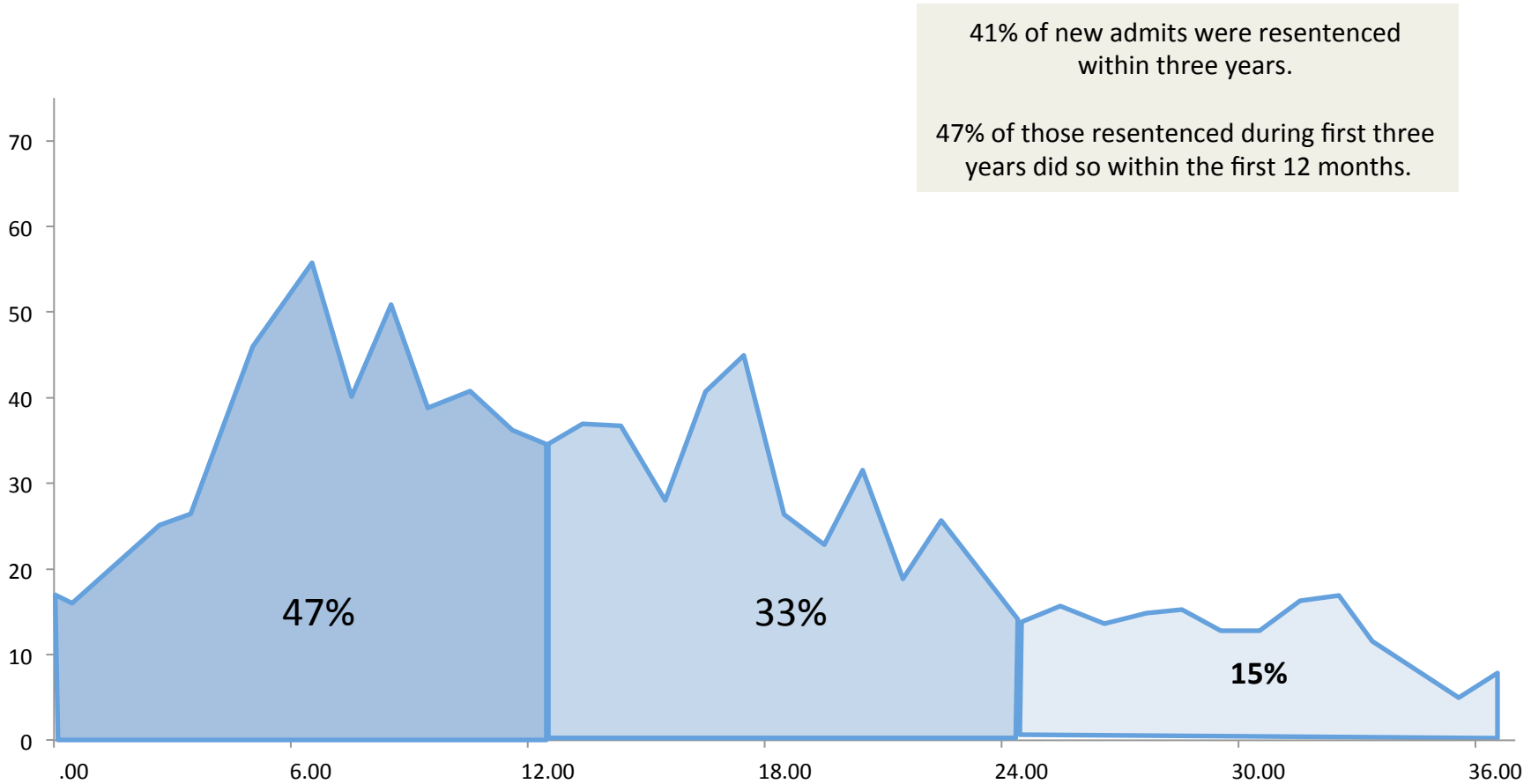
Probation carries the largest proportion of high-risk offenders, though it is vital to lower the number of cases missing risk information.



Source: Montana Department of Corrections Admission & Stock Data

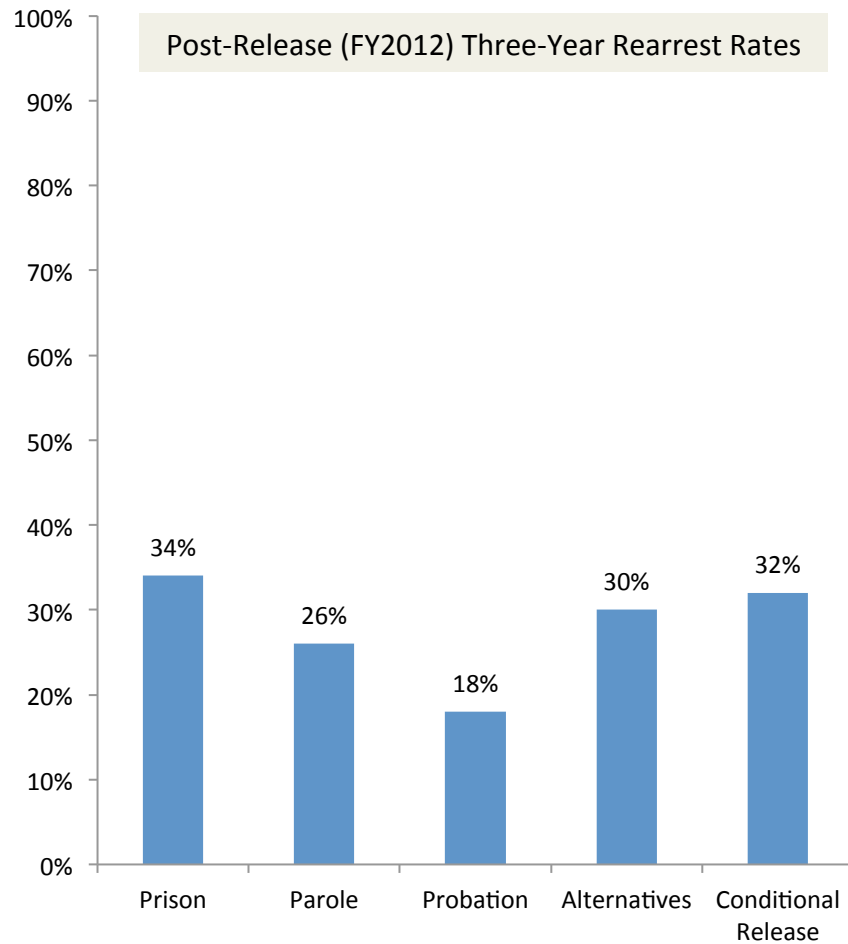
Resentencing analysis demonstrated diminished recidivism with passage of time.

Months to Resentencing Among Those Resentenced Within Three Years, FY2012 Probation Admission Cohort

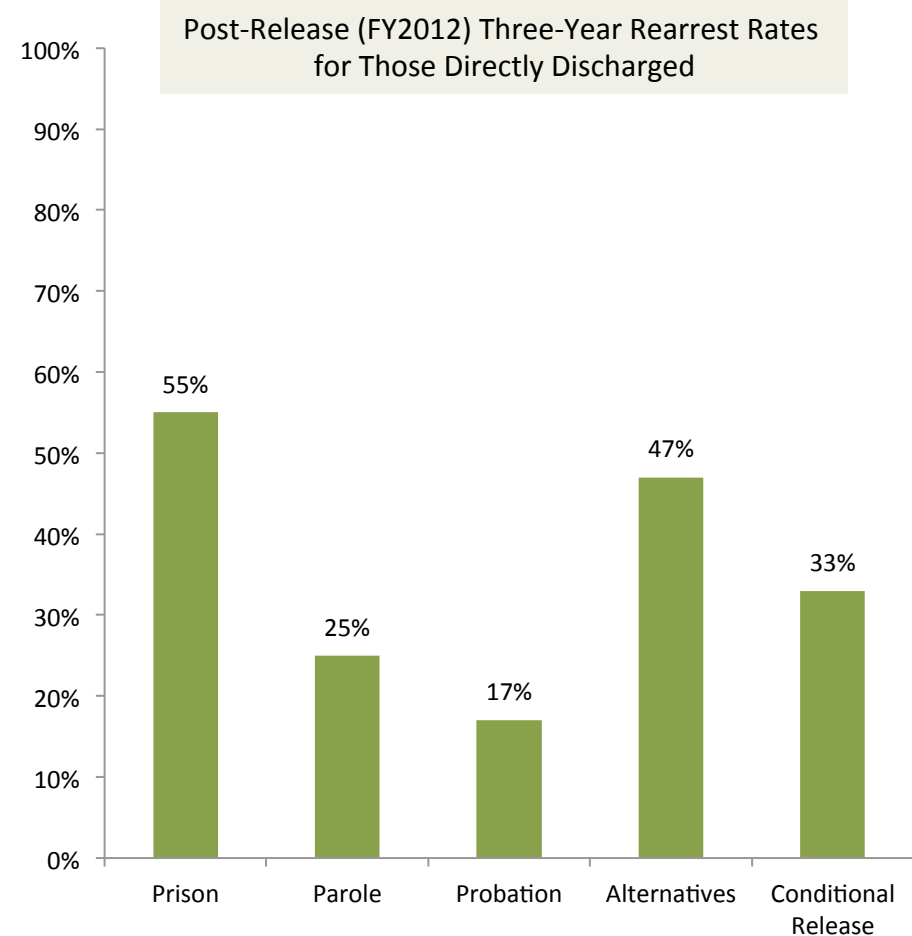


Source: Montana Department of Corrections Admissions & Offense History Data

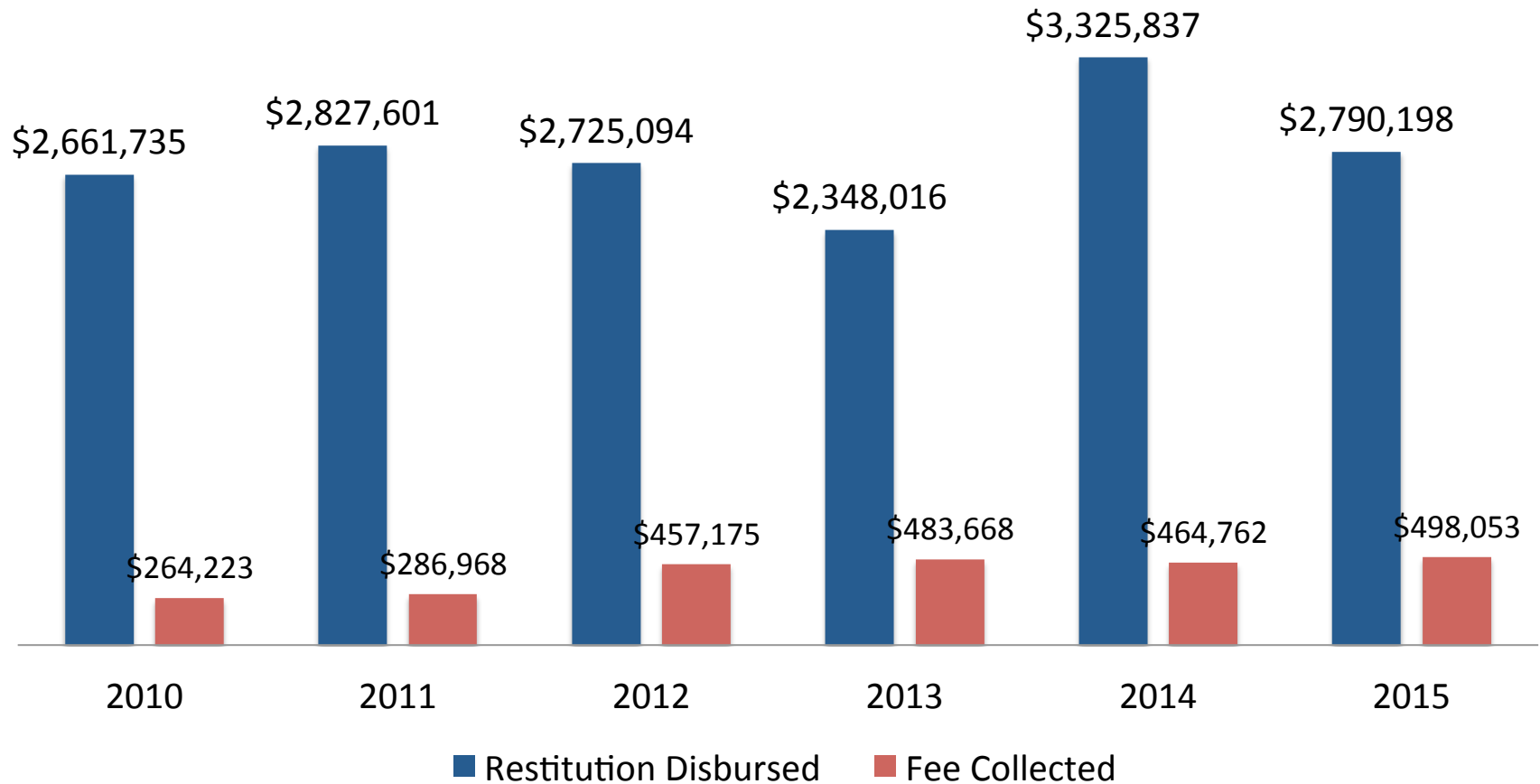
Three-year rearrest rates suggest that discharge through parole and probation achieve reductions in reoffending.



Note: Many releases progress immediately to another system, so multiple effects are in play.



The Department of Corrections helps inmates meet important terms of a sentence by collecting restitution and fees through offender accounts.

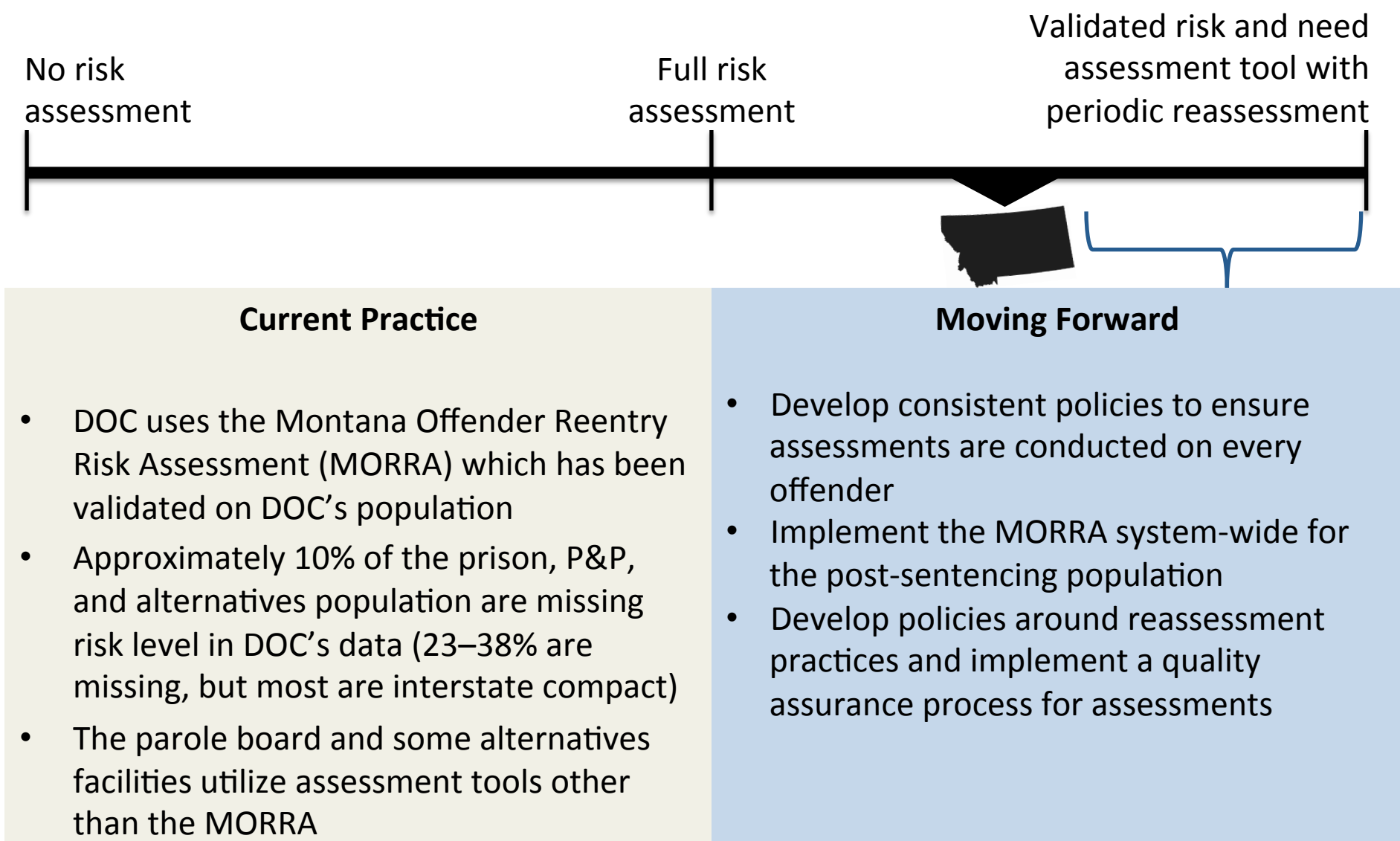


Source: Montana Department of Corrections [website](#)

System Checklist: Reducing Recidivism

- 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 Risk and Need: Montana has adopted a risk and needs assessment tool, yet not everyone in the system has been assessed.



2. Target the Right People: Supervision and programs are not adequately focused on people with higher risk/need.

Supervision
not differentiated
by risk

Supervision
differentiated
by risk

Supervision and
programs focused
on high risk

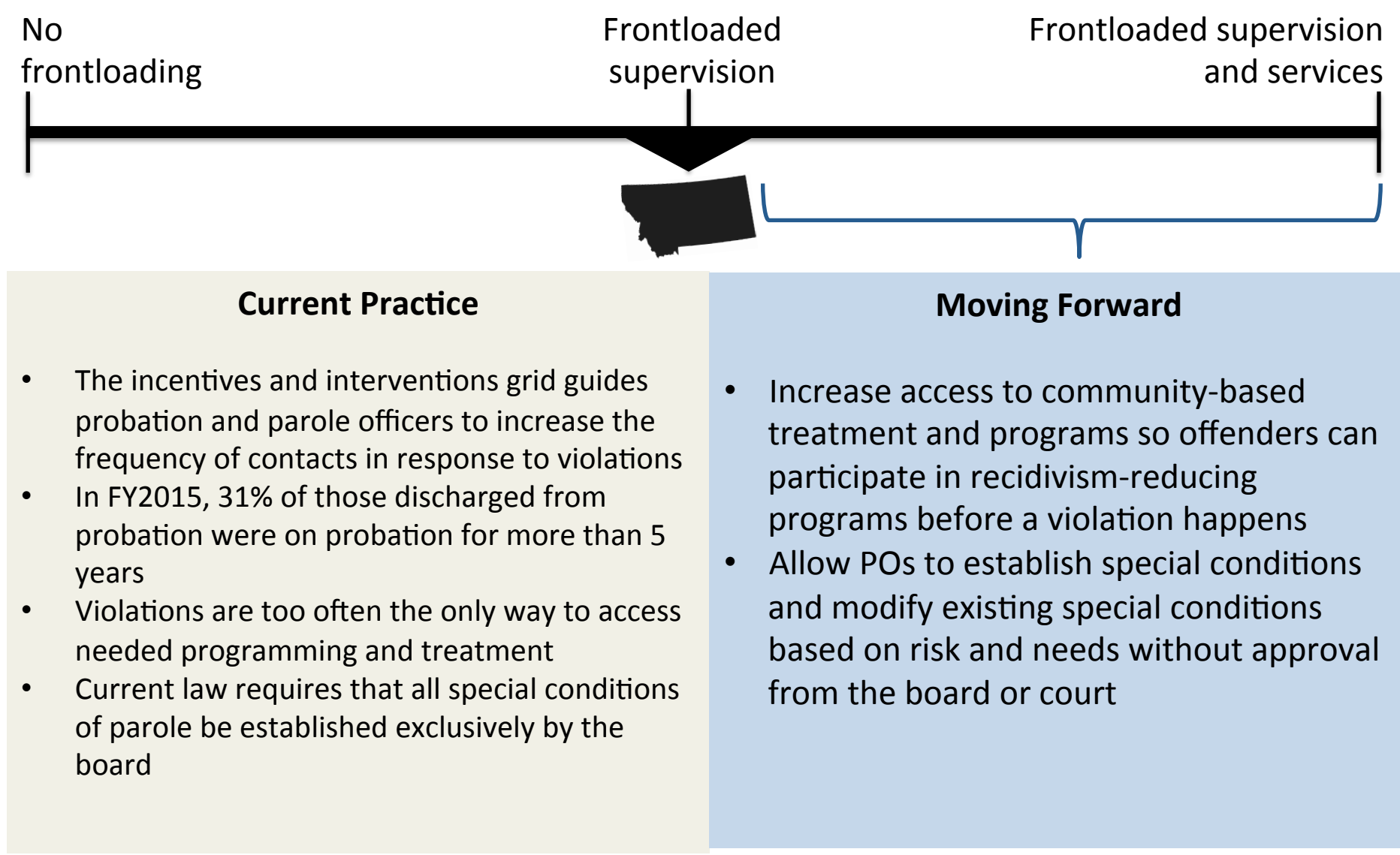
Current Practices

- Supervision is differentiated by risk
- Risk assessments do not drive decisions about placement, length of stay, or special conditions
- There is a lack of commonly agreed upon decisional protocol between DOC and the parole board
- The current parole board structure could lead to inconsistencies in the evaluation of cases

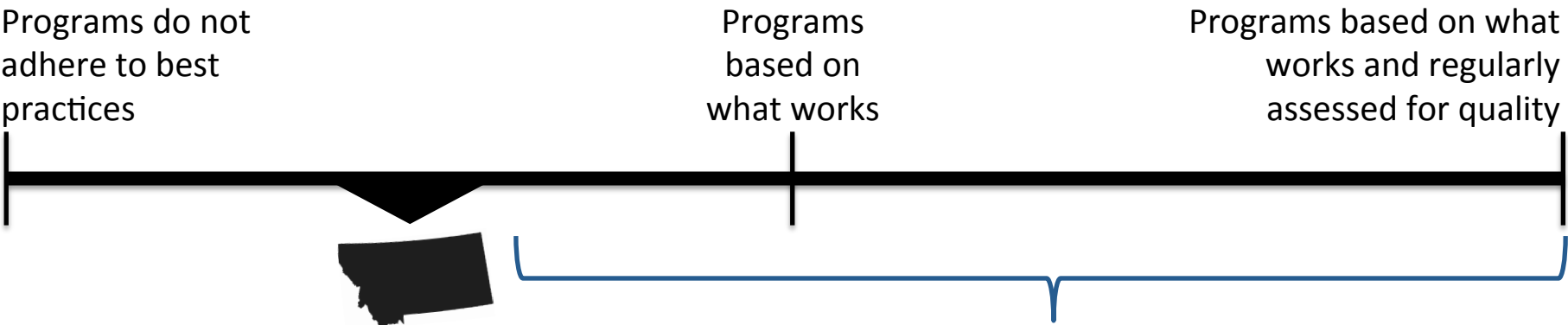
Moving Forward

- Develop actuarial guidelines and a response matrix that incorporates the MORRA to ensure that assessment centers and the parole board use risk and needs assessments to determine placements and special conditions
- Ensure alternative facilities and P&P use risk and needs assessments to determine program placement, length of stay, and conditions
- Guarantee community corrections programs have adequate resources to address high-risk individuals and prioritize programming resources for individuals who are most likely to offend

3. Frontload Supervision and Treatment: Probation terms are long and access to treatment at the outset is limited.



4. Implement Proven Programs: Montana does not have adequate resources to address its needs.



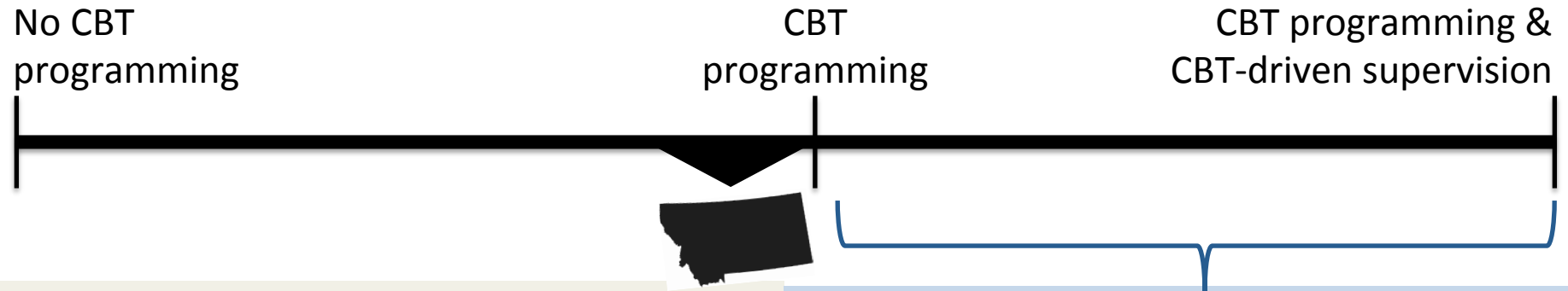
Current Practice

- Montana does not have adequate behavioral health resources to address its population’s needs
- Across the system, treatment is not informed by risk assessment and there is a lack of individualized treatment planning
- The system lacks an effective quality assurance and oversight process to ensure program consistency, fidelity, and quality in prisons and in community corrections

Moving Forward

- Specify a treatment model and strengthen minimum clinical standards for DOC and contract facilities
- Institute quality assurance mechanisms and strengthen standards to ensure accountability and performance
- Establish incentives to create timely access to effective community-based behavioral health services
- Provide training to staff on evidence-based principles and core correctional practices

5. Criminal Thinking: DOC and alternative facilities offer CBT, but the programs are not always evidence-based.



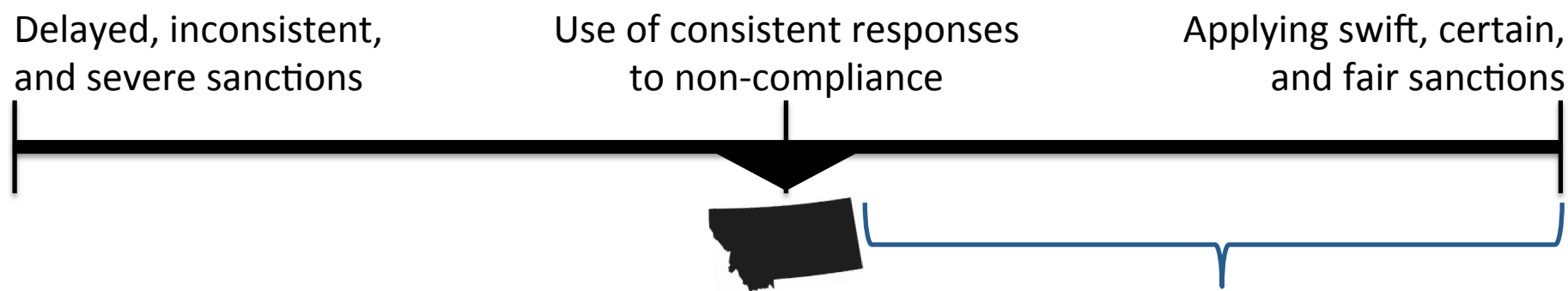
Current Practice

- DOC and alternative facilities identified the need to switch the cognitive behavioral therapy (CBT) offering from Cognitive Principles and Restructuring (CP&R) to the evidence-based Thinking for a Change Program, yet CP&R continues to be offered widely

Moving Forward

- Continue phasing out CP&R and fully implement Thinking for a Change
- Train POs and adjust workload to allow POs to deliver CBT to higher risk probationers
- Institute quality assurance mechanisms to ensure that effective practices are continually used

6. Hold individuals accountable: It is unclear how consistently swift and certain sanctions are being utilized.



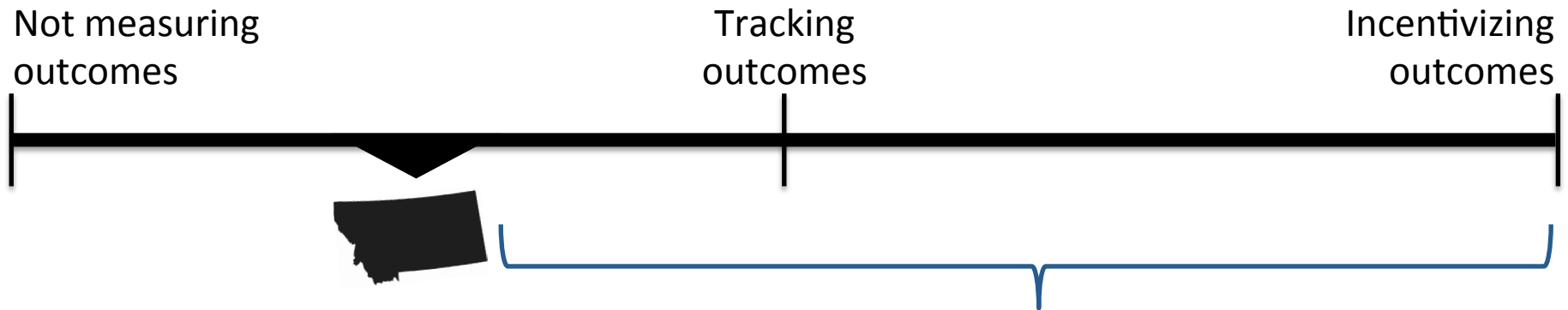
Current Practice

- DOC uses an incentives and interventions grid to guide POs, but it is unclear if there is a formal process to ensure consistency.
- Sanctions include 1–30 day jail stays and 30–60 day sanctions
- The lack of jail beds across the state prevents POs from using short jail stays as sanctions

Moving Forward

- Conduct an assessment of how the incentives and interventions grid is being used by POs in practice
- Train POs to ensure consistency in the use of sanctions and incentives
- Reallocate resources to ensure that swift and certain sanctions can be utilized consistently to respond to behaviors

7. Measure Outcomes: DOC measures recidivism, but does not track outcomes by providers and programs.



Current Practice

- Recidivism measures are broad
- DOC does not measure outcomes by providers and programs
- DOC does not measure outcomes of its placement decisions

Moving Forward

- Require DOC to measure the outcomes by providers and programs in addition to the outcomes of its placement decisions
- Explore incentives to improve access and quality of community interventions

System Checklist: Reducing Recidivism

- 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**

Comments and Discussion

Stakeholder Responses

- Commissioner Jennie Hansen
- Director Mike Batista
- Commissioner Derek Gibbs
- Commissioner Roxanne Klingensmith

Presentation Summary

Front End: Drug- and supervision-related arrests are driving front-end pressures on the entire system. Improved prevention efforts and alternative response models for these offenses could increase public safety and lessen back-end pressures.

Admissions: The Montana criminal justice system places a large proportion of sentenced offenders—including high/very-high risk—on probation. The prison population primarily consists of violent offenders.

Flow & Outcomes: A portion of the DOC population goes through up to five different “front doors” of the system in under three years. Of those originally placed to an alternative, 26% were admitted to prison next within 3 years. Probation & parole produce lower rearrest rates than other system actors. Close to 50% of post-probation “recidivism” occurs in the first year on probation.

Best Practices: Decisions can involve objective data, in a structured process that can be evaluated. Supervision decisions, including where to supervise and when and how to sanction, should be grounded in assessments of risks and needs.

Moving Forward

Next Steps

- Fourth Commission on Sentencing meeting in May/June
- Conduct additional stakeholder engagement, including attending association meetings for judges, sheriffs, county attorneys, and police chiefs
- Continue strategic discussions with the parole board, victim advocates, DOC, community corrections, and other stakeholders
- Organize visits with national experts on topics of specific interest to commissioners (pretrial, sentencing, etc.)
- Work at the request of state leaders, stakeholders, and the commission to develop a package of policy options with impact projections

Questions/Research

- Identify trends requiring deeper quantitative and qualitative analyses
- Develop increased intelligence on recidivism trends across systems
- Specify initial policy options for further investigation and begin projection calculations on potential policy recommendations
- Work with local stakeholders and experts to develop increased clarity around challenges facing American Indians/Native Alaskans
- Identify additional stakeholders we have not yet contacted

Thank You

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This project was supported by Grant No. 2013-ZB-BX-K002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.