

Justice Reinvestment Working Group Second Meeting

September 10, 2015

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



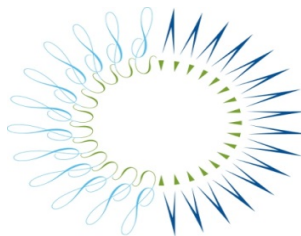
Justice Reinvestment

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

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Updated Working Group Roster

**Associate Justice (Ret.)
Judith Savage,
Co-Chair**

**Chief Justice Paul Suttell,
Co-Chair**

Rep. Marvin
Abney

Anna Cano-
Morales, Latino
Policy Institute

Col. Hugh
Clements,
Providence Police

Megan Clingham,
Mental Health
Advocate

Sen. Cynthia
Coyne

Rep. Robert
Craven

Michael Évora,
Commission for
Human Rights

Hon. John Flynn,
Superior Court

Hon. Alice
Gibney, Superior
Court

Sen. Paul Jabour

Rep. Cale Keable

Attorney General
Peter Kilmartin

Hon. Jeanne
LaFazia, District
Court

Sen. Michael
McCaffrey

Hon. John
McConnell Jr.,
U.S. District Court

Mary McElroy,
State Public
Defender

Maria
Montanaro,
BHDDH

Col. Steven
O'Donnell,
RI State Police

Sen. Christopher
Ottiano

Laura Pisaturo,
RI Parole Board

Rep. Daniel Reilly

Chief Brian
Sullivan, Police
Chiefs Assoc.

Olin Thompson,
Assoc. of Criminal
Defense Lawyers

James Vincent,
NAACP

A.T. Wall,
RIDOC

Rhode Island launches justice reinvestment with interbranch press conference



Governor Gina Raimondo signs Executive Order 15-11, establishing the Justice Reinvestment Working Group.

“We have to make smart investments to break the cycle of crime and incarceration and improve public safety.

We need to do more, we need to do better, and we need to do it now.”

-Governor Raimondo

Data analysis is underway as agencies continue to fulfill data requests

Data	Source	Status
Crime and Arrest Data	Rhode Island State Police	Reports Retrieved
Criminal History Data	Office of the Attorney General	Preparing Request
Court Disposition and Sentencing Data	Rhode Island Judiciary/ Office of the Attorney General	Partially Received
Problem Solving Court Data	Rhode Island Judiciary	Reports Received
Probation Supervision Data	RIDOC	Received
ACI Population Data	RIDOC	Received
Parole Supervision Data	RIDOC	Received
Parole Decision Data	Parole Board/RIDOC	Pending
Programming and Behavioral Health Data	RIDOC/BHDDH	Pending

An update on criminal justice system stakeholder engagement since the July working group meeting

Working Group Members



Individual meetings/calls with working group members and their staff

Organizations



OpenDoors, ACLU, Day One, University of Rhode Island, Direct Action for Rights & Equality, Local Initiatives Support Corporation, and the Institute for the Study & Practice of Nonviolence

Focus Groups/
Board Meetings



Pretrial Investigators, Superior Court Judges, District Court Judges, Police Chiefs, and RIDOC Clinicians

Behavioral
Health Experts



Mental Health Consumer Advocates of RI, Providence Center, and behavioral health staff at RIDOC, BHDDH, and the Department of Health

Examples of Upcoming Discussions

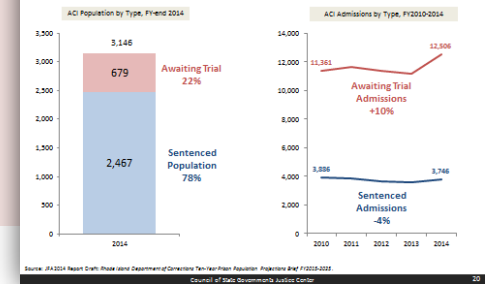
- Focus groups with probation & parole officers, victim advocates, and community advocates
- Criminal Defense Lawyers Association's Executive Committee

The three initial focus areas from our previous presentation

1

Pretrial. How does the movement of a growing population awaiting trial achieve efficiency and effective public safety?

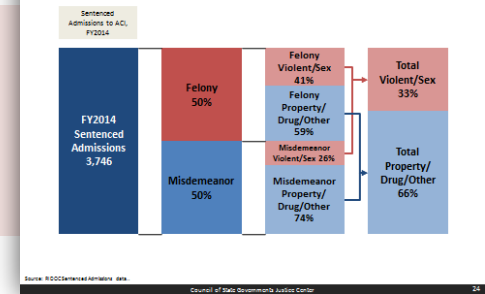
One quarter of people in the ACI are awaiting trial, and pretrial admissions have greatly increased in recent years



2

Low severity offenders. How can and does the state respond to the high volume of people admitted to the ACI for lower severity offenses?

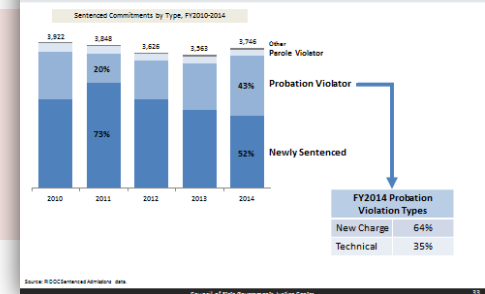
Two thirds of admissions are for lower severity crimes



3

Probation. Are there ways to strengthen the large probation system to achieve better outcomes?

Nearly half of sentenced admissions are probation violators, and over one third of those violations are technical



Presentation Overview



Reducing Recidivism

Pretrial

Probation

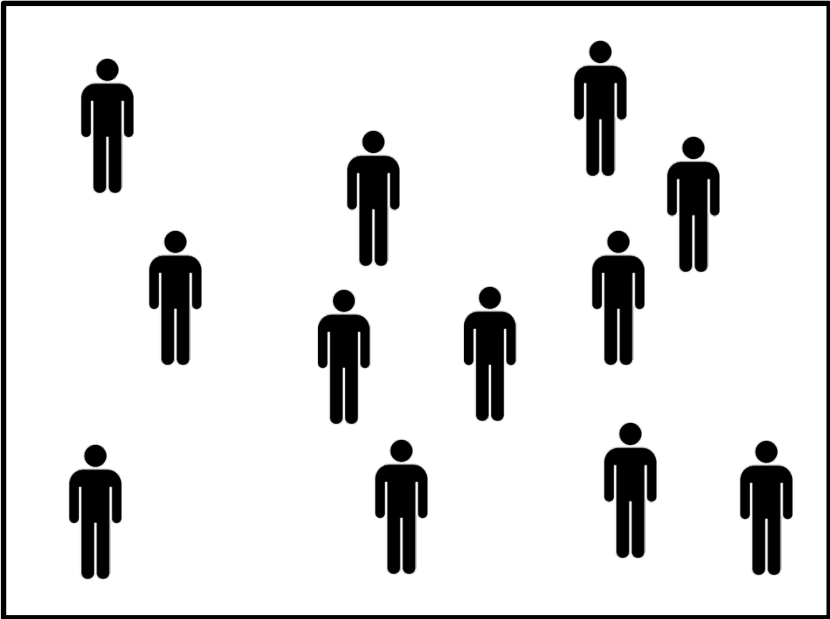
System Checklist:

Reducing Recidivism and Promoting Recovery

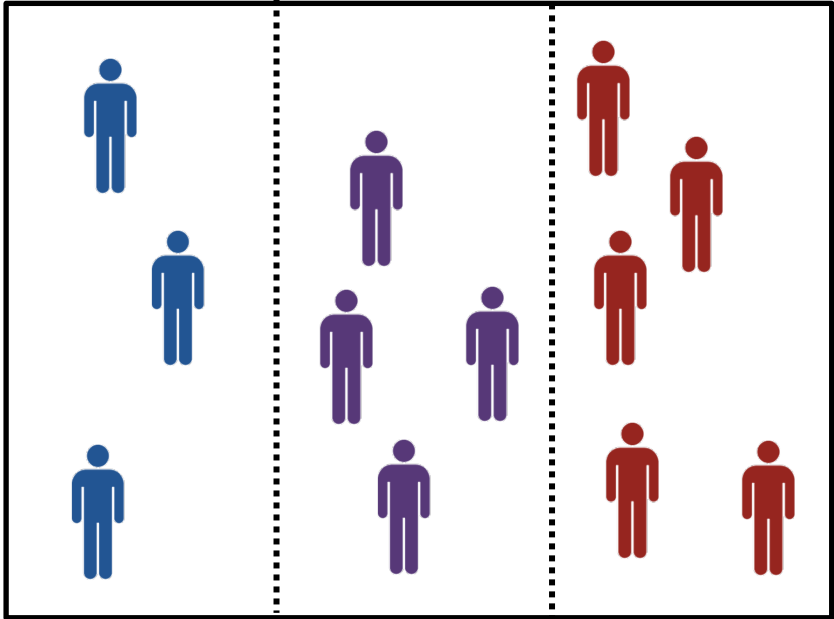
- 1 **Assess** risk and need
- 2 **Target** the right people
- 3 **Frontload** supervision and treatment
- 4 **Implement** proven programs
- 5 Address **criminal thinking**
- 6 Hold individuals **accountable**
- 7 **Measure** and incentivize **outcomes**

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

Without Risk Assessment...

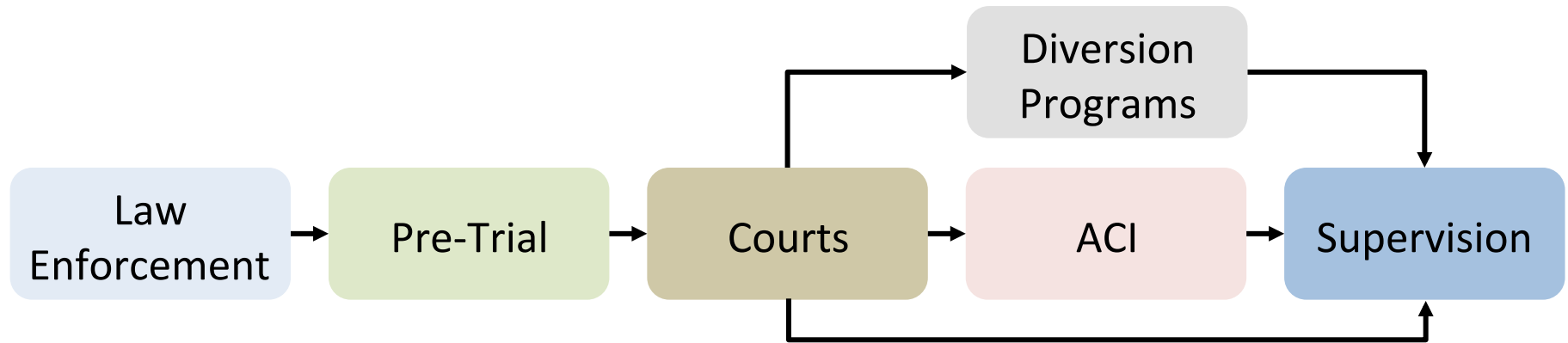


With Risk Assessment...



Risk of Re-offending		
Low 10% re-arrested	Moderate 35% re-arrested	High 70% re-arrested

1. Assess. Conducting assessments at multiple system points informs key decisions.



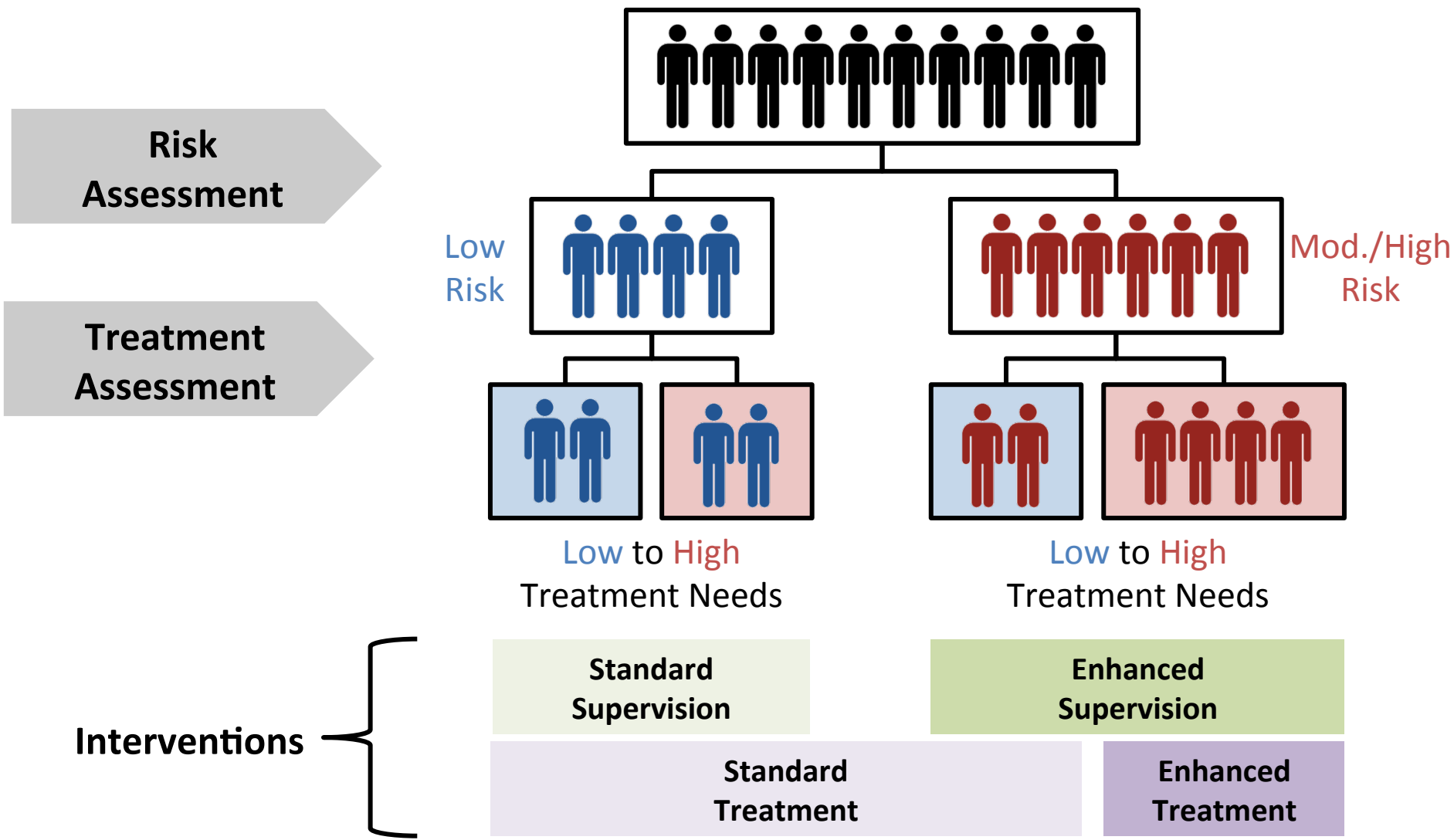
Initial Assessments Inform:

- Immediate treatment needs
 - Diversion decisions
 - Sentencing
 - Problem solving courts
 - Need for confinement
- Community supervision strategy

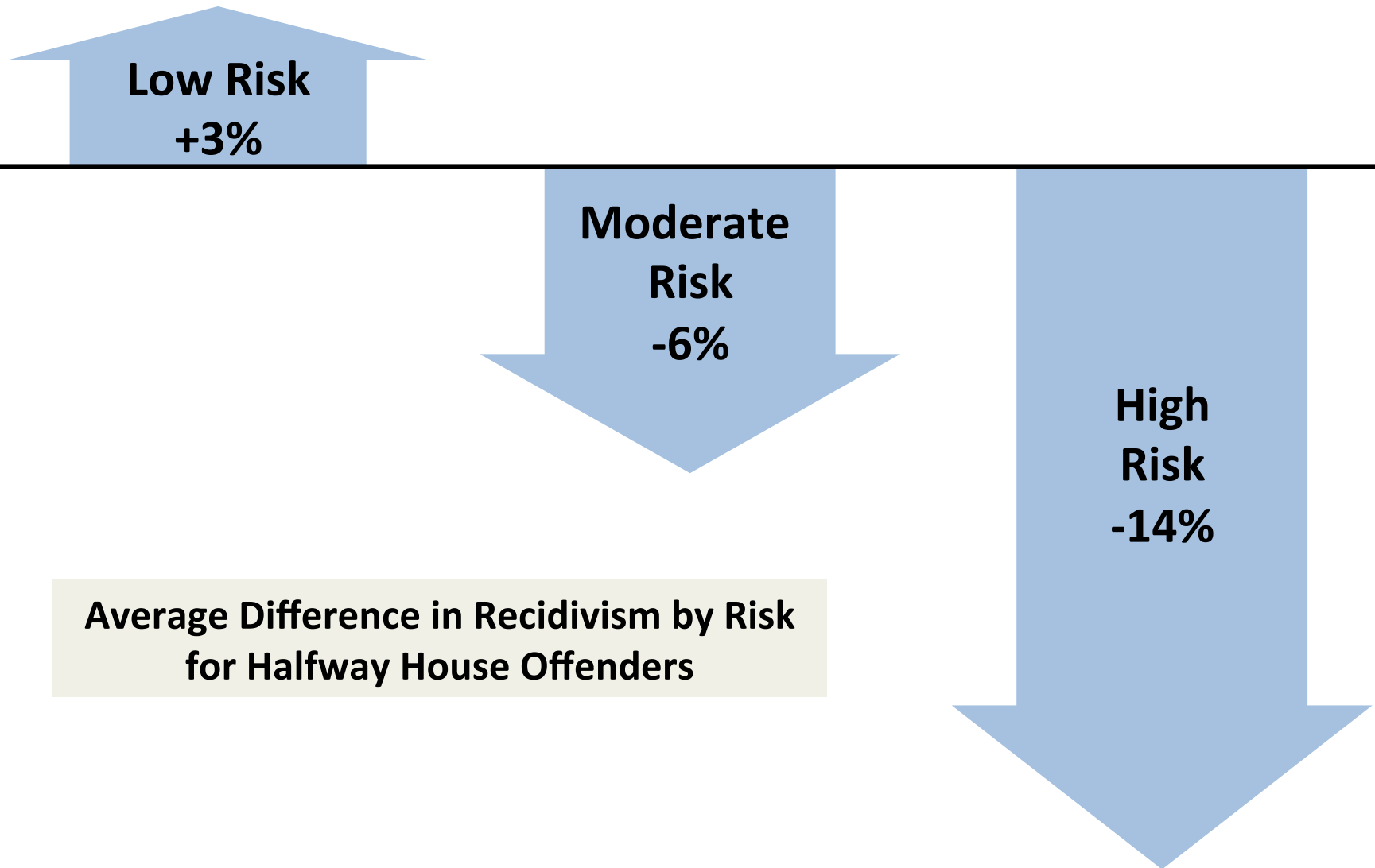
Subsequent Assessments Inform:

- Risk management
- Programming & treatment needs
 - Case planning
 - Reentry
- Community supervision
- Programming effectiveness

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

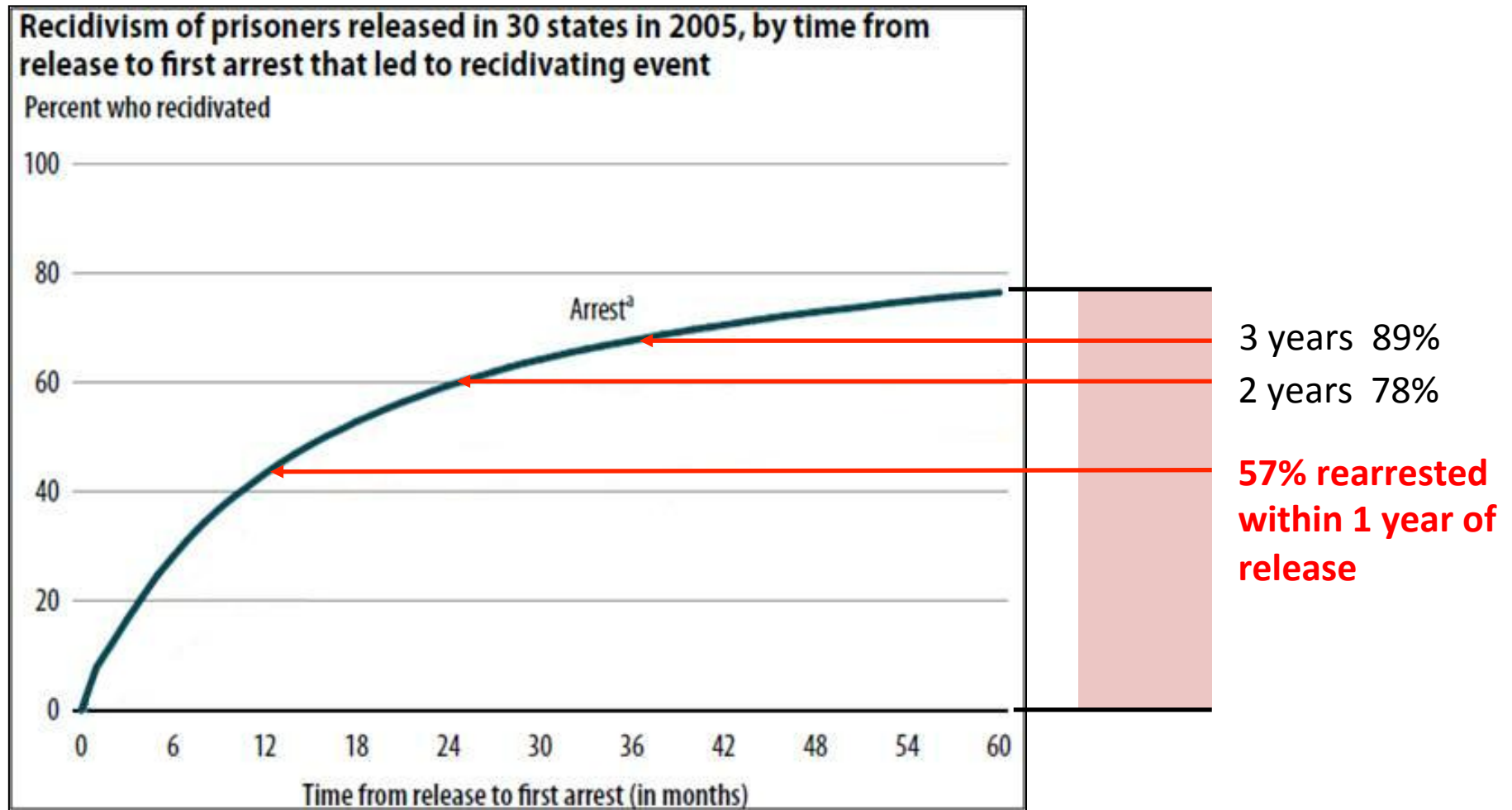


2. Target. Focus on high-risk offenders.



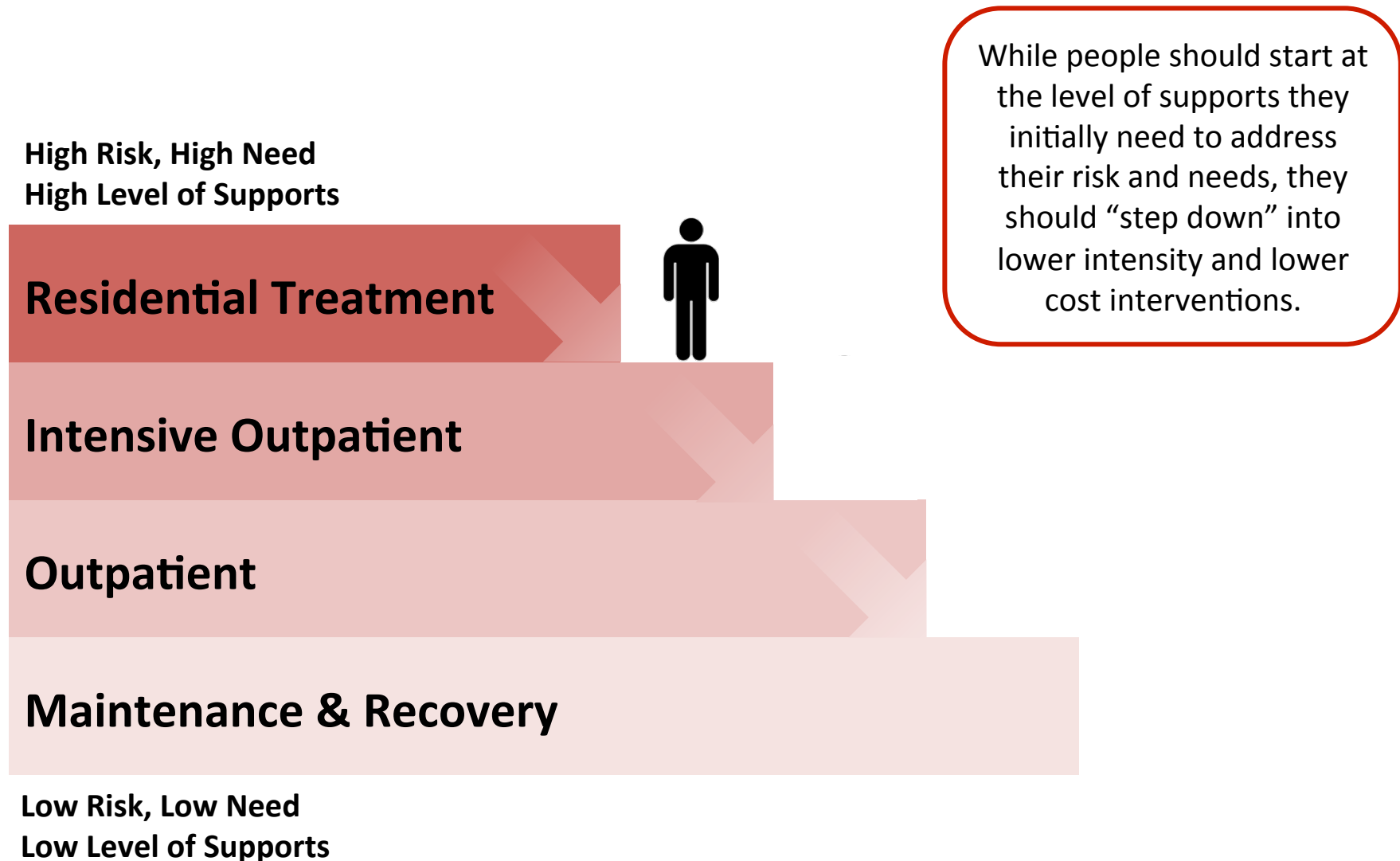
Source: *Presentation by Latessa, "What Works and What Doesn't in Reducing Recidivism: Applying the Principles of Effective Intervention to Offender Reentry"

3. Frontload. Supervision should be focused on the period when people are most likely to reoffend.

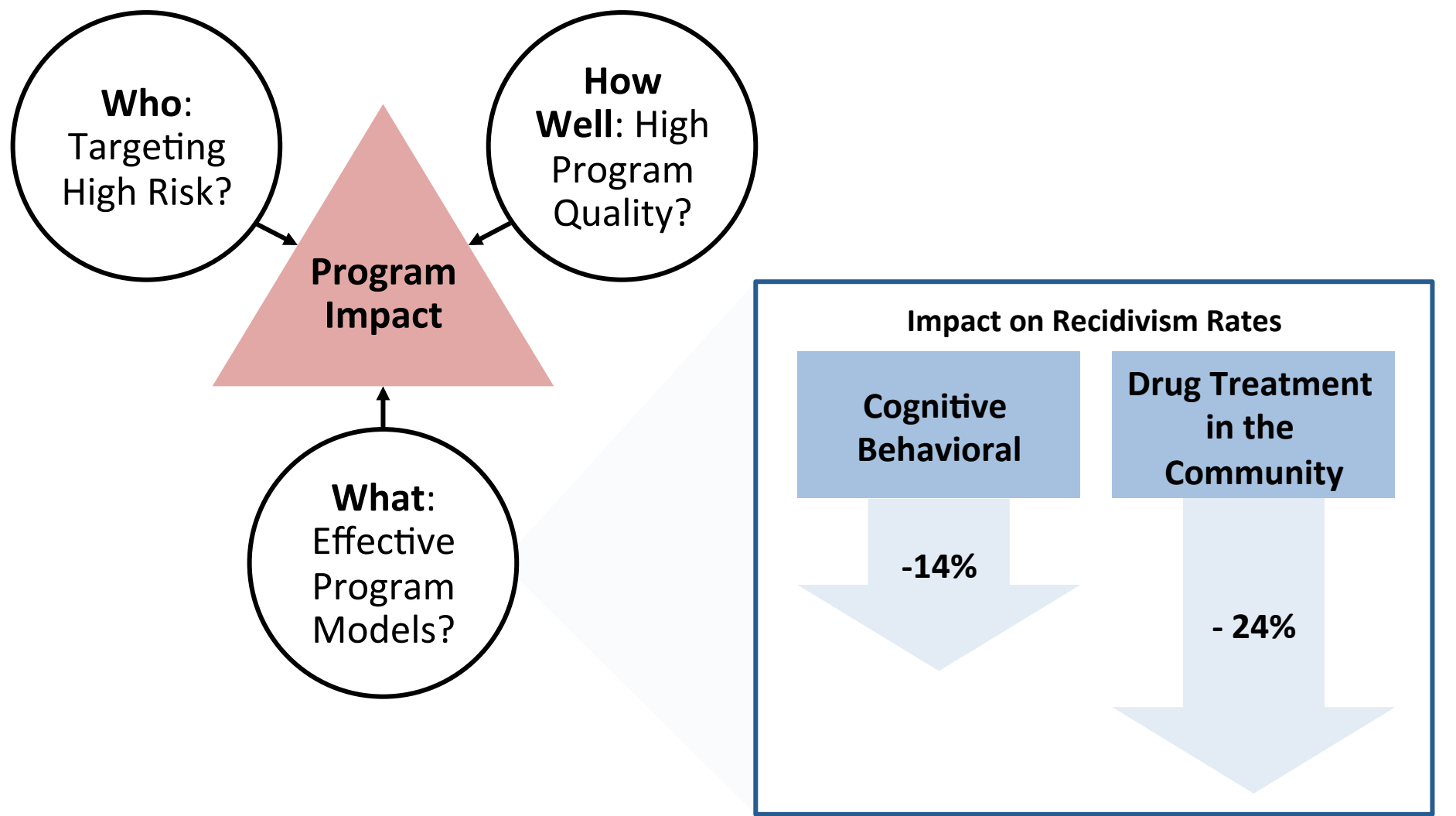


Source: BJS, Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010.

3. Frontload. A continuum of services must be able to provide the right services at the right time.



4. Implement. Evaluating the impact and cost of effective programs helps ensure resources are expended wisely.



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.

5. Criminal Thinking. “Criminalized” thinking neutralizes an expected sense of responsibility.

Examples of Types of Criminal Thinking

Denial of Victim

“I’m the one who is getting messed with.”
“They had it coming.”

Denial of Injury

“No one really got hurt here.”
“They have insurance for that.”

Denial of Responsibility

“I didn’t do it.”
“I had no choice!”

The Condemnation of the Condemners

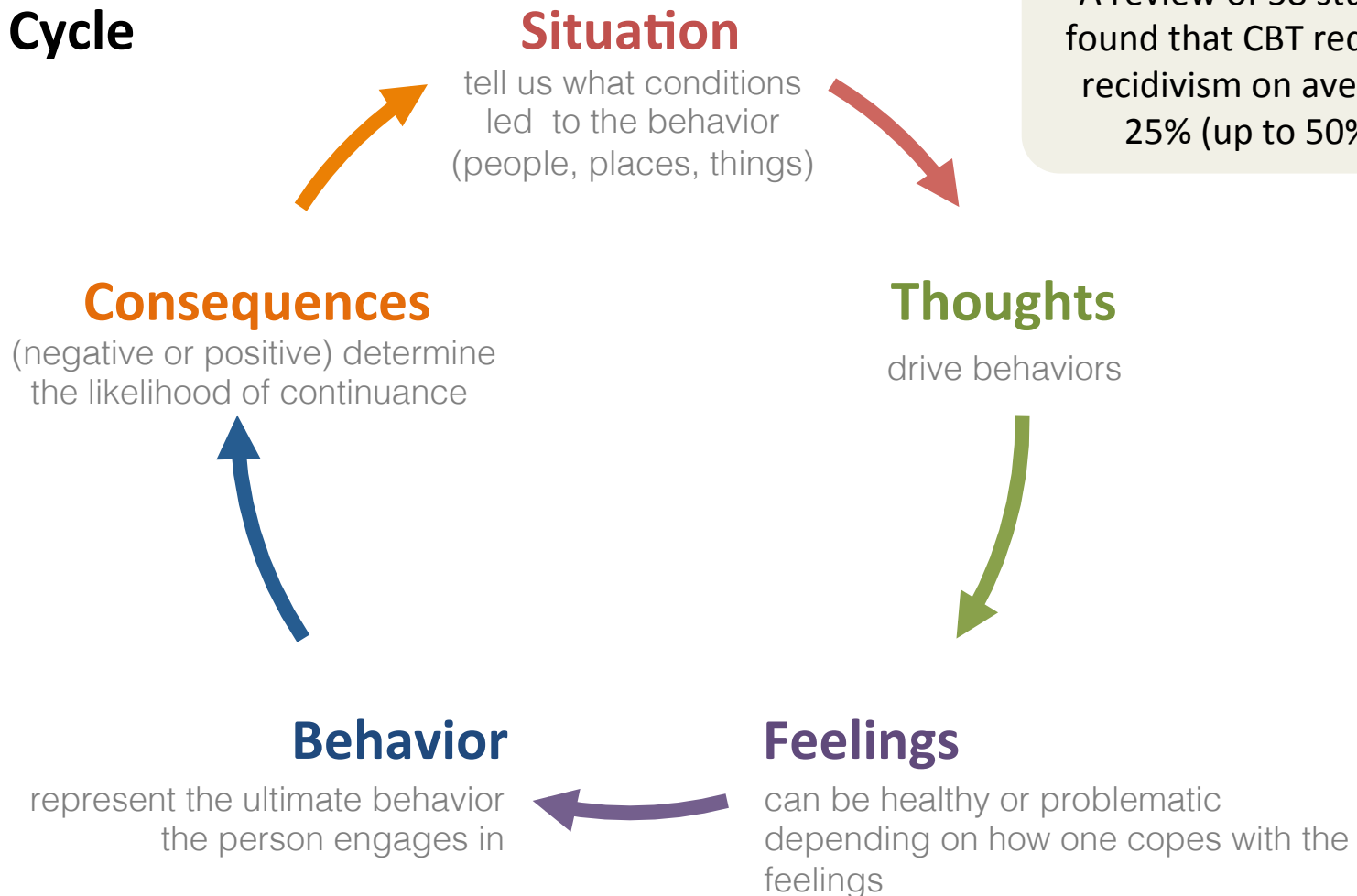
“The cops are just out to get me.”
“You do the same things. You just haven’t been caught.”

Appeal to Higher Loyalties

“My friends needed me. What was I going to do?”
“I didn’t do it for myself.”

5. Criminal Thinking. CBT takes advantage of the interconnections between thoughts, feelings, and behavior.

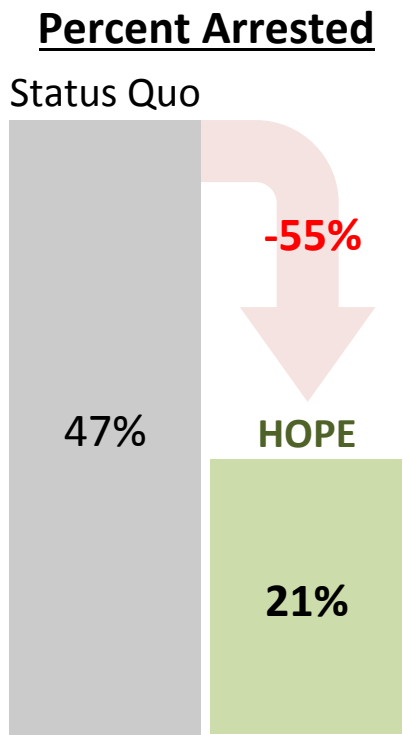
Cognitive-Behavioral Cycle



6. Accountability. Swift and certain responses to violation behavior are critically important.

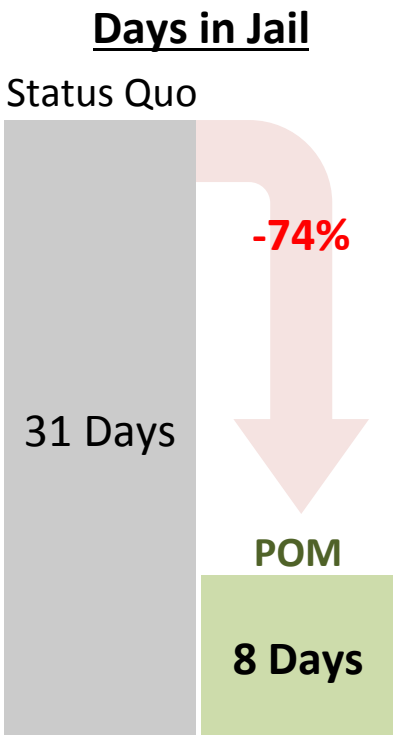
Hawaii HOPE

Intensive, random drug testing with swift, certain, and brief jail sanctions to supervision violations



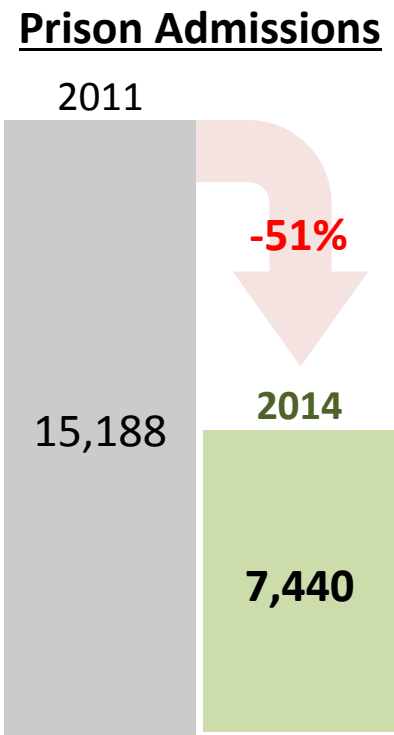
Georgia POM

Prompt sanctions to correct behavior of troublesome probationers



North Carolina

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



Source: *An Evaluation of Georgia’s Probation Options Management Act*, Applied Research Services, October 2007; *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii’s HOPE*, Hawken, Angela and Mark Kleiman, December 2009.

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

System Checklist:

Reducing Recidivism and Promoting Recovery

- 1 **Assess** risk and need
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Presentation Overview

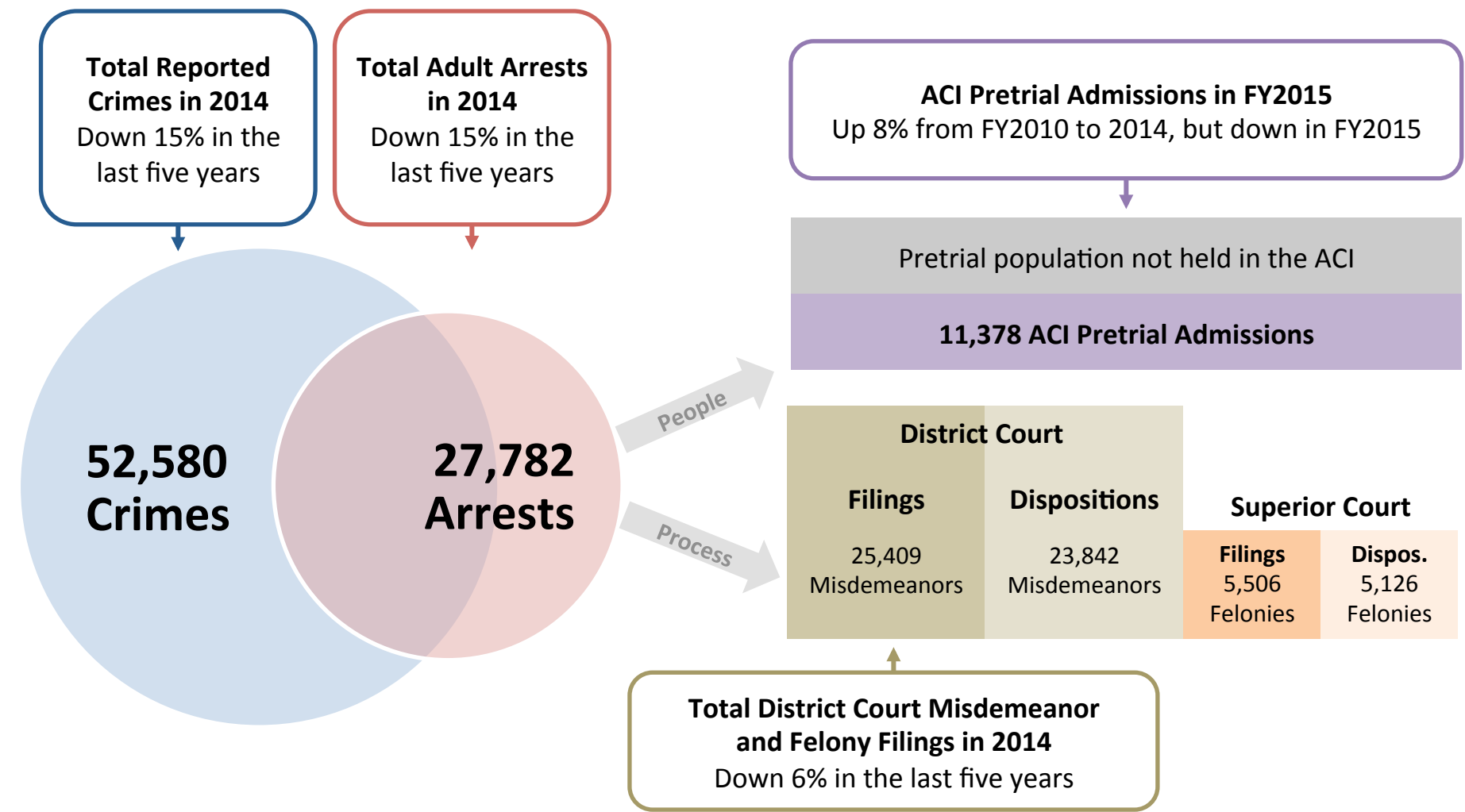
Reducing Recidivism



Pretrial

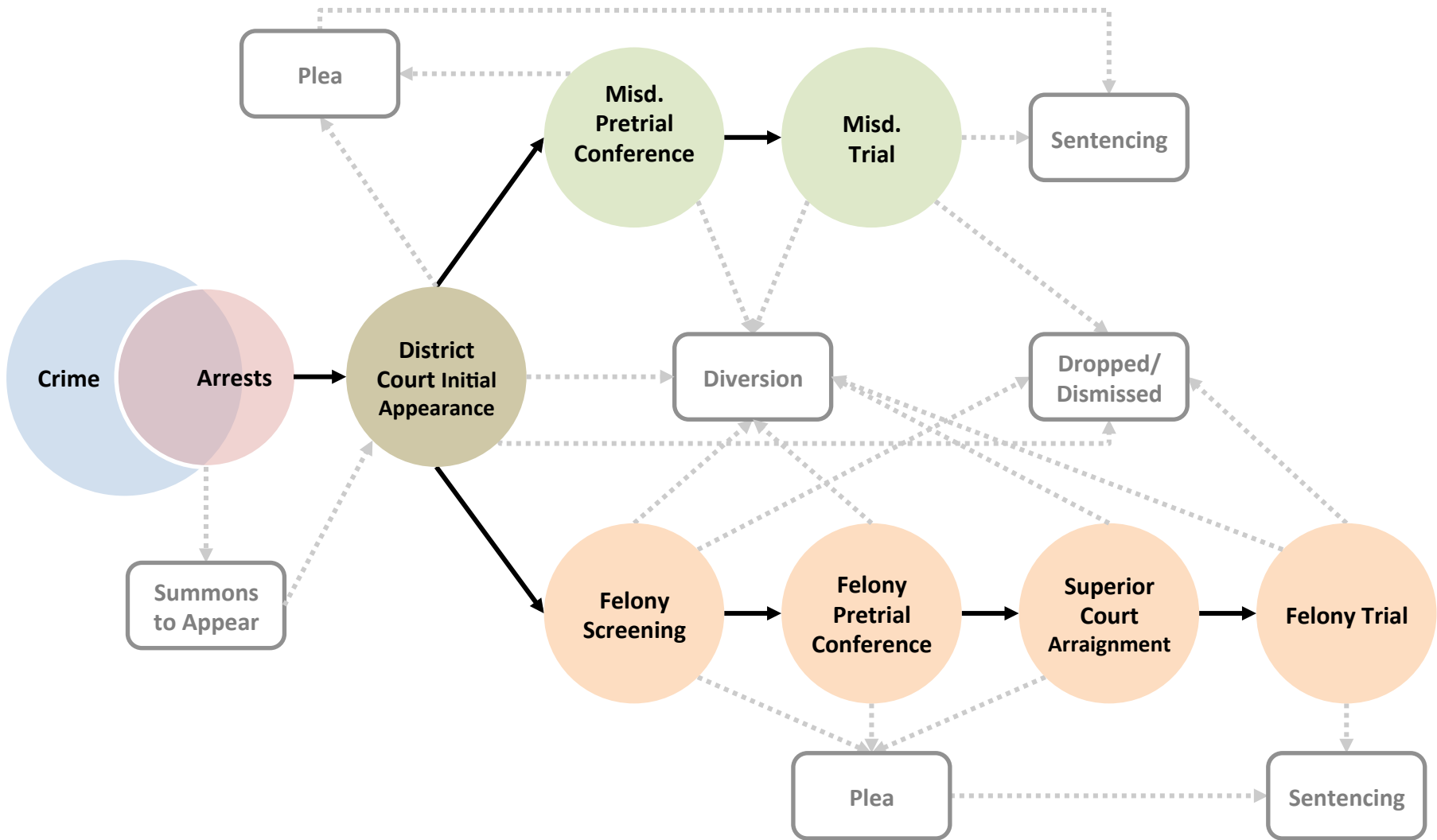
Probation

Crime, arrests, and filings are all down, decreasing pressure at the front end of the system.



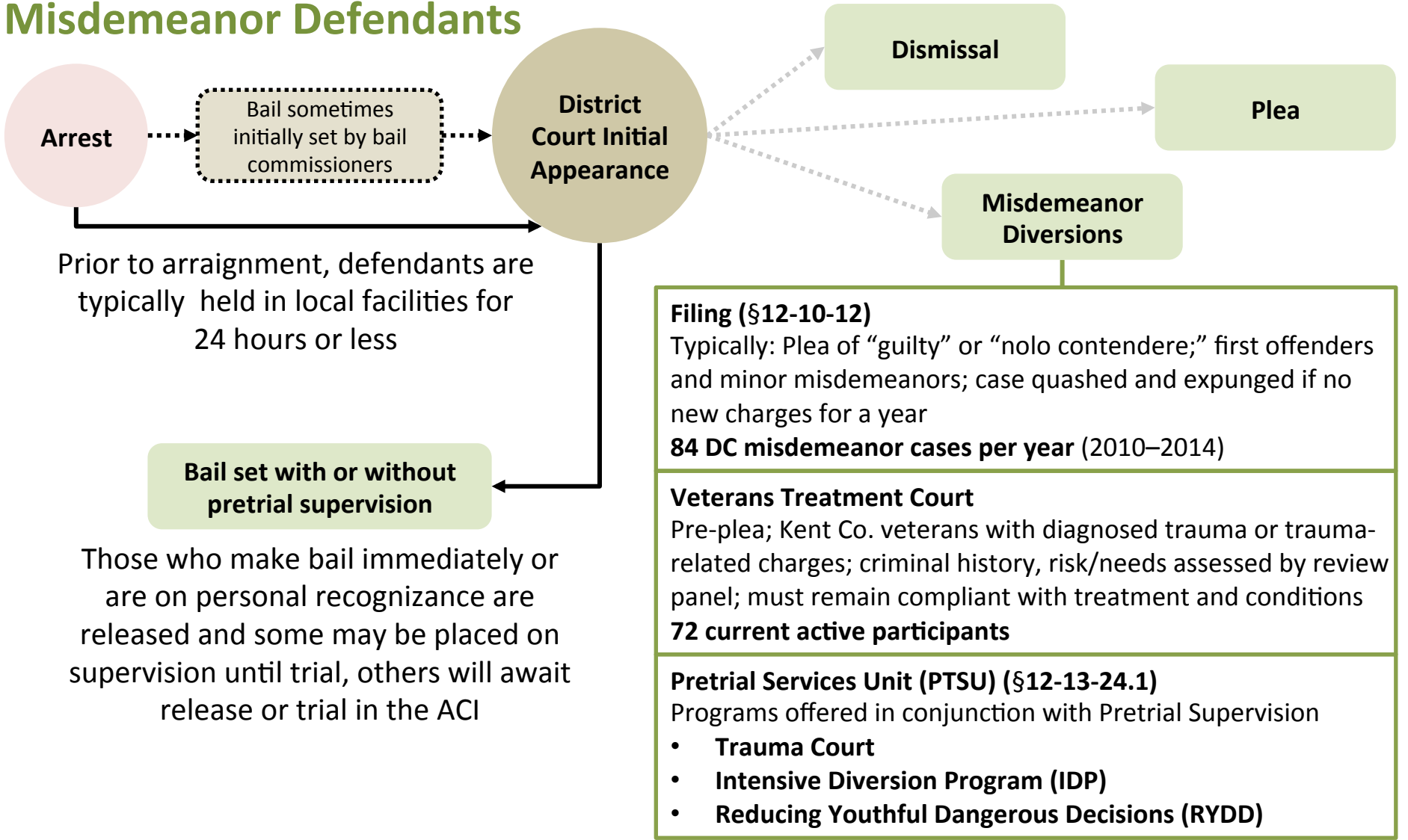
Source: Rhode Island State Police Crime in Rhode Island 2014, Rhode Island Judiciary Annual Reports, RIDOC pretrial data.

Rhode Island's complex pretrial system uses diversion at various points.



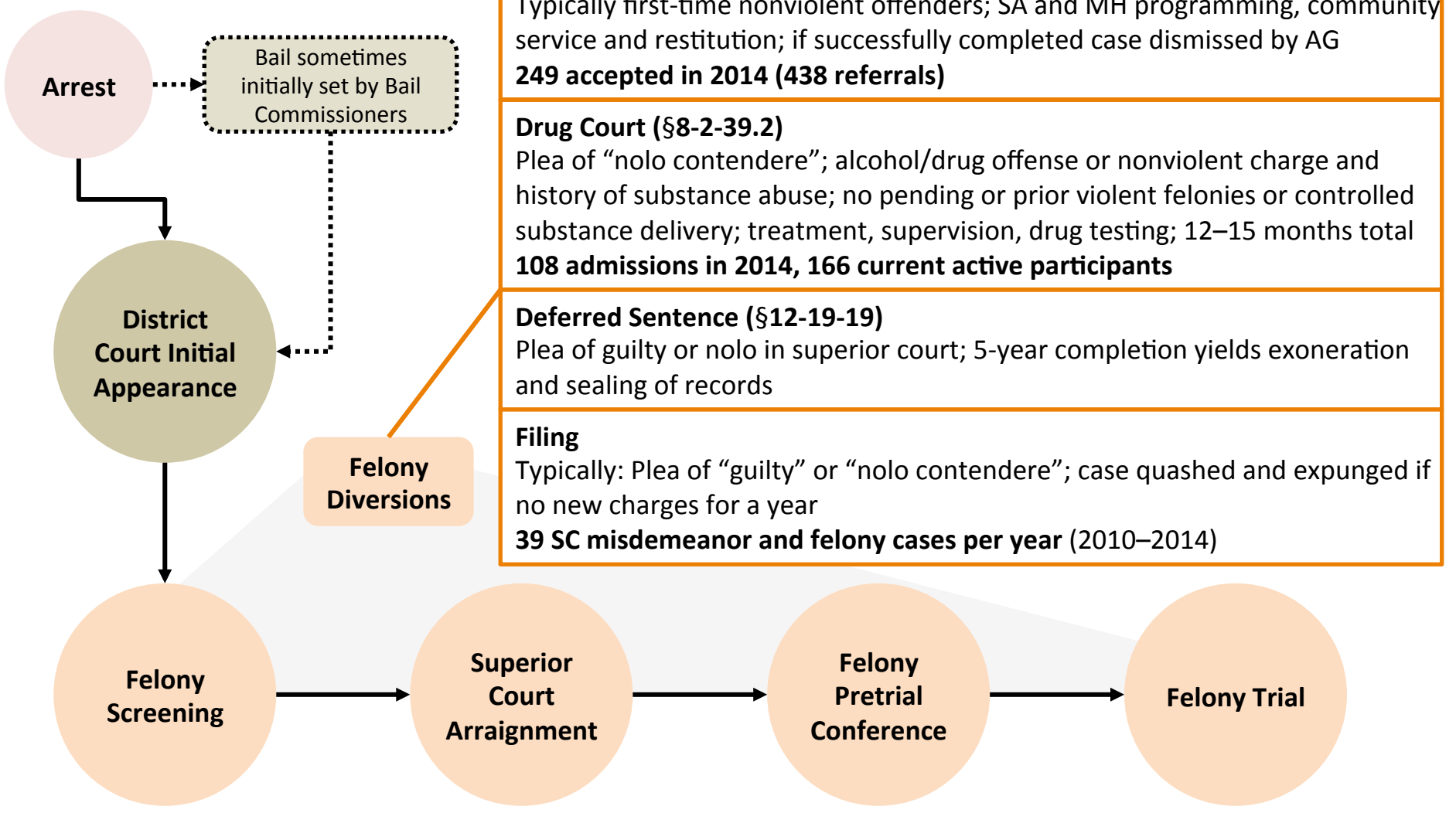
For misdemeanor defendants, there are several diversion opportunities.

Misdemeanor Defendants

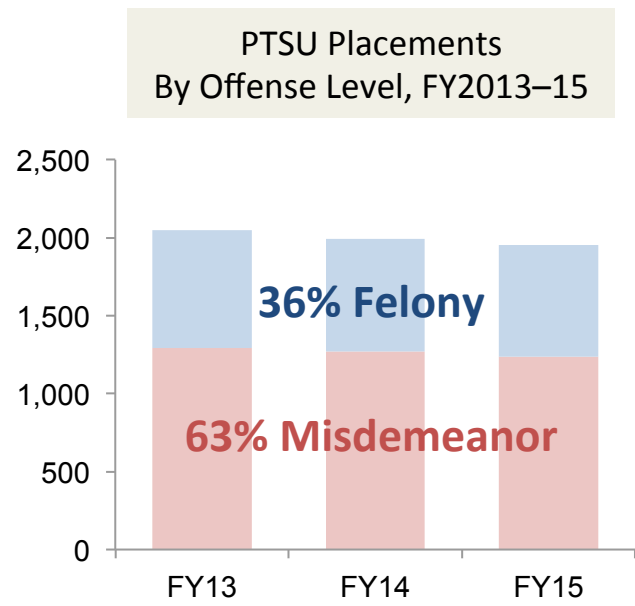


Felony defendants with limited criminal history may also participate in several diversion programs.

Felony Defendants



Of these, the PTSU has the highest volume of cases and most are referred for mental health/substance use needs.



Between 700 and 750 people are actively supervised on PTSU at any given time.

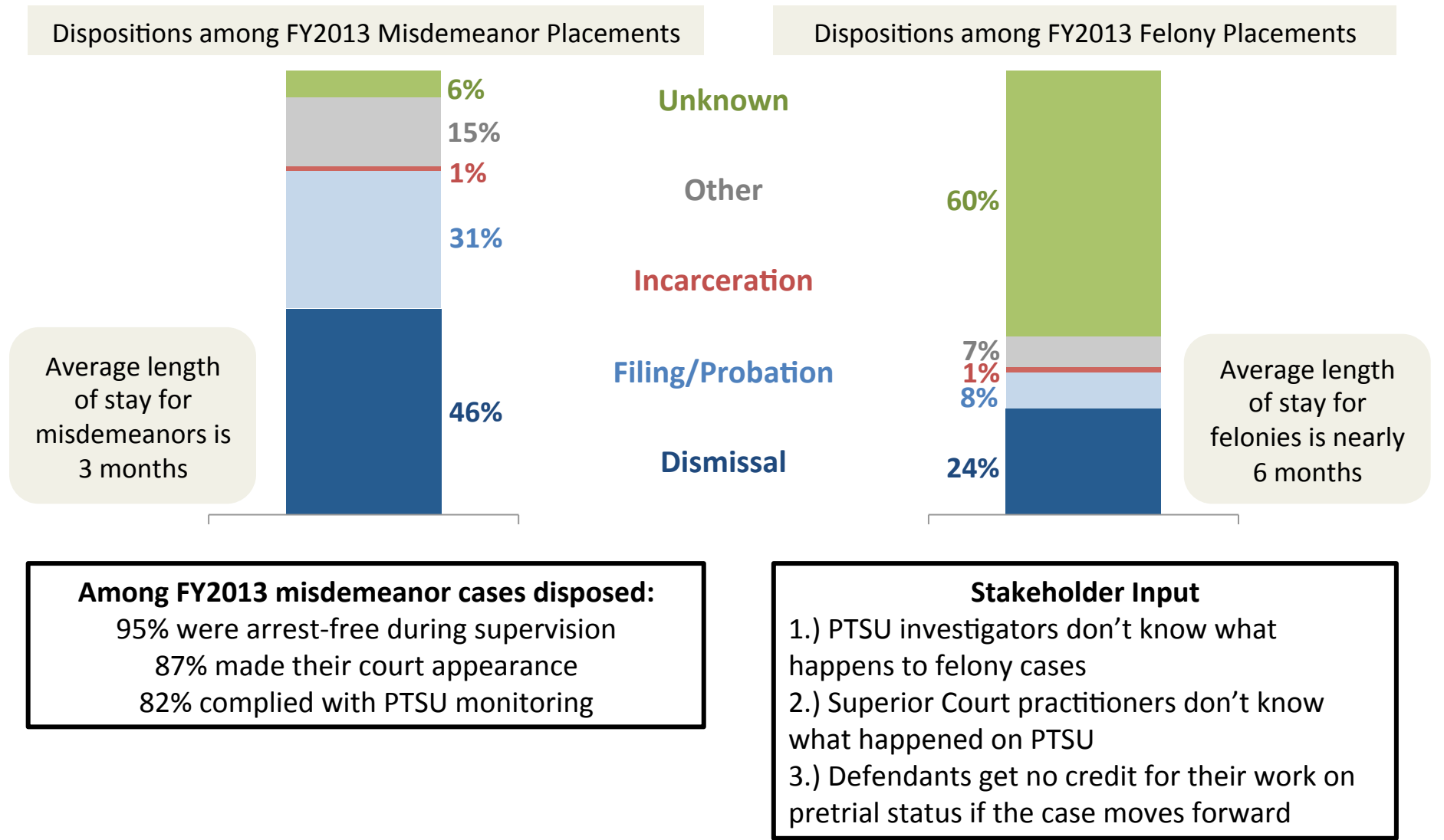
- Characteristics:**
- Sex**
72% Male
28% Female
 - Race**
71% White
9% Hispanic
6% Black
 - Age**
8% <20
35% 20-29
22% 30-39
17% 40-49
13% 50-59
4% >60

80% of placements are categorized as having a substance use or mental health needs.

- District Court judges indicate confidence in PTSU’s ability to identify individualized treatment plans and monitor defendants.
- PTSU is one of the only opportunities for risk/needs assessments pre-sentencing

Source: Rhode Island PTSU data.

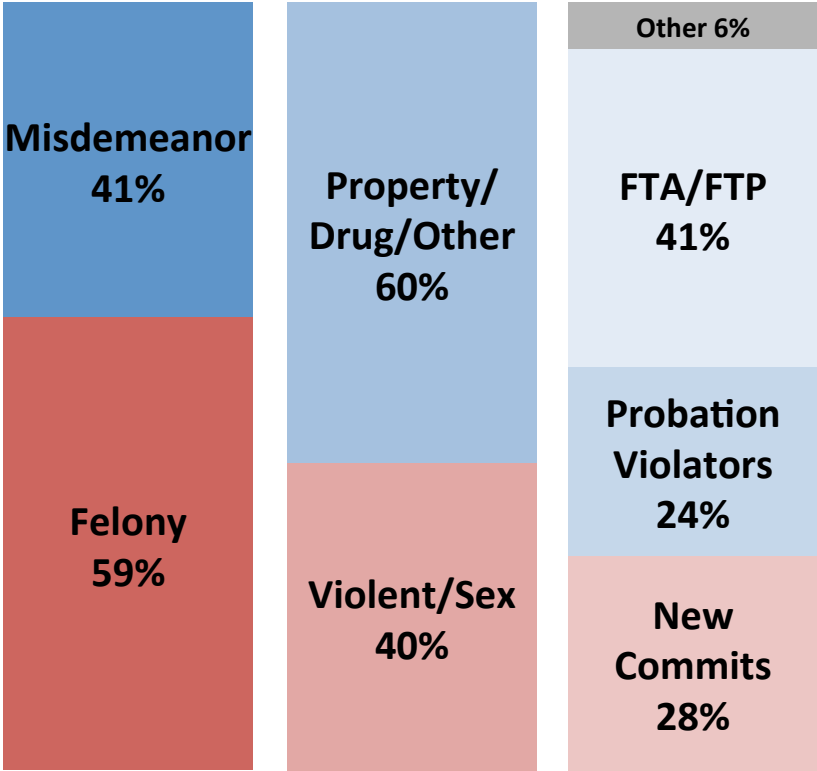
But while misdemeanor PTSU completers have a high rate of case dismissal, outcomes for felony defendants are less clear.



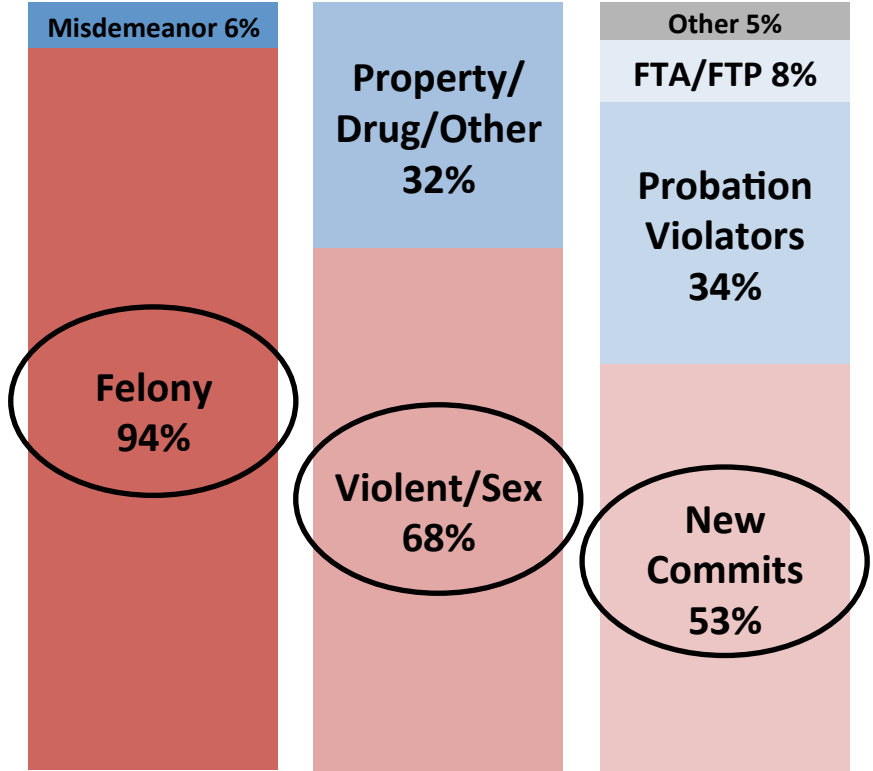
Source: Rhode Island PTSU data.

Of those who were detained in the ACI awaiting trial, the population reflects an accumulation of more serious offenses.

Pretrial Admissions by Offense Level and Type, FY2015, N=11,378



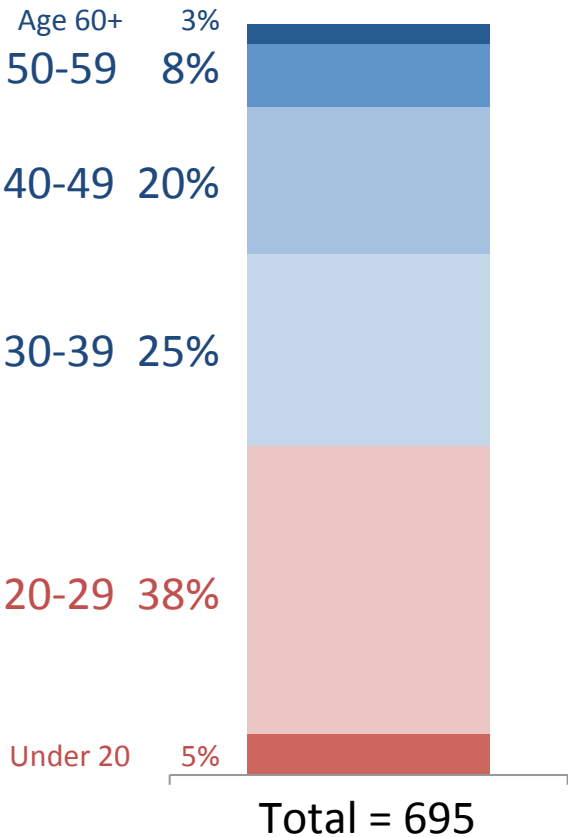
Pretrial On-Hand Population by Offense Level and Type, FY2015, N=695



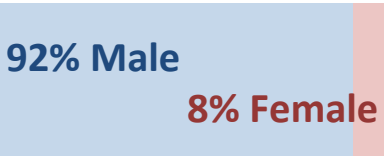
Source: RIDOC pretrial data.

Demographics of the detained pretrial population also skew toward younger, male defendants of color.

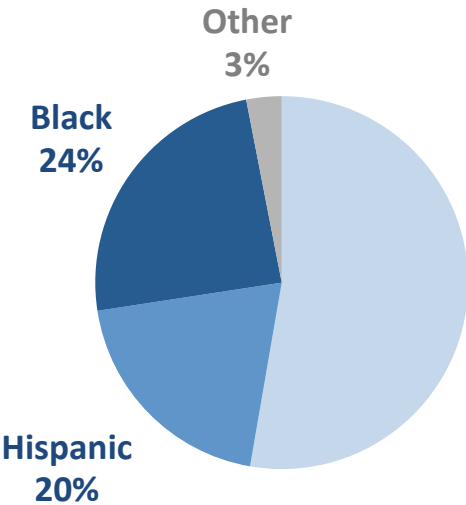
Pretrial On-Hand Population
by Age Group, FY2015



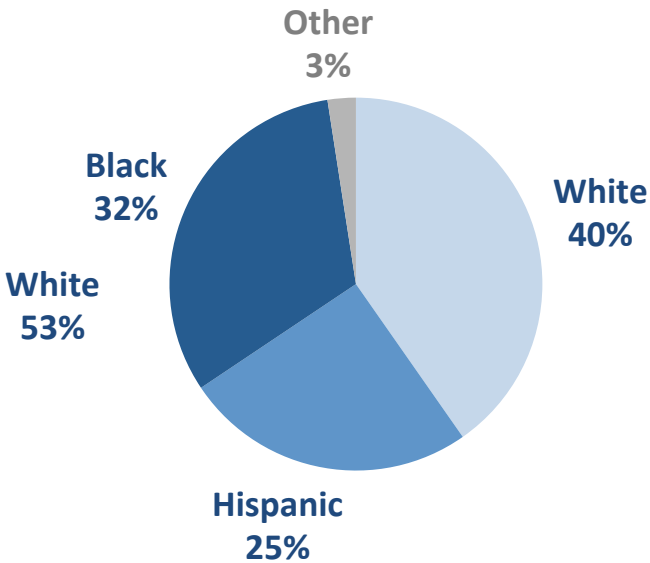
Pretrial On-Hand Population
by Sex, FY2015



Pretrial Admissions by Race/Ethnicity,
FY2015



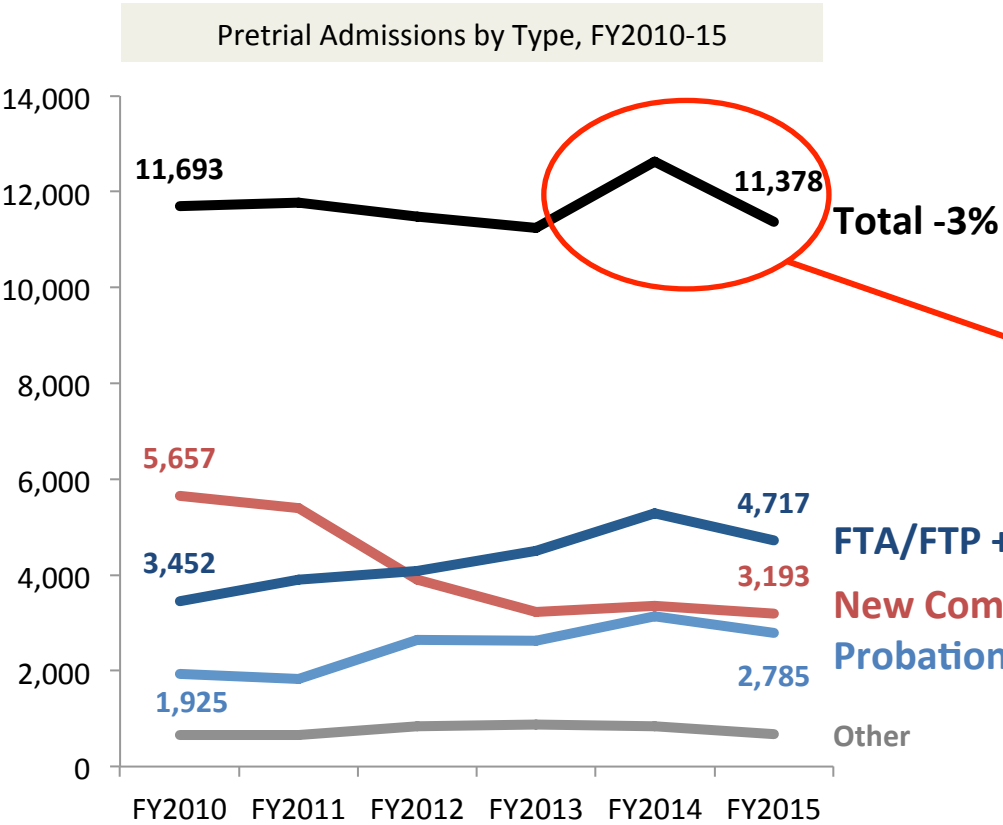
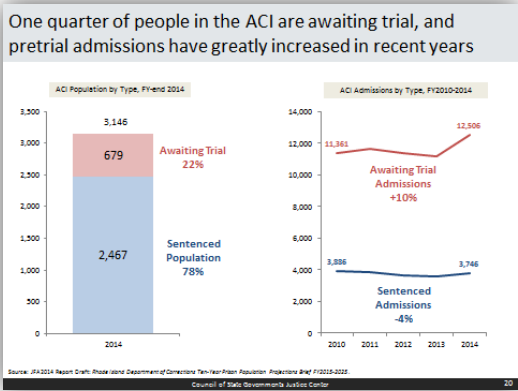
Pretrial On-Hand Population by Race/
Ethnicity, FY2015



Source: RIDOC pretrial data, Rhode Island State Police Crime in Rhode Island 2014.

More recent data shows the 2014 growth in pretrial admissions has receded.

In July we presented data indicating a significant increase in pretrial admissions.



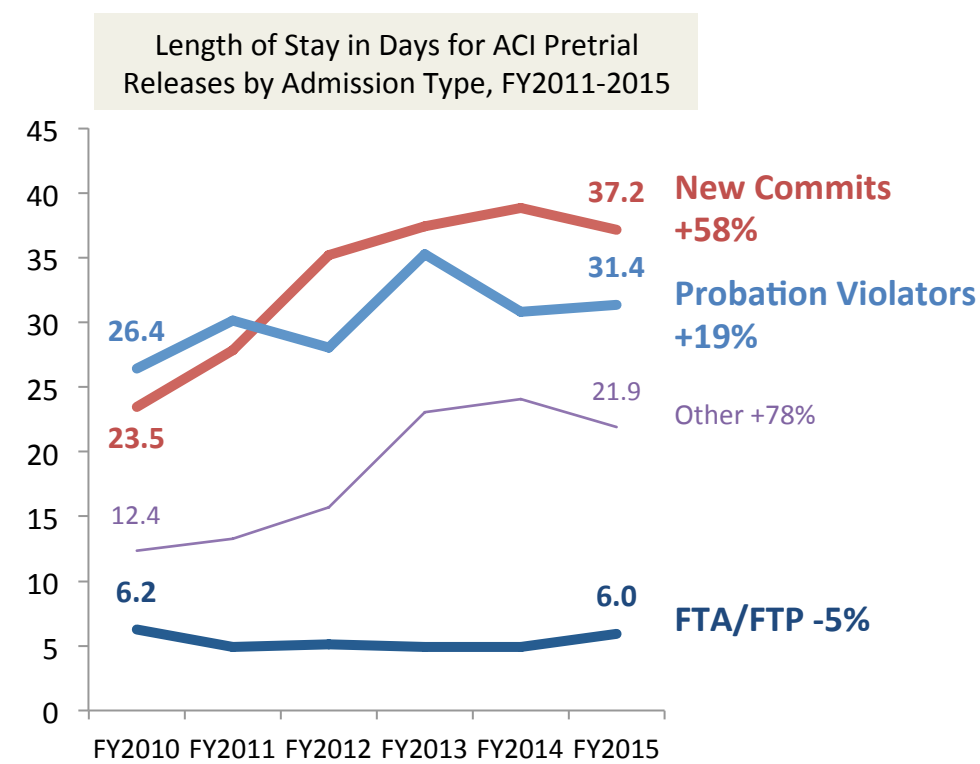
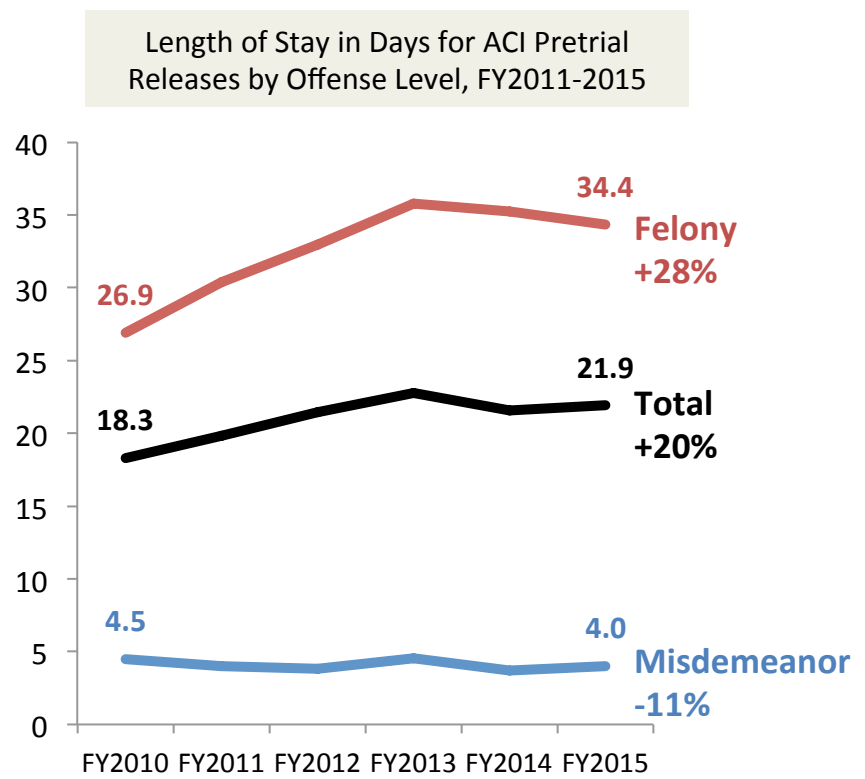
With new FY2015 data, the FY2014 admission spike has returned to expected levels.

FTA/FTP +37%
New Commitments -44%
Probation Violators +45%

There are questions about how well new commitments and probation violators are distinguished in the data.

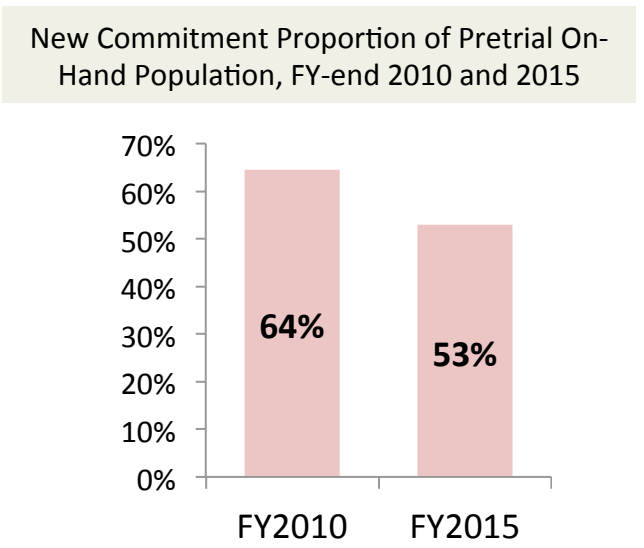
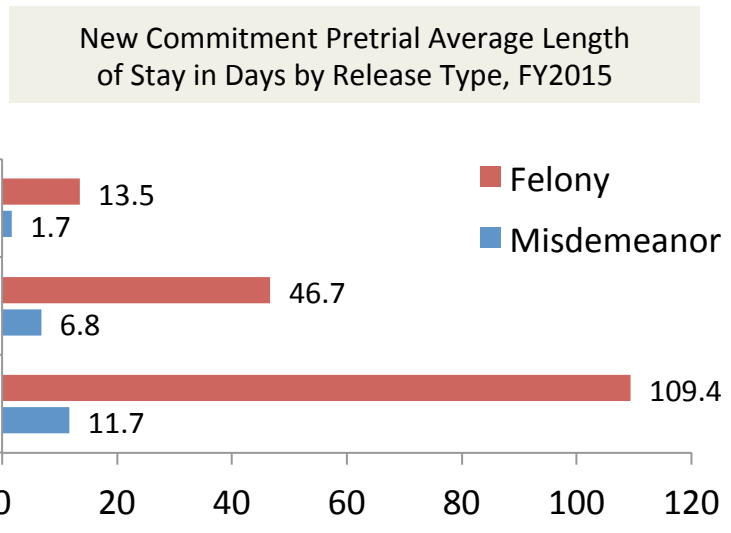
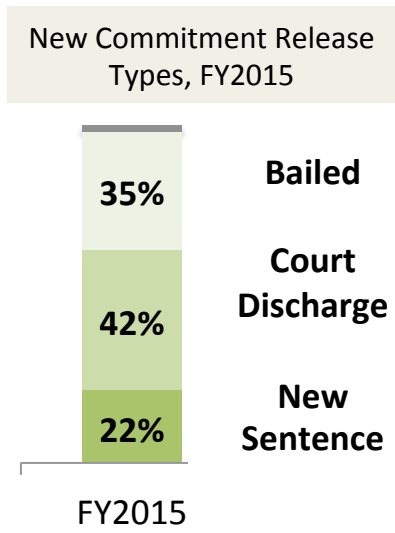
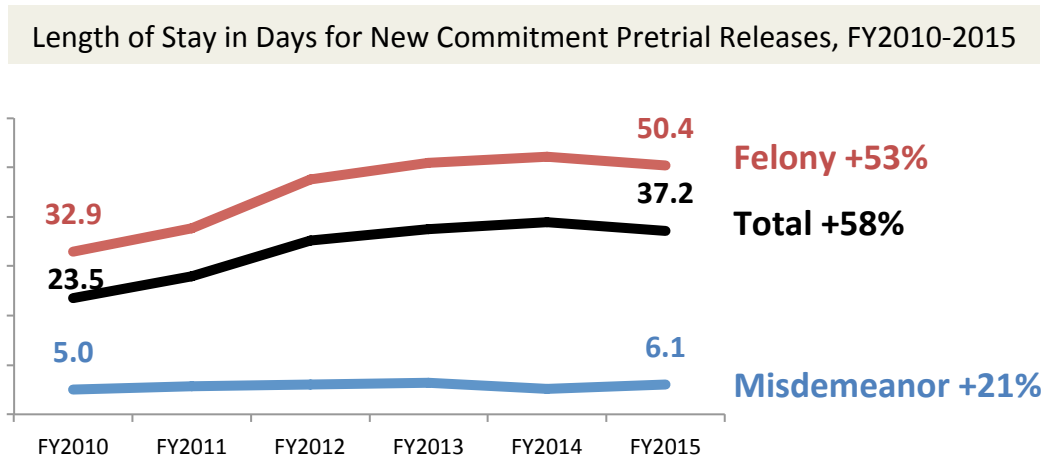
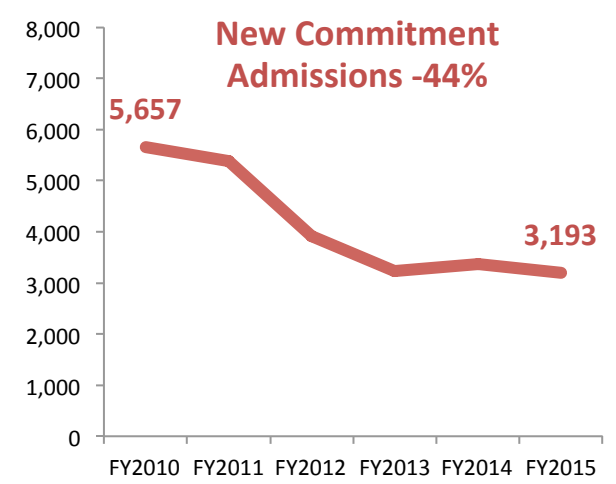
Source: RIDOC pretrial data.

However, the length of time people are detained on pretrial has grown by offense and admission types.



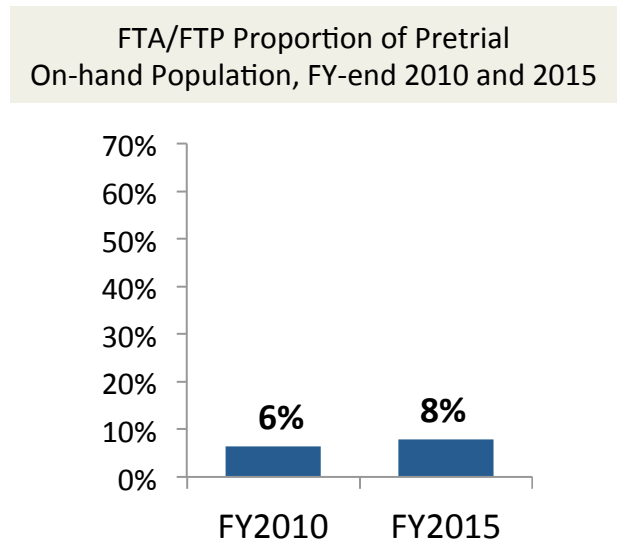
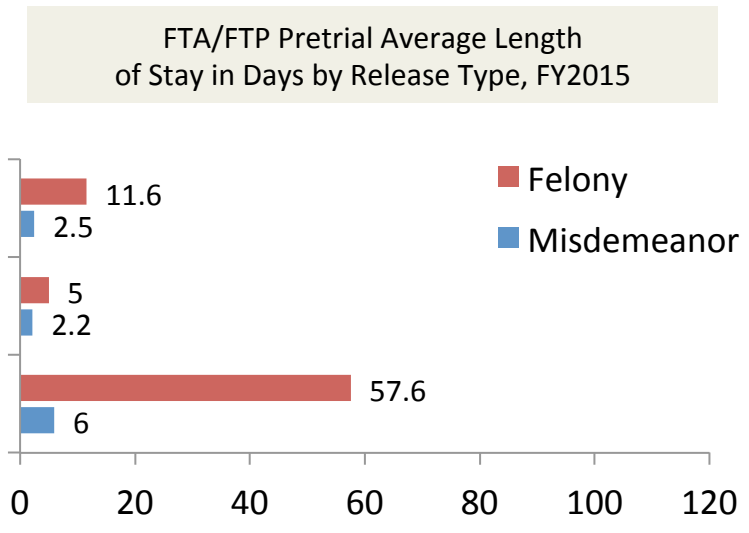
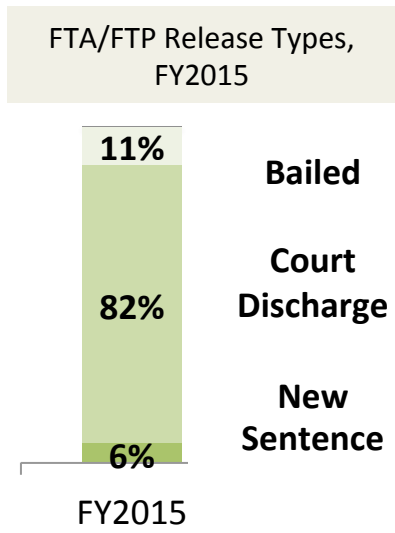
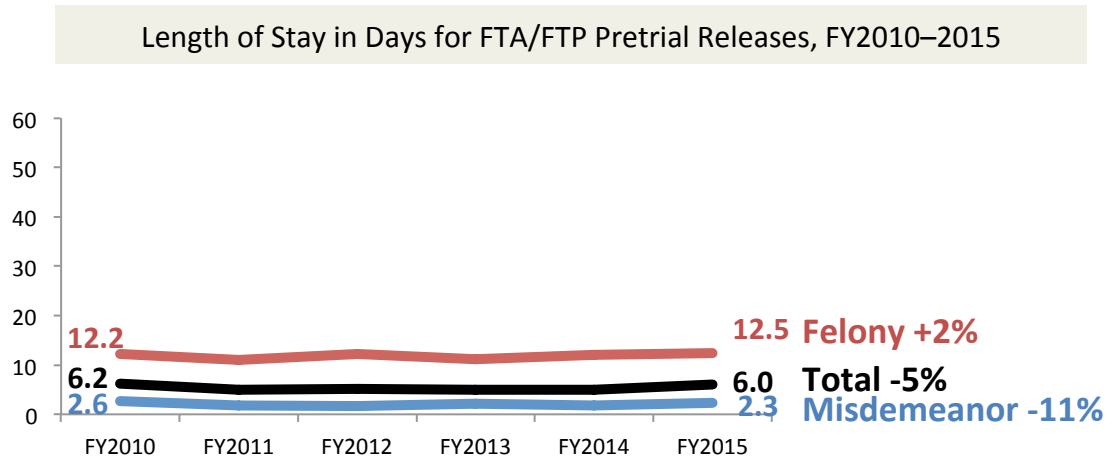
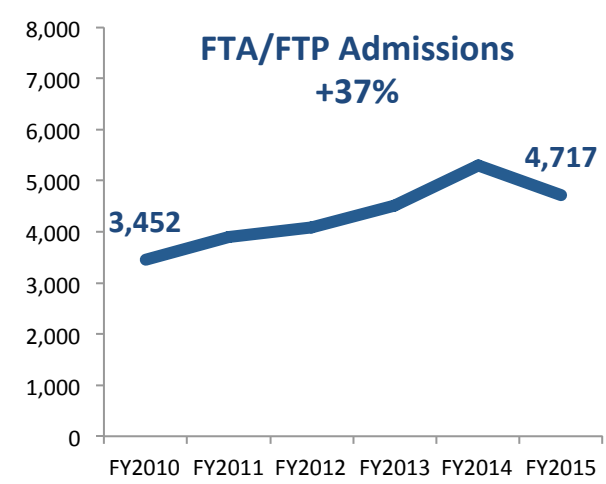
Source: RIDOC pretrial data.

New commitment admissions are down, but long stays mean they still constitute a large portion of pretrial beds.



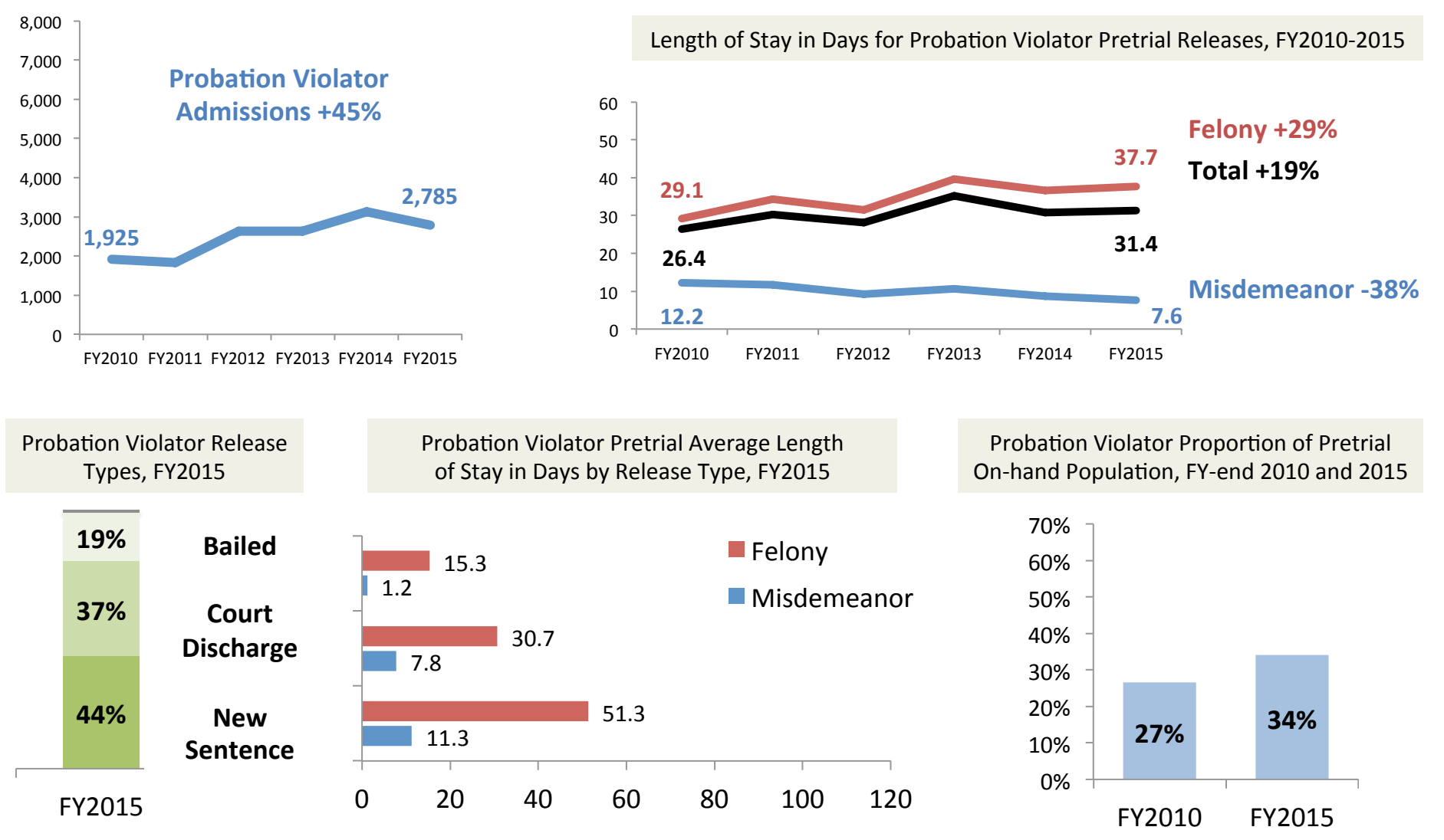
Source: RIDOC pretrial data.

Increasing volume of FTA/FTP admissions likely create costs despite short lengths of stay.



Source: RIDOC pretrial data.

Growing probation violator admissions and increasing length of stay lead to a larger share of the ACI pretrial population.



Source: RIDOC pretrial data.

Reduced pretrial admissions and length of stay are both viable options for achieving bed savings.

Bed space in the ACI for pretrial detainees is determined by two factors:

Volume of people admitted to the ACI for pretrial detention	X	Length of time those people spend detained in the ACI	=	Number of bed-days needed to detain the pretrial population	÷ 365	=	Number of pretrial beds occupied for a full year
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Example: Beds saved from volume reduction of FTA/FTP admissions

FTA/FTP pretrial admissions in FY2015: 4,717	X	Average length of stay among these releases: 6.0 days	=	Pretrial bed-days: 28,302	=	Pretrial beds for a full year: 78	Cutting FTA/FTP admissions in half would save 39 beds
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Example: Beds saved from length-of-stay reduction among probation violators

Probation violator admissions in FY2015: 2,785	X	Average length of stay among these releases: 31.4 days	=	Pretrial bed (days): 87,449	=	Pretrial beds for a full year: 240	Cutting Probation Violator LOS by 1/3 would save 80 beds
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Source: RIDOC pretrial data.

Research shows that longer lengths of stay for low-risk defendants increases their likelihood of recidivism.

The Hidden Costs of Pretrial Detention

Detaining low-risk defendants, even just for a few days, is strongly correlated with higher rates of new criminal activity both during the pretrial period and years after case disposition.

Low-risk defendants had a **40% higher chance of committing new crime before trial** when held 2–3 days compared to those held one day or less and **51% higher chance of committing a new crime** in the next two years when held 8–14 days compared to one day or less.



Released
Defendants

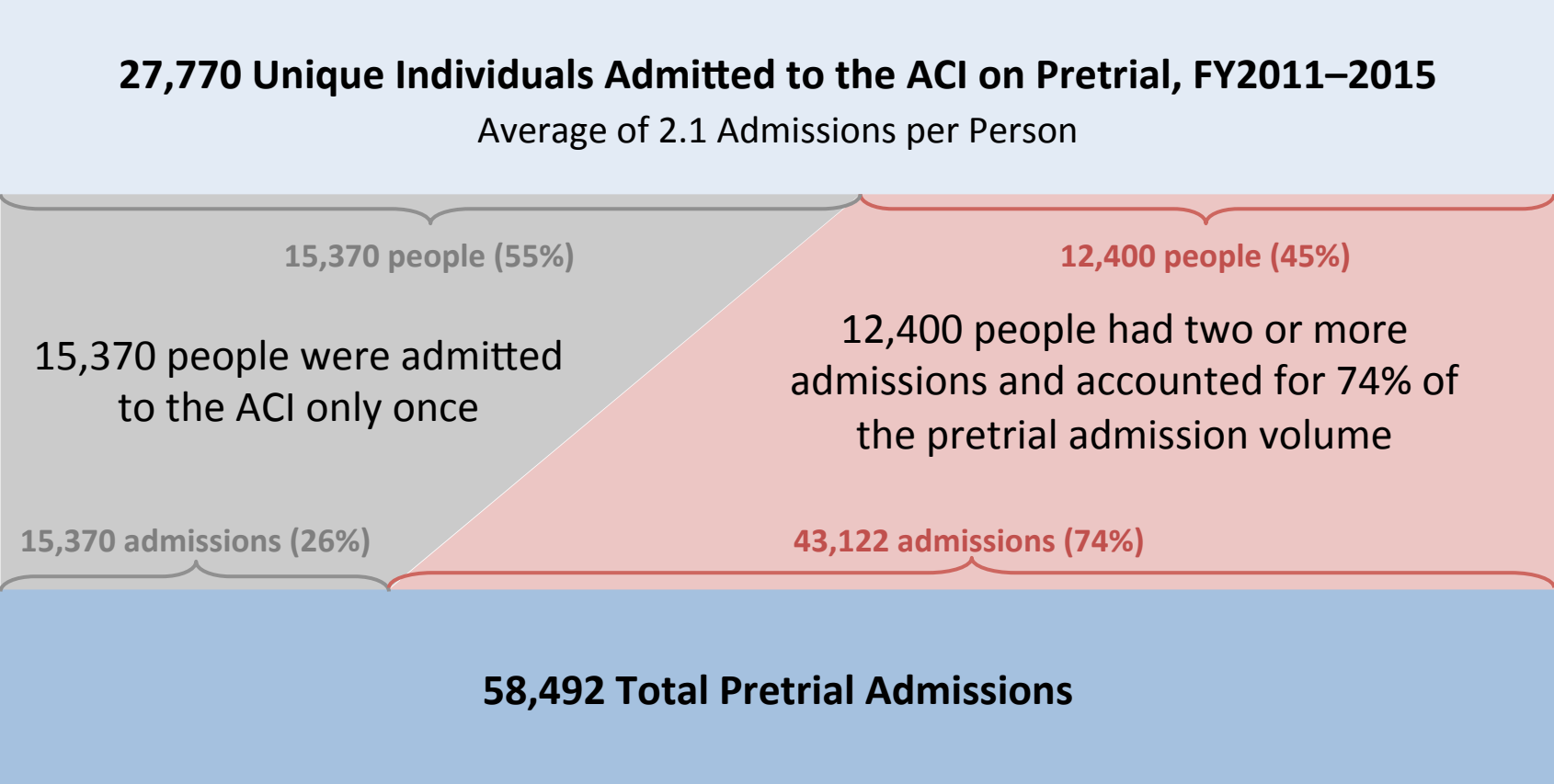


Detained
Defendants



With only limited use of risk assessment tools (PTSU), it is impossible for judges to know which defendants are low or high risk for absconding or committing new crimes on release.

Almost half of pretrial admissions were people who cycled through the ACI at least twice.



 **The most frequent flyer had 22 admissions over the five-year period**



Source: RIDOC pretrial data.

Summary of takeaways from pretrial system analysis

1. **Thousands are diverted** prior to reaching ACI, but the data is limited as to why most are diverted or their outcomes.
2. **Reported crime and arrests have declined by 15%** since 2009, and court filings are also down.
3. However, increases in **probation violators and FTA/FTP defendants continue to drive pretrial admissions.**
4. At the same time, the **length of stay for new commitments and probation violators has grown**, particularly among felony populations.
5. A reduction in pretrial admissions and/or length of stay **could significantly reduce ACI beds** used for pretrial detainees.
6. Research suggests **longer lengths of stay can yield worse outcomes** for low-risk defendants.
7. Only a small portion of pretrial defendants are assessed for their risk, and **release decisions are not currently informed by risk assessments.**

Key questions for the working group

1. What are the outcomes for the thousands of people released pretrial who are not admitted as ACI detainees? Do current diversion options maximize the potential for reaching eligible participants?
2. Why are so many felony FTA/FTP defendants admitted into the ACI for a short period of time? Is there potential to reduce their volume?
3. Why are felony new commitment admissions rising even as crime and arrest rates fall?
4. Why are felony admission lengths of stay increasing?
5. Why are felony probation violator pretrial admissions on the rise?
6. Are there opportunities to reduce the volume and length of stay among the felony pretrial population?
7. Could greater use of a risk/needs assessment help target treatment and referral resources for more of the “frequent flyer” defendants cycling through the courts?

Presentation Overview

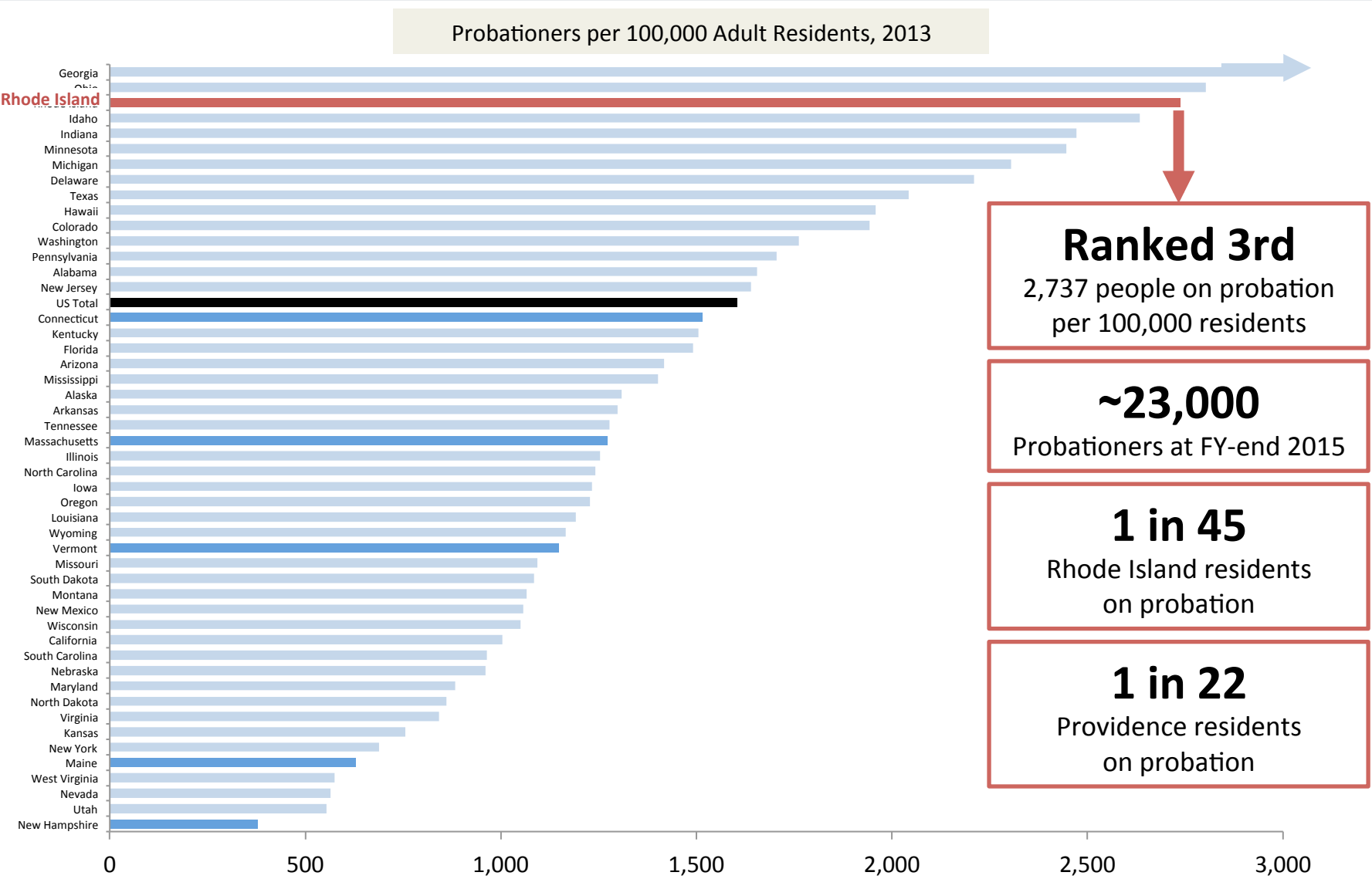
Reducing Recidivism

Pretrial

Probation

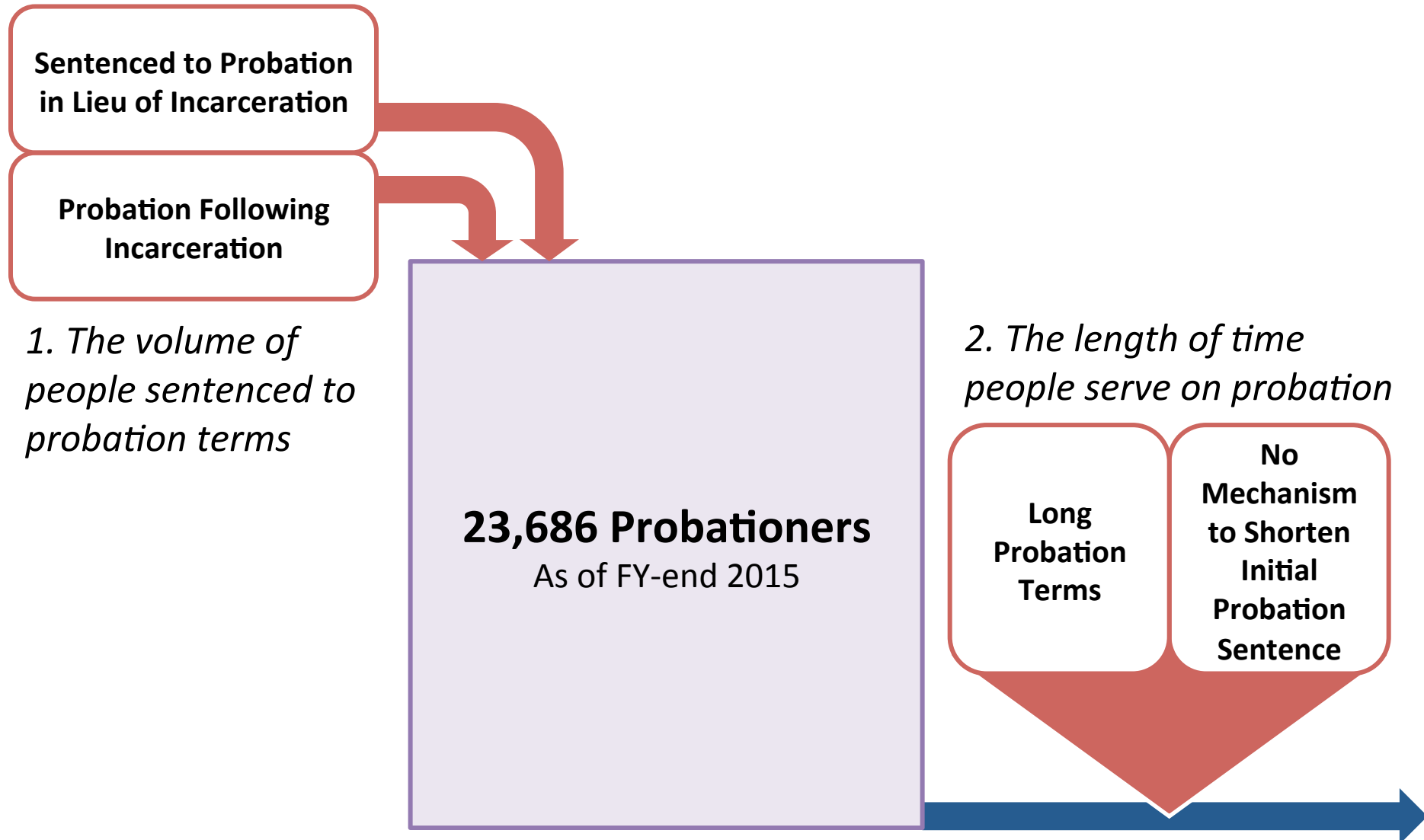


In July, we showed the ways Rhode Island's large probation system stands apart nationally and regionally

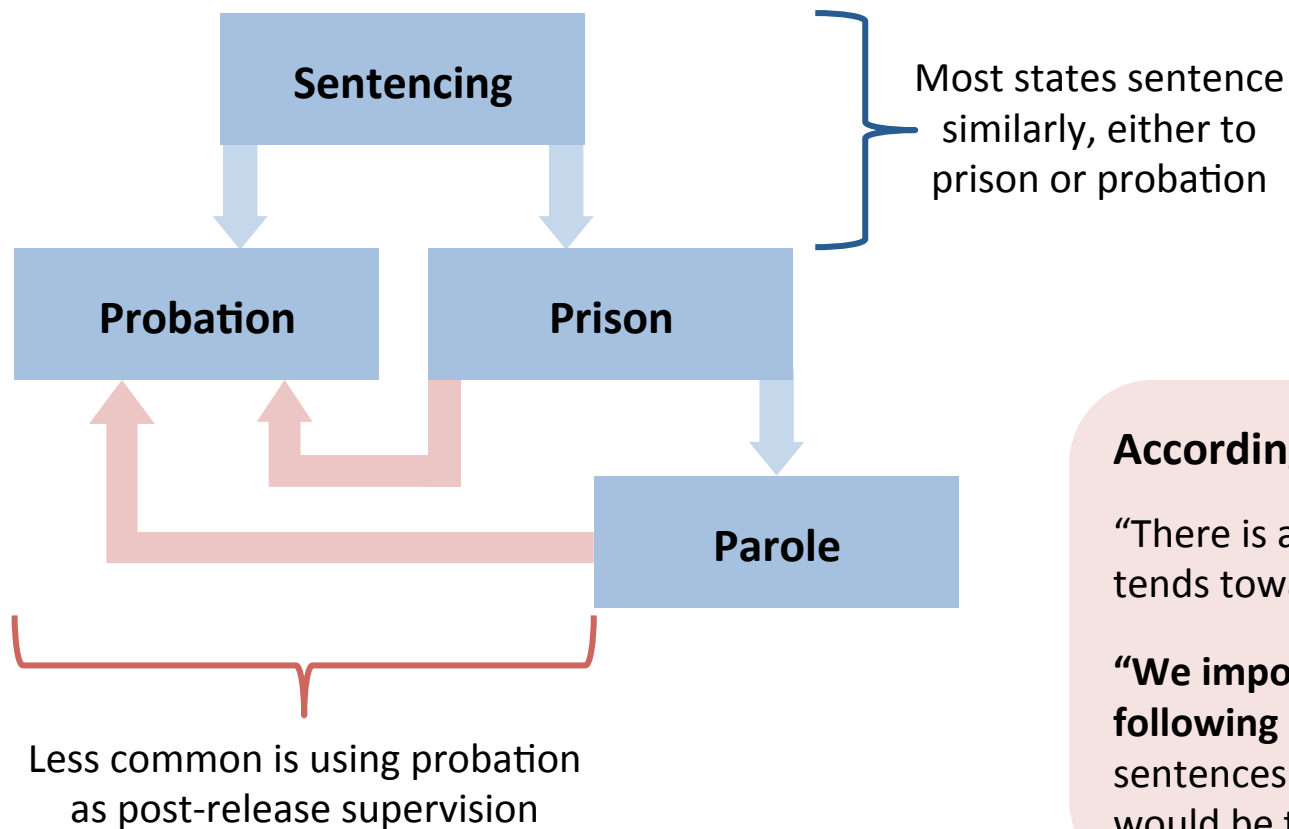


Source: BJS, Probation and Parole in the United States, 2013, RIDOC, <http://www.doc.ri.gov/administration/planning/docs/PP%20city-gender%20data%206-30-15.pdf>.

Two elements of Rhode Island's system create the large probation population.



The use of probation for post-release supervision creates a second “in-flow” into the probation system.



According to judges:

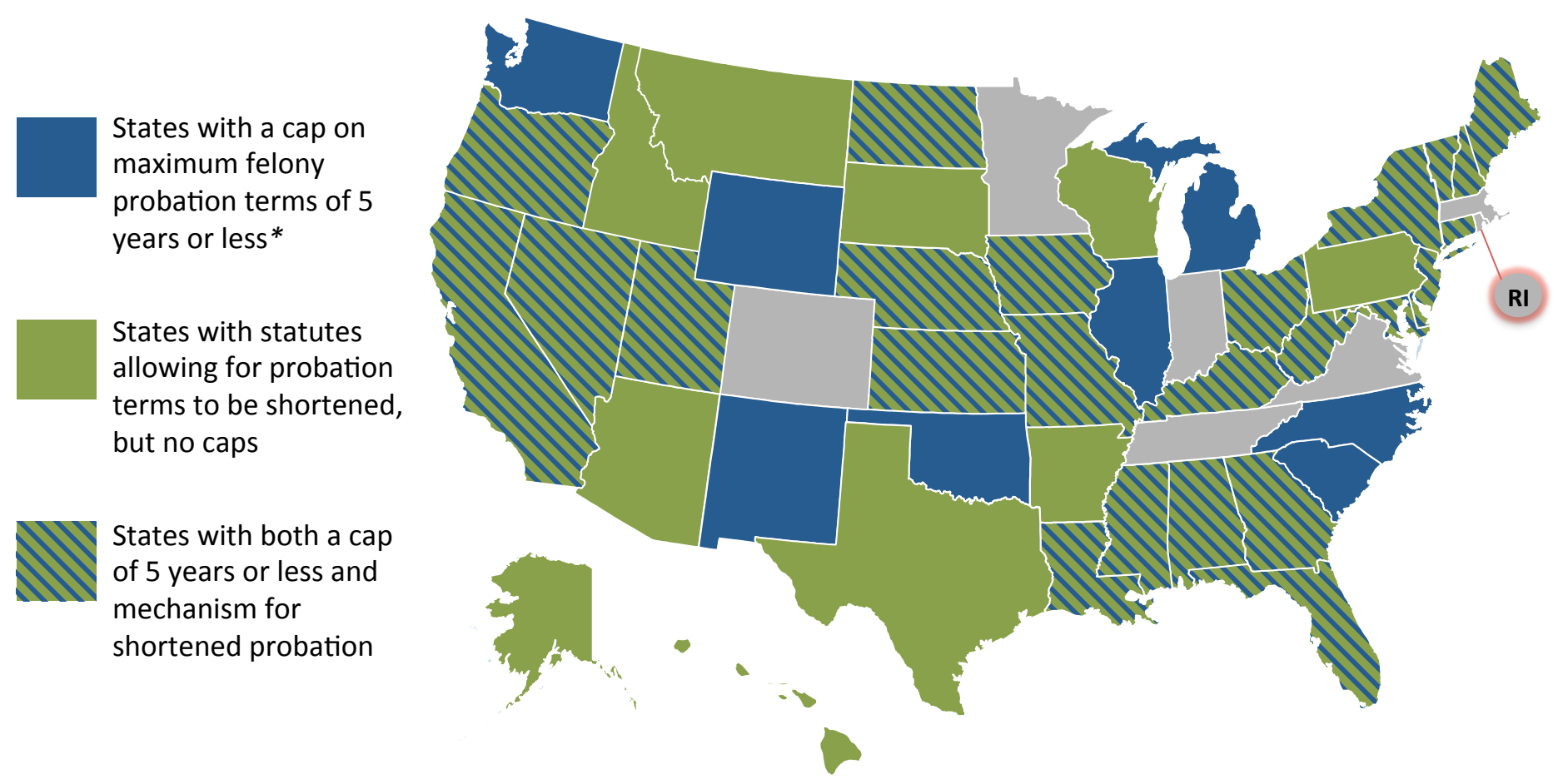
“There is a **culture of sentencing** that tends toward split sentences.”

“**We impose long terms of probation following prison**, instead of flat sentences where parole supervision would be the norm after release.”

Awaiting further data analysis to understand the contribution of straight probation and split sentences to the probation population

Most states have caps on felony probation terms and mechanisms to shorten them—Rhode Island has neither.

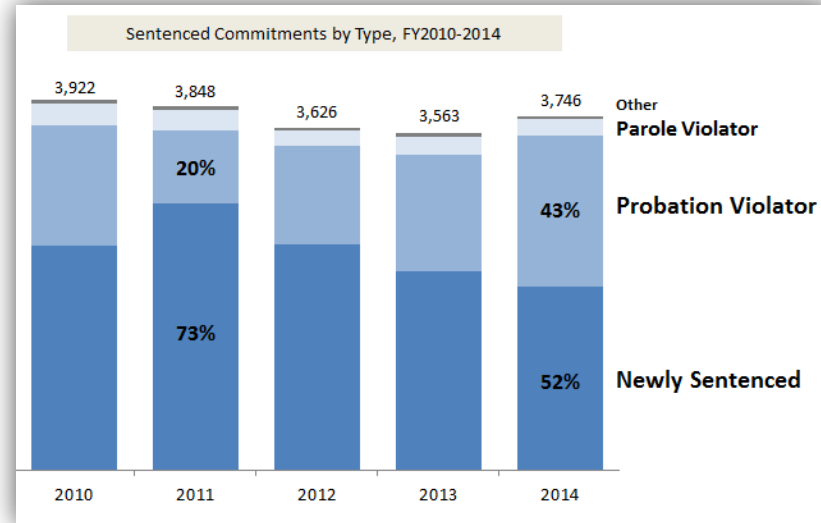
43 states have either a cap on probation terms, or a statutory mechanism for shortening probation terms or both.



* Many states exempt some crimes from the cap

Another area where Rhode Island stands apart is in the standard of proof for probation violations.

In July, we showed that a growing proportion of sentenced admissions are probation violators.



“At a probation-violation hearing, the sole issue for a hearing justice is whether or not the defendant has breached a condition of his or her probation by failing to keep the peace or remain on good behavior. The state need only show that reasonably satisfactory evidence supports a finding that the defendant has violated his or her probation.”

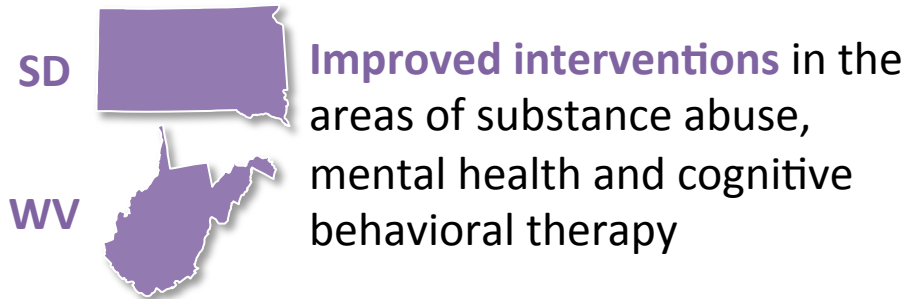
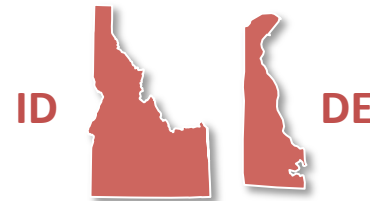
Supreme Court of Rhode Island, in numerous decisions, e.g., State v. Barrientos, 88 A. 3d 1130 (2014) (citations omitted)

Rhode Island is one of only three states that uses “reasonable assurance” as the standard of proof for probation violation.



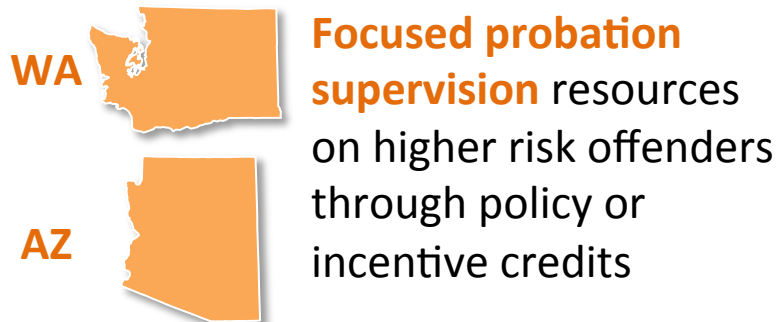
Justice reinvestment has allowed other states to identify supervision challenges and adopt policy changes.

Authorized graduated responses to supervision violations



Improved interventions in the areas of substance abuse, mental health and cognitive behavioral therapy

Required/improved risk-needs assessments for people supervised in the community



Focused probation supervision resources on higher risk offenders through policy or incentive credits

Adopted more effective **swift, certain, and graduated responses to violation behavior** to reduce probation revocations to prison



Early analysis indicates that Rhode Island probation policies contrast with emerging trends in other states.

	Use of Probation	Length	Assessment	Targeting	Revocation
Other States	In lieu of prison	Terms capped	Risk/needs assessed	Higher risk receives most intensive supervision	Burden of Proof: 'Preponderance of Evidence' Defined sanctions
Rhode Island	In lieu of prison and in addition to prison	No cap short of statutory maximum	?	?	Burden of Proof: 'Reasonable Assurance' Sanctioning limited only by suspended time

How can probation in Rhode Island achieve better long-term outcomes?

Other states face the challenge of many offenders reentering the community without supervision, regardless of the risk they pose.



In Rhode Island, however, the challenge is to identify how current probation sentencing and practices can be structured, utilized, and resourced to increase accountability, reduce recidivism, and increase public safety.

Additional Areas for Analysis and Understanding

1. Probation sentencing, volume, length of stay, recidivism, and violation rates (data permitting)
2. Outcomes among people with behavioral health needs in and outside the ACI (data permitting)
3. Probation supervision policies and practices
4. Supervision resources
5. Larger impacts of probation terms, for individuals, communities, and the state
6. Restitution orders and collection rates

Presentation Summary and Key Takeaways

1

To effectively reduce recidivism, Rhode Island's criminal justice system must assess, target, frontload supervision & treatment, implement proven programs, address criminal thinking, hold people accountable, and measure & incentivize outcomes.

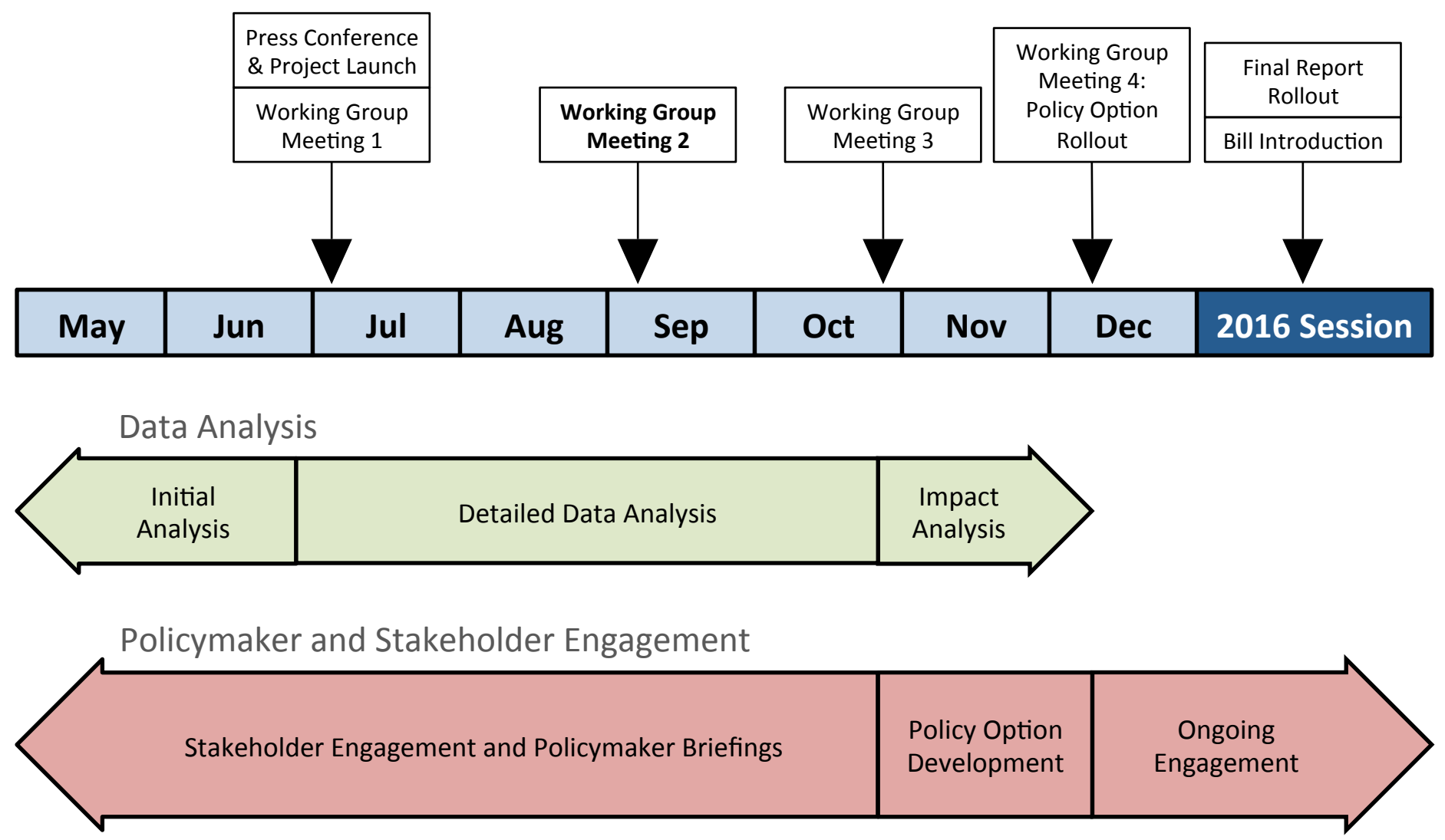
2

Few pretrial defendants are assessed for their risks/needs, referred to services, or monitored while awaiting trial, and pretrial detainees are held for longer times in the ACI.

3

Aspects of Rhode Island's probation law and practice are unique and may be contributing to the large probation population, including the allowance for long terms, the lack of a shortening mechanism, and the low standard of proof required for violations.

Justice Reinvestment Timeline



Thank You

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