



Rhode Island Justice Reinvestment Working Group *Third Meeting*

October 27, 2015

The Council of State Governments Justice Center

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Council of State Governments Justice Center

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





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**

Data analysis process has identified several obstacles that should be addressed

Quantifying the Data Analysis Conducted So Far

Data Submitted by Four
Different Agencies

Received Nearly 100
Case-Level Data Files

Sum Total of
2.3 Million Records

Statewide identifiers not used across all data systems to facilitate sharing and matching

Reliance on external vendors for dataset creation

Previously **unexamined data** requires additional validation

Identifying **data gaps** (e.g. race in sentencing data, and probation case management)

First-time data exports requiring incremental improvements

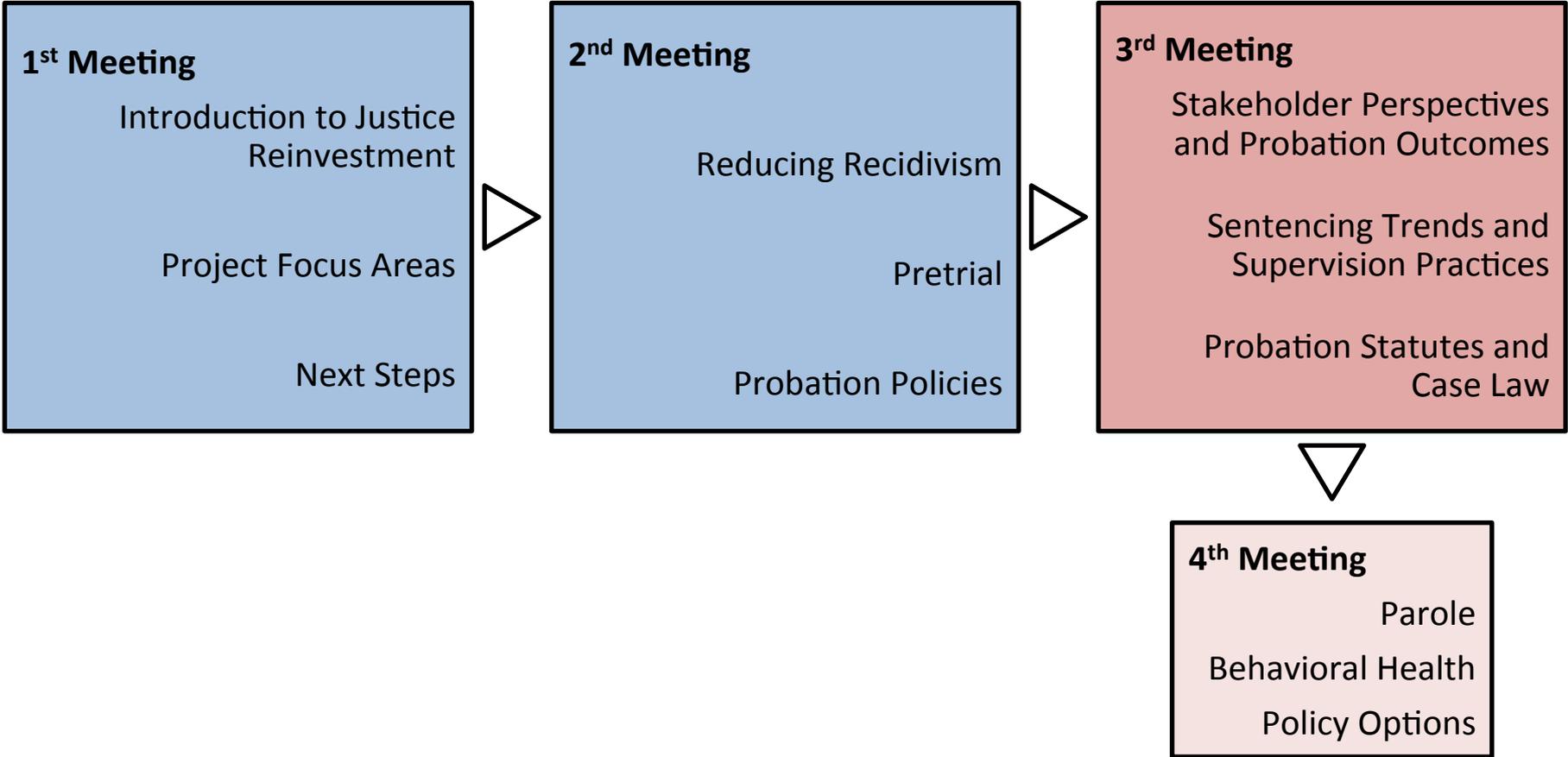
Data housed in transitioning or **developmental data systems**

Individuals working in and affected by the CJ system lent their time and voices to illuminate issues in need of examination

Stakeholder Engagement Since the September Workgroup Meeting

Victim Advocates	Over 20 participants from multiple organizations, including The Institute for the Study & Practice of Nonviolence, Mothers Against Drunk Driving, Justice Assistance, Day One, and the Coalition Against Domestic Violence
Probation & Parole Officers	About 25 participants in five separate focus groups with parole officers, probationers officers with general caseloads, probation officers with specialized caseloads, transitional officers/discharge planners, and supervisors/administrators
Behavioral Health Experts	Over 25 participants from multiple organizations/agencies, including Providence Center, Kent Center, Department of Human Services' Medicaid Office, and RI Communities for Addiction Recovery Efforts
Community Advocates, Service Providers, & CJ Involved Individuals	Over 30 participants from multiple organizations, including Direct Action for Rights & Equality, OpenDoors, RI for Community & Justice, and College UnBound
Courtroom 9 Observation	To better understand court procedures related to probation and parole violations

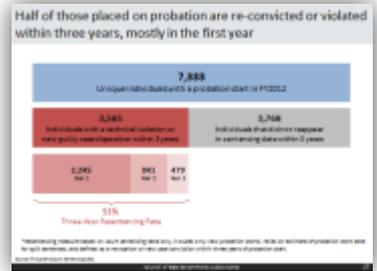
Recap of topics covered and to be covered in this project



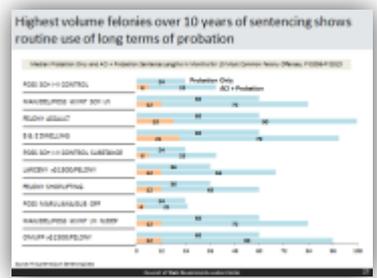
Preview of themes and sequence

- Stakeholders see an ineffective system and it does in fact produce high recidivism
- Sentencing produces lengthy supervision terms, and probation practices are insufficiently “evidence based”
- State policy governing sentencing and supervision is starkly outdated and other states provide models

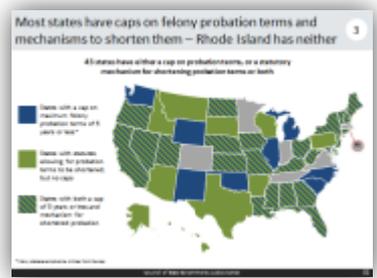
49% of probationers resentenced within three years



Caseloads of 155 probationers per officer, even with over half of the population banked



One key statute untouched since 1956



Presentation Overview



Stakeholder Perspectives and Probation Outcomes

Sentencing Trends and Probation Supervision Practices

Probation Statutes and Case Law

Victim advocates are frustrated with probation, notification, and compensation

Key Frustrations:

Risk Assessment

- Inadequate risk assessments to inform supervision decisions
- Better screening of risk, specifically for batterers and sex offenders

Supervision

- Inadequate resources to meaningfully supervise people in the community

Restitution

- Not collected during ACI incarceration, and no management system
- Long probation terms and associated costs/fines de-prioritize restitution payments

Notification

- Difficulties and breakdowns in contacting victims throughout the criminal justice process

Compensation

- Three year time restriction to apply for compensation creates barriers for victims to pay for services they need

Services

- Lack of programs at initial contact with law enforcement

People involved in the system explain what it means to be on probation and parole

Key Takeaways:

Probation Terms

- People plead to probation term and conditions without full understanding

Supervision

- Differing views about supervision--some feared moving to “banked” supervision because they become just a number, others thought officers used harsh sanctions

Violations

- Sanctions are not consistent and do not fit the type of violation
- Inadequate due process in violation hearings

Behavioral Health Issues

- Substance abuse and mental health needs contribute to criminal behavior

Expungement

- Make expungement automatic if eligible

Home Confinement

- Expand the use of home confinement

Probation officers indicate major challenges to supervising people effectively

Key Takeaways:

Risk Assessment

- Limited to a brief risk screen, not a full risk/needs assessment, that does not adequately drive intensity or nature of supervision

Training

- Trained in evidence-based practices, but unable (and sometimes resistant) to use those practices due to current caseload demands

Caseloads

- Unmanageable caseloads with most time spent on paperwork

Violation Responses

- Ability to apply intermediate sanctions in response to minor violations limited by the court

Special Conditions

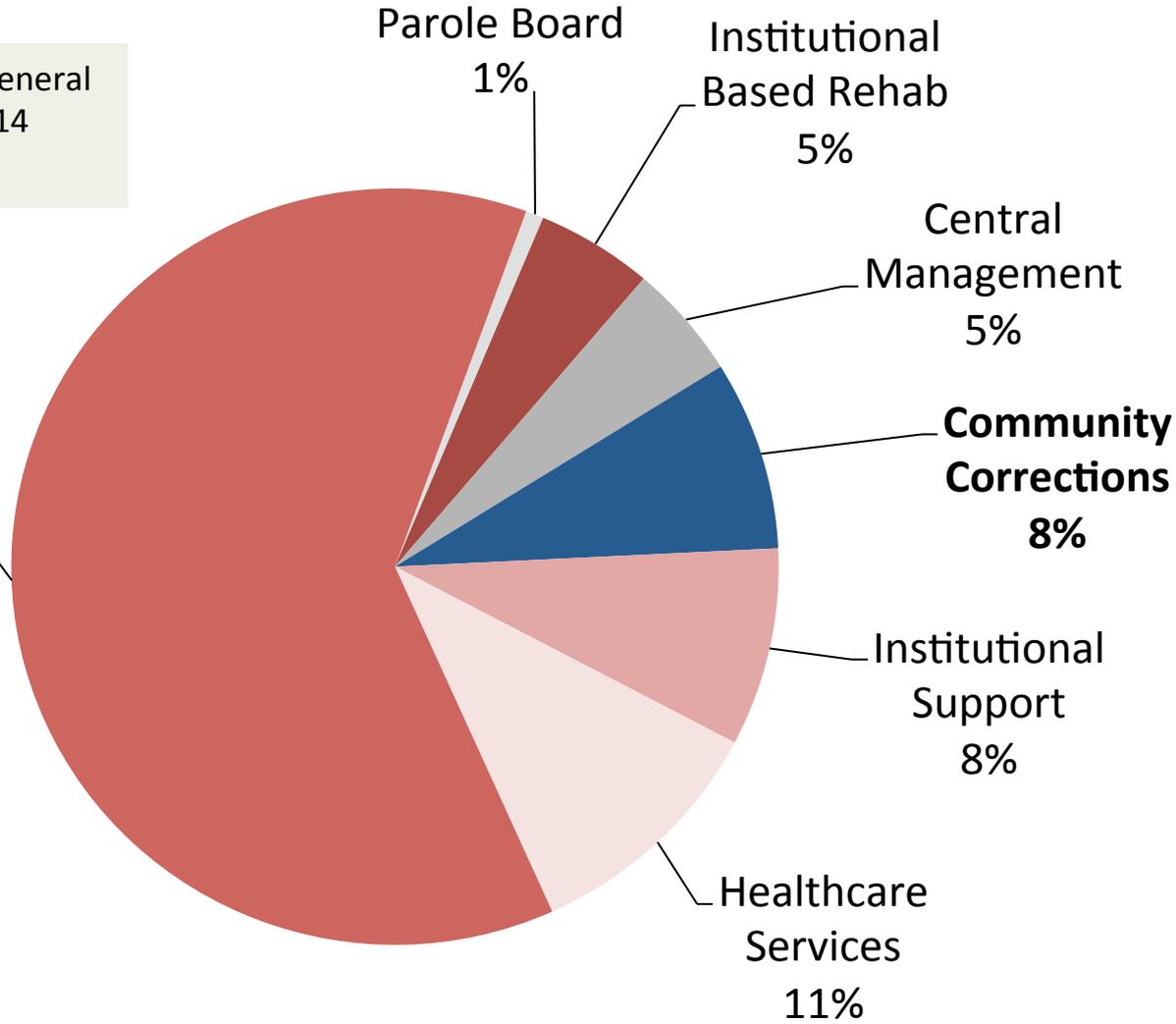
- Do not reflect risk and needs, and judges sometimes resist probation officer recommendations

Programming

- In-house cognitive behavioral programming is very limited

Reminder: Community corrections spending accounts for only 8 percent of DOC funding

Department of Corrections General Revenue Spending, FY2014
\$185.3M Total

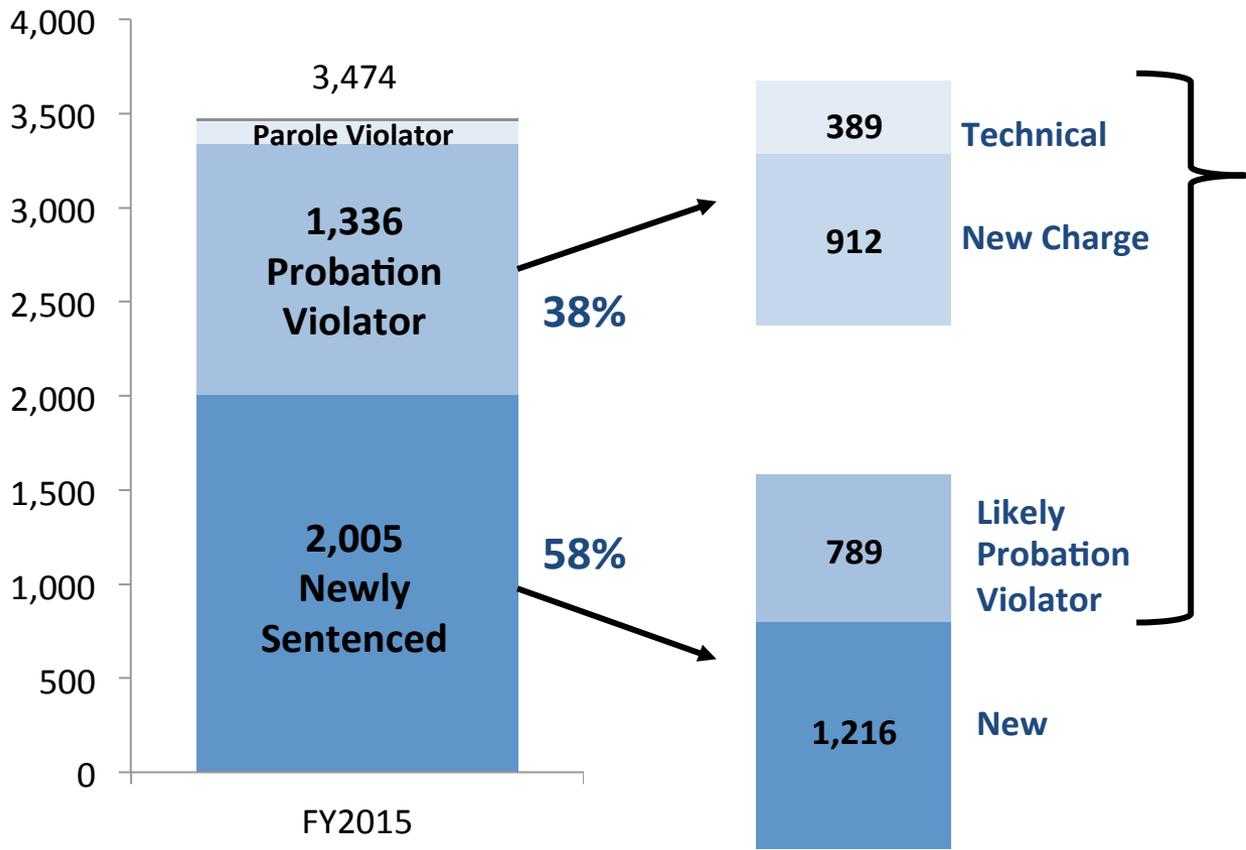


With only 8% of DOC funds devoted to supervision, are there ways to better target resources to increase public safety?

Source: Rhode Island Budget Office, FY2004 and FY2014 Budget as Enacted Reports.

Additional analysis of ACI sentenced commitments shows as much as 61% may be probation violators

Sentenced Commitments by Type, FY2015

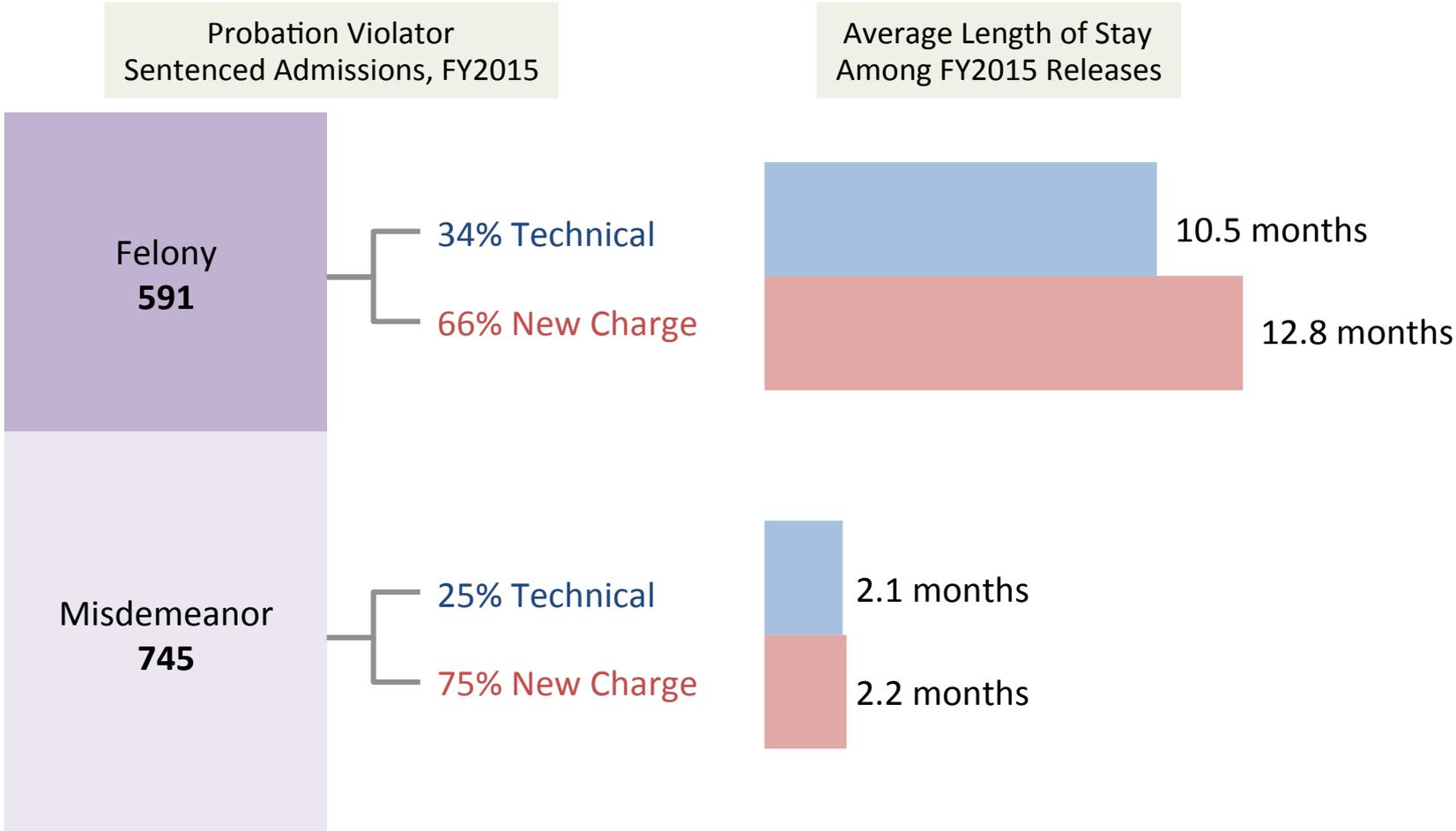


Estimated Total Probation Violator Proportion **61%**

To address concerns that some probation violators were not being identified among ACI admissions, we matched FY2015 commitments to court data and uncovered 789 additional likely violators

Source: RIDOC sentenced admission data.

Technical violators sentenced to the ACI spend about as long as those resentenced for new crime violations



Source: RIDOC sentenced admission data.

Probation violators pose significant cost to the state, consuming at least one-third of the ACI population

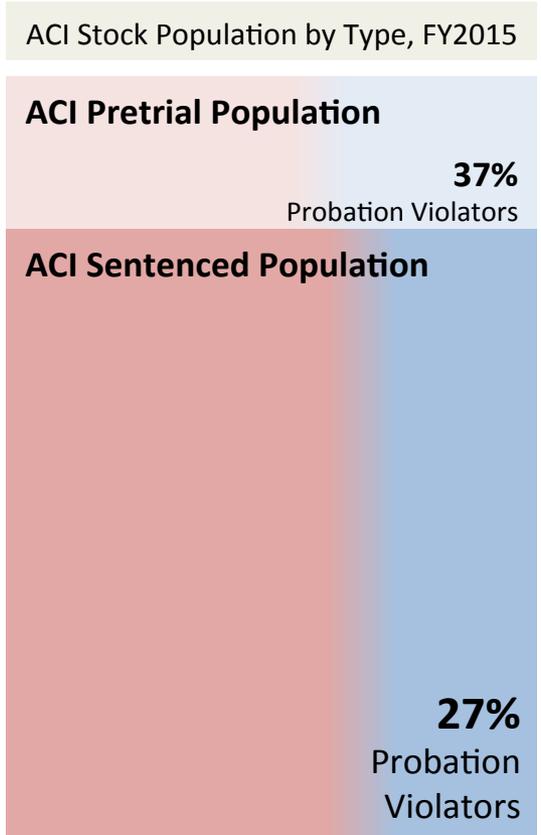
Probation Violator Pretrial Bed Consumption

Probation Violator pretrial admissions in FY2015:	2,785	X	Average length of stay among these releases:	31.4 days	=	Pretrial beds for a full year:	240
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Probation Violator Sentenced Bed Consumption

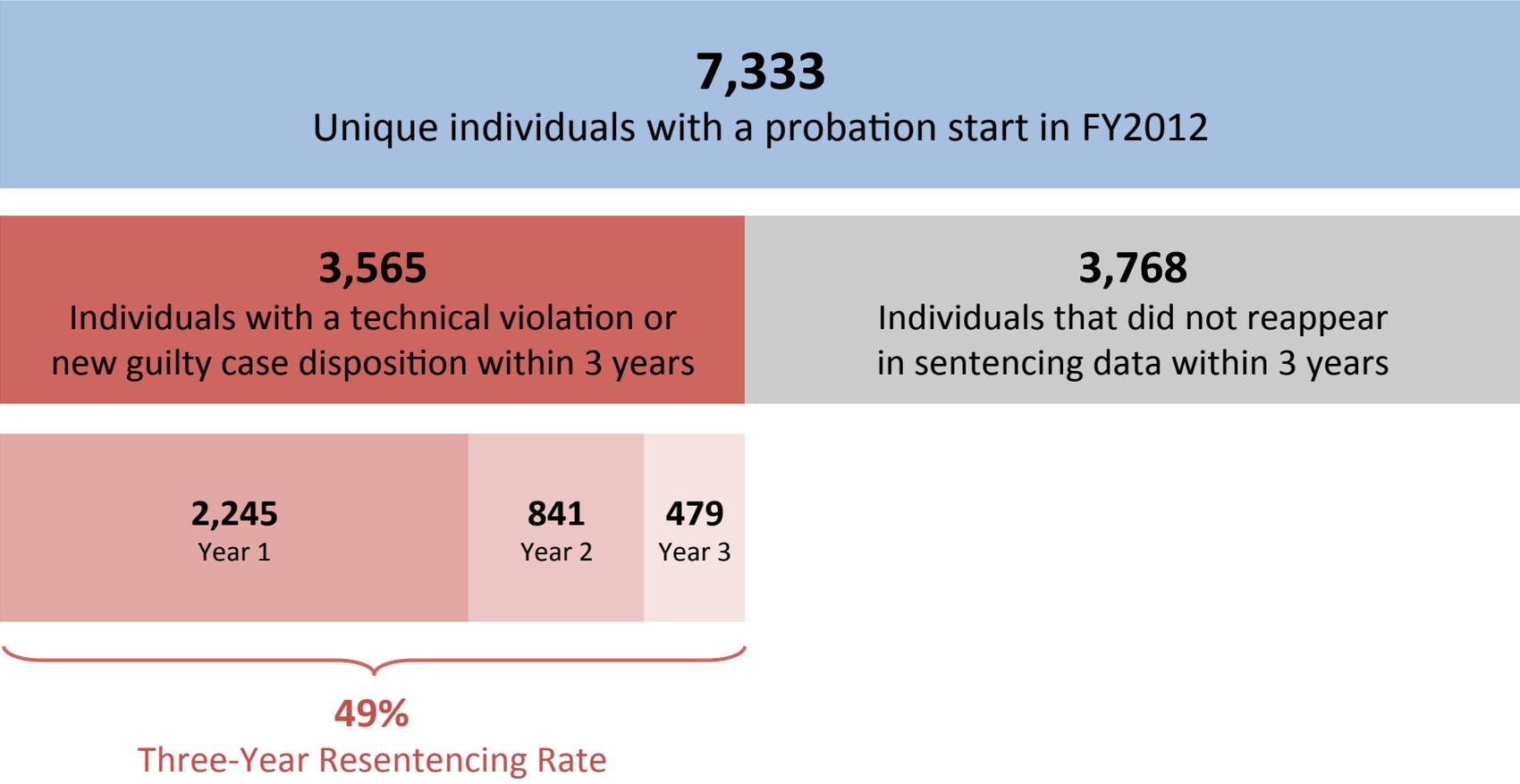
Probation Violator sentenced admissions in FY2015:	1,336	X	Average length of stay among these releases:	211.5 days	=	Sentenced beds for a full year:	774
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Just those currently flagged as probation violators represent 29% of the total ACI population which Rhode Island spends more than \$170 million per year to house



Source: RIDOC pretrial and sentenced stock data.

Half of those placed on probation are re-convicted or violated within three years, mostly in the first year



*Resentencing measure based on court sentencing data only, includes only new probation starts, relies on estimate of probation start date for split sentences, and defined as a revocation or new case conviction within three years of probation start.

Source: RI Supreme Court Sentencing Data.

How do resentencing rates compare for similar individuals sentenced to Probation Only, versus ACI + Probation?

Ideal Measure

Validated risk assessment instrument to measure the likelihood of recidivism which utilizes:

Static Factors
(Such as prior criminal history, age at first arrest)

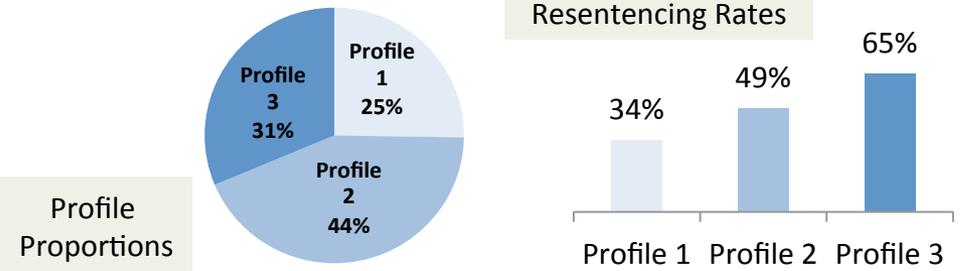
Dynamic Factors
(Such as employment status, treatment completion)

If Unavailable

Working Measure

Build a proxy risk score using available static data (age, sex, criminal history)

Using a scoring system, divide the population into well differentiated profiles:

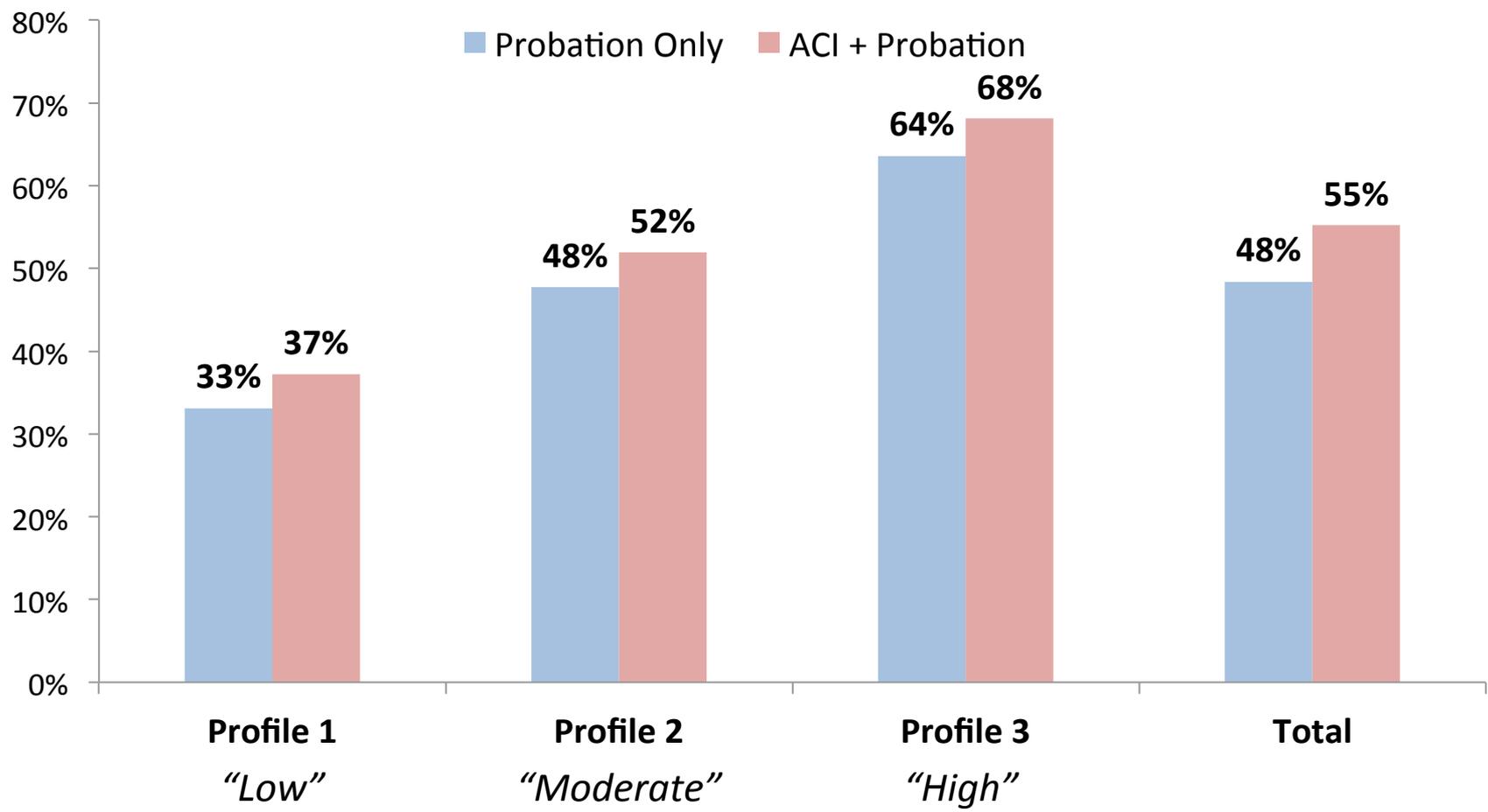


Available Data for Scoring: Age at Probation Start, Sex, Total Charges among Guilty Cases in the Past 5 Years

Source: RI Supreme Court Sentencing Data.

Resentencing rate is lower for Probation Only compared to ACI + Probation across groups with similar “risk”

Three-year Resentencing Rate by Offender Profile and Probation Sentence Type, FY2012 Probation Start Cohort



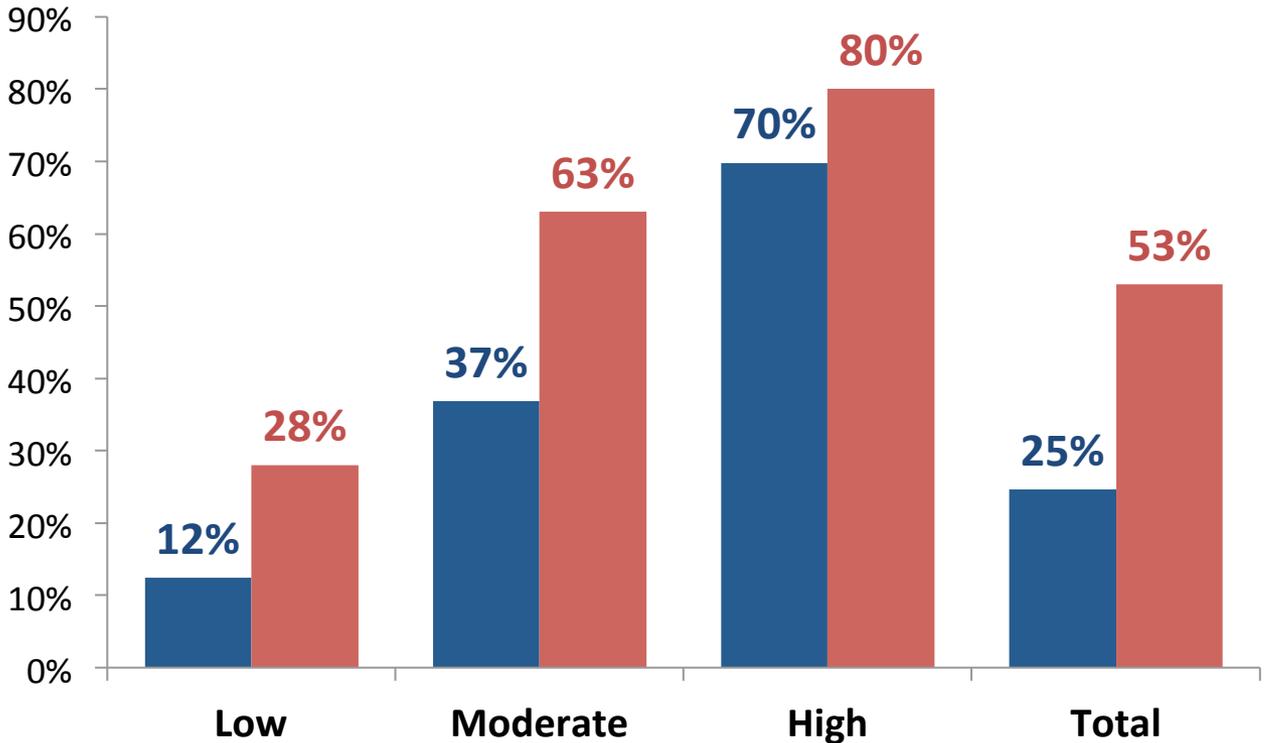
Source: RI Supreme Court Sentencing Data.

Other research demonstrates higher post-incarceration recidivism for matched risk groups

Idaho

Three-Year Incarceration Rates by Risk Level, FY2008-2009

■ New Straight Probation Starts ■ Paroles from Term



Reasons why prison might increase an individual's likelihood of future criminal activity:

- Modeling and reinforcement of pro-criminal behaviors
- Identification as part of a convict group
- Assimilation of pro-criminal attitudes, habits, prison culture

Source: CSG-JC Idaho Justice Reinvestment Project.

Reminder: Other states are adopting shorter, less costly sanctions and reducing recidivism

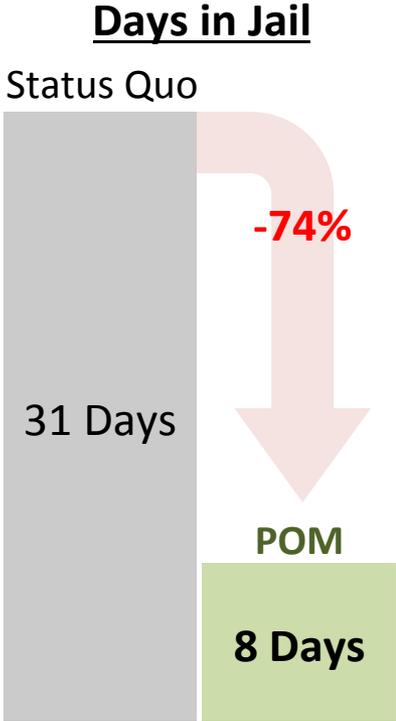
Washington

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



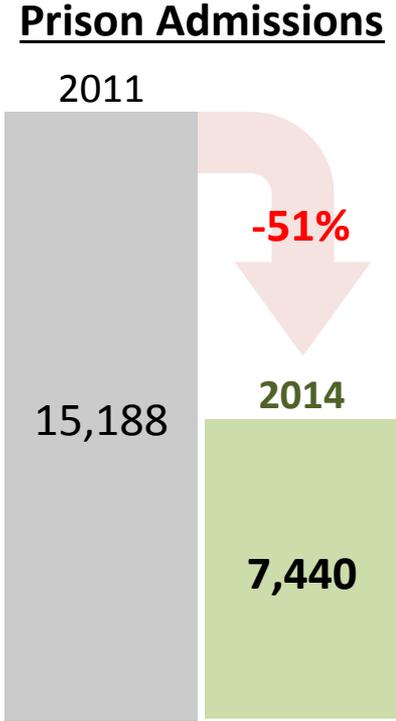
Georgia

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

Key Takeaways: Probation outcomes

- Probation violators stay in the ACI for technical violations almost as long as those with new charges.
- Probation violators constitute an estimated 61% of sentenced commitments to the ACI.
- Half of those on probation are reconvicted/wrapped within three years, mostly in year one.
- Despite poor probation outcomes, individuals sentenced to Probation Only have lower resentencing rates than ACI + Probation, a result borne out by other research.
- Other states are adopting shorter, less costly sanctions that do less to impair access to treatment, housing, employment. To reduce recidivism due to new charges, probation supervision must be strengthened to deploy best practices shown to be effective in other states.

Presentation Overview

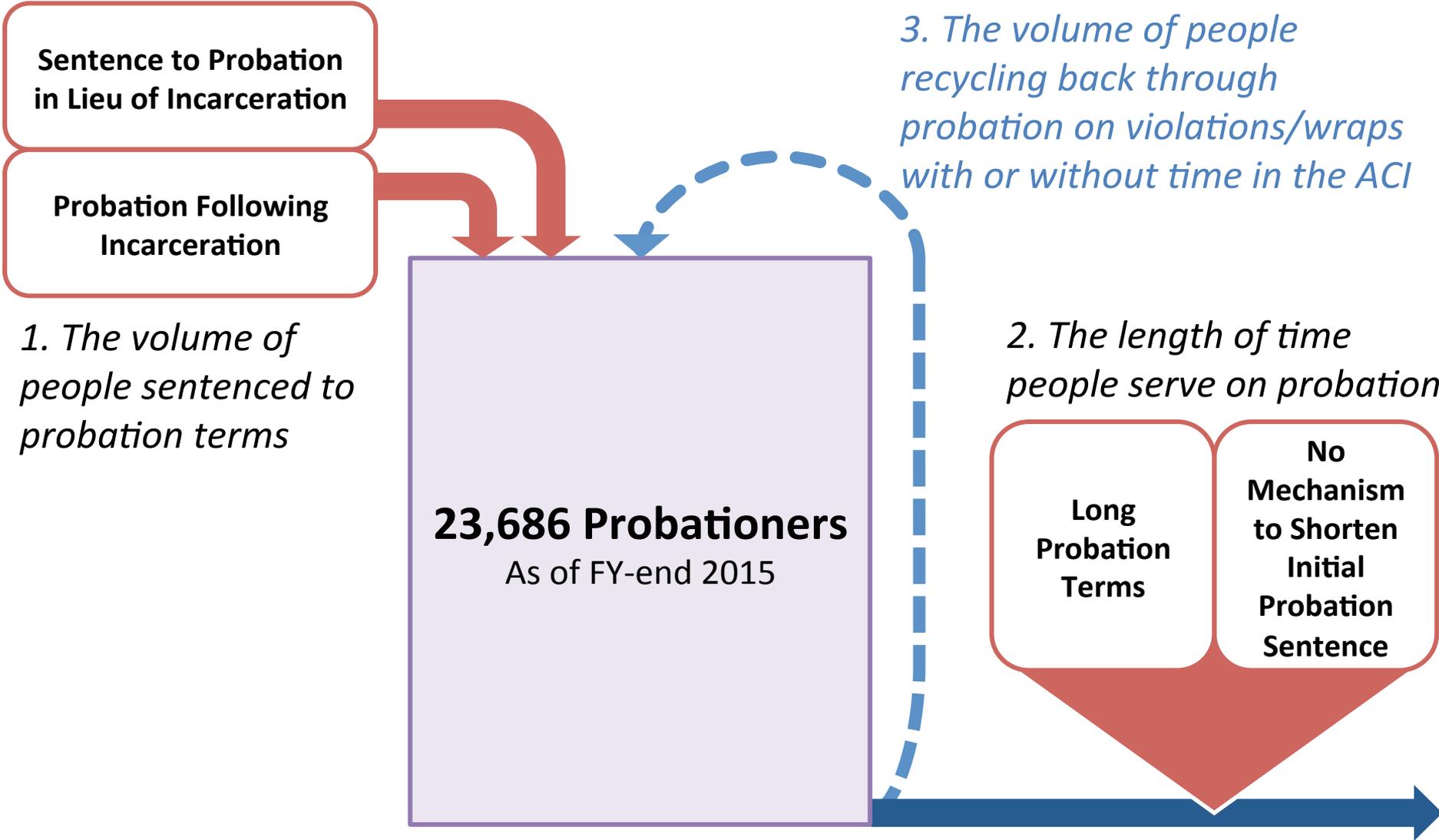
Stakeholder Perspectives and
Probation Outcomes



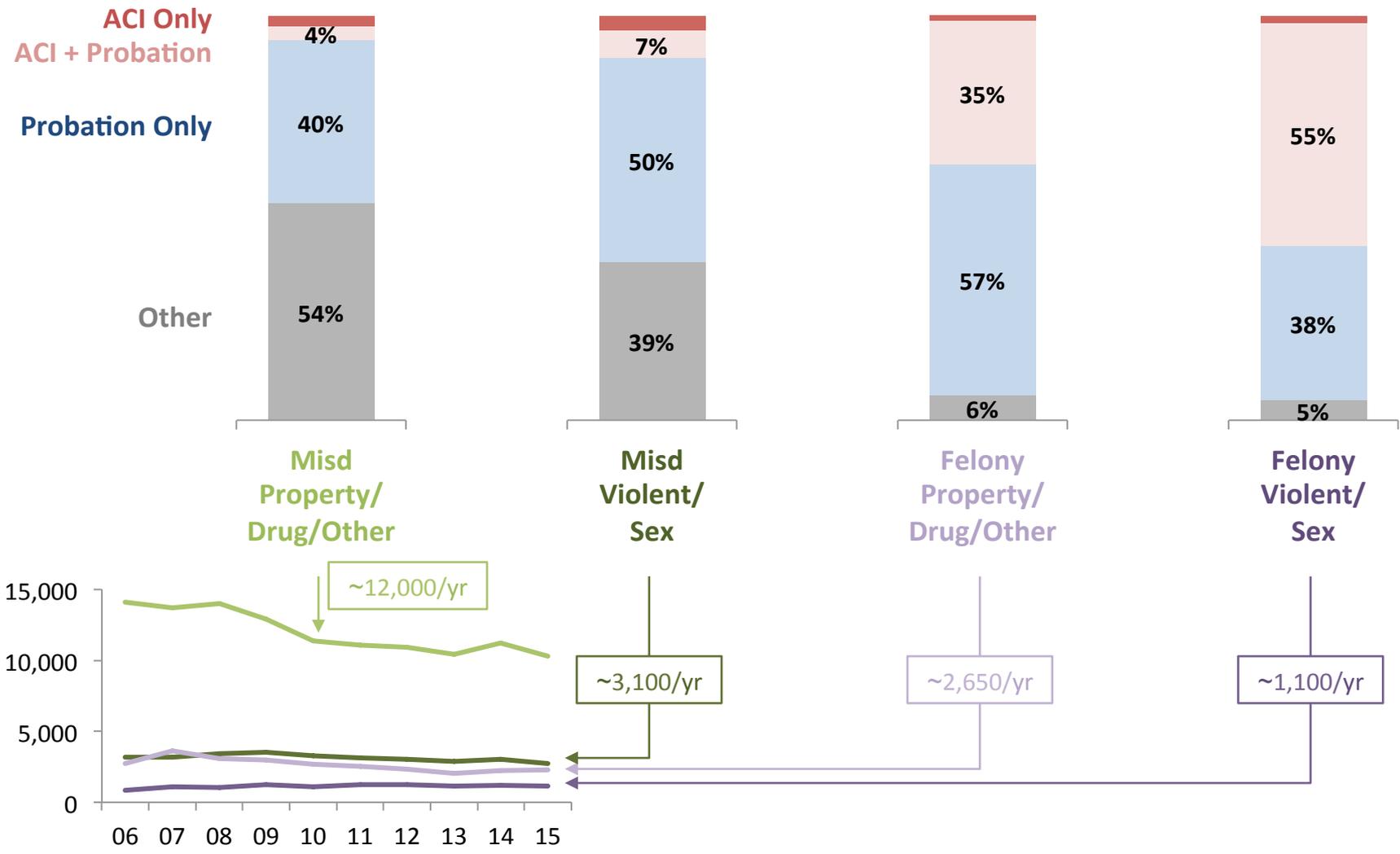
**Sentencing Trends and Probation
Supervision Practices**

Probation Statutes and Case Law

Three factors drive Rhode Island's large probation population

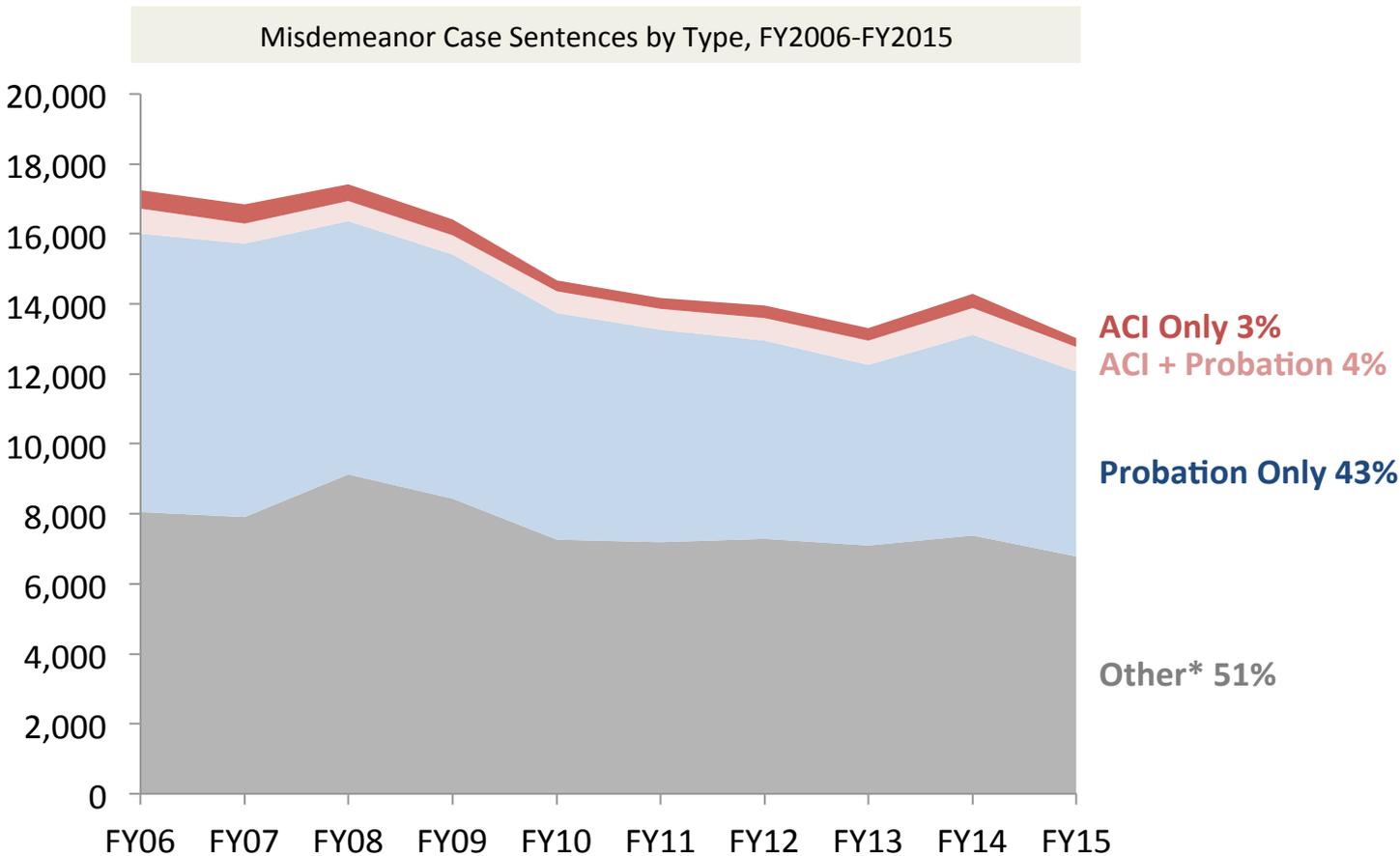


More serious felony offenses tend to result in sentences to ACI + Probation



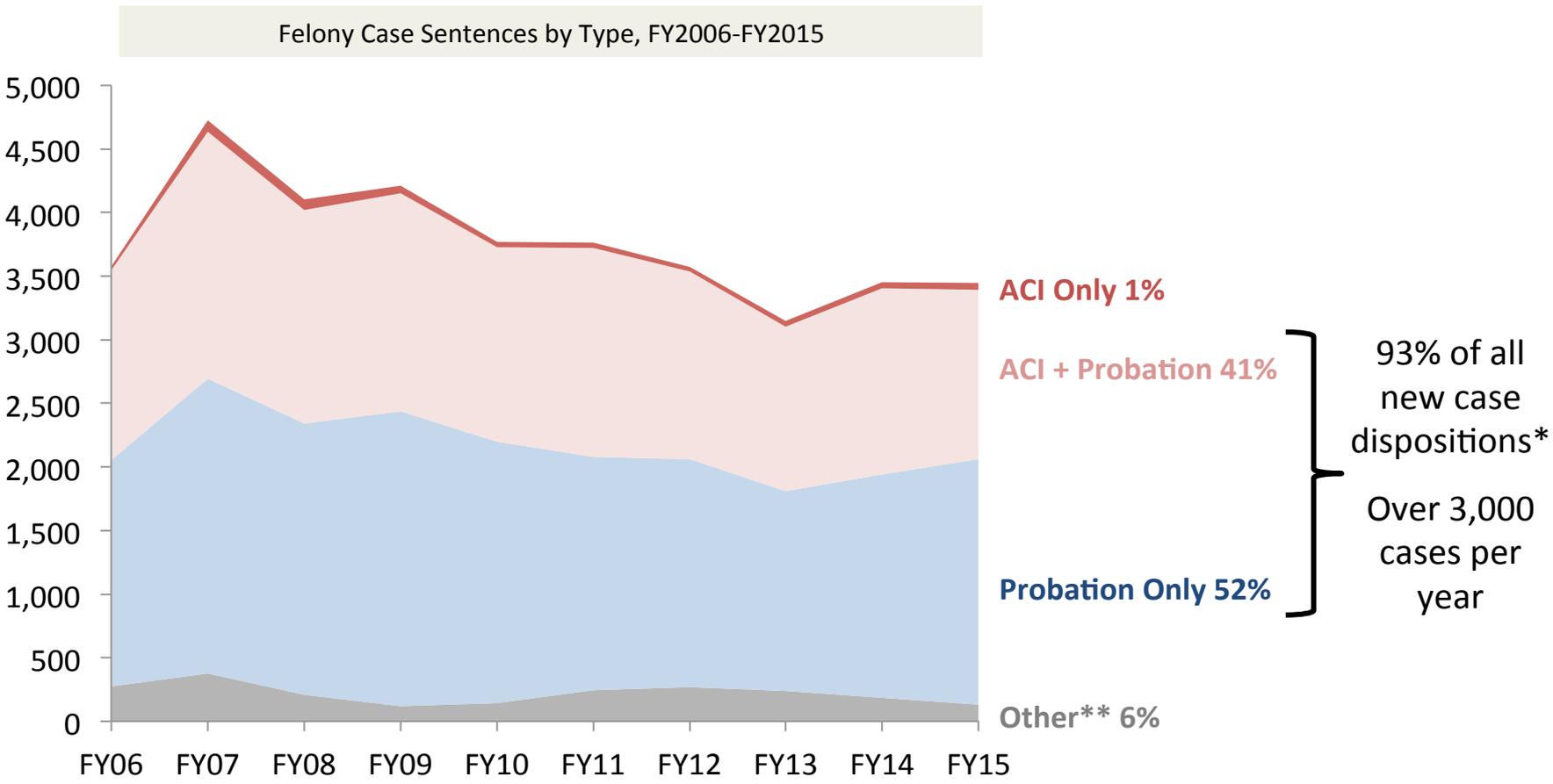
Source: RI Supreme Court Sentencing Data.

Misdemeanor sentencing adds six thousand cases to probation yearly



* Other includes community service, fines, forfeitures, license suspension, programs, treatment, restitution, etc.

Felony sentencing includes probation supervision in 93% of cases, with frequent use of ACI + Probation



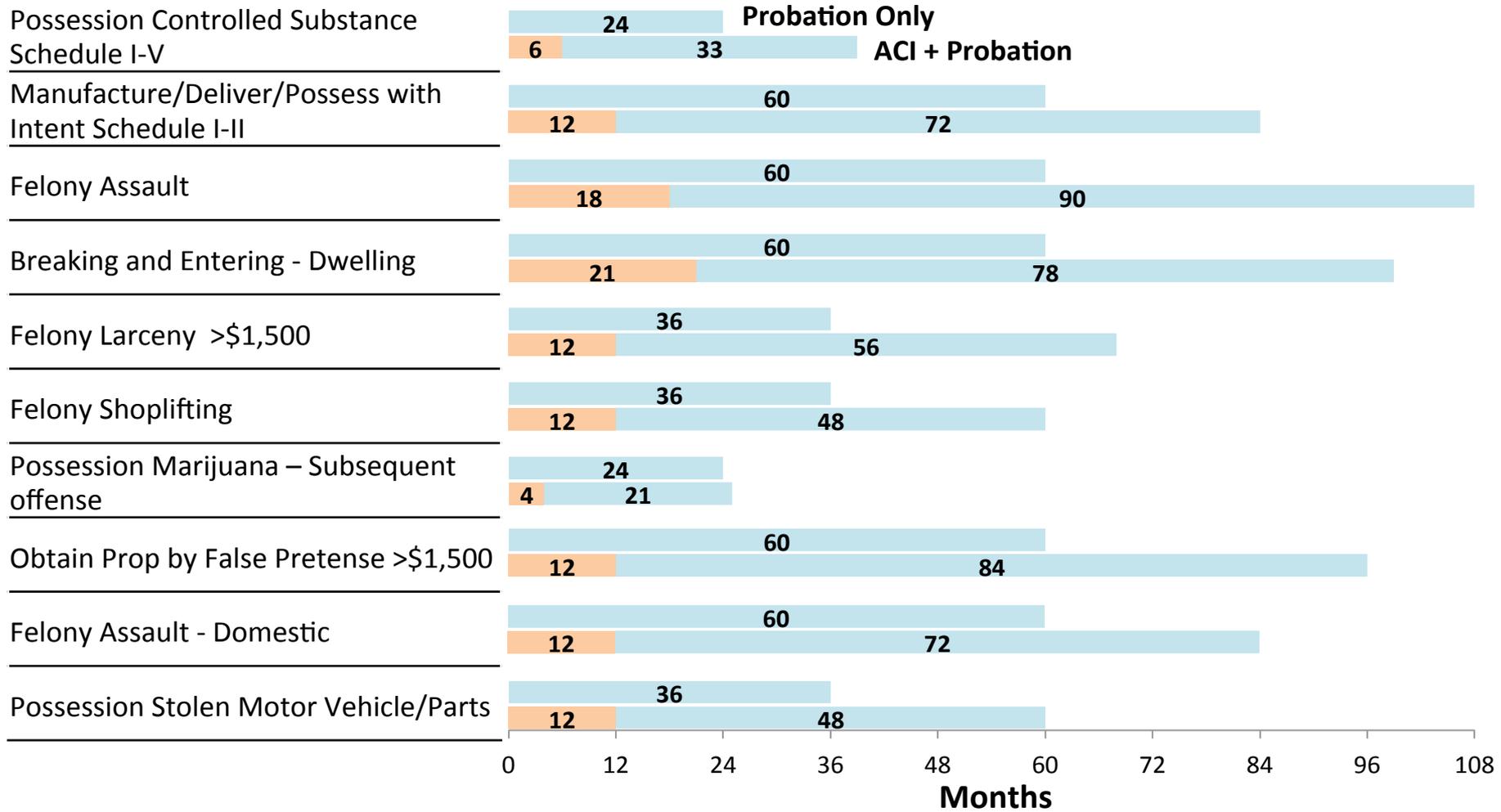
* Excludes probation violation dispositions

** Other includes community service, fines, forfeitures, license suspension, programs, treatment, restitution, etc.

Source: RI Supreme Court Sentencing Data.

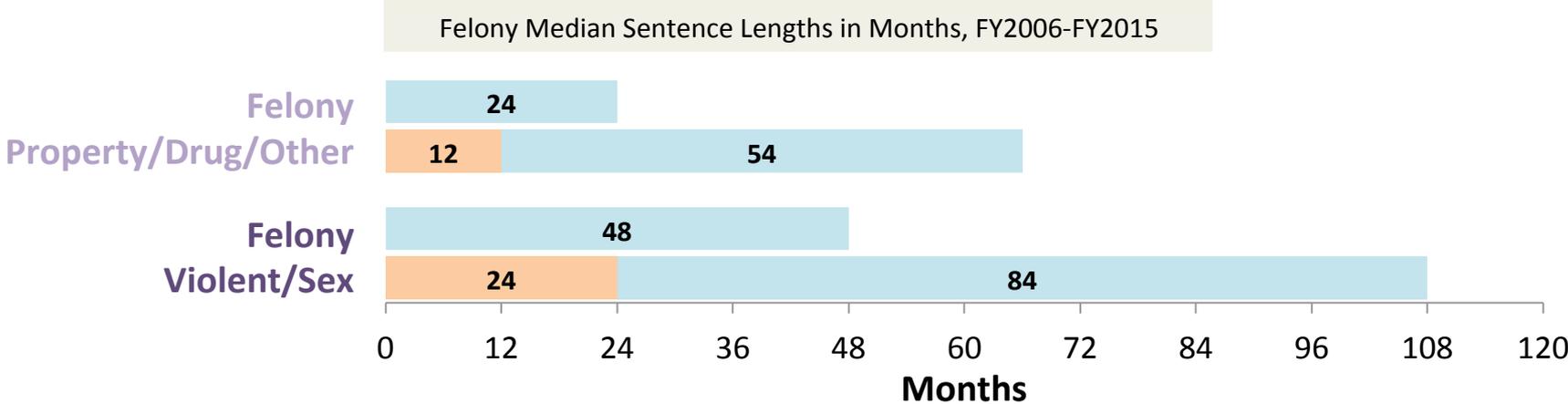
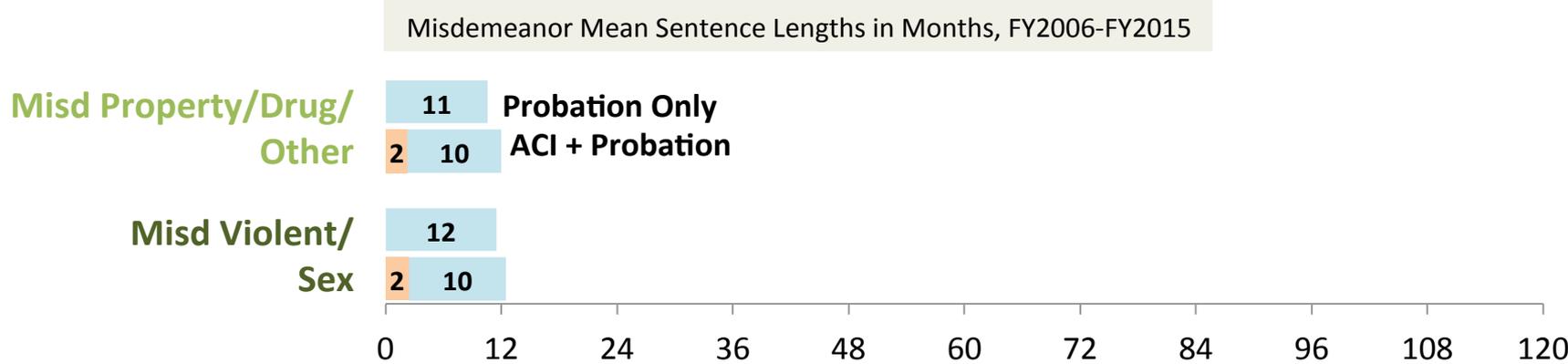
Highest volume felonies over 10 years of sentencing show the routine use of long terms of probation

Median Probation Only and ACI + Probation Sentence Lengths in Months for 10 Most Common Felony Offenses, FY2006-FY2015



Source: RI Supreme Court Sentencing Data.

Median felony sentence lengths show much longer periods of probation when accompanied by an ACI sentence



Suspended sentence lengths equal the probation length in nearly 100% of ACI + Probation sentences

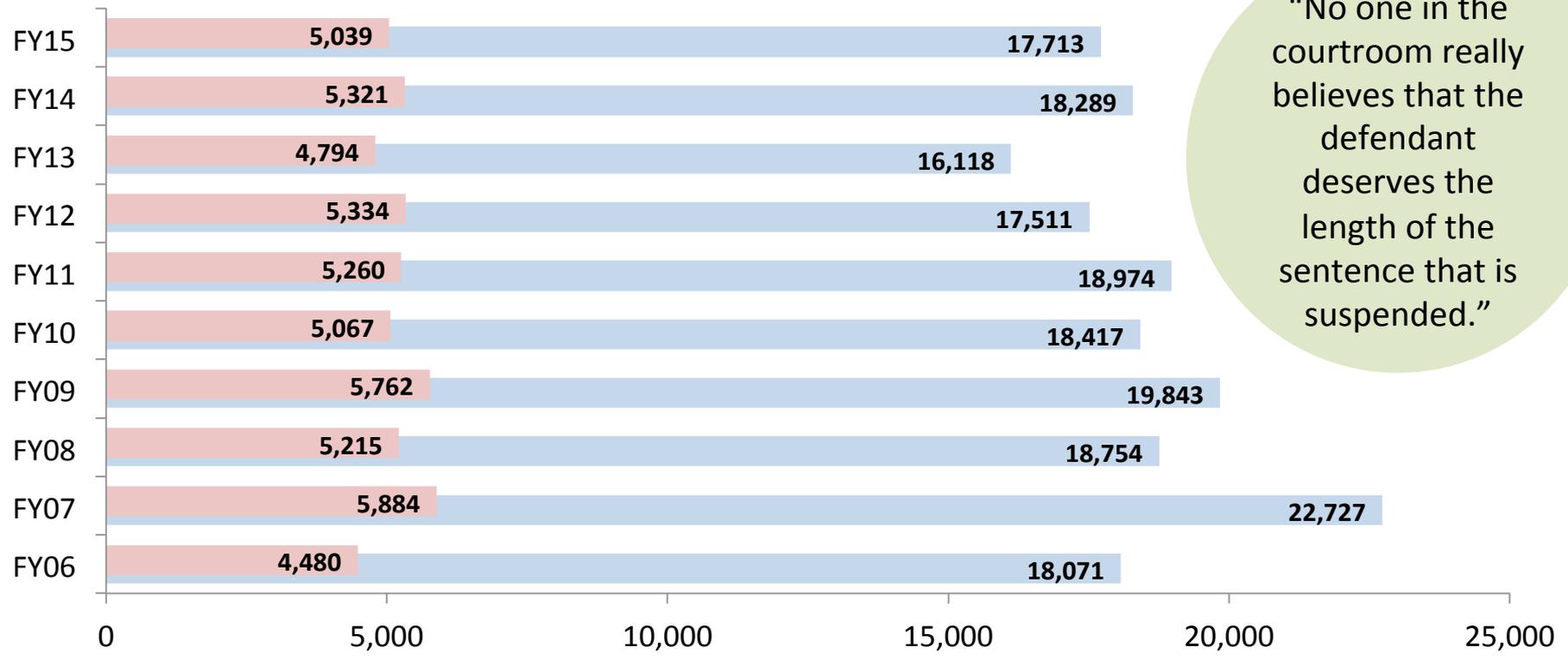
Source: RI Supreme Court Sentencing Data.

Cumulative total of suspended sentence exposure of individuals is an unaffordable threat

Each year, the courts hand down about **5,200 bed-years of incarceration** sentences (ACI Only or ACI + Probation)

Each year the courts hand **down 3.5 times that amount of bed-year liability** in the form of suspended sentences (with Probation Only or ACI + Probation)

Cumulative Bed-Years of Incarceration and Suspended Sentences, FY2006-2015

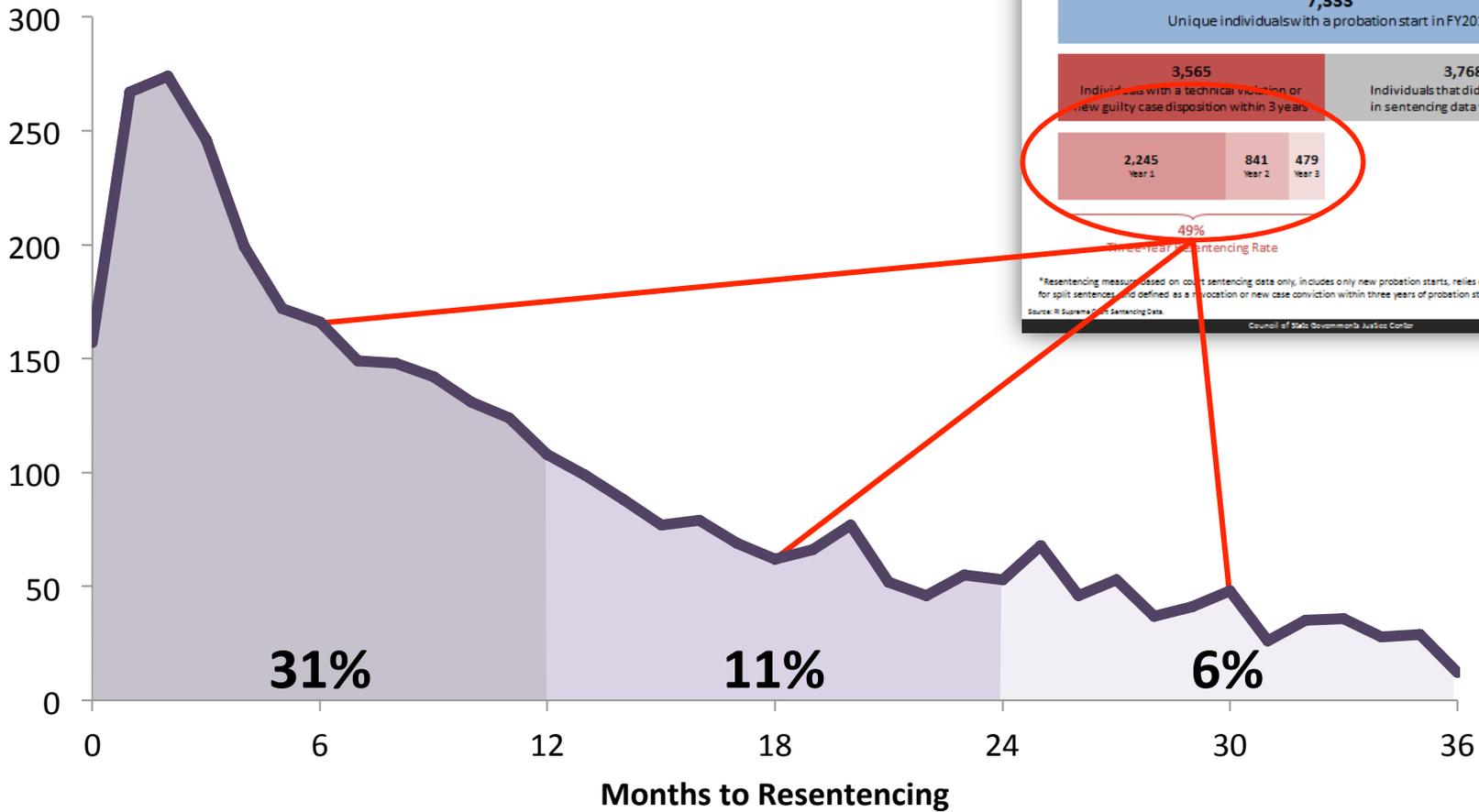


“No one in the courtroom really believes that the defendant deserves the length of the sentence that is suspended.”

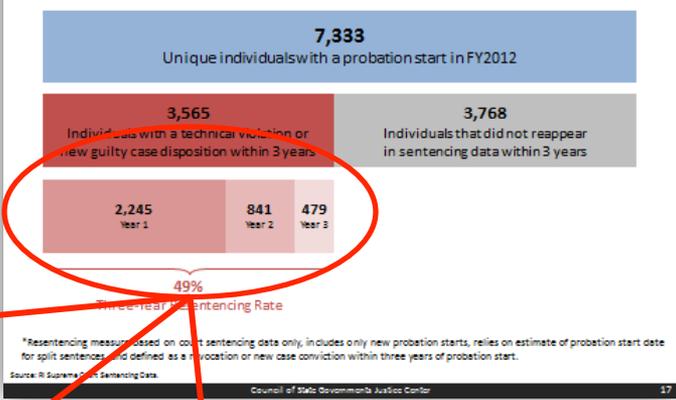
Source: RI Supreme Court Sentencing Data.

Resentencing analysis demonstrated diminished recidivism with passage of time

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



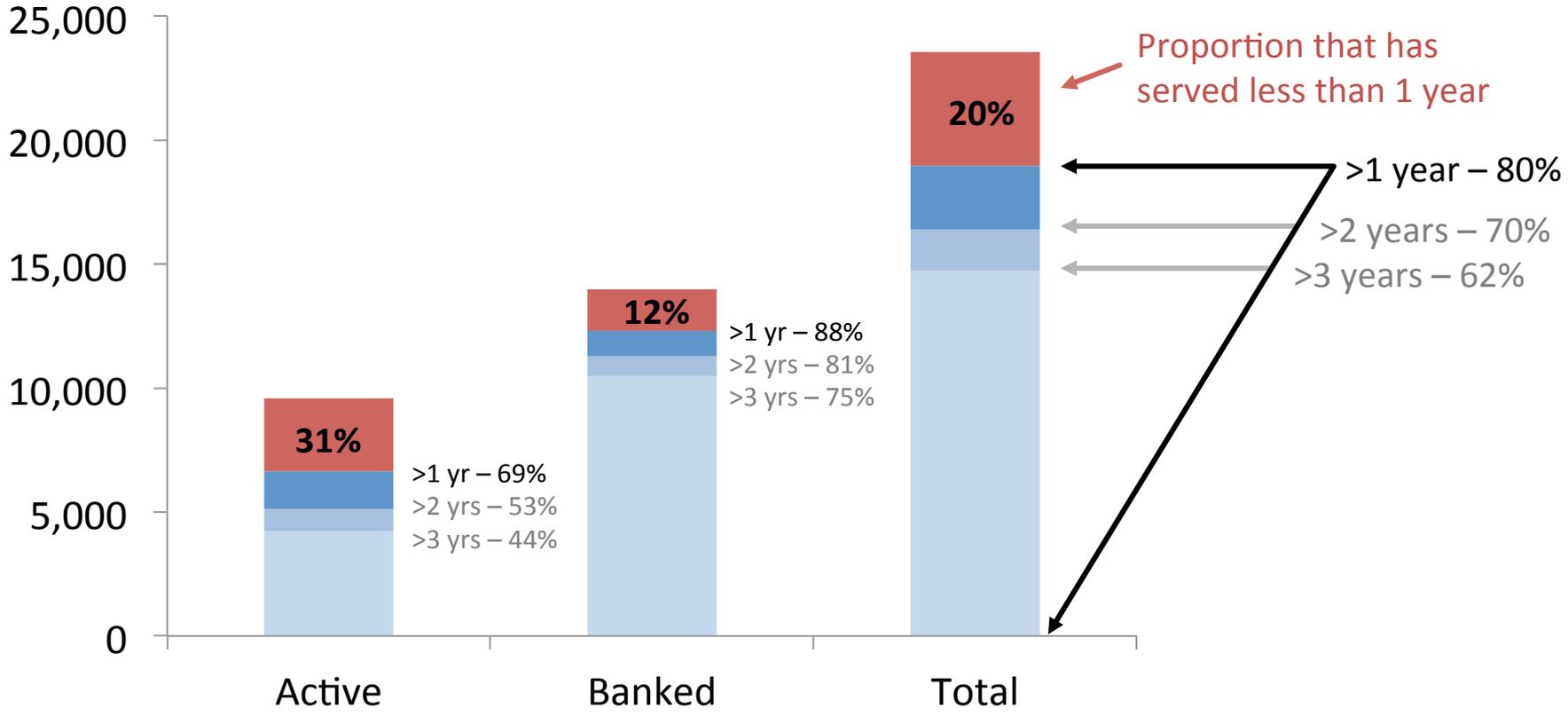
Half of those placed on probation are re-convicted or violated within three years, mostly in the first year



Source: RI Supreme Court Sentencing Data.

Only 20% of probationers, and 31% of active cases, are within the period highest recidivism

Probation Stock Population by Current Length of Stay on Supervision, FY2015



Source: RIDOC probation stock population data.

Key Takeaways: Sentencing

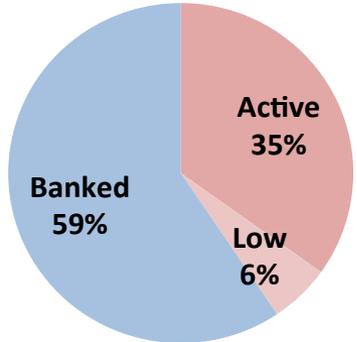
- Rhode Island includes probation in over 90% of felony sentences, either in lieu of or post-incarceration. ACI + Probation is used more, for more serious offenses.
- Long probation sentences of 4 to 7 years are routinely imposed.
- Post-prison probation and suspended sentence terms are virtually always identical and average 3.5 times prison sentenced time.
- Over half of the probation population has served beyond the 3-year mark, the period in which recidivism is most likely to occur.
- And only 20% of probationers, and 31% of active cases, are within the period of highest recidivism.

Most probationers are not actively supervised and that decision has been primarily based on time under supervision

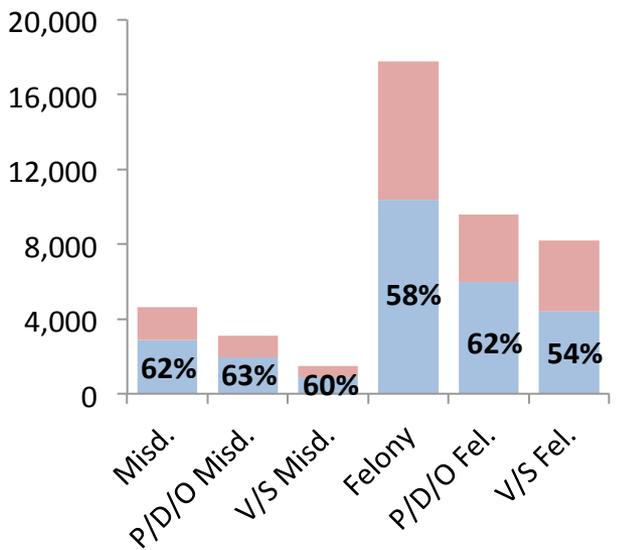
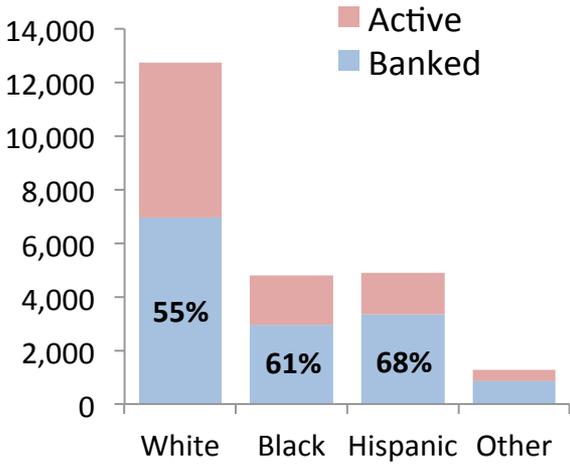
Felony probationers are eligible to be moved from active to low and then banked supervision based on offense type, compliance, and score on risk proxy or LSI-R screener.

- Nonviolent: After 6 months
- Multiple Violent or Serious Offenses: 1-3 years
- Sex Offense: Ineligible

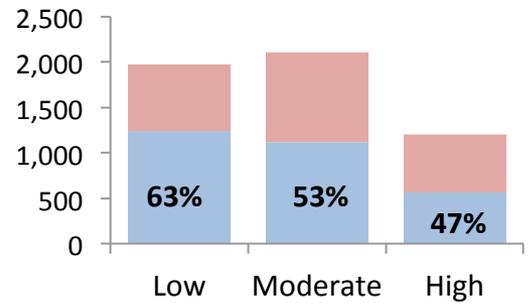
Probation Stock Population by Supervision Type, FY2015



Probation Stock Population Breakdowns with Percentage Banked, FY2015



Note that risk assessment data among FY2015 probationers is very limited – only 22% were assessed at some point in time



Source: RIDOC probation stock population data.

Current supervision caseload information shows inadequate officers for the population

	Generic Probation	Specialized Probation*	Total
# of Officers	34	29	63**
Banked Cases (Administrative Banked, Minimum Supervision Unit, Warrants, Holds, Interstate, Court ordered unsupervised)	13,233	775	14,008
Total Active Cases (Active and Low Supervision)	7,159	2,589	9,748
Average Active Caseload per Officer	211	89	155

There is no accepted, universal caseload size standard, however probation can reduce recidivism rates when the dosage of time and attention is paired with the risk and need level of the client. An example of potential caseload levels stratified by risk:
Low: 120-200 cases Moderate: 50-60 cases High: 20-30 cases

* Specialized caseloads include Domestic Violence, Sex Offender, Gender Specific, Drug Court, Mental Health, and Safe Streets.
 ** Probation officer positions: 63 carrying a caseload, six vacancies, four on medical leave, one training officer, one institutional officer.

Using the current number of officers, Rhode Island could reduce caseloads to levels that actually reduce recidivism

Current Probation	
Number of Officers	63
Banked Cases	14,008
Active Cases	9,748
Average Active Caseload	155

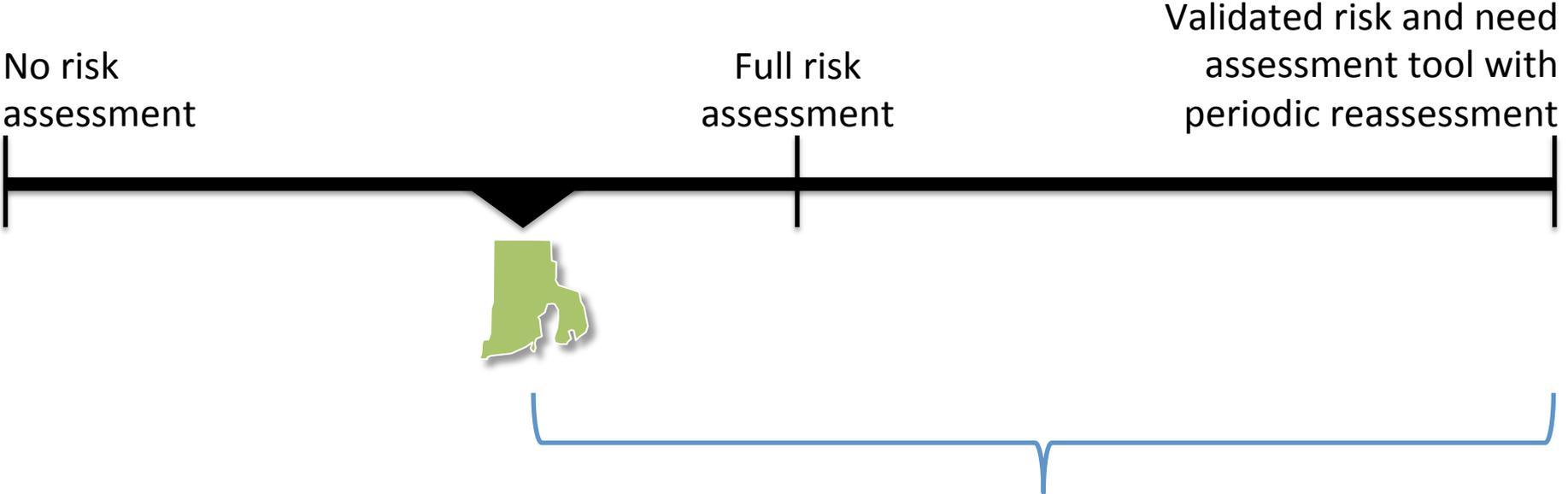
Instead of high caseloads that result in no public safety gain, caseloads of 40 high risk felony probationers for 12 months of supervision could enable officers to employ practices demonstrated to reduce recidivism

Hypothetical Scenario	Low Risk Misd.	Low Risk Felony & Moderate Risk Misd.	Mod Risk Felony & High Risk Misd.	High Risk Felony
Estimated Annual Inflow	2,100	3,200	3,200	1,000
Length of Active Supervision	0 months	3 months	9 months	12 months
Number of Officers	0	5	30	27
Active Cases at any one time	0	800	2,400	1,000
Average Active Caseload	0	150	80	40

Reminder: System checklist to reduce recidivism

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

1. Assess Risk and Need: Rhode Island has yet to adopt a modern risk and need assessment tool



Current Practice:
Probation does not yet conduct a full risk assessment. This year, probation began using an 8-factor risk screening tool.

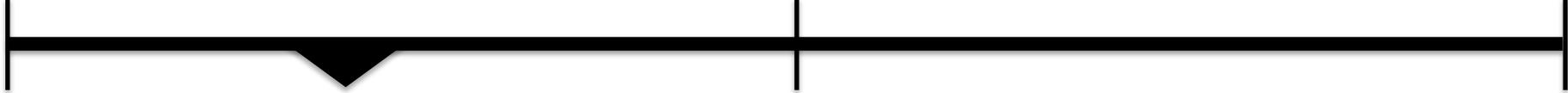
- Continue to use screening tool to triage low-risk people to low supervision unit.
- Use full validated risk and need assessment for those identified as higher risk by the screening tool.
- Conduct periodic reassessment to monitor changes in risk.
- Respond to the changing risks and needs.

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

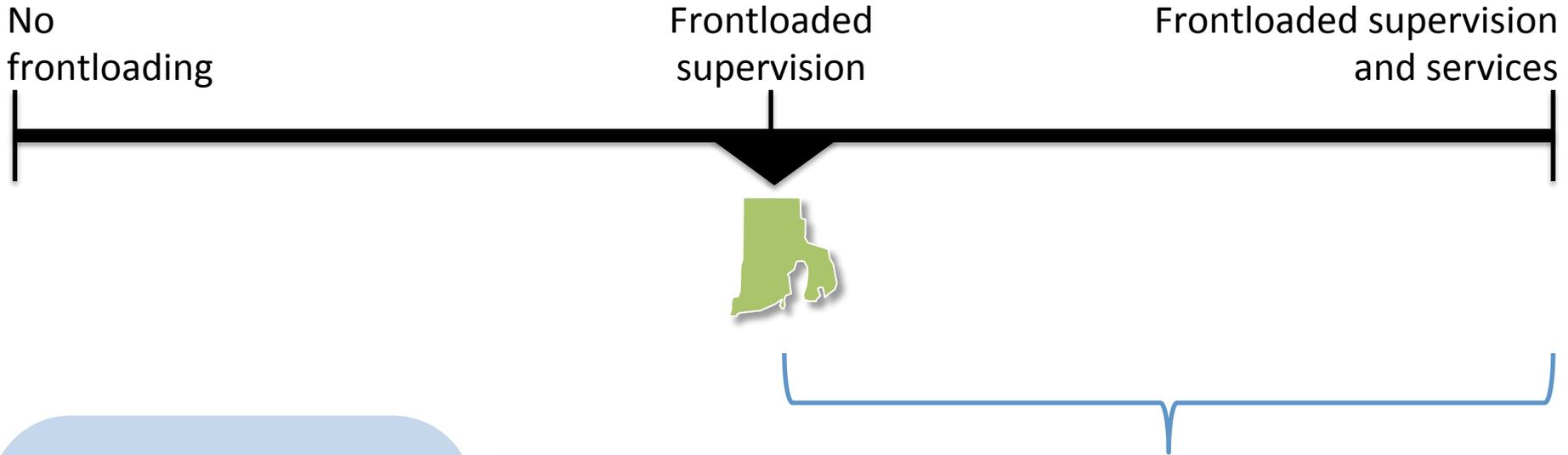
Supervision and programs focused on high risk



Current Practice:
Risk screening information only minimally informs supervision level or prioritization of programming resources.

- Use risk and needs assessment to drive supervision intensity and placement in appropriate programming.
- Prioritize programming resources for individuals who are most likely to reoffend.
- Move felony probationers from active to banked based on risk level and demonstrated compliance.

3. Frontload Supervision and Treatment: Probation officers prioritize contact with individuals at the onset of probation



Current Practice: Officers frontload supervision and increase dosage after serious violations. Banked caseloads receive minimal supervision, if any.

- Continue more frequent contact with PO at the onset of supervision.
- Reduce frequency of contact with on-going compliance over time.
- Reallocate resources to make a difference in the critical first year for higher risk offenders.

4. Implement Proven Programs: Probation offers minimal Cognitive-Behavioral Interventions (CBI)

Programs do not adhere to best practices

Programs based on what works

Programs based on what works and regularly assessed for quality



Current Practice:
CBI programs are not routinely offered and probation does not fund outside treatment. Programs offered in the community are not evaluated to ensure effectiveness.

- Implement and fund evidence based practices.
- Invest in CBI to address criminal thinking.
- Require community based programs to use evidence based interventions for offenders.

6. Accountability: Lack of any policy and practice to ensure that violation sanctioning is consistent, graduated, and fair

Delayed, inconsistent, and severe sanctions

Use of consistent responses to non-compliance

Applying swift, certain, and fair sanctions



Current Practice:
Responses to violations are delayed due to court procedures and are at the full discretion of the presiding judge. Current policies lack specificity to ensure responses to violations are consistent, graduated, and fair.

- Provide probation officers the ability to modify conditions of supervision to address emerging risks and needs.
- Give probation officers the authority to apply swift and certain responses to violations.
- Create detailed guidance to respond to non-compliance with supervision.

7. Measure Outcomes: Probation and providers are not adequately held accountable

Not measuring outcomes

Tracking outcomes

Incentivizing outcomes



Current Practice:
No ongoing capability or use of monthly outcome data for probationer success or violation behavior.

- Measure multiple measures of recidivism by region, risk level, programs, etc.
- Use outcomes to manage probation supervision strategies, training and resources for programming.
- Require community-based programs for offenders to measure impacts on recidivism.
- Explore using incentives to improve quality of programs.

Key Takeaways: Probation supervision practices

- Today's supervised caseload of about 10,000 produces average caseloads of 155:1, and another 14,000 are not supervised.
- Current probation resources are not deployed to reduce recidivism, but could be reallocated to make a difference in the critical first year for high risk offenders.
- Risk and needs assessment is a prerequisite to prioritizing supervision and treatment resources effectively to reduce recidivism. Rhode Island is way behind, and even the risk screen being conducted is not used to triage high caseloads.
- Increasing accountability implicates probation officer authority to impose swift and limited sanctions.

Presentation Overview

Stakeholder Perspectives and
Probation Outcomes

Sentencing Trends and Probation
Supervision Practices

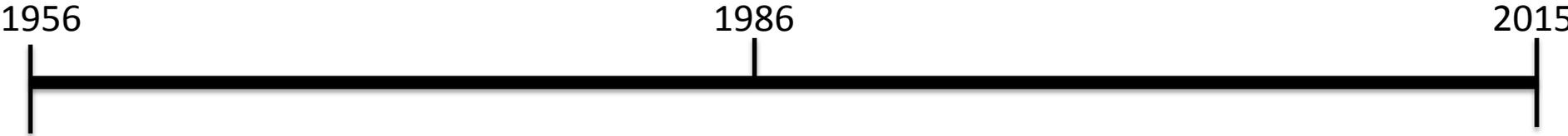


Probation Statutes and Case Law

Our assessment of Rhode Island General Laws and cases governing sentencing and probation

1. Most laws governing probation and supervision have not been updated in 30-60 years, unlike laws in other states that have been overhauled recently.
2. Existing laws are not supportive of, and hinder, probation from adopting best practices.
3. Rhode Island's laws are out of step with most other states on several key issues, particularly in use and length of suspended sentences and probation terms.
4. Case law highlights current constraints on reform.

1. Most of Rhode Island's probation laws have not been updated in 30-60 years



1956
§ 12-19-15 Terms of probation & suspended sentences

1976
§ 12-18-1 Probation allowed pre-sentence

1982
§ 12-19-14 Probation violation process

2010
§ 12-19-18: Release if violated and then acquitted/charges dropped

2014
§ 12-19-8: Modification of conditions may be requested



1973
 Model Penal Code

1989
 Overhaul of probation & community corrections

1993
 Overhaul of Penal Code & sentencing

2005-07
 Progressive sanctions required

2013
 Risk assessment required



1993
 Structured sentencing act requires probation in sentencing grid

2011
 Overhaul of probation sentencing, assessment, delegation of authority, and sanctioning

2. Other states have recently enacted laws enabling probation to use best practices; Rhode Island has not

Authorizes graduated responses to supervision violations



Requires risk-needs assessments for people supervised in the community



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



Swift, certain, and shorter sanctions for violation behavior to reduce probation revocations to prison



2. Despite 50-year old statute, suspended sentences and probation are treated as a unified package for split sentences

G.L. § 12-19-15 (1956)

“The power of the court to commit the defendant shall not be deemed to terminate with the termination of the period of the original sentence, but the court shall have power to enforce the sentence even though the original period of the sentence has expired.

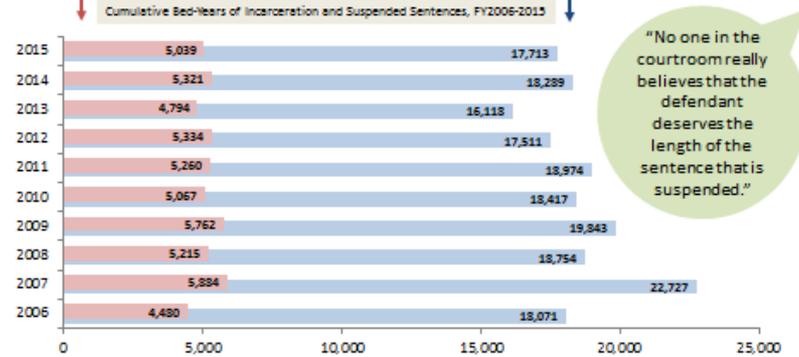
The term of the suspended sentence **may be longer or shorter or for the same time as the probation period ...”**

Nearly 100% of misdemeanor and felony ACI + Probation sentences had equal suspended and probation terms post-ACI

Cumulative total of suspended sentence exposure of individuals is an unenforceable (unaffordable) threat

Each year, the courts hand down about 5,200 bed-years of incarceration sentences (ACI Only or ACI+ Probation)

Each year the courts hand down 3.5 times that amount of bed-year liability in the form of suspended sentences (with Probation Only or ACI + Probation)



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2. Rhode Island sentence ranges allow long sentences to be imposed, or suspended

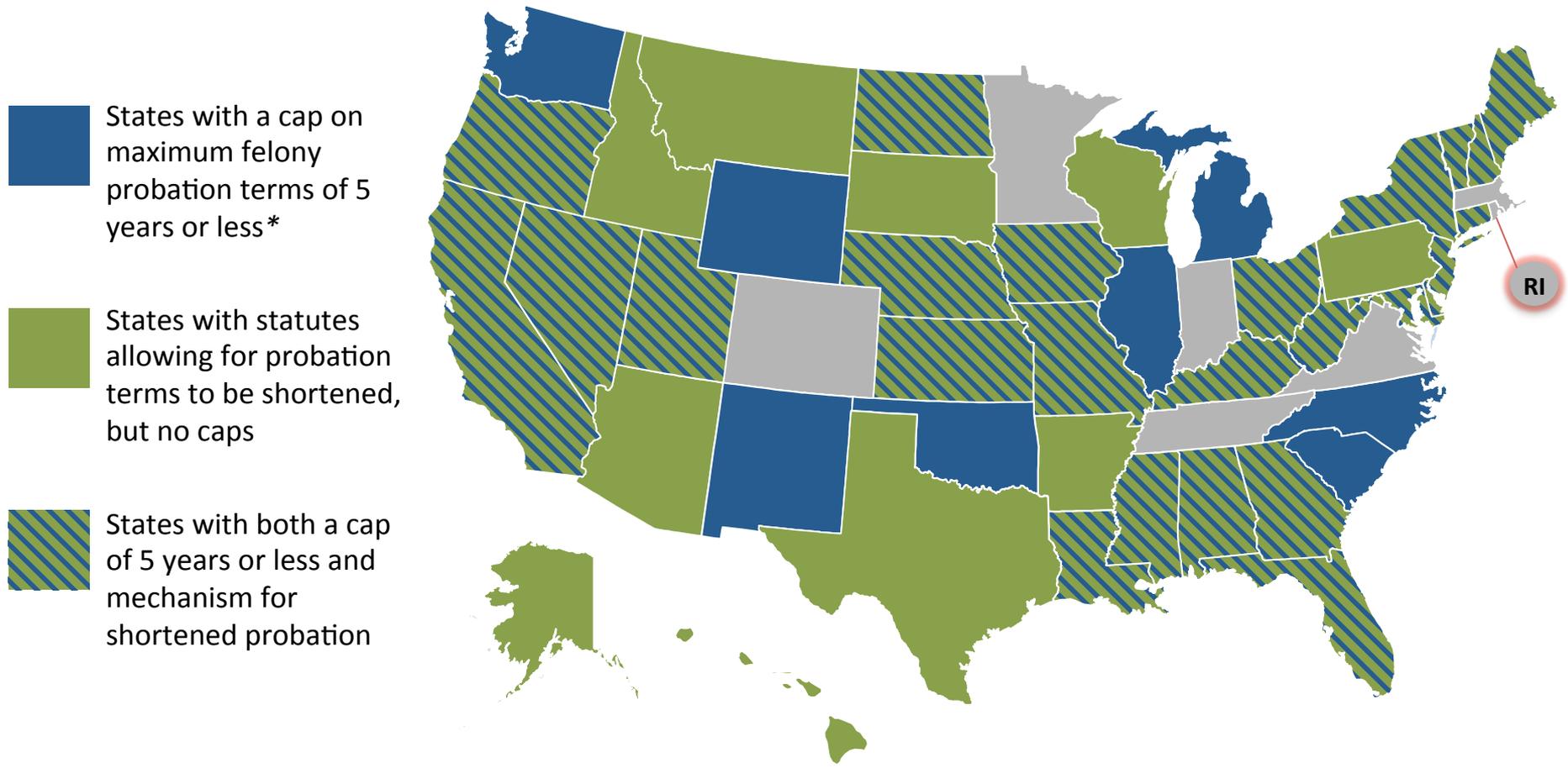
Felony Offense	 CT	 MA	 RI
Felony Assault (weapon)	1-20	10	20
Felony Assault (injury)	1-20	5	20
Robbery 2 nd	1-10	Life	5-30
Robbery 1 st	1-20	Life	10-Life
Larceny etc. (\$250-\$2,000)	5	5	10
Delivery 1oz < 1k	15	10	50
Delivery 1oz < 1k (not)	5-20 to Life	10	50

21 states have adopted sentencing guidelines, so they have

- (1) ranked offenses by seriousness;
- (2) considered the impact of criminal history systematically; and
- (3) narrowed statutory ranges with presumptive ranges

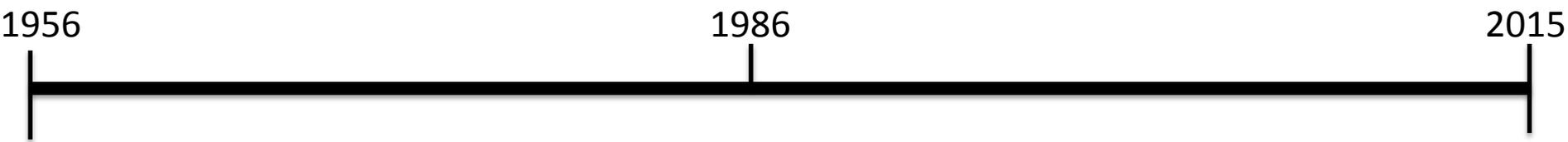
3. Most states have caps on felony probation terms and mechanisms to shorten them – Rhode Island has neither

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

3. ALI Model Penal Code recently overhauled guidance on probation sentencing, supervision, and sanctioning



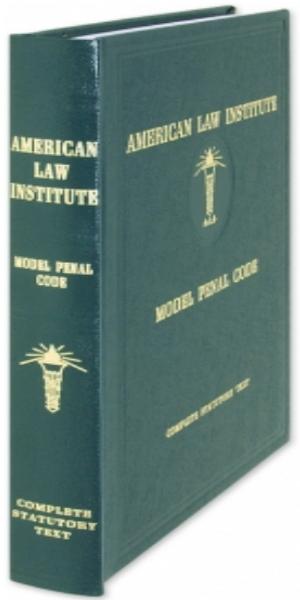
1960s: IL, MN, NM

1970s: NY, GA, KS, CT, CO, OR, DE, HI, NH, PA, UT, MT, OH, TX, FL, KY, ND, VA, AR, ME, WA, SD, IN, AZ, IA, MO, NE, NJ

1980s: AL, AK, WY

2014 Sentencing Guidance

- Probation is for accountability and risk reduction
- Terms limited to 3 years for felonies
- Early termination should be authorized and encouraged
- Lesser sanctions should be used before revocation



34 states adopted the original MPC; RI has not

4. Case law highlights other areas where Rhode Island may have unique constraints upon reforms

Administrative Sanctions

- *Gagnon v. Scarpelli* (SCOTUS) required 2-step violation hearings but *DeLomba* (SCRI) did not adopt
- A new administrative sanction policy could fulfill this function

Retroactivity of Reforms

- Current litigation (*Beaudoin*) may mean that policies such as limiting terms on probation, or changing sanctions, can only be adopted prospectively

Standard for Violations

- “Reasonable satisfaction” standard has been a creature of case law since 1968

➤ Working Group will need to consider judicial as well as legislative policy changes, e.g., South Dakota

Key Takeaways: Probation law

- Existing laws governing probation have barely been touched while other states have modernized their laws to enable and require more effective sentencing and supervision practices.
- The length of probation terms in Rhode Island is driven by the long suspended sentences imposed on top of sentences to the ACI, permitted by broad penalties in law.
- Unlike most other states, Rhode Island has no meaningful limit on terms of supervision, and no method for early discharge.
- Rhode Island has not modernized the larger policy framework (such as the 34 states that have adopted the Model Penal Code, and 21 states that have adopted sentencing guidelines).

Looking ahead to policy options to improve probation

To reduce recidivism, increase public safety and lower costs, Rhode Island must modernize its entire approach to probation.

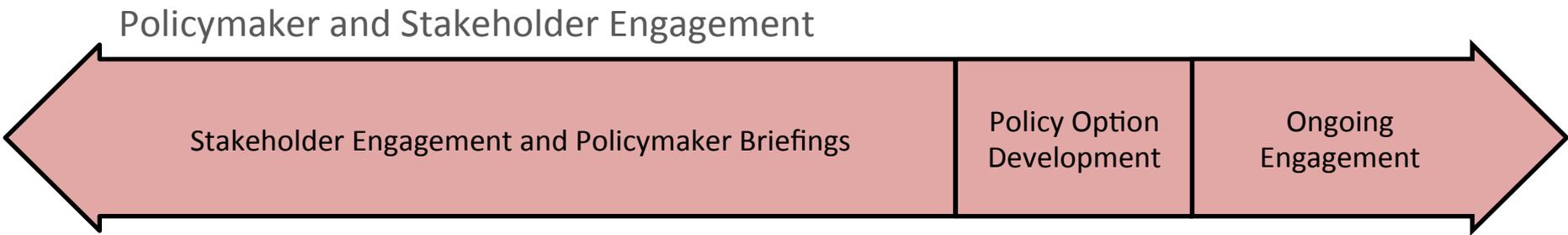
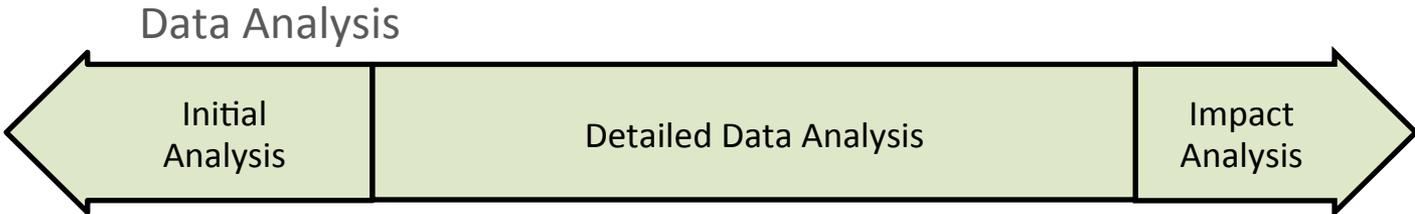
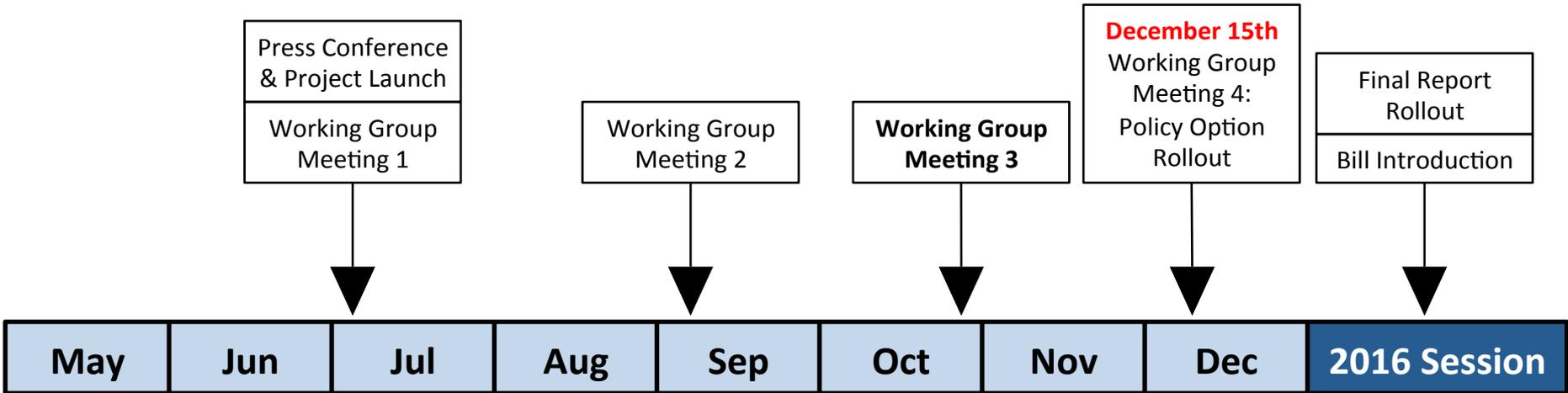
Step 1, overhaul of existing laws that are outdated, unsupportive of what works, and out of step with most other states.

- Probation sentences and length of active supervision must be aligned with risk, available resources, and the research on when offenders are most likely to recidivate.

Step 2, comprehensive administrative implementation.

- Probation officers must adopt and utilize a full risk and needs assessment tool to identify individuals most likely to reoffend.
- Existing probation resources must be reorganized to ensure high risk offenders are supervised on caseloads small enough to enable effective supervision capable of reducing recidivism.
- Responses to probation violations must be more swift, certain, and less severe to reduce costs, free up resources for reinvestment in supervision & programs, and more effectively reduce re-offending.

Justice Reinvestment Timeline



Thank You

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