

## Justice Reinvestment Working Group



### *Second Meeting*

*August 26, 2014*

**Council of State Governments Justice Center**

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## Funding and Partners

# Justice Reinvestment

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



## 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



## Two phases of Justice Reinvestment

### Phase 1

#### Analyze Data and Develop Policy Options

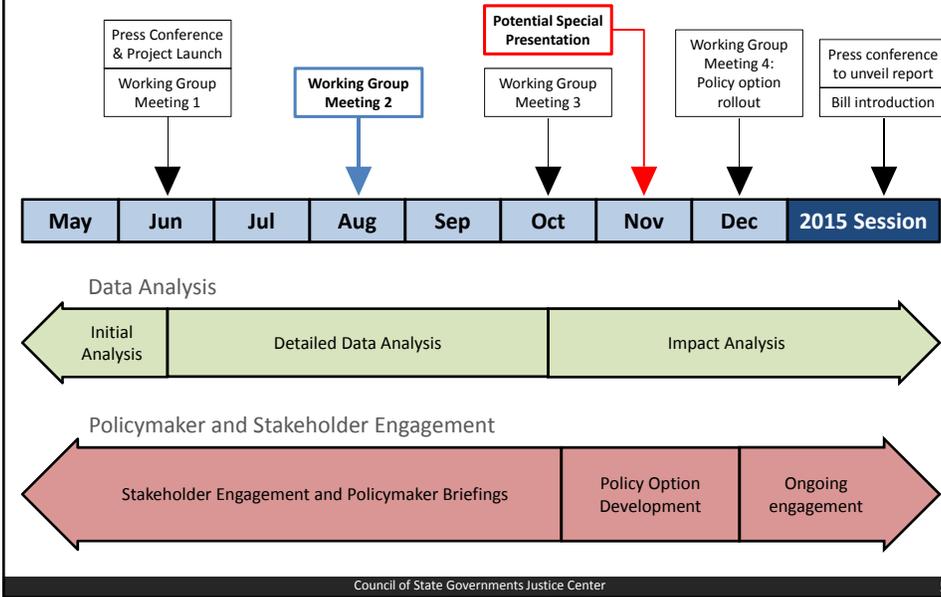
- Analyze data
  - Look at crime/arrests, courts, corrections, and supervision trends
- Solicit input from stakeholders
- Assess behavioral health treatment capacity
- Develop policy options and estimate cost savings

### Phase 2

#### Implement New Policies

- Identify assistance needed to implement policies effectively
- Deploy targeted reinvestment strategies to increase public safety
- Track the impact of enacted policies/programs
- Monitor recidivism rates and other key measures

## Justice Reinvestment project timeline



## Data requests to state agencies largely have been fulfilled

Data Type		Source
- Crime and Arrests - Jail	✓ ✓	Crime Commission
- Sentencing	✓	Administrative Office of the Courts
- Probation Supervision - Problem Solving Courts - Community Based Programs	✓ ✓ P	Office of Probation Administration
- Prison - Parole Decision-making - Parole Supervision	✓ ✓ ✓	Department of Correctional Services
<u>Other</u> - Population Data - Behavioral Health Data - Criminal History Information	✓ ✓ P	Census/State Data Center Cross-system Sources State Police

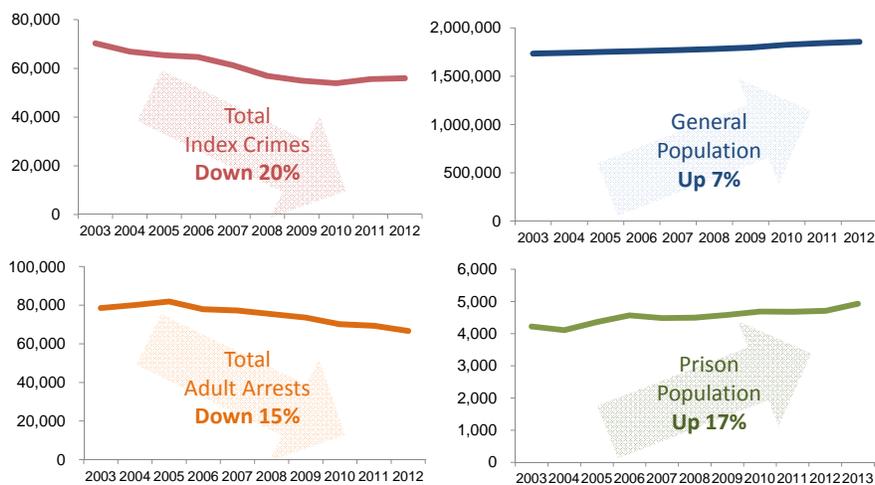
## Update on criminal justice system stakeholder engagement since June working group meeting

- County Officials → Workshop with ~30 county commissioners, county attorneys, public defenders, sheriffs, and mental health professionals
- Reentry Alliance → Discussion with reentry service providers
- Probation Officers and Parole Officers → Three days of focus groups with probation officers and PSI writers, and with parole officers
- Law Enforcement → Visit to the Omaha Police Department to meet with Crime Analysis Unit and a police officer ride-along
- District Judges → Lancaster and Douglas County District Court Judges lunch meeting, and survey to be distributed in coming weeks

### Upcoming Meetings

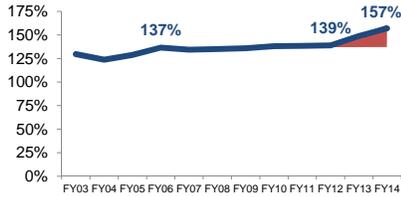
- Discussion organized by Nebraska Coalition for Victims of Crime
- Visit to Tecumseh prison
- Conference presentations to county attorneys, defense attorneys, sheriffs, and district judges

## Recap of Nebraska trends reported at June meeting

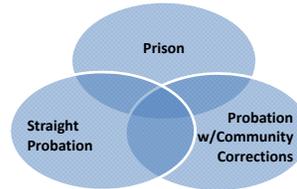


## June's presentation posed three questions that will be explored at today's and October's working group meetings

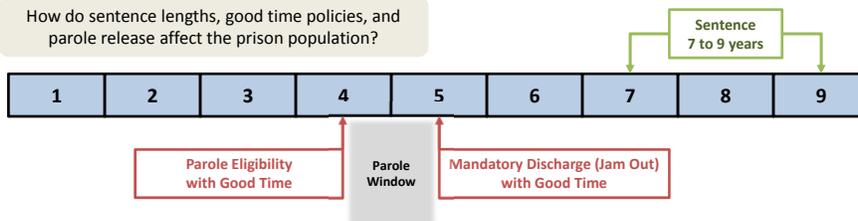
What are underlying drivers in the recent surge in prison growth?



How are probation and community corrections diverting from prison and reducing recidivism?



How do sentence lengths, good time policies, and parole release affect the prison population?



Source: NDCS release data.

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## Presentation Overview



**Contributors to Nebraska Prison Crowding**

**Felony Sentencing Distribution**

**Effective Strategies to Reduce Offender Risk**

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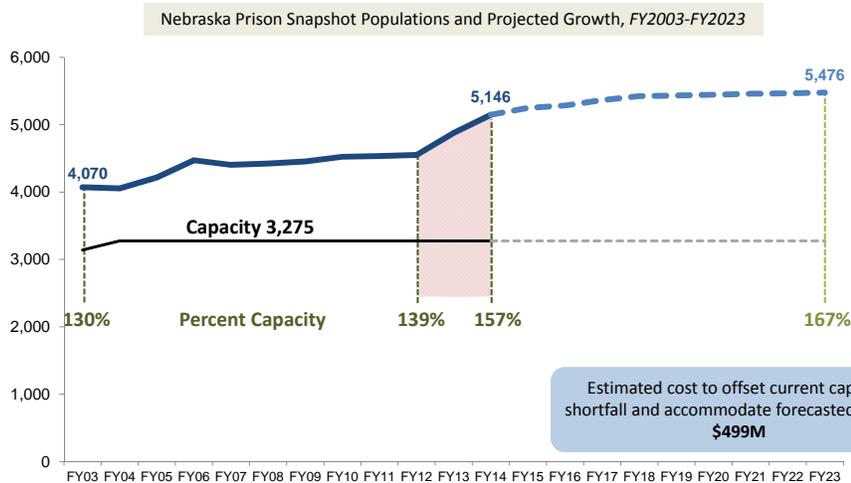
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In Nebraska, felony offenses are divided into levels with sentence length ranges from which courts determine prison term

Felony Level	1, 1A, 1B, 1C, 1D	2	3	3A	4
Sentence Range	1 - Death 1A - Life 1B - 20 years to life 1C - 5 mand. min. to 50 years 1D - 3 mand. min. to 50 years	1 to 50 years	1 to 20 years	Up to 5 years	Up to 5 years
Common Offenses	<ul style="list-style-type: none"> <li>Murder</li> <li>Kidnapping</li> <li>Sexual Assault</li> <li>Use of a firearm to commit a felony</li> <li>Possession of a firearm by prohibited person</li> <li>Possession with intent to distribute</li> </ul>	<ul style="list-style-type: none"> <li>Attempt/Aid Class 1 felony</li> <li>Hazardous drug delivery</li> <li>Robbery</li> <li>Sexual Assault 1<sup>st</sup> degree</li> <li>Assault 1<sup>st</sup> degree</li> </ul>	<ul style="list-style-type: none"> <li>Controlled substance delivery</li> <li>Burglary</li> <li>Attempt/Aid Class 2 felony</li> <li>Theft over \$1,500</li> <li>Assault 2<sup>nd</sup> degree</li> <li>Forgery 1<sup>st</sup> degree</li> <li>Repeat DUI offenders</li> <li>Possession of a deadly weapon by prohibited person</li> </ul>	<ul style="list-style-type: none"> <li>Repeat DUI offenders</li> <li>Child abuse</li> <li>Assault on officer 3<sup>rd</sup> degree</li> <li>Sexual assault on child 3<sup>rd</sup> degree</li> </ul>	<ul style="list-style-type: none"> <li>Possession of controlled substance</li> <li>Attempt/Aid Class 3 or 3A felony</li> <li>Drive while suspended</li> <li>Theft \$500-\$1,500</li> <li>Forgery 2<sup>nd</sup> degree</li> <li>Terroristic threats</li> <li>Sex offender registry violations</li> <li>Operate motor vehicle to avoid arrest</li> </ul>

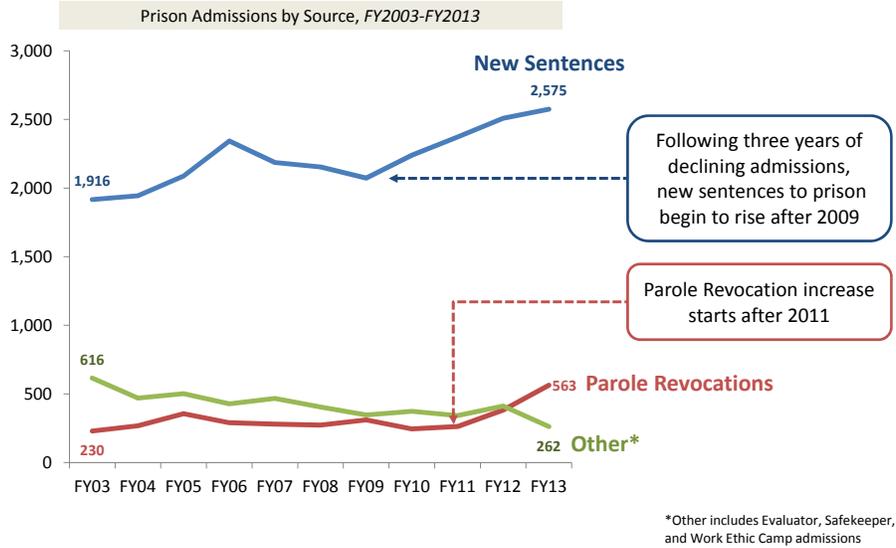
Sentence lengths determine whether the sentence is served in jail (if less than 1 year) or prison (one year or more)

At the June presentation, we indicated we would explore contributors to the prison population increase after 2012

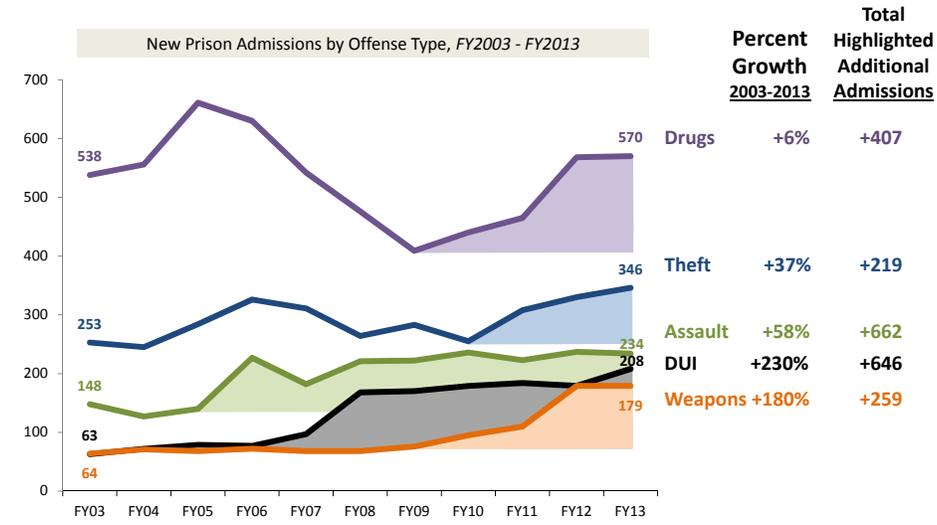


Source: NDCS Annual Reports; JFA Institute, NDCS Ten-Year Prison Population Projections, FY2012-2022. Estimated operating and construction costs from CSG Nebraska Working Group Presentation #1, June, 2014.

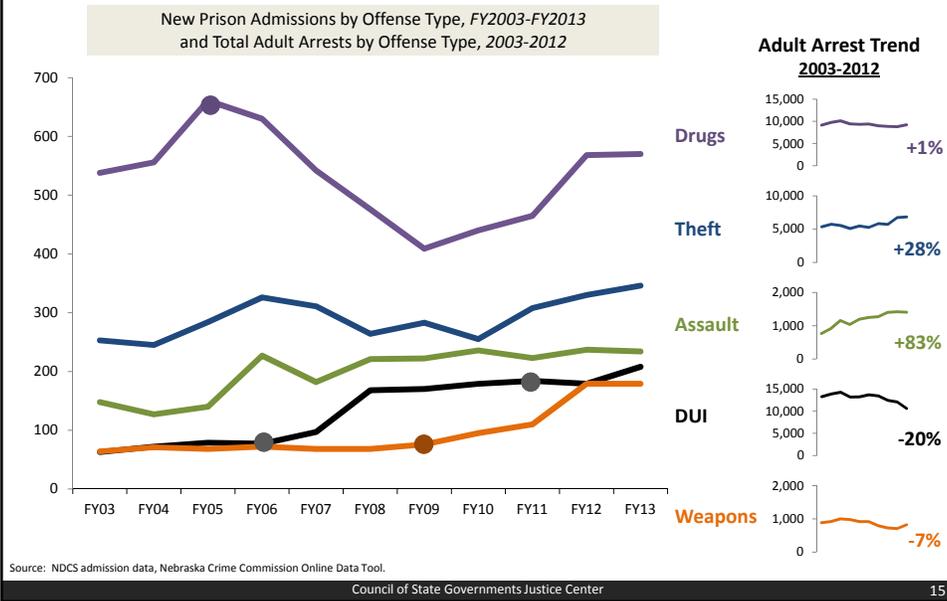
## Since 2009, new sentence and parole violator admissions to prison together climbed 30 percent



## Certain offenses contributed disproportionately to the increase among new prison admissions



## Apparent increase in admissions for certain offenses following penalty enhancements

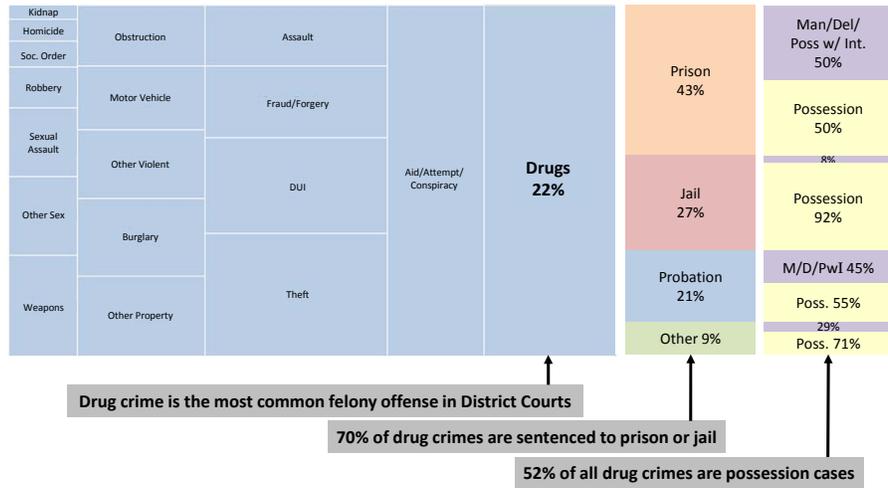


## Examples of recent criminal penalty enhancements

Drugs	
2005 (LB 117)	<ul style="list-style-type: none"> <li>Added meth to "extremely hazardous substances" list, making possession etc. of less than 10 grams a Class II rather than Class III felony. Adjusted felony amounts and levels for meth and heroin possession.</li> <li>Upgraded knowingly selling ephedrine to someone for making meth from Class III misdemeanor to Class IV felony.</li> </ul>
DUI	
2006 (LB 925)	<ul style="list-style-type: none"> <li>Increased penalty for motor vehicle homicide under the influence from Class IIIA to Class III felony.</li> <li>Second offenses raised to Class II felony.</li> <li>Increased penalty for most varieties of DUI – some up to Class II felonies.</li> </ul>
2011 (LB 675)	<ul style="list-style-type: none"> <li>Increased many repeat DUI penalties.</li> </ul>
Weapons	
2009 (LB 63)	<ul style="list-style-type: none"> <li>Stronger penalties for transferring a firearm to a juvenile, possession of a weapon on school grounds, use of a deadly weapon, and possession of deadly weapon during commission of felony.</li> <li>Possession of stolen or defaced firearm upgraded from Class IV to Class III felony. Discharging a weapon from or after exiting a motor vehicle made Class IC Felony.</li> <li>Adds felons and those convicted of misdemeanor domestic violence in the last seven years as people prohibited from possessing deadly weapons.</li> </ul>

## Possession accounts for at least half of all felony drug sentences

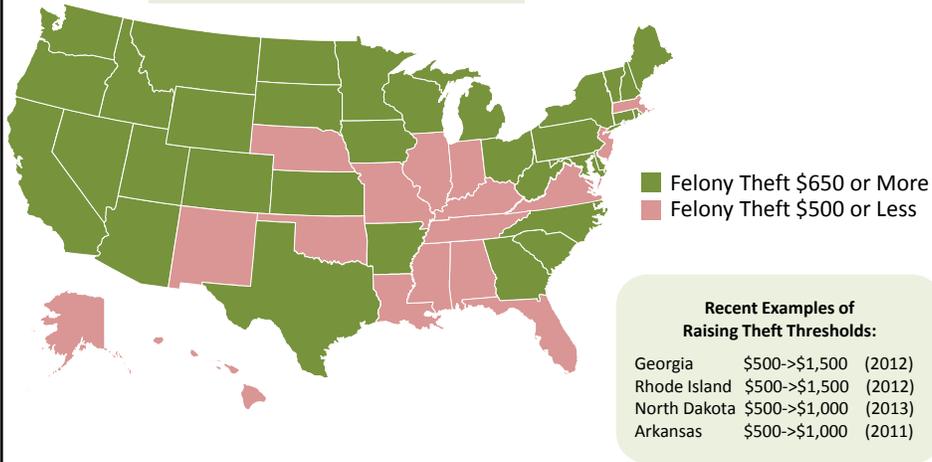
Offense Type Among All Felony Sentences, FY2012-FY2013



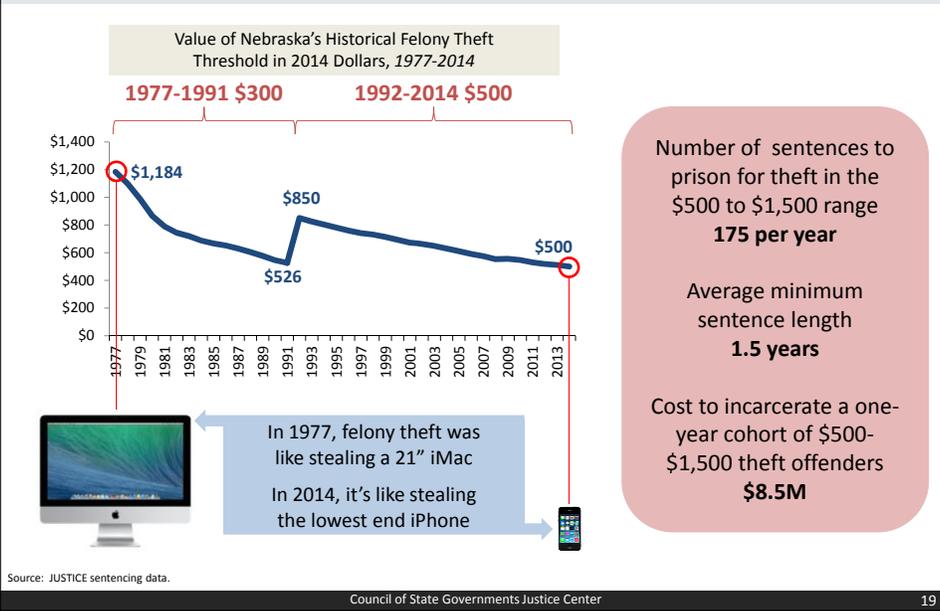
Source: JUSTICE sentencing data.

## Nebraska is one of 17 states with a felony theft threshold of \$500 or less

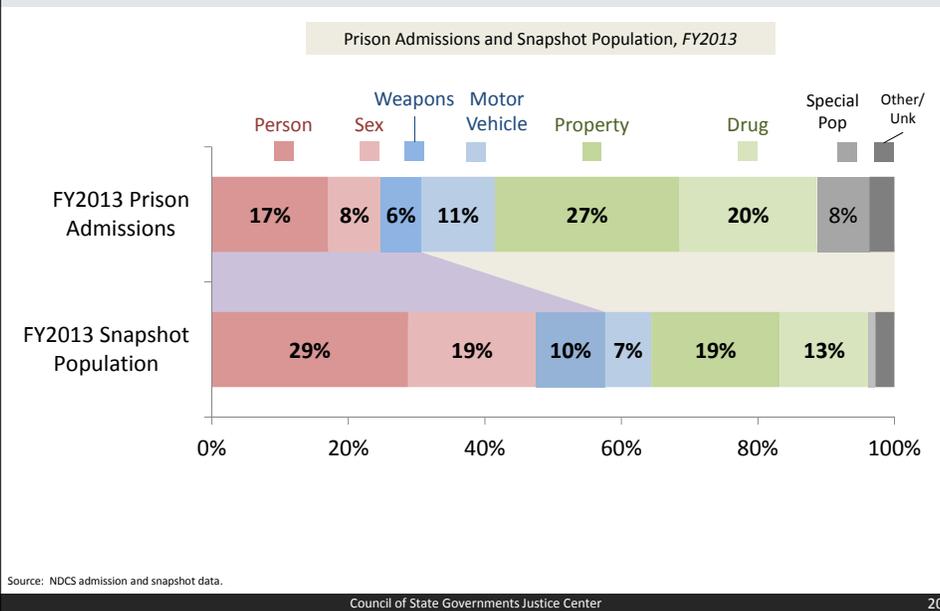
Felony Theft Thresholds by State, 2014



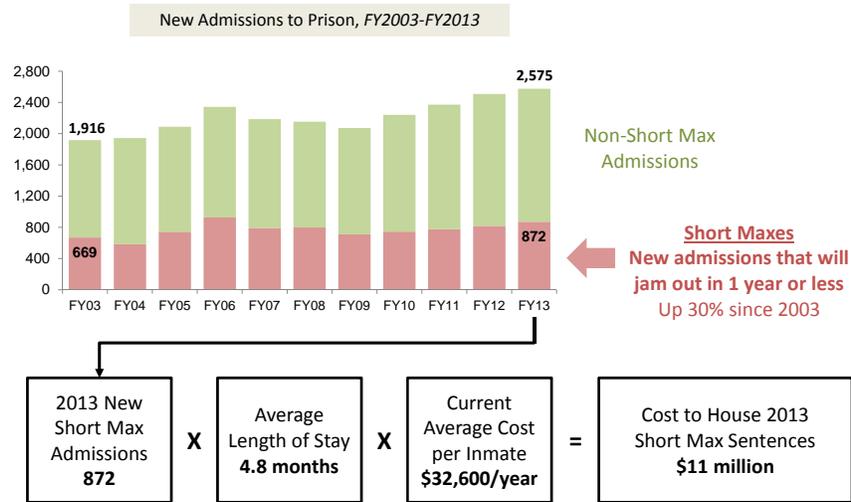
## Recalibrating felony theft amounts could save Nebraska millions of dollars per year



## Despite fewer admissions, more serious offenses accumulate in the snapshot population

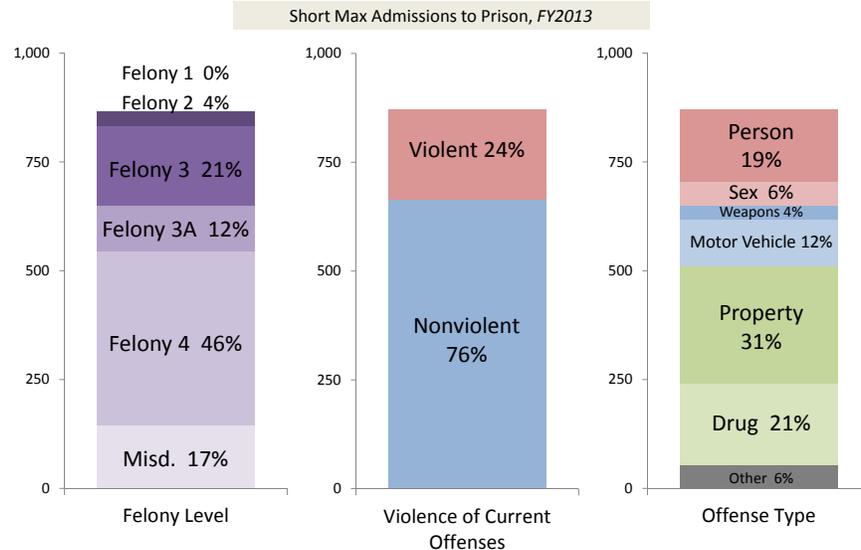


## “Short Max” sentences represent about one third of all new admissions and consume considerable resources



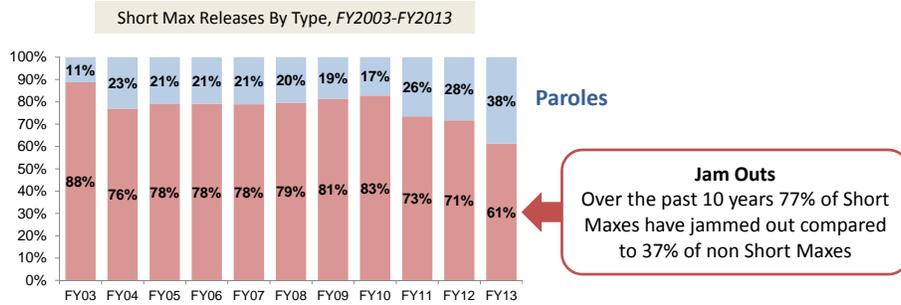
Source: NDCS admission data.

## Short Max admissions to prison are frequently lower level, non-violent offenders



Source: NDCS admission data.

## Short Max prisoners jam out to no supervision twice as often as those with longer stays



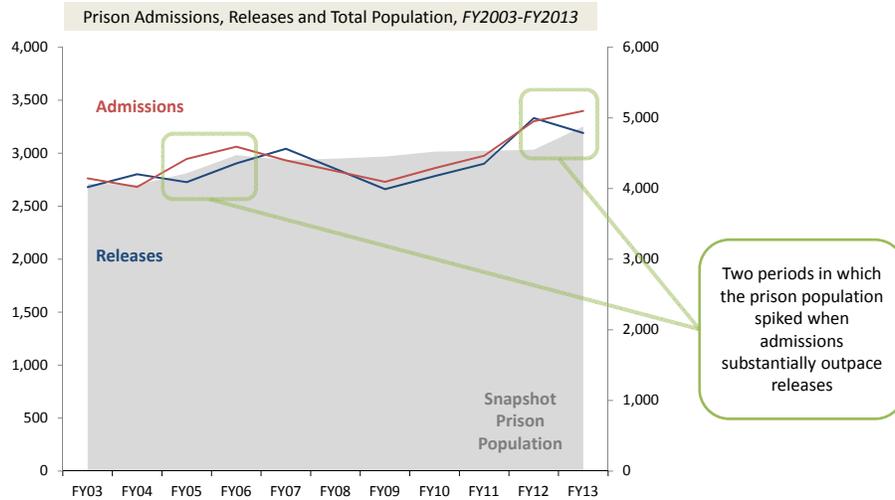
The average Short Max admission is parole eligible in 3 months  
Average LOS 4.8 months



Given short time frames, entry into programming is unlikely and completion is nearly impossible

Source: NDCS release data.

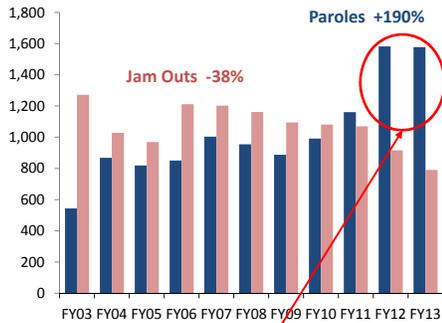
## Unless releases can keep up with or exceed admissions, the prison population will climb



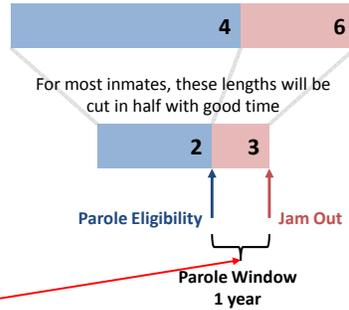
Source: NDCS admission and release data

## Despite increase in parole releases over jam-outs, bed savings are restricted due to narrow parole windows

New Commitment Releases by Type, FY2003-FY2013



The average sentence length for new admissions is roughly 4 to 6 years



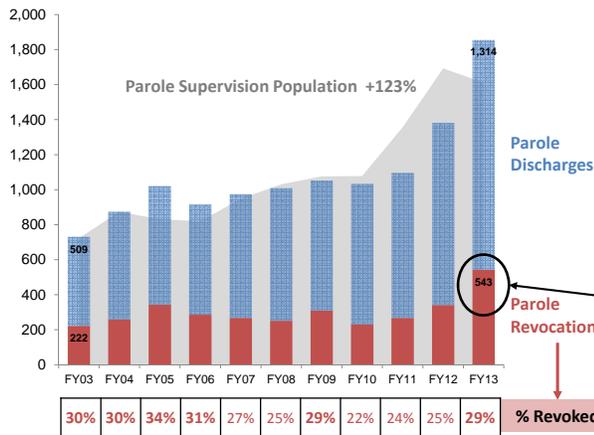
500 additional parolees released 6 months before jam out yields only 250 beds for one year

Narrow parole windows means less time saved per parole grant and little post-release supervision time

Source: NDCS release data.

## Higher volume of parole revocations to prison also mitigates the impact of increased parole release

Parole Snapshot Population and Parole Terminations by Type, FY2003-FY2013

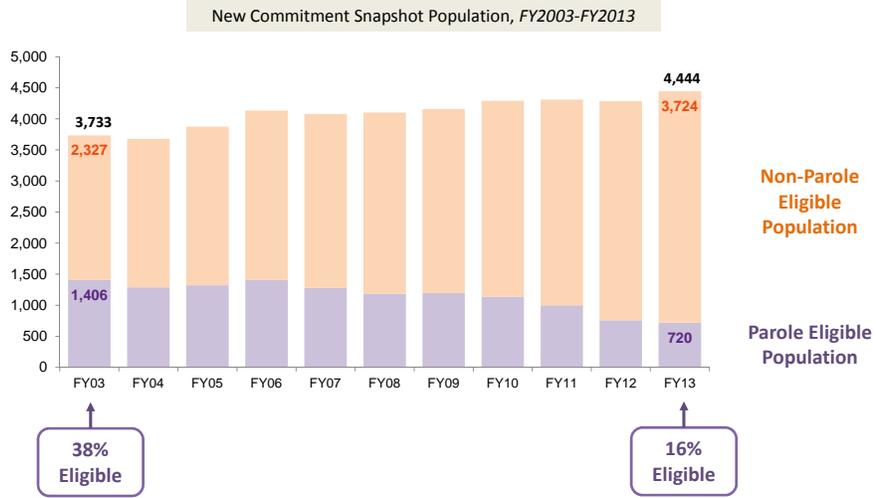


As more parolees were placed on supervision, the volume of revocations spiked

200 additional parolees revoked and returned for 6 months in prison consumes 100 beds for one year

Source: NDCS parole snapshot and release data.

## As the volume of parole releases rises, the pool of eligible parole candidates recedes



Source: NDCS snapshot data.

## Presentation Overview

Contributors to Nebraska  
Prison Crowding

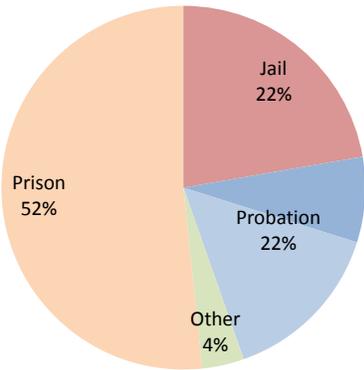


Felony Sentencing Distribution

Effective Strategies to  
Reduce Offender Risk

## Sentencing in Nebraska tilts heavily toward incarceration

Felony Sentencing Distribution,  
FY2012-FY2013



### Expanded Detail on Probation Sentences with Jail Time

§29-2262 enable courts to impose up to 6 months of jail time at any point during the probation term.

The average jail order with a probation sentence is 3 months

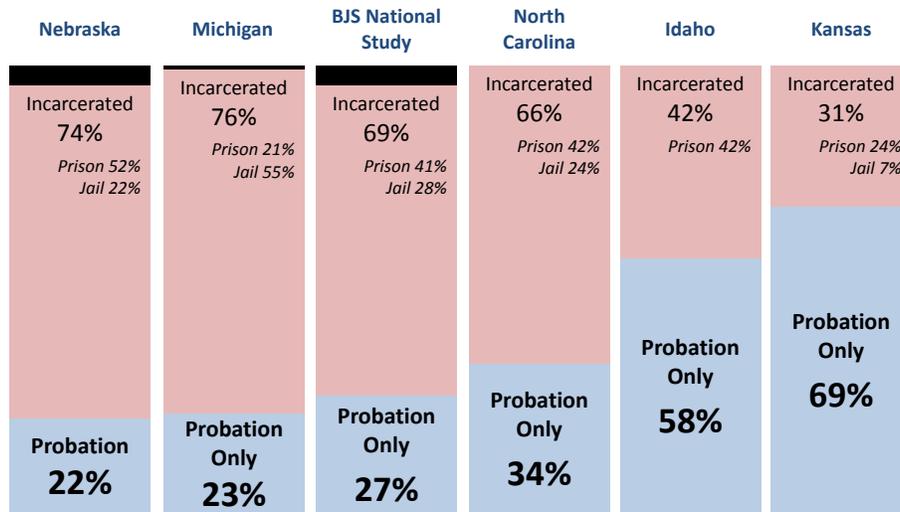
34% of probation sentences include jail time

Source: JUSTICE sentencing data.

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## Nebraska utilizes probation less often than the national average and several other recent JR states



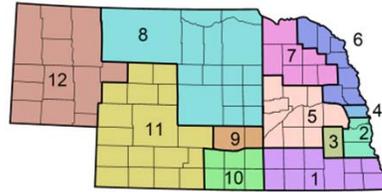
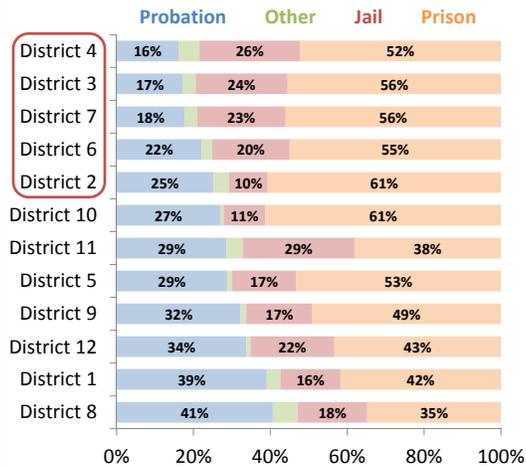
Source: *Statewide Dispositions – Fiscal Year 2012*, Office of Community Alternatives, MI Dept. of Corrections, November 2012; KS Felony Sentencing Data; *Structured Sentencing Statistical Report FY 2011/12*, NC Sentencing and Policy Advisory Commission; BJS Felony Sentences in State Courts, 2006 – Statistical Tables; Nebraska JUSTICE sentencing data.

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## Percent of felony sentences to probation is lowest in Nebraska's most populous judicial districts (4 and 3)

Felony Sentencing by Judicial District, FY2012-FY2013



### Hypothetical Scenario:

If Districts 2, 3, 4, 6 and 7 sentenced felonies at same rate as the national average, prison admissions would drop by 500 per year

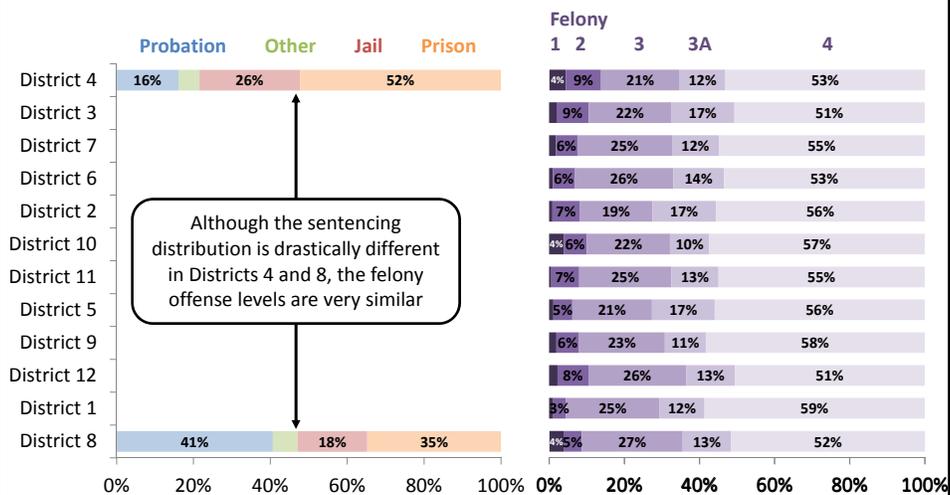
Source: JUSTICE sentencing data.

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## Variation in felony offenses across judicial districts fails to explain differences in sentencing distribution

Felony Sentencing by Judicial District and Felony Level, FY2012-FY2013

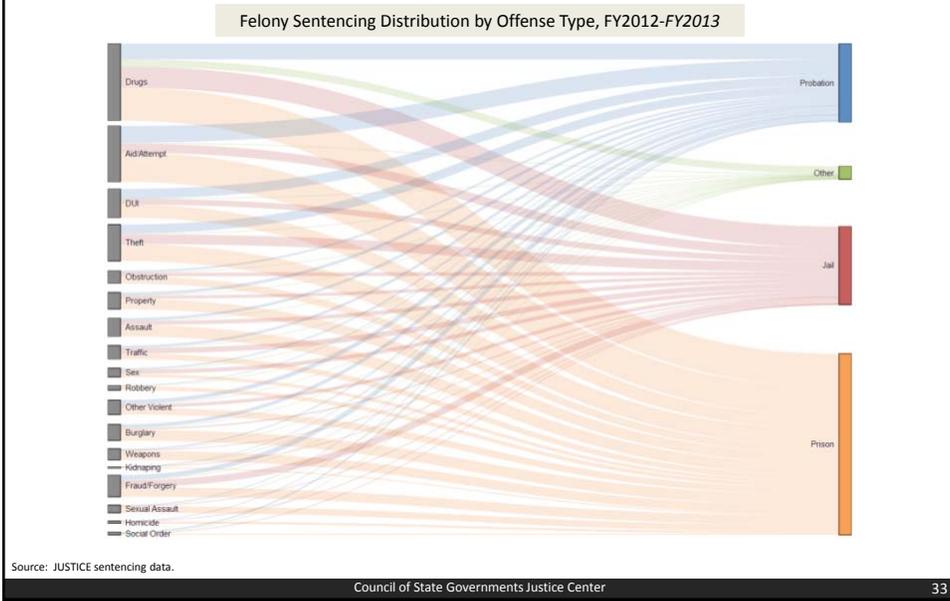


Source: JUSTICE sentencing data.

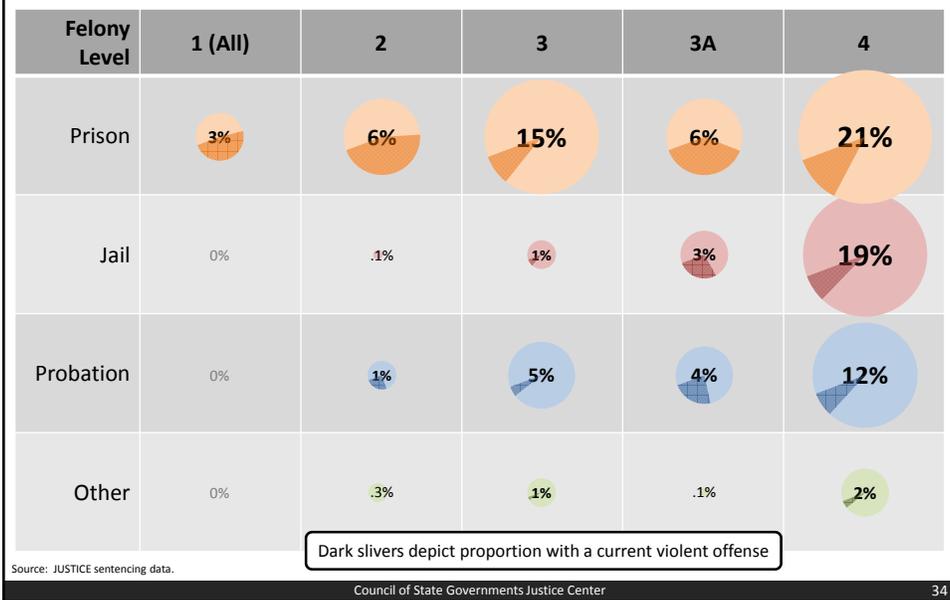
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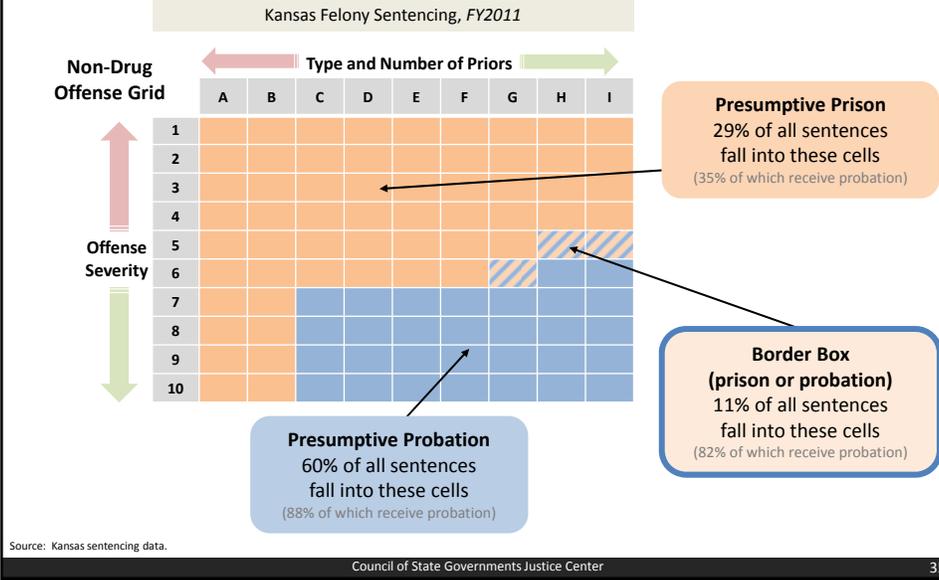
Although probation receives a smaller share than prison, it receives a portion of all offense types



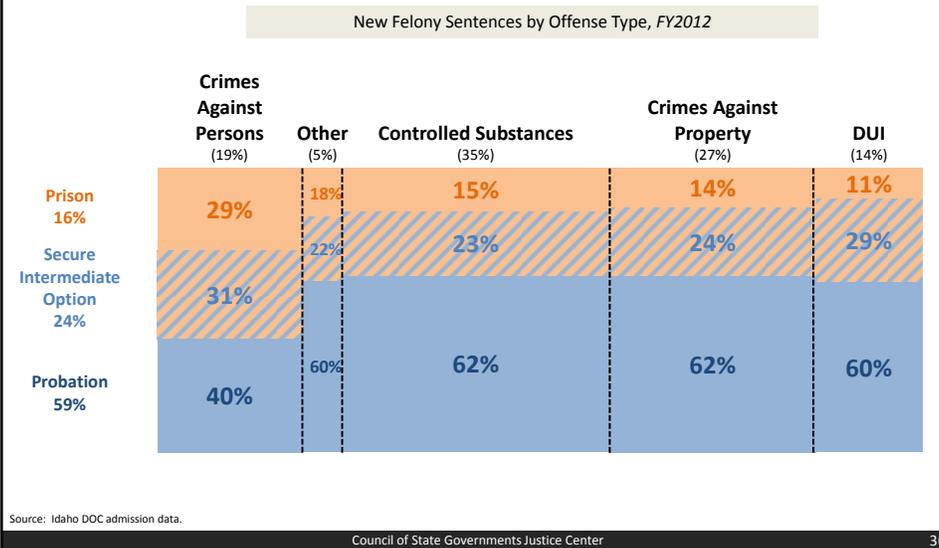
Majority of lower-level felony sentences are disposed to jail or prison



## In Kansas, sentencing guidelines create a structure that yields a higher percentage of sentences to probation

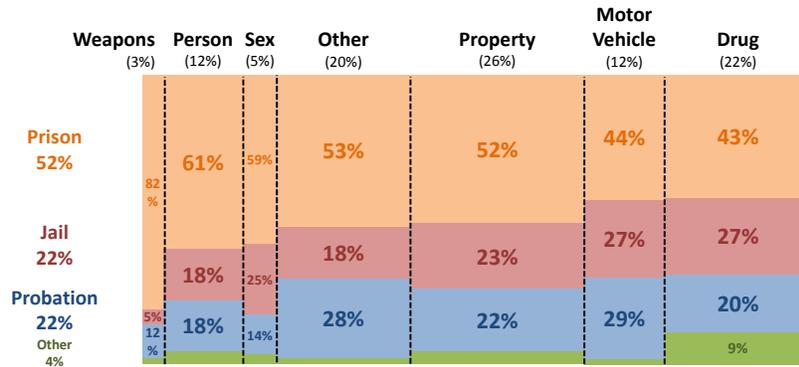


## In Idaho, probation receives almost 60% of felony sentences



## While in Nebraska, the proportion of felony sentences to probation falls in the 20% range or less

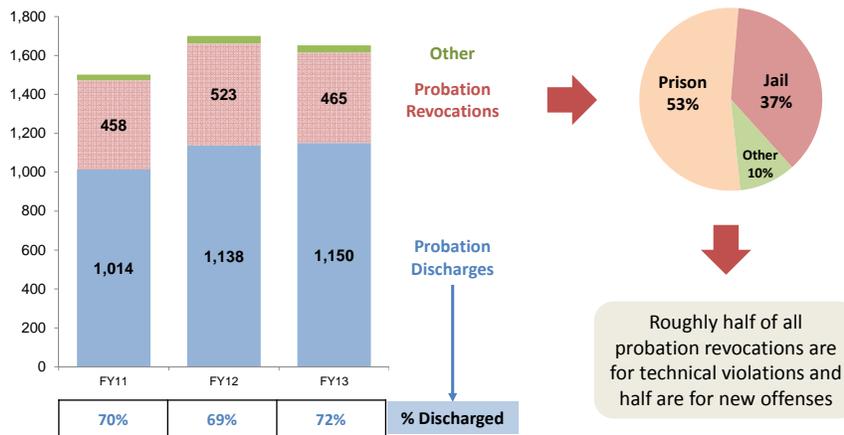
Felony Sentences by Type and Offense Type, FY2012-FY2013



Source: JUSTICE sentencing data.

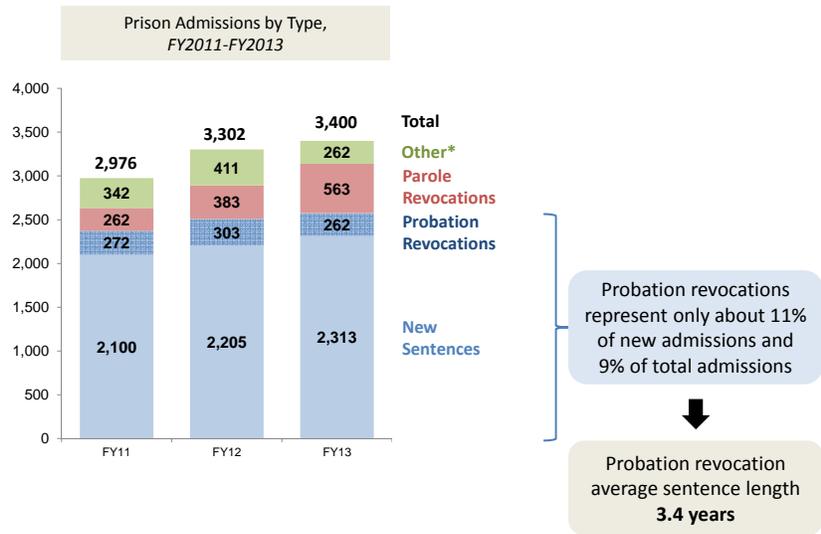
## 70 percent of Nebraska probationers successfully complete probation supervision terms

Probation Terminations by Type, FY2011-FY2013



Source: Nebraska Probation Administration release data.

## Probation revocations represent a small portion of total prison admissions



Source: Nebraska Probation Administration release data and NDCS admission data.

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## Presentation Overview

Contributors to Nebraska Prison Crowding

Felony Sentencing Distribution

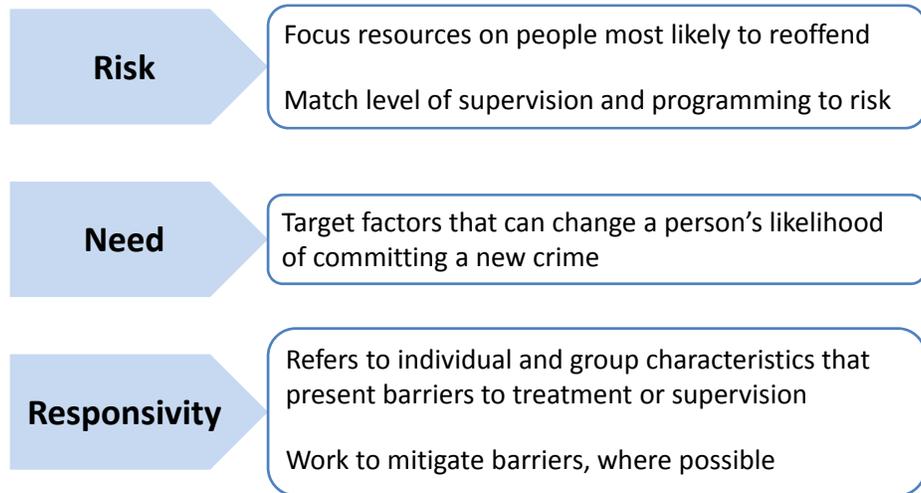


Effective Strategies to Reduce Offender Risk

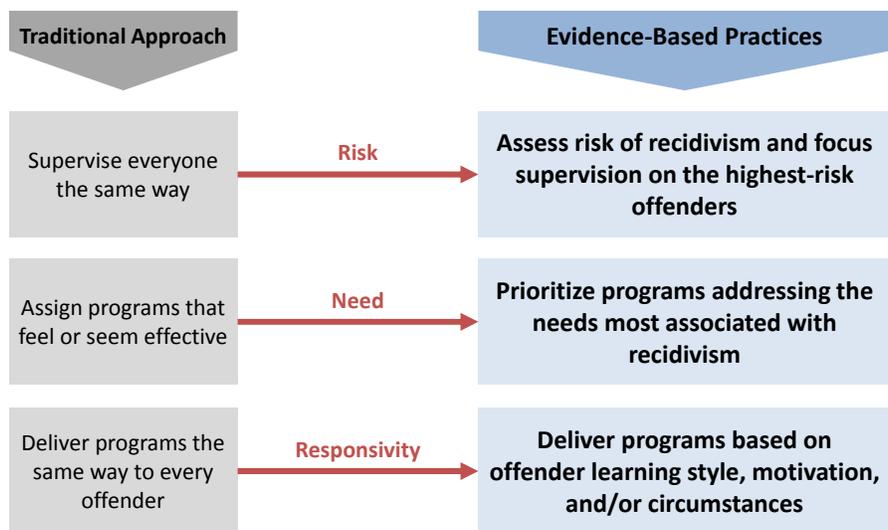
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## Risk, Need and Responsivity forms the foundation of effective supervision and programming



## RNR principles are the essential components of effective supervision



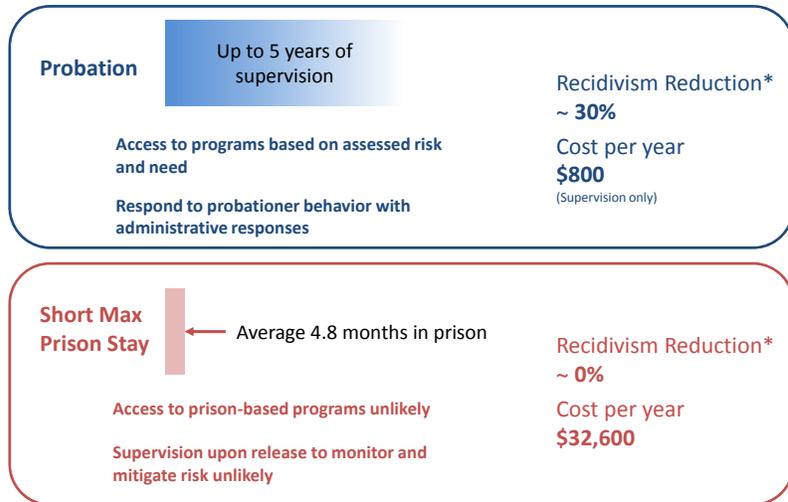
## Characteristics of effective responses to probationer risk and adherence to conditions of supervision

- Dosage** Focus supervision officer time and program resources on the highest-risk offenders
- Swift** Enable officers to respond meaningfully to violations without delay or time-consuming processes
- Consistency** Use a graduated range of sanctions and incentives to guide specific type of response to violations
- Cost-effectiveness** Prioritize the most expensive, restrictive sanctions for offenders committing the most serious violations

## Initial observations of probation policies are positive and identify opportunity for further strengthening supervision

- Dosage** ✓+ Probationers are assessed for risk and assigned to caseloads accordingly. Supervision/program resources then are focused on higher-risk probationers. Caseloads vary based on probationer risk, enabling higher-quality engagement of higher-risk cases.
- Swift** ✓ Statutes specify administrative responses to violations that may be imposed without a court hearing. Hearings are required for custodial sanctions, such as for show cause terms. Delays between probable cause and revocation hearings often last two or more months.
- Consistency** ✓ Policies specify levels of administrative responses that may be applied to violations. Although officer training includes use of the sanctions matrix, policies do not structure responses in a graduated fashion based on risk, violation severity, and other criteria.
- Cost-effectiveness** ✓- Although administrative responses are permitted and longer jail sanctions are used, policy doesn't authorize short (2- to 3-day) jail stays as more restrictive behavioral response. Certain courts apply short jail stays but the practice is inconsistent statewide.

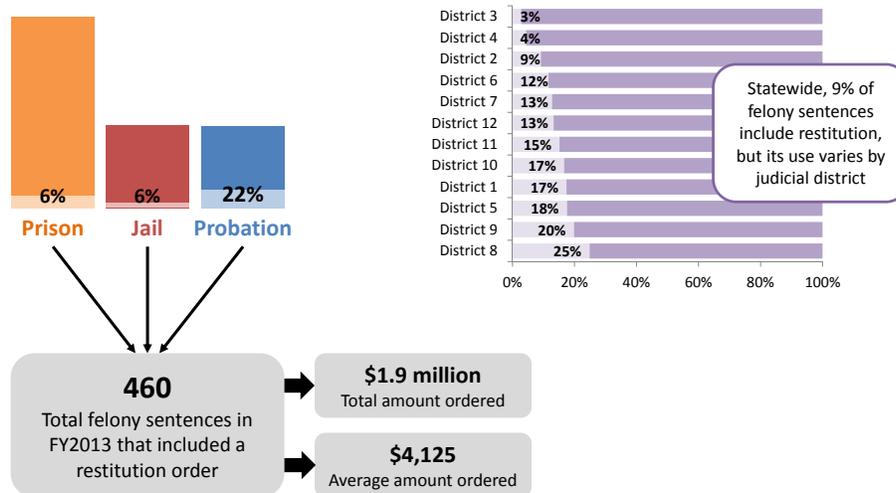
## Probation could generate greater recidivism impact and cost-effectiveness than short maxes to prison



\* Based on Washington State Institute for Public Policy analysis of return on investment from evidence based intervention programs and policies.

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.

## Courts much more likely to attach restitution orders to probation than to jail or prison sentences

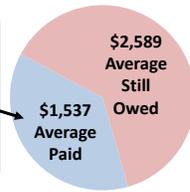


Source: JUSTICE sentencing data.

## Restitution collections much more likely for people on probation than for people in jail or prison

In FY2013, the average felony restitution order was \$4,125

An average \$1,537 (37%) had been collected through July 2014 (1 to 2 year follow up period)



Of all restitution orders (460):

- 28% paid in full (129)
- 23% made partial payments (106)
- 55% paid none (225)

In the last 5 years, as few as 25 DCS inmates have been ordered to pay restitution in prison and total collections have amounted to less than \$2,800

Probationers are given the largest restitution dollar amounts and they pay more within the 1-2 year follow up period

	Prison	Jail	Probation
Average Amount	\$3,177	\$1,449	<b>\$5,342</b>
Total Orders	151	41	246
Paid All	23 (15%)	8 (20%)	89 ( <b>36%</b> )
Paid Some	14 (9%)	3 (7%)	84 ( <b>34%</b> )
Paid None	114 ( <b>75%</b> )	30 ( <b>75%</b> )	73 (30%)

Source: JUSTICE sentencing data and NDCS restitution report.

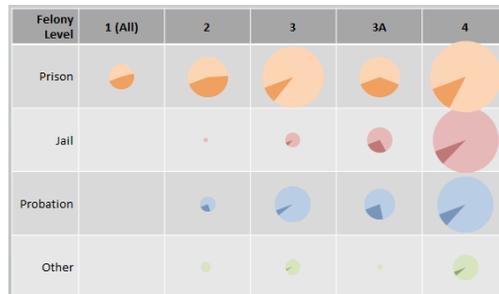
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## (1) Presentation Recap

### 54 percent of people sentenced for felonies are convicted of offenses at the lowest level (F4)

- 87 percent of these convictions were for nonviolent offenses
- One factor is Nebraska's lower felony theft threshold (\$500) compared to most states



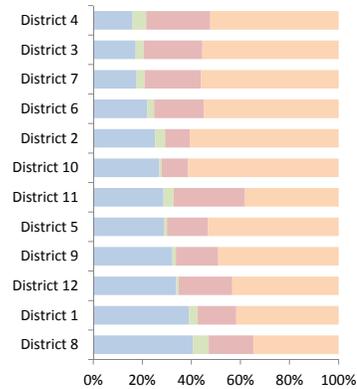
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## (2) Presentation Recap

### 73 percent of Felony 4s are sanctioned with prison and jail terms, rather than probation

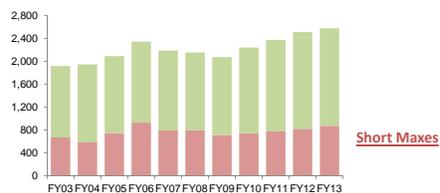
- Within Nebraska the rate of felonies sentenced to probation varies considerably, from as low as 16 percent (District 4) to as high as 41 percent (District 8)
- In contrast, other states have and the US as a whole have higher rates of sentences to probation



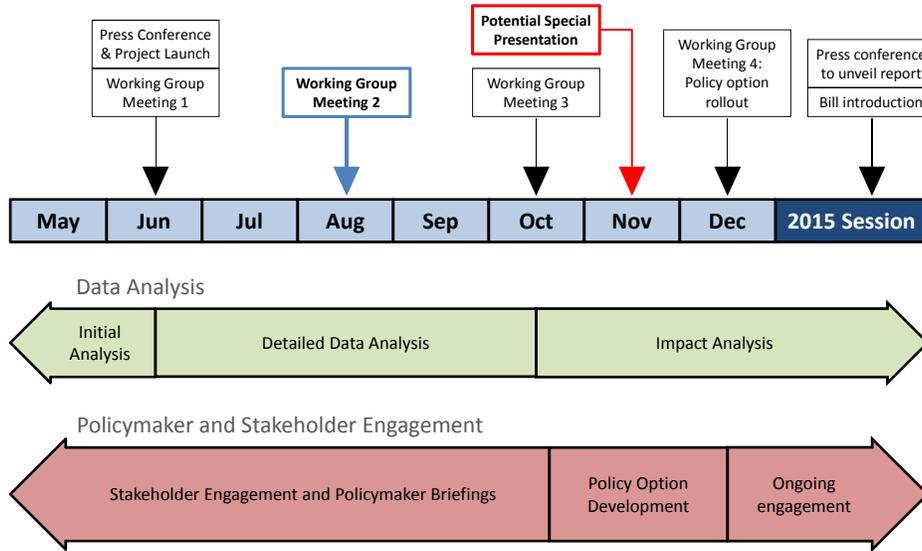
## (3) Presentation Recap

### Short Max prison terms do not provide much accountability during or after the brief lock up

- Short Max prison stays are shorter than allowable probation terms, and more in line with a misdemeanor jail sentence
- Short incarceration periods are more costly and less effective at reducing recidivism than longer periods of community supervision and treatment
- Most don't receive supervision and programming upon release
- Restitution among those ordered to probation is far more likely to be collected than those sentenced to prison



## Justice Reinvestment project timeline



## Thank You



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