

# Justice Reinvestment Initiative in Vermont

Presentation to the Justice Reinvestment II Working Group

October 12, 2021



**Justice Center**  
THE COUNCIL OF STATE GOVERNMENTS

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# Justice Center

THE COUNCIL OF STATE GOVERNMENTS

We are a national nonprofit, nonpartisan organization that combines the power of a membership association, serving state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities.

## How We Work

- We bring people together
- We drive the criminal justice field forward with original research
- We build momentum for policy change
- We provide expert assistance

## Our Goals

- Break the cycle of incarceration
- Advance health, opportunity, and equity
- Use data to improve safety and justice

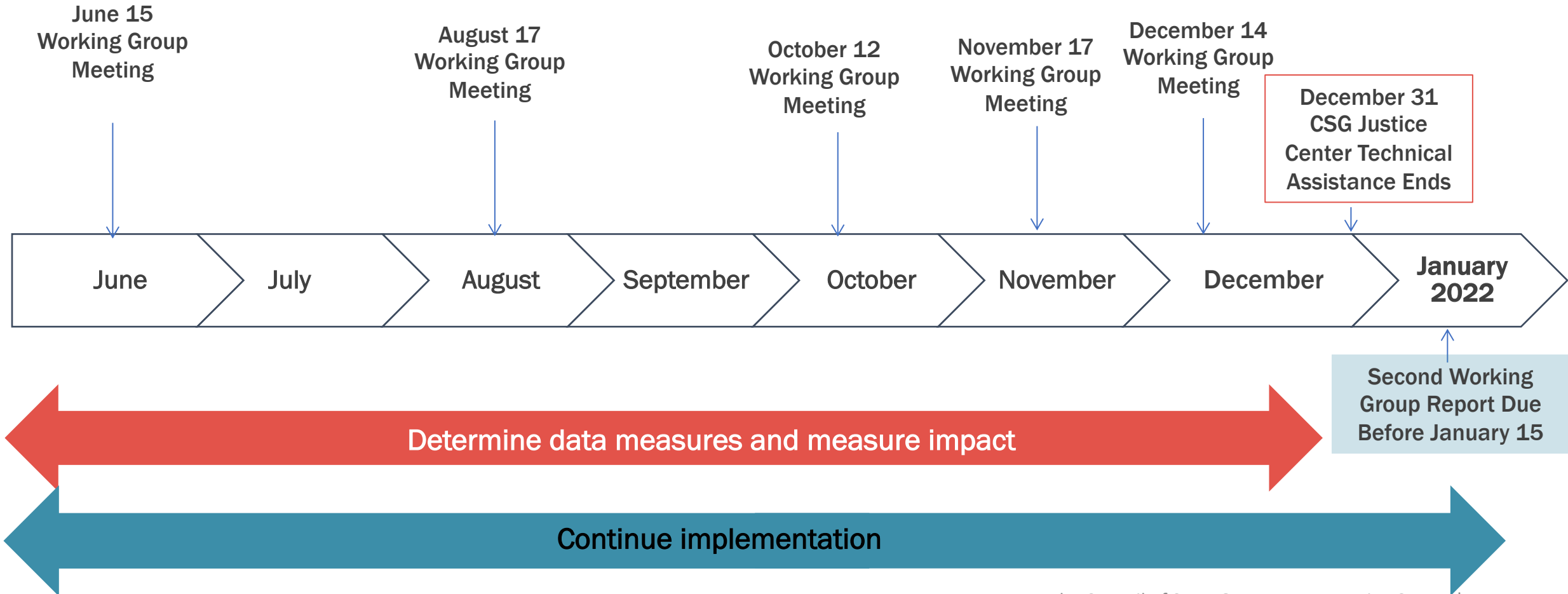




**A data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism**

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.

# The working group has two remaining meetings before delivering their report to the legislature in January 2022.





## The working group prioritized the following tasks prior to its second reporting deadline on **January 15, 2022**.

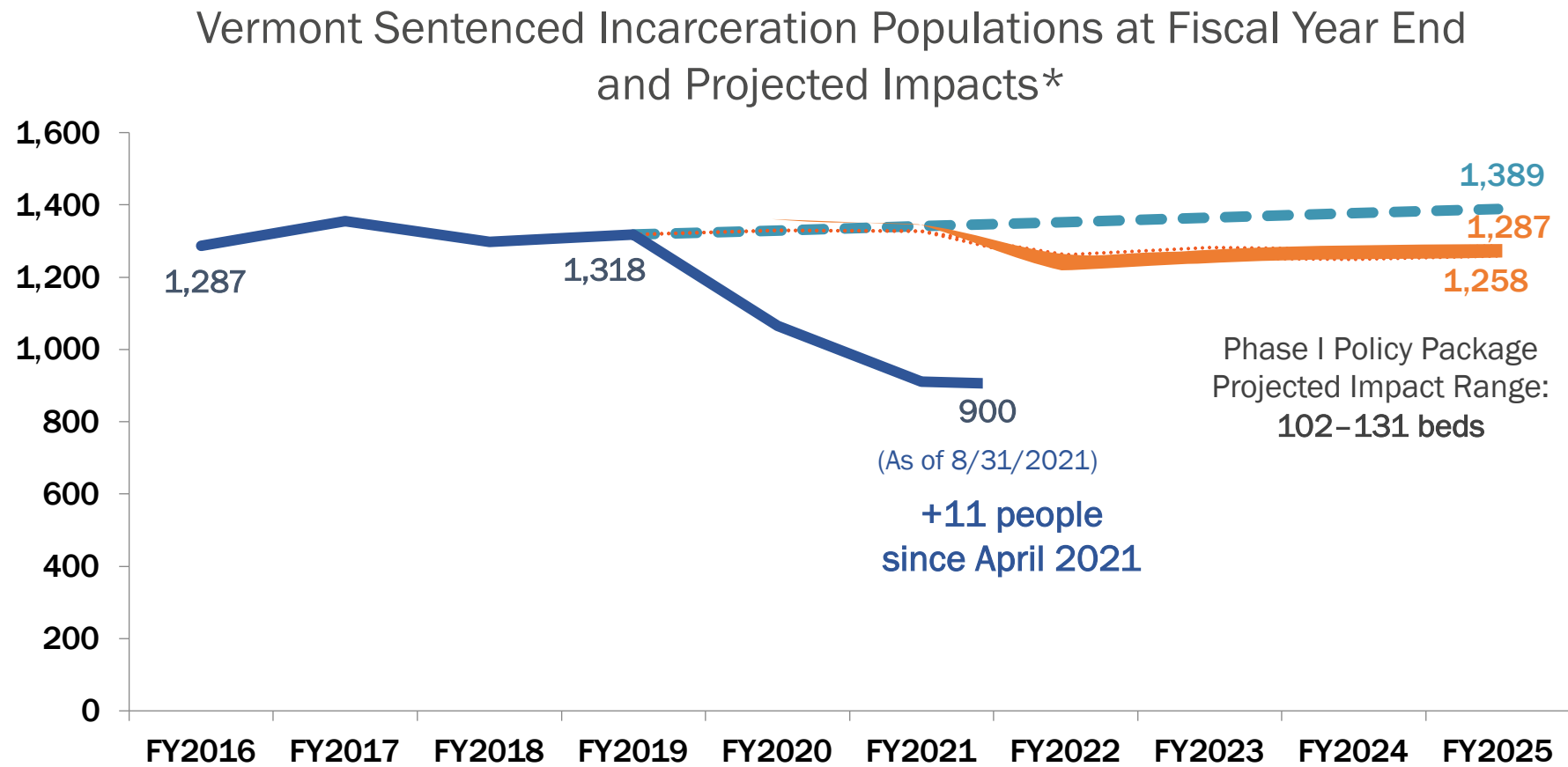
1. Oversee the Justice Reinvestment Initiative implementation activities and monitor implementation outcomes including the role of the COVID-19 pandemic in prison and supervision population change.
2. Evaluate the policy of parole eligibility for older adults in prison who are not serving a sentence of life without parole.
3. Develop funding recommendations for the upcoming budget cycle.
4. Continue the racial equity sentencing analysis and discuss potential policies to address racial disparities.



## Overview

- 1 Data Monitoring**
- 2 Parole for Older Adults Continued**
- 3 Reinvestment Funding Recommendations**
- 4 Next Steps**

# Since the start of the COVID-19 pandemic, Vermont prison admissions have decreased significantly, resulting in a 31 percent decline in the incarcerated population.

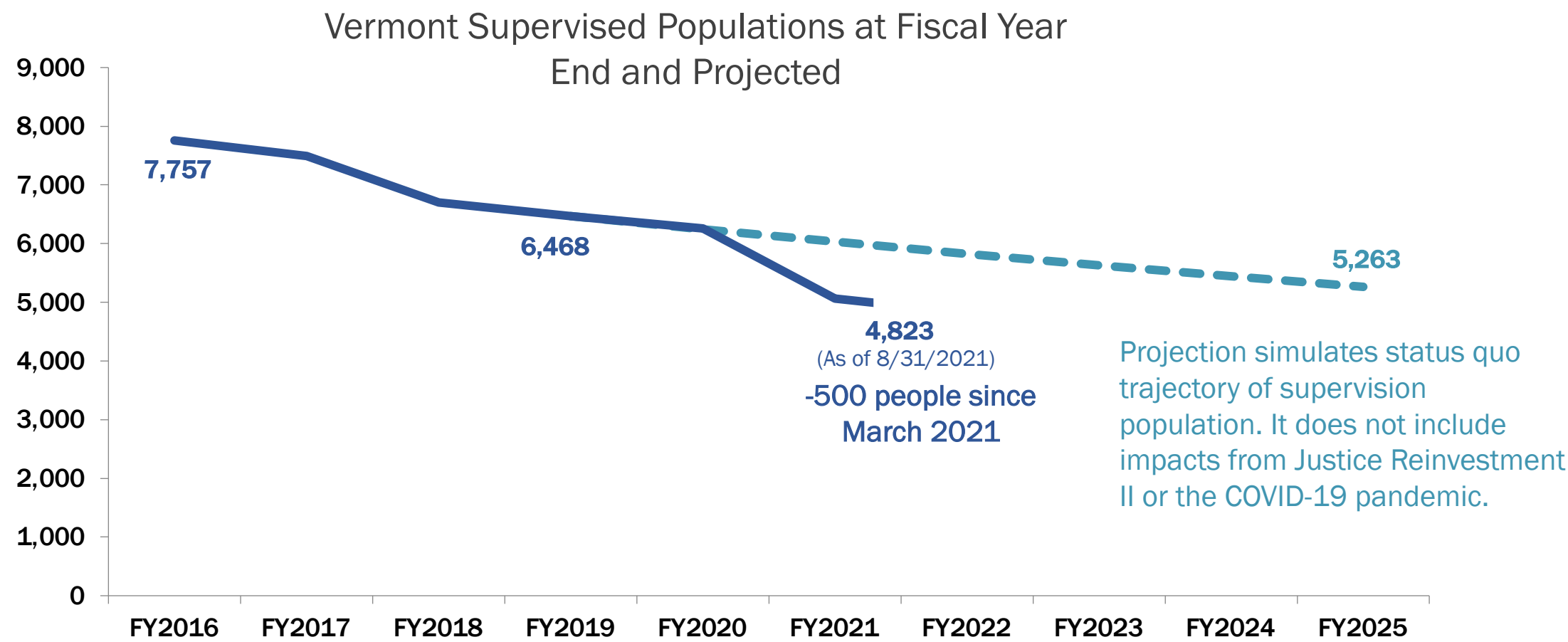


Initial projection models did not account for changes in the prison population since the onset of COVID-19 and so should be considered within a very limited context.

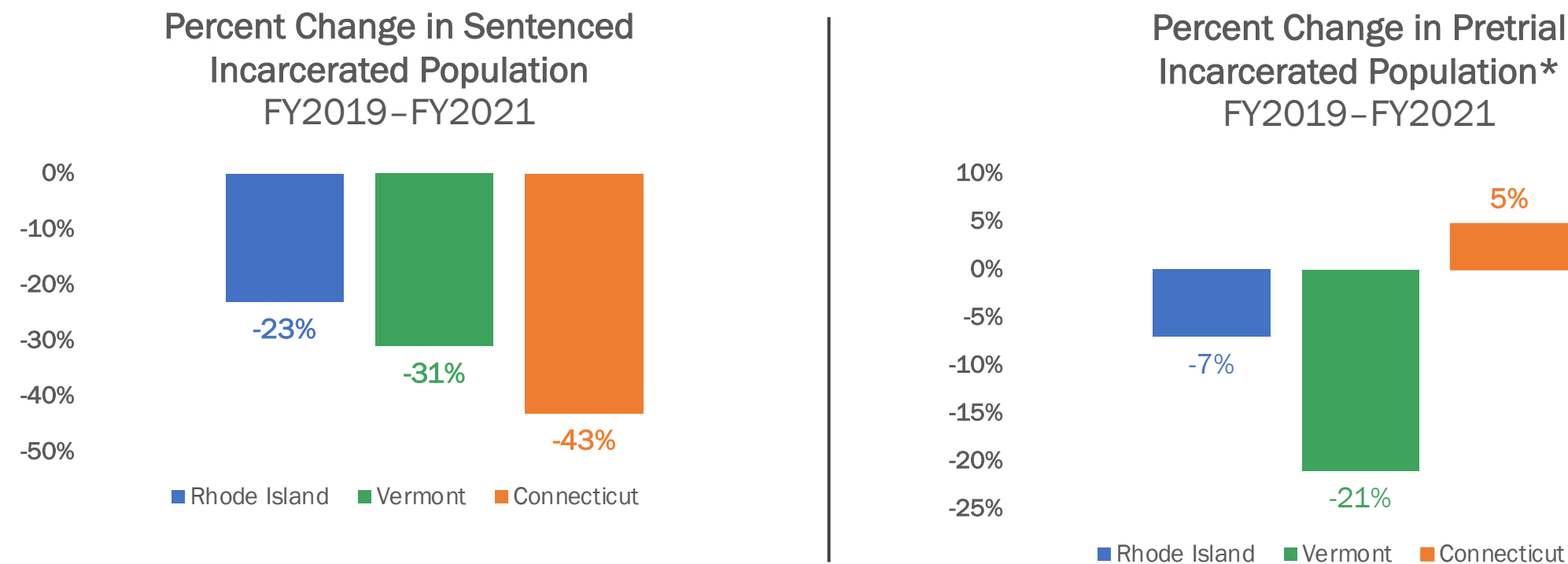
\*This chart shows Vermont's original Phase I impact projections and does not include the minimal reduction in savings resulting from carveouts to earned time as enacted in Act 12.



# Vermont's community supervision population has also decreased significantly.



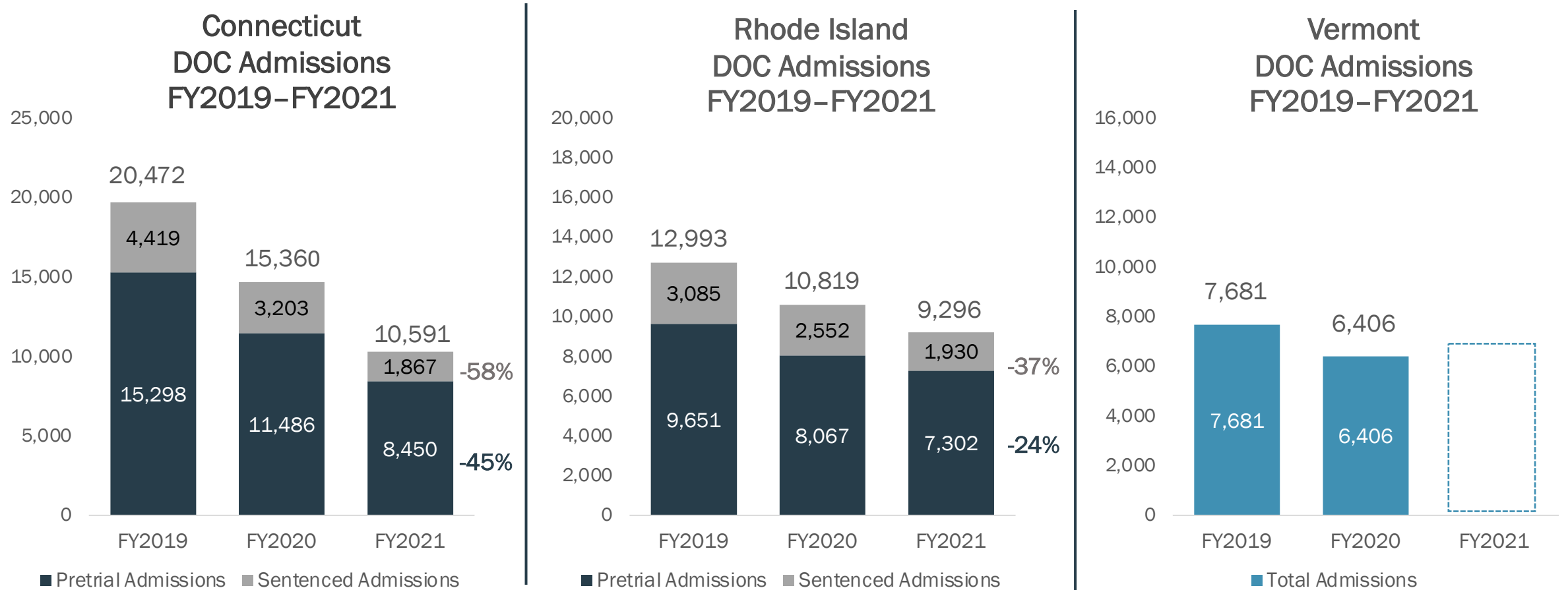
Nearby states with unified systems have also experienced large declines in the sentenced prison population but less similarity in changes to the pretrial population.



Decline in Total Incarcerated Population FY2019–21: -19% Rhode Island, -29% Vermont, -31% Connecticut

\*Vermont’s pretrial population was calculated by subtracting the yearly average for federal holds.

# Admissions of sentenced individuals have declined sharply in Rhode Island and Connecticut, with Connecticut's population reaching a 32-year low.



The Council of State Governments, *More Community, Less Confinement* (New York: The Council of State Governments, 2021)

<https://csgjusticecenter.org/publications/more-community-less-confinement/>

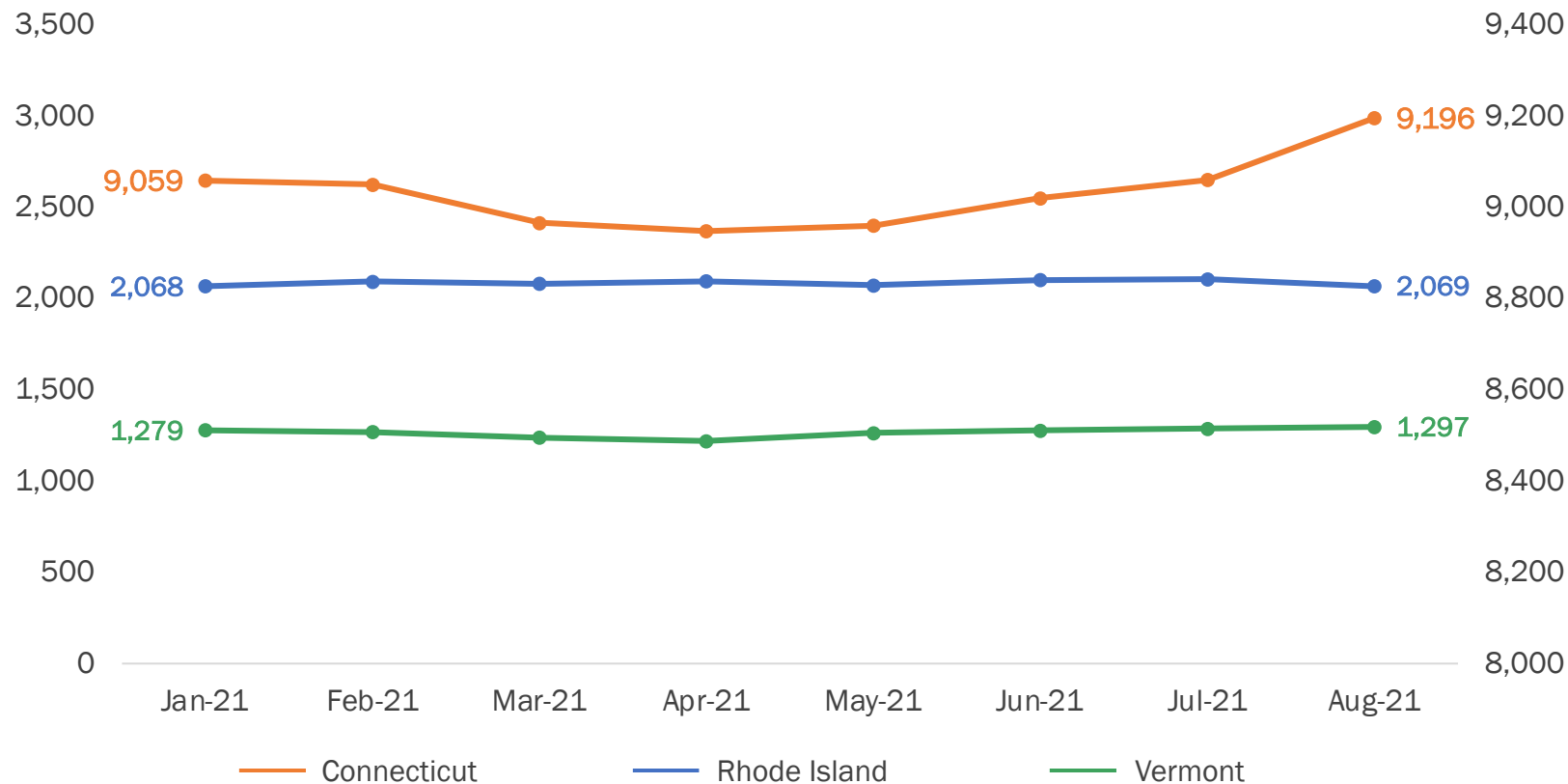
“Research Unit, Monthly Indicator Report” State of Connecticut, Office of Policy and Management, accessed October 12, 2021,

<https://portal.ct.gov/OPM/CJ-About/CJ-SAC/SAC-Sites/Monthly-Indicators/Monthly-Indicators-2019>.



# The first eight months of 2021 show slight upticks in the total incarcerated population across all three states.

Prison Populations in 2021  
Rhode Island, Vermont, and Connecticut



- ✓ For **Connecticut**, this increase comes almost exclusively from the pretrial population, which grew 16 percent from January to August 2021.
- ✓ **Rhode Island** trends have remained steady over the 8-month period in 2021.
- ✓ The **Vermont** pretrial population started trending upward in May and continued that trend in June and July. The sentenced population has remained stable.



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# **Act 148 tasks the working group with evaluating a parole policy for older adults in Vermont and making recommendations for any legislative action.**

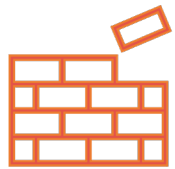
This section continues this evaluation and includes:

- 1) Requested information regarding state approaches for addressing aging prison populations other than compassionate release
- 2) A review of key takeaways from the August presentation regarding parole for older adults
- 3) Policy options for the working group to consider recommending to the legislature in January 2022



# During the August meeting, members requested information on approaches for addressing the aging prison populations other than compassionate release.

States have utilized several different strategies, often in conjunction with medical or geriatric parole:



Retrofitting or building secure prison facilities for geriatric incarcerated people in need of a high level of day-to-day care



Creating structured programs for older adults that provide age-specific treatment, care, and reentry services



Contracting with private providers to serve people in the community

# States with large aging incarcerated populations have invested significant resources in retrofitting or building new geriatric facilities.

Facilities range from specialized wings to dedicated prisons and most often serve people requiring a high level of care.



Pennsylvania converted a **former state hospital into a secure geriatric prison facility** for incarcerated people in need of long-term or hospice care.



Missouri has created several **enhanced care wings within existing prison facilities** to provide services similar to a nursing home.



Virginia established a **special needs facility that provides services for older incarcerated people**, as well as others who require different types of specialized care.

# Other states have created structured programs for older adults that provide age-specific programming, care, and reentry services.

These programs focus on supporting the needs of older adults while incarcerated as well as in preparation for release.



Ohio's Hocking Correctional Facility offers **wraparound services focused on community reintegration** to prepare aging incarcerated people for release, including into nursing home placement.



Nevada partnered with community organizations to establish a **program for older incarcerated people** designed to increase mental, physical, and spiritual health.



# Connecticut is implementing an innovative model in collaboration with state mental health and private sector partners.



After struggling to identify nursing homes willing to accept corrections and mental health referrals, Connecticut contracted with a privately owned and operated facility to specialize in state-referred clients.

- The facility, 60 West, serves people in need of nursing home-level care outside of incarceration or hospital settings.
- Most corrections residents are people granted Nursing Home Release under the discretionary authority of the DOC commissioner and are monitored by the Division of Parole and Community Services.
- Other residents include referrals from the Department of Mental Health and Addiction Services.

# 60 West is the first facility of its kind to be approved for federal nursing home funding by the Centers for Medicare & Medicaid Services.

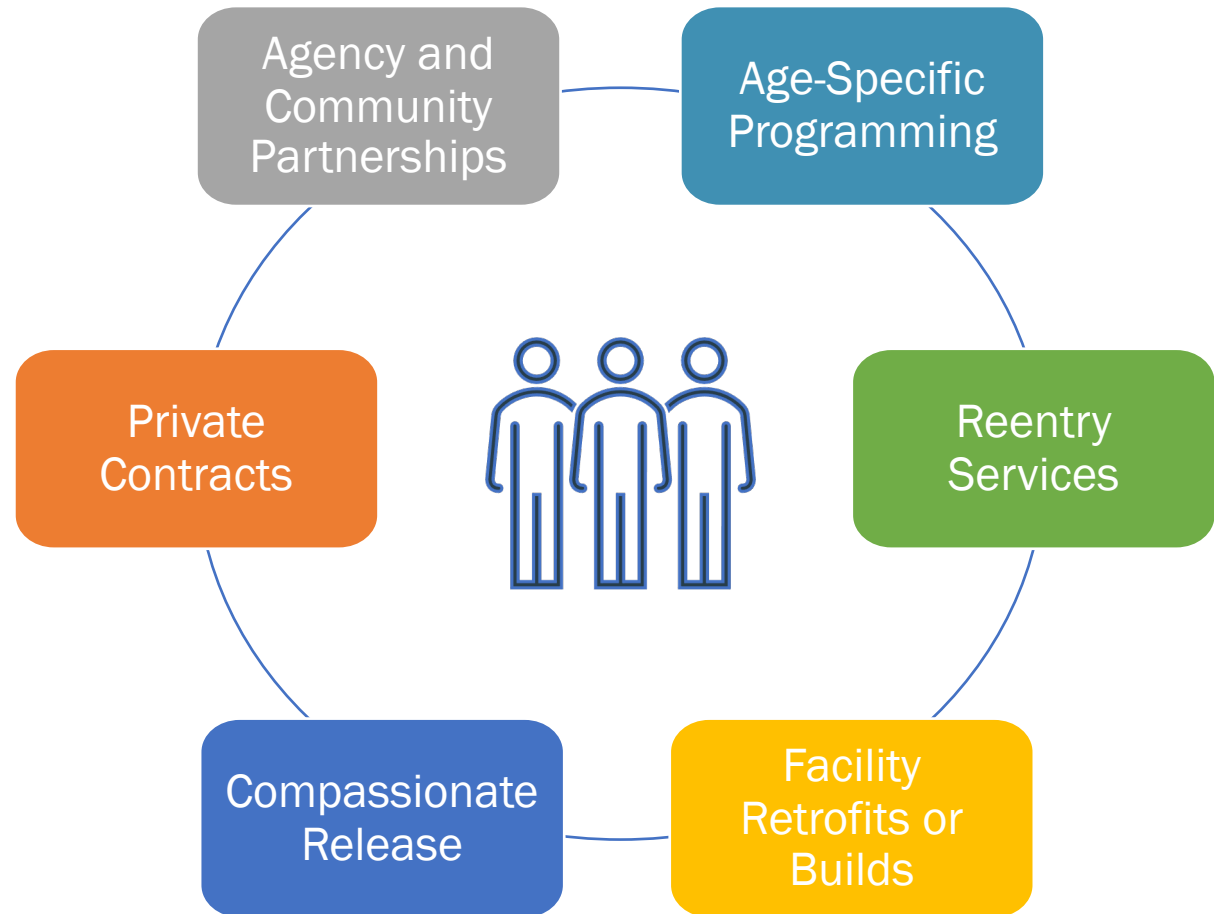
Medicaid covers half the cost of resident care at 60 West, resulting in significant savings to the state.



*Under a 1997 exemption, people in correctional custody qualify for Medicaid reimbursement if care is provided outside of a state or local facility. This is a significant opportunity for states to access critical funding to support long-term care in the community for aging incarcerated people.*

**Like Connecticut, other states often use multiple strategies, including compassionate release, to manage the needs and cost of aging prison populations.**

It is important for states to assess the specific needs of their older incarcerated population, as well as collaborate with health and human service agency and community partners.



# Compassionate release can refer to parole eligibility based on a medical condition or age.

The goals of an early parole policy based on age are similar to those of medical parole, which Vermont currently allows for, but with a more specific focus on the aging prison population.



Reduce correctional **health care costs** related to treating older adults.



Increase access to a **higher level of day-to-day care** than what may be available in an institution.



Reduce the **rising number** of incarcerated older adults in the prison population.



Provide a **humane alternative** to continued incarceration for people suffering from age-related issues.

## In August, CSG Justice Center staff provided an overview of parole policies related to older adults in other states.

- Seventeen states currently have a parole policy for older adults with only four states not providing some type of compassionate release based on a person's age or medical condition.
- Most states limit eligibility to people 60 or older and do not require a person to have served any set duration of their sentence.
- In addition to age, some states require a person to have some type of qualifying age-related infirmity or illness.
- State policies also include other components such as offense carveouts and victim notification and opportunity for input.

# The working group also reviewed findings from a limited data analysis of the potentially eligible population should Vermont adopt a parole policy for older adults.



*Vermont's older incarcerated population has increased nearly 10 percent since 2015. Of the 87 people who are currently incarcerated and are 60 or older:*

- Only 18 have served at least 5 years but not yet reached their minimum;
- Of these 18 people, 77 percent are incarcerated for sexual assault or murder; and
- Most have been assessed as higher risk although research does show that future criminality is generally inversely correlated with age.



# Finally, the working group discussed the use of compassionate releases policies, including challenges that result in underutilization.

## Key takeaways include:

- Compassionate release policies are generally applied on a case-by-case basis, so eligibility does not always guarantee release.
- Nationally, as well as in Vermont, compassionate release policies are used infrequently.
- There are several factors that contribute to the underutilization of parole policies for older adults nationally:
  - Extensive statutory exclusions
  - A complicated or unclear identification and assessment process
  - Lengthy release determination processes
  - Lack of post-release housing, health care, and other services in the community

**Act 148 tasks the working group with evaluating a parole policy for older adults in Vermont as well as reporting out any recommendations for legislative action.**

Based on conversations with working group members, there are several policy recommendations the group may consider.

### **Option 1**

Recommend that the legislature adopt a parole policy for older adults to allow release consideration for eligible individuals on a case-by-case basis.

- Establish eligibility criteria based on age and time served.
- Include victim notification and input requirements.
- Consider offense carveouts.

**Based on conversations with working group members, there are several policy recommendations for the working group to consider related to parole for older adults.**

## **Option 2**

Recommend that the legislature consider modifications to the existing medical parole statute to ensure it encompasses the totality of the population that Vermont would like to be eligible for compassionate release consideration.

- This could include adding eligibility based on age and/or an age-related illness. For example, Wyoming statute allows medical parole for someone “incapacitated by age to the extent that deteriorating physical or mental health substantially diminishes the ability of the person to provide self-care within the environment of a correctional facility.”

**Based on conversations with working group members, there are several policy recommendations for the working group to consider related to parole for older adults.**

### **Option 3**

Recommend the legislature not pursue the development of a parole policy for older adults and instead explore other options for addressing the needs of the aging incarcerated population in Vermont.

### **Option 4**

Report the results of the working group's study of a parole policy for older adults to the legislature without a consensus recommendation for legislative action or inaction.



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# There are **two ways** Vermont can continue to financially support ongoing Justice Reinvestment II efforts.

## 1. Up-front investments in the FY2023 budget

- Funding allocated by the legislature to support the success of Justice Reinvestment II.

## 2. Potential reinvestment funding

- Savings from out-of-state prison bed reductions during the previous fiscal year
- Appropriation language requires that any unexpended funds for correctional services from out-of-state beds be carried forward to the next fiscal year to support community-based service programs. **Reinvestment funding may only be expended on community-based service programs approved by the Joint Legislative Justice Oversight Committee.**



# During FY2021, Vermont made \$900,000 in up-front investments in community-based supports and programming.

## Up-front investments

- **\$200,000** in domestic violence intervention programming - Vermont Council on Domestic Violence
- **\$300,000** to strengthen transitional housing options and efficacy – Department of Corrections
- **\$400,000** to target gaps in mental health and substance use community services for people on supervision – Department of Mental Health

## Reinvestment funding

- For FY2021, there was **\$360,000** available for reinvestment from out-of-state bed savings. This funding remained unspent at the end of the fiscal year and so was absorbed back into the state general fund.
- For FY2022, there is **\$417,000** available for reinvestment from out-of-state bed savings that has not yet been allocated.

# Act 148 tasks the working group with developing funding and appropriation recommendations for future reinvestments.

The working group may consider the following recommendation regarding appropriations in support of Justice Reinvestment II.

## Option

Recommend that the legislature consider reinvestments and/or up-front investments in the following areas when seeking to appropriate funding in support of Justice Reinvestment II efforts:

- **Domestic violence intervention programming** through the Vermont Council on Domestic Violence to ensure ongoing sustainability
- **Data collection and analysis capacity**, including additional changes to DOC's Offender Management System as needed
- **Community-based mental health and substance use services and criminogenic interventions** for people with complex needs on community supervision
- **Housing-related needs** for people on or transitioning to community supervision



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- 4**      **Next Steps**

# The working group has two remaining meetings before delivering their report to the legislature in January 2022.



## November 17

- Asses the findings of the racial equity analysis and identify potential policy options to address disparities within sentencing.



## December 14

- Conclude any final discussions related to parole for older adults, the racial equity analysis, and reinvestment funding recommendations.
- Review final CSG Justice Center wrap-up presentation. Discuss and finalize next steps for the working group's January 15, 2022, report to the legislature.
- Conclude CSG Justice Center's Justice Reinvestment II technical assistance.

# CSG Justice Center staff continue to prepare results of the racial equity in sentencing analysis to share with the working group in November.



## Final Presentation (November 2021)

Presentation will review key results from quantitative analysis.

- If racial disparities are identified, we will make recommendations about how to improve practices to reduce disparities moving forward.



## Analysis Report (December 2021)

- Report will provide quantitative results and any recommendations in greater detail, as well as documentation of methodology.
- If data gaps are identified during the analysis process, we will provide guidance on how to address them.

# Thank You!

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<https://csgjusticecenter.org/resources/newsletters/>

For more information, please contact Madeleine Dardeau [mdardeau@csg.org](mailto:mdardeau@csg.org) or Lorretta Sackey at [lsackey@csg.org](mailto:lsackey@csg.org)

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