

# Justice Reinvestment in Vermont

Presentation to the Justice Reinvestment II Working Group

June 15, 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

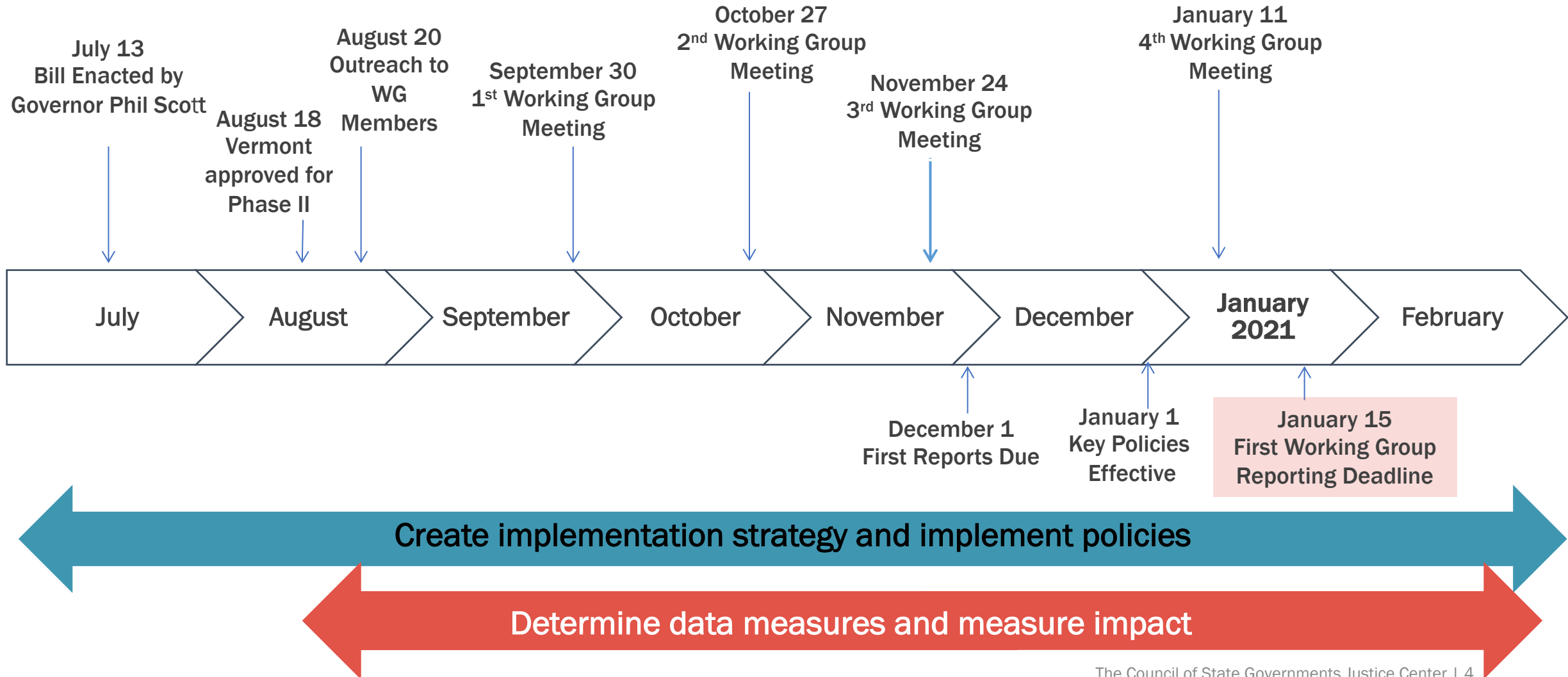




**A data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism**

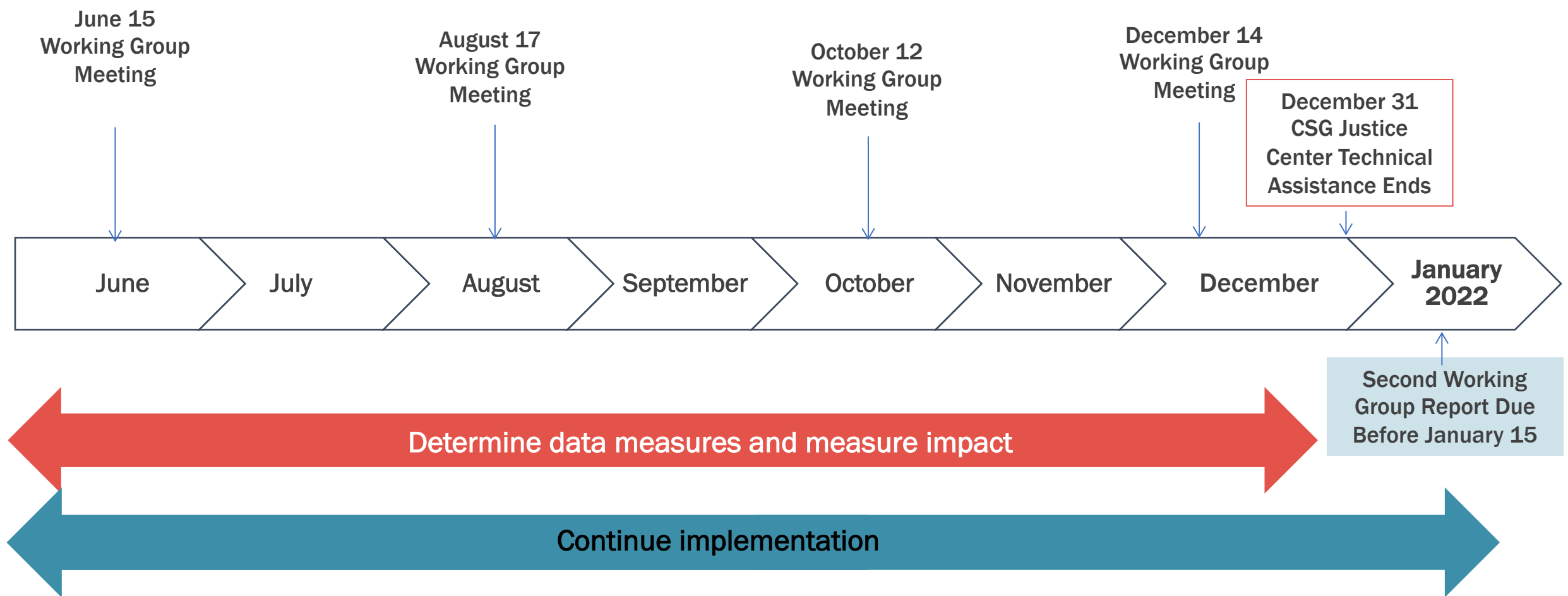
The Justice Reinvestment Initiative is supported by funding from the U.S. Department of Justice's Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts.

Before the 2021 legislative session, the working group met four times to monitor Justice Reinvestment II implementation and consider additional policy recommendations.





Last January, the working group decided to meet four more times in 2021 in preparation for delivering a second report to the legislature in January 2022.



**In addition to ongoing implementation oversight, the working group has three remaining tasks as described in Act 148.**

**Working group duties include:**

- ✓ Studying earned time for people on probation and exploring other related policy options.
- ✓ Assessing gaps in how people in the criminal justice system with mental health and substance use needs are identified and served.
- ☐ Studying presumptive probation.
- ☐ Evaluating parole eligibility for older adults who have not served their minimum term.
- ☐ Developing reinvestment funding and appropriation recommendations.



## Overview

- 1** Results of January 2021 Recommendations
- 2** Implementation Funding and Data Monitoring
- 3** Introduction to Racial Equity Analysis
- 4** Next Steps



**After studying probation earned credit and other related policies, the working group recommended modifications to Vermont's existing midpoint review process.**

### **Legislative Recommendation**

Adopt modifications to Vermont's midpoint review process to make it more presumptive and encourage its use, using a model of earned discharge policies from other states, such as Montana.



### **Act 24**

Enacted in May 2021, Act 24 strengthens the midpoint review process.

**The working group also supported several recommendations for improvements in how people in the criminal justice system with mental health and substance use needs are identified and served.**

### **Legislative Recommendation**

Require DOC to develop a brief report that will be provided to judges before sentencing to inform condition setting for all felony probation cases. This report should include risk and need assessment results, mental health and substance use disorder screening results, and criminal history.



### **Act 14**

Enacted in April 2021, Act 14 creates a one-to-two site pre-sentencing report pilot project.

# Additional mental health and substance use recommendations focused on administrative strategies for agency-level implementation.

## Administrative Recommendation

Recommend that AHS convene representatives from each relevant department in the agency to develop and implement changes to policy and procedure that address barriers to information sharing and care coordination for supporting people in the criminal justice system with mental health and substance use needs.



## In Process

In May, AHS leadership convened an internal working group that is meeting weekly to develop an interdisciplinary care coordination model for supporting people with complex needs who are involved in the justice system. This work is being supported by Policy Research Associates funded through the CSG Justice Center's Justice Reinvestment Initiative resources.



# Additional mental health and substance use recommendations focused on administrative strategies for agency-level implementation.

## Administrative Recommendations

Recommend that DOC explore hiring licensed clinicians to be placed in local supervision offices to administer mental health and substance use screenings and assessments, as well as liaise with community-based treatment providers.



Recommend that DOC use a validated mental health screening tool for people sentenced directly to misdemeanor probation.



## In Process

DOC is currently developing a supervision model focused on criminogenic intervention strategies in which clinicians will support supervision staff in working with people that have complex needs.

## On Hold

Consideration of this recommendation is on hold while DOC implements expanded screening processes as part of the pilot project created in Act 14.

**The Vermont legislature allocated \$900,000 in up-front reinvestment to support Justice Reinvestment implementation.**

**New FY2022 up-front funding and reinvestment**

- **\$200,000** to maintain investments in domestic violence intervention programming
- **\$400,000** to target gaps in mental health and substance use community services for people on supervision
- **\$300,000** to strengthen transitional housing options and efficacy

# Enacted in April 2021, Act 12 created a limited carveout in the earned time statute as modified in Act 148.

## Primary changes in Act 12:

- Prohibited people currently incarcerated for a narrow group of serious offenses from participating in the earned time program
- Changed the name of the program from “earned good time” to “earned time”
- Included additional victim notification requirements

*Due to the narrow nature of the carveouts in Act 12, the bill resulted in a very small reduction to the bed savings and averted costs envisioned in Vermont’s initial JR impact projections.\**

\*It is important to note that initial projections 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.



# **The Racial Disparities in the Juvenile and Criminal Justice Advisory Panel (RDAP) will continue to study the Bureau of Racial Justice Statistics as a result of Act 65.**

On or before [November 15, 2021](#), RDAP shall submit a report to the House and Senate Committees on Judiciary that identifies:

- The Bureau and where it should be situated (creation of an independent body or housed within state government)
- To what extent the Bureau should be staffed
- The mission of the Bureau
- How the Bureau will seek to conduct data collection and analysis
- Methods for the Bureau to enforce its data collection and analysis



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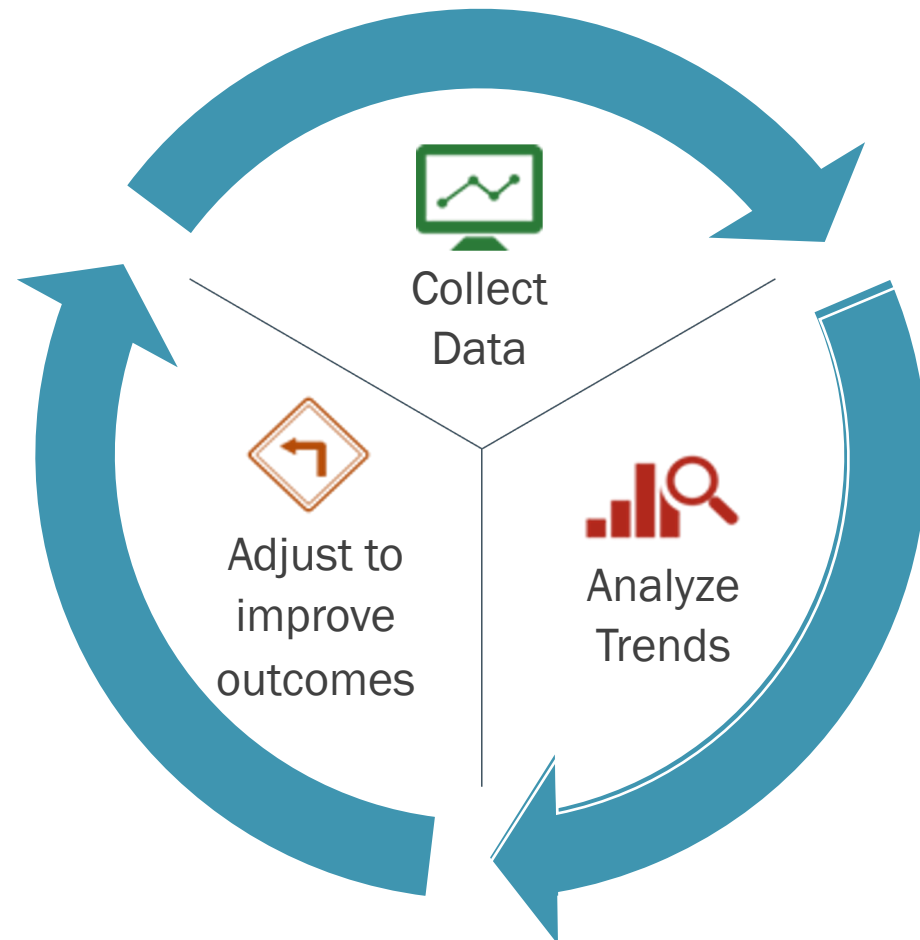
# In April, Vermont applied to the Bureau of Justice Assistance for Justice Reinvestment subaward funding to support implementation.

- ✓ *Training for Parole Board members, supervision officers, and community providers on using risk assessments to better target interventions*
- ✓ *AHS cross-department training focused on organizational-level collaboration to support shared clients who are in the justice system and have mental health and/or substance use needs*
- ✓ *Training on evidence-based housing practices for providers selected through DOC's Request for Proposal process*
- ✓ *Training for supervision officers on evidence-based correctional practices*
- ✓ *Training for supervision officers and community providers on engaging people on supervision with complex mental health and substance use needs*
- ✓ *Investments in improving DOC and Parole Board data collection and analysis processes*

**Total subaward request: \$430,000**



**CSG Justice Center staff are also assisting Vermont in identifying key metrics to monitor implementation progress and inform future policy and practice adjustments.**



Vermont is required to continue to collect and provide this information to the CSG Justice Center for two years following the end of Phase II assistance.

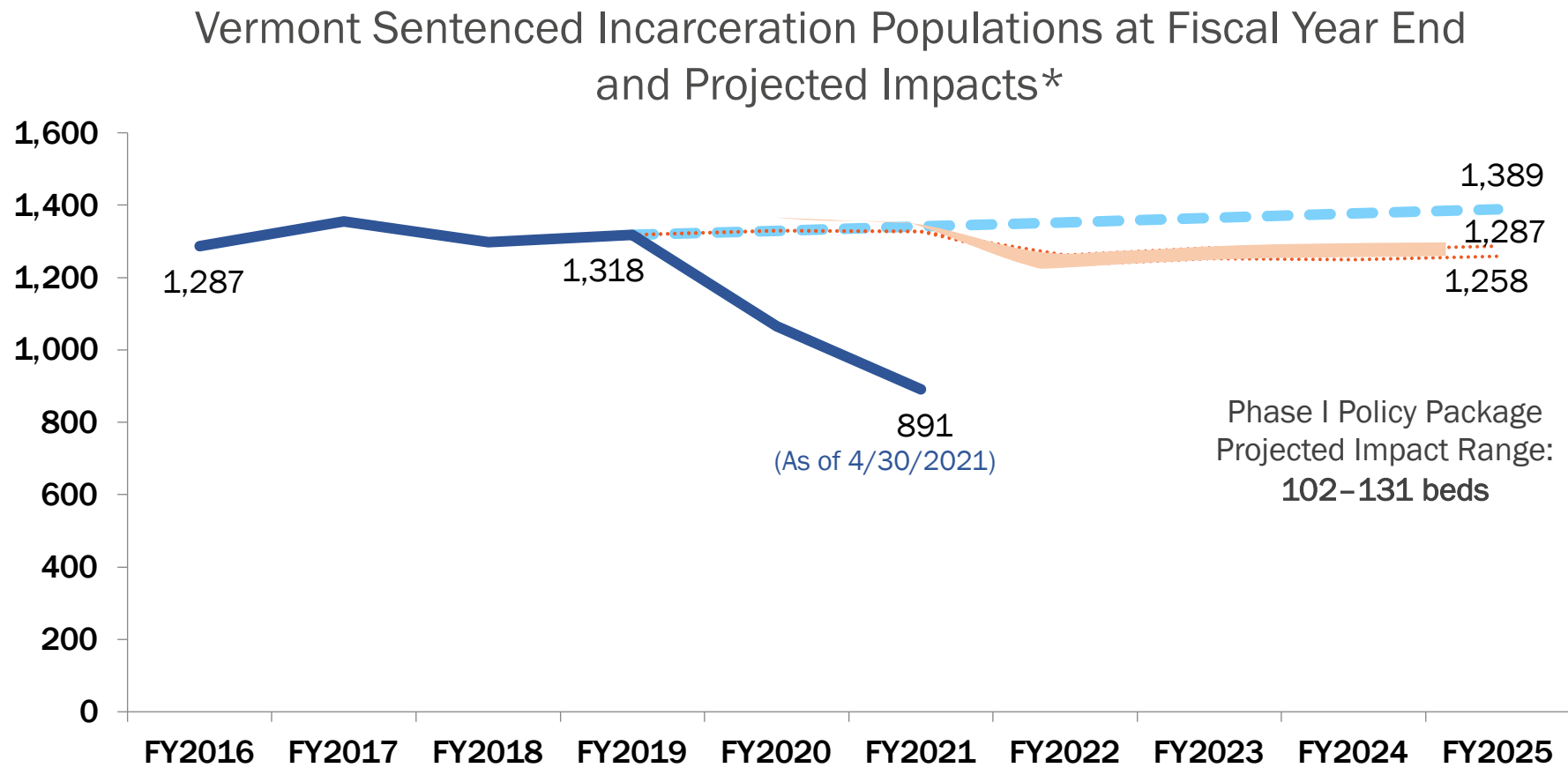
# Vermont's data measures will monitor several key areas, including the implementation of presumptive parole and returns to incarceration.

## Key data monitoring areas include:

- Population snapshots  
*Institutional and community supervision*
- Admissions, releases, and interrupts  
*Institutional and community supervision*
- Hearings, violations, and determinations  
*Parole and presumptive parole*
- Positive, negative, and graduated responses  
*Community supervision*

Vermont's subaward will be funding critical improvements to DOC's data system. As a result, some data monitoring measures will not be available until after system modifications are made.

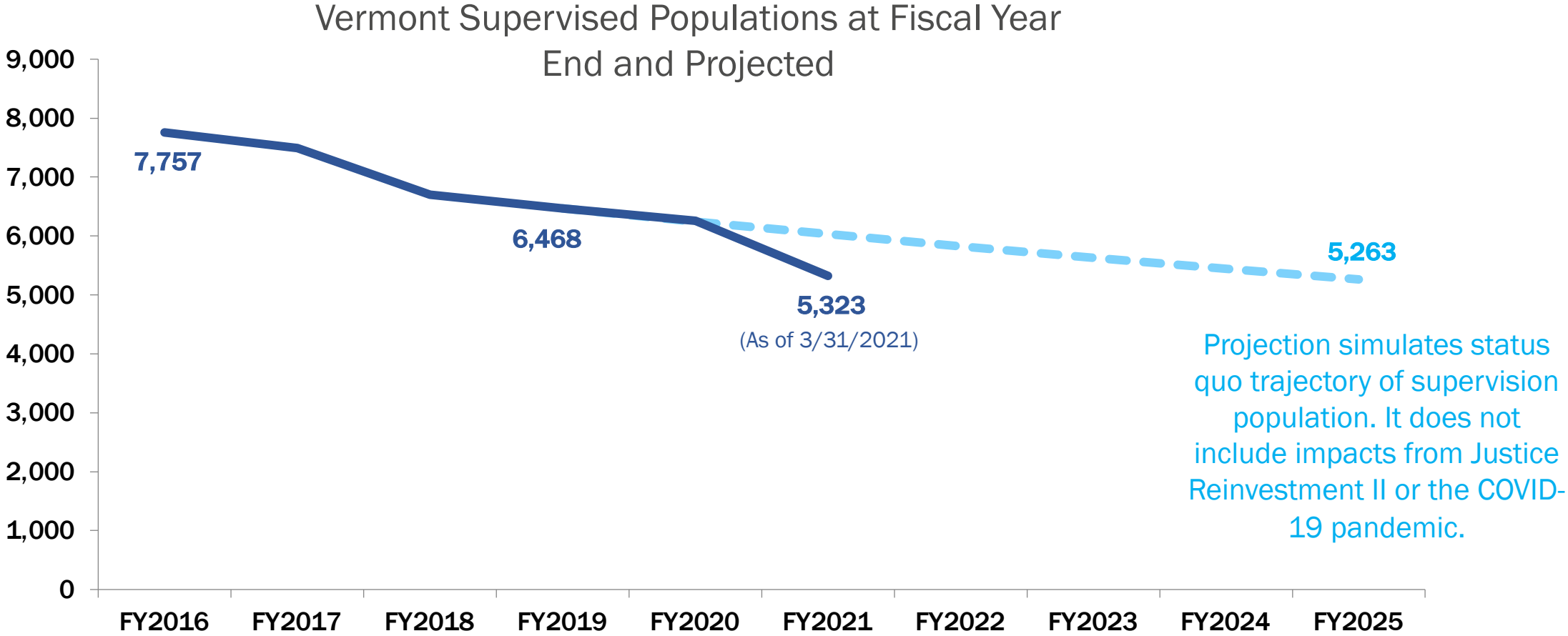
# The COVID-19 pandemic has significantly reduced Vermont prison admissions, resulting in a 32 percent decline in the incarcerated population.



Initial projections 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.

# The COVID-19 pandemic has also impacted Vermont's community supervision population.





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# Vermont’s Phase I data analysis included an initial review of available demographic information.

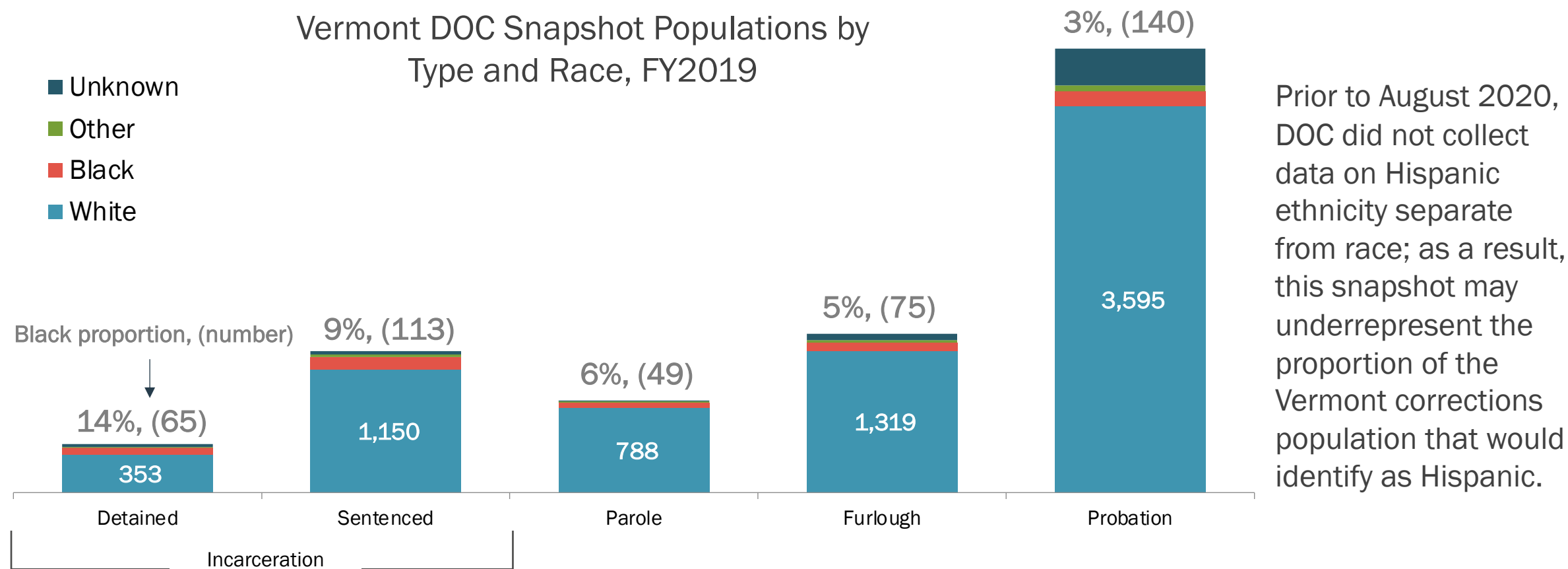
Vermont’s General Population in 2019:
94.2% White
2% Two or More Races
2% Hispanic
1.9% Asian
1.4% Black
0.4% American Indian/Alaskan Native
92.6% White, not Hispanic

As part of Phase II technical assistance, CSG Justice Center staff will build on this initial analysis to examine racial equity in sentencing outcomes in Vermont’s criminal justice system.

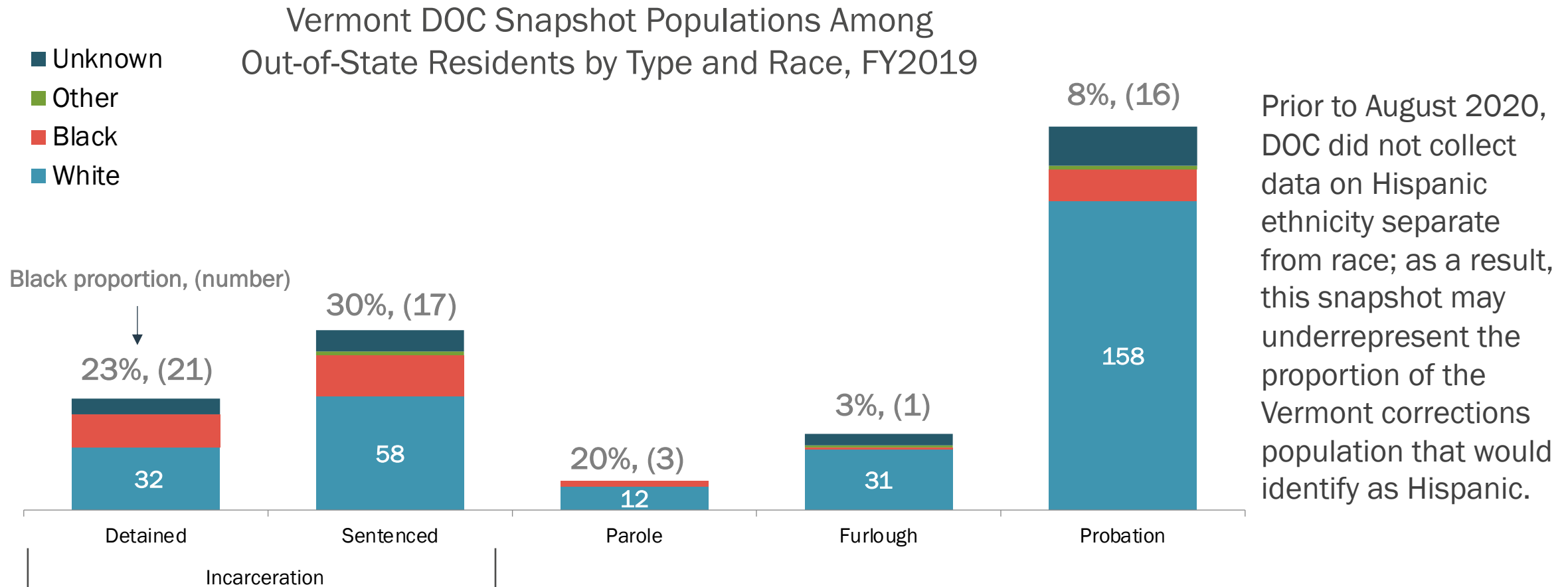
Due to data and sample size limitations, this work will primarily focus on exploring disparities between Black and White adults.



# Black Vermonters are disproportionately represented in all corrections populations, particularly among people who are incarcerated.



# Black people make up a large proportion of Vermont's out-of-state corrections populations when compared to the resident population.

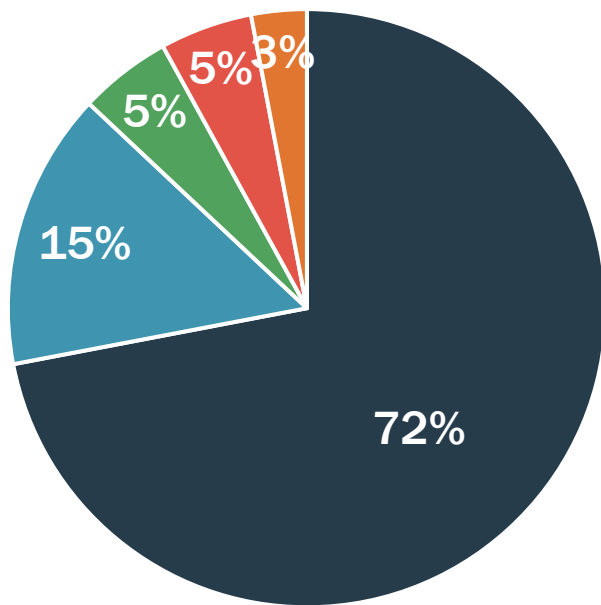


**Relative to the total incarcerated population, Black people are more often sentenced to incarceration for drug offenses and less often for property offenses.**

Vermont DOC Sentenced Incarceration Snapshot Population by Offense Type for Black Vermonters and Non-Vermonters FY2019

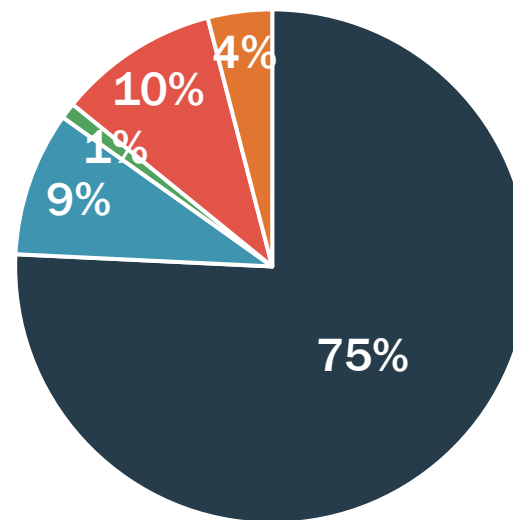
**Total Sentenced Population**

(1,318)



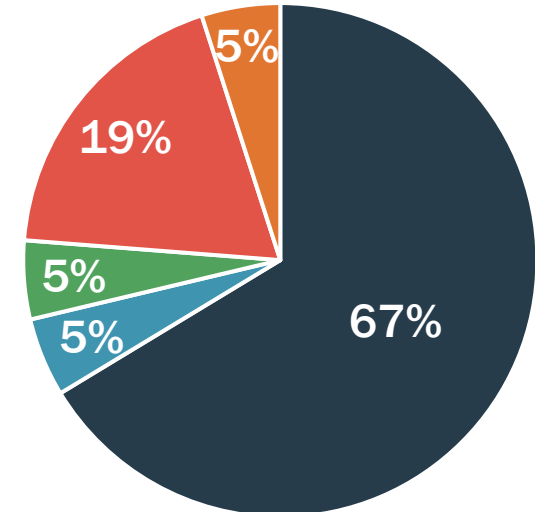
**Black Vermonters**

(89)



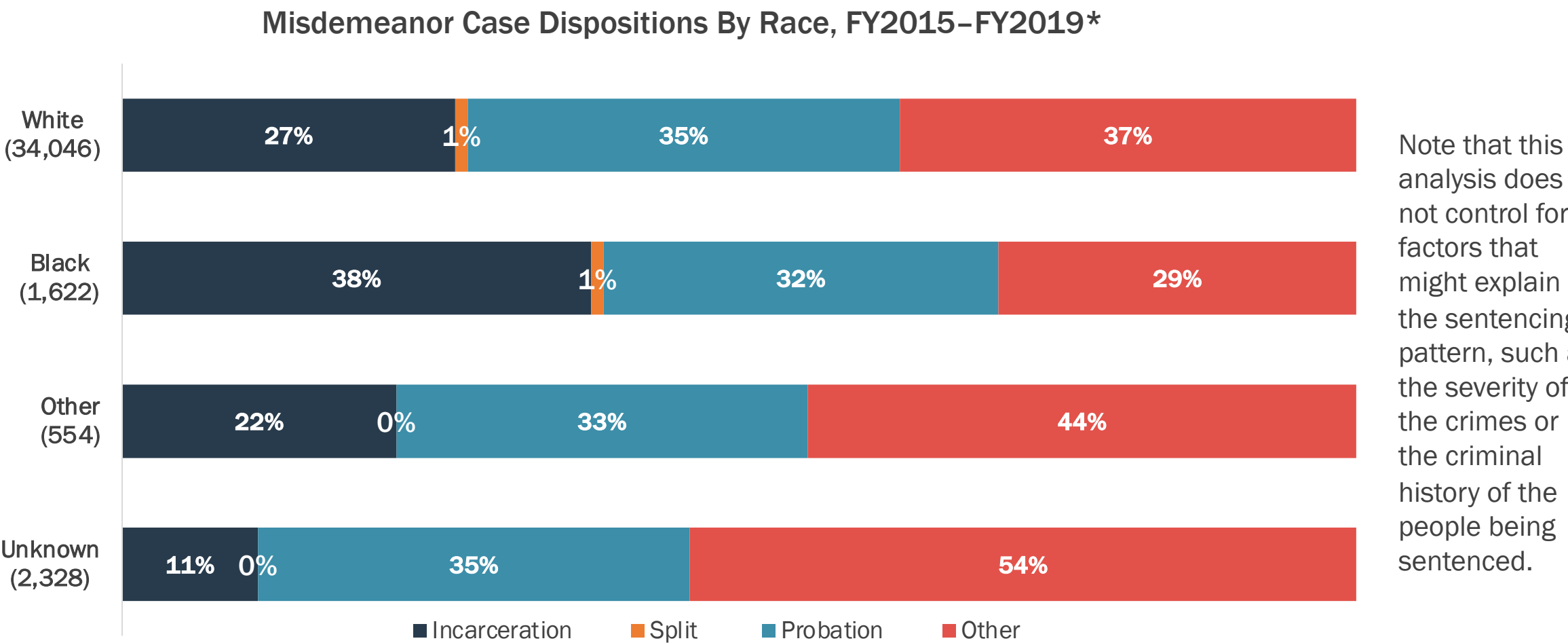
**Black Non-Vermonters**

(21)



■ Violent ■ Property ■ Motor Vehicle ■ Drug ■ Other/Unknown

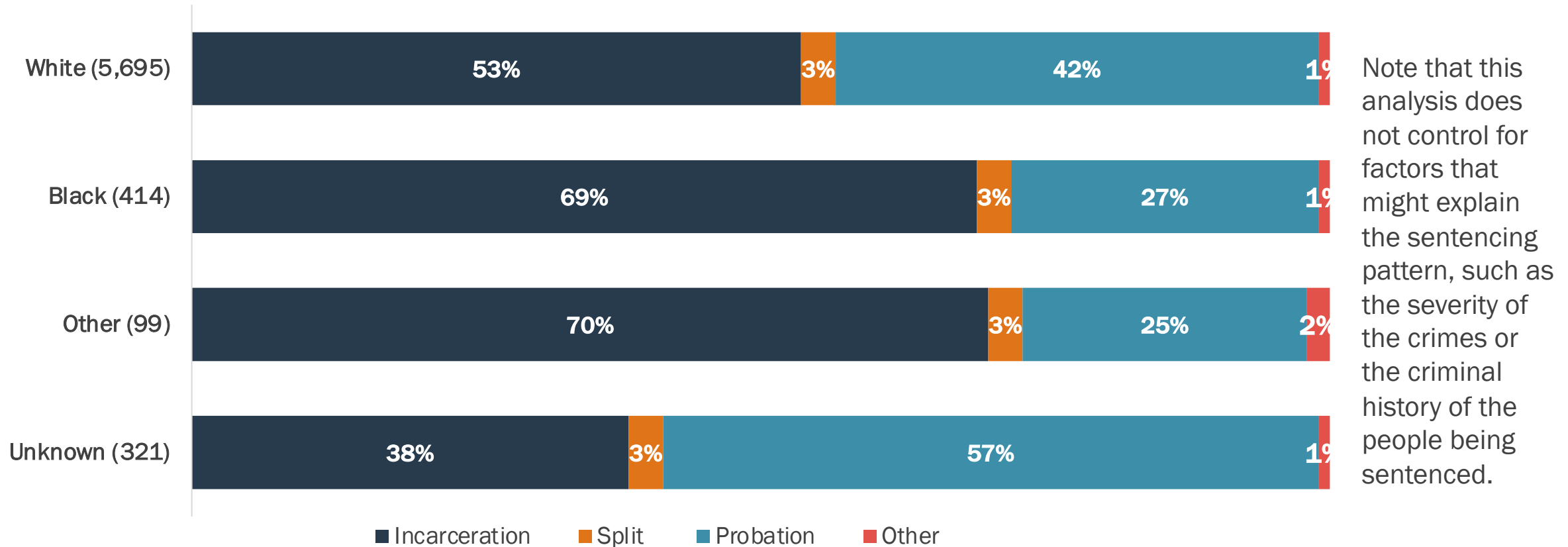
# Without controls for crimes or criminal history, Black people appear to receive incarceration for misdemeanors more often.



\*The Vermont Judiciary does not collect data on Hispanic ethnicity separate from race; as a result, this snapshot may underrepresent the proportion of people who would identify as Hispanic.

# Without controls for crimes or criminal history, Black people appear to receive incarceration for felonies more often.

Felony Case Dispositions by Race, FY2015–FY2019\*



\*The Vermont Judiciary does not collect data on Hispanic ethnicity separate from race; as a result, this snapshot may underrepresent the proportion of people who would identify as Hispanic.

## There was no variation found in length of probation terms or minimum and maximum incarceration sentences by race.

- Statutory guidance seems to have ensured that there is no variation in **average probation lengths** for felony and misdemeanor offenses by race.
- Median lengths for **felony incarceration sentences** are also consistent across demographics.
- Note that this analysis did not control for factors such as the severity of the crimes or the criminal history of the people being sentenced.\*

\*In addition, the Vermont Judiciary does not collect data on Hispanic ethnicity separate from race; as a result, this snapshot may underrepresent the proportion of people who would identify as Hispanic.



# **An in-depth analysis will seek to further explore the disparities identified between Black and White Vermonters within the criminal justice system.**

- Vermont's Phase I racial equity data analysis was preliminary. In January, working group members discussed continuing the analysis through the Phase II process.
- The effort to resume examining racial equity in Vermont's criminal justice system includes a new CSG Justice Center staff member, Research Manager Sara Bastomski.
- Since January, CSG Justice Center staff have created an analysis plan, examined available data, and received acceptance from the Institutional Review Board (IRB).

Research indicates that while racial disparities in incarceration have declined since 2000, they remain a persistent feature of the U.S. criminal justice system.

5x

Nationally, Black people are  
**5 times** more likely to be  
incarcerated in **state prison** than  
White people.

7x

Nationally, Black people are  
**7 times** more likely to be  
incarcerated in **federal prison** than  
White people.

# Research also shows that differences in sentencing outcomes are one important driver of such disparities.



A large body of work documents that Black defendants, on average, are more likely to receive harsher sentences, *relative to comparable White defendants*.



While this difference varies by type of crime and jurisdiction, it is typically found to be statistically significant.

Travis W. Franklin, "The State of Race and Punishment in America: Is Justice Really Blind?," *Journal of Criminal Justice*, 59 (2018): 18-28.

Ryan D. King and Michael T. Light, "Have Racial and Ethnic Disparities in Sentencing Declined?," *Crime and Justice* 48, no. 1 (2019): 365-437.

Michael T. Light, "The Declining Significance of Race in Criminal Sentencing: Evidence from US Federal Courts," *Social Forces* (2021):

<https://doi.org/10.1093/sf/soab018>.

Ojmarrh Mitchell, "A Meta-Analysis of Race and Sentencing Research: Explaining the Inconsistencies," *Journal of Quantitative Criminology* 21, no. 4 (2005): 439-66.

# Vermont's racial equity analysis will use the following key concepts and statistical terms.



## Racial disparity

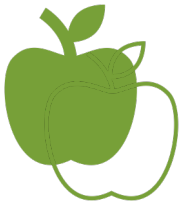
- Refers to any circumstance in which different racial groups experience unequal treatment or outcomes
- Evidence of disparity is distinct from understanding the processes that contribute to it



## Descriptive statistics

- Statistics that summarize information about a data set
- E.g., counts, percentages, averages

# Vermont's racial equity analysis will use the following key concepts and statistical terms.



## Propensity score matching (or weighting)

- Method used to create two statistically indistinguishable groups and isolate the effect of a variable of interest on an outcome by comparing “apples to apples”
- Used to mimic experimental design in contexts where randomized controlled trials are not feasible/ethical



## Relative rate index

- Method used to examine whether different groups experience an outcome at similar rates
- Often used to compare justice system trends (e.g., incarceration rates)

# Vermont's racial equity analysis will use the following key concepts and statistical terms.



## Statistical power analysis

- Method for determining if a sample (data set) is large enough to run certain statistical tests and find meaningful results
- Larger samples yield greater statistical power



## Regression analysis

- Statistical method for determining the relationship of one variable to another



# The analysis of Black/White racial equity within Vermont's criminal justice system will include two major objectives.

## A high-level summary analysis of court and corrections data

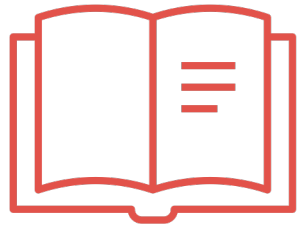
- Examine the extent to which racial disparities exist at multiple decision points across these systems, over multiple years
- Methods: descriptive statistics (e.g., means, proportions, relative rate index)

## An in-depth analysis of sentencing outcomes

- If we find disparities in part 1, we'll also examine whether they persist *after* accounting for important case and defendant characteristics
- Methods: regression analysis, possibly propensity score matching

## The analysis plan will rely on data from these Vermont sources.

Data Source	Judicial System (Courts)	Department of Corrections	Department of Public Safety
Year(s)	2015–2019	2016–2019	Lifetime Records
Status	Have data through September 2019 from Phase I analysis. Working to obtain court data for remainder of 2019	Have data from Phase I analysis. Working to schedule time to discuss data fields with staff	Working with VCIC to process data use agreement



## As with any analysis project, there are several anticipated limitations to our work.

- In-depth analysis will only be possible at the state level.  
→ Jurisdiction-level results will be limited to high-level, descriptive statistics
- State-level criminal history data is unlikely to yield a 100% match rate to court data.
- As is typically the case, we do not have data that comprehensively documents prosecutorial decision-making and plea bargains.

# We have two intended analysis outputs; each will rely on specific statistical methods.



## Descriptive statistics

- Document trends in courts and DOC data over time (by year)
- Examine whether any observed racial disparities are statistically significant (without adjusting for case/person characteristics)



## Analysis of sentencing outcomes

- Assess extent to which sentences to incarceration and sentence length vary by race, accounting for defendant and case characteristics
- More rigorous test of racial differences (compares “apples to apples”)

# Project deliverables include a final presentation and report detailing quantitative results and recommendations.



## Final Presentation (Late Summer/Fall 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 (Fall 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.



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# From June to December 2021, the working group will continue to study the tasks outlined in Act 148 and monitor the implementation of Justice Reinvestment II.



## June 15

- Review the outstanding statutory duties stipulated in Act 148 and create a plan for future working group meetings.
- Discuss the analysis plan regarding the review of racial equity in sentencing analysis.
- Review JR-related projects and Act 148 implementation progress.



## August 17

- Consider policy-related issues discussed at the June 15<sup>th</sup> meeting.
- Continue the working group's review of racial equity in sentencing analysis.
- Continue oversight of Justice Reinvestment II implementation.



## October 15

- Discuss policy-related issues and consider appropriation options.
- Address any findings related to the review of racial equity in sentencing analysis.
- Continue oversight of Justice Reinvestment II implementation.



## December 14

- Conclude the discussion on outstanding policy-related issues and consider appropriation recommendations.
- Review implementation progress data analysis and JR sustainability recommendations.
- Wrap up the CSG Justice Center's role in the state of Vermont.



# Member discussion: Act 148 requires the working group to examine three remaining statutory tasks and report to the legislature in January 2022.

1. Study the efficacy of using [probation as a presumptive sentencing structure](#) for certain types of offenses for which connections to community—based programming lead to better outcomes.
2. Evaluate the policy of [parole eligibility for older incarcerated adults](#) who are not serving a sentence of life without parole and who have served a portion of their sentence but not the minimum term.
3. Report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions with its [funding and appropriation recommendations](#) for legislative action on or before January 15, 2022.

# Thank You!

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For more information, please contact Sara Friedman at [sfriedman@csg.org](mailto:sfriedman@csg.org)  
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