

# Introduction

Section 21 (c)(2) of Act 148 requires the Justice Reinvestment II Working Group to submit a report to the legislature by January 15, 2022, with findings from their study of additional areas for policy reform and any recommendations for legislative action.

In preparation for this report, the working group examined three policy areas:

- Parole for older adults
- Options for reinvestment and up-front investments in community-based services
- Racial equity in sentencing

The following presentation from The Council of State Governments Justice Center provides a comprehensive overview of Justice Reinvestment II implementation, the findings from the working group's additional areas of study, and the working group's recommendations for legislative action per Act 148.

The working group's January 2022 recommendations can be found on **slides 57–63**.

The findings from the working group's study of a parole policy for older adults in Vermont can be found in the appendix on **slides 69–92**.



**Justice  
Reinvestment  
Initiative**  
Vermont



**Justice Center**  
THE COUNCIL OF STATE GOVERNMENTS

# **Justice Reinvestment Initiative in Vermont**

Overview and Analyses of Justice Reinvestment Initiative Policy Implementation at End of CSG Justice Center Technical Assistance

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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



# What is Justice Reinvestment?

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 funded principally by the U.S. Department of Justice's **Bureau of Justice Assistance (BJA)** with additional funding from **The Pew Charitable Trusts**.

Technical assistance for states participating in the Justice Reinvestment Initiative is provided by the **CSG Justice Center** and **Community Resources for Justice's Crime and Justice Institute**.

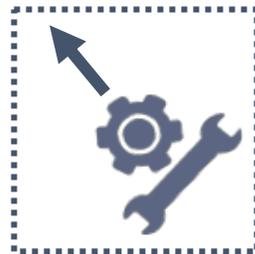


# Justice Reinvestment is tailored to the specific needs of the state.

## Examples of Different Ways States Use the Justice Reinvestment Initiative



Tackle state and local public safety and health challenges, from recent crime trends to people who have behavioral health needs.



Scale up recidivism-reduction efforts, such as increasing the use of risk and needs assessments; the quality of supervision; and access to effective, research-based programs and services.



Enhance data collection, develop analytical capacity, and create a shared understanding of criminal justice issues.



Manage costs associated with state prison and local jail population trends to ensure resources are being used effectively.



# **Justice Reinvestment Initiative** Vermont

## Overview

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**Justice Reinvestment II  
Overview**

**2**

**Criminal Justice Trends**

**3**

**Policy-Specific  
Implementation**

**4**

**Sustainability and Next  
Steps**

# In June 2019, Vermont requested technical assistance for a second Justice Reinvestment Initiative project.\*



This letter was submitted to Justice Reinvestment funders and signed by state leaders from **all three branches signed in support:**

<b>Governor</b> Phil Scott	<b>Chief Justice</b> Paul Reiber	<b>Then-AHS Secretary</b> Al Gobeille
<b>Then-Senate President Pro Tempore</b> Tim Ashe	<b>Then-Speaker of the House</b> Mitzi Johnson	<b>Then-DOC Commissioner</b> Mike Touchette
	<b>Attorney General</b> T.J. Donovan	

\*Vermont first used a data-driven Justice Reinvestment Initiative approach in 2007 resulting in a 16 percent drop in the incarcerated population.



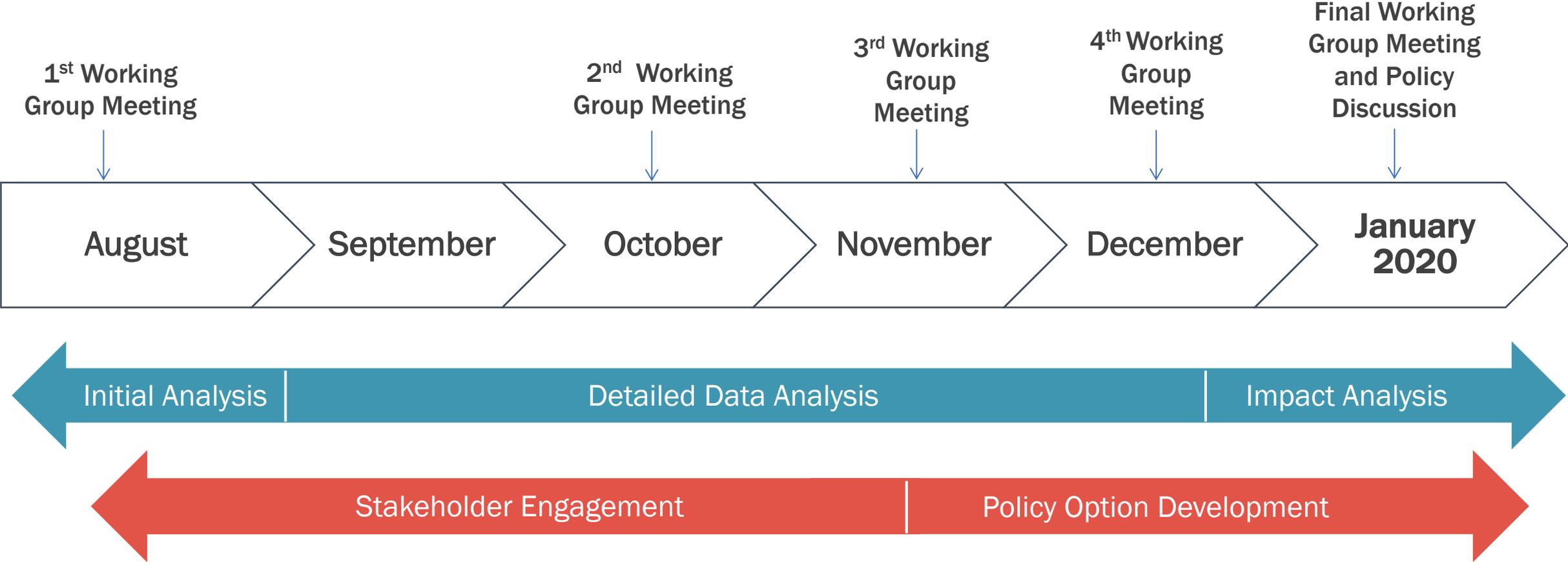
# Governor Phil Scott convened the Justice Reinvestment II Working Group to identify opportunities for improving public safety and reducing recidivism to achieve long-term savings.



In 2019, the working group identified several areas Justice Reinvestment II would primarily seek to address:

- Analyze how increases in some categories of crime may be impacting other parts of the state’s criminal justice system.
- Explain the connection between supervision revocations and incarceration.
- Assess how individuals’ behavioral health challenges, such as serious mental illnesses and substance use disorders, play a role in their movement through and their reentry from the criminal justice system.
- Identify where Vermont’s data tracking and analytics must be strengthened to provide lawmakers with sustainable information to guide safe policymaking in future legislative sessions.

# From August 2019 through January 2020, the working group met five times to develop Justice Reinvestment policies.



# To inform the policy development process, CSG Justice Center staff engaged over 200 stakeholders.

## Front-End System Pressures

- ✓ Law enforcement officers and leadership
- ✓ Victim advocates
- ✓ People with lived experience
- ✓ Diversion program and pretrial services administrators
- ✓ Court officials, including judges
- ✓ State's attorneys
- ✓ Criminal defense attorneys

## Incarcerated Populations

- ✓ Department of Corrections leadership and staff, including supervision officers
- ✓ Court officials, including judges
- ✓ Parole officials
- ✓ Housing experts and leadership
- ✓ Victim advocates
- ✓ People with lived experience

## Behavioral Health

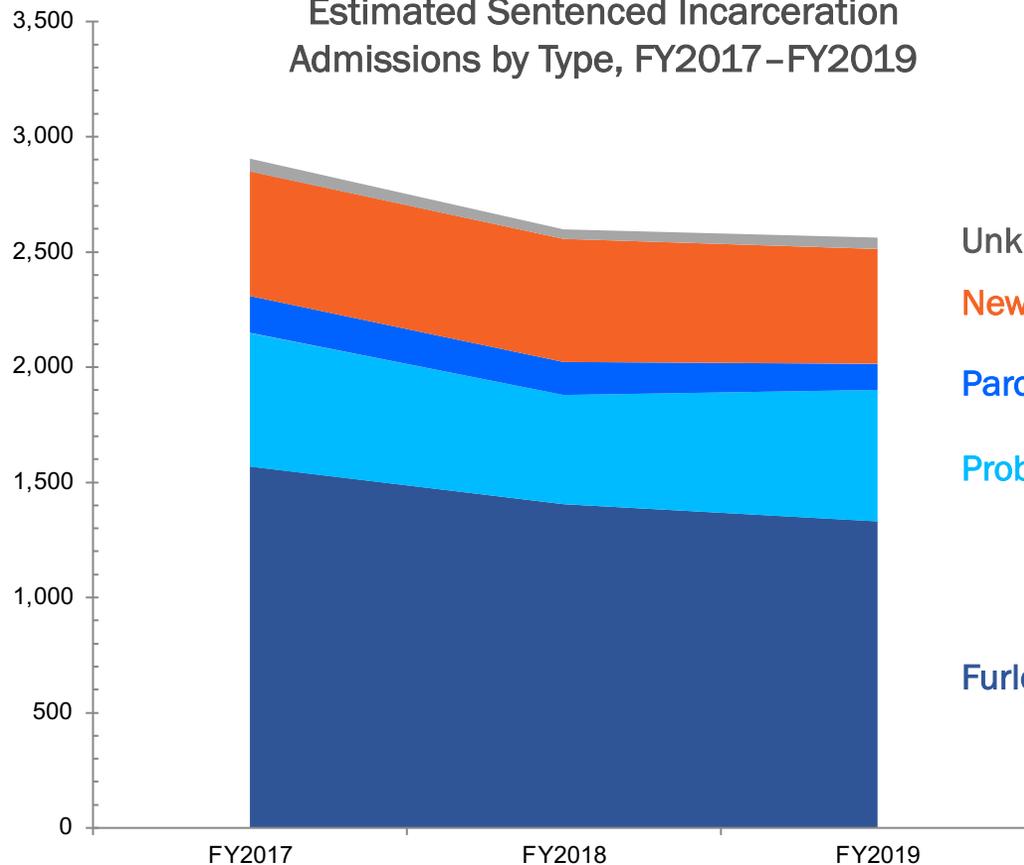
- ✓ Agency staff implementing behavioral health programs for criminal justice populations
- ✓ Community-based providers and treatment experts
- ✓ Law enforcement officers and leadership
- ✓ Victim advocates
- ✓ People with lived experience

# CSG Justice Center staff also analyzed data from multiple criminal justice system sources.

<b>Data Type</b>	<b>Source</b>	<b>Data Accessed or Received</b>
<b>Crime/Arrests</b>	Department of Public Safety	NIBRS data
<b>Pretrial Detention</b>	Department of Corrections	Admissions and release data
<b>Court Dispositions/Diversions</b>	Vermont Judiciary	Disposition data received; some diversion information accessed
<b>Criminal Histories</b>	Vermont Judiciary/ Department of Public Safety	Process to access data identified but analysis not undertaken
<b>Furlough Supervision</b>	Department of Corrections	Snapshot, admissions, and release data received
<b>Prison</b>	Department of Corrections	Snapshot, admissions, and release data received
<b>Probation/Parole Supervision</b>	Department of Corrections	Snapshot, admissions, and release data received
<b>Victim Services</b>	Vermont Center for Crime Victim Services	Summary data accessed
<b>Behavioral Health</b>	Department of Corrections/ Department of Health	Some DOC data received

# This analysis found that almost 80 percent of sentenced DOC admissions were people returned or revoked from community supervision, primarily from furlough.

Estimated Sentenced Incarceration Admissions by Type, FY2017–FY2019



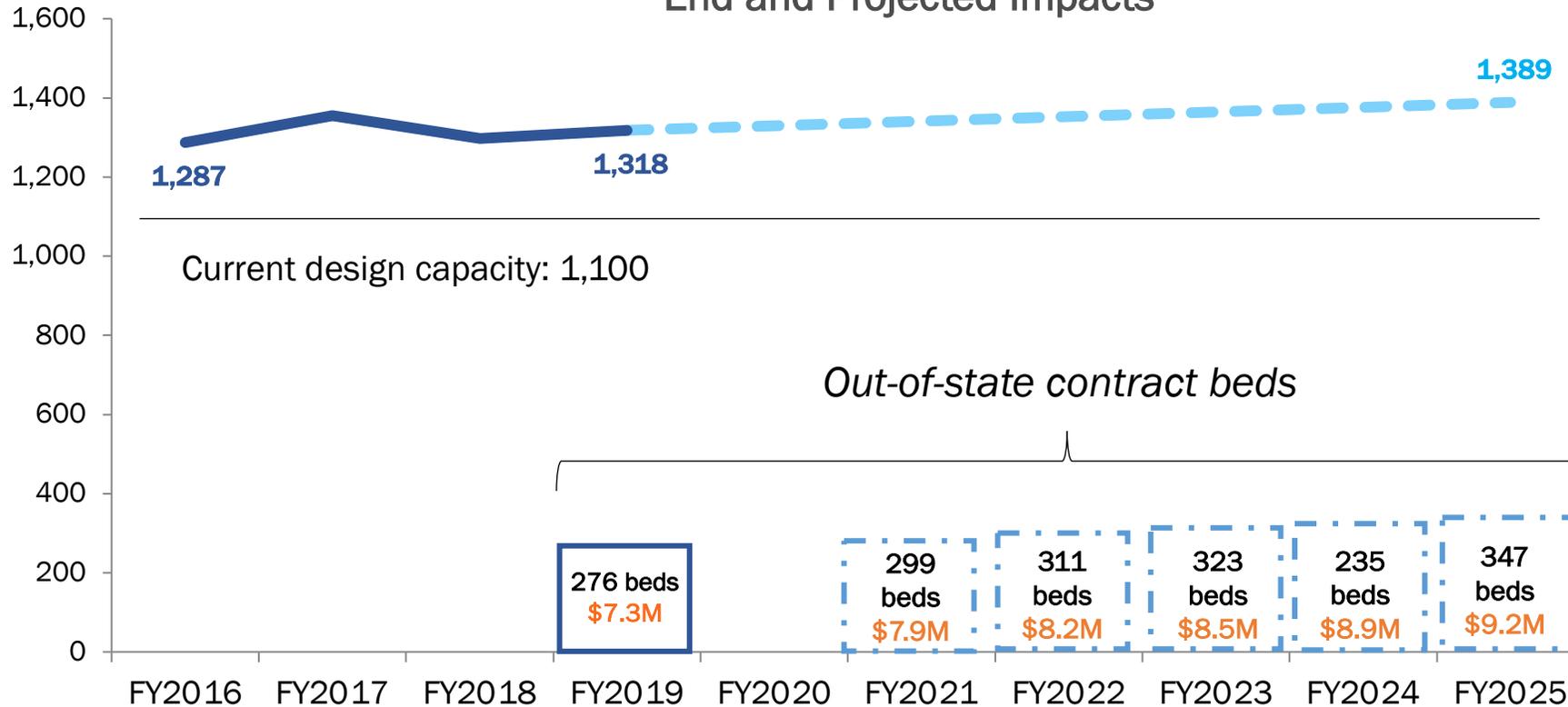
Average Annual Admissions FY2017–FY2019 (Volume, Percentage)

Unknown	49, 2%
New Court Commitments	524, 20%
Parole Violations	139, 5%
Probation Violations	541, 20%
Furlough Violations	1,425, 53%

*Because admission and release categories must be derived using DOC data, these analyses should be considered strong estimates.*

# In addition, increases in the sentenced incarcerated population were projected to cost Vermont \$43 million in out-of-state contract beds by FY2025.

Vermont Sentenced Incarceration Populations at Fiscal Year End and Projected Impacts



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.

To address these and other public safety challenges, the working group developed a package of policy reforms focused on four primary goals.

1. Reduce recidivism and revocations to prison.
2. Achieve a more equitable system across gender, race, and geography.
3. Improve data and reporting to inform decision-making.
4. Reinvest in policy implementation and sustained progress.

# These recommendations became the foundation for Vermont's Justice Reinvestment II legislation enacted in July 2020.

## Act 148:

- ✓ Established **presumptive parole** to reduce reliance on the furlough supervision system.
- ✓ Streamlined the **furlough system** to increase community supervision consistency.
- ✓ Incentivized good behavior by increasing **earned time** from 5 to 7 days per month for people in prison and on furlough.
- ✓ Required additional data to be collected and reported about the use of the DOC's **graduated sanctions** policy.
- ✓ Directed the Agency of Human Services to identify gaps in identifying and serving people in the criminal justice system who have **behavioral health** needs.
- ✓ Required analysis related to demographics and sentencing to help Vermont better identify and reduce **racial disparities** in the criminal justice system.

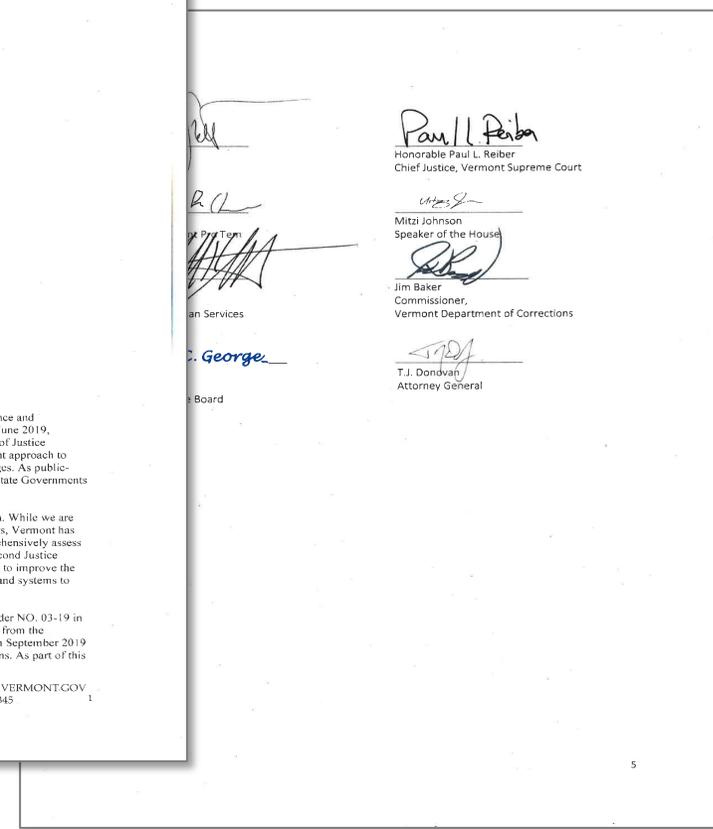
# Act 148 also reconvened the Justice Reinvestment II Working Group to oversee implementation and continue to develop policy recommendations in several areas.

## Specifically, the working group was tasked with

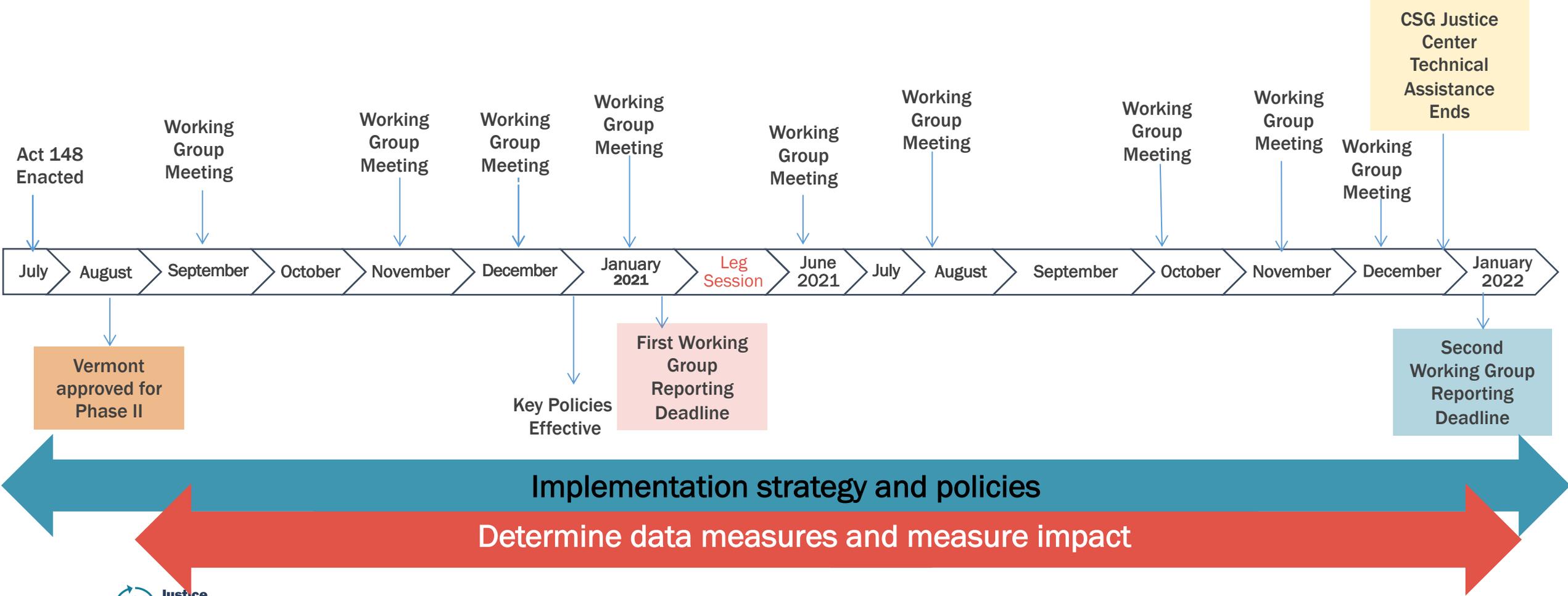
- Studying earned time for people on probation and other related policy options;
- Identifying ways to increase DOC and community provider risk assessment information sharing to help inform plea agreement, sentencing, and revocation decisions;
- Identifying screening, assessment, case planning, and care coordination gaps for people with complex behavioral health issues in the criminal justice system and recommending system improvements;
- Identifying new or existing tools to identify risk factors that can be targeted with treatment and services;
- Studying presumptive probation;
- Evaluating parole eligibility for older adults who have not served their minimum term; and
- Developing funding and appropriation recommendations.

# Following the passage of Act 148, Vermont leaders requested continued technical assistance to support the implementation of Justice Reinvestment II policy changes.

This letter was approved by the Bureau of Justice Assistance on August 18, 2020, which prompted CSG Justice Center staff to begin implementation assistance in earnest.



# From September 2020 to December 2021, the working group met nine times to monitor implementation and develop additional policy recommendations.



# CSG Justice Center staff supported ongoing Justice Reinvestment II policy development, as well as the implementation of Act 148.

Technical assistance provided by the CSG Justice Center focused on these key areas:

- **Providing expert guidance** to support the implementation of Act 148 including the identification and application of evidence-based practices in community supervision
- **Supporting the Justice Reinvestment II Working Group** by providing ongoing research, data, policy, and implementation assistance through two additional rounds of policy development
- **Developing outcome measures** to set up data tracking and monitor population trends to help Vermont understand the impacts of new and revised policies
- **Supporting collaboration** among Department of Corrections, Parole Board, Agency of Human Services to achieve shared Justice Reinvestment II implementation goals
- **Providing grant oversight** for \$430,000 in funding for training and investing in improving data collection practices

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Technical assistance included: **23** Working Group Meetings & Presentations + **345** Phone & Video Calls = **368** Interactions with Stakeholders

As part of the CSG Justice Center's ongoing technical assistance, Vermont received **\$430,000** in subaward grant funding from the Bureau of Justice Assistance to support implementation efforts.

## Funding Items

- ✓ *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**



# **Justice Reinvestment Initiative** Vermont

## Overview

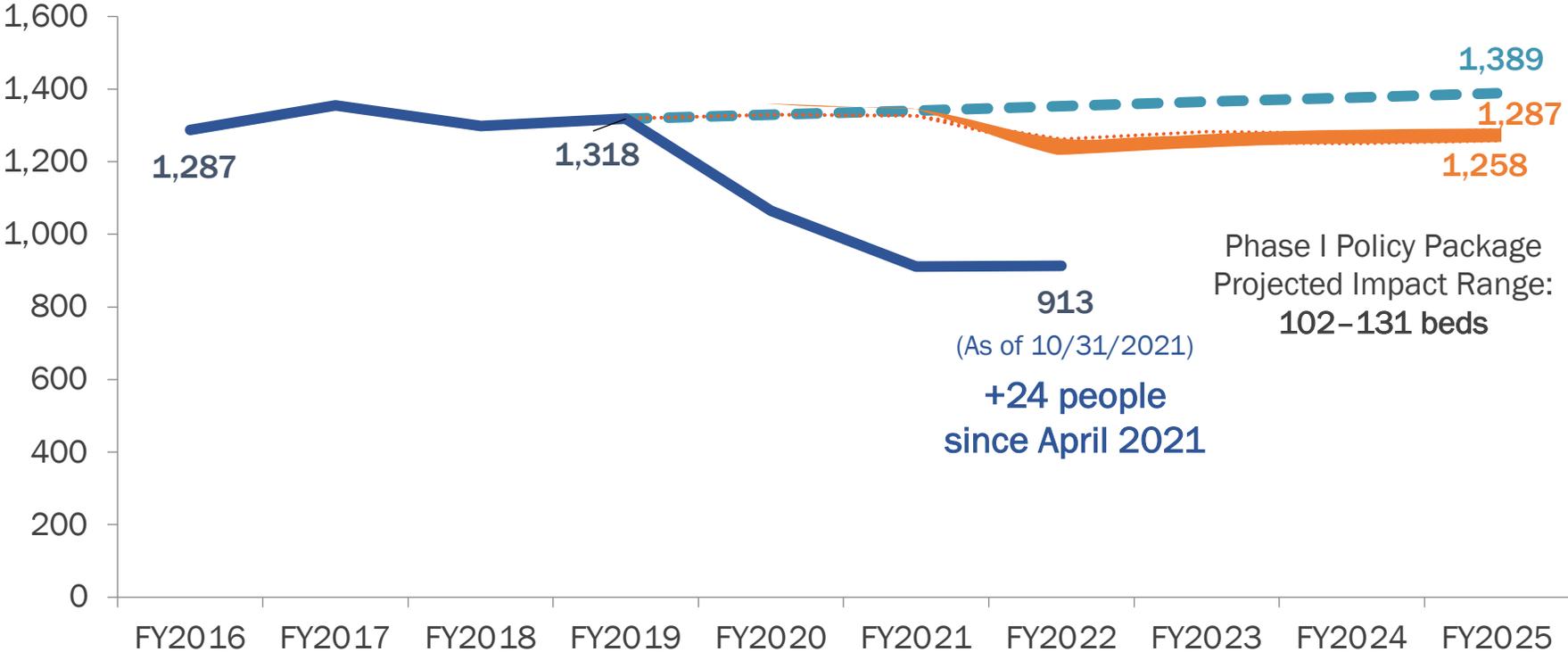
- 1 Justice Reinvestment II Overview
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# The impact of COVID-19 on criminal justice trend data makes it challenging to monitor the impacts of Justice Reinvestment II policies in Vermont.

- Vermont's sentenced incarcerated population has fallen well below original Justice Reinvestment II projections largely due to the impact of COVID-19 across the justice system.
- DOC has recently started reporting admissions data, including returns to incarceration, which will help the working group better understand a key Justice Reinvestment II outcome measure despite pandemic-related data challenges.
- Pending updates to DOC's data system funded through Vermont's subaward will also provide important additional data to monitor the implementation of specific policy reforms and help determine their impact on broader criminal justice trends.

# Since the COVID-19 pandemic, Vermont's sentenced incarcerated population has declined 31 percent.

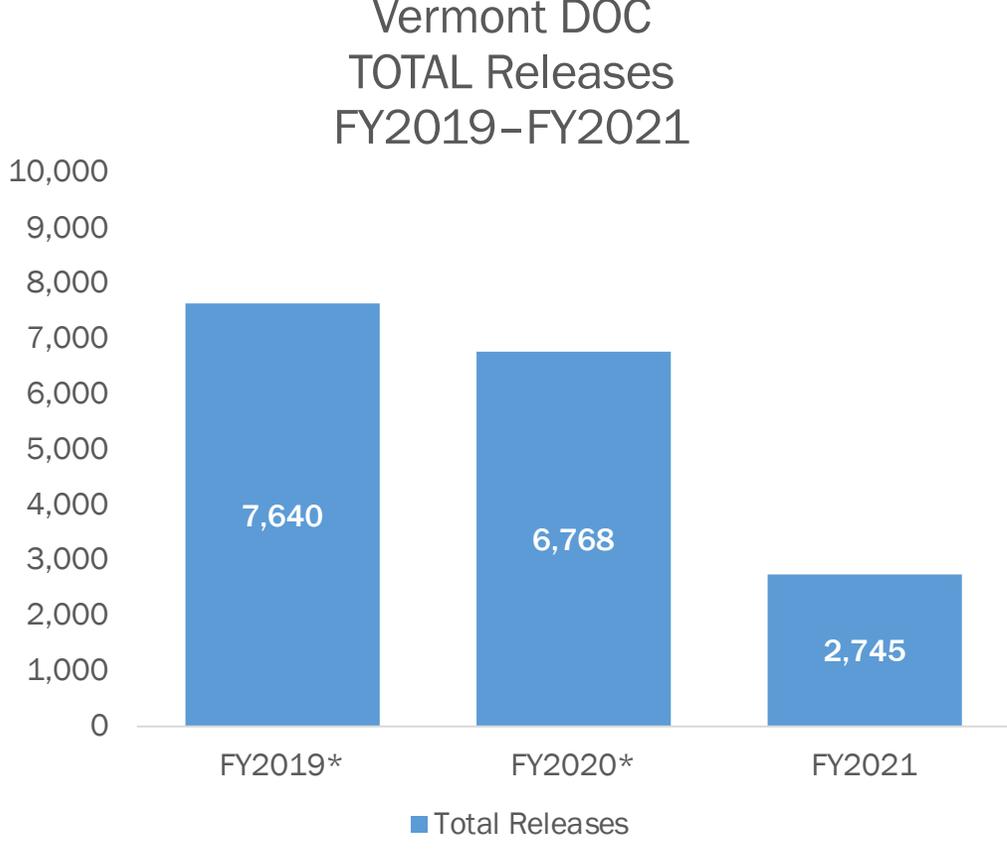
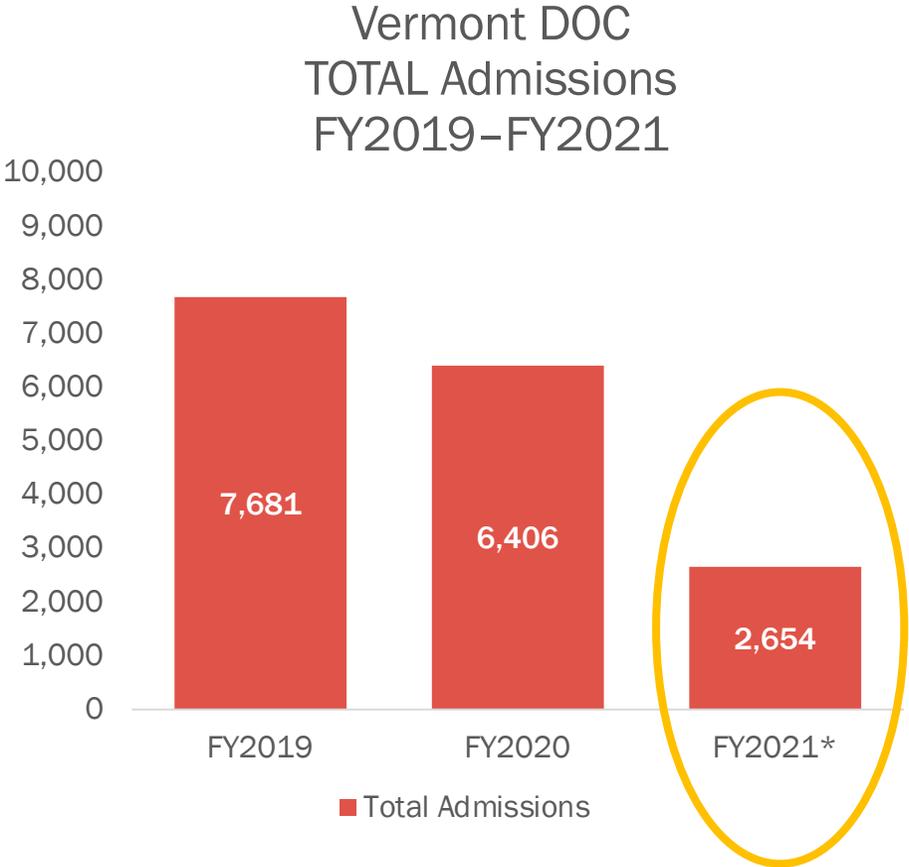
Vermont Sentenced Incarceration Populations at Fiscal Year End and Projected Impacts\*



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.

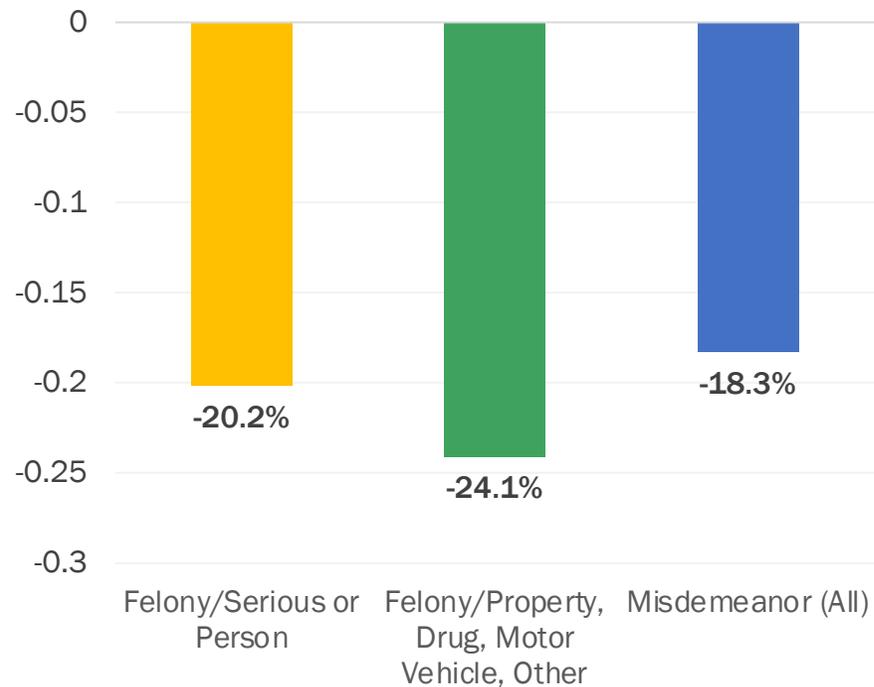
# This population decline is driven by historically low admissions.



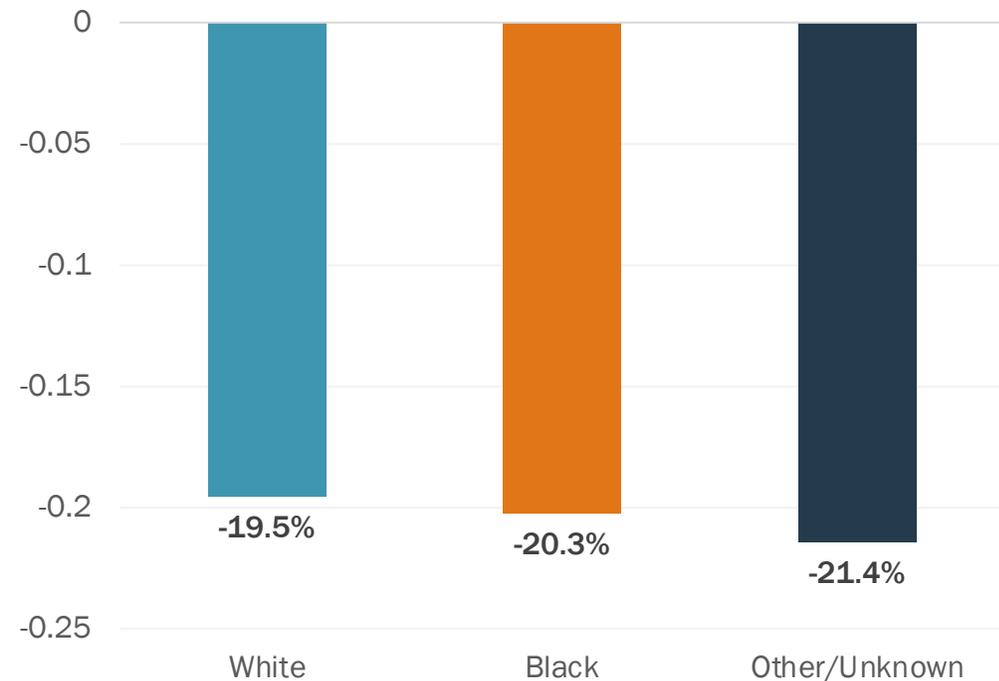
\* Denotes an estimated figure.

# Reductions in the sentenced incarcerated population were consistent across offense types and by race.

Percent Change in Sentenced Incarcerated Population by Offense Type, March 2020–September 2021

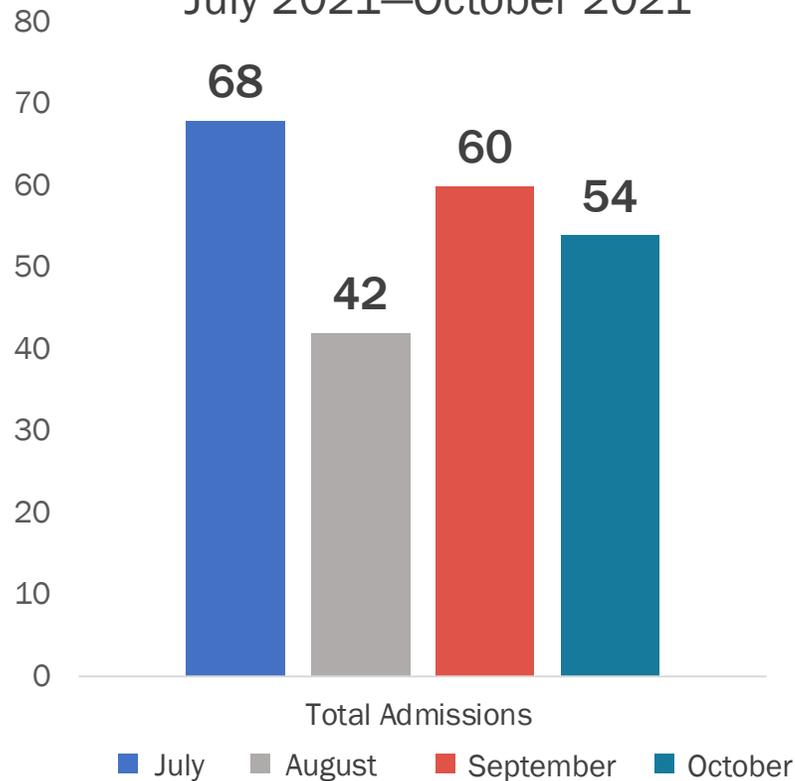


Percent Change in Sentenced Incarcerated Population by Race, March 2020–September 2021

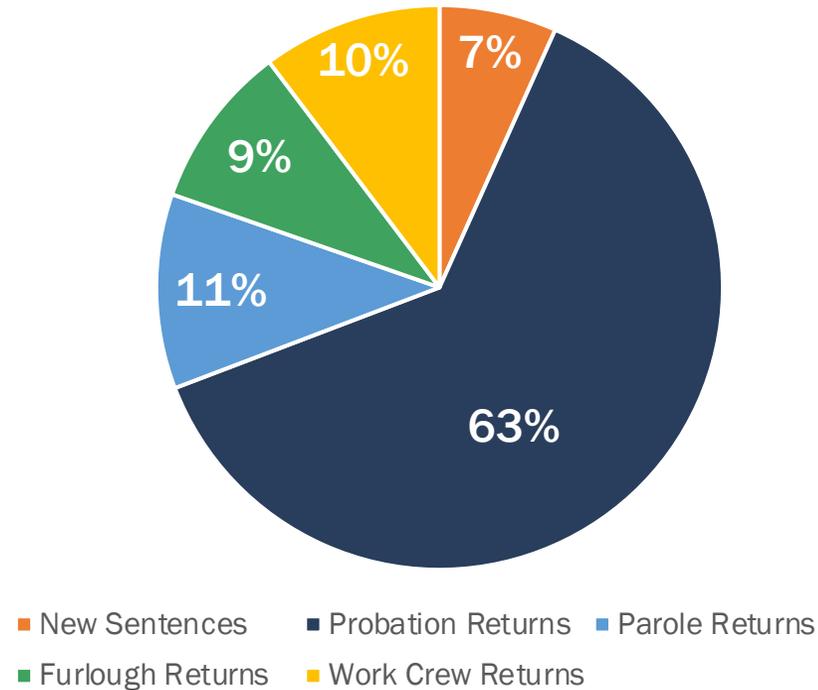


# From July to October 2021, the vast majority of sentenced admissions were people returning from probation, not furlough as was the case pre-pandemic.

Admissions of Sentenced Individuals:  
July 2021–October 2021



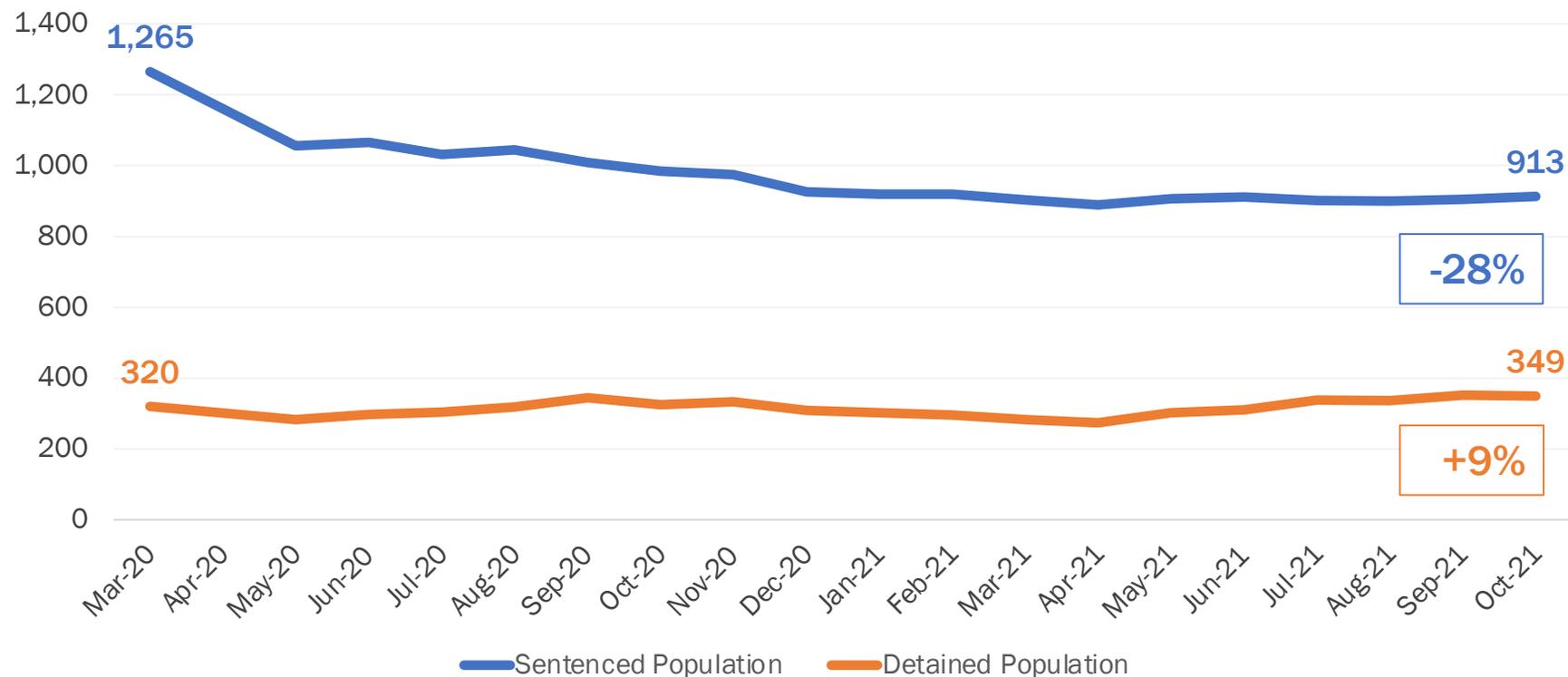
Proportion of Admissions:  
July 2021–October 2021



*While this data is from a very limited period and impacted by COVID-19 related criminal justice system disruptions, it is very different from pre-Justice Reinvestment II findings, which showed that over 50 percent of admissions were returns from furlough.*

# While Vermont's sentenced incarcerated population remains low, the detainee population has begun to increase in the last six months.

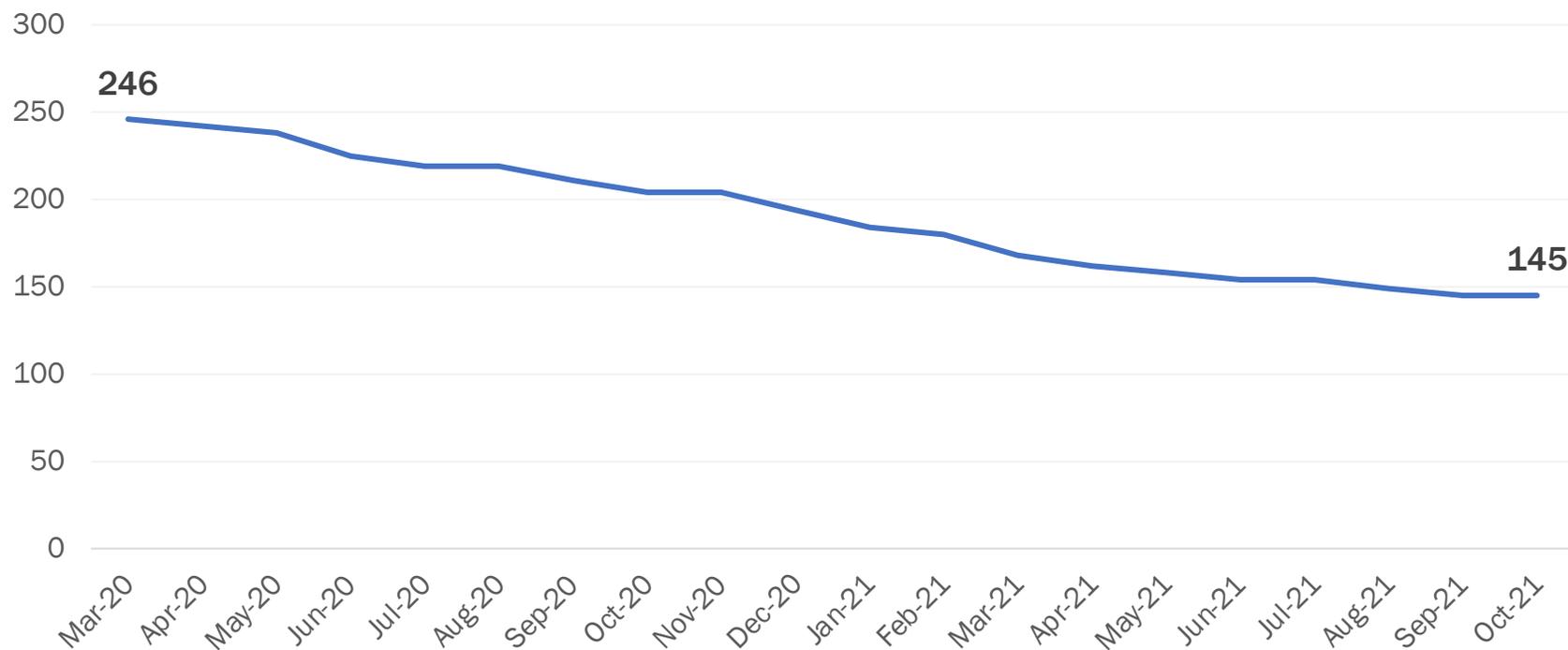
Snapshot Vermont TOTAL Incarcerated Population  
March 2020–October 2021



*This increase in people being detained likely reflects an increase in court and law enforcement activity after disruptions due to COVID-19.*

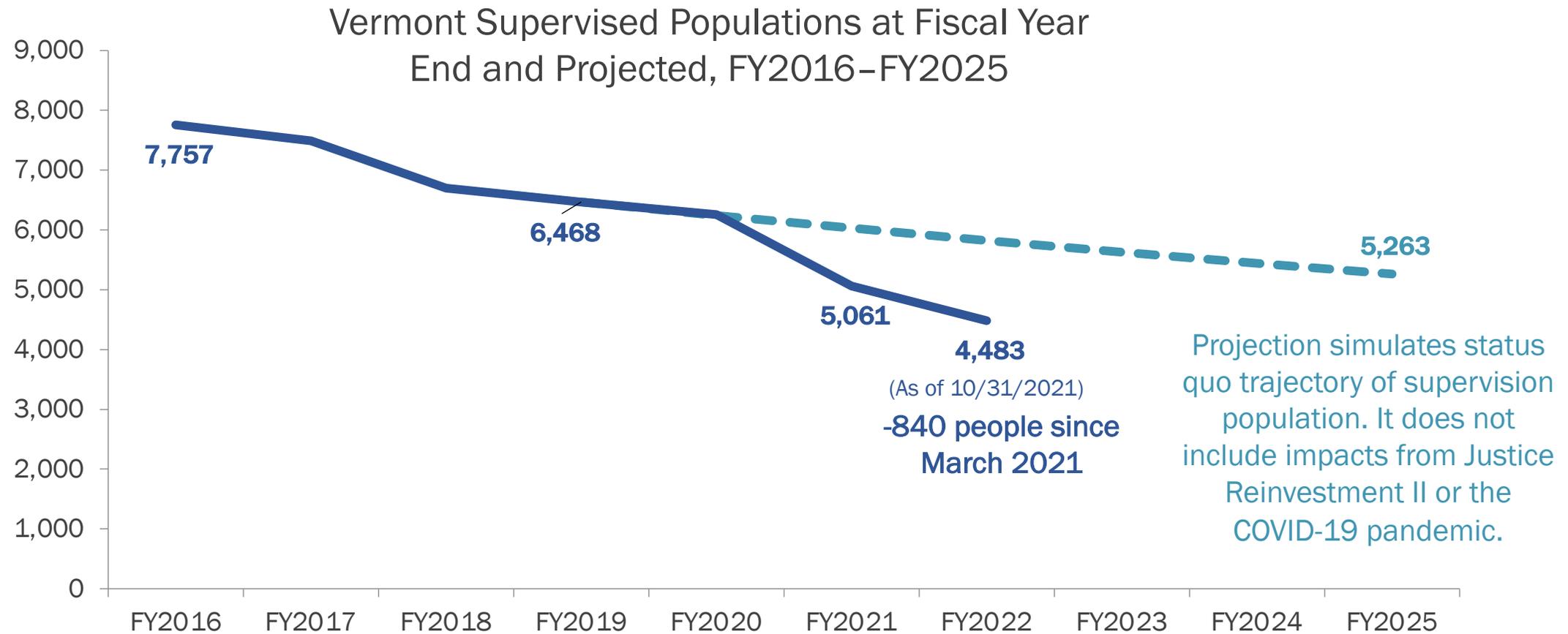
# The number of people being housed out of state has declined 41 percent since March 2020 due to decreases in the overall incarcerated population resulting from the pandemic.

Number of Incarcerated People Housed Out of State  
March 2020–October 2021



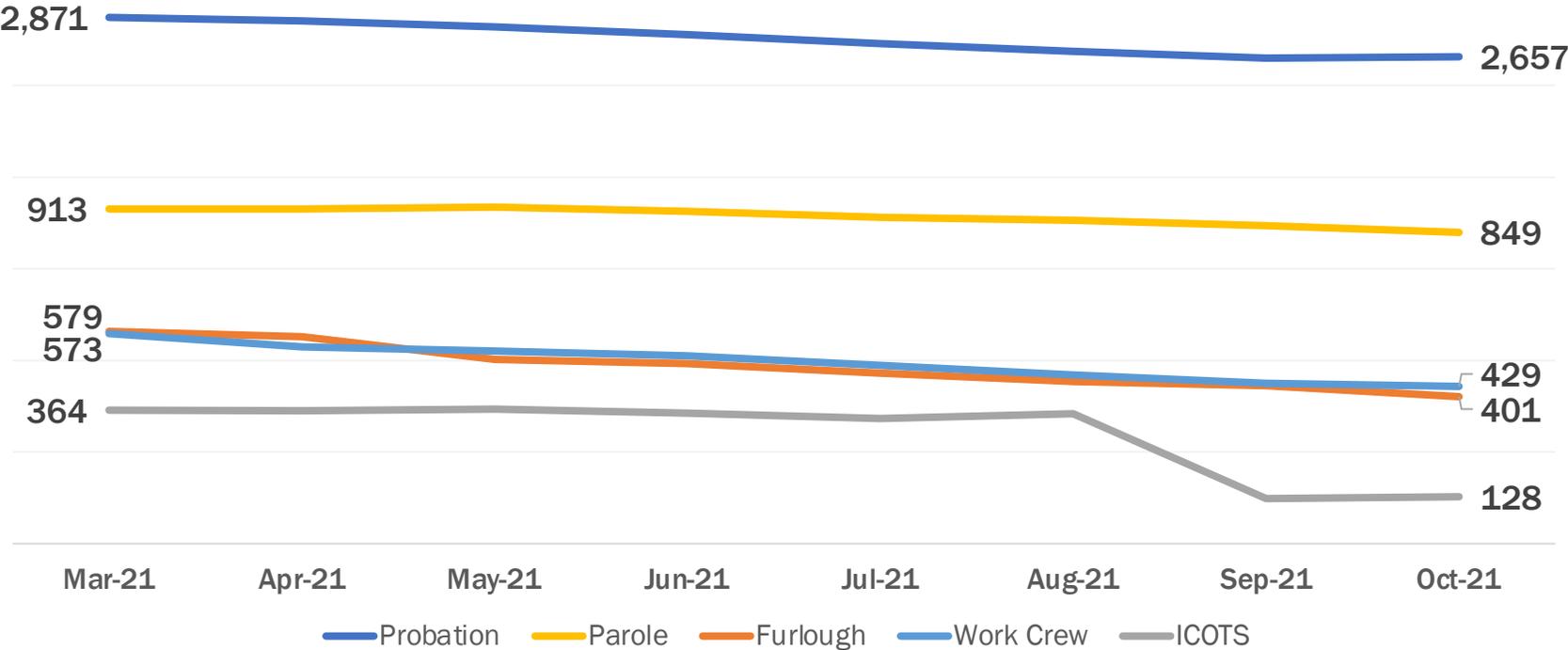
*Over the same period, the number of people incarcerated by the Vermont DOC (sentenced, detained, and holds) declined approximately 20 percent.*

# Vermont's community supervision population has continued to decline since the beginning of the pandemic due to disruptions in court processes.



# While all community supervision caseload populations have decreased since March 2021, the number of people on furlough declined 31 percent.

Community Supervision Population\*  
March 2021–October 2021



## Percent Decline by Community Supervision Caseload Type

Probation -7.5%

Parole -7.0%

Furlough -31%

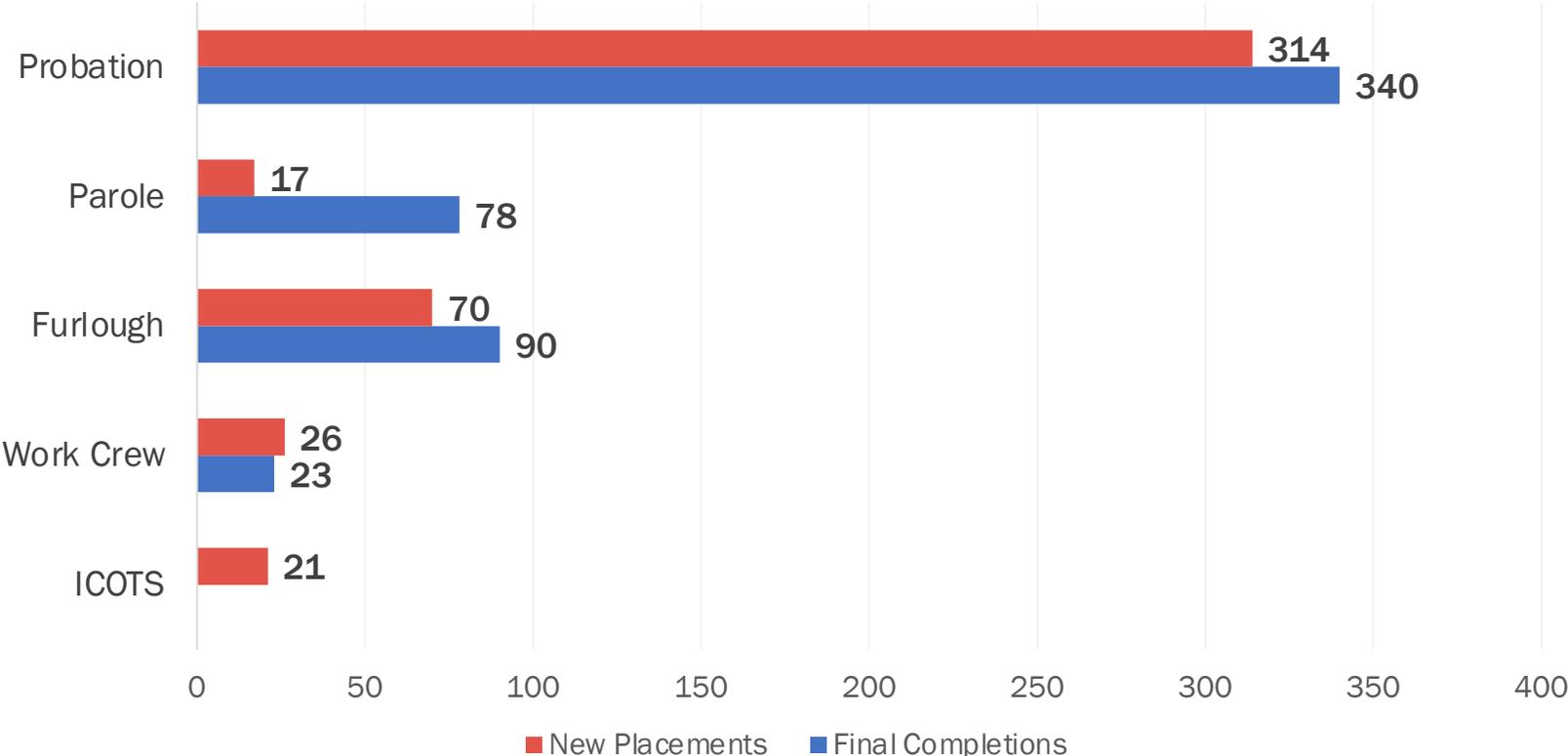
Work Crew -25%

ICOTS -65%

\* Not pictured in the graph are "Other" supervision types, of which there were 23 in March and 19 in October.

# From July to October 2021, community supervision completions exceeded supervision placements for nearly all caseload types.

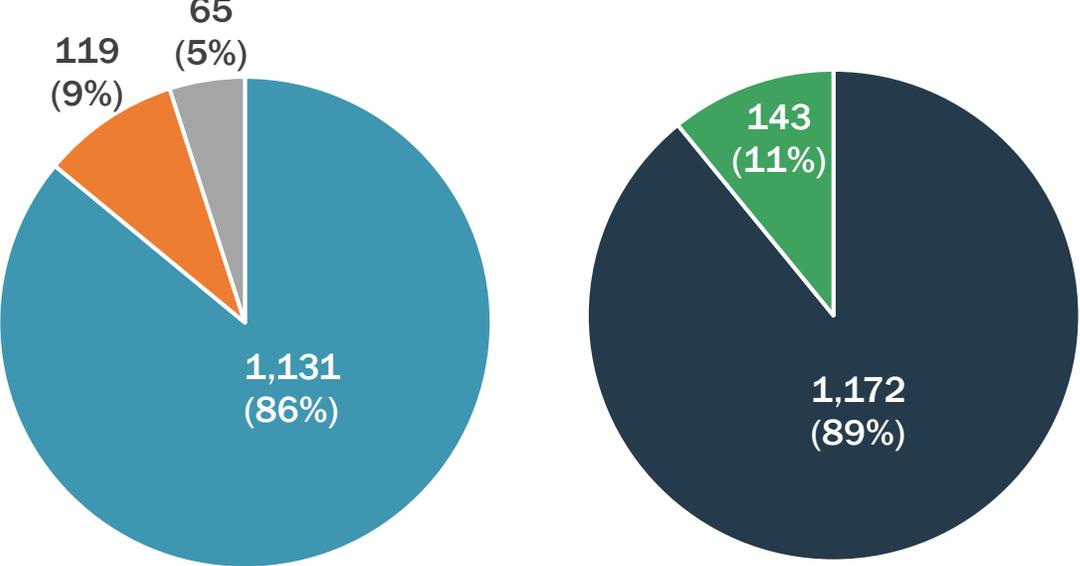
Placements to and Completions from Community Supervision:  
July 2021–October 2021



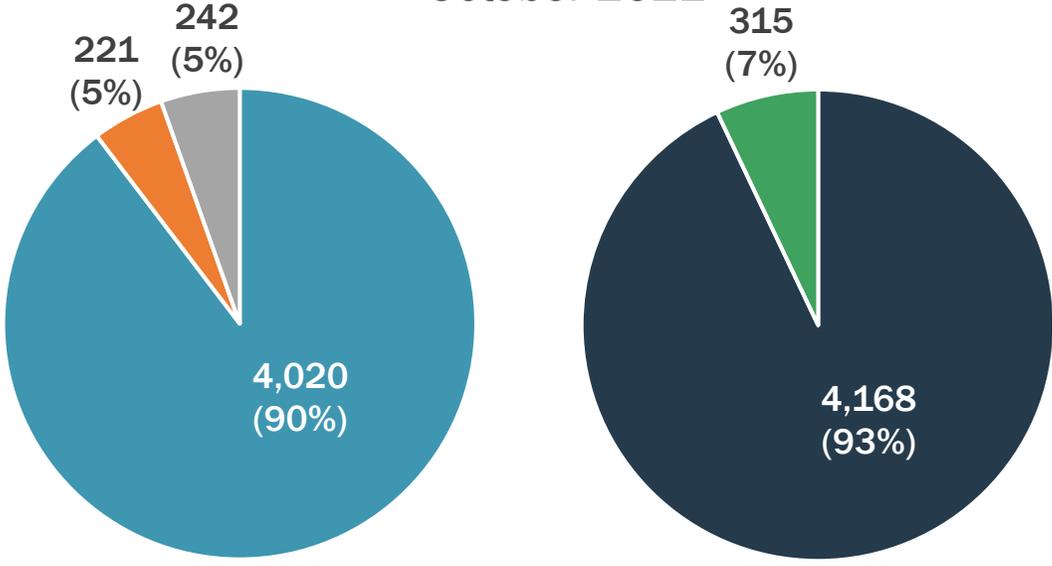
*DOC began tracking community supervision placements as of July 2021, so trend data is not yet available. However, it is likely that placements decreased significantly during the COVID-19 pandemic and continue to remain low due to disruptions in court processes.*

# In 2020, DOC began collecting Hispanic ethnicity data, revealing a previously unidentified demographic that is disproportionately represented in Vermont's criminal justice population.

Total Incarcerated Population  
by Race and Ethnicity  
October 2021



Community Supervision Population by Race  
and Ethnicity  
October 2021



■ White 
 ■ Black 
 ■ Other/Unknown 
 ■ Hispanic, Latinx, or Spanish 
 ■ NOT Hispanic, Latinx, or Spanish

Vermont 2020  
Census Hispanic  
Population: **2.4%**



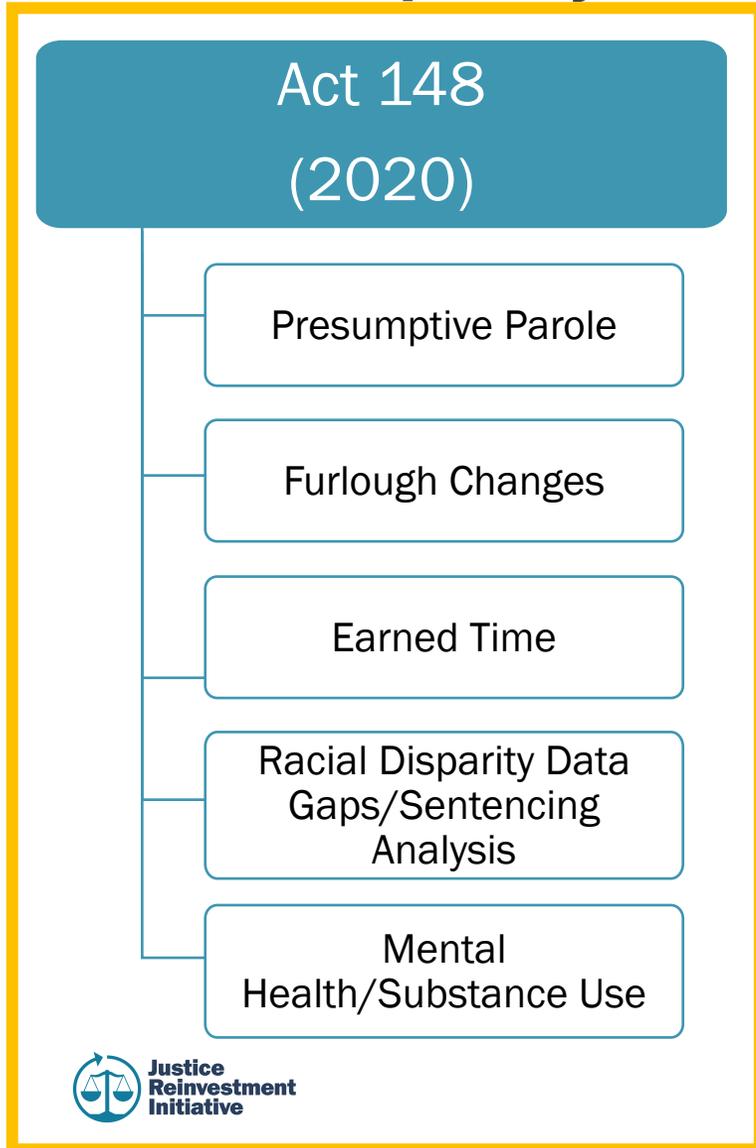


# **Justice Reinvestment Initiative** Vermont

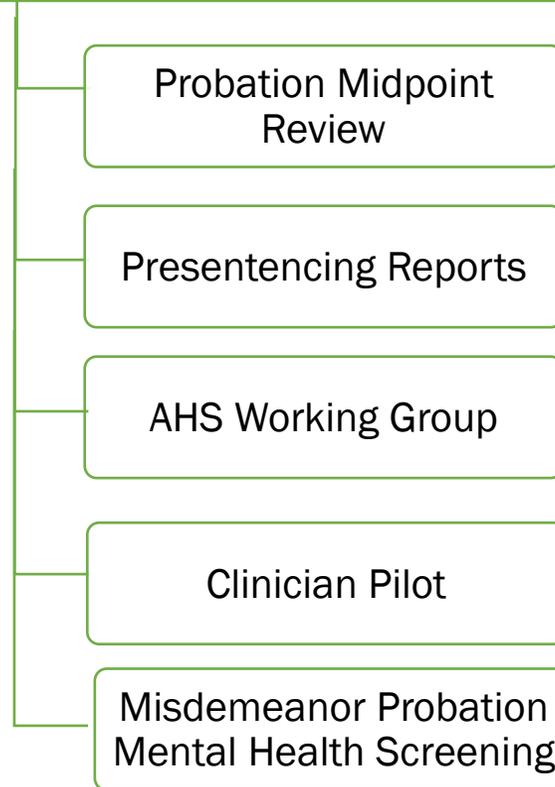
## Overview

- 1 Justice Reinvestment II Overview
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# The Justice Reinvestment II Working Group engaged in three rounds of policy development.



## Policy Recommendations (2021)



## Policy Recommendations (2022)



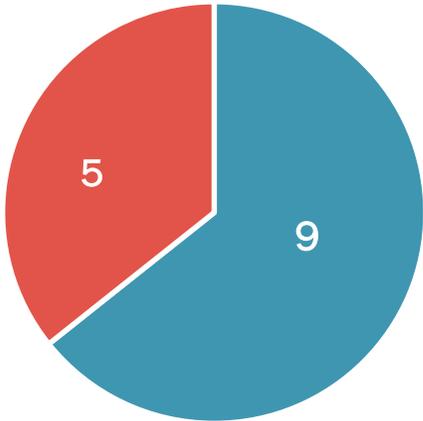
# Act 148 (2020): Established presumptive parole to reduce reliance on the furlough system.

## Implementation Progress

- DOC and Parole Board collaborate to co-implement new presumptive parole policies and processes by [January 1, 2021](#).
- Parole Board begins tracking presumptive parole data pending DOC data system changes.
- Parole Board adopts the Ohio Risk Assessment Systems (ORAS) tool to better evaluate risk and need.
- DOC completes data system changes to support presumptive parole data collection ([in progress](#)).
- Presumptive parole eligibility expands to include some listed offenses ([Effective January 1, 2023](#)).

# A total of 14 cases have been referred to the Parole Board for presumptive parole consideration since January 2021.

Vermont Presumptive Parole Cases  
Jan. 2021–Oct. 2021



■ Approved ■ Schedule for a Hearing

### Risk Level of Approvals:

- 0 Low risk
- 5 Moderate risk
- 4 High risk

### Risk Level of Denials:

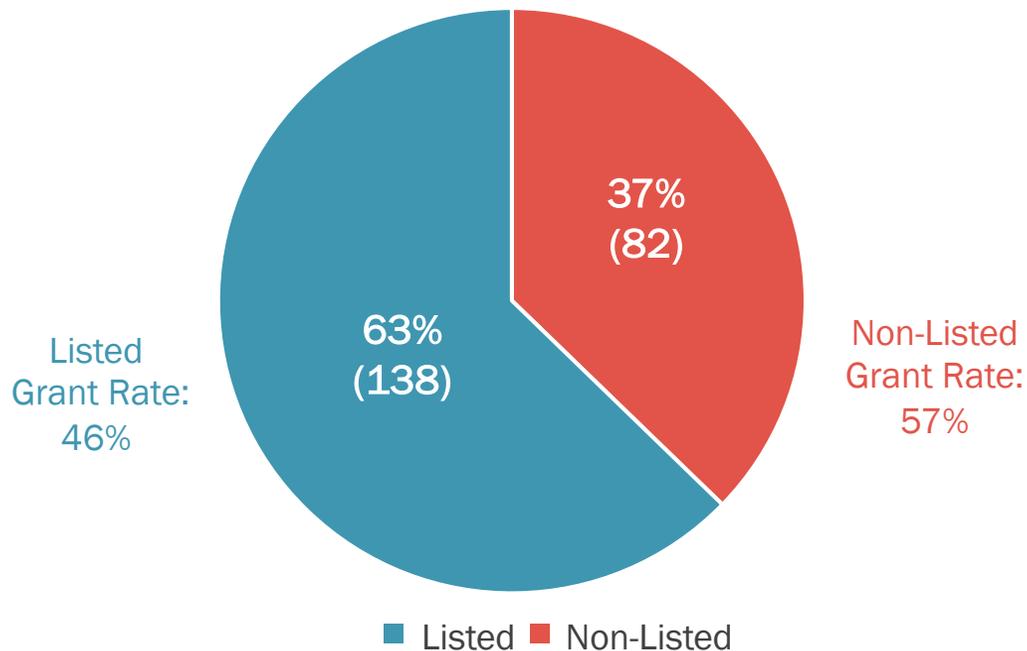
- 2 Low risk
- 1 Moderate risk
- 2 High risk

## Policy Highlights:

- Of the initial 14 presumptive parole cases considered by the board, **five were scheduled for hearings** to provide opportunity for victim input.
- Of the five cases where a hearing was scheduled, **none were denied based on victim input**. One was denied for reasons unrelated to victim concerns.
- The number of cases referred to the Parole Board in the first eleven months of implementation are about **60 percent fewer** than initially projected.

# The Parole Board continues to see a significant number of people convicted of unlisted offenses through the initial eligibility hearing process.

Percentage of Initial Eligibility Hearings by Listed or Non-listed Offense, January – November 2021

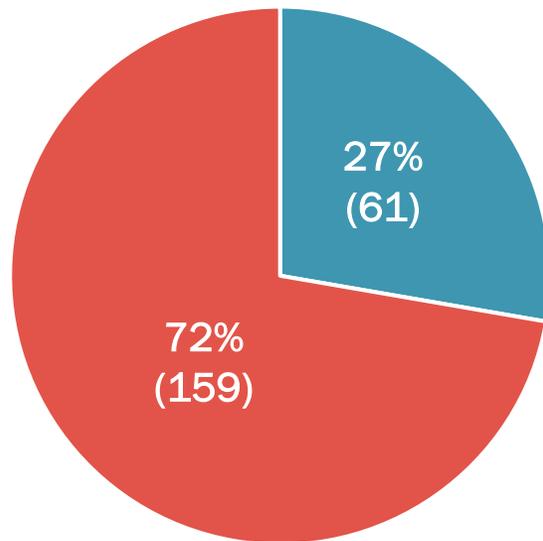


## Statutory reasons a person convicted of an unlisted offense may not be referred for presumptive parole:

- New criminal conviction
- Outstanding warrant, detainer, commitment, or pending charge
- Non-compliance with required services and programming
- Non-compliance with supervision conditions
- Major disciplinary rule violation or pending infraction
- Prior parole revocation
- DOC determination that the person can not be released safely or is not willing or capable of being a law-abiding citizen

# From January to November 2021 only 27% of hearings were completed at least thirty days prior to a person's eligibility date as required by Act 148.

Timeframe for Initial Parole Eligibility Hearings,  
January – November 2021



- Hearing Completed At Least 30 Days Prior to Eligibility Date
- Hearing Completed After Eligibility Date

*62 percent of hearings completed after a person's eligibility date were done the following three months.*

*About 30 percent of people receiving initial eligibility hearings from January – November 2021 were already released on furlough.*

# Pending updates to DOC's data system will provide additional information for monitoring presumptive parole moving forward.

## Data available post-DOC system updates will include:

- Total number of people who have reached their minimum;
- Of those who reached their minimum, total number eligible for presumptive parole, and;
- Total number ineligible for presumptive parole and reason for ineligibility.

# Vermont should continue to commit to presumptive parole being the primary release mechanism for people who have served their minimum sentence.

## Moving Forward

- Vermont state and agency leadership should continue to **monitor the volume of presumptive parole case referrals and approvals**:
  - Why are people who have served their minimum sentences deemed ineligible for presumptive parole? Are there extensive denials for specific statutory exclusions?
  - Are people refusing presumptive parole to remain on furlough and receive earned time?
  - Are people being denied presumptive parole and for what reason?
- The Parole Board should continue to **move away from reliance on furlough** by supporting the presumption of parole without a hearing unless there is a victim of record who can be contacted and would like to provide input.
- If there are a significant number of people refusing presumptive parole to remain on furlough and receive earned time, Vermont should consider ways to either expand earned time to people on parole or encourage existing early discharge mechanisms to avoid creating an incentive for people to stay on furlough.

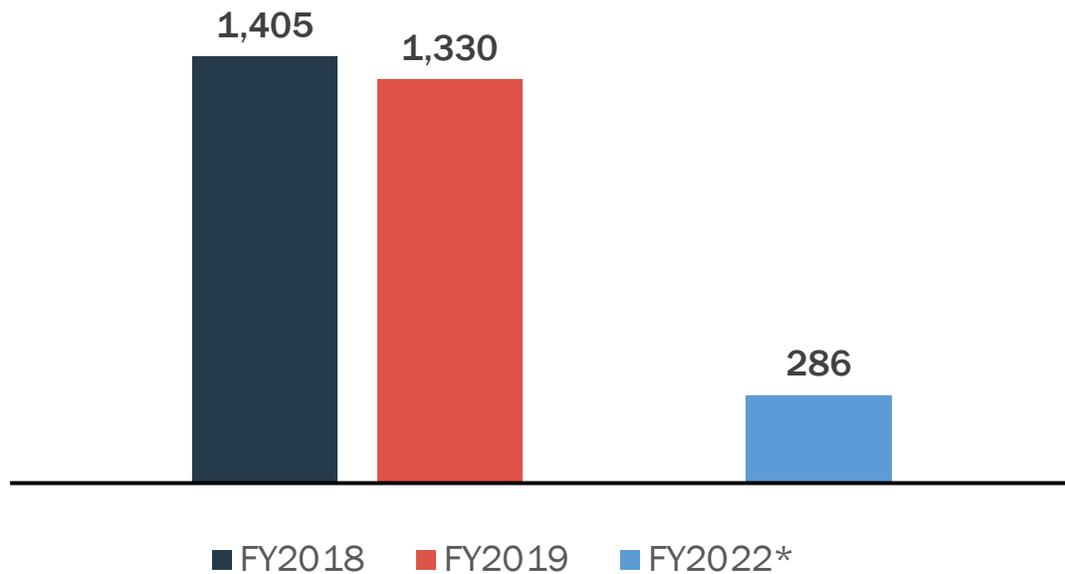
# Act 148 (2020): Streamlined the furlough system and established a review process for furlough revocations.

DOC Implementation Progress (including additional community supervision reforms not required in Act 148)

- Revise furlough statuses and create revocation review process.
- Cease furlough interrupts less than 90 days.
- Create new threshold for furlough interrupts greater than 90 days.
- Begin tracking returns to incarceration, including furlough returns.
- Revise community supervision conditions and contact standards to better align with evidence-based practice.
- Revise sanction grid to establish response tiers aligned with evidence-based practices in supervision.
- Complete data system changes to support collection of sanction and incentive data (in progress).

# Very preliminary data from FY2022 suggest that furlough returns are on track to be significantly lower than prior fiscal years.

Furlough Returns to Custody:  
FY2018, FY2019, and FY2022 Projection\*



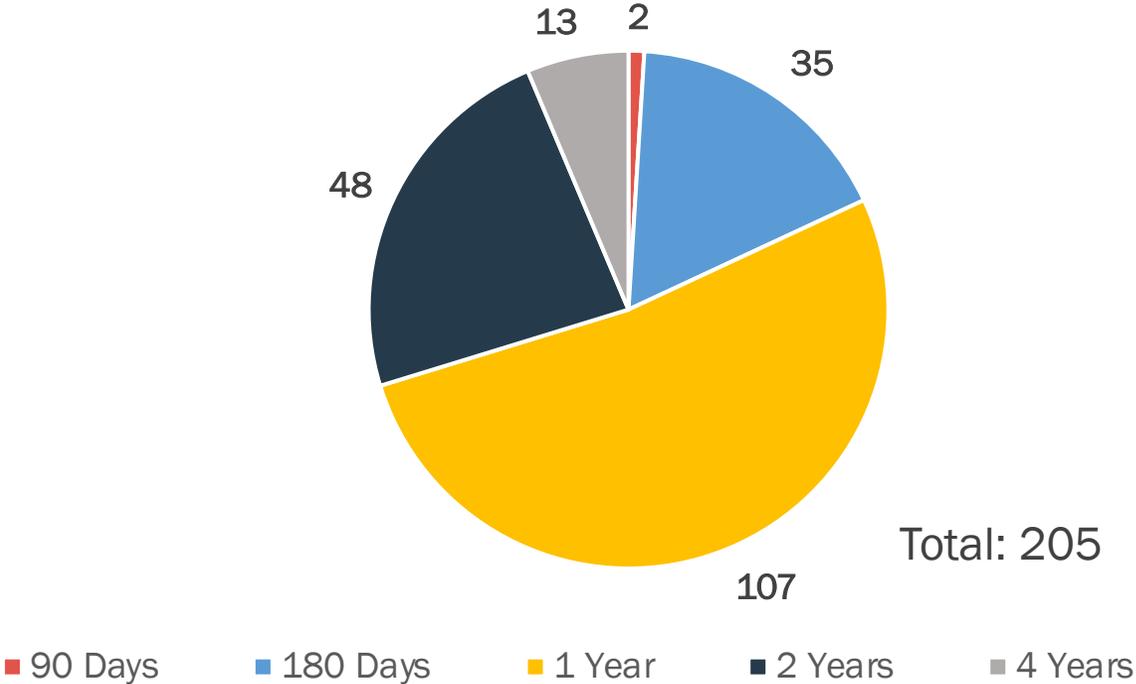
\*FY2022 is estimated based on four months of data

*From July 2021 to October 2021, an estimated 22 people per month were admitted to custody on a furlough supervision interrupt.*

*If this volume remains consistent, furlough returns will be far lower in FY2022 than in prior fiscal years.*

# In the October 2021 snapshot prison population, 205 people were incarcerated for a furlough interrupt, with 82 percent for one year or more.

Current Furlough Interrupts in Incarcerated Population: October, 2021



*Pending DOC data system updates will allow for a more nuanced understanding of the population incarcerated for furlough interrupts.*

# Pending updates to DOC's data system will provide additional information for monitoring changes to furlough moving forward.

Data available post-DOC system updates will include:

- Total new furlough interrupts each month;
- Reason for furlough interrupt (significant violation or new crime); and
- Length of new furlough interrupts (90 days, 180 days, 1 year, 2 years, or 4 years).

# Act 148 (2020): Streamlined the furlough system and established a review process for furlough revocations.

## Moving Forward

- Vermont state and agency leadership should carefully **monitor returns to incarceration**, particularly for people on furlough, in order to understand the impact of policy and statutory reforms.
- In addition to changes to community supervision sanction policies, DOC should also **complete revisions to incentive policies** begun during initial Justice Reinvestment II implementation.
- Sanction, incentive, and revocation data should be **collected, monitored for quality assurance, and available** to inform training needs and ongoing agency decision making.
- State and agency leadership should collaboratively address implementation challenges related to the furlough revocation review process, including lack of clarity about when and how the process should be applied.

# Act 148 (2020): Incentivized positive behavior change through modifications to earned time.

## Implementation Progress

- DOC files emergency and permanent rules.
- DOC creates automated system to track earned time.
- Extensive feedback from victim community leads to adoption of additional notification requirements and offense carveouts established in Act 12 (2021).

# Initial data indicates that about **79 percent** of the total sentenced incarcerated and furlough population received earned time at least once from July to October 2021.

Number of People Receiving Earned Time  
and Average Number of Days Received,  
July–October 2021

Month	Number of Individuals Receiving Earned Time	Average Days Earned
July	857	6.9
August	826	6.8
September	836	6.9
October	804	6.8

## Policy Highlights:

- From July–October 2021, about **63 percent** of the sentenced incarcerated and furlough population received earned time each month with **79 percent** of the total population receiving earned time at least once during the four-month time period.
- The percentage of people receiving earned time during this period is only slightly less than initial CSG Justice Center policy impact projections.

# Act 148 (2020): Directed Vermont stakeholders to explore gaps in racial disparities data and sentencing outcomes.

## Implementation Progress

- RDAP delivers Act 148 report in December 2020 on racial disparity data gaps and challenges.
- The legislature directs RDAP to make recommendations regarding the creation of a new entity focused on racial disparity data and analysis.
- Sentencing Commission reviews RDAP report and sentencing data from Crime Research Group.
- CSG Justice Center conducts additional analysis to identify racial disparities at sentencing.

## Moving Forward

- Continue to focus on [improving race- and ethnicity-related data collection and analysis capacity](#), including through the establishment of an Office of Racial Justice Statistics.
- [Advance recommendations](#) for improving racial disparities at the point of sentencing.

# Act 148 (2020): Required further examination of challenges identifying and serving people in the justice system with complex needs.

## Implementation Progress

- ✓ AHS and the CSG Justice Center identify challenges to supporting people in the justice system with complex needs.
- ✓ Working group uses findings to make 2021 legislative and administrative recommendations.
- ✓ AHS and CSG Justice Center report findings to the working group in November 2021, including challenges to consistent information sharing and care coordination.

# The Justice Reinvestment II Working Group engaged in three rounds of policy development.

## Act 148 (2020)

- Presumptive Parole
- Furlough Changes
- Earned Time
- Racial Disparity Data Gaps/Sentencing Analysis
- Mental Health/Substance Use

## Policy Recommendations (2021)

- Probation Midpoint Review
- Presentencing Reports
- AHS Working Group
- Clinician Pilot
- Misdemeanor Probation Mental Health Screening

## Policy Recommendations (2022)

- Parole for Older Adults
- Reinvestment Funding
- Racial Disparities

# Working Group Recommendation (2021): Proposed strategies to improve information sharing and care coordination for people on supervision with complex needs.

## 2021 Working Group Mental Health and Substance Use recommendations included:

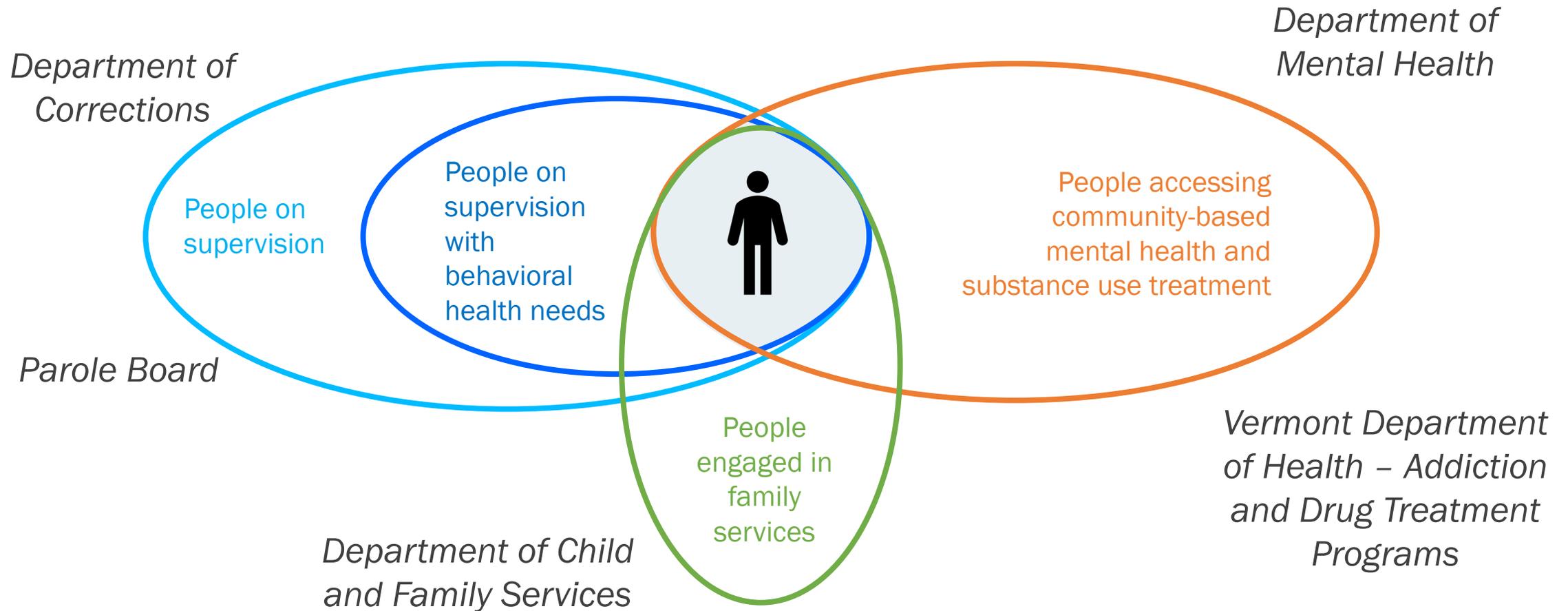
- Require DOC to develop a brief report including mental health and substance use screening information for judges before sentencing to inform condition setting for all felony probation cases.
- Recommend that AHS convene a cross-department working group to develop and implement changes to policy and 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.
- 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.

# Most of the working group's 2021 recommendations related to mental health and substance use are still in progress.

## Implementation Progress

- Act 14 (2021) creates one to two site pre-sentencing report pilot project.
- DOC develops a supervision model focused on criminogenic intervention strategies in which clinicians will support supervision staff in working with people who have complex needs to be piloted in Burlington (in progress).
- DOC expands mental health screening to the misdemeanor probation population (postponed until after Act 14 implementation).
- AHS convenes cross-agency working group (paused to allow DOC to focus on Burlington pilot project).

# Without substantial and sustained collaboration between AHS departments in support of shared clients, Vermont will continue to struggle to support people on supervision who have complex needs.



# There are several ways Vermont can improve how people in the justice system with complex needs are identified and served.

## Moving Forward

- Ensure that program and policy changes within DOC, the Parole Board, and AHS are not developed or implemented in silos. Efforts should be **closely coordinated with other relevant stakeholders** and connect to broader system reform goals.
- Commit to **intentional, sustained cross-department coordination** within AHS to improve information sharing and care coordination in support of shared clients with complex needs.
- When developing new initiatives that serve people with complex needs, **identify clear program-level outcome measures** that connect to broader system reform goals.
- Continue to focus on creating **a shared cross-system understanding of mental health, substance use, and criminogenic need** among supervision staff, community providers, and Parole Board members.

# Working Group Recommendation (2021): Adjust Vermont's probation midpoint review process to encourage use.

## Implementation Progress

-  Legislature passes Act 24 adopting modifications to the midpoint review process.
-  DOC begins discharge referrals under new policy in May 2021.

## Implementation Challenges

- New criteria requires DOC to recommend discharge for people with a pending new offense.
- In September 2021, the Vermont Superior Court determined Act 24 only applied to people sentenced after passage thereby ending discharge recommendations under the new policy.

## Moving Forward

- Legislatively establish eligibility for midpoint review under Act 24 (2021) for the current supervised population.
- Prohibit discharge consideration for people with a pending new charge.

# The Justice Reinvestment II Working Group engaged in three rounds of policy development.

## Act 148 (2020)

- Presumptive Parole
- Furlough Changes
- Earned Time
- Racial Disparity Data Gaps/Sentencing Analysis
- Mental Health/Substance Use

## Policy Recommendations (2021)

- Probation Midpoint Review
- Presentencing Reports
- AHS Working Group
- Clinician Pilot
- Misdemeanor Probation Mental Health Screening

## Policy Recommendations (2022)

- Parole for Older Adults
- Reinvestment Funding
- Racial Disparities

# Working Group Recommendation (2022): Study and make recommendations regarding the adoption of a parole policy for older adults in Vermont.

## Recommendation

The working group did not come to a consensus on a recommendation for legislative action or inaction regarding the adoption of a parole policy for older adults in Vermont.

Working group members expressed concerns, including

- Significant policy underutilization due to a lack of appropriate housing or care available in the community;
- Unclear need for an additional release mechanism given the existence of medical parole and furlough; and
- Appropriateness of release for people serving sentences for serious offenses.

*The working group decided to report the results of their study of a parole for older adults policy to the legislature along with a recommendation to explore other options for addressing the needs of the aging incarcerated population in Vermont.*

# Working Group Recommendation (2022): Target reinvestment or up-front funding toward key community-based services.

## Recommendation

The legislature should 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

**In November 2021, the working group reviewed the results of a racial equity in sentencing analysis and adopted recommendations for addressing identified disparities.**

**Analysis results included the following:**

- In Vermont, Black people are **6 times more likely to be incarcerated** than White people.
- Disparities are present in the cases coming to Vermont courts: annually, Black people are **over 14 times more likely to be a defendant in a felony drug case.**
- Once before the court, Black people are **not** more likely to be convicted for most offenses or sentenced to longer incarceration terms for any offense. Importantly, however, there are **statistically significant racial disparities in who receives an incarceration sentence**, particularly for felony property and drug offenses.

## **Working Group Recommendation (2022): Consider policy recommendations to reduce racial disparities identified in the racial equity in sentencing analysis.**

### **Recommendation 1**

Vermont is currently considering a classification structure for drug offenses. The legislature should apply a racial equity lens to the classification process for drug offenses by

- Reducing lower- to mid-level felony drug possession offenses to misdemeanors; and
- Reevaluating the threshold of the highest level of possession and sales to better reflect significant amounts of drugs intended for distribution.

### **Recommendation 2**

To address racial disparities in incarceration for felony drug and property offenses for similarly situated defendants, Vermont should pursue either non-binding sentencing guidance or presumptive probation for certain offenses to support judicial discretion related to incarceration decisions.

## **Working Group Recommendation (2022): Consider policy recommendations to reduce racial disparities identified in the racial equity in sentencing analysis.**

### **Recommendation 3**

Vermont should require the collection and reporting of race and ethnicity data in the Attorney General's Pretrial Services and Court Diversion Report, as well as in any other statewide diversion programs, for the purpose of identifying and addressing disparities in program access and use by county.

### **Recommendation 4**

State's attorneys should explore the use of internal guidance to increase consistency in charging and plea-bargaining decisions. Guidance should focus on when and what to charge, particularly for drug-related cases, as well as provide a framework for guiding discretion during the plea-bargaining process. To monitor implementation of internal guidance, offices should regularly collect and examine charging and plea-bargaining data as well as consider establishing a process for internal review prior to charging.

# Working Group Recommendation (2022): Increase collection, analysis, and availability of race and ethnicity data.

## Data-related recommendations include the following:

- Expand availability of Hispanic ethnicity data to law enforcement and the courts.
- Invest in staffing and system improvements necessary to increase future data collection and analysis capacity.
- Collect and analyze sentencing data statewide as well as by judicial district.
- Identify opportunities to publish racial disparity data, including an annual report to benchmark and monitor progress.
- Engage impacted communities in the collection of quantitative and qualitative data as well as the development and implementation of policy changes related to racial disparity.
- Use data and community engagement to inform judicial training to support consistent decision-making.

# CSG Justice Center staff have identified several takeaways from the implementation of Justice Reinvestment II in Vermont.



Vermont persevered through unprecedented challenges to develop and implement Justice Reinvestment II reforms during the COVID-19 pandemic and identify over \$1.6 million in reinvestment funding and up-front investments.



DOC and the Parole Board have made significant policy and practice changes and have coordinated subaward funded trainings to support Justice Reinvestment II efforts.



Vermont has taken meaningful steps toward increasing data capacity and is well situated to monitor outcomes moving forward, including returns to incarceration and the implementation of presumptive parole.



Despite progress, consistent collaboration among AHS departments and the Parole Board remains a significant challenge to improving care coordination for people on supervision with complex needs.



# **Justice Reinvestment Initiative** Vermont

## Overview

- 1 Justice Reinvestment II Overview
- 2 Criminal Justice Trends
- 3 Policy-Specific Implementation
- 4 Sustainability and Next Steps

# To fully realize the intended outcomes of Justice Reinvestment II, CSG Justice Center staff recommend several key steps for ongoing sustainability.

<b>Data</b>	<ul style="list-style-type: none"><li>• Use available data to continue monitoring Justice Reinvestment II reforms.</li><li>• Explore opportunities to increase data collection and analysis capacity, particularly related to the application of incentives and sanctions, as well as the collection of race and ethnicity data.</li></ul>
<b>Reinvestment</b>	<ul style="list-style-type: none"><li>• Continue to direct all out-of-state bed savings to a separate Justice Reinvestment II fund for the purpose of reinvesting in community-based services approved through the Joint Legislative Justice Oversight Committee.</li><li>• Expand the time period for spending reinvestment funding from one to at least two fiscal years.</li><li>• Continue to explore opportunities for up-front investments in community-based services, particularly mental health and substance use treatment.</li></ul>
<b>Oversight</b>	<ul style="list-style-type: none"><li>• Continue to convene the Justice Reinvestment II Working Group to monitor, discuss, and coordinate ongoing cross-system implementation.</li></ul>

# There are several next steps to close out CSG Justice Center technical assistance in Vermont.

## December 2021

- CSG Justice Center technical assistance ends.

## January 2022

- The Justice Reinvestment II Working Group submits second report to the legislature by January 15.

## February 2022

- CSG Justice Center staff submit analysis report on racial equity in sentencing to Vermont.

## Early 2022

- Vermont receives first Justice Reinvestment II data monitoring report.

# Thank You!

Join our distribution list to receive updates and announcements:

<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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# APPENDIX

## The Justice Reinvestment II Working Group's Study of Parole for Older Adults

*Slides compiled from Justice Reinvestment II Working Group meetings on August 17, 2021 and October 12, 2021.*

**Act 148 tasks the working group with evaluating the policy of allowing parole eligibility for older adults who have served a portion of their minimum term.**

*Medical Parole*

Parole eligibility based on a person's medical condition.

*Geriatric Parole or Parole for Older Adults*

Parole eligibility based on a person's age and/or age-related illness or infirmity, including incapacity and the need for long-term care.

*Compassionate Release*

Can refer to both medical parole and/or parole for older adults.

# Vermont law currently provides for medical parole and medical furlough.

	Medical Parole	Medical Furlough
Person must be diagnosed with a terminal or serious medical condition that makes them unlikely to physically present a danger to society	✓	✓
Allows for release to a hospital, hospice, licensed inpatient facility, or other suitable housing accommodation	✓	✓
Requires recommendation by the Department of Corrections (DOC) based on a range of factors including offense, time served, risk level, victim concerns, age, and release plan.	✓	✓
Entity responsible for final release determination.	Parole Board	DOC

# Parole for older adults has similar policy goals as medical parole but with a more explicit focus on the aging prison population.



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



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



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



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



# There have been several efforts to create a parole policy for older adults in Vermont that were not enacted.

## H.29 (2013)

→ Eligibility included people 55–65 who have served at least 10 years and people 65 or older who have served at least 5 years.

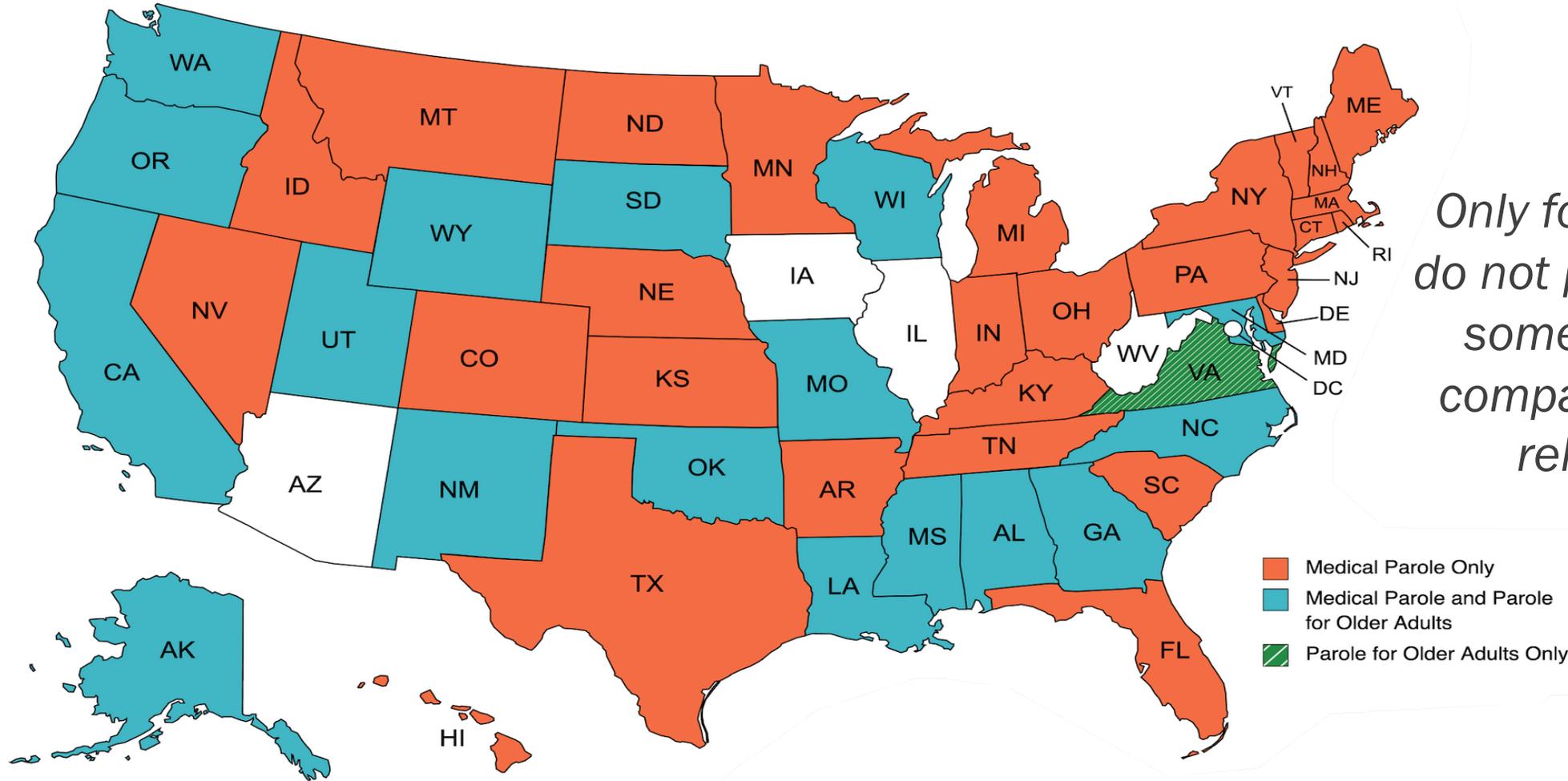
## S.167 (2019)

→ Proposed a judicial process for people 65 or older who suffer from a chronic or serious medical condition or are experiencing deteriorating mental or physical health.

## S.338 (2020) and S.18 (2021)

→ Eligibility included people 65 or older who have served 5 years, fulfilled programming requirements, and have not received a major disciplinary rule violation within the previous 12 months.

# Seventeen states currently have a parole policy for older adults, with all but one also having medical parole.



*Only four states do not provide for some type of compassionate release.*

# Most states limit eligibility to people **60 or older** and do not require a person to have served any set duration of their sentence.

- 7 Require a person be at least 60.
- 8 Do not require a person to have served any set duration of their sentence.
- 3 Require a person be at least 65
- 2 Require a person 60+ to have served at least 10 years and a person 65+ to have served at least 5 years.
- 4 Do not have an age requirement and base eligibility on physical incapacitation and/or reduced risk to public safety due to age.

# In addition to age, some states require that a person must also have some type of qualifying age-related infirmity or illness.



In Missouri, an incarcerated person must be incapacitated by age to the extent that they **require long-term nursing home care**.



In North Carolina, in addition to being 65 or older, an incarcerated person must also **suffer from chronic infirmity, illness, or disease related to aging** that has incapacitated the person to the extent they do not pose a public safety risk.



In Oregon, along with being elderly, an incarcerated person must also be **permanently incapacitated**.

# Many state policies also include other components such as victim notification and carve-outs for certain offenses.

*Additional components include:*

- **Offense carveouts** for a range of violent and/or sexual offenses
- Requirements that a person **serve a defined portion of their minimum sentence** prior to parole consideration
- **Victim notification** when a person is identified or approved for early release, as well as an opportunity for victim input prior to decision-making
- Eligibility exclusions for people **-serving life without parole**
- Additional **criteria for release** including significantly reduced risk to public safety and risk to recidivate

*In nearly all states, the final release decision is made by the paroling authority or the corrections department.*

# Data from the Department of Corrections can provide some insight into the eligible population should Vermont adopt a parole policy for older adults.

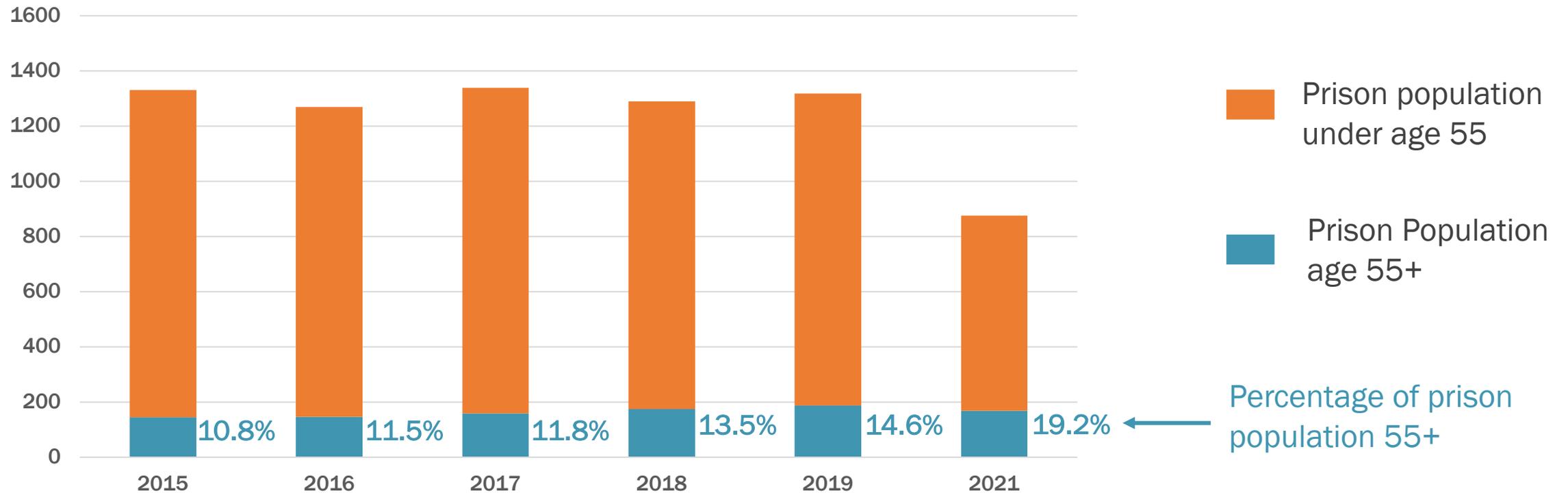
CSG Justice Center staff were able to do a **limited population profile** for people who could potentially be considered for release under a parole policy for older adults with criteria that the person:

- Be at least 60 years of age or older
- Have served at least 5 years
- Have not yet served their minimum sentence and are therefore ineligible for release through the standard parole process

*It is important to note that due to data analysis limitations, this profile was unable to account for re-admissions over time when calculating total time served. As a result, it should be considered a strong estimate.*

# The number of people over the age of 55 who are incarcerated in Vermont has increased almost 10 percent since 2015 despite a recent decrease in the total prison population.

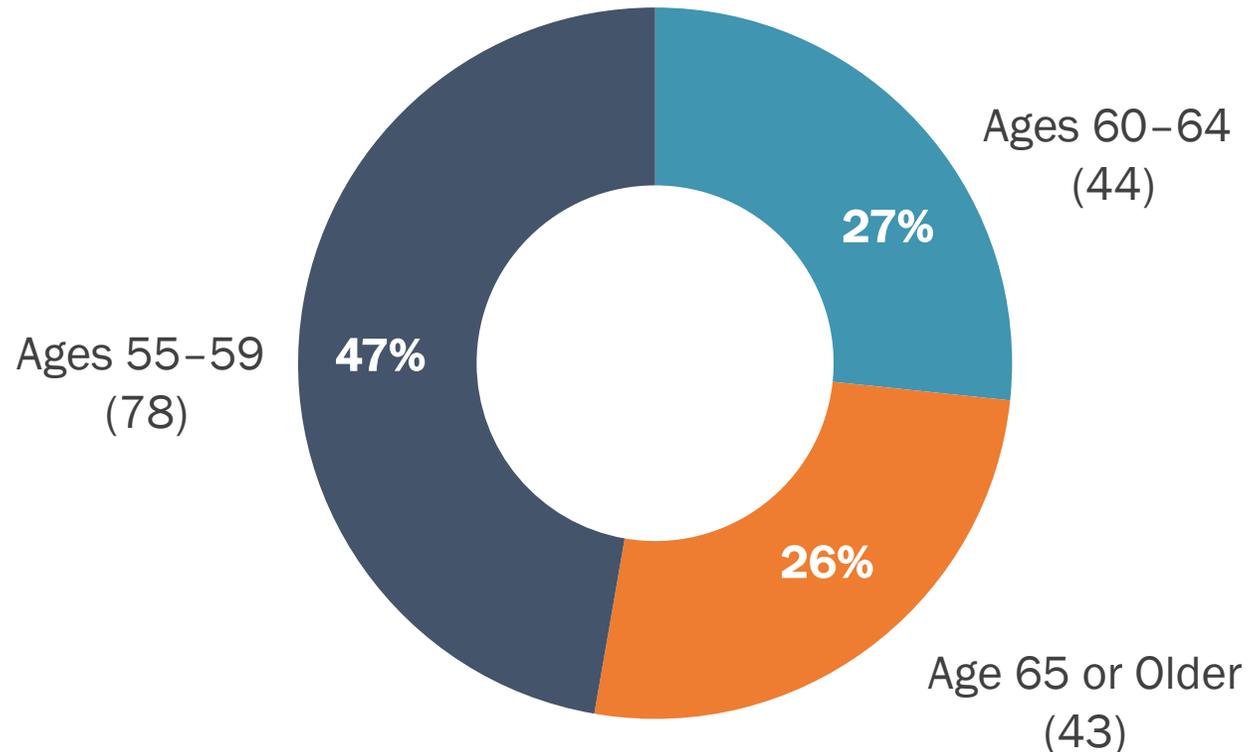
Snapshot Sentenced Incarcerated Prison Population by Age, June 2015–2019 and April 2021\*



\*Due to data set limitations, specific age categories were not available for 2020.

# Over half of Vermont's older incarcerated population are 60 years or older.

Snapshot Sentenced Incarcerated Population  
Over 55 Years of Age, April 2021



## 60+ population demographics:

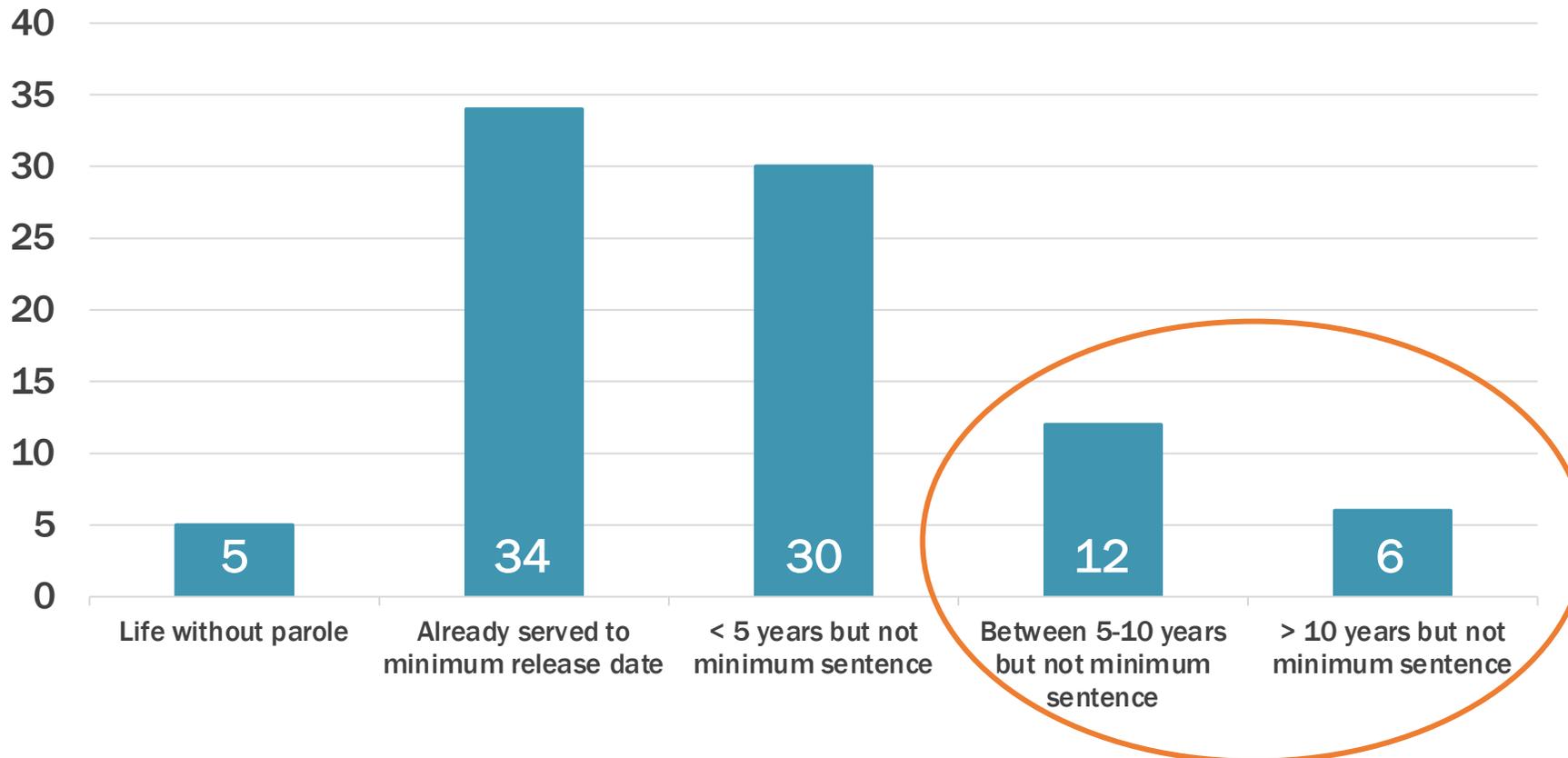
*Male* 84 (96%)  
*Female* 3 (4%)

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*White* 79 (91%)  
*Black* 5 (6%)  
*American Indian/  
Alaskan Native* 2 (2%)  
*Unknown* 1 (1%)

# Of the 87 incarcerated people aged 60 or older, only 18 have served at least 5 years but not yet reached their minimum.

Portion of Minimum Sentence Served for Vermont Prison Population 60 Years of Age or Older, April 2021

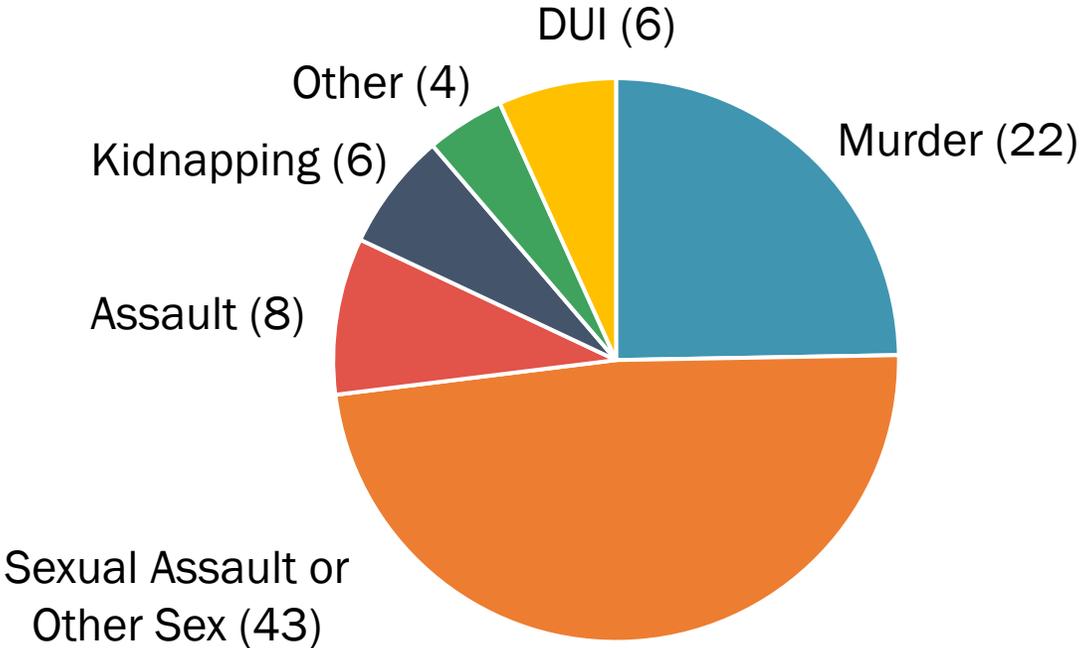


*Of the 18 people 60 years or older who have served at least 5 years, 9 have served over half of their minimum sentence.*

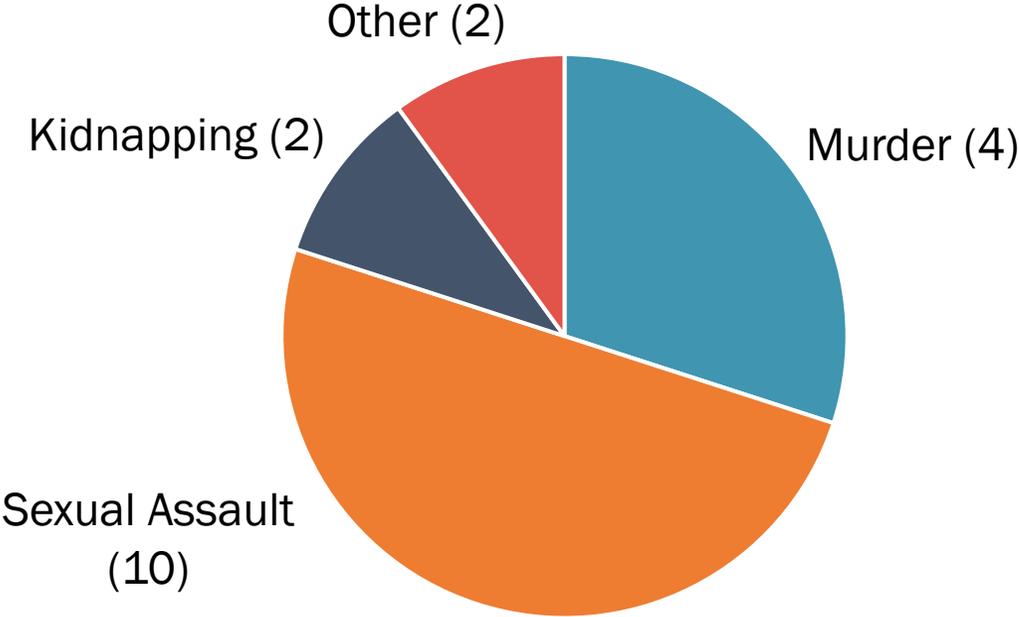
*Due to data analysis limitations, this profile was unable to account for re-admissions over time when calculating total time served. As a result, it should be considered a strong estimate.*

# 77 percent of people 60 and older who have not met their minimum but served at least 5 years are incarcerated for sexual assault or murder.

Vermont Incarcerated Population At Least 60 or Older by Offense Type, April 2021



Vermont Incarcerated Population At Least 60 or Older That Have Served At Least 5 Years But Not Their Minimum by Offense Type, April 2021



The Council of State Governments Justice Center analysis of a Vermont Department of Corrections publicly available prison population file downloaded from the DOC website in April 2021.

**While most of the 18 people included in Vermont's population profile have been assessed as higher risk, research does show that future criminality is inversely correlated with age.**

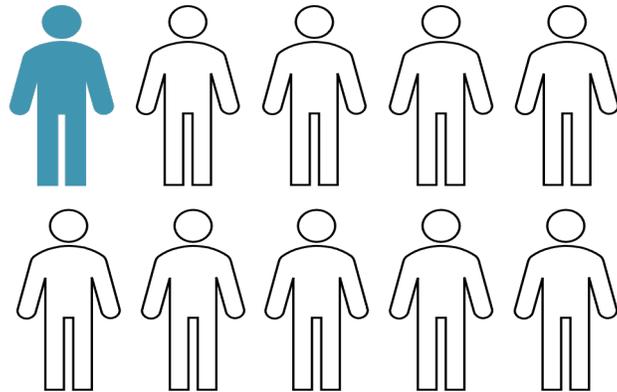
As a result, some older incarcerated people may be released without an increased risk to public safety.

Studies have found that people 55 or older are significantly less likely to recidivate following release when compared to people under 30 years old.\*



\*It is important to note that the degree to which risk decreases with age can vary by recency and offense type. Specifically, people convicted of recent sexual offenses involving children do not show reduced risk to reoffend just because they are older.

**Compassionate release policies are generally applied on a case-by-case basis, so eligibility does not always guarantee release.**



*Nationally, only a little more than one out of 10 people eligible for medical or age-related parole were ultimately granted release from 2013 to 2015.*

**Data on the use of medical parole and furlough is not available for Vermont; however, anecdotal information indicates that these policies are used infrequently.**

# There are several factors that contribute to the underutilization of parole policies for older adults nationally.

*These challenges significantly limit a state's ability to achieve intended policy goals despite the enactment of a statute on parole for older adults:*

- Extensive statutory exclusions that overly restrict the number of people eligible for case-by-case consideration
- A complicated or unclear identification and assessment process, including vague definitions or eligibility criteria
- Lengthy release determination processes
- Lack of post-release housing, health care, and other services in the community

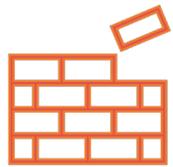
**Should Vermont adopt a parole policy for older adults, it would be important to track several key measures to monitor implementation.**

*Measures include:*

- Total eligible population based on statute
- Number of people identified for review and how they were identified
- Number of people reviewed and the resulting recommendation
- Number of people released
- Reason for rejecting review, recommendation, or release

# 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.

