

CRIME AND JUSTICE INSTITUTE

Nebraska Criminal Justice Reinvestment Working Group

Justice Reinvestment Initiative Presentation #3
September 13, 2021



Crime and Justice Institute at CRJ | Boston, MA | www.crj.org/cji

Overview

- Follow-up Questions
- Review of Key Takeaways
- Time Served Trends
 - Sentencing Trends
 - Release Mechanisms
 - Actual Time Served
- Parole



Follow-Up Questions: Presentation #1



Drug Crimes Are Top Offenses Across All Races

Top Offenses at Admission, 2020

Black	Hispanic	Native American	White
Possession with Intent to Deliver or Distribute	Possession with Intent to Deliver or Distribute	Possession of a Controlled Substance (Except Marijuana)	Possession of a Controlled Substance (Except Marijuana)
Robbery	Possession of a Controlled Substance (Except Marijuana)	Terroristic Threats	Possession with Intent to Deliver or Distribute
Possession of a Controlled Substance (Except Marijuana)	Sexual Assault (1 st Degree)	Possession with Intent to Deliver or Distribute	Terroristic Threats
Possession of Deadly Weapon by Prohibited Person	Domestic Assault	Domestic Assault	Burglary
Terroristic Threats	Robbery	Possession of a Deadly Weapon by Prohibited Person	Possession of a Deadly Weapon by Prohibited Person
Assault (2 nd Degree)	Assault (2 nd Degree)	Assault (2 nd Degree)	Domestic Assault
Domestic Assault	Sexual Assault of Child (1 st Degree)	Burglary	Driving While Intoxicated
Driving While Intoxicated	Assault (1 st Degree)	Robbery	Child Abuse
Theft by Unlawful Taking	Child Abuse	Driving While Intoxicated	Assault (2 nd Degree)
Burglary	Driving While Intoxicated	Theft by Receiving Stolen Property	Possession of Firearm by Prohibited Person



*Safekeepers excluded from analysis; due to the small number of Asian and individuals identified as an Other race, they have also been excluded from this analysis

Madison County Has Highest Admission Rate Per 10,000 Residents

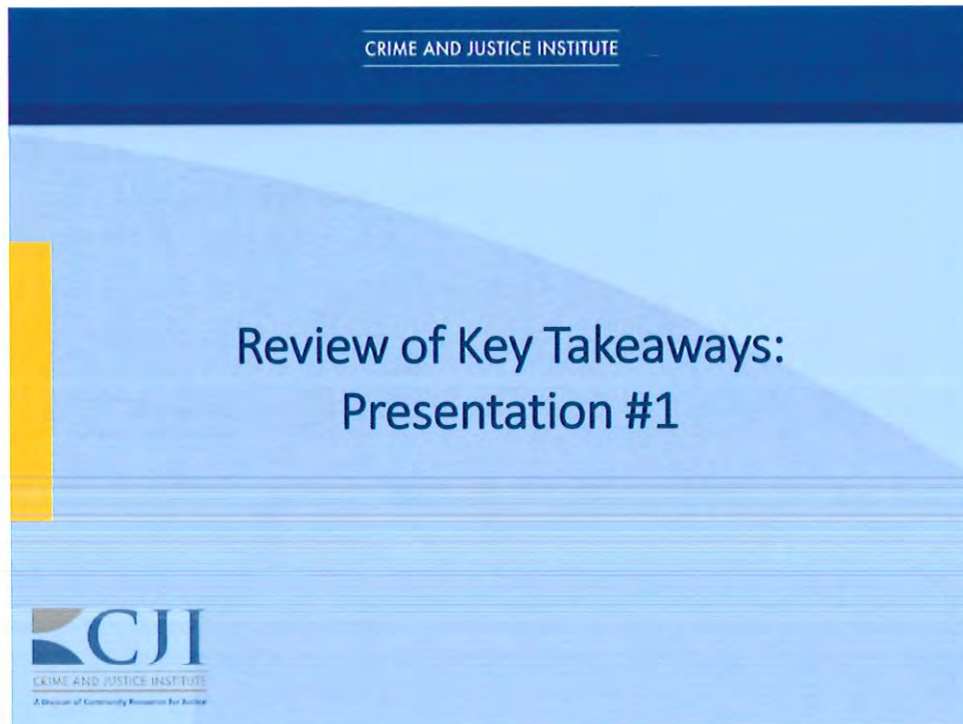
Total Admissions to NDCS Per 10,000 Residents, 2020



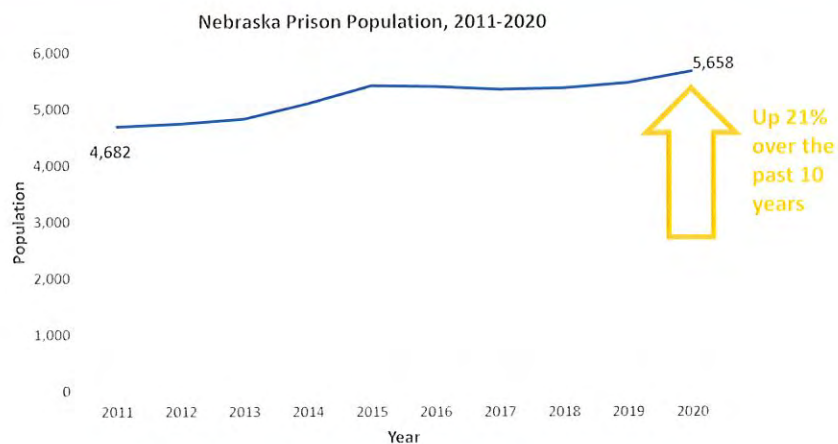
In 2011, Madison County Also Had Highest Admission Rate Per 10,000 Residents

Total Admissions to NDCS Per 10,000 Residents, 2011





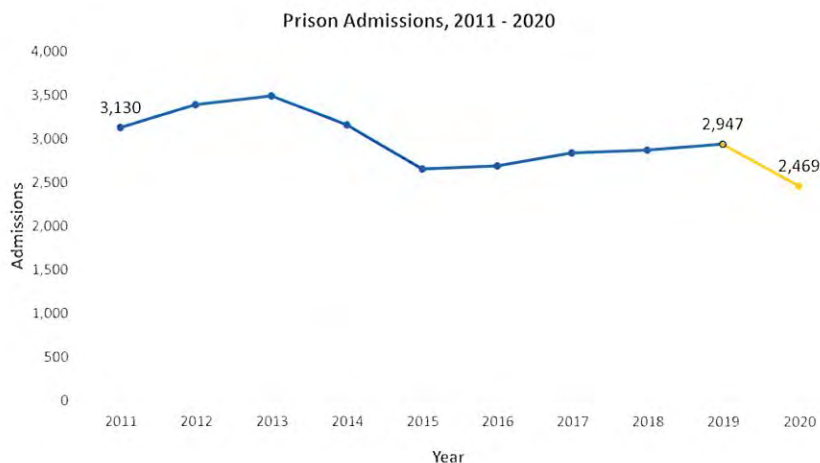
Nebraska's Prison Population is Growing



Source: Nebraska Department of Correctional Services, Average Daily Population and Capacity Chart

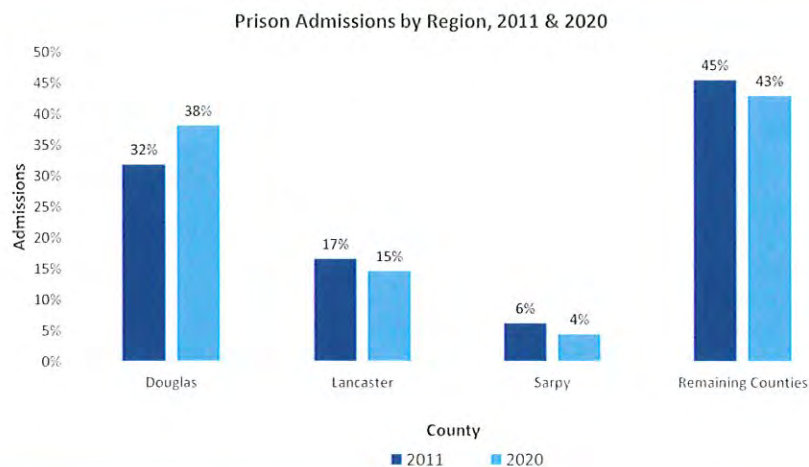
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Total Admissions are Down 21% Since 2011



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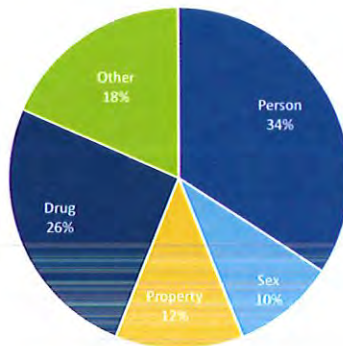
Despite State Decreases, Total Admissions are Up from Douglas County



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More Than Half of Initial Admissions Are For Non-Person/Non-Sex Offenses

Initial Admissions by Offense Category, 2020

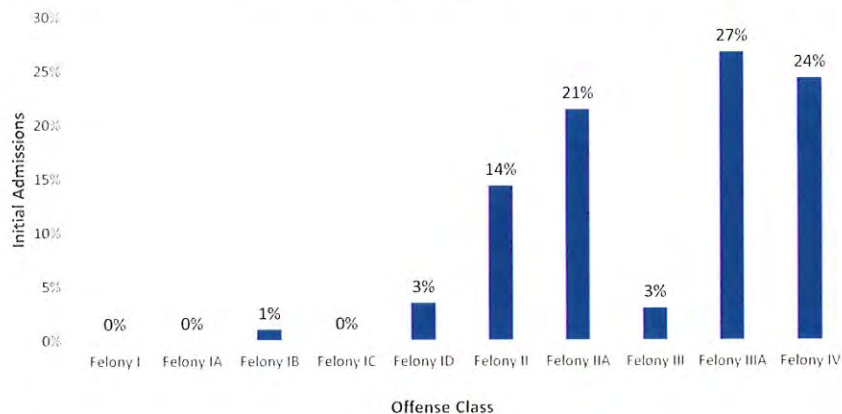


*Safekeepers excluded from figures.

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Over Half of Initial Admissions are For Felony IIIA or IV Offenses

Initial Admissions by Felony Offense Class, 2020



*Safekeepers and misdemeanors excluded from figures

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Data Sources

- Individual-level data from:
 - Nebraska Department of Correctional Services (NDCS)
 - All admissions to NDCS custody in calendar years 2011-2020
 - All releases from NDCS custody in calendar years 2011-2020
 - Nebraska Division of Parole Supervision
 - All Parole admissions and discharges by calendar year 2011-2020
- Aggregate-level data from:
 - Nebraska Board of Parole Annual Reports and Datasheets (FY 2018 to FY 2020)

Data Notes

- Unless stated otherwise, all data presented were analyzed by CJI in consultation with NE agencies
- Data presented here may not match agency reports due to different methodologies for analysis
- Offense data is for the most serious offense, as reported by NDCS, related to the current admission
- NDCS initial admissions include probation revocations
- Sentencing details limited to initial admissions only



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Data Notes II

- Sentence length uses admission cohorts 2011-2020
- Time served and release mechanisms use release cohorts 2011-2020
- Median is reported for both sentence length and time served



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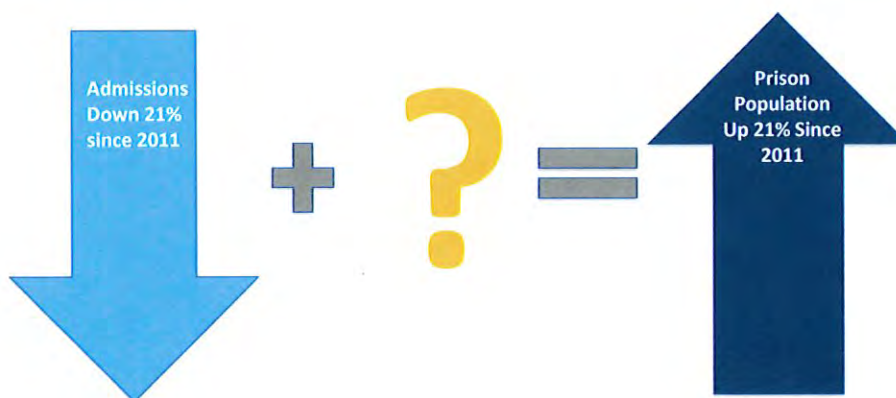
Iron Law of Prison Population Growth

Admissions + Time Served
= Nebraska Department of
Correctional Services Population



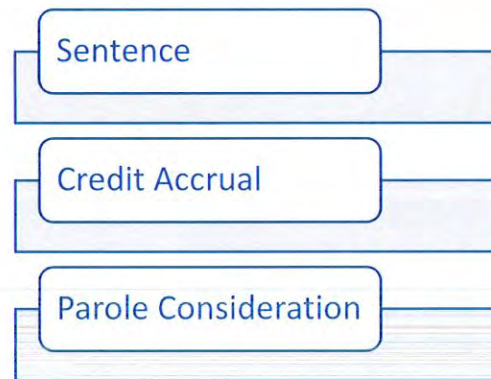
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NDCS Population



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Understanding Time Served



Sentencing Trends

Felony Sentencing

- **Determinate**
 - A sentence with one number, which is the set amount of time after which the person is released to post-release supervision
- **Indeterminate**
 - A sentence with two numbers, a **maximum** and a **minimum**; A person is eligible for parole after serving their minimum and must be released after serving their maximum
- **Mandatory minimum sentences**
- **Consecutive sentences**



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Indeterminate Sentences

Offense Class	Sentence Range	Post-Release Supervision Minimum and Maximum
Felony I	Death	None
Felony IA	Life	None
Felony IB	20 years – Life	None
Felony IC	5 years (mandatory)* – 50 years	None
Felony ID	3 years (mandatory)* – 50 years	None
Felony II	1 year – 50 years	None
Felony IIA	No minimum – 20 years	None



Note: Sentence ranges apply to all convictions from 8/30/15 onward
 *Mandatory minimums are not eligible for day-for-day good time and are not eligible for probation

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Determinate Sentences

Offense Class	Sentence Range	Post-Release Supervision Minimum and Maximum
Felony III	No minimum (determinate sentence) – 4 years and/or \$25k fine	9 Months – 2 Years
Felony IIIA	No minimum (determinate sentence) – 3 years and/or \$10k fine	9 Months – 18 Months
Felony IV	No minimum (determinate sentence) – 2 years and/or \$10k fine	No Minimum – 12 Months



Note: Sentence ranges apply to all convictions from 8/30/15 onward

*Commercial Drug Offenses include: manufacture, distribute, deliver, dispense, or possess with the intent to do any of those things

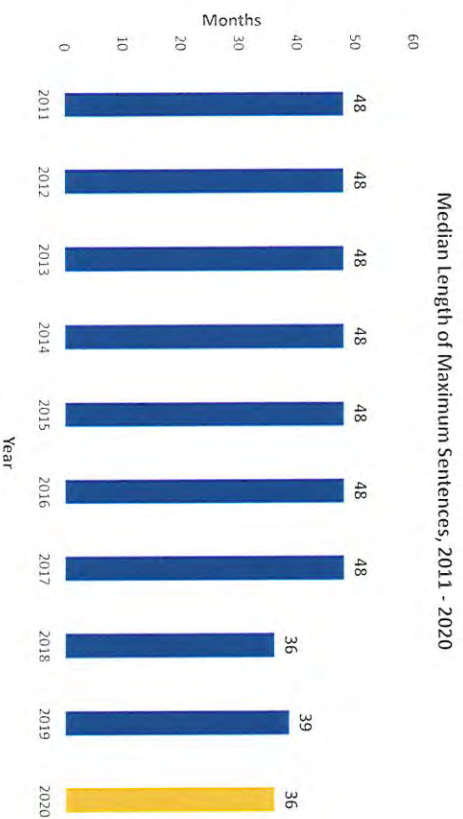
Pre-COVID, Minimum Sentence Length Was Up 25%

Median Length of Minimum Sentence, 2011 - 2020



*Safekeepers and life sentences excluded from figures. Includes concurrent and consecutive sentences; minimum sentences include mandatory minimum terms as well

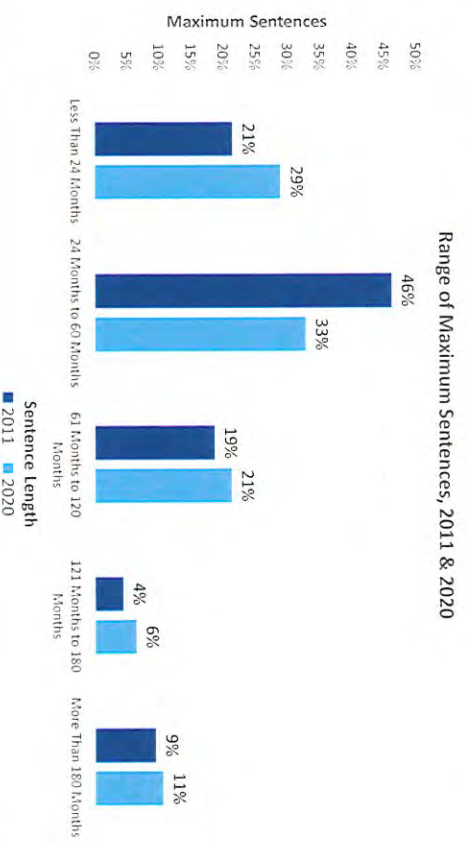
Maximum Sentence Length is Down



*Safepayers and life sentences excluded from figures; includes concurrent and consecutive sentences

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Proportion of Maximum Sentences Longer Than 5 Years Has Increased



*Safepayers and life sentences excluded from figures; includes concurrent and consecutive sentences

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Sentences for Possession With Intent Longer Than Burglary

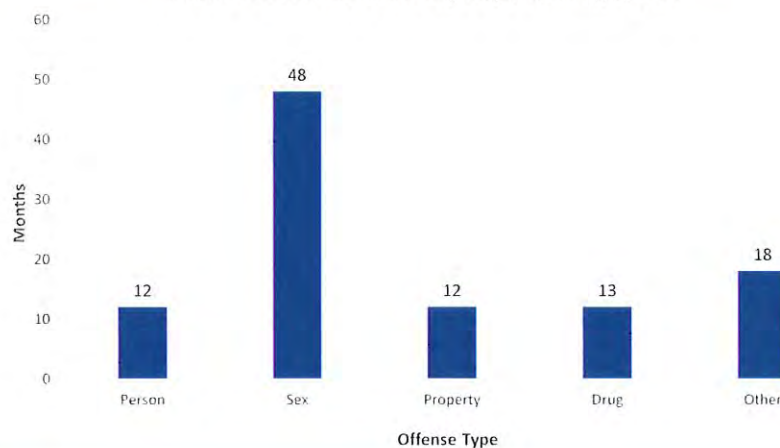
Top 10 Offenses at Admission in 2020	Median Minimum Sentence	Median Maximum Sentence
Possession of a Controlled Substance (Except Marijuana)	N/A	18
Possession with Intent to Deliver or Distribute	30	48
Terroristic Threats	N/A	24
Possession of a Deadly Weapon by a Prohibited Person	30	36
Domestic Assault	N/A	24
Burglary	24	36
Robbery	36	72
Driving While Intoxicated	12	24
Assault (2 nd Degree)	36	60
Sexual Assault (1 st Degree)	120	168



*Safekeepers and consecutive sentences excluded from figures; 'N/A' refers to determinate sentences

Minimum Sentence for Drug Offenses is Longer Than Person Offenses

Median Minimum Sentence Length by Offense Type, 2020



*Safekeepers and consecutive sentences excluded from figures

Minimum and Maximum Sentences by Offense Class, 2020

Offense	Median Minimum Sentence	Median Maximum Sentence
Felony ID	36	72
Felony II	48	72
Felony IIA	36	60
Felony III	N/A	24
Felony IIIA	N/A	24
Felony IV	N/A	18



*Safekeepers and consecutive sentences excluded from figures

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Mandatory Minimum Sentences

Type of Offense	Mandatory Minimum Sentence Length
Class ID Felony	3 years
Class IC Felony	5 years
Habitual Criminal	10 years*
Certain Serious Sex Offenses such as Sexual Assault of a Child	15 or 25 years depending on the offense and whether it is a first or second offense



*25 years for repeat offenders of certain serious offenses such as murder, sexual assault and arson

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How are Mandatory Minimum Sentences Different?

1. Mandatory minimum sentences are not eligible for probation
2. No good time can be earned for the mandatory minimum portions of a sentence

Example: A person serving a 10- to 20-year sentence with a 5-year mandatory minimum must serve 5 years before earning any good time. They would be parole-eligible at 7.5 years and would have mandatory release at 12.5 years.*



*This example has been simplified and does not account for the potential to earn certain additional time credits for avoiding infractions

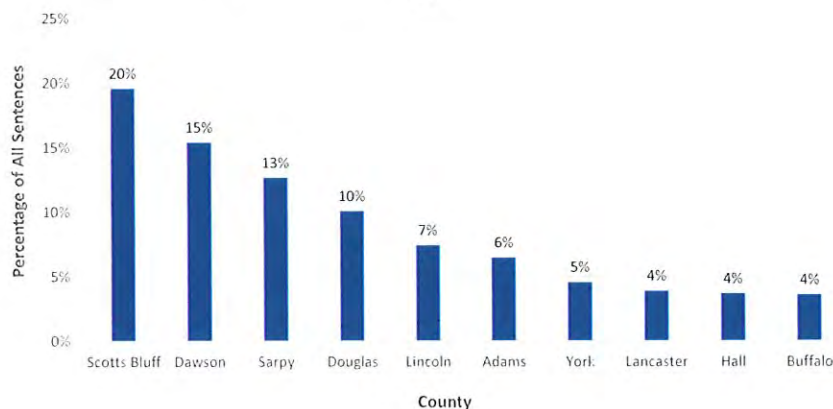
Admissions With Mandatory Minimums Have More Than Doubled

Percentage of Admissions with Mandatory Minimum Sentences, 2011 - 2020



Large Variation in Use of Mandatory Minimums Within Counties

Percentage of Mandatory Minimum Sentences of All Sentences by County, 2020

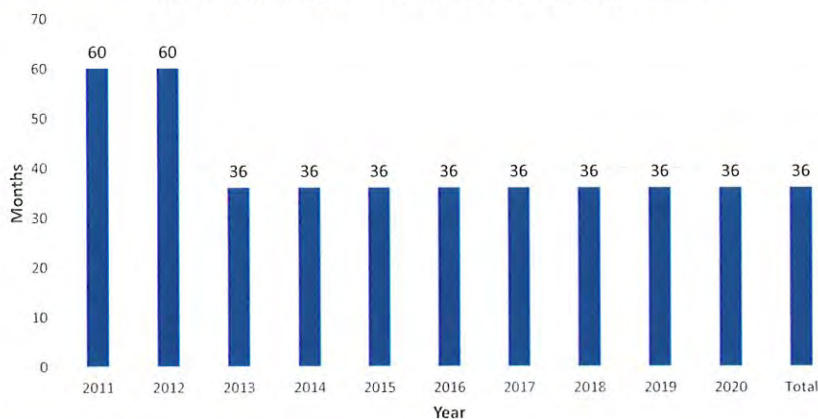


*Safekeepers excluded from figures

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Length of Mandatory Minimum Sentences is Unchanged Since 2013

Median Mandatory Minimum Sentence by Year, 2011 - 2020



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Consecutive Sentences Overview

- Consecutive sentences are required if the convicted individual is convicted of a **Deadly Weapon Offense**
- These offenses include:
 - Using a deadly weapon to commit a felony*
 - Possessing a deadly weapon while committing a felony**
- In any other situation in which a person is sentenced for multiple offenses at once, it is up to the judge's discretion whether to run the sentences consecutively or concurrently

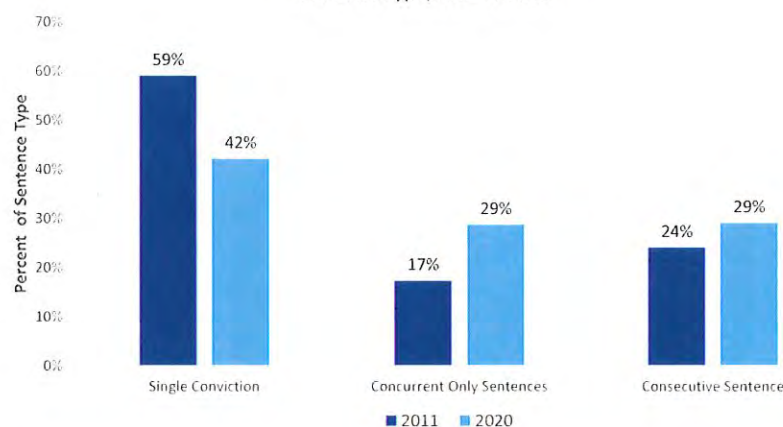


*If the weapon is a firearm, it is a Class IC felony; if the weapon is not a firearm, it is a Class II felony
 **If the weapon is a firearm, it is a Class II felony; if the weapon is not a firearm, it is a Class III felony

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Large Increase in the Proportion of Sentences with Multiple Convictions

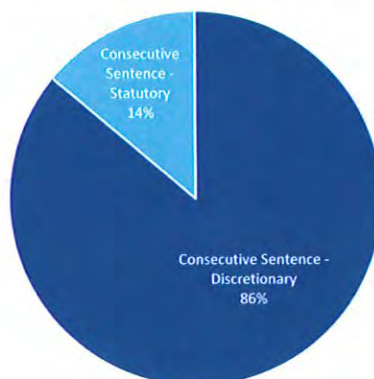
Sentence Type, 2011 & 2020



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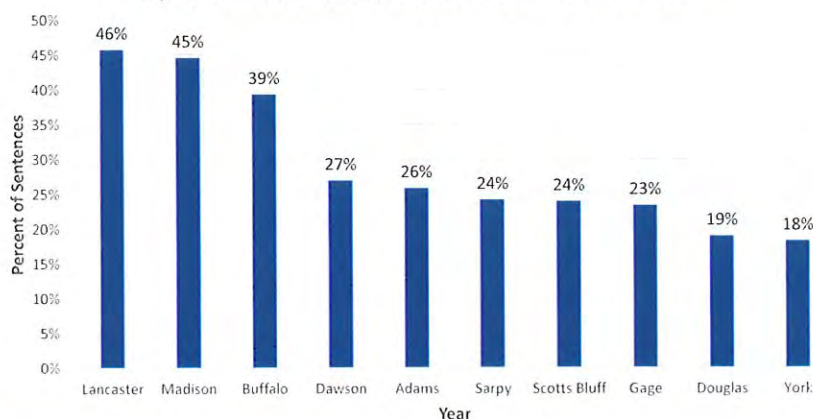
86% of Consecutive Sentences Were Discretionary

Discretionary vs. Statutorily-Required Consecutive Sentences, 2020

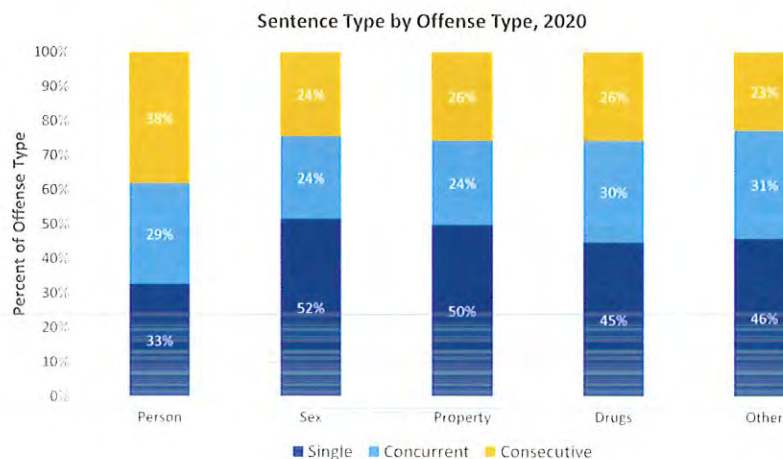


Large Variation in Use of Consecutive Sentences Within Counties

Top Counties with Highest Rate of Consecutive Sentences, 2020



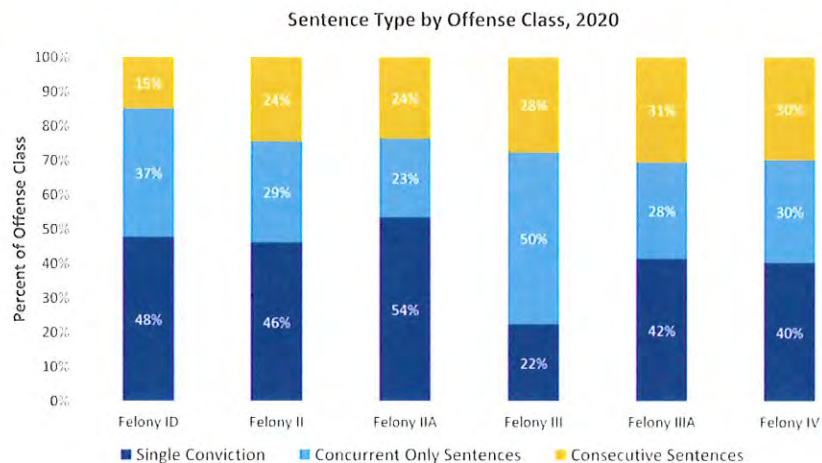
One in Four Property and Drug Offenses Have Consecutive Sentences



*Safekeepers excluded from figures

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Least Serious Offense Classes are Most Likely to Have Consecutive Sentences



*Safekeepers excluded from figures; analysis limited to offense classes with more than 20 cases

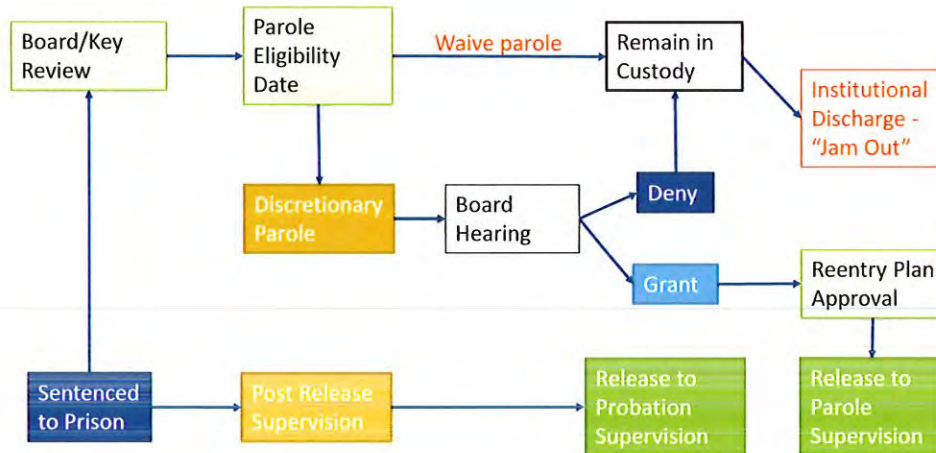
40

Key Takeaways

- Minimum sentence length is up 25% pre-COVID
- Frequency of mandatory minimums is up, but median length of these sentences has remained unchanged since 2013
- Use of consecutive sentences is up; 86% are discretionary
- Felony IIIA and Felony IV offense classes, which account for more than half of admissions, are most likely to have consecutive sentences

Release Mechanisms

System Map of Releases

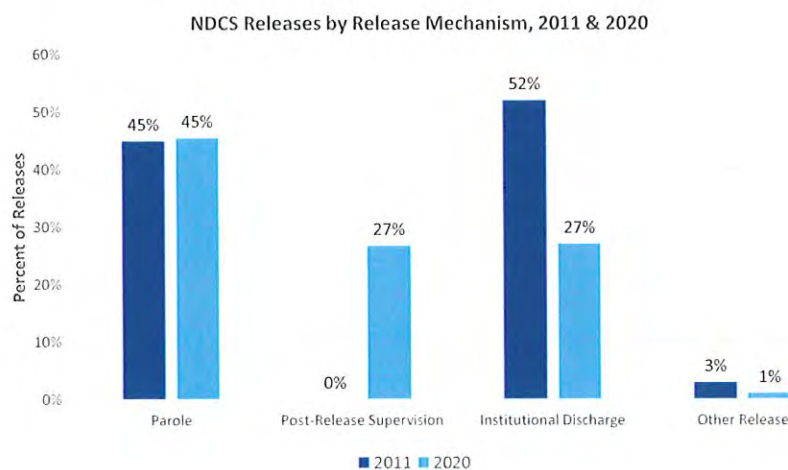


Definitions

- **Institutional Discharge:** Release from NDCS at the expiration of a sentence
- **Parole:** Release from NDCS with community supervision by parole officers
- **Post-Release Supervision:** Release from NDCS or jail to a community-based supervision sentence for Class III, IIIA, and IV felonies
- **Other:** Examples include release of individuals admitted to NDCS erroneously or due to death



Large Shifts in Institutional Discharges and Release to Post-Release Supervision (PRS)



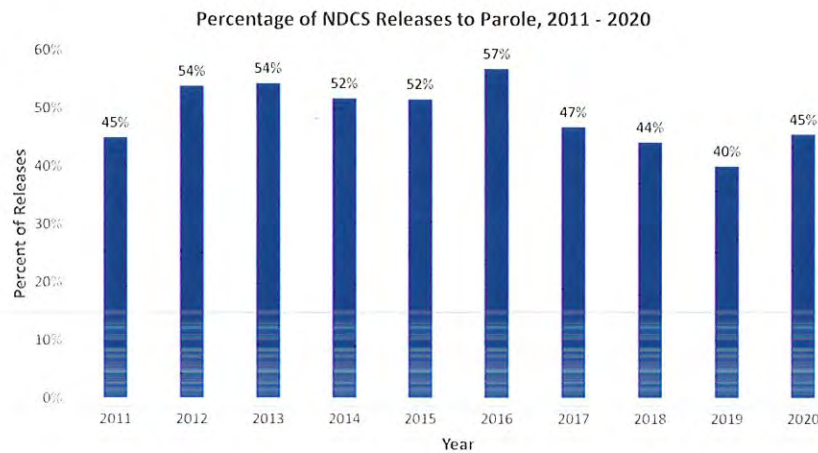
*Safekeepers excluded from figures; includes all admission types

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Release Mechanisms: Parole



Percentage of Releases to Parole Remains Consistent

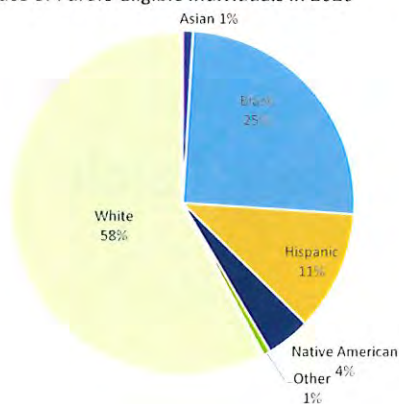


*Safekeepers excluded from figures; includes all admission types

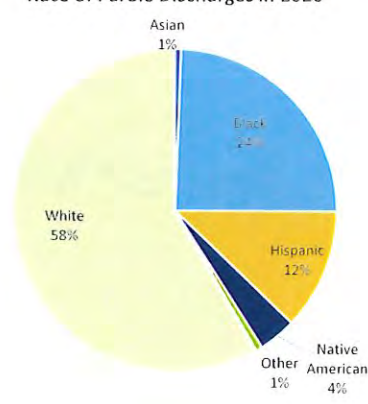
47

Racial Breakdown of Parole Discharges Matches Parole-Eligible Cases

Race of Parole-Eligible Individuals in 2020



Race of Parole Discharges in 2020



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Breakdown of Releases to Parole by Sentencing County



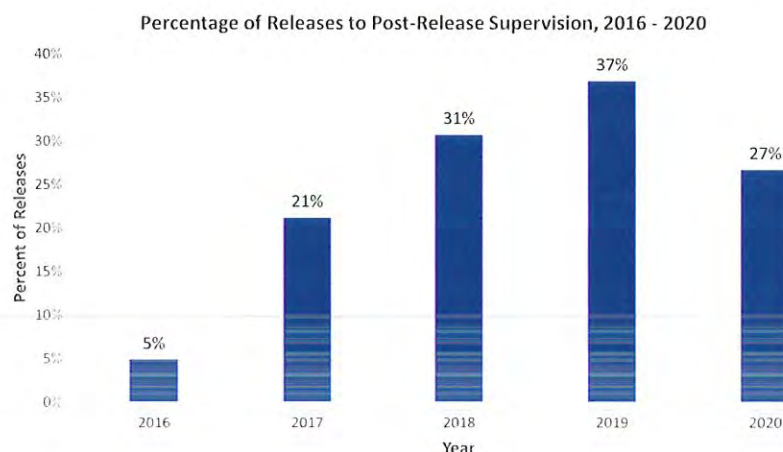
*Safekeepers excluded from figures; analyses limited to initial admits only

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Release Mechanisms: Post-Release Supervision



Percentage of Releases to Post-Release Supervision has Increased



*Safekeepers excluded from figures

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Breakdown of Releases to PRS by Sentencing County



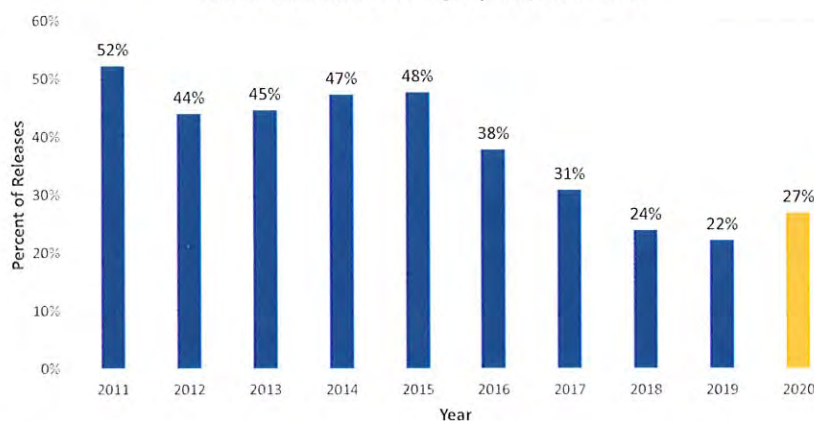
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Release Mechanisms: Institutional Discharge



Percentage of Institutional Discharges has Dropped 50%

Rate of Institutional Discharge by Year, 2011 - 2020



*Safekeepers excluded from figures; includes all admissions types

5-1

Breakdown of Releases by Institutional Discharge by Sentencing County



*Safekeepers excluded from figures; analyses limited to initial admits only

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Key Takeaways

- Large shifts in institutional discharges and releases to PRS; as use of PRS has increased, institutional discharges have decreased
- The percentage of releases to parole has remained unchanged
- Large variation across the state in how individuals are being released from prison

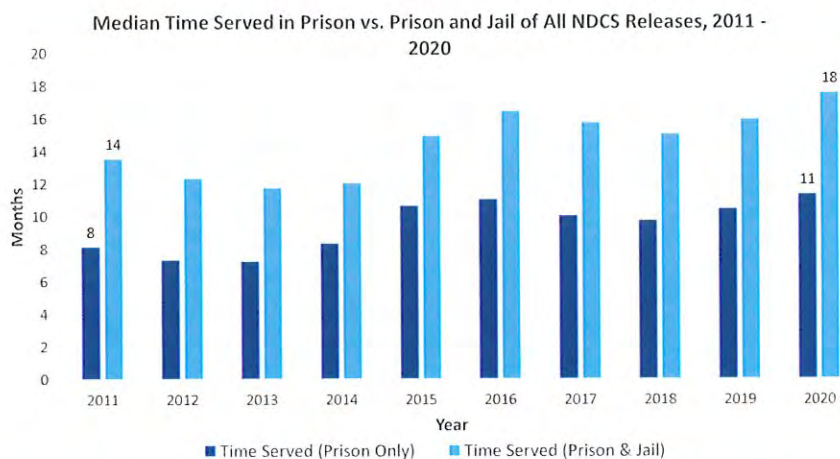


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Time Served



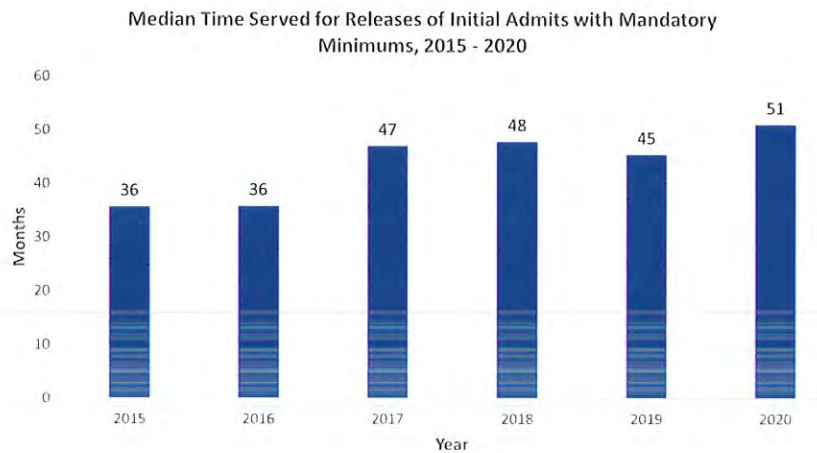
**Time Served in NDCS Increased 38%;
Total Time Served is Up 29%**



*Safekeepers excluded from figures; includes all admit types, discharge types, and sentence types

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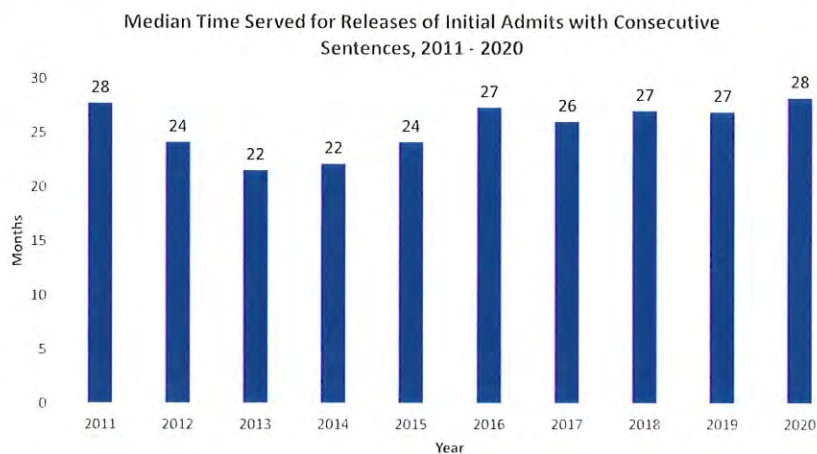
Time Served for Sentences with Mandatory Minimums is Up 42%



*Safekeepers excluded from figures; figures limited to initial admits only.

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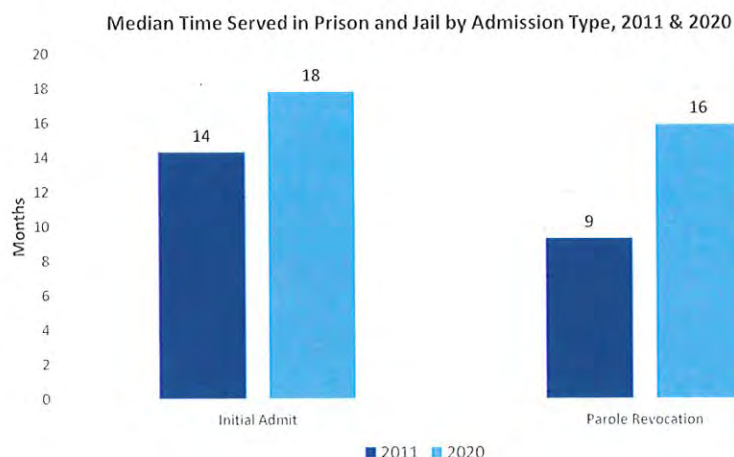
Time Served for Consecutive Sentences Remains Unchanged



*Safekeepers excluded from figures; figures limited to initial admits only.

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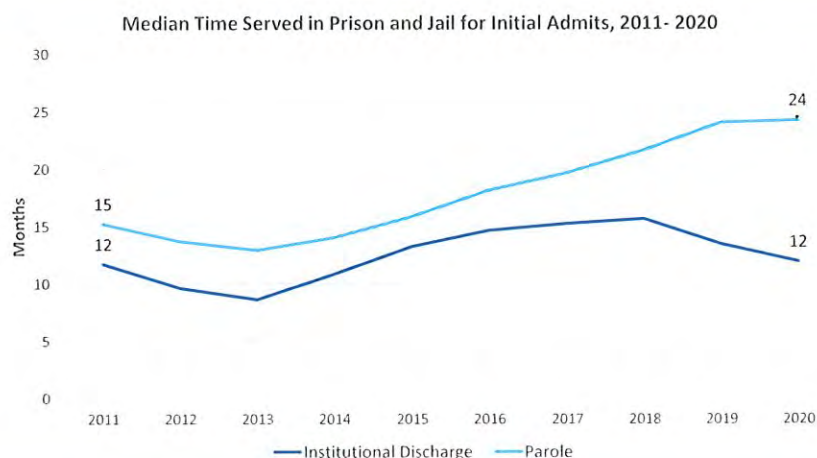
Length of Time Served for Parole Revocation Admissions is Up 78%



*Safekeepers excluded from figures; consecutive and concurrent sentences included in figures

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Time Served for Parole Releases Increased 60%



*Safekeepers excluded from figures; consecutive and concurrent sentences included in figures

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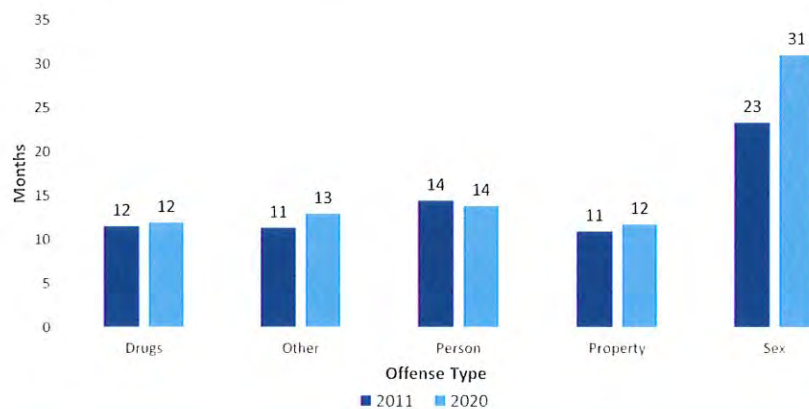
Breakdown of Time Served by Sentencing County



*Safekeepers excluded from figures; analysis limited to initial admits only; figures includes consecutive and concurrent sentences

Time Served for Sex Offenses is Up 35%

Median Time Served in Prison and Jail by Offense Type, 2011 - 2020



*Safekeepers and consecutive sentences excluded from figures; analysis limited to initial admits only

Time Served by Offense Class Has Shifted Over Time



*Safekeepers and consecutive sentences excluded from figures; analysis limited to initial admits only and offenses classes with more than 20 admits

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Time Served for Possession with Intent is Up 42%

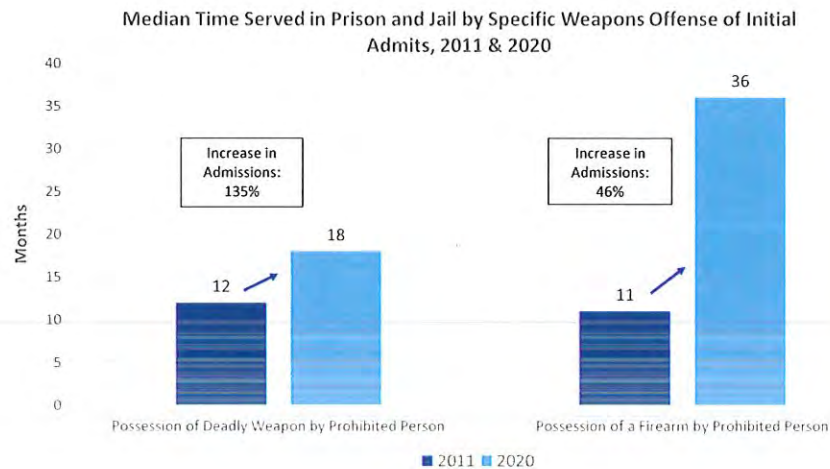
Top 10 Offenses at Admission in 2020	Percent of Initial Admissions 2020	Median Time Served in Months (2011)	Median Time Served in Months (2020)
Possession of a Controlled Substance (Except Marijuana)	13%	10	9
Possession with Intent to Deliver or Distribute	11%	12	17
Terroristic Threats	6%	12	12
Possession of a Deadly Weapon by a Prohibited Person	5%	12	18
Domestic Assault	5%	10	12
Burglary	5%	13	14
Robbery	4%	18	34
Driving While Intoxicated	4%	12	12
Assault (2 nd Degree)	3%	12	18
Sexual Assault (1 st Degree)	3%	37	60



*Safekeepers and consecutive sentences excluded from figures; analysis limited to initial admits only; Time served includes time in prison and jail

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Time Served for Possession of a Firearm was More Than 3x Longer



*Safekeepers and consecutive sentences excluded from figures; analysis limited to initial admits; time served includes time in prison and jail; use of deadly weapon and firearm offenses accounted for less than 10 admissions each year

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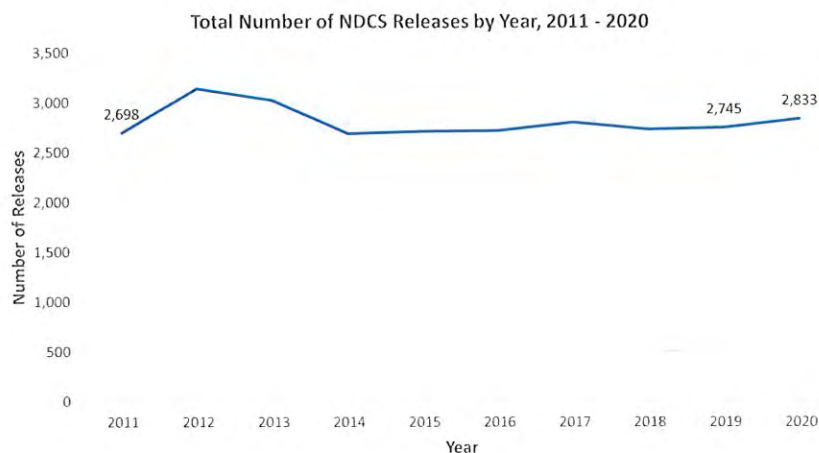
Key Takeaways

- Time served in NDCS has increased 38%, while total time served in NDCS and jails is up 29%
- Time served for sentences with mandatory minimums is up 42%
- Time served for sentences released to parole is up 60%
- Time served for possession with intent to deliver drugs up 42%, while time served for possession of a firearm by a prohibited person has more than tripled



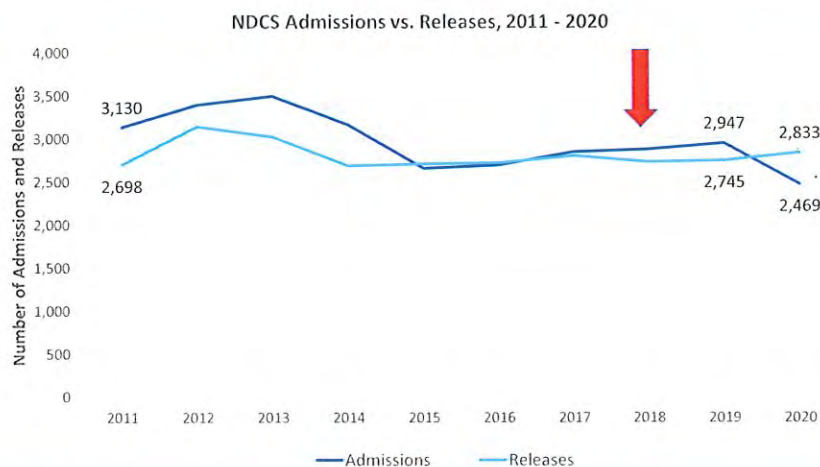
68

Pre-COVID, Releases Decreased 2%



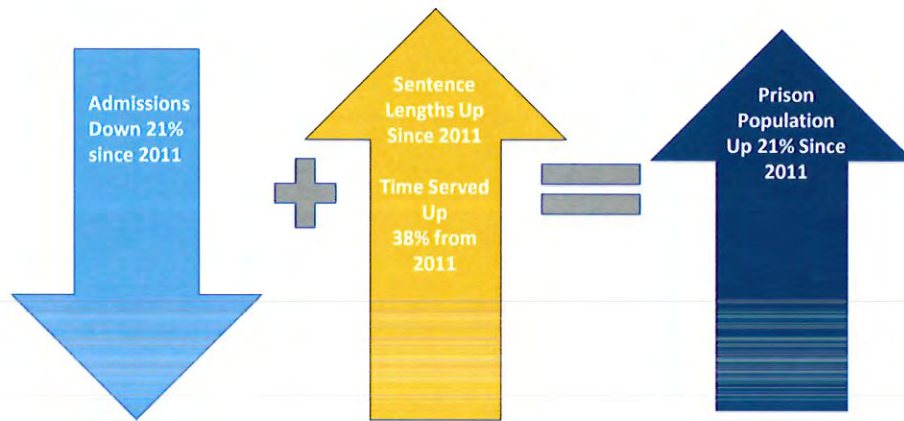
69

Pre-COVID, Admissions Outpaced Releases



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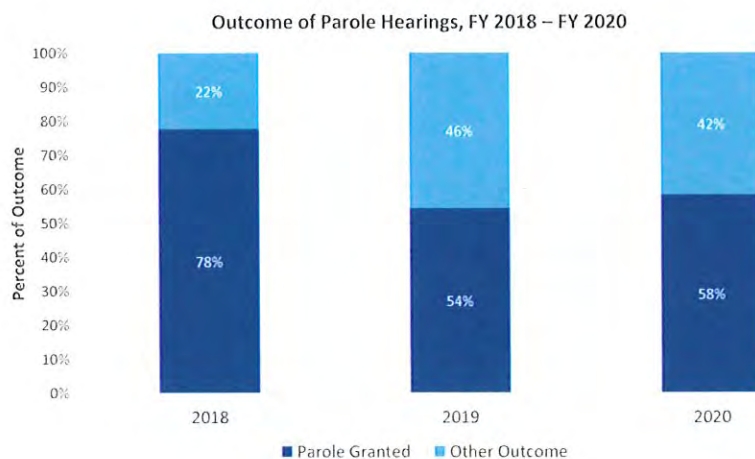
NDCS Population



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Parole

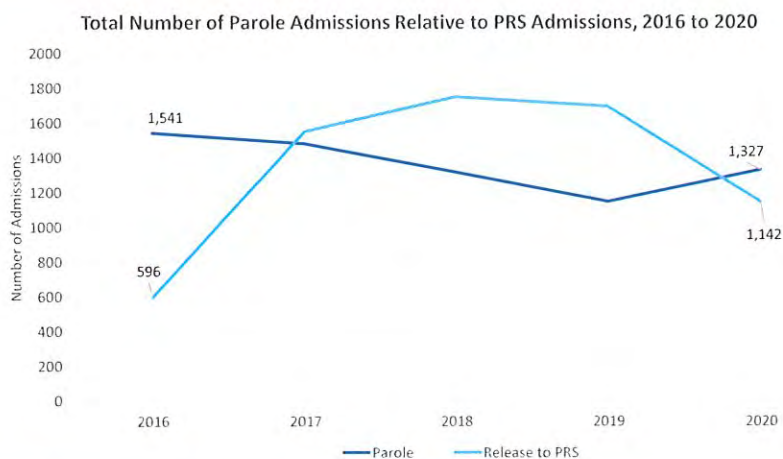
Parole Grants Decreased



*Other outcomes include deferred or denied
Source: Nebraska Board of Parole Annual Reports and Statistics and Datasheets

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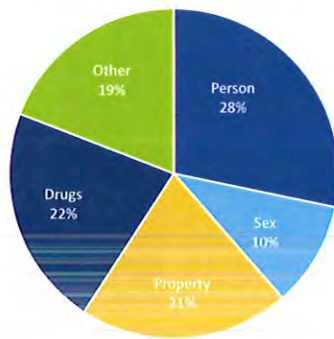
Number of Parole Admissions Decreased as PRS Increased



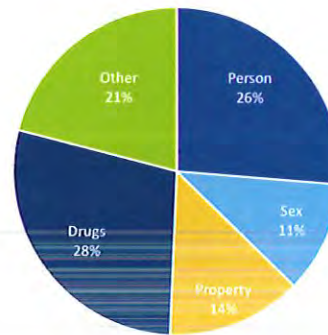
74

Nearly Half of Parole-Eligible Cases Are Drug or Property Offenses

Offense Category of Sentences with Parole Eligibility Dates in 2011



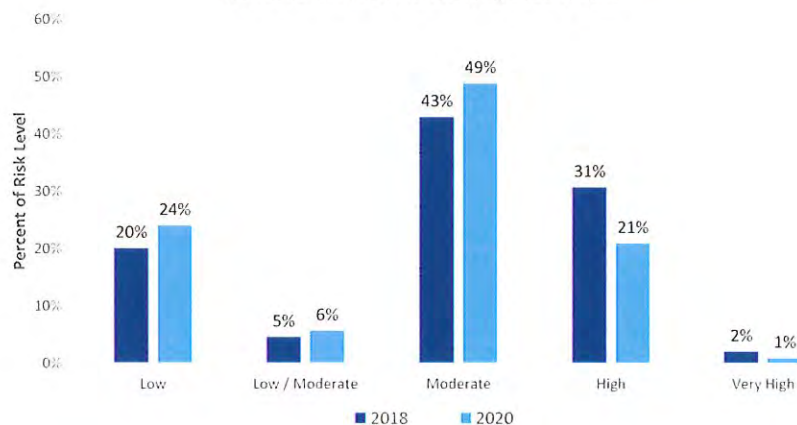
Offense Category of Sentences with Parole Eligibility Dates in 2020



*Source: NDCS

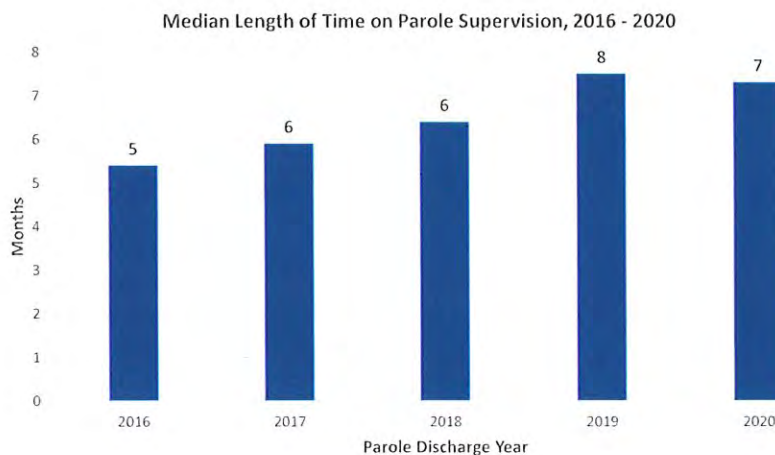
Fewer Parole Admissions of High or Very High Risk; Increase in Low Risk

Risk Level of Parole Admissions, 2018 & 2020

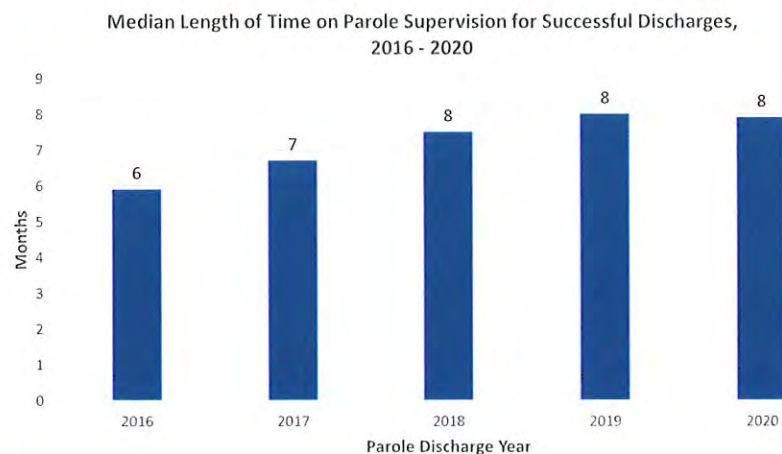


*ORAS assessments completed within 180 days of parole date are included in analysis

Total Time on Parole Supervision Increased by Two Months

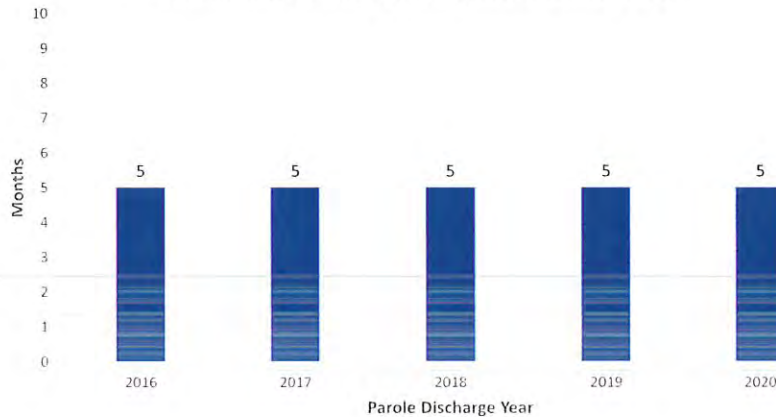


Length of Time on Parole for Successful Discharges is Up 33%



Length of Time to Parole Revocation is Unchanged

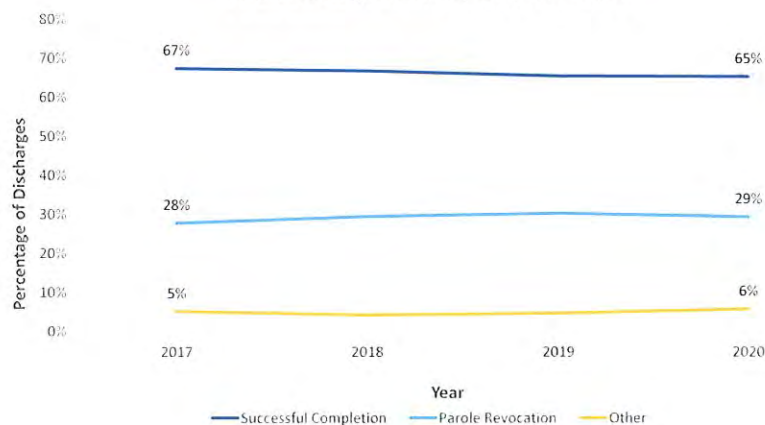
Median Length of Time to Parole Revocation, 2016 - 2020



*Length of time calculated from parole start date to parole discharge date

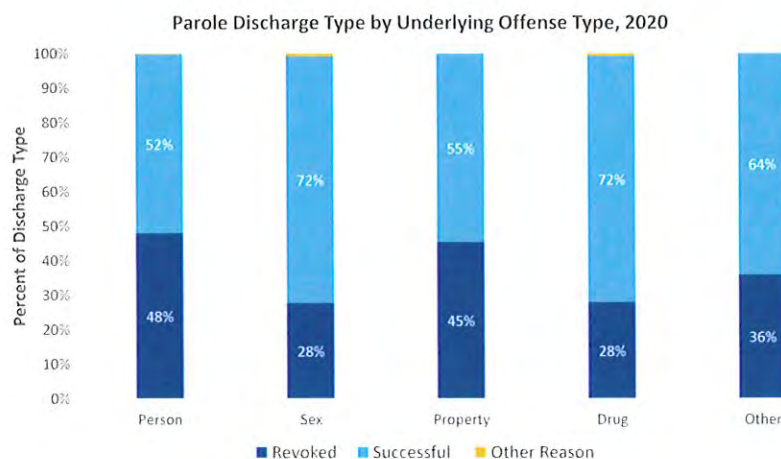
Rate of Parole Revocation Remains Steady at 30%

Parole Discharge Reason by Year, 2017 - 2020



*The category of Other includes: absconded; parole rescinded; individual picked up by sending state, and returned to sending state

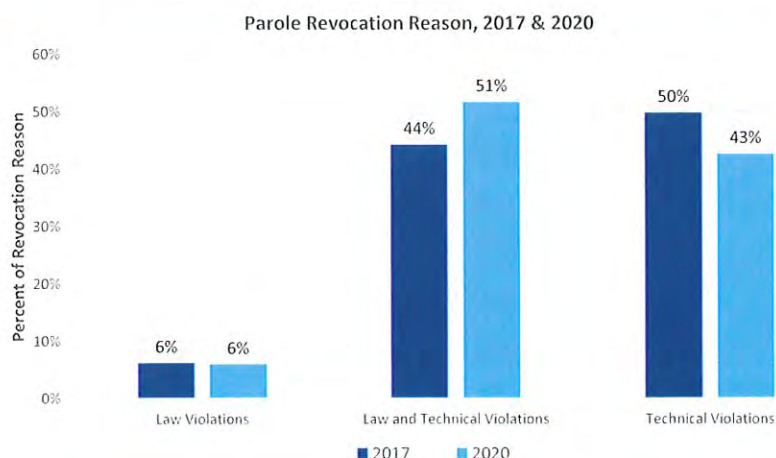
Almost Half of Parole Discharges for Underlying Property Offenses are Revoked



*The category of Other includes: absconded; parole rescinded; individual picked up by sending state, and returned to sending state

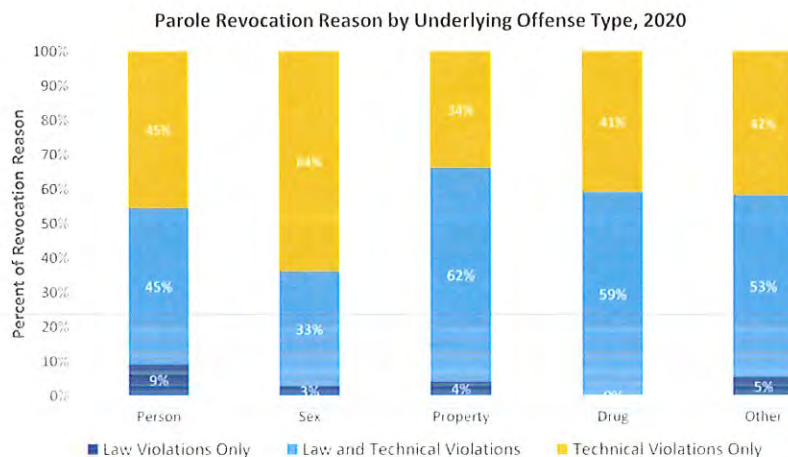
81

More Than 40% of Revocations are Due to Technical Violations Only



82

More Than 1/3 of Revocations for Property and Drug Offenses are Technical

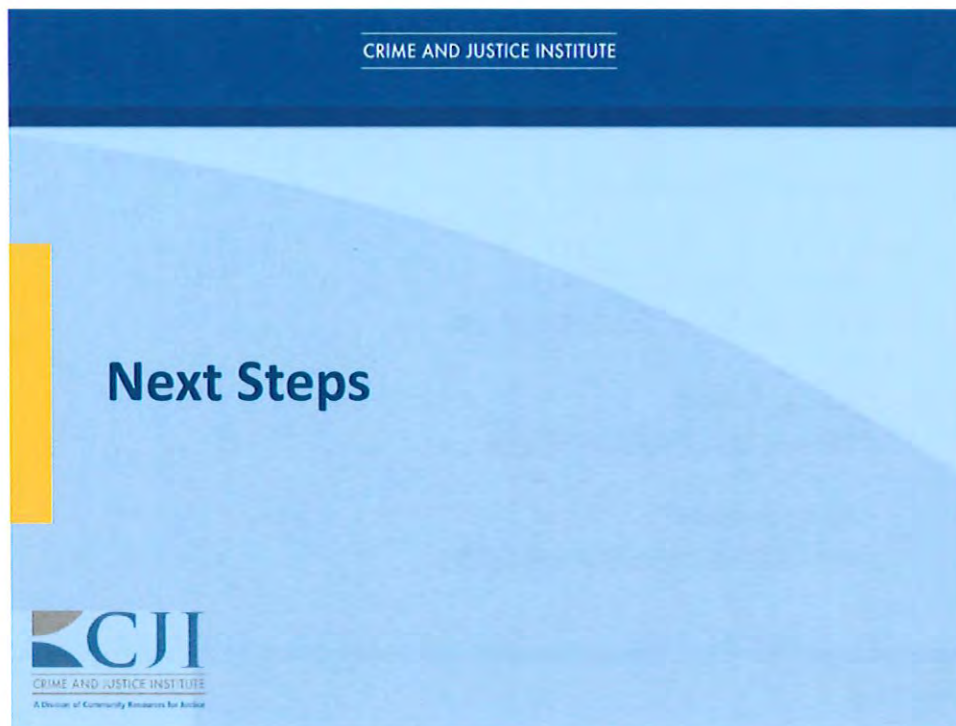


Key Takeaways

- The percentage of cases granted parole has decreased
- The number of admissions to parole has decreased in tandem with increases in the number of admissions to post-release supervision
- The underlying offenses of parole admissions have not changed; nearly half are property or drug offenses
- The rate of parole revocation remains steady
- More than 40% of parole revocations due to technical violations only



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Next Steps

- Roundtables: October and November
 - Law Enforcement
 - Victims/Advocates/Survivors
 - CJ-Impacted People
 - Behavioral Health Providers
- Subgroup Meetings: October and November
 - Admissions
 - Length of Stay/Release
 - Community Supervision
- Final Meeting: December

Questions/Contact

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