JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS

# Sentencing and Justice Reinvestment Initiative

November 5, 2014

Michigan Law Revision Commission

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Council of State Governments Justice Center
www.csgjusticecenter.org

# Overview of Presentation

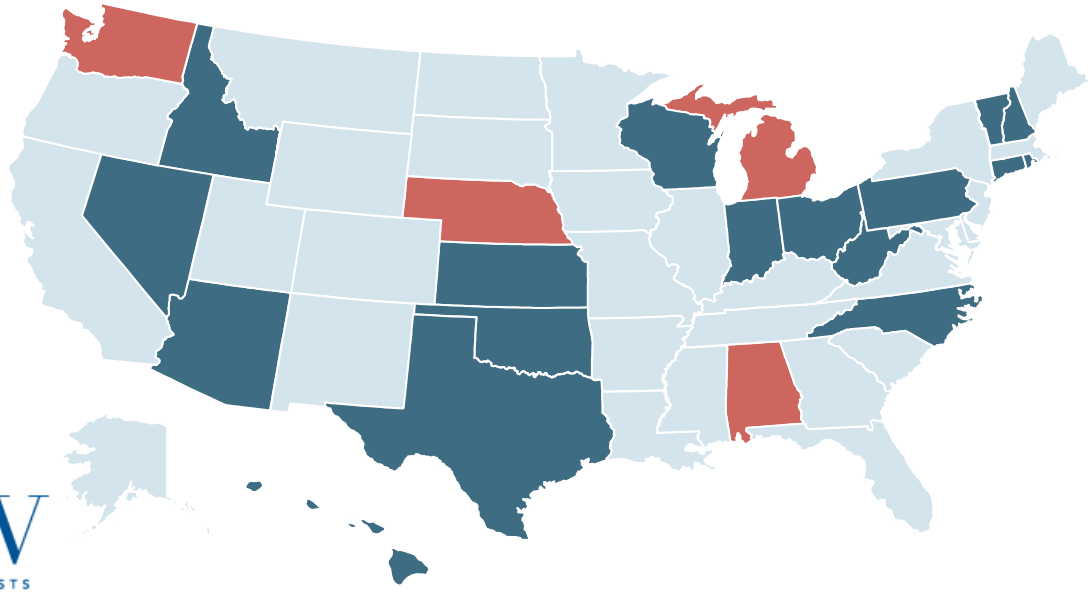
**Project Overview**

**Highlights**

**Legislation**

# The Council of State Governments, the Justice Center, and states where we have conducted Justice Reinvestment

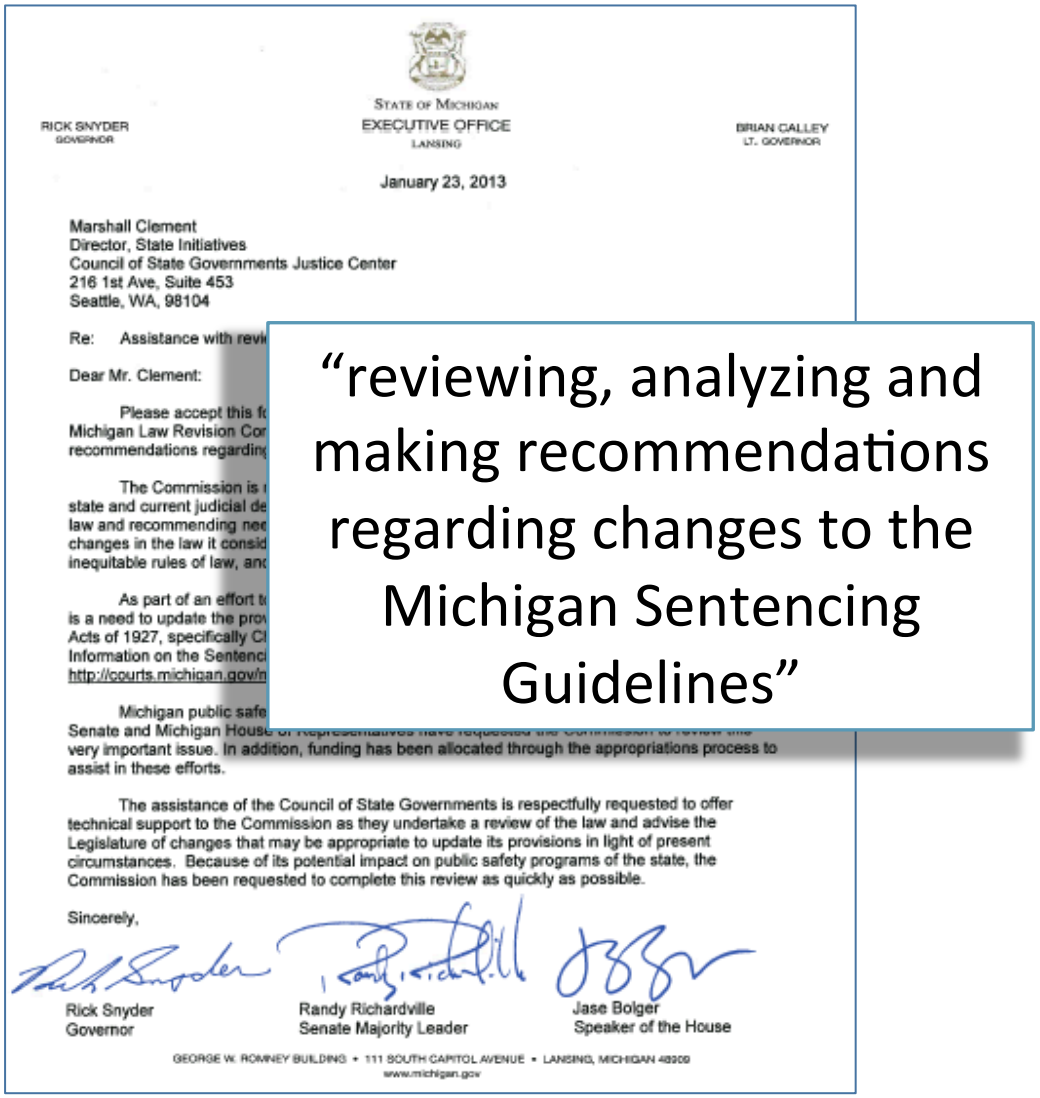
- **CSG** - national non-profit, non-partisan membership association of state government officials that works with members of all three branches of state government
- **CSG Justice Center** - provides practical, nonpartisan advice informed by the best available evidence
- **Justice Reinvestment** – a data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety.
- 18 states have used a Justice Reinvestment approach with assistance from the Justice Center.
- Funding provided by:



# Michigan helped fund the project and specifically asked for recommendations around sentencing and parole

**January 2013:**
**SB 233, Section 351**

*"The funds appropriated …shall be used for a contract [between the Michigan Law Revision Commission and] the Council of State Governments to* **continue its review of Michigan's sentencing guidelines and practices, including, but not limited to, studying length of prison stay and parole board discretion**."



STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

BRIAN CALLEY
LT. GOVERNOR

January 23, 2013

Marshall Clement
Director, State Initiatives
Council of State Governments Justice Center
216 1st Ave, Suite 453
Seattle, WA, 98104

Re: Assistance with revi

Dear Mr. Clement:

Please accept this fo
Michigan Law Revision Cor
recommendations regarding

The Commission is
state and current judicial de
law and recommending nee
changes in the law it consid
inequitable rules of law, and

As part of an effort t
is a need to update the prov
Acts of 1927, specifically Ch
Information on the Sentenci
http://courts.michigan.gov/n

Michigan public safe
Senate and Michigan House of Representatives have requested the Commission to review this
very important issue. In addition, funding has been allocated through the appropriations process to
assist in these efforts.

The assistance of the Council of State Governments is respectfully requested to offer technical support to the Commission as they undertake a review of the law and advise the Legislature of changes that may be appropriate to update its provisions in light of present circumstances. Because of its potential impact on public safety programs of the state, the Commission has been requested to complete this review as quickly as possible.

Sincerely,

Rick Snyder
Governor

Randy Richardville
Senate Majority Leader

Jase Bolger
Speaker of the House

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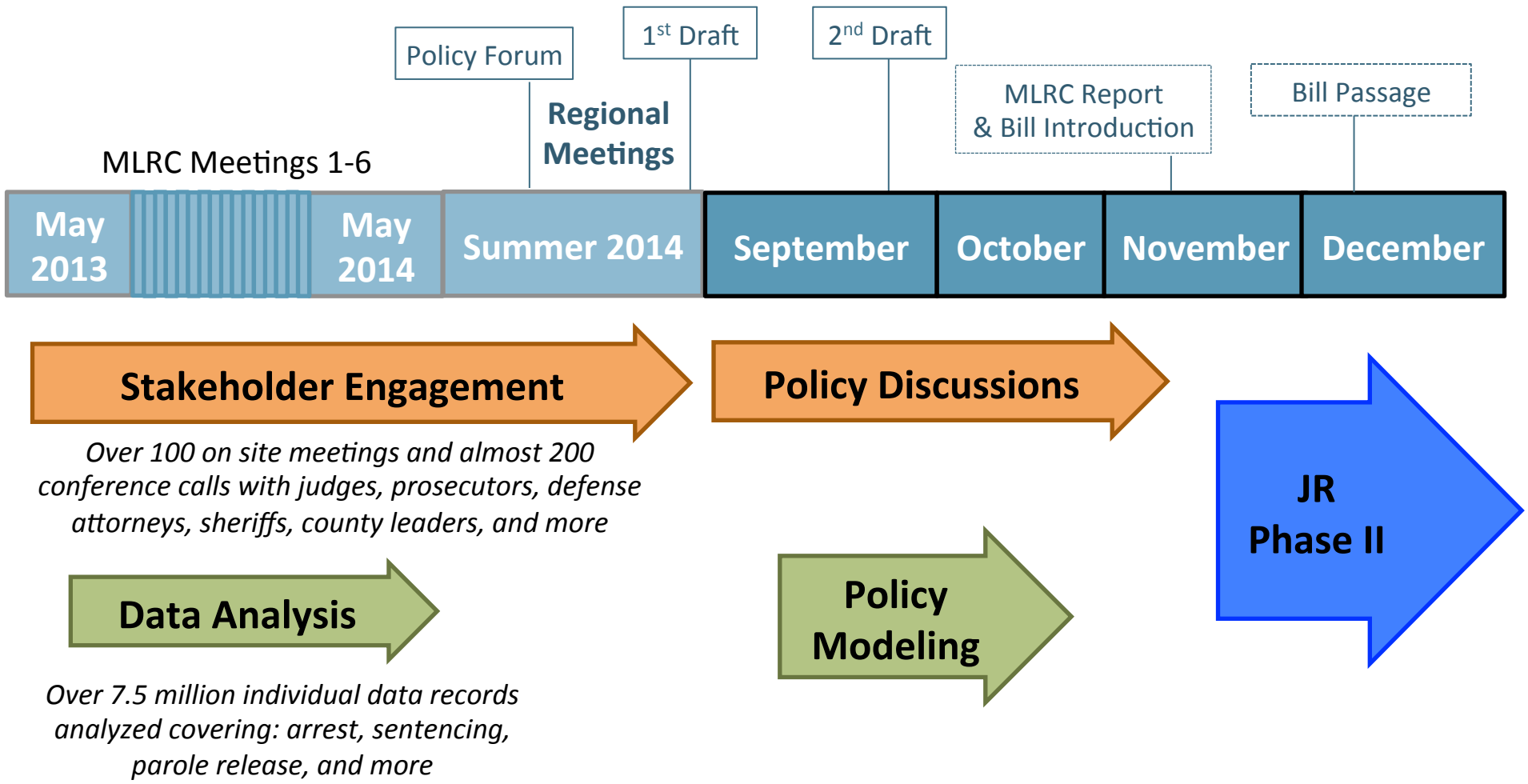
"reviewing, analyzing and making recommendations regarding changes to the Michigan Sentencing Guidelines"

# CSG has undertaken extensive research through data analysis and stakeholder engagement

**May 2013 through November 2014:**

- ✓ 7.5 million records from 10 databases representing more than 200,000 individuals
- ✓ 25 site visits to Michigan
- ✓ 177 meetings and 272 conference calls
- ✓ 7 presentations to MLRC
- ✓ 10 presentations to prosecutors, judges, defense attorneys, victim advocates, sheriffs, and county officials
- ✓ 3 stakeholder workgroup meetings

# Project timeline leads to final meeting and bill introduction



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# In handling offense characteristics, Michigan is more complex than other states

## Michigan Guidelines

***9 Offense Classes***
*(with Class H the least serious)*

2nd Deg. Mur
Class A
Class B
Class C
**Class D**
Class E
Class F
Class G
Class H

All offense characteristics must be put through a scoring process to determine where along the severity continuum it falls.

| Offense Value | |
|---|---|
| I | Least Severe |
| II | |
| III | |
| IV | |
| V | |
| VI | Most Severe |

**Many state grids capture offense severity in one row. Michigan has an additional dimension of scoring offense variables leading to many more potential rows into which an offense may fall.**

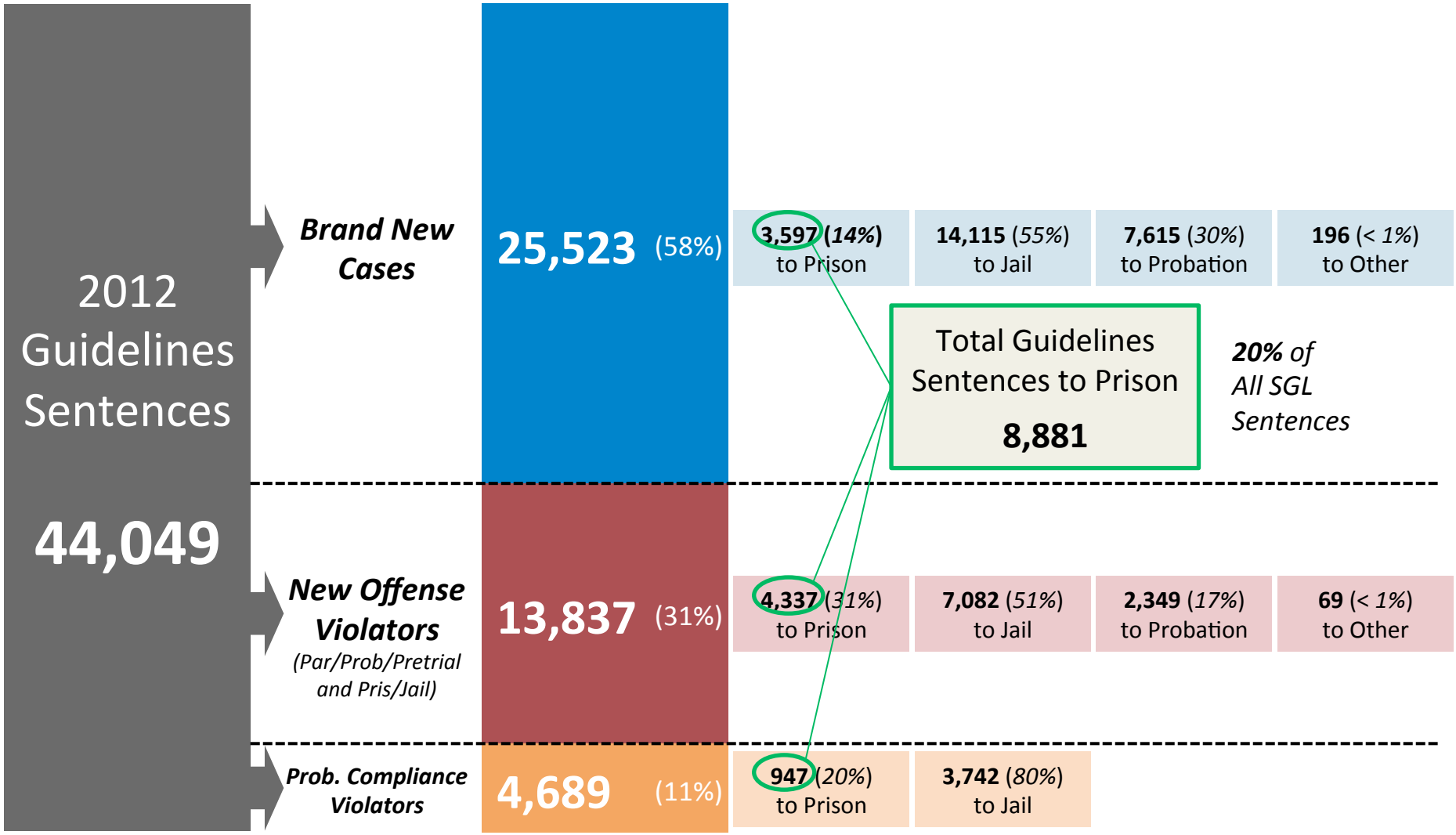
## North Carolina Guidelines

***10 Offense Classes***
*(with Class I the least serious)*

| Offense Class | |
|---|---|
| A | Most Severe |
| B1 | |
| B2 | |
| C | |
| D | *Aggravated* |
| | Presumptive |
| | *Mitigated* |
| E | |
| F | |
| G | |
| H | |
| I | Least Severe |

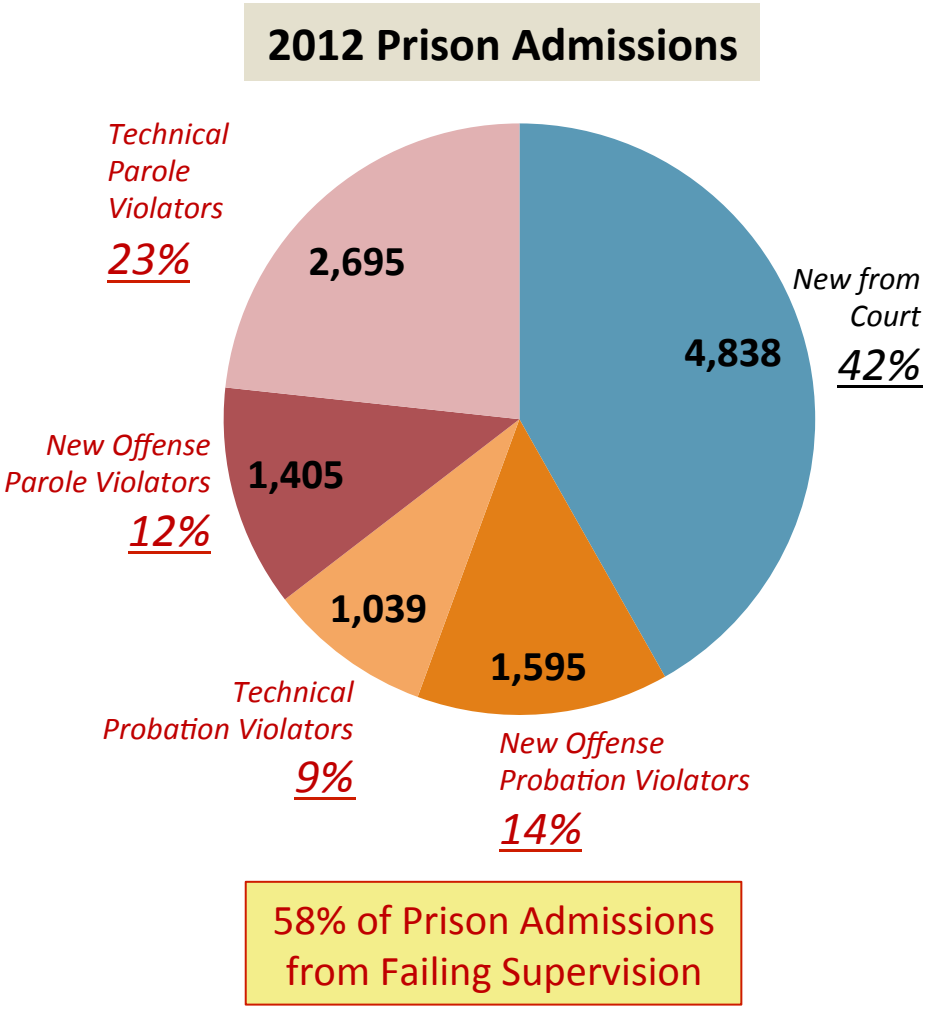
Source: *Sentencing Guidelines Manual,* MI Judicial Institute, June 2012; and *Structured Sentencing: Training and Reference Manual,* NC Sentencing and Policy Advisory Commission, August 2004.

# Breakdown of sentences shows "brand new" versus violators




Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

# Supervision violators make up almost 60% of admissions to prison – compliance violators alone account for a third




Source: *Prison Admissions Data-2012*, Michigan Dept. of Corrections.

# More than $300 million spent annually locking up probation violators (using average cost per day)

**2008-12 Average Admissions of Probation Violators to Prison and Jail, and Length of Stay**

- New Off. Prob. Revs. = 1,590 for **37** mos
- Tech. Prob. Revs. = 1,030 for **25** mos

2,620 violators admitted to prison annually
- 39% are compliance violators

**Prison**

6,951
Beds per Day

**at $98 per day**
**= $249 million Annually**

- New Off. Prob. Revs = 2,295 for 7 mos
- Tech. Prob. Revs. = 3,742 for 7 mos

6,037 violators admitted to jail annually
- 62% are compliance violators

**Jail**

3,473
Beds per Day

**at $45 per day**
**= $57 million Annually**

Source: *Felony Sentencing (BIR) Data 2008-2012, Prison Admissions Data 2008-2012,* and *Prison Releases Data 2008-2012*, Michigan Dept. of Corrections; and *Corrections Background Briefing*, December 2012, House Fiscal Agency.

# Michigan's sentencing guidelines do not impact maximum sentence length

## Hypothetical where an offender faces minimum of 5 years in prison…

**Kansas:** guidelines dictate maximum sentence and available time credits.

**No less than 60 months w/ good time**

**Max sent = 71 months**

No parole board, but offenders must "earn" their way to the minimum.

**North Carolina:** guidelines dictate minimum and maximum sentence.

**Min sentence = 60 months**

**Max sent = 84 months**

**Michigan:** guidelines dictate minimum sentence in most cases. The Parole Board controls most of the prison sentence.

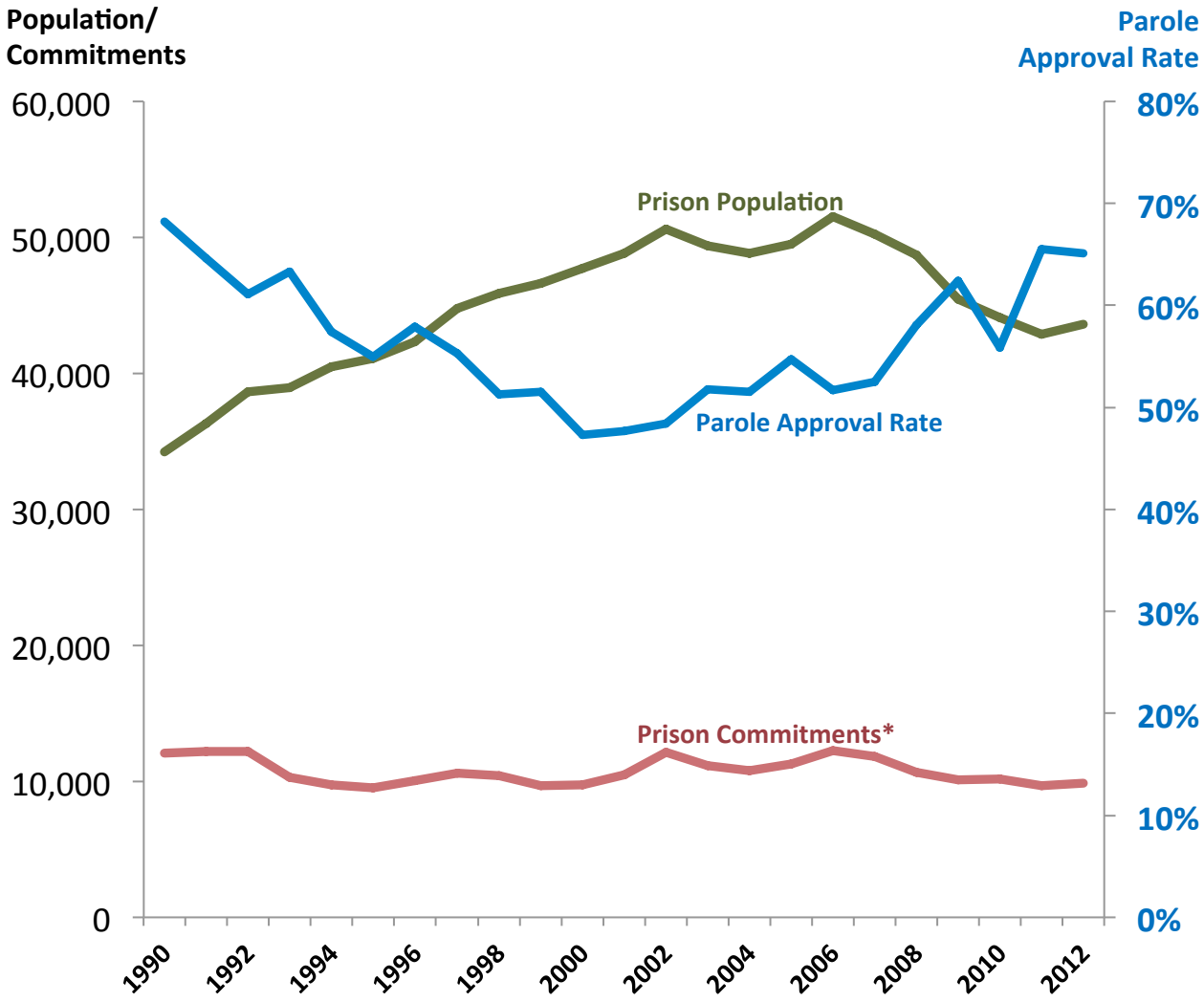
Parole board determines when released.

**Min sentence = 60 months**

**Max sentence = 180-240 months**
(set in statute for specific offense)

Source: *Sentencing Guidelines Manual,* MI Judicial Institute, June 2012; *Kansas Sentencing Guidelines Desk Reference Manual 2012*, KS Sentencing Commission; and *Structured Sentencing: Training and Reference Manual,* NC Sentencing and Policy Advisory Commission, August 2004.

# Prison population dependent upon parole approval rate rather than commitments




Source: *2006-2011 Statistical Reports,* MI Dept. of Corrections*; 2008-2012 Intake Profiles,* MI Dept. of Corrections*; Trends in Key Indicators,* MI Dept. of Corrections, February 2013.

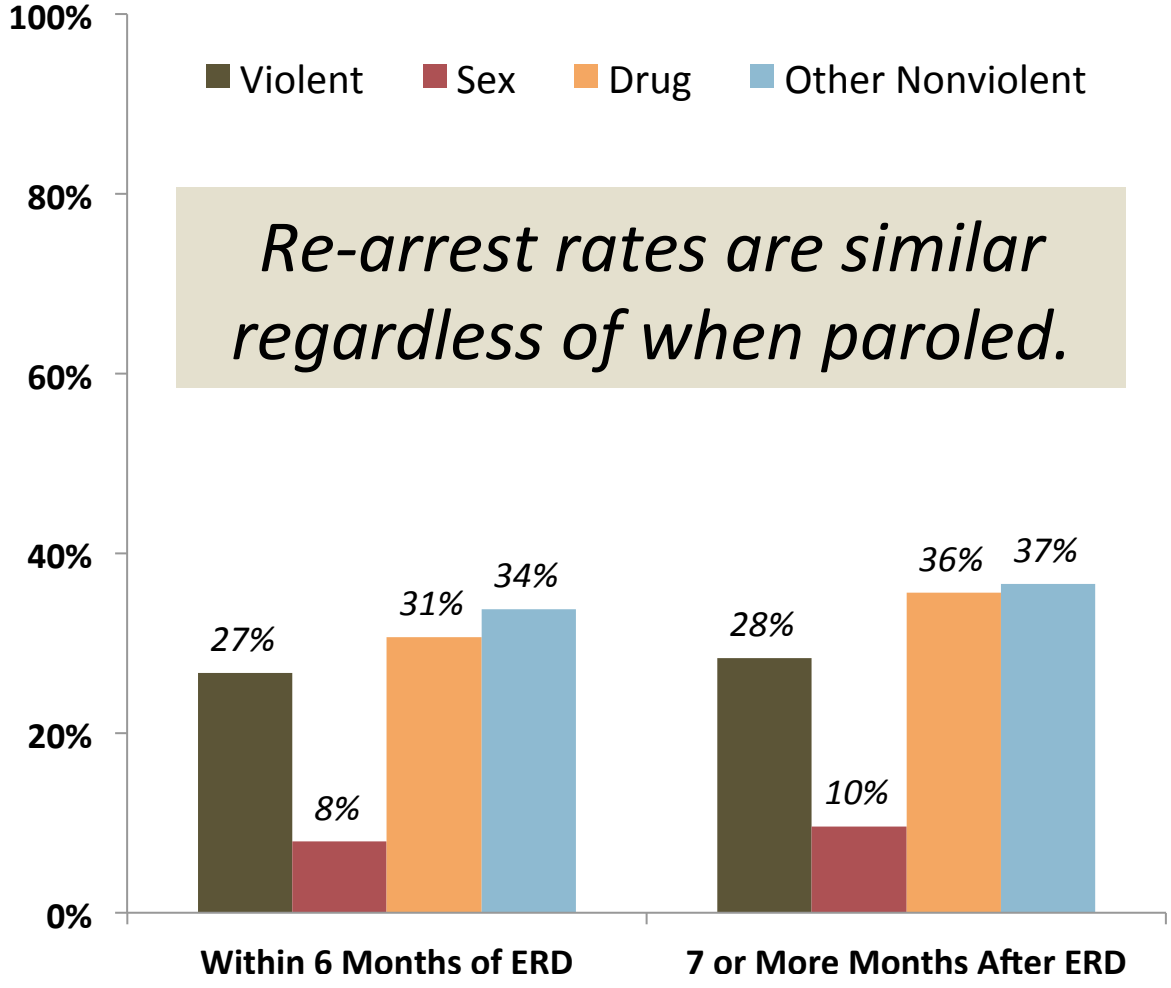
Since the early 1990s, the fluctuations in prison population and parole approval rates have been mirror opposites:

- As approval rates have declined, the prison population has risen.

* Prison commitments include new sentences, all probation violators (technical and new offense), and new offense parole violators.

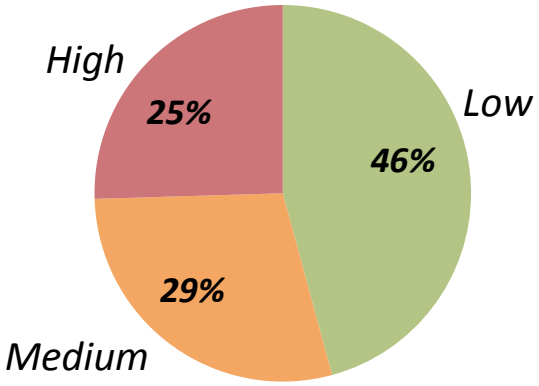
# Re-arrest rates are very similar for those held further beyond earliest release date

**2 Year Re-Arrest Rates by Time Served Beyond Minimum:**
(2010 Releases to Parole Excluding Parole Violator Admissions)

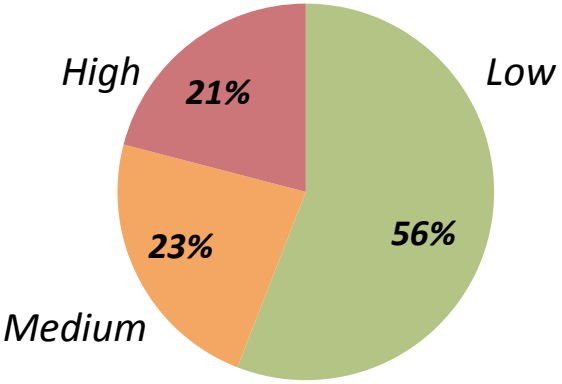



*Re-arrest rates are similar regardless of when paroled.*

**Risk Breakdown of Those Released w/in 6 months:**




**Risk Breakdown of Those Released 7+ months:**




Source: *Prison Releases Data 2008-2012* and *COMPAS Risk/Needs Data*, Michigan Dept. of Corrections; and *Criminal History Records,* Michigan State Police.

# Michigan's sentencing structure undermines intent to narrow discretion and reduce disparity

Defendants Convicted of Felony

***Guidelines Scoring Process***

Narrowing down the offense/offender profile into 1 of 258 cells

- ❑ 9 Different Grids
- ❑ 33 Different "Prior Record Variable" Scoring Choices
- ❑ 76 Different "Offense Variable" Scoring Choices

***Defendant is "scored" and awaiting sentencing.***

***Sentencing Process***

Opening up discretion: the narrowing is lost

- ❑ 89% of cases fall in cells with wide-ranging punishment options
- ❑ Very wide prison SL ranges
- ❑ Habitual sentencing double counts past convictions and used inconsistently
- ❑ Actual sentencing disparity present

***Release Process***

- ❑ Widely different lengths of stay behind bars for similar cases and imposed sentences.

# Justice Center report issued in May, and technical appendix compilation of analyses issued in July

JUSTICE CENTER
The Council of State Governments

May 2014

## Applying a Justice Reinvestment Approach to Improve Michigan's Sentencing System

### Summary Report of Analyses and Policy Options

IN MICHIGAN, ONE OUT OF EVERY FIVE STATE dollars is spent on corrections.[1] While policymakers look for ways to contain the high costs of corrections, victims, law enforcement, and prosecutors have urged caution against letting fiscal concerns trump efforts to reduce crime and protect the public. Everyone seems to agree, however, that the state should be getting a much greater return on the significant investments taxpayers currently make in the criminal justice system.

Michigan has analyzed these problems in recent years and implemented various strategies. From statewide reentry programs to reduce recidivism, to law enforcement efforts to deter crime in cities plagued by violence, Michigan has achieved measurable progress: reported violent crime is down 15 percent from 2008 to 2012;[2] warrant rates for parolees declined by 20 percent from 2008 to 2011;[3] and the prison population dropped 15 percent between 2006 and 2012.[4]

Despite these achievements, however, high costs and crime persist, and the prison population is starting to increase again.[5] Counties struggle with costly jail populations. Rates of violent crime in four Michigan cities are three to five times greater than the national average, and victim service providers assert that reported crime statistics do not fully capture the incidence of victimization or the impact of reduced law enforcement resources across the state.[6]

As a result of these persistent problems, in January 2013, state leaders decided to look at sentencing in Michigan. Enacted in 1998, the state's sentencing guidelines have been modified from time to time over the past 15 years, but after the Sentencing Commission that created the guidelines was dissolved in 1997, policymakers could not track how the system was contributing to public safety, recidivism trends, and state and local spending. Governor Rick Snyder, Chief Justice Robert Young,

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REPORT TECHNICAL APPENDIX:
Compilation of Michigan Sentencing and Justice Reinvestment Analyses

May 2014

Council of State Governments Justice Center

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# Proposals to fine-tune Michigan sentencing, increase public safety, and stabilize the cost of corrections

| | | |
|---|---|---|
| Consistency and Predictability | 1. **Structure** sanctions in the guidelines to produce more consistent sentences | N |
| | 2. Make the **length** of time a person will serve in prison more predictable at sentencing | Y |
| Public Safety and Cost | 3. Use risk of re-offense to inform probation and post-release **supervision** | Y |
| | 4. Hold people accountable and increase public safety for less cost (**SSSP**) | Y |
| | 5. Concentrate **funding** on programs most likely to reduce recidivism | Y |
| Evaluation and Monitoring | 6. **Monitor** changes to sentencing practices and their impact | Y |
| | 7. **Survey** victimization and track restitution assessment and collection | N/Y |

# Proposed (and rejected) sentencing structure to make use of probation, jail and prison more predictable and consistent

**Example of reallocation of dispositions and resources based on the structured use of probation, jail and prison within the guidelines.**

= Current Straddle Cells

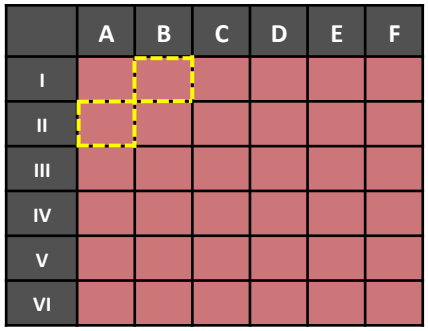
= Probation Cells

= Jail Cells

= Prison Cells

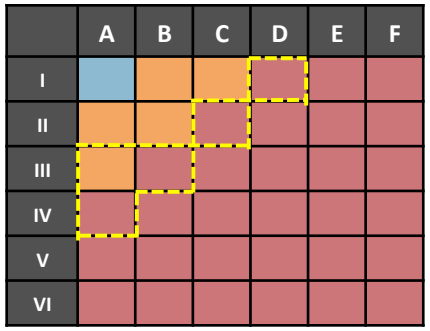
***Class B Grid***

+ 233 to Prison
- 169 to Jail



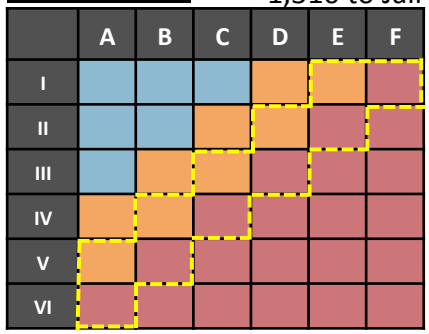

***Class C Grid***

+ 355 to Prison
- 242 to Jail



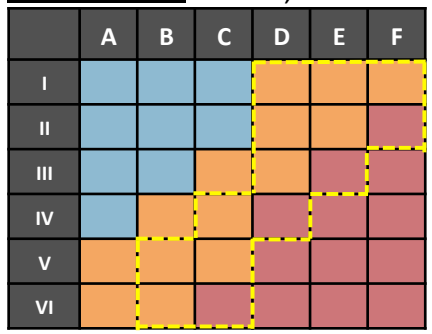

***Class D Grid***

+ 189 to Prison
- 1,310 to Jail



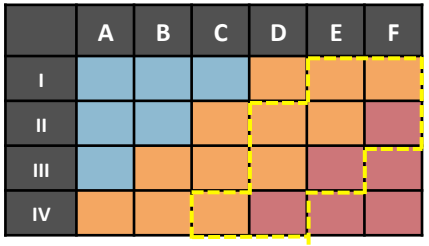

***Class E Grid***

- 842 to Prison
- 3,998 to Jail



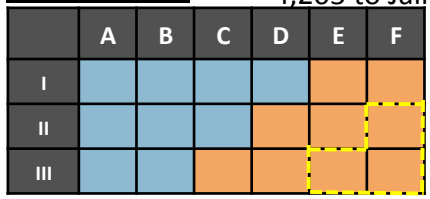

***Class F Grid***

- 181 to Prison
- 1,180 to Jail



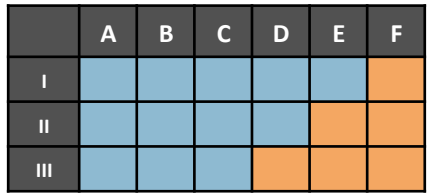

***Class G Grid***

- 326 to Prison
- 4,205 to Jail




***Class H Grid***

- 852 to Jail



# Legislative package is down to four bills

| Bill Draft | Topics |
|---|---|
| 6301 | -Measuring restitution collection<br>-Creating Criminal Justice Policy Commission<br>-Revising County Jail Reimbursement Program |
| 6303 | -Targeting probation supervision terms by risk<br>-Defining probation violation 'sanction regimen'<br>-Tweaking swift and sure sanctions probation |
| 6305 | -Increasing parole certainty<br>-Defining parole sanction regimen |
| 6307 | -Updating community corrections<br>-Focusing on EBP and recidivism reduction |

# Prison impacts of proposed policies yield potential savings

Policy Impacts on Prison Beds

| Policy | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|---|
| Greater Certainty in Parole | -10 | -316 | -1,045 | -1,930 | -2,771 | -3,653 |
| Probation Violators Held in Jail | -98 | -760 | -1,158 | -1,029 | -990 | -1,014 |
| Parole Violators Held in Jail | 0 | -1 | -32 | -132 | -244 | -380 |
| Combined Total Impacts | -108 | -1,077 | -2,235 | -3,091 | -4,005 | -5,047 |

# Proposed policies can reduce jail usage even with new populations

## Policy Impacts on Jail Beds

| Policy | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|---|
| Probation Violators held in Jails | -177 | -812 | -796 | -703 | -704 | -711 |
| Probation Violators (formerly to MDOC) held in Jails | 37 | 110 | 139 | 143 | 146 | 150 |
| Parole Violators (formerly to MDOC) held in Jails | 632 | 221 | 218 | 219 | 220 | 222 |
| Combined Total Impacts | 492 | -481 | -439 | -341 | -338 | -339 |

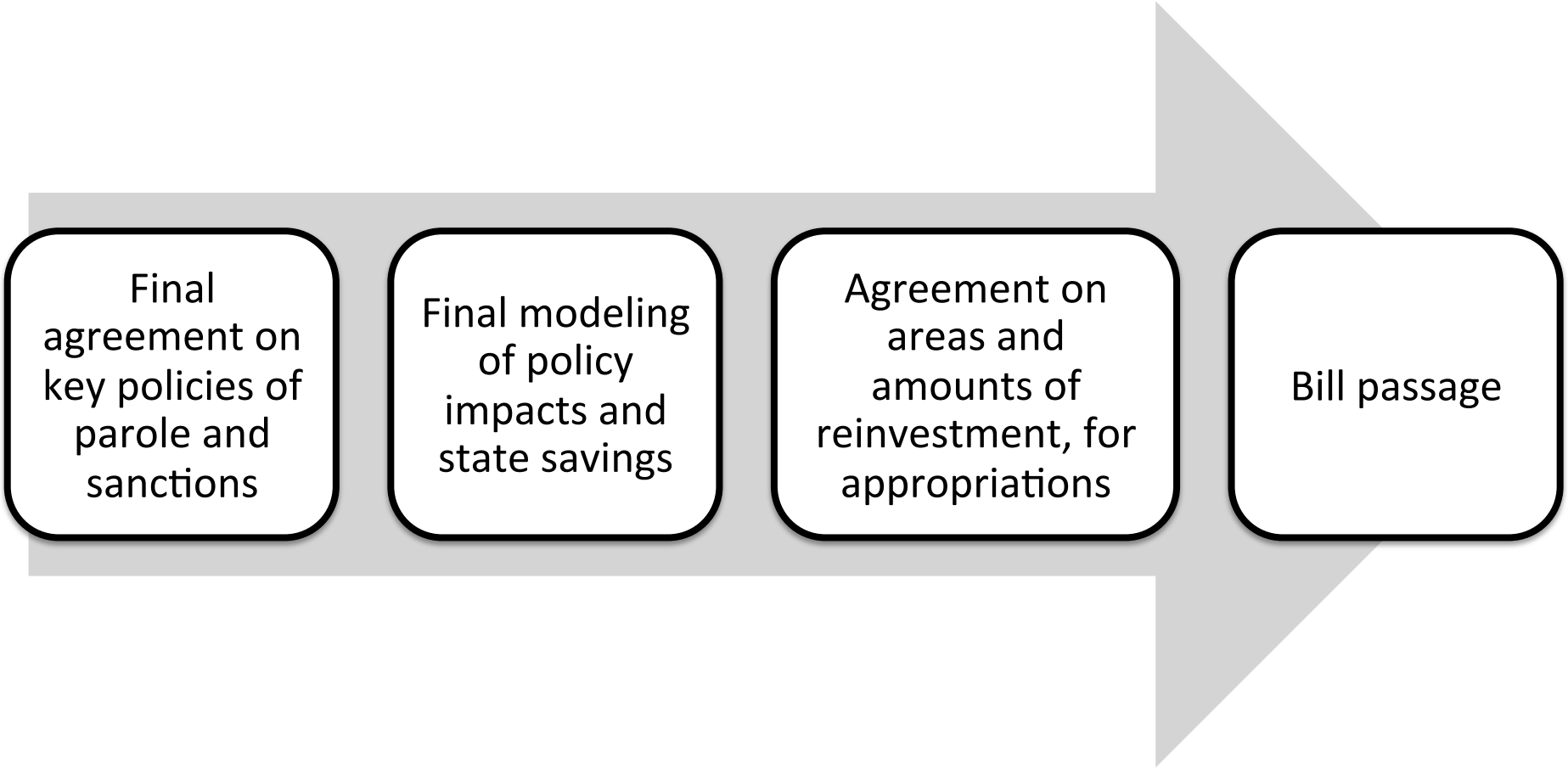
# State savings create the opportunity for a win-win for the state and for counties

- Counties should be reimbursed for holding violators
- Use of jails for violators should be contingent on capacity
- Using jails for parole violators can be delayed
- Dormant state capacity can be activated if needed
- Reinvestment in community corrections can assist with jail management

# Big picture outcomes anticipated from proposed policies

- Fewer unsupervised releases from jail
- Greater accountability for more violations
- More effective use of supervision
- Increased public safety
- Stable releases and state savings over time
- Reinvestment opportunities for probation, courts, counties & victims

# Next steps to the finish line



# Thank you to all those who have participated!

**Ellen Whelan-Wuest**
**Project Manager**
ewhelan-wuest@csg.org

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