

In 2015, the leaders of Maryland's executive, legislative and judicial branches recognized the state needed help to address challenges in its sentencing and corrections policies and practices. Despite historically low rates of crime, the state was still locking up more than 20,000 people – disproportionately people of color – which is about the same number of people in prison as the early 1990s when Maryland was dealing with all-time high crime rates. This commitment to a “tough on crime” agenda was costing the state \$1.3 billion a year with little demonstrated impact on public safety. As a result, Maryland policymakers requested the assistance of the Bureau of Justice Assistance and the Pew Charitable Trusts to help identify the root causes of Maryland’s costly and ineffective prison system, and to provide evidence-based policy solutions proven to work in other states.

Maryland established the Justice Reinvestment Coordinating Council in 2015, joining 33 other states that have participated in the Justice Reinvestment Initiative (JRI). JRI provides technical assistance to states interested in a data-driven process to identify areas of improvement to policy and practice that can reduce the number of people in prison, control costs, and protect public safety. This is accomplished by policy reforms that cut costs by reducing the number of people in prison, or under community supervision, and reinvesting the savings into alternatives proven to reduce recidivism and keep people released from prison in the community.

The Justice Reinvestment Act in Maryland

The Justice Reinvestment Coordinating Council (JRCC)¹ reached several key conclusions:

- Six in 10 people entering Maryland prisons annually were sentenced for a nonviolent offense.
- The majority (58 percent) of people admitted to Maryland prisons were entering for a violation of community supervision.
- Time served in Maryland prisons had grown by 23 percent over a decade, due to longer sentences and more restrictive parole release policies.
- Only about 1 in 3 people eligible for parole were released annually, and they served an average of nine months beyond their parole eligibility date.

Over the course of six months, the JRCC reviewed original data analysis, heard testimony from stakeholders, examined best practices from other states, held four public hearings, and spent significant time in debate and discussion related to ways to effectively reform Maryland’s sentencing and corrections policies. Their work culminated in 19 policy recommendations that focused on:

- Reserving prison space for people convicted of serious, violent offenses

¹ The JRCC was created through the passage of Senate Bill 602 (2015), which was tasked with developing a series of recommendations to inform Maryland's legislature on changes to sentencing and correctional policies.

- Strengthening community supervision practices
- Improving release practices
- Establishing oversight and accountability for correctional practices

Many of the recommendations from the JRCC were incorporated into Senate Bill 1005 (2016), the *Justice Reinvestment Act (JRA)*, which took effect 17 months later on October 1, 2017 due to complexities with implementation. Some of the highlights of SB 1005 include:

- Reducing penalties for drug possession and theft, while recalibrating mandatory minimum sentences to focus on high-level sales.
- Increasing opportunities for individuals in prison to earn time off of their sentence by participating in programming.
- Capping how long an individual can serve in prison for a revocation of community supervision.
- Employing graduated sanctions for violations of community supervision in order to keep individuals in the community and out of prison.
- Reducing intensity of supervision for persons on parole who are at low-risk of reoffending.
- Expanding eligibility for geriatric and medical parole.
- Collecting important performance metrics to assess the implementation of these reforms and to share the data with an oversight board.

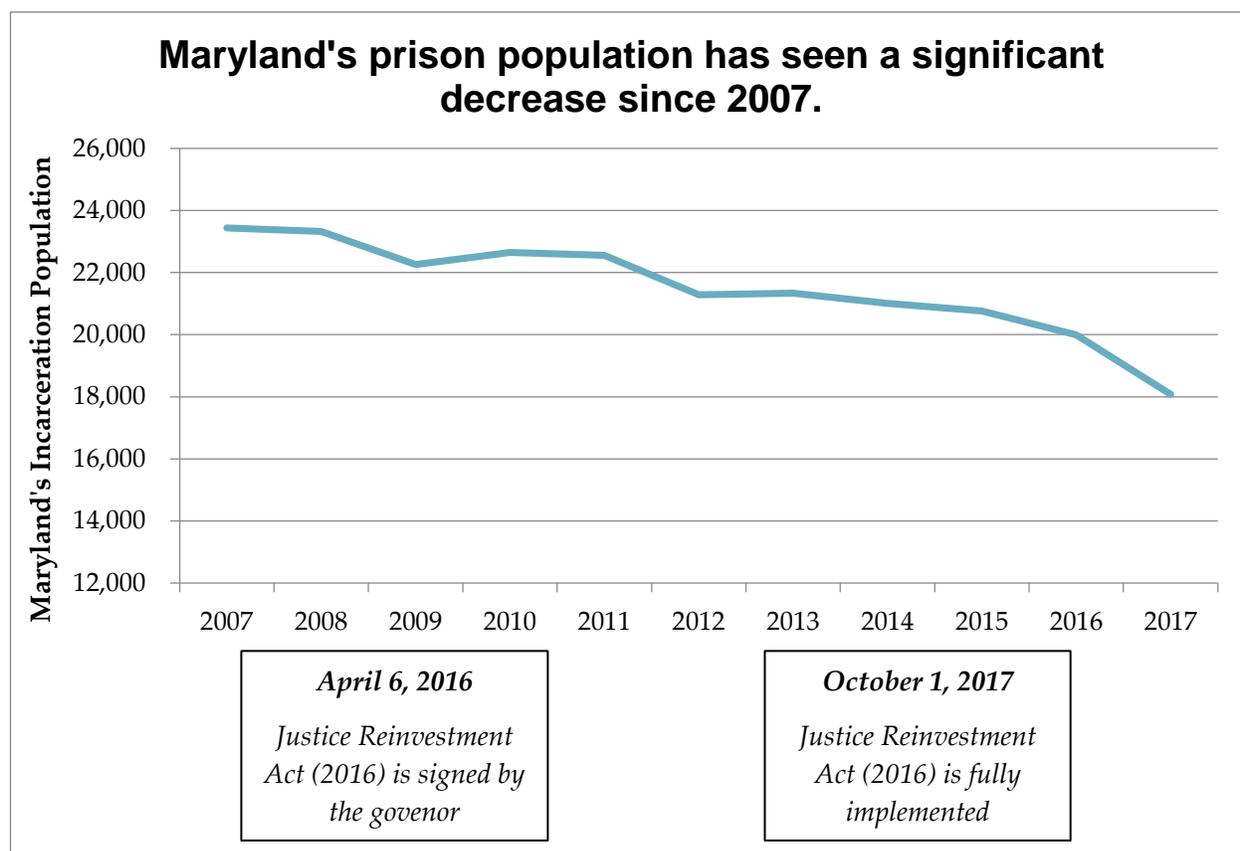
The SB 1005 package had estimated savings of \$80 million over 10 years by reducing the prison population by about 1,200 people (6 percent) relative to the status quo. It is important to note that the bill and its forecasted impact were scaled back significantly from the original consensus recommendations of the JRCC, which would have driven down the prison population by an estimated 14 percent over the next 10 years, saving the state approximately \$240 million.

The JRA: One Year Later

At the time of its passage, Maryland forecast its prison population to increase by about four percent, to 21,500, absent any legislative reforms. No estimates were even made for the projected impact of the prison population in the first year of reform because it takes time for new policies to be designed and implemented. Thus, most of the impact of SB 1005 would be expected to occur in years 2 through 10.

Most of the projected impact of SB 1005 was from averted growth, rather than an actual reduction in the prison population. *In fact, the Maryland prison population declined sharply in 2017, leading the nation with a decline of nearly 10 percent.* Considering this decline, it is possible that the growth projection may have been flawed from the outset. By year end 2017, Maryland was down to 18,078 people in prison, which represented a decline of nearly 23 percent over the last decade. These data make it clear that, despite forecasts of a modest increase, Maryland has been in the middle of a sustained downward trend in its use of incarceration. This is true even when looking at changes in the state's imprisonment rate,

which controls for the size of the overall state population. The rate dropped 10 percent during 2017 and 28 percent over the last decade.



These falling prison numbers coincide with continued drops in the state's crime rate. Thus, with some exceptions such as a concerning recent uptick in homicides in Baltimore, Maryland in 2018 is safer than it has been without having to lock up more people. Even if not the direct result of the JRA, these developments are reason for celebration. There could be even more cause for optimism moving forward, if the JRA reforms ramp up as planned and are effectively implemented throughout the state.

The JRA called for the creation of the Justice Reinvestment Oversight Board (JROB), which is charged with implementation of the policy reforms, including collecting and reporting performance measures. As of July 2018, nine months after implementation, the JROB was tracking the following:

- Prison population (down 1.3 percent);
- Active community supervision population (down 2.4 percent);
- Trends in use of county detention (down 16 percent);
- Use of pretrial detention (down 3 percent)
- Compliance with graduated sanctions (82 percent of sanctions are compliant with JRA rules).

The JROB is also tracking the use of "8-507 placements," which are residential, non-secure, treatment facilities in the community. Since the passage of the JRA, 448 individuals have been admitted to an 8-507 treatment program, with 62 having successfully completed treatment and another 287 still participating. While it is too early to determine whether this program will successfully drive down the prison population over time, it is clear that recent declines in the Maryland prison population cannot be attributed to the use of 8-507 placements.

Unfortunately, Maryland is not collecting the granular data that are necessary to pinpoint the exact impact of the changes to sentencing and release policies. For example, how are the changes to drug possession sentencing and mandatory minimums affecting the prison population? Court and correctional data would need to be linked in order to measure any changes to the rates of admission, length of sentence, and actual time served in prison. Maryland is not currently reporting that type of information to the JROB. The same is true of earned-time credits. Without individual-level data that identify each person who has been impacted by the reform and comparing their length of stay to similarly-situated individuals prior to the change, the precise impact of the JRA on Maryland's prison population cannot be ascertained. Clearly, larger trends are at work and other factors external to JRA impact the numbers being reported to the JROB. This precludes the JROB from meeting its statutorily-prescribed goal of "monitoring the progress and compliance with the implementation of the recommendations of the Justice Reinvestment Coordinating Council."

The JRA One Year Later: What Can Maryland Do Better?

The passage of one year since the effective date of the Justice Reinvestment Act provides an opportunity to reflect on progress made and identify areas where Maryland can improve. In that spirit, there are three important steps that Maryland should take to ensure that the JRA is able to fulfill the goals enshrined in the legislation:

- Implement key reforms
- Reinvest savings from declining prison population
- Improve data reporting

Implement Key Reforms

The passage of the JRA ushered in a number of important reforms to sentencing, community supervision, and treatment capacity in Maryland. While it is far too early to determine how much of an impact many of these policy changes will have on the prison population, there are some that can be identified as being underutilized. For example, SB 1005 expanded eligibility for geriatric parole and medical parole. However, there are no data available that would indicate how much, if at all, these reforms are actually being utilized. There are currently more than 3,000 people over the age of 50 held in Maryland prisons. Over 800 are over 60 years of age and that number will grow due to the use of life sentences, including the fact that people with parole-eligible life sentences are very rarely released in Maryland. This is the result of a 1995 change in practice by then-Governor Parris Glendening, continued by every governor since, to deny recommendations for release by the Parole Commission. This has resulted in an aging prison population that is disproportionately Black, costs more to incarcerate than the state average due to health

costs associated with prison, and is at greatly reduced risk of reoffending due to aging. Maryland has the potential to save millions by simply following the recommendations of the JRCC and SB 1005 and making earnest use of geriatric parole and medical parole.

Reinvest Savings

There are far fewer people incarcerated today than in prior years; Maryland should use this opportunity to reinvest these savings in programs and people that hold the potential to further reduce the scale of the criminal justice system while also maximizing public safety. This virtuous cycle is the promise of the justice reinvestment model — move dollars out of dated, ineffective prisons and into communities where the return on investment is significantly higher. As of 2017, data from the Urban Institute reveal that the 22 states that participated in the justice reinvestment process have reported a total of \$557 million in investments.² This includes \$193 million in upfront investments at the time of bill passage and another \$364 million in subsequent years. Most states are investing these dollars in community-based treatment and services, strengthening community supervision, treatment in prisons, problem-solving courts, and services to victims. The strategy is that these investments will drive further declines in crime and recidivism, thereby leading to a further reduction in the number of people in prison or under supervision.

Most of the dollars saved through justice reinvestment are directed back into the criminal justice system in the form of expanded community supervision resources, drug treatment, mental health treatment, and law enforcement. On the other hand, Colorado offers a powerful example of directing resources back to the communities most acutely affected by mass incarceration. Recent research points to community organizations that push diverse strategies targeting economic development, treatment, healthy neighborhoods, and expanded green space as important contributors to reductions in violent crime.³ Colorado's Justice Reinvestment Crime Prevention Initiative, passed in 2017, is consistent with those findings. The Initiative authorizes savings from reforms to parole revocation policies to be invested in community-based organizations that have developed innovative strategies to strengthen neighborhoods and prevent crime. This approach ensures that dollars are directed where they are most needed and empowers leaders in those communities to develop customized, evidence-based solutions to their problems.

The City of Baltimore offers an opportunity to replicate the promise of the Colorado experience. Currently, one in three people in Maryland prisons is from Baltimore,⁴ and the impact of mass incarceration is even more concentrated. Just 25 communities in Baltimore account for three-quarters of all people from the city held in Maryland prisons. In many of these communities, Maryland is spending upwards of \$10 million per year to incarcerate its residents and millions more in supervision and reentry support.

Colorado's Work and Gain Education and Employment Skills program offers a different approach to reinvestment and reentry. It is a partnership between the Colorado Department of Corrections and community-based organizations to provide reentry support for people

² Jeremy Welsh-Loveman and Samantha Harvell. *Justice Reinvestment Initiative Data Snapshot: Unpacking Reinvestment* (Washington, DC: Urban Institute, 2018).

³ Emily Badger, "The unsung role that ordinary citizens played in the great crime decline," *The New York Times*, (New York, NY), November 9, 2017.

⁴ N.A., *The Right Investment? Correctional Spending in Baltimore City* (Washington, DC: Justice Policy Institute, 2015).

leaving prison. The local reentry programs are funded by money from the Department of Corrections and are run by people who live and work in the communities most impacted by mass incarceration. Many of the people who design and run these programs have been in the criminal justice system and their experiences define an innovative approach to reentry. The programs support job training, education, and vocational credentialing. Early results are promising, with high rates of participation and only three percent of individuals returning to prison for committing new crimes while in the program.

Maryland would be wise to invest a portion of the savings from reducing its prison population into these communities to support drug treatment, job training, economic development, housing, and education. Investing in a portfolio of these types of programs would result in a much better return on investment than spending more money on prisons. In addition, there is substantial value to the community as reduced crime saves costs to victims, law enforcement, and the court. For the cost of sending one person to prison for a year – currently \$46,000 – investing in communities at the local level could pay for employment training for nine people, two-bedroom apartments for 36 families for one month, or a GED course for 46 people.⁵ One avenue to achieve this goal is to work through the Local Government Justice Reinvestment Commission, which was established in SB 1005 to represent each county in advising the JROB on various matters. The Commission is charged with making recommendations regarding grants to local governments and creating measures to assess the effectiveness of the grants.

Data Reporting

Maryland is not collecting and reporting the data necessary to produce meaningful performance measures that track the implementation of SB 1005. Currently, the JROB produces a quarterly brief that outlines system-level trends in the prison population, community supervision, county detention, pretrial detention, and the use of graduated sanctions. None of these data provide the detail necessary to determine what effect, if any, the JRA is having on those populations.

Oregon and Pennsylvania provide two examples of justice reinvestment states that use online, interactive dashboards to communicate their progress with implementation.

Oregon's Criminal Justice Commission⁶ (*Figure I*) provides information on prison use by county, recidivism, reinvestment, grants to counties, and trends in drug use. This rich collection of data provides a much more nuanced understanding of how changes in policy and practice impact these key indicators.

Pennsylvania's Justice System Joint Performance Measures⁷ (*Figure II*) dashboard provides another example of an interactive resource that tracks data from the Department of Corrections, the Board of Probation and Parole, and other key justice reinvestment indicators. It is important to note that the Pennsylvania dashboard is the product of a partnership among state agencies.

⁵ N.A., *The Right Investment? Correctional Spending in Baltimore City* (Washington, DC: Justice Policy Institute, 2015).

⁶ "Interactive Data," *Oregon – Criminal Justice Commission*, Accessed October 29, 2018. <https://www.oregon.gov/cjc/data/Pages/main.aspx>

⁷ "Justice Reinvestment Initiative / Joint Performance Measures," *PA Justice System Joint Performance Measures*, Accessed October 29, 2018. <https://jridashboardpa.net/Home/tabid/2018/Default.aspx>

Figure 1
Oregon's Criminal Justice Commission – Justice Reinvestment Prison Usage Dashboard

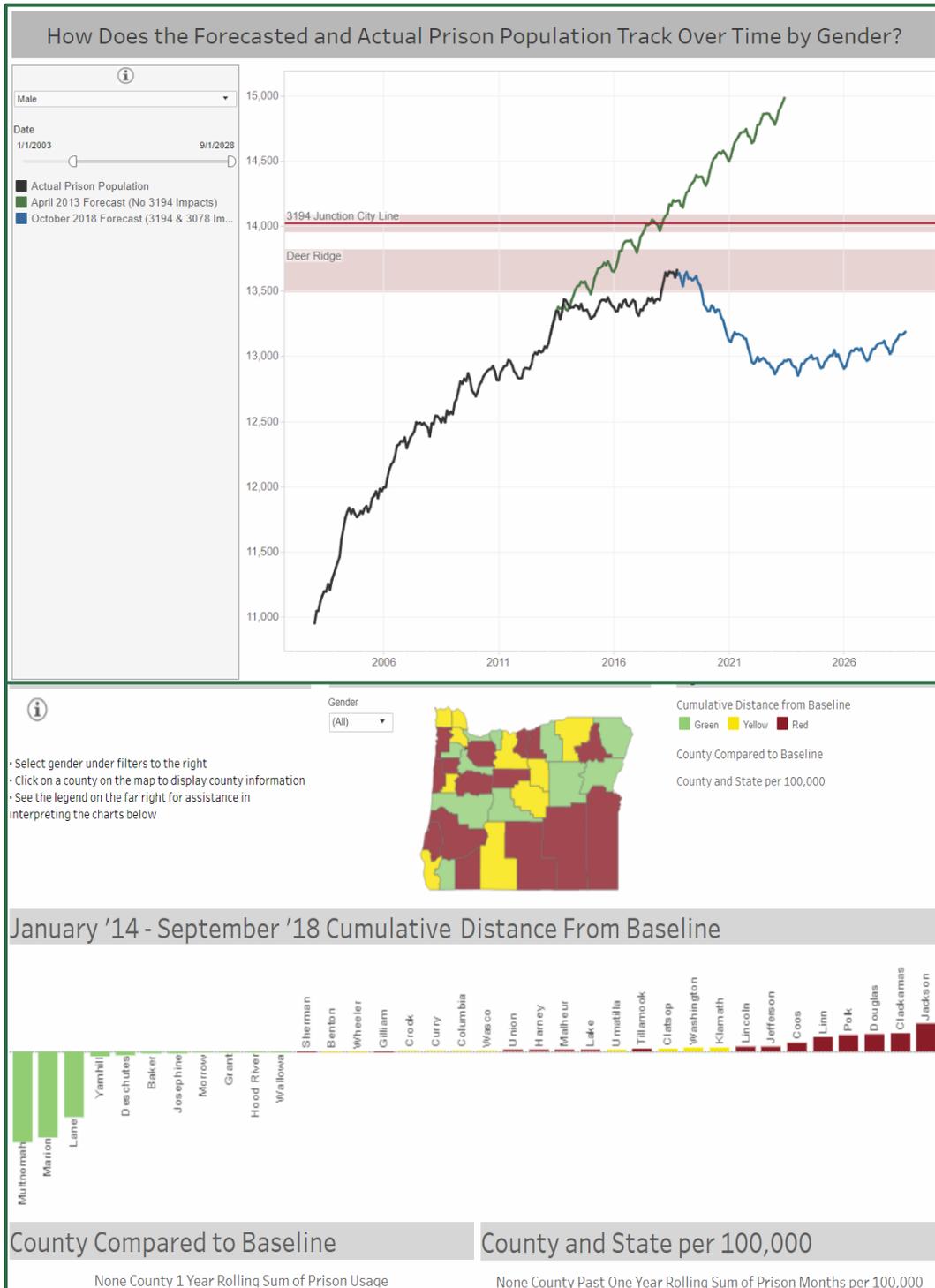
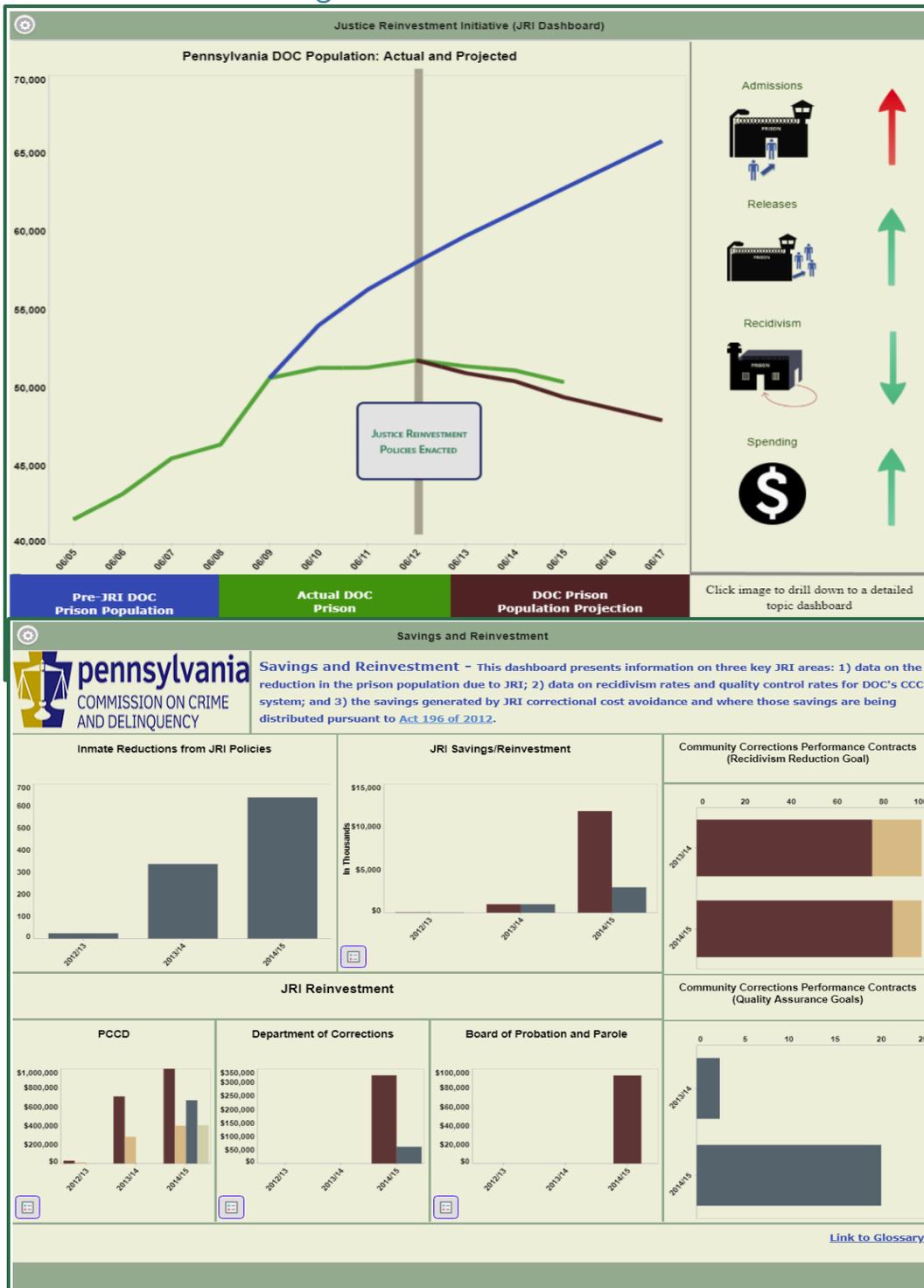


Figure II
 Pennsylvania's Justice System Joint Performance Measures – Justice Reinvestment Prison Usage Dashboard



Another example of a state making good use of data to inform its justice reinvestment process is South Carolina's Sentencing Reform Oversight Committee (SROC)⁸. The SROC receives information from the Department of Corrections and the Department of Probation, Parole, and Pardon Services on key benchmarks of that state's justice reinvestment package. The SROC then produced an annual *State Expenditures Savings Report* that tracks changes to the prison and community supervision population, recidivism, and the use of sanctions, rewards, and revocations. All of the data are then plugged into a formula that calculates the savings accrued due to reforms and indicate where the funds should be reinvested.

It is not enough for each individual agency to collect system-level data. Individual-level data need to be shared among agencies in order for any meaningful conclusions to be drawn. The criminal justice system is comprised of various state and local agencies and courts that a justice-involved individual may pass through; if the data are different each step of the way, it is impossible to determine whether policy and practice are proceeding as planned. To achieve this in Maryland, the JROB must work closely with the Governor's Office of Crime Control & Prevention to ensure that all participating agencies are collecting data that can be linked across systems for meaningful analyses of the implementation and effectiveness of the JRA. In addition, the JROB should invite a third-party research organization to conduct a process evaluation in order to answer whether the intended goals of the JRA are being met.

Conclusion

The Justice Reinvestment Act, as written, is a landmark piece of criminal justice legislation that seeks to put Maryland on the pathway to a more fair and effective criminal justice system that protects the public, provides support for people involved in the justice system, and reinvests resources into programs and policies that hold the promise of better outcomes. However, in the year since the law went into effect, little is known about its impact. Anecdotal evidence suggests that implementation has been uneven and the lack of any systematic data collection or process evaluation prevents lawmakers and the public from knowing whether the JRA is meeting its ambitious goals. Policymakers and the JROB should use the occasion of this one-year anniversary to demand that the state ensure all elements of the JRA are implemented, savings are tabulated and targeted for reinvestment, and data are collected and shared among criminal justice agencies in order to allow for effective monitoring of its effectiveness.

⁸ "Sentencing Reform Oversight Committee," *South Carolina Legislature*. Accessed October 29, 2018. <https://scstatehouse.gov/citizensinterestpage/SentencingReformOversightCommittee/SROC.php>