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The Impact of Presumptive Probation

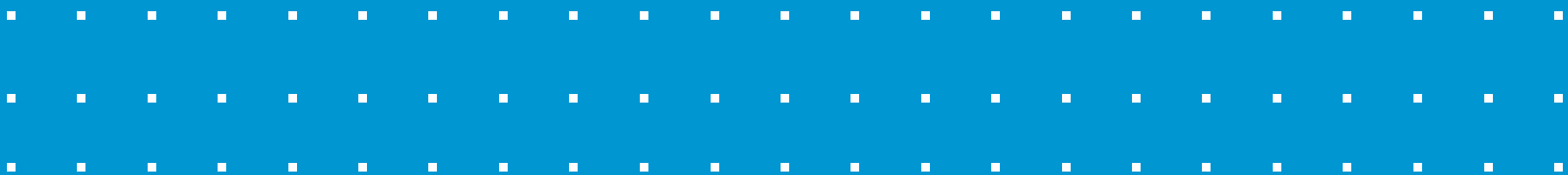
Bryce Peterson, Sam Bieler, Brian Elderbroom, Samantha Harvell



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Senate Bill 70



South Dakota's Justice Reinvestment Initiative

- In 2012, Governor Daugaard, Chief Justice Gilbertson and legislative leaders established the Criminal Justice Initiative Work Group
- The Work Group received technical assistance from the Pew Charitable Trusts and Crime and Justice Institute
- Work Group met with over 400 criminal justice stakeholders
- SD's prison population and imprisonment rates had been growing dramatically, without public safety results
- Projections showed the prison population would increase another 25 percent over the next decade at a cost of \$224 million

Drivers of Incarceration in South Dakota

- In 2012, more than 80 percent of admissions to prison were for non-violent offenses, more than half for drug or alcohol related offenses
- 6 out of 10 inmates most serious current conviction was a non-violent offense
- Of drug convictions, 68% were for possession, not sales or manufacturing

The Public Safety Improvement Act (SB 70)

- Signed into law by Governor Daugaard in Feb 2013
- Focused on:
 - Strengthening community supervision
 - Differentiating between levels of criminal conduct
 - Utilizing alternatives to prison for less serious offenses
 - Investing in evidence-based programs that reduce recidivism

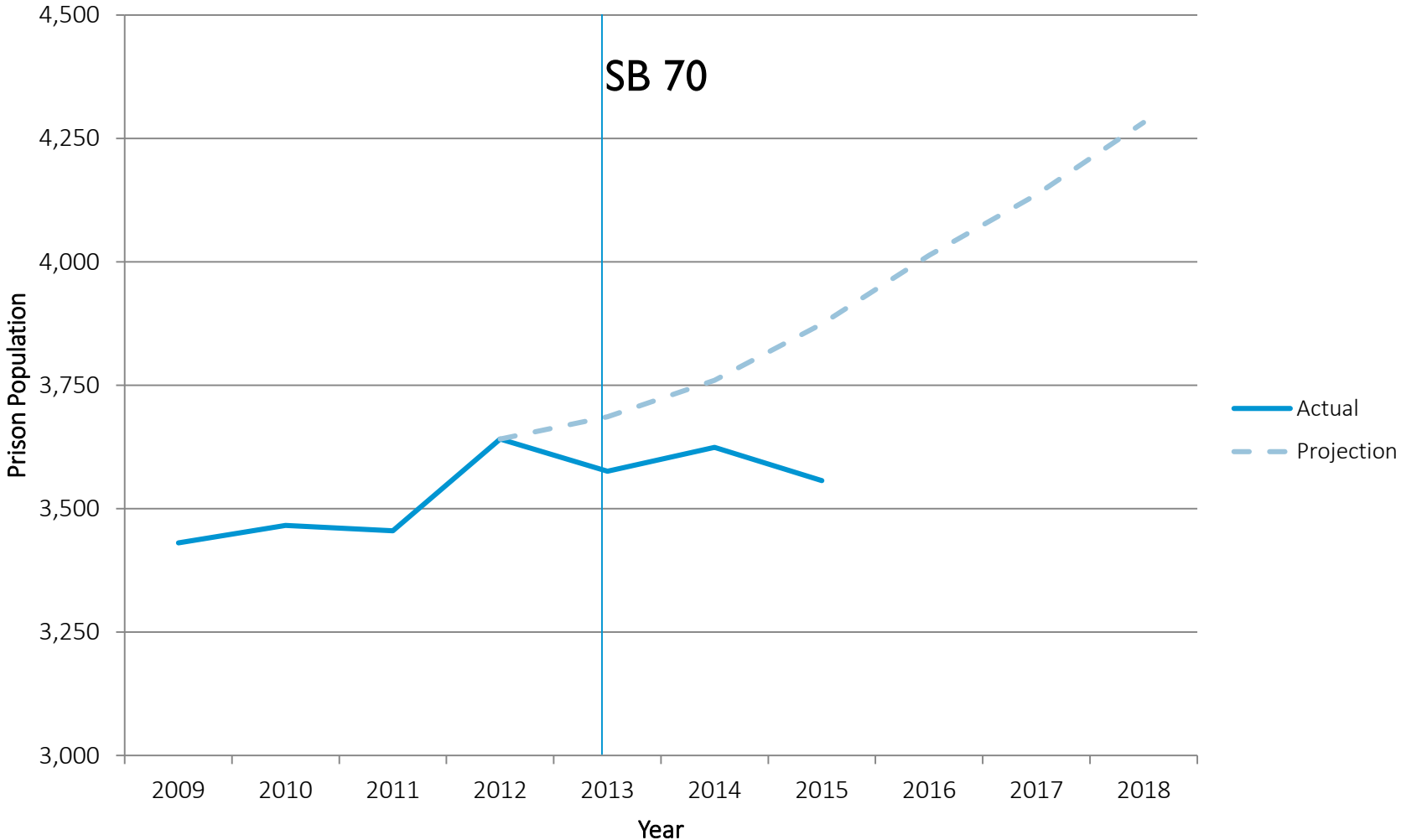
Key SB 70 Policy Reforms

- Establishes presumptive probation for Class 5 and 6 felonies
- Several other reforms:
 - Authorizes earned discharge from probation and parole
 - Requires the use of more evidence-based supervision practices
 - Reclassifies certain theft and burglary crimes to lesser felonies
 - Creates a tiered controlled substance statute and reclassifies drug possession and ingestion from a Class 4 felony to a Class 5 and 6, respectively

Early Results and Impacts from SB 70

- Prison population declined from FY14 to FY15 and stands 8% lower than projections
- Avoided cost of building a new women's prison and produced avoided costs of more than \$30 million
- Average parole caseload down 18%
- Prison admissions for violations of probation and parole decreasing (parole revocations down 41% since FY12)
- Participation in drug courts, substance-abuse treatment, and other recidivism reduction programming increasing

South Dakota Prison Population and Projections

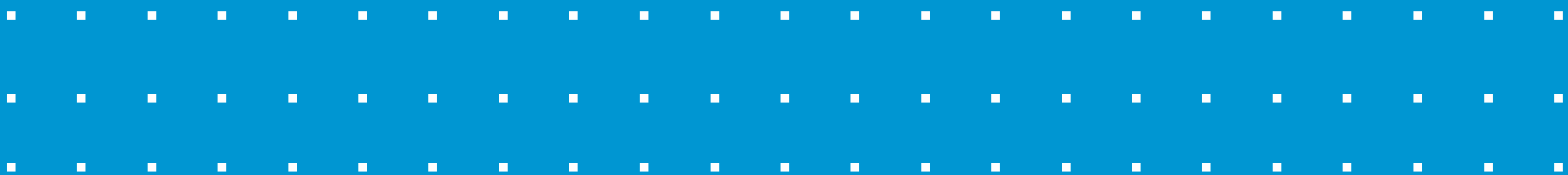




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Presumptive Probation

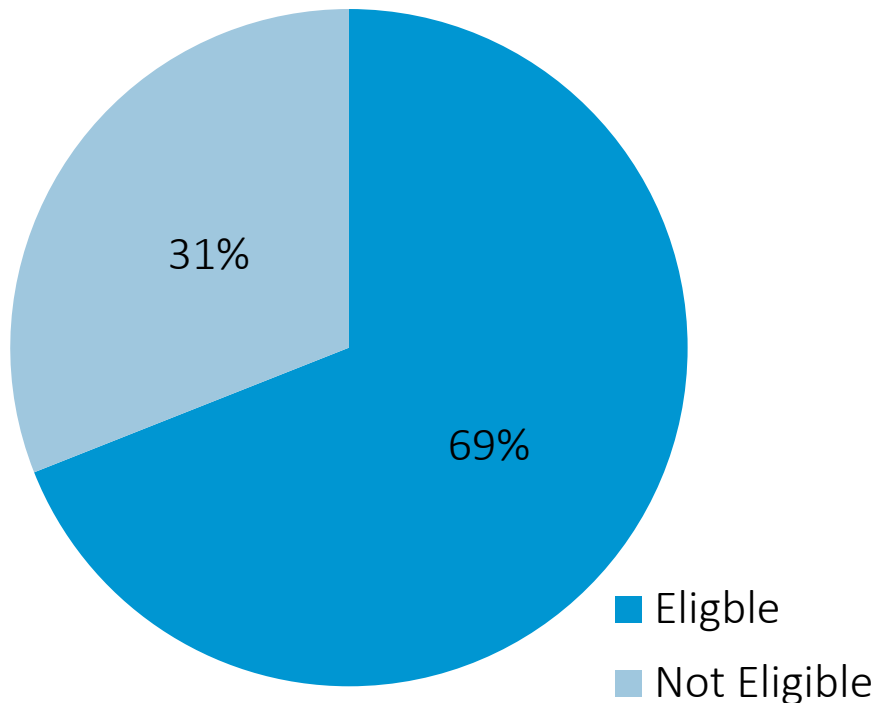


Presumptive Probation

“The sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony ... to a term of probation. The sentencing court may impose a sentence other than probation if the court find aggravating circumstances exist...”

Presumptive Probation Affects a Large and Growing Share of Felony Convictions

State Felony Convictions, 2015



Note: Increased from 53% in FY14

Eligible

- Any Class 5 & 6 felony
 - Drug possession, ingestion
 - Forgery, theft, and third-degree burglary
 - DUI (third and fourth offense)

Ineligible

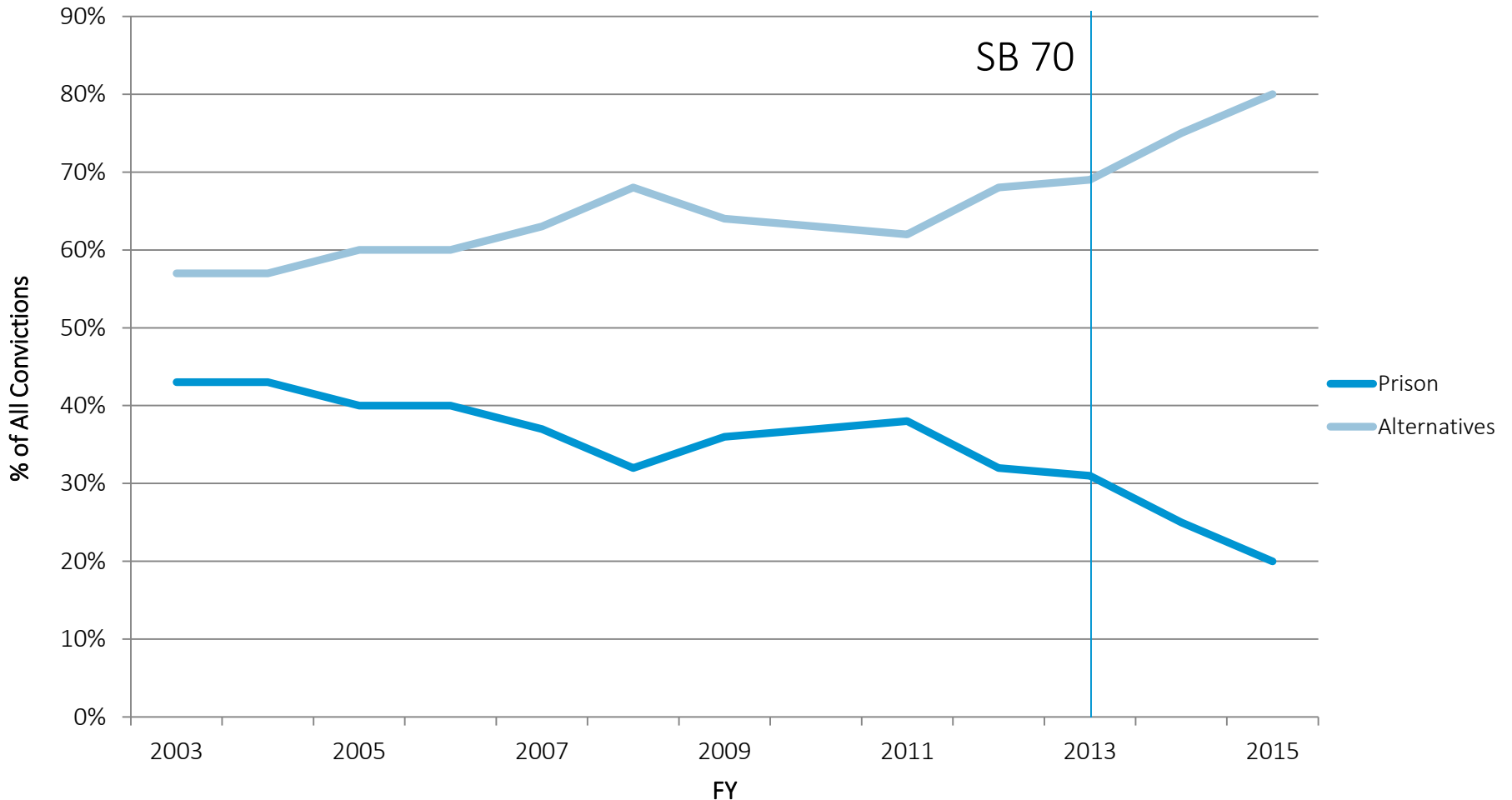
- Any felony outside of Class 5 & 6
- Violent or sex offenses in Class 5 & 6
 - Assaulting a law enforcement officer
 - Stalking

Urban's Analysis of Presumptive Probation

- Definitions
 - Incident versus person-based
 - Ineligible offenses excluded from counts
- Analysis
 - Outcomes pre- (FY03-FY13) and post- (FY14-FY15) SB 70
 - Total arrests, felony filings, convictions, placement rates (probation versus prison), sentence lengths, etc.
 - One-year reconviction rates
 - Statistically matched sample of 6,515 people before and after SB 70
- Measures vary slightly from PSIA Annual Report

Placements to Probation Increasing Significantly

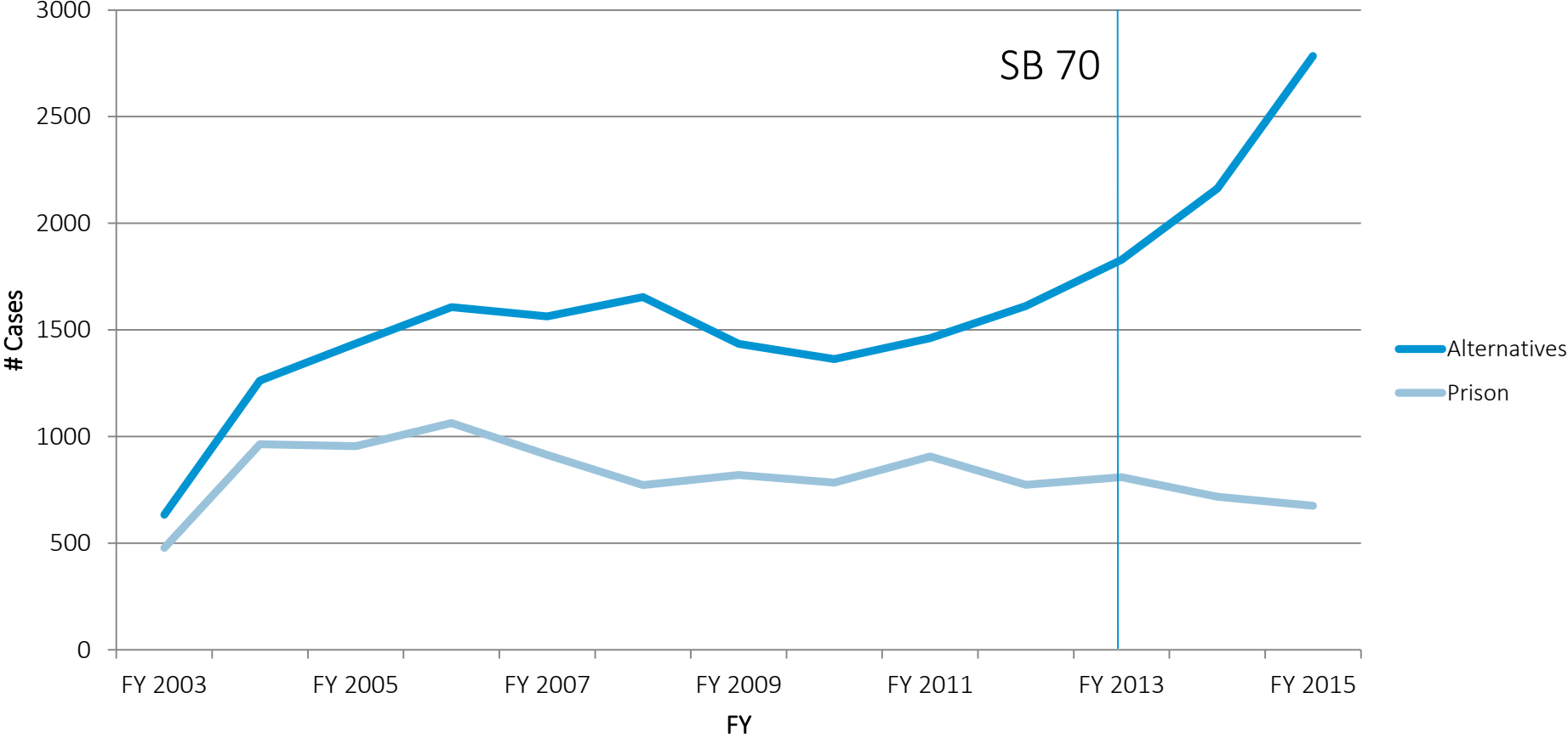
Presumptive Probation Eligible Offenses



Includes eligible Class 5 & 6 felonies, third-degree burglary, grand theft < \$5K, drug possession, and ingestion

Admissions to Prison Decreasing , Placements to Probation Increasing Dramatically

Presumptive Probation Eligible Offenses



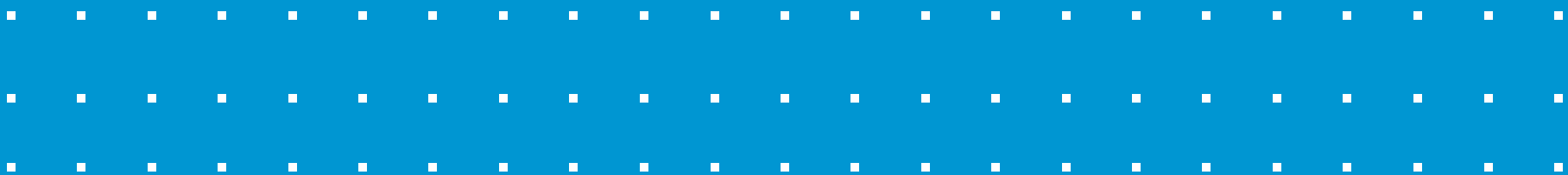
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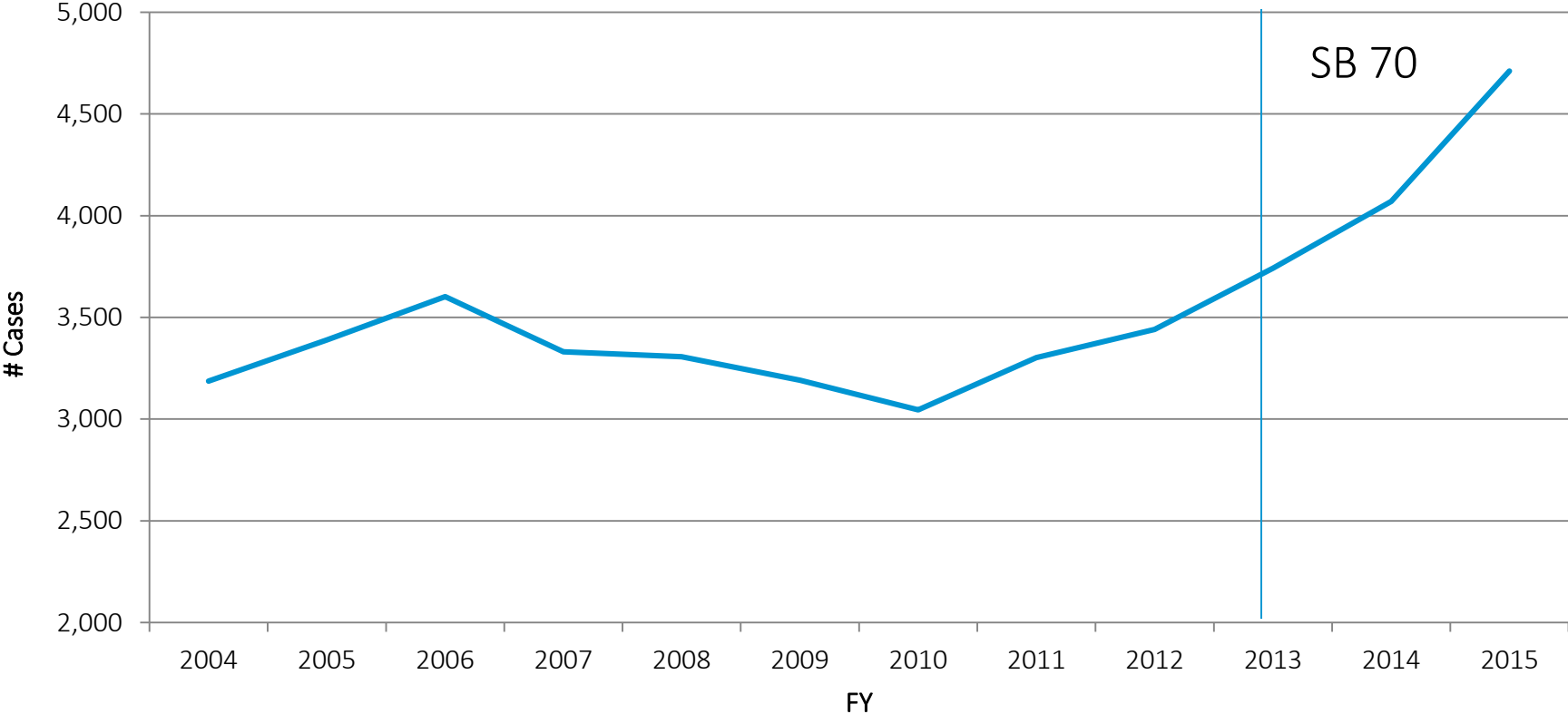
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Other Impacts



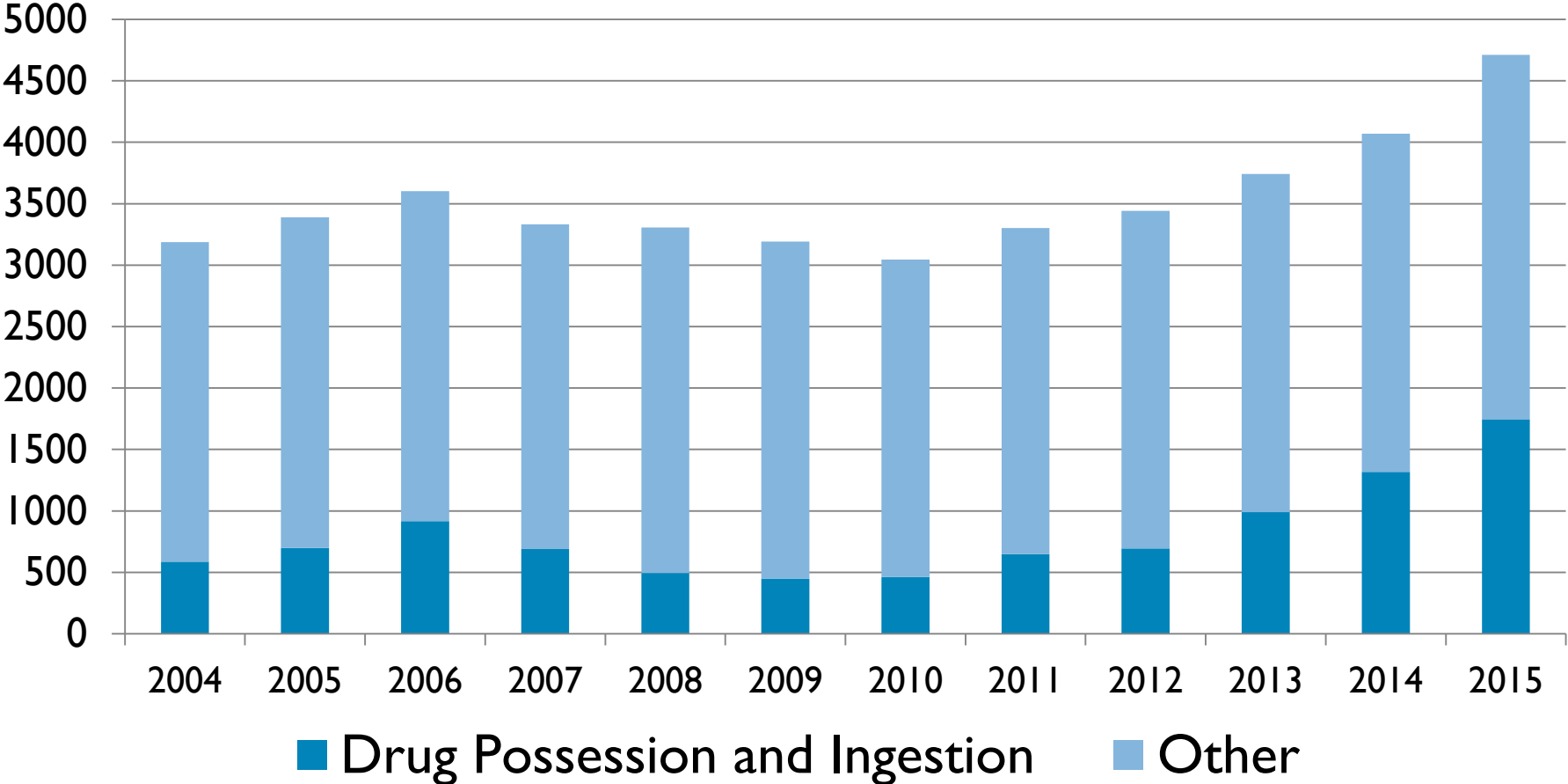
Statewide Felony Convictions Increasing Dramatically

Total Felony Convictions



Increase in Felony Convictions Driven by Drug Possession and Ingestion

Felony Convictions in South Dakota



Net Widening Concentrated At Conviction Level, Prison Admissions and Sentence Lengths Both Declining

- Sentences to prison for presumptive probation eligible offenses are down 16%
 - 617 people incarcerated in FY15, down from 731 in FY13
- Sentence lengths for drug offenses half pre-SB 70 levels
 - Prior to SB 70 (2003-2013): 482 days
 - Since SB 70 (2014-2015): 242 days

Net Widening Driven By Felony Filings

Arrests are largely flat, but felony filings and convictions have increased each of the past four years

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Change FY11-15
Arrests	26,511	28,248	27,973	28,650	29,928	+11%
Felony Filings*	7,795	8,568	9,267	9,839	11,263	+44%
Convictions	3,303	3,441	3,742	4,070	4,711	+43%

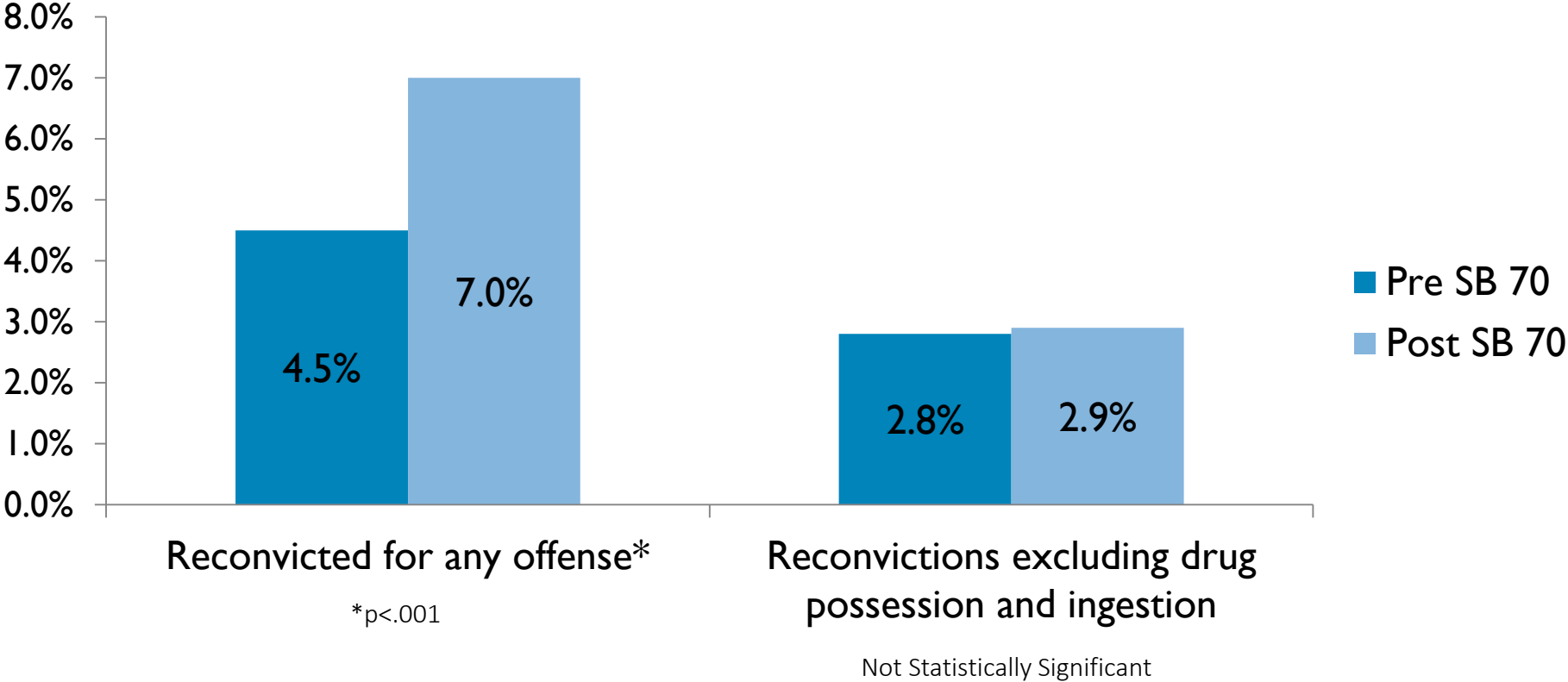
*Annual rather than FY counts

Convictions Increasing Across the State

County	FY 2010	FY 2013	FY 2014	FY 2015	% Change FY13-15
Minnehaha	838	965	996	1,295	34%
Pennington	638	799	956	1,115	40%
Brown	169	183	188	207	13%
Codington	106	124	137	176	42%
Lawrence	165	129	184	166	29%
Meade	98	135	158	155	15%
Hughes	77	110	134	143	30%

Reconvictions Driven by Drug Possession and Ingestion

Felony reconviction rates within one year of placement on probation in South Dakota

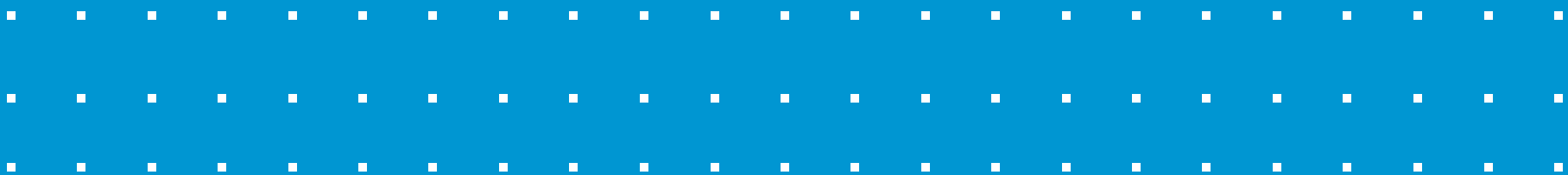




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Conclusions



Key Takeaways

- Placements to probation for Class 5 and 6 felonies are increasing after SB 70
- But, felony convictions are also increasing, particularly for possession and ingestion
- Increase in convictions driven by felony filings
- One-year reconviction rates for probationers have increased, but negligible when excluding possession and ingestion

Policy Recommendations

- Reclassify ingestion from Class 5 and 6 felonies to a Class 1 misdemeanor (original Work Group recommendation)
- Reclassify drug possession from a Class 5 and 6 felonies to a Class 1 misdemeanor
 - E.g., California (2014) and Utah (2015)
- Expand presumptive probation to nonviolent Class 4 felonies
- Strengthen reporting requirements and data collection on “departures”
- Expand SD’s problem-solving courts and invest into community-based substance-abuse treatment