JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS

Analyzing Sentencing & Corrections Trends in Washington

Presentation to the Washington State Sentencing Guidelines Commission

Marshall Clement, Director of State Initiatives, CSG Justice Center

mclement@csg.org

May 12, 2017

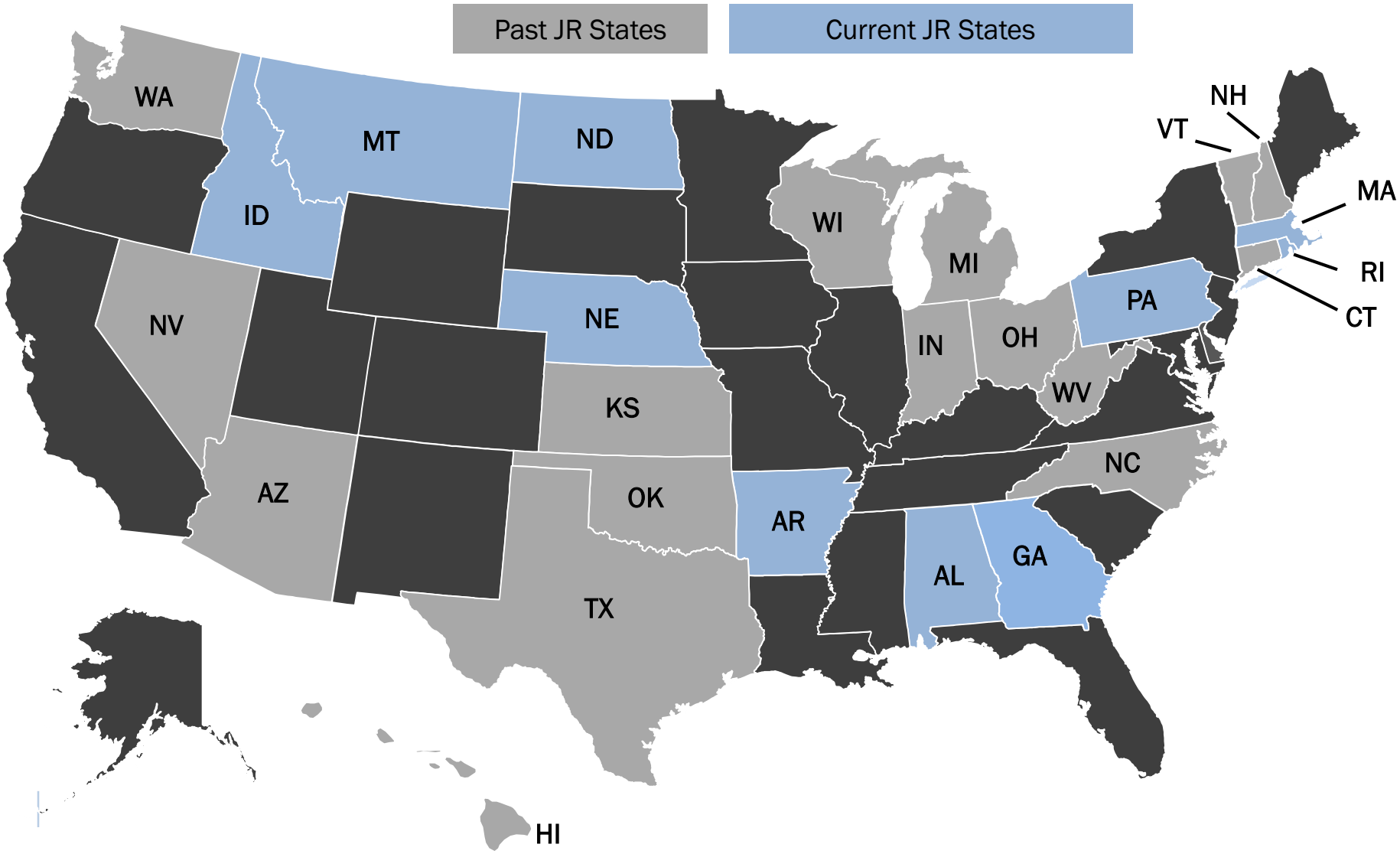
The Council of State Governments Justice Center

National nonprofit, nonpartisan membership association of state government officials that engage members of **all three branches** of state government.

JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS

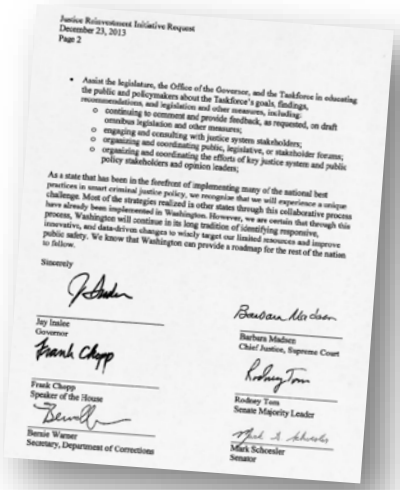
- Justice Center provides **practical, nonpartisan advice** informed by the best available evidence.

The CSG Justice Center has conducted intensive data analysis in 25 states.



Justice Reinvestment in Washington

At the request of state leaders, the CSG Justice Center provided technical assistance to the Washington State Justice Reinvestment Taskforce from June 2014 through the 2015 legislative session.



Justice Reinvestment Initiative Request
December 23, 2013
Page 2

- Assist the legislature, the Office of the Governor, and the Taskforce in educating the public and policymakers about the Taskforce's goals, findings, recommendations, and legislation and other measures, including:
  - continuing to comment and provide feedback, as requested, on draft omnibus legislation and other measures;
  - engaging and consulting with justice system stakeholders;
  - organizing and coordinating public, legislative, or stakeholder forums;
  - organizing and coordinating the efforts of key justice system and public policy stakeholders and opinion leaders;

As a state that has been in the forefront of implementing many of the national best practices in smart criminal justice policy, we recognize that we will experience a unique challenge. Most of the strategies realized in other states through this collaborative process have already been implemented in Washington. However, we are certain that through this process, Washington will continue in its long tradition of identifying responsive, innovative, and data-driven changes to wisely target our limited resources and improve public safety. We know that Washington can provide a roadmap for the rest of the nation to follow.

Sincerely

Jay Inslee
Governor

Barbara Madsen
Chief Justice, Supreme Court

Frank Chopp
Speaker of the House

Rodney Tom
Senate Majority Leader

Bernie Warner
Secretary, Department of Corrections

Mark Schoesler
Senator

Justice Reinvestment in Washington
Analysis and Policy Framework

JANUARY 2015

Overview

Washington has the highest reported property crime rate in the country.[1] In recent years, an increasing number of individuals convicted of property crimes have been sentenced to prison. People convicted of property offenses have a high likelihood of committing a new crime, yet Washington is the only state in the country where supervision is not available as a sentence for most people convicted of property offenses, despite the significant impact supervision can have on reducing the likelihood of reoffending. Washington's prison population is growing. In part, due to an increasing number of repeat property offenders being sentenced to prison for long lengths of stay.

Between FY2003 and FY2014, Washington's prison population increased 8 percent, from 16,138 to 17,502. The Washington Caseload Forecast Council currently projects the prison population to grow by an additional 6 percent over the next 10 years, to 18,542 by FY2024, exceeding the current capacity of the state's prisons of 17,423 by 6 percent. Expanding capacity to address the projected growth is estimated to cost the state approximately $291 million in construction and operation costs over 7 years. Policymakers came together because ensuring public safety is a state priority, and they realized that simply building a new prison without reconsidering current policies would do little to alter the state's high property crime rate, impact prison population growth, or reduce recidivism.

Washington is viewed as a national leader in using research and evidence to drive criminal justice policy and practice. The Washington State Institute for Public Policy (WSIPP), which conducts practical, nonpartisan

Projected 6-Year Outcomes of Justice Reinvestment Policy Framework

Provide property offenders with supervision and, if needed, treatment — 2,000 Property offenders newly eligible for supervision

Reduce property crime rate by 2021 — 15%

Avert prison construction and operations costs by 2021 — Up to $291 Million

Invest in law enforcement, supervision, treatment, and support for victims and counties by 2021 — $90 Million

JUSTICE CENTER
The Council of State Governments

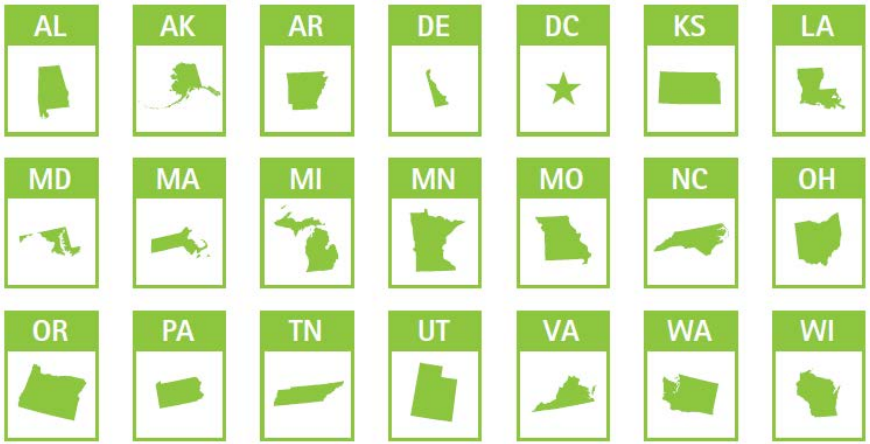
Data collected by Washington State agencies enables an exceptional degree of matching and analysis.

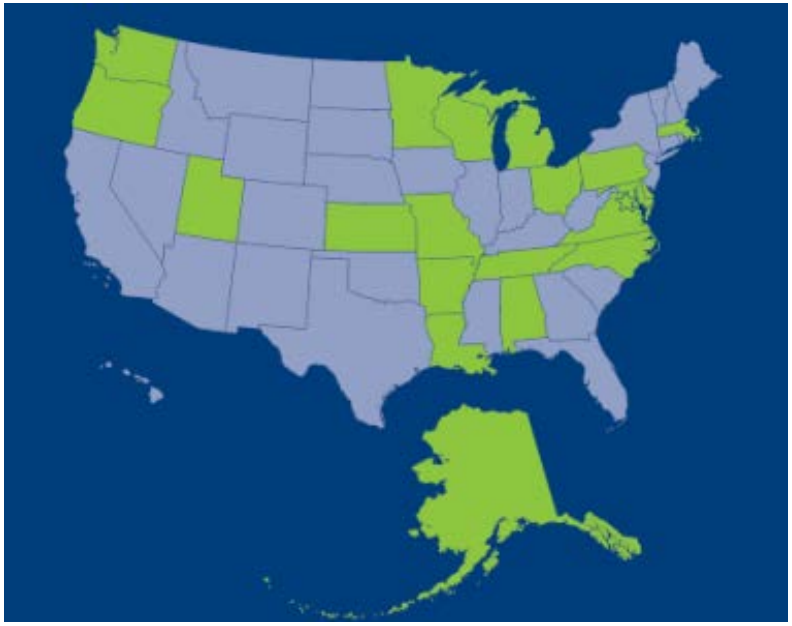
Washington State Patrol	Administrative Office of the Courts	Caseload Forecast Council	Department of Corrections
Felony and Misdemeanor Arrests 1980–June 2014	Felony and Misdemeanor Court Disposition—Criminal History Database provided by WSIPP	Felony Convictions 2000–2013	Prison & DOC Supervision: Admissions, Releases, On Hand 2004–2013
8.7 million records	8 million records	370,000 records	800,000 records

Linking of files on State ID (SID) Number

Sentencing in Washington and Other States

Washington is one of 21 guideline states and 13 non-parole (determinate) states.





States with Sentencing Guidelines	States Without Parole Release
Alabama	
Alaska	
Arkansas	
	Arizona
	California
Delaware	
DC	
	Illinois
	Indiana
Kansas	Kansas
Louisiana	
Maryland	
Massachusetts	
	Maine
Michigan	
Minnesota	Minnesota
Missouri	
North Carolina	North Carolina
Ohio	Ohio
Oregon	Oregon
Pennsylvania	
Tennessee	
Utah	
Virginia	Virginia
Washington	Washington
Wisconsin	Wisconsin

Washington's grids have 169 total cells, with more columns and rows than other systems.

258 cells: 9 grids with 3-6 rows and 6 columns

169 cells (16 x 10) + (3 x 3) (drug)

135 cells (10 x 9) + (5 x 9) (drug)

133: (11 x 7) + (8 x 7) (sex off.)

112 cells (14 x 8)

99 cells (11 x 9)

60 cells (10 x 6)

Seriousness Level	Offender Score: 0 to 2	3 to 5	6 to 9+
LEVEL III	59.5m 51-68	84m 68+-100	110m 100+-120
LEVEL II	16m 12+-20	40m 20+-60	90m 60+-120
LEVEL I	3m 0-6	12m 6+-18	18m 12+-24

Seriousness Level	Offender Score: 0	1	2	3	4	5	6	7	8	9+
LEVEL XVI	LIFE SENTENCE WITHOUT PAROLE/DEATH PENALTY									
LEVEL XV	280m 240-320	291.5m 250-333	304m 261-347	316m 271-361	327.5m 281-374	339.5m 291-388	364m 312-416	394m 338-450	431.5m 370-493	479.5m 411-548
LEVEL XIV	171.5m 123-220	184m 134-234	194m 144-244	204m 154-254	215m 165-265	225m 175-275	245m 195-295	266m 216-316	307m 257-357	347.5m 298-397
LEVEL XIII	143.5m 123-164	156m 134-178	168m 144-192	179.5m 154-205	192m 165-219	204m 175-233	227.5m 195-260	252m 216-288	299.5m 257.342	347.5m 298-397
LEVEL XII	108m 93-123	119m 102-136	129m 111-147	140m 120-160	150m 129-171	161m 138-184	189m 162-216	207m 178-236	243m 209-277	279m 240-318
LEVEL XI	90m 78-102	100m 86-114	100m 95-125	119m 102-136	129m 111-147	139m 120-158	170m 146-194	185m 159-211	215m 185-245	245m 210-280
LEVEL X	59.5m 51-68	66m 57-75	72m 62-82	78m 67-89	84m 72-96	89.5m 77-102	114m 98-130	126m 108-144	150m 129-171	230.5m 149-198
LEVEL IX	36m 31-41	42m 36-48	47.5m 41-54	53.5m 46-61	59.5m 51-68	66m 57-75	89.5m 77-102	101.5m 87-116	126m 108-144	150m 129-171
LEVEL VIII	24m 21-27	30m 26-34	36m 31-41	42m 36-48	47.5m 41-54	53.5m 46-61	78m 67-89	89.5m 77-102	101.5m 87-116	126m 108-144
LEVEL VII	17.5m 15-20	24m 21-27	30m 26-34	36m 31-41	42m 36-48	47.5m 41-54	66m 57-75	78m 67-89	89.5m 77-102	101.5m 87-116
LEVEL VI	13m 12+-14	17.5m 15-20	24m 21-27	30m 26-34	36m 31-41	42m 36-48	53.5m 46-61	66m 57-75	78m 67-89	89.5m 77-102
LEVEL V	9m 6-12	13m 12+-14	15m 13-17	17.5m 15-20	25.5m 22-29	38m 33-43	47.5m 41-54	59.5m 51-68	72m 62-82	84m 72-96
LEVEL IV	6m 3-9	9m 6-12	13m 12+-14	15m 13-17	17.5m 15-20	25.5m 22-29	38m 33-43	50m 43-57	61.5m 53-70	73.5m 63-84
LEVEL III	2m 1-3	5m 3-8	8m 4-12	11m 9-12	14m 12+-16	19.5m 17-22	25.5m 22-29	38m 33-43	50m 43-57	59.5m 51-68
LEVEL II	0-90 d	4m 2-6	6m 3-9	8m 4-12	13m 12+-14	16m 14-18	19.5m 17-22	25.5m 22-29	38m 33-43	50m 43-57
LEVEL I	0-60 d	0-90 d	3m 2-5	4m 2-6	5.5m 3-8	8m 4-12	13m 12+-14	16m 14-18	19.5m 17-22	25.5m 22-29
Unranked					0-12m					

Unlike other states that sentence to probation in lower sections of the grid, Washington uses mostly confinement.

Washington Sentencing Grid

Seriousness Level	Offender Score 0	1	2	3	4	5	6	7	8	9+
LEVEL XVI	LIFE SENTENCE WITHOUT PAROLE/DEATH PENALTY									
LEVEL XV	280m 240-320	291.5m 250-333	304m 261-347	316m 271-361	327.5m 281-374	339.5m 291-388	364m 312-416	394m 338-450	431.5m 370-493	479.5m 411-548
LEVEL XIV	171.5m 123-220	184m 134-234	194m 144-244	204m 154-254	215m 165-265	225m 175-275	245m 195-295	266m 216-316	307m 257-357	347.5m 298-397
LEVEL XIII	143.5m 123-164	156m 134-178	168m 144-192	179.5m 154-205	192m 165-219	204m 175-233	227.5m 195-260	252m 216-288	299.5m 257.342	347.5m 298-397
LEVEL XII	108m 93-123	119m 102-136	129m 111-147	140m 120-160	150m 129-171	161m 138-184	189m 162-216	207m 178-236	243m 209-277	279m 240-318
LEVEL XI	90m 78-102	100m 86-114	100m 95-125	119m 102-136	129m 111-147	139m 120-158	170m 146-194	185m 159-211	215m 185-245	245m 210-280
LEVEL X	59.5m 51-68	66m 57-75	72m 62-82	78m 67-89	84m 72-96	89.5m 77-102	114m 98-130	126m 108-144	150m 129-171	230.5m 149-198
LEVEL IX	36m 31-41	42m 36-48	47.5m 41-54	53.5m 46-61	59.5m 51-68	66m 57-75	89.5m 77-102	101.5m 87-116	126m 108-144	150m 129-171
LEVEL VIII	24m 21-27	30m 26-34	36m 31-41	42m 36-48	47.5m 41-54	[illegible]	[illegible]	[illegible]	[illegible]	126m 108-144
LEVEL VII	17.5m 15-20	24m 21-27	30m 26-34	36m 31-41	42m 36-48	[illegible]	[illegible]	[illegible]	[illegible]	101.5m 87-116
LEVEL VI	13m 12+-14	17.5m 15-20	24m 21-27	30m 26-34	36m 31-41	[illegible]	[illegible]	[illegible]	[illegible]	89.5m 77-102
LEVEL V	9m 6-12	13m 12+-14	15m 13-17	17.5m 15-20	25.5m 22-29	38m 33-43	47.5m 41-54	59.5m 51-68	72m 62-82	84m 72-96
LEVEL IV	6m 3-9	9m 6-12	13m 12+-14	15m 13-17	17.5m 15-20	25.5m 22-29	38m 33-43	50m 43-57	61.5m 53-70	73.5m 63-84
LEVEL III	2m 1-3	5m 3-8	8m 4-12	11m 9-12	14m 12+-16	19.5m 17-22	25.5m 22-29	38m 33-43	50m 43-57	59.5m 51-68
LEVEL II		4m 2-6	6m 3-9	8m 4-12	13m 12+-14	16m 14-18	19.5m 17-22	25.5m 22-29	38m 33-43	50m 43-57
LEVEL I			3m 2-5	4m 2-6	5.5m 3-8	8m 4-12	13m 12+-14	16m 14-18	19.5m 17-22	25.5m 22-29
Unranked	0-12m									

Up to one year of confinement

Minnesota Sentencing Grid

4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE 0	1	2	3	4	5	6 or more
Murder, 2nd Degree (intentional murder; drive-by-shootings)	11	306 *261-367*	326 *278-391*	346 *295-415*	366 *312-439*	386 *329-463*	406 *346-480*[2]	426 *363-480*[2]
Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)	10	150 *128-180*	165 *141-198*	180 *153-216*	195 *166-2*	[illegible]	[illegible]	[illegible]
Assault, 1st Degree Controlled Substance Crime, 1st Degree	9	86 *74-103*	98 *84-117*	110 *94-132*	122 *104-1*	[illegible]	[illegible]	[illegible]
Aggravated Robbery, 1st Degree Controlled Substance Crime, 2nd Degree	8	48 *41-57*	58 *50-69*	68 *58-81*	78 *67-9*	[illegible]	[illegible]	[illegible]
Felony DWI	7	36	42	48	54 *46-6*	[illegible]	[illegible]	[illegible]
Controlled Substance Crime, 3rd Degree	6	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Residential Burglary Simple Robbery	5	18	23	28	[illegible] *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Nonresidential Burglary	4	12[1]	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Theft Crimes (Over $5,000)	3	12[1]	13	15	17	19 *17-22*	21 *18-25*	23 *20-27*
Theft Crimes ($5,000 or less) Check Forgery ($251-$2,500)	2	12[1]	12[1]	13	15	17	19	21 *18-25*
Sale of Simulated Controlled Substance	1	12[1]	12[1]	12[1]	13	15	17	19 *17-22*

Presumptive probation with up to a year of confinement

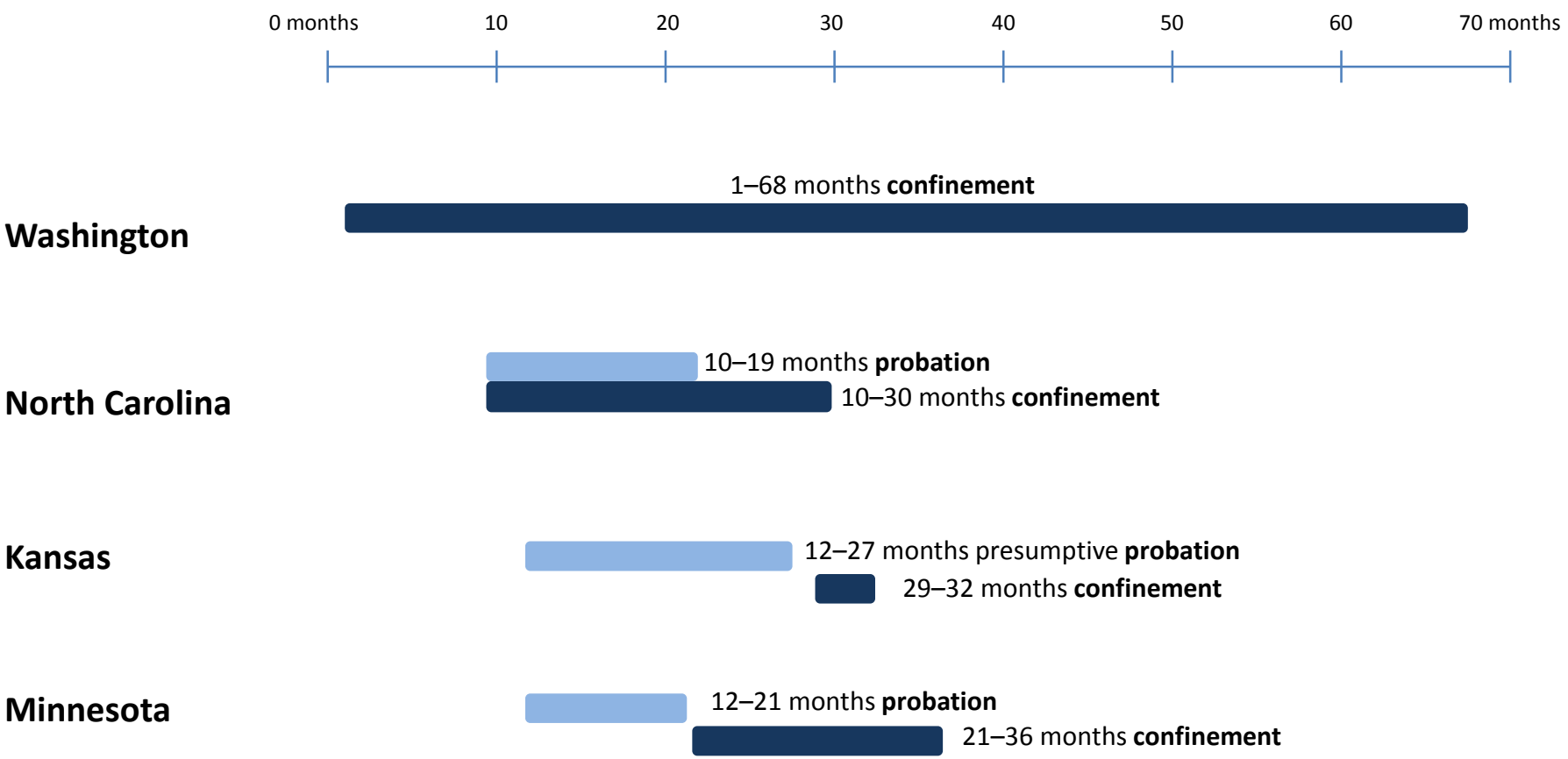
Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.

Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

[1] 12[1]=One year and one day

Washington has significantly wider sentence ranges for certain offenses, like second-degree burglary, compared to other states.

Sentencing for Second-Degree Burglary



Evolution of Criminal Justice Policy

U.S.

Rehabilitative Era

1930 – 1970

Just Desserts / "Nothing Works" Era

1971 – 1995

"What Works?" / RNR Era

1995– Today

Washington

Sentencing Reform Act
of 1981
- Eliminated probation and parole
- Adopted strict sentencing grid

Persistent Offender Accountability Act
of 1993
- Adopted life without parole sentencing for "three strikes"

Offender Accountability Act
of 1999
- Required risk-based supervision
- Prioritized supervision for high-risk offenders

Significant reforms to supervision policy
2003 – 2009
- Eliminated supervision for most non-violent offenders

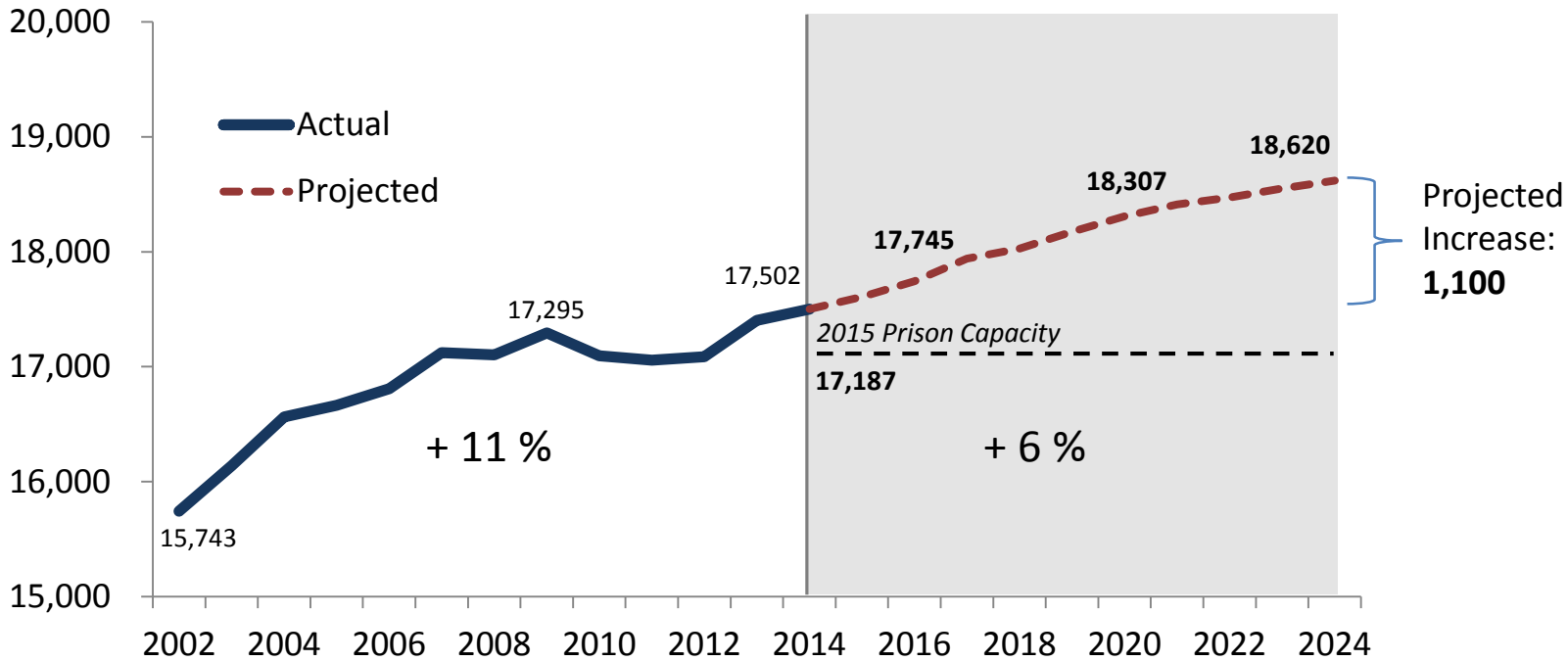
Washington as a National Leader
- WSIPP
- First state to implement "swift and certain" statewide
- Promising intervention and prevention for juveniles

Since the “Nothing Works” era, researchers have addressed the following questions about recidivism.

- What are the effects of incarceration versus community supervision on recidivism outcomes?
- What does it take to reduce recidivism?
- What is the relationship between sentence length and recidivism?

Findings from Washington's Justice Reinvestment Initiative

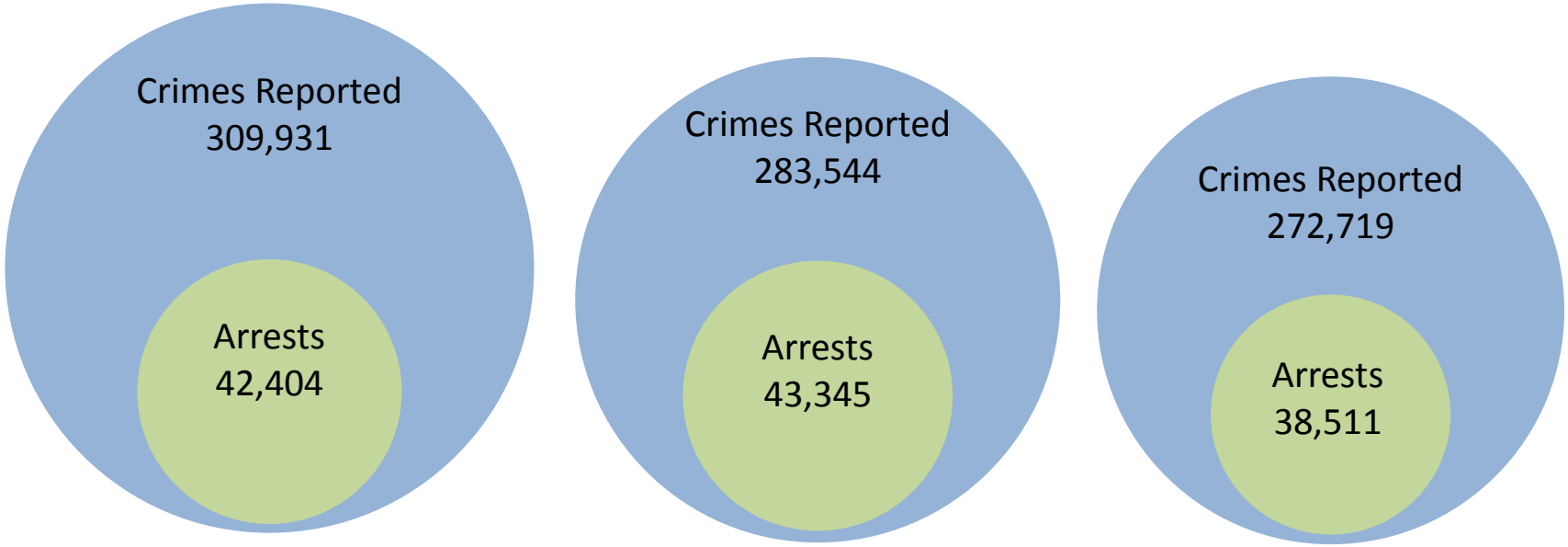
Washington's prison population exceeded capacity and was projected to continue to increase.



*Projections beyond June 2017 are not officially adopted by the Caseload Forecast Council

- *Source: Caseload Forecast Council, November 2014 Forecast; Criminal Justice Planning Services, "Cost-Effective Incarceration of Washington State Adult Offenders," 2012.*

Since 2002, index crimes and arrests had declined together.



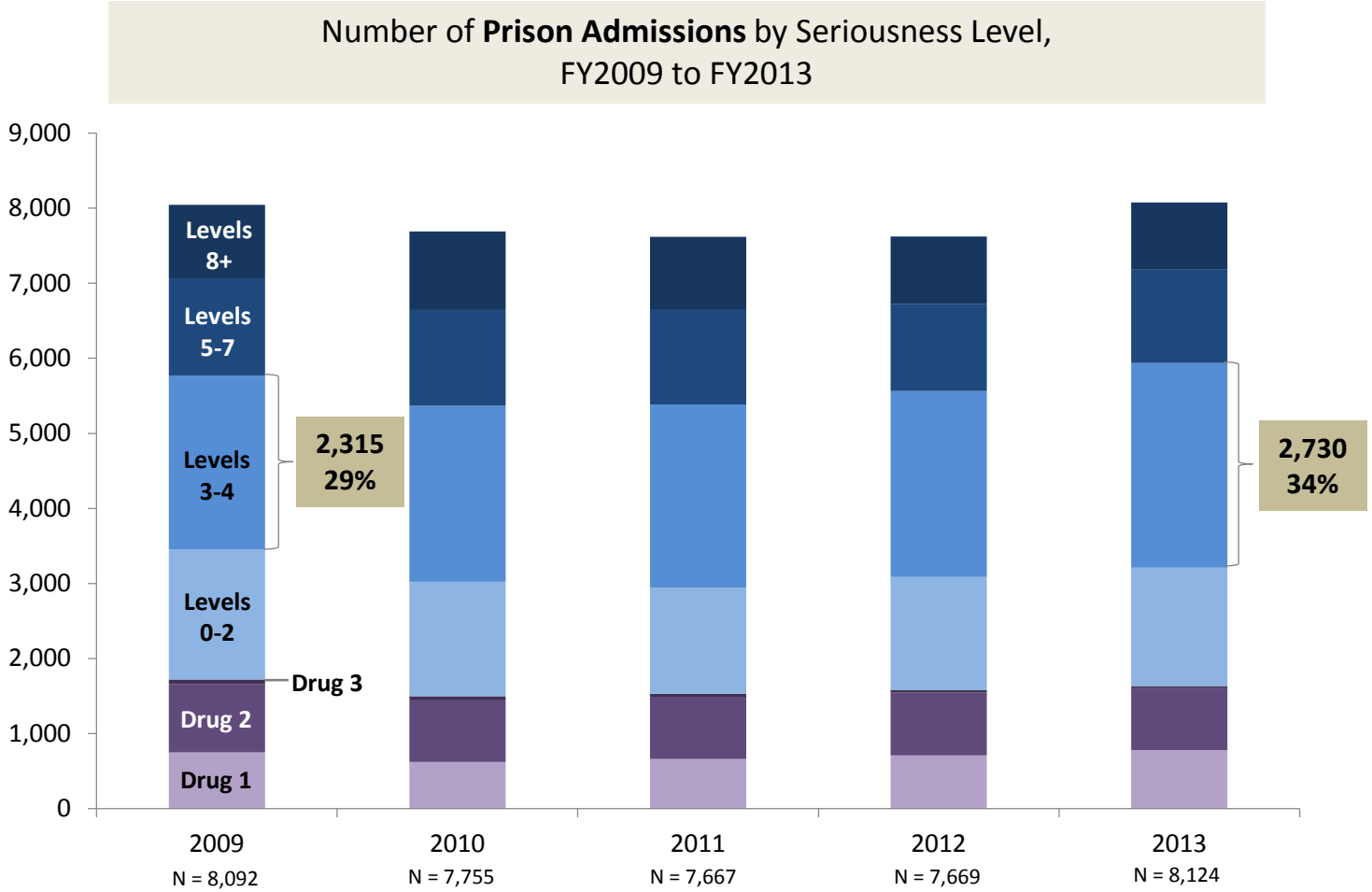
	2002	2007	2012
Clearance Rates	**13.7%**	**15.3%**	**14.1%**

2002-2012 % change	
Index Crimes	-12%
Arrests	-10%

**Arrests include only violent and property index crime categories*

Index crimes: aggravated assault, forcible rape, murder, robbery, arson, burglary, larceny-theft, and motor vehicle theft.
Source: Federal Bureau of Investigation, "Crime in the United States" (2002-2012)

Prison admissions had remained steady over the last decade, yet admissions for seriousness level 3 and 4 offenses had increased in number and proportion since FY2009.



*Excludes approx. 1% of admissions with unknown Seriousness Level

The on-hand prison population was concentrated in the upper left and lower right sections of the grid.

FY2013 **End-of-Year** Prison Population

Standard Grid

Seriousness Level	Offender Score: 0	1	2	3	4	5	6	7	8	9+	Unknown Offender Score
LEVEL XVI	LIFE SENTENCE WITHOUT PAROLE/DEATH PENALTY										
LEVEL XV	158										808
LEVEL XIV	204										250
LEVEL XIII											
LEVEL XII	303		108	235			124			217	597
LEVEL XI	164			118							180
LEVEL X	164			126			101			140	160
LEVEL IX	143		137				100			369	272
LEVEL VIII											
LEVEL VII							125			349	
LEVEL VI											
LEVEL V					108	106				204	
LEVEL IV	106		137	146	128	180	214	195	134	817	180
LEVEL III					177	151	170	181	174	733	102
LEVEL II								103	149	712	
LEVEL I										341	

*Excludes approx. 2% of population with unknown Seriousness Level

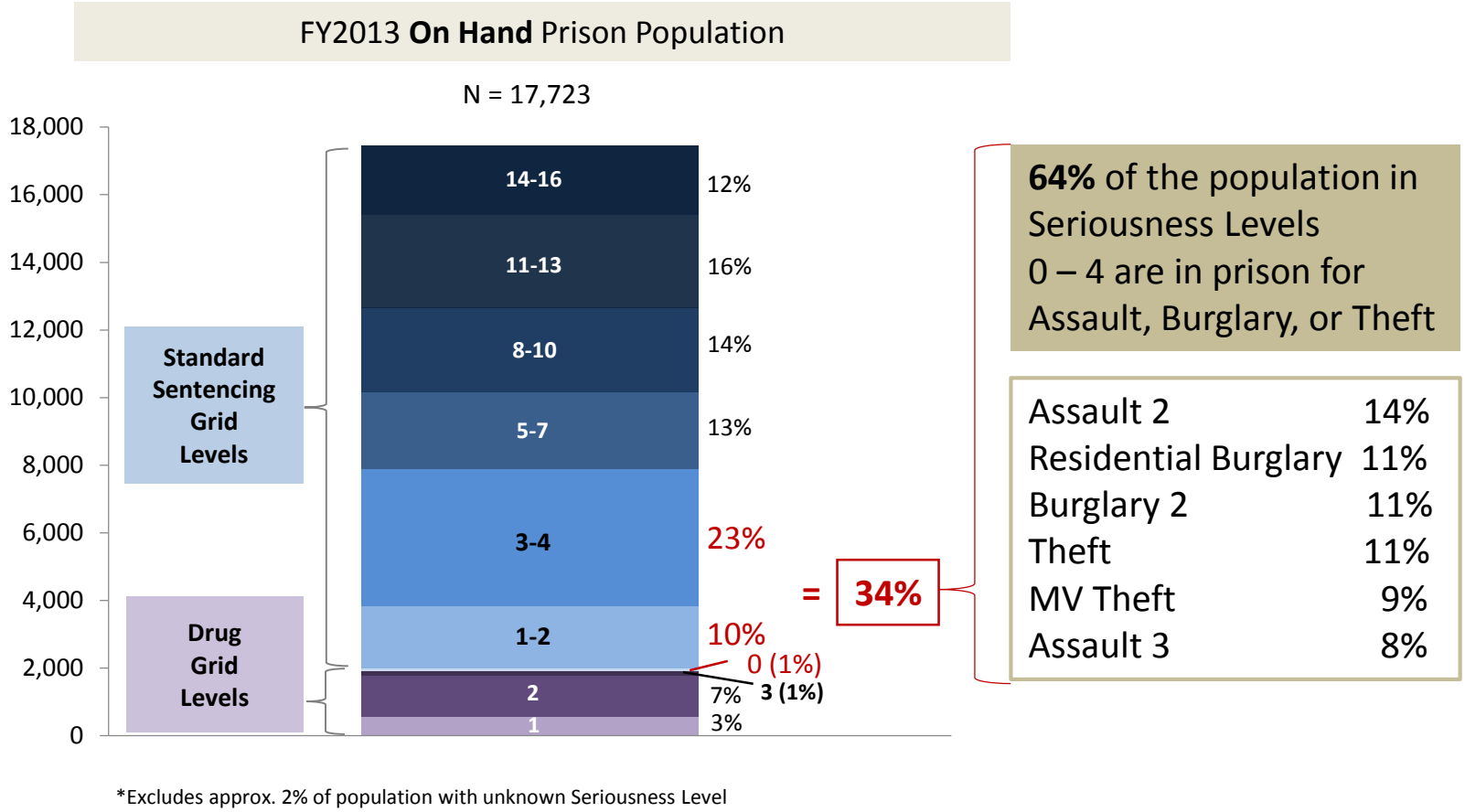
Drug Grid

Seriousness Level	Offender Score: 0 to 2	3 to 5	6 to 9+
LEVEL III			
LEVEL II	212	347	568
LEVEL I		129	384

Shaded grid cells represent a population over 100

Source: Justice Center analysis of DOC data

Of the on-hand prison population, one-third had been sentenced for offenses in seriousness levels 0 – 4 and primarily for property crimes.

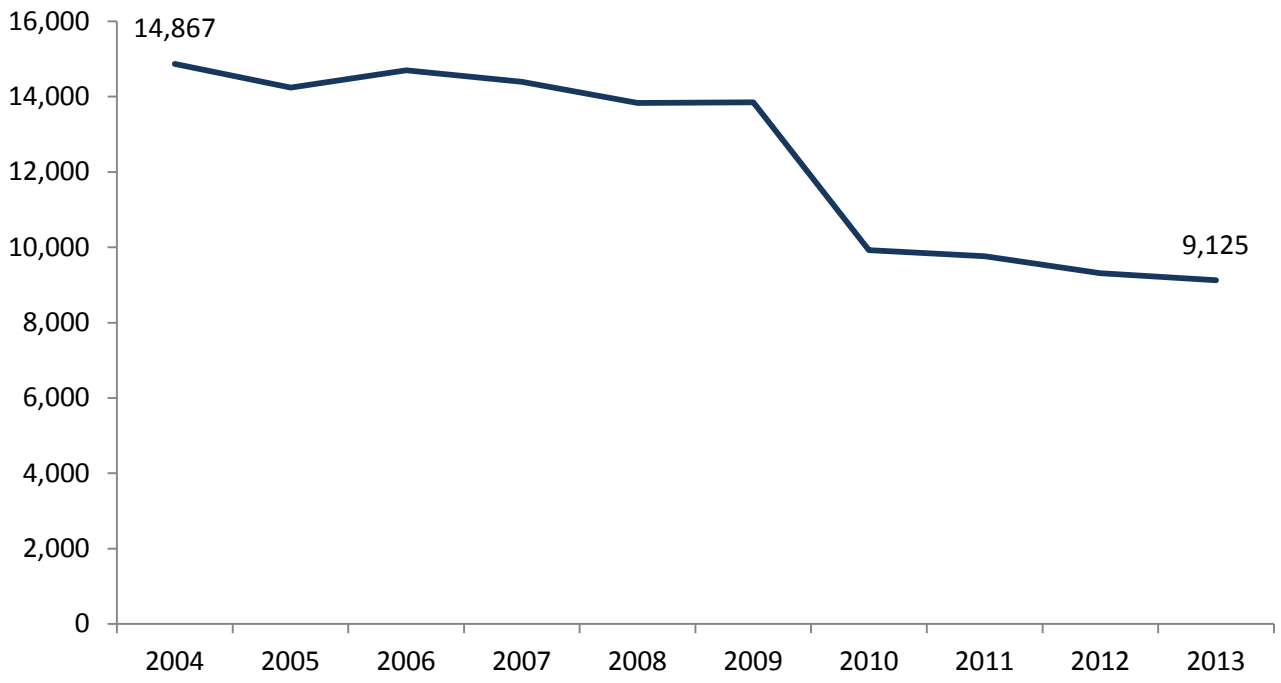


*Excludes approx. 2% of population with unknown Seriousness Level

Source: Justice Center analysis of DOC data

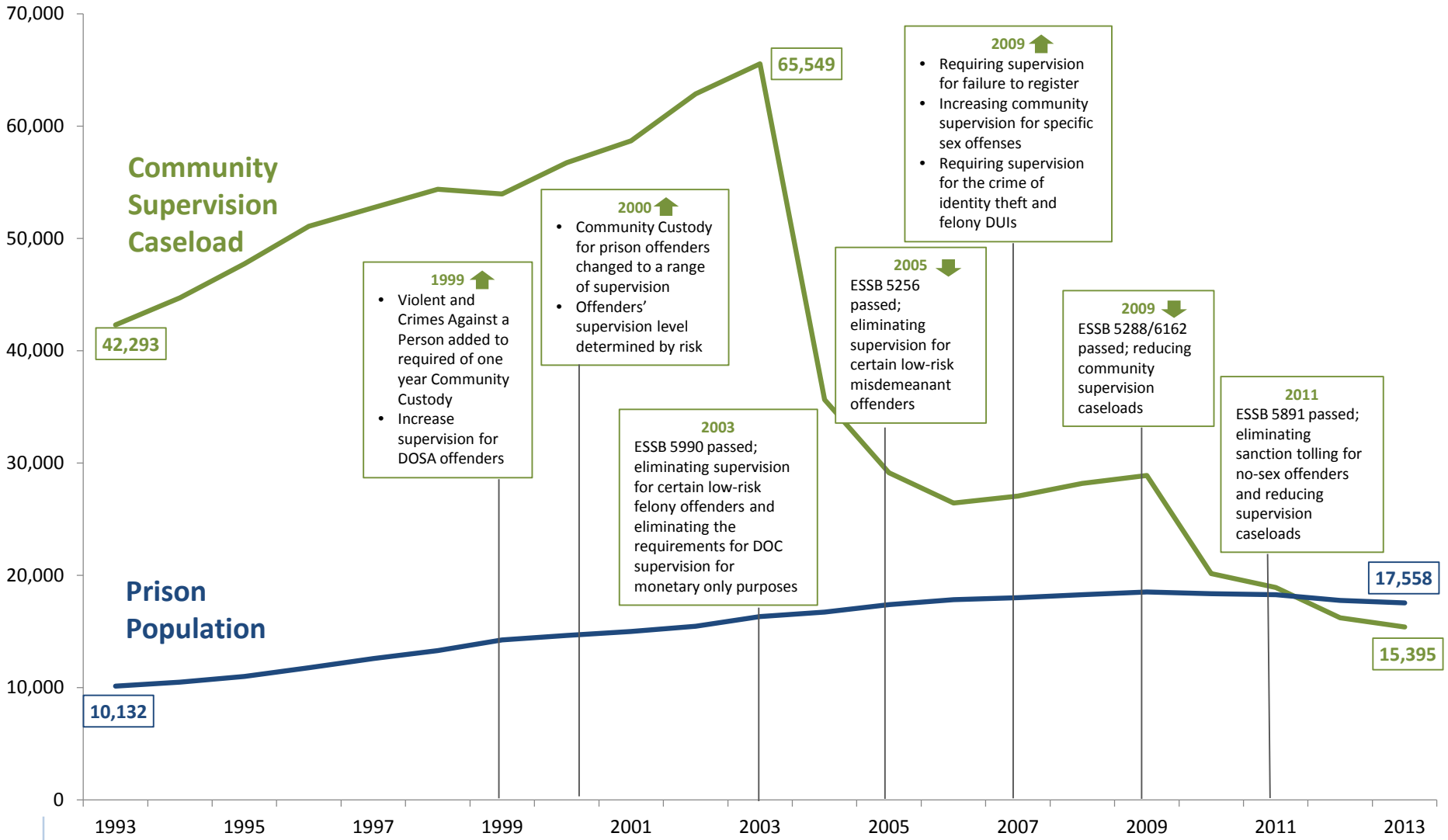
The number of people released from prison and jail and starting supervision had declined by nearly 40 percent since FY2004.

Number of Individuals Starting Supervision Following Release from Prison or Jail, FY2004 to FY2013



Source: CSG Justice Center analysis of DOC and CFC data.

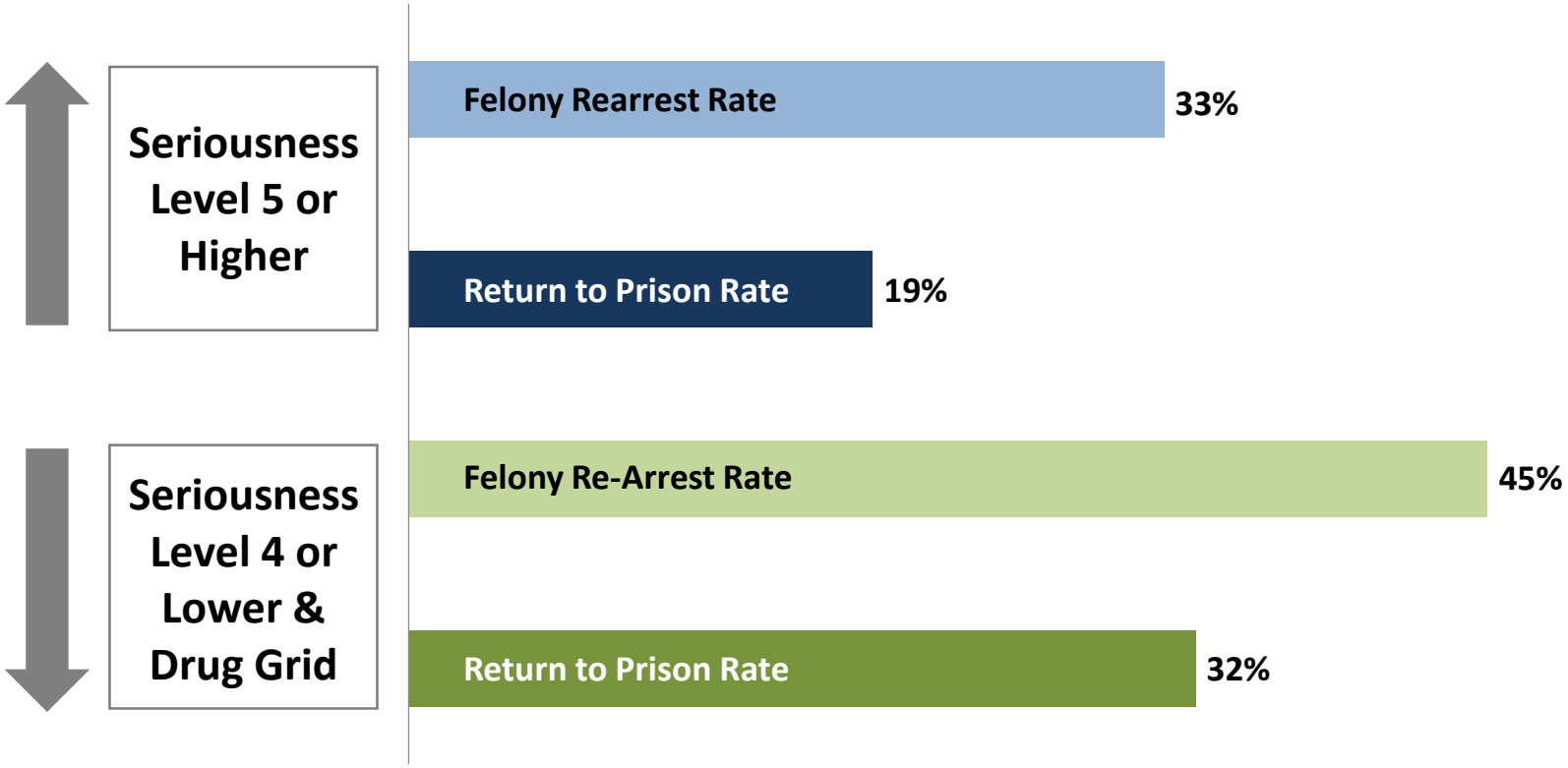
The supervision population had increased then decreased as a result of the policy changes.



Source: Washington State Department of Corrections, "Major Sentencing Changes Impacting Community Supervision Caseloads and Prison Population."

Offenders who committed less serious offenses had much higher recidivism rates than those who committed more serious offenses.

Three Year Felony Rearrest and Return to Prison Rates by Seriousness Level, **FY2010 Prison Releases**



Source: Justice Center analysis of DOC and WSP data