

Put a Ph.D. On It: Using Social Science at Sentencing

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Sentencing Resource Counsel Project
Federal Public & Community Defenders
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2 THE COURT: Okay. Those are separate. Let's talk
3 about the age first. Why is -- age 47, why is that a factor
4 that I should vary on?

5 MR. ____: At that age and her present condition,
6 she's very, very unlikely to recidivate, Your Honor.

7 THE COURT: And what's your basis for that statement?
8 Where -- what's in the sentencing record that would support that
9 statement?

10 MR. ____: I think there has been numerous studies,
11 although those are not in evidence before --

12 THE COURT: Are they somehow -- they worked their way
13 in the sentencing record that I'm --

14 MR. ____: No, they didn't, Your Honor, so it
15 can't be --

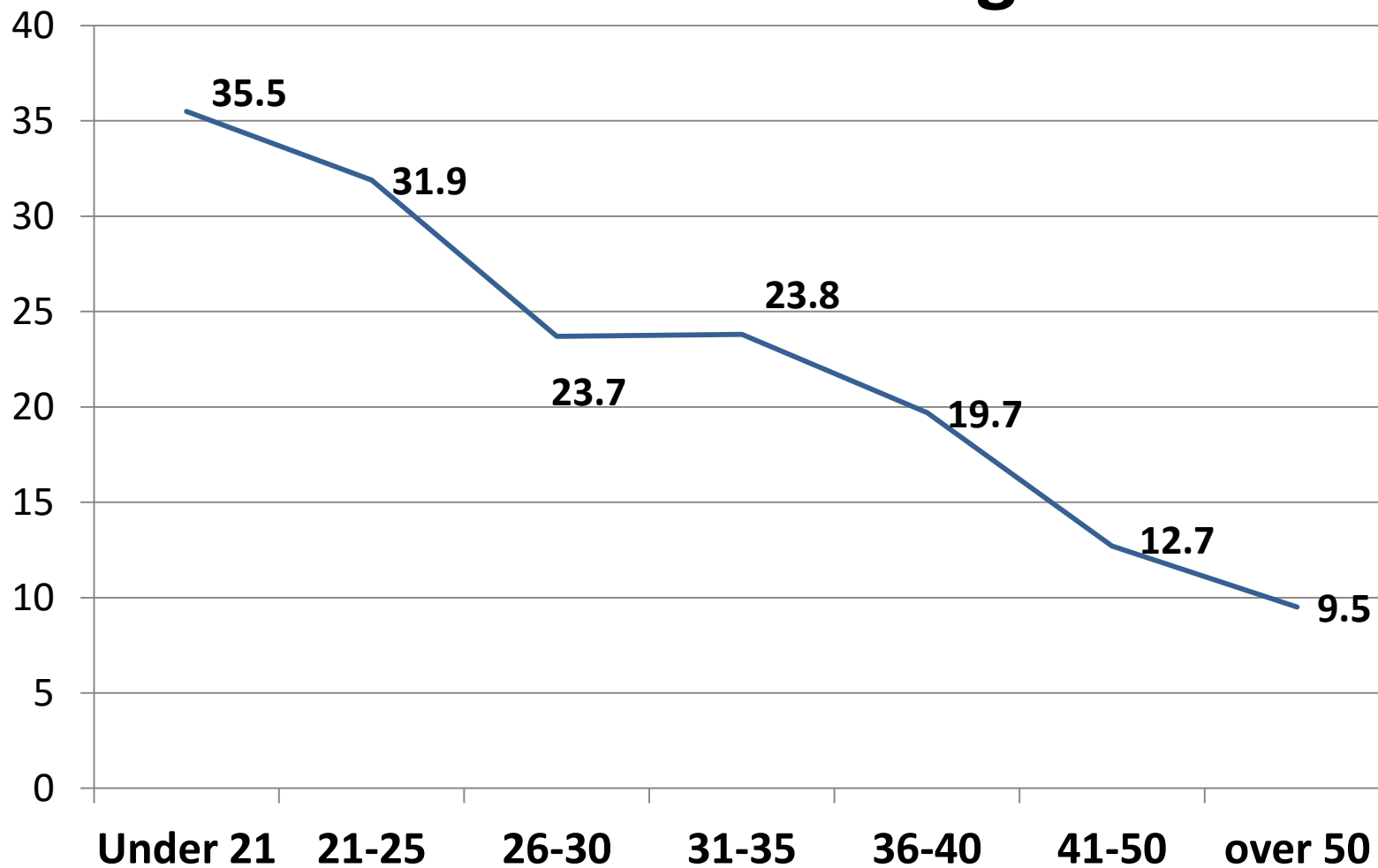
16 THE COURT: Okay. And so I'm supposed to consider
17 something that's not in the sentencing record.

18 MR. ____: No, no. I'm not asking you to do that. I
19 would just suggest to the Court that her age could be one of the
20 factors that the Court could consider in varying downward in this
21 case.

22 THE COURT: You know what? I'm going to continue this
23 sentencing. Is your client in custody?

Age and Recidivism

% Recidivating



USSC, Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines, Ex. 9 (2004)

Age-Crime Curve and Youthful Offenders

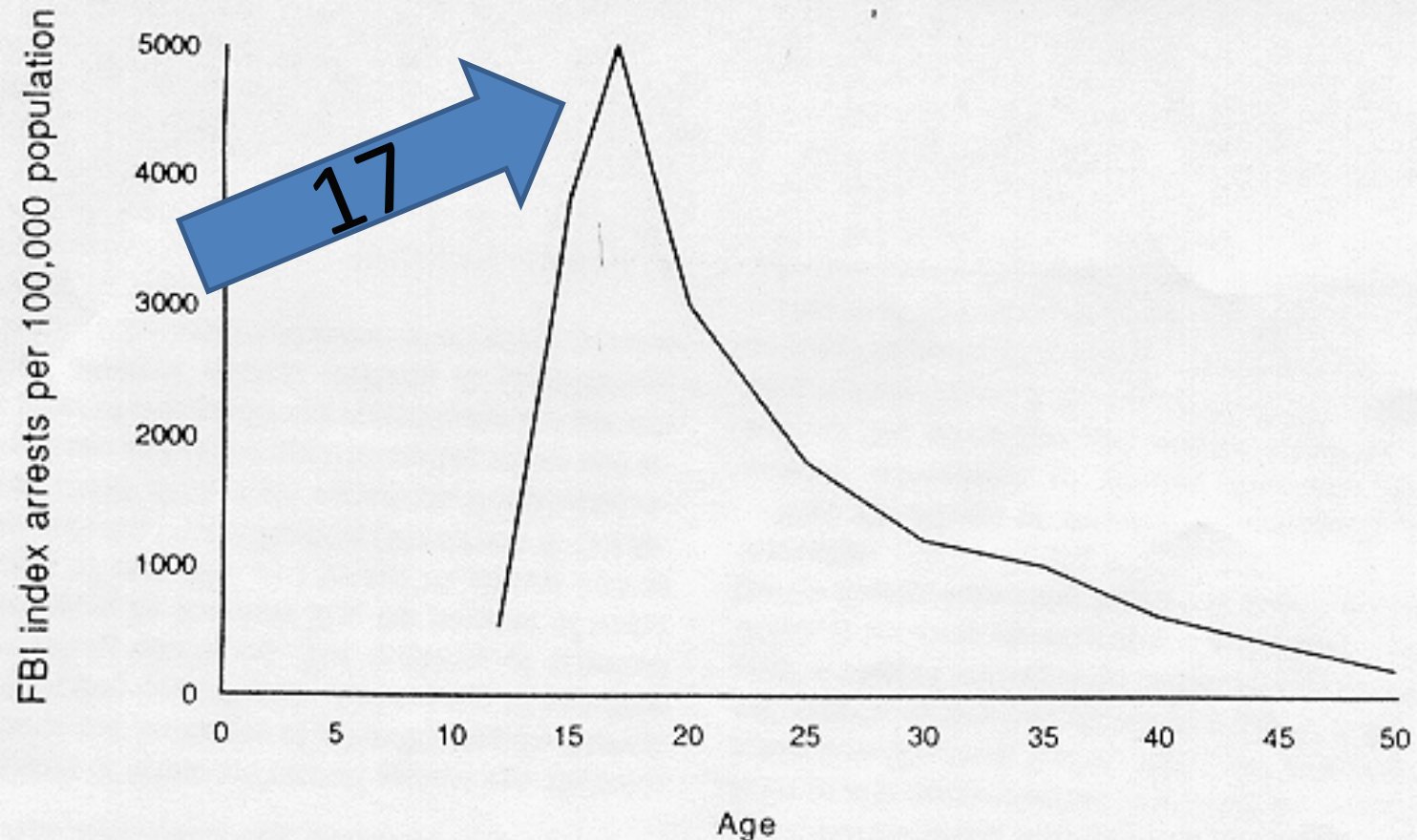
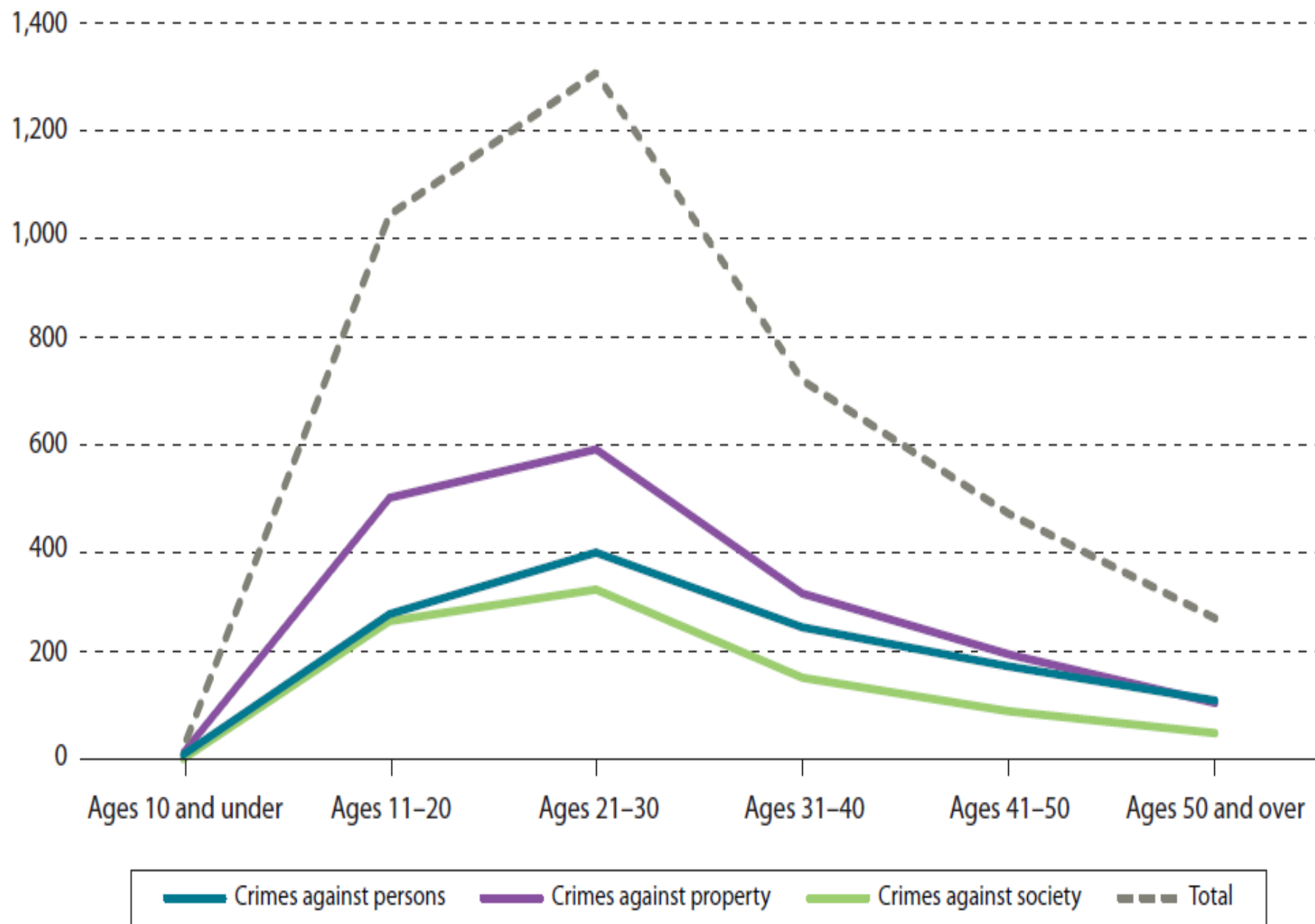


Figure 1. Age-specific arrest rates for United States Federal Bureau of Investigation's (FBI) index offenses in 1980. (Index offenses include homicide, forcible rape, robbery, aggravated assault, burglary, larceny, and auto theft. From "Criminal Career Research: Its Value for Criminology" by A. Blumstein, J. Cohen, and D. P. Farrington, 1988, *Criminology*, 26, p. 11. Copyright 1988 by the American Society of Criminology. Adapted by permission.)

Number of offenders (in thousands)



Factors Explaining Age-Crime Curve

- **49%** - reduced exposure to antisocial peers, peer pressure and gangs
- **40%** - stability in home and less victimization or less witnessing of victimization
- **25%** - social control – relationships, children, in school, under supervision
- **24%** psychosocial variables – impulse control, self-regulation

Sweeten, et.al, *Age and the Explanation of Crime Revisited*, 42 Jrnl of Youth & Adolesc. 921 (2013)

Judges think age and low risk of recidivism is mitigating

- 67% surveyed - age is ORDINARILY relevant in determining whether to depart or vary
- FY2014 – age cited as a reason to sentence below the GL range 938 times; low risk of recidivism cited 575 times



Office of the Inspector General
U.S. Department of Justice



The Impact of an Aging Inmate Population on the Federal Bureau of Prisons



**The Impact of an Aging Inmate
Population on the Federal Bureau of
Prisons**

- medical care
- lower bunks
- programs and activities
- release needs



The government, in a recent study published by the Department of Justice, acknowledges that the Bureau of Prisons (BOP) is ill equipped to care adequately for its elderly population. U.S. Dept. of Justice, THE IMPACT OF AN AGING INMATE POPULATION ON THE FEDERAL BUREAU OF PRISONS, (May 2015) (Exhibit D) (hereinafter "Report"). This Report concludes that BOP institutions lack appropriate staffing, medical resources, and infrastructure to care for the unique needs of the elderly. The Report found that the medical needs of the elderly are not timely met, and the delay in providing medical attention and access to outside specialists can be as long as 114 days (Report at 18). Even in the facilities' own medical units, there are long waiting periods, wait lists for appointments and frequent cancellations, resulting in inmates "falling through the cracks" (Report at 19). The infrastructure of BOP facilities is simply insufficient to care for the elderly's needs. There is a significant lack of lower bunks, requiring older, infirm inmates to use a ladder to reach the top or middle bunk (Report at 24). There are few handicap accessible facilities, including bathrooms. Many prisons are situated on uneven terrain and have narrow, uneven sidewalks making it unsafe for aging inmates to move around (Report at 29). BOP facilities lack activities and programs designed for an older population and its staff lacks training on issues facing the elderly (Report at 32-35).

***United States v. Bannister,*
786 F. Supp. 2d 617 (E.D.N.Y. 2011)**

**“How did these eleven come to this pass,
and what should be done with them?”**





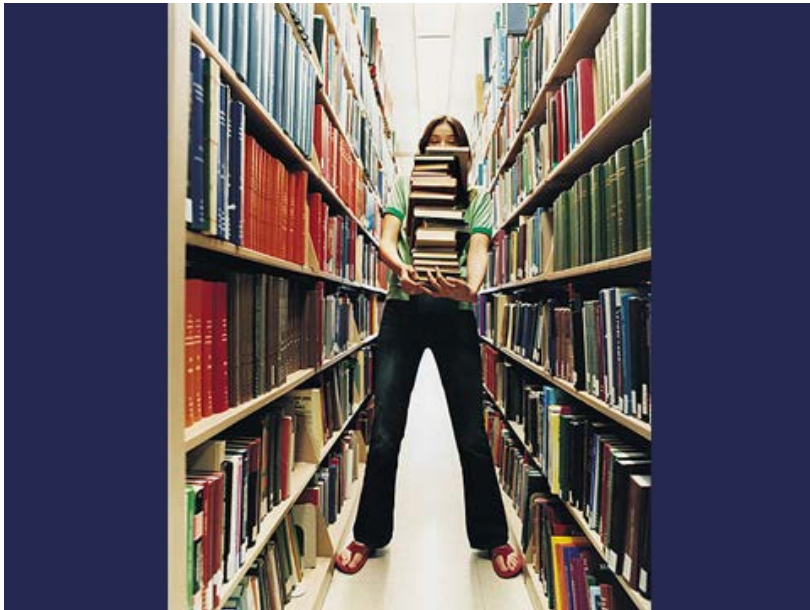
Bannister

- **Segregation**
- **Poverty**
- **Unemployment**
- **Adverse health consequences**
- **Public Housing**

Bannister



Merging Research with Statutory Purposes of Sentencing



- Retribution and just punishment
- General deterrence
- Incapacitation
- Rehabilitation

18 U.S.C. § 3553(a)

Purpose: Retribution and Just Punishment

“The Guidelines and congressionally directed ranges are significantly harsher than community sentiment recommends.”

Judge Gwin



	Avg. Sentence (Months)	Difference from Juror Recommendation
Juror Sentence in Months (n=261)	65	
Actual Sentence	125	61
Guidelines Minimum	138	75
Guidelines Maximum	174	111

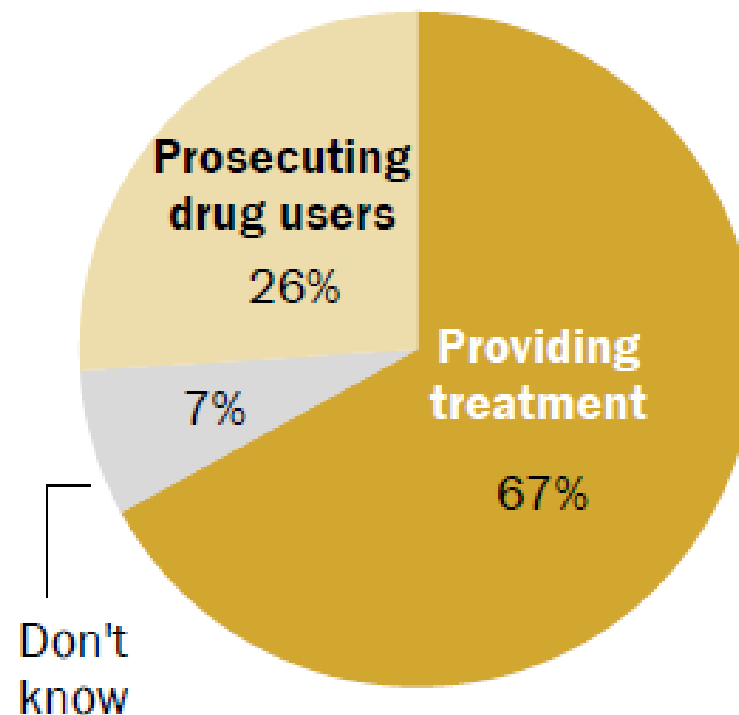
Possession, Receipt, Distribution of Child Pornography

- **Guidelines** **21-27 years**
- **USAO** **20 years**
- **Judge Gwin** **5 years**



14 months

On Drug Policy, Gov't Should Focus More On ...



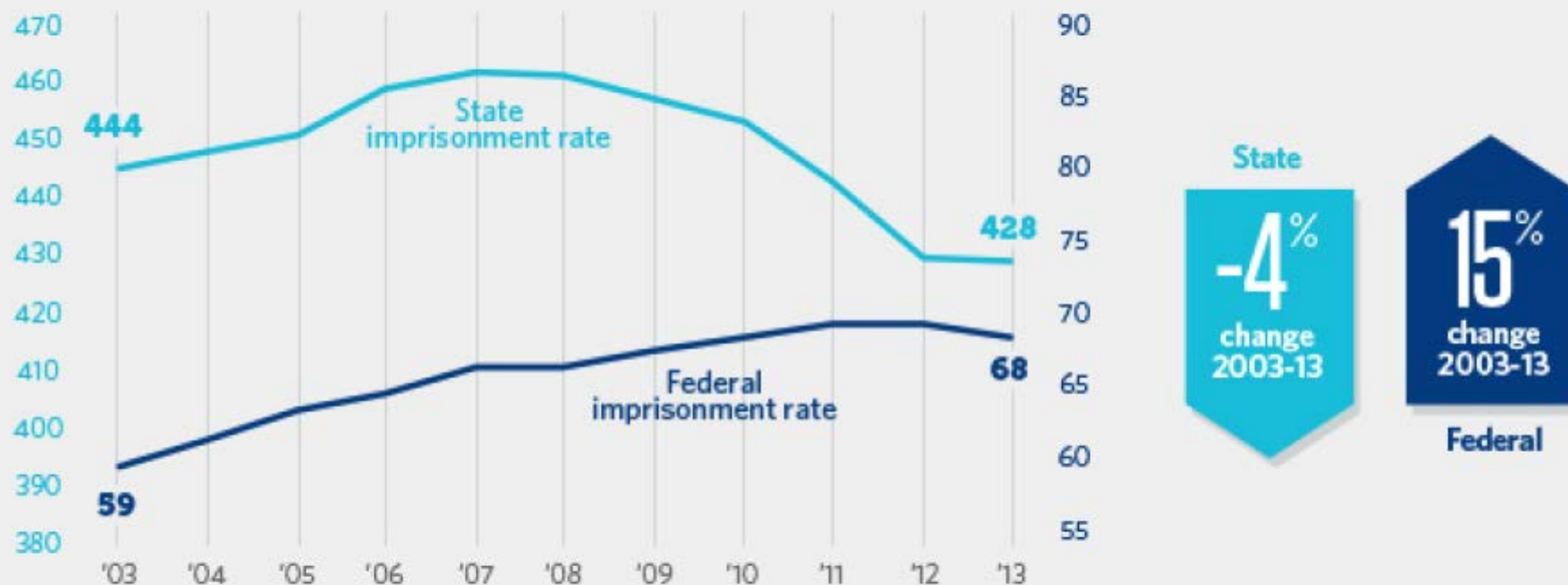
Survey conducted Feb. 14-23, 2014.

PEW RESEARCH CENTER

Figure 1

Federal and State Imprisonment Rates Diverge

Federal rate increased significantly over past decade



Note: State and federal imprisonment rates are per 100,000 U.S. residents and are calculated using end-of-year, total jurisdictional offender populations.

Source: Bureau of Justice Statistics' Corrections Statistical Analysis Tool

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Advancing Criminal Justice Reform





HUMAN
RIGHTS
WATCH

CALLOUS AND CRUEL

Use of Force against Inmates with Mental Disabilities
in US Jails and Prisons

COLLATERAL CONSEQUENCES RESOURCE CENTER

Collateral Consequences of Criminal Conviction and Restoration of Rights: News, Commentary, and Tools

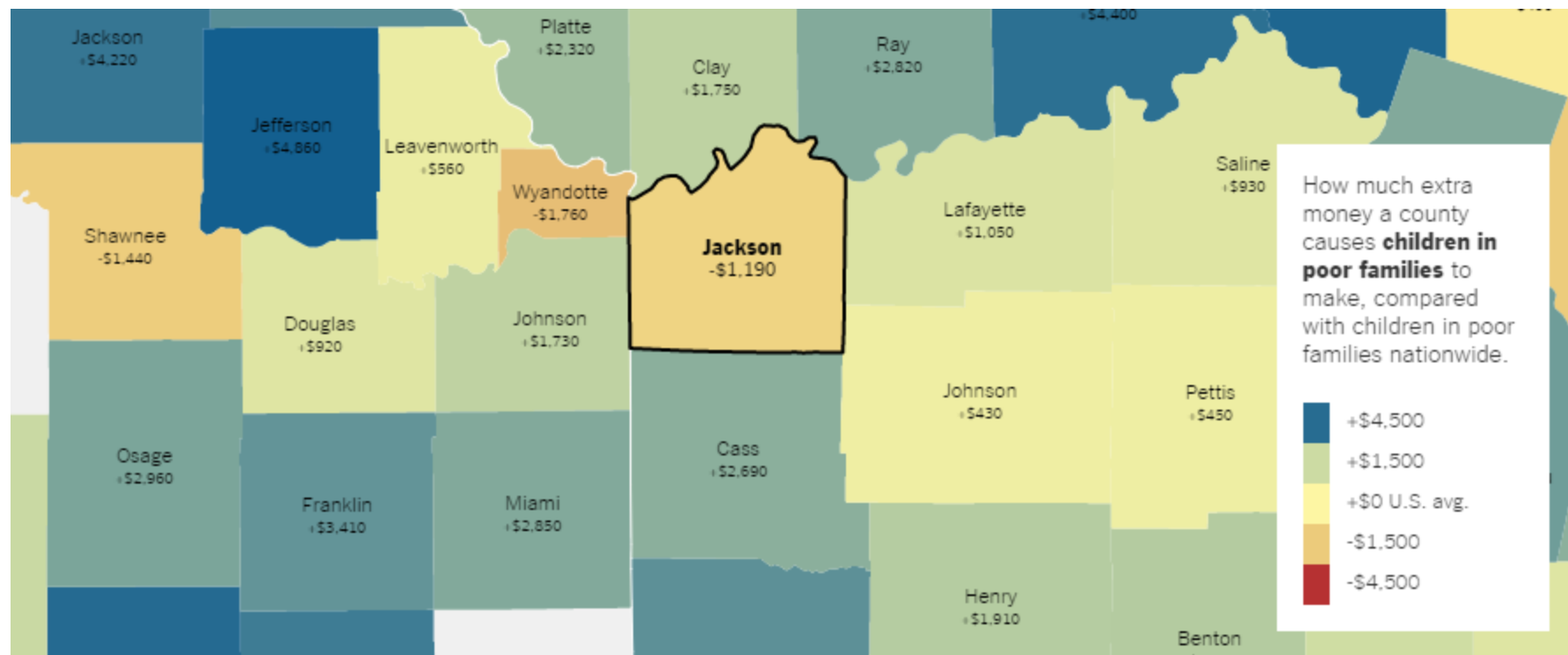
**NATIONAL INVENTORY OF THE
COLLATERAL CONSEQUENCES
OF CONVICTION**



“I’ve heard mitigating things about you.”







Jackson County is pretty bad for income mobility for children in poor families. It is better than about 21 percent of counties.





The three types of ACEs include

ABUSE



Physical



Emotional



Sexual

NEGLECT



Physical



Emotional

HOUSEHOLD DYSFUNCTION



Mental Illness



Incarcerated Relative



Mother treated violently



Substance Abuse



Divorce

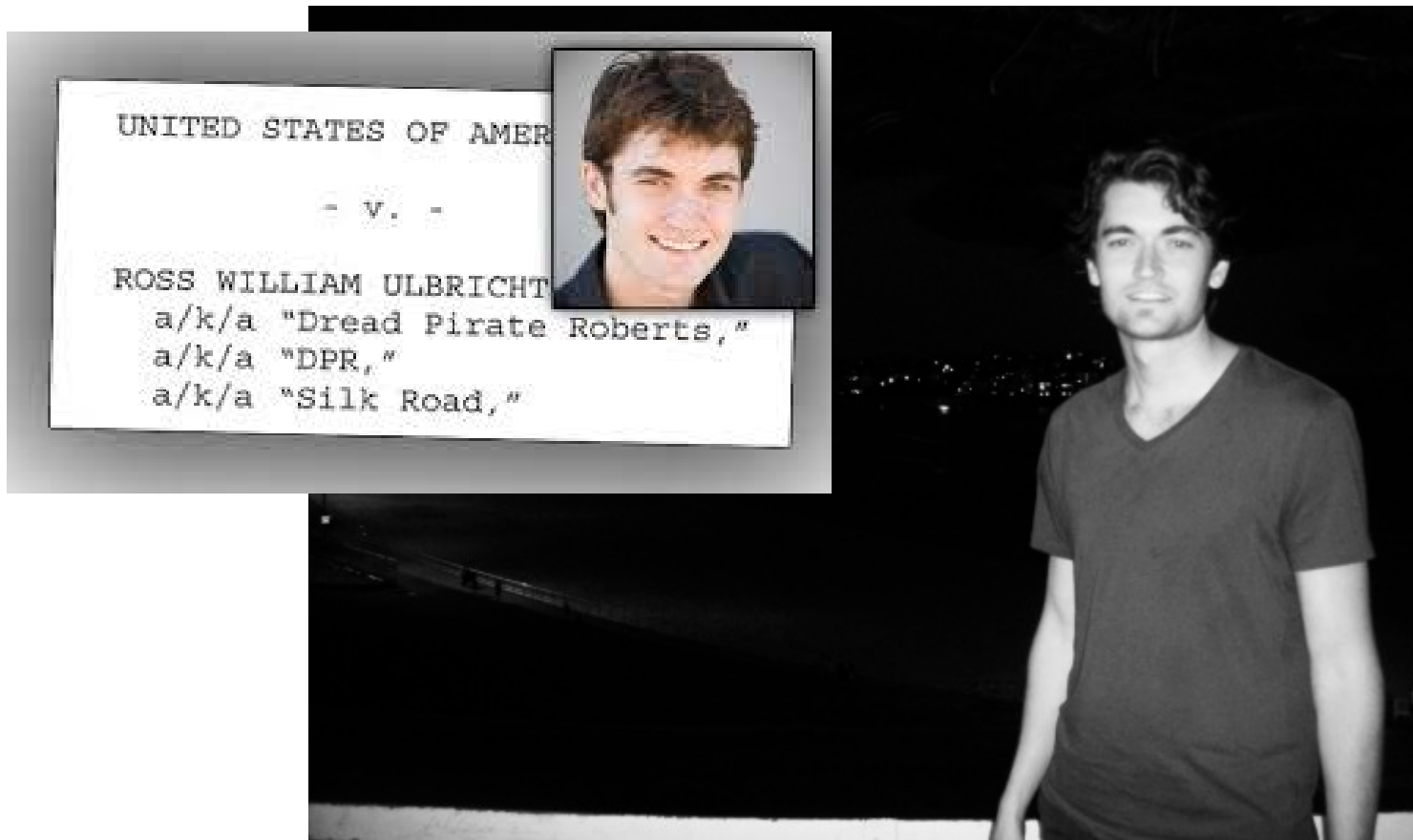


LEAD

- **7x** more likely to drop out of school
- **6x** more likely to become involved in the juvenile justice system
- Violent, aggressive behavior; speech delays; Attention Deficit Disorder; hyperactivity; diminished IQ; hearing and memory problems; reduced motor control and balance.

Purpose: General Deterrence





“For those considering stepping into your shoes... they need to understand, without equivocation that there will be severe consequences.”



NATIONAL INSTITUTE OF JUSTICE

FIVE THINGS

ABOUT DETERRENCE



Deter would-be criminals by using scientific evidence about human behavior and perceptions about the costs, risks and rewards of crime.

1. The *certainty* of being caught is a vastly more powerful deterrent than the punishment.

Research shows clearly: If criminals think there's only a slim chance they will be caught, the severity of punishment — even draconian

4. Increasing the severity of punishment does little to deter crime.

Laws and policies designed to deter crime are ineffective partly because criminals know little about the sanctions for specific crimes.

Purpose: Incapacitation



The Growth of **INCARCERATION** in the United States

Exploring Causes and Consequences

NATIONAL RESEARCH COUNCIL
OF THE NATIONAL ACADEMIES

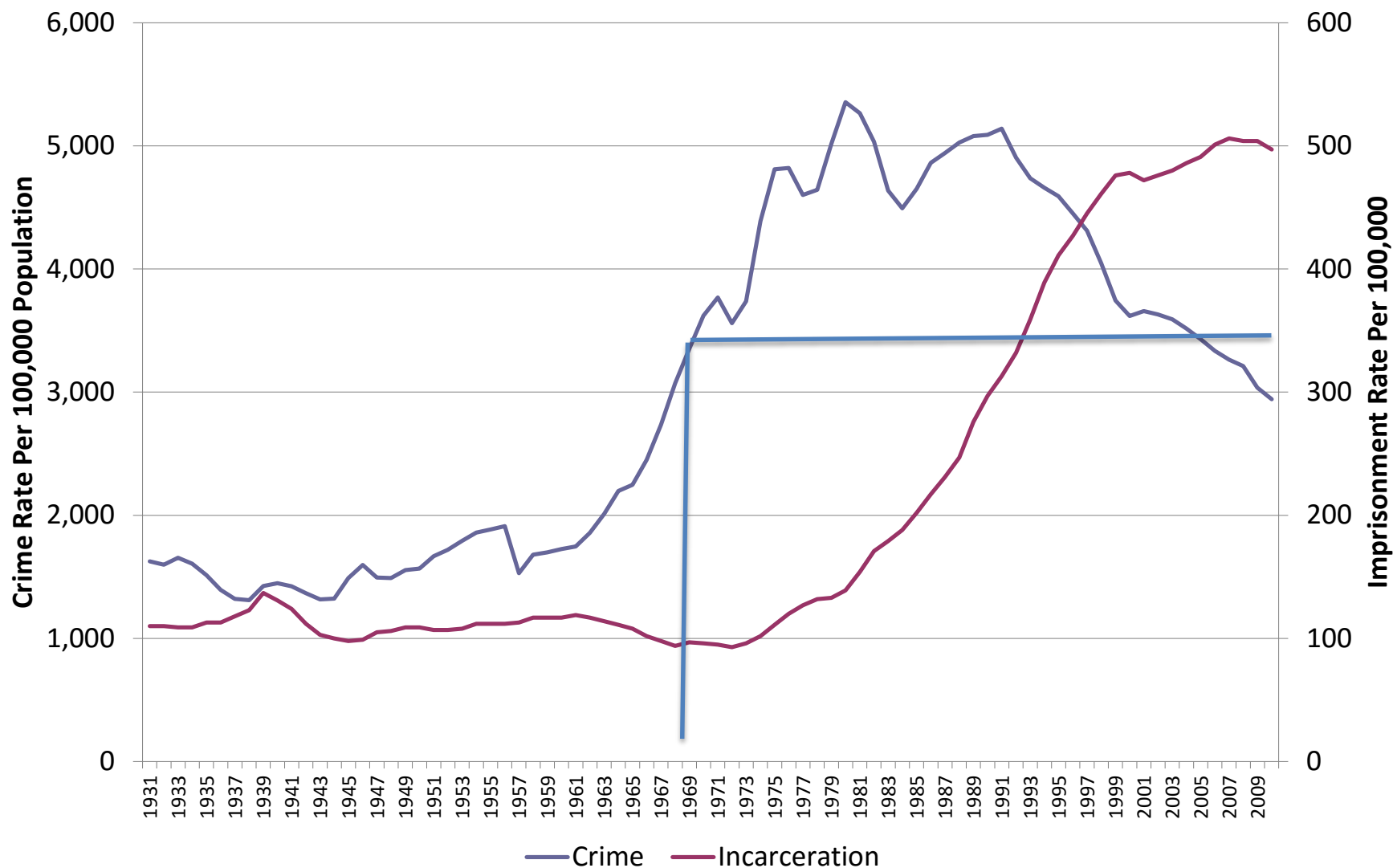
- “incapacitation strategy ...can misfire because most or all of those sent to prison are rapidly replaced.”
- Street-level drug trafficking is the paradigm case.

Conclusion

“The incremental deterrent effect of increases in lengthy prison sentences is modest at best. Because recidivism rates decline markedly with age, lengthy prison sentences, unless they typically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.”

Crime Control

Crime and Prison Incarceration Rates 1931-2010



BRENNAN
CENTER
FOR JUSTICE

WHAT CAUSED THE CRIME DECLINE?

Dr. Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling

Foreword by Dr. Joseph E. Stiglitz

Executive Summary by Inimai Chettiar

Examined Factors

- Incarceration
- Police
- Death penalty
- Right-to-carry
- Unemployment
- Income
- Inflation
- Alcohol
- Aging population
- Crack
- Abortion
- Lead gas
- CompStat
- Consumer confidence

Relevant Factors

- **Incarceration**
- **Police**
- **Death penalty**
- **Right-to-carry**
- **Unemployment**
- **Income**
- **Inflation**
- **Alcohol**
- **Aging population**
- **Crack**
- **Abortion**
- **Lead gas**
- **CompStat**
- **Consumer confidence**

Effect of Incarceration since 1990?

“Since approximately 1990, the effectiveness of increased incarceration of bringing down crime has been essentially ZERO”



Most States Cut Imprisonment and Crime

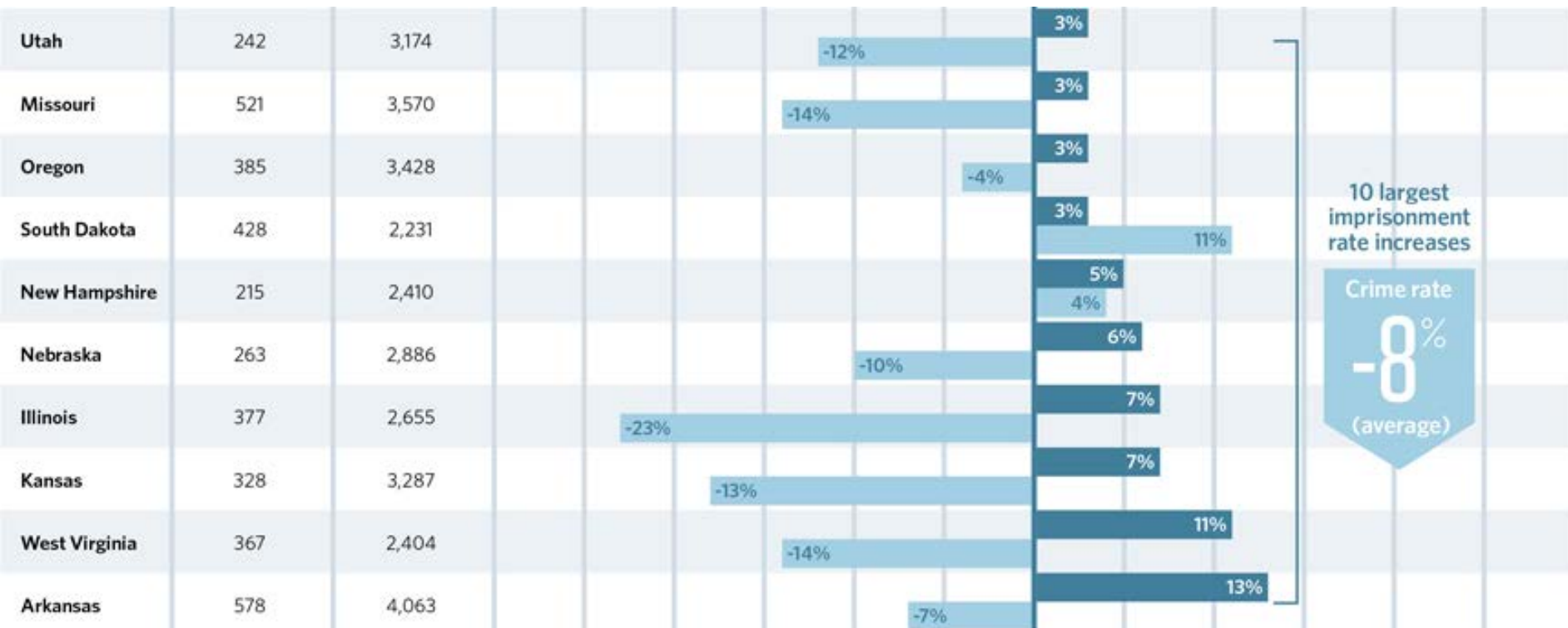
Crime Decline Is Greater in States That Cut Imprisonment

In the 33 states where imprisonment rates decreased, crime rates fell an average of 13%



In the 17 states where imprisonment rates increased, crime rates fell an average of 11%





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	All Fields ▼	
AND ▼	Author ▼	
AND ▼	Title ▼	
AND ▼	Subject ▼	
AND ▼	Journal/Serial Title ▼	

Year of Publication:

Before ▼

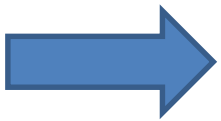
Language

- All
- Afrikaans
- Albanian
- Ancient Greek
- Arabic
- Armenian
- Assamese
- Austronesian
- Azerbaijani
- Basque

Format:

- All
- Album
- Architectural Drawing
- Archival Material
- Archival Material/Manuscripts
- Art
- Article
- Artifact
- Atlas
- Audio Recording

Wilcox, HC, Juramoto SJ, Lichtenstein P,
Langstrom N, Brent DA, Runeson B.,
Psychiatric Morbidity, Violent Crime,
and Suicide Among Children and
Adolescents Exposed to Parental Death.
J Am Acad Child Adolesc Psychiatry.
2010 May; 45 (5): 514-23.

Abstract  Article

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- Visit local university

Assessing Research

REFERENCE MANUAL ON SCIENTIFIC EVIDENCE THIRD EDITION



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Spotlight

Federal Register Notice: Submission of Amendments to Congress and Request for Public Comment

On April 30, 2014, the Commission submitted to Congress amendments to the federal sentencing guidelines. The Commission seeks public comment on the issue of whether to apply the amendment to the drug quantity table retroactively. The Commission will receive public comment on this issue through July 7, 2014. Public comment can be e-mailed to public_comment@ussc.gov.

[“Reader-Friendly” Version of Final Amendments \(Effective November 1, 2014\)](#)

[“Reader-Friendly” Version of Issue for Comment on Retroactive Application of Drug Amendment](#)

[News Release: Commission Votes to Reduce Drug Trafficking Sentences](#)

Research and Publications

NEW Quick Facts on Drug Trafficking Offenses

The newest release in this publication series presents data on all drug trafficking cases.



[Quick Facts on Powder Cocaine Trafficking Offenses](#)

[Quick Facts on Methamphetamine Trafficking Offenses](#)

[Quick Facts on Marijuana Trafficking Offenses](#)

[Quick Facts on Crack Cocaine Trafficking Offenses](#)

[Quick Facts on Heroin Trafficking Offenses](#)

[Quick Facts on Oxycodone Trafficking Offenses](#)

[April 2014 Crack Retroactivity Data Report](#)

News

NEW [Wall Street Journal Publishes Chair's Letter to the Editor \(May 7, 2014\)](#)

[Chair's Remarks on Amendment Vote \(April 10, 2014\)](#)

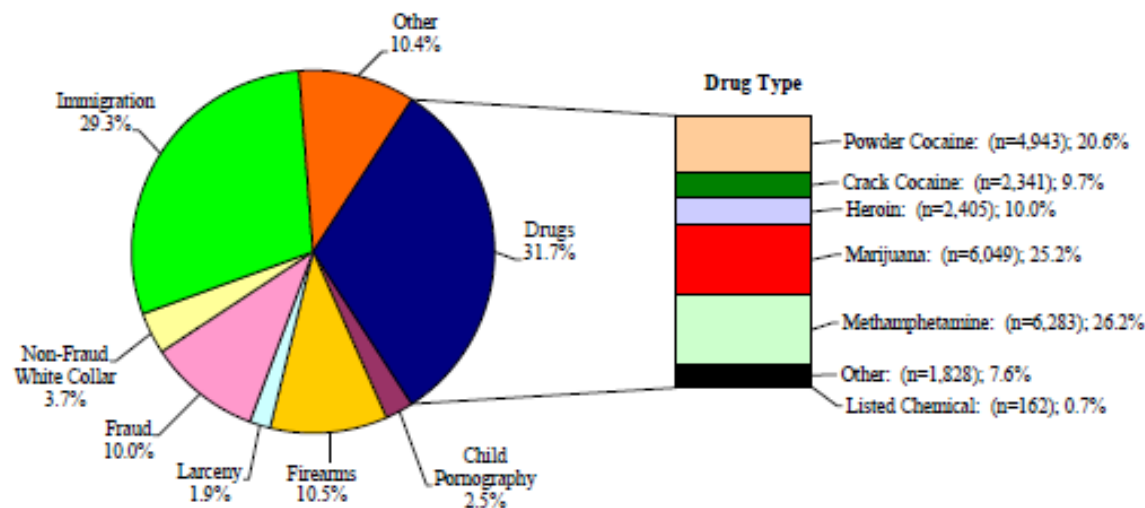
[2013 Annual Report](#)

[Chair's Speech: A Generational Shift for Drug Sentences](#)

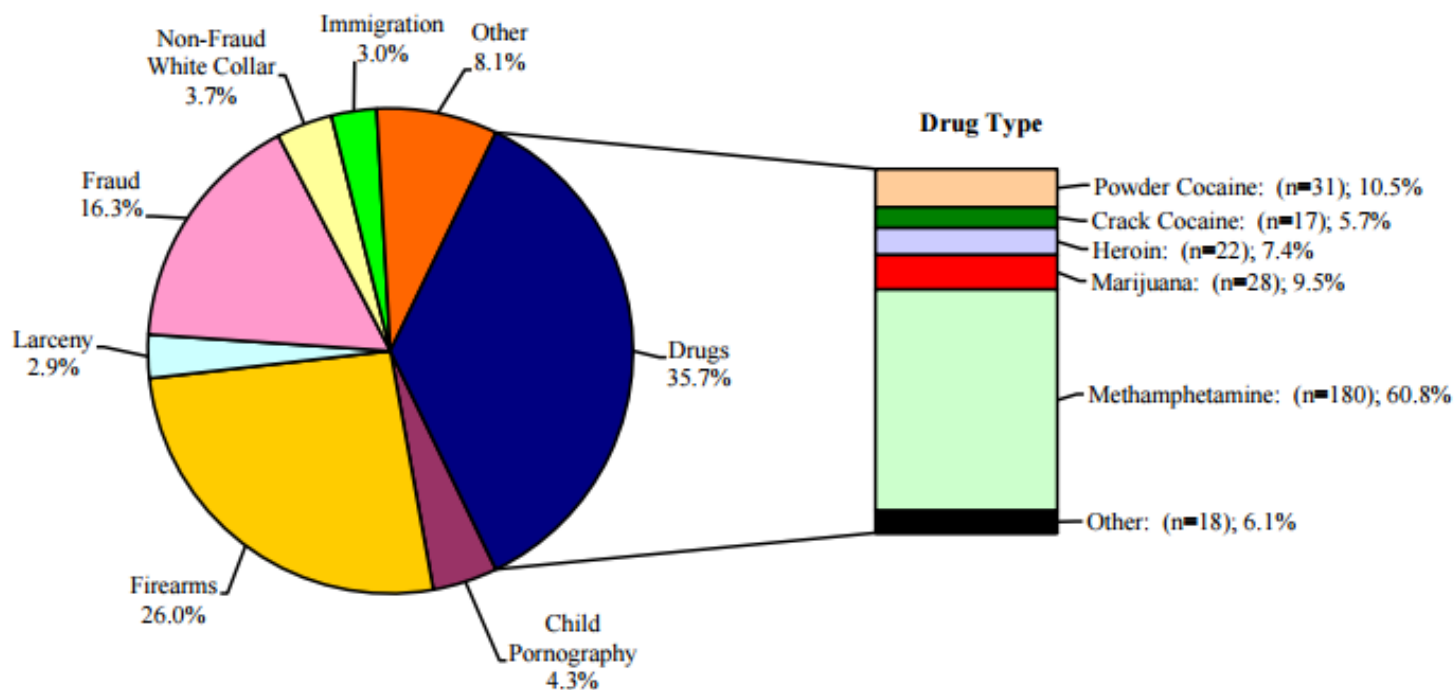
On March 26, 2014, Chair Saris spoke at Georgetown University Law Center about the Commission's recommendations to Congress on reducing mandatory minimum penalties and proposed amendments to the federal sentencing guidelines for drug offenses.

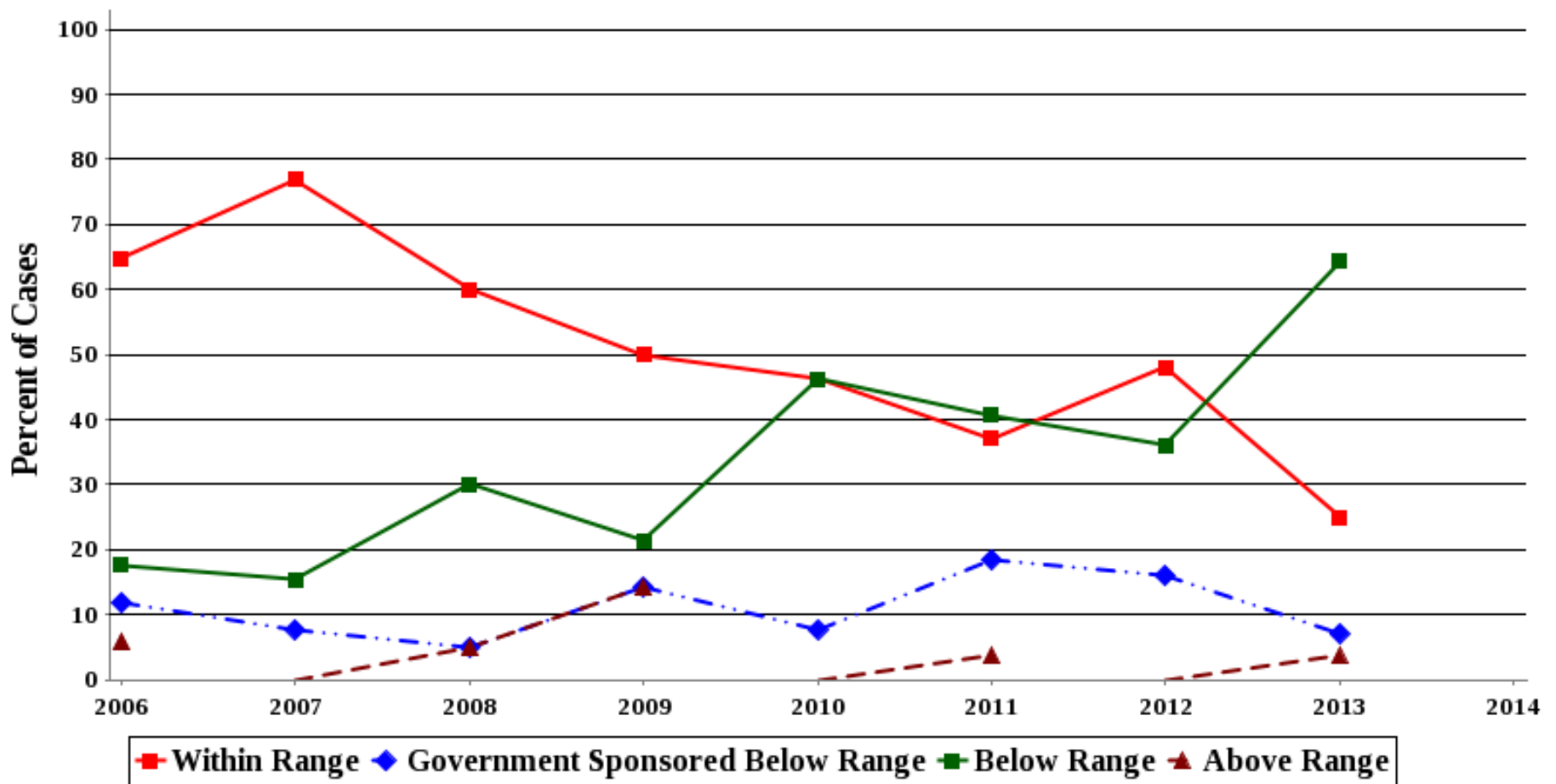
[News Advisory: Chair's Comment on Senate Judiciary Committee Action on Sentencing Reform](#)

National

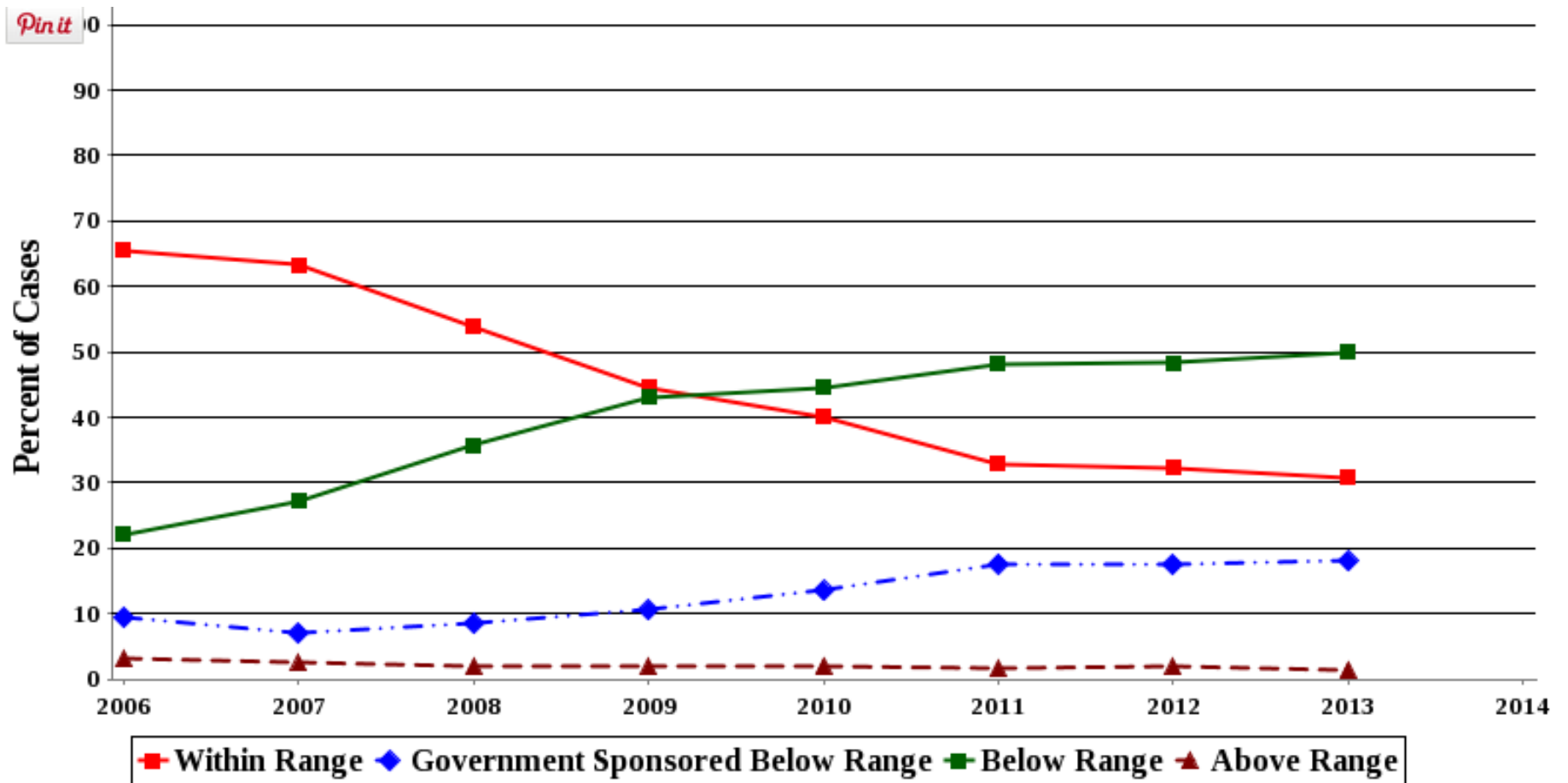


Western Missouri

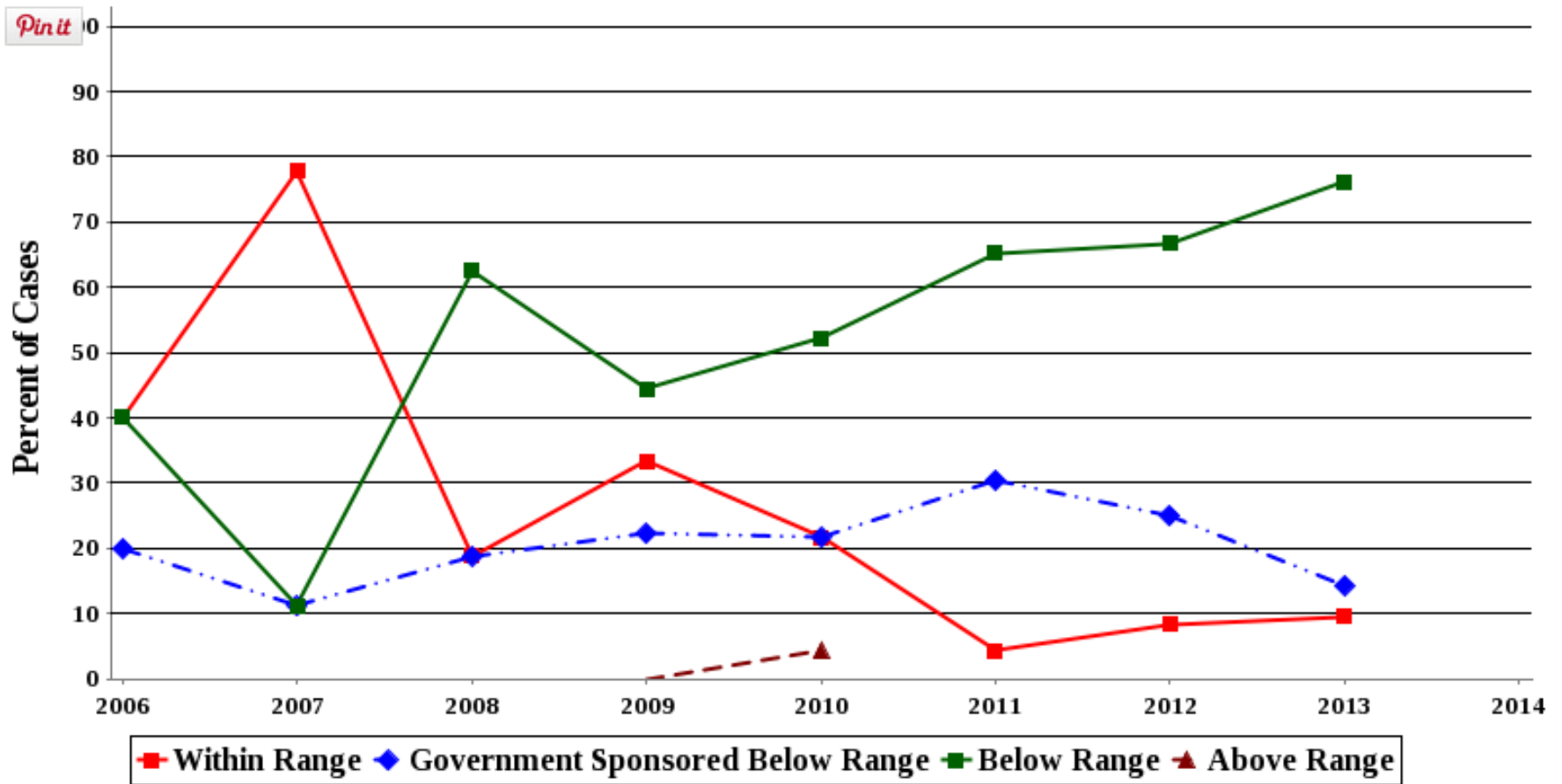




Missouri West – 2G2.2



National – 2G2.2



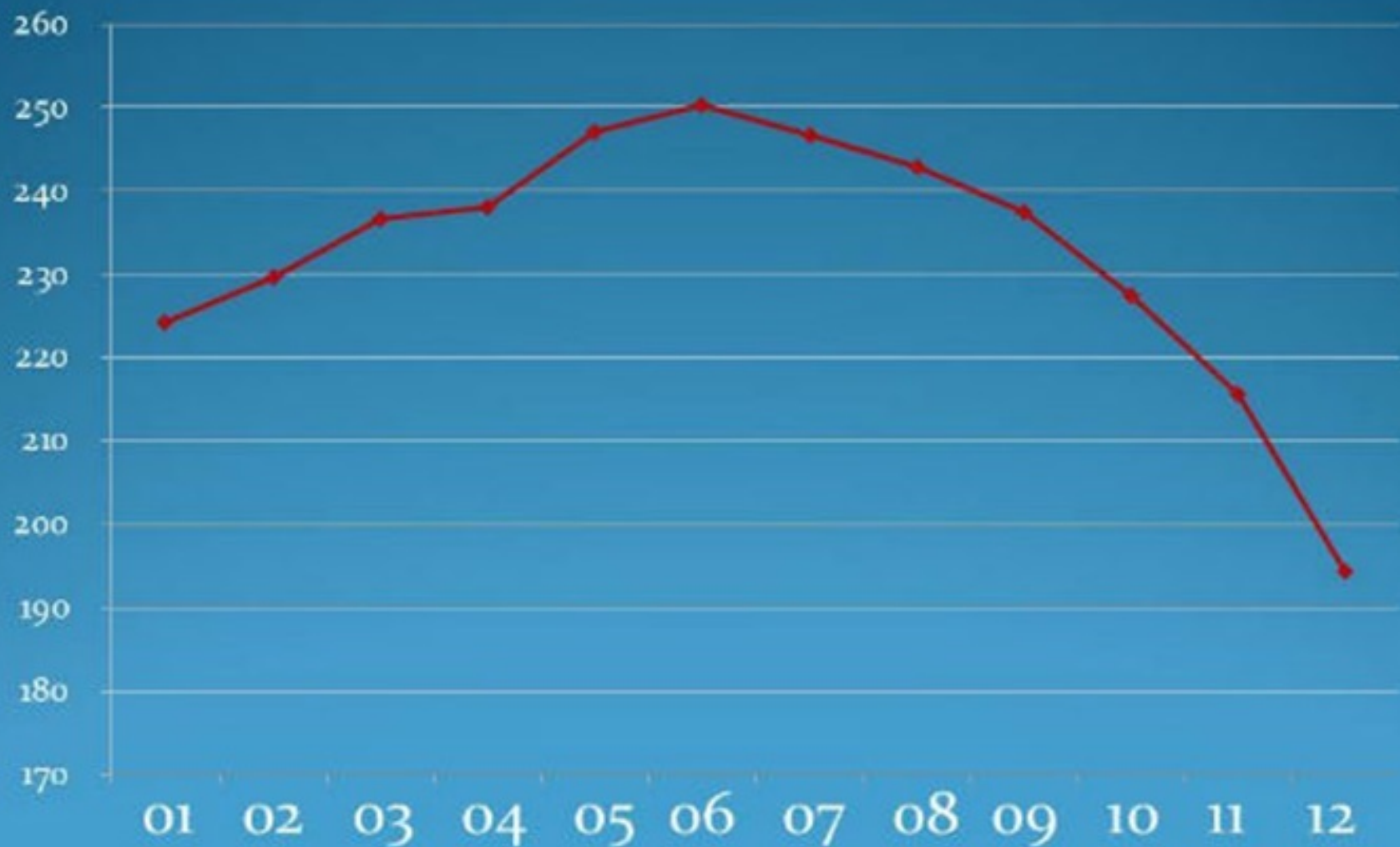
Nebraska – 2G2.2

Results of 2014 Survey of United States District Judges: Modification and Revocation of Probation and Supervised Release

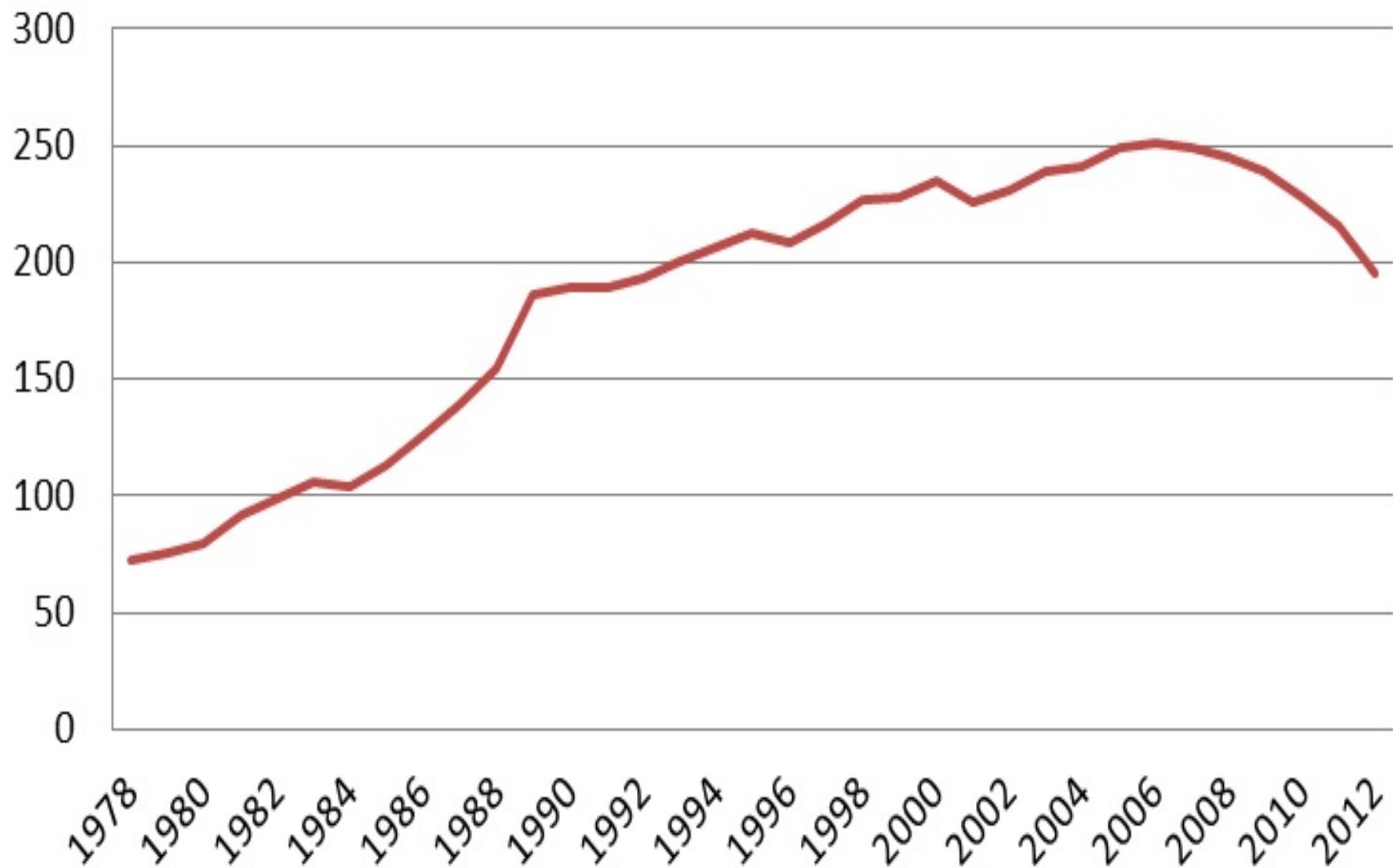




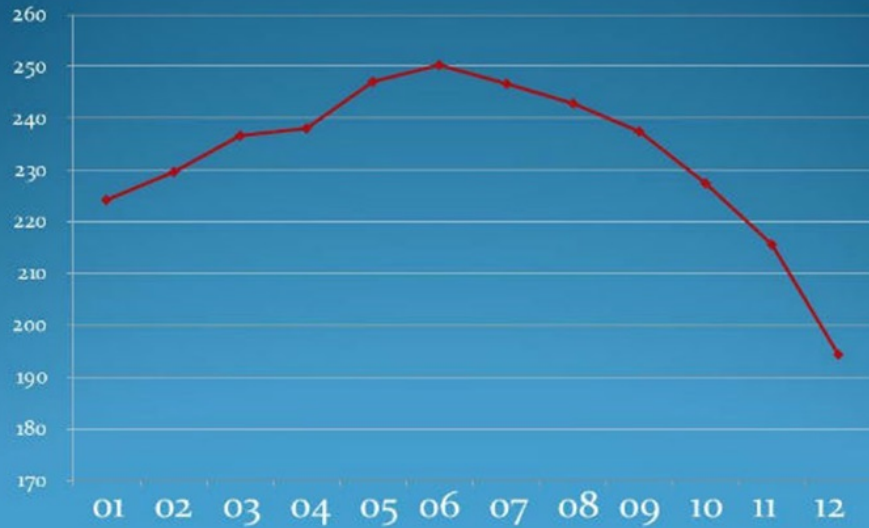
U.S. Prison Admission Rate per 100,000 from 2001-2012



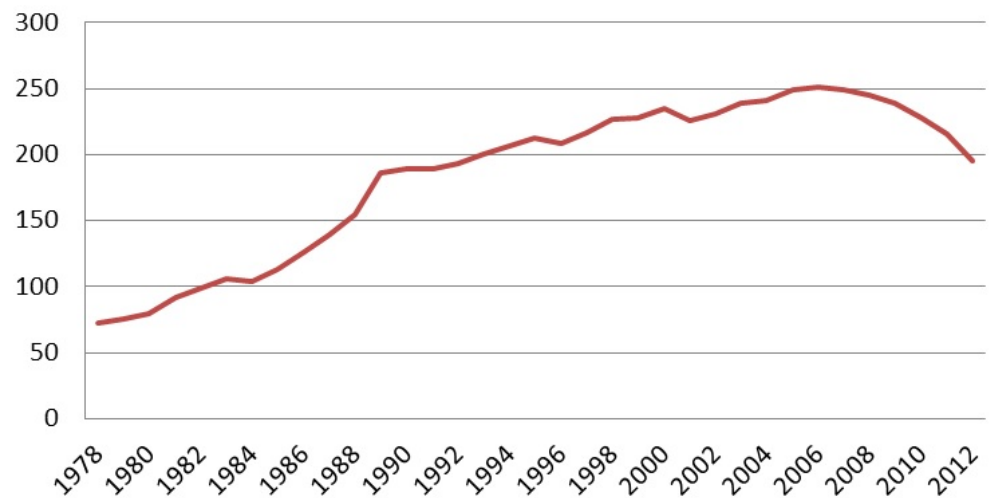
U.S. admission rate per 100,000



U.S. Prison Admission Rate per 100,000 from 2001-2012



U.S. admission rate per 100,000



U.S. incarceration rate per 100,000

