

Disparity and Disproportionality in the Criminal Justice System

WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY

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Sentencing
Guidelines
Commission

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Non-partisan research at legislative/board direction

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PURPOSE

To better understand the research available on changes in disparity and disproportionality in the United States Criminal Justice System and in the Washington State Criminal Justice System.

Three main questions:

- 1. What do we mean when we talk about disparity or disproportionality? Where are the “pressure points” in the system?**
- 2. How have policies in the United States affected disparities and disproportionality in the criminal justice system?**
- 3. What do we know about disparity and disproportionality in Washington State?**

KEY TERMS

- ✓ Discretion: freedom/leeway an individual or an organization has to make decisions
- ✓ Disproportionality: when the proportion of a group within the control of the system is greater than the proportion of such groups in the general population. This is a state of being.
- ✓ Disparity: when the ratio of one group experiencing an event is not equal to the ratio of another group who experienced the same event. This is about equality in treatment.

KEY TERMS

- ✓ Disparity: when the ratio of one group experiencing an event is not equal to the ratio of another group who experienced the same event. This is about equality in treatment or outcomes.
 - ✓ Disparate treatment
 - ✓ Disparate impact

- ✓ “Warranted” vs “Unwarranted” disparity

TYPES OF DISPARITY AND DISPROPORTIONALITY IN CJ

- ✓ Racial/ethnic
- ✓ Gender
- ✓ Geography (urban/rural; inter-court)
- ✓ Age
- ✓ Socioeconomic status
- ✓ Interactions of any of the above

UPSTREAM AND DOWNSTREAM

General population

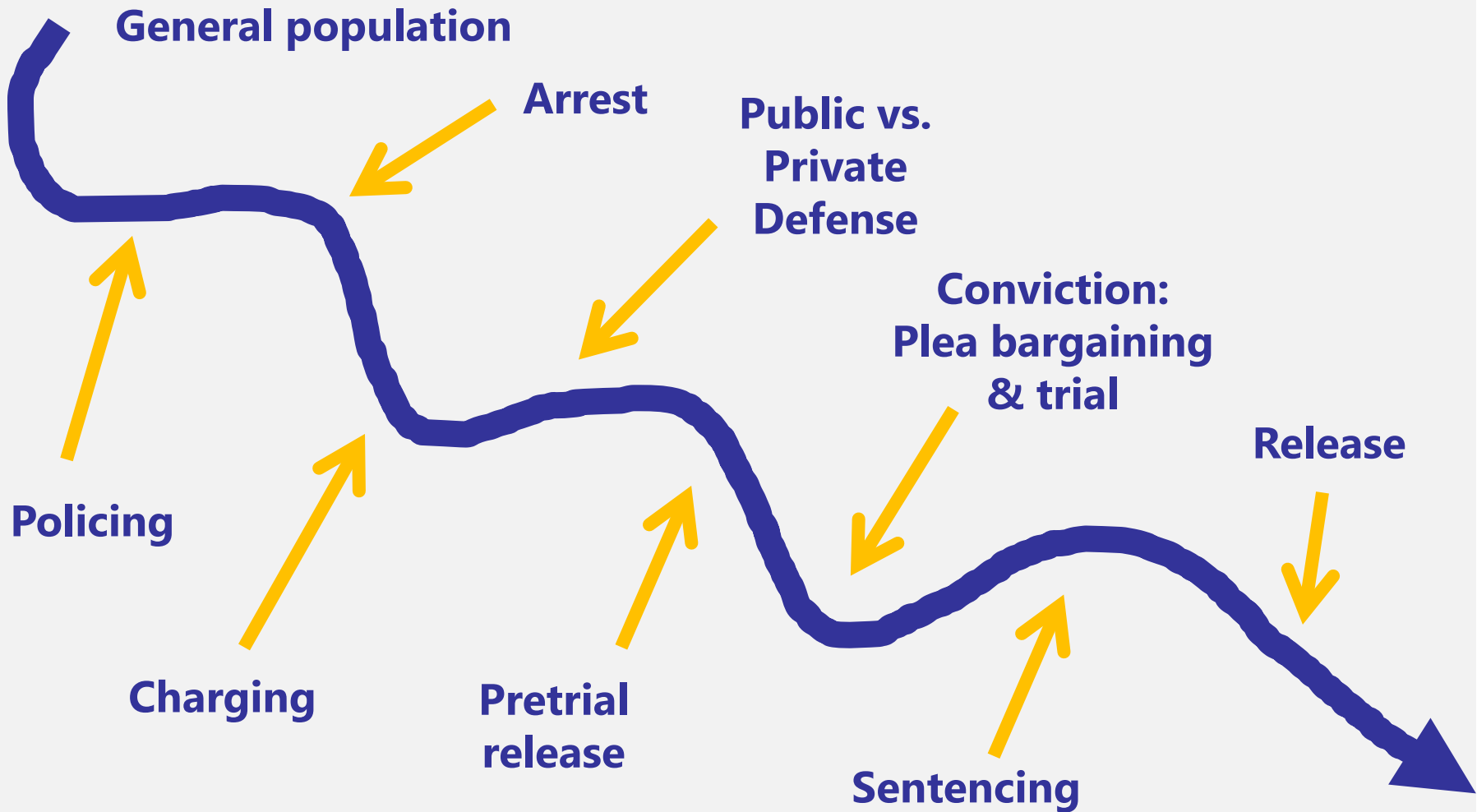


**Social structures:
Residential segregation
Education
Employment
Etc.**

**“Upstream Disparity
and Disproportionality**

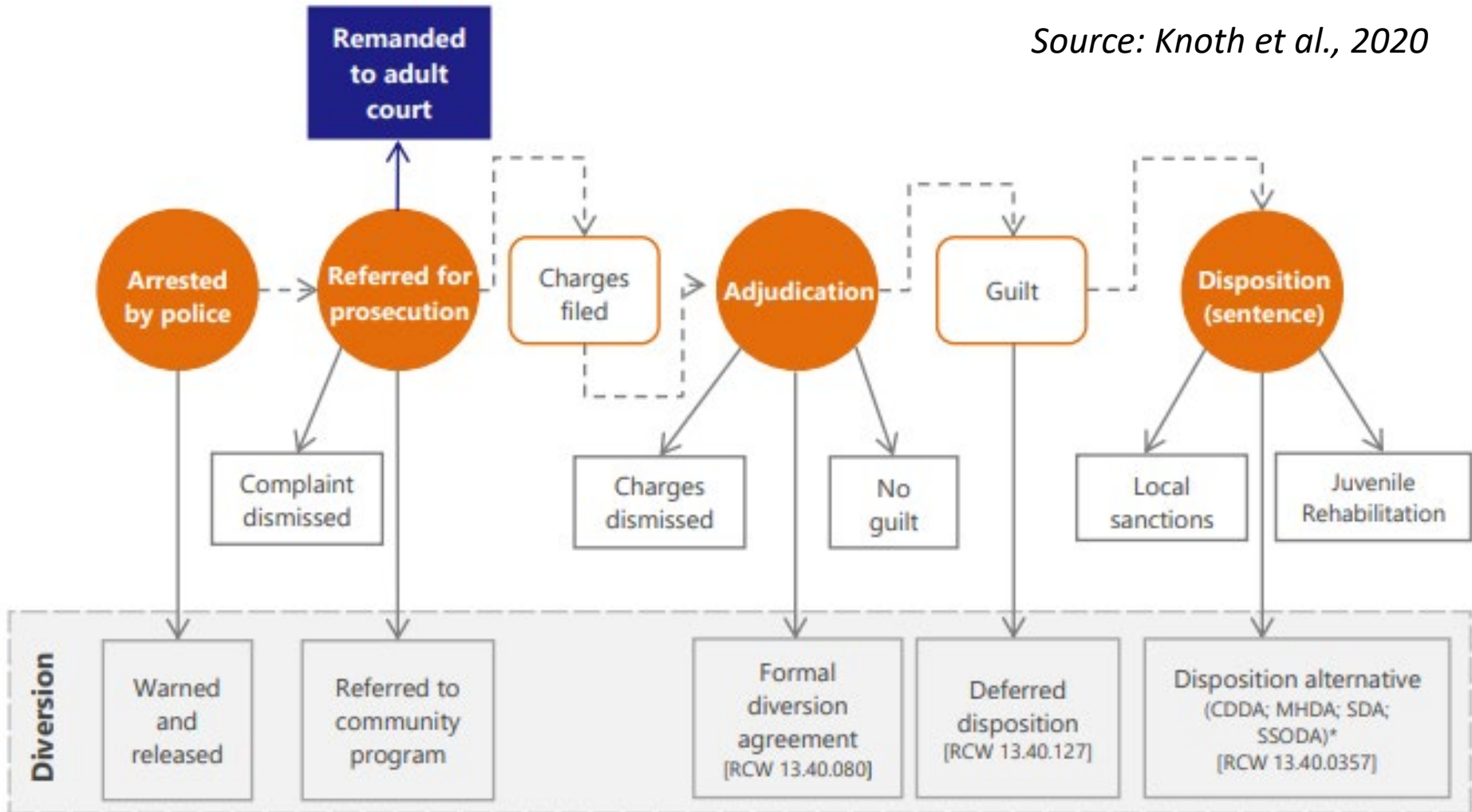


UPSTREAM AND DOWNSTREAM



A SYSTEMS APPROACH

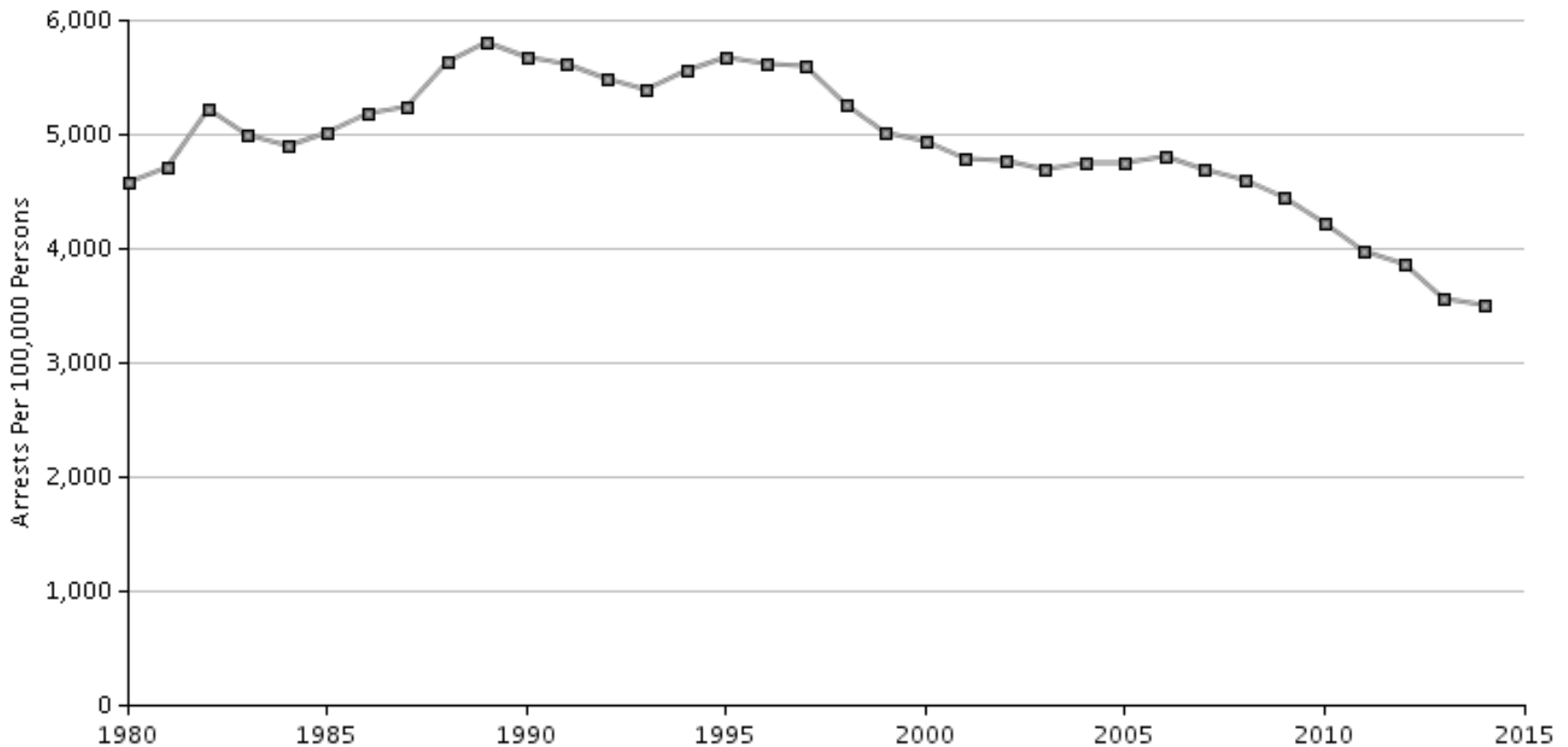
Source: Knoth et al., 2020



US ARRESTS OVER TIME

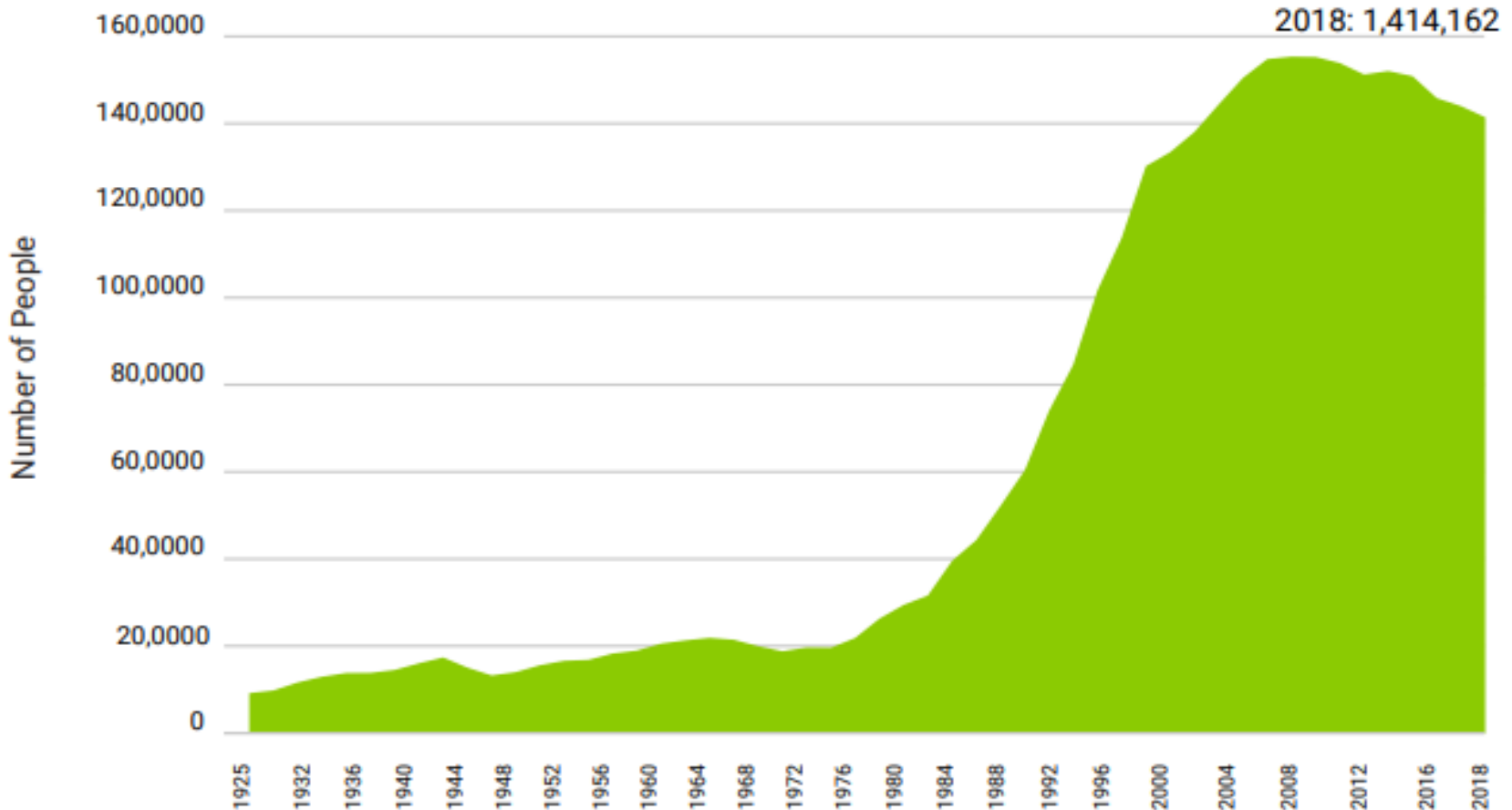
U.S. Arrest Estimates

Arrest Rates of All Persons for All Offenses



US INCARCERATION OVER TIME

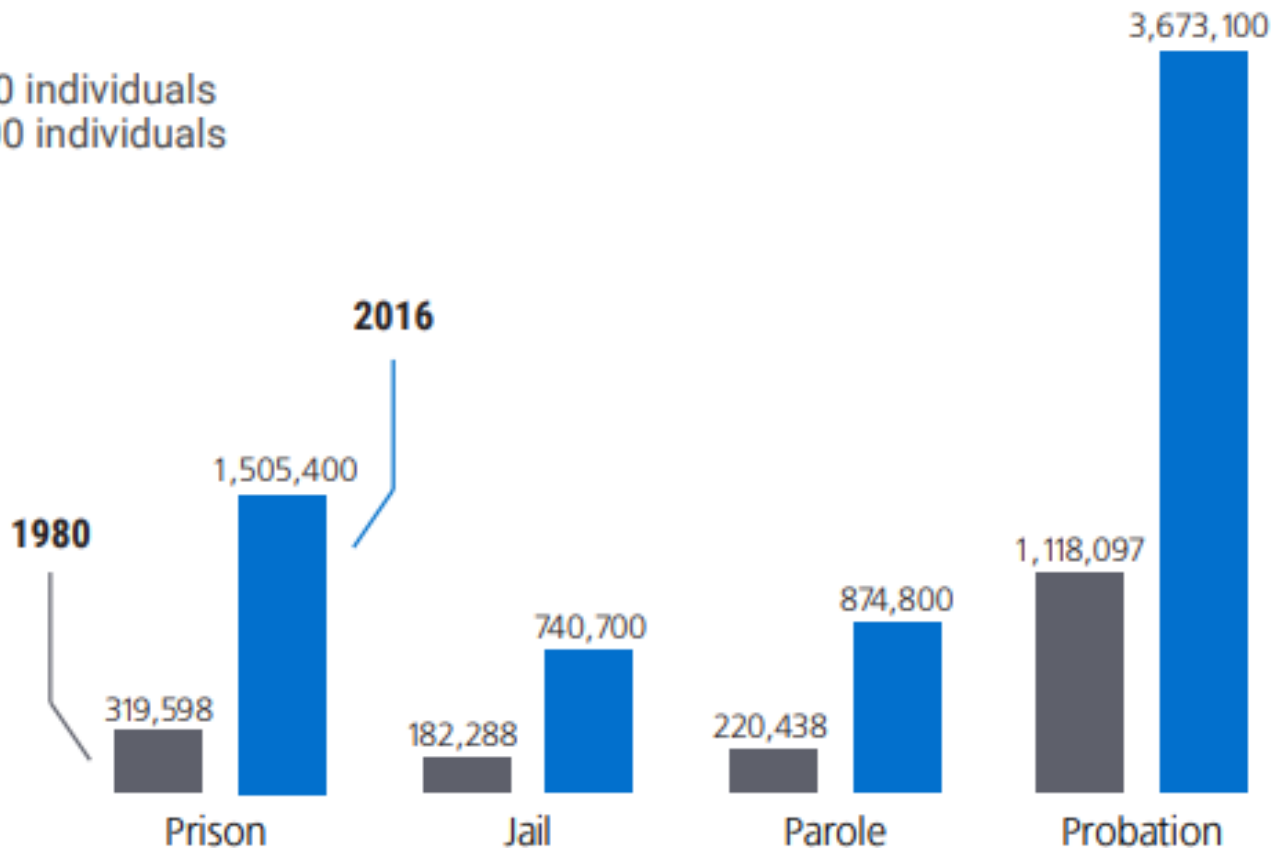
U.S. State and Federal Prison Population, 1925-2018



US CJ SUPERVISION OVER TIME

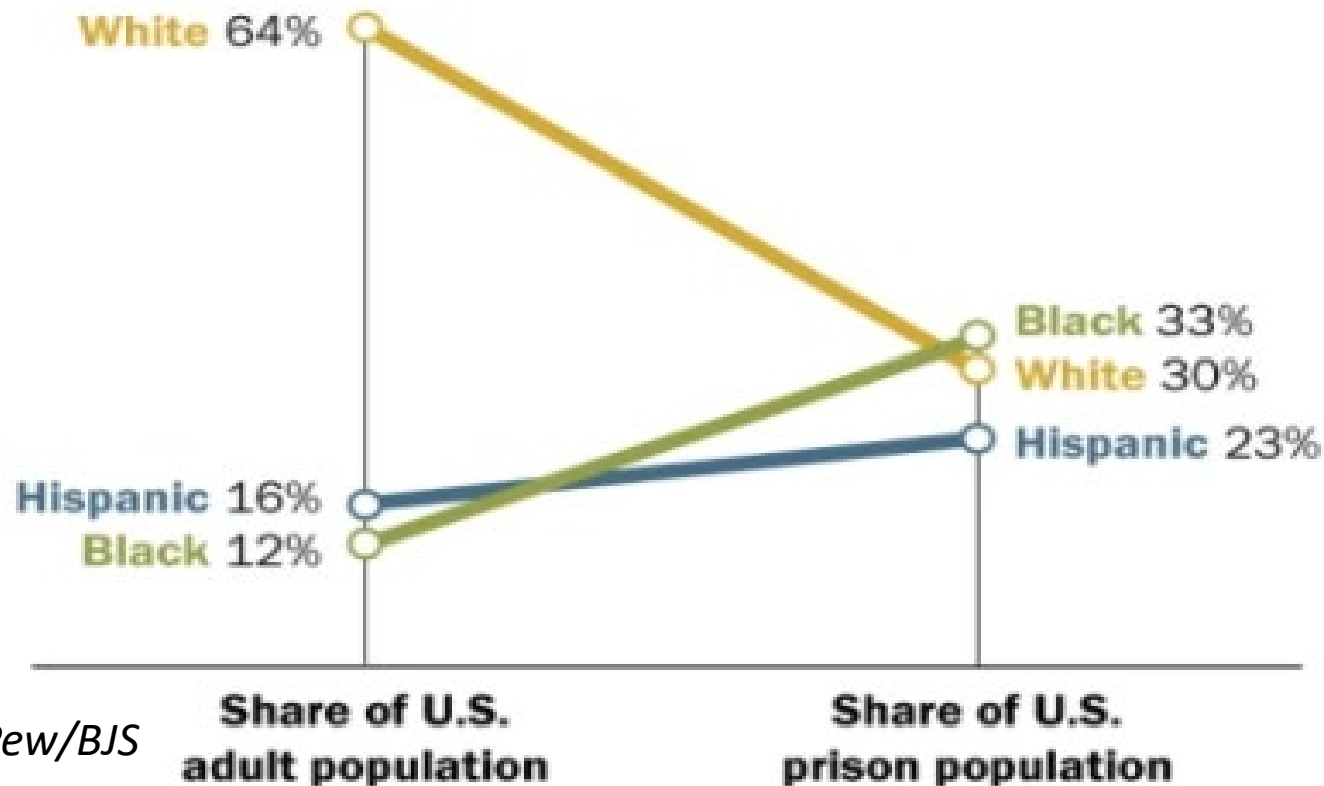
Population Under Control of the U.S. Corrections System, 1980 and 2016

1980: 1,842,100 individuals
2016: 6,613,500 individuals



US RACIAL DISPROPORTIONALITY IN INCARCERATION

U.S. adult population and U.S. prison population by race and Hispanic origin, 2017



Source: Pew/BJS

UNITED STATES TOUGH ON CRIME MOVEMENT

Decades of Change

1970s *“War on Drugs”*

- Nixon Passage of the Controlled Substances Act; Declaration of drug abuse as “public enemy number one.”
- Increased funding for drug-control agencies and law enforcement. Changes in policing, particularly for drug crimes.
- Passage of mandatory incarceration for some drug crimes.
- Promotion of drug-free school zones.
- Martinson publication – “nothing works” in rehabilitation.

1980s

1990s

UNITED STATES TOUGH ON CRIME MOVEMENT

Decades of Change

2000s

Focus on What Works

- Second Chance Act – expanded emphasis on job training and placement, housing assistance, and mentoring.
- Nationwide investments in evidence-based CJ programs
- Supreme Court Decisions challenging mandatory sentencing guidelines. Federal system (and many states) move to advisory guidelines.
- Use of risk assessments in policing, courts, and corrections

2010s

EXPLAINING DISPARITY

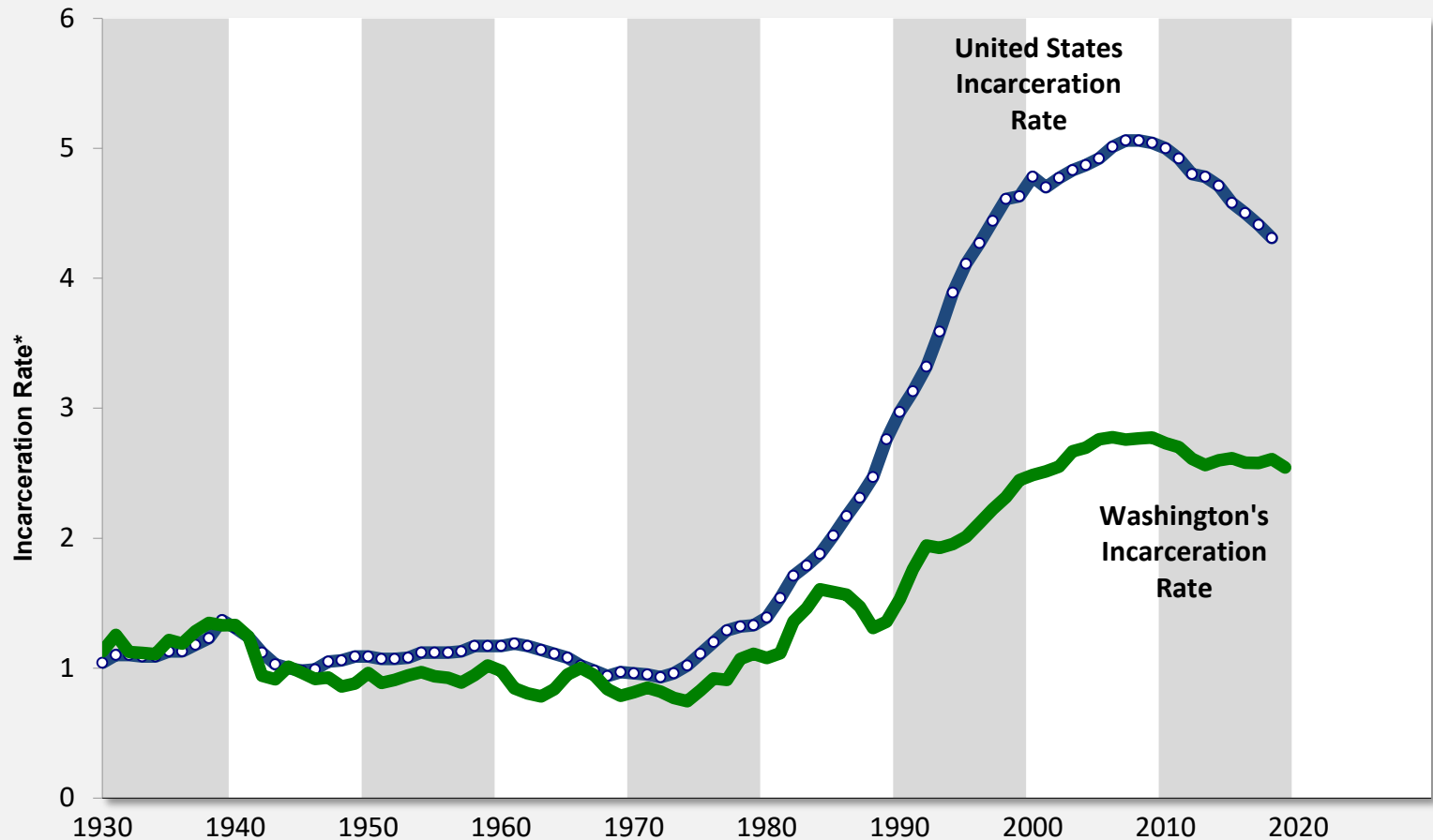
Potential causes

Differences in offending behaviors

- If the rate of offending is higher for one subgroup than another, then disparate impacts may be expected.
- Research has dispelled some of these theories using self-report offending data.
- Other research finds that, after accounting for differences in arrest (as a measure of offending), there is still unexplained disparity in final sentencing outcomes.

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The Adult Prison Incarceration Rate in Washington and the United States

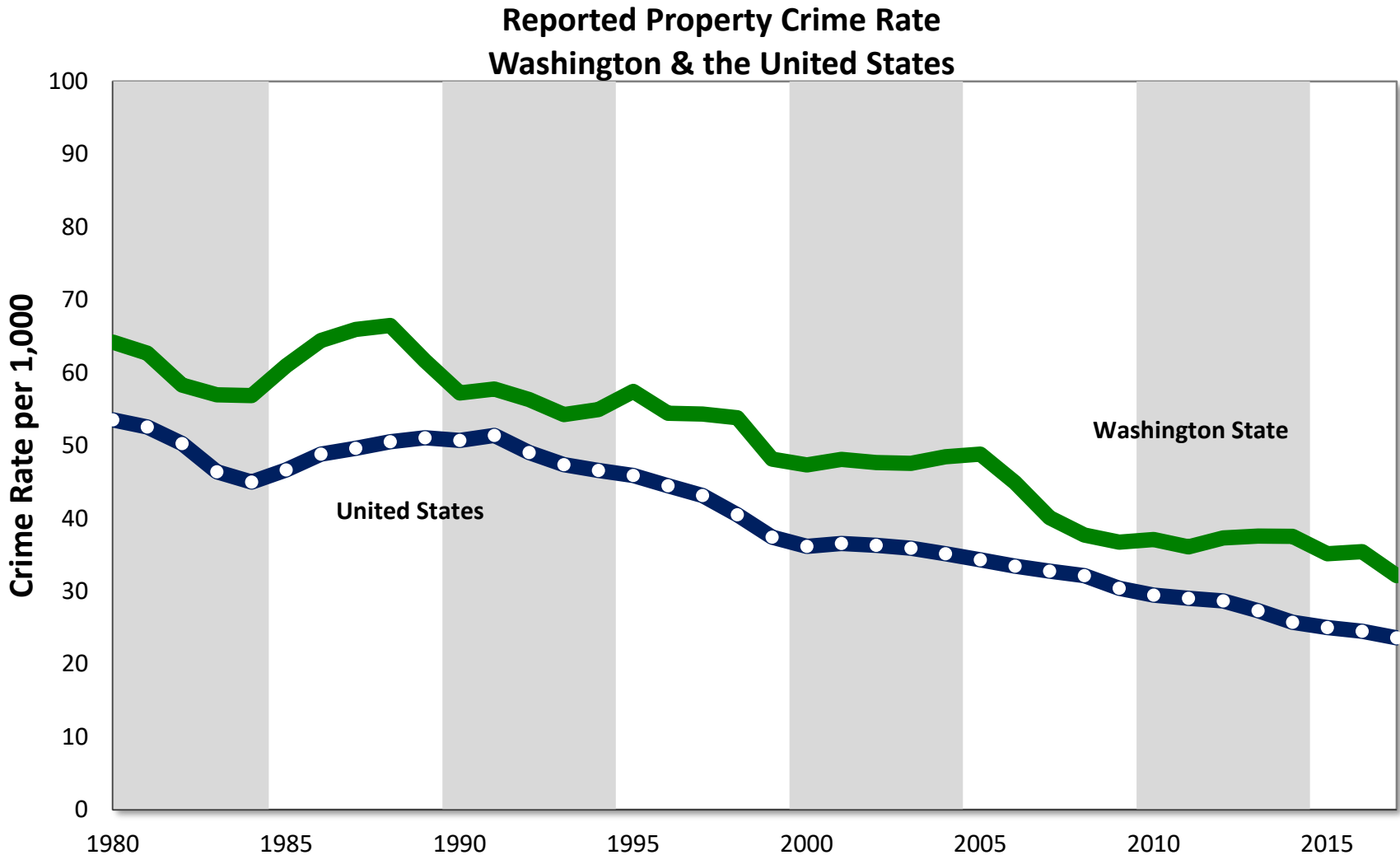


*The incarceration rate is defined as the number of inmates in State or Federal prisons per 1,000 resident population in Washington or the United States.

Washington State Institute for Public Policy, August 2020

Source: WA Caseload Forecast Council and Bureau of Justice Statistics

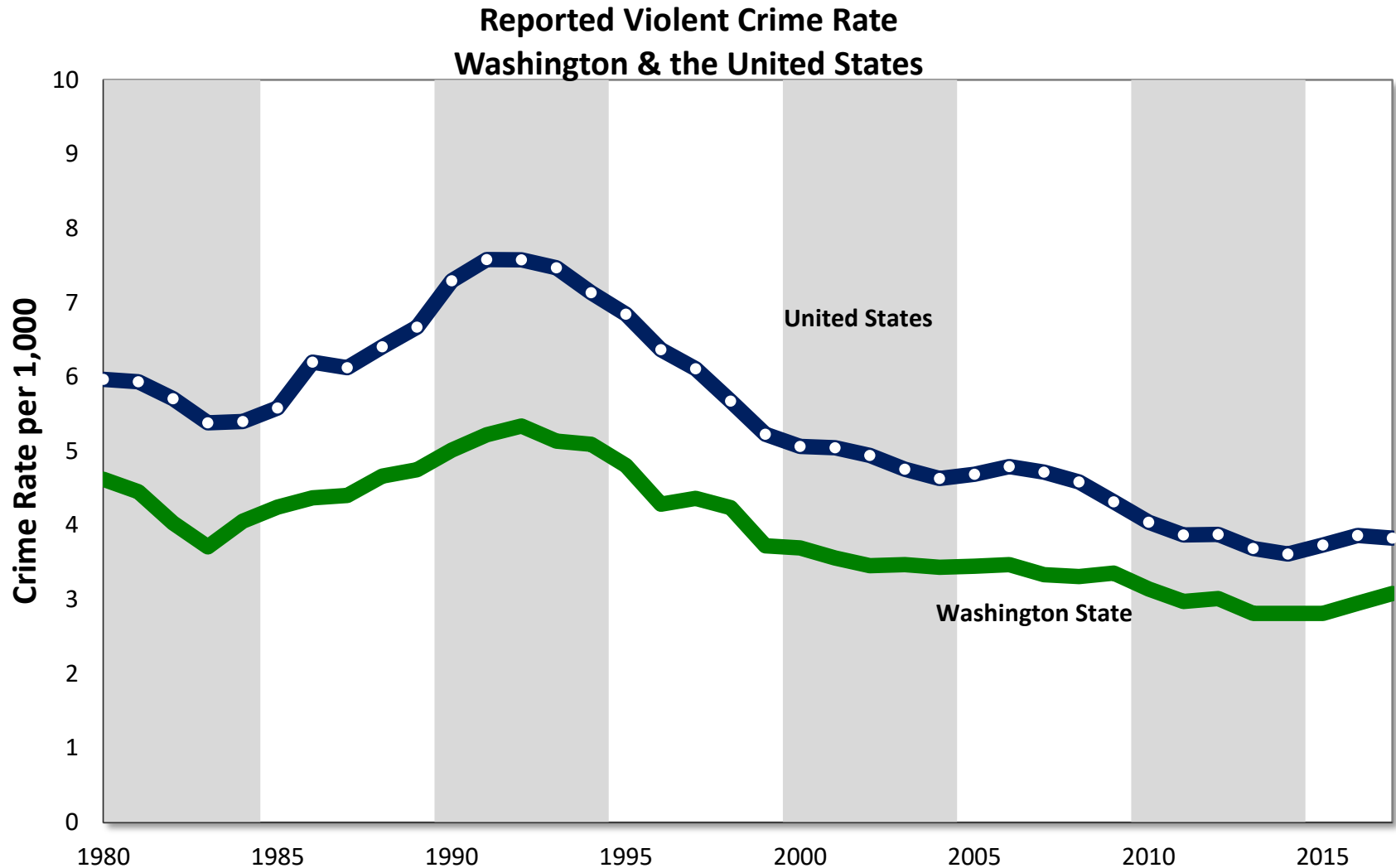
WASHINGTON STATE



Washington State Institute for Public Policy, Dec. 2018

Source: Uniform Crime Reports

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Washington State Institute for Public Policy, Dec. 2018

Source: Uniform Crime Reports

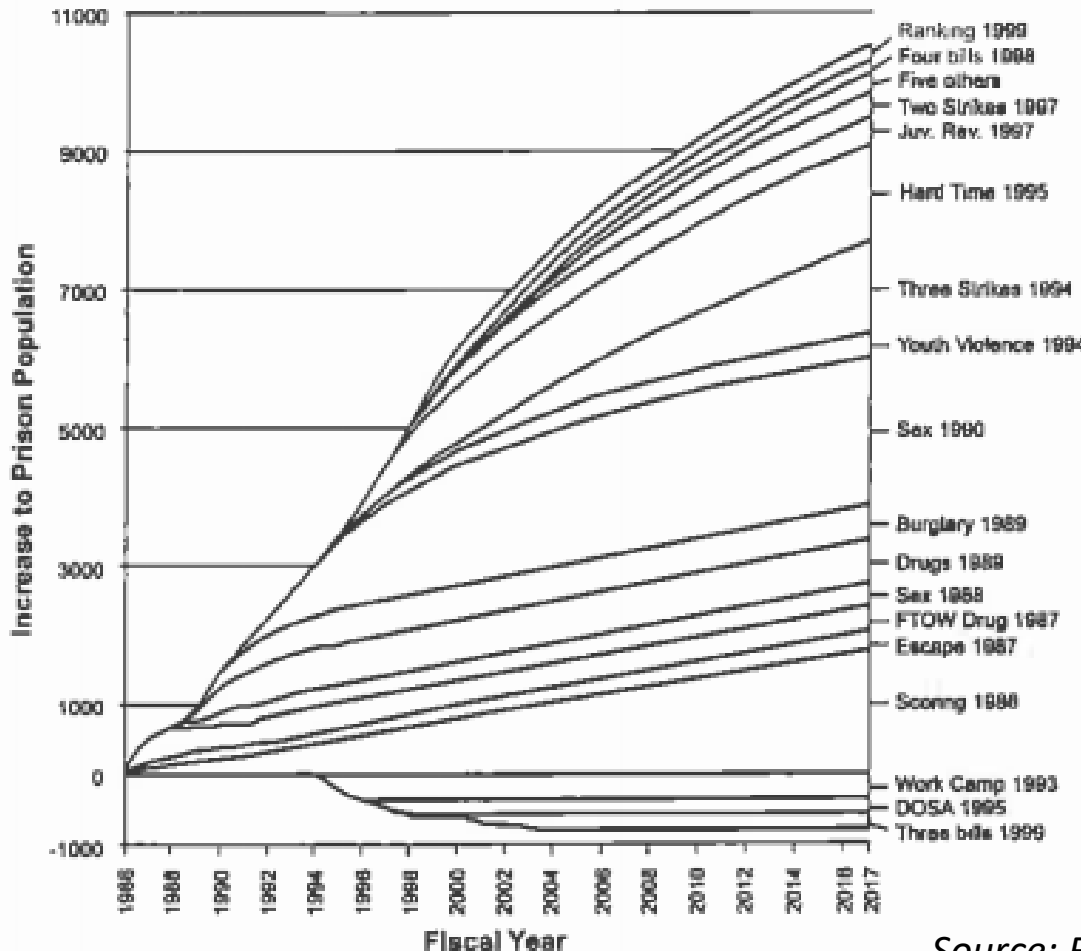
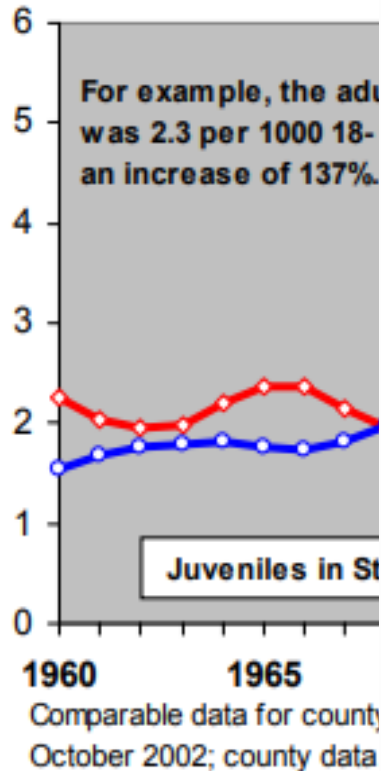
POLICY CHANGES IN WASHINGTON STATE

Changes Over Time

1981-1984	<ul style="list-style-type: none">• Legislature enacts the Sentencing Reform Act, shifting to a determinate sentencing structure, abolishing parole• State adopts Sentencing Guidelines Commission's recommendations for a determinate sentencing grid. Moves toward truth-in-sentencing model.
1985	<ul style="list-style-type: none">• First change to sentence lengths in the grid. Washington Cattleman's Association – theft of livestock.• Established “theft of livestock” and increased presumptive ranges.
1992	<ul style="list-style-type: none">• [Spring] First bill in the United States to establish a three strikes law put forth in the Legislature, but fails.• [Fall] Three strikes ballot initiative passes with over 75% of the state vote
1994	<ul style="list-style-type: none">• “Hard Time for Armed Crime” – firearm and deadly weapons enhancements
1995-1999	<ul style="list-style-type: none">• Establishment and expansion of DOSA.

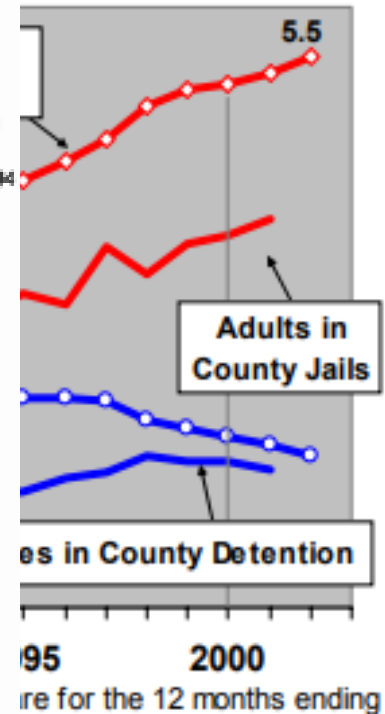
POLICY CHANGES IN WASHINGTON STATE

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Source: Boerner & Lieb, 2001
WSIPP, 2003

FIG. 4.—Cumulative effects of criminal justice legislation, 1986–2000 sessions

DISPARITY FOLLOWING SRA IN WA

- Engen, Gainey, Crutchfield, and Weis (2003)
 - Sample of adult felony sentences from July 1989 through June 1992
 - Examined discretionary departures and structured sentencing alternatives (Alternative Sentence Conversion, FTOW, and SSOSA)
- Findings:
 - 85% of sentences fell within presumptive range
 - Legal, offense-related characteristics increased the use of upward departures, but less so for downward departures
 - White defendants, females, older defendants, and those who plead guilty were substantially more likely to receive downward departures
 - Hispanic defendants and those convicted in trials were more likely to receive upward departures

POLICY CHANGES IN WASHINGTON STATE

Changes Over Time

1999-2000	<ul style="list-style-type: none">• Offender Accountability Act” – increased discretion for correctional officers.• Established a risk-based supervision model
2002	<ul style="list-style-type: none">• Legislature adopts drug offense sentencing grid with intent of:<ul style="list-style-type: none">• Decreasing time spent in confinement for drug offenses• Increasing the use of substance abuse treatment with funds allocated to a criminal justice treatment account
2003	<ul style="list-style-type: none">• Legislature increases earned early release time for non-violent property and drug offenders from 33% to 50%
2004	<ul style="list-style-type: none">• Blakely v. Washington SCOTUS decision limits judicial discretion for aggravated sentences
2010	<ul style="list-style-type: none">• Provisions expanding earned early release time sunset.
2014`	<ul style="list-style-type: none">• Justice Reinvestment Initiative<ul style="list-style-type: none">• Policy recommendations included policing, sentencing, and corrections reforms

WASHINGTON STATE - UPSTREAM

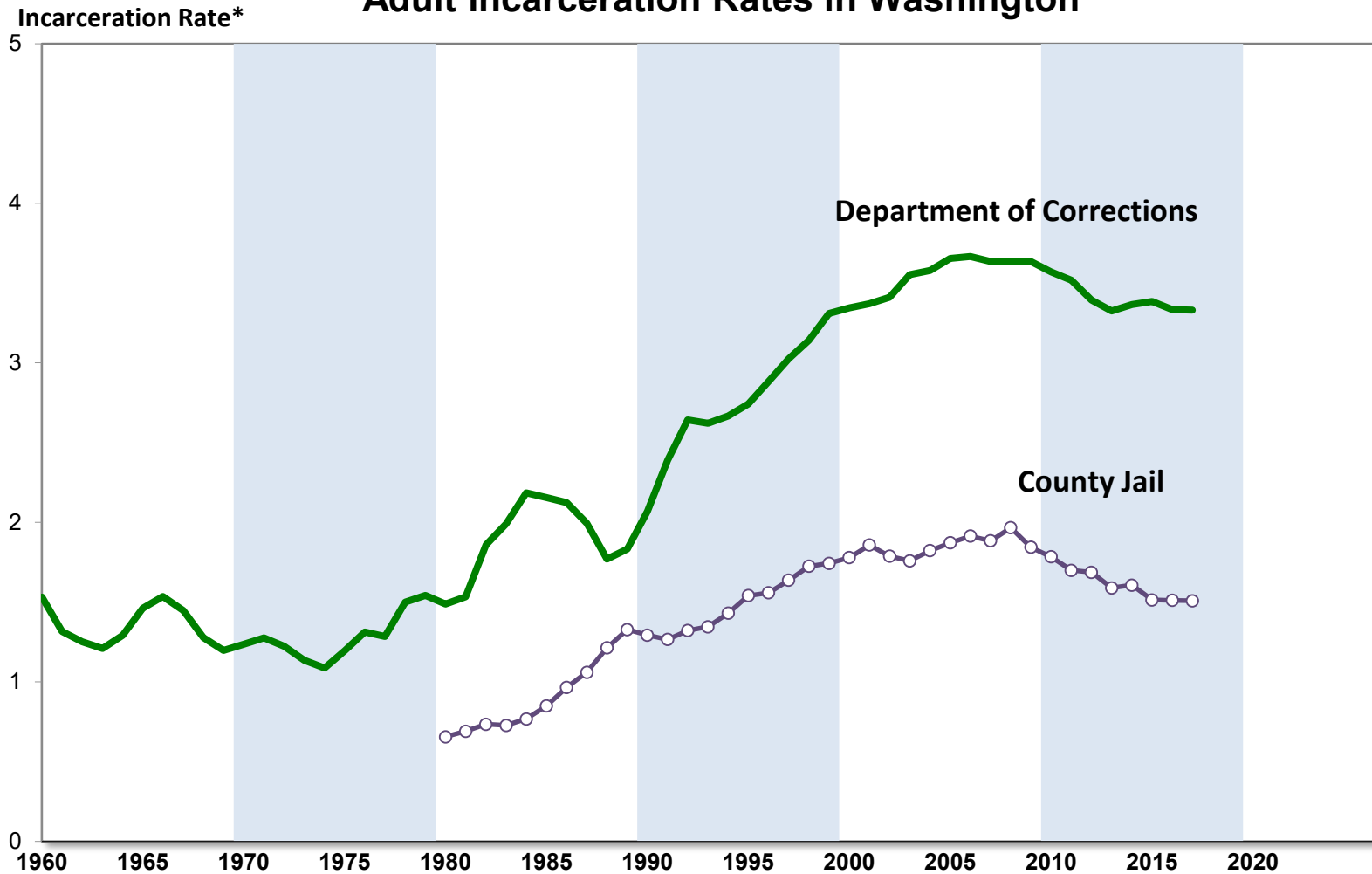
Arrests by race, per 1,000

	White	Black	American Indian	Asian
2000	44.48	170.22	109.53	18.53
2019	30.58	128.09	57.12	15.67

Source: WASPC/OFM

WASHINGTON STATE

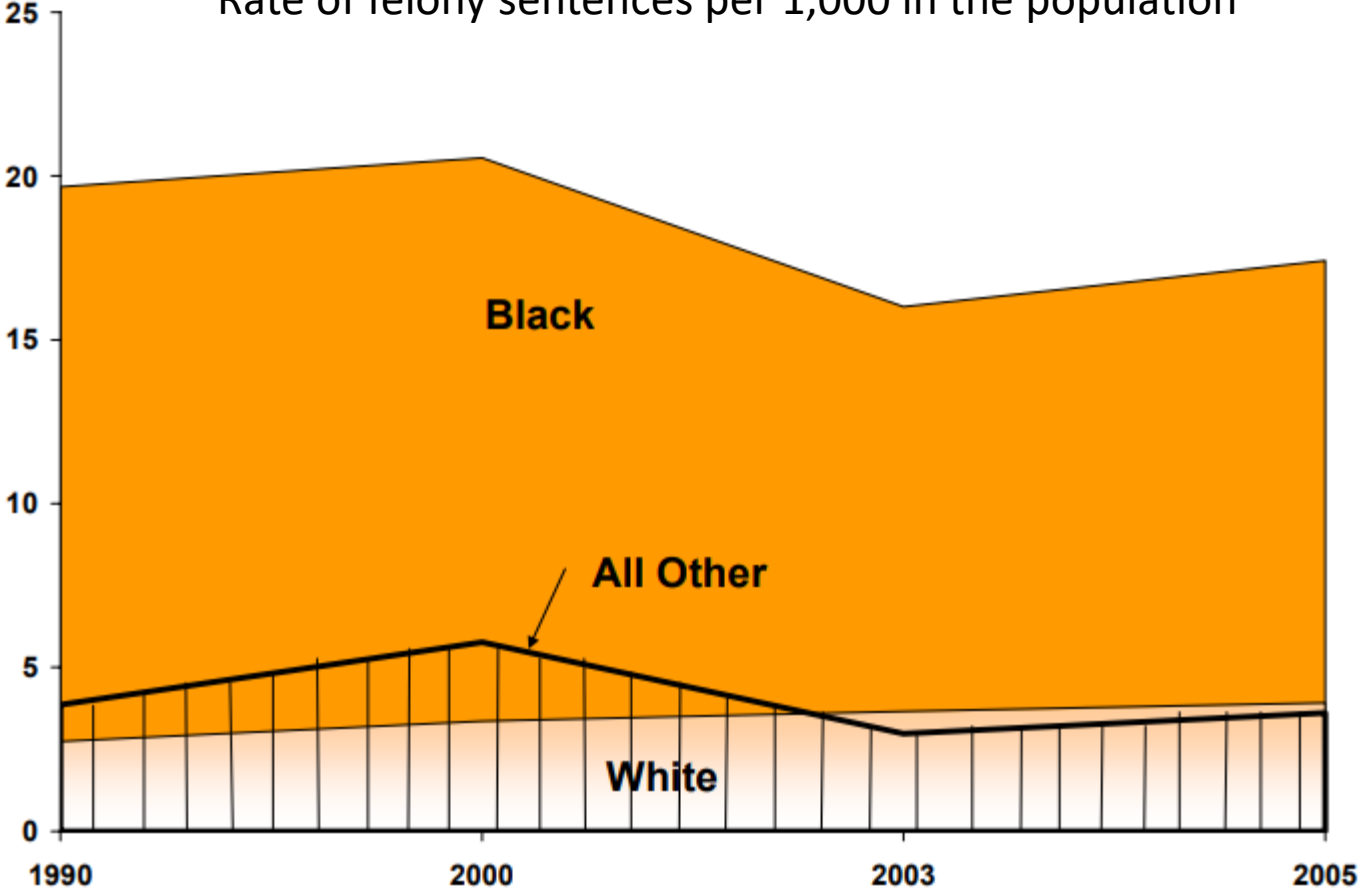
Adult Incarceration Rates in Washington



*The incarceration rate is defined as the number of inmates in State or Federal prisons per 1,000 resident population in Washington

WASHINGTON STATE

Rate of felony sentences per 1,000 in the population



FY 2019:
Black: 17.02
White: 5.90
All other: 3.39

*Source: Caseload
Forecast Council*

WASHINGTON STATE - DOWNSTREAM

Incarceration rates per 100,000 by race (2016)

State	White	Black	Hispanic
Oklahoma	580	2625	530
Idaho	458	2160	619
Oregon	366	2061	395
State Average	275	1408	378
Washington	224	1272	272
Hawaii	246	585	75

Source: BJS

CONCLUSION

- Singular policy reforms in the criminal justice system have rarely had a significant impact on overall disparities or disproportionalities. Exceptions are those that target explicit, known causes of disparate treatment – e.g., crack v. cocaine sentencing discrepancies.
- There is limited information on disparity across the criminal justice system in Washington, but Washington does appear to have lower rates of disparity than other states.
- Additional, comprehensive research is needed to understand where disparities exist and how policies have impacted those differences over time.

THANK YOU

Questions?

Hydraulic Displacement of Discretion

- ✓ Underlying premise: a certain amount of discretion exists in the sentencing process and is distributed between different court actors (e.g., prosecutors and judges)
 - ✓ When you decrease discretion in one area, you increase it in another area.
- ✓ Key question to keep in mind: Where does discretion go when it is constrained in a given area?
- ✓ Source: Miethe 1987; Walker 1993

HYDRAULIC DISPLACEMENT OF DISCRETION

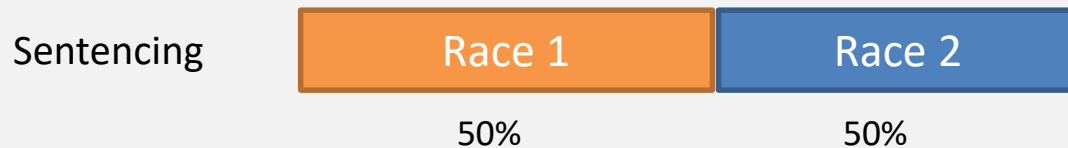
Example NY Drug Laws:

- 1973, NY legislature thought prosecutorial discretion was undermining tough sentences on drug crimes. In response they restricted prosecutorial discretion by passing a ban on pleas to lower charges for anyone charged with a Class A1 drug offense (mandatory sentence of 15-25 years to life). Charges for lesser felonies could not plea to Misdemeanor. Championed as one of toughest laws on drug crimes.
- Real effects:
 - Drug arrests resulting in indictment dropped from 39% to 25% (**prosecutors less likely to file initial charges**)
 - Convictions fell from 86% to 80% (**judges and juries less likely to convict**)
 - Net result: overall percentage of drug arrests resulting in convictions fell from 33.5% to 20%. Cases that were previously plea bargained down were either dismissed or beaten through acquittal.

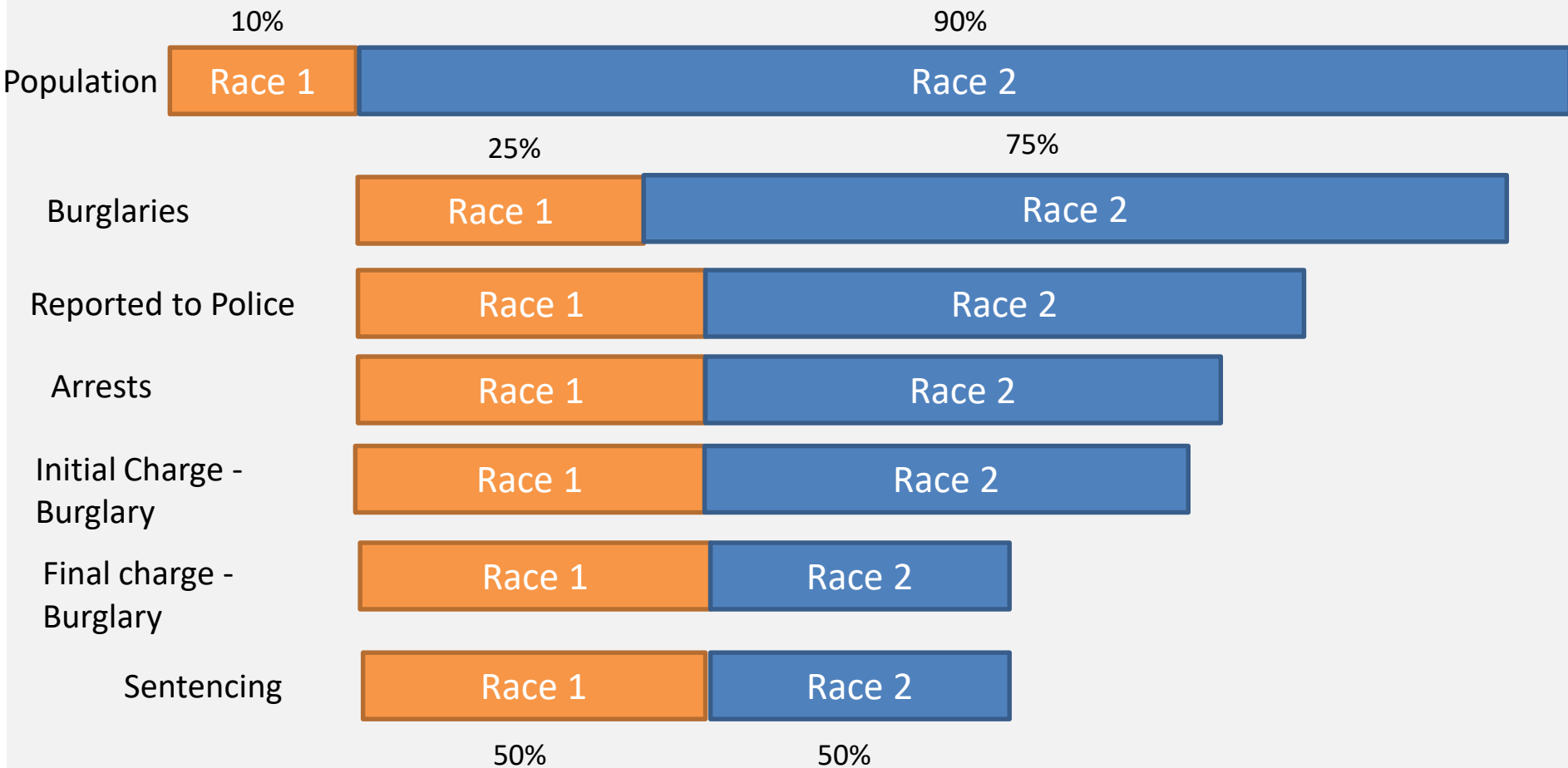
UNDERSTANDING DISPARITY AND DISPROPORTIONALITY



Comparing sentencing outcomes to population percentages may indicate significant disproportionality at sentencing. But is it representative of disparity at sentencing?

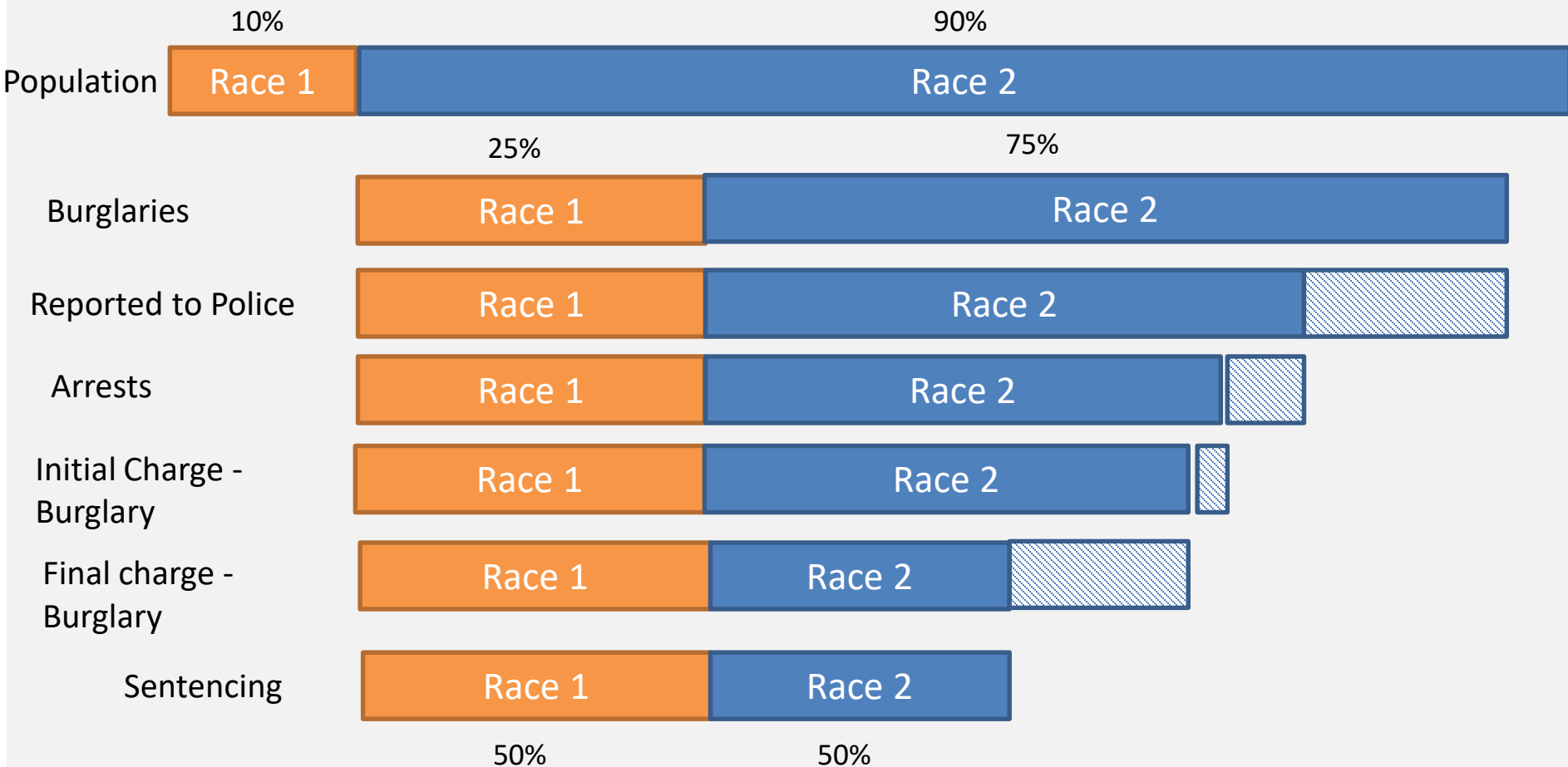


UNDERSTANDING DISPARITY AND DISPROPORTIONALITY



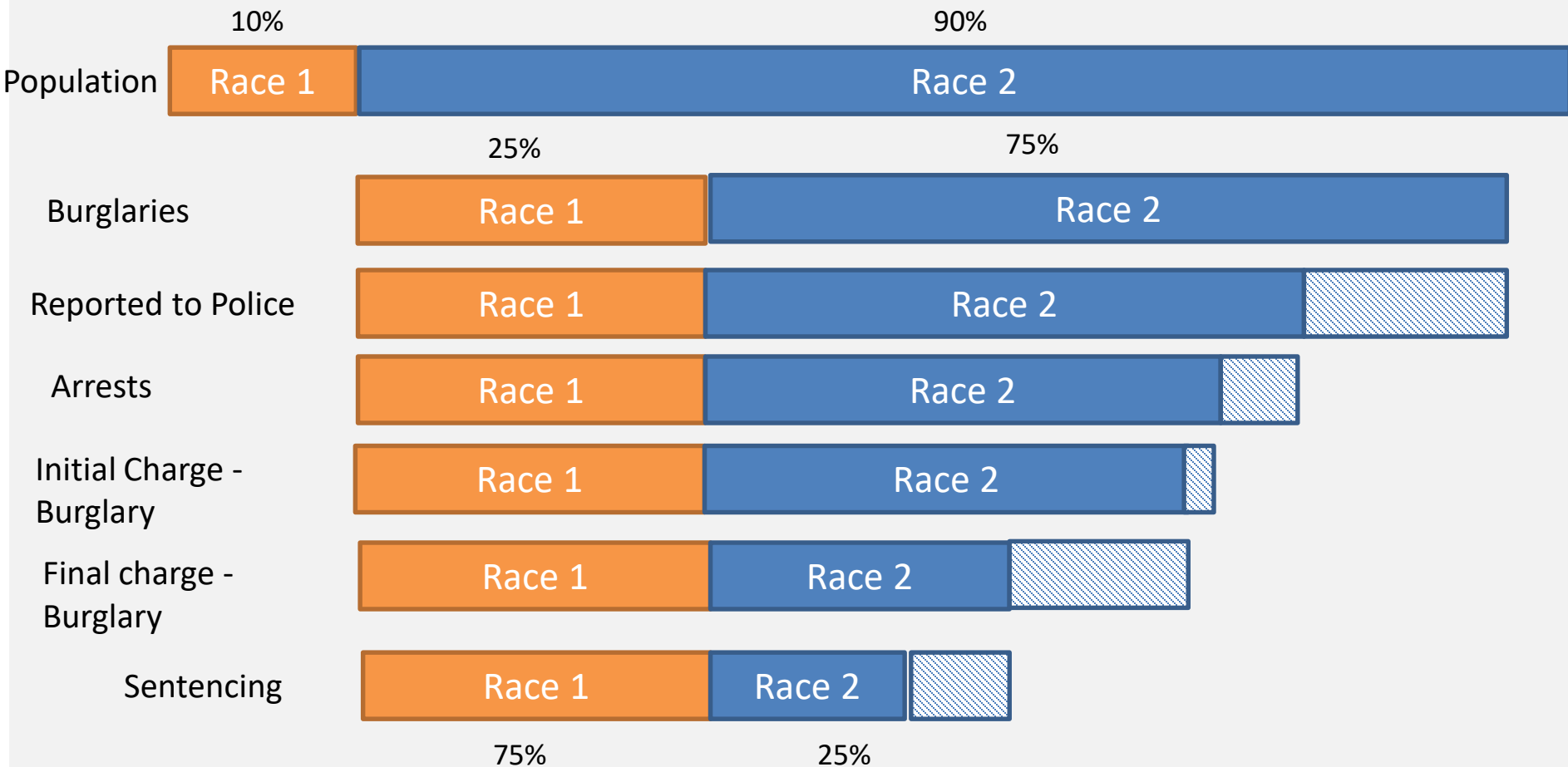
Disproportionality or Disparity at Sentencing?

UNDERSTANDING DISPARITY AND DISPROPORTIONALITY



Disproportionality or Disparity at Sentencing?

UNDERSTANDING DISPARITY AND DISPROPORTIONALITY



Disproportionality or Disparity at Sentencing?