

Smart Justice, Fair Justice: Campaign to End Mass Incarceration

Mark Cooke, Campaign Policy Director

mcooke@aclu-wa.org

June 10, 2015



Because Freedom Can't Protect Itself

Presentation Overview

- I. Mass Incarceration in the U.S. and Washington State
- II. Jails – Purpose and Use
- III. Alternatives to Jail
- IV. Role of the Community

ACLU of Washington

- Who We Are
- What We Do
 - Litigation
 - Advocacy
 - Education
- Focus on “front-end” reform



Big Picture Food for Thought

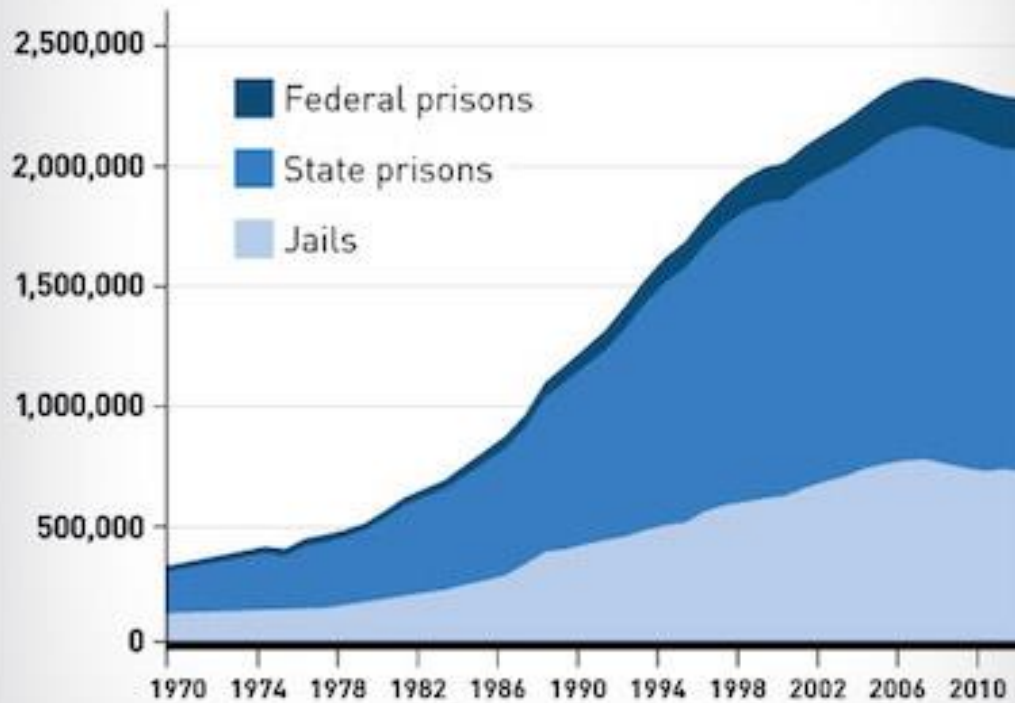
- **Choice** - *“There is no relationship between crime and jail size. The size of a jail is determined, to a large extent, by the policy choices made to the system and the availability of alternatives.”* Spokane - Bennett Report (2008).
- **Tough on Crime is being replaced by Smart on Crime**, and it’s bi-partisan - *“Coalition for Public Safety”* – Koch, ACLU, Right on Crime (Grover Norquist).

Mass Incarceration

- The United States represents 5% of the world's population but holds 25% of the world's inmates.
- More than 2 million are behind bars in state prisons and local jails, and another 200,000 are in federal custody.
- The U.S. holds nearly a third of all incarcerated women worldwide.
- One in three black men can now expect to spend time in prison at some point during his life.
- Roughly 1/3 of U.S. population has a criminal record

Mass Incarceration

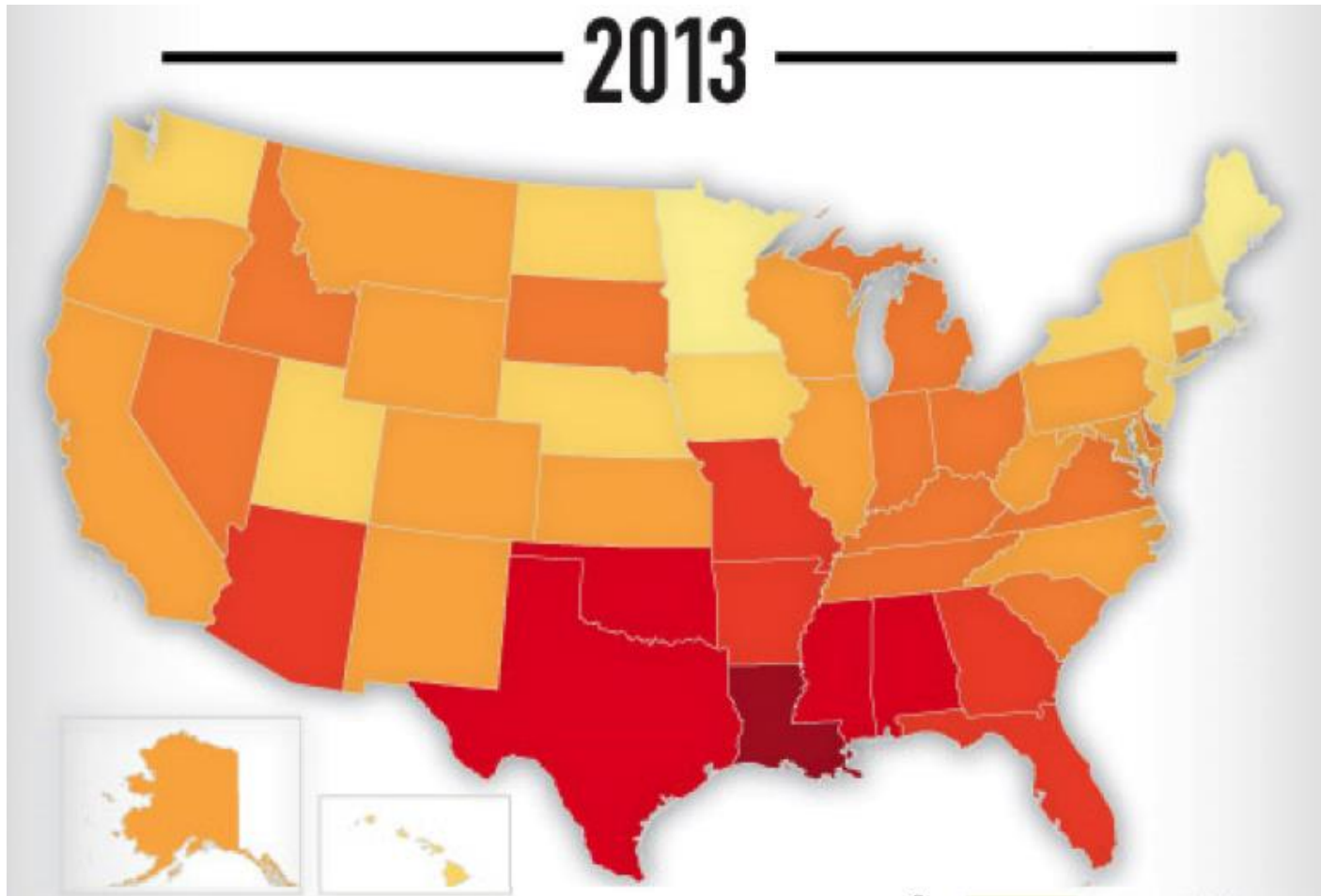
ESTIMATED NUMBER OF ADULTS INCARCERATED IN THE U.S. 1970–2013



SOURCE: Bureau of Justice Statistics (BJS)

ACLU

Mass Incarceration



Mass Incarceration

Top Ten Incarceration States by Rates and Population*			
Rate per 100,000 adults (number)		Number of inmates* (rate)	
LA	1083 (50,100)	TX	221,800 (839)
OK	984 (37,900)	CA	218,800 (571)
MS	963 (28,800)	FL	154,500 (790)
AL	952 (46,000)	GA	91,600 (917)
GA	917 (91,600)	PA	85,500 (669)
TX	839 (221,800)	NY	81,400 (414)
AZ	833 (55,200)	OH	69,800 (603)
FL	790 (154,500)	IL	69,300 (538)
AR	770 (22,800)	MI	60,200 (608)
DE	756 (7,000)	VA	58,800 (712)

*Yearend 2013 data, state prisons and local jails only (does not include federal inmates)

Washington – 30,640 in prison and jail (458 per 100,000)

Mass Incarceration

- Over 3,100 acts are subject to criminal sanction in Washington state.
 - Illegal to be a member of the Communist Party
 - Illegal to waterski an hour before sunrise
 - Illegal to steal a shopping cart
 - Illegal to have a trace of drug residue in a pipe
- Over 250,000 criminal cases filed in 2013 (4/5th of these cases are misdemeanors).

Mass Incarceration

Table 2: Crime and Incarceration Rates (1990-2013)

	1990-2013	1990-1999 ("1990s")	2000-2013 ("2000s")
Violent Crime (murder, non-negligent manslaughter, forcible rape, robbery, aggravated assault)	50% decline	28% decline	27% decline
Property Crime (burglary, larceny-theft, motor vehicle theft)	46% decline	26% decline	25% decline
Imprisonment	61% increase	61% increase	1% increase

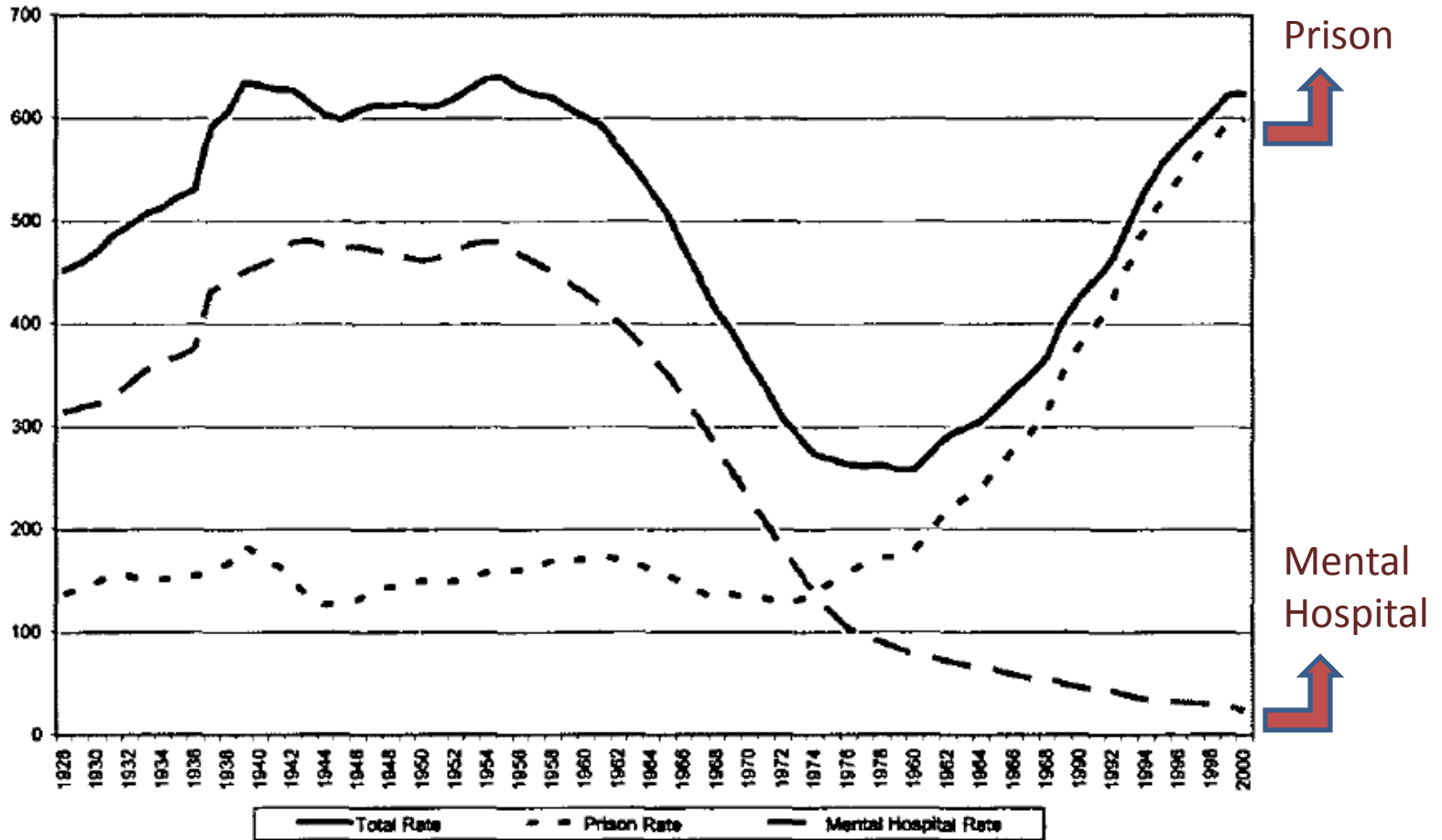
*Sources: Federal Bureau of Investigation, Uniform Crime Reports; U.S. Department of Justice, Bureau of Justice Statistics.*¹³

Brennan Center – What Caused the Crime Decline?

- Increased incarceration has negligible crime control benefits
- CompStat has played a role in bringing down crime in cities
- Social, economic, and environmental factors played a role (aging population, economic factors, decreased alcohol consumption)

Mass Incarceration

Figure 1: Institutionalization in the United States (per 100,000 adults)



Mass Incarceration

- A bipartisan coalition of leaders is proclaiming consensus that mass incarceration is a national crisis; conversations about solutions are in early stages.
- Presidential candidates are running on the issue, raising its profile for the next eighteen months.
- We have a unique window of opportunity to shape the national narrative and advance bold, trend-setting reforms.

Jails

- **“Jails are the gateway to the formal criminal justice system in a country that holds more people in custody than any other country on the planet.”**
- **They house a wide variety of people – pretrial, local sentences post-conviction, probation violators, etc.**
- **They are controlled by local govt’s.**

Vera Institute of Justice - Incarceration’s Front Door: The Misuse of Jails in America (2015).

Jails

- Over 3,000 jails in U.S. (57 in WA)
- 731,000 people in jail each day (about 11,000 in WA in 2014)
- 12 million admissions a year in U.S.
- Whatcom County – Average Daily Jail Population 403 (designed capacity 298)



Jails

What drives jail populations?

- Who is getting arrested and booked;
- Prosecutors decisions on who to charge or divert;
- Pretrial service programs that make custody or release determinations;
- Courts who decide whom to detain or release and under what conditions;
- Other criminal justice actors whose action or inaction can accelerate or delay pending cases;
- Community corrections officials who choose how and when to send people back to jail.

Jails

Frequent Fliers

- Mentally ill – Washington ranks 49th in psychiatric bed capacity. Psychiatric boarding and competency restoration delays have resulted in litigation.
- Homeless – Seattle U: *Washington's War on the Visibly Poor*. Bellingham has a 11 ordinances that criminalize homelessness (sitting on sidewalk, sleeping in public place, urination, etc). 1,682 citations over 5yr span.



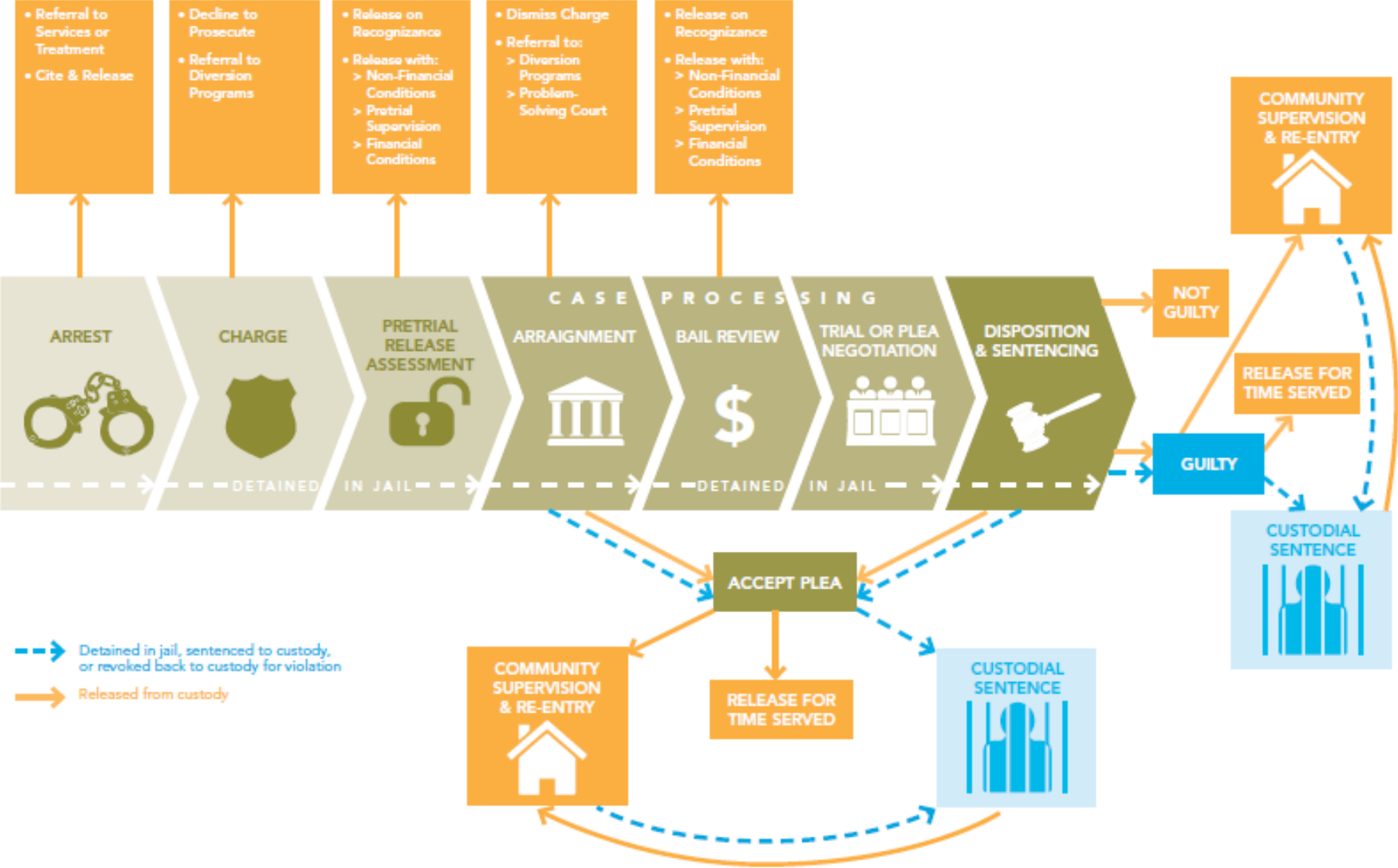
Jails

- Unsafe and unsanitary jails are unacceptable. Cruel, inhumane, and degrading conditions can lead to litigation for constitutional violations. Jefferson County, King County, Pierce County, Purdy, have all been taken to court by the ACLU.
- **BUT:** building a bigger, fancier jail, with even more beds is not the only answer...

Alternatives

- The Earth is not flat and what's best for public safety doesn't always mean locking people up.
- Opportunities for diversion exist at every stage of the criminal justice system.
- Local government decisions about what gets money matter (i.e. jail beds, low income housing, crisis beds).

Diversion and release opportunities during the typical criminal case trajectory

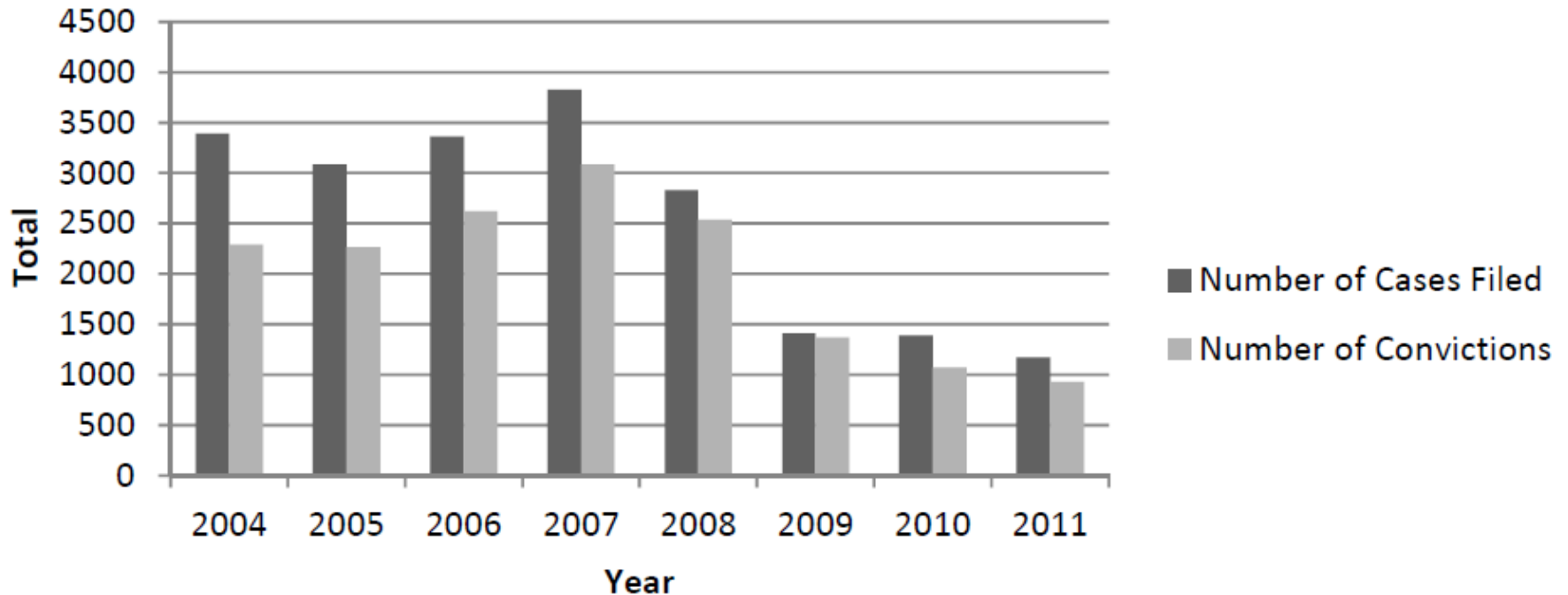


Alternatives - Prosecutor Discretion

“The decision to file criminal charges, with the awesome consequences it entails, requires consideration of a wide range of factors ***in addition to the strength of the Government’s case***, in order to determine ***whether prosecution would be in the public interest. Prosecutors often need more information than proof of a suspect’s guilt***, therefore, before deciding whether to seek an indictment.”

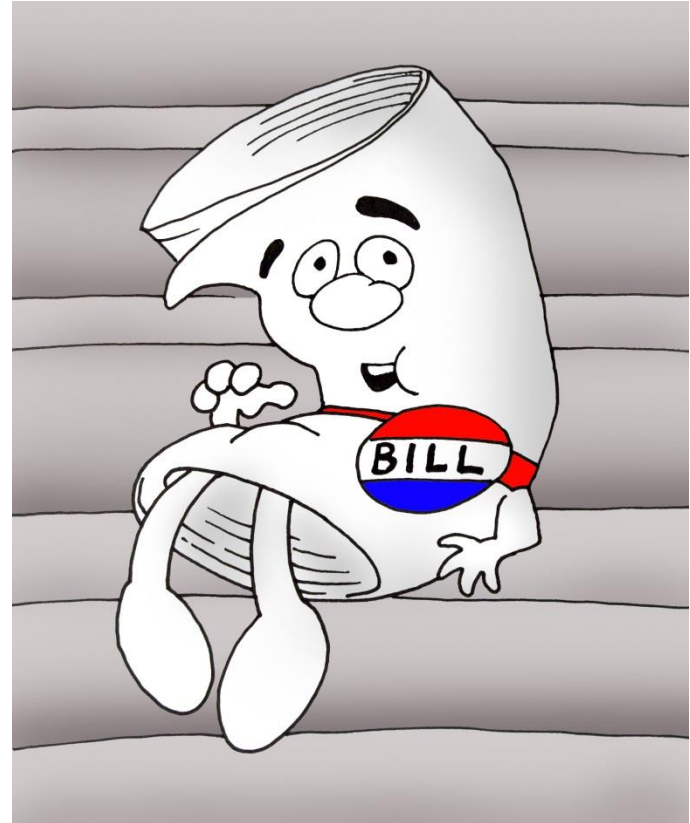
United States v. Lovasco, 431 U.S. 783

Number of Superior Court Cases Filed and Convictions for Controlled Substance Violations in King County by Year

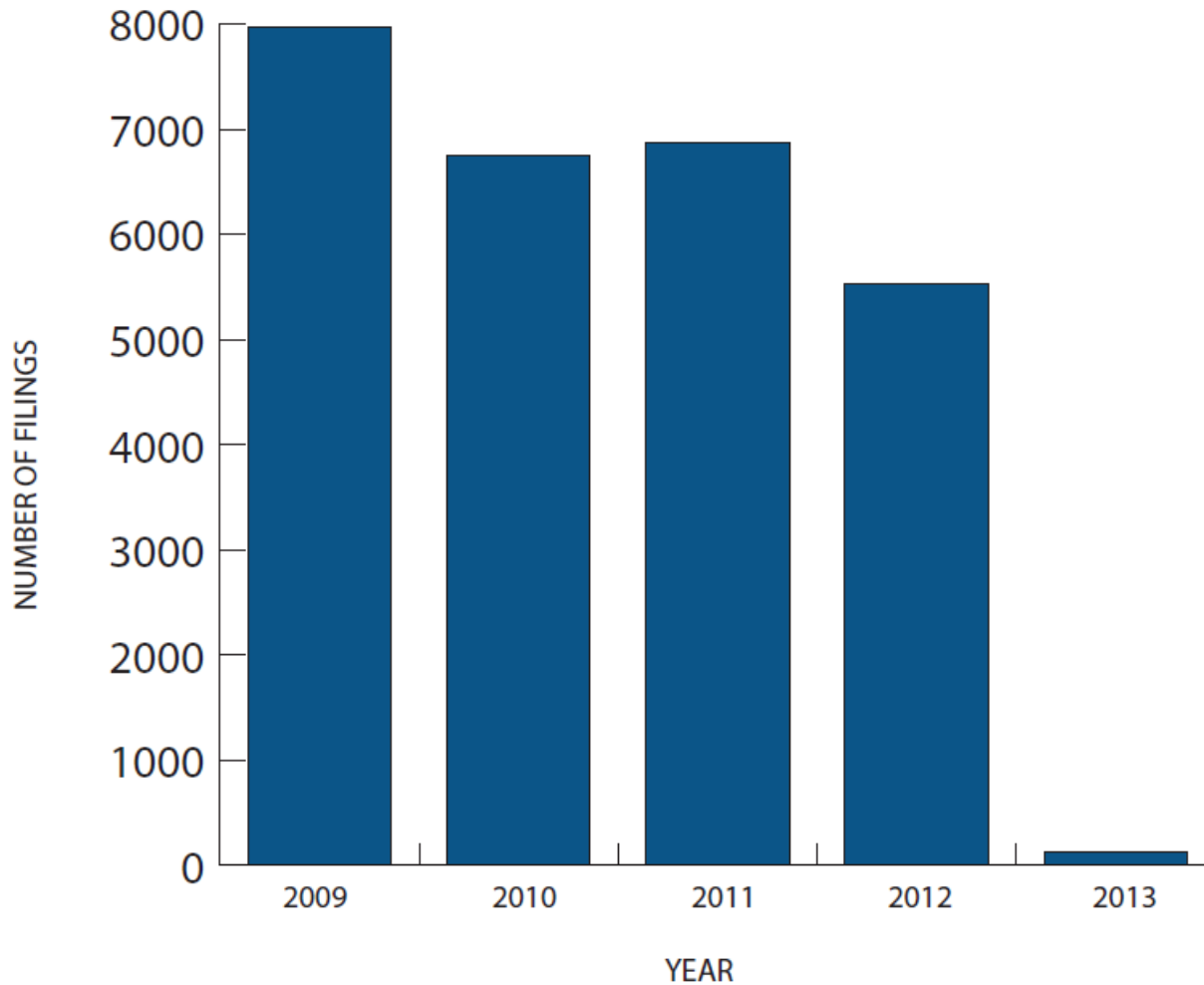


Alternatives – Statutory Reform Via Legislation

- 911 Good Samaritan Laws
- Marijuana Decriminalization
- Driving with a suspended license



WA Marijuana Filings - Age 21+



Analysis by ACLU-WA
Source: WA Administrative Office of the Courts

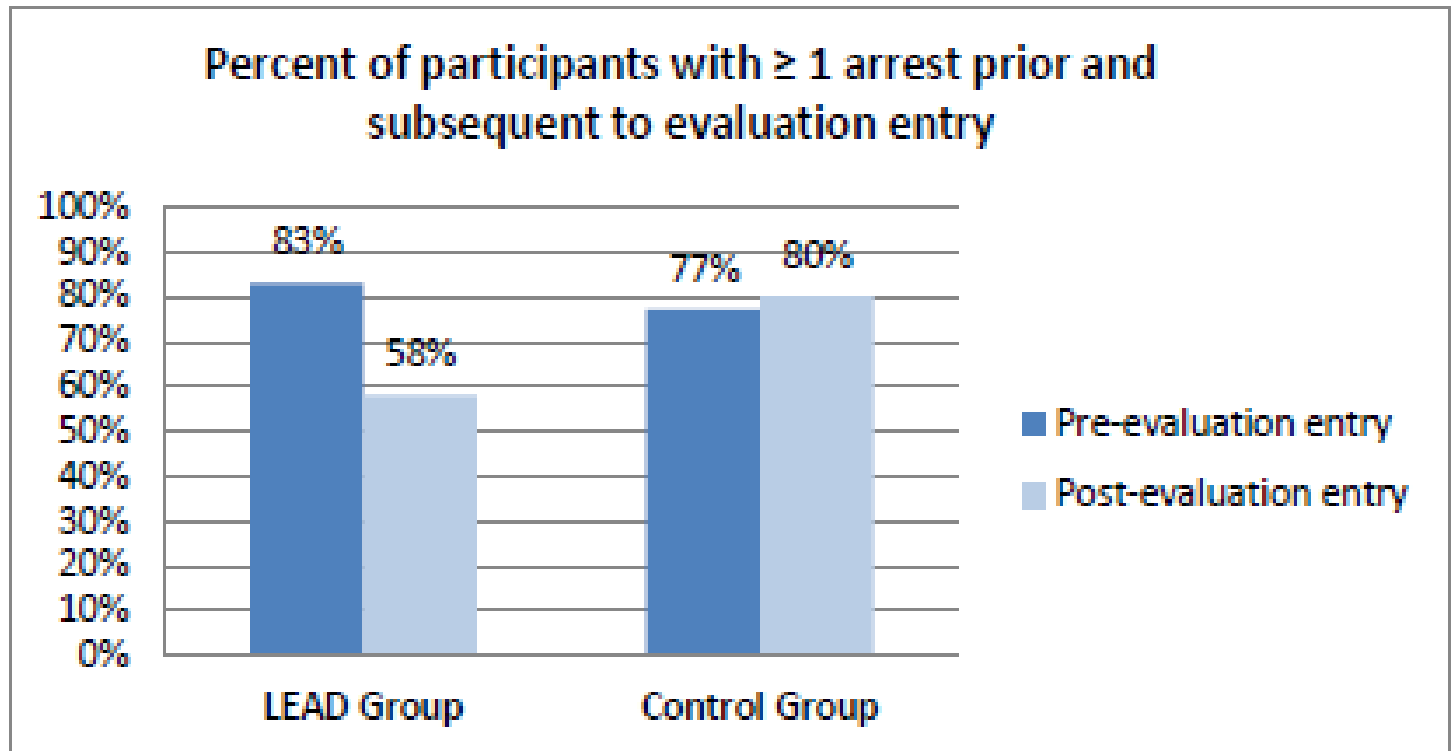
Alternatives - Diversion

- RCW 10.31.110 – “Arrest individuals with mental disorders” divert to services. Requires agreement between prosecutor and police.
- A third option - King County Crisis Solutions Center, Yakima Diversion Program.
- Jail diversion – Snohomish County – “refusing to house people for nonviolent misdemeanors or whose medical condition simply can't be adequately managed within the lockup.”
- Risk assessments and pretrial supervision.



LAW ENFORCEMENT ASSISTED DIVERSION

LEAD is a pre-booking diversion program where offenders are diverted into community-based treatment and support services at the point of arrest.



Alternatives – Court Reforms

- Therapeutic courts – SB 5107 (drug court, mental health courts, veterans courts, etc.).
- Bail reform – the longer someone remains in pretrial detention the worse long-term outcomes they face (jobs, family ties, more likely to plead guilty to get out).
- Speed up! How fast can you get someone in front of a judge to move the case along.
- Electronic Home Monitoring.

Alternatives – Community Reform

- CIT training for law enforcement
- Guardian Culture at WSCJTC
- Restorative Justice Programs
- Affordable Care Act – Behavioral Health Integration
- Basic services – supportive housing, substance abuse treatment, mental health services, etc.

Role of the Community

- The decision of whether to build a jail ultimately rests with the residents/voters of the cities, county, and tribes that will pay for it. Elected officials, such as executives, council members, sheriffs, and prosecutors ultimately serve at the pleasure of the public.
- Coalition building is paramount to any effort to push back against expanding the size of the criminal justice system. Advocates must engage with non-traditional allies to succeed (LEAD, Right on Crime).
- Once jail beds exist, there is a tendency to want to fill them.

Role of the Community - Spokane

- Spokane County Jail is Overcrowded. Initial response was to build a huge new facility.
- Detailed needs assessments - Bennett Reports.
- Community pushes back – Smart Justice Spokane – “reform our expensive, ineffective, and unfair criminal justice system.”
- Coalition building and symposium leads to “Blueprint for Reform,” which includes participation from county, city, law enforcement, and the community – Spokane Regional Justice Council.
- Therapeutic courts, electronic home monitoring, chronic offender unit.
- 2015 – Spokane awarded MacArthur Foundation grant to reduce jail overcrowding.

Role of the Community – Questions for Lawmakers

- If we had to use existing jail resources, who would you let out and how could you make those resources work more efficiently?
- Who is in the jail (demographics, criminal history, etc.)?
- Why are they in jail (what are the specific charges)?
- How much time are they spending in jail for each stage of the criminal justice system (pre-charge, pre-trial, post-conviction, etc.)?
- How many people in the jail are legitimate public safety or flight risks?
- Can a smaller jail achieve the same public safety outcomes at lesser cost?