



AGENDA

CRIMINAL PUNISHMENT CODE TASK FORCE

October 4, 2019 at 1:30 PM

Stetson University Law Center

1700 North Tampa Street

Tampa, Florida 33602

“Reviewing, evaluating, and making recommendations regarding sentencing for and ranking of noncapital felony offenses under the Criminal Punishment Code.”

Chapter 2019-167, §152, Laws of Florida.

Welcome and Additional Introductions

Attorney General Ashley Moody

Task Force Subcommittee Update

Subcommittee Chairs

Crime and Justice Institute Presentation

Lisa Marguiles
Len Engel

Department Of Corrections Presentation

Kenneth Steely
DOC General Counsel

Florida Conference Of Circuit Judges Presentation

The Honorable Angela Cowden
The Honorable Gregory Parker

Discussion Of Presentations

Task Force Members

Public Comment

Open to Public

Closing Remarks

Attorney General Ashley Moody

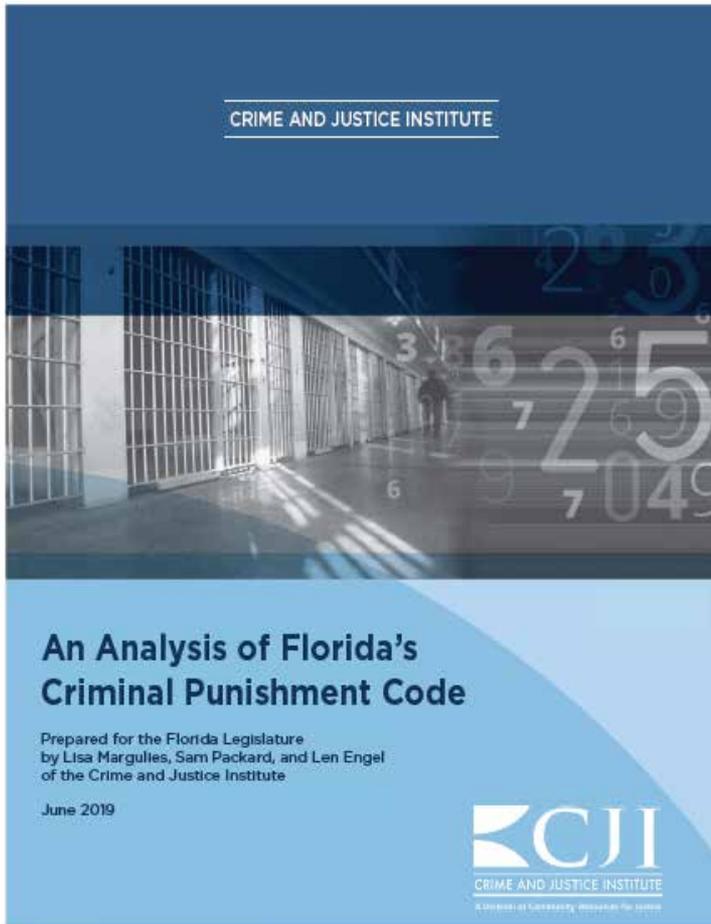
An Analysis of Florida's Criminal Punishment Code

Criminal Punishment Code Task Force
October 4, 2019

Who we are

- The Crime and Justice Institute (CJI) works with local, state, and national criminal justice organizations to reduce recidivism, cut costs, and promote public safety throughout the country
- Since 2008, CJI has assisted states in analyzing sentencing and corrections data and systems, supporting the development of policy options, and educating the public and policymakers

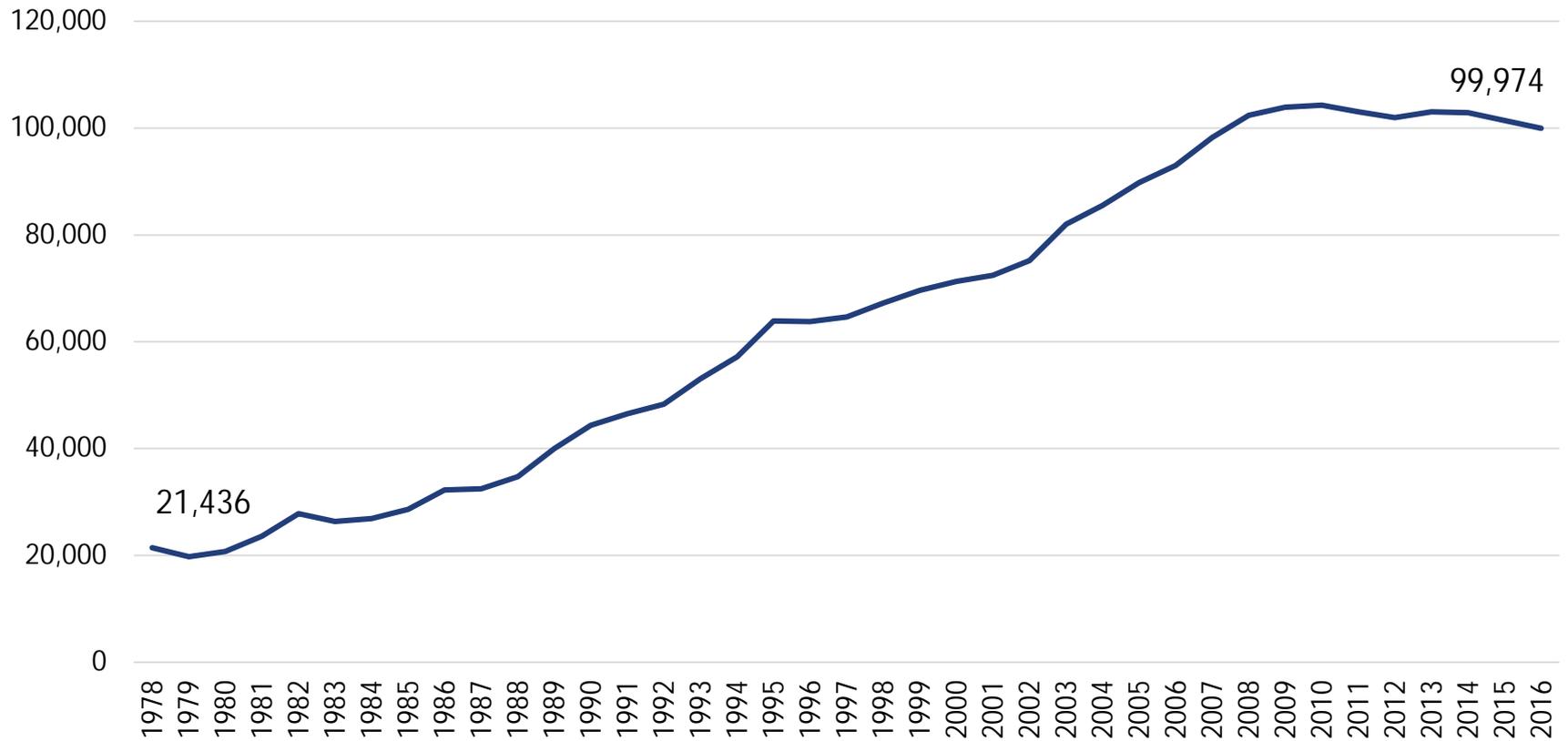
CJI's Florida Reports



- *An Examination of Florida's Prison Population Trends (2017)*
- *Data-Driven Solutions to Improve Florida's Criminal Justice System (2018)*
- *An Analysis of Florida's Criminal Punishment Code (2019)*

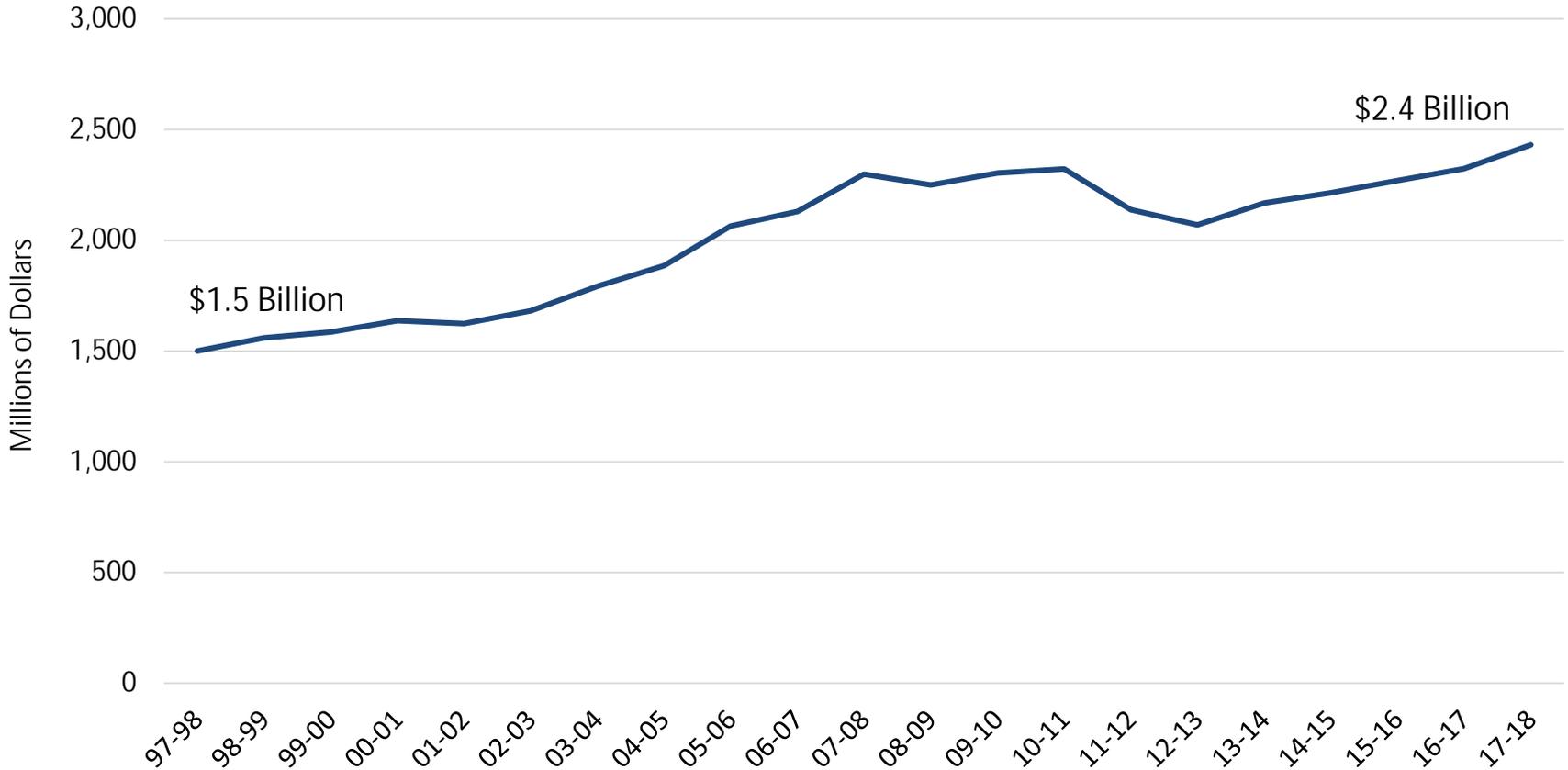
Florida's Prison Population Grew 366% Since 1978

Florida Prison Population, 1978-2016

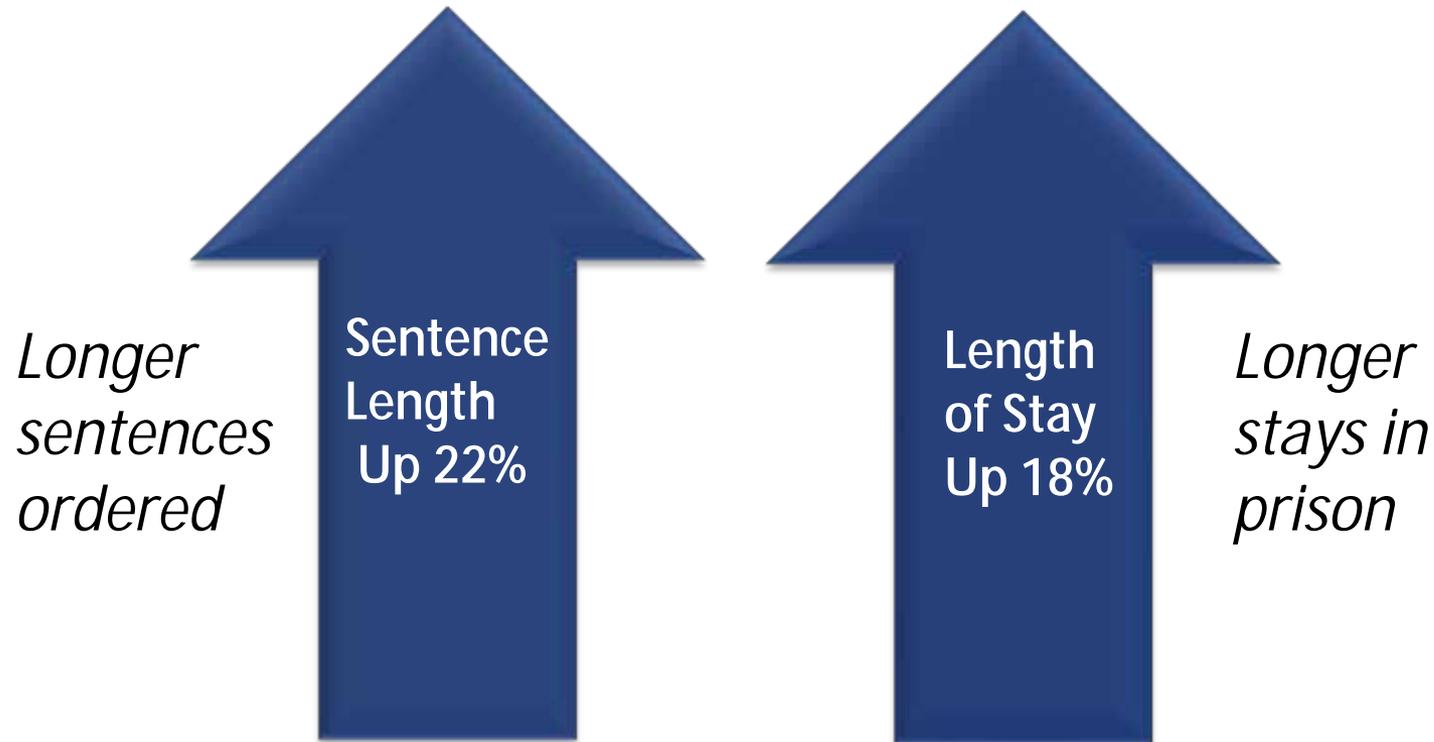


FDC Operating Funds Increased Nearly a Billion Dollars in 20 Years

DOC Total Operating Funds, by FY



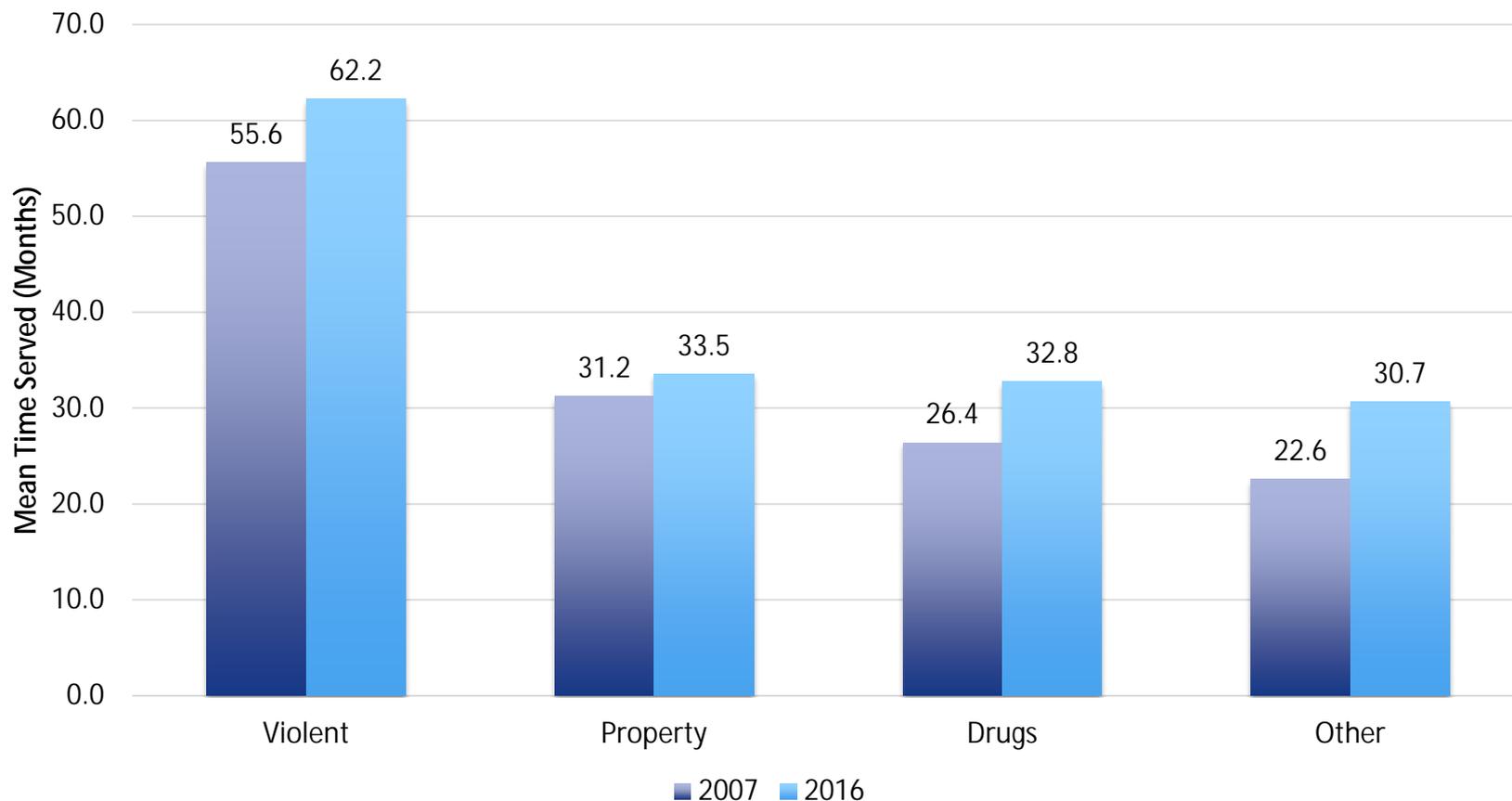
Time Served in Prison Has Increased



Data from 2007-2016

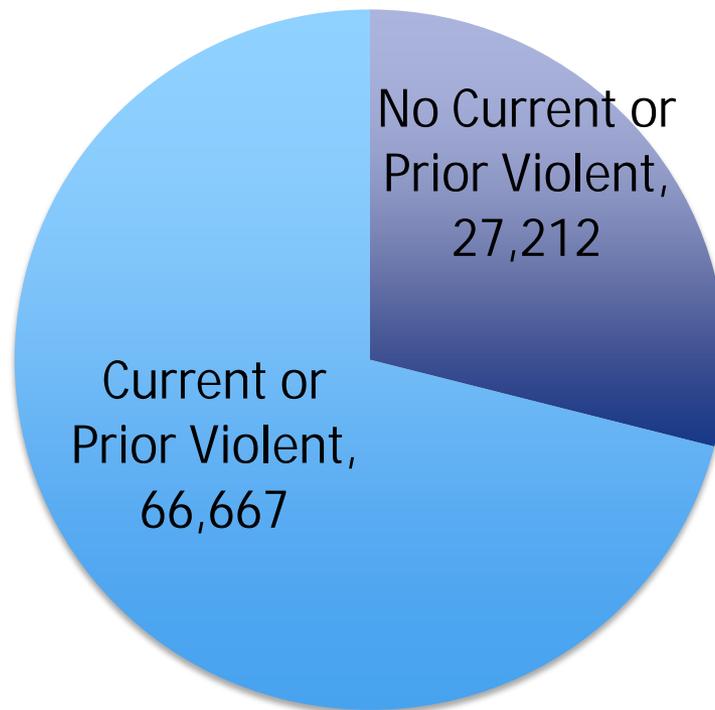
Time Served Has Increased Across Offense Types

Mean Time Served by Offense Type (4-Group), 2007 vs 2016



29% of Prison Population Has No Current or Prior Violent Crime

Prison Population by Current and Prior Violent, Dec 31 2016

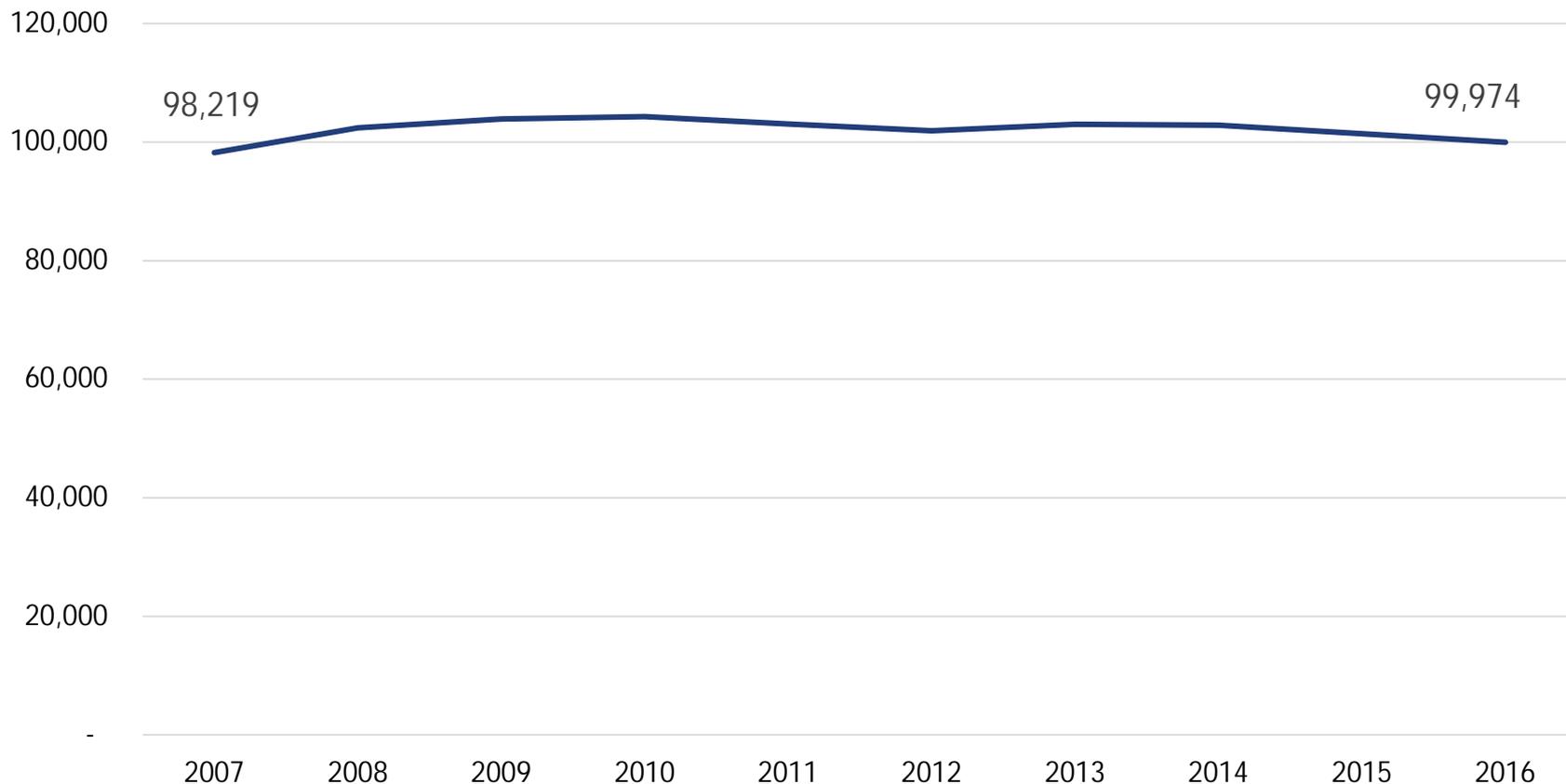


8 of Top 10 Crimes at Admission Nonviolent

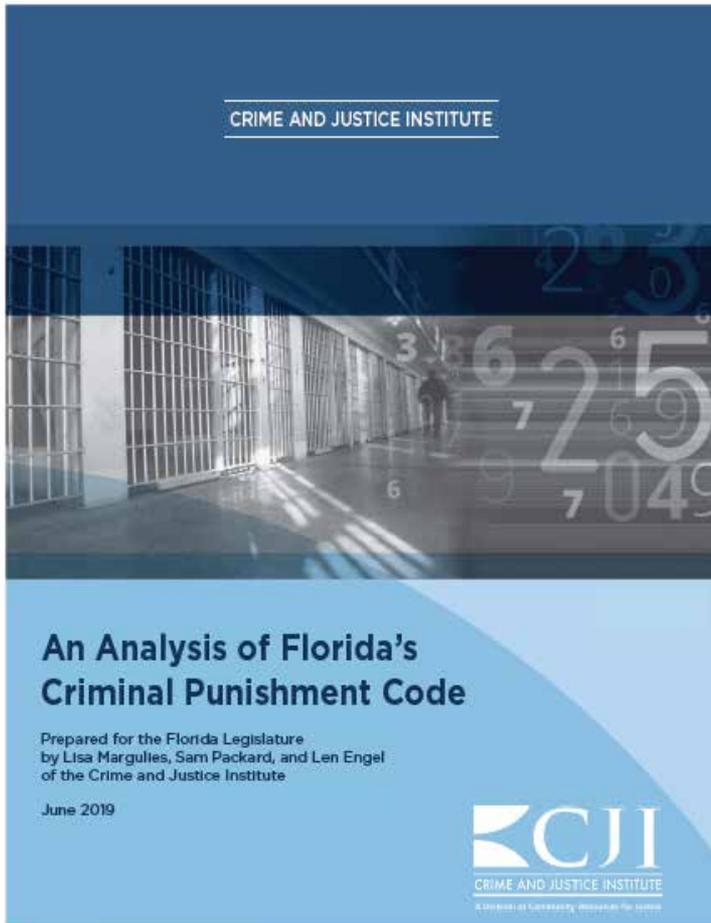
Offense	2016
Burglary of a Dwelling/Occupied Structure/Conveyance	2,352
Possession of Controlled Substance (3rd Degree)	1,965
Sale/Manufacturing/Delivery of Controlled Substance (2nd Degree)	1,958
Traffic In Stolen Property	1,507
Felon/Delinquent with Gun/Concealed Weapon/Ammunition	1,500
Burglary of an Unoccupied Structure/Conveyance-or Attempted	1,194
Trafficking in Controlled Substance (1st Degree)	1,190
Grand Theft, \$300-\$5,000	973
Robbery with a Deadly Weapon	832
Robbery	608

Florida Prison Population Mostly Steady Over Decade

Florida Prison Population, 2007-2016



Core Questions for 2019 Report



- What is the impact of the CPC on prison sentences and lengths of incarceration?
- Is the CPC meeting its stated goals?
- Does the CPC align with current criminological research and best practice?

FL Statute: CPC's Primary Purpose is Punishment

Punishment

Neutrality

Proportionality

Transparency

Finality

Prioritization
of Resources

Rehabilitation

2019 Report Data Methodology and Process

- Requested and analyzed 10 years of data from FDC from FY 2009 to 2018
- Analysis included 1,088,405 scoresheets from this 10-year period, representing all 20 circuits and 67 counties
- Due to irregularities in reporting compliance, analysis focused on FY 2018

Point Totals and Applicable Sentencing

CPC Point Range	0-22	> 22-44	> 44
Required Sentence	Non-state prison sentence*	Discretionary prison sentence*	Required prison sentence**

*Excluding some felonies; and, for 0-22 points only, absent a finding of danger to the public

**Absent departure or diversion for eligible offenders

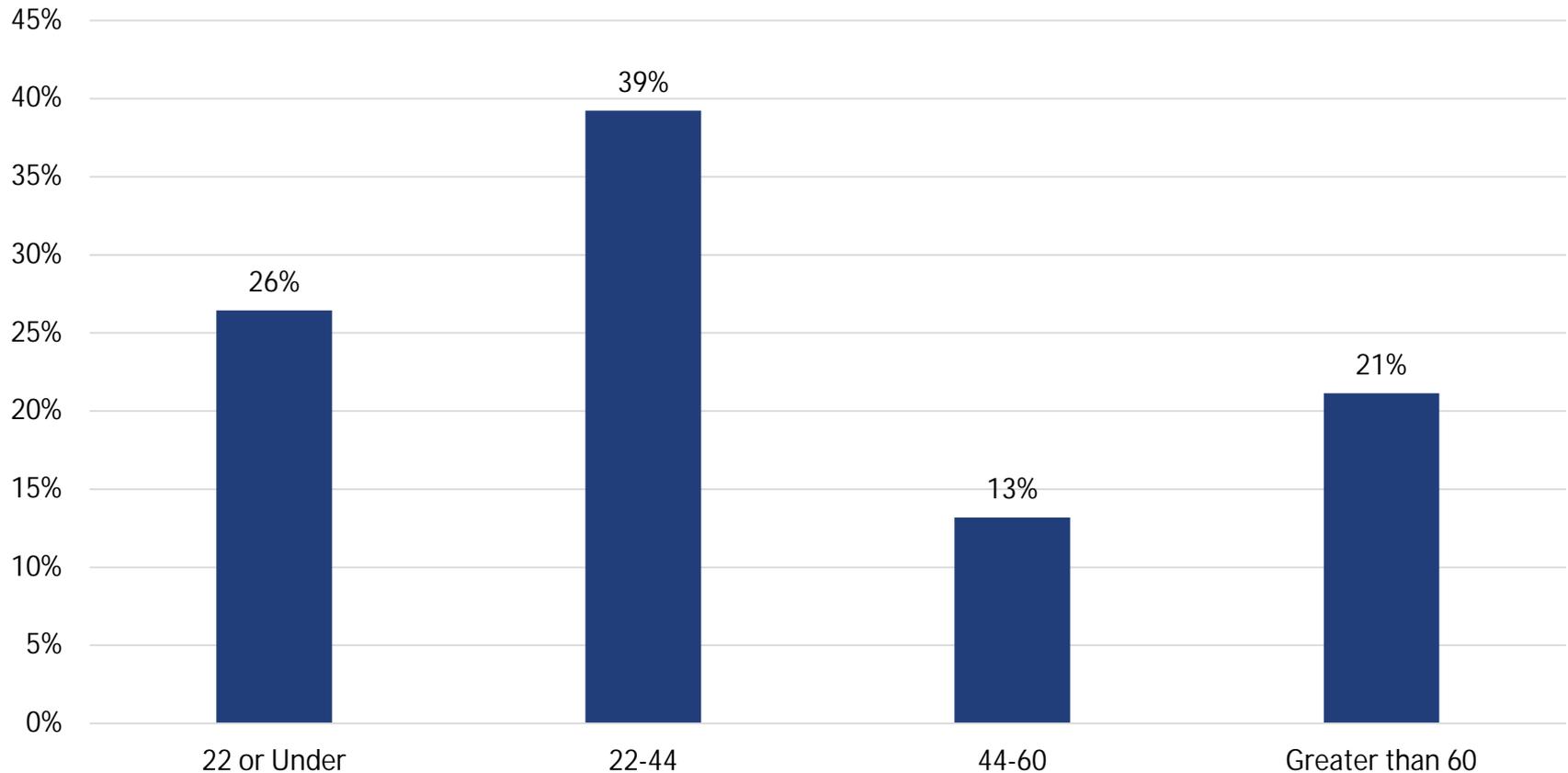
Primary Offense and Severity Level

Level	Most Common Offenses
1	<ul style="list-style-type: none"> • Driving with Suspended License • Petit Theft 3rd Conviction • Possession of Marijuana over 20g
2	<ul style="list-style-type: none"> • Grand Theft, \$300-\$5,000 • Utter Forged Instrument • Credit Card Fraud
3	<ul style="list-style-type: none"> • Possession of Cocaine • Possession of a Controlled Substance • Sale, Manufacture, Deliver Marijuana
4	<ul style="list-style-type: none"> • Burglary of Unoccupied Dwelling • Grand Theft Auto • Battery of Law Enforcement Officer
5	<ul style="list-style-type: none"> • Traffic in Stolen Property • Sale, Manufacture, Deliver Cocaine • Felon in Possession of Firearm

Level	Most Common Offenses
6	<ul style="list-style-type: none"> • Aggravated Assault with No Intent to Kill • Felony Battery • Robbery with No Gun or Deadly Weapon
7	<ul style="list-style-type: none"> • Burglary of an Occupied Dwelling • Aggravated Battery with Deadly Weapon • Sex Offender Fail to Comply with Conditions
8	<ul style="list-style-type: none"> • Burglary, Armed with Explosives or Weapon • Burglary, Assault Any Person • Sexual Battery with Victim Age 12-15
9	<ul style="list-style-type: none"> • Robbery with a Gun or Deadly Weapon • Molestation of Victim Under 12 • Trafficking Heroin 28g to 30kg
10	<ul style="list-style-type: none"> • 2nd Degree Murder • 1st Degree Murder • Home Invasion

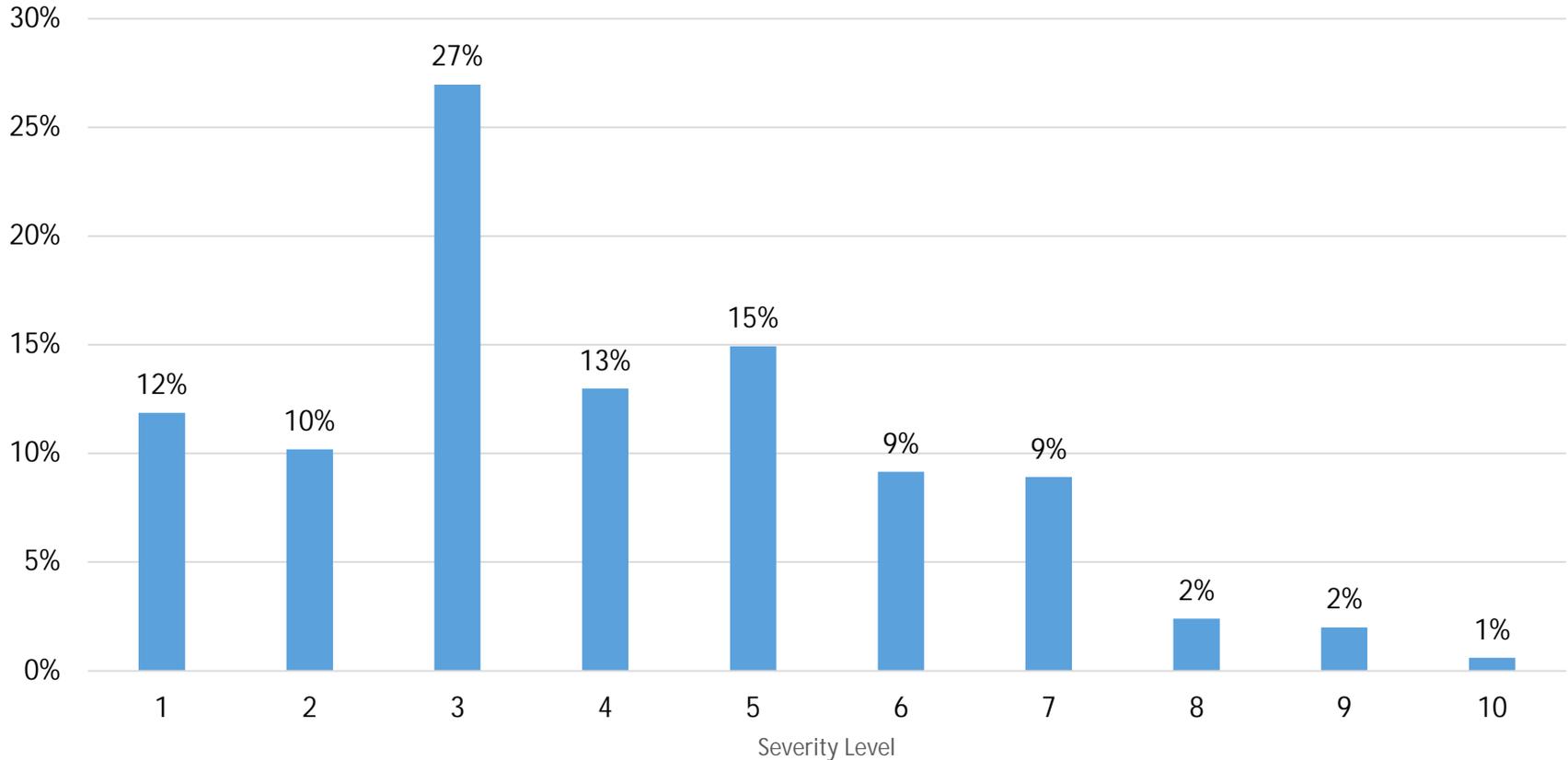
Majority of Scoresheets Contained 44 Points or Fewer in FY 2018

Distribution of Scoresheets, FY 2018



Primary Offense Severity Level 3 Most Common in FY 2018

Severity Level of CPC Scoresheets, FY 2018



1 in 4 Scoresheets Received State Prison Sentence

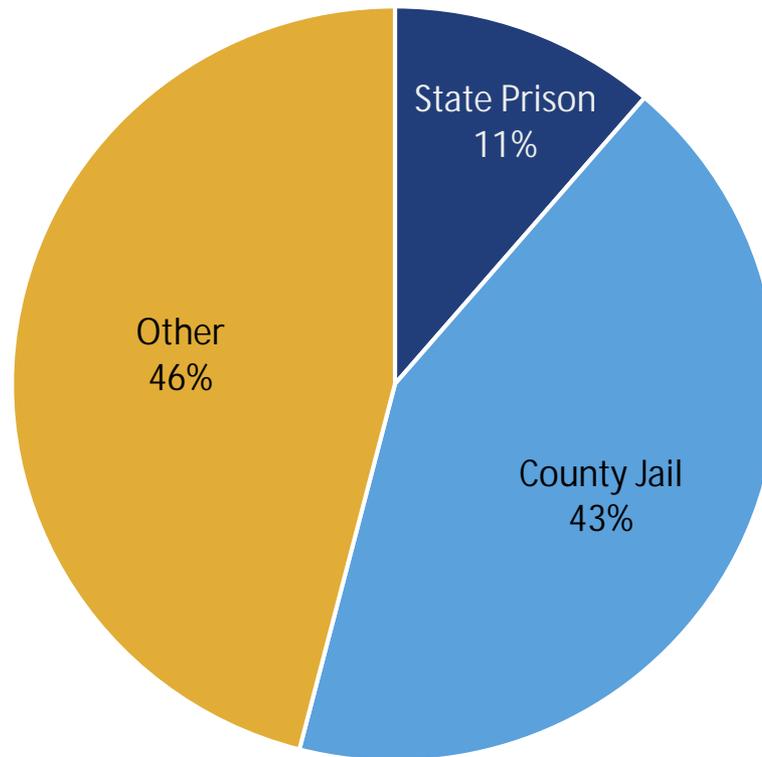
Sanction	Total	Percentage of Total
State Prison	31,740	25.0%
Probation	51,508	40.6%
County Jail	33,562	25.5%
Community Control	7,482	5.9%
Other	2,505	2.0%

Analysis Focused on 22 to 44 Point Score Totals

- Represents largest portion of FY 2018 scoresheets
- Broad discretion to impose any prison or non-prison sentence
- Opportunity to analyze variability in sentencing decisions over a large number of cases
- Multiple alternatives to prison imply that legislature regards this group as lower-level

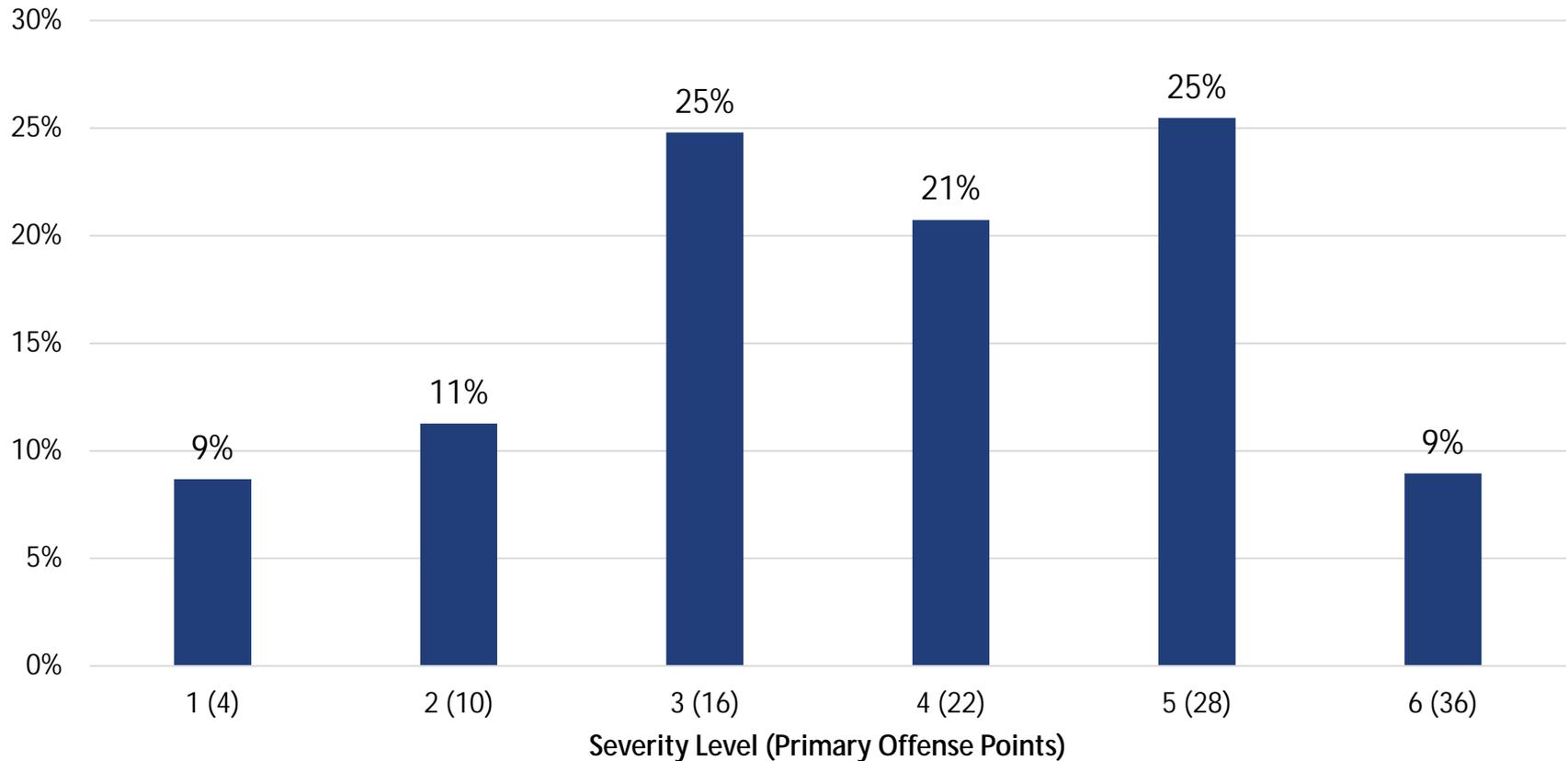
11 Percent of 22-44 Point Group Received a Prison Sanction in FY 2018, or 4,500 Admissions

Sentences of 22-44 Point Group, FY 2018



Nearly Half of 22-44 Point Group Receiving Prison Had Severity Level of 3 or Lower

Severity Level of 22-44 Point Prison Sentences, FY 2018

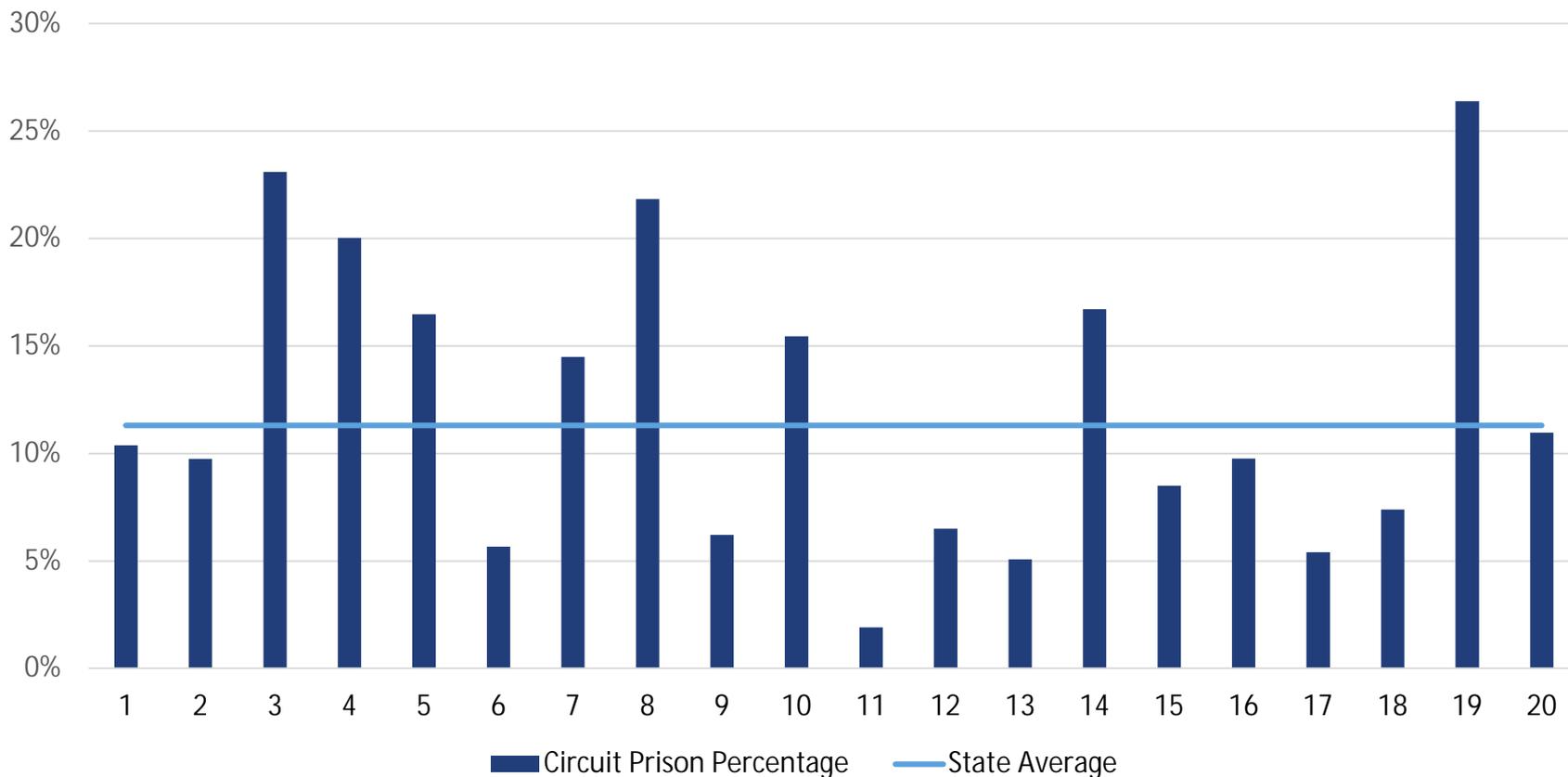


Drug Possession Offense Accounts for a Significant Number of Prison Admissions

- Drug possession primary offense in 72 percent of 22-44 point scoresheets with offense severity level 3
- In ten years, 9,100 drug possession scoresheets in this group received a state prison sentence
- In FY 2018, nearly 1,000 scoresheets or approximately 800 individuals in this group were admitted to prison

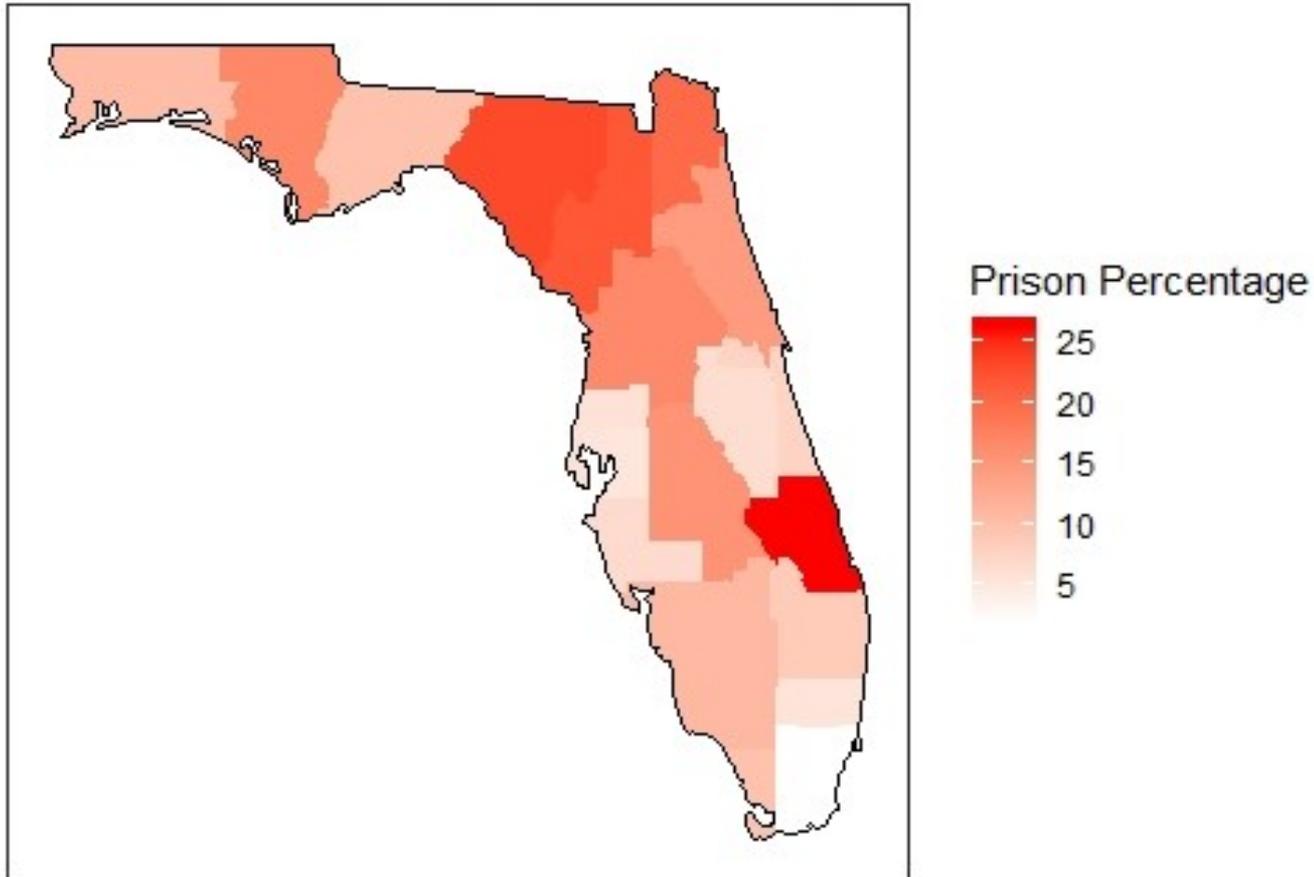
Wide Variation in Likelihood of Prison Sanctions Among Judicial Circuits

Percentage of 22-44 Cases Sentenced to Prison by Circuit, FY 2017-2018



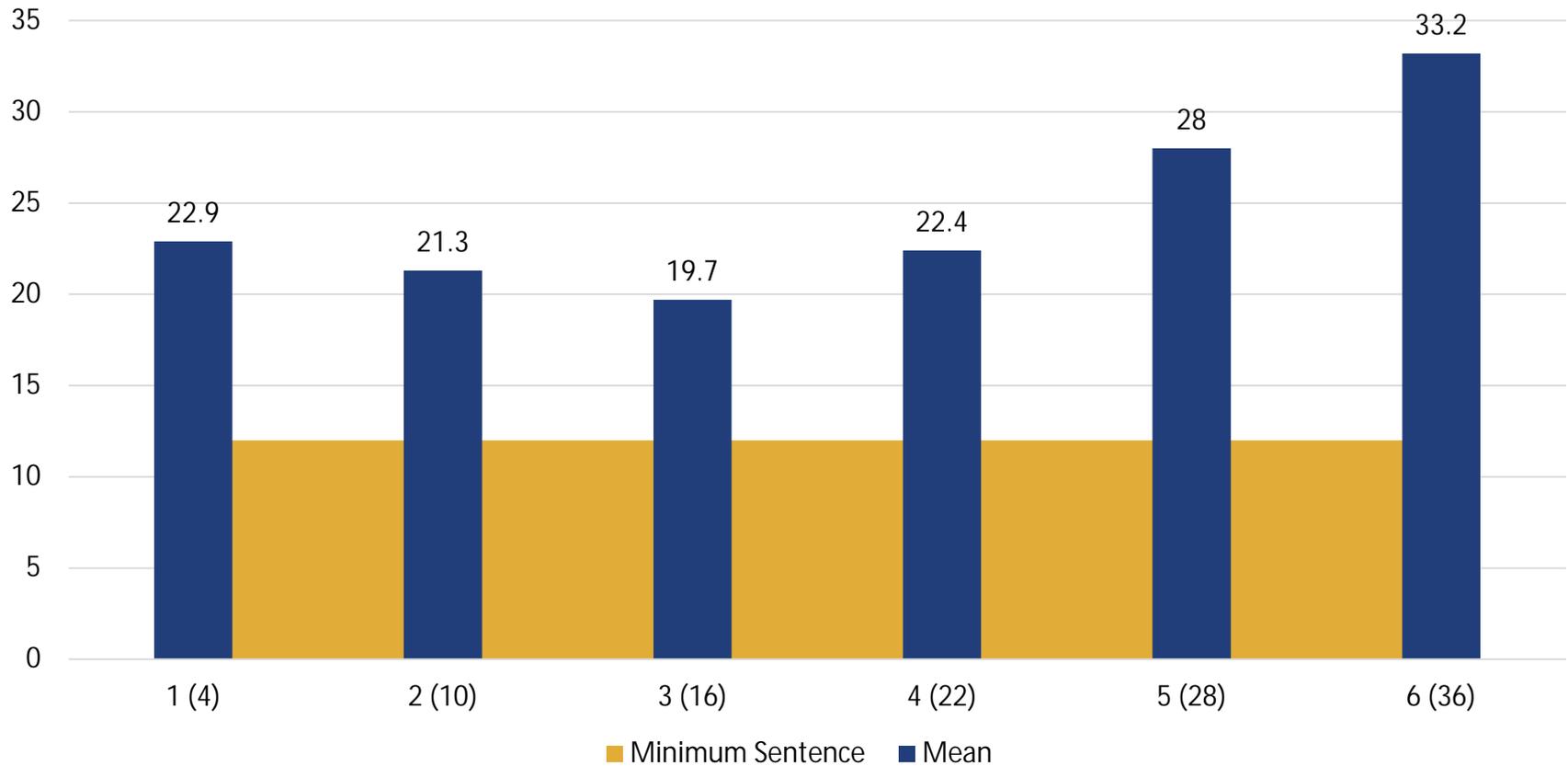
Wide Variation in Likelihood of Prison Sanctions Among Judicial Circuits

Percentage of 22 to 44 Point Scoresheets Sentenced to Prison by Judicial Circuit, FY 2018



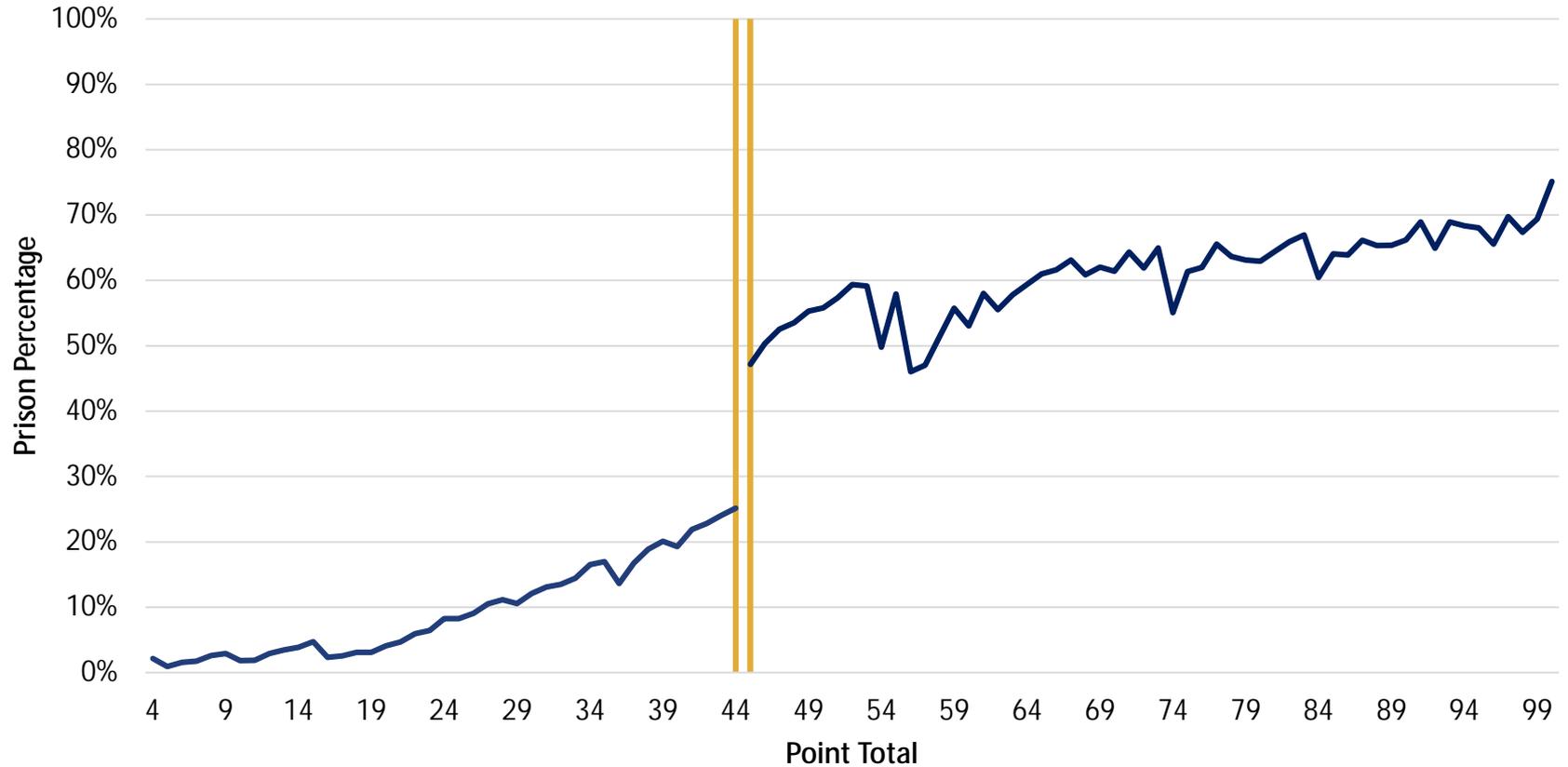
Sentences Were Longer Than Statutory Minimum Across Severity Levels

Mean Sentences of 23-44 Point Scoresheets by Severity Level, FY 2018



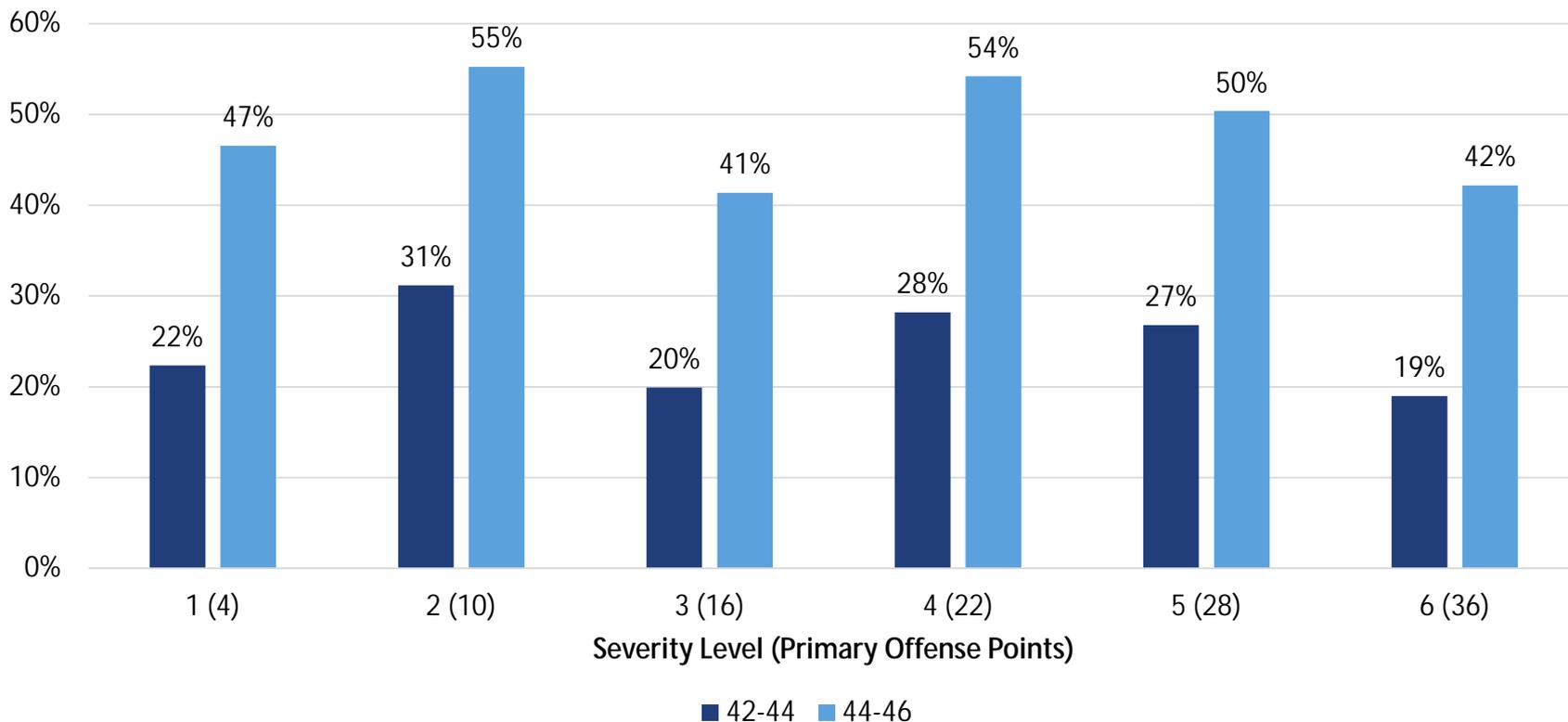
Dramatic Jump in Likelihood of Prison Above 44 Points

Percent of Scoresheets Sentenced to Prison by Total Points, FY 2018



Significant Variation in Likelihood of Prison Based on a Small Difference in Total Points

Percentage of 42-46 Receiving Prison Sentences by Severity Level and Point Total, FY 2018



Key Takeaways for FY 2018

- 22-44 point range accounted for an estimated 4,500 admissions to prison, or more than 15 percent of overall admissions
- Likelihood of prison sanction for scoresheets in 22-44 point range varies dramatically by judicial circuit
- Sentences significantly exceed the minimum required prison sentence for 22-44 point group
- Exceeding the 44-point threshold drastically increases the likelihood of a prison sanction

What is the Impact of Incarceration on Recidivism?

In general, incarceration is not more effective than non-custodial sanctions at reducing recidivism

For many lower-level offenders, incarceration can actually increase recidivism

Longer prison stays do not reduce recidivism more than shorter stays

Key Guideline Characteristics for Policy Consideration by Florida

- Using two primary factors to determine a sentence: criminal history and seriousness of the current offense
- Providing a recommended sentence range with lower and upper limits with departure only on findings of aggravated or mitigated circumstances
- Shortening sentence lengths, given that Florida's 85 percent time-served requirement is applied to all inmates
- Creating a meaningful right of appeal to a higher court for sentences that exceed specified ranges

Thank You

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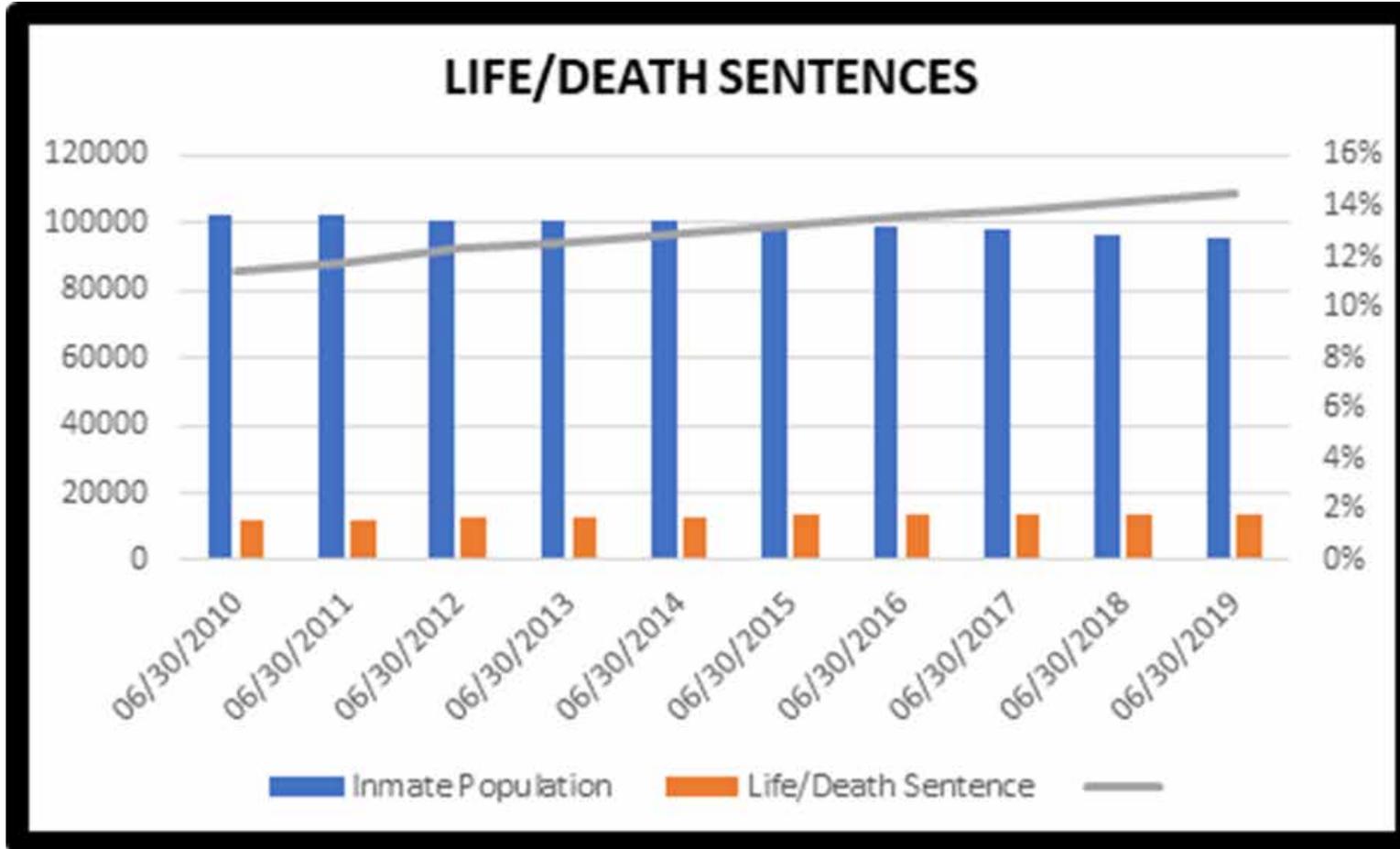
SENTENCING TRENDS & PRISON POPULATION

Florida Department
Of Corrections

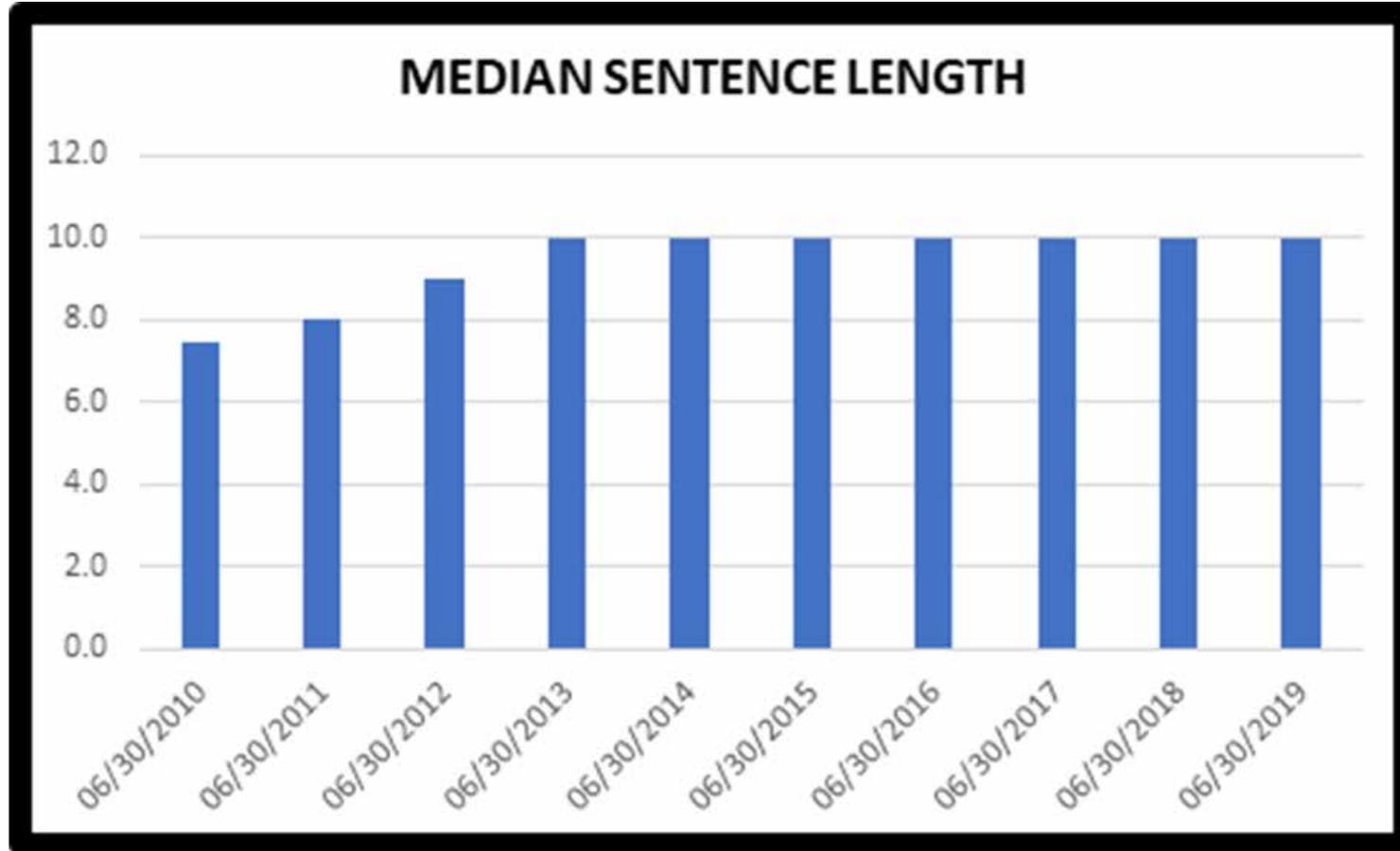
Kenneth S. Steely
General Counsel

October 2019

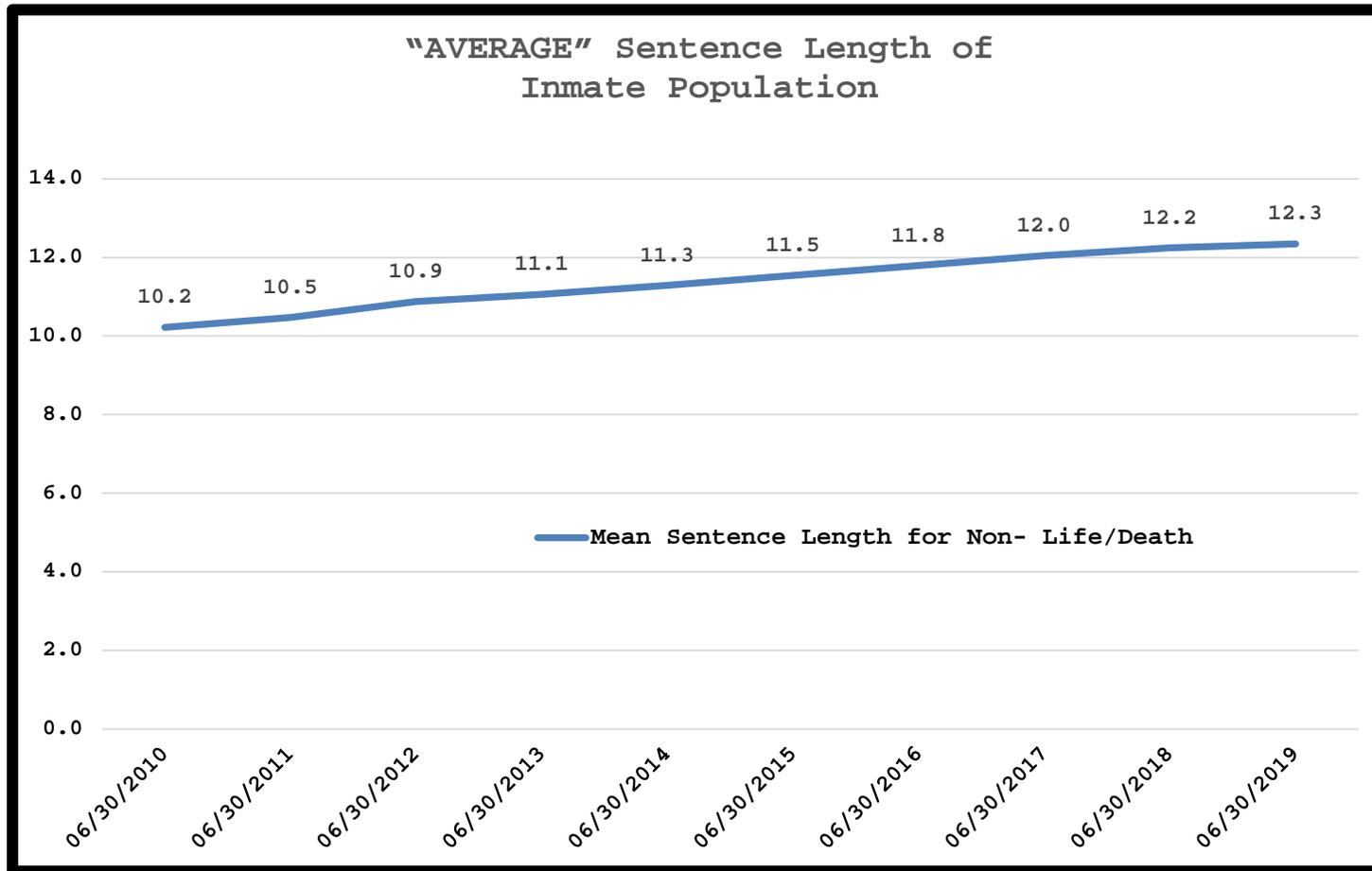
SENTENCING TRENDS



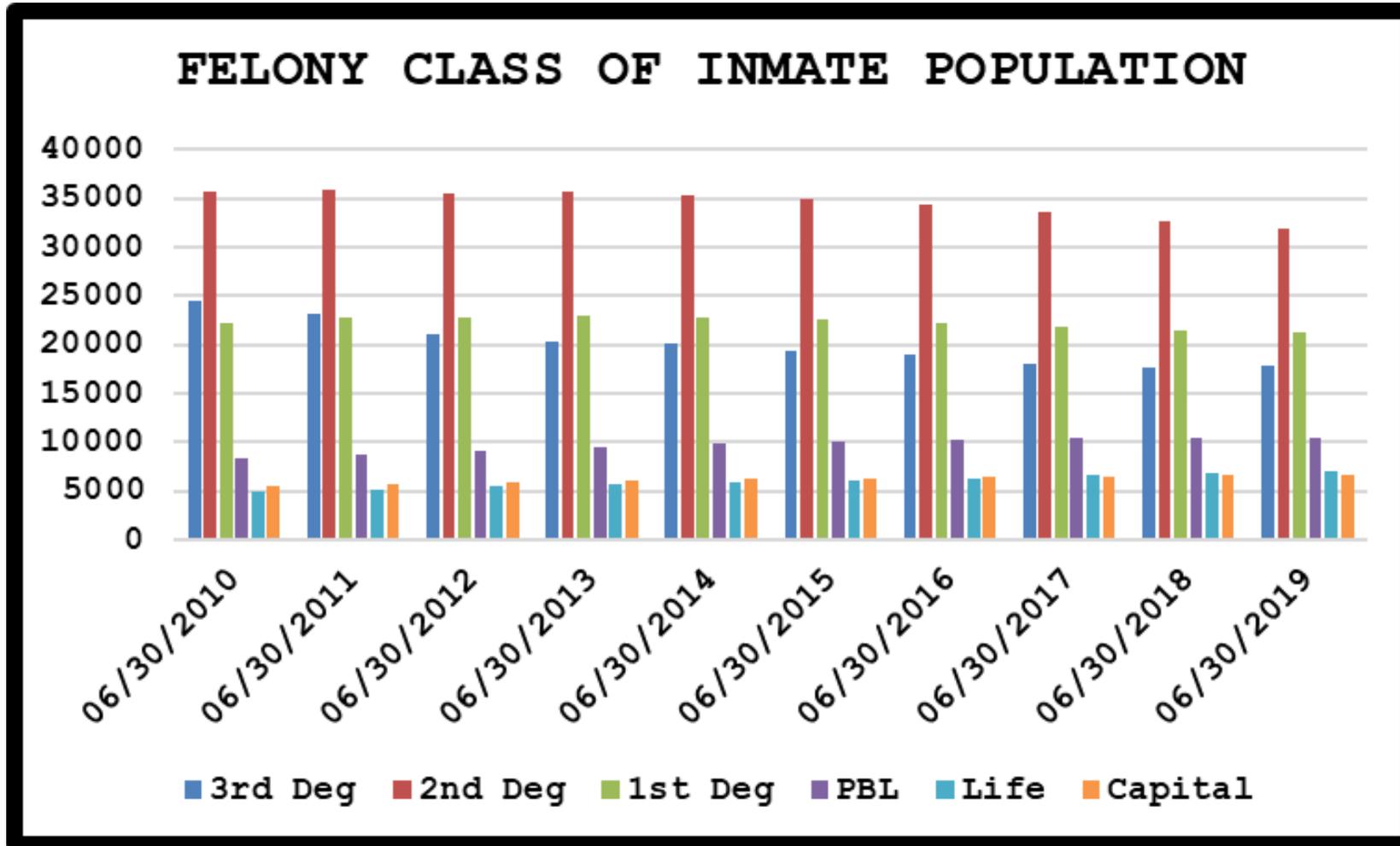
SENTENCING TRENDS



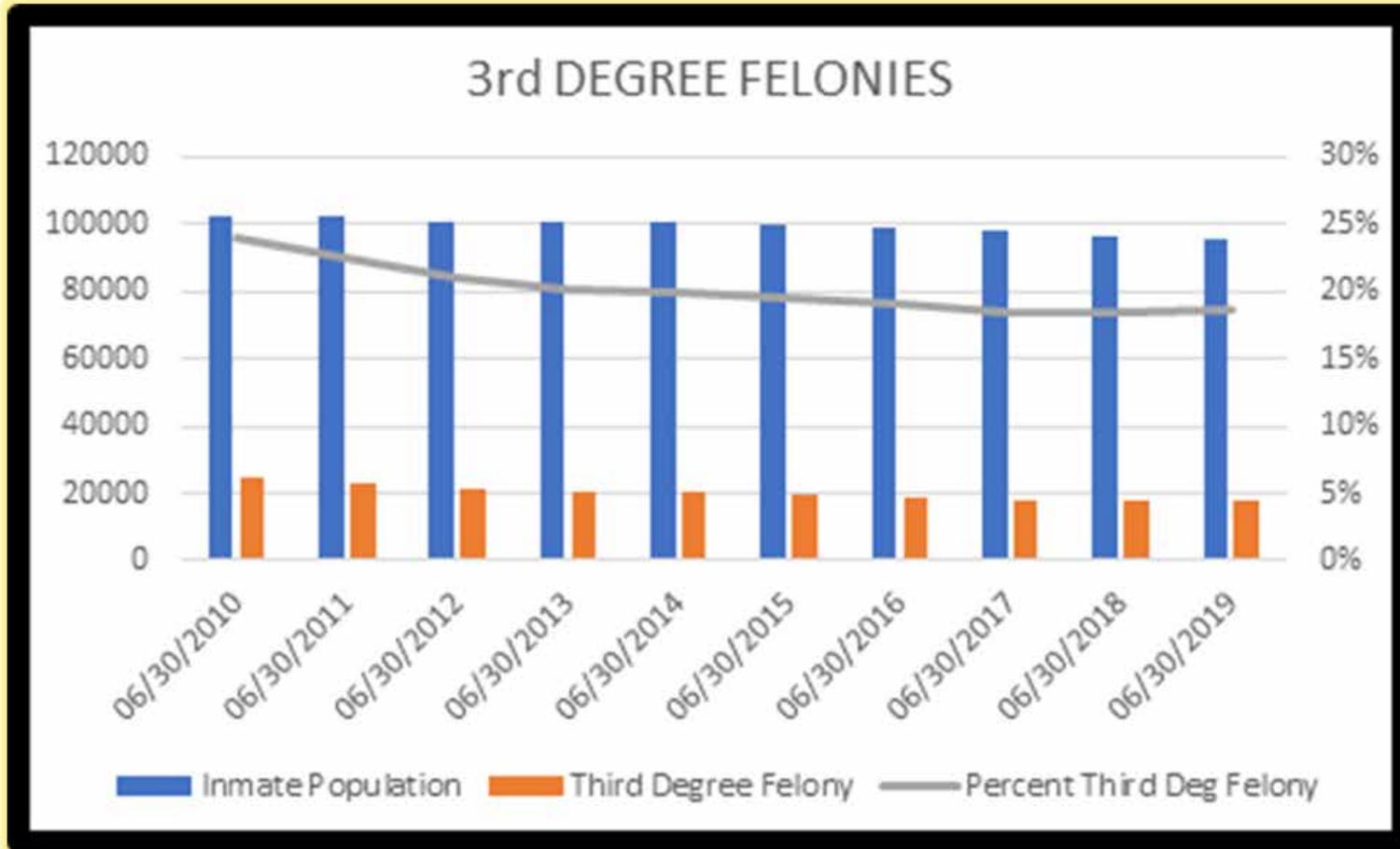
SENTENCING TRENDS



SENTENCING TRENDS



SENTENCING TRENDS



SENTENCING TRENDS - ADMISSIONS



TOP 5 OFFENSES FY10/11				TOP 5 OFFENSES FY18/19			
OFFENSE	# INMATES ADMITTED	% OF TOTAL ADMISSIONS	MEAN SENTENCE LENGTH IN YEARS	OFFENSE	# INMATES ADMITTED	% OF TOTAL ADMISSIONS	MEAN SENTENCE LENGTH IN YEARS
BURGLARY DWELLING/OCCUPIED STRUCTURE/CONVEYENCE	2895	8.3%	4.6	FELON W/GUN/CONCEALED WEAPON/AMMO	1838	6.4%	3.2
COCAINE S/M/D	2306	6.6%	2.9	BURGLARY UNOCCUPIED STRUCTURE/CONVEYENCE	1289	4.5%	2.5
BURGLARY UNOCCUPIED STRUCTURE/CONVEYANCE	1780	5.1%	2.5	TRAFFIC IN STOLEN PROPERTY	1222	4.3%	2.5
TRAFFIC IN STOLEN PROPERTY	1514	4.3%	2.8	COCAINE S/M/D	989	3.4%	2.7
POSSESSION OF COCAINE	1350	3.9%	1.8	POSSESSION CONTROLLED SUBSTANCE/OTHER	956	3.3%	1.7



SENTENCING TRENDS – IN PRISON

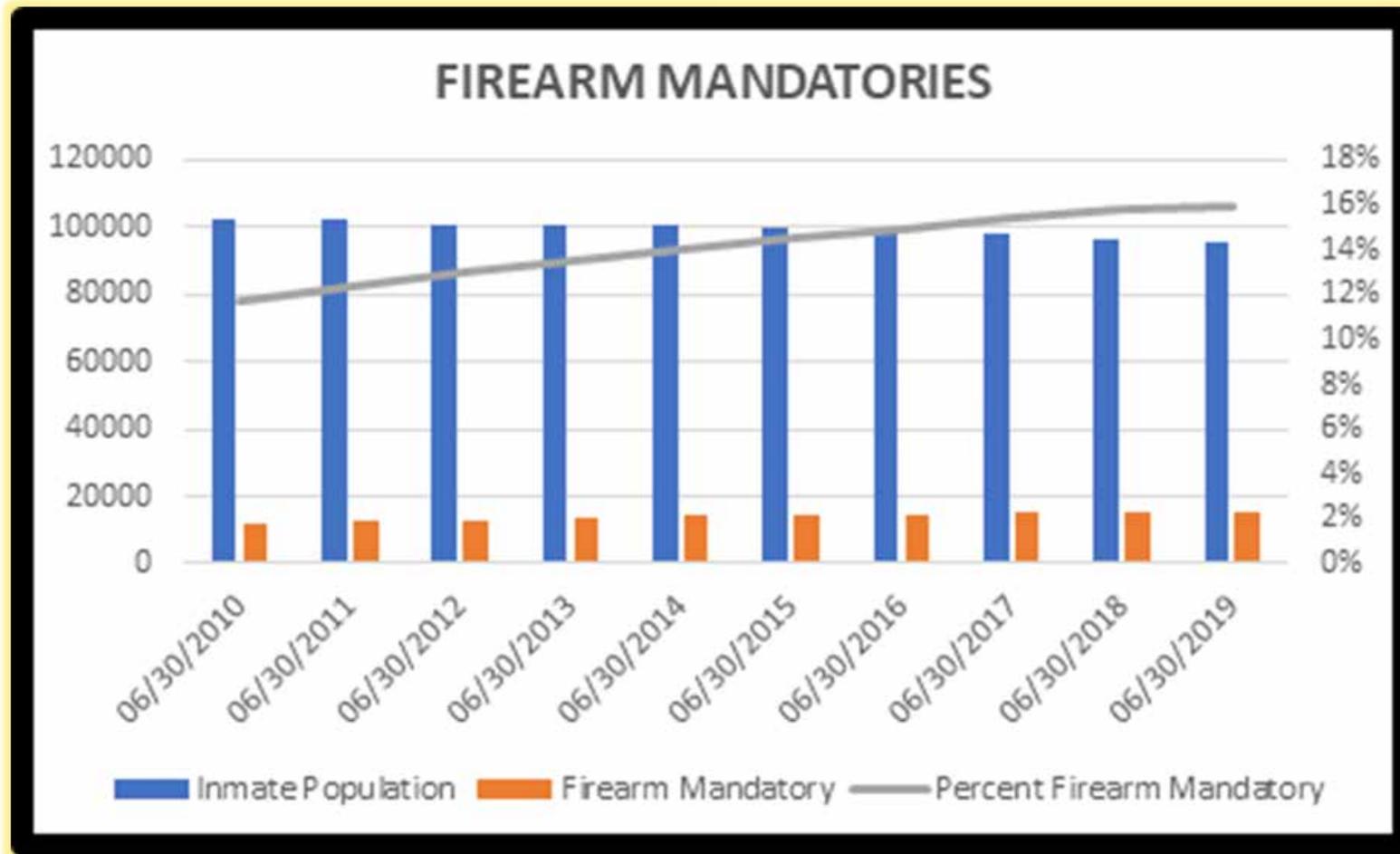
TOP 5 OFFENSES IN PRISON ON 6/30/2010

OFFENSE	# INMATES	% OF TOTAL POPULATION	MEDIAN SENTENCE LENGTH IN YEARS
BURGLARY DWELLING/OCCUPIED STRUCTURE/CONVEYENCE	7849	7.7%	5.5
ROBBERY W/GUN OR DEADLY WEAPON	7505	7.3%	15.0
1 ST DEGREE MURDER/PREMEDITATED OR ATTEMPT	5690	5.6%	LIFE
COCAINE S/M/D	5545	5.4%	3.5
2 ND DEGRE MURDER DANGEROUS ACT	4138	4.0%	30

TOP 5 OFFENSES IN PRISON ON 6/30/2019

OFFENSE	# INMATES	% OF TOTAL POPULATION	MEDIAN SENTENCE LENGTH IN YEARS
ROBBERY W/GUN OR DEADLY WEAPON	7256	7.6%	20.0
1 ST DEGREE MURDER/PREMEDITATED OR ATTEMPT	6590	6.9%	LIFE
BURGLARY DWELLING/OCCUPIED STRUCTURE/CONVEYENCE	6135	6.4%	10.0
2 ND DEGRE MURDER DANGEROUS ACT	5251	5.5%	30.0
FELON W/GUN/CONCEALED WEAPON	3881	4.1%	3.7

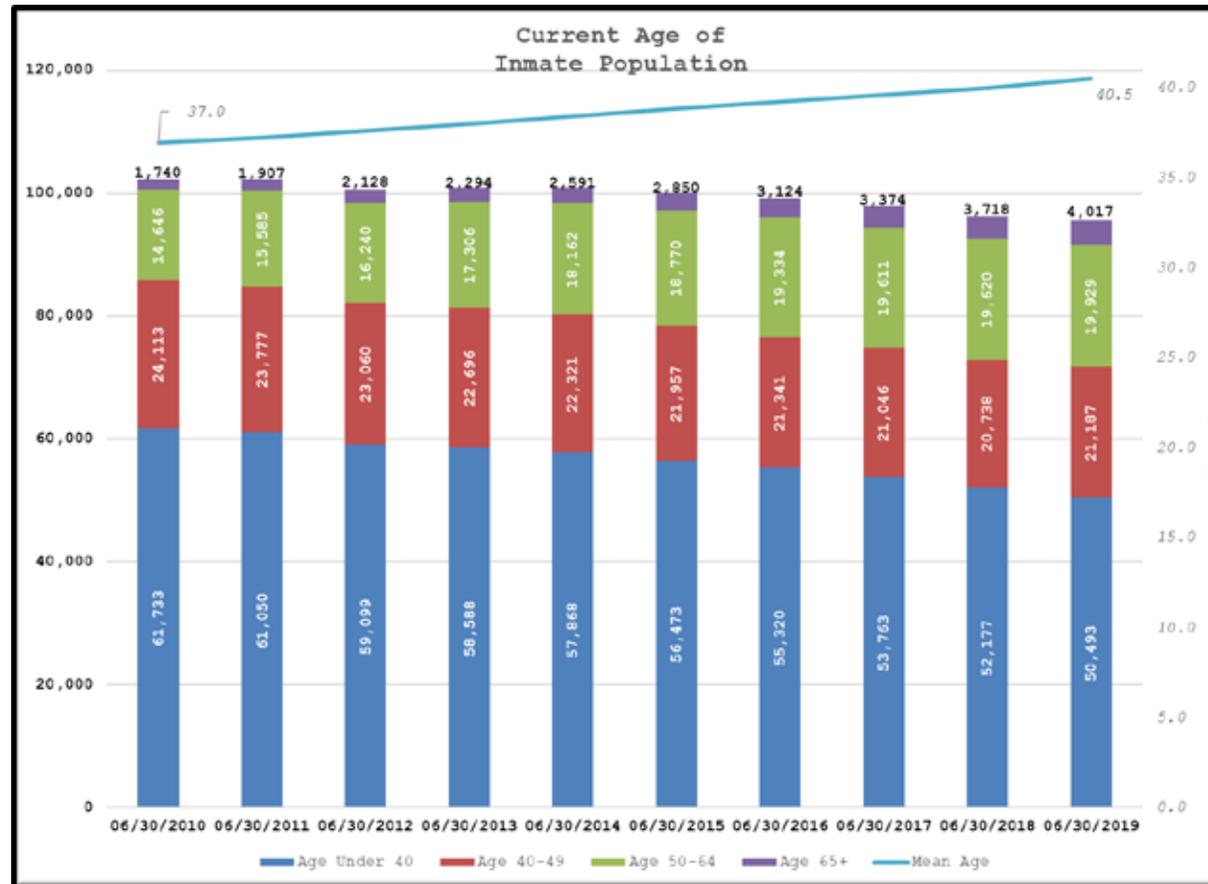
MANDATORY SENTENCING



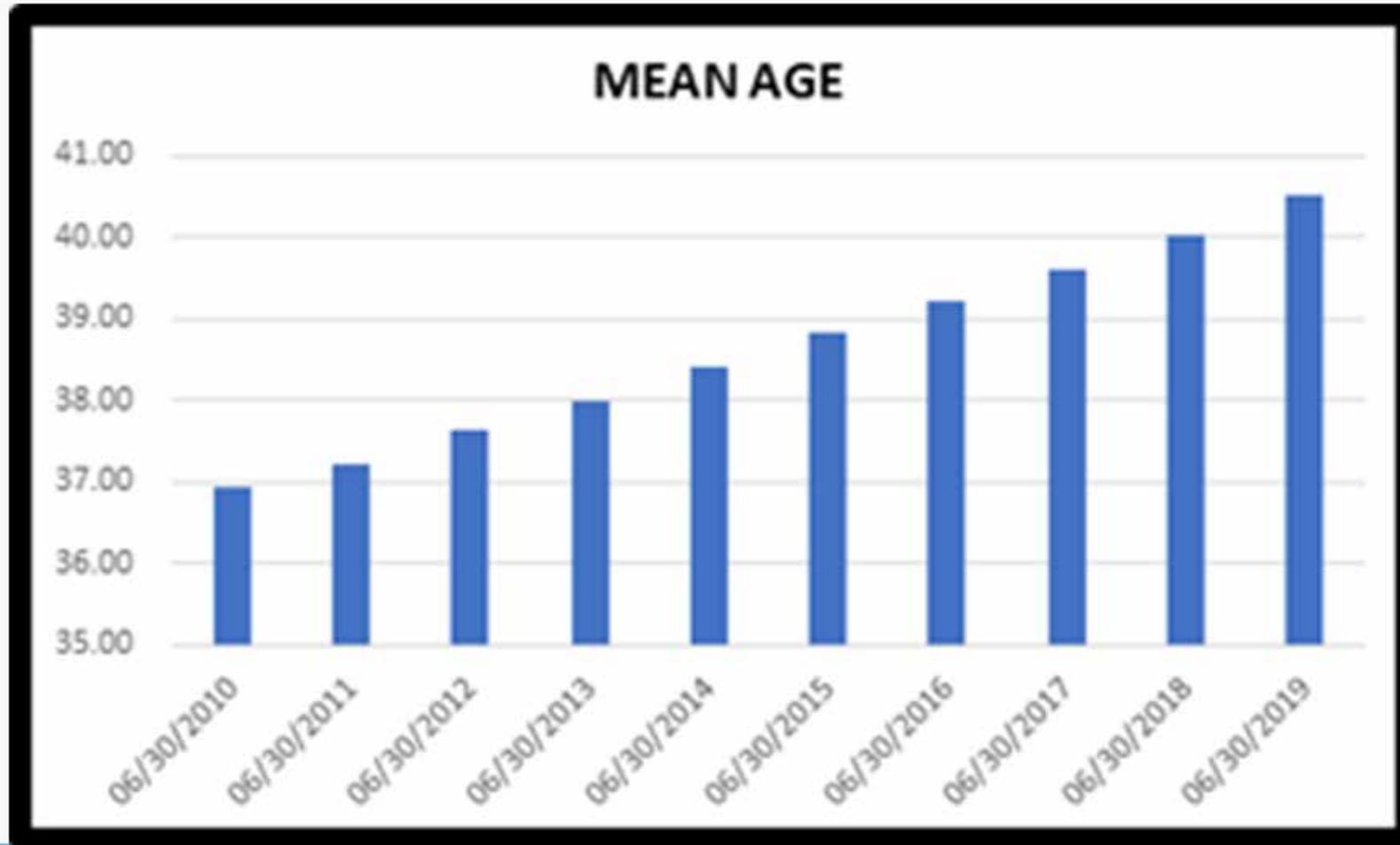
MANDATORY SENTENCING



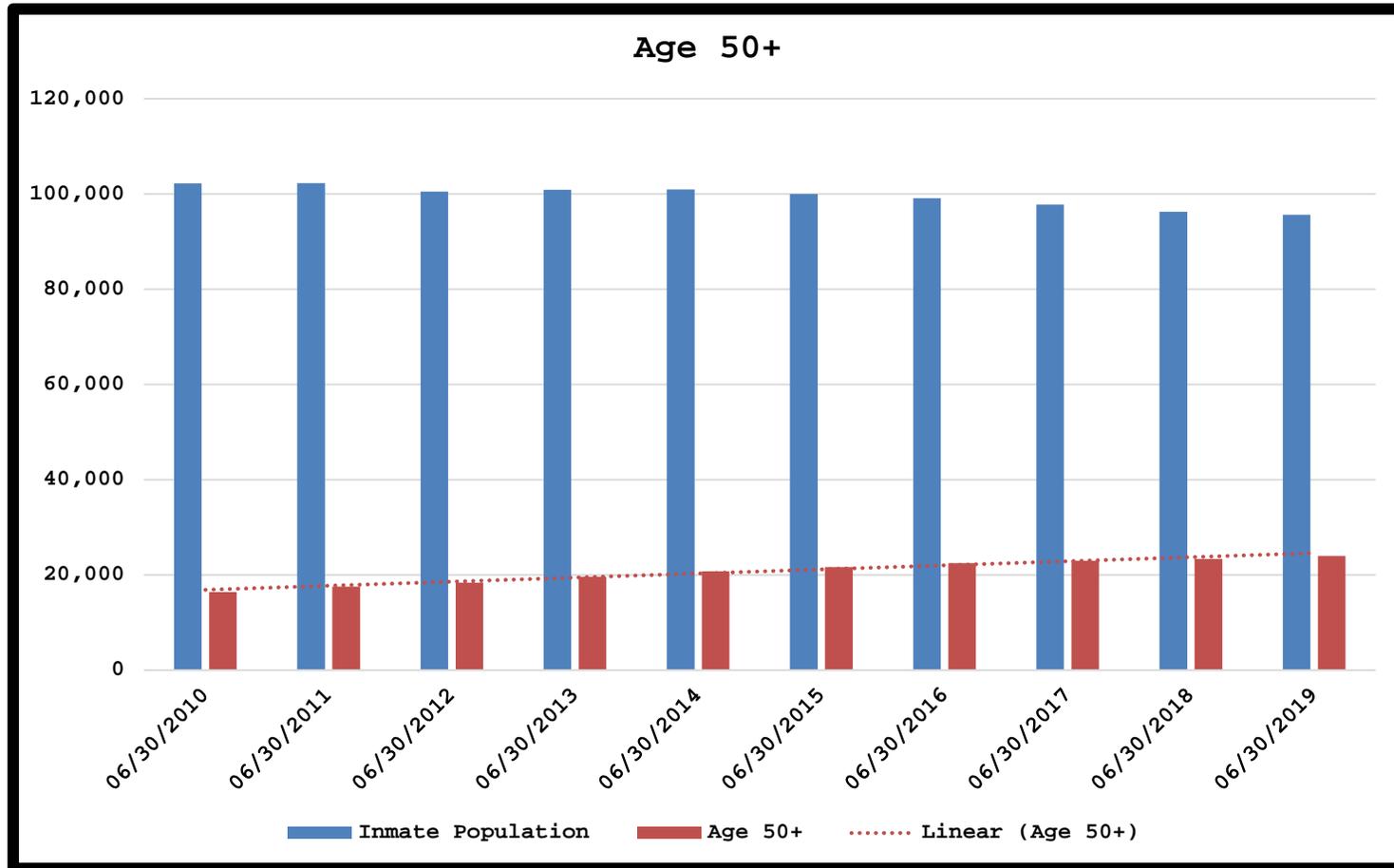
DEMOGRAPHICS



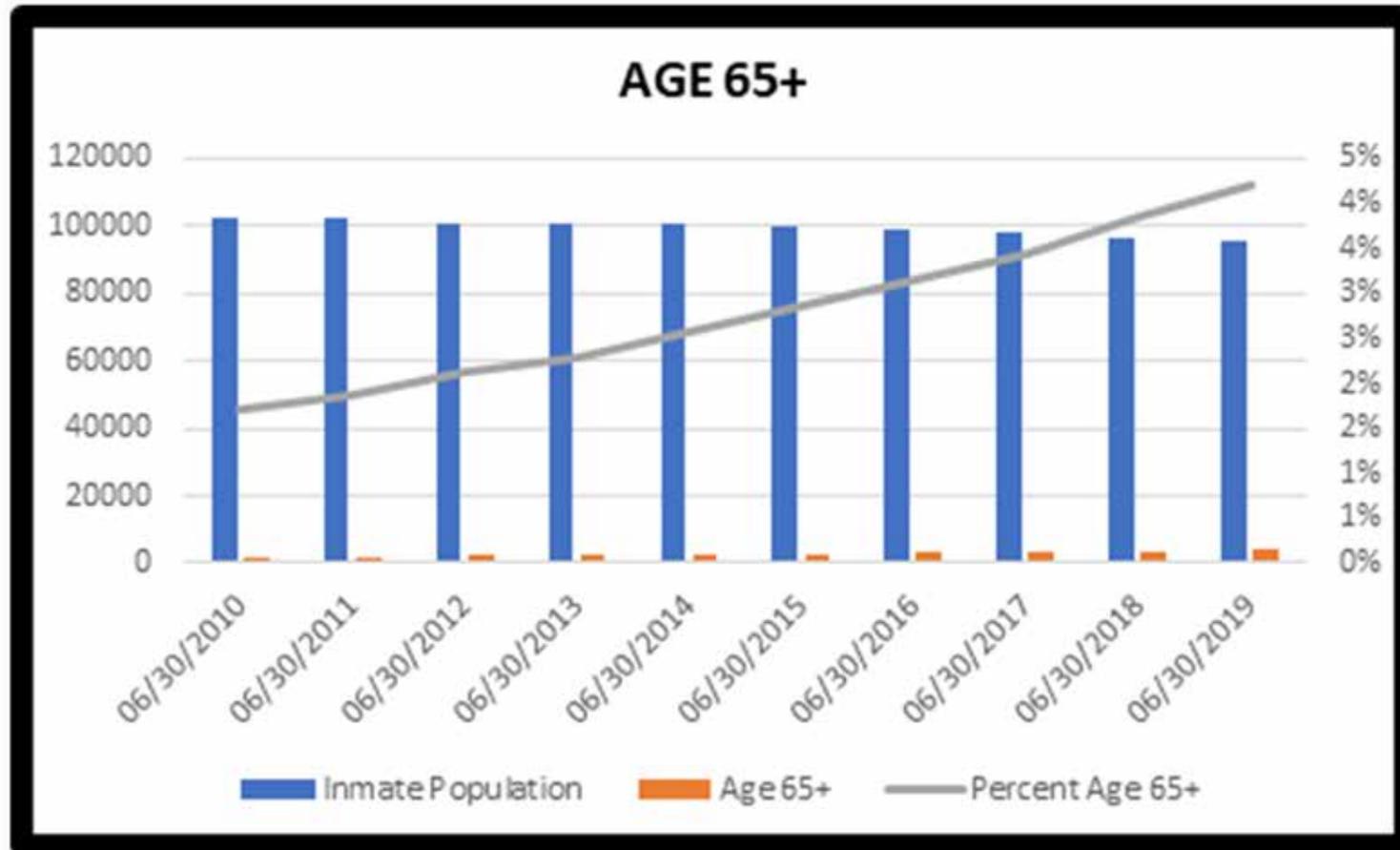
DEMOGRAPHICS



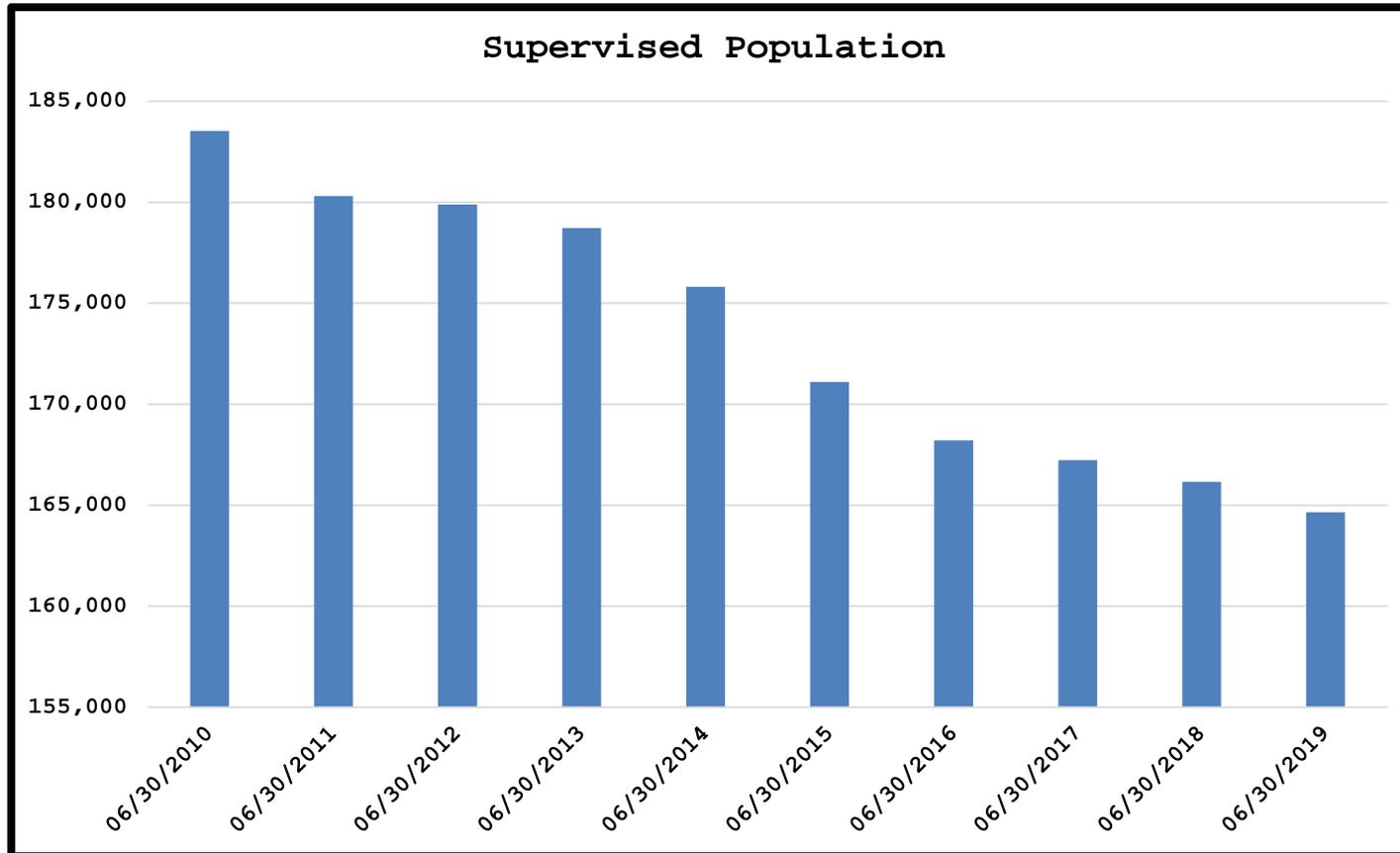
DEMOGRAPHICS



DEMOGRAPHICS



SUPERVISED POPULATION





Thank you

Kenneth Steely, General Counsel

921.0026. Mitigating circumstances

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

- (a) The departure results from a legitimate, uncoerced plea bargain.
- (b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- (c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- (d) The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.
- (e) The need for payment of restitution to the victim outweighs the need for a prison sentence.
- (f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.
- (g) The defendant acted under extreme duress or under the domination of another person.
- (h) Before the identity of the defendant was determined, the victim was substantially compensated.
- (i) The defendant cooperated with the state to resolve the current offense or any other offense.
- (j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- (k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.
- (l) The defendant is to be sentenced as a youthful offender.
- (m) The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under [s. 921.0024](#) are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in [s. 948.08\(6\)](#).
- (n) The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

(3) Except as provided in paragraph (2)(m), the defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and does not, under any circumstances, justify a downward departure from the permissible sentencing range.

EXAMPLES

NON-STATUTORY MITIGATING FACTORS APPROVED BY COURTS OF APPEAL OR ALLOWED UNDER FEDERAL SENTENCING GUIDELINES

- Enticement: Enticement is not one of the enumerated grounds for a departure sentence. However, imposition of a downward departure based on enticement is not prohibited either. State v. Simmons, 80 So. 3d 1089, 1092 (Fla. 4th Dist. App. 2012) The most likely situation for assertion of this mitigator is where law enforcement has conducted a “sting” operation and created a temptation for the defendant to commit the crime that falls short of entrapment, but the evidentiary challenges to application of this mitigator are formidable .See—Enticement, 16 Fla. Prac., Sentencing § 6:36 (2018-2019 ed.)
- Sentence entrapment: Although the doctrine of sentencing entrapment may be relied upon to depart from the Federal Sentencing Guidelines,¹ and it has so far not been formally recognized as a non-statutory basis for downward departure sentencing in Florida, it is not inconsistent with present sentencing doctrine in this state. “Sentencing entrapment” occurs when outrageous official conduct overcomes the will of an individual predisposed only to commit a minor or lesser offense and the individual is entrapped into committing a greater offense subject to greater punishment. See U.S. v. Stavig, 80 F.3d 1241, 1245 (8th Cir. 1996).
- Sentence manipulation: Although a defendant does not have a right to be arrested in order to be prevented from committing further crimes, a trial court has discretion to impose a downward departure sentence, when law

enforcement allows a defendant to continue criminal activities for no reason other than to enhance his or her sentence. State v. Steadman, 827 So. 2d 1022 (Fla. 3d Dist. App. 2002).

- Reduction of defendant's sentence to provide parity with sentence of codefendant who was at least, if not more, culpable than defendant, was proper, so that downward departure from sentencing guidelines was proper. Sanders v. State, 510 So. 2d 296 (Fla. 1987)