



# Decriminalization through Diversion: The Only Way Out.

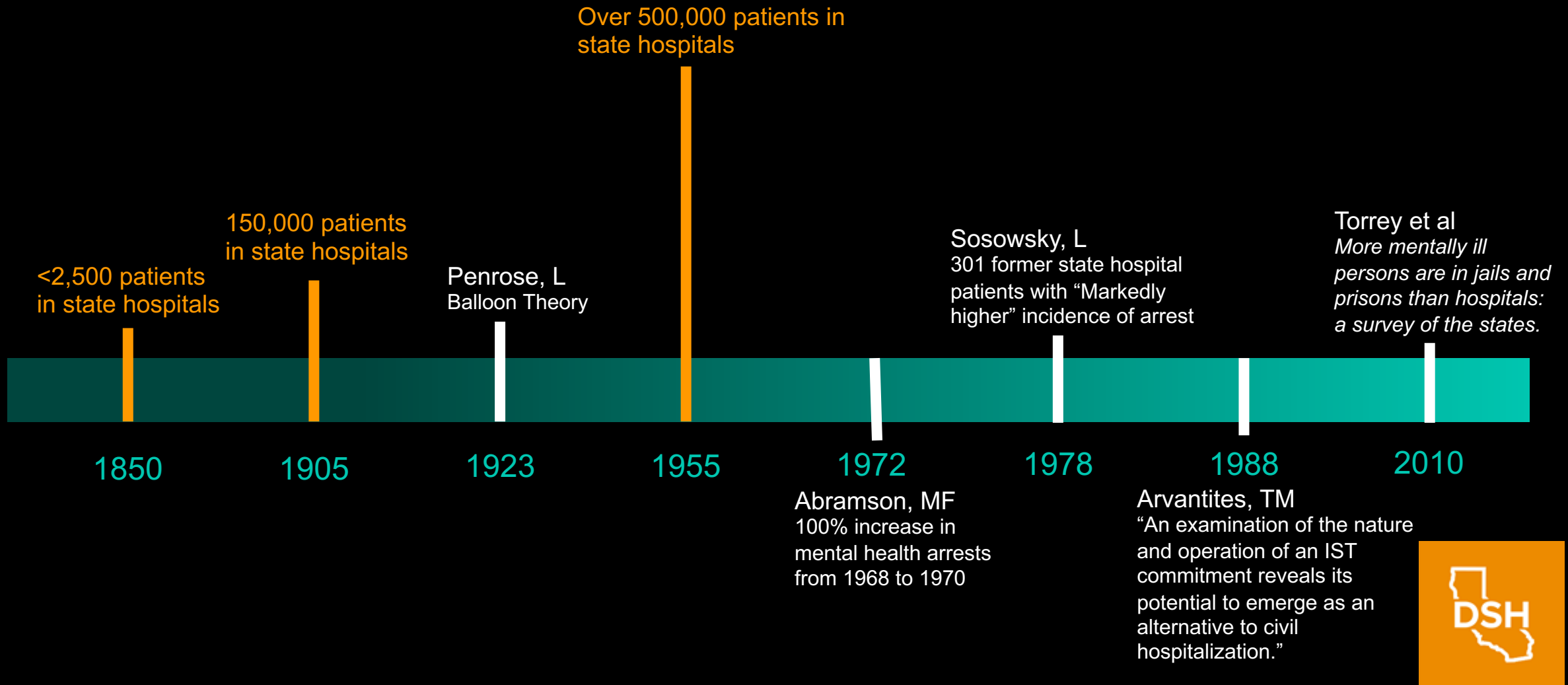
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# Learning Objectives

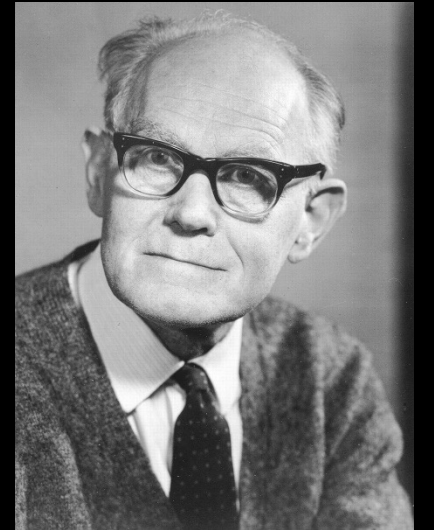
- Explain that forensic patients are increasing nationally, driven largely by an increase in patients found incompetent to stand trial.
- Review the risk factors and outcomes for forensic psychiatric commitments under the IST statute.
- Trace the history of mental health policy in the United States since the mid-1800's and apply that historical knowledge to the current mental health crisis in state hospitals.
- Provide overview of the current literature on community-based alternative treatment.
- Describe DSH IST Felony Mental Health Diversion Program.

# State Hospital overutilization: An historic problem



# Penrose Effect/Penrose's Law

In 1939, British psychiatrist Lionel Penrose described an inverse relationship between the number of patients in mental hospitals and the number of sentenced adult prisoners



Circa 1947

# Reference



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## The San Francisco News

*A Scripps-Howard Newspaper*

presents a  
reprint of

# People in the Dark

A Series of Articles on California's Hospital System  
for the Mentally Sick

Written by Al Ostrom—Photographs by Robert J. Warren

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A SUMMARY

- 1960s - Deinstitutionalization

# Abramson 1972

- Lanterman-Petris-Short (LPS) Act of 1969 made criteria for initial involuntary treatment more stringent and the only avenue to indeterminate involuntary commitments were after criminal conviction
- In 1970, the year after LPS went into effect, there was a 36% increase in criminal complaints and over 100% increase in mental commitments because of incompetency to stand trial in San Mateo County

# Mentally Ill Patients Have Higher Rates of Arrest Than the General Population After Reform

**TABLE 6**

**Annual Arrest Rates for Postreform Period for 4,237 U.S. Cities in 1974, San Mateo County in 1974, and San Mateo County Cohort Admitted from June 1972 to December 1973 (N=301)**

Crime	Arrest Rates Per 1,000 persons		
	U.S. Cities	San Mateo County	Admission Cohort
Murder	0.15	0.08	1.46
Rape	0.18	0.09	1.46
Robbery	1.18	0.38	2.23
Aggravated assault	1.55	0.93	26.58
Burglary	2.85	1.27	12.56



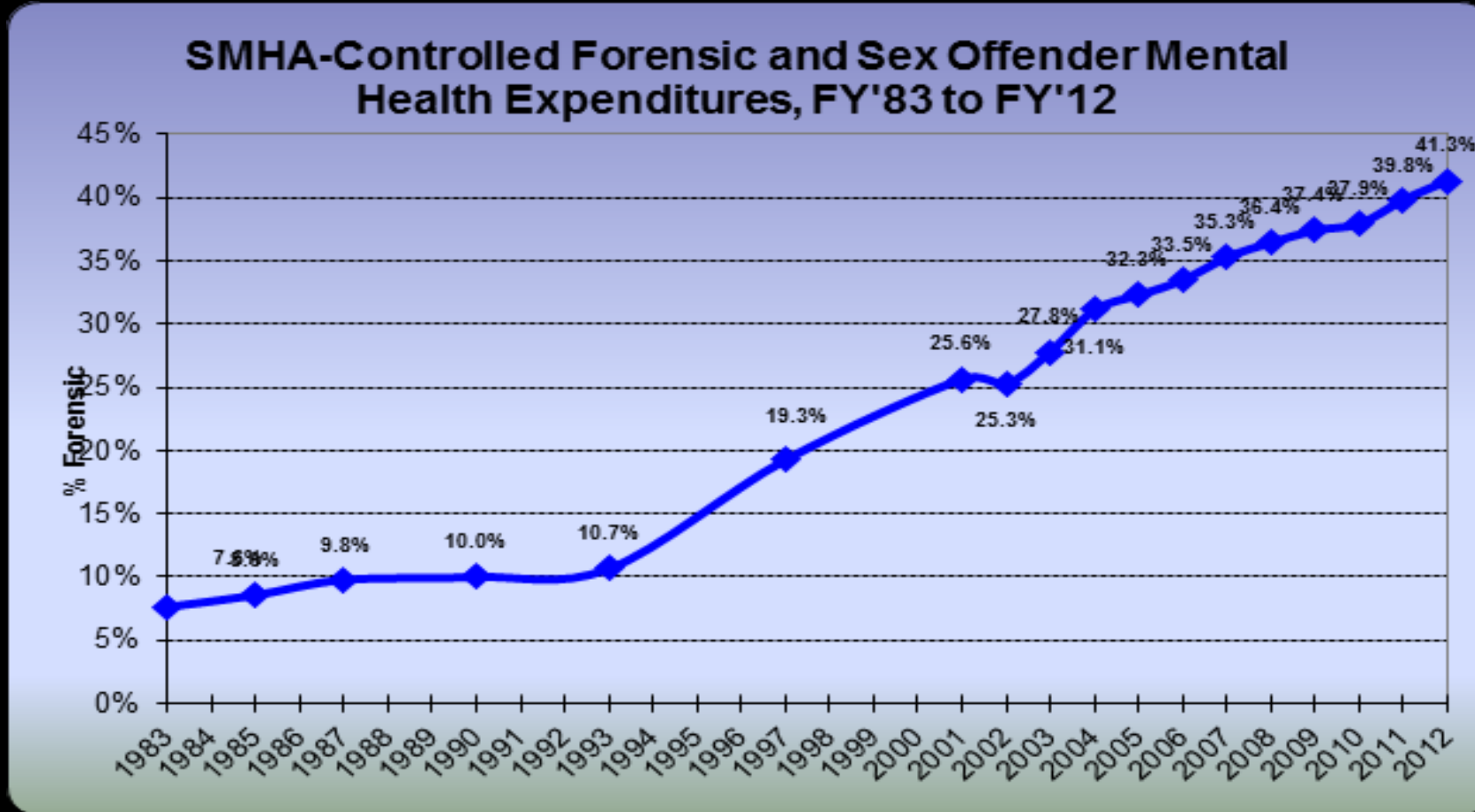
# Incompetent to Stand Trial (IST) Commitments Are Positively Correlated to Deinstitutionalization

- IST commitments increased post-deinstitutionalization by an average of 20%
- The increase in IST admissions, as a percentage of all hospitalizations, was positively correlated to the rate of deinstitutionalization ( $r=0.93$ )

# A National Problem

- Colorado to hire consultant to ensure speedy competency ...[Colorado Springs Gazette](#)-Aug 2, 2016
- With state hospitals packed, mentally ill inmates wait in county jails ...[Dallas Morning News \(blog\)](#)-Apr 21, 2016
- Jail wait times are inhumane for the mentally ill The [Delaware County Daily Times](#)-Jul 18, 2016
- Federal trial to tackle Washington's mental competency wait lists. The [Seattle Times](#). March 14, 2015.
- Jails are becoming 'new psych hospitals' Jackson Hole ([Wyoming](#)) News & Guide-Aug 10, 2016
- ACLU revives lawsuit against Pa. over 'off the charts' delays to treat mentally ill defendants. [Pennlive.com](#) May 11, 2017
- Lawsuit alleges Utah agencies 'unconstitutionally delay' mentally ill inmates' treatment. [Deseret News Utah](#) September 9, 2015
- Long, Dangerous Wait for Hospital Beds for Those Incompetent to Stand Trial KQED [California](#) October 20, 2015
- New York plan aims to divert mentally ill people from jail's revolving door. The [New York Times](#). December 2, 2014.

# National % Forensic Spending



# NASMHPD Forensic Survey

- **75%** demand for forensic services has increased (a lot 54%, moderately 21%)
- **78%** of states responding report that increased demand for forensic services has required that they maintain **waiting lists for admission**
- **Half** of states responding report that they have been **threatened with or found in contempt of court** for failing to admit court ordered patients in a timely manner



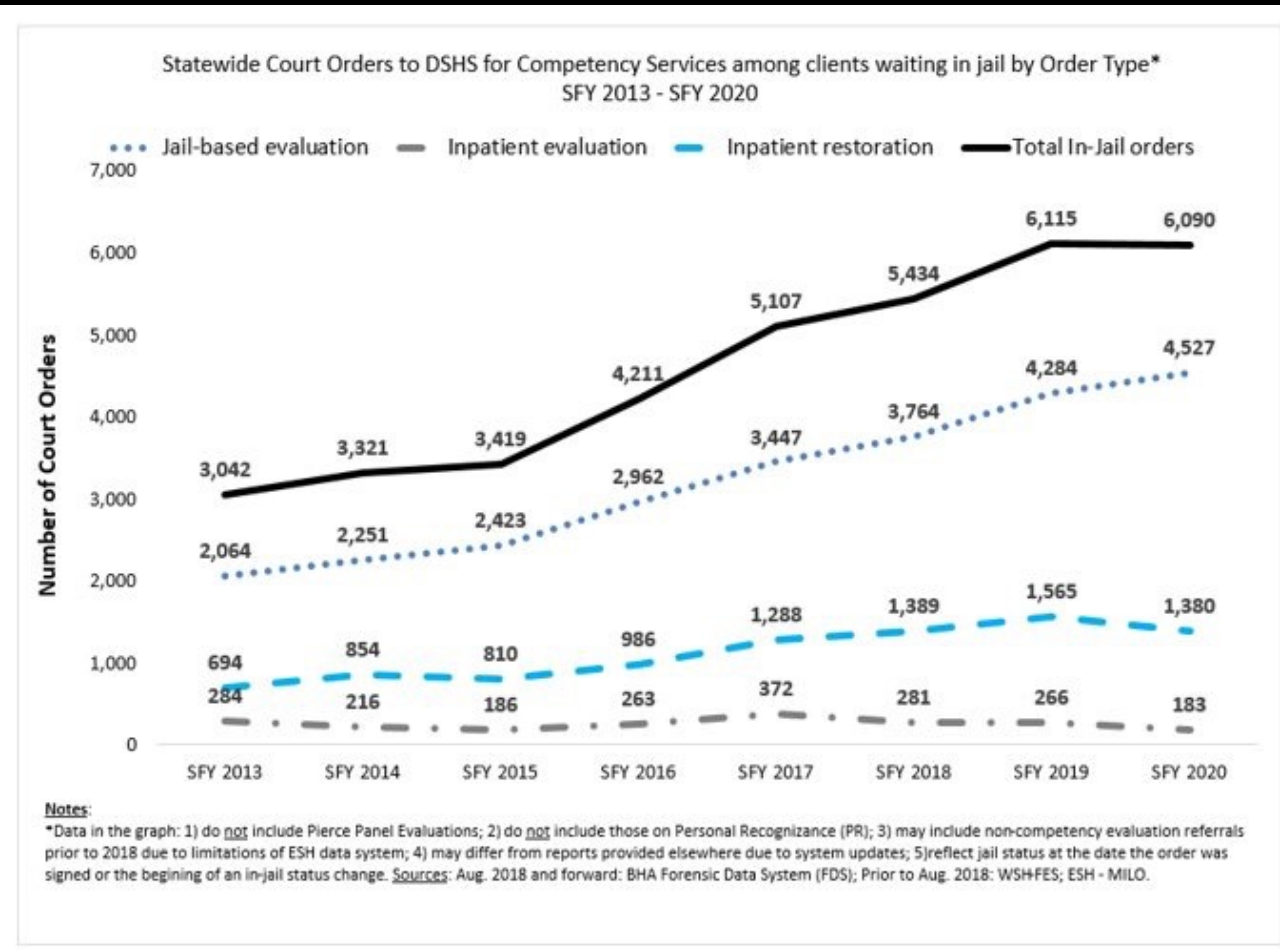
# Forensic Patients in State Hospitals



- 74%↑ in the number of forensic patients in state hospitals from 1999 to 2014
- 72%↑ the number of **IST** patients from 1999 to 2014



# Trueblood v. Washington (2015)



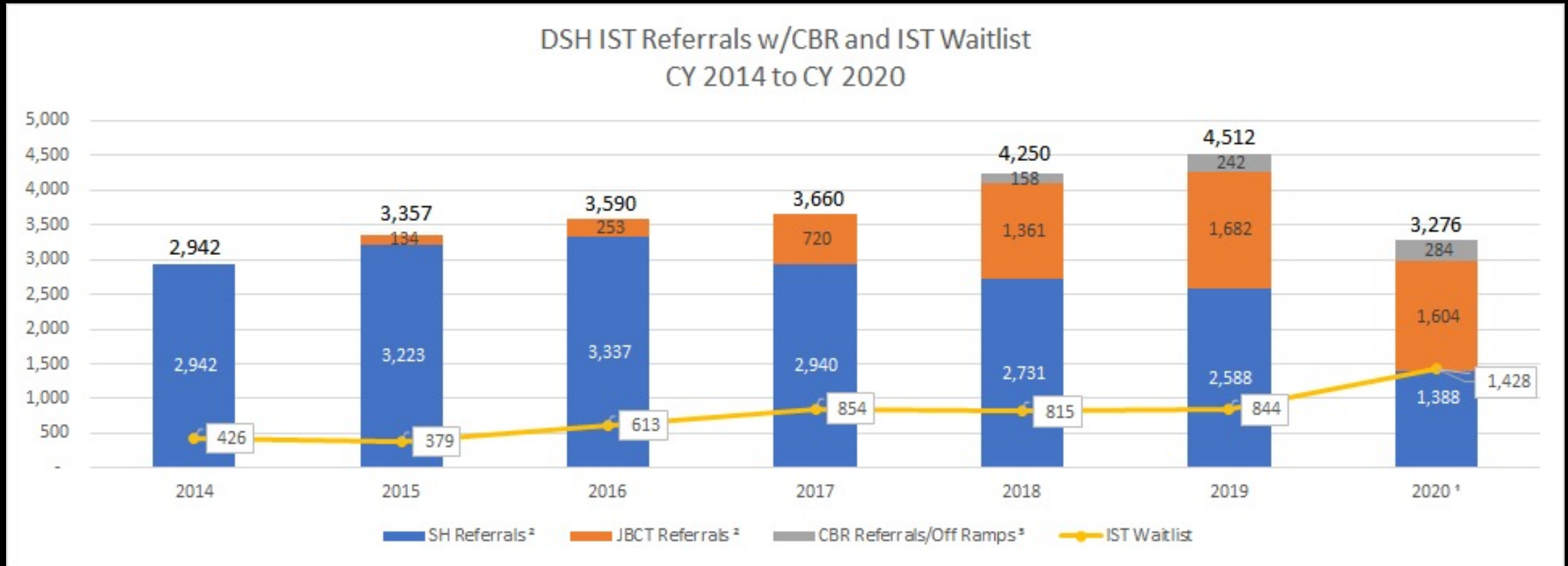
# Trueblood v. Washington (2015)

- Over \$100,000,000 in contempt fines
- New settlement structure: Contempt Settlement Agreement.
  - Supports improved access to appropriate behavioral health services that are designed to dramatically reduce the number of people entering the criminal court system
  - “How we care for those with behavioral health disorders is a measure our humanity as a state. Our work with our state, county and local partners is never done.”

» former Washington DSHS Secretary Cheryl Strange



# DSH Referrals & Waitlist



<sup>1</sup> Referral decreases in the 2020 calendar year represent the impact of the COVID-19 pandemic.

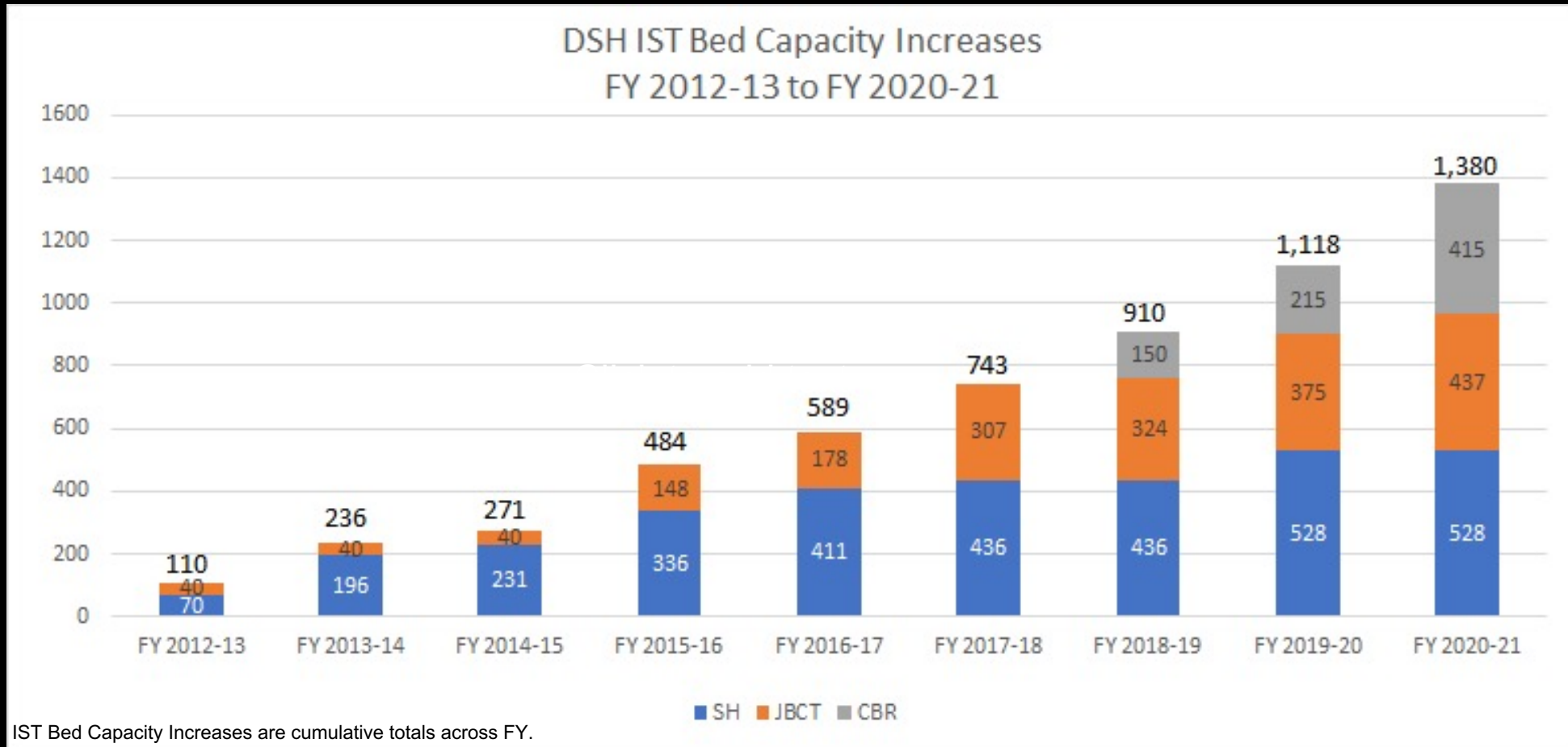
<sup>2</sup> IST Referrals exclude SH/JBCT Transfers and Court Returns.

<sup>3</sup> CBR/Off Ramp tracking began in 2018.





# DSH Capacity Increases



# WHY ?



# UC Davis Napa Research

- Started in 2008
- Dr. Barbara McDermott
- Large sample
- Initially Napa specific
- Expanded into statewide protocol



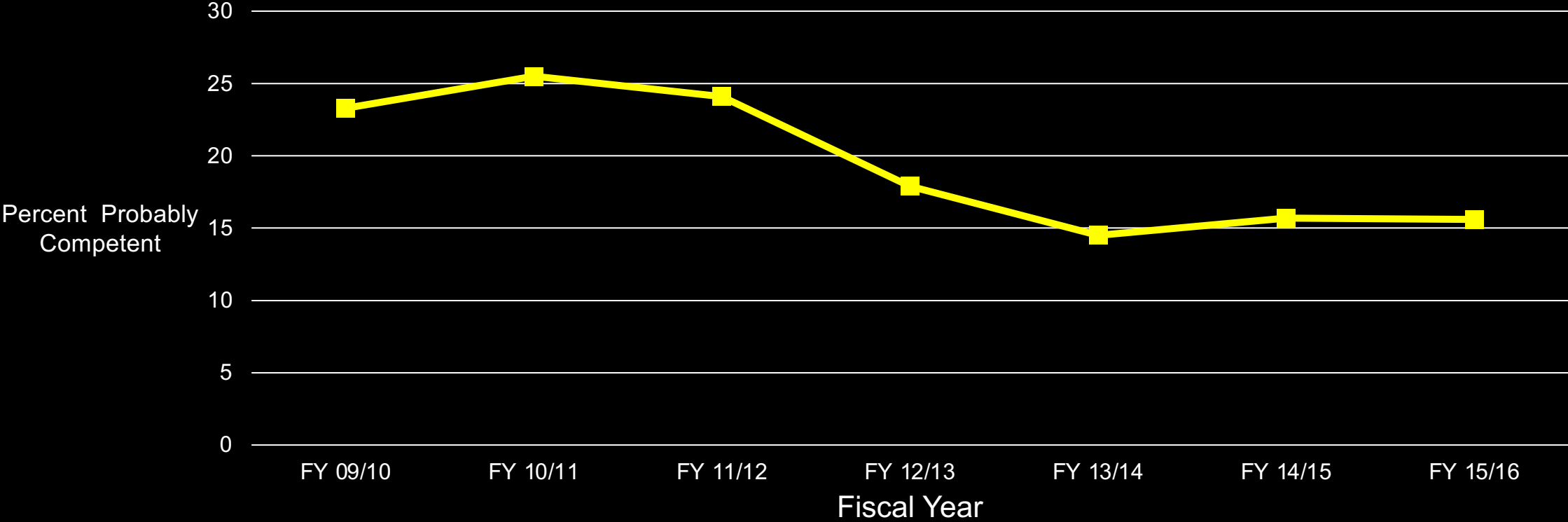
# Malingering?

Percent Malingering by Fiscal Year



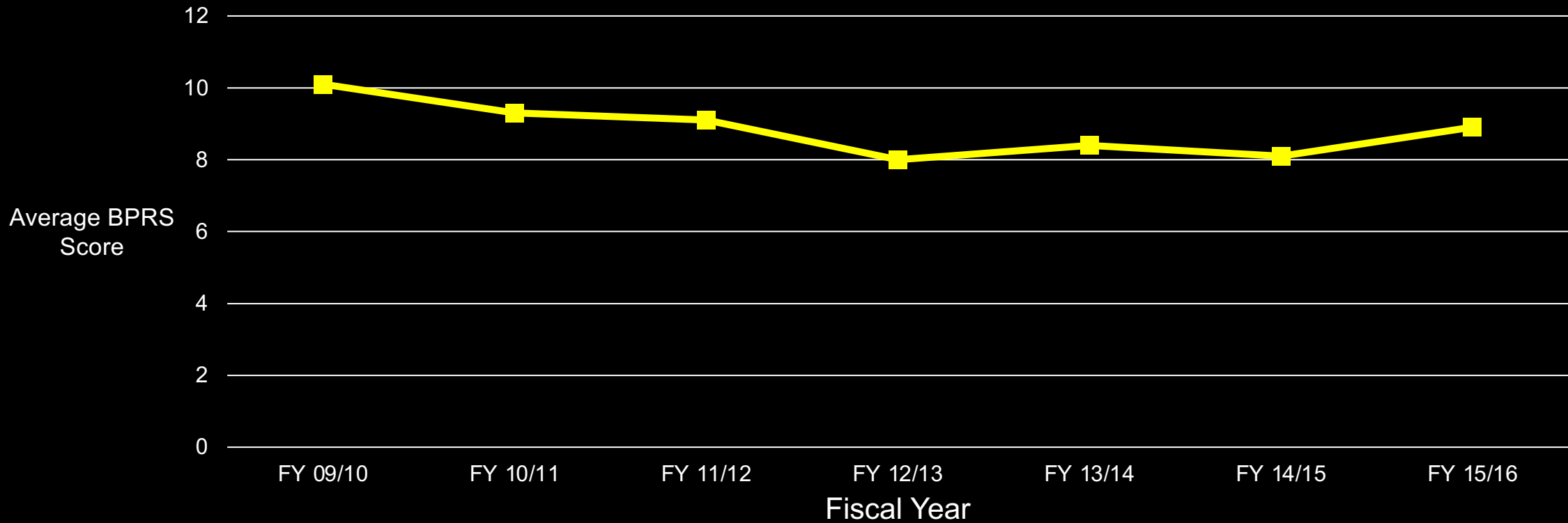
# Already Competent?

Percent Probably Competent by Fiscal Year



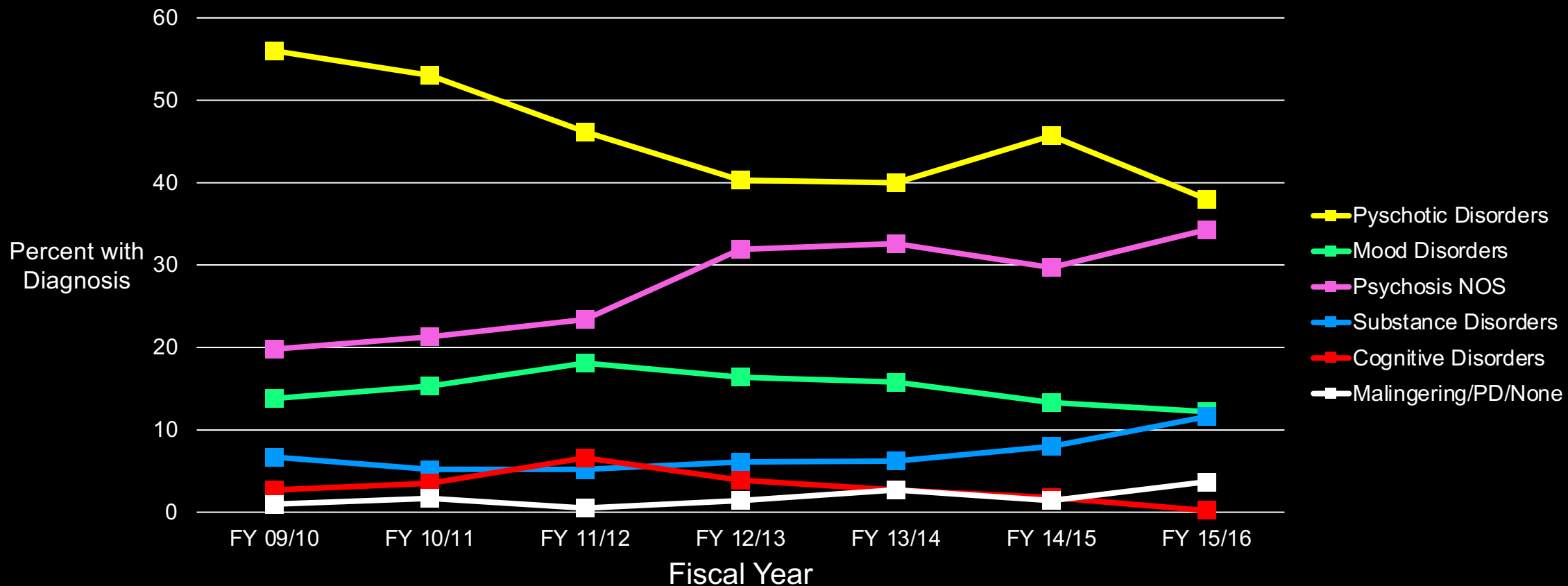
# More (or less) ill?

Average BPRS Scores by Fiscal Year



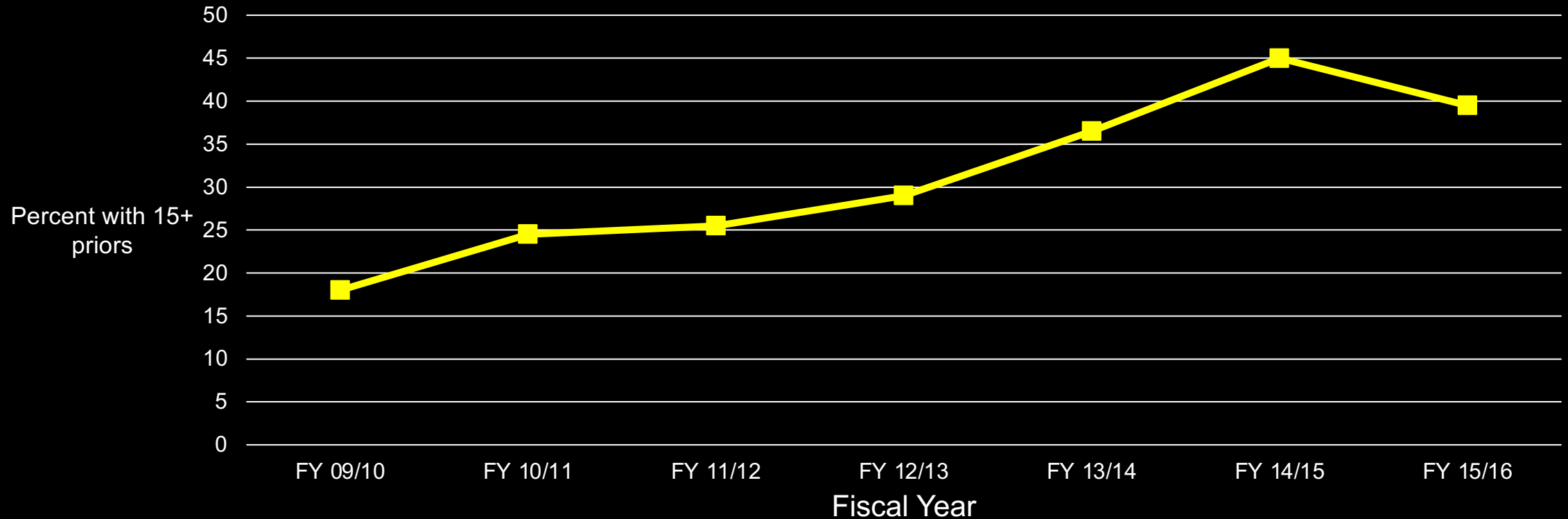
# More Substance Abuse?

Primary Diagnosis by Fiscal Year



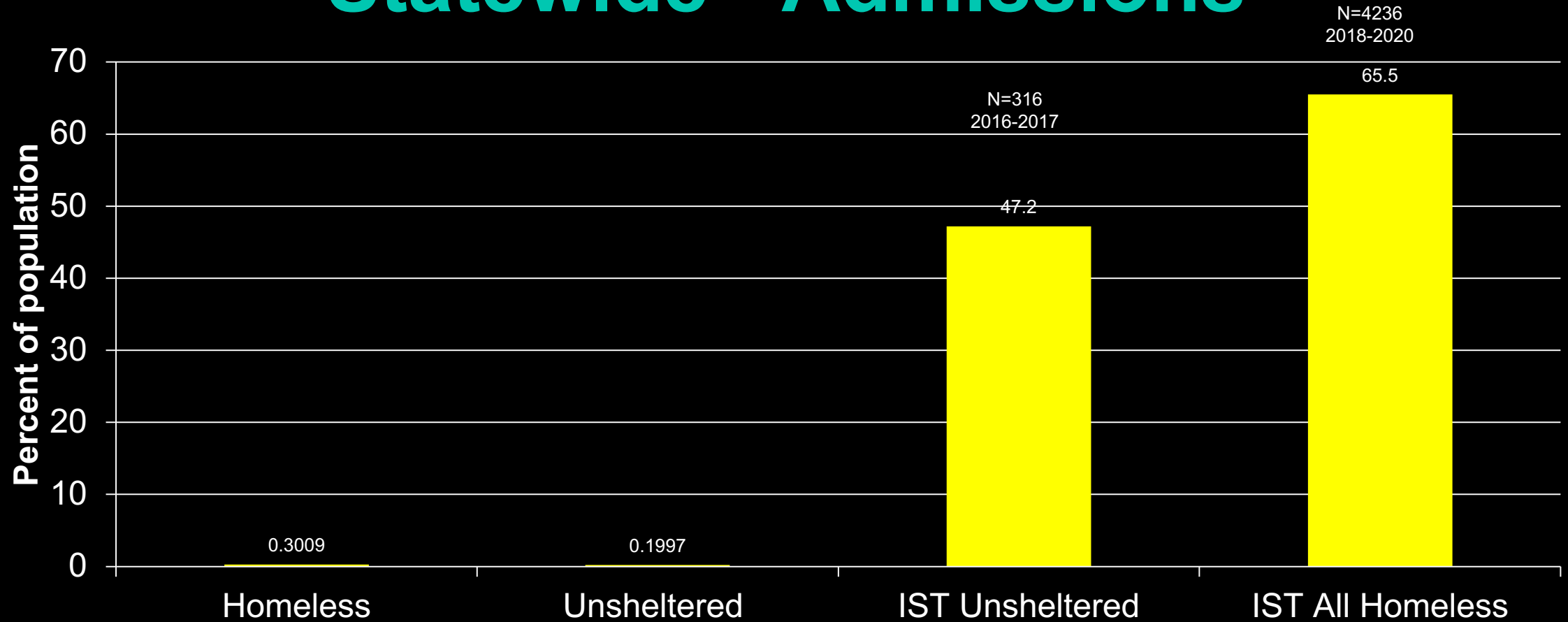
# More Criminal History?

Percent with 15+ Prior Arrests by Fiscal Year





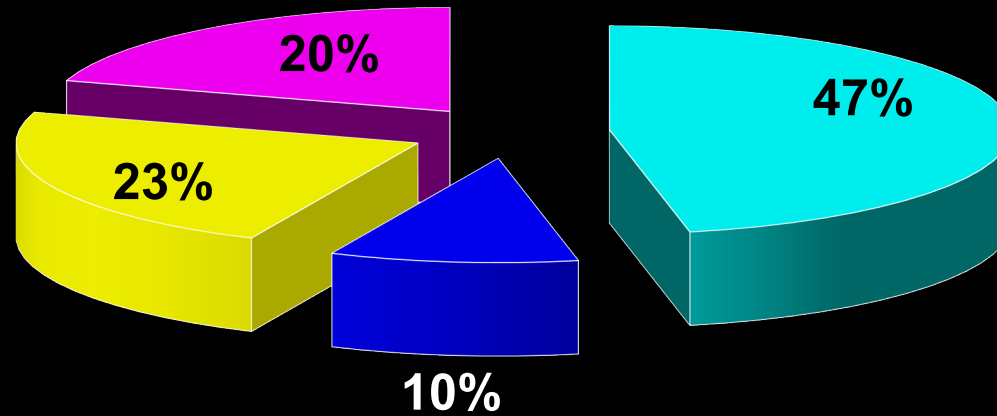
# Statewide - Admissions



UC DAVIS  
HEALTH



# Statewide - Admissions



■ No MH services in 6 months

■ No MH ED services in 6 months

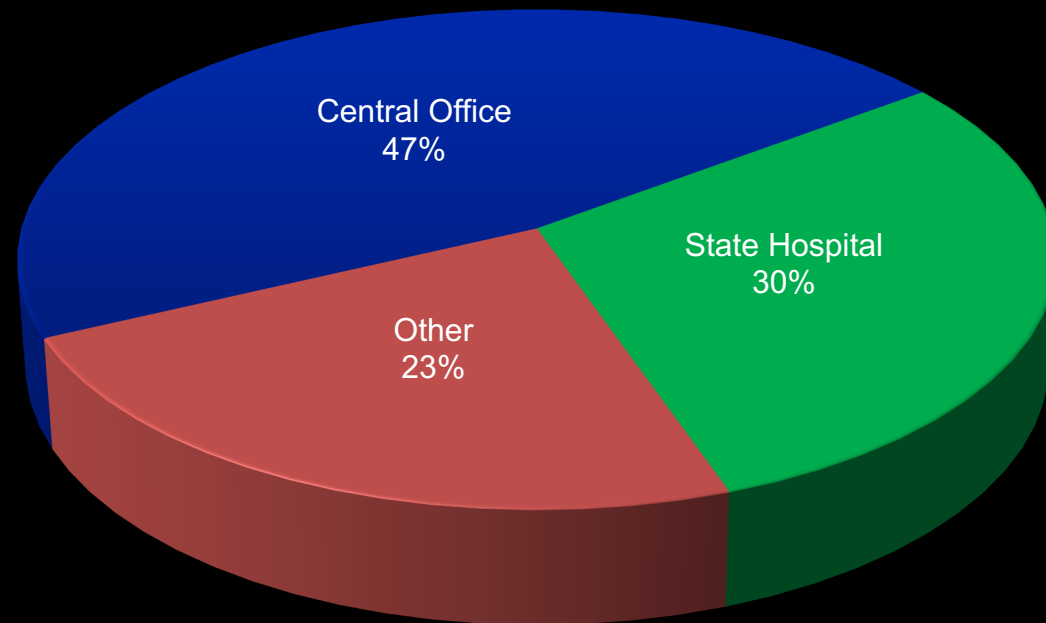
■ 1-2 MH ED services in 6 months

■ 3 or more MH ED services

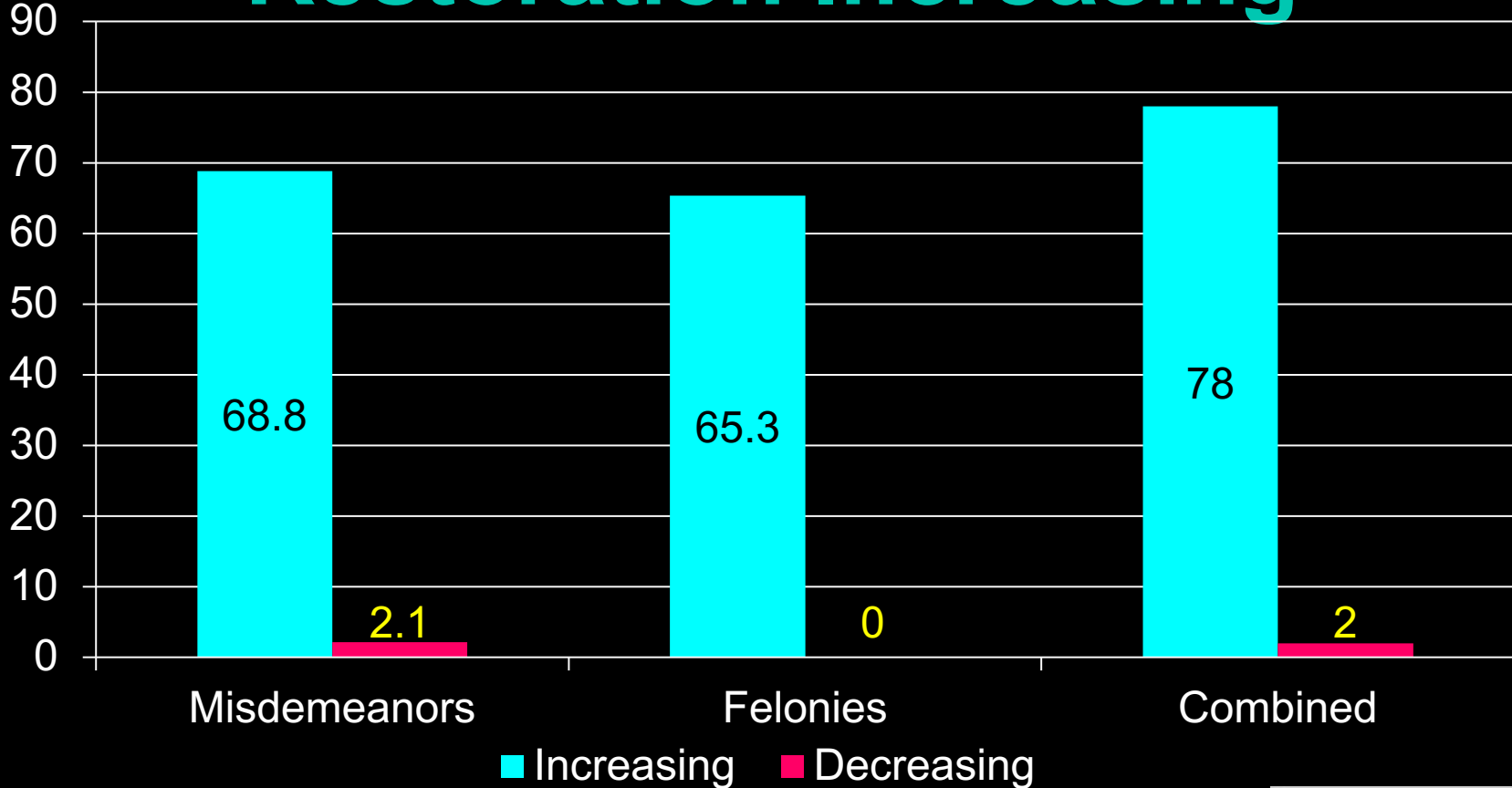
**UCDAVIS**  
**HEALTH**



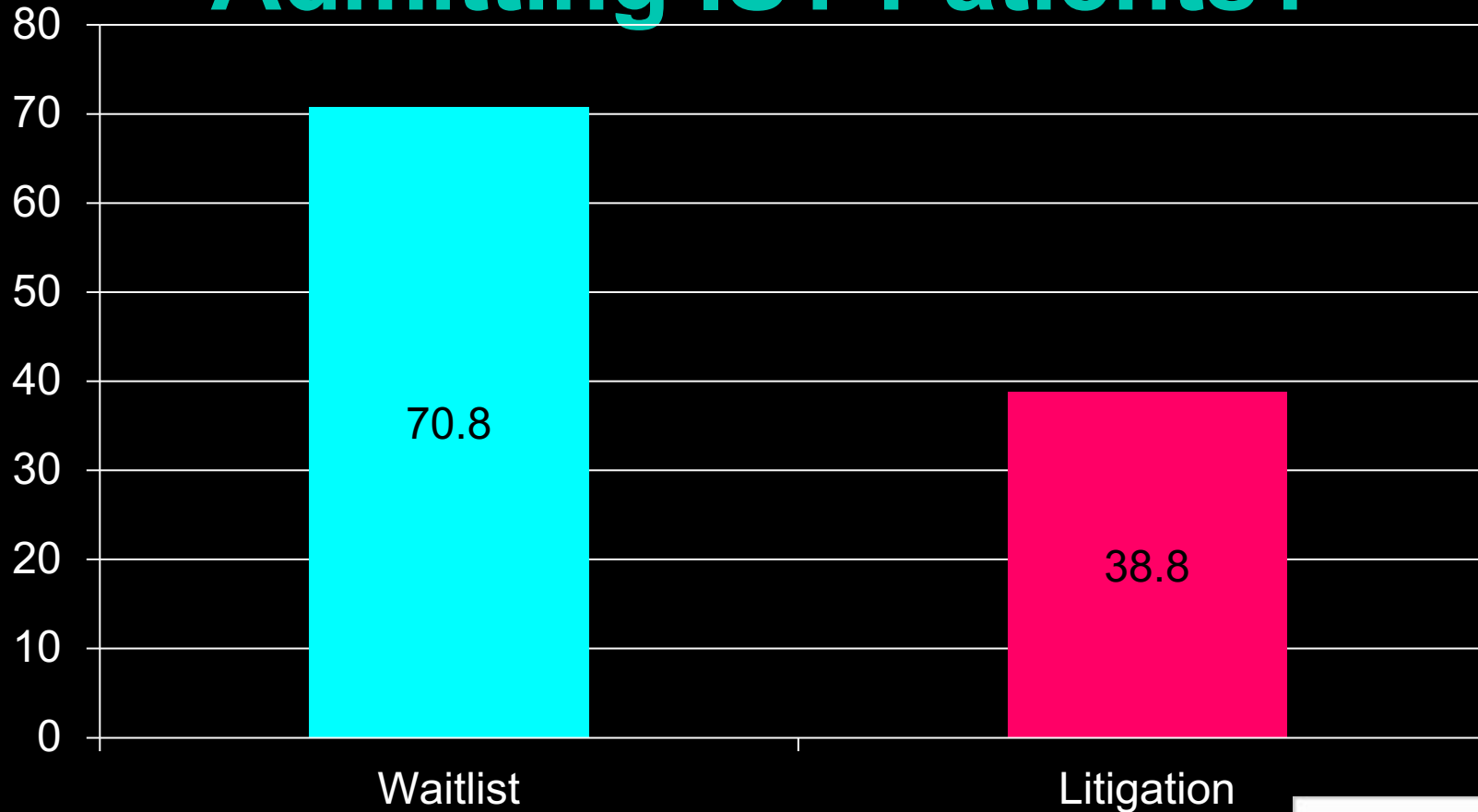
# NATIONAL SURVEY



# Referrals for Competency Restoration Increasing



# Waitlist/Litigation for Admitting IST Patients?



**UCDAVIS**  
**HEALTH**



# Rankings

- Responses ranked high in importance\*:
  - Inadequate general mental health services (3.45)
  - Inadequate crisis services in community (3.71)
  - Inadequate number of inpatient psychiatric beds in community (3.78)
  - Inadequate ACT services in community (4.22)

\*Lower numbers means a higher (more important) ranking

# United States (1988–2011)

- Reductions to local psychiatric bed capacity were significantly correlated with an average increase of 256.2 jail inmates
- There were no long-run effects observed of changes to psychiatric bed supply on psychiatric admissions at general medical hospitals

# California Hospital Association Report

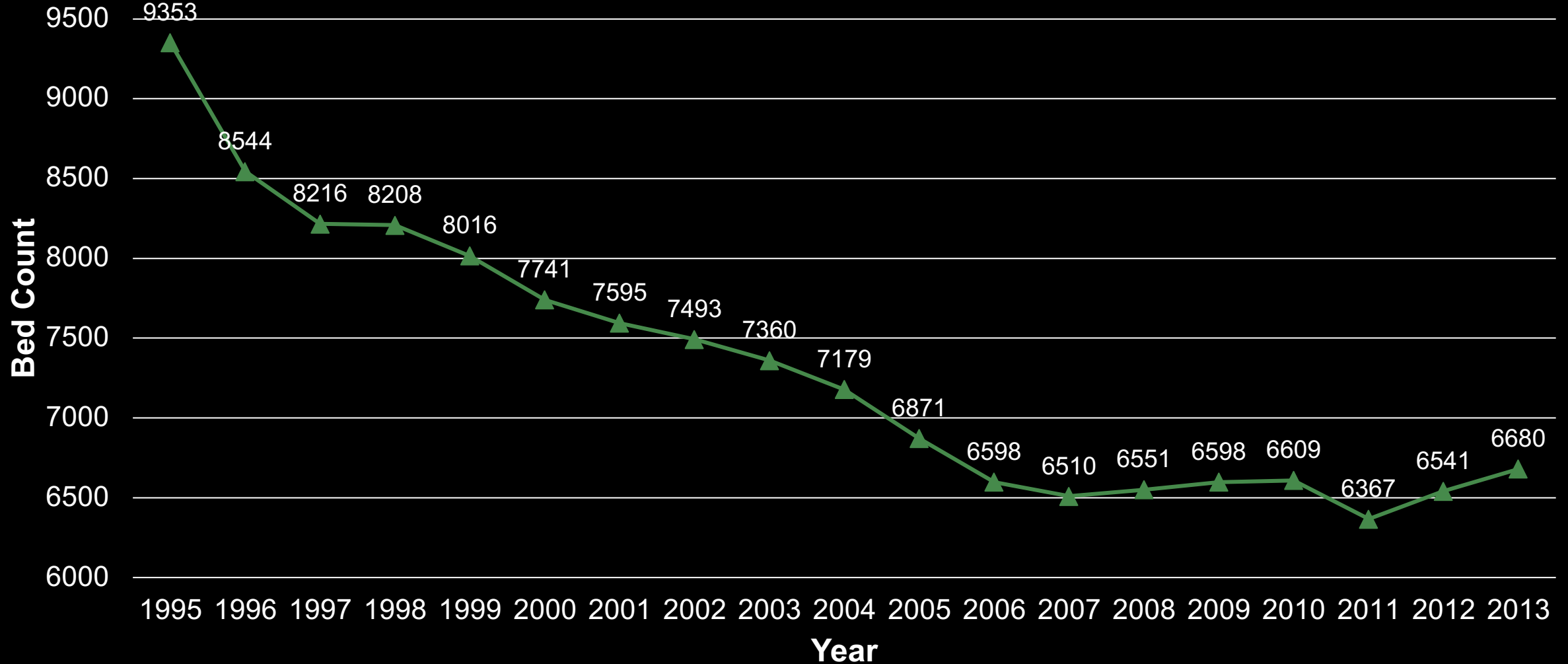
## Total Psychiatric Facilities 1995–2013





# California Hospital Association Report

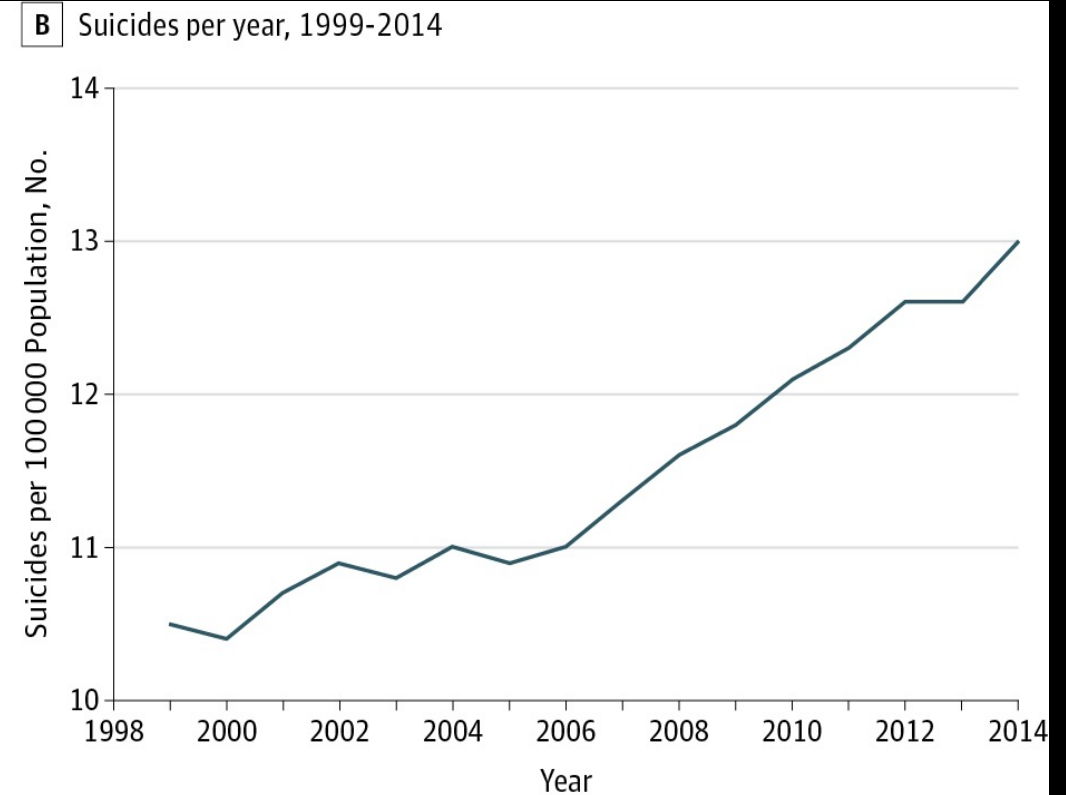
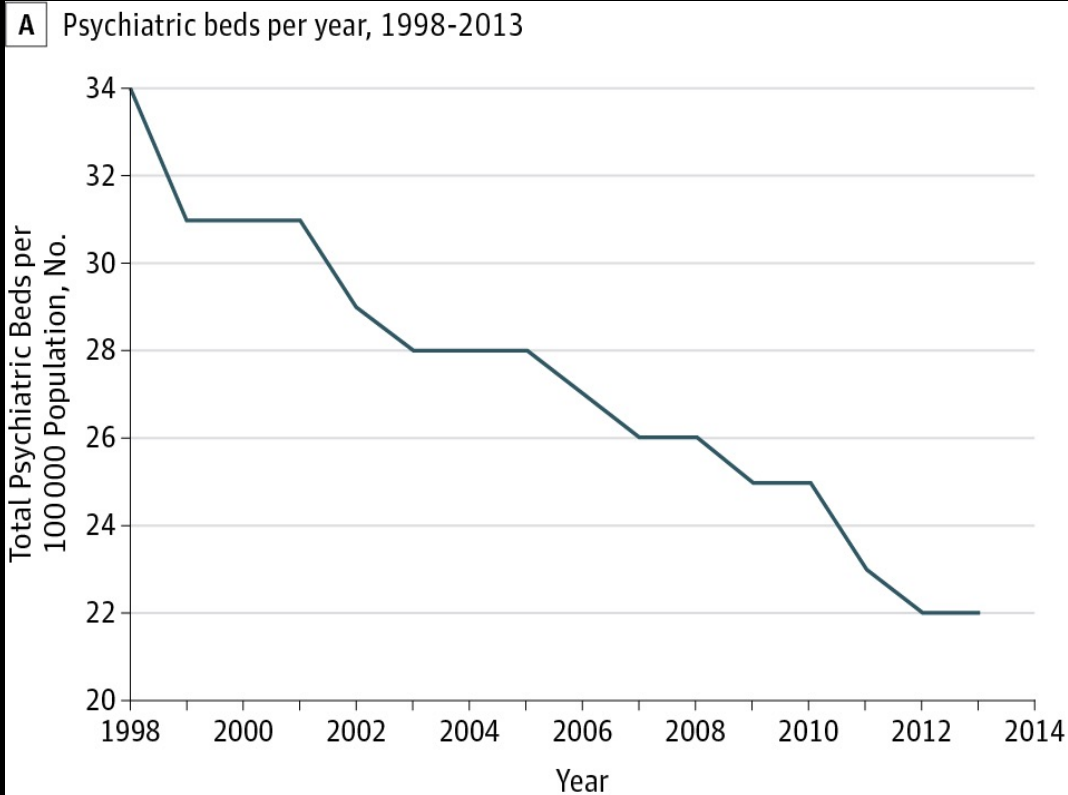
## Total Psychiatric Beds 1995–2013



# Organization for Economic Co-operation and Development (OECD)

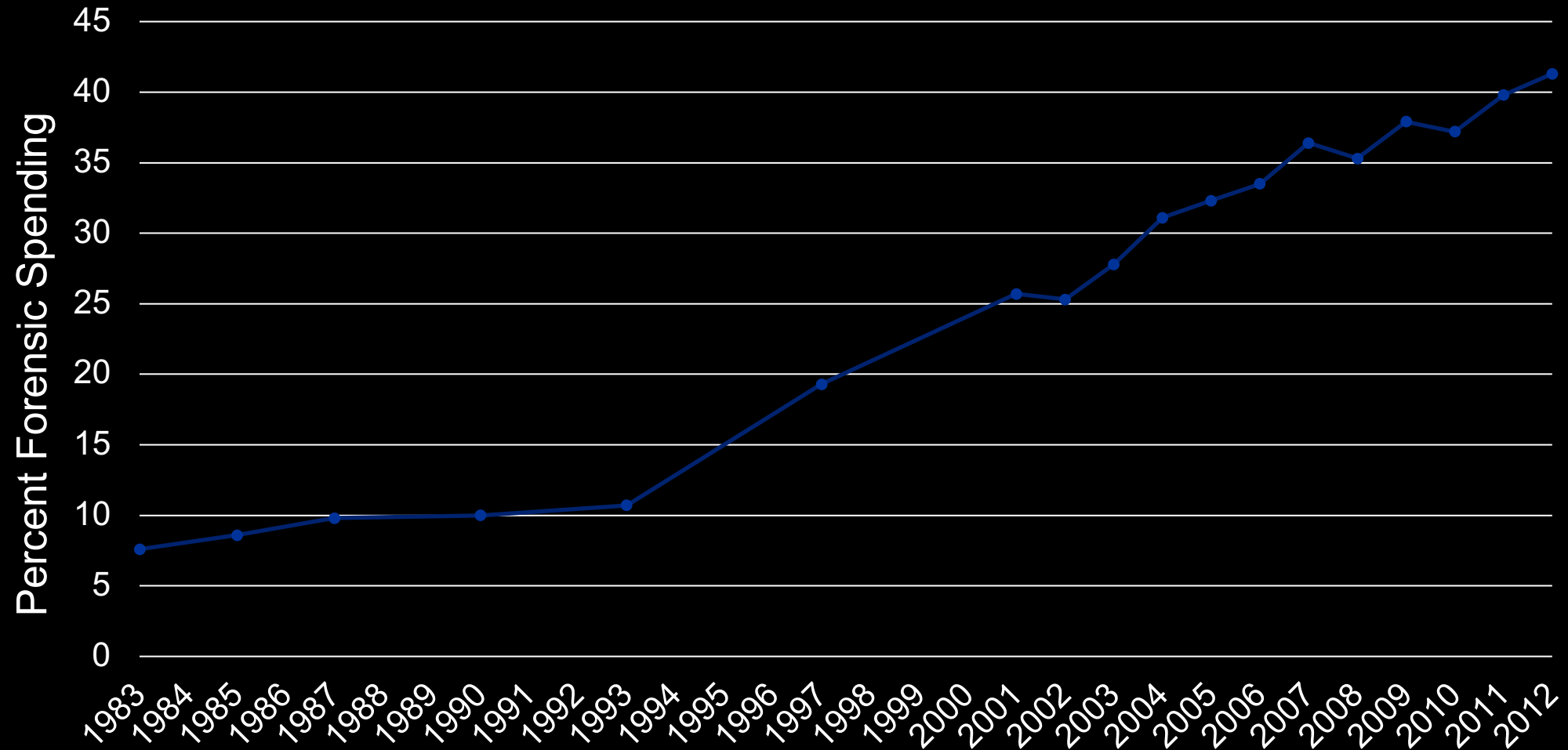
- Average of 71 beds per 100,000 in 35 OECD countries
- Expert recommendation is 50 beds per 100,000
- United states is 22 beds per 100,000
- California...17 beds per 100,000
- 25 of 58 California counties do not have inpatient psychiatric services

# Relationship Between Psychiatric Beds and Suicide



# National Forensic Spending

## State Mental Health Agency Controlled Forensic and Sex Offender Mental Health Expenditures, FY'83 to FY'12



Adapted from Ted Lutterman, NRI

# Link Between Beds and Arrest

Study of police discretion indicates that when confronted with the choice between arresting a person with mental illness or bringing that person to an emergency room, the most important factor was whether the officer thought that person would be admitted to a hospital bed.

» Green, TM International Journal of Law and Psychiatry, 1997

# Why?: Our Hypothesis

- Individuals with Schizophrenia Spectrum Disorders are drifting into an untreated, unsheltered condition.
- These conditions are leading to increased contact with police and subsequent criminal charges.
- This increased contact is leading to a surge in IST referrals to state hospitals.
- Building more state hospital beds will only exacerbate the problem long term.
- IST restoration is not adequate long term treatment plan.
- So, what can we do?



35-year-old male transient male. Police called, arrived as patient was on roof, pulling the roofing tiles off the residence and throwing roofing tiles off the roof. He took off his clothing. Officers stated patient then threw roofing tiles at them. One tile landed a foot from officers. Broke skylight, doused himself with water from spout. No response to taser. Ran away and was apprehended. Agitated and talking to himself. Charged with **felony aggravated assault** on a police officer (**AWDW** roof tile), and **felony vandalism**.



45-year-old transient male entered a sandwich shop. Believed he owned the establishment. Locked the back door and put crates in front of it, per his comments to secure it because it “was busted”, and asked for a sharpie and paper to put an out of order sign on the back door. Proceeded to bathroom, cleaned it, and expressed concern about someone slipping due to excess water on the floor. Asked the clerk for the money in the register stating, “Don’t worry I’m the owner.” Was denied without incident. Then asked for a sandwich. Clerk ran out and into the storefront adjacent for help. At the time of arrest was delusion about owning stores and talking about “Tony the Tiger”. Pt charged with **false imprisonment and attempted robbery.**





37-year-old transient male. Police called when patient refused to leave Jack in the Box. Police asked him to step outside and he complied. During a search, the police informed patient he was not welcome at the Jack in the Box. He became upset and tried to get out of the grasp of the officer. He then tried to call the police on an imaginary phone. He was talking to himself about the devil. He was missing his left eye and informed police he took out his eye because the devil told him to. The police attempted to handcuff patient and the patient struggled, was tasered multiple times. Charged with **battery with Injury on a police officer and resisting executive officer.**



# Does an IST commitment help?

## 3-Year Post Discharge Recidivism Rates

**2014-15 Discharges: IST Recidivism Rate – 69.0%**

**2015-16 Discharges: IST Recidivism Rate – 72.3%**

**2016-17 Discharges: IST Recidivism Rate – 71.0%**

*Note: Recidivism Rate is based on the count of individuals arrested 3 years following discharge [count of individuals (arrested)/# of discharges].*



# Does an IST commitment help?

- Across 3 years of IST discharges **15%** of felony ISTs had a **single offense**. Post discharge from DSH **35%** of them had their **charges dropped**.
- Across 3 years of IST discharges **85%** of felony ISTs had **multiple offenses**. Post discharge from DSH **24%** of them had their **charges dropped**.

*Note: IST discharge cohorts includes the following three fiscal years: FY 2016-17, FY 2017-18, and FY 2018-19, total of 6,048 IST discharges.*



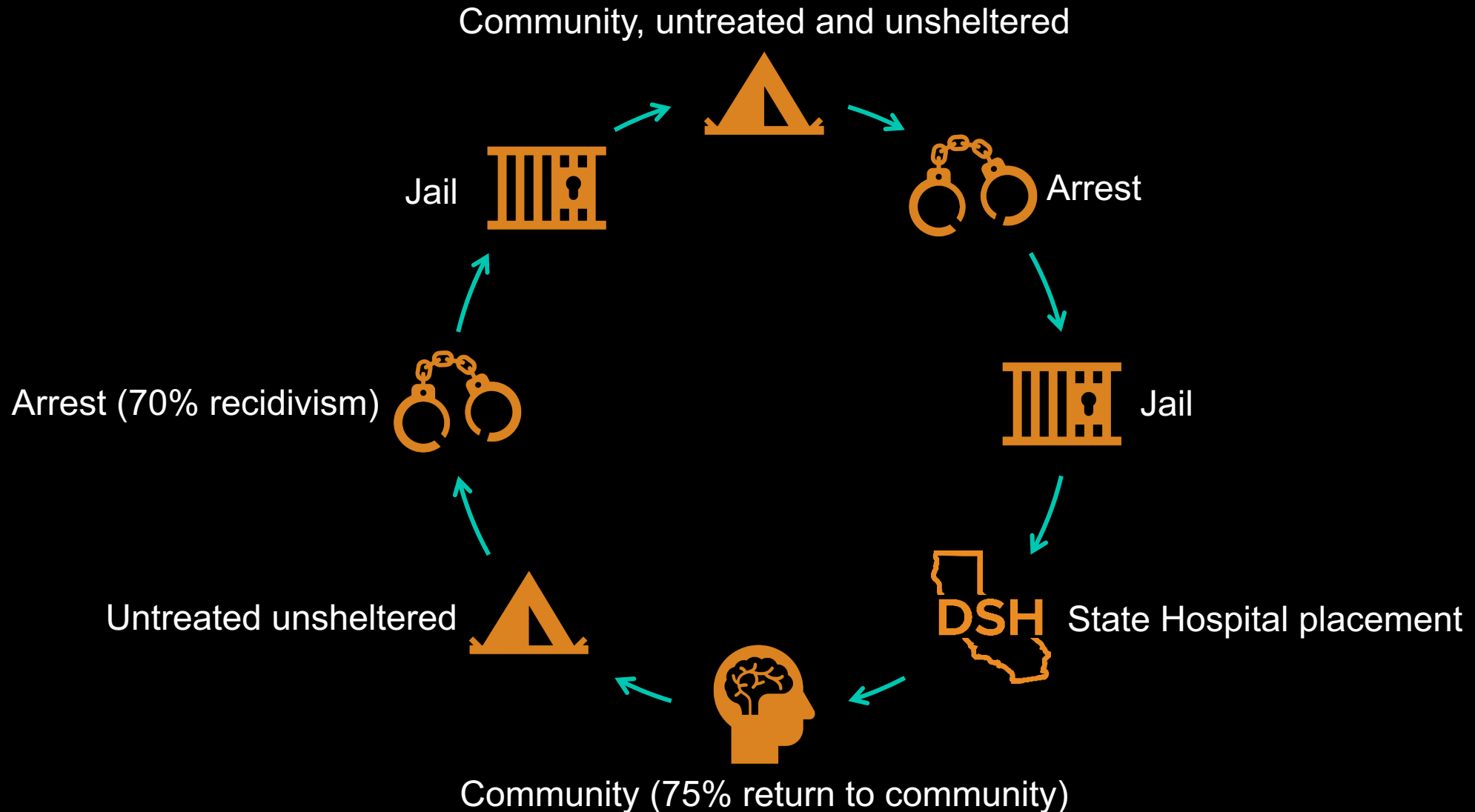
# Where do ISTs go?

- Across the 3 years of felony IST discharges
  - **24.3%** were sentenced to **prison**.
  - **0.2%** were committed to a **State Hospital** under the Not Guilty by Reason of Insanity commitment.

*Note: IST discharge cohorts includes the following three fiscal years: FY 2016-17, FY 2017-18, and FY 2018-19, total of 6,048 IST discharges.*



# Let's Break the Cycle





# **Alternatives to Incarceration and State Hospitalization**



# **An Overview of Community- Based Alternatives**

# Community-Based Alternatives

- First drug court established in 1989, in Dade County, Florida in response to increasing numbers of drug-involved offenders.
  - Well documented, costly, and ineffective cycle of arrest, incarceration, release and re-arrest
  - Instead of punishing drug-involved offenders, drug courts were established to address the underlying cause of the offender's behavior.
  - Provided a range of treatment options, case management, and social services that were delivered under judicial supervision





# Community-Based Alternatives

- The success of drug courts in reducing drug use and criminal recidivism led to the innovation of developing other “specialty” problem solving courts.
  - **Mental health courts**
  - **Family dependency courts**
  - **Veteran’s courts**
  - **Community courts**



# Community-Based Alternatives

- Like drug courts, each of the problem-solving specialty courts were designed on the premise that addressing an offender's underlying needs is more effective to prevent future re-involvement with the criminal justice system.
- Mental health courts and community-based alternatives for those with serious mental illness were created to address the growing crisis with justice involved individuals.



# Benefits of Community-Based Alternatives

- There are many advantages of community-based interventions over treatment provided while incarcerated. Community-based programs are:
  - more effective than similar programs in institutional settings.
  - more focused on narrower groups of offenders (i.e., interventions are tailored more to offender needs).
  - more likely to use evidence-based practices than institutional providers.
  - more cost effective.
  - more likely to reduce re-arrest.



# Outpatient Treatment Reduces Both Risks and Costs for individuals with SMI

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## Effects of Outpatient Treatment on Risk of Arrest of Adults With Serious Mental Illness and Associated Costs

Richard A. Van Dorn, Ph.D.  
Sarah L. Desmarais, Ph.D.  
John Petrla, J.D., LL.M.  
Diane Haynes, M.A., M.P.A.  
Jay P. Singh, Ph.D.

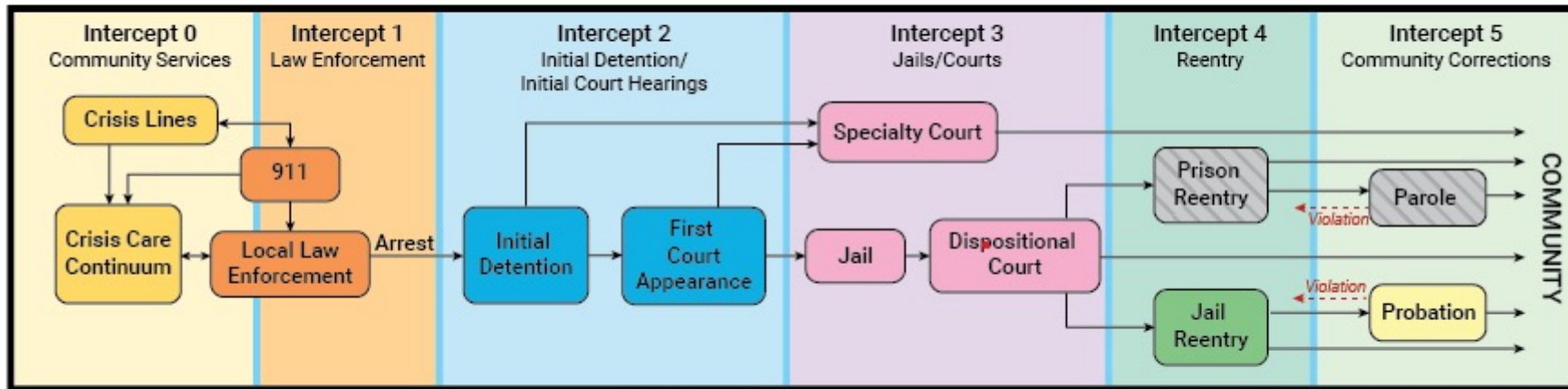
**Conclusions:** Routine outpatient treatment, including medication and outpatient services, may reduce the likelihood of arrest among adults with serious mental illness. Medication possession over a 90-day period after hospitalization appears to confer additional protection. Overall, costs were lower for those who were not arrested, even when they used more outpatient services. (*Psychiatric Services in Advance*, May 15, 2013; doi: 10.1176/appi.ps.201200406)





# **Intervention points in the criminal justice process**

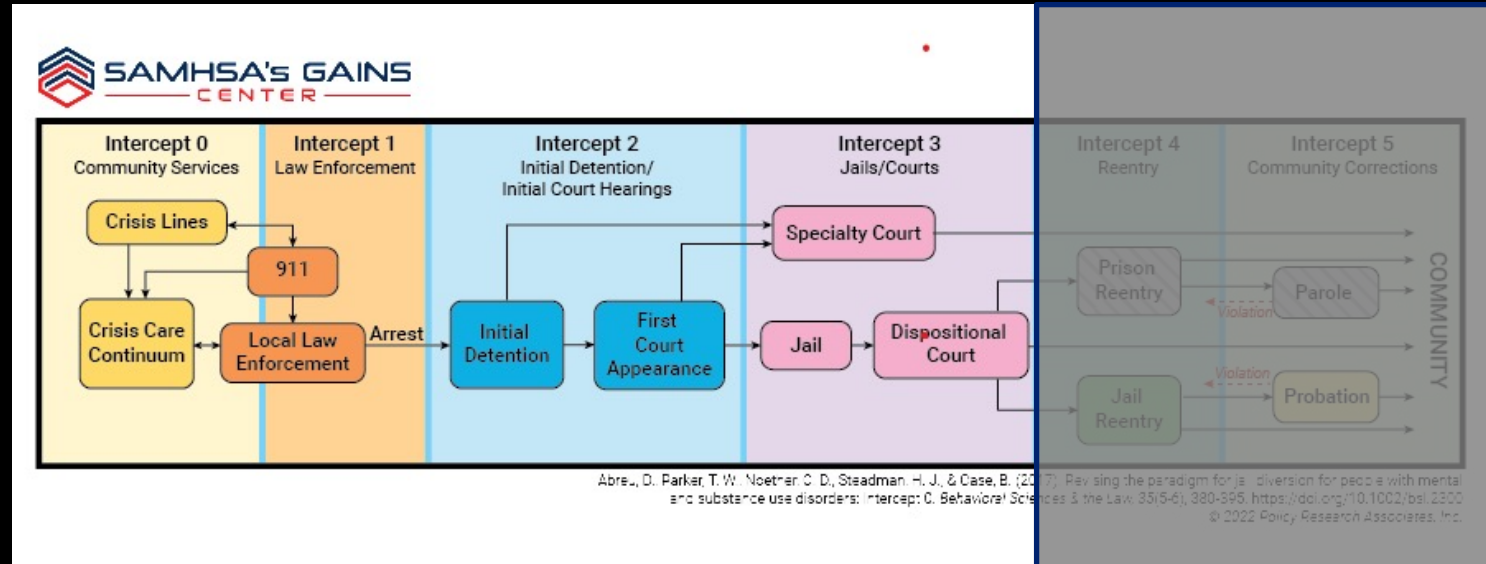
# Sequential Intercept Model (SIM)



Abreu, D., Parker, T. W., Noether, C. D., Steadman, H. J., & Case, B. (2017). Revising the paradigm for jail diversion for people with mental and substance use disorders: Intercept 0. *Behavioral Sciences & the Law*, 35(5-6), 380-395. <https://doi.org/10.1002/bsl.2300>  
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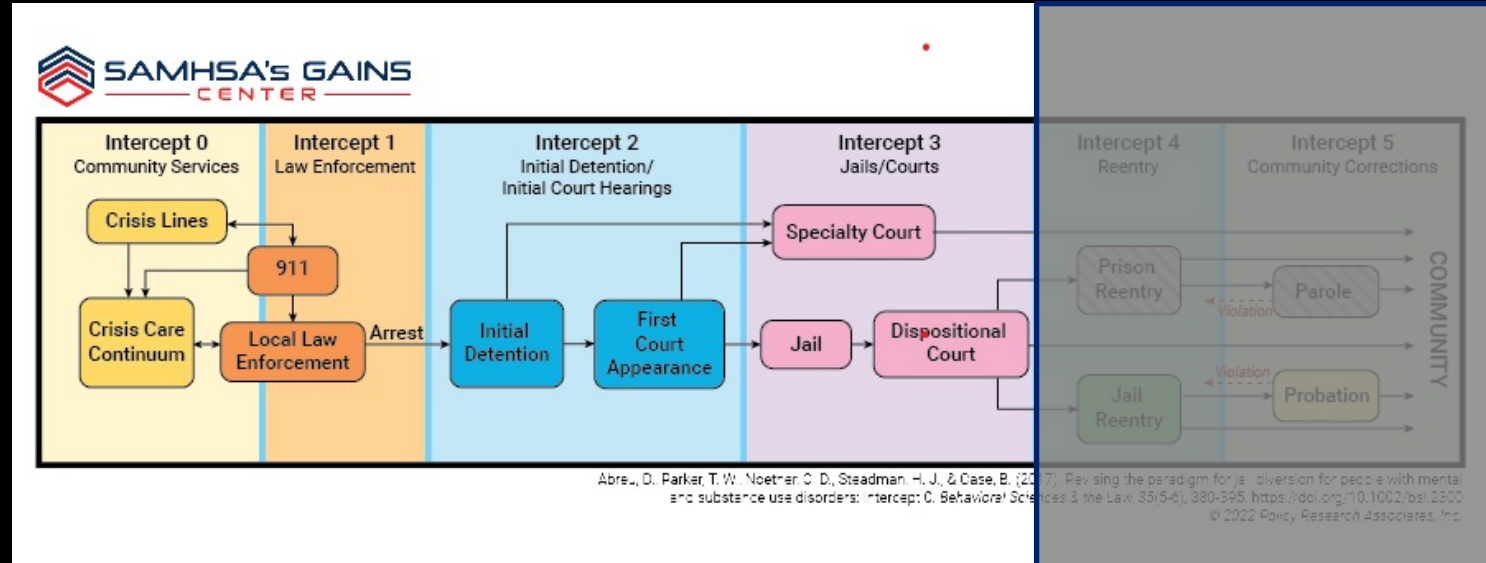


# Opportunities for Diversion



- **Intercept 0: Community Services**
  - Involves opportunities to divert people into local crisis care services (diverted to treatment services instead of arrest or criminal charges).
- **Intercept 1: Law Enforcement**
  - Involves diversion performed by law enforcement and other emergency services (diverted to treatment instead of arrest or criminal charges).

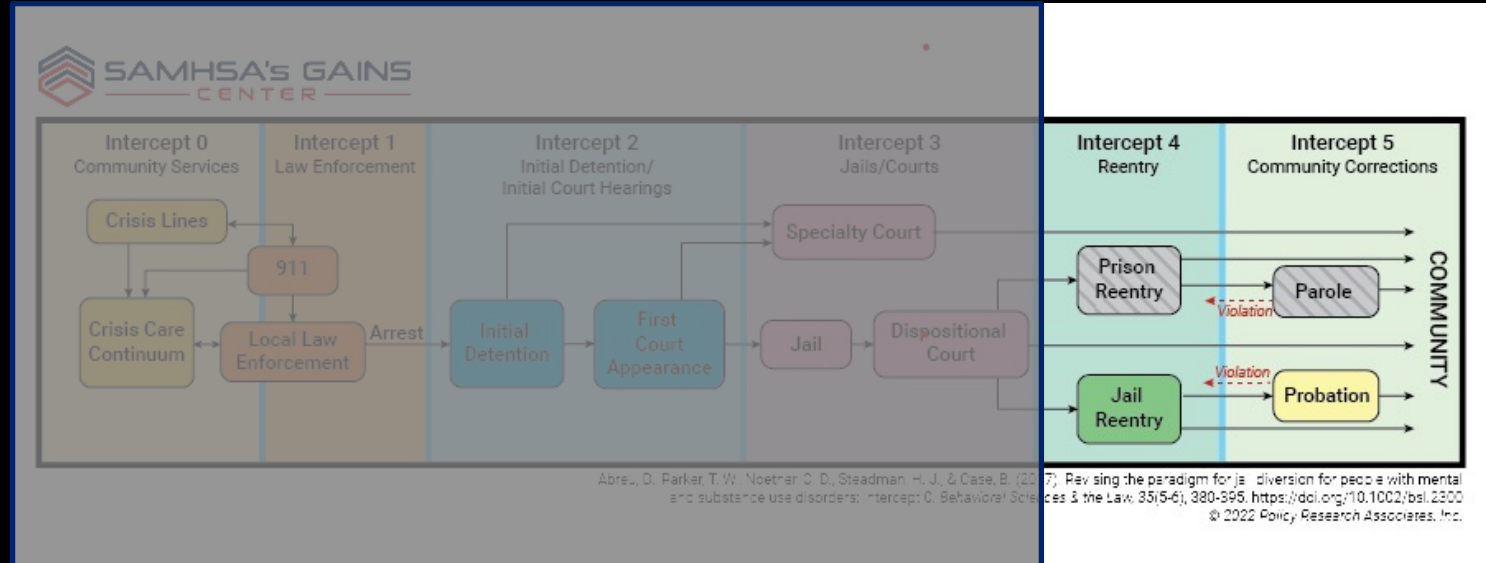
# Opportunities for Diversion



- **Intercept 2**: Initial Court Hearings/Initial Detention
  - Involves diversion to community-based treatment by jail clinicians, social workers, or court officials during jail intake, booking or initial hearing.
- **Intercept 3**: Jails/Courts
  - Involves diversion to community-based services through jail or court process and programs *after* a person has been booked into jail.
- Intercepts 1, 2 or 3 are common intervention points for diversion programs.



# Opportunities for Diversion

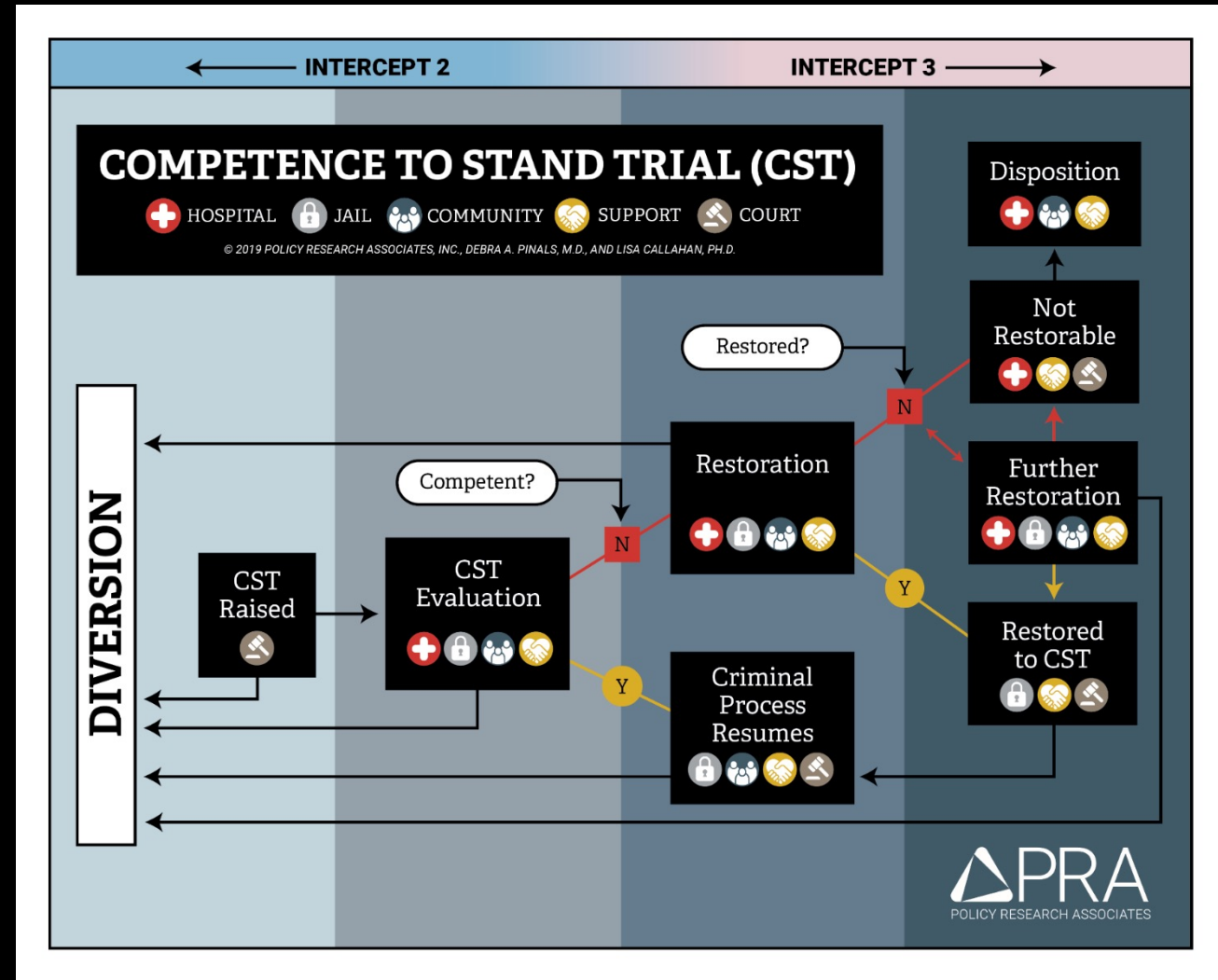


- **Intercept 4: Reentry**
  - Involves supported reentry back into the community after jail or prison to reduce further justice involvement of people with mental and substance use disorders.
- **Intercept 5: Community Corrections**
  - Involves community-based criminal justice supervision with added supports for people with mental and substance use disorders.



# Competence Diversion Process

- Multiple systems
  - Court
  - Hospital
  - Jail
  - Community
- Multiple stakeholders
  - Person
  - Legal actors
  - Clinicians
  - Family and other supports
  - Community





# **Diverting justice involved individuals with serious mental illness**

# Diversion

- General term
  - Not “one” strategy, program, or approach
  - Includes any effort to divert from standard court process and/or into less restrictive environment
- Strategy to promote community-based alternatives to:
  - Jail/prison
  - Hospital



# Risk Need Responsivity (RNR) Model

- Best practice for assessing and treating justice-involved persons
- Mitigate risk(s) and improve public safety with adherence to:
  - Risk principle
  - Need principle
  - Responsivity principle

Andrews & Dowden (2006); Andrews & Bonta (2010); Lowenkamp et al. (2006)



# Risk Principle in IST Context

- Calibrate level of intensity and frequency of supervision and services to level of risk
  - Higher risk → more resources
  - Lower risk → fewer resources
- Over-intervening → increase adverse outcomes
  - Increase risk factors
  - Reducing protective factors



# Need Principle in IST Context

- Target **risk and protective factors** relevant to violence risk for that person
  - Criminogenic needs and treatment needs
  - Increase treatment match, improved outcome



# Responsivity Principle in IST Context

- Many will have serious mental illnesses
  - Many will have current symptoms
  - Some will have acute symptoms
- Use stepwise approach that prioritizes public safety
  1. Plan for safety and implement violence risk management strategies
  2. Address acute symptoms to build stability
  3. Treat violence and mental health needs to reduce violence risk and restore into the community.





# Risk Assessment in Mental Health Diversion

- Two primary considerations:

## 1. Eligibility

- Person must present a sufficient risk to warrant level of supervision, resources, and services associated with diversion program
- Community resources must be available to manage risk

**Risk Principle**

## 2. Case management

- Frequency and intensity of services
  - Conditions
  - Supervision strategies (e.g., house arrest, electronic monitoring)
  - Frequency of supervision meetings or court appearances
  - Treatment dosage (pharmacological and psychosocial)
- No universal standards or guidelines

**Need and Responsivity Principles**



# Diversion: The Miami Model

- The Eleventh Judicial Circuit Criminal Mental Health Project (CMHP) was established in the early 2000's.
- Purpose was to divert misdemeanor offenders with SMI or co-occurring SMI and substance use away from criminal justice system and into community-based treatment and support services.



# CMHP Program Overview

- Pre-booking jail diversion (e.g., crisis intervention teams)
- Post-booking jail diversion (misdemeanor and felony)
  - Individuals are screened for mental illness, substance use, criminogenic risks, etc.
  - Screening information is used to determine appropriate level of treatment, support services, and community supervision.
- Forensic hospital diversion
  - Individuals diverted from placement in state hospitals
  - Services include crisis stabilization, competency restoration, development of living skills, assistance with community re-entry, and community monitoring.



# CMHP Program Outcomes

TABLE 2. City of Miami and Miami-Dade Police Departments Annual CIT Calls.

	2010	2011	2012	2013	2014	2015	2016	2017	2018 <sup>a</sup>	Total	Rate per 1000 CIT Calls
CIT calls	7779	9399	10 404	10 626	11 042	10 579	11 799	11 799	8045	91 472	–
Individuals transported to crisis	3307	4642	5527	3946	5155	7417	8303	8818	7898	55 013	601.4
Individuals diverted from jail	1940	3563	2118	1215	1871	1633	1694	1860	1622	17 516	191.5
Arrests made	4	45	27	9	24	10	19	11	3	152	1.7

<sup>a</sup>CIT data were not collected by city of Miami in 2018. Information reported reflects calls responded to by Miami-Dade Police Department only.



# CMHP Program Outcomes

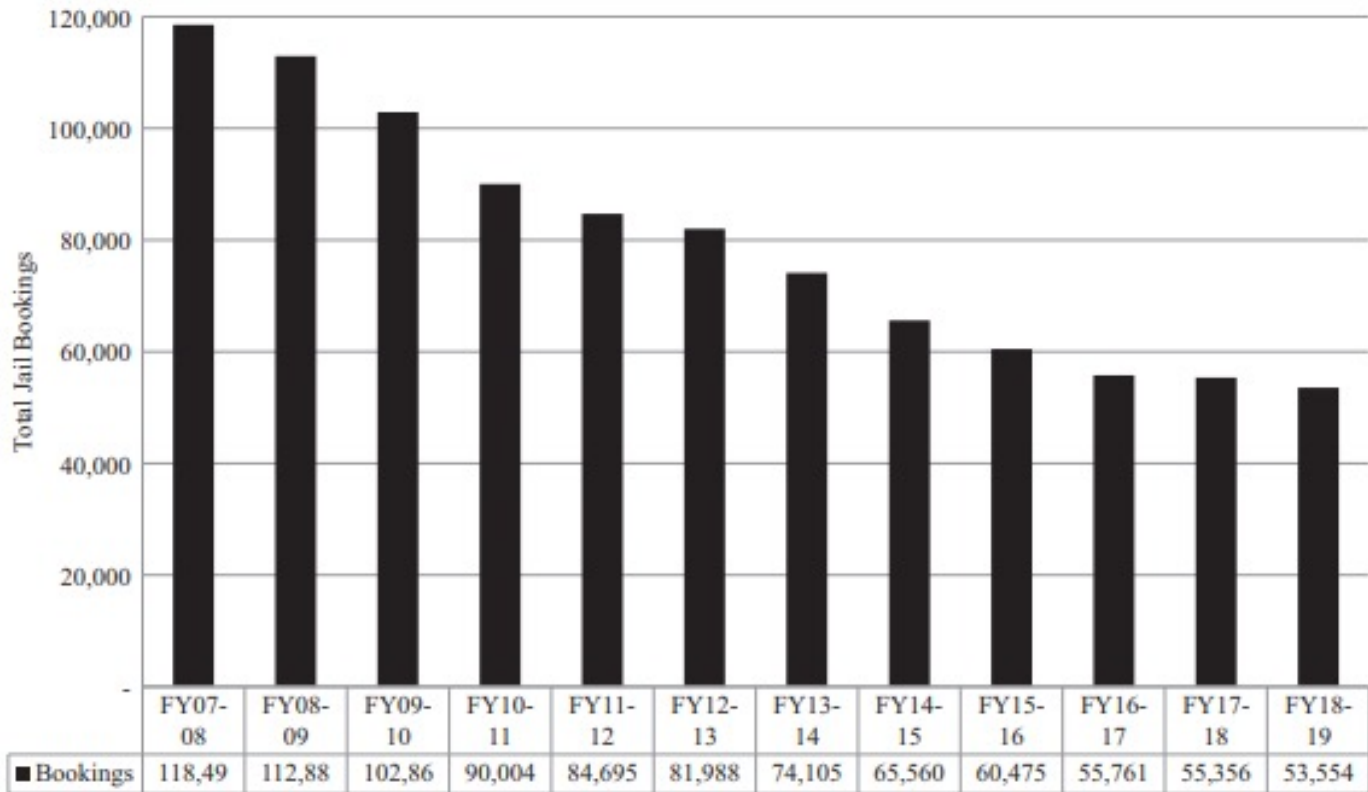


FIGURE 1. Annual county jail bookings FY2005-06 to FY2018-19.



# CMHP Program Outcomes

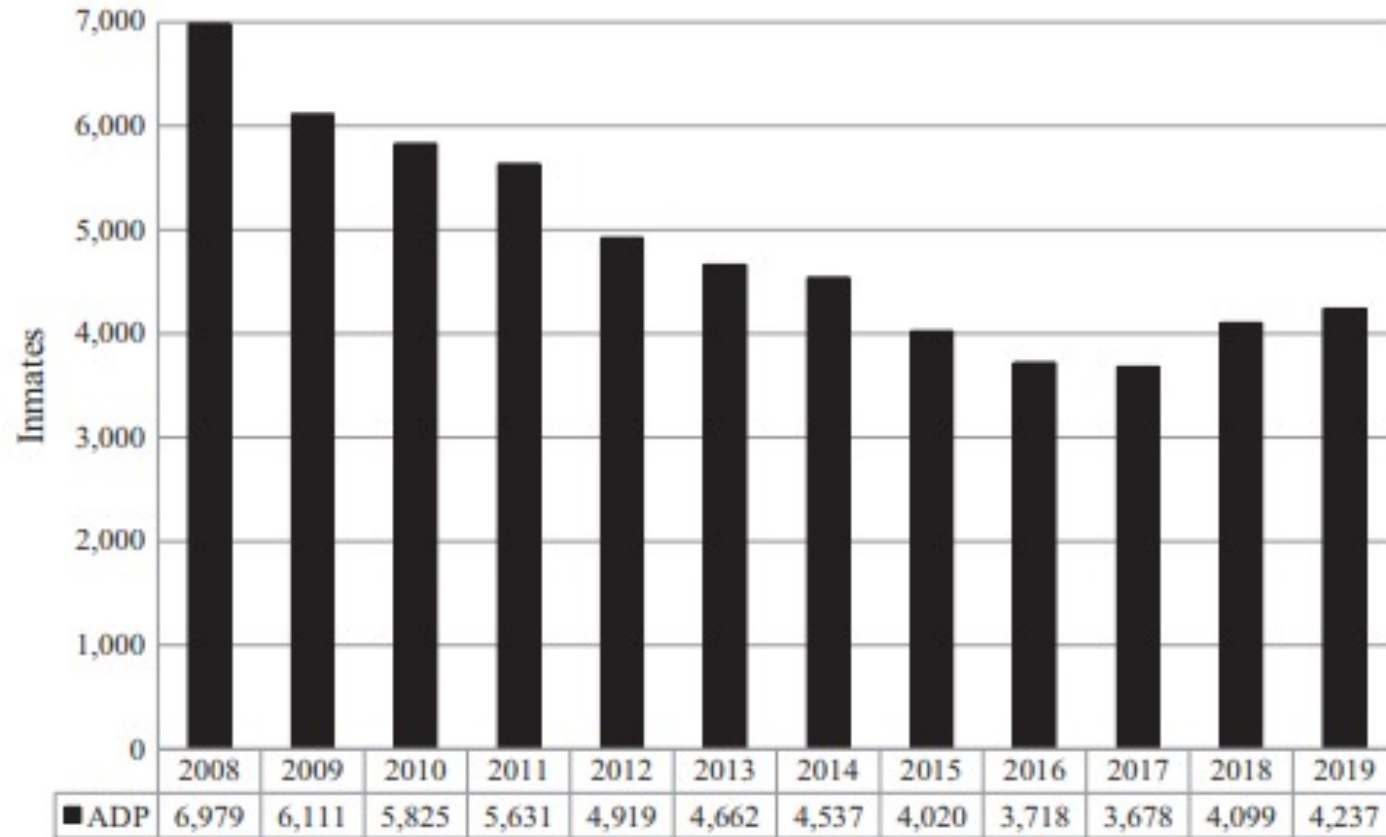


FIGURE 2. Average daily population (ADP) 2008-2019.



**But what about criminogenic risk factors?**



# But what about criminogenic risk factors?

Law and Human Behavior

© 2013 American Psychological Association  
0147-7307/13/\$12.00 DOI: 10.1037/lhb0000054

## Offenders With Mental Illness Have Criminogenic Needs, Too: Toward Recidivism Reduction

Jennifer L. Skeem  
University of California, Berkeley

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Simon Fraser University

Patrick J. Kennealy  
University of South Florida

Jennifer Eno Louden  
The University of Texas at El Paso

Joseph R. Tatar II  
University of California, Irvine

Many programs for offenders with mental illness (OMIs) seem to assume that serious mental illness directly causes criminal justice involvement. To help evaluate this assumption, we assessed a matched sample of 221 parolees with and without mental illness and then followed them for over 1 year to track recidivism. First, compared with their relatively healthy counterparts, OMIs were equally likely to be rearrested, but were more likely to return to prison custody. Second, beyond risk factors unique to mental illness (e.g., acute symptoms; operationalized with part of the Historical-Clinical-Risk Management-20; Webster, Douglas, Eaves, & Hart, 1997), OMIs also had significantly more general risk factors for recidivism (e.g., antisocial pattern; operationalized with the Level of Service/Case Management Inventory; Andrews, Bonta, & Wormith, 2004) than offenders without mental illness. Third, these general risk factors significantly predicted recidivism, with no incremental utility added by risk factors unique to mental illness. Implications for broadening the policy model to explicitly target general risk factors for recidivism such as antisocial traits are discussed.

*Keywords:* crime, violence, mental disorder, psychosis, risk factors





# But what about criminogenic risk factors?

- Offenders with mental illness (OMI) were equally likely to be rearrested but were more likely to return to custody.
- Beyond risk factors associated with mental illness (HCR-20v3), OMI's had more general risk factors for recidivism (antisocial patterns; LS/CMI).
- General risk factors significantly predicted recidivism, with no incremental utility being added by risk factors associated with mental illness.



# Separating the signal from the noise

- Heterogeneity of population
  - Recognize that justice involved individuals are a diverse and complex group.
  - Complex challenges require complex solutions.
- RNR principles
  - Better match intervention to risk needs.
- Treatment of schizophrenia
  - Decrease in arrests and criminal justice involvement when individuals with schizophrenia receive treatment.





# DSH Felony IST Diversion Program

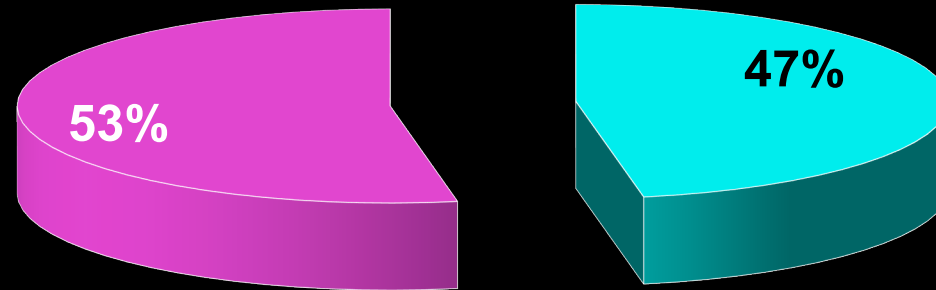
# DSH Felony IST Diversion - Target Population

## WIC § 4361(c)(1) Describes eligibility criteria

- “diagnosed with schizophrenia, schizoaffective disorder, or bipolar disorder” [(c)(1)(A)]
- “who have the potential to be found incompetent to stand trial for felony charges. . . Or who have been found [IST] for felony charges” [(c)(1)(A)]
- “significant relationship between the individual’s serious mental disorder and the charged offense OR between the individual’s conditions of homelessness and the charged offense” [(c)(1)(B)]
- “does not pose an unreasonable danger to public safety” [(c)(1)(C)]

# Waitlist Review Diversion Eligibility

N=191



■ Meets Diversion Eligibility ■ Probably not Diversion Eligible

**UCDAVIS**  
**HEALTH**



# What **could** happen with diversion

- Waitlist 1700 x 47% = **799** potential diversion candidates
- Current DSH funded diversion slots = **820**

# What **is** happening with diversion

- Total of **533** people have been diverted under the program
- **But only 11 percent were on our waitlist**
- Sent a survey to our diversion partners
  - Lack of psychiatric stability identified as most common barrier

Major Barrier   Barrier   Not a Barrier

If a defendant is found IST, they are not competent to consent to diversion

If an IST is diverted from the waitlist, there is a risk they will "lose their place" on the list if diversion fails

The criminal justice partners in the county are uncomfortable dropping felony charges

Felony ISTs on the waitlist who are still in jail are not psychiatrically stable enough to release into the...

The county diversion program is unable to involuntarily medicate participants

The county program does not have appropriate housing for these clients

The county program does not have appropriate treatment options for these clients

Our county struggles with identifying ISTs on the waitlist who would be appropriate for the Diversion...

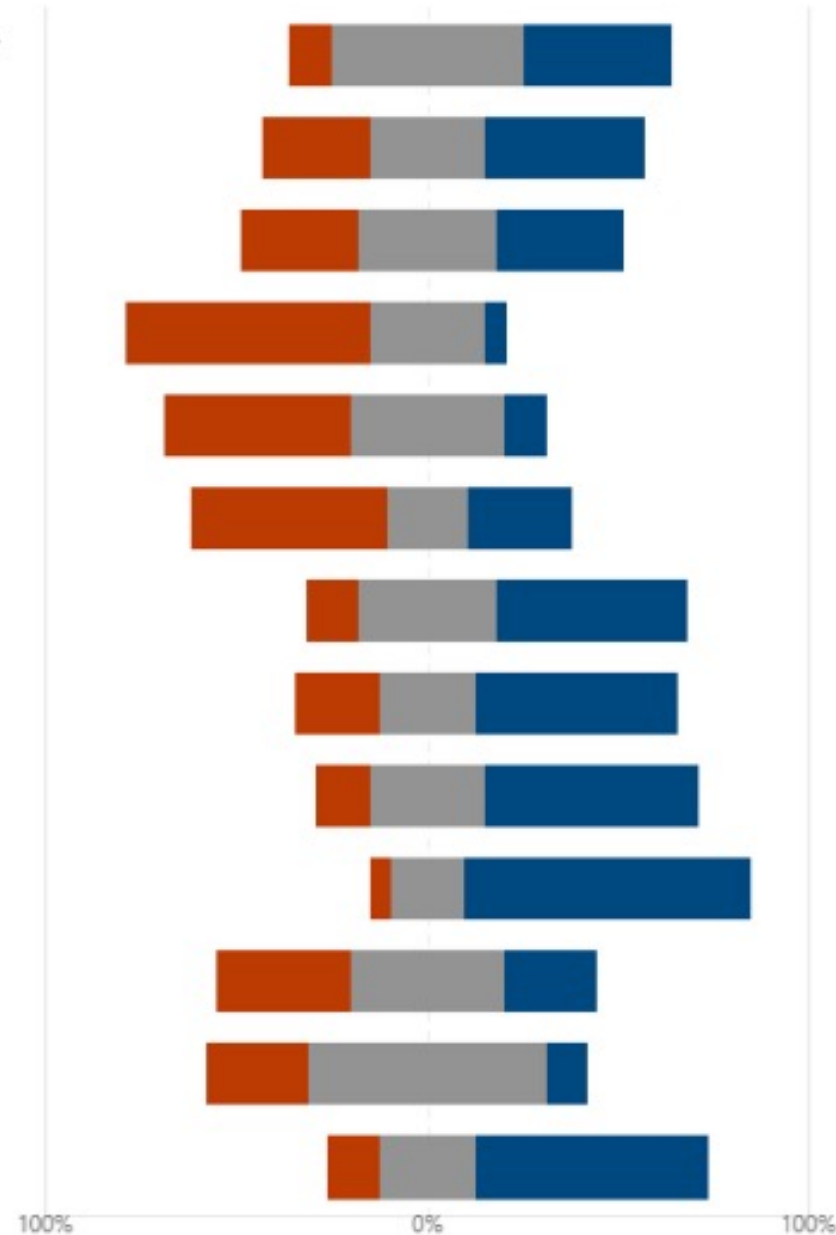
Our county is concerned about how to assess risk

The criteria for diversion eligibility is unclear

There is disagreement among county stakeholder groups about who is suitable for Diversion

Our county is concerned about the risk of re-offense while out in the community

Our county does not have a forensically-trained workforce that can adequately manage a felony IST...





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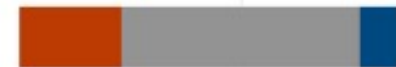
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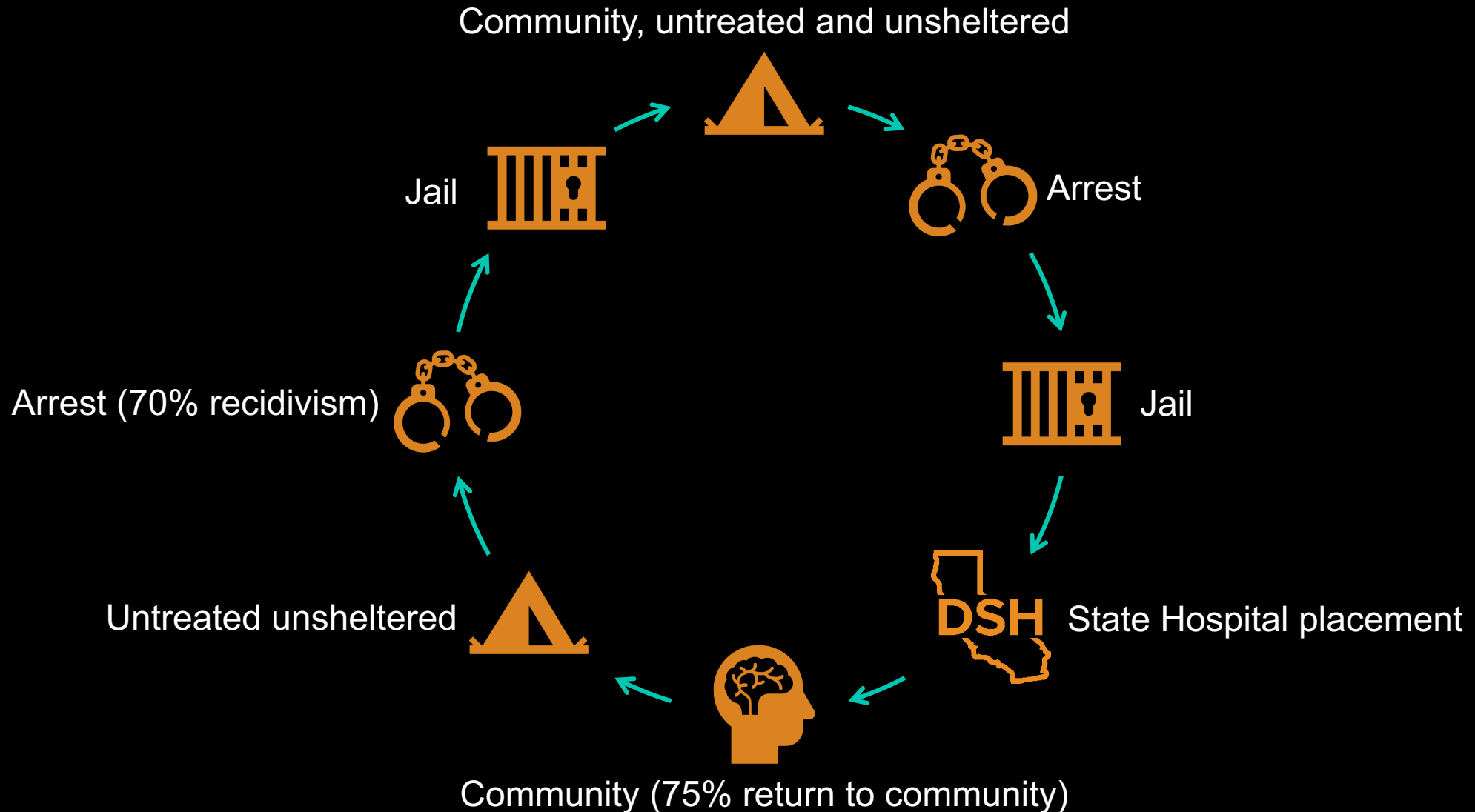
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# Preliminary Data on DSH Felony IST Diversion Program

- Currently, over 500 justice involved individuals have been diverted through the DSH IST diversion program.
- When counties match the right individuals with the right treatment programs, diversion can be very effective.
- IST individuals (vs. likely to be found IST) placed in the Felony IST Diversion Program have a 75% chance of successfully completing diversion ( $OR = 3.007, p < .001$ )



# Let's Break the Cycle





In a world where there is so much to be done, I  
felt strongly impressed that there must be  
something for me to do.

(Dorothea Dix)

[izquotes.com](http://izquotes.com)

# Q & A

**THANK YOU**

