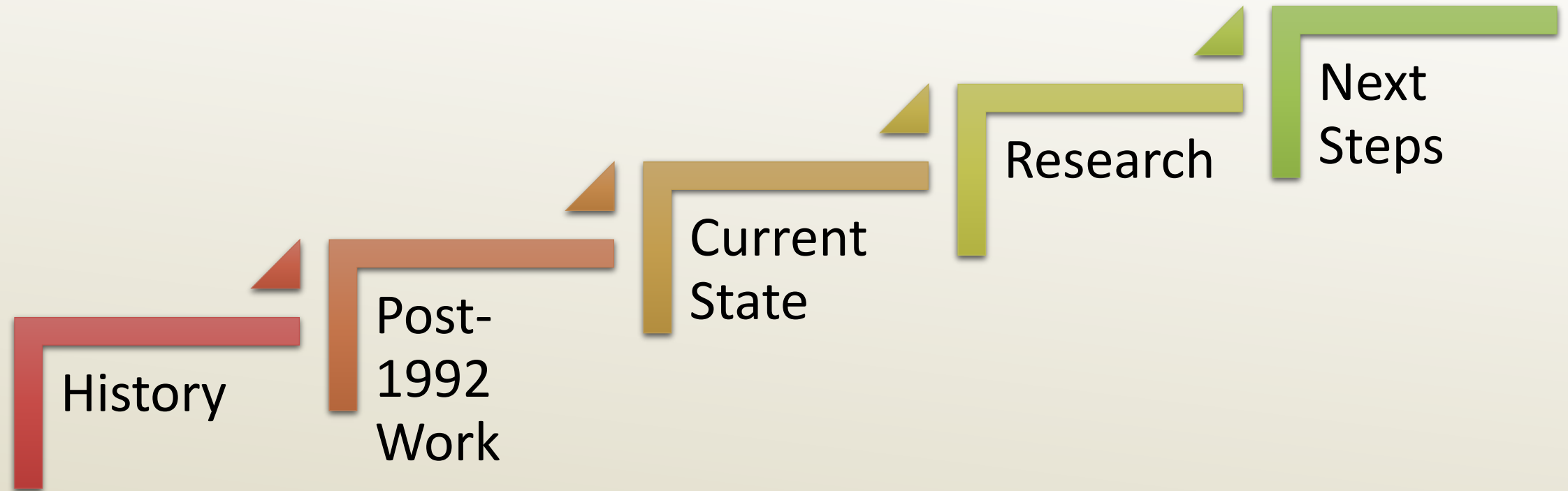


Drug Sentencing in Minnesota

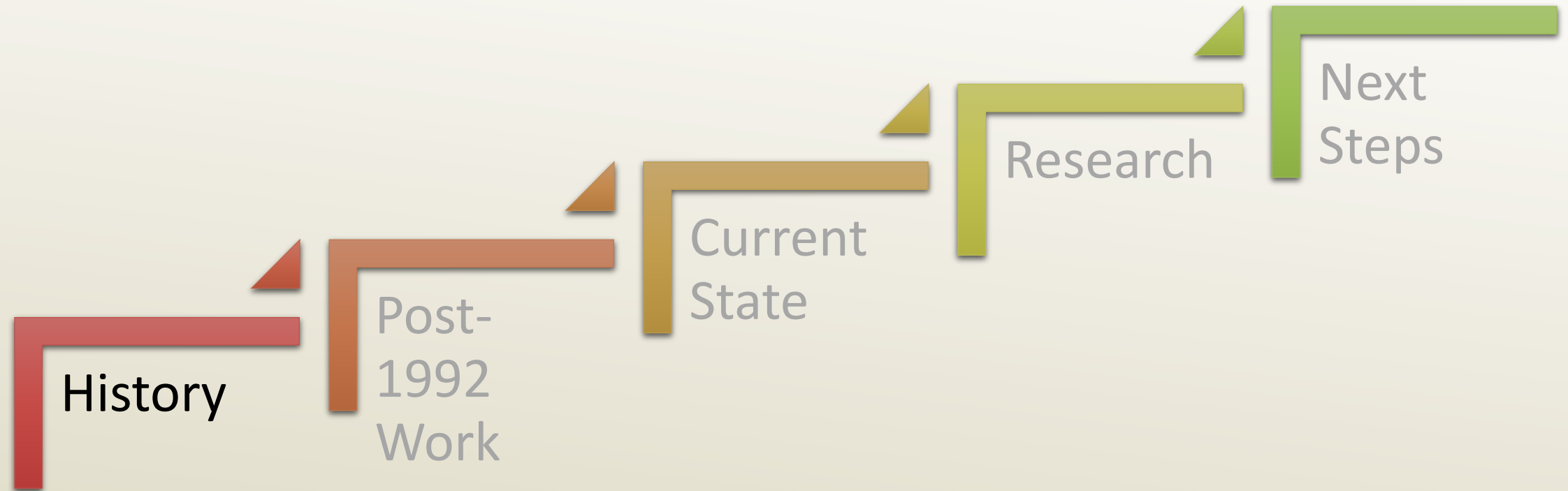
Minnesota Sentencing Guidelines Commission

August 26, 2015

Drug Sentencing in Minnesota



Drug Sentencing in Minnesota



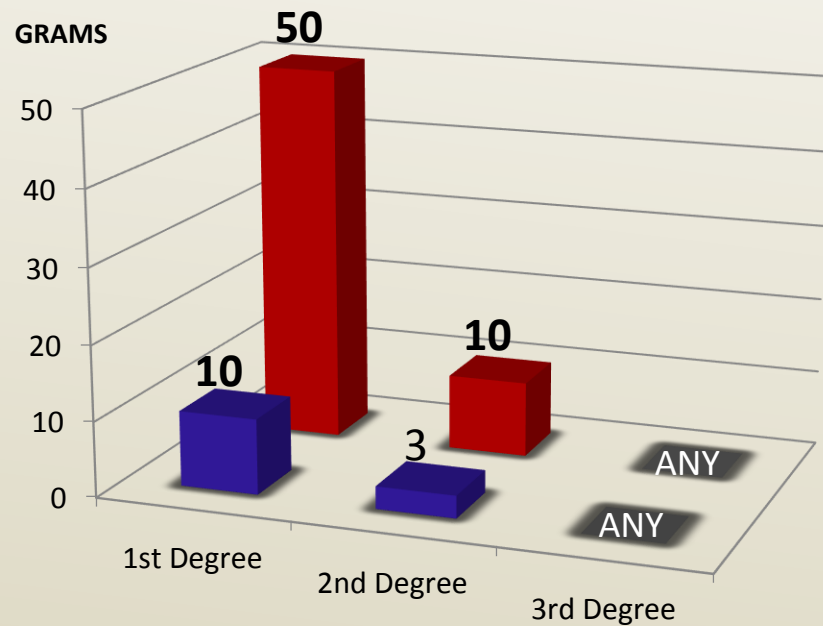
The late '80s were key years for changes in drug rankings ...

	SEVERITY LEVEL OF CONVICTION OFFENSE	0	1	2	3	4	5	6+	1985
1985 Severity Level 6: sale heroin, LSD, and narcotics 1985 Severity Level 4: sale any amount of cocaine	6	21	26	30	34 (33-35)	44 (42-46)	54 (50-58)	65 (60-70)	
	4	12 ¹	15	18	21	25 (24-26)	32 (30-34)	41 (37-45)	
* Historic Severity Levels 7 and 8 become today's Severity Levels 8 and 9.	SEVERITY LEVEL OF CONVICTION OFFENSE	0	1	2	3	4	5	6+	1986
1986 Severity Level 7: sale of quantified amounts (7+ g. narcotics, 10+ g. cocaine) 1986 Severity Level 6: sale unquantified amount cocaine	7*	24 (23-25)	32 (30-34)	41 (38-44)	49 (45-53)	65 (60-70)	81 (75-87)	97 (90-104)	
	6	21	26	30	34 (33-35)	44 (42-46)	54 (50-58)	65 (60-70)	
	SEVERITY LEVEL OF CONVICTION OFFENSE	0	1	2	3	4	5	6+	1987
1987 Severity Level 7: Reduced quantity threshold for crack cocaine sale to 3+ g.	7*	24 (23-25)	32 (30-34)	41 (38-44)	49 (45-53)	65 (60-70)	81 (75-87)	97 (90-104)	
1988: Concerned about violence, MSGC votes to double durations for severity Level 7* and 8* offenses at CHS=0.	SEVERITY LEVEL OF CONVICTION OFFENSE	0	1	2	3	4	5	6+	1988
1989 Severity Level 8 ("First Degree"): sale 10+/50+ g. crack/powder; poss. 25+/500+ g. crack/powder 1989 Severity Level 7 ("Second Degree"): sale 3+/10+ g. crack/powder; poss. 6+/50+ g. crack/powder	8*	86 (81-91)	98 (93-103)	110 (105-115)	49 (45-53)	65 (60-70)	81 (75-87)	97 (90-104)	
	7*	48 (44-52)	58 (54-62)	68 (64-72)	78 (74-82)	88 (84-92)	98 (94-102)	108 (104-112)	

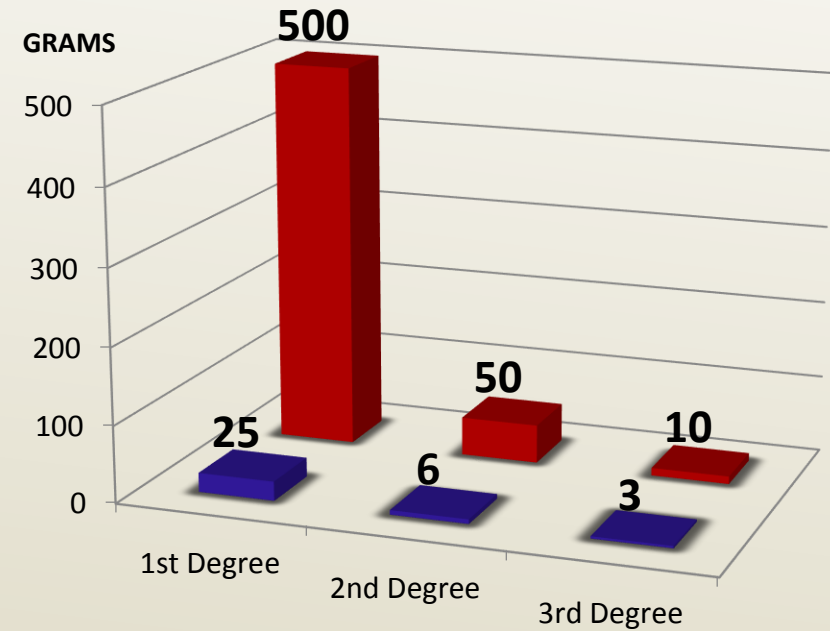
A look at some of the 1989 statutory thresholds ...

- 5 degrees established with possession and sale offenses at each degree.
- Separate thresholds established for powder and crack cocaine.

1989 Minn. Laws ch. 290, art. 3.



SALE OFFENSES



POSSESSION OFFENSES

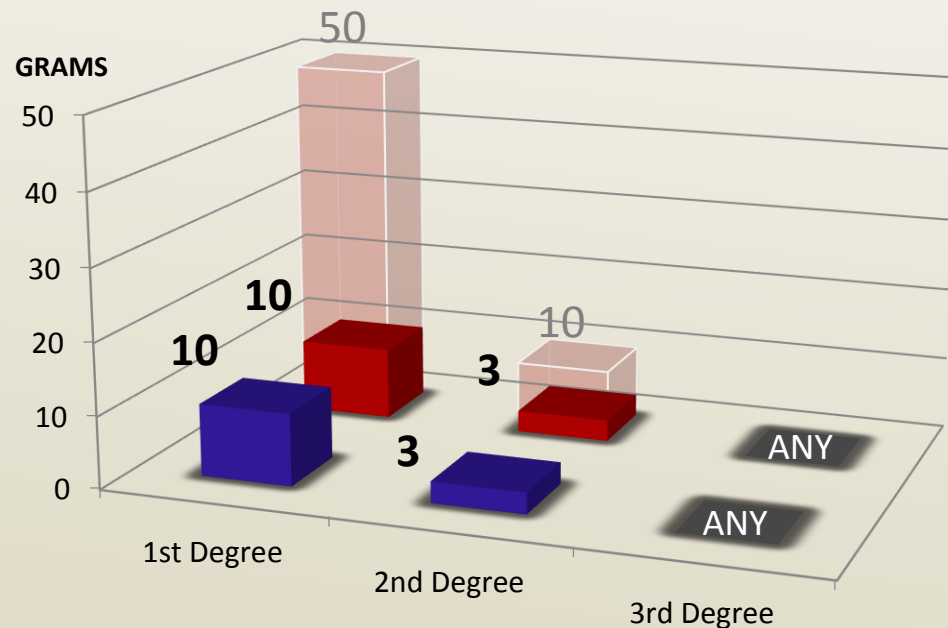
Post-Russell, thresholds dropped for powder cocaine, heroin, and meth

1991

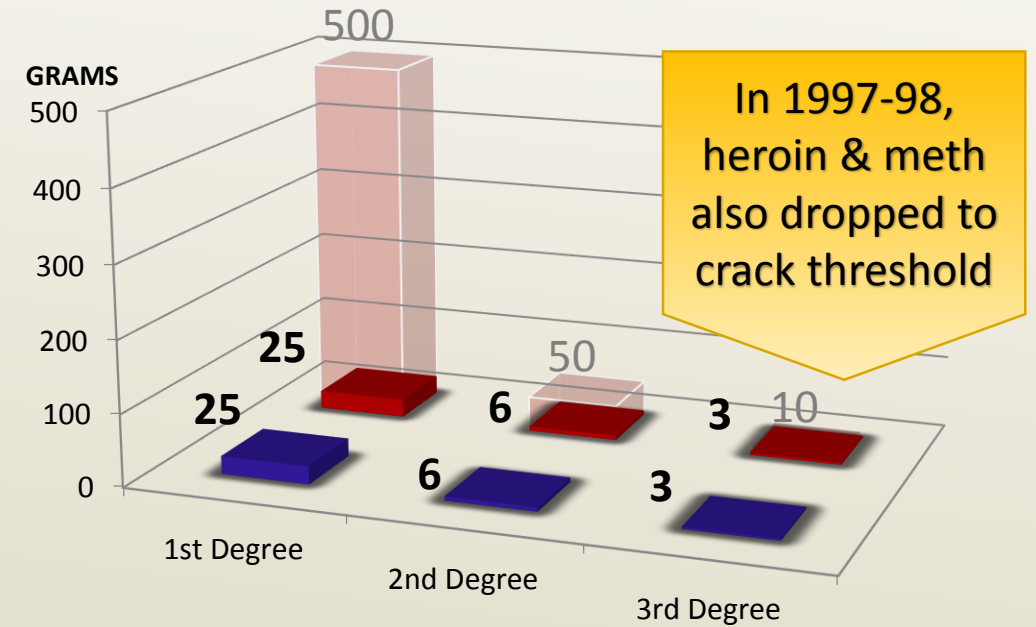
- *State v. Russell*: Disparate treatment of crack and powder cocaine is unconstitutional.

1992

- Legislature drops thresholds for all cocaine offenses to be equal to the previous crack-only thresholds, thereby increasing the penalties for powder offenses.



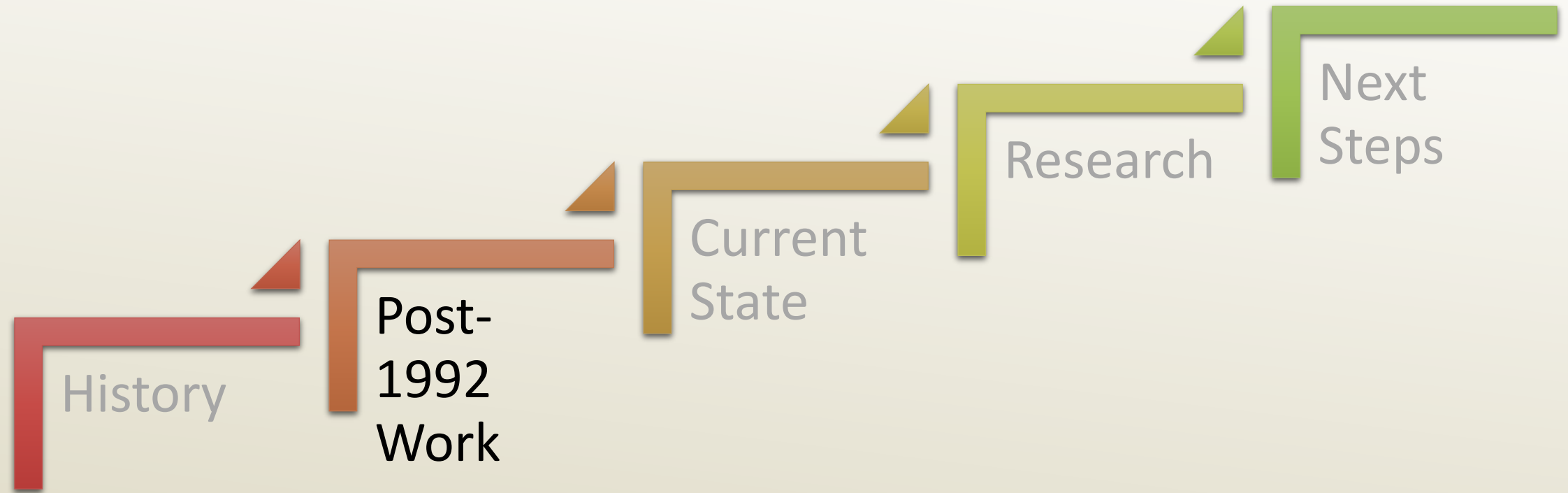
SALE OFFENSES







POSSESSION OFFENSES











In 1997-98, heroin & meth also dropped to crack threshold

Drug Sentencing in Minnesota














Summary of Commission Proposals to Modify Drug Offenses

			
Options presented to Legislature	Commission continuation; no new developments	No modifications adopted by MSGC	Legislature did not adopt

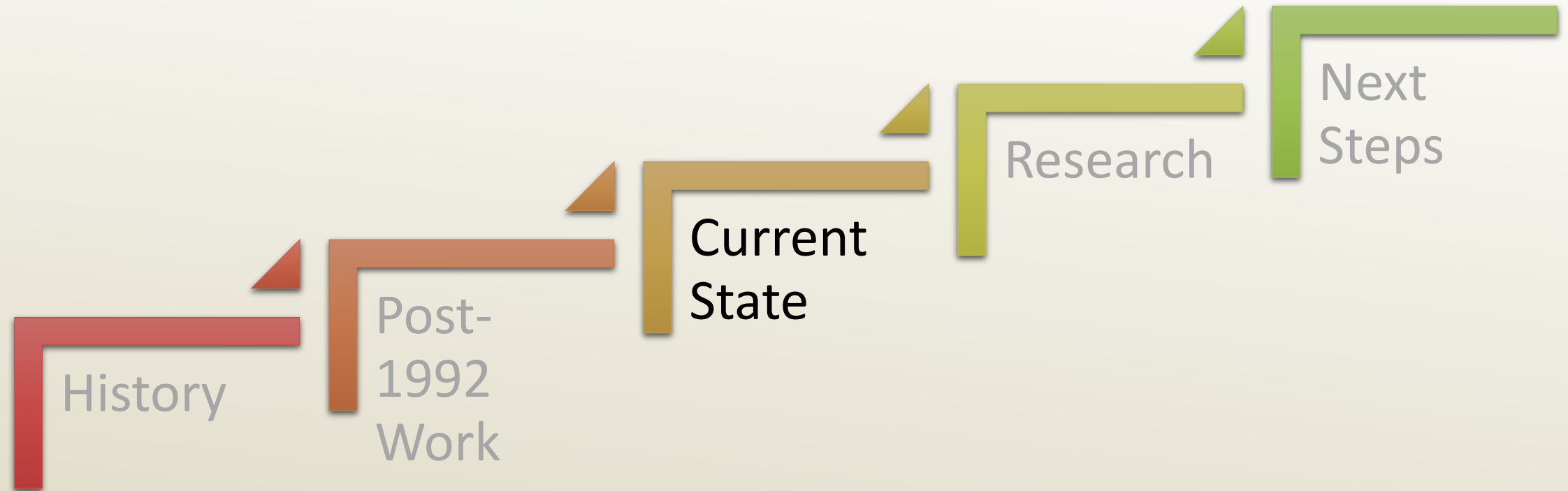
1995	Insert new severity level 7 at 36 mos. commit	Part of reform package with many components; adjust 1 st and 2 nd deg.			
2000-01	Drug subcommittee with outside members	Developed drug Grid with border boxes; reshape how drug offenses were ranked.			
2002	New drug subcommittee with a new Chair	Developed proposal for mandatory diversion for possession.			
2003-04	Legislature directive to report on drug offenses	List of options given to Legislature in 2004 Legislative Report.			
2007	2007 Report to the Legislature	Options given to Legislature. Updated results from 2004 Legislative Report.			

Summary of Commission Proposals to Modify Drug Offenses (cont.)

			
Options presented to Legislature	Commission continuation; no new developments	No modifications adopted by MSGC	Legislature did not adopt

2008	Legislative directive to make changes to Grid for controlled substance offenses	Notwithstanding multiple proposals, MSGC proposed no changes. Recommended LWGCS.	  
2009	Report from Legislative Working Group on Controlled Substances	Report recommended “modest” changes to thresholds.	 
2012-13	Special outcome study of 1st and 2nd Degree drug offenses	Gathered data on drug amounts. Presented findings to Round Table forum. Multiple proposals failed to win MSGC majority.	
2014	1st & 2nd Degree mitigated departures: regression analysis	Significant: Criminal history; double quantity threshold; being Hispanic; geography	

Drug Sentencing in Minnesota



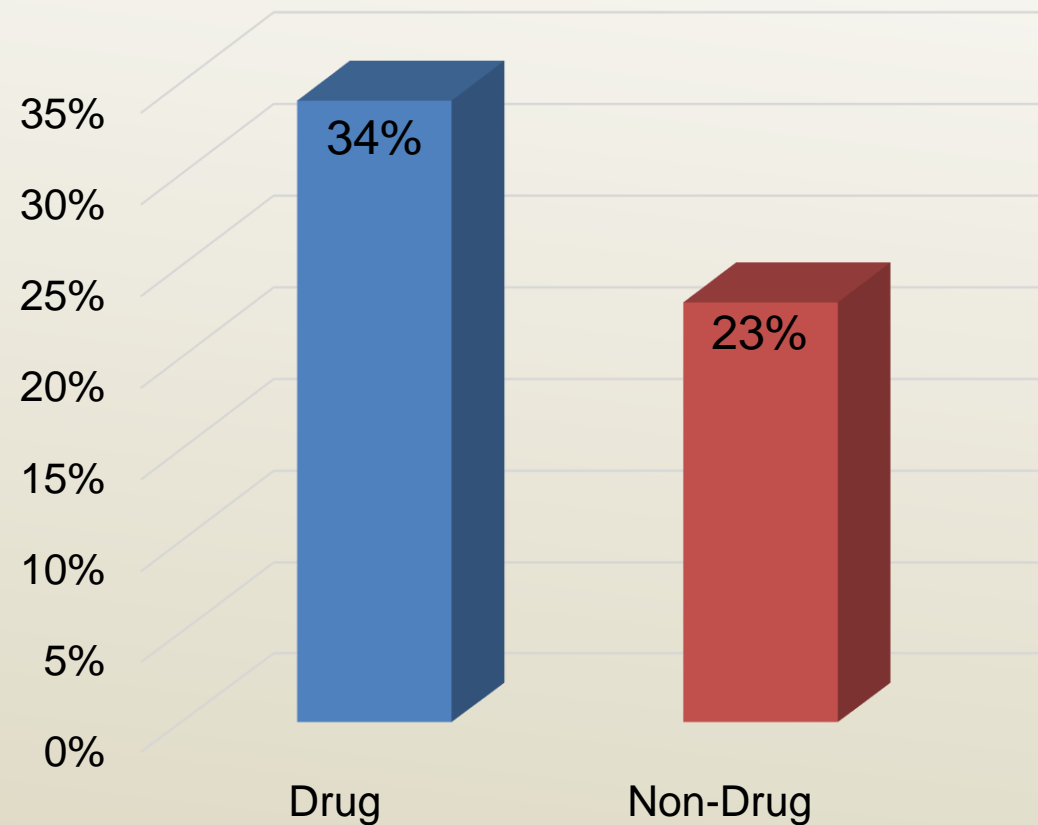
Comparing 1st- and 2nd-Degree Controlled Substance Crime to Other Severity Level 9 and 8 Offenses

Most Severity Level 9 Offenses Involve Death or Great Bodily Harm

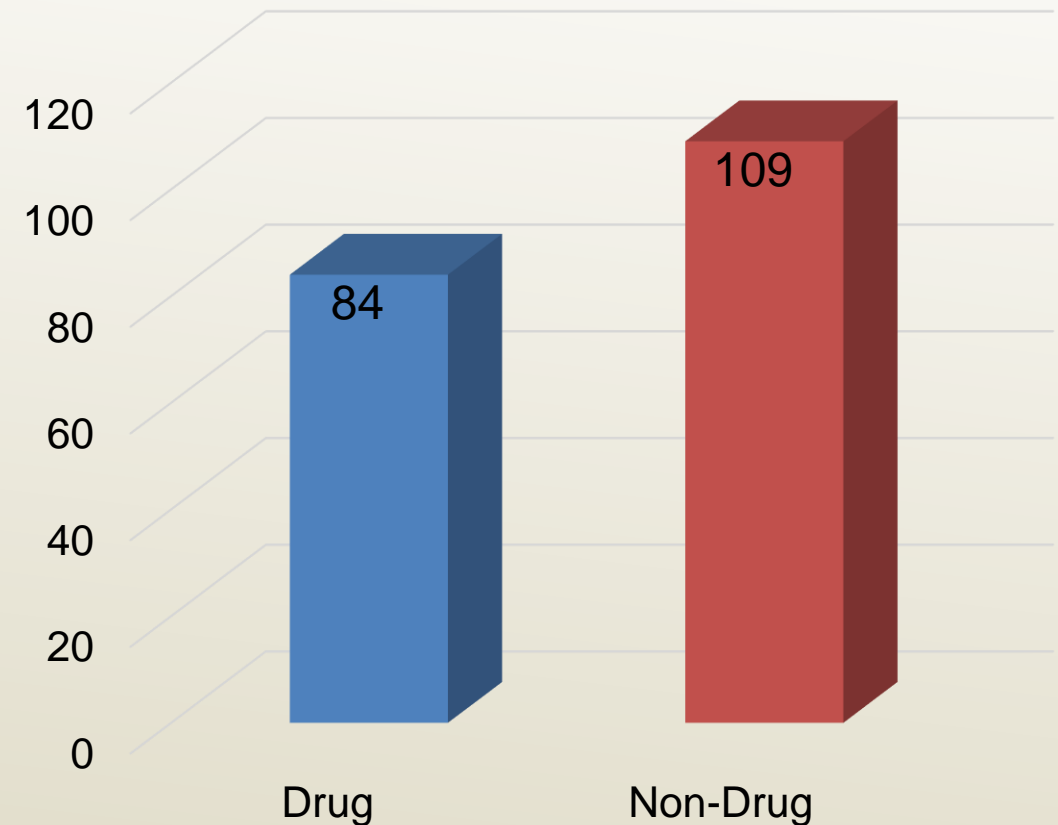
OFFENSE	Death	Great Bodily Harm	Neither
Assault 1		✓	
Assault 1 of Unborn Child		✓	
Controlled Substance Crime 1			✓
Meth Manufacture			✓
Criminal Abuse of Vulnerable Adult – Death	✓		
Death of Unborn Child in Commission of Crime	✓		
Engage/Hire Minor < 13 in Prostitution			✓
Import Controlled Substance Across State Borders			✓
Kidnapping - Great Bodily Harm		✓	
Manslaughter 1	✓		
Manslaughter of an Unborn Child 1	✓		
Murder 3 (may involve drugs)	✓		
Witness Tampering - Agg 1	POSSIBLE	POSSIBLE	

Severity Level 9 Sentencing Practices

Dispositional Departure Rates



Executed Sentence Durations (months)



Most SL 8 Offenses Involve Great Harm, Weapon, or Violence

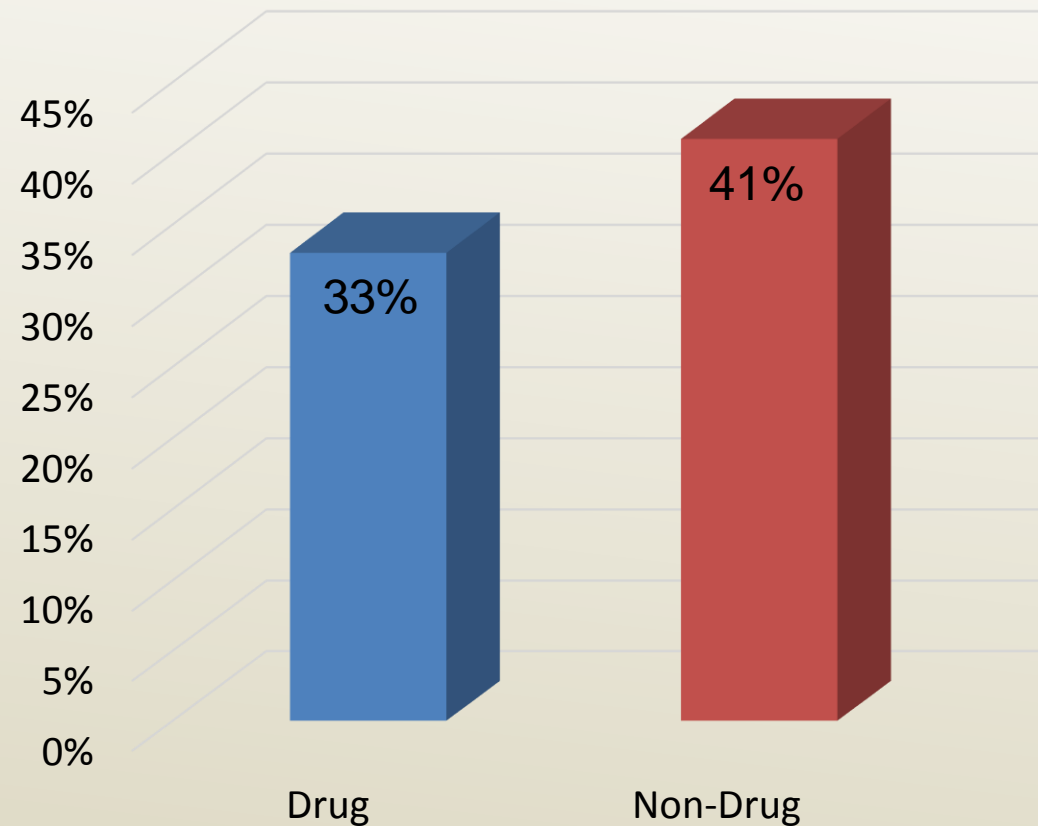
OFFENSE	Death	GBH	Weapon	Violence	None
Aggravated Robbery 1			✓	✓	
Arson 1					✓
Burglary 1 (Weapon/Assault)			POSSIBLE	POSSIBLE	
Controlled Substance Crime 2					✓
Criminal Abuse of Vulnerable Adult – GBH		✓			
Criminal Vehicular Homicide	✓				
Criminal Vehicular Operation - Death to Unborn Child	✓				
Deprivation of Vulnerable Adult – GBH		✓			
Drive-By Shooting			✓		
Fictitious Emergency Call Resulting in Death or GBH	POSSIBLE	✓			
Escape With Violence from Felony				✓	
GBH Caused by Drug Distribution		✓			
Identity Theft - 8 victims, \$35K, or child porn					✓

Most SL 8 Offenses Involve Great Harm, Weapon, or Violence (cont.)

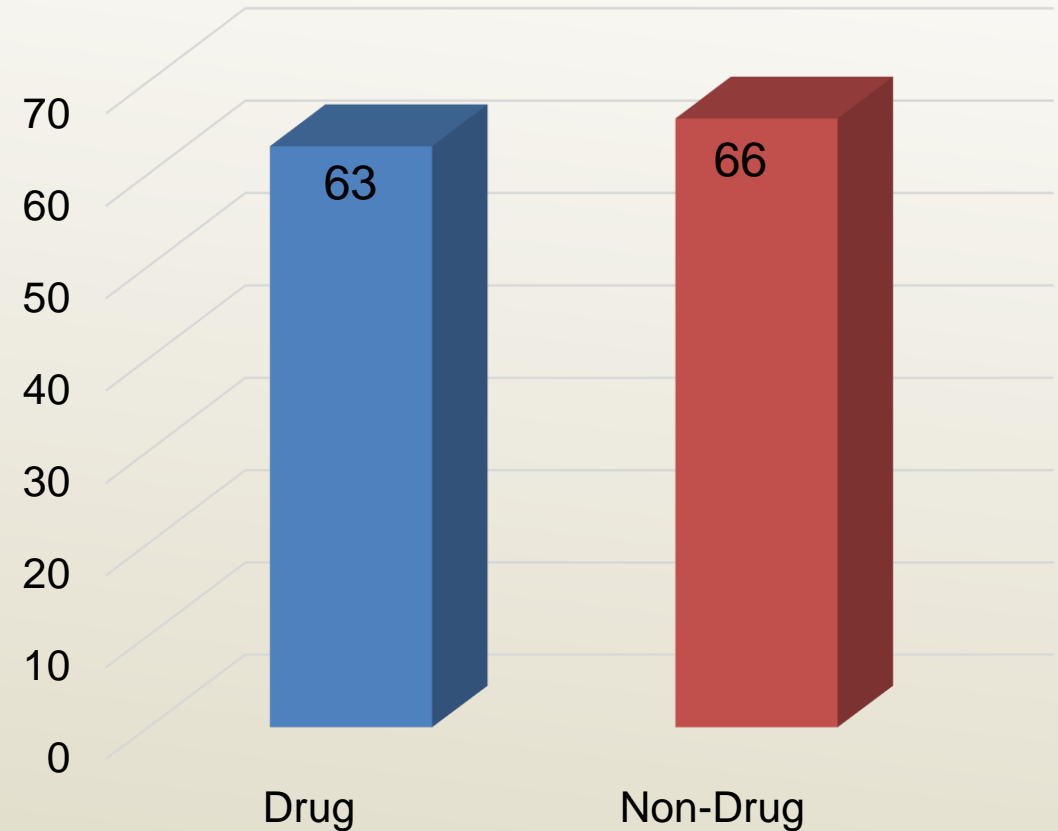
OFFENSE	Death	GBH	Weapon	Violence	None
Kidnapping - No Safe Release or Victim < 16				POSSIBLE	
Malicious Punishment of Child – GBH		✓			
Manslaughter 1 - Coerced/Sold C-III thru C-V Drugs	✓				
Manslaughter of Unborn Child 1 – Coerced	✓				
Manslaughter 2 - Culpable Negligence/Child Neglect or Endangerment	✓				
Manslaughter of Unborn Child 2 - Culpable Negligence	✓				
Riot 1 - Death & Weapon	✓				
Wildfire Arson - 100 homes, 1,500 acres, or \$250K crops					✓

Severity Level 8 Sentencing Practices

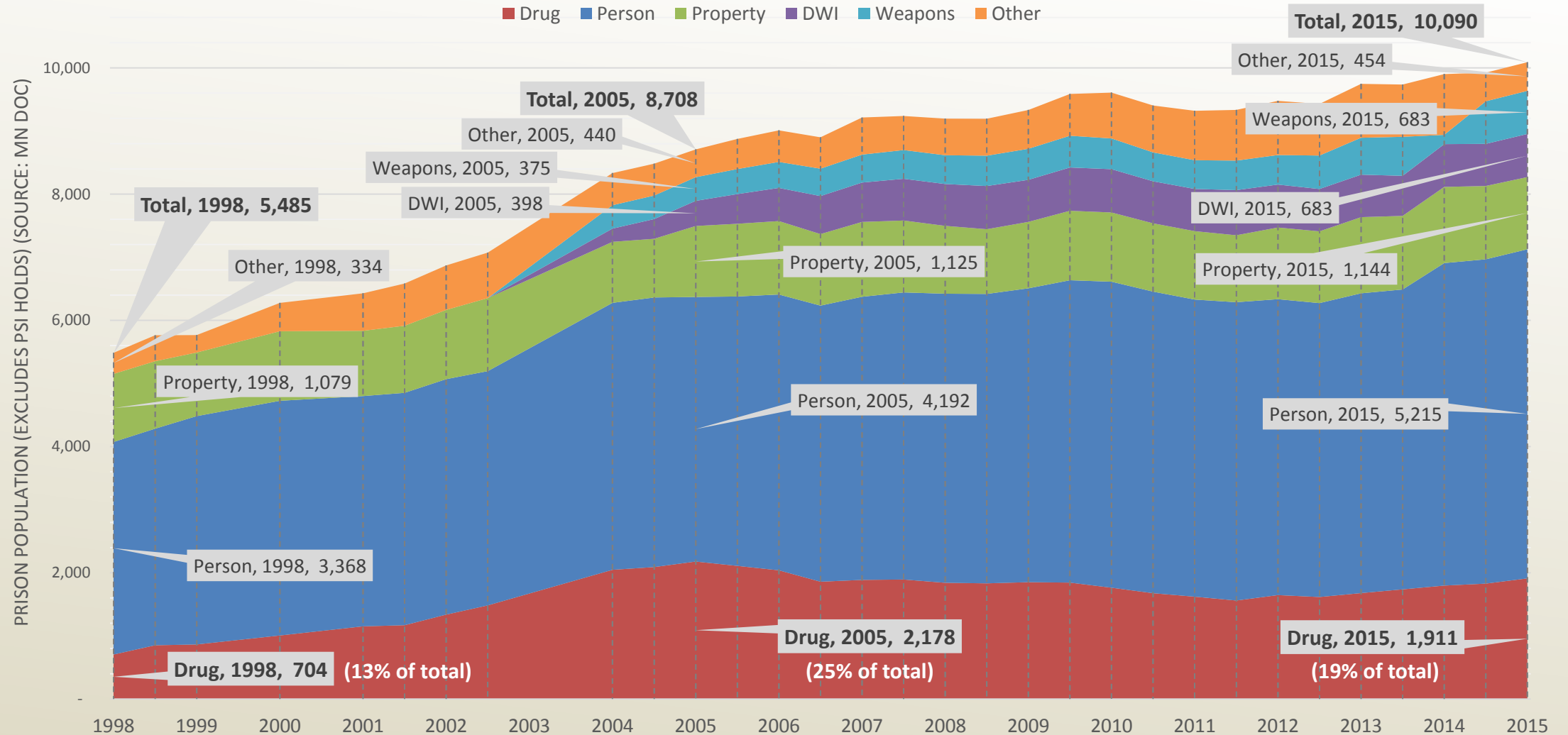
Dispositional Departure Rates



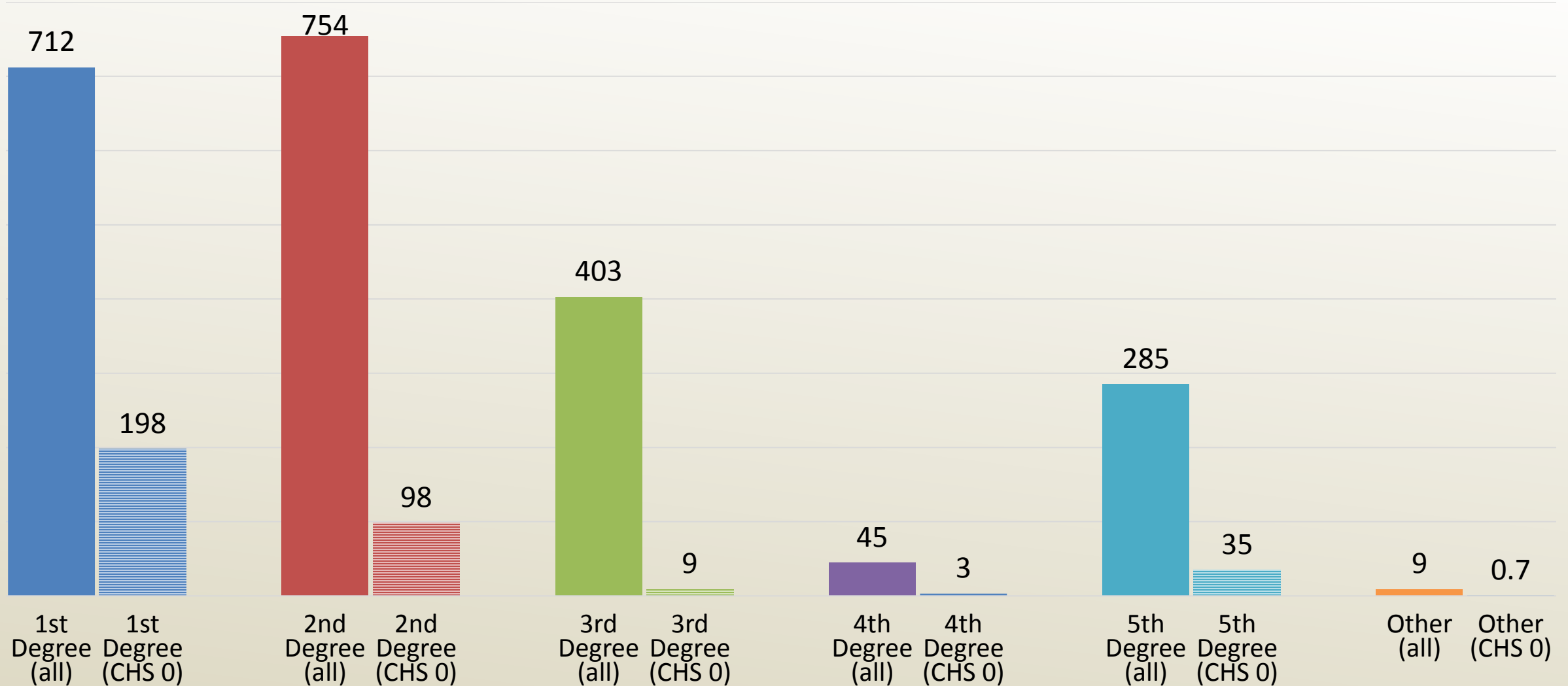
Executed Sentence Durations (months)



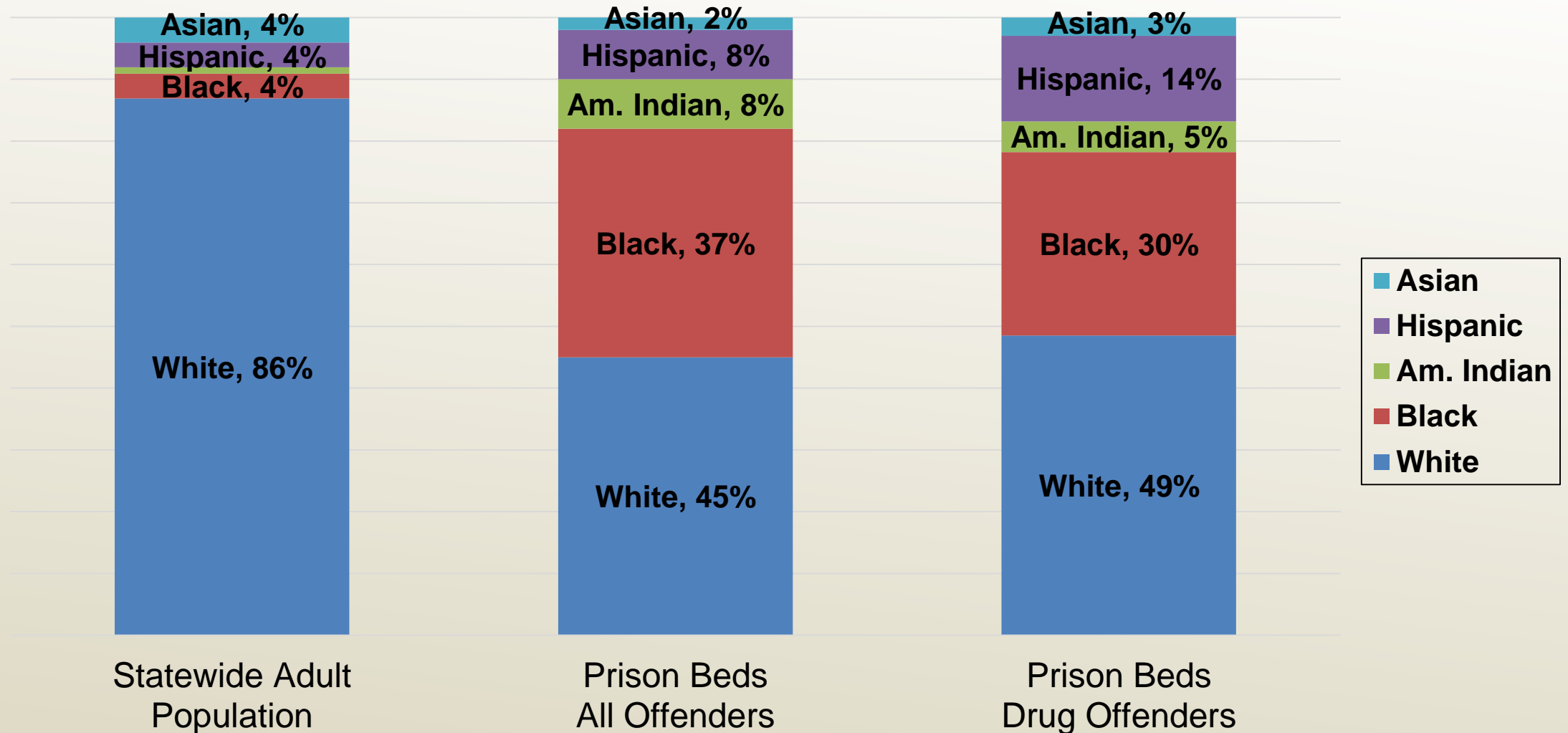
Minnesota State Prison Population by Offense Type (1998-2015)



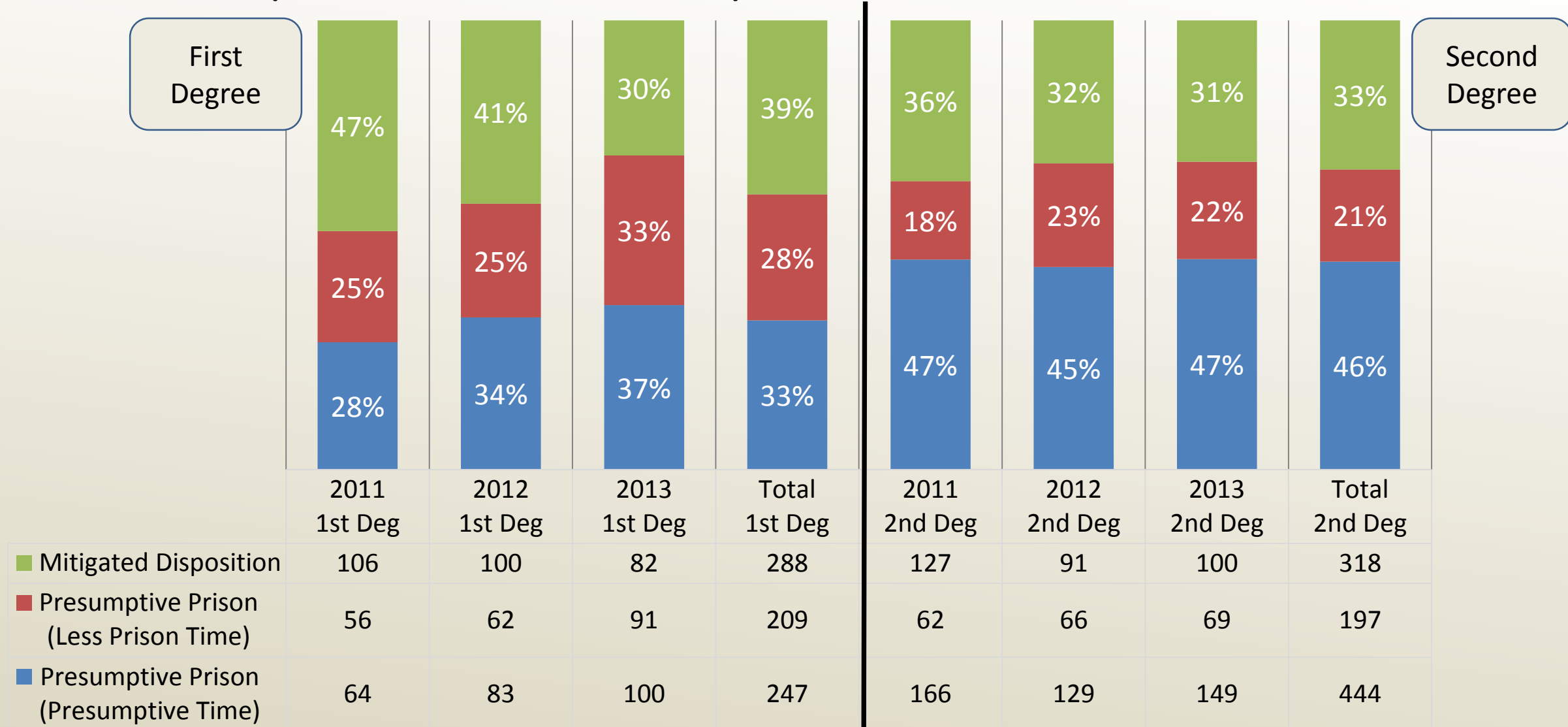
Prison Beds by Degree of Controlled Substance Crime (Annual average of sentences, 2011-13)



Prison Beds by Race: Sentenced 2011-2013



Departure Rates Over Time: First- and Second-Degree Drug Offenders (Sentenced 2011-2013)



Mitigated Departure Rates for First- and Second-Degree Drug Offenses By Criminal History Score (Sentenced 2011-2013)

DISPOSITIONAL DEPARTURE RATES

SEVERITY LEVEL	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6
9	55%	44%	22%	23%	10%	21%	15%
8	61%	34%	21%	14%	14%	6%	12%

Departure Rate 100%



Departure Rate 0%

DURATIONAL DEPARTURE RATES (MITIGATED)

SEVERITY LEVEL	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6
9	33%	51%	45%	48%	59%	64%	56%
8	20%	28%	29%	30%	38%	41%	39%

Departure Rate 100%



Departure Rate 0%

RECEIVED PRESUMPTIVE SENTENCE

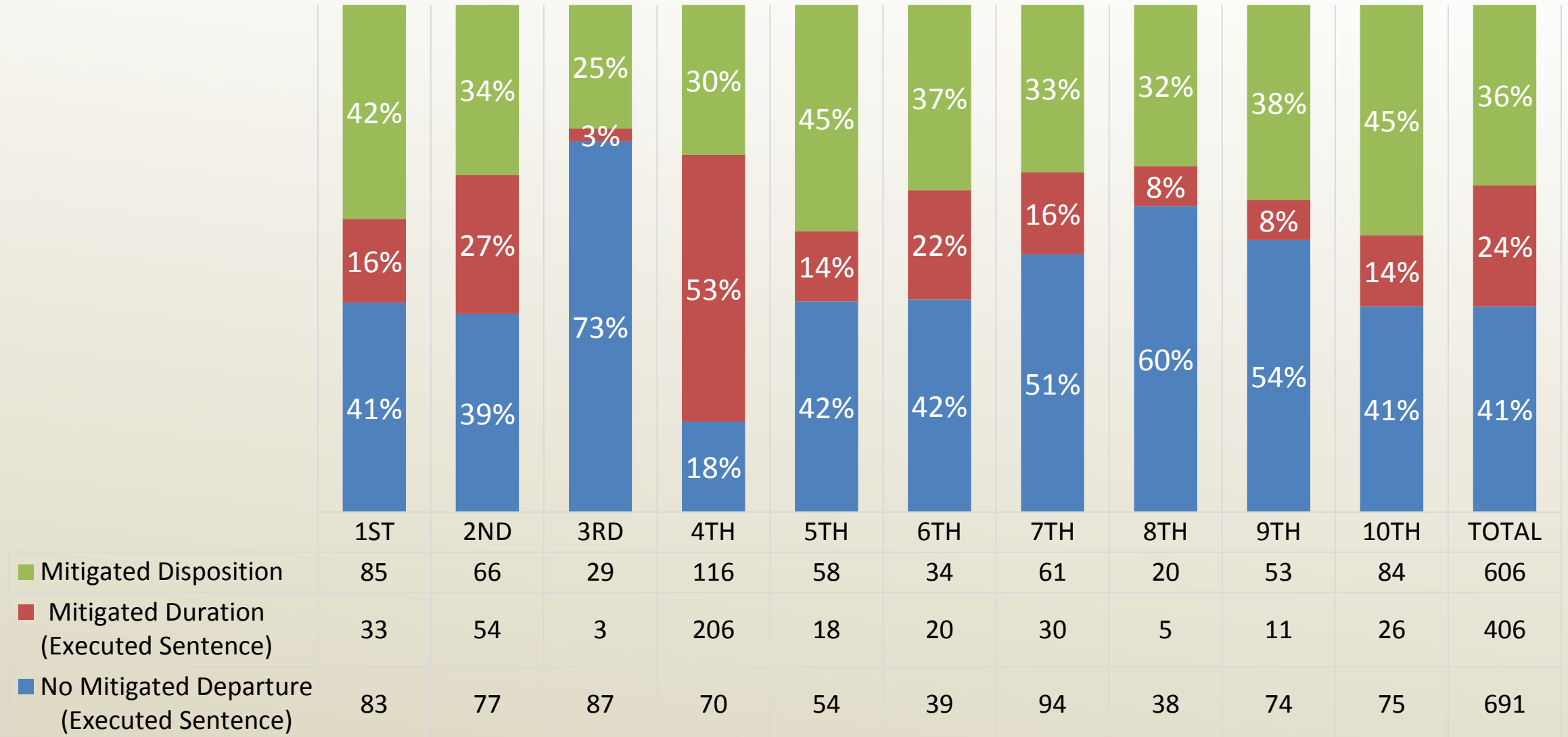
SEVERITY LEVEL	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6
9	30%	28%	43%	40%	37%	29%	38%
8	31%	48%	57%	60%	54%	56%	53%

Received Presumptive
Sentence 100%

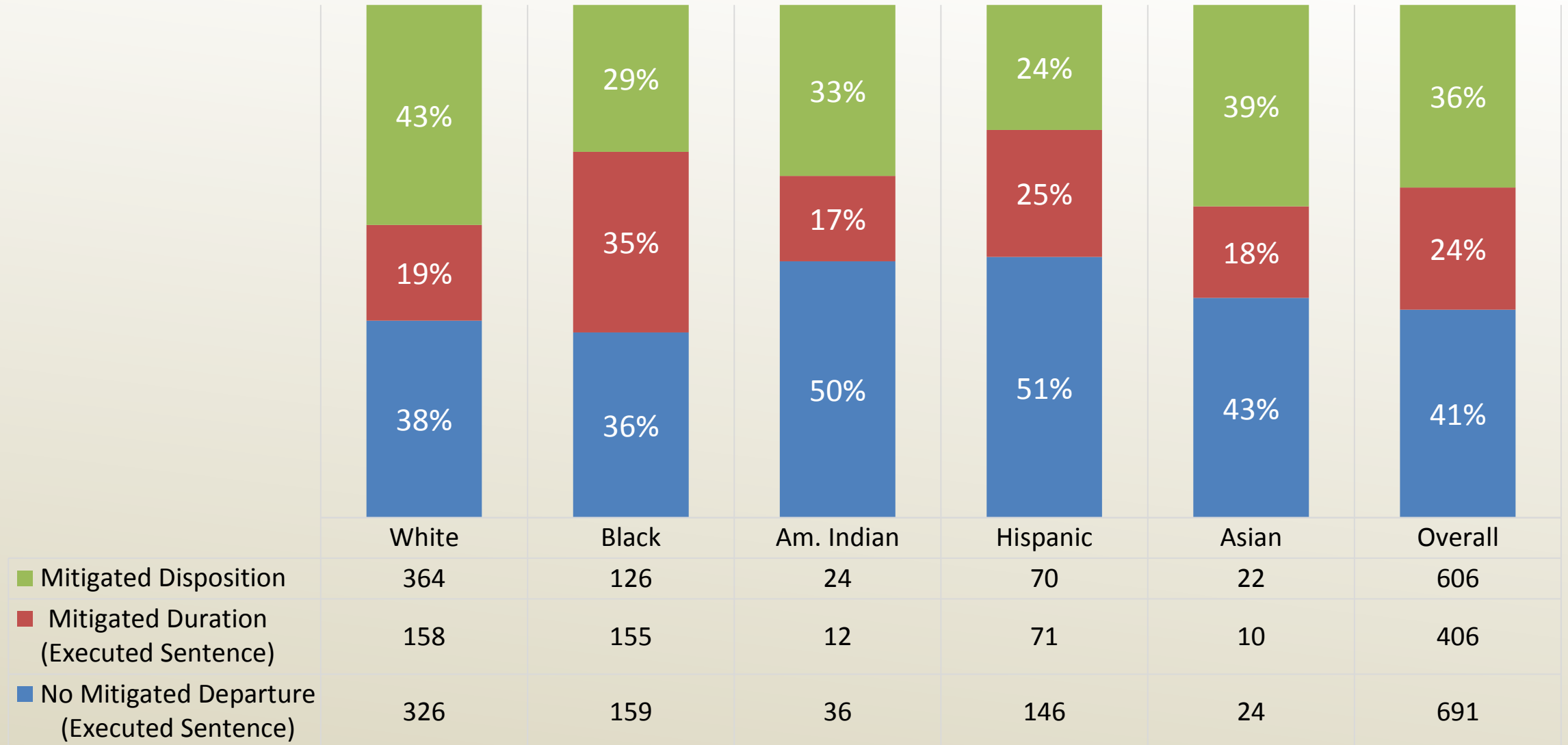


Received Presumptive
Sentence 0%

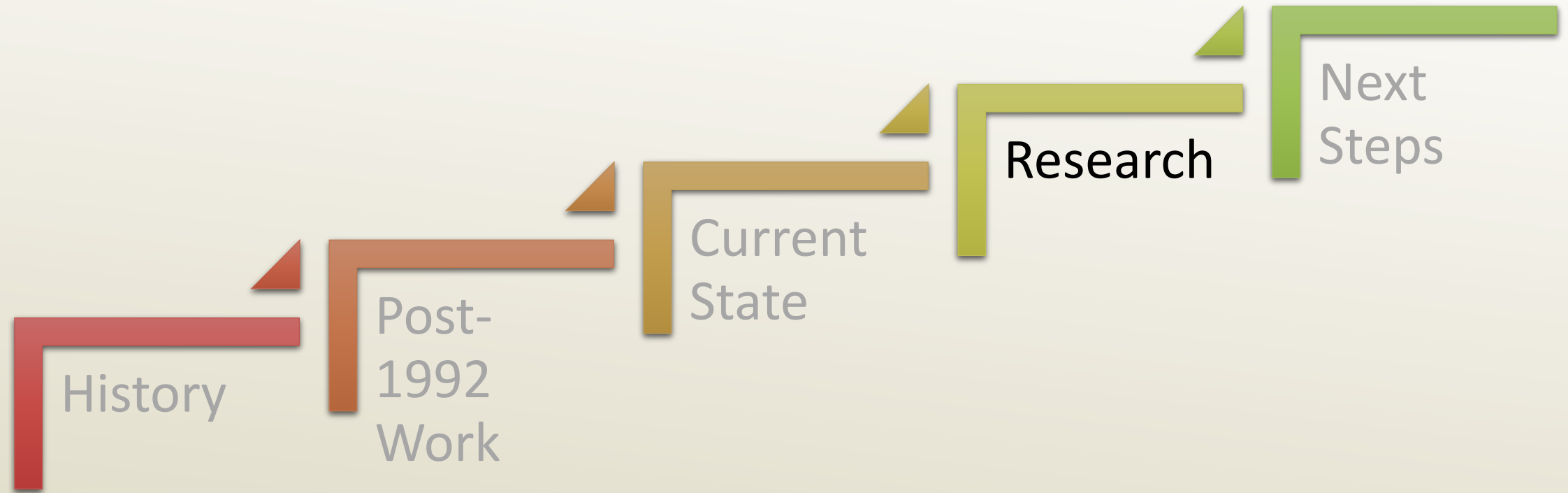
Departure Rates by Judicial District: First- and Second-Degree Drug Offenders (Sentenced 2011-2013)



Departure Rates by Race: First- and Second-Degree Drug Offenders (Sentenced 2011-2013)



Drug Sentencing in Minnesota

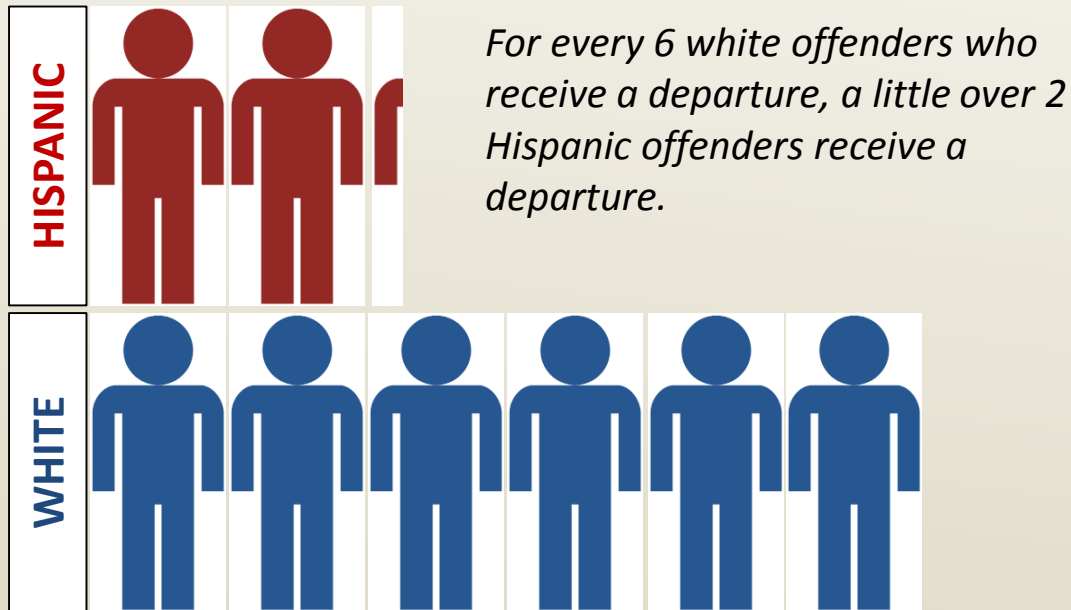


Who gets mitigated departures?

Regression analysis: What are the significant factors behind mitigated departures for 1st Degree and 2nd Degree drug offenders in 2011?

Summary of Statistically Significant Effects for Race and Judicial District

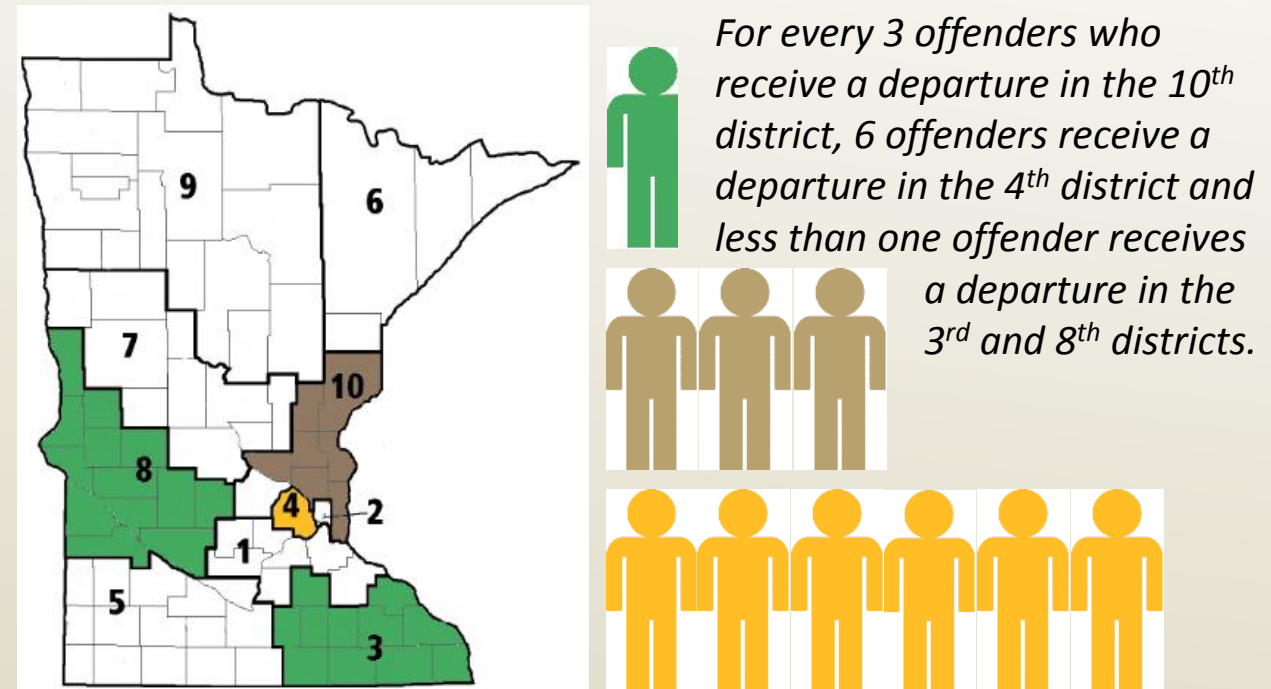
① **RACE/ETHNICITY.** Compared to whites, Hispanics were 64% less likely to get dispositional/ durational departures. This was the only statistically significant effect for race/ethnicity.**



** $p < .01$

8/26/2015

② **REGION.** Compared to the 10th Judicial District, offenders sentenced in the 3rd and 8th districts were less likely to get departures while offenders in the 4th District were twice as likely to get departures.*



* $p < .05$

Summary of Statistically Significant Effects for Criminal History Score and Drug Amounts

③ **HISTORY.** Offenders with criminal history scores of 1 or more were 65% less likely to get departures.**



** p<.01

④ **WEIGHT.** Offenders with double the threshold amount or more were 38% less likely to get departures.*



* p<.05

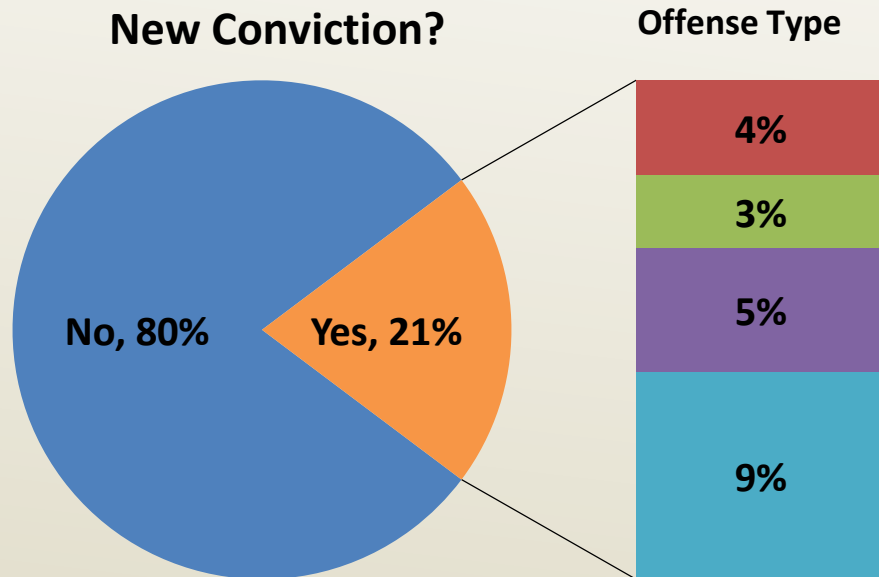
Does prison affect recidivism?

Examining outcomes for 1st and 2nd Degree drug offenders placed on probation or released from prison, 2007-09

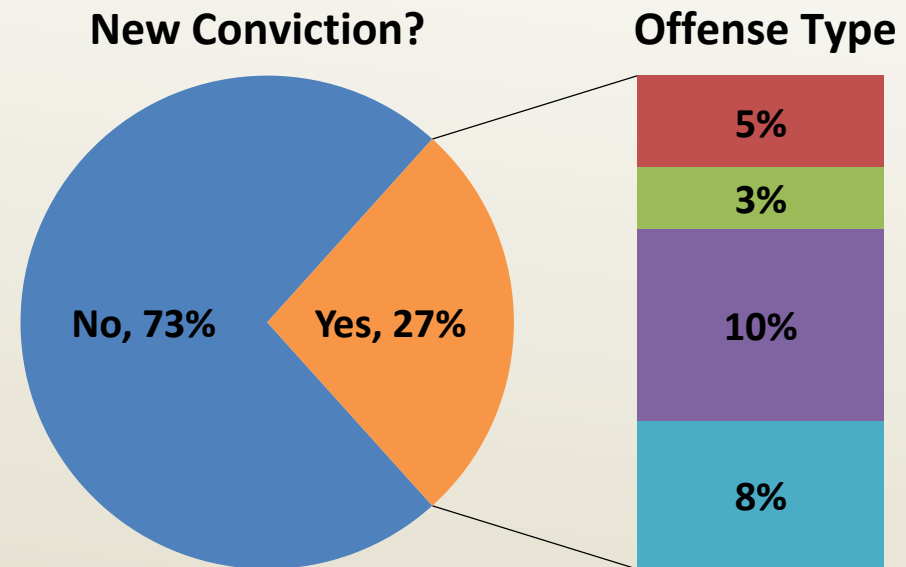
Reviewing USSC crack recidivism study

1st & 2nd degree drugs: Probationers do better than ex-prisoners ...

Probationers



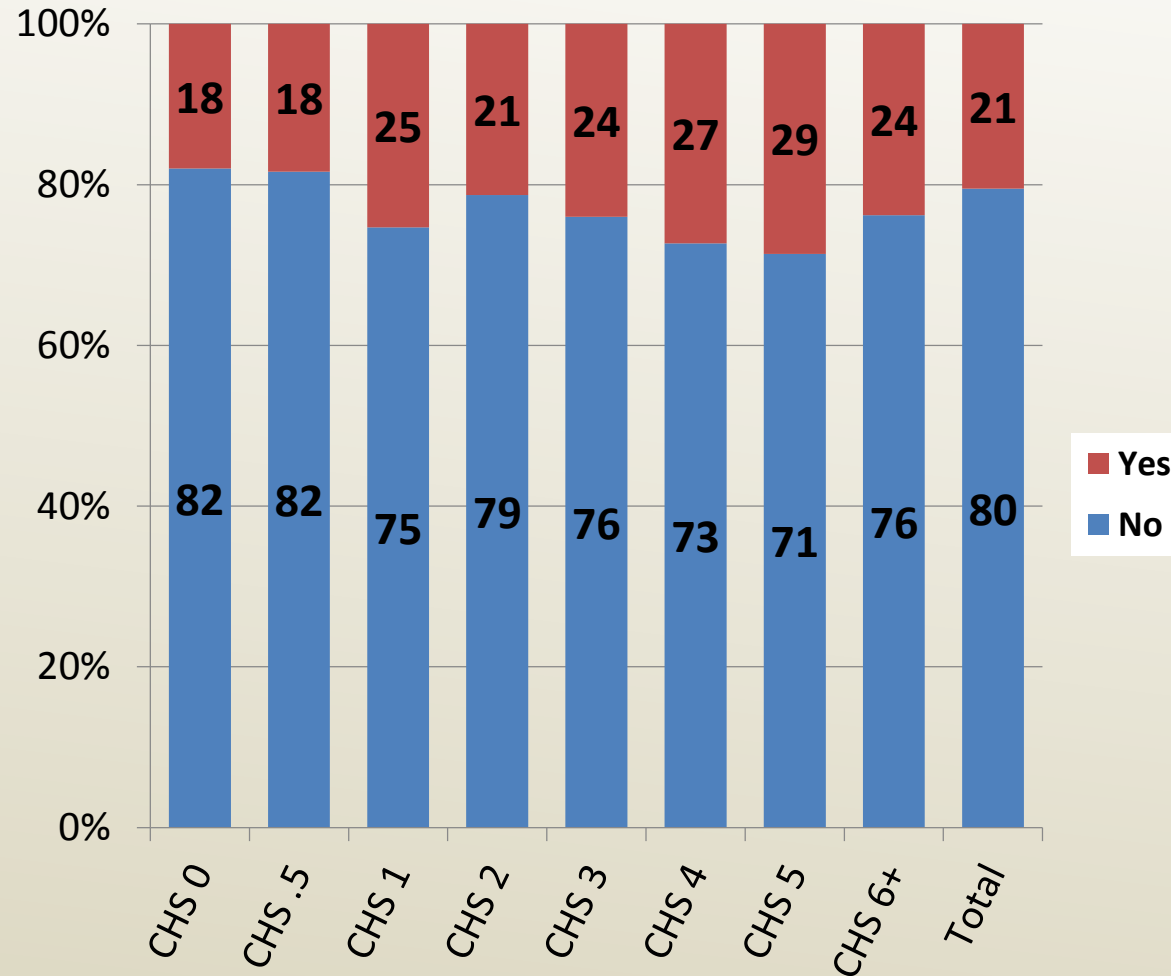
Ex-Prisoners



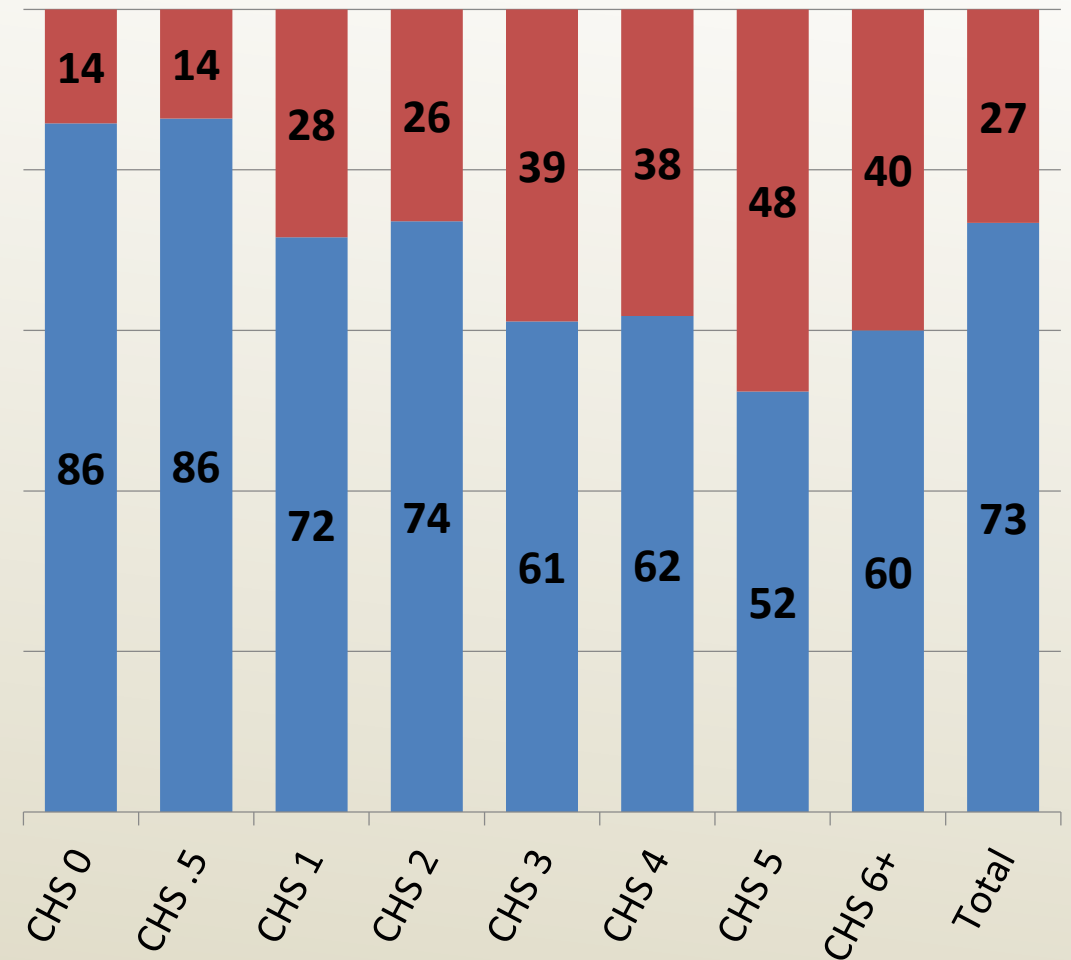
■ Person ■ Property ■ Drug ■ Other

... and this is true across most criminal history scores...

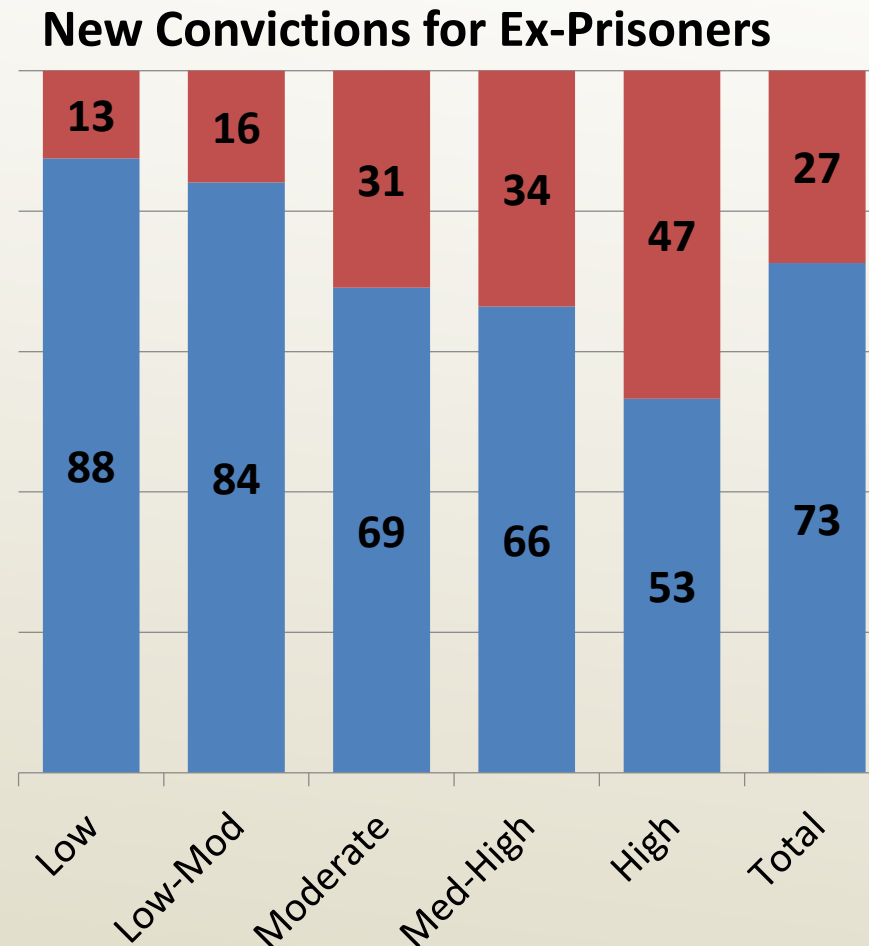
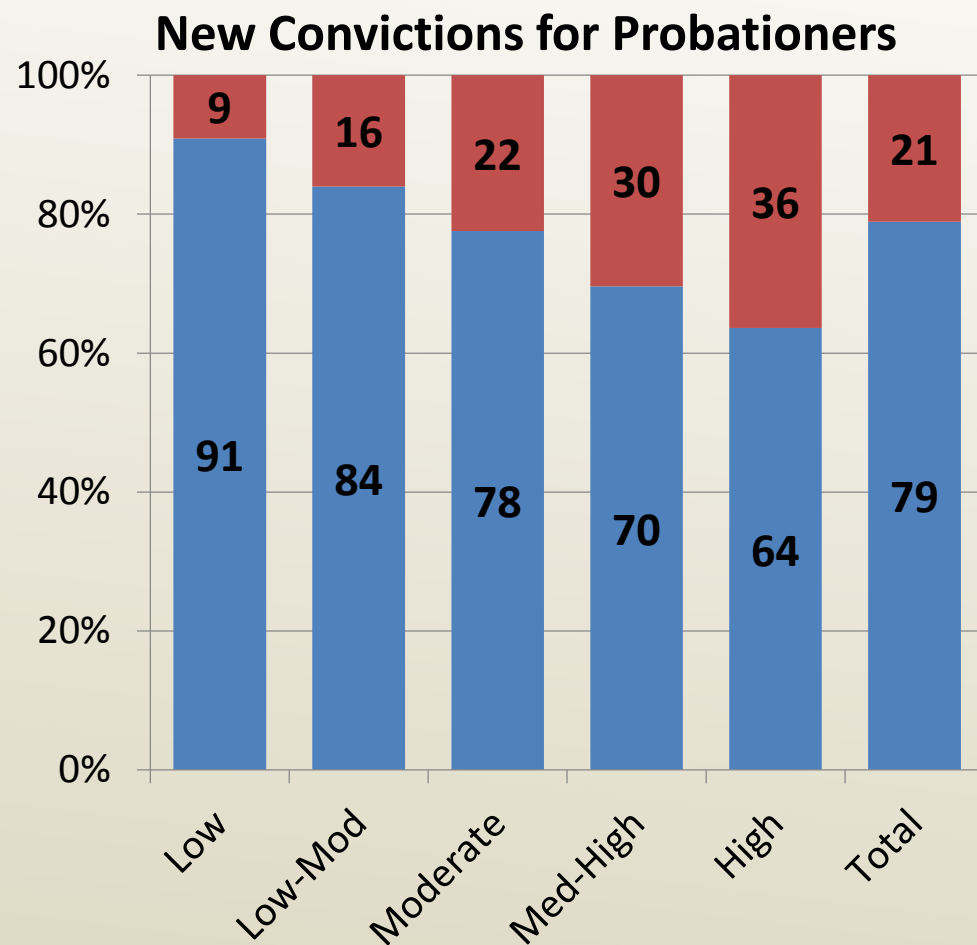
New Convictions for Probationers



New Convictions for Ex-Prisoners



...and across most LSI-R Risk Assessment Levels.



Do longer prison terms reduce recidivism?

- In 2007, the U.S. Sentencing Guidelines Commission—
 - Reduced the severity of crack cocaine trafficking by two levels
 - Gave judges discretion to apply reductions retroactively
- Some offenders' sentences were retroactively reduced
 - Average drop was 22 months, or 20 percent
- A similar group of offenders was not given a retroactive reduction
- USSC studied the two groups for 5 years
- Findings: Shortening the sentence caused no significant differences in recidivism rates or timing of recidivism

How does Minnesota's drug sentencing scheme compare to other jurisdictions?

A look at typical Minnesota drug offenders (2011 data)

Comparing presumptive sentences in other Guidelines jurisdictions

Comparing Presumptive Sentences: Examples of MN 1st Degree Drug Offense-Sale

Offender Profile for Typical 1st Degree Sale Drug Offender: *Sale or poss. w/intent of 10 or more grams aggregated over a 90-day period*



Offense Sentenced: First-Degree Sale

- 31 yr. old
- White or Hispanic male
- Sentenced in the Metro Area
- Criminal History Score of 0.

Drug

Cocaine or Meth offense
Amount less than 20 Grams

Act

A Confidential Reliable Informant (CRI) was used
Actual sale transaction(s)
Convicted of a first-time drug offense

Other

A gun was not involved, nor were there children present
Most likely sentenced to probation

Example 1

Sale of 19 grams of Cocaine
Criminal History Score of 0
First time drug offense
No weapon involved

State	Presumptive Sentence
 Minnesota	Prison 86 months Range 74-103
 Kansas	Prison 49 months Range 46-51
 Washington	Prison 16 months Range 12-20
 Oregon	Prison 17 months Range 16-18
 Federal	Prison Range 10-16

Comparing Presumptive Sentences: Examples of MN 1st Degree Drug Offense-Possession

Offender Profile for Typical First-Degree Possession Drug Offender: *Possession of 25 or more grams*



Offense Sentenced: First-Degree Possession

- 35 yr. old
- White male
- Sentenced in the Metro Area
- Criminal History score of 0.

Drug

Cocaine or Meth offense
Amount less than 50 Grams

Act






No CRI was used
Originally charged with first-degree possession
Convicted of a first-time drug offense

Other

A gun was not involved, nor were there children present
Most likely sentenced to probation


Example 2

Possess 49 grams of Cocaine
Criminal History Score of 0
First time drug offense
No weapon involved

State	Presumptive Sentence
 Minnesota	Prison 86 months Range 74-103
 Kansas	Probation 11 months Range 10-12
 Washington	Jail 3 months Range 0-6
 Oregon	Probation <91 days jail <180 days supervised
 Federal	Imprisonment not required Range 0-6

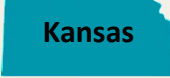

Comparing Presumptive Sentences: Examples of MN 2nd Degree Drug Offense-Sale

Offender Profile for Typical Second-Degree Sale Drug Offender: *Sale or poss. w/ intent of 3 or more grams aggregated over a 90-day period*

	
Offense Sentenced: Second-Degree Sale	
<ul style="list-style-type: none">• 32 yr. old• White male• Sentenced in the Non-Metro Area• Criminal History Score of 0 or 1	
Drug	Meth offense Amount less than 10 Grams
Act	A CRI was used Actual sale transaction(s) Originally charged with second-degree sale Convicted of a first-time drug offense
Other	A gun was not involved, nor were there children present Most likely sentenced to the presumptive sentence


Example 3

Sale of 9 grams of Meth
Criminal History Score of 1
First time drug offense
No weapon involved

State	Presumptive Sentence
 Minnesota	Prison 58 months Range 50-69
 Kansas	Prison 104 months Range 99-110
 Washington	Prison 16 months Range 12-20
 Oregon	Probation <91 days jail <180 days supervised
 Federal	Prison Range 15-21






Comparing Presumptive Sentences: Examples of MN 2nd Degree Drug Offense-Possession

Offender Profile for Typical Second-Degree Possession Drug Offender: *Possession of 6 or more grams*

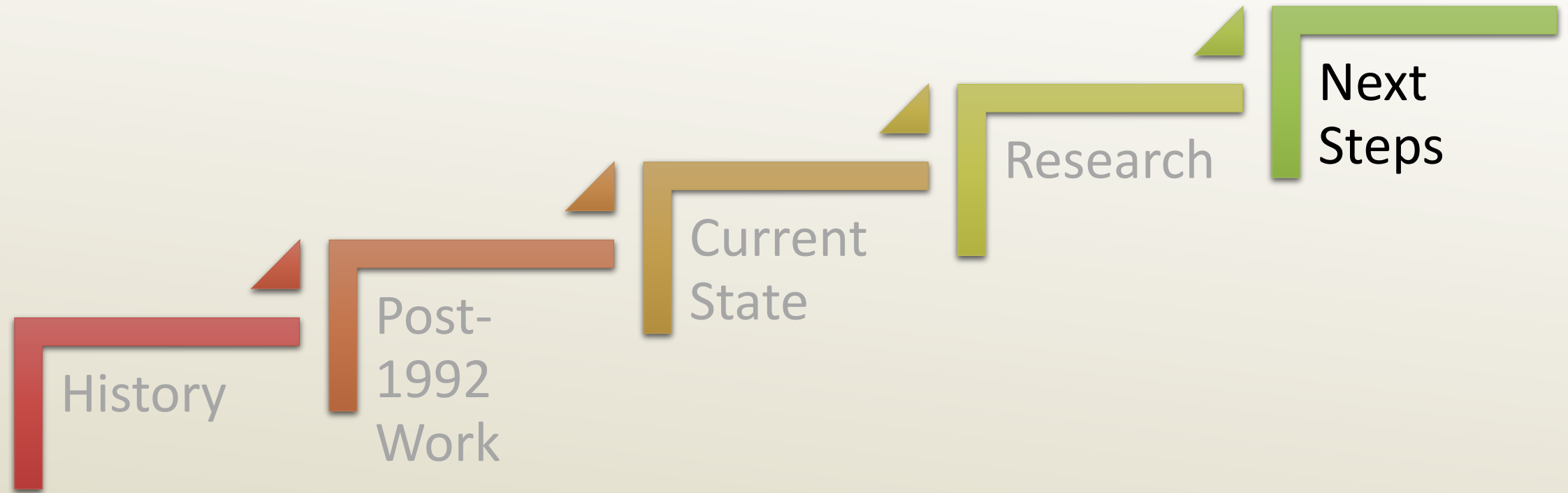
	
Offense Sentenced: Second-Degree Possession	
<ul style="list-style-type: none">• 34 yr. old• White male• Sentenced in the metro area• Criminal History score of 0 or 1	
Drug	Meth offense Amount between 12 and 25 Grams
Act	No CRI was used Originally charged with second-degree possession Convicted of a first-time drug offense
Other	A gun was not involved, nor were there children present Most likely sentenced to the presumptive sentence

Example 4

Possess 24 grams of Meth
Criminal History Score of 1
First time drug offense
No weapon involved

State	Presumptive Sentence
 Minnesota	Prison 58 months Range 50-69
 Kansas	Probation 15 months Range 14-16
 Washington	Jail 16 months Range 12-20
 Oregon	Probation <91 days jail <180 days supervised
 Federal	Imprisonment not required Range 0-6

Drug Sentencing in Minnesota



Can we arrive at effective solutions in 2015?

MSGC Action?

Recommendation to Legislature?

Hybrid Approach?

MSGC reduces severity levels ("Drugs Minus One")

- MSGC reduces severity levels for drug degrees (e.g., 1st & 2nd)
- Similar to USSC 2014 "Drugs Minus Two" approach
- Con: Leaves highest severity level (9) unavailable for "kingpin" cases
- Con: Opposition from enforcers



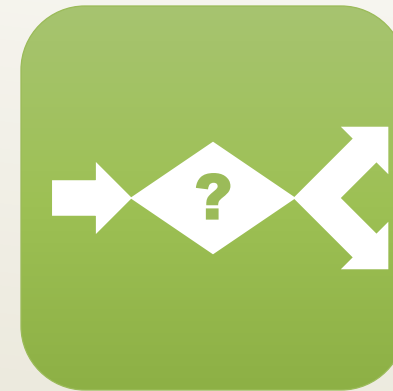
MSGC creates border boxes

- MSGC creates “border boxes” for some higher-level drug offenders with low criminal history, leaving the prison decision in judge’s discretion
- Con: “Solves” departure rate disparity by defining it away
- Con: Moving away from uniformity, predictability
- Con: What about other SL 8 & 9?



MSGC creates graduated severity levels

- MSGC puts drug offenses in one of two severity levels (current or reduced), depending on proof of enhancing factor
- Con: MSGC does not typically use extra-statutory offense characteristics, which may lead to legal challenges
- Con: Will add to complexity of Guidelines



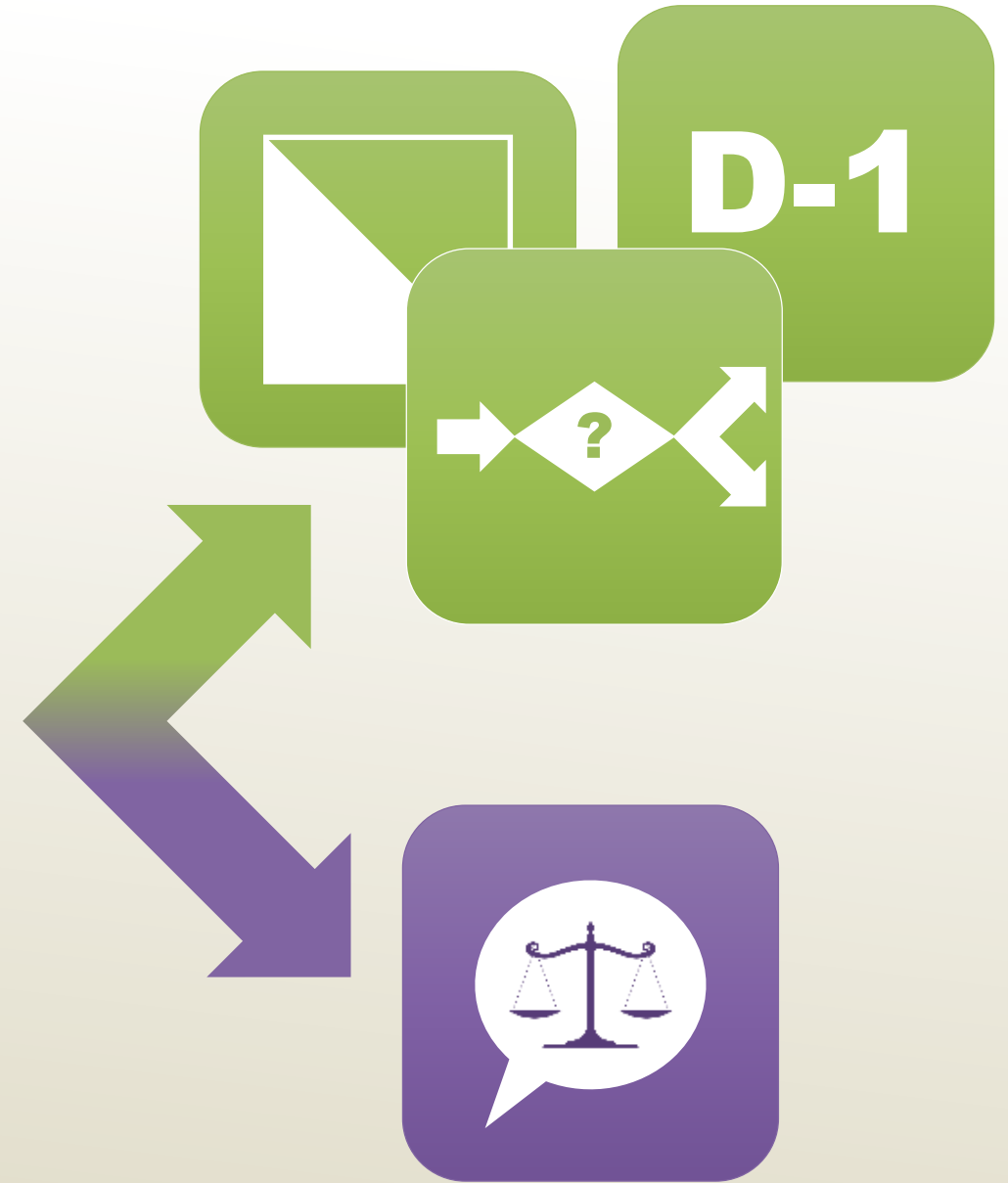
Recommendations to Legislature

- MSGC recommends specific changes to legislature
- Pro: Less rushed timetable than options involving MSGC action
- Con: Legislature has not acted on recommendations before



Hybrid approach

- MSGC makes changes and recommends specific changes (possibly as an alternative to MSGC changes) to legislature
- Pro: Gives legislature choice of:
 - Taking recommended action,
 - Allowing MSGC to act, or
 - Overruling MSGC
- Con: Ambitious MSGC agenda for 2015



Process Moving Forward

MSGC Action

- Timeline:
 - Requires public comment
 - Must be finalized by October
 - Should have significant progress by September



- Methods:
 - Subcommittee?
 - Ideas to staff, drafted for meeting?
 - Discussion by MSGC as a body?

Recommendation to Legislature

- Timeline:
 - No public comment required
 - Probably best in January report to legislature
 - December deadline implied

