

UNDERSTANDING THE PROLIFERATION OF LONG AND LIFE SENTENCES IN WASHINGTON STATE

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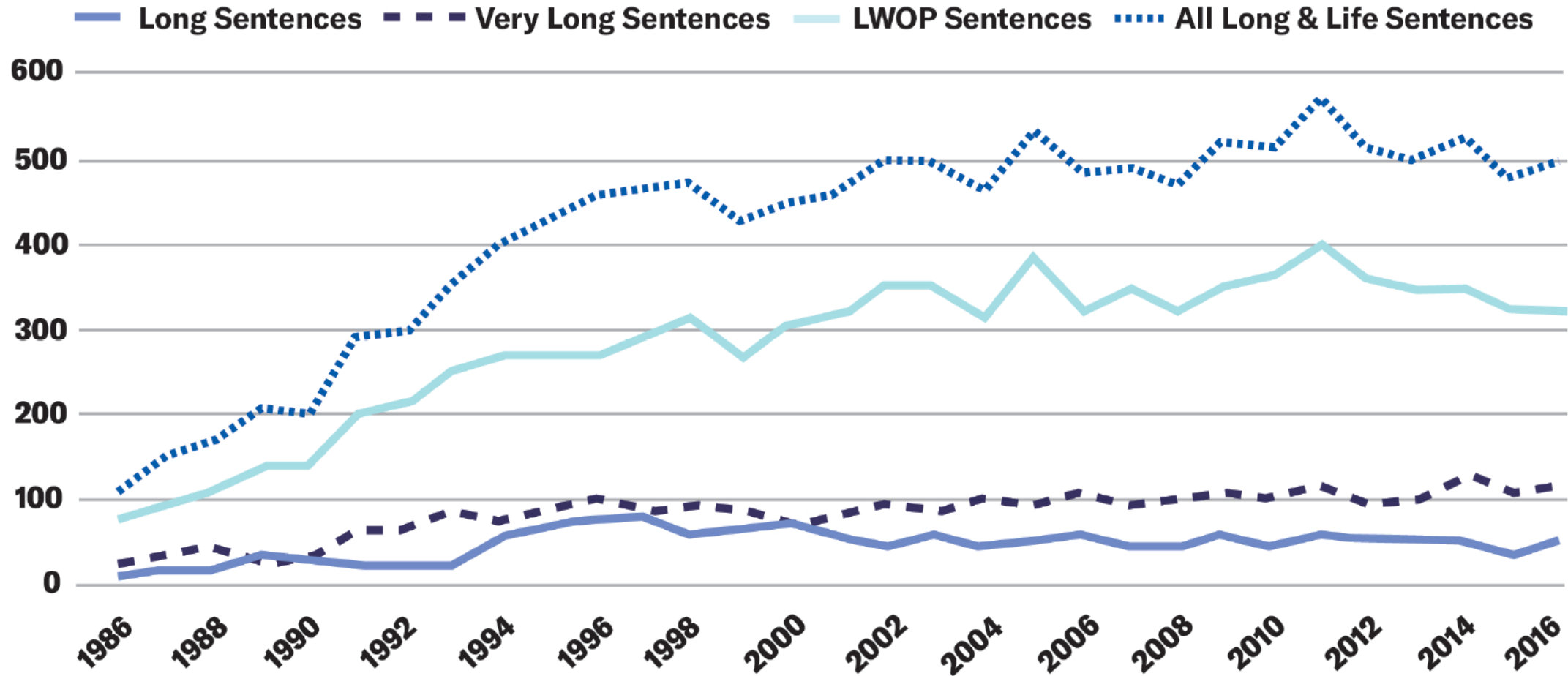
Supreme Court Symposium

June 12, 2024

OVERVIEW OF PRESENTATION

1. Document the proliferation of long and life sentences in Washington and associated racial disparities
2. Identify the main policy drivers of this trend
3. Describe its unintended consequences
4. Summarize research-related concerns about excessive sentencing

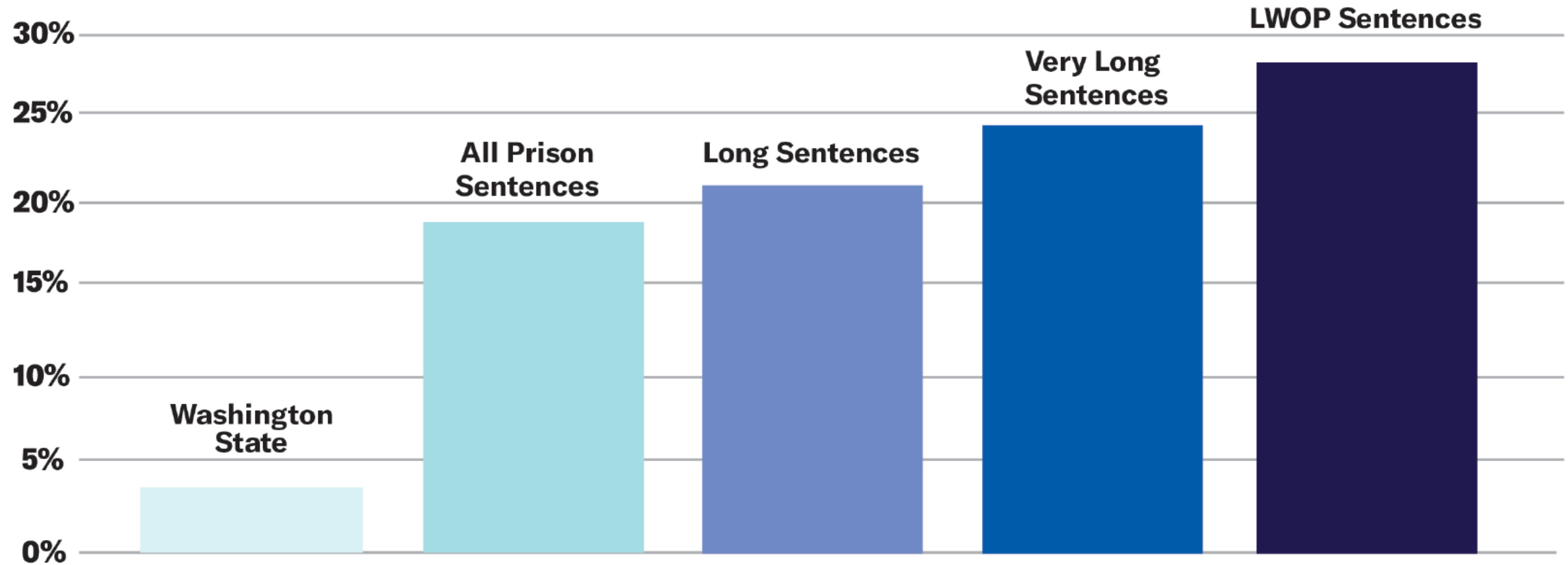
Number of Long, Very Long, and Life Sentences Imposed in Washington State, 1986-2016



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: LWOP sentences include both formal and virtual LWOPs.

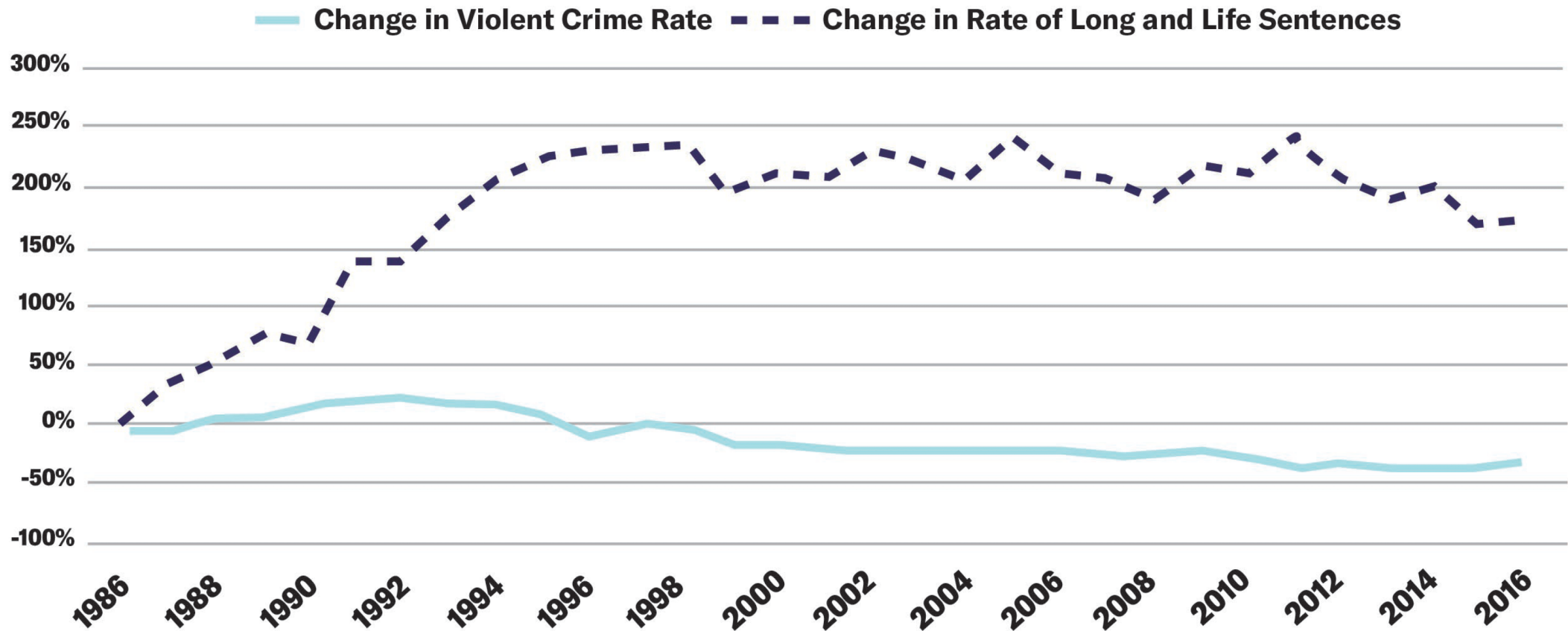
The Representation of Black People in Washington State, Washington State Prisons, and Among those Who Received Long and Life Sentences, January 1986 - June 2017



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.

Note: LWOP sentences include both formal and virtual LWOPs.

Cumulative Change in Serious Violent Crime Rate vs. Rate of Long and Life Sentences, 1986-2016



Source: Change in long and life sentences based on authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council. Crime data were taken from the FBI's *Uniform Crime Reports*. Data for 1986-2014 were accessed via the UCR online data analysis tool, available at <http://www.ucrdatatool.gov/> Data for 2015 and 2016 were accessed via UCR Annual Reports, available at <https://www.fbi.gov/services/cjis/ucr/publications> (see Table 5 for 2015 and Table 3 for 2016).



POLICY DRIVERS I

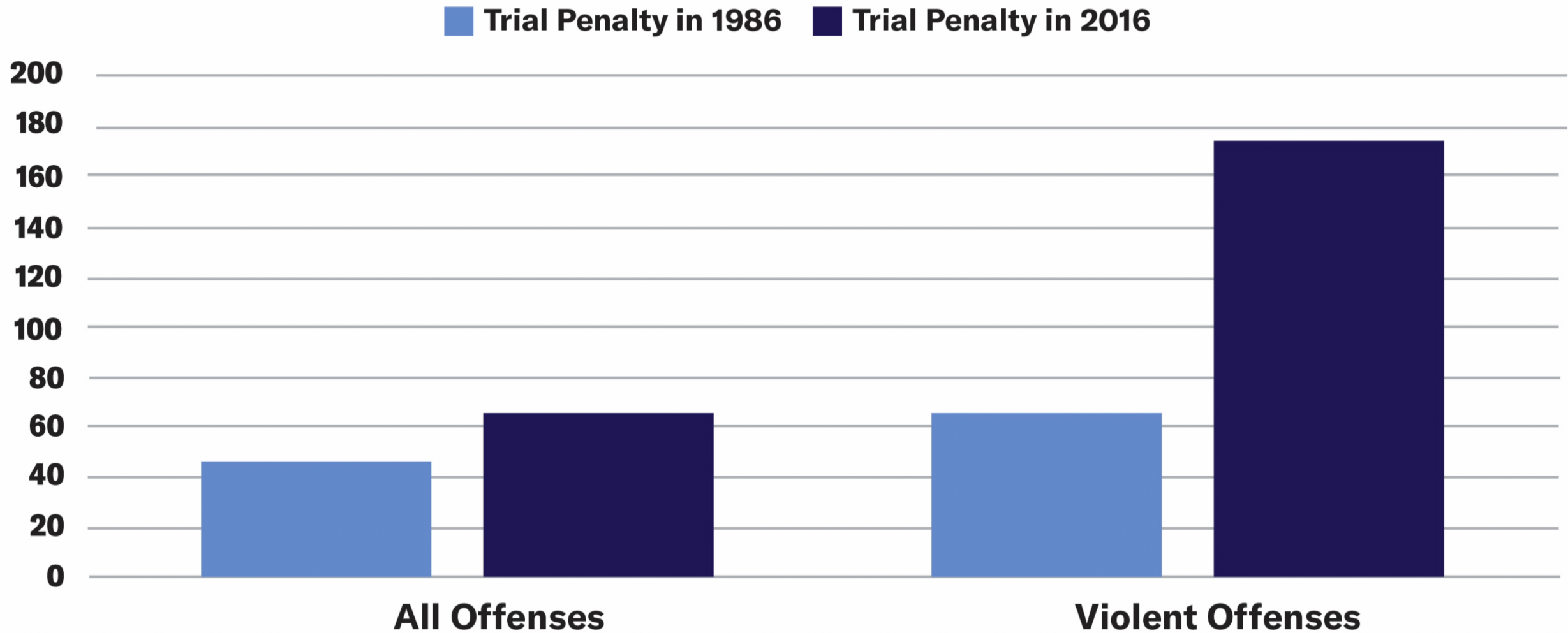
- Mandatory LWOP or death penalty for aggravated murder, 1977, 1984
- Persistent Offender Accountability Act (three-strikes law), 1995
- Hard Time for Armed Crime (weapons enhancements), 1998



POLICY DRIVERS II

- Many changes to the calculation of offender scores
 - All but one increased sentence length
- ESSB 5990: Restrictions on earned time off for most prisoners (2003)
- Context: near abolition of parole under the SRA

Trial Penalty for All Cases and Cases Involving Violent Offenses, 1986 vs. 2016



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.
Note: These data are shown in months.

CONCERNS

Primary concern: long and life sentences are not necessary for public safety

- Long sentences do not deter more than short ones
- Emphasis on incapacitation leads to the incarceration of the middle-aged and elderly
 - Inefficient
 - Costly
 - Inhumane

CONCERNS CONTINUED

- Harmful effects on individuals, families, communities
 - Pronounced racial disparities in these impacts
- Many juveniles and emerging adults receive long or life sentences
- The current approach does not serve victims well
 - And victim preferences are varied

SENTENCING REFORM IN WASHINGTON STATE: PROGRESS AND PITFALLS

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Washington State Minority and Justice Commission

Supreme Court Symposium

June 12, 2024

OVERVIEW OF PRESENTATION

- Describe recent changes to law and policy that create second look opportunities for people serving long and life sentences
- Describe the impact of these changes to law and policy
- Share findings regarding re-offending among one subset of this population

RECENT CHANGES TO LAW & POLICY INCLUDED IN THE ANALYSIS

1. “Miller fixes” stemming from USSC ruling in *Miller v. Alabama*
2. In re Domingo-Cornelio and In re Ali
3. In re Monschke and In re Bartholomew
4. SB 5154: Robb II Reform
5. SB 6164: Prosecutor-Initiated Resentencing

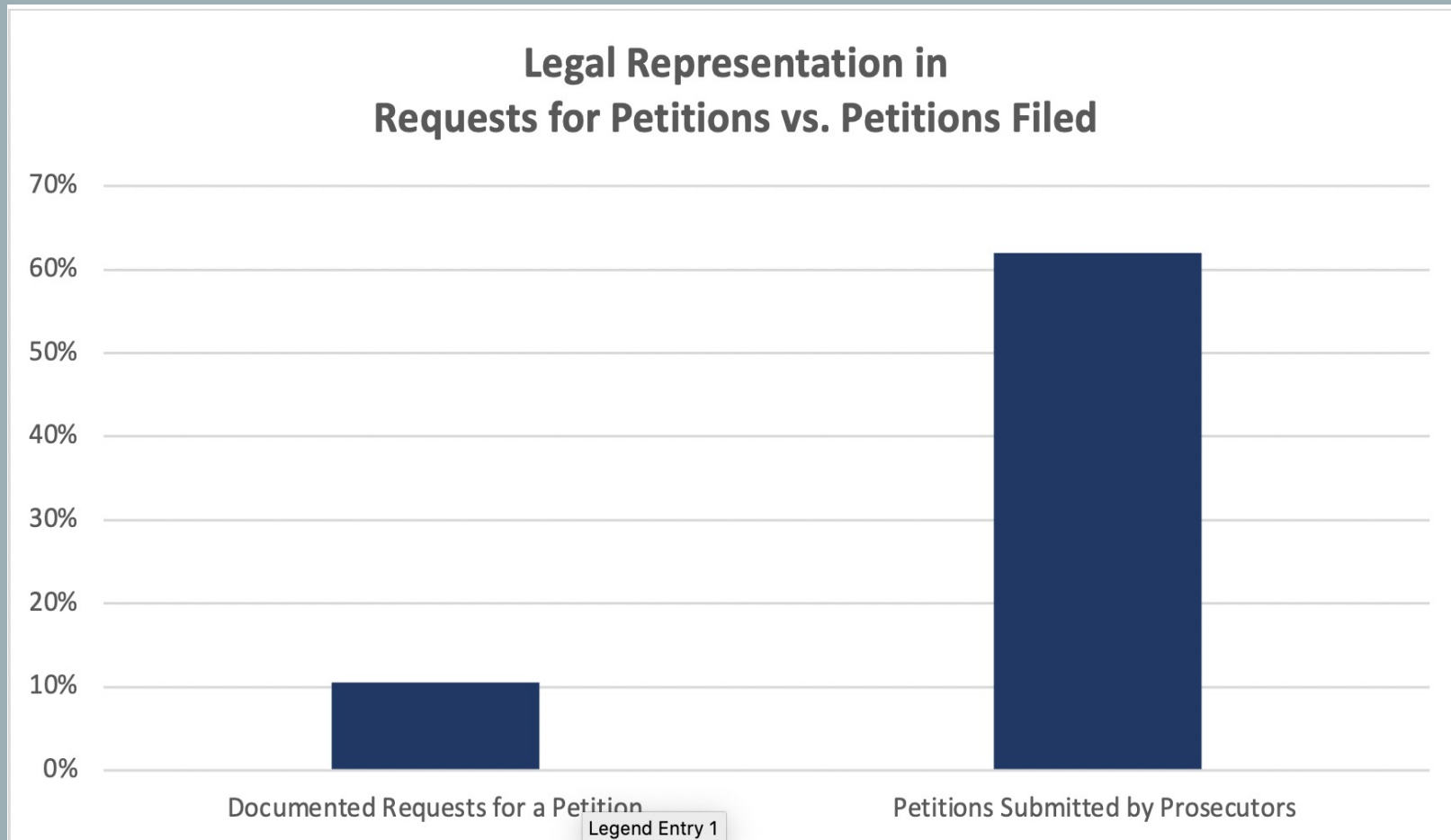
KEY FINDINGS

- As of March 2024, an estimated 6,620 people were serving a sentence of 10 years or more, LWP or LWOP in Washington State
- An estimated 637 people became potentially eligible for review by the ISRB or a court as a result of the aforementioned reforms
- As of November 2022, 286 people had been released as a result of one of these reforms (excluding SB 6164)

SB 6164: PROSECUTOR-INITIATED RESENTENCING

- More than a thousand people have requested that prosecutors petition the courts for a resentencing
- We were able to document a total of 42 petitions for resentencing submitted by prosecutors to the courts under SB 6164 at least through August 2023
- 29 of the 42 (69 percent) of the petitions filed by prosecutors were filed in one of three counties (Pierce, King, or Clark)

ACCESS TO LEGAL REPRESENTATION APPEARS TO MATTER A GREAT DEAL



RECIDIVISM

TABLE 5. NEW FELONY CONVICTIONS AND RETURNS TO PRISON AMONG PEOPLE ELIGIBLE FOR REVIEW UNDER A MILLER FIX

	Among those released By the end of 2020 (n=71)	Among those released by May 1, 2023 (n=98)
Individuals with new felony convictions	1.4% (1/71)	2.2% (2/98)
Individuals who have returned to prison for any reason	5.6% (4/71)	7.1% (7/98)

Source: Information regarding new felony convictions was provided by Duc Luu at the Administrative Office of the Courts. Information regarding revocations/returns to prison was provided by the Department of Corrections and Seattle Clemency Project attorneys.

CONTRIBUTIONS TO FAMILIES AND COMMUNITIES

- All but one had a full-time job
- All had reconnected with family and loved ones and many were taking care of children and/or grandchildren
- Many worked in non-profit organizations aimed at improving public safety and social justice

EXTRA SLIDES

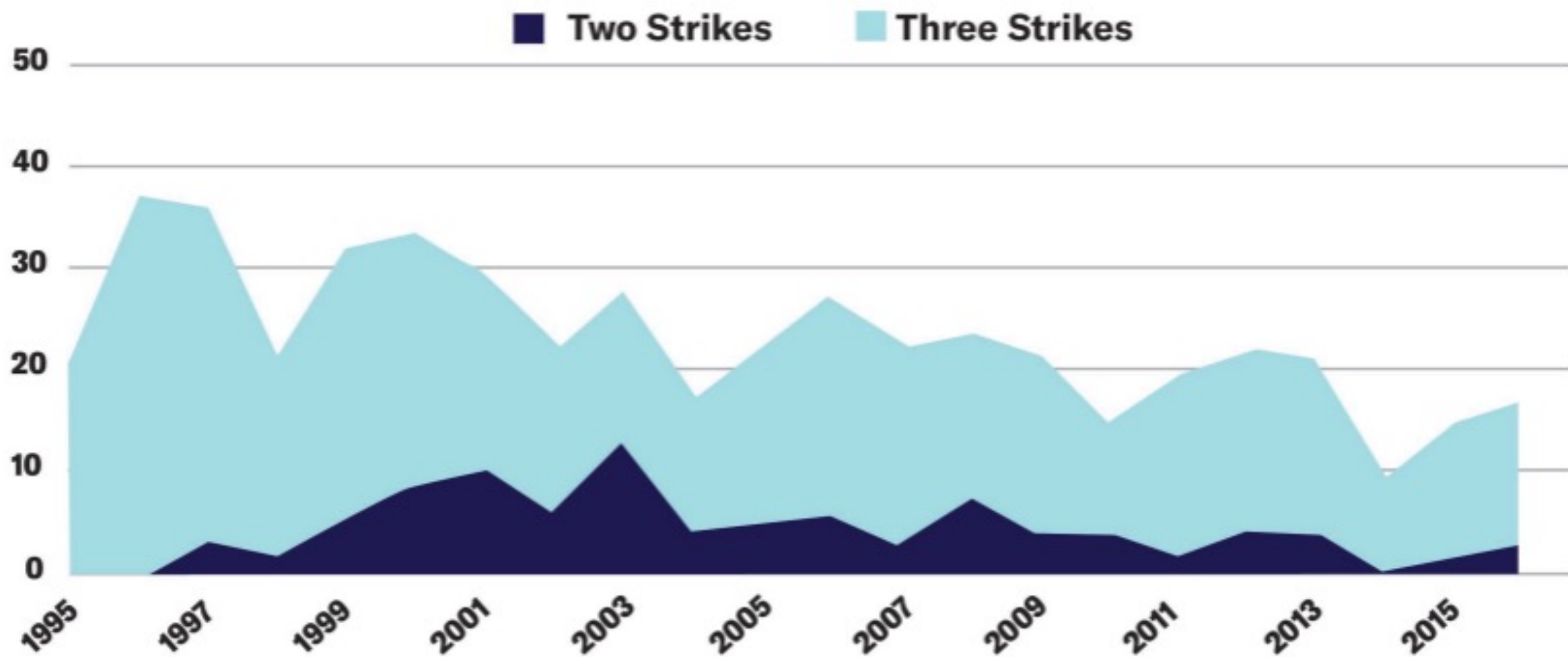
POSSIBLE REASONS WHY MANY ELIGIBLE PEOPLE REMAIN BEHIND BARS

- They do not have counsel and/or have not (yet) sought resentencing;
- They are awaiting a sentencing hearing;
- They have been resentenced but a court has not issued a final decision;
- They were resentenced but have not served their new sentence;
- They were reviewed by the ISRB but were not paroled;
- Although they are a member of the group generally eligible for resentencing, a court found that they did not meet the additional criteria (i.e., a juvenile who has not established "prejudice");
- They appear to, but do not in fact, meet the criteria for re-sentencing (i.e., they have a Robbery II conviction and are serving an LWOP sentence as a three-striker but they would remain a three-striker even without the Robbery II conviction); and/or
- They have chosen not to be resentenced.

MODEL PENAL CODE ON RETROACTIVITY

No determinate sentencing system can be absolute, and no purely determinate system has ever existed in American law. All jurisdictions that have abrogated the releasing authority of a parole agency have retained mechanisms such as good-time and earned-time credits, compassionate-release provisions, ad hoc emergency contingencies for prison overcrowding, and the clemency power of the executive. The question is not whether original judicial sentences should ever be subject to change in a determinate structure, but what exceptions should be grafted onto the generally determinate scheme.

Annual Number of LWOP Sentences Stemming from Persistent Offender Accountability Act, 1995-2016



Source: Authors' analysis of Washington State Superior Court Sentencing data provided by the Washington State Caseload Forecast Council.