

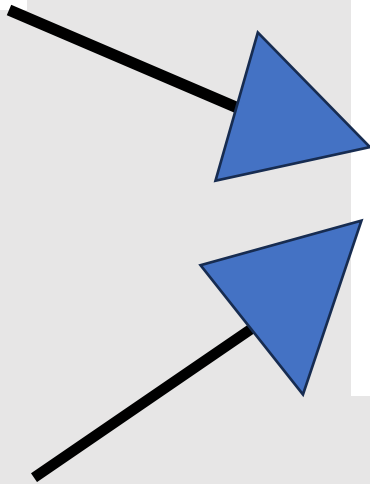
# *The Changing Landscape of Felony Sentencing & Lessons from Resentencing*

April 25, 2025

Cindy Arends Elsberry

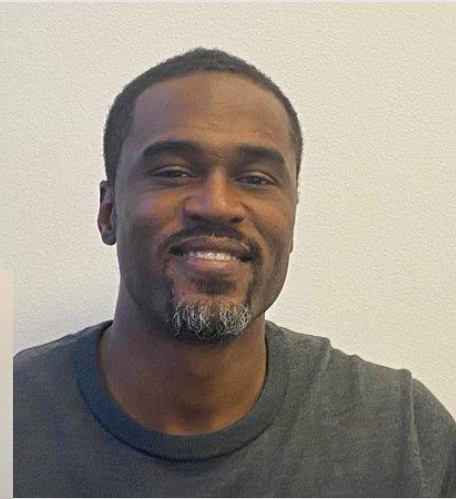
Resentencing Resource Attorney





# REDEMPTION

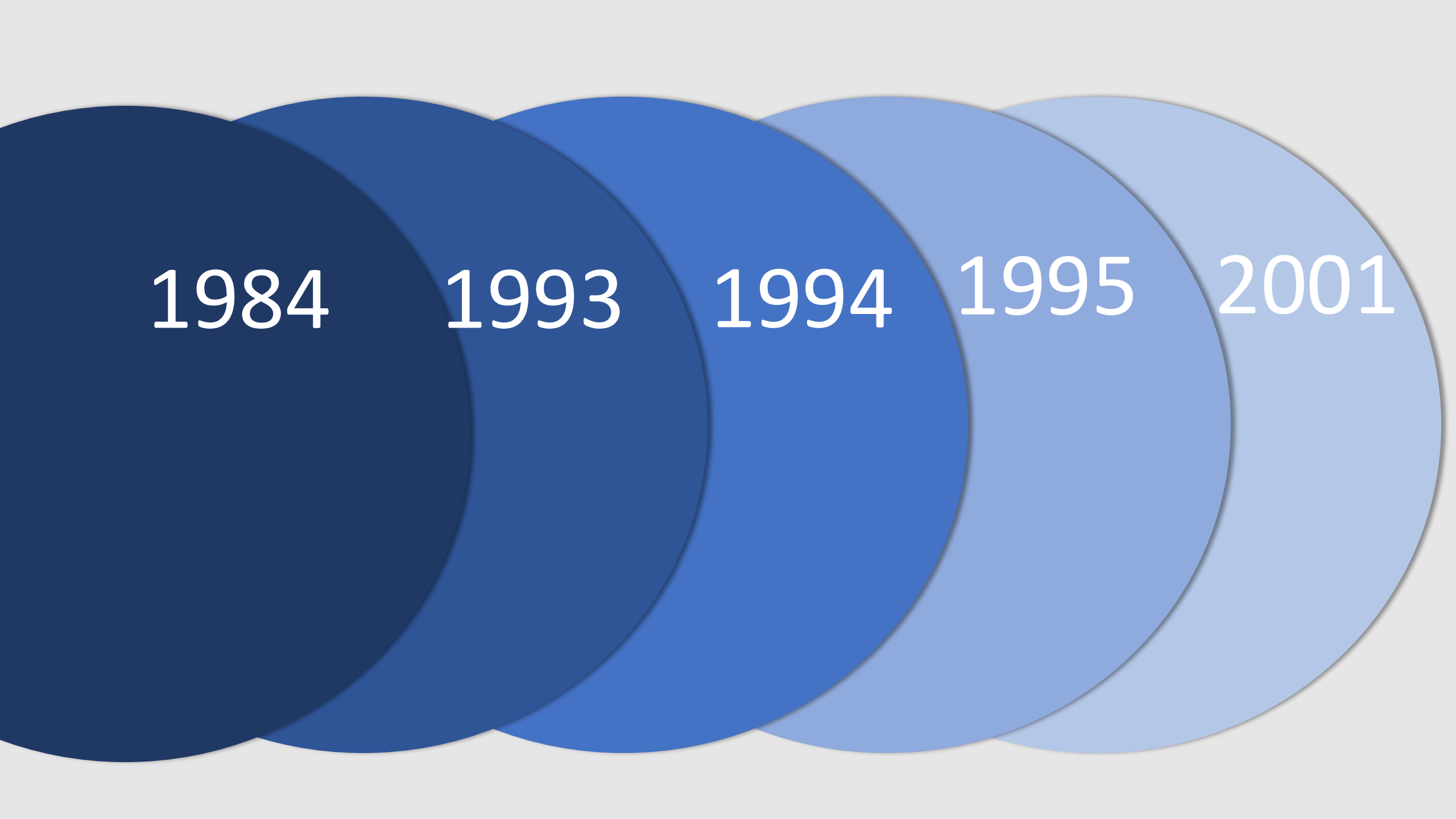
PROJECT OF WASHINGTON



- **Cindy Arends Elsberry (She/her/hers)**
- Trial level PD 15 years
- Resource Attorney at WDA
- Managing Attorney of RPW/WDA
- Expertise/interests:
  - Youth in adult court
  - Clients with mental health concerns
  - Sentencing advocacy
  - Race equity in criminal legal system
  - Defender sustainability







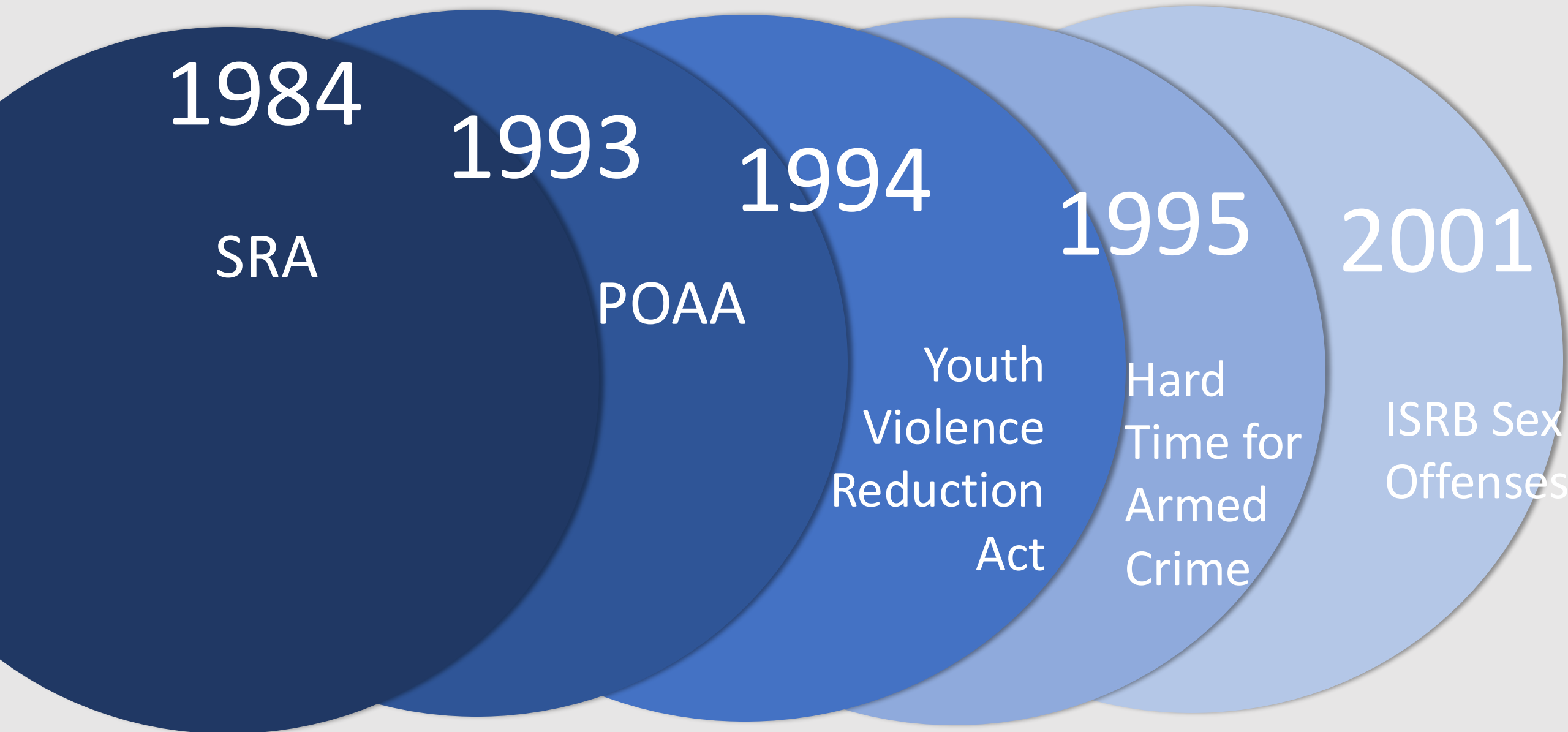
1984

1993

1994

1995

2001



1984

SRA

1993

POAA

1994

Youth  
Violence  
Reduction  
Act

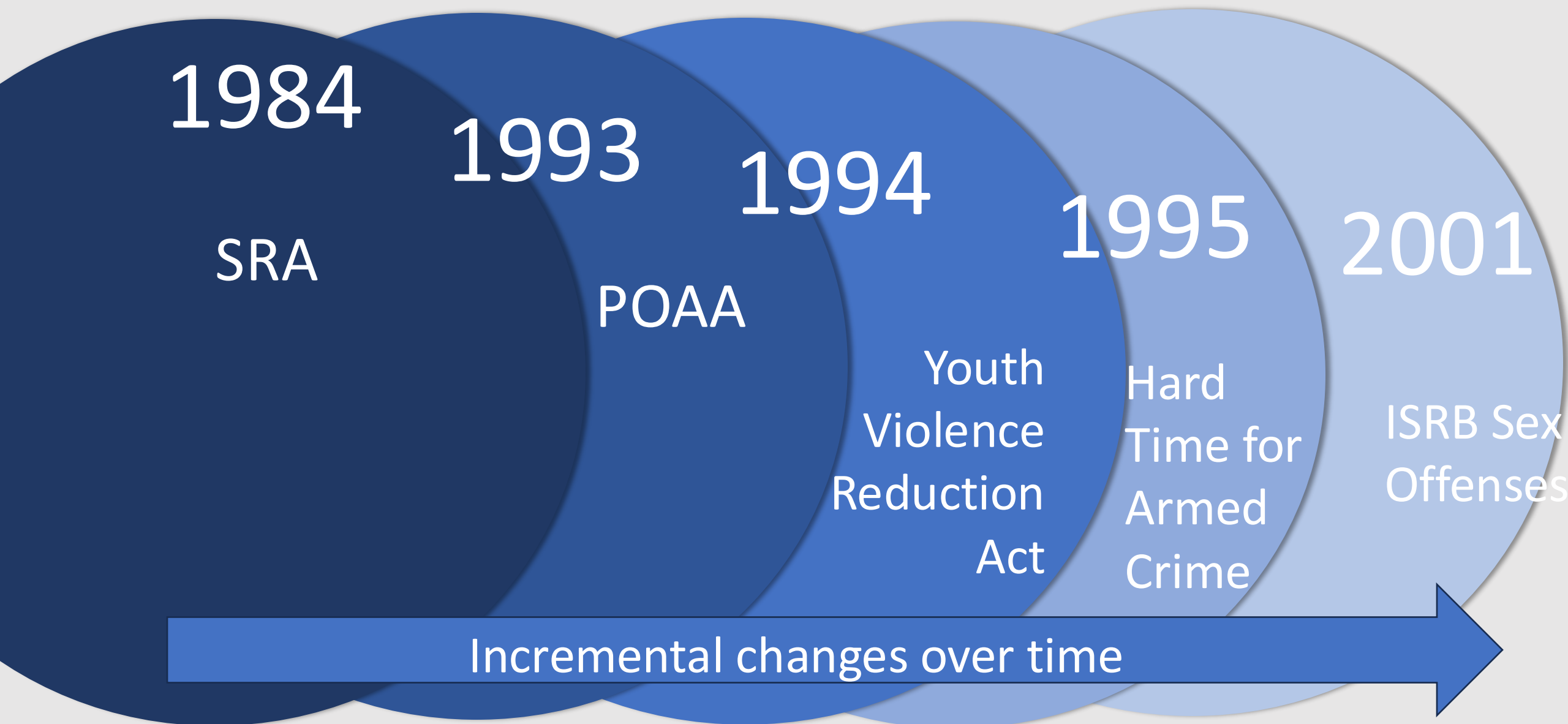
1995

Hard  
Time for  
Armed  
Crime

2001

ISRB Sex  
Offenses

Incremental changes over time



# Pre-SRA Sentencing (Parole)



# 1984 -- Determinate Sentencing

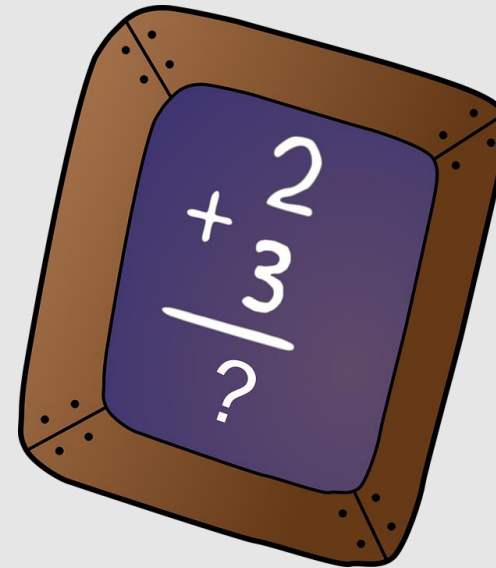


# SRA Sentencing



- Limit discretion
- Forecast \$
- Increase confidence
- **Reduce disparity**

Before 2020 = Resentencings\*\*RARE\*\*



# Resentencing Landscape Prior to 2014



# Resentencing Landscape Prior to 2014

***Roper v. Simmons (2005)***

***Graham v. Florida (2010)***

***Miller v. Alabama (2012)***

***Padilla v. Kentucky (2010)***



# Resentencing Landscape 2012-14

*Miller v. Alabama (2012)*  
(33)



# *Miller-fix*

## 2014 - 2015

33 people→

*Miller v. Alabama (2012)*

*ISRB/JUVENILE PAROLE*

*>20 YEARS*



# 2015 - 2019

*State v. O'Dell* (2015)

*State v. Houston-Sconiers*  
(2017)

Three Strikes- Robbery 2  
(2019)



# Resentencing Landscape 2020

**SB 6164**

***Domingo-Cornelio/Ali***



# Resentencing Landscape 2021-24

*Monschke*

*Blake*

**Three Strikes(~~Robbery 2~~)**



# Washington State 2022-25

## 7 Resentencing Pathways + Early Release

---

### + Legislation

### + Court



# Resentencing by the Numbers

***Miller - 33 (8 released)***

***Three Strikes -75 (56 released)***

***“6164” – 55 (or so)***

***Domingo Cornelio/Ali -550->121 (94 Released)***

***Monschke – 60 (9 released)***

- Source DOC, Resentencing and Release Manager 3.13.25- (approximate numbers)

## ***Blake***

- **2448 resentencings**
  - **55,000 court orders processed,**
  - **300,000 vacate orders still needed**
  - **6K orders in or under DOC jurisdiction**
- 
- Source DOC, Resentencing and Release Manager 1.23.25- (approx. numbers)

# Immigrant Post-conviction Relief

- Pardons
- Padilla/CrR 7.8 Motions



# Remaining

- *Miller* - 6
- *Monschke* - 22
- *State v Blake* – 50 - 100
- Three Strikes - 27
- 6164 (Ongoing)
- *Houston-Sconiers* -??
- *Padilla v. Kentucky* ??
- Prison Riot (HB 1815) - 94

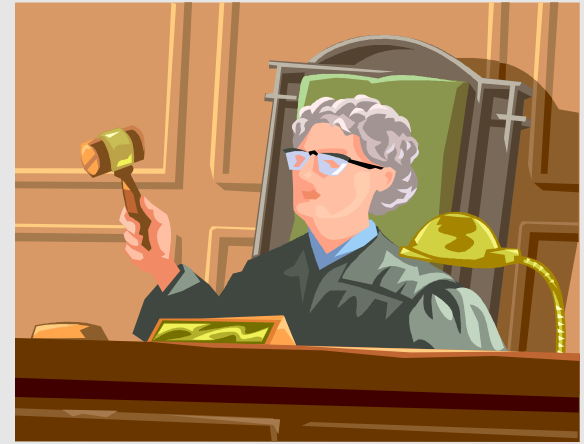


# These Cases are Different



# These Cases are Different

**PEOPLE CHANGE, MATURE, and  
GROW**





# STORY OF TRANSFORMATION

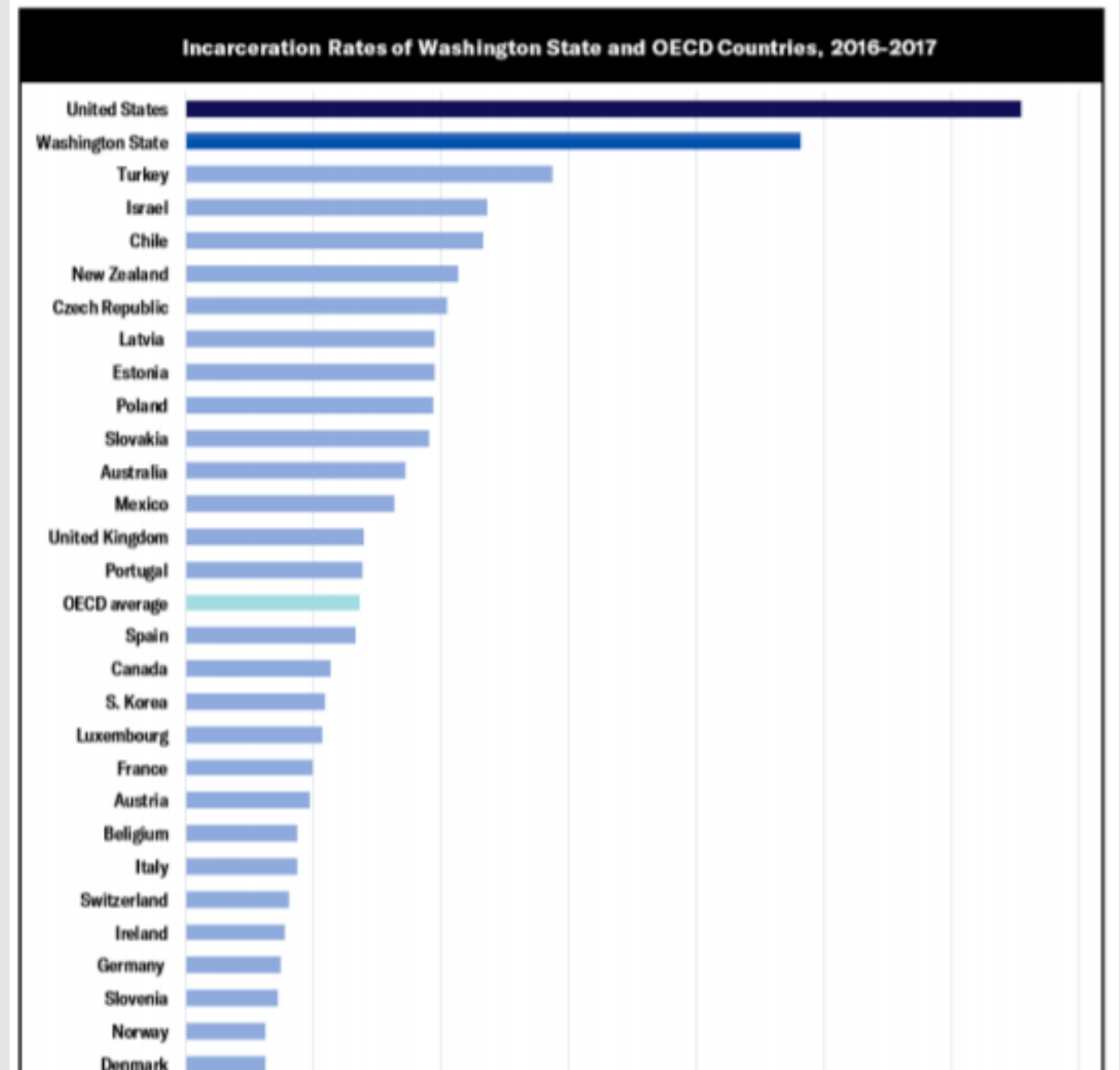


# Second Look Lessons

System needs changes:  
“Second Look”



Washington State's incarceration rate is 3 times greater than Western Europe, Korea, Japan and Turkey.



*About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State*, Beckett and Evans, (Feb. 2020), Executive Summary, pg. 1.

# Racial Disparities

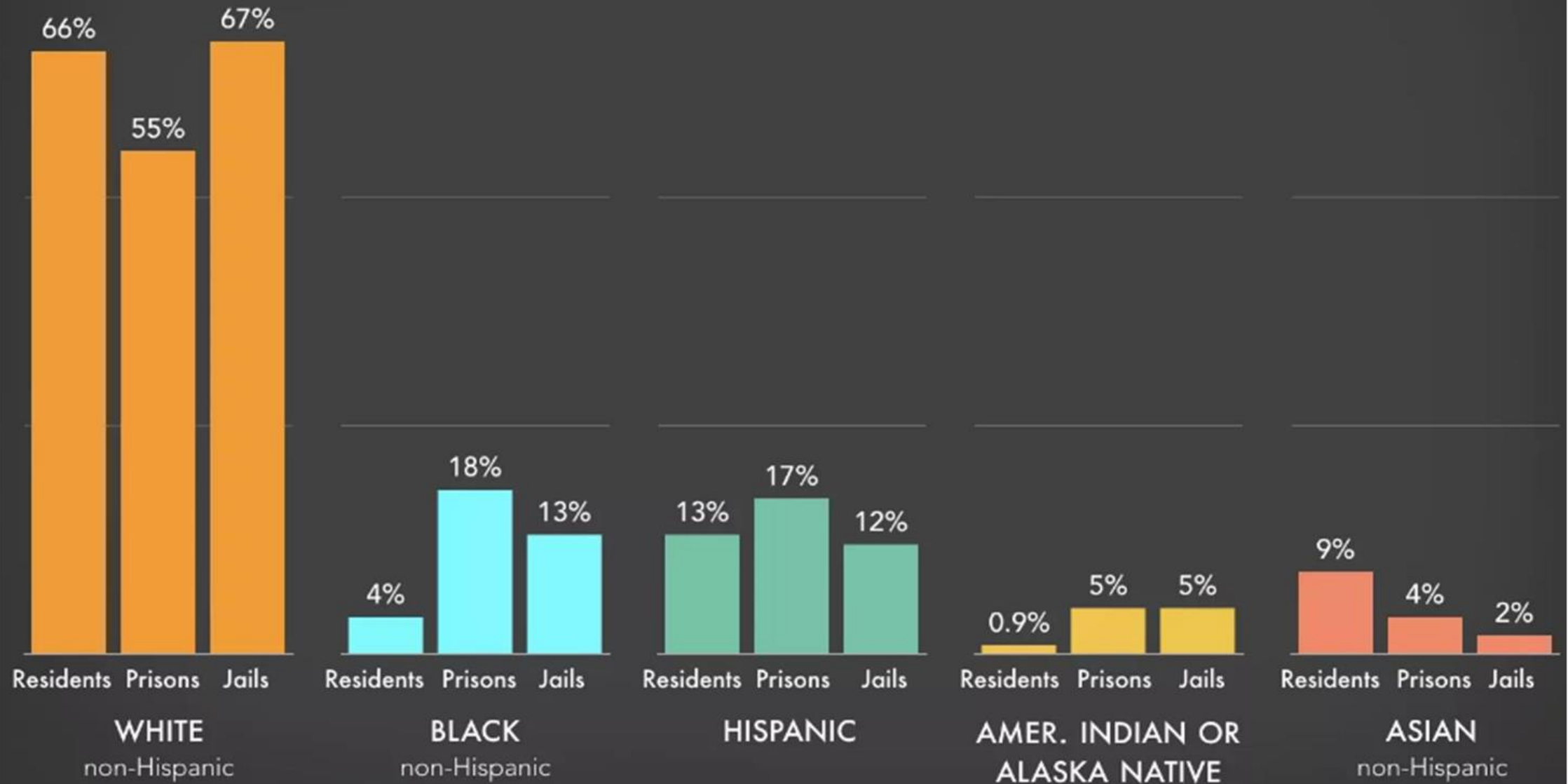
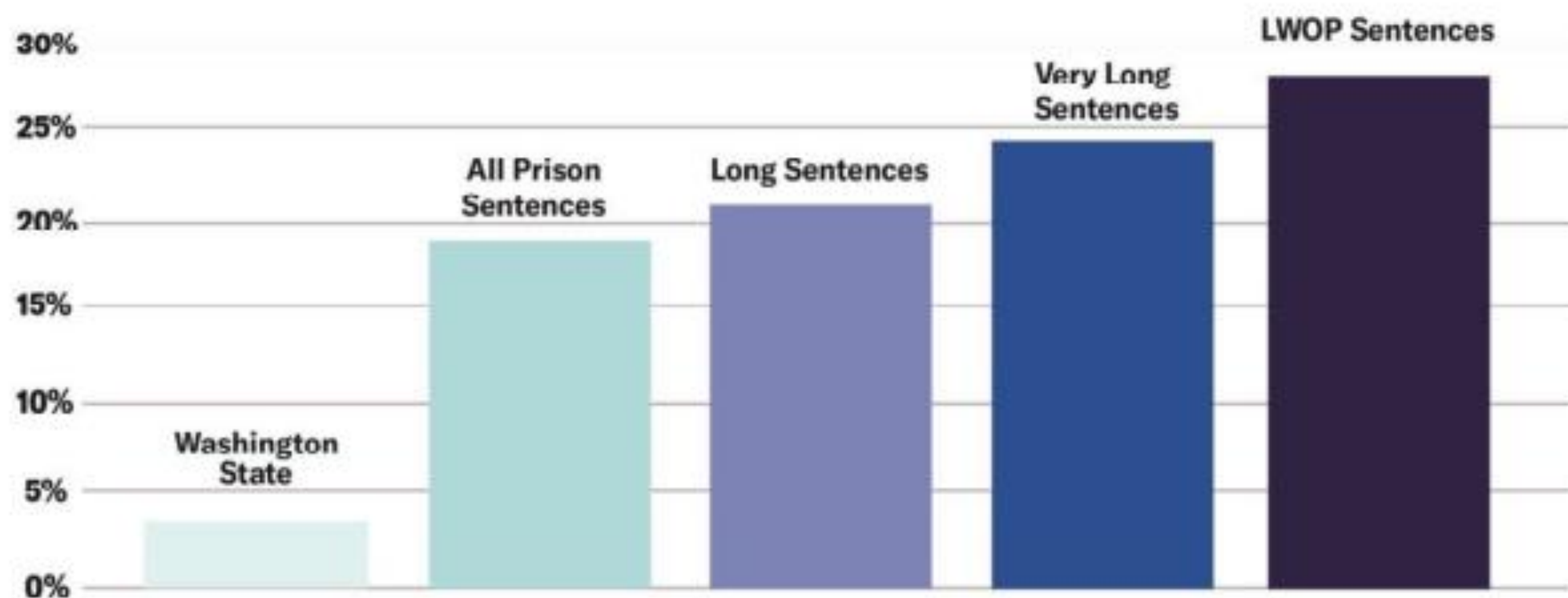


**Figure 9.**

**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.



# Second Look Lessons



# Second Look Lessons: Impacted Voice



# Second Look Lessons



**Table 15. Mitigated Exceptional Sentence Reasons  
Fiscal Year 2024**

| <b>REASON</b>                                                                    | <b>COUNT</b> |
|----------------------------------------------------------------------------------|--------------|
| Exceptional sentence is more appropriate/is in the interests of justice.         | 447          |
| All parties agreed to mitigated sentence.                                        | 382          |
| Part of plea agreement.                                                          | 263          |
| Defendant's age.                                                                 | 18           |
| Capacity to appreciate the wrongfulness was significantly impaired.              | 16           |
| The defendant's mental condition.                                                | 14           |
| Victim was an initiator, willing participant, aggressor, or provoker.            | 11           |
| To make frugal use of the state's resources.                                     | 6            |
| The multiple offense policy results in a clearly excessive presumptive sentence. | 3            |
| With no apparent predisposition, was induced by others to participate.           | 2            |
| Other mitigating factor.                                                         | 2            |
| For defendant's rehabilitation or treatment.                                     | 1            |
| No prior convictions or they are remote in time.                                 | 1            |
| Defendant's physical condition.                                                  | 1            |
| Crime committed under duress, coercion, threat, or compulsion.                   | 1            |
| Defendant is addressing psychological problem.                                   | 1            |
| <b>Total Mitigated Reasons:</b>                                                  | <b>1,169</b> |
| <b>Total Mitigated Sentences:</b>                                                | <b>1,123</b> |
| <b>Total Reasons Per Case:</b>                                                   | <b>1.04</b>  |

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1169 Reasons  
1123 Cases

- Interest of Justice (447)
- All parties agreed to mitigated sentence (382)
- Part of the plea bargain (283)

→ 93% of the reasons  
likely involved DPAs  
support



# Second Look Lessons



What about  
Victims?



# Second Look Lessons:



**Prepare clients**

# Second Look Lessons: Prepare Clients



Haley Bell Photography

EVERYONE  
DESERVES  
A SECOND  
CHANCE

