



Bundesministerium
der Justiz

Prison & Probation – and the German federalism

28. Conference of Directors of Prison and Probation Services
Berlin | 6. & 7. June 2023

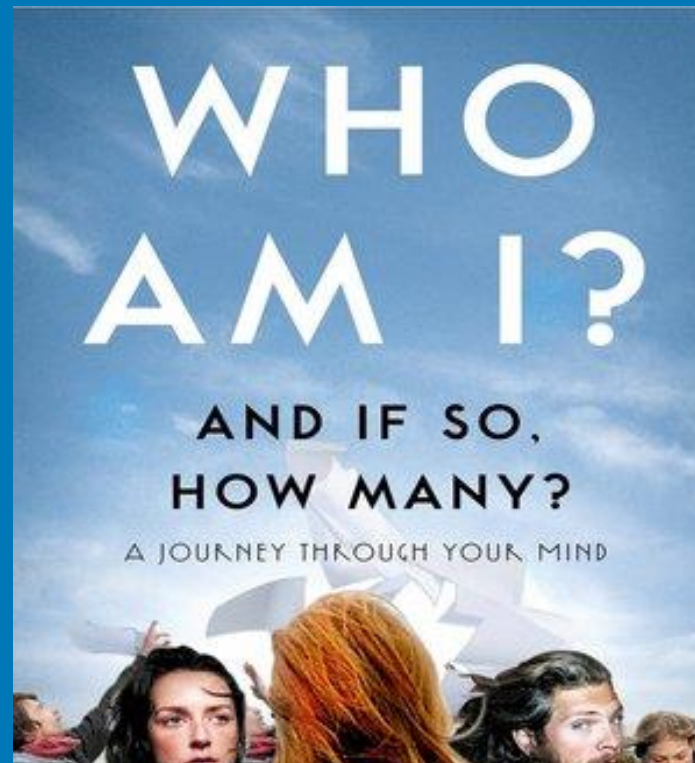




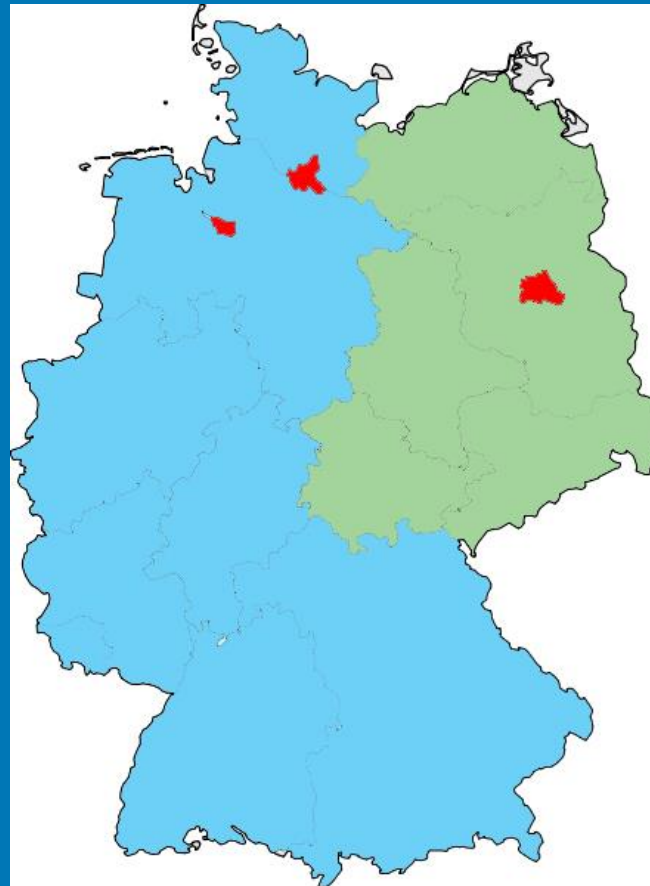
- 1 Who is Germany (and if so how many)?
- 2 Who has the power?
- 3 What is criminal law?
- 4 What is a prison sentence in Germany?
- 5 Is there a magic force?
- 6 How to cooperate?
- 7 Who is in German prisons?
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- 9 How to avoid a prison sentence?
- 10 What are the current challenges?
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Who is Germany (and if so – how many?)

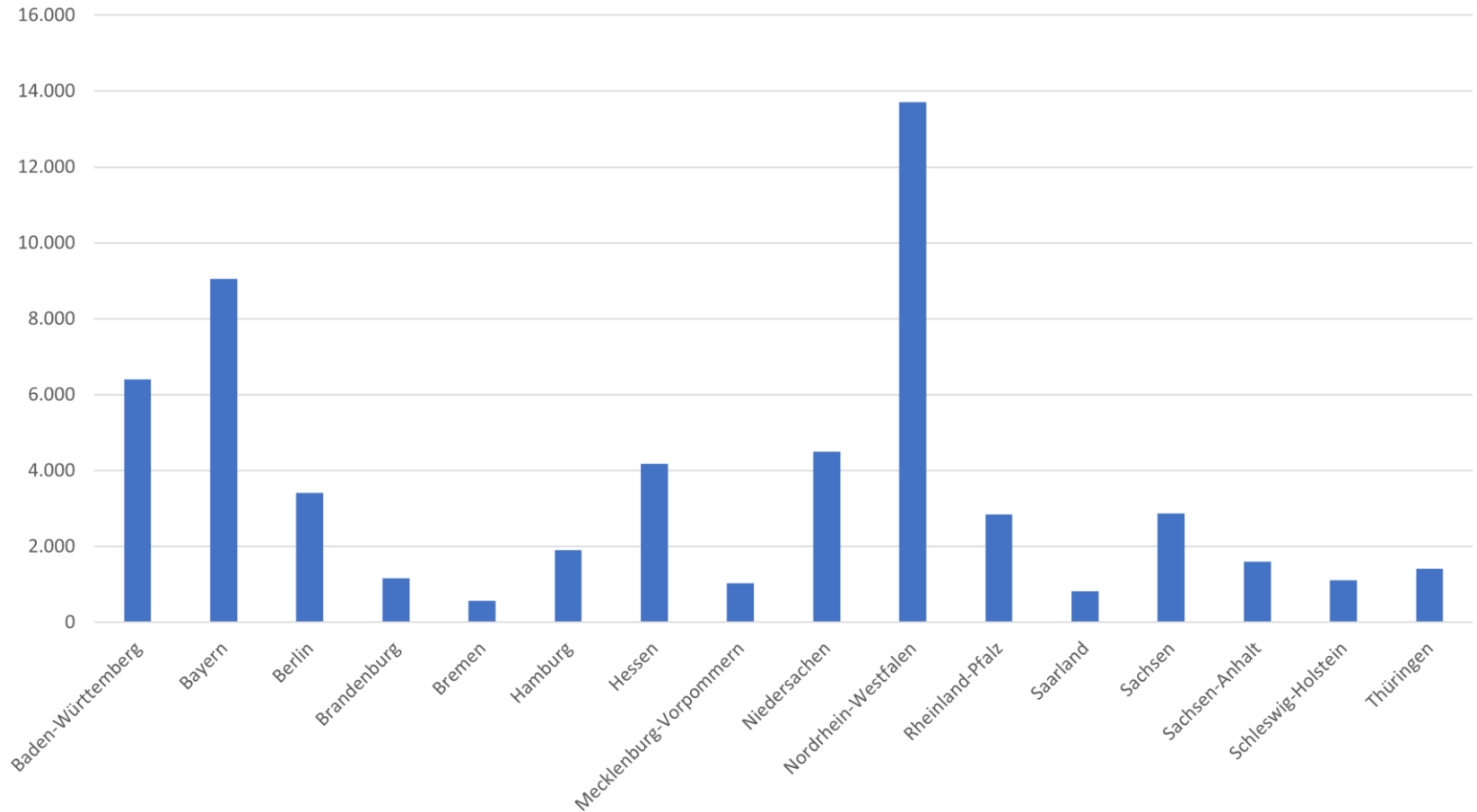








Prison Population
Länder





Who has the power?



„*The Federal Republic of Germany is a democratic and social federal state*“

(Art. 20 Para 3 Basic Law)

Federal State

- *Länder* have State quality
- Principle of Subsidiarity
- As a rule: public powers are assigned to the *Länder*, if not stated otherwise



What is criminal law?



Criminal Code

- Criminal offences
- Criminal liability
- Sanctions

Code of Criminal Procedure

- Investigation
- Court proceedings
- Execution of sentence

Länder:

- Rules for implementation of prison sentence and probation regime



What is a prison sentence in Germany?



Länder laws

- for the execution of every kind of detention
(Custodial sentence, Pre-trial detention, Youth custodial sentence
Preventive detention, Short term youth detention)
- Differences in form, details, implementation
- Overall: great similarities



Is there a magic force?





Federal Constitutional Court

- Fundamental rights remain valid
- Parliamentary legislation needed
- Social re-integration
- Empirical effectiveness
- Chance of life in liberty
- Insufficient staffing - no justification for violation of fundamental rights
- Obligation to work only as means of rehabilitation
- Family ties
- Leaves to maintain coping abilities
- Enforced medical treatment, physical restraint



How to cooperate?



How to cooperate?

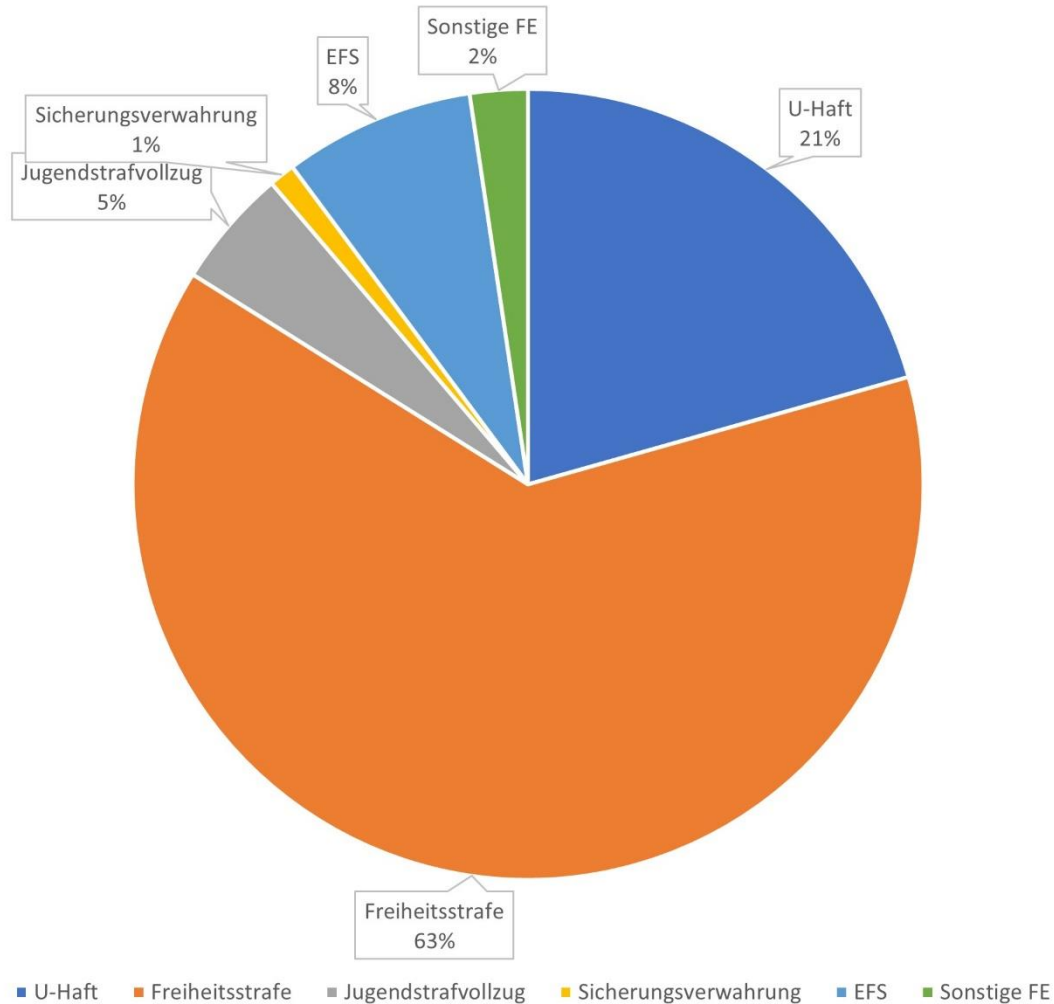
1. Procedure of Legislation
2. System of Government and Administration Conferences
3. Joint Institutions



Who is in German prisons?



Justizvollzug Arten des Freiheitsentzuges Juni 2022

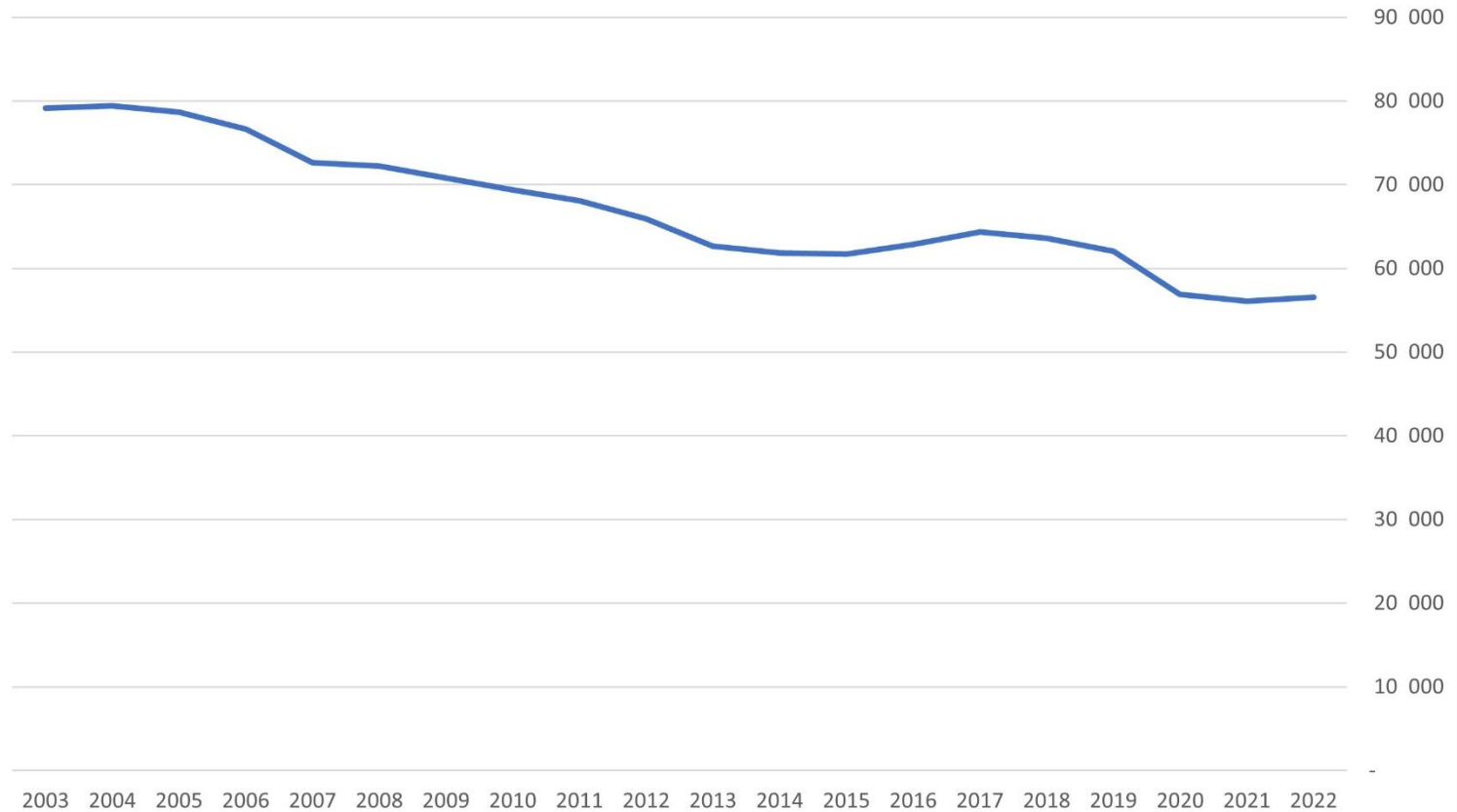




Where have all the prisoners gone?

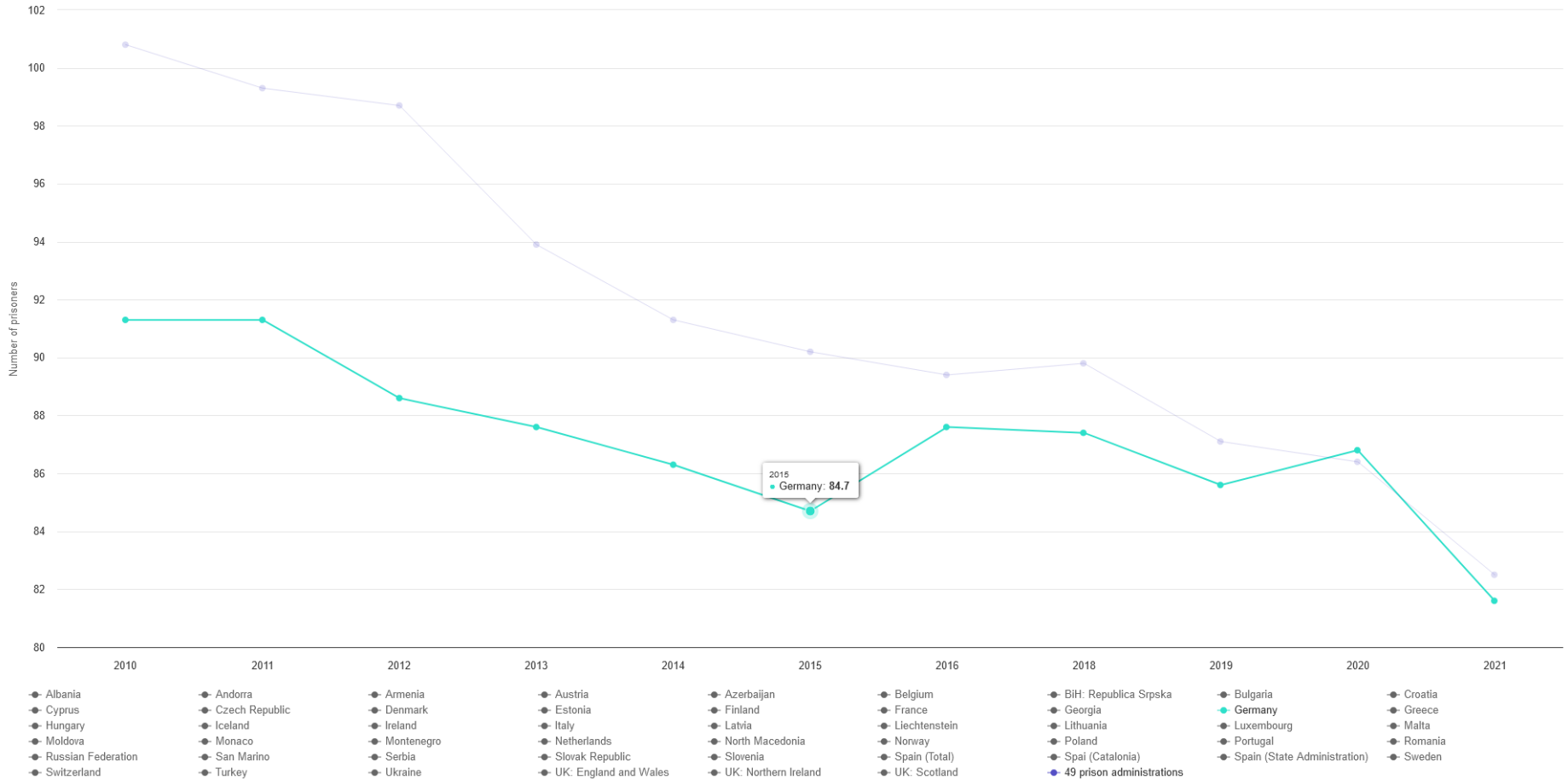


Belegung Deutschland Insgesamt
2003 - 2022





Prison Density per 100 places (Estimation of overcrowding)
(select countries to view)

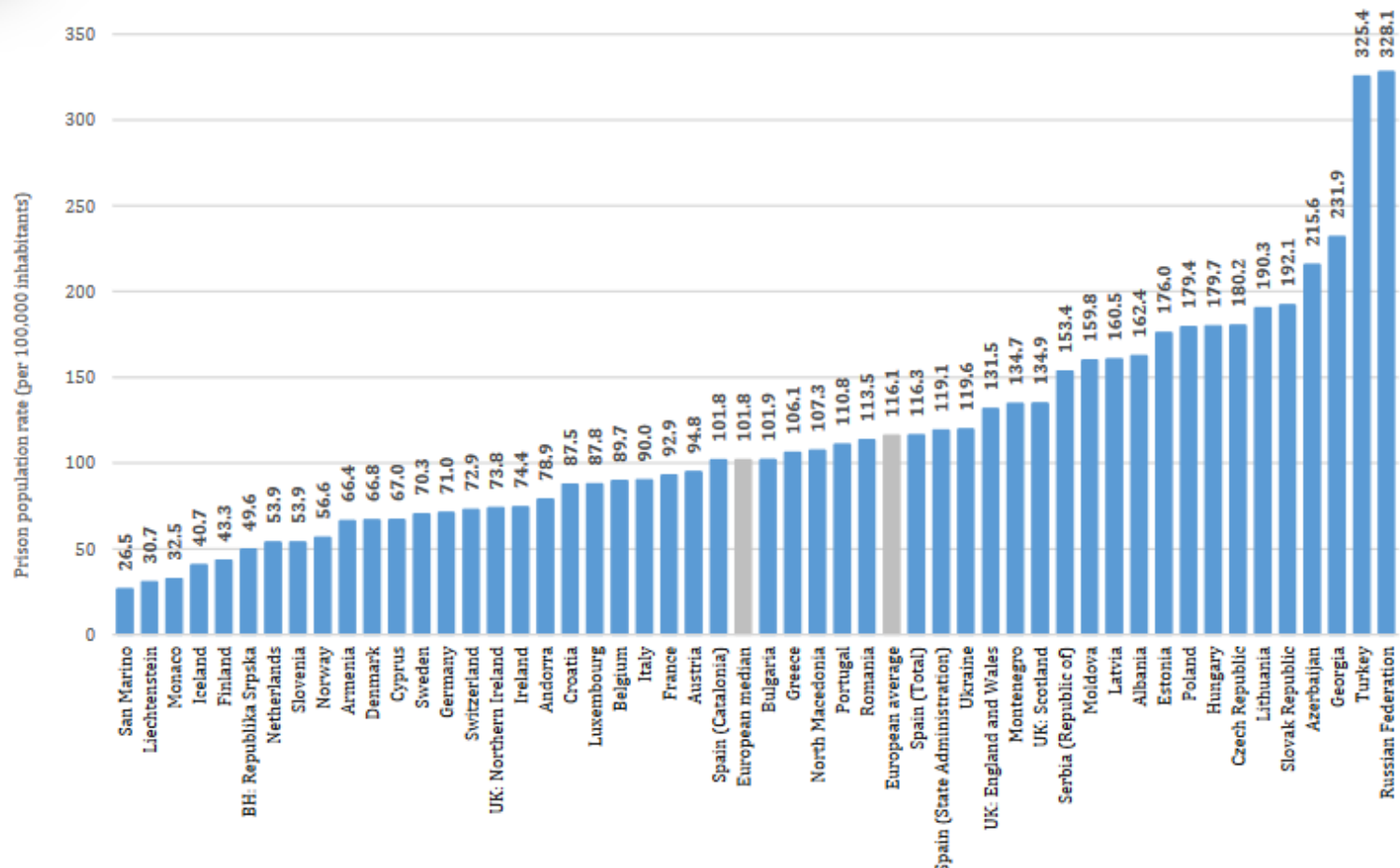


* Data for 2010-2016 had a date of reference to 1st September for each reporting year. The date of reference was later changed to 31st January meaning that there is no value for 2017.

† Missing data has been added to this graph using linear interpolation. This is indicated on the data point where this occurs.

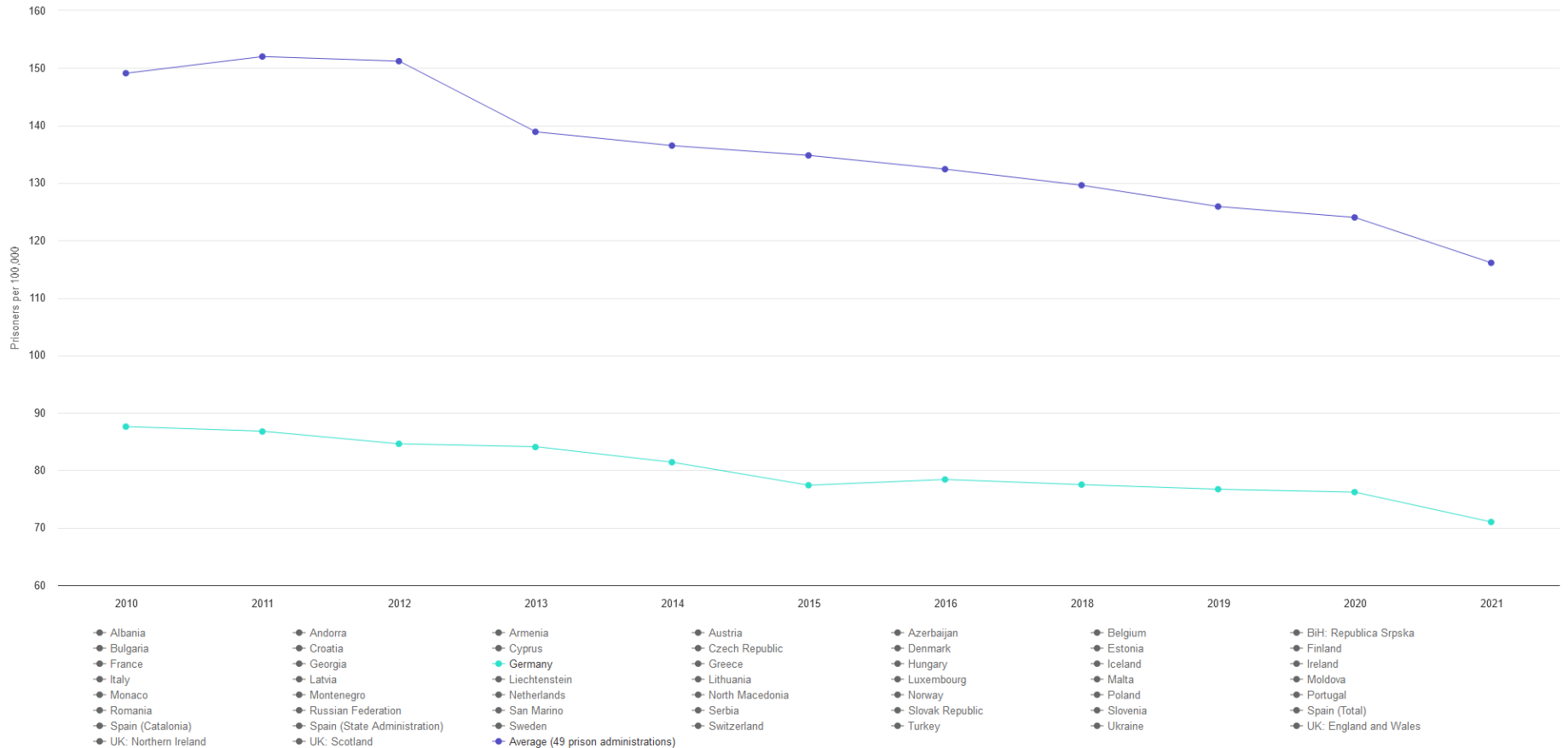


Figure 1. Prison population rates (inmates per 100,000 inhabitants) on 31st January 2021 (N=49)





Number of Prisoners per 100,000 Population (select countries to view)



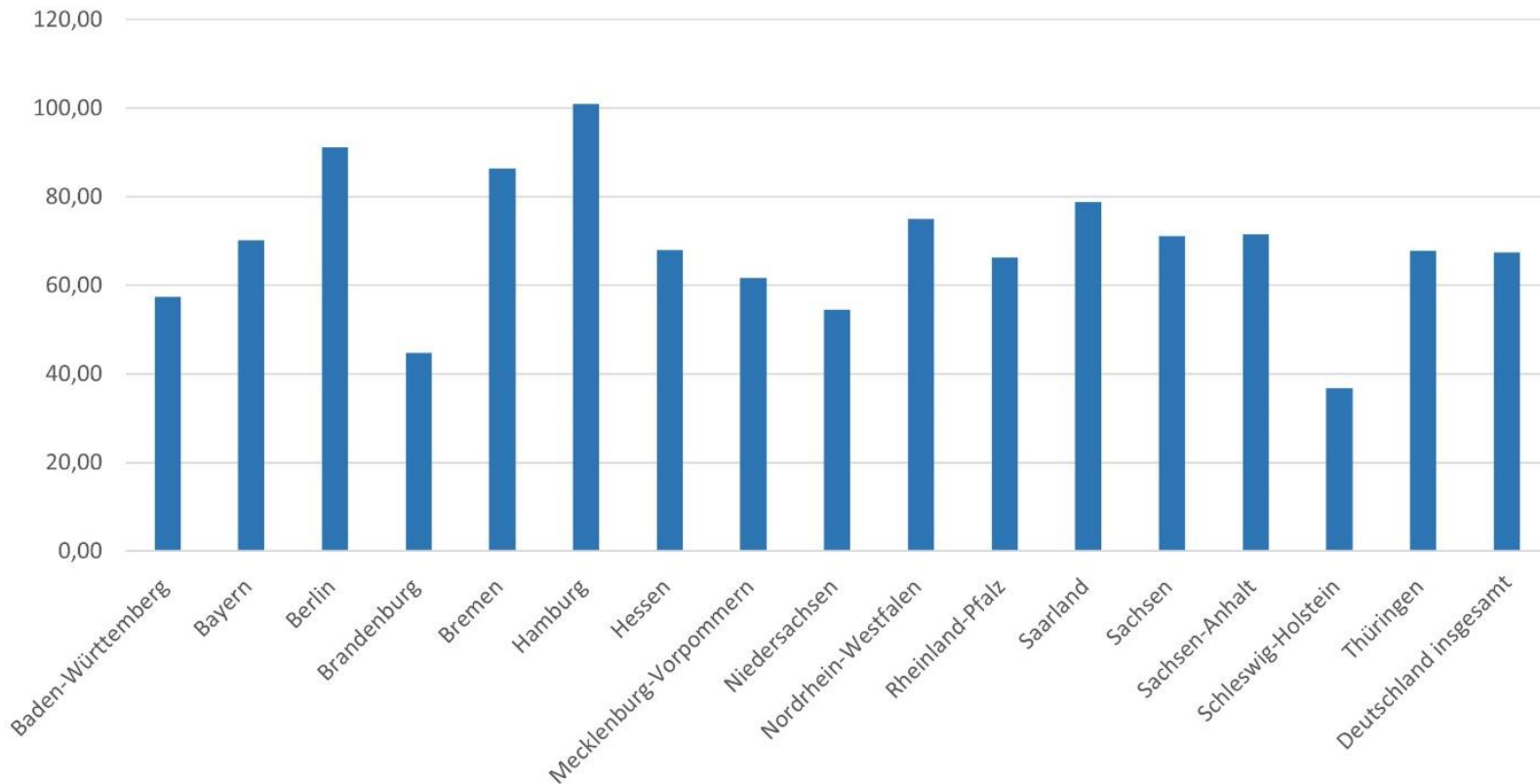
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‡ 2019 figures have been used from alternative sources (Bosnia & Herzegovina: <http://wp.unil.ch/space/space-i/prison-stock-on-1-january/prison-stock-on-1st-january>) (Belgium, Malta, Ukraine: <https://www.prisonstudies.org>).



Prison Population Rate
Prisoners per 100.000 Inhabitants
31.12.2021





How to avoid a prison sentence?



How to avoid a prison term: Diversion, Community Sanctions, Probation

- Diversion: 60%
- Non-custodial sentences: 85%
- Prison sentences suspended on probation: 69%

- 186 probationers per 100.000

- Probation success rate: 70%



What challenges do we face?

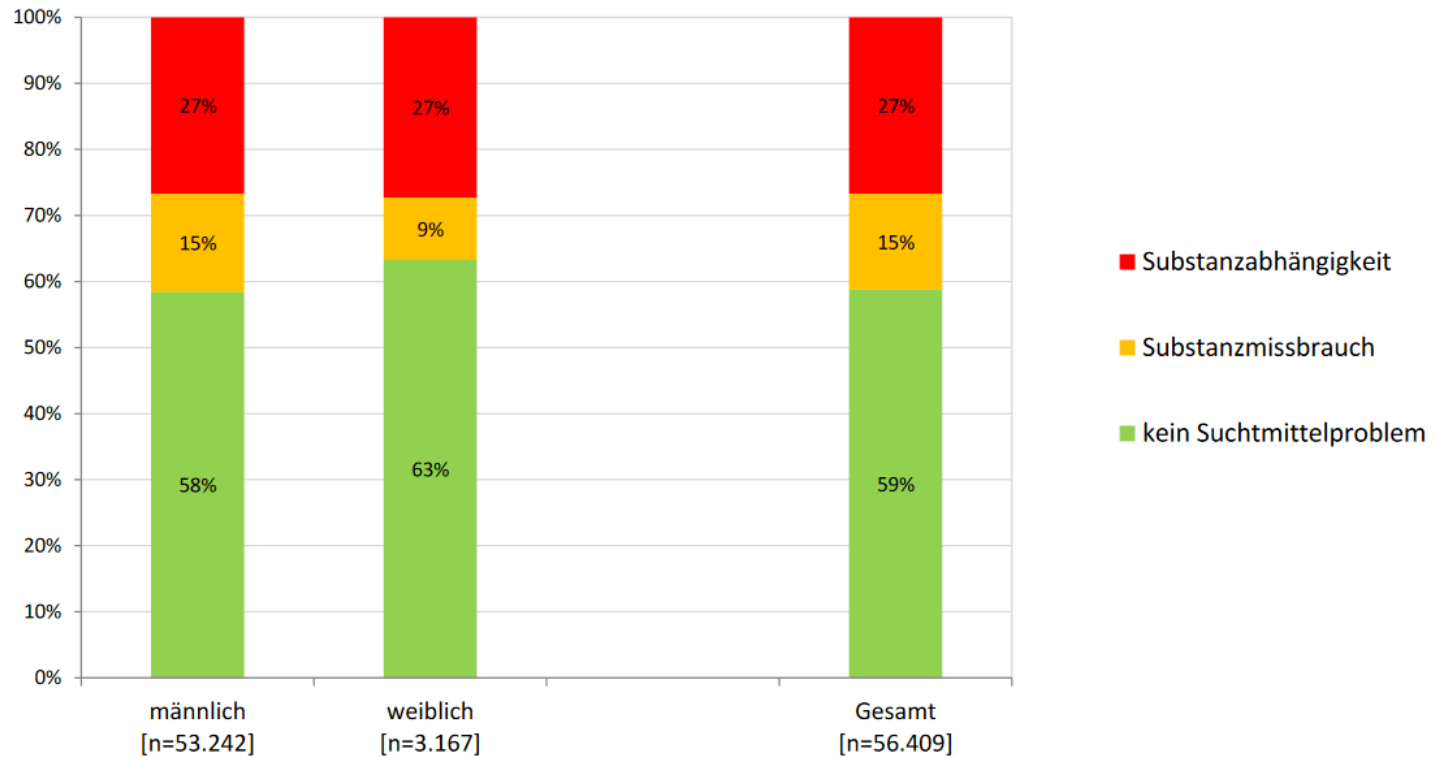


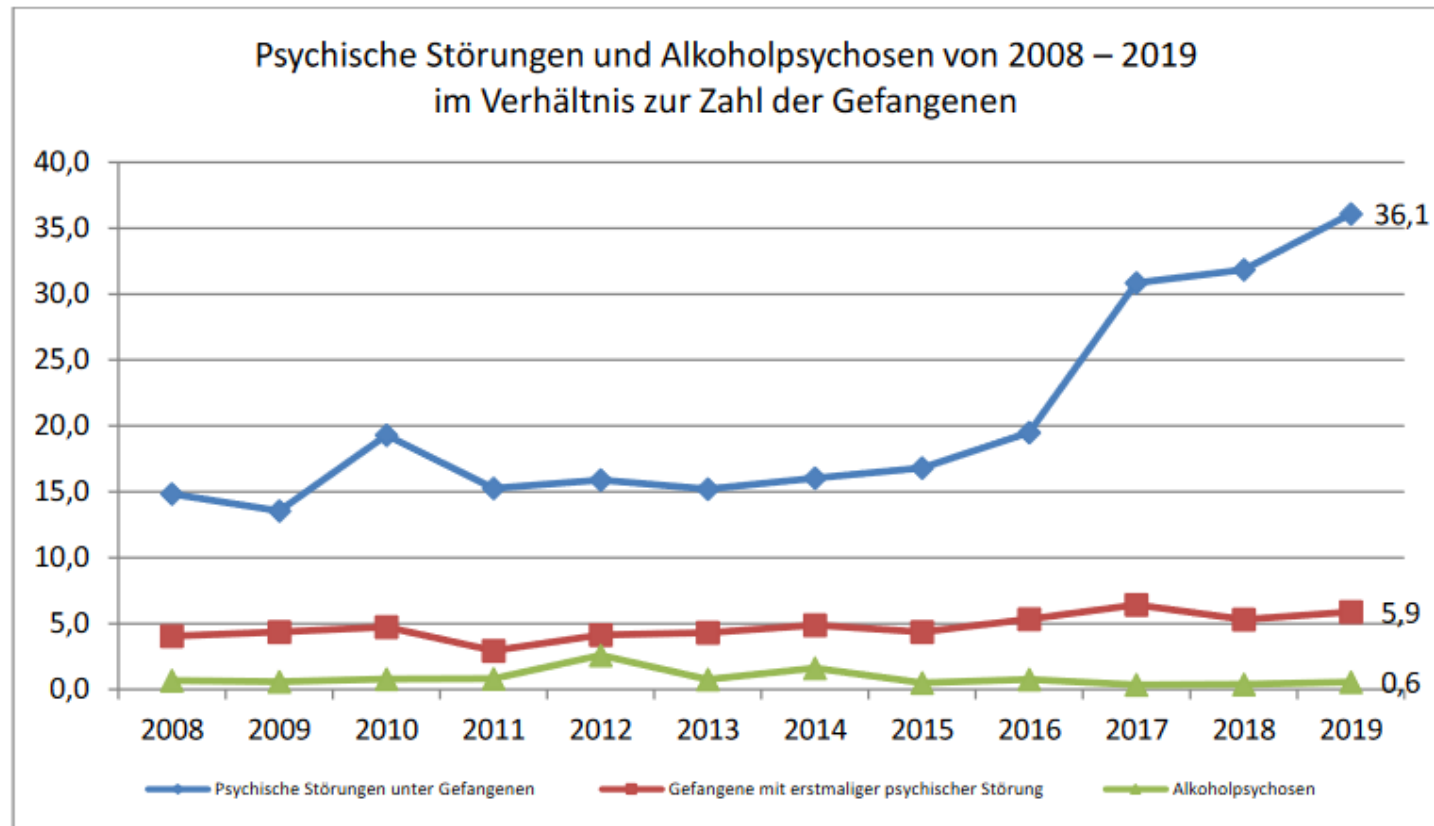
Challenges

- Drug misuse
- Mental disorders
- Overcrowding in forensic hospitals
- Data and evidence



Suchtmittelbelastung nach Geschlecht







What to take home?



- 1.) Federalism: rooted in German history; complex issue.
- 2.) Criminal law <-> Prison and Probation law
- 3.) Statistics and criminological research: not easy
- 4.) International participation: not easy
- 5.) Federal Constitutional Court: force of reform
- 6.) Good staffing, respectful treatment, rehabilitation treatment
- 7.) Cautious enforcement of criminal law – safe societies
- 8.) Many laws - simpler and speedier law making



Thank you for your attention!!!

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