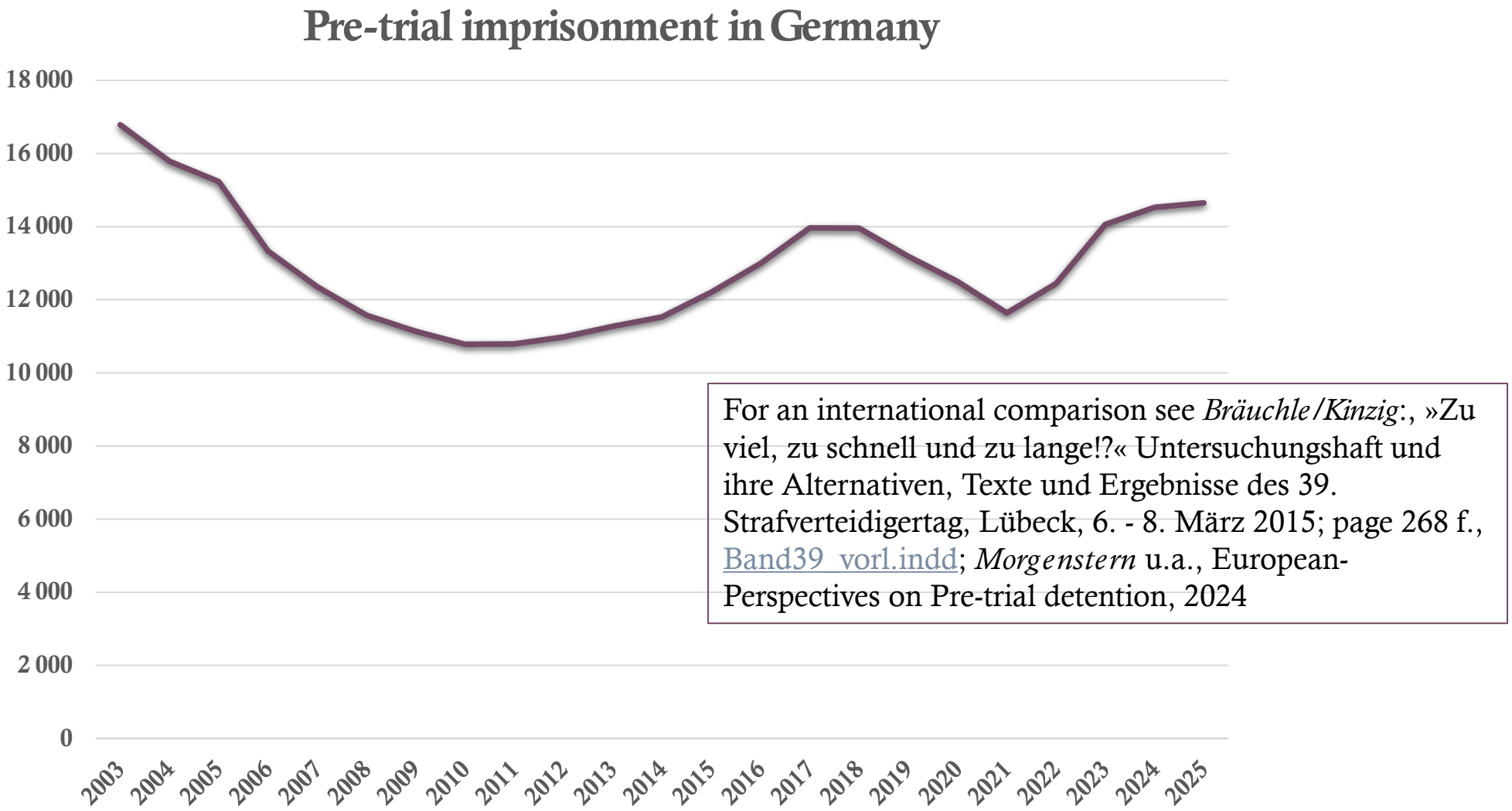
MEASURES AGAINST PRISON OVERCROWDING

Pre-trial detention
in Germany



Source: Justizvollzugsstatistik; Bevölkerung: Jahresdurchschnittszahl der Fortschreibung ab 2011 und Rückrechnungsergebnis der regionalen VGR vor 2011; Personen in Untersuchungshaft | Statistikportal.de

MATERIAL LIMITATIONS TO PRE-TRIAL DETENTION

- § 112 StPO:
  - urgent suspicion of an offence
  - additionally: Reason for pre trial detention
    - absconding, hiding or risk of absconding
    - tempering with evidence
    - risk of recurrence (§ 112a StPO)
    - reduced standard of review in cases of capital crime (§ 112 Abs. 3 StPO)
- Parallel: § 126a StPO:
  - urgent suspicion of an offence
  - urgent reasons for the expectation of compulsory admission in a psychiatric hospital or rehab

MATERIAL LIMITATIONS TO PRE-TRIAL DETENTION

- no fixed limit of duration
- exemption: § 122a StPO
  - only in case of detention because of danger of re-offending
  - limit: 1 Year
- suspension of arrest warrants (§ 116 StPO)
  - not only bail, but free decision of the court
  - possible: electronic shackle (LG Wiesbaden BeckRS 2016, 108245; AG Wiesbaden StV 2016, 817; WD 7 – 3000 – 109/21)
- principle of proportionality (§ 112 Abs. 1 S. 2 StPO)
  - restrictions for reasons for arrest concerning youths under 16 years of age (§ 72 Abs. 2 JGG)
  - measures to avoid pre-trial detention for youths under 18 years of age (§ 72 Abs. 1 JGG)

FOCUS: YOUTH HEALTH/EDUCATION ACCOMMODATIONS

Age 14-18!

- §§ 72 Abs. 4, 71 Abs. 2 JGG: preliminary accommodation in youth health/education facilities
- run by non-government organisations of welfare on state subsidies
- mostly open facilities
  - in conflict with repressive judicial culture
  - problematic: distribution of free places
  - no central authority
  - youth welfare as the institution of coordination (Arbeitskreis U-Haft-Vermeidung | Nds. Landesamt für Soziales, Jugend und Familie)
- rare: custodial facilities (DJI – Platzzahlen)
  - Many requests, many declines
  - 33% unregular releases
- empirical evidence: *Dorenburg*, Untersuchungshaft und Untersuchungshaftvermeidung bei Jugendlichen und Heranwachsenden in Deutschland und Europa, p. 275 ff. Uni Greifswald; *Grüne/Hoops*, ZJJ 1/2026, 17 ff.

PROCEDURAL LIMITATIONS TO PRE-TRIAL DETENTION

- effective: procedural limitations
- principle of acceleration → § 121 StPO
  - examination ex officio after 6 months
  - competent court: Higher Regional Court → revision by the Attorney General
  - verification not only of the degree of evidence but also the absence of delay in investigations
  - repetition at least every three months § 122 Abs. 4 S. 2 StPO
- constitutional court: pre-trial detention longer than one year is the utmost exception (BVerfG NStZ-RR 2021, 50, 51; NJW 2019, 915, 917)

Decision
Uphold: 98 %

Still: 1,717 = 8.2% in 2024

Source: Statistischer Bericht Strafverfolgung 2024: In der Strafverfolgungsstatistik in Deutschland erfasste Personen mit Untersuchungshaft nach Grund und Dauer der Untersuchungshaft; see also *Morgenstern*, Die Untersuchungshaft, 2018, page 395 ff.