Therapeutic Justice:

Outshouting the Noise

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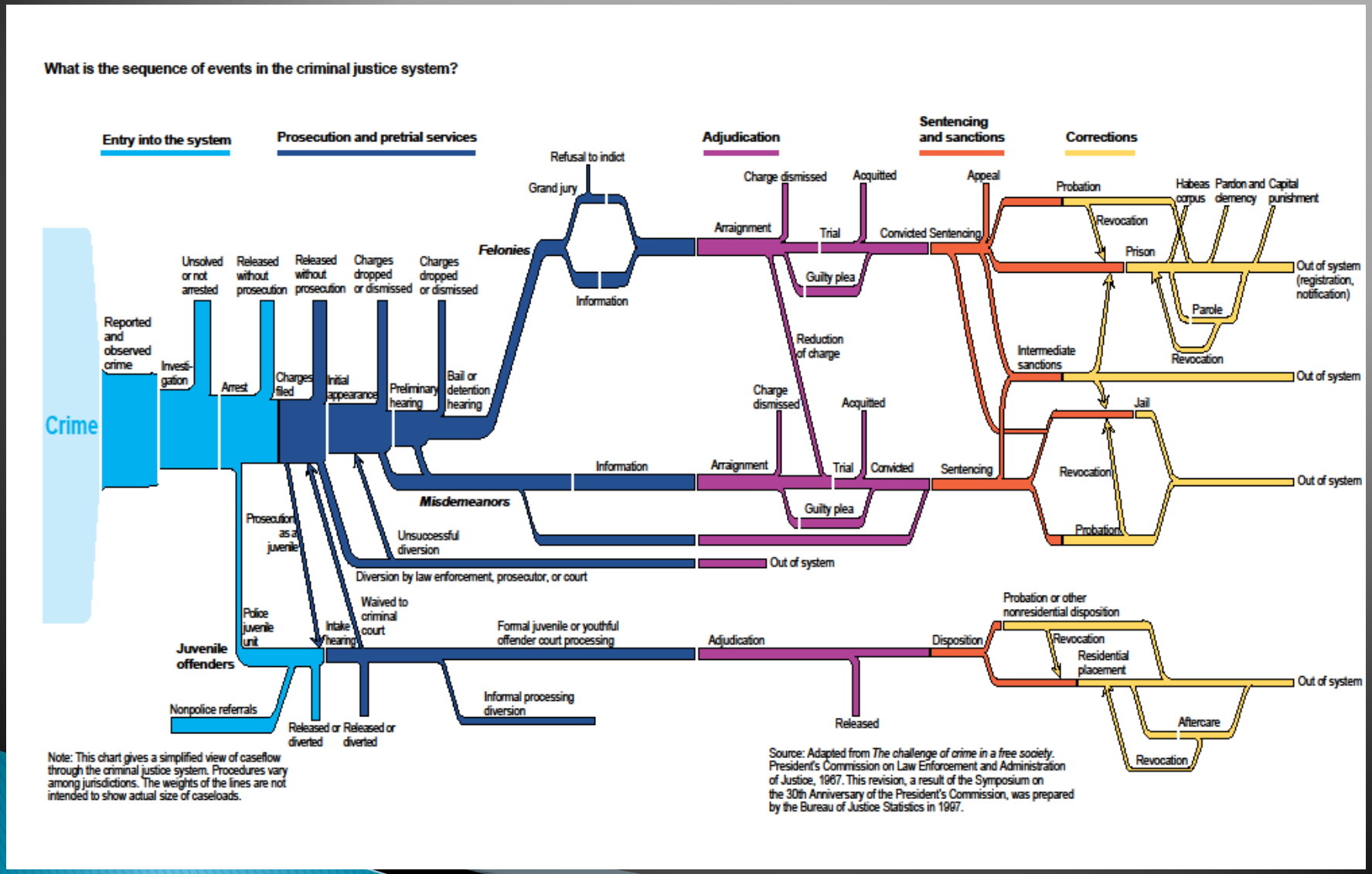
Entry to Criminal Court



THERAPEUTIC JUSTICE

A broad term that refers to judicial approaches that address the offender’s behavior as a problem requiring non-traditional sanctions and/or social services in addition to traditional sanctions.

PROBLEM-SOLVING

- Courts that are established to look outside the traditional framework of legal proceedings for solutions to such cases.
- They include special initiatives such as drug courts, community courts, and mental health courts, as well as programs such as unified family courts.

BALANCED AND RESTORATIVE JUSTICE

based on principles of accountability (i.e., increasing the offenders' awareness of the effect of their actions on others and offering them opportunities to repair the harm caused), competency development (i.e., providing offenders with opportunities to increase their skills so they are able to function as more productive members of society), and community protection (i.e., increasing offenders' skills and ties to the community so they will be less likely to harm the community again).

Comparison of Justice Theories

Source:

Chart constructed by Susanne DiPietro, in part from Judge Edward J. Cashman, materials on restorative justice, and Leena Kurki, "Incorporating Restorative and Community Justice Into American Sentencing and Corrections," Sentencing & Corrections: Issues for the 21st Century, No. 3 (National Institute of Justice Research in Brief,

September 1999), NCJ-175723.

Justice Center, University of Alaska Anchorage Alaska Justice Forum 18(4), Winter 2002

Definition of Crime

Retributive justice: Crime is a breach of a rule created by a sovereign. Crime should be addressed by professionals who are not connected to the victim or the offender.

Therapeutic justice: Crime is a manifestation of illness of offender's body or character. Crime should be addressed through treatment by professionals.

Restorative justice: Crime is a disruption of community harmony and relationships. Crime should be addressed in the community by the community, the victim, and the offender.

Community justice: Crime is committed by people who are not invested in the community and is caused by complex social problems. Crime should be addressed in the community by a partnership between the community and criminal justice agencies.

Primary Focus

Retributive justice: Focus on defendant.

Therapeutic justice: Focus on defendant's rehabilitation, including teaching accountability.

Restorative justice: Equal focus on offender, community, and victim.

Community justice: Focus on enhancing and sustaining community life as a way of preventing crime and exerting social control..

Sentencing Goals

- **Retributive justice:** Vindicate social values, deter defendant and others, isolate defendant from community, rehabilitate defendant if possible. Primary beneficiary is government, second is society, and third, the victim.
- **Therapeutic justice:** To correct/heal the offender, who receives most services and benefits. Society is secondary; victim benefits to the extent that offender is rehabilitated.
- **Restorative justice:** Repair the harm, heal victim and community, restore offender to healthy relationship with community through offender accountability, encourage community to take responsibility for responding to crime.
- **Community justice:** Similar to goals of restorative justice; however, community justice also attempts to address some of the social problems underlying crime and to involve local residents in planning and decision making.

International Network on Therapeutic Jurisprudence

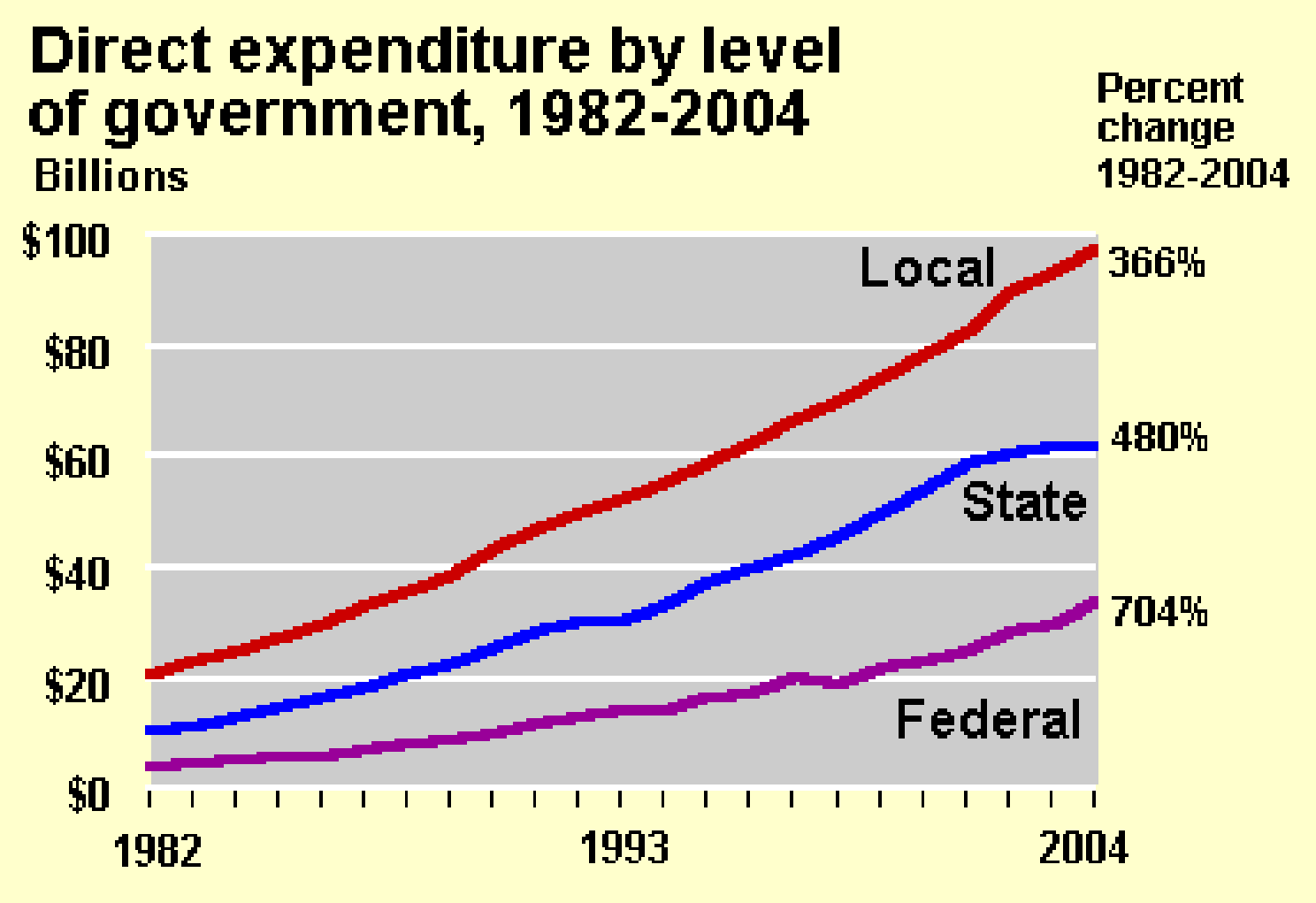
- “Therapeutic Jurisprudence concentrates on the law's impact on emotional life and psychological well-being.
- It is a perspective that regards the law (rules of law, legal procedures, and roles of legal actors) itself as a social force that often produces therapeutic or anti-therapeutic consequences.
- It does not suggest that therapeutic concerns are more important than other consequences or factors, but it does suggest that the law's role as a potential therapeutic agent should be recognized and systematically studied.”

David Wexler, Distinguished Research Professor Emeritus of Law, University of Arizona and Professor of Law and Director, International Network on Therapeutic Jurisprudence, University of Puerto Rico, 1994 - present

How might we develop solutions?

1) Start with the premise that there will never be enough money.
2) Consider Indiana and Oregon Constitutional provisions that criminal justice should be reformative, not vindictive.
3) That means –In all courts–Asking the question and focusing on – how do we change this defendant's behavior?
4) Sort through those who are a danger to all, to some, to themselves or to no one.

Funding the Justice System: How are the Courts Funded?



A simple Constitutional statement

Article One, Section 18 of the Constitution of the State of Indiana provides:

"The penal code shall be founded on principles of reformation, and not vindictive justice."

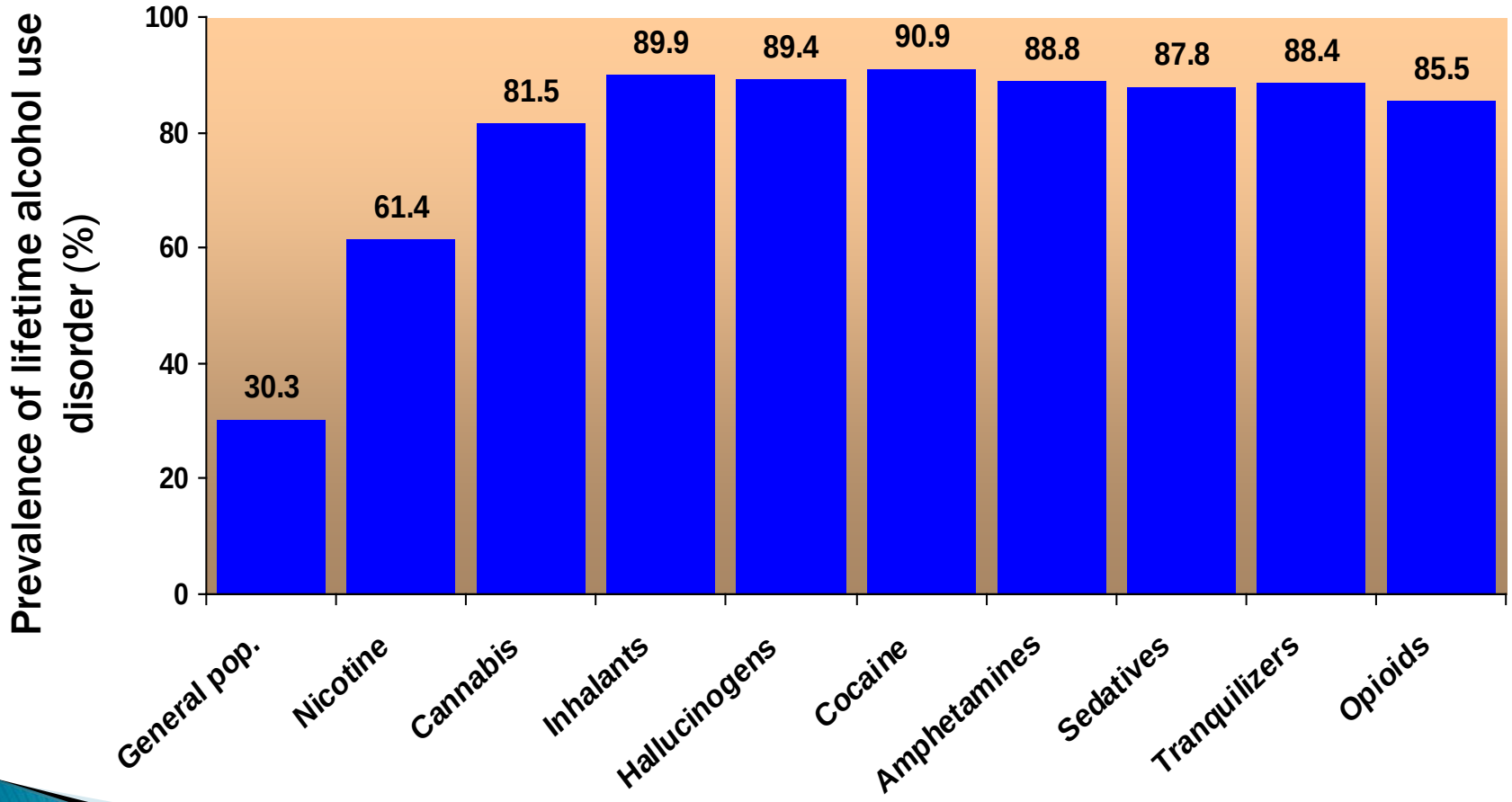
Scenario One

1. Injustice perpetuated by misguided good intentions
   i. Required to plead guilty to get treatment
   ii. Pleads to a felony
   iii. Is treated by the usual court treatment (whatever is available)
   iv. Loses job because of no driver's licenses, time off from work, Can not get work or credit because of the felony conviction (true for those in bankruptcy)
   v. Fails to pay costs, etc
   vi. Back to court

Scenario Two

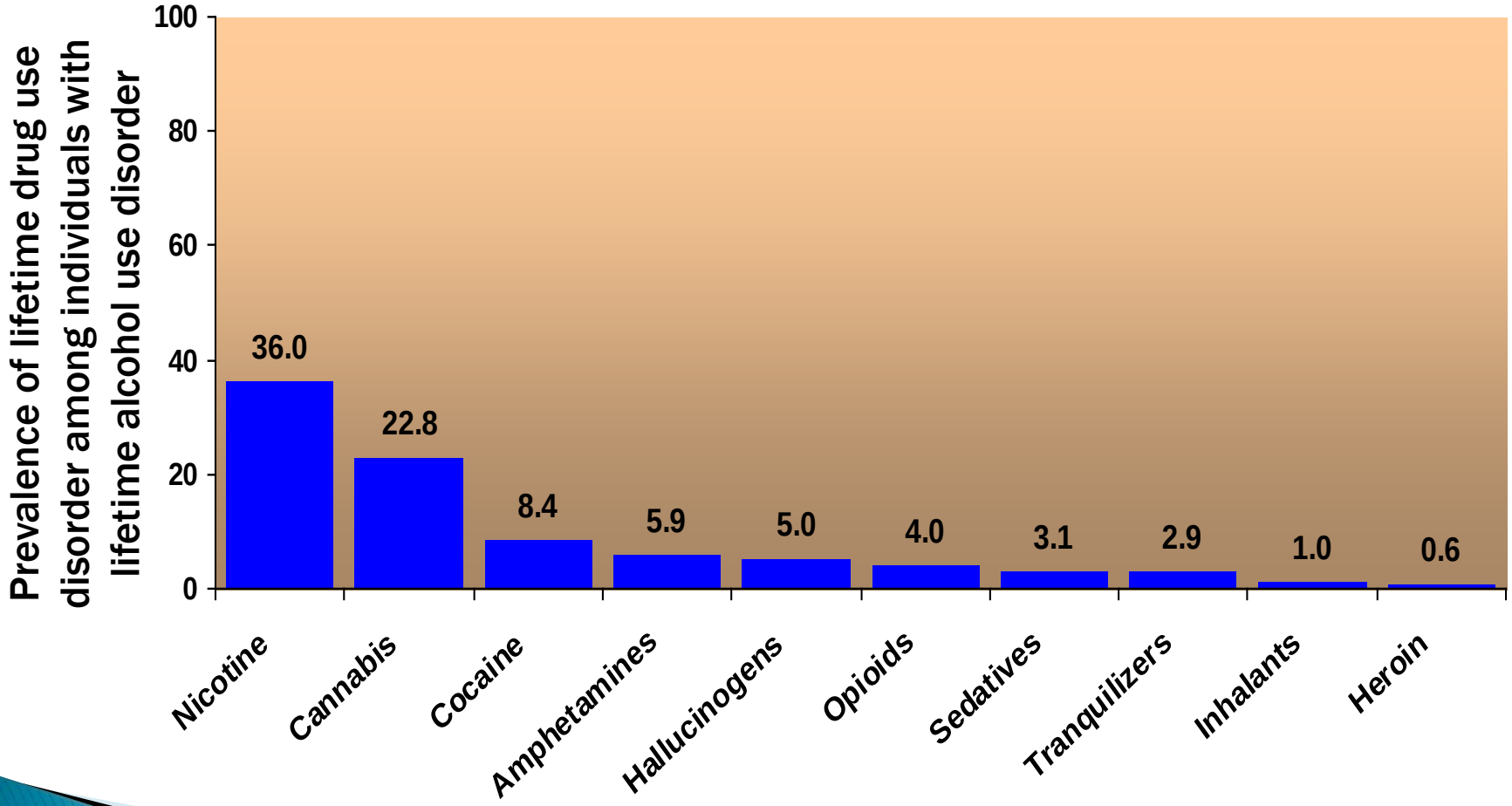
- System as usual
  - May never get to trial
  - May plead to a misdemeanor as part of the deal
  - May go to court ordered treatment
  - May get sober on own
  - May live in a state that has process for expungement.
  - Less expensive and may be more humane.
  - First time probationers less likely to reoffend.

Prevalence of lifetime alcohol use disorder among individuals with selected lifetime drug use disorders



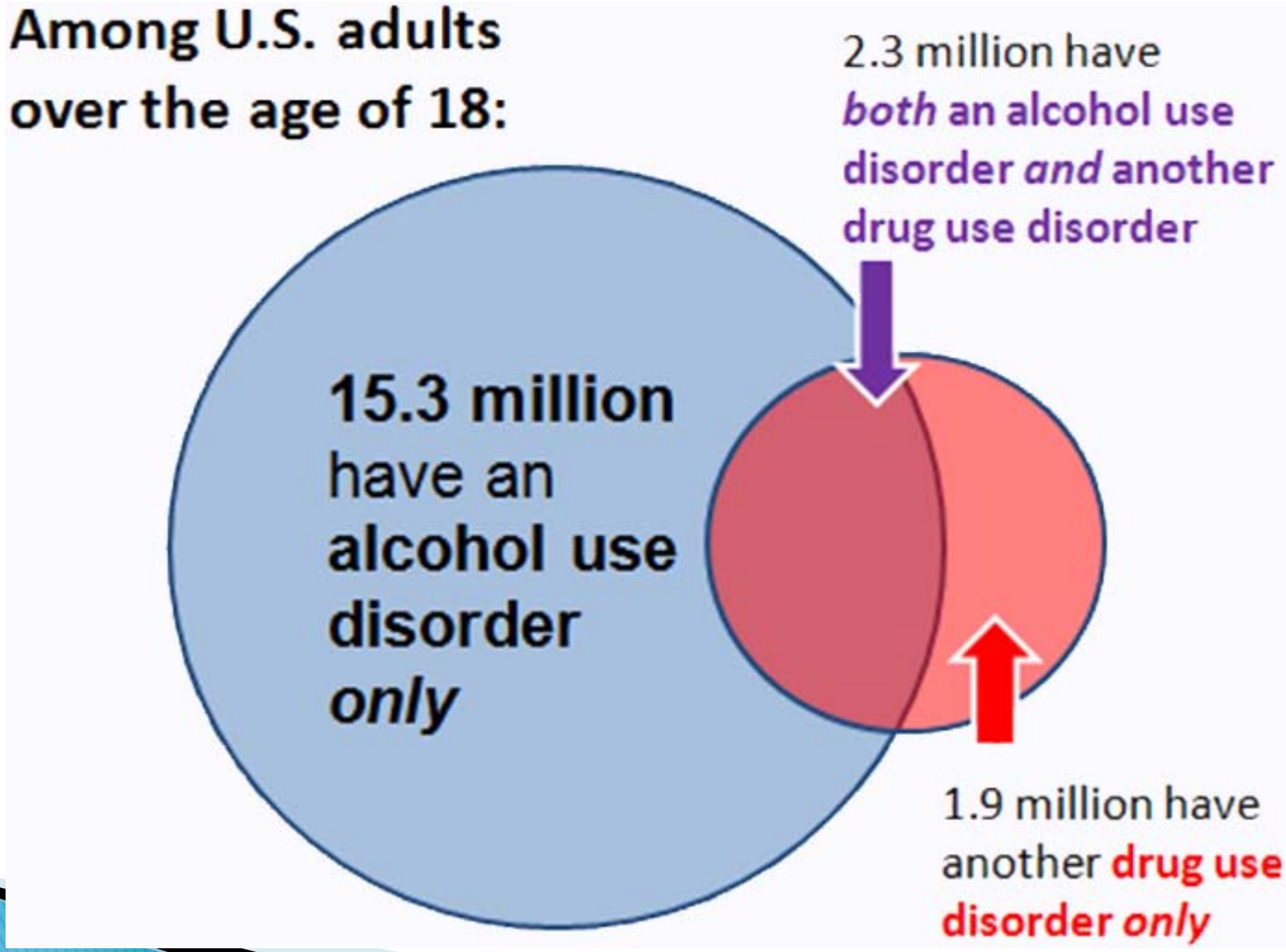
Source: 2001-2002 National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), n=43,093 (unpublished data)

Drug Use Disorders Are Rare Among Persons with Alcohol Use Disorders

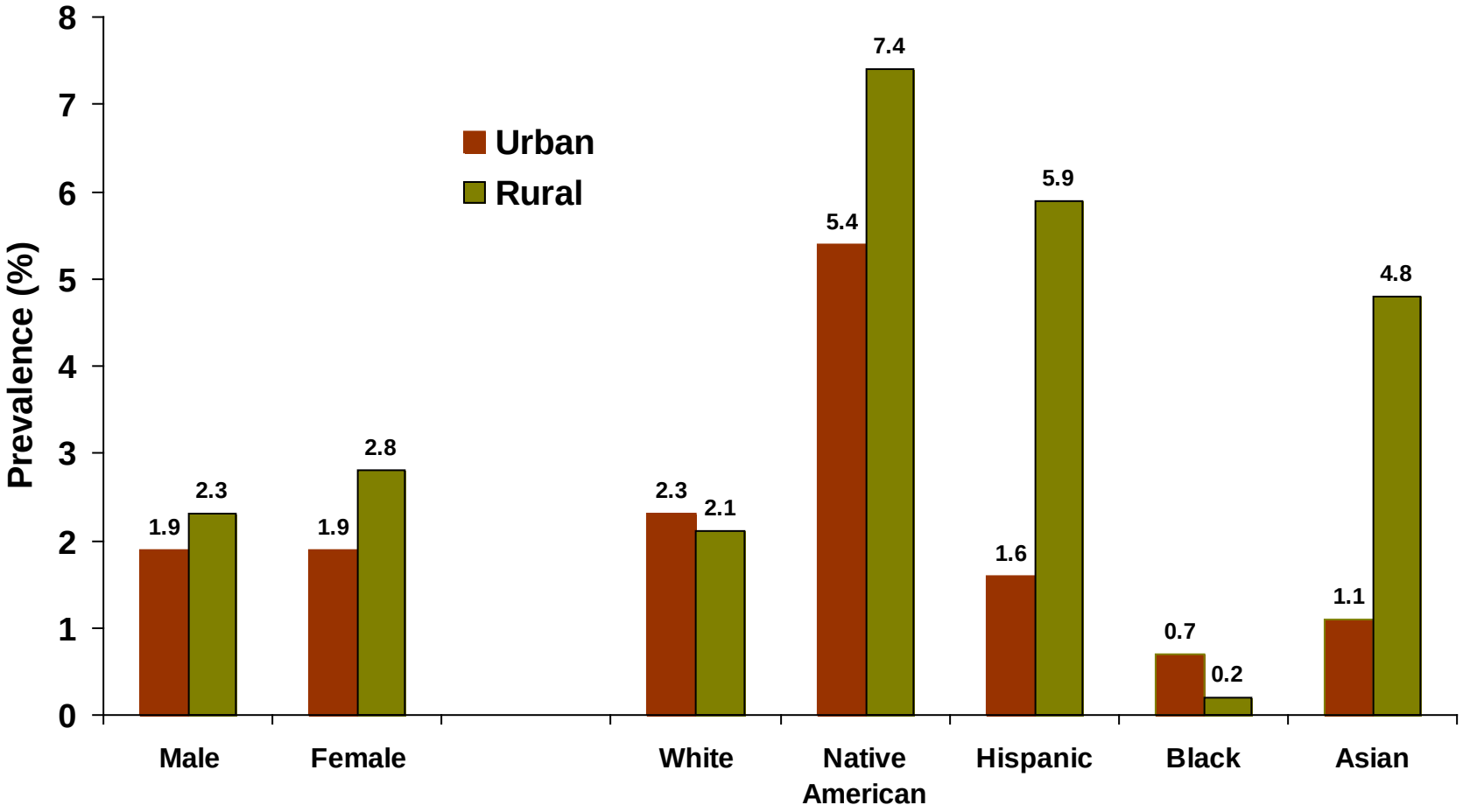


Source: 2001-2002 National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), n=43,093 (unpublished data)

Alcohol Use Disorders Surpass Other Drug Use Disorders



The RURAL problem

- Under staffed law enforcement and justice system with inadequate resources
- Huge issues of training and even duty personnel
  - Example-no sheriff on duty after midnight; five deputies and three cars
- No treatment
- No transportation

Past-Year DSM-IV Alcohol Dependence Among 12-to-17 Year-Olds by Sex, Race-Ethnicity and Urbanicity