

# Creating an Informed Electorate: Understanding criminal justice policy

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## *"Educating Justice: Postsecondary Education in the Justice Disciplines"*

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# One Important Teaching Goal

- Encourage/ teach people to evaluate **future** policy
  - Separate from teaching criminal justice „values“
- Show them how evidence and analysis can *help* answer certain questions about policy
- Encourage people to demand evidence, especially when there are „costs“ associated with a policy
- Move people away from accepting simplistic accounts of causality
  - Crime and criminal justice
  - Other policy areas
- Understand (a bit) about Canadian values/ history

# Vehicle for Accomplishing This: Understanding Punishment Policies – The Harper Crime Agenda

Provides lots of examples

- Bills
- Statements

Contrasts

- Policy language (past and current)
- Criminal justice policies

# Summary of “Crime” Legislation (2006-2014)

## Government Bills (Commons & Senate) Only

Government Crime Bills (only)	Conservatives 2006-2011	Conservatives 2011 to 8 May 2014	Conservatives <b>Total</b> <b>(2006- 2014)</b>
Total crime bills introduced	<b>62</b>	<b>21</b>	<b>83</b>
Total sentencing or punishment bills introduced	<b>34</b>	<b>12</b>	<b>46</b>
Total crime bills passed by Parliament	<b>20</b>	<b>11</b>	<b>31</b>

# This talk: A few examples

1. General Deterrence  
Tough on crime – sentencing – laws
2. Impact of Imprisonment. History - Political consensus on appropriate approach
3. Pardons
4. The law and the administration of justice

# Example 1: General Deterrence

## Taking Advantage of “Methodological” Naiveté

- Examples
  - Firearms C10(39-1)/C-2 (39-2)
  - Drug Minimums [C26(39-2)/S10(40-3)/C10(41-1)]
  - Trafficking Tobacco [S16(41-1)/C10 (41-2)]
  - Sex offences [C-22(39-1)/C-2(39-2)/C-34(40-2)/C-54(40-3)/S2(40-3)/C-30(41-1)/C26(41-2)]
- The problem of simple „before-after“ changes
  - Assumes absolute stability and no other external influences
  - Assumes no pre-existing changes
- Comparisons
  - Assumes that a comparison is perfect (identical in all respects except the variable of interest)
  - Assumes no other factor could account for the difference

# General Deterrence (severity): Examples and Research

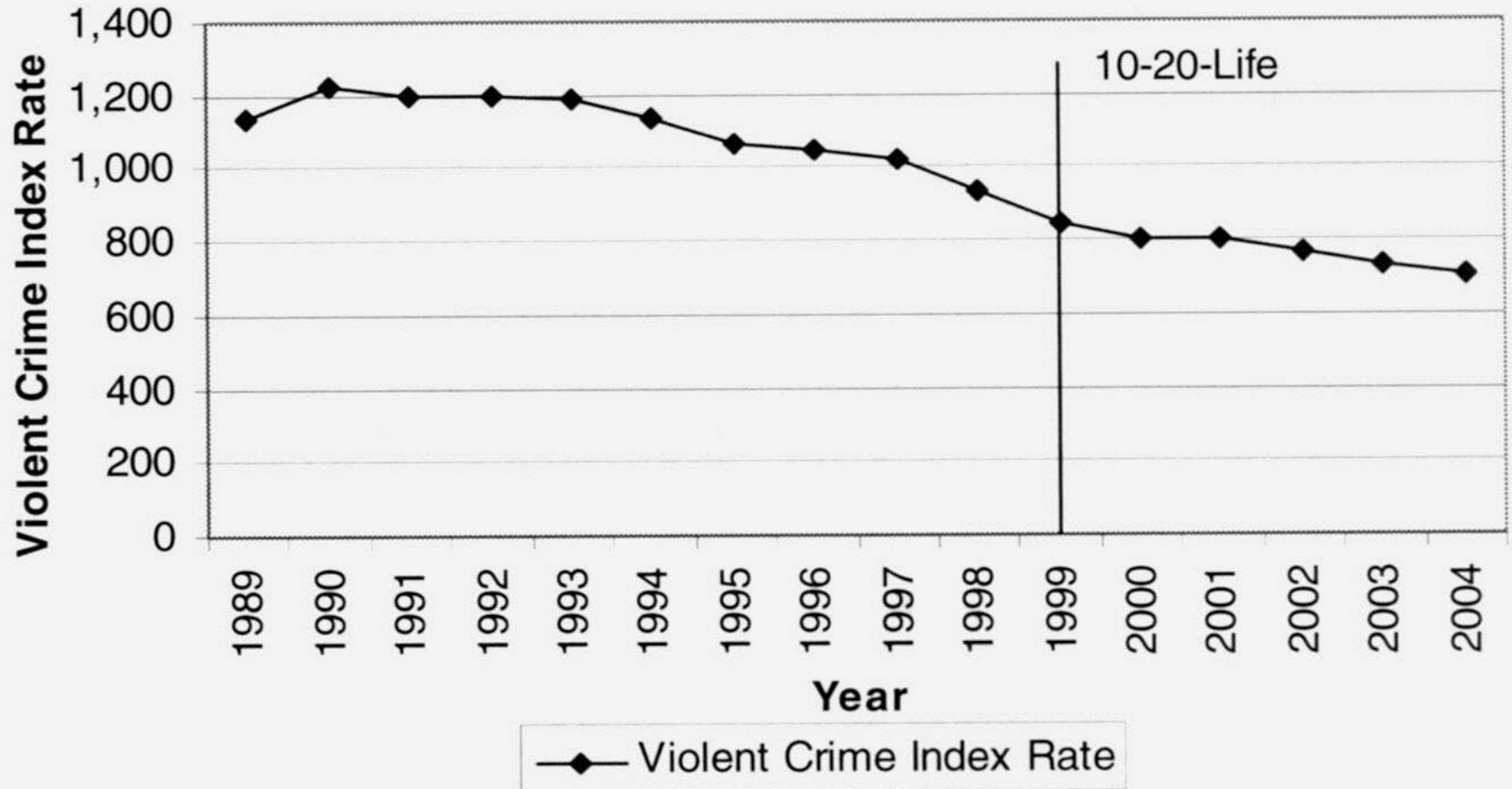
- Reviews of research: almost completely consistent.
- What is necessary process for effectiveness
  - Thinking and weighing consequences
  - Knowledge of consequence (new penalty)
  - Assume reasonable likelihood of apprehension
  - Commit offence anyway
- Policy areas: Maximums, Mandatory Minimums, Aggravating factors

# The Florida Story

- Mandatory Minimum Sentences, Private Member's Bill in 2005 [Conservatives with NDP support]
- Parliamentary Committee Evidence: Prosecutor from the Florida Attorney General's Office (speaking of the 10-20-Life law for gun crimes)
  - “In the 10-20-Life period, **violent crime is down 30%...** fewer people were robbed, fewer people were killed. I'm a prosecutor. I'm in the courtroom every day. **These laws are good.**” – Testimony, House of Commons Justice Committee, November 2005.



FIGURE 2. FLORIDA'S VIOLENT CRIME INDEX RATE, 1989-2004



# “Protecting Canada’s Seniors Act” (introduced 12 March 2012)

“Evidence that the **offence had a significant impact on the victim**, considering their age and other personal circumstances, including their health and financial situation” now listed as aggravating factor in sentencing.

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“This legislation **would further support our Government's common front to combat elder abuse** in all forms.... **The interests of law-abiding citizens should always be placed ahead of those of criminals**.... (Press Release)

Our government is committed to ensuring the well-being of Canadian seniors... “ “This bill **ensures that perpetrators would be punished appropriately.**” - Rob Nicholson, November 6, 2012

# Systematic Examination of the Data vs. Picking and Choosing Findings

*Kovandzic et al Justice Quarterly 2004 21(2)*

- 188 U.S. cities with populations 100K+
- Homicide, Rape, Robbery, Assault, Burglary, Larceny, Motor Vehicle Theft
- Introduction of harsh sentencing
- Controlled for obvious correlates
- 21 states x 7 crimes = 147 analyses
  - **72 (29 „sig.”) decreases** in crime following law change
  - **75 (31 „sig.”) increases** in crime following law change

## Example 2: The Impact of Imprisonment (A cornerstone of current „crime“ policy)

Tough is good/ makes you safe?

- Research
  - Direct impact on offender (e.g., „individual deterrence“/ recidivism)
  - Impact of sentence length on offender“s life
  - Collateral effects (children, etc.)
- Costs
- **Canada“s History: Questioning the value of imprisonment**

# Royal Commission to Investigate the Penal System of Canada - 1938

“The undeniable responsibility of the state to **those held in its custody is to see that they are not returned to freedom worse** than when they were taken in charge. This responsibility has been officially recognized in Canada for nearly a century but, although recognized, it has not been discharged. The evidence before the Commission convinced us that **there are very few, if any, prisoners who enter our penitentiaries who do not leave them worse members of society than when they entered them.**” (p.100)

# The Canadian Committee on Corrections (Ouimet Committee) 1969

“It is the Committee’s view that in all cases where there has been no finding of dangerousness, sentences of **imprisonment should be imposed only where protection of society clearly requires such penalty....**

The Committee wishes to **emphasize the danger of overestimating the necessity for and the value of long terms of imprisonment except in special circumstances.**”

The Committee maintains that imprisonment or confinement should be **used only as an ultimate resort when all other alternatives have failed...**”



# Rehabilitation in Penitentiaries (1972)

- “We will undoubtedly have to keep on protecting society against dangerous criminals, but we will also take into consideration the fact that most inmates do not belong to such a category.... **An inmate is always a citizen who, sooner or later, will return to a normal life in our society and as such, is basically entitled to have his human rights as a citizen respected by us to the largest possible extent.**”
  - The Liberal Solicitor General, Canada
- “I want to congratulate the minister for realizing at last that **crime is not just a sordid happening but rather a result of human behaviour brought about by our economic and social conditions** which we have failed to change.”
  - The **Conservative** Justice critic.

# Law Reform Commission - 1976

The cost of criminal law to the offender, the taxpayer and all of us must always be kept as low as possible. . . . **The harsher the punishment, the slower we should be to use it. . . . The major punishment of last resort is prison. . . . As such it must be used sparingly.** . . . Positive penalties like restitution and community service orders should be increasingly substituted for the negative and uncreative warehousing of prison.” (pp. 24–25)



# “Criminal Law in Canadian Society”

(“Policy of the Government of Canada” 1982)

- The approach calls for restraint to be employed in the use of criminal law and the criminal justice system, on the basis of a conception of the criminal law as the ultimate point along the spectrum of society’s informal and formal methods of dealing with conduct.”
- “In awarding sentences, **preference should be given to the least restrictive alternative** adequate and appropriate in the circumstances.”
- *Sentencing* (1984): “**Canada’s incarceration rate looks relatively restrained only in comparison to that of the United States, and such other countries as the Soviet Union and the Union of South Africa.**” (1984).

# Government Task Force (Neilson Task Force) - 1985

“The use of incarceration in Canada has become a concern on a number of levels . . . . Incarceration costs approximately 10 to 15 times as much . . . as community-based [sanctions]. . . . At the same time as there are concerns about the costs . . . **doubts about its value are also prevalent.** . . . Correctional administrators consistently report that a **large proportion of persons in their jails do not belong there.** . . . There is also a paucity of alternative punishments which are less costly and less debilitating than prison.” (pp. 322-323)

# Canadian Sentencing Commission - 1987

“[Our endorsement of] a **policy of restraint in the use of imprisonment** [is consistent] with the recommendations of almost every group that has examined the criminal justice system from the Brown Commission in 1848 to the Neilson Task Force in 1986.”

“In the submissions to this Commission, most groups and individuals called for **restraint in the use of custodial sentences and advocated a greater use of community sanctions.**”

# House of Commons [Daubney] 1988

- “Carceral sentences should be used with **restraint; there must be a greater use of community alternatives** to incarceration where appropriate, particularly in cases not involving violence or recidivism.”
- “A term of **imprisonment should not be imposed without canvassing the appropriateness of alternatives to incarceration** through victim-offender reconciliation programs or alternative sentencing planning.”
- Members included Rob Nicholson & Bill Domm

Minister of Justice (Kim Campbell) and  
Solicitor General of Canada (Pierre Cadieux) -1990

**“Imprisonment is generally viewed as of limited use in controlling crime through deterrence, incapacitation and reformation,** while being extremely costly in human and dollar terms.”

**“Imprisonment is expensive and it accomplishes very little,** apart from separating offenders from society for a period of time.”

**“Reducing our dependency on prisons is needed** to achieve greater effectiveness, balance, and restraint in our system.”

# (House of Commons) Standing Committee on Justice and the Solicitor General (1993)

**“If locking up those who violate the law contributed to safer societies, then the United States should be the safest country in the world.** In fact the United States affords a glaring example of the limited impact that criminal justice responses may have on crime”

“Evidence from the U.S. is that **costly repressive measures alone fail to deter crime.**”

Note: The committee was chaired by and dominated by Progressive Conservative MPs.



# Federal/Provincial/Territorial Committee on Corrections Population Growth January 1995 - 2001

Origin: Concern about money

Purpose:

“...to identify **options to deal effectively with growing prison populations**” (1995)

“...concern was expressed that this **growth threatened to outstrip available capacity and resources during a time when government resources continued to decline**” (May 1996)

“... the eleven recommendations... were endorsed by all...” (May 1996) including two, then very conservative provinces, Ontario [Mike Harris] and Alberta [Ralph Klein]

# An Incomplete List of Commissions, Committees, Reports, etc. 1956-Onwards with the Theme of Restraint in the Use of Imprisonment

- Committee on Remission Service... (“Fauteaux report, 1956)
- Department of Justice, Canada: Report on Juvenile Justice (1965)
- Ouimet Committee “Canadian Committee on Corrections” (1969)
- Law Reform Commission (1976 and following)
- Sub-Committee on the Penitentiary System in Canada (the “MacGuigan Report) 1977
- *Criminal Law in Canadian Society* (1982)
- Sentencing (1984)
- Task Force on Program Review (“Neilson Task Force) 1985
- Canadian Sentencing Commission (1987)
- House of Commons Justice Committee – “Taking Responsibility” (1988)
- Directions for Reform (Sentencing; Corrections & Conditional Release (1990)
- House of Commons Committee Report on Crime Prevention (1993)
- Federal-Provincial-Territorial Working Group on Corrections Population Growth (1996, 1997, 1998. 2000)
- Strategy for Youth Justice (1998)



# The Alternate View of Imprisonment

- Stockwell Day (President, Treasury Board):  
“Canada **needs** more prisons because the numbers of **unreported crimes are alarming**....” (August 2010)
- Vic Toews (Minister of Public Safety):  
“Unfortunately, our safe streets and healthy communities are **increasingly under threat** of gun, gang and drug violence....”

# National Post, 21 March 2011

Ian Lee, Business, Carleton

- “Canadian criminologists owe the public better than to make ideologically driven arguments that are not supported by verifiable factual data.”
- “In its incarceration rates, Canada sits **below the OECD average and indeed if only the federal incarceration rate is used**, Canada is below every European country.”

## Meaningful Translation:

- “In terms of incarceration rates, if we count only 37% of Canada’s prisoners and 100% of Europe’s, Canada’s rate is below that of every European country.”

[Data then publicly available (2008/9) 13,286 federal and 23,635 provincial prisoners=36,921]

Imprisonment in OECD Countries [Canada, about 110 adults per 100,000 general population or about 117 if youths are included)

- Higher than Canada (n=15)

**Australia (129)**

Chile (317)

Czech Republic (209)

Estonia (273)

Hungary (152)

Israel (325)

**Luxembourg (155)**

Mexico (208)

**New Zealand (195)**

Poland (225)

Slovak Republic (151)

**Spain (164)**

Turkey (155)

**United Kingdom (153)**

**United States (760)**

- Lower than Canada (n=18)

**Austria (99)**

**Belgium (93)**

**Denmark (63)**

**Finland (67)**

**France (96)**

**Germany (90)**

**Greece (109)**

**Iceland (44)**

**Ireland (85)**

**Italy (97)**

Japan (63)

Korea (97)

**Netherlands (100)**

**Norway (70)**

**Portugal (104)**

Slovenia (65)

**Sweden (74)**

**Switzerland (76)**

# “Harper Government Measures Aim to End the Revolving Door of Justice”

Government Press Release: Winnipeg, July 11, 2012

“Today... Vic Toews... reaffirmed that our Government’s tough on crime measures to keep our streets and communities safe is ending the revolving door of Canada’s justice system. **By keeping real criminals in prison longer, the Correctional Service of Canada has seen a reduction in recidivism** and is returning a large sum of funds that will benefit hard-working, law-abiding citizens.

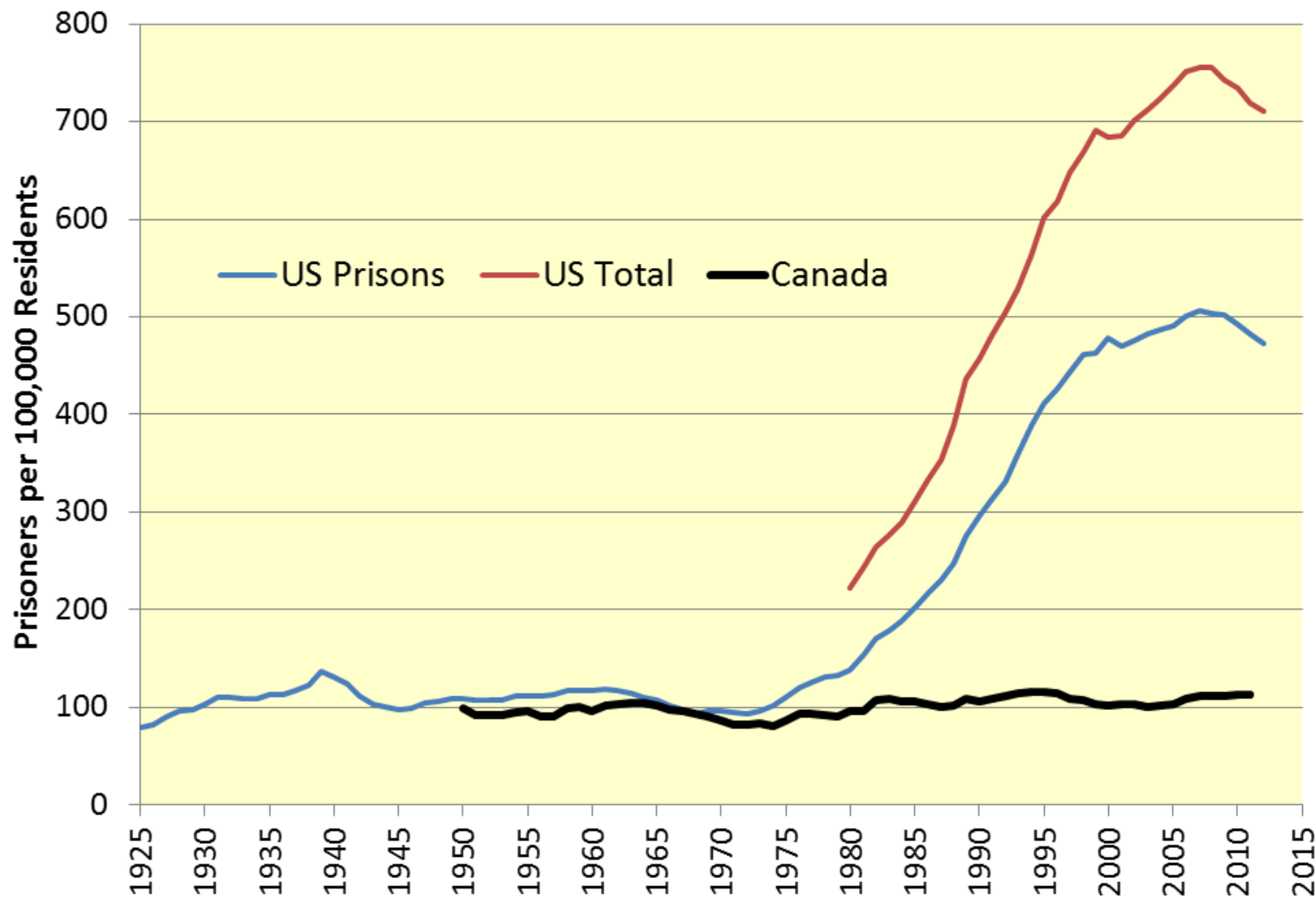
“The Harper Government’s tough-on-crime legislation ensures we keep repeat, serious offenders in jail longer. Our measures haven’t had the excessive impact on justice system resources that critics originally predicted... Recouping these funds is another example of our continued efforts to return to a balanced budget and our government’s commitment to ensuring the safety and security of law-abiding citizens...

“Today’s announcement demonstrates what our government has always said; **our tough measures on crime do not result in new inmates and new prisons.**”

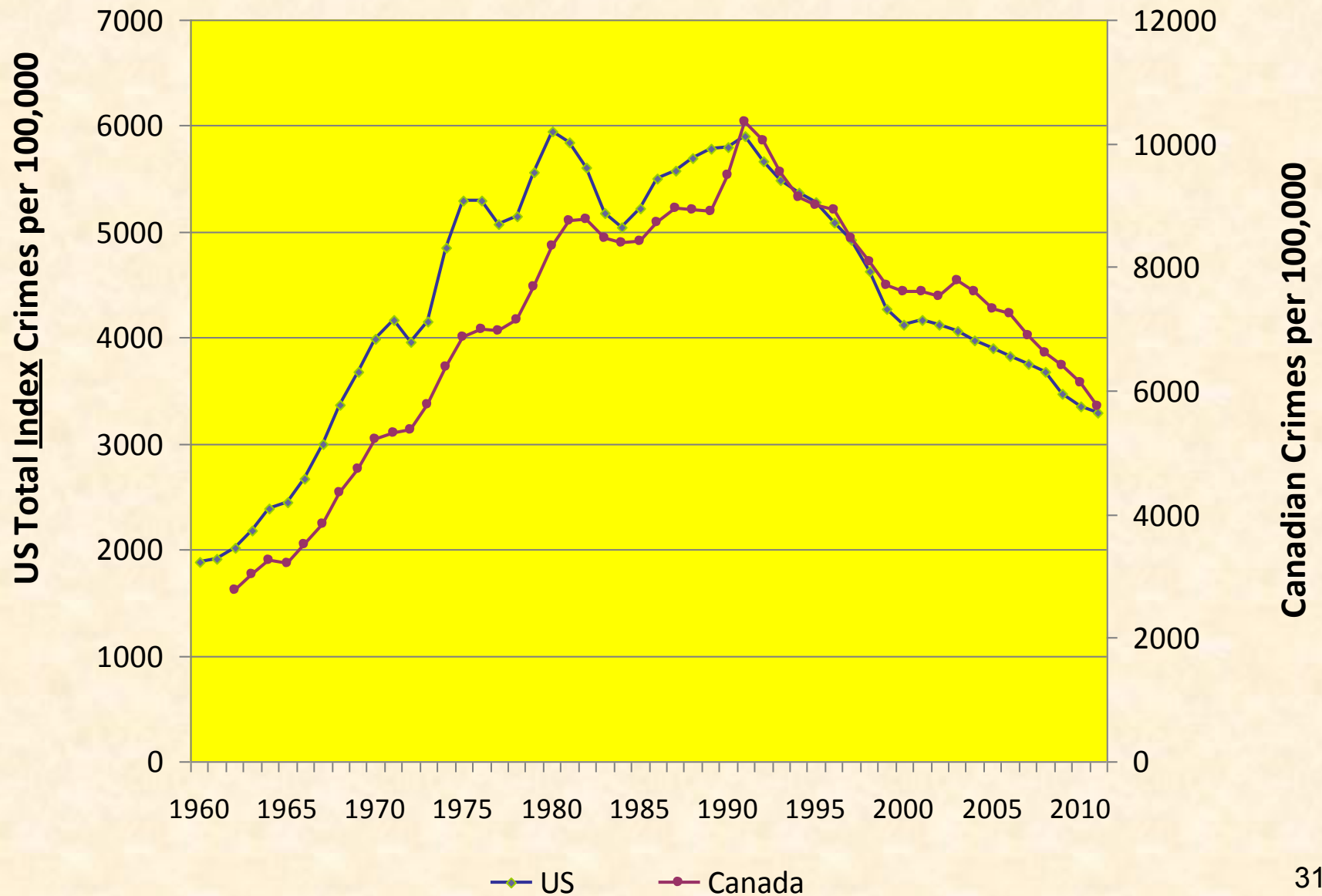
# Assumptions (11 July 2012 Press Release)

- Tough on crime leads to safety
  - General deterrence
  - Effect of harsh punishments on offenders
- Long prison sentences leads to lower recidivism rates
- Crime (and legislation) are the only factors that affect prison population size
  - Compensatory effects
  - Long term effects

## Prisoner Counts: US and Canada

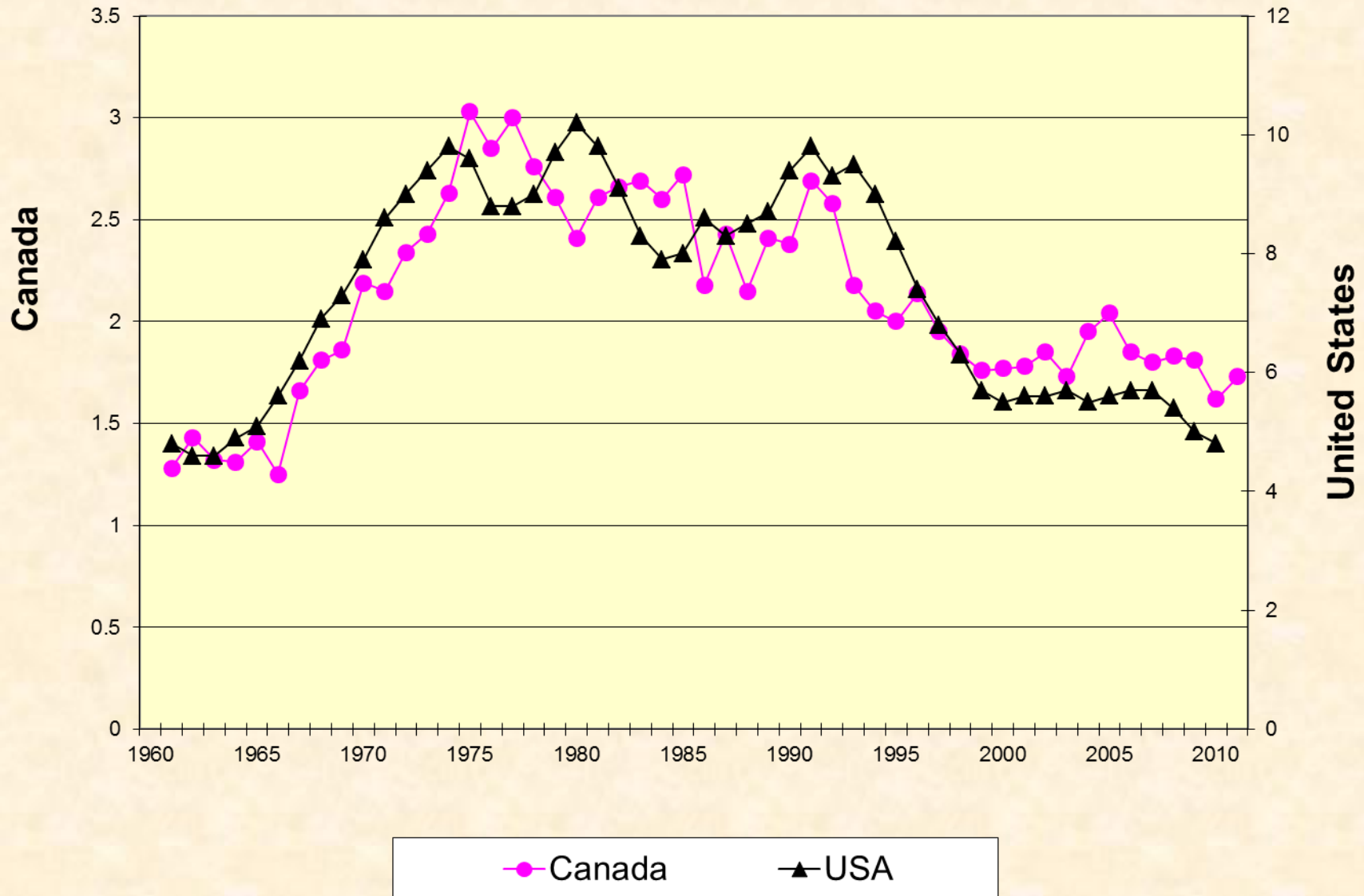


## US and Canadian "Total" Crime Rates



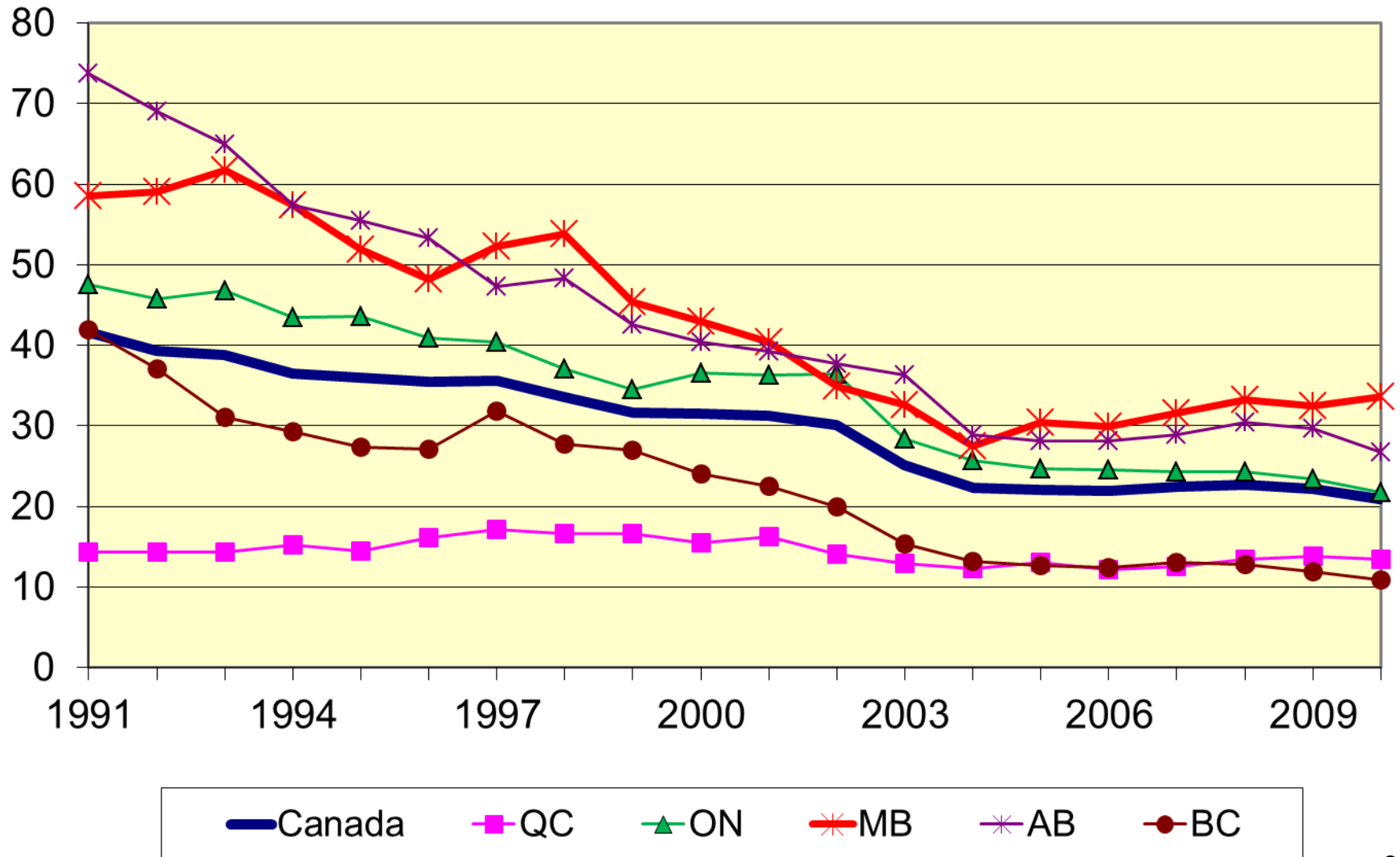


# Homicide Rates per 100,000 Residents

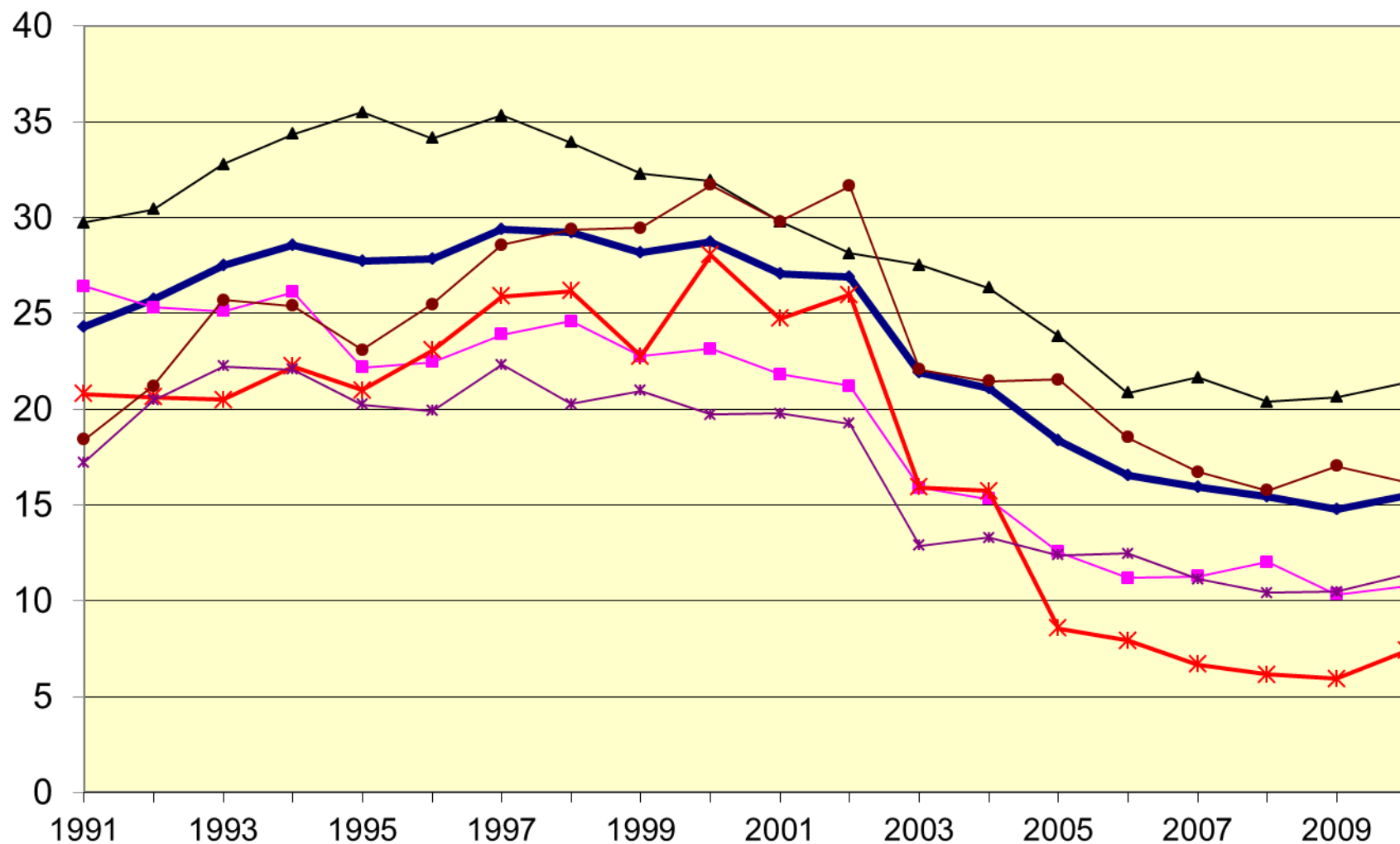




## Youth Cases to Court per 1000 Youths



**Percent Guilty (Youth) Cases to Custody**



—◆— Canada

—■— QC

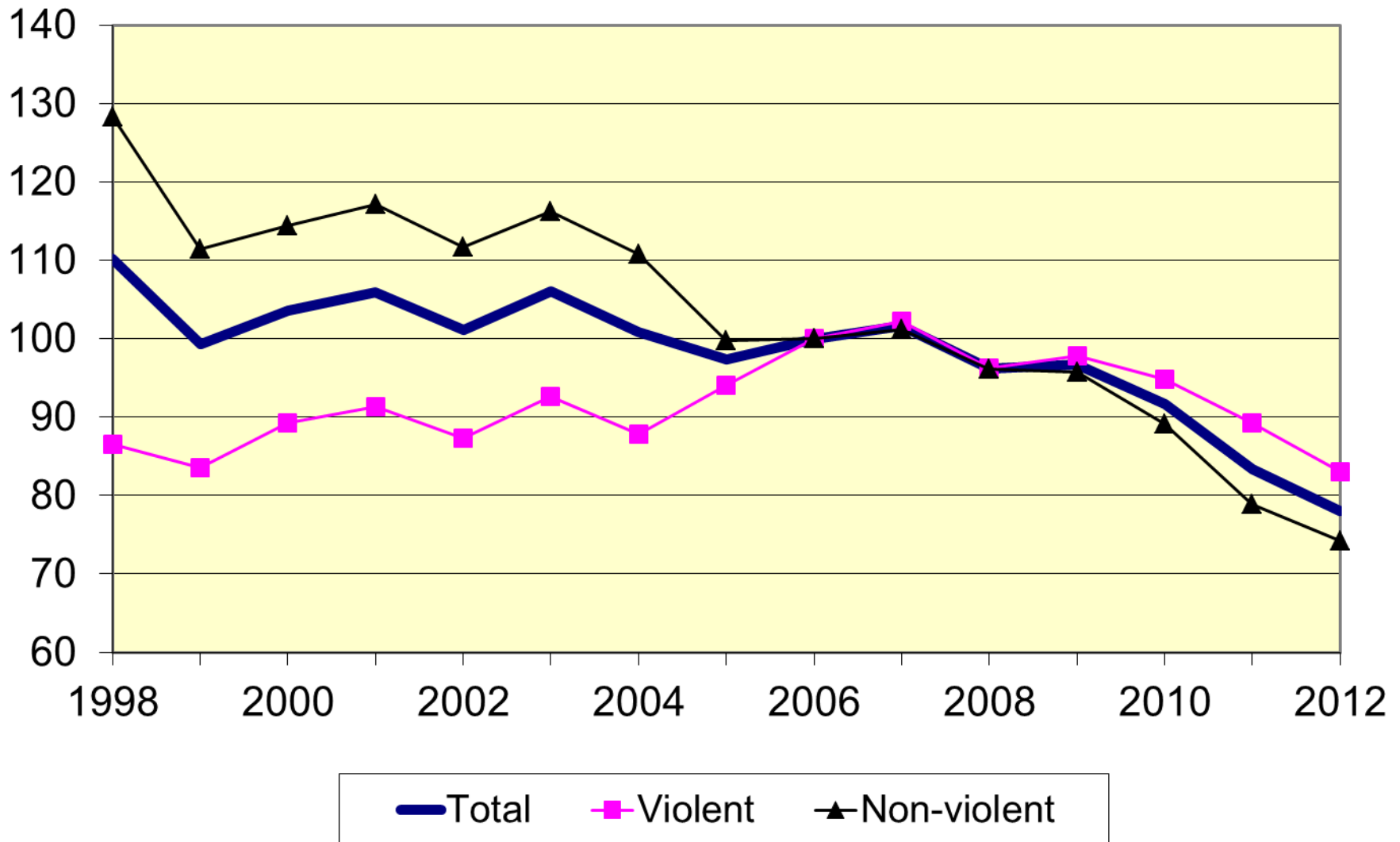
—▲— ON

—×— MB

—\*— AB

—●— BC

# Canada: Youth "Crime" Severity Index



# Impact of Imprisonment, overall

- Punishment levels are largely the result of policy choices.
- Youth: Reduction in crime *attributable to youth* occurred simultaneous with **decreased** use of youth court and youth custody.
- Collateral effects are serious

# Example 3 – Pardons: Offenders vs. Ordinary Citizens Who are the criminals?

- Offending by youths
- Prevalence of criminal records
- Pardons
  - Getting a job
  - Re-offending likelihood
    - Age
    - Other predictive factors
  - “Criminals” vs. “Law-abiding Canadians”

# Administrative Costs of Pardon [Record Suspension]

\$50 to \$150 in 2010, \$631 (on 23 Feb 2012)

“Canadians are right to expect that convicted criminals be held fully accountable for their crimes. That’s why our government is proposing that **criminals pay for the administrative costs of applying for pardons.** There are numerous examples of **law-abiding Canadians** being required to pay administrative fees and it is wrong that criminals are being subsidized in this manner.”

“**Ordinary Canadians** shouldn’t have to be footing the bill for **a criminal** asking for a pardon.”

- Vic Toews (2011)

Minister of Public Safety, Canada

# Effect of “rejection” of “criminals” (those with criminal record)

- Change Canadians’ views of offenders?
- Prevalence of „criminals” (3.8 million Canadians).  
Canadians with criminal records:
  - **21.2% of males**
  - **3.9% of females**over 12 years old have a current criminal record.
- Pardons: 1970-2013: 463,242 issued (21,075 revoked).

## Example 4 - The Importance of the Administration of Justice: Alberta 1993-1997

- Split responsibility: criminal law, administration of justice
- Need to look beyond the federal government – provinces and territories
- The importance of the administration of justice (and provinces" responsibility for it)
- The lack of importance of political parties in determining imprisonment/ punishment policies

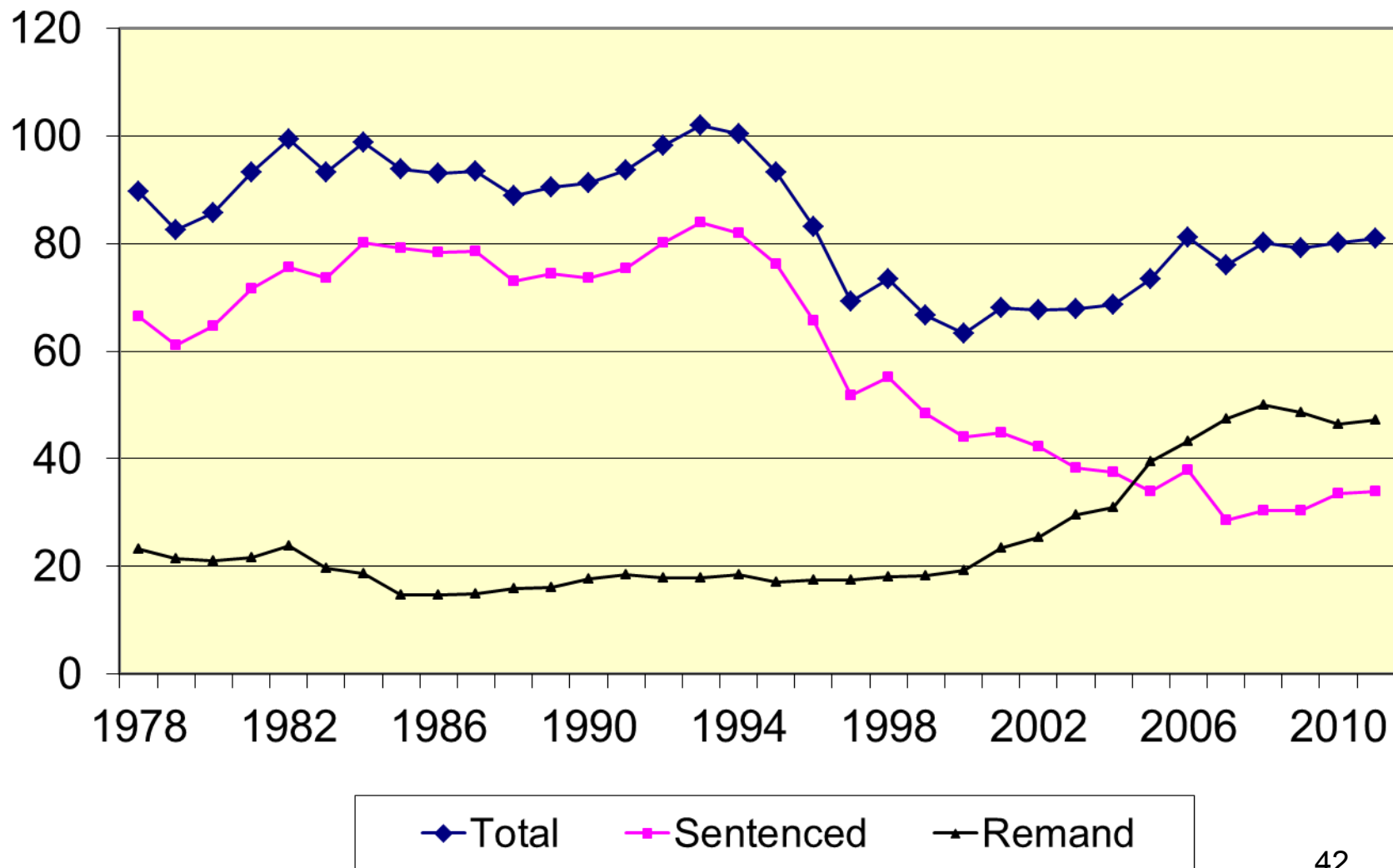


# Alberta's Challenge (1992-7)

- Ralph Klein (chosen as premier 1992; re-election of Conservatives, June 1993)
- The central issue
  - Budget deficit to be eliminated
  - Cut spending (not increase revenue)
- Developing policy
  - Knowledgeable civil servants
  - Underlying Canadian values
  - Not controversial (“Serious and violent crime initiative”)

# Alberta (Provincial) Imprisonment

Adult Prisoners per 100,000 Residents



# Views of Incarceration:

## The Alberta Minister of Justice (1996)

- “[This is part of a] rationalization of our system [whereby] the management of offenders who would normally be incarcerated [are to be dealt with] **by a cost-effective and progressive approach to corrections.**”
- “There are other ways of dealing with some of the criminal activity **that are more effective than putting a person in jail.**”
- “[The policy] is much more effective in changing behaviour than just having someone... being put in jail... The issue is **how effective is prison and are there alternatives which are better** for less serious... criminal activity.”

# Did Alberta Learn from its Experience? [2013]

“We’re basically targeting [for diversion to community service or restorative justice programs] people who don’t have a lengthy criminal record... The justice system **should try to rehabilitate where it can, but when you want to put people behind bars, our focus should be on the high end offender...** people involved in murders, sexual assaults and things like that...”

- Justice Minister and Solicitor General of Alberta  
Jonathan Denis (8 March 2013).

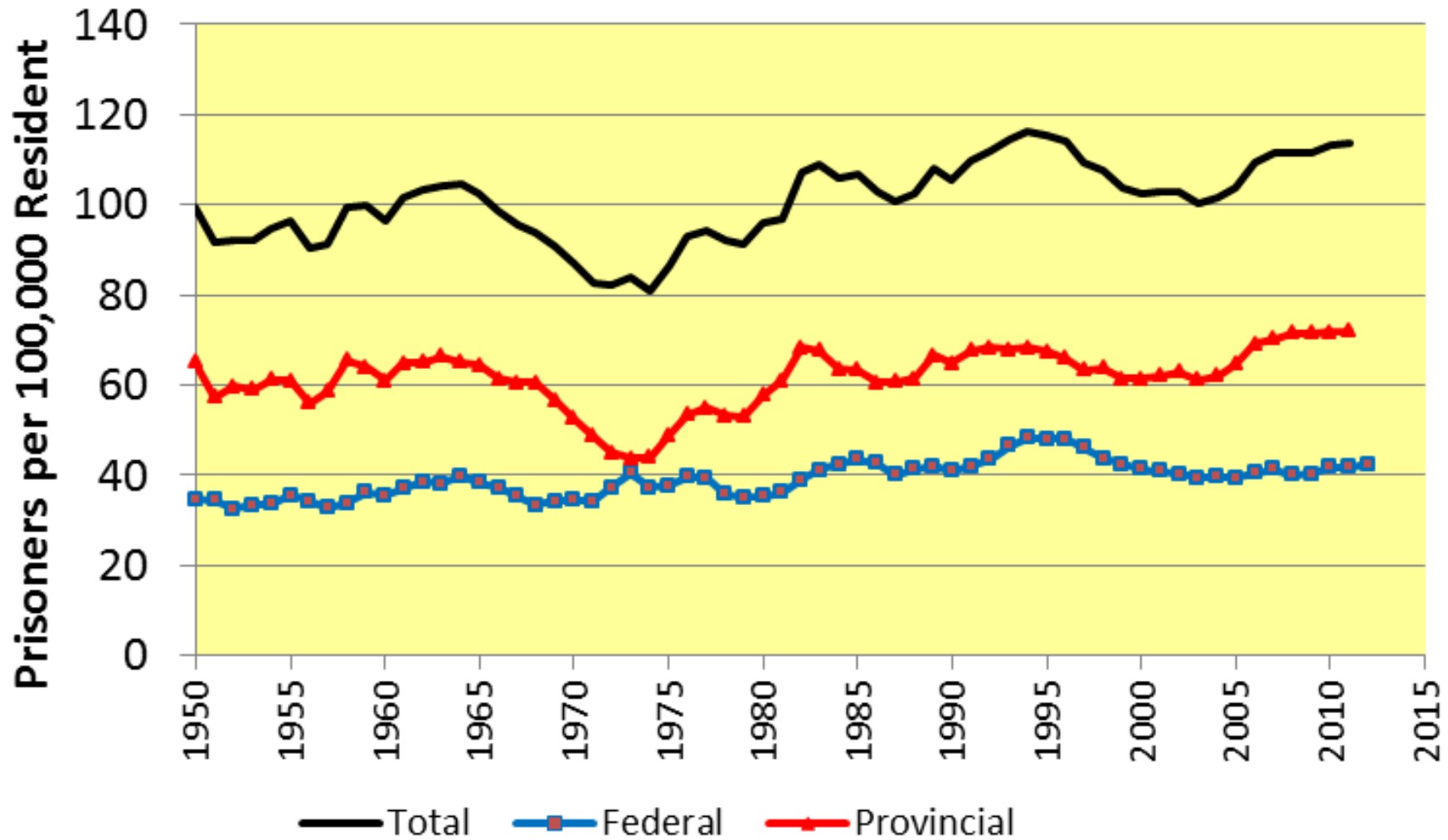
# Conclusion:

## Teaching “Criminal Justice”

- Highlight the importance of...
  - A careful analysis of what is said
  - The evidence that is being presented
- Many opportunities to focus on Canadian approach to crime (historically and currently)
  - A bit of criminal justice history
  - Comparative approaches (e.g., with U.S.)
- Most important: Teaching the importance of systematic evidence of effects (evidence beyond „before-after“ or simple assertions).
- Understanding role of evidence and values

End

# Canada: Imprisonment Rates



2003/4=100    2005/6=104    2006/7=110    2011/2=114



# Limits of Justice

“[In the same way that] war is too important to be left to the generals . . . Crime prevention is too important to be left to the lawyers, or the justice ministers, or even the judges. . . . **In the final analysis, crime prevention has as much to do with the [minister of] . . . Finance, [the minister of] . . . Industry, and [the minister of] . . . Human Resources Development, as it does with the [minister of] Justice.**” - Minister of Justice, 1996

**Note: The same Minister (Allan Rock) who introduced various 4 year mandatory minimum sentences for violent offences with firearms.**

# Harper Government Measures Aim to End the Revolving Door of Justice — Press Release: 11 July 2012

Background: Aug. 2010 - Jan 2011: announced total of “over 2700” new beds in penitentiaries.

**“Projections pegged the inmate population at growing to almost 17,725 by June 2012, the actual figure to date is 14,965.”** (press release)

Source of these projections: Critics or CSC?

# Imprisonment Assumptions (11 July 2012 Press Release)

- By 2012, there would be 17,725 prisoners but there are only 14,965

- **Projected „rate“: 51 prisoners/100K residents**

- Actual rate: **41.5** (Public Safety Canada; Press figure: 43)

2000: 41

2007: 41

2001: 41

2008: 40

2002: 40

2009: 40

2003: 39

2010: 42

2004: 40

2011: 42

2005: 39

2012: 42

2006: 40

**Highest ever: 1995: 48**

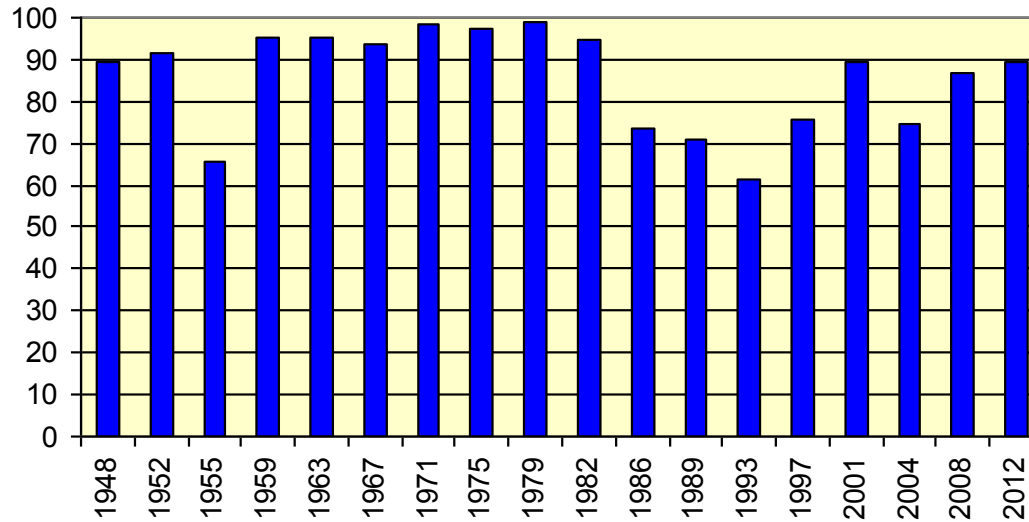
- Timing of the announcement (why not 2011?)

# The Language: Throne Speech – 3 June 2011

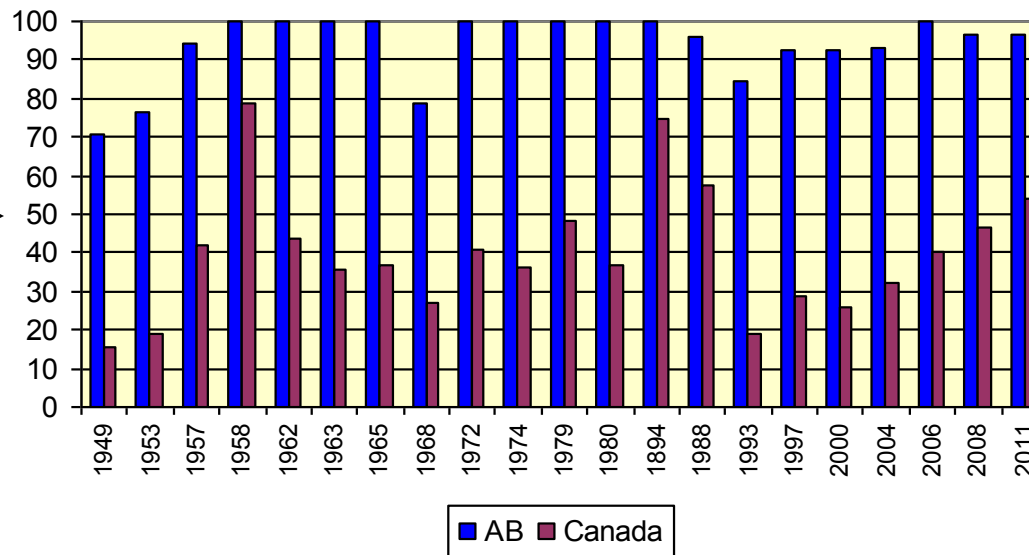
## Law abiding people, police, victims vs. Criminals

- Our Government will move quickly to reintroduce comprehensive law-and-order legislation to combat crime and terrorism. These measures will protect children from sex offenders. They will eliminate house arrest and pardons for serious crimes. **They will give law enforcement officials, courts, and victims the legal tools they need to fight criminals and terrorists.** Our Government will continue to **protect** the most vulnerable in society and work to prevent crime. It will propose **tougher sentences** for those who abuse seniors and will help at risk youth avoid gangs and criminal activity. It will address the problem of violence against women and girls.
- Our Government has always believed **the interests of law-abiding citizens should be placed ahead of those of criminals.** Canadians who are victimized or threatened by crime deserve their government's support and protection, and they should have the right to take reasonable steps to defend themselves and their property when the police cannot be there to assist them. Our Government will reintroduce legislation to clarify and strengthen laws on self-defence, defence of property and citizen's arrest.

## Percent 'Conservative' Seats in Provincial Legislature: Alberta



## Proportion of 'Conservative' Seats in House of Commons, Canada: Alberta & Canada



# Criminal Code (1996-Present)

“An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances.”

“**All available sanctions other than imprisonment that are reasonable in the circumstances should be considered** for all offenders, **with particular attention to the circumstances of aboriginal offenders.**”

(s. 718.2)