

PREVENTIVE DETENTION AND THE MANAGEMENT OF RISK

**– Overview of legislation and practice in the
Nordic countries**

**Tapio Lappi-Seppälä
National Research Institute of Legal Policy – Finland**

**Justice Cooperation Network
Warnemünde, 3-5.9.2014**

PREVENTIVE DETENTION IN THE NORDICS

- Adoption 1920/1930
- Extension 1940/50s
- Restrictions/Abolishment 1970/80/2000s
- Reforms 2000/2010s
- Systemic comparisons

/

Adoption and expansion

- Norway 1902/1929
- Denmark 1925/1930
- Sweden 1927/1937
- Finland 1931/1953

- NOR,DEN,DWE
 - Psychopath-institutions for "abnormals"
- FIN
 - Prolonged confinement of habitual recidivists

The peak-years of preventive detention in the Nordics

	Prisoners total (abs)*	Preventive detention (abs)*	<i>Population (1000s)</i>	Prisoners /pop	Prev. det. / pop	Prev. det. %
NOR 1952	1679	130	<i>3327</i>	50,5	3,9	7,7
DEN 1959	3300	412	<i>4549</i>	72,5	9,1	12,5
FIN 1966	7284	389	<i>4581</i>	159,0	8,5	5,3
SWE 1967	5438	769	<i>7868</i>	69,1	9,8	14,1

*Daily averages

NOR = Sikring (NOU 1983:57 p.46)

DEN = Forvaring 390 + Sikring 22 (Bet 667/72 p. 60 and 94)

FIN = Preventive detention (Prison administration)

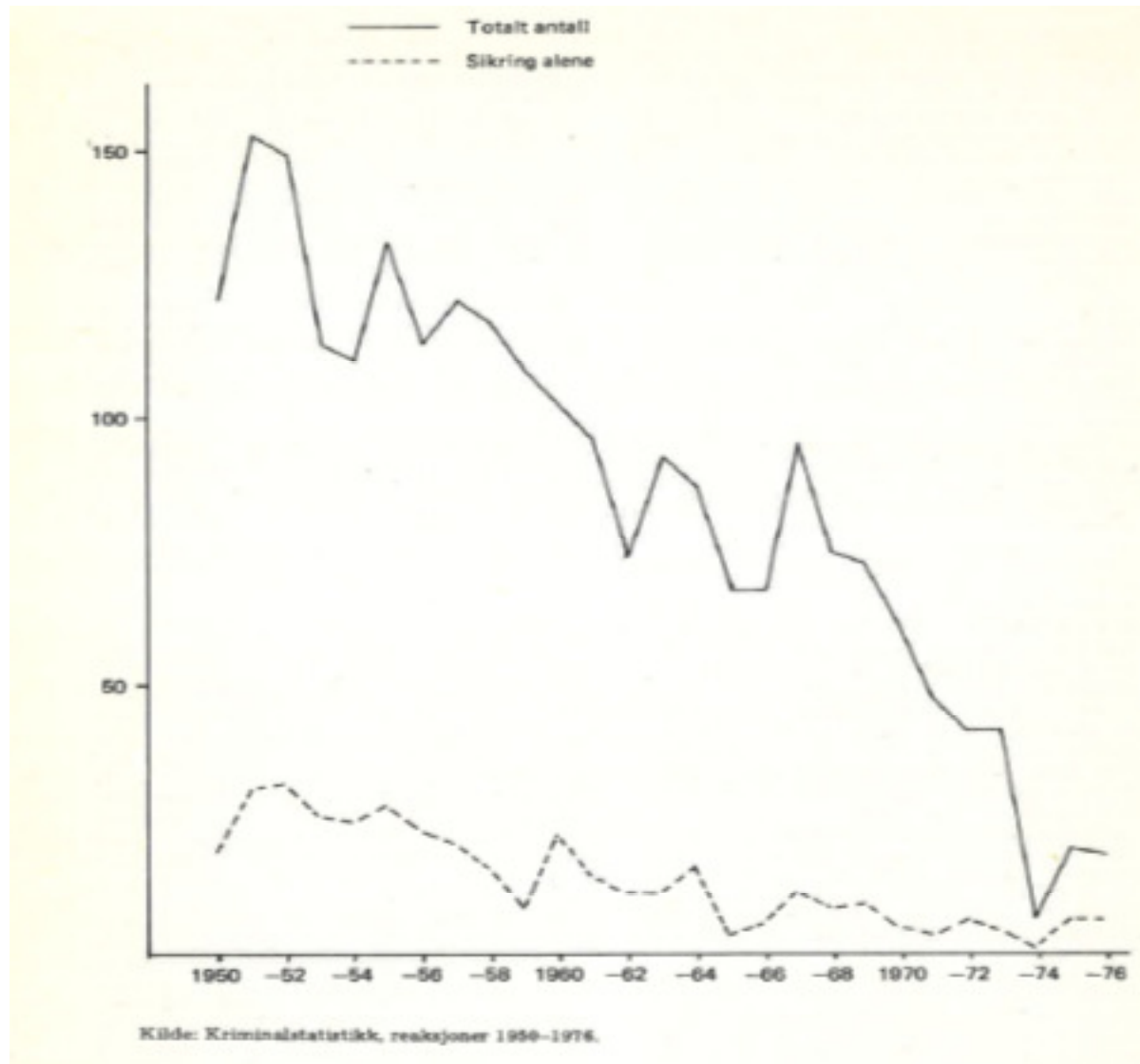
SWE = Internering (RÅ 1975 p.164)

//

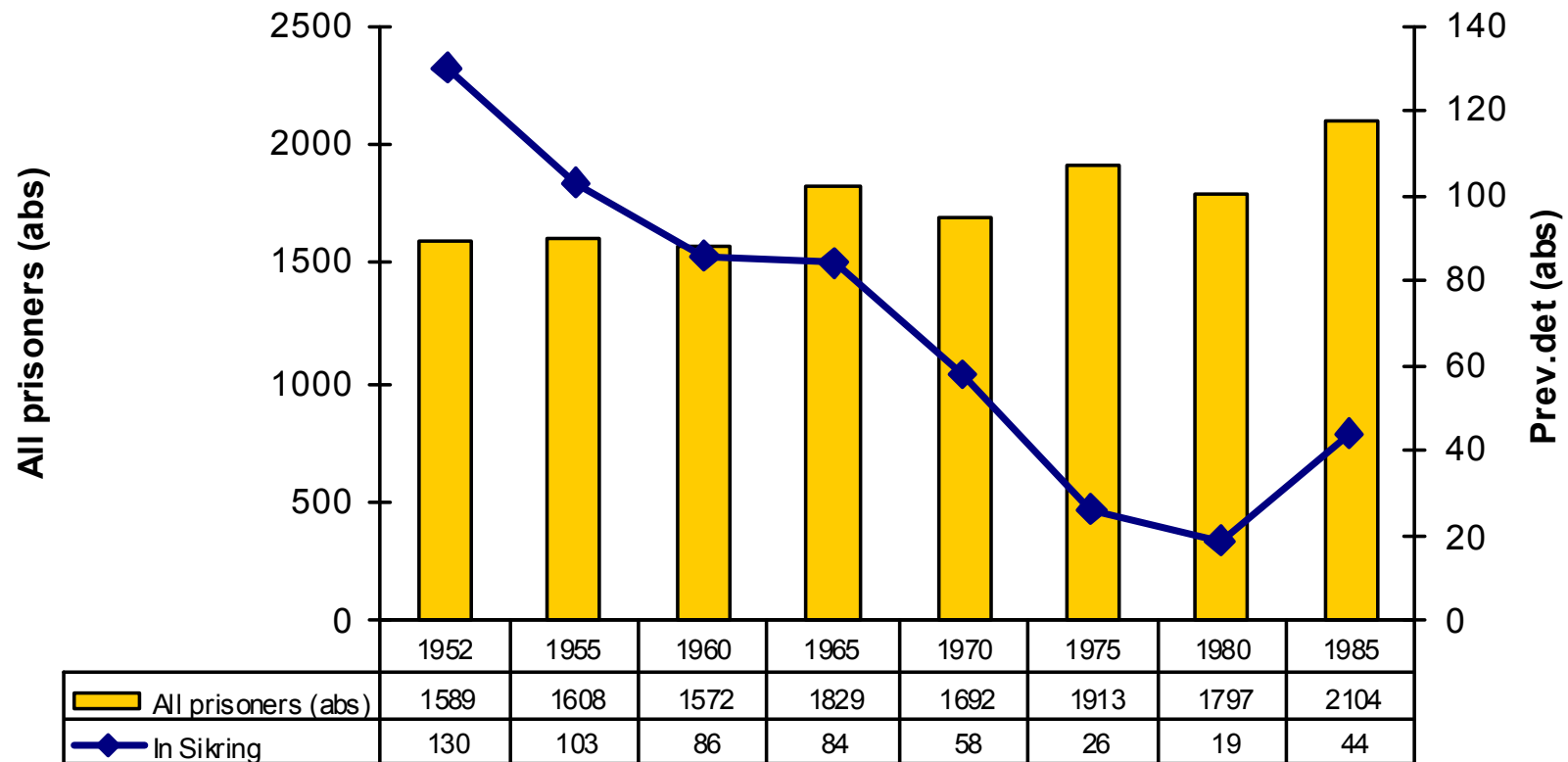
The 1960s social-liberal critics

- Against coercive care, indeterminate sanctions, overuse of prison and inflexible prison regimes
- Restricting preventive detention
 - Finland in 1971: heavy restrictions
 - Denmark 1973: heavy restrictions
 - Sweden in 1981: abolishment
 - Norway: abolishment of life sentence 1981
- More relaxed prison regimes
 - prison furloughs, open prisons, early release programs
- Scaling down other institutions:
 - mental hospitals, alcohol treatment, youth prison

Court decisions on preventive detention in Norway 1950-1976



Prisoners in preventive detention in Norway 1952-1985

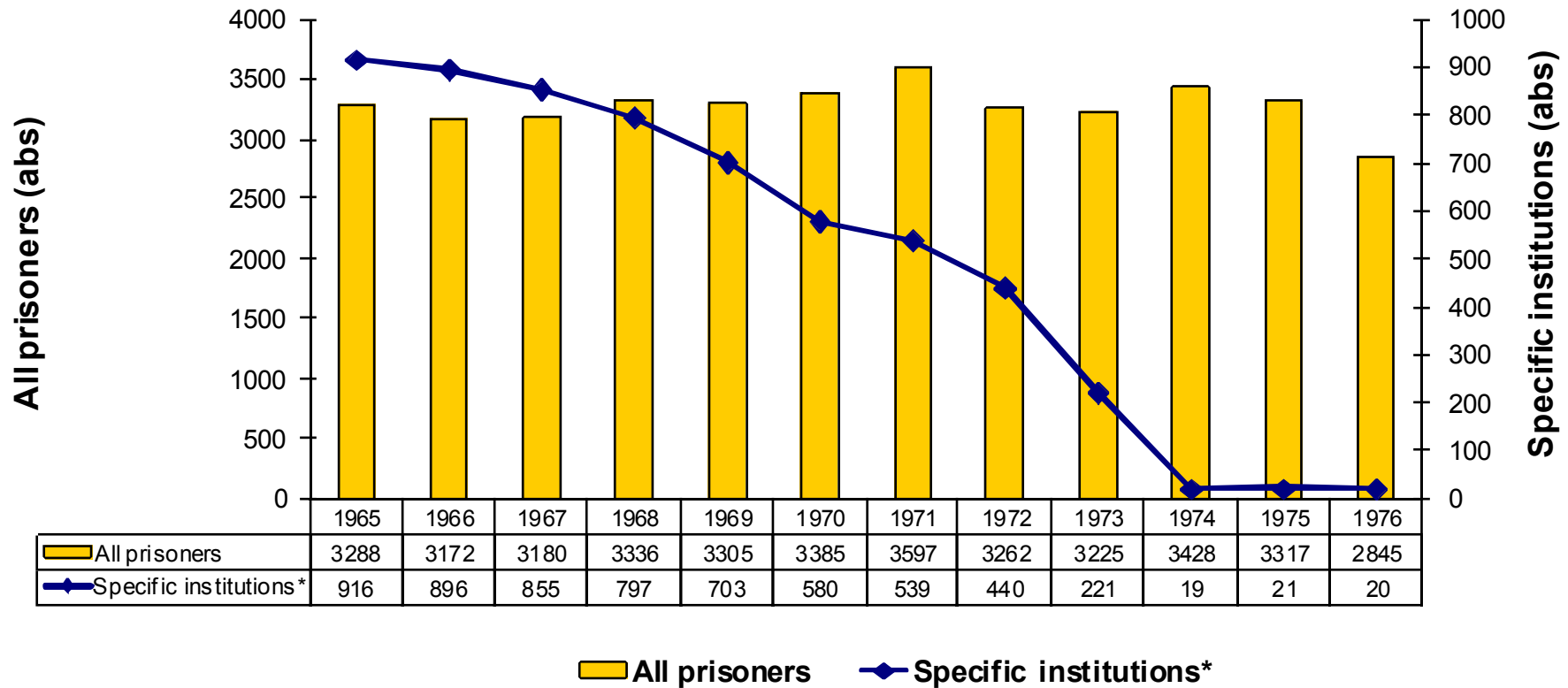


All prisoners (abs)
 In Sikring

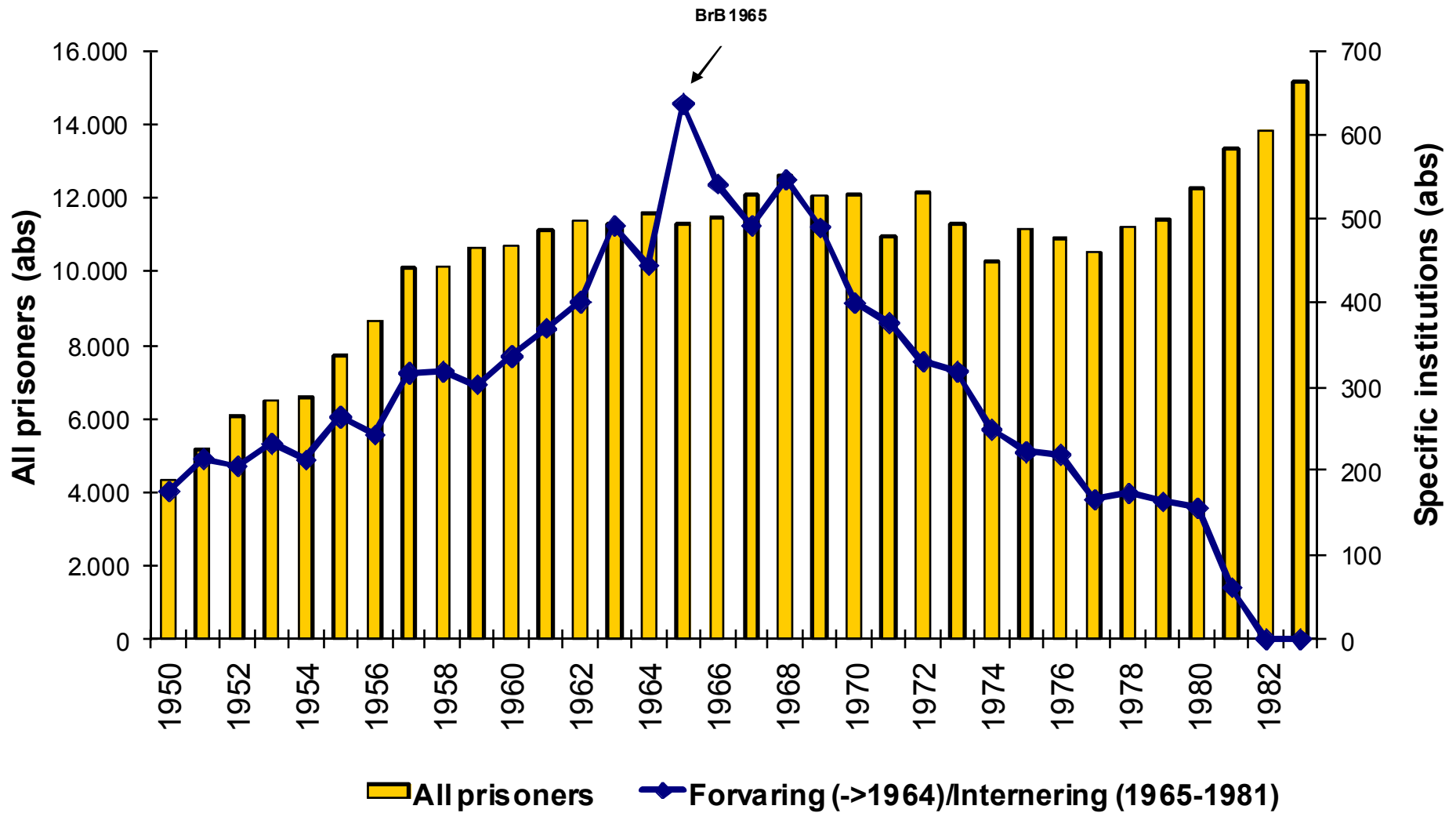
DECLINE OF ALL INDETERMINATE SANCTIONS IN DENMARK 1965-1976

Prisoners and inmates in specific institutions* in Denmark 1965-1976

*) Youth prison, specific prison, workhouse, Forvaring, sikring, alcohol treatment

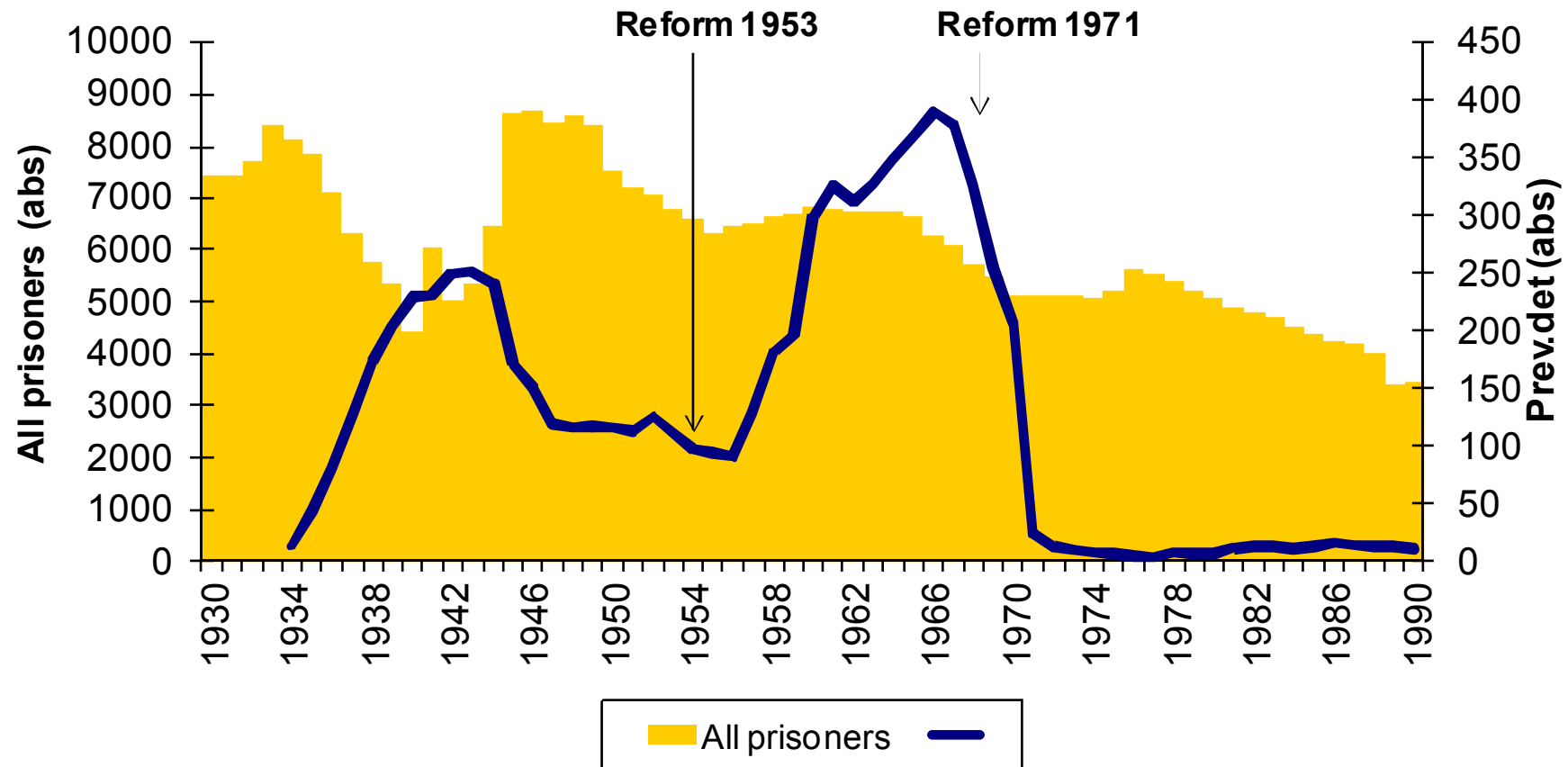


Rise and fall of preventive detention in Sweden 1950-1982



Rise and fall of preventive detention in Finland 1932-1990

Prisoners and recidivist in preventive detention 1930–1990 (absolute figures)



III Reforms 1990/2000s

The return of indeterminate sanctions?

- Norway 1997/2002 reform of Forvaring (->1973 proposal)
 - Non-responsible: compulsory care-orders
 - Responsible + dim.responsible: Forvaring
 - Initial minimum and maximum (15/21 y)
 - Max extended by 5 years by the court
 - About 14 orders/year
- Denmark 1997/2002
 - Lowering the threshold of "Forvaring" in sexual offenses
 - Forvaring = Indeterminate sanction for both responsible and non-responsible
 - Time-limits to care orders with less serious offenses
 - Note: several type of compulsory care orders

Reforms in Finland & Sweden

- Finland 2006
 - Abolishment of preventive detention
 - Replaced by "serving the sentence" in full
 - Symbolic, but important reform in principle
 - Since 1972 no-one had served longer than nominal sentence
 - Reform to come (2015)
 - 2 years compulsory supervision for prisoners serving their sentence in full
- Sweden
 - No legislative changes, but several proposals
 - Note: The requirement of responsibility abolished in 1962, all offenders may be sentenced to sanctions (including care-orders), but prison is forbidden for mentally ill

Finland:

High risk violent recidivists serving the full sentence

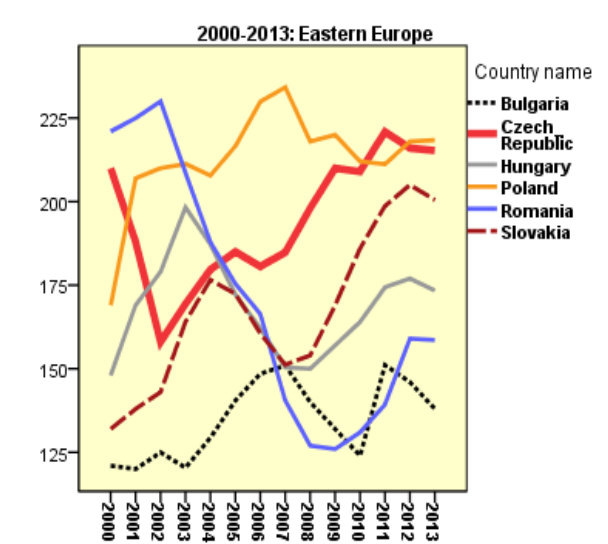
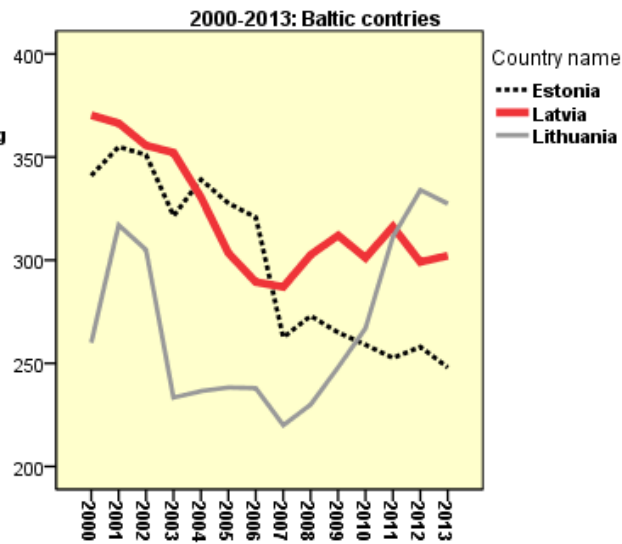
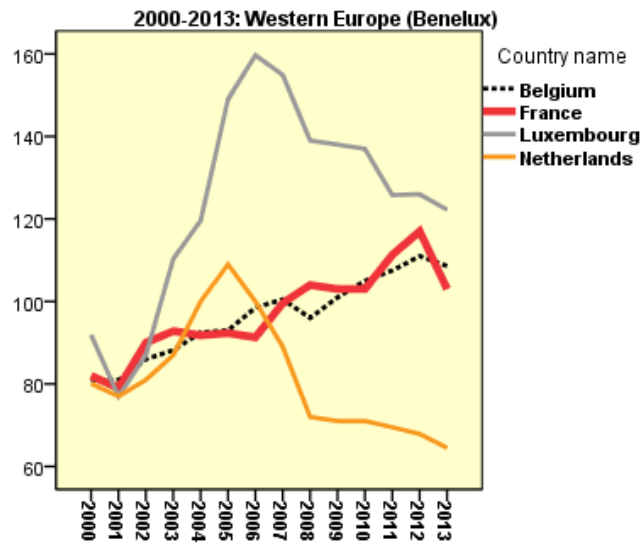
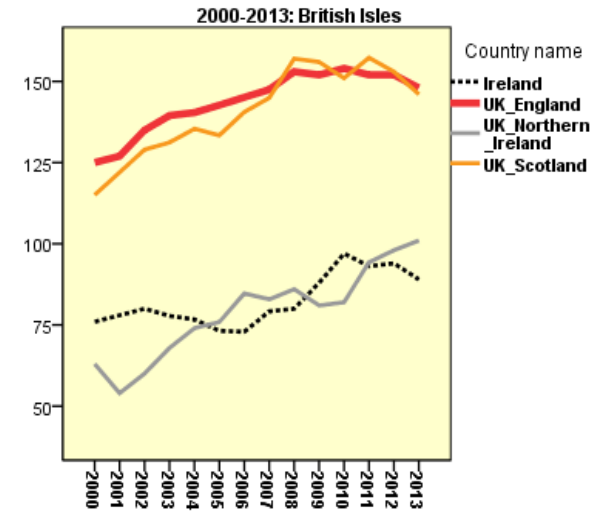
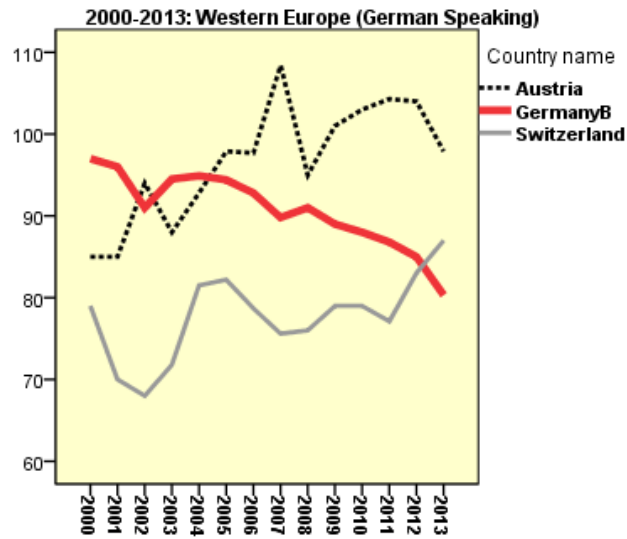
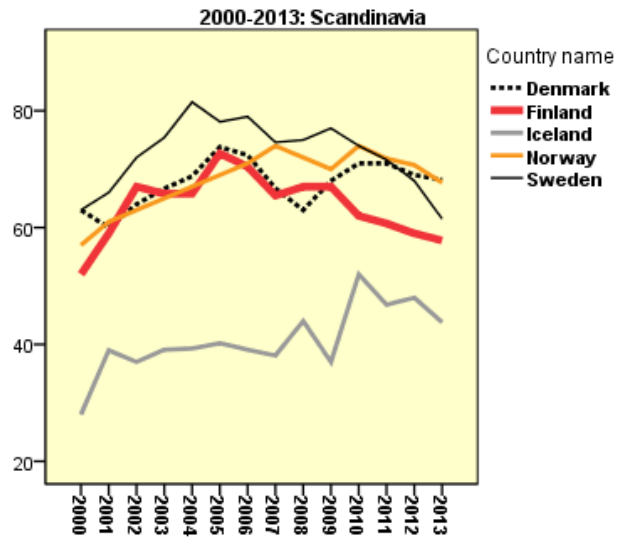
- Small number of repeat violent offenders
 - now serving around 35
- Decision process
 - 1st decision by the district court
 - 2nd decision by the court of appeal
 - not to be released on regular parole
 - specific risk assessment (takes 3-4 weeks)
 - In all cases release on parole takes place latest 3 months before the end of the prison term
- Enforcement: Normal rules
 - Updated sentence plan, risk&need assessment, program work, prison leaves, release preparations
- Problem:
 - no (or very short) supervision after release -> reform plan 2015

IV

IMPRISONMENT RATES 2000->

- Overall incarceration rates in the Baltic region
 - Generally stable or declining incarceration rates in the Nordic countries, Germany and Baltic countries
 - with the exception of Lithuania

Imprisonment rates 2000-2013



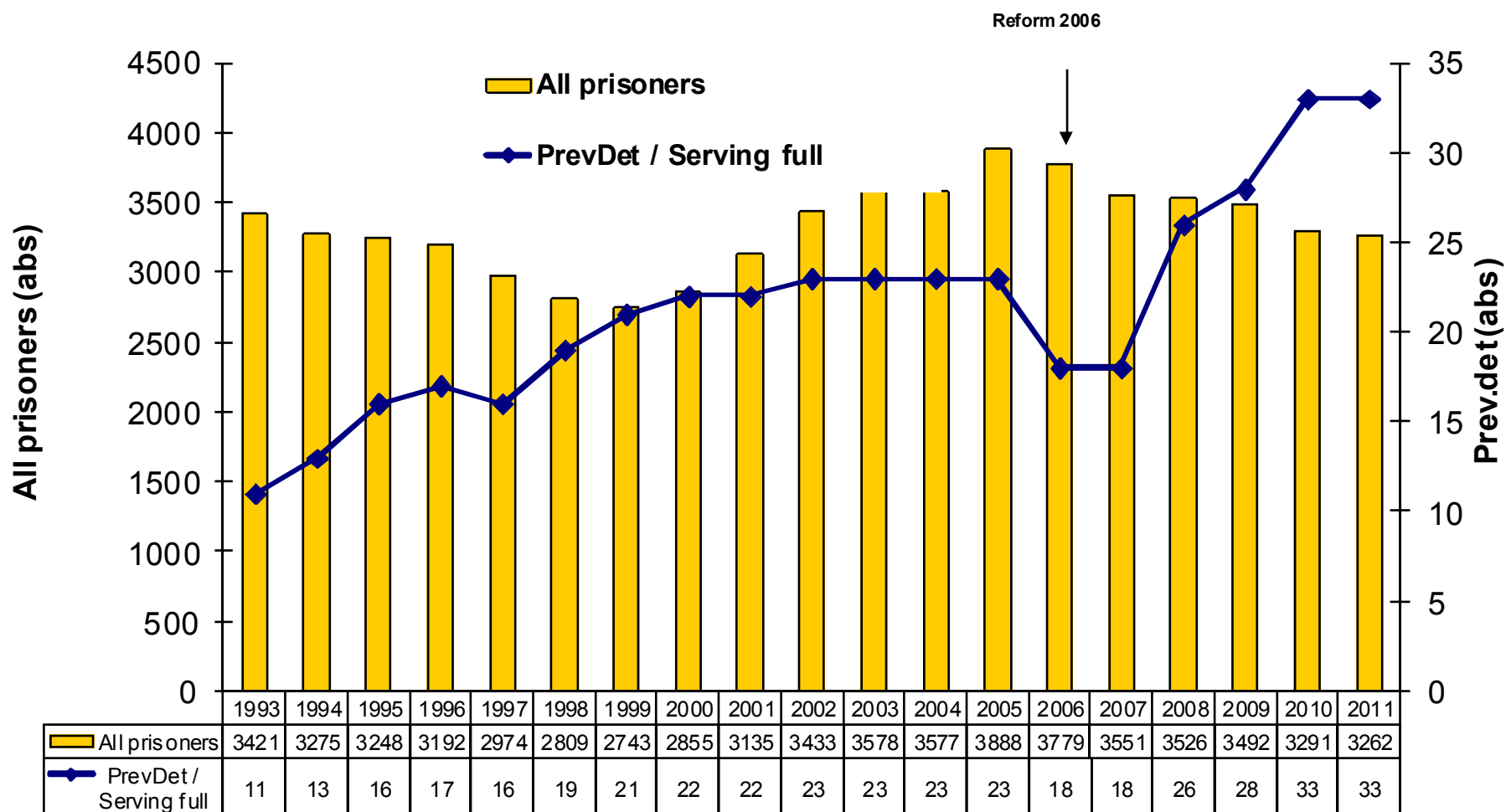
V.

The use of preventive detention 1990-2012

- Stable (Norway) of slightly increased (Denmark, Finland) use of preventive detention

Preventive detention in Finland 1993-2011

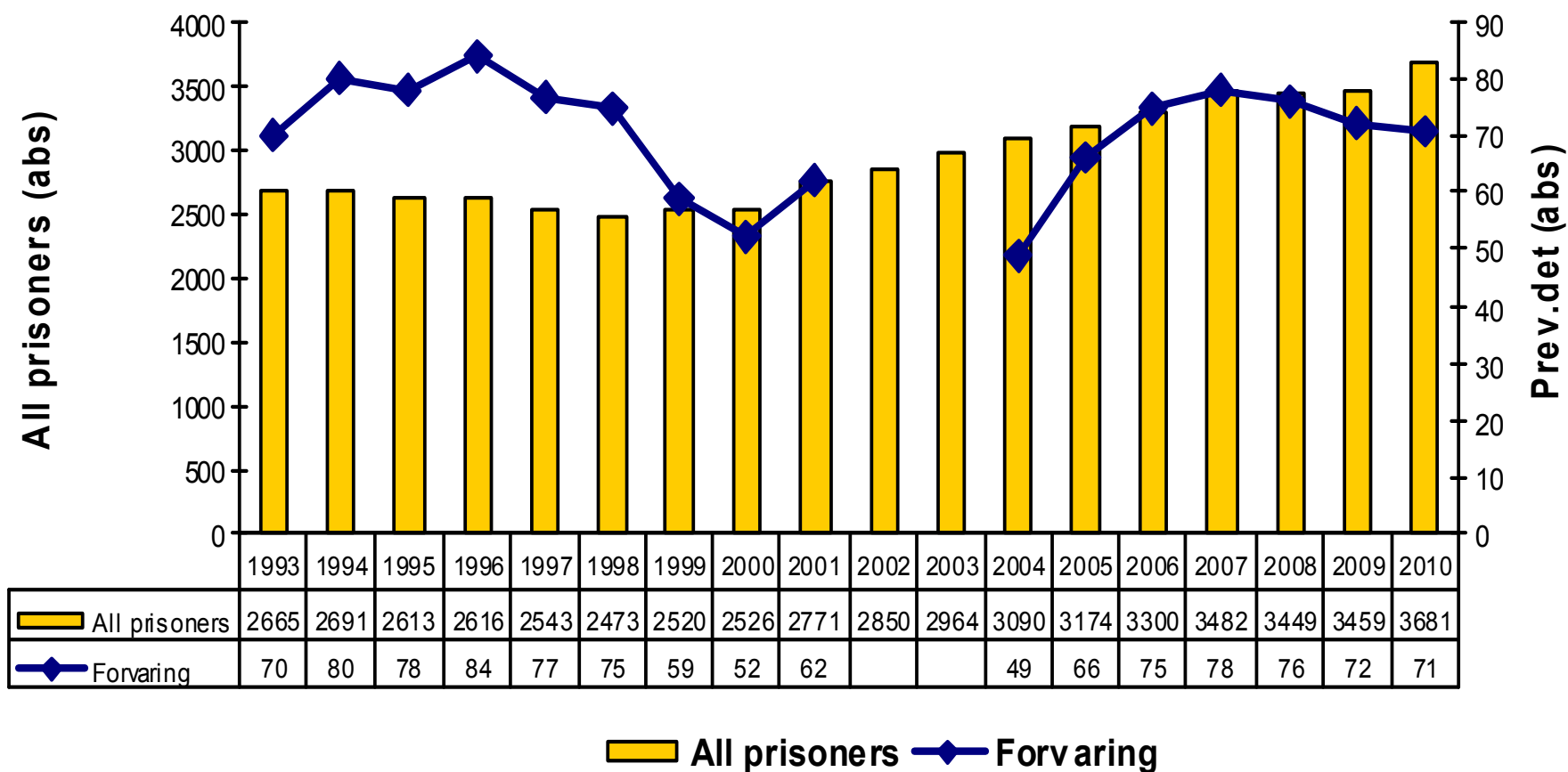
Prisoners 1993-2011 and recidivist in preventive detention 1993–2006 and prisoners serving their sentence in full 2007-2011 (absolute figures)



Preventive detention in Norway 1993-2010

Figure . Prisoners in Sikring/Forvaring in Norway 1993-2010

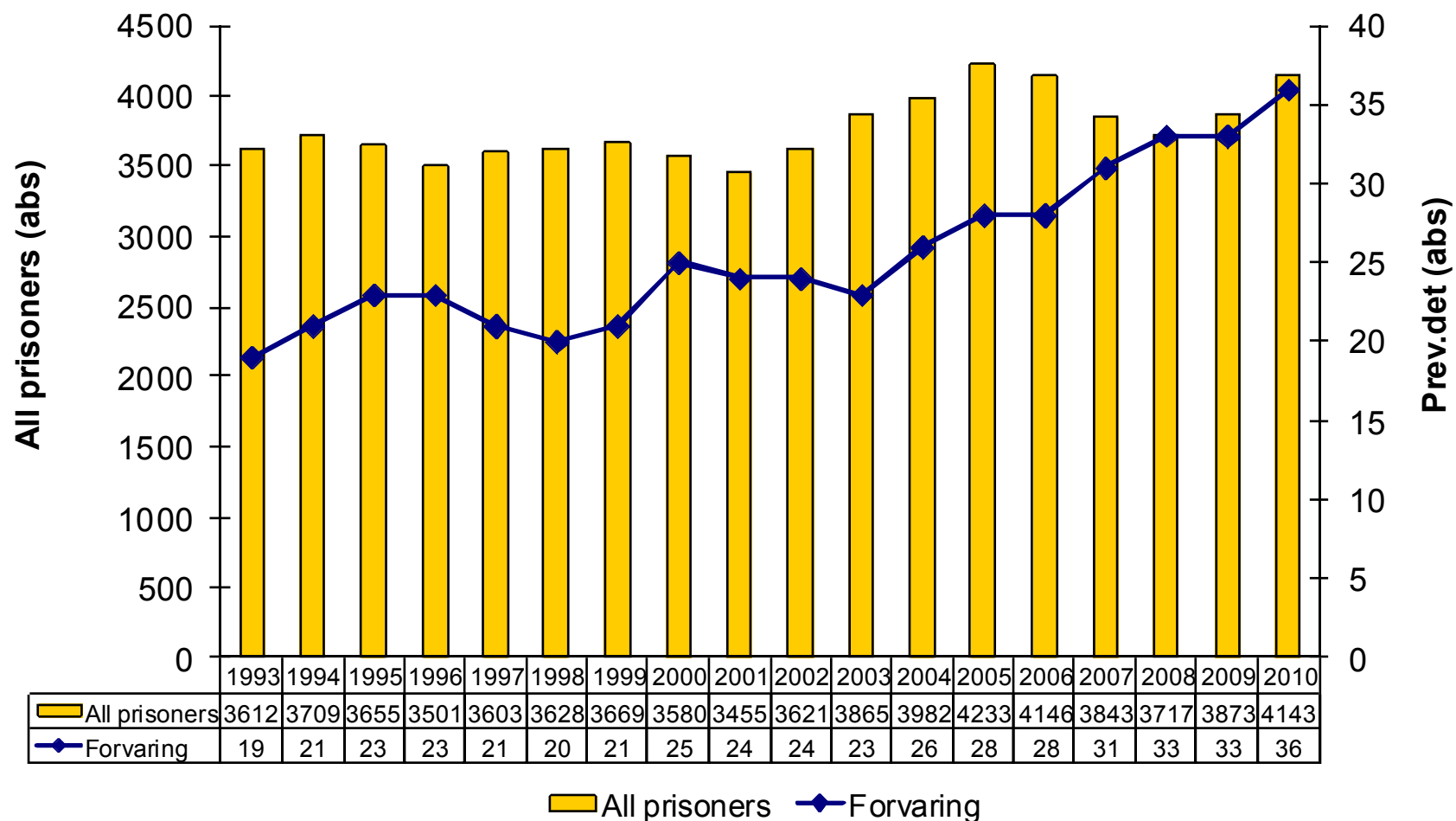
Sources: Danielsson, Nordisk statistik 2001 & Hildebrandt 2012



Preventive detention in Denmark 1993-2010

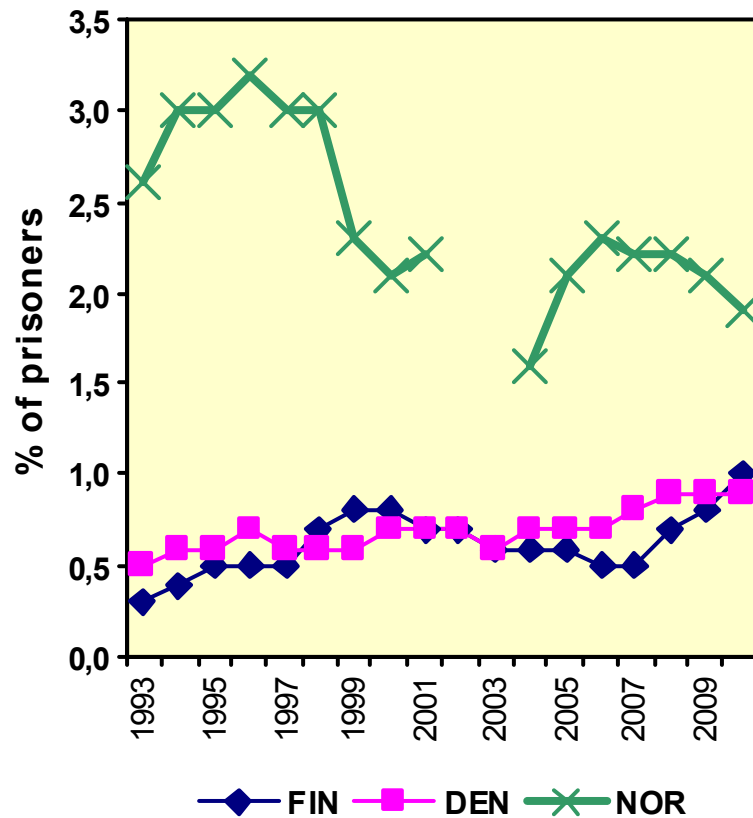
Figure . Prisoners in Forvaring in Denmark 1993-2010

Sources: Danielsson, Nordisk statistik 2001 & Hildebrandt 2012

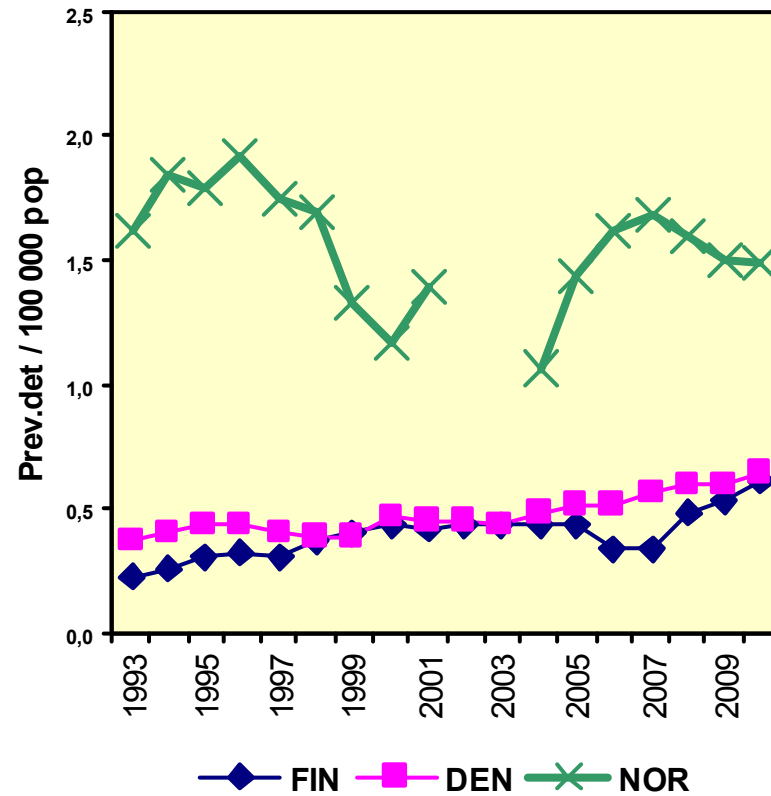


Preventive detention in three Nordic countries 1993-2010

As % of all prisoners



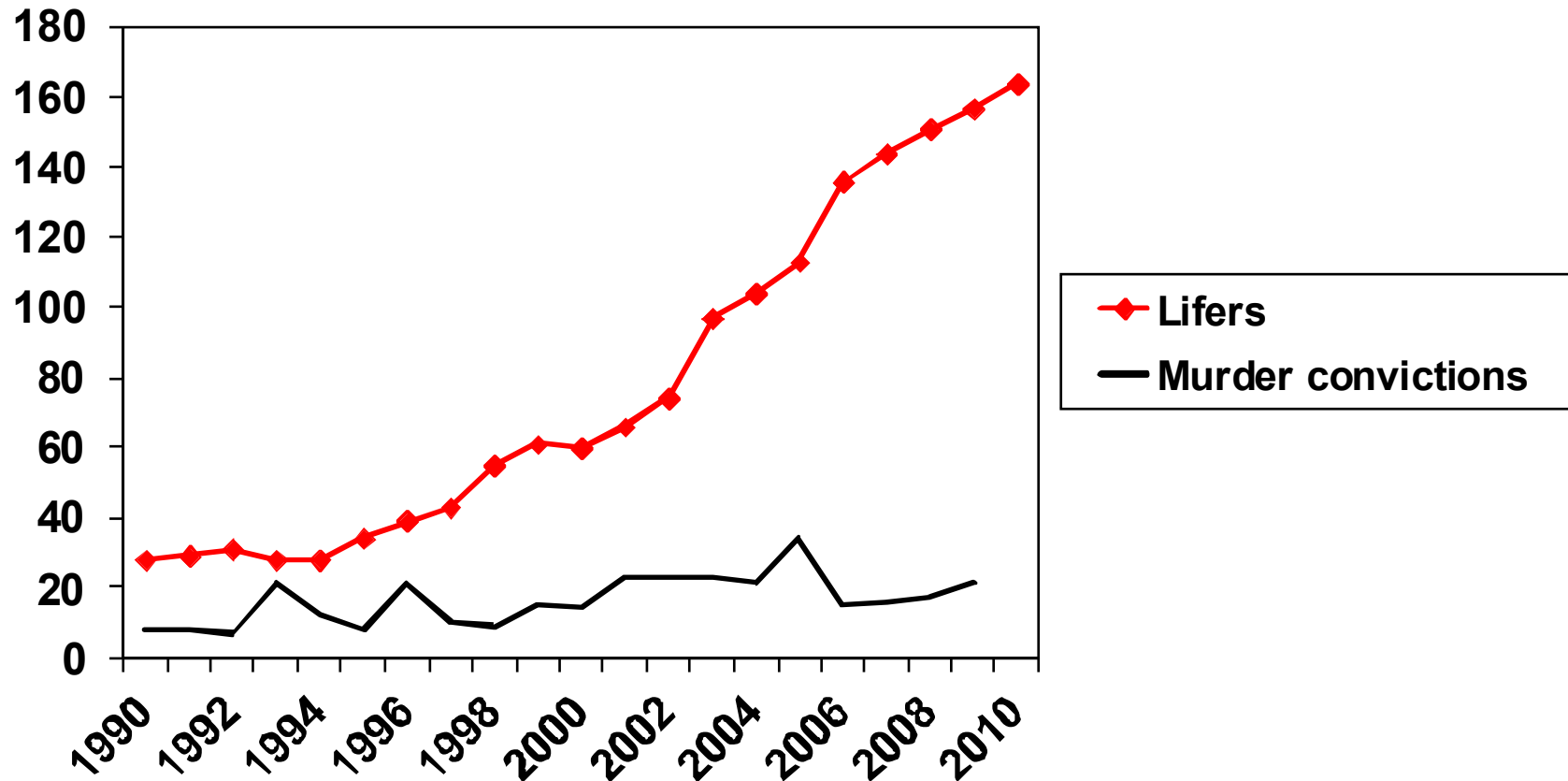
Per 100 000 pop



Other related sanctions and measures to be taken in account for high risk/serious offenders

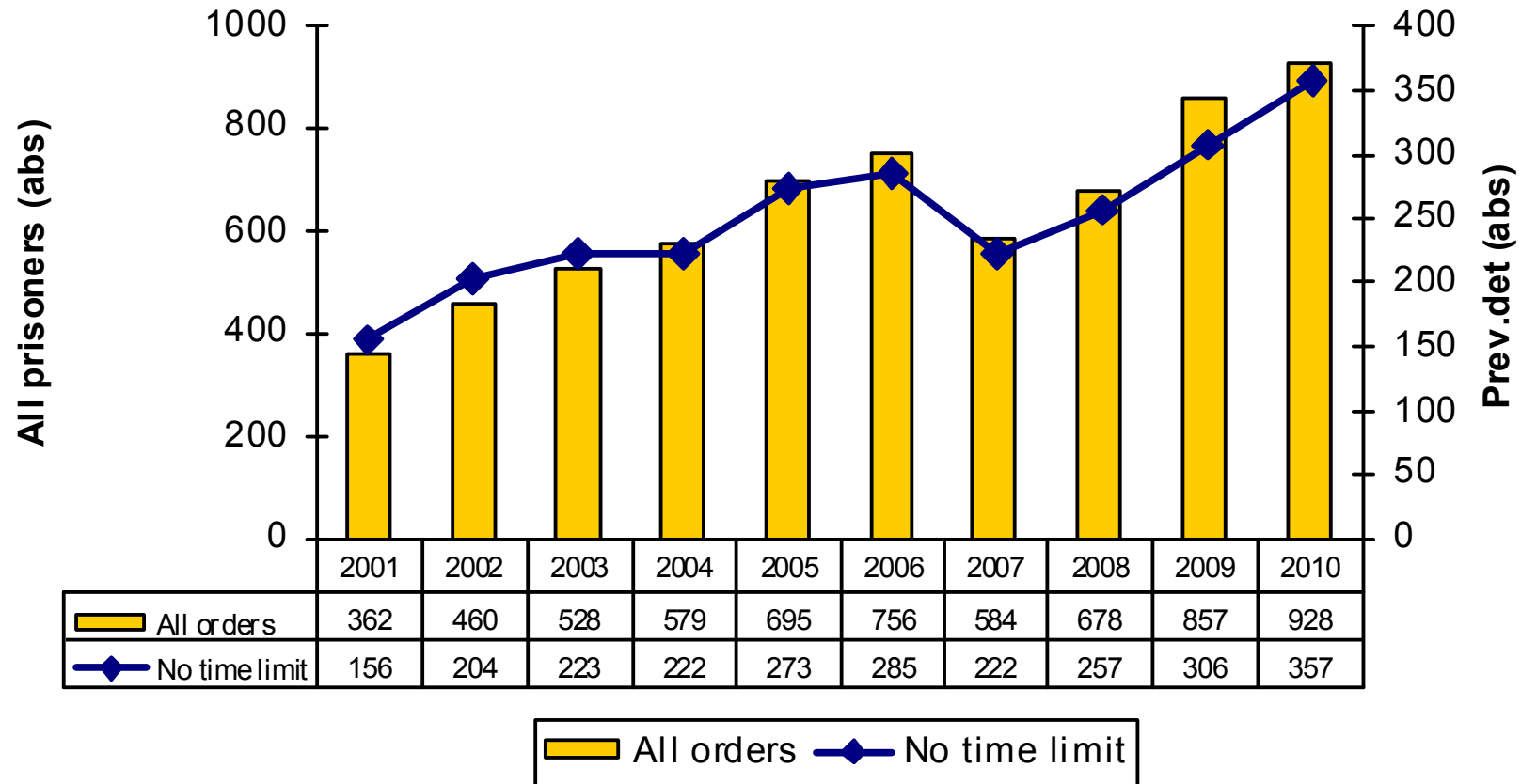
- Increase in the use of life sentences in Finland and Sweden 1990-2010
- Increase in in the number of Forensic patients in Denmark 1990-2010

Prisoners serving life sentence and murder-convictions, FIN 1990-2010



Psychiatric care orders in Denmark 2001-2010

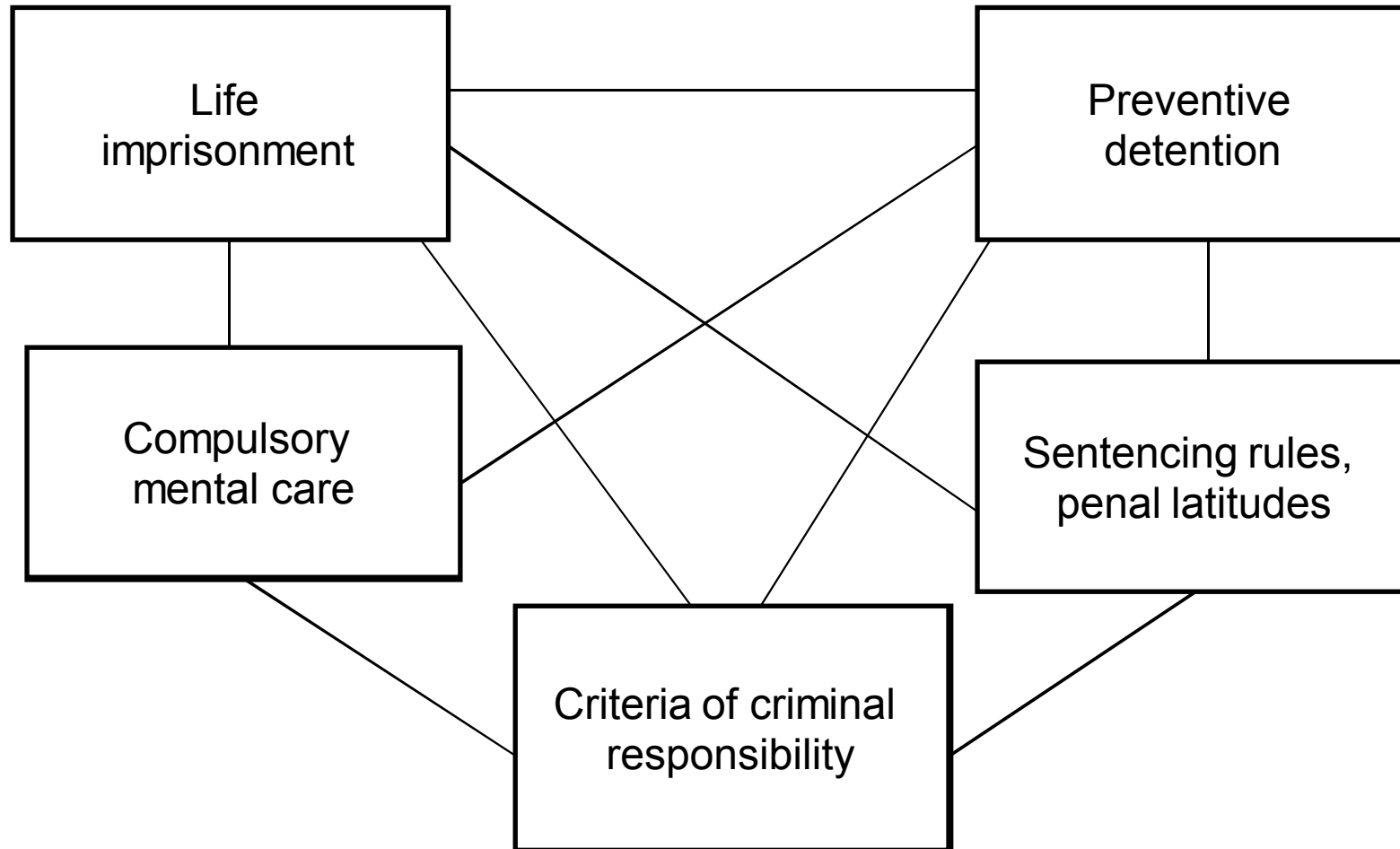
Offenders sentenced to institutional psychiatric care orders in 2011 (Nye Foranstaltningsdomme 2011).



VI. Systemic comparisons

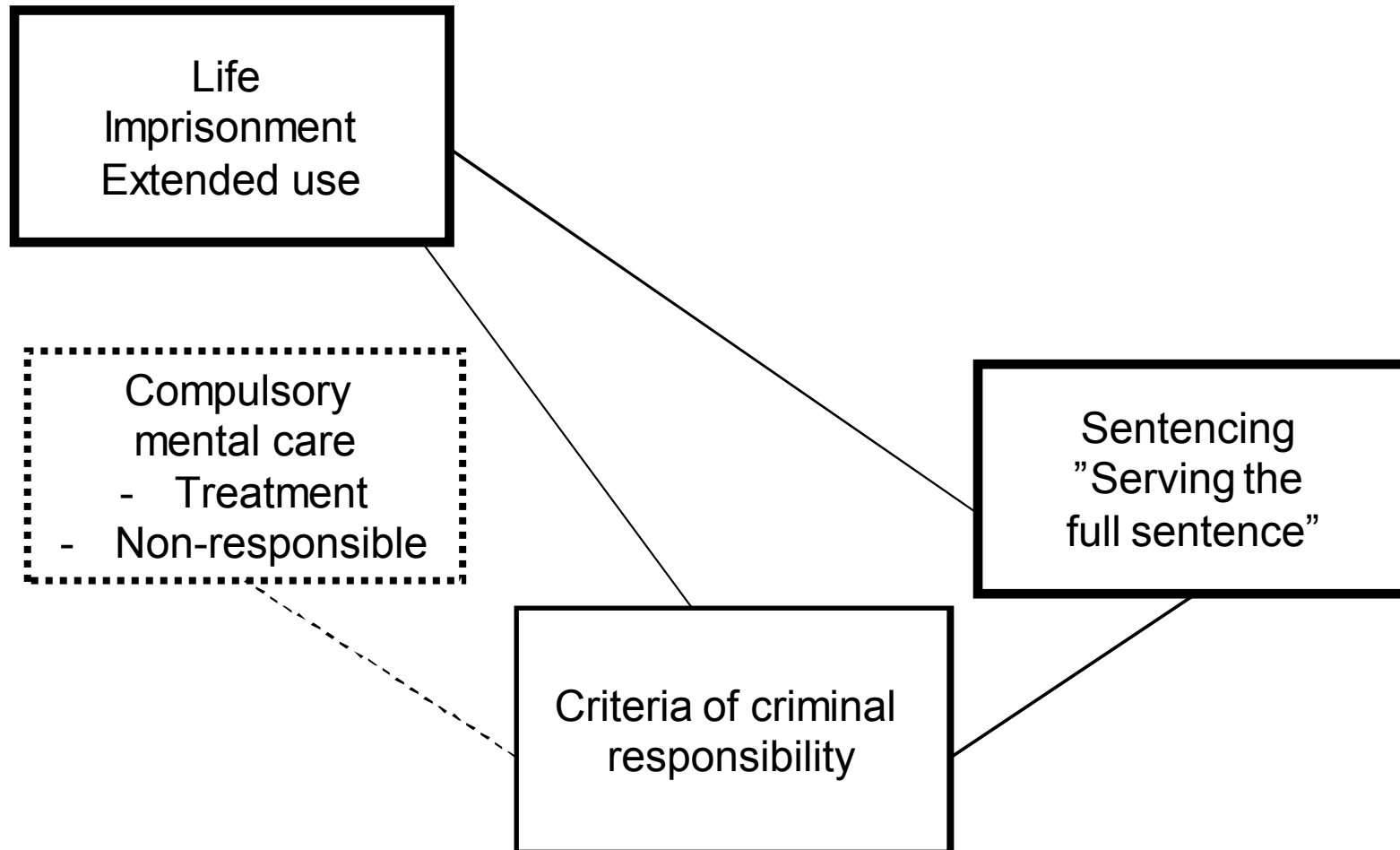
Interactions and internal relations

Social protection, risk management and the interacting legislative arrangements



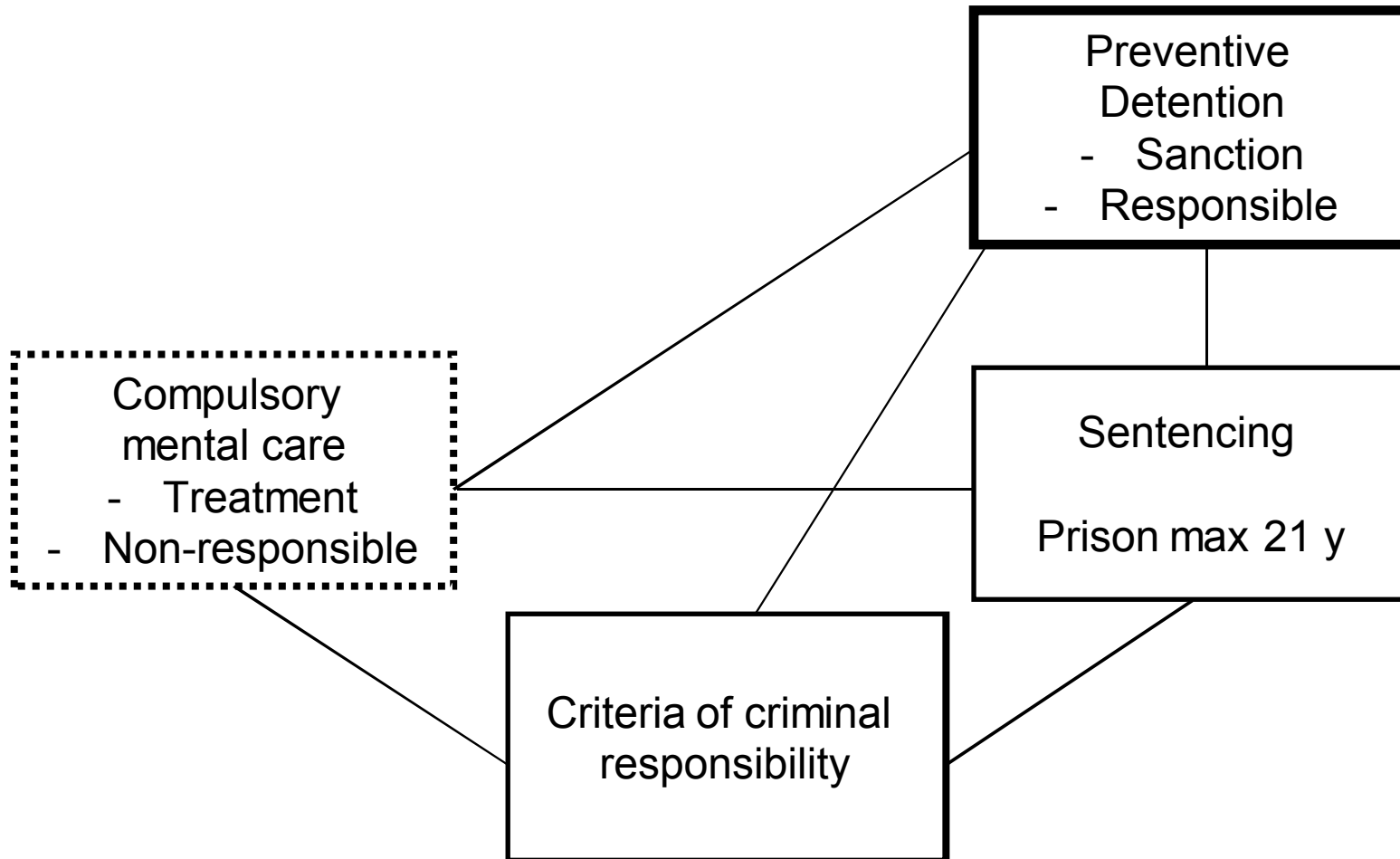
FINLAND

No preventive detention, care separated from CJS, serving the sentence in “full”, life imprisonment



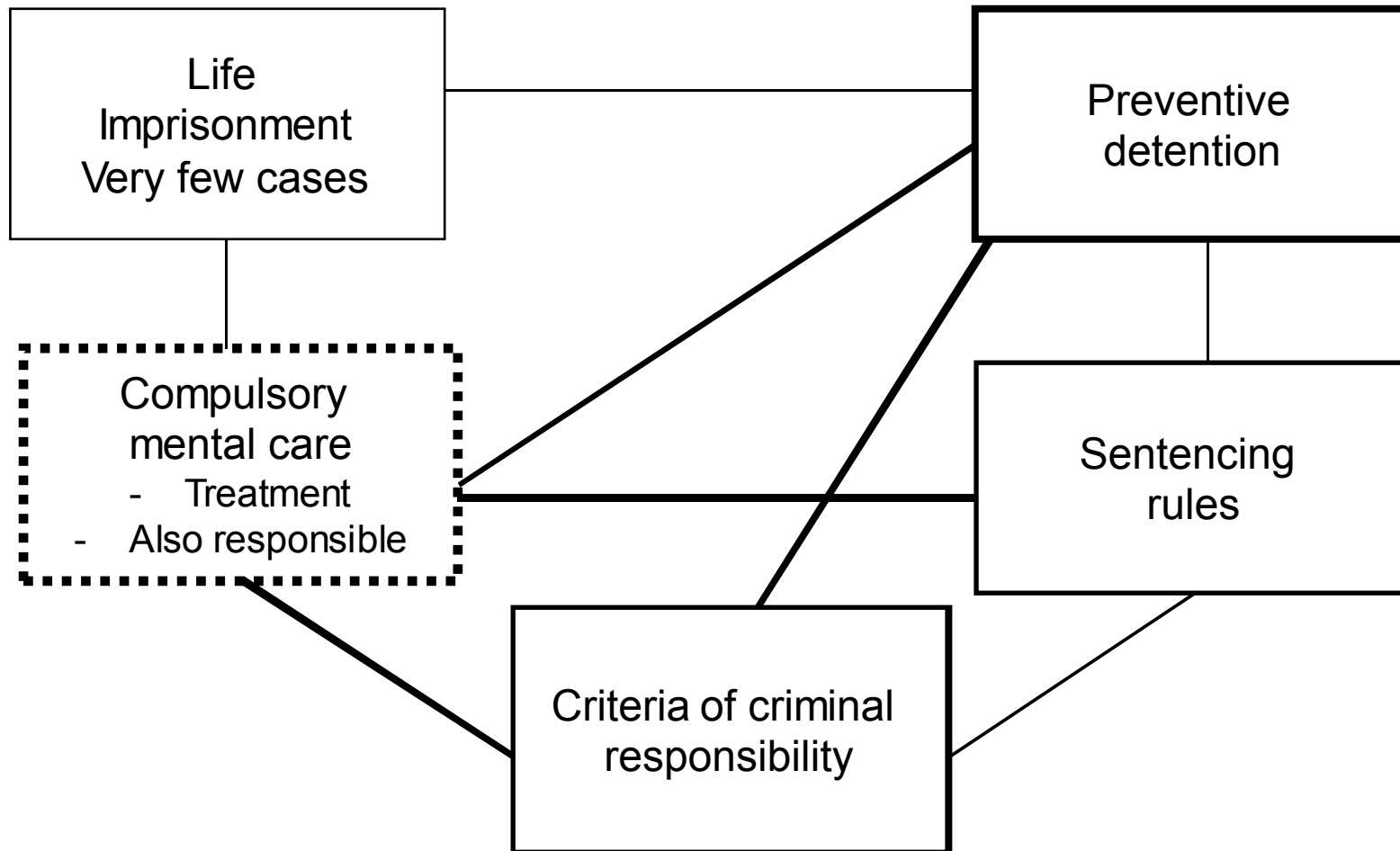
NORWAY

No life imprisonment, extended maximum prison term,
preventive detention, care linked with CJS



DENMARK

Rarely used life imp, preventive detention and care orders
mixed and integrated in the CJS



SWEDEN

No concept of responsibility, no preventive detention, specific
Compulsory care-orders, extended maximums and life
imprisonment

