



The Acquittal – an Unknown of the Criminal Justice System?

*16th Annual Conference of the European Society of Criminology
22nd September 2016, Münster*

*Jörg Kinzig
Peter Kurlemann*



Overview

I. Introduction

II. Study design

III. First results

1. Statistics of prosecution
2. Analysis of court-files

IV. Summary and future prospects



The Project

- Funding period (by the *German Research Foundation [DFG]*):
1st October 2014 – 30th September 2017
- Research - team:
 - Prof. Dr. Jörg Kinzig (Management)
 - Dipl. Jur. Maximilian Haffner
 - Bernadette Schaffer, M.A.
 - Peter Kurlemann, B.Sc.
 - Dr. Wolfgang Stelly
 - Dr. Jürgen Thomas
 - Thaya Vester, M.A.



The German Code of Criminal Procedure

Section 261 - [Free Evaluation of Evidence]

The court shall decide on the result of the evidence taken according to its free conviction gained from the hearing as a whole.

Source: German Code of Criminal Procedure



The German Code of Criminal Procedure

Section 261 - [Free Evaluation of Evidence]

The court shall decide on the result of the evidence taken according to its free conviction gained from the hearing as a whole.

Section 267 - [Reasons for the Judgment]

[...]

(5) If the defendant is acquitted, the reasons for the judgment shall show whether the defendant's guilt was deemed not proven or whether, and on what basis, the act deemed proven was considered not to give rise to criminal liability. If all parties entitled to an appellate remedy waive their right of appellate remedy or if no appellate remedy is sought within the given time limit, it shall only be necessary to state whether it was for factual or legal reasons that the criminal offence with which the defendant is charged was not established. [...]

Source: German Code of Criminal Procedure



Central questions

- Is an acquittal more of an “inevitable frictional loss of justice” (MERBREIER, 1970), or an avoidable error of the criminal justice system?
- How often do acquittals appear?
 - Is there a development in the relative share?
- Who are those affected by it?
 - Does the population of those affected have any special characteristics?



Statistics of prosecution

- A descriptive approach to the acquittal
- Longitudinal design (analysis of statistics from 2000 to 2013) for having a look at the development of the frequencies of acquittals
- Analysis of selected areas of the object of investigation

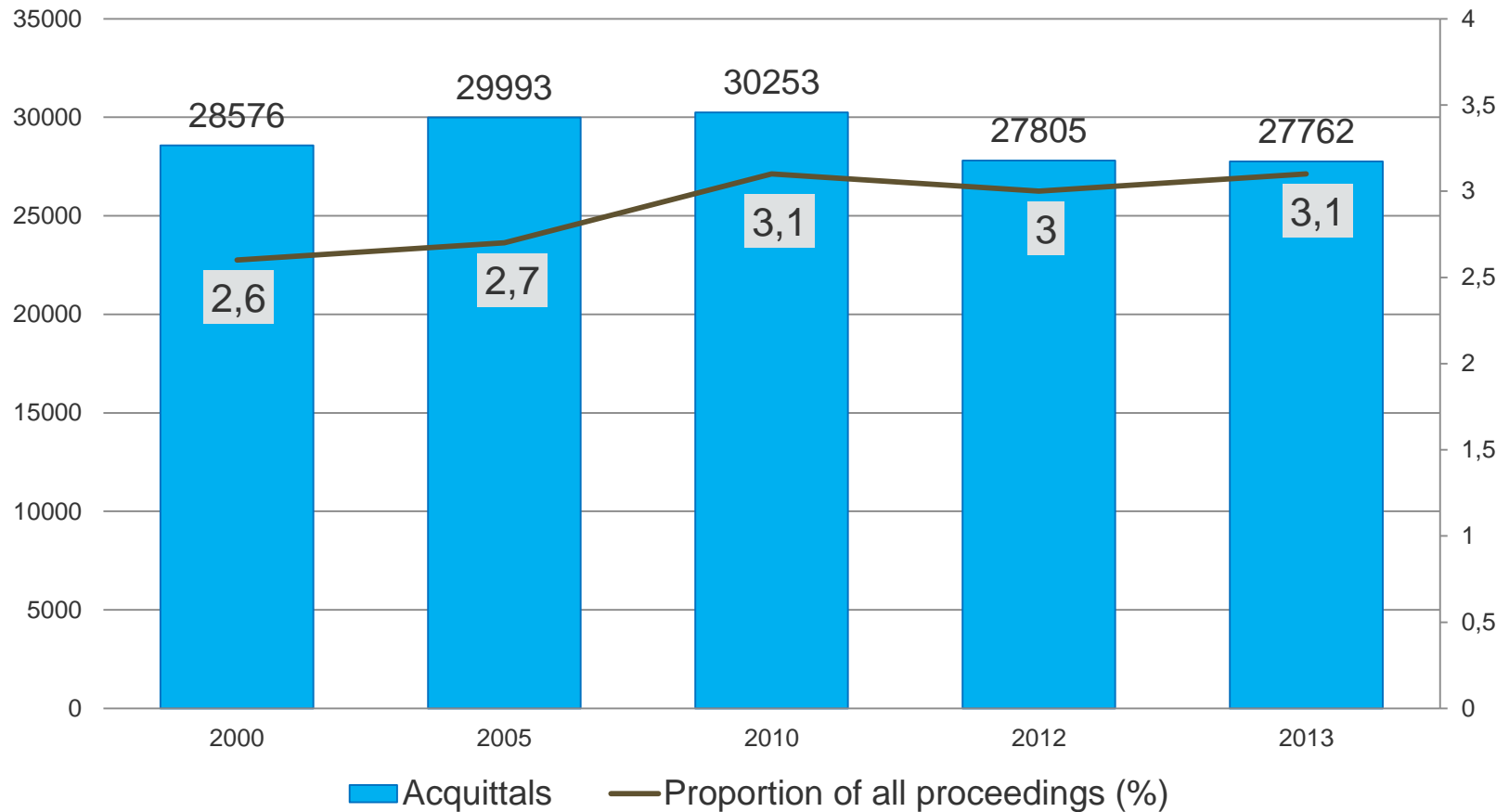


Analysis of court-files

- Cross-sectional design (analysis of court-files) including **all those proceedings** in Germany in the years 2012 and 2013 that **ended with an acquittal**, after the accused had been remanded.
- **Present status:**
302 acquitted subjects (265 proceedings) have been analysed.
 - Quantitative analysis (via standardized questionnaire)
 - Qualitative analysis (with a brief summary of the proceeding)
- Objective of the study: The analysis of court files will be concluded at the end of September 2016.



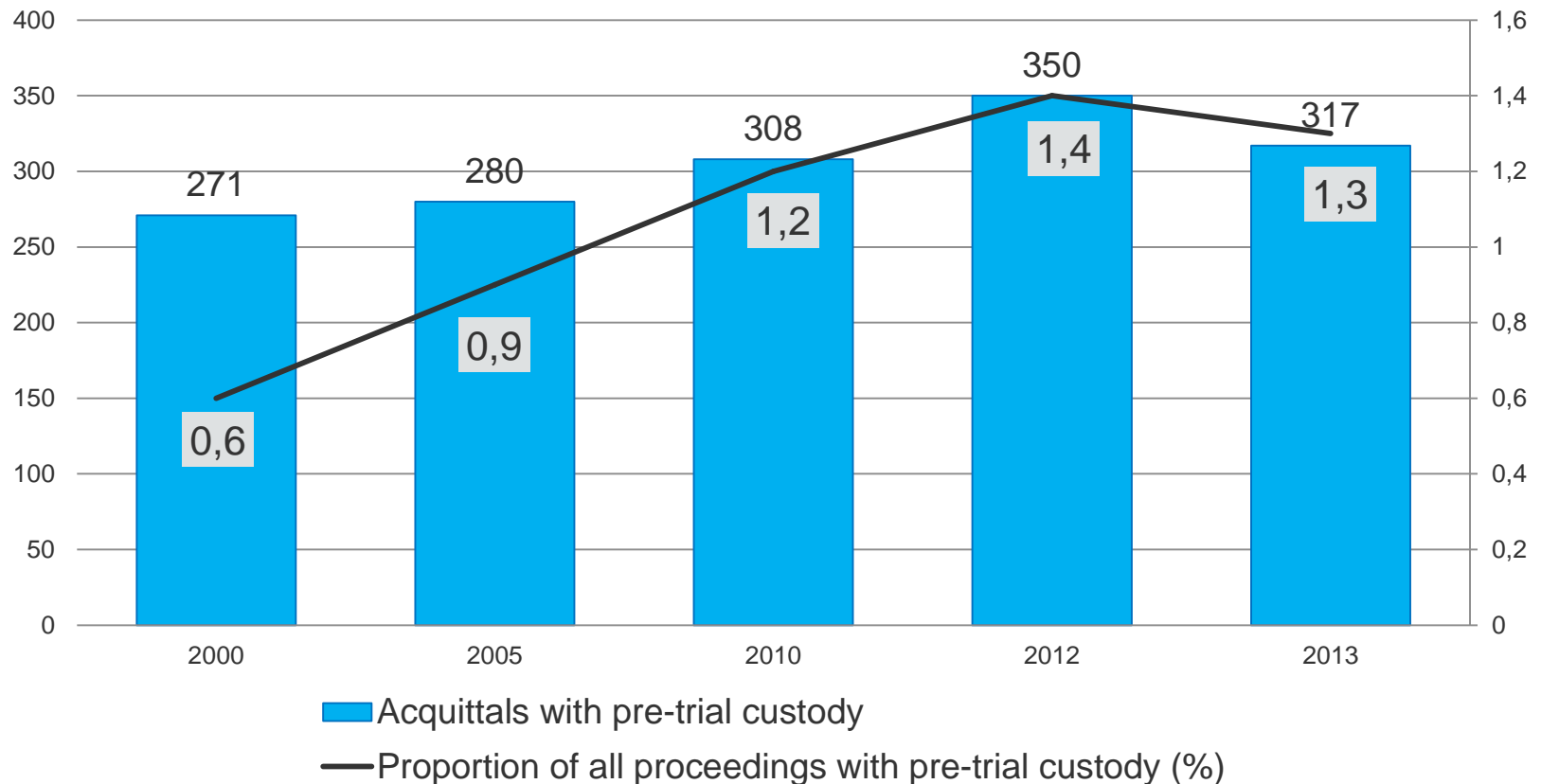
The acquittal – an overview



Source: research-team's calculations of the statistics of prosecution



Acquittals after pre-trial custody – an overview



Source: research-team's calculations of the statistics of prosecution



Demographics – a comparison

	Pre-trial custody: Sentencing	Pre-trial custody: Acquittal
age (median)	37	37
younger than 25	12,4 %	9,7 %
25 – 50 years	74,7 %	74,9 %
older than 50	12,8 %	15,4 %
female	7,8 %	7,6 %
male	92,2 %	92,4 %
German citizen	48,5 %	46,8 %
non-German citizen	51,5 %	53,2 %

Source: research-team's calculations of the statistics of prosecution 2013



Facts of proceedings

- The **average duration** of custody was **121 days**.
(min: 1 day; max: 520 days; SD = 100 days)
- In **79%** of the proceedings the warrant has been **annulled in the main proceedings, or only with the acquittal** by court.
- Previous convictions of the accused persons:
 - **27 % without** any known previous convictions
 - **29 %** have already experienced an **imprisonment**
 - **37 %** are known to have **more than once** been **previously convicted** for a crime the same category as the accused one

Source: analysis of court-files (n = 302)



Facts of proceedings

- In **95% of the proceedings**, the acquittal happened in **first instance**.
 - In **90,6%** the judgment has been justified by **factual reasons**.
 - In **9,4%** the judgment has been justified by **legal reasons**.
- In **79,5% of cases** the defendant's guilt was **deemed not proven**.
- In **3,4%** of cases it was **proven**, that the defendant **wasn't guilty**.
- In **76,5%** of the proceedings, the acquitted **received a compensation** for wrongful imprisonment by the state.

Source: analysis of court-files (n = 302)



Summary

- The acquittal after pre-trial custody is – compared to other kinds of sentencing – a rare phenomenon in Germany. The problematic nature of those proceedings however is an interesting and important field for criminological research.
- The acquittal-rate as well as the rate of acquittals after pre-trial custody have been ascending owing especially to sex crimes, and violent offences.
- The subjects affected by an acquittal after pre-trial custody correspond more to the population of pre-trial detainees than to the standard population.



Future prospects

- The court-file analysis will be concluded.
 - Interviews with experts of the field such as lawyers, prosecutors, and judges will be held in October. Ten interviews in each category (30 in total) are planned.
- Discussion of the research results to compare them to everyday practice of experts.



Thank you for your attention!

Contact:

joerg.kinzig@jura.uni-tuebingen.de

peter.kurlemann@ifk.uni-tuebingen.de

Institute of Criminology

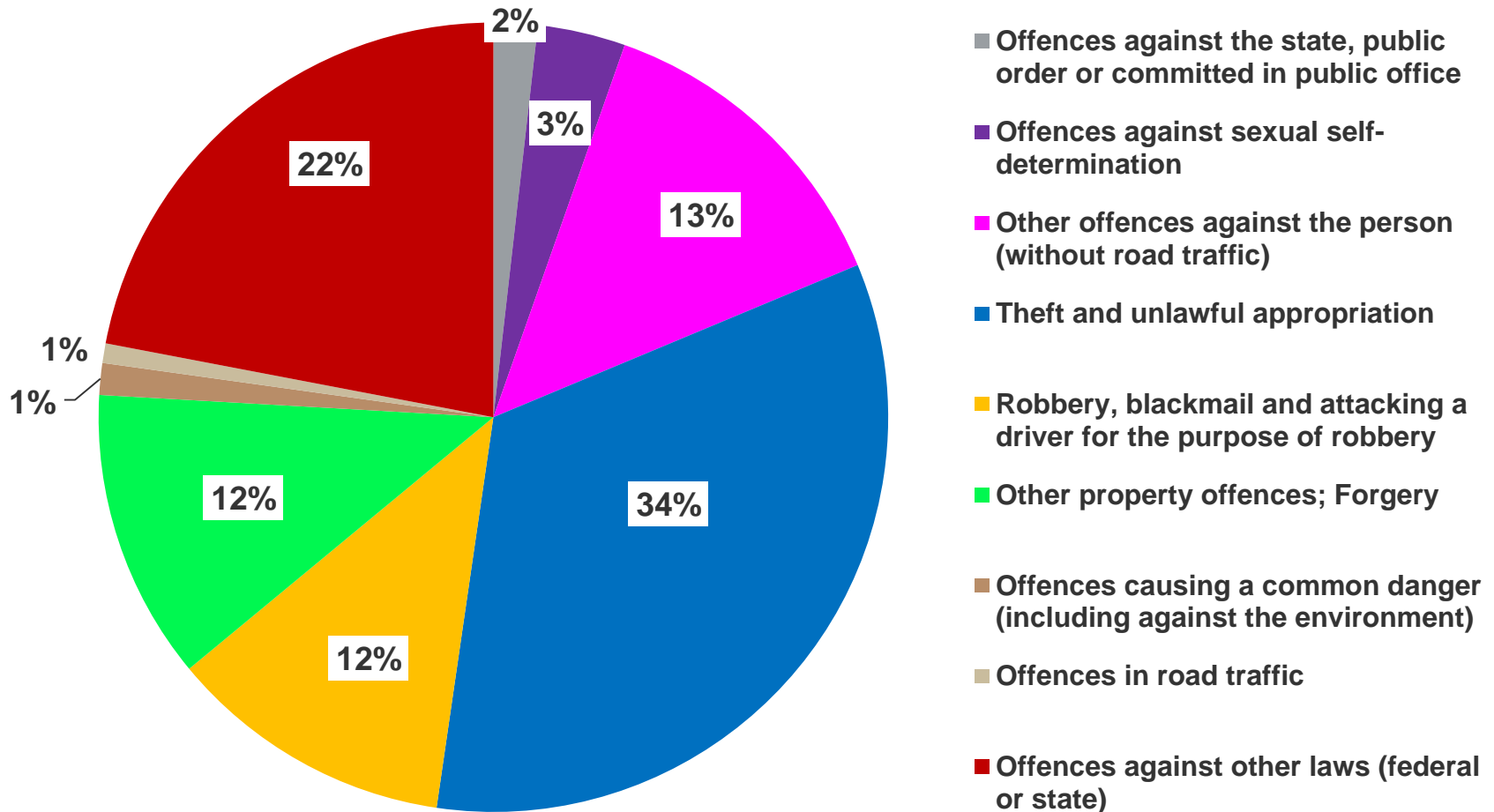
University of Tübingen

Sand 7

D-72076 Tübingen

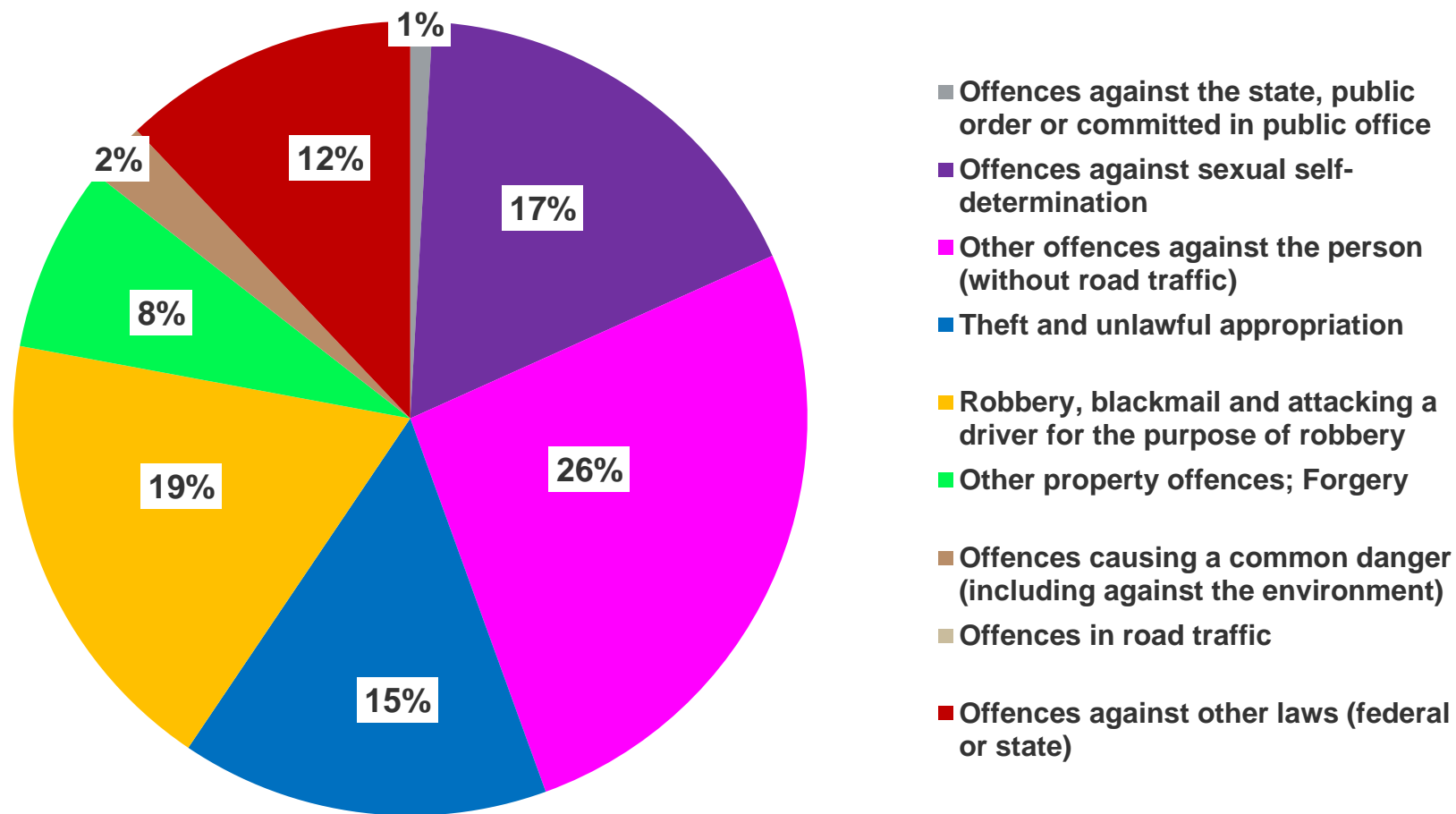


Offences: Pre-trial custody (sentencing)



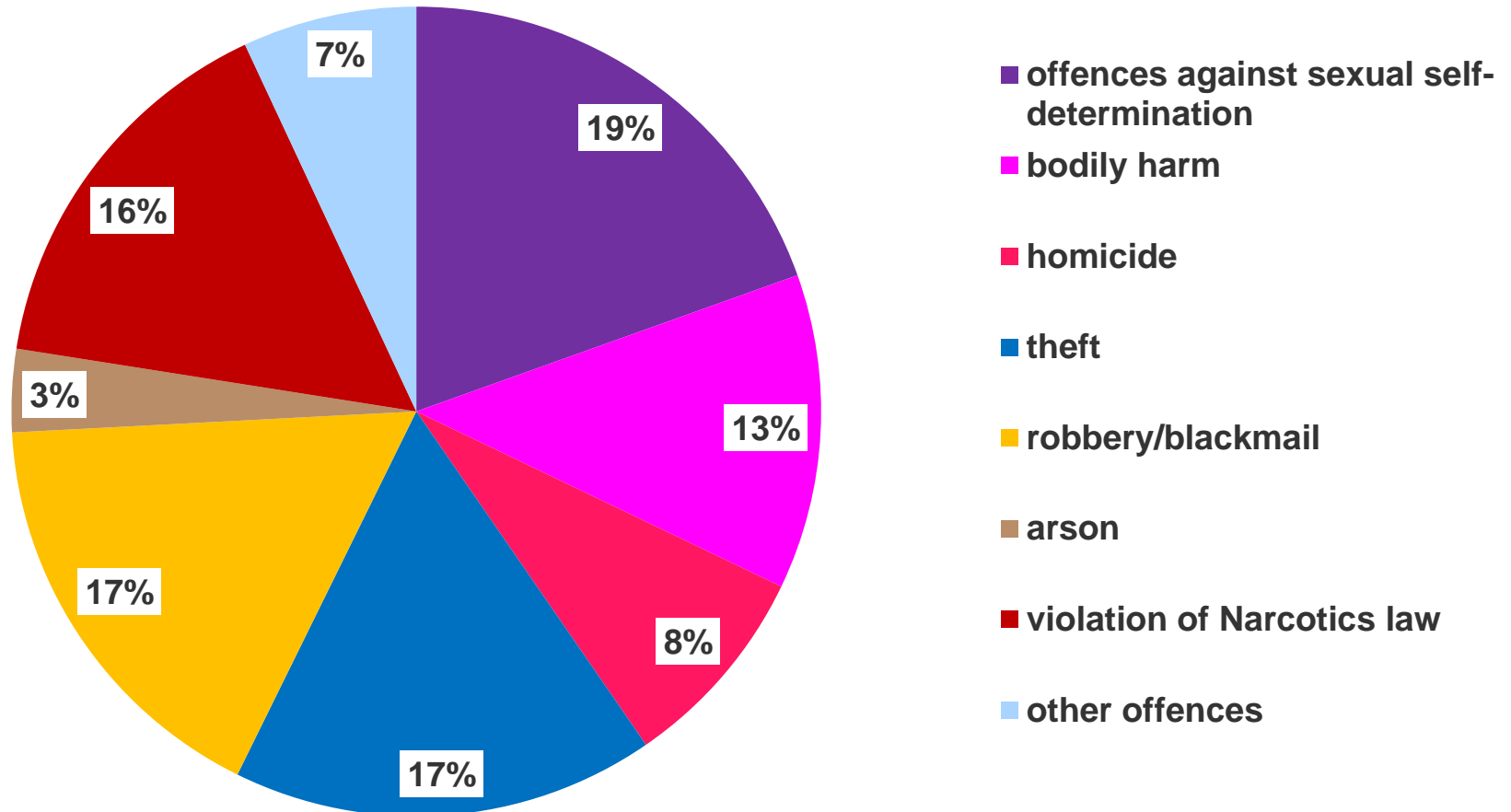


Offences: Pre-trial custody (acquittal)





Analyzed crimes (distribution)



Source: analysis of court-files (n = 302)