Mass Incarceration: The Whole Pie 2019

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Can it really be true that most people in jail are being held before trial? And how much of mass incarceration is a result of the war on drugs? These questions are harder to answer than you might think, because our country’s systems of confinement are so fragmented. The various government agencies involved in the justice system collect a lot of critical data, but it is not designed to help policymakers or the public understand what’s going on. As public support for criminal justice reform continues to build, however, it’s more important than ever that we get the facts straight and understand the big picture.

This report offers some much needed clarity by piecing together this country’s disparate systems of confinement. The American criminal justice system holds almost 2.3 million people in 1,719 state prisons, 109 federal prisons, 1,772 juvenile correctional facilities, 3,163 local jails, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.¹ This report provides a detailed look at where and why people are locked up in the U.S., and dispels some modern myths to focus attention on the real drivers of mass incarceration.
How many people are locked up in the United States?

The U.S. locks up more people per capita than any other nation, at the staggering rate of 698 per 100,000 residents. But to end mass incarceration, we must first consider where and why 2.3 million people are confined nationwide.

76% of people held by jails are not convicted of any crime

If you include the 2.9 million people held in local jails that rent out space to other agencies, 65% are unconvicted. Either way, jail incarceration rates are driven largely by local bail practices.
Despite reforms, drug offenses are still a defining characteristic of the federal system.

Beyond “federal prison,” multiple agencies and thousands of local facilities confine people for the federal government.

U.S. Marshals Service
Detains people:
- Pre-trial for federal offenses
- Serving short-term federal sentences
- For transport to federal prisons and courts

Confines people in:
- Bureau of Prisons-operated detention centers, metropolitan correctional centers, and federal transfer centers
- 15 contracted private prisons
- 1,800 contracted state and local facilities around the country (mostly local jails)

Bureau of Prisons
Incarcerates people convicted of federal offenses in:
- Federal prisons
- Private contracted prisons
- Residential reentry centers (halfway houses)
- Home confinement
- Contracted local facilities (jails)

Immigration and Customs Enforcement (ICE)
Detains people for violations of immigration laws in:
- Private contracted prisons
- Contracted local facilities (jails)
- Federal detention centers

Office of Refugee Resettlement (ORR)
Holds unaccompanied youth seeking asylum in the U.S. in:
- Shelters (including non-licensed “temporary influx shelters”)
- A limited number of foster homes
- Secure juvenile facilities

Slideshow 1. Swipe for more detailed views.
This big-picture view allows us to focus on the most important drivers of mass incarceration and identify important, but often ignored, systems of confinement. The detailed views bring these overlooked systems to light, from immigration detention to civil commitment and youth confinement. In particular, local jails often receive short shrift in larger discussions about criminal justice, but they play a critical role as “incarceration’s front door” and have a far greater impact than the daily population suggests.

While this pie chart provides a comprehensive snapshot of our correctional system, the graphic does not capture the enormous churn in and out of our correctional facilities, nor the far larger universe of people whose lives are affected by the criminal justice system. Every year, over 600,000 people enter prison gates, but people go to jail 10.6 million times each year. Jail churn is particularly high because most people in jails have not been convicted. Some have just been arrested and will make bail within hours or days, while many others are too poor to make bail and remain behind bars until their trial. Only a small number (less than 150,000 on any given day) have been convicted, and are generally serving misdemeanors sentences under a year.
Pretrial Detention

Over 540,000 people are locked up who haven’t even been convicted or sentenced

Why?

Many are detained in local jails because they cannot afford to pay the bail amount set to secure their release.

The median bail amount for felonies is $10,000, which represents 8 months’ income for a typical person detained because they can’t pay bail.

Local jails 462,000

Youth 15,000
Psychiatric evaluation or treatment 9,000
Indian Country 1,100

Federal 51,000

Pretrial policies drive jail growth

Number of people in local jails by conviction status, 1983-2016

Pretrial detention is responsible for all of the net jail growth in the last 20 years.

Local Jails: The real scandal is the churn

When talking about the societal impact of jails, the average daily population of 612,000 is far less important than the staggering number — 10.6 million — admitted to jails each year.

What does 10.6 million jail admissions look like?

It’s enough people to fill a line of prison buses bumper-to-bumper from New York City to San Francisco.

Why are so many people detained in jails before trial? They’re not wealthy enough to afford money bail.

Median annual pre-incarceration incomes (in 2015 dollars) for people ages 25-39 in local jails who were unable to post a bail bond, compared to incomes of same-age non-incarcerated people, by gender

For detailed data notes, see Detaining the Poor at www.prisonpolicy.org/reports/incomejails.html
With a sense of the big picture, the next question is: why are so many people locked up? How many are incarcerated for drug offenses? Are the profit motives of private companies driving incarceration? Or is it really about public safety and keeping dangerous people off the streets? There are a plethora of modern myths about incarceration. Most have a kernel of truth, but these myths distract us from focusing on the most important drivers of incarceration.

Five myths about mass incarceration

The overcriminalization of drug use, the use of private prisons, and low-paid or unpaid prison labor are among the most contentious issues in criminal justice today because they inspire moral outrage. But they do not answer the question of why most people are incarcerated, or how we can dramatically – and safely – reduce our use of confinement. Likewise, emotional responses to sexual and violent offenses often derail important conversations about the social, economic, and moral costs of incarceration and lifelong punishment. Finally, simplistic solutions to reducing incarceration, such as moving people from jails and prisons to community supervision, ignore the fact that “alternatives” to incarceration often lead to incarceration anyway. Focusing on the policy changes that can end mass incarceration, and not just put a dent in it, requires the public to put these issues into perspective.
The first myth: Releasing “nonviolent drug offenders” would end mass incarceration

It’s true that police, prosecutors, and judges continue to punish people harshly for nothing more than drug possession. Drug offenses still account for the incarceration of almost half a million people,\(^4\) and nonviolent drug convictions remain a defining feature of the federal prison system. Police still make over 1 million drug possession arrests each year,\(^5\) and many of these arrests do lead to prison sentences. Drug arrests continue to give residents of over-policed communities criminal records, hurting their employment prospects and increasing the likelihood of longer sentences for any future offenses.

But at the state and local levels, far more people are locked up for violent and property offenses than for drug offenses alone. To end mass incarceration, reforms will have to go further than the “low hanging fruit” of nonviolent drug offenses. (As it happens, some of the boldest strategies for reforming the criminal justice system – such as heavy investments in social services and community-based alternatives to incarceration – benefit not only those with substance use disorders, but people at risk of incarceration for any offense.)
1 in 5 incarcerated people is locked up for a drug offense

451,000 are incarcerated for nonviolent drug offenses every day.

State prisons
198,000

Local jails
118,000 Unconvicted
35,000 Convicted

Federal
81,000 Bureau of Prisons
16,000 U.S. Marshals

Youth 2,500
Military 90

There are over 1 million drug possession arrests each year

There are 6 times as many arrests for drug possession as for drug sales.
(Arrests in millions, 1980–2017)

The second myth: Private prisons are the corrupt heart of mass incarceration

In fact, less than 8% of all incarcerated people are held in private prisons; the vast majority are in publicly-owned prisons and jails. Some states have more people in private prisons than others, of course, and the industry has lobbied to maintain high levels of incarceration, but private prisons are essentially a parasite on the massive publicly-owned system – not the root of it.

Nevertheless, a range of private industries and even some public agencies continue to profit from mass incarceration. Many city and county jails rent space to other agencies, including state prison systems, the U.S. Marshals Service, and Immigration and Customs Enforcement (ICE). Private companies are frequently granted contracts to operate prison food and health services (often so bad they result in major lawsuits), and prison and jail telecom and commissary functions have spawned multi-billion dollar private industries. By privatizing services like phone calls, medical care and commissary, prisons and jails are unloading the costs of incarceration onto incarcerated people and their families, trimming their budgets at an unconscionable social cost.
Private prisons and jails hold less than 8 percent of all incarcerated people, making them a relatively small part of a mostly publicly-run correctional system.

The third myth: Prisons are “factories behind fences” that exist to provide companies with a huge slave labor force

Simply put, private companies using prison labor are not what stands in the way of ending mass incarceration, nor are they the source of most prison jobs. Only about 5,000 people in prison – less than 1% – are employed by private companies through the federal PIECP program, which requires them to pay at least minimum wage before deductions. (A larger portion work for state-owned “correctional industries,” which pay much less, but this still only represents about 6% of people incarcerated in state prisons.)

But prisons do rely on the labor of incarcerated people for food service, laundry and other operations, and they pay incarcerated workers unconscionably low wages: our 2017 study found that on average, incarcerated people earn between 86 cents and $3.45 per day for the most common prison jobs. In at least five states, those jobs pay nothing at all. Moreover, work in prison is compulsory, with little regulation or oversight, and incarcerated workers have few rights and protections. Forcing people to work for low or no pay and no benefits allows prisons to shift the costs of incarceration to incarcerated people – hiding the true cost of running prisons from most Americans.

The fourth myth: Expanding community supervision is the best way to reduce incarceration
Community supervision, which includes probation, parole, and pretrial supervision, is often seen as a “lenient” punishment, or as an ideal “alternative” to incarceration. But while remaining in the community is certainly preferable to being locked up, the conditions imposed on those under supervision are often so restrictive that they set people up to fail. The long supervision terms, numerous and burdensome requirements, and constant surveillance (especially with electronic monitoring) result in frequent “failures,” often for minor infractions like breaking curfew or failing to pay unaffordable supervision fees.

In 2016, at least 168,000 people were incarcerated for such “technical violations” of probation or parole – that is, not for any new crime. Probation, in particular, leads to unnecessary incarceration; until it is reformed to support and reward success rather than detect mistakes, it is not a reliable “alternative.”
Technical violations are the main reason for incarceration of people on probation and parole

Slideshow 4. Swipe for more detail about what the data on recidivism really shows.

Contrary to myth, people incarcerated for violent offenses and released are least likely to be arrested again

Percentage of people released from prison in 2005, by most serious offense type, who were rearrested for an offense in the same category within 3 years of release

By almost any measure, people who are released after serving time in prison for violent offenses are the least likely to reoffend:

- Least likely to be rearrested for any offense
- Least likely to be convicted again
- Least likely to be incarcerated again
- Least likely to be sentenced to prison again

The fifth myth: People in prison for violent or sexual crimes are too dangerous to be released

https://www.prisonpolicy.org/reports/pie2019.html
Finally, we come to the myth that people who commit violent or sexual crimes are incapable of rehabilitation and thus warrant many decades or even a lifetime of punishment. As lawmakers and the public increasingly agree that past policies have led to unnecessary incarceration, it’s time to consider policy changes that go beyond the low-hanging fruit of “non-non-nons” – people convicted of non-violent, non-serious, non-sexual offenses. If we are serious about ending mass incarceration, we will have to change our responses to more serious and violent crime.

The data supports changing our responses to some of the crimes that scare people most: people convicted of sexual assault and homicide are actually among the least likely to reoffend after release. People convicted of homicide are the least likely to be re-arrested, and those convicted of rape or sexual assault have re-arrest rates roughly 30-50% lower than people convicted of larceny or motor vehicle theft. More broadly, people convicted of any violent offense are less likely to be re-arrested in the years after release than those convicted of property, drug, or public order offenses. Yet people convicted of violent offenses often face decades of incarceration, and those convicted of sexual offenses can be committed to indefinite confinement or stigmatized by sex offender registries long after completing their sentences.

**Recidivism: A slippery statistic**

What changes when we define recidivism different ways? 34 states couldn't tell you, because they only collect one measure. We discuss the implications.

**Offense categories might not mean what you think**

To understand the main drivers of incarceration, the public needs to see how many people are incarcerated for different offense types. But the reported offense data oversimplifies how people interact with the criminal justice system in two important ways: it reports only one offense category per person, and it reflects the outcome of the legal process, obscuring important details of actual events.

First, when a person is in prison for multiple offenses, only the most serious offense is reported. So, for example, there are people in prison for violent offenses who were also convicted of drug offenses, but they are included only in the “violent” category in the data. This makes it hard to grasp the complexity of criminal events, such as the role drugs may have played in violent or property offenses. We must also consider that almost all convictions are the result of plea bargains, where defendants plead guilty to a lesser offense, possibly in a different category, or one that they did not actually commit.

Secondly, many of these categories group together people convicted of a wide range of offenses. For violent offenses especially, these labels can distort perceptions of individual “violent offenders” and exaggerate the scale of dangerous violent crime. For example, “murder” is an extremely serious offense, but that category groups together the small
number of serial killers with people who committed acts that are unlikely, for reasons of circumstance or advanced age, to ever happen again. It also includes offenses that the average person may not consider to be murder at all. In particular, the felony murder rule says that if someone dies during the commission of a felony, everyone involved can be as guilty of murder as the person who pulled the trigger. Acting as lookout during a break-in where someone was accidentally killed is indeed a serious offense, but many may be surprised that this can be considered murder in the U.S.\textsuperscript{11}

Lessons from the smaller “slices”: Youth, immigration, and involuntary commitment

Looking more closely at incarceration by offense type also exposes some disturbing facts about the 63,000 youth in confinement in the United States: Too many are there for a “most serious offense” that is not even a crime. For example, there are over 8,100 youth behind bars for technical violations of their probation, rather than for a new offense. An additional 2,200 youth are locked up for “status” offenses, which are “behaviors that are not law violations for adults, such as running away, truancy, and incorrigibility.”\textsuperscript{12} Nearly 1 in 10 youth held for a criminal or delinquent offense is locked in an adult jail or prison, and most of the others are held in juvenile facilities that look and operate a lot like prisons and jails.

Turning to the people who are locked up criminally and civilly for immigration-related reasons, we find that 13,000 people are in federal prisons for criminal convictions of immigration offenses, and 10,600 more are held pretrial by U.S. Marshals. The vast majority of people incarcerated for criminal immigration offenses are accused of illegal entry or illegal re-entry – in other words, for no more serious offense than crossing the border without permission.\textsuperscript{13}
Most confined youth are held for nonviolent offenses, or no crime at all

10,300 youth are locked up for "offenses" that aren't even crimes, and another 12,000 are refugees held awaiting placement with family or friends.

Almost 85,000 people are confined for immigration reasons

And 1 in 4 ICE detainees is held in a local jail.

In ICE facilities 5,000

In private prisons contracting with ICE 32,000

In local jails contracting with ICE 11,000
Another 49,000 people are civilly detained by U.S. Immigration and Customs Enforcement (ICE) not for any crime, but simply for their undocumented immigrant status. ICE detainees are physically confined in federally-run or privately-run immigration detention facilities, or in local jails under contract with ICE. An additional 11,800 unaccompanied children are held in the custody of the Office of Refugee Resettlement (ORR), awaiting placement with parents, family members, or friends. While these children are not held for any criminal or delinquent offense, most are held in shelters or even juvenile placement facilities under detention-like conditions.

Adding to the universe of people who are confined because of justice system involvement, 22,000 people are involuntarily detained or committed to state psychiatric hospitals and civil commitment centers. Many of these people are not even convicted, and some are held indefinitely. 9,000 are being evaluated pre-trial or treated for incompetency to stand trial; 6,000 have been found not guilty by reason of insanity or guilty but mentally ill; another 6,000 are people convicted of sexual crimes who are involuntarily committed or detained after their prison sentences are complete. While these facilities aren’t typically run by departments of correction, they are in reality much like prisons.