

Mass Incarceration: The Whole Pie 2018

By Peter Wagner and Wendy Sawyer
March 14, 2018

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's not designed to help policymakers or the public understand what's going on. Meaningful criminal justice reform that reduces the massive scale of incarceration, however, requires that we **start with the big picture**.

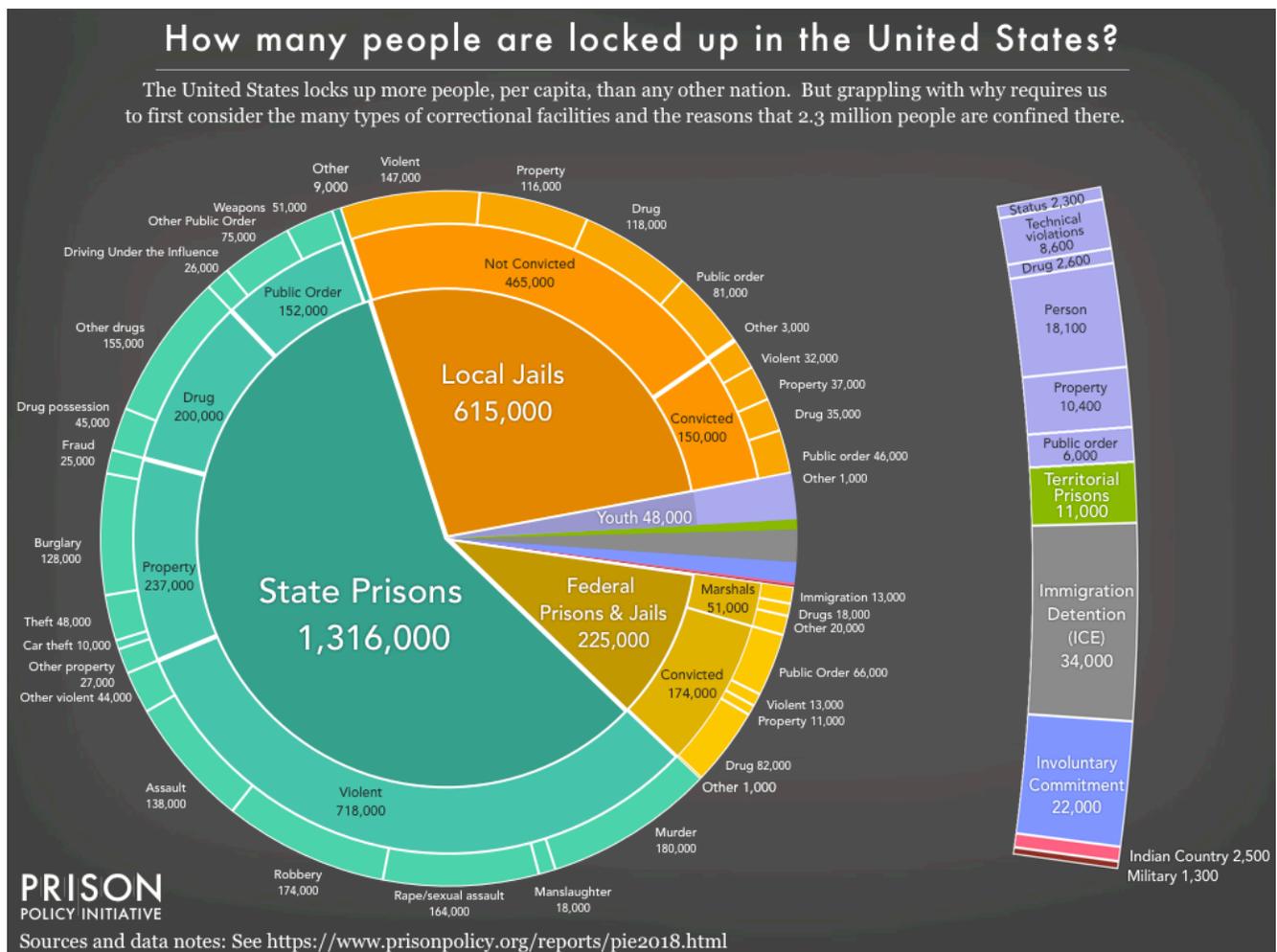
This report offers some much needed clarity by **piecing together this country's disparate systems of confinement**. The American criminal justice system holds almost 2.3 million people in 1,719 state prisons, 102 federal prisons, 1,852 juvenile correctional facilities, 3,163 local jails, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories. We go deeper to provide further detail on why people are locked up in all of those different types of facilities.

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. Additional graphics bring these overlooked parts of the "pie" 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 number suggests.

While this pie chart provides a comprehensive snapshot of our correctional system, it does not capture the enormous churn in and out of our correctional facilities and the far larger universe of people whose lives are affected by the criminal justice system. Every year, 626,000 people walk out of 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 in the next few hours or days, and others are too poor to make bail and must remain behind bars until their trial. Only a small number (150,000 on any given day) have been convicted, generally serving misdemeanor sentences under a year.

With a sense of the big picture, a common follow-up question might be: **how many people are locked up for a drug offense?** We know that almost half a million people are locked up because of a drug



offense. The data confirms that nonviolent drug convictions are a defining characteristic of the federal prison system, but play only a supporting role at the state and local levels. Still, states' continued practice of arresting people for drug possession destabilizes individual lives and communities.

The criminal justice system involves some complicated decisions and relationships, some of which — but not all — can be represented graphically. For example, almost all convictions are the result of plea bargains, where people plead guilty to a lesser offense, perhaps of a different category or one that they may not have actually committed.

And many of these categories group together people convicted of a wide range of offenses. Even “murder” includes offenses that the average American may not consider to be murder at all. For example, 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. Driving a getaway car during a bank robbery where someone was accidentally killed is indeed a serious offense, but many may be surprised that this is considered murder.

Breaking down incarceration by offense type also exposes some disturbing facts about the youth confined by our criminal and **juvenile justice** systems: Too many are there for a “most serious offense” that is **not even a crime**. For example, there are over 8,500 youth behind bars for “technical violations” of the requirements of their probation, rather than for a new offense. Further, 2,300 youth are locked up for “status” offenses, which are “behaviors that are not law violations for adults, such as running away, truancy, and incorrigibility.” Nearly 1 in 10 is held 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 issues, we find that 13,000 people are in federal prison for criminal convictions of violating federal immigration laws, and 13,000 more are held pretrial by U.S.

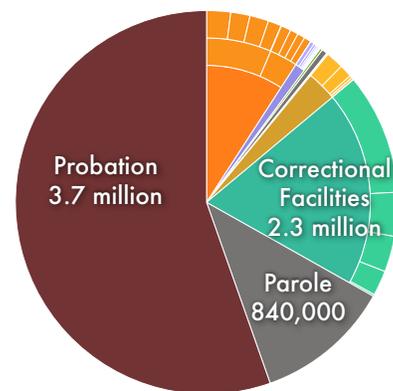
Marshals. Another 34,000 are civilly detained by U.S. Immigration and Customs Enforcement (ICE) separate from any criminal proceedings and are physically confined in federally-run or privately-run **immigration detention facilities** or in local jails under contract with ICE. (Notably, these categories do not include immigrants represented in other pie slices because of non-immigration related criminal convictions.)

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 after their prison sentences are complete. While these facilities aren't typically run by departments of correction, they are in reality much like prisons.

While this “whole pie” provides the most inclusive view of the various systems of confinement in the U.S. justice system available, these snapshots can't capture all of the important systemic issues. Once we have wrapped our minds around the “whole pie” of mass incarceration, for example, we should zoom out and note that being locked up is just one piece of the larger pie of correctional control. There are another 840,000 people on parole and a staggering **3.7 million people on probation**. Particularly given the often onerous conditions of probation, policymakers should be cautious of “alternatives to incarceration” that can easily widen the net of criminalization to people who are not a threat to public safety.

Beyond identifying the parts of the criminal justice system that impact the most people, we should also focus on who is most impacted and who is left behind by policy change. For example, people of color are dramatically overrepresented in the nation's

prisons and jails. These racial disparities are particularly stark for Blacks, who make up 40% of the incarcerated population despite representing only 13% of U.S. residents. Gender disparities matter too: rates of incarceration have grown even faster for women than for men. As policymakers continue to push for reforms that reduce incarceration, they should avoid changes that will widen disparities, as has happened with juvenile confinement and women in state prisons.



Now that we can see the big picture of how many people are locked up in the United States in the various types of facilities, we can see that **something needs to change**. Looking at the big picture requires us to ask if it really makes sense to lock up 2.3 million people on any given day, giving this nation the dubious distinction of having the highest incarceration rate in the world. Both policymakers and the public have the responsibility to carefully consider each individual slice in turn to ask whether legitimate social goals are served by putting each category behind bars, and whether any benefit really outweighs the social and fiscal costs.

Even narrow policy changes, like reforms to money bail, can meaningfully reduce our society's use of incarceration. Meanwhile, some reforms that seem promising have minimal effect, because they simply transfer people from one slice of the correctional “pie” to another. Keeping the big picture in mind is critical if we hope to develop strategies that actually shrink the “whole pie.”

For the footnotes, data sources and a dozen additional graphics to this report, see prisonpolicy.org/reports/pie2018.html

To receive more cutting edge research and advocacy, join our newsletter at prisonpolicy.org/subscribe/