

PRISON

POLICY INITIATIVE

Mass Incarceration: The Whole Pie 2019

By Wendy Sawyer and Peter Wagner

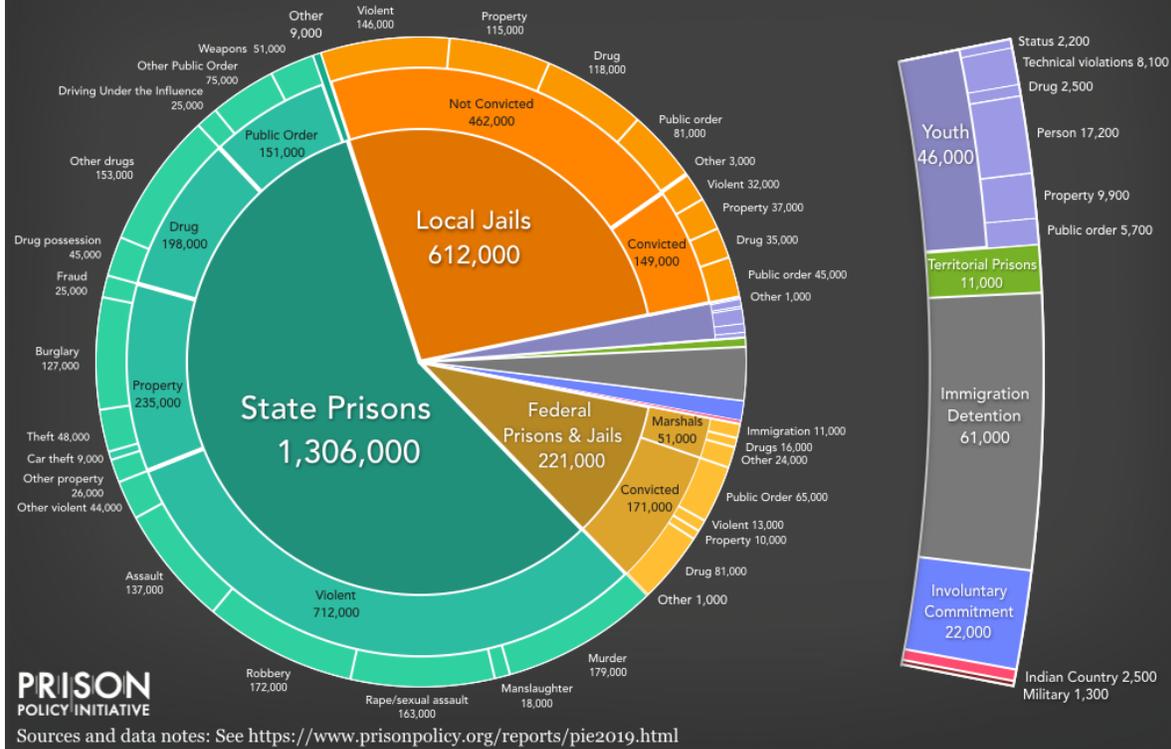
March 19, 2019

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.

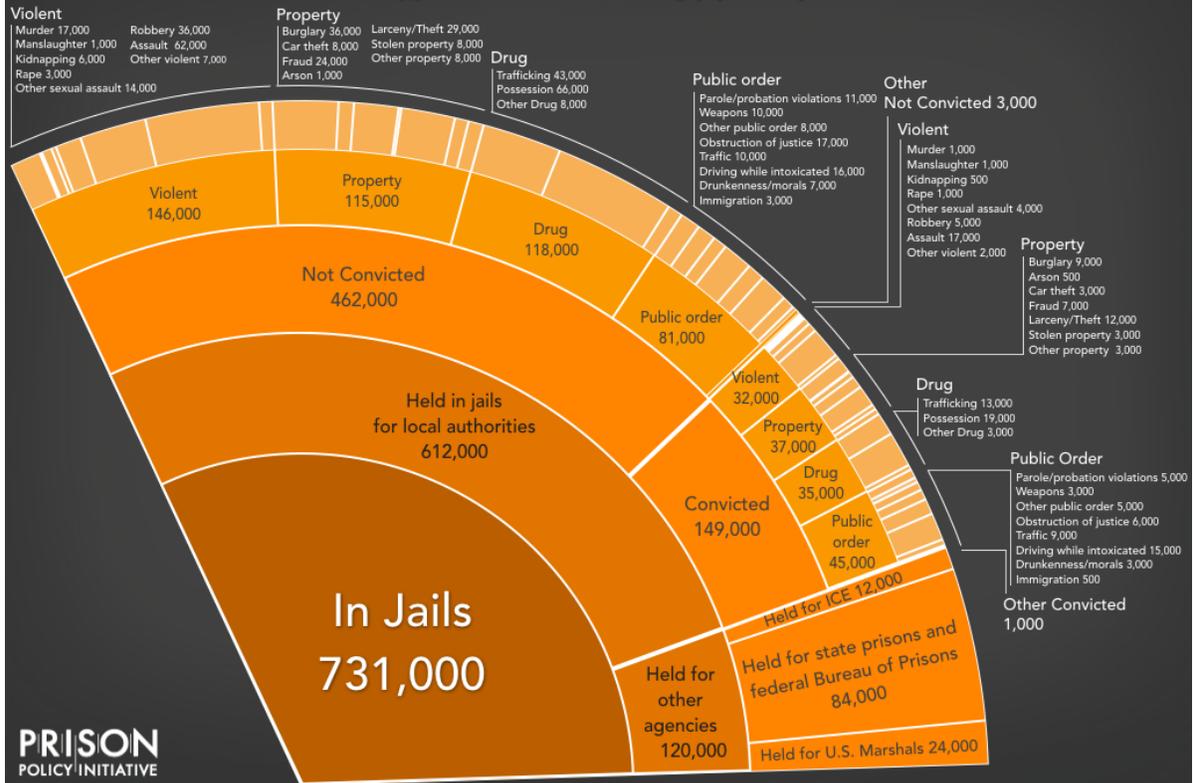
How many people are locked up in the United States?

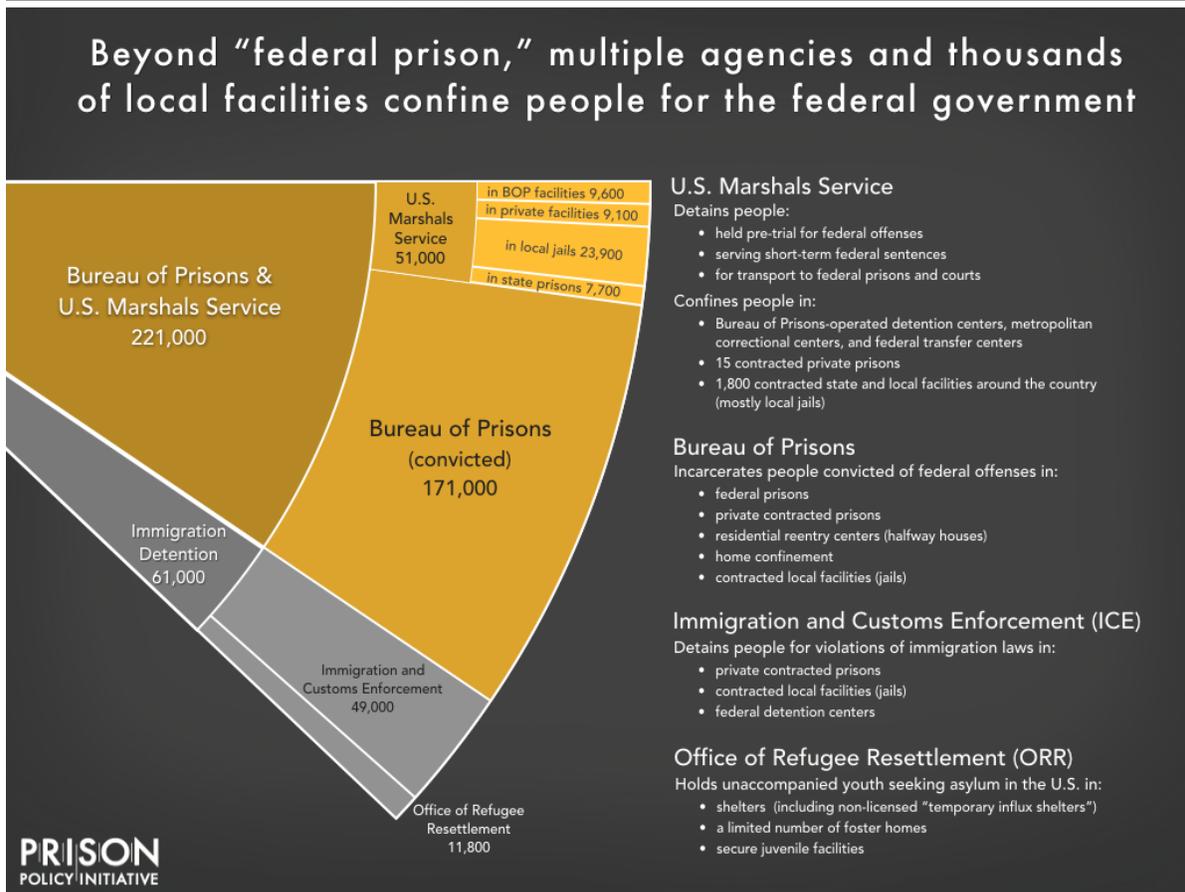
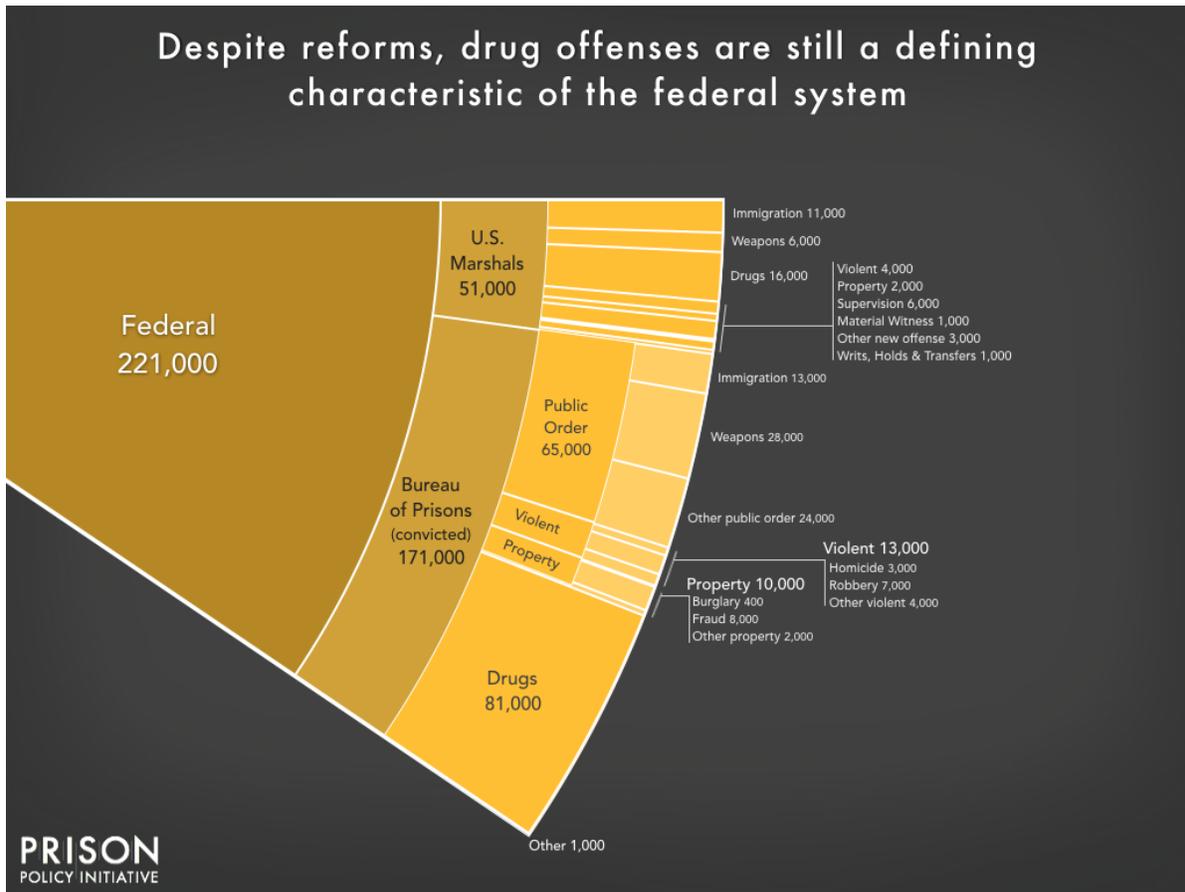
The U.S. locks up more people per capita than any other nation, at the staggering rate of 698 per 100,000 residents. But to end mass incarceration, we must first consider *where* and *why* 2.3 million people are confined nationwide.



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

If you include the 120,000 people held in local jails that rent out space to other agencies, 63% are unconvicted. Either way, jail incarceration rates are driven largely by local bail practices.



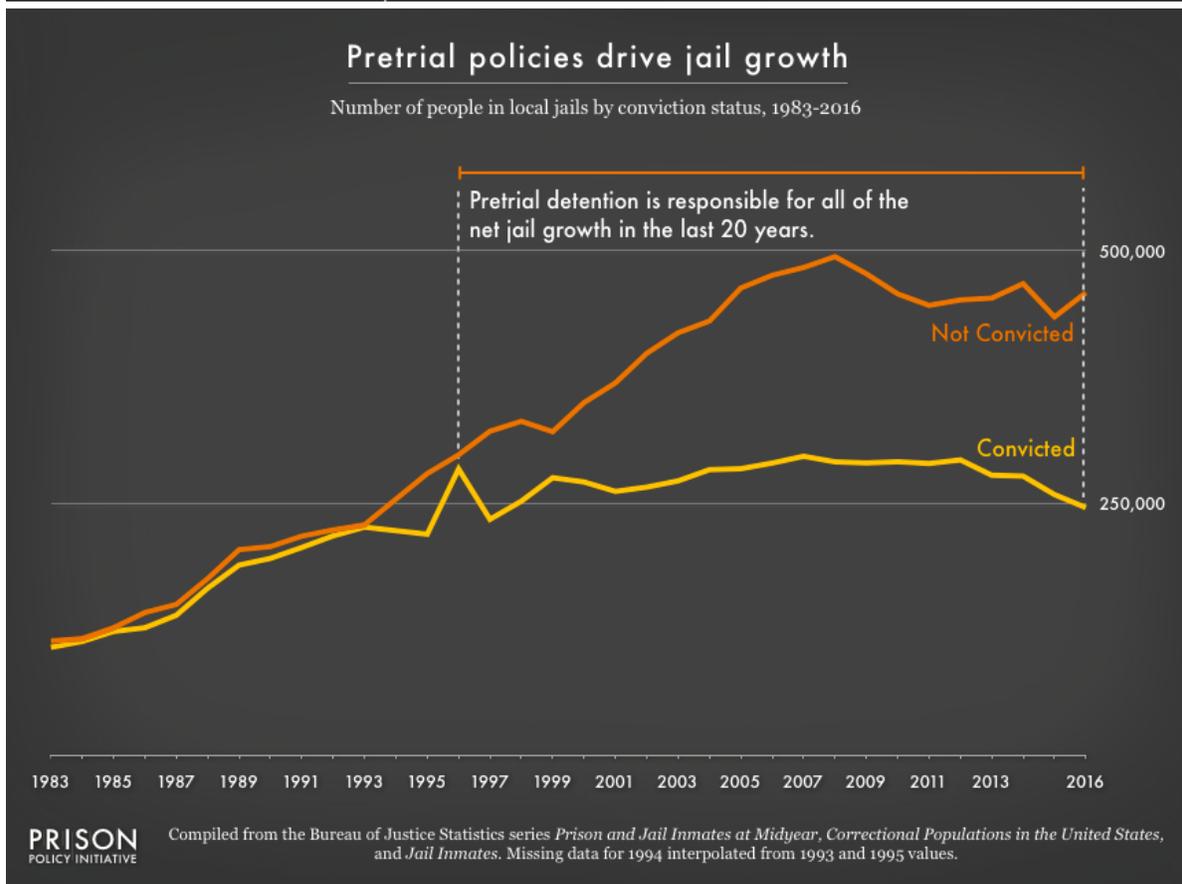
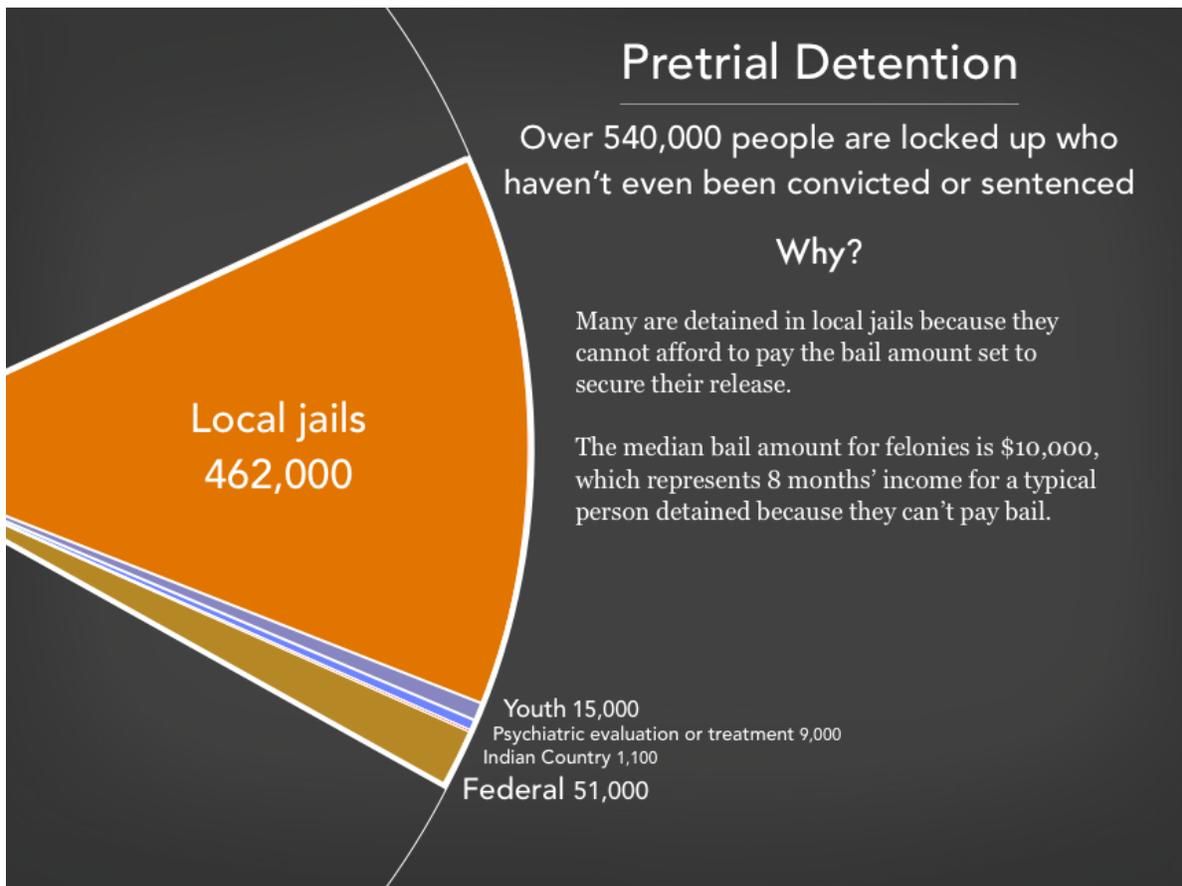


Slideshow 1. Swipe for more detailed views.

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.² Jail churn is particularly high because most people in jails have not been convicted.³ 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.



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.

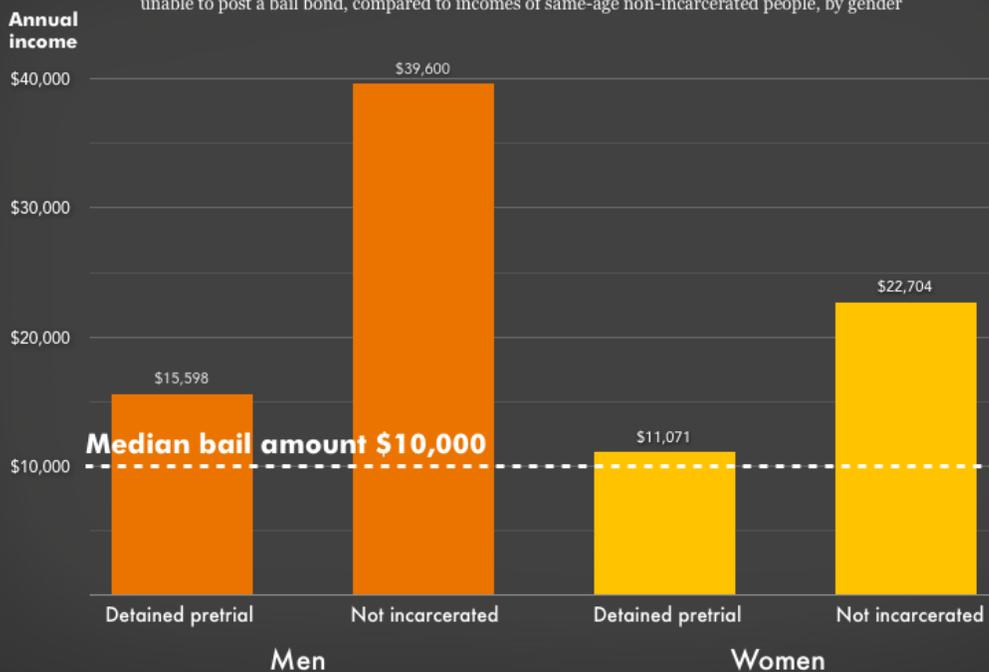
What does 10.6 million jail admissions look like?



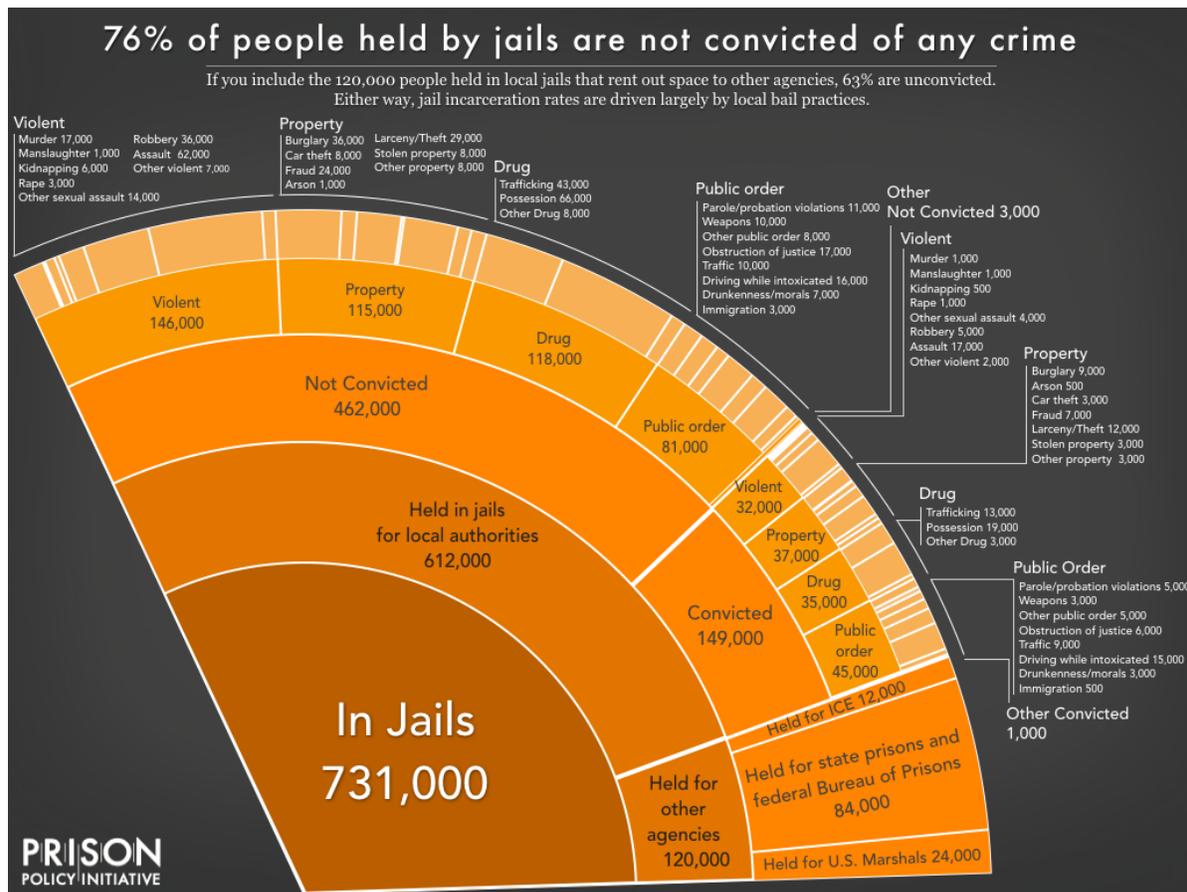
It's enough people to fill a line of prison buses bumper-to-bumper from New York City to San Francisco.

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 23-39 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



Slideshow 2. Swipe for more detail on pre-trial detention.

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.

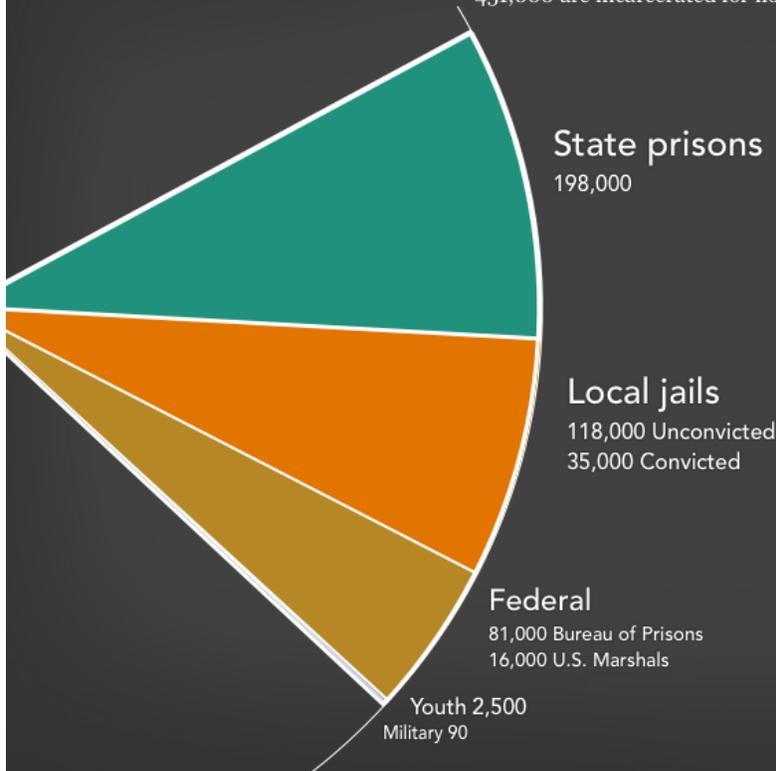
The first myth: Releasing “nonviolent drug offenders” would end mass incarceration

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.)

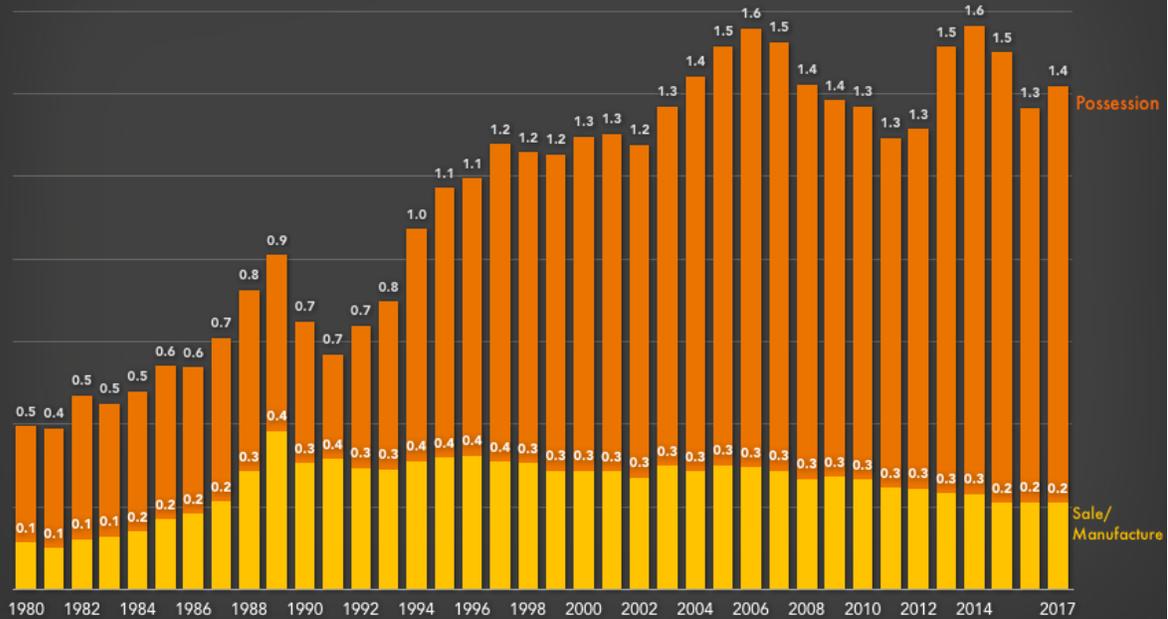
1 in 5 incarcerated people is locked up for a drug offense

451,000 are incarcerated for nonviolent drug offenses on any given day.



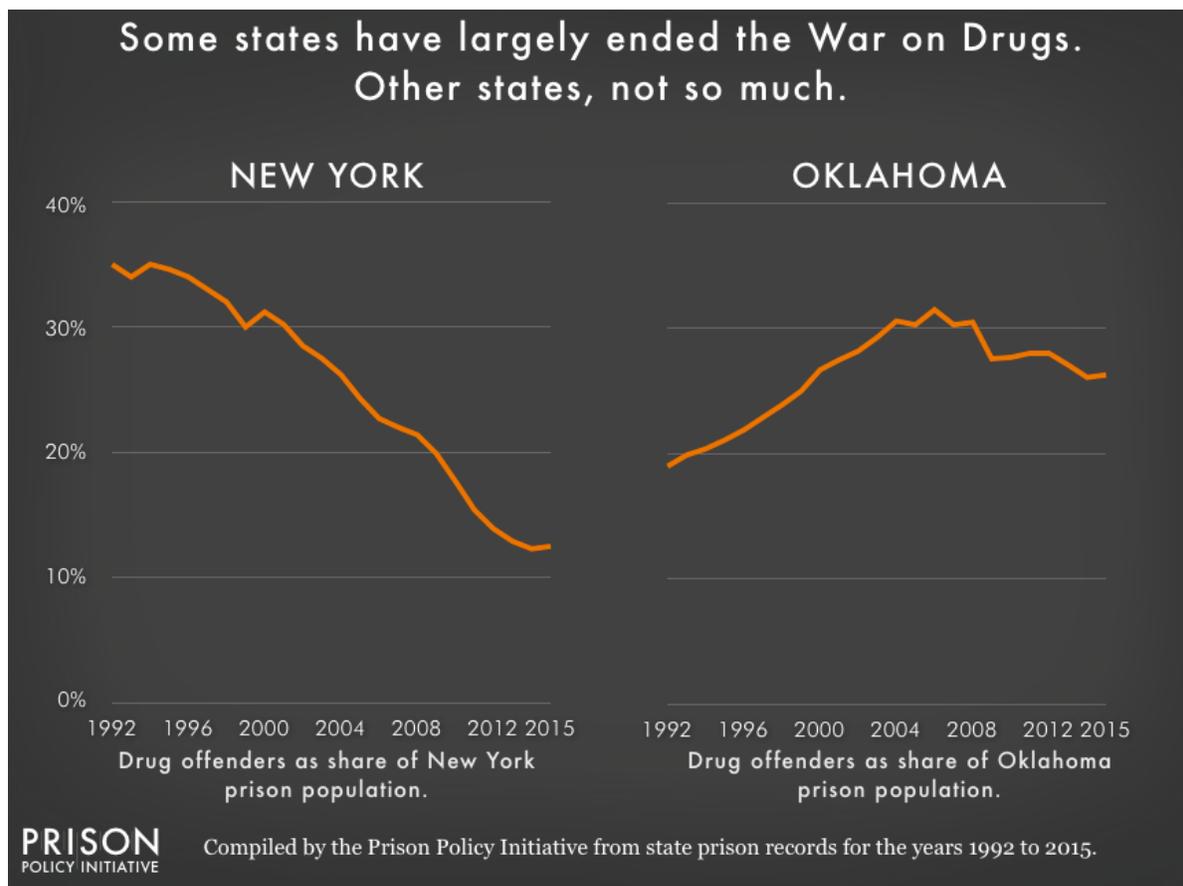
There are over 1 million drug possession arrests each year

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



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Compiled by the Prison Policy Initiative from Federal Bureau of Investigation *Crime in the United States* series.

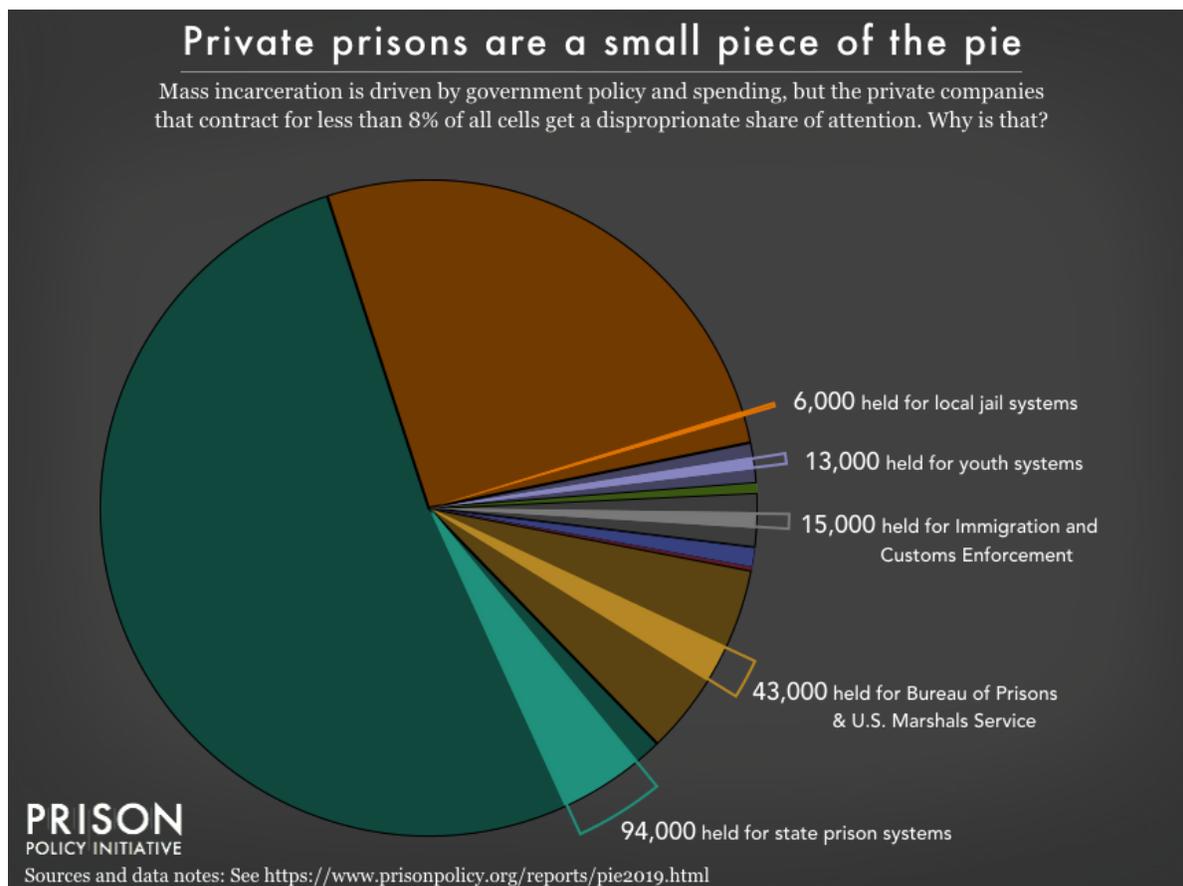


Slideshow 3. Swipe for more detail on the War on Drugs.

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.⁶ 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,⁷ 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

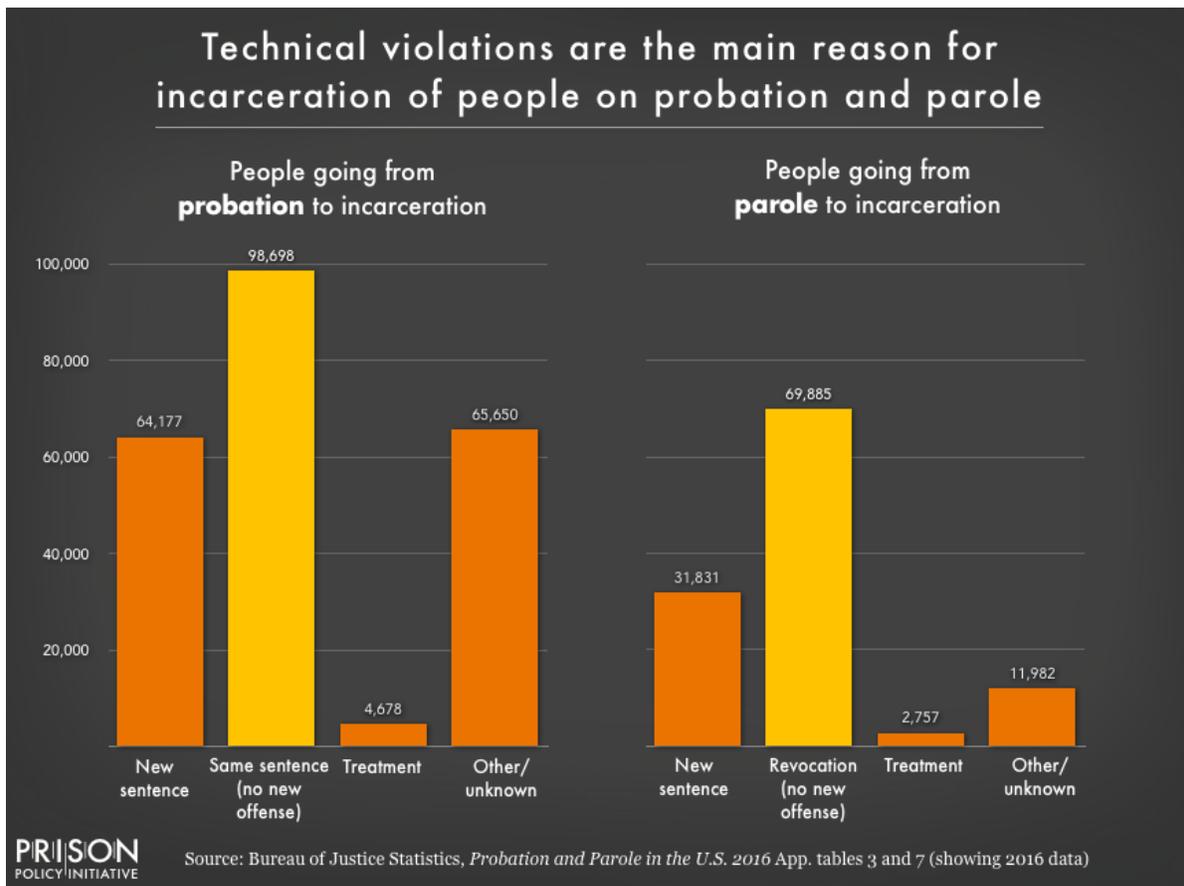
Simply put, private companies using prison labor are not what stands in the way of ending mass incarceration, nor are they the source of most prison jobs. Only about 5,000 people in prison – less than 1% – are employed by private companies through the federal PIECP program, which requires them to pay 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.)⁸

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.⁹ 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.”



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

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

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.

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.¹⁰ 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.¹¹

Recidivism: A slippery statistic

As long as we are considering recidivism rates as a measure of public safety risk, we should also consider how recidivism is defined and measured. While this may sound esoteric, this is an issue that affects an important policy question: at what point – and with what measure – do we consider someone’s re-entry a success or failure?

The term “recidivism” suggests a relapse in behavior, a return to criminal offending. But what is a valid sign of criminal offending: self-reported behavior, arrest, conviction, or incarceration? Defining recidivism as re-arrest casts the widest net and results in the highest rates, but arrest does not suggest conviction, nor actual guilt. More useful measures than re-arrest include conviction for a new crime, re-incarceration, or a new sentence of imprisonment; the latter may be most relevant, since it measures offenses serious enough to warrant a prison sentence. Importantly, people convicted of violent offenses have the lowest recidivism rates by each of these measures. However, the recidivism rate for violent offenses is a whopping 48 percentage points higher when re-arrest, rather than imprisonment, is used to define recidivism.

The cutoff point at which recidivism is measured also matters: If someone is arrested for the first time 5, 10, or 20 years after they leave prison, that’s very different from someone arrested within months of release. The most recent government study of recidivism reported that 83% of state prisoners were arrested at some point in the 9 years following their release, but the vast majority of those were arrested within the first 3 years, and more than half within the first year. The longer the time period, the higher the reported recidivism rate – but the lower the actual threat to public safety.

A related question is whether it matters what the post-release offense is. For example, 71% of people imprisoned for a violent offense are re-arrested within 5 years of release, but only 33% are re-arrested for another *violent* offense; they are much more likely to be re-arrested for a public order offense. If someone convicted of robbery is arrested years later for a liquor law violation, it makes no sense to view this very different, much less serious, offense the same way we would another arrest for robbery.

A final note about recidivism: While policymakers frequently cite reducing recidivism as a priority, few states collect the data that would allow them to monitor and improve their own performance in real time. For example, the Council of State Governments asked correctional systems what kind of recidivism data they collect and publish for people leaving prison and people starting probation. What they found is that states typically track just one measure of post-release recidivism, and few states track recidivism while on probation at all:

Most states track and publish just one measure of post-release recidivism



Very few states track and publish any recidivism data for people on probation



If state-level advocates and political leaders want to know if their state is even trying to reduce recidivism, we suggest one easy litmus test: Do they collect and publish basic data about the number and causes of people's interactions with the justice system while on probation, or after release from prison?

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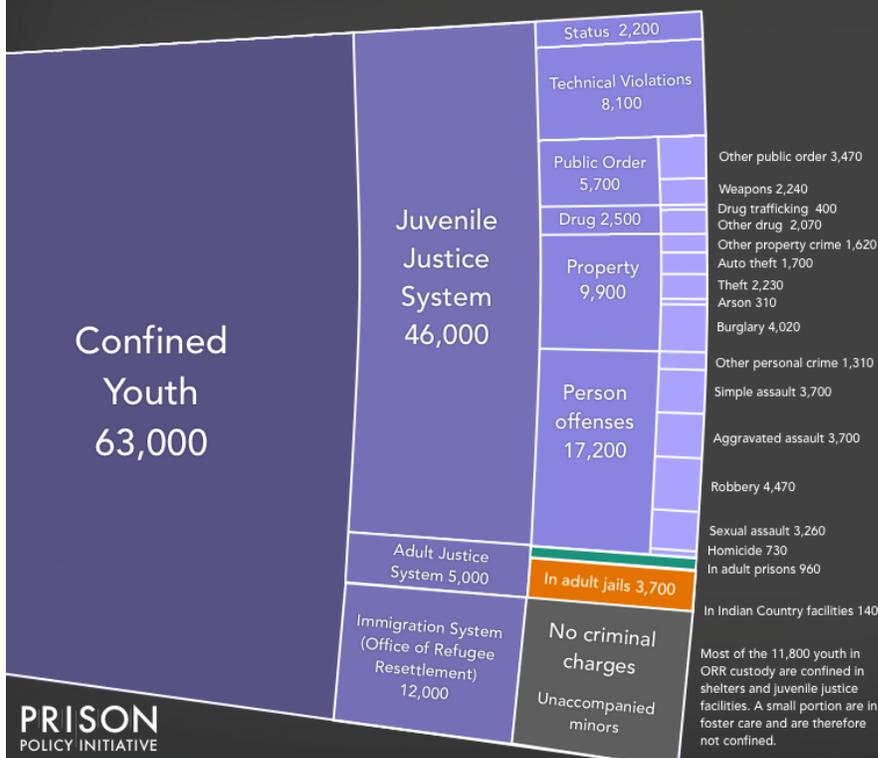
Lessons from the smaller "slices": Youth, immigration, and involuntary commitment

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."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.¹³

Most confined youth are held for nonviolent offenses, or no crime at all

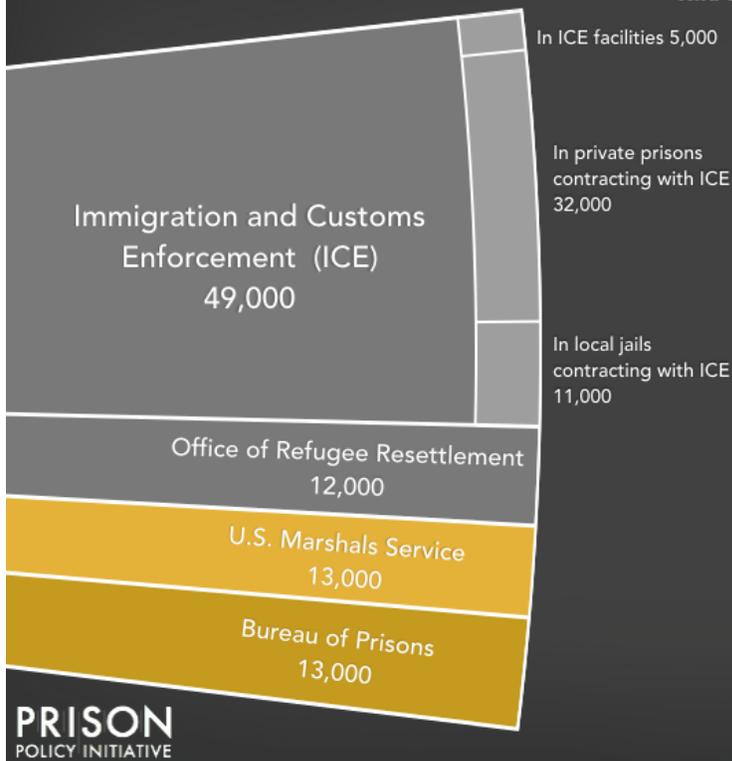
10,300 youth are locked up for “offenses” that aren’t even crimes, and another 12,000 are refugees held awaiting placement with family or friends.

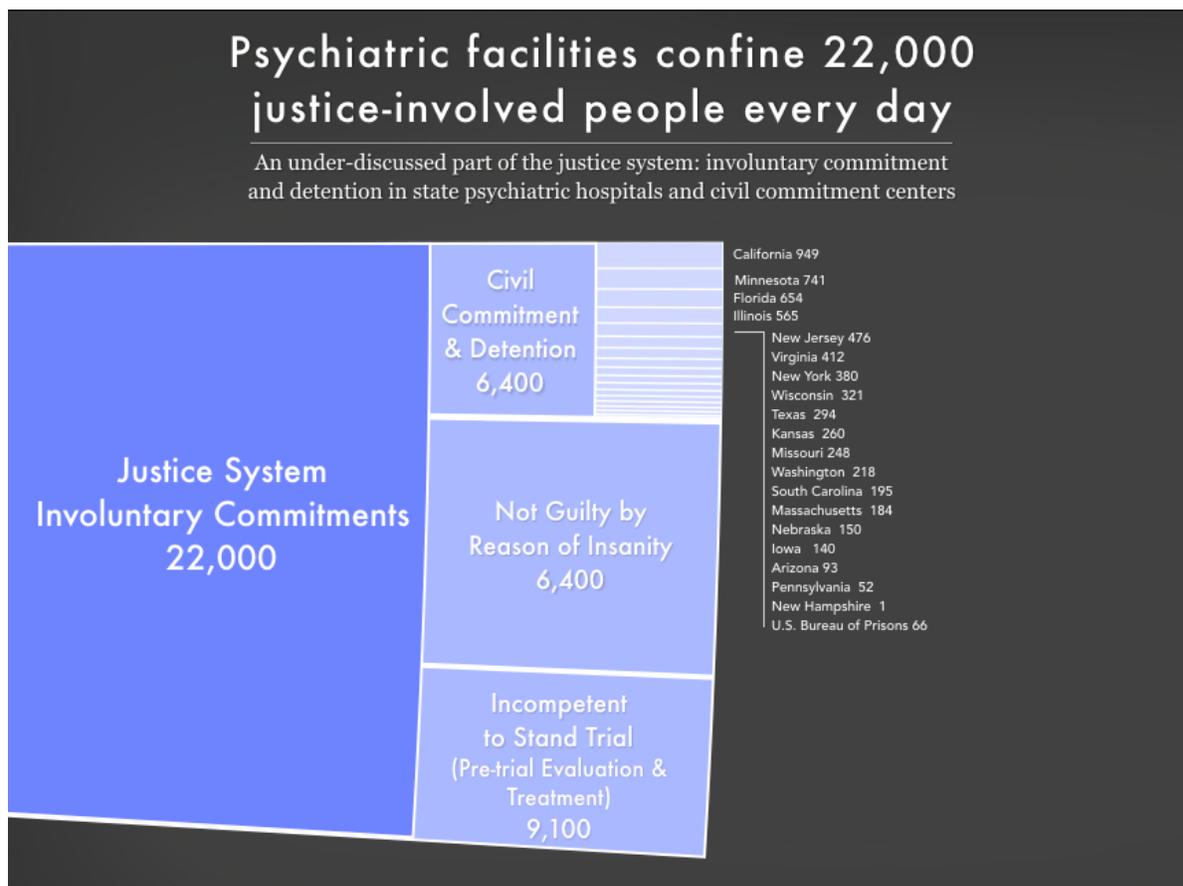


- Other public order 3,470
 - Weapons 2,240
 - Drug trafficking 400
 - Other drug 2,070
 - Other property crime 1,620
 - Auto theft 1,700
 - Theft 2,230
 - Arson 310
 - Burglary 4,020
 - Other personal crime 1,310
 - Simple assault 3,700
 - Aggravated assault 3,700
 - Robbery 4,470
 - Sexual assault 3,260
 - Homicide 730
 - In adult prisons 960
 - In Indian Country facilities 140
- Most of the 11,800 youth in ORR custody are confined in shelters and juvenile justice facilities. A small portion are in foster care and are therefore not confined.

Almost 85,000 people are confined for immigration reasons

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





Slideshow 5. Swipe for more detail about youth confinement, immigrant confinement and psychiatric confinement.

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.⁽¹⁴⁾

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.

Beyond the "Whole Pie": Community supervision, poverty, and race and gender disparities

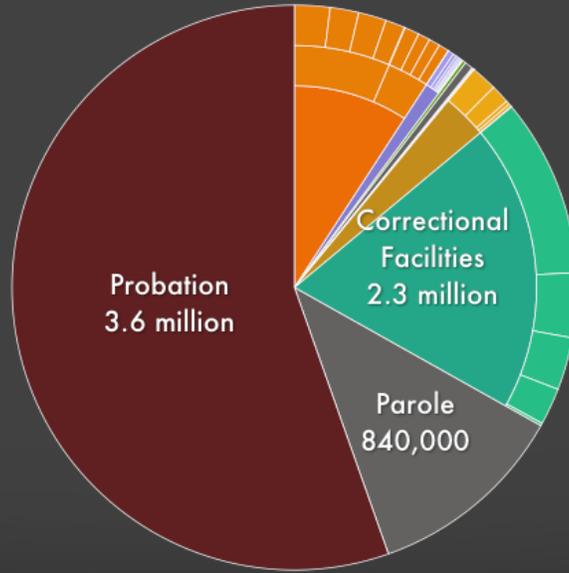
While this report provides the most inclusive view of the various systems of confinement in the U.S. justice system available, these snapshots can't capture all of the important systemic issues. Once we have wrapped our minds around the “whole pie” of mass incarceration, for example, we should zoom out and note that confinement is just one piece of the larger system of correctional control. There are another 840,000 people on parole and a staggering 3.6 million people on probation. Given the onerous conditions of probation and the steep consequences for technical violations, policymakers should be wary of “alternatives to incarceration” that can easily lead to incarceration for people who pose no 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. Poverty, for example, plays a central role in mass incarceration. People in prison and jail are disproportionately poor compared to the overall U.S. population.¹⁵ The criminal justice system punishes poverty, beginning with the high price of money bail: The median felony bail bond amount (\$10,000) is the equivalent of 8 months' income for the typical detained defendant. As a result, people with low incomes are more likely to face the harms of pretrial detention. Poverty is not only a predictor of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison destroys wealth, creates debt, and decimates job opportunities.¹⁶

It's no surprise that people of color – who face much greater rates of poverty – are dramatically overrepresented in the nation's prisons and jails. These racial disparities are particularly stark for Black Americans, who make up 40% of the incarcerated population despite representing only 13% of U.S residents. The same is true for women, whose incarceration rates have for decades risen faster than men's, and who are often behind bars because of financial obstacles such as an inability to pay bail. 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 with women in state prisons.

Incarceration is just one piece of the much larger system of correctional control

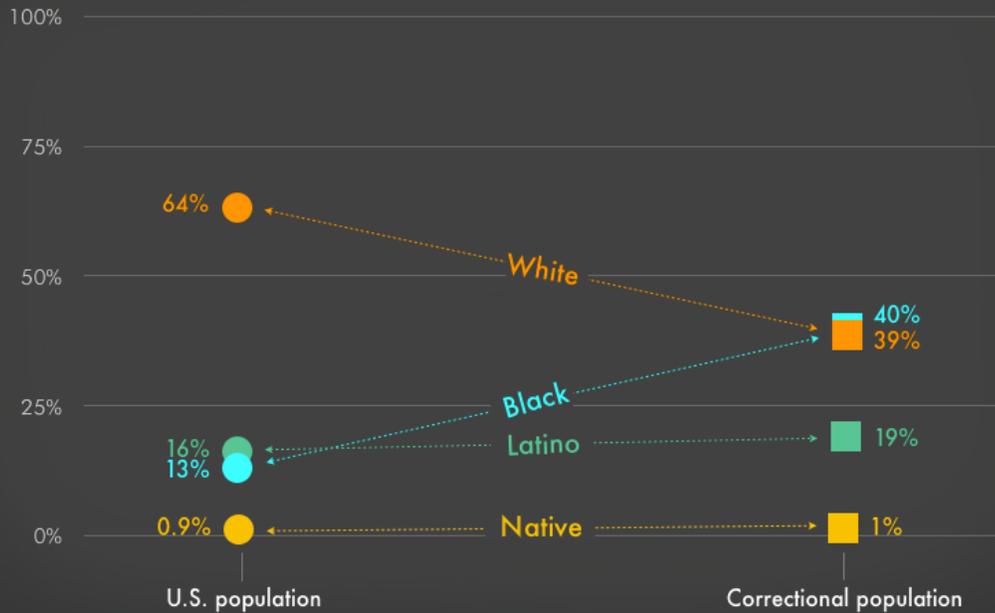
The U.S. justice system controls almost 7 million people, more than half of whom are on probation.



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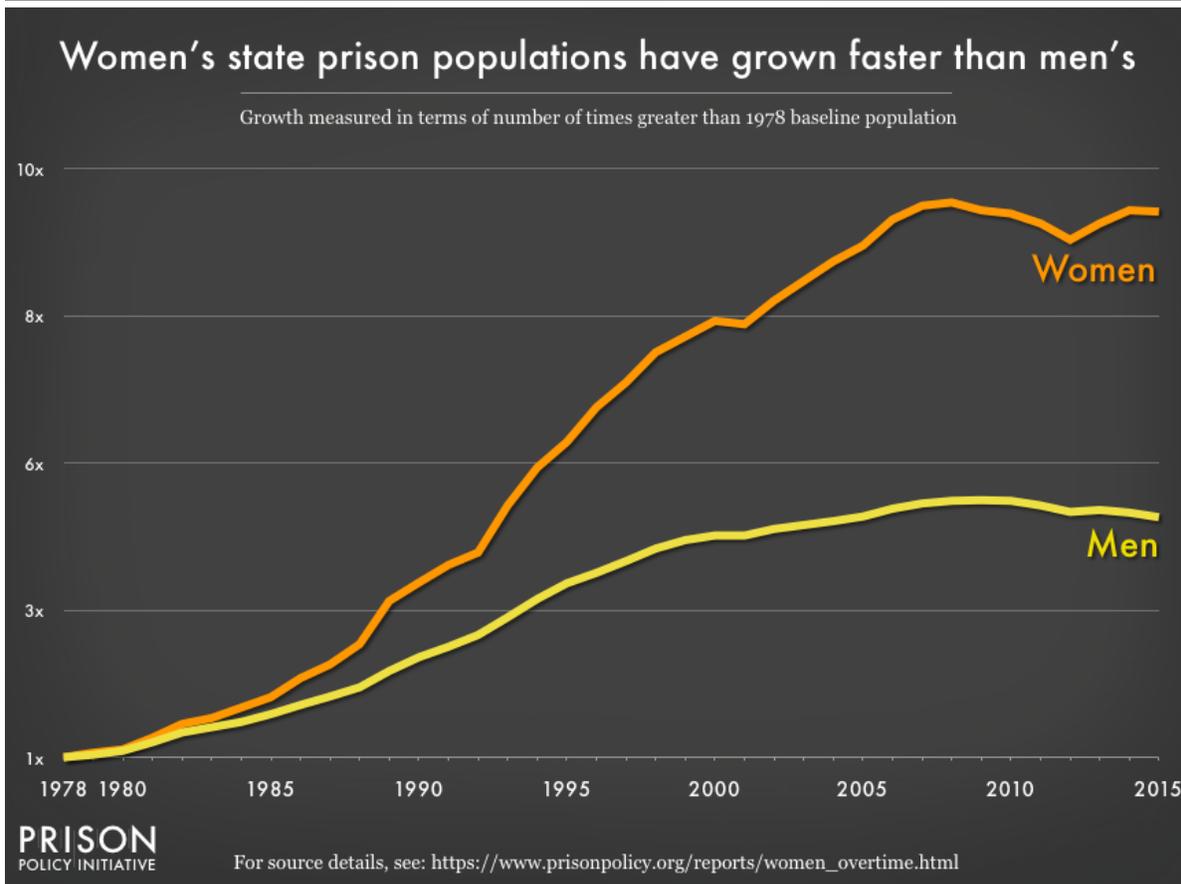
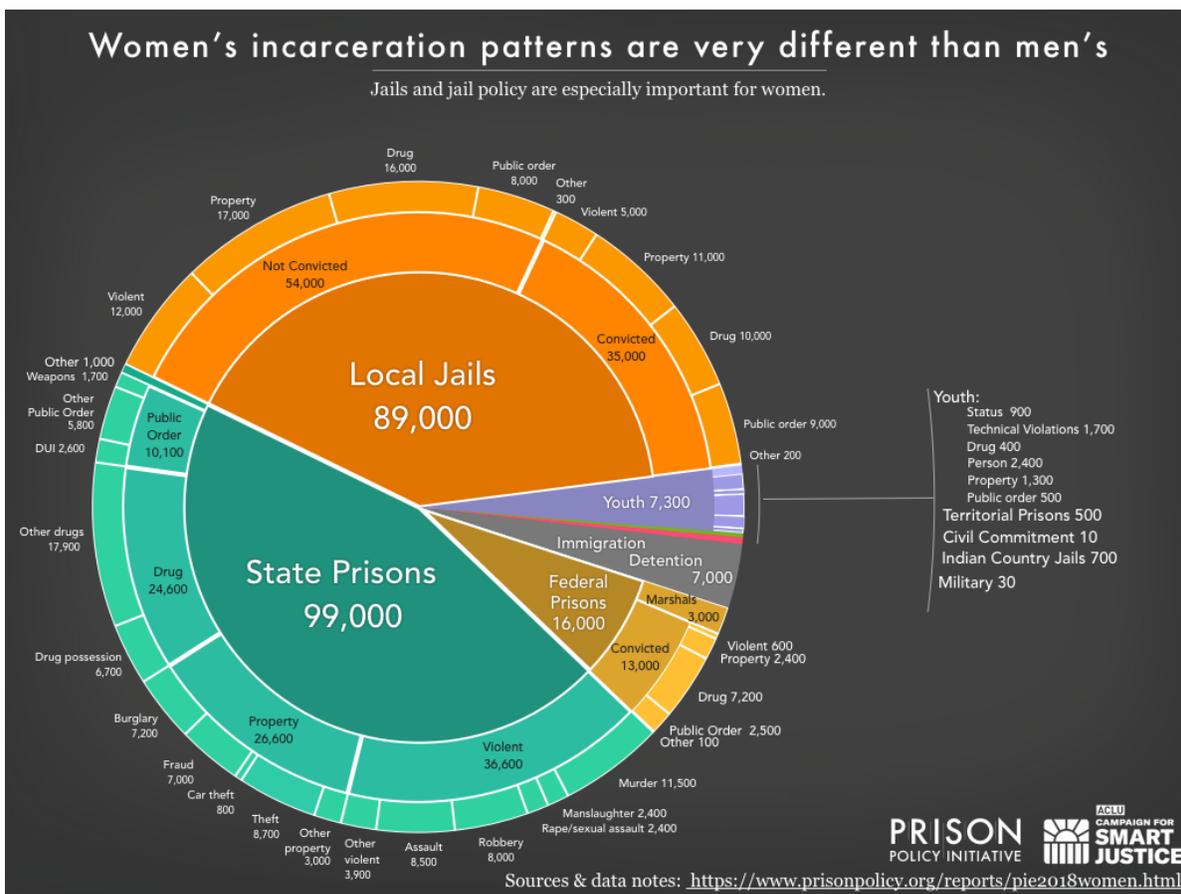
Racial and ethnic disparities in correctional facilities

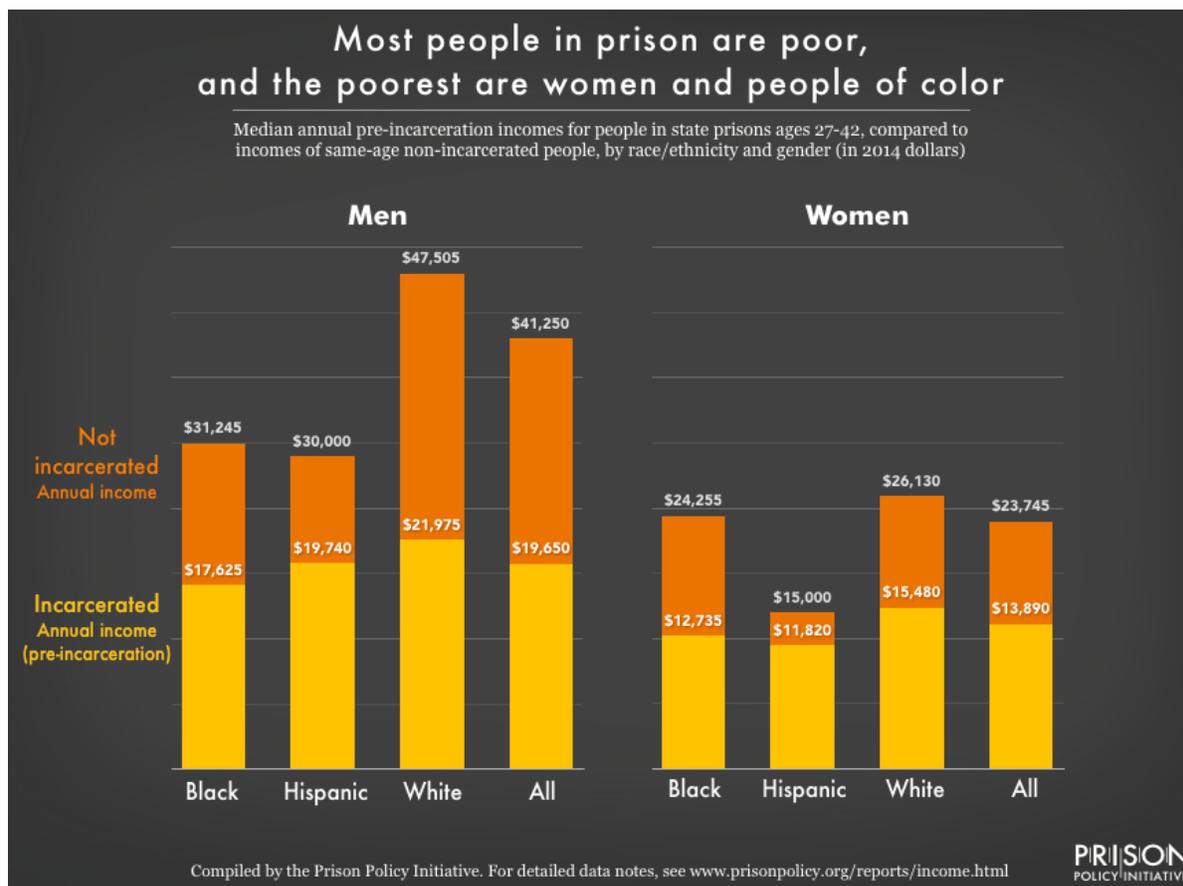
Whites are underrepresented in the incarcerated population while Blacks are overrepresented.



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Compiled from 2010 Census, Summary File 1.





Slideshow 6. Swipe for more detail about race, gender and income disparities.

Equipped with the full picture of how many people are locked up in the United States, where, and why, our nation has a better foundation for the long overdue conversation about criminal justice reform. For example, the data makes it clear that ending the war on drugs will not alone end mass incarceration, though the federal government and some states have taken an important step by reducing the number of people incarcerated for drug offenses. Looking at the “whole pie” also opens up other conversations about where we should focus our energies:

- Are state officials and prosecutors willing to rethink not just long sentences for drug offenses, but the reflexive, simplistic policymaking that has served to increase incarceration for violent offenses as well?
- Do policymakers and the public have the stamina to confront the second largest slice of the pie: the thousands of locally administered jails? Will state, county, and city governments be brave enough to end money bail without imposing unnecessary conditions in order to bring down pretrial detention rates? Will local leaders be brave enough to redirect public spending to smarter investments like community-based drug treatment and job training?
- What is the role of the federal government in ending mass incarceration? The federal prison system is just a small slice of the total pie, but the federal government can certainly use its financial and ideological power to incentivize and illuminate better paths forward. At the same time, how can elected sheriffs, district attorneys, and judges — who all control larger shares of the correctional pie — slow the flow of people into the criminal justice system?

- Given that the companies with the greatest impact on incarcerated people are not private prison operators, but service providers that contract with public facilities, will states respond to public pressure to end contracts that squeeze money from people behind bars?
- Can we implement reforms that both reduce the number of people incarcerated in the U.S. and the well-known racial and ethnic disparities in the criminal justice system?

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 group 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. At the same time, we should be wary of proposed reforms that seem promising but will have only 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."

Read about the data sources

How to link to specific images and sections

Acknowledgments

All Prison Policy Initiative reports are collaborative endeavors, but this report builds on the successful collaborations of the 2014, 2015, 2016 and 2017, and 2018 versions. For this year's report, the authors are particularly indebted to Heidi Altman of the National Immigrant Justice Center for feedback and research pointers on immigration detention, Todd Minton for helping us understand the Bureau of Justice Statistics' data on jails, Mack Finkel, Alexi Jones, and Maddy Troilo for research support, Wanda Bertram for her invaluable edits, and Shan Jumper for sharing updated civil detention and commitment data. This year, we are again grateful to Jordan Miner for making the report interactive, and Elydah Joyce for her help with the design. Any errors or omissions, and final responsibility for all of the many value judgements required to produce a data visualization like this, however, are the sole responsibility of the authors.

We thank the John D. and Catherine T. MacArthur Foundation Safety and Justice Challenge for their support of our research into the use and misuse of jails in this country. We also

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About the authors

Wendy Sawyer is a Senior Policy Analyst at the Prison Policy Initiative. She is the author of the 2018 reports *Youth Confinement: The Whole Pie* and *The Gender Divide: Tracking women's state prison growth*, as well as the 2016 report *Punishing Poverty: The high cost of probation fees in Massachusetts*.

Peter Wagner is an attorney and the Executive Director of the Prison Policy Initiative. He co-founded the Prison Policy Initiative in 2001 in order to spark a national discussion about the negative side effects of mass incarceration. He is a co-author of a landmark report on the dysfunction in the prison and jail phone market, *Please Deposit All of Your Money*. Some of his most recent work includes *Following the Money of Mass Incarceration* and putting each state's overuse of incarceration into the international context in *States of Incarceration: The Global Context 2018*.

He is [@PWPolicy](#) on Twitter.

About the Prison Policy Initiative

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to expose the broader harm of mass criminalization and spark advocacy campaigns to create a more just society. Alongside reports like this that help the public more fully engage in criminal justice reform, the organization leads the nation's fight to keep the prison system from exerting undue influence on the political process (a.k.a. prison gerrymandering) and plays a leading role in protecting the families of incarcerated people from the predatory prison and jail telephone industry and the video visitation industry.

See the footnotes