



WHY ARE SO MANY AMERICANS IN PRISON?

RAFAEL MANGUAL

Our prisons are crowded with people who shouldn't be there, the victims of a racist justice system. This is the popular progressive narrative. But it's wrong in every respect—dangerously wrong.

The U.S. does have a very large prison population—not because too many innocent people are incarcerated, but because too many people commit serious—usually violent—crimes. With rare exceptions, that's why most people are imprisoned in America. Period. Full stop.

Before presenting the facts, let me add these caveats: It's unacceptable that any innocent person is behind bars. Punishment must always fit, not exceed, the crime. We should do everything we can to reduce the rates of recidivism—committing more crime after release. And finally, everyone in prison should be treated humanely.

But let's not fool ourselves that our prisons are full of people who shouldn't be there. That's simply not the case.

Let's start with those convicted of drug offenses, the source of so much of the “mass incarceration” myth. While it's true that about half of federal prisoners are incarcerated on drug charges, federal inmates constitute only about 12% of the American prison population. Almost nine of every ten prison inmates are in state facilities. And very few of *them*—less than 15%—are there for drug-related offenses.

Four times that number are behind bars for one of the following serious crimes:

Murder—14%

Rape or sexual assault—13%

Robbery—13%

Aggravated or simple assault—11%

And burglary—9%

In short, violent criminals make up the clear majority of the state prison population. What's more, drug offenders who *do* end up in prison don't actually serve very much time—almost half are released within a year.

The truth is that most criminals probably spend less time in prison than you think—even for the most violent crimes. According to the Bureau of Justice Statistics, almost 40% of released state prisoners served less than a year in prison. Even 20% of murderers and nearly 60% of those convicted of rape or sexual assault served less than five years of their sentences in prison.

What explains the short stays? Answer: plea bargaining.

Most prosecutions never go to court. Instead, a deal is made between the defendant's attorney and the prosecutor to avoid going to trial. These negotiations often involve the offender agreeing to plead guilty in exchange for a reduced sentence, or dropping or downgrading the most serious charges. As a result, a prisoner's conviction record often understates the crime that landed him behind bars in the first place.

For example, an armed burglar who, when arrested, was found to be in possession of illegal drugs might go to prison not for his worst crime—the armed burglary, but for a plea-bargained charge of, say, trespass and drug possession. But the media and the activists don't tell us about this rather important detail. Instead, all we hear about is the poor fellow who's serving time “for selling a small amount of cocaine.”

This assumes, of course, that the convicted criminal does any time at all. Studies done by the Justice Department show that only about 40% of felony convictions lead to a prison sentence. Yes, many are given probation, sentenced to home confinement, or given credit for time served in pretrial detention. But most of the time, convicted criminals don't go to prison.

Do we really want even more criminals out on the street? Activists say yes. Scholars at the left-leaning Brennan Center have called for an immediate 40% reduction in the number of inmates. CNN host Van Jones, founder of the #Cut50 initiative, tops that. He wants a 50% reduction. But if the activists get their way, the costs would be high—and would likely be paid by the most vulnerable. Most crimes are committed by a small fraction of the population who primarily victimize their own communities.

Here's an all-too-common example: In the spring of 2019, two men were charged with the murder of a Chicago woman who was shot while holding her baby. One of the men charged, according to the Chicago Tribune, had “nine felony convictions, including for a 2004 second-degree murder charge.”

A January 2017 University of Chicago Crime Lab study found that, on average, someone arrested for a homicide or shooting in that city had nearly 12 prior arrests. Almost 20% had more than 20.

If we cut prison rolls by 20, 40 or 50%, it won't be politicians and media celebrities living in gated communities who will pay the price; it will be the law-abiding citizens in underserved neighborhoods struggling to get ahead who will pay.

When it comes to debates about criminal justice policy, these people—not criminals—should come first.

I'm Rafael Mangual, deputy director of legal policy at the Manhattan Institute, for Prager University.