

What is Mass Incarceration?

By John L. Fossum, Rice County Attorney.

In the last several years many people have decried Mass Incarceration and complained that too many people are imprisoned. It seems important to start by agreeing what Mass Incarceration is and then what criteria should be used for imprisonment.

Different organizations use different methods to calculate imprisonment, for consistency in comparison I chose the Sentencing Project which reported 2016 numbers for all 50 states and U.S. as a whole. Using the numbers for imprisonment, those convicted of felonies and sent to prison, the Sentencing Project reported that the U.S. as a whole had 471 people in prison per 100,000 in population.

When you look at the various states you soon see that different states make very different contributions to the prison population. Minnesota, has one of the lowest incarceration rates in the country. Minnesota ranked 47th in the nation in 2016 with 194 per 100,000. Compared to neighboring Wisconsin, we have a much smaller percentage of our population in prison, Wisconsin has an imprisonment rate of 371 per 100,000 ranking 29th among the states.

Louisiana has the rate with 816 per 100,000 in prison, Oklahoma second at 700 per 100,000 and Alabama third at 633 per 100,000. Maine had the lowest rate in 2016, with 153 per 100,000 in prison, Rhode Island 49th at 178 per 100,000, and Massachusetts was 48th in in 2016 with 188 per 100,000 of its population in prison.

Are the 12 states that have a rate higher than 471 engaging in Mass Incarceration or are the 38 that have a lower rate also engaging in Mass Incarceration? Where is the appropriate place to draw the line?

Minnesota's Sentencing Guidelines limit the use of prison to violent felonies for first time offenders. Violent Felonies include Murder, assaults, certain criminal sexual conduct cases, and 1st degree drug cases, which are the sale or possession of significant amounts of cocaine, heroin, or methamphetamine. Smaller sales or possession cases require prior felony convictions to result in a prison sentence.

Property crimes and other felonies ranked as low level by the guidelines may require multiple convictions to result in a prison sentence.

According to the Minnesota Department of Corrections, there were 9,849 people in Minnesota prisons on July 1 of this year, less than the 10,592 reported in 2016. Of those, 703 were women. The vast majority, 5,236 were serving sentences for person crimes, assault, murder, and criminal sexual conduct, for example. Drug cases took a distant second at 1,825 prisoners. Property crimes rounded out the top 3 categories at 1,013 prisoners. As of that census, there were 609 prisoners serving life sentences on Minnesota convictions.

It is impossible to say what the appropriate number of people in prison is, certainly not from the courtroom. We work, based on the facts of the case and the background of the offender, to reach a result recommended by the guidelines and what is just in a given case.

It is hard to know what the proper incarceration rate is. From the perspective of my office we need to look at the cases individually not try to hit a target of appropriate incarceration rate. Before engaging in a debate about Mass Incarceration we should first recognize not all states are the same and not all are engaging in the high levels of incarceration most critics decry. Most people in Minnesota prisons are

there for violent crimes against other Minnesota citizens. Only 18.5% are there for drug crimes. It's certainly reasonable to have a discussion about what crimes should result in prison, but it is also reasonable to start from an understanding of where we are before we talk about where we should go.