

UNITED STATES

PUNISHMENT AND PREJUDICE:

The Racial Costs in the War on Drugs

I. SUMMARY AND RECOMMENDATIONS	2
II. THE EXTENT OF U.S. INCARCERATION.....	7
III INCARCERATION AND RACE	8
Admission to Prison	8
Overrepresentation of Blacks in Prison	8
Rates of Incarceration	9
Rates of Incarceration of Black and White Men.....	9
IV. THE ROLE OF VIOLENT CRIME IN U.S. INCARCERATION RATES	11
V. THE IMPACT OF THE WAR ON DRUGS ON U.S. INCARCERATION	13
Drug Offenders Admitted to Prison.....	14
Rate of Admission of Drug Offenders	14
Drug Offending and Rates of Admission to Prison	14
Drugs Involved In Offense	15
Type of Drug Conduct	15
Low-level Offenders	15
VI. RACIALLY DISPROPORTIONATE INCARCERATION OF DRUG OFFENDERS	17
Racial Disparities in Drug Offender Admissions to Prison	17
Drug Offenders as a Proportion of Total Black Admissions.....	17
VII. RACIALLY DISPROPORTIONATE DRUG ARRESTS	19
Drug Arrests.....	19
Drug Law Violations by Blacks and Whites.....	19
Origins of Racially Disproportionate Arrests.....	21
VIII. WOMEN, RACE, DRUGS AND IMPRISONMENT	24
IX. CONCLUSION.....	25
APPENDIX: METHODOLOGY	26
ACKNOWLEDGMENTS	27

I. SUMMARY AND RECOMMENDATIONS

Since the mid 1980s, the United States has undertaken aggressive law enforcement strategies and criminal justice policies aimed at curtailing drug abuse. The costs and benefits of this national war on drugs are fiercely debated. What is not debatable, however, is its impact on black Americans. Ostensibly color blind, the war on drugs has been waged disproportionately against black Americans.

Our research shows that blacks comprise 62.7 percent and whites 36.7 percent of all drug offenders admitted to state prison, even though federal surveys and other data detailed in this report show clearly that this racial disparity bears scant relation to racial differences in drug offending. There are, for example, five times more white drug users than black. Relative to population, black men are admitted to state prison on drug charges at a rate that is 13.4 times greater than that of white men. In large part because of the extraordinary racial disparities in incarceration for drug offenses, blacks are incarcerated for all offenses at 8.2 times the rate of whites. One in every 20 black men over the age of 18 in the United States is in state or federal prison, compared to one in 180 white men.

Shocking as such national statistics are, they mask even worse racial disparities in individual states. In seven states, for example, blacks constitute between 80 and 90 percent of all drug offenders sent to prison. In at least fifteen states, black men are admitted to prison on drug charges at rates that are from 20 to 57 times greater than those of white men. These racial disparities in drug offenders admitted to prison skew the racial balance of state prison populations. In two states, one in every 13 black men is in prison. In seven states, blacks are incarcerated at more than 13 times the rate of whites.

The imprisonment of blacks for drug offenses is part of a larger crisis of overincarceration in the United States. Although prison should be used as a last resort to protect society from violent or dangerous individuals, more people are sent to prison in the United States for nonviolent drug offenses than for crimes of violence. Throughout the 1990s, more than one hundred thousand drug offenders were sent to prison annually. More than 1.5 million prison admissions on drug charges have occurred since 1980. The rate at which drug offenders are incarcerated has increased ninefold. According to retired General Barry McCaffrey, director of the Office of National Drug Control Policy, the nation's war on drugs has propelled the creation of a vast "drug gulag." Drug control policies bear primary responsibility for the quadrupling of the national prison population since 1980 and a soaring incarceration rate, the highest among western democracies.

Human Rights Watch presents in this report original as well as previously published statistics that document the extraordinary extent to which Americans, and especially black Americans, have been burdened with imprisonment because of nonviolent drug offenses. We have conducted the first state-by-state analysis of the impact of drug offenses on the admission to prison of blacks and whites. (See Appendix for methodology.) The statistics we have compiled present a unique -- and devastating -- picture of the price black Americans have paid in each state for the national effort to curtail the use and sale of illicit drugs.

We have focused on the imprisonment of drug offenders at the state level because aggregate national data masks the remarkable differences among the states regarding the degree to which they put drug offenders in prison and the extent to which the use of prison as a penal sanction for drug offenders is racially disproportionate. As discussed in this report, these substantial state differences are primarily the result of public penal policies and law enforcement priorities, not different rates of drug offending.

With this report Human Rights Watch seeks to bring renewed attention to extreme racial disparities in one area of the criminal justice system -- the incarceration of drug law offenders, i.e., persons whose most serious conviction offense is a nonviolent drug law violation. The high rates of incarceration for all drug offenders are

cause for concern. But the grossly disparate rates at which blacks and whites are sent to prison for drug offenses raise a clear warning flag concerning the fairness and equity of drug law enforcement across the country, and underscore the need for reforms that would minimize these disparities without sacrificing legitimate drug control objectives.

Drug offenders in the United States face penal sanctions that are uniquely severe among western democracies. Drug sentences, even for those guilty of retailing or possessing small drug quantities, can compare to or exceed sentences for serious violent crimes such as armed robbery, rape, and even murder. Supporters of imprisonment for drug offenders insist it removes major traffickers and dangerous criminals from society, deters prospective offenders, and enhances community safety and well-being. Critics point to compelling data showing that few of the drug offenders who end up in prison are higher level dealers or traffickers and, indeed, that the prior criminal records of many incarcerated drug offenders are limited to drug offenses or consist of other nonviolent crimes. The massive use of imprisonment has failed to decrease the availability of drugs or raise their price, and adult drug use has not changed appreciably since the end of the 1980s. Most observers believe imprisonment has had little impact on the number of drug dealers on the streets. Even many police officials acknowledge that for every low level dealer incarcerated, another emerges to take his place. Moreover, according to an authoritative independent study of mandatory minimum prison sentences for drug offenders, such sentences are “not justifiable on the basis of cost-effectiveness at reducing cocaine consumption, cocaine expenditures or drug-related crime.”

Prison is a legitimate criminal sanction -- but it should be used sensibly, justly, parsimoniously, and with due consideration for the principles of proportionality and respect for human dignity required by international human rights law. The incarceration of hundreds of thousands of low-level nonviolent drug offenders betrays indifference to such considerations. Moreover, many drug offenders receive egregiously long prison sentences, particularly because of the prevalence of mandatory sentencing laws for drug offenses that do not permit judges to calibrate sentences to the conduct and level of culpability of each defendant.¹ Many factors -- the transformation of crime and punishment into key issues in electoral debates, the persistence of drug abuse, the desire to “send a message” and communicate social opprobrium, ignorance about drug pharmacology, and concern about crime, among others -- have encouraged politicians and public officials to champion harsh prison sentences for drug offenders and to turn a blind eye to the extraordinary human, social, and economic costs of such policies. They have also turned a blind eye to the war on drugs’ staggering racial impact.

¹ See Human Rights Watch, *Cruel and Usual: Disproportionate Sentences for New York Drug Offenders* (New York: Human Rights Watch, 1997). Thirty two states have mandatory minimum sentencing laws for drug offenses. Bureau of Justice Assistance, “National Assessment of Structured Sentencing” U.S. Department of Justice (February 1996). Mandatory sentences are not responsible for all excessive drug sentences. In Oklahoma, for example, a jury in 1997 gave a sentence of 93 years to Will Forster, Human Rights Watch three with no prior criminal record who grew marijuana plants in his basement. *Human Rights Watch* 2000 Vol. 12, No. 2 (G)

It is difficult to assess the extent to which racial bias or sheer indifference to the fate of black communities has contributed to the development and persistence of the nation's punitive anti-drug strategies. Certainly the emphasis on penal sanctions in the fight against drugs cannot be divorced from longstanding public association of racial minorities with crime and drugs.² Cocaine use by white Americans in all social classes increased in the late 1970s and early 1980s, but it did not engender the "orgy of media and political attention" that catalyzed the war on drugs in the mid-1980s when smokable cocaine in the form of crack spread throughout low income minority neighborhoods that were already seen as dangerous and threatening.³ Even though far more whites used both powder cocaine and crack cocaine than blacks, the image of the drug offender that has dominated media stories is a black man slouching in an alleyway, not a white man in his home. When asked to close their eyes and envision a drug user, Americans overwhelmingly picture a black person.⁴

Poor minority urban neighborhoods have been the principal "fronts" of the war on drugs. Massive street sweeps, "buy and bust" operations, and other police activities have heavily targeted participants in street level, retail drug transactions in these neighborhoods. Not surprisingly, comparably few of the people arrested there have been white. Racial profiling -- or the police practice of stopping, questioning, and searching minorities in vehicles or on the street based solely on their appearance -- has also contributed to racially disproportionate drug arrests, although there are no reliable estimates of the number. More blacks have also been prosecuted federally for crack offenses than white, and thus have disproportionately felt the effects of the higher sentences for crack versus powder cocaine mandated in federal law.⁵

Many Americans would agree that punitive drug policies relying on harsh penal sanctions would have been changed long ago if whites were incarcerated on drug charges at the same rate as blacks. It is deeply troubling that in the United States the political majority has maintained criminal justice policies that so disproportionately burden a racial minority, particularly when those policies coupled with felony disenfranchisement laws further politically weaken that minority.⁶ Politicians have been able more easily to reap the electoral advantages of endorsing tough policies because the group that suffered most from those policies -- black Americans -- lacked the numbers to prevail in the political arena.

Human Rights Watch fully acknowledges the public's legitimate interest in curtailing the abuse of dangerous drugs. But the importance of drug control should not be permitted to override fundamental principles of equal protection of the laws and racial equality. In an equitable criminal justice system, sanctions should be imposed equally on offending populations.

²Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995); David Cole, *No Equal Justice* (New York: The New Press, 1999); David Musto, *The American Disease: Origins of Narcotic Control* (New Haven, CT: Yale University Press, 1973).

³ See, e.g., Craig Reinerman and Harry G. Levine, "The Crack Attack, Politics and Media in the Crack Scare," in Craig Reinerman and Harry G. Levine, *Crack in America* (Berkeley: University of California Press, 1997).

⁴ Barry R. McCaffrey "Race and Drugs: Perception and Reality, New Rules for Crack Versus Powder Cocaine," *Washington Times*, October 5, 1997 citing results of a survey published in 1995: Burston, Jones, and Robert-Saunders, "Drug Use and African Americans: Myth Versus Reality" in the *Journal of Alcohol and Drug Education*. Ninety-five percent of respondents pictured a black drug user while only 5 percent imagined other racial groups.

⁵ According to the United States Sentencing Commission, 88.3 percent of federal crack cocaine defendants were black. United States Sentencing Commission, *Special Report to the Congress: Cocaine and Federal Sentencing Policy, 1995*, Washington, D.C., 1995, p. 156. The sentencing laws of at least ten states also treat crack cocaine offenses more harshly than powder.

⁶ See Human Rights Watch and The Sentencing Project "Losing the Vote: The Impact of Felony Disenfranchisement Law in the United States" (New York: Washington, D.C., 1998)

Under state and federal constitutional law, racial disparities in law enforcement are constitutional as long as they are not undertaken with discriminatory intent or purpose.⁷ International human rights law wisely does not impose the requirement of discriminatory intent. The International Convention on the Elimination of all Forms of Racial Discrimination (CERD), to which the U.S. is a state party, defines race discrimination as conduct that has the “purpose or effect” of restricting rights on the basis of race.⁸ It proscribes race-neutral practices curtailing fundamental rights that unnecessarily create statistically significant racial disparities even in the absence of racial animus.⁹ It requires remedial action whenever there is an unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin, even where there may be no intent to discriminate against that group.¹⁰ Under CERD, governments may not engage in “malign neglect,” that is, they may not ignore the need to secure equal treatment of all racial and ethnic groups, but rather must act affirmatively to prevent or end policies with unjustified discriminatory impacts.

Assessing whether the severe impact of drug law enforcement on blacks is justifiable requires scrutiny of the drug war’s goals and methods, and consideration of available alternatives. Human Rights Watch believes there are numerous policy alternatives to current patterns of criminal law enforcement that would reduce adverse racial disparities while continuing to respond to social concerns about public drug dealing and drug abuse. In the context of nationwide debates over the use of the criminal law to address drug abuse, doubts about the fairness and justice of enforcing those laws disproportionately against minorities take on even greater significance. It is hard to justify policies that result in the grossly disproportionate incarceration of a racial minority when there are feasible and cost-effective alternative approaches to address drug abuse and drug dealing that would not have such an effect.

Even if blacks and whites were sent to prison on drug charges at comparable rates, Human Rights Watch would still urge reconsideration of the heavy U.S. reliance on incarceration in its drug policies. In choosing strategies to address drug abuse and drug dealing, the country must consider the negative consequences of high incarceration rates, particularly in minority communities. No functioning democracy has ever governed itself with as large a percentage of its adults incarcerated as the United States. The direct and collateral consequences of imprisonment may be acceptable when violent offenders are put behind bars, but they are much harder to justify for nonviolent drug offenders.

In the poor urban minority communities from which most black drug offenders are taken, the high percentage of men and, increasingly, women sent to prison may also undermine their communities’ moral and social cohesion. By damaging the human and social capital of already disadvantaged neighborhoods, the “war on drugs” may well be counterproductive, diminishing opportunities for social and economic mobility and even contributing to an increase in crime rates.¹¹

The racially disproportionate nature of the war on drugs is not just devastating to black Americans. It contradicts faith in the principles of justice and equal protection of the laws that should be the bedrock of any constitutional democracy; it exposes and deepens the racial fault lines that continue to weaken the country and belies its promise as a land of equal opportunity; and it undermines faith among all races in the fairness and

⁷ The requirement of proof of intent has been a formidable barrier for victims of discrimination in the criminal justice system seeking judicial relief. See, e.g., “Developments in the Law: Race and the Criminal Process,” 101 *Harvard Law Review* 1520 (1988).

⁸ International Convention on the Elimination of All Forms of Racial Discrimination, Par. I, Article 1,3. In the Centre for Human Rights, *Human Rights: A Compilation of International Instruments*, Vol., ST/HR/1/REV.5 (New York: United Nations, 1994), p.66. Also available at <http://www.un.org/Depts/Treaty/>.

⁹ See CERD, General Recommendation XIV(42) on article 1, paragraph 1, of the Convention, U.N. GAOR, 48th Sess., Supp. No. 18, at 176, U.N. Doc. A/48/18(1993). See also, Theodor Meron, “The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination,” 79 *The American Journal of International Law* 283, 287-88 (1985).

¹⁰ Committee on the Elimination of Racial Discrimination, General Recommendation on Par. I, Article 1 of CERD.

¹¹ See Todd R. Clear, “The Unintended Consequences of Incarceration,” (paper presented to the NIJ Workshop on Corrections Research, February 14-15, 1996).

efficacy of the criminal justice system. Urgent action is needed, at both the state and federal level, to address this crisis for the American nation.

Recommendations

U.S. political leaders must acknowledge the excessive and racially disproportionate incarceration of nonviolent drug offenders and grapple forthrightly with ways to eliminate it. The first step is to reevaluate the current strategies for fighting drugs. Policy makers in each state, as well as in the federal government, should reassess existing public policy approaches to drug use and sales to identify more equitable but still effective options. In particular, they should examine the costs and benefits of relying heavily on penal sanctions to address drug use and drug trafficking and should look closely at law enforcement strategies to identify ways to make them more racially equitable.

We believe each state as well as the federal government should subject current and proposed drug policies to strict scrutiny and modify those that cause significant, unwarranted racial disparities. In addition, we believe the state and federal governments should:

- Eliminate mandatory minimum sentencing laws that require prison sentences based on the quantity of the drug sold and the existence of a prior record. Offenders who differ in terms of conduct, danger to the community, culpability, and other ways relevant to the purposes of sentencing should not be treated identically. Judges should be able to exercise their informed judgment in crafting effective and proportionate sentences in each case.
- Increase the availability and use of alternative sanctions for nonviolent drug offenders. Drug defendants convicted of nonviolent offenses should ordinarily not be given prison sentences, even if they are repeat offenders, unless they have caused or threatened specific, serious harm -- for example, when drug sales are made to children -- or if they have upper level roles in drug distribution organizations.
- Increase the use of special drug courts in which addicted offenders are given the opportunity to complete court supervised substance abuse treatment instead of being sentenced to prison.
- Increase the availability of substance abuse treatment and prevention outreach in the community as well as in jails and prisons.
- Redirect law enforcement and prosecution resources to emphasize the arrest, prosecution, and incarceration of importers, manufacturers, and major distributors, e.g., drug king pins, rather than low level offenders and street level retail dealers.
- Eliminate different sentencing structures for powder cocaine and crack cocaine, drugs that are pharmacologically identical but marketed in a different form. Since more blacks are prosecuted for crack cocaine offenses and thus subjected to the higher penalties for crack offenses that exist in federal and some state laws, the crack-powder sentencing differential aggravates without adequate justification the racial disparities in imprisonment for drug offenses.
- Eliminate racial profiling and require police to keep and make public statistics on the reason for all stops and searches and the race of the persons targeted.
- Require police to keep and make public statistics on the race of arrested drug offenders and the location of the arrests.

To facilitate more inter-state criminal justice analyses, the Bureau of Justice Statistics of the U.S. Department of Justice should annually compile and publish state-by-state statistics on the racial impact of the criminal justice

system as it applies to drug offenders, including statistics on arrests, convictions, sentences, admissions to prison, and prison populations.

II. THE EXTENT OF U.S. INCARCERATION

In the year 2001, the total number of people in U.S. prisons and jails will surpass two million.¹² The state and federal prison population has quadrupled since 1980 and the rate of incarceration relative to the nation's population has risen from 139 per 100,000 residents to 468.¹³ If these incarceration rates persist, an estimated one in twenty of America's children today will serve time in a state or federal prison during his or her lifetime.¹⁴

There is a considerable range in prison incarceration rates among U.S. states (Table 1). Minnesota has the lowest rate, 121 prisoners per 100,000 residents, and Louisiana the highest, with a rate of 763. Seven of the ten states with the highest incarceration rates are in the South.¹⁵ Almost every state has a prison incarceration rate that greatly exceeds those of other western democracies, in which between 35 and 145 residents per 100,000 are behind bars on an average day.¹⁶ The District of Columbia, an entirely urban jurisdiction, has a rate of 1,600.

¹² Allen J. Beck, "Prison and Jail Inmates at Midyear 1999," Bureau of Justice Statistics, U.S. Department of Justice (April 2000).

¹³ Ibid.; Kathleen Maguire and Ann L. Pastore, eds., *1998 Sourcebook of Criminal Justice Statistics*, Bureau of Justice Statistics, U.S. Department of Justice (1999), Table 6.36.

¹⁴ Thomas P. Bonczar and Allen J. Beck, "Lifetime Likelihood of Going to State or Federal Prison," Bureau of Justice Statistics, U.S. Department of Justice (March 1997).

¹⁵ In each of the twenty years since 1978 for which data is available, the South has had significantly higher incarceration rates than any other region. See BJS, *1998 Sourcebook*, Table 6.37.

¹⁶ The number of prisoners per 100,000 inhabitants varies worldwide from about 20 in Indonesia to about 685 in Russia. In Western Europe, the rate ranges between 35 in Cyprus and 145 in Portugal. Andre Kuhn, "Incarceration Rates Across the World," *Overcrowded Times*, April 1999, p.1. International rates of incarceration include prisoners awaiting sentences as well as all sentenced prisoners, whereas state prisons in the U.S. only confine convicted prisoners with sentences of more than one year. Therefore, the actual difference between foreign rates of incarceration and U.S. prison incarceration rates is even greater than

III. INCARCERATION AND RACE

The disproportionate representation of black Americans in the U.S. criminal justice system is well documented.¹⁷ Blacks comprise 13 percent of the national population, but 30 percent of people arrested, 41 percent of people in jail,¹⁸ and 49 percent of those in prison.¹⁹ Nine percent of all black adults are under some form of correctional supervision (in jail or prison, on probation or parole), compared to two percent of white adults.²⁰ One in three black men between the ages of 20 and 29 was either in jail or prison, or on parole or probation in 1995.²¹ One in ten black men in their twenties and early thirties is in prison or jail.²² Thirteen percent of the black adult male population has lost the right to vote because of felony disenfranchisement laws.²³

Admissions to Prison

Racial disparities in incarceration increased in the 1980s and 1990s as the number of blacks sent to prison grew at a faster rate than the number of whites.²⁴ Between 1979 and 1990, the number of blacks as a percentage of all persons admitted to state and federal prisons increased from 39 to 53 percent.²⁵ Although the admissions for both races, in absolute numbers, rose sharply, the increase was greatest for blacks (Figure 1).

Human Rights Watch has been able to analyze state prison admissions based on raw data on 37 states gathered by the Bureau of Justice Statistics of the U.S. Department of Justice through its National Corrections Reporting Program (NCRP) for 1996, the most recent year for which this data is available. In 17 of these states, blacks constituted more than half of all prison admissions (Table 2). Maryland had the highest percentage of black admissions, 79 percent, followed by Illinois with 74 percent, Louisiana with 73 percent, and New Jersey with 72 percent.

Overrepresentation of Blacks in Prison

In every state, the proportion of blacks in prison exceeds, sometimes by a considerable amount, their proportion in the general population (Figure 2). In Minnesota and Iowa, blacks constitute a share of the prison population that is twelve times greater than their share of the state population. In eleven states -- Kansas, Montana, Nebraska, New Hampshire, Oregon, Rhode Island, South Dakota, Utah, Washington, Wisconsin, and Wyoming -- the percentage of the prison population that is black is more than six times greater than the percentage of the state population that is black.

¹⁷ See generally, Marc Mauer, *Race to Incarcerate* (New York: The New Press, 1999) pp. 118-142; David Cole, *No Equal Justice*. Although racial bias may play a role in individual cases, most researchers believe racial disparities in the criminal justice system are primarily the result of indirect discrimination; the impact of race-linked (e.g. poverty, education, neighborhood of arrest) disadvantages compounded through out the criminal justice processing system; specific "social structural contexts;" and such legally relevant race neutral variables as the existence of prior records. See, generally, Robert J. Sampson and Janet L. Lauritsen, "Racial and Ethnic Disparities in Crime and Criminal Justice in the United States," in Michael Tonry, ed., *Ethnicity, Crime, and Immigration*, (Chicago: University of Chicago Press, 1997).

¹⁸ Jails typically confine people awaiting trial or who have been sentenced to a year or less of confinement.

¹⁹ BJS, *1998 Sourcebook*, Table 4.10 (arrests), Table 6.28 (jail inmates); Allen J. Beck and Christopher J. Mumola, "Prisoners in 1998," Bureau of Justice Statistics, U.S. Department of Justice (August 1999).

²⁰ BJS, *1998 Sourcebook*, Table 6.2.

²¹ Marc Mauer, *Young Black Americans and the Criminal Justice System: Five Years Later*, (Washington D.C.: The Sentencing Project, 1995).

²² BJS, "Inmates at Midyear 1999."

²³ Human Rights Watch and the Sentencing Project, *Losing the Vote*.

²⁴ In 1970, blacks constituted 41 percent of combined state and federal prison populations and whites 58 percent. In 1997, blacks constituted 49.2 percent of the prison population and whites 48.3 percent. Margaret Werner Cahalan, *Historical Corrections Statistics in the United States, 1850-1984*, Bureau of Justice Statistics, U.S. Department of Justice (December 1986), Table 3.31; BJS, "Prisoners in 1998."

²⁵ As used in this report, prison "admissions" refers to new court commitments to prison, i.e., persons sent to prison upon conviction or upon revocation of probation. It does not include persons returned to prison for parole violations unless they have

Rates of Incarceration

Racially disaggregated incarceration rates that measure the number of confined blacks and whites per 100,000 residents of each racial group yield another perspective on the extent of racial disparities in imprisonment. Nationwide, blacks are incarcerated at 8.2 times the rate of whites. That is, a black person is 8.2 times more likely to be in prison than a white person. Among individual states, there are even more extraordinary racial disparities in incarceration rates (Figure 3). In seven states -- Connecticut, Illinois, Iowa, Minnesota, New Jersey, Pennsylvania, and Wisconsin -- blacks are incarcerated at more than 13 times the rate of whites. Minnesota has by far the highest disparity -- blacks in that state are incarcerated at 23 times the rate of whites. In the District of Columbia, blacks are incarcerated at 34 times the rate of whites. Even in Hawaii and Vermont, the states with the smallest racial disparities in incarceration rates, blacks are still incarcerated at more than twice the rate of whites.²⁶

Blacks are incarcerated nationally at a rate of 1,547 per 100,000 black residents. In some states, the black rate of incarceration reaches extraordinary levels (Table 3). In Alaska, Arizona, Connecticut, Delaware, Iowa, Oklahoma, Rhode Island, Texas, Wisconsin and the District of Columbia, blacks are incarcerated at rates that exceed 2,000 per 100,000. The lowest incarceration rate for blacks, 570 in North Dakota, exceeds the highest rate for whites, 440 in Arizona.

These rates of incarceration reflect a marked increase since the late 1980s. Although rates increased for both whites and blacks in most states between 1988 and 1996, the black rate in most states increased more than the white rate. The national black rate of incarceration increased 67 percent, from 922 per 100,000 black residents to 1547, while the white rate increased 28 percent, from 134 to 188 per 100,000 white residents (Table 4). In nine states -- Iowa, Kentucky, Montana, New Hampshire, North Dakota, Tennessee, Texas, West Virginia, and Wisconsin -- the black rate of incarceration doubled. In another twenty-six states, the rate increased by fifty percent or more. In contrast, the white rate increased by fifty percent in fifteen states; in only two states (South Dakota and Washington) did the white rate double. As a result, the ratio of the rates of black to white incarceration increased from 6.8 to 8.2.

Rates of Incarceration of Black and White Men

Since most inmates are adult men, an even more significant measure of the extent of racial disparities in state prison populations and of the sheer magnitude of black incarceration is obtained from comparing the racially disaggregated incarceration rates of men over the age of eighteen.²⁷ In no state are black men incarcerated at rates even close to those of white men (Figure 4). Nationwide, black men are incarcerated at 9.6 times the rate of white men. In eleven states, black men are incarcerated at rates that are *twelve to twenty-six* times greater than those of white men (Table 5). Thus, in Minnesota, the state with the greatest racial disparity in incarceration, a black man is 26.8 times more likely to be in prison than a white man. In Connecticut, Illinois, Iowa, New Jersey, Pennsylvania, and Wisconsin, a black man is more than fifteen times more likely to be in prison than a white man. In the District of Columbia, black men are incarcerated at 49 times the rate of white men.

²⁶ One analyst of racial disparities in U.S. incarceration has suggested that low white imprisonment rates are a key factor in creating high racial disproportions. Leena Kurki, "Racial Incarceration Disparities," *Overcrowded Times*, December 1999, p. 5. Other researchers have suggested that states with relatively smaller black populations have more racial disproportionality in their prison population. George S. Bridges and Robert D. Crutchfield, "Law, social standing and racial disparities in imprisonment," 22 *Social Problems* 31 (1975); See also, Darnell F. Hawkins and Kenneth A. Hardy, "Black-white imprisonment rates: A state-by-state analysis," 16 *Social Justice* 75 (1989), which suggests that the percent of a state's black population that is urban may be even more determinative; northern states have larger urban concentrations than southern states, and have higher racial disparities in their incarcerated population.

²⁷ Human Rights Watch, "93.5% of all inmates. BJS, "Prisoners in 1998," Table 7.

The rate at which black men are incarcerated is astonishing. There are 4,630 black men in prison nationwide per 100,000 black men in the population, whereas the rate for white men is 482.²⁸ In ten states and the District of Columbia, black men are incarcerated at staggeringly high rates that range from 5,740 to 7,859 per 100,000. In contrast, the range among the ten states with the highest rates of white male incarceration is 620 to 1,151. The highest rate of white male incarceration (1,151) is lower than the lowest rate of black male incarceration (1,195). According to Department of Justice calculations, if current rates of incarceration remain unchanged, 28.5 percent of black men will be confined in prison at least once during their lifetime, a figure six times greater than that for white men.²⁹

Because of their extraordinary rate of incarceration, one in every 20 black men over the age of 18 is in a state or federal prison, compared to one in every 180 whites. In certain states, the incarceration of black men reaches devastating levels: in Oklahoma and Iowa one in every thirteen black men is in state prison; in Rhode Island, Texas and Wisconsin, the figure is one in every fourteen (Table 6).

²⁸The rate of incarceration of black men in federal and state jail and prison populations increased at ten times the rate of white men between 1985 and 1995. See Michael Tonry, "Crime and Punishment in America, 1971-1996," *Overcrowded Times*, April 1998, p. 15.

IV. THE ROLE OF VIOLENT CRIME IN U.S. INCARCERATION RATES

Contrary to popular assumption, the remarkably high and increasing rates of incarceration in the U.S. since the 1980s have not been driven by increases in the rate of violent crime. Rather, the burgeoning prison population is the result of changes in penal policies and practices and of the soaring number of drug offenders given prison sentences.

Despite the prominent role violent crime has played in the concerns of politicians,³⁰ the media,³¹ and the public,³² the trends in offense rates for murder, robbery, burglary, and forcible rape were relatively flat or declining between 1980 and 1996 -- even before the past couple of years in which declining crime rates have been widely noted.³³ The only violent crime that showed clear growth was aggravated assault, which may partly reflect increased official recording of domestic assaults and the increased tendency of police to record simple assaults as aggravated.³⁴ Overall, "crime rates for most crimes peaked around 1980, fell through the mid-80s, rose for a while for reasons largely associated with the crack cocaine epidemic, and have since fallen sharply."³⁵ The violent crime rate in 1997 was almost twenty percent lower than in 1991; the property crime rate was 16.1 percent lower. Total crime rates were at least twenty-five percent lower in 1996 than in the late 1980s or early 1990s.³⁶ Arrests for all the major violent crimes, except aggravated assault, actually declined between 1990 and 1996.³⁷ Indeed, regardless of the law enforcement and criminal justice strategies, crime dropped in all the major cities except Washington D.C., with total crime rates at least twenty-five percent lower in 1996 than in the late 1980s or early 1990s.³⁸

³⁰ Efforts to understand the causes of increasingly punitive penal policies in the U.S. have identified as key factors the changing role that crime and punishment have played in U.S. politics. See, e.g., Michael Tonry, "Why are U.S. Incarceration Rates so High," *Overcrowded Times*, June 1999; Theodore Caplow and Jonathan Simon, "Understanding Prison Policy and Population Trends," in Michael Tonry and Joan Petersilia, eds., *Prisons*, (Chicago: University of Chicago Press, 1999).

³¹ Crime is regularly the most frequently covered story in network news regardless of crime rates. In 1997, for example, murder coverage rose from previous years despite declining homicide rates. See, "Crime Regains Top Spot in Television News Coverage in 1997," *Overcrowded Times*, April 1998, reprinted from *Media Monitor*, January/February 1998, a publication of the Center for Media and Public Affairs, Washington, D.C.

³² See BJS, *1998 Sourcebook*, Tables 2.33-2.43, for a useful compendium of statistics about public attitudes towards crime and personal safety.

³³ The standard sources for measuring national crime rates are the Federal Bureau of Investigations' annual publication of *Uniform Crime Reports: Crime in the United States*, based on arrest data compiled by the FBI through its Uniform Crime Reporting Program; and the annual National Crime Victimization Survey, conducted for the Bureau of Justice Statistics, U.S. Department of Justice by the U.S. Bureau of the Census. The U.S. Department of Justice also publishes periodic reports on crime, e.g. Callie Marie Rennison, "Criminal Victimization in 1998," Bureau of Justice Statistics, U.S. Department of Justice, (July 1999).

³⁴ See Alfred Blumstein and Allen J. Beck, "Population Growth in U.S. Prisons, 1980-1996," in Tonry and Petersilia, *Prisons*, p. 30.

³⁵ Tonry, "Why are U.S. Incarceration Rates So High?" See also, Tonry, "Crime and Punishment in America, 1971-1996," *Overcrowded Times*, April 1998.

³⁶ For example, between 1991 and 1997, the murder rate fell by 30.6 percent, rape by 15.1 percent, robbery by 31.8 percent, aggravated assault by 11.8 percent, etc. Leena Kurki, "US Crime Rates Keep Falling," *Overcrowded Times*, February 1999.

³⁷ Paula M. Ditton and Doris James Wilson, "Truth in Sentencing in State Prisons," Bureau of Justice Statistics, U.S. Department of Justice (January 1999), p. 5.

³⁸ Kurki, "US Crime Rates Keep Falling."

According to two of the country's leading experts on criminal justice statistics, the growth in state incarceration for non-drug offenses between 1980 and 1996 is attributable entirely to public policy changes that increased the imposition of prison sentences and their length, and not to increased offending.³⁹ That is, the growth of the prison population, excluding drug offenders, has been driven by criminal justice policies that have: 1) increased the likelihood that conviction for a crime will result in incarceration, including through mandatory minimum sentencing and "three strikes" laws; 2) increased the length of time served, by increasing the length of sentences, and reducing or eliminating the availability of early release and parole; and 3) increased the rate at which parolees are returned to prison.

Although these policies have been championed as protecting the public from serious and violent offenders, they have actually yielded high rates of confinement of nonviolent offenders.⁴⁰ For the period 1980 to 1992, eighty-four percent of the increase in state prison admissions was due to the admission of nonviolent offenders, including drug offenders.⁴¹ Between 1990 and 1996, more than twice as many people were sent to state prison for nonviolent offenses (1,530,300) as for violent ones (654,800).⁴²

In 1980, 48 percent of new admissions to prison were convicted of crimes of violence, 41 percent were convicted of property crimes, and 7 percent were convicted of drug crimes.⁴³ By 1996 the proportion of drug offenders among new court commitments had soared to 31.7 percent, while the proportion of violent offenders had dropped to 26.8 percent and property offenders to 32.3 percent.⁴⁴ These proportions have remained essentially unchanged since then. Nationwide, nonviolent offenders account for 72 percent of all prison admissions. With the exception of Oregon, in every state reporting to the NCRP, nonviolent offenders accounted for between 58 and 84 percent of all new admissions to state prison (Table 7).

³⁹ Blumstein and Beck, "Population Growth." Blumstein and Beck focused on the six crimes that account for most of state prison populations: murder, robbery, aggravated assault, burglary, drugs, and sexual assaults. Drawing on data collected by the U.S. Department of Justice's Bureau of Justice Statistics, and from other national data sets, Blumstein and Beck analyzed growth in incarceration by crime type and by race and gender and then partitioned the growth of state incarceration rates by stages of the criminal justice process (commission of crime, arrest, conviction, commitment, and time served in prison).

⁴⁰ See Marc Mauer, *Race to Incarcerate* (New York: The New Press, 1999).

⁴¹ Marc Mauer, *Americans Behind Bars: The International Use of Incarceration, 1992-1993*, (Washington D.C.: The Sentencing Project, 1994) p. 10.

⁴² Numbers calculated from Bureau of Justice Statistics, "Correctional Populations in the United States, 1996," U.S. Department of Justice, April 1999, Table 1.22.

⁴³ Mauer, *Americans Behind Bars*, p.10

⁴⁴ Mauer, *Americans Behind Bars*, Table 1.23. 13

V. THE IMPACT OF THE WAR ON DRUGS ON U.S. INCARCERATION

The single greatest force behind the growth of the U.S. prison system since the mid-1980s has been the national "war on drugs."⁴⁵ Spearheaded by major federal drug policy initiatives that significantly increased penalties for drug offenses and markedly increased federal funds for state anti-drug efforts, federal and state measures to combat drugs have concentrated on criminal law enforcement rather than prevention and treatment.⁴⁶ An estimated 400,000 people -- almost one-quarter of the total incarcerated population in the U.S. -- are confined in local jails and state and federal prisons on drug charges.⁴⁷ Citing the extraordinary number of drug offenders in U.S. prisons, General Barry McCaffrey, has decried the creation of what he termed a "drug gulag."⁴⁸

Policies adopted to battle the use and sale of drugs have led to marked increases in arrest rates, in the likelihood of going to prison, and in the length of sentences for drug offenders. Between 1980 and 1997, the number of annual drug arrests tripled to a high of 1,584,000.⁴⁹ The rate of drug arrests per 100,000 residents rose from 288 to 661.⁵⁰ The rate of commitment to state prison per drug arrest quintupled between 1980 and 1990, rising from 19 prison commitments per 1,000 arrests to 103 per 1,000.⁵¹ The estimated time served by drug offenders in state prisons increased a full year between 1987 and 1996; federal drug sentences doubled.⁵²

⁴⁵ Michael Tonry, a prominent U.S. criminologist, has pointed out that the war on drugs gathered steam after the use of cocaine had already begun to decline. Federal drug use surveys show cocaine use rose markedly between 1983 and 1985, and then began a steep decline, leveling off in 1992. Tonry, *Malign Neglect*. Federal drug use surveys indicated the number of cocaine users declined from 5.7 million in 1985 to 1.4 million in 1992 and has not changed significantly since then; the number of frequent cocaine users has not changed much since 1985; and the number of occasional users decreased from 7.1 million in 1985 to 2.4 million in 1994 and has remain unchanged since then. The number of current crack users has not changed since 1988. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *Summary Findings from the 1998 National Household Survey on Drug Abuse*, Washington, D.C., 1999, p. 16. The trends are probably more reliable than the precise numbers because of a large sampling error and potentially significant underreporting in the survey. The rise, leveling off, and decline of crack varied in its timing in different cities and areas across the country. Andrew Lang Golub and Bruce D. Johnson, "Crack's Decline: Some Surprises Across U.S. Cities," *National Institute of Justice: Research in Brief*, Washington D.C.: U.S. Department of Justice, July 1997.

⁴⁶ About two-thirds of the federal drug budget is allocated to interdiction, law enforcement and supply reduction efforts. One-third is allocated for prevention, treatment and demand reduction. Office of National Drug Control Policy, *The National Drug Control Strategy*, 2000. These proportions have not varied significantly in recent years.

⁴⁷ Marc Mauer, "The Crisis of the African-American Male and the Criminal Justice System," written testimony before the U.S. Commission on Civil Rights, April 15-16, 1999 (citing data from the Bureau of Justice Statistics).

⁴⁸ *CBS This Morning*, September 13, 1999.

⁴⁹ The Sentencing Project, *Drug Policy and the Criminal Justice System*, (Washington D.C.: The Sentencing Project, August 1999), citing FBI, *Crime in the United States*, various years. Arrests have soared not just for "hard" drugs such as cocaine and heroin, but for marijuana as well. In 1996, there were over 406,000 arrests for marijuana possession alone. U.S. Department of Justice, Federal Bureau of Investigation (DOJ/FBI), *Uniform Crime Reports: Crime in the United States, 1998* (Washington, D.C.:USGPO, 1998). (Figure calculated by Human Rights Watch from data in table 4.1 and table 29).

⁵⁰ Blumstein and Beck, "Population Growth," pp. 29-31.

⁵¹ The rate of commitments per arrest dropped to 77 per 100,000 in 1996. BJS, "Truth in Sentencing." The increase in the likelihood of being sent to prison following an arrest and its impact on state incarceration rates was greater for drug offenses than for murder, assault, robbery, burglary, and rape. Blumstein and Beck, "Population Growth," p. 41.

⁵² Time served by drug offenders in state prison rose from 1.3 years to 2.3 years; in federal prisons the time rose from Human Rights Watch, *Prison Overcrowding*, p. 36. Blumstein and Beck, "Population Growth," p.36 May, 2000 Vol. 12, No. 2 (G)

As of 1997, there were an estimated 285,009 men and women in state and federal prisons on drug charges, a twelfold increase since 1980.⁵³ Relative to the adult population, the rate of incarceration of drug offenders has increased almost tenfold, rising from less than 15 inmates per 100,000 adults to 148 per 100,000.⁵⁴ In 1980, drug offenders comprised only six percent of state prison populations. By 1998, they constituted 21 percent. In federal prisons, drug offenders now comprise 59 percent of all inmates, whereas they represented only a quarter of federal inmates in 1980.⁵⁵

Drug Offenders Admitted to Prison

Between 1980 and 1998, the number of new admissions of drug offenders to state and federal prison soared, exceeding 1.5 million in total (Figure 5). In recent years, about one hundred thousand drug offenders have been admitted to prison annually.

Nationwide, 31 percent of all admissions to state prison in 1996 were drug offenders. Among the states, the proportion of drug offenders varied between a low of 10 percent in Maine to a high of 46.6 percent in New Jersey and 44.7 percent in New York (Figure 6). In three quarters of the states, more than one in five persons sent to prison was convicted of a drug offense. In contrast, violent offenders accounted nationwide for only 26.8 percent of new state prison admissions.

Rate of Admission of Drug Offenders

There is a remarkable range in the extent to which states subject their populations to incarceration on drug charges (Table 8). The rates of admission of drug offenders to prison per 100,000 adult residents vary from a low of 6 per 100,000 in Maine to a high of 91 in California. The ten states that have the highest rates of drug offender admissions relative to population are: California, Illinois, Louisiana, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Washington.

Nationwide, drug offenders are sent to prison at a rate, relative to population, that is 13 percent higher than the rate for violent offenders (Table 9). In one half of the states reporting to NCRP, the admission rates for drug offenders exceed those for persons convicted of violent crimes. Six states -- Arkansas, California, Illinois, New Jersey, New York, and Virginia -- send drug offenders to prison at rates that range from 50 to 100 percent higher than the rates for violent offenders.

Drug Offending and Prison Admissions

⁵³ In 1980, an estimated 23,900 people were in state and federal prison for drug offenses. Blumstein and Beck, "Population Growth," p. 21. In 1998, there were an estimated 227,400 drug offenders under the jurisdiction of state correctional authorities at year end 1998. BJS, "Prisoners in 1998." An estimated 57,609 drug offenders were in the custody of federal correctional authorities for drug offenses. *Sourcebook 1998*, Table 6.52

⁵⁴ Blumstein and Beck, "Population Growth," pp. 20-21.

⁵⁵ BJS, "Prisoners in 1998." Justice Research and Statistics Associates, *Crime and Justice Atlas*. Office of Justice Programs, National Rights Watch, U.S. Department of Justice, June 1998, p. 134.

The broad range in admission rates for drug offenders across the country cannot be ascribed simply to variations in drug use and sales in different states. Table 10, covering twenty six states, presents federal estimates of the percentage of the population over 12 in those states who were current illicit drug users in 1991-1993.⁵⁶ Although some drug users may cross state lines to purchase drugs, we assume that relative rates of drug use in each state also roughly reflect relative amounts of drug sale activity. Comparing drug use rates with calculations of the rate relative to population at which drug offenders in those states were sent to prison reveals the lack of a consistent correlation between drug offending and the imprisonment of drug offenders. First, the percentage of the population that used drugs varied among states from 4.1 to 8.2 percent, compared to a range in drug offender admission rates that extended from 8 to 91. Second, the states with higher rates of drug use were not necessarily the states with higher drug offender admission rates. Oregon, for example, had the third highest percentage of drug use, yet it had one of the lowest rates of drug admissions. In contrast, California had both the highest rate of drug use and the highest rate of drug offender admissions. Third, lower drug use did not necessarily correlate with low drug offender admissions rates. The percentage of Illinois' population that used drugs was quite low, yet the state had the second highest rate of drug offender admissions. Similarly, Louisiana had a relatively low rate of drug use yet it had one of the highest rates of drug admissions.

Obviously, no definitive conclusions can be drawn from a comparison of these two rather crude sets of figures. Nevertheless, the data suggest the explanation for the different rates at which people are sent to prison for drug offenses must lie in different penal policies and priorities among the states, including different law enforcement resources and strategies, prosecutorial charging preferences, and sentencing laws, as well as structural and demographic factors, e.g., degrees of urbanization, rather than rates of drug offending.

Drugs Involved In Offense

The NCRP data does not permit reliable calculations about the extent to which different "hard" drugs (e.g., cocaine, amphetamines, heroin) were involved in drug offenses. The data is somewhat better with regard to the identification of marijuana offenses, which were identified as the drug involved in 4.3 percent of all drug admissions.⁵⁷ In nine states marijuana offenses accounted for more than ten percent of drug admissions: Alabama (16.09), Iowa (17.22), Kentucky (12.4), Mississippi (14.50), New Hampshire (28.83), North Dakota (43.02), South Carolina (11.25), South Dakota (18.3), and West Virginia (20.63) (Table 11).

Type of Drug Conduct

People are sent to prison for both drug possession and sales-related conduct. In 1996, the simple possession of drugs (excluding possession with intent to sell) was the most serious conviction offense for 28 percent of all drug offenders admitted to state prison (Table 12). Fifty-six percent of drug offender admissions were for drug sales, and the rest for other drug-related offenses (e.g., fraudulent prescriptions and unlawful possession of syringes). In nine states (Alabama, Colorado, Georgia, Minnesota, Mississippi, South Dakota, Texas, Utah, and Virginia) more than 50 percent of drug offenders sent to prison were convicted of simple possession.

Low-level offenders

⁵⁶ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *Substance Abuse in States and Metropolitan Areas: Model Based Estimates from the 1991-1993 National Household Survey on Drug Abuse Summary Report*, Washington, D.C., 1996.

⁵⁷ The Bureau of Justice Statistics has reported that marijuana was involved in the current offense of 12.9 percent of drug offenders in state prison and 18.9 percent of drug offenders in federal prison. Christopher Mumola, "Substance Abuse and Human Rights Watch Federal Prisoners, 1997," Bureau of Justice Statistics, U.S. Department of Justice, 2000, Vol. 12, 99, p. 21G.

Whether convicted on possession or sales charges, relatively few of the drug offender prison admissions over the past two decades have been high-profile drug traffickers, “king pins,” or persons occupying high level positions within sophisticated drug dealing enterprises.⁵⁸ Available research indicates that most incarcerated drug offenders are bit players in the drug trade, such as small-time dealers selling to customers on the streets, addicts trying to support their habit,⁵⁹ “mules” or couriers trying to earn some extra cash, and women pressed into occasional service by drug dealing boyfriends. Most of the men and women incarcerated in New York prisons on drug offenses, for example, whether first or repeat offenders, were convicted of low level drug offenses involving minute drug quantities.⁶⁰ Even federal drug defendants, who would be expected to have higher level profiles than state drug defendants, are primarily low level offenders.⁶¹ According to the United States Sentencing Commission, only 11 percent of federal drug defendants were high level dealers; more than half were street level dealers or mules.⁶² Another federal analysis indicated that over one-third of the drug felons in federal prisons were low level nonviolent offenders.⁶³

Some supporters of the war on drugs have justified the incarceration of drug offenders on the assumption that it incapacitates people who are dangerous apart from their drug-dealing. Research to date on the criminal histories of incarcerated drug offenders consistently shows, however, that most cannot reasonably be considered dangerous individuals. Three quarters of the drug offenders in state prisons in 1997 had no prior convictions for violent crimes; one third had prior sentences limited to drug offenses.⁶⁴ In 1991, fourteen percent of the drug offenders in state prisons had no prior sentence; 84 percent had no prior sentences for violent crimes.⁶⁵ Human Rights Watch’s analysis of incarcerated drug offenders in New York revealed that the majority had nonviolent criminal histories.⁶⁶ Among felony defendants in large urban counties arrested on drug charges, 38 percent had no prior convictions, even for a misdemeanor; only 11 percent had a prior felony conviction for a violent crime.⁶⁷ Independent researchers determined that Arizona, New Mexico, and New York imprison large numbers of drug-only offenders, i.e. people whose current offense is a drug crime and whose past criminal offenses were limited to low level

⁵⁸ See., e.g., William J. Sabol and James P. Lynch, “Crime Policy Report: Did Getting Tough on Crime Pay?” *The Urban Institute*, August 1997, available at <http://www.urban.org/crime.crime.htm>.

⁵⁹ Forty-two percent of state prisoners convicted of drug offenses reported being under the influence of drugs at the time they committed their current offense. BJS, “Substance Abuse and Treatment.”

⁶⁰ Human Rights Watch, *Cruel and Usual*; Human Rights Watch, “Who Goes to Prison for Drug Offenses? A Rebuttal to the New York State District Attorneys Association,” available at <http://www.hrw.org/hrw/campaigns/drugs/ny-drugs.htm>; Human Rights Watch “Official Data Reveal Most New York Drug Offenders Are Nonviolent,” also available at <http://www.hrw.org/hrw/press/1999/jan/y-drug0107.htm>.

⁶¹ Federal drug law enforcement agencies place a priority on major drug traffickers and other significant drug law offenders.

⁶² United States Sentencing Commission, *Cocaine and Federal Sentencing Policy, 1995*. p. 172. The Sentencing Project, *Drug Policy and the Criminal Justice System*, p.3.

⁶³ U.S. Department of Justice, “An Analysis of Nonviolent Drug Offenders with Minimal Criminal Histories,” (unpublished report, February 4, 1994). For a discussion of the Department of Justice’s findings, see Marc Miller and Daniel Freed, “Editors’ Observations on the Disproportionate Imprisonment of Low-Level Drug Offenders,” 7 *Federal Sentencing Reporter* 3 (New York: Vera Institute of Justice, July, 1994).

⁶⁴ BJS, “Substance Abuse and Treatment,” p. 2.

⁶⁵ In 1991, 126,929 out of a total of 150,305 drug offenders in state prison had no prior felony convictions. Sabol and Lynch, “Crime Policy Report,” Table 3. Alfred Beck et al., “Survey of State Prison Inmates 1991,” Bureau of Justice Statistics, U.S. Department of Justice (March 1993).

⁶⁶ Human Rights Watch “Official Data Reveal Most New York Drug Offenders Are Nonviolent”; Human Rights Watch, “Who Goes to Prison for Drug Offenses? A Rebuttal to the New York State District Attorneys Association.”

⁶⁷ Timothy C. Hart and Brian A. Reaves, “Felony Defendants in Large Urban Counties, 1996,” Bureau of Justice Statistics, U.S. Department of Justice (October 1999), Tables 11 and 12.

nonviolent drug crimes.⁶⁸ In Massachusetts, an analysis of a sample of incarcerated male drug offenders revealed most had either no prior criminal record, or records classified as minor or moderate.⁶⁹

⁶⁸ See, John Dilulio, "Against Mandatory Minimums," *National Review*, May 17, 1999. Anne M. Piehl, Bert Useem and John Dilulio, *Right Sizing Justice: A Cost-Benefit Analysis of Imprisonment in Three States*, (New York: Manhattan Institute, September 1999).

⁶⁹ William N. Brownsberger and Anne M. Piehl, "Profile of Anti-Drug Law Enforcement in Urban Poverty Areas in Massachusetts," November 1997. Brownsberger, a research fellow in drug policy at Harvard Medical School and Assistant Attorney General for Narcotics and Special Investigations prepared this report with a grant from the Robert Wood Johnson Foundation. Human Rights Watch Abuse Policy Research Program. 18 May, 2000 Vol. 12, No. 2 (G)

VI. RACIALLY DISPROPORTIONATE INCARCERATION OF DRUG OFFENDERS

The impact of incarceration as a weapon in the war against drugs has fallen disproportionately on black Americans. Blacks are overrepresented in U.S. prisons relative to their proportion of the population and, as discussed below, relative to their rates of drug offending. Whites, conversely, are significantly underrepresented. Fifty-six percent of drug offenders in state prison nationwide are black.⁷⁰ Blacks are incarcerated on drug charges at dramatically higher rates than whites and drug offenses also account for a much greater proportion of blacks sent to prison than they do for whites.

Racial Disparities in Drug Offender Admissions to Prison

Blacks constituted 62.6 percent of all drug offenders admitted to state prisons in 1996, whereas whites constituted 36.7 percent.⁷¹ In certain states, the racial disproportion among drug admissions are far worse (Figure 7). In Maryland and Illinois, blacks constituted an astonishing 90 percent of all drug admissions. In one third of the states reporting to the NCRP, blacks comprise more than 75 percent of all drug admissions. In all the states, the proportion of drug offenders admitted to state prison greatly exceeds the proportions of the state population that is black (Table 13).

The disproportionately high percentage of blacks among those admitted to state prison on drug charges is cause for alarm. But the disparity in the rates at which black and white men over the age of eighteen are sent to prison on drug charges is nothing short of a national scandal. The drug offender admissions rate for black men ranges from 60 to a breathtaking 1,146 per 100,000 black men (Figure 8). The white rate, in contrast, begins at 6 and rises no higher than 139 per 100,000 white men.

Nationwide, the rate of drug admissions to state prison for black men is thirteen times greater than the rate for white men (Table 14). In ten states black men are sent to state prison on drug charges at rates that are 26 to 57 times greater than those of white men in the same state. In Illinois, for example, the state with the highest rate of black male drug offender admissions to prison, a black man is 57 times more likely to be sent to prison on drug charges than a white man.

Drug Offenders as a Proportion of Total Black Admissions

The high and disproportionate number of blacks who are sent to prison should be a cause for national concern regardless of the crime for which they are convicted. What may be most troubling about black incarceration, however, is that it is propelled by nonviolent drug offenses. In other words, but for the war on drugs, the extent of black incarceration would be significantly lower.

Drug offenses accounted for nearly two out of five (38 percent) of all black admissions (Table 15). The proportion of sentenced drug offenders among all black offenders sent to state prison ranged among states between a high of 61 percent in New Hampshire and a low of 16 percent in Oregon, with a majority of the states falling in the range of 30 and 40 percent. In contrast, drug offenders constituted 24 percent of all whites sent to state prison nationwide and in more than half of the states that submitted data to the NCRP.

More blacks were sent to state prison nationwide on drug charges than for crimes of violence (Table 16). Only 27 percent of black admissions to prison were for crimes of violence -- compared to 38 percent for drug offenses. If all nonviolent offenses (property, drugs, public order, etc) are combined, 73 percent of all blacks sent to

⁷⁰ BJS, "Prisoners in 1998."

⁷¹ The specific reasons for the discrepancy between the black proportion of felony drug convictions and of drug admissions have not been analyzed. They may include such factors as the type of drug offense, the type of drug, and the presence of prior record. For example, blacks comprised 56 percent of persons convicted of trafficking felonies while whites comprised 43 percent. *Human Rights Watch* in State Courts," (May 1999), Table 519

prison were sentenced for nonviolent crimes. Seventy-three percent of whites admitted to prison were also sentenced for nonviolent offenses.

VII. RACIALLY DISPROPORTIONATE DRUG ARRESTS

The disproportionate rates at which black drug offenders are sent to prison originate in racially disproportionate rates of arrest.⁷² Contrary to public belief, the higher arrest rates of black drug offenders do not reflect higher rates of drug law violations. Whites, in fact, commit more drug crimes than blacks. But the war on drugs has been waged in ways that have had the foreseeable consequence of disproportionately targeting black drug offenders.

Drug Arrests

The war on drugs precipitated soaring arrests of drug offenders and increasing racial disproportions among the arrestees. Blacks had long been arrested for drug offenses at higher rates than whites. Throughout the 1970s, for example, blacks were approximately twice as likely as whites to be arrested for drug-related offenses. By 1988, however, with national anti-drug efforts in full force, blacks were arrested on drug charges at five times the rate of whites.⁷³ Nationwide, blacks constituted 37 percent of all drug arrestees;⁷⁴ in large urban areas, blacks constituted 53 percent of all drug arrestees.⁷⁵

Even greater disparities in drug offender arrest rates have been documented in individual states. For example, Human Rights Watch's analysis of drug arrests by race in the state of Georgia for the years 1990-1995 revealed that, relative to their share of the population, blacks were arrested for cocaine offenses at seventeen times the rate of whites.⁷⁶ In Minnesota, drug arrests of blacks grew 500 percent during the 1980s, compared with 22 percent for whites.⁷⁷ In North Carolina, between 1984 and 1989, minority arrests for drugs increased 183 percent compared to a 36 percent increase in white drug arrests.⁷⁸

Drug Law Violations by Blacks and Whites

The marked racial disparities in drug arrests did not reflect racial differences in violations of drug laws prohibiting possession and sale of illicit drugs. Statistical as well as anecdotal evidence indicate drug possession and drug selling cut across all racial, socio-economic and geographic lines. Yet because drug law enforcement resources have been concentrated in low-income, predominantly minority urban areas, drug offending whites have been disproportionately free from arrest compared to blacks.

⁷² Racial disparities in drug arrests account for the preponderance, but not all, of the racial disproportionality in incarcerated drug offenders. Indeed, Alfred Blumstein has found that the rate of imprisonment for drug offenses "is the most poorly correlated to the rate of arrests of all crime types." Based on 1991 data he concluded that blacks comprised 57.7 percent of the prisoners for drug offenses but only 40.4 percent of the arrestees for drug offenses, "so that they are overrepresented in prison by forty-three percent compared to arrest." Alfred Blumstein, "Racial Disproportionality of U.S. Prisons Populations Revisited," 64 *University of Colorado Law Review* 751 (1993). The precise reasons for the substantially different racial proportions among drug offender arrestees and incarcerated drug offenders disparity in arrest versus incarceration on drug offenses have not been established conclusively. The type of drug offenses (possession or sales), the type of drug and the existence of a prior record are all factors that affect sentencing.

⁷³ Tonry, *Malign Neglect*, p. 111; Blumstein, "Racial Disproportionality." Blacks constituted 26.8 percent of all adult drug arrests in 1980 but 40 percent of those arrested on drug charges in 1990. The black share of drug arrests decreased slightly to 37 percent in 1998. U.S. Department of Justice, Federal Bureau of Investigation (DOJ/FBI), *Uniform Crime Reports: Crime in the United States*, (Washington, D.C.:USGPO, 1980, 1990, and 1998). Juvenile drug arrests followed a similar trend. Black youth comprised 14.5 percent of all drug arrests in 1980; in 1990 they comprised 48.8 percent of drug arrests. Data obtained from the Federal Bureau of Investigation; on file at HRW.

⁷⁴ U.S. Department of Justice, Federal Bureau of Investigation (DOJ/FBI), *Uniform Crime Reports: Crime in the United States, 1998* (Washington, D.C.:USGPO, 1998).

⁷⁵ BJS, "Felony Defendants", Table 4, p. 5.

⁷⁶ HRW, *Race and Drug Law Enforcement in Georgia*.

⁷⁷ Tonry, *Malign Neglect*, p. 113.

The Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services calculates drug use trends from data gathered through the federal National Household Survey on Drug Abuse (NHSDA).⁷⁹ In a report based on NHSDA data for 1991, 1992, and 1993, SAMHSA estimated that 3.1 percent of non-Hispanic blacks and 2.4 percent of non-Hispanic whites over the age of 12 had used cocaine in the past year. Because there are far more whites than blacks in the national population, these use rates translate into 3,727,680 non-Hispanic whites who had used cocaine compared to 720,130 non-Hispanic blacks.⁸⁰ That is, there were five times as many non-Hispanic whites as blacks who were cocaine users.

According to the most recent NHSDA survey, in 1998 there were an estimated 9.9 million whites (72 percent of all users) and 2.0 million blacks (15 percent) who were current illicit drug users in 1998.⁸¹ There were almost five times as many current white marijuana users as black and four times as many white cocaine users. Almost three times as many whites had ever used crack as blacks. Among those who had used crack at least once in the past year, 462,000 were white and 324,000 were black.⁸² Only among current crack users did the number of blacks exceed the number of whites -- and this was a change from previous years in which the number of current white crack users had exceeded the number of black users (Table 17).⁸³ SAMHSA also estimated that in 1998 there were 4,934,000 whites who used marijuana on 51 or more days in the past year, compared to 1,102,000 blacks, and 321,000 whites who had used cocaine on 51 or more days in the past year compared to 171,999 blacks⁸⁴

The comparison of racial proportions of drug users and drug arrests in the period 1979 to 1998 reveals a markedly higher arrest rate of black drug offenders compared to both whites and to the black proportion of the drug using population (Table 18). The percentage of current drug users who were black and white did not vary significantly in this twenty-year period. Among those arrested on drug charges, however, the percentage of blacks rose markedly, and the percentage of whites decreased correspondingly. For each year, the percentage of black drug arrests was at least double the percentage of blacks among current drug users. Whites, conversely, were under-arrested; that is, they constituted a smaller percent of drug arrests than they did of drug users.

⁷⁹ The National Household Survey on Drug Abuse is the primary source of data on the prevalence of substance use in the United States. It was sponsored by the National Institute on Drug Abuse from 1974 to 1991. Beginning in October, 1992, responsibility for conducting the NHSDA was moved to the Office of Applied Studies within the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services. The NHSDA is conducted through questionnaires and interviews administered to large national sample, with oversampling in six metropolitan areas. The survey undercounts certain disadvantaged populations, e.g. the homeless, those in institutions, and those not in stable residences.

⁸⁰ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *Prevalence of Substance Use Among Racial and Ethnic Subgroups in the United States 1991-1993*, Washington, D.C., 1998.

⁸¹ SAMHSA, *Summary Findings 1998*, p. 13.

⁸² U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *National Household Survey on Drug Abuse: Populations Estimates 1998*, Washington, D.C., 1999. Table 5B and D.

⁸³ According to the 1994 survey, for example, 292,200 whites were current users of crack cocaine compared to 161,000 blacks. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *Population Estimates for 1994*, Washington, D.C., September 1995. Table 5B and D.

⁸⁴ SAMHSA, *Population Estimates 1998*, Tables 20 B, 20D, 21B, 21D.

There are no comparable annual statistics on the estimated number and race of drug sellers nationwide. Nevertheless, such data as exists indicates whites constitute a far greater share of the drug selling population than of the population arrested for drug selling. For example, during the period 1991-1993, SAMHSA included questions about drug selling in the annual NHSDA surveys. Although the responses are best seen as a rough approximation of drug selling activity, they are nonetheless highly suggestive.⁸⁵ On average over the three year period, blacks were 16 percent of admitted sellers and whites were 82 percent. According to research on patterns of drug purchase and use in selected major cities, drug users reported that their main drug sources were sellers of the same racial or ethnic background as they were.⁸⁶ A large study conducted in the Miami, Florida metropolitan area of 699 cocaine users (powder and crack) revealed that over 96 percent of the users in each ethnic/racial category were involved in street-level drug dealing, which again would suggest a racial profile of sellers that is comparable to that of users.⁸⁷ General Barry McCaffrey has stated that drug transactions between youth are generally intra-racial, that is, youth tend to buy from sellers of the same race.⁸⁸ ONDCP's former periodic report on drug trends, *Pulse Check*, also indicated a high frequency of intra-racial drug transactions, that is, that whites tended to buy from white sellers and minorities from minority sellers.⁸⁹

Origins of Racially Disproportionate Arrests

To some extent, racial disproportions in drug arrests reflect demographic factors. Drug law enforcement is concentrated in large urban areas. Illicit drug use is also higher in large metropolitan areas.⁹⁰ Since more blacks, proportionately, live in these areas than whites, black drug offenders are at greater risk of arrest than white offenders.⁹¹ But within metropolitan areas, politics and law enforcement priorities have determined how drug arrests would be distributed.

Within urban areas, the "major fronts" in the drug wars have been low income minority neighborhoods. With the spread of crack in the early 1980s, these neighborhoods suffered from the disorder, nuisance, and assaults on the quality of life that accompanied increased drug dealing on the streets as well as the crime and violence that

⁸⁵ Beginning in 1991, SAMHSA asked respondents in the household survey, whether they had sold any illicit drugs during the preceding year. One can assume that under-reporting on illegal conduct may be considerable and that withholding information would be more prevalent with regard to drug selling than drug use. We do not know, however, whether there would be significant differences between blacks and whites in their willingness to acknowledge drug selling. The responses must also be treated with caution because the NHSDA does not survey people living on the streets or in institutions.

⁸⁶ K. Jack Riley, *Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six U.S. Cities*, Washington D.C.: National Institute of Justice and the Office of National Drug Control Policy, December 1997.

⁸⁷ Dorothy Lockwood, Anne E. Pottieger and James A. Inciardi, "Crack Use, Crime by Crack Users, and Ethnicity," in Darnel F. Hawkins, ed., *Ethnicity, Race and Crime*, (New York: State University of New York Press, 1995).

⁸⁸ Patricia Davis and Pierre Thomas, "In Affluent Suburbs, Young Users and Sellers Abound," *The Washington Post*, December 14, 1997.

⁸⁹ Office of National Drug Control Policy, *Pulse Check: National Trends in Drug Abuse* (Washington, D.C. various years). Pulse Check reported on illegal drug use trends based on information obtained from police, ethnographers, and epidemiologists working in the drug field. Publication of Pulse Check ended in the Winter of 1998.

⁹⁰ According to SAMHSA's surveys, regardless of racial or ethnic subgroup, a relatively high prevalence of illicit drug use is found among individuals who reside in metropolitan areas with populations greater than one million. See SAMHSA, *Prevalence of Substance Abuse*. SAMHSA prepared estimates on drug use in twenty-six states and in twenty-five large metropolitan areas. Their data show that the percentage of population using any illicit substance within the past month in the 1991-1993 period was usually larger for metropolitan areas than for the states in which those areas were located. A high proportion -- generally between one third and one half -- of each state's drug using population was also located in metropolitan areas. In Texas, for example, half of all cocaine users were in four urban areas; in Florida, one third of cocaine users were in two urban areas. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *Substance Abuse in States and Metropolitan Areas*, Exh. 3.1, 3.2, 3.3, and 3.5.

⁹¹ Only 14 percent of blacks live in non-metropolitan areas compared to 27 percent of whites. SAMHSA, *Racial and Ethnic Subgroups*. While 44 percent of Americans live in large metropolitan areas, 60 percent of drug possession arrests occur there. Patrick A. Langan, "The Race Disparity in U.S. Drug Arrests," unpublished report on file at HRW. Langan is a senior statistician with the Bureau of Justice Statistics.

accompanied the development of crack distribution systems. Dismayed residents in those neighborhoods pressed the police and public officials to “do something.” But the residents’ response was more than matched by the censure, outrage, and concern from outsiders that was fanned by incessant and frequently sensationalist media stories about crack, and by politicians seeking electoral advantage by being “tough on crime.”⁹²

⁹² Journalists portrayed crack use and crack-related crime as primarily problems of blacks in inner city neighborhoods. “Magazine photographs show young black American men and women smoking crack in abandoned buildings, minority youth with guns in their jeans, and handfuls of crack.” Lockwood, Pottieger, and Inciardi, “Crack Use,” p. 212. See also, e.g., Reinerman and Human “Right Crack Back.”

Although crack was the least used of all illicit drugs in the U.S., and although more whites used illicit drugs than blacks (see Table 17, above), the “war on drugs” has been targeted most notoriously at the possession and sale of crack cocaine by blacks. Crack cocaine in black neighborhoods became a lightning rod for a complicated and deep-rooted set of racial, class, political, social, and moral dynamics.⁹³ To the extent that the white majority in the U.S. identified both crime and drugs with the “dangerous classes” -- i.e., poor urban blacks -- it was easier to endorse, or at least acquiesce in, punitive penal policies that might have been rejected if members of their own families and communities were being sent to prison at comparable rates.⁹⁴

Tactical considerations also encouraged the concentration of anti-drug resources in disadvantaged minority neighborhoods and the consequent disproportionate number of black drug offender arrests. Police departments point to the number of arrests as a measure of effectiveness. The circumstances of life and the public nature of drug transactions in low income urban neighborhoods make arrests far easier there than in other neighborhoods.⁹⁵ In poor black neighborhoods, drug transactions are more likely to be conducted on the streets, in public, and between strangers, whereas in white neighborhoods -- working class through upper class -- drugs are more likely to be sold indoors, in bars, clubs, and private homes. “[I]n poor urban minority neighborhoods, it is easier for undercover narcotics officers to penetrate networks of friends and acquaintances than in more stable and closely knit working-class and middle-class neighborhoods. The stranger buying drugs on the urban street corner or in an alley, or overcoming local suspicions by hanging around for a few days and then buying drugs, was commonplace. Police undercover operations can succeed [in working and middle-class neighborhoods] but they take longer, cost more, and are less likely to succeed.”⁹⁶

Racial profiling -- the police practice of stopping, questioning, and searching potential criminal suspects in vehicles or on the street based solely on their racial appearance -- has also contributed to racially disproportionate drug arrests, although there are no reliable estimates of the number. In many locales, black drivers are disproportionately stopped for minor traffic offenses and then searched.⁹⁷ Similarly, blacks and other minorities have been disproportionately targeted in “stop and frisk” operations in which police temporarily detain, question, and pat down pedestrians suspected of criminal activity. In New York City, for example, between January 1998 and March 1999, police officers made far more stop and frisks in minority neighborhoods; even within neighborhoods with primarily white populations, the majority of the people stopped were black or Hispanic.⁹⁸

⁹³ The notorious distinction and heavier sentences mandated in federal law between crack cocaine versus powder cocaine, and the proportionally greater number of blacks prosecuted federally for crack and thus receiving heavier sentences than whites who are primarily prosecuted for powder cocaine offenses, have come to symbolize for many the racially discriminatory nature of the war on drugs. See United States Sentencing Commission, *Special Report to the Congress: Cocaine and Federal Sentencing Policy, 1995* for data on federal prosecution of crack versus powder cocaine offenses. No comparable national data exists on cocaine prosecutions in the ten states whose criminal laws distinguish between powder and crack cocaine.

⁹⁴ Tonry, *Malign Neglect*. The country could have, for example, chosen an aggressive public health strategy to counter cocaine use in low income neighborhoods, as it did under President Richard Nixon in the 1970s when faced with a surge in heroin use. See Michael Massing, *The Fix* (New York: Simon and Schuster, 1998).

⁹⁵ HRW, *Race and Drug Law*; Caplow and Simon, “Understanding Prison Policy.”

⁹⁶ Tonry, *Malign Neglect*, p. 106. See also Blumstein, *Racial Disproportionality*; Carole Wolff Barnes and Rodney Kingsworth, “Race, Drug, and Criminal Sentencing: Hidden Effects of the Criminal Law,” 24 *Journal of Criminal Justice* 39 (1996).

⁹⁷ See, e.g. David Harris, “The Stories, The Statistics, and the Law: Why ‘Driving While Black’ Matters,” 84 *Minnesota L. Rev.* 265 (1999); David Harris, “Driving While Black: Racial Profiling on Our Nation’s Highways,” An American Civil Liberties Union Special Report, June 1999. Available on-line at www.aclu.org/profiling/report.

⁹⁸ Ronald H. Weich and Carlos T. Angulo, *Justice on Trial: Racial Disparities in the American Criminal Justice System*, a report by the Leadership Conference on Civil rights and the Leadership Conference Education Fund, May, 2000, pp. 4-5, citing “The New York City Police Department’s ‘Stop and Frisk’ Practices: A Report to the People of New York from the Office of the

Other factors have also been important in increasing the relative rate at which black drug offenders are arrested compared to whites. For example, low income purchasers of cocaine buy the drug in the cheap form of single or several hits of crack. They must engage in far more illegal transactions to satisfy their desire for drugs than middle or upper class consumers of powder cocaine who have the resources to buy larger and longer lasting supplies. The greater frequency of purchases and sales may well affect susceptibility to arrest.⁹⁹

⁹⁹ See Alfred Blumstein, "Youth Violence, Guns, and the Illicit-Drug Industry," 86 *The Journal of Criminal Law and Human Rights* (Wash. DC) 26 (2000).
26
May, 2000 Vol. 12, No. 2 (G)

VIII. WOMEN, RACE, DRUGS AND IMPRISONMENT

Although women accounted for only 6.5 percent of the total state and federal prison population at midyear 1999,¹⁰⁰ the rate of incarceration of women has been growing twice as fast as that of men over the last two decades.¹⁰¹ Between 1990 and 1997, the female incarceration rate nearly doubled, increasing from 31 to 57 women in prison per 100,000 female residents.¹⁰² At midyear 1999 there were 87,199 women under the jurisdiction of state and federal correctional authorities.¹⁰³

Racial disparities among incarcerated women are pronounced: black women were more than eight times as likely as white to be in prison in 1997.¹⁰⁴ The incarceration rates for both black and white women have increased by approximately two-thirds since 1990.¹⁰⁵

The war on drugs is responsible for the dramatic rise in the absolute number and rate of women incarcerated and, indeed, has had a greater proportionate impact on women than men. Between 1990 and 1997, the number of women serving time in prison for drug offenses nearly doubled, compared to a 48 percent increase in the number of men in prison for drug offenses.¹⁰⁶

Between 1986 and 1996, the number of women incarcerated on drug charges rose by 888 percent, compared to a rise of 129 percent for non-drug offenses.¹⁰⁷ In 1979, twelve percent of the women in state prison had been convicted of drug charges; by 1997, that figure had risen to 34.4 percent.¹⁰⁸ Fifty-six percent of their convictions were for trafficking offenses and 44 percent were for possession.

Drug offenses accounted for more than two in five women admitted to state prisons nationwide (Table 19). The three states with the highest percentages of women sent to prison on drug charges were New York (68 percent), Washington (54 percent), and New Jersey (49 percent).

As with men, the impact of the war on drugs falls disproportionately on black women. Nationwide, 42.2 percent of all black women and 36.1 percent of white women admitted to prison in 1996 were convicted of drug offenses. Even in the states with the lowest percentages of female drug offender admissions, the figure is more than one in five (with the exception of Iowa). Black women constitute 6.3 percent of the national adult population and 7 percent of prison drug admissions; white women constitute 43.2 percent of the national adult population but only 5.4 percent of drug admissions. Black female drug offenders constituted a greater percentage of total admissions than white female drug offenders in half of the states that reported data to the NCRP (Figure 9).

IX. CONCLUSION

¹⁰⁰ There were 75,241 women under jurisdiction of state correctional authorities, and 9,186 under federal jurisdiction BJS, "Prisoners in 1998," Table 7, p. 6

¹⁰¹ Marc Mauer, Cathy Potler, and Richard Wolf, *Gender and Justice: Women, Drugs, and Sentencing Policy*, (Washington D.C.: The Sentencing Project, November 1999). p.1

¹⁰² BJS, "Prisoners in 1998," p. 5.

¹⁰³ BJS, "Inmates at Mid-year 1999."

¹⁰⁴ Non-hispanic black women are incarcerated at a rate of 200 per 100,000, compared to the rate of 25 per 100,000 for white non-hispanic women. BJS, "Prisoners in 1998," Table 15.

¹⁰⁵ "Prisoners in 1998," Table 12.

¹⁰⁶ Ibid., "Prisoners in 1998," p. 11. There were 11,700 more women in state prison in 1997 on drugs charges than in 1990, representing 38% of the 30,600 total increase in the number of female state prisoners in that period.

¹⁰⁷ Mauer, Potler, and Wolf, *Gender and Justice*, p. 2.

¹⁰⁸ Lawrence A. Greenfield and Tracy L. Snell, "Women Offenders." Bureau of Justice Statistics, U.S. Department of Justice

Putting a person behind bars is so common in the United States and so frequently imposed for minor conduct that it seems the country has lost sight of just how serious a punishment imprisonment is. Short of executions, imprisonment is the most severe exercise of a government's legitimate coercive and penal powers.

Imprisoned individuals lose their liberty, autonomy, and the unfettered exercise of most rights. Prisoners are deprived of their families, friends, jobs, and communities. Their days usually pass in unproductive idleness. Life in prison is all too often degrading, demoralizing, dehumanizing and dangerous. Inmates' health, safety, privacy, and even dignity are threatened by overcrowding and violence.

Imprisonment reduces ex-offenders' subsequent incomes and employability; it may increase the probability of future offending; and may result in their being denied the right to vote, to engage in certain occupations, and to receive various public benefits and services.¹⁰⁹ Sending a parent or family bread-winner to prison can wreak havoc on the financial and social stability of prisoners' families, and the effects of a parent's imprisonment on children's development is likely to be substantial and deleterious.¹¹⁰ The consequences for communities of having large populations of former prisoners is unknown, but exposing millions of adults to the violence and racism of prison life scarcely bodes well. In inner city black neighborhoods, the high rate at which men are removed to prison may undermine those communities and contribute to perpetuating cycles of crime.

In short, prison is not a sanction that should be imposed needlessly or intemperately -- much less in a racially discriminatory fashion. Yet, in its zeal to tackle a tough social problem, the United States seems to have lost sight of the principles that should govern the use of incarceration. The extraordinary number of nonviolent drug offenders sent to prison bespeaks a nation determined to "send a message" about drugs and crime regardless of whether prison is ineffective, cruel, or unduly costly compared to other ways of responding to drugs. While drug abuse and drug trafficking warrant concerted national efforts, it may be that the human, social, and economic costs of the prison "cure" is worse than the "disease" itself. Certainly, for the black community, it would seem that the choice of penal sanctions to combat drug abuse has imposed inordinately high costs.

With the cocaine epidemic having run its natural course and the nation enjoying the fruits of a sustained period of prosperity, it is possible that the "moral panic" of the past decades will abate. The public and its political leaders may now be able to realize the need to move beyond the war on drugs and to begin to dismantle the racially unjust "drug gulag" it has spawned. Across the country there are encouraging signs of progress: some state legislatures are beginning to debate changes to their mandatory sentencing laws that would restore judicial discretion and flexibility and encourage the use of alternatives to incarceration; the number of drug courts with the ability to require substance abuse treatment for addicted offenders in lieu of a prison sentence is surging; and there is renewed attention to the pressing need for more substance abuse treatment.

¹⁰⁹ Human Rights Watch and The Sentencing Project, *Losing the Vote*; Tonry and Petersilia, *Prisons*.

¹¹⁰ More than 1.5 million children are estimated to have a parent who is incarcerated, and many more will have a parent incarcerated at some point during their lives. See Denise Johnson, "Effects of Parental Incarceration," in K. Gabel and D. Johnson, *Children of Incarcerated Parents* (New York: Lexington Books, 1995); Hagan and Dinovitzer, "Collateral Consequences of Human Rights Watch Children," in Tonry and Petersilia, *Prisons*. 28

Appendix: Methodology

This report uses several sources of data and presents both original as well as previously published statistics on prison admissions and incarceration.

There is no nationwide source of state-by-state data on the composition of prison populations by race and offense. State-by-state data on prison admissions is available from the National Corrections Reporting Program (NCRP) conducted annually by the U.S. Department of Justice. The NCRP annually collects individual-level data on all persons admitted to and released from state and federal prisons and its data sets are available from the National Archive of Criminal Justice Data at the University of Michigan. The explanatory guides that accompany the data provide a detailed explanation of the NCRP methodology and definitions.

For this report, we used the NCRP data for 1996, the most recent year for which they were available. We have provided admissions data from the 37 states who reported to the NCRP in 1996. (The number of participating states varies each year.) We did not obtain admissions data directly from the twelve states that did not participate in the NCRP because the states use different offense codes and we could not ensure consistency in the analysis of their admissions by offense.

We manipulated the NCRP data to identify all admissions that were new court commitments. New court commitments include all persons admitted to prison on a new sentence. That is, we excluded persons who had been admitted to prison previously, were released, and then returned because of parole revocations -- unless they returned with a new sentence. In that case, the new offense would be recorded, not the original offense. The NCRP does not use individual prisoners as a "unit" in its database, but uses each admission as a unit. It is theoretically possible, therefore, that a person can be in the database for 1996 more than once if he or she had been admitted more than once in that year. However, since offenders are rarely sent to prison unless they have a sentence of more than one year, we believe the possible number of double counted cases is insignificant.

Offenders admitted to prison are categorized in this report according to the most serious offense for which they were sent to prison. "Drug" offenders are prisoners admitted with a drug offense as their most serious offense. Anyone convicted of both a crime of violence and a drug offense would be categorized as a violent offender.

A number of states failed to provide complete data on their admissions. In Arkansas, for example, offense designations are missing for about fifty percent of the admitted population, and in Tennessee, offense values are missing for seventeen percent of the admissions. In a few other states there are much lower percentages of missing values.

There are significant numbers of missing values in the NCRP database in the category of type of drugs. We have therefore been cautious in our use of this data and only included the data for marijuana, which seemed consistent with other sources. Similarly, in the category of type of drug crime (e.g., possession vs. trafficking), some states did not provide complete records and our figures are best seen as approximations. The data from Arkansas, Hawaii, and Louisiana were so incomplete that we did not use them at all.

To calculate rates of admission relative to state populations, we have used population figures obtained from the Bureau of the Census for January 1997, which are an interpolation by the Bureau of the Census from the census estimates of July 1996 and July 1997. Reference to adults in this report includes individuals over the age of 18.

For data on incarceration rates and prison populations we used national prisoner statistics from the Bureau of Justice Statistics (BJS). BJS obtains year-end and mid-year counts of prisoners from departments of corrections in each of the fifty states. A distinction is made between prisoners in custody from those under jurisdiction. To have custody of a person, a state must hold that person in one of its facilities. To have jurisdiction means that a state has

legal authority over the prisoner. Prisoners under a state's jurisdiction may be in the custody of a local jail, in another state's prison, or in another correctional facility. In this report, unless otherwise indicated, we use figures of prisoners under state jurisdiction when we are citing prison population rates or prison population composition. However, for the following states, data are for custody rather than jurisdiction counts: Arizona, Florida, Georgia, Illinois, Iowa, Michigan, and Vermont.

For state incarceration rates we used the rates published in BJS, "Prison and Jail Inmates at Midyear 1999," published in April 2000. The racial breakdown of state prison populations was obtained from BJS, "Correctional Populations in the United States, 1996," published in April 1999. We used these state prison populations and census data to calculate incarceration rates by race.

Some states operate unified jail and prison systems, and their prison population figures include both jail and prison inmates. These are Alaska, Connecticut, Delaware, Hawaii, Rhode Island, Vermont, and the District of Columbia.

We have used NCRP and BJS designations of white and black inmates. These figures may include Hispanic whites and Hispanic blacks as some states did not disaggregate Hispanics. Nine states reporting to NCRP identified the race of a large number of prisoners as "unknown."

XI. ACKNOWLEDGMENTS

This report was written by Jamie Fellner, Human Rights Watch associate counsel. Sinead Walsh, a consultant to Human Rights Watch, performed the data analysis. Kenneth Roth, Human Rights Watch Executive Director, and Malcolm Smart, Program Director, edited the report. Production assistance was provided by Jacqueline Brandner and Maura Dundon.

Human Rights Watch would like to thank Allen Beck and James Stephan of the Bureau of Justice Statistics, Marc Mauer of The Sentencing Project, and Marie Pees from the Bureau of the Census for their assistance in the preparation of this report.

We are grateful to the Open Society Institute for the funding that supported this work.

Human Rights Watch

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Reed Brody, advocacy director; Carroll Bogert, communications director; ; Barbara Guglielmo, finance director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Patrick Mingos, publications director; Susan Osnos,

associate director; Maria Pignataro Nielsen, human resources director; Jemera Rone, counsel; Malcolm Smart, program director; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Jonathan Fanton is the chair of the board. Robert L. Bernstein is the founding chair.

Web Site Address: <http://www.hrw.org>

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).