



UNITED STATES

# Targeting Blacks

Drug Law Enforcement and Race in the United States

HUMAN  
RIGHTS  
WATCH



# **Targeting Blacks**

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Human Rights Watch  
350 Fifth Avenue, 34th floor  
New York, NY 10118-3299 USA  
Tel: +1 212 290 4700, Fax: +1 212 736 1300  
hrwnyc@hrw.org

Poststraße 4-5  
10178 Berlin, Germany  
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629  
berlin@hrw.org

Avenue des Gaulois, 7  
1040 Brussels, Belgium  
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471  
hrwbe@hrw.org

64-66 Rue de Lausanne  
1202 Geneva, Switzerland  
Tel: +41 22 738 0481, Fax: +41 22 738 1791  
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor  
London N1 9HF, UK  
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800  
hrwuk@hrw.org

27 Rue de Lisbonne  
75008 Paris, France  
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22  
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500  
Washington, DC 20009 USA  
Tel: +1 202 612 4321, Fax: +1 202 612 4333  
hrwdc@hrw.org

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



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## Drug Law Enforcement and Race in the United States

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## I. Introduction

What the drugs themselves have not destroyed, the warfare against them has. And what once began, perhaps, as a battle against dangerous substances long ago transformed itself into a venal war on our underclass. Since declaring war on drugs ... we've been demonizing our most desperate citizens, isolating and incarcerating them and otherwise denying them a role in the American collective. All to no purpose. The prison population doubles and doubles again; the drugs remain.

—Ed Burns, Dennis Lehane, George Pelecanos, Richard Price, and David Simon, creators of the HBO television series *The Wire*, in an op-ed written for *Time Magazine*, March 5, 2008<sup>1</sup>

Long before launching the global “war on terror,” the United States launched what it called the “war on drugs,” a law enforcement and crime control effort targeting its own people. Ostensibly color-blind, the US drug war has been and continues to be waged overwhelmingly against black Americans. Although white Americans constitute the large majority of drug offenders, African American communities continue as the principal “fronts” in this unjust effort. Defenders of the current anti-drug efforts claim they want to protect poor minority communities from addiction as well as the disorder, nuisance, and violence that can accompany drug dealing. But the choice of imprisonment as the primary anti-drug strategy, and the effect of this policy on neighborhoods, evokes the infamous phrase from the Vietnam War, “it became necessary to destroy the town in order to save it.”<sup>2</sup>

*Targeting Blacks* updates our prior report documenting racial disparities among drug offenders sent to prison.<sup>3</sup> It reveals that drug law enforcement in the United States continues to produce extraordinarily high and disproportionate rates of black

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<sup>1</sup> Ed Burns et al., “The Wire’s War on the Drug War,” *Time Magazine*, Wednesday, March 5, 2008, <http://www.time.com/time/nation/article/0,8599,1719872,00.html> (accessed March 12, 2008).

<sup>2</sup> Attributed to an unnamed US military officer by Associated Press reporter Peter Arnett, February 7, 1968.

<sup>3</sup> Human Rights Watch, *United States – Punishment and Prejudice: Racial Disparities in the War on Drugs*, vol. 12, no. 2(A), May 2000, <http://www.hrw.org/reports/2000/usa/>. *Punishment and Prejudice* was based on state prison admissions data from 1996. We focus in this present report only on the racial implications of the so-called war on drugs.



incarceration, particularly for black men. Based on data on new prison admissions reported by 34 states to the National Corrections Reporting Program for 2003 (the most recent available),<sup>4</sup> our analysis reveals that:

- African Americans constituted 53.5 percent of all persons who entered prison<sup>5</sup> because of a drug conviction;<sup>6</sup>
- Blacks were 10.1 times more likely than whites to enter prison for drug offenses;
- A black man was 11.8 times more likely than a white man to enter prison for drug offenses;
- A black woman was 4.8 times more likely than a white woman to enter prison for drug offenses;
- Among all African Americans entering prison, almost two out of five (38.2 percent) were convicted of drug offenses, compared to one in four whites (25.4 percent); and
- Although still dramatic, the racial disparity in the ratio of black to white prison admission rates for drug offenses in 2003 was in most states less than in 1996. Nevertheless, because of the increase in the disparity in states with large populations such as New York and California, the racial disparity across the 34 states was higher in 2003 than it was in 1996. In 2003, the black prison admission rate for drug offenses was 10.1 times that of whites. In 1996, it was 9.9 times greater.

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<sup>4</sup> The prison admissions data presented in this report is drawn from information reported by 34 individual states to the federal National Corrections Reporting Program (NCRP) for the year 2003, the last for which data were available. Although Alaska reported to the NCRP that year, we have excluded it from our analysis because there were many blanks in its data and it did not report any new admissions to prison for drug convictions. We have limited our analysis to the two racial categories, black and white, and did not include breakdowns by ethnicity (for example, Hispanic vs. non-Hispanic) because of the large number of missing data for ethnicity in the data reported by the states. The “white” and “black” categories each include Hispanic individuals. See Chapter IX: Methodology, for a complete description of the data and our methods of analysis.

<sup>5</sup> In this report we use the terms “entered prison,” “admitted to prison,” “prison admissions,” and “new court commitments” interchangeably. They are used to refer to people who were sent to prison by the courts because of convictions on new charges. See Chapter IX: Methodology.

<sup>6</sup> A person can be sentenced to prison with convictions for multiple offenses. In this report, when we refer to drug offenders, people convicted of drug offenses, drug admissions, and the like, we refer only to people whose most serious conviction crime was a drug offense. If, for example, a person was convicted of murder or armed robbery as well as selling drugs, he would not be included in our data as a drug offender.

The 59,535 adult African Americans who entered prison with drug convictions in 2003 in the 34 reporting states form just part of the unknown numbers of African Americans who have been incarcerated over the past two-and-a-half decades at rates greatly disproportionate to whites.<sup>7</sup> Since the mid-1980s, the nation's drug problem has been perceived to be primarily an urban black problem, even though—as discussed below—available data suggests there may be six times as many white drug offenders as black. The racially disproportionate results presented in this report are as predictable as they are unjust.<sup>8</sup>

It is impossible to determine whether and if so to what extent conscious racial hostility has influenced US drug control strategies. But even absent overt racial animus, race has mattered, influencing the development and persistence of anti-drug strategies. The emphasis on penal sanctions, for example, cannot be divorced from widespread and deeply rooted public association of racial minorities with crime and drugs.<sup>9</sup> The choice of crack cocaine as an ongoing priority for law enforcement—instead of the far more prevalent powder cocaine<sup>10</sup>—cannot be divorced from public association of crack with African Americans, even though the majority of crack users were white.<sup>11</sup> In short, unconscious and conscious racial stereotypes have affected

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7 There are no official data on the number of African Americans or whites who have been incarcerated on drug charges during the “war on drugs.” Between 1974 and 2001, an estimated 2,166,000 blacks were incarcerated on all charges in state and federal prisons. Thomas P. Bonczar, Bureau of Justice Statistics (BJS), “Prevalence of Imprisonment in the U.S. Population 1974-2001,” August 2003, p. 1, <http://www.ojp.usdoj.gov/bjs/pub/pdf/piuspo1.pdf> (accessed April 16, 2008).

8 Many organizations have documented the racial disparities in US anti-drug efforts. See, for example, the websites of The Sentencing Project, <http://www.sentencingproject.org/IssueAreaHome.aspx?IssueID=3> (accessed April 16, 2008), and the Justice Policy Institute, <http://www.justicepolicy.org> (accessed April 16, 2008).

9 Michael 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); Katherine Beckett, Kris Nyrop, and Lori Pfingst, “Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests,” *Criminology*, vol. 44, no. 1 (2006), <http://www.blackwell-synergy.com/action/showPdf?submitPDF=Full+Text+PDF+%28298+KB%29&doi=10.1111%2Fj.1745-9125.2006.00044.x&cookieSet=1> (accessed April 16, 2008).

10 Despite its notoriety, crack has never been one of the most heavily used drugs in the United States. For example, of the estimated 111,774,000 people age 12 and older who have used an illicit drug at least once in their lifetime, 8,554,000 are estimated to have used crack cocaine. In contrast, an estimated 35,298,000 persons have used powder cocaine, and 20,118,000 have used stimulants. US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), “Results from the 2006 National Survey on Drug Use and Health: National Findings,” 2007, Appendix G: Selected Prevalence Tables, Table G.1, <http://www.oas.samhsa.gov/NSDUH/2K6NSDUH/AppG.htm> (accessed April 16, 2008). SAMHSA's prevalence estimates are based on a survey of representative households and non-institutional group quarters nationwide.

11 In 1995, the United States Sentencing Commission (USSC) noted, “Public opinion tends to associate the country's drug crisis, specifically its perceived ‘crack problem,’ with Black, inner-city neighborhoods. [SAMHSA's National Household Survey on Drug Abuse] found that cocaine in any form was used by 2.8 percent of Whites, 3.9 percent of Blacks, and 3.8 percent of Hispanics in the survey population during the 1991 reporting year. Because Blacks and Hispanics comprise significantly smaller percentages of the total population, the majority of those reporting cocaine use were white.” USSC, “Special Report to Congress: Cocaine and Federal Sentencing Policy,” February 1995, p. 34, <http://www.ussc.gov/crack/exec.htm> (accessed

public perceptions of drugs, crime, disorder, and danger, and helped shape political and policy responses. Drug policy could have focused on a public health approach and sought to reduce demand. Instead, a penal approach has been pursued that focused on the suppliers, and, in particular, suppliers in minority neighborhoods.

The harms to those neighborhoods—as well as to the individuals sent to prison—are serious and long-lasting. Criminologist Michael Tonry has pointed out that unless and until drug control policies are less destructive, the life prospects for many disadvantaged blacks will remain bleak.<sup>12</sup> His recent summary of the problems with Minnesota’s drug policies applies with equal force nationally:

Current Minnesota drug policies damage minority communities and help assure that many minority group members remain locked in multi-generational cycles of disadvantage and social exclusion. If Minnesota is ever to offer equal opportunities and life chances to all its citizens, it will have to radically rethink and revise its responses to drug use and abuse. Current policies cause much more harm than they prevent, and require tens of millions of dollars of annual expenditures on law enforcement and corrections that could be much more constructively committed to improving people’s lives.<sup>13</sup>

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April 16, 2008). According to the 2006 national household survey of drug use and health conducted by SAMHSA, 3.3 percent of surveyed whites and 5.3 percent of surveyed blacks age 12 and older reported having used crack cocaine at least once in their lifetime. SAMHSA, “Results from the 2006 National Survey,” Table 1.34A, <http://www.oas.samhsa.gov/NSDUH/2k6NSDUH/tabs/SectionTabs1to46.htm#Tab1.34A> (accessed April 16, 2008). Given the disparity in the size of the respective populations in the United States, these percentages translate into a striking difference in the absolute numbers of each racial group estimated to have used crack: 5,553,800 whites and 1,537,000 blacks. The spread of crack cocaine—much cheaper than powder—in black neighborhoods, coupled with violence by drug gangs seeking to establish control over the crack market, prompted extraordinary levels of political and press attention to crack’s use by African Americans. The USSC has published succinct summaries of what is known about comparative risks and dangers of crack versus powder cocaine, and has repeatedly concluded there is no justification for the far higher sentences for crack offenders. Among its findings were that the two drugs are pharmacologically identical, with their effects depending primarily on method of ingestion, and that many of the fears about crack—for example, crack babies—have proved groundless. In addition, the violence that accompanied the establishment of distribution networks for crack cocaine when it was first introduced has greatly diminished.

<sup>12</sup> See, for example, Tonry, *Malign Neglect*.

<sup>13</sup> Michael Tonry, “Minnesota Drug Policy and its Disastrous Effects on Racial and Ethnic Minorities,” in the appendices of Council on Crime and Justice, “Justice, Where Art Thou: A Framework for the Future,” October 2007, p. 62, <http://www.crimeandjustice.org/researchReports/FINAL%20REPORT%2010.4.07.pdf> (accessed April 16, 2008). Tonry has written extensively about drug policies and their consequences.

We hope this report will encourage US political leaders and the public to grapple forthrightly with the excessive and racially disproportionate incarceration of drug offenders, and to develop plans to eliminate it. The first step is to reassess existing approaches to drug abuse and to evaluate the costs and benefits of feasible, cost-effective, and more equitable alternatives. Such alternatives exist, and some states have begun to take steps in the right direction—establishing drug courts to divert drug offenders from prison into community-based treatment programs, modifying their sentencing laws, and commissioning studies of racial disparities in their criminal justice systems.<sup>14</sup> As the data presented in this report demonstrates, however, much remains to be done.

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<sup>14</sup> See, for example, Governor's Commission on Reducing Racial Disparities in the Wisconsin Justice System, "Final Report," February 2008, <ftp://doaftp04.doa.state.wi.us/doadocs/web.pdf> (accessed April 16, 2008); Justice Policy Institute, "Substance Abuse Treatment and Public Safety," January 2008, [http://www.justicepolicy.org/images/upload/08\\_01\\_REP\\_DrugTx\\_AC-PS.pdf](http://www.justicepolicy.org/images/upload/08_01_REP_DrugTx_AC-PS.pdf) (accessed April 16, 2008); Ryan S. King, The Sentencing Project, "The State of Sentencing 2007," January 2008, [http://www.sentencingproject.org/Admin/Documents/publications/sl\\_statesentencingreport2007.pdf](http://www.sentencingproject.org/Admin/Documents/publications/sl_statesentencingreport2007.pdf) (accessed April 16, 2008); Marc Mauer and Ryan S. King, The Sentencing Project, "A 25-Year Quagmire: the War on Drugs and its Impact on American Society," September 2007, [http://www.sentencingproject.org/Admin/Documents/publications/dp\\_25yearquagmire.pdf](http://www.sentencingproject.org/Admin/Documents/publications/dp_25yearquagmire.pdf) (accessed April 16, 2008).

## II. Recommendations

Human Rights Watch urges public officials in the United States:

- To adopt community-based sanctions and other alternatives to incarceration for low-level drug offenders;
- To put more resources into substance abuse treatment (making it available in the community and in prison to all who need it) and prevention outreach;
- To increase investments in community educational, economic, health, and social programs;
- To eliminate mandatory minimum sentences for all drug offenses;
- To adopt public health-based strategies to reduce the harms associated with drug abuse;
- To conduct a comprehensive analysis of racial disparities in all phases of drug law enforcement—from arrests through incarceration—and to bring stakeholders together to devise ways to ensure drug laws and their enforcement do not disproportionately burden black communities;
- To enact legislation that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, prohibits policies or practices in the criminal justice system that have either
  - the purpose of restricting the exercise and enjoyment of human rights and fundamental freedoms on the basis of race, color, descent, or national or ethnic origin; or
  - the effect of restricting the exercise and enjoyment of human rights and fundamental freedoms on the basis of race, color, descent, or national or ethnic origin; and

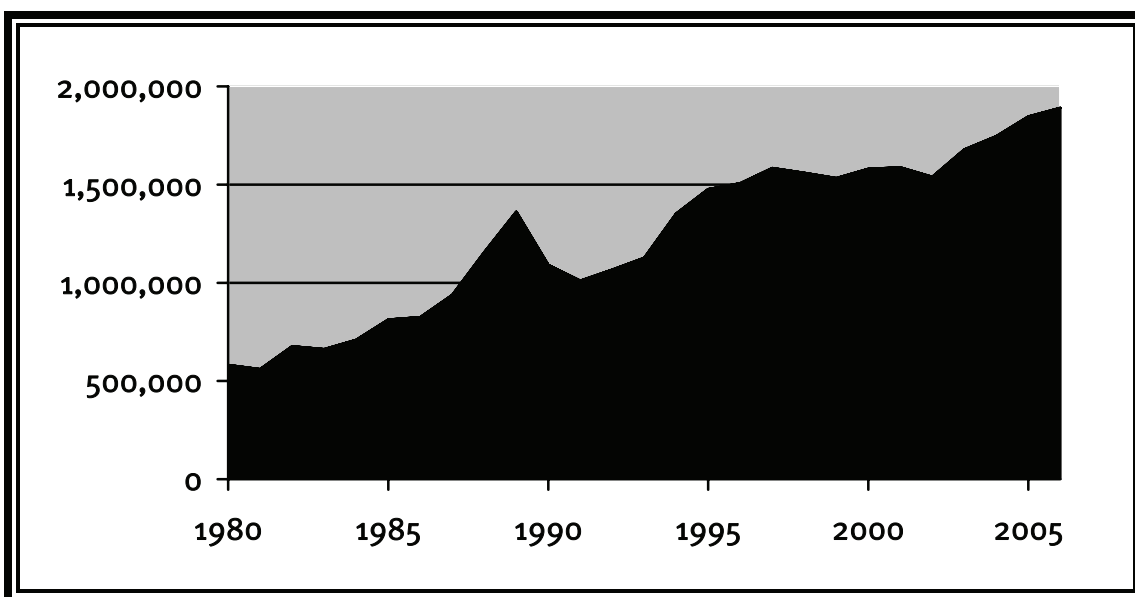
- Pending enactment of such legislation, to eliminate anti-drug policies or practices that have
  - the purpose of discriminating against blacks, or
  - the effect of discriminating against blacks

in violation of the International Convention on the Elimination of All Forms of Racial Discrimination.

### III. Background: The War on Drugs and the US Criminal Justice System

Since the early 1980s, when the Reagan administration launched the “war on drugs,” federal and state measures to battle the use and sale of drugs have emphasized arrest and incarceration rather than prevention and treatment.<sup>15</sup> The impact on the criminal justice system has been dramatic. Between 1980 and 2006, arrests for drug offenses more than tripled, rising from 581,000 arrests in 1980 to 1,889,810 in 2006.<sup>16</sup>

*Fig.1: Drug Abuse Violation Arrests*



Source: Federal Bureau of Investigation (FBI), Uniform Crime Reports, Crime in the United States, annual.<sup>17</sup>

<sup>15</sup> In the late 1960s and early 1970s, the national response to drug abuse was primarily one of treatment. Since then the focus has been primarily on law enforcement. 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 other demand reduction strategies. These proportions have not varied significantly in recent years. The White House, “National Drug Control Strategy,” February 2008, Appendix B, p. 71, <http://www.whitehousedrugpolicy.gov/publications/policy/ndcso8/2008ndcs.pdf> (accessed April 16, 2008).

<sup>16</sup> Federal Bureau of Investigation (FBI), “Crime in the United States, 2006,” September 2007, Table 29, [http://www.fbi.gov/ucr/cius2006/data/table\\_29.html](http://www.fbi.gov/ucr/cius2006/data/table_29.html) (accessed April 16, 2008).

<sup>17</sup> Drug arrest data for 1980 to 2004 is made available by the BJS, “Drug and Crime Facts: Drug Law Violations- Enforcement,” <http://www.ojp.usdoj.gov/bjs/dcf/tables/arrotot.htm> (accessed April 16, 2008). 2005 and 2006 arrest data is made available by the FBI, “Crime in the United States, 2005,” [http://www.fbi.gov/ucr/05cius/data/table\\_29.html](http://www.fbi.gov/ucr/05cius/data/table_29.html), “Crime in the United States, 2006,” [http://www.fbi.gov/ucr/cius2006/data/table\\_29.html](http://www.fbi.gov/ucr/cius2006/data/table_29.html) (both accessed April 16, 2008).

In some states, the growth in drug arrests has been even more dramatic. For example, drug arrests in Illinois quintupled between the mid-1980s and 2000,<sup>18</sup> and quadrupled in Minnesota between 1985 and 2005.<sup>19</sup>

The war on drugs was part of a larger “tough on crime” policy approach whose advocates believed harsh mandatory punishments were needed to restore law and order to America. Many factors beyond drug use and abuse encouraged politicians and public officials to embrace tough mandatory sentences for drug crimes, including the deterioration of inner cities, racial tensions, fear of crime, an unwillingness to tackle social inequalities, the willingness to use crime as a partisan issue, and intense media pressures—what a group of leading criminologists have called a “‘perfect storm’ that drove the imprisonment binge.”<sup>20</sup> New laws increased the likelihood of a prison sentence even for low-level offenses, increased the length of prison sentences, and required prisoners to serve a greater proportion of their sentences. This occurred for drug offenses as well as crimes of violence. In particular, laws establishing mandatory minimum sentences for drug law violations were enacted that replaced judicial discretion with fixed sentences determined by one or two factors (for example, the quantity and type of drugs involved in the offense).<sup>21</sup>

One result of the new drug laws<sup>22</sup> was a soaring prison population, as greater proportions of drug offenders received prison sentences and the length of incarceration increased. Between 1980 and 1998 the total number of new admissions of drug offenders to state and federal prison exceeded 1.5 million.<sup>23</sup> Between 1980 and 2003 the number of drug offenders in state prisons grew

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18 Drug arrests rose from 10,000 in the mid-1980s to 50,000 in 2000. Tim Whitney, Illinois Criminal Justice Information Authority and TASC, “Disproportionate Sentencing of Minority Drug Offenders in Illinois,” November 17, 2005, <http://www.icjia.state.il.us/public/pdf/ResearchReports/Disproportionate%20Sentencing%20Report.pdf> (accessed April 16, 2008).

19 Drug arrests rose from 5,372 in 1985 to 20,015 in 2005. Council on Crime and Justice, “Justice, Where Art Thou,” p. 15.

20 James Austin, The JFA Institute, “Unlocking America: Why and How to Reduce America’s Prison Population,” November 2007, p. 6, <http://www.jfa-associates.com/publications/srs/UnlockingAmerica.pdf> (accessed April 16, 2008).

21 Human Rights Watch, *Cruel and Usual: Disproportionate Sentences for New York Drug Offenders*, vol. 9, no. 2(B), March 1997, <http://hrw.org/reports/1997/usny/>.

22 Among the 50 states, statutory penalties for violating sale and possession provisions for drugs “vary greatly by substance, by the quantity of the substance sold or possessed, and by the type of offense (i.e., sale or possession). For example, the maximum statutory penalty for the sale of a standard retail amount of cocaine, methamphetamine, or ecstasy ranges from one year of imprisonment to life in prison.” ImpactTeen Illicit Drug Team, Andrews University and the RAND Corporation, “Illicit Drug Policies: Selected laws from the 50 States,” January 2002, p. 11, <http://www.rwjf.org/files/publications/other/DrugPoliciesReport.pdf> (accessed April 16, 2008).

23 Human Rights Watch, *Punishment and Prejudice*, p. 14, fig. 5.



twelvefold.<sup>24</sup> In 2006 an estimated 248,547 men and women were serving time in state prisons for drug offenses, constituting 19.5 percent of all state prisoners.<sup>25</sup>

In some states, the increase was even greater. For example, the number of drug offenders sentenced to prison in Illinois was 14 times greater in 2002 than 20 years earlier.<sup>26</sup> In 1990, prison admissions for drug crimes constituted 27 percent of Illinois prison admissions; by 2000, they constituted 40 percent.<sup>27</sup>

Countrywide, in 2002 the maximum prison sentence for a person convicted of a felony drug offense in state court was 48 months; for possession alone, the maximum sentence was 35 months.<sup>28</sup>

Few of the men and women who enter prison because of drug offenses are kingpins or major traffickers. The overwhelming preponderance are low-level non-violent offenders, primarily street-level dealers, couriers, and other bit players in the drug trade. In New York State, for example, 63 percent of the men and women sent to prison for drug offenses in 1998 had been convicted of the lowest level of drug offense; one in four were convicted of simple possession.<sup>29</sup> A federal survey of state prisoners nationwide revealed that among drug offenders, 58 percent had no history of violence or high-level drug activity; 35 percent had criminal histories limited to drug offenses; 21 percent were serving a sentence for a first-time offense; and 43 percent were convicted of drug possession. Half of the drug offenders who were

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24 The number of drug offenders in state prison rose from 19,000 to 250,900. Mauer and King, "25-Year Quagmire," fig. 2.

25 William J. Sabol, Ph.D., BJS, "Prisoners in 2006," December 2007, Table 11, pp. 8-9, <http://www.ojp.usdoj.gov/bjs/pub/pdf/po6.pdf> (accessed April 16, 2008). There are currently 93,751 federal prisoners doing time for drug offenses. *Ibid.*, Table 12. The number of drug offenders held in local jails also increased dramatically: in 1983, 9.3 percent of jail inmates were drug offenders. By 2002 the figure was 24.7 percent. BJS, "Sourcebook of Criminal Justice Statistics 2003," Table 6.19, <http://www.albany.edu/sourcebook/pdf/t619.pdf> (accessed April 16, 2008).

26 Whitney, "Disproportionate Sentencing of Minority Drug Offenders in Illinois," p. 3.

27 Arthur J. Lurigio, Ph.D., Loyola University and TASC, "The Disproportionate Incarceration of African Americans for Drug Crimes: The Illinois Perspective," November 2000, p. 6, <http://www.icjia.state.il.us/public/pdf/ResearchReports/Disproportionate%20Incarceration%20of%20African%20Americans%20for%20Drug%20Crimes.pdf> (accessed April 16, 2008).

28 The sentence lengths provided are the mean for maximum sentences. Matthew R. Durose and Patrick A. Langan, Ph.D., BJS, "Felony Sentences in State Courts, 2002," December 2004, Table 3, p. 4, <http://www.ojp.usdoj.gov/bjs/pub/pdf/fssc02.pdf> (accessed April 16, 2008).

29 Human Rights Watch, "Who Goes to Prison for Drug Offenses? A Rebuttal to the New York State District Attorney's Association," 1999, <http://www.hrw.org/campaigns/drugs/ny-drugs.htm>; "Official Data Reveal Most New York Drug Offenders are Nonviolent," Human Rights Watch news release, January 7, 1999, <http://hrw.org/english/docs/1999/01/07/usdom793.htm>, revealing that 80 percent of the drug offenders who received prison sentences for drug offenses had never been convicted of a violent crime.

surveyed reported their drug activity consisted of selling or helping to sell drugs to others for their use, and less than a third (28.5 percent) reported activity that might constitute a higher-level role (for example, distributing or helping distribute drugs to dealers).<sup>30</sup>

More than two decades of incarcerating drug offenders has apparently had little impact on the demand for illicit drugs. In surveys carried out during the years 1991-1993, an average of 5.8 percent of persons surveyed reported using an illicit drug during the previous month.<sup>31</sup> In the same survey carried out in 2006, 8.3 percent of persons said they had used an illicit drug in the previous month.<sup>32</sup> During 2002-2006, an estimated 500,000 men and women entered prison on drug charges.<sup>33</sup> Yet during that period, the proportion of persons age 12 and older who used illicit drugs remained essentially unchanged.<sup>34</sup> Even the use of crack, so highly targeted by law enforcement since the mid-1980s, remains surprisingly prevalent: in 2006 an estimated 702,000 people were using it.<sup>35</sup> As currently carried out—that is, with an emphasis on law enforcement rather than substance abuse treatment—punitive anti-drug policies may be as futile as they are unfair.

They are also expensive. The average annual operating cost per inmate in state prison is \$22,650.<sup>36</sup> Substance abuse treatment is far less expensive—prison costs

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30 These figures were developed by The Sentencing Project from data in the 1997 Survey of Inmates conducted by the Bureau of Justice Statistics (BJS). Ryan S. King and Marc Mauer, The Sentencing Project, “Distorted Priorities: Drug Offenders in State Prisons,” September 2002, pp. 2, 4, and 7, [http://www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5Cdp\\_distortedpriorities.pdf](http://www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5Cdp_distortedpriorities.pdf) (accessed April 16, 2008). Federal drug offenders are also predominantly low-level: 61.5 percent of federal crack cocaine offenders and 53.1 percent of federal powder cocaine offenders are street-level dealers, couriers, lookouts, or perform other low-level functions, for example. USSC, “Report to Congress: Cocaine and Federal Sentencing Policy,” May 2007, figs. 2-4, p. 19, [http://www.ussc.gov/r\\_congress/cocaine2007.pdf](http://www.ussc.gov/r_congress/cocaine2007.pdf) (accessed April 16, 2008).

31 SAMHSA, “Substance Abuse in States and Metropolitan Areas: Model Based Estimates from the 1991-1993 National Household Surveys on Drug Abuse,” September 1996, Exhibits 3.1-3.4, <http://www.oas.samhsa.gov/96state/ch3.htm#Ch3.2> (accessed April 16, 2008).

32 The persons surveyed were age 12 or older. SAMHSA, “Results from the 2006 National Survey,” Appendix G, Selected Prevalence Tables, Table G.6.

33 Since 1990 state drug admissions have averaged 100,000 and upwards a year. Human Rights Watch, *Punishment and Prejudice*, fig. 5. In 2003 there were 168,000 drug admissions in 34 NCRP reporting states.

34 SAMHSA, “Results from the 2006 National Survey,” Appendix G: Selected Prevalence Tables, Table G.2 (lifetime), Table G.4 (past year), and Table G.6 (prior month). These tables provide percentages of the population age 12 or older using selected drugs for the years 2002 through 2006.

35 This figure is an increase from the 567,000 estimated users in 2002. *Ibid.*, Table G.5.

36 James J. Stephen, BJS, “State Prison Expenditures,” June 2004, p. 1, <http://www.ojp.usdoj.gov/bjs/pub/pdf/spe01.pdf>, (accessed February 25, 2008). These figures do not count capital outlays. In 2001, the total operating costs and capital outlays for state adult correctional facilities amounted to \$29.5 billion.

five to six times more than non-residential drug treatment.<sup>37</sup> It is also more effective at reducing addiction and associated crime. As the director of the National Institute on Drug Abuse recently pointed out, “Comprehensive drug treatment works. It not only reduces drug use but also curtails criminal behavior and recidivism.”<sup>38</sup> According to the National Institute on Drug Abuse, every dollar invested in addiction treatment programs yields a return of four to seven dollars in reduced costs of drug-related crimes.<sup>39</sup> The Justice Policy Institute has calculated that California may have saved more than \$350 million in the five years after it legislated the use of drug treatment instead of prison for non-violent offenders convicted of simple possession.<sup>40</sup>

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37 The average daily cost per inmate in a state prison is \$62.05. *Ibid.* The mean cost per client day for outpatient drug treatment was \$10.32 (methadone) and \$9.17 (non-methadone). SAMHSA, “The ADSS Cost Study: Costs of Substance Abuse Treatment in the Specialty Sector,” 2003, Table 4.2, p. 21, <http://www.oas.samhsa.gov/ADSS/ADSSCostStudy.pdf> (accessed February 25, 2008).

38 Nora D. Volkow, “Treat the Addict, Cut the Crime Rate,” *The Washington Post*, August 19, 2006. Volkow cites SAMHSA reports that substance abuse treatment can dramatically cut drug abuse and reduce criminal activity.

39 US Department of Health and Human Services, National Institute on Drug Abuse (NIDA), “NIDA InfoFacts: Treatment Approaches for Drug Addiction,” August 2006, <http://www.nida.nih.gov/PDF/InfoFacts/Treatment06.pdf> (accessed April 16, 2008). The Washington State Institute for Public Policy concluded that a dollar spent on community-based drug treatment yields an estimated \$18.52 in benefits. Steve Aos, Washington State Institute for Public Policy, “The Criminal Justice System in Washington State: Incarceration Rates, Taxpayer Costs, Crime Rates and Prison Economics,” January 2003, <http://www.wsipp.wa.gov/rptfiles/SentReport2002.pdf> (accessed April 16, 2008). These and other examples of the cost-effectiveness of substance abuse treatment are presented in Justice Policy Institute, “Substance Abuse Treatment and Public Safety,” January 2008, [http://www.justicepolicy.org/images/upload/08\\_01\\_REP\\_DrugTx\\_AC-PS.pdf](http://www.justicepolicy.org/images/upload/08_01_REP_DrugTx_AC-PS.pdf) (accessed April 16, 2008).

40 In 2001 the Substance Abuse and Crime Prevention Act of 2000, or Proposition 36, went into effect in California, requiring drug treatment as an alternative to incarceration for non-violent adult offenders convicted of simple drug possession. In the following five years, the rate of incarceration for drug possession in the state dropped by 34.3 percent. Scott Ehlers and Jason Ziedenberg, Justice Policy Institute, “Proposition 36: Five years later,” April 2006, [http://www.justicepolicy.org/images/upload/06-04\\_REP\\_CAProp36FiveYearsLater\\_DP-AC.pdf](http://www.justicepolicy.org/images/upload/06-04_REP_CAProp36FiveYearsLater_DP-AC.pdf) (accessed April 16, 2008).

## IV. Race and the Incarceration of Drug Offenders

The punitive anti-drug policies of the last 20 years bear heavy responsibility for the extremely high and disproportionate representation of black Americans in the US prison population.<sup>41</sup>

### Drug Offenses and Black Incarceration

Drug offenses have played a greater role in black incarceration than white:

- 38.2 percent of all blacks entering prison in 2003 with new sentences had been convicted of drug offenses, compared to 25.4 percent of whites. (Table 1).
- Between 1990 and 2000, drug offenses accounted for 27 percent of the total increase in black inmates in state prison and only 15 percent of the increase in white inmates.<sup>42</sup>
- Among blacks currently serving state prison sentences, 22.9 percent were convicted of drug offenses; among whites, 14.8 percent.<sup>43</sup>

In some individual states, the impact of drug policies on black incarceration has been far greater: for example, in Illinois, the number of black admissions for drug offenses grew six-fold between 1990 and 2000, while the number of whites admitted for drug offenses remained relatively stable.<sup>44</sup>

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<sup>41</sup> Racial disproportions in US incarceration have been extensively documented. For example, black men are incarcerated under state or federal jurisdiction at 6.2 times the rate of white men, and black women are incarcerated at 3.1 times the rate of white women. Sabol, BJS, "Prisoners in 2006," Table 10, p. 8. The rate of sentenced prisoners under state or federal jurisdiction per 100,000 residents is 487 for white men, compared to 3,042 for black men. The rate for white women is 48, compared to 148 for black women. *Ibid.*, Appendix, Table 7, p. 23. About one in every 33 black men is a sentenced prisoner, compared to one in every 205 white men. *Ibid.*, p. 8. Approximately 16.6 percent of adult African American men have been in prison, compared to 2.6 percent of white men. Bonczar, "Prevalence of Imprisonment in the U.S. Population 1974-2001," p. 1.

<sup>42</sup> Paige M. Harrison and Allen J. Beck, Ph.D., BJS, "Prisoners in 2001," July 2002, Table 19, p. 13, <http://www.ojp.usdoj.gov/bjs/pub/pdf/p01.pdf> (accessed April 18, 2008).

<sup>43</sup> Sabol, BJS, "Prisoners in 2006," Table 11, p.8.

<sup>44</sup> Lurigio, "Disproportionate Incarceration of African Americans for Drug Crimes: The Illinois Perspective," p. 6.

*Table 1: Prison Admissions for Drug Offenses as a Percentage of All Admissions, by Race and Gender, 2003*

<b>State</b>	<b>White Male</b>	<b>White Female</b>	<b>White All</b>	<b>Black Male</b>	<b>Black Female</b>	<b>Black All</b>
Alabama	29.5%	40.7%	31.2%	32.7%	29.8%	32.4%
California	28.2%	35.1%	29.2%	32.9%	32.1%	32.8%
Colorado	20.9%	38.9%	23.3%	35.7%	46.5%	37.3%
Florida	18.4%	37.1%	20.5%	39.0%	36.8%	38.8%
Georgia	27.7%	40.5%	29.5%	34.8%	26.6%	34.0%
Hawaii	12.0%	21.7%	13.6%	31.1%	33.3%	31.4%
Illinois	24.2%	32.3%	25.3%	48.2%	42.4%	47.5%
Iowa	32.6%	36.1%	32.9%	22.9%	10.5%	21.4%
Kentucky	28.5%	43.5%	30.8%	39.3%	38.6%	39.2%
Louisiana	26.6%	38.8%	28.1%	44.2%	39.9%	43.9%
Maryland	22.5%	26.0%	22.8%	50.7%	54.2%	50.9%
Michigan	10.6%	18.3%	11.2%	22.9%	17.1%	22.5%
Minnesota	33.8%	48.9%	35.3%	28.2%	30.4%	28.3%
Mississippi	34.5%	39.2%	35.3%	36.3%	36.4%	36.3%
Missouri	29.4%	43.2%	31.1%	38.2%	27.6%	37.5%
Nebraska	30.1%	38.9%	31.1%	17.2%	32.6%	18.9%
Nevada	14.3%	29.2%	16.2%	19.2%	15.7%	18.8%
New Hampshire	19.0%	30.6%	19.9%	24.2%	0.0%	21.1%
New Jersey	30.2%	49.4%	32.2%	55.1%	53.8%	55.0%
New York	23.9%	43.0%	25.9%	43.9%	54.3%	44.6%
North Carolina	12.7%	24.2%	14.4%	27.3%	30.2%	27.6%
North Dakota	39.5%	62.9%	42.3%	15.6%	20.0%	16.2%
Oklahoma	41.8%	59.1%	44.5%	42.3%	52.5%	43.6%
Oregon	13.7%	25.9%	14.8%	11.6%	26.3%	13.4%
Pennsylvania	24.7%	31.0%	25.2%	43.6%	31.7%	43.1%
South Carolina	16.3%	18.5%	16.7%	33.0%	20.8%	31.8%
South Dakota	30.1%	33.3%	30.6%	32.6%	45.5%	35.1%
Tennessee	16.8%	28.1%	18.8%	30.6%	29.2%	30.5%
Texas	23.5%	38.8%	25.7%	38.8%	38.7%	38.8%
Utah	36.8%	52.5%	38.9%	35.1%	70.0%	38.0%
Virginia	13.7%	21.6%	14.9%	31.8%	35.4%	32.2%
Washington	30.0%	44.8%	31.9%	43.1%	55.5%	44.5%
West Virginia	9.2%	15.8%	10.1%	31.8%	31.8%	31.8%
Wisconsin	19.1%	25.7%	19.7%	44.3%	53.3%	44.9%
<b>Total*</b>	<b>23.9%</b>	<b>35.9%</b>	<b>25.4%</b>	<b>38.3%</b>	<b>36.7%</b>	<b>38.2%</b>

Source: National Corrections Reporting Program, 2003.

\* Total calculated on basis of 34 reporting states.

## Racial Composition of Drug Offender Admissions

Among the 34 states reporting new admissions to the National Corrections Reporting Program (NCRP) in 2003, there were a total of 111,247 adult men and women who entered state prison that year convicted of drug offenses—possession, sales, manufacturing, or other drug related offenses. The new drug offender prison admissions included 59,535 black men and women (53.5 percent of the total) and 37,003 white men and women (33.3 percent of the total). (See Table 2 for the number of prison admissions for drug offenders by race in each of the 34 states, and Figure 2 for the racial composition of drug offender admissions).<sup>45</sup>

## Racial Disparities in Rates of Admission

Because the proportion of blacks and whites in state populations varies considerably, rates of admission for drug offenses relative to the black and white population of each state present a clearer picture of the racial impact of drug law enforcement than the racial composition of admissions. According to our analysis of the 2003 admissions, as shown in Figure 3, the total rate of prison admission for blacks in the 34 reporting states<sup>46</sup> was 256.2 per 100,000 adult black residents.<sup>47</sup> For whites, the rate was 25.3 per 100,000 adults. The black rate of admission has grown much faster than the white rate: between 1986 and 2003 the rate of admission to prison for drug offenses for blacks quintupled; the white rate did not quite triple.<sup>48</sup>

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<sup>45</sup> Other racial backgrounds—Indian American, Asian, Native Hawaiians, other—as well as admissions where race was marked unknown or left blank account for the remainder.

<sup>46</sup> The “total” rate is calculated on the basis of all prison admissions for drug offenses in the 34 states and the combined populations of those states. Throughout this report, “totals” are calculated on the basis of all the 34 states’ data combined. They do not reflect averages. We do not know the extent to which the figures for the 34 reporting states would be consistent with figures for the non-reporting states.

<sup>47</sup> Throughout this report, all calculations of rates relative to population are based on adult residents in the state. See Chapter IX, Methodology.

<sup>48</sup> In 1986 the rate of admission for blacks for drug offenses was 49 per 100,000 black adults, and for whites it was 9 per 100,000 white adults. Vincent Schiraldi, Barry Holman, and Phillip Beatty, The Sentencing Project, “Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States,” p. 7, <http://www.cjcj.org/drug/> (accessed April 24, 2008). See also Pamela E. Oliver, Ph.D., “Racial Patterns in State Trends in Prison Admissions 1983-2003: Drug and Non-drug Sentences and Revocations,” [http://www.ssc.wisc.edu/~oliver/RACIAL/StateTrends/RacialPatterns\\_Intro\\_National.pdf](http://www.ssc.wisc.edu/~oliver/RACIAL/StateTrends/RacialPatterns_Intro_National.pdf) (accessed February 19, 2008). Dr. Oliver uses data from the National Corrections Reporting Program to develop national and state-by-state graphs depicting prison admissions for participating states over a 20-year period.

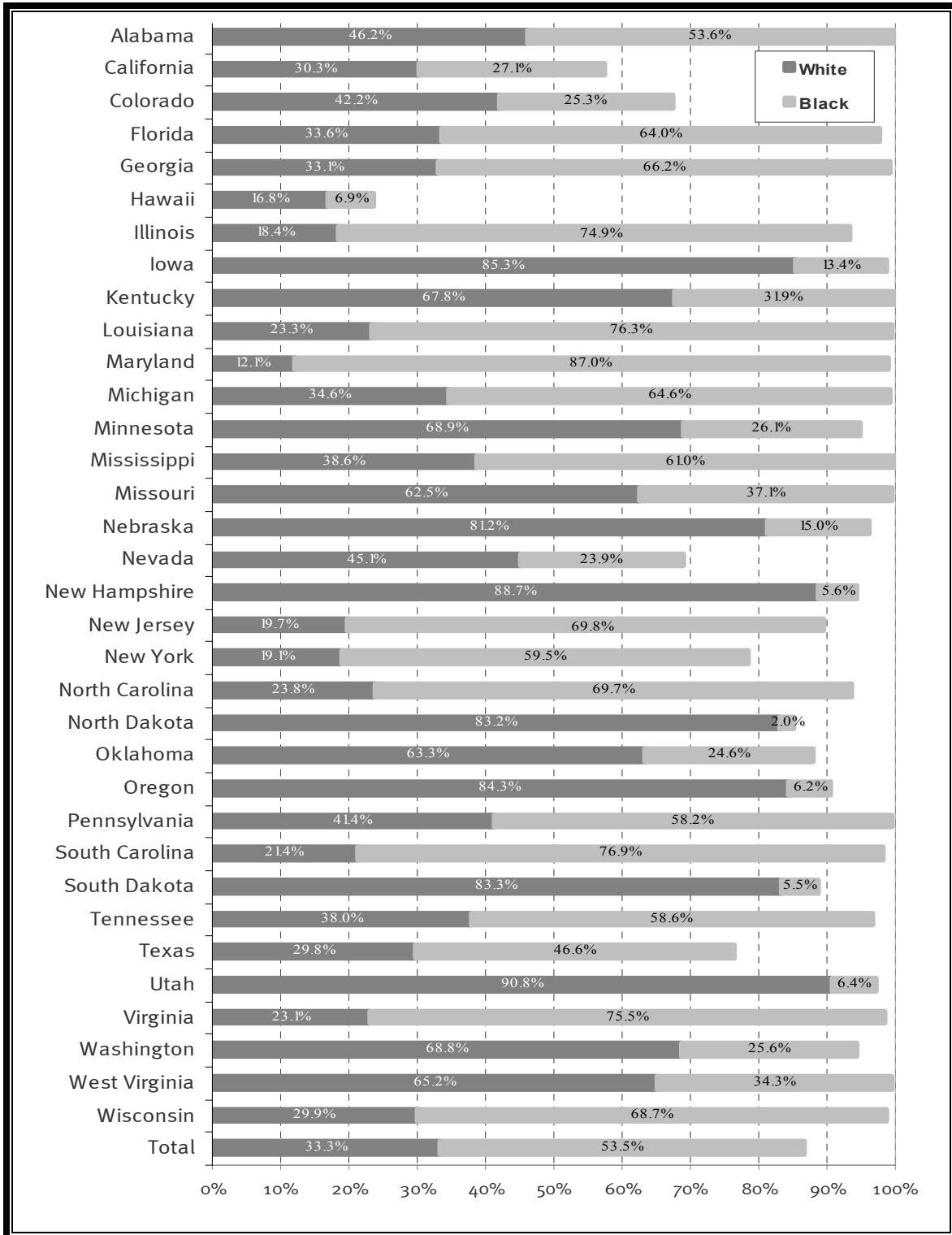
*Table 2: Number of Prison Admissions for Drug Offenses, by Race, 2003*

<b>State</b>	<b>White</b>	<b>Black</b>	<b>Other</b>	<b>Total</b>
Alabama	1,261	1,463	6	2,730
California	5,341	4,777	7,524	17,642
Colorado	634	380	490	1,504
Florida	3,009	5,740	216	8,965
Georgia	1,502	3,005	30	4,537
Hawaii	39	16	177	232
Illinois	1,982	8,052	723	10,757
Iowa	625	98	10	733
Kentucky	1,799	847	9	2,655
Louisiana	616	2,021	12	2,649
Maryland	585	4,200	44	4,829
Michigan	565	1,054	12	1,631
Minnesota	805	305	59	1,169
Mississippi	1,080	1,706	9	2,795
Missouri	1,321	783	9	2,113
Nebraska	432	80	20	532
Nevada	247	131	170	548
New Hampshire	126	8	8	142
New Jersey	1,019	3,600	542	5,161
New York	1,242	3,870	1,395	6,507
North Carolina	1,170	3,419	318	4,907
North Dakota	247	6	44	297
Oklahoma	1,869	725	359	2,953
Oregon	285	21	32	338
Pennsylvania	1,233	1,732	13	2,978
South Carolina	618	2,223	51	2,892
South Dakota	305	20	41	366
Tennessee	804	1,241	72	2,117
Texas	2,646	4,136	2,090	8,872
Utah	653	46	20	719
Virginia	735	2,404	45	3,184
Washington	1,787	665	144	2,596
West Virginia	116	61	1	178
Wisconsin	305	700	14	1,019
<b>Total*</b>	<b>37,003</b>	<b>59,535</b>	<b>14,709</b>	<b>111,247</b>

Source: National Corrections Reporting Program, 2003.

\* Total calculated on basis of 34 reporting states.

Fig.2: Racial Composition of Prison Admissions for Drug Offenses, 2003



Source: National Corrections Reporting Program, 2003.



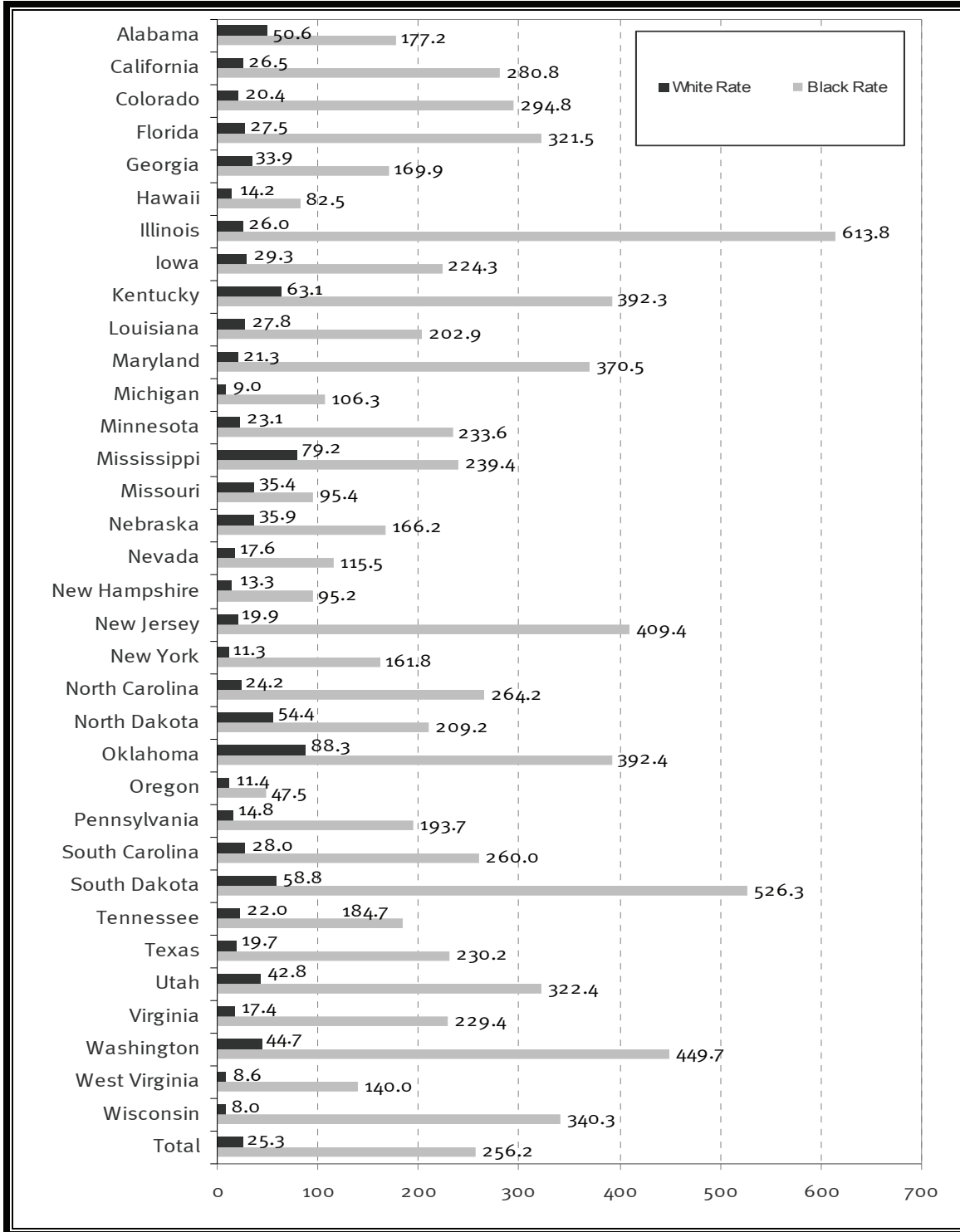
*Table 3: Rates of Prison Admissions for Drug Offenses, by Gender and Race, 2003*  
(Rates calculated per 100,000 residents of each race and gender)

State	White Male	White Female	White All	Black Male	Black Female	Black All
Alabama	83.5	19.9	50.6	363.6	26.1	177.2
California	43.8	9.2	26.5	515.1	62.5	280.8
Colorado	31.9	8.9	20.4	456.5	117.2	294.8
Florida	44.9	11.2	27.5	628.2	50.7	321.5
Georgia	55.5	12.7	33.9	345.3	21.8	169.9
Hawaii	20.0	7.7	14.2	122.0	25.3	82.5
Illinois	44.2	8.5	26.0	1,227.6	109.4	613.8
Iowa	53.7	6.4	29.3	402.7	28.8	224.3
Kentucky	102.6	26.4	63.1	725.8	88.5	392.3
Louisiana	47.7	9.1	27.8	414.0	27.4	202.9
Maryland	39.7	4.1	21.3	760.5	50.1	370.5
Michigan	16.3	2.1	9.0	218.8	11.0	106.3
Minnesota	40.8	6.1	23.1	412.1	38.5	233.6
Mississippi	132.4	29.0	79.2	477.7	41.1	239.4
Missouri	60.9	11.6	35.4	129.8	14.3	95.4
Nebraska	62.3	10.6	35.9	277.3	60.7	166.2
Nevada	26.6	8.2	17.6	211.5	19.4	115.5
New Hampshire	24.2	3.1	13.3	167.0	0.0	95.2
New Jersey	34.7	6.2	19.9	822.1	59.5	409.4
New York	19.5	3.7	11.3	333.9	24.1	161.8
North Carolina	36.7	12.2	24.2	519.5	50.7	264.2
North Dakota	90.1	19.2	54.4	281.7	91.5	209.2
Oklahoma	143.7	35.9	88.3	684.0	119.5	392.4
Oregon	19.4	3.8	11.4	66.8	24.7	47.5
Pennsylvania	27.6	3.1	14.8	407.7	13.0	193.7
South Carolina	47.3	9.7	28.0	537.2	30.8	260.0
South Dakota	99.5	19.3	58.8	597.6	387.6	526.3
Tennessee	33.8	10.9	22.0	371.9	28.9	184.7
Texas	31.1	8.6	19.7	430.6	51.4	230.2
Utah	70.7	15.2	42.8	468.6	117.7	322.4
Virginia	28.4	6.9	17.4	435.2	49.5	229.4
Washington	74.4	15.6	44.7	719.8	133.5	449.7
West Virginia	14.3	3.3	8.6	245.9	32.4	140.0
Wisconsin	14.4	1.9	8.0	664.8	51.5	340.3
<b>Total*</b>	<b>42.1</b>	<b>9.1</b>	<b>25.3</b>	<b>495.5</b>	<b>44.0</b>	<b>256.2</b>

Source: National Corrections Reporting Program, 2003.  
\* Total calculated on basis of 34 reporting states.

Fig.3: Rates of Prison Admissions for Drug Offenses, by Race, 2003

(Rates calculated per 100,000 residents of each race)



Source: National Corrections Reporting Program, 2003.

The state rates for drug offender prison admissions for whites ranged from a low of 8 (Wisconsin) to a high of 88.3 (Oklahoma) per 100,000 white residents. (Table 3). The rates for drug offender admissions for blacks ranged from a low of 47.5 (Oregon) to a high of 613.8 (Illinois) per 100,000 black residents. The five states with the highest black drug offender admission rates were Illinois (613.8), South Dakota (526.3), Washington (449.7), New Jersey (409.4), and Oklahoma (392.4). Table 3 also shows that in every one of the 34 states, blacks were sent to prison for drug offenses at far higher rates than whites in that state.

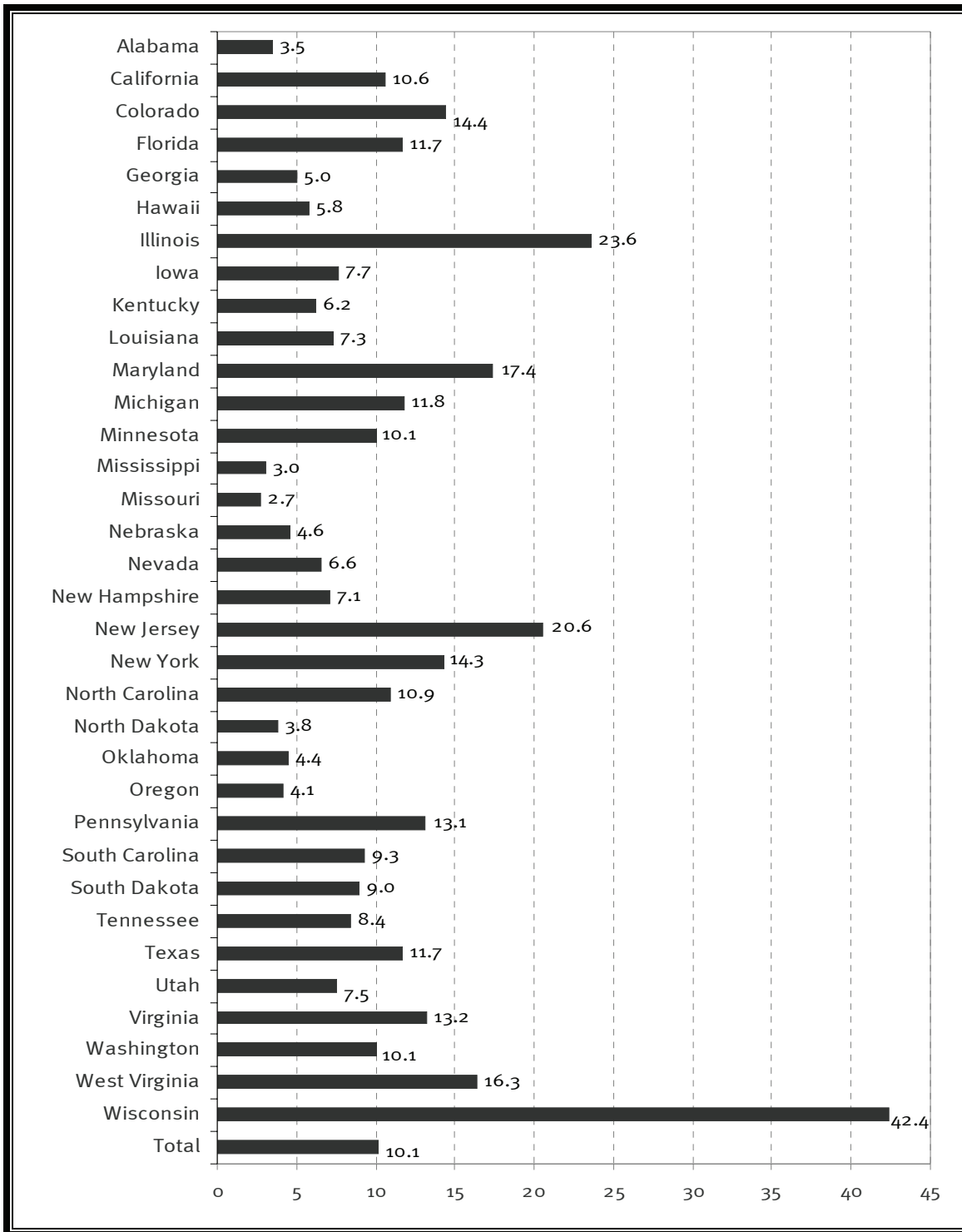
In Figure 4, we present the ratio of black drug admission rates to white drug admission rates in the 34 states. Overall, blacks were sent to state prison for drug offenses in 2003 at 10.1 times the rate of whites. The disparity between black and white rates of admission was lowest in Missouri, where the black rate was still 2.7 times greater than the white rate. In the state with the highest disparity, Wisconsin, blacks entered prison on drug charges at 42.4 times the rate of whites. The rate of black drug offender admissions was more than 20 times that of whites in Illinois (23.6) and New Jersey (20.6). As shown in Table 4, the 10 states with the worst ratios between the rates at which blacks and whites were sent to prison for drug offenses were: Wisconsin (42.4), Illinois (23.6), New Jersey (20.6), Maryland (17.4), West Virginia (16.3), Colorado (14.4), New York (14.3), Virginia (13.2), Pennsylvania (13.1), and Michigan (11.8).

We analyzed the admissions data to determine whether some states send drug offenders of both races to prison at higher rates than other states, even though the drug admission rates of whites and blacks may be of a considerably different magnitude. As shown in Figure 5, there is a weak correlation between drug admission rates for blacks and for whites in each state.<sup>49</sup> Illinois and New Jersey, for example, have very high rates of black admissions but relatively low rates of white admissions. Conversely, Alabama and Mississippi have relatively high rates of white admissions and relatively low rates of black admissions. Oklahoma, in contrast, sends both whites and blacks to prison for drug offenses at relatively high rates.

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<sup>49</sup> If there were a robust correlation, the states would cluster closely along a line rising diagonally from a low on the left side of the figure to a high on the right side.

*Fig.4: Ratio of Black:White Rates of Prison Admissions for Drug Offenses, 2003*  
 (Rates calculated per 100,000 residents of each race)



Source: National Corrections Reporting Program, 2003.

*Table 4: Ranking of States by Ratio of Black:White Prison Admission Rates for Drug Offenses, 2003*

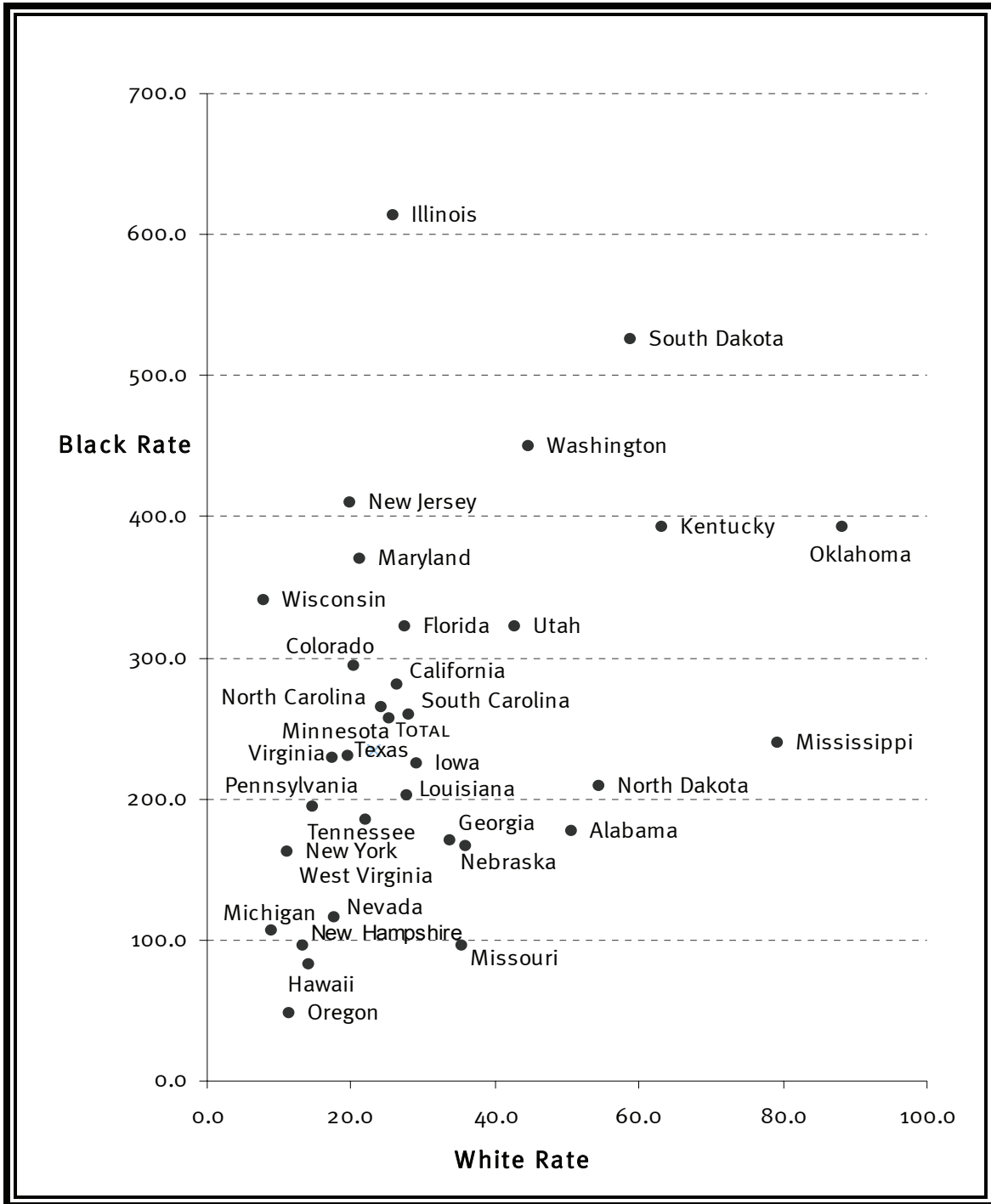
(Rates calculated per 100,000 residents of each race)

State	Black:White Rate Ratios
Wisconsin	42.4
Illinois	23.6
New Jersey	20.6
Maryland	17.4
West Virginia	16.3
Colorado	14.4
New York	14.3
Virginia	13.2
Pennsylvania	13.1
Michigan	11.8
Florida	11.7
Texas	11.7
North Carolina	10.9
California	10.6
Minnesota	10.1
Washington	10.1
South Carolina	9.3
South Dakota	9.0
Tennessee	8.4
Iowa	7.7
Utah	7.5
Louisiana	7.3
New Hampshire	7.1
Nevada	6.6
Kentucky	6.2
Hawaii	5.8
Georgia	5.0
Nebraska	4.6
Oklahoma	4.4
Oregon	4.1
North Dakota	3.8
Alabama	3.5
Mississippi	3.0
Missouri	2.7

Source: National Corrections Reporting Program, 2003.

Fig.5: Correlation of White and Black Rates of Prison Admissions for Drug Offenses, 2003

(Rates calculated per 100,000 adults of each race)



Source: National Corrections Reporting Program, 2003.

## Race and Gender

Racial disparities in incarceration for drug offenses are even more evident when the data analysis incorporates gender. As shown in Table 1, drug offenses in 2003 accounted for about two in ten white men entering prison that year (23.9 percent) but nearly four in ten black men (38.3 percent). The differences were less marked among women: drug offenses accounted for 35.9 percent of white women entering prison that year and 36.7 percent of black women.

The proportion of black men sent to prison in 2003 because of drug offenses ranged from a low of one in 10 (Oregon, 11.6 percent) to a high of one in two (New Jersey, 55.1 percent, and Maryland, 50.7 percent). The proportion of white men sent to prison because of drug offenses was never higher than 41.8 percent (Oklahoma).

Drug offenses play a greater role in sending women to prison than men. In seven states (Maryland, New Jersey, New York, Oklahoma, Utah, Washington, and Wisconsin), drug sentences accounted for 50 percent or more of all black women sent to prison in 2003. Convictions for drug offenses accounted for 50 percent or more of the new admissions among white women in three states (North Dakota, Oklahoma, and Utah).

We computed the prison admission rates for drug offenses per 100,000 adult residents for the 34 NCRP participating states, disaggregating the data by gender and race. As shown in Table 3, the drug admission rates for the 34 states together were 495.5 for black men, 44.0 for black women, 42.1 for white men and 9.1 for white women. Drug admission rates for black men ranged from a low of 66.8 per 100,000 black adult males in Oregon, to a high of 1,227.6 in Illinois. For white men, the rates of drug offender admissions ranged from a low of 14.3 per 100,000 white male adult residents in West Virginia to a high of 143.7 in Oklahoma. The highest black male rate is 8.5 times greater than the highest white male rate. The rates at which black women were sent to prison for drug offenses ranged from a low of 11.0 per 100,000 black female adults in Michigan<sup>50</sup> to a remarkably high 387.6 in South Dakota. The lowest rate for white women was 1.9 in Wisconsin and the highest was 35.9 in

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<sup>50</sup> Excluding New Hampshire, which had an admission rate of zero for black women.

Oklahoma. (The contrast between the black and white rates for men and women in each state is displayed graphically in Figures 6 and 7).

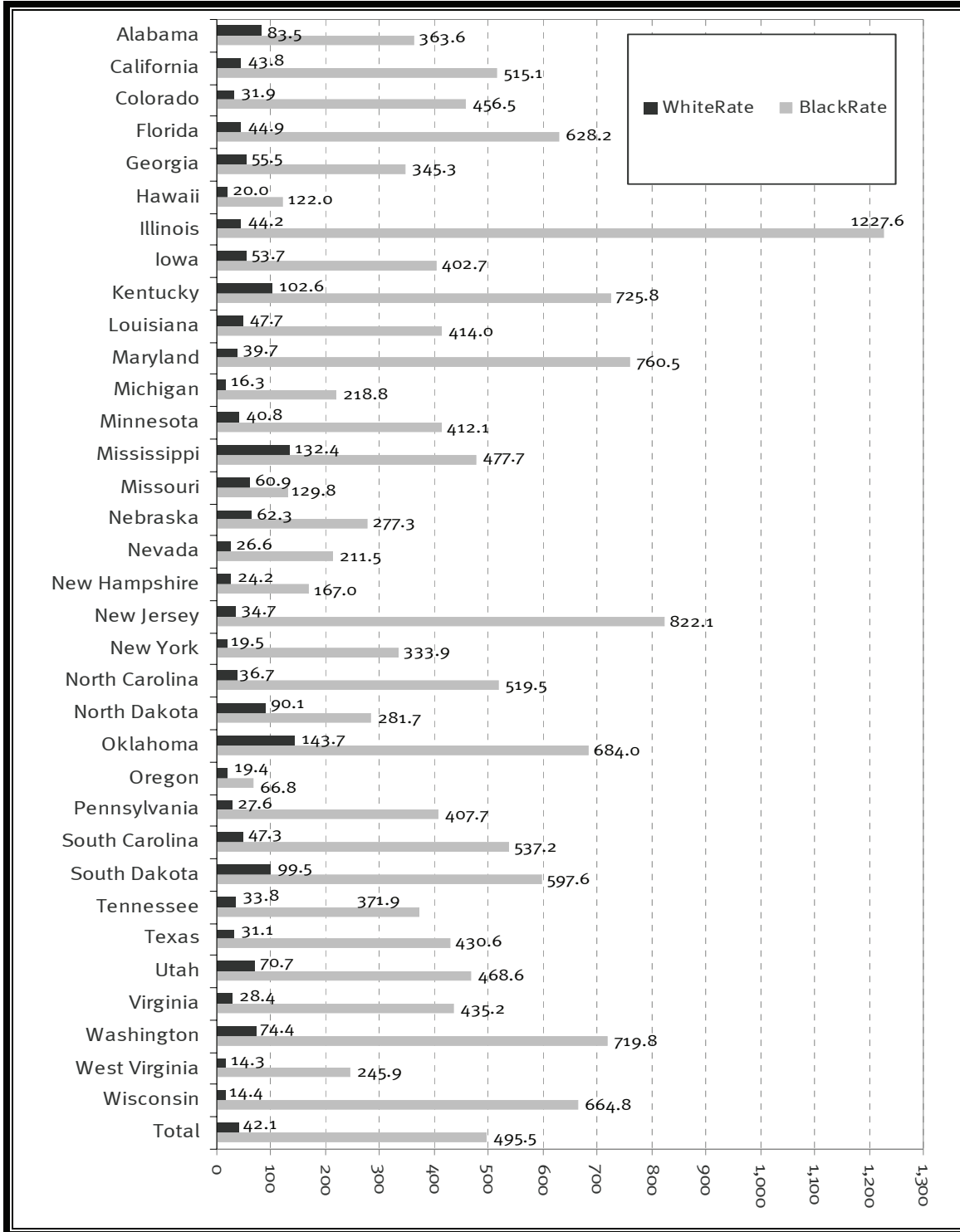
Among the 34 states, black men were admitted to prison on drug charges at 11.8 times the rate of white men. (Table 5). The lowest ratio of black to white male drug admission rates was 2.1, in Missouri, with the highest in Wisconsin, at 46.1. That is, a black man was twice as likely as a white man to be sent to prison on drug charges in Missouri and 46 times as likely in Wisconsin.

Marked racial disparities exist among female offenders as well, although the magnitude of the disparity is smaller. As seen in Table 5, black women are sent to prison on drug charges at 4.8 times the rate of white women. In five states (Colorado, Illinois, Maryland, South Dakota, and Wisconsin), black women are sent to prison on drug charges at more than 10 times the rate of white women, with the greatest disparities in South Dakota (the rate at which black women entered prison for drug offenses was 20 times greater than that of white women) and Wisconsin (black women's rate was 27.6 times greater than that of white women).



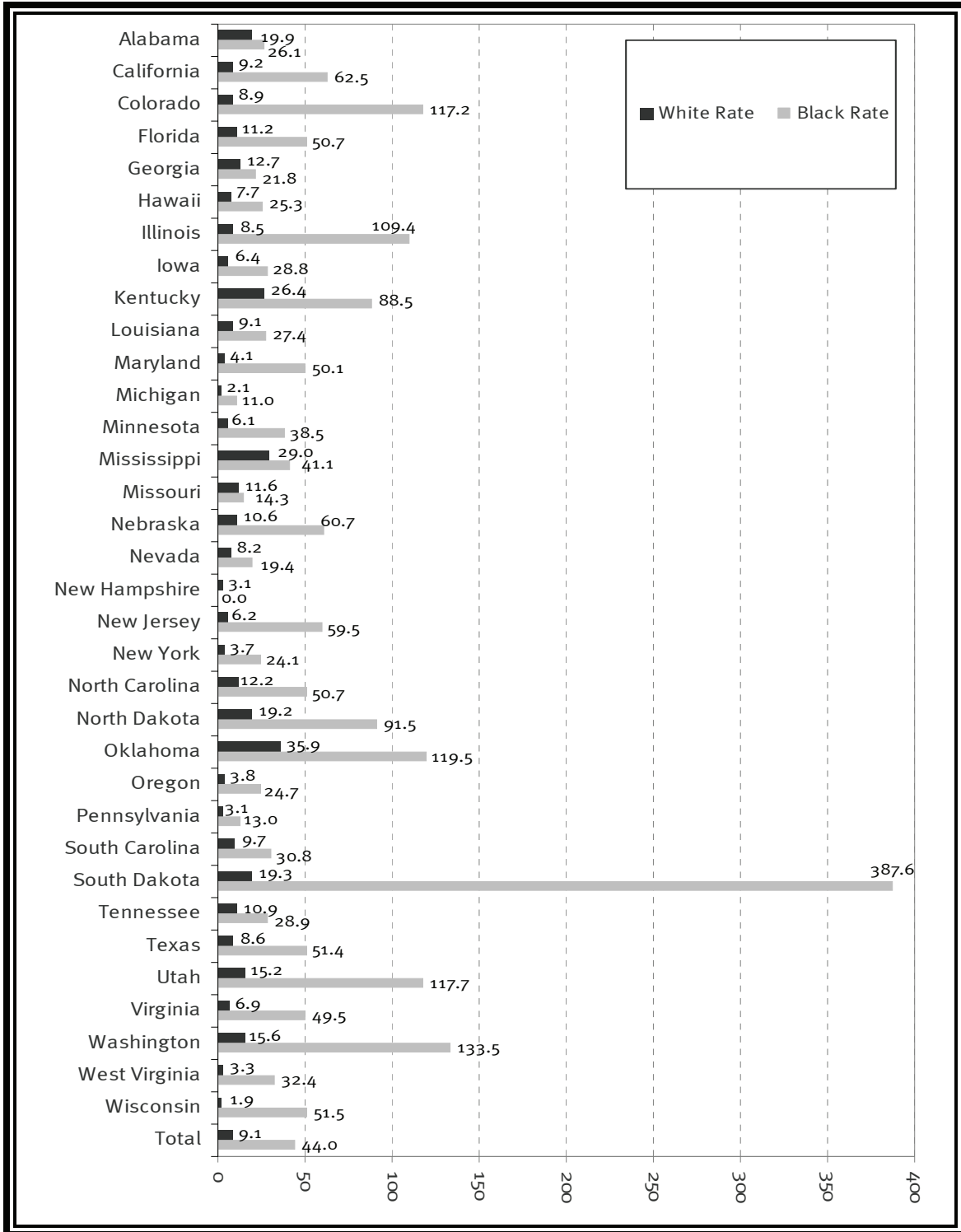
Fig.6: Male Rates of Prison Admissions for Drug Offenses, by Race, 2003

(Rates calculated per 100,000 male residents of each race)



Source: National Corrections Reporting Program, 2003.

Fig.7: Female Rates of Prison Admissions for Drug Offenses, by Race, 2003  
 (Rates calculated per 100,000 female residents of each race)



Source: National Corrections Reporting Program, 2003.

Table 5: Ratio of Black:White Rates of Prison Admissions for Drug Offenses by Gender, 2003

State	Black:White Male	Black:White Female	Black:White Total
Alabama	4.4	1.3	3.5
California	11.8	6.8	10.6
Colorado	14.3	13.2	14.4
Florida	14.0	4.5	11.7
Georgia	6.2	1.7	5.0
Hawaii	6.1	3.3	5.8
Illinois	27.7	12.8	23.6
Iowa	7.5	4.5	7.7
Kentucky	7.1	3.4	6.2
Louisiana	8.7	3.0	7.3
Maryland	19.2	12.3	17.4
Michigan	13.4	5.2	11.8
Minnesota	10.1	6.3	10.1
Mississippi	3.6	1.4	3.0
Missouri	2.1	1.2	2.7
Nebraska	4.4	5.8	4.6
Nevada	8.0	2.4	6.6
New Hampshire	6.9	0.0	7.1
New Jersey	23.7	9.6	20.6
New York	17.1	6.5	14.3
North Carolina	14.2	4.2	10.9
North Dakota	3.1	4.8	3.8
Oklahoma	4.8	3.3	4.4
Oregon	3.5	6.5	4.1
Pennsylvania	14.8	4.2	13.1
South Carolina	11.3	3.2	9.3
South Dakota	6.0	20.0	9.0
Tennessee	11.0	2.6	8.4
Texas	13.9	5.9	11.7
Utah	6.6	7.7	7.5
Virginia	15.3	7.1	13.2
Washington	9.7	8.5	10.1
West Virginia	17.2	9.9	16.3
Wisconsin	46.1	27.6	42.4
<b>Total*</b>	<b>11.8</b>	<b>4.8</b>	<b>10.1</b>

Source: National Corrections Reporting Program, 2003.

\* Total calculated on basis of 34 reporting states.

## V. Changes between 1996 and 2003

We have compared data from 1996, covered in our earlier report *Punishment and Prejudice*, with the results from our analysis here of the 2003 data.<sup>51</sup> Although racial disparities in rates of incarceration for drug offenders diminished to some extent in most of the reporting states, a comparison of the total rates for 1996 and 2003 indicates a slight worsening of the disparity nationwide.

### Racial Disparities 1996-2003

As shown in Table 6, both black and white rates of prison admissions for drug offenses dropped during this period, although that of whites dropped by a bigger percentage. The black rate of prison admissions for drug offenses decreased 11.4 percent from 1996 to 2003, from 289.4 to 256.2 per 100,000 black adults. The white rate of prison admissions for drug offenses decreased by 13.2 percent, from 29.1 to 25.3 per 100,000 white adults. The white rate of prison admissions for drug offenses increased in 31 states between 1996 and 2003, and the black rate of admission increased in 18.

The racial disparity reflected in the ratio of black-to-white drug offender prison admission rates decreased in 30 of the 34 states, but it increased in states with large populations such as New York and California. (Table 7). The net result is that the racial disparity among the rates of drug offender prison admissions across the 34 states in 2003 appears to have increased slightly. In 1996 the black drug offender prison admission rate was 9.9 times greater than that of whites. In 2003 it was 10.1 times greater. (Table 7). This slight increase in the ratio of black and white rates may, however, reflect changes or errors in data reporting by the states, rather than a real increase in the disparity.

There was little change in the racial composition of drug offender prison admissions between 1996 and 2003. (Table 8). Taking the 34 reporting states together, the black

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<sup>51</sup> Human Rights Watch, *Punishment and Prejudice*. We have recomputed the 1996 data, to ensure the admissions data for both 2003 and 1996 have been analyzed using the same methodology. The 1996 data presented in this report is thus in a few places not identical to that published in *Punishment and Prejudice*.

proportion of drug admissions to prison remained at 53.5 percent. The white proportion of drug admissions decreased from 35.8 percent to 33.3 percent, while the proportion of drug offenders characterized as “other” increased from 10.6 percent to 13.2 percent.

The role of drug offenses in sending blacks and whites to prison did not change markedly between 1996 and 2003. As shown in Table 9, drug offenses accounted for 25 percent of all whites sent to prison in 1996, and 25.4 percent in 2003. For blacks the increase was slightly greater: drug offenses accounted for 36.8 percent of all blacks sent to prison in 1996 and 38.2 percent in 2003. The proportion of drug offenders among all whites sent to prison increased in 29 states, whereas it increased among black offenders in only 20 states.

Among the individual states, there were some notable changes in rates of prison admission for white and black drug offenders during this period:

- The white rate of drug offender prison admissions increased by more than 100 percent in 13 states. (Table 6).
- The three states with the largest increases in prison admission rates for white drug offenders were Minnesota (271.7 percent), Mississippi (275.4 percent), and Tennessee (604.5 percent). (Table 6).
- The rate of prison admissions for black drug offenders increased by more than 100 percent in three states (North Dakota, South Dakota, and Tennessee), and decreased by more than 50 percent in three states (California, New Hampshire, and Oregon). (Table 6).
- Two states had significant increases in the black-to-white ratio of drug offender prison admissions rates: California (ratio worsened by 61.5 percent) and New York (ratio worsened by 41.6 percent). In both states, the black and white rates of admission to prison for drug offenders decreased between 1996 and 2003, but the white rate decreased more than the black rate. (Tables 6, 7).

Table 6: Rates of Prison Admissions for Drug Offenses, by Race, 1996 and 2003

(Rates calculated per 100,000 residents of each race)

State	White			Black		
	1996	2003	% Change	1996	2003	% Change
Alabama	19.5	50.6	160.0%	171.3	177.2	3.5%
California	121.7	26.5	-78.3%	799.7	280.8	-64.9%
Colorado	11.4	20.4	79.5%	287.4	294.8	2.6%
Florida	14.5	27.5	89.5%	257.7	321.5	24.7%
Georgia	13.9	33.9	143.3%	133.2	169.9	27.5%
Hawaii	10.8	14.2	31.8%	52.1	82.5	58.3%
Illinois	10.9	26.0	137.9%	569.5	613.8	7.8%
Iowa	12.9	29.3	126.8%	377.6	224.3	-40.6%
Kentucky	27.4	63.1	130.4%	450.2	392.3	-12.9%
Louisiana	19.2	27.8	45.0%	218.3	202.9	-7.1%
Maryland	10.9	21.3	95.9%	265.3	370.5	39.6%
Michigan	6.9	9.0	31.8%	133.7	106.3	-20.5%
Minnesota	6.2	23.1	271.7%	266.1	233.6	-12.2%
Mississippi	21.1	79.2	275.4%	154.4	239.4	55.0%
Missouri	13.4	35.4	164.6%	82.8	95.4	15.3%
Nebraska	19.7	35.9	82.1%	283.3	166.2	-41.3%
Nevada	19.1	17.6	-8.1%	170.0	115.5	-32.1%
New Hampshire	11.5	13.3	15.7%	238.7	95.2	-60.1%
New Jersey	15.4	19.9	29.2%	410.1	409.4	-0.2%
New York	22.2	11.3	-49.1%	224.6	161.8	-28.0%
North Carolina	14.0	24.2	72.1%	308.2	264.2	-14.3%
North Dakota	15.4	54.4	253.1%	78.9	209.2	165.3%
Oklahoma	33.9	88.3	160.3%	252.0	392.4	55.7%
Oregon	9.9	11.4	15.2%	112.5	47.5	-57.8%
Pennsylvania	9.2	14.8	60.4%	134.1	193.7	44.5%
South Carolina	14.4	28.0	95.2%	223.2	260.0	16.5%
South Dakota	28.0	58.8	110.0%	225.4	526.3	133.5%
Tennessee	3.1	22.0	604.5%	26.3	184.7	601.6%
Texas	13.0	19.7	51.5%	222.2	230.2	3.6%
Utah	20.9	42.8	104.9%	196.5	322.4	64.1%
Virginia	14.6	17.4	19.6%	276.0	229.4	-16.9%
Washington	33.7	44.7	32.7%	520.5	449.7	-13.6%
West Virginia	5.0	8.6	69.9%	129.0	140.0	8.5%
Wisconsin	6.8	8.0	17.6%	340.2	340.3	0.0%
<b>Total*</b>	<b>29.1</b>	<b>25.3</b>	<b>-13.2%</b>	<b>289.4</b>	<b>256.2</b>	<b>-11.4%</b>

Source: National Corrections Reporting Program, 2003.

\* Total calculated on basis of 34 reporting states.

*Table 7: Ratio of Black:White Rates of Prison Admissions for Drug Offenses, 1996 and 2003*

(Rates calculated per 100,000 residents)

State	Black/White 1996	Black/White 2003	% Change 1996-2003
Alabama	8.8	3.5	-60.2%
California	6.6	10.6	61.5%
Colorado	25.3	14.4	-42.9%
Florida	17.8	11.7	-34.2%
Georgia	9.6	5.0	-47.6%
Hawaii	4.8	5.8	20.1%
Illinois	52.1	23.6	-54.7%
Iowa	29.2	7.7	-73.8%
Kentucky	16.4	6.2	-62.2%
Louisiana	11.4	7.3	-35.9%
Maryland	24.4	17.4	-28.7%
Michigan	19.5	11.8	-39.7%
Minnesota	42.8	10.1	-76.4%
Mississippi	7.3	3.0	-58.7%
Missouri	6.2	2.7	-56.4%
Nebraska	14.4	4.6	-67.8%
Nevada	8.9	6.6	-26.1%
New Hampshire	20.7	7.1	-65.5%
New Jersey	26.6	20.6	-22.8%
New York	10.1	14.3	41.6%
North Carolina	22.0	10.9	-50.2%
North Dakota	5.1	3.8	-24.9%
Oklahoma	7.4	4.4	-40.2%
Oregon	11.3	4.1	-63.4%
Pennsylvania	14.5	13.1	-9.9%
South Carolina	15.5	9.3	-40.3%
South Dakota	8.1	9.0	11.2%
Tennessee	8.4	8.4	-0.4%
Texas	17.0	11.7	-31.6%
Utah	9.4	7.5	-19.9%
Virginia	19.0	13.2	-30.5%
Washington	15.5	10.1	-34.9%
West Virginia	25.6	16.3	-36.2%
Wisconsin	49.8	42.4	-14.9%
<b>Total*</b>	<b>9.9</b>	<b>10.1</b>	<b>2.0%</b>

Source: National Corrections Reporting Program, 2003.

\* Total calculated on basis of 34 reporting states.

*Table 8: Racial Composition of Prison Admissions for Drug Offenses, 1996 and 2003*

State	1996			2003		
	White	Black	Other	White	Black	Other
Alabama	26.6%	73.1%	0.3%	46.2%	53.6%	0.2%
California	55.3%	33.3%	11.5%	30.3%	27.1%	42.6%
Colorado	28.4%	30.5%	41.1%	42.2%	25.3%	32.6%
Florida	27.2%	71.3%	1.5%	33.6%	64.0%	2.4%
Georgia	22.4%	77.1%	0.4%	33.1%	66.2%	0.7%
Hawaii	24.8%	9.8%	65.4%	16.8%	6.9%	76.3%
Illinois	9.5%	82.4%	8.1%	18.4%	74.9%	6.7%
Iowa	60.7%	31.1%	8.2%	85.3%	13.4%	1.4%
Kentucky	45.7%	54.1%	0.2%	67.8%	31.9%	0.3%
Louisiana	17.2%	82.2%	0.6%	23.3%	76.3%	0.5%
Maryland	9.8%	87.6%	2.5%	12.1%	87.0%	0.9%
Michigan	24.8%	75.1%	0.1%	34.6%	64.6%	0.7%
Minnesota	48.2%	50.1%	1.7%	68.9%	26.1%	5.0%
Mississippi	21.6%	78.3%	0.1%	38.6%	61.0%	0.3%
Missouri	58.6%	40.9%	0.5%	62.5%	37.1%	0.4%
Nebraska	64.8%	34.0%	1.2%	81.2%	15.0%	3.8%
Nevada	43.4%	29.5%	27.1%	45.1%	23.9%	31.0%
New Hampshire	86.7%	12.4%	0.9%	88.7%	5.6%	5.6%
New Jersey	16.5%	72.3%	11.1%	19.7%	69.8%	10.5%
New York	24.5%	52.1%	23.4%	19.1%	59.5%	21.4%
North Carolina	14.4%	83.2%	2.4%	23.8%	69.7%	6.5%
North Dakota	83.3%	2.4%	14.3%	83.2%	2.0%	14.8%
Oklahoma	53.7%	32.3%	14.0%	63.3%	24.6%	12.2%
Oregon	46.9%	9.2%	43.9%	84.3%	6.2%	9.5%
Pennsylvania	41.4%	58.5%	0.1%	41.4%	58.2%	0.4%
South Carolina	14.2%	85.5%	0.2%	21.4%	76.9%	1.8%
South Dakota	90.2%	4.6%	5.2%	83.3%	5.5%	11.2%
Tennessee	40.1%	59.2%	0.8%	38.0%	58.6%	3.4%
Texas	21.4%	50.3%	28.4%	29.8%	46.6%	23.6%
Utah	89.9%	7.4%	2.7%	90.8%	6.4%	2.8%
Virginia	18.0%	81.3%	0.8%	23.1%	75.5%	1.4%
Washington	60.3%	32.4%	7.2%	68.8%	25.6%	5.5%
West Virginia	55.3%	43.9%	0.8%	65.2%	34.3%	0.6%
Wisconsin	28.7%	69.4%	2.0%	29.9%	68.7%	1.4%
<b>Total*</b>	<b>35.8%</b>	<b>53.5%</b>	<b>10.6%</b>	<b>33.3%</b>	<b>53.5%</b>	<b>13.2%</b>

Source: National Corrections Reporting Program, 1996 and 2003.

\* Total calculated on basis of 34 reporting states.



Table 9: Prison Admissions for Drug Offenses as a Percentage of All Admissions, by Race, 1996 and 2003

State	White			Black		
	1996	2003	% Change	1996	2003	% Change
Alabama	20.1%	31.2%	55.7%	31.9%	32.4%	1.6%
California	33.6%	29.2%	-13.2%	36.9%	32.8%	-11.1%
Colorado	15.3%	23.3%	52.4%	32.1%	37.3%	16.4%
Florida	14.0%	20.5%	47.1%	34.0%	38.8%	14.3%
Georgia	17.3%	29.5%	70.5%	31.8%	34.0%	7.0%
Hawaii	10.9%	13.6%	25.2%	23.6%	31.4%	32.7%
Illinois	15.3%	25.3%	65.5%	47.1%	47.5%	0.9%
Iowa	11.9%	32.9%	176.8%	22.1%	21.4%	-3.4%
Kentucky	19.3%	30.8%	59.8%	44.6%	39.2%	-12.0%
Louisiana	20.3%	28.1%	38.6%	33.8%	43.9%	29.8%
Maryland	11.3%	22.8%	102.1%	26.1%	50.9%	94.6%
Michigan	10.1%	11.2%	11.1%	28.5%	22.5%	-21.3%
Minnesota	13.5%	35.3%	162.1%	22.6%	28.3%	25.5%
Mississippi	21.7%	35.3%	62.9%	33.1%	36.3%	9.7%
Missouri	17.0%	31.1%	82.7%	20.2%	37.5%	85.9%
Nebraska	22.0%	31.1%	41.9%	29.4%	18.9%	-35.6%
Nevada	15.3%	16.2%	6.0%	23.6%	18.8%	-20.2%
New Hampshire	18.4%	19.9%	8.1%	60.9%	21.1%	-65.4%
New Jersey	29.5%	32.2%	9.3%	50.0%	55.0%	10.0%
New York	39.9%	25.9%	-35.2%	48.8%	44.6%	-8.6%
North Carolina	10.4%	14.4%	38.3%	33.2%	27.6%	-16.9%
North Dakota	21.1%	42.3%	100.0%	20.0%	16.2%	-18.9%
Oklahoma	25.0%	44.5%	78.4%	31.8%	43.6%	37.1%
Oregon	10.9%	14.8%	36.1%	11.7%	13.4%	14.0%
Pennsylvania	26.1%	25.2%	-3.2%	33.8%	43.1%	27.5%
South Carolina	10.7%	16.7%	55.4%	30.1%	31.8%	5.6%
South Dakota	22.4%	30.6%	36.9%	25.0%	35.1%	40.4%
Tennessee	12.6%	18.8%	48.9%	36.3%	30.5%	-16.0%
Texas	18.4%	25.7%	39.5%	37.6%	38.8%	3.1%
Utah	27.9%	38.9%	39.4%	28.2%	38.0%	34.8%
Virginia	15.9%	14.9%	-6.5%	38.2%	32.2%	-15.7%
Washington	32.6%	31.9%	-2.4%	51.0%	44.5%	-12.9%
West Virginia	9.0%	10.1%	11.9%	42.5%	31.8%	-25.3%
Wisconsin	17.2%	19.7%	14.9%	37.8%	44.9%	19.0%
<b>Total*</b>	<b>25.0%</b>	<b>25.4%</b>	<b>1.9%</b>	<b>36.8%</b>	<b>38.2%</b>	<b>3.7%</b>

Source: National Corrections Reporting Program, 1996 and 2003.

\*Total calculated on basis of 34 reporting states.

The increase in the rate of white drug offender admissions in 31 states between 1996 and 2003 may partially reflect the impact of the increased manufacturing and use of methamphetamine in the past decade.<sup>52</sup> For example, in 1994, an estimated 3,825,000 people age 12 and older had used methamphetamine for nonmedical purposes in their lifetime, and 760,000 had used it in the past year.<sup>53</sup> By 2006, the estimated number of people who had used methamphetamine for nonmedical purposes in their lifetime had soared to 14,206,000, including 1,889,000 who had used it in the past year.<sup>54</sup> The available data also suggests whites use methamphetamine far more than blacks. For example, in 2006, 6.9 percent of whites surveyed reported use of methamphetamine during their lifetime, compared to 1.9 percent of blacks. Translating these rates into numbers yields an estimate of 11,540,000 whites who have used methamphetamine, and 546,000 blacks.<sup>55</sup> According to a study on racial disparities in Minnesota's imprisonment rates, the disparity had indeed lessened recently due to the "imprisonment of Methamphetamine offenders who are predominately white."<sup>56</sup>

### Race and Gender 1996-2003

Tables 10 and 11 show the rates of drug offender prison admissions for men and for women, disaggregated by race, along with the percentage of change in those rates between 1996 and 2003. The rate for white men increased in 31 states, including in

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<sup>52</sup> Methamphetamine is a synthetic psychostimulant that is cheap, highly addictive, and dangerous when used for nonmedical purposes. Traditionally, it has been a drug used primarily by lower middle class white men, although this may be changing as the number of women as well as minorities using the drug is apparently increasing. Since the early 1990s, use of "meth" has spread from the west and southwest into the midwest and south. See, for example, SAMHSA, "State Estimates of Past Year Methamphetamine Use," *The National Survey on Drug Use and Health (NSDUH) Report*, Issue 37, 2006, <http://www.oas.samhsa.gov/2k6/stateMeth/stateMeth.htm> (accessed April 16, 2008); and SAMHSA, "Methamphetamine Use," *The NSDUH Report*, January 26, 2007, <http://www.oas.samhsa.gov/2k7/meth/meth.pdf> (accessed April 16, 2008). Persons in the west were more likely to have used methamphetamine in the past year than persons in the midwest, south, and northeast. Use of the drug is lowest in the northeast. In certain parts of the country, methamphetamine now exceeds cocaine and heroin as the drug of greatest law enforcement concern. For example, the National Association of Counties reported that 47.4 percent of surveyed county law enforcement officials said that methamphetamine was the biggest drug problem in their counties, compared to 21 percent who reported that cocaine was their biggest problem. See National Association of Counties (NACO), "The Meth Epidemic: The Changing Demographics of Methamphetamine," August 2007, <http://www.naco.org/Template.cfm?Section=Library&template=/ContentManagement/ContentDisplay.cfm&ContentID=24797> (accessed April 16, 2008).

<sup>53</sup> SAMHSA, "National Household Survey on Drug Abuse: Advance Report # 18 on the Findings of the 1995 National Household Survey on Drug Abuse," <http://oas.samhsa.gov/nhsda/ar18to28.htm#A1> (lifetime use), and <http://www.oas.samhsa.gov/treatan/treana13.htm#E10E52> (past year use) (accessed April 16, 2008).

<sup>54</sup> SAMHSA, "Results from the 2006 National Survey," Tables 8.43A-8.45BB.

<sup>55</sup> The respondents were age 12 years and older. *Ibid.*, Detailed Tables, Table 8.43B. See also, for example, Council on Crime and Justice, "Justice, Where Art Thou."

<sup>56</sup> Council on Crime and Justice, "Justice, Where Art Thou."

13 states where the increase was over 100 percent. Nevertheless, the total white male rate declined over the period by 18.4 percent because of the marked decline in such large states as California and New York. The rate for black men decreased in 17 states, including in California and New York, and in only two states (Tennessee and North Dakota) did the growth exceed 100 percent. The net result was a decrease of 11.2 percent for the total black rate between 1996 and 2003. Because the rate for black men declined less than the rate of white men, the disparity between the two grew worse: as shown in Table 12, black men were sent to prison on drug charges at 10.8 times the rate of white men in 1996. In 2003, black men were sent to prison on drug charges at 11.8 times the rate of white men.

The pattern was different for women. Between 1996 and 2003, the rate for white women increased in 30 states. (Table 11). Although the increases in many states were significant—in 19 states the rate increased by more than 100 percent—the declines in California and New York kept the total increase to only 14 percent. The rate at which black women were sent to prison for drug offenses decreased in 21 states during this period—and where the rate increased, the growth was relatively small compared to the increases in white women’s rates. The result was a significant total decrease of 28.9 percent among black women entering prison for drug offenses. As a result of these changes, the ratio of rates at which black and white women were sent to prison for drug offenses decreased, dropping from 7.7 to 4.8. (Table 12). That is, the racial disparity in the women’s rates was reduced.

Because women are only a small percentage of prison drug admissions, the changes in the male rates have a much greater impact on the overall rates.

The changes—or lack thereof—in the total as well as state-specific figures between 1996 and 2003 reflect many factors, the analysis of which is beyond the scope of this report. We want to emphasize the huge impact that a large state, such as California, can have on the total figures for the 34 states. We also want to caution that to an unknown extent, the data may reflect changes in reporting methods by the states with regard to race and ethnicities.

*Table 10: Male Rates of Prison Admissions for Drug Offenses, by Race, 1996 and 2003*

(Rates calculated per 100,000 male residents)

State	White			Black		
	1996	2003	% Change	1996	2003	% Change
Alabama	34.0	83.5	145.3%	341.1	363.6	6.6%
California	214.6	43.8	-79.6%	1414.5	515.1	-63.6%
Colorado	19.1	31.9	67.1%	471.0	456.5	-3.1%
Florida	25.1	44.9	78.9%	507.4	628.2	23.8%
Georgia	23.4	55.5	137.1%	268.3	345.3	28.7%
Hawaii	14.7	20.0	35.8%	62.4	122.0	95.6%
Illinois	19.6	44.2	125.3%	1116.2	1227.6	10.0%
Iowa	23.6	53.7	127.3%	672.3	402.7	-40.1%
Kentucky	44.8	102.6	129.0%	886.3	725.8	-18.1%
Louisiana	34.1	47.7	39.8%	442.7	414.0	-6.5%
Maryland	18.6	39.7	113.3%	541.5	760.5	40.4%
Michigan	12.1	16.3	34.2%	274.2	218.8	-20.2%
Minnesota	11.3	40.8	262.6%	466.6	412.1	-11.7%
Mississippi	38.8	132.4	241.6%	322.1	477.7	48.3%
Missouri	24.1	60.9	152.4%	173.0	129.8	-24.9%
Nebraska	35.2	62.3	77.1%	480.5	277.3	-42.3%
Nevada	30.6	26.6	-13.1%	307.1	211.5	-31.1%
New Hampshire	20.2	24.2	20.0%	363.5	167.0	-54.1%
New Jersey	28.4	34.7	22.3%	829.0	822.1	-0.8%
New York	38.6	19.5	-49.5%	432.9	333.9	-22.9%
North Carolina	22.8	36.7	60.7%	606.8	519.5	-14.4%
North Dakota	27.7	90.1	225.6%	68.4	281.7	311.5%
Oklahoma	54.1	143.7	165.6%	433.8	684.0	57.7%
Oregon	16.4	19.4	18.0%	205.9	66.8	-67.6%
Pennsylvania	17.8	27.6	54.7%	277.9	407.7	46.7%
South Carolina	25.6	47.3	84.7%	452.5	537.2	18.7%
South Dakota	47.7	99.5	108.7%	304.9	597.6	96.0%
Tennessee	5.7	33.8	495.5%	53.4	371.9	596.9%
Texas	20.5	31.1	51.7%	387.5	430.6	11.1%
Utah	37.9	70.7	86.7%	344.2	468.6	36.2%
Virginia	24.6	28.4	15.6%	516.2	435.2	-15.7%
Washington	57.1	74.4	30.3%	836.4	719.8	-13.9%
West Virginia	9.1	14.3	57.0%	245.1	245.9	0.3%
Wisconsin	12.7	14.4	13.8%	654.9	664.8	1.5%
<b>Total*</b>	<b>51.6</b>	<b>42.1</b>	<b>-18.4%</b>	<b>558.0</b>	<b>495.5</b>	<b>-11.2%</b>

Source: National Corrections Reporting Program, 1996 and 2003.

\* Total calculated on basis of 34 reporting states.

*Table 11: Female Rates of Prison Admissions for Drug Offenses, by Race, 1996 and 2003*

(Rates calculated per 100,000 female residents)

State	White			Black		
	1996	2003	% Change	1996	2003	% Change
Alabama	6.2	19.9	223.1%	36.7	26.1	-28.9%
California	29.5	9.2	-68.7%	212.0	62.5	-70.5%
Colorado	4.0	8.9	124.6%	99.6	117.2	17.6%
Florida	4.8	11.2	131.0%	41.7	50.7	21.7%
Georgia	4.9	12.7	157.6%	23.5	21.8	-7.4%
Hawaii	6.3	7.7	22.8%	38.1	25.3	-33.6%
Illinois	2.8	8.5	203.5%	120.5	109.4	-9.2%
Iowa	3.2	6.4	101.7%	73.4	28.8	-60.8%
Kentucky	11.6	26.4	128.5%	83.5	88.5	6.1%
Louisiana	5.4	9.1	68.1%	37.8	27.4	-27.5%
Maryland	3.6	4.1	14.4%	34.0	50.1	47.7%
Michigan	2.0	2.1	8.7%	18.8	11.0	-41.5%
Minnesota	1.5	6.1	309.2%	52.6	38.5	-26.9%
Mississippi	4.9	29.0	494.1%	20.5	41.1	100.7%
Missouri	3.6	11.6	223.7%	10.0	14.3	43.2%
Nebraska	5.4	10.6	96.0%	105.1	60.7	-42.2%
Nevada	7.2	8.2	14.2%	35.2	19.4	-44.9%
New Hampshire	3.4	3.1	-9.7%	78.0	0.0	-100.0%
New Jersey	3.5	6.2	74.3%	53.5	59.5	11.2%
New York	7.3	3.7	-49.4%	55.7	24.1	-56.8%
North Carolina	5.8	12.2	108.5%	63.0	50.7	-19.5%
North Dakota	3.5	19.2	453.9%	93.0	91.5	-1.6%
Oklahoma	15.3	35.9	135.1%	90.0	119.5	32.7%
Oregon	3.8	3.8	-0.2%	10.7	24.7	130.7%
Pennsylvania	1.5	3.1	101.2%	15.5	13.0	-16.2%
South Carolina	3.9	9.7	150.7%	36.5	30.8	-15.7%
South Dakota	9.4	19.3	104.7%	87.9	387.6	341.1%
Tennessee	0.8	10.9	1272.9%	4.6	28.9	529.0%
Texas	6.0	8.6	45.1%	73.9	51.4	-30.5%
Utah	4.6	15.2	231.5%	0.0	117.7	--
Virginia	5.1	6.9	36.0%	65.2	49.5	-24.0%
Washington	10.9	15.6	42.9%	167.4	133.5	-20.2%
West Virginia	1.4	3.3	132.7%	30.9	32.4	4.9%
Wisconsin	1.4	1.9	38.0%	64.6	51.5	-20.3%
<b>Total*</b>	<b>8.0</b>	<b>9.1</b>	<b>14.0%</b>	<b>61.9</b>	<b>44.0</b>	<b>-28.9%</b>

Source: National Corrections Reporting Program, 1996 and 2003.

\*Total calculated on basis of 34 reporting states.

*Table 12: Ratio of Black:White Rates of Prison Admissions for Drug Offenses by Gender, 1996 and 2003*

(Rates calculated per 100,000 adult residents)

State	1996 Black:White			2003 Black:White		
	Male	Female	All	Male	Female	All
Alabama	10.0	6.0	8.8	4.4	1.3	3.5
California	6.6	7.2	6.6	11.8	6.8	10.6
Colorado	24.7	25.1	25.3	14.3	13.2	14.4
Florida	20.2	8.6	17.8	14.0	4.5	11.7
Georgia	11.5	4.8	9.6	6.2	1.7	5.0
Hawaii	4.2	6.1	4.8	6.1	3.3	5.8
Illinois	56.8	42.9	52.1	27.7	12.8	23.6
Iowa	28.5	23.3	29.2	7.5	4.5	7.7
Kentucky	19.8	7.2	16.4	7.1	3.4	6.2
Louisiana	13.0	7.0	11.4	8.7	3.0	7.3
Maryland	29.1	9.5	24.4	19.2	12.3	17.4
Michigan	22.6	9.6	19.5	13.4	5.2	11.8
Minnesota	41.5	35.0	42.8	10.1	6.3	10.1
Mississippi	8.3	4.2	7.3	3.6	1.4	3.0
Missouri	7.2	2.8	6.2	2.1	1.2	2.7
Nebraska	13.7	19.5	14.4	4.4	5.8	4.6
Nevada	10.0	4.9	8.9	8.0	2.4	6.6
New Hampshire	18.0	22.8	20.7	6.9	0.0	7.1
New Jersey	29.2	15.1	26.6	23.7	9.6	20.6
New York	11.2	7.6	10.1	17.1	6.5	14.3
North Carolina	26.6	10.8	22.0	14.2	4.2	10.9
North Dakota	2.5	26.8	5.1	3.1	4.8	3.8
Oklahoma	8.0	5.9	7.4	4.8	3.3	4.4
Oregon	12.6	2.8	11.3	3.5	6.5	4.1
Pennsylvania	15.6	10.1	14.5	14.8	4.2	13.1
South Carolina	17.7	9.4	15.5	11.3	3.2	9.3
South Dakota	6.4	9.3	8.1	6.0	20.0	9.0
Tennessee	9.4	5.8	8.4	11.0	2.6	8.4
Texas	18.9	12.4	17.0	13.9	5.9	11.7
Utah	9.1	0.0	9.4	6.6	7.7	7.5
Virginia	21.0	12.8	19.0	15.3	7.1	13.2
Washington	14.6	15.3	15.5	9.7	8.5	10.1
West Virginia	26.9	22.0	25.6	17.2	9.9	16.3
Wisconsin	51.6	47.8	49.8	46.1	27.6	42.4
<b>Total*</b>	<b>10.8</b>	<b>7.7</b>	<b>9.9</b>	<b>11.8</b>	<b>4.8</b>	<b>10.1</b>

Source: National Corrections Reporting Program, 1996 and 2003.

\* Total calculated on basis of 34 reporting states.

## VI. Origins of Racial Disparities in Prison Admissions for Drug Offenses

No doubt many Americans believe racial differences in imprisonment for drug offenses reflect racial differences in involvement with illegal drug activities—that blacks are sent to prison at higher rates on drug charges because they are more involved in drug offenses than whites. The heightened media and political attention to substance abuse and the drug trade in urban minority neighborhoods has promoted the public perception that illegal drugs are more prevalent in those neighborhoods than in more affluent white neighborhoods.<sup>57</sup> The reality has long been the reverse. In absolute numbers, there are far more whites committing drug offenses than blacks. The disproportionate rates at which blacks are sent to prison for drug offenses compared to whites largely originate in racially disproportionate rates of arrest for drug offenses.<sup>58</sup>

### Rates of Illegal Drug Activity

Use of illegal drugs, by definition, entails the drug offense of illegal possession. The best approximation of comparative rates of drug possession comes from federally-sponsored household surveys of drug use among Americans.<sup>59</sup> Over the years, those surveys have suggested that whites and blacks use illicit drugs at roughly the same rates. For example, according to the most recent survey, an estimated 49 percent of whites and 42.9 percent of blacks age 12 or older have used illicit drugs in their lifetime; 14.5 percent of whites and 16 percent of blacks have used illicit drugs in the past year; and 8.5 percent of whites and 9.8 percent of blacks have used an illicit drug in the past month (those in this latter category are deemed to be current drug users).<sup>60</sup>

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57 Leonard Saxce, Ph.D., et al., “The Visibility of Illicit Drugs: Implications for Community-Based Drug Control Strategies,” *American Journal of Public Health*, vol. 91 (2001), pp. 1987-1994, <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1446920> (accessed April 16, 2008).

58 Disparities in drug arrests account for the preponderance, but not all, of the racial disproportionality among incarcerated drug offenders. The type of drug offense (for example, possession or trafficking), the type of drug, and existence of a prior record are all “race-neutral” factors that can affect sentencing. Human Rights Watch, *Punishment and Prejudice*, p. 19, fn. 72.

59 The surveys conducted by SAMHSA exclude high-drug using populations such as the homeless and people who are in jail or prison, whether pending trial or serving sentences.

60 SAMHSA, “Results from the 2006 National Survey,” Appendix G: Selected Prevalence Tables, Table G.1.

## *Drug Users*

Because the white population in the United States is slightly more than six times larger than the black population,<sup>61</sup> and the rate of drug use is roughly comparable between the two, the number of white drug users is significantly higher than the number who are black. For example, according to the 2006 surveys conducted by the federal Substance Abuse and Mental Health Services Administration (SAMHSA), an estimated 111,774,000 people in the United States age 12 or older have used illicit drugs during their lifetime, of whom 82,587,000 are white and 12,477,000 are black.<sup>62</sup> There are also far more whites than blacks among people who have used cocaine in any form in their lifetime, as well as among those who have used crack cocaine. According to the 2006 SAMHSA estimates, there are 27,083,000 whites who have used cocaine during their lifetime, compared to 2,618,000 blacks, and 5,553,000 whites who have used crack cocaine, compared to 1,536,000 blacks.<sup>63</sup> If black and white drug users are combined (and leaving aside other races), blacks account for 13 percent of the total who—according to SAMSHA surveys—have ever used an illicit drug, 8 percent of those who have ever used cocaine, and 21 percent of those who have ever used crack cocaine.

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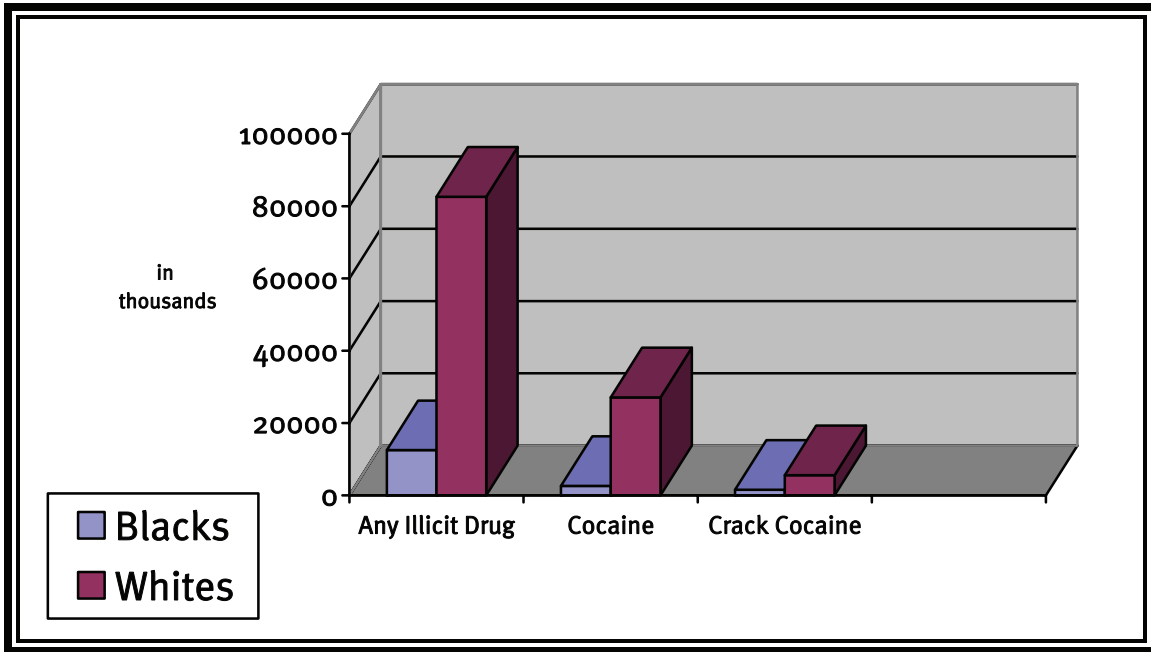
61 There are 239,746,000 whites and 38,343,000 African Americans living in the United States. US Census Bureau, “Statistical Abstract of the United States: 2008,” Table 6, p. 9, <http://www.census.gov/compendia/statab/> (accessed April 16, 2008).

62 SAMHSA, “Results from the 2006 National Survey,” Detailed Tables, Table 1.19A.

63 *Ibid.* Tables 1.33A (cocaine use) and 1.34A (crack use).



Fig.8: Lifetime Drug Use by Race, Ages 12 and Older



Estimates for drug use by persons age 12 and older from Substance Abuse and Mental Health Services Administration (SAMHSA), “Results from the 2006 National Survey on Drug Use and Health: National Findings.”

### Drug Sellers

There is relatively little research on the demographics of drug sellers as such. Little is known about the racial composition of drug kingpins and major traffickers, but as discussed above, it is those at the bottom of the drug trade—for example, those engaging in direct transactions with drug users—who constitute most of the drug sellers who enter the criminal justice system and ultimately prison. Such data as is available suggests, however, that low-level drug sellers have a similar racial profile to drug users. In addition to the illegal activity of drug possession, drug users typically engage in the activities of transferring, selling, and distributing drugs to friends, acquaintances, or strangers.<sup>64</sup> Such activities are illegal in all states even when the transferring activities are not connected to compensation—for example, when someone makes a collective purchase to divide among friends. If the

<sup>64</sup> There is considerable research indicating that “many frequent drug users participate in some aspect of the drug distribution system in order to support their drug habit and/or generate income.” Katherine Beckett, “Race and Drug Law Enforcement in Seattle,” May 3, 2004, p. 32, <http://www.soc.washington.edu/users/kbeckett/Enforcement.pdf> (accessed April 16, 2008). In addition, drug users engage in transferring activities not connected to compensation—for example, passing drugs between friends and making collective purchases that are divided up.

preponderance of drug users are white, then a preponderance of those who transfer or sell to another user are probably also white.

There is research suggesting people typically obtain their drugs from persons of their own race.<sup>65</sup> For example, drug users questioned in a study of patterns of drug purchase and use in six major cities consistently reported that their main drug sources were sellers of the same racial or ethnic background as themselves. As one researcher addressing racial congruity in drug activities concluded, “[D]ealers with direct contact with their customers ... are likely to look like the customers, and in fact be the customers, at other points in time.”<sup>66</sup> Recent research in Seattle’s multi-racial and multi-drug drug market indicates that the majority of those who use serious drugs in Seattle are white, as are a majority of the sellers.<sup>67</sup>

The available data, limited as it is, thus suggests that if blacks constitute around 13 percent of the total black and white drug users, they will constitute roughly that proportion of the total black and white drug offenders—those possessing, purchasing, and transferring drugs to others. All other things being equal, they should constitute a roughly similar proportion of people of both races who are arrested, convicted, and sent to prison for drug law violations.<sup>68</sup>

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65 Human Rights Watch, *Punishment and Prejudice*, p. 15. As sociologist Pamela E. Oliver points out, “most users of illegal drugs meet the legal definition of delivering illegal drugs because of the way an illegal market works, where people make buys and redistribute to their friends.” Pamela E. Oliver “Racial Disparity in the Drug War and Other Crimes: Arrests, Prison Sentences, Probation and Probation Revocations as sources of Prison Admissions Disparities,” included as an Appendix in Commission on Reducing Racial Disparities in the Wisconsin Justice System, “Final Report,” February 2008, <ftp://doaftpo4.doa.state.wi.us/doadocs/web.pdf> (accessed April 16, 2008). According to the Office of Juvenile Justice and Delinquency Prevention, the National Longitudinal Survey of Youth indicated that 3 percent of black youth reported selling drugs compared with 17 percent of white youth. In a sampling of youth ages 12-17 in 1997 and 1998, the National Longitudinal Survey of Youth found that the proportion of youth who reported selling or helping to sell drugs was the same among white, black, and Hispanic youth. Findings reported in Howard Snyder and Melissa Sickmund, Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “Juvenile Offenders and Victims: 2006 National Reports,” March 2006, p. 82, <http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/NR2006.pdf> (accessed April 16, 2008).

66 Dana E. Hunt, “Drugs and Consensual Crimes: Drug Dealing and Prostitution,” in Michael Tonry and James Q. Wilson, eds., *Drugs and Crime* (Chicago: University of Chicago Press, 1990), p. 172.

67 Beckett et al., “Race, Drugs, and Policing;” and Beckett, “Race and Drug law Enforcement in Seattle.” The report was prepared on behalf of the Defender Association’s Racial Disparity Project in Seattle, Washington.

68 See also Dorothy Lockwood, et al., “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). A study conducted in the Miami, Florida metropolitan area of 699 cocaine users (powder and crack) found over 96 percent of users in each racial/ethnic category was involved in street-level drug dealing.

## Rates of Arrest

But all other things are not equal. Blacks constitute 35.1 percent of all drug arrests nationwide.<sup>69</sup> Even if we were to double the 13 percent estimate of the number of blacks who may be drug offenders, the arrest figure is still disproportionately large. Arrest data from some individual states reveal even more dramatic disparities. In Georgia, for example, although blacks constituted approximately 14 percent of all current drug users, they constituted 58 percent of persons arrested for drug possession. Among cocaine users, blacks constituted 22 percent of current users but 79 percent of arrests for cocaine possession.<sup>70</sup> In Illinois blacks accounted for 72 percent of all persons arrested for drug offenses.<sup>71</sup> In Minnesota “there is a 10:1 disparity in drug-related arrests between African Americans and Whites” that exists despite a study finding a similar level of drug use in Minnesota across racial and ethnic lines.<sup>72</sup> In Wisconsin the rate of black arrests for drug offenses of 2,324 per 100,000 was six times greater than the white rate of 367.<sup>73</sup> In West Virginia non-white males accounted for 26 percent of drug arrests by drug task forces but constituted only 2.5 percent of the state population.<sup>74</sup>

There are numerous factors that help account for drug arrests that are racially disproportionate to drug offending. Of considerable significance is the fact that blacks are more likely to live in cities than whites: according to the US Census Bureau, 51.5 percent of blacks in the US live in a metropolitan area, compared to 21.1 percent of whites.<sup>75</sup> As a general matter, illicit drug use is higher in urban areas,<sup>76</sup>

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69 Bureau of Justice Statistics (BJS), “Sourcebook of Criminal Justice Statistics 2006,” Table 4.10.2006, <http://www.albany.edu/sourcebook/pdf/t4102006.pdf> (accessed April 16, 2008).

70 Human Rights Watch, *Race and Drug Law Enforcement in the State of Georgia*, vol. 8, no. 4, July 1996, <http://www.hrw.org/reports/1996/Us2.htm>.

71 Blacks accounted for 72 percent on average of arrests for drug offenses during three years in the late 1990s. The proportion of blacks among those arrested for drug offenses increased from 46 percent in 1983 to 82 percent in 1992. Lurigio, “The Illinois Perspective,” p. 7.

72 Council on Crime and Justice, “Justice, Where Art Thou,” p. 16.

73 Governor’s Commission on Reducing Racial Disparities in the Wisconsin Justice System, “Final Report,” Appendix, p. 48.

74 Dr. Stephen M. Haas, director, West Virginia Drug and Violent Crime Control Task Force, “Presentation to Senate Judiciary Subcommittee C,” October 2, 2005, <http://www.google.com/search?q=cache:jAExeYczYrkj:www.wvdcjs.com/statsanalysis/Presentations/DVCCTF%252003-04%2520Report%2520Presentation.ppt+Drug+%26+Violent+Crime+Control+Task+Force+Report,+2003-2004&hl=en&ct=clnk&cd=1&gl=us> (accessed April 16, 2008).

75 US Census Bureau, “The Black Population in the United States: March 2002,” April 2003, Figure 2, p. 2, <http://www.census.gov/prod/2003pubs/p20-541.pdf> (accessed April 16, 2008).

there are more law enforcement resources per capita in urban areas,<sup>77</sup> and there are more drug arrests in urban than in non-urban areas.<sup>78</sup> Drug law enforcement is not, however, evenly distributed within urban areas. Instead, it has focused on low-income, predominantly minority neighborhoods. This is not a “race neutral” factor. Press attention and community concerns about crack cocaine and political imperatives to be “tough on crime” made those neighborhoods the principal “fronts” in the so-called war on drugs.<sup>79</sup> Practical policing factors have played a role as well: drug transactions in poor minority neighborhoods are more likely to be in public spaces and between strangers, making it easier to undertake arrests, such as via “buy and bust” operations, than it is in the bars, clubs, and private homes where drug dealing by whites is more likely to occur.<sup>80</sup>

Drug arrest data reveal the greater number of black drug arrests in urban areas across the country:

*Table 13: US Arrests for Drug Abuse Violations, 2006*<sup>81</sup>

Region	Total number	Number/ % whites	Number/ % blacks
Nonmetropolitan(rural)	85,720	68,985/ 80.5%	14,744/ 17.2%
Suburban	491,999	365,791/ 74.3%	121,184/ 24.6%
Metropolitan	1,059,063	635,190/ 60%	410,240 /38.7%

76 Higher percentages of both blacks and whites use illicit drugs in metropolitan areas than in non-metropolitan areas. SAMHSA, “Illicit Drug Use, by Race/Ethnicity, in Metropolitan and Non-Metropolitan Counties: 2004 and 2005,” *The NSDUH Report*, June 21, 2007, <http://www.oas.samhsa.gov/2k7/popDensity/popDensity.pdf> (accessed March 3, 2008).

77 The expenditures per capita for police personnel are larger in central city areas than they are outside of them and also increase with the size of cities. BJS, “Sourcebook of Criminal Justice Statistics 2003,” Table 1.65.

78 For example, 76 percent of the arrests nationwide for drug abuse violations in 2002 occurred in cities. Data compiled from BJS, “Sourcebook of Criminal Justice Statistics,” Tables 4.10 and 4.12, <http://www.albany.edu/sourcebook/> (accessed April 16, 2008).

79 There is an extensive body of literature on the origins and impact of “tough on crime” drug policies and the focus on crack cocaine. See, for example, Tonry, *Malign Neglect*; Marc Mauer, The Sentencing Project, *Race to Incarcerate* (New York: The New Press, 1999); Steven B. Duke and Albert C. Gross, *America’s Longest War: Rethinking our Tragic Crusade against Drugs* (New York: Putnam Books, 1994); Craig Reinerman and Harry G. Levine, eds., *Crack in America: Demon Drugs and Social Justice* (Berkeley, CA: Univ. of California Press, 1997); and Eva Bertram et al., *Drug War Politics: The Price of Denial* (Berkeley, CA: Univ. of California Press, 1996).

80 Human Rights Watch, *Punishment and Prejudice*, pp. 21-23.

81 BJS, “Sourcebook of Criminal Justice Statistics, 2006,” Table 4.12.2006 (“Arrests in Cities”), <http://www.albany.edu/sourcebook/pdf/t4122006.pdf>; *Ibid.*, Table 4.16.2006 (“Arrests in Suburban Areas”), <http://www.albany.edu/sourcebook/pdf/t4142006.pdf>; *Ibid.*, Table 4.16.2006 (“Arrests in Nonmetropolitan Counties”), <http://www.albany.edu/sourcebook/pdf/t4162006.pdf> (all accessed April 16, 2008).

As seen in Table 13, the absolute number of black drug arrests was dramatically larger in urban areas, as was the percentage of all drug arrestees who were black. There were more than three times as many arrests of blacks in urban areas as in suburban, while there were only 1.7 times as many arrests of whites. These figures also reveal the relatively few arrests that take place in rural areas—only 5 percent of the 1,636,782 drug arrests in 2006 occurred in rural areas. In the 75 largest counties in the United States, blacks in 2002 accounted for 46 percent of drug offense arrests and whites for 29 percent.<sup>82</sup>

Although it is difficult to quantify the extent, racial profiling no doubt plays some role in higher black drug arrests.<sup>83</sup> In Minneapolis, for example, blacks constituted 18 percent of the population but experienced 37 percent of police vehicle stops; whites were 65 percent of the population, but experienced 43 percent of stops. In 1999, 77 percent of young males (ages 18-30) arrested for drug offenses in Minneapolis were black, while 13.8 percent were white.<sup>84</sup> Even when there are dramatic racial disparities in police stops of vehicles or pedestrians, however, establishing the existence of racial profiling and quantifying its impact is extremely difficult because of the complexities inherent in determining the extent to which the disparities reflect racial bias or legitimate factors. Nevertheless, in many studies researchers conclude that race-neutral factors cannot wholly account for the disparities. Thus, for example, researchers have concluded that legitimate race-neutral reasons do not explain all of the stark racial disparities evident in New York City police “stop and frisk” decisions.<sup>85</sup>

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82 Data is for non-Hispanic blacks and non-Hispanic whites. Thomas H. Cohen and Brian A. Reaves, BJS, “Felony Defendants in Large Urban Counties, 2002,” February 2006, Table 3, p. 4, <http://www.ojp.usdoj.gov/bjs/pub/pdf/fdluco2.pdf> (accessed April 16, 2008).

83 Many observers believe racial profiling remains a significant problem in the United States. See, for example, the American Civil Liberties Union (ACLU), “Race and Ethnicity in America: Turning a Blind Eye to Injustice (U.S. Violations of the Convention on the Elimination of All Forms of Racial Discrimination),” December 2007, [http://www.aclu.org/pdfs/humanrights/cerd\\_full\\_report.pdf](http://www.aclu.org/pdfs/humanrights/cerd_full_report.pdf) (accessed April 16, 2008).

84 Tonry, *Malign Neglect*, p. 65.

85 Office of the Attorney General, New York State, “The New York City Police Department’s ‘Stop & Frisk’ Practices: A Report to the People of the State of New York,” December 1, 1999, [http://www.oag.state.ny.us/press/reports/stop\\_frisk/stop\\_frisk.html](http://www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html) (accessed April 16, 2008); and Greg Ridgeway, RAND Corporation, “Analysis of Racial Disparities in the New York Police Department’s Stop, Question, and Frisk Practices,” 2007, [http://www.rand.org/pubs/technical\\_reports/2007/RAND\\_TR534.sum.pdf](http://www.rand.org/pubs/technical_reports/2007/RAND_TR534.sum.pdf) (accessed April 16, 2008).

## From Arrest to Imprisonment

Racial disparities evident in drug arrests grow larger as cases wind their way through the criminal justice system. Thus, blacks constitute 43 percent and whites 55 percent of persons convicted of drug felonies in state courts,<sup>86</sup> and then the disproportion increases slightly among people sent to prison because of drug convictions (with blacks accounting for 53.5 percent and whites 33.3 percent, as discussed above). Prosecutorial discretion may play a role in the increased disparity between arrests and prison admissions for drug offenses, as prosecutors have essentially unchecked authority to choose what charges to bring and what pleas to accept.<sup>87</sup> Blacks arrested on drug charges may also have higher prison admission rates because they are less likely to be able to afford private attorneys<sup>88</sup> and must rely on public defenders overwhelmed with high case loads, court-appointed attorneys who may lack the capacity and/or inclination to vigorously pursue a defense, or private attorneys who have little incentive to put anything beyond the least amount of time into a case because they have contracted at a fixed price to take on public defense cases.<sup>89</sup> Although defendants represented by publicly financed counsel have the

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86 Durose and Langan, BJS, "Felony Sentences in State Courts, 2002," Table 5, p. 6.

87 Prosecutors have wide-ranging and essentially unchecked power to determine whether to prosecute a drug offense and, if so, to determine what charges to bring or pleas to accept. Because of mandatory sentencing legislation, the decision regarding what charges to bring effectively determines the sentence. In the largest counties, 57 percent of persons charged with drug trafficking felonies plead guilty. Cohen and Reaves, "Felony Defendants in Large Urban Counties, 2002," p. 30, Table 23. The Justice Policy Institute points out that, unlike crimes of violence, the detection—and then prosecution and sentencing—of drug offenders is a matter of considerable law enforcement as well as prosecutorial discretion. Phillip Beatty, Amanda Petteruti, and Jason Ziedenberg, Justice Policy Institute, "The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties," December 2007, p. 16, [http://www.justicepolicy.org/images/upload/07-12\\_REP\\_Vortex\\_AC-DP.pdf](http://www.justicepolicy.org/images/upload/07-12_REP_Vortex_AC-DP.pdf) (accessed April 16, 2008).

88 For example, 25.6 percent of black persons have income below the poverty level compared to 10.4 percent of whites. US Census Bureau, "Statistical Abstract of the United States: 2008," Table 36, p. 38, <http://www.census.gov/compendia/statab/> (accessed April 16, 2008).

89 Only 15.3 percent of felony drug defendants in the 75 largest counties in the US were represented by hired attorneys. Caroline Wolf Harlow, BJS, "Defense Counsel in Criminal Cases," November 2000, Table 7, p. 5, <http://www.ojp.usdoj.gov/bjs/pub/pdf/dccc.pdf> (accessed April 16, 2008). Regarding the crisis of publicly financed counsel and its impact on minorities, see also The Sentencing Project and National Association of Criminal Defense Lawyers, "Racial Disparity in Criminal Court Processing in the United States: Submitted to the United Nations Committee on the Elimination of Racial Discrimination," December 2007, <http://www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5CCERD%20December%202007.pdf> (accessed April 16, 2008); American Bar Association Standing Committee on Legal Aid and Indigent Defense, "Gideon's Broken Promise: America's Continuing Quest for Equal Justice, A Report on the American Bar Association's Hearings on the Right to Counsel in Criminal Proceedings," December 2004, <http://www.abanet.org/legalservices/sclaid/defender/brokenpromise/fullreport.pdf> (accessed April 16, 2008); and The Southern Center for Human Rights (SCHR), "If You Cannot Afford A Lawyer ...': A Report on Georgia's Failed Indigent Defense System," January 2003, <http://www.schr.org/reports/docs/jan.%202003.%20report.pdf> (accessed April 16, 2008).

same conviction rates as those represented by private attorneys, those with publicly financed counsel are more likely to be sentenced to incarceration.<sup>90</sup>

Another factor to consider as an explanation for higher prison admission rates is the existence of a prior criminal record, which increases the likelihood of a prison sentence upon a subsequent conviction.<sup>91</sup> Most states have enhanced penalties for second or subsequent drug offenses.<sup>92</sup> Since blacks are more likely to be arrested and hence more likely to have prior convictions, they are more likely to receive prison sentences for subsequent offenses.

### Case Study: New York

New York presents a clear example of racially disproportionate drug offender arrests and prison admissions, as well as the contribution urban law enforcement makes to this disparity.

Forty-two percent of New York State's population is in New York City, but 56 percent of law enforcement officers are there.<sup>93</sup> In New York City there is one law enforcement officer for every 224.1 persons. In upstate, less urbanized New York counties, the rate of officers per person varies widely: it is one per 537.8 in Seneca, one per 1,650.6 in Franklin, and one per 2,334 in Oswego. In New York City there are 2.6 drug arrests per officer, compared to 1.22 drug arrests per officer in the rest of the state. Perhaps not surprisingly, 80.6 percent of all drug arrests in New York are in New York City (Table 14).<sup>94</sup>

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<sup>90</sup> Caroline Wolf Harlow, "Defense Counsel in Criminal Cases." Defendants represented by private counsel were also more likely to be released pretrial.

<sup>91</sup> Among defendants convicted in state court of felony drug offenses, 63 percent had prior convictions, primarily for non-violent felony offenses and misdemeanors. Cohen and Reaves, "Felony Defendants in Large Urban Counties, 2002" Table 10, p. 12.

<sup>92</sup> ImpactTeen Illicit Drug Team, Andrews University and the RAND Corporation, "Illicit Drug Policies," p. 36.

<sup>93</sup> US Census Bureau, "2006 American Community Survey Data Profile Highlights: New York City, New York," [http://factfinder.census.gov/servlet/ACSSAFFacts?\\_event=&geo\\_id=16000US3651000&\\_geoContext=01000US%7C04000US36%7C16000US3651000&\\_street=&\\_county=New+York+City&\\_cityTown=New+York+City&\\_state=04000US36&\\_zip=&\\_lang=en&\\_sse=on&ActiveGeoDiv=&\\_useEV=&pctxt=fph&pgsl=040&\\_submenuld=factsheet\\_1&ds\\_name=ACS\\_2006\\_SAFF&\\_ci\\_nbr=null&qr\\_name=null&reg=null%3Anull&\\_keyword=&\\_industry=](http://factfinder.census.gov/servlet/ACSSAFFacts?_event=&geo_id=16000US3651000&_geoContext=01000US%7C04000US36%7C16000US3651000&_street=&_county=New+York+City&_cityTown=New+York+City&_state=04000US36&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=040&_submenuld=factsheet_1&ds_name=ACS_2006_SAFF&_ci_nbr=null&qr_name=null&reg=null%3Anull&_keyword=&_industry=) (accessed April 16, 2008). Data on law enforcement officers calculated from data provided by New York State Division of Criminal Justice Services to Human Rights Watch.

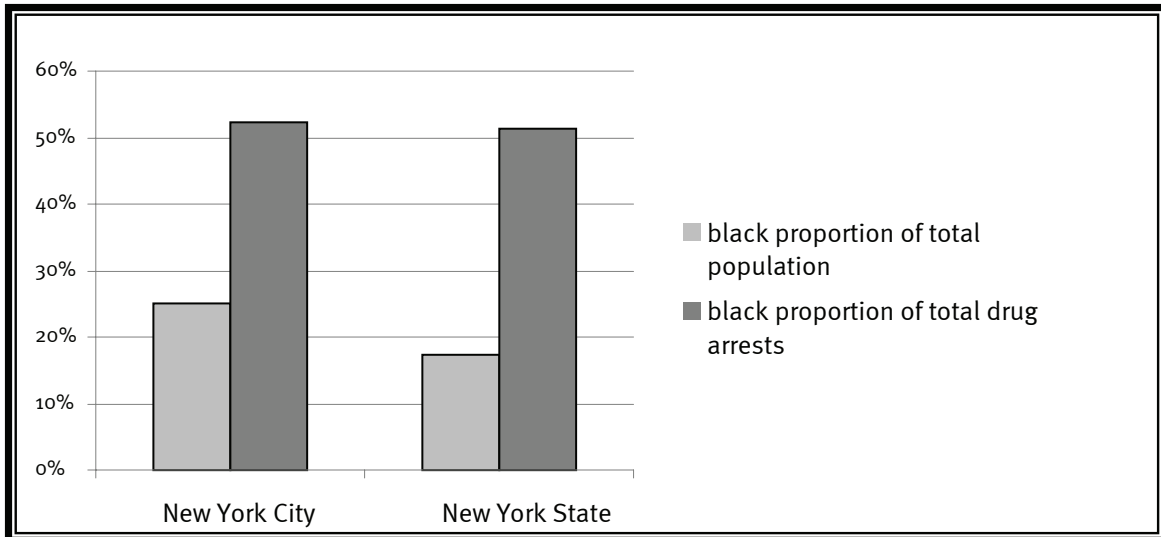
<sup>94</sup> All data in this report on New York arrests are for 2002, and were provided to Human Rights Watch by the New York State Division of Criminal Justice Services (DCJS). Between 2003 and 2007, New York City drug arrests varied from a high of 77 percent of all drug arrests in the state (2003, 2007) to a low of 73 percent (2006). 2002 is the last year for which DCJS has reliable data on the racial and ethnic breakdown of state drug arrests.

Table 14: New York Drug Arrests by Region and Race/Ethnicity: 2002

Region	White	Black	Hispanic	Other	Total
New York City	15,112	57,280	35,876	1,237	109,505
Suburban NYC	4,523	4,278	549	59	9,409
Upstate	7,873	8,314	585	156	16,928
New York State	27,512	69,878	37,011	1,452	135,853

Blacks constitute 17.4 percent of the state’s population,<sup>95</sup> and they accounted for 51.4 percent of drug arrests in the state. Blacks constitute 25.1 percent of New York City’s population,<sup>96</sup> but represent 52.3 percent of all drug arrests in the city. Blacks in New York City alone represent only 10.7 percent of the state population, yet accounted for 42.1 percent of all drug arrests statewide.

Fig 9: Black Drug Arrests, New York City and New York State



Source: Data from New York State Division of Criminal Justice Services for the year 2002, on file with Human Rights Watch.

The racial disproportions in drug arrests are followed by racial disproportions in prison admissions. Table 15 shows that blacks from New York City—who, as noted above, constitute 10.7 percent of the state population—accounted for 26 percent of

95 US Census Bureau, “State & County Quick Facts,” <http://quickfacts.census.gov/qfd/states/36000.html> (accessed April 16, 2008).

96 US Census Bureau, “2006 American Community Survey Data Profile Highlights: New York City, New York.”



state prison admissions.<sup>97</sup> Statewide, black drug offenders accounted for 56 percent of the total number of drug offenders admitted to prison.

*Table 15: Race and Ethnicity of New Prison Admissions for Drug Offenses in New York, 2006<sup>98</sup>*

Region	White	Black	Hispanic	Other	Unknown	Total
New York City	134	1,578	1,525	12	5	3,254
Suburban New York	104	556	167	5	0	832
Upstate Urban	130	786	133	11	6	1,066
Upstate Other	296	472	126	12	2	908
<b>Total</b>	<b>664</b>	<b>3,392</b>	<b>1,951</b>	<b>40</b>	<b>13</b>	<b>6,060</b>

The role of cities in sending people to prison is also readily apparent in Table 15. More than half (53.7 percent) of the people in the state entering prison in 2006 because of drug offenses were from New York City.<sup>99</sup>

### **Case Study: Illinois**

Illinois has long had striking disproportions in the race of drug offenders sent to prison. According to our analysis, blacks accounted for 74.9 percent of prison admissions for drug offenses in 2003, and were sent to prison on drug charges at a rate relative to the population that was 23.6 times greater than that of whites. In the last few years, The Illinois Criminal Justice Information Authority (ICJIA) has supported research to explore the causes of the marked racial disparities in the sentencing and incarceration of Illinois drug offenders.<sup>100</sup> The most recent report for the ICJIA, published in 2005, found that Cook County, which includes Chicago,

<sup>97</sup> Blacks represented about half the prison admissions from new court commitments for drug offenses throughout the period 2002-2006. State of New York Department of Correctional Services, "Statistical Overview: Year 2006 Court Commitments," May 2007, Table 9.1, p. 19, [http://www.doccs.state.ny.us/Research/Reports/Court\\_Commitments\\_2006.pdf](http://www.doccs.state.ny.us/Research/Reports/Court_Commitments_2006.pdf) (accessed April 16, 2008).

<sup>98</sup> Data provided by the New York State Department of Correctional Services, March 7, 2008, on file with Human Rights Watch.

<sup>99</sup> State of New York Department of Correctional Services, "Year 2006 Court Commitments," Table 11.3, p. 23. Forty percent of the commitments from New York City were for drug offenses.

<sup>100</sup> The study was prompted by the results regarding Illinois reported in Human Rights Watch, *Punishment and Prejudice*. Lurigio, "The Disproportionate Incarceration of African Americans for Drug Crimes: The Illinois Perspective," p. 10: "All of our analyses confirmed the HRW's findings regarding the disproportionate incarceration of African-Americans in Illinois for drug-law violations."

constituted 43 percent of the population of Illinois but accounted for nearly two-thirds of all state drug arrests.<sup>101</sup> Ninety percent of drug arrests in Cook County occurred in Chicago, and African Americans constituted 74 percent of the people arrested for drug offenses in Chicago, and 85 percent in all of Cook County.<sup>102</sup>

The analysis concluded that “arrests and convictions of African-Americans for [drug] violations in Chicago and in Cook County are driving the state’s racial disparities in imprisonment.” It suggested several factors that help explain the racial disparities, including: 1) residents in predominately African American neighborhoods call the police, urging them to combat street-level gang and drug activities; 2) outdoor open-air drug selling typical in minority urban areas is more vulnerable to police “buy and bust” strategies to arrest sellers; and 3) sentencing enhancements that increase sentences for people selling drugs within designated boundaries—for example, within 1,000 feet of schools, public housing, and churches—typically apply to people selling drugs in poor (and African American) urban areas.

But the study also found race to be an independent factor. The report for the ICJIA cited earlier research showing that three factors predicted a sentence to prison for a drug law violation, holding all other variables constant: type of offense (possession or sales); history of imprisonment; and race. Persons of color, mostly African Americans, were three times more likely than whites to be sentenced to prison for any drug law violation.<sup>103</sup>

## Case Study: Seattle

The authors of a comprehensive study of race and drug law enforcement in Seattle concluded that blatant racial prejudice may be less important in producing stark racial disparities in drug law enforcement than a more subtle form of “racism,” in which “race shapes perceptions of who and what constitutes ... [the] drug problem and the organizational response to that problem.”<sup>104</sup>

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<sup>101</sup> *Ibid.*, p.7.

<sup>102</sup> *Ibid.*

<sup>103</sup> The other variables included in the study were age, gender, educational level, and jurisdiction type.

<sup>104</sup> Beckett et al., “Race, Drugs, and Policing;” and Beckett, “Race and Drug Law Enforcement in Seattle.” The report was prepared on behalf of the Defender Association’s Racial Disparity Project in Seattle, Washington.

Seventy percent of Seattle’s residents are white, only 8.4 percent are black, and the rest are of other races. The majority of those who delivered (shared, sold, or transferred) serious drugs<sup>105</sup> in Seattle were white, but the large majority (64.2 percent) of drug arrestees were black. The researchers concluded the disparity was the result of the police department’s allocation of resources, the department’s emphasis on the outdoor drug market in the racially diverse downtown area, its lack of attention to other outdoor markets that are predominantly white, its relative disinterest in heroin sellers (who are predominantly white), and its emphasis on crack cocaine. As a result of these department priorities, during the two-year period in the study, 78.7 percent of the arrests for delivery of any of the five drugs studied were for crack, even though crack was only involved in an estimated 33.3 percent of Seattle drug transactions. In contrast, methamphetamine was involved in an estimated 10.7 percent of outdoor transactions, yet only 1.1 percent of the drug delivery arrests involved that drug. Powder cocaine was involved in an estimated 22.7 of outdoor transactions, but accounted for only 3.8 percent of arrests. Finally, heroin was involved in 33 percent of transactions but in only 16.4 percent of arrests. Whites constitute the majority of those who deliver methamphetamine, ecstasy, powder cocaine, and heroin in Seattle; blacks are the majority of those who deliver crack. Not surprisingly then, 79 percent of the crack arrestees were black, contributing greatly to the overall racial skewing of Seattle drug arrests.

The researchers could not find a “racially neutral” explanation for these arrest figures or the police priorities that caused them. The focus on crack offenders, for example, did not appear to be a function of the frequency of crack transactions compared to other drugs, of public safety or public health concerns, or of crime rates or citizen complaints. The researchers concluded that the Seattle police department’s drug law enforcement efforts:

[R]eflect implicit racial bias: the unconscious impact of race on official perceptions of who and what constitutes Seattle’s drug problem .... Indeed, the widespread racial typification of drug offenders as racialized “others” has deep historical roots and was intensified by the diffusion of potent cultural images of dangerous black crack offenders. These

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<sup>105</sup> The drugs studied were heroin, powder cocaine, crack cocaine, methamphetamine, and ecstasy.

images appear to have had a powerful impact on popular perceptions of potential drug offenders, and, as a result, law enforcement practices in Seattle.<sup>106</sup>

### **Case Study: A Focus on Counties**

The Justice Policy Institute (JPI) recently examined the relationship between county socio-demographic structures and their drug admission rates. According to JPI, “since relatively constant patterns of individual-level drug use do not appear to be driving the widely varying racial and cross-jurisdiction drug admission rates, it is necessary to examine the socio-demographic characteristics of places that may be associated with these disparities in prison admission rates.”<sup>107</sup> Among its findings: larger proportions of African Americans in a county’s population and high poverty rates are both strongly correlated with higher county rates of sending people to prison on drug charges. According to JPI, its research suggests that the greater the proportion of disadvantaged people in a community, the more likely the community is to have “punitive practices with regard to policing, prosecuting, and ultimately imprisoning individuals who have engaged in drug behaviors,” a finding consistent with a body of research that suggests “punishment is easier to dispense upon individuals with whom one feels little commonality.”<sup>108</sup>

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<sup>106</sup> Beckett et al., “Race, Drugs, and Policing,” p. 130.

<sup>107</sup> Phillip Beatty, Amanda Petteruti, and Jason Ziedenberg, Justice Policy Institute, “The Vortex,” p. 16. The study examined 198 large-population counties, representing 51.2 percent of the US population.

<sup>108</sup> *Ibid.*, p. 16.

## VII. Racial Injustice and Human Rights

In the post-civil rights era in the US, deep racial inequities remain in the criminal justice system. We do not know whether or to what extent conscious racism—that is, overt hostility to blacks—affects the actions of individual police, prosecutors, judges, politicians, or other participants in drug law enforcement. What we can identify are institutional structures and practices that appear to be color-blind but have the effect of perpetuating advantages for whites and disadvantages for blacks. The “war on drugs” is a paradigmatic example. Laws that appear racially neutral are actually embedded in particular racial dynamics adverse to African Americans, and their enforcement perpetuates those dynamics. As Prof. David Cole has observed, inequalities in the criminal justice system “do not stem from explicit and intentional race or class discrimination, but they are problems of inequality nonetheless.” The problem is not explicit and intentional considerations of race, but racial “disparities built into the very structure and doctrine of our criminal justice system....”<sup>109</sup>

Drug law enforcement has deepened the racial disadvantages confronted by low-income African Americans even as it perpetuates the erroneous belief that most drug offenders are black. Research shows that “at a time when civil rights and welfare policies aimed at improving opportunities and living standards for black Americans, drug and crime policies worsened them ... [They] have operated in the same ways as slavery and ‘Jim Crow’ legalized discrimination did in earlier periods to de-stabilize black communities and disadvantage black Americans, especially black American men.”<sup>110</sup> The Leadership Conference on Civil Rights concluded in a study of civil rights and the criminal justice system, “Our criminal laws, while facially neutral, are enforced in a manner that is massively and pervasively biased. The injustices of the criminal justice system threaten to render irrelevant fifty years of hard-fought civil rights progress.”<sup>111</sup>

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<sup>109</sup> Cole, *No Equal Justice*, p.9.

<sup>110</sup> Michael Tonry, “Minnesota Drug Policy and its Disastrous Effects on Racial and Ethnic Minorities,” in the appendices of Council on Crime and Justice, “Justice, Where Art Thou,” p. 63, citing research by University of California at Berkeley sociologist Loic Wacquant, <http://www.crimeandjustice.org/researchReports/FINAL%20REPORT%2010.4.07.pdf> (accessed April 16, 2008).

<sup>111</sup> Ronald H. Weich and Carlos T. Angulo, Leadership Conference on Civil Rights, “Justice on Trial,” 2000, <http://www.civilrights.org/publications/reports/cj/justice.pdf> (accessed April 16, 2008).

Although racist intent is not a prerequisite to the existence of racial inequities, US state and federal constitutional law requires a finding of such intent before courts will rule unconstitutionally discriminatory practices that disproportionately burden a racial group.<sup>112</sup> International human rights law, specifically the International Convention on the Elimination of All forms of Racial Discrimination (ICERD), a treaty to which the United States is a party, is better suited to redressing racial inequities rooted in structural racism.<sup>113</sup>

ICERD prohibits policies and practices that have the purpose *or effect* (emphasis added) of restricting rights on the basis of race.<sup>114</sup> It proscribes apparently race-neutral practices affecting fundamental rights—for example, the right to liberty—regardless of racist intent, if those practices create unwarranted racial disparities. The Convention requires remedial action whenever there is an unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin.<sup>115</sup> As the Committee on the Elimination of Racial Discrimination recently concluded after reviewing the most recent periodic reports of the United States regarding its compliance with ICERD:

The Committee reiterates the concern expressed in paragraph 393 of its previous concluding observations of 2001 (A/56/18, paras. 380-407) that the definition of racial discrimination used in the federal and state legislation and in court practice is not always in line with that contained in article 1, paragraph 1, of the Convention, which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect. In this regard, the Committee notes that indirect—or *de facto*—

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

113 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 UN GAOR Supp. (No. 14) at 47, UN Doc A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States on November 20, 1994.

114 Under ICERD, racial discrimination is defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." ICERD, Part I, Article 1(1).

115 Committee on the Elimination of Racial Discrimination (CERD), General Recommendation 14(2) on Article 1, para. 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," *The American Journal of International Law*, vol. 79 (1985), pp. 287-88.

discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. (Article 1(1)).<sup>116</sup>

Under ICERD governments 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.<sup>117</sup> ICERD notes in particular the importance of eliminating racial discrimination in legal systems. Article 5(a) requires states party to “prohibit and eliminate racial discrimination ... notably in the enjoyment of ... the right to equal treatment before the tribunals and all other organs administering justice.”<sup>118</sup> The Committee on the Elimination of Racial Discrimination has recommended that “[s]tates should ensure that the courts do not apply harsher punishments solely because of an accused person’s membership of a specific racial or ethnic group.”<sup>119</sup>

Although the Committee has not specifically addressed racial disparities in the enforcement of US drug laws, it has previously observed the particularly high rate of incarceration of African Americans and Hispanics, and recommended that the United States ensure that this disproportionately high incarceration rate was not a result of the “economically, socially and educationally disadvantaged position of these groups.”<sup>120</sup> In 2008 the Committee reiterated “its concern with regard to the

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<sup>116</sup> CERD, “Consideration of Reports Submitted by State Parties under Article 9 of the Convention: Concluding Observations, United States of America,” CERD/C/USA/CO/6, February 2008, para. 10, <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-USA-CO-6.pdf> (accessed April 16, 2008). The Committee also considered written and oral testimony by numerous nongovernmental organizations. The submission by Human Rights Watch is available online: Human Rights Watch, *United States – Submission to the Committee on the Elimination of Racial Discrimination*, vol. 20, no. 2(G), February 2008, <http://hrw.org/reports/2008/uso208/>.

<sup>117</sup> “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.... Each State Party undertakes to engage in no act or practice of racial discrimination ... and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation...” ICERD, Part I, Article 2(1)(a).

<sup>118</sup> *Ibid.*, Article 5(a).

<sup>119</sup> CERD, General Recommendation 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, CERD/C/64/Misc.11/rev.3, para. 34.

<sup>120</sup> CERD, “Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America,” CERD/C/59/Misc.17/Rev.3, August 14, 2001, para. 16. It also instructed the United States to “take firm action to guarantee the right of everyone ... to equal treatment before the courts.”

persistent racial disparities in the criminal justice system [of the United States] including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population....”<sup>121</sup> The Committee pointed out that stark racial disparities in the administration and functioning of the criminal justice system, particularly in the prison population, “may be regarded as factual indicators of racial discrimination....” It recommended that the United States “take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.”

The United States suggested in its most recent submission to the Committee that racial disparities in the criminal justice system generally reflect racial disparities in offending, but it noted that there are “some unexplained disparities particularly related to drug use and enforcement.”<sup>122</sup> We disagree. We think the United States could have explained racial disparities in drug law enforcement if it had sought to do so. But explained or not, those disparities cannot be justified. There can be little doubt that under ICERD, the United States must move forcefully to eliminate them.

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<sup>121</sup> CERD, “Concluding Observations: United States of America,” February 2008, para. 20.

<sup>122</sup> Government of the United States, “Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the Convention on the Elimination of All Forms of Racial Discrimination,” April 2007, <http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD%20Report%204-07.pdf> (accessed April 16, 2008), paras. 165 and 327. Along with many other NGOs, Human Rights Watch submitted information to the Committee for the record for the Committee’s review of the United States’ compliance with its obligations under ICERD, during its 72nd session. Human Rights Watch, *United States - Submission to the Committee on the Elimination of Racial Discrimination*.



## VIII. Conclusion

The racial disparities in incarceration generated by drug control strategies raise deeply troubling questions. Why are white drug users and sellers comparatively free of arrest and incarceration for their illegal activity? Why has the United States continued to address illicit drugs primarily with a punitive criminal justice approach, including harsh prison sentences? Why has the country been willing to impose the burden of incarceration for drug offenses primarily on those who by virtue of race and poverty are already among the most marginalized in society and the most politically powerless?<sup>123</sup>

We cannot answer those questions. But we do know that the racial disparities we have documented in this report violate fundamental principles of justice and equal protection of the law. They undermine faith among all races and ethnic groups in the fairness and efficacy of the US criminal justice system.<sup>124</sup> They are particularly intolerable because incarceration has such grave implications for the offenders' lives and those of their families and communities.

It is difficult to overstate the harshness of a prison sentence and its enduring consequences. Prisons are tense, overcrowded, dangerous, and barren places in which it may be difficult to maintain one's emotional equilibrium and self-respect, much less turn a life around. Prison education, vocational, and substance abuse programs are minimal. Incarceration leaves families without breadwinners,<sup>125</sup>

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<sup>123</sup> People in the criminal justice system are not a political constituency to which politicians pay heed. Moreover, criminal justice involvement can lead to temporary—and in some places, permanent—political disenfranchisement. Human Rights Watch and The Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, 1998, <http://www.hrw.org/reports98/vote/>. See also the website of The Sentencing Project for subsequent reports and news about the campaign to restore the right to vote to former felons, <http://www.sentencingproject.org/IssueAreaHome.aspx?IssueID=4> (accessed April 16, 2008).

<sup>124</sup> Human Rights Watch, *Punishment and Prejudice*, p.5. Minnesota's Council on Crime and Justice recently concluded that the "disparity between how different races have been treated in the war on drugs undermines the integrity of the criminal justice system, causing people to lose confidence that the system is even-handed and works equally for the benefit of all citizens." Council on Crime and Justice, "Justice, Where Art Thou," p. 16.

<sup>125</sup> Contrary to a common misperception, most drug offenders were employed and earning a wage prior to their incarceration. King and Mauer, "Distorted Priorities," p. 10.

children without parents.<sup>126</sup> Even after release from prison, the consequences of incarceration continue, reflected in wrecked families, troubled children, diminished opportunities for jobs and economic advancement, problems finding housing, and political disenfranchisement.<sup>127</sup> Spending time in prison may increase the likelihood of recidivism.<sup>128</sup> High rates of incarceration in particular communities may deplete the human and social capital of already disadvantaged neighborhoods, diminishing opportunities for social and economic mobility and even contributing to ongoing cycles of crime.<sup>129</sup>

The United States can and must devise ways to make its drug control policies less destructive to black communities in general, and black males in particular. There is no justification for levying the burdens of incarceration and its aftermath disproportionately on black drug offenders. The statistics presented in this report reflect the persistent failure of the United States to ensure that its efforts to reduce illicit drug use and sales are conducted within a framework of respect for human rights.

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126 Christopher J. Mumola, BJS, "Incarcerated Parents and Their Children," August 2000, <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf> (accessed April 16, 2008); and Human Rights Watch, *Collateral Casualties: Children of Incarcerated Drug Offenders in New York*, vol. 14, no. 3, June 2002, <http://www.hrw.org/reports/2002/usany/>.

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

128 Cassia Spohn and David Holleran, "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders," *Criminology*, vol. 40 (2002), pp. 329-357 (drug offenders sentenced to probation have lower recidivism rates and reoffend more slowly than those sentenced to prison).

129 Dina R. Rose and Todd R. Clear, "Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory," *Criminology*, vol. 36 (1998), pp. 441-479.

## IX. Methodology

### Prison Admissions for Drug Offenses

State-by-state data on prison admissions from the National Corrections Reporting Program (NCRP) for 2003<sup>130</sup> (the latest year with available data) were used to compute all the statistics in this report related to admissions to prison. In 2003, 35 states participated in the reporting of admission data to NCRP. The data were cleaned as follows before any analysis:

- The admission database had a total of 559,526 cases. Cases were attributed to states first using the state of jurisdiction. Where the state of jurisdiction was unknown (136,573 cases; 24.4 percent) the county where sentence was imposed was used to assign the case to a state. A total of 1,546 cases (0.28 percent) were excluded when the case could not be attributed to a participating state. These include cases from: “Shared Jurisdiction” (2), “Federal Prison System” (195), “State Other than Reporting State” (62), “Unknown State” (777), and cases from non-participating states: Arizona (7), Arkansas (3), Connecticut (134), Delaware (1), Idaho (5), Kansas (5), Massachusetts (1), Montana (3), New Mexico (7), Ohio (1), and Vermont (343). The remaining 557,980 cases were from participating states.
- Only new court commitments were considered for analysis, representing 357,114 cases (64.0 percent), including: “New Court Commitment,” “Parole Revocation with a New Sentence,” “Mandatory Parole Release with a New Sentence,” “Suspended Sentence Imposed,” and “Probation Revocation with a New Sentence.” A total of 200,866 cases (36.0 percent) from the participating states that were not new court commitments (for example, “Parole Revocation with No New Sentence”) were excluded.
- Alaska did not report any new commitments in the data it submitted to the NCRP. We have therefore not included Alaska in this report and in the data

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<sup>130</sup> Bureau of Justice Statistics (BJS), “National Corrections Reporting Program Series,” 2003, <http://www.icpsr.umich.edu/cocoon/ICPSR/SERIES/00038.xml> (accessed December 1, 2007).

analyses that we have done. We refer in the report to the 34 NCRP reporting states for simplicity's sake, even though there were technically 35.

- Out of the 357,114 new commitments, 3,397 concerned children. These cases were excluded. All the figures used in this report are provided for adults only. Finally, 15 cases were excluded because they had incomplete data on demographics (gender or age). The final number of new prison commitments considered for analysis therefore was 353,702 cases.
- From this admissions database, drug offenders were selected for analysis. Drug offenders identified for this report were defined as new prison admissions in the NCRP database for which the most serious offense (that is, the offense that carried the longest sentence—variable V26 in the database) was a drug-related offense. These included offense codes 340 to 450.<sup>131</sup> Only those cases were selected for analysis. Offenders who were admitted to prison with more serious offenses—such as murder—in addition to drug offenses are not included among drug offenders in our analyses. The final database for drug offender admissions included 111,247 cases.

## Race and Prison Admissions

The NCRP database treats race and ethnicity separately, with one variable for race and one variable for ethnicity. We only used race in our analyses of prison admissions because of the large amount of missing data on ethnicity (23.8 percent cases with missing ethnicity). We recoded race into three categories: whites, blacks, and “other.” The “other” category includes cases for which the race was Indian American, Asian, Native Hawaiian, other, unknown, or blank cases. Each racial category can include Hispanics and non-Hispanics.

## Rates of Admission

We used US Census Bureau projected population data for 2003<sup>132</sup> to compute rates of admissions in this report. Rates were calculated per 100,000 adult (age 18 years or older) residents of the designated race and gender groups in each state for which

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<sup>131</sup> BJS, “Offense Code for the National Correction Program,” ICPSR 20741 Codebook.

<sup>132</sup> US Census Bureau, “Population Estimates,” March 2008, <http://www.census.gov/popest/estimates.php> (accessed April 16, 2008).

we had drug admissions data. Races were recoded into three categories: white, black, and other, each of which may include Hispanics and non-Hispanics.

## **Total Figures**

In the charts and figures in this report, unless otherwise specified, “total” frequencies and rates of admission were calculated on the basis of the total number of new drug admissions and the total populations for the 34 reporting states combined. The “totals” do not reflect averages.

## **Limitations**

### *External Validity*

The National Corrections Reporting Program does not provide data for all 50 states. In 2003, 35 states participated in the program (the number of participating states varies each year). The state of Alaska did not report any new prison admissions and we therefore excluded it from our analysis. The analysis presented in this report therefore is only valid for the 34 reporting states with new prison admissions. How the non-participating states differ in terms of drug admissions and racial disparity is unknown.

### *Reporting of the Cases*

The reliability of the data contained in the NCRP database cannot be assessed. The NCRP database is based on a structured questionnaire completed annually on the basis of official prison records of prisoner population movement. After the questionnaires are processed by the Census Bureau, state tallies are sent to state officials for verification and comment. Limitations and information on data processing are provided in the codebook associated with the data.<sup>133</sup>

### *Duplication*

The NCRP database considers every prison admission as a new case. It is therefore possible that the same individual is represented more than once in the 2003 database if he or she was admitted more than once over the course of that year.

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<sup>133</sup> BJS, ICPSR 20741 Codebook.

However, since offenders are rarely sent to prison unless they have a sentence of one year or more, the possible number of duplicates among new prison admissions is unlikely to affect the analyses presented in this report.

### *Missing Data on Race*

Among the new drug offender admissions in the NCRP data base, 12.3 percent listed race as unknown, “other” or left the variable blank. There is no way of knowing whether or to what extent the results of our analyses would change had there been more complete reporting on race in the NCRP database.

# Targeting Blacks

## Drug Law Enforcement and Race in the United States

US drug law enforcement continues to disproportionately impact black Americans, fueling their extraordinarily high rates of incarceration. Although whites constitute the large majority of drug offenders, it is blacks who, in the so-called war on drugs, bear the brunt of its punitive policies.

Using 2003 data (the most recent available) from 34 states on those newly entering prison because of drug offense convictions, *Targeting Blacks: Drug Law Enforcement and Race in the United States* documents state by state the dramatically higher proportion and rate at which blacks are sent to prison for drug offenses, compared to whites. Among the report's key findings:

- Blacks constituted 53.5 percent of all persons entering state prisons with a new drug offense conviction.
- A black man was 11.8 times more likely than a white man to enter prison with a new drug conviction, and a black woman was 4.8 times more likely than a white woman.
- Among all African Americans entering prison, 38.2 percent were convicted of drug offenses, compared to 25.4 percent among whites.

Human Rights Watch calls on public officials to identify and eliminate all policies that have the effect of creating racial disparities in the arrest, prosecution, and incarceration of drug offenders. Authorities should implement anti-drug strategies that will respond to concerns about substance abuse without unfairly condemning black men and women to prison.

*Targeting Blacks* is a follow up to Human Rights Watch's 2000 report, *Punishment and Prejudice: Racial Disparities in the War on Drugs*, based on data from 1996.

*Inmates wait in holding pens at the California Institution for Men in Chino, California, on July 12, 2007. The offenses they were convicted of are not known.*

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