

# **Racial Disparities and the Drug War**

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**and**

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## **Introduction**

When the phrase “drug offender” comes to mind, most people associate these specific words with a young black male. This specific image of a typical drug offender originated from the mass media, which ultimately impacted our perception of what we believe is a drug offender. As a result of this misconception, the criminal justice system is portrayed as racially biased through every step in the prosecution process. The soaring arrest, conviction, and incarceration rates obtained by black drug offenders by no means reflect higher rates of drug use. In fact, as will be noted below, some statistics have shown that the white population has a higher rate of illegal drug use than the black population. Yet, what is particularly interesting is that throughout the drug war era, from the 1980’s to the present-day, the arrest and incarceration rates for African-American women have continued to increase at a much faster pace than any other race and gender group imprisoned. How is this possible?

Drug policies that were distinctively intended to target serious traffickers and kingpins were in reality targeting offenders with minor forms of selling and possession. A recent study by the Sentencing Project on marijuana policies found that the majority of those arrested were for possession of marijuana and this accounted for 78.7% of the increase in drug arrests during the 1990s (King and Mauer 2005, 3). Since the role of women in the illegal drug business has been a minor one (as will be shown in a subsequent section of this report), it is no surprise why women would have higher arrest, and incarceration rates than men.

Federal mandatory minimum drug sentencing laws tend to have an impact of minority communities as opposed to others. A recent report prepared by John R. Steer,

member and vice chair of the U.S. Sentencing Commission described racial disparities in prosecution (U.S. Sentencing Commission 2000):

Commission data show two demographic trends with respect to the application of mandatory minimum sentences that may raise some concerns. First, since 1993, the percent of mandatory minimum cases in which the defendant is white has decreased from 30 percent to approximately 23 percent, while the percent of such cases in which the defendant is Hispanic has increased from approximately 33 percent to almost 39 percent. Thus, during this period, Hispanics subjects to mandatory minimums displaced white defendants on almost a one-to-one basis.

...Blacks are much more likely than white or Hispanic defendants to receive heightened mandatory minimum penalties, and the difference in the likelihood increases as the penalty increases. In 1998 black defendants comprised only 30 percent of cases subject to a five year mandatory minimum. However, they comprise over 40 percent of cases subject to a ten year mandatory minimum, over 60 percent of cases subject to a 20 year mandatory minimum, and almost 80 percent of cases subject to a mandatory life term.

Conversely, whites and Hispanics are less likely to receive heightened mandatory minimum penalties as the mandatory term increases. Hispanic defendants comprise approximately 44 percent of cases subject to a five year mandatory minimum, 20 percent of cases subject to a 20 year mandatory minimum, and approximately 8 percent of cases subject to a mandatory life term. Similarly, white defendants comprise approximately 25 percent of cases subject to a five year mandatory minimum, approximately 17 percent of cases subject to a 20 year mandatory minimum, and approximately 13 percent of cases subject to a mandatory life term.

As the severity of the punishment increases, so does the racial disparity. Also, what was once considered a “justice system,” may be perceived by racial minorities as a “biased

system.” The information that is quoted in John Steer’s presentation at a commission sentencing hearing is represented in Figure 1.

## **The Federal Sentencing Guidelines**

Mandatory minimum sentencing is often mistaken for federal sentencing guidelines, especially when it comes to drug offenses. These two guidelines commonly interact with one another, but are two separate sentencing procedures. The *Federal Sentencing Guidelines* (Guidelines) are a set of rules outlining specific sentencing ranges for every federal offense, such as drug related crimes, by analyzing a table that generates a sentence range based on a number of particular components of the offense (Lapidus et al, 2005, 40). The primary principle behind sentencing guidelines is to promote impartiality and certainty of punishment, deterrence, incapacitation, and rehabilitation through sentencing. A mandatory minimum sentence is much more influential than the Guidelines when it comes to drug offenses because mandatory minimums impose harsher penalties. For example, if the Guidelines indicate a sentence of 5 to 6 years for an offense, but mandatory minimum results in 10 years, then the court must enforce a sentence of 10 years or more.

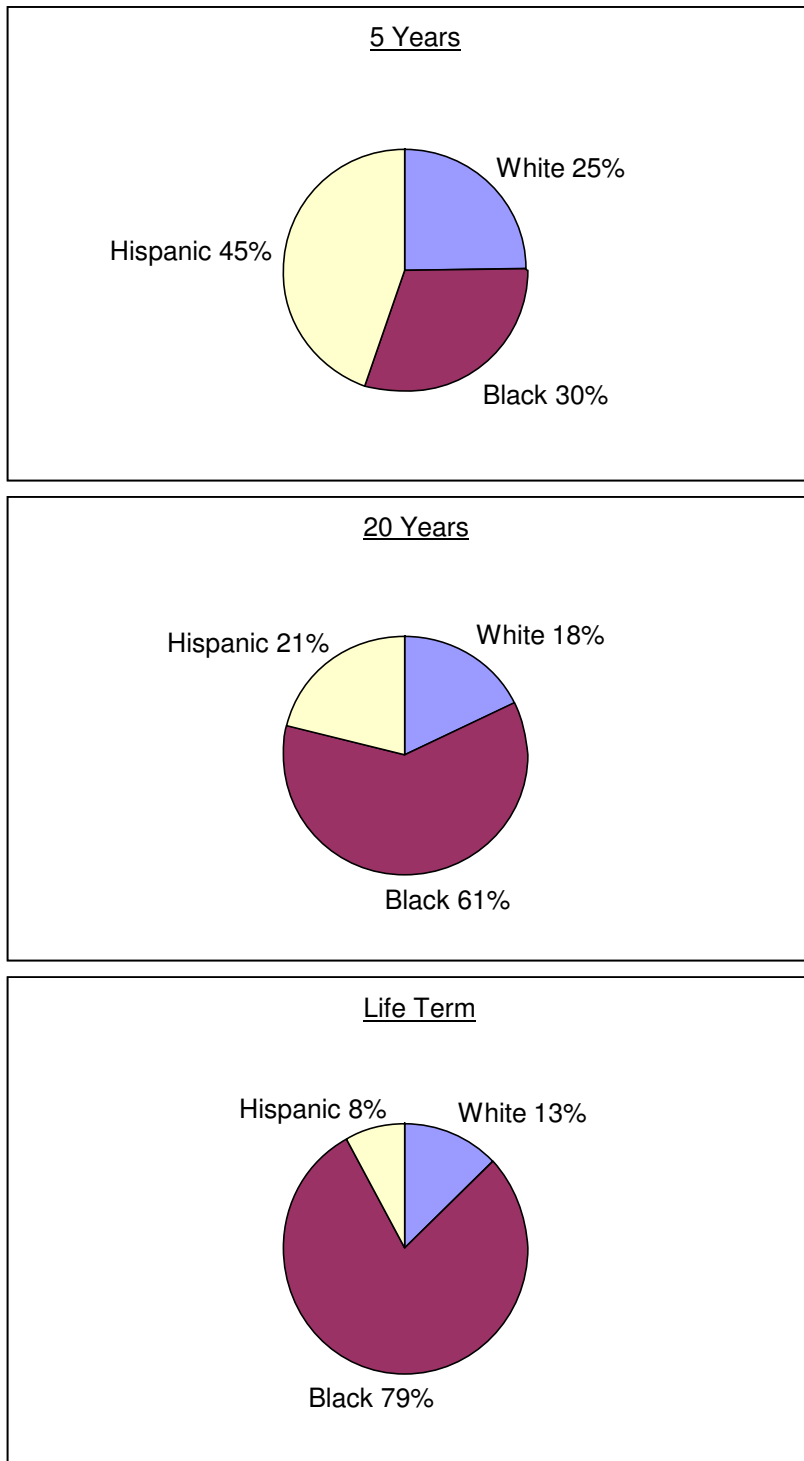
The Guidelines provide a feature similar to the “safety valve” which is called a “downward departure.” A *downward departure* allows a judge to sentence a defendant outside the Guidelines range but under restricted circumstances (Lapidus et al., 2005, 40). For instance, if a judge determines there were unusual and meaningful mitigating conditions not taken into account by the guidelines, then the defendant could receive a lower sentence. If a woman’s circumstance includes violence, physical or mental health issues, pregnancy, or family responsibilities, then a few or all of these factors may

influence a judge's sentencing decision. Additionally, there is also substantial evidence that some of these same factors were rejected as a foundation for downward departure. On the other hand, several courts have managed to consider such evidence and have readjusted their sentencing decisions to prevent women from being further penalized by the criminal justice system. The impact of the drug war on women will be covered in a later section.

### **Race and the Drug War**

A common view holds that the drug war has aimed its efforts to rid the nation of "dangerous drugs" or what former President George Bush called the "scourge of the nation" (Baum, 1997). Aside from the obvious fact that the most dangerous drugs are tobacco and alcohol (as demonstrated by the large number of deaths resulting from their use), one would assume that enforcement efforts would target those who use the outlawed drugs (marijuana, cocaine, etc.) the most. However, this is not the case. As journalist Gregory Flanagan wrote "People of color are more likely to be stopped and searched for drugs by the police, they are more likely than whites to be convicted when caught with drugs and they, on average, receive harsher sentences than whites for similar drug charges" (Flanagan, 1). In May of 2000, The Drug Policy Litigation Project reported that African-Americans comprised of 35% of those arrested for drug possession, 55% of those convicted, and 74% of those incarcerated (Gunja 2003, 1). The next several pages display sample tables and graphs that illustrate these discrepancies based on race.

**Figure 1. Disparity in Mandatory Minimum Sentencing by Race in 1998.**



Source: U.S. Sentencing Commission

Note: The table values do not total 100% due to lack of additional available data and estimates made by the U.S. Sentencing Commission.

Starting with Table 1, census data show that whites out-number blacks in the population about five to one, yet both groups purchase and consume drugs at similar rates (see Table 2) (Flanagan, 1). However, arrest and conviction rates clearly show that blacks are disproportionately targeted, as seen in Tables 3 and 4.

**Table 1 Racial Demographics in the US, 2000.**

Race	Percent (2000)
White	62.6%
Hispanic	12.5
Black	12.3
Other	12.6

Source: U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3).

[http://factfinder.census.gov/servlet/SAFFacts?\\_event=&geo\\_id=01000US&\\_geoContext=01000US&\\_street=&\\_county=&\\_cityTown=&\\_state=&\\_zip=&\\_lang=en&\\_sse=on&\\_ActiveGeoDiv=&\\_useEV=&\\_pctxt=fph&\\_pgsl=010](http://factfinder.census.gov/servlet/SAFFacts?_event=&geo_id=01000US&_geoContext=01000US&_street=&_county=&_cityTown=&_state=&_zip=&_lang=en&_sse=on&_ActiveGeoDiv=&_useEV=&_pctxt=fph&_pgsl=010)

**Table 2 Percent Distribution of Drug Use, by Race, 1994 and 2004.**

Race	1994	2004
White	6.0%	8.1%
Black	7.3%	8.7%
Hispanic	5.4%	7.2%
American Indian/Alaskan Native	N/A	12.3%
Asian	N/A	3.1%
2 or More Race	N/A	13.3%

Source: The 1994 National Household Survey on Drug Abuse Report and the 2004 National Survey on Drug Use and Health Report.

Note: N/A means “Not Applicable,” data was not presented in the NHSDA report.

Table 3 is one among many data sets produced by several studies during the past ten years. This one comes from the National Organization for the Reform of Marijuana Laws (NORML). These data cover the years 1991 – 1995 and show large racial differences in the arrest rates for each type of drug.

**Table 3. Drug Arrest Rates, by Race, 1991 – 1995.**

Offense	Year	Rate Per 100,000					Ratio black: white
		All	black	white	Am. Indian	As. Pacific	
<b>All Drug Arrests</b>	1991	411.58	1,389.06	273.26	140.49	52.35	5.08
	1995	596.19	1,755.32	439.94	240.12	72.69	3.99
<b>Marijuana Possession</b>	1991	89.79	172.37	81.03	49.16	13.64	2.13
	1995	193.23	425.70	166.04	103.63	23.44	2.56
<b>Marijuana Sales</b>	1991	29.02	66.73	24.59	10.44	2.18	2.71
	1995	36.92	101.17	28.39	18.00	3.99	3.56
<b>Opiate/Cocaine Poss.</b>	1991	159.16	603.74	94.37	37.71	19.78	6.40
	1995	192.60	657.44	124.99	54.01	21.44	5.26
<b>Opiate/Cocaine Sales</b>	1991	110.81	517.15	47.37	14.39	11.97	10.92
	1995	116.87	488.21	58.52	15.52	7.99	8.34

Source: Gettman, Jon. *United States Marijuana Arrests, Part Two: Racial Differences in Drug Arrests*. NORML Foundation, 2000.

[http://www.norml.org/index.cfm?Group\\_ID=5328](http://www.norml.org/index.cfm?Group_ID=5328)

Still another study found similar rate differences between blacks and whites. As shown in Figures 2 and 3 of this study, while arrests for drug violations showed a gradual increase during the 1980s, the arrest rate for blacks and other racial minorities climbed rapidly, exactly when the drug war took off in the Reagan era (Day, 1995).



Figure 2. Arrest rates for drug violations (1965-1993).

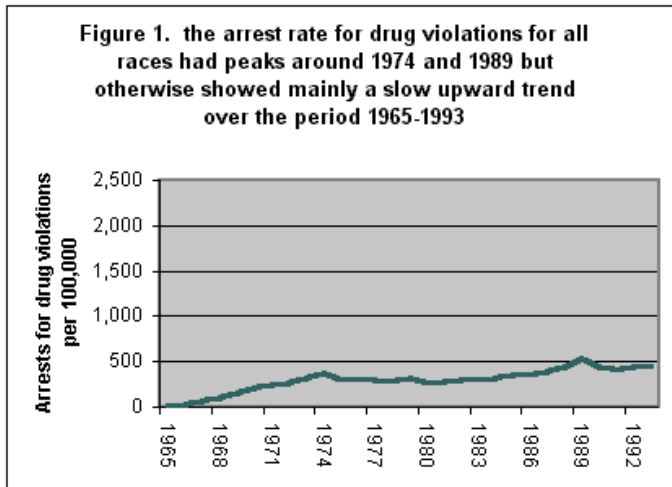
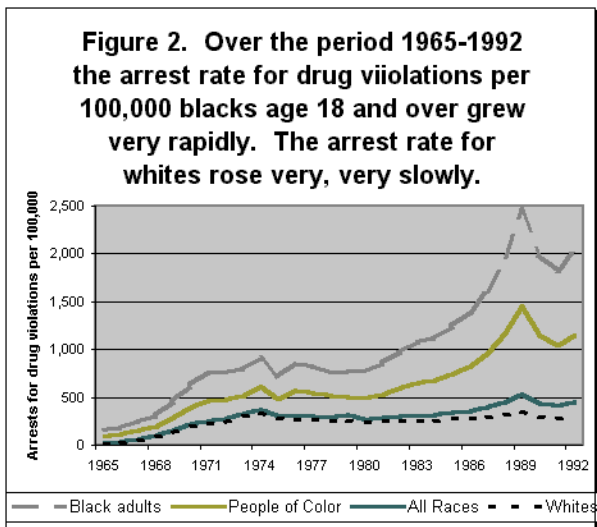


Figure 3. Arrest rates for drug violations by race (1965-1992).



Source: Day, Dawn. "Drug Arrests: Are Blacks Being Targeted?" Washington, DC: Criminal Justice Foundation, April, 1995. Figure numbers changed for this report.

<http://www.dogwoodcenter.org/publications/Day95.html>

Numerous studies have illustrated the differential conviction and sentencing rates for drug cases. To illustrate just one among many examples, table 4 shows one study in Florida, revealing that blacks are more than twice as likely as whites to be sentenced to prison for drugs.

**Table 4. Conviction rates for drugs, by Race, State of Florida.**

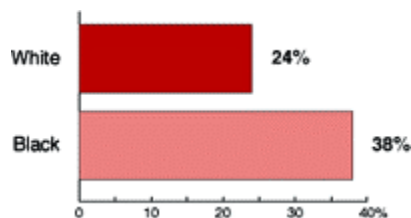
Prison Versus Non-Prison Sentence for Blacks and Whites (N=221,577): Sentencing Guidelines Cases from July 1, 1994 to December 31, 1996				
Offense Type	Total Percent of Cases Sentenced to Prison	Blacks: Percent of Cases Sentenced to Prison	Whites: Percent of Cases Sentenced to Prison	Difference in Cases Sentenced to Prison
<b>TOTAL ALL CASES</b>	17.2%	20.8%	14.1%	6.7%
<b>Violent</b>	29.8%	36.0%	24.6%	11.4%
<b>Property</b>	15.0%	17.1%	13.7%	3.4%
<b>Drugs</b>	11.6%	15.7%	6.3%	9.4%
<b>Other</b>	17.3%	19.4%	15.7%	3.7%

Source: Florida Department of Corrections

[http://www.dc.state.fl.us/pub/sg\\_annual/9596/part\\_ii/ii2\\_t1.html](http://www.dc.state.fl.us/pub/sg_annual/9596/part_ii/ii2_t1.html)

Looking at those in custody based on various censuses of state and federal prisons show that drug convictions constitute 24% of the admissions to state prisons for whites, but 38% for blacks, as shown in Figure 4.

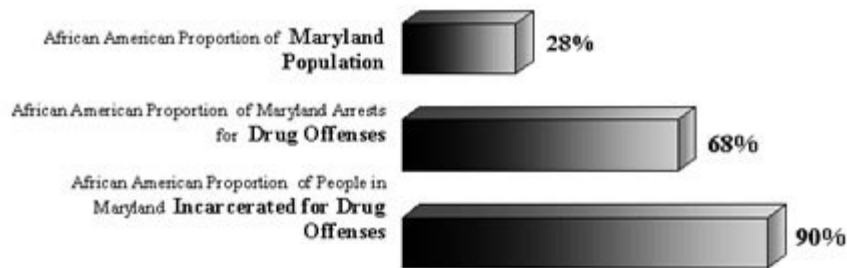
**Figure 4. Drug Offenders as a Percent of State Admissions by Race.**



Source: Incarcerated America, Human Rights Watch Backgrounder April 2003 (<http://www.hrw.org/backgrounder/usa/incarceration/>).

Studies of individual states show even greater racial disparities. A study of Maryland by the Justice Policy Institute showed the following differences in 2003. As shown in Figure 5, while blacks constitute only 28% of the population of that state, they are two-thirds of all drug arrests and an astounding 90% of those incarcerated on drug convictions.

**Figure 5. Race and Incarceration in Maryland**



Source: Justice Policy Institute, “Race and Incarceration in Maryland: Executive Summary.” October 20th, 2003. <http://www.justicepolicy.org/article.php?id=342>

Finally, Table 5 shows the obvious racial discrepancy in the state of Wisconsin. Note the black/white ratio for drugs in the two largest counties (Dane and Milwaukee). The disproportioned nature of the statistics is not only disturbing, but it also “contradicts faith in the principles of justice and equal protection of the laws that should be the bedrock of any constitutional democracy; it exposes and deepens the racial fault lines that continue to weaken the country and belies its promises as a land of equal opportunity; and it undermines faith among all races in the fairness and efficacy of the criminal justice system” (Human Rights Watch 2000). Though drug statutes may appear to be impartial, organizations such as the Drug Policy Litigation Projects and the Human Rights Watch have expressed their concern on how these laws are actually enforced.

	White Milwaukee	White Dane	Black Milwaukee	Black Dane	B/W Milwaukee	B/W Dane
Total	58	41	943	2059	16.4	49.7
Homicide	2	1	36	14	15.1	26.2
Assault	6	6	88	373	14.0	67.3
Robbery	7	3	144	256	19.9	96.8
Sex Assault	9	5	67	166	7.8	34.9
Theft, burglary, etc.	15	12	215	332	14.1	28.6
Arson	0	0	6	0	18.9	
Drugs	10	3	300	560	30.7	193.0
Public Order	1	2	10	41	10.6	22.4
Derived	3	3	29	145	11.4	45.9
Stolen Prop., fraud etc	3	6	37	145	14.0	22.9
Other	2	2	11	28	6.7	13.1

**Table 5. New Prison Admissions per 100,000 by race and county of sentencing, for Dane and Milwaukee Counties, 1996.** Rates per 100,000 population within race, and black/white ratios. “White” is white non-Hispanic. Oliver, P. (2002). *Racial Disparities in Criminal Justice*. Madison: University of Wisconsin.

## Race and Illicit Drug Use

As already noted above, several surveys have been conducted to determine the extent of illegal drug use. In this section this topic will be explored in more detail by reviewing self-reported surveys from the following sources: The Substance Abuse and Mental Health Services and the National Survey on Drug Use and Health.

### *Substance Abuse Surveys*

The Substance Abuse and Mental Health Services (SAMHSA) sponsored an annual survey called the National Household Survey on Drug Abuse (NHSDA). By year 2002, this same survey was then changed to the National Survey on Drug Use and Health (NSDUH).

NHSDA and NSDUH define a *current user* as someone who used an illicit drug within a month period of taking the survey (Substance Abuse and Mental Health Services Administration, 2005; National Household Survey on Drug Abuse 1994). Over the years,

the amount of current users have increased from 12.6 million in 1994 (5.8% of the population) to 19.1 million in 2004 (7.9% of the population). This meant that the current users in the population had also risen from 5.8% to 7.9% (Substance Abuse and Mental Health Services Administration, 1994; Substance Abuse and Mental Health Services Administration, 2005).

Table 6 is a more detailed version of the data reported in Table 1. As shown here, when comparing data from both years on gender, the rates had virtually stayed consistent. Male drug users increased from 7.9% to 9.9% within a ten year period, while female drug users increased from 4.3% to 6.1% (Substance Abuse and Mental Health Services Administration, 1994; Substance Abuse and Mental Health Services Administration, 2005). Overall, men were more likely to be an illicit drug user than women.

In 1994, the rates of illicit drug use among whites were 6.0%, Hispanics were 5.4%, and blacks were 7.3%. In 2004, the use rate was 8.1% for whites, 7.2% for Hispanics, and 8.7% for blacks. When assessing these rates, it is clear that there is no significant difference among these three groups (Substance Abuse and Mental Health Services Administration, 1994; Substance Abuse and Mental Health Services Administration, 2005).

However in 2004, NSDUH had three new categories of race/ethnic groups: 1) American Indian/Alaskan Native, 2) Asian, and 3) two or more races. During this year, the rates were highest among persons reporting two or more races with 13.3% and American Indian/Alaskan Natives with 12.3%. Asians had the lowest rate with 3.1% (Substance Abuse and Mental Health Services Administration, 2005)

The reports in both years concluded that “marijuana is by far the most commonly used illicit drug” (Substance Abuse and Mental Health Services Administration, 1994; Substance Abuse and Mental Health Services Administration, 2005). While marijuana use in 1994 was up to 81% of all current drug users, only 61% used strictly marijuana and the other 20% used marijuana with another illicit drug. Rates in 2004 estimated nearly 76.4% of all current marijuana users; Fifty-six percent used only marijuana, while 19.7% used marijuana with another illicit drug (Substance Abuse and Mental Health Services Administration, 1994; Substance Abuse and Mental Health Services Administration, 2005). The rate of marijuana use has continued to be consistent over the years.

**Table 6. Results of the National Household Survey on Drug Abuse in 1994 and the National Survey on Drug Use and Health in 2004**

<u>Population</u>	<u>1994</u>	<u>2004</u>
Current Drug Users	12.6 Million	19.1 Million
Percent of the Population	5.8%	16.1%
 <u>Gender</u>		
Men	7.9%	9.9%
Women	4.3%	6.1%
 <u>Race or Ethnicity</u>		
White	6.0%	8.1%
Black	7.3%	8.7%
Hispanic	5.4%	7.2%
American Indian/Alaskan Native	N/A	12.3%
Asian	N/A	3.1%
2 or More Race	N/A	13.3%
 <u>Type of Drugs</u>		
Marijuana	81.0%	76.4%
Cocaine	0.7%	0.5%
Heroin	1.7%	0.1%
Methamphetamine	N/A	0.2%

Source: The 1994 National Household Survey on Drug Abuse Report and the 2004 *National Survey on Drug Use and Health Report*.

Other drug use has been steadily decreasing from 1994 to 2004. Cocaine use decreased from 0.7% to 0.5%, while heroin use decreased from 1.7% to 0.1% (Substance Abuse and Mental Health Services Administration, 1994; Substance Abuse and Mental Health Services Administration, 2004). Methamphetamine data was presented in later NSDUH reports, in which 0.2% of participants in 2004 declared their use of Meth (Substance Abuse and Mental Health Services Administration, 2005).

As noted above, there are few racial differences in illegal drug use among adults. Surveys also show few racial differences among high school students. A survey by the Centers on Disease Control (Grunbaum et al, 2003) looked at “current users” (defined as users of drugs who have used a drug at least once within a 30 day period of participating in the survey). According to this survey, in 1993, 20.6% of male high school students and 14.6% of female students were current users of marijuana. However, these rates have slightly increased by year 2003. In 2003, 25.1% of male students and 19.3% of female students were current users of marijuana. Male students in general have maintained higher rates than female students over the years.

Moreover, statistics reveal that Hispanics students had the highest percentage of current marijuana use in both the 1993 and 2003 data. High school Hispanics students had a 19.4% in 1993 and 23.8% in 2003. Black students came in second in marijuana use with 18.6% in 1993 and 23.9% in 2003. The group least likely to use marijuana on a regular basis was white students with a total of 17.3% in 1993 and 21.7% 2003.

Next, when examining the current cocaine user statistics, male students display a small percentage difference over female students. In 1993, male students had 2.3% while

the female students had 1.4%. By 2003, male students had a rate of 4.6% and females with 3.5%.

Current users of cocaine were highest among Hispanics with 4.6% in 1993 and 5.7% in 2003. On the other hand, white students exhibited slightly higher rates than blacks during this ten-year period. White students accrued 1.6% in 1993 and 3.8% in 2003. Black students were the least likely to report cocaine use with 1.0% in 1993 and 2.2% in 2003.

Although the National Survey on Drug Use and Health (NSDUH) is sponsored by Substance Abuse and Mental Health Services (SAMSHA), NSDUH reported interesting information on female drug users regarding race and pregnancy data.

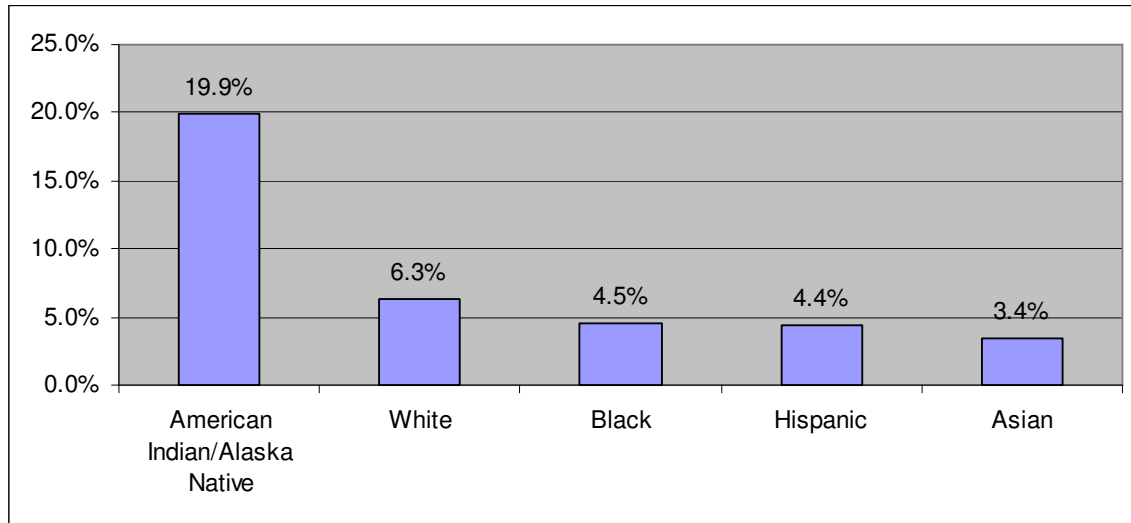
In 2003, the National Survey on Drug Use and Health (NSDUH) reported an estimate of “5.9% of women aged 18 or older met the criteria for the abuse of or dependence on alcohol or an illicit drug in the past year” (National Survey on Drug Use and Health 2005, 1). NSDUH further states that “rates of abuse of or dependence on alcohol or illicit drugs among women aged 18 or older were highest among American Indians or Alaska Natives (19.9 percent), followed by whites (6.3 percent), blacks (4.5 percent), Hispanics (4.4 percent), and Asians (3.4 percent) (Substance Abuse and Mental Health Services Administration, 2005, 2). See Figure 6 for these results.

The NSDUH also indicated in another report on gender differences in substance dependence and abuse that “males are more likely to use, abuse, and be dependent on alcohol or illicit drugs than females” (Substance Abuse and Mental Health Services Administration, 2005, 1). The report also revealed that males and females between the ages of 18 and 49 who were married had lower rates of dependence on an illicit drug than



males or females of other marital statuses (Substance Abuse and Mental Health Services Administration, 2005, 2).

**Figure 6. Percentage of Past Year Abuse of or Dependence on Any Illicit Drug/Alcohol among Women Aged 18 or Older, by Race/Ethnicity: 2003**



Source: The National Survey on Drug Use and Health 2005.

Note: The data in this table is from the “Substance Abuse and Dependence among Women” Report.

### ***Summary***

According to the first two major surveys by SAMHSA and Sourcebook, it is clear that men use illicit drugs more than females. In the SAMHSA survey, there was significant difference among drug with white, black, and Hispanic users. However by 2004, SAMHSA reported that rates of illicit drug use were high among persons with 2 or more races and American Indian/Alaskan Natives.

When analyzing marijuana use, SAMHSA participants reported marijuana as the most popular illicit drug. Marijuana use had remained consistent over the years in these surveys. However, participants showed high rates of marijuana use among male and

Hispanic high school students. Moreover, there was no significant difference in drug use with cocaine and heroin in the SAMHSA survey.

In the last survey by NSDUH, American Indian/Alaskan Natives women had the highest rate of illicit drug use. There was no significant difference among white, black, Hispanic, and Asian women drug users. Black pregnant women had rates similar to black non-pregnant women. On the other hand, white and Hispanic pregnant women had much lower rates than white and Hispanic non-pregnant women. Finally, recent non-pregnant mothers had rates comparable to non-pregnant women.

### **Racial Differences in Drug Arrests**

Data presented during the drug war have raised many questions as to what race and gender group are more likely to be arrested for drug offenses. A study by Human Rights Watch implies that drug arrests are disproportionate in nature, in which law enforcement officials target urban, poor, minority regions of a city. Whether this finding is true, examining the Human Rights Watch data as well as statistical data from reliable resources may be beneficial in determining what is factual.

A report by Human Rights Watch concluded that the war on drugs results in an increase in arrest rates for drug offenders as well as an increase in racial discrimination among arrestees (Human Rights Watch 2000). Blacks are more likely to be arrested for drug offenses than whites (Human Rights Watch 2000). The Human Rights Watch continued by stating “Throughout the 1970s, for example, blacks were approximately twice as likely as whites to be arrested for drug-related offenses. By 1988, the national anti-drug efforts was in full force and blacks were arrested on drug charges at five times the rate of whites” (Human Rights Watch 2000). Hence, blacks represented 37% of all

drug arrestees nationwide and blacks represented 53% of all drug arrestees in urban areas (Human Rights Watch 2000).

In most instances, racial disproportions in drug arrests indicate demographic factors. Drug enforcement is highly concentrated in vast urban and metropolitan areas, where illicit drug use is considered to be high (Human Rights Watch 2000). It is also said that “Since more blacks, proportionately, live in these areas than whites, black drug offenders are at greater risk of arrest than white offenders. But within metropolitan areas, politics and law enforcement priorities have determined how drug arrests would be distributed” (Human Rights Watch 2000).

The main area of concentration during the drug war has been in low income minority neighborhoods. When the popularity of crack began in the early 1980s, these neighborhoods suffered from “disorder, nuisance, and assault on the quality of life that accompanied increased drug dealing on the streets as well as the crime and violence that accompanied the development of crack distribution systems” (Human Rights Watch 2000). Distressed neighbors in these concentrated areas forced the police and political officials to do something about the drug issue. As a result, the crack cocaine dilemma fed the media frenzy with sensationalized stories which ultimately led politicians to seek electoral votes by “getting tough on crime” (Human Rights Watch 2000).

Although crack is the least consumed illicit drug in the U.S., the war on drugs has managed to target the possession and sale of crack cocaine among blacks. Human Rights Watch notes that crack cocaine in black neighborhoods became a primary concern for “complicated and deep-rooted set of racial, class, political, social, and moral dynamics.”

Not surprisingly, the general public identifies both crime and drugs with those whom are collectively poor, urban, and black (Human Rights Watch 2000).

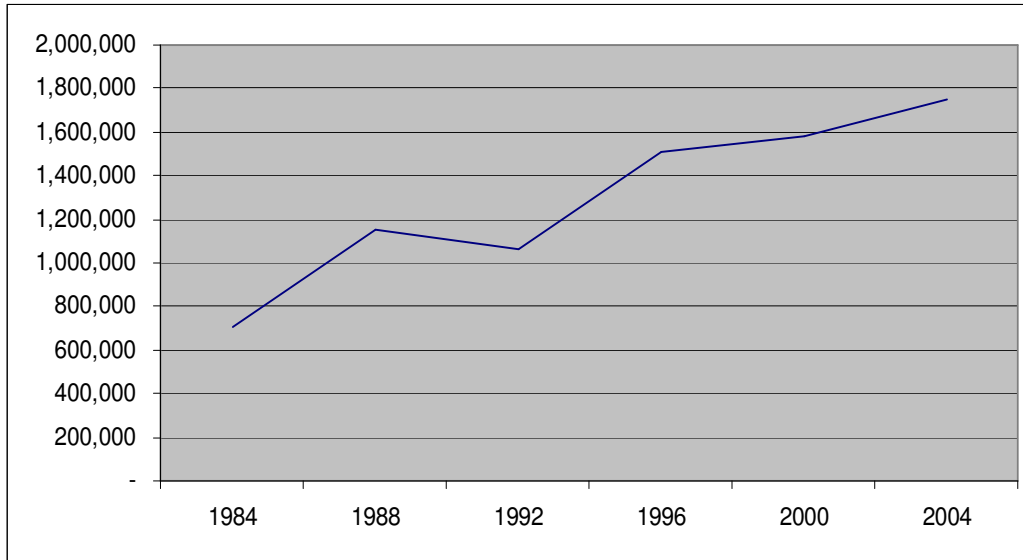
### ***Uniform Crime Reports***

The Federal Bureau of Investigations categorizes all drug-related offenses as “Drug Abuse Violations.” *Drug abuse violations* can be defined as “state and/or local offenses relating to the unlawful possession, sale, use, growing, and manufacturing of narcotic drugs including opium or cocaine and their derivatives, marijuana, synthetic narcotics, and dangerous nonnarcotic drugs such as barbiturates” (Harrison and Beck, 2004; Sourcebook 2003, 385).

The total number of arrests for drug abuse violations has continued to increase. In 1984, approximately 708,400 offenders were arrested for drug law violations (Harrison and Beck, 2004). Ten years later, the amount of arrests dramatically increased to 1,351,400 (Harrison and Beck, 2004). By 2004, there was an estimate of 1,745,712 drug arrests (Harrison and Beck, 2004). The number of drug arrest had nearly doubled the amount of arrestees in 1984. These data are shown in Figure 7.

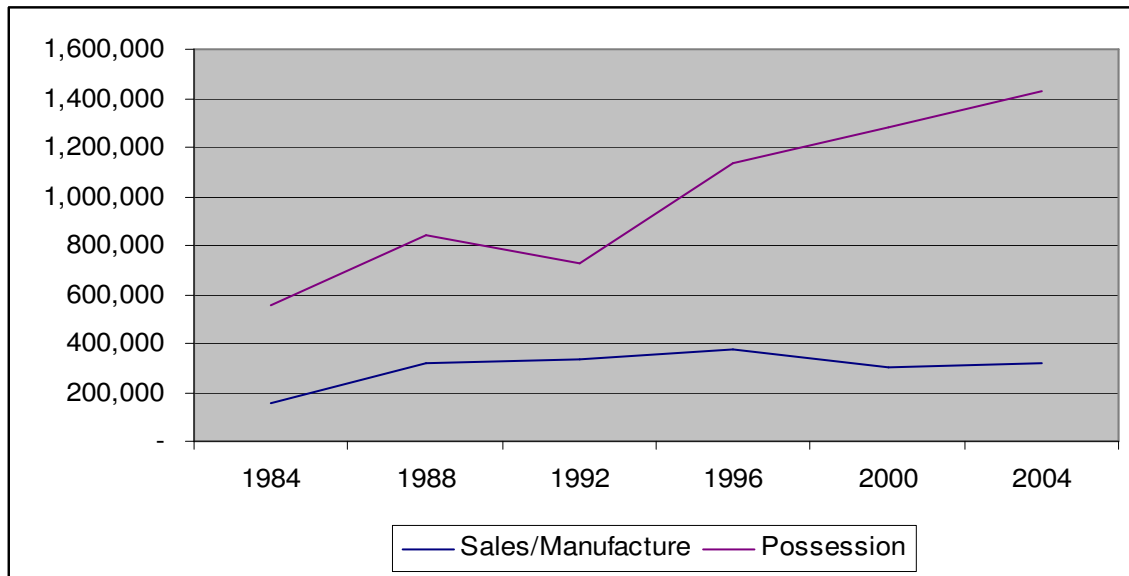
When analyzing drug related arrests more closely, results show that nearly four-fifths of all drug arrests were for possession (Harrison and Beck, 2004). The other one-fifth drug arrests were for sale or manufacture. In 1984, possession accounted for 552,600 (78%) of all drug arrests, while 155,800 arrests were for sale/manufacture (Bureau of Justice Statistics 2004). In 1994, possession arrests increased to 990,600 (73%) and sale/manufacture arrests increased to 360,800 (Harrison and Beck, 2004). By 2004, possession accounted for 1,426,200 (82%) of arrestees, while sale/manufacture accounted for 319,500 arrestees. See results in Figure 8.

**Figure 7. Number of Drug Abuse Violation Arrests from 1984-2004**



Source: Federal Bureau of Investigations, Uniform Crime Reports.

**Figure 8. Number of Arrests by Type of Drug Law Violation from 1984-2004**



Source: Federal Bureau of Investigations, Uniform Crime Reports.

As noted in Table 7, when comparing the percentage distribution of male and female arrests, males have continuously obtained higher rates of arrest than females. In

1996, male arrestees consisted 83.4% of all illicit drug violations, whereas female arrestees accounted for only 16.6% (Sourcebook 1997, 341). In 2002, male arrestees had decreased their rates to 81.9% and female arrestees increased their rate to 18.1% (Sourcebook 2003, 356).

Next, when analyzing race and ethnicity, whites had nearly doubled the amount of arrests when compared to blacks at 60.4% to 38.4% in 1996 (Sourcebook 1997, 338). Likewise, rates were relatively comparable in 2002 with white arrestees at 66.2% and blacks with 32.5% (Sourcebook 2003, 358). The 1996 data demonstrates that American Indian/Alaskan Natives accounted for 0.5% of drug arrests, while the 2002 data presents a rate of 0.6% (Sourcebook 1997, 338; 2003, 358). Similarly, Asian/Pacific Islanders displayed a 0.6% arrest rate in 1996 compared to 0.7% in 2002 (Sourcebook 1997, 338; 2003, 358). See data displayed in Table 9.

**Table 7. Drug Arrests by Type, Gender, Race/Ethnicity in 1996 and 2002.**

<u>Drug Type of Arrest</u>	<u>1996</u>	<u>2002</u>	<u>Total Average 1996 to 2002</u>
Possession	75.0%	80.0%	77.5%
Sale/Manufacture	25.0%	20.0%	22.5%
<u>Gender</u>			
Men	83.4%	81.9%	82.7%
Women	16.6%	18.1%	17.4%
<u>Race or Ethnicity</u>			
White	60.4%	66.2%	63.3%
Black	38.4%	32.5%	35.5%
American Indian/Alaskan Native	0.5%	0.6%	0.5%
Asian/Pacific Islander	0.6%	0.7%	0.6%

Source: The Sourcebook of Criminal Justice Statistics, 1997 and 2003

Note: Data from 1996 derived from pages 338 and 341 of the 1997 Sourcebook Edition. Data provided from 2002 derived from pages 356, 358, and 385 of the 2003 Sourcebook Edition. Figures taken from the FBI Uniform Crime Reports.

### ***Drug Arrest Rates and Race***

When considering *rates per 100,000 population* a much different picture emerges. Recent research by NORML examined drug arrest *rates* among the different races. In their report, the following conclusions were reached (Gettman, 2000):

- The black arrest rate for all drug offenses is four times the arrest rate for whites;
- The black arrest rate for marijuana offenses is 2.5 times the arrest rate for whites;
- When controlling for drug use levels the black arrest rate for marijuana possession is 2.27 times higher than the white arrest rate;
- When controlling for drug use levels the black arrest rate for all drug possession offenses is 2.89 times higher than the white arrest rate;
- The disparity between black and white arrests rates for marijuana increased between 1991, when the black arrest rate was 2.13 times higher, and 1995 when the black arrest rate was 2.56 higher nationally than for white;
- Black arrest rates for marijuana are over twice the white arrest rate in over 2/3 of metropolitan area counties;
- Black arrest rates for other drug offenses are over twice the white arrest rate in over 4/5 of metropolitan area counties;
- Black arrest rates are generally lower in jurisdictions with large black populations, but regardless of the level of the black arrest rate for any drug offense it is typically twice or greater than the white rate for the same crime in the same jurisdiction;
- The disparity between black and white arrest rates for drug offenses increases with the severity of the offense.

The figures reported in this study were shown in Table 5.

Finally, a Human Rights Watch report arrived at the following conclusions:

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

Even greater disparities in drug offender arrest rates have been documented in individual states. For example, Human Rights Watch's analysis of drug arrests by race in the state of Georgia for the years 1990-1995 revealed that, relative to their share of the population, blacks were arrested for cocaine offenses at seventeen times the rate of whites. In Minnesota, drug arrests of blacks grew 500 percent during the 1980s, compared with 22 percent for whites. In North Carolina, between 1984 and 1989, minority arrests for drugs increased 183 percent compared to a 36 percent increase in white drug arrests (Human Rights Watch, 2000; see original report for sources of the data reported here).

It is quite clear from these and many other studies that blacks and other minorities are being arrested on drug charges at rates far in excess of those for whites. Also, the arrest rates for these minorities far exceed their rates of illegal drug use.

### ***Summary***

As shown in the data reviewed in this section, drug arrest rates are far higher among minorities when compared to whites. While arrest for the sale and manufacturing of drugs have remained stable, arrests for drug possession are on the rise. Data also show that males are more likely to be arrested for drug violations than females.

## **Drug Convictions**

### ***State Court Convictions***

Drug offenses accounted for 37% of all felony convictions in state courts in 2000. Males constituted 81% of those convicted of drug charges and females 19% (Rainville and Reaves, 2003). Race figures prominently in these data. As shown in Table 8, of all the drug defendants, blacks were 47%, compared to 27% for whites and 27% for Hispanics.



**Table 8. Drug Felony Convictions in State Court by Gender and Race in 2002.**

<u>Gender</u>	
Male	83.0%
Female	17.0%
<u>Race</u>	
White	27%
Black	47%
Other	27%

Source: Rainville, Gerard and Brian A. Reaves. *Felony Defendants in Large Urban Counties, 2000*. Washington, DC: Bureau of Justice Statistics, December 2003.

<http://www.ojp.usdoj.gov/bjs/pub/pdf/fdluc00.pdf>

### ***Convictions in Federal Courts***

In another analysis, convictions in federal court resulting from an arrest by the Drug Enforcement Administration (DEA) revealed very stark racial differences. As shown in Table 9, while blacks constitute 28.2% of all drug convictions, they comprise just under one-third of convictions for powder cocaine and fully fourth-fifths of all crack cocaine convictions and about two-thirds of all marijuana convictions. Hispanics clearly dominate for powder cocaine convictions in addition to heroin and marijuana convictions. Compared this distribution with their proportion in the general population and their overall use rate, noted earlier in this report.

### ***Summary***

In general, drug convictions in state courts show clear gender and racial differences. Even larger racial differences are seen in federal cases. It is very clear that there are large discrepancies between racial distribution in the general population, illegal drug and drug convictions.

Perhaps the most glaring racial differences are seen in incarceration rates for drugs and for all crimes in general. This subject is covered in the next section.

**Table 9. Drug Convictions in Federal Courts, by Race and Gender, 2002.**

<b>Gender</b>	All Drugs	Powder Cocaine	Crack Cocaine	Heroin	Marijuana
Male	86.7%	85.7%	91.5%	82/8%	86.3%
Female	13.3	14.3	8.5	17.2	14.7
<b>Race</b>					
White	26.9%	17.7%	7.0%	14.0%	25.8%
Black	28.2%	30.9	81.4	22.6	64.7
Hispanic	42.7	50.1	10.5	61.7	64.7

Source: Sourcebook on Criminal Justice Statistics, "Drug Offenders Sentenced in U.S. District Courts under the U.S. Sentencing Commission Guidelines, 2002."  
<http://www.albany.edu/sourcebook/pdf/t539.pdf>

## **Incarceration**

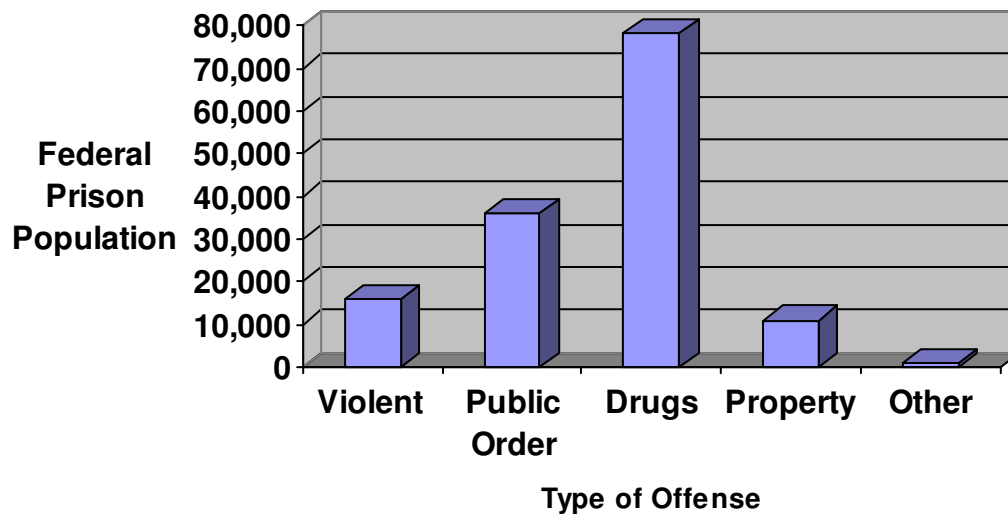
In this section, drug offending incarceration rates will be categorized into four sections with its results: Federal and State Imprisonment, Racial Demographics, Gender Demographics, and Racial and Gender Demographics.

### ***Federal and State Imprisonment***

As early as the mid-1980's, the drug imprisonment rate began to increase at a quicker rate when compared to all other types of offenses, going up by 478% from 1985 to 1995 (Mumola and Beck, 10). Figure 9 shows the federal prison population by the type of offense for 2002. As illustrated, there were twice as many drug offenders than

public order offenders and nearly eight times the number of property offenders (Harrison and Beck 2003). Thus, more than half of the inmates serving time in a federal prison are there for drug violations.

**Figure 9. Federal Prisoners by Offense in 2002**



Source: Department of Justice, Bureau of Justice Statistics  
 Note: Information is provided by the Prisoners in 2002 statistical report.

Additionally, when comparing the federal inmate prison population from 1985 and 2000 among all serious offenses, drugs almost doubled, going from 30.2% to 56.7%. Public-order offenses tripled from 8% to 24.6%. All the other major offenses actually decreased (in percentage) over time when compared to drug and public-order offending. By year 2000, violent offenses constituted only 10% with property offenses only comprising only 7.6%. This distinction is illustrated in Table 10.

Incidentally, it should be noted that the results on Table 12 may have been affected by a change in definitions for each offense over the time period analyzed. A change in the definition of any of the offenses could ultimately skew the results of each offense. This is definitely an issue worth noting.

**Table 10. Number and Percent of Sentenced Inmates in Federal Prison by Offense, 1985 and 2000**

Most serious offense	Number of Inmates <sup>a</sup>		Percent of inmates	
	1985	2000	1985	2000
Total	31,364	129,329	100%	100%
Violent offenses <sup>b</sup> (Homicide, Assault, Robbery, Other Violent)	7,768	12,973	24.8%	10.0%
Property offenses (Burglary, Fraud, Other Property)	5,289	7,524	16.9%	7.6%
Drug Offenses	9,482	73,389	30.2%	56.7%
Public-order offenses (Immigration, Weapons, Escape/court, Other Public-order)	2,514	31,855	8.0%	24.6%
Other/Unknown <sup>c</sup>	6,311	1,263	20.1%	1.1%

Source: Department of Justice, Bureau of Justice Statistics

Note: Data for 1985 are from table A-9 of Statistical Report, Federal Bureau of Prisons. Data for 2000 are from the BJS Federal justice database.

<sup>a</sup>Includes prisoners of any sentence length.

<sup>b</sup>Includes murder, nonnegligent manslaughter, and negligent manslaughter.

<sup>c</sup>Includes offenses not classifiable or not a violation of the United States Code.

Next, when analyzing drug populations from 1980 to 2000 within the State Correctional Facilities, we can clearly see a rapid growth for drug convictions. While in 1980, the drug offender population numbered 19,000; by 1990 the population had increased to 148,600. By 2000, the number of drug offenders had nearly doubled to 251,000. In other words, in just two decades the number of drug offenders in state prisons went up by 1,322%. This is demonstrated in Table 11.

**Table 11. Offenders Sentenced to State Prisons by Offense from 1980-2000**

Offense	1980	1985	1990	1995	2000	Total percent change, 1980-2000
Violent	173,300	246,200	313,600	459,600	589,100	340%
Property	89,300	140,100	173,700	226,600	238,500	267%
Drug	19,000	38,900	148,600	212,800	251,100	1322%
Public Order	12,400	23,000	45,500	86,500	124,600	1005%

Source: Department of Justice, Bureau of Justice Statistics

Note: Offense distribution for yearend 1980, 1985, 1990, 1995, and 2000 are based on data from the Survey of Inmates in State Correctional Facilities, conducted in November 1979, March 1986, and August 1991. Data for 1995 and 2000 are from the BJS Federal justice database. Data are based on sentenced inmates, regardless of sentence length.

The results in Table 11 also display similar rates with public order offenders with an increase of 1005% in the state prison population. In 1980, the public order population numbered 12,400, while in 1990 the population numbered 45,500. By 2000, the number of public order offenders increased to 124,600.

Likewise, violent and property offenders shared similar increases as well. Over a twenty year period, the violent offender population grew by 340% while the property offender population increased only 267%.

In brief, the data above demonstrates the phenomenal rise in the drug offender population within both the federal and state prison system when compared to all other categories of offenses. Additionally, the drug inmate population is also increasing at a faster rate than most serious offenses, such as violent and property crime. Clearly, drug incarceration rates have been tremendously affected by the “War on Drugs.”

### ***Racial Demographics and Prison Populations***

When examining drug offenders by race in 1990, there were far more black offenders (83,400) than there were white offenders (61,000). In 1995, black drug offenders outnumbered whites by 134,000 to 86,100. By year 2000, blacks outnumbered their white counterparts by 145,300 to 58,200. In 2002, the incarceration rate for black offenders nearly doubled the amount of white offenders. Moreover, when comparing the total percent change in the incarceration rate from 1990 to 2002, whites increased at 105% and blacks increased at 151%. Results are displayed in Table 12.

Results in Table 12 also reveal that black drug offenders are incarcerated at a higher rate per 100,000 U.S. residents than white offenders. In 1990, blacks were nine times more likely than whites to be sentenced to federal prison for drug offenses. While in 1995, there were 405 black drug offenders per 100,000 blacks in the U.S., compared to 40 white drug offenders per 100,000 whites. By 2000 and 2002, blacks had more than 12 times the amount of drug offenders per 100,000 than whites.

**Table 12. Number of Sentenced Drug Offenders in Federal Prisons by Race and Rate per 100,000 U.S. Residents, 1990-2002**

<b>Drug Offenders</b>	<b>1990</b>	<b>2002</b>	<b>Total percent change or average rate per 100,000, 1990-2002</b>
White	<b>61,000</b>	<b>64,500</b>	6%
Rate/100,000	<b>34.2</b>	<b>36.4</b>	6
Black	<b>83,400</b>	<b>126,000</b>	51%
Rate/100,000	<b>276</b>	<b>364</b>	32

Source: Department of Justice, Bureau of Justice Statistics

Note: The offense and race data is obtained in the National Corrections Reporting Program through estimates of admission and releases. Population figures for each race taken from the U.S. Census Bureau.

## Conclusions

It is apparent from the above figures that race figures prominently in the war on drugs. As shown here, while blacks represent about 12 percent of the total population and use illegal drugs no more than do whites, their arrest, conviction and incarceration rates for drug offenses far exceed whites. This cannot be by mere accident. Indeed, an argument can be made that the drug war has intentionally targeted blacks. Historical studies of drug laws (Musto, 1999; Helmer, 1975) have demonstrated that in virtually every case the outlawed drug was used mostly by racial and ethnic minorities, starting with the opium (used mostly by Chinese) and ending with crack cocaine (used mostly by blacks). Tonry (1995) has argued that since policy makers were made aware of the likely consequences of using the legal system to repress drug use would include targeting racial minorities and ignoring whites and they ignored such warnings, then it was their *intent* all along to target minorities. Whether or not policy makers consciously made such a decision is irrelevant; besides, racial bias has been repeatedly revealed in study after study during the past 20 years, but the findings are ignored.

It could also be argued that enforcing such laws in such an obviously biased manner conveniently becomes a method of disposing of the “dangerous classes” or the “surplus population.” Numerous scholars have made this argument (Shelden, 2001; Irwin, 2005, chapter 8).

- Baum, D. 1997. *Smoke and Mirrors: The War on Drugs and the Politics of Failure*. Boston: Little Brown/Back Bay Books.
- Day, D. 1995. "Drug Arrests: Are Blacks Being Targeted?" Washington, DC: Criminal Justice Foundation, April.  
<http://www.dogwoodcenter.org/publications/Day95.html>
- Flanagan, G. 2001. "The War on Drugs is a Racist War." *Liberation Journal*. August 15.  
[http://www.libertocracy.com/Webessays/police/drugwar/drugwar\\_racist.htm](http://www.libertocracy.com/Webessays/police/drugwar/drugwar_racist.htm)
- Gettman, J. 2000. *United States Marijuana Arrests, Part Two: Racial Differences in Drug Arrests*. NORML Foundation.  
[http://www.norml.org/index.cfm?Group\\_ID=5328](http://www.norml.org/index.cfm?Group_ID=5328)
- Grunbaum, J. A. et al. 2003. "Youth Risk Behavior Surveillance – United States, 2003." *Morbidity and Mortality Weekly Report* 53, No. SS-2. Washington, DC: U.S. Government Printing Office, May 21, 2004, pp. 49-65. Cited in *Sourcebook on Criminal Justice Statistics 2003*.  
<http://www.albany.edu/sourcebook/pdf/t362.pdf>.
- Gunja, F. 2003. "Position Paper: Race and the War on Drugs." The American Civil Liberties Union - *Drug Policy Litigation Project*. May.  
<http://www.aclu.org/Files/OpenFile.cfm?id=14089>
- Harrison, P. M. and J. C. Karberg. 2003. "Prison and Jail Inmates at Mid-Year 2002." Washington, DC: Bureau of Justice Statistics, April.
- Harrison, P. M. and A. J. Beck. 2001. "Prisoners in 2000." Washington, DC: US Department of Justice, *Bureau of Justice Statistics*, August.  
<http://www.ojp.usdoj.gov/bjs/pub/pdf/p00.pdf>
- Harrison, P. M. and A. J. Beck. 2003. "Prisoners in 2002." Washington, DC: US Department of Justice, *Bureau of Justice Statistics*, July.  
<http://www.drugwarfacts.com/women.htm>
- Harrison, P. M. and A. J. Beck. 2004 "Prisoners in 2003." Washington, DC: US Department of Justice, *Bureau of Justice Statistics*, November.  
<http://www.ojp.usdoj.gov/bjs/pub/pdf/p03.pdf>
- Harrison, P. M. and A. J. Beck. 2005. "Prison and Jail Inmates at Midyear 2004." Washington, DC: US Department of Justice, *Bureau of Justice Statistics*, April. <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim04.pdf>
- Helmer, J. 1975. *Drugs and Minority Oppression*. New York: Seabury Press.



- Human Rights Watch. 2000. *Punishment and Prejudice: Racial Disparities in the War on Drugs*. <http://www.hrw.org/reports/2000/usa/>
- Irwin, J. 2005. *The Warehouse Prison*. Los Angeles: Roxbury Publishing.
- King, Ryan S. and Marc Mauer. "The War on Marijuana: The Transformation of the War on Drugs in the 1990s." *The Sentencing Project*. May 2005. <http://www.sentencingproject.org/pdfs/waronmarijuana.pdf>
- Lapidus, L., N. Nuthra, A. Verma, D. Small, P. Allard and K. Levingston. 2005. "Caught in the Net: The Impact of Drug Policies on Women and Families." New York: American Civil Liberties Union, March. <http://www.aclu.org/womensrights/crimjustice/13210pub20050322.html>
- Mumola, C. J. 2000. "Incarcerated Parents and Their Children." Washington, DC: US Department of Justice, *Bureau of Justice Statistics* Special Report, August. <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf>
- Mumola, C. J. and A. J. Beck, Ph.D. 1997. "Prisoners in 1996." Washington, DC: US Department of Justice, *Bureau of Justice Statistics*, June. <http://www.ojp.usdoj.gov/bjs/pub/pdf/p96.pdf>
- Musto, D. F. 1998. *The American Disease: Origins of Narcotic Control*. (3<sup>rd</sup> ed.) New Haven, CT: Yale University Press.
- Rainville, G. and B. A. Reaves. 2003. *Felony Defendants in Large Urban Counties, 2000*. Washington, DC: Bureau of Justice Statistics, December. <http://www.ojp.usdoj.gov/bjs/pub/pdf/fdluc00.pdf>
- Shelden, R. G. 2001. *Controlling the Dangerous Classes*. Boston: Allyn and Bacon.
- Sourcebook of Criminal Justice Statistics*, various dates. Washington: U. S. Department of Justice.
- Substance Abuse and Mental Health Services Administration. 2005 "2004 National Survey on Drug Use and Health." Washington, DC.
- Substance Abuse and Mental Health Services Administration. 1994. National Household Survey on Drug Abuse. Washington, DC.
- Tonry, M. 1995. *Malign Neglect: Race, Crime, and Punishment in America*. New York: Oxford University Press.
- United States Sentencing Commission. 1995 *Cocaine and Federal Sentencing Policy*,

*Special Report to Congress.* Washington, D.C.: U. S. Government Printing Office.

U.S. Sentencing Commission 2000. *Guidelines Manual.* Washington, DC.  
<http://www.ussc.gov/2000guid/TABCON00.htm>

U.S. Sentencing Commission. 2003. “Drug Briefing Attachment: Explanation of Figures, Data, and Methodology.”  
[http://www.ussc.gov/AGENDAS/drugbrief/Release\\_Appendix\\_NoImpact.pdf](http://www.ussc.gov/AGENDAS/drugbrief/Release_Appendix_NoImpact.pdf),