

## The Racial Disparity in U.S. Drug Arrests

by

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This report summarizes results of my analysis of a racial disparity in connection with drug arrests. The analysis uses available data from two sources, one being an ongoing national survey of admitted drug use. While I have concerns about the quality of the drug-use data for making racial comparisons, in doing the analysis I put those concerns aside and used the data uncritically. However, those concerns do exist and I address some of them at the close. Note also that my analysis was confined to the arrest stage. I do not investigate any possible disparities beyond that stage of the justice system.

**The racial disparity** Annually, the FBI compiles statistics on persons arrested for "drug abuse violations," a category consisting both of drug selling and drug possession. To learn how many arrests there were for drug abuse violations, specially tabulated national data were obtained from the FBI covering the three-year period 1991 to 1993.<sup>1</sup> An annual average was then taken based on the three years. Based on these arrest records, blacks constituted an average of 40% of persons arrested nationwide per year for drug abuse violations.<sup>2</sup>

Annually, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the Public Health Service (Department of Health & Human Services) surveys illicit drug use through face-to-face interviews with members of American households

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<sup>1</sup>Where the race, drug type or type of drug offense (trafficking versus possession) were unknown, correction was made to bring drug arrests to the nationally estimated total.

<sup>2</sup>Information on race is not 100% complete in available arrest statistics. To illustrate, in 1993, race was known in 86% of drug abuse violation arrests. The racial composition of the unknowns may differ from the knowns. If so, some amount of measurement error is built into the drug statistics on race.

(including college dormitories and homeless shelters).<sup>3</sup> To learn how many people admitted to using selected categories of illicit drugs<sup>4</sup> - drugs that, if possessed, potentially subject the person to risk of arrest - any time during the 12-months prior to their interview, specially tabulated national data were obtained from SAMHSA. The data consist of annual averages based on three years of surveying households (1991 to 1993). These self-reports show that blacks constituted 13% of persons who admitted using (and therefore possessing) illicit drugs each year.

Since blacks are 40% of drug violation arrests but only 13% of admitted drug users, there is an apparent disparity of 27 percentage points (since  $40 - 13 = 27$ ).

**Redefining the disparity** Based on disaggregated FBI arrest data, blacks are 49% of persons arrested for drug selling and 36% of persons arrested for drug possession.

<u>Race</u>	<u>According to 1991-93 FBI data,</u> <u>percent of arrests for</u>	
	<u>selling drugs</u>	<u>possessing drugs</u>
All	100%	100%
White	50	63
Black	49	36
Other	1	1

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<sup>3</sup>Persons in jail or prison are not included in the SAMHSA survey. Were the purpose of my analysis to determine how many persons in the Nation use illicit drug, the absence of incarcerated persons from the SAMHSA survey would create a problem, particularly since many incarcerated persons admit they use illicit drugs when free. But my purpose is different. It is to learn how many people were subject to arrest for illicit drug use, and then compare that to the number of people actually arrested. By and large, incarcerated persons are not subject to arrest and are not included in arrest counts. Their absence from the SAMHSA survey, then, is actually desirable for my purposes.

<sup>4</sup>These selected categories are 1) heroin or cocaine, 2) marijuana, and 3) psychotherapeutics or hallucinogens. For the purpose of investigating the racial disparity between arrests and drug use, types of drugs not subject to arrest (for example, glue) were excluded from all tabulations. The 13% figure, therefore, only pertains to types of drugs for which possession is illegal.

Information on admitted drug selling is also available from the SAMHSA survey. In that survey, respondents are asked whether or not they had sold drugs during the year. On average over the three-year period 1991-93, blacks were 16% of admitted sellers:

<u>Race</u>	According to SAMHSA 1991-93 data,	
	<u>percent of persons</u> <u>selling drugs</u>	<u>using drugs</u>
All	100%	100%
White	82	84
Black	16	13
Other	2	3

Comparing arrest and household survey data for the period 1991-93 therefore provides evidence of two disparities:

**Disparity in drug selling** Blacks are 49% of arrests for selling drugs but only 16% of admitted drug sellers, a disparity of 33 percentage points;

**Disparity in drug possession** Blacks are 36% of persons arrested for drug possession but only 13% of persons admitting illicit drug use, a disparity of 26 percentage points.

The SAMHSA survey provides too little information on drug sales for any detailed analysis to be made of the disparity in connection with selling of illicit drugs.<sup>5</sup> However, enough detail exists to analyze the drug possession disparity.

**Disparity in illegal drug possession** Drug users are not all equally at risk of being arrested for drug possession. Certain factors (for example, frequent use) place some drug users at greater risk than others. What these factors are, and how the races differ on them, are spelled out next:

1. Type of drug used

Risk of arrest is greater for using heroin or cocaine than for using other drugs.<sup>6</sup> Risk of arrest varied as

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<sup>5</sup>For example, the SAMHSA survey does not specify type or quantity of drug sold or frequency of drug selling.

<sup>6</sup>Risk of arrest is measured by dividing the FBI's average annual number of persons arrested per year for a particular type of drug by the SAMHSA's average annual number of persons who said they used that drug any time during the 12 months prior to their

follows:<sup>7</sup>

Heroin/cocaine: 6%<sup>8</sup>

Marijuana: 1.5%<sup>9</sup>

Psychotherapeutics/hallucinogens: 1.2%<sup>10</sup>

With respect to type of drug used, the races differ in ways that place black drug users at greater risk of arrest than whites. Specifically, according to the SAMHSA data, among blacks who reported using illicit drugs during the year, 20% said the drug was heroin or cocaine, the type with the greatest risk of arrest. For white drug users, the figure was lower - 16%. The type of drug with the lowest risk of arrest - psychotherapeutics/hallucinogens - had a high use rate among whites and a low use rate among blacks. That is, 19% of black drug users and 30% of white drug users reported using this drug.

## 2. Frequency of use

A well established criminological fact is that the more crimes a person commits, the more likely that person is to be arrested. Accordingly, frequent drug users are more at risk of arrest than infrequent users.

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interview.

<sup>7</sup>Undoubtedly some drug users do not admit using drugs in the SAMHSA survey. Consequently, though the term "risk of arrest" is used, it would be more accurate to say "relative" risk of arrest.

<sup>8</sup>Put in words, 6% is the average annual FBI number of persons arrested for heroin or cocaine (or their derivatives), divided by the average annual number of SAMHSA respondents who said they used heroin or cocaine any time during the year.

<sup>9</sup>Put in words, 1.5% is the average annual FBI number of persons arrested for marijuana, divided by the average annual number of SAMHSA respondents who said they used marijuana any time during the year.

<sup>10</sup>Put in words, 1.2% is the average annual FBI number of persons arrested for anything other than heroin or cocaine (and their derivatives) or marijuana, divided by the average annual number of SAMHSA respondents who said they used psychotherapeutics or hallucinogens any time during the year.

arrest than whites. Among black drug users, 54% reported using drugs at least monthly and 32% reported using them weekly. Such frequent drug use was less common among white drug users. Among white users, 39% reported using drugs monthly and 20% reported using them weekly.

### 3. Place of use

Drug law enforcement is heavily concentrated in large urban places. To illustrate, large metropolitan areas are where 44% of Americans live and where 47% of illicit drug use occurs but where 60% of drug possession arrests occur.

With respect to place of residence, the races differ in ways that place black drug users at greater risk of arrest than white users. Large metropolitan areas are where 60% of blacks live but where 41% of whites live. Moreover, large metropolitan areas are where 63% of black drug use occurs compared to 45% of white drug use.

Although blacks are 13% of drug users, they should comprise over 13% of drug possession arrests since the types of drugs they use, the frequency with which they use them, and the places where they use them, put blacks at greater risk of arrest. How much in excess of 13% cannot be precisely determined from existing data, but the data do allow estimates to be made. One such estimate is given next, preceded by information on how it was derived.

1. Drug use data for the analysis. Since there are three races (white, black, other), three types of drugs (heroin/cocaine, marijuana, psychotherapeutics / hallucinogens) and four place sizes (large vs. medium vs. small vs. non-metropolitan statistical areas),<sup>11</sup> 36 race-drug-place-specific numbers from the SAMHSA survey were obtained. The measure of drug use selected from the SAMHSA survey for the analysis was "average number of days of drug use in the past 12 months." This measure was available just for cocaine and marijuana. For heroin, psychotherapeutics (e.g., analgesics such as darvon, percodan and codeine; tranquilizers; stimulants; sedatives) and hallucinogens (e.g., PCP and LSD), the measure selected for the analysis was "any use during the past 12 months." Estimated heroin use was then combined with that of cocaine to form a

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<sup>11</sup>The Nation is divided into four metropolitan statistical areas (MSA's) defined by population size: large (1 million and over), medium (250,000 to 999,999), small (MSA's under 250,000), and non-MSAs.

combined heroin/cocaine category.<sup>12</sup>

2. Drug arrest data for the analysis. Since there are three races (white, black, other), three types of drugs for which detailed arrest statistics exist (heroin/cocaine, marijuana, psychotherapeutics/hallucinogens) and four place sizes (large vs. medium vs. small vs. non-metropolitan areas), 36 race-drug-place-specific numbers from FBI arrest records were obtained. The 36 specify the number of arrests for drug possession by race, type of drug possessed, and size of place. In the arrest data, drugs were classified as closely as possible to match the three SAMHSA drug categories.

3. Once the 72 pieces of information were assembled, analysis proceeded this way:

a. First, white drug users' risk of arrest was calculated. Since there are three drug types and four place sizes, there were 12 risk measures. Risk of arrest was calculated by dividing the number of white arrests (based on the FBI data) by the number of instances of admitted white drug use (based on the SAMHSA survey).

b. Next, the 12 were applied to the black drug users who were like the white drug users in terms of type of drug used, frequency of use, and place of use. The product was 12 separate counts of "expected black arrests." For example, white risk of arrest for heroin/cocaine in large metropolitan areas was applied to the number of blacks using heroin/cocaine in large metropolitan areas to obtain one of the 12 counts of expected black arrests.

c. These 12 counts of "expected black arrests" were then summed.

d. Lastly, the sum of "expected black arrests" was divided by the hypothetical total arrests, where this hypothetical was defined as actual white arrests plus expected black arrests plus actual arrest of other races. The result was "23%."

The estimate - 23% - is what the black possession arrest percentage should be, taking into account differences between whites and blacks in terms of type of drug used, frequency of use, and place of use. In other words, although blacks were 13%

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<sup>12</sup>Heroin and cocaine had to be combined because FBI arrest figures combine heroin and cocaine in the same category.

of drug users, given how they differed from whites with respect to increased risk, they should amount to 23% of arrests, or 10 percentage points beyond the 13% figure.

**Discussion** The aim of the analysis was to investigate a 23-percentage-point racial disparity in connection with drug possession arrests (blacks are 36% of drug possession arrests but 13% of drug users, a disparity of 23 points). The analysis revealed that 10 of the 23 points were attributable to race-neutral factors.

The analysis leaves unexplained 13 percentage points (the difference between 36% and the explained 23%). Perhaps the 13 percentage points or some portion of them reflect a practice of police unjustifiably overarresting blacks, but not necessarily. Besides discriminatory arrest practices, there are numerous other possible explanations. Suppose, for example, that criminally active persons who use drugs (both whites and blacks alike) tend not to admit drug use when asked in a household survey. This is not wild supposition, given that, in the National Institute of Justice's Drug Use Forecast survey, about half of arrested suspects testing positive for drug use were drug-use-deniers (they denied using drugs but urinalysis indicated otherwise). Although arrested whites and arrested blacks were about equally likely to be drug-use-deniers, these results nevertheless have implications for the SAMHSA survey. A larger fraction of the black population than the white population consists of criminally active persons and, therefore, a larger fraction of the black population than the white population would consist of criminally active persons who use drugs but deny it.<sup>13</sup> Consequently, the SAMHSA survey would probably understate the difference between whites and blacks in terms of drug use. Whether the effect of such drug-use-denial among criminally active persons is large enough to account for the unexplained 13 percent is not known, but research on the topic should pursue this possibility.

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<sup>13</sup>I do not address drug-use denial among the non-criminally active segment of the population. While research on the topic exists, I have not familiarized myself its findings.