WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Racial Disparities in Arrests in the District of Columbia, 2009-2011

Implications for Civil Rights and Criminal Justice in the Nation's Capital

July 2013

A report of the
Washington Lawyers' Committee
for Civil Rights & Urban Affairs
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Preface

This report is dedicated to Judge Louis F. Oberdorfer, the distinguished jurist, who inspired the creation of the Washington Lawyers' Committee for Civil Rights in 1968 while a Partner at Wilmer, Cutler & Pickering. Judge Oberdorfer served on the Committee's Board of Trustees until his elevation to the bench in 1977. Throughout his long career, Judge Oberdorfer, who died in February of this year, spoke eloquently in support of civil rights and criminal justice reform. In his memory, the Louis F. Oberdorfer Fund has been established to support the Committee's ongoing work on criminal justice reform and civil rights advocacy.

The Washington Lawyers' Committee would like to acknowledge with particular gratitude the service of the following retired and senior Federal and District of Columbia Judges who composed the Advisory Committee assisting with this study:

John M. Ferren, Senior Judge, District of Columbia Court of Appeals

Rufus G. King III, Senior Judge, Superior Court of the District of Columbia

James Robertson, Retired Judge, United States District Court for the District of Columbia

Ricardo M. Urbina, Retired Judge, United States District Court for the District of Columbia

Patricia M. Wald, Retired Chief Judge, United States Court of Appeals for the District of Columbia Circuit

We also want to express our appreciation for the invaluable assistance in researching and writing this report provided by a team of lawyers from Covington & Burling LLP: Joshua Asher, Michael Beder, Darien Capron, Ran Mukherjee, and Alan Pemberton.

Finally, the Committee would like to recognize the contributions of Jason Ziedenberg, for his editorial support, and Philip Fornaci, the former Director of the Committee's DC Prisoners' Project, whose leadership and vision were indispensable to this undertaking.

Roderic V.O. Boggs
Executive Director
July 12, 2013

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Introduction

At its founding in 1968, the Washington Lawyers' Committee for Civil Rights and Urban Affairs sought to address issues of racial discrimination and their associated causes. Our work started with efforts to address issues of discrimination and poverty identified by the Report of the National Advisory Commission on Civil Disorders (known as the Kerner Commission) as the root causes of the riots that had erupted in cities across the country throughout the 1960s. Forty-five years later, the Washington Lawyers' Committee has developed a wide range of litigation and advocacy programs and projects addressing a broad range of civil rights and poverty concerns, including criminal justice reform and prisoners' rights. In 2006 the Committee joined forces with the DC Prisoners Project to make prisoners' rights a formal and major part of its work.

The Washington Lawyers' Committee has long been concerned by the impact of the drug laws and drug policies on the population it serves, and the Committee's view has been that drug abuse and addiction are most appropriately treated primarily as public health concerns rather than criminal matters. While litigation efforts to win judicial recognition of this principle were unsuccessful in the 1970s, the Committee's pilot program at that time demonstrated the importance of legal support and expanded treatment for addicted individuals.

This report grows out of increasing concern that broader aspects of our local and national criminal justice systems — even beyond questions relating to drug policies — reflect significant racial disparities that raise important questions of public policy and civil rights concerns. In order to further explore these issues, the Committee convened a panel of senior and retired judges, and enlisted the support of a team of attorneys at the firm of Covington & Burling LLP, to obtain and analyze a comprehensive set of arrest data for the District of Columbia covering the years 2009, 2010 and 2011. Together, the Washington Lawyers' Committee, Covington &

Burling LLP, and the judicial review committee have analyzed and reviewed the data. While we leave it to readers to draw their own conclusions, it is the view of this report's authors and advisors that the statistics contained here should serve as a wake-up call to Washington, D.C. residents and policymakers. These findings speak to the need for residents and policymakers to take a deeper look at some of the civil rights implications of our drug, public health and public safety policies.

Key findings arising from the our analysis of the data, which should give D.C. residents and policymakers cause for concern, include:

- **More than eight out of 10 arrests in our city were of African Americans.** MPD reported a total of 142,191 adult arrests from 2009 through 2011. While there are about as many African Americans aged 18 or older (47.6%) as there are adult whites (42%) living in this city, eight out of 10 adults arrested for a crime in Washington are African American. In 2010, there were 40,353 arrests of adult African American Washingtonians, which is equivalent to 17 percent of the total number of adult African American D.C. residents. [1] Moreover, there were 31,874 arrests that year of adult African American men, which is equivalent to more than 30 percent of the adult male African American population. The 4,866 arrests of white residents is equivalent to 2 percent of the white D.C. residents aged 18 or older.
- **Wards with more African American residents witnessed far more arrests.** The five wards where seven out of 10 arrests in the city were made are home to nine out of 10 African American residents of the city. Even in wards where fewer African Americans live, African Americans made up a disproportionately high percentage of arrestees.
- **More than 19 out of 20 arrests in Washington, D.C. were for nonviolent offenses.** Four of the largest categories of offenses — arrests classified by Metropolitan Police Department (MPD) under the drug, traffic, disorderly conduct, and "other assault" charge categories — alone accounted for about six out of 10 arrests in the District. Offenses in these categories are not considered violent crimes within the definitions used by the FBI's Uniform Crime Reporting system.
- **Nine out of 10 individuals arrested for drug offenses were African American.** African Americans were the overwhelming majority of drug arrestees, across all major categories of narcotics, including powder cocaine, crack cocaine, heroin and other drugs.

[1] Note, however, that this does not necessarily mean that literally 17 percent of all adult African Americans living in D.C. were arrested in 2010; some individuals were arrested more than once, and some individuals arrested in D.C. may not have been D.C. residents.

- **Six out of 10 drug arrests were for simple possession, and nearly nine out of 10 of arrests for possession involved African American arrestees.** Marijuana arrests represented the lead category of arrests.

- **Wards with a high percentage of African American residents accounted for a disproportionately high percentage of all drug arrests.** Wards that had a higher percentage of white residents accounted for a lower percentage of drug arrests, but even in these wards, African Americans were arrested for drug crimes at disproportionately high rates given the wards' demographics.

- **While there are significant disparities between whites and African Americans in drug arrests, drug use survey data shows much less disparity in drug use among the two groups.** Drug use survey data shows little disparity in drug use among wards in contrast to the large disparities in drug arrest numbers among the wards.

- **Nearly seven out of 10 traffic arrests were of African Americans.** The disparity was less evident for traffic offenses that involved conduct more obvious to an observer, like Driving Under the Influence, as opposed to conduct that is less externally obvious, such as driving on a suspended license.

- **Eight out of ten individuals arrested for disorderly conduct were African American or Hispanic.** African Americans accounted for more than three-quarters of disorderly conduct arrestees in each of the three years. However, the overall number of disorderly conduct arrests dropped about 16.5 percent between 2010 and 2011, compared with a drop of about 1.1 percent in reported arrests for all offenses. The drop in disorderly conduct arrests coincided with changes in the disorderly conduct statutes, including the repeal of one of the most frequently recorded forms of the charge, "loud and boisterous" behavior. The authors do not attempt in this report to determine whether there is a causal connection between the statutory changes and the drop in disorderly conduct arrests. However, this correlation at least suggests that it may be possible to reduce the aggregate impact of racially disparate arrest patterns through community-driven changes to laws, policies, and practices.

- **Eight out of 10 arrests in the "other assault" charge category were of African Americans.** "Other assaults"—an offense category that generally represents the least serious assaultive behavior that comes to the attention of law enforcement—was among the four largest arrest categories. As is true of arrests as a whole and arrests within the other largest charge categories, arrests in the "other assaults" category involved disproportionately large numbers of African American arrestees.

- **Most arrests did not result in confinement, probation, or diversion.** A preliminary analysis of dispositional information shows that, of the thousands of arrests for nonviolent offenses in this city, many do not result in any adjudication on the merits. A significant number of cases are dismissed, with a number being resolved by a prosecutor discontinuing the case or by a judicial dismissal with prejudice. But even in the absence of a conviction, an arrest record creates serious problems for an individual, and a discriminatory pattern of arrests has serious implications for an entire community.

The Committee and its partners offer these research findings to the residents of Washington, D.C. and local policymakers so that this community can make informed policy choices: the city can choose policies most likely to reduce the harm of drug use, adopt practices that help the city operate a justice system free of unconscious or conscious bias, and change systemic practices which may be having an unintended effect in generating these outcomes.

About the data, methodology and demographic reporting

Data and methodology.

The data on non-juvenile arrests for the years 2009, 2010, and 2011 were provided to the authors by the Metropolitan Police Department (MPD). Court disposition data for 2009, 2010, and 2011 were provided by the D.C. Superior Court in response to a request by the Washington Lawyers' Committee to District of Columbia Superior Court Chief Judge Lee Satterfield. The authors analyzed the data to develop meaningful findings to shape a public policy discussion, which was reviewed by the advisors to this project. Further details of the methodology underlying particular findings are noted where relevant. The Washington Lawyers' Committee is grateful to MPD, the D.C. Superior Court, and Judge Satterfield for providing access to this data. Scholars who wish to conduct follow-up research using this data are welcome to contact Washington Lawyers' Committee to make appropriate arrangements.

Demographic reporting.

The graphs the authors developed were based on information received from the MPD, the Superior Court and the U.S. Census Bureau. In the graphs, the authors note the demographic information provided to us by these government entities. For instance, MPD's arrest data includes a one-letter code to identify an arrestee's race, with the most common categories being "B" for black, "W" for white, and (in 2011 and late 2010) "H" for Hispanic. While the authors have elected to use other language in the text in the report to explain the findings, the graphs retain the demographic language used by these source entities for reporting purposes.

The authors note that further research is needed on how residents identified as Hispanic are affected by our criminal justice processes. The arrest data MPD provided did not report Hispanic arrestees as a separate category in 2009 or most of 2010. As a result, this analysis

largely focuses on the reportable findings on "blacks" and "whites." Where the report focuses specifically on 2011 data, findings regarding Hispanic arrestees also may be reported.

Other information and appendices.

This summary reflects select findings from the data that the authors analyzed. The authors elected to focus on nonviolent arrests because they represent the overwhelming majority of arrests in this city, and arrest patterns for four of the largest arrest categories (traffic, disorderly conduct, non-aggravated assaults, and drug arrests) together comprise more than six out of ten arrests in the District. For more information on data the authors collected on other offense categories, researchers are welcome to contact the Washington Lawyers' Committee.

Arrests: Overall demographic findings

More than eight out of 10 arrests were of African Americans.

According to the United States Bureau of the Census, in 2010 the District of Columbia had a total population of 601,723, of whom 305,125 (50.7%) were African American 231,471 (38.5%) were white, and 54,749 (9.1%) were Hispanic.

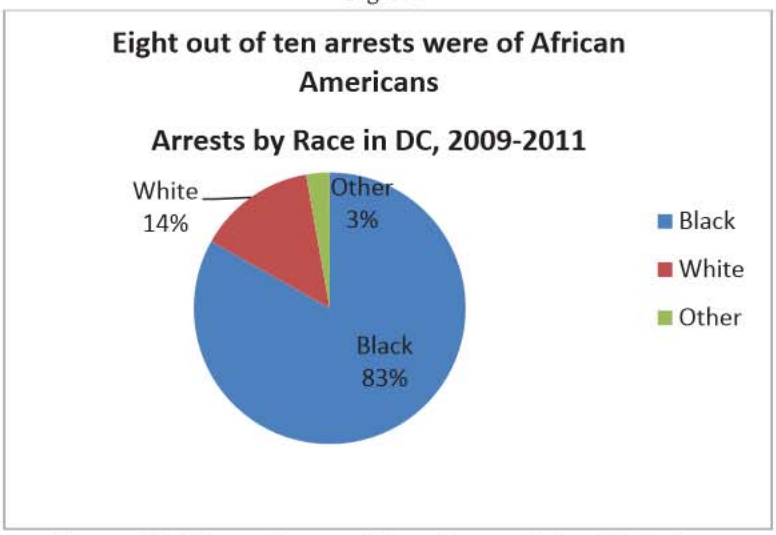
Among adults (18 and older) – the focus of this analysis—there were about as many African American adults (47.6%) as white adults (42%).

Between 2009 and 2011, however, more than eight out of 10 of those residents who were arrested[2] for all crimes were African Americans.

In 2010, there were 40,353 arrests of adult African American Washingtonians, which is equivalent to 17 percent of the total number of African American residents aged 18 or older. Moreover, there were 31,874 arrests that year of adult African American men, which is equivalent to more than 30 percent of the adult male African American population. The 4,866 arrests of white residents was equivalent to 2 percent of the white D.C. residents aged 18 or older.

[2] **Methodology I:** Analysis of arrest patterns: Data on non-juvenile arrests for 2009, 2010, and 2011 were provided by MPD. Unless otherwise noted, all references to "arrests" throughout this report refer to non-juvenile arrests. MPD's response indicated that "non-homicide arrests reflect arrests made by all agencies in the District of Columbia," but the data do not distinguish between arrests made by MPD and those made by other agencies. For the purposes of this report, the authors refer to all arrests reported in MPD's response as "MPD arrests."

Figure 1



Source: Washington Lawyers' Committee analysis of MPD data.

Arrests by location: Wards with more African American residents witnessed more arrests.

The five wards where seven out of 10 arrests in the city were made are home to nearly nine out of 10 African American residents of the city.

While Washington, D.C. wards have roughly the same number of residents – somewhere between 70,000 and 80,000 residents – the arrests are not distributed evenly among the wards. Six out of 10 residents live in five wards: Wards 4, 5, 6, 7 and 8. These five wards are where nearly nine out of 10 African American residents of Washington, D.C. live.

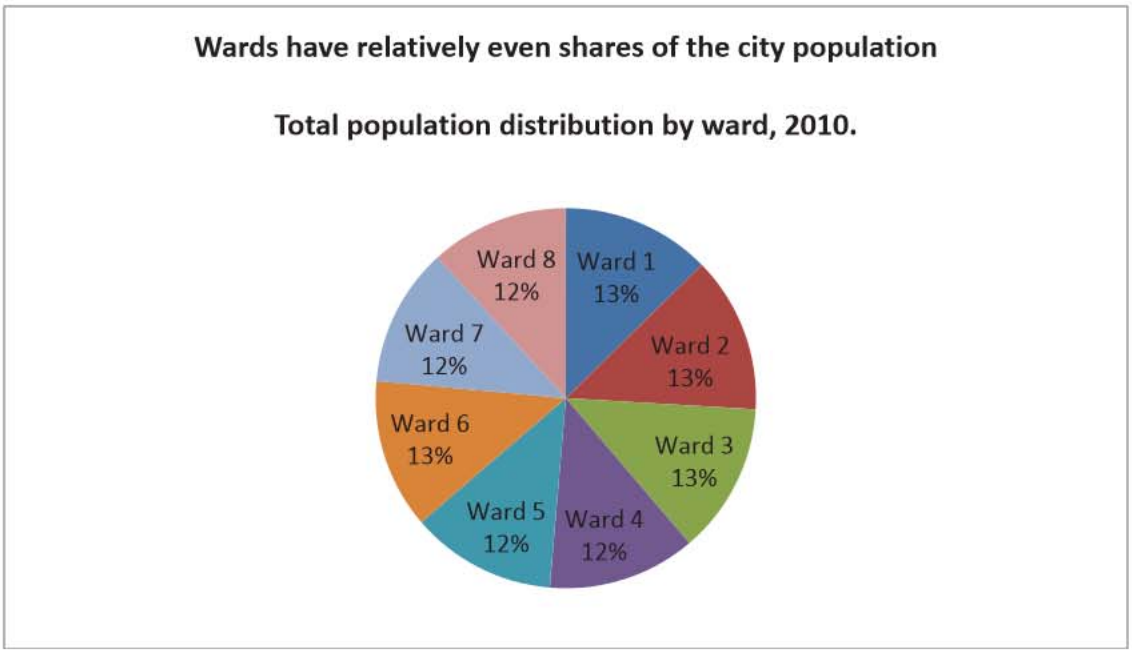
There are five wards in the city where nearly nine out of 10 African American residents live.

Figure 2

Ward	Total Population	African American population (number)	African American population (percent)
Ward 1	76,197	24,794	32.5%
Ward 2	79,915	10,079	12.6%
Ward 3	77,152	3,860	5.0%
Ward 4	75,773	44,459	58.7%
Ward 5	74,308	56,489	76.0%
Ward 6	76,598	31,842	41.6%
Ward 7	71,068	67,471	94.9%
Ward 8	70,712	66,131	93.5%
Total	**601,723**	**305,125**	**50.7%**
African American residents in Wards 4 to 8		**266,392**	**87% of African American residents live in five wards**

Source: U.S. Department of Commerce, Bureau of the Census (2010).

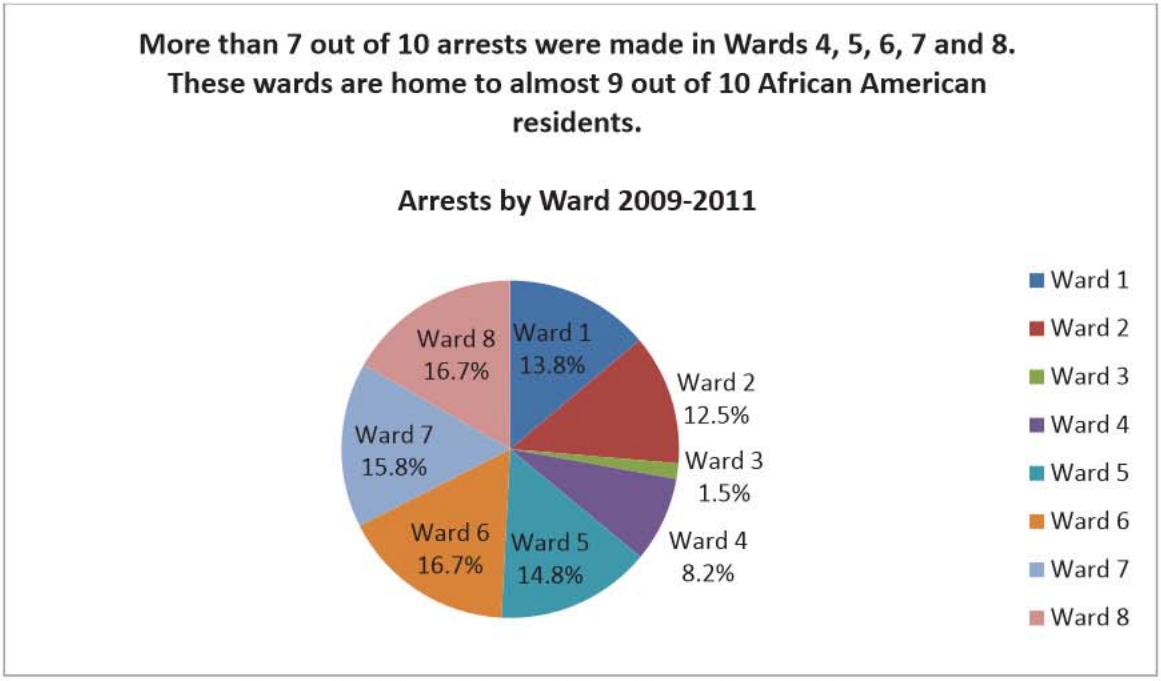
Figure 3



Source: U.S. Department of Commerce, Bureau of the Census (2010).

When the authors mapped[3] the arrests by ward, seven out of 10 arrests (72 percent) were found to have occurred in Wards 4, 5, 6, 7 and 8. Even in wards where fewer African Americans live, African Americans made up a disproportionately high share of arrestees in those wards: In 2011, just under half of Ward 2 arrestees and more than 80 percent of Ward 6 arrestees were African American, even though they made up only 12.6 percent and 41.6 percent of the population in these wards.

Figure 4



Source: Washington Lawyers' Committee analysis of MPD data.

[3] **Methodology II: Mapping arrests by location.** The data provided to the researchers included a separate entry for each reported arrest, and included such information as the date of the arrest; the arrestee's name, age, and race; the address or intersection where the arrest took place; and a charge category and charge description for the top charge associated with the arrest. For 2009 and 2010 data, the authors used Geographic Information Systems software and publicly available GIS data provided by the D.C. government, to map approximately three-quarters of arrest-location addresses to the District's ward boundaries. The data MPD provided for 2011 included a field indicating the ward where an arrest took place, and this information was included for 45,344 arrests, about 94.5 percent of the reported arrests in 2011. Arrest location information for 2009-10 reflects 73,063 arrests that were successfully matched to ward boundaries, approximately 75.1 percent of total arrests.

Arrests composition

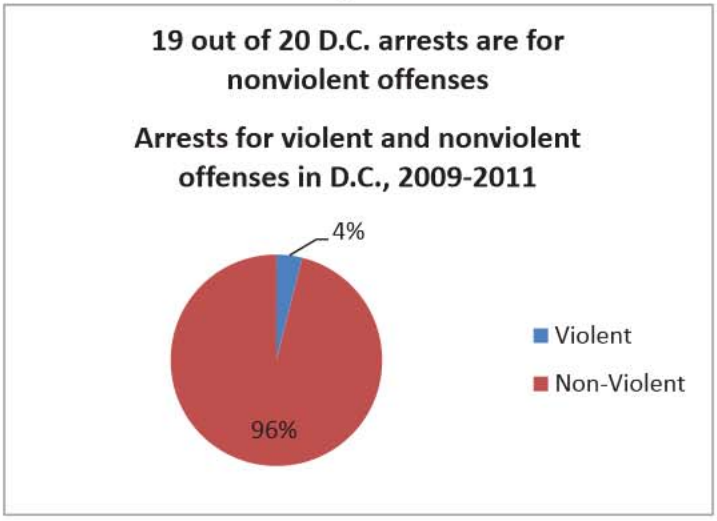
Violent and nonviolent arrests

Nineteen out of 20 arrests in Washington, D.C. were for nonviolent offenses.

Drug, traffic, disorderly conduct and "other assault" charges accounted for six out of 10 arrests in the District.

More than 19 out of 20 arrests in Washington D.C. were for nonviolent offenses. Arrests for violent offenses[4] constituted 4 percent of all arrests in 2009, 2010, and 2011 — totaling just 1,848 of the 48,668 arrests in 2009, 1,890 of the 48,567 arrests in 2010, and 2,108 of the 44,956 arrests in 2011. Without minimizing the harm that D.C. residents experience from any crime, it is clear that when an arrest is made in this city, it is much more likely than not to be for a non-violent offense.

Figure 5



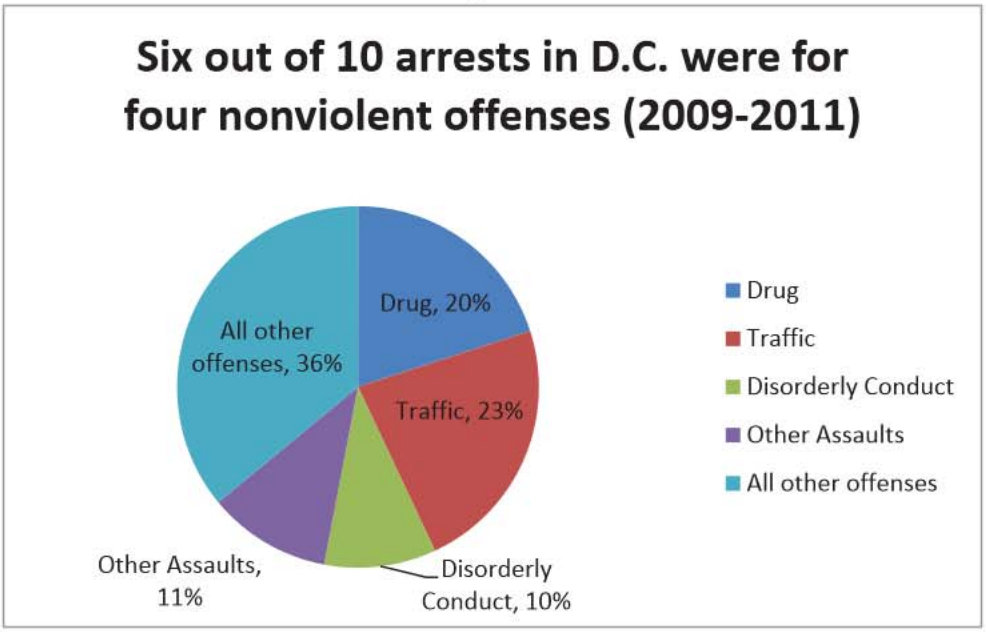
Source: Washington Lawyers' Committee analysis of MPD data.

[4] **Violent crime defined.** In the FBI's Uniform Crime Reporting (UCR) Program, the category of "violent crimes" includes murder and non-negligent manslaughter, forcible rape or sexual abuse, robbery, and aggravated assault. In 2009, 2010, and 2011, nearly all of violent crime arrests in the city were for the crimes of aggravated assault or robbery — 95% of all arrests for violent crimes in each of 2009 and 2010, and 91% of all arrests for violent crimes in 2011. Between 4% and 5% of the arrests for violent crimes each year were for homicide or manslaughter (79 total arrests in 2009, 87 in 2010, and 80 in 2011). Arrests for rape were low in 2009 and 2010 — 15 arrests and 9 arrests, respectively — but increased significantly in 2011 to 103 arrests (or 5 percent of the total arrests for violent crime in that year).

Arrests in four common nonviolent offense categories (drug offenses, traffic, disorderly conduct and other assault) accounted for more than six out of 10 arrests in the city.

Since arrests for these four nonviolent crimes comprise such a large portion of total arrests, the rest of this analysis will focus on these offense categories.

Figure 6



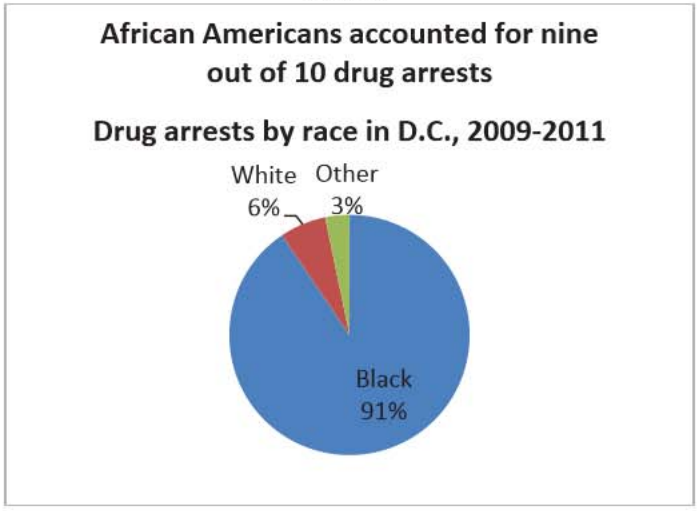
Source: Washington Lawyers' Committee analysis of MPD data.

Drug offenses

African Americans accounted for nine out of 10 drug arrests.

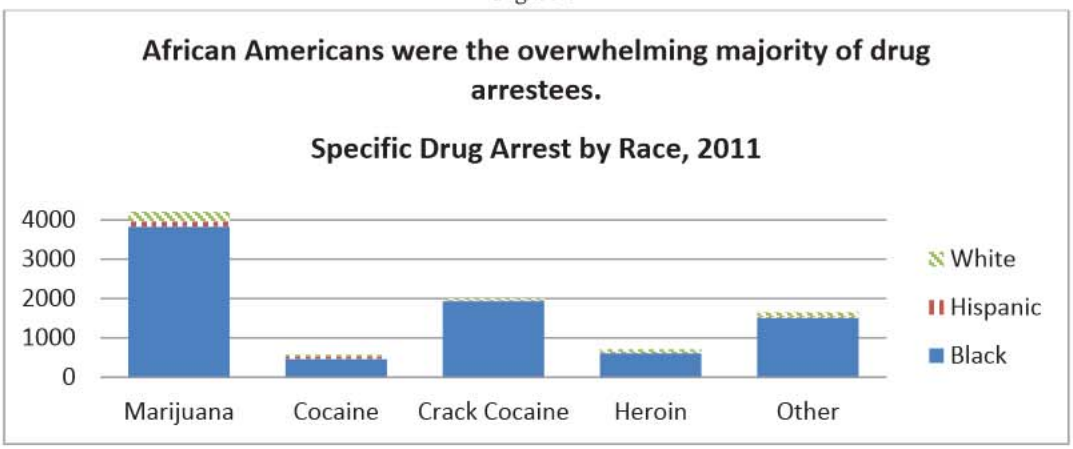
In each year from 2009 through 2011, drug arrests accounted for just under 20 percent of all MPD arrests – about one out of five arrests in the city. Drug arrestees were overwhelmingly from the African American population. Over the three-year period, in the "Narcotic Drug Laws" charge category, African American arrestees accounted for about 91 percent of arrests. This disparity also was present within the arrest patterns for particular drugs, including arrests involving marijuana, crack cocaine, cocaine, and heroin. Marijuana arrests were far more common than arrests involving any other drug.

Figure 7



Source: Washington Lawyers' Committee analysis of MPD data.

Figure 8



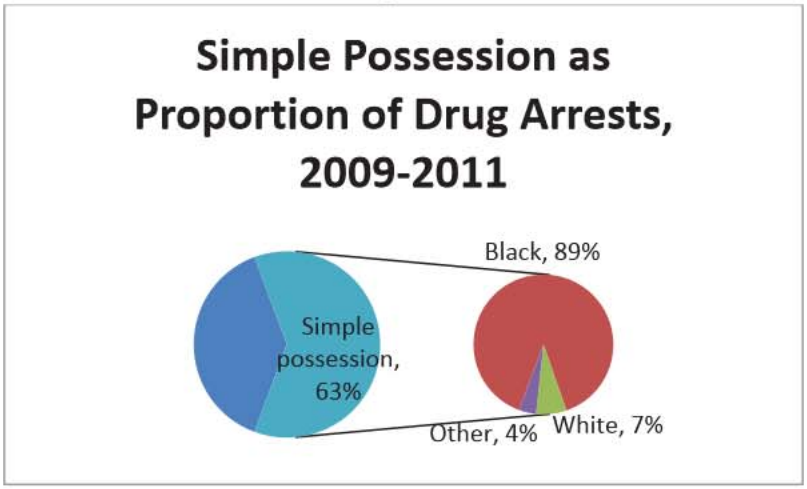
Source: Washington Lawyers' Committee analysis of MPD data.

Six out of ten drug arrests involved simple possession.

Over the three-year period, 63 percent of drug arrests were for simple possession charges (including possession of drug paraphernalia). African American arrestees accounted for nearly nine out of 10 simple possession drug arrests during the three-year period.

Six out of 10 drug arrests were for simple possession
About nine out of ten simple possession arrests involved African American arrestees

Figure 9



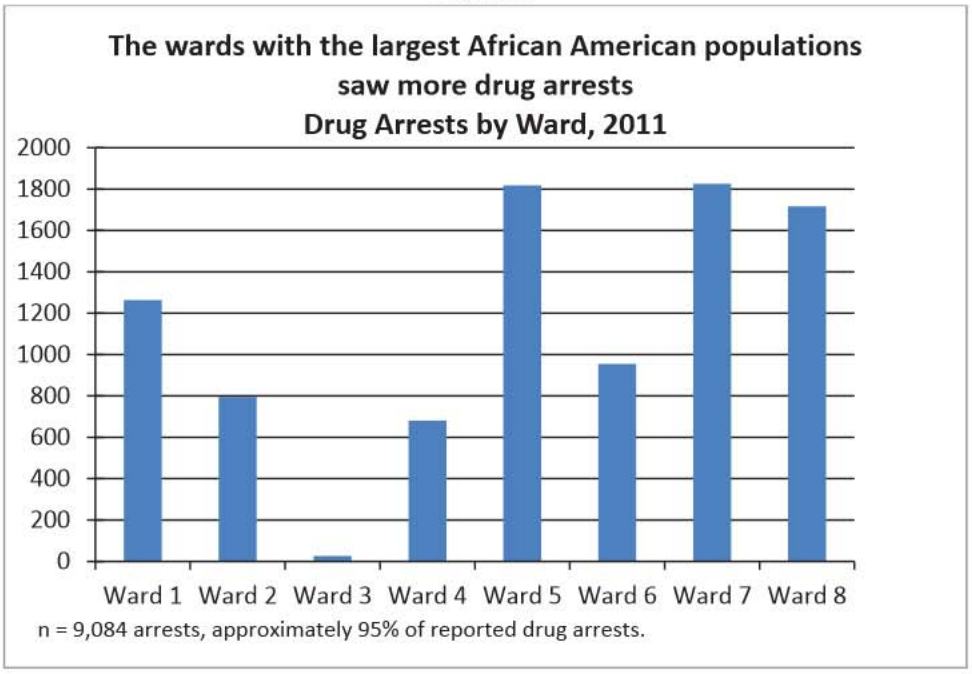
Source: Washington Lawyers' Committee analysis of MPD data.

Wards that had a high percentage of African American residents had a higher percentage of all drug arrests.

For more than 95 percent of 2011 drug arrests, MPD's arrest data identified the ward where the arrest occurred.

Wards 5, 7 and 8 had the highest number of 2011 drug arrests, accounting for about 19 percent, 19.1 percent, and 18 percent of drug arrests, respectively. As of the 2010 Census, the proportion of D.C.'s population residing in these wards ranged from about 11.8 percent of D.C.'s population residing in Ward 8 to 12.3 percent of the population residing in Ward 5.[5] Ward 5's population was about 77 percent African American as of 2010, as was 96 percent of Ward 7 and 94 percent of Ward 8.[6]

Figure 10



[5] *See* http://www.neighborhoodinfodc.org/wards02/wards.html.

[6] *Id.*

Wards that had a higher percentage of white residents had a lower percentage of drug arrests

Ward 1 accounted for about 12.7 percent of D.C.'s population and about 13.2 percent of its drug arrests in 2011. Ward 3 had the lowest reported number of drug arrests in 2011 — only 27 total, less than one percent of that year's drug arrests — despite being home to about 12.8 percent of the District's population. Ward 3 is about 78 percent white.

While there fewer arrests from wards where the residents were majority white, even among wards where the African American population is comparatively smaller, African Americans were disproportionately represented among arrests: while only about a third of Ward 1's population was African American, almost 81 percent of the drug arrestees in Ward 1 were African American.

While there were significant disparities in drug arrests between the two groups, national drug use survey data shows little disparity in drug use between whites and African Americans.

While there were disparities in drug arrest patterns, the leading national survey of drug use shows much less disparity between drug use rates between whites and African Americans. The National Survey on Drug Use and Health (NSDUH) found that in 2011, the national rate of illicit drug use within the previous month among those 18 and older ranged was 15.5 percent in the African American community and 14.7 percent in the white community.[7] The national rate of lifetime illicit drug use among those 18 and older was higher among whites: 53.5 percent, compared with 47.5 percent for African Americans.[8]

[7] *See* Table 1.23B, Results from the 2011 National Survey on Drug Use and Health: Summary of National Findings and Detailed Tables, http://www.samhsa.gov/data/NSDUH/2011SummNatFindDetTables/Index.aspx.

[8] *Id.*

Drug use survey data shows much less disparity in drug use among wards than the disparity seen in drug arrests among wards.

The National Survey on Drug Use and Health findings on drug use by ward show much less disparity in reported drug use among wards. NSDUH estimated that 9.43 percent of Ward 3 residents aged 18 and older had used illicit drugs in the previous month, compared with 12.2 percent of Ward 5, 13.07 percent of Ward 7, and 14.15 percent of Ward 8.[9] Although this does show a difference in drug use among these areas, such differences are far less pronounced than the differences in drug arrest rates. The low number of drug arrests in Ward 3 is particularly notable. NSDUH estimated that the rate of cocaine use in the past year among Ward 3 adults was about the same as the city-wide average.[10] Yet, cocaine-related arrests were in the single digits for Ward 3 in each of the years examined.

While there are significant racial disparities among wards in drug arrests, the disparities in surveyed drug use rates are smaller (2008 to 2010).

Figure 11

State/Substate Region	18+ (Estimated %)	18+ (95% Confidence Interval)
District of Columbia	11.62	(9.94 - 13.54)
Ward 1	11.92	(8.94 - 15.71)
Ward 2	11.75	(8.86 - 15.44)
Ward 3	9.43	(7.04 - 12.53)
Ward 4	10.36	(7.50 - 14.15)
Ward 5	12.20	(8.80 - 16.68)
Ward 6	10.92	(8.05 - 14.64)
Ward 7	13.07	(9.98 - 16.95)
Ward 8	14.15	(10.68 - 18.52)

Source: Table 1 – *Illicit Drug Use in the Past Month*, by Age Group and Substate Region: Percentages, Annual Averages Based on 2008, 2009, and 2010 NSDUHs (SAMHSA, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2008, 2009, and 2010 (Revised March 2012)).

[9] *See* Table 1, 2008-2010 National Survey on Drug Use and Health Substate Age Group Tables, http://www.samhsa.gov/data/NSDUH/substate2k10/AgeGroupTables/NSDUHsubstateAgeGroupTabs2010.htm.

[10] *See id.* at Table 7.

Traffic violations

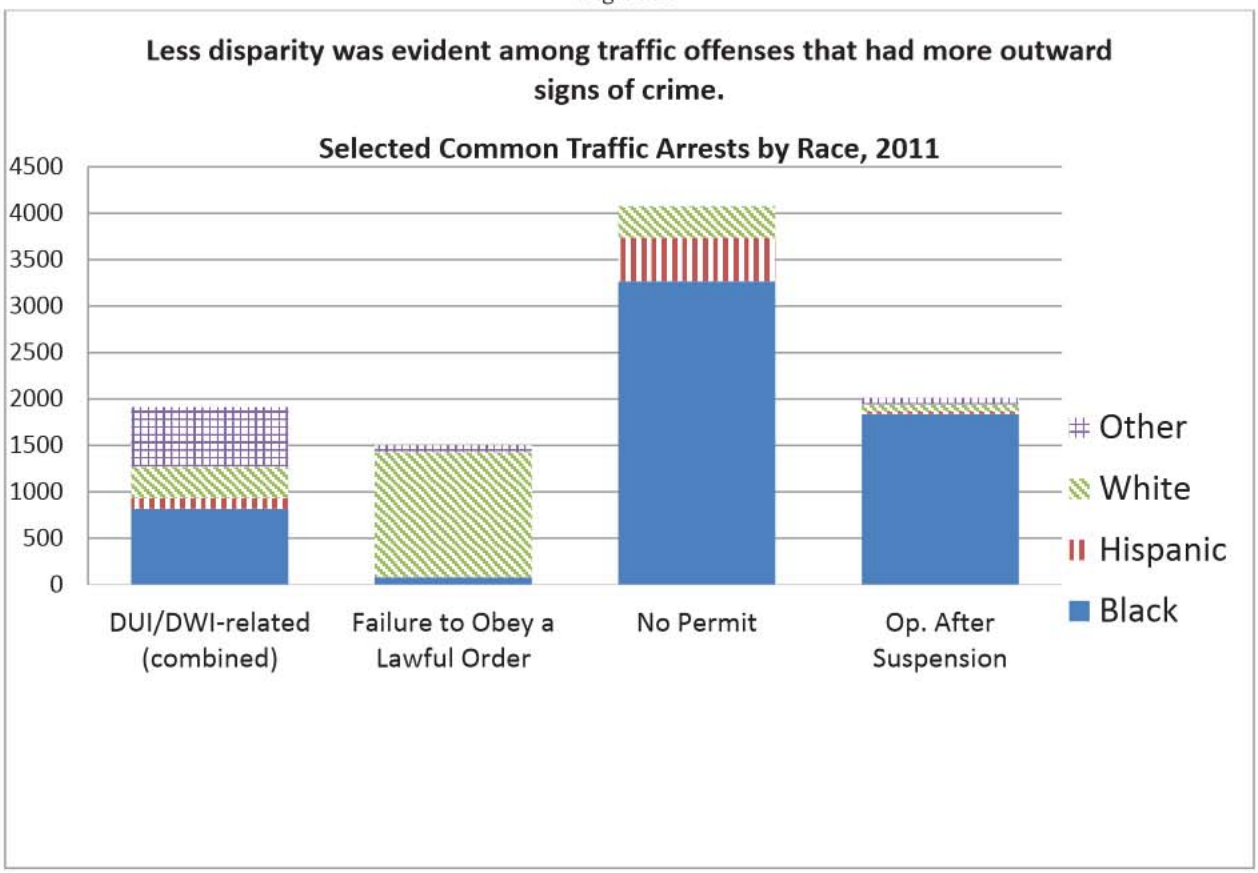
Nearly seven out of ten traffic arrests involved African American arrestees.

"Traffic Violation" was the most frequent arrest category in each year, exceeding even drug arrests. This category accounted for about 22 percent of arrests in 2009 and 24 percent of arrests in both 2010 and 2011.

Just over three-quarters of arrestees in this category were African American in 2009 and 2010; in 2011, 69.4 percent of traffic arrestees were African American. Across all three years, individuals arrested on charges in this category were disproportionately likely to be African American.[11] The exception was the "failure to obey a lawful order" charge, which accounted for 12.6 percent of traffic arrests in 2011, of which nearly 90 percent of arrestees were white.

[11] **2009 and 2010 findings:** In 2009, the three most common traffic charges in 2009 were "no permit" (39.1 percent), "other traffic charge" (23 percent) and "operating after suspension" (15 percent). Combined, arrests related to various DUI/DWI charges accounted for about 17.6 percent of total 2009 traffic arrests. In 2010, the three most common traffic charges were "no permit" at 38.2 percent, "other traffic charge" at 20.6 percent, and "operating after suspension" at 17.5 percent. Combined, arrests related to various DUI/DWI charges accounted for about 16.1 percent of total 2010 traffic arrests.

Figure 12



Source: Washington Lawyers' Committee analysis of MPD data.

Criminal justice reformers have noted that police have wide discretion to conduct traffic stops and make arrests.[12] Because so many drivers at any given time could be stopped for at least a minor or technical failure to comply with the traffic laws, concern has been expressed that law enforcement officers can exercise their discretion in ways that reflect conscious or unconscious biases.[13] This may be of greatest concern with respect to offenses that are likely to have fewer outward manifestations (such as driving on a suspended license) versus offenses that have more obvious outward indicators (such as driving under the influence).[14]

[12] Michelle Alexander, *The New Jim Crow* 85-86 (rev. ed. 2012).

[13] *Id.*

[14] *Cf. id.* at 85-87, 127-28.

Disorderly conduct

Eight out of ten individuals arrested for disorderly conduct were African American or Hispanic.

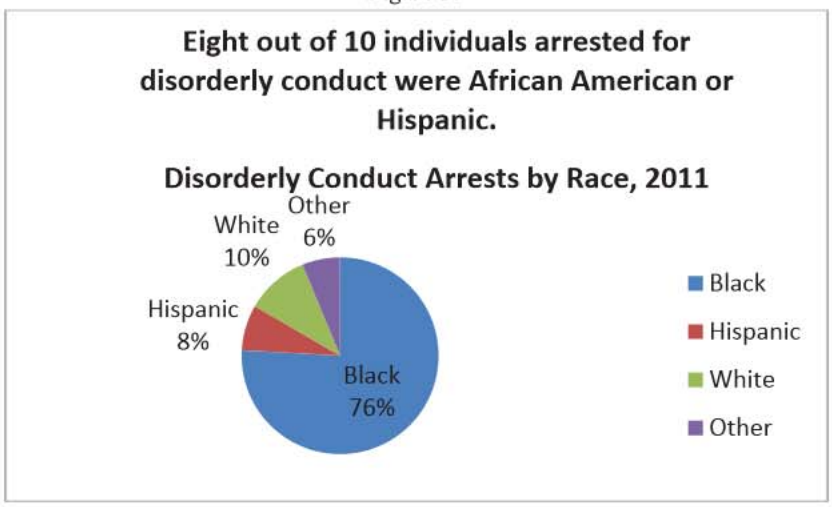
"Disorderly conduct" is a misdemeanor offense that encompasses a variety of behaviors listed in the D.C. Code. The "Disorderly Conduct[15] / Possession of an Open Container of Alcohol" (POCA) charge category was one of the five most frequently cited MPD arrest-charge categories in each year from 2009 through 2011, accounting for between about 9 and 11 percent of total arrests in those years.

In 2009, African American arrestees accounted for about 77.5 percent of the 5,338 "Disorderly Conduct / POCA" arrests, and were similarly disproportionately represented in the three most common charges within the category: POCA, jostling, and "loud and boisterous." More than three-quarters of arrests in the general "Disorderly Conduct / POCA" category were listed under one of those three specific charges. African American arrestees accounted for more than 80 percent of POCA arrests, more than 75 percent of "jostling" arrests, and almost 84 percent of the "loud and boisterous" arrests. Similar patterns were seen in the 2010 arrest data.

As is discussed below, changes to the disorderly conduct statutes took effect in 2011, and the number of disorderly conduct arrests dropped that year. Nonetheless, as the chart below reflects, African American arrestees continued to account for more than three-quarters of disorderly conduct arrests.

[15] Prohibited acts also include more serious conduct — such as inciting or provoking violence "where there is a likelihood that such violence will ensue," disrupting lawful public gatherings or conveyances by engaging in "loud, threatening, or abusive language, or disruptive conduct," and engaging in "peeping tom" behavior. These more serious behaviors are not, however, the leading categories of arrests under the disorderly conduct laws.

Figure 13



Source: Washington Lawyers' Committee analysis of MPD data.

When the "loud and boisterous" category was eliminated from the disorderly conduct statute in 2010, disorderly conduct arrests dropped.

A 2010 report by the Council for Court Excellence found that "the prohibition of loud and boisterous talking or other disorderly conduct should be dropped because it is too vague and lends itself to abuse."[16] The Disorderly Conduct Amendment Act of 2010 (DCAA) made a number of significant revisions to the DC statutes defining disorderly conduct offenses, including the elimination of the "Loud and Boisterous" category of disorderly conduct offenses. The Metropolitan Police Department issued a January 2011 circular to all officers outlining the changes and instructing officers that the changes would be effective as of February 1.[17]

Disorderly conduct arrests dropped about 16.5 percent between 2010 and 2011, compared with an overall drop of about 1.1 percent in MPD-reported arrests. The drop may be attributable, at least in part, to the changes in the disorderly conduct statute, particularly the repeal of the "loud and boisterous" form of the charge. It is not possible to prove any such causal connection

[16] *See* "Revising the District of Columbia Disorderly Conduct Statutes," Council for Court Excellence, at 7 (Oct. 14, 2010) (attached to "Report on Bill 18-425, the Disorderly Conduct Amendment Act of 2010," Council of the District of Columbia Committee on Public Safety and the Judiciary (Nov. 18, 2010)).

[17] "Disorderly Conduct," Metropolitan Police Department, Circular CIR-11-01, at 1 (Jan. 21, 2011), *available at* https://go.mpdconline.com/GO/CIR_11_01.pdf.

from the available data. It is notable, however, that "loud and boisterous" arrests accounted for 15.9 percent of disorderly conduct arrests in 2009 and 15.4 percent of such arrests in 2010, before being nearly eliminated in 2011.[18] Arrests for "jostling" also virtually disappeared in 2011, after making up about 18 percent of disorderly conduct arrests in 2009 and 2010.

Although the authors do not attempt in this report to determine whether there is a causal connection between the statutory changes and the drop in disorderly conduct arrests, this correlation at least raises an inference that it may be possible to reduce the aggregate impact of racially disparate arrest patterns through community-driven changes to laws, policies, and practices.

[18]A handful of arrests on this charge — 33— were reported in 2011, all in January before MPD began operating under the DCAA changes. Twenty-nine of those arrestees were African American.

"Other assaults"

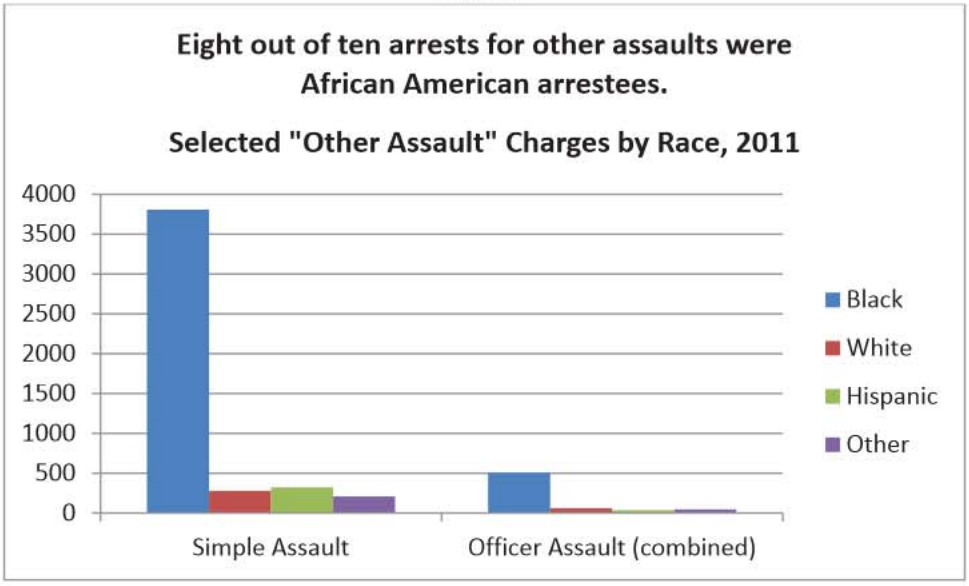
Eight out of ten arrests for "other assaults" were African American.

The "other assaults"[19] charge category was among the top five arrest categories seen in each year, accounting for about 10.6 percent of arrests in 2009, 10.7 percent in 2010, and 11.2 percent in 2011. The percentage of African American arrestees in the overall category ranged from just over 80 percent in 2009 to just under 86 percent in 2011. The vast bulk of arrests in the category consisted of "simple assault" charges, which made up more than 80 percent of the arrests each year (including about 87.5 percent of 2011 arrests in this category). While charges in this category can involve an assault on a police officer, 8 out of 10 "other assault" arrests do not involve an assault on a police officer.[20]

[19] D.C.'s simple-assault statute, D.C. Code § 22-404(a), does not define the elements of an assault. D.C. courts therefore follow the common law of criminal assault, under which "[t]he essence of the common law offense of assault is the intentional infliction of bodily injury or the creation of fear thereof." Simple assault can include attempted battery, "intent to frighten assaults," and offensive sexual touching. Simple assaults are included within MPD's "other assaults" charge category. A conviction for aggravated assault, in contrast, requires proving that the defendant caused serious bodily harm to another person. D.C. Code § 22-404.01(a). MPD's arrest data includes a separate charge category for aggravated assault, which is a crime classified as "violent" for the purposes of the FBI's Uniform Crime Reporting system. D.C.'s statute regarding assaults on police imposes penalties on anyone who "without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with a law enforcement officer on account of, or while that law enforcement officer is engaged in the performance of his or her official duties." D.C. Code § 22-405(b). Thus, the offense "proscribes conduct beyond assault" that otherwise actively obstructs a police officer in his or her duties. However, to be convicted under this statute, "a person's conduct must go beyond speech and mere passive resistance or avoidance, and cross the line into active confrontation, obstruction or other action directed against an officer's performance in the line of duty." Thus, for instance, a driver who braces himself against a car steering wheel to resist being moved by an officer, or a person who holds a gate shut while an officer tries to enter, may be convicted under the statute. In contrast, neither passive non-compliance with an officer's commands nor flight from an officer is evidence of active resistance sufficient to violate the statute. The offense generally is a misdemeanor, but it becomes a felony if the person "causes significant bodily injury to the law enforcement officer, or commits a violent act that creates a grave risk of causing significant bodily injury to the officer." § 22-405(b), (c).

[20] Arrests involving assaults on officers accounted for roughly 13 percent of "other assault" arrests in 2009 and 2010, and about 11.7 percent of 2011 "other assault" arrests. African American arrestees accounted for 88.1 percent of these arrests in 2009, 85.1 percent in 2010, and 77.4 percent in 2011.The exact charge descriptions in the arrest data are not identical from year to year, and they do not always make clear whether an arrest was on the misdemeanor or felony form of the charge.

Figure 14



Source: Washington Lawyers' Committee analysis of MPD data.

Dispositional information

The Superior Court of the District of Columbia provided data regarding the disposition of cases that were filed in the Court in 2009, 2010, 2011, and preliminary data for 2012. These records included 49,163 cases in 2009, 43,183 in 2010, and 42,558 in 2011.

The dispositional analysis the authors offer here is preliminary, but it does raise some important policy questions for District residents, law enforcement officials, and policymakers. Of the thousands of arrests for nonviolent offenses in this city, many are dismissed or dropped with no adjudication on the merits. For instance, in 2009 10 percent of traffic cases filed in Superior Court were dismissed by the court either with prejudice (7 percent) or with no reason specified (3 percent), and prosecutors simply dropped another 22 percent of these cases. Similarly, 18 percent of drug cases filed in Superior Court in 2009 were dismissed by the court with no reason specified and 8 percent were dismissed with prejudice; prosecutors declined to pursue another 8 percent of all 2009 drug cases filed in Superior Court.

This preliminary analysis of dispositional information – including an effort to match arrest to dispositional outcomes in the aggregate – shows that the racial disparities identified at the arrest phase continue through the post-arrest and dispositional phases of the criminal justice system.

Relatively few cases were diverted, and a significant number were dismissed with prejudice or voluntarily discontinued by the prosecutor.

In analyzing cases filed in Superior Court that did not result in an adjudication on the merits, three categories of cases are of particular interest:

1. **Dismissed with prejudice**. Reasons why a case may be dismissed with prejudice from Superior Court can include a determination that the case was brought in bad faith, was vexatious, or was not prosecuted within a reasonable amount of time. Over the three-year period (2009 to 2011), an average of 11 percent of the cases filed in Superior Court were dismissed with prejudice.

2. **Diversion:** "Nolle diversion" indicates that the defendant in the case was sent to a diversion program—often involving some form of treatment. Over the three-year period, an average of 9 percent of the cases filed in Superior Court were diverted. Upon successful completion of a felony diversion program, the defendant's sentence will be determined by the court, though the chances of the defendant receiving probation are increased.[21]

3. **Voluntarily discontinued by the prosecutor:** Over the three-year period, 9 percent of the cases filed in Superior Court were "nolle prosequi," meaning that the prosecutor voluntarily discontinued criminal charges before trial.[22]

Specific dispositional findings for select offenses.

- **Traffic:** Of the 29,000 traffic cases filed over the three-year period, 8 percent were dismissed with prejudice, 15 percent were voluntarily discontinued by the prosecutor, and eight percent were diverted.[23]

- **Drugs:** Of the 24,000 drug cases filed over the three-year period, 8 percent were dismissed with prejudice, 9 percent were voluntarily discontinued by the prosecutor, and 10 percent were diverted.[24]

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[21] There are several different diversion programs in D.C., with eligibility depending on the nature of the charged offenses (for most, the crime must not be serious or violent) and the defendant's prior criminal history. The programs are operated out of the D.C. Superior Court's Community Courts. If a defendant successfully completes a misdemeanor diversion program within a certain period of time (often four to nine months), the prosecutor will dismiss the charge. Pretrial Services Agency for the District of Columbia, Programs and Services, available at: http://www.psa.gov/programs-and-services.html.

[22] A prosecutor may decide not to pursue a case because the charges cannot be proved due to evidence too weak to carry the burden of proof, because of a conflict of interest (for example, if defense counsel has an employment relationship with the prosecutor's office or if counsel faces criminal investigation or charges), because the prosecutor becomes doubtful the accused is guilty, or because the defendant has died. Prosecutors exercise a great degree of discretion in determining whether to apply to the court for a declaration of nolle prosequi. Prosecutors are not required to publicly disclose the reasons for voluntarily discontinuing a case, but such a decision may indicate that the prosecutor believes he or she will be unable to secure a guilty verdict. A withdrawal of a case through nolle prosequi is not an adjudication on the merits, and the defendant's case could be re-indicted on the same charges at a later date.

[23] In 2009, of the 12,135 traffic cases filed in Superior Court, 9,096 (or 75%) of the cases did not have a sentencing date. 27% of the traffic cases were dismissed, either with no reason specified (3%), as part of a plea bargain (17%), or with prejudice (7%). 13% of traffic cases were sent to a diversion program, and 22% were nolle prosequi. 20% of all traffic defendants were sentenced to probation, and 22% were sentenced to some term of confinement. This trend continued in 2010 and 2011. In 2010, of the 8,940 traffic cases filed in Superior Court, only 28% were resolved with a sentencing date. Of all traffic cases, 35% were dismissed, either with no reason specified (1.8%), as part of a plea bargain (27%), or with prejudice (7%). 5% of traffic cases went to a diversion program, and 13% were nolle prosequi. 22% of traffic defendants were sentenced to probation, and 22% of all traffic defendants were sentenced to some term of confinement. In 2011, of the 8,698 traffic cases filed in Superior Court, 5,850 (67%) did not result in a sentencing date. 40% of the traffic cases were dismissed, either with no reason specified (2%), as part of a plea bargain (29%) or with prejudice (9%). 7% of cases were sent to diversion programs, and 11% of cases were nolle prosequi. 28% of traffic defendants were sentenced to probation, and 27% of all traffic defendants were sentenced to some term of confinement.

Matched pairing of arrests to dispositions shows consistency in racial disparities.

The authors were able to match certain of these dispositions to the arrest data provided by MPD for 2009, 2010, and 2011 — 13,916 matched cases in 2009, 11,377 matched cases in 2010, and 11,780 matched cases in 2011. The method the authors used sought to match the name and date of each arrest with the name and date associated with each filing in Superior Court, and then analyze the overall outcomes in the aggregate.[25]

In general, the racial composition of the matched cases was quite similar to the demographics of overall arrests, suggesting that racial disparities in arrest rates seem to persist through the disposition process rather than being increased or decreased.

- **Nearly nine in 10 matched cases involved African American defendants:** In 2009, 2010, and 2011, for example, 87 percent of the matched disposition cases were for African American defendants, while 13 percent, 12 percent and 8 percent (respectively)

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[24] In 2009, 7,353 drug cases were filed in Superior Court. A full 62% of these did not have a sentencing date. 41% of all drug cases — 3,003 — were dismissed, either with no reason specified (18%, 1,302 cases), as part of a plea bargain (15%, 1,136 cases) or with prejudice (8%, 565 cases). 19% of drug defendants in 2009 were sentenced to probation, and 34% were sentenced to some period of confinement. 8% of drug cases in 2009 were sent to diversion programs. Prosecutors declined to prosecute 603 drug cases in 2009, totaling 8% of all 2009 drug cases filed in Superior Court. Thus, 16% of all drug cases (1,168 total cases) filed in Superior Court in 2009 ended in a disposition that suggests that the case against the defendant may have been flawed. 2010 saw an uptick in the number of cases that were dismissed as part of a plea bargain — 23%, or 1,859 of the 8,068 total drug cases — but the disposition of drug cases in 2010 was otherwise quite similar to 2009. Again, 15% of the 2010 drug cases resulted in either a dismissal with prejudice or were nolle prosequi (1,234 cases). This number increased further in 2011, with 21% of drug cases (1,767 cases) resulting in a dismissal with prejudice or nolle prosequi. The disposition of drug cases filed in 2011 otherwise mirrored the previous years' results.

[25] **Methodology III:** Preliminary analysis of court disposition outcomes. The court provided data on each criminal case filed in D.C. Superior Court. Information for each case included the filing date, the defendant's name, each charge filed, and the disposition of each charge. Disposition information included data on the outcome of the case (i.e., whether the charge resulted in a conviction, acquittal, nolle prosequi, or other resolution) and what, if any, sentence was imposed (e.g., how much, if any, confinement was imposed and served, or whether the defendant received supervised or unsupervised probation). Matching these cases was important because the raw disposition data provided by the Superior Court did not contain demographic information. Since there was no unique identifier common to both data sets that would allow perfect matches between arrests and resulting court cases, the analysis is limited in its ability to track the ultimate outcomes of the particular arrests we analyzed. Nonetheless, this report makes an initial attempt to conduct such an analysis using a subset of approximate matches between arrests and court cases: the authors used an automated script to match a subset of arrests with court cases by comparing the arrestee and defendant names, the arrest date, and the filing date for court cases. The authors assumed that an arrest matched a court case when (1) the arrestee and defendant names matched, and (2) the filing date for the court case was within 14 days after the arrest date. Any conclusions drawn from analyzing this subset are accordingly tentative, but the authors believe this analysis is conceptually valid and should help frame future discussions.

of the cases involved white defendants. During these three years, 85 percent, 84 percent and 83 percent (respectively) of all arrests were of African Americans.

- **About nine in 10 matched drug cases involved African American defendants:** Of the drug cases we were able to match to 2009 drug arrests, 93 percent of those that ended up in Superior Court involved African American defendants while 7 percent involved white defendants. Again, these percentages were similar to the matched 2010 drug cases (92 percent African American and 7 percent white in Superior Court) and 2011 drug arrests (88 percent African American and 6 percent white in Superior Court).

Again, this is a preliminary analysis of dispositional outcomes, and is certainly an area that should be studied in more detail. This analysis shows that of the tens of thousands of arrests for the two largest arrest categories in the city (drugs and traffic), a significant number (about 17 percent and 23 percent, respectively) were dismissed either with prejudice or because they were voluntarily discontinued. This suggests that a large number of people may have suffered the collateral consequences of a pending charge based on charges that were weak or otherwise not worth pursuing.

Conclusion

While the African American community represents just under half of the adult population of the District of Columbia (47.6 percent, versus 42 percent that were white), the data show that there are significant disparities between African American representation in the population and D.C. arrest patterns for a variety of offenses.

An analysis of the arrest trends for the 2009 to 2011 period showed that, African Americans represent:

- Eight out of 10 arrests, overall;
- Nine out of 10 drug arrests in the city;
- Seven out of 10 traffic arrests;
- Nearly eight out of 10 arrests for disorderly conduct;
- Eight out of 10 arrests for non-aggravated assaults.

While there are racial disparities in arrests for other kinds of crimes, arrests for drugs, traffic, non-aggravated assault and disorderly conduct – four offenses that represent six in 10 of the arrests that occur in this city – reflect particularly significant disparities. When an African American individual is arrested in Washington, D.C., the arrest is most likely to be for one of these four nonviolent crimes.

Beyond the overall disparity between African American arrest rates and African American representation in the city's population, there are also substantial disparities in the number of arrests and their concentration among wards, particularly for drug offenses. The data show:

- The five wards that are home to nine out of 10 African Americans accounted seven out of every 10 arrests in the city;
- More drug arrests took place in wards with the largest African American populations than in other wards;

- Wards that had a higher percentage of white residents accounted for a lower percentage of drug arrests;
- Nearly nine out of 10 arrests for simple possession involved African Americans– a drug arrest category that represents six out of 10 drug arrests made in this city.

Surveys that seek to document drug use do not find the same level of disparity seen in drug arrests: The data show that African Americans and whites—for the most part—are just as likely to use illicit drugs. The small disparities seen in drug use do not come close to matching the disparities seen in drug arrests.

Preliminary information on court dispositions for the 2009 to 2011 period show that the racial disparities seen in arrests persist downstream in the justice system, when these cases are processed in the D.C. courts.

This analysis also suggests that targeted changes in laws, policies and practices can have an impact on reducing arrests. The elimination of the "loud and boisterous" form of the disorderly conduct charge in 2011 may be one such example. Local reformers identified the charge as potentially subject to abuse and recommended its elimination. After the charge was eliminated, the number of disorderly conduct arrests dropped significantly. The data available to the authors is not sufficient to allow this report to draw a conclusion as to whether or to what extent the change in the law caused the drop in arrests. However, the authors believe the correlation is, at least, an indication that seeking targeted changes in laws and practices that have produced disparate impacts is a potentially productive means of addressing those impacts.

Policy implications

The Washington Lawyers' Committee offers this analysis to city residents, policymakers and our advisors to inform the policy choices. The Committee seeks to be part of a city that can embrace the safest, healthiest and most effective ways to solve public safety and social policy challenges.

While more research needs to be done to understand why the data trends uncovered here are occurring, the analysis raises important policy issues that should be part of any city-wide discussion:

- **Negative impact of a needless arrest:** An arrest is not a neutral event: it has an impact on the individual, communities where significant numbers of arrests occur, and law enforcement. Arrests and processing can be humiliating and degrading experiences. When a community loses an individual to the criminal justice system, the community may lose a parent, a potential employee, and a taxpayer. The data show that the disparity in arrest patterns may have significant implications for the African American community in Washington, D.C. Even when an arrest does not result in a conviction, the arrest itself can have lasting impacts on an individual's ability to return to school, get and keep a job, find housing, and maintain his or her social and economic standing.

- **Resources:** While this analysis shows that a relatively small number of arrests lead directly to a custodial sentence for nonviolent offenses, there is a decided cost to the taxpayer and to the entire justice system when it must process tens of thousands of people for behaviors that might be handled in a way less costly to the system and less destructive to the individual.

- **Perceptions of fairness:** Large disparities between a racial or ethnic community's representation in the population and in the criminal justice system inevitably affect adversely the trust those segments of the community have in the justice system.

Policy recommendations

The Washington Lawyers' Committee makes the following recommendations to Washington D.C. residents and policymakers on ways the community can address some of the questions that arise from this analysis of arrest and disposition data. Some of these recommendations are action items that the Committee itself will follow up on, and some are recommendations the Committee believes need initiation by the appropriate public agencies.

I) Investigation: Arrests over the three-year period exhibited serious and pervasive racial disparities, both in the aggregate and within the four largest charge categories. In the judgment of the Washington Lawyers' Committee, these significant and consistent disparities across the board require an in depth investigation into the factors generating this disparate racial impact.

For instance, in a recent commentary published in the *Washington Post*, MPD Chief Cathy Lanier acknowledged that African Americans "represent a disproportionate number of arrestees in the District," including "for marijuana arrests, for other narcotics

and all arrests."[26] Chief Lanier argued these patterns do not stem from selective enforcement but rather result at least in part from differences in the number of offenses officers personally observe and the volume of service calls generated by different communities.[27] The follow-up investigation called for in this report should assess these and other possible explanations for the observed racial disparities in arrests, should evaluate the rationale for the policing practices employed in affected neighborhoods, and should consider whether changes to the underlying laws or to policing procedures and practices might alleviate the disparate racial impact this report has demonstrated. The Committee recommends that the investigation be conducted by an independent body that has full access to relevant data, has the ability to question and obtain additional information from appropriate law enforcement officials, and would report its findings publicly.

II) Community review: As a significant component of the immediate follow up to this report, the Washington Lawyers' Committee intends to take the lead in convening a series of community forums in the neighborhoods in the city where the most glaring racial disparities in arrest statistics have been identified, to solicit community testimony on the patterns noted here. This effort will be undertaken in conjunction with a coalition of local community and civil rights and civil liberties organizations.

III) Drug policy reform: As an immediate priority in light of the overwhelming racial disparities identified in arrests related to misdemeanor drug offenses, and marijuana arrests in particular, the Committee supports: (1) a renewed focus in the District of Columbia and as matter of national policy on treating drug abuse as a public health concern rather than a primary focus of the criminal justice system; and (2) determining the extent to which the use of certain currently illegal drugs should be decriminalized or legalized.

IV) Continuing research: The striking findings of racial disparities in arrests provide compelling support for going forward with the Committee's plans for undertaking two related follow-up studies. The first of these studies will examine the conditions of confinement faced by the thousands of District residents currently incarcerated and the limitations on liberty affecting residents of this city under the continuing supervision of the criminal justice system. The second study will assess the collateral consequences under D.C. and federal law of arrest and conviction records, which the Committee believes adversely affect thousands of city residents, mostly African Americans.

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[26] Cathy L. Lanier, "The D.C. police aren't waging 'war' on pot users," *Washington Post*, http://www.washingtonpost.com/opinions/the-dc-police-arent-waging-a-war-on-pot-users/2013/06/21/59f09c1e-d91f-11e2-a9f2-42ee3912ae0e_story.html (June 21, 2013).

[27] *Id.*