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Selective Policing

Racially Disparate Enforcement of Low-Level Offenses in New Jersey

A Report by the American Civil Liberties Union of New Jersey



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Selective Policing: Racially Disparate Enforcement of Low-Level Offenses in New Jersey
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Executive Summary

Police departments across the country increasingly have come to rely on the aggressive enforcement of low-level offenses to maintain social order and deter more serious crimes. Such a strategy involves the exercise of unfettered discretion by individual police officers. They decide whether and when to make arrests for minor misbehaviors that pose little or no harm to the community. This can lead to the uneven enforcement of low-level offenses, which falls disproportionately on Black and Latino communities.

The origins of this report stem from a 2013 American Civil Liberties Union national study of racial disparities in the context of marijuana possession arrests. That report found that Blacks in New Jersey were nearly three times more likely to be arrested than Whites. The American Civil Liberties Union of New Jersey decided to further examine those findings by taking a closer look at the arrests for numerous low-level offenses, specifically disorderly conduct; defiant trespass; loitering; and marijuana possession. We examined the most recent data available from police departments in four cities. The cities were chosen to reflect New Jersey's diversity in population density, demographics, and geographic location. The four cities are Jersey City, Elizabeth, New Brunswick, and Millville.

The results of the study demonstrate a pattern of racially disparate enforcement practices in all four cities. In each case, the study identified extreme racial disparities in the number of arrests of Black and White people for low-level offenses. We were unable to gauge the full extent of the disparities because of serious flaws in the data collection practices of each police department.

Key findings from the report:

- **Racial disparities between Black and White arrests exist in every city studied.** For the most recent years available, the data show Blacks in Jersey City are 9.6 times more likely to be arrested than Whites for the low-level offenses studied. In Millville, it's 6.3 times more likely; in Elizabeth, it's 3.4 times more likely; and in New Brunswick, 2.6 times more likely.
- **Racial disparities between Hispanic/Latino and White arrests are present where data are available.** Arrest data for Hispanics/Latinos are not kept in a consistent manner from jurisdiction to jurisdiction. Where data were available, however, the study found disparities. For example, for the most recent years available, in Jersey City, Hispanics/Latinos were 2.9 times more likely to be arrested than Whites for the offenses studied. In Millville, Hispanics/Latinos were 6.3 times more likely to be arrested for marijuana possession.

- **Some law enforcement agencies do not track Hispanic/Latino data.** For example, the Elizabeth Police Department does not track Hispanic/Latino arrests, despite serving a population that is 60% Hispanic/Latino.
- **Police departments are not keeping records in accessible, reliable formats.** Some departments were simply missing arrest data for several years. Haphazard record keeping was evident in all four police departments. Jersey City, for example, conducted a hand count of its arrest records for 2011 and discovered significantly more marijuana possession arrests than were found by a computer search. The lack of accurate, reliable records makes evaluating the departments' practices difficult (sometimes impossible), hindering transparency and accountability.
- **Individuals charged with low-level offenses are generally not involved in serious crimes.** For example, 95% of the low-level arrests in Jersey City did not involve any other offense classified as "serious" by the FBI's Uniform Crime Report. Because the study focused on low-level offenses, arrests that included charges for more serious offenses were excluded from the analyses.

The study data revealed a clear pattern of Black and Hispanic/Latino communities disproportionately bearing the brunt of policing practices that focus on a strict enforcement of low-level offenses. The human cost of these arrests and convictions can include having to pay court costs and fines; criminal records that follow individuals for the rest of their lives; and the loss of income, housing, child custody, or immigration status. In extreme cases, a confrontation with police over a low-level offense can escalate into an episode of violence.

Almost as troubling as the revelations about the disparity in the number of arrests, is the routine lack of diligence in record keeping and the haphazard collection of enforcement data.

Without full, careful, and transparent reporting of the arrests made by a city's police department, the public cannot be adequately informed about the work of the department; the community cannot hold officials accountable for the actions being taken; and the police departments cannot determine the effectiveness of its policing strategies.

Despite incomplete data from the police departments due to breakdowns in their reporting practices, a clear picture emerged. The effort to fight crime with an aggressive strategy of arresting people for low-level offenses served mainly to create unacceptable disparities in the number of Blacks and Hispanics/Latinos arrested.

The racial disparities uncovered by this study are deeply troubling and call for immediate action to identify their causes. Only then can law enforcement agencies begin to

understand the impact such arrests have on communities of color, and implement the appropriate changes.

Key recommendations from the report:

Local Reforms

- Municipal officials, police chiefs, and prosecutors should formally place enforcement of offenses that have a minimal impact on public safety among their lowest enforcement priorities.
- Municipalities should pass robust anti-racial profiling laws. One such law recently passed in New York City provides a private cause of action for injunctive relief for disparate impact claims and expands the categories of protected classes.
- Police departments should stop using arrests as a measure for evaluating officer performance. This practice can induce officers to make unnecessary low-level arrests that do nothing to strengthen the public safety.
- Municipalities should institute strong, independent oversight of police departments, such as Civilian Complaint Review Boards. They must have the authority to independently investigate police officers and ensure that discipline sticks when wrongdoing is found to have occurred. CCRBs should also include an office of the Inspector General to monitor police practices and policies. The recently-created police civilian review board in Newark should serve as a model for the rest of the state.
- Police departments should adopt tools that lead to greater accountability, such as dashboard and/or body cameras, with appropriate privacy and First Amendment protections.

State Reforms

- The Attorney General of New Jersey should formally investigate the existence of racial disparities in low-level arrests in New Jersey.
- The Attorney General of New Jersey should improve data collection by requiring law enforcement agencies to track and report data on summonses, arrests, and stops, and by issuing a directive for police departments to record Hispanic/Latino arrests according to specific guidelines. This would create uniformity, which is currently lacking, across municipalities in their reporting of Hispanic/Latino arrest data.

- State lawmakers should recognize that some laws for minor offenses should be repealed, especially marijuana possession. This report finds racial disparities for the offense in all four cities, despite evidence that Blacks and Whites use marijuana at similar rates. Legalizing marijuana use would end its disparate enforcement, and properly treat it as a public health issue.

Data Reforms

- Police departments should improve the collection and management of arrest data, and systematically analyze the data collected. The principles of good policing demand that departments take stock of how resources are allocated and how enforcement decisions impact New Jersey communities.
- Police departments should report arrest data for low-level offenses to the public by posting the information online on a regular basis.
- Reporting should include data on both pedestrian and vehicular searches and “Terry” stops (also known as “stop-and-frisk”), where police may temporarily detain someone if they have a reasonable suspicion that person is involved in a crime, and search the person if police believe the person is armed.

By taking these steps, New Jersey can move toward ending the unfair enforcement of low-level offenses in all of our communities, relieving people of the damaging consequences they face for behaviors that pose little to no public safety threat.

The study shows that disparities exist in large and small New Jersey communities when it comes to the police enforcement of low-level offenses. A shift in those policies and priorities would not only end the disparate treatment of Black and Hispanic/Latino community members, it would allow police departments to redirect their scarce resources and valuable time toward addressing serious crimes that represent a real threat to the communities they serve.

I. Introduction

A 2013 ACLU study found that Black New Jerseyans are 2.8 times more likely to be arrested for marijuana possession than their White neighbors,¹ despite federal government data that show Blacks and Whites use marijuana at similar rates.² The marijuana arrest data suggest that the disparity is the result of policing decisions that focus on the aggressive enforcement of marijuana possession in communities of color, while seemingly turning a blind eye to the same behavior among Whites.

While marijuana possession arrests have become a staple of police activity in departments across the county, they also often indicate a larger pattern of aggressive and racially disparate enforcement of low-level offenses. Such offenses are often enforced according to a “broken windows” theory of policing, which posits that arrests for minor violations prevent more serious crime.³ In practice, though, broken windows policing often leads to the criminalization of behavior, sometimes including legal behavior, in neighborhoods disproportionately inhabited by low-income Black and Latino residents.⁴ In extreme cases, the over-aggressive enforcement of minor offenses can lead to police brutality, as epitomized by Eric Garner’s death in Staten Island, New York on July 17, 2014.⁵ Mr. Garner was killed after he was placed in a chokehold by a New York City police officer in violation of departmental rules banning such chokeholds. The interaction began when police officers tried to arrest Mr. Garner for allegedly selling loose, untaxed cigarettes.

Department-level analyses of arrests provide insights as to how arrests are made at the neighborhood level, and offer detailed information about the age, gender, and race/ethnicity of the targets of police enforcement.

This report examines disparities in police enforcement of four low-level offenses in New Jersey.⁶ The four offenses, chosen after speaking with civil rights advocates and defense attorneys, observing municipal court hearings, and studying publicly available federal government data, are: marijuana possession (possession of 50 grams or less, the lowest possession offense),⁷ disorderly conduct (public behavior thought to disrupt the public peace or cause annoyance),⁸ defiant trespass (being on property without permission, often a business, store, or neighbor’s property),⁹ and loitering (wandering or remaining in public with the “purpose” of obtaining a controlled substance).¹⁰ Previous studies have documented the differential treatment of Blacks and Whites by police in the context of low-level arrests in other jurisdictions,¹¹ and this report documents the problem in New Jersey through the study of four cities chosen to reflect the State’s diversity in demographics, population size, and geographic location.

A. *Why Arrests for Low-Level Offenses Matter: The Human and Fiscal Costs*

Every aspect of policing involves a measure of choice and decision-making: which offenses to prioritize; where to patrol; whether to investigate, stop, detain, question, caution, arrest, or charge.¹² Officers often exercise the greatest degree of discretion in the context of low-level offenses. Unlike serious crime, where there is often a victim or some form of property damage, low-level offenses are violations that rest primarily on the officer's observations and subjective decision to enforce. The nature of these encounters creates ample opportunity for arbitrary and unfair enforcement of low-level offenses, often based on an officer's implicit bias. Enforcement often involves a one-on-one interaction between an officer and an individual, and the application of oftentimes vague or overbroad statutes.¹³ The outcome of the interaction depends on the officer's perception of innocuous behavior that can be construed as a violation of the law.

The human costs of a low-level arrest are often significant. Low-level arrests carry a host of collateral consequences that can deeply entangle individuals in the criminal justice system. While low-level offenses are technically not considered crimes under the New Jersey Constitution or New Jersey criminal code, a conviction carries with it the possibility of jail time or probation, and the imposition of hefty fines. These burdens mire individuals with a criminal record and stigmatize people for engaging in nonviolent conduct that poses little to no public safety threat. Someone arrested can lose income, if not employment, and face childcare hardships because of required court appearances. Nonappearance for a court date can result in the issuance of a warrant—a crime in the fourth degree.¹⁴ An arrest can also affect a person's immigration status,¹⁵ limit employment opportunities,¹⁶ lead to eviction,¹⁷ mandate the loss of licensing in certain professions,¹⁸ and result in a drivers license suspension.¹⁹ These hardships are compounded in communities of color, which bear the brunt of heavy-handed enforcement policies.

The fiscal costs of low-level arrests further necessitate scrutiny of aggressive enforcement. Particularly in times of budget constraints, police departments must make difficult decisions about the allocation of scarce resources. Arrests cost taxpayers money and consume officers' time, which could be better spent focusing on serious and violent crimes that *do* pose serious public safety threats. Working to strengthen community relations and finding alternatives to arrest, instead of focusing on the enforcement of minor offenses, could pay dividends for community safety and police departments' budgets in the long run.

Understanding who is being arrested for low-level offenses, in comparison to who is *not* being arrested, is critical to evaluating the fairness, effectiveness, and perceived legitimacy of law enforcement practices.

**B. *Why Police Departments' Data Collection Practices Matter:
Transparency and Accountability Depend on Accurate and Reliable Data***

Data analysis is a primary mechanism by which law enforcement agencies can evaluate their practices and address concerns and allegations of discriminatory or unfair policing practices. By collecting data on “the nature, character, and demographics of police enforcement practices,” as recommended by the United States Department of Justice (DOJ), police departments can assess the appropriate application of the authority and broad discretion entrusted to them.²⁰ In the spring of 2014, former Attorney General Eric Holder announced that the DOJ would begin collecting data about stops, searches, and arrests to address racial disparities in the criminal justice system, recognizing that “to be successful in reducing both the experience and the perception of bias, we must have verifiable data about the problem.”²¹

Racial disparities are a red flag that a particular community may be the target of unfair enforcement. This can foster resentment in the community,²² and reduce community cooperation with police.²³ Law enforcement training and policies that take such disparities into account can reduce those disparities, encouraging police-community collaboration and increasing confidence in police work.

This study relied on analyses of arrest records from New Jersey police departments. What the ACLU-NJ found, however, was that all of the departments from which records were requested had difficulty producing complete or accurate data. This raises significant transparency and accountability concerns, since communities, oversight bodies, and even police departments themselves can only hold police accountable if they know what the police are doing: how many arrests they are making, who is being arrested, and for what.

By collecting arrest and other criminal justice data, both the public and police departments can accurately assess the appropriate application of the authority and broad discretion entrusted to law enforcement.²⁴ Access to accurate criminal justice data is critical to preventing miscarriages of justice and to ascertaining the scope of potential problems, and police departments bear responsibility for collecting and maintaining these data. The data problems encountered in New Jersey are discussed in detail in the methodology and case studies sections that follow.

Example of Bad Data Management: Asbury Park Police Department

The ACLU-NJ originally selected five cities for this study. However, the Asbury Park Police Department (APPD) was unable to produce records that could be properly analyzed and was dropped from the study.

The APPD first provided the ACLU-NJ with printed records because the department lacks the technological capacity to provide records in an electronic file format. The records, however, also lacked necessary information: race, gender, location, and the other offenses a person was charged with. The ACLU-NJ and the APPD had several discussions over the course of seven months to determine how the agency could retrieve the records sought. Despite the existence of an APPD data management system and electronic database, the APPD was unable to access the necessary data, which prevented us from including the department in the study.

The practices of the APPD are a glaring example of poor data management by a police department. Using an electronic record management system is only the first step in adequate data collection practices. Departments must take additional steps to ensure that their systems' structures make basic policing data easily accessible, and they must train personnel to manage and retrieve the data.

II. Findings

A. Extreme Racial Disparities Exist Between Black and White Arrests in the Four Cities Studied

The data revealed racial disparities in arrests in all four cities, with Blacks on average between 3.2 to 5.7 times more likely to be arrested than Whites for the study offenses.²⁵

For the four low-level study offenses, Blacks in Jersey City were on average nearly 5 times more likely to be arrested than Whites from 2005 to 2013, with the disparity peaking in 2013, when they were 9.6 times more likely to be arrested.²⁶ In Elizabeth, Blacks were 3.6 times more likely than Whites to be arrested, and in New Brunswick they were 3.3 times more likely to be arrested. Blacks in Millville fared even worse: they were 5.8 times more likely than Whites to be arrested for the study offenses.

Similar racial disparities in Hispanic/Latino arrests are present in certain offense categories. In 2013, Hispanics/Latinos in Jersey City were 2.9 times more likely to be arrested than Whites for all study offenses. Hispanics/Latinos in Millville were 6.3 times more likely than Whites to be arrested for marijuana possession in 2013, and 2.1 times more likely to be arrested for disorderly conduct. The New Brunswick Hispanic/Latino data indicate low disparities, and in some instances no disparity. Data for Hispanics/Latinos in Elizabeth is not collected, making it impossible to assess the extent of any disparities. Specific problems with Hispanic/Latino arrest data are discussed in each case study.

B. Individuals Charged with Low-Level Offenses Are Generally Not Involved in Serious Crimes

A common refrain from law enforcement agencies is that cracking down on petty offenses leads to catching individuals involved in more serious crimes.²⁷ The data received from police departments for this report, however, indicate that this is not the case for the majority of low-level arrests. In Jersey City, 95% of the arrests did not involve serious crimes as classified by the FBI, 84% of the total arrests involved low-level charges exclusively (i.e., there were no charges for an indictable offense), and 56% of these arrests were for a stand-alone charge for one of the four low-level offenses studied only.²⁸ More than 93% of the total arrests in Elizabeth did not include a charge that the federal government classifies as serious offenses.²⁹ In New Brunswick, 97% of the total arrests did not include a charge for a serious crime and 74% of the arrests had low-level offense charges only (i.e., no indictable offense was charged). Finally, 95% of the total arrests in Millville did not involve charges for a serious crime, and nearly 70% did not involve an indictable offense.

C. Police Departments Fail to Keep Arrest Records for Low-Level Offenses in Accessible, Reliable Formats

All four of the police departments in this report use some form of electronic record management system. However, each one encountered varying degrees of difficulty in producing the records requested. At first, Jersey City could not provide information about the other offenses charged for each arrest, and then estimated the cost of retrieving the records at more than \$10,000.³⁰ Elizabeth changed its process for coding arrests in 2010, which affected the accurate cataloging of arrests. New Brunswick could not isolate the study offenses from all other arrests, and could only provide records in printed format. Data for 2010 and 2011 in Millville are missing after being lost in a data transfer.³¹

The central purpose of modern electronic record keeping is to improve the collection and management of records, and to facilitate easier access and use. In the context of arrest records, every department fell short of these objectives.

D. Some Cities Fail to Track Hispanic/Latino Arrest Data Consistently, If at All

The departments studied do not appear to have uniform systems for recording ethnicity data in arrest records, specifically for Hispanics/Latinos, which also causes discrepancies in the racial data from jurisdiction to jurisdiction. Elizabeth, for example, does not record Hispanic/Latino arrests at all—despite having a 60% Hispanic/Latino population. Millville tracked race and ethnicity for Hispanics/Latinos (e.g., Hispanic-Black or Hispanic-White) until 2010, and then stopped. Where Hispanic/Latino arrest data are not recorded, those arrests are most likely recorded as White arrests,³² skewing arrest rates and disparities for other racial groups. Given New Jersey's large Hispanic/Latino population, it is critical that police departments systemize their record keeping practices for Hispanic/Latino data so that they can accurately track arrest patterns and disparities.

Elizabeth does not record Hispanic/Latino arrests despite having a 60% Hispanic/Latino population.

E. Data Provided by Police Departments Varied from the Data They Reported to the Federal Government

The ACLU-NJ found discrepancies between the data provided for this report and the data the departments reported to the FBI/UCR Program.³³ The FBI/UCR Program collects and

publishes crime and arrest data, including arrest data for two of the study offenses: marijuana possession and disorderly conduct. In many instances the ACLU-NJ received records that reflected far fewer arrests than reported to the FBI/UCR.³⁴

As of the writing of this report, the departments with whom we attempted to resolve the inconsistent data issues have not been able to explain what accounts for the discrepancies. For example, after months of guess work, the JCPD conducted a manual review of all arrest records to provide an accurate count of its marijuana possession and disorderly conduct arrests for 2011. The results were shocking: the manual count produced many more marijuana possession arrests, and significantly more disorderly conduct arrests than the computer searches had counted. Thus, the JCPD's current data management system obscures the breadth of the over-enforcement of low-level offenses and its racially disparate effects.

None of the departments were able to explain the discrepancies between the data reported to the FBI/UCR Program and the data given to the ACLU-NJ. The data discrepancies are presented in Appendix B.

III. Data Sources and Methodology

A. Definitions

The following list contains definitions of important terms in this report:

- *Low-level offense*: All non-indictable offenses under the New Jersey criminal code including disorderly persons and petty disorderly persons offenses;
- *Low-level arrest*: An arrest that only includes charges for disorderly persons and petty disorderly persons offenses;
- *Study offense*: One of the four low-level offenses analyzed in this report (marijuana possession, disorderly conduct, defiant trespass, and loitering);
- *FBI/UCR Part I Offenses*: Serious offenses under the FBI/UCR Program for which crime data is collected;³⁵
- *FBI/UCR Part II Offenses*: Less serious offenses under the FBI/UCR Program for which arrest data is collected;³⁶
- *Indictable offense*: A “crime” under the New Jersey Constitution punishable by a sentence of more than 6 months;³⁷
- *Disorderly person/Petty disorderly persons offense (“DP”/“PDP”)*: Non-indictable offenses that are not considered crimes under the New Jersey Constitution or criminal code; DPs carry a maximum penalty of six months in prison, up to a \$1,000 fine, and potential community service or probation; PDPs carry a possible jail sentence of 30 days, up to a \$500 fine, and potential community service or probation.³⁸ Both DPs and PDPs carry some additional mandatory fees;³⁹
- *Arrest*: The custodial arrest or issuance of a summons to an individual. Arrest data were collected from the four police departments analyzed.

B. Data Sources

The ACLU-NJ submitted public records requests under New Jersey’s Open Public Records Act (“OPRA”) to the Asbury Park, Elizabeth, Jersey City, Millville, and New Brunswick police departments in August 2013.⁴⁰ The OPRA requests sought records in electronic file format for the four study offenses during a 10-year period (2003-2012) and the following information commonly recorded in arrest reports: name, address, race, ethnicity, age, gender, location of arrest, offense, other offenses charged, date and time of arrest, and arresting officer’s name.⁴¹ The ACLU-NJ requested this information to analyze arrest rates among different demographic groups, track increases or decreases in arrests, identify patterns in increases or decreases of arrest rates and racial disparities, and to map where arrests occur.

Some departments had lost records, not transferred records to electronic format, changed their record keeping procedures from one year to another or had their records maintained by vendors quoting thousands of dollars to retrieve data.

The ACLU-NJ encountered significant difficulties in obtaining complete data from the police departments. Some departments had lost records for spans of years,⁴² some had not transferred records for some years to electronic format,⁴³ some had changed their record keeping procedures from one year to another,⁴⁴ and some had their records maintained and managed by vendors that quoted charges of thousands of dollars to retrieve the information requested.⁴⁵ Additionally, the ACLU-NJ’s analysis of the available arrest data revealed discrepancies with arrest data the departments had reported to the FBI/UCR Program,⁴⁶ suggesting that the records provided under the OPRA requests most likely did not include records for all the arrests made.⁴⁷ These problems are discussed in detail in each of the case studies, and the numerical discrepancies are presented in Appendix B.

Despite the challenges and delays in obtaining data from the police departments, the ACLU-NJ was able to collect enough data for reliable statistical analyses of arrest rates by race in each municipality, with the exception of Asbury Park. This report relies on the arrest data received from the police departments and the United States Census’s annual city population estimates by age, sex, race, and ethnicity to document arrest rates per 100,000 for the four low-level study offenses by race.

C. Methodology

To calculate the arrest rates by race for a low-level offense in a given jurisdiction, the number of White, Black, and Hispanic/Latino arrests for the offense is divided by the White, Black, and Hispanic/Latino population, respectively, in that jurisdiction. The corresponding ratio is then multiplied by 100,000 to obtain the arrest rate per 100,000 persons. The measure of racial disparity for each offense is calculated as the ratio of the Black or Hispanic/Latino arrest rate to the White arrest rate. For example, a racial disparity measure (or ratio) of three implies that the rate at which Blacks or Hispanics/Latinos are arrested for the given offense is three times the rate at which Whites are arrested for that offense.

Because the purpose of this inquiry is to examine disparities in nonviolent, low-level arrests, where possible, arrests that have more serious offenses charged as part of the arrest are not included in the analyses. Specifically, arrests that include an indictable offense charge are dropped. Thus, the analyses include only arrests where the study offense is the stand-alone (sole) charge, or there are other disorderly persons or petty disorderly persons offenses charged.⁴⁸ Instances where this method is not applied are noted.

IV. Analyses of Police Arrest Data in Four Cities

The following section analyzes the arrest patterns in each municipality, presented as four separate case studies. Because the data for each jurisdiction has flaws specific to that department, we do not contrast the results among jurisdictions, as this would result in an apples-to-oranges comparison. Rather, we present the data for each municipality to demonstrate the arrest and racial disparity patterns and trends within that city. The case studies are presented in order of population size, from largest to smallest.

A. CASE STUDY: JERSEY CITY POLICE DEPARTMENT

Jersey City Data Problems

Obtaining data from the Jersey City Police Department (JCPD) was a difficult process. For example, records predating 2005 are unavailable because “the computer system crashed in early 2005.”⁴⁹ The city also provided printed records (i.e., in non-electronic format) for 2005 to 2012 that could not be used because they failed to include information about “other offenses charged.”⁵⁰ And after months of repeatedly contacting the city to obtain the records requested, in late 2013 the ACLU-NJ received a letter quoting a cost of more than \$10,000 for the arrests records.⁵¹

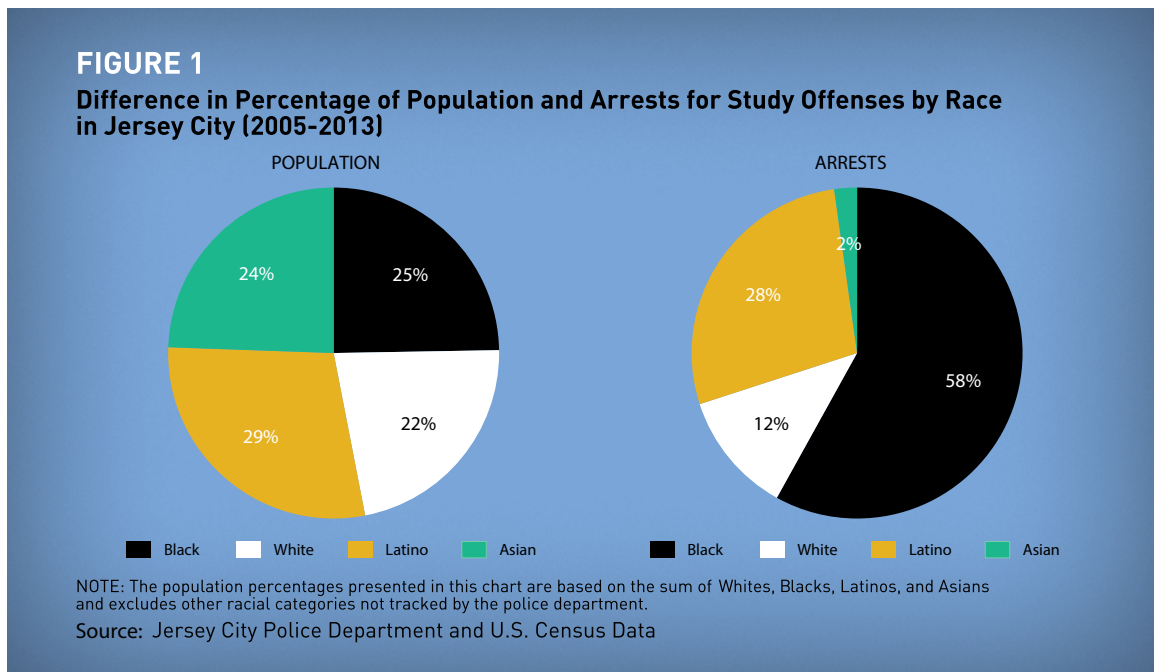
After the ACLU-NJ raised concerns about the difficulties in accessing data from the JCPD with Jersey City Mayor Steven Fulop and Director of Public Safety James Shea, they intervened to facilitate the production of the records sought. With their help, the ACLU-NJ eventually received what appeared to be a complete set of arrest records with all of the information requested.⁵² However, the arrest numbers in the JCPD records were low for Jersey City’s population size and compared to the data the JCPD reported to the FBI/UCR Program (specifically, for the offenses of marijuana possession and disorderly conduct).⁵³ When the ACLU-NJ raised these concerns, the JCPD agreed to conduct a manual review of arrest records for one year, 2011, in order to compare the total number of arrests for marijuana possession and disorderly conduct with the totals the JCPD reported to the FBI/UCR.⁵⁴ The results of the hand count confirmed that there had been significantly more marijuana possession and disorderly conduct arrests than the JCPD’s computer search produced.⁵⁵

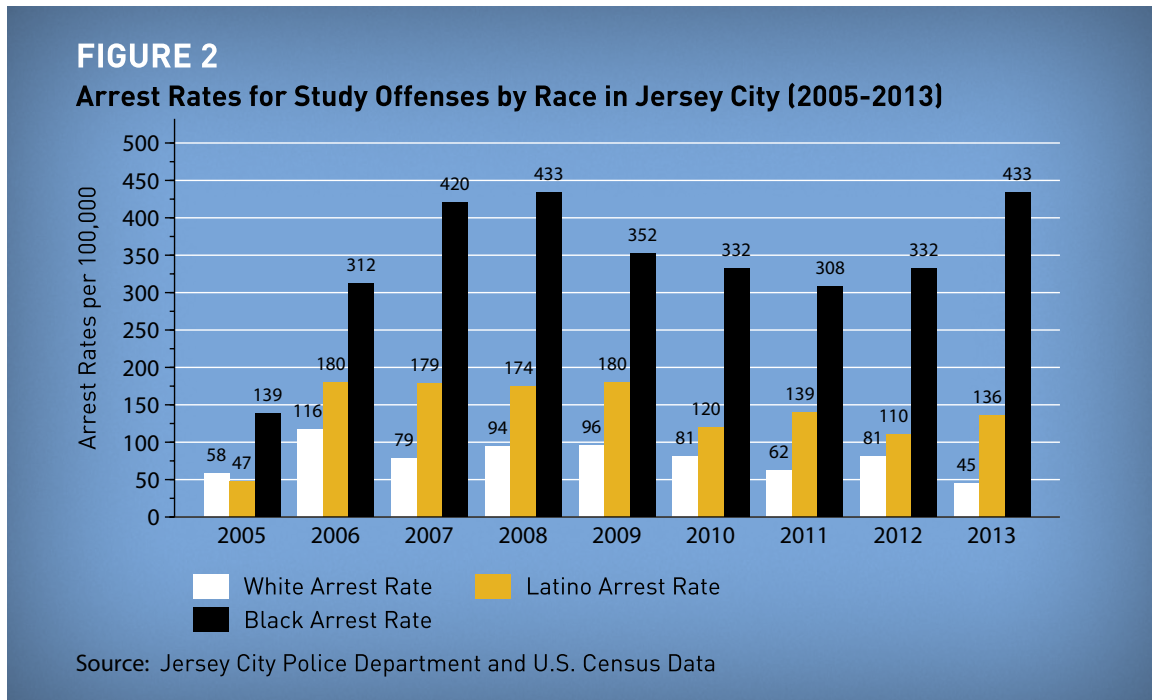
Because the JCPD was only able to do a hand count for one year, this report analyzes both the original data set (referred to as “OPRA data” or “computer search data”) and the hand count data for 2011. While the OPRA data does not include the full universe

of arrests for the offenses requested, it serves as a sample from which general arrest and disparity patterns for the period from 2005 to 2013 can be drawn. The numbers do not provide a complete picture of arrests in Jersey City, but do offer a snapshot of the disparity patterns in arrests. Total arrests and arrest rates are likely much higher. The hand count data for marijuana possession and disorderly conduct for 2011 are presented because they are more accurate representations of the true number of arrests, and confirm that Jersey City’s communities of color bear the brunt of the enforcement of low-level offenses.

The data problems in Jersey City are particularly surprising given the city’s stated commitment to the collection and analysis of crime data to help curb violence.⁵⁶ The mayor’s office has reported that it tracks crime down to an hourly basis so it can identify crime problems and better allocate resources.⁵⁷ Hopefully the city will be able to improve its arrest data management as it endeavors to use data to strengthen the efficiency and efficacy of its law enforcement activities.

High Racial Disparities in Jersey City: Blacks are Nearly Five Times More Likely and Hispanics/Latinos are Twice as Likely as Whites to be Arrested for the Study Offenses

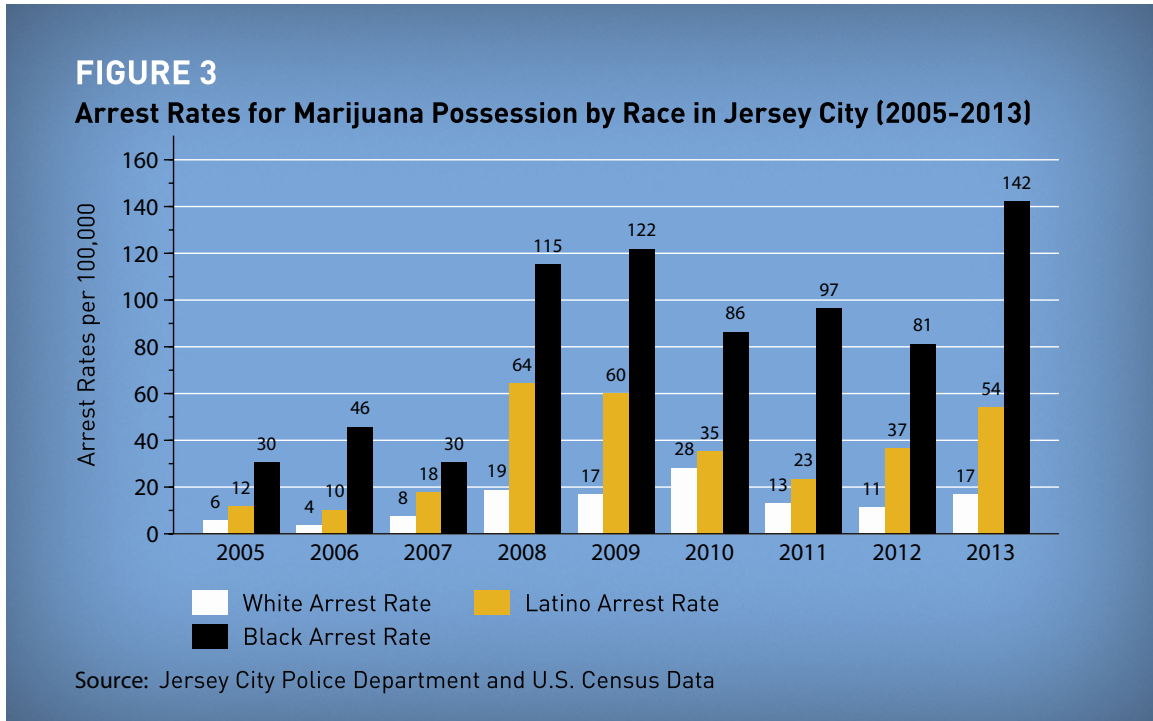




For the period from 2005 to 2013, Blacks were 4.8 times more likely to be arrested for the study offenses than Whites in Jersey City. Hispanics/Latinos were nearly twice as likely as Whites to be arrested (1.9) for the study offenses during this time. In 2013, Blacks were 9.6 times more likely, and Hispanics/Latinos were three times more likely than Whites to be arrested for the study offenses in Jersey City—some of the highest disparities of all the jurisdictions studied by the ACLU-NJ.

The arrest rate for the study offenses for Blacks and Hispanics/Latinos increased over the sample period from 2005 to 2013, while the White arrest rate in 2013 actually decreased from its 2005 level. See Figure 2. For example, the Black arrest rate increased 212% (from 139 arrests per 100,000 to 433 arrests per 100,000) and the Hispanic/Latino arrest rate increased 189% (from 47 arrests per 100,000 to 136 per 100,000), reaching a high point in 2006 and 2009 (180 arrests per 100,000). The White arrest rate, on the other hand, decreased 22% between 2005 and 2013 (from 58 arrests per 100,000 to 45 arrests per 100,000). This resulted in a 300% increase in the Black-White disparity from 2005 to 2013, and a 275% increase in the Hispanic/Latino-White disparity.

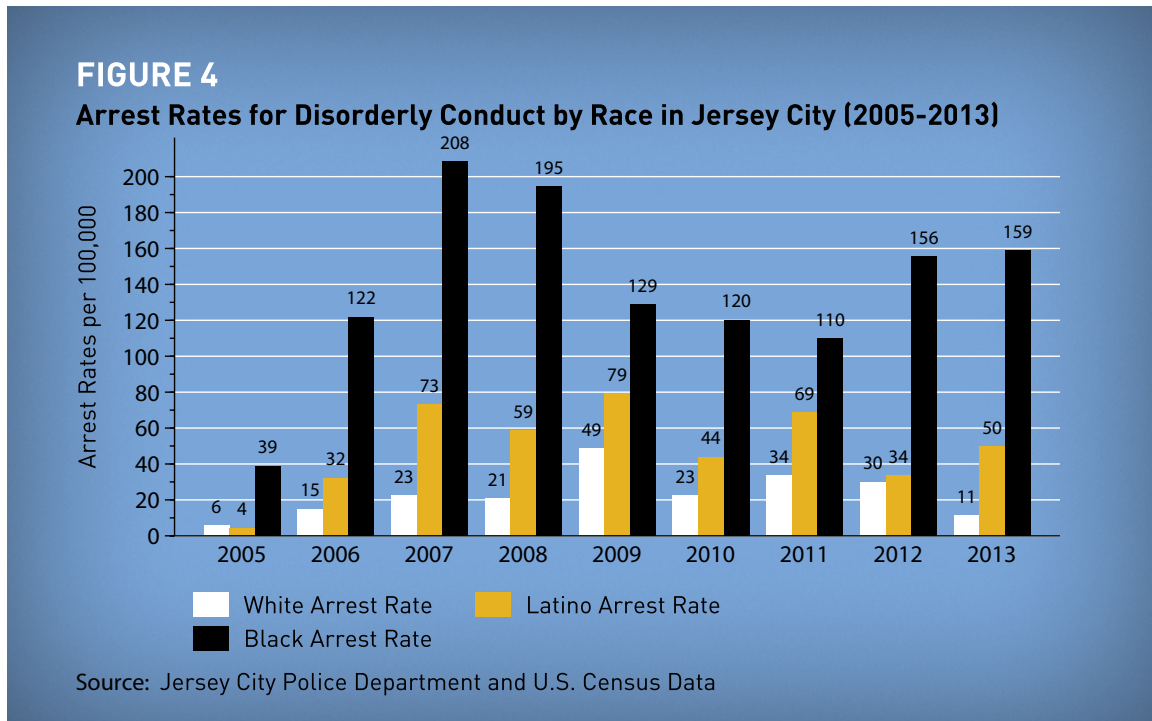
• **Marijuana Possession Arrest Disparities**



During the sample period (2005-2013) in Jersey City, Blacks were 6.8 times more likely, and Hispanics/Latinos were 2.7 times more likely to be arrested for marijuana possession than Whites. The data show that racial disparities in enforcement of the offense grew over these years. See Figure 3. In 2005, Blacks were 5.4 times, and Hispanics 2.1 times, more likely than Whites to be arrested for marijuana possession. By 2013, Blacks in Jersey City were 8.4 times more likely than Whites to be arrested. This is even more troubling when compared to the average New Jersey disparity: Blacks statewide are 2.8 times more likely to be arrested.⁵⁸ Hispanics/Latinos were 3.2 times more likely to be arrested than Whites for marijuana possession in 2013.

The Jersey City arrest rates for marijuana possession presented here are most likely an underestimate. The computer data the ACLU-NJ received reflected far fewer arrests than the data the JCPD had reported to the FBI/UCR Program; and the hand count data confirmed that there had been more than five times as many arrests than the data indicated.⁵⁹ However, the data received from the JCPD represent a sample indicative of the racial disparities present in marijuana possession arrests, and they raise serious concerns of policing bias, given the evidence showing similar marijuana usage rates among Blacks and Whites.⁶⁰

• **Disorderly Conduct Arrest Disparities**

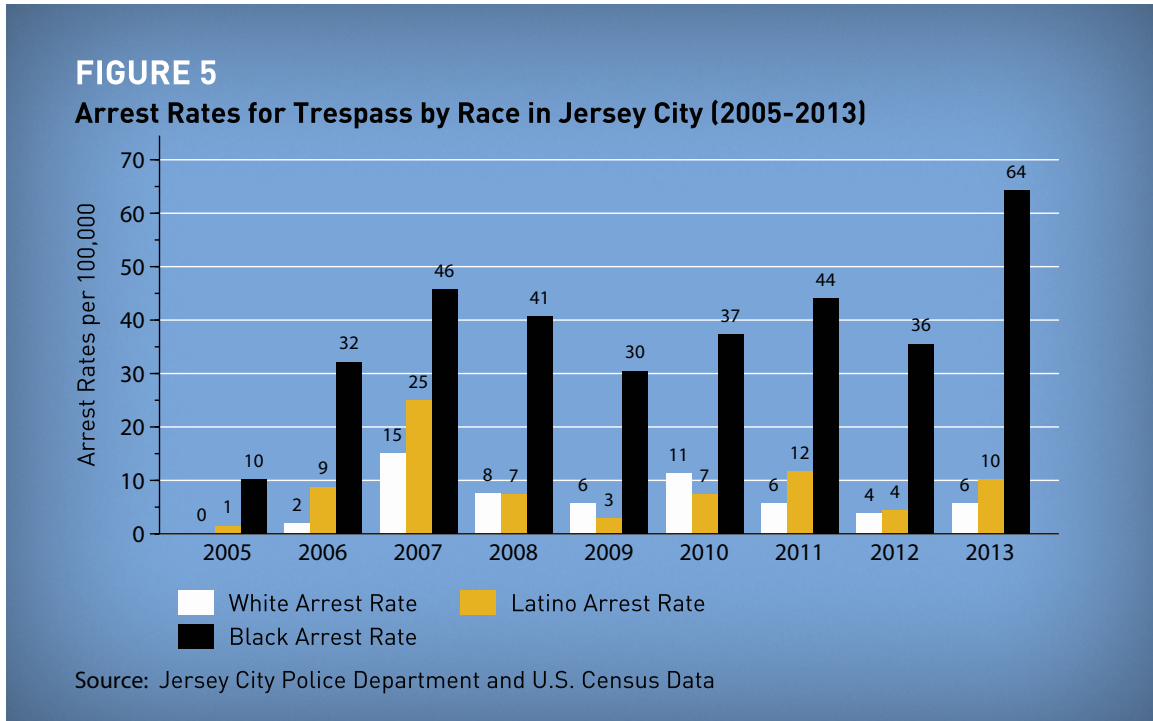


On average, Blacks were 7.4 times more likely, and Hispanics/Latinos 2.4 times more likely to be arrested for disorderly conduct in Jersey City for the sample period (2005-2013). See Figure 4. The disparities were the worst in 2013: Blacks in Jersey City were over 14 times more likely to be arrested for disorderly conduct than Whites, and Hispanics were 4.4 times more likely to be arrested for the offense that year. These disparities reflect an increase in the arrest rate for both groups since 2005.

In 2013, Blacks in Jersey City were over 14 times more likely to be arrested for disorderly conduct than Whites.

Disorderly conduct arrests increased for all races between 2005 and 2013: the Black arrest rate grew by 308% (from 39 arrests per 100,000 to 159 arrests per 100,000); the Hispanic/Latino arrest rate increased by 1,150% (from four arrests per 100,000 to 50 per 100,000); and the White arrest rate increased 83% (from six arrests per 100,000 to 11 per 100,000).⁶¹ See Figure 4.

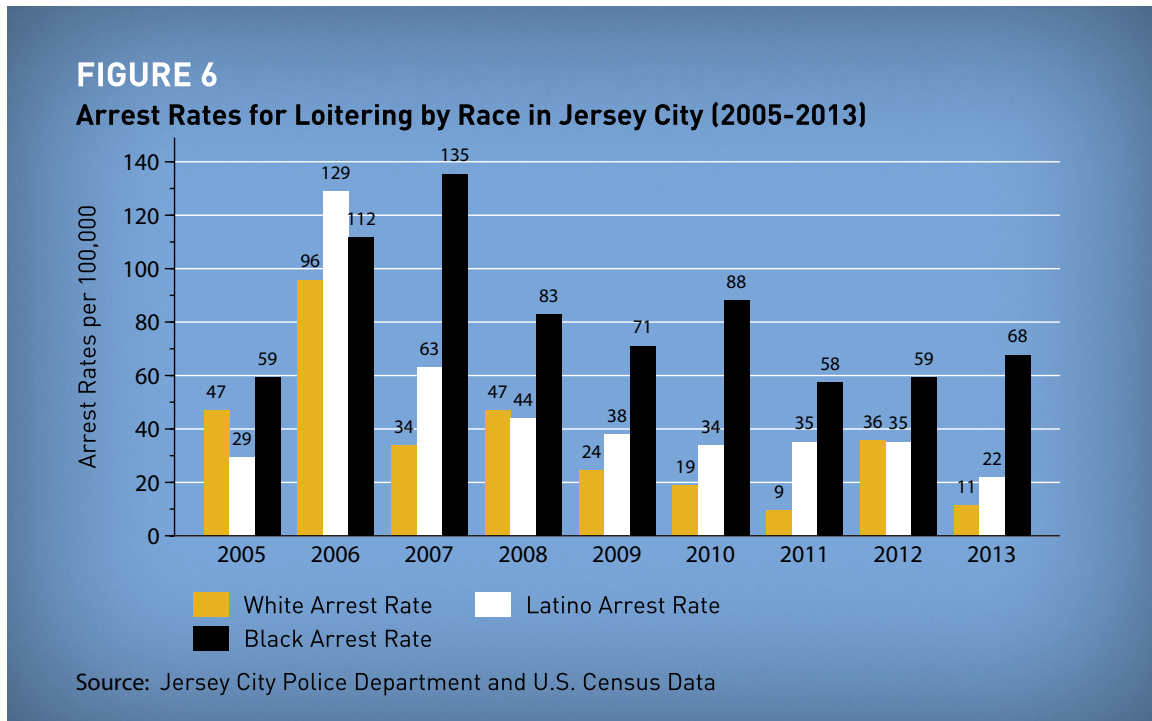
• **Trespass Arrest Disparities**



The racial disparity for trespass arrests by the JCPD was especially high for Blacks during the time period examined (2005-2013):⁶² on average, they were 7.7 times more likely to be arrested than Whites. See Figure 5. The disparity for Hispanics/Latinos during this time was much lower (1.7). The racial disparity between Black-White arrests for trespass remained high at the end of the sample period: in 2013 Blacks were over 11 times more likely than Whites to be arrested for trespass. The Black arrest rate also increased exponentially—540%—between 2005 and 2013.

There were relatively few trespass arrests in Jersey City over the sample period (2005-2013). See Appendix A, Table A3. It is possible that the data received may not include information for all trespass arrests given the documented discrepancies in data for marijuana possession and disorderly conduct arrests. Based on the data received, however, the arrest rate increased from 2005 to 2013 for all races, but most dramatically for Blacks. See Figure 5.

• **Loitering Arrest Disparities**



Blacks were 3.4 times more likely, and Hispanics/Latinos were 1.7 times more likely, than Whites to be arrested for loitering in Jersey City for the sample period (2005-2013). See Figure 6. However, the disparities increased in recent years: Blacks in Jersey City were six times more likely than Whites to be arrested for loitering in 2013; Hispanics were almost twice as likely as Whites to be arrested that year.

The loitering arrest rate fluctuated for all races throughout the sample period: the White arrest rate was at its lowest in 2013 (11 arrests per 100,000), and was at its highest in 2006 (96 arrests per 100,000); the Black arrest rate was at its lowest in 2011 (58 per 100,000) and its highest in 2007 (135 per 100,000); Hispanics/Latinos saw the lowest rate in 2013 (22 per 100,000) and highest rate in 2006 (129 per 100,000).

Blacks Make Up 59% of Arrests for the Study Offenses Although They Are Only 25% of the Population in Jersey City

TABLE 1: Annual Arrests for All Study Offenses by Race in Jersey City (2005-2013)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2005	31	82	132	145
2006	62	184	123	369
2007	42	248	122	412
2008	50	256	119	425
2009	51	208	123	382
2010	43	196	82	321
2011	33	182	95	310
2012	43	196	75	314
2013	24	256	93	373
Total	379 (12%)	1,808 (59%)	864 (28%)	3051 (100%)

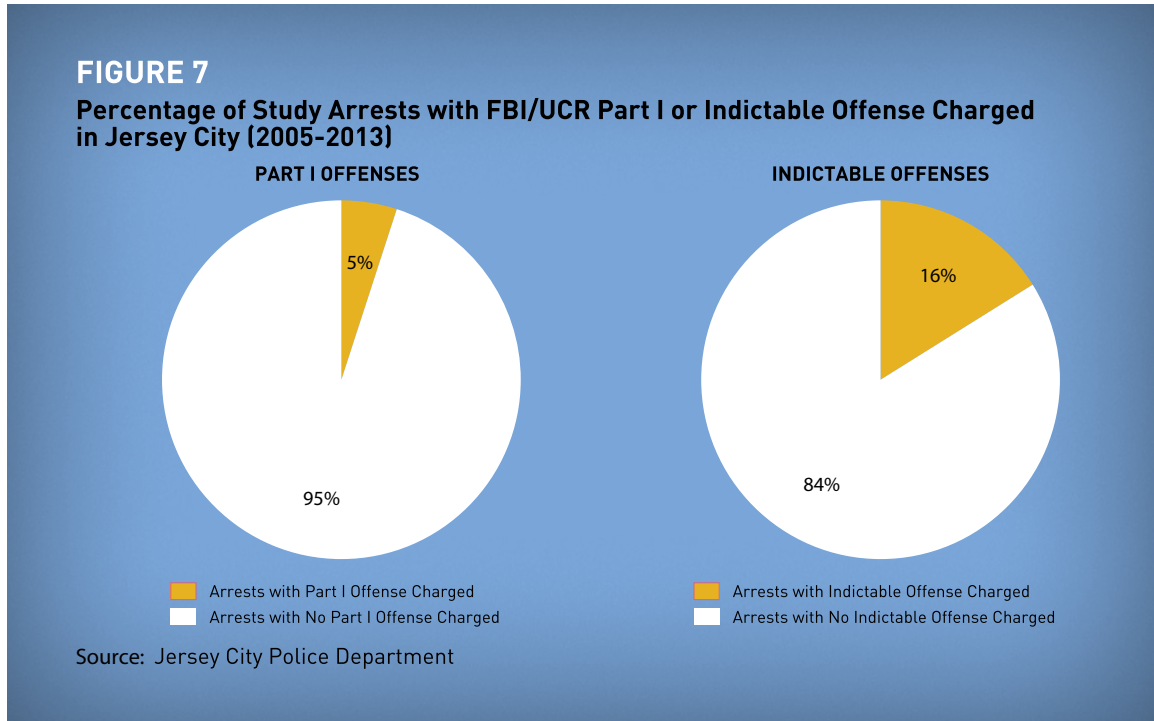
* A small number of Asian and American Indian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: Jersey City Police Department

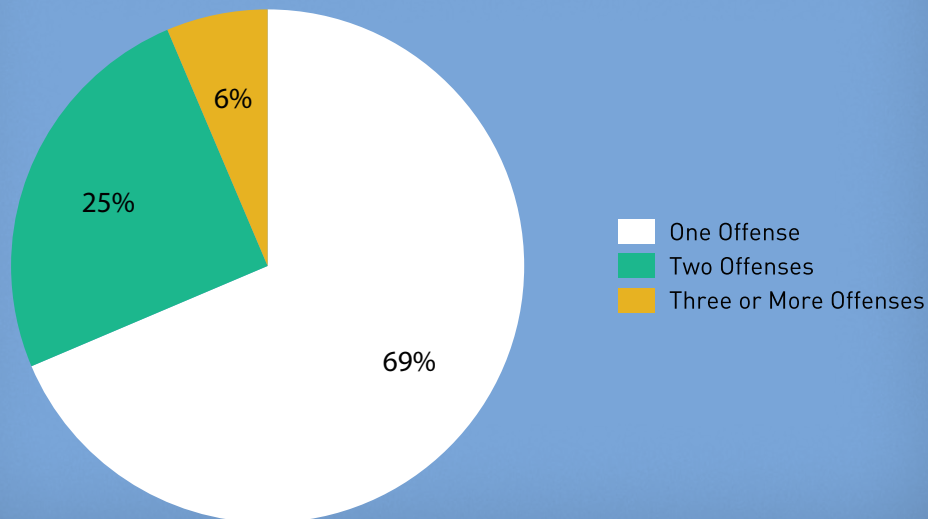
Blacks represent a disproportionate number of arrests for all offenses: 61% of marijuana possession arrests, 64% of disorderly conduct arrests, 70.5% of trespass arrests, and 48% of loitering arrests.

With a population of nearly a quarter million people during the sample period, Jersey City has a relatively even demographic distribution: Whites (22%), Blacks (25%), Hispanics/Latinos (29%), and Asians (24%).⁶³ Still, Blacks represent a disproportionate number of arrests for all offenses: 61% of marijuana possession arrests, 64% of disorderly conduct arrests, 70.5% of trespass arrests, and 48% of loitering arrests.⁶⁴ Hispanic/Latino arrests for all offenses were also much higher than total White arrests. See Table 1.

The Vast Majority of Arrests in Jersey City for the Study Offenses Do Not Involve a Serious UCR Part I Crime, Indictable Offense, or Multiple Charges



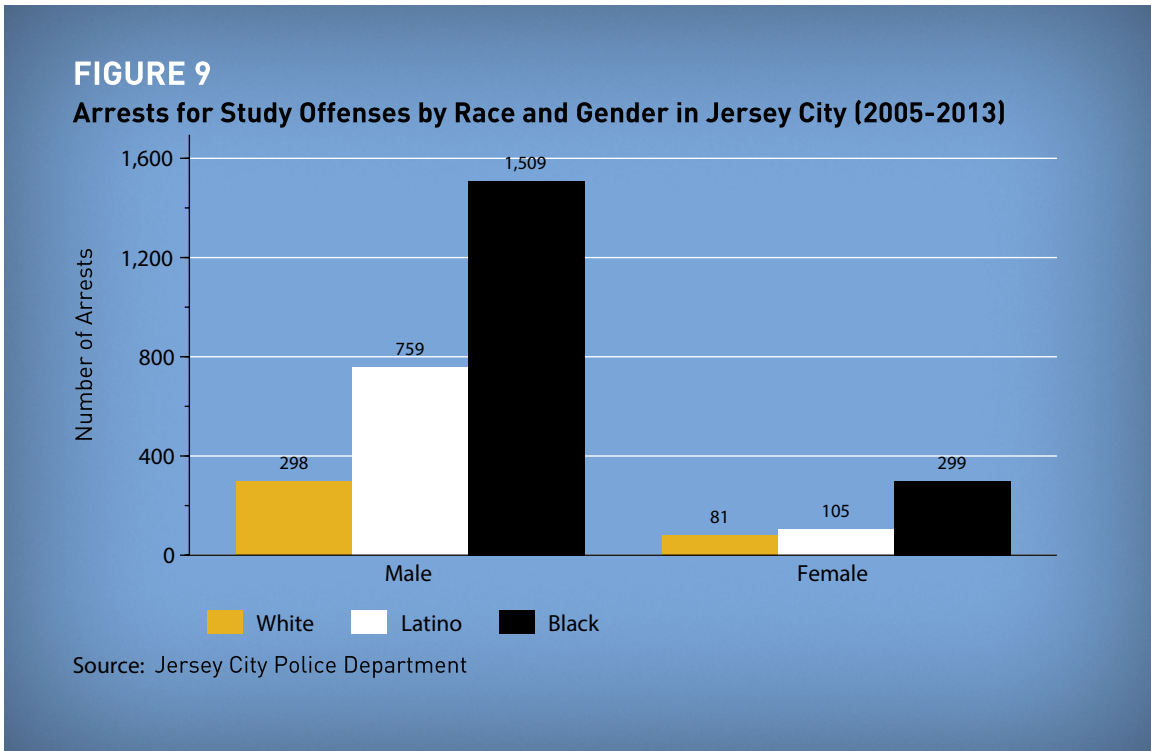
The ACLU-NJ received data for 3,727 arrests of the study offenses from the JCPD in response to our OPRA request. Of these arrests, only 191 arrests included a charge for a UCR Part I crime. In other words, in only 5% of the arrest instances was there an allegation of a serious Part I offense, and only 16% (604) of the arrests involved an indictable offense charge. See Figure 7.

FIGURE 8**Number of Offenses Charged Per Arrest for Study Offenses in Jersey City
(2005-2013)**

Source: Jersey City Police Department

When limiting the data set to those arrests that did not include an indictable offense charge, we are left with a total of 3,123 purely low-level arrests in Jersey City. Ninety-four percent of these arrests involved a charge for only one study offense, or a study offense in combination with a second low-level offense. See Figure 8. The average number of offenses charged per arrest was 1.66.

Black Males Account for 12% of the Jersey City Population But Make up Over 47% of Arrests for Study Offenses



NOTE: Total arrests are higher than the sum of the White, Black, and Latino arrests because Asian and American Indian arrests are not presented in the figure.

While males represent the majority of arrests in Jersey City (84%), Black males in particular are overrepresented: they account for 47% of the arrests, while they make up only 12.3% of the population.⁶⁵ See Figure 9. Overall, females are a small percentage of the total arrests (16%). However, within the female gender category, Black females make up a disproportionate percentage of the arrests: 60%.

Young People Aged 18-24 Represent a Disproportionate Number of Arrests in Jersey City**TABLE 2: Breakdown of Arrests for Study Offenses by Age and Race in Jersey City (2005-2013)***

AGE	WHITE	BLACK	LATINO	TOTAL (% of total arrests by age)
Juvenile	15 (3%)	329 (69%)	123 (26%)	478 (15%)
18 to 24	89 (10%)	565 (61%)	247 (27%)	922 (29%)
25 to 34	42 (10%)	231 (56%)	127 (31%)	412 (13%)
35 to 44	143 (16%)	443 (51%)	268 (31%)	877 (28%)
45+	90 (21%)	240 (55%)	99 (23%)	438 (14%)
Total (% of total arrests by race)	379 (12%)	1,808 (58%)	864 (28%)	3,127 (100%)

* Total arrests per age category are higher than the sum of the White, Black, and Latino arrests because Asian and American Indian arrests are not presented in the table.

Source: Jersey City Police Department

Black juveniles in Jersey City made up the majority of juvenile arrests for all offenses.

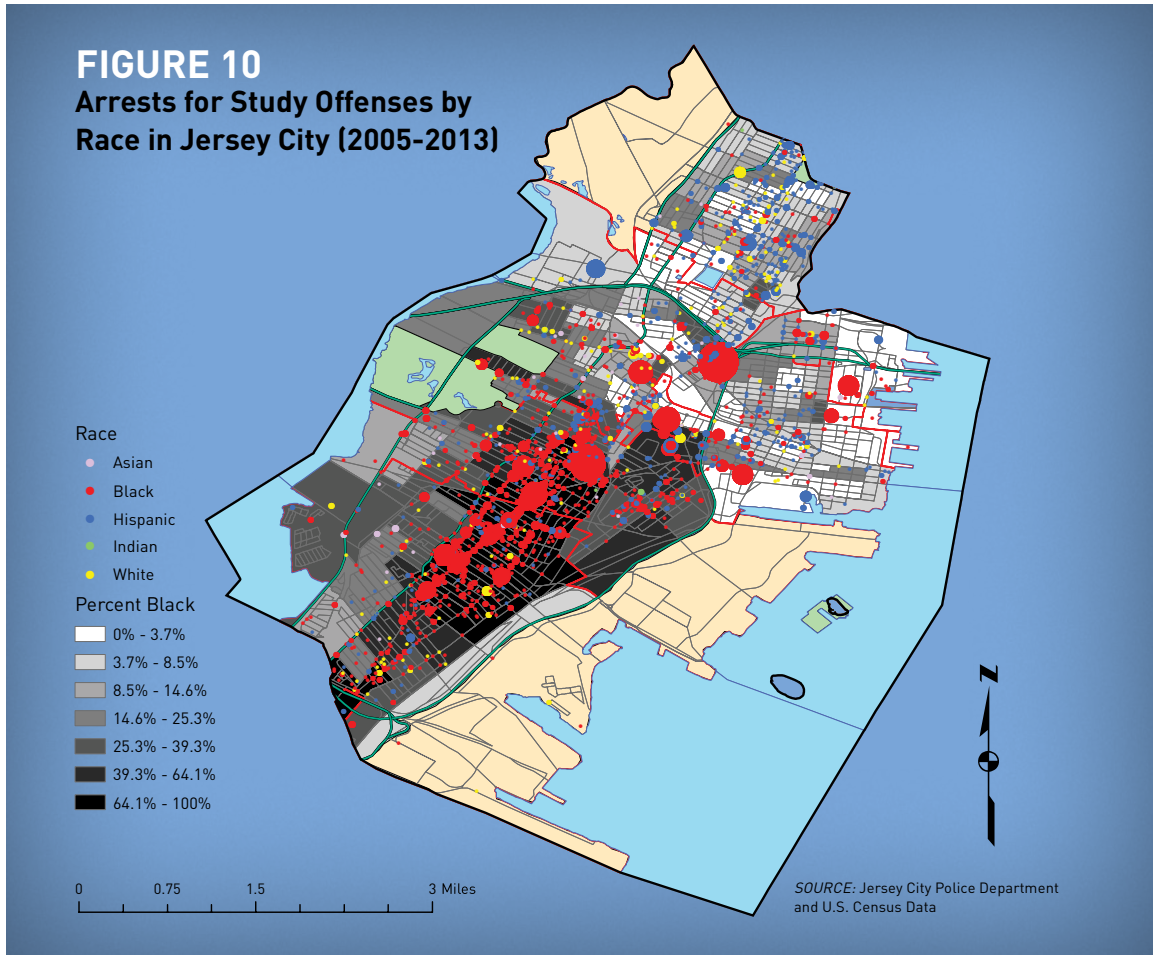
Blacks comprise 25% of the population in Jersey City,⁶⁶ yet they represent the majority of arrests for every age category analyzed. See Table 2. For the sample period analyzed, Blacks accounted for anywhere between 51% (35 to 44) to 69% (juvenile) of the arrests within the different age categories.

Young people aged 18 to 24 represent 7.4% of the population in Jersey City,⁶⁷ yet they make up 29% of all arrests for the study offenses. See Table 2. When looking at the race data for 18 to 24 year olds in Jersey City, Black youth (18 to 24) represent a disproportionate number of those arrested for the study offenses: they are only 3.3% of the population,⁶⁸ yet they account for 18% of all arrests for the study offenses.

Black youth aged 18 to 24 are only 3.3% of the population in Jersey City but represent 18% of arrests for the study offenses.

People aged 35 to 44 are 14.5% of the population in Jersey City.⁶⁹ Surprisingly, this group accounts for nearly as many arrests in Jersey City as people aged 18 to 24: 28%. Within this age category, Blacks and Latinos represent 82% of the arrests.

Who and Where: Individuals Arrested in Jersey City Are Arrested in Close Proximity to Home



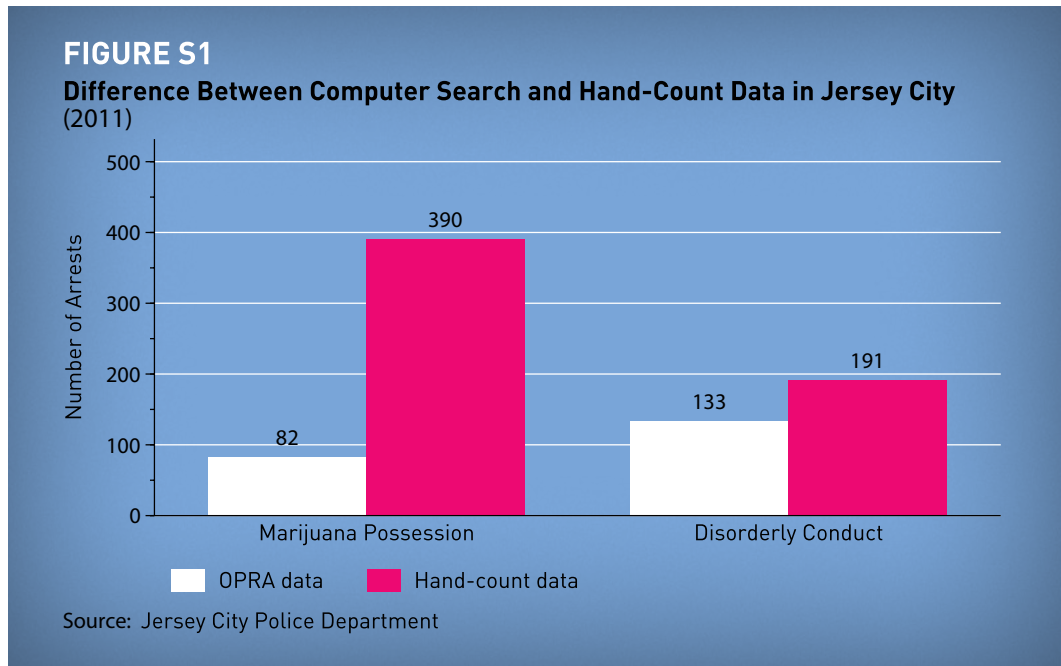
The JCPD data show that most arrests are of residents in their own communities. The vast majority of arrests—84%—were of Jersey City residents. Most arrests occurred in close proximity to the individual’s home: 42% (1,580) within a half mile from home; and 60% (2,285) within one mile from home.⁷⁰ In sum, individuals tended to be arrested in their own communities and close to home.

Black arrests were concentrated in the southern part of the city, in predominantly Black neighborhoods, while Latino arrests were concentrated to the North, in predominantly Hispanic/Latino areas. See Figure 10. The few White arrests that do appear in the data are evenly distributed throughout the city.

Manual Review of JCPD Arrest Records Revealed Many More Racially Disproportionate Low-Level Arrests

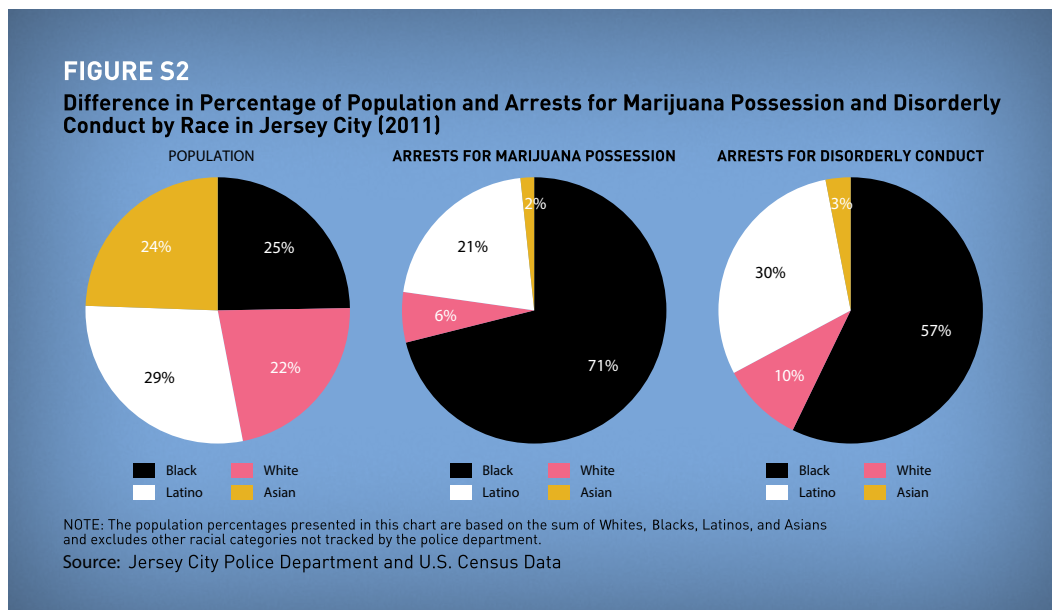
The ACLU-NJ repeatedly questioned the accuracy of the JCPD’s arrest data because the numbers were drastically lower than those the department had reported to the FBI/UCR Program. Despite numerous computer searches, the department could not reconcile the arrest data it had produced in response to the ACLU-NJ’s OPRA request with the data it had reported to the FBI/UCR Program. In an effort to determine what accounted for the discrepancies, the JCPD agreed to conduct a manual review of all its arrests records for 2011. This would provide the most accurate and reliable accounting of the JCPD’s marijuana possession and disorderly conduct arrests for that year. Indeed, the manual review produced significantly more arrest records than the JCPD provided via its computer searches. The manual review exposed the JCPD’s poor data management practice: the department is unable to produce accurate arrest data under its current system. The data management system it now uses obscures the extent to which low-level arrests disproportionately affect Jersey City’s communities of color.

The JCPD Made Nearly 400 Marijuana Possession Arrests and Nearly 200 Disorderly Conduct Arrests in 2011 Alone



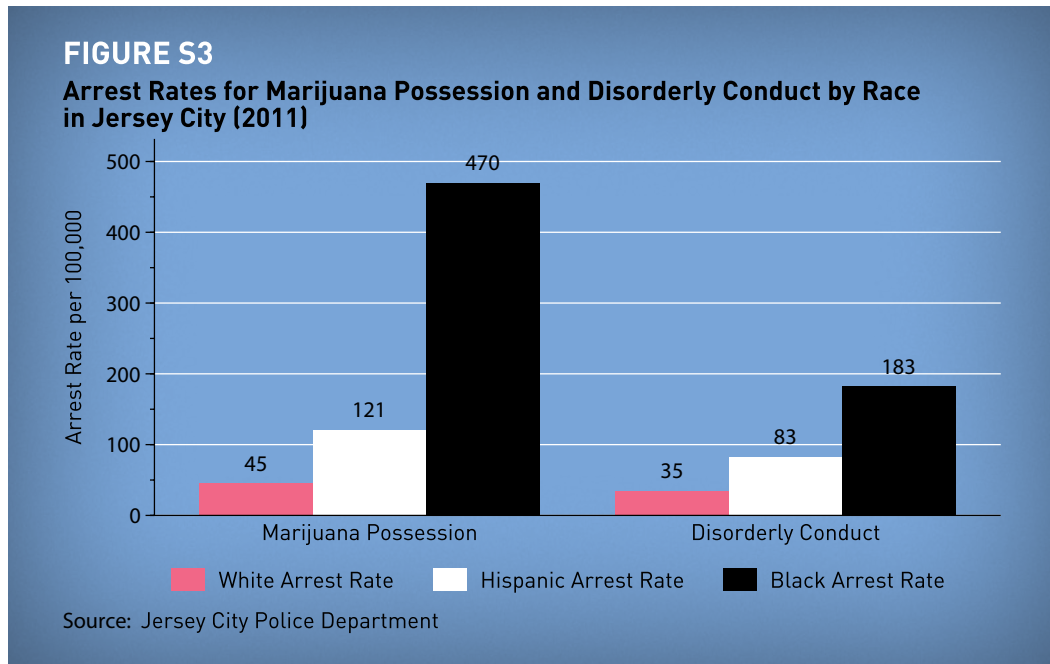
NOTE: The totals for the hand-count data reflect our estimation of marijuana possession and disorderly conduct arrests that did not include an indictable offense. Similarly the OPRA data do not include an arrest with an indictable offense.

When the JCPD manually reviewed all of its arrest records for 2011, one by one, it produced 390 marijuana possession arrests, while the OPRA results had reported only 82 marijuana possession arrests.⁷¹ See Figure S1. In other words, the JCPD failed to recover 79% of the relevant arrests when it conducted computer searches for the data. The same problem was present in the disorderly conduct data: the OPRA data reported 133 disorderly conduct arrests, while the hand count later produced 191 disorderly conduct arrests—30% more arrests.⁷² See Figure S1.



Blacks were overrepresented in both marijuana possession and disorderly arrests. While they comprised a quarter of Jersey City’s population, they accounted for 71% of the marijuana possession and 57% of the disorderly conduct arrests in 2011. Whites, on the other hand, were underrepresented, while Hispanic/Latino arrests were more proportionate to the percentage of the Hispanic/Latino population. See Figure S2.

Racial Disparities in 2011 Arrests Were Worse Than the Computer Records Showed



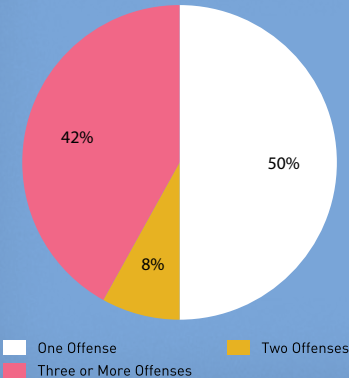
Not only did the JCPD’s hand count confirm that there had been many more arrests than the department had initially reported, it also revealed that the racial disparities in arrests were worse than the OPRA data indicated. In fact, Blacks were 10.4 times more likely than Whites to be arrested for marijuana possession in 2011—one of the highest disparities for the offense in the study; Hispanics/Latinos were 2.7 times more likely to be arrested. See Figure S3. Blacks were 5.2 times more likely, and Hispanics/Latinos 2.4 times more likely, than Whites to be arrested for disorderly conduct. See Figure S3.

These results suggest that the racial disparities for the remaining years (2005-2010 & 2012-2013), and for the other offenses (loitering and trespass), likely are more pronounced than the OPRA data in the preceding section suggest.

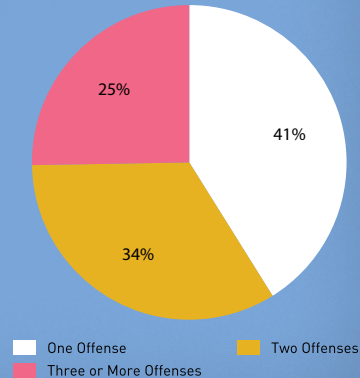
FIGURE S6

Number of Offenses Charged Per Arrest for Marijuana Possession and Disorderly Conduct in Jersey City (2011)

ARRESTS FOR MARIJUANA POSSESSION



ARRESTS FOR DISORDERLY CONDUCT



Source: Jersey City Police Department

Of 511 total arrests for marijuana possession, less than one percent had a serious Part I UCR crime associated with them. Fifty percent of the arrests had marijuana possession as the only charge. See Figure S6. Two-hundred-and-thirty-three (88%) of the 262 total arrests for disorderly conduct arrests did not have a Part I crime associated, and 41% were for the sole charge of disorderly conduct. See Figure S6.

B. CASE STUDY: ELIZABETH POLICE DEPARTMENT

Elizabeth Data Problems

In September 2013, the Elizabeth Police Department (EPD) provided an initial set of records in response to the ACLU-NJ's request, but the department's response missed substantial amounts of data.⁷³ The EPD eventually produced a dataset but the initial analysis of these records revealed serious discrepancies with the data the EPD had submitted to the FBI/UCR Program; data for some years appeared to be missing, too.⁷⁴ The ACLU-NJ sent Police Chief Patrick Shannon and Elizabeth Mayor Chris Bollwage letters addressing the data issues and asking them to find out what accounted for the discrepancies. In April 2014, the city informed the ACLU-NJ that it is was unable to provide an explanation for the gaps and inaccuracies in the data.⁷⁵

Analyzing the EPD's Inconsistent Data Tracking

The EPD used two different recording systems to categorize arrests between 2003 and 2013. Until 2010, the department categorized arrest records using a federal UCR/LEIRS code.⁷⁶ Beginning in 2011, the EPD began to record its arrests according to statute number. The analysis of the data from 2003 to 2012 therefore excludes arrests that have a Part I offense charged. The analysis for arrests for 2011 and 2012 is further limited to arrests that do not have an indictable offense charge, i.e., those arrests that involved exclusively low-level offenses.⁷⁷ While the EPD data is imperfect, it is enough to illustrate racial disparity patterns and geographic trends of low-level arrests in Elizabeth for the purposes of this study.

74,000 Latinos Unaccounted for in the Data

The EPD data presented an additional complication because of the way the department tracks race and ethnicity in arrests. Elizabeth's 74,000 Hispanic/Latino residents account for nearly 60% of its total population, making it the city with the largest Hispanic/Latino population of the four cities studied.⁷⁸ The EPD records, however, do not indicate which arrests were of Hispanic/Latinos.⁷⁹ The ACLU-NJ observed municipal court sessions and spoke with defense attorneys who confirmed anecdotally that a majority of the people charged with low-level offenses in Elizabeth are Hispanic/Latino.

The lack of Hispanic/Latino data in Elizabeth creates a serious problem in analyzing racial disparities in arrests. First, it is impossible to examine potential arrest disparities between Whites and Hispanics/Latinos.⁸⁰ Second, the lack of such data likely deflates the actual disparities between White and Black arrests: because the EPD likely categorizes Hispanic/Latino arrests in Elizabeth as White arrests, the number of White arrests is likely inflated, thus reducing the Black-White arrest disparity.

Because the EPD likely categorizes Hispanic/Latino arrests in Elizabeth as White arrests, the number of White arrests is likely inflated, reducing the Black-White arrest disparity.

Although all law enforcement agencies in Union County are required to record certain information concerning vehicular stops and investigatory detentions, including the race and ethnicity of the individual “if known,” the policy does not provide instructions for determining race or ethnicity, and it does not require the recording of race in the arrest context.⁸¹

Significant Racial Disparities in Elizabeth: Blacks are Three to Four Times More Likely Than Whites to be Arrested for the Study Offenses

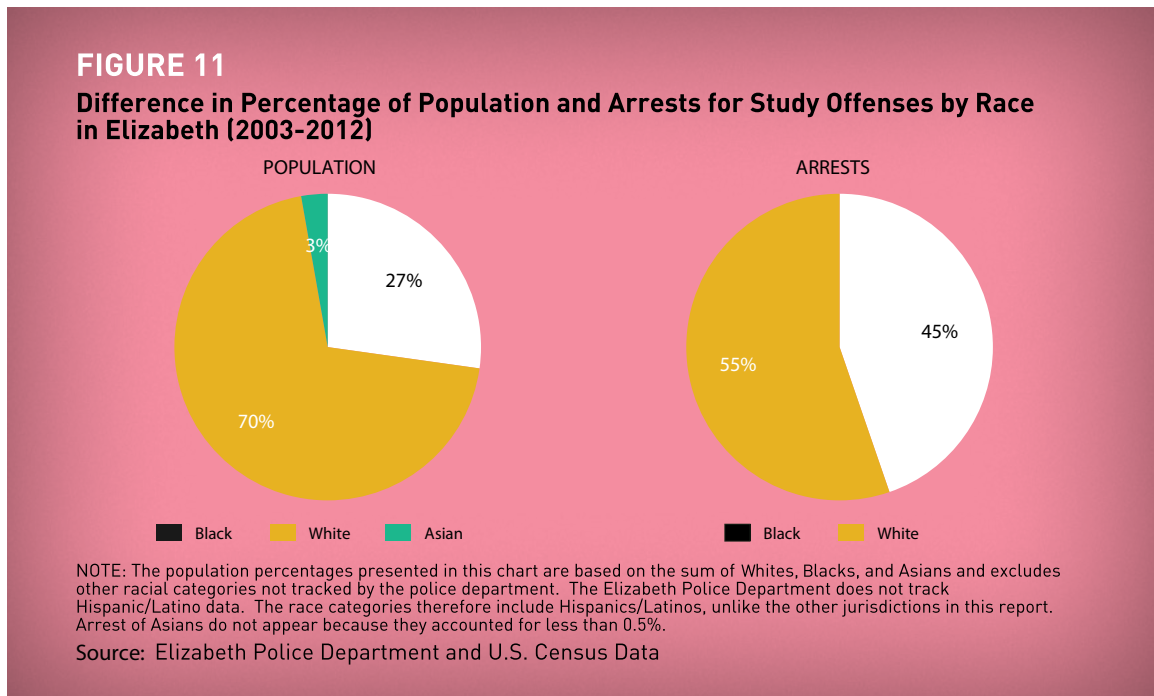
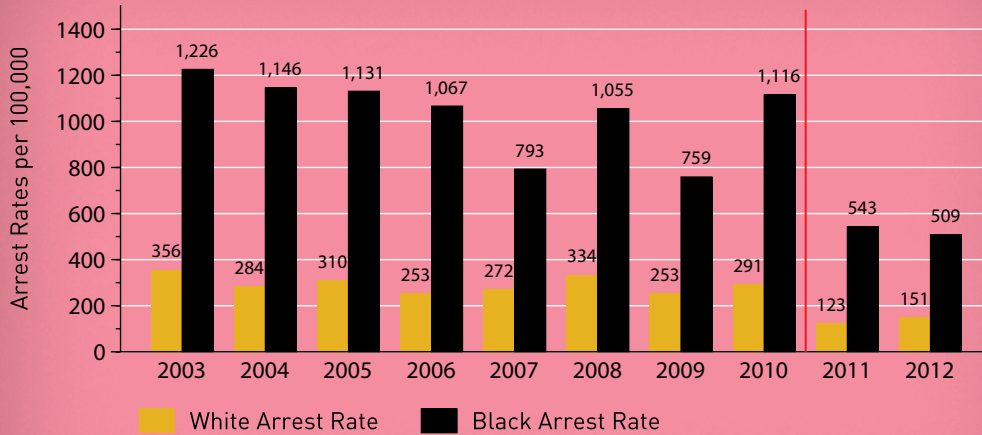


FIGURE 12

Arrest Rates for Study Offenses by Race in Elizabeth (2003-2012)



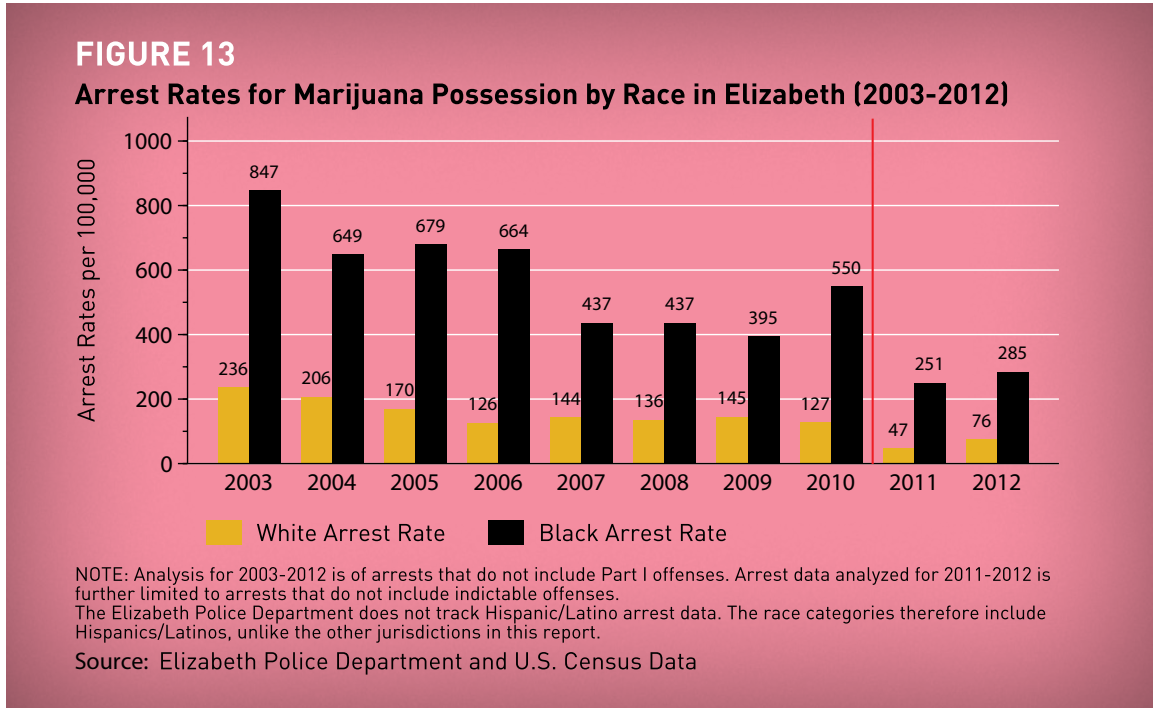
NOTE: Analysis for 2003-2012 is of arrests that do not include Part I offenses. Arrest data analyzed for 2011-2012 is further limited to arrests that do not include indictable offenses. The Elizabeth Police Department does not track Hispanic/Latino arrest data. The race categories therefore include Hispanics/Latinos, unlike the other jurisdictions in this report.

Source: Elizabeth Police Department and U.S. Census Data

The data show that Blacks were 3.6 times more likely than Whites to be arrested in the years for which the ACLU-NJ received data (2003-2012), for all study offenses. Blacks were 4.4 times more likely than Whites to be arrested for loitering, 4 times more likely to be arrested for trespass, 3.7 times more likely to be arrested for marijuana possession, and 3 times more likely to be arrested for disorderly conduct. These disparities are potentially even higher because the EPD is most likely coding Hispanic/Latino arrests as White arrests, thus inflating the White arrest rate, and in turn reducing the disparity between Blacks and Whites.

The overall arrest rate declined between 2003 and 2012, but this is most likely attributable to the EPD's change in its data recording method in 2011.⁸² See Figure 12.

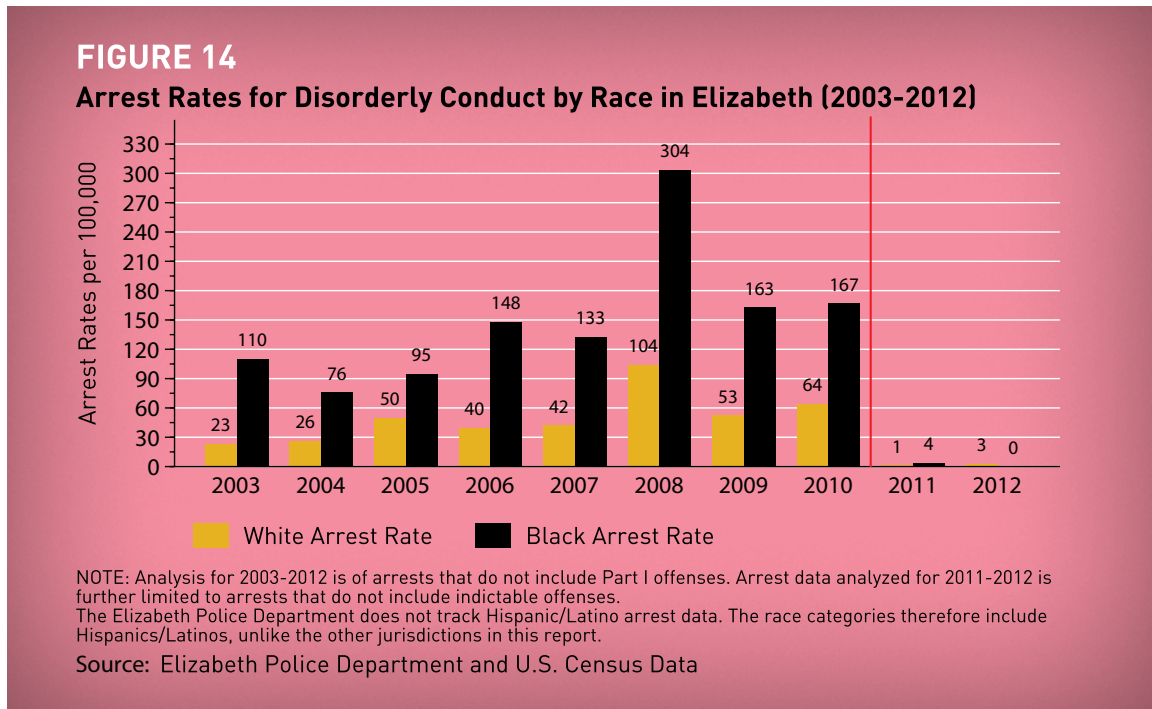
• **Marijuana Possession Arrest Disparities**



While Blacks in New Jersey are 2.8 times more likely than Whites to be arrested for marijuana possession,⁸³ in Elizabeth they were 3.7 times more likely than Whites to be arrested for the offense during the sample period (2003-2012). See Figure 13. In fact, the racial disparity remained consistent during this time, even while the arrest rate decreased. Additionally, while the racial disparity in marijuana possession arrests decreased between 2011 and 2012 (from 5.4 to 3.7), the most recent years for which we have data, it remains at higher levels than ten years earlier (3.6).

The data show a 66% decrease in the Black arrest rate (from 847 arrests per 100,000 in 2003 to 285 arrests per 100,000 in 2012) and a 68% decrease in the White arrest rate (from 236 arrests per 100,000 in 2003 to 76 arrests per 100,000 in 2012). The decline in marijuana possession arrests is a welcome development, however, because the decline was even across racial groups, the racial disparity in arrests persisted.

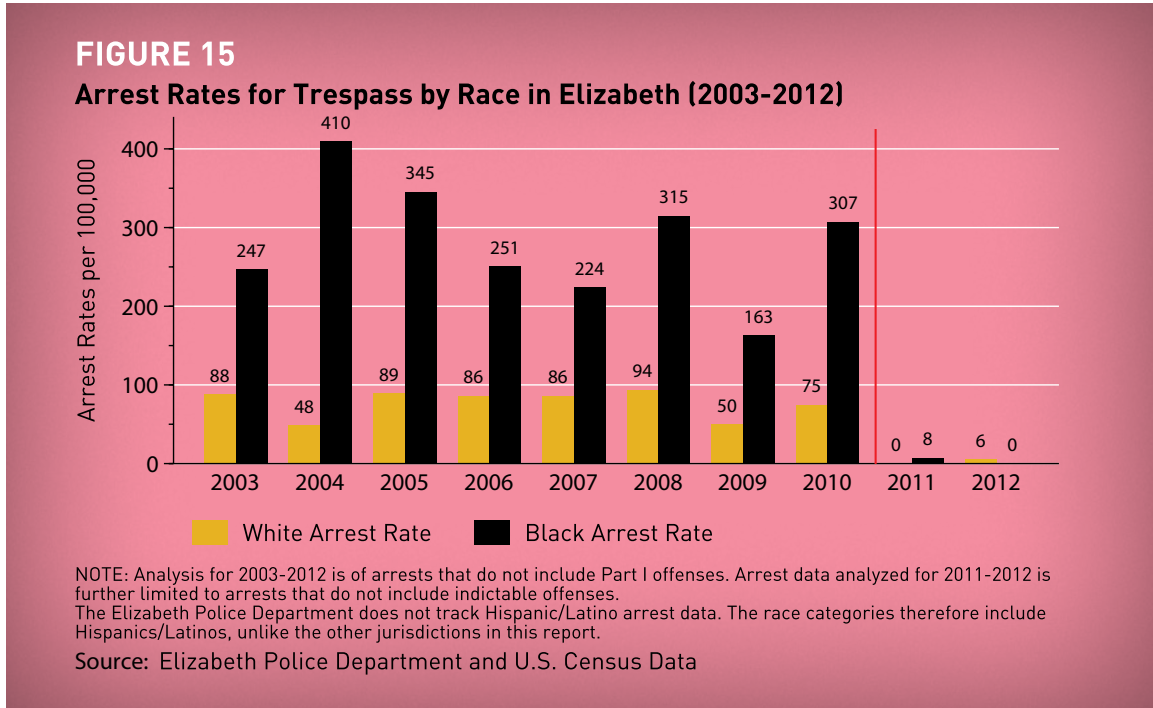
• **Disorderly Conduct Arrest Disparities**



Providing an overall rate of the racial disparity between Black and White arrests for disorderly conduct in Elizabeth for the sample period is not possible because the data do not provide reliable numbers for the last two years examined (2011 and 2012). See Figure 14. The total number of disorderly conduct arrests in Elizabeth in 2010 was 88; in 2011, that number fell to 2 (a 98% decrease).⁸⁴ The ACLU-NJ suspects that this is a result of the EPD’s change in procedure for recording arrest information in 2011, although the department was unable to confirm whether this is the case.

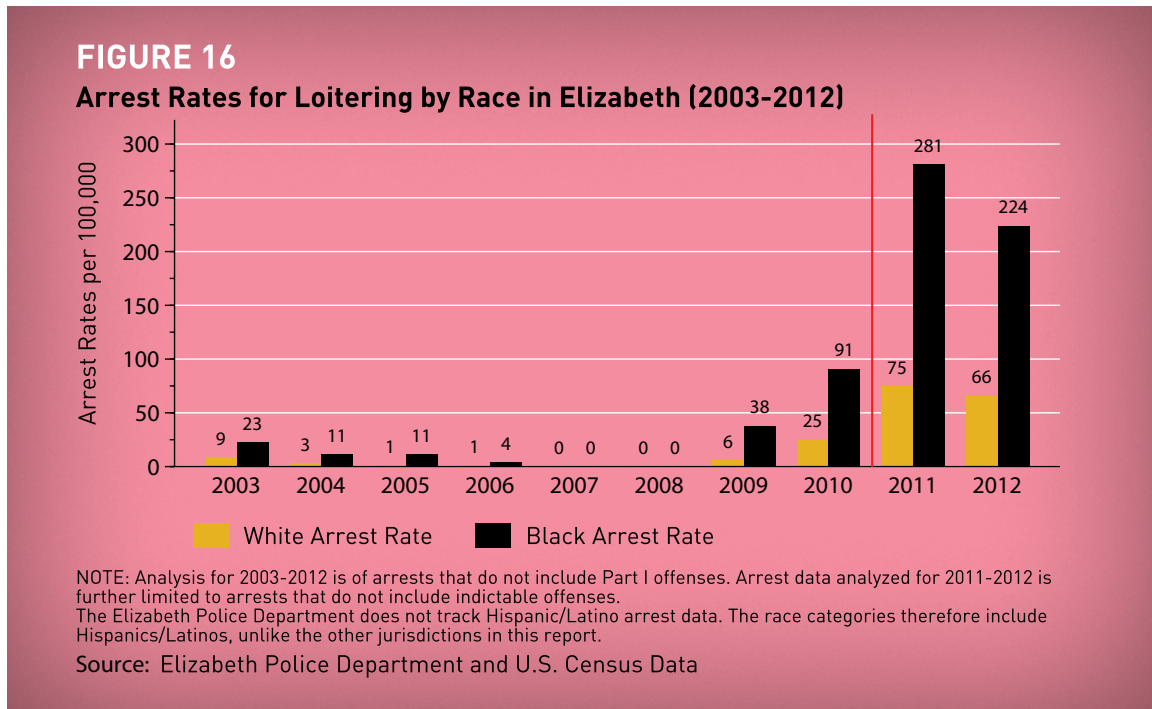
Disparities for disorderly conduct arrests for earlier years were present, however: in 2003 Blacks were 4.7 times more likely, and in 2010 Blacks were 2.6 more likely, to be arrested than Whites. See Figure 14.

• **Trespass Arrest Disparities**



The data for trespass arrests for 2011 and 2012 suffer from the same problem as the disorderly conduct arrest data: there appear to be data missing based on the drastic drop in White arrests in 2011 (from 75 arrests per 100,000 in 2010, to zero in 2011) and Black arrests in 2011 (from 307 arrests per 100,000 in 2010, to 8 in 2011).⁸⁵ See Figure 15. Again, the EPD was not able to provide an explanation for the apparently missing data; based on the data that the ACLU-NJ did receive, however, there were racial disparities in arrests every calendar year and they do not appear to be waning. In 2010, the last year for which more reliable data are available, Blacks in Elizabeth were 4.1 times more likely than Whites to be arrested for trespass.

• *Loitering Arrest Disparities*



While the data for disorderly conduct and trespass appear to be missing for 2011, the data received for loitering arrests pose the opposite problem. From 2003 to 2010, the EPD reported anywhere between zero arrests (2007 and 2008) to 41 arrests (2010).⁸⁶ There was then a sudden jump to 125 loitering arrests in 2011 and 104 in 2012. See Figure 16. Again, this indicates a potential problem with how the records were coded in the system and a subsequent problem with the retrieval of records. The ACLU-NJ was unable to determine which UCR offense category the EPD applied to loitering arrests during this time period (2003-2010)—making their identification impossible and resulting in an incomplete data set. The EPD was not able to answer the question definitively.

Blacks Make Up 58% of Arrests for the Study Offenses Although They Are Only 21% of the Population in Elizabeth

TABLE 3: Annual Arrests for Study Offenses by Race in Elizabeth (2003-2012)*

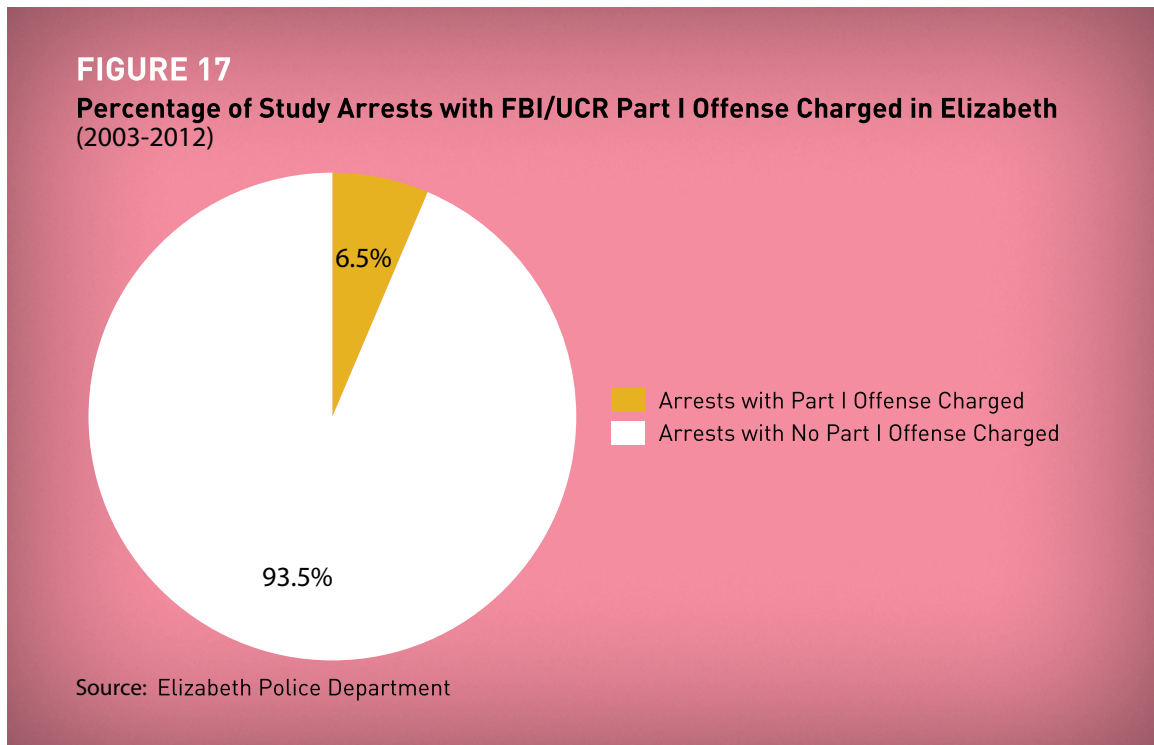
YEAR	WHITE	BLACK	TOTAL
2003	243	323	566
2004	194	302	496
2005	212	298	510
2006	173	281	454
2007	186	209	395
2008	228	278	506
2009	173	200	373
2010	199	294	493
2011	84	143	227
2012	103	134	237
Total	1,795 (42%)	2,462 (58%)	4,257 (100%)

* A small number of Asian arrests in the data are not included. Percentages of total are based on the sum of White and Black arrests only.

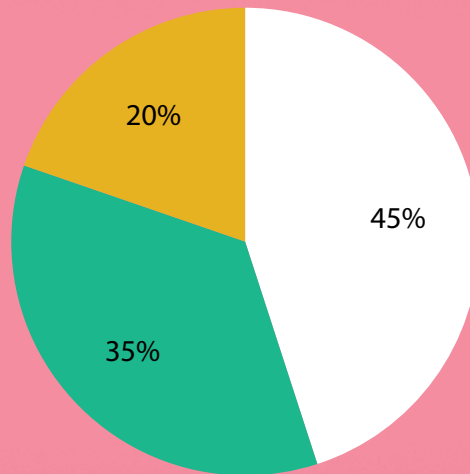
Source: Elizabeth Police Department

The EPD made 4,257 arrests (an average 426 arrests per year) of Blacks and Whites for the study offenses between 2003 and 2012.⁸⁷ See Table 3. Marijuana possession accounts for 2,333 arrests during this time, followed by defiant trespass (1,023), disorderly conduct (594), and loitering (307). See Appendix A, Tables A5-A8. Arrests for defiant trespass and disorderly conduct were likely even higher as the data for 2011 and 2012 only reflect between 2 and 4 arrests each year for these offenses. If these data are correct, it would mean that there had been an unprecedented 98% and 99% decrease in both disorderly conduct and trespass arrests between 2010 and 2011, respectively. As previously noted, because the EPD changed its procedure for recording arrests in 2011, the discrepancy is likely due to the change in its records management rather than a precipitous drop in arrests. The total arrests for loitering are also likely higher than this data set reflects, for the same reason.

The Vast Majority of Arrests for the Study Offenses in Elizabeth Do Not Involve Serious FBI/UCR Part I Crimes



The data received indicate that the majority of people arrested in Elizabeth for the study offenses were in fact only engaged in minor offenses. Of 4,875 arrests for which the ACLU-NJ received data, only 316, or 6.5%, involved a charge for a serious FBI/UCR Part I offense. See Figure 17. In other words, 93.5% (4,559) of the arrests for the study offenses did *not* involve a charge for a serious Part I crime.

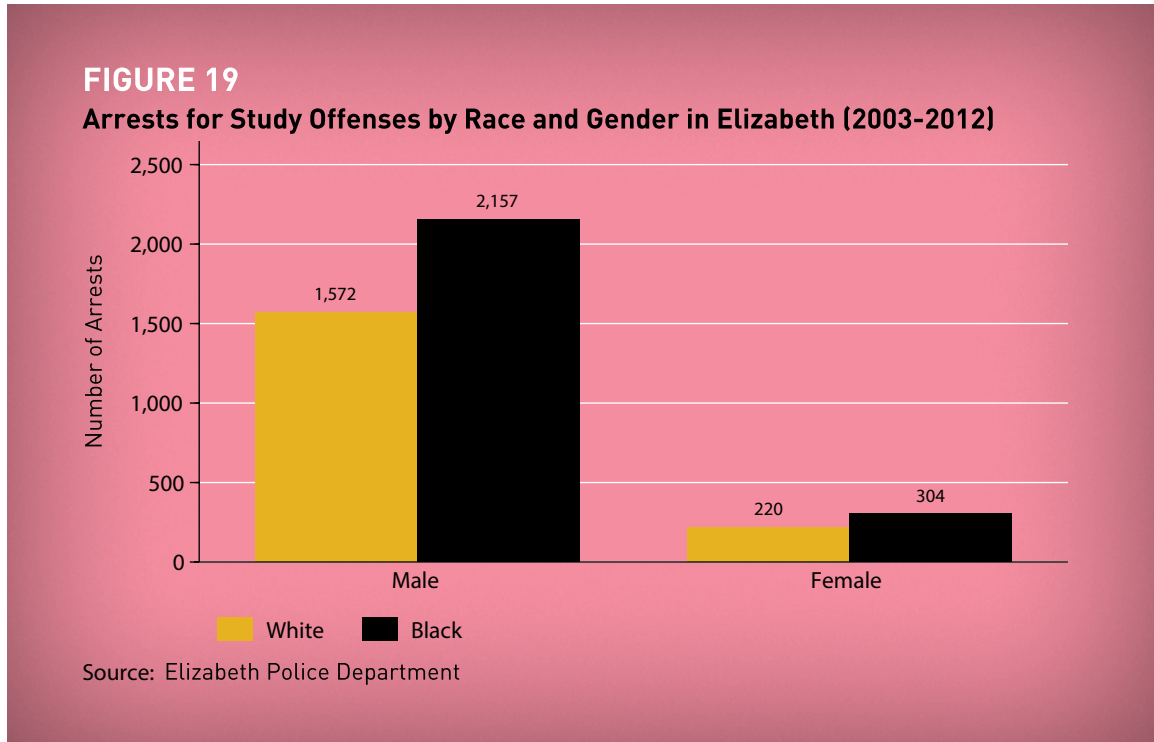
FIGURE 18**Number of Offenses Charged Per Arrest for Study Offenses in Elizabeth (2003-2012)**

One Offense Two Offenses Three or More Offenses

Source: Elizabeth Police Department

Of the Elizabeth arrest data (4,198 arrests),⁸⁸ 45% (1,894) of the arrests were stand-alone (the offense examined was the sole charge and basis for the arrest). See Figure 18. The next 35% of arrests (1,475) had a second non-Part I offense charged, meaning that 80% of the arrests involved two or fewer charges. The percentage of arrests in Elizabeth involving indictable offenses for the sample period (2003-2012) cannot be calculated because the EPD only categorized arrests by UCR code, rather than by statute number, from 2003 to 2010.

Black Males Account for 10% of the Elizabeth Population Yet Make-up Over 51% of Arrests for Study Offenses



Males account for 88% of arrests in Elizabeth for the four offenses. Black males, however, represent the majority of these arrests: with a total population in Elizabeth of 126,458, Black males are only 10% of the population,⁸⁹ yet they represent 51% (2,157) of the low-level arrests studied. See Figure 19.

With a total population of 126,458, Black males are only 10% (12,545) of the population, yet they represent 51% (2,157) of the low-level arrests studied.

Blacks Age 18-24 Make Up A Disproportionate Number of Arrests in Elizabeth**TABLE 4: Breakdown of Arrests for Study Offenses by Age and Race in Elizabeth (2003-2012)***

AGE	WHITE	BLACK	TOTAL (% of total arrests by age)
Juvenile	151 (43%)	197 (56%)	349 (8%)
18 to 24	743 (41%)	1,071 (59%)	1,814 (43%)
25 to 34	498 (42%)	689 (58%)	1,191 (28%)
35 to 44	231 (40%)	341 (60%)	572 (13%)
45+	172 (51%)	164 (49%)	336 (8%)
Total (% of total arrests by race)	1,795 (42%)	2,462 (58%)	4,262 (100%)

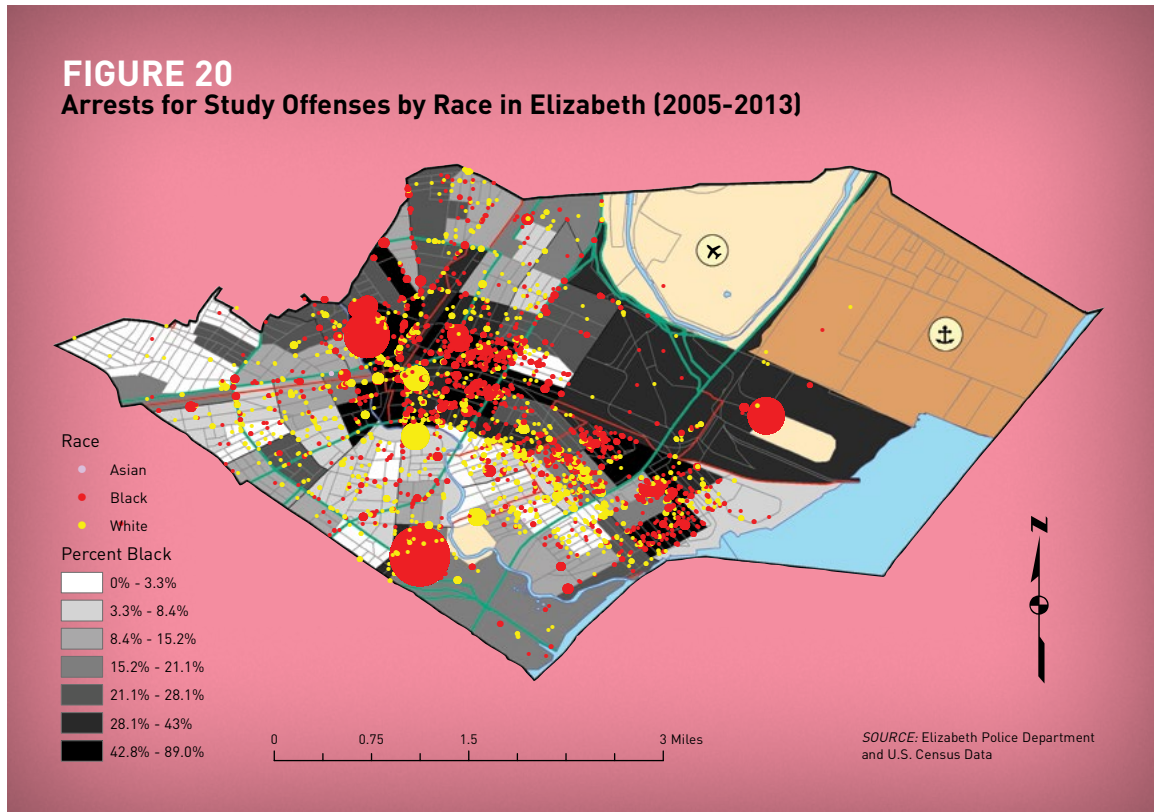
* Total arrests per age category are higher than the sum of the White and Black arrests because Asian arrests are not presented in the table.

Source: Elizabeth Police Department

Blacks represent 21% of the Elizabeth population,⁹⁰ yet they make up the majority of arrests in every age category except one (45 and over). See Table 4.

Young people aged 18 to 24 are arrested most frequently in Elizabeth for all four study offenses, comprising 43% of all arrests. See Table 4. When looking at the racial data, however, it is clear that Blacks age 18 to 24 are significantly overrepresented in arrests. While this group is only 3.1% of the population in Elizabeth,⁹¹ they account for 25% of all the low-level arrests.

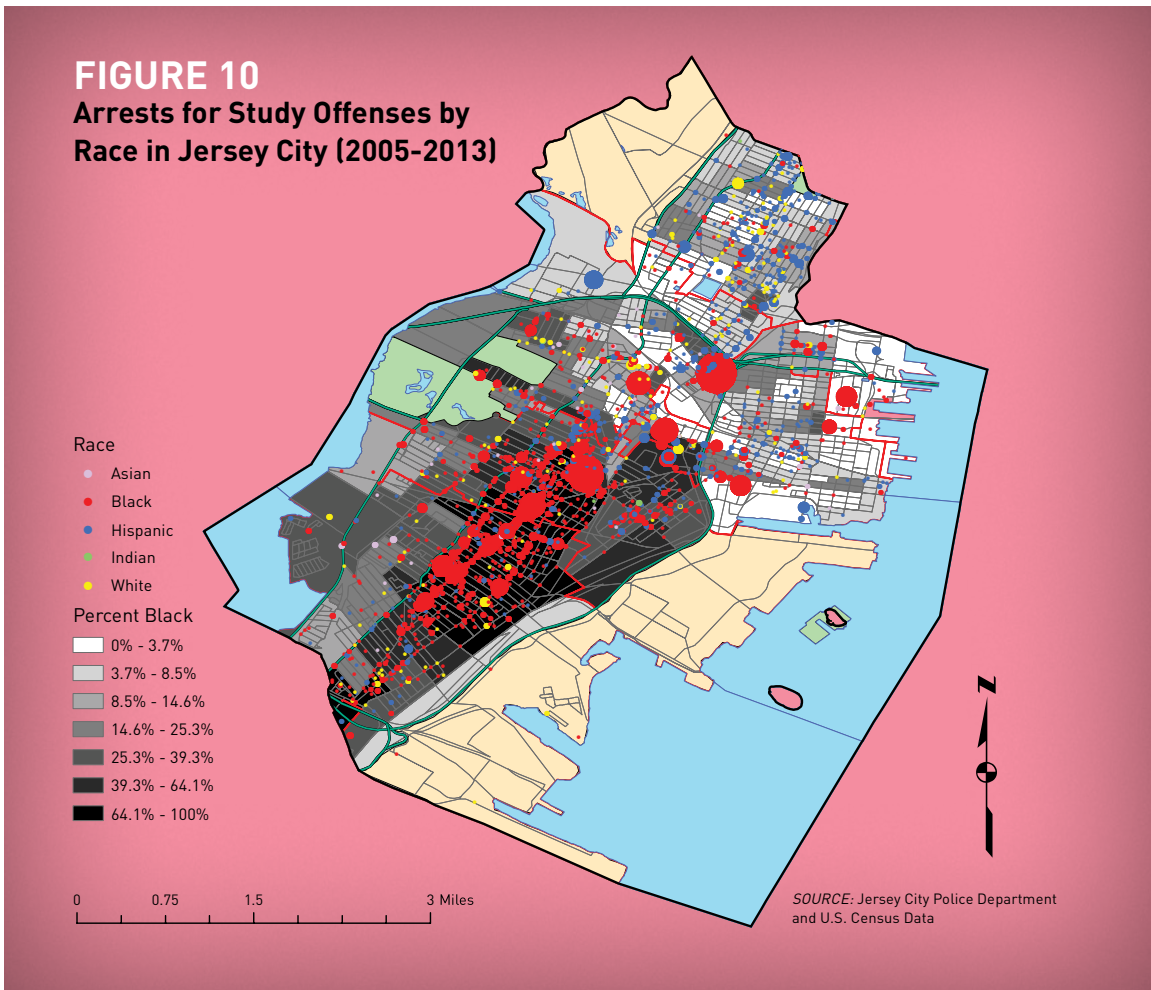
Who and Where: Arrests in Elizabeth Occur in Close Proximity to Home

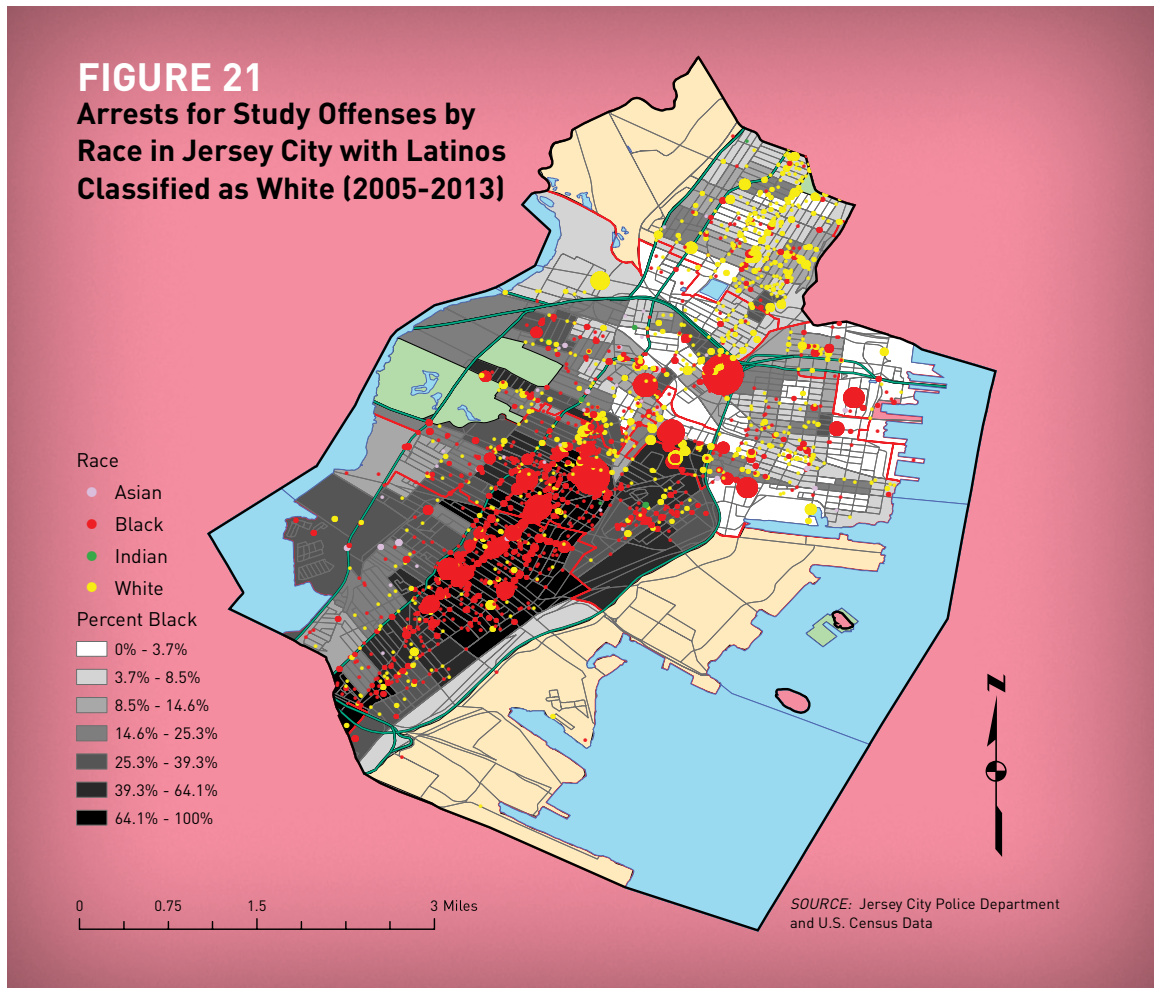


Seventy percent of those arrested for the study offenses were Elizabeth residents. Additionally, most arrests occurred in close proximity to home: 33% of arrests happened within a half mile from home, and 50% within one mile from home.

Arrests were spread out across Elizabeth, but clustered in areas with high Black populations, including two public housing projects (Mravlag Manors and Oakwood Plaza Apartments). See Figure 20.

The map in Figure 20 is somewhat misleading in the number of the “White” arrests that it shows. As previously discussed, many of the White arrests are most likely arrests of Elizabeth’s Hispanic/Latino population. To illustrate what the map might look like if Hispanic/Latino arrests were tracked by the EPD, we have altered the map of Jersey City’s low-level arrests to show what it would look like if Jersey City’s Hispanic/Latino arrests were reported as White arrests—keeping in mind that Jersey City has a Hispanic/Latino population of only 28% as compared to Elizabeth’s Hispanic/Latino population of 60%.⁹² Figure 10 below is the map of Jersey City’s actual arrests for the study offenses. Figure 21 has been altered to show what it would look like if Jersey City’s Hispanic/Latino arrests were categorized as White arrests.





C. CASE STUDY: NEW BRUNSWICK POLICE DEPARTMENT

New Brunswick Data Problems

The New Brunswick Police Department (NBPD) was not able to provide records in an electronic file format, and it was not able to provide records for the specific study offenses as requested. Instead, the NBPD could provide only printed records of *all* arrests.⁹³ This revealed problems with the current system used by NBPD to maintain its arrest records. First, the NBPD stated that it does not have the ability to run search queries for specific offenses with additional data, such as the data sought for this report (e.g., race, age, and arrest location). Secondly, the NBPD cannot save search results in an electronic file format,

further hindering any attempts to evaluate and analyze arrest data. This poses serious limitations on the use of the information by researchers, advocates, oversight bodies, the public, and the department itself. While the NBPD appears to store its arrest data electronically, the public will be well-served if the department optimizes its systems for easier access to the information, thus increasing transparency.

Blacks Are 3.18 Times More Likely than Whites to be Arrested in New Brunswick for the Study Offenses⁹⁴

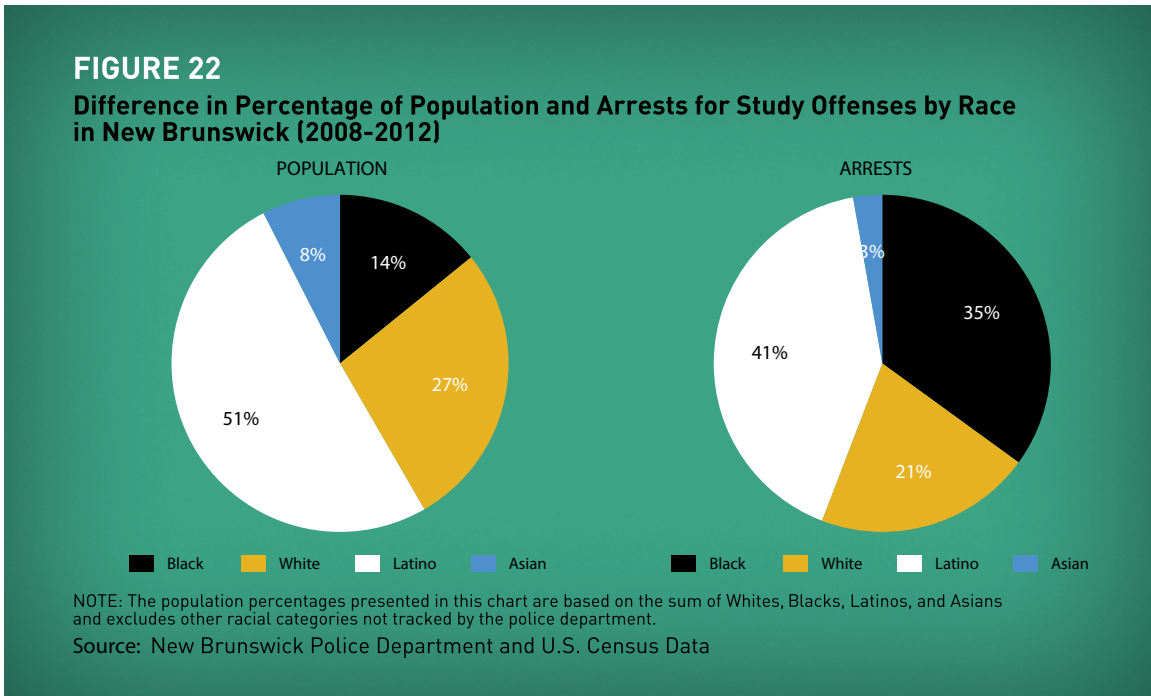
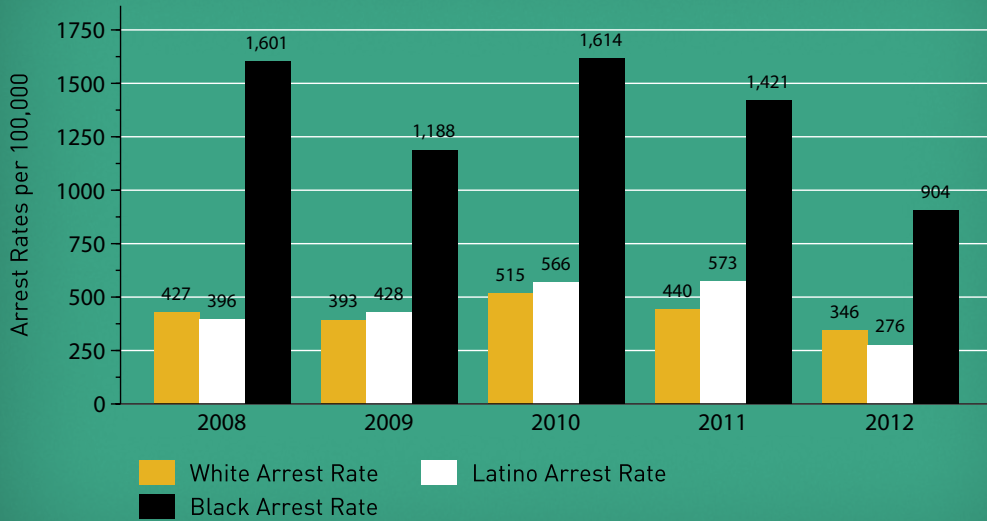


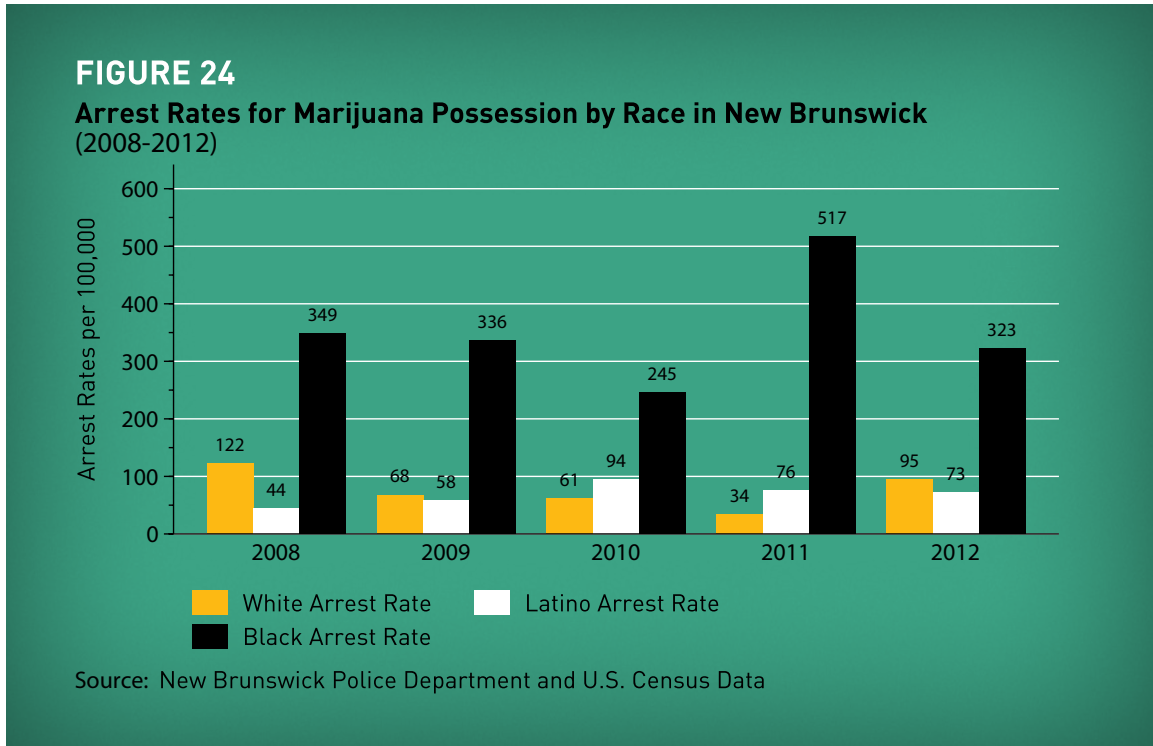
FIGURE 23
Arrest Rates for Study Offenses by Race in New Brunswick (2008-2012)



Source: New Brunswick Police Department and U.S. Census Data

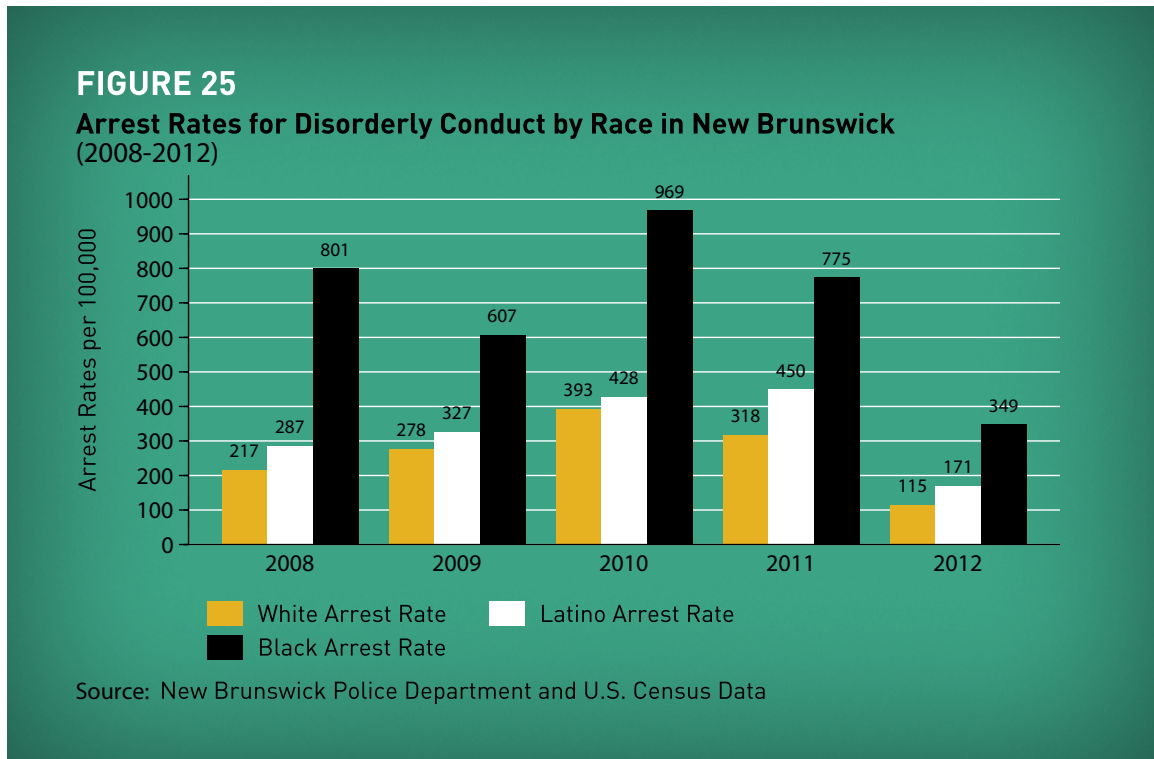
Blacks in New Brunswick were 3.2 times more likely than Whites to be arrested for a study offense in the years analyzed (2008-2012). See Figure 23. The Black-White arrest disparity for all offenses remained relatively consistent between 2008 and 2012, with a high of 3.8 and low of 2.6. Hispanics/Latinos were arrested at a rate similar to Whites most years (between 1.3 to 0.8).

• **Marijuana Possession Arrest Disparities**



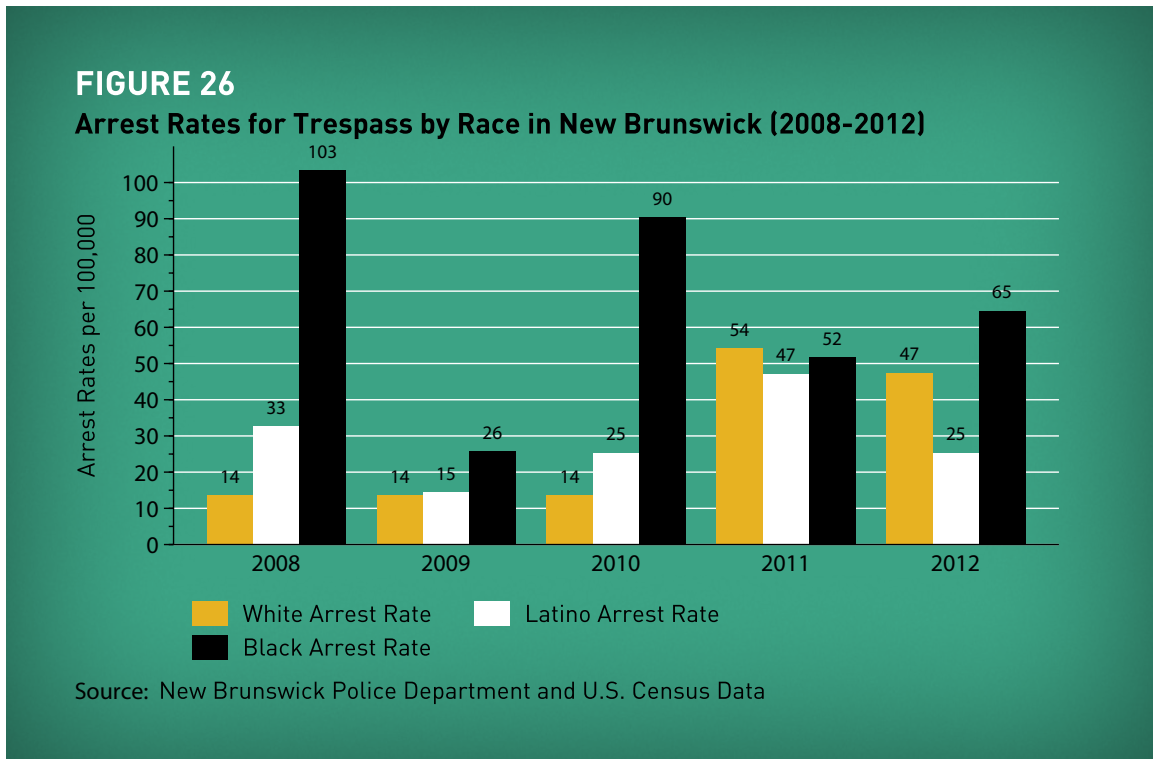
Blacks in New Brunswick were 6.5 times more likely than Whites to be arrested for marijuana possession over the sample period (2008-2012). See Figure 24. Notably, marijuana possession arrest rates for Blacks and Hispanics/Latinos spiked in 2011, while the White arrest rate dropped, resulting in an extreme racial disparity that year: Blacks were over 15 times more likely to be arrested, and Hispanics were more than 2 times more likely to be arrested than Whites. The disparity fell the following year: Blacks were 3.4 times more likely to be arrested in 2012 than Whites—still above the state average of 2.8. While the actual number of marijuana possession arrests was low,⁹⁵ indicating a decline in enforcement of the offense, the disparity between Black-White arrests suggests that the offense continues to be disproportionately enforced in the Black community.

• **Disorderly Conduct Arrest Disparities**



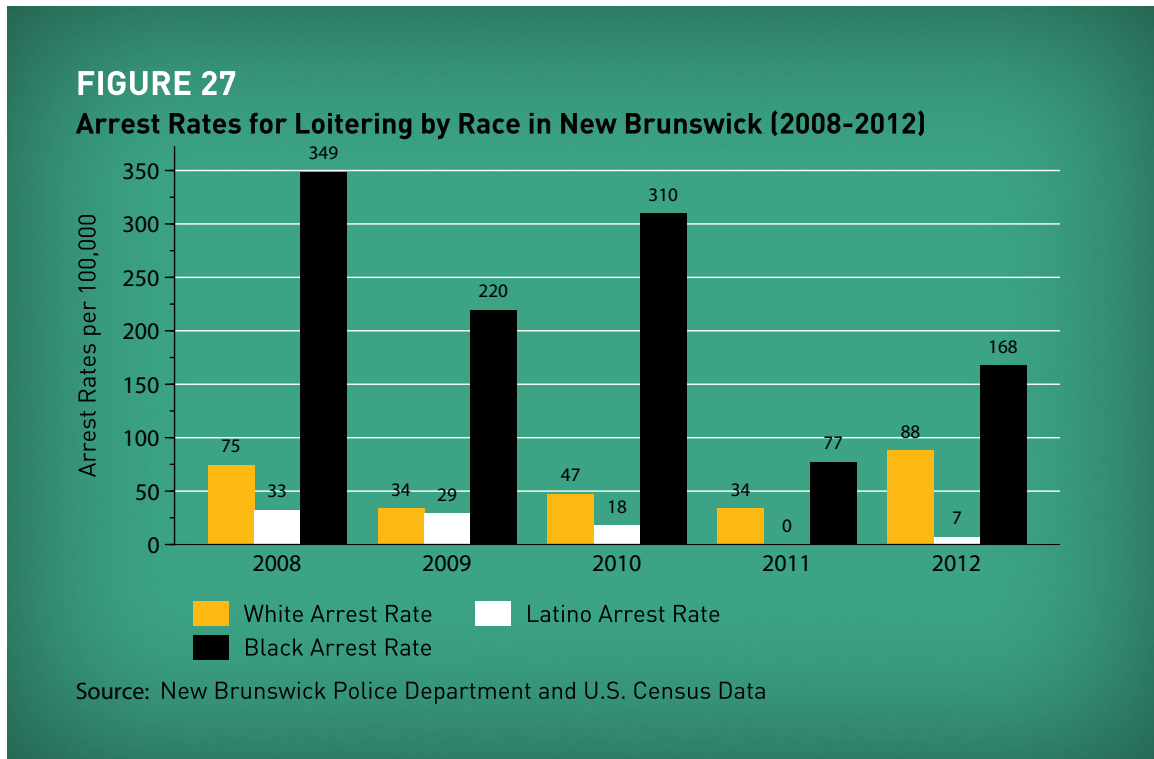
Blacks were also disproportionately represented in disorderly conduct arrests in New Brunswick—on average, they were 2.7 times more likely to be arrested than Whites for the offense during the sample period (2008-2012). See Figure 25. The racial disparity was slightly higher in 2012, the last year for which the ACLU-NJ received data: Blacks were three times more likely than Whites to be arrested for disorderly conduct. Hispanics/Latinos on the other hand, saw negligible disparities with Whites.

• **Trespass Arrest Disparities**



Blacks were 3.9 times more likely than Whites to be arrested for trespass during the sample period (2008-2012). See Figure 26. However, the Black-White arrest disparity for trespass arrests was highest in 2008 (7.6), and has decreased in the years since (e.g., 1.4 in 2012). Disparities for Hispanic/Latino arrests were negligible for disorderly conduct.

• *Loitering Arrest Disparities*



The data from the sample period for New Brunswick (2008-2012) revealed that Blacks were 4.6 times more likely than Whites to be arrested for loitering, although the disparity decreased in the most recent years (2011 and 2012). *See* Figure 27. The Black arrest rate for loitering decreased by 75% from 2010 to 2011 (from 310 arrests per 100,000 to 77 arrests per 100,000), resulting in a drop in the Black-White arrest disparity from 6.5 to 2.3. It is unclear what caused the Black arrest rate to decrease that year, especially given its 118% increase the following year.

Blacks Make Up 36% of Arrests for the Study Offenses Although They Are Only 16% of the Population in New Brunswick

TABLE 5: Annual Arrests for Study Offenses by Race in New Brunswick (2008-2012)*

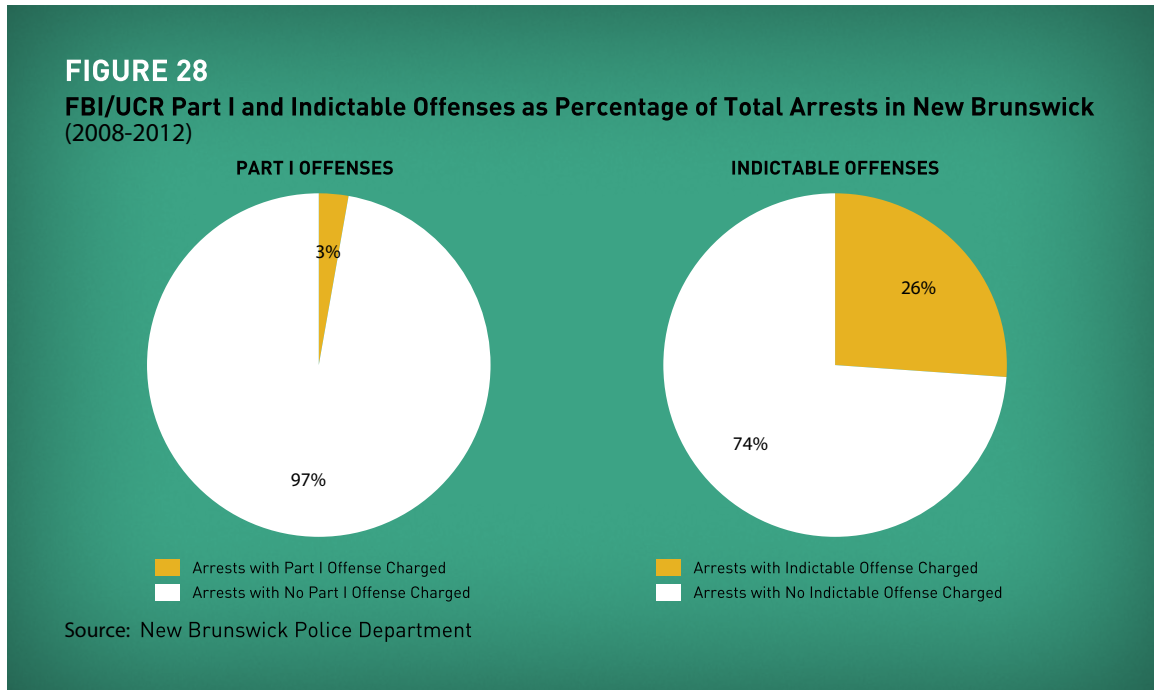
YEAR	WHITE	BLACK	LATINO	TOTAL
2008	63	124	109	296
2009	58	92	118	268
2010	76	125	156	357
2011	65	110	158	333
2012	51	70	76	197
Total	313 (21.5%)	521 (36%)	617 (42.5%)	1451 (100%)

* A number of Asian and American Indian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

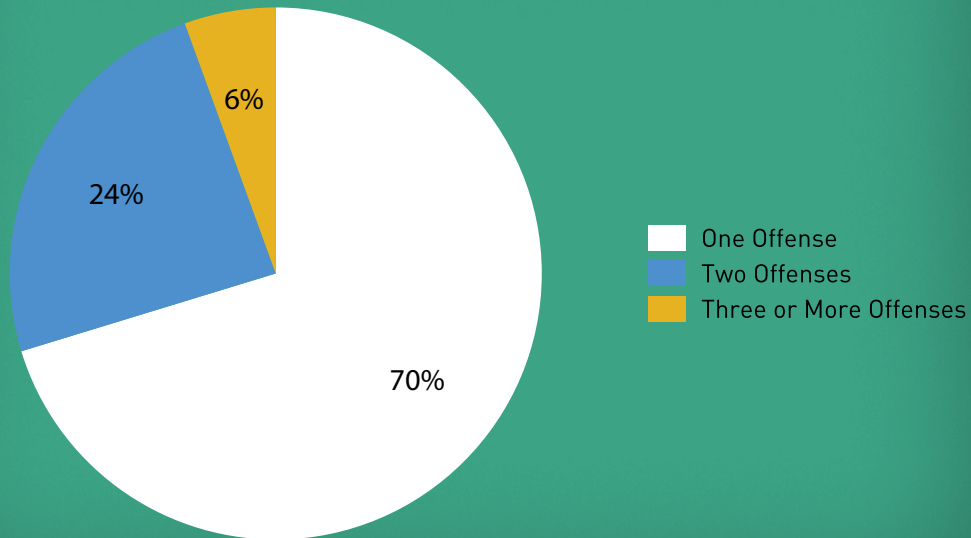
Source: New Brunswick Police Department

Despite the fact that Blacks represent only 16% of the population in New Brunswick,⁹⁶ arrests of Blacks outnumbered arrests of Whites in every year analyzed (2008-2012), representing 36% of the total arrests for the sample period. See Table 5.

The Majority of Arrests for a Low-Level Offense Did Not Involve a Serious Crime



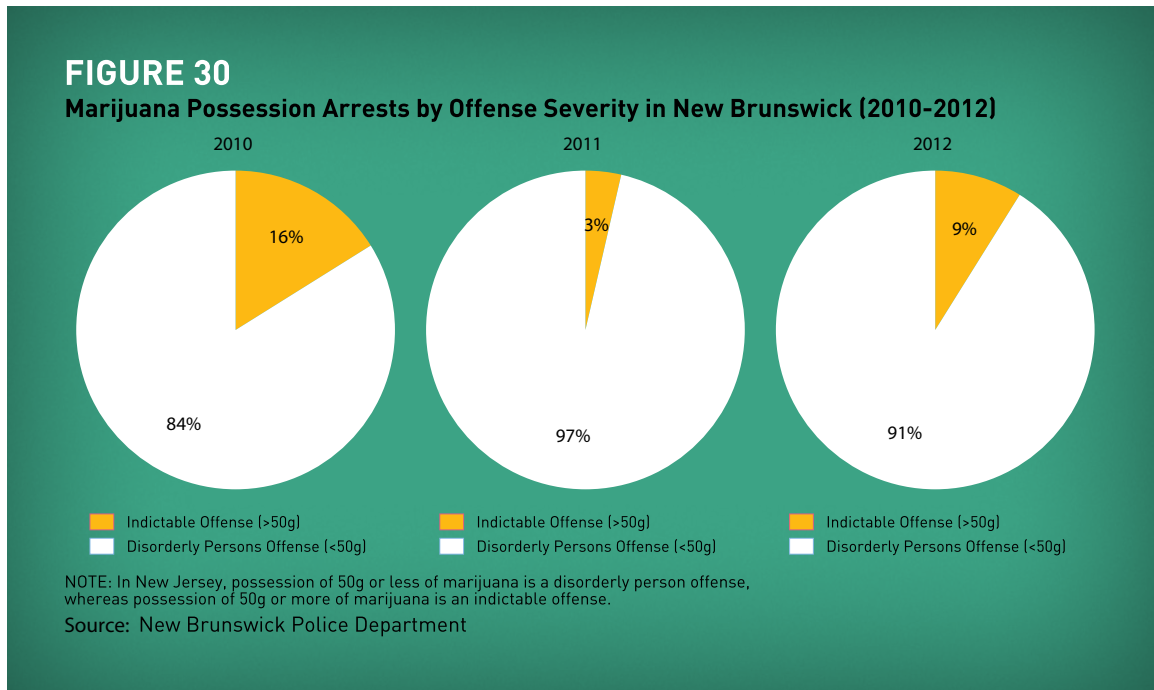
The NBPD data included 2,031 arrests, of which only 3% (55) involved a charge for a serious Part I offense; 74% (1,498) did not include a charge for an indictable offense. See Figure 28.

FIGURE 29**Number of Offenses Charged per Arrest for Offenses Examined in New Brunswick (2008-2012)**

Source: New Brunswick Police Department.

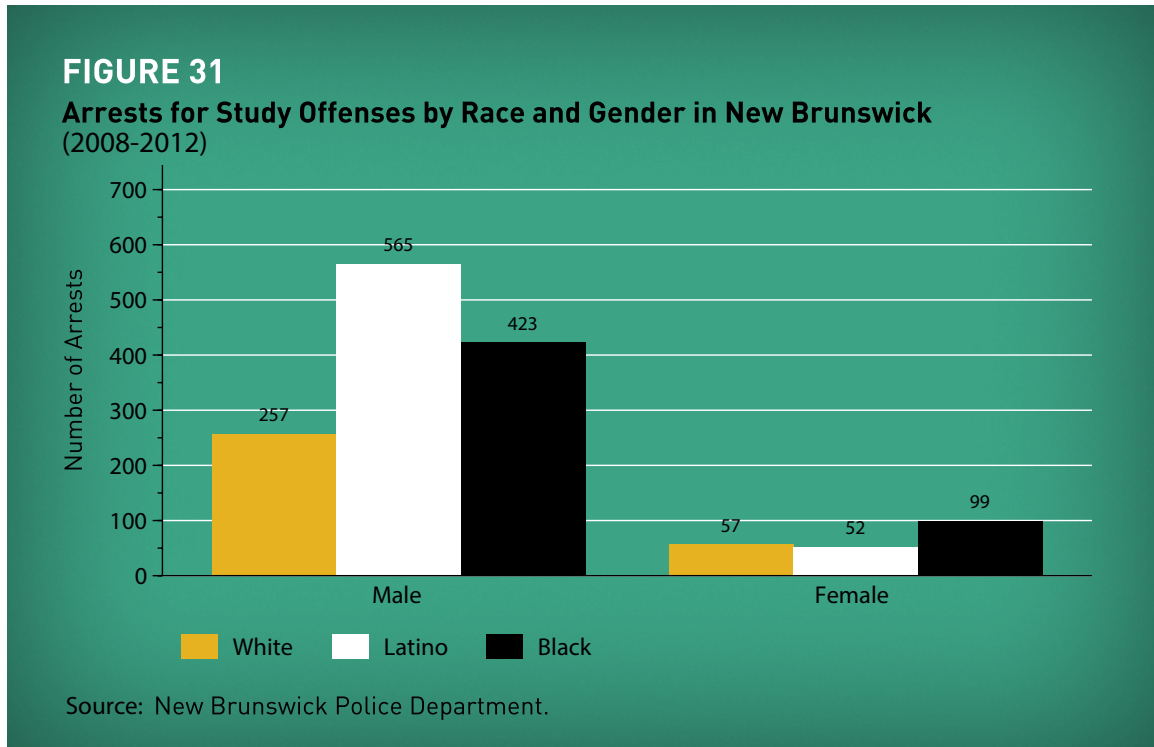
Of the arrests in New Brunswick that did not include an indictable charge, *i.e.*, purely low-level arrests, 70% did not include additional charges. In other words, a study offense was the stand-alone charge in 70% of the arrests. *See* Figure 29. Twenty-four percent included one additional low-level charge, meaning that 94% of the low-level arrests involved a study offense only or a study offense in combination with another low-level charge. The average number of charges per arrests was 1.63. Disorderly conduct was the offense most frequently charged by itself: 45% of the total arrests for the study offenses were for the stand-alone charge of disorderly conduct.

A Closer Look at Marijuana Possession Offenses: The Vast Majority of NBPD’s Marijuana Arrests Are for Small Amounts



Because NBPD provided data for all of its arrests, we were able to discern that the vast majority of marijuana possession arrests were for the low-level, disorderly persons offense examined in this report involving possession under 50 grams, as opposed to the more serious, indictable offense of marijuana possession of over 50 grams.⁹⁷ See Figure 30.

Black and Latino Males Account for 33% of the New Brunswick Population But Make up Over 65% of Arrests for Study Offenses



Males make up 86% of the arrests analyzed in New Brunswick, but Black and Hispanic/Latino males make up a disproportionate number of the arrests. See Figure 31. Black males are 6% of the population in New Brunswick,⁹⁸ yet account for 29% of the arrests for the study offenses. Hispanic/Latino males make up 39% of the arrests, but they represent only 27% of the population.⁹⁹

D. CASE STUDY: MILLVILLE POLICE DEPARTMENT

Millville Data Problems

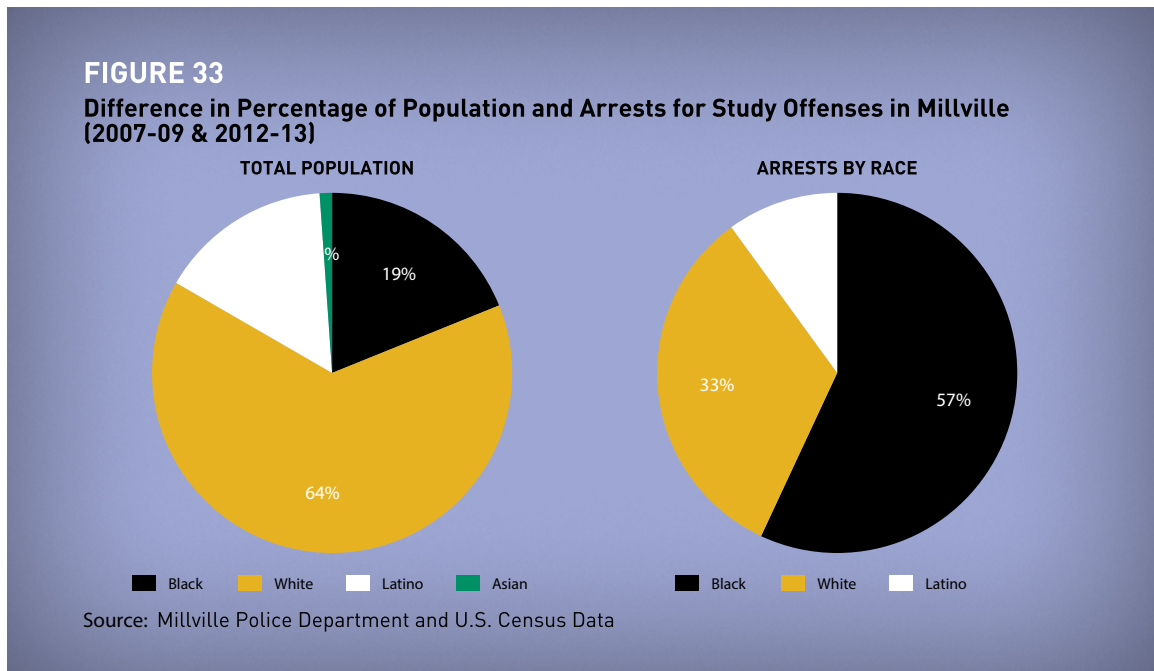
The Millville Police Department (MPD) responded to the ACLU-NJ’s OPRA request in a cooperative and timely manner, yet we encountered significant difficulties in compiling records in compiling records to analyze. Arrest records from 2003 to 2009 were not stored in an electronic database and are only available in printed form.¹⁰⁰ Arrest records for 2010

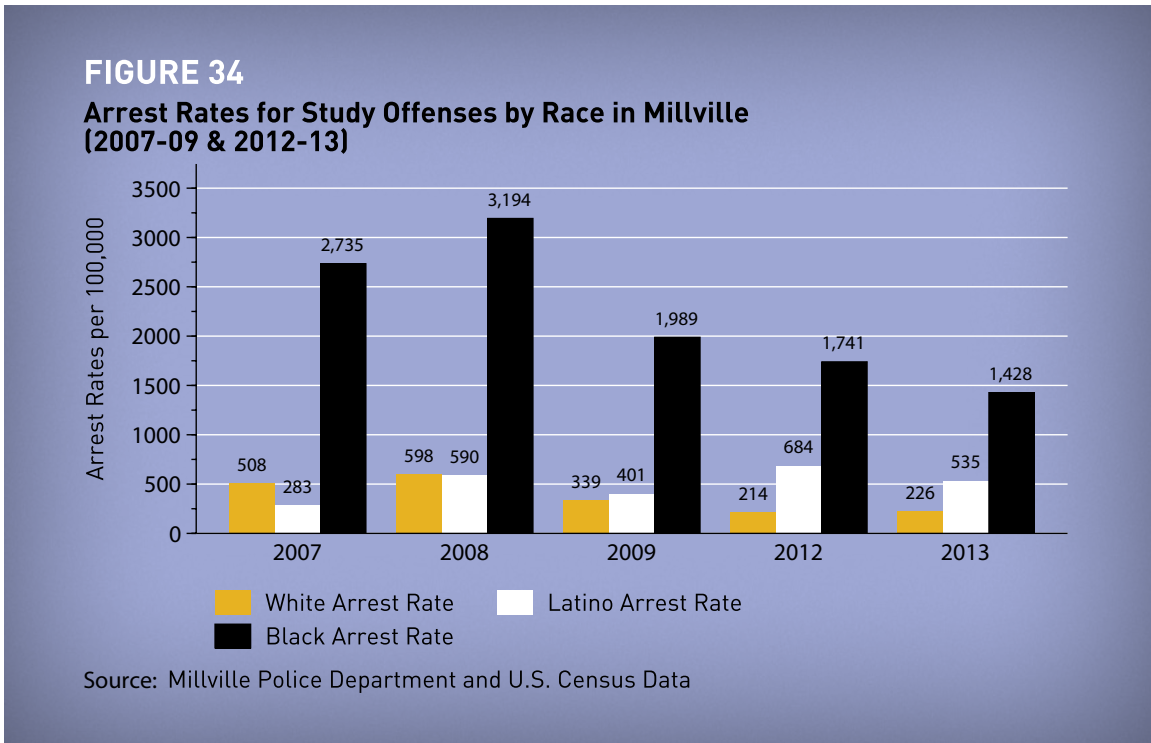
and 2011 were lost in a 2011 data migration when the MPD changed its record management system, rendering those data unavailable.¹⁰¹

The ACLU-NJ also discovered discrepancies between the MPD data and the FBI/UCR data for marijuana possession and disorderly conduct arrests, albeit smaller than in the other jurisdictions.¹⁰² Therefore, this analysis is an estimation of arrest totals and overall patterns based on the sample set provided by the MPD.

The MPD data for 2013 includes data for the first three quarters of the year only. Therefore, arrest rates and disparities have been weighted to provide an estimation of the statistics for the full year.¹⁰³

Racial Disparities in Arrests for Study Offenses in Millville Increased in 2012 and 2013 for Blacks and Hispanics/Latinos

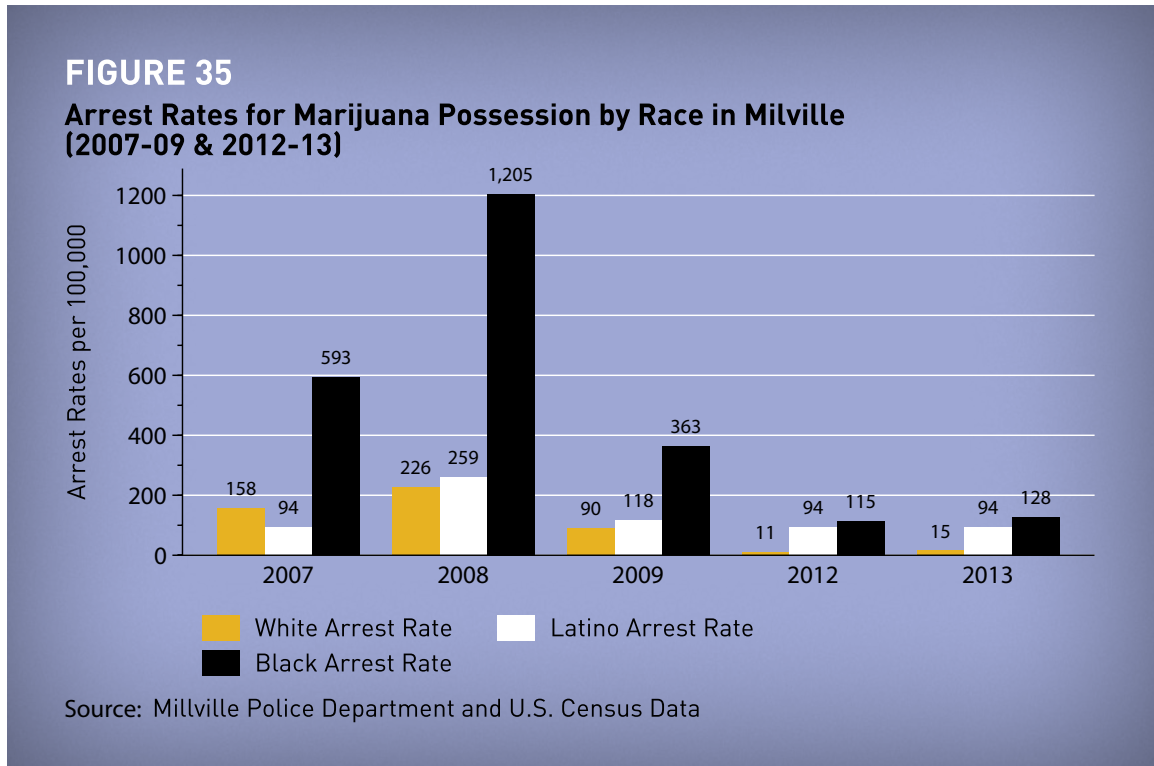




For the sample period examined in Millville (2007-2009 & 2012-2013), Blacks were 6.2 times more likely than Whites to be arrested for the study offenses. See Figure 34. The average Hispanic/Latino-White racial disparity was low—an average of 1.3 for the time period—but with increases in recent years (3.2 in 2012, and 2.2 in 2013).

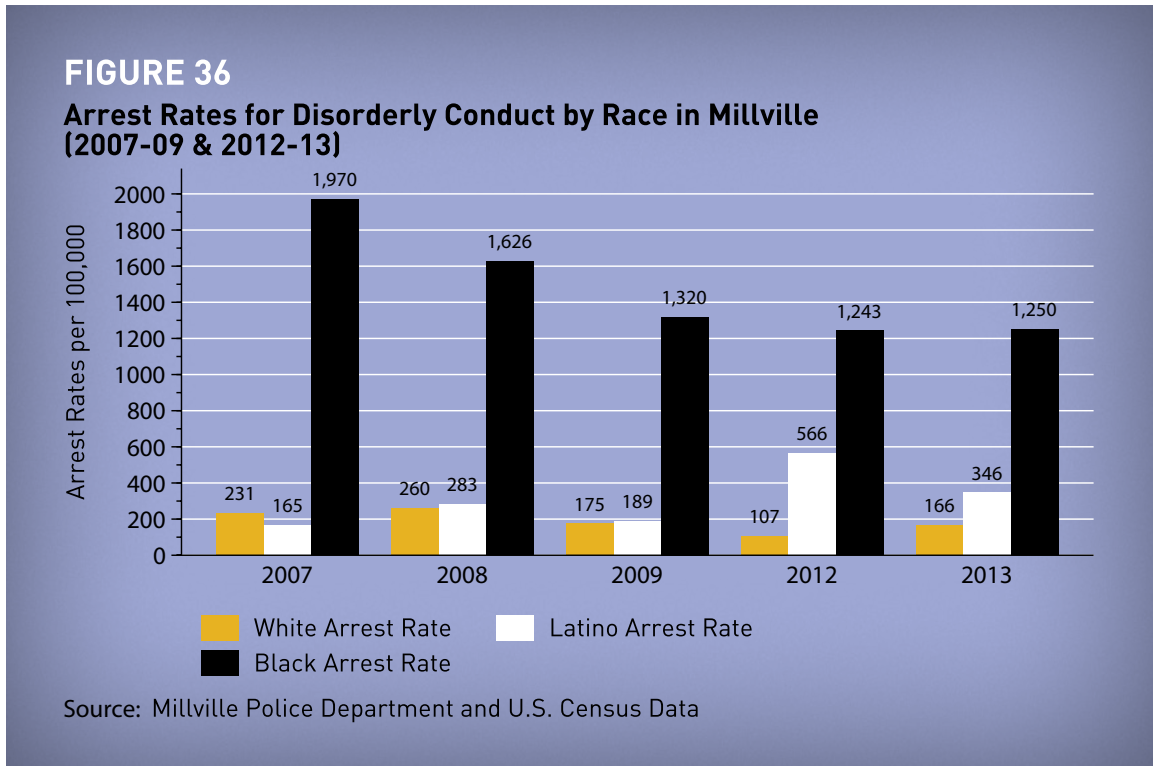
While the number of arrests for certain offenses (marijuana possession and disorderly conduct) in Millville decreased in 2012 and 2013, the Black-White arrest disparity remained constant or increased. In some cases the disparity increased exponentially: the Hispanic/Latino-White arrest disparity for marijuana possession increased from 0.6 in 2007 to 6.3 by 2013. For Blacks it increased from 3.8 in 2007 to 8.5 in 2013. Both the arrest rate and arrest disparity increased for trespass: in 2007 Blacks were 2.2 times more likely than Whites to be arrested, and by 2012 they were 7.8 times more likely to be arrested.¹⁰⁴ Loitering was the only offense for which there was not a significant racial disparity in arrests, with the exception of 2009, when both Blacks (3.4) and Hispanics/Latinos (4.2) were arrested at higher rates.

• *Marijuana Possession Arrest Disparities*



Extreme disparities in Black-White marijuana possession arrests exist in Millville for every year for which data were available, with a high of 10.2 in 2012. See Figure 35. Disparities in Hispanic/Latino-White marijuana possession arrests exist for every year except 2007.

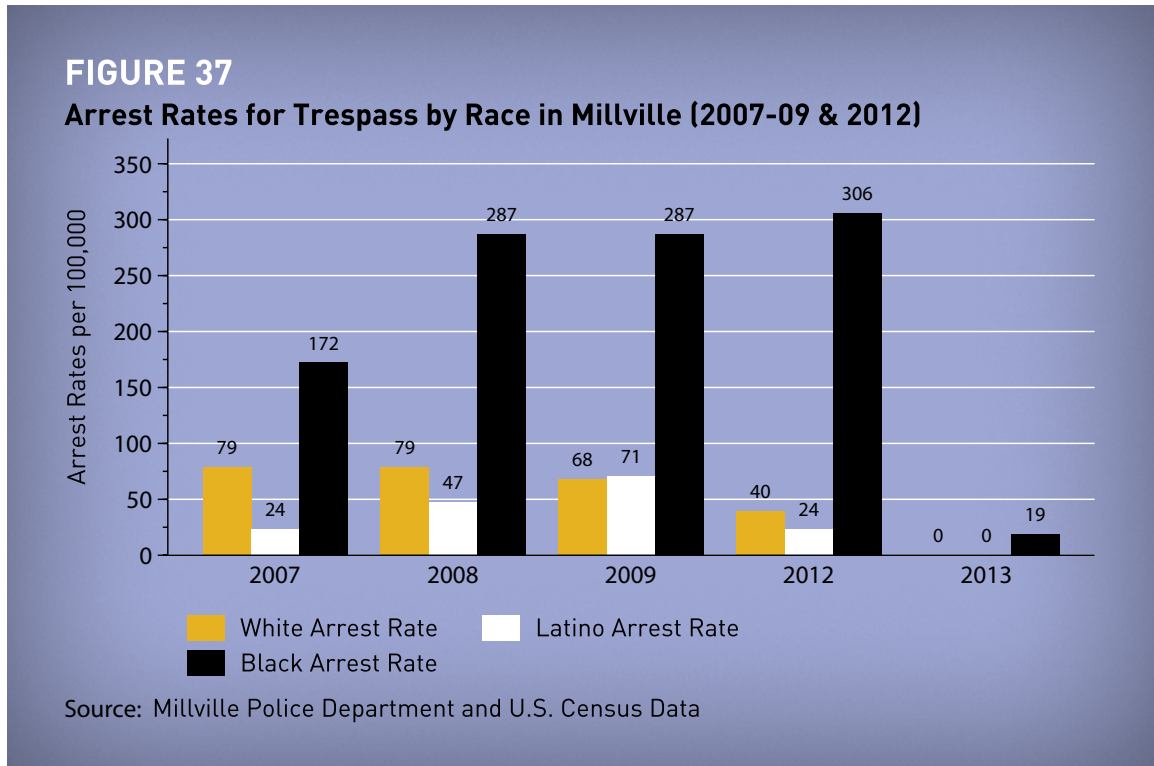
• **Disorderly Conduct Arrest Disparities**



Blacks in Millville were 8.3 times more likely than Whites to be arrested for disorderly conduct during the sample period (2007-2009 & 2012-2013). See Figure 36. Hispanics/Latinos were 2.1 times more likely than Whites to be arrested for the offense during this time period.

The Black-White racial disparity for disorderly conduct arrests spiked in 2012 (11.6) and remained at a high level in 2013 (7.5).

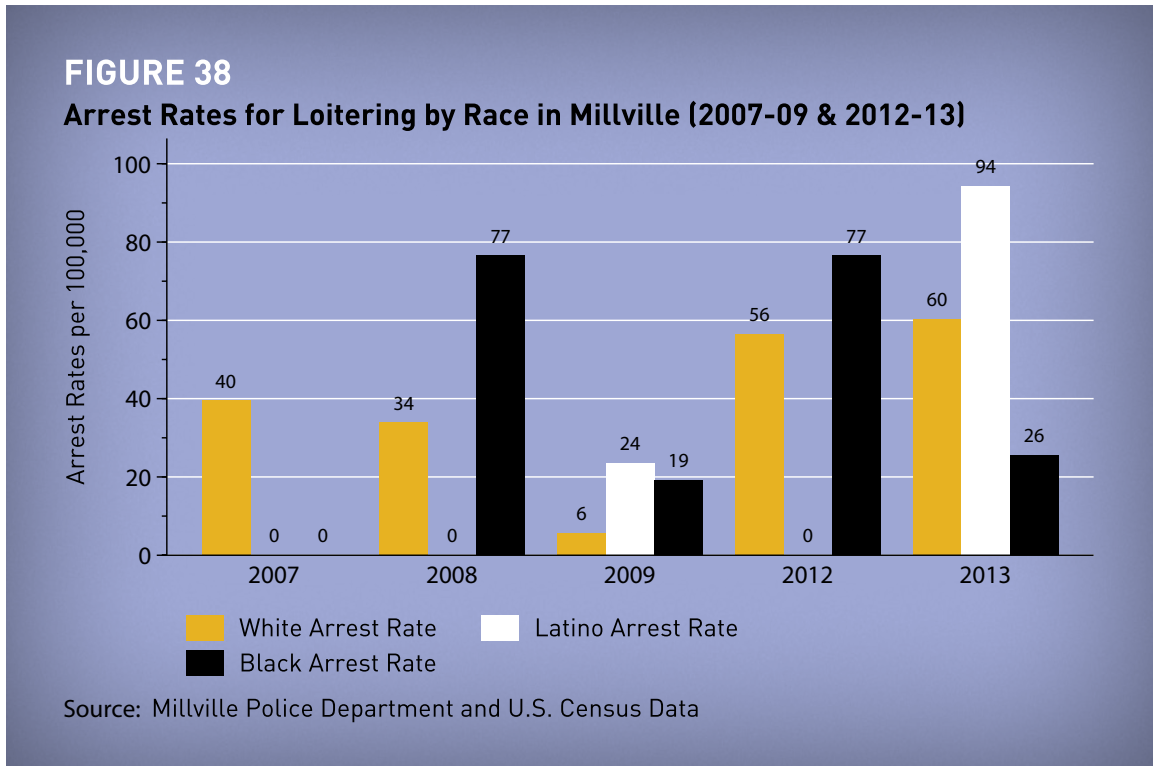
• *Trespass Arrest Disparities*



Blacks were four times more likely than Whites to be arrested for trespass during the sample period (2007-2009 & 2012-2013). See Figure 37. There was no racial disparity in Hispanic/Latino-White arrests for the offense during this time.

The trespass arrest data that the ACLU-NJ received from the MPD for 2013 was incomplete and did not reflect any trespass arrests for Whites or Hispanics/Latinos in 2013. The disparity rates are therefore incalculable for that year. However, the Black-White disparity rate the preceding year was extremely high: Blacks were 7.7 times more likely than Whites to be arrested.

• **Loitering Arrest Disparities**



Loitering had the lowest arrest disparity: Blacks were 1.6 times more likely than Whites to be arrested for the offense; Hispanics/Latinos were arrested at a nearly even rate to Whites. See Figure 38. Overall, the relatively low loitering arrest rates for all groups indicate that the MPD is not making many arrests for the offense. The absence of any arrests for several years (e.g., Blacks and Hispanics/Latinos in 2007, Hispanics/Latinos in 2008 and 2012), however, raises a red flag that the MPD may not have retrieved complete loitering records for the sample period.

Blacks Make Up 57% of Arrests for the Study Offenses Although They Are Only 20% of the Population in Millville

TABLE 7: Annual Arrests for Study Offenses by Race in Millville (2007-09 & 2012-13)*†

YEAR	WHITE	BLACK	LATINO	TOTAL
2007	90	143	12	245
2008	106	167	25	298
2009	60	104	17	181
2012	38	91	29	158
2013	32	56	17	105
Total	326 (33%)	561 (57%)	100 (10%)	987 (100%)

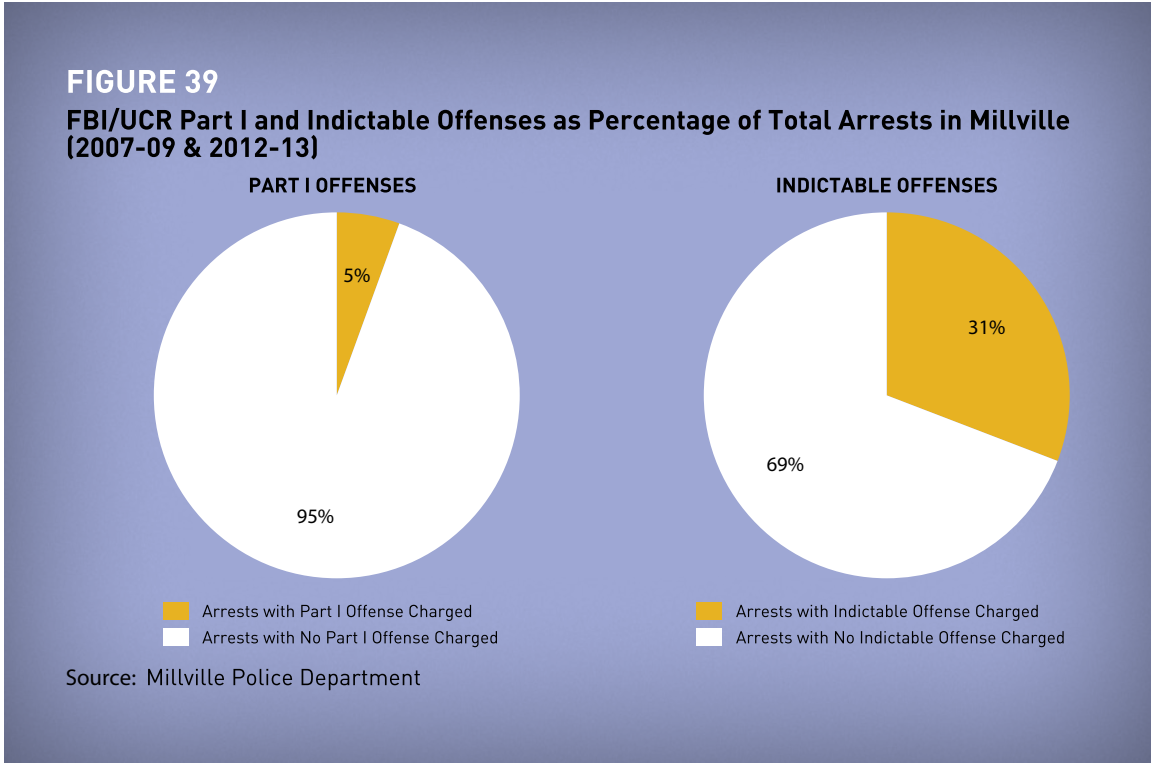
* Total arrests for 2013 are based on the first three quarters of the year only, and reflect the sum of marijuana possession, disorderly conduct, and loitering arrests only because the police department did not provide trespass arrest records for 2013.

† A small number of Asian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

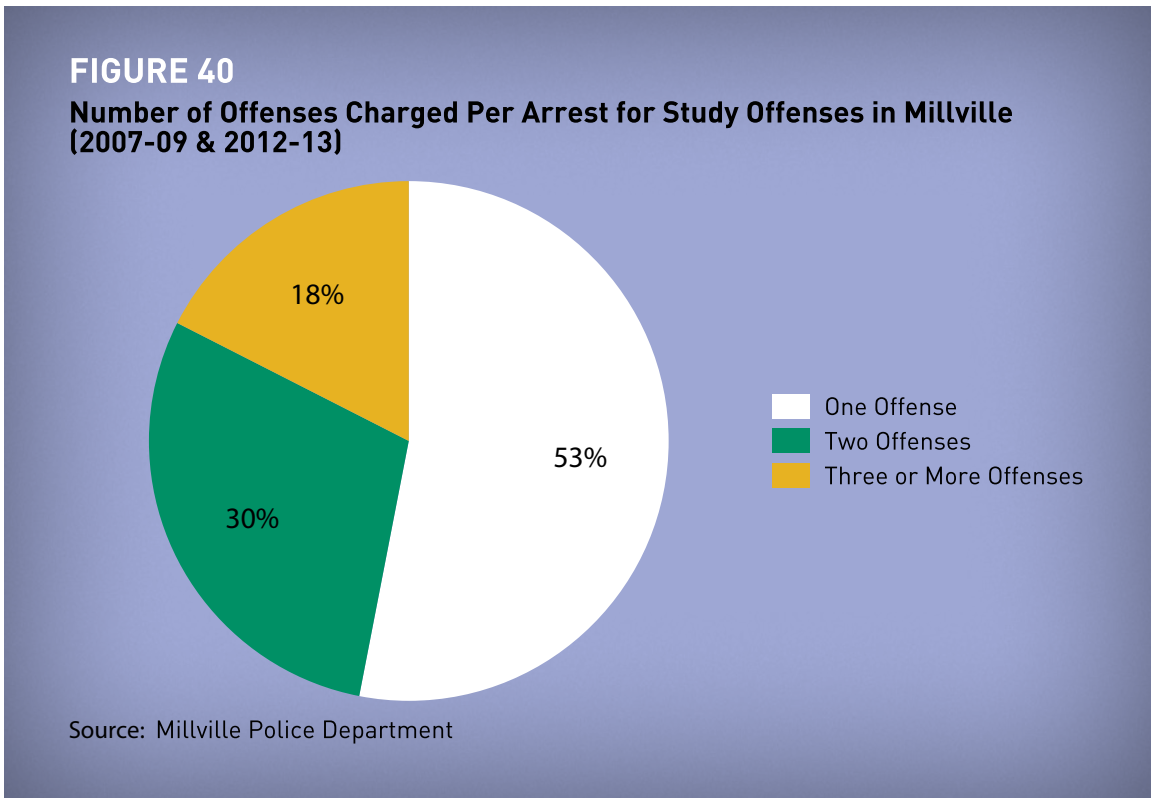
Source: Millville Police Department

Blacks are 20% of the population in Millville,¹⁰⁵ yet they account for 57% of the arrests for the study offenses in the sample period (2007-2009 & 2012-2013). See Table 7. Blacks made up the majority of arrests for every year analyzed.

The Majority of Arrests for the Study Offenses in Millville Did Not Involve a Serious Crime

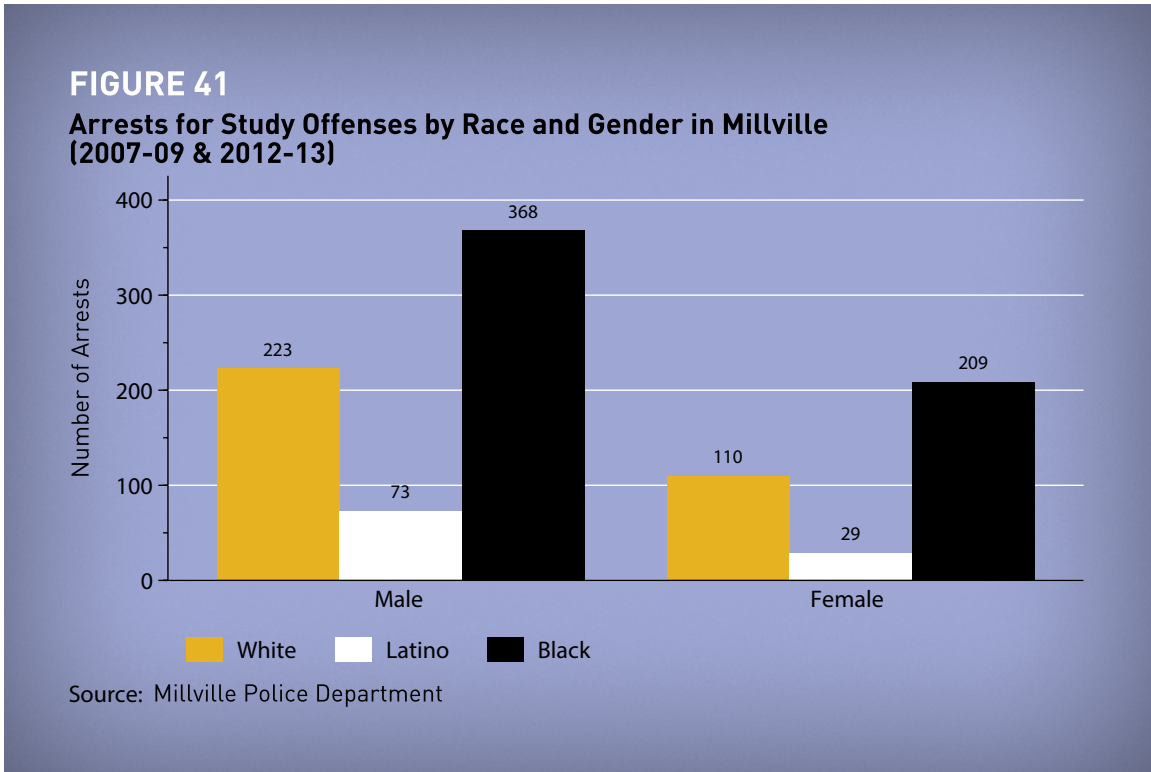


The MPD data included 1,438 arrests, of which only 5% (78) involved a charge for a serious Part I crime. See Figure 39. Indictable offense charges are present in only 31% (443) of the arrest data. In other words, 69% (995) of arrests involved a study offense only, or a study offense in combination with other low-level charges.



Looking at the number of charges for each arrest in the low-level arrest data set (995),¹⁰⁶ 53% are for a stand-alone charge of a study offense. See Figure 40. The next 30% of arrests have a second low-level offense charged (bringing the cumulative total to 82%). In sum, the majority of arrests for the study offenses are for a single charge, or two low-level charges—they do not involve numerous charges or serious crimes. Disorderly conduct was the offense that was most often charged alone: 36% (359) of the arrests were for a stand-alone charge of disorderly conduct.

Black Males in Millville Are The Most Overrepresented Group in Low-Level Arrests



The MPD’s enforcement of low-level arrests falls disproportionately on Blacks as a group: the data show that Black males (36%) and Black females (21%) together make up 57% of the arrests analyzed.¹⁰⁷ See Figure 41. As a group, they represent only 20% of the population in Millville.¹⁰⁸

When looking across gender lines, Black males are disproportionately represented in arrests: they are only 9% of the population but make up 36% of the arrests. Black females are also overrepresented: they are 10% of the population and account for 21% of the arrests.¹⁰⁹

Black Youth Make Up the Majority of the MPD's Low-Level Arrests

TABLE 8: Breakdown of Arrests for Study Offenses by Age and Race in Millville (2007-09 & 2012-13)*

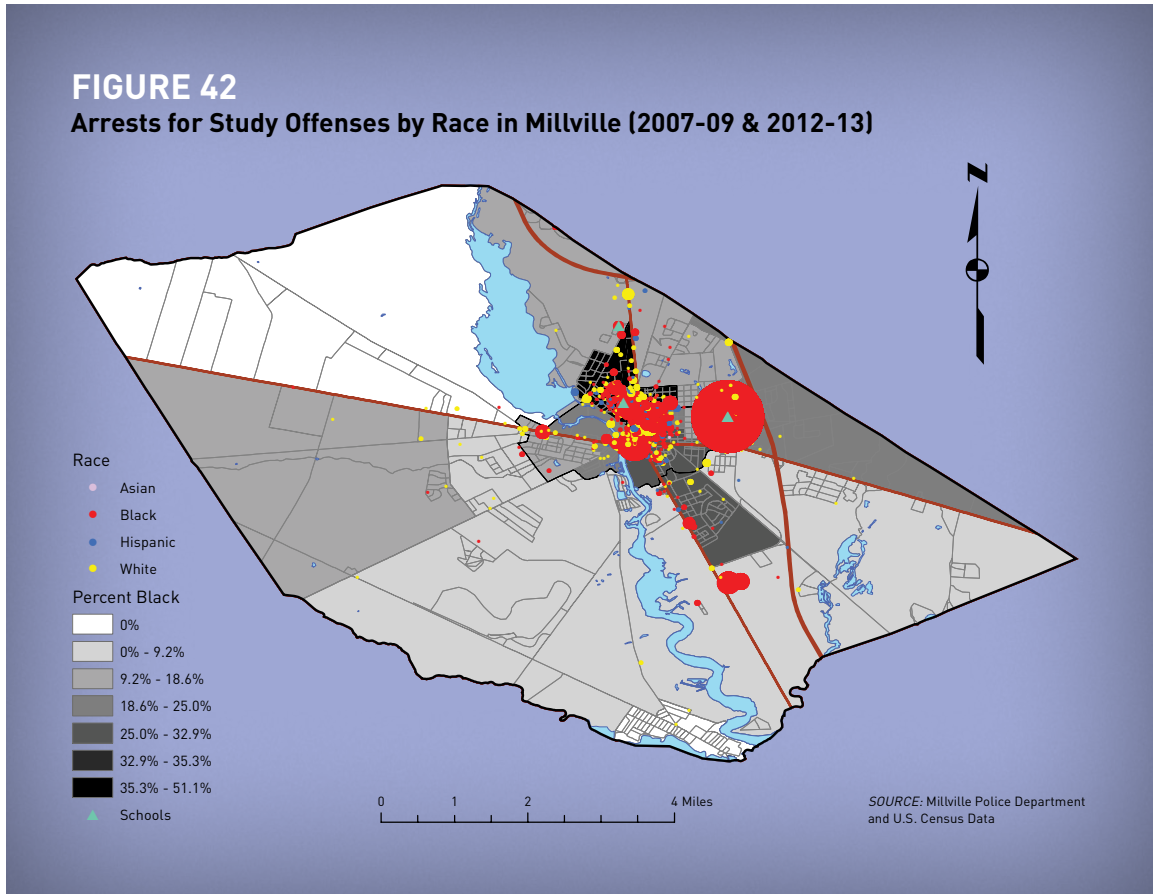
AGE	WHITE	BLACK	LATINO	TOTAL (% of total arrests by age)
Juvenile	68 (28%)	151 (63%)	20 (8%)	239 (23.5%)
18 to 24	106 (32%)	189 (56%)	40 (12%)	336 (33%)
25 to 34	43 (38%)	52 (46%)	19 (17%)	114 (11%)
35 to 44	71 (34%)	119 (57%)	19 (9%)	210 (21%)
45+	47 (40%)	66 (56%)	4 (3%)	117 (11.5%)
Total (% of total arrests by race)	335 (33%)	577 (57%)	102 (10%)	1,016 (100%)

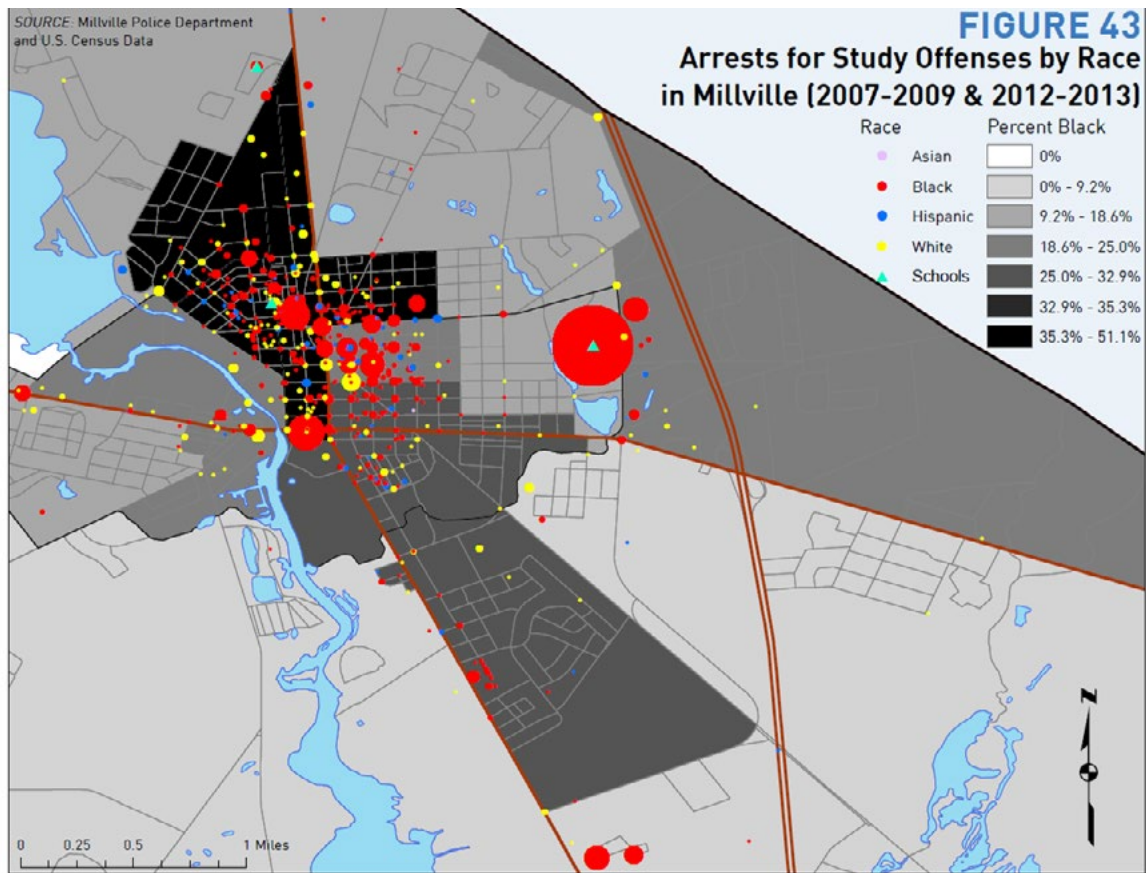
* Total arrests per age category are higher than the sum of the White, Black, and Latino arrests because Asian and American Indian arrests are not presented in the table.

Source: Millville Police Department

The data revealed that Blacks in Millville account for the most arrests across all age groups. See Table 8. Blacks aged 18 to 24 make up the largest proportion of arrests of the total study offenses—19%—yet they were only 3% of the population.¹¹⁰ Within their age group, Blacks represent 31% of 18 to 24 year-olds but make up 56% of the arrests.¹¹¹

Who and Where: The Majority of Arrests Occurred in Millville's Downtown Area, and Individuals Arrested Were In Close Proximity to Home





Eighteen percent of the arrests in Millville occurred at the individual’s home address. In keeping with this pattern, 45% of arrests occurred within a half mile from home, and 58% occurred within a mile from home.¹¹² When comparing those numbers to the location of arrests, it becomes clear that the majority of arrests are of Millville residents who live in the predominantly Black areas of downtown Millville, including the Third Ward.

The arrests that occurred at locations outside of the downtown areas were at Millville Senior High School, and at the Delsea Garden Apartments, which is a Section 8 housing complex. See Figures 42 and 43.

V. Recommendations

The data findings in this report raise serious concerns about the current enforcement policies and practices of the four police departments examined. Specifically, the data signal that enforcement of low-level offenses has a disparate impact on people of color. The data collection process also revealed significant flaws in the haphazard and incomplete manner in which police departments collect, store, retrieve, and provide arrest data. The ACLU-NJ makes the following recommendations seeking to address these issues. These recommendations are not limited to the jurisdictions in this report, but rather constitute better data collection and policing practices that should be implemented by cities and law enforcement officials across New Jersey, as well as at the state level.

Policing and Enforcement Policy

Local Reforms

- **Local officials, police chiefs, and prosecutors should agree to make enforcing low-level offenses that do not harm public safety among their lowest priorities.** Because low-level offenses such as the ones studied here pose little to no public safety harms, police should shift their priorities and devote their resources to serious crimes. Key players in the criminal justice system should exercise their authorized discretion and adopt formal policies making these offenses their lowest enforcement priorities.

The City of Seattle, for example, made marijuana a lowest-enforcement priority in 2003, and by 2010, over a four month period, only six out of 6,500 incident reports cited marijuana as the reason for the police contact.¹¹³

On the prosecutorial side, in 2010, the Harris County (Texas) District Attorney's Office implemented a policy to stop prosecuting drug paraphernalia possession cases as felonies.¹¹⁴ Under the old practice, officers would arrest people found with paraphernalia for felony drug possession if there was any drug residue. The change in policy resulted in a drop of 7,800 felony drug possession cases between 2008 and 2011.¹¹⁵

Two district attorneys' offices in New York City adopted stop-prosecution policies for certain low-level offenses. In 2012, Bronx District Attorney Robert Johnson announced that his office would no longer prosecute people arrested for trespassing in public housing projects—people who often were either residents themselves or guests of residents—unless the prosecutor first interviewed the arresting officer to ensure that the arrest was proper.¹¹⁶ In 2014, Brooklyn District Attorney Kenneth Thompson adopted a policy to stop

prosecuting people arrested for possessing small amounts of marijuana in a push to explore alternatives to court for low-level offenders.¹¹⁷

Coupled with the periodic evaluation of arrest data, the shift in enforcement priorities will allow police to make better resource allocation decisions and to pursue policies and practices that will reduce racial disparities in arrests. Furthermore, making these offenses low-enforcement priorities will reduce the severe consequences individuals often face when arrested, including being saddled with a criminal record.

- **Pass strong and enforceable anti-racial profiling laws like New York City's.** Local officials should pass strong anti-racial profiling laws like New York City's, which expanded the protected categories of persons (age, gender, gender identity or expression, sexual orientation, immigration status, disability, and housing status), gave more power to residents to challenge racial profiling incidents. New Jersey municipalities should also mandate police training for conscious and unconscious bias, which can influence officers' decision-making when dealing with the public.¹¹⁸ While the data analyses in this report do not provide an answer as to a single cause of the disparities, racial profiling is a potential contributing factor that leads to the disproportionate arrest of people of color.
- **Police departments should stop using low-level arrests as a performance measure for evaluating officers.** Measuring police effectiveness by the number of arrests officers make incentivizes officers to make low-level arrests, which are generally easier to execute than arrests for serious crimes. This can lead to unconstitutional arrests if officers are pressured to generate arrest numbers.¹¹⁹ For this reason, police departments should stop using low-level arrests as a performance measure.
- **Institute strong, independent oversight of police departments, such as a Civilian Complaint Review Board (CCRB) to review allegations of individual officers' misconduct and Inspector General (IG) offices to monitor police policies and practices.** Effective civilian oversight of the police department is integral to ensuring a system of democratic and accountable policing. Municipalities in New Jersey should establish independent CCRBs to investigate individual acts of police misconduct and discipline officers when necessary. A strong CCRB with the authority to independently investigate and to discipline officers also can help change institutional practices that contribute to arrest disparities. Establishing IG offices to review police policies and practices at the agency-wide level will allow municipalities to identify and reform those practices that have a disparate impact on communities of color. An example of a civilian review board with strong investigatory, disciplinary, and audit authorities is the one recently created in Newark.¹²⁰

- **Municipalities should expand use of police dashboard and body cameras with appropriate rules.** The use of body-worn cameras is increasingly considered a best practice among law enforcement as it encourages police departments to reduce the number of incidents involving use of force and protects officers from baseless allegations of abuse.¹²¹ The use of cameras can help address issues of racial disparities in arrests by encouraging police accountability and discouraging improper or unconstitutional stops. However, policies must ensure that cameras are on during civilian-police encounters and New Jerseyans have a right to access camera footage of their interactions with officers. Additionally, cameras would allow police departments to evaluate arrest incidents and create a safety net for officers improperly accused of racial profiling or misconduct. Departments that explore the use of cameras in day-to-day policing should also ensure privacy protections of both the public and police officers.

State Reforms

- **New Jersey should adopt a system of taxing and regulating marijuana.** The failed war on drugs has been fueled in part by the hyper-enforcement of low-level marijuana laws, which have a disproportionate impact on communities of color. The disproportionate number of Black arrests for marijuana possession, despite similar usage rates between Whites and Blacks, illustrates the fundamental unfairness of these laws in practice.

By legalizing marijuana for adults, New Jersey would remove marijuana use from the criminal justice sphere and properly treat it as a public health issue. By treating marijuana like alcohol and cigarettes, its sale and consumption could be carefully regulated. Money generated through sales taxes could be re-invested in communities for drug treatment and prevention, and other community needs, and money saved by departments could be redirected toward serious crime.
- **The New Jersey Attorney General should investigate racial disparities in low-level offenses in municipalities throughout the state.** This study serves as a glimpse into the racial disparities in low-level arrests for only four law-enforcement agencies in New Jersey. The findings are stark, however, and indicate that Black and Latino communities bear the disproportionate impact of enforcement. The AG should investigate whether such disparities exist in other municipalities and the causes of the disparities, intervening where necessary to eliminate disparities. Moreover, the AG should investigate the disparities highlighted in this report and intervene accordingly.

Data Collection & Management

Local Reforms

- **Police departments must improve data collection and management, and they should systematically analyze the data.** This report highlights the obstacles posed by poor data collection practices. Departments should ensure that their data management systems allow for easy access and retrieval of all arrest, summonses, stop-and-frisk, and police-search information for analysis, for the benefit of both the police department and the public. All data associated with such records should be readily available, and personnel should be trained to retrieve and aggregate it as needed. If departments do not yet store these types of data electronically, they should begin the process of switching to such systems. Effective data collection and retention practices will assist police departments in determining resource allocation priorities, identifying public safety needs, and building a comprehensive picture of department-wide policing practices. Furthermore, by improving data collection and management practices, police departments and oversight bodies can identify patterns of unequal enforcement and implement policies to curb such practices.

An example of the benefits of effective data evaluation is the Durham Human Rights Commission's (DHRC) recent review of Durham, North Carolina, traffic stop data. After reviewing data collected and published by the Durham Police Department,¹²² the DHRC made a finding of racial bias and profiling and issued 34 recommendations to reduce racial bias in enforcement to the Durham City Council.¹²³

- **Regularly report arrest data to the public by posting information for low-level offenses online on a regular basis.** All arrest and crime information should be publicly available, but as a first step, police departments should engage in the systematic analysis of low-level arrests and post the results publicly online. The majority of arrests that police make are for low-level offenses, and they should be carefully scrutinized. Not only will publicly available information increase transparency and encourage accountability, it will also provide police departments with opportunities to evaluate and assess the ways their enforcement decisions may manifest themselves in a racially disparate manner. Furthermore, regular reporting would promote police accountability, fostering greater confidence in police work.

Arrest data should not be in PDF format, but rather, the raw data should be made available in a format that is easy to download, search, and analyze. Providing data in a user-friendly, accessible format increases police transparency and encourages public participation and engagement in government.

- **Police departments should collect data on searches, *Terry* stops (pedestrian and vehicular), and frisks by requiring officers to fill out reports and publish the results online on a periodic, preferably monthly, basis.** Every police department should require officers to fill out reports for all investigatory stops and searches conducted. While a stop, encounter, or subsequent frisk or full search may not result in an arrest or charge of a low-level offense, often it is the point of contact that leads to an arrest. Understanding the scope and implementation of these practices will allow police, civil rights advocates, oversight bodies, and the community at large to ascertain whether the practices are being misused or leading to constitutional violations. Stop-and-frisk abuses can have damaging effects on communities, as illustrated by recent experiences in New York City and Philadelphia. By implementing reporting requirements, departments can ensure that officers understand the law and take corrective action when officers conduct stops and searches improperly.

Terry stop forms should collect the following data:

- (1) Date, time, and location of encounter;
- (2) Duration of encounter;
- (3) Perceived race, ethnicity, gender, and age of persons stopped; ethnicity information should include Hispanic/Latino data;
- (4) The initial reason for the stop;
- (5) Whether the officer conducted a frisk (pat-down) of the individual, and if so, the legal basis for the frisk;
- (6) Whether the officer conducted a search beyond the frisk, the specific scope of the search (including the areas and items searched), and the legal basis for the search;
- (7) Whether any contraband was seized during the frisk or broader search, where it was seized from, and the type of contraband seized;
- (8) Disposition of the stop, including whether the person was let go without any sanctions imposed; whether the officer issued a summons, and the list the charges, if so; or, whether the officer arrested the person, and the list the charges, if so;

(9) Whether any force or threat of force was used at any point during the encounter, and type of force used or threatened; and

(10) Name and badge numbers of all officers present or involved in the encounter.

This information, with the exception of police officers' names, should be made available to the public online, in a user-friendly, downloadable format.

State Reforms

- **The New Jersey Attorney General should formally require law enforcement agencies to track and report data on summonses, arrests, and stops.** The AG needs to set strong transparency standards for law enforcement agencies in New Jersey by formally requiring that all agencies document their summons, arrest, and stop activities. The AG should set uniform guidelines for tracking the data, and require that it be publicly reported on a periodic basis.
- **The New Jersey Attorney General should issue a directive to police departments to properly record Hispanic/Latino arrest data.** The lack of reliable Hispanic/Latino data makes assessing the impact of enforcement practices on New Jersey's sizeable Hispanic/Latino community impossible to assess. Because arrest information is central to identifying potential civil rights violations or disparate policing practices, it is critical that police departments accurately and uniformly track Hispanic/Latino arrests.

Beginning in January 2013, the FBI/UCR expanded its ethnicity categories to include "Hispanic or Latino" and "Not Hispanic or Latino".¹²⁴ Collection of ethnicity data is not mandated, however, and the FBI itself anticipates that law enforcement agencies' implementation of these changes to their data collection could take a considerable amount of time.¹²⁵ The New Jersey AG's office can expedite and facilitate the process of collecting Hispanic/Latino data by issuing guidelines for law enforcement agencies to follow, as the AG's guidelines have a binding effect on police departments. The guidelines should include a clear methodology for police departments to follow in recording the data to ensure uniformity across agencies, as well as training procedures for officers.

- **The New Jersey Attorney General should issue clear guidelines to law enforcement agencies for reporting Part II arrests to the FBI/UCR Program.** Law enforcement agencies in New Jersey do not have a true uniform system for reporting Part II offense arrest data. Under the current system, agencies make subjective determinations about how to rank the seriousness of charges and thus which charge to report as the arrest incident (since only

the most serious charge is reported to the UCR). This means that reported arrests can vary from municipality to municipality, and we lack a clear picture of exactly what individuals are arrested for. The AG should endeavor to create a uniform system of reporting that provides police departments with clear guidelines for reporting Part II arrests.

Appendix A—Total Annual Arrests by Offense for Each Municipality

TABLE A1: Annual Marijuana Possession Arrests by Race in Jersey City (2005-2013)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2005	3	18	8	29
2006	2	27	7	36
2007	4	18	12	34
2008	10	68	44	122
2009	9	72	41	122
2010	15	51	24	90
2011	7	57	16	80
2012	6	48	25	79
2013	9	84	37	130
Total	65 (9%)	443 (61%)	214 (30%)	722 (100%)

* A small number of Asian and American Indian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: Jersey City Police Department

TABLE A2: Annual Disorderly Conduct Arrests by Race in Jersey City (2005-2013)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2005	3	23	3	29
2006	8	72	22	102
2007	12	123	50	185
2008	11	115	40	166
2009	26	76	54	156
2010	12	71	30	113
2011	18	65	47	130
2012	16	92	23	131
2013	6	94	34	134
Total	112 (10%)	731 (64%)	303 (26%)	1146 (100%)

* A small number of Asian and American Indian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: Jersey City Police Department

TABLE A3: Annual Trespass Arrests by Race in Jersey City (2005-2013)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2005	0	6	1	7
2006	1	19	6	26
2007	8	27	17	52
2008	4	24	5	33
2009	3	18	2	23
2010	6	22	5	33
2011	3	26	8	37
2012	2	21	3	26
2013	3	38	7	48
Total	30 (10.5%)	201 (70.5%)	54 (19%)	285 (100%)

* A small number of Asian and American Indian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: Jersey City Police Department

TABLE A4: Annual Loitering Arrests by Race in Jersey City (2005-2013)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2005	25	35	20	80
2006	51	66	88	205
2007	18	80	43	141
2008	25	49	30	104
2009	13	42	26	81
2010	10	52	23	85
2011	5	34	24	63
2012	19	35	24	78
2013	6	40	15	61
Total	172 (19%)	433 (48%)	293 (33%)	898 (100%)

* A small number of Asian and American Indian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: Jersey City Police Department

TABLE A5: Annual Arrests for Marijuana Possession by Race in Elizabeth (2003-2012)*

YEAR	WHITE	BLACK	TOTAL
2003	161	223	384
2004	141	171	312
2005	116	179	295
2006	86	175	261
2007	98	115	213
2008	93	115	208
2009	99	104	203
2010	87	145	232
2011	32	66	98
2012	52	75	127
Total	965 (41%)	1,368 (59%)	2,333 (100%)

* A small number of Asian arrests in the data are not included. Percentages of total are based on the sum of White and Black arrests only.

Source: Elizabeth Police Department

TABLE A6: Annual Arrests for Disorderly Conduct by Race in Elizabeth (2003-2012)

YEAR	WHITE	BLACK	TOTAL
2003	16	29	45
2004	18	20	38
2005	34	25	59
2006	27	39	66
2007	29	35	64
2008	71	80	151
2009	36	43	79
2010	44	44	88
2011	1	1	2
2012	2	0	2
Total	278 (47%)	316 (53%)	594 (100%)

Source: Elizabeth Police Department

TABLE A7: Annual Arrests for Trespass by Race in Elizabeth (2003-2012)*

YEAR	WHITE	BLACK	TOTAL
2003	60	65	125
2004	33	108	141
2005	61	91	152
2006	59	66	125
2007	59	59	118
2008	64	83	147
2009	34	43	77
2010	51	81	132
2011	0	2	2
2012	4	0	4
Total	425 (41.5%)	598 (58.5%)	1023 (100%)

* A small number of Asian arrests in the data are not included. Percentages of total are based on the sum of White and Black arrests only.

Source: Elizabeth Police Department

TABLE A8: Annual Arrests for Loitering by Race in Elizabeth (2003-2012)*

YEAR	WHITE	BLACK	TOTAL
2003	6	6	12
2004	2	3	5
2005	1	3	4
2006	1	1	2
2007	0	0	0
2008	0	0	0
2009	4	10	14
2010	17	24	41
2011	51	74	125
2012	45	59	104
Total	127 (41%)	180 (59%)	307 (100%)

Source: Elizabeth Police Department

TABLE A9: Annual Arrests for Marijuana Possession by Race in New Brunswick (2008-2012)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2008	18	27	12	57
2009	10	26	16	52
2010	9	19	26	54
2011	5	40	21	66
2012	14	25	20	59
Total	56 (19%)	137 (48%)	95 (33%)	288 (100%)

* A small number of Asian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: New Brunswick Police Department

TABLE A10: Annual Arrests for Disorderly Conduct by Race in New Brunswick (2008-2012)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2008	32	62	79	173
2009	41	47	90	178
2010	58	75	118	251
2011	47	60	124	231
2012	17	27	47	91
Total	195 (21%)	271 (29%)	458 (50%)	924 (100%)

* A number of Asian and American Indian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: New Brunswick Police Department

TABLE A11: Annual Arrests for Trespass by Race in New Brunswick (2008-2012)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2008	2	8	9	19
2009	2	2	4	8
2010	2	7	7	16
2011	8	4	13	25
2012	7	5	7	19
Total	21 (24%)	26 (30%)	40 (46%)	87 (100%)

* A small number of Asian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: New Brunswick Police Department

TABLE A12: Annual Arrests for Loitering by Race in New Brunswick (2008-2012)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2008	11	27	9	47
2009	5	17	8	30
2010	7	24	5	36
2011	5	6	0	11
2012	13	13	2	28
Total	41 (27%)	87 (57%)	24 (16%)	152 (100%)

Source: New Brunswick Police Department

TABLE A13: Annual Arrests for Marijuana Possession by Race in Millville (2007-09 & 2012-13)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2007	28	31	4	63
2008	40	63	11	114
2009	16	19	5	40
2012	2	6	4	12
2013	2	5	3	10
Total	88 (37%)	124 (52%)	27 (11%)	239 (100%)

* Total arrests for 2013 are based on the first three quarters of the year only.

Source: Millville Police Department

TABLE A14: Annual Arrests for Disorderly Conduct by Race in Millville (2007-09 & 2012-13)*†

YEAR	WHITE	BLACK	LATINO	TOTAL
2007	41	103	7	151
2008	46	85	12	143
2009	31	69	8	108
2012	19	65	24	108
2013	22	49	11	82
Total	159 (27%)	371 (63%)	62 (10%)	592 (100%)

* Total arrests for 2013 are based on the first three quarters of the year only.

† A small number of American Indian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: Millville Police Department

TABLE A15: Annual Arrests for Trespass by Race in Millville (2007-09 & 2012-13)*

YEAR	WHITE	BLACK	LATINO	TOTAL
2007	14	9	1	24
2008	14	15	2	31
2009	12	15	3	30
2012	7	16	1	24
2013	0	1	0	1
Total	47 (43%)	56 (51%)	7 (6%)	110 (100%)

* Total arrests for 2013 are based on the first three quarters of the year only.

Source: Millville Police Department

TABLE A16: Annual Arrests for Loitering by Race in Millville (2007-09 & 2012-13)*†

YEAR	WHITE	BLACK	LATINO	TOTAL
2007	7	0	0	7
2008	6	4	0	10
2009	1	1	1	3
2012	10	4	0	14
2013	8	1	3	12
Total	32 (69%)	10 (22%)	4 (9%)	46 (100%)

* Total arrests for 2013 are based on the first three quarters of the year only.

† A small number of Asian arrests in the data are not included. Percentages of total are based on the sum of White, Black, and Latino arrests only.

Source: Millville Police Department

Appendix B—Discrepancies Between Uniform Crime Reporting (UCR) and Open Public Records Act (OPRA) Data

TABLE B1: Marijuana Possession, Jersey City

YEAR	FBI/UCR DATA	OPRA REQUEST DATA*
2005	286	58
2006	151	45
2007	48	50
2008	305	151
2009	250	160
2010	292	118
2011	259	98
2012	-	110
2013	-	181

TABLE B2: Disorderly Conduct, Jersey City

YEAR	FBI/UCR DATA	OPRA REQUEST DATA*
2005	641	47
2006	576	114
2007	626	212
2008	533	199
2009	528	174
2010	459	139
2011	445	142
2012	-	150
2013	-	144

* OPRA data do not include arrests with Part I offenses involved.

TABLE B3: Marijuana Possession, Elizabeth

YEAR	FBI/UCR DATA	OPRA REQUEST DATA*
2003	291	394
2004	252	322
2005	265	312
2006	214	270
2007	181	218
2008	164	210
2009	138	206
2010	134	235
2011	189	227
2012	-	267

TABLE B4: Disorderly Conduct, Elizabeth

YEAR	FBI/UCR DATA	OPRA REQUEST DATA*
2003	231	47
2004	236	38
2005	257	60
2006	257	68
2007	271	64
2008	225	152
2009	244	79
2010	225	88
2011	147	3
2012	-	2

* OPRA data do not include arrests with Part I offenses involved.

TABLE B5: Marijuana Possession, New Brunswick

YEAR	FBI/UCR DATA	OPRA REQUEST DATA*
2008	104	139
2009	86	109
2010	99	138
2011	98	135
2012	-	100

TABLE B6: Disorderly Conduct, New Brunswick

YEAR	FBI/UCR DATA	OPRA REQUEST DATA*
2008	180	201
2009	170	207
2010	231	306
2011	220	280
2012	-	98

* OPRA data do not include arrests with Part I offenses involved.

TABLE B7: Marijuana Possession, Millville

YEAR	FBI/UCR DATA	OPRA REQUEST DATA*
2007	131	155
2008	121	151
2009	105	97
2010	108	-
2011	66	-
2012	-	16
2013	-	17

TABLE B8: Disorderly Conduct, Millville

YEAR	FBI/UCR DATA	OPRA REQUEST DATA*
2007	163	180
2008	148	170
2009	140	122
2010	145	-
2011	142	18
2012	-	125
2013	-	98

* OPRA data do not include arrests with Part I offenses involved.

Endnotes

- 1 ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE* 165 (2013), available at <https://www.aclu.org/files/assets/1114413-mj-report-rfs-reli.pdf>.
- 2 *Id.* at 66-67 (according to federal government data, 14% of Blacks and 11.6% of Whites reported using marijuana in the past year in 2010; among 18-to-25-year-olds, 33.4% of Whites and 27.6% of Blacks reported using marijuana in the past year in 2010).
- 3 See George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, *THE ATLANTIC MONTHLY*, Mar. 1982, available at <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>. The broken windows theory of policing was first tested as a foot-patrol experiment in Newark, NJ in the mid-1970s. See *id.* The study found that while the presence of more officers increased public confidence (people believed crime had been reduced), it did not actually reduce crime. See *id.*; William J. Bratton, Chief, L.A. Police Dep't, Speech at Milken Institute Conference, *This Works: Crime Prevention and the Future of Broken Windows Policing*, (Dec. 4, 2003), available at http://www.manhattan-institute.org/html/cb_36.htm. Broken windows theory provided the framework for order maintenance and zero-tolerance policing strategies across the country. See ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE*, *supra* note 1, at 92 n.101 Forming the core of broken windows policing is the subjective perception about who is undesirable and what behaviors constitute disorder, engendering a high degree of police officer discretion and the potential for disparate enforcement. Kelling and Wilson addressed this concern in their essay:

We might agree that certain behavior makes one person more undesirable than another but how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry? We can offer no wholly satisfactory answer to this important question. We are not confident that there is a satisfactory answer except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority. That limit, roughly, is this—the police exist to help regulate behavior, not to maintain the racial or ethnic purity of a neighborhood.

Kelling & Wilson, *Broken Windows*, Mar. 1982. Broken windows policing has since been widely criticized. See, e.g., Benjamin Bowling, *The Rise and Fall of New York Murder: Zero Tolerance or Crack's Decline?*, 39 *BRIT. J. CRIMINOLOGY* 531 (1999) (attributing the decrease in homicide rates in the 1990s to the decrease of the crack cocaine epidemic, which had begun before the implementation of broken windows policing); Bernard Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 *MICH. L. REV.* 291 (1998) (disputing the claim that reducing public disorder deters serious crimes); Bernard Harcourt, *Policing Disorder: Can We Reduce Serious Crime by Punishing Petty Offenses?*, *BOSTON REV.*, April–May 2002 (criticizing the lack of an adequate definition of disorder, suggesting that what proponents of broken windows policing might call disorder may be perceived entirely differently by another segment of the population, and may actually mean strong community bonds [graffiti is one example], and presenting alternative theories for the decline in crime in New York City by providing examples of declining crime rates in other cities that did not implement broken windows policing). Most recently, the broken windows theory of policing has come under attack in New York City after an NYPD officer killed Eric Garner when placing him in a chokehold during an arrest for allegedly selling untaxed cigarettes. See, e.g., Editorial, *Broken Windows, Broken Lives*, *N.Y. TIMES*, July 25, 2014, available at <http://www.nytimes.com/2014/07/26/opinion/broken-windows-broken-lives.html>.
- 4 For example, in New York City, public housing residents and their authorized guests were subjected to a trespass policy in their own buildings that led to countless illegal stops and arrests by the New York City Police Department. See Editorial, *Stop-and-Frisk in Public Housing*, *N.Y. TIMES*, Sept. 5, 2013, at A22, available at http://www.nytimes.com/2013/09/06/opinion/stop-and-frisk-in-public-housing.html?_r=0.
- 5 Joseph Goldstein & Marc Santora, *Staten Island Man Died from Chokehold During Arrest, Autopsy Finds*, *N.Y. TIMES*, Aug. 1, 2014, available at <http://www.nytimes.com/2014/08/02/nyregion/staten-island-man-died-from-officers-chokehold-autopsy-finds.html>.
- 6 “Low-level offense” in this report refers to disorderly persons and petty disorderly persons offenses under the New Jersey Constitution and criminal code. They are not considered crimes within the meaning of the Constitution, although an individual convicted of such an offense still faces jail-time, fines, and will receive a criminal record. See N.J. STAT. ANN. § 2C:1-4. They are analogous to misdemeanors and violations in other states.
- 7 Specifically, the study looks at marijuana possession of 50 grams or less, which is the lowest possession charge possible, and a disorderly persons offense under New Jersey law:
 - a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, ... Any person who violates this section with respect to: (4) Possession of 50 grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person.

N.J. STAT. ANN. § 2C:35-10a(4).
- 8 Disorderly conduct can be broadly applied to a range of behavior that police have discretion to construe as disorderly, annoying, or potentially dangerous. It is a petty disorderly persons offense, the lowest level of offense in New Jersey:
 - a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he: (1) Engages in fighting or threatening, or in violent or tumultuous behavior; or (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor. b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

N.J. STAT. ANN. § 2C:33-2. N.J. STAT. ANN. § 2C:33-2b, which was enacted to punish profane speech, has been “held unconstitutional for overbreadth on the ground that one cannot be prosecuted for public use of coarse or abusive language that does not go beyond offending the sensibilities of a listener.” *State v. Duncan*, 376 N.J. Super. 253, 261 n.3 (App. Div. 2005) (citing *State in the Interest of H.D.*, 206 N.J. Super. 58, 61 (App. Div.1985)).

- 9 Defiant trespass is a disorderly persons offense charged when police determine that the person knew or should have known they were not entitled to be on the property:
- A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by: (1) Actual communication to the actor; or (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or (3) Fencing or other enclosure manifestly designed to exclude intruders.
- N.J. STAT. ANN. § 2C:18-3b.
- 10 Loitering with the intent to obtain or distribute a controlled substance, also a disorderly persons offense, has the potential to be enforced arbitrarily by police because the offense rests on the officer's interpretation of a person's behavior or presence in a particular place as evidence of the intent to purchase drugs:
1. a. ... "Public place" means any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure or area. b. A person, whether on foot or in a motor vehicle, commits a disorderly persons offense if (1) he wanders, remains or prowls in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog; and (2) engages in conduct that, under the circumstances, manifests a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog. c. Conduct that may, where warranted under the circumstances, be deemed adequate to manifest a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog includes, but is not limited to, conduct such as the following: (1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place; (2) Repeatedly passing objects to or receiving objects from pedestrians or motorists in a public place; (3) Repeatedly circling in a public place in a motor vehicle and on one or more occasions passing any object to or receiving any object from a person in a public place.
- N.J. STAT. ANN. § 2C:33-2.1.
- 11 See, e.g., ACLU of MARYLAND, *THE MARYLAND WAR ON MARIJUANA IN BLACK AND WHITE* (2013), available at http://www.aclumd.org/uploaded_files/0000/0470/aclu_marijuana_in_md_report_Whitecover.pdf (analyzing racial disparities in low-level marijuana possession arrests in Maryland); WASHINGTON LAWYERS' COMMITTEE, *RACIAL DISPARITIES IN ARRESTS IN THE DISTRICT OF COLUMBIA, 2009-2011* (2013), available at http://www.washlaw.org/pdf/wlc_report_racial_disparities.pdf (finding that the majority of arrests in the District of Columbia are for nonviolent offenses and disproportionately of African-Americans); COUNCIL ON CRIME AND JUSTICE, *LOW LEVEL OFFENSES IN MINNEAPOLIS: AN ANALYSIS OF ARRESTS AND THEIR OUTCOMES* (2004), available at <http://www.crimeandjustice.org/researchReports/Low%20Level%20Offenses%20in%20Minneapolis-%20An%20Analysis%20of%20Arrests%20and%20their%20Outcomes.pdf> (documenting arrest and conviction disparities between Blacks and Whites in Minneapolis for seven low-level offenses).
- 12 See Simon Britnitt & Philip Stenning, *Understanding discretion in modern policing*, 35 CRIM. L.J. 319, 320 (2011).
- 13 For example, "tumultuous behavior" constitutes disorderly conduct under many statutes (including in New Jersey) and can be widely interpreted and abusively applied. A famous example of the zealous overuse of disorderly conduct statutes is the arrest of Harvard University Professor Henry Louis Gates, Jr., who was arrested at his own home after police interrogated him under suspicion that he was a burglar, and he allegedly exhibited a "tumultuous manner." See CHRISTY E. LOPEZ, AMERICAN CONSTITUTION Soc'y, *DISORDERLY (MIS)CONDUCT: THE PROBLEM WITH "CONTEMPT OF COP" ARRESTS 1-2*, (2010). The colloquial term for this type of abusive disorderly conduct arrest is "contempt of cop"—when a person is arrested for challenging or questioning an officer's actions. See *id.* at 4.
- In July 2014, the Justice Department concluded a three-year investigation of the Newark Police Department's (NPD) policing practices after allegations of excessive force, unconstitutional stops and arrests, and discriminatory police actions. See U.S. DEP'T OF JUST., C.R. DIVISION, *INVESTIGATION OF THE NEWARK POLICE DEP'T 1* (2014), available at www.justice.gov/usao/nj/Press/files/pdf/2014/NPD%20Findings%20Report.pdf. The Justice Department found that 75% of NPD pedestrian stops lacked a sufficient legal basis; Blacks were stopped disproportionately to Whites; police officers retaliated against individuals who questioned the police's actions; excessive force in more than 20% of NPD use of force incidents; and evidence of theft of individuals' property by police officers. See *id.* at 2-3. Regarding "contempt of cop" arrests, the DOJ found that "NPD officers engaged in a pattern of violating constitutional rights by detaining and arresting individuals who lawfully object to police actions or behave in a way that officers perceive as disrespectful." See *id.* at 12-13. The arrests were often charged as obstruction of justice, resisting arrest, or similar offenses. See *id.* at 13.
- 14 See N.J. STAT. ANN. § 2C:29-9 ("A person is guilty of [contempt] ... if he purposely or knowingly disobeys a judicial order").
- 15 Minor disorderly persons offenses could result in deportation. For example, a Lawful Permanent Resident (LPR) becomes deportable for one conviction for "a crime involving moral turpitude" (which includes disorderly persons offenses such as shoplifting, fraudulent conduct, and destruction of property) if that offense was committed within five years after the individual was admitted into the U.S. and if the individual was sentenced to confinement for one year or more. 8 U.S.C.A. § 1227(a)(2)(A)(i). See also John E. Hogan & Amy B. Herbold, *Collateral Consequences: The Potential for Deportation and Exclusion as a Result of a Municipal Court Shoplifting Conviction*, N.J. LAWYER MAGAZINE, Dec. 2010, at 19-22. Generally, a LPR can be deported for two convictions of crimes of moral turpitude, regardless of when the offenses were committed and irrespective of the length of sentence imposed on each. *Id.*; 8 U.S.C. 1227(a)(2)(A)(ii).
- A LPR convicted of two marijuana offenses can be subject to removal. See 8 U.S.C. § 1227 (a)(2)(B)(i) & (ii). In 2010, the Supreme Court held that two minor drug offenses do not constitute an "aggravated felony" under 8 U.S.C. § 1101(a)(43)(B), which would render a LPR ineligible for cancellation of removal in subsequent deportation proceedings; however, he or she can still be subject to deportation if convicted, but is not precluded from applying for cancellation of removal. See *Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577, 2580 (2010).
- 16 See, e.g., N.J. ADMIN. CODE § 8:431-4.3 (disqualifying individuals convicted of certain disorderly persons offenses from obtaining certification as an assisted living administrator); N.J. ADMIN. CODE § 8:431-3.3 (disqualifying individuals convicted of certain disorderly persons offenses from obtaining certification as a personal care assistant); N.J. ADMIN. CODE § 8:431-2.3 (disqualifying individuals convicted of certain disorderly persons offenses from obtaining certification as a nurse aid); N.J. ADMIN. CODE § 13:61-2.4 (allowing for denial of approval to become an approved boat safety instructor for individuals convicted of certain disorderly persons offenses).

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- 17 N.J. STAT. ANN. § 2A:18-61.1 (allowing for the removal of tenants convicted under N.J. STAT. ANN. § 2C:35-1 et al. and other statutes).
- 18 See, e.g., N.J. ADMIN. CODE § 13:21-21.15 (Chief Administrator may refuse to issue a license or suspend or revoke an existing license of an auto body repair facility if an individual was convicted of certain disorderly persons or petty disorderly persons offenses); N.J. ADMIN. CODE § 8:40-2.2 (Persons convicted of disorderly persons offenses and certain petty disorderly persons offenses may be denied licenses to operate ambulance services).
- 19 See N.J. STAT. ANN. § 2C:35-16 (“[A] person convicted of or adjudicated delinquent for a violation of [certain drug offenses] shall forthwith forfeit his right to operate a motor vehicle over the highways of this State”).
- 20 DEBORAH RAMIREZ, JACK McDEVITT & AMY FARRELL, U.S. DEP’T OF JUST., A RESOURCE GUIDE ON RACIAL PROFILING DATA COLLECTION SYSTEMS iii (2000), available at <https://www.ncjrs.gov/pdffiles1/bja/184768.pdf>.
- 21 Press Release, U.S. Dep’t of Just., Att’y Gen. Holder: Justice Dept. to Collect Data on Stops, Arrests as Part of Effort to Curb Racial Bias in Criminal Justice System (Apr. 28, 2014), available at <http://www.justice.gov/opa/pr/2014/April/14-ag-445.html>.
- 22 See e.g., John MacDonald & Robert J. Stokes, *Race, Social Capital, and Trust in the Police*, 41 URB. AFFAIRS REV. 358, 361 (2006) (“Aggressive arrest policies tied to the zero-tolerance public-order maintenance tactics currently in vogue, as well as efforts to control drug distribution, also fuel a growing resentment of the police in minority communities.”)(citations omitted). See also Press Release, U.S. Dep’t of Just., supra note 21 (“Racial disparities contribute to tension in our nation generally and within communities of color specifically, and tend to breed resentment towards law enforcement that is counterproductive to the goal of reducing crime[.]”) (quoting Att’y Gen. Holder).
- 23 Studies have found that communities are less likely to cooperate with police in a variety of ways when members hold negative perceptions of the police and how they are treated by police. See U.S. DEP’T OF JUST., CMTY. ORIENTED POLICING SERV., *DISCOURTEOUS COPS AND UNRULY CITIZENS: MEDIATION CAN HELP*, 2 CMTY. POLICING DISPATCH 3 (2009), available at http://cops.usdoj.gov/html/dispatch/March_2009/mediation.htm; see also Lopez, supra note 13, at 13 (“Community members who trust police are more likely to report corner drug dealing, the sighting of a dangerous suspect, and even knowledge about a crime being planned.”).
- 24 See RAMIREZ ET AL., supra note 20, at iii.
- 25 An average disparity for all four cities would not be an accurate assessment of the overall disparity because it could not take into account the differences in each department’s data recording methods, as well as the different time periods examined in each case.
- 26 All arrest rates and disparities presented are specifically for the four study offenses in this report unless otherwise noted.
- 27 See Kelling & Wilson, supra note 3; see also Bratton, Speech at Milken Institute Conference, supra note 3 (describing how fare evaders arrested in the New York City subway system were sometimes wanted on warrant).
- 28 “Total arrests” here refers to all the arrests for which the JCPD provided records, including those arrests with FBI/UCR Part I and indictable offenses involved.
- 29 See *infra* note 35 for an explanation of the FBI’s classification of serious Part I offenses.
- 30 Letter from Robert Byrne, City Clerk for Jersey City (Dec. 3, 2013) (on file with the ACLU-NJ).
- 31 Email from Susan Robostello, City Clerk for Millville (Oct. 22, 2014) (on file with the ACLU-NJ).
- 32 In Elizabeth, for example, an ACLU-NJ review of the arrestees for 2012 with a discernable Hispanic/Latino surname showed that for 94% of those arrests the individual’s race was recorded as White, and recorded as Black in 6% of the arrests. Surname analysis is a technique that has long been used by demographers to identify members of particular racial and ethnic groups in the population. See, e.g., ALLAN ABRAHAMSE, PETER A. MORRISON & NANCY MINTER BOLTON, RAND CORP., *SURNAME ANALYSIS FOR ESTIMATING LOCAL CONCENTRATION OF HISPANICS AND ASIANS* (1993), available at <http://www.rand.org/pubs/papers/P7844.html>.
- 33 The government data referred to are crime and arrests statistics from the FBI Uniform Crime Reporting Program (UCR).
- 34 See *infra* note 46 for a description of the FBI/UCR method for counting Part II offenses such as marijuana possession and disorderly conduct. Because the FBI/UCR’s reporting method for Part II arrests requires that law enforcement agencies only report the most serious offense charged for each arrest, this results in the loss of certain data—specifically, the less serious offenses involved in the arrests that go unreported. Even when taking this into account, the OPRA data should have included *more* arrests, not less. This is because the records should have included every arrest incident where a study offense was charged, regardless of whether or not it was the most serious charge for the particular arrest.
- 35 The FBI’s Uniform Crime Reporting (“UCR”) Program compiles national crime and arrest data, and offenses are categorized as Part I or Part II offenses. Part I offenses were chosen by the FBI because they are serious crimes that occur with regularity across the country, and are likely to be reported to the police. See U.S. DEP’T OF JUST., FBI, *CRIME IN THE UNITED STATES 2004* 505 (2004), available at https://www2.fbi.gov/ucr/cius_04/documents/CIUS2004.pdf. Part I Crimes include: Criminal Homicide, Forcible Rape, Robbery, Aggravated Assault, Burglary (breaking or entering), Larceny-theft, Motor Vehicle Theft, and Arson. *Id.*
- 36 The FBI/UCR only collects arrest data for Part II offenses, as opposed to crime data for Part I offenses. *Id.* Part II offenses are simple assault (i.e., does not result in serious injury); forgery and counterfeiting, fraud; embezzlement; buying, receiving, possessing stolen property; vandalism; carrying or possessing a weapon; prostitution; sex offenses; drug abuse violations; gambling; offenses against the family and children; driving under the influence; liquor laws; drunkenness; disorderly conduct; vagrancy; suspicion; curfew and loitering; runaways under 18; and all other offenses not identified as Part I or Part II (i.e., any offense that does not have its own Part I or Part II category is counted here). See *id.*
- 37 See N.J. STAT. ANN. § 2C:1-4(a):
An offense defined by this code or by any other statute of this State, for which a sentence of imprisonment in excess of 6 months is authorized, constitutes a crime within the meaning of the Constitution of this State. Crimes are designated in this code as being of the first, second, third or fourth degree.

38 See N.J. STAT. ANN. § 2C:1-4(b):

An offense is a disorderly persons offense if it is so designated in this code or in a statute other than this code. An offense is a petty disorderly persons offense if it is so designated in this code or in a statute other than this code. Disorderly persons offenses and petty disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State. There shall be no right to indictment by a grand jury nor any right to trial by jury on such offenses. Conviction of such offenses shall not give rise to any disability or legal disadvantage based on conviction of a crime.

See also N.J. STAT. ANN. § 2C:43-8:

A person who has been convicted of a disorderly persons offense or a petty disorderly persons offense may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed 6 months in the case of a disorderly persons offense or 30 days in the case of a petty disorderly persons offense.

- 39 See, e.g., N.J. STAT. ANN. § 2C:43-3.1 (“[A]ny person convicted of any disorderly persons offense, any petty disorderly persons offense, or any crime not resulting in the injury or death of any other person shall be assessed \$50.00 for each such offense or crime for which he was convicted” to be deposited in the Victims of Crime Compensation Board.); N.J. STAT. ANN. § 2C:43-3.2 (“In addition to any other fine, fee or assessment imposed, any person convicted of a crime, disorderly or petty disorderly persons offense or violation of R.S. 39:4-50 shall be assessed \$75 for each conviction” to be deposited in the Safe Neighborhood Services Fund.); N.J. STAT. ANN. § 2C:43-3.5 (“In addition to any term or condition that may be included in an agreement for supervisory treatment pursuant to N.J.S.2C:43-13 or imposed as a term or condition of conditional discharge pursuant to N.J.S.2C:36A-1 for a violation of any offense defined in chapter 35 or 36 of Title 2C of the New Jersey Statutes, each participant shall be assessed a penalty of \$50 for each adjudication or conviction” to be deposited in the Drug Abuse Education Fund.).
- 40 The requests were submitted to five agencies, but one, the Asbury Park Police Department, was not able to produce adequate records and could not be included in this report. See text box on page twelve for a description of Asbury Park’s response to the ACLU-NJ’s Open Public Records Act request.
- 41 The OPRA requests also sought data for two other low-level offenses: obstructing highways and other public passageways, N.J. STAT. ANN. § 2C:33-7, and smoking in public, N.J. STAT. ANN. § 2C:33-13. Because the records received showed none or very few arrests for these offenses, they were not included in the analyses.
- The ACLU-NJ requested the records specifically in electronic file format, which are required under the public records law, if available, because electronic records are searchable and analyzable, facilitating studies such as this one.
- 42 Jersey City did not have records pre-2005 according to department officials because of a “computer crash.” Email from Irene McNulty, Office of the City Clerk of Jersey City (Oct. 21, 2013) (on file with the ACLU-NJ). Millville had a similar “crash” that lost all of its arrest records for 2010 and 2011. Voicemail message from Captain Matteo Rabbai, Millville Police Dep’t. (Nov. 25, 2013).
- 43 The ACLU-NJ was told that Asbury Park’s arrest records pre-2008 “were sent to a private off-site storage facility some time ago” in boxes comingled with reams of other law enforcement documents. Letter from Frederick C. Raffetto, City Attorney for Asbury Park (Nov. 15, 2013) (on file with the ACLU-NJ).
- 44 The Elizabeth Police Department used the UCR code to track arrests until 2010, and then switched to recording arrests according to the New Jersey Criminal Code starting in 2011.
- 45 Jersey City first quoted a price of \$10,240 for the records requested. Asbury Park quoted \$2,950 for its vendor to retrieve information for a three-year period.
- 46 The FBI/UCR Program instructs police departments to count only the most serious offense when dealing with arrests where the person was charged with several Part II offenses. See U.S. DEP’T OF JUST., FBI, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION UNIFORM CRIME REPORTING PROGRAM, SUMMARY REPORTING SYSTEM USER MANUAL 140 (2013), available at <http://www.fbi.gov/about-us/cjis/ucr/nibrs/summary-reporting-system-srs-user-manual>. For example, if an arrest had a charge for weapons possession and for marijuana possession, the police department would most likely count the weapons possession, and the marijuana possession arrest would not be recorded in the UCR data. However, there are no set guidelines for which offenses to count as more serious and thus such determinations are left to the individual police departments’ discretion. See *id.* Based on this method of recording UCR data, we would expect that the records provided in response to the OPRA request would contain more arrests for the study offenses, since they should include every instance when one of the study offenses was charged as part of an arrest, as opposed to only those arrests where the study offense was the most serious charge.
- 47 Of the four study offenses, the FBI/UCR Program only collects and reports data for two: marijuana possession and disorderly conduct. Thus, we could only compare the data received for these two offenses to the publicly available FBI/UCR data.
- 48 Where arrest totals and rates are provided for the four study offenses combined, a small percentage of the arrests appear in the data more than once. Because the analyses focused on the four offense categories, the ACLU-NJ should have received a record for every arrest incident where one of the study offenses was charged. It is possible that one of the other study offenses was charged as part of an arrest incident. For example, if there was an arrest where the individual was charged with both marijuana possession and disorderly conduct, this arrest would appear in the data sets for both offenses. When providing the sum total of arrests (i.e., all marijuana possession, disorderly conduct, trespass, and loitering arrests) for the particular jurisdiction, the arrest would thus appear twice. Of 3,209 total arrest incidents in Jersey City, 3% involved an additional study offense. In Elizabeth, 3.7% of the 2,117 arrests involved an additional study offense. In New Brunswick there were 1,499 total arrests and 1.73% involved an additional study offense, and in Millville 2% of the 1,003 arrests in the data set involved additional study offenses.
- 49 Email from Irene McNulty, *supra* note 42.
- 50 Data for 2005 begins March 18, 2005. Telephone conversation with Tim McGinnis, General Dynamics (Mar. 4, 2014).
- 51 Letter from Robert Byrne, *supra* note 30.

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- 52 The ACLU-NJ would like to thank Mayor Fulop and Director Shea for their ongoing efforts to assist in the procurement of the records and their cooperation with this project.
- 53 For example, in 2011, the latest year for which FBI/UCR arrest data is currently available, the JCPD reported 445 disorderly conduct arrests. Meanwhile, the data the ACLU-NJ received from the JCPD reflected only 142 disorderly conduct arrests. FBI/UCR Program Data and Jersey City Police Department. Similar discrepancies existed for marijuana possession: the JCPD reported 259 such arrests in 2011 to the FBI/UCR Program, but the data the ACLU-NJ received only contained data for 98 arrests that year. *Id.* The FBI/UCR does not have trespass or loitering arrest categories, thus there are no public statistics for these offenses.
- 54 The ACLU-NJ requested that arrests for 2011 be reviewed because it was the most recent year for which FBI/UCR data was available at the time.
- 55 See pages 33-34 for the hand count data.
- 56 See Terrence T. McDonald, *Jersey City Says Data Collection on Crime Helping City “Turn a Corner”*, NJ.COM (Feb. 10, 2014), http://www.nj.com/ijournal-news/index.ssf/2014/02/jersey_city_officials_address.html.
- 57 See *id.*
- 58 See ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE*, *supra* note 1, at 165.
- 59 See Appendix B, Tables B1 and B2 for a comparison of the number of arrests reported to the FBI/UCR and the number of arrests in the data received. For every year available for Jersey City (2005-2011), the data received reflect fewer arrests than reported to the FBI/UCR. Because of the way in which Part II arrests are calculated in the FBI/UCR, we would expect the data received to have more, not fewer arrests. See *supra* note 46 (explaining the FBI/UCR Program’s counting method for Part II offenses).
- 60 See ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE*, *supra* note 1, at 66-67.
- 61 The large percentage increases are partially attributable to the low number of arrests reported for disorderly conduct. A slight uptick in arrests any given year can result in an exponential percentage increase.
- 62 The arrest disparity for 2005 is incalculable based on the data provided because they reflect zero White arrests, making the disparity infinite.
- 63 U.S. CENSUS (2010).
- 64 See Appendix A for arrest totals by offense category.
- 65 Jersey City Police Dep’t Arrest Data; U.S. CENSUS BUREAU, JERSEY CITY 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES Table DP05. (ACS Demographic & Hous. Estimates) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP05&prodType=table; U.S. CENSUS BUREAU, JERSEY CITY 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES Table B01001B (Sex by Age (Black or African American Alone)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_B01001B&prodType=table.
- 66 U.S. CENSUS (2010).
- 67 The population percentage is based on the number of White, Black, and Hispanics/Latinos aged 18 to 24 in Jersey City. JERSEY CITY 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES, *supra* note 65, at Tables DP05 & B01001B.; U.S. CENSUS BUREAU, JERSEY CITY 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES tbl.B01001I (Sex by Age (Hispanic or Latino)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_B01001I&prodType=table; U.S. CENSUS BUREAU, JERSEY CITY 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES Table B01001I (Sex by Age (White alone, not Hispanic or Latino)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_B01001I&prodType=table.
- 68 Jersey City Police Dep’t Arrest Data; JERSEY CITY 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES, *supra* note 65, at Tables DP05 & B01001B.
- 69 JERSEY CITY 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES, *supra* note 65, at Table DP05.
- 70 The arrest distance from home was calculated using arrest location and home address data.
- 71 The hand count data analysis is based on arrests that did not have a Part-I offense charged. Because the records do not indicate the statute number for the offense or offenses charged for each arrest, we estimated the number of marijuana possession and disorderly conduct arrests that did not involve an indictable offense. We did so by reducing the number of arrests by the percentage of arrests we received from the OPRA response that did not include an indictable offense. The hand-count produced 511 marijuana possessions arrests, 507 of which were not accompanied by a UCR/FBI Part I offense. We reduced that number by 23 percent to produce 390 arrests that did not include an indictable offense. The hand-count produced 262 disorderly conduct arrests, 233 of which were not accompanied by an arrest for a UCR/FBI Part I offense. We reduced that total by 18 percent to produce 191 arrests that did not include an indictable offense.
- 72 Notably, the hand count produced about twice as many marijuana possession arrests than the department had reported to the FBI/UCR, and about half of the disorderly conduct arrests it had reported. In sum, the JCPD was still unable to reconcile the total arrests with the number of arrests it had reported to the FBI/UCR, even after the manual review of all its arrest records.
- 73 For example, there were no records for any disorderly conduct or loitering arrests from 2003 to 2010, and none of the records included information about “other offenses charged.” Additionally, the records had been sent in a non-searchable PDF file format.
- 74 For example, the arrest data for loitering showed zero arrests in 2007 and 2008, which then increased to 167 arrests by 2011. The EPD data received by the ACLU-NJ showed 227 marijuana possession arrests in 2011, while the FBI/UCR data reported 189 arrests for marijuana possession that year. Records for disorderly conduct included only 3 such arrests in 2011, while the FBI/UCR data reported 147. See Appendix B, Tables B3 & B4.
- 75 Email from Rocco Dipaola, Second Assistant City Att’y for Elizabeth (Apr. 29, 2014) (on file with the ACLU-NJ).
- 76 These records, therefore, do not indicate the state statute number for the offense or offenses charged for each arrest. It is therefore impossible to determine whether the additional offenses charged as part of each arrest were indictable offenses.
- 77 The Elizabeth data analyses therefore combine two methods: arrests with Part I offenses involved are excluded in analyses for 2003 to 2012; arrests with indictable offenses involved are excluded in analyses for 2011 and 2012.

- 78 U.S. CENSUS (2010).
- 79 The arrest records received did not include any Hispanic/Latino data, and representatives from the EPD confirmed that the department does not record Hispanic/Latino race/ethnicity information in arrest records.
- 80 Therefore, to calculate arrests rates in Elizabeth we use the U.S. Census statistic of 54.6% “White alone” for our calculations, rather than the 18.2% “White alone, not Hispanic or Latino” statistic. See U.S. Census, *Quick Facts for Elizabeth, New Jersey*. In the other case studies for which Hispanic/Latino data is available, we use “White alone, not Hispanic or Latino” and “Hispanic or Latino” census statistics to calculate the arrest rates.
- 81 See UNION COUNTY LAW ENFORCEMENT TRAFFIC STOPS AND INVESTIGATORY DETENTION POL’Y, UNION COUNTY POLICE CHIEFS ASS’N, ET AL. 6 (July 2001).
- 82 Until 2010, the EPD coded arrest offenses according to their corresponding FBI/UCR category. Beginning in 2011, the department began coding arrest offenses according to their statutory offense code. This caused an irregularity in how the total numbers were compiled and counted.
- 83 See ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE*, *supra* note 1, at 165.
- 84 See Appendix A, Table A6 for disorderly conduct arrest totals by year in Elizabeth.
- 85 See Appendix A, Table A7 for total trespass arrests by year in Elizabeth.
- 86 See Appendix A, Table A8 for loitering arrest totals in Elizabeth.
- 87 The actual number of arrests for the study offenses was 4,342 (2,393 marijuana possession arrests, 1,041 trespass arrests, 600 disorderly conduct arrests, and 308 loitering arrests). Because race data was missing for some arrests they could not be included in the analysis, thus the lower total of 4,257.
- 88 Study offense data in Elizabeth are arrests that did not include a Part I offense for 2003-2010 or an indictable offense for 2011-2012.
- 89 U.S. CENSUS BUREAU, ELIZABETH 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES Table DP05 (ACS Demographics & Hous. Estimates) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP05&prodType=table; U.S. CENSUS BUREAU, ELIZABETH 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES, Table B01001B (Sex by Age (Black or African American Alone)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_B01001B&prodType=table.
- 90 U.S. CENSUS (2010).
- 91 ELIZABETH 2012 AM. CMTY. SURVEY 1-YEAR ESTIMATES, *supra* note 89, at Tables DP05 & B01001B.
- 92 U.S. CENSUS (2010).
- 93 This rendered the data entry process extremely labor intensive. Because it required the manual review of all of New Brunswick’s arrests for each year, and manual entry of records into an electronic file format, the ACLU-NJ limited its request and analysis to a five-year period (2008-2012).
- 94 Like the other jurisdictions studied here, the ACLU-NJ relied on 2010 U.S. Census data to determine the baseline demographic population information for New Brunswick. The ACLU-NJ recognizes that Rutgers—New Brunswick has a large and diverse student population that may impact the analysis of this data in New Brunswick. The ACLU-NJ was unable to account for any demographic changes in New Brunswick that may be caused by any daytime or temporary influx of students or others. We encourage the City of New Brunswick to conduct further analysis to determine the impact of the Rutgers population on low-level offense arrest data.
- 95 See Appendix A, Table A9 for annual marijuana possession arrests by race for New Brunswick.
- 96 U.S. CENSUS (2010).
- 97 See N.J. STAT. ANN. § 2C:35-10a(3). Fifty grams is the equivalent of slightly more than three packs of cigarette.
- 98 U.S. CENSUS BUREAU, NEW BRUNSWICK 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES Table DP05 (ACS Demographic & Hous. Estimates) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_3YR_DP05&prodType=table; U.S. CENSUS BUREAU, NEW BRUNSWICK 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES Table B01001B (Sex by Age (Black or African American Alone)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_3YR_B01001B&prodType=table.
- 99 NEW BRUNSWICK 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES, *supra* note 92, at Table DP05; U.S. CENSUS BUREAU, NEW BRUNSWICK 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES Table B01001I (Sex by Age (Hispanic or Latino)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_3YR_B01001I&prodType=table.
- 100 This rendered the data entry process extremely labor intensive. Because it required the manual review of Millville’s arrests for each of these years, and manual entry of the records into an electronic file format, the ACLU-NJ limited the analyses of the printed records to 2007-2009.
- 101 Email from Susan Robostello, *supra* note 31; Phone Message from Captain Matteo Rabbai, *supra* note 42.
- 102 For example, the MPD data reported a total of 158 (2007), 156 (2008), and 97 (2009) arrests for marijuana possession, while the FBI/UCR totals were 131 (2007), 121 (2008), and 105 (2009). Millville Police Dep’t Arrest Records & U.S. CENSUS (2010). Similar discrepancies were present in the disorderly conduct data: 190 (2007), 176 (2008), and 128 (2009) arrests, whereas the FBI/UCR data reported 163 (2007), 148 (2008) and 140 (2009) arrests. *Id.* Because the UCR prescribes a method of counting only the most serious offense for arrests where there were several Part II offenses charged, we might expect to see more arrests in the MPD data, but not fewer, as there were in 2009. See *supra* note 46 for an explanation of the FBI/UCR Program’s counting method for Part II offenses.
- 103 Total arrests for Millville presented in the tables in Appendix A are *not* weighted and represent the arrests for the first three quarters of the year only for 2013.
- 104 The ACLU-NJ did not receive data for trespass arrests in Millville for 2013.
- 105 U.S. CENSUS (2010).
- 106 The low-level arrest data set only includes those arrests that do not involve charges for FBI/UCR Part I or indictable offenses.
- 107 See U.S. CENSUS BUREAU, MILLVILLE 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES Table B01001B (Sex by Age (Black or African American Alone)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_3YR_B01001B&prodType=table.

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- 108 U.S. CENSUS (2010).
- 109 U.S. CENSUS BUREAU, MILLVILLE 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES Table DP05 (ACS Demographic & Hous. Estimates) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_3YR_DP05&prodType=table; MILLVILLE 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES, *supra* note 106, at Table B01001B.
- 110 *Id.*
- 111 *Id.*; U.S. CENSUS BUREAU, MILLVILLE 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES Table B01001I (Sex by Age (Hispanic or Latino)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_3YR_B01001I&prodType=table; U.S. CENSUS BUREAU, MILLVILLE 2012 AM. CMTY. SURVEY 3-YEAR ESTIMATES Table B01001H (Sex by Age (White Alone, Not Hispanic or Latino)) (2012), available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_3YR_B01001H&prodType=table.
- 112 The MPD did not provide zip code information for two-thirds of the arrestees' addresses. Therefore, the ACLU-NJ was unable to analyze what percentage of all the arrests were of Millville residents. The sample set of addresses that did have a zip code allowed us to analyze the proximity to home of those specific arrests.
- 113 See Mayor Mike McGinn, *An FAQ on Marijuana Enforcement in Seattle*, SEATTLE.GOV (Sept. 1, 2010, 12:56 P.M.), <http://mayormcginn.seattle.gov/an-faq-on-marijuana-enforcement-in-seattle/> (noting that marijuana was the primary reason for contact in only .09% of cases).
- 114 See Brian Rogers, *Crack Policy puts Harris County DA at Odds with Police*, HOUSTON CHRONICLE, Dec. 5, 2011, available at <http://www.chron.com/default/article/Crack-policy-puts-Harris-County-DA-at-odds-with-2346724.php>.
- 115 REBECCA BERNHARDT, TEX. CRIM. JUST. COAL., HARRIS COUNTY COMMUNITIES: A CALL FOR TRUE COLLABORATION, RESTORING COMMUNITY TRUST AND IMPROVING PUBLIC SAFETY 8 (2013), available at <http://www.texascjc.org/sites/default/files/uploads/Harris%20County%20Communities%20A%20Call%20for%20True%20Collaboration.pdf>. The new Harris County District Attorney, Mike Anderson, reinstated the policy of prosecuting trace cases as felonies in 2013. Emily DePrang, *Houston's New DA Brings Back "Trace" Felonies, the Eighties*, THE TEXAS OBSERVER, Feb. 15, 2013, available at <http://www.texasobserver.org/houstons-new-da-brings-back-trace-felonies-the-eighties/>.
- 116 Joseph Goldstein, *Prosecutor Deals Blow to Stop-and-Frisk Tactic*, N.Y. TIMES, Sept. 25, 2012, at A1, available at http://www.nytimes.com/2012/09/26/nyregion/in-the-bronx-resistance-to-prosecuting-stop-and-frisk-arrests.html?pagewanted=all&_r=0.
- 117 Stephanie Clifford, *Proposal to Limit Prosecutions of Marijuana Cases in Brooklyn*, N.Y. TIMES, Apr. 23, 2014, at A22, available at http://www.nytimes.com/2014/04/24/nyregion/in-brooklyn-proposing-to-end-prosecutions-for-low-level-marijuana-offenses.html?_r=0.
- 118 See Tracey G. Gove, *Implicit Bias and Law Enforcement*, POLICE CHIEF MAG., Oct. 2011, available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2499&issue_id=102011 (discussing the role of implicit bias in the criminal justice system and approaches for interventions for law enforcement); R. Richard Banks, Jennifer L. Eberhardt & Lee Ross, *Symposium on Behavioral Realism: Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CALIF. L. REV. 1169, 1171-78 (2006) (discussing the role of bias in the criminal justice system in the context of racial profiling, officer shooting behavior, and sentencing decisions).
- 119 See, e.g., *Floyd v. City of New York*, 959 F. Supp. 2d 668, 680-681 (discussing the pressure created by NYPD commanders for officers to increase stops without an accompanying attention to the constitutionality of the stops).
- 120 See Heather Haddon, *Newark Unveils Civilian Police Review Board*, THE WALL STREET JOURNAL, April 30, 2015, available at <http://www.wsj.com/articles/newark-unveils-new-civilian-police-review-board-1430421423>. All New Jersey police departments are subject to the New Jersey Attorney General's *Law Enforcement Directive No. 2005-1*, issued on June 28, 2005. See Press Release, Peter C. Harvey, N.J. Att'y Gen., New Jersey Attorney General Harvey Implements "First-in-Nation" Directive to Prohibit Racial Profiling: Statewide Policy Mandates Training for All Police (Jun. 28, 2005), available at <http://www.state.nj.us/lps/dcj/releases/2005/racial-profiling-062805.htm>. The directive mandates a video training program for all law enforcement officers. *Id.* However, it does not provide any mechanisms for addressing officers that are found to racially profile. See N.J. Att'y Gen. Law Enforcement Directive No. 2005-1 (2005), available at <http://www.state.nj.us/lps/dcj/agguide/directives/racial-profiling/pdfs/law-enforce-dir-2005-1.pdf>.
- 121 ACLU, WASHINGTON LEGISLATIVE OFFICE, STRENGTHENING CBP WITH THE USE OF BODY-WORN CAMERAS (Oct. 24, 2013), available at https://www.aclu.org/sites/default/files/assets/13_10_25_aclu_one_pager_re_body-worn_cameras_for_cbp_final.pdf; see also JAY STANLEY, ACLU, POLICE BODY-MOUNTED CAMERAS: WITH THE RIGHT POLICIES IN PLACE, A WIN FOR ALL (Oct. 2013), available at https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf (providing policy recommendations for the use of body-cameras to ensure privacy protections).
- 122 All police departments in North Carolina have been required to publish monthly traffic stop data since 2000 pursuant to N.C. GEN. STAT. § 114-10.01.
- 123 See CITY OF DURHAM HUMAN RIGHTS COMM'N, RECOMMENDATIONS SUBMITTED TO THE CITY OF DURHAM CITY COUNCIL (Apr. 23, 2014), available at <http://www.wral.com/asset/news/local/2014/05/01/13611408/HRCDDPReport.pdf>.
- 124 FBI, *Countdown Begins for New UCR Data Collections and Initiatives Coming January 1* (Dec. 1, 2012), <http://www.fbi.gov/about-us/cjis/cjis-link/december-2012/Countdown%20Begins%20for%20New%20UCR%20Data%20Collections%20and%20Initiatives%20Coming%20January%201>.
- 125 See *id.*

A Report by the American Civil Liberties Union of New Jersey



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