COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
COMMITTEE REPORT

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Councilmember Tommy Wells, Chairperson
Committee on the Judiciary and Public Safety TW

DATE: January 15, 2014

SUBJECT: Report on Bill 20-409, "Marijuana Possession Decriminalization Amendment Act of 2014"[1]

The Committee on the Judiciary and Public Safety, to which Bill 20-409, "Marijuana Possession Decriminalization Amendment Act of 2014" was referred, reports favorably thereon with amendments, and recommends approval by the Council.

CONTENTS

I. BACKGROUND AND NEED

INTRODUCTION

Bill 20-409, the "Simple Possession of Small Amounts of Marijuana Decriminalization Amendment Act of 2013" was introduced on July 10, 2013 by Councilmembers Wells, Barry, McDuffie, Evans, Bonds, Grosso, Graham, and Cheh, and cosponsored by Chairman Mendelson and Councilmember Catania. On October 23 and 24, 2013, the Committee on the Judiciary and Public Safety held public hearings on the bill. A summary of the testimony provided at the hearings, as well as other submitted statements, is found below in section V.

Bill 20-409, renamed the "Marijuana Possession Decriminalization Amendment Act of 2014," would make the possession of one ounce or less of marijuana a civil offense subject to a

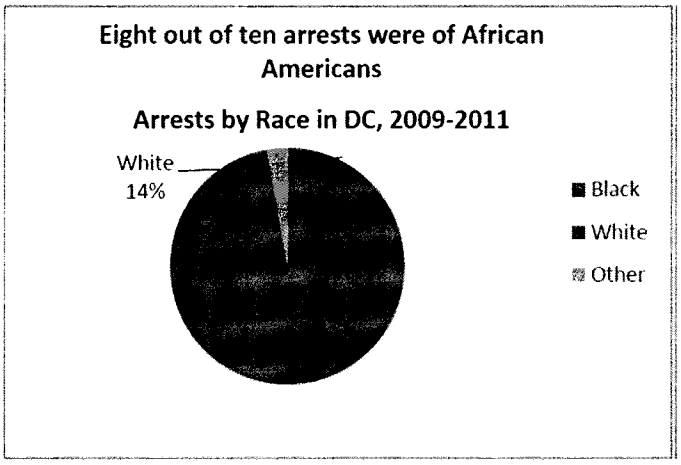
[1] As introduced, the bill was named the "Simple Possession of Small Amounts of Marijuana Decriminalization Amendment Act of 2013"; this committee print renames the bill.

$25 fine. The Committee made several amendments to the introduced bill. Rather than amend the Controlled Substances Act of 1981 (D.C. Official Code § 48-904.01, *et seq.*), the committee print creates a freestanding law with several conforming amendments. The substantive changes contained in the committee print are outlined in detail below.

BACKGROUND

Racial Disparity in Arrests

In the District of Columbia, black residents are being arrested at significantly higher rates than whites. According to the United States Bureau of the Census, in 2010 the District of Columbia had a total population of 601,723.[2] Of this population approximately 305,125 (50.7%) were black.[3] While there are about as many black adults as there are white adults living in the District, eight out of 10 adults arrested for a crime in the District are black.[4] In 2010, there were 40,535 arrests of black residents, which is equivalent to 17% of the total number of black residents in the District.[5] Clearly, there are troubling racial disparities in who is being arrested in the District.



Source: Washington Lawyers' Committee analysis of MPD data.

While wards in the District have roughly the same populations, the arrests in the District are not evenly distributed among them.[6] Wards with more black residents witnessed far more arrests than wards with lower populations of black residents.[7] For example, seven out of ten arrests in the District occurred in Wards 4, 5, 6, 7 and 8, wards that are home to 9 out of 10 black residents of the District.[8]

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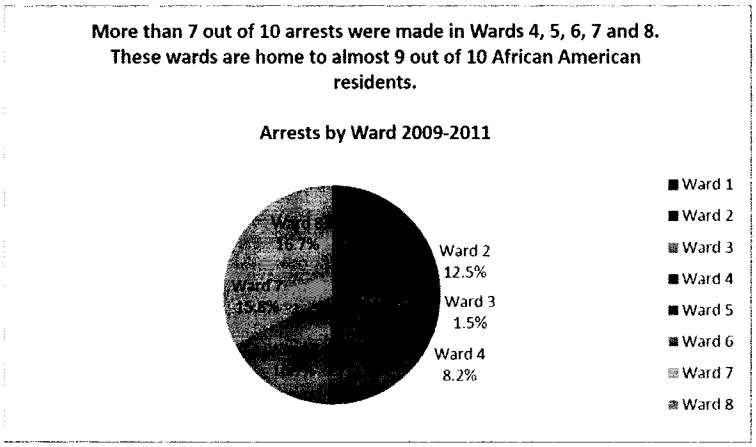
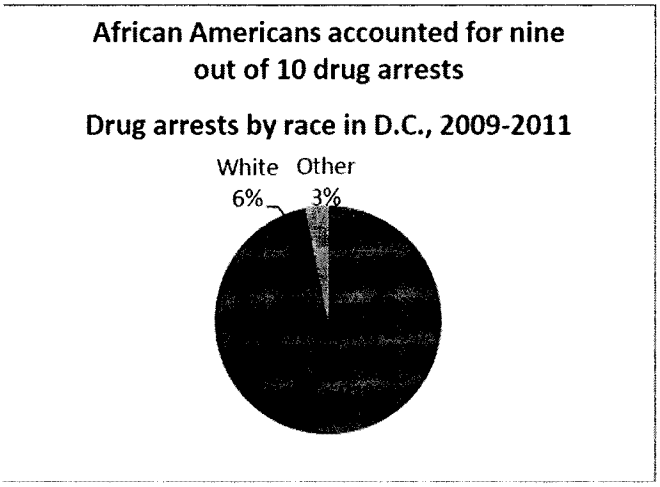
[2] Washington Lawyers' Committee for Civil Rights and Urban Affairs, "Racial Disparities in Arrests in the District of Columbia, 2009-2011," July 2013, p. 7.
[3] *Id.*
[4] *Id.* at p. 2.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.* at p. 10.



Source: Washington Lawyers' Committee analysis of MPD data.

In each year from 2009 through 2011, drug arrests accounted for just under 20% of all MPD arrests.[9] Over this same three year period, 63% of drug arrests were for simple possession charges and black arrestees accounted for nearly 9 out of 10 simple possession drug arrests.[10]

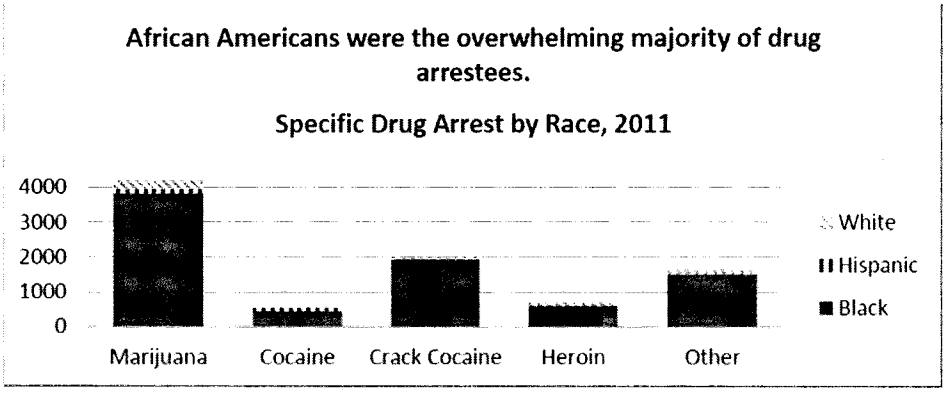


Source: Washington Lawyers' Committee analysis of MPD data.

Marijuana arrests account for 46.9% of all drug arrests in the District of Columbia.[11] In 2010 alone, law enforcement officers in the District made a total of 5,393 marijuana arrests – nearly 15 arrests a day.[12] The District of Columbia had a higher marijuana arrest rate than any other state, at 846 arrests per 100,000 people.[13] On a county level, the District of Columbia ranked as number seven out of 945 counties examined in the American Civil Liberties Union report.[14] While marijuana arrests have increased nationally by 18% since 2001, marijuana arrests

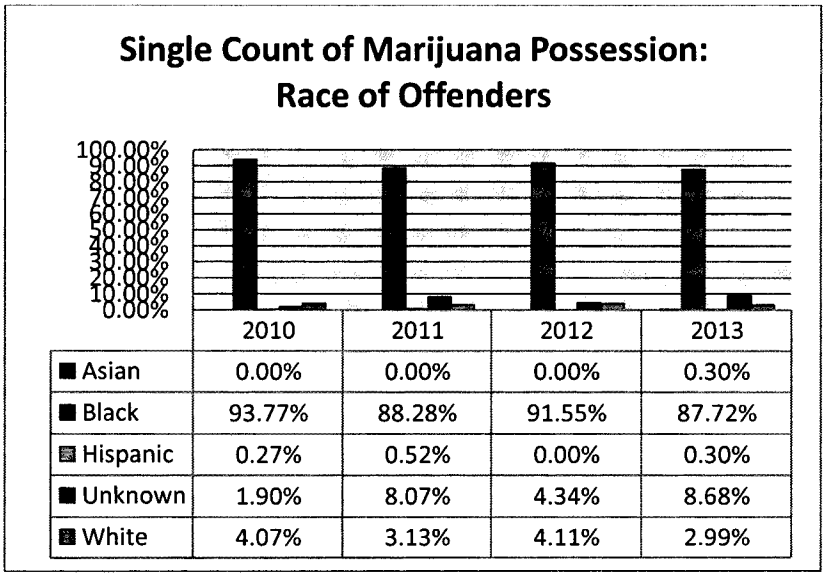
[9] *Id.* at p. 13.
[10] *Id.* at p. 13-14.
[11] The American Civil Liberties Union, "Behind the D.C. Numbers: The War on Marijuana in Black and White," p. 4.
[12] *Id.*
[13] *Id.*
[14] *Id.*

have increased by 61.5% in the District of Columbia.[15] Of these marijuana arrests, approximately 90% of individuals arrested were African American, yet African Americans comprise only about half the population of D.C. and use marijuana at a rate comparable to the use by white people.[16]



Source: Washington Lawyers' Committee analysis of MPD data.

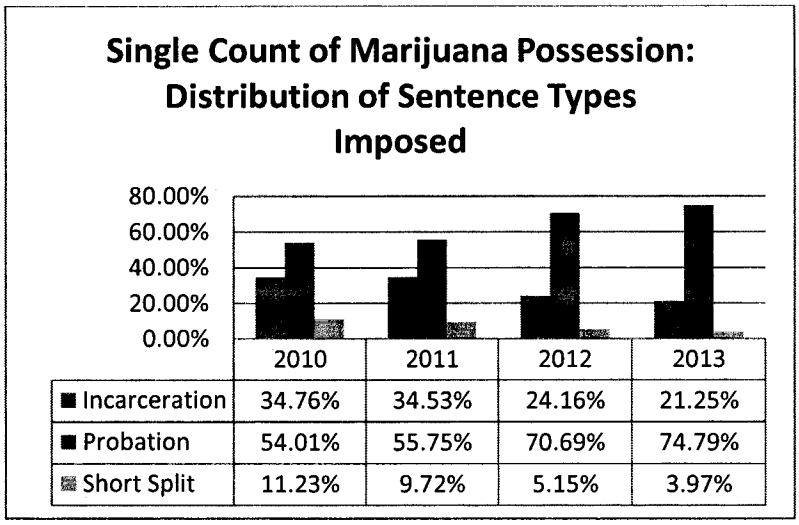
Although the conviction numbers are significantly smaller than the arrest numbers, those convicted are also disproportionately African American. For example, in 2010, 369 people were convicted of a single count of marijuana possession in the District.[17,18] Of these 369 individuals, 91.33% were black, while only 4.07% were white.[19]



	2010	2011	2012	2013
Asian	0.00%	0.00%	0.00%	0.30%
Black	93.77%	88.28%	91.55%	87.72%
Hispanic	0.27%	0.52%	0.00%	0.30%
Unknown	1.90%	8.07%	4.34%	8.68%
White	4.07%	3.13%	4.11%	2.99%

Source: Sentencing and Criminal Code Revision Commission

[15] *Id.*
[16] Testimony of Arthur B. Spitzer, p. 2.
[17] Data provided by Barbara S. Tombs-Souvey, Executive Director, Sentencing and Criminal Code Revision Commission, December 9, 2013.
[18] In the same year, the average sentence imposed for a single count of marijuana possession was 70.8 days, although the average sentence served was 21.4 days.
[19] *Id.*



	2010	2011	2012	2013
Incarceration	34.76%	34.53%	24.16%	21.25%
Probation	54.01%	55.75%	70.69%	74.79%
Short Split	11.23%	9.72%	5.15%	3.97%

Source: Sentencing and Criminal Code Revision Commission

These arrests come at a high price to the District. Marijuana arrests take up valuable time of law enforcement officers, who could be spending their time preventing more serious crimes.[20] After an arrest, the District incurs costly expenditures for processing, public defenders, and trials. For those who are convicted and sentenced, incarceration adds another expense.[21]

Beyond the financial costs to the District, there is a far more important cost: the devastating toll marijuana arrests take on our residents and neighborhoods. Every person who is arrested for possessing small quantities of marijuana can be legally discriminated against in employment, housing, and education. These individuals often lose their right to food assistance and other forms of public support. Furthermore, it is well known that even a short period of incarceration can do serious harm to an individual's mental and physical health.[22] And when we incarcerate someone, we also risk punishing that person's family and community, especially when parents are taken away from their children. The arrest data shows that the District's African-American community has borne the brunt of these costs.

Bill 20-409, the Marijuana Possession Decriminalization Amendment Act of 2014, is a critical first step to address the disproportionate impact of the failed War on Drugs, and the systematic disenfranchisement of individuals, families, and whole communities. The attendance at the Committee's public hearings on Bill 20-409 showed that this is an issue of deep concern for our residents. Many of the public witnesses spoke passionately about the disproportionate arrest rates of black residents in the District and shared personal stories about the very real challenges facing arrestees and returning citizens because of arrest records for marijuana possession. These personal stories provide an important context for the alarming data on arrests in the District.

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[20] Testimony of Alex Romano, p. 3 ("Put simply, if police were free from the burden of arresting adults for small amounts of marijuana, they would have more time to investigate more serious crimes.").
[21] The District spends approximately $56,000 a year on each inmate in its custody. Email from Sylvia Lane, Department of Corrections, August 27, 2013.
[22] Testimony of Andrew Fois, p. 4; Testimony of Roderic Boggs, p. 2; Testimony of Debra G. Rowe, p.1.

The high costs of marijuana criminalization are exacerbated by the fact that marijuana is generally accepted to be no more harmful or addictive than alcohol or tobacco, perhaps less so. Government studies have undermined the belief that marijuana acts as a gateway drug.[23,24] Furthermore, criminal penalties for possession of small amounts of marijuana simply do not deter marijuana use.[25] Those who are arrested for smoking marijuana are no more likely to stop smoking it than those who are never caught.[26] There also does not appear to be a relationship between the severity of marijuana laws over time and the number of people using marijuana.[27]

Public attitudes about marijuana use are changing. An October 2013 study found that 75% of District residents support decriminalization of small amounts of marijuana and 58% of all Americans support some kind of reform.[28,29] In the last thirty years, sixteen states have decriminalized and two have legalized possession of small amounts of marijuana.[30] It is expected that as many as ten other states will do so within the next two years.[31]

While not everyone's view of marijuana have evolved, there can be little question that the status quo is untenable. The Committee received very few statements in opposition to this legislation, but even among the opposition, not a single witness testified about the benefits of arresting more than 5,000 individuals a year for possessing marijuana.[32] This legislation represents the realization that in the District of Columbia, regardless of what one thinks about marijuana use, the decision to use marijuana should not render someone a criminal for life.

Decriminalization of one ounce or less of marijuana in the District[33]

In the District of Columbia, possession by an adult of any amount of marijuana is currently a misdemeanor punishable by up to six months in jail and/or up to a $1,000 fine.[34] Bill

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[23] *See* RAND 2006 study. *See also,* Testimony of Andy Fois, p. 3.
[24] Testimony of Laura E. Hankins, p. 3 (doubting whether marijuana is a gateway drug, but describing marijuana use as "gateway conduct to the criminal justice and juvenile justice systems").
[25] C. Thies and C. Register. 1993. *Decriminalization of marijuana and demand for alcohol, marijuana and cocaine.* The Social Sciences Journal 30: 385-399.
[26] P. Erickson, "Cannabis Criminals: The Social Effects of Punishment on Drug Users," 1980.
[27] *See* Marijuana Policy Project, "Do Harsh Penalties for Marijuana Possession Reduce Teen Use?" p. 1; *see also,* Testimony of Alex Romano, p. 3 (noting that the substantial reduction in cigarette smoking rates resulted from education, not criminal penalties).
[28] See Reuters Oct. 22, 2013 (cited in Testimony of Andrew Fois, p.3).
[29] A Washington Post poll released January 15, 2014 found that 63 percent of District residents – of every age, race, and ethnicity – support legalization. Of the 34 percent who oppose, nearly half of them support decriminalization. http://www.washingtonpost.com/local/dc-politics/in-major-shift-dc-voters-strongly-support-legalizing-marijuana/2014/01/15/9fcc6d04-7d6a-11e3-93c1-0e888170b723_story.html (accessed January 15, 2014).
[30] Testimony of Andrew Fois at p. 3
[31] *Id.*
[32] On the contrary, several witnessed testified they opposed Bill 20-409 because they supported full legalization of marijuana. The remaining witnesses who testified in opposition to this legislation were primarily concerned with marijuana use by children and marijuana smoke in public places; provisions of this committee print were drafted with these concerns in mind.
[33] Nothing in this Bill will have an impact on the ability of federal law enforcement officers to enforce federal law throughout the District. While this bill will greatly limit the risk of arrest for possession of one ounce or less of marijuana, there is still a risk of arrest – by federal law enforcement – assumed by anyone choosing to possess it.
[34] D.C. Code § 48-904.01.

20-409 would eliminate all criminal penalties for possession of one ounce or less of marijuana.[35] In the bill as introduced, the penalty for possessing one ounce or less of marijuana was a $100 civil fine and seizure of the marijuana.[36] The committee print amends the civil fine amount to $25 per violation. This change reflects the testimony received by the Committee at its public hearings, in which a number of witnesses testified that a $100 fine would impose too heavy a burden on households with a limited ability to pay.[37] Just as low-income people of color have been arrested disproportionately as a result of the current criminal status of marijuana possession, these residents will likely receive a disproportionate number of civil fines.[38] By lowering the amount of the fine, we lessen the burden on individuals and families for whom a larger fine could be devastating financially, while still providing a mechanism to discourage marijuana use.[39]

As stated above, the amended bill authorizes law enforcement officers, in addition to issuing a Notice of Violation, to seize all marijuana and paraphernalia visible to the officer at the time the violation is issued. The amended bill was carefully worded to ensure that people found in possession of one ounce or less of marijuana would not be subject to the sort of invasive searches that routinely accompany an arrest. Accordingly, the fact that someone is found smoking marijuana in public should not on its own provide an officer with a reason to search that person's body or effects, unless the officer has some other reason to believe the person is involved in criminal activity.

In addition, some witnesses expressed concern that social sharing of marijuana could be considered distribution by law enforcement officers. In its marijuana decriminalization legislation, Massachusetts did not specifically address whether the social sharing of marijuana would constitute distribution under its laws. As a result, the Supreme Court of Massachusetts was asked to decide the issue. The Court held that the social sharing of marijuana did not constitute distribution, noting that the clear policy goals of decriminalizing marijuana is "to reduce the direct and collateral consequences of possessing small amounts of marijuana, to direct law enforcement's attention to serious crime, and to save taxpayer resources previously devoted to targeting the simple possessing of marijuana."[40] The Committee shares these policy goals; accordingly, the committee print clarifies that the social sharing of marijuana does not constitute distribution for purposes of the bill.

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[35] Other states have decriminalized amounts ranging from half an ounce to four ounces of marijuana, with a majority of these states decriminalizing possession of up to one ounce of marijuana. By decriminalizing one ounce or less, we avoid creating a class of marijuana possession that is neither decriminalized nor presumed to involve distribution.
[36] Other states have imposed fines ranging from $50 to $650 depending on the facts of a particular case.
[37] Testimony of Ericka Taylor, p. 2 ("By virtue of the fact that there is a stronger police presence in our poorer communities, it is difficult to imagine that those residents won't face an unequal proportion of citations.").
[38] Testimony of Drug Policy Alliance at p. 2.
[39] Regardless of whether the civil penalty was $100 or $25, the effect of a civil fine on the person cited depends in large part on that person's resources. A wealthy resident might find a $100 fine *de minimis*, while a lower income resident would find the same fine financially devastating.
[40] *Commonwealth v. Jackson*, 464 Mass. 758 (2013) ("To [hold the defendants liable for distribution] would undermine the clear intent of the voters to alter police conduct toward marijuana users.").

Smoking in Public

At the public hearings on Bill 20-409, some witnesses expressed concern that decriminalizing small quantities of marijuana might lead more individuals to smoke marijuana in public.[41] The Office of the Attorney General also suggested maintaining criminal penalties for public marijuana smoking.[42] Such a provision, however, would undo the very purpose of Bill 20-409: To put an end to the large number of marijuana possession arrests in the District.[43] Arresting people for smoking marijuana in public would again fall disproportionately on black residents.[44] Instead of resorting to criminal sanctions, the committee print was amended to provide an enhanced civil penalty of $100 for individuals found smoking marijuana in public places. This amendment strikes a careful balance between deterring the public smoking of marijuana and the necessity of removing criminal penalties for marijuana use.

The committee print provides an illustrative list of places where smoking marijuana will be subject to the enhanced fine. This list includes day care centers, schools, parks, playgrounds, recreation centers, gymnasiums, libraries, parking lots, sidewalks, streets, alleys, bus stops, train stations, and any other place to which a substantial number of the public has access. These provisions, however, should not be construed to apply to the consumption of marijuana on private property, even if such consumption is in public view.[45]

Identification Concerns

Under District law, law enforcement has no authority to compel someone to identify himself or herself for a civil offense unless it is tied to a specific licensing or regulatory structure, such as a driver's license or vehicle registration.[46] Andrew Fois, Deputy Attorney General, Public Safety Division, Office of the Attorney General of the District of Columbia, who testified for the Executive, expressed concern that offenders may refuse to provide their name and address, or may provide a false name and address. To address this problem, Mr. Fois suggested that refusing or otherwise failing to identify one's self should be a criminal offense.[47] The

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[41] *See, e.g.,* Testimony of Ladaveon Butler, p. 1; Testimony of Yvonne L. Williams, p. 2.
[42] *See, e.g.,* Testimony of Andrew Fois at p. 3 ("In order to ensure the quality of life for all, criminal penalties for possession should be maintained for smoking marijuana where children and citizens are enjoying our parks, playgrounds, sidewalks and other public places.").
[43] Testimony of Grant Smith, p. 12 ("Criminalizing people for consuming marijuana in public would undermine the purpose of B20-409.").
[44] Testimony of Grant Smith, p. 12 (noting that criminal penalties for public smoking could disproportionately impact poor residents and particularly the homeless who are less likely to have access to private property or space to consume marijuana and may be more likely to occupy spaces that are visible to the public or are adjacent to public sidewalks and rights-of-way).
[45] Testimony of Grant Smith, p. 13 (noting that the "consumption of marijuana that is conducted on private property but in public view (such as a porch or yard) should not be subject to additional penalties beyond the civil fine that is provided in this legislation for possession of marijuana weighing one ounce or less").
[46] *See Gomez v. Turner*, 672 F.2d 134, 143 n. 18 (D.C. Cir. 1982) ("That citizens can walk the streets, without explanations or formal papers, is surely among the cherished liberties that distinguish this nation from so many others.").
[47] Testimony of Andrew Fois, p. 7 ("In order to ensure that the violator provides proper identification, failure to produce a government identification that is within the person's possession, refusing to identify one's self, or giving false information should be a criminal offense.").

committee print was amended to provide a criminal penalty of $100 for individuals who refuse or otherwise fail to provide correct identifying information to the police.[48] This amendment gives "teeth" to the bill and ensures that the administrative procedures created in the committee print will be effective.

The committee print also incorporates the identification language proposed by the executive during the hearing, which echoes existing language in the Litter Control Act (D.C. Code § 8-801, *et seq.*) and the Traffic Amendment Act (D.C. Code § 50-2303.07).[49]

Probable Cause and Reasonable Articulable Suspicion

Section 306 of the committee print clarifies the search warrant and seizure provision of the introduced bill to make clear that a search warrant shall not be issued if the sole basis for its issuance would be the possession or transfer without remuneration of marijuana weighing one ounce or less, as such possession and transfer would not longer be criminal under this bill.[50]

This section also outlines what circumstances no longer constitute reasonable articulable suspicion of a crime.

The District of Columbia Court of Appeals has repeatedly held that a law enforcement officer who smells marijuana has probable cause to believe that a quantity of marijuana is present.[51] With this in mind, several witnesses at the public hearings on Bill 20-409 suggested that the bill should be amended to clarify that the odor of marijuana, on its own, would not provide an officer with reasonable articulable suspicion of a crime[52] The committee print adopts this proposal because possessing one ounce or less of marijuana would no longer be a crime. As a result, there would be no basis for believing that a crime has been committed if the only evidence was the smell of marijuana.[53] This amendment prevents law enforcement from bootstrapping suspicion that a person is committing the civil infraction of possessing one ounce

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[48] The committee print relies, in substantial part, similar language found on the Litter Control Act (D.C. Code § 8-801, *et seq.*).

[49] *See also* Testimony of Grant Smith, p. 11 (suggesting that, with respect to identifying offenders, Bill 20-409 should adopt the provisions used for pedestrian infractions contained in D.C. Code § 50-2303.07).

[50] The Fourth Amendment of the United States Constitution provides that "no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. The determination of whether probable cause exists is a common-sense decision whether, given the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 230 (1983).

[51] *See, e.g., Minnick v. United States*, 607 A.2d 519, 525 (D.C. 1992) ("[A] police officer who smells the identifiable aroma of a contraband drug emanating from a car has probable cause to believe that the car contains a quantity of that drug."); *United States v. Bolden*, 429 A.2d 185, 186 (D.C. 1981) (probable cause existed where trained police officer "recognized the smell of marijuana and the telltale fold of a PCP tinfoil package"); *Thompson v. United States*, 368 A.2d 1148 (D.C. 1977) (police officers smelled marijuana and noticed hand-rolled cigarette); *United States v. Burton*, 327 A.2d 308 (D.C. 1974) (police officer saw driver smoking hand-rolled cigarette, noticed that the smoke had a "strange odor," and then saw passenger hide something as he approached the car).

[52] *See, e.g.,* Testimony of Arthur B. Spitzer, p. 6.

[53] *See Commonwealth v. Cruz*, 459 Mass. 459 (2011) ("Given our conclusion that [the marijuana decriminalization statute] has changed the status of possessing one ounce or less of marijuana from a crime to a civil violation, without at least some other additional fact to bolster a reasonable suspicion of actual criminal activity, the odor of burnt marijuana alone cannot reasonably provide suspicion of criminal activity . . .").

or less of marijuana into a reason to suspect that the person might be in possession of more than one ounce of marijuana as the justification for a stop and/or search.[54]

This amendment acknowledges that "continuing to allow stops based on nothing more than odor would change nothing about the community's interaction with law enforcement around the possession of marijuana."[55] Notably, this amendment does not require the police to ignore the odor of marijuana.[56] It merely states than an officer must have additional evidence before reasonably believing an individual has committed a crime.

The committee print was also amended to provide that the following additional factors, individually or in combination with each other, shall not constitute reasonable articulable suspicion of a crime: (the odor of marijuana, as described above); the possession of or the suspicion of possession of marijuana without evidence of quantity in excess of one ounce; the possession of multiple containers of marijuana without evidence of quantity in excess of one ounce; and the possession of marijuana without evidence of quantity in excess of one ounce in proximity to any amount of cash or currency.[57]

The possession of even large quantities of money does not, on its own, indicate that someone possessing one ounce or less of marijuana is also distributing marijuana. A 2011 Federal Deposit Insurance Company study estimates that as many as 31,000 households (10.9% of all households) in the District of Columbia are without bank accounts.[58] The Committee heard from "unbanked" residents who routinely carry monthly rent payments or other large payments in cash on their person. Without this amendment, members of these 31,000 households would be at risk of being charged with distribution, should they be found with only a decriminalized amount of marijuana. Given that this legislation is designed to address the disparate impact of the War on Drugs, the exclusion of this language would be a disservice to disadvantaged communities in the District.

Just as the presence of cash often leads charges to be escalated to include distribution, the presence of multiple containers of marijuana has been used as evidence that someone is involved in distributing marijuana. But it is well known that in some communities, marijuana is often divided into small quantities before it is sold (e.g. "dime" bags). As a result, someone could have multiple small bags, each containing far less than one ounce of marijuana. Such a quantity, when taken together, would be decriminalized under this bill, yet, without this amendment, this person

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[54] Testimony of Laura E. Hankins, p. 3.
[55] *Id.*
[56] For example, the odor of burnt marijuana, combined with erratic driving, would likely give an officer reasonable articulable suspicion of driving while under the influence of marijuana.
[57] The Supreme Court held in *Terry v. Ohio* that if an officer has reasonable, articulable suspicion to believe that crime is afoot based on her observations and rational inference drawn from them, her training, and her experience, the officer may stop the suspect. 392 U.S. 1, 27 (1968). Furthermore, if the officer has reasonable articulable suspicion to believe a suspect is armed and dangerous, the officer may perform a frisk. *Id.* In determining whether an officer had reasonable articulable suspicion that crime was afoot, an officer must be able to point to specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant a man of reasonable caution in the belief that the action taken was appropriate. *Id.* at 17.
[58] Federal Deposit Insurance Corporation, *2011 FDIC National Survey of Unbanked and Underbanked* Households. September 2012, at 126, http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf.

might be charged with felony distribution merely because their marijuana is carried in a particular way.

These amendments are not meant to inhibit the enforcement of our distribution laws, but they will require law enforcement officers to have stronger evidence that the defendant is actually selling marijuana. Too many marijuana users have been accused of distribution merely because they carry their marijuana in a particular way or because they don't have a bank account. These amendments are crucial to ending the devastating and arbitrary consequences of the War on Drugs.

Conditions of Release, Probation, and Supervised Release

As a condition of release or probation, judges may require an individual to refrain from the use of controlled substances; the term as defined in current law includes marijuana.[59] As a result, many individuals wind up in jail because they violated the terms of their release by possessing or using marijuana. Others, including juveniles, are denied even the option of conditional release or probation because they test positive for marijuana. Given that the primary goal of this legislation is to stop pulling people into the criminal justice system because of marijuana use, using or possessing small quantities of marijuana should no longer be a reason to deny an individual his or her freedom.

On the other hand, judges will sometimes have sound reasons for requiring individuals to refrain from using marijuana. Judges, who will be more familiar with the facts of each individual case, are in the best position to decide whether it is necessary to require an individual to refrain from marijuana while on probation. This legislation strikes the appropriate balance by stating that positive tests for marijuana or possession of one ounce or less of marijuana shall not be grounds for revoking, or otherwise denying, conditional release, probation, or supervised release, unless the judge expressly made the use of marijuana, as opposed to controlled substances generally, a violation of the order. Under this legislation, judges should make such decisions based on the specific facts of each case, and not as a matter of course.

Record Sealing

The Committee received testimony regarding the sealing of criminal records involving offenses that would no longer constitute crimes after passage of this legislation.[60] Given the complexities involved in record sealing, the Committee will address record sealing in a separate bill.[61]

For all the reasons explained above, the Committee moves this bill as amended.

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[59] *See, e.g.,* D.C. Code § 23-1321.
[60] Supplemental Testimony of Laura E. Hankins, submitted November 4, 2013, p. 7.
[61] On September 17, 2013, Councilmember Grosso introduced Bill 20-467, the "Record Sealing for Non-Violent Marijuana Possession Act of 2013." This legislation was referred to the Committee on the Judiciary and Public Safety and a hearing was held on December 19, 2013.

II. LEGISLATIVE CHRONOLOGY

July 10, 2013	Bill 20-409, the "Simple Possession of Small Amounts of Marijuana Decriminalization Amendment Act of 2013", is introduced by Councilmembers Wells, Barry, McDuffie, Evans, Bonds, Grosso, Graham, and Cheh, and cosponsored by Chairman Mendelson and Councilmember Catania, and is referred to the Committee on the Judiciary and Public Safety. The Committee print renamed the legislation the "Marijuana Possession Decriminalization Amendment Act of 2014."
July 19, 2013	Notice of Intent to act on Bill 20-409 is published in the *District of Columbia Register.*
September 27, 2013	Notice of a Public Hearing is published in the *District of Columbia Register.*
October 23, 2013	The Committee on the Judiciary and Public Safety holds a public hearing on Bill 20-409.
October 24, 2013	The Committee on the Judiciary and Public Safety reconvenes the public hearing on Bill 20-409.
January 15, 2014	The Committee on the Judiciary and Public Safety marks-up Bill 20-409.

III. POSITION OF THE EXECUTIVE

Andrew Fois, Deputy Attorney General, Public Safety Division, Office of the Attorney General of the District of Columbia, testified on behalf of the executive in support of Bill 20-409. Mr. Fois noted that scientific knowledge about the effects of marijuana is improving, and that marijuana is generally accepted to be no more harmful or addictive than alcohol or tobacco, perhaps less so. Mr. Fois acknowledged that recent studies have disproved the theory that marijuana is a gateway drug. Furthermore, Mr. Fois stated that the collateral consequences of criminalizing marijuana possession are too high, such as how having a criminal record can result in individuals not obtaining employment, losing employment, losing their property or housing, and being refused admission to college or denied scholarships. In addition, Mr. Fois noted that decriminalization of marijuana could result in lowered costs for the criminal justice system and would allow law enforcement to prioritize more serious crime. Mr. Fois explained that although the District might decriminalize possession of small amounts of marijuana, it is important to send the message, especially to children, of marijuana's dangers and effects, just as we do with alcohol. Mr. Fois then identified several areas where the Executive wanted to work with the Committee to make the bill as effective as possible to achieve the goal of ensuring the proper balance between decriminalization and quality of life for our residents.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY AND STATEMENTS

The Committee on the Judiciary and Public Safety held public hearings on Bill 20-409 on Wednesday, October 23, 2013 and on Thursday, October 24, 2013. The testimony summarized below is from those hearings. A copy of all written testimony received is attached to this report; the video recording of the hearings (available online at http://oct.dc.gov/services/on_demand_video/channel_13.asp) is incorporated by reference. The Hearing Record is on file with the Office of the Secretary of the Council.

The following witnesses testified at each hearing or submitted statements outside of the hearings:

October 23, 2013

Jamal Maheed, Collective Power, testified in support of Bill 20-409. He addressed the racial disparities in marijuana possession arrests under current law and stated that the bill would be a step toward "ending racial profiling, mass incarceration, and the criminalization of Black and Brown people in D.C." Mr. Maheed suggested that the Committee remove civil penalties entirely for adult possession of marijuana. He also argued that the cultivation of up to three marijuana plants should be decriminalized. Finally, he argued that the bill should include a record sealing provision for marijuana possession.

David Hudgens, Public Witness, testified in support of Bill 20-409. Mr. Hudgens described an experience from his childhood when he was stopped and searched by the police and testified that this memory continues to bring him mental anguish. He said that, to the present day, he is cautious about not making sudden moves and keeping his hands visible whenever he is in a majority black neighborhood. Finally, Mr. Hudgens testified that blacks are 10 times more likely to be arrested on drug charges than whites and argued that some large corporations profit from the disproportionate imprisonment of black youth.

Alec Karakatsanis, Equal Justice Under Law, testified in support of Bill 20-409. Mr. Karakatsanis stated that he believes it is unjust that a person's privacy is sacrosanct until they begin using a controlled substance, at which time they can be searched and imprisoned as a criminal. He argued that no one should be caged for any crime unless the legislature is sure that locking that person up away from their family and society is strictly necessary to create the sort of society we want to live in.

Stewart Anderson, Family and Friends of Incarcerated People, testified in support of Bill 20-409. He commented that marijuana is not associated with the same atrocities as alcohol and yet

alcohol is legalized. He stated that the bill will prevent people from going to prison for something no more harmful than smoking a cigarette. *(No written statement.)*

Courtney Stewart, Chairman, The Reentry Network for Returning Citizens, testified in support of Bill 20-409. Mr. Stewart compared the negative consequences of illegal drug use and the negative consequences of the war on drugs. He argued that drug use merely harms the user and that the drug user has chosen to assume these risks. By contrast, he said that the drug war harms non-users by locking away their family members, neighbors, and friends. Mr. Stewart further argued that marijuana arrests supported what he characterized as a school-to-prison pipeline, and that our current prison system, in effect, manufactures criminals.

Debra G. Rowe, Returning Citizens United, testified in support of Bill 20-409. She expressed concern about the racial disparities in arrests reported by the Washington Lawyers Commission. She also testified that young people between the ages of 16 and 25 may run when being stopped by police. She stated that this could endanger their lives. Ms. Rowe also testified that running from the police used to be considered "resisting arrest" but is now classified as "assault on a police officer." She noted remaining concerns about how the committee would deal with instances of police misconduct which play a role in the over-policing of young, low-income African American and Latino people.

Rev. Kelly D. Wilkins, Covenant Baptist United Church of Christ, testified in support of Bill 20-409, but believed the bill should go further. She urged that the bill be amended to remove the civil fine.

Rev. Willie Wilson, Union Temple Baptist Church, testified in support of Bill 20-409in order to remedy racial disparities and the impact of arrest records. He urged that the bill be amended to include provision for expunging marijuana arrest records.

Elder Bernard Howard, Sanctuary of Praise, testified in opposition to Bill 20-409. He argued that it would encourage young people to smoke marijuana.

Lydell Mann Sr., Resident, testified in support of Bill 20-409. He reported that he has been using cannabis for years to manage pain associated with a motorcycle accident. He also urged easier access to marijuana for medical marijuana patients.

Kymone Freeman, We Act Radio, testified in support of Bill 20-409 stated that he is a lifelong user of marijuana and has been a functional member of society. Mr. Freeman suggested that the bill should address record sealing and retroactivity. *(No written statement.)*

Marianne Ali, DC Central Kitchen, testified in support of Bill 20-409. She argued that this bill was necessary to increase employment opportunities for low income black residents. She described her agency's work with unemployed people, stated that many of her clients were those imprisoned on drug charges, and argued that incarceration for marijuana possession does not make economic sense.

Ericka Taylor, DC Fair Budget Coalition, testified in support of Bill 20-409. She argued that passage of the bill would benefit the city financially and would make our society more just. She suggested that the bill be amended by removing or reducing the fine, clarifying the penalty for non-payment due to lack of resources, sealing marijuana-related arrest records, and decriminalizing the cultivation of up to three marijuana plants.

Patrice Sulton, N.A.A.C.P., testified in support of Bill 20-409, although she suggested a number of amendments. She encouraged those in attendance to visit the courts and the D.C. Jail. Ms. Sulton stated that the jail looks like a slave ship when they bring the young black men out in shackles. Ms. Sulton expressed concern that the bill will not adequately address racial disparities due to uneven enforcement. To mitigate these concerns, she recommended the bill adopt the PDS proposal that the odor of marijuana not be used as the basis to conduct a search and that marijuana testing not be used as a condition for release and probation. (*No written statement*)

Mike Stark, Campaign to End the Death Penalty, testified in support of Bill 20-409, although she suggested a number of amendments. He stated that the bill should apply retroactively and that the District needed to disincentive the police behavior of using the suspicion of drug use as the basis for a stop. *(No written statement.)*

Alex Romano, Marijuana Policy Project, testified in support of Bill 20-409. He testified that his organization believes that the enforcement of marijuana possession laws cost the District between $26 million to $50 million per year. He also claimed that criminal enforcement is not effective. His written testimony included several studies, which are included with his written statement.

Nikolas Schiller, Public Witness, testified in support of Bill 20-409, but thought the bill should go further. He suggested that $100 was too high of a fine, especially considering the fine for an open container of alcohol is $25. Mr. Schiller suggested that marijuana be taken out of the controlled substances act and given its own title. *(No written statement.)*

Omeed Tabiei, Public Witness, testified in support of Bill 20-409. Mr. Tabiei commented that the criminalization of marijuana was rooted in racist policies which currently disproportionately affect African American drug users. He discussed the tax payer expense involved in a policy of criminalization and pointed to the benefits of decriminalization including the greater availability of resources to respond to more serious crimes. Mr. Tabiei noted concern over the interaction between the district's decriminalization policy and federal law which may continue to prosecute marijuana possession.

October 24, 2013

Rod Boggs, Executive Director, Washington Lawyers' Committee for Civil Rights and Urban Affairs, testified in support of Bill 20-409, highlighting the racial disparities in arrest rates for marijuana possession in the District of Columbia. Mr. Boggs also noted that drug arrests occur disproportionately in parts of the city with high African-American populations.