

MARIJUANA IN MILWAUKEE



*An overview of municipal marijuana policy
in Milwaukee and other U.S. cities*

ABOUT THE PUBLIC POLICY FORUM

Milwaukee-based Public Policy Forum – which was established in 1913 as a local government watchdog – is a nonpartisan, nonprofit organization dedicated to enhancing the effectiveness of government and the development of southeastern Wisconsin through objective research of regional public policy issues.

PREFACE AND ACKNOWLEDGMENTS

This report was undertaken to provide citizens and policymakers in Greater Milwaukee with an enhanced understanding of current marijuana possession laws in Wisconsin and Milwaukee, and insight into how the consequences of small-scale marijuana possession have been addressed recently in other U.S. cities. Report authors would like to thank the many justice system officials who met with us and provided information during our initial research phase, including officials from the Milwaukee Municipal Court and Milwaukee County Circuit Court, the Milwaukee City Attorney's office, city attorneys in several Milwaukee County suburbs, the Milwaukee County District Attorney's office, and other law enforcement officials at the City and County.

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The first in a series of two reports addressing municipal marijuana policy

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INTRODUCTION

With the sale and possession of marijuana now legal in four states — and with several cities taking action recently to reduce or eliminate criminal penalties for possession of small amounts of marijuana — the legal treatment of marijuana has become a prominent public policy issue in the halls of Congress and in statehouses and city halls across the United States.

Here in Wisconsin, two bills have been proposed in the Wisconsin Assembly that address the use of marijuana for non-medicinal purposes: one to regulate the production and sale of marijuana to adults 21 and older; and the other to decriminalize possession of up to 25 grams of marijuana. Meanwhile, in the City of Milwaukee, the Milwaukee Common Council has debated a change to City ordinances that would dramatically reduce the fine for first-time, small-scale marijuana possession.

As this debate continues to unfold, there will be emotional discussion regarding the enforcement of current marijuana possession laws in Wisconsin and Milwaukee, the impact of such enforcement on justice system budgets and resources, and the ramifications should marijuana laws or enforcement policies be relaxed. There also will be a need for clarity between the concepts of marijuana legalization versus decriminalization, and about the range of options that might exist for those wishing to explore a new legal paradigm for marijuana possession in Wisconsin or its largest city.

The Public Policy Forum has embarked on a two-phase research project that is designed to provide a factual underpinning for this important discussion. ***Our focus for this initial research effort is the City of Milwaukee, as opposed to the State of Wisconsin as a whole.*** This is not predicated on a belief that it is best for the debate on marijuana policy to be undertaken at the local level, but rather our assessment — based on the stated positions of the Governor and leaders of the Wisconsin Legislature — that any state legislative action on this matter will lag deliberations and possible action at Milwaukee City Hall.

Given our focus on city government, our research does not address the myriad issues related to full-scale legalization of marijuana usage, which also involves legalizing its commercial sale. Policy issues related to the regulation of sales and the taxation of those sales will become relevant only if the State of Wisconsin decides to pursue a full legalization option. Instead, we concentrate on the range of issues regarding how marijuana possession is and should be treated by the courts and law enforcement at the municipal level.

In this, the first of two reports in our two-phase project, we provide context for potential marijuana policy changes in Milwaukee by exploring efforts to reduce the consequences of small-scale marijuana possession in other U.S. cities. In conducting this analysis, we also consider — on a broad level — the specifics of marijuana possession laws and enforcement in Milwaukee and Wisconsin; and the range of issues that elected officials in Milwaukee should consider in determining whether and which approach to changing the law might be most appropriate here.

Our analysis stems from legislation introduced in the Milwaukee Common Council that seeks to substantially reduce the penalties associated with a first-time arrest for the possession of 25 grams or less of marijuana. The rationale offered by supporters is that existing penalties — which include a forfeiture of \$250 to \$500 — are too severe given the relatively harmless nature of the drug; that the



severity of the penalty results in unnecessary incarceration; that the enforcement of existing laws is disproportionately harming racial minorities; and that the current legal framework surrounding small-scale marijuana possession requires an inappropriate use of public resources to implement and enforce.

Without taking any position as to whether a change in the law is merited, we consider the reasoning cited by proponents in the context of the following research questions:

1. What is the precise nature of marijuana possession laws in Milwaukee and what do we know about how those laws are being enforced and who is being impacted?
2. How have other cities in the United States that share similar concerns about marijuana-related penalties addressed those concerns?
3. In light of the actions taken by other U.S. cities and policy concerns that have emanated here, what specific policy considerations should be contemplated by Milwaukee policymakers as they consider potential changes to marijuana possession laws?

While this report offers a broad overview of marijuana laws and their consequences in Milwaukee in conjunction with our national "scan," our Phase II report – to be released by the end of 2015 – will take a deeper dive into local law enforcement and justice system data for the purposes of:

- Determining the prevalence of arrests and incarceration for small-scale marijuana possession.
- Describing the demographics of those being arrested and incarcerated and how those individuals are being impacted in terms of employment and related factors.
- Assessing how much is being spent to enforce existing marijuana laws and the potential for redirecting those resources to other justice system needs under various decriminalization scenarios.

Our overall intention is not to advocate for a change to marijuana possession laws in Milwaukee, but to provide objective, factual context and perspective for the ongoing debate. Marijuana legalization and decriminalization debates in other jurisdictions have been marked by passionate rhetoric on both sides. The debate in Milwaukee is likely to be no different, and we believe policymakers and citizens would benefit from impartial research that discusses the actions taken by other cities and that provides detailed quantitative and qualitative analysis that will inform the potential need for policy changes here.



AN OVERVIEW OF FEDERAL, STATE, AND MUNICIPAL MARIJUANA LAW

To understand the legal and policy context for the City of Milwaukee and other U.S. cities when it comes to marijuana laws, it is first necessary to have a basic understanding of federal and state laws, and how the legal authority of the federal and state governments impacts the ability of municipalities to establish independent legal frameworks for marijuana possession and usage. In this section, we attempt to provide such an understanding. Here, as in the remainder of this report, our analysis focuses on laws related to simple possession, as opposed to possession with intent to distribute.

The Controlled Substances Act (CSA) is the federal law that establishes U.S. drug policy by regulating the manufacture, use, possession, and distribution of certain substances. Adopted in 1970, the Act classifies drugs in five distinct categories based largely on their potential for abuse and their medical benefits.

The CSA classifies marijuana as a Schedule I drug, which means that its cultivation, use, possession, distribution, and sale are prohibited. Schedule I drugs are considered the most harmful substances with no medical benefits.

Despite this classification, there are a myriad of state laws that treat marijuana far less harshly and that essentially contradict federal law. Obvious examples are the laws recently passed and now being implemented in Colorado and Washington that legalized the cultivation, sale, distribution, and private use of marijuana. Other examples include states that have legalized the medical use of marijuana, while less extreme examples are states that have "decriminalized" by reducing or removing penalties for possession of small amounts of marijuana.

Decriminalization typically means that public possession of small amounts of marijuana (up to one ounce) results in a small fine, similar to a traffic ticket, with no criminal prosecution. In many cases, this stipulation is reserved for first-time offenders, although some jurisdictions have removed criminal penalties for all small possession offenses. Some jurisdictions have gone even further by eliminating all penalties for private consumption of marijuana, while stopping short of full-scale legalization by still prohibiting its public use, sale, and distribution.

In addition to federal and state law, there also are municipal ordinances that regulate marijuana. In most cases, local governments' marijuana ordinances are consistent with state law, and actions taken by municipalities to individually define penalties for marijuana use and possession are consistent with the legal boundaries laid out by state statutes. However, recently there have been attempts by municipalities in several states to pass ordinances or ballot initiatives that contradict state law.

The fact that laws often contradict each other is not unique to marijuana. There are countless other areas where laws conflict among different branches of government and jurisdictions. This creates challenges for the courts, law enforcement, and citizens. In the case of marijuana, the United States Attorney General responded to the legalization of marijuana in Colorado and Washington by issuing a memorandum in 2013 that provides guidance on how the federal government will enforce



the Controlled Substances Act as it pertains to marijuana. A summary of current federal marijuana enforcement guidelines is provided below.

FEDERAL LAW

It has been the federal government's policy for many years to reserve the enforcement of petty marijuana possession offenses to the state and local level. Per a 2013 Attorney General memorandum, federal officials are committed to limiting marijuana enforcement and investigations to address the most significant threats and focus these efforts on the following priorities:¹

- Preventing the distribution of marijuana to minors
- Preventing revenue from the sale of marijuana to benefit criminal activity
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states
- Preventing state-authorized marijuana activity from being used as a cover or pretext for trafficking of other illegal drugs or activity
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use
- Preventing the growth of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands
- Preventing marijuana possession or use on federal property

It is important to note that these are mere guidelines. If, at any point, the federal government wanted to prosecute a marijuana offense, it could do so through its preemption powers. Preemption is grounded in the Supremacy Clause of Article VI, cl.2 of the Constitution, which declares federal law the supreme law of the land. At the moment, the federal government has chosen to not preempt state marijuana laws as long as those laws do not interfere with the federal government's ability to achieve the priorities listed above.

Controlled Substances Act

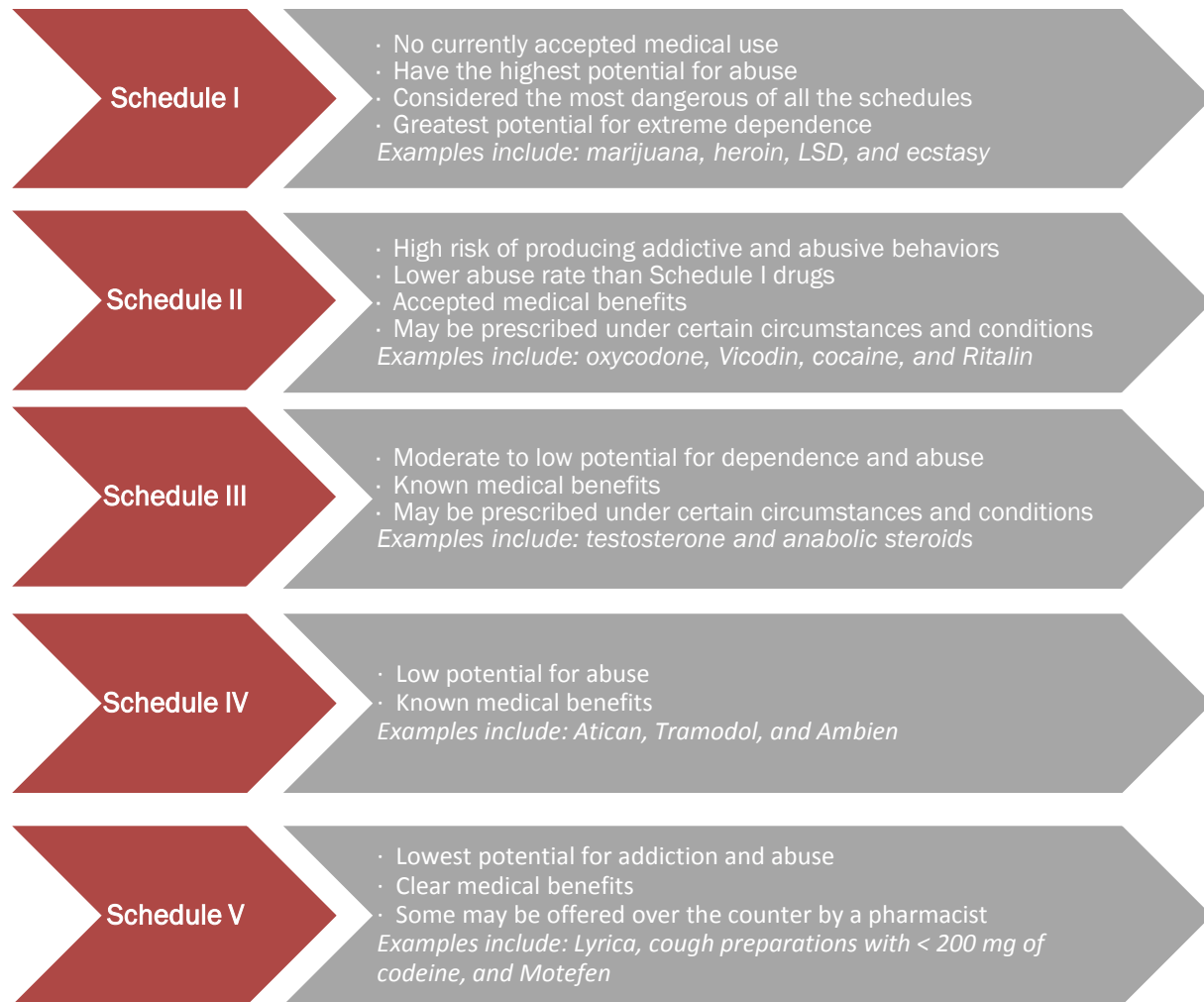
Drugs, substances, and particular chemicals used to produce drugs, are regulated through the Controlled Substances Act. The Act divides these substances into five distinct schedules based on the drug's potential for abuse and its acceptable medical use. The abuse rate is the primary factor in classifying a drug. Schedule I drugs are considered to have no accepted medical use and to have the highest potential for abuse. Thus, the possession, distribution, or use of these drugs is strictly prohibited by federal law. Drugs in other classifications are deemed to have a lower probability of abuse and have recognized medical benefits. Such drugs are allowed to be prescribed subject to various conditions and circumstances.

¹ Cole, James. Memorandum for All United States Attorneys. 2013. Retrieved from <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.



A brief explanation of each classification is shown in **Figure 1**.²

Figure 1: Controlled Substances Act Drug Schedules



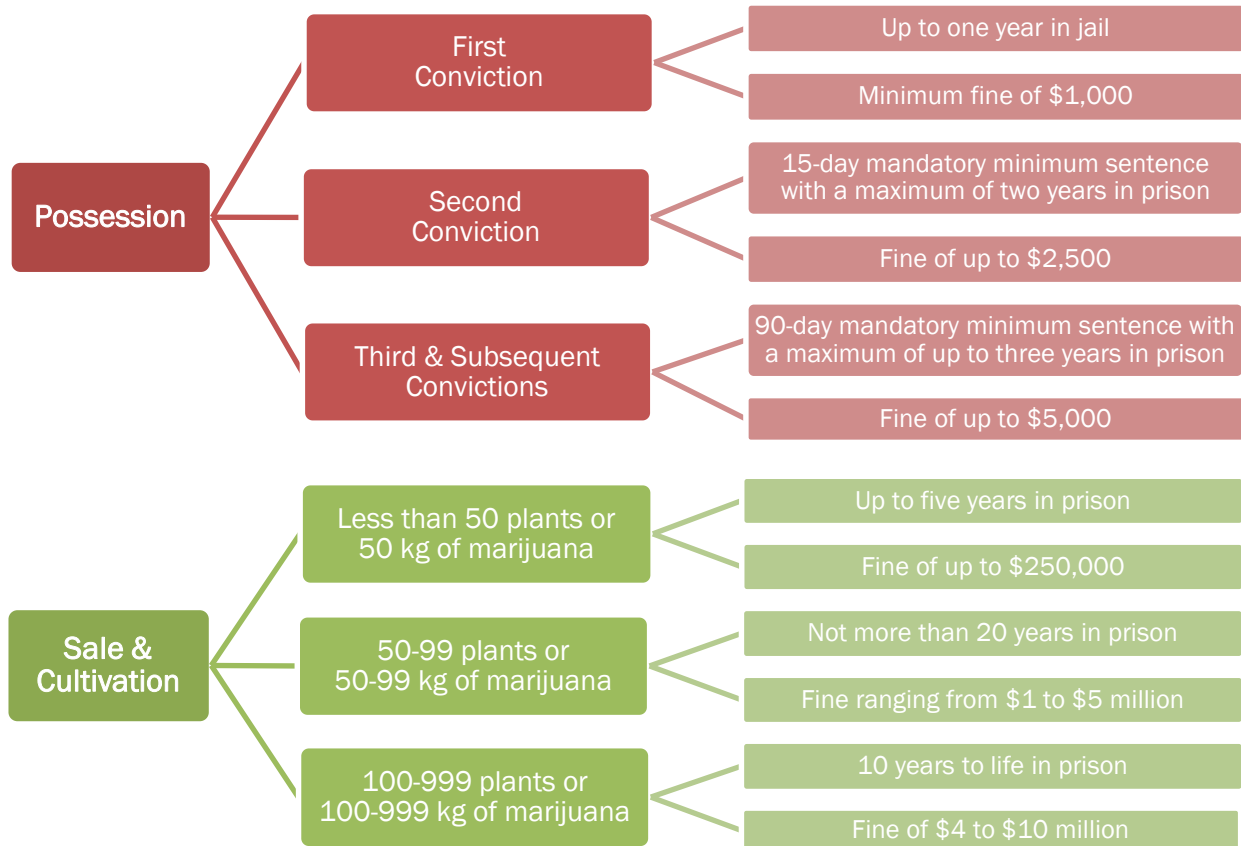
² Drug Enforcement Administration. Retrieved from <http://www.dea.gov/druginfo/ds.shtml>.



Federal Penalties

As discussed above, marijuana is classified as a Schedule I drug under federal law. Thus, its sale, use, distribution, and possession are strictly prohibited. Federal penalties for various marijuana offenses are depicted in **Figure 2**.³

Figure 2: Federal Penalties for Marijuana Offenses



STATE LAW

While beyond the scope of this analysis, the debate over the effects and medical benefits of marijuana has been well documented and dates back more than 100 years. This debate has occurred not only in Congress, but also has reverberated within statehouses across the country.

Individual states began carving out their own legal frameworks with regard to marijuana in the wake of a report by the National Commission on Marijuana and Drug Abuse in the early 1970s.⁴ The Commission was created by the Controlled Substances Act in response to concerns that the dangers of the drug did not match the federal penalties, especially with regard to possession of small amounts of marijuana. The Commission's report – issued to Congress in 1972 – concluded that the effects of moderate use of marijuana to the individual and society did not warrant such extreme

³ NORML. Retrieved from <http://norml.org/laws/item/federal-penalties-2>.

⁴ Marihuana, A Signal of Misunderstanding, Commissioned by President Richard Nixon, March 1972.



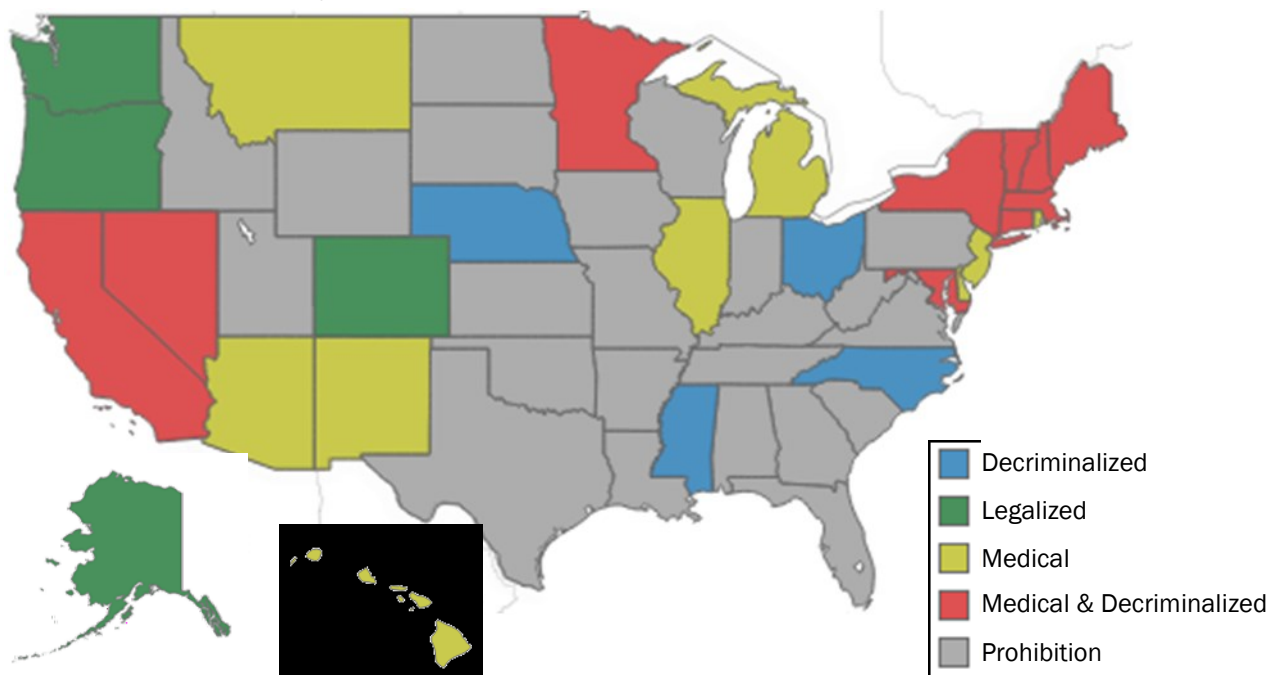
penalties. The committee recommended a small citation and no criminal prosecution for public possession of marijuana and no penalty for private consumption. Although Congress did not take action based on the report's findings, several states subsequently have made changes to their marijuana laws.

State marijuana laws govern the possession, sale, and cultivation of the drug and can be broken down into four categories:⁵

- **Legalization** – this is the far end of the spectrum in which marijuana is legal for adults and is taxed and regulated similarly to cigarettes and alcohol.
- **Medical** – legislation allowing the use of marijuana for medicinal purposes has been adopted in 23 states. These states allow doctors to use marijuana to treat patients for certain conditions.
- **Decriminalization** – states with decriminalization laws typically do not impose jail time or criminal sanctions for first-time offenders caught possessing small amounts of marijuana (typically one ounce or less). Violators typically receive a monetary fine in this scenario.
- **Prohibition** – this is the most restrictive category in that the possession, sale, and cultivation of marijuana of any amount, regardless of the offense, are considered criminal. This means that the penalty may consist of jail time and a criminal record.

Map 1 shows the distribution of states among those categories.

Map 1: Marijuana Laws by State



⁵ Ibid.



MUNICIPAL LAW

In several states, municipalities have the ability to pass local marijuana ordinances that can classify certain forms of possession or use of marijuana as municipal violations that are subject to civil fines or penalties, or that can otherwise establish specific municipal regulations that pertain to marijuana. Because state law preempts municipal law (just like federal law preempts state law), municipal ordinances typically are consistent with state statutes. However, just as some states have passed laws that appear to contradict federal law, there has been a recent influx of municipalities that have attempted to pass ballot initiatives or ordinances stripping penalties for small-scale marijuana violations in states that prohibit the drug. Examples include Detroit, where adults over the age of 21 may possess up to one ounce of marijuana without penalty;⁶ and Portland, Maine, where private possession and use of up to 2.5 ounces of marijuana has been legalized.⁷

Similar to cases in which state and federal law conflict, local ordinances cannot prevent the prosecution of state or federal marijuana law violations. That is, municipal marijuana ordinances may only regulate how the locality prosecutes violations at the local level. State and federal laws still are in effect and may be enforced by state, federal, or even local officials. For instance, if a person were caught possessing under an ounce of marijuana in Detroit, that person still could be charged with a state or federal law violation, despite the fact that he or she did not violate municipal law.

⁶ Ballotpedia. Retrieved from [http://ballotpedia.org/Detroit_City_Marijuana_Decriminalization_Question_\(November_2012\)](http://ballotpedia.org/Detroit_City_Marijuana_Decriminalization_Question_(November_2012)).

⁷ Ballotpedia. Retrieved from [http://ballotpedia.org/City_of_Portland_Recreational_Marijuana_Legalization,_Measure_1_\(November_2013\)](http://ballotpedia.org/City_of_Portland_Recreational_Marijuana_Legalization,_Measure_1_(November_2013)).



MARIJUANA LAWS IN MILWAUKEE

Virtually all citizens recognize and understand that the sale, possession, and use of marijuana are illegal in the City of Milwaukee. Those who closely follow proceedings in and around City Hall also know that concerns have been raised about the severity of penalties associated with possession of small amounts of marijuana, and the impacts of those penalties on racial minorities and justice system resources.

There is far less knowledge, however, regarding what the law actually says and how it is enforced. In this section, we seek to provide a basic understanding of marijuana laws in the City of Milwaukee and some of the issues that have been raised regarding their composition and enforcement.

CURRENT LAWS

In May 1997, the City of Milwaukee passed a new municipal ordinance addressing the issue of marijuana possession.⁸ Previously, all marijuana possession charges were treated as violations of state law, meaning that violators were subject to criminal prosecution by the Milwaukee County District Attorney (D.A.) and to criminal penalties determined in state court. The local legislation allows first-time offenders found possessing 25 grams of marijuana (just under one ounce) or less to be charged with violating a city ordinance rather than a state law. Hence, violators receive the equivalent of a municipal ticket, and their cases are brought before municipal court. Forfeitures for violating the ordinance range from \$250 to \$500. Failure to pay can result in up to 20 days in jail, but the typical jail sentence (when one is given) is eight days.⁹

For second and subsequent violations involving 25 grams or less, individuals are to be charged by the D.A. with a criminal offense under state law. Whether that offense is a misdemeanor or a felony depends on whether the individual has experienced a previous marijuana conviction. (More information about the State's marijuana regulations is provided below.)

Cases involving quantities of marijuana greater than 25 grams carry steeper penalties, as do cases in which there is a charge of "possession with intent to distribute." Possessing marijuana-related paraphernalia also is prohibited by law, so in cases involving possession of both marijuana and paraphernalia, individuals can be charged with both violations, each of which carries a distinct fine.



How much is 25 grams? When New York City announced changes to its marijuana policy in November 2014, Police Commissioner Bill Bratton held up a 25-gram bag of oregano to help people understand the quantity of marijuana being discussed.

⁸ Nichols, Mike. "Milwaukee eases pot punishment." *Milwaukee Journal Sentinel*. May 14, 1997. Accessed via the Milwaukee Journal Sentinel's archives on February 10, 2015.

⁹ City of Milwaukee Code of Ordinances: <http://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-1/CH106.pdf>



In the fall of 2014, Aldermen Nik Kovac and Ashanti Hamilton introduced a proposal to reduce the maximum forfeiture for violating the City’s marijuana possession ordinance (which applies to first-time offenses) from \$500 to \$5.¹⁰ Forfeitures for consuming marijuana in public would not be altered, remaining in the \$250 to \$500 range. The original proposal also would have allowed the City to treat second and subsequent offenses as municipal violations if the District Attorney declined to prosecute.

The City’s Public Safety Committee held a hearing on a version of the proposal at its February 2015 meeting, but delayed a vote. On May 11, supporters of the measure brought a revised version – calling for a reduction in the maximum forfeiture to \$50 – directly to the floor of the Common Council, but a final decision again was delayed. A revised version is likely to be considered again by the full Council in early June. According to the proposal’s lead author, that version will not contain any changes related to second and subsequent offenses.

POTENTIAL TO REDUCE FINES LIMITED BY COURT FEES AND SURCHARGES

The proposal to reduce penalties for first-time marijuana possession cases would lower the *forfeiture* amount, which currently is set at \$250-500. (According to officials from the Milwaukee Municipal Court, the forfeiture amount for a marijuana possession charge typically is \$266.) In addition to the forfeiture, however, the fees and surcharges included in the table below are added to calculate the total fine.

Item	Amount	Agency Retaining
Court Clerk Fee	\$33	City
Jail Assessment Fee	1% (\$10 minimum)	County
State Clerk Fee	\$5	State
State Crime Lab Fee	\$13	State
State Surcharge	26% of forfeiture	State

For a forfeiture of \$266, therefore, fees and surcharges add up to \$130 for a total fine of \$396. If the typical forfeiture were reduced to \$50, these additional costs would remain, leaving a total fine of at least \$124.

¹⁰ City of Milwaukee: <https://milwaukee.legistar.com/LegislationDetail.aspx?ID=1899940&GUID=8C65BD0B-9E96-4A90-8A1A-CF59BC48A254&FullText=1>



STATE OF WISCONSIN POLICY CONTEXT

Chapter 961 of the Wisconsin Statutes – the Uniform Controlled Substances Act – regulates marijuana possession and other drug-related crimes in Wisconsin. Under the statute, individuals with no previous drug offenses who are convicted of possessing marijuana for the first time can be fined up to \$1,000 and/or sentenced to up to six months in jail.¹¹

While the language in the state statutes refers to “first offenses,” it is important to understand that state law only applies to *criminal* cases. Individuals typically have broken a municipal marijuana possession ordinance at least once before a criminal charge would be brought by a district attorney, so in this context, a “first offense” actually refers to the second time a person has been cited for marijuana possession.

First-time *criminal* marijuana possession charges are treated as misdemeanors under state law, but second and subsequent criminal offenses can be charged as Class I felony crimes, which carry a fine of up to \$10,000 and/or imprisonment for up to 3.5 years.¹²

Until recently, Wisconsin law only allowed municipalities to regulate marijuana possession for the first time in which an individual is cited, and only for cases involving less than 25 grams. In April 2014, the State passed Act 293, which allows cities, towns, and villages to impose municipal ordinances regulating possession of marijuana in excess of 25 grams, and regulating second and subsequent offenses, “*provided the district attorney’s office declines to prosecute.*”¹³

This change in state law affords municipalities the opportunity to pursue civil forfeitures from individuals whose marijuana possession cases otherwise would not have been prosecuted by the district attorney's office. It is possible this will result in the D.A. taking fewer second and subsequent marijuana possession cases, thus potentially establishing lower risk of incarceration but greater risk of municipal fines for some offenders. Some municipalities, such as the City of West Allis, have modified their ordinances to reflect the change in State policy. Most have not, however, including the City of Milwaukee.

POLICY IN PRACTICE: FIRST OFFENSES

This section lays out how first-time noncriminal marijuana possession offenses typically are handled in the City of Milwaukee based on extensive conversations with officials from the City Attorney’s office and Municipal Court.

When individuals are ticketed for first-time marijuana possession offenses, they are given an arraignment date when they must appear in municipal court. In most cases, if they do not appear at the arraignment, they are found guilty by default, a fine is determined, and they are given 60 days to pay and are sent a default judgment notice. The individual also is sent a reminder if the payment has not been made 10 days before the due date.

¹¹ Wisconsin Legislative Reference Bureau: <http://legis.wisconsin.gov/lrb/pubs/wb/14wb8.pdf>

¹² Ibid.

Wisconsin State Legislature: <https://docs.legis.wisconsin.gov/statutes/statutes/939/IV/50>

¹³ Wisconsin Act 293. Wisconsin State Legislature: <http://docs.legis.wisconsin.gov/2013/related/acts/293>
Wisconsin 66.0107: <https://docs.legis.wisconsin.gov/statutes/statutes/66/I/0107>



In many cases, such individuals do not take action to resolve their cases. After the 60-day period elapses, the default judgment becomes a municipal warrant. Tracking people down who have been issued municipal warrants is not a top police priority, however. The City typically does not take further action on those cases unless the individual is stopped by police for another violation. Thus, many cases remain open for long periods of time.

If an individual is stopped by a police officer for any reason, however, then the officer typically reviews the individual's record, sees that a warrant has been issued, and releases the individual on "personal recognizance" (PR). The individual must sign a PR bond, which indicates that the individual understands that a warrant has been issued in his or her case and that he or she intends to appear in court.

Many individuals who sign PR bonds fail to appear in court again. Those cases can be sent to collections and any alternative sentences can be enforced at that time. A common method of collection used by the City for those who owe municipal fines is the State of Wisconsin's Tax Refund Interception Program (TRIP).

The City's current policy is to issue a second warrant to individuals who do not appear at their municipal court date after signing a PR bond. In fact, the City will issue four warrants for the same case before an individual may be detained. Therefore, a person typically has to be stopped by police at least four times for other violations before a detention would occur.

Only a small number of individuals found guilty of a first-offense marijuana possession charge are sentenced to time in jail, and that only occurs in cases involving repeated failure to pay. Among 4,554 total marijuana possession cases in which the defendant was found guilty between January 2012 and March 2015, only 12 cases (involving 11 individuals) resulted in jail sentences for failure to pay.¹⁴ Among those, only eight individuals actually served time in jail.

Notably, the City of Milwaukee, in accordance with State law, does *not* suspend driver's licenses for adults who fail to pay a marijuana possession fine. The City only suspends adults' driver's licenses for traffic-related offenses. Juvenile offenders can have their licenses suspended by the City of Milwaukee for a marijuana possession offense, however, though they cannot be incarcerated.

Notably, in the past, many individuals spent short periods of time in jail for outstanding municipal warrants on marijuana possession violations. When second or subsequent warrants were issued for individuals who later were stopped by police officers for any other reason, they may have been detained for a day or two before being released. Those days spent in jail were counted toward satisfying their fines, and they were given PR bonds to sign and extensions to pay the remainder of their fines.

The Milwaukee Municipal Court changed this practice in May 2012, however, and, according to court officials, no longer holds individuals on municipal warrants unless they *also* are being held for a criminal charge. In cases only involving a warrant for a first-time marijuana possession violation, therefore, individuals are given a PR bond to sign and are quickly released. In cases involving both a

¹⁴ Data provided by the City of Milwaukee's municipal court upon request.



municipal warrant and a criminal charge, days spent in jail can be credited toward satisfying judgments for both offenses.

While few people in Milwaukee are committed to jail time for first-time marijuana possession charges, most also do not pay the fines they are given. This is despite the fact that the City of Milwaukee offers payment plans and extensions to individuals who appear in court. As shown in **Table 1**, payments of any amount were made in only 42% of cases in which individuals were found guilty of marijuana possession during a recent period of more than three years; only 28% of the fines were paid in full.

Table 1: Marijuana Possession Cases in the City of Milwaukee’s Municipal Court

Year	Cases Filed	Guilty	Dismissed	Pending	Cases with Payments	Paid in Full
2012	1,952	1,796	107	49	835	568
2013	1,746	1,524	80	142	631	427
2014	1,381	1,131	57	193	426	288
2015 YTD ¹⁵	240	103	0	137	15	14

There are multiple reasons why most of these fines are never paid in full. As previously mentioned, many individuals do not appear in court after signing a PR bond. At that time, their cases are sent to collections, but individuals who do not earn money or pay taxes still are unlikely to pay their fines. Even for individuals who do pay taxes, there is an order in which TRIP distributes tax refunds to creditors, and the municipal court typically is not first on that list.¹⁶ It is also worth noting that after seven years, if an offender has not broken any other municipal ordinance, then his or her case may be dismissed.

POLICY IN PRACTICE: SECOND AND SUBSEQUENT OFFENSES

Since the City of Milwaukee’s marijuana possession ordinance only addresses first offenses, second and subsequent offense cases typically are sent to the D.A.’s office. That office exercises its discretion in deciding whether or not to criminally charge an individual for marijuana possession and what type of charge to issue.

We received data from the Milwaukee County circuit court on cases prosecuted by the D.A. from 2013 and 2014 that **only** involved a second or subsequent marijuana possession offense. We have not had the opportunity to fully analyze and verify our initial interpretation of these data, as doing so likely will involve examining hundreds of individual cases. However, given the potential relevance of this information to the debate that is currently occurring at the Milwaukee Common Council, we felt it was important to share findings from our initial review in this report. Readers should keep in mind the uncertain nature of these findings and our intention to conduct additional examination.

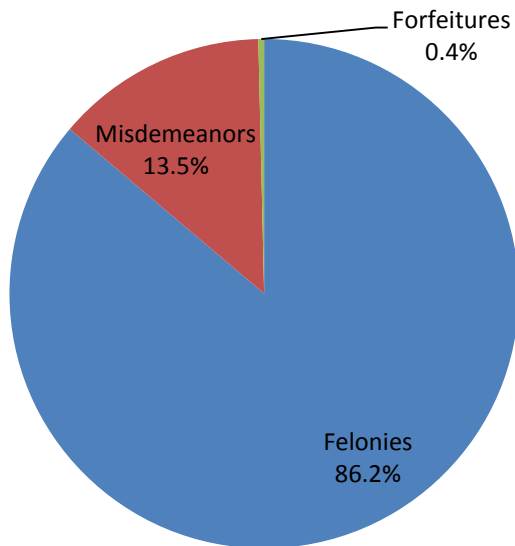
¹⁵ This information was compiled for a data request on March 23, 2015 and reflects cases in the system until that time.

¹⁶ Under the State of Wisconsin’s Tax Refund Interception Program, the Department of Revenue “is authorized to intercept any state tax refund and refundable credit to pay debts owed to other government agencies.” <https://www.revenue.wi.gov/faqs/ise/refintcp.html>



Our initial review found that a majority of these cases that involve second or subsequent marijuana possession offenses resulted in felony convictions and sentences to time in jail. (Again, we have been told that these cases do not include cases involving additional charges or cases that the D.A. decided not to prosecute.) According to the data, among 424 total cases the D.A. prosecuted during the 2013-14 period, 275 were found guilty (105 were still pending so no disposition had yet occurred). As **Chart 1** shows, 86% of those found guilty were convicted of felonies.

Chart 1: Category of offense for second and subsequent marijuana possession convictions in Milwaukee County, 2013 and 2014



Among those 275 cases that have so far resulted in convictions, 265 were sentenced to jail time, while only nine were sentenced to time in state prison. (The remaining case only resulted in a forfeiture.) Among those sentenced to time in jail, the number of days varied greatly, from as short as one or two days, to as long as one full year. Prison sentences ranged from 12 to 18 months.

Our interviews with officials in the D.A.'s office and with other justice system stakeholders indicate that the intention of the D.A.'s office is not to charge people with felonies for marijuana possession if they do not already have at least one other felony on their record. In our follow-up to this report, we plan to conduct a deeper analysis of justice system data – including a look at cases the D.A. decided not to prosecute – to obtain a more precise picture of how second and subsequent offenses are being handled by the justice system in Milwaukee County.

Also, the 275 convictions over a two-year period for second and subsequent marijuana offenses should not mask the much larger number of individuals who are arrested each year on marijuana charges. Milwaukee Police Department data indicate there are more than 4,000 marijuana-related arrests in the City of Milwaukee each year, and that more than three-quarters of drug arrests are for possession, as opposed to manufacturing or distribution. Furthermore, in 2013, marijuana-related arrests amounted to approximately 14% of total arrests for any offense. It is possible that many marijuana possession cases also involve additional charges or either are not prosecuted or reduced



to municipal offenses by the D.A., which is why the 424 prosecutions appear to be relatively low. We intend to further explore this issue, as well, in our follow-up research.

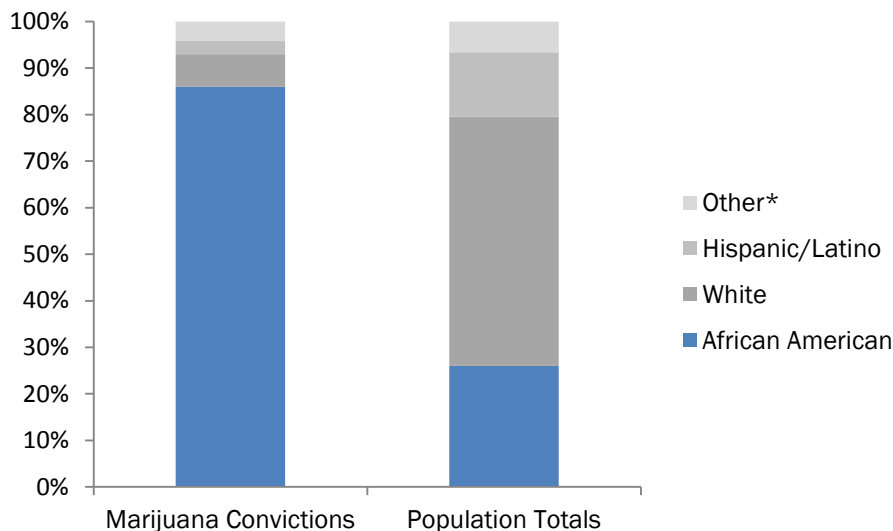
POLICY ISSUES

Current policies pertaining to marijuana possession in the City of Milwaukee and surrounding communities raise several important issues that warrant consideration.

- 1) Racial disparity of arrests:** One major concern often raised about Milwaukee's (and Wisconsin's) marijuana laws is that African Americans are arrested at disproportionate rates. In addition to being an issue of fundamental fairness, concerns have been raised regarding the impact of arrests for marijuana possession on police-community relations in predominantly African American neighborhoods.

As shown in **Chart 2**, while African Americans make up approximately 26% of Milwaukee County's population,¹⁷ they accounted for 86% of those found guilty of a second or subsequent marijuana possession offense in 2013 and 2014.¹⁸

Chart 2: Comparison of 2013 and 2014 marijuana possession convictions in Milwaukee County with population totals



*Other includes two or more races.

The American Civil Liberties Union (ACLU) also recently found that African Americans are 4.7 times more likely to be arrested for marijuana possession than whites in Milwaukee County, despite a body of research that shows roughly equal rates of marijuana consumption across race.¹⁹

¹⁷ U.S. Census Bureau. American Fact Finder 2013 3-year estimates.

¹⁸ These data *do not* include cases involving additional charges other than second and subsequent marijuana possession offenses.

¹⁹ Dennis, Latoya. "Milwaukee Lawmakers Look to Lower Marijuana Fines." *WUWM*. January 2, 2015. <http://wuwm.com/post/milwaukee-lawmakers-look-lower-marijuana-fines>



- 2) **City vs. suburbs:** When the City of Milwaukee created its marijuana ordinance in 1997, supporters pointed to similar ordinances in several Milwaukee suburbs and the need to establish more universal regulations countywide. At the time, residents in suburbs with municipal marijuana ordinances who were found possessing marijuana only received municipal citations, while City of Milwaukee residents guilty of the same offense received much harsher penalties associated with violating state criminal law.

Today, as Milwaukee aldermen debate the latest proposal for modifying the City’s marijuana ordinance, concerns again have been raised regarding the lack of consistent policies throughout the county. Fines vary by municipality, deferred prosecution options exist in many suburbs but not in Milwaukee, and some suburbs handle second and subsequent offenses as municipal violations, while others send all second and subsequent offenses to the D.A. To shed light on this issue, we looked at several Milwaukee County suburbs to see how they regulate marijuana possession.

- **Bayside:** The typical fine for a marijuana possession charge in the Village of Bayside is \$691, inclusive of court costs. Bayside issues warrants for individuals who fail to pay fines for municipal citations, and individuals can be jailed for failure to pay. The Village also utilizes TRIP to recover unpaid fines. Second and subsequent marijuana possession cases are sent to the D.A.

Bayside offers payment plans to people struggling to pay their fines, and also offers deferred prosecution.²⁰ Under deferred prosecution, individuals must complete a group dynamics class at Milwaukee Area Technical College (MATC) and must complete community service. If the individual does so and does not receive any other non-traffic tickets during the deferred prosecution period (typically one year, but can be between 6 and 18 months), then the ticket is dismissed.

- **Franklin:** Penalties for violating Franklin’s marijuana possession ordinance are spelled out in the City’s “General Penalty” provision and amount to a range of \$1 to \$2,500. The typical fine for a first-time citation is \$533.50. Failure to pay can result in up to 90 days in jail. According to the city attorney, second and subsequent marijuana possession offenses also are handled by Franklin’s municipal court, as the D.A. typically does not prosecute those cases.
- **Shorewood:** Under Shorewood’s ordinance, the Village’s “General Penalty” of \$10 – \$2,000 applies, but typically, the actual fine is \$376. Like Bayside, Shorewood in some cases offers a deferred prosecution program that can reduce the person’s total cost to

Matthews, Dylan. “The black/white marijuana arrest gap, in nine charts.” *Washington Post*. June 4, 2013. <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/04/the-blackwhite-marijuana-arrest-gap-in-nine-charts/>

²⁰ Deferred prosecution policies can differ among different jurisdictions. The Milwaukee County D.A., for example, has its own distinct deferred prosecution policies that do not involve the same requirements as those offered in Bayside.



\$100-150 and that requires the individual to take an online educational program. Shorewood's program also requires drug screenings over a six-month period. According to Shorewood's village prosecutor, some second and subsequent offenses are issued at the municipal level and not sent to the D.A. Fines may be higher for second and subsequent offenses. Shorewood generally sends cases involving 25 grams or more to the District Attorney's office for review of potential criminal charges.

- **Wauwatosa:** The ordinance in Wauwatosa applies its "General Penalty" provision to first-time marijuana possession cases, which amounts to a fine of \$1 to \$5,000. According to the City Attorney, Wauwatosa's standard forfeiture for first-time marijuana possession is \$100-\$200.
- **West Allis** has modified its policy based on the recent change in state law, broadening the police department's authority to issue municipal citations for cases involving "possession of more than twenty-five (25) grams of marijuana or possession of any amount of marijuana following a conviction in this state for possession of marijuana, provided that the district attorney dismissed charges for the same conduct or declined to prosecute the case."²¹ According to the City Attorney's office, the fine for possession under the City of West Allis ordinance is \$1,321, inclusive of court costs.
- **Whitefish Bay:** As in Bayside, the typical fine for a marijuana possession charge in the Village of Whitefish Bay is \$691, inclusive of court costs. Whitefish Bay does not issue warrants for individuals who fail to pay municipal fines, however, and no one serves time in jail for failure to pay fines. Second and subsequent offense cases are sent to the D.A. and do not return to municipal court.

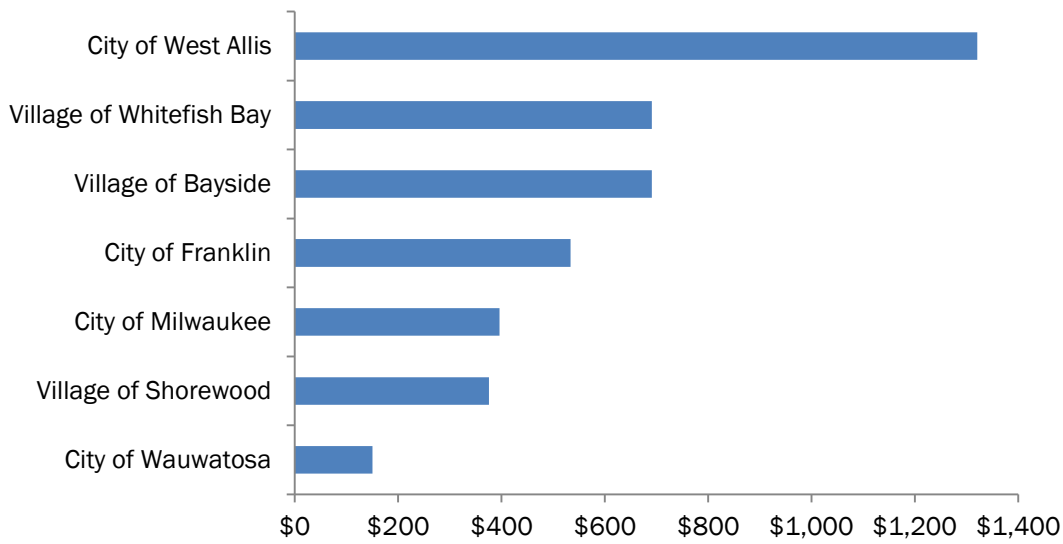
Whitefish Bay also offers payment plans and deferred prosecution. The deferred prosecution program is similar to Bayside's in that individuals must take a class, complete community service, and not receive any other non-traffic tickets during the deferred prosecution period. Whitefish Bay's program differs in that it typically imposes court costs of \$150 and the required class is online rather than at MATC.

Chart 3 summarizes the information we collected on typical fines for first-time marijuana possession violations. It shows that the fines imposed by the City of Milwaukee are in line with many of the Milwaukee County suburbs, with Wauwatosa and West Allis being outliers on opposite ends of the spectrum.

²¹ City of West Allis Code of Ordinances: <http://ecode360.com/27406202>



Chart 3: Typical fines for first-time marijuana possession, by municipality²²



- 3) **Lack of diversion opportunities:** Because marijuana is not considered an addictive drug and few clinical treatment programs exist for marijuana users, individuals arrested for possessing marijuana do not have the same diversion opportunities as those caught possessing other illegal drugs. This issue is particularly relevant to those being prosecuted for a second or subsequent small-scale offense, whose cases are in the hands of the D.A.'s office.

In Milwaukee County, the D.A. has made increased use of diversion into drug treatment programs for low-level offenders in recent years, but that option is not available for those whose treatment needs are related solely to marijuana use. With regard to first offenses, while community service is an option under Milwaukee's marijuana possession ordinance, a UW-Milwaukee analysis found that option was used only 36 times between 2008 and 2013, which amounted to only 1% of the total marijuana possession citations.²³ Deferred prosecution options appear to be more widely utilized in Milwaukee County suburbs.

- 4) **Unpaid Fines, Incarceration, and Driver's License Suspensions:** As previously shown in **Table 1**, municipal court data from the City of Milwaukee indicate that fines in only 28% of first-time marijuana possession cases that were levied between January 2012 and March 2015 were paid in full. A common claim is that people whose only offense is that they did not pay fines for municipal marijuana possession violations end up in jail and/or with suspended driver's licenses. The City has incarcerated only eight individuals for failure to pay marijuana possession fines over the last three years, however, and cannot suspend adults' driver's licenses for marijuana possession violations. While the City may wish to consider lowering its marijuana-related fines or changing its policy to *never* incarcerate offenders for failure to pay

²² While the City of Milwaukee's policy is to give fines in the \$250-500 range, the typical fine total is \$396, according to Municipal Court officials. Similarly, forfeitures in the City of Wauwatosa range from \$100-200. For comparison purposes, we used the midpoint for Wauwatosa. Notably, total fines in Wauwatosa may be somewhat higher when court costs are added.

²³ Pawasarat, John and Marilyn Walczak. 2015.



those fines, the perceived beneficial impact of doing so would appear to be less significant than some may believe. City leaders also could consider changing policy to no longer suspend juvenile offenders' licenses for marijuana possession.

It is also worth noting that the City's policies regarding the circumstances in which individuals can be incarcerated for unpaid municipal fines could be changed at any time by the Municipal Court without Common Council approval. If the City's intention is for those policies *not* to be changed, then the Common Council may wish to solidify them in the City's code.

Second and subsequent offenses are more likely to lead to incarceration in the Milwaukee County Jail or House of Correction and/or criminal records, which can have significant impacts on offenders' lives. Incarceration – even for only a few days in a Milwaukee County correctional facility (as opposed to a longer stay in a state prison) – clearly can impact offenders' prospects of maintaining or finding employment. Having a criminal record also can impact employability, particularly for work in fields where state or employer policies exclude felons from employment.

In addition, criminal convictions for second and subsequent marijuana possession charges are rarely expunged from an individual's record, which can impact their employability for the rest of their working lives. This is not the case for marijuana possession cases only, but rather for all criminal convictions in Wisconsin. Based on state law, expungement must be requested by the court at the time of sentencing.²⁴ It is much more difficult to have a conviction expunged after a sentence has been completed.

Having an expungement order does not necessarily mean that an individual's arrest record will be wiped clean from the Consolidated Court Automation Programs (CCAP) system once the individual has completed his or her sentence. According to the Wisconsin State Public Defender's Office, removing records from CCAP often requires additional efforts to obtain the necessary court orders.

From a workforce and economic development perspective, the practice of arresting or criminally charging individuals for possession of small amounts of marijuana may be creating a significant barrier to employment for a large number of Milwaukee residents. Consequently, those seeking marijuana policy changes because of their belief that significant numbers of economically disadvantaged citizens are needlessly suffering harsh penalties may wish to focus greater attention on the treatment of second and subsequent offenses for small-scale possession.

- 5) **Public resources used for enforcement:** The financial cost to local governments of policing and prosecuting marijuana possession also has been raised as an issue. While data have not been compiled on the cost of enforcing marijuana laws within the city of Milwaukee, the ACLU found that \$44.4 million was spent enforcing marijuana laws statewide in 2010,

²⁴ Wisconsin State Legislature 973.015: Special Disposition.
<https://docs.legis.wisconsin.gov/statutes/statutes/973/015>



indicating that the amount spent in Milwaukee likely is in the millions.²⁵ Since most fines for marijuana possession never are paid, a key question is whether the amount of public resources being spent to enforce these laws is appropriate. The Public Policy Forum plans to devote detailed attention to this issue in our follow-up report to be released later this year.

- 6) **Consistency of enforcement:** Based on our conversations with justice system officials, there appears to be a great deal of discretion involved in enforcement of marijuana possession laws. Police officers decide whether to give individuals citations or make arrests – and the D.A. decides whether to prosecute for second and subsequent offenses – with a broad set of considerations in mind. For example, an individual’s previous record may be considered, and/or whether the case involves other offenses beyond marijuana possession. Police and D.A. discretion, therefore, has significant impacts on case outcomes.

²⁵ Dennis, Latoya. January 2, 2015.



MARIJUANA LAWS IN OTHER U.S. CITIES

In this section, we provide a brief overview of cities across the country that have taken steps to reduce the penalties associated with marijuana use and possession despite federal and state prohibition. This overview is designed to provide context for policymakers and citizens in Milwaukee who are interested in learning about the range of options that might be available to modify city ordinances and/or enforcement policies in an effort to address perceived problems with current marijuana laws and their enforcement.

Our national scan indicates that the strategies taken by cities that have sought to carve out their own legal frameworks for marijuana possession generally fall into three categories: adjusting law enforcement priorities; treating possession as a civil offense; and eliminating penalties altogether. We summarize those strategies below and provide examples of municipalities that have pursued them.

In addition, at the conclusion of this section, we summarize how major cities in neighboring states treat small-scale marijuana possession. Again, this information is provided as context for those who wish to contemplate policy changes in Milwaukee and who are curious about how other big cities in our region have approached this issue.

It is important to note that the cities discussed in this section have not fully legalized marijuana use or possession. With the exception of Denver and Seattle, where state voters opted to legalize, public possession of marijuana remains illegal in each city. Moreover, these cities took action despite state laws and/or restrictions that were more stringent. However, the examples provided here illustrate some of the many avenues available to city governments to impact local marijuana policies in the absence of statewide action.

THREE MUNICIPAL APPROACHES FOR REDUCING MARIJUANA POSSESSION PENALTIES

As discussed earlier in this report, the legal treatment of marijuana possession in U.S. cities is guided first by federal law and then by state law. However, as we have seen in Colorado and Washington, the illegality of marijuana possession under federal law does not fully restrict the ability of states to develop contradictory legal and regulatory frameworks. In the same manner, restrictions in state laws have not precluded local governments across the country from establishing their own enforcement and legal structures.

We distinguish the approaches pursued by municipal governments by placing them into three distinct categories. The examples below are by no means an exhaustive list, but they do broadly illustrate how several municipalities have taken action outside of the confines of state and federal law to reduce the consequences associated with marijuana possession and consumption.

Adjusting Law Enforcement Priorities

The first approach aims to reduce the stringency of local, state, and federal marijuana laws by placing limitations on the use of municipal resources to enforce those laws.



Table 2: Examples of Cities That Have Adjusted (or are Adjusting) Law Enforcement Priorities

City	State	City Population*	Metro Population†	Adjustment	Year
Seattle	WA	652,405	3,671,478	Ballot measure to make marijuana-related activities the lowest law enforcement priority	2003
Denver	CO	649,495	2,754,258	Ballot measure to make marijuana-related activities the lowest law enforcement priority	2007
Oakland	CA	406,253	4,594,060	Ballot measure to make marijuana-related activities the lowest law enforcement priority	2004
San Francisco	CA	837,442	4,594,060	Vote by Board of Supervisors to make marijuana-related activities the lowest law enforcement priority	2006
Nashville	TN	609,664	1,792,649	A 2015 ballot initiative would prevent tax dollars from being spent on criminal prosecution of < 2 oz.	Aug 2015

*U.S. Census Bureau: 2013 Estimates

†U.S. Census Bureau: 2014 Estimates

- **Seattle** voters passed Initiative 75 in September 2003 that made marijuana-related activities the lowest law enforcement priority for both the police department and the city attorney.²⁶ At the time, Washington state law treated possession as a criminal misdemeanor with up to 90 days in jail and a \$1,000 fine.²⁷ Seattle's city council established a Marijuana Policy Review Panel to “assess and report on the effects” of Initiative 75. The 11-member panel issued a final report in December 2007 which noted a decrease in the number of marijuana-related cases referred by police to the city attorney as well as a decrease in the number of cases filed by the city attorney.²⁸ The panel found “no evident increase in marijuana use among young people, no evident increase in crime, and no adverse impact on public health.”²⁹ The number of marijuana-related cases decreased to the point that in January 2010, the city attorney announced he would no longer prosecute marijuana possession cases.³⁰

- This ‘de-prioritization’ approach has been adopted in other cities. **Oakland**, California voters passed Measure Z in 2004; voters in **Santa Barbara**, **Santa Cruz** and **Santa Monica**, California approved ballot measures in 2006; and **Denver** voters passed Question 100 in 2007. **San Francisco** instituted a similar policy in 2006, though it was the result of a vote by the city’s Board of Supervisors rather than a ballot initiative.³¹

²⁶ NORML. Retrieved from <http://norml.org/news/2003/09/18/seattle-voters-approve-initiative-making-marijuana-enforcement-city-s-lowest-priority>

²⁷ Ibid

²⁸ Washington Association for Substance Abuse and Violence Prevention. Retrieved from

<http://wasavp.org/wp-content/uploads/2012/06/Seattle-I-75-policy-review-report-Dec-20071.pdf>

²⁹ Ibid

³⁰ Heffter, Emily. “Seattle’s new city attorney to dismiss cases of pot possession.” *The Seattle Times*. Jan. 15, 2010. <http://www.seattletimes.com/seattle-news/seattles-new-city-attorney-to-dismiss-cases-of-pot-possession/>

³¹ NORML. Retrieved from <http://norml.org/news/2006/11/16/san-francisco-adopts-deprioritization-ordinance>



- **Nashville** will try a different method with a ballot initiative in August 2015. The initiative would “prevent any metro tax dollars from being used for the criminal prosecution of an adult for the possession of less than two ounces of marijuana.”³² Marijuana remains illegal in Tennessee and the initiative seeks to work around state law rather than conflict with it. To provide oversight, there is a clause giving citizens the standing to sue the city government if it is found to have violated the initiative, resulting in \$1,000 in damages and compensation for legal costs.

Possession as a Civil Offense

The second approach taken by cities to reduce marijuana consequences has been to alter municipal codes to reclassify possession from a criminal to a civil infraction. This reduction places possession on a level similar to a parking ticket, results in processing in municipal court, and typically yields a fine rather than jail time. The specific details of the statutes as well as the fine amounts vary from city to city; however, this step effectively decriminalizes the possession of marijuana. This, of course, is the approach that already has been taken in Milwaukee with regard to first-time offenses and that some now wish to modify even further.

It is important to note that while some forms of possession are a non-criminal offense in Milwaukee and the cities cited below, there are no provisions for the purchase or sale of marijuana in those cities. In most of the municipalities described here, being caught in the act of buying marijuana will result in a criminal arrest. Full *legalization* – which some advocate to allow cities to benefit from taxes associated with the regulated sale of marijuana through licensed retailers – would require addressing the sale and purchase of marijuana.

Table 3: Examples of Cities That Treat Possession as a Civil Offense

City	State	City Population	Metro Population	Adjustment	Year
Ann Arbor	MI	117,025	356,874	Ballot initiative made 1 st offense possession a \$25 fine, 2 nd offense a \$50 fine, and 3 rd /subsequent a \$100 fine	1974
Madison	WI	243,344	633,787	Per city-passed ordinance, possession of < 112 grams in a public place results in maximum \$100 fine*	1977
Grand Rapids	MI	192,294	1,027,703	Ballot initiative made any possession a civil infraction with a maximum fine of \$100	2012
Santa Fe	NM	69,976	148,164	Per city-passed ordinance, possession of up to 1 oz results in a maximum civil fine of \$100	2014
Philadelphia	PA	1,553,000	6,051,170	Per city-passed ordinance, possession of < 30 grams results in a non-criminal citation and \$25 fine	2014

* Madison has fully decriminalized possession in a *private* place; that provision of the city ordinances is discussed in the following section.

- **Ann Arbor**, Michigan was one of the first cities in the U.S. to decriminalize marijuana. In 1972, the city council voted to reduce the penalty for possession of less than two ounces to a civil infraction with a \$5 fine. A new city council repealed the ordinance in 1973, but voters amended the city charter in 1974 to reinstate the decriminalization policies. In its current form, Section 16.2 of the city charter specifies a \$25 fine for the first offense possession of any amount of

³² Ballotpedia. Retrieved from [http://ballotpedia.org/Nashville-Davidson_County_Metro_Marijuana_Decriminalization_Initiative_\(August_2015\)](http://ballotpedia.org/Nashville-Davidson_County_Metro_Marijuana_Decriminalization_Initiative_(August_2015))



marijuana, \$50 for the second infraction, and a \$100 fine for the third and subsequent offenses.³³ Marijuana offenses do not result in a criminal record.

- **Madison**, Wisconsin also has one of the oldest municipal policies in the country, having passed an ordinance in 1977 (Ordinance 23.20) that confirms the prohibition in state law against the public possession of marijuana, but that modifies the penalties. Under the city ordinance, public possession of less than 112 grams of marijuana is subject to a \$100 fine.³⁴ Violation of this ordinance is not a crime and no record of the infraction can be made. The Madison ordinance is unique in that the amount of marijuana permissible greatly exceeds other jurisdictions, which typically set limits at between 25-35 grams. In addition, the ordinance makes no mention of multiple infractions, which indicates there is no enhanced penalty for repeated violation. (Madison also has fully decriminalized possession of marijuana in a *private* place, which we discuss in the next section.)
- Though marijuana remains illegal in Michigan, **Grand Rapids** joined Ann Arbor to implement decriminalization policies through a ballot initiative in 2012. The initiative amends the city charter to make marijuana possession a civil infraction with a maximum fine of \$100.³⁵ There is no criminal record associated with an infraction and the fine is waived if the possession is for medical purposes as recommended by a health professional.
- In September 2014, the **Santa Fe**, New Mexico city council voted 5-4 to specify that possession of up to an ounce of marijuana is a civil infraction with a maximum fine of \$25.³⁶ Current New Mexico state law classifies marijuana possession of less than an ounce as a misdemeanor with a maximum fine of \$100 and 15 days in jail.³⁷ Though not as severe as other states, the New Mexico penalties do result in a criminal record, something the Santa Fe ordinance removes.
- **Philadelphia** passed an ordinance in October 2014 that makes possession of 30 grams or less of marijuana subject to a non-criminal citation and a \$25 fine for each offense.³⁸ Furthermore, *public* marijuana use is treated as a non-criminal citation with a fine of \$100 for each violation, though this can be waived if up to nine hours of community service is performed. The Philadelphia ordinance is unique in two ways. First, it maintains the same fine amounts regardless of the number of infractions. Second, many cities that have decriminalized marijuana have maintained criminal charges for public consumption, though Philadelphia treats such consumption as a non-criminal offense.

³³ City of Ann Arbor, Michigan City Charter. Retrieved from <http://annarborchronicle.com/wp-content/uploads/2012/05/CharterNovember2011.pdf>

³⁴ City of Madison, Wisconsin Code of Ordinances. Retrieved from https://www.municode.com/library/wi/madison/codes/code_of_ordinances?nodeId=Chapter%2023%20-%20Offenses%20Against%20Public%20Policy

³⁵ Ballotpedia. Retrieved from [http://ballotpedia.org/Grand_Rapids_City_Marijuana_Decriminalization_Amendment_Proposal_\(November_2012\)](http://ballotpedia.org/Grand_Rapids_City_Marijuana_Decriminalization_Amendment_Proposal_(November_2012))

³⁶ Oswald, Mark. "Santa Fe City Council reduces marijuana penalties." *Albuquerque Journal*. Aug. 28, 2014. <http://www.abqjournal.com/453189/news/santa-fe-city-council-reduces-marijuana-penalties.html>

³⁷ NORML. Retrieved from <http://norml.org/laws/item/new-mexico-penalties-2>

³⁸ City of Philadelphia, Pennsylvania City Code. Retrieved from [http://www.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/thephiladelphiacode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:philadelphia_pa](http://www.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/thephiladelphiacode?f=templates$fn=default.htm$3.0$vid=amlegal:philadelphia_pa)



Eliminating Penalties for Possession

The third approach taken by cities to address perceived negative consequences associated with stringent marijuana laws is to eliminate penalties for small amounts of marijuana possession altogether. Again, as with the cities described above that have reduced marijuana possession violations to civil offenses, most of the cities that have eliminated small-scale marijuana possession penalties still have not fully *legalized* the drug, in that its purchase and sale still is prohibited. However, some of the cities described here have treaded close to that issue, as well.

Table 4: Examples of Cities That Have Eliminated (or are Acting to Eliminate) Penalties for Marijuana Possession

City	State	City Population	Metro Population	Adjustment	Year
Madison	WI	243,344	633,787	Per city-passed ordinance, possession in a private place is allowed	1977
Lansing	MI	113,972	470,458	Ballot initiative removed penalties for adult possession of up to 1 oz on private property	2013
Portland	ME	66,318	523,552	Ballot initiative legalized possession and use of up to 2.5 oz by adults 21+	2013
Washington	DC	658,893	6,033,737	Ballot initiative allows adults to legally possess up to 2 oz and grow up to 6 plants (initiative being contested in U.S. Congress)	2014
Toledo	OH	282,313	607,456	A 2015 ballot initiative would remove all jail time, fines, and reporting of marijuana violations	Sept. 2015

- **Madison's** Ordinance 23.20 not only reduced public possession to a non-criminal civil violation, but also allows for possession of up to 112 grams of marijuana in a private place without any penalties or consequences.³⁹ Similarly, in 2010, voters in **Breckenridge**, Colorado approved a ballot initiative to remove all criminal and civil penalties and fines for possession of up to an ounce of marijuana in a private place.⁴⁰ Though Colorado has now legalized and regulated marijuana, this initiative was innovative at the time.
- In Michigan, possession of any amount of marijuana is a misdemeanor punishable by up to one year in jail and a maximum fine of \$2,000.⁴¹ Despite this, several cities have taken steps through ballot initiatives to remove penalties for possession. Voters in **Detroit** approved an initiative in 2012 that allows adults who are 21 or older to possess less than one ounce of marijuana on private property without fine or criminal prosecution. On the same day, voters in **Flint** approved a similar provision that allows possession and use of up to one ounce of marijuana by those who are age 19 and above. Several smaller Michigan cities have followed this path in recent years. In 2013, voters in **Lansing** approved a proposal identical to Detroit's. In addition, the following Michigan cities adopted the Detroit proposal in 2014: **Berkley, Hazel Park, Huntington Woods, Mount Pleasant, Oak Park, Pleasant Ridge, Port Huron, and Saginaw.**

³⁹ City of Madison, Wisconsin Code of Ordinances. Retrieved from https://www.municode.com/library/wi/madison/codes/code_of_ordinances?nodeId=Chapter%2023%20-%20Offenses%20Against%20Public%20Policy

⁴⁰ NORML. Retrieved from <http://norml.org/news/2009/11/06/colorado-breckenridge-voters-overwhelmingly-decide-to-end-pot-penalties>

⁴¹ NORML. Retrieved from <http://norml.org/laws/item/michigan-penalties-2>



- While state law in Maine already treats possession of less than 2.5 ounces of marijuana as a civil infraction with a maximum fine of \$600, several cities in that state have taken further steps to remove penalties.⁴² Voters in **Portland** passed a ballot initiative in November 2013 that allows adults age 21 and over to “legally possess up to 2.5 ounces of marijuana and paraphernalia” in public and to use marijuana on private property.⁴³ The Portland initiative is unique in that it allows for the possession of both paraphernalia and actual marijuana; and it allows adults to “engage in activities for the purpose of ascertaining the possession of marijuana and paraphernalia.”⁴⁴ With the inclusion of this language, Portland has removed penalties for the sale, purchase, possession, and use of marijuana on private property, though the ordinance does not extend this protection to the cultivation of marijuana. In 2014, neighboring **South Portland** passed a similar ballot initiative⁴⁵ that allows adults age 21 and over to possess up to an ounce of marijuana and paraphernalia in public and allows for use on private property.⁴⁶ However, the South Portland ordinance does not extend to the purchase or sale of marijuana.
- **Washington, D.C.** was a hotbed of activity with regard to marijuana policy in 2014. The city council passed a bill in March to reduce marijuana penalties to \$25 for possession and \$100 for public use, and eliminate jail time for each. In November, voters approved an initiative that allows adults to legally possess up to two ounces of marijuana, grow up to six cannabis plants, and “transfer (but not sell) up to one ounce to another person 21 years of age or older.” Because Washington, D.C. has unique governance and Congressional oversight structures, this information may not be relevant as a potential path for other municipalities to follow.
- Voters in **Toledo**, Ohio will cast ballots in September 2015 on a proposal to de-penalize marijuana possession. Under Ohio law, possession of less than 100 grams is a misdemeanor with no jail time and a maximum fine of \$150. This is a lesser consequence than in most states, though a misdemeanor conviction would result in a criminal record and suspension of a driver’s license for a period of between six months and five years. The Toledo initiative does not seek to challenge the legality of marijuana, but instead would “remove all jail time and fines for marijuana violations,” prevent a marijuana violation from being reported to professional licensing boards or law enforcement agencies, and prevent civil or criminal asset forfeiture and driver’s license suspensions related to marijuana offenses.⁴⁷ The Toledo initiative does not specify thresholds for age or the amount of marijuana in possession.

⁴² NORML. Retrieved from <http://norml.org/laws/item/maine-penalties-2>

⁴³ City of Portland, Maine Code of Ordinances. Retrieved from <http://www.portlandmaine.gov/DocumentCenter/Home/View/1083>

⁴⁴ Ibid

⁴⁵ Marijuana Policy Project. Retrieved from <http://www.mpp.org/media/press-releases/south-portland-maine-becomes.html>

⁴⁶ City of South Portland, Maine Code of Ordinanced. Retrieved from http://www.southportland.org/files/5514/2193/6294/CO_CH_31.pdf

⁴⁷ Ballotpedia. Retrieved from [http://ballotpedia.org/City_of_Toledo_Marijuana_Decriminalization_%22Sensible_Marijuana_Ordinance%22_Initiative_\(September_2015\)](http://ballotpedia.org/City_of_Toledo_Marijuana_Decriminalization_%22Sensible_Marijuana_Ordinance%22_Initiative_(September_2015))



MUNICIPAL MARIJUANA POLICIES IN OTHER LARGE MIDWESTERN CITIES

Those interested in contemplating changes to existing marijuana laws and enforcement policies in the City of Milwaukee may benefit not only from perspective on other cities that have "pushed the envelope" across the country, but also from an understanding of how other major cities in the Midwest treat the possession of small amounts of marijuana. The table below summarizes marijuana laws in six nearby major cities. We then summarize municipal activity in three of those six cities that recently have taken action to make their city ordinances less restrictive than state law.

Table 5: Treatment of Small-Scale Marijuana Possession by Other Large Midwestern Cities

City	State	City Population	Metro Population	Treatment
Chicago	IL	2,719,000	9,554,598	Possession of less than 0.5 oz may result in a \$250-\$500 fine for 1 st offense; second and subsequent result in \$500 fines
St. Louis	MO	318,416	2,806,207	Possession of < 35 grams for 1 st or 2 nd offense results in a summons (instead of a criminal arrest); municipal court fines range from \$100 to \$500
Detroit	MI	688,701	4,296,611	Adults 21+ can possess 1 oz or less with no penalties
Minneapolis	MN	400,070	3,495,176	City ordinances largely follow state law, which lists possession of < 42.5 grams as a misdemeanor with no jail time and a maximum fine of \$200
Cleveland	OH	390,113	2,063,598	Possession of < 200 grams is a 1 st degree misdemeanor with a maximum fine of \$1,000 and 6 months in jail; if < 100 grams, minor misdemeanor with no jail and \$150 maximum fine
Indianapolis	IN	852,866	1,971,274	City ordinances follow state law, which cites possession of < 30 grams as a misdemeanor punishable by up to 1 year in jail and a \$5,000 fine

- **Chicago** became the largest city to reduce penalties for small-scale marijuana possession when the city council passed an ordinance in 2012 stipulating possession of less than 0.5 ounces (15 grams) may result in a citation with a fine ranging from \$250-500.⁴⁸ The second and each subsequent offense thereafter would incur a \$500 fine. The ordinance does not make a citation mandatory, but rather gives police officers the discretion to issue a citation instead of making an arrest. Officers continue to arrest individuals for public use, possession on school or park grounds, and possession by those without an ID and those under 17 years old.⁴⁹

The ordinance runs counter to Illinois state law, which treats possession of 2.5 grams or less of marijuana as a Class C misdemeanor punishable with up to 30 days in jail.⁵⁰ The length of incarceration increases with the amount of marijuana possessed, with 10-30 grams equaling up to a year in jail. Possession of any amount greater than 30 grams is treated as a felony with one year or more in jail and a fine up to \$25,000.

⁴⁸ Municipal Code of Chicago, Illinois. Retrieved from [http://www.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicago_il](http://www.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il)

⁴⁹ Mack, Kristen. "Chicago City Council passes pot ticket ordinance." *Chicago Tribune*. June 27, 2012. http://articles.chicagotribune.com/2012-06-27/news/chi-chicago-city-council-passes-pot-ticket-ordinance-20120627_1_pot-possession-pot-ticket-ordinance-marijuana

⁵⁰ NORML. Retrieved from <http://norml.org/laws/item/illinois-penalties>



CHICAGO'S EXPERIENCE MAY HOLD LESSONS FOR MILWAUKEE

The recent change in city ordinances in Chicago resulted from a variety of concerns, including police resources and racial equity. Data from 2011 indicate that nearly one in five arrests in Chicago was for marijuana possession of less than 30 grams.¹ The Chicago police chief noted at the time that it took about a half hour to issue a ticket compared to nearly four hours for each arrest.¹ Moreover, it was estimated that Cook County – which includes Chicago – spent more than \$78 million and 69,000 police hours in 2012 on arrests, prosecution and jail time associated with marijuana possession.¹ Advocates for the legal change argued that reducing time and expenses devoted to marijuana possession could enable police to focus more on other law enforcement priorities.

In addition, despite national data that indicate similar levels of marijuana use among racial groups, African Americans comprised the vast majority of marijuana arrests in Chicago. Of the 47,400 arrests for marijuana possession of 30 grams or less in Chicago in 2009 and 2010, 78% were African American, 17% were Hispanic, and 5% were white.¹ Some aldermen noted a desire for racial equity in law enforcement as motivation for passing the ordinance.

The enforcement of the ordinance has had mixed effects since it was implemented. Between August 2012 and February 2014, there were 22,569 police encounters in which action was taken for marijuana possession of less than 15 grams; of those, 20,844 resulted in arrests and just 1,725 in citations. Moreover, the racial disparities remain. The racial breakdown of those arrested essentially mirrors the statistics prior to the ordinance - 78% were African American, 17% were Hispanic, and 4% were white.¹ The racial breakdown of marijuana tickets is only slightly less skewed – 70% were African American, 18% were Hispanic, and 11% were white.¹ The data make clear that Chicago police are continuing to arrest offenders rather than exercising their authority to issue citations.

- In April 2013, the **St. Louis** Board of Aldermen adopted a new city ordinance that gives police officers the option to issue a summons for municipal court instead of a criminal arrest for possession of less than 35 grams of marijuana. Municipal court fines range between \$100-500 for the first and second offenses, with no jail time or criminal record.⁵¹ The ordinance did not include a third offense, which would be subject to criminal proceedings under state law.
- As noted above, voters in **Detroit** approved Proposal M in 2012. The proposal changed the city code so that adults age 21 and over in possession of less than an ounce of marijuana on private property would not face criminal prosecution.

⁵¹ City of St. Louis, Missouri. Retrieved from <https://www.stlouis-mo.gov/internal-apps/legislative/upload/floor-substitute/BB275FS.pdf>



POLICY OPTIONS AND CONCLUSION

It is worth reiterating that the Public Policy Forum takes no position on specific proposed or possible changes to marijuana laws and policies in the City of Milwaukee, and that our research and analysis of this topic is guided solely by the desire to provide greater public understanding in light of current consideration of this issue by the Milwaukee Common Council. With that being said, this initial overview of the policy considerations surrounding marijuana possession does reveal a menu of options available to those who believe that penalties for possession of small amounts should be modified.

Our initial analysis also reveals continued inconsistencies between Milwaukee and its suburbs with regard to marijuana fines and enforcement, and a lack of clarity for citizens with regard to how existing laws are being enforced and who is doing the enforcing. These points suggest that action should at least be contemplated to revisit marijuana possession ordinances in the City of Milwaukee for the purpose of clarifying the desired intent of the law and prioritizing law enforcement resources.

Our initial review of current marijuana laws and their enforcement in Milwaukee yielded six policy considerations that should be pondered by City policymakers and justice system officials as they consider the current legal framework. In addition, our scan of other cities indicated three categories of strategies for those seeking to carve out municipal marijuana possession policies that are less restrictive than state law.

However, while these considerations and strategies provide ample food for thought, the types of potential reforms to be considered will be driven by the broader policy goals of those seeking change. Our research and stakeholder interviews in Milwaukee – as well as our review of other cities that have reduced or eliminated penalties for marijuana possession – indicate that three broad (and sometimes overlapping) policy goals typically drive municipal governments to seek changes to their marijuana laws and enforcement practices:

1. A desire to better reflect the perceived limited effects of the drug, which are deemed no more serious than those associated with other "vices," such as liquor or tobacco.
2. A desire to free up resources for more pressing law enforcement needs.
3. A desire to eliminate racial disparities in enforcement of the law and eliminate minor marijuana infractions as a barrier to employment.

Below, we review policy options in the context of those three goals, taking into account our observations from other cities and our initial review of the existing legal framework in Milwaukee.

LIMITED EFFECTS WHEN COMPARED TO OTHER DRUGS

There are many who believe that the health effects associated with marijuana are no more adverse than those associated with alcohol and that marijuana, therefore, should be regulated in similar fashion. While it is beyond the scope of this research to opine on that belief, it would appear that the options to effectuate it on the municipal level may be somewhat limited.

To truly regulate marijuana in a similar fashion to alcohol, a municipality would need to legalize its commercial sale (or at the very least, home production). As we have discussed, several states have



taken or will soon attempt to take that route. Few municipalities have attempted to do so, however, in large part because their efforts would conflict with both federal *and* state law. That would be the case for the City of Milwaukee, as well.

Portland, Maine, and Washington, DC, are two cities we have identified that have sought to provide legal means for adults to obtain marijuana for personal use. The move by Portland voters to allow citizens to “engage in activities for the purpose of ascertaining the possession of marijuana” removes legal obstacles to buying the drug, but still does not create a regulatory framework for commercial sale. Voters in Washington, DC, meanwhile, are attempting to legalize the home production of a limited number of marijuana plants for personal use, but similarly have not provided for commercial production and sale.

There is a wider array of options for those who simply wish to establish marijuana penalties that are similar to penalties for alcohol without legalizing its commercial sale or home production. The **Detroit** model – which allows adults who are 21 or older to possess less than one ounce of marijuana on private property without the threat of fine or criminal prosecution – would be one potential approach, as it would essentially legalize use by consenting adults within the privacy of their own homes, but still penalize use by minors and in public. Closer to home, the **Madison** example provides an even less restrictive option, as it allows for private possession of up to 112 grams of marijuana, which amounts to almost four ounces.

FREE UP RESOURCES FOR MORE PRESSING LAW ENFORCEMENT NEEDS

Another common rationale for the pursuit of modifications to municipal marijuana policies is the desire to divert police and justice system resources to areas deemed more “serious” and important. Of course, the simplest way to achieve that objective is to legalize marijuana possession, but those who support action for resource-related reasons may be uncomfortable with the notion of full legalization. Instead, they may consider private marijuana possession and use as a less serious offense than possession and use of other illegal drugs, and they may prefer, therefore, to see law enforcement resources and penalties determined accordingly.

There is a range of options for those wishing to pursue changes to Milwaukee’s treatment of marijuana under this rationale. One model is the approach used by several cities to pass ballot initiatives or municipal ordinances directing police departments to consider marijuana law enforcement their “lowest law enforcement priority.” One city (**Nashville**) is attempting a different twist by placing an initiative on the ballot that would prohibit the use of public dollars to prosecute adults for possession of less than two ounces of marijuana, and that would give citizens standing to sue the city if it violates the prohibition.

A potential advantage of pursuing the “lowest law enforcement priority” approach in Milwaukee is that by emphasizing a reduction in *arrests* (as opposed to a reduction in penalties), this strategy could produce resource savings across the justice system, from the Milwaukee Police Department (MPD) to the Milwaukee County Jail to municipal and circuit courts and the D.A.’s office. A potential disadvantage, however, is the difficulty associated with defining “lowest priority” and ensuring that the policy is implemented, though borrowing from the Nashville model might alleviate those concerns. Also, some may argue that MPD already treats small-scale marijuana possession – when



unaccompanied by other potentially illegal actions – as a "low" law enforcement priority, so codifying this policy would have little practical impact.

Another range of options related to freeing up justice system resources surrounds further "decriminalization" of small-scale marijuana possession to treat all or greater numbers of small-scale marijuana possession offenses as civil, as opposed to criminal violations. We have found that in **Chicago**, a primary rationale for such action was the contention of the Chicago police chief that it took police officers about a half hour to issue a municipal ticket, compared to nearly four hours for each arrest.

Here in Milwaukee, as we have discussed, the first offense for possession of 25 grams of marijuana or less already has been decriminalized. The current effort by several Milwaukee aldermen to dramatically lower the fine for first offenses is not necessarily driven by resource concerns, but it could have a beneficial impact in that regard. Establishing a fine amount that enables greater numbers of violators to pay immediately would reduce costs associated with pursuing payment. As we have found, however, this approach likely would not produce substantial savings in incarceration costs, as very few individuals who do not pay their fines receive jail time.

Expanding the universe of violators who would be subject solely to municipal violation – as opposed to criminal charges – likely would have a greater financial and resource-related impact. This approach not only could free up MPD resources by allowing officers to issue greater numbers of municipal tickets while making fewer arrests, but it also could produce substantial savings in jail processing, D.A., circuit court, public defender, and incarceration costs. Potential examples for Milwaukee could include **Ann Arbor**, which treats first, second, and third offenses for small-scale possession as municipal violations with varying small fine amounts; and **Santa Fe** and **Philadelphia**, which have established *any* offense for possession of small amounts of marijuana as civil infractions with a maximum fine of \$25.

Milwaukee's ability to pursue such changes may be limited by State statute, however. As discussed previously, a change in State law adopted by the Wisconsin Legislature in 2014 now allows municipal governments to treat second and subsequent violations for possession of small amounts of marijuana as municipal violations, but *only* provided that the D.A. elects not to prosecute. Consequently, even in those municipalities that change their ordinances to avail themselves of this provision, criminal arrests still would need to be made, detention resources still would need to be utilized, and D.A. time still would need to be employed for second and subsequent violations, though potential reductions in incarceration and court costs could be realized if the D.A. elects not to prosecute.

In light of the specificity of the state law, it is possible that the State could intervene if Milwaukee were to pursue a legal framework that treated all violations of the law for small-scale marijuana possession as civil violations *without* allowing the D.A. to decide whether to prosecute. On the other hand, given the example of Madison, which has been allowed to implement an ordinance that goes much further in terms of decriminalization, it is also possible that the State would not interfere if Milwaukee sought greater discretion. Consequently, City officials who are interested in pursuing changes along the lines of Ann Arbor, Santa Fe, and Philadelphia may wish to work with the D.A. and



State officials to determine whether such changes could be effectuated in policy or practice within the confines of the newly passed state law.

Finally, it is difficult to speculate conclusively on the potential for resource savings from various policy options without having a clear understanding of the resources currently employed to enforce marijuana laws in Milwaukee and to prosecute and detain violators. The Public Policy Forum plans to conduct a thorough analysis of that question and report our findings in our follow-up report to be released later this year.

ELIMINATE RACIAL DISPARITIES AND BARRIERS TO EMPLOYMENT

A third goal that often drives pursuit of policy initiatives to relax or eliminate penalties for small-scale marijuana possession is the desire to reform a legal framework that is perceived to treat African Americans more harshly than others, and/or that is perceived to add unnecessarily to the barriers to employment often faced by disadvantaged populations.

While we have not yet conducted our own comprehensive analysis of alleged racial disparities in Milwaukee (but plan to do so for our follow-up report), our initial analysis and the findings of other organizations indicate that in Milwaukee and nationally, African Americans are arrested for marijuana infractions in numbers that far exceed their proportion of the overall population. In addition, regardless of whether racial disparities exist, some argue that incarcerating or blemishing the records of citizens who already may face barriers to employment for possessing small amounts of marijuana serves no useful purpose for the individual or society at large.

Those who are driven by these concerns to seek policy changes in Milwaukee again have a varied menu from which to choose. In fact, any of the strategies discussed above – de-prioritization, decriminalization, or full de-penalization – could dramatically reduce the number of African Americans who are being arrested on small-scale marijuana possession charges, and the number of disadvantaged individuals whose ability to find and retain jobs is being impacted by time spent in jail or the existence of a marijuana-related criminal charge on their record.

But it is here, in particular, that we come back to one of the key findings of our initial analysis, which is that the treatment of second and subsequent violations for small-scale marijuana possession should perhaps be a bigger concern than the treatment of first offenses for those who wish to change the existing legal framework. As discussed previously, while the size of the fine for a first offense is a relevant concern for numerous reasons – and while there may indeed be a racial disparity in terms of those cited for first offenses – an inability to pay such fines is not resulting in incarceration for the vast majority of those who are cited. Furthermore, because first offenses result in municipal citations, the only record of such offenses is in the municipal court database (which is still a public database), as opposed to databases that are more commonly used to determine one's criminal record.

A bigger issue from the perspective of barriers to employment is the treatment of second and subsequent offenses as criminal violations. Even if the offense is treated as a misdemeanor, a conviction still appears on one's criminal record and still may result in time spent in jail while the offender awaits disposition by the D.A. or court. In addition, even if the Milwaukee ordinance was modified to allow second and subsequent offenses to be treated as municipal violations when the



D.A. declines to prosecute, an arrest still would need to be made. Consequently, a change in the law that would definitively change the treatment of second and subsequent offenses to municipal violations could make a particular difference in addressing small-scale marijuana convictions as a barrier to employment.

One note of caution that has been raised by the local chapter of the ACLU⁵² is that a change to make the City's marijuana ordinance consistent with the new state law (i.e. second and subsequent offenses treated as municipal violations if the D.A. declines to prosecute) could result in the levying of fines against second and subsequent offenders that will be onerous for them and that otherwise would not have occurred if the D.A. had elected not to prosecute. This concern would have to be balanced with the benefits that likely would accrue from creating an opportunity to criminally prosecute fewer individuals in the first place.

CONCLUSION

The discussion in this section is intended to frame policy options through the lens of the primary arguments used by those who are advocating for relaxed marijuana laws. There are other important perspectives that are not covered here, such as the perspectives of those concerned foremost with public safety and public health.

For example, our stakeholder interviews have indicated that MPD may use marijuana possession laws to arrest and detain individuals who are considered dangerous and suspected of more serious crimes that cannot initially be verified, but that are later determined through questioning or the post-arrest discovery of additional evidence. Whether this is a fair and appropriate use of marijuana possession laws (if it is occurring) is beyond our scope; it is important to note, however, that this and several other public safety-related reasons could be cited to support maintaining or even strengthening existing marijuana laws and enforcement policies.

With regard to public health, there has been impassioned debate in this country for the past 50 years regarding the health consequences associated with marijuana consumption. Furthermore, any modifications to its legal treatment must be judged with consideration of the potential to pose harm to minors or to encourage persistent heavy usage by those who are currently only casual or occasional users.

Nevertheless, our initial research indicates that there are several policy considerations surrounding current marijuana laws and enforcement policies in the City of Milwaukee that justify a review of the current framework, and several examples from around the country that could serve as models for potential change. In our next report – to be released by the end of 2015 – we will dig deeper into justice system data in an attempt to provide even greater insight into the societal and fiscal impacts of Milwaukee's existing marijuana legal paradigm and where (if at all) potential change might be most appropriate.

⁵² American Civil Liberties Union of Wisconsin, Letter to Milwaukee Alderman Terry Witkowski dated October 1, 2014.



DEFINITIONS

Ballot Initiatives – laws passed through the ballot box. These can be initiated through the collection of voter signatures or through legislative action.

Civil penalty – a financial penalty imposed by a government for a violation of the law that is intended to compensate the government for wrongdoing. Such wrongdoing is not considered to merit criminal punishment, which often entails time in jail.

Commitment alternative – an instance when a municipal court judge requires a person to spend time in jail for a municipal violation.

Controlled Substances Act – law passed by Congress in 1970 that governs federal drug policies.

Criminal penalty – a penalty imposed by a government for a violation of the law that is intended to punish the violator. Such penalties typically include jail time and are reflected on an individual's criminal record.

Criminal record – a history or list of a person's previous criminal convictions.

Cultivation – refers to the growing of marijuana.

Decriminalization – when referring to marijuana, this typically means the removal of criminal penalties for possession of small amounts of marijuana, though civil penalties may still apply.

Distribution – this refers to the transport of marijuana from one person to another.

Expunge – the removal of a criminal conviction from a person's criminal record.

Felony – a crime regarded as more serious than a misdemeanor and punishable by imprisonment for more than one year in a state or federal prison.

Legalization – when referring to marijuana, this means a policy that supports a legally controlled market for marijuana, where consumers can buy marijuana for personal use from a safe legal source.

Marijuana – dried flowers and leaves of the Cannabis Sativa plant.

Misdemeanor – a lesser crime punishable by fine and/or county jail time for up to one year.

Municipal ordinance – a law enacted by a city or county.

Municipal record – a history or list of a person's municipal violations.

One ounce of marijuana – one ounce of marijuana equals 28.35 grams or 60 marijuana cigarettes.

Paraphernalia – equipment needed for the preparation or use of marijuana.



Personal Recognizance Bond (PRB) – a form that, when signed, means that an individual acknowledges there is a warrant out for his or her arrest and that the individual must appear in court.

Personal service – the personal delivery of a process (e.g. PRB) to the individual to whom it is directed.

State statute – laws enacted by a state government body.

THC – the main active ingredient in marijuana.

Warrant – a document issued by a court that gives the police the power to take a particular action (e.g. make an arrest, serve a person with a PRB).

