MARIJUANA IN MILWAUKEE
ARREST TRENDS AND IMPLICATIONS

THE SECOND IN A SERIES OF TWO REPORTS ADDRESSING MUNICIPAL MARIJUANA POLICY
PUBLIC POLICY FORUM
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 and their enforcement in the City of Milwaukee, as well as insight into policy and financial implications. Report authors would like to thank the officials and analysts from the Milwaukee Police Department who spent several hours meeting with us and responding to our data requests and questions. We also would like to thank officials from the Milwaukee County District Attorney's office for similarly responding to our data requests and answering our questions, and the many other local justice system officials who patiently responded to our inquiries.

Finally, we wish to thank the Heil Family Foundation for its grant to the Forum that helped make this research possible. That grant was inspired by the Greater Together Challenge.
Marijuana in Milwaukee
Arrest Trends and Implications

March 2016

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

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**INTRODUCTION/EXECUTIVE SUMMARY**

In the spring of 2015, the Milwaukee Common Council initiated deliberations on a measure to dramatically reduce the fine for first-time possession of small amounts of marijuana. That development – as well as the national debate that had emerged regarding the potential legalization of marijuana – prompted the Public Policy Forum to launch an analysis of the legal framework that guides marijuana policy in Wisconsin's largest city. In particular, we sought to shed greater light on how existing municipal marijuana laws – and their enforcement – were impacting citizens and law enforcement resources in Milwaukee; and to explore what lessons might be learned from the marijuana policies of other large cities.

Our initial report – *Marijuana in Milwaukee: An Overview of Municipal Marijuana Policy in Milwaukee and Other U.S. Cities* – was released in May 2015. The report outlined the interplay between federal, state, and municipal marijuana laws and policies; traced the history of Milwaukee's marijuana ordinances and how they related to State of Wisconsin marijuana statutes; examined recent justice system data on those cited for violating Milwaukee ordinances or prosecuted under state law for possessing small amounts of marijuana; and discussed how Milwaukee's legal and law enforcement policies toward marijuana compared to those of other cities.

Among our key findings was that while considerable numbers of Milwaukee residents were being issued municipal citations for first-time possession of small amounts of marijuana, few were spending time behind bars for failure to pay the corresponding fines. In fact, our research showed that among 4,554 total marijuana cases involving first-time possession of 25 grams or less in which the defendant was found guilty between January 2012 and March 2015, only 12 cases (involving 11 individuals) resulted in jail sentences. Among those, only eight individuals actually served time in jail.

In seeming contradiction to that finding, our analysis also found that the infrequency of jail time for minor marijuana infractions did not signify that most violators were paying their fines. In Chart 1, we show payment data updated through the end of 2015. Payments of any amount have been made in 44% of cases in the four-year period, while 32% of the fines have been paid in full.

**Chart 1: Fine Payments for Marijuana Possession Cases in Milwaukee Municipal Court, 2012-2015**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partial Payments</td>
<td>12%</td>
</tr>
<tr>
<td>Paid in Full</td>
<td>32%</td>
</tr>
<tr>
<td>No Payments Made</td>
<td>55%</td>
</tr>
</tbody>
</table>

Source: Milwaukee Municipal Court
These findings prompted several questions that we seek to address in this, our second report on marijuana policy in Milwaukee, including the following:

- Is there a public good being served by arresting and then issuing citations to hundreds of individuals in Milwaukee each year for possession of small amounts of marijuana, particularly when so few pay the fines?

- What is the quantity of police resources being used to issue those citations, and could those resources be better spent on other law enforcement priorities?

- What options might City of Milwaukee officials have to further modify municipal marijuana policy to alter this paradigm, if they were so inclined?

To tackle these questions, we examined four years of Milwaukee Police Department (MPD) arrest and citation data for individuals charged only with possession of small amounts of marijuana. Our desire to isolate those violations – as opposed to violations involving multiple charges or larger amounts – was predicated on our desire to delve into policies that pertain to low-level marijuana violations that would not reasonably be deemed to pose a meaningful threat to public safety. As we detailed in our May 2015 report, it is with regard to these violations that other cities recently have initiated legal and policy changes that may be of interest to Milwaukee policymakers.

To complement our quantitative data analysis, we also interviewed MPD officials to gain a better understanding of the Department's policies and procedures with regard to those apprehended with small amounts of marijuana; and interviewed officials with the Milwaukee County District Attorney's office to better understand their prosecutorial policies with regard to small-scale marijuana arrests.

In addition, with the help of MPD analysts, we undertook a fiscal analysis that reviewed the time spent by MPD officers in making low-level marijuana arrests and issuing citations, and that calculated the costs associated with that time.

Overall, our research reveals that arrests of individuals in Milwaukee for possession of small amounts of marijuana and no other simultaneous violations are trending sharply downward and are occurring at a rate of fewer than two per day. This indicates that Milwaukee police do not appear to be aggressively pursuing enforcement of municipal law with regard to minor marijuana infractions when other alleged crimes are not involved. It also supports statements made to us by MPD officials that seeking and making low-level marijuana arrests is not a departmental priority. This finding should allay concerns that enforcement of marijuana ordinances is diverting vast amounts of resources from more serious crimes, and that extensive numbers of Milwaukee residents are being penalized for violations of the law that some believe to be relatively harmless.

We also find, however, that there is a substantial racial disparity with regard to those who are arrested for marijuana violations in the City of Milwaukee. Furthermore, we suggest that the fact that officers are taking the time to arrest violators of municipal marijuana ordinances who ultimately are released with a simple citation may suggest the need to consider additional changes in policy.

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1 We acknowledge that our methodology for isolating "low-level" marijuana infractions is somewhat subjective. For example, some may argue that individuals arrested on multiple charges that involve marijuana possession and a minor traffic violation or a violation of probation or parole also should be included in our analysis. However, given the nature of MPD's data sets and our inability to individually review thousands of arrest records, we believe this approach constitutes a practical and effective means of analyzing arrests that pertain to minor marijuana possession infractions.
**Background**

The federal Controlled Substances Act, adopted by the U.S. Congress in 1970, classifies marijuana as a Schedule I drug, which means that its cultivation, use, possession, distribution, and sale are prohibited. Yet, despite this classification, 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. As a result, different states have taken different approaches with regard to governing the possession, sale, and cultivation of the drug.

In addition, 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, as opposed to prosecution under state law. This is often referred to as "decriminalization." 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 legalized marijuana in apparent contradiction to federal law, there has been a recent influx of municipalities that have attempted to reduce or eliminate state penalties for small-scale marijuana violations.

For our May 2015 report, we conducted a national scan of cities across the U.S. that have reduced the penalties associated with marijuana use and possession despite more stringent laws at the federal and state levels. **Table 1** summarizes our findings for other large Midwestern cities.

**Table 1: Treatment of Small-Scale Marijuana Possession by Other Large Midwestern Cities**

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

Prior to 1997, all marijuana possession charges in the City of Milwaukee 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. But in that year, city officials adopted an ordinance that allows first-time offenders possessing 25 grams of marijuana or less to be charged with violating a city ordinance, instead. Hence, first-time violators typically receive a municipal ticket that is accompanied by a fine, and their cases are brought before municipal court without a referral to the D.A.

In June 2015, the Common Council approved significant additional changes to the City's marijuana ordinances. The first reduced the maximum forfeiture for violating the City’s marijuana possession ordinance from $500 to $50. As shown in Table 2, the forfeiture amount is accompanied by various fees and surcharges that add up to the total fine. Consequently, the Council's action meant that those issued the maximum forfeiture amount of $50 would now face a total fine of $124, as opposed to the $691 fine associated with the previous maximum forfeiture amount of $500.

<table>
<thead>
<tr>
<th>Table 2: Court Fees and Surcharges</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Item</strong></td>
</tr>
<tr>
<td>Court Clerk Fee</td>
</tr>
<tr>
<td>Jail Assessment Fee</td>
</tr>
<tr>
<td>State Clerk Fee</td>
</tr>
<tr>
<td>State Crime Lab Fee</td>
</tr>
<tr>
<td>State Surcharge</td>
</tr>
</tbody>
</table>

Until recently, while first marijuana offenses involving 25 grams or less were treated as municipal violations in Milwaukee, state law dictated that second and subsequent offenders be criminally charged under state law (if charged at all). Typically, the first violation under state law (i.e. second overall offense) has been prosecuted as a misdemeanor, while subsequent offenses have been prosecuted as felonies.

There are several important distinctions between offenses that are treated as municipal violations and those that are criminally prosecuted under state law. Perhaps most important is that individuals who are charged under a municipal ordinance typically receive their citation prior to being booked in the Milwaukee County Jail, while those charged under state law are booked and detained in the Jail until the D.A. makes a charging decision. Those who are convicted under state law also have the charge appear on their criminal record, which could have implications for future employment.

In April 2014, Wisconsin lawmakers passed a new State law that gives municipalities the option to also regulate second and subsequent offenses for possession of 25 grams or less as municipal violations, "provided the district attorney’s office declines to prosecute."\(^2\) When Milwaukee Common Council members voted to lower the fine for first-time possession in June 2015, they also approved an ordinance change that establishes consistency with the new statute for second and subsequent offenses. It was hoped by supporters that the City's ability to issue citations to second and subsequent small-scale marijuana offenders would encourage the D.A. to prosecute fewer such individuals, thus freeing up justice system resources for more pressing needs.

A NEW PROTOCOL GOVERNING SMALL-SCALE MARIJUANA ARRESTS

A key policy question emanating from passage of the new ordinance was whether the Milwaukee County D.A. still would require all individuals arrested on second or subsequent small-scale marijuana possession infractions to be booked in the Jail and subject to case-by-case prosecution decisions; or whether, instead, an effort would be made to preserve justice system resources by establishing a policy under which such offenders who were deemed unlikely to be prosecuted simply could be issued a citation and released by police without booking and referral to the D.A.

The D.A.’s office opted for the latter approach, and worked with MPD to establish a protocol that was intended to provide police officers with authority to issue citations to certain small-scale marijuana possession offenders regardless of whether those individuals had been previously convicted of a similar charge. The protocol – which took effect in August 2015 – specifies that Milwaukee police may issue a citation to any individual apprehended with 28 grams or less of marijuana, regardless of whether it is a first or subsequent offense, provided that the marijuana appears to be solely for personal use. Circumstances that would initiate a referral to the D.A. are limited to the following:

- The suspect is on probation or parole
- The suspect has a history of violence, including any firearms related offense
- The present offense involved the use, possession, or presence of a firearm or other dangerous weapon
- The present offense came out of the execution of a search warrant
- The suspect is a known member of a drug network
- If other aggravating circumstances are present and the arresting officer's supervisor approves the referral

This change, in effect, declares to Milwaukee police officers on the street that the D.A. will not prosecute individuals whose sole infraction is possession of 28 grams or less of marijuana, who are deemed to be non-violent, and who have not been convicted previously of more serious crimes. The protocol does not legalize possession of small amounts of marijuana in Milwaukee, but it does further decriminalize the drug by allowing MPD officers to issue citations to most individuals apprehended with small amounts and to refrain from transporting and booking them in the County Jail.

Some may debate whether this approach is appropriate from a public safety perspective. From a financial perspective, however, it would appear to have potential to produce savings from reduced police, D.A., and Jail resources spent on minor marijuana offenses. For the individuals in question, it also eliminates the possibility of spending multiple days in Jail awaiting a disposition, which can result in loss of employment and other negative impacts.
**Total Arrests and Marijuana Arrests Declining Sharply**

To analyze the potential impacts of this change in policy – and to explore whether further adjustments to the City's marijuana laws and policies should be considered – we requested several years of arrest data from MPD. These data allow us to consider trends in marijuana-related law enforcement activity both before and after the legal and procedural changes took place.

We started by considering marijuana arrests in the context of other arrest activity in Milwaukee during the past several years. As shown in Chart 2, total arrests in the City of Milwaukee have declined sharply in recent years, falling by 40% since 2010. If we narrow down the analysis to look only at drug arrests, and then even further to examine only marijuana-related arrests, we see that those totals have dropped even more precipitously (by 49% and 54%, respectively), as shown in the chart.

**Chart 2: Total arrests, drug arrests, and marijuana arrests in the City of Milwaukee, 2010-2015**

The marijuana arrest totals cited above include all marijuana-related arrests. Because discussions about modifying the law in Milwaukee and elsewhere have centered primarily on those cited for minor infractions in which there are no other alleged crimes involved, we also asked MPD to provide us with four years of marijuana arrest data that isolated instances in which the arrestee's only charge was small-scale possession with no intent to distribute. As shown in Chart 3, the frequency of those arrests also has trended sharply downward, falling from 1,308 in 2012 to 613 in 2015, a decrease of 53%.

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3 "Intent to distribute" not only is determined by possession of large amounts of marijuana; such a charge also can be levied against an individual possessing a small amount if the arresting officer determines the marijuana is packaged in such a way that it suggests an intent to distribute.
We also were interested in tracking and comparing small-scale charges that involved first-time possession, which presumably would have resulted in municipal citations, versus those that involved a second or subsequent offense, which until recently would have been exclusively charged under state law. MPD was able to provide us with a breakdown of the above small-scale possession arrests by municipal versus state law violation. As shown in Chart 4, arrests under the municipal ordinance far exceeded those that occurred under the state statute.\footnote{While interpretation of the law would dictate that arrests coded by MPD as violations of the municipal ordinance would signify a first-time offense and arrests coded as violations of the state statute would signify a second or subsequent offense, we did not have the ability to analyze individual arrest records and cannot verify that was the case for each arrest.} We also see that both types of arrests declined considerably over the four-year period, with arrests under state law decreasing by 65% and arrests under the municipal ordinance decreasing by 51%.
Our analysis of marijuana arrests for the remainder of this report focuses on this subset of marijuana arrests during the 2012-2015 timeframe in which possession of 25 grams or less is the only charge at the time of arrest. As noted above, for purposes of this analysis, our goal was to focus on low-level marijuana violations that would not reasonably be deemed to pose a meaningful threat to public safety. We have used this data set as a proxy to meet that goal. We acknowledge that some may believe an analysis of municipal marijuana policy should focus on all marijuana arrests and/or a different subset based on a different definition of "low-level" violation.

For those seeking additional context on the marijuana arrests we have omitted from our analysis, Chart 5 shows a breakdown of the number of charges accompanying those charged with possession of 25 grams or less of marijuana in 2015, including the approximately 600 we have isolated for analysis in this report in which the low-level marijuana charge is the only charge. In Chart 6, we provide further context by citing the most frequent charges that accompanied the low-level marijuana charge for those individuals charged with multiple offenses.

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5 We were unable to determine why our analysis in Chart 5 shows 611 arrests in which small-scale marijuana possession is the only charge, while our analysis in Chart 3 shows 613 such arrests, but we consider the difference to be inconsequential.
Chart 5: Number of charges for those arrested for possession of small amounts of marijuana, 2015

Source: Milwaukee Police Department

Chart 6: Most frequent charges accompanying a charge for small-scale possession of marijuana, 2015

Source: Milwaukee Police Department
Policy Implications

Our analysis of City of Milwaukee arrest data reveals that when Milwaukee aldermen first started to consider changes to municipal marijuana policy early in 2015, there already had been a sharp reduction in marijuana arrest activity, from nearly 6,500 arrests in 2010 (an average of about 18 per day) to about 3,700 in 2014 (an average of about 10 per day). This reduction – which would continue in 2015, when total marijuana arrests dropped to fewer than 3,000 – was consistent with a dramatic overall decline in arrest activity.

Our analysis also appears to verify that MPD is placing a much lower priority today than it was four years ago on arresting individuals on minor marijuana charges. This is particularly relevant given that reducing the frequency of these types of charges was a primary goal of City officials when they decided to modify municipal ordinances last spring.

In 2015, there were 2,963 total marijuana-related arrests in the city; the data we collected show that only 613 (21%) of those arrests involved individuals whose sole charge was possession of 25 grams or less of marijuana, indicating that the vast majority of marijuana arrests in the city involve individuals who also were charged with other offenses, or whose marijuana offense involved larger amounts and/or intent to distribute. While nearly 3,000 marijuana arrests per year suggests substantial use of law enforcement resources to enforce marijuana laws, the much smaller number of arrests when possession of small amounts is the only offense – as well as the sharp downward arrest trend – suggests a much more limited effort to arrest “casual users” and other low-level offenders.

The decline in overall arrests in the City of Milwaukee during the past several years has not received a great deal of public attention to date. MPD officials cite, as one explanation, deliberate efforts to reduce the amount of time spent by officers arresting non-violent individuals for minor offenses, so that more time can be devoted to activities deemed better suited to preventing serious, violent crimes. That includes a 2013 change in police protocols requested by MPD, and approved by the Milwaukee Police and Fire Commission, that restricts the conditions under which officers conduct consent searches of vehicles when making traffic stops.

Whether and/or the extent to which this overall decline in arrests has positively impacted public safety and the effective allocation of police resources is beyond the scope of this report. However, the extent to which the dramatic decline in low-level marijuana arrests stems from larger policy decisions that have decreased arrest activity in general – as opposed to being linked to a specific determination that low-level marijuana crimes are not a priority for MPD – should be considered in the context of the issues raised in this report.
Racial and Socioeconomic Disparities Still Exist

Last spring's Common Council debate on lowering marijuana fines – as well as the ongoing national debate on marijuana policy – was highlighted not only by concerns about the weight of the penalties associated with possession of small amounts of marijuana, but also by the argument that arrests for small-scale marijuana offenses are disproportionately targeting African Americans, despite research showing that marijuana usage is just as prevalent among whites. While we did not have the ability to explore the prevalence of marijuana usage in Milwaukee, our review of MPD arrest data does indicate that African Americans, and individuals who are in poorer areas of the city, are more likely to be arrested for possessing small amounts of marijuana.

As shown in Chart 7, while Blacks comprise about 39% of the City of Milwaukee’s population, they were the subject of 72% of the 3,903 arrests for possession of small amounts of marijuana in the city (when that was the sole charge) from 2012 through 2015. Hispanics accounted for 15% of the arrests, while comprising about 18% of the city's population; and whites accounted for 12% of the arrests while comprising about 37% of the population.

Chart 7: Racial breakdown of small-scale marijuana arrests in the City of Milwaukee, 2012-2015

<table>
<thead>
<tr>
<th></th>
<th>Rate per 1,000 Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>72%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>15%</td>
</tr>
<tr>
<td>White</td>
<td>12%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
</tr>
</tbody>
</table>

Source: Milwaukee Police Department

When we break down the arrest data by the location in which the arrest occurred, we see that eight zip codes in the City of Milwaukee had at least seven small-scale marijuana arrests for every 1,000 residents during this timeframe, while 12 zip codes had fewer than three arrests per 1,000 residents (Map 1). When we examine median household income by zip code in Map 2 and Chart 8, we see the average household incomes in zip codes with higher concentrations of arrests tend to be lower than those of the zip codes with lower concentrations of arrests, meaning small-scale marijuana arrests are disproportionately occurring in poorer areas of the city.

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*For example, a 2013 report by the American Civil Liberties Union argues that "A Black person is 3.73 times more likely to be arrested for marijuana possession than a white person, even though Blacks and whites use marijuana at similar rates." The report can be accessed at [https://www.aclu.org/report/war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white](https://www.aclu.org/report/war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white).

7 Population estimates obtained from the U.S. Census Bureau, American Fact Finder 2014 estimate.
Map 1: Small-scale marijuana arrests per 1,000 residents by zip code, 2012-2015
Map 2: Median Household Income per zip code

City of Milwaukee border

2014 Median Household Income
13,544
66,132

53224
53223
53225
53216
53218
53219
53209
53210
53211
53212
53206
53205
53202
53203
53200
53204
53207
53215
53214
53213
53219
53216
53220
53228
53226
53227
53222
Finally, we broke down the small-scale marijuana arrest data by gender and age. As show in Chart 9 and Chart 10, 82% of the arrests from 2012 through 2015 involved individuals under the age of 30, and 88% involved males.

Chart 9: Age breakdown of small-scale marijuana arrests in the City of Milwaukee, 2012-2015

Source: Milwaukee Police Department
Policy Implications

MPD arrest data indicate that the vast majority of arrests for minor marijuana possession infractions in Milwaukee involve young African American males in some of the poorest zip codes in the city. This finding should not necessarily be construed to suggest there is a racial or socioeconomic bias at play among arresting officers. Indeed, MPD attributes these results to the heavier police presence in areas of the city where data indicate there are the highest incidences of violent crime and calls for service, which coincides with areas that have large concentrations of African American residents. Given the heavier police presence in those areas, there logically would be greater numbers of police encounters, including encounters with those possessing small amounts of marijuana.

In Maps 3 and 4, we use MPD data to show, by zip code, violent crimes per 1,000 residents and calls for service for the 2012-2015 timeframe. A comparison of these maps to Map 1, which shows small-scale marijuana arrest rates by zip code, generally supports MPD’s contention that there is an overlap between areas with high violent crime rates and frequent calls for service (both of which presumably create a heavier police presence) and those with high rates of minor marijuana arrests.

Also, MPD officials suggest, anecdotally, that while the prevalence of marijuana usage is not necessarily greater in areas of the city that are poorer or predominately African American, there are greater incidences of individuals openly smoking marijuana in those areas. Given the greater police presence, that factor also may produce a greater number of low-level marijuana arrests.

Regardless of the question of bias or intent, however, the data indicate that African American males in poor sections of the city are being arrested and cited for possessing small amounts of marijuana far more frequently than other citizens in the City of Milwaukee. Consequently, despite the sharp decline in the number of such arrests over the past four years, those looking to relax City marijuana restrictions on small-scale possession even further (or eliminate them altogether) under the rationale that doing so would address an area of racial and socioeconomic disparity would appear to have evidence to support their case.
Map 3: Violent crime per 1,000 residents by zip code, 2012-2015
Map 4: MPD calls for service by zip code, 2012-2015
Too Early to Determine the Impacts of the New Police Protocol

In light of the new protocol developed by MPD and the Milwaukee County D.A. regarding arrests for second and subsequent small-scale marijuana possession, we also sought to explore whether changes had occurred in arrests under municipal ordinance versus arrests under state law since the protocol was adopted in mid-August. We were somewhat surprised to find that the number of arrests that had been occurring under state law (when marijuana possession was the only charge) was very low to begin with. As shown earlier in Chart 4, whereas 223 such arrests had occurred as recently as 2012, that number dropped to just 77 in 2015 (a decrease of 65%).

In Chart 11, we show the monthly totals of marijuana possession-only arrests under state law during the past four years. We see that between September and December 2015, there was a dip (from nine to four) in the number of such arrests, which occurred after adoption of the new protocol that gave MPD the ability to issue citations to certain small-scale offenders regardless of whether the offense was their first or subsequent. However, we also see that arrests in those months tended to be lower than the early months in the other years in question, as well. Also, the small number of arrests to begin with makes it difficult to proclaim an impact.

Chart 11: Monthly totals of small-scale marijuana arrests under Wisconsin Statutes in the City of Milwaukee, 2012-2015

Source: Milwaukee Police Department

In Chart 12, we show a similar month-by-month breakdown of arrests under the municipal ordinance to determine whether there had been an upsurge in municipal arrests in the last four months of 2015 that could be linked to the new protocol. We see that there was not an increase, though it is important to note that municipal arrests tended to decline in the last four months of the year in 2012-2014, as well.
**Policy Implications**

Overall, while not conclusive in terms of determining whether the new protocol will lead to an increase in municipal citations and a decrease in state charges for possession of small amounts of marijuana, the data showing that small-scale, possession-only arrests under state marijuana statutes are so infrequent in the first place would seem to support the adoption of the protocol. Any public safety concerns that might have emanated from the decision not to pursue prosecution of non-violent second and subsequent offenders should be assuaged by the small and diminishing number of individuals who were being arrested on such charges (with no simultaneous charges) before the protocol was adopted. The bad news, however, is that the fiscal savings associated with a possible reduction of prosecutions for second and subsequent offenders will not be substantial, as few prosecutions were occurring, anyway.
**WHY ARE SMALL-SCALE MARIJUANA POSSESSION ARRESTS BEING MADE AT ALL?**

In light of our findings on the decreasing number of small-scale marijuana possession arrests under either municipal or state law, an additional policy consideration comes to light: Given MPD’s stated intention to de-emphasize arrests for possession of small amounts of marijuana (when no other alleged crimes are involved), and the D.A.’s stated intention to avoid using his office’s resources to prosecute individuals when such arrests are made, why are arrests being made in the first place? Why not have MPD officers simply issue citations on the street when such encounters occur?

When we originally sought marijuana arrest data, we did so, in part, so we could calculate the financial and human resource savings that might accrue from issuing more citations and prosecuting fewer people under state law for minor marijuana infractions. Our interest was piqued by an ordinance change that was enacted in Chicago in 2012, which gave police the discretion to issue citations of $250 to $500 to adults apprehended with 15 grams or less of marijuana. According to media coverage at the time, Chicago's police superintendent supported the change as a means of preserving and redirecting police resources. He contended that a marijuana arrest took up to four hours of police time, compared with only about 30 minutes to issue a ticket.8

As we will discuss below, we found that there is, indeed, a substantial difference in the resources spent to arrest and book an individual under state law for a minor marijuana infraction versus that spent to issue a citation under the municipal ordinance. We were surprised to learn, however, that the difference would be even more significant if not for the fact that Milwaukee police officers always make an arrest and transport the arrestee to a district station before a citation is issued under the municipal marijuana ordinance. In other words, in no case would an MPD officer simply write a ticket and release an individual who is encountered with a small amount of marijuana, as police officers now have the discretion to do in Chicago, or as they typically do with several other types of municipal ordinance violations.

When we asked MPD officials why that was the case, they attributed their policy to a provision in the Wisconsin Statutes that requires the department to "obtain and file fingerprints, descriptions, photographs, and any other available identifying data" on persons taken into custody for a variety of different offenses, including possession of controlled substances.9 The requirement applies not only to violations of state law, but also to violations of municipal ordinances for the offenses in question. We were informed further that while MPD has plans to pilot mobile identification technologies for use in the field, officials believe even those technologies would not allow the department to meet the identification requirements imposed by the state statute.

We also did a random sample of a handful of Milwaukee County suburban municipalities to ascertain whether they were interpreting state law in similar fashion. We found that they, too, make arrests for all encounters involving marijuana, though it is worth noting that those municipalities maintain much higher fines than Milwaukee's maximum fine of $50.

To explore what the department might save in human and financial resources if officers were permitted simply to issue citations on the street to non-violent marijuana offenders who present a valid form of identification, we asked MPD to provide data on the time spent by arresting officers

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when making marijuana arrests and transporting and processing arrestees at a district station. MPD’s data system could not produce such information with regard to the time spent by officers, but the department was able to provide data on the amount of time each individual arrested for a low-level marijuana crime from 2012-2015 (when that was the only charge) was in police custody from arrest to release.

While that amount of time may not be an exact barometer of the time spent by each of the two arresting officers for each arrest, it does represent a reasonable proxy. We were told by MPD analysts that both officers typically transport the individual to the district station, where one typically supervises the arrestee during booking while the other prepares necessary paperwork.

As shown in Table 3, if we assume that the time spent by the arrestee in custody is equivalent to the time spent by the arresting officers, then the average time spent by an officer engaged in an arrest under the municipal marijuana ordinance in the 2012-2015 timeframe was 3.9 hours. This essentially represents the time spent by the officer in encountering the individual, making the arrest, transporting him/her to the district station, and supervising/processing necessary paperwork at the district station.

MPD also provided information on the average officer cost (salary and benefits) during each of the four years, which we used to calculate the average cost per officer per arrest. We then multiplied the per-officer cost by two (given that there are almost always two police officers involved in an arrest) to come up with a total MPD officer cost per municipal marijuana arrest. That total – as shown in the table – was about $309 per arrest in 2015. It is important to note that this estimated cost does not include the cost of personnel employed at the district station to book and supervise arrestees, as well as transportation, commodity, and other non-personnel costs.

Table 3: Officer cost per municipal small-scale marijuana arrest (arrest to release), 2012-2015

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<tbody>
<tr>
<td>Municipal Marijuana Arrests</td>
<td>1,085</td>
<td>974</td>
<td>779</td>
<td>536</td>
<td>3,374</td>
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<tr>
<td>Average Hours Per Municipal Arrest</td>
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<td>4.0</td>
<td>3.3</td>
<td>3.3</td>
<td>3.9</td>
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<tr>
<td>Average Officer Compensation</td>
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<td>$43.95</td>
<td>$46.77</td>
<td>$46.38</td>
<td>$45.17</td>
</tr>
<tr>
<td>Officer (2) Cost per Municipal Arrest</td>
<td>$382.81</td>
<td>$355.16</td>
<td>$309.21</td>
<td>$309.43</td>
<td>$349.79</td>
</tr>
</tbody>
</table>

Source: Milwaukee Police Department

As shown in Chart 13, multiplying our officer cost per arrest by the number of arrests yields a total annual cost of about $415,000 in 2012, with that number dropping to about $166,000 in 2015. The reduction in cost is attributed both to the dwindling arrest numbers and a reduction in the average arrest time from 4.4 hours in 2012 to 3.3 hours in 2015.

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10 In this chart, we isolate only those small-scale marijuana arrests that occurred under municipal ordinance, as opposed to State statute.
11 While we did not have the ability to analyze the issue, we can surmise that the decline in average time spent during an arrest may be at least partially attributed to smaller volumes of processing activity at district stations in light of sharply diminished total arrest numbers.
Chart 13: Total officer costs per year on small-scale municipal marijuana arrests, 2012-2015

Source: Milwaukee Police Department, Public Policy Forum analysis

Based on our discussions with MPD officials (and per the Chicago example), we estimate that a police encounter in which an individual is written a municipal citation and released at the site of the violation would take an average of 30 minutes of an officer’s time. Using that estimate, we calculated the cost and hours that would have been incurred had each of the small-scale marijuana arrests under the municipal ordinance from 2012-2015 been handled through the issuance of a citation without transport to a district station. The results – shown in Charts 14 and 15 – indicate that annual financial savings would have been $141,000 in 2015 (down from $368,000 in 2012), while annual officer hour savings would have been 3,040 hours in 2015 (down from 8,447 in 2012).

Chart 14: Estimated financial savings for issuing citations vs. arresting individuals, 2012-2015

Source: Milwaukee Police Department, Public Policy Forum analysis
Finally, as noted above, when we compare the average time spent in MPD custody by individuals arrested under the state statute, as opposed to the municipal ordinance, we find that the per-arrest difference is far more substantial. An arrest under the state statute involves not only a transport to the district station, but also a subsequent transport and processing at the Milwaukee County Jail. According to MPD data, the average time spent in MPD custody for a state arrest during the 2012-2015 timeframe was 12.3 hours, as compared to the 3.9-hour average time spent for municipal arrests.

Unfortunately, we were unable to calculate an MPD cost associated with the extra time, as that would have entailed a detailed analysis of staffing at each district station and assumptions regarding the fraction of each employee's time spent on marijuana-related offenders. However, we can assume that an average differential of 8.4 hours in MPD custody per arrest – combined with the added costs associated with personnel at the County Jail and the District Attorney's office for each arrestee under the state law – produces a significant added cost for arrests under state law as compared to arrests under the municipal ordinance.

**Policy Implications**

Our analysis indicates that the requirement that MPD arrest low-level, nonviolent marijuana offenders who ultimately are issued municipal citations necessitated about 2.8 hours of extra time per officer and an added cost of about $260 per encounter in 2015, as compared to a scenario in which the officers simply would write tickets on the street. Because the number of such arrests has plummeted in recent years, the maximum annual projected savings that would result from a change in policy to allow the issuance of marijuana citations at the location of the alleged infraction has dropped from about $368,000 in 2012 to about $141,000 today (if we assume that arrest activity

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**Chart 15: Estimated officer hours saved for issuing citations vs. arresting individuals, 2012-2015**

Source: Milwaukee Police Department, Public Policy Forum analysis
remains close to the 2015 level). Meanwhile, the maximum number of officer hours saved has declined from 8,447 in 2012 to 3,040 in 2015.12

In light of MPD’s annual budget of $277 million, a potential savings of up to $141,000 per year cannot be considered significant. Consequently, if the number of low-level arrests for marijuana possession continues to remain flat or decline, then a change in arrest policy regarding non-violent individuals encountered with small amounts of marijuana would not appear to be a high-priority matter from a fiscal perspective.

However, there may be other reasons to consider a change, such as an opportunity to improve police-community relations. Given our finding that the vast majority of low-level arrests involve African American males, some may view this as an opportunity to enhance relations with the African American community by lowering the number of arrests for low-level crimes that take place in predominately African American neighborhoods. It is important to note that such a policy change would not legalize marijuana possession in the City of Milwaukee or even further decriminalize it. On the contrary, it would simply alter the mechanism under which citations are issued under the existing municipal ordinance.

In addition, even though the reduction in officer hours would not produce a significant increase in officer resources to devote to more serious crimes, providing for more than 3,000 additional officer hours on the street per year still could have a positive impact on crime-fighting efforts.

Finally, it could be argued that in light of the recent change in the municipal ordinance that lowers the maximum fine for small-scale marijuana possession to $50, the means of enforcement (i.e. the requirement that an arrest be made) no longer is congruent with the seriousness of the infraction. Per that argument, State law and local policies dictating the need for an on arrest should catch up to the recent legal changes that give municipalities greater leeway to issue municipal citations for small-scale marijuana possession, as well as the longstanding provision of State law that allows them to set the penalties associated with such citations.

Our analysis also suggests that on a "per encounter" basis, there is a substantial savings associated with issuing a municipal citation for a small-scale marijuana possession offense versus pursuing prosecution under state law, even when the municipal citation requires an arrest. Consequently, from a fiscal and human resource perspective, the recent change to municipal ordinance and the new protocol developed by MPD and the D.A. should be seen in a positive light. It is important to recognize, however, that because the number of arrests under the state statute when the sole offense was possession of 25 grams or less of marijuana was so low to begin with, the total savings associated with the new law and policy will not be substantial.

12 We refer to "maximum" numbers of dollars and hours saved because a change in policy could allow officers the discretion to either issue citations on the street or make arrests, as opposed to mandating that they do either.
Policy Options and Conclusion

Our two-part series of reports on marijuana policy in Milwaukee considers potential policy changes through the lens of those who are concerned about the dedication of substantial taxpayer and law enforcement resources to cite, arrest, and/or prosecute those who possess small amounts of marijuana for personal use; and about the impacts of such enforcement on the African American and low-income populations who are being disproportionately cited and arrested for such violations. Given the national debate on possible legalization of marijuana – as well as recent debates that have taken place at Milwaukee City Hall – we believed those concerns and their policy implications to be worthy of fact-based analysis and discourse.

In our May 2015 report, we framed our concluding discussion in the context of strategies taken by other cities that had recently opted to modify their marijuana-related laws and policies because of similar concerns. Those strategies generally fall into three categories: adjusting law enforcement priorities; treating possession as a civil offense; and eliminating penalties altogether. Now that we have analyzed MPD arrest data and considered recently-adopted policy changes in Milwaukee, it is instructive to do so again.

Adjusting Law Enforcement Priorities

This approach aims to reduce the stringency of marijuana laws by placing limitations on the use of municipal resources to enforce those laws. For example, in Seattle, before marijuana was legalized statewide, voters passed an initiative that established marijuana-related activities as the lowest law enforcement priority for both the police department and the city attorney. Meanwhile, in Nashville, voters passed an initiative last summer that prevents any metro tax dollars from being used for the criminal prosecution of an adult for the possession of less than two ounces of marijuana.

Our analysis shows that arrests for minor marijuana infractions in Milwaukee have declined from about 1,300 in 2012 to about 600 in 2015, which suggests that use of police and taxpayer resources to enforce such infractions is diminishing. Also, our trend data confirm the statements of MPD officials that the department already considers minor marijuana possession infractions to be a very low law enforcement priority, and the recent protocol developed by MPD and the D.A. should keep the number of criminal prosecutions of non-violent individuals who are arrested with small amounts of the drug to a minimum. Consequently, it could be argued that an approach along the lines of Seattle or Nashville would be unnecessary.

It is worth noting, once again, that our analysis defines a "minor" marijuana infraction as one that involves possession of 25 grams or less with no intent to distribute, and with no other simultaneous violation. Total marijuana-related arrests similarly have trended downward in recent years, but nearly 3,000 such arrests occurred in 2015, which means that much larger amounts of law enforcement resources are devoted to enforcing marijuana laws, in general.

We are unable to determine the breakdown of marijuana infractions that do not meet our definition of "minor" between the categories of those arrested with more than 25 grams and/or those arrested on multiple violations. It would stand to reason that if a substantial number of those arrests are solely for possession of an amount greater than 25 grams with no intent to distribute and no simultaneous violations, then a Nashville-type approach that would set a higher threshold for when police should make an arrest (e.g. two ounces/56 grams, as opposed to 25 grams) could result in greater potential law enforcement resource savings.
Possession as a Civil Offense

This approach involves altering municipal codes to reclassify possession from a criminal to a civil infraction. As we have discussed, this is the approach already taken in Milwaukee, but other cities have established civil penalties that (arguably) constitute a greater degree of “decriminalization.” Ann Arbor, for example, has established a $25 fine for the first offense possession of any amount of marijuana, $50 for the second infraction, and $100 for the third and subsequent offenses. Philadelphia, meanwhile, has made private possession of 30 grams or less subject to a non-criminal citation and a $25 fine for each offense.

While City of Milwaukee leaders do have the ability to reduce the maximum fine under the municipal ordinance from the current $50, state statutes dictate that this could apply only to first offenses related to possession of 25 grams or less, and to any subsequent offenses of 25 grams or less that the D.A. elects not to prosecute. Consequently, the Ann Arbor approach of setting no limit on the possession amount, or of staggering the fine amount based on the number of offenses, may not be viable without a change to state law. Similarly, any effort by the Common Council and Mayor to specify a uniform fine amount for any offense (regardless of whether first or subsequent) without being subject to the D.A's involvement may not pass legal muster under State statutes.

As we have discussed above, another area in which there may be an opportunity to further reduce the impact of marijuana penalties on those caught possessing small amounts – and to preserve police resources for more serious crimes – is with regard to MPD's arrest policy. We have found that for the roughly 600 incidents per year in which MPD officers take enforcement action against an individual possessing a small amount of marijuana with no simultaneous violation, they are making an arrest and then issuing a citation, instead of having the discretion to issue a citation on the street and release the individual immediately.

Given the low priority already placed on these crimes by MPD and the D.A., this policy could be questioned. Arrests tend to be far more visible than encounters in which citations are issued, and we have found that most low-level marijuana arrests in Milwaukee are occurring in areas of the city where, some may argue, racial tensions run high and police-community relations have been challenged. Also, while the potential monetary and officer hour savings are insignificant in the context of MPD's total budget and workforce, it could be argued that those savings still should be pursued given the department's larger fiscal and human resource constraints.

In this case, as well, the ability of City officials to alter the policy is questionable, given a provision in State statutes that requires identifying data to be secured and filed for any individual taken into custody for a variety of offenses, including small-scale marijuana possession. Whether advanced mobile identification technologies or strategies may exist – or whether a different interpretation of state law may be permissible – are questions that policymakers may wish to pursue.

Eliminating Penalties for Possession

The third approach involves eliminating penalties for small amounts of marijuana possession altogether. Most of the cities that have eliminated marijuana possession penalties still have not fully legalized the drug, in that its purchase and sale still are prohibited. Examples of cities that fall into this category include Madison, where possession of up to 112 grams of marijuana in a private place is allowed without any penalties or consequences; and Detroit, where adults can possess less than one ounce of marijuana on private property without the threat of fine or criminal prosecution.
Our findings on MPD arrest trends could be used both by proponents and opponents of such an approach in Milwaukee. On the one hand, the fact that the number of individuals cited for low-level marijuana infractions has dropped so precipitously in recent years means that there would not be substantial financial and human resource savings if penalties were eliminated. Consequently, it could be argued that the benefits of having penalties in place (for those who believe such penalties are a deterrent to both abuse and distribution) outweigh any benefits that could be derived from diverting the current amount of financial and officer resources to more serious police pursuits.

Conversely, some may argue that given the already low number of annual citations/arrests for minor infractions – as well as the relatively low percentage of marijuana-related fines that are even paid – complete decriminalization with regard to possession of small amounts would have no adverse consequences from a public health and public safety perspective. Furthermore, those making this argument may attest that the community would reap benefits not only on the fiscal and police resources front, but also from eliminating racial disparities with regard to enforcement of the law.

It is important to point out that for the time being, this may be a hypothetical debate for Milwaukee policymakers, as eliminating penalties for small amounts of marijuana in the city would run counter to state law. However, given that other cities have similarly adopted marijuana ordinances that appear to run counter to state law – including Madison in our own state – that question would need to be further fleshed out by local and state lawmakers and justice system officials.

**Conclusion**

Overall, our review of MPD arrest data and policies reveals that in Milwaukee, there is far less reason to be concerned about excessive use of law enforcement resources to enforce laws that prohibit possession of small amounts of marijuana than there was four years ago. Arrests have decreased dramatically, and a new protocol developed by MPD and the D.A. confirms that both entities view minor marijuana-related infractions as worthy of only very limited prosecutorial and police attention.

Yet, while recent City ordinance changes and MPD actions have created a less restrictive policy and law enforcement paradigm for small scale marijuana possession (particularly considering that legalization is not an option under state law), there still may be grounds to consider additional modifications. As we have described, the low-level marijuana arrests that are occurring are in predominately African American and low-income parts of the city, which is cause for concern from the perspective of both social justice and police-community relations. Furthermore, the fact that arrests are occurring at all for violations that merit a maximum fine of $50 may suggest a level of law enforcement attention that is unnecessary and imprudent.

In considering whether future policy changes are warranted, policymakers also may wish to track and determine the permanency of the trends that have emerged during the past four years. The dramatic decline in low-level marijuana arrests is consistent with a similar decline in arrests overall, a development that has not received a great deal of public scrutiny. Whether the two are firmly linked and result from changes in search policy or other protocols has not yet been determined.

It may be that the downward trend will continue, or that current low-level marijuana arrest rates will become the norm. If that is the case, then further changes to marijuana policy may not justify prioritization from policymakers. However, if the downward trends in marijuana-related arrests are linked primarily to the policy prerogative of the current chief, or if those trends are likely to reverse with policy changes that increase arrest activity in general, then consideration of marijuana policy changes that would institutionalize the reduced use of resources may be a greater imperative.