



**Written Statement of the American Civil Liberties Union Before the
United States House of Representatives Committee on Oversight &
Government Reform, Subcommittee on Government Operations**

Hearing on

**District of Columbia's "Marijuana Possession Decriminalization
Amendment Act of 2014"**

*Thursday, May 8, 2014
at 9:30 am*

**Submitted by the
ACLU Washington Legislative Office,
The ACLU Criminal Law Reform Project,
The ACLU of the Nation's Capital**

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The American Civil Liberties Union (ACLU) welcomes this opportunity to submit testimony to the United States House of Representatives Committee on Oversight and Government Reform, Subcommittee on Government Operations for the hearing on the federal government's response to the District of Columbia's overwhelmingly popular decision to decriminalize small amounts of marijuana. The ACLU is a nationwide, nonprofit, non-partisan organization with more than half a million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. The ACLU of the Nation's Capital (ACLU-NCA) works to protect civil liberties and civil rights in Washington, D.C. through public education, legislative advocacy and litigation.

In 2013, the ACLU published an unprecedented nationwide study on the significant and widespread racial disparities in marijuana arrests from 2001-2010 ("ACLU report").¹ The report documented arrest rates for marijuana possession by race for all 50 states (and the District of Columbia) and their respective counties. Shortly after the publication of the national report, the ACLU-NCA released a shadow report entitled, "Behind the D.C. Numbers: The War on Marijuana in Black and White," ("ACLU-NCA report")² focusing on racial disparities in marijuana arrests here in the District of Columbia. As detailed further below, the report found that Black people in the District of Columbia are 8 times more likely than whites to be arrested for marijuana possession, notwithstanding that these two groups use marijuana at roughly equal rates.

The ACLU-NCA report cast a spotlight on racial disparity in marijuana arrests and selective enforcement of the District's marijuana laws, and it catalyzed several months of high-profile public debate about the root causes of those disparities. Soon after the release of the report, in the face of increasing public pressure to act, members of the D.C. Council signaled their intention to prepare legislation to address the problem. In March 2014, after months of careful deliberation, the D.C. Council passed, by a margin of 10-1, the Marijuana Possession Decriminalization Amendment Act of 2014 ("the Act"). The Act has been cited as among the first marijuana reform efforts primarily aimed at addressing racially biased enforcement of drug laws and a necessary step to move smart, fair, and compassionate drug policy in the District.³ We urge the Committee and its members to respect this local and widely supported measure to address problems related to racial disparities in arrests by the Metropolitan Police Department.

¹ ACLU, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests* (2013) (hereinafter ACLU report), available at <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

² ACLU of the Nation's Capital, *Behind the D.C. Numbers: The War on Marijuana in Black and White* (2013) (hereinafter ACLU-NCA report), available at <http://aclu-nca.org/sites/default/files/docs/2013/ACLU%20Marijuana%20in%20Black%20and%20White%20Behind%20the%20DC%20Numbers%207%202013.pdf>.

³ S.A. Hughes, *D.C.'s Marijuana Decriminalization Bill Heads to Congress after Being Signed*, DCist, March 31, 2014, available at http://dcist.com/2014/03/marijuana_decriminalization_bill_si.php; *Washington, D.C. City Council Voted to Decriminalize Marijuana Possession*, Huffington Post, March 3, 2014, http://www.huffingtonpost.com/the-washington-dc-city-counci_b_4900223.html.

Prior to the passage of the Act, adult possession of any amount of marijuana was a misdemeanor punishable by up to six months in jail and/or up to a \$1,000 fine.⁴ The Act was introduced as Bill 20-409 in July 2013 by D.C. Council members Tommy Wells, Marion Barry, Kenyon McDuffie, Jack Evans, Anita Bonds, David Grosso, Jim Graham, and Mary Cheh, and cosponsored by Chairman Phil Mendelson and Council member David Catania.

The Act states that the possession of one ounce or less of marijuana is no longer a criminal offense under the laws of the District, but is instead a civil offense subject to a \$25 fine. Law enforcement officers enforcing the Act will issue a Notice of Violation, and are authorized to seize all marijuana and paraphernalia visible to the officer at the time the Violation is issued. In passing the Act, the District joined 11 states that had already instituted similar legislation.⁵ At present, there are 13 states where marijuana possession has become a civil offense under state law, and two states that have passed measures to tax and regulate the production, sale and possession of marijuana. In addition, 21 states and the District of Columbia allow certain seriously ill patients to access marijuana for medical purposes.⁶

Extreme Racial Disparities in D.C. Marijuana Enforcement

The ACLU and ACLU-NCA reports demonstrated, with hard data, that the District of Columbia has a higher per capita arrest rate, greater racial disparities in marijuana possession arrests, and spends more money on marijuana enforcement than almost any state or county in the country.⁷ The average national disparity is already stark: Black people are 3.73 times more likely than white people to be arrested for marijuana possession,⁸ In the District, this number is considerably worse. Black people here are a stunning 8 times more likely to be arrested for marijuana possession despite near equal usage rates in Black and white populations.

Additional statistics provide context for this troubling fact. In 2010, slightly more than half the District's population was Black, yet a staggering 91 percent of all marijuana arrests that year were of Black people.⁹ In 2010, law enforcement officers in the District made a total of 5,393 marijuana arrests amounting to nearly 15 arrests per day.¹⁰

The racial disparities illustrated by this data affirm the collective experience of Black communities in the District, which have long understood that there is a selective application of the War on Drugs. Indeed, the impetus to study marijuana in the District in depth came amidst dozens of reports received by the ACLU-NCA that Metropolitan Police Officers were regularly

⁴ D.C. Code § 48-904.01.

⁵ At present, 13 states have decriminalized the adult possession of small amounts of marijuana. This total number includes one state that decriminalized marijuana through case law and one state that passed decriminalization legislation after the District of Columbia did. Those 13 states are as follows: Alaska, California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Nebraska, New York, Oregon, Rhode Island, Vermont, and Washington state.

⁶ Since 1996, 22 U.S. jurisdictions have enacted medical marijuana laws: Alaska, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington.

⁷ See ACLU-NCA report, *supra* n. 2, at 4.

⁸ ACLU, *supra* n. 1, at 47.

⁹ See ACLU-NCA report, *supra* n. 2, at 4.

¹⁰ *Id.* at 4.

stopping young people based solely on the alleged odor of marijuana and initiating searches that in many cases failed to find any contraband. Accordingly, the marijuana arrest data, with its extreme racial disparities, is just the tip of the iceberg. Behind this data are likely thousands of other police encounters that use marijuana as pretext to stop and search people in the District. Unfortunately we cannot analyze these stops empirically, as the Metropolitan Police Department (“MPD”) does not systematically document them.

Following the release of the ACLU-NCA report, there was a dramatic shift in the already-evolving public opinion regarding marijuana prohibition in the District.¹¹ The ACLU-NCA’s data mapping¹² showed that the vast majority of marijuana possession arrests take place east of 16th street, where the overwhelming majority of the District’s African American residents live and far from the numerous colleges scattered across the western part of the District. This trend made clear that marijuana enforcement was a police priority only in certain parts of the District. D.C. Council members who previously had been skeptical of marijuana reform rallied around the need for change in the face of this powerful data.

Considerations Beyond Racial Disparities

Although racial disparities were a key problem driving marijuana reform in the District, other considerations also played a significant role. First, the Council was concerned that the investment of police time and other resources in marijuana enforcement was lowering the force’s ability to prevent and solve more serious crimes. After any arrest, the District incurs costs related to processing and sometimes incarcerating arrestees, providing legal representation for indigent defendants and, ultimately, prosecuting those who have been formally charged. Indeed, in 2010, the District spent more per capita on marijuana enforcement than any of the 50 states, totaling between an estimated \$9 million and \$43 million for police enforcement, judicial and legal fees, and incarceration expenses.¹³

Second, the Council was concerned about burdening so many citizens with the consequences of a conviction for marijuana possession, which may include loss of employment, loss of housing, inability to get educational loans, and other serious and debilitating consequences. This legal discrimination against people, disproportionately Black people, for an activity that a majority of the country thinks should be legal, has become politically intolerable in the District.¹⁴ The Council recognized that these consequences take a toll on District residents and entire neighborhoods, which limits the growth and flourishing of the city.

¹¹ In 2010, District residents were split on legalizing small amounts of marijuana for personal use, with 46 percent in favor and 48 percent opposed. Whites were more likely to support legalization than Blacks (60 percent vs. 37 percent). A.C. Davis & P.M. Craighill. *In Major Shift, D.C. Residents Strongly Support Legalizing Marijuana*, Washington Post, January 15, 2014, available at: http://www.washingtonpost.com/local/dc-politics/in-major-shift-dc-voters-strongly-support-legalizing-marijuana/2014/01/15/9fcc6d04-7d6a-11e3-93c1-0e888170b723_story.html.

A new Washington Post poll, released January 15, 2014, found that 63 percent of District residents—of every age, race, and ethnicity—supported legalization. Of the 34 percent who oppose, nearly half of them support decriminalization. *Id.*

¹² Available at <http://aclu-nca.org/billions-of-dollars-wasted-on-racially-biased-arrests-behind-dc-numbers>

¹³ See ACLU-NCA report, *supra* n. 2, at 5.

¹⁴ A.C. Davis & P.M. Craighill, *In Major Shift, D.C. Residents Strongly Support Legalizing Marijuana*, Washington Post, January 15, 2014, available at http://www.washingtonpost.com/local/dc-politics/in-major-shift-dc-voters-strongly-support-legalizing-marijuana/2014/01/15/9fcc6d04-7d6a-11e3-93c1-0e888170b723_story.html.

Third, there were serious concerns about the necessity and efficacy of a criminal justice approach to limiting the consumption of marijuana. Studies have dispelled the belief that marijuana acts as a gateway drug¹⁵ and have found that criminal penalties for possession of small amounts of marijuana do not deter marijuana use.¹⁶

The Implications of the New Civil Penalty

The Act removes the criminal penalty for marijuana possession of one ounce or less and replaces it with a civil Notice of Violation and a \$25 fine. The purpose of this fine—which is lower than fines in other decriminalization jurisdictions—is to lessen the burden on individuals and families for whom a larger fine could be devastating financially, while still providing a mechanism to discourage marijuana use. For the many individuals and families in the District living below the poverty line, who, based on arrest patterns, are more likely to face the Act’s civil penalty, the \$25 marijuana possession fine will constitute a significant proportion of their available income.¹⁷

The Act does not include any requirement that individuals who are found to possess marijuana show some form of identification to law enforcement. Under District law, law enforcement has no authority to compel someone to identify himself or herself after the alleged commission of a civil offense, unless it is tied to a specific licensing or regulatory structure such as a driver’s license or vehicle registration. Indeed, the D.C. Circuit has explained that pedestrians do not need to carry identification: “That citizens can walk the streets, without explanations or formal papers, is surely among the cherished liberties that distinguish this nation from so many others.” *Gomez v. Turner*, 672 F. 2d 134, 143 n.18 (D.C. Cir. 1982). Under existing D.C. Code § 50- 2303.07, a person who commits a civil offense must give the officer his or her true name and address (or face a misdemeanor for the failure to do so), but is not required to “possess or display any documentary proof” of that information.

Finally, reducing the penalty for marijuana possession raises important questions about the potential impact on use and abuse of marijuana by young people under the age of 18. A growing body of data suggests that severity of penalties for marijuana possession bears no causal relationship to teen usage. Using state-by-state data from the Centers for Disease Control and Prevention’s High School Youth Risk Behavior Survey, increases in high school marijuana

¹⁵ Ralph E. Tarter et al., *Predictors of Marijuana Use in Adolescents Before and After Licit Drug Use: Examination of the Gateway Hypothesis*, 12 American Journal of Psychiatry 163, 2134-40 (2006).

¹⁶ C. Thies and C. Register, *Decriminalization of marijuana and demand for alcohol, marijuana and cocaine*, The Social Sciences Journal 30, 385-399 (1994).

¹⁷ For a household of four that has yearly income equal to the federal poverty line (\$23,550), the \$25 fine is comparable to nearly 10% of that family’s monthly food budget (based on budget allocations from the Massachusetts Institute of Technology living wage calculator for DC, available at <http://livingwage.mit.edu/counties/11001>).

The burden is even greater for larger families and households with incomes that fall short of the federal poverty line. The cost of the fine is especially burdensome considering that more than half of those arrested for marijuana offenses in Police District 6, the Police District with the highest number of arrests in 2010, were unemployed at the time of their arrest.

usage were compared between states with marijuana decriminalization and those without.¹⁸ Between 2009 and 2011 in states without decriminalization measures in place, marijuana use increased by 1.2% on average. In states with decriminalization laws on the books for the entire period, marijuana use decreased by 1.3% on average.¹⁹ Therefore, national trends that cite the overall increase in teen marijuana use cannot be attributed solely to the relaxation of marijuana laws. Moreover, contrary to popular perception, most marijuana possession arrests in the District are of adults, not juveniles. In 2010, young people under the age of 18 made up just 3.8 percent of the total arrests in the District for marijuana related offenses.

Enforcement of Federal Marijuana Laws in the District of Columbia

As many commentators have recognized, the 40-year War on Drugs, waged on our own citizens, has been a deeply flawed and failed effort.²⁰ A key component of its failure has been the total prohibition of marijuana, which has resulted in the expenditure of vast amounts of money prosecuting and incarcerating countless people whose potential is decimated by wasted time behind bars and complex webs of collateral consequences that obstruct their ability to succeed in society.²¹ Worse still, the burden of marijuana prohibition falls disproportionately on Black

¹⁸ Centers for Disease Control and Prevention, *1991-2011 High School Youth Risk Behavior Survey Data*, available at <http://nccd.cdc.gov/YouthOnline/ServerRedirect.aspx>. The ACLU-NCA compared all state data that was made available through the study for 34 states in which marijuana has not been decriminalized and 6 states (AK, CO, ME, MA, NE, NY) where marijuana was decriminalized for the entire period between 2009 and 2011.

¹⁹ Centers for Disease Control and Prevention (CDC). *1991-2011 High School Youth Risk Behavior Survey Data*. Available at <http://nccd.cdc.gov/YouthOnline/ServerRedirect.aspx>. Data was unavailable for 10 states including California, Iowa, Minnesota, Montana, Nevada, Ohio, Oregon, Pennsylvania, Virginia, and Washington.

²⁰ For example, the number of sentenced prisoners under state jurisdiction for drug offenses increased 52 percent between 1990 and 2010. See Allen J. Beck & Paige M. Harrison, U.S. Dep't of Just., Bureau of Just. Statistics, *Prisoners in 2000*, 1, 12 (2001), available at <http://bjs.gov/content/pub/pdf/p00.pdf> (reporting the state prison population at 708,370 in 1990 and that 22 percent of that population, or 155,843 people, were incarcerated for drug offenses); E. Ann Carson & William J. Sabol, U.S. Dep't Of Just., Bureau of Just. Statistics, *Prisoners in 2011*, 9 (2012), available at <http://www.bjs.gov/content/pub/pdf/p11.pdf> (reporting the state prison population sentenced for drug offenses at 237,000 in 2010).

Despite the increase of people incarcerated for drug offenses, drug use not only failed to decline, but instead increased. In 2011, an estimated 22.5 million Americans aged 12 or older—8.7 percent of the population—reported using drugs in the past month. *Drug Facts: Nationwide Trends*, Nat'l Inst. on Drug Abuse (2012), available at <http://www.drugabuse.gov/publications/drugfacts/nationwide-trends>. This is an 8.3 percent increase from 2002. *Id.*

On the 40th anniversary on the drug war, President Jimmy Carter called for an end to the global drug war, noting that global drug consumption and the prison population explosion have increased since it started. Jimmy Carter, Op-Ed., *Call Off the Global Drug War*, N.Y. Times, June 16, 2011, available at <http://www.nytimes.com/2011/06/17/opinion/17carter.html>. President Carter called for the United States to adopt the reforms laid out by the Global Commission on Drug Policy, which recommends substituting treatment for imprisonment for nonviolent drug offenders, and a shift toward combating violent criminal organizations rather than going after nonviolent, low-level drug offenders. *Id.*

²¹ The ACLU estimates that states spent \$3.6 billion enforcing marijuana possession laws in 2010 alone. See ACLU, *supra* n.1, at 75 fig.24. Meanwhile, there are dire collateral consequences that accompany a marijuana arrest and conviction, both for society and the individual. For example, public safety is affected: studies have shown that “marijuana arrests in particular, do not lower criminal activity, and may actually increase crime.” See Katherine Beckett & Steve Herbert, ACLU of Wash., *The Consequences And Costs Of Marijuana Prohibition*, 31 (2008), available at http://www.aclu-wa.org/library_files/BeckettandHerbert.pdf (citing Bernard E. Harcourt & Jens Ludwig, *Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000*, U. of Chi. L. & Econ., Working Paper No. 317, 173 (2007), available at <http://www.econ.brown.edu/>

Americans who, across the country, are arrested, prosecuted, and convicted of marijuana offenses at rates that far exceed their rates of offending behavior as compared to whites.²²

As is the case nationwide, there is concurrent federal and local jurisdiction in D.C. What sets D.C. apart is that significant pockets of the city are federally owned land and buildings.²³ The removal of criminal penalties under D.C. law for possession of small amounts of marijuana will have no impact on the applicability of federal law in D.C., which may be enforced by both MPD and federal law enforcement agencies.²⁴

However, if past patterns continue, there is not likely to be much enforcement of the federal marijuana possession law. Prior to passage of the Act, more than 99 percent of marijuana possession arrests by MPD and federal officers in the District were made under D.C. law, not federal law.²⁵ In addition, based on an analysis of all marijuana related arrests by all law enforcement agencies in D.C. in 2010, the ACLU-NCA found that only about 1 percent of marijuana arrests occurred on Federal land and approximately 3 percent of marijuana arrests occurred within a one block radius of a federally owned or leased building.²⁶

Of course, law enforcement may choose to increase federal marijuana law enforcement for minor possession cases in order to fill the gap left by the changed D.C. law, although whether the U.S. Attorney's office for D.C. and the Federal District Court of D.C. will support expansion of federal charging of marijuana offenses in the wake of D.C. law reform remains to be seen. In any event, while the Act will limit the risk of arrests for marijuana possession of one ounce or less of marijuana, there is still a risk of arrest under federal law, which will be assumed by any individual who chooses to possess it.

Conclusion

The War on Drugs and the racially disparate policing practices that have characterized the War on Drugs have devastated communities in the District. Despite nearly equal usage rates between Black and white people and comparable populations, nearly 91 percent of all marijuana arrests in the District in 2010 were of Black people. To address this staggering racial disparity the D.C. Council took an appropriate and well-considered step to address the harms of marijuana enforcement in the District under local law. Using mid-range figures, the ACLU estimates that D.C. spent in 2010 nearly \$18 million on police enforcement of marijuana laws, more than \$6 million in judicial and legal costs related to marijuana arrests and more than \$2 million

fac/glenn_loury/louryhomepage/teaching/Ec%20222/marijuana-arrests-Ludwig.pdf). In addition, the financial costs to the individual can include lawyer's fees, missed or lost work, and bail, fines or court costs. *Id.* at 33-34. Perhaps most serious are the costs that are impossible to quantify such as emotional stress, familial tensions and disruptions, and loss of faith in the legal system. *See id.* at 32.

²² Blacks, on average, are 3.7 times more likely than whites to be arrested for marijuana possession despite using marijuana at comparable rates. *See* ACLU, *supra* n. 2, at 47 fig. 9.

²³ *See* Exhibit A, below.

²⁴ The District of Columbia Police Coordination Act of 2011, H.R. 2199, 107th Congress (2001) (enacted.) Print.

²⁵ In 2010, the MPD made the most marijuana arrests on federal land of any law enforcement agency, but these arrests constituted less than 1 percent of all marijuana arrests made by MPD. The U.S. Park Police was the only other police agency to make marijuana arrests on federal land. These arrests amounted to about 5 percent of all marijuana arrests made by the U.S. Park Police. *See* Table 1, below.

²⁶ *See* Table 1, below.

incarcerating individuals convicted of violating marijuana-related laws. This money is better invested in our community to enhance public health and safety and police-community relations. We urge the Committee and its members to respect this local and widely supported measure to address problems related to racial disparities in arrests by the Metropolitan Police Department. The ACLU looks forward to measuring the effectiveness of this bill in addressing racial disparities in law enforcement and is prepared to advocate further in this arena.

APPENDIX

The exhibits below analyze the entire universe of marijuana related arrests occurring in the District in 2010. This data was obtained from the Metropolitan Police Department through an ACLU Freedom of Information Act Request. The data set includes the arrest address for all 5,393 arrests for marijuana related offenses that occurred in DC in 2010. These addresses were geocoded to points using the ArcGIS World Geocoding Service. The locations of federal lands and federal buildings were acquired from the DC GIS Data Clearinghouse/Catalog.

Marijuana Arrests on Federal Land	56
Total Marijuana Arrests	5393
Percentage of Arrests Occurring on Federal Land	1.04%
Marijuana Arrests Occurring within 1 block of a federal building	172
Percentage of Arrests Occurring within 1 block (est .1 mi) of a federal building	3.19%

	MPD	US Park Police	Metro Police	Capitol Police	All Others
Offender Race: Black	91.85%	78.46%	93.59%	70.37%	71.88%
Offender Race: White	7.45%	20.00%	5.13%	25.93%	28.13%
Offender Sex: Male	89.31%	85.77%	93.59%	74.07%	84.38%
Arrest Charge: Possession	73.34%	84.23%	87.18%	88.89%	78.13%
Possession Arrests where Possession was Sole Charge	55.13%	42.47%	44.12%	33.33%	40.00%
Arrest Charge: Distribution	4.80%	0.38%	0.00%	0.00%	3.13%
Arrest Charge: PWID	21.86%	15.38%	12.82%	11.11%	18.75%
Arrests Charge: Multiple - Other Criminal Charges	44.24%	55.00%	57.69%	62.96%	59.38%
Arrests on Federal Land	0.88%	4.62%	0.00%	0.00%	0.00%
Arrests Under Federal CSA Statute	0.18%	0.38%	0.00%	0.00%	0.00%
Total Marijuana Arrests	4996	260	78	27	32

Exhibit A

2010 DC Marijuana Arrests on Federal Land

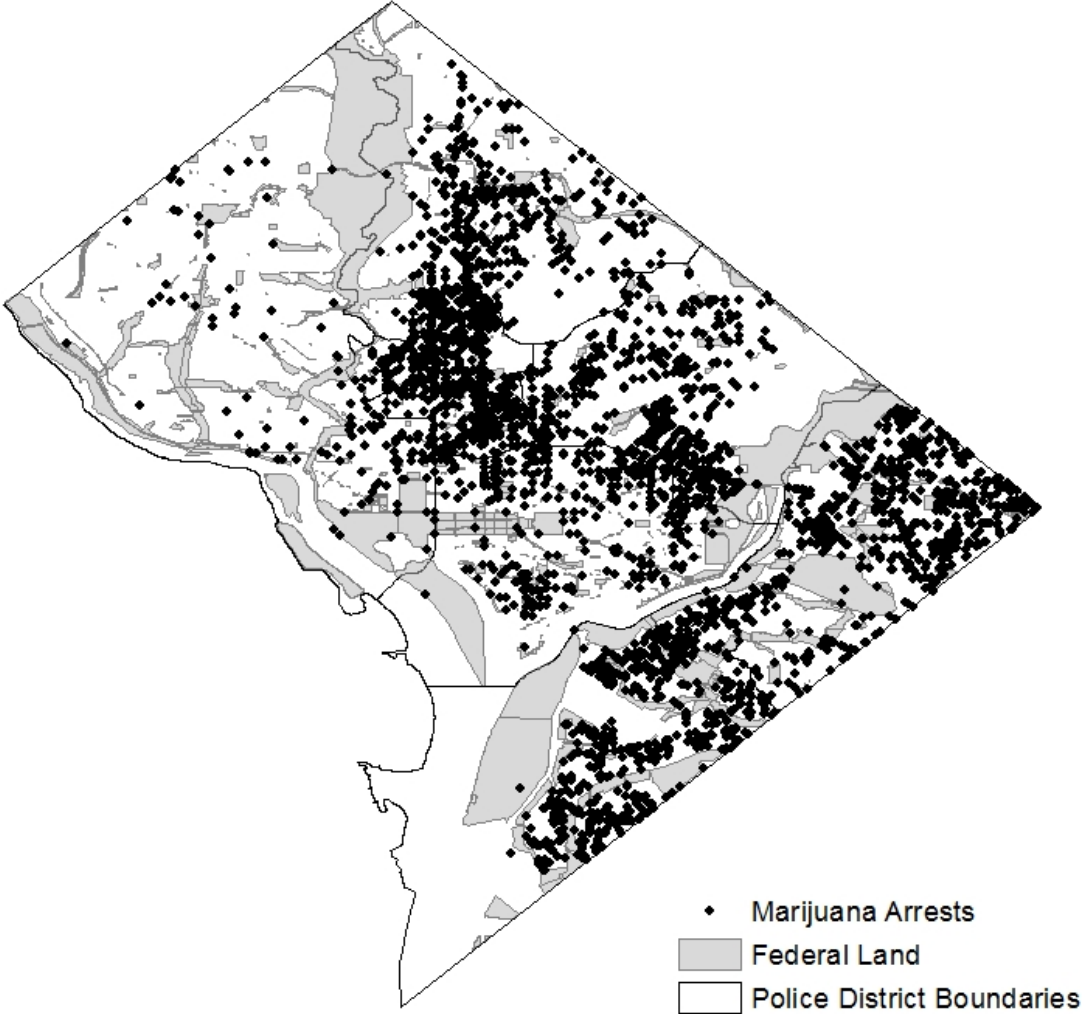
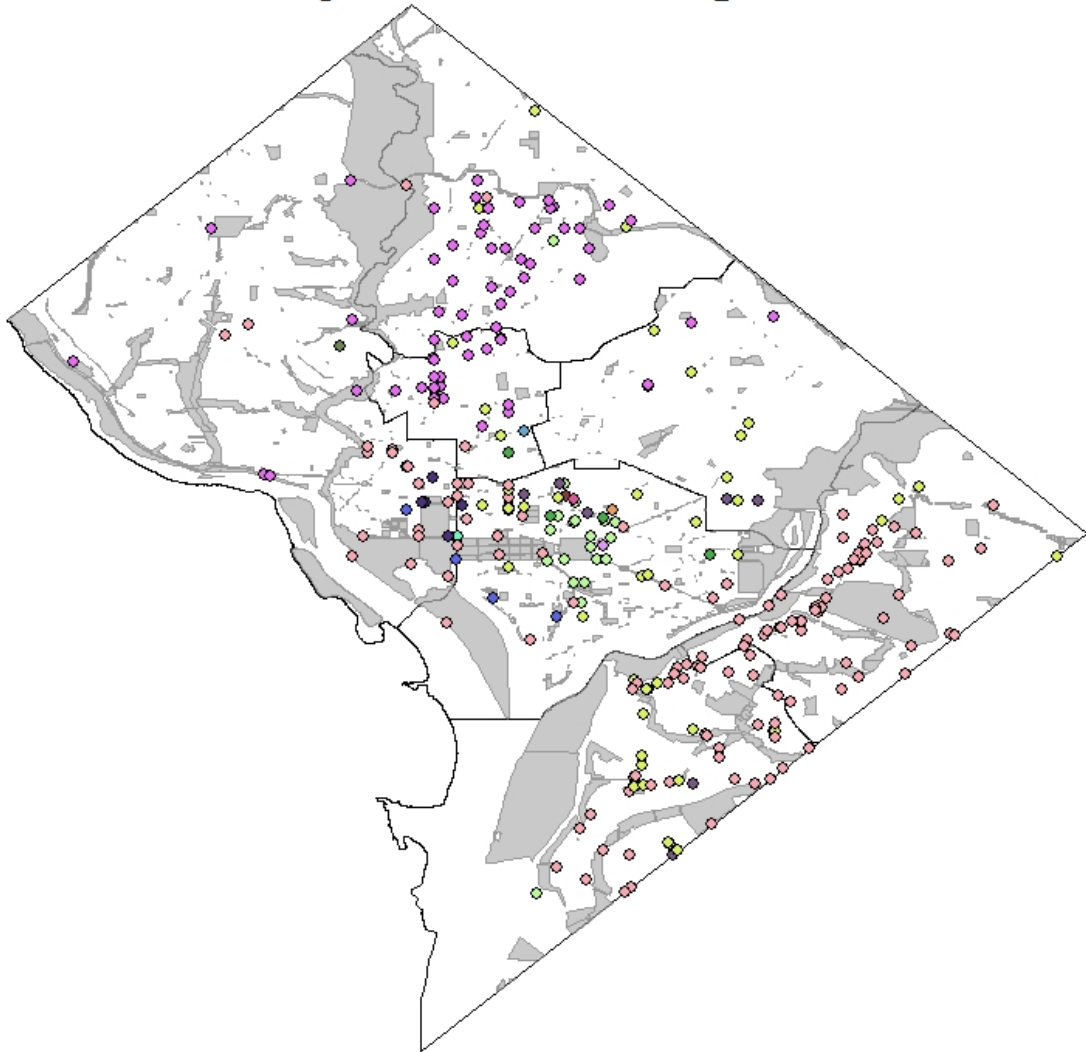


Exhibit B

2010 DC Marijuana Arrests By Non-MPD Agencies



- Arresting Agency**
- | | | |
|--------------------------|------------------------------|---------------------------------|
| • Bureau Engraving | • Federal Protective Service | • Smithsonian Police |
| • DC Protective Services | • GPO Police | • Supreme Court Police |
| • DEA | • Metro Transit Police | • U.S. Capitol Police |
| • FBI | • National Zoological Park | • U.S. Park Police |
| | • Other | • U.S. Park Police (Rock Creek) |
| | | • White House Secret Service |
| | | ■ Federal Land |
| | | □ Police District Boundaries |

Exhibit C

2010 DC Marijuana Arrests by U.S. Park Police

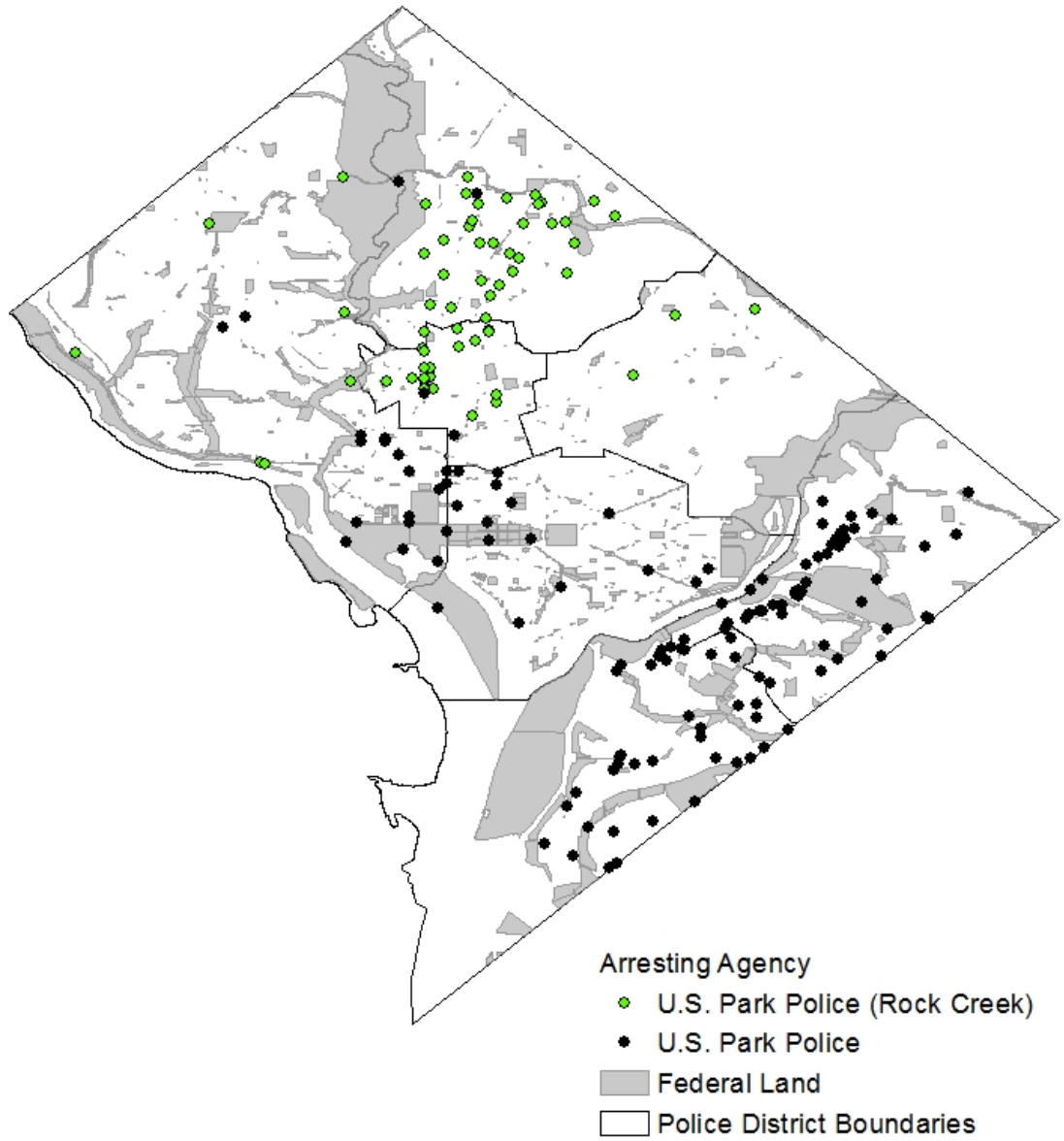
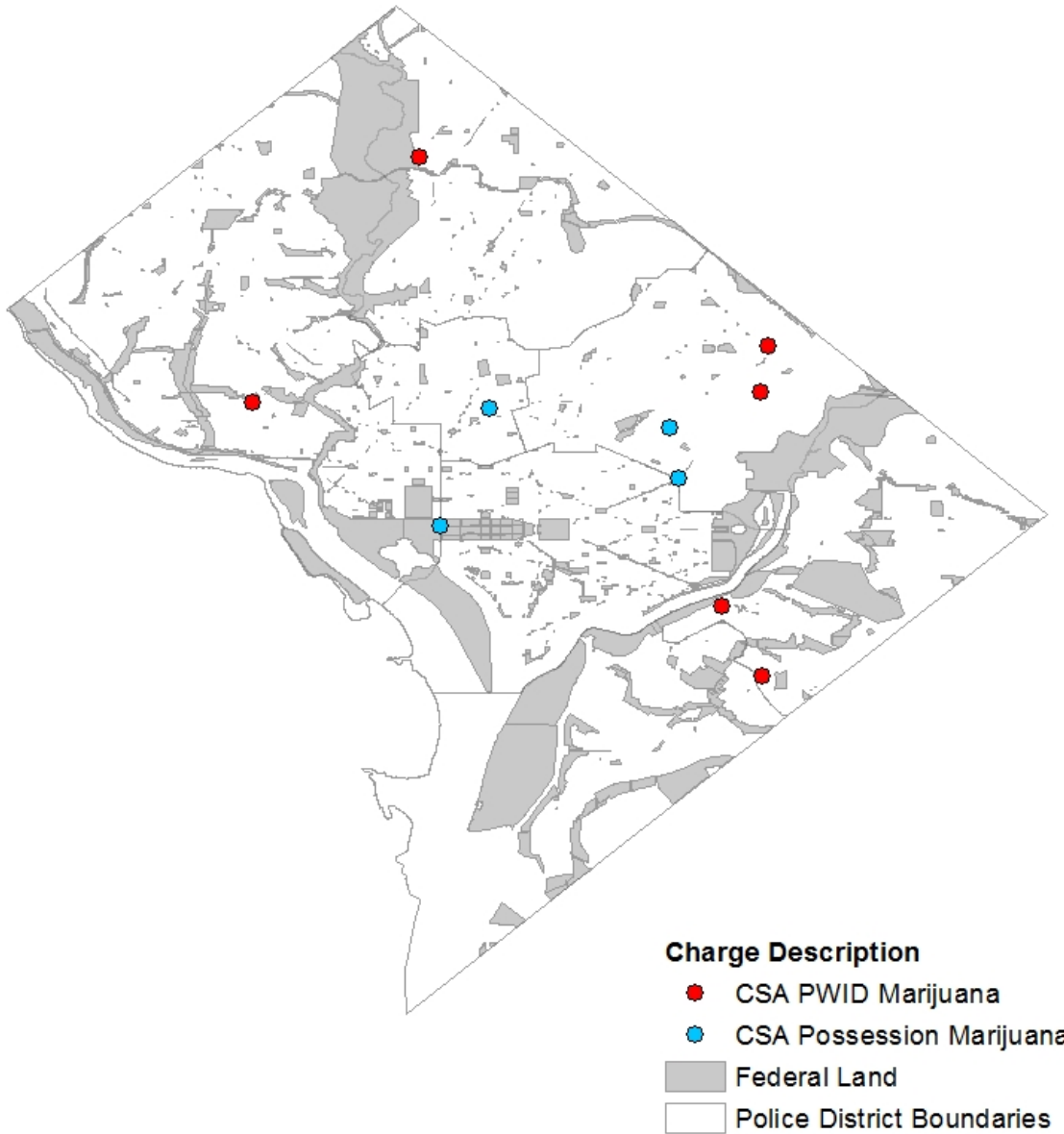


Exhibit D 2010 DC Marijuana Arrests Under Federal Statute



Behind the D.C. Numbers



BILLIONS OF DOLLARS WASTED ON RACIALLY DISPARATE ARRESTS

REVISED JULY 2013




Behind the D.C. Numbers: The War on Marijuana in Black and White

June 2013; revised July 2013



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Behind the D.C. Numbers

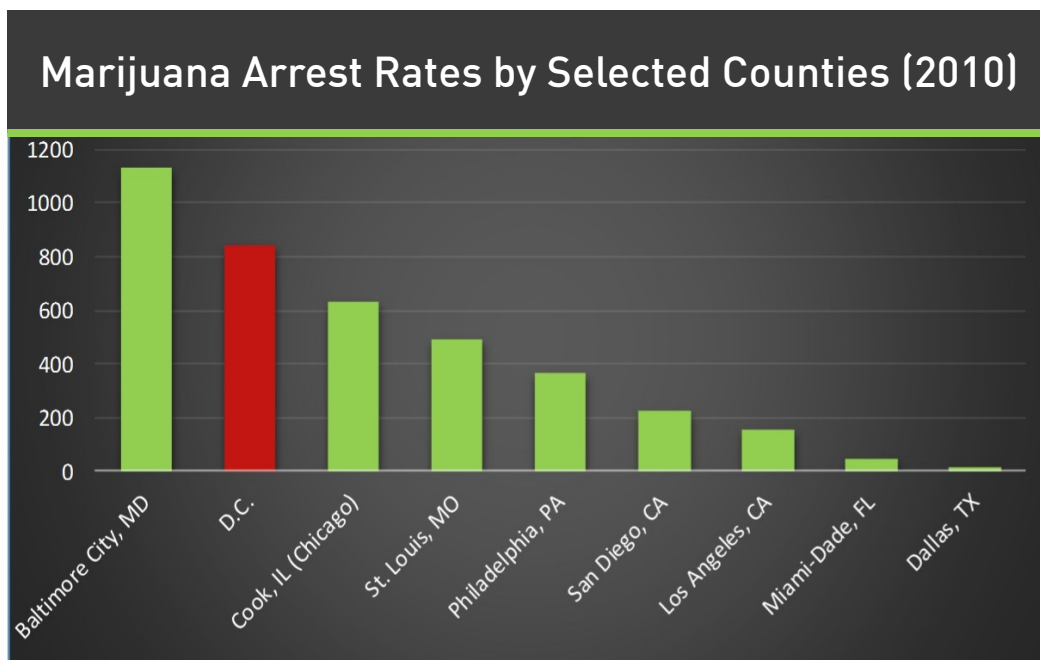
Nationwide, police departments are making arrests for possession of marijuana at a startling rate, according to a new report by the American Civil Liberties Union. Data obtained by the ACLU show glaring racial disparities in marijuana arrests during the past decade as well as an inordinate amount of public funds spent on over-policing. These data are highly suggestive of racial bias, and they affirm the collective experience of Black communities, which have long known that there is a selective application of the War on Drugs in the United States.

Sadly, the District of Columbia is among the worst offenders in these national trends. The District has a higher per capita arrest rate, greater racial disparity in marijuana possession arrests, and spends more money in marijuana

enforcement than almost any other state or county in the country.

Our analysis of arrest data provided by the Metropolitan Police Department (MPD) raises several red flags: What evidence are police officers using to obtain probable cause or reasonable suspicion to stop and search these people? Why are arrest rates highest in “gentrifying” neighborhoods? Are there financial incentives, in the form of federal funding, which reward high volumes of arrests for minor crimes?

This report represents the start of a renewed inquiry by the ACLU of the Nation’s Capital into the impact of the War on Marijuana on both Black and white communities in the District of Columbia.



HIGH RATES OF ARRESTS

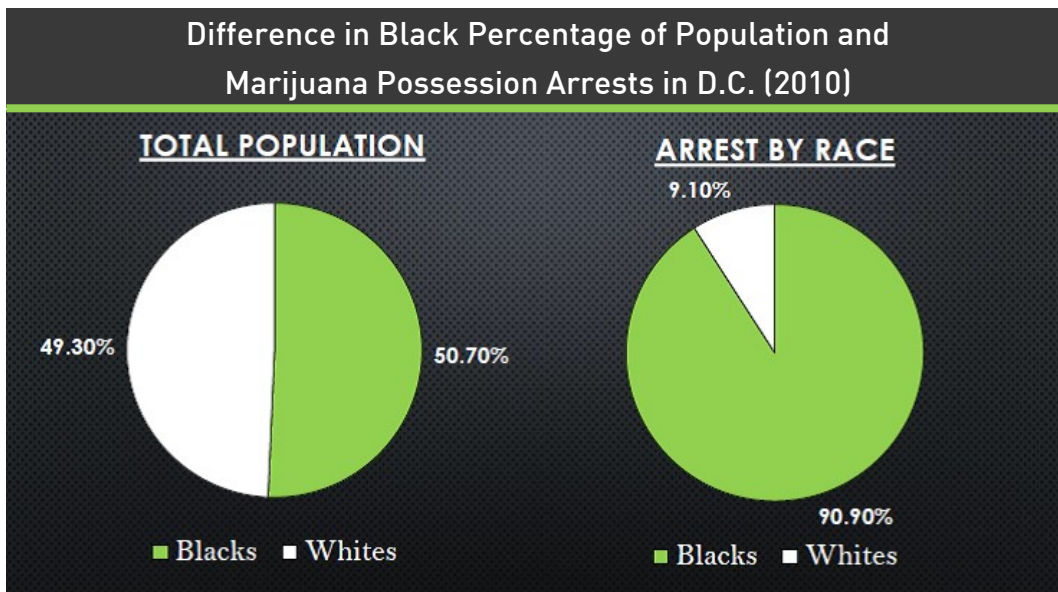
Nationally, while overall drug arrests have dropped, marijuana arrests have risen by 18 percent since 2001. In the District marijuana arrests have risen by 61.5 percent between 2001 and 2010. According to data produced by the Metropolitan Police Department, **law enforcement officers in the District of Columbia made a total of 5,393 marijuana arrests in 2010** —

nearly 15 arrests a day. In 2010, D.C. had a higher marijuana arrest rate than any state, at 846 arrests per 100,000 people. On a county level, D.C. ranked as number seven out of 945 counties examined in the National ACLU's report — far outranking counties such as Los Angeles, Miami-Dade and Philadelphia. Overall, marijuana arrests account for nearly half, 46.9 percent, of all drug arrests in the District.

HIGH RACIAL DISPARITY

As the number of marijuana arrests has increased, so have racial disparities. While the white arrest rate nationwide has remained fairly constant between 2001 and 2010, at about 192 arrests per 100,000 people, the Black arrest rate has jumped from 521 per 100,000 in 2002 to 716 per 100,000 in 2010. Thus, despite roughly equal marijuana usage rates, nationally Blacks are 3.73 times more likely than whites to be arrested for marijuana possession. In the District, Black people are a full eight times more likely than non

-Blacks to be arrested for marijuana possession. Indeed, in D.C. slightly more than half the population is Black, yet **in 2010 a staggering 91 percent of all marijuana arrests were of Black people.** The Black marijuana arrest rate in the District is 1,489 per 100,000, more than twice the national Black arrest rate of 716 per 100,000. This rate is an increase from 2001, when the rate of Black marijuana arrests in D.C. was 770 per 100,000. By comparison, the white marijuana arrest rate in the District is 185 per 100,000, which is below the national rate of 192 per 100,000.



SELECTIVE ENFORCEMENT

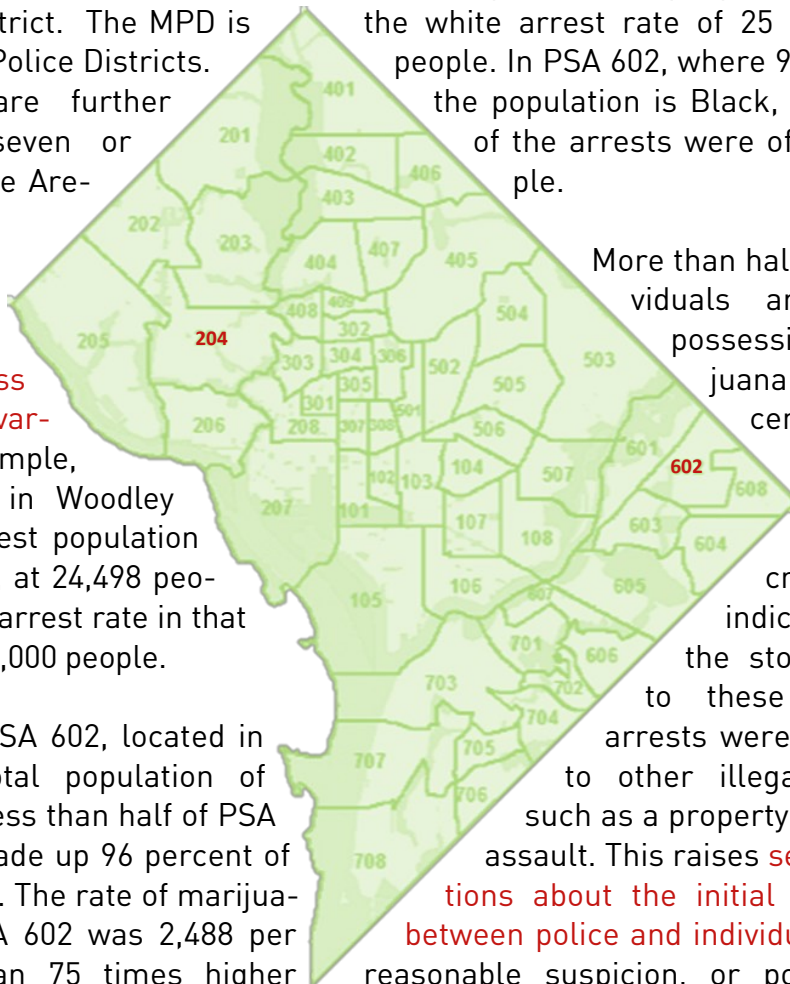
These arrests are not distributed evenly throughout the District. The MPD is divided into seven Police Districts. Those Districts are further subdivided into seven or more Police Service Areas (PSAs).

The ACLU's analysis found that **arrest rates across Districts and PSAs varied greatly**. For example, PSA 204, located in Woodley Park, had the largest population of any PSA in 2010, at 24,498 people. The marijuana arrest rate in that PSA was 33 per 100,000 people.

Compare that to PSA 602, located in Anacostia. The total population of PSA 602 is 9,647, less than half of PSA 204, and Blacks made up 96 percent of the PSA population. The rate of marijuana arrests for PSA 602 was 2,488 per 100,000, more than 75 times higher than PSA 204. When broken down by race, though Black people accounted for only

4.5 percent of the total population in PSA 204, the Black arrest rate in 2010 was 181 per 100,000 people, compared to the white arrest rate of 25 per 100,000 people. In PSA 602, where 96 percent of the population is Black, 100 percent of the arrests were of Black people.

More than half of the individuals arrested for possession of marijuana — 54 percent — were not charged with any other crime, which indicates that the stops that led to these marijuana arrests were not related to other illegal behavior, such as a property crime or an assault. This raises **serious questions about the initial interactions between police and individuals** and the reasonable suspicion, or possible lack thereof, that led to the initial stop and subsequent searches.



WASTED RESOURCES

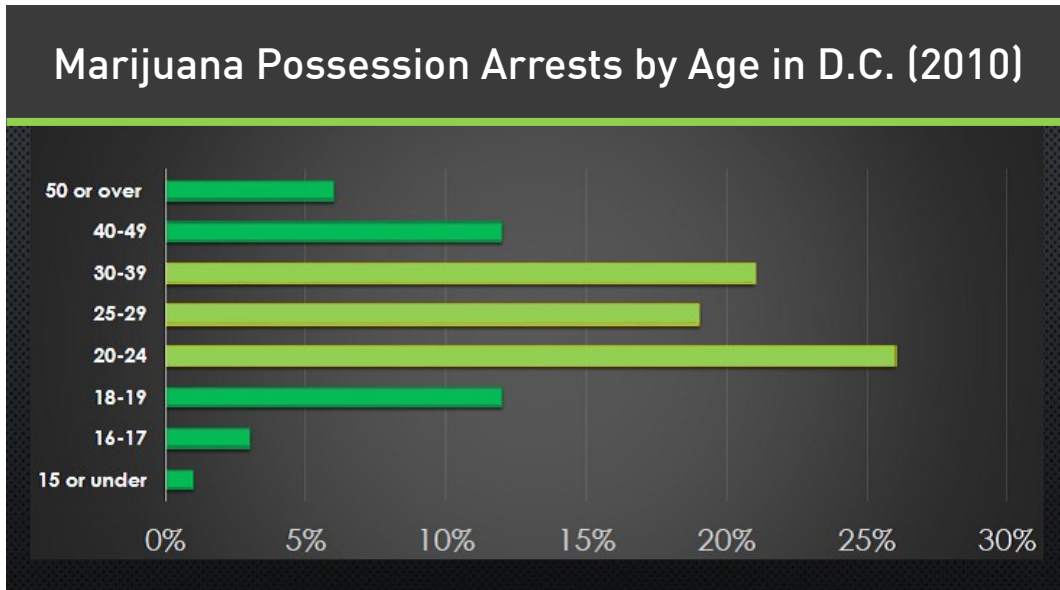
D.C.'s high arrest rates, and the enforcement practices that lead to those arrests, don't come without a cost. The ACLU estimates that **the District in 2010 spent between \$9 million and \$43 million on marijuana possession enforcement** — more per capita on marijuana enforcement than any state. Using mid-range figures, the ACLU estimates that D.C. spent in 2010

nearly \$18 million on police enforcement of marijuana laws, more than \$6 million in judicial and legal costs related to marijuana arrests and more than \$2 million incarcerating individuals convicted of violating marijuana-related laws. This money could otherwise be invested in our community to enhance public health and safety, for drug treatment programs and police-community relations, or for many other purposes.

NOT JUST YOUTH

Finally, contrary to popular perception, marijuana arrests in D.C. aren't just focused on teenagers and young people.

Unlike national trends, in 2010 there were more people arrested for marijuana aged 30-39 than aged 25-29 or aged 16-19.



TIME FOR A CHANGE

D.C.'s drug laws and polices need to be drastically revised to make them fairer, more compassionate, and better designed to reduce drug dependency and

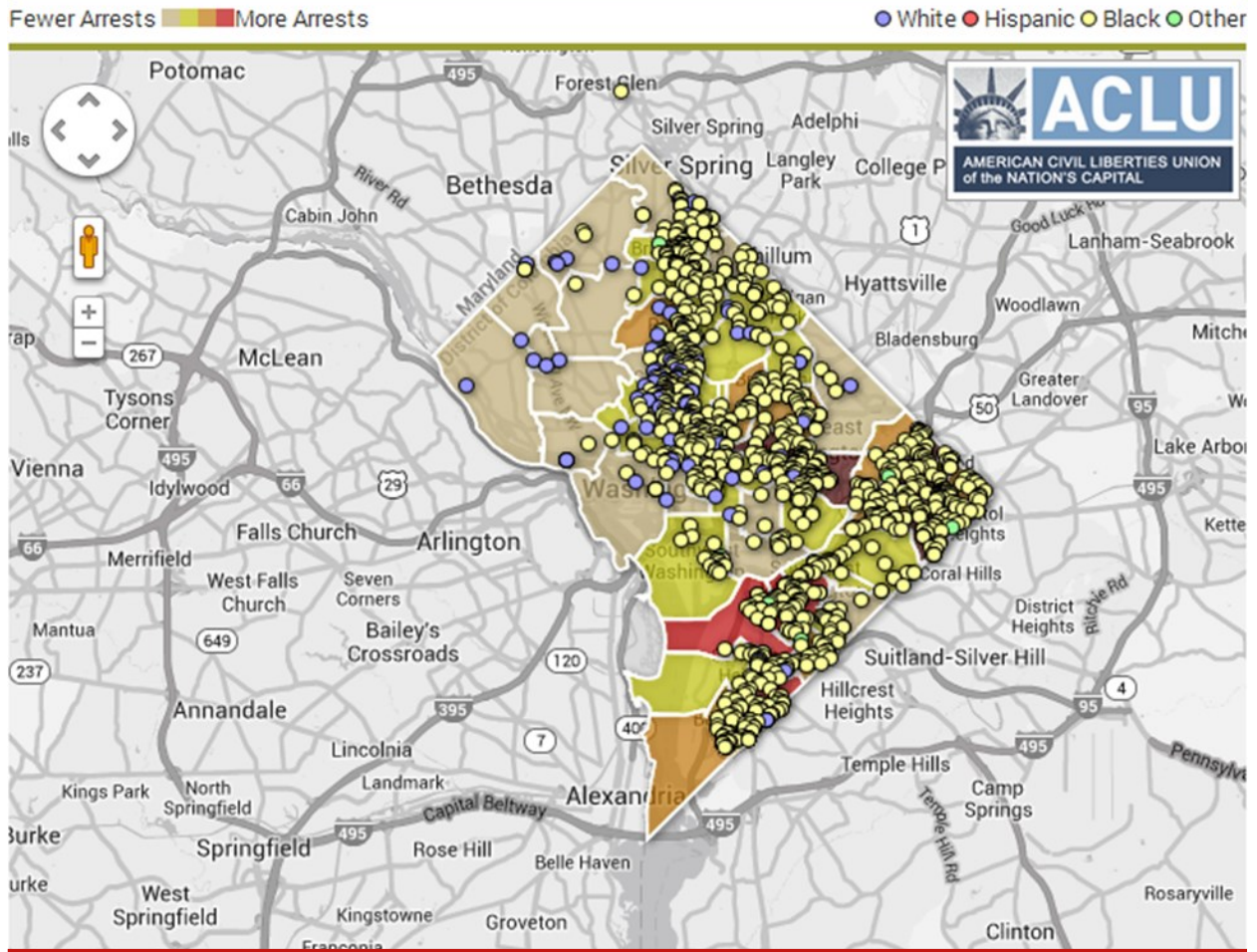
improve public health and safety. The ACLU of the Nation's Capital recommends that D.C. eliminate criminal penalties for low-level possession and use of marijuana. **This is the only way to eliminate the extreme racial disparity in the enforcement of marijuana laws.**



NOTES:

Population data is based on 2010 Census data. Though D.C. is not a state or a county, comparisons of arrest *rates*, meaning the number of arrests per 100,000 people, are illustrative and take into account differences in overall population. For example, Los Angeles county has a marijuana possession arrest rate of 159 per 100,000 people. Though the county made many more overall arrests due to its significantly larger population, D.C.'s arrest rate, at 846 per 100,000, is much higher than the arrest rate in Los Angeles county because a larger proportion of the D.C. population has been arrested for marijuana. Financial calculations and arrest data from other jurisdictions come from the National ACLU report, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*, available at www.aclu.org/marijuana.

MAPPING THE DATA



Web design by Andrew Michael; www.luckyproof.com

Each dot on the map above represents a marijuana-related arrest in 2010. Yellow dots indicate the arrestee was identified in arrest data provided by MPD as Black. Blue dots indicate the arrestee was identified as white. The map is divided into PSAs. The PSA boundaries in this map reflect boundaries as revised in January 2012. The data provided by MPD retroactively changed the PSA of

each 2010 arrest to reflect these new boundaries. Each PSA is assigned a color based on the absolute number of arrests. This map is available in interactive form on our website, at <http://aclu-nca.org>. The website map allows viewers to zoom in to street level, to sort the data by race, PSA, District, police department, and to see data on each individual arrest.



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Seema Sadanandan is the Program Director at ACLU of the Nation's Capital (ACLU-NCA). She joined the ACLU-NCA in 2013 and oversees non-litigation advocacy efforts in defending civil rights and liberties in the District. Seema was the primary researcher and co-author of the ACLU-NCA's shadow report published in 2013 entitled, "Behind the D.C. Numbers: The War on Marijuana in Black and White," focusing exclusively on racial disparities in marijuana arrests in the District of Columbia. She leads the organization's efforts to combat discrimination and address other issues that have a disproportionate impact on communities of color. Prior to joining the ACLU, she was a documentary filmmaker and campaign strategist for social movements in the United States and abroad. Seema is a graduate of American University's Washington College of Law and Tulane University.