

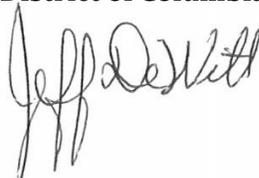
Government of the District of Columbia  
Office of the Chief Financial Officer



**Jeff DeWitt**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeff DeWitt  
Chief Financial Officer 

**DATE:** January 15, 2014

**SUBJECT:** Fiscal Impact Statement – “Marijuana Possession Decriminalization Amendment Act of 2014”

**REFERENCE:** Bill 20-409, Draft Committee Print shared with the Office of Revenue Analysis on January 13, 2013

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**Conclusion**

Funds are sufficient in the FY 2014 through FY 2017 budget and financial plan to implement the bill.

**Background**

Under current law, marijuana is a Schedule III banned substance in the District of Columbia and possession of any amount is considered a criminal offense. A person convicted of possession of half a pound or less could be punished by a \$1,000 fine or up to 180 days in prison.<sup>1</sup>

The bill makes the possession or transfer<sup>2</sup> of a small amount (one ounce or less), and the smoking of marijuana a civil violation punishable by a \$25 notice of violation (NOV) for possession and \$100 for smoking. It also provides the framework for the Office of Administrative Hearings (OAH) to adjudicate these cases.

The specifics of the bill are as follows: First, the bill establishes that the possession of a small amount of marijuana is not a criminal offense for an individual 18 years of age or older and is not a delinquent act for an individual under 18 years of age (“juvenile”). If an individual is found in possession, they will be issued the \$25 NOV, must provide their true name and address,<sup>3</sup> and forfeit

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<sup>1</sup> Penalty assumes a first offense of manufacturing, distributing, or possessing with the intent to distribute ½ pound or less. (D.C. Official Code § 48-904.01(a)(2)(B)).

<sup>2</sup> The transfer is only a civil violation if it is done without remuneration.

<sup>3</sup> Failure to provide one’s true name or address carries a civil penalty of \$100.

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any visible marijuana and associated paraphernalia. If the offender is a juvenile, OAH will also send a copy of the NOV to his or her parent or guardian at the address provided at the time of the violation. Smoking is only considered a civil violation if it is done in certain public places.<sup>4</sup> Additionally, the violator is not required to provide any documentary proof of his or her name and address.

Next, the bill requires that any cases associated with these violations be adjudicated through OAH. The recipient of a NOV must respond within fourteen days by admitting the violation through payment of the fine, admitting with an explanation, or denying the violation. In cases where the violation is denied, OAH will schedule a hearing and send a notice of the hearing within thirty days. If a person fails to respond within fourteen days or fails to show up for a scheduled hearing, he or she is considered liable and is sent a subsequent violation that includes the original fine amount plus a penalty amount equivalent to the violation.

Lastly, the bill includes a number of limitations on government actions. First, the bill prohibits the District from seeking any further violations, penalties, or disqualifications for the possession of marijuana except in cases related to employment with the some District government agencies. Second, no resident can be denied public assistance<sup>5</sup> as a result of this civil violation. Third, a judicial officer may not consider a violation of this bill or a positive drug test for marijuana as a reason to revoke pretrial release or to suspend probation unless that condition is explicitly stated as part of the release order.<sup>6</sup> Fourth, the bill does not allow for a search warrant to be obtained if the sole basis for that warrant is the possession or transfer without remuneration of one ounce or less of marijuana. Fifth, the odor of marijuana or burnt marijuana, possession of marijuana or suspicion of possession thereof, cannot be basis for presumption of criminal activity unless there is evidence of more than one ounce. This holds true for possession of multiple containers of marijuana or possession in proximity to any amount of cash or currency. Finally, a violation of this bill cannot be considered a drug offense by the Department of Motor Vehicles when making a determination to revoke an operator's permit or driving privileges, delay the issuance or reinstatement of a permit or privileges, or delay a juvenile's opportunity to obtain an operator's permit if the offense occurred before the age of 16.

### **Financial Plan Impact**

Funds are sufficient in the FY 2014 through FY 2017 budget and financial plan to implement the resolution. The Metropolitan Police Department (MPD) and OAH will be the primary implementing agencies and both agencies can implement the bill with their existing resources.

The bill could increase the civil fines collected by the District government but it is not possible to provide a reliable estimate at this time. The bill prohibits enforcement officers from requiring an individual to present proof of his or her identity, and this prohibition will weaken the District's ability to collect fines. Data suggest that roughly half of all arrests that included marijuana

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<sup>4</sup> Public places, as defined in the bill, include day care centers, schools, parks, playgrounds, recreation centers, gymnasiums, libraries, parking lots, sidewalks, streets, alleys, bus stops, train stations, and any other location where the public or a substantial number of the public has access.

<sup>5</sup> This includes General Assistance for Children, Emergency Shelter, Family Services, Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility, and Interim Disability Assistance.

<sup>6</sup> The condition to prohibit the use of controlled substances does not constitute explicit prohibition of marijuana possession or use.

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possession are for the sole possession of marijuana.<sup>7</sup> While it is a significant number of cases, there is no way to validate if the name and address information provided are correct and, consequently, many of the associated fines may go unpaid and it is unlikely these individuals will pursue hearings with OAH. The proposed civil violation enforcement mechanism is also the same implemented for littering violations<sup>8</sup> and of all valid littering violations issued, eighty-seven percent have gone unpaid.<sup>9</sup> Thus violation revenues will most likely be minimal.

As an additional example, the City of Chicago decriminalized marijuana in an amount of fifteen grams or less, but with weaker restrictions on government action than the District is proposing. Among other differences, Chicago requires a verifiable ID and arrests can still be made if smoking is occurring in a park, near a school, or in a vehicle. Despite these restrictions, after fourteen months of implementation, Chicago collected only twenty-one percent of its valid fines and penalties.<sup>10</sup> Since the District does not require an ID, we expect the District would have less success than Chicago in collecting revenues.

For the same reasons, we also do not expect a significant increase in cases adjudicated before OAH, but OAH can absorb any increased caseload within its existing resources.

Finally, MPD can implement the changes in its process at no additional cost. Decriminalizing marijuana will likely reduce costs on the MPD and Department of Corrections by freeing officers' time and resources at the jail for other uses. While this is not likely to result in cost savings that could be incorporated in a budget, it would allow both agencies to shift resources to areas with greater need.

It is also important to note that the federal appropriations act<sup>11</sup> forbids the District from spending any federal resources on the enactment or enforcement of any laws to legalize or reduce the penalties associated with the possession, use, or distribution of a Schedule I controlled substance.<sup>12</sup> Implementation of this bill could put at risk number of federal grants that the District receives to pay for and support police officers. Additionally, the federal government would still consider these offenses to be criminal offenses and any violations discovered on federal lands or by a federal law enforcement agency would be handled according to federal law and regulation.

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<sup>7</sup> Data from MPD for over fifty-six thousand citywide arrests involving marijuana possession from 2000-2012 (excludes arrests for possession with intent to distribute, distribution, or conspiracy).

<sup>8</sup> Anti-Littering Amendment Act of 2008, effective March 20, 2009 (D.C. Law 17-314; D.C. Official Code §8-802).

<sup>9</sup> According to a 2012 MPD analysis of NOV's issued.

<sup>10</sup> <http://www.suntimes.com/news/cityhall/23331575-418/one-year-after-decriminalization-pot-tickets-a-bust.html>

<sup>11</sup> Continuing Appropriations Act, 2014, approved October 17, 2013 (Public Law 113-46), incorporating, by reference, Department of Defense, Military Construction and Veterans Affairs, and Full-Year Continuing Appropriations Act, 2013, approved March 26, 2013 (Public Law 113-6) and Consolidated Appropriations Act, 2012, approved December 23, 2011 (Public Law 112-74).

<sup>12</sup> Under the federal Controlled Substances Act, Title 21, Chapter 13, Subchapter I, Part B, marijuana is a Schedule I substance.