



Dealing with Marijuana Misdemeanors in Durham: Racial Disparities Undercut the City's Progress

An analysis of publicly-available data shows that racial disparities persist in low-level marijuana law enforcement in Durham, North Carolina. African Americans age 25 and under represent about 15% of Durham's population, yet this group represents 46% of the city's minor marijuana charges.

This report discusses how current marijuana enforcement practices disproportionately impact African Americans, undermine economic progress, and erode trust in the community. Self-Help recommends that the Durham City Council adopt an enforceable policy that makes misdemeanor marijuana violations the lowest priority for Durham law enforcement.

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Acknowledgements

Self-Help's mission is to expand economic opportunity for all, and our experience shows that opportunities begin in the neighborhoods we serve. We dedicate this report to the members of the Durham community who are most affected by policing practices and whose voices have brought much-needed attention to these concerns.

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Executive Summary

For years, Self-Help and its partners have been investing in Durham neighborhoods to revitalize struggling communities and build greater economic opportunities. We appreciate and depend upon the vital and complementary role that the Durham Police Department (DPD) plays in public safety. However, to the extent that law enforcement practices are unfair or inefficient, these practices directly undermine millions of dollars in investments and thwart progress that would benefit the entire city.

Our goal in this report is to introduce facts and analysis to inform decisions on Durham's future enforcement of marijuana violations. Here we present new information on racial disparities and enforcement of low-level marijuana charges based on data previously released by the DPD. In addition, based on publicly-available court records, we update the DPD's more recent enforcement activities.

Our analysis shows that large racial disparities persist in Durham's enforcement of low-level marijuana violations, and these actions come at a high cost to those charged and the entire community. Our major findings include these:

- In Durham, African Americans continue to comprise over 80% of the people charged for misdemeanor marijuana charges, while whites remain a small fraction of those charged.
- African Americans age 25 and under represent about 15% of Durham's population, yet this group represents 46% of misdemeanor marijuana charges.
- Even after recent reforms,¹ disparate enforcement persists, and Durham's record is out of line with other progressive cities. For example, Durham's charge rate today for low-level marijuana charges is three times higher than Seattle's back in 2002, when marijuana was still illegal there.
- A simple misdemeanor conviction costs families up to \$374 in court fees and fines. The costs in lost opportunities for education and employment can be much higher, and are grossly disproportionate to the infractions.
- Some of the neighborhoods with the highest level of enforcement are the same neighborhoods where Self-Help and others are investing as part of a City program to fight poverty and help increase opportunities for residents.

Self-Help encourages the Durham City Council to adopt an enforceable policy that makes misdemeanor marijuana violations the lowest priority for Durham law enforcement, as recommended by the FADE (Fostering Alternatives to Drug Enforcement) coalition. In this report, we present simple, practical policy recommendations for handling marijuana misdemeanors and supporting community investments in Durham.

¹ On October 1, 2014, the Durham Police Department implemented a policy change requiring written consent for certain police searches. See <https://www.southerncoalition.org/durham-adopts-written-consent-policy-for-searches/>. Additionally, a statewide law lowered the penalty for possessing marijuana paraphernalia, effective December 1, 2014. See <http://nccriminallaw.sog.unc.edu/prior-possession-of-drug-paraphernalia/>.

Background

Well before Ferguson, Missouri made the news, African-American communities in Durham, North Carolina raised serious concerns about racial disparities in local law enforcement. In 2013, following a string of officer-involved shootings and police records showing racial disparities in traffic stops and searches, Durham residents organized and took action. They petitioned the City Council for reprieve from the impact of policing practices on their communities. As a result, Mayor Bill Bell asked the Durham Human Relations Commission to investigate. The Commission held months of public hearings before concluding “racial bias and profiling [are] present in the Durham Police Department practices.”²

Young people charged for having a joint in their pocket may face diminished opportunities, with less access to student aid, affordable housing and a decent job.

The Commission followed up with a list of 34 recommendations to address the problems that surfaced. These included a set of five policy recommendations urged by a coalition called Fostering Alternatives to Drug Enforcement (FADE).³ Some of the FADE recommendations have been adopted and implemented in part. Among those not adopted is the recommendation that the City of Durham make marijuana possession the lowest law enforcement priority.

It is widely recognized that roughly the same share of African Americans and whites engage in the recreational use of marijuana, but enforcement of marijuana laws and resulting penalties fall much harder on blacks. The legal charges alone typically trigger several hundred dollars in court fees and fines, but the collateral consequences can be much worse. Young people charged for having a joint in their pocket may face diminished opportunities for a better future, with less access to student aid for college, affordable housing and a decent job.

With the pending retirement of Durham’s Chief of Police, the Durham Police Department is entering a key period of transition. The City has an opportunity to re-evaluate broader policies and practices. The ideal outcome will be increased trust and confidence that law enforcement is even-handed and focused on the highest impact enforcement activities.

As described in this report, Self-Help and others are actively investing in neighborhoods where disproportionate marijuana charges are occurring. Since Mayor Bill Bell launched his Poverty Reduction Initiative, the City and other partners have invested significant resources in these communities.⁴ Disproportionate enforcement of minor marijuana infractions can undercut that work by stripping money out of these communities and stifling opportunities for jobs, housing and education. Reprioritization of enforcement activities would contribute to greater public safety by 1) building better relationships between police and citizens and 2) keeping opportunities open that help build stronger communities overall.

² “Recommendations Submitted to the City of Durham City Council by the City of Durham Human Relations Commission,” April 23, 2014, available at <http://www.southerncoalition.org/wp-content/uploads/2014/05/HRCDPDreport.pdf>.

³ The FADE coalition is comprised of and led by individuals from Durham communities most directly impacted by the city’s current policing practices. FADE’s recommendations were endorsed by a wide-ranging number of community stakeholders, including Durham Congregations in Action (CAN), Committee on the Affairs of Black People, Durham NAACP, Southerners on New Ground, Durham People’s Alliance and many others.

⁴ Mayor Bill Bell has characterized 2015 “the year of action” to implement his Poverty Reduction Initiative first formulated in his 2014 State of the City Address. See <http://www.newsobserver.com/news/local/community/durham-news/article10236821.html>.

Analysis

A Closer Look at the DPD Report: Additional Information on Misdemeanor Marijuana Arrests

In July 2014, Durham's City Manager requested the Durham Police Department to provide statistics on misdemeanor possession-of-marijuana charges. The DPD responded with a memo titled "Analysis of Misdemeanor Marijuana Data." For simplicity, we will refer to this memo as "the DPD report."

The DPD report identified and aggregated all cases in which at least one alleged offense occurred for minor misdemeanor possession of marijuana from the 18-month period covering January 2013 through June 2014, excluding cases involving juveniles 15 years of age or younger. The report also includes demographic data, a listing of any concurrent charges that accompanied the misdemeanor possession charge, and other data.

Only a small share (12%) of misdemeanor marijuana charges is directly attributable to citizen complaints.

After reviewing the DPD report, we find a number of key points that warrant additional consideration by the Durham City Council and other community stakeholders. For example, the records compiled in the DPD report show:

- The report confirms the disparate impact of marijuana enforcement, with 87% of minor marijuana charges involving African Americans.
- Only a small share (12%) of misdemeanor marijuana charges is directly attributable to citizen complaints. The majority of the charges stem from actions initiated by the DPD, with a vehicle stop being the most common triggering event.

An appendix to this paper provides a more detailed description of these findings and more discussion on their implications.

Update: More Recent Analysis of Low-Level Marijuana Charges

Since the DPD issued its report on misdemeanor marijuana enforcement, two new policies could affect policing practices. On October 1, 2014, the City Council adopted one of the FADE policy recommendations that requires a Durham resident's written permission to conduct a consent search. Additionally, a statewide law lowered the penalty for possessing marijuana paraphernalia, effective December 1, 2014.

Given these policy changes and the local attention on enforcement actions related to marijuana, we reviewed more recent criminal charge data to assess whether any changes have occurred subsequent to the DPD report. Our analysis is based on data from the North Carolina Administrative Office of the Courts (NCAOC) detailing cases involving marijuana charges over a six-month period (February 25 to August 25, 2015).⁵

⁵ See <https://www.southerncoalition.org/durham-adopts-written-consent-policy-for-searches/> for a discussion of Durham's new policy of written consent. The University of North Carolina School Of Government provides a summary of the statewide changes involving possession of marijuana paraphernalia at <http://nccriminallaw.sog.unc.edu/prior-possession-of-drug-paraphernalia/>.

Disparities Persist

We analyzed charges that only involved misdemeanor marijuana charges, with no additional charges filed.⁶ The DPD report had shown that 87% of such arrests involved African Americans. As shown below in Figure 1, nearly a year after the DPD report, the more recent records show that racial disparities involving marijuana charges remain persistently high. In a city where 41% of the population is African American, our data show that African Americans make up twice that percentage (82%) of people charged with only misdemeanor marijuana offenses. The majority of arrests involved men under the age of 25.

Nearly a year after the DPD report, more recent records show that racial disparities involving marijuana charges remain persistently high.

Figure 1. Percentage of Cases with Only Misdemeanor Marijuana Charges by Race, Age Group, and Gender

	Cases with Only Marijuana Charges (July 2013 – Dec. 2014)	Only Marijuana and/or Paraphernalia Possession Cases (Feb. 2015 – Aug. 2015)*
Race/Ethnicity		
% African American	87.4%	81.8%
% Hispanic	5.2%	6.1%
% Other	0.0%	2.0%
% White	7.3%	10.1%
Age Group		
% Age 20 and Under	24.6%	20.3%
% Age 21 to 25	36.1%	39.2%
% Age 26 to 30	18.3%	22.3%
% Over Age 30	20.9%	18.2%
Gender		
% Male	85.3%	79.7%
% Female	14.7%	20.3%

* Note that the dataset from the DPD report contained 191 unique marijuana charges during an 18-month period (January 2013 to June 2014), compared to our six months of data, during which the DPD charged 148 people with misdemeanor marijuana offenses.

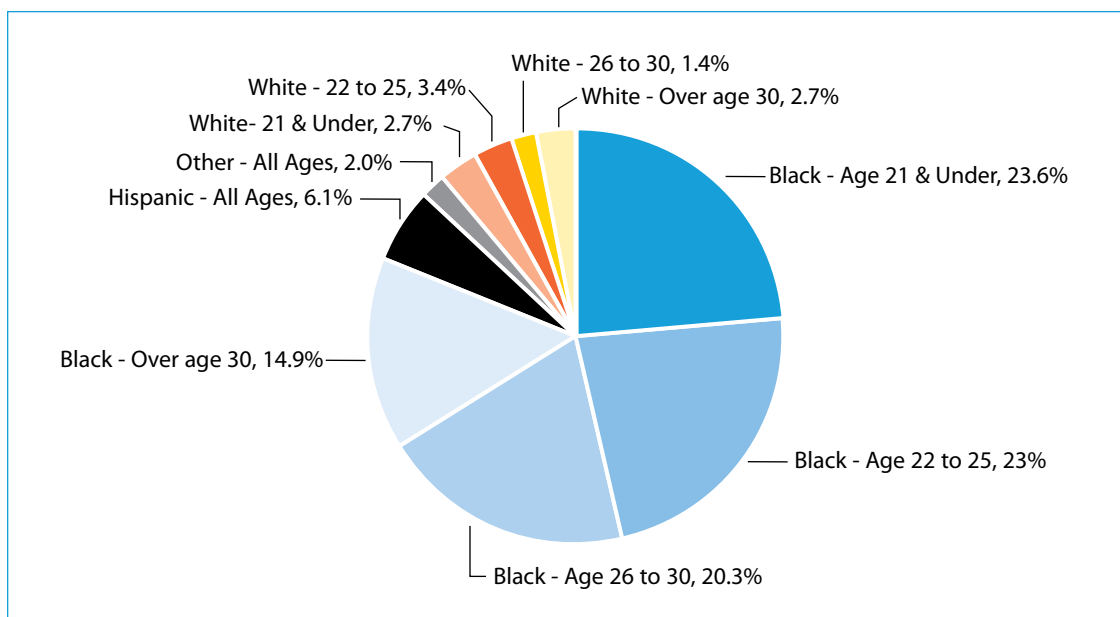
⁶ For the purposes of this comparison, we used our NC Administrative Office of the Courts dataset (Feb. 2015 - Aug. 2015) to define "marijuana only" charges as including: Possession of less than 0.5 oz. of marijuana, possession of a schedule VI controlled substance, possession of marijuana paraphernalia, or any combination thereof.

Young People Hit Hard

Marijuana charges and a subsequent conviction have a particular impact on younger African Americans (age 25 and under). This age group represents about 15% of Durham's population,⁷ yet their charge rate is much higher. The chart below shows that African Americans age 25 and under represent over 46% of those charged with only possession of marijuana and/or paraphernalia. Among those African Americans age 25 and under, 84% were male, including four that were charged at age 16 or 17.⁸ As discussed further below, this finding has significant implications for employment and educational opportunities that are available to these young people.

African Americans age 25 and under represent over 46% of those charged with only possession of marijuana and/or paraphernalia.

Figure 2. Percentage of Cases with Only Marijuana Charges by Race and Age Group (Feb. 2015 – Aug. 2015)



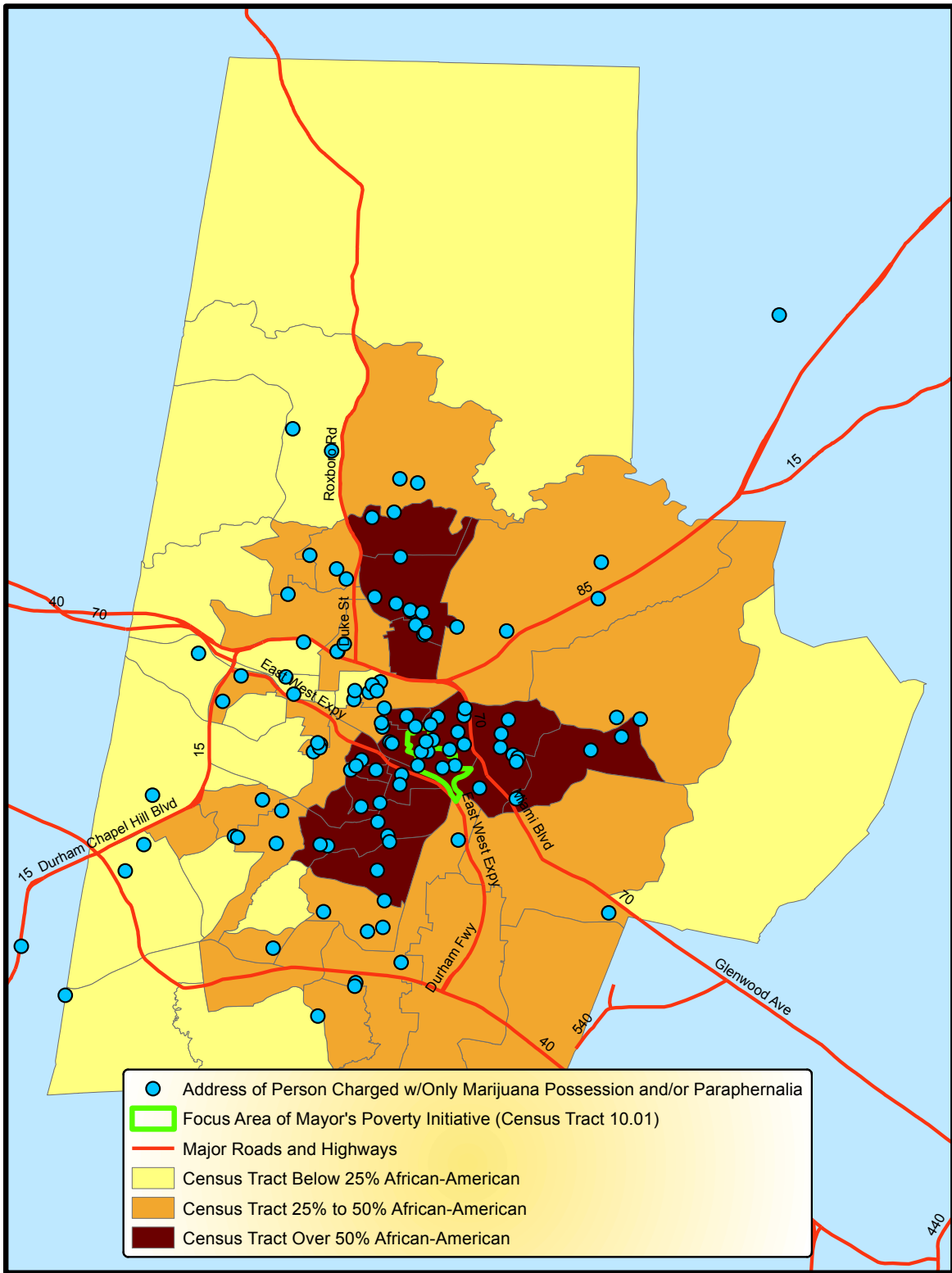
African-American Communities Disproportionately Affected

Viewing people with marijuana charges by where they reside also reveals racial disparities in Durham. Previous reports have shown that the great majority of people charged with a marijuana infraction were charged in Durham neighborhoods with a majority African-American residency. Here for the first time, we map the residential addresses of people charged (which may or may not be in the same area where the police charged the individual). As shown below, marijuana charges overwhelmingly involve people who live in areas where more than half of residents are African American. In light of the costs and collateral consequences that follow a misdemeanor marijuana charge and subsequent conviction, the geographic patterns shown on the map inevitably have a significant impact on entire communities that already face many economic and social challenges.

7 U.S. Census Bureau, 2014 American Community Survey.

8 The data also includes two others under the age of 18 (one white female, and one Hispanic male). In North Carolina individuals ages 16 and 17 are charged as adults for all crimes.

**Figure 3. Disparities by Neighborhood:
Durham Marijuana Charges Displayed by Residential Addresses
(Feb. 2015 – Aug. 2015)**



Putting Durham's Marijuana Charges in Context

Nationally, marijuana charges climbed dramatically starting in 2006, and have continued to do so. However, in recent years, some local jurisdictions have begun to use their discretion to focus fewer public resources on low-level marijuana possession. For example, in 2003, voters in Seattle, Washington enacted a local ordinance by ballot initiative to adopt a citywide policy to make marijuana possession the lowest law enforcement priority. Even prior to that policy change, Seattle was already charging very few people for marijuana possession. In 2002, there were fewer than 250 misdemeanor marijuana cases referred for prosecution in Seattle, which had a population of just over 570,000 people at that time.⁹ So, in 2002, the last full year prior to the enactment of the city's policy changes, Seattle's charge rate for misdemeanor marijuana was 39 people per 100,000 residents.

Durham's charge rate today for misdemeanor marijuana is over three times that of Seattle back in 2002.

By comparison, Durham's charge rate today for misdemeanor marijuana is over three times that of Seattle back in 2002. According to the above NCAOC data, between February and August 2015, 148 people were charged by the Durham Police Department with misdemeanor marijuana. If the current rate continues, the city is on track to charge 296 people this year. Given that Durham's population is just over 250,000, this represents a charge rate of 118 people per 100,000 residents—a charge rate that is three times that of Seattle before that city deprioritized low-level marijuana enforcement.¹⁰

It is also worth emphasizing that the risk of a marijuana conviction doesn't fall equally on all marijuana users in Durham. For example, Duke University's policies toward drug use – not just marijuana – is to help rehabilitate rather than simply penalize. According to Duke University Dean of Students Sue Wasiolek, "Throughout my time at Duke, our approach to drug use has been much more therapeutic than it has been punitive. That hasn't really changed over the last 40 years."¹¹ Duke's official policy states: "In addition to disciplinary action, the conduct officer, or designee, may require a student to take a leave of absence, and return to campus may be conditional upon proof of completion of a substance abuse treatment program."¹²

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

10 U.S. Census, <http://quickfacts.census.gov/qfd/states/37/3719000.html>. Note that Seattle's misdemeanor marijuana charges decreased by almost 60% in the year following passage of the de-prioritization initiative. See note 27.

11 Nick Martin, "The Dank Diaries," Duke Chronicle, November 25, 2014.

12 Duke University, "Drugs and Drug Paraphernalia," last updated Sept. 2015, <http://policies.duke.edu/students/university-wide/drugs.php>.

The Damage to Communities and the Risks for Durham

Damage to Communities – Collateral Consequences

Because African Americans in Durham are significantly more likely to be charged than whites for holding less than half an ounce of marijuana, they also are significantly more likely to be burdened with the indirect costs of these charges—the collateral consequences.

Researchers have documented a host of negative consequences resulting from low-level drug convictions, including marijuana.¹³ In addition to the significant, direct impact of monetary fines, court costs and attorney fees, the person charged also may face serious consequences related to job, housing and military service opportunities.¹⁴

Potential Employment Consequences

- Missed or lost work (from court appearances and/or community service)
- Denial of employment opportunities by employers that will not hire people with a criminal record
- Preclusion from obtaining certain occupational licensures
- Disqualification from unemployment benefits and other social services

Potential Housing Consequences

- Grounds for eviction from a rental property
- Termination of federal housing assistance

In addition, while military service often provides a better future for young people, a young person saddled with even a misdemeanor marijuana charge may be denied the opportunity to serve in the armed forces.¹⁵

13 Generally, the paper discusses the charging of a misdemeanor marijuana offense – in this section we discussed the ramifications of conviction.

14 See the University of North Carolina’s Collateral Consequences Assessment Tool (C-CAT) for a broad summary of all the potential indirect impacts of a criminal conviction in North Carolina, including possession of misdemeanor marijuana. Additionally, the Minnesota 2020 Project assesses the full costs of marijuana convictions at http://www.mn2020.org/assets/uploads/article/collateral_costs_web.pdf.

15 See <http://army.com/info/usa/disqualifiers> for a discussion of the additional barriers even a minor possession conviction presents to young men and women.

Particularly for young people, perhaps the most devastating collateral consequence is the loss of educational opportunities. If an active recipient of Federal financial aid (e.g. Pell Grant, Stafford Loan) is convicted of any drug related offense, including a misdemeanor possession of marijuana, the student loses access to financial aid for at least a year.¹⁶ To be clear, under certain conditions, a student can restore their aid eligibility. Nonetheless, restoration depends upon enrollment in an "approved" drug rehabilitation program and passing two unannounced, random drug tests. Particularly troubling for 16- and 17-year-old Durham residents is that while most teenagers from other states do not have to disclose their juvenile convictions, North Carolinians do.¹⁷

Perhaps the most devastating collateral consequence is the loss of educational opportunities.

Risks to Durham: Unraveling Progress

Self-Help, which now does lending and community development work nationwide, started in Durham in 1980. We are one of many organizations that have invested in Durham's people and economic vitality. The records we provide here could be expanded to include investments and contributions from many other nonprofits, private companies and the City of Durham itself.

Since we began lending in 1984, Self-Help has lent over \$279 million in Durham, primarily to foster homeownership, business development and nonprofit activities that benefit the wider community. We have helped over 1,500 families purchase a home, created or saved over 5,600 jobs, facilitated the education of over 2,000 children and ensured more than 1,300 child care slots. We have been active in the Durham community in numerous ways, and currently we are participating in Mayor Bill Bell's Poverty Reduction Initiative.¹⁸

Self-Help Lending in Durham (1984–2015)	# of Loans	Amount Lent
Home purchase	1,514	\$ 128,780,000
Commercial and nonprofit	571	\$ 148,952,000
Consumer (auto, personal, HELOC, credit card)	250	\$ 1,561,000
Total	2,335	\$ 279,293,000

16 <http://www.usnews.com/education/blogs/student-loan-ranger/2015/04/15/drug-convictions-can-send-financial-aid-up-in-smoke>.

17 When applying for FAFSA, convictions before 18 don't count, unless you are tried as an adult (e.g. NC where 16 and 17s are tried as adults). See also, <https://www.ifap.ed.gov/drugworksheets/attachments/StudentAidEligibilityWorksheetEng1415.pdf>

18 See note 4 on p. 3.

Our loans are designed to increase economic opportunities, especially in low-wealth communities that have lacked investment. Many of the loans we make are in the communities where minor marijuana possession is most aggressively enforced. For example, Self-Help is a particularly active lender in East Durham. In Census Tract 18.02, which is centered along NC-98 and US-70, 65% of the population is African-American and 22% Hispanic. We have lent over \$8.3 million to 105 families to purchase a home in this community, thus giving these families more opportunity to acquire equity that can be used to finance a better future. Yet this aim is now being seriously undermined: Over the past six months,¹⁹ a resident **in this community is three times more likely to be charged with a low-level marijuana misdemeanor than elsewhere in the city of Durham.**²⁰

Many of the loans Self-Help makes are in the communities where minor marijuana possession is most aggressively enforced.

Another area where Self-Help has been active as a home lender is in Census Tract 10.01, targeted in the Mayor's Poverty Reduction Initiative. In this small community, with a very low homeownership rate of 31% and fewer than 400 owner-occupants, Self-Help has funded nearly \$1.8 million worth of home loans to 35 families for home purchases. In 2013, Self-Help invested over \$10 million in Census Tract 10.01 for the renovation of the city's oldest school building, the former Durham Graded School, on Driver Street. This building now provides a quality education to 600 children every year through the high-achieving Maureen Joy Charter School, where almost all students are children of color and well over 80% are low-income.

More recently, as part of the Mayor's Poverty Reduction Initiative, Self-Help Credit Union will serve as the custodian and depository for Durham Kids Save, a partnership with the East Durham Children's Initiative and 1:1 Fund. This program will ensure that every new kindergarten student at Y.E. Smith Elementary starts an educational savings account that they can contribute to and receive matching funds to build savings for higher education.

At the same time that Self-Help and others invest in strengthening Census Tract 10.01, a disproportionate number of arrests and citations disrupts families in this community by charging residents, primarily young African-American men, for simple minor marijuana possession. **A resident of this community is over three times more likely than someone elsewhere in Durham to be charged with a low-level marijuana misdemeanor.**²¹

19 Based on NC AOC data for the six months ending August 25, 2015.

20 Arrest levels in Census Tracts 10.01 and 18.02 and ratio of arrest to Durham as a whole.

	Marijuana Charges	People (U.S. Census)	Charge Rate	Ratio
CT 10.01	5	3,466	0.14%	3.2
CT 18.02	9	6,736	0.13%	3.0

21 *Ibid.*

Since Mayor Bell launched his Poverty Reduction Initiative, the City and other partners, such as Self-Help, have invested substantial dollars and thousands of people hours in Census Tract 10.01. At the same time, enforcement of simple minor marijuana possession is stripping money out of these communities. The average cost of simple misdemeanor conviction essentially imposes a direct tax on families of up to \$374 (\$174 in court fees, plus a \$200 maximum fine for the violation), almost all of which goes to the State of North Carolina.²²

Here we have identified measurable monetary costs. Beyond these, there are the less measurable but very real costs of deteriorating trust and alienation that come with apparently disproportionate enforcement of minor infractions. One of the goals included in the Mayor's Poverty Reduction Initiative focused on "relationship building" between DPD and high-minority areas.²³ Similarly, Durham's Human Relations Commission recommended that DPD improve "communications and community outreach" as part of an effort to address concerns of racial bias and profiling.²⁴

Continuing the current level of enforcement related to minor marijuana infractions is directly counter to these goals. Such enforcement is inefficient, and it puts Durham at real risk: the risk of eroding investments already made and the risks that come from an angry and alienated community, which in turn leads to much greater risks to public safety than low-level possession of marijuana. Durham will be safer when people have greater trust in authorities and more hope for a better future.

Continuing the current level of enforcement related to minor marijuana infractions is directly counter to current city initiatives and goals.

22 UNC School of Government blog post: the vast majority of fees and fines are sent back to the state, not directly to the city budget like Ferguson. <http://nccriminallaw.sog.unc.edu/we-are-not-ferguson/>.

23 Memo to Durham City Council from Ellen Reckhow, "Poverty Reduction Initiative: Public Safety Task Force", August 17, 2015.

24 Durham Human Relation Commission, "Recommendations Submitted to the City of Durham City Council," April 23, 2014.

Policy Recommendations

We know that deprioritizing marijuana enforcement is feasible and effective based on local actions taken in others cities such as Seattle; Santa Cruz, California; Columbia, Missouri; and Eureka Springs, Arkansas.²⁵ Here we present simple, practical policies for reducing enforcement of marijuana misdemeanors and supporting community investments in Durham.

1. Deprioritize marijuana enforcement.

A. The City Council should adopt a "lowest law enforcement priority" policy.

Cities and towns around the country have adopted Lowest Law Enforcement Priority (LLEP) policies to more effectively target municipal and law enforcement resources on violent crimes and other high priorities instead of low-level marijuana offenses.²⁶ Instituted by voter initiatives or city council measures, LLEPs instruct local law enforcement (police and District Attorneys) to make certain marijuana-related offenses the lowest law enforcement priority, and all other offenses higher priorities, for their departments.

While LLEPs do nothing to change federal and state drug policies, when implemented by local law enforcement, they can be effective in redirecting resources to more serious crimes. A review of Seattle's LLEP found that Seattle's already low misdemeanor marijuana charges decreased by almost 60% in the year following passage of the initiative.²⁷ Although LLEPs do not directly address racial disparities and may not reduce such disparities, the overall reduction in marijuana-related charges would nonetheless significantly reduce the negative impact of marijuana convictions on Durham's African-American residents, particularly young black men. As such, we recommend that the City Council adopt a policy designating marijuana as the lowest priority for Durham law enforcement personnel.

We recommend that the City Council adopt a policy designating marijuana as the lowest priority for Durham law enforcement personnel.

25 See, e.g., Seattle, Wash., Code § 12A.20.060 (2003); Columbia, Mo., Code § 16-255.2 (2004); Eureka Springs, Ark., Code § 7.04.04 (2006); Santa Cruz, Cal., Code ch. 9.84 (2006); Hailey, Idaho, Code ch. 11.08 (2010). The voters of the City of Portland, Maine passed a ballot initiative that legalized marijuana possession (2.5 ounces or less) in the city. See Portland, Me., Code § 17-113 (2013). It is worth noting that the first LLEP passed in 1979 in Berkley, CA. See Berkley, Cal., Code ch. 12.24 (1979).

26 See note 25.

27 "Final Report of the Marijuana Policy Review Panel on the Implementation of Initiative 75," December 4, 2007. Available at <http://wasavp.org/wp-content/uploads/2012/06/Seattle-I-75-policy-review-report-Dec-20071.pdf>.

B. The City Council and DPD should take additional steps to ensure marijuana enforcement is deprioritized.

LLEPs are effective only to the extent that a municipality's law enforcement staff complies with the policy. In addition to adopting what could be considered a largely symbolic measure, we recommend that the Durham City Council and the DPD adopt other policies that have the effect of making marijuana offenses the lowest law enforcement priority for the City of Durham, including the following:

- **The DPD should use its existing discretion to treat misdemeanor marijuana charges with a citation rather than a full custodial arrest.** The DPD has the discretion to treat someone with a misdemeanor marijuana charge as a full custodial arrest or as a citation, like a speeding ticket. The DPD already exercises this discretion in some cases, but there is no transparency in when or how this discretion is used.

The differences between an arrest and a citation are significant, meaning people will experience very different outcomes even when charged with the same offense. Specifically, a full custodial arrest requires fingerprinting and the creation of an FBI number, establishing a record that will follow an individual forever, even if the charges are later dismissed. An arrest may also subject the accused individual to a full body cavity search. In some cases, people who are arrested may end up sitting in jail because they are not able to post bond as they await their first appearance in court. Ironically, N.C. law does not allow the imposition of a jail sentence for misdemeanor marijuana charges.

Finally, in order to get out of jail for a charge that is not supposed to lead to jail time, arrestees are not eligible to receive free counsel and often plead guilty due to lack of counsel. Although a citation is still problematic for the person charged, it does not carry any of these significant consequences.

- **The City should consider restricting more funds in the DPD budget.** The City Council should restrict more of the DPD budget to make clear that programs focusing on safety and violent crime, for example, have priority over the enforcement of marijuana offenses. It appears that the City Council has a great deal of discretion over how it uses its resources for policing and public safety. For example, the City's budgetary allocation to the DPD is almost entirely comprised of the City's discretionary funds (approximately \$54 million from the City's General Fund).²⁸
- **The DPD should adjust its own budget to reflect the deprioritization of misdemeanor marijuana enforcement.** The DPD also appears to have a great deal of discretion in the allocation of its funds. Currently, over 97% of the DPD's revenues are marked as discretionary.²⁹ To effectively implement the preceding recommendations, the DPD will likely need to adjust its budget to reflect the changing priorities, including directing dollars away from enforcement activities that have the effect of increasing misdemeanor marijuana charges and instead to community policing activities and more serious infractions. For example, only about 5% of the budget is allocated to the DPD's Community Services Bureau, the division that provides the bulk of relationship-building activities for the department.³⁰

28 City of Durham, FY 2015-2016 Budget, "Public Safety Budget Summary," <http://durhamnc.gov/DocumentCenter/Home/View/4266> (funding to the Durham Police Department represents the largest allocation in the Public Safety category (61%) and represents the single largest allocation of money from the City's General Fund).

29 Id at 22.

30 Id at 21 and 23.

2. Expand the existing misdemeanor diversion program.

Specialized court programs are not new in North Carolina. Drug treatment and family courts have been in operation since at least the mid-1990s, following legislation establishing the programs. Drug treatment courts address the needs of drug-dependent people charged with crimes with the idea that proper treatment can reduce drug-related recidivism. However, access to the programs comes only after an individual's case has been adjudicated and participation is mandated as part of the sentence.

On the other hand, pre-trial diversion programs, where individuals are not charged if they successfully complete a program, are not as widespread. The programs often include treatment, educational programming, and assistance with employment, among other components. They are implemented for a variety of reasons, including prison overcrowding, limited government resources, and increasing awareness about the collateral consequences of justice involvement on individuals, families, and communities.

Since January 2014, Durham County Senior District Court Judge Marcia Morey has operated a diversion program for 16- and 17-year olds charged with most types of non-traffic misdemeanor offenses, including misdemeanor marijuana possession.³¹ Instead of being charged with the offense, individuals participate in a workshop-style program over a period of time focused on their offenses, and upon successful completion of the program, any charges are dropped. Anecdotal results suggest the program works to keep individuals' criminal records clear and reduce recidivism. In September 2015, the City of Durham took an important step when it announced plans to expand the diversion to individuals from ages 18 to 21 who are charged with a non-violent misdemeanor for the first time. This expanded program, the Durham Adult Misdemeanor Diversion Program, was scheduled to start on October 1, 2015.

We vigorously applaud the expansion of the juvenile diversion program. It is a significant first step toward reducing racial disparities in drug enforcement policies and the various collateral consequences that result from such policies. We recommend that Durham further expand the diversion program so that it is available regardless of age. Our data show that the expansion to age 21 will have limited impact on a significant proportion of marijuana charges in Durham, as almost 50% of those charges involve African Americans over the age of 22. Additionally, we recommend that the City provide sufficient support and training to DPD officers to ensure that the program is used for as many eligible individuals who are able to take advantage of it. Finally, we recommend that the Durham Adult Misdemeanor Program submit a report to the City Council at least annually that details how many individuals have participated in the program, which departments are directing participants to the program, and participants' outcomes.

We recommend that the City further expand the diversion program so that it is available regardless of age.

³¹ Traffic citations, sex crimes and firearm-related offenses are excluded. See <http://www.newsobserver.com/news/local/community/durham-news/article33188025.html>.

3. Provide a semi-annual report to the City Council.

Although there are data available on Durham Police Department marijuana charges and related activity, that data is difficult to obtain. In November 2014, the DPD adopted a policy to produce an annual report on misdemeanor marijuana arrests as well as require the Crime Analysis Unit to provide quarterly reports to District Commanders and their supervisors for review.³² The policy also states that the annual report is to be shared with the City Manager, though it is unclear what specific data is to be included in the report. While this policy is a good start, more is needed to ensure transparency and accountability since racial disparities remain essentially unchanged since the adoption of the policy.

We recommend that the DPD be required to submit a semi-annual report to the City Council solely on its activities related to marijuana offenses, at least until marijuana charges have substantially declined. At a minimum, these reports should include: the total number of all arrests or citations for marijuana offenses; the breakdown of these charges by arrest or citation; the breakdown of arrests and citations by race, gender, age, charge, and classification of the charge; the reason or cause for the interaction; the number of individuals recommended for the diversion program; the reasons for non-compliance with the LLEP; and all property seizures related to marijuana offenses.

³² Durham Police Department, General Order 1052, eff. 1/03/2014, available at <http://durhamnc.gov/DocumentCenter/View/6960>.

Appendix: Background on the DPD Report and Additional Analysis

On July 8, 2014, Durham City Manager Tom Bonfield requested that the Durham Police Department provide data regarding misdemeanor charges for possession of marijuana. Specifically, the Manager requested: 1) the total number of charges broken down by race, gender and age; 2) whether additional criminal or traffic charges were issued concurrently with the marijuana charge; and 3) whether defendants were being charged for the first time.

Culling from all charge data (arrests and citations) over the course of 18 months (January 1, 2013 - June 30, 2014), the DPD identified 759 misdemeanor marijuana charges. In some instances, defendants were cited more than once with an additional misdemeanor marijuana charge in the same interaction or cited again in the same time period, reducing the total number of unique defendants to 739.

Subsequently, the DPD issued a memo entitled “Analysis of Misdemeanor Marijuana Data” based on this dataset. The memo includes a narrative and important data on how the DPD addresses misdemeanor marijuana infractions. Here we seek to highlight several key facts based on data points from the DPD report.

The data show that Durham’s marijuana enforcement has a racially disparate impact, with 86% of misdemeanor marijuana charges involving African Americans.

Per the City Manager’s request, the DPD released demographic information for each marijuana charge. The DPD displayed in a table each requested demographic by City Council district. Below is an aggregation of the report’s demographic info and each demographic segment expressed as percentage of the total charges.

The following is a summary of select demographics of marijuana possession defendants.

DPD Analysis of 739 Misdemeanor Marijuana Charges (January 1, 2013 - June 30, 2014)

	Select Demographic/Total	Percentage of All Charges
African Americans	637/739	86.2%
Males	641/739	86.7%
Youth (25 or younger)	389/739	52.6%

Citizen complaints triggered only 12.3% of all marijuana charges.

When the information was available, the DPD provided additional data on what triggered the interaction between the DPD and a Durham resident, e.g., a 911 call or traffic stop. In the narrative preceding the tables that summarizes the origins of the police-citizen interaction, the DPD writes that "... [of] the 739 arrests, 390 were identified as a 'DRUGS' call for service ... with 299 of those being self-initiated and 91 initiated by a citizen." **To be clear, a "self-initiated" call for service means a DPD officer initiated the contact – not a Durham resident.** Additionally, 349 of the marijuana charges did not list the trigger for the contact. Based on the available information, only 12% of all marijuana charges clearly stemmed, directly or indirectly, from a citizen complaint.

Calls for Service	Gross Number	Percentage of All Charges
Unknown/Undisclosed	349	47.2%
Police Initiated (e.g., vehicle stop)	299	40.5%
Citizen Initiated (e.g., 911 call)	91	12.3%

The DPD further explained that because calls for service often change in the process, an examination of the 299 "self-initiated" or officer-initiated contacts was warranted, and thus the DPD provided a table listing the rationale for the officer-initiated contact. While nearly 30 different reasons were listed as the cause of contact, the top five reasons accounted for 72% of the contacts: Vehicle Stop; Knock and Talk; Suspicious Person; Suspicious Activity; and Suspicious Vehicle. Vehicle stops alone accounted for 109 charges – 36% of all charges that included a reason for contact with a Durham resident.

Charges issued concurrently with a marijuana charge merit additional review.

The DPD memo also provided information about the additional charges that accompanied the misdemeanor marijuana charge. This data revealed that marijuana charges coincided with an additional 1,943 citations. According to the DPD's summary, 75% of the additional charges were other misdemeanors with the remainder felonies. Notably, the DPD may have mistakenly included 750 misdemeanor "Possess Control Substance Schedule VI" charges in the list of 1,943 additional charges. In the state of North Carolina, the most commonly charged Schedule VI drug is marijuana.³³ In other words, the DPD's summary of "other" charges appears to include the original marijuana possession charge, thus possibly overstating the total additional charges by nearly 40%.

33 While Schedule VI controlled substances in North Carolina include marijuana, THC (the active ingredient of marijuana) and synthetic versions of marijuana (see http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_90/GS_90-94.html), in our review of court files including marijuana citations we did not observe any pattern of multiple misdemeanor Schedule VI possession charges stemming from a single incident. Per Scott Holmes, law professor at North Carolina Central University, this is consistent with DPD training, as they are instructed to issue a single charge (typically the most serious one) for a specific offense.

Reasonably summarizing multiple criminal charges is admittedly difficult, but the crude snapshot provided below may be informative to policymakers, community groups and other stakeholders. Notably, a total of 1,396 charges, or 72%, were for possession of a controlled substance or for a charge ancillary to possession (e.g., drug paraphernalia), while only 1% of all charges was related to alleged instances of trafficking, sale or delivery of a controlled substance.³⁴

“Additional” Offense Category	Gross Number	Percentage of All Charges
Misdemeanor Marijuana	750	38.6%
Ancillary Charge to Drug Possession (e.g. Paraphernalia)	399	20.5%
Illegal Possession of Drugs, Alcohol, Tobacco (not Misdemeanor Marijuana)	247	12.7%
Court Order Violation (e.g. Failure to Appear)	152	8.0%
Violence, Threat of Violence, Breaking & Entering, Firearm-related	145	7.4%
Property Crime/Financial/Trespass	109	5.6%
Traffic	91	4.7%
Trafficking, Sale or Delivery of a Controlled Substance	27	1.4%
Other	23	1.2%
Total	1943	100%

34 Considering that traffic stops were the most common reason for a police-citizen interaction that results in a misdemeanor marijuana charge it is worth noting a recent presentation from UNC Professor Frank Baumgartner. Professor Baumgartner, after years of reviewing North Carolina data, has noted that traffic stops are both “extremely inefficient” in identifying drug couriers, the ostensible rationale for stop and searches, and costly in terms of undermining community trust. According to his analysis of North Carolina traffic stop data from 2002 to 2014 - the largest and longest time series of any data set in the country – stops yield contraband less than one percent of the time. See <http://www.unc.edu/~fbaum/TrafficStops/Baumgartner-IAAR-2015.pdf>

About Self-Help Credit Union

Self-Help is a community development lender headquartered in Durham, NC. Founded in 1980, Self-Help has provided over \$6.8 billion in financing to 102,000 families, individuals and businesses underserved by traditional financial institutions. We help drive economic development and strengthen communities by financing hundreds of homebuyers each year, as well as nonprofits, child care centers, community health facilities, public charter schools, and residential and commercial real estate projects. Through its credit union network, Self-Help serves 130,000 families in North Carolina, California and Chicago and offers a full range of financial products and services.

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