SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 303	**Hearing Date:**	April 14, 2015
Author:	Hueso		
Version:	February 23, 2015		
Urgency:	No	**Fiscal:**	No
Consultant:	JM		

Subject: ***Controlled Substances: Destruction of Seized Marijuana***

HISTORY

Source: Peace Officers Research Association of California

Prior Legislation: SB 1193 (Evans) – 2013, died on the Assembly Floor

Support: California District Attorneys Association; Imperial County Sheriff

Opposition: Drug Policy Alliance; American Civil Liberties Union

PURPOSE

The purpose of this bill is to allow a law enforcement agency to destroy all but two pounds of seized marijuana, if the agency complies with existing requirements that it weigh the entire amount seized, take representative samples and photograph the marijuana.

Existing law provides that controlled substances and devices or paraphernalia for using or administering controlled substances that are possessed in violation of relevant statutes may be seized by law enforcement officers. A search warrant may be issued for seizure. (Health & Saf. Code § 11472.)

Existing law provides that, except as provided in the controlled substance assets and instrumentalities forfeiture law, all controlled substances, and instruments or paraphernalia associated with the controlled substances, seized as a result of a case that ended with the defendant's conviction, shall be destroyed by the court of conviction. (Health & Saf. Code § 11473.)

Existing law provides that all controlled substances, and instruments or paraphernalia associated with the controlled substances, seized as found property or as a result of a case that ended without trial, dismissal or conviction, shall be destroyed unless the court finds that the defendant lawfully possessed the property. (Health & Saf. Code § 11473.5.)

Existing law provides that an order for destruction of controlled substances and associated instruments and paraphernalia may be carried out by a police or sheriff's agency, the Department of Justice, Highway Patrol or Department of Alcoholic Beverage Control. (Health & Saf. Code § 11474.)

Existing law provides that controlled substances listed in Schedule I (Health and Saf. Code § 11054) possessed, sold or transferred in violation of the controlled substances control statutes, and plants from which controlled substances are derived, are contraband, which must be seized and forfeited to the state. (Health & Saf. Code § 11475.)

Existing law, as an exception to the other statutes concerning seizure and destruction of controlled substances, provides that law enforcement may, without a court order, destroy seized controlled substances in excess of 10 pounds, where the following circumstances are present:

- At least five random samples are taken and preserved in addition to the 10 pound.
- In the cases of marijuana, at least one 10-pound sample and five representative samples consisting of leaves or buds shall be retained for evidence.
- Photographs of the material to be destroyed must be taken.
- The gross weight of the entire material must be determined.
- The chief law enforcement officer has determined that it is not reasonably possible to keep all of the material or to store it in another place.
- Within 30 days of destruction of the material, an affidavit demonstrating compliance with this section must be filed in the court with jurisdiction over any criminal proceeding associated with the material.
- If no criminal action is pending, the affidavit may be filed in any court in the county that would have jurisdiction over a criminal action involving the material. (Health & Saf. Code § 11479.)

This bill provides that a law enforcement agency may destroy any amount of growing or harvested marijuana exceeding two pounds if the requirements for weighing, photographing and taking samples of the marijuana are met.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity."(Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

> Law enforcement offices are required by law to store 10 pounds marijuana and 5 additional representative samples for evidence. According to a June report by the California Attorney General's Office, nine counties in California: Shasta, Glenn, Mendocino, Sacramento, Merced, Madera, Fresno, Ventura, and Los Angeles currently possess over 1,000 pounds of marijuana. This can be very burdensome on these agencies because most facilities were not intended to store such large quantities- forcing these agencies to create additional storage facilities onsite resulting in significant costs to law enforcement.
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> In addition to the lack of adequate storage facilities to store the marijuana held for evidence, it is also a serious threat to the health of law enforcement personnel. Because marijuana is a plant, it begins to develop spores and mold within a short period of time. This leads to difficulty breathing and other harmful side effects as a result of frequent handling of the storage items inside these evidence rooms.
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> By reducing the amount of evidence marijuana stored from 10 pounds to 2 pounds, law enforcement will be not only save funding for storage but the reduced amounts but will allow for easier storage and safekeeping of the marijuana, thereby decreasing impacts to officers health and safety.

2. Return of Marijuana and Compensation under Existing Law and Practice

The laws and practices in various counties concerning return of marijuana to a qualified patient and compensation to a patient for destruction of marijuana do not appear to be consistent or clear. The most widely-known case is *Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355. In *Garden Grove*, city police made a vehicle stop of Felix Kha. The arresting officers took ¾ of an ounce of marijuana from Kha. Marijuana possession charges were dropped when Kha established that he had a valid medical marijuana recommendation. Kha sought return of this marijuana, the city refused to do so and the Court of Appeal eventually ordered the city to return the marijuana. (*Id*. at pp. 386-392.)

In *County of Butte v. Superior Court* (*Williams*) (2009) 175 Cal.App.4th 729, sheriff's deputies threated to arrest David Williams, a qualified medical marijuana patient and a member of a medical marijuana collective, if he did not destroy all but 12 of the collective's 41 plants. Williams sued the county, alleging unreasonable search and seizure, violations of California civil rights law (Civ. Code § 52.1) and conversion – a form of theft or wrongful destruction. The county sought summary dismissal of the suit, arguing that it did not present a cognizable claim. The appellate court ordered the suit to proceed. Committee staff has been unable to find any appellate decisions – including unpublished decisions – applying the Butte County v. Superior Court decision. However, an appellate decision would only be issued if one of the parties to a case appealed the order. Counties and cities may have accepted the decision in *Butte County* v. *Superior Court* that lawsuits for compensation for seized marijuana could go forward. Allowing the case to proceed does not mean that the person seeking compensation will win the case and be compensated. The county or city could still defend their actions when the case is fully litigated. Or, as noted below, counties and cities could have settled the suits, thus avoiding the substantial costs of litigation.

In connection with a related bill in 2014, the sponsor provided committee staff with examples of cases in which government entities were required to compensate patients for medical marijuana that was destroyed by a law enforcement agency. For example, in a San Luis Obispo County matter, the sheriff's office paid medical marijuana patient Kimberly Marshall $20,000 to compensate her for destroyed marijuana. Marshall had a recommendation allowing her to possess up to six pounds of dried marijuana buds. Marshall's attorney filed suit against the county, apparently under the Government Claims Act, and won a settlement. (Gov. Code §§ 830-998.3.)

IF PROVISIONS ARE NOT MADE FOR THE COMPENSATION OF LEGITIMATE MEDICAL MARIJUANA PATIENTS AND CAREGIVERS WHOSE MARIJUANA AND RELATED EQUIPMENT WERE DESTROYED PURSUANT TO THIS BILL,WILL LAW ENFORCEMENT AGENCIES BE SUBJECT TO LITIGATION AND JUDGMENTS REQUIRING COMPENSATION IN NUMEROUS INDIVIDUALLY FILED CASES?

3. Argument in Support

The Peace Officers Research Association of California argues in support:

> Currently, California law states that a law enforcement agency must store 10 pounds of cannabis and take five random samples from the entire seizure. The storage requirement has become a burden on agencies and evidence storage facilities, as evidence lockers were not built to house such large quantities of

marijuana. Furthermore the marijuana itself can contain dangerous pesticides and often begins to decompose or mold, causing health risks to officers coming in contact with it.

4. Argument in Opposition

The Drug Policy Alliance argues in opposition:

> Drug Policy Alliance opposes SB 303, an act to authorize the law enforcement agency to destroy seized substances suspected to be marijuana in excess of 2 pounds, subject to specified requirements and require the law enforcement agency to retain at least one 2-pound sample and 5 random and representative samples consisting of leaves or buds, for evidentiary purposes, from the total amount to be destroyed.
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> As introduced, the bill would allow law enforcement agencies to destroy medical marijuana, legally possessed by a bona fide patient or caregiver before the defendant has the opportunity to provide evidence that shows that they are allowed under California law to cultivate or possess medical marijuana. Medical marijuana is a lifesaving therapy for thousands of Californians who suffer debilitating illnesses. Their rights should not be trammeled upon because some law enforcement officials find it inconvenient to store ten pounds of evidence—evidence that may not only be property, but may in fact be medicine.

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