
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1578 **Hearing Date:** June 27, 2017
Author: Jones-Sawyer
Version: May 8, 2017
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Marijuana and Cannabis Programs: Cooperation with Federal Authorities*

HISTORY

Source: Drug Policy Alliance

Prior Legislation: AB 4 (Ammiano), Ch. 570, Stats. of 2013
AB 351 (Donnelly), Ch. 450, Stats. of 2013

Support: American Civil Liberties Union of California; Americans for Safe Access; Amity Foundation; Angeles Emeralds; Black American Political Association of California – Sacramento Chapter; Bradco Companies; Broken No More; Brownie Mary Democrats of California; Cage-Free Cannabis; California Cannabis Manufacturers Association; California Minority Alliance; California NORML; California Public Defenders Association; California Society of Addiction Medicine; California State Conference of the National Association for the Advancement of Colored People; California Youth Empowerment Network; Center for Living and Learning; City of Oakland; City of West Hollywood; Courage Campaign; Homeless Health Care Los Angeles; Humboldt Cannabis Tours; Immigrant Legal Resource Center; Immigrant Youth Coalition; International Cannabis Farmers Association; Law Enforcement Action Partnership; Los Angeles Cannabis Task Force; Los Angeles Reintegration Council; Los Angeles Regional Reentry Project; Marijuana Policy Project; Margro Advisors; Mental Health America of California; National Latino Evangelical Coalition; New Way of Life Re-entry Project; Prison Law Office; SEIU; Southern California Coalition; Tarzana Treatment Center; Watershed Resources Consulting; William C. Velasquez Institute

Opposition: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotic Officers Association; California State Sheriffs' Association; League of California Cities; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs' Association

Assembly Floor Vote:

41 - 33

PURPOSE

The purpose of this bill is to prohibit a state or local agency, as defined, from using agency resources to assist a federal agency to investigate, detain, detect, report, or arrest a person for marijuana activity that is authorized by law in the State of California and transferring an individual to federal law enforcement authorities for purposes of marijuana enforcement, unless directed to do so by a court order.

Existing law states that it shall not be a violation of state or local law, for persons 21 years of age or older to: (Health and Saf., § 11362.1, subd. (a)(1)-(5).)

- Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;
- Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products;
- Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants;
- Smoke or ingest marijuana or marijuana products; and
- Possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever.

Existing law specifies that no physician shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. (Health and Saf., § 11362.5, subd. (c).)

Existing law states that laws prohibiting possession or cultivation of marijuana shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. (Health and Saf., § 11362.5, subd. (d).)

Existing law defines "primary caregiver," for purposes of medical marijuana, as the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person. (Health and Saf., § 11362.5, subd. (e).)

Existing law established a joint state-local agency licensing and regulatory framework for medical cannabis under the Medical Cannabis Regulation and Control Act, and establishes the Office of Medical Cannabis Regulation within the Office of the Governor, the Division of Medical Cannabis Regulation within the State Board of Equalization, the Division of Medical Cannabis Manufacturing and Testing within the Department of Public Health, and the Division of Medical Cannabis Cultivation within the Department of Food and Agriculture, and sets forth the duties of the respective regulatory authorities. (Business and Prof. Code, §§ 19300-19355.)

Existing law prohibits a peace officer from detaining a person who is a witness or victim to a hate crime exclusively for any actual or suspected immigration violation when that person is not charged with committing any crime under state law. (Pen. Code, § 422.93, subd. (b).)

Existing law prohibits a law enforcement official from detaining an individual on the basis of a United States Immigration and Customs Enforcement (ICE) hold after that individual becomes eligible for release, unless any of the following apply:

- The individual has been convicted of a serious or violent felony, as specified;
- The individual has been convicted of any felony which is punishable by imprisonment in state prison;
- The individual has been convicted within the last five years of a misdemeanor for a crime that is punishable as a felony or misdemeanor;
- The individual has been convicted at any time for any one of a list of specified felonies;
- The individual is a current registrant on the California Sex and Arson Registry;
- The individual has been arrested for any specified felony, and a magistrate has made a finding that there is probable cause to hold the person to answer for that charge; or,
- The individual has been convicted of a federal crime that meets the definition of an aggravated felony as specified in the federal Immigration and Nationality Act or is identified by ICE as the subject of an outstanding federal felony arrest warrant. (Gov. Code, § 7282.5.)

This bill states that a state or local agency shall not do any of the following without a court order signed by a judge:

- Use agency money, facilities, property, equipment, or personnel to assist a federal agency to investigate, detain, detect, report, or arrest a person for commercial or noncommercial marijuana or medical cannabis activity that is authorized or allowed under state or local law in the State of California;
- Respond to a request made by a federal agency or federal entity for information about an individual who is authorized or allowed under state or local law to possess, cultivate, transport, manufacture, sell, or possess for sale marijuana or marijuana products or medical cannabis or medical cannabis products, if that request is made for the purpose of investigating or enforcing the federal Controlled Substances Act Related to marijuana or cannabis or other federal marijuana or cannabis law;
- Provide information about a person who has applied for or received a license to engage in commercial marijuana or commercial medical cannabis activity pursuant to the Medical Cannabis Regulation and Safety Act or the Control, Regulate and Tax Adult Use Marijuana Act, if that request is made for the purpose of investigating or enforcing the federal Controlled Substances Act Related to marijuana or cannabis or other federal marijuana or cannabis law; and
- Transfer an individual to federal law enforcement authorities for purposes of marijuana enforcement or detain an individual at the request of federal law enforcement or federal authorities for marijuana or cannabis related conduct that is legal under state or local law.

This bill defines "AUMA," for purposes of this bill, as the Control, Regulate and Tax Adult Use Marijuana Act, enacted by the approval of Proposition 64 at the November 8, 2016, statewide general election.

This bill defines "MCRSA," for purposes of this bill, as the Medical Cannabis Regulation and Safety Act, regarding licensing of cultivators, manufacturers, testing laboratories, distributors, and dispensaries of medical cannabis and medical cannabis products.

This bill defines "State or local agency," for purposes of this bill as, including all of the following:

- A law enforcement agency, including, but not limited to, police, sheriffs, university police, and other campus police agencies;
- A licensing authority under AUMA or MCRSA;
- Any other state or local agency with information that identifies licensees under AUMA or MCRSA; and
- A city, county, city and county, or state agency with information regarding individuals who have obtained medical marijuana program cards, as specified.

COMMENTS

1. Need for This Bill

According to the author:

The prior presidential administration provided assurances that if California developed a robust regulatory and enforcement system for medical or personal marijuana use by adults, California residents who complied with state laws and regulations would have a reasonable expectation that they would *not* be subject to harassment, arrest or incarceration by the federal government.

However, given the current President and new Federal Attorney General's suggested crackdown on the recreational use of marijuana, using state and local resources for the administration's agenda is an overreach that would completely undermine both the will of California voters and the laws approved by our State Legislature. As such, AB 1578 will prevent the misuse of resources, which are funded by our state and local taxes.

2. Proposition 64 was passed by the voters on November 8, 2016

As a result of the passage of Proposition 64 (the Adult Use of Marijuana Act), adults, aged 21 years or older, are allowed to possess and use marijuana for recreational purposes. The measure created two new taxes, one levied on cultivation and the other on retail price. Revenue from the taxes will be spent on drug research, treatment, and enforcement, health and safety grants addressing marijuana, youth programs, and preventing environmental damage resulting from illegal marijuana production.

Proposition 64 allows adults to possess up to an ounce of marijuana. Adults are also allowed to cultivate up to six marijuana plants inside their homes. Marijuana packaging is now required to provide the net weight, origin, age, and type of the product, as well as the milligram amount per serving of [tetrahydrocannabinol](#) and other [cannabinoids](#).

3. Proposition 215, Medical Marijuana: Proposition 215

The California Compassionate Use Act, was enacted by the voters and took effect on Nov. 6, 1996 as California Health & Safety Code 11362.5. The law makes it legal for patients and their

designated primary caregivers to possess and cultivate marijuana for their personal medical use if they have the recommendation or approval of a California-licensed physician.

SB 420, a legislative statute, went into effect on January 1, 2004 as California H&SC 11362.7-.83. This law broadens Prop. 215 to transportation and other offenses in certain circumstances; allows patients to form medical cultivation “collectives” or “cooperatives”; and establishes a voluntary state ID card system run through county health departments.

In 2015, the California Legislature passed [the Medical Marijuana Regulation and Safety Act \(MMRSA or MCRSA\)](#), establishing permitting for marijuana cultivation and dispensaries, etc. at the state level (with local approval). The law went into effect on January 1, 2016; however, the state has said it will need until January 2018 to set up the necessary agencies, information systems, and regulations to actually begin issuing licenses. In the interim, local governments may choose to adopt new ordinances to permit or license local businesses in preparation for state licensing. Facilities currently operating in accordance with state and local laws may continue to do so until such time as their license applications are approved or denied. In the meantime, prospective applicants are strongly advised to apply to the state Board of Equalization for a Resale Permit, and to prepare for seeking approval from their local governments.¹

4. Federal Law Criminalizes the Possession, Use, and Cultivation of Marijuana

The fact that California law allows possession and use of marijuana in specified manners, does not change the fact that marijuana continues to be illegal under federal law. Federal law criminalizes the possession and cultivation of marijuana. (21 U.S.C., §§ 841 and 844.) State authorization does not provide immunity from federal criminal proceedings, if federal law enforcement was inclined to pursue them.

Under Federal Law Marijuana is a Schedule I controlled substance. The fact the marijuana is on Schedule I means that the federal government views cannabis as highly addictive and having no medical value.

Although Marijuana is criminalized on the federal level, federal Department of Justice is currently prohibited from spending funds from specific appropriations acts for prosecutions of those individuals who complied with their state’s marijuana law. In 2014 and 2015, Congress approved a budget amendment that prohibits Justice Department funds from being used to prevent states from implementing medical cannabis laws. These restrictions on federal enforcement are part of the 2016 funding bill for the Commerce-Justice-Science (CJS) budgets and expired at the end of the fiscal year, September 30, 2016.

Known as the Rohrabacher-Farr or CJS amendment, it first signed into law on December 16, 2014 and then again on December 18, 2015. The Rohrabacher-Farr amendment doesn’t just prevent direct interference with state implementation; it should also end federal medical cannabis raids, arrests, criminal prosecutions, and civil asset forfeiture lawsuits, as well as providing current medical cannabis prisoners with a way to petition for their release.²

The most important case involving the Rohrabacher-Farr amendment took place in the federal 9th Circuit Court. In the August 2016 decision of *U.S. vs. McIntosh*, the court held that the

¹ <http://www.canorml.org/medical-marijuana/patients-guide-to-california-law>

² http://www.safeaccessnow.org/federal_marijuana_law

Rohrabacher-Farr Amendment prohibits the federal prosecution of conduct that is allowed by the state's medical cannabis law. In the opinion, Judge Diarmuid O'Scannlain wrote, "*We therefore conclude that, at a minimum, § 542 prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws.*" *U.S. v. McIntosh* (2016), 833 F.3d 1163, 1177.

The most recent extension of Rohrabacher-Farr expires on April 28, 2017. But that provision must be re-approved annually, and if it's allowed to expire, the federal authorities could aggressively pursue criminal sanctions of marijuana related actions which continue to be illegal under federal law.

5. Possibility of Increased Federal Enforcement of Marijuana Laws

As the court in *McIntosh* noted, "DOJ [Federal Department of Justice] is currently prohibited from spending funds from specific appropriations acts for prosecutions of those who complied with state law. But Congress could appropriate funds for such prosecutions tomorrow." (*McIntosh*, at 1179.) There has recently been a change in the executive branch, and White House press secretary Sean Spicer said on February 23, 2017, that he expects states to be subject to "greater enforcement" of federal laws against marijuana use, a move that could undercut the growing number of jurisdictions moving to legalize the drug for recreational purposes.³

The current Attorney General, Jeff Sessions has also made statements indicating his concern with states that have liberalized laws surrounding marijuana use. On February 27, 2017, Attorney General Jeff Sessions restated his opposition to marijuana use and offered an warning about state-level marijuana legalization efforts, suggesting that such policies would open states to "violence," as well as potential repercussions from the federal government.⁴ Such statements have raised concerns that the Attorney General could use the FBI to crack down on marijuana operations nationwide, or direct the Drug Enforcement Administration to enforce federal prohibition outside of the jurisdiction of the U.S. Court of Appeals for the 9th Circuit. If Rohrabacher-Farr's amendment was allowed to expire, the Attorney General could then order the DEA to enforce federal law nationally.

6. Argument in Support

According to Drug Police Alliance:

The presidential administration of Barack Obama provided assurances that if California developed a robust regulatory and enforcement system for medical or adult use of marijuana, California residents who complied with state laws and regulations would have a reasonable expectation that they would not be subject to harassment, arrest or incarceration by the federal government...

However, given the election of Donald Trump, the record of US Attorney General Sessions as a dyed-in-the-wool drug warrior and proponent of mass incarceration,

³ www.washingtonpost.com/news/post-politics/wp/2017/02/23/spicer-feds-could-step-up-anti-pot-enforcement-in-states-where-recreational-marijuana-is-legal/?utm_term=.5261641fe41e

⁴ http://www.huffingtonpost.com/entry/jeff-sessions-marijuana-comments_us_58b4b189e4b0780bac2c9fd8

and the recent statement by the President's press secretary that we should expect attacks on legal adult use marijuana, it is prudent to pass state legislation to prevent the misuse of our own state and local resources. We cannot allow our own law enforcement and regulatory agencies to thwart the will of the California voter, and the intent of legislation passed by our State Legislature and signed by our Governor.

7. Argument in Opposition

According to the Association for Los Angeles Deputy Sheriffs:

This bill will have the impact of hamstringing law enforcement investigations. Ironically, its ultimate consequence would be to vitiate Proposition 64 in its entirety by resulting in the outright intervention by federal authorities in order to enforce federal marijuana laws across the board in California.

In 2013, Deputy Attorney General James Cole issued guidance with respect to the federal government's position on marijuana enforcement in states that had legalized marijuana in their jurisdictions. The Cole Memo, as it has come to be known, outlines eight federal enforcement priorities for issues relating to marijuana. Implicit in the Cole Memo is the proposition that there will be open communication between the state and federal government to assure that the state is in compliance with the federal priorities. Under AB 1578, however, the state would be prohibited from interaction with the federal government to ascertain compliance with the Cole Memo. For example, among the priorities of the Cole Memo are the prevention of distribution of marijuana to minors. Inasmuch as Proposition 64 permits audiences that receive marijuana advertising to be up to 28.4% children, this will be an issue of significance. Under AB 1578, however, the state would seem to be precluded from sharing any information about the percentage of children receiving marijuana advertising. Similarly, although Proposition 64 provides that conviction of a controlled substance trafficking felony may not be the sole reason for denying a marijuana license, the state could be precluded from even reaching out to the federal government to determine if there were any other factors in connection with that felony trafficking conviction. In like manner, a federal law enforcement discovery of California marijuana being illegally sold in another state could be impossible to trace to the California based trafficker under the provisions of AB 1578.

In other words, AB 1578 could have the unintended consequence of placing California in direct violation of the Cole Memo and inviting precisely the type of federal intervention the bill is intended to prevent.

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