



Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

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ASA Wins Landmark Ruling on Cultivation of Medical Marijuana **California Appellate court protects patient collectives and affirms civil rights**

A case Americans for Safe Access has been fighting for three years resulted last month in an appellate court ruling that protects California patients who grow marijuana collectively.

The California Third District Court of Appeal issued a 2-1 decision affirming a superior court ruling that state and local law enforcement must respect the right of medical marijuana patients to cultivate their medicine collectively.

The court also found that law enforcement must obtain a warrant to search a patient's property and seize any marijuana found there. The judges wrote that to rule otherwise would "surely shock the sensibilities of the voters" who approved the state's medical marijuana initiative in 1996.

"In addition to protecting patients' right to collectively cultivate, the Court has reaffirmed that medical marijuana patients enjoy the same constitutional rights as everyone else,

including the ability to file civil rights actions when those rights are violated," said Joe Elford, ASA Chief Counsel and the attorney who litigated the case.

ASA took the case in 2006 after receiving repeated reports that Butte County law enforcement and other police agencies throughout the state were refusing to recognize the legitimacy of patient collectives.

The landmark appellate decision concerns the 2005 warrant-less search of a patient's home in Paradise, California. During the search, the Butte County Sheriff ordered the homeowner, David Williams, 56, to uproot more than two-dozen plants being grown for a small collective of seven medical marijuana patients. Though state law allows for collective cultivation, the sheriff told Williams it is not lawful to grow marijuana for multiple patients.

A superior court judge in Butte County ruled otherwise in 2007, saying medical marijuana

patients "should not be required to risk criminal penalties and the stress and expense of a criminal trial in order to assert their rights."

The appeals court last month agreed, finding that patients have "the same constitutional guarantee of due process available to all individuals, no matter what their status, under the state Constitution." The appeals panel noted that "[t]he fact that this case

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Calif. State Senators Urge New National Policy on Medical Marijuana

Some California state senators are pushing for comprehensive changes in federal policy on medical cannabis.

After hearing testimony from Americans for Safe Access and other patient advocates, the California Senate Health Committee last month passed a resolution urging an end to federal interference in state medical marijuana programs, as well as a new national approach that supports research and makes the drug available in all states.

Introduced in June by State Senator Mark Leno (D-San Francisco) and sponsored by ASA, the resolution is now before the Senate Judiciary Committee. If passed there, it will go before the full Senate.

"Patients and providers in California remain at risk of arrest and prosecution by federal law enforcement, and legally established medical marijuana cooperatives continue to be the subjects of federal raids," said Sen. Leno in a statement.

Senate Joint Resolution 14 asks the federal government to both curtail raids in the state and "create a comprehensive federal medical marijuana policy that ensures safe and legal access to any patient that would benefit from it."

The resolution also urges President Obama and Congress to establish "an affirmative defense

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Colorado Rejects Restrictions on Distribution **Grassroots Campaign Yields Health Department Win**

On July 20, patients and advocates convinced the Colorado Board of Health to reject a proposal that would have sharply restricted the ability of the state's citizens to access medical marijuana.

Nearly 1,000 medical cannabis patients and supporters—including lawyers, doctors, care providers, veterans, and numerous health-care and religious organizations—attended the 12-hour hearing, and nearly 200 supporters of safe access testified, thanks to months of coordinated efforts by Sensible Colorado, an ASA affiliate.

As a result, the Board of Health voted 5-4 to table a proposal that would have limited caregivers to assisting no more than five patients. The proposal would have also restricted who can qualify as a caregiver under Colorado law, requiring medical marijuana providers to assist patients in ways that would be impractical for many—including providing patients with food, transportation, and housekeeping services.



Brian Vicente (seated center) reacts to the win. (Kim Sidwell photo)

When these changes were first proposed in January, Sensible Colorado mounted a grassroots campaign that delayed the hearing until July so patient advocates could organize a response. The successful outreach efforts that ensured the large turnout at the hearing were just part of Sensible Colorado's campaign. Director Brian Vicente also convinced such prominent state organizations as the Northern Colorado AIDS Project, the ACLU of Colorado and the Colorado Criminal Defense Bar to

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publicly oppose the changes, and he persuaded one of the state's Congressional delegation to write a letter of opposition to the board.

The success of Sensible Colorado's organizing paves the way for increased access to medical marijuana through safe and affordable distribution, an issue for many of the 13 states with medical cannabis laws.

With only one exception, state medical marijuana laws failed to address how qualified patients are to obtain their medicine. The legislatures of several states have now amended their laws to establish rules for distribution of marijuana to patients.

In the past few years, California, Washington and Oregon have created provisions for regu-

lating distribution. This year, Maine has debated the issue and Rhode Island has now licensed three "Compassion Centers" to provide medical marijuana. This fall, voters in Maine will consider an initiative to implement a distribution system for patients.

New Mexico is the one state where lawmakers not only established protections for patients but directed state officials to find ways of distributing medical marijuana. In March, the state issued its first license for non-profit medical marijuana production.

Distribution questions are also shaping new medical marijuana laws coming before state legislatures. Lawmakers in New Jersey and Iowa have been debating plans to distribute medical marijuana to patients, not just protect them from prosecution if they can get it.

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to medical marijuana charges in federal court and establish federal legal protection for individuals authorized by state and local law."

Don Duncan, ASA's California Director, and Lanette Davies, a Sacramento patient and activist were among those who explained to the senators why this is so important.

"With more than two dozen medical marijuana defendants currently being prosecuted by the Justice Department, each of them facing many years in prison, such a policy change would be timely, relevant and critically important," said Duncan. "The entire country needs a sensible medical marijuana policy."

While the Obama Administration has said it has a new policy on medical cannabis, federal raids on patients and providers continue.

Currently, medical marijuana patients and providers charged under federal law cannot introduce evidence about their medical condition, their doctor's advice, or state medical marijuana laws.

The resolution also seeks expanded research into the medical benefits of marijuana. More research was a recommendation of a 1999 report commissioned by the White House but never acted on. In 2007, a judge ruled that federal policy is unnecessarily limiting FDA-approved studies.

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involves medical marijuana and a qualified medical marijuana patient does not change these fundamental constitutional rights or an individual's right to assert them."

"This ruling sends another strong message to state law enforcement that they must abide by the laws of the state and not the competing federal laws," said ASA's Elford.

Even the dissenting opinion in the case contained a plea for new federal law. Judge James Morrison wrote that, "[t]he United States Congress should reconsider its refusal to amend the federal drug laws to make reasonable accommodation for the 13 states that have enacted some form of compassionate use exception to their penal codes."

ACTION ALERT: Educate the New Drug Czar!

On July 22, new White House Drug Czar Gil Kerlikowske said at a press conference that marijuana "has no medicinal benefit." He should have done his homework.

Studies have shown marijuana to have medical efficacy for a number of illnesses and chronic conditions. Even the 1999 report commissioned by the office Kerlikowske now heads said so.

Please urge President Obama and Drug Czar Kerlikowske to recognize that thousands of Americans depend on medicinal marijuana to treat their symptoms and relieve their suffering—from chronic pain and nausea to the effects of MS and HIV/AIDS.

Use ASA's online tool at AmericansForSafeAccess.org/drugczar. Or call the ONDCP at (202) 395-6618. Or send a letter like the one below to: Director Gil Kerlikowske, Office of National Drug Control Policy, P.O. Box 6000, Rockville, MD 20849.

Dear President Obama and ONDCP Director Kerlikowske:

I am writing out of concern for Mr. Kerlikowske's position on medical use of marijuana. The Fresno Bee recently quoted Mr. Kerlikowske as saying that marijuana "has no medicinal benefit."

Yet this denies established scientific findings and common medical practice. Countless studies have shown marijuana's efficacy for many serious health conditions. Some of the most recent clinical trials are at the website of the University of California's Center for Medicinal Cannabis Research (www.cmcrc.ucsd.edu).

I urge you to review the full scientific record and revise the ONDCP's position. As states continue passing sensible medical marijuana laws, the federal government should adopt a comprehensive policy that reflects the benefits of this promising medicine.

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