

California Law Enforcement and Medical Marijuana



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Law enforcement attitudes towards medical marijuana in California have been mixed. Generally, many law enforcement officials and associations have been hostile to medical marijuana, since California's voters legalized it in 1996 and continuing today.¹ For example, Sheriff Brad Gates, a past president of the California State Sheriffs' Association, and James P. Fox, then sitting president of the California District Attorneys Association, both signed ballot arguments against Proposition 215, the initiative to legalize medical marijuana.²

Other local law enforcement officials, by contrast, have been quite supportive. Terence Hallinan, then San Francisco District Attorney, signed one of the arguments in favor of Prop. 215 during the campaign.³ His colleagues and predecessors have generally been equally supportive of medicinal marijuana. Longtime San Francisco Sheriff Michael Hennessy went so far as to condone its use in San Francisco county jails, saying, "If it eases their pain and helps their health and their appetites, which allows them to live longer, then we should be doing it."⁴

More recently, San Francisco Police Department spokesperson Boaz Mariles lauded the positive working relationship the city's medical marijuana dispensaries have with the community and with his department last year, stating, "The police culture has changed in terms of understanding that it's not just weed, it's medicine...The public has spoken and it's our job to work with the marijuana dispensary clubs to keep them and the community safe."⁵ When asked if the city has experienced increased crime or nuisance, Mariles replied, "It's just the opposite...people are taking ownership. Now they're stakeholders in the community. If we do our job right and they do theirs, crime should go down." Mariles concluded that the city's medical marijuana dispensers have indeed "done their part."⁶

California's previous attorneys-general have defended California's medical marijuana laws and sought their

optimal implementation. In 2003, the only law enforcement official to register an opinion regarding state legislation to improve implementation of Prop. 215 was then-Attorney General Bill Lockyer, who supported the bill,⁷ intended to "address the concerns of law enforcement and ultimately will help make medical marijuana available to chronically ill patients."⁸

After a 2005 U.S. Supreme Court ruling, Attorney General Lockyer issued a statement in which he declared that California's medical marijuana laws remain intact and unchanged, despite federal laws that prohibit medicinal marijuana:

"Californians spoke overwhelmingly in favor of medical marijuana by passing Proposition 215... and that law still stands in our state. Unfortunately, federal law continues to criminalize the use of physician-recommended marijuana medicine... Taking medicine on the recommendation of a doctor for a legitimate illness should not be a crime. There is something very wrong with a federal law that treats medical marijuana the same as heroin. The United States Congress and the President have the power to reform and modernize federal law in order to bring relief to medical patients and still punish those who illegally traffic in substances. Patients, physicians and the public that support medicinal marijuana should tell their Congressional Representatives and Senators to take a fresh look at the federal laws that ban its use."⁹

Governor Jerry Brown, while serving as Attorney General, published official guidelines in late 2008 instructing qualified patients and state law enforcement officers on how to comply with the state's medical marijuana laws. By issuing these guidelines, California's highest ranking law enforcement official affirmed medical marijuana's legality and legitimacy in California—in accordance with the wishes of the state's voters, policymakers and courts. The guidelines are also intended to clarify the law in order to assist law enforcement to discharge their duties.¹⁰

With the passage of time, other law enforcement entities seem to have softened their attitudes towards

medical marijuana. According to a recent news report, the head of the California District Attorney Association said that his organization does not often take a stance on medical marijuana issues because his members' opinions on the subject vary widely, explaining, "It is different than a lot of areas in criminal law where there is a consensus....there are varying approaches from county to county in the way law enforcement is dealing with medical marijuana laws."¹¹

While local policies differ greatly, a number of localities – with the ready involvement of their law enforcement agencies – have taken constructive approaches to medical marijuana implementation, balancing the needs of law enforcement, patients and their communities. Such jurisdictions have created, and maintain, responsible and effective regulations for the cultivation and distribution of medical marijuana.¹²

In San Diego, some law enforcement officers, notably the district attorney's office, have aggressively sought to undermine state law, while others have defended it and called instead for sensible regulations. San Diego Police Chief William Lansdowne in 2004 stated in a departmental memo that "Department personnel...will not knowingly participate in any federal operation or investigation that is in conflict with our established policies and procedures concerning medicinal marijuana."¹³ Chief Lansdowne recently reiterated his support, saying "I'm on board with medical marijuana. I think that there's a place for it." Deriving from compassion and a respect for the will of the voters, Chief Lansdowne described his position: "My support of medical marijuana is not unusual. My father died of cancer. It was difficult and, towards the end, it would have been benevolent for him to have whatever he needed. We need to get everybody onboard. It's clear in the votes that there is certainly a desire to have medical marijuana. We just have to manage it well."¹⁴ His colleague, Assistant Chief Cesar Solis, when serving as head lieutenant of the city's narcotics unit in 2004 said his department does not "want to take [marijuana] away from anyone who has a legitimate right and need to have it."¹⁵

Mendocino County Sheriff-Coroner Thomas D. Allman has taken a particularly innovative and successful approach to make certain that his county's medical marijuana program works for patients and non-patients alike. He not only recognizes marijuana's medical benefits, but also –and, for Sheriff Allman, more importantly –he acknowledges that medical marijuana is the state law and is here to stay. "The voters have passed the law; we're only trying to make it work. And the longer we build up hurdles and we build up laws, then the more money we're going to be spending in court to ultimately be told to get over it. So the Mendocino County Sheriff's Office...we're trying to make it work," he said in a recent interview.¹⁶

Instead of arresting growers suspected of operating in violation of the law, Sheriff Allman and the Mendocino County Board of Supervisors introduced a series of policies to assist law enforcement in identifying bona fide patients and caregivers, while ensuring patients' access to marijuana and their medical privacy. Each patient or caregiver may cultivate up to 25 plants per parcel of land; patients can also form a collective with other patients, enabling them to cultivate up to 99 plants. Collectives must first complete and submit an application (and pay a fee), verifying that they have adequate security at the proposed cultivation site, are not planning to cultivate near a school or other prohibited area, and will agree to monthly inspection by the Sheriff's department to prove they are not creating a nuisance or causing environmental damage (from electricity theft or illegal water irrigation, for instance).¹⁷

Central to Sheriff Allman's approach is the provision (for a \$25 fee) of special county-issued zip-ties with individualized serial numbers to be placed on each plant that a patient or caregiver intends to grow, so that Mendocino's law enforcement officers can easily distinguish between legitimate and illicit cultivation.¹⁸ "I recently walked a 99-plant garden with a marijuana farmer," Sheriff Allman related. "I didn't arrest him, and our meeting ended with a handshake."¹⁹

Mendocino's approach has paid off. Not only has the county found a workable, community-oriented response to the challenges of implementing a medical marijuana program, but it has also raised hundreds of thousands of dollars. Sheriff Allman estimates that zip-tie fees alone will generate "a quarter-million dollars for the county" in 2011.²⁰

Summing up Mendocino's active collaboration between growers, law enforcement and neighbors, Sheriff Allman said, "You're seeing law enforcement working with the citizens to say: 'OK, we think we understand the problem. We think we have a solution. Let's give it a try.' And fortunately, because we have so many forward-thinking citizens that say, 'All right, well, let's try it.'"²¹ He continued: "I think history will judge us favorably and that future historians will say that opting for legal medical marijuana was the right road to take."²²

Sheriff Allman encourages his colleagues in law enforcement to follow Mendocino's lead and work with medical marijuana patients to devise a system that improves their community's safety and health, rather than contradicting the will of California's citizens. "If law enforcement continues to ignore what the voters' intention was, and if law enforcement continues to ignore what the courts have mandated, then law enforcement is going to find itself on the losing end of a battle."²³

Law Enforcement Support for Marijuana Decriminalization and Legalization

A few members of California's law enforcement community have gone even further and called for the decriminalization of adult possession of marijuana for recreational uses. California enacted legislation last fall that reduced simple marijuana possession from a misdemeanor to an infraction with a fine; among the bill's supporters were the California District Attorneys Association and the Judicial Council of California, which argued in favor that processing simple marijuana offenses bore "too great a cost for the courts at a time when resources are shrinking and caseload is growing."²⁴ A previous version of this decriminalization bill was supported by the California District Attorneys Association, the Judicial Council of California, the Office of the Attorney General, and the district attorneys of several major counties, including the Los Angeles County and San Mateo County District Attorneys Offices.²⁵

In California's 2010 statewide election, various law enforcement entities came out strongly in favor of the citizen initiative to legally regulate marijuana for adults (Proposition 19). Prop. 19 supporters included the National Black Police Association, the National Latino Officers Association, and retired individual members of law enforcement from across the country.²⁶ Several career officers were among the initiative's most prominent supporters, such as former San Jose Chief of Police Joseph McNamara, former Los Angeles Police Department Narcotics Detective David Doddridge, former Los Angeles Deputy Chief of Police Stephen Downing, and retired Orange County Superior Court Judge Jim Gray – all of whom signed ballot arguments in favor of the initiative.²⁷

Many others, like Former LAPD sergeant and Los Angeles County deputy district attorney William John Cox, gave ringing endorsements of the initiative in the press on several occasions.²⁸

Besides retired law enforcement, some sitting law enforcement officials support outright legalization of marijuana for adults as well. Oakland City Attorney John Russo officially endorsed Prop. 19. The Office of the Sheriff-Administration for the City and County of San Francisco formally endorsed Assembly Member Tom Ammiano's bill that would have regulated marijuana like alcohol for adults.²⁹ Current Humboldt County District Attorney Paul Gallegos openly supports marijuana legalization as well, saying, "I think marijuana should be legalized and regulated and taxed just like we do with alcohol... I am more than prepared to get over this battle and start redirecting those resources away from marijuana and go after more serious drugs. We have plenty of work to do out there."³⁰

A host of these supporters have already pledged to campaign for a future state ballot initiative to tax and regulate marijuana like alcohol, including retired Redondo Beach Police Lieutenant and mother Diane Goldstein.³¹ Judge Gray and Deputy Chief Downing, mentioned above, have already begun gathering signatures for a new legalization initiative in 2012.³²

Following is a complete list of law enforcement endorsements of Prop. 19.³³

- National Black Police Association
- National Latino Officers Association
- Law Enforcement Against Prohibition (LEAP)
- San Jose Police Chief Joseph McNamara (Ret.)
- Seattle Police Chief and San Diego Deputy Police Chief Norm Stamper (Ret.)
- Former Los Angeles Deputy Police Chief Stephen Downing
- Former Los Angeles Police Department Sergeant, Los Angeles Deputy District Attorney and El Cajon Police Officer William John Cox
- Former Contra Costa County Deputy Sheriff David Sinclair
- Former Los Angeles Deputy Sheriff and Kings County Deputy Sheriff, MacKenzie Allen
- Former Los Angeles Deputy Sheriff Jeff Studdard
- Former Sutter County Deputy Sheriff and Wheatland Police Officer Nate Bradley
- Former Yolo County Resident Deputy Sheriff and Sacramento Port Police Officer, Danny Maynard
- Humboldt County Sheriff's Captain Stephen Cobine (Ret.)
- Orange County Superior Court Judge James P. Gray (Ret.)
- San Francisco District Attorney Terence Hallinan (Ret.)
- Former Senior Humboldt County Deputy District Attorney and Prosecutor Jeffrey Schwartz
- Former Los Angeles Deputy District Attorney and California Administrative Law Judge Mike Schmier
- Riverside County Deputy District Attorney Walter Clark (Ret.)
- Oakland City Attorney John Russo
- Former Community Prosecutor James Anthony, Oakland City Attorney's Office
- Los Angeles Police Department Narcotics Detective David Doddridge (Ret.)
- Former San Jose Police Department Narcotics Detective Russ Jones
- Former Los Angeles Senior Police Specialist Walter McKay
- United States Air Force Security Forces Officer John Darker, Anderson, CA
- Former United States Military Police Officer Dr. Nina Graves, Santa Barbara, CA
- United States Navy Officer and Intelligence Specialist Larry Talley (Ret.)

- California Correctional Peace Officer William Baldwin (Ret.)
- California Correctional Peace Officer Madeline Martinez (Ret.)
- Former Lakeport Police Officer Rick Erickson
- Former San Francisco Police Officer Bill Dake
- Former Torrance Police Officer Kyle Kazan
- Lyle Smith, Los Angeles Sheriff's Department (Ret.)
- Former Senior Reserve Park Ranger, Orange County, L. Lawrence Baird
- Mohave County Deputy Probation Officer Joe Miller (Ret.)
- Former Massachusetts Assistant Attorney General John Amabile, Tisbury, MA
- Atlanta, Georgia State's Attorney Jay Fisher
- Former American Samoa Attorney General's Office Chief Prosecutor and Municipal Prosecutor for Washington Cities Jim Doherty
- New Jersey State Police Detective Lieutenant Jack Cole (Ret.)
- New Hampshire State Police Officer Paul MacLean (Ret.)
- Retired Bristol, Vermont Police Chief and Saint Albans, Vermont Police Chief Tim Datig
- Former Deputy Sheriff Leo E. Laurence, J.D., Central Missouri
- Former Reserve Deputy Sheriff and Corrections Officer Dwayne Sessom, Lawton, Oklahoma
- Former Davis County, Utah Deputy Constable Bret Black
- Retired Washington Superior Court Judge David Nichols
- Retired Police Captain Peter Christ, Syracuse, New York.
- Former Spokane, Washington Police Department Narcotics Investigator Jay Fleming
- John O'Brien, Sheriff, Genesee County, MI (Ret.)
- Former Corrections Official Michael Gilbert, San Antonio, Texas
- Former Department of Corrections Sniper and K-9 Narcotics Dog Trainer Rusty White, Bridgeport, Texas
- National Black Police Association Executive Director and former Washington, DC Metropolitan Police Officer Ronald Hampton
- Former Baltimore Police Officer Peter Moskos
- Burlington, Ontario, Canada Law Enforcement Officer Alison Myrden (Ret.)
- Law Enforcement Officer Tony Ryan (Ret.), Sioux Falls, South Dakota Physicians and Doctors

¹ For example, recent legislation to protect medical marijuana patients from employment discrimination in non-safety-sensitive positions was opposed by nearly all the major law enforcement professional associations. See California Senate Floor Analyses, SB 129 (Leno)(4/11/11), http://ct2k2.capitoltrack.com/Bills%5Csen%5Csb_0101-0150/sb_129_cfa_20110411_105052_sen_floor.html.

² California Ballot Pamphlet. "Medical Use of Marijuana. Initiative Statute." (Proposition 215, 1996). Ballot arguments. http://www.chrisconrad.com/expert.witness/ballot_215.html

³ Id.

⁴ "Jailbirds Smoking a Joint in the Joint?" *Associated Press*, (May 2, 1997).

⁵ Julia Dahl, "Oaksterdam: California's Experiment with Medical Marijuana," *The Crime Report* (TCR), Center on Media, Crime and Justice at the John Jay College of Criminal Justice in New York, (Thursday, March 18, 2010), <http://www.thecrimereport.org/archive/oaksterdam-californias-experiment-with-medical-marijuana/>

⁶ Id.

⁷ California Senate Health and Human Services Committee Analysis, S.B. 420, 2003 Leg. Reg. Sess. § 1(b)(1) (Cal. 2003). (Vasconcellos) (April 9, 2003) http://info.sen.ca.gov/pub/03-04/bill/sen/sb_0401-0450/sb_420_cfa_20030407_132810_sen_comm.html

⁸ Id.

⁹ Bill Lockyer, CA Attorney General's Statement on the Raich Decision (press release, 2005), <http://www.safeaccessnow.org/article.php?id=2175>

¹⁰ Brown, Edmond G.. "Guidelines for the Security and Non-Diversion of Marijuana grown for Medical Use" http://aq.ca.gov/cms_attachments/press/pdfs/n1601_medical_marijuanaguidelines.pdf

¹¹ W. Scott Thorpe, California District Attorney Association, quoted in Paul Elias, "Many felony pot cases getting tossed out of court," *Associated Press* (March 28, 2010), http://www.huffingtonpost.com/2010/03/28/felony-marijuana-cases-ge_n_516538.html

¹² See for example, Coleman, V. & Sparks, M., *Medical Marijuana Dispensaries: An Overview of Regulatory Approaches for Localities*, Community Prevention Initiative 3 (2010), <http://www.ca-cpi.org/docs/publications/Other/MedicalMarijuanaDispensaries.pdf>; and Mark Eddy, Congressional Research Service, *CRS Report for Congress -- Medical Marijuana: Review and Analysis of Federal and State Policies* (2010)

<http://www.cannabisguild.com/MED-MJ-FOLDER/MMJ-FEDERALISM/CRS-Report-State-Federal-4-10.pdf>.

¹³ San Diego Police Department Procedure Memorandum, "Medical Use of Marijuana Enforcement Procedure," (06/19/06), <http://www.sandiego.gov/police/pdf/060619enforcement.pdf>; see also "Police Chief Won't Work With Feds In Pot Busts," *San Diego City Beat* (Wed, 4 Feb 2004) <http://www.mapinc.org/drugnews/v04/n221/a07.html>.

¹⁴ "A Q&A with SDPD Chief William Lansdowne," *San Diego Union-Tribune* (July 10, 2011), <http://www.signonsandiego.com/news/2011/jul/10/a-ga-with-sdpd-chief-william-lansdowne/>.

¹⁵ San Diego City Beat (2004).

¹⁶ Public Broadcasting Service, "The Pot Republic," *Frontline* (Oct. 18, 2010 and March 7, 2011) <http://www.pbs.org/wgbh/pages/frontline/the-pot-republic/interviews/tom-allman.html#ixzz1UZcps1mV>

¹⁷ For the various steps of this process, see County of Mendocino, "Permit Application For Mendocino County Code 9.31 Exemption," Form 801 Rev. (Rev. 01/01/11), <http://www.mendocinosheriff.com/pdfs/99PermitApplication20110101.pdf>; County of Mendocino, Board of Supervisors, "Ordinance Amending Chapter 9.31 of Title 9 of the Mendocino County Code Entitled "Medical Marijuana Cultivation Regulation," (2010), <http://www.mendocinosheriff.com/services/medicalmarijuana/2010Ordinance4235.pdf>; Thomas D. Allman, Sheriff-Coroner,

County of Mendocino, Office Of The Sheriff-Coroner, Captain Kurt O. Smallcomb, Field Services, Captain Tim Pearce, Corrections, "Requirements for Compliance with Medical Marijuana Cultivation Ordinance," http://www.mendocinosheriff.com/services/medicalmarijuana/Requirements_for_Cultivation_rev_2_.pdf; and Mendocino County Sheriff's Office, "3rd Party 9.31 Garden Inspectors," <http://www.mendocinosheriff.com/services/medicalmarijuana/inspectors.html>. See also *Frontline*, "the Pot Republic"; and Susan Gardner, "Sheriff Allman talks politics and procedures at Rotary meeting," *Redwood Times* (12/02/2010), http://www.redwoodtimes.com/ci_16759836?source=most_ved.

¹⁸ Mendocino County Sheriff's Office, Thomas D. Allman, Sheriff-Coroner, "Medical Marijuana Zip-tie Program, Q & A," (Summer 2011), <http://www.mendocinosheriff.com/pdfs/ziptie25QA2011.pdf>.

¹⁹ Jonah Raskin, "Mendocino County Sheriff Tom Allman: A Medical Marijuana Grower's Best Friend," *Anderson Valley Advertiser* (Jan 27th, 2011), <http://theava.com/archives/9793>. See also, <http://www.mendocinosheriff.com/>

²⁰ *Frontline*, "the Pot Republic."

²¹ *Frontline*, "the Pot Republic."

²² Jonah Raskin, "Mendocino County Sheriff Tom Allman: A Medical Marijuana Grower's Best Friend," *Anderson Valley Advertiser* (Jan 27th, 2011), <http://theava.com/archives/9793>.

²³ *Frontline*, "the Pot Republic."

²⁴ Senate Floor Analysis of California SB 1449, http://leginfo.ca.gov/pub/09-10/bill/sen/sb_1401-1450/sb_1449_cfa_20100421_110949_sen_floor.html.

²⁵ Assembly Committee Analysis of CA Senate Bill 797 (Romero, 2005/2006), http://leginfo.ca.gov/pub/05-06/bill/sen/sb_0751-0800/sb_797_cfa_20050620_103631_asm_comm.html.

²⁶ Prop. 19 Endorsements, <http://www.facebook.com/topic.php?uid=105977739467526&topic=7>

²⁷ California General Election Statewide Voter Information Guide, November 2, 2010, Proposition 19, Arguments and Rebuttals, <http://www.voterguide.sos.ca.gov/propositions/19/arguments-rebuttals.htm>.

²⁸ See, for example, Law Enforcement Against Prohibition, "Cops & Judges Hold Press Conferences to Support Prop. 19 & Marijuana Legalization," (press release, September 10, 2010) <http://copssaylegalize.blogspot.com/2010/09/cops-judges-hold-press-conferences-to.html>; Michael Whitney, "Prop 19: Cops, Law Enforcement Support Marijuana Legalization," *FireDogLake.org*, (Wednesday September 15, 2010); Catherine Saillant, "Legalizing pot would free up police to fight violent crime, law enforcement group says," *LA Times* (September 13, 2010)

<http://latimesblogs.latimes.com/lanow/2010/09/legalizing-pot-would-free-up-police-to-fight-violent-crime-law-enforcement-group-says.html>; Janie Lorber, "Former D.E.A. Chiefs Seek to Block Legal Pot," *New York Times* (September 13, 2010), <http://thecaucus.blogs.nytimes.com/2010/09/13/former-anti-drug-chiefs-seek-to-block-legal-pot/>; LEAP blog, <http://copssaylegalize.blogspot.com/2010/09/media-goes-nuts-for-cops-supporting.html>.

²⁹ California Assembly Committee on Public Safety Analysis of AB 390 (Ammiano) (January 12, 2010) http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0351-0400/ab_390_cfa_20100111_194038_asm_comm.html.

³⁰ Donna Tam, "Quite a LEAP for state of California: Humboldt County law enforcement officials sign on to group's support for Proposition 19," *The Eureka Times-Standard*,

(09/14/2010) http://www.times-standard.com/localnews/ci_16070531.

³¹ Diane Goldstein, "Opposing Viewpoints on: Time to regulate, tax and control," *Imperial Valley Press Online*, (October 17, 2010), http://articles.ivpressonline.com/2010-10-17/marijuana-prohibition_24808324; see also Coalition for Cannabis Policy Reform, <http://www.cannabispolicyreform.org/>.

³² "Pot backers get approval for Calif. ballot petitions," *Associated Press / USA Today*, (7/26/11) http://www.usatoday.com/news/nation/2011-07-26-marijuana-legalization-california-ballot_n.htm?csp=34news.

³³ These officials signed a public letter urging voter to approve Prop. 19. See Law Enforcement Against Prohibition, "California Law Enforcers Endorse Marijuana Legalization," (September 13, 2010) <http://copssaylegalize.blogspot.com/2010/09/california-law-enforcers-endorse-prop.html>.