



# LEGAL ISSUES FOR MEDICAL CANNABIS PATIENTS

These three bills raise legal issues for medical cannabis patients related to civil asset forfeiture, evidence handling, and acquiring and using vape pens. The issues in the bill are nuanced, but have potential consequences for patients, caregivers, and other stakeholders. Americans for Safe Access urges lawmakers to consider the details of these bills carefully.

## **SB 443 (Mitchell) – Support**

*Location – Assembly*

This bill would require a state prosecuting agency to seek or obtain a criminal conviction for the unlawful cultivation of cannabis (and other drug offenses) prior to an entry of judgment for recovery of expenses related to the alleged offense. The bill would prohibit maintaining an action for recovery of expenses against a person who has been acquitted of the underlying criminal charges. The bill would prohibit state or local law enforcement agencies from transferring seized property to a federal agency and make other changes to the asset forfeiture laws.

Despite criminal protections under the Compassionate Use Act (Proposition 215) and the Medical Marijuana Program Act (SB 420), legal medical cannabis patients are still sometimes arrested or charged for cultivation-related offenses. Prosecutors should not be allowed to seek recovery of expenses from a defendant if they are not seeking or have not obtained a conviction. This bill will protect legal patients and providers wrongfully arrested or prosecuted for conduct that turns out to be legal under state medical cannabis laws.

## **SB 303 (Hueso) – No Position**

*Location – Assembly*

This bill would authorize the law enforcement agency to destroy seized growing or harvested cannabis in excess of two pounds, or the amount of marijuana a medical cannabis patient or designated caregiver is authorized to possess by ordinance in the city or county where the cannabis was seized, whichever is greater. The bill would also require the law enforcement agency to retain at least one two-pound sample and five random and representative samples consisting of leaves or buds, for evidentiary purposes, from the total amount to be destroyed.

The evidence retention rules in SB 303 are more lenient than already in place. Unlike legislation last year, SB 1193 (Evans), this bill does not provide for reasonable compensation for the portion of medical cannabis destroyed if the charges are dropped or the defendant is acquitted based on a medical cannabis defense. Medical cannabis patients whose medicine is wrongfully confiscated may not be able to recover as much medicine or receive reasonable compensation if this bill is adopted.

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SB 443 | SB 303 | SB 140

## **SB 140 (Leno) – No Position**

*Location – Assembly*

This bill makes changes to existing state law related to tobacco to ensure that electronic cigarettes are regulated and taxed like other tobacco products. However, the bill expands the definition of tobacco product to include “an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.” Other vaporized liquids could include preparations of medical cannabis, which contain no nicotine or other chemicals. The bill does not preempt local ordinances regarding consuming medical cannabis. However, the restrictions imposed on selling and using electronic cigarettes or similar devices would apply to vaporizing medical cannabis in the large majority of jurisdictions that have no regulations specific to medical cannabis. ASA proposes making a blanket exemption for any device used solely for medical cannabis inhalation.

## **Constituent Comments**

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