SAFE ACCESS NOW
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CORRESPONDENCE 7
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April 13, 2006

To: Stanislaus County Board of Supervisors
Attn: Supervisor Ray Simon, Chairman
CC: Cleopathia Moore, Stanislaus Public Health Administration
Rick Robinson, Stanislaus County Executive Officer

Honorable Members of the Board of Supervisors,

Safe Access Now is a statewide advocacy group focusing on local governments' compliance with California's *Compassionate Use Act* (Prop. 215) as well as the *Medical Marijuana Program Act* (SB 420). We are committed to ensuring all patients using medicinal *Cannabis* legitimately under state law are free from the risk of arrest, detainment or seizure of their medicine. We are writing you because your board is poised to make an important policy decision in order to move into compliance with California's medical marijuana laws.

In 1996, California voters approved Proposition 215 because they felt that seriously ill patients should be able to use marijuana under their doctor's recommendation without any legal repercussions. Currently an estimated 150,000 patients in the state are legally using medical marijuana to address the symptoms of such afflictions as AIDS, glaucoma, chronic pain as well as curbing the side effects from chemotherapy and hepatitis-C treatments. To reinforce the rights of patients and caregivers established by *The Compassionate Use Act*, the California Legislature and the Governor enacted Senate Bill 420 (H&S Code §11362.7 though §11362.83) in October of 2003.

SB 420 requires counties to administer a statewide voluntary Medical Marijuana ID Card (MMIC) program. This identification card program, among its other benefits, is designed to aid law enforcement in identifying legal medical marijuana patients with better ease and efficiency. Using the web-based database maintained by the California Department of Health Services (CDHS), a peace officer can look up an MMIC number in seconds. This system works to protect those patients using medical *Cannabis* under state law from unnecessary arrest or seizure of their medicine, while allowing law enforcement to focus on genuine criminal activity. It is for this reason that the law enforcement community has generally embraced this program.

Counties are allowed to set a fee to recover costs associated with administering the MMIC program at the county level. A similar ID card program was implemented by the state of Oregon in 1999, operating solely on patient fees. Unexpectedly, the Oregon Medical Marijuana Program was able to report a $986,000 budget surplus by 2004. This money was available to be used for other patient services with $26,000 left over for the state's general fund. This example proves that an effective MMIC program is not only revenue-neutral, but has the potential to create a modest revenue enhancement for the administering county agency.

It has been brought to our attention that the Stanislaus County Department of Public Health is awaiting direction from your board in order to move forward with the California Medical Marijuana ID Card Program. Although this program is mandated by state law, some administrative details, such as the fee structure need to be approved by the Board of Supervisors before the county can be compliant with §11362.7.

Currently, twenty California counties have operating MMIC programs and dozens more are on their way toward full implementation. Because of the fundamental importance of this program to patients, caregivers and law enforcement personnel, we urge you to direct the Stanislaus County Public Health Department to immediately move forward with the state mandated medical marijuana program.

To assist you in your decision making, we are providing the following information:

1.) A copy of State Attorney General, Bill Locker's legal opinion on the status of the Medical Marijuana ID Card Program

2.) A news article from *The Statesman Journal* (8/20/04) reporting on the budget surplus created by the Oregon Medical Marijuana Program

3.) An independent opinion poll on California's medical marijuana laws. The survey, conducted by "The Field Poll" in 2004 shows an 18% increase in voters' support of Proposition 215 (*The Compassionate Use Act*) since its passage in 1996. 74% of California voters favor the implementation of the law (83% of Democrats and 63% of Republicans)

4.) Additional information outlining the benefits of the Medical Marijuana ID Card

5.) A copy of *Cannabis Yields and Dosage: a Guide to the Production and Use of Medical Marijuana*

Please contact me at the number below when a timeline can be established for the implementation of the MMIC or if you have any questions regarding this policy. Patients in Stanislaus County are eagerly awaiting the ID card program, as promised to them by state law.

Thank you for taking decisive action to uphold state law and the will of California voters.

ATTACHMENTS AVAILABLE FROM YOUR CLERK

Sincerely,

F. Aaron Smith
Safe Access Now
(707) 291-0076

WHY WE SUPPORT THE CALIFORNIA MEDICAL MARIJUANA ID CARD PROGRAM:

PROVIDED BY: *SAFE ACCESS NOW*

- **The ID card protects patients and caregivers** from lengthy detainment, arrest, seizure of property or unnecessary court proceedings. While patients are not required to participate in the ID card program, many choose to because they cannot afford the personal risk of wrongful prosecution that those without ID cards face.

- **The ID card program will greatly assist law-enforcement** in distinguishing patients with legitimate medical marijuana recommendations from those who are using false or counterfeit documentation. The county-administered ID program clarifies the current patchwork of patient documentation and frees our law enforcement and judicial system to focus on genuine criminal activity.

- **The county will not incur any additional costs by implementing the ID card program** because the county is allowed to set its own fees to recoup the start-up and operating costs. For example, the Oregon Medical Marijuana Program, implemented in 1999, was able to realize a $986,000 budget surplus after two years of operation. This also allowed the state to significantly reduce the fees imposed on patients.

- **The county has a legal responsibility to the State of California to implement the program,** refusal to do so will expose the county to the risk of possible legal action at the cost of local taxpayers.

- **Voters' support of safe and legal access to medical marijuana** has only grown stronger since the passage of the *Compassionate Use Act* (Prop. 215) in 1996. According to an independent field poll conducted in 2004, 74% of Californians believe that patients should not be arrested for using marijuana as medicine. The statewide Medical Marijuana ID card program simply provides additional protection to qualified patients and further solidifies our state law and the will of the voters.

For more information, contact:

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Fees for Medical-Marijuana Create Budget Surplus

Statesman Journal; August 20, 2004
by Crystal Luong

Advocates want more of the funds to go toward patients As the number of medical-marijuana patients continues to rise in Oregon, the accompanying licensing fees have generated a substantial budget surplus.

The Oregon Medical Marijuana Program reported a surplus of about $986,000 by the end of March.

The patient-registration program was created after the Oregon Medical Marijuana Act took effect in 1998. The program started without state funding in 1999 and has operated solely on patient fees.

More than 10,000 patients are registered. Estimates for the program's first years were between 500 and 1,000 participants.

Based on projections, application fees were set to cover a $100,000 price tag for launching the agency, said Dr. Richard Bayer, Administrative Rules Committee member for the state's medical-marijuana act.

The goal was surpassed within two years.

As a result of the greater participation, the Department of Human Services cut annual renewal fees in July 2003.

Since then, registration has almost doubled, and further reductions are being sought.

"It's extremely difficult to predict this program," said Chris Grorud, DHS program support manager.

Some of the surplus will go to the state's general fund and to develop a 24-hour verification system that law enforcement officials could use to confirm legal cardholders.

Medical-marijuana advocates want to see more of the funds directed to patient-care resources.

Once patients receive their registry cards, they have no federal referrals about where to go or how to grow plants, said Madeline Martinez, executive director of the Oregon National Organization for the Reform of Marijuana Laws.

Those issues are beyond the program's realm, according to state Public Health Officer Grant Higginson.

"The program is not meant to be an advocate for the medical-marijuana act," Higginson said. "It is currently felt that to provide that information is beyond administrative duties."

The program will continue to focus only on processing applications, issuing state registry cards and handling renewals. All information for patients is available on the program's Web site and in printed form, said Mary Leverette, acting program manager.

The resources include statutes, application instructions, basic facts and statistics.

Although the state does not contribute to the program, about $26,000 of its surplus will be transferred to the state general fund, Grorud said.

People in the Oregon Health Plan or receiving Supplemental Security income pay less for applications and renewals.

The program's Administrative Work Group is considering further fee reductions, which might take effect as early as 2005, Higginson said.

Registry fees

Application fees for a program-registry identification card:

A new application is $150, or $50 for people on the Oregon Health Plan or receiving Supplemental Security Income.

A renewal application is $100, or $50 for people on the OHP or receiving SSI.

For more information, call (503) 731-4002, Ext. 233.

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

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July 15, 2005

Via Facsimile Transmission
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Robert D. Tousignant
Deputy Director and Chief Counsel
Office of Legal Services
Department of Health Services
P.O. Box 997413
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RE: *Department of Health Services's Questions Regarding Medical Marijuana Identification Cards and Federal Law*

Dear Mr. Tousignant:

On July 8, 2005, the Department of Health Services (DHS) requested legal advice regarding the impact of *Gonzales v. Raich* on DHS's statutory obligation to establish and maintain a voluntary program for the issuance of identification cards to qualified patients using medical marijuana. (See, e.g., Health & Saf. Code § 11362.71.)[1] Immediately after requesting our advice, DHS issued a press release announcing that it had unilaterally suspended compliance with the Health and Safety Code, pending the receipt of legal advice from the Attorney General. For the reasons discussed below, we conclude that DHS must comply with the Health and Safety Code.

BACKGROUND

Proposition 215

As you know, Proposition 215 was approved by California voters on November 5, 1996, and exempts patients and their caregivers from state laws prohibiting the possession and cultivation of marijuana when the possession or cultivation is for personal medical purposes, and

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1 Citations are to the California Health and Safety Code unless otherwise indicated.

the possession or cultivation is based on the recommendation of a physician. (§ 11362.5.) This law is titled the "Compassionate Use Act of 1996." (*Ibid.*) While Proposition 215 exempts qualified individuals from certain state marijuana laws, it does not grant an absolute immunity from arrest. (*People v. Mower* (2002) 28 Cal.4th 457, 468-470.) Instead, Proposition 215 provides a "limited immunity from prosecution [and] may serve as a basis for a motion to set aside an indictment or information prior to trial, as well as a basis for a defense at trial." (*Id.* at p. 470.)

The Medical Marijuana Program (Senate Bill 420)

On October 12, 2003, the Governor signed into law Senate Bill 420 (SB 420) which added Article 2.5, titled "Medical Marijuana Program," to Chapter 6 of Division 10 of the Health and Safety Code. (§ 11362.7, et seq.) The Medical Marijuana Program creates a voluntary system for qualified patients and caregivers to obtain an identification card that will insulate them from arrest for violations of state law relating to marijuana. (See §§ 11362.765 and 11362.775.) Under the Medical Marijuana Program, DHS is directed to "establish and maintain a voluntary program for the issuance of identification cards" to qualified patients and primary caregivers, and to provide a process through which state and local law enforcement officers may immediately verify a card's validity. (§ 11362.71, subd. (a); see also 11362.71, subd. (d)(3).)

Raich v. Ashcroft

On December 16, 2003, the Ninth Circuit Court of Appeals ruled that federal law enforcement officials could not enforce the federal Controlled Substances Act (CSA) against Californians who cultivate or use marijuana in compliance with Proposition 215. (*Raich v. Ashcroft* (9th Cir. 2003) 352 F.3d 1222.) The Ninth Circuit concluded that there was a strong likelihood that the CSA was unconstitutional and in excess of Congress's power under the Commerce Clause. (*Id.* at p. 1234.) Further, the Ninth Circuit found that medical marijuana users would suffer significant hardship if an injunction was not issued. (*Ibid.*)

Gonzales v. Raich

On June 6, 2005, the United States Supreme Court reversed the Ninth Circuit's ruling in *Raich v. Ashcroft* and held that the intrastate cultivation and use of marijuana for medical purposes authorized by California law may be prohibited by Congress as a valid exercise of federal authority under the Commerce Clause. (*Gonzales v. Raich* (2005) 545 U.S. ___ [125 S.Ct. 2195, 2201-2215].) While the Court's analysis focused on the scope of Congress's authority under the Commerce Clause, the practical significance of the decision is that federal law enforcement officers may continue to enforce federal drug laws against Californians who cultivate or use medical marijuana. This was the state of the law when the voters passed Proposition 215 and when the Legislature enacted SB 420. Most important with respect to

DHS's questions is that *Raich* does not invalidate California's medical marijuana laws. We now turn to DHS's specific questions.

THE DEPARTMENT OF HEALTH SERVICES'S QUESTIONS

(1) Would the implementation of a program required by Health and Safety Code section 11362.7 et seq. to provide medical marijuana identification cards for the purpose of facilitating the possession or cultivation of medical marijuana violate any federal criminal statute, including, but not limited to, aiding and abetting a federal crime?

We believe the answer is no. First, the State of California, and state officials acting in their official capacity to implement a valid state law, cannot be "persons" within the meaning of federal criminal statutes relating to marijuana. A conclusion to the contrary would undermine the system of "dual sovereignty" created by the United States Constitution. Second, even if state actors were persons under federal criminal laws, the marijuana identification cards simply clarify a cardholder's status under state law. And, as far as we know, the mere issuance or possession of the state identification cards does not satisfy the elements of any federal criminal offense.

Federal criminal law provides, subject to limited exceptions, that it is "unlawful for any person [to] knowingly or intentionally" manufacture, distribute dispense or possess any controlled substance. (21 U.S.C. § 841.) Federal law treats marijuana as a controlled substance. (21 U.S.C. § 812(c).) Additionally, and as DHS has pointed out, it is illegal to aid and abet in the manufacture, distribution or possession of marijuana. (18 U.S.C. § 2.) Further, any attempt or conspiracy to manufacture, distribute or possess marijuana would also be a crime. (21 U.S.C. § 846.)

The federal government's decision to criminalize the use and possession of marijuana – for all purposes – does not require California to do the same. It is well-settled that the "Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." (*Printz v. United States* (1997) 521 U.S. 898, 925; *New York v. United States* (1992) 505 U.S. 144, 161 [Congress may not commandeer the legislative processes of the states].) These principles reflect the system of "dual sovereignty" created by the United States Constitution. (*Printz v. United States, supra,* at pp. 918-919.)

Congress may not avoid the limits on federal power over states by attempting to control the actions of individual state employees:

> We have observed that "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office . . . . As such, it is no different from a suit against the State itself." And the same must be said of a

> directive to an official in his or her official capacity. To say that the Federal Government cannot control the State, but can control all of its officers, is to say nothing of significance. Indeed, it merits the description "empty formalistic reasoning of the highest order."

(*Printz v. United States, supra,* at pp: 930-931 [citations omitted].)

The logical extension of the Supreme Court's holding in *Printz* is that if the federal government cannot affirmatively force state officials to implement federal regulatory programs, then the federal government cannot criminalize the non-enforcement of a federal program. A conclusion to the contrary would obliterate the Supreme Court's holding in *Printz* and allow the federal government to accomplish, through criminal prosecution, that which it cannot do through legislation. For this reason, we believe the federal government cannot enforce federal criminal laws against state officials who merely implement valid state law – or choose not to enforce federal law. State law enforcement officers who accept a state medical marijuana identification card, and decline to arrest a cardholder who is in possession of marijuana, are not subject to criminal prosecution for failure to enforce federal marijuana laws. To conclude otherwise would effectively force all state officials to commence enforcing federal criminal laws.

DHS's actions in implementing the Medical Marijuana Program are free from criminal *prosecution not only* because of federalism, but also because the activity itself fails to satisfy the elements of a federal crime. DHS is not manufacturing, distributing, dispensing or possessing marijuana. (21 U.S.C. §§ 812(c) and 841.) Moreover, the obligation of DHS to establish and maintain a *voluntary* program for the issuance of identification cards to qualified patients and primary caregivers, and to provide a process through which state and local law enforcement officers may immediately verify a card's validity, does not constitute aiding and abetting. (18 U.S.C. § 2.)

In a case that presented an issue similar to DHS's current question, the Ninth Circuit held that California doctors who recommend that their patients use marijuana are not guilty of aiding and abetting or conspiracy under federal law. (*Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 636.) The Court found that even though a doctor may suspect that a patient may heed the doctor's recommendation to use marijuana, such a suspicion is too nebulous to satisfy the intent element for aiding and abetting or conspiracy:

> A doctor's anticipation of patient conduct, however, does not translate into aiding and abetting or conspiracy. A doctor would aid and abet by acting with the specific intent to provide a patient with the means to acquire marijuana. Similarly, a conspiracy would require that a doctor have knowledge that a patient intends to acquire marijuana, and intend to help the patient acquire

> marijuana. Holding doctors responsible for whatever conduct the doctor could anticipate a patient *might* engage in after leaving the doctor's office is simply beyond the scope of either conspiracy or aiding and betting.

(*Id.* at p. 636 [citations omitted; emphasis in original].)

Here, the staff of DHS acting under the Medical Marijuana Program are less likely to be engaged in federal criminal activity than doctors who recommend marijuana. First, DHS staff are not recommending that anyone use marijuana. DHS staff are carrying out their obligation to administer a voluntary system that provides clarification of an individual's rights under state law. Second, and as discussed above, because DHS staff are state actors they, like the State of California itself, are also entitled to protection under the system of dual sovereignty outlined in the Constitution. (*Printz v. United States, supra,* at pp. 930-931.)

(2) If the answer to the first question is affirmative, does Article III, section 3.5, of the California Constitution require that the Department of Health Services implement the medical marijuana identification card program required by state law even if doing so would constitute a federal crime?

As discussed above, we do not believe that compliance with Health and Safety Code section 11362.7 et seq., violates any federal criminal statute. But a continued failure by DHS to comply with the Health and Safety Code, would likely amount to a violation of the California Constitution. Article III, section 3.5 of the California Constitution provides, in pertinent part, that:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
>
> [¶] . . . [¶]
>
> (c) To declare a statute unenforceable, or to *refuse to enforce a statute on the basis that federal law or federal regulations* prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

(Cal. Const., art. III, § 3.5 [emphasis added].)

Presently, DHS is refusing to enforce or comply with the program for issuing medical marijuana identification cards as provided for in the Health and Safety Code. (§ 11362.7 et seq.) A unilateral decision not to comply with state law, on the ground that it may be prohibited by

federal criminal law, without first receiving the guidance of an appellate court, is barred by the California Constitution. (See also *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1068 [San Francisco lacks authority to disregard the state law prohibition on same-sex marriage].) Accordingly, we advise DHS to resume compliance with the Health and Safety Code.[2]

(3) If the answer to the first question is affirmative, would the provision of a disclaimer to identification card applicants and holders, advising them that the identification card will not protect them from federal prosecution, eliminate the potential criminal liability of the Department or its staff?

Again, we do not believe that the statutory duties imposed on DHS by the Health and Safety Code subject DHS to federal criminal liability. Thus, whether DHS should provide the public with additional information regarding the implications of federal law is a policy question for DHS. Having said that, we believe that such a provision would be a correct statement of the law.

(4) Would the information obtained from applicants for the MMP identification cards be subject to subpoena by federal authorities and, if so, could this information, if subpoenaed by federal authorities, be used to locate, arrest, or prosecute medical marijuana patients and/or primary caregivers?

This question does not provide sufficient detail for us to answer it fully. The hypothetical does not indicate what specific information is subpoenaed. And it is unclear whether the question is referring to the detailed medical information about cardholders that would be in the possession of county health officials, or the more limited information that will be received by DHS. (See, e.g., §§ 11362.715 [detailed information ID card applicants shall provide the county]; 11362.72 [counties shall transmit limited information to DHS].) Further, the hypothetical does not indicate the reason why the federal authorities subpoenaed the information.

Notwithstanding the limited information provided by this question, it appears that the information received from applicants for marijuana identification cards may indeed be subject to a federal subpoena. (*United States v. White* (E.D. Va. 2004) 342 F.Supp.2d 495 [Virginia unsuccessful in quashing federal subpoena for state records regarding child support payments].) It is also possible that this information could be used in a criminal prosecution. And as detailed above, Proposition 215 has never provided a defense to federal prosecution.

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[2] In the event that DHS is unwilling to implement the Medical Marijuana Program, the California Supreme Court has left open the possibility that a state official, who believes state law is in conflict with federal law, may seek declaratory relief from the courts. (*Lockyer v. City and County of San Francisco, supra*, 33 Cal.4th at p. 1099, fn. 27.)

CONCLUSION

The actions that DHS is required to take under the Health and Safety Code do not violate federal criminal laws for two reasons: (1) under the Constitutional principles of dual sovereignty, the federal government cannot force state officials to enforce federal laws; and (2) the steps involved in implementing the Medical Marijuana Program do not satisfy the elements of any federal crime. Notwithstanding the absence of a violation of federal law, the California Constitution prohibits DHS from refusing to enforce a state statute without an appellate court order.

We are optimistic that this analysis fully addresses your questions.

Sincerely,

JONATHAN K. RENNER
Deputy Attorney General

For BILL LOCKYER
Attorney General

JKR:pg

cc: James Humes, Chief Assistant Attorney General

THE FIELD POLL

THE INDEPENDENT AND NON-PARTISAN SURVEY OF PUBLIC OPINION ESTABLISHED IN 1947 AS ***THE CALIFORNIA POLL*** *BY* ***MERVIN FIELD***

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Release #**2105**

Release Date: **Friday, January 30, 2004**

STRONG SUPPORT FOR IMPLEMENTATION OF PROP. 215, THE STATE'S MEDICAL MARIJUANA LAW. CALIFORNIANS' ATTITUDES ABOUT THE DRUG HAVE CHANGED OVER TIME.

by Mark DiCamillo and Mervin Field

There is now greater voter support for allowing the medical use of marijuana than there was when California voters first approved the groundbreaking law eight years ago.

In 1996 a 56% majority of this state's voters passed Proposition 215, the medical marijuana initiative, which exempts from state criminal laws patients or caregivers who possess or cultivate marijuana for medical use when prescribed by a doctor. However, implementation of Prop. 215 has bogged down or been blocked by numerous obstacles raised by federal, state or local authorities.

In a survey completed earlier this month, *The Field Poll* finds that three in four voters (74%) favors implementation of the law.

Voter support for the implementation of Prop. 215 cuts across all partisan, ideological and age subgroups of the state.

Table 1
Do you favor or oppose implementation of Proposition 215, to allow for the medical use of marijuana in California? (among registered voters)

	Favor	Oppose	No opinion
Statewide	74%	24	2
Party			
Democrats	83%	16	1
Republicans	63%	33	4
Non-partisans/others	73%	27	*
Political ideology			
Conservative	53%	44	3
Middle-of-the-road	78%	21	1
Liberal	92%	6	2
Age			
18 – 29	76%	24	*
30 – 39	79%	19	2
40 – 49	77%	21	2
50 – 64	77%	22	1
65 or older	59%	39	2

** Less than ½ of 1%.*

Comparing marijuana use to the consumption of alcohol

Underlying voters' current strong support for the medical marijuana law are some rather profound changes in the attitudes that Californians have about the drug. For example, back in 1969 *The Field Poll* found that only 16% of this state's residents agreed that the use of marijuana was no more dangerous than the use of alcohol, while 75% disagreed. Now, half of the voting public (50%) believes that marijuana is no more dangerous than alcohol, while slightly fewer (46%) disagree.

Attitudes about the perceived dangers of marijuana use are directly related to whether a voter admits to having ever smoked marijuana before. Among those who have (which includes about half – 49% – of all voters), 63% feel that the use of marijuana is no more dangerous than alcohol. On the other hand, of those who say they have never used the drug, just 37% feel this way.

Table 2
Agree/disagree: "The use of marijuana is no more dangerous than the use of alcohol."
(among registered voters)

	Agree	Disagree	No opinion
Statewide			
2004	50%	46	4
1983	44%	52	4
1969	16%	75	9
Usage (2004)			
Have smoked marijuana	63%	34	3
Never smoked marijuana	37%	59	4

Note: In this and all succeeding tables in this report, previous surveys were conducted among all adults.

Does marijuana use lead to more dangerous drugs?

The belief that marijuana leads a person to use more dangerous drugs has also declined over time. In 1969, 83% of the California public supported the view that marijuana leads a person to use more dangerous drugs. Now, opinions are more divided, with 52% saying it does and 45% maintaining that it does not.

Opinions are related to one's past use of marijuana, as well as to a voter's level of education. Majorities of those who have smoked marijuana in the past or who are college graduates disagree that marijuana leads to the use of more dangerous drugs. By contrast, majorities of those who have never smoked marijuana or who have not graduated from college feel that it does lead a person to other, more dangerous drugs.

Table 3
Agree/disagree: "While marijuana may not be more dangerous than alcohol, its use leads a person to more dangerous drugs." (among registered voters)

	Agree	Disagree	No opinion
Statewide			
2004	52%	45	3
1983	58%	39	3
1969	83%	12	5
Usage (2004)			
Have smoked marijuana	39%	59	2
Never smoked marijuana	66%	30	4
Education (2004)			
High school or less	61%	37	2
Some college/trade school	62%	35	3
College graduate	41%	56	3
Post graduate work	38%	56	6

Some reservations about marijuana still exist

Californians' support for the medical use of marijuana has not eliminated some long-held reservations about the use of the drug in non-medical situations.

For example, in 1983, 65% of Californians agreed that the use of marijuana can make a person lose control of what he or she is doing. The current survey finds that a large majority of Californians (58%) still hold to this view.

Three-fourths (77%) of those who have never smoked marijuana agree that the drug can result in a person losing control, compared to only 40% of the past marijuana smokers who believe this is the case.

Table 4
Agree/disagree: "Marijuana is a dangerous drug that can make a person lose control of what he or she is doing." (among registered voters)

	Agree	Disagree	No opinion
Statewide			
2004	58%	39	3
1983	65%	31	4
Usage (2004)			
Have smoked marijuana	40%	56	4
Never smoked marijuana	77%	19	4

Note: question not asked in 1969.

Legalize marijuana?

By a five to three margin (56% to 39%), California voters disapprove of the idea of legalizing marijuana and selling it like alcohol or tobacco, so that it can be taxed to generate needed tax moneys for the state.

These findings are not a great deal different from opinions held in 1983, when this idea was opposed by a 64% to 35% margin.

Table 5
Agree/disagree: "Marijuana should be legalized and sold like alcohol or tobacco, so it can be taxed to generate needed tax monies for the state."
(among registered voters)

	Agree	Disagree	No opinion
Statewide			
2004	39%	56	5
1983	35%	64	1
Usage (2004)			
Have smoked marijuana	52%	44	4
Never smoked marijuana	27%	69	4
Political ideology (2004)			
Conservative	22%	75	3
Middle-of-the-road	43%	52	5
Liberal	54%	41	5

Note: question not asked in 1969.

Information About the Survey

Sample Details

The findings in this report are based on a telephone survey conducted January 5-13, 2004 in English and Spanish among a random sample of 500 registered voters in California.

Sampling was completed by means of random digit dialing, which selects telephone exchanges within all area codes serving California in proportion to population. Within each exchange a random sample of telephone numbers was created by adding random digits to the telephone exchange selected, permitting access to both listed and unlisted telephones. Up to five attempts was made to reach a randomly selected voter at each number dialed. After the completion of interviewing, the sample was adjusted slightly to Field Poll estimates of the state's total registered voter population.

According to statistical theory, results from the overall sample of registered voters have a sampling error of +/- 4.5 percentage points at the 95% confidence level.

There are other possible sources of error in any survey in addition to sampling variability. Different results could occur because of differences in question wording, sequencing or through omissions or errors in sampling, interviewing or data processing. Extensive efforts were made to minimize such potential errors.

Questions Asked

I am going to read some statements that have been made about marijuana. For each, please tell me whether you agree or disagree. (ITEMS READ IN RANDOM ORDER.) (SEE RELEASE FOR STATEMENTS READ)

As you may recall in November 1996, California voters approved Proposition 215, the medical marijuana initiative, which exempted from state criminal laws patients or caregivers who possessed or cultivated marijuana for medical use when prescribed by a doctor. Do you favor or oppose the implementation of Prop. 215 to allow for the medical use of marijuana in California?