

Article Last Updated: 6/29/2006 02:54 AM

Drug policy reform activists suffer state, federal defeats

Legislators oppose pot raid laws, back jail time for users

By Josh Richman, STAFF WRITER
Inside Bay Area

Drug-reform advocates took a one-two punch as state lawmakers changed the treatment-not-jail sentencing law for drug users and the House opposed an amendment to halt federal pot raids in states with medical marijuana laws.

State lawmakers late Tuesday night approved changes to the drug-treatment law — passed as Proposition 36 by 61 percent of voters in November 2000 — so judges now will be able to impose two to five days of jail time to punish drug-use relapses during treatment. Opponents say this "flash incarceration" does not make treatment more effective and dilutes the law's original intent.

Ethan Nadelmann, executive director of the national Drug Policy Alliance, which helped pass Proposition 36, said

he supposes advocates were "naive" to believe that evidence the original law cut costs, reduced the prison population and improved lives would persuade lawmakers to let it alone. "When push came to shove, the same law enforcement establishment that opposed Proposition 36 back in 2000 didn't let up," he said, vowing the law's advocates won't let up, either.

The changes approved Tuesday are "almost definitely unconstitutional" because they alter a voter-approved ballot measure without another popular vote, he said. "We are going to be in court on this issue. It ain't over yet."

Gov. Arnold Schwarzenegger predicated his Proposition 36 earmark in next year's state budget on these changes being made, so he'll almost surely sign the bill. The Drug Policy Alliance and other groups could sue by early next week, but the bill requires that it automatically be put on the ballot if a court strikes any part of it down.

On Wednesday, the House of Representatives voted 259-163 against a budget amendment introduced for the fourth consecutive year by Rep. Maurice Hinchey, D-N.Y., and Rep. Dana Rohrabacher, R-Huntington Beach, to bar use of federal funds to arrest and prosecute patients and providers in the 11 states, including California, with medical marijuana laws.

The amendment got two more votes Wednesday than it did last year, compared to 148 in 2004 and 152 in 2003 — progress, but still far short of the 218 it would need to pass.

"Basically, the Republicans managed to keep strong party discipline. ... They feel they can't break with the White House on this," Nadelmann said.

That is despite an unexpected show of support from Citizens Against Government Waste, a conservative fiscal watchdog group. The group issued a report Monday on the federal war on drugs, finding that "(i)n this time of excessive waste and expanding deficits, Congress must start sending a signal that its priorities are in order."

Federal prosecution of medical marijuana use in states that have decided to allow it wastes "valuable resources and taxpayer dollars," the report said, urging the amendment's passage.

Marijuana Policy Project communications director Bruce Mirken said Wednesday advocates are "doing our best to see the glass as half full, knowing that this is an election year and politicians tend to run for cover in election years... But it's still dismaying how out of touch Congress is with the public..."

"Virtually all of the debate from the other side had nothing to do with the amendment itself," Mirken said. "It was all about marijuana being bad for kids and a gateway drug... all of which has nothing to do with whether it should be allowed for patients with cancer or AIDS when their states decide it should be."

Caren Woodson, government affairs director of Americans for Safe Access, agreed the amendment wasn't about medical marijuana's merits but rather "was designed to support federal law enforcement" by letting the Justice Department "re-allocate valuable monies to our country's most pressing illicit drug control issues, instead of spending funds to arrest and prosecute seriously ill, state-certified cannabis patients."

A detailed roll call was unavailable early Wednesday; the only greater-Bay Area members of Congress who opposed the amendment in past years were Dennis Cardoza, D-Atwater, and Richard Pombo, R-Tracy.

The Proposition 36 rewrite first was put forth as SB 803 by state Sen. Denise Ducheny,

D-San Diego. The Assembly Public Safety Committee — chaired by Mark Leno, D-San Francisco, a Proposition 36 supporter — held a public hearing on SB 803 last August but delayed its vote until last week; Ducheny then pulled her bill at the last minute and moved its language into SB 1137, the state budget trailer approved late Tuesday.

Contact Josh Richman at

jrichman@angnewspapers.com.