



# Legislative Council Staff

## Research Note

Version: Final

Date: 5/19/2016

### Bill Number

House Bill 16-1359

### Sponsors

*Representative Salazar*  
*Senator Guzman*

### Short Title

*Use Of Medical Marijuana While  
On Probation*

### Research Analyst

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### Status

This research note reflects the final version of the bill, which becomes effective on August 10, 2016, assuming no referendum petition is filed.

### Summary

This bill alters one of two exceptions to the prohibition against a court requiring that a person on probation refrain from possessing or using medical marijuana. Under current law, a court may not prohibit the authorized possession or use of medical marijuana as a condition of probation unless the defendant was convicted of a medical marijuana-related crime or the court determines, based on a substance abuse assessment, it is necessary and appropriate to accomplish sentencing goals. The bill amends the latter exception by requiring the court determination to be based on material evidence rather than a substance abuse assessment.

### Background

State law prohibits those on probation from committing another offense. House Bill 15-1267 made an exception from this probation condition for the possession and use of medical marijuana in accordance with the Colorado Constitution, which is an offense under federal law. HB 15-1267 also created the exceptions to the prohibition against a court requiring that a person on probation refrain from possessing or using medical marijuana. Passage of HB 15-1267 came after the Colorado Court of Appeals ruled in *People v. Watkins* that the medical marijuana provision in the Colorado Constitution (Article XVIII, Section 14) does not allow a court to enter a probation order that would have the effect of exempting a probationer with a medical marijuana card from complying with federal criminal statutes outlawing the possession and use of marijuana for purposes of the mandatory probation condition. This ruling overturned a lower court ruling allowing

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the probationer to use marijuana for medical purposes.

## House Action

**House Judiciary Committee (April 14, 2016).** During the hearing, the committee heard testimony in support of the bill from representatives of the Judicial Branch and the Drug Policy Alliance, as well as a concerned citizen. The committee adopted amendment L.002, which restored the language allowing a court to determine that a probationer may be prohibited from possessing or using medical marijuana, but required the determination to be based on material evidence rather than a substance abuse assessment. Amendment L.002 was conceptually amended to allow *any* material evidence to meet the basis for determination. The committee referred the amended bill to the House Committee of the Whole.

**House second reading (April 18, 2016).** The House adopted the House Judiciary Committee report and passed the bill on second reading.

**House third reading (April 19, 2016).** The House passed the bill on third reading with no amendments.

## Senate Action

**Senate Judiciary Committee (April 26, 2016).** The committee referred the bill to the Senate Committee of the Whole with no amendments. At the hearing, a representative of the Judicial Branch testified in support of the bill.

**Senate second reading (April 28, 2016).** The Senate passed the bill on second reading with no amendments.

**Senate third reading (April 29, 2016).** The Senate passed the bill on third reading with no amendments.