

**BALLOT PROPOSITION #201
Drug Medicalization, Prevention, and Control Act of 2000**

Publicity Pamphlet Fiscal Impact Summary

Proposition 201 is projected to reduce state prison costs. These savings, however, would be partially offset by increased costs elsewhere in state government. The overall fiscal impact to the state is estimated to be a net savings of \$2.4 million in the fiscal year ending June 30, 2002 and \$7.2 million in 2004.

The Proposition requires the parole of certain Arizona Department of Corrections (ADC) inmates currently serving a sentence for personal possession or use of a controlled substance, and eliminates the mandatory minimum sentence and increases the maximum sentence by 20% of certain drug offenses. Overall, these provisions are projected to reduce the ADC prison population and result in savings for the ADC budget.

The Proposition would also result in some increased costs, as some drug offenders would be sentenced to supervised probation instead of prison. In addition, the state would also have the cost of establishing and operating a system for the legal distribution of medical marijuana to qualified patients. The cost of the distribution system cannot be estimated due to the difficulty in determining the number of eligible patients and the testing costs related to distributing confiscated marijuana.

The Proposition is also projected to initially transfer \$12.1 million in anti-racketeering monies (forfeited criminal assets) to drug treatment, drug prevention and gang prevention programs, and transfer approximately \$1.3 million each year thereafter.

	FISCAL YEAR			
	2001	2002	2003	2004
STATE EXPENDITURES				
State General Fund	\$ (318,800)	\$(2,384,800)	\$(4,868,700)	\$(7,224,200)
STATE REVENUES				
Anti-Racketeering Revolving Fund	\$(12,122,700)	\$(1,290,300)	\$(1,290,300)	\$(1,290,300)
Drug Treatment and Education Fund	12,122,700	1,290,300	1,290,300	1,290,300

FISCAL ANALYSIS

Description

Proposition 201 would do the following:

1. Require the Attorney General to establish a patient registry and a system for legally distributing marijuana to qualified patients who must pay for it, to the extent they are able.
2. Require probation on conviction of a first or second offense involving the personal possession or use of paraphernalia associated with possession or use of a controlled substance and prohibit the court from imposing a term of incarceration in prison or jail as a condition of probation.
3. Require that anti-racketeering money be transferred to the Arizona Judiciary's Drug Treatment and Education Fund. Of the transferred monies, 75% shall be used for drug treatment and 25% shall be used for drug prevention and gang prevention.

Description (Continued)

4. Persons convicted of possession of two ounces or less of marijuana or paraphernalia associated with the possession of marijuana shall be punished by a fine of not more than \$500. The court may require drug education in addition to the fine.
5. Except for certain offenses, increase the maximum sentence and fine for drug offenses by 20% and abolish the minimum sentence and fine for the same drug offenses.
6. Require parole for current prisoners who have been convicted of possession or use of a controlled substance and who are not currently serving another sentence. The Board of Executive Clemency must parole these prisoners unless the board determines that a prisoner would be a danger to the public. Paroled prisoners must participate in a drug treatment or education program.

Estimated Impact

The JLBC Staff estimates the Proposition would reduce General Fund expenditures by \$(318,800) in FY 2001, \$(2,384,800) in FY 2002, \$(4,868,700) in FY 2003 and \$(7,224,200) in FY 2004. Overall there would be a decrease in General Fund expenditures by ADC and an increase in General Fund expenditures by the Judiciary as some drug offenders are sentenced to probation instead of incarceration at ADC. The Office of the Attorney General would also incur additional General Fund expenditures, as the Proposition requires the Attorney General to establish a patient registry and a system for the legal distribution of medical marijuana to qualified patients.

Estimated Impact of Proposition 201 on State Agencies' General Fund Expenditures				
<u>State Agency/Proposition Provision</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>
Arizona Department of Corrections				
Changes to Drug Sentencing Laws	\$ -0-	\$ (2,584,700)	\$(5,702,100)	\$(8,057,600)
Parole for Current Inmates	(318,800)	(554,000)	-0-	-0-
Arizona Judiciary				
Changes to Drug Sentencing Laws	-0-	253,900	333,400	\$333,400
Arizona Attorney General				
System to Distribute Medical Marijuana	-0-	500,000	500,000	500,000
Testing Costs of Confiscated Marijuana	<u>Undeterminable</u>	<u>Undeterminable</u>	<u>Undeterminable</u>	<u>Undeterminable</u>
TOTAL GENERAL FUND IMPACT	\$ (318,800)	\$ (2,384,800)	\$(4,868,700)	\$(7,224,200)

In addition, the Proposition transfers \$12,122,700 from the Office of the Attorney General's Anti-Racketeering Revolving Fund to the Arizona Judiciary's Drug Treatment and Education Fund in FY 2001 and transfers approximately \$1,290,300 each fiscal year thereafter.

Analysis

Expenditures

State Distribution of Medical Marijuana

The Proposition requires the Attorney General to establish a marijuana patient registry for qualified persons and to distribute marijuana to individuals on the registry. The Attorney General shall utilize marijuana from either the Federal Compassionate Use program or from tested confiscated marijuana. Under the federal program, which began in the 1970's, the federal government provides marijuana to qualified patients. The program, however, was closed to new participants beginning in 1992. As a result, we have assumed that the Attorney General would be unable to acquire marijuana through the federal program and would have to use confiscated marijuana.

Prior to providing any confiscated marijuana, the Attorney General would need to test the marijuana for purity and potency. The state would be unable to test the marijuana to see what elements it contains but rather would need to test for each element individually. As a result, there could be hundreds of tests required for each sample to ensure that the confiscated marijuana does not contain other controlled substances, pesticides or metals. Determining confiscated marijuana's purity would be extremely difficult without knowing how the marijuana was cultivated. The cost for testing confiscated marijuana is therefore undeterminable and will depend on the number of patients, the quantity of marijuana to be provided, the cost per

Analysis (Continued)

test and the number of tests needed to determine a sample's purity and potency. Without knowing how the marijuana was cultivated, the state may not be able to determine a sample's purity with 100% certainty. As a result, the state's liability for distributing potentially impure marijuana to qualified patients is also unknown at this time.

While the laboratory costs for testing confiscated marijuana are unknown, the estimated annual General Fund cost for administering the distribution of marijuana is approximately \$500,000. This estimate includes the cost to house and distribute the marijuana as well as provide security for the distribution system. The actual cost will greatly depend on the number of participants in the program and how the Attorney General structures the distribution system. Distribution could occur at one location or at several locations throughout the state.

The estimated General Fund cost of this provision is approximately \$500,000 each fiscal year beginning in FY 2002. This estimate does not include the cost of testing confiscated marijuana for distribution.

Possession or Use of 2 Ounces or Less of Marijuana

The Proposition prohibits the court from imposing a term of incarceration in prison or jail for possession of 2 ounces or less of marijuana or possession of paraphernalia associated with marijuana possession. The JLBC Staff does not anticipate any fiscal impact associated with this provision. No fiscal impact is anticipated due to the relatively small number of offenders annually convicted of personal possession of 2 ounces or less of marijuana. We roughly estimate that the number of offenders in this category is several hundred. In addition, those offenders typically receive a sentence of unsupervised probation. A statewide case management tracking system does not currently exist so a definitive number of annual convictions for personal possession of 2 ounces of marijuana cannot be easily determined. Our estimate uses data from primarily rural courts throughout Arizona that share a case management system. Based on the data provided by those courts we extrapolated to the remainder of the state.

Maximum and Minimum Mandatory Drug Sentencing Laws

The Proposition eliminates the mandatory minimum sentence and increases by 20% the maximum sentence of certain drug offenses. There are approximately 1,300 new inmates annually incarcerated at ADC for mandatory minimum drug offenses. Based on a sample provided by ADC, we estimate that passage of the Proposition would annually result in approximately 10.6% of these drug offenders receiving a sentence of probation instead of incarceration, 6.6% receiving a reduced sentence, 1.3% receiving an increased sentence, and the remaining 81.5% not being affected. The JLBC Staff estimate is based on the current distribution of offenders between mandatory minimum and maximum sentences. Based on the sample provided by ADC, approximately 26% of mandatory minimum drug offenders receive the minimum, 2% receive the maximum sentence and 72% receive a sentence somewhere between the minimum and maximum.

The estimated General Fund savings in reduced state prison costs from this provision are approximately \$(2,584,700) in FY 2002, \$(5,702,100) in FY 2003 and \$(8,057,600) in FY 2004. No savings are anticipated for FY 2001 as the Proposition would take effect midway through the fiscal year and the average case takes approximately 7 months from arrest to sentencing.

The savings in prison costs would be partially offset by increased General Fund costs for probation. The estimated General Fund cost increase for probation from this provision is approximately \$253,900 in FY 2002 and \$333,400 each fiscal year thereafter.

Parole for Current Prison Inmates

The Proposition requires parole for ADC inmates sentenced for personal possession or use of a controlled substance unless the inmate has previously been convicted of a violent crime, possession for sale, production, manufacture, or transportation for sale, or the Board of Executive Clemency determines beyond a reasonable doubt that the prisoner would be a danger to the general public. Based on information provided by ADC, we anticipate that 160 prisoners would be eligible for a parole hearing if the Proposition passes. We anticipate that 61 inmates will be paroled. The Board of Executive Clemency paroled 39.6% of the inmates eligible for parole after passage of the 1996 Drug Medicalization Proposition. We have used the same percentage in determining our projection of 61 parolees. On average, the 61 paroled inmates will have approximately 293 days remaining to serve on their sentence. Based on an average daily per capita cost for prison of \$52.81 and parole of \$5.79, this would provide a state General Fund cost savings of \$(318,800) in FY 2001 and \$(554,000) in FY 2002.

Analysis (Continued)

Revenues

Asset Forfeiture

The Proposition requires that all monies in the Office of the Attorney General Anti-Racketeering Revolving Fund be transferred, within 15 days of the Proposition’s enactment, to the Arizona Administrative Office of the Courts (AOC) Drug Treatment and Education Fund. As of March 31, 2000, the Anti-Racketeering Fund had an available fund balance of \$11,804,700. Based on the average quarterly revenues deposited in the fund and expenditures from the fund during FY 1997 through FY 2000, we estimate the fund will decrease to approximately \$11,477,600. The amount of monies actually transferred may be significantly less than projected if criminal justice agencies expend monies from the fund at a rate higher than the historical average.

All future forfeiture monies received by the state from the federal government or another state shall be transferred to the AOC Drug Treatment and Education Fund within 30 days of deposit in the Anti-Racketeering Fund. We estimate that \$645,100 will be transferred in the last half of FY 2001 and approximately \$1,209,300 each fiscal year thereafter. The JLBC Staff estimate is based on the average annual revenue from FY 1997 through FY 2000. Whether the federal government will continue to distribute forfeiture monies to the Anti-Racketeering Fund is unclear at this time. In addition, we have assumed that the Proposition’s language does not require the future transfer of forfeiture monies received from Arizona only cases. Annual revenues from Arizona only cases averaged \$1,940,600 from FY 1997 to FY 2000.

The impact on state law enforcement agencies that currently utilize Attorney General Anti-Racketeering Revolving Fund monies depends on whether the Legislature decides to replace the transferred funding with another funding source or requires the state agencies to reduce spending.

The fiscal impact of this provision is a transfer from the Attorney General Anti-Racketeering Revolving Fund to the AOC Drug Treatment and Education Fund of \$12,122,700 in FY 2001 and approximately \$1,209,300 each fiscal year thereafter.

Transfers from the Anti-Racketeering Fund to the Drug Treatment and Education Fund			
<u>Type of Transfer</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>
One-time ^{1/}	\$11,477,600	\$ -0-	\$ -0-
Annual ^{2/}	<u>645,100</u>	<u>1,209,300</u>	<u>1,209,300</u>
TOTAL	\$12,122,700	\$1,209,300	\$1,209,300

^{1/} Projected available fund balance of Anti-Racketeering Fund at date of Proposition’s enactment.
^{2/} Projected future asset forfeiture monies to be transferred to the Drug Treatment and Education Fund.

Local Government Impact

Expenditures

The fiscal impact of the Proposition on local government is unknown at this time and will vary between Arizona’s 15 counties. The impact in a county will greatly depend on the county attorney’s current charging practices regarding personal possession and use of a controlled substance or paraphernalia. Those counties that currently impose a jail sentence, as a term of probation for personal possession, would incur some cost savings from reduced jail days served. The level of savings would depend on the number of offenders, the number of days served and the daily per capita cost for jail.

On the other hand, counties could incur greater expenditures depending on whether a county’s trial rate increases and the sentencing practice of individual Superior Court judges. On average, approximately 5% to 10% of all cases proceed to trial with the remaining being resolved prior to trial. The elimination of mandatory minimum sentences could result in fewer offenders pleading to an offense and result in higher trial rates. The possibility of probation may entice some offenders to reject a plea agreement and choose to proceed to trial. Higher trial rates could result in higher criminal justice expenditures for attorneys, judges and other staff or could result in longer case processing times and longer pretrial time served in county jails.

Local Government Impact (Continued)

The elimination of mandatory minimum sentences may also result in higher county jail costs depending on the sentencing practices of Superior Court judges. The JLBC Staff anticipates that approximately 140 offenders will be annually sentenced to probation rather than being sentenced to ADC as a result of eliminating mandatory minimums for certain drug offenses. We have assumed that the increased cost for probation will be born by the state, however, if judges include jail as a term of probation, counties would incur greater jail costs from this provision of the Proposition.

Revenues

Each county attorney has an anti-racketeering fund, which cumulatively had available fund balances totaling \$16,889,700 as of March 31,2000. The initiative, however, does not require the transfer of those monies to the AOC Drug Treatment and Education Fund. The initiative also does not impact future revenues deposited in the county attorneys' anti-racketeering funds.

7/14/00

A.R.S. § 19-123 requires the Joint Legislative Budget Committee Staff to prepare fiscal impact estimates for ballot initiative measures. This estimate was prepared by Brad Regens (602-542-5491).
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