

BALLOT PROPOSITION #203
Drug Medicalization, Prevention, and Control Act of 2002

Fiscal Impact Summary

Proposition 203 is projected to reduce state prison costs. These savings could be partially offset by increased costs for probation and the medical marijuana registry and distribution system. A precise fiscal estimate of this proposition, however, cannot be determined.

The proposition requires the parole of certain prison inmates currently serving a sentence for personal possession or use of a controlled substance, eliminates the mandatory minimum sentence for certain drug offenses and increases the maximum sentence by 50% for violent crimes committed while under the influence of drugs. Overall, these provisions are projected to reduce the state prison population and result in savings.

The proposition would also result in some increased probation costs, as the elimination of mandatory minimum sentences would result in some drug offenders sentenced to supervised probation. This cost could be partially offset by a provision which would reduce current probation expenses by changing possession of 2 ounces or less of marijuana from a criminal violation to a civil violation. It is projected that any increased cost for probation would be less than the prison savings as probation is less costly than prison.

The state would also have the cost of establishing and operating a patient registry and a system for the legal distribution of medical marijuana to qualified patients. The cost of the patient registry is estimated to be \$165,000. Revenues collected from fees to offset the costs of the patient registry are estimated to be \$55,000. The cost of the distribution system cannot be estimated as more information is needed to determine how the system will be structured and the testing costs related to distributing confiscated marijuana.

FISCAL YEAR

2003

2004

2005

STATE REVENUES/EXPENDITURES

State General Fund

Anti-Racketeering Fund

Drug Treatment and Education Fund

See Discussion Below

FISCAL ANALYSIS

Description

Proposition 203 would do the following:

1. Change possession of 2 ounces or less of marijuana from a criminal violation to a civil violation. The court may impose a fine of not more than \$250 for the first and second offense, and \$750 for each subsequent offense, and may waive the fine if the offender completes a drug education program.
2. Require probation on conviction of a first or second offense involving the personal possession of drug paraphernalia and prohibit the court from imposing a term of incarceration in prison or jail as a condition of probation.
3. Increase the maximum sentence and fine by 50% for violent crimes committed while under the influence of drugs, and abolish mandatory minimum sentences and fines for certain drug offenses.
4. Change the definition of prior conviction for drug possession to exclude those convictions in which an offender has successfully completed a drug treatment or education program.
5. 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.
6. Prohibit the forfeiture of property for a drug offense until the person charged with the crime has been found guilty.

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Description (Cont'd)

7. Require the Department of Public Safety (DPS) to establish a system to maintain and distribute marijuana to qualified patients.
8. Require the Department of Health Services (DHS) to establish a patient registry for those patients eligible to receive marijuana for medical purposes.

Estimated Impact

A precise fiscal estimate of this Proposition cannot be determined due to an inability to determine in advance the sentences imposed by Superior Court judges and how the medical marijuana distribution will be implemented. The following table lists the various provisions of the Proposition and the likely effect on state expenditures and revenues.

<u>Estimated Impact of Proposition 203</u>		
<u>State Agency/Proposition Provision</u>	<u>Expenditures</u>	<u>Revenues</u>
Arizona Department of Corrections		
No Mandatory Minimum Sentences	Decrease	No Change
Change Definition of Prior Conviction	Decrease	No Change
Increase Maximum Sentences by 50%	Increase	No Change
Parole for Current Inmates	Decrease	No Change
Arizona Judiciary/Probation		
No Mandatory Minimum Sentences	Increase	Cannot be determined
Change Definition of Prior Conviction	Increase	No Change
Adding Drug Paraphernalia to Possession Laws	No Change	No Change
Marijuana Possession as Civil Offense	Decrease	Increase Fines
Arizona Attorney General		
Anti-Racketeering Fund – Defer Property Forfeiture	No Change	Decrease
Department of Health Services		
Marijuana Registry	\$165,000	\$55,000
Department of Public Safety		
Shipments from National Institute on Drug Abuse Maintain and Distribute Confiscated Marijuana to Eligible Recipients	Cannot be determined	No Change
Testing Confiscated Marijuana Samples	Increase	No Change
Anti-Racketeering Fund	No Change	Decrease

Analysis

Marijuana Possession as Civil Offense

The Proposition defines the possession of less than 2 ounces of marijuana, marijuana plants, or marijuana drug paraphernalia as a civil violation. In addition, the measure requires the court to impose a fine of \$250 for first and second offenses, and \$750 for each subsequent offense. The court may waive the fine if the defendant successfully completes a drug education program approved by the court. Under current law, these offenses are defined as felonies. We lack information on the number of individuals charged with possession and whether these individuals are sentenced to jail or probation, participate in a diversion program, or have their charges reduced and instead pay a fine.

This provision of the initiative could reduce state costs if individuals convicted of possession of 2 ounces or less are sentenced to supervised probation under current law. Since these offenders would no longer be sentenced to probation, redefining marijuana possession as a civil offense could result in savings to probation departments throughout the state. Since the state and counties share probation expenses, any savings would be experienced by both entities. In those counties that currently impose a jail sentence as a term of probation, there would also be a cost savings from reduced jail days served.

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Analysis (Cont'd)

According to the Maricopa County Attorney's Office and the Maricopa Public Defender Office, a portion of the offenders charged with possession of 2 ounces or less in that county are not sentenced to probation and instead participate in a diversion program prior to conviction. If the offender successfully completes the diversion program, the charges are then reduced or the sentence is suspended. We do not have precise figures on the number of offenders who opt for a diversion program. If a county has a diversion program, they would experience savings if these individuals are no longer required to participate and instead pay a civil fine.

In addition, according to the Pima County Attorney's Office and the Pima Public Defender Office, charges for first-time drug possession offenders in their county are typically reduced immediately from a felony to a misdemeanor. In this circumstance, the proposition would not affect current practice and would therefore not result in additional savings.

In addition, the measure requires all fines collected from these civil violations to be deposited in the Drug Treatment and Education Fund. Due to an inability to determine the number of offenders who will pay this fine and the number who will opt for a drug education program, we cannot determine a precise estimate for these increased revenues.

Possession of Drug Paraphernalia

The Proposition prohibits the court from imposing a term of incarceration in prison or jail for possession of drug paraphernalia for first and second offenses. Since this provision codifies what is currently practiced, the JLBC Staff does not anticipate it will have any fiscal impact.

Maximum and Minimum Mandatory Drug Sentencing Laws

The Proposition eliminates the mandatory minimum sentence and fine for certain drug offenses and increases by 50% the maximum sentence and fine for violent crimes committed under the influence of a controlled substance. The Arizona Department of Corrections (ADC) is likely to experience savings related to eliminating mandatory minimum sentences, but could also experience increased costs related to increasing the maximum sentences imposed for some offenders convicted of violent crimes. Eliminating mandatory minimums could result in more offenders sentenced to probation, and could therefore increase the cost to probation departments throughout the state. The precise cost to the prison system and probation departments depends on the sentences imposed by Superior Court judges and the number of offenders diverted from state correctional facilities to probation. The cost is \$58.51 per day to house an inmate at a state prison and \$2.40 to supervise an adult on standard probation.

In addition, the 50% increase in maximum fines could result in increased revenue for the state. Since this provision allows, and does not require the court to impose a higher fine, the precise increase in state revenues would depend on the decisions made by the court. The potential increase in state revenues could be offset by the elimination of mandatory minimum fines. Since we do not have information on how these provisions will affect court decisions, we cannot estimate the precise impact to state revenues.

Change Definition of Prior Conviction

The Proposition changes the definition of prior conviction for drug possession to exclude those convictions in which an offender has successfully completed a drug education program. This provision is likely to decrease prison and jail expenditures since offenders would have more opportunities to receive probation instead of incarceration. The decrease in expenditures, however, could be partially offset by increased probation costs associated with supervising these individuals. Under current law, those convicted of a third drug possession offense could be incarcerated.

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. Parole may also be denied if the Board of Executive Clemency determines beyond a reasonable doubt that the prisoner would be a danger to the general public. The ADC would experience reduced costs associated with this provision of the initiative for every offender released from state correctional facilities as a result of this measure. As of March 2002, there were approximately 1,500 inmates serving a prison sentence for drug possession at a cost of \$58.51 per day.

Defer Property Forfeiture for Drug-Related Offenses Until Conviction

The Proposition prohibits the forfeiture of property for drug-related offenses until those charged with a crime have been found guilty. Law enforcement agencies are currently permitted to seize any property involved in drug offenses and can hold

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Analysis (Cont'd)

these assets throughout the legal proceedings. Any cash received as a result of this process is deposited in the Attorney General's Anti-Racketeering Fund, and since the Proposition would limit law enforcement agencies' ability to withhold these assets, it is likely that the balance in this fund will decrease as a result of the measure. In addition, monies deposited in DPS' Anti-Racketeering Fund would also decrease. DPS receives a portion of the proceeds from the sale of forfeited assets whenever the department is involved in drug-related cases.

Marijuana Registry

The Proposition requires DHS to create and maintain a patient registry of individuals eligible for the medical use of marijuana. DHS must also issue a registry identification card to eligible individuals who pay a fee not to exceed \$50 and provide a list of persons issued registry identification cards to state or local law enforcement agencies to verify lawful possession. The cost to maintain the registry is approximately \$165,000 each fiscal year beginning in FY 2003 and is based on 1,100 eligible participants. This estimate includes salaries, health benefits, equipment, and other operating expenditures for 2 employees to maintain the patient registry. These costs are based on a marijuana patient registry system established in Oregon with similar requirements. The population estimate was derived by extrapolating Oregon's participation rates to Arizona. In the first year of the Oregon program, approximately 1.99 people per 10,000 participated in the program. This would translate to about 1,100 participants in Arizona. It is estimated that a portion of the costs will be covered by a fee assessed to register patients. The Proposition allows a fee of up to \$50, which would generate revenues of \$55,000 each year based on 1,100 participants. The Proposition does not identify any other funding source for the patient registry, therefore, we assume the General Fund will cover any funding difference.

State Distribution of Medical Marijuana

The Proposition requires DPS to utilize marijuana from either the Federal Compassionate Use program or from confiscated marijuana that was grown, cultivated, or produced in Arizona. DPS must submit a request to the National Institute on Drug Abuse (NIDA) and the University of Mississippi for quarterly shipments of marijuana for medical purposes. Under the federal program, which began in the 1970's in conjunction with the University of Mississippi, the federal government provides marijuana grown at the university, through the NIDA, to qualified patients. The program, however, was closed to new participants beginning in 1992. As a result, it is unknown whether DPS would be able to acquire marijuana through the federal program. Costs associated with the acquisition cannot be determined because the quantity to be distributed, the number of shipments, and the shipment method are unknown.

Confiscated marijuana must be maintained and distributed in a secure location in at least 3 counties with the greatest population. We estimate a cost to DPS for these requirements, however, the precise amount is unknown and would depend on the quantity to be maintained and how the distribution system is structured. We assume that if the quantity of marijuana housed is small, existing space could be utilized within DPS' evidence rooms. DPS would incur additional expenses to house and secure marijuana if quantities exceed existing space availability.

It is likely that DPS would incur costs associated with testing confiscated 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 numerous tests required for each sample to ensure that the confiscated marijuana does not contain other controlled substances, pesticides, or metals. The cost for testing confiscated marijuana will depend on the number of patients, the quantity of marijuana to be provided, the cost per test, and the number of tests needed to determine a sample's purity and potency. 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.

Local Government Impact

The fiscal impact of the Proposition on local government is unknown at this time and will vary between Arizona's 15 counties. The counties could experience increased costs if the elimination of mandatory minimum sentences results in more offenders sentenced to probation instead of incarceration. This would result in increased costs to probation departments throughout the state. County probation departments could also experience costs associated with changing the definition of prior conviction since more offenders would be eligible for probation. Since these offenders could commit more offenses before a term of incarceration is imposed, and since these offenders would appear in court each time, there could be increased court costs associated with these additional offenses as well. These costs would be borne by the Superior Court in each of the 15 counties. These increased costs, however, could be offset by savings associated with fewer jail days served by these offenders.

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Local Government Impact (Cont'd)

The Proposition could result in savings to Arizona counties if the reclassification of drug possession as a civil offense results in fewer offenders sentenced to supervised probation. Since the Proposition reclassifies these offenses as civil violations, the offenders would no longer be sentenced to probation. The Maricopa County Attorney's Office indicates that offenders charged with these violations are not typically sentenced to probation under current law, so any savings associated with this provision would be minimal. It is possible, however, that some counties currently sentence these offenders to probation and would therefore experience reduced probation costs. In counties that impose a jail sentence as a term of probation for personal possession, there could be 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 cost per day to jail an offender.

9/12/02

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 Kim Hohman and Tony Vidale (602-542-5491).