OA 12-10-01

IN THE SUPREME COURT OF FLORIDA
Case No. SC01-1950

Upon Request From the Attorney General
for an Advisory Opinion as to the
Validity of an Initiative Petition

ADVISORY OPINION TO
THE ATTORNEY GENERAL

RE: RIGHT TO TREATMENT AND REHABILITATION FOR NONVIOLENT DRUG OFFENSES

RESPONSE BRIEF OF AMICUS CURIAE FLORIDA ASSOCIATION OF DRUG COURT PROFESSIONALS, INC.

IN OPPOSITION TO THE INITIATIVE

Martin Epstein, Esquire
Fla. Bar No: 0971189
Florida Association of Drug
Court Professionals, Inc.
3228 Gun Club Road
West Palm Beach, FL 33406
Attorney for Amicus Curiae

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SUMMARY OF THE ARGUMENT

Constitutions and their amendments are traditionally designed to establish and protect inalienable rights. The proposed ballot initiative doesn't seek to add an inalienable right; it seeks to change the law for a limited sector of Florida's population. In doing so, it fails to meet the clear and unambiguous standard and violates the single subject rule.

ARGUMENT

I. CONSTITUTIONS ARE DESIGNED TO ESTABLISH AND PROTECT INALIENABLE RIGHTS.

The forefathers of this great country crafted the U.S. Constitution, which would be enhanced by the amendments to establish and protect inalienable rights. The Preamble of our U.S. Constitution states:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The first ten amendments set forth our Bill of Rights and establish those inalienable" rights that have stood as a sentinel over our civil liberties for over two centuries.

Similarly, the Florida Constitution states its purpose in the Preamble.

> We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.

So too does the Florida Constitution set out the parameters of our State's government. So too do our amendments protect those vital inalienable rights due Florida's citizens. The Florida Constitution never has been and never should be a conduit by which our legislative, executive, and judicial branches of government are circumvented.

The U.S. Bill of Rights consists of 13 amendments, only three of which exceed 75 words in length in their total text. Our Florida Constitution also contains 13 amendments, of which only four exceed 75 words in length in their total text. Yet, the war cry of the proponents of this amendment is that the title meets the 75 word restriction for ballot initiative summaries.

A great deal of the proponent's brief focuses on the success of limiting the summary to seventy-five words. CONGRATULATIONS! Most of the U.S. and Florida constitutional amendments in total length do not exceed 75 words.

The reason for this is that rights sought to be protected by a state or country's constitution don't generally need more than 75 words. Here, the summary is limited to 75 words, but it has taken the proponents a total of

601 words to spell out their proposal in total. And in doing so, they have left many of us wondering about what was left out, why, and what to do about it. Inalienable rights don't need excess verbiage. They are the very foundation upon which our State and Country operate. They are subject to judicial interpretation. However, the framers meant what they said and said what they meant -- a philosophy that has not been adhered to in this initiative.

> A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the object themselves.

McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819).

Hundreds, indeed thousands, of cases have been litigated over the years, interpreting constitutional rights. Yet, the basis of those decisions has lain in the significant and special nature of what a constitutional amendment was designed to achieve.

The present initiative would create a right for those "charged with" or

"convicted of" enumerated crimes. It does not provide a right for all the citizens of the State of Florida. It does not provide a right for all the citizens of the State of Florida who suffer from addiction. When has a constitutional amendment established special rights for a select population of our society? The present initiative does not provide a right to our entire citizenry, only a right for those charged or convicted of a crime. The current practice in this State is to limit rights of convicted offenders -- not bolster them. Since when do the rights of one class of citizens outweigh those of an entire society?

If the proponents believe that the citizens of this State are entitled to rehabilitation and treatment, then the proposal should express that inalienable" right. Why have they chosen not to do so? Is it because their goal is not to protect inalienable rights, but rather to decriminalize/legalize possession and purchase of controlled substances. The initiative does not create or protect a right for all. Rather, it is an alternative sentencing structure.

Our legislature, which represents the citizens of this State, has determined that purchase and possession of controlled substances without a

legitimate prescription is a crime. The proponents of this initiative seek to undo this legislative decision, which usurps the law making authority of the legislative branch.

When rights are inalienable, they are able to be expressed in words capable of public understanding. It is for this reason, that our great State has set forth minimum constitutional standards to protect against the invasion of those who would legislate through the conduit of a ballot initiative.

This attempt by non-Floridians to circumvent our constitutional and legislative processes must fail. This Court has the constitutional and statutory obligation to protect our citizens from proposals that neither reflect a single subject nor set forth in clear and unambiguous terms the subject matter of the amendment. This proposal fails in both of these requirements.

II. THE PROPOSED CONSTITUTIONAL AMENDMENT FAILS TO SATISFY FLORIDA'S CONSTITUTIONAL AND STATUTORY MANDATES.

A. The Title Summary Is Not Clear and Unambiguous.

The proponents argue on page 11 that the "subjective view of the merit and political ramifications of a proposed initiative are irrelevant in

these proceedings. While the FADCP agrees that this Court's decision is limited in scope to the two constitutional and statutory requirements, it is critical for this Court to be aware of the ramifications of its decision. Furthermore, should the proponents truly believe that the ramifications of this amendment are irrelevant, then why is so much emphasis in their brief placed on negating the ramifications?

On page 12-13, the proponents argue that "[a]ny given initiative petition may raise issues that are controversial. That is the inherent nature of the process and one if its most powerful democratic features: to present issues for consideration and allow the voters themselves to express individual opinions about them." (Proponent's Brief at 12-13). However, what the proponents fail to acknowledge is that this is the very reason why the clear and unambiguous standard must be met. A proposition that is deceptive, ambiguous, and illusory, should never be put before the Florida voters.

On page 14, the proponents argue that the ballot summary must only be "fair and advise the voter sufficiently to enable the voter to cast a ballot intelligently." (Proponent's Brief at 14). This Court has had recent

experience that Florida voters have a great deal of difficulty in dealing with the casting of simple votes for candidates that do not incorporate a 75-word ballot summary. In addition, to fully understand the true intent of the initiative, the voter is at a disadvantage not readily having the full text of the amendment, comprising 601 words.

According to the proponents, the fact that people might not inform themselves about what they are voting for is immaterial so long as they have an opportunity to inform themselves. Let's be realistic, most Floridians don't vote; and those that do, may not be motivated to seek out and read verbiage that is not placed before them at the time of the vote. This perhaps is what the proponents are counting on.

On page 17, the proponents allege that the amendment is clear and unambiguous. In the same paragraph it is suggested that the Attorney General has misinterpreted the wording. If this is so, then how can an ordinary citizen be expected to understand the alleged "clear and unambiguous" proposal if the chief law enforcement officer of our State interprets the proposal in a way that wasn't intended by the proponents.

On page 17, the proponents advise that the first paragraph of the

initiative applies to both felonies and misdemeanors. In doing so, it now converts a one year misdemeanor to the potential of 18 months of treatment, followed by the potential of prosecution without any concomitant waiver of speedy trial. Once again, this disrupts a legal system established by the Florida legislature and administered by the Florida judicial system. And, by applying it to misdemeanors it deceives the public by suggesting that someone can participate in treatment for up to 18 months while supervision/incarceration under the same penal code is limited by law to one year.

On page 18, the proponents make a quantum leap by suggesting that voters will take time to read and understand the text of the amendment. Recent history involved in the elections of 2000 should teach us all that not only **don't** the voters read material before the election, they are often unable to follow directions at the time of voting. To believe that each voter will take the time to read and understand the text of the amendment is at best optimistic.

The proponents argue that "a single criminal episode" is clear and unambiguous. However, those familiar with substance abuse know that a

person can go on a long term binge covering several days or weeks. Is that a single criminal episode?

On page 19, the proponents argue that the right to elect treatment in lieu of sentencing or incarceration is "perfectly clear". Once before our nation faced that phrase -- "perfectly clear." However, in their explanation, they concede that "[t]he reference in the summary to two offenses . . . is entirely consistent with the expanded detail . . . which addresses the intended treatment of multiple (not two) offenses committed during a single criminal episode. When the word "two" actually means "multiple within one", isn't that ambiguous?

On page 20, the proponents suggest that "the trial judge retains the exclusive authority to determine, in the first place, whether any given offender is eligible to elect treatment and rehabilitation." While appreciated, that authority appears nowhere in the text. In fact, as previously addressed, the proponents have excluded courts altogether from the language of this amendment. They then suggest that the trial judge controls the monitoring and whether violations merit transfer. This is completely inconsistent with the actual language of the amendment which

"clearly" (for once) leaves that decision in the hands of an "independent qualified professional" -- not a trial judge. Yet, the amendment graciously bestows upon the judiciary the responsibility for trying cases up to 18 months after the fact when persons are thrown out of treatment, and for sentencing those who have failed.

They concede that the amendment changes current law. And while they also concede that the summary does not detail the role of the trial judge, neither does the text make any reference to the court. The proponents argue that the very point of a constitutional amendment is to change the law. Tradition has established that the purpose of a constitutional amendment is to protect and preserve inalienable rights, not legislate.

On page 22, the proponents describe the trial court's role to "offer treatment and rehabilitation". It "continues to exist after the offender has had the two chances guaranteed by the amendment". This appears to refute their prior statement that the trial judge is involved throughout because here they argue that once an offender has had two bites at the apple, now the trial court has the discretion to offer a third or fourth.

On page 23, the proponents acknowledge a need for fiscal planning.

What they fail to disclose to the general public is how much this proposal will cost the State, where the money will come from, and how it will be distributed. As we witness the Red Cross dealing with the monies collected from the September 11th fund, we should be mindful that best intentions are often misinterpreted in the implementation. Nowhere does the summary or the text advise the public what this amendment will cost the State. This is especially important when our State is currently in a fiscal crisis.

A good idea loses its goodness when its implementation creates a fiscal crisis. The bullet train is a prime example of this deceptiveness. This is why it is so crucial that an amendment "fully" disclose the ramifications to the public. "Treatment for our citizens" -- who wouldn't want that? It is this very alluring suggestion that the proponents intend to capitalize on without disclosing what it will take for this amendment to be funded.

They attempt to make short shrift of the "in treatment" -- "election of treatment" language. However, they quite clearly are different. Being in treatment for 18 months is not the same as electing it today and never going for eighteen months. This distinction is just another reason why this initiative fails to "clearly and unambiguously" disclose to the citizens of this

State what is intended by this amendment.

Their attempt to clarify this distinction on pages 24-25 simply fails. The fact that it takes almost a page to explain the distinction illustrates the problem with clarity. The summary is inconsistent with the text of the amendment. And this matter of semantics may not even by noticed by the many citizens who may take the time to read the entire text.

B. <u>The Initiative Violates the Single Subject Requirement</u>.

On page 31, the proponents admit that if the amendment usurps or "otherwise substantially" affects the functions of more than one branch or level of government, it fails to satisfy the single subject rule. This ballot initiative does just that. It undermines the executive branch's Drug Control Strategy, issued by the Governor in 1999. It significantly impacts prosecutorial discretion in charging offenders. It substantially impacts a prosecutor's ability to prove cases as many trials will be postponed for 18 months, becoming stale and exacerbating time guidelines for trial court efficiency. It substantially impacts a trial court's sentencing authority, its ability to control its caseload, and its trial dockets. It usurps the legislature's sentencing guidelines and sentencing structure. In short, this

ballot initiative does not merely build on existing law, it rewrites it.

III. OTHER INITIATIVES HAVE YET TO PROVE SUCCESSFUL.

A. The Report Card is Still Out in California.

This initiative is one of three pending in our State, Michigan, and Ohio. Each initiative has been tailored to meet what the proponents believe to be the popular thinking in each State. So far, the proponents have been successful in passing initiatives in Arizona and California, respectively. Yet, the report card is still out.

Interestingly, the California Drug Courts and the proponents of this ballot initiative have found that **incorporating the drug court model** under the auspices of Prop 36 has provided the best implementation and most successful model for the State. See AOC Workgroup Model attached as an appendix.

Critics of Prop 36 share yet a more bleak view of the future. "[A]s many as one-quarter of drug users sent by court officers to treatment centers are not showing up. Others begin treatment and disappear, or continue their drug habit undetected. Some critics complain of insufficient funding and oversight of those who do remain enrolled." Christian Science Monitor,

The Christian Science Publishing Society (September 26, 2001). According to James Stilwell, a former addict and now executive director of Impact Drug and Alcohol Treatment Center, "the problem with Proposition 36 is that it offers no threat of jail time or other consequence if clients are not motivated to change their drug habits. 'Under this law, all you do is answer to a probation officer who has no power except to put you in another program if you fail the one you are in'. . . . We tried that approach in the '60's and '70s. It didn't work then and doesn't work now." Id. There are additional concerns of inadequate funding, lack of required drug testing, and an abandonment of a tried and true system of drug court processing.

In addition, unlike California, the Florida Drug Court system is reaching approximately 50% of the possible population. And, there are plans underway for expansion.

B. This Initiative Intentionally Excludes Florida's Court System.

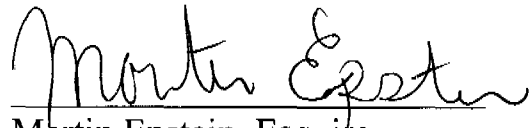
Interestingly, unlike the California initiative, Florida's court system has been excluded from the proposal pending before this Court. (See Prop 36 attached as appendix 2). Why? In its brief, the proponents state that

Florida's Drug Court System ". . . is intended to effect a multidisciplinary approach incorporating the expertise of the judiciary and qualified health professionals". Yet efforts by Florida's leaders in the drug policy area to work with the proponents on appropriate legislation in lieu of this ballot initiative fell on deaf ears. Indeed, the proponents have capitalized on the success of Florida's drug courts when they stood idly by doing nothing to support or advance these programs. And now, that the court system has made major strides in drug policy reform, the proponents seek to piggy-back on the court's success, eliminate the court's supervision from the equation, and make a mockery of laws passed by our legislature, which designate possession and purchase of a controlled substance as an illegal act.

CONCLUSION

For the foregoing reasons, the Florida Association of Drug Court Professionals, Inc., respectfully requests this Court to find that the proposed constitutional amendment initiative fails to meet Florida's constitutional and statutory requirements as set forth above.

RESPECTFULLY SUBMITTED,



Martin Epstein, Esquire
Fla. Bar No: 0971189
Florida Association of Drug Court Professionals, Inc.
3228 Gun Club Road
West Palm Beach, FL 33406
Attorney for Amicus Curiae

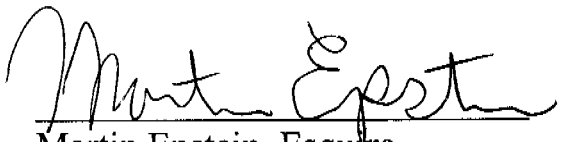
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this November 9, 2001, to the Honorable Robert A. Butterworth, Office of the Attorney General, The Capitol, Tallahassee, Florida 32399-1050; Stephen H. Grimes, Esq. and Susan L. Kelsey, Esq., Holland and Knight, P.O. Box 800, Tallahassee, Florida 32302; and Kenneth W. Sukhia, counsel for Save Our Society from Drugs, Fowler, White et al., 101 North Monroe Street, Suite 1090, Tallahassee, Florida 32301.

Martin Epstein, Esquire
Fla. Bar No: 0971189
Florida Association of Drug Court Professionals, Inc.
3228 Gun Club Road
West Palm Beach, FL 33406
Attorney for Amicus Curiae

CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel hereby certifies that this brief has been typed using 14 point Times New Roman Font in accordance with Rule 9.210(a)(2), Fla.R.App.P.



Martin Epstein, Esquire
Fla. Bar No: 0971189
Florida Association of Drug Court Professionals, Inc.
3228 Gun Club Road
West Palm Beach, FL 33406
Attorney for Amicus Curiae

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The AOC implementation workgroup has developed:
"Implementation Model –Court Supervised Treatment"

ONE SUPERVISED TREATMENT SYSTEM

1. **To provide for a "seamless transition" to a system including Prop 36 cases.**

    - Prop 36 **should not be viewed as a separate treatment program** from traditional court supervised treatment programs such as PC 1000 and Drug Court with separate procedures and objectives.

    - We should look at non-violent substance abusers as one group for the purpose of determining the appropriate level of treatment and supervision, **regardless of the point of entry or the basis of eligibility.**

EXPERIENCED TEAM IN SPECIALIZED DEPARTMENTS AND CALENDARS

2. **To provide for a Team of Judges and Support Staff with training and or experience (or who receive training) in supervising substance abusing defendants while they are in treatment.**

    - Recognizing that Prop 36 will add thousands of defendants to the existing treatment system, the response of the Courts should be to design a system within each Superior Court that will **calendar cases in specialized departments and/or calendars**

ONGOING COURT REVIEWS OF PROGRESS

- that will **make use of well-established treatment court principles** in supervising all defendants who are

mandated into treatment **including court reviews of progress.**

- Treatment Court Principles feature **a non-adversarial approach to the greatest extent possible.**

ASSESSMENT FOR TREATMENT AND SUPERVISION

3. **To provide for an appropriate level of treatment and supervision through individual assessments.**

    - The first and most important principle of effective drug treatment recognized by the National Institute of Drug Abuse is that no single treatment is appropriate for all individuals. **There is no "one size fits all" treatment program.**

    - Each participant should be **assessed individually** both for **the level of addiction and the level of intensity of supervision**, and, then, be assigned to treatment commensurate with the severity of his addiction and probation supervision commensurate with his or her criminal history.

    - We should recognize that an assessment for each defendant is critical in this process for supervision and treatment, and that **assessments will change over time** as the defendant progresses or fails in treatment, and carrying out obligations.

MODIFICATION OF TREATMENT AND SUPERVISION

4. **To provide for an integrated court, probation and treatment system that permits defendants to move to different treatment and supervision levels as they progress or fail in treatment.**

- A core element of current court supervised treatment programs is recognizing that defendants will move between different levels of treatment and supervision and that **modifications in treatment and supervision plans will be necessary**.

- The fact that the defendant has "failed" at one level of treatment does not mean that he or she will not succeed at a higher level of intensity in treatment.

COLLABORATION BETWEEN JUDGE, PROSECTUTION, DEFENSE, TREATMENT AND PROBATION

5. To provide for meaningful cooperation and collaboration between treatment providers and the Court and Probation Department.

- Court supervision of drug treatment has proved to be one of the most significant advances in drug treatment in the past decade, and its effectiveness has been recognized by the National Institute on Drug Abuse. However, **successful Court supervision requires collaboration**.

SHARING RESPONSIBILITY AND INFORMATION

- Current court supervised treatment involves **frequent face to face meetings between the judge, probation officers, and treatment professionals, and sharing of information by the treatment professionals** with the probation officers and the judge **for therapeutic (not punitive) purpo**ses. The Judge, Probation and Treatment Provider all should be involved in case management.

- To be successful, Prop 36 cases should be incorporated into this system of "collaborative treatment", and courts should establish guidelines for choosing providers who are willing to share authority over the case in this manner.

AOC Workgroup Model

1. One Supervised Court Treatment System

2. Experienced Team in Specialized Departments and Calendars

3. Ongoing Court Reviews by Judge of Progress

4. Individual Assessment for Treatment and Supervision

5. Ongoing Modification of Treatment and Supervision (Active involvement of treatment and probation with the Judge)

6. Collaboration Between Judge, Prosecution, Defense, Treatment and Probation to resolve issues and develop protocols to avoid adversarial hearings

SECTION 1. Title

This Act shall be known and may be cited as the "Substance Abuse and Crime Prevention Act of 2000."

SECTION 2. Findings and Declarations

The People of the State of California hereby find and declare all of the following:

(a) Substance abuse treatment is a proven public safety and health measure. Non-violent, drug dependent criminal offenders who receive drug treatment are much less likely to abuse drugs and commit future crimes, and are likelier to live healthier, more stable and more productive lives.

(b) Community safety and health are promoted, and taxpayer dollars are saved, when nonviolent persons convicted of drug possession or drug use are provided appropriate community-based treatment instead of incarceration.

(c) In 1996, Arizona voters by a 2-1 margin passed the Drug Medicalization, Prevention, and Control Act which diverted non-violent drug offenders into drug treatment and education services rather than incarceration. According to a Report Card prepared by the Arizona Supreme Court, the Arizona law: is "resulting in safer communities and more substance abusing probationers in recovery," has already saved state taxpayers millions of dollars, and is helping more than 75% of program participants to remain drug free.

SECTION 3. Purpose and Intent

The People of the State of California hereby declare their purpose and intent in enacting this Act to be as follows:

(a) To divert from incarceration into community-based substance abuse treatment programs non-violent defendants, probationers and parolees charged with simple drug possession or drug use offenses;

(b) To halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration – and re-incarceration – of non-violent drug users who would be better served by community-based treatment; and

(c) To enhance public safety by reducing drug-related crime and preserving jails and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies.

SECTION 4. Section 1210 is added to the Penal Code to read:

1210. Definitions.

As used in Penal Code sections 1210.1 and 3063.1, and Division 10.8 of the Health and Safety Code:

(a) The term "non-violent drug possession offense" means the unlawful possession, use, or transportation for personal use of any controlled substance identified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058, or the offense of being under the influence of a controlled substance in violation of Health and Safety Code section 11550. The term "non-violent drug possession offense" shall not include possession for sale, production, or manufacturing of any controlled substance.

(b) The terms "drug treatment program" or "drug treatment" mean a licensed and/or certified community drug treatment program which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention

courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The terms "drug treatment program" or "drug treatment" shall not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender or (2) any activity similar to those listed in (d)(1) above.

SECTION 5. Section 1210.1 is added to the Penal Code to read:

1210.1 Possession Of Controlled Substances; Probation; Exceptions.

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a non-violent drug possession offense shall receive probation.

As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose as a condition of probation participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a non-violent drug possession offense who is reasonably able to do so to contribute to the cost of their own placement in a drug treatment program.

(b) Subdivision (a) shall not apply to:

(1) Any defendant who has previously been convicted of one or more serious or violent felonies in violation of Penal Code sections 667.5(c) or 1192.7, unless the non-violent drug possession offense occurred after a period of 5 years in which the defendant remained free of both prison custody and the commission of an offense which results in (a) a felony conviction other than a non-violent drug possession offense or (b) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more non-violent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who:

(A) While using a firearm, unlawfully possesses any amount of (1) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (2) a liquid, non-liquid, plant substance, or hand-rolled cigarette, containing phencyclidine.

(B) While using a firearm, is unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phencyclidine.

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who (a) has two separate convictions for non-violent drug possession offenses (b) has participated in two separate courses of drug treatment pursuant to subdivision (a) and (c) is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment. Notwithstanding any other provision of law, the trial court shall sentence such defendants to 30 days in jail.

(c) Within 7 days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department. On a quarterly basis after the defendant begins the drug treatment program, the treatment provider shall prepare and forward a progress report to the probation department.

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation to ensure that defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment, the probation department may move to revoke probation. At the revocation hearing, unless the defendant proves

by a preponderance of the evidence that there is a drug treatment program to which he is amenable, the court may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

(d) Dismissal of charges upon successful completion of drug treatment.

(1) At any time after completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges. If the court finds that defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment or information against the defendant. In addition, the arrest on which the conviction was based shall be deemed to have never occurred. Except as provided in subdivision (d)(2) and (d)(3) below, the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment or information pursuant to subdivision (d)(1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Penal Code section 12021.

(3) Except as provided below, after an indictment or information is dismissed pursuant to subdivision (d)(1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the

offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(e) Violation of Probation.

(1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

(2) Non-drug related probation violations.

Where a defendant receives probation under subdivision (a), and violates that probation either by being arrested for an offense that is not a non-violent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether

probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

(3) Drug related probation violations.

(A) Where a defendant receives probation under subdivision (a), and violates that probation either by being arrested for a non-violent drug possession offense or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(B) Where a defendant receives probation under subdivision (a), and for the second time violates that probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (1) has committed a serious violation of rules at the drug treatment

program, (2) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (3) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(C) Where a defendant receives probation under subdivision (a), and for the third time violates that probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, defendant is not eligible for continued probation under subdivision (a).

(D) Where a defendant on probation at the effective date of this act for a non-violent drug possession offense violates that probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine if probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

(E) Where a defendant on probation at the effective date of this act for a non-violent drug possession offense violates that probation a second time either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

(F) Where a defendant on probation at the effective date of this act for a non-violent drug offense violates that probation a third time either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, defendant is not eligible for continued probation under subdivision (a).

SECTION 6. Section 3063.1 is added to the Penal Code to read:

3063.1. Possession Of Controlled Substances; Parole; Exceptions.

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), parole may not be suspended or revoked for commission

of a non-violent drug possession offense or for violating any drug-related condition of parole.

As an additional condition of parole for all such offenses or violations, the Parole Authority shall require participation in and completion of an appropriate drug treatment program. Vocational training, family counseling and literacy training may be imposed as additional parole conditions.

The Parole Authority may require any person on parole who commits a non-violent drug possession offense or violates any drug-related condition of parole, and who is reasonably able to do so, to contribute to the cost of their own placement in a drug treatment program.

(b) Subdivision (a) shall not apply to:

(1) Any parolee who has been convicted of one or more serious or violent felonies in violation of Penal Code sections 667.5(c) or 1192.7.

(2) Any parolee who, while on parole commits one or more non-violent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

(3) Any parolee who refuses drug treatment as a condition of parole.

(c) Within 7 days of a finding that the parolee has either committed a non-violent drug possession offense or violated any drug-related condition of parole, the Parole Authority shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare a drug treatment plan and forward it to the Parole Authority and to the California Department of Corrections

Parole Division Agent responsible for supervising the parolee. On a quarterly basis after the parolee begins drug treatment, the treatment provider shall prepare and forward a progress report to these entities and individuals.

(1) If at any point during the course of drug treatment the treatment provider notifies the Parole Authority that the parolee is unamenable to the drug treatment provided, but amenable to other drug treatments or related programs, the Parole Authority may act to modify the terms of parole to ensure that the parolee receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the Parole Authority that the parolee is unamenable to the drug treatment provided and all other forms of drug treatment, the Parole Authority may act to revoke parole. At the revocation hearing, parole may be revoked unless the parolee proves by a preponderance of the evidence that there is a drug treatment program to which he is amenable.

(3) Drug treatment services provided by subdivision (a) as a required condition of parole may not exceed 12 months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

(d) Violation of Parole.

(1) If parole is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

(2) Non-drug related parole violations.

Where a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by being arrested for an offense other than a non-violent drug possession offense, or by violating a non drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole may be modified or revoked if the parole violation is proved.

(3) Drug related parole violations.

(A) Where a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked where the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be intensified to achieve the goals of drug treatment.

(B) Where a parolee receives drug treatment under subdivision (a), and during the course of drug treatment for the second time violates that parole either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved the parolee is not

eligible for continued parole under any provision of this section and may be re-incarcerated.

(C) Where a parolee already on parole at the effective date of this act violates that parole either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked where the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be modified to include participation in a drug treatment program as provided in subdivision (a). This paragraph will not apply to any parolee who at the effective date of this act has been convicted of one or more serious or violent felonies in violation of Penal Code sections 667.5(c) or 1192.7.

(D) Where a parolee already on parole at the effective date of this act violates that parole for the second time either by being arrested for a non-violent drug-possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be re-incarcerated.

SECTION 7. Division 10.8 is added to the Health & Safety Code to read:

Division 10.8. Substance Abuse Treatment Funding.

11999.4 Establishment Of The Substance Abuse Treatment Trust Fund.

A special fund to be known as the "Substance Abuse Treatment Trust Fund" is created within the State Treasury which is continuously appropriated for carrying out the purposes of this division.

11999.5 Funding Appropriation

Upon passage of this Act, $60,000,000 shall be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2000-2001 fiscal year. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional $120,000,000 annually for the 2001-2002 fiscal year, and an additional sum of $120,000,000 in each such subsequent fiscal year concluding with the 2005-2006 fiscal year. These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each of these specified fiscal years. Funds transferred to the Substance Abuse Treatment Trust Fund are not subject to annual appropriation by the Legislature and may by used without a time limit. Nothing in this section shall preclude additional appropriations by the Legislature to the Substance Abuse Treatment Trust Fund.

11999.6 Distribution Of Monies From Substance Abuse Treatment Trust Fund

Monies deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the secretary of the Health and Welfare Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing persons in and providing (1) drug treatment programs under this Act and (2) vocational training, family counseling and literacy training under this Act. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation

department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this Act other than drug testing services of any kind. Such monies shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this Act. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the department director has determined that demand for drug treatment services is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment.

11999.7 Local Government Authority to Control Location of Drug Treatment Programs

Notwithstanding any other provision of law, no community drug treatment program may receive any funds from the Substance Abuse Treatment Trust Fund unless the program agrees to make its facilities subject to valid local government zoning ordinances and development agreements.

11999.8 Surplus Funds

Any funds remaining in the Substance Abuse Treatment Trust Fund at the end of a fiscal year may be utilized to pay for drug treatment programs to be carried out in the subsequent fiscal year.

11999.9 Annual Evaluation Process

The department shall annually conduct a study to evaluate the effectiveness and financial impact of the programs which are funded pursuant to the requirements of this Act. The study shall include, but not be limited to, a study of the implementation process, a review of lower incarceration costs, reductions in crime, reduced prison and jail construction, reduced welfare costs, the adequacy of funds appropriated, and any other impacts or issues the department can identify.

11999.10 Outside Evaluation Process

The department shall allocate up to 0.5% of the fund's total monies each year for a long term study to be conducted by a public university in California aimed at evaluating the effectiveness and financial impact of the programs which are funded pursuant to the requirements of this Act.

11999.11 County Reports

Counties shall submit a report annually to the department detailing the numbers and characteristics of clients-participants served as a result of funding provided by this Act. The department shall promulgate a form which shall be used by the counties for the reporting of this information, as well as any other information that may be required by the department. The department shall establish a deadline by which the counties shall submit their reports.

11999.12 Audit Of Expenditures

The department shall annually audit the expenditures made by any county which is funded, in whole or in part, with funds provided by this Act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of this Act.

11999.13 Excess Funds

At the end of each fiscal year, a county may retain unspent funds received from the Substance Abuse Treatment Trust Fund and may spend those funds, if approved by the department, on drug programs that further the purposes of this Act.

SECTION 8. Effective Date

Except as otherwise provided, the provisions of this Act shall become effective July 1, 2001, and its provisions shall be applied prospectively.

SECTION 9. Amendment

This Act may be amended only by a roll call vote of two-thirds of the membership of both houses of the Legislature. All amendments to this Act shall be to further the Act and shall be consistent with its purposes.

SECTION 10. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this initiative which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.