

PROPOSITION 203
DRUG MEDICALIZATION, PREVENTION AND CONTROL ACT OF 2002

ANALYSIS BY LEGISLATIVE COUNCIL

In 1996, the voters passed the Drug Medicalization, Prevention and Control Act of 1996. The Act allowed medical doctors to prescribe certain controlled substances to treat diseases or to relieve the symptoms of seriously ill or terminally ill patients. Along with other provisions, the Act modified probation, sentencing and treatment laws for drug offenders.

Proposition 203 would decriminalize the possession of two ounces or less of marijuana, marijuana drug paraphernalia or two or fewer marijuana plants if the possession is for personal use only but would subject the possessor to a civil fine of \$250 for a first or second offense or \$750 for a third or subsequent offense within a two year period. A judge could waive the civil fine if the person completes a court approved drug education program.

Proposition 203 requires the Department of Public Safety to provide not more than two ounces of marijuana free of charge to each person who is qualified to use marijuana for medical purposes.

This proposition would require any law enforcement agency that seizes marijuana that was grown, cultivated or produced in Arizona to retain the marijuana and forward it to the Arizona Department of Public Safety. It also would require the Director of the Department of Public Safety to request from the National Institute on Drug Abuse and the University of Mississippi quarterly shipments of marijuana grown at the University of Mississippi for distribution free of charge by the Department to all persons qualified to use marijuana for medical purposes.

The Department of Public Safety would be required to maintain marijuana that is seized and that is grown, cultivated or produced in Arizona in secure locations within public buildings located in at least the three most populous counties, and the Department would be required to disclose the location of these public buildings. The distribution to qualified persons would be limited to not more than two ounces of marijuana within a thirty day period. In addition, the proposition would establish criminal penalties for any person who uses or attempts to use false identification and for any person who possesses, uses, sells, delivers or transports marijuana outside Arizona or delivers the marijuana to another person who intends to possess, sell, deliver or transport the marijuana outside Arizona.

Proposition 203 also would require the Arizona Department of Health Services to establish and maintain a program for the issuance of registry identification cards to any Arizona resident who is at least eighteen years of age, who pays a fee of \$50 and who provides written documentation from the person's attending physician that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's condition. If the person designates a primary caregiver and the

caregiver meets certain requirements, the caregiver also would be eligible to receive a registry identification card. A cardholder would be entitled to possess, use or produce two ounces of marijuana and two marijuana plants, and the cardholder's designated primary caregiver would be entitled to possess or produce two ounces of marijuana and two marijuana plants. The registry identification card program also includes the following provisions:

- Under certain conditions, the Department of Health Services would be allowed to issue a registry identification card to a person who is less than eighteen years of age if the person's custodial parent or legal guardian consents to the medical use of marijuana by that person.
- The Department also would be allowed to deny an application for a registry identification card if the applicant fails to provide the necessary information or the Department determines that the information provided is false.
- Intentionally providing false information to the Department for purposes of obtaining a registry identification card would be punishable as a class 4 felony.
- A cardholder and the cardholder's designated primary caregiver would be required to return their registry identification cards to the Department if the cardholder's attending physician determines that the cardholder no longer has a debilitating medical condition or if the cardholder no longer resides in Arizona.
- Any person who possesses a registry identification card would have to notify the Department of any change in the person's name, address, attending physician or designated primary caregiver and annually submit to the Department updated written documentation of the person's debilitating medical condition and name of the person's designated primary caregiver for the upcoming year.

Proposition 203 defines "debilitating medical condition" to mean cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions; a medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following: (i) cachexia; (ii) severe pain; (iii) severe nausea; (iv) seizures, including but not limited to seizures caused by epilepsy; or (v) persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or any other medical condition or treatment for a medical condition adopted by the Department by rule or approved by the Department pursuant to a petition submitted pursuant to Arizona Revised Statute section 36-2611.

Proposition 203 would increase the maximum sentence by fifty percent for any person who is convicted of intentionally and knowingly committing a violent crime while under the influence of a controlled substance and would abolish the minimum mandatory sentence or fine for any conviction of certain drug offenses.

Proposition 203 would 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. It would subject to incarceration persons who are convicted of three or more offenses involving personal possession or use of a controlled substance or paraphernalia associated with possession or use of a controlled substance. For purposes of determining whether or not a person is eligible for probation or incarceration, a court could not consider a

prior conviction for personal possession or use of a controlled substance or personal possession or use of drug paraphernalia associated with possession or use of a controlled substance if the person has completed a court ordered drug treatment or education program for that prior conviction. Proposition 203 also specifies that any drug treatment for a person with a history of opioid use must include an assessment by a professional who is qualified in the use of narcotic replacement treatment and, if medically necessary, must include use of narcotic replacement therapy, such as methadone maintenance.

Proposition 203 provides that even if a person does not possess a registry identification card, the person would have an affirmative defense to a criminal charge of possession, usage or production of marijuana if the person charged has been diagnosed with a debilitating medical condition, has been advised by an attending physician that the medical use of marijuana may mitigate the symptoms or effects, is engaged in the medical use of marijuana and possesses or produces not more than two ounces of marijuana and two marijuana plants. If the person possesses or produces more than these amounts, the person could also assert the affirmative defense but would have to prove that the greater amount is medically necessary as determined by the person's attending physician.

Proposition 203 would also require parole or community supervision for prisoners who have been convicted of personal possession or use of a controlled substance and who are not concurrently serving another sentence, unless the Board of Executive Clemency determines that a prisoner would be a danger to the public. These prisoners would be required to participate in and, to the extent they are able, pay for a drug treatment or education program as a condition of parole or community supervision.

Proposition 203 specifies that property seized in relation to a drug offense may not be forfeited unless the owner of the property is convicted of the drug offense and the court finds by clear and convincing evidence that either the property was instrumental in committing or facilitating the offense or was the proceeds of the offense.