

**PROPOSITION 301**

**OFFICIAL TITLE**

**SENATE CONCURRENT RESOLUTION 1033**

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO PROBATION FOR METHAMPHETAMINE OFFENSES.

**TEXT OF PROPOSED AMENDMENT**

Be it resolved by the Senate of the State of Arizona, the House of Representatives concurring:

1. Under the power of the referendum, as vested in the Legislature, the following measure, relating to probation for methamphetamine offenses, is enacted to become valid as a law if approved by the voters and on proclamation of the Governor:

AN ACT

AMENDING SECTION 13-901.01, ARIZONA REVISED STATUTES; RELATING TO PROBATION.

Be it enacted by the Legislature of the State of Arizona: Section 1. Section 13-901.01, Arizona Revised Statutes, is amended to read:

13-901.01. Probation for persons convicted of possession or use of controlled substances or drug paraphernalia; treatment; prevention; education; exceptions; definition

A. Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance or drug paraphernalia is eligible for probation. The court shall suspend the imposition or execution of sentence and place the person on probation.

B. Any person who has been convicted of or indicted for a violent crime as defined in section 13-604.04 is not eligible for probation as provided for in this section but instead shall be sentenced pursuant to chapter 34 of this title.

C. Personal possession or use of a controlled substance pursuant to this section shall not include possession for sale, production, manufacturing or transportation for sale of any controlled substance.

D. If a person is convicted of personal possession or use of a controlled substance or drug paraphernalia, as a condition of probation, the court shall require participation in an appropriate drug treatment or education program administered by a qualified agency or organization that provides such programs to persons who abuse controlled substances. Each person who is enrolled in a drug treatment or education program shall be required to pay for participation in the program to the extent of the person's financial ability.

E. A person who has been placed on probation pursuant to this section and who is determined by the court to be in violation of probation shall have new conditions of probation established by the court. The court shall

select the additional conditions it deems necessary, including intensified drug treatment, community restitution, intensive probation, home arrest or any other sanctions except that the court shall not impose a term of incarceration unless the court determines that the person violated probation by committing an offense listed in chapter 34 or 34.1 of this title or an act in violation of an order of the court relating to drug treatment.

F. If a person is convicted a second time of personal possession or use of a controlled substance or drug paraphernalia, the court may include additional conditions of probation it deems necessary, including intensified drug treatment, community restitution, intensive probation, home arrest or any other action within the jurisdiction of the court.

G. At any time while the defendant is on probation, if after having a reasonable opportunity to do so the defendant fails or refuses to participate in drug treatment, the probation department or the prosecutor may petition the court to revoke the defendant's probation. If the court finds that the defendant refused to participate in drug treatment, the defendant shall no longer be eligible for probation under this section but instead shall be sentenced pursuant to chapter 34 of this title.

H. A person is not eligible for probation under this section but instead shall be sentenced pursuant to chapter 34 of this title if the court finds the person either:

1. Had been convicted three times of personal possession of a controlled substance or drug paraphernalia.
2. Refused drug treatment as a term of probation.
3. Rejected probation.

4. WAS CONVICTED OF THE PERSONAL POSSESSION OR USE OF A CONTROLLED SUBSTANCE OR DRUG PARAPHERNALIA AND THE OFFENSE INVOLVED METHAMPHETAMINE.

I. Subsections G and H of this section do not prohibit the defendant from being placed on probation pursuant to section 13 901 if the defendant otherwise qualifies for probation under that section.

J. For the purposes of this section, "controlled substance" has the same meaning prescribed in section 36 2501.

2. The Secretary of State shall submit this proposition to the voters at the next general election as provided by article IV, part 1, section 1, Constitution of Arizona.

**ANALYSIS BY LEGISLATIVE COUNCIL**

In 1996, the voters passed the Drug Medicalization, Prevention and Control Act of 1996. This law states that in most cases, a person who is convicted for the first or second time of personal possession or use of a controlled substance, including methamphetamine, is eligible for probation and cannot be sentenced to a term in jail or prison. Only when a person has been convicted three times of personal possession or use of a controlled substance, including methamphetamine, can that person be sentenced to jail or prison. However, that person may be eligible for probation pursuant to the general probation laws for convicted persons.

Proposition 301 would amend the current law so that a person who is convicted for the first or second time of personal possession or use of methamphetamine can be sentenced to a term in jail or prison.

Spelling, grammar and punctuation were reproduced as submitted in the "for" and "against" arguments.

This change in the law will allow judges to use a jail term as a condition of probation to force methamphetamine users to comply with court mandated drug treatment and rehabilitation.

**ARGUMENTS “FOR” PROPOSITION 301**

Passage of this proposition is essential for the fight against meth. I’ve been an early and active supporter of this ballot measure because methamphetamines pose a greater danger to our community today than any other drug. Meth is highly addictive and destructive. There is a strong connection between meth abuse and identity theft. Maricopa County police agencies report that in 90 percent of the cases in which they serve warrants for suspected identity theft, they find meth on the premises. Phoenix has the second highest rate of methamphetamine abuse of all the nation’s cities, as evidenced by drug tests done on arrestees.

Meth is also a “parent snatcher” for children whose parents become addicted. Meth robs children of their parents and often makes their childhood a chaotic, horrible experience.

This proposition will change the law so that people arrested for possession of meth can be sentenced to jail or prison after their first conviction for drug possession. Currently, meth users can be incarcerated only after their second or third conviction for drug possession, or if they refuse to participate in treatment.

Time in jail is often the only thing that offers meth addicts a secure, drug-free environment and an opportunity to reflect on their situation. In 2003, researchers at Arizona State University conducted a study of Maricopa County’s Drug Courts. They found that drug offenders who were sentenced to a term in jail were almost twice as likely to complete a drug treatment program successfully than were offenders who received no jail time (40 percent compared to 22 percent).

To turn the tide against meth, we must give prosecutors and judges the tools necessary to deter meth use and to ensure meaningful opportunities for treatment. I urge you to vote yes.

Andrew Thomas, Maricopa County Attorney, Phoenix

**ARGUMENTS “AGAINST” PROPOSITION 301**

Proposition 301 could deny thousands of people the opportunity for cost effective drug treatment, clogging our prisons with more non-violent addicts and potentially costing taxpayers millions of dollars.

The voters of Arizona made it clear that they believe in treatment for drug users by voting for the Drug Medicalization, Prevention, and Control Act of 1996. Through programs like Drug Court, that law provides probation and treatment for low-level drug offenders—those convicted of simple possession and personal use. The program saved taxpayers over \$12 million in 2004. Unlike prison, these probation programs are no free ride. Participants must pay for their treatment. They work, pay taxes, and support their families while in treatment. If they don’t comply with treatment, the judge can sentence them to jail. But Proposition 301 would gut this very successful program, replacing it with costly prison sentences.

Everyone agrees that methamphetamine use is a serious problem in our community. If we want people to stop using drugs, the obvious solution is to provide treatment. Research shows that people addicted to methamphetamine can be treated as successfully as any other addict. But this proposition could send all of them to prison, further stretching our state budget.

VOTE NO on Proposition 301 because:

- Voters already decided that low-level drug users should be put on probation and receive treatment instead of being sent to prison.
- This proposition will cost taxpayers, at minimum, an extra \$2,843 for each drug offender it sends to prison and would be less effective than the cheaper treatment alternatives already in place.
- This proposition would not affect violent criminals, drug dealers, or people who manufacture methamphetamine because they are already subject to stiff sentences under Arizona law.

Arizona voters got it right the first time. VOTE NO on Proposition 301.

Caroline Isaacs, Program Director, American Friends Service Committee, Arizona Area Program, Tucson

Matthew Lowen, Program Coordinator, American Friends Service Committee, Arizona Area Program, Tucson

*Paid for by “American Friends Service Committee”*

**COMMON SENSE REQUIRES A “NO” VOTE**

Most people in the therapeutic and criminal justice community strongly disagree with this proposition. Incarcerating thousands of drug users, at huge taxpayer expense, will have extreme negative social and economic consequences.

In 1996, the voters overwhelmingly supported Proposition 200, described as “treatment not prison for drug offenders.” Under Prop 200, a person charged with simple possession of drugs (not including drug sales) who has no history of violent offenses and who desires treatment must get an opportunity on probation. Probationers are required to attend drug treatment and counseling and to drug test regularly as conditions of probation, and if probation is violated only then does jail or prison become an option.

Over ten years, drug court programs have been successful in helping many thousands kick drug addiction where jail and prison sentences have failed. Because the stated purpose of Arizona’s penal code is to punish rather than reform, the Arizona Department of Corrections devotes little or no resources to drug rehabilitation. The result is that after a meth user finishes his prison sentence he’s released to the community to continue his

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drug use.

Methamphetamine is indeed a dangerous drug used disproportionately by the poor. But crack cocaine, ecstasy, and heroin are all similarly dangerous.

Methamphetamine is a political football. Politicians looking for an easy sound bite are jumping on the "tough on meth" bandwagon. Prison however is not the correct medical or social solution to this problem.

If this measure passes, then our prisons will be further overcrowded, our courts will be further clogged with drug cases instead of cases involving violent or property crime, and drug addicts will receive no treatment.

Proposition 301 will create far more harm than good for Arizona. Vote NO on November 7.

Robert Hooker

Pima County Public Defender

Robert Hooker, Pima County Public Defender, Tucson

*Paid for by "David J. Euchner"*

**PROPOSITION 301**

**BALLOT FORMAT**

**PROPOSITION 301**

REFERRED TO THE PEOPLE BY THE LEGISLATURE

**OFFICIAL TITLE**

SENATE CONCURRENT RESOLUTION 1033  
ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO PROBATION FOR METHAMPHETAMINE OFFENSES.

**DESCRIPTIVE TITLE**

AMENDS CURRENT LAW TO MAKE A PERSON INELIGIBLE FOR MANDATORY PROBATION IF THE PERSON IS CONVICTED OF THE PERSONAL POSSESSION OR USE OF A CONTROLLED SUBSTANCE OR DRUG PARAPHERNALIA AND THE OFFENSE INVOLVED METHAMPHETAMINE.

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A "yes" vote shall have the effect of making a person ineligible for mandatory probation if the person is convicted of an offense involving the personal use or possession of methamphetamine.	YES <input type="checkbox"/>
A "no" vote shall have the effect of retaining the current law requiring mandatory probation to a person convicted for a first or second offense for the use or possession of methamphetamine, unless the person has been convicted three or more times of personal possession or use of a controlled substance or drug paraphernalia, refused drug treatment as a condition of probation, or rejected probation.	NO <input type="checkbox"/>

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