

**PROPOSITION 302**  
**OFFICIAL TITLE**

**HOUSE CONCURRENT RESOLUTION 2013**

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

**TEXT OF THE PROPOSED AMENDMENT**

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: definition

A. Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance ~~as defined in section 36-2504~~ OR DRUG PARAPHERNALIA is eligible for probation. The court shall suspend the imposition or execution of sentence and place ~~such~~ 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 ~~the other provisions of~~ 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 ~~as defined in section 36-2504~~ 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 ~~under the provisions of~~ 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 service, intensive probation, home arrest, or any other ~~such sanctions short of incarceration~~ 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 ~~as defined in section 36-2504~~ OR DRUG PARAPHERNALIA, the court may include additional conditions of probation it deems necessary, including intensified drug treatment, community service, 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.

G. H. A person ~~who has been convicted three times of personal possession or use of a controlled substance as defined in section 36-2504~~ is not eligible for probation under the ~~provisions of~~ provisions of 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.

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. The Act made several changes to laws regarding drug-related crimes. The current law states that in most cases, a person who is convicted for the first time of personal possession or use of a controlled substance is eligible for probation and is not subject to incarceration. In addition, as a condition of probation, the offender must attend a drug treatment or education program. If the offender violates probation, the court may impose additional conditions of probation, including intensified drug treatment, community service, intensive probation or home arrest, but may not impose a term of incarceration for the probation violation. Additionally, a person who has been convicted three times of personal possession or use of a controlled substance may be sentenced to a term of incarceration or may be eligible for probation pursuant to other statutes in effect.

Proposition 302 would expand current law so that a person who is convicted for the first time of personal possession or use of drug paraphernalia is also eligible for probation and drug treatment and is not subject to incarceration.

Proposition 302 would allow a court to impose a term of incarceration on a person who is on probation for a first offense involving personal possession or use of a controlled substance or drug paraphernalia but only if the offender violated probation by committing another drug-related offense or violated a court order relating to drug treatment.

This proposition would also allow the probation department or a prosecutor to petition the court to revoke an offender's probation if the offender fails or refuses to participate in drug treatment while on probation. If the court revokes probation, the offender would be sentenced under Arizona's drug laws. In addition, any person who has been convicted of personal possession or use of a controlled substance or drug paraphernalia, regardless of the number of prior convictions, would be subject to incarceration and would not be eligible for probation if the person refuses drug treatment as a term of probation or rejects probation as a sentencing alternative. However, even if the person is not eligible for probation under the personal possession or use laws, the court may still impose probation if the person is otherwise eligible for probation under the general probation laws for convicted persons.

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

GENERAL ELECTION NOVEMBER 5, 2002

## ARGUMENTS "FOR" PROPOSITION 302

## VOTE YES ON PROPOSITION 302

Hello, I am Rick Romley, the Maricopa County Attorney. Have you ever heard of Drug Court? Drug courts are part of a national effort to help people who come into the criminal justice system get effective drug-abuse treatment. Drug courts exist throughout the nation and the results have been very positive.

In Arizona, however, our drug courts have not been as effective because judges do not have the ability to force drug users to confront their drug problem.

So, what's the problem? Ask the judges. Ask the treatment providers. Ask the recovering addict who needs an incentive to complete treatment.

In Arizona, approximately 30% of those who go through drug court refuse treatment and the judge can do nothing about it. A judge may not impose any incarceration, no matter how brief, until a third conviction for a drug violation. I cannot tell you how frustrating it is for all of us who see the devastation that drugs cause, to offer treatment to someone and that person says, "Judge, I'm not going to treatment and there is nothing you can do about it!"

Proposition 302 will change that. Proposition 302 will allow a judge to impose a short jail term to encourage a person to go into treatment.

All of us know of someone, or have had a loved one, involved in drugs. All of us have seen how drugs tear apart families and fragment communities. All of us know that **"Drugs Destroy Dreams"**. I urge you to vote **YES** on **Proposition 302**.

*Richard M. Romley, Maricopa County Attorney, Phoenix*

## Vote YES on Prop 302 for Stricter Drug Abuse Penalties

We finally have the opportunity to empower our courts to take a tougher stand on persons who are convicted of the possession of illegal drugs or drug paraphernalia.

As defined in Prop 302, first time offenders who violate probation can be sentenced to intensified drug treatment, community service, intensive probation or home arrest or jail.

First and second time offenders who fail or refuse drug treatment could face incarceration as an incentive to accept drug treatment.

If we are to combat drug abuse effectively and vociferously, we must provide our courts with more recourse in dealing with drug abusers.

Join me in fighting drug abuse by voting YES on Prop 302.

*Thomas P. Ambrose, Senior VP Public Affairs, Phoenix Suns, Phoenix*

## Protect Our Children - Vote YES on Proposition 302

Drug abuse and drug abusers are a threat to our children and to our community. Proposition 302 provides the Courts with more choices in sentencing and probation alternatives.

Proposition 302 provides the Courts with the right to impose a term of incarceration for a convicted drug abuser who commits an offense while on probation.

If a drug abuser who has been convicted fails or refuses to participate in a drug treatment program, Proposition 302 allows the Courts to impose sentencing of jail time as part of probation.

We SHOULD provide judges with more recourse in dealing with drug abusers. It will help strengthen our efforts in fighting drug abuse. And it will help us all to protect our children.

Please join me in voting YES on Proposition 302.

*Mayor Skip Rimsza, City of Phoenix, Phoenix*

Paid for by M. Scott Phelps and Dottie Carter Phelps

## Empower Our Courts - Vote Yes on Prop 302

It is a known fact that criminals faced with jail time will think twice about committing a violation against society.

This is why I support Prop 302, which provides our courts with more flexibility in determining probationary requirements or incarceration.

Each and every one of us has the obligation and responsibility to protect the citizens of our state from harm. Prop 302 provides the mechanism to do just that.

Probation requirements can include intensified drug treatment, community service or home arrest. Jail time will be enforced for probationary violations.

Prop 302 is fair to our safety and well-being by providing more options to the courts. Prop 302 is also fair to the convicted drug abuser by providing drug treatment opportunities (in which they contribute according to their financial ability).

Let's do the right thing. Let's do the fair thing. Vote YES on Prop 302.

*William G. Ridenour, Managing Partner, Ridenour, Hienton, Harper & Kelhoffer PLLC, Phoenix*

## ARGUMENTS "AGAINST" PROPOSITION 302

I served in the Reagan Administration when the Drug War was just gaining steam. I remember then how Republicans and Democrats hopped on the bandwagon so quickly despite the problems with the policy. At the time I thought that drug abuse is a disease like cancer you need to fight it the way you fight other diseases - through medical treatment, not guns and prisons. Now, I am even more certain of that.

In 1996, myself and the late Barry Goldwater were part of a citizens committee to find alternatives to our failing War on Drugs. The final product of this group was Proposition 200 which was approved by Arizona Voters 65% to 35%.

Unfortunately, no sooner had the ink dried on the governor's signature making this law in 1996, than the Arizona politicians sought to repeal the will of the voters. We had to take them to the ballot again in 1998 which we won. But now the politicians are back to repeal the will of the voters with Proposition 302.

Voters made clear in 1996 and 1998 that first time drug users should not be incarcerated for mere drug possession. Proposition 302

guts this law. According to the Supreme Court, drug treatment is a success and is saving lives and money. Don't let the politicians erase your vote - vote No on 302.

*John Norton, Former Deputy Secretary of Agriculture, Chairman, The People Have Spoken, Phoenix*

Paid for by "The People Have Spoken"

I served on the Arizona Appellate Court for 12 years and another 10 years on the Superior Court. As a judge on the front line of our criminal justice system, I can state that Proposition 302 will do nothing to further our effort to fight drug addiction. I urge you to vote No on 302.

This idea of incarcerating drug users whose only crime was addiction was rejected by voters in 1996 and 1998 and Proposition 302 is in effect an attempt to thwart the will of the people. Supporters of Proposition 302 believe that those who fail drug treatment should be incarcerated. The truth is that just like with alcohol or smoking, those who seek to rid themselves of drugs sometimes take more than one chance to break their habit. Our existing law already provides for sanctions such as home arrest or intensified treatment for non compliance. Proposition 302 is also unnecessary. According to a recent report by the Arizona Supreme Court, those drug users who could not be incarcerated did better in treatment than those who could be incarcerated.

I urge you to uphold the overwhelming vote by Arizonans in 1996 and 1998 to provide drug treatment instead of incarceration. Vote No on Proposition 302.

*Judge Rudy Gerber (ret.), Phoenix*

Paid for by "The People Have Spoken"

#### **ARIZONANS SHOULD VOTE "NO" ON PROPOSITION 302**

Proposition 302 represents yet another attempt by the politicians and bureaucrats to repeal the drug treatment provisions Arizona voters overwhelmingly approved in 1996. First they tried to do this legislatively, but in 1998 the voters overwhelmingly reaffirmed the decision they made to deal with drug abuse as a medical problem—not a criminal problem—and refer drug users to treatment facilities, not jail. Doctors were among the strongest supporters of this new approach.

And, according to a 2001 report from the Arizona Supreme Court, this approach is working. So far, more than 5 thousand non-violent drug users have participated in the program, with nearly two-thirds completing it successfully. This has saved Arizona taxpayers at least \$6.7 million a year.

Now the opponents of drug policy reform want to try again to thwart the will of the voters. Proposition 302 would repeal the drug treatment provisions they approved in 1996, and reaffirmed in 1998.

But the evidence is in—and it is convincing. Medical treatment works, and prison is a proven failure in reducing drug abuse. We can no more use jails to cure the disease of drug abuse than we can use them to cure cancer. We should save our prison resources for the violent offenders who are a threat to society—not first-time drug users who suffer from a disease.

As doctors, we urge you to vote "No" on Proposition 302.

*Jeffrey A. Singer, MD, FACS, Phoenix*

*Jeffrey D. Steier, MD, Scottsdale*

*Steven J. Lipsky, MD, FACEP, Paradise Valley*

*Steven A. Yee, MD, Scottsdale*

*Greg S. Morris, MD, Scottsdale*

*Abraham J. Seyegh, MD, Phoenix*

*Joel E. Colley, MD, Scottsdale*

Paid for by "Jeffrey A. Singer"

No on 302

I am a cancer survivor. I was diagnosed in 1995 with head cancer. All of my doctors said this was 95% fatal. I went through numerous surgeries and severe radiation therapies over 6 years. Through a combination of God's grace, luck, and medical marijuana I am still alive. Medical marijuana enabled me during these trying times to maintain my appetite and weight. Without a vigorous physical state that medical marijuana allowed me to maintain, I would never had made it.

In 1996, Arizona voters approved medical marijuana 65% to 35% and again in 1998, but the politicians still fail to honor the will of the voters. Now the politicians are back again with Proposition 302 which repeals the drug treatment part of this initiative.

Back in 1996 and 1998, the politicians said that voters did not know what they were voting for. Now it's 2002 and they are still saying voters are confused. Show the politicians once and for all that you know what your voting for -- vote No on 302.

*Josh Burner, Mesa*

Paid for by "The People Have Spoken"

No on 302

I served as Arizona's Secretary of State from 1990-94. As such, I ran elections in this state. Voters in 1996 and 1998 approved medical marijuana, but the politicians still have not allowed this program to happen. Now the politicians are up to the same stuff with the drug treatment program approved by voter in 1996 and 1998. Vote No on 302 as it seeks to repeal these voter approved provisions. The politicians continually state that the people don't know what they are voting for. Well, show them once and for all that you do know - Vote No on 302.

*Richard Mahoney, Arizona Secretary of State 1990-1994, Independent Candidate for Governor, Phoenix*

Paid for by "The People Have Spoken"

No on 302

In 1996 -- and again in 1998 -- Arizona voters approved a public health strategy to replace the failed War on Drugs. These measures provided medical treatment rather than prison for non-violent drug users. The legislator's Proposition 302 would return us to the stupid and ineffective "Do Drugs, Do Time" policy that prevailed prior to 1996.

Our legislative leaders said that we were duped when we voted for treatment over prison in 1996 and 1998. Now those same leaders really want us to be dupes by voting for their proposition 302 which would repeal much of what we have already voted for twice.

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

**Arguments "Against" Proposition 302**

According to a recent report by the Supreme Court, last year almost two thirds of 5,385 non-violent drug users successfully completed treatment programs at a savings of \$5,000,000, compared to what it would have cost had those same 5,385 drug users been sent to prison. In prison they would have had easy access to drugs and they would have been released from prison more addicted than when they went in.

The drug treatment program is working - it does not need to be fixed. Vote no on 302.

*Dr. John Sperling, Chairman, the Apollo Group and Founder, University of Phoenix, Phoenix*

Paid for by "The People Have Spoken"

**BALLOT FORMAT**

**PROPOSITION 302**

REFERRED TO THE PEOPLE BY THE LEGISLATURE

<p><b>OFFICIAL TITLE</b></p> <p>HOUSE CONCURRENT RESOLUTION 2013                  AN ACT AMENDING SECTION 13-901.01, ARIZONA REVISED STATUTES; RELATING TO PROBATION.</p>
<p><b>DESCRIPTIVE TITLE</b></p> <p>ALLOWS COURT TO IMPOSE TERM OF INCARCERATION IF PERSON CONVICTED OF PERSONAL POSSESSION OR USE OF CONTROLLED SUBSTANCE OR DRUG PARAPHERNALIA VIOLATES PROBATION BY COMMITTING ANOTHER DRUG-RELATED OFFENSE OR REFUSING TO PARTICIPATE IN DRUG TREATMENT, OR IF THE PERSON REFUSES DRUG TREATMENT OR REJECTS PROBATION AT THE TIME OF SENTENCING.</p>

**PROPOSITION 302**

<p>A “yes” vote shall have the effect of allowing a court to impose a term of incarceration if a person convicted of personal possession or use of a controlled substance or drug paraphernalia violates probation by committing a drug-related offense or violates a court order relating to drug treatment, or if the person refuses drug treatment or rejects probation at sentencing.</p>	<p><b>YES</b> <input type="checkbox"/></p>
<p>A “no” vote shall have the effect of not allowing a court to impose a term of incarceration for persons convicted of possession of a controlled substance for personal use.</p>	<p><b>NO</b> <input type="checkbox"/></p>