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☞ **MICAH (Milwaukee Inner-City Congregations Allied for Hope)**

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Corrections and Courts (AC-CC)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

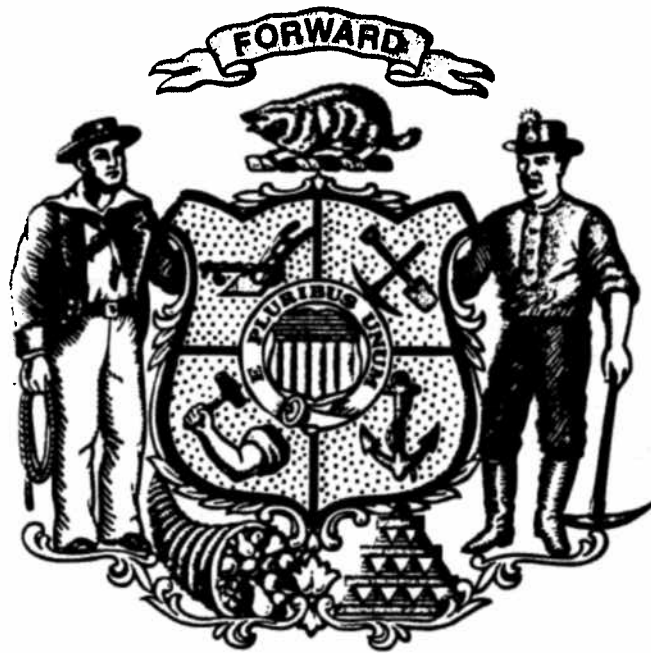
- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

Note: LRB-4037/2

became 2001

SB 496



MEMORANDUM

Date: July, 2001

To:

From: WISDOM and MICAH AODA Committees

Re: Request for Information re. Amending Wisconsin Statutes to Require Treatment for Nonviolent Drug Possession Offenses

Over 20,000 men and women are currently serving time in Wisconsin's prisons,¹ nearly three times as many as there were a decade ago.² The nation's "War on Drugs," and its accompanying changes in criminal justice policies (e.g., mandatory minimum sentencing and "three strikes" laws) have been a driving force in the incarceration binge of the last two decades. The following statistics underscore this trend:

- ◇ More than 450,000 men and women are imprisoned on drug charges nationwide, a ten-fold increase from 1980.³
- ◇ In 1999, four out of five drug arrests were for possession and one out of five for sales; and two-fifths of drug arrests were for marijuana-related⁴ offenses.
- ◇ According to a Bureau of Justice Statistics (BJS) report about those imprisoned in state and federal correctional facilities in 1997, three out of four prisoners could be characterized as being involved with substance abuse during the time leading up to their arrest.⁵
- ◇ According to the BJS and The Sentencing Project, in 1996 one-fourth of all jail inmates were in custody for a drug offense, compared to one-tenth of inmates in 1983; and by 1998, drug offenders comprised 21 percent of all state prison inmates and 58 percent of federal prison inmates.⁶

In an effort to address the climbing incarceration rate, the State of Wisconsin has sought to build more prisons and has even purchased a prison built on speculation by a private developer (i.e., the facility in Stanley). In addition, one in five Wisconsin prisoners is now serving time in facilities operated by private contractors in other states.⁷

¹ See Wisconsin Department of Corrections, "Offenders Under Control" (March 23, 2001).

² See the Benedict Center, circular, *Wisconsin Prison Expansion and Milwaukee* (undated).

³ See [No author listed], "More States Exploring Prison Alternatives," Join Together Online, <<http://www.jointogether.org/sa/wire/news>> (Oct. 27, 2000).

⁴ See The Sentencing Project, "Facts About Prisons and Prisoners" (April, 2001) (citing FBI, *Crime in the United States, 1999*, at 221).

⁵ See U.S. Department of Justice, "More Than Three Quarters of Prisoners Had Abused Drugs in the Past" (press release, Jan. 5, 1999).

⁶ See The Sentencing Project, "Facts About Prisons and Prisoners" supra.

⁷ See Wisconsin Department of Corrections, "Offenders Under Control," DOC-302 (March 23, 2001). As

Acting or appearing "tough on crime" is, of course, expensive. Between 1982 and 1997, direct expenditures on corrections rose from just over \$9 billion nationwide to \$43.5 billion.⁸ There are also very considerable human costs. For example, according to The Sentencing Project, "Black males have a 29% chance of serving time in prison at some time in their lives; Hispanic males have a 16% chance; white males have a 4% chance."⁹ Faced with climbing corrections costs at a time of tight budgets, some states have reconsidered their policies and have sought to be smarter, rather than tougher, on crime, particularly drug-related crime.

In Arizona, persons convicted of personal possession of controlled substances are eligible for probation with drug treatment or education required as a condition of that probation.¹⁰ Those indicted or convicted of violent crimes and those convicted of possession for the purpose of selling, manufacturing or transporting for sale are not eligible to participate.¹¹ If a person convicted of simple possession and sentenced to probation violates that probation once or even a second time, he or she is not automatically revoked and sent to prison; rather, the court has the option of placing additional terms on his or her probation, including intensified treatment and supervision.¹²

Arizona law also permits the presiding judge of the superior court of a county to establish a drug court program to adjudicate the cases of nonviolent "drug dependent persons who are charged with probation eligible offenses."¹³ Under this program, where a defendant is convicted and otherwise eligible for probation, "the court, without entering a judgment of guilt and with the concurrence of the defendant, may defer further proceedings and place the defendant on probation."¹⁴ If the defendant fulfills the terms and conditions of probation, "the court may discharge the defendant and dismiss the proceedings against the defendant or may dispose of the case as provided by law."¹⁵

According to a study by the Arizona Supreme Court of drug court programs in two of the state's largest counties, 77 percent of offenders participating tested drug-free at the completion of their outpatient treatment programs, thus saving the state \$2.5 million in prison costs.¹⁶ In Maricopa County, which provides treatment to addicts convicted of felonies, the program has been so successful that officials plan to expand it to reach

of March 23, 2001, 4338 of Wisconsin's 20,251 inmates were held in facilities operated by the Corrections Corporation of America in Minnesota, Tennessee, and Oklahoma.

⁸ See Bureau of Justice Statistics, "Direct Expenditures for Criminal Justice by Component, 1982-1997," Justice Employment and Expenditure Extracts, 1982-97, Table 1.

⁹ See The Sentencing Project, "Facts About Prisons and Prisoners" supra.

¹⁰ See Ariz. Rev. Stat. § 13-901.01. A and C (2001).

¹¹ See id., § 13901.01 B and D.

¹² See id., § 13901.01 E, F and G.

¹³ See generally Ariz. Rev. Stat. §13-3422 (2001).

¹⁴ See id., § 13-3422 F.

¹⁵ Id., §13-3422 H.

¹⁶ See Join Together Online, "Arizona Counties Serve as Models for Shifting to Treatment," <<http://www.jointogether.org>> (Dec. 29, 2000). The two counties were Pima and Maricopa (which includes Phoenix, the state's largest city). The study involved 2622 offenders.

addicts who are not yet in jail and to include a family case-management program.¹⁷

On July 1, the State of California began to implement Proposition 36, which *mandates* probation for many persons convicted of a non-violent drug possession offenses.¹⁸ The law does not apply to any defendant: convicted of “one or more serious violent felonies;” convicted in the same proceeding of any felony or non-drug-related misdemeanor; convicted of certain drug offenses while using a gun; who refuses treatment; or who has been previously convicted, has failed at two previous courses of treatment, and is found by “clear and convincing evidence” (the second highest standard of proof) “to be unamenable to any and all forms of available drug treatment.”¹⁹

If an offender is found by the treatment service provider to be unamenable to any and all forms of treatment, he or she may have her probation revoked.²⁰ However, the law also provides for dismissal of charges when a defendant successfully completes a drug treatment program; while he or she is still prohibited from carrying a concealable firearm, the defendant is also able in many instances to “indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted of the offenses.”²¹ Like the Arizona law noted above, Proposition 36 also includes a “three strikes” provision which renders a defendant who has been convicted of violating probation for the third time ineligible for continued probation.²²

In many cases where an offender on parole violates the terms of his or her parole by committing a nonviolent drug possession offense, California’s new law does not permit officials to automatically revoke or suspend parole but instead instructs them to require the defendant to complete an appropriate treatment program.²³ Proposition 36 also requires the California Legislature to appropriate of \$120 million annually thru the 2005-2006 fiscal year to fund substance abuse treatment programs for the nonviolent drug offenders and parole violators already noted.²⁴

We are inquiring:

- (1) Whether it would be possible for Wisconsin to amend its own statutes to include programs similar to those in place in Arizona and California, i.e., mandating courts to require substance abuse treatment rather than imprisonment for those convicted of nonviolent drug possession offenses,

¹⁷ See *id.* The case management program will include the provision of “tickets and other incentives to families who take their children to museums, zoos, historical societies and other educational sites.”

¹⁸ See Cal. Penal Code § 1210.01(a) (2001).

¹⁹ See *id.*, § 1210.01 (b)(1)-(5).

²⁰ See *id.*, § 1210.01(c).

²¹ See *id.*, § 1210.01(d)(1)-(3). The exception to the nondisclosure provision is in cases where the defendant responds to “any questionnaire or application for public office, for a position as a peace officer...for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.”

²² See *id.*, § 1210.01(e)(3)(C).

²³ See Cal. Penal Code § 3063.01 (2001) The exceptions generally follow those noted in FN 19 re: offenses committed with a firearm, violent felonies, etc.

²⁴ See Cal. Health & Safety Code Div. 10.8 §§ 11999.4 and 11999.5 (2001).

and certain classes of nonviolent probation and parole violators who are amenable to such treatment;

- (2) Which provisions of the Wisconsin Statutes would have to be amended to affect such changes;
- (3) What the projected costs of such programs would be;
- (4) What, if any, savings would accrue to the state and taxpayers by offering treatment rather than imprisonment to the offenders noted above; and
- (5) What effect, if any, such laws would have on the number of individuals incarcerated in the state's jails, prisons and other correctional facilities

If you have any questions or concerns or would otherwise like to further discuss this matter, please do not hesitate to contact David Liners at (414) 449-0805 or davidl@micahempowers.org. Thank you for your consideration.



SEP 20 2001

September 7, 2001

Daniel P. Vrakas
Wisconsin State Representative
State Capitol, Room 119-W
Madison, WI 53702

Dear Dan,

It was a pleasure meeting with you last Friday and strategizing how we might move forward on addressing the problem of alcohol and drug addiction in Wisconsin. As you know Milwaukee Inner-City Congregations Allied for Hope (MICAHA) has been working for over ten years toward a goal of effective treatment for anyone who needs it regardless of their ability to pay.

Our primary focus is to get addicted people into treatment before they might commit a crime. Second, when non-violent crimes are committed we are trying to get the addicted into treatment as an alternative to prison. Hopefully, this treatment would be outside the prison system. Third, we want effective treatment for those in prison who are addicted.


When designing our program Wisconsin has the advantage of looking at the best practices elsewhere in the country, such as Arizona and California. In addition, we have UWM's ongoing assessment of the program in Milwaukee County, which is made possible through the \$10 million TANF funds allocated by the State— thank you for your help in securing these funds. This program is an effective way to get appropriate treatment for TANF eligible people and hopefully keep them out of the criminal justice system.

I have enclosed an article by Joseph A. Califano Jr., president of the National Center on Addiction and Substance Abuse at Columbia University. It was in AMERICA magazine dated June 4-11, 2001. The article gives a good overview of MICAHA's position regarding the problem of and solution to addiction.


Our MICAHA AODA Task Force has begun setting up meetings with the legislators you and Scott recommended. We will keep you informed of our progress. Please let me know if you will be able to attend MICAHA's Public Meeting on Thursday, November 15, 2001 at Our Savior's Lutheran Church, 3022 W. Wisconsin Avenue, Milwaukee at 7:00pm. We want to announce to our member congregations our plan of working together to make treatment for non-violent addicted offenders an alternative to prison in Wisconsin. I will be calling you next week to find out if the public meeting fits into your schedule.

We look forward to hearing what the Legislative Fiscal Bureau determines for this program and how we can best incorporate it into our state's agenda. Thank you again for being willing to meet with us and work on this important issue. Peace.

Gratefully yours,



Dianne Henke
MICAHA AODA Task Force

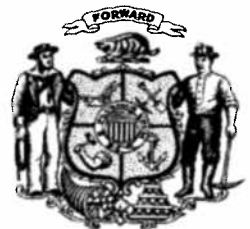


Erian & Dianne Henke W283N3366 Lakeside Rd Pewaukee, WI 53072-3332
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copy: Rep. Scott Walker, Rep. Scott Jensen, Rev. Archie Ivy-President of MICAHA



WISCONSIN STATE LEGISLATURE



Gilbert, Melissa

From: Walker, Scott
Sent: Friday, October 26, 2001 11:00 AM
To: Gilbert, Melissa
Subject: FW: MICAH

Scott Walker
State Representative - Wauwatosa
Scott.Walker@legis.state.wi.us
608/266-9180
www.RepScottWalker.com

-----Original Message-----

From: Conor Williams [mailto:Conor.Williams@stonedimensions.com]
Sent: Tuesday, October 23, 2001 2:44 PM
To: Rep.Walker@legis.state.wi.us
Cc: davidl@micahempowers.org
Subject: MICAH

Dear Scott,

I spoke with Missy at your office earlier today and am following up with an e-mail as she and I agreed.

- (1) Thank you for presenting the request to the Fiscal Bureau for analysis of the fiscal impact of sending non-violent drug offenders to treatment rather than prison.
- (2) Please be aware that Senator Gary George has presented a request to the Reference Bureau for that office to start working on this issue also.
- (3) Senator Gary George has agreed to attend MICAH's annual meeting on the evening of Thursday Nov 15th to announce his support of this AODA initiative. He will be acknowledged in front of the crowd of 1,500 to 2,000 people from the 44 congregations that make up MICAH.
- (4) I appreciate that you have a conflict in your schedule so you are unable to attend the public meeting.
- (5) I write to ask you to consider sending us a letter of support for this initiative wherein you would explain the action you have taken to date and/or sending someone to represent you at the public meeting. In the letter you could specifically delineate your intentions and support - maybe you only wish to state that you support further investigation of this initiative. Either way we would like the opportunity to publicly acknowledge your contribution by way of a letter from you and/or a person to represent you.

I look forward to hearing from you at your convenience. I will be going to Ireland with my family for 2 weeks starting tomorrow and would appreciate to hear from you by e-mail which I will be checking regularly.

Sincerely

Conor Williams
1935 Underwood Ave
Wauwatosa WI 53213
(W) 262-513-3912
(H) 414-443-0735
conor.williams@stonedimensions.com

MICAH
fax 414-449-5371

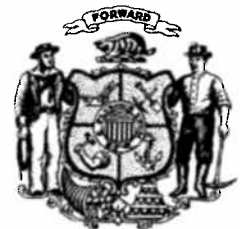
Diane Henke

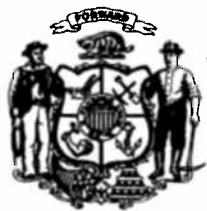
fax 262-695-4100

~~fax~~ Friday



WISCONSIN STATE LEGISLATURE





Wisconsin State Legislature

October 26, 2001

Dear members of MICAH:

We appreciate the work of the MICAH subcommittee members examining the issue of substance abuse. Following our recent meeting with the subcommittee, we asked the non-partisan Legislative Fiscal Bureau to prepare a report on the number of individuals currently sentenced for drug-related crimes in the state. In addition, we asked that the review include the number serving time in prison and the number who are sentenced for other offenses.

We remain interested in addressing the substance abuse problems of many of those who are convicted of crimes in this state. At the same time, we want to protect the public from individuals guilty of assaultive offenses. We do believe we can reach a reasonable compromise.

On a more practical note, legislation revising the criminal code passed through the Assembly on an 86 -10 vote on February 14. Assembly Bill 3 was drafted from recommendations set forth by the Criminal Penalties Study Committee. This special task force was comprised of individuals representing all areas of the criminal justice system -- including several members from the Milwaukee area.

AB 3 is crucial because the measure re-categorizes crimes so that punishment is consistent with the severity of each crime. Many of the maximum penalties for controlled substance crimes are adjusted under the new code. In addition, this legislation includes sentencing guidelines for judges across the state. Absent these guidelines, sentences may be harsher in some parts of the state than in others.

The Assembly passed the criminal code revision by an overwhelmingly bipartisan vote during the past legislative session also. The measure currently is being sponsored in the Senate by a Milwaukee Democrat; unfortunately, the bill still awaits a public hearing in the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform. Until the committee takes positive action, individuals can expect to be sentenced under the highest maximum penalties implemented under Truth-in-Sentencing.

AB 3 represents the first major overhaul of the criminal code in decades. Any adjustment to controlled substance penalties would most appropriately be made under this broader change in state law. Accordingly, we hope that members of M.I.C.A.H. encourage members of the state Senate to approve the criminal code revision during the current legislative session.

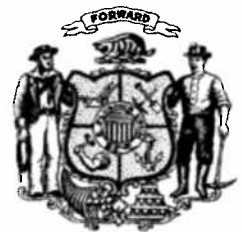
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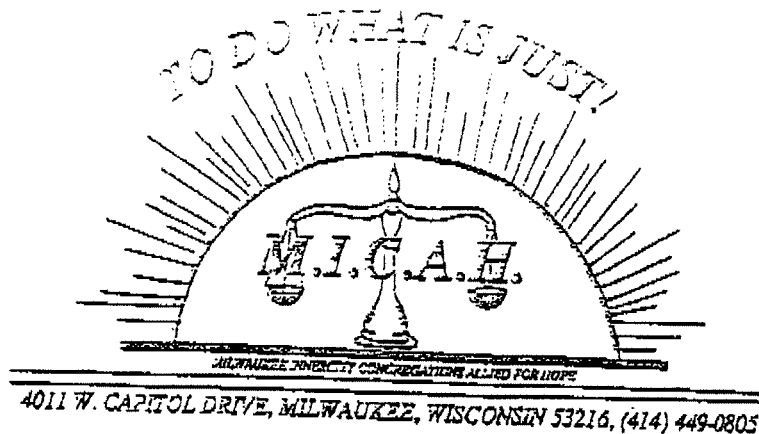

Rep. Scott Walker
Chair, Committee on Corrections and the Courts


Rep. Dan Vrakas
Chair, Majority Caucus



WISCONSIN STATE LEGISLATURE



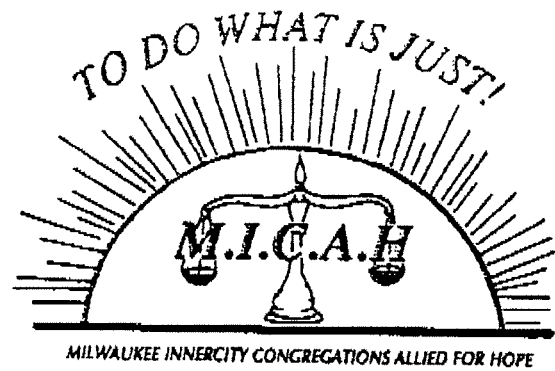


SEND TO Company name	From
Attention <i>Rep. Walker</i>	<i>David Linares</i>
Office location	Date <i>11/1/01</i>
Fax number <i>608-282-3614</i>	Office location
Phone number	Phone number <i>414-449-0805</i>

Urgent
 Reply ASAP
 Please comment
 Please review
 For your information

Total pages, including cover: 3

COMMENTS



4011 WEST CAPITOL DRIVE, MILWAUKEE, WISCONSIN 53216

Phone: (414) 449-0805 • FAX: (414) 449-5371 • E-Mail: micah@micahempowers.org • Web Site: www.micahempowers.org

October 30, 2001

Representatives Scott Walker and Dan Vrakas
Wisconsin State Legislature

Dear Representatives Walker and Vrakas:

Thank you for your letter of October 26, 2001. As representatives of the MICAH organization, we have appreciated your willingness to meet with us and to engage in very sincere discussions about the desirability of sending non-violent drug offenders to treatment rather than to prison. Like you, we recognize that prisons have a real function in protecting citizens from those who commit violent crimes, but that incarceration is not the most effective response to non-violent individuals whose real problem is addiction. For such people, treatment is more humane, and it is clearly in the best interest of the rest of our state. It will save money, and it will return people to their families, the economy, and even the rolls of taxpaying citizens.

We are grateful that you have asked the Legislative Fiscal Bureau for an analysis of the impact that this measure will have.

As you know, we have spoken with many other state legislators about this concept. As a result of one of those conversations, State Senator Gary George has begun the process of getting legislation written. We hope that his work, and yours, will help to make this discussion even more concrete, as we move toward a statewide effort to make this change. We are happy to see that members of both political parties are actively involved in this process. It is our sincere hope that in Wisconsin, as in some other states, this can be a bipartisan effort.

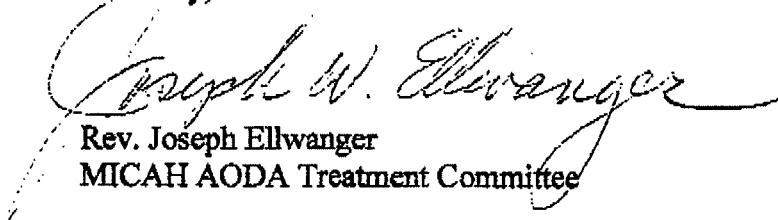
As you have recommended, we have spoken with several parties about AB3 and the revision of the criminal code. We certainly wish you well in finding a way to conclude that important piece of business. Still, for whatever reason, that measure seems to have become very politicized. It is our sincere hope that the differences over

p. 2

the rest of the criminal code will not be a roadblock for this common-sense measure, where it seems-very possible for us to find common ground that will be to the benefit of all the people of Wisconsin.

Again, you have our gratitude for your support and your willingness to work on this issue. Please feel free to contact us at any time through the MICAH office, at the numbers and address on this letterhead.

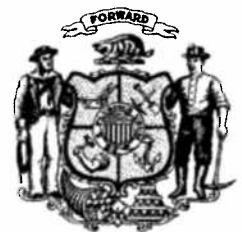
Sincerely,



Rev. Joseph Ellwanger
MICAH AODA Treatment Committee



WISCONSIN STATE LEGISLATURE





Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

NOV 19 2001

November 19, 2001

TO: Representative Scott Walker
Room 308 North, State Capitol

FROM: Jere Bauer, Fiscal Analyst

SUBJECT: Drug Offenders Sentenced to Wisconsin Prisons, 2000-01

At your request, I am providing information regarding offenders sentenced to Wisconsin state prisons during 2000-01 for drug offenses. Specifically, you asked that I provide information on: (a) the total number of individuals sentenced to prison for drug offenses during this time period; (b) the number of individuals without assaultive offenses sentenced for drug offenses during this time period; and (c) state costs if drug treatment was provided to these non-assaultive offenders instead of incarceration.

In 2000-01, the Department of Corrections had a total of 1,886 admissions to the prison system for drug offenses. Of the total, 1,116 of the admissions were associated with probation or parole violations, alternatives to the revocation of probation or parole, probation or parole revocation hearing and temporary probation or parole holds. The remaining 770 drug offense admissions were for new criminal sentences sentenced under either: (a) an indeterminate sentence; or (b) at least one determinate (truth-in-sentencing) sentence. Some offenders may have been admitted for multiple offenses and given both determinate and indeterminate sentences of which one was a drug offense. For offenders with multiple sentences, Corrections' data can only identify whether at least one of the sentences is a determinate sentence.

Table 1 identifies drug offenders admitted to the Wisconsin prisons in 2000-01 under a new criminal sentence by admission type and indicates whether the offense(s) also involved assault, sexual assault or assault and sexual assault. It should be noted that complete sentencing data is currently available on 756 of the 770 drug offenders admitted in 2000-01. Based on sentencing information for 2000-01, 629 of 756 offenders were sentenced to prison for drug offenses that did not involve assault.

Table 1

**Drug Admissions
New Sentences, 2000-01
By Sentence and Offense Type**

	<u>Drug Only</u>	<u>Drug/ Assault</u>	<u>Drug/Sexual Assault</u>	<u>Drug/Assault/ Sexual Assault</u>	<u>Total</u>
Indeterminate, single offense	48	0	0	0	48
Indeterminate, multiple offense	65	19	0	1	85
Determinate, single offense	195	0	0	0	195
At least one determinate, multiple offense	<u>321</u>	<u>103</u>	<u>1</u>	<u>3</u>	<u>428</u>
Total	629	122	1	4	756

In order to provide an estimate of costs if drug treatment were provided to drug offenders instead of incarceration, the following variables need to be considered: (a) the number of offenders who would be affected; (b) the length of time an offender would have been incarcerated; (c) the costs of incarceration; and (d) the costs of potential treatment.

Table 2 identifies the confinement time (prison) for drug offenders admitted to the Wisconsin prisons in 2000-01 in months by the type of sentence. In reviewing the table, the following points should be made:

a. The table identifies only prison confinement time. Under a determinate sentence, this is the time specified by the judge at sentencing. For indeterminate sentences, confinement time in the table is assumed to be 66% of an offender's sentence (the mandatory release [MR] date). For multiple offenses with at least one determinate sentence, the confinement time may be either the determinate sentence confinement time or the MR date.

b. The table identifies both mean (average) and median (middle observation point) confinement time for drug offenses. Both measures are shown because the mean confinement time may be affected by a few particularly long or short sentences, while the median confinement time identifies the absolute middle value of a group of sentences.

c. Indeterminate sentencing was ended for offenses occurring on or after December 31, 1999. While offenders may still be sentenced to an indeterminate sentence, the offense that they committed must have occurred before December 31, 1999. Being sentenced to an indeterminate sentence, therefore, becomes increasingly less likely the further one moves from December 31, 1999.

d. Confinement time for offenders with indeterminate sentences represent the maximum amount these individuals will spend in prison because of their eligibility for parole release, generally at any time between 25% and 66% of their total sentence. Since it is not known when individual offenders may be released, the confinement times identified in the table represent the maximum prison time allowed. (It should be noted that subsequent to parole release, offenders may be returned to prison for parole violations.)

TABLE 2
Mean and Median Confinement Time (Months)
Drug Offenses
New Sentences, 2000-01
By Sentence and Offense Type

<u>Sentence Type</u>	<u>Drug Only</u> (N=629)	<u>Drug/ Assault</u> (N=122)	<u>Drug/Sexual Assault</u> (N=1)	<u>Drug/Assault/ Sexual Assault</u> (N=4)
Indeterminate, single offense				
Mean	30	0	0	0
Median	24	0	0	0
Indeterminate, multiple offense				
Mean	37	55	0	400
Median	32	28	0	400
Determinate, single offense				
Mean	30	0	0	0
Median	24	0	0	0
At least one determinate, multiple offense				
Mean	39	53	24	96
Median	30	32	24	96

Note: N=number of cases

Table 3 identifies the community supervision time (parole or extended supervision) for drug offenders admitted to the Wisconsin prisons in 2000-01 in months by the type of sentence. In general the same cautionary notes that apply to Table 2 apply to Table 3. However, in reviewing Table 3, the following points should be made:

a. Community supervision time under a determinate sentence is the time specified by the judge at sentencing as an extended supervision sentence and may not be modified. For indeterminate sentences, community supervision time (parole) in the table is assumed to be 34% of an offender's total sentence. For multiple offenses with at least one determinate sentence, the community supervision time may be either the extended supervision sentence under a determinate sentence or one-third of the sentence for those with an indeterminate sentence.

b. An offender with an indeterminate sentence who is placed on parole may be discharged from state supervision prior to the expiration of his or her sentence. The times identified in the table for indeterminate sentences represent the maximum parole period an offender would be on community supervision.

c. In comparing Tables 2 and 3, note that, for drug only sentences, the average and median prison times for indeterminate and determinate sentences are similar (Table 2), while the average and median community supervision times are considerably longer for determinate sentences than indeterminate sentences (Table 3).

Table 3

**Mean and Median Community Supervision Time (Months)
Drug Offenses
New Sentences, 2000-01
By Sentence and Offense Type**

<u>Sentence Type</u>	<u>Drug Only</u> (N=629)	<u>Drug/ Assault</u> (N=122)	<u>Drug/Sexual Assault</u> (N=1)	<u>Drug/Assault/ Sexual Assault</u> (N=4)
Indeterminate, single offense				
Mean	15	0	0	0
Median	12	0	0	0
Indeterminate, multiple offense				
Mean	18	27	0	200
Median	10	14	0	200
Determinate, single offense				
Mean	40	0	0	0
Median	30	0	0	0
At least one determinate, multiple offense				
Mean	47	52	36	164
Median	42	40	36	144

Note: N=number of cases

Prison Savings

According to the Department of Corrections' Annual Fiscal Report for fiscal year 1999-00 (the latest year for which information was available) the annual per capita cost of incarceration in state prison was \$22,600. However, given that the state's correctional facilities currently exceed operating capacity, changes in inmate populations first affect out-of-state contract bed placements. Costs for out-of-state prison placements currently charged by the Corrections Corporation of America are \$16,100 annually. The calculation of prison savings, therefore, uses the out-of-state contract bed cost.

In determining prison cost savings of providing drug treatment rather than incarceration, it is assumed that only those offenders sentenced for a drug offense(s) only would be placed in community treatment programs (629 of the 756 offenders admitted to the prison system in 2000-01 for drug offenses). Using this assumption, annual prison costs to the state would be reduced by \$10.1 million. It should be noted, however, that if it is assumed that drug admissions in 2000-01 represent a typical year and the confinement times identified in Table 2 are taken into account, there is a cumulative effect on prison costs. After approximately three years (the average confinement sentence for an offender with at least one determinate sentence with multiple offenses) and annually thereafter, prisons would experience a cost reduction of between \$23.5 million and \$29.8 million, based on mean and median confinement times.

In reviewing the savings estimate, it should be noted that costs are based on one year's admission data, and may not be reflective of future admission trends. Further, costs identified assume that 2001-02 contract bed costs extend into the future. In addition, since the sentence lengths for individuals with indeterminate sentences represent the maximum incarceration time, cost reductions in future years could be less than is estimated to the extent that these offenders may serve less confinement time if released before their MR dates.

Extended Supervision/Probation and Parole Supervision Costs

According to the Department of Corrections' Annual Fiscal Report for fiscal year 1999-00, the annual per capita cost of probation and parole was \$1,600. It is difficult, however, to estimate costs or savings for community supervision by providing community placement for drug offenders in conjunction with drug treatment. The probation terms judges may give drug offenders who would receive treatment in the community are not known. If the amount of time drug offenders under a community treatment option spend in community under supervision would be similar to the amount of time they would otherwise spend on parole or extended supervision, the costs of community supervision of drug offenders would not change. To the extent that community supervision times under a treatment option would be longer or shorter than current parole or extended supervision times, community correction costs could increase or decrease.

Treatment Costs

The amount and cost of drug treatment for offenders is dependent on an individual's need for such treatment. Treatment could include halfway house placement, day treatment, other outpatient care, denial groups, or relapse prevention. Any given offender could utilize one or more of these treatment services. According to Corrections, costs for drug treatment services range from \$68 (relapse prevention groups) to \$5,800 (90-day halfway house stay) per offender. Establishing a cost estimate for these services, therefore, is difficult. In a 1998 study from the federal Department of Justice's Drug Courts Program Office, it was indicated that the "average cost for the treatment component of a drug court program ranges between \$1,200 and \$3,000 per participant, depending on the range of services provided." Using these estimates, if all individuals who were sentenced to

prison in 2000-01 for drug offenses were placed in a treatment program (629 offenders), costs could range between \$754,800 and \$1,887,000.

The following points should be noted regarding this estimate:

- The cost estimates assume that all offenders admitted to prison in 2000-01 for drug offenses would be placed in the community in treatment and would complete treatment.
- Treatment cost estimates are based on a 1998 study and are not specific to Wisconsin. Actual costs of the program would depend on program design and the type of treatment services provided. Further, since Corrections currently contracts with private providers for most of its treatment services, actual costs will depend on competitive proposals submitted by possible providers.
- It is not known what the recidivism rate for drug offenders in treatment programs would be or how violations of treatment requirements would be addressed. To the extent that prison time would be served due to violations, costs savings would be reduced.
- To the extent that Corrections is currently providing community treatment for individuals released on parole or placed on probation, the net increase in costs could be less.
- Cost estimates might also be offset to the extent that the offender or the offender's medical insurance covers treatment costs.
- Based on 2000-01 prison admission data, 15 offenders were admitted to prison for drug possession-related offenses only, with the remainder of offenders admitted for possession with intent to deliver or manufacturing and delivering drugs. To the extent that only individuals with drug possession offenses are placed in community-based treatment instead of prison, treatment costs and prison cost savings would be substantially less than are estimated.
- Given that only 15 offenders were admitted to prison in 2000-01 for drug possession offenses, it can be assumed that the majority of offenders convicted for drug possession and given confinement sentences were placed in county jails for a period of less than one year and/or placed on probation under Corrections' supervision. If additional offenders are placed under the supervision of Corrections as the result of being provided drug treatment in the community rather than being placed in county jail, state supervision and treatment costs would be higher than is estimated.

In summary, state costs if drug treatment was provided to certain drug offenders instead of incarceration are dependent on a number of variables: (a) the type of drug offenders placed in treatment; (b) whether those offenders would be diverted from state prison or county jail; and (c) the length of time offenders would be in community supervision and treatment. Based on 2000-01 prison admission data for offenders admitted for a drug offense(s) only, annual incarceration costs

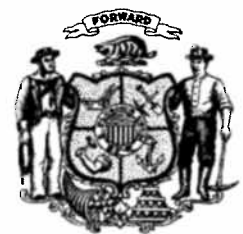
after approximately three years could be reduced by \$23.5 million to \$29.8 million if those offenders were placed in community treatment programs, based on mean and median confinement times. It should be noted, however, that any offenders returned to prison for program failure would reduce the prison cost savings. While community supervision costs could be affected by required drug treatment, these costs cannot be determined because judicial sentencing patterns are not known. Finally, drug treatment costs on an annual basis are estimated to range from \$754,800 and \$1,887,000. The identified cost estimates could, however, be affected by a change in any of the variables or by the design of the drug treatment program.

I hope this information is of assistance.

JR/lah



WISCONSIN STATE LEGISLATURE



1935 Underwood Ave
Wauwatosa, WI 53213

Scott Walker
Wisconsin State Representative
State Capitol,
Madison, WI 53702
By Fax: 608-282-3614

December 18th, 2001

Dear Rep Walker,

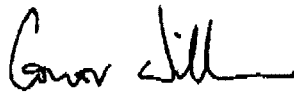
Subsequent to my conversation with Missy from your office I am faxing the draft legislation being sponsored by Senator Gary George based upon the initiative of "Treatment Rather Than Prison" for non-violent drug offenders that was the subject of our meeting with you on August 31st. As you can see this matter has progressed since we last met.

We would like to have a few of us meet with you as soon as possible to explain in detail this initiative. We would like to review with you the legislation that is being drafted and explore your willingness to sponsor the legislation in the Assembly. We met with Senator George last night. He said he would be very willing to work with you on this matter and even indicated a willingness to discuss it in the context of the Truth in Sentencing legislation that has been stalled. Please let us know when you might be available to meet for 30 or 45 minutes so that we can discuss these things in detail.

I would also like to direct you to www.supreme.state.az.us That is the web site of the Arizona Supreme Court, which has officially studied the first year of that state's experience with similar legislation. It shows that many people got treatment. And, after factoring the cost of treatment, and the cost of extra parole officers, they saved the taxpayers \$6.7 million dollars.

I appreciate your interest in this issue. Please call me on 262-893-7381 to let us know what time may be convenient for us to meet with you.

Yours sincerely,



Conor Williams
MICAH AODA Task Force

Cc: Sen. Gary George, Rev. Joseph Jackson – President of MICAH



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4037/P1

RLR:jld:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal 46.03 (18) (fm), 961.47, 961.472 and 961.475; to amend 20.410**
2 **(1) (b); and to create 301.03 (3j), 302.113 (9) (am) and 961.476 of the statutes;**
3 **relating to: drug treatment for persons convicted of possession of controlled**
4 **substances, granting rule-making authority, and making an appropriation.**

Analysis by the Legislative Reference Bureau

Current law prohibits possession of various controlled substances. The penalties for possession of a controlled substance vary from a fine not to exceed \$500 or imprisonment for not more than 30 days or both for possession of many drugs, to a fine not to exceed \$5,000 or imprisonment for not more than two years or both for possession of several narcotic drugs and for other nonnarcotic drugs including, methamphetamine, ketamine, and flunitrazepam. For possession of many controlled substances, the maximum penalty is greater for a second or subsequent conviction.

Under current law, a court may place a person who is convicted of possession of a controlled substance and who volunteers to participate in drug treatment on probation if a drug treatment facility agrees to treat the person. If the person participates in treatment and probation is not revoked, the court may discharge the person's sentence at the end of the probation period. In addition, if a person has no prior drug-related convictions and pleads guilty or is found guilty of a possession offense for which the maximum penalty is a fine of not more than \$500 or imprisonment for not more than 30 days or both, and the person successfully completes probation for the offense, the court may discharge the person's sentence without creating a record of conviction.

Generally, if a person is on probation and violates a condition of probation, the probation may be revoked and the person may be ordered to serve a sentence of imprisonment. Similarly, if a person serving a bifurcated sentence (consisting of a term of incarceration followed by a term of extended supervision) is released to extended supervision and violates a condition of extended supervision, the extended supervision may be revoked and the person may be returned to prison to serve the remainder of the bifurcated sentence in prison.

This bill requires that a court place a person on probation and order the person to participate in drug treatment if the person is convicted of possession or attempted possession of a controlled substance unless any of the following conditions applies:

1. The person has been convicted of a serious felony (the so-called "three strikes" felonies).
2. The person is convicted of another crime or is found to have violated a drunk driving ordinance in the same proceeding.
3. The person was incarcerated at the time he or she committed the offense.
4. The person has previously been convicted of possession or attempted possession of a controlled substance, has been provided drug treatment in connection with any such conviction, and is found by the sentencing court to be unamenable to treatment.
5. The person refuses to participate in drug treatment.

The drug treatment may consist of outpatient treatment, treatment at a halfway house, narcotic replacement therapy, drug education or prevention courses, or inpatient residential drug treatment if it is needed to address special detoxification or relapse situations or severe drug dependence. A court may order treatment for up to 12 months, or for the length of the probation period, whichever is less. The treatment must be provided by a treatment facility that is certified by the department of health and family services.

If a person on probation for possession of a controlled substance violates a condition of probation that is related to drug treatment or if the person commits another possession offense, the conditions of the person's probation may be modified, but the person's probation may not be revoked unless a hearing examiner finds by a preponderance of the evidence that the person is a danger to himself, herself, or others or that the person is unamenable to treatment. The bill directs the department of corrections (DOC) to promulgate rules establishing standards for determining whether a person is unamenable to treatment. However, if a person violates a condition of probation that is not related to drug treatment or possession of a controlled substance, the probation may be revoked as under current law.

The bill creates a similar restriction on revoking extended supervision for any person serving a term of extended supervision for any crime. If a person on extended supervision violates a condition of extended supervision that is related to drug treatment or commits a controlled substances possession offense, the person's extended supervision may not be revoked for that violation unless a hearing examiner finds by a preponderance of the evidence that the person is a danger to himself, herself, or others or that the person is unamenable to treatment.

The bill provides that, if a person successfully completes probation for possession of a controlled substance, without revocation, the record of the conviction is expunged and the possession offense for which the person served probation cannot be counted as a prior conviction for subsequent penalty enhancers or for other disabilities or disqualifications related to convictions.

The bill requires that a recipient of drug treatment or of a drug assessment pay for the treatment or assessment to the extent of his or her ability. DOC is responsible for funding the costs of treatment and assessments that are not covered by the recipient or by insurance.

If a person who is convicted for possession of a controlled substance is not eligible for mandatory probation and drug treatment, a court may still place the person on probation and order drug treatment, as under current law, as long as the person voluntarily agrees to drug treatment. Under the bill, DOC is responsible for funding the treatment and any related assessments, if the person or his or her insurance does not pay for the treatment or assessment. Further, the bill provides that, if a court orders that a person receive drug treatment while incarcerated in jail, DOC is responsible for the cost of the treatment that is not covered by the recipient or insurance.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 20.410 (1) (b) of the statutes is amended to read:
- 2 20.410 (1) (b) *Services for community corrections.* The amounts in the schedule
- 3 to provide services related to probation, extended supervision and parole, the
- 4 intensive sanctions program under s. 301.048, the community residential
- 5 confinement program under s. 301.046, programs of intensive supervision of adult
- 6 offenders and minimum security correctional institutions established under s.
- 7 301.13, and for drug assessments and drug treatment ordered under s. 961.476. No
- 8 payments may be made under this paragraph for payments in accordance with other
- 9 states party to the interstate corrections compact under s. 302.25.
- 10 SECTION 2. 46.03 (18) (fm) of the statutes is repealed.
- 11 SECTION 3. 301.03 (3j) of the statutes is created to read:

1 301.03 (3j) Provide drug assessments and drug treatment for persons
2 convicted of offenses under s. 961.41 (3g) as provided under s. 961.476.

3 **SECTION 4.** 302.113 (9) (am) of the statutes is created to read:

4 302.113 (9) (am) Notwithstanding par. (a), if the violation under par. (a) is a
5 commission of an offense under s. 961.41 (3g) or a violation of a condition of extended
6 supervision concerning drug treatment, the division of hearings and appeals or the
7 department may modify the conditions of extended supervision, but may not revoke
8 extended supervision unless a hearing examiner for the division of hearings and
9 appeals finds by a preponderance of the evidence that the person is a danger to
10 himself or herself or to others, or that the probationer is unamenable to treatment
11 as determined in accordance with the rules promulgated under s. 961.476 (6) (b).

12 **SECTION 5.** 961.47 of the statutes is repealed.

13 **SECTION 6.** 961.472 of the statutes is repealed.

14 **SECTION 7.** 961.475 of the statutes is repealed.

15 **SECTION 8.** 961.476 of the statutes is created to read:

16 **961.476 Probation and drug treatment for possession.** (1) In this section,
17 "drug treatment" includes outpatient treatment, treatment at a halfway house,
18 narcotic replacement therapy, drug education or prevention courses, or inpatient
19 residential drug treatment as needed to address special detoxification or relapse
20 situations or severe dependence.

21 (2) If a person is convicted of possession of or attempted possession of a
22 controlled substance or a controlled substance analog under s. 961.41 (3g), the
23 sentencing court shall, withhold sentence, or impose sentence and stay its execution,
24 and place the person on probation under s. 973.09 unless any of the following applies:

1 (a) The person has ever been convicted of a felony identified under s. 939.62
2 (2m) (a) 2m. b.

3 (b) The person is convicted of another crime in the same proceeding.

4 (c) The person is found in the same proceeding to have violated a local ordinance
5 that is in conformity with s. 346.63 for driving a motor vehicle while the person has
6 a prohibited alcohol concentration.

7 (d) The person was incarcerated under a sentence for another crime at the time
8 of the offense for which he or she is being sentenced.

9 (e) The person has been previously convicted for possession of, or attempted
10 possession of, a controlled substance or a controlled substance analog under s. 961.41
11 (3g), has been provided treatment for drug use in connection with any such prior
12 conviction, and has been found unamenable to treatment.

13 (f) The person refuses to participate in drug treatment as a condition of
14 probation.

15 (3) Before establishing conditions of probation under this section or before
16 making a finding as to whether a person is unamenable to treatment, a court may
17 order the person to comply with an assessment of his or her use of controlled
18 substances. The court shall designate an approved treatment facility, as defined
19 under s. 51.01 (2), that is certified by the department of health and family services
20 to provide assessment services to conduct the assessment. The court may order that
21 the treatment facility provide a proposed treatment plan. The treatment facility
22 shall submit an assessment report to the court within 14 days of the order for an
23 assessment. At the request of the treatment facility, the court may extend the time
24 for submitting a report by not more than 20 additional workdays.

1 (4) If a court places a person on probation under this section, the court shall
2 require as a condition of probation that the person participate in drug treatment
3 provided by an approved treatment facility, as defined under s. 51.01 (2). The
4 treatment may not be longer than 12 months, or the period of probation, whichever
5 is less. The court may order up to 6 months of aftercare to follow the treatment.

6 (5) Notwithstanding s. 973.09 (4) (a), a person placed on probation under sub.
7 (1) may not be confined in a county jail, Huber facility, work camp, or tribal jail as
8 a condition of probation.

9 (6) (a) Notwithstanding s. 973.10 (2), if a person on probation under sub. (2)
10 commits an offense under s. 961.41 (3g) or violates a condition of probation
11 concerning drug treatment, the division of hearings and appeals or, if the probationer
12 waived his or her right to a hearing, the department of corrections may modify the
13 conditions of probation, but may not revoke probation unless a hearing examiner
14 finds by a preponderance of the evidence that the person is a danger to himself or
15 herself or to others or that the probationer is unamenable to treatment. If the
16 probationer violates a condition of probation that is not related to drug treatment,
17 the department of corrections or the division of hearings and appeals may revoke
18 probation as provided under s. 973.10 (2).

19 (b) The department of corrections shall promulgate rules regarding the
20 standards for determining whether a person is unamenable to treatment.

21 (7) When a court orders probation under sub. (2) for a conviction of an offense
22 under s. 961.41 (3g), the court shall order that the record of conviction be expunged
23 upon successful completion of the probation. A person successfully completes
24 probation if the person completes the term of probation without the probation being
25 revoked. Upon successful completion of probation, the department of corrections

1 shall issue a certificate of discharge and shall forward the certificate to the court of
2 record, which shall expunge the record of conviction. Disqualifications or disabilities
3 imposed by law upon conviction of a crime, including the additional penalties
4 imposed for 2nd or subsequent convictions under s. 961.48, do not apply to a
5 conviction that has been expunged under this subsection.

6 (8) If a person is convicted of an offense under s. 961.41 (3g) and sub. (2) does
7 not apply, a court may at its own discretion order that the person be placed on
8 probation and participate in drug treatment as a condition of probation, or that the
9 person participate in drug treatment while incarcerated in jail or in prison, as long
10 as the person agrees to participate in drug treatment. The court may order that any
11 period of probation ordered under this subsection run concurrently or consecutively
12 to any sentence or to any other order of probation.

13 (9) (a) The court shall order any person who receives a drug assessment or drug
14 treatment under this section to pay for that assessment or treatment to the extent
15 that the person is able to pay.

16 (b) From the appropriation under s. 20.410 (1) (b), the department of
17 corrections shall pay for the cost of any assessments or treatment ordered under this
18 section, including drug treatment provided to a person while he or she is incarcerated
19 in jail, that is not paid for by the person receiving the assessment or treatment or that
20 person's insurance.

21 **SECTION 9. Initial applicability.**

22 (1) The treatment of section 961.476 of the statutes first applies to offenses
23 committed on the effective date of this subsection, but persons sentenced on or after
24 the effective date of this subsection for offenses committed before the effective date

1 of this subsection may choose to be sentenced in accordance with section 961.476 of
2 the statutes.

3 SECTION 10. Effective date. This act takes effect on the first day of the 6th
4 month beginning after publication except as follow:

5 (1) The treatment of section 961.476 (6) (b) of the statutes takes effect on the
6 day after publication.

7 (END)

OHIO DRUG TREATMENT INITIATIVE

FINAL DRAFT

ARTICLE IV, Section 24

(A) **INTENTS AND PURPOSES.** The purposes and intent of the voters in adding this section to the Ohio constitution are as follows:

- (1) To break the cycle of drug use, addiction and crime as early as possible by guaranteeing treatment and rehabilitation services to non-violent drug users entering the criminal justice system.
- (2) To halt the wasteful expenditure of millions of dollars each year on the incarceration and reincarnation of non-violent drug users who would be better served by treatment and rehabilitation, and to promote medical and public health responses to drug abuse that reject incarceration for non-violent defendants charged with drug possession or use.
- (3) To provide substance abuse treatment and rehabilitation programs to non-violent defendants charged with drug possession or use, in order to reduce or eliminate substance abuse and addiction and increase the employability of such persons.
- (4) To enhance public safety by reducing drug-use-related crime and by preserving jail and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and dependence through professionally supervised drug treatment programs.
- (5) To rest primary responsibility for the supervision of non-violent defendants charged with drug possession or use with community-based treatment providers, with medically appropriate links to the criminal justice system, and to ensure that drug testing is used as a treatment tool, with relapse understood to be a part of the process of recovery, not an occasion for punishment.
- (6) To maintain existing efforts in Ohio to prevent drug use and to provide treatment and rehabilitation to substance users and abusers, whether or not they are involved in the criminal justice system, without reducing funding for such efforts in order to pay for treatment and rehabilitation programs made necessary by this measure.

(B) **TREATMENT MOTION, HEARING AND ASSESSMENT.**

- (1) If an offender is charged with or convicted of illegal possession or use of a controlled substance, the offender may file a request for treatment.
- (2) Upon receipt of a request for treatment, the court shall stay all criminal proceedings related to the illegal possession or use of a controlled substance charge

pending its final determination as to whether the offender is eligible under this section for treatment. The court may make its initial determination as to whether the offender is eligible for treatment with or without a hearing. This initial determination shall be made within three days of receipt of the request for treatment.

- (3) If the court makes an initial determination that an offender is not eligible for treatment without conducting a hearing on that issue, the offender may, within three days, request a hearing before that determination becomes final. If the offender requests a hearing on the initial determination, within seven days thereafter the court shall conduct a hearing to determine whether the offender is eligible under this section for treatment, and the court shall enter its final determination as to whether the offender is eligible for treatment.
- (4) If the court finds under division (C) of this section that the offender is eligible for treatment, the court shall accept the offender's request for treatment, including all waivers described in subdivision J(5) of this section. In addition, the court shall stay all criminal proceedings, including sentencing, related to the illegal possession or use of a controlled substance charge, and shall order the release of the offender if the offender is in custody due to the stayed criminal proceedings. No offender found to be eligible for treatment and entitled to such release shall be sentenced to a term of incarceration unless and until the offender is removed from treatment under subdivision (F) of this section.
- (5) The court shall order an assessment of each offender found to be eligible for treatment under this section by a qualified treatment professional for the purposes of determining the offender's addiction severity and need for treatment, determining the types of drug treatment and social services that might be appropriate for the offender, and recommending an appropriate treatment plan. The assessment shall be completed within seven days of the court's determination that the individual is eligible for treatment under this section.
- (6) If the court finds that an offender is not eligible for treatment under this section, the criminal proceedings against the offender may proceed as if the offender's request for treatment had not been made.

(C) ELIGIBILITY FOR TREATMENT.

- (1) A first- or second-time offender shall be eligible for treatment if the court finds all of the following:
 - (a) The offender is charged with illegal possession or use of a controlled substance;

- (b) The offender has not been convicted of or imprisoned for a violent felony within five years of committing the current offense;
- (c) The offender has not been sentenced to a term of incarceration that would interfere with the offender's participation in the treatment plan; and,
- (d) In the same proceeding, the offender has not been convicted of and does not have pending charges for:
 - (i) any felony other than an illegal possession or use offense, or any misdemeanor involving theft, violence or the threat of violence;
 - (ii) an offense of trafficking, sale or manufacture of controlled substances;
 - (iii) an offense of possession of drugs with the intent or for the purpose of trafficking, sale or manufacture of controlled substances; or,
 - (iv) an offense of illegally operating a motor vehicle under the influence of alcohol or a controlled substance.

(2) A repeat offender shall be eligible for treatment if the court finds both of the following:


- (a) The offender satisfies all of the eligibility requirements of division (C)(1) of this section; and,
- (b) The requested treatment is in the best interests of the offender and the public.

If the court denies the request for treatment of a repeat offender who satisfies all of the eligibility requirements of division (C)(1) of this section, the offender may be sentenced to a maximum of ninety days in a county jail or community-based corrections facility for the illegal possession or use offense.



(3) If an offender does not qualify under division (C)(1) or division (C)(2) of this section solely due to the offender's failure to satisfy the eligibility requirement of division (C)(1)(d)(i) of this section, the offender may nonetheless be found eligible for treatment if the court finds all of the following:

- (a) The offense or offenses do not include a violent felony or any misdemeanor involving violence or the threat of violence;
- (b) The offense or offenses resulted from drug abuse or addiction;

- 
- (c) Treatment of the individual is in the best interests of the offender and the public; and,
 - (d) The individual has not been proven to pose a danger to the safety of others.

(D) TREATMENT PLAN. If the court grants an offender's request for treatment:

- (1) The qualified treatment professional designated by the court under division (B) (5) of this section, after conducting an assessment of the offender, shall determine the type and duration of the treatment program or programs that the offender shall receive, and the methods of monitoring the offender's progress while in treatment. The qualified treatment professional shall prepare and submit this treatment plan to the court with a list of treatment providers capable of administering the proposed treatment program or programs.
- (2) The court shall review this treatment plan and shall adopt the treatment plan as submitted, if the court finds that the plan complies with this section. If the treatment plan as submitted is found not to comply with this section or to be otherwise unsatisfactory, the court shall request the designated qualified treatment professional to reconsider and submit a revised treatment plan to the court.
- (3) The court shall designate an appropriate treatment provider to administer the treatment plan adopted by the court from the list of treatment providers included in the qualified treatment professional's treatment plan. The qualified treatment professional who submitted the treatment plan shall not be appointed as the treatment provider unless no other treatment provider is available to administer the treatment plan.
- (4) The court may add reasonable conditions to the offender's terms of release to ensure compliance with the treatment plan and other court orders.
- (5) The court may require an offender who is reasonably able to do so to pay all or a portion of the cost of the offender's participation in a treatment plan. However, such payment requirement shall not be so burdensome as to make participation in a treatment plan inaccessible, nor shall such payment requirement be excessive or punitive in nature.
- (6) The court shall not require the offender to waive confidentiality of medical or treatment information as a condition for participating in a treatment plan, except that the offender may be required to give written consent for the disclosure to the court of drug and alcohol abuse treatment information by the treatment provider, including objective data generated during treatment, but not including confidential communications. Such written consent shall be non-revocable, and shall be in a

form that meets the requirements of all applicable federal and state laws and regulations governing the confidentiality of drug and alcohol abuse treatment information.

- (7) If the offender does not consent to the terms and conditions imposed by the court, the offender's request for treatment may be deemed withdrawn and the criminal proceedings against the offender may proceed as if the offender's request for treatment had not been made, except that no otherwise confidential drug or alcohol abuse treatment information made available to the court may be used by any person in this or in other civil or criminal proceedings without the offender's further written consent.
- (8) The court shall require the offender to participate in and cooperate with the treatment program of the designated treatment provider for a period of time designated in the treatment plan, not to exceed 12 months. This period of time may be extended only if, based on information provided by a qualified treatment professional who has assessed the individual, the court finds by clear and convincing evidence that an extension of such period is necessary for treatment to be successful. No extension of the period of time designated for an offender's treatment plan shall exceed an additional 6 months. Under no circumstances shall the total time period of treatment required under this section exceed a total of 18 months; nor shall court supervision of any offender extend more than 90 days beyond the end of treatment.
- (9) The court shall order the offender to appear for treatment according to the treatment plan no later than 14 days after the court has found the offender to be eligible for treatment, unless the court, because of lack of space or other good cause shown, authorizes an extension of the date for entry into treatment. No offender shall be required to wait more than 30 days to enter treatment.

(E) MODIFICATION OF TREATMENT PLAN AT TREATMENT PROVIDER'S INITIATION.

- (1) Nothing in this section shall be construed to require a treatment provider to retain an offender who commits a major violation of that program's rules.
- (2) If at any point during the course of treatment, the treatment provider determines that the treatment being provided is unsuitable for the offender, or that it is impracticable for the treatment provider to continue to administer the treatment plan, the treatment provider shall so notify the court.
- (3) If at any point during the course of treatment, the treatment provider notifies the court that the treatment being provided is unsuitable for the offender, or that it is impracticable for the treatment provider to continue to administer the treatment plan, the court, after notice and an opportunity for a hearing, and subject to the recommendation of a qualified treatment professional, may modify the terms of

the treatment plan to ensure that the offender receives an alternative treatment program or related programs.

(F) PROGRAM VIOLATIONS, CONSEQUENCES, REMOVAL FROM TREATMENT PLAN

(1) Consequences of Removal.

- (a) If an offender who has not been convicted of the illegal possession or use of a controlled substance charge that gave rise to the request for treatment is removed from a treatment plan pursuant to the provisions of this subdivision, the offender may be tried, and if convicted may be sentenced to up to ninety days in county jail or in a community-based corrections facility for the illegal possession or use offense.
- (b) If an offender who has been convicted of the illegal possession or use of a controlled substance charge that gave rise to the request for treatment is removed from a treatment plan pursuant to the provisions of this subdivision, the offender may be sentenced to up to ninety days in county jail or in a community-based corrections facility for the illegal possession or use offense.
- (c) If an offender is removed from a treatment plan pursuant to the provisions of this subdivision, and has had additional criminal charges or convictions stayed by the court, prosecution, conviction or sentencing for such additional charges may be conducted without limitation by the provisions of this section.

(2) Non-Drug Related Violations. Where an offender participates in a treatment plan, and violates the terms of that treatment plan either by committing an offense that is not an illegal possession or use of a controlled substance offense, or by violating a non-drug-related condition set by the court, the court shall conduct a hearing to consider evidence of the offense or violation, and to determine whether the offender shall be removed from the treatment plan or otherwise sanctioned.

- (a) If the offender has been convicted of a new offense that is not illegal possession or use of a controlled substance, the court may remove the offender from the treatment plan provided that the court also finds by a preponderance of the evidence at least one of the following:
 - (i) the severity of the offense justifies removal, or
 - (ii) the offense indicates that the individual poses a danger to the safety of others.

- (b) If the alleged violation of a non-drug-related condition of the treatment plan is proved by clear and convincing evidence, the court may remove the offender from the treatment plan provided that the court also finds by a clear and convincing evidence at least one of the following:
 - (i) the severity of the offense justifies removal, or
 - (ii) the offense indicates that the individual poses a danger to the safety of others.
 - (c) If the court does not remove the offender from treatment after finding that an offense or violation occurred, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional, and may impose proportionate sanctions for the offense or violation, not including incarceration.
- (3) **Drug-Related Violations.**
- (a) Where an offender participates in a treatment plan, and is alleged to have committed a severe drug-related violation or multiple drug-related violations of that plan, the court may hold a hearing to consider evidence of the violation or violations and necessary responses, including sanctions, amendment of the treatment plan, or removal of the offender from treatment.
 - (b) If, at the hearing, the court finds by clear and convincing evidence that an offender did commit the alleged drug-related violation or violations, and the court finds this conduct to represent a serious disruption of the treatment plan, the court shall proceed as follows:
 - (i) If the court has not previously found the offender to have committed a serious disruption of the treatment plan during the current course of treatment, the court shall consider evidence that the offender poses a danger to the safety of others. Provided that the court so finds by clear and convincing evidence, the court may remove the offender from treatment. If the court does not find that the offender poses a danger to the safety of others, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional, and may impose proportionate sanctions for the serious disruption of the treatment plan, not including incarceration.

- (ii) If the court has once previously found the offender to have committed a serious disruption of the treatment plan during the current course of treatment, the court shall consider evidence that the offender poses a danger to the safety of others or is unamenable to treatment. Provided that the court finds by clear and convincing evidence that the offender either poses a danger to the safety of others or is unamenable to treatment, the court may remove the offender from treatment. If the court does not so find, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional, and may impose proportionate sanctions for the serious disruption of the treatment plan, not including incarceration.
 - (iii) If the court has more than once previously found the offender to have committed a serious disruption of the treatment plan during the current course of treatment, the court may remove the offender from treatment. If the court does not remove the offender from treatment, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional, and may impose proportionate sanctions for the serious disruption of the treatment plan.
- (4) **Treatment period extension; limitation.** If the court extends the period of treatment pursuant to this subdivision, the total period of treatment required shall not exceed 18 months.

(G) COMPLETION OF PROGRAM; BENEFITS; LIMITATIONS.

- (1) If the court grants an offender's request for treatment prior to a conviction for an illegal possession or use offense, and the treatment provider notifies the court that the offender has completed the treatment plan, or the treatment plan as modified, the court shall dismiss the stayed proceedings against the offender without an adjudication of guilt and there shall not be a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime. Notwithstanding such dismissal of proceedings, the court may order continued supervision of the offender for up to 90 days.
- (2) If the court grants an offender's request for treatment after a conviction for an illegal possession or use offense, and the treatment provider notifies the court that the offender has completed the treatment plan, or the treatment plan as modified, the court shall dismiss the stayed proceedings against the offender.

Notwithstanding such dismissal of proceedings, the court may order continued supervision of the offender for up to 90 days.

- (3) If the court grants an offender's request for treatment and the treatment provider notifies the court that the period of time designated in the treatment plan, or the treatment plan as modified, has expired, but, in the opinion of the treatment provider, the offender has not successfully completed the treatment plan, then the court may, after consultation with the treatment provider and a qualified treatment professional who has assessed the offender, take any of the following actions:
 - (a) Dismiss the stayed proceedings and terminate the treatment plan with a finding that the offender has either:
 - (i) successfully completed the treatment plan, or
 - (ii) completed the treatment plan without a determination of successful completion.
 - (b) Order an extension of the period of treatment, provided that such extension does not cause the total required treatment period to exceed 18 months; or
 - (c) Order continued supervision of the offender for a period of up to 90 days.
- (4) Any time after 90 days subsequent an offender's completion of a treatment plan, or a treatment plan as modified, the offender may file a motion for the sealing of records and, if applicable, the expungement of the conviction which gave rise to the request for treatment. Upon receipt of such a motion the court shall consult with the treatment provider and, in the court's discretion, a qualified treatment professional who has assessed the offender, to determine whether the offender has successfully completed treatment. If the court so finds by a preponderance of the evidence, the court shall, as applicable to the case, order the sealing of records related to the offender's charge or conviction for illegal possession or use of a controlled substance, and expunge any conviction.
- (5) Notwithstanding the sealing of records related to the offense in question or the expungement of any conviction, law enforcement agencies shall keep records of offenders' arrests, convictions and referrals to treatment for illegal possession or use of a controlled substance. Such records shall be maintained for the exclusive law enforcement purposes of enabling prosecutors and the courts to have information about the number of prior illegal possession or use offenses on record for a person later charged with or convicted of illegal possession or use, and to conduct criminal record checks for persons applying for a position as a law enforcement officer. With these exceptions, all law enforcement records of sealed

or expunged records of illegal possession or use offenses shall be confidential and not subject to any disclosure.

- (6) Neither the successful completion of the treatment plan, nor the sealing of records, nor the expungement of a conviction under this section relieve an offender of the obligation to disclose the arrest and any expunged conviction in response to any direct question contained in any questionnaire or application for a position as a law enforcement officer.

(H) FUNDING FOR TREATMENT.

- (1) Within 60 days of enactment of this section, the Governor shall designate a state department to direct implementation of the programs required by this section, which shall be referred to as the lead agency. Such department shall meet the following criteria:
 - (a) The department has a mission that is primarily concerned with public health matters;
 - (b) The department has a demonstrated capacity for administering funds for multiple types of treatment programs; and,
 - (c) The department has affiliated agencies or bodies in counties or multi-county regions to which funds may be distributed.
- (2) The General Assembly shall enact legislation and the lead agency shall promulgate regulations for the implementation of this section consistent with its purposes and intent. The lead agency shall ensure that recipient counties or multi-county regional bodies provide a diversity of treatment programs to ensure the availability of a continuum of services from low-threshold to residential drug treatment, as well as services designed for the special needs of women and parents, pregnant women, and other culturally and linguistically diverse populations.
- (3) A special fund to be known as the "Substance Abuse Treatment Fund" is hereby created within the state treasury for carrying out the purposes of this section.
- (4) Upon enactment of this Amendment there is hereby appropriated \$15 million from the state General Fund to the Substance Abuse Treatment Fund for the remainder of the 2002-2003 fiscal year, to pay for the costs of preparing state and local government entities and treatment programs for implementation of this measure. For each fiscal year thereafter, until and including the 2008-2009 fiscal year, there is hereby appropriated annually from the General Fund to the Substance Abuse Treatment Fund \$28.5 million, or such greater amount as the General Assembly may determine to be necessary to ensure that all persons eligible for, and who elect, treatment under this provision, receive such treatment

and that all other requirements imposed by this section may be fulfilled. Notwithstanding Section 22, Article II, or any other provision of this Constitution, no further act of appropriation shall be necessary for such annual appropriations to occur. Such funds shall be transferred to the Substance Abuse Treatment Fund no later than the first day of each fiscal year. After the 2008-2009 fiscal year, the amount of funding required by this section shall become discretionary and subject to routine budgetary processes.

- (5) The State of Ohio shall maintain its prior efforts to provide substance abuse treatment and rehabilitation during at least the first six fiscal years following passage of this section. During this six-fiscal-year period, and concluding with fiscal year 2008-2009, funds appropriated to pay for treatment programs under this section shall supplement, and not supplant, funding for substance abuse prevention and treatment programs and other rehabilitation programs operating prior to the enactment of this provision. During this six-fiscal-year period, the General Assembly shall continue to appropriate funds for substance abuse prevention and treatment programs and other rehabilitation programs in amounts equal to or greater than the amounts appropriated for substance abuse prevention and treatment programs and other rehabilitation programs in fiscal year 2000-2001, without taking into account any funds from the Substance Abuse Treatment Fund.
- (6) Except as otherwise provided herein, the director of the lead agency shall distribute annually all monies appropriated to the Substance Abuse Treatment Fund to the department's affiliated agencies or bodies in counties or multi-county regions to pay for the costs of providing treatment programs for offenders eligible under this section and for offenders placed in treatment under other intervention-in-lieu-of-incarceration programs established by statute.
- (7) The director of the lead agency shall determine the allocation of the monies from the Substance Abuse Treatment Fund to each county or multi-county regions through a fair and equitable distribution formula for estimating the need for funds that includes factors such as population, the number of arrests for illegal possession or use of a controlled substance, substance abuse treatment and rehabilitation services caseload, the need for infrastructure development to provide treatment and rehabilitative services, and such other factors as the director of the lead agency may deem appropriate. The lead agency may also reserve up to five percent of the funds available in the Substance Abuse Treatment Fund to pay for the lead agency's administrative costs associated with implementing this section, and may reserve up to one percent of the funds available to pay for a long-term study of the offender populations and treatment programs affected by this section.
- (8) Each county or multi-county region shall spend at least 85 percent of the funds distributed under this article on the provision of community-based treatment and

rehabilitation services to offenders eligible under this section, persons placed in treatment under other intervention-in-lieu-of-incarceration programs established by statute, or persons who commit drug-related violations of the terms of supervised release from prison. No county or multi-county region shall, in any fiscal year, devote more than 15 percent of the funds provided under this section to non-treatment expenses made necessary by the provisions of this section, including, but not limited to, case management and administration costs for treatment providers, transportation for offenders to treatment, additional probation department costs and court costs. The director of the lead agency may stipulate permissible uses of such non-treatment funds.

- (9) Each county or multi-county regional body receiving funds shall be required to submit to the lead agency annual reports or more frequent reports, subject to annual audits by the Auditor of State, detailing the use of funds provided under this section.
- (10) The lead agency shall annually collect and publish data to evaluate the effectiveness and financial impact of the treatment programs implemented under this section. The study shall include, but not be limited to, a review of the implementation process; any changes in overall drug-related costs of probation, incarceration, and supervised release; changes in recidivism rates for non-violent drug offenders; reductions in crime; reductions in prison and jail construction; changes in health outcomes for drug users; reduced welfare costs; increased employability of persons completing treatment elected under this section; comparisons of treatment modalities; adequacy of funds appropriated; and other impacts or issues identified by the department. The lead agency shall also collect data on the race, gender and age of drug offenders, demographic information on types and numbers of controlled substances arrests, prosecutions, diversions to treatment under this section and otherwise, and completion of treatment.
- (11) At any time after a minimum of five years serving as the lead agency, the department chosen by the Governor may be reconsidered or changed. If a new department is designated as the lead agency, it shall meet all criteria specified in this division and shall serve as the lead agency for a minimum of five years.
- (I) **LIMITED SCOPE OF TREATMENT RIGHT.** Nothing in this section prohibits the general assembly from authorizing treatment or treatment in lieu of conviction for persons not otherwise eligible under this section.
- (J) **DEFINITIONS.** As used in this section,
- (1) **"Illegal possession or use of a controlled substance"** means a violation of Ohio civil or criminal statutes involving having, holding, controlling, obtaining, or storing a quantity of a controlled substance consistent with personal use; or consuming, using, or being under the influence of a controlled substance; and including other

non-violent illegal acts incidental to drug possession or use, such as possession of drug paraphernalia, purchase of a controlled substance, and transportation of a controlled substance merely as an extension of possession for personal use.

- (2) **"Treatment program" or "treatment"** mean a state-approved treatment and/or rehabilitation program, or set of programs, designed to reduce or eliminate substance abuse or drug dependency and to increase employability. Such program or programs may include outpatient treatment, half-way house treatment, sober living environments, 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. Such program or programs may also include, as deemed appropriate, access to vocational training, literacy training, family counseling, mental health services, or similar support services. A Veterans Administration facility may also serve as a treatment program for an appropriate client, irrespective of state licensure. The terms "treatment program" or "treatment" shall not include programs offered in a prison or jail facility or in other forms of incarceration.
- (3) **"Treatment provider"** means an appropriately licensed provider, certified facility, or licensed and credentialed professional that provides a "treatment program."
- (4) **"Qualified treatment professional"** means an individual with specialized knowledge, skill, experience, training, or education in the areas of psychology, psychiatry or addiction therapy who has the expertise needed to conduct the addiction and life skills assessments necessary to determine an offender's suitability to one or more forms of treatment and to recommend an appropriate treatment plan.
- (5) **"Request for treatment" or "request"** means a motion filed by an individual facing charges of illegal possession or use of controlled substance or who has been convicted of such an offense. The request shall include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred. The request shall also include the defendant's written consent for limited disclosure of information to the court by a qualified treatment professional to be designated by the court, as necessary to and as provided for in division (B)(5) of this section for the creation of a treatment plan for the individual. Such written consent shall be non-revocable, and shall be governed by, and in a form that meets the requirements of, federal and state laws and regulations protecting the confidentiality of drug and alcohol abuse treatment information.

- (6) **"Violent felony"** means any felony that includes as one or more elements of the offense proof that the offender has caused or threatened to cause any injury, illness, or other physiological impairment to any person.
- (7) **"Repeat offender"** means an offender who is charged with or convicted of an offense of illegal possession or use of a controlled substance and:
- (a) Has had two or more prior convictions for illegal possession or use of a controlled substance after the enactment of this section; or,
 - (b) Has participated in two or more prior courses of treatment under this section.
- (8) **"First- or second-time offender"** means an offender who is charged with or convicted of an offense of illegal possession or use and is not a repeat offender.
- (9) **"Unamenable to treatment"** means that an offender:
- (a) has repeatedly committed serious violations of treatment program rules that inhibit the offender's ability to function in the treatment program,
 - (b) has continually refused to participate in the treatment program, or
 - (c) has asked to be removed from the treatment plan adopted by the court.
- (10) **"Objective data"** means confidential drug and alcohol treatment information that is specific and quantified, such as attendance records, drug test results, and progress reports, and does not include confidential communications made by a patient to a treatment provider or program in the course of diagnosis, treatment or referral for treatment for drug or alcohol abuse.
- (K) **EFFECTIVE DATE.** Except for those portions of subdivision (H) of this measure requiring immediate effect, this section shall take effect on the 1st day of July following the election at which it is approved, and shall apply to all qualifying charges, convictions and criminal sentences before the court from that day forward.



Post-It® Fax Note	7671	Date	12/26/01	# of pages	2
To	SCOTT WALKER / MISSY	From	CONOR WILLIAMS		
Co./Dept.		Co.	MICAH		
Phone #		Phone #	262-893-7381		
Fax #	608-282-3614	Fax #			

TO: DAVID LINERS
 FROM: ALEXANDRA COX, THE LINDESMITH CENTER
 SUBJECT: TREATMENT V. INCARCERATION, FISCAL EFFECTS
 DATE: 12/26/2001
 CC: DANIEL ABRAHAMSON

Scott,
 Additional information on
 cost savings from treatment
 rather than prison for non-
 violent drug offenders. Can
 we meet? *Conor Williams*

Below are some highlights of the fiscal effects of California's Proposition 36 that have been demonstrated both before and after the effective date of the initiative, July 1st, 2001.

Some significant facts about California prisoners and prison costs:

- Before Proposition 36 was enacted, drug offenders accounted for 27% of California's prison population, 46% of whom were incarcerated solely for simple possession.¹
- According to the LAO's 2001-2002 budget analysis, the cost of imprisoning one inmate in a California prison per year is \$25,607.
- California taxpayers each spent a total of \$516 a year to fund the cost of arresting and imprisoning drug offenders.²

Treatment costs in California, according to the California Department of Drug and Alcohol Programs:

- **Methadone Maintenance:** \$7/day
Outpatient: \$7/day
Long-term residential: \$53/day
Day Programs: \$33/day

National treatment costs, according to a 1997 report by the Substance Abuse and Mental Health Services Administration:

- A national average of treatment costs are said to range from \$1,800 per client to approximately \$6,800 per client.³
- The study also broke down the cost of treatment according to the treatment regimen received:

Methadone: \$13/day, \$3,900/client (about 300 days)

¹ Beatty, Phillip, Holman, Barry and Schiraldi, Vincent. (2000) *Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States*. Washington DC: The Justice Policy Institute

² UCSF study by economists Dan Vencill and Zagros Sadjadi

³ National Treatment Improvement Evaluation Study, 1997, Substance Abuse and Mental Health Services Administration.

Outpatient nonmethadone: \$15/day, \$1,800/client (about 120 days)
Correctional: \$24/day, \$1,800/client (about 75 days)
Long-term residential: \$49/day, \$6,800/client (about 140 days)
Short-term residential: \$130/day, \$4,000/client (about 30 days)

Some significant facts about Proposition 36, according to estimates by the California Legislative Analyst's Office a non-partisan government agency charged with analyzing the potential outcomes of Proposition 36:

- Proposition 36 would divert as many as 24,000 non-violent drug possession offenders each year, which would result in as many as 11,000 fewer prison beds each year.⁴
- The initiative might result in a net caseload reduction of 9,500 parolees each year.
- The initiative proposes to divert approximately 12,000 eligible jail inmates to probation each year.
- The Proposition would likely to result in a net savings to the state after several years of between \$100 million and \$150 million annually, due primarily to lower costs for prison operations.⁵
- Counties will see an additional savings of \$50 million annually due to lower jail costs.
- There would be one-time avoidance of capital outlay costs of between \$450 million and \$550 million in the long term, due to the fact that the state would also be able to delay the construction of additional prison beds.

Proposition 36 facts, implementation:

- Between July 1st and October 31st 2001, California's prison population decreased by 2,400.
- As of the end of August 2001, approximately 2,300 clients participated in services offered by Proposition 36.⁶
- 140 parolees per week are being referred to substance abuse treatment through Proposition 36, which is on track to meet the projected number of 7,200 parolees over the course of the entire year.
- Statewide, probationers are on track to meet the projected number of referrals.

⁴ California Legislative Analyst's Office, *Fiscal Effect of "The California Safety and Crime Prevention Act of 2000"* [sic] (1999) <<http://www.drugreform.org/laoreport.tp>>

⁴ UCSF study by Dan Vencill and Zagros Sadjadi

⁵ *Fiscal Effect of "The California Safety and Crime Prevention Act of 2000"*

⁶ California Alcohol and Drug Data System, July 1, 2001 through August 31, 2001, Produced by Department of Drug and Alcohol Programs