

CALIFORNIA

▶▶ **GENERAL ELECTION**

TUESDAY, NOVEMBER 7, 2000

▶▶ **QUICK REFERENCE**

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OFFICIAL VOTER INFORMATION GUIDE



CERTIFICATE OF CORRECTNESS

I, Bill Jones, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 7, 2000, and that this pamphlet has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 14th day of August, 2000.

Bill Jones
Secretary of State

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CONTENTS

PROP

PAGE

Introduction		
Quick Reference Pullout Guide		
BOND ACT		
32	Veterans' Bond Act of 2000.	4-7
LEGISLATIVE CONSTITUTIONAL AMENDMENT		
33	Legislature. Participation in Public Employees' Retirement System. Legislative Constitutional Amendment.	8-11
LEGISLATIVE INITIATIVE AMENDMENT		
34	Campaign Contributions and Spending. Limits. Disclosure. Legislative Initiative Amendment.	12-17
INITIATIVE CONSTITUTIONAL AMENDMENTS AND STATUTES		
35	Public Works Projects. Use of Private Contractors for Engineering and Architectural Services. Initiative Constitutional Amendment and Statute.	18-21
36	Drugs. Probation and Treatment Program. Initiative Statute.	22-27
37	Fees. Vote Requirements. Taxes. Initiative Constitutional Amendment.	28-31
38	School Vouchers. State-Funded Private and Religious Education. Public School Funding. Initiative Constitutional Amendment.	32-37
39	School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements. Initiative Constitutional Amendment and Statute.	38-41
An Overview of State Bond Debt		42
Voter Information Pages		43-53
Text of the Proposed Laws		54-74

THE GREAT SEAL OF CALIFORNIA



Throughout this Voter Information Guide, you will see elements of and illustrations from the Great Seal of California. The design for the Great Seal was adopted at the Constitutional Convention of 1849. Under thirty-one stars, Minerva, Roman goddess of arts, sciences, and wisdom in war and peace, keeps watch over a tableau depicting industry, commerce, agriculture, and the grandeur of nature. Like the political birth of our State, Minerva was born full grown from the brain of Jupiter, father of the gods and guardian of law and order. The grizzly bear at her feet, independent and formidable, symbolizes California. As part of his official constitutional duties, the Secretary of State is the custodian of the Great Seal.

Ballot Measure Summary

PROPOSITION

36

DRUGS. PROBATION
AND TREATMENT PROGRAM.

INITIATIVE STATUTE.

Put on the Ballot by Petition Signatures.

SUMMARY

Requires probation and drug treatment, not incarceration, for possession, use, transportation of controlled substances and similar parole violations, except sale or manufacture. Authorizes dismissal of charges after completion of treatment. Fiscal Impact: Net annual savings of \$100 million to \$150 million to the state and about \$40 million to local governments. Potential avoidance of one-time capital outlay costs to the state of \$450 million to \$550 million.

WHAT YOUR VOTE MEANS

YES

A **YES** vote on this measure means: Adult offenders convicted of being under the influence of illegal drugs or using, transporting, or possessing illegal drugs for personal use would generally be sentenced to probation and drug treatment.

NO

A **NO** vote on this measure means: Adult offenders convicted of being under the influence of illegal drugs or using, transporting, or possessing illegal drugs would generally continue to be sentenced to prison, jail, or probation. There would be no requirement that they be sentenced to drug treatment.

ARGUMENTS

PRO

The war on drugs has failed. Nonviolent drug users are overcrowding our jails. Violent criminals are being released early. Drug treatment programs are rarely available. We pay \$25,000 annually for prisoners when treatment costs only \$4,000. Expanded treatment programs will reduce crime, save lives, and save taxpayers hundreds of millions.

CON

Proposition 36 prohibits jail for persons convicted of using heroin, crack, PCP and other illegal drugs, or for possessing "date rape" drugs—even those with prior convictions for rape, child molesting and other violent crimes. Proposition 36 has no regulatory safeguards, cripples legitimate treatment, invites fraud and endangers public safety.

FOR ADDITIONAL INFORMATION

FOR

California Campaign for New Drug Policies

(310) 394-2952
www.drugreform.org

AGAINST

Californians United Against Drug Abuse/Sponsored by Law Enforcement, Drug Treatment Professionals, Healthcare, Crime Victims and Taxpayers—No on 36.
455 Capitol Mall, Suite 801
Sacramento, CA 95814

1-800-995-3221
www.noonprop36.com

PROPOSITION

37

FEEES. VOTE REQUIREMENTS. TAXES.

INITIATIVE CONSTITUTIONAL AMENDMENT.

Put on the Ballot by Petition Signatures.

SUMMARY

Requires two-thirds vote of State Legislature, majority or two-thirds of local electorate to impose future state, local fees on activity to study or mitigate its environmental, societal or economic effects. Defines such fees as taxes except property, development, certain other fees. Fiscal Impact: Unknown, potentially significant, reduction in future state and local government revenues from making it more difficult to approve certain regulatory charges.

WHAT YOUR VOTE MEANS

YES

A **YES** vote on this measure means: Government actions to establish certain regulatory charges would require approval by a greater number of legislators or local voters.

NO

A **NO** vote on this measure means: Current laws and constitutional requirements regarding regulatory charges would not be changed.

ARGUMENTS

PRO

The California Taxpayers Association urges you to vote **Yes** on Proposition 37 to stop hidden taxes on food, gasoline, utilities and other necessities. Proposition 37 makes politicians accountable to taxpayers by requiring a vote of the people or a 2/3 vote of the Legislature to enact these hidden taxes.

CON

Proposition 37 *protects polluters and shifts their costs to taxpayers*. The oil and tobacco lobbies who paid for Prop. 37 want you to pay for the pollution and sickness they cause. *American Cancer Society, League of Women Voters, Sierra Club and California Tax Reform Association say: No on 37!*

FOR ADDITIONAL INFORMATION

FOR

Californians Against Hidden Taxes

591 Redwood Hwy., Suite 4000
Mill Valley, CA 94941
(916) 448-4266
info@yesonprop37.org
www.yesonprop37.org

AGAINST

Doug Linney
Taxpayers Against Polluter Protection

1904 Franklin Street, Suite 909
Oakland, CA 94612
(510) 444-4793
info@polluterprotection.com
www.polluterprotection.com

36 DRUGS. PROBATION AND TREATMENT PROGRAM. Initiative Statute.

Official Title and Summary Prepared by the Attorney General

DRUGS. PROBATION AND TREATMENT PROGRAM.

Initiative Statute.

- Requires probation and drug treatment program, not incarceration, for conviction of possession, use, transportation for personal use or being under influence of controlled substances and similar parole violations, not including sale or manufacture.
- Permits additional probation conditions except incarceration.
- Authorizes dismissal of charges when treatment completed, but requires disclosure of arrest and conviction to law enforcement and for candidates, peace officers, licensure, lottery contractors, jury service; prohibits using conviction to deny employment, benefits, or license.
- Appropriates treatment funds through 2005–2006; prohibits use of these funds to supplant existing programs or for drug testing.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Net savings to the state of between \$100 million and \$150 million annually, within several years of implementation.
- Potential one-time avoidance of capital outlay costs to the state of between \$450 million and \$550 million in the long term.
- Net savings to local government of about \$40 million annually, within several years of implementation.

OVERVIEW

This measure changes state law so that certain adult offenders who use or possess illegal drugs would receive drug treatment and supervision in the community, rather than being sent to prison or jail or supervised in the community, generally without drug treatment. The measure also provides state funds to counties to operate the drug treatment programs.

The most significant provisions of the measure and their fiscal effects are discussed below.

BACKGROUND

Three Types of Crimes. Under current state law, there are three kinds of crimes: felonies, misdemeanors, and infractions.

A felony is the most severe type of crime and can result in a sentence in state prison or county jail, a fine, or supervision on county probation in the community. Current law classifies some felonies as “violent” or “serious.” The state’s “Three Strikes and You’re Out” law provides longer prison sentences, in some cases 25 years to life, for offenders who have prior convictions for violent or serious felonies.

Misdemeanors are considered less serious and can result in a jail term, probation, a fine, or release to the community without probation but with certain conditions imposed by the court. Infractions, which include violations of certain traffic laws, cannot result in a prison or jail sentence.

Drug Offenses. State law generally makes it a crime to possess, use, or be under the influence of certain drugs, including marijuana, cocaine, heroin, and methamphetamine.

Some drug-related offenses are classified as felonies and some as misdemeanors. Whether a drug-related crime is classified as a felony or misdemeanor, as well as the punishment imposed upon conviction, depends primarily upon the specific substance found to be in the possession of an offender. Drug offenses are not classified by law as violent or serious offenses.

State law generally provides more severe punishment for offenders convicted of possessing illegal drugs for sale rather than for their own personal use.

Probation Violators. With some exceptions, an offender convicted of drug use or possession can be sentenced to county probation supervision in the community instead of jail or prison, or to probation supervision after a term in jail. A probationer found to have committed a new crime while on probation such as using or possessing an illegal drug, or who violated any condition of probation, could be sent to state prison or county jail by the courts.

Parole Violators. After release from prison, an offender imprisoned for felony drug possession is subject to up to three years of state parole supervision in the

community. A parolee who commits a new crime, such as using or possessing an illegal drug, could be returned to prison by the courts based on new criminal charges, or by the administrative action of the Board of Prison Terms based on a finding of a parole violation.

PROPOSAL

Drug Offenders Convicted in Court

Changes in Sentencing Law. Under this proposition, effective July 1, 2001, an offender convicted of a “nonviolent drug possession offense” would generally be sentenced to probation, instead of state prison, county jail, or probation without drug treatment. As a condition of probation, the offender would be required to complete a drug treatment program.

The measure defines a nonviolent drug possession offense as a felony or misdemeanor criminal charge for being under the influence of illegal drugs or for possessing, using, or transporting illegal drugs for personal use. The definition excludes cases involving possessing for sale, producing, or manufacturing of illegal drugs.

Offenders convicted of nonviolent drug possession offenses would be sentenced by the court for up to one year of drug treatment in the community and up to six additional months of follow-up care. The drug treatment programs must be licensed and certified by the state and could include various types of treatment methods, including residential and outpatient services and replacement of narcotics with medications, such as methadone. A court could require offenders to participate in vocational training, family counseling, literacy training or community service, and could impose other probation conditions. The measure requires that offenders who are reasonably able to do so help pay for their own drug treatment.

Some Offenders Excluded. This measure specifies that certain offenders would be excluded from its provisions and thus could be sentenced by a court to a state prison, county jail, or probation without drug treatment. This would be the case for an offender who refused drug treatment, or who possessed or was under the influence of certain (although not all) illegal drugs while using a firearm. This measure also excludes offenders convicted in the same court proceeding of a misdemeanor unrelated to drug use or any felony other than a nonviolent drug possession offense. Also, an offender who had two or more times failed the drug treatment programs required under this measure, and who was found by the court to be “unamenable” to any form of drug treatment, would be sentenced to 30 days in county jail.

In addition, offenders with one or more violent or serious felonies on their record, and thus subject to longer prison sentences under the Three Strikes law,

would not be sentenced under this measure to probation and drug treatment, unless certain conditions existed. Specifically, during the five years before he or she committed a nonviolent drug possession offense, the offender (1) had not been in prison, (2) had not been convicted of a felony (other than nonviolent drug possession), and (3) had not been convicted of any misdemeanor involving injury or threat of injury to another person.

Court Petitions. An offender placed on probation who successfully completes drug treatment and complies with his or her probation conditions could petition the court to dismiss the charges and to have that arrest considered, with some exceptions, to have never occurred.

Sanctions. An offender sentenced by a court to participate in and complete a drug treatment program under this measure would only be subject to certain sanctions if it were determined that he or she was unamenable to treatment or had violated a condition of probation. The sanctions could include being moved to an alternative or more intensive form of drug treatment, revocation of probation, and incarceration in prison or jail. In some cases involving repeat drug-related violations, return to prison or jail would be mandatory.

Parole Violators

Changes in Parole Revocation. Under this proposition, effective July 1, 2001, a parole violator found to have committed a nonviolent drug possession offense or to have violated any drug-related condition of parole would generally be required to complete a drug treatment program in the community, instead of being returned to state prison. The Board of Prison Terms could require parole violators to participate in and complete up to one year of drug treatment and up to six additional months of follow-up care.

Parolees could also be required to participate in vocational training, family counseling, or literacy training. Parolees reasonably able to do so could be required to help pay for their own drug treatment.

Some Parole Violators Excluded. Under the measure, the Board of Prison Terms could continue to send to prison any parole violator who refused drug treatment, or had been convicted of a violent or serious felony. The measure also excludes parole violators who committed a misdemeanor unrelated to the use of drugs or any felony at the same time as a nonviolent drug possession offense.

Court Petitions. Unlike drug offenders placed on probation by the courts, parolees would not be eligible under this measure to submit petitions for dismissal of the charges or to have their arrest considered to have never occurred.

Sanctions. Parolees who fail to comply with their drug treatment requirements or violate their conditions of parole would only be subject to sanctions similar to those for drug offenders on probation, including modification of their drug treatment program or revocation of parole and return to state prison.

Other Provisions

The measure provides state funds to counties to implement the measure and requires a study of its effectiveness and fiscal impact. County governments would be directed to report specified information on the implementation and effectiveness of the drug treatment programs to the state, and their expenditures would be subject to audits by the state.

FISCAL EFFECT

This measure would have significant fiscal effects upon both state and local governments. The major effects are discussed below.

Individual Fiscal Components

State Prison System. This measure would result in savings to the state prison system. This is because as many as 24,000 nonviolent drug possession offenders per year would be diverted to drug treatment in the community instead of being sent to state prison. Because many of these offenders would otherwise have served only a few months in prison, we estimate as many as 11,000 fewer prison beds would be needed at any given time. Consequently, state prison operating costs would be reduced by between \$200 million to \$250 million annually within several years after implementation of this measure.

The estimate reflects a range of potential savings because of (1) differences in how counties would implement the measure and the effectiveness of the treatment programs they would establish, (2) possible changes in the way prosecutors and judges handle drug cases, such as changes in plea bargaining practices, and (3) uncertainty about the number of Three Strikes cases affected by the measure. These savings would be partly offset to the extent that the offenders diverted to the community under this measure later commit additional crimes that result in their commitment to state prison.

Assuming that growth in the inmate population would have otherwise continued, the state would also be able to delay the construction of additional prison beds as a result of this measure. This would result in a one-time avoidance of capital outlay costs of between \$450 million and \$550 million in the long term.

State Parole System. This measure would divert a significant number of offenders from entering state custody as prison inmates. Thus, fewer offenders would eventually be released from state prison to state parole supervision, resulting in a savings to the state. We estimate that the initiative would result in a net caseload reduction of as many as 9,500 parolees and a net state savings of up to \$25 million annually for parole operations.

County Jails. We estimate that the provisions in this measure barring jail terms for nonviolent drug possession offenses would divert about 12,000 eligible offenders annually from jail sentences to probation supervision and drug treatment in the community. This would result in about \$40 million annual net savings to county

governments on a statewide basis, within several years after implementation of the measure. These savings would decline to the extent that jail beds no longer needed for drug possession offenders were used for other criminals who are now being released early because of a lack of jail space.

Treatment Trust Fund. This measure appropriates \$60 million from the state General Fund for the 2000–01 fiscal year, and \$120 million each year thereafter concluding with the 2005–06 fiscal year, to a Substance Abuse Treatment Trust Fund. After 2005–06, funding contributions from the General Fund to the trust fund would be decided annually by the Legislature and Governor.

The money placed in the trust fund would be allocated each year to county governments to offset their costs of implementing this measure, including increased probation caseloads, substance abuse treatment, court monitoring of probationers, vocational training, family counseling, literacy training, and compliance with the state reporting requirements. None of the money could be used for drug testing of offenders.

Fees Paid by Offenders. This measure authorizes the courts and the Board of Prison Terms to require eligible offenders to contribute to the cost of their drug treatment programs. The amount of revenues generated from charging such fees to offenders is unknown but would probably amount to several million dollars annually on a statewide basis within several years after implementation of the measure.

Trial Court Impacts. This measure would probably result in significant ongoing annual savings for the court system because fewer offenders facing nonviolent drug possession charges would contest those charges at trial. The combined savings to the state and county governments for trial court, prosecution, and indigent defense counsel costs would probably amount to several million dollars annually on a statewide basis within several years after implementation of the measure. However, the savings to the state could be offset by an unknown, but probably small, amount for additional court costs to monitor treatment compliance by diverted offenders.

Other Drug Treatment Effects. To the extent that the additional drug treatment services provided under this measure are effective in reducing substance abuse, state and local governments could experience savings for

health care, public assistance, and law enforcement programs. The amount of such potential savings is unknown.

Summary of Fiscal Effects

This measure is likely to result in net savings to the state after several years of between \$100 million and \$150 million annually due primarily to lower costs for prison operations. Assuming inmate population growth would have otherwise continued, the state would also be able to delay the construction of additional prison beds for a one-time avoidance of capital outlay costs of between \$450 million and \$550 million in the long term. Counties would probably experience net savings of about \$40 million annually due primarily to a lower jail population.

A summary of the fiscal effects of the measure is shown in Figure 1.

Figure 1
Proposition 36
Summary of Fiscal Effects of Major Provisions^a

	State	Local
Substance Abuse Treatment Trust Fund Appropriation	\$120 million annual costs.	—
Prison operations	\$200 million to \$250 million annual savings.	—
Prison construction	\$450 million to \$550 million one-time cost avoidance.	—
Parole operations	\$25 million annual savings.	—
Jail operations	—	\$40 million annual savings statewide.
Fees paid by offenders	—	Potentially several million dollars in annual revenues statewide.
Trial courts, prosecution, public defense	Potentially several million dollars in annual savings.	Potentially several million dollars in annual savings statewide.
Total Fiscal Impact	\$100 million to \$150 million annual net savings; \$450 million to \$550 million one-time cost avoidance.	About \$40 million in annual net savings statewide.

^a Within several years after implementation of the measure.

Argument in Favor of Proposition 36

If Proposition 36 passes, nonviolent drug offenders convicted for the first or second time after 7/1/2001, will get mandatory, court-supervised, treatment instead of jail.

California prisons are overcrowded. We don't want violent criminals to be released early to make room for nonviolent drug users. We must keep violent criminals behind bars, and try a different approach with nonviolent drug users.

Proposition 36 is strictly limited. It only affects those guilty of simple drug possession. If previously convicted of violent or serious felonies, they will not be eligible for the treatment program unless they've served their time and have committed no felony crimes for five years. If convicted of a non-drug crime along with drug possession, they're not eligible. If they're convicted of selling drugs, they're not eligible.

Treatment under Proposition 36 is not a free ride. The rules are strict. For example, if an offender commits a non-drug crime, or demonstrates that treatment isn't working by repeatedly testing positive for drug use, the offender can be jailed for one to three years.

Besides drug treatment, judges can also order job training, literacy training and family counseling. The idea is to turn addicts into productive citizens, so they pay taxes and stop committing crimes to support their habits.

This is smart drug policy. A California governmental study showed that taxpayers save \$7 for every \$1 invested in drug treatment. The state's impartial Legislative Analyst says Proposition 36 can save California hundreds of millions of dollars a year, even after spending \$120 million annually on treatment programs.

In 1996, Arizona voters passed a similar initiative. Their Supreme Court reported millions of dollars in savings and a

remarkable success rate in treating drug users during the first two years. More recently, New York State decided to implement a similar program.

Proposition 36 is a safe, smart alternative to the failed drug war. It is supported by prominent Democrats and Republicans, major newspapers, and the California Society of Addiction Medicine. Some law enforcement officers and organizations also support Proposition 36. It is opposed by the prison guards union and law enforcement groups that want to spend even more money on failed drug policies we've had for 25 years.

Proposition 36 only affects simple drug possession. No other criminal laws are changed. Right now there are 19,300 people in California prisons for this offense. We're paying \$24,000 per year for each of them. When they get out, many will return to drugs and crime. Treatment costs about \$4,000, and while it doesn't help every drug user, it does reduce future crime more effectively than prison.

Proposition 36 is not radical. It gives eligible drug users the opportunity for treatment. If they fail, or break the rules, they can go to jail. Those who can afford to pay for treatment can be forced to do so. If they are convicted of a violent or serious felony or are dealing drugs, they won't be eligible. Treatment instead of jail works in Arizona and will work in California.

PETER BANYS, *President*
California Society of Addiction Medicine
RICHARD POLANCO, *Majority Leader*
California State Senate
KAY McVAY, *President*
California Nurses Association

Rebuttal to Argument in Favor of Proposition 36

Supporters of Proposition 36 say a similar initiative in Arizona is a "proven success." In fact, it has created a nightmare.

Because drug offenders now realize there are no consequences for failing or refusing treatment, many are thumbing their noses at the court and continuing to abuse drugs.

As a result, treatment is less effective and our drug problems are getting worse.

RICHARD M. ROMLEY, *Maricopa County District Attorney*,
State of Arizona

Proposition 36 is not limited to "nonviolent" drug users.

Persons convicted of possessing "date rape" drugs can remain on the street under Proposition 36—even those with prior convictions for sex crimes like rape and child molesting.

Proposition 36 also lets drug abusers with a history of criminal violence remain free, including those with prior convictions for murder, child abuse, assault and other violent crimes.

Under Proposition 36, they cannot be sent to jail, no matter how violent their criminal history.

ROBERT NALETT, *Vice President*
California Sexual Assault Investigators Association

Proposition 36 doesn't provide "court-supervised" drug treatment.

It ties the hands of judges, hurts legitimate treatment and effectively decriminalizes heroin, methamphetamine and other illegal drugs.

Proposition 36 includes no licensing or accountability guidelines—inviting unregulated, ineffective treatment by unqualified operators.

It cripples California's successful drug courts, which provide effective treatment under court supervision—helping drug abusers and saving taxpayers an estimated \$10 for every dollar invested.

Drug courts hold drug abusers accountable with regular drug testing and consequences for failing treatment—accountability not found in Proposition 36.

STEPHEN V. MANLEY, *President*
California Association of Drug Court Professionals

Argument Against Proposition 36

Decriminalizes Heroin and Other Hard Drugs

Proposition 36 effectively decriminalizes heroin, crack cocaine, PCP, methamphetamine, “date rape” drugs and many other illegal substances—the hard drugs behind most child abuse, domestic violence, sexual attacks and other violent and theft-related crimes in California.

Instead of offering a real solution to drug abuse, it gives up the fight.

This dangerous and misleading initiative pretends to offer a new approach to drug treatment. In fact, it hurts legitimate drug treatment programs that work—like California’s highly successful drug courts.

Proposition 36 wasn’t written by drug treatment experts. It was written by a criminal defense lawyer and funded by three wealthy out-of-state backers whose ultimate goal is to legalize drugs.

Puts Potentially Violent Drug Abusers on the Street

Proponents claim Proposition 36 deals only with non-violent drug users. In reality, it will allow an estimated 37,000 felony drug abusers to remain on our streets every year—many of them addicted to drugs that often ignite violent criminal behavior.

Even drug abusers with long histories of drug dealing, parole violations and prior felonies would escape jail. Instead, they would be diverted into “treatment” programs. But the initiative includes no safeguards or licensing guidelines to ensure these programs are effective. This opens the door to fraud, abuse and “fly-by-night” half-way houses run by people interested in money, not results. Programs offering nothing more than cassette tapes or Internet “chat rooms” could qualify for tax money.

Weakens the Law Against “Date Rape” Drugs

If Proposition 36 becomes law, serial rapists, child molesters and other sex offenders convicted of possessing “date rape”

drugs could escape jail or prison. Instead, they would be given treatment.

Proposition 36 also prevents prison or jail for persons convicted of possessing illegal drugs while armed with loaded firearms, or of abusing drugs while on parole.

Proposition 36 forces employers to keep drug abusers on the job, making it easier for drug abusers to continue working as teachers, school bus drivers, even airline pilots.

Proposition 36 promises to save tax money, but former California Director of Finance Jesse Huff warns the “ultimate cost of this initiative is far higher than its promised savings. It commits taxpayers to spending \$660 million and contains millions of dollars in hidden costs for law enforcement, probation and court expenses.”

Proposition 36 spends \$660 million in tax money, but prohibits any of this money from being used for drug testing. Testing is vital because it holds drug abusers accountable during treatment. Without testing, there is no way to prove treatment is working.

Sends the Wrong Message to Our Kids

Proposition 36 tells our children there are no longer any real consequences for using illegal drugs like heroin and cocaine. It sends the same message to hardcore drug abusers.

Don’t be fooled. This dangerous and misleading initiative threatens public safety and hurts our ability to help drug abusers conquer their addictions with treatment programs that really work.

JOHN T. SCHWARZLOSE, *President*

Betty Ford Center

ALAN M. CROGAN, *President*

Chief Probation Officers of California

THOMAS J. ORLOFF, *President*

California District Attorneys Association

Rebuttal to Argument Against Proposition 36

Opponents think the war on drugs is working. They want to spend even more money on this failed policy. So they’re distorting Proposition 36.

They claim it “decriminalizes” drugs. Not true. Possession of illegal drugs remains a felony, but for the first two convictions, the punishment is treatment, not prison.

Opponents claim Proposition 36 hurts drug courts. Not true. California’s drug courts will continue, but they serve less than 5% of drug offenders.

Opponents claim drug offenders with loaded firearms will only get treatment. Not true. Carrying concealed weapons is a separate crime for which one can be jailed.

They claim offenders in treatment won’t be drug tested. Not true. Judges can order testing and require offenders to pay for it and their treatment.

Opponents claim treatment programs will be “fly-by-night.” Not true. Proposition 36 requires all programs to be licensed.

They try to scare you by saying sex offenders with “date rape” drugs benefit from this initiative. Not true. Only drug

possession “for personal use” qualifies; using drugs to enable rape is not “personal use.”

Opponents argue that drug users must be kept on the job, including airline pilots and bus drivers. Ridiculous. Nothing in Proposition 36 prevents anyone from being fired for a drug offense, or from being fired for failing a drug test.

Opponents say the initiative has “hidden costs,” but the impartial Legislative Analyst says the initiative will generate huge savings, after treatment programs are paid for. You decide who’s right.

Vote YES on Proposition 36.

MAXINE WATERS

Member of U.S. Congress

PETER BANYS, *President*

California Society of Addiction Medicine

TIM SINNOTT, *President*

California Association of Alcoholism and Drug Abuse Counselors

4529.17. *The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

4529.18. *If any act of the Legislature conflicts with the provisions of this act, this act shall prevail.*

4529.19. *This act shall be liberally construed to accomplish its purposes.*

4529.20. *This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.*

SEC. 5. This initiative may be amended to further its purposes by statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor.

SEC. 6. If there is a conflicting initiative measure on the same ballot, which addresses and seeks to comprehensively regulate the same subject, only the provisions of this measure shall become operative if this measure receives the highest affirmative vote.

Proposition 36: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code and the Penal Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000

SECTION 1. Title

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

SEC. 2. Findings and Declarations

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

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

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

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

SEC. 3. Purpose and Intent

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

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

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

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

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

1210. Definitions

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code:

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

(b) *The term "drug treatment program" or "drug treatment" means a licensed and/or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.*

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

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

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

1210.1. Possession of Controlled Substances; Probation; Exceptions

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

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

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

(b) *Subdivision (a) does not apply to either of the following:*

(1) *Any defendant who previously has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in (A) a felony conviction other than a nonviolent drug possession offense, or (B) a*

misdemeanor conviction involving physical injury or the threat of physical injury to another person.

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

(3) Any defendant who:

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

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

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

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

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

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

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment, the probation department may move to revoke probation. At the revocation hearing, unless the defendant proves by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable, the court may revoke probation.

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

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

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

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

(3) Except as provided below, after an indictment or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her

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

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

(e) Violation of probation

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

(2) Non-drug-related probation violations

If a defendant receives probation under subdivision (a), and violates that probation either by being arrested for an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

(3) Drug-related probation violations

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

(B) If a defendant receives probation under subdivision (a), and for the second time violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

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

(D) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall

revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

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

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

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

3063.1. Possession of Controlled Substances; Parole; Exceptions

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating any drug-related condition of parole.

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

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

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

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

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

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

(c) Within seven days of a finding that the parolee has either committed a nonviolent drug possession offense or violated any drug-related condition of parole, the Parole Authority shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare a drug treatment plan and forward it to the Parole Authority and to the California Department of Corrections Parole Division agent responsible for supervising the parolee. On a quarterly basis after the parolee begins drug treatment, the treatment provider shall prepare and forward a progress report to these entities and individuals.

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

(2) If at any point during the course of drug treatment the treatment provider notifies the Parole Authority that the parolee is unamenable to the drug treatment provided and all other forms of

drug treatment, the Parole Authority may act to revoke parole. At the revocation hearing, parole may be revoked unless the parolee proves by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable.

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

(d) Violation of parole

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

(2) Non-drug-related parole violations

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

(3) Drug-related parole violations

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

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

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

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

SEC. 7. Division 10.8 (commencing with Section 11999.4) is added to the Health and Safety Code, to read:

DIVISION 10.8. SUBSTANCE ABUSE TREATMENT FUNDING

11999.4. Establishment of the Substance Abuse Treatment Trust Fund

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

11999.5. Funding Appropriation

Upon passage of this act, \$60,000,000 shall be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2000–01 fiscal year. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional \$120,000,000 for the 2001–02 fiscal year, and an additional sum of \$120,000,000 for each such subsequent fiscal year concluding with the 2005–06 fiscal year. These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each of these specified fiscal years. Funds transferred to the Substance Abuse Treatment Trust Fund are not subject to annual appropriation by the Legislature and may be used without a time limit. Nothing in this section precludes additional appropriations by the Legislature to the Substance Abuse Treatment Trust Fund.

11999.6. Distribution of Monies from Substance Abuse Treatment Trust Fund

Monies deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing persons in and providing (a) drug treatment programs under this act, and (b) vocational training, family counseling and literacy training under this act. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this act other than drug testing services of any kind. Such monies shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this act. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department has determined that demand for drug treatment services is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment.

11999.7. Local Government Authority to Control Location of Drug Treatment Programs

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

11999.8. Surplus Funds

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

11999.9. Annual Evaluation Process

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

11999.10. Outside Evaluation Process

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

11999.11. County Reports

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

11999.12. Audit of Expenditures

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

11999.13. Excess Funds

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

SEC. 8. Effective Date

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

SEC. 9. Amendment

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

SEC. 10. Severability

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

Proposition 37: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW**Two-Thirds Vote Preservation Act of 2000****SECTION 1. Title**

This measure shall be known and may be cited as the "Two-Thirds Vote Preservation Act of 2000."

SECTION 2. Findings and Declaration of Purpose

The People of the State of California find and declare that:

(a) Article XIII A, Section 3, of the California Constitution prohibits the California Legislature from imposing a state tax without approval by a two-thirds vote of the members of each house.

(b) Article XIII C, Section 2, subdivisions (b) and (d), of the California Constitution prohibit local governments from imposing a general tax without approval by a majority vote of the people or a special tax without approval by a two-thirds vote of the people.

(c) These vote requirements do not apply to the imposition of legitimate fees.

(d) There have been increasing attempts by the state and local governments to disguise new taxes as fees in order to avoid the vote requirements.