



The Florida Drug Treatment Initiative

The Florida Drug Treatment Initiative is a proposed constitutional amendment expected to be placed before Florida voters on the November 2002 ballot. The measure, sponsored by the Florida Campaign for New Drug Policies, is also known by its official title: “Right to Treatment and Rehabilitation for Nonviolent Drug Offenses.” In summary, the measure:

Offers treatment to first and second-time drug possession offenders.

A person charged with or convicted of drug possession may elect to receive drug treatment and rehabilitation services in lieu of being prosecuted or sentenced. The measure screens out persons dealing drugs, committing other crimes along with drug possession, or with a violent history. Treatment may also be requested by persons on third or subsequent offenses, with the court having discretion on whether to offer the alternative sentence. Finally, a person may reject treatment and face sentencing under existing law.

Provides for professional assessment and placement in treatment.

A qualified treatment professional will be appointed by the court to assess each individual’s treatment needs and to determine the appropriate course of treatment, which may last for up to 18 months under court supervision. Treatment is defined broadly in the initiative to include additional vocational training, literacy training, and other support services.

Details procedures for different stages of treatment. A qualified treatment professional recommends methods of monitoring progress for each offender. The measure outlines progressive steps for modifying a person’s treatment program or removing the person from treatment in response to violations. The measure provides benefits including dismissal of criminal charges for completion of treatment. A person who is removed from treatment by the court faces prosecution or sentencing under pre-existing criminal laws.

Provides for legislative implementation. Because the initiative is a brief constitutional amendment, the Legislature is given a role in more fully detailing how the system will operate through implementing legislation.



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Treatment Monitoring, Sanctions and Consequences

The Florida Drug Treatment Initiative offers court-supervised treatment to people arrested for or convicted of drug possession or use. Because people enter treatment through the criminal justice system, there is an ever-present threat that a person in treatment under the initiative will face the ultimate consequence for violating the terms of the treatment program — removal from treatment and jail or prison time.

The length of the treatment program required of each offender will be determined by a treatment professional who has evaluated the person's history of substance abuse and has recommended a course of treatment. Studies indicate that three to 12 months' worth of treatment yields the best results, but a person may be required to attend up to 18 months' worth of treatment under the terms of the initiative.

How will drug offenders in treatment be monitored?

At the same time a qualified treatment professional recommends a treatment plan for each individual, he or she must recommend methods of monitoring the individual's progress while in treatment [Initiative section (c)]. Typically this will include regular drug testing, progress reports by counselors, and other kinds of evaluations. The judge sentencing the offender may also impose conditions of probation, and may require regular court appearances to check up on the individual.

What kinds of sanctions can be imposed by a judge when an offender slips up in treatment?

A wide range of sanctions is available to a judge supervising a drug offender in treatment. Typically in court-supervised treatment today, an offender who tests positive for drug use or fails to attend required sessions can have the frequency of drug tests increased, can be required to perform community service or come to court more regularly, or can be transferred to a new, more intensive treatment program, including a residential program. All of these

sanctions, and others, will be available to judges supervising drug offenders in treatment after passage of the initiative.

A person can also be transferred to a new treatment program if there are problems in the initial program, including violations of treatment program rules [Initiative section (d)]. Often the court will order such a person to complete a more intensive program in response to the violation or violations.

What is the ultimate consequence for failure in treatment?

After a judge has tried two or more treatment programs for a drug offender, violations of the program can result in removal from treatment and a jail or prison sentence. The court determines when it is necessary to take such a step. Section (d) of the initiative states: Any individual removed from appropriate treatment who has been convicted of the drug possession offense may be sentenced for the offense without regard to this section.

In other words, pre-existing criminal laws of Florida may be used to sentence the person to a term in jail or prison. Depending on the nature of the offense and any prior record, a person facing drug possession charges could be sentenced to up to five years behind bars after failing treatment.

When does treatment end if the person does not fail?

Most people ordered into treatment under the Florida Drug Treatment Initiative will be required to complete between three and 12 months in a program. Treatment ends when the court receives notice that the person has reached successful completion of the prescribed course of treatment. At that point, the court will dismiss proceedings against the person and he or she will be released from all obligations imposed by the court.



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How many people will the Florida Drug Treatment Initiative affect?

It is estimated that 10,000 Florida citizens will receive drug treatment instead of being incarcerated *each year* if the initiative is enacted by voters.¹

How does Florida deal with drug possession offenders now?

In calendar year 2000, Florida law enforcement officers made nearly 100,000 arrests of adults for drug possession.² Of these, almost 36,000 were for a felony charge of possessing hard drugs like cocaine and heroin.³

In fiscal year 2000,⁴ more than 20,000 people were convicted on felony possession charges. Of these:

- 84 percent had no criminal history of violence⁵
- 47 percent were sentenced to jail or prison⁶
- more than half were granted probation, often without any certified or court-monitored drug treatment program⁷

¹ In fiscal year 2000, at least 10,184 people were given a sentence of incarceration in Florida on a charge of drug possession. The Florida Department of Corrections reports that 7,828 drug possession offenders were given a jail sentence, while 2,356 entered state prison, in fiscal year 2000. The figures for jail sentences are known to be low estimates. See notes 5-7 below for details.

² Estimated number of possession arrests in Florida in 2000 was 97,505. Data reported by the Florida Department of Law Enforcement, in *Crime in Florida: 2000 Uniform Crime Report*, indicate there were 116,912 “drug arrests” in calendar year 2000, including arrests for drug offenses more serious than possession. The FBI estimates that in Florida (and other Southern states), 83.4 percent of drug arrests are for possession (in *Crime in the United States – 1999*).

³ *Ibid.* Estimate by FBI of all drug arrests in Florida that were for hard-drug possession, a felony, is 30.6 percent, or 35,775 arrests. In Florida, “purchase” of drugs for personal use is also a crime – this is considered a possession offense for purposes of this chart.

⁴ Fiscal year 2000 was July 1, 1999 – June 30, 2000.

⁵ Florida Department of Corrections, Bureau of Research and Data Analysis, “Number of Prior Violent Offenses: Offenders Sentenced for a Drug Possession or Purchase Offense,” May 24, 2001.

⁶ *Ibid.* At least 10,184 people were given a prison or jail sentence for drug possession, out of 21,547 people for whom sentences were recorded, for a total of 47 percent. Of these, 7,828 received a jail sentence, while Department of Corrections admissions data indicate 2,356 entered prison. Note: The authors warn that jail data are incomplete, representing about 70 percent of all cases, due to under-reporting by the counties. The actual number is certainly higher.

⁷ *Ibid.* Actual figures were 11,272 granted probation out of 21,547 separate offenders tracked. Probation with drug treatment, such as in a drug court setting, is available to a small portion of offenders.

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1 **TITLE:** Right to Treatment and Rehabilitation for Nonviolent Drug Offenses
2

3 **SUMMARY:** Individuals charged or convicted of possessing or purchasing controlled
4 substances or drug paraphernalia may elect appropriate treatment as defined,
5 instead of sentencing or incarceration, for first two offenses; discretionary with court
6 thereafter. Excludes individuals committing serious crimes in same episode or
7 convicted or in prison for violent crimes in past five years. Individual unamenable to
8 treatment may be prosecuted or sentenced. Upon successful completion or eighteen
9 months in treatment, no prosecution or sentencing. Legislative implementation.
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11
12 **TEXT:**

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14 Article I, Section 26, Florida Constitution, is hereby created to read as follows:
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16 Right to Treatment and Rehabilitation 17

18 (a) Any individual charged with or convicted of illegally possessing or
19 purchasing a controlled substance or drug paraphernalia may elect to
20 receive appropriate treatment as described in subsection (c), instead of
21 being sentenced or incarcerated, which shall be a matter of right for the
22 first and second offense after enactment of this section and at the
23 discretion of the court for subsequent offenses. If more than one
24 qualifying offense under this section occurs during a single criminal
25 episode, it shall be considered a single offense. For purposes of this
26 section, an individual who elects to receive appropriate treatment prior
27 to conviction shall be deemed to have waived the right to a speedy trial.

28 (b) This section shall not apply to any individual who in connection with the
29 same criminal episode as the drug offense described in (a) is also
30 charged with or convicted of: any felony; any misdemeanor involving
31 theft, violence or the threat of violence; trafficking, sale, manufacture, or
32 delivery of a controlled substance; purchase or possession with intent to
33 sell, manufacture, or deliver a controlled substance or drug
34 paraphernalia; or operating a vehicle under the influence of alcohol or a
35 controlled substance. This section also shall not apply to any individual
36 who, within five years before committing the drug possession offense,
37 has been convicted of, or in prison for, one of the serious or violent
38 crimes described in Section 775.084(c)(1), Florida Statutes (2000), or
39 such other violent crimes as may be provided by law.
40

- 1 (c) For purposes of this section, "appropriate treatment" means a state-
2 approved drug treatment and/or rehabilitation treatment program, or
3 set of programs, designed to reduce or eliminate substance abuse or drug
4 dependency and to increase employability. Such program or programs
5 shall include, as deemed appropriate, access to vocational training,
6 literacy training, family counseling, mental health services, or similar
7 support services. The determination of the type and duration of the
8 appropriate treatment program or programs that an individual shall
9 receive, and methods of monitoring the individual's progress while in
10 treatment, shall be made by a qualified professional as defined in
11 Section 397.311(25), Florida Statutes (2000).
- 12 (d) An individual receiving appropriate treatment under this section may be
13 transferred to a different program due to violations of program rules or
14 unsuitability to the form of treatment initially prescribed. An individual
15 may be removed from appropriate treatment if, after multiple programs
16 and violations, and upon an independent evaluation by a qualified
17 professional as defined in Section 397.311(25), Florida Statutes (2000),
18 the individual is found by the court to be unamenable to treatment and
19 rehabilitation. Any such individual removed from appropriate
20 treatment who has been convicted of the drug possession offense may be
21 sentenced for the offense. Prosecution may be recommenced against any
22 individual removed from appropriate treatment who has not yet been
23 convicted, and a conviction resulting from such prosecution may result
24 in a criminal sentence without regard to this section.
- 25 (e) Appropriate treatment shall be terminated upon an individual's
26 successful completion of the prescribed course of appropriate treatment,
27 or upon an independent evaluation and finding by a qualified
28 professional as defined in Section 397.311(25), Florida Statutes (2000),
29 that an individual's appropriate treatment has been successful, or
30 eighteen months after the date the individual elected to receive
31 appropriate treatment, whichever occurs first. Upon termination of
32 appropriate treatment, the individual may not be prosecuted, sentenced,
33 or placed under continued court supervision for the offense which led to
34 the appropriate treatment.
- 35 (f) This section shall become effective on July 1 of the year following
36 passage by the voters, and shall apply prospectively only to drug
37 possession offenses occurring on or after that date.
- (g) The Legislature shall enact such laws as necessary to implement this
section.