

PROPOSITION
36 **ALLOWS FELONY CHARGES AND INCREASES SENTENCES FOR CERTAIN DRUG AND THEFT CRIMES. INITIATIVE STATUTE.**

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on page 126 and the Secretary of State's website at voterguide.sos.ca.gov.

- Allows felony charges for possessing certain drugs and for thefts under \$950—both currently chargeable only as misdemeanors—with two prior drug or two prior theft convictions, as applicable. Defendants who plead guilty to felony drug possession and complete treatment can have charges dismissed.
- Increases sentences for other specified drug and theft crimes.
- Increased prison sentences may reduce savings that currently fund mental health and drug treatment programs, K–12 schools, and crime victims; any remaining savings may be used for new felony treatment program.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Increased state criminal justice costs, likely ranging from several tens of millions of dollars to the low hundreds of millions of dollars annually, primarily due to an increase in the prison population.
- Increased local criminal justice costs, likely in the tens of millions of dollars annually, primarily due to county jail, community supervision, and court-mandated mental health and drug treatment workload.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

PUNISHMENT DEPENDS ON SERIOUSNESS OF CRIME AND CRIMINAL HISTORY

Punishment for Felonies. A felony is the most serious type of crime. People can be sentenced to county jail or state prison for felonies, depending on the crime and their criminal history. In some cases, people can be supervised in the community by a county probation officer instead of serving some or all of their sentence in jail or prison. This is called county community supervision. The length of a sentence mostly depends on the crime. For example, murder

can be punished by 15 years or more in prison. In contrast, selling drugs can be punished by up to five years in jail or prison, depending on the drug. Sentences can also be lengthened due to details of the crime. For example, sentences for selling certain drugs (such as fentanyl, heroin, cocaine, or methamphetamine) can be lengthened based on the amount sold.

Punishment for Misdemeanors. A misdemeanor is a less serious crime. Examples include assault and drug possession. People can be sentenced to county jail, county community supervision, and/or a fine for

ANALYSIS BY THE LEGISLATIVE ANALYST

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misdemeanors. Sentences can be up to one year in jail.

PROPOSITION 47 REDUCED PUNISHMENTS FOR SOME THEFT AND DRUG CRIMES

In 2014, Proposition 47 changed some theft and drug crimes from felonies to misdemeanors. For example, shoplifting (stealing items worth \$950 or less from a store) and drug possession generally became misdemeanors.

PROPOSAL

Proposition 36 makes several key changes related to punishments for theft and drug crimes. First, it increases punishment for some of these crimes. Second, it creates a new treatment-focused court process for some drug possession crimes. Third, it requires courts to warn people convicted of selling or providing illegal drugs to others that they can be charged with murder if they keep doing so and someone dies.

INCREASES PUNISHMENT FOR SOME THEFT AND DRUG CRIMES

Proposition 36 increases punishment for some theft and drug crimes in three ways:

- ***Turns Some Misdemeanors Into Felonies.*** For example, currently, theft of items worth \$950 or less is generally a misdemeanor. Proposition 36 makes this crime a felony if the person has two or more past convictions for certain theft crimes (such as shoplifting, burglary,

or carjacking). The sentence would be up to three years in county jail or state prison. These changes undo some of the punishment reductions in Proposition 47.

- ***Lengthens Some Felony Sentences.*** For example, Proposition 36 allows felony sentences for theft or damage of property to be lengthened by up to three years if three or more people committed the crime together.
- ***Requires Some Felonies Be Served in Prison.*** For example, as discussed above, sentences for selling certain drugs (such as fentanyl, heroin, cocaine, or methamphetamine) can be lengthened based on the amount sold. Currently, these sentences are served in county jail or state prison depending on the person's criminal history. Proposition 36 generally requires these sentences be served in prison.

CREATES NEW COURT PROCESS FOR SOME DRUG POSSESSION CRIMES

Proposition 36 allows people who possess illegal drugs to be charged with a "treatment-mandated felony," instead of a misdemeanor, in some cases. Specifically, this applies to people who (1) possess certain drugs (such as fentanyl, heroin, cocaine, or methamphetamine) and (2) have two or more past convictions for some drug crimes (such as possessing or selling drugs). These people would generally

ANALYSIS BY THE LEGISLATIVE ANALYST

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get treatment, such as mental health or drug treatment. Those who finish treatment would have their charges dismissed. Those who do not finish treatment could serve up to three years in state prison. This change undoes some of the punishment reductions in Proposition 47.

REQUIRES WARNING OF POSSIBLE MURDER CHARGES FOR SELLING OR PROVIDING DRUGS

Proposition 36 requires courts to warn people that they could be charged with murder if they sell or provide illegal drugs that kill someone. This warning would be given to people convicted of selling or providing certain drugs (such as fentanyl, heroin, cocaine, and methamphetamine). This could make it more likely for them to be convicted of murder if they later sell or provide illegal drugs to someone who dies.

FISCAL EFFECTS

Proposition 36 would have various fiscal effects on the state and local governments. The size of these effects would depend on uncertain factors, such as what decisions local prosecutors would make.

Increases State Criminal Justice Costs.

Proposition 36 would increase state criminal justice costs in two main ways.

- ***Increase in State Prison Population.***
 It would require some people who now serve their sentences at the county level to serve them in state

prison. Also, it lengthens some prison sentences. In total, the prison population could increase by around a few thousand people. (There are about 90,000 people in prison now.)

- ***Increase in State Court Workload.***

This is because felonies usually take more time to resolve than misdemeanors. Also, treatment-mandated felonies would increase court workload.

In total, Proposition 36 would **increase state criminal justice costs, likely ranging from several tens of millions of dollars to the low hundreds of millions of dollars each year (annually)**. This amount is less than one-half of 1 percent of the state's total General Fund budget. (The General Fund is the account the state uses to pay for most public services, including education, health care, and prisons.)

Increases Local Criminal Justice Costs.

Proposition 36 would increase local criminal justice costs in two main ways.

- ***Net Increase in County Jail and Community Supervision Population.***

In some ways, Proposition 36 would reduce the jail and community supervision population. This is because some people would go to state prison instead of the county level. In other ways, it would increase this population. This is because some people would spend more time in county jail or on

ANALYSIS BY THE LEGISLATIVE ANALYST

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community supervision. Overall, Proposition 36 likely would increase the county population. This increase could be around a few thousand people. (There are about 250,000 people at the county level now.)

- ***Increase in Local Court-Related Workload.*** It would also increase workload for local prosecutors and public defenders. This is because felonies usually take more time to resolve than misdemeanors. Also, treatment-mandated felonies would create workload for some county agencies (such as probation or behavioral health departments).

In total, Proposition 36 would **increase local criminal justice costs, likely by tens of millions of dollars annually.**

Reduces Amount State Must Spend on Certain Services. Proposition 47 created a process in which the estimated state savings from its punishment reductions must be spent on mental health and drug treatment, school truancy and dropout prevention, and victim services. These estimated savings totaled

\$95 million last year. By undoing parts of Proposition 47, Proposition 36 reduces the state savings from Proposition 47. This would reduce the amount the state must spend on mental health and drug treatment, school truancy and dropout prevention, and victim services. This reduction likely would be in the low tens of millions of dollars annually.

Other Fiscal Impacts. Proposition 36 could have other fiscal effects on the state and local governments. For example, if the increased punishments or mandated treatment reduce crime, some state and local criminal justice costs could be avoided. However, it is unknown if these or other effects would occur.

Visit sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/2024-ballot-measure-contribution-totals for a list of committees primarily formed to support or oppose this measure.

Visit fppc.ca.gov/transparency/top-contributors.html to access the committee's top 10 contributors.

★ ARGUMENT IN FAVOR OF PROPOSITION 36 ★

YES ON PROP. 36: TOUGHER LAWS TO MAKE OUR COMMUNITIES SAFER AND HOLD REPEAT CRIMINALS ACCOUNTABLE

California is suffering from an explosion in crime and the trafficking of deadly hard drugs like fentanyl. Prop. 36 will fix the mess our politicians have ignored for far too long. It is a balanced approach that corrects loopholes in state law that criminals exploit to avoid accountability for fentanyl trafficking and repeat retail theft.

YES ON PROP. 36: TOUGHER LAWS TO STOP “SMASH-AND-GRAB” THEFTS

The explosion in retail theft has caused stores across California to raise prices, lock up items, and close their doors. Prop. 36 increases penalties for smash-and-grab crimes when three or more people act together to commit theft. It also allows prosecutors to file felony charges if a defendant has two or more prior theft convictions.

“California needs Prop. 36’s tougher laws against smash-and-grab thefts so we can keep small businesses open in every community.”—Robert Rivinius, Executive Director, Family Business Association of California

YES ON PROP. 36: TOUGHER PROSECUTION OF SERIAL THIEVES

Under current California law, thieves can get away with the equivalent of a TRAFFIC TICKET if the value of items stolen in one instance is \$950 or less. That means someone can steal an UNLIMITED amount—so long as each individual crime is not over \$950—and likely avoid jail time and even arrest.

“Prop. 36 will allow prosecutors to combine the value of items stolen from multiple thefts and increase accountability for serial thieves.”—Mike Hestrin, Riverside County District Attorney

YES ON PROP. 36: TOUGHER PENALTIES FOR FENTANYL TRAFFICKING

Fentanyl is one of the top killers in California, with more young people dying of drug overdoses than car accidents. Yet fentanyl is treated less seriously than methamphetamine,

heroin, PCP, and cocaine when offenders are armed with a firearm. Prop. 36 will close this loophole while increasing penalties for trafficking large quantities and when a trafficker sells drugs to someone who dies as a result.

“Fentanyl has killed too many people, yet traffickers can avoid the consequences. We need Prop. 36 because no parent should ever have to bury another child killed by fentanyl poisoning.”—Gina McDonald, Co-Founder, Mothers Against Drug Addiction and Deaths

YES ON PROP. 36: HOLD CAREER CRIMINALS ACCOUNTABLE AND ENFORCE DRUG TREATMENT REQUIREMENTS

In California, criminal justice reforms have advanced equity and reduced incarceration rates. But the unintended consequences of these policies include an epidemic of drug use, trafficking, and repeat retail theft because the people committing these crimes don’t face any serious consequences.

“Prop. 36 will make our justice system fair and create effective tools for holding individuals accountable for their crimes and helping those who suffer from addiction to hard drugs get the necessary treatment to begin new lives.”—Rev. Jonathan Moseley, Western Regional Director, National Action Network Los Angeles

VOTE YES ON PROP. 36 FOR SAFER CALIFORNIA COMMUNITIES

Prop. 36 will toughen California’s laws on “smash-and-grab” theft and fentanyl trafficking. That’s why small businesses, law enforcement, social justice, crime victims’, and drug survivors’ advocates, along with 900,000 Californians support Prop. 36.

Read it for yourself at VoteYesProp36.com.

Gregory Totten, Chief Executive Officer
California District Attorneys Association

Harriet Salarno, Founder
Crime Victims United

Michael Hedges, President
California Small Business Association

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 36 ★

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Retail theft and fentanyl are real problems. Californians deserve real solutions. Prop. 36 is a false promise, not a fix.

Prop. 36 will reignite the failed war on drugs, wasting billions on jails and prisons, and slashing crucial funding for crime prevention, treatment, victims, and rehabilitation. That will mean more crime, not less.

Prop. 36 makes simple drug possession a felony, costing taxpayers billions in incarceration without reducing crime. The nonpartisan Legislative Analyst Office concluded the measure will require the state to spend billions more on prisons over the next several years. That means bigger cuts to schools, healthcare, and other essential services.

The measure is also so poorly drafted that it will simply create confusion in the courts and not lead to higher penalties in many retail theft cases.

In the last two years, state leaders increased funding for retail theft prosecutions and fentanyl trafficking, leading to more convictions. Lawmakers continue to pass strong new

laws targeting retail theft rings, illegal online markets, and fentanyl.

California law already requires felonies for smash-and-grab robberies, drug trafficking, and repeat theft, and these serious crimes can lead to tough penalties. There is no loophole—under current law, fentanyl traffickers and repeat thieves can and do spend years behind bars. Prop. 36 doesn’t fix anything—it’s about funding prisons instead of treatment and prevention. This sends California backward, not forward.

Don’t be fooled by false solutions. Vote No on Prop. 36.

Cristine Soto DeBerry, Executive Director
Prosecutors Alliance Action

Don Frazier, Executive Director
Reentry Providers Association of California

David Guizar, Co-Founder
Crime Survivors for Safety and Justice

★ **ARGUMENT AGAINST PROPOSITION 36** ★

VOTE NO ON PROP. 36! THIS IS A WASTEFUL APPROACH THAT MAKES CALIFORNIA LESS SAFE. PROP. 36 is an extreme measure that will waste \$750 million in taxpayer dollars; cut funding from mental health, drug treatment, and rehabilitation programs; and do nothing to make us safer.

PROPOSITION 36 IS THE WRONG ANSWER. We must have an all-of-the-above approach to stop fentanyl use and improve public safety, but PROP. 36 is the opposite of that. This is a one-size-fits-all prison-first approach. It will lock up people who are not a danger, slash desperately needed money from proven crime prevention and treatment programs, and cost taxpayers hundreds of millions more on prisons.

PROP. 36 IS TOO EXTREME. Prop. 36 is so extreme that stealing a candy bar could lead to felony charges. It is a gross overreach that brings back 1980s “drug war” style tactics that packed our state prisons with people convicted of low-level drug offenses, harming public safety and damaging families and communities.

We must address persistent problems like theft and fentanyl, but we must use solutions that work and are targeted at the actual issue, instead of the scattershot failed solutions of the past. By making simple drug possession a felony, this measure will send thousands into state prison, drive up prison costs, and slash money for local safety programs. That will make crime worse, not better.

PROP. 36 STRIPS MONEY FROM CRIME VICTIMS, REHABILITATION, AND MENTAL HEALTH. Prop. 36 will strip millions away from dedicated funding that is spent on rehabilitation and services for crime victims, and it will expand the state prisons budget instead.

Local public safety programs that are working with law enforcement to prevent crime and stop people from cycling in and out of jails will **LOSE** funding if Prop. 36 passes.

These include effective recidivism reduction programs that get people struggling with mental health and addiction off the streets and into treatment, as well as trauma recovery centers for crime victims and programs providing truancy and dropout prevention for at-risk youth. These programs have a proven track record of stopping crime. We need **MORE** of these programs, working hand-in-hand with law enforcement, not less. This measure only locks more people up in state prison.

PROPOSITION 36 IS BEING PUSHED BY MAGA-REPUBLICANS. Don’t be fooled. Law enforcement leaders, crime victims, and rehabilitation experts oppose Prop. 36 because it slashes money for public safety, victims, and treatment programs that stop repeat offending.

EXPERTS ON CRIME, SPENDING, AND CRIMINAL JUSTICE AGREE: Prop. 36 will **NOT** make our communities safer. Prop. 36 **WILL** waste hundreds of millions of **YOUR** taxpayer dollars on methods that are proven to be inefficient and ineffective.

Voting for Prop. 36 would be a vote to cut money for treatment and victims and waste taxpayer dollars. Voting NO on Prop. 36 maintains serious penalties for drug trafficking and organized crime, and protects dedicated funding for treatment, crime prevention, and rehabilitation that successfully reduce crime and recidivism.

VOTE NO ON PROP. 36

More info: StopProp36.com

Diana Becton, District Attorney
Contra Costa County

William Lansdowne, Police Chief (ret.)
City of San Diego

Jess Nichol, Victim Advocate
Crime Survivors for Safety and Justice

★ **REBUTTAL TO ARGUMENT AGAINST PROPOSITION 36** ★

YES ON PROP. 36: BALANCED, RESPONSIBLE SOLUTIONS TO RISING CRIME

California has a serious crime problem, and the politicians have failed to fix it. Prop. 36 is a tailored reform focused on the root causes of rising crime: • Repeat retail theft • Fentanyl trafficking • Drug addiction without incentives for treatment

PROP. 36: TARGETED RESPONSE TO CALIFORNIA’S CRIME CRISIS

Prop. 36 increases penalties for smash-and-grab theft and serial thieves who victimize businesses repeatedly. No one will go to prison for “stealing a candy bar,” and judges are given discretion to assess the severity of crimes for sentencing. Prop. 36 won’t result in over-incarceration.

PROP. 36: SMART APPROACH TO TREATING DRUG ADDICTION

Prop. 36 does not automatically lock up drug users. Instead, it restores drug courts, providing offenders who’ve been convicted three times with incentives to complete drug treatment.

PROP. 36: SAVINGS FOR CONSUMERS AND TAXPAYERS

California small businesses and stores lost nearly \$9 billion in 2022 from theft. Targeting the small group of criminals who repeatedly steal will result in huge savings for consumers. Treating addiction is a smart way to address illegal drug use and overdoses that cost California \$60 billion annually for opioids alone, according to the CDC.

PROP. 36: TOUGHER PENALTIES AND ACCOUNTABILITY

We shouldn’t let the politicians tell us California’s crime problem doesn’t exist. Prop. 36 is a smart, balanced, and responsible approach of tougher penalties for targeted crimes and real accountability for public safety.

READ WHY PROP. 36 IS SUPPORTED BY DEMOCRATS AND REPUBLICANS, SMALL BUSINESSES, MAYORS, SOCIAL JUSTICE AND VICTIMS’ GROUPS, AND LAW ENFORCEMENT

VoteYesProp36.com

Robert Rivinius, Executive Director
Family Business Association of California

Jay King, President
California Black Chamber of Commerce

Greg Van Dyke, President
California Consumer Advocates for Affordability and Safety