

SEPTEMBER 10, 2024

# **Proposition 36: Allows Felony Charges and Increases Sentences for Certain Drug and Theft Crimes. Initiative Statute.**

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PRESENTED TO:

Senate Committee on Public Safety  
Hon. Aisha Wahab, Chair

Assembly Committee on Public Safety  
Hon. Kevin McCarty, Chair



LEGISLATIVE ANALYST'S OFFICE

# LAO Role in the Initiative Process

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## Fiscal Analysis Prior to Signature Collection

- State law requires our office to work with the Department of Finance to prepare a joint impartial fiscal analysis of each initiative before it can be circulated for signatures. State law requires that this analysis provide an estimate of the measure's fiscal impact on the state and local governments.
- A summary of the estimated fiscal impact is included on petitions that are circulated for signatures.

## Analyses for Qualified Measures

- State law requires our office to provide impartial analyses of all statewide ballot propositions for the statewide voter information guide. This analysis includes a description of the proposition and its fiscal effects.



# Background

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## **Punishment Depends on Seriousness of Crime and Criminal History**

- ***Punishment for Felonies.*** 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. Sentences can also be lengthened due to details of the crime.
- ***Punishment for Misdemeanors.*** People can be sentenced to county jail, county community supervision, and/or a fine for 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

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## Increases Punishment for Some Theft and Drug Crimes

- ***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, 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

- Allows people who possess illegal drugs to be charged with a "treatment-mandated felony" instead of a misdemeanor if they (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 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.



# Proposal

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## **Requires Warning of Possible Murder Charges for Selling or Providing Drugs**

- 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

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## Increases State Criminal Justice Costs

- ***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.
- ***Total Increase in State Criminal Justice Cost.*** 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 annually.

## Increases Local Criminal Justice Costs

- ***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 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).
- ***Total Increase in Local Criminal Justice Cost.*** In total, Proposition 36 would increase local criminal justice costs, likely by tens of millions of dollars annually.



## Fiscal Effects

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*(Continued)*

### **Reduces Amount State Must Spend on Certain Services**

- ***Proposition 47 Savings Must Be Spent 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.
- ***Reduction in Savings Would Reduce Required Spending.*** 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.

