



PROPOSITION 36

Allows Felony Charges and Increases Sentences for Certain Drug and Theft Crimes. Initiative Statute.

ANALYSIS OF MEASURE

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 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 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 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.

YES/NO STATEMENT

A **YES** vote on this measure means: People convicted of certain drug or theft crimes could receive increased punishment, such as longer prison sentences. In certain cases, people who possess illegal drugs would be required to complete treatment or serve up to three years in prison.

A **NO** vote on this measure means: Punishment for drug and theft crimes would remain the same.

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.

BALLOT LABEL

Fiscal Impact: State criminal justice costs likely ranging from several tens of millions of dollars to the low hundreds of millions of dollars annually. Local criminal justice costs likely in the tens of millions of dollars annually.