

(c) *Statutory References.* Unless otherwise stated, all references contained in this chapter to statutes codified outside of this chapter refer to those statutes as they existed on July 1, 2023.

(d) *Effective Date.* This chapter shall take effect on the next January 1 following its approval by the voters of California.

14199.136. Standing to Defend Chapter

Notwithstanding any other law, if the State of California or any of its officers or officials fail to defend the constitutionality of this chapter, following its approval by the voters, any other state or local government agency of this state shall have the authority to intervene on behalf of the State of California or the department in a court action challenging the constitutionality of this chapter for the purpose of defending its constitutionality, whether that action is in state or federal trial court, on appeal, or on discretionary review by the Supreme Court of California or the Supreme Court of the United States. The reasonable fees and costs of defending the action by the other state or local government agency shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

SEC. 2. Appropriations Limit.

(a) Commencing with the 2025–26 fiscal year, pursuant to Section 4 of Article XIII B of the California Constitution, the electors of the State of California hereby adopt an increase in the appropriations limit for the State of California equal to the amount of the revenues generated by the taxes contained in Article 6 (commencing with Section 14199.123) of this act and Article 7.1 (commencing with Section 14199.80) of Chapter 7 of Part 3 of the Welfare and Institutions Code.

(b) The duration of the increase in the State of California’s appropriations limit adopted pursuant to this section shall be for the maximum amount of time permitted under Section 4 of Article XIII B of the California Constitution.

SEC. 3. Conflicting Initiative Measures.

The people of the State of California hereby find and declare:

(a) If this initiative measure and another initiative measure or measures that raises or extends a managed care organization provider tax to fund Medi-Cal services, benefits, and coverage appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. If this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be void.

(b) This act continues an existing tax on managed care organization providers, a type of health care service plan, that is used for the purpose of increasing reimbursement rates or payments under the Medi-Cal

program. Initiative No. 21-0042 Amendment #1 exempts from the definition of “tax” a levy, charge, or exaction collected from local units of government, health care providers, or health care service plans that is primarily used by the State of California for the purposes of increasing reimbursement rates or payments under the Medi-Cal program. Therefore, no conflict exists between this act and Initiative No. 21-0042 Amendment #1.

(c) This act does not alter, apply to, or address the matters contained in Initiative No. 23-0021 Amendment #1. Therefore, no conflict exists between this act and Initiative No. 23-0021 Amendment #1.

PROPOSITION 36

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

This initiative measure amends and adds sections to the Health and Safety Code and the Penal Code, and adds a section to the Government Code; 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

THE HOMELESSNESS, DRUG ADDICTION, AND THEFT REDUCTION ACT

SECTION 1. Title.

This act shall be known as The Homelessness, Drug Addiction, and Theft Reduction Act.

SEC. 2. Purposes and Intent.

This measure will reform laws that have dramatically increased homelessness, drug addiction, and theft throughout California.

This measure will:

(a) Provide drug and mental health treatment for people who are addicted to hard drugs, including fentanyl, cocaine, heroin, and methamphetamine.

(b) Add fentanyl to existing laws that prohibit the possession of hard drugs while armed with a loaded firearm.

(c) Add fentanyl to existing laws that prohibit the trafficking of large quantities of hard drugs.

(d) Permit judges to use their discretion to sentence drug dealers to state prison instead of county jail when they are convicted of trafficking hard drugs in large quantities or are armed with a firearm while engaging in drug trafficking.

(e) Warn convicted hard drug dealers and manufacturers that they can be charged with murder if they continue to traffic in hard drugs and someone dies as a result.

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(f) Reinstate penalties for hard drug dealers whose trafficking kills or seriously injures a drug user.

(g) Increase penalties for people who repeatedly engage in theft.

(h) Add new laws to address the increasing problem of “smash and grab” thefts that result in significant losses and damage, or that are committed by multiple thieves working together.

SEC. 3. Findings and Declarations.

The people of the State of California find and declare as follows:

(a) Reducing Homelessness Through Drug and Mental Health Treatment

(1) California has reached a tipping point in its homelessness, drug, mental health, and theft crises. Our state has the highest rate of homelessness per capita of any state in the country. And drug overdoses now kill two to three times the number of people in California as car accidents.

(2) Since the passage of Proposition 47 in 2014, homelessness in California has increased by 51 percent, while during the same time period in the rest of the country, it has declined by 11 percent. Proposition 47 reduced the legal consequences of both possession of hard drugs (fentanyl, cocaine, heroin, methamphetamine, and phencyclidine), and theft. The result has been massive increases in drug addiction, mental illness, and property crimes, including retail theft, committed by addicts to support their addiction. At the same time, California has seen a dramatic decrease in mental health and drug treatment for homeless people due to reduced incentives to participate in treatment. Our homelessness problem is directly connected to these unintended consequences of Proposition 47, which the voters now desire to correct.

(3) Progressive states, including New Jersey, Maryland, Illinois, and Michigan, have significantly stronger hard drug laws than California, and their homeless rate is 4 to 5 times lower than California’s.

(4) This proposal takes a modest step in the direction of these states by enacting a new class of crime called a “treatment-mandated felony.” Under this new “treatment-mandated felony,” prosecutors would have the discretion to charge a felony for hard drug possession after two previous drug convictions. If charged with this “treatment-mandated felony” for a third or subsequent drug offense, the offender would be given the option of participating in drug and mental health treatment. If the offender successfully completes drug and mental health treatment, the charge would be fully expunged, and the offender would receive no jail time. If the offender refuses drug and mental health treatment, they would serve jail time for hard drug possession. For a second conviction of the treatment-mandated felony (the fourth total conviction for hard drug possession), a judge would have the option of imposing time in jail or state prison. Along with hard drug and mental health treatment,

offenders charged with a treatment-mandated felony would be offered shelter, job training, and other services designed to break the cycle of addiction and homelessness.

(b) Cracking Down on Hard Drug Dealers

(1) Fentanyl is the most dangerous drug that our nation has ever seen. Because it is largely produced synthetically, fentanyl is typically cheaper than other hard drugs. As a result, drug dealers now regularly include fentanyl in other drugs, including diet, anxiety, and sleeping pills, cocaine, and heroin. Further, fentanyl is up to 50 times stronger than heroin. Therefore, a very tiny amount of fentanyl can prove deadly. One kilogram (2.2 pounds) of fentanyl provides enough of the drug to manufacture four to ten million doses, or enough to kill 500,000 people. Finally, because such a small amount of fentanyl is necessary to create addiction, it is easier to smuggle across the border in smaller, yet much more deadly quantities.

(2) This act would authorize greater consequences for hard drug dealers whose trafficking kills or seriously injures a person who uses those drugs, and it would provide a mechanism to warn convicted hard drug dealers and manufacturers that they can be charged with murder if they continue to traffic in hard drugs and someone dies as a result.

(3) This act would add nonprescription fentanyl to an existing list of hard drugs, including heroin, cocaine, and methamphetamine, for which it is illegal to possess the drug while armed with a loaded firearm.

(4) This act would also add nonprescription fentanyl to an existing list of hard drugs, including heroin, cocaine, and methamphetamine, that authorizes greater consequences for drug dealers who sell large quantities of hard drugs.

(5) This act also permits judges to sentence drug dealers who traffic in large quantities of hard drugs or who are armed with a firearm while trafficking in hard drugs to state prison instead of local county jails. Only our state prisons are equipped to manage security for hardened drug dealers and to provide them the rehabilitation services they need to safely reenter society.

(c) Accountability for Repeat Theft and Smash and Grab Thefts

(1) Prior to Proposition 47, individuals who repeatedly engaged in theft could be charged with a felony. Prop. 47 eliminated this repeat offender felony and instead provided that any theft up to \$950 in value is now a misdemeanor—regardless of how many times the offender has committed theft. In practice, this means that an offender who repeatedly steals up to \$950 in value faces virtually no legal consequences.

(2) The result has been an explosion in retail and cargo theft causing stores throughout California to close to protect employees and customers from criminal activity that disrupts the efficient delivery of products directly to consumers and creates billions of dollars in economic losses to our local communities and state.

This rapid increase in retail and cargo theft has also contributed to rising inflation, as businesses have been forced to raise prices to account for their economic losses. This retail and cargo theft explosion has collided with the fentanyl epidemic, as hard drug users have engaged in brazen theft to support their drug habits, knowing that there will be no consequences for either their theft or their hard drug use.

(3) Under this act, an offender with two prior convictions for theft can be charged with a felony, regardless of the value of the stolen property. Diversion programs will continue to exist, meaning that judges will retain discretion not to incarcerate an offender even for more than two theft convictions. But prosecutors will have the ability to bring felony charges against hardened, repeat offenders who continue to engage in theft. Judges will have the discretion to sentence a repeat offender to jail in appropriate cases, or to state prison if an offender is convicted four or more times of theft.

(4) This act also authorizes judges to exercise their discretion to impose an enhanced penalty when an offender steals, damages, or destroys property by acting together with two or more offenders or by causing losses of \$50,000 or more. By permitting discretion in these scenarios, judges will be able to fashion sentences that are appropriate for the crime committed, including so-called “smash and grabs” committed by mobs or large groups of people working together.

(5) The value of property stolen in multiple thefts will be permitted to be added together so that in appropriate cases an offender may be charged with felony theft instead of petty theft. This provision addresses the problem of offenders who commit a series of thefts in which the property stolen during each theft has a value under the \$950 felony theft threshold, in order to insulate themselves from felony charges.

(6) Along with the hard drug provisions in this act, these theft law changes will stop the vicious cycle of hard drug users stealing to support their habits without legal consequences for their actions.

SEC. 4. Section 11369 is added to the Health and Safety Code, to read:

11369. (a) This section shall be known, and may be cited, as Alexandra’s Law.

(b) The court shall advise a person who is convicted of, or who pleads guilty or no contest to, a violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 involving a hard drug, of the following:

“You are hereby advised that it is extremely dangerous and deadly to human life to illicitly manufacture, distribute, sell, furnish, administer, or give away any drugs in any form, including real or counterfeit drugs or pills. You can kill someone by engaging in this conduct. All drugs and counterfeit pills are dangerous to human life. These substances alone, or mixed, kill human beings in very small doses. If you illicitly manufacture,

distribute, sell, furnish, administer, or give away any real or counterfeit drugs or pills, and that conduct results in the death of a human being, you could be charged with homicide, up to and including the crime of murder, within the meaning of Section 187 of the Penal Code.”

(c) The advisory statement shall be provided to the defendant in writing, either on a plea form, if used, as an addendum to a plea form, or at sentencing, and the fact that the advisory was given shall be specified on the record and recorded in the abstract of the conviction.

(d) (1) Except as provided in paragraph (2), as used in this section, “hard drug” means a substance listed in Section 11054 or 11055, including a substance containing fentanyl, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine, and the analogs of any of these substances as defined in Sections 11400 and 11401.

(2) As used in this section, “hard drug” does not include cannabis, cannabis products, peyote, lysergic acid diethylamide (LSD), other psychedelic drugs, including mescaline and psilocybin (mushrooms), any other substance listed in subdivisions (d) and (e) of Section 11054, or, with the exception of methamphetamine, any other substance listed in subdivision (d) of Section 11055.

SEC. 5. Section 11370.1 of the Health and Safety Code is amended to read:

11370.1. (a) Notwithstanding Section 11350 or 11377 or any other provision of law, every person who unlawfully possesses any amount of a substance containing cocaine base, a substance containing cocaine, a substance containing heroin, a substance containing methamphetamine, a substance containing fentanyl, a crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

(b) Subdivision (a) does not apply to any person lawfully possessing fentanyl, including with a valid prescription.

(c) As used in this subdivision (a), “armed with” means having available for immediate offensive or defensive use.

~~(b)~~ *(d) Any person who is convicted under this section shall be ineligible for diversion or deferred entry of judgment under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code.*

SEC. 6. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a) (1) A person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 with respect to a substance containing heroin, ~~fentanyl~~, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine as

specified in paragraph (6) of subdivision (b) of Section 11055, ~~when the person knew of the substance's nature or character as a controlled substance,~~ shall receive an additional *state prison* term as follows:

(A) If the substance exceeds one kilogram by weight, the person shall receive an additional term of three years.

(B) If the substance exceeds four kilograms by weight, the person shall receive an additional term of five years.

(C) If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years.

(D) If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years.

(E) If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years.

(F) If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

(2) The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(b) (1) A person convicted of a violation of, or of conspiracy to violate, Section 11378, 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine, amphetamine, phencyclidine (PCP) and its analogs shall receive an additional *state prison* term as follows:

(A) If the substance exceeds one kilogram by weight, or 30 liters by liquid volume, the person shall receive an additional term of three years.

(B) If the substance exceeds four kilograms by weight, or 100 liters by liquid volume, the person shall receive an additional term of five years.

(C) If the substance exceeds 10 kilograms by weight, or 200 liters by liquid volume, the person shall receive an additional term of 10 years.

(D) If the substance exceeds 20 kilograms by weight, or 400 liters by liquid volume, the person shall receive an additional term of 15 years.

(2) In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

(3) The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(c) (1) A person convicted of a violation of, or of a conspiracy to violate, Section 11351 or 11352 with respect to a substance containing fentanyl shall receive an additional *state prison* term as follows:

(A) If the substance exceeds 28.35 grams (one ounce) by weight, the person shall receive an additional term of three years.

(B) If the substance exceeds 100 grams by weight, the person shall receive an additional term of five years.

(C) If the substance exceeds 500 grams by weight, the person shall receive an additional term of seven years.

(D) If the substance exceeds one kilogram by weight, the person shall receive an additional term of 10 years.

(E) If the substance exceeds four kilograms by weight, the person shall receive an additional term of 13 years.

(F) If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 16 years.

(G) If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 19 years.

(H) If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 22 years.

(I) If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

(2) The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

~~(e)~~ (d) The additional terms provided in this section shall not be imposed unless the allegation that the weight of the substance containing heroin, fentanyl, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, methamphetamine, amphetamine, or phencyclidine (PCP) and its analogs exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) Notwithstanding paragraph (9) of subdivision (h) of Section 1170 of the Penal Code, a defendant convicted of an underlying violation specified in this section who admits an enhancement pursuant to this section or for whom an enhancement pursuant to this section is found true, is punishable by imprisonment in the state prison and not pursuant to subdivision (h) of Section 1170 of the Penal Code.

~~(d)~~ (f) The additional terms provided in this section shall be in addition to any other punishment provided by law.

~~(e)~~ (g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section if the court determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

SEC. 7. Article 8 (commencing with Section 11395) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 8. Treatment-Mandated Felony

11395. (a) This article shall be known and cited as the Treatment-Mandated Felony Act.

(b) (1) Notwithstanding any other law, and except as provided in subdivision (d), a person described in

subdivision (c) who possesses a hard drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code. A second or subsequent conviction of this section, is punishable by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

(2) A person shall not be sentenced to jail or prison pursuant to this section unless a court determines that the person is not eligible or suitable for treatment or that any other circumstance described in paragraph (4) of subdivision (d) applies to that person.

(c) Subdivision (b) applies to a person who has two or more prior convictions for a felony or misdemeanor violation of Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11370.1, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11395, including a conviction that occurred before the effective date of this section. Prior convictions shall be alleged in the accusatory pleading, and either admitted by the defendant in open court or found to be true by the trier of fact.

(d) (1) (A) In lieu of a jail or prison sentence, or a grant of probation with jail as a condition of probation, a defendant charged with a violation of this section may elect treatment by pleading guilty or no contest to a violation of this section and admitting the alleged prior convictions, waiving time for sentencing and the pronouncement of judgment, and agreeing to participate in, and complete, a detailed treatment program developed by a drug addiction expert and approved by the court. A defendant's plea of guilty or no contest shall not constitute a conviction for any purpose unless judgment is entered pursuant to paragraph (4) for a violation of this section.

(B) Upon or subsequent to arraignment for a violation of this section, and at the request or with the consent of the defendant or their attorney, the court shall order a drug addiction expert to conduct a substance abuse and mental health evaluation of the defendant. The expert shall submit a report of the evaluation to the court and parties. The evaluation may be based on an interview of the defendant or other individuals with relevant knowledge and review of records the expert deems appropriate, including medical records, criminal history, prior treatment history, and records pertaining to the current offense. If the defendant participates in the interview, neither the defendant's interview nor evidence derived from the interview may be used against the defendant at any subsequent trial for the instant offense except for the purposes of impeachment should the defendant testify inconsistently. The evaluation shall detail the defendant's drug abuse or mental health issues, if any, so the court and parties may better determine appropriate handling of the defendant's case.

(C) Concurrent with the order for a substance abuse and mental health evaluation of the defendant, and with

the defendant's consent, the court shall also order that a case worker or other qualified individual determine whether the defendant is eligible to receive Medi-Cal, Medicare, or any other relevant benefits for any programs or evaluations under this section. If the defendant did not previously consent to an eligibility determination at arraignment, the court shall order the eligibility determination upon and as a condition of the defendant's agreement to participate in and complete a treatment program as described in this subdivision.

(2) A treatment program may include, but is not limited to, drug treatment, mental health treatment, job training, and any other conditions related to treatment or a successful outcome for the defendant that the court finds appropriate. The court must hold regular hearings to review the progress of the defendant. The court shall make referrals to programs that provide services at no cost to the participant and have been deemed by the court, the drug addiction expert, and the parties to be credible and effective. A defendant may also choose to pay for a program that is approved by the court.

(3) Upon the defendant's successful completion of the treatment program as specified in paragraph (2), the positive recommendation of the treatment program, and the motion of the defendant, prosecuting attorney, the court, or the probation department, the court shall dismiss this charge against the defendant and the provisions of Section 1000.4 of the Penal Code, as it read on the effective date of this section, shall apply, including the provision that the arrest upon which the defendant was deferred shall be deemed to have never occurred. A dismissal based on the successful completion of treatment shall not count as a conviction for any purpose, including for determining punishment pursuant to subdivision (b).

(4) If at any time it appears that the defendant is performing unsatisfactorily in the program, is not benefiting from treatment, is not amenable to treatment, has refused treatment, or has been convicted of a crime that was committed since starting treatment, the prosecuting attorney, the court on its own, or the probation department may make a motion for entry of judgment and sentencing. After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered and the defendant sentenced. Judgment shall be imposed and the defendant sentenced if the court finds true one or more of the foregoing circumstances. However, except when the defendant has been found to have been convicted of a crime that was committed since starting treatment, the court may rerefer the defendant to treatment if the court finds that it is in the interest of justice to do so, that the defendant is currently amenable to treatment, and if the defendant agrees to participate in, and complete, a treatment program as described in this section.

(5) For time spent in residential treatment, a defendant may earn only actual credits pursuant to Section 2900.5 of the Penal Code and shall not earn conduct credits pursuant to Section 4019 of the Penal Code or any

other provision. Time spent in any other type of program or counseling is not eligible for any credits.

(e) (1) Except as provided in paragraph (2), as used in this section, "hard drug" means a substance listed in Section 11054 or 11055, including a substance containing fentanyl, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine, and the analogs of any of these substances as defined in Sections 11400 and 11401.

(2) As used in this section, "hard drug" does not include cannabis, cannabis products, peyote, lysergic acid diethylamide (LSD), other psychedelic drugs, including mescaline and psilocybin (mushrooms), any other substance listed in subdivisions (d) and (e) of Section 11054, or, with the exception of methamphetamine, any other substance listed in subdivision (d) of Section 11055.

(f) Upon an arrest for a violation of this section, the court shall require judicial review prior to release to make an individualized determination of risk to public safety and likelihood to return to court.

(g) This section shall not be construed to preclude prosecution or punishment pursuant to any other law.

SEC. 8. Section 490.3 is added to the Penal Code, to read:

490.3. Notwithstanding any other law, in any case involving one or more acts of theft or shoplifting, including, but not limited to, violations of Sections 459.5, 484, 488, and 490.2, the value of property or merchandise stolen may be aggregated into a single count or charge, with the sum of the value of all property or merchandise being the values considered in determining the degree of theft.

SEC. 9. Section 666.1 is added to the Penal Code, to read:

666.1. (a) (1) Notwithstanding any other law, a person who has two or more prior convictions for any of the offenses listed in paragraph (2), and who is convicted of petty theft or shoplifting, is punishable by imprisonment in the county jail not exceeding one year or pursuant to subdivision (h) of Section 1170. A second or subsequent conviction of this section is punishable by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

(2) This section applies to the following offenses, including a conviction that occurred before the effective date of this section:

(A) Petty theft, as described in Section 488 or 490.2.

(B) Grand theft, as described in Sections 487, 487h, and in Chapter 5 (commencing with Section 484) of Title 13 of Part 1.

(C) Theft from an elder or dependent adult, as described in Section 368.

(D) The theft or unauthorized use of a vehicle, as described in Section 10851 of the Vehicle Code.

(E) Burglary, as described in Section 459.

(F) Carjacking, as described in Section 215.

(G) Robbery, as described in Section 211.

(H) Receiving stolen property, as described in Section 496.

(I) Shoplifting, as described in Section 459.5.

(J) Identity theft and mail theft, as described in Section 530.5.

(b) A person subject to charging under this section or actually charged with this section may be referred by a prosecuting attorney's office or by a county probation department to a theft diversion or deferred entry of judgment program pursuant to Section 1001.81. If appropriate, a person admitted to such a program may also be referred to a substance abuse treatment program.

(c) Upon an arrest for a violation of this section, the court shall require judicial review prior to release to make an individualized determination of risk to public safety and likelihood to return to court.

(d) This section shall not be construed to preclude prosecution or punishment pursuant to any other law.

SEC. 10. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), a person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for one year, unless the arming is an element of that offense. This additional term shall apply to a person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 30510 or 30515, or a machinegun, as defined in Section 16880, or a .50 BMG rifle, as defined in Section 30530, the additional and consecutive term described in this subdivision shall be three years imprisonment pursuant to subdivision (h) of Section 1170 whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon, machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon, machinegun, or a .50 BMG rifle.

(b) (1) A person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the

additional term shall be in the state prison for one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(c) (1) Notwithstanding the enhancement set forth in subdivision (a), a person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code shall be punished by an additional and consecutive term of imprisonment ~~in the state prison pursuant to~~ subdivision (h) of Section 1170 for three, four, or five years.

(2) Notwithstanding paragraph (9) of subdivision (h) of Section 1170 of the Penal Code, a defendant convicted of an underlying violation specified in this subdivision who admits an enhancement pursuant to this subdivision or for whom an enhancement pursuant to this subdivision is found true, is punishable by imprisonment in the state prison and not pursuant to subdivision (h) of Section 1170 of the Penal Code.

(d) Notwithstanding the enhancement set forth in subdivision (a), a person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as a single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 11. Section 12022.6 is added to the Penal Code, to read:

12022.6. (a) When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, or commits a felony violation of Section 496, the court shall impose a term in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, as follows:

(1) If the loss or property value exceeds fifty thousand dollars (\$50,000), the court shall impose an additional term of one year.

(2) If the loss or property value exceeds two hundred thousand dollars (\$200,000), the court shall impose an additional term of two years.

(3) If the loss or property value exceeds one million dollars (\$1,000,000), the court shall impose an additional term of three years.

(4) If the loss or property value exceeds three million dollars (\$3,000,000), the court shall impose an additional term of four years.

(5) For every additional loss or property value of three million dollars (\$3,000,000), the court shall impose a term of one year in addition to the term specified in paragraph (4).

(b) In any accusatory pleading involving multiple charges of taking, damage, or destruction, or multiple violations of Section 496, the additional terms provided in this section may be imposed if the aggregate losses to the victims or aggregate property values from all felonies exceed the amounts specified in this section and arise from a common scheme or plan. All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

(c) The additional terms provided in this section shall not be imposed unless the facts relating to the amounts provided in this section are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(d) Notwithstanding any other law, the court may impose an enhancement pursuant to this section and another section on a single count, including an enhancement pursuant to Section 12022.65.

SEC. 12. Section 12022.65 is added to the Penal Code, to read:

12022.65. (a) Any person who acts in concert with two or more persons to take, attempt to take, damage, or destroy any property, in the commission or attempted commission of a felony shall be punished by an additional and consecutive term of imprisonment of one, two, or three years.

(b) The additional term provided in this section shall not be imposed unless the existence of the facts required in subdivision (a) are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) Notwithstanding any other law, the court may impose an enhancement pursuant to this section and another section on a single count, including an enhancement pursuant to Section 12022.6.

SEC. 13. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years.

(b) Any person who personally inflicts great bodily injury on any person other than an accomplice in the

commission of a felony or attempted felony which causes the victim to become comatose due to brain injury or to suffer paralysis of a permanent nature shall be punished by an additional and consecutive term of imprisonment in the state prison for five years. As used in this subdivision, “paralysis” means a major or complete loss of motor function resulting from injury to the nervous system or to a muscular mechanism.

(c) Any person who personally inflicts great bodily injury on a person who is 70 years of age or older, other than an accomplice, in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

(d) Any person who personally inflicts great bodily injury on a child under the age of five years in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for four, five, or six years.

(e) Any person who personally inflicts great bodily injury under circumstances involving domestic violence in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three, four, or five years. As used in this subdivision, “domestic violence” has the meaning provided in subdivision (b) of Section 13700.

(f) (1) As used in this section, “great bodily injury” means a significant or substantial physical injury.

(2) As used in this section, a person who sells, furnishes, administers, or gives away a controlled substance is deemed to have personally inflicted great bodily injury when the person to whom the substance was sold, furnished, administered, or given suffers a significant or substantial physical injury from using the substance.

(g) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. Subdivisions (a), (b), (c), and (d) shall not apply if infliction of great bodily injury is an element of the offense.

(h) The court shall impose the additional terms of imprisonment under either subdivision (a), (b), (c), or (d), but may not impose more than one of those terms for the same offense.

SEC. 14. Chapter 36 (commencing with Section 7599.200) is added to Division 7 of Title 1 of the Government Code, to read:

*CHAPTER 36. FUNDING FOR THE HOMELESSNESS,
DRUG ADDICTION, AND THEFT REDUCTION ACT*

7599.200. (a) This chapter shall be known as the *Funding for the Homelessness, Drug Addiction, and Theft Reduction Act*.

(b) From moneys disbursed to the Board of State and Community Corrections pursuant to paragraph (3) of subdivision (a) of Section 7599.2 and Section 6046.2 of the Penal Code, the Board of State and Community

Corrections may allocate appropriate funds to counties and local governments for programs specified in Section 11395 of the Health and Safety Code. This provision shall not preclude funding for this act from any other source, including, but not limited to, the Local Revenue Fund 2011 established under Section 30025 and other funds designated for substance abuse and mental health treatment.

(c) A defendant charged with a treatment-mandated felony is eligible for any appropriate Medi-Cal or Medicare programs or services, including, but not limited to, those described in clauses (iii) to (v), inclusive, of subparagraph (B) of paragraph (16) of subdivision (f) of Section 30025, for the defendant's programs specified in Section 11395 of the Health and Safety Code. A county or local government may contract directly with the State Department of Health Care Services or any other applicable state agency to provide for the provision or administration of any applicable Medi-Cal or Medicare treatment programs.

SEC. 15. Amendments.

(a) Except as provided in subdivision (b), this act shall not be amended by the Legislature except by a statute that furthers the purposes, intent, findings, and declarations of the act and is passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

(b) The Legislature may, by majority vote, amend Section 11369 of the Health and Safety Code only to expand the list of drugs that qualify as a “hard drug” and to expand the list of convictions to which it applies, and may, by majority vote, amend Section 11395 of the Health and Safety Code only to expand the list of drugs that qualify as a “hard drug” and to expand the list of applicable prior convictions, and may, by majority vote, amend Section 666.1 of the Penal Code only to expand the list of applicable prior convictions.

SEC. 16. Severability.

If any provision of this act, or any part of any provision, or the application of any provision or part to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications of provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 17. Conflicting Initiatives.

(a) This act creates a new drug treatment statute and changes the penalties for career and serial thieves. In the event that this act and another initiative measure or measures relating to the same subject appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the

provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by the voters but superseded by law by any other conflicting measure approved by the voters at the same election, and the

conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.



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.



**NEVADA
COUNTY**
CALIFORNIA

BOARD OF SUPERVISORS

Lisa Swarthout

District 3 Supervisor
lisa.swarthout@nevadacountyca.gov
530.265.1480

Susan Hoek

District 4 Supervisor
sue.hoek@nevadacountyca.gov
530.265.1480

NEVADA COUNTY BOARD OF SUPERVISORS

BOARD AGENDA MEMO

MEETING DATE: October 8, 2026

TO: Board of Supervisors

FROM: Supervisor Lisa Swarthout, District 3
Supervisor Susan Hoek, District 4

SUBJECT: Resolution supporting California Proposition 36, Allows Felony Charges and increases sentences for certain drug and theft crimes. Initiative Statute.

RECOMMENDATION: Adopt the attached Resolution.

FUNDING: N/A

BACKGROUND: California voters approved Proposition 47 in 2014, a prison reform ballot measure aimed at reducing state prison populations. The measure reclassified certain nonviolent crimes, such as drug possession and petty theft under \$950, from felonies to misdemeanors. It also redirected savings from reduced incarceration to grant programs to support mental health and drug treatment, reduce truancy in K-12 education, and victim services.

Proposition 36 proposes to make several key changes to Prop 47's 2014 reforms:

Proposition 47 Actions

- Reclassified certain drug (including personal use) and theft-related offenses where property was under \$950 as misdemeanors (previously felonies).
- Resentenced individuals already serving sentences for felonies

Proposition 36 Proposed Actions

- Reclassifies certain drug offenses (including fentanyl), and repeated theft convictions where property is under \$950—as felonies
- Establishes new felony sentencing for certain crimes of

(reclassified as Prop 47 misdemeanors), reducing their prison time.

- Redirected savings from incarceration costs to mental health and drug treatment programs, reducing truancy, and victim services.

up to three years in county jail or state prison, (lengthier if multiple people involved and/or fentanyl, heroin, cocaine, or methamphetamine was involved).

- Creates new “treatment-mandated felony” which would mandate convicted offenders get mental health or drug treatment (or face incarceration).
- For certain crimes, would require that offenders serve their sentences in a state prison, as opposed to county jails
- Requires courts to warn people they could be charged with murder if they sell or provide illegal drugs that result in someone’s death.

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.

The California District Attorney Association sponsored Prop 36, citing concerns that Prop 47 led to fewer arrests and decreased accountability for theft. Property theft spiked during the COVID-19 pandemic, and the high visibility of retail theft including viral videos also fueled public sentiment there was insufficient accountability for these types of crimes. The initiative also seeks to provide criminal justice partners with a stronger “stick” to approach addressing the state’s fentanyl crisis. The Chief Probation Officers of California has taken a support position, along with the California State Sheriff’s Association. However, the California Public Defenders Association has taken an oppose position.

The initiative statute entitled “Homelessness, Drug Addiction, and Theft Reduction Act” was placed on the November ballot via the voter signature initiative process, with support from retail groups in California. It is important to note that the proposition does not include any specific provisions to address homelessness despite its title.

Nevada County District Attorney Jesse Wilson, and Nevada County Sheriff Shannan Moon, are in support of Proposition 36 and urge the Board to take a support position. Moreover, the Nevada County Public Defender anticipates that a passage of Proposition 36 will increase costs throughout the criminal justice system, while

decreasing resources at the same time and has raised concerns on its efficacy. The Public Defender anticipates due to an increase of caseloads, there may be a need for additional attorneys and staff support in order to meet its mandate.

The Legislative Analyst's Office (LAO) estimates that Prop 36 could cost the state and counties hundreds of millions of dollars annually due to increased prison and jail populations. In fact, the Legislature narrowly passed a prison bed-reduction bill AB 2178 (Ting) during the final week of session, noting that Prop 36 could reverse the LAO's current projected trends showing 15,000 empty prison beds by 2025, and 19,000 by 2028. The measure would also reduce funding for Prop 47-supported grant programs, such as treatment and victim services, as fewer savings would be available from reduced incarceration. Additionally, there would be an unknown increased cost for courts, county jails, and community supervision services. While it is expected that the fiscal impact to Nevada County may be minimal, it remains unknown to what extent the actual impact will have on the County and its services, notably on the Sheriff, District Attorney, Behavioral Health (via Drug Court), Probation and the Public Defender's Office.

Despite concerns on unknown increased costs, we believe that Proposition 36 is needed to help address the continued crime that was exacerbated by the passage of Proposition 47 that hamstrung law enforcement's ability to do their job and protect the community. Therefore, in an effort to help further mitigate the unintended consequences created by Prop 47 that reclassified certain felonies to a misdemeanor that has created major challenges for law enforcement officials to curb crime, we recommend the Board adopt the attached Resolution supporting California Proposition 36.

Sincerely,

Supervisor Lisa Swarthout
District 3

Supervisor Susan Hoek
District 4