



# San Mateo County Ballot Measure Analysis Form

Date Submitted: August 20, 2024  
 Submitted Department: County Executive's Office  
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Reviewed and Approved by County Attorney  
 Yes  No

Reviewed and Approved by County Executive  
 Yes  No  N/A

## State Ballot Proposition 36 The Homeless, Drug Addiction, and Theft Reduction Act

Submitted: September 22, 2023  
 Citizen Initiative state statute  
 Legislatively referred constitutional amendment  
 Bond issue

### Recommended Position

Support  
 Oppose  
 Neutral  
 Other - Supervisor Muller requested the Board support this measure.

### Summary

Proposition 36 would change criminal sentencing for theft and drug crimes, undoing some of the punishment reductions in Proposition 47 from 2014.

### Background

In 2014, Proposition 47 changed some theft and drug crimes from felonies to misdemeanors to reduce overcrowding at state prisons. Proposition 47 also permitted incarcerated persons previously sentenced for these reclassified crimes to petition for resentencing. For example, shoplifting (stealing items worth \$950 or less from a store) and drug possession generally became misdemeanors.

In June 2023, 66 members of the Legislature requested that the Little Hoover Commission research and report on retail theft in California in response to rising theft and fentanyl to provide findings and make recommendations for policy reform. In late 2023, Speaker Robert Rivas formed the California State Assembly's Select Committee on Retail Theft. The Legislature and the Governor subsequently released a package of bills aimed at addressing both retail theft and the sale of drugs, including fentanyl. However, the proposed changes would not fundamentally alter the changes effected by Proposition 47.

In August 2023, a coalition of law enforcement and local district attorneys developed the Homeless, Drug Addiction, and Theft Reduction Act initiative (Proposition 36), which, if approved by California voters, would change specific provisions enacted by Proposition 47. Proponents circulated petitions statewide and collected more than the 652,100 valid signatures needed to qualify for the November 2024 ballot.

July 2024 represented the final opportunity for the Legislature and initiative proponents to negotiate a compromise and avoid the ballot. At one point, the Legislature's package included language that would have rendered the initiative inoperable if that version received more votes in November. Ultimately, the Legislature could not reach a consensus on its version, so the initiative proponents moved the Homeless, Drug Addiction, and Theft Reduction Act forward for the November 2024 ballot.

On August 16, 2024, Governor Newsom signed a 10-bill package to make prosecuting people suspected of retail and vehicle theft easier. The bills are intended to counter changes proposed through Prop. 36, which the Governor and some Democrats oppose, and that would impose stricter penalties. Some of the notable bills include AB 1799 (Irwin), which allows for the consolidation of retail theft prosecution across jurisdictions; AB 2943 (Chavez Zbur), which permits peace officers to make arrests for misdemeanor shoplifting even if they were not witness to the crime and facilitates the prosecution of aggregated thefts by the same person(s) across different counties that exceed the \$950 threshold for felony theft charges; AB 3209 (Berman) that allows retail stores to seek restraining orders against people who steal, vandalize or assault an employee; SB 1144 (Skinner) which requires that online marketplaces collect certain information from high-volume third-party sellers and authorizes a district attorney, city attorney, and county counsel to enforce the requirements; and SB 1416 (Newman) that enacts sentencing enhancements for large-scale organized retail theft.

### Ballot Measure

Proposition 36 makes several key changes related to punishments for theft and drug crimes:

1. It increases punishment for possessing certain drugs, including fentanyl, and for individuals who are convicted of a third misdemeanor theft crime.
2. It creates a new treatment-focused court process for some drug possession crimes.
3. 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 from consuming an unlawful substance sold by that individual.

Under current law, the theft of items worth up to \$950 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. Under the measure, these sentences could be lengthened by up to three years for theft or property damage if three or more people committed the crime together, regardless of the amount stolen.

In addition, Proposition 36 will allow for the value of property stolen in multiple thefts to be combined so that individuals who commit multiple thefts that, in combination, meet \$950 in value may be charged with felony theft instead of petty theft.

The ballot initiative would also increase sentences for the sale of drugs such as fentanyl, heroin, cocaine, or methamphetamine based on the amount sold. Fentanyl would be added to the list of drugs that warrant a felony charge if the person is also found in possession of a firearm, increasing the punishment up to four years. In addition, those found guilty of possession could be charged with a "treatment-mandated" felony for those with two or more previous convictions for drug crimes and given the option of participating in drug and mental health treatment. Individuals who complete the mental and substance use treatment programs would have their charges dismissed.

## Departments Impacted

**District Attorney**—The District Attorney indicates the following impacts on the operations and services of his office:

1. Provides for the filing of felony charges for a third retail theft, irrespective of the value of the stolen property. The DA notes that this will have a negligible effect on his operation as a felony charge does not increase the expenditure of time and resources for the prosecution.
2. Provides for mandatory prison sentences for certain sales of narcotics such as fentanyl. This will have a minimal effect on the DA's Office since it has already prosecuted these cases, and no additional resources will be required. The Department could experience a slight

increase in the number of cases going to trial, but this should not impact their operations.

3. Provides for mandatory admonition to persons convicted of drug offenses, warning that selling drugs is dangerous and might lead to a murder charge in the future. The DA does not anticipate an impact on his office due to this added admonition.
4. **Fiscal Impact**—The DA anticipates a negligible financial impact on his office due to the implementation of Prop. 36, as it will not increase the number of cases prosecuted or the workload for prosecuting cases it already handles.

**Sheriff's Office**—The Sheriff anticipates the following potential impacts:

1. Operations Division:
  - Increases in calls for service of theft and narcotic-related offenses reported by the public.
  - Increases in arrests as a result of affected offense code classifications.
  - Increased jail bookings by Patrol Deputies related to certain narcotics and theft-related crimes.
  - Increases in Detective follow-up related to impacted offenses and crime categories.
2. Corrections Division:
  - Increases in jail housing population (Sheriff's Office and external Law Enforcement partner generated), processing of incarcerated persons care/health needs, and corrections-led jail programs by Sheriff's staff.
  - Increased jail time as a result of stricter punishments for some narcotics and theft-related offenses as a result of changes imposed by Prop. 36.
  - Increases in Court Security and Transportation activity, including in-custody court appearances and transportation needs for other incarcerated persons, such as facility transfers and offsite medical appointments.
3. Workload increases in the Operations and Corrections Divisions will potentially impact other Sheriff's Office services, such as the Forensic Crime Lab.
4. **Fiscal Impact**—The Sheriff's Office expects funding for additional resources to safely and effectively respond to the increased demands to better serve the community, incarcerated persons in their care, and Sheriff's staff will be needed.

**Probation**—The Chief Probation Officer notes the following impacts:

1. Anticipates an unknown increase in the number of adults on probation and in state prisons.
2. The Department will need to continue to have the ability to hire Probation Officers to manage increased caseloads as Prop. 47 and subsequent state legislation

- reduced the caseload numbers by 35 percent.
3. Probation Officers will also have less time to help rehabilitate offenders than in past years due to changes in state law that have significantly reduced probation terms. As a result, the department's success rates could decrease.
  4. There are not enough treatment slots for the anticipated increased number of offenders who will require mandatory drug and mental health services. In addition, offenders will also require an addiction disorder diagnosis for payment of services. The Department anticipates that many Prop. 36 offenders will not be drug addicts, which could result in County costs.
  5. **Fiscal Impact**—Unknown at this time.

**Private Defender Program**—The Chief Defender opposes Prop. 36 for the following reasons:

1. Allows anyone with two prior petty thefts (or theft-related offenses) to be charged with a felony no matter the value.
2. Multiple thefts will be allowed to be aggregated to meet the \$950 threshold.
3. A person with two prior drug possession convictions could be charged with a "treatment-mandated felony" for a third or subsequent drug offense and would be ordered to complete treatment unless the court determines that the person is not eligible or suitable for treatment and sent to prison.
4. While the proposition is promoted as a solution to homelessness and drug addiction, it does not provide any new funding for housing or treatment.
5. Cuts \$750 million in the next decade from dedicated funding for mental health, drug treatment, victim services, reentry, and crime prevention programs due to loss of state savings currently deposited into the Safe Neighborhoods and Schools funds established by Prop. 47.
6. Believes the proposal will have a devastating impact on the clients served by the PDP.
7. **Fiscal Impact**—No estimate provided.

**Correctional Health**—The Chief of Health and Correctional Health Services Director note the following impacts:

1. Anticipate an increase in the number of incarcerated persons requiring services.
2. While the Sheriff's Office did not provide a projected census count to the Division, based on previous experience and current workload, it anticipates that about 100 newly incarcerated persons may be impacted by the proposition on a daily basis. The number could be smaller, however, and it will depend on the actions of the court and District Attorney.
3. **Fiscal Impact**—Based on this estimated workload increase, the Division anticipates requiring the following additional staffing: 1 (one) Nurse Practitioner, 2 (2)

Correctional Health Nurses, and 2 (two) mental health clinics. Increased staffing costs are approximately \$1,206,785. Pharmaceutical and medical supplies are estimated at \$543,336 annually. The estimated total cost is \$1,750,121.

The Health System anticipates that some staffing and treatment costs may be billable to Medi-Cal retrospectively 90 days post-discharge as part of the CalAIM waiver. However, given the high number of out-of-county residents in the jail and the small subset of reimbursable services, reimbursement amounts are unclear. The remaining costs will require Net County Costs.

**Behavioral Health and Recovery Services**—The Behavioral Health and Recovery Services Director and Health System Chief note the following impacts:

1. Estimate that 600 individuals will seek substance use services in the County if Prop. 36 passes. This figure is based on experience.
2. **Fiscal Impact**—Based on this projected client increase, the Division anticipates requiring the following additional staffing: 2 (two) Case Management Assessment Specialists (CMAS) to conduct assessments and referrals to treatment; 1 (one) Mental Health Program Specialist to train the CMAS staff and partner with Correctional Health, the Sheriff's Office, Probation Officers, Judges, SUD treatment providers and mental health providers to develop integrated behavioral health workflows and streamlined referral pathways.

Additional annual costs include: 1) an estimated \$7,203,592 increase in Drug Medi-Cal Organized Delivery System (DMC ODS) claims across all treatment modalities; 2) \$118,602 for the expansion and continuation of Contingency Management/Recovery Incentives pilot to this population, which is an evidence-based practice for those struggling with addiction to stimulants, offering small weekly incentives for abstinence; and 3) \$2,171,100 for associated room and board costs and recovery residence housing essential to support long term recovery. \$805,740 is projected for residential treatment room and board costs for an estimated 100 individuals for 60 days each. \$1,365,360 will provide another 100 individuals 120 days of recovery residence housing while concurrently participating in outpatient substance use disorder treatment.

3. Total estimated costs are \$10,011,077 per year some of which may be billable to Medi-Cal.

**Courts**—The Court Executive Officer anticipates the following impacts on the Court operations:

1. The San Mateo County Superior Court and the State are experiencing a significant court reporter shortage. The

anticipated increase in felony cases and subsequent Prop. 36 requirements for regular review hearings for “treatment-mandated” felonies will challenge the Court’s ability to provide court reporter coverage for larger and more frequent felony calendars.

The anticipated increase in the felony workload comes during decreased state funding for the judicial branch. The San Mateo County Superior Court expects to cut its operations budget by \$1.45 million for the next fiscal year, along with an expected hiring freeze. The Court will be unable to increase the availability or access to court reporters. This could lead to long delays and continuances in court hearings while courtrooms wait for an available court reporter.

2. The proposition does not define the expertise and knowledge base of the “drug addiction expert” expected to be utilized for assessing defendants charged with a “treatment-mandated” felony. The proposition also fails to identify a validated risk/needs diagnostic tool or evidence-based clinical assessment tool that is to be employed in the “substance abuse and mental health evaluation” of the defendant.
3. The County’s Drug Treatment Court would be challenged to address the anticipated workload increases that may result from a reversion to charging felony offenses that are currently misdemeanor offenses under Prop. 47. Drug Court is no longer staffed and calendared at the same levels it was ten years ago.

## Fiscal Impact

The measure would have unknown costs for San Mateo County operations; however, it is expected to have fiscal impacts on the Sheriff’s Office, Probation Department, Correctional Health, and Behavioral Health. The Courts and Private Defender Program also note increased costs.

At the statewide level, estimates from the California Legislative Analyst’s Office and the Department of Finance indicate the measure would increase state criminal justice system costs by several tens of millions to the low hundreds of millions of dollars annually, primarily due to an increase in the state prison population and state court workload.

Some of these costs could be offset by reductions in state spending on local mental health and substance use services, truancy and dropout prevention, and victim services due to current legal requirements. In addition, an increase in local criminal justice system costs throughout the state, potentially up to tens of millions of dollars annually, due to increased local court workloads and a net increase in the number of people in county jail and under county community supervision.

## Support

According to the proponents of the ballot measure, “Proposition 36 is a balanced approach that corrects loopholes in state law that criminals exploit to avoid accountability for fentanyl trafficking and repeat retail theft.

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. Proposition 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.”

The California State Association of Counties (CSAC) Executive Committee voted to approve a support position recommended by the Administration of Justice Policy Committee. The CSAC Board of Directors will be voting on the position for Proposition 36 on August 29, 2024.

### Supporters:

- **California District Attorneys Association**
- **California Police Chiefs Association**
- **California Retailers Association**
- **California State Sheriffs’ Association**
- **California Small Business Association**
- **California Correctional Peace Officers Association**

## Opposition

According to the opponents of the ballot measure, “Proposition 36 will strip millions away from dedicated funding that is spent on mental health, drug treatment, and rehabilitation programs, and it will expand the state prisons budget instead.

Local public safety programs 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.”

## Opponents:

- **Anti-Recidivism Coalition**
- **Vera Institute of Justice**
- **Prosecutors Alliance Action**
- **Reentry Providers Association of California**
- **Crime Survivors for Safety and Justice**

## Status

6/11/24—Qualified for the November 2024 ballot.