

What the Legislature Needs to Know About Prop 36

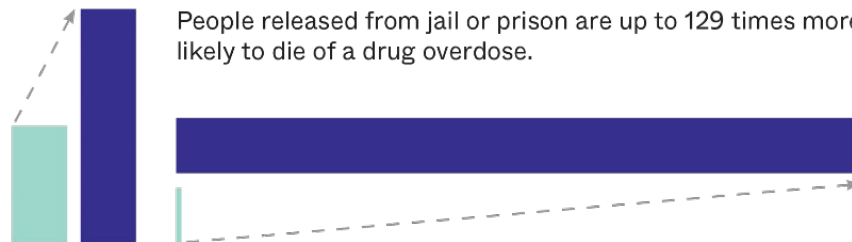
In November 2024, California voters approved [Proposition 36](#), which extends “three strikes”-style sentencing to low-level nonviolent drug and theft offenses. It will cost California millions to billions each year and cut funding from crime prevention programs that keep communities safe, like mental health and drug treatment, housing services, and K-12 school programs. **During the 2025-2026 legislative cycle, California legislators should be aware of (1) what penalties Prop 36 put in place and, (2) the way in which it impacts funding streams.**

What is Prop 36?

In 2014, in an effort to save money and improve the prison system without [compromising public safety](#), California passed [Proposition 47](#). Prop 47 reclassified six low-level nonviolent felony offenses to misdemeanors, including shoplifting and simple drug possession. It funneled the resulting costs savings into [effective safety measures](#) like drug and mental health treatment, homelessness prevention, and victim services centers.

In 2024, [Prop 36](#) rolled back portions of Prop 47. Although proponents described Prop 36 as “The Homelessness, Drug Addiction, and Theft Reduction Act,” none of its provisions [directly addressed homelessness](#). Rather than fund substance use treatment or expand behavioral healthcare, it addressed substance use and low-level theft only through longer sentences.

Overdoses in California prisons have more than doubled in recent years.



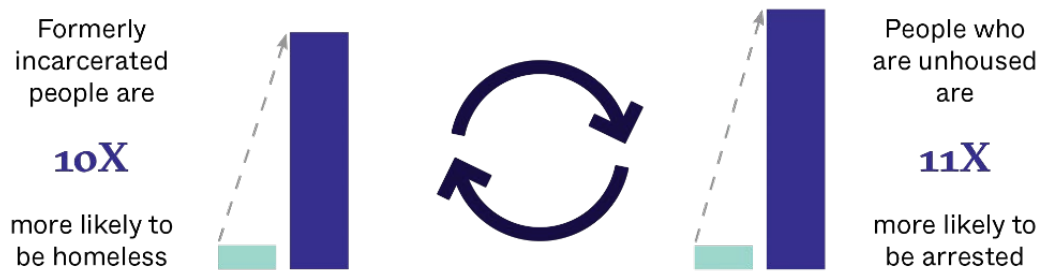
People released from jail or prison are up to 129 times more likely to die of a drug overdose.

Sources: [New England Journal of Medicine](#) and [LAist](#)

How will Prop 36 impact California?

Funding: Because Prop 36 will increase prison spending, it will decrease Prop 47 cost savings that [fund drug treatment, housing, and school-based programs](#)—as well as services for survivors of crime. According to the [Legislative Analyst's Office](#), Prop 47 saved the state approximately \$95 million per year, which was reallocated to these crime prevention programs. The LAO [also estimated](#) that Prop 36 will increase state spending on prisons between tens of millions and hundreds of millions of dollars annually. [Advocates estimated](#) that Prop 36 will also increase local spending on jails and courts by up to \$2.3 billion per year.

Safety: Because programs funded by Prop 47 are [three times more effective](#) at reducing future convictions compared to prison, Prop 36 may not reduce crime rates as intended by its authors. Prop 36 also risks increasing homelessness because incarceration makes someone more likely to experience homeless and because it [cuts funding from housing programs](#). Further, it will likely increase [overcrowding and racial disparities](#) in prisons and jails.



Sources: [Arnold Ventures](#), [Prison Policy Initiative](#), and [National Law Center on Homelessness & Poverty](#)

What does Prop 36 do?

Prop 36 both rolls back Prop 47 and adds new penalties for drug use and a broad range of theft offenses, and it adds new sentencing enhancements that will apply to any type of crime. For example:

- If someone gets caught possessing a small amount of drugs three or more times, they could go to **jail or prison for up to three years**.
- If someone gets arrested for low-level theft three or more times, including something as simple as returning a rental car late or stealing a sandwich, they could go to **jail or prison for up to three years**.

Drug Use

Prop 36 increases incarceration time for those who use drugs. While Prop 36 imposes mandated drug treatment in some cases, it will reduce funding for (and consequently availability of) such treatment. Specifically, Prop 36:

- Allows judges to sentence someone to a felony (up to three years in state prison and a host of other consequences including limitations on future employment, voting rights, and other civil rights) for possessing any amount of drugs if the person has previously been convicted of two or more drug-related offenses, including misdemeanor possession.
 - If a judge determines the person is “eligible or suitable for treatment,” they can participate in court-mandated addiction and mental health treatment instead of incarceration.
 - However, even if the person is approved for court-mandated treatment, they will be required to plead guilty and will face immigration and civil rights consequences as a result.
 - A judge or prosecutor may remove the person from treatment at any time, and wealthier people can pay for a program of their choice instead of the one the court mandates.
- Adds fentanyl to the list of drugs for which it is a felony to possess any amount of drugs while also possessing a loaded firearm, even if the firearm is possessed lawfully and the person has a license to possess the firearm.
- Requires the court to warn anyone convicted of possessing for sale, transporting, or distributing any amount of so-called “hard drugs” that they could be charged with murder if they sell or distribute drugs in the future and the recipient dies.
 - This makes it easier to prosecute that person for murder in the future because it satisfies the prosecutor’s burden to demonstrate the death was intentional.
 - This applies not just to drug dealers but also to anyone who might provide a friend or fellow user with drugs (whether in exchange for money or not).

Theft

Prop 36 increases prison time for a broad range of theft offenses (for example, failing to return a rental car on time). Specifically, Prop 36:

- Allows judges to punish someone who commits any of a wide range of misdemeanor and felony theft offenses with a felony (up to three years in state prison and other civil rights consequences) if they have two or more prior convictions for a theft-related offense.
 - Prosecutors or probation officers could refer people convicted under this section for [diversion](#), but only if counties have theft diversion programs in place (which the vast majority of counties, including Los Angeles County, do not).
- Allows prosecutors to add together multiple unrelated misdemeanor level (under \$950) thefts to arrive at a dollar amount of over \$950 in order to charge them as a felony.
 - Prop 47 set the felony threshold for theft at \$950, an amount lower than 40 other states including South Carolina (\$2,000) and Texas (\$2,500).
 - While prosecutors were previously able to combine related thefts, this allows prosecutors to combine entirely unrelated thefts to charge someone with a felony, for example stealing a sandwich in January, returning a rental car late in June, and then taking money out of your employer's cash register in December.

Sentencing Enhancements

Sentencing enhancements require judges to add additional years of prison time on top of the sentence for the underlying crime. This means that the person is punished twice, once by the actual sentence associated with the crime and again by the extra time added by the enhancement. **Some sentencing enhancements in Prop 36 apply to any felony—not just theft or drug offenses.** Specifically, Prop 36:

- Adds a mandatory sentencing enhancement if someone “takes, damages, or destroys any property” during any felony offense, and the damage exceeds \$50,000 of value.
 - This is a sentencing enhancement that [previously existed](#) but was allowed to sunset in 2018. Governor Brown [vetoed](#) a similar enhancement in 2018 on grounds that there was no “corresponding evidence that it was effective in deterring crime.”
 - Unlike the previous version of this enhancement, Prop 36 does not require damage to be intentional, meaning, for example, that it could apply to property damaged in a car accident.
 - The dollar amounts are also set at a lower amount when compared to the previous version of this enhancement and will not be adjusted for inflation (meaning the punishments are harsher).
- Adds a mandatory sentencing enhancement of up to three years when two or more people “take, attempt to take, damage, or destroy any property” during **any felony**, regardless of the value or whether it was intentional.
- Adds fentanyl to an existing mandatory sentencing enhancement for drug sale or possession that adds between three and 25 years (depending on the amount of drugs) to a person's sentence.

Learn more about Prop 36

[Studies show that increasing charges and punishments](#) (including for repeat offenses) does not meaningfully deter crime. Neither does [lowering felony theft thresholds](#) work. Rather than address safety, many of Prop 36's provisions are likely to increase prison [overcrowding](#) and add to racial disparities. To better understand how Prop 36 will impact California, please see these further resources:

- [Fact Sheet Regarding Prop 47-Funded Programs in LA County](#)
- [Fact Sheet Regarding Statewide Racial Disparities in Retail Theft Arrests](#)
- [Article Regarding Positive Impacts of Prop 47-Funded Services](#)