

PROP 36



What is Prop 36?

“The Homelessness, Drug Addiction, and Theft Reduction Act” was enacted by the voters on November 5, 2024, and became effective on December 18, 2024. The initiative makes several changes to narcotic- and theft-related laws.

Most significantly, Prop 36 creates two (2) new alternative felony/misdemeanor (“wobbler”) offenses.



H&S § 11395

Treatment-Mandated Felony

Simple possession of a “hard drug” if the offender has two (2) prior drug-related convictions.

Hard drugs include: fentanyl, heroin, cocaine, cocaine base, methamphetamine, phencyclidine, and their analogs.

Qualifying prior convictions include: H&S §§ 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11370.1, 11377, 11378, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11395.

PC § 666.1 Petty Theft with Priors

Petty theft or shoplifting if the offender has two (2) prior theft-related convictions.

Qualifying prior convictions include: PC §§ 211 (robbery), 215 (carjacking), 368 (theft from elder or dependent adult), 459 (burglary), 459.5 (shoplifting), 488 or 490.2 (petty theft), 487 (grand theft) 487h (grand theft of cargo), any grand theft crime described in §§ 484 through 502.9, 496 (receiving stolen property), 530.5 (identity theft or mail theft), and VC § 10851 (theft or unauthorized use of a vehicle)



What is a “wobbler”?

A “WOBBLER” IS A CRIME THAT CAN BE CHARGED AS EITHER A FELONY OR A MISDEMEANOR.

- Punishment for either of these crimes is a 16-2-3 wobbler, punishable in county jail (1170(h)) for a first offense and state prison for any subsequent offense.
- There is no “washout” or age limit on priors that qualify an offender for a H&S § 11395 or PC § 666.1 charge.
- An arrest for either H&S § 11395 or PC § 666.1 requires the court to conduct a judicial review prior to release from custody in order to make an individualized determination of the defendant’s risk to public safety and the likelihood the defendant will appear in court if released.
- A felony arrest for H&S § 11395 or PC § 666.1 will also necessitate DNA collection (PC § 296(a)(2)(C)).

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Other Narcotic-Related Provisions:

- **H&S § 11369 (“Alexandra’s Law”)**: Requires a court to warn convicted hard drug dealers that they can be charged with murder if they traffic in hard drugs and someone dies as a result (i.e., *Watson*-style advisement).
- **H&S § 11370.1**: Adds fentanyl to existing law that prohibits the possession of a hard drug while armed with a loaded firearm.
- **H&S § 11370.4**: Adds a new subdivision for trafficking fentanyl in high quantities and requires a state prison sentence instead of county jail (1170(h)) for any violation.
- **PC § 12022(c)**: Drug dealers must be sentenced to state prison instead of county jail (1170(h)) when trafficking while armed with a firearm.
- **PC § 12022.7**: Allows a “great bodily injury” enhancement (a “strike”) if someone suffers serious injury or death from using drugs that were sold, furnished, administered, or given to them by the offender.

Other Theft-Related Provisions:

- **PC § 490.3**: Permits aggregating (combining) the value of property or merchandise stolen during multiple thefts to meet the felony \$950 threshold.
- **PC § 12022.6**: Re-enacts a version of the excessive takings enhancement, which provides for increased punishment for taking or damaging property worth more than \$50,000.
- **PC § 12022.65**: Creates a new enhancement for acting in concert with two or more persons to take, damage, or destroy property in the commission or attempted commission of a felony.

Prior Versions of Proposition 36

Two other previous criminal justice-related initiatives were also titled “Proposition 36.” In 2000, voters enacted the “Substance Abuse and Crime Prevention Act” which allowed certain defendants to receive drug treatment instead of jail time for non-violent drug possession offenses. In 2012, the “Three Strikes Reform Act” eliminated life sentences for most non-serious /violent offenses regardless of a defendant’s prior record. Current Proposition 36 does not affect the prior versions.