

# LAW ENFORCEMENT TRAINING BULLETIN

# PROP 36

## What is Prop 36?

“The Homelessness, Drug Addiction, and Theft Reduction Act” was enacted by the voters on November 5, 2024, though does not become effective until approximately mid-December (no later than 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 are: H&S §§ 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11370.1, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11395.

### **P.C. § 666.1 Petty Theft with Priors**

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

Qualifying prior convictions are: P.C. §§ 211 (robbery), 215 (carjacking), 368 (theft from an 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 V.C. § 10851 (theft or unauthorized use of a vehicle)



- 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 “wash out” or age limit on priors that qualify an offender for a H&S § 11395 or P.C. § 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).)

# LAW ENFORCEMENT TRAINING BULLETIN **PROP 36**

Continued



## IMPORTANT

**It is crucial that law enforcement check an arrestee's criminal history (local and state) to determine if an offender has two (2) or more qualifying prior convictions that would elevate the crime to a felony (H&S § 11395 or P.C. § 666.1).**

### **LAW ENFORCEMENT ADVISEMENT FOR HARD DRUG TRAFFICKERS**

**"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 such 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. " (H&S Code, § 11369, subd. (b).)**

### **Other Narcotic-Related Provisions:**

- H&S § 11369 – 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.
- P.C. § 12022(c) – drug dealers must be sentenced to state prison instead of county jail (1170(h)) when trafficking while armed with a firearm.
- P.C. § 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:**

- P.C. § 490.3 – permits aggregating (combining) the value of property or merchandise stolen during multiple thefts to meet the felony \$950 threshold.
- P.C. § 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.
- P.C. § 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.