



COUNTY OF SAN DIEGO

BOARD OF SUPERVISORS

1600 PACIFIC HIGHWAY, ROOM 335, SAN DIEGO, CALIFORNIA 92101-2470

AGENDA ITEM

DATE: August 27, 2024

05

TO: Board of Supervisors

SUBJECT:
SUPPORT FOR PROPOSITION 36: THE HOMELESSNESS, DRUG ADDICTION, AND THEFT REDUCTION ACT (DISTRICTS: ALL)

OVERVIEW

Whether it's rampant retail theft causing neighborhood store closures and higher prices for working families, or the growing epidemic of fentanyl overdoses, Californians must address these pressing public health and public safety issues. Retail theft not only affects the livelihood of business owners but also disrupts community stability, leading to workplace violence, store closures and increased prices that disproportionately impact low-income families. At the same time, the fentanyl crisis continues to ravage communities, with overdose deaths reaching unprecedented levels and straining our healthcare and emergency response systems. The need for balanced reform is clear: it's on our streets, in our stores, and affecting our communities and families.

Passed in 2014, Proposition 47, the Criminal Sentences, Misdemeanor Penalties, Initiative Statute, expressed the intention to make California's criminal justice system more equitable by expanding opportunities for offenders to be treated at the misdemeanor level. Unfortunately, it also led to a decade of unintended consequences: Repeat, habitual and organized offenders who steal amounts under \$950 and, or repeatedly possess hard drugs such as fentanyl and methamphetamine go without any increased accountability, or incentive to engage in addiction or mental treatment since the consequence is always a citation or misdemeanor. Sadly, there is no dispute that a substantial segment of persons experiencing homelessness suffer from untreated addiction resulting in the staggering data point from our Medical Examiner that this vulnerable population of unhoused individuals has a 117 times higher rate of overdose death, adding to the barriers to prevent and end homelessness.

Supported by over 900,000 signatures, Proposition 36 seeks to provide a balanced reform that preserves options for individuals who want to pursue rehabilitation and diversion, while also providing public safety with tools to hold repeat offenders accountable and incentivize treatment. It also provides accountability for fentanyl dealers by bringing it into the same fold as

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methamphetamine. Proposition 36 is not a three strikes law nor is it a mandatory state prison law. It maintains judicial discretion needed to allow probation and to order treatment.

It's time for meaningful reforms to our justice system, that ensure our communities are safe. This includes responsible and balanced changes to Proposition 47.

Proposition 36: The Homelessness, Drug Addiction, and Theft Reduction Act will address homelessness, drug addiction, and theft by:

- Classifying repeat theft as a felony for individuals who steal less than \$950 if they have two or more prior theft related convictions with the option to reduce to a misdemeanor even on the third theft while the fourth conviction remains a felony.
- Allowing stolen property values from multiple thefts to be combined so repeat offenders can be charged with a felony if the total exceeds \$950.
- Authorizing judges to impose an enhanced penalty when an offender steals, damages, or destroys property by participating in organized theft with two or more offenders or by causing losses of \$50,000 or more.
- Adding fentanyl to the list of hard drugs.
- Enabling stricter penalties for dealers whose drug trafficking causes death or serious injury and warns traffickers of potential murder charges if continued drug trafficking results in fatalities similar to the warnings that are given in DUI cases.
- Enacting a new class of crime called a “treatment-mandated felony” where offenders with two prior hard drug possession convictions would be given the option of participating in drug and mental health treatment in lieu of incarceration.
- Allowing offenders who successfully complete drug and mental health treatment to avoid jail time and have the charge fully expunged.

Therefore, we recommend that the Board adopt a resolution in support of Proposition 36: The Homelessness, Drug Addiction and Theft Reduction Act which will be included on the November 5, 2024, statewide ballot.

RECOMMENDATION

SUPERVISOR JIM DESMOND, SUPERVISOR JOEL ANDERSON AND DISTRICT ATTORNEY SUMMER STEPHAN

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Adopt the Resolution titled: RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO FORMALLY EXPRESSING THE COUNTY'S SUPPORT FOR PROPOSITION 36, THE HOMELESSNESS, DRUG ADDICTION AND THEFT REDUCTION ACT ON THE NOVEMBER 5, 2024 STATEWIDE BALLOT.

EQUITY IMPACT STATEMENT

The Homelessness, Drug Addiction, and Theft Reduction Act seeks to enhance community safety and address critical issues of retail theft, drug addiction, and homelessness, impacting all Californians, particularly marginalized communities. By classifying repeat thefts and organized retail crime as felonies, the measure aims to protect small businesses and working families from economic harm and neighborhood disinvestment. Including fentanyl in the list of hard drugs and imposing stricter penalties on traffickers addresses the overdose crisis, while offering pathways to treatment over incarceration. These reforms balance justice with compassion; ensuring that repeat offenders face appropriate consequences while maintaining the original intent of reducing incarceration for non-violent offenses will help address disparities in the criminal justice system and enhance community safety for all residents.

SUSTAINABILITY IMPACT STATEMENT

This proposed action contributes to the County of San Diego's Sustainability Goal of protecting the health and well-being of all San Diego residents. By supporting the proposed reforms to Proposition 47, the County can promote sustainable public safety policies that protect communities while providing opportunities for rehabilitation and reducing recidivism. This balanced approach is essential for creating safer and more resilient neighborhoods throughout San Diego County. Enhancing public safety is of paramount priority for the County.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

The approval and subsequent enactment of The Homelessness, Drug Addiction and Theft Reduction Act ballot measure will help to restore historical protections that have been in place for our business community. By restoring confidence for retailers and others that thefts will be addressed through arrests and prosecutions, regardless of any thresholds, we can protect the business community and may prevent the closure of stores and help stem the exodus of businesses to other states.

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

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Whether it's rampant retail theft causing neighborhood store closures and higher prices for working families, or the growing epidemic of fentanyl overdoses, Californians can't afford inaction. Passed in 2014, Proposition 47 achieved notable success in making California's criminal justice system more equitable. However, it led to unintended consequences over the past decade — repeat and often organized retail theft, and difficulty incentivizing people to seek drug and mental health treatment often creating circumstances that lead to homelessness.

Following the submittal of over 900,000 signatures in support of “The Homelessness, Drug Addiction and Theft Reduction Act,” California's Secretary of State announced that the initiative qualified to appear on the November 5, 2024, statewide ballot as Proposition 36. If approved by voters, this measure would revise elements of Proposition 47, which reclassified certain drug and property-related crimes as misdemeanors instead of felonies.

A major goal of reclassifying specific crimes under Proposition 47 was to reduce incarceration rates and focus resources on violent and serious offenders. However, there continues to be questions about its impact on crime rates, with evidence it has led to an increase in certain types of theft and larceny. For example, following the approval of Proposition 47, the State experienced a nine percent increase in larceny offenses and an increase in auto break-in thefts compared to other states.

In 2017, the California Supreme Court ruled that a person convicted of a felony for stealing a car could now have their conviction reduced to a misdemeanor if the vehicle was worth \$950 or less, and in 2018, researchers found that Proposition 47 contributed to an increase in car burglaries, shoplifting and other thefts.

Because thieves now frequently target items below \$950, many retailers have had to secure their high-theft items to prevent further losses. Large retailers, including supermarkets and pharmacies reported that shoplifting increased from 15% to over 50% in some cases following the approval of Proposition 47. Several major department stores, including Target, Nordstrom, and Old Navy, have had to close stores in some areas, such as the San Francisco Bay area. The criminal actions have led to frustration and safety concerns for business owners, employees, and customers. In some instances, clashes between thieves and retail employees attempting to stop thefts have escalated into violence, even resulting in fatalities.

According to the California Retailers' Association, there are even instances of criminals bringing calculators into stores to ensure the amount of goods they are stealing do not exceed \$950. Because prosecutors often decide against prosecuting thefts under \$950, and with only 6.6% of reported theft incidents resulting in an arrest in 2022, down from 15% in 2013, many retailers no longer report many thefts to the police.

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The changes proposed by The Homelessness, Drug Addiction and Theft Reduction Act ballot measure would address this issue by authorizing stricter penalties for repeat offenders involved in theft-related crimes. It would allow for persons convicted of two or more theft-related offenses to be punished as either a misdemeanor, or a felony based on the value of the property involved. Because the proposed reforms would change laws enacted through the initiative process, it requires approval by the State's voters.

In addition to the impact of Proposition 47 on retailers, participation in some drug diversion programs, particularly drug courts, has dropped since the enactment of the measure, as it became easier for drug offenders to avoid mandated treatment programs. According to the Center for Court Innovation, following the passage of Proposition 47, participation in drug courts decreased statewide by 67% between 2014 and 2018. Their study suggests that reduced legal leverage under Proposition 47 directly influenced this decline, as eligible defendants were more likely to refuse participation due to perception of the program as lengthy and intensive.

By redefining fentanyl as a hard drug, the proposed reform measure would hold accountable individuals convicted of trafficking fentanyl and would grant judges greater discretion in sentencing drug traffickers. This measure may also assist in reducing the homeless population by encouraging those struggling with drug addiction to seek and participate in the treatment they need to get off the streets.

The Homelessness, Drug Addiction, and Theft Reduction Act will address homelessness, drug addiction, and theft in the following ways:

Addresses Organized and Serial Retail Theft

- Rampant retail theft is harming businesses and residents in California because those who commit these crimes know they'll get away with it, even if they're caught. This measure will hold repeat offenders accountable for the safety of our communities, rather than putting them back on the streets.
- Classifies repeated theft as a felony for individuals who steal less than \$950 if they have two or more prior theft related convictions.
- Allows stolen property values from multiple thefts to be combined so repeat offenders can be charged with a felony if the total exceeds \$950, countering tactics by career criminals to avoid harsher penalties.
- Authorizes judges to impose an enhanced penalty when an offender steals, damages, or destroys property by participating in organized theft with two or more offenders or by causing losses of \$50,000 or more.

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Confronts the Fentanyl Crisis in Our Communities

- The fentanyl crisis has reached alarming levels and is now responsible for 20 percent of youth deaths in California. This measure will define fentanyl as a hard drug, hold individuals convicted of trafficking fentanyl accountable, and would grant judges greater discretion in sentencing drug traffickers.
- Adds fentanyl to the list of hard drugs — such as heroin, cocaine, and methamphetamine — that are illegal to possess with a firearm and authorizes greater consequences for selling deadly quantities.
- Enables stricter penalties for dealers whose drug trafficking causes death or serious injury and warns traffickers of potential murder charges if continued drug trafficking results in fatalities.

Prioritizes Mental Health and Drug Treatment

- Breaking the cycle of repeat offenders means addressing the many root causes of retail theft. This measure provides critical mental health, drug treatment services, and job training within our justice system for people who are experiencing homelessness or struggling with mental health challenges or substance misuse.
- Enacts a new class of crime called a “treatment-mandated felony” where offenders with multiple hard drug possession convictions would be given the option of participating in drug and mental health treatment in lieu of incarceration.
- Allows offenders who successfully complete drug and mental health treatment to avoid jail time and have the charge fully expunged.

Therefore, we recommend that the Board adopt a resolution in support of The Homelessness, Drug Addiction and Theft Reduction Act that will appear on the November 5, 2024, statewide ballot. Supporting this reform effort aligns with the County’s commitment to enhancing public safety while maintaining the principles of justice reform. It is crucial to balance the need for accountability with opportunities for rehabilitation and prevention of recidivism.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed action supports the Safety, Restorative, and Quality of Life Initiatives of the County of San Diego’s 2024-2029 Strategic Plan by enhancing public safety and offering alternatives to incarceration.

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Respectfully submitted,



JIM DEMSOND
Supervisor, Fifth District



JOEL ANDERSON
Supervisor, Second District



SUMMER STEPHAN
District Attorney

ATTACHMENTS

Resolution in Support of Proposition 36, the Homelessness, Drug Addiction and Theft Reduction Act on the November 5, 2024, Statewide ballot