

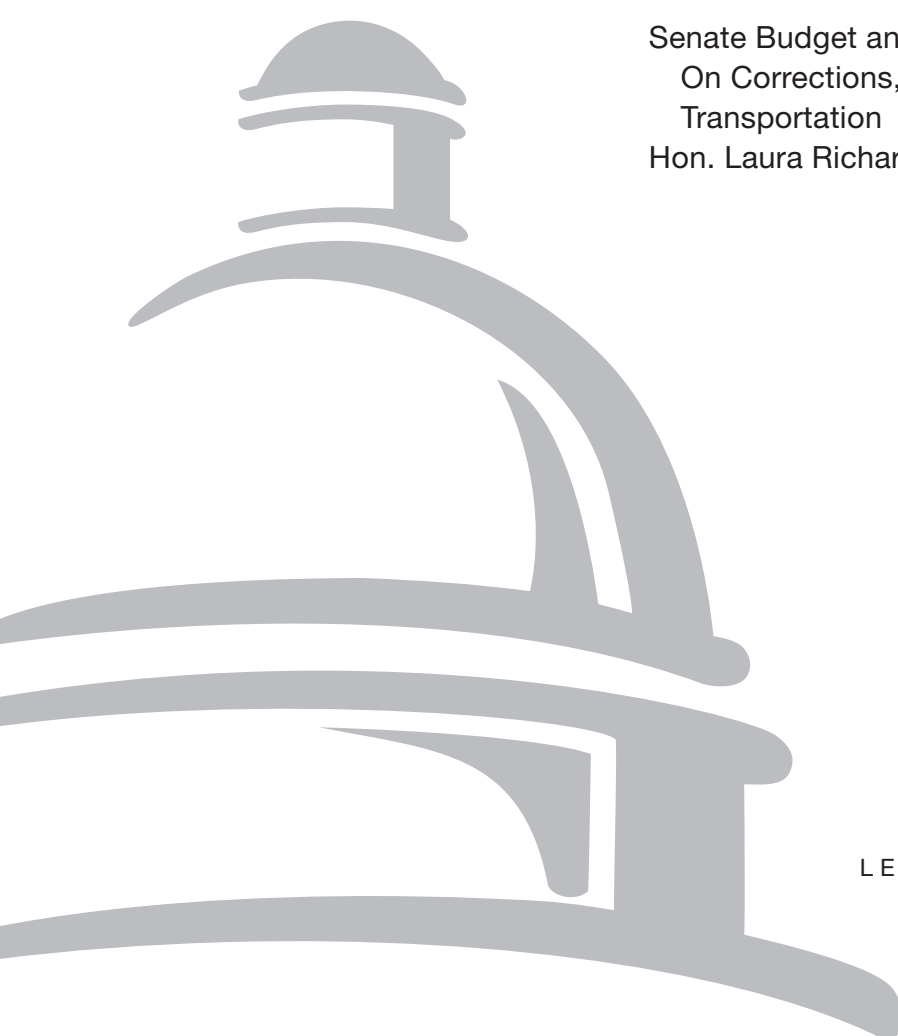
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Overview of Proposition 36 Fiscal Impacts and Selected Substance Use Disorder Treatment Programs

PRESENTED TO:

Senate Committee on Public Safety
Hon. Jesse Arreguín, Chair

Senate Budget and Fiscal Review Subcommittee No. 5
On Corrections, Public Safety, Judiciary, Labor and
Transportation
Hon. Laura Richardson, Chair



LEGISLATIVE ANALYST'S OFFICE

Overview of Handout

- At the request of staff, we have created this handout, which provides an overview of:
 - Proposition 36, which was approved by the voters in November 2024 and increased punishment for various theft and drug crimes.
 - Our estimates of the major fiscal impacts of Proposition 36 on the state and local governments.
 - Estimated Proposition 36 fiscal impacts included in the Governor’s proposed 2025-26 budget and our assessment of those estimates.
 - Selected substance use disorder (SUD) treatment programs.



Overview of Proposition 36

Increased Punishment for Some Theft and Drug Crimes

- **Turned Some Misdemeanors Into Felonies.** For example, theft of items worth \$950 or less 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). These changes reversed some of the punishment reductions that were made by Proposition 47 (2014), which converted various lower-level drug and theft crimes from felonies to misdemeanors.
- **Lengthens Some Felony Sentences.** For example, Proposition 36 allows felony sentences for theft or damage of property to be lengthened by up to three years if three or more people committed the crime together.
- **Requires Some Felonies Be Served in Prison.** For example, sentences for selling certain drugs (such as fentanyl, heroin, cocaine, or methamphetamine) can be lengthened based on the amount sold. Prior to Proposition 36, these sentences were served in county jail or state prison depending on the person's criminal history. Proposition 36 generally requires these sentences be served in prison.

Creates New Court Process for Some Drug Possession Crimes

- Allows people who possess illegal drugs to be charged with a "treatment-mandated felony" instead of a misdemeanor if they (1) possess certain drugs (such as fentanyl, heroin, cocaine, or methamphetamine) and (2) have two or more past convictions for some drug crimes (such as possessing or selling drugs).
- These people must generally be offered treatment, such as mental health or drug treatment. Those who finish treatment will have their charges dismissed. Those who do not finish treatment could serve up to three years in state prison.
- This change reversed some of the punishment reductions in Proposition 47.



Overview of Proposition 36

(Continued)

Requires Warning of Possible Murder Charges for Selling or Providing Drugs

- Requires courts to warn people that they could be charged with murder if they sell or provide illegal drugs that kill someone. This warning is given to people convicted of selling or providing certain drugs (such as fentanyl, heroin, cocaine, and methamphetamine). This could make it more likely for them to be convicted of murder if they later sell or provide illegal drugs to someone who dies.



LAO Estimate of Full Implementation Fiscal Impacts

Increases in State Criminal Justice Costs

- ***Increase in State Prison Population.*** Proposition 36 requires some people who previously served their sentences at the county level to now serve them in state prison. Also, it lengthens some prison sentences. In total, the prison population could increase by around a few thousand people. (There are about 90,000 people in prison now.)
- ***Increase in State Court Workload.*** This is because felonies usually take more time to resolve than misdemeanors. Also, treatment-mandated felonies will increase court workload.
- ***Total Increase in State Criminal Justice Cost.*** In total, Proposition 36 will increase state criminal justice costs, likely ranging from several tens of millions of dollars to the low hundreds of millions of dollars annually.

Increases in Local Criminal Justice Costs

- ***Net Increase in County Jail and Community Supervision Population.*** In some ways, Proposition 36 will reduce the jail and community supervision population. This is because some people will go to state prison instead of the county level. In other ways, it will increase this population. This is because some people will spend more time in county jail or on community supervision. Overall, Proposition 36 likely will increase the county population. This increase could be around a few thousand people. (There are about 250,000 people at the county level now.)
- ***Increase in Local Court-Related Workload.*** It will also increase workload for local prosecutors and public defenders. This is because felonies usually take more time to resolve than misdemeanors. Also, treatment-mandated felonies will create workload for county agencies (such as probation or behavioral health departments) responsible for providing services that could be mandated under this provision.
- ***Total Increase in Local Criminal Justice Cost.*** In total, Proposition 36 will increase local criminal justice costs, likely by tens of millions of dollars annually.



LAO Estimate of Full Implementation Fiscal Impacts

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Reduces Amount State Must Spend on Certain Grant Programs

- ***Proposition 47 Savings Must Be Spent on Certain Grant Programs.*** Proposition 47 created a process in which the estimated state savings from its punishment reductions must be spent on grant programs for mental health and drug treatment, school truancy and dropout prevention, and victim services. These estimated savings totaled \$95 million last year.
- ***Reduction in Savings Will Reduce Required Spending.*** By undoing parts of Proposition 47, Proposition 36 reduces the state savings from Proposition 47. This will reduce the amount the state must spend on the grant programs. We estimated this reduction would likely be in the low tens of millions of dollars annually.



Funding for Proposition 36 Impacts on the State Prisons, Parole, and Courts

Governor's Proposal

- ***Assumes Prison Population Will Increase by 570 in 2024-25 and 3,300 in 2025-26.*** The administration estimates that Proposition 36 will cause the average daily prison population to be about 570 higher (or 1 percent) than otherwise in 2024-25 and 3,300 higher (or 4 percent) in 2025-26.
- ***Assumes Parole Population Will Increase by 360 in 2025-26.*** The administration estimates that Proposition 36 will have no impact on the average daily parole population in 2024-25 but will cause it to be about 360 higher (or 1 percent) than otherwise in 2025-26.
- ***Does Not Provide Court Funding Specifically for Implementation.*** While the Governor's budget proposes an ongoing \$82 million General Fund increase in discretionary funding for the trial courts, this funding will generally be used to mitigate the impacts of an ongoing \$97 million General Fund reduction from 2024-25 and to address increased costs. There is no proposed funding specifically for Proposition 36 implementation.



Funding for Proposition 36 Impacts on the State Prisons, Parole, and Courts

(Continued)

Assessment

- **Impact on Prison Population Is Likely Overestimated.** The administration estimated the impact of Proposition 36 on the prison population by assuming a near full reversal of Proposition 47.
 - On the one hand, this overestimates the impact because Proposition 36 only reversed portions of Proposition 47. On the other hand, it underestimates the impact because it does not include several crimes affected by Proposition 36 but not Proposition 47. On net, we find that this likely leads to overestimation in the near term.
 - We estimate that the impact of Proposition 36 could be less than half of the magnitude of the administration’s estimates, meaning the California Department of Corrections and Rehabilitation (CDCR) could be overbudgeted in the millions of dollars in 2024-25 and tens of millions of dollars in 2025-26. However, any Proposition 36 estimate is subject to major uncertainty.
- **Not Plausible That There Will Be Impact on Parole Population in 2025-26.** Only two components of Proposition 36 would increase the parole population. The affected people would have relatively long prison terms so it is not plausible that they could be released to parole before the end of 2025-26. This means that CDCR could be overbudgeted by roughly a few million dollars in 2025-26.
- **Impact on Courts Unclear.** Our understanding is that the judicial branch is currently determining how to implement Proposition 36, collecting data, and assessing the impacts of the measure. Without specific Proposition 36 funding, the trial courts would need to prioritize the use of their discretionary funding—possibly resulting in impacts to other court services. However, some workload—to an unknown degree—might be absorbable (such as within existing drug courts). If true, it would reduce the amount of General Fund needed for Proposition 36.



Funding for Proposition 36 Impacts on the State Prisons, Parole, and Courts

(Continued)

Recommendation

- ***Direct CDCR to Address Flaws in Its Prison and Parole Population Impact Estimates at the May Revision.*** We recommend that the Legislature direct the department to address the flaws in its Proposition 36 population estimates and adjust its population-related funding requests at the May Revision accordingly.
- ***Consider Directing Judicial Branch to Report in Spring Budget Hearings on Potential Impacts.*** The Legislature could consider directing the judicial branch to report in spring budget hearings on implementation progress and the impacts of Proposition 36. This will allow the Legislature to determine what level of funding—if any—is needed. Any funding provided, however, would come at the cost of other budget priorities given the multiyear deficits facing the state.



Funding for Required State Spending Under Proposition 47

Background

- State Savings From Proposition 47 Required to Be Transferred to Special Fund for Designated Grant Programs.** Proposition 47 requires the administration to annually transfer the savings it attributes to the measure in one fiscal year from the General Fund into the Safe Neighborhoods and Schools Fund (SNSF) in the following fiscal year to be allocated as follows: 65 percent to the Board of State and Community Corrections (BSCC) for mental health and SUD treatment, (2) 25 percent to the California Department of Education for school truancy and drop-out prevention, and (3) 10 percent to the California Victim Compensation Board for trauma recovery services.

Governor’s Proposal

Administration Projects Major Decrease in Proposition 47 Savings Due to Proposition 36

	2023-24 ^a	2024-25 ^b	2025-26 ^c	2026-27 ^c
Estimated State Savings From Proposition 47	\$94,773,000	\$88,331,000	\$30,524,000	\$24,703,000
Decline Relative to 2023-24	—	-6,442,000	-64,249,000	-70,070,000
Percent Decline Relative to 2023-24	—	-7%	-68%	-74%
Estimated Prison Population Reduction Attributable to Proposition 47	3,796	3,464	711	439
Percent Decline Relative to 2023-24	—	-9%	-81%	-88%

^a Estimated savings amount was transferred to the Safe Neighborhoods and Schools Fund (SNSF) in 2024-25.

^b Estimated savings amount is budgeted to be transferred to the SNSF in 2025-26. Reflects Proposition 36 in effect for half of the fiscal year.

^c Estimated savings amount is a projection. Reflects Proposition 36 in effect for the full fiscal year.



Funding for Required State Spending Under Proposition 47

(Continued)

Assessment

- **Effect on Proposition 47 Prison Population Impact Likely Overestimated...** As discussed previously, the administration assumes that Proposition 36 will nearly fully reverse Proposition 47, causing it to overestimate the effect of Proposition 36 as it only reversed portions of Proposition 47.
- **...Causing Proposition 47 Savings to Be Likely Underestimated.** The administration correspondingly underestimates the prison population reduction still attributable to Proposition 47. This means that the \$88.3 million General Fund transfer to the SNSF is likely underestimated by around a few million dollars. The projected 2026-27 and subsequent transfers could be underestimated potentially in the tens of millions annually.

Recommendation

- **Direct Administration to Address Flaws in Proposition 47 Savings Estimate at the May Revision.** We recommend that the Legislature direct the administration in spring budget hearings to address the flaws with its methodology for estimating the savings attributable to Proposition 47 by the time of the May Revision.



Funding for Treatment Costs Under Proposition 36

Background

- ***Creates Treatment-Mandated Felony.*** Proposition 36 allows people who possess illegal drugs to be charged with a treatment-mandated felony instead of a misdemeanor if they (1) possess certain drugs (such as heroin or cocaine) and (2) have two or more past drug convictions.
- ***Requires Substance Abuse and Mental Health Evaluation of Defendants.*** With consent of the defendant, Proposition 36 requires courts to order a substance abuse and mental health evaluation of the defendant conducted by a drug addiction expert.
- ***Requires Assessment of Eligibility for Relevant Benefits.*** Proposition 36 also requires courts to order that a case worker determine whether the defendant is eligible to receive Medi-Cal, Medicare, or any other relevant benefits.
- ***Allows Drug Treatment, Mental Health Treatment, Job Training, or Any Other Conditions the Court Finds Appropriate.*** Proposition 36 specifies that treatment may include drug treatment, mental health treatment, job training, and any other conditions related to treatment or a successful outcome for the defendant that the court finds appropriate.
- ***Specifies BSCC May Allocate Monies From the SNSF for Such Treatment Programs.*** Proposition 36 specifies that BSCC may allocate funds from its share of the SNSF to local governments for treatment-mandated felony programs.

Governor's Proposal

- ***Does Not Include Dedicated Funding for Treatment.*** The Governor's budget does not include dedicated funding for treatment of defendants charged with the treatment-mandated felony.



Funding for Treatment Costs Under Proposition 36

(Continued)

LAO Comments

- ***Most Treatment Historically a County Responsibility.***
Proposition 36 allows for any treatment or conditions that courts find appropriate. Accordingly, the actual treatment provided under Proposition 36 will depend on decisions made by courts. However, much of the treatment that seems relevant is historically provided by counties. For example, as we describe on the next page of this handout, counties are responsible for providing SUD services for Medi-Cal enrollees.
- ***State Not Required to Pay for Increased County Costs.*** When ballot measures generate increased costs for local governments, the state is not required to cover them. The state could choose to provide additional funding, such as to help support the behavioral health system. Doing so, however, would likely come at the cost of other existing state programs, given the multiyear deficits facing the state. If it chooses to consider providing funding, the Legislature may want to ask counties how they plan to treat this population and whether sufficient provider capacity exists.



Overview of Selected SUD Treatment Programs

- ***Drug Medi-Cal Provides SUD Treatment to Medi-Cal Enrollees.*** Counties are responsible for providing SUD services to Medi-Cal enrollees. Nearly all enrollees have access to an enhanced set of services modeled after the American Society of Addiction Medicine criteria for SUD treatment services. These services include case management, withdrawal management, and several forms of medication-assisted treatment. Funding for Drug Medi-Cal is over \$1.2 billion, with about three-quarters of the funding coming from the federal government and the remaining funding primarily coming from local realignment revenue.
- ***Behavioral Health Services Act (BHSA) Funds Variety of Behavioral Health Treatment Services From Millionaire's Tax.*** In March 2024, voters approved Proposition 1 which made broad changes to the Mental Health Services Act that change how counties use *existing* funding from the millionaire's tax on behavioral health services. One major change impacting people with SUD issues was that prior to the BHSA, people had to have co-occurring mental health and SUD challenges to receive services funded from the millionaire's tax. Proposition 1 changed the law so that people with only SUD challenges could receive such services. Counties have some flexibility in how they use BHSA revenues, with SUD treatment being one of many possible services that could be funded. For example, for eligible populations, counties may use BHSA revenues to draw down federal funds for Drug Medi-Cal. The funding can also be used for non-Medi-Cal populations. Notably, Proposition 1 did not increase revenues for county behavioral health services. Revenues for the BHSA are estimated to be \$3.2 billion in 2024-25.
- ***Other Recent State SUD Efforts.*** Additionally, the state has allocated funding to a variety of other programs aimed at improving SUD treatment. For example, the state has used a few hundred million dollars of opioid settlement funds in recent years for the Naloxone Distribution Project, which aims to reduce opioid overdose deaths through the provision of free naloxone, prevention and harm reduction grants, and an education and awareness campaign.

