

New Law Update: Prop 36 Brings Significant Changes to Drug and Theft Offenses in CA

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Background:

In 2014, California voters passed Proposition 47 which reduced certain felony crimes to misdemeanors including: petty theft, shoplifting, receiving stolen property, and simple drug possession (among others). This meant that individual convicted of these felonies could have their records reclassified as misdemeanors and seek resentencing or even early release.

However in November 2024, California voters passed Prop 36 which introduced significant changes to the rules for certain drug and theft-related offenses. Two new “wobbler” offenses were created: §11395 HS and §666.1 PC—allowing for these crimes to revert to felonies if the defendant has two or more prior qualifying convictions.

What Changed Under Prop 36?

1. §11395 HS Treatment-Mandated Felony (Hard Drugs):

Under this law, simple possession of a “hard drug” (including fentanyl, meth, heroin, cocaine and others) is now a felony if the individual has two or more prior drug-related convictions (such as possession, transport or sale of controlled substances). Note that marijuana is excluded and not considered a hard drug.

2. §666.1 PC Petty Theft with Priors:

This law now makes petty theft or shoplifting a felony if the individual has two or more prior theft-related convictions. These prior convictions can include petty theft, robbery, carjacking, burglary, identity theft, and other theft-related crimes.

What Does This Mean for Law Enforcement?

For law enforcement, Prop 36 requires a thorough review of an arrestee’s criminal history before making decisions about charges. If someone is arrested for drug possession or petty theft, the officer **must** check for prior qualifying convictions as those could elevate a misdemeanor offense to a felony under Prop 36.

For example: Imagine you arrest someone found in possession of meth. Under Prop 47,

this would typically result in a citation for a misdemeanor. But under Prop 36, if the arrestee has two prior drug-related convictions, this could be elevated to a felony charge under §11395 HS.

The same applies to petty theft. What might seem like a simple shoplifting incident could become a felony under §666.1 PC if the arrestee has two prior theft convictions.

Both §11395 HS and §666.1 PC carry a punishment of either 16 months, 2 years, or 3 years in county jail (for the first offense) and state prison for any subsequent offense.

Bottom Line:

Prop 47 initially lowered the severity of certain offenses, leading to a catch-and-release situation for many repeat offenders. However, Prop 36 now gives law enforcement the tools to address repeat offenders more effectively. Before issuing a citation for misdemeanor theft or drug possession, it's crucial to check the arrestee's criminal history to ensure you are charging correctly, especially since two prior convictions could elevate the offense to a felony.

By staying informed and conducting thorough checks, you can ensure the law is being applied correctly and help maintain public safety.

Stay Safe and Informed!