



Public Safety Policy Committee Proposition 36

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1. [The Homelessness, Drug Addiction, and Theft Reduction Act \(23-0017\)](#)

Initiative Summary:

This measure would increase penalties for trafficking of hard drugs including fentanyl, increase penalties for those who repeatedly engage in theft, add new laws to address the problem of smash and grabs and organized retail theft, and provides diversion programs for repeat offenders.

Initiative Description:

Fentanyl and Drug Provisions

This measure proposes various amendments to the Health and Safety Code, and would require the court to advise a person who is convicted or who pleads no contest to a violation of various code sections involving a hard drug of the following:

"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. "

The advisory statement shall be provided to the defendant in writing either on a plea form or at sentencing.

This measure would add fentanyl to the list of controlled substances that, if possessed by a person while armed with a loaded operable firearm, is guilty of a felony punishable in state prison for two, three, or four years. Additionally, the measure creates enhancements for individuals in the personal possession of a firearm when they are in possession of, manufacturing, transporting, selling, importing, and trafficking controlled substances that are serious felonies (such as cocaine, methamphetamine, and PCP) to additional consecutive terms of three, four, and five-years' imprisonment.

This measure would increase penalties for those who possess for sale, or purchase for purposes to sell, a substance containing fentanyl an additional state prison term as follows:

- If the substance exceeds 28.35 grams by weight, the person shall receive an additional term of three years.
- If the substance exceeds 100 grams by weight, the person shall receive an additional term of five years.
- If the substance exceeds 500 grams by weight, the person shall receive an additional term of 7 years.
- If the substance exceeds one kilogram by weight, the person shall receive an additional term of 10 years.
- If the substance exceeds four kilograms by weight, the person shall receive an additional term of 13 years.
- If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 16 years.
- If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 19 years.
- If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 22 years.
- If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

This measure provides that a defendant convicted of an underlying violation who admits an enhancement is punishable by imprisonment in state prison instead of 16 months in county jail which is provided under existing law (AB 109, 2011) and shall not be allowed to be sent to county jail.

This measure amends existing law (SB 1080, 2010) by providing that a person who sells, furnishes, or gives away a controlled substance is deemed to have personally inflicted great bodily injury when the person to whom the substance was sold, furnished or administered or given suffers a significant or substantial physical injury from using the substance. This change would provide that selling any controlled substance would be eligible for an additional 3 years in prison.

Changes the sentences for cocaine and heroin to state prison instead of county jail.

Treatment Mandated Felony

This measure provides that a person who possesses a hard drug unless it is a written prescription by a physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment in county jail for not more than one year, while a second conviction is punishable by one year in county jail or by imprisonment in state prison.

This measure provides that a person shall not be sentenced to jail or prison under these new provisions unless a court determines that the person is not eligible or suitable for treatment. In lieu of a jail or a prison sentence, a defendant charged with a violation may elect treatment by doing the following:

- Pleading guilty or no contest to a violation of this section and admitting the alleged prior conviction.
- Agreeing to participate in, and complete, a detailed treatment program developed by a drug addiction expert and approved by the court.

A defendant's plea of guilty or no contest would not constitute a conviction for any purpose unless judgment is entered under the provisions in this measure that allow for a new entry of judgment for refusing treatment.

This measure also details the requirements for a treatment program which may include drug treatment, mental health treatment, job training and any other conditions related to treatment that the court deems appropriate. The court would be required to hold regular hearings to review the progress of the defendant and make necessary referrals to programs that provide services at no cost to the participant.

Per this measure, after the defendant completes the treatment program, the court must dismiss charges. If at any time it appears the defendant is performing unsatisfactorily in the program, is not benefitting from treatment, not amenable to treatment, has refused treatment, or has been convicted of a crime since starting treatment, the prosecuting attorney, the court, or the probation department may make a motion for entry of judgment and sentencing.

This measure provides that a defendant may earn only actual credits (as defined under Section 2900.5 of the Penal Code) for time spent in residential treatment and shall not earn conduct credits.

This measure defines hard drugs as a substance containing fentanyl, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine, and the analogs of any of these substances. This measure does not define hard drugs to include cannabis, cannabis products, peyote, LSD, other psychedelic drugs, or certain drugs listed under existing law (Health and Safety Code Sections 11054 and 11055).

Retail Theft Provisions

Aggregation

This measure would allow for a case involving one or more acts of theft or shoplifting including but not limited to shoplifting that does not exceed \$950, larceny, petty theft, and grand theft, the value of property or merchandise stolen may be aggregated into a single county or charge with the sum of the value of all property or merchandise being the values considered in determining the degree of theft.

Repeat Offenders

This measure would provide that a person who has two or more prior convictions for any of the offenses listed below, and who is convicted of petty theft or shoplifting, is punishable by imprisonment in the county jail not exceeding one year or up to three years in prison depending on the type of felony (existing law Penal Code Section 1170).

The offenses eligible are as follows:

- Petty theft
- Grand theft
- Theft from an elder or dependent adult
- Theft or unauthorized use of a vehicle
- Burglary
- Carjacking

- Robbery
- Receiving stolen property
- Shoplifting
- Identity theft and mail theft

This measure would also provide that a prosecutor or probation department could refer a person to a theft diversion, or a deferred entry of judgment program as established under existing law (Penal Code Section 1001.81), and if appropriate, admitted to such a program may also be referred to a substance abuse treatment program.

Smash and Grabs/Organized Retail Theft

This measure would provide that when a person takes, damages, or destroys any property in the commission or attempted commission of a felony, or a felony violation of Penal Code Section 496 (receiving stolen property), the court must impose a term in addition and consecutive to the punishment for the felony as follows:

- If the loss or property value exceeds \$50,000, the court must impose an additional term of one year.
- If the loss of property value exceeds \$200,000, the court shall impose an additional term of two years.
- If the loss or property value exceeds \$1,000,000, the court shall impose an additional term of three years.
- If the loss or property value exceeds \$3,000,000, the court shall impose an additional term of four years.
- For every additional loss or property value of \$3 million the court shall impose a term of one year in addition to the term specified above.

This measure provides that in any accusatory pleading involving multiple charges of taking, damage or destruction or multiple violations of theft, additional terms may be imposed if the aggregate losses to the victims or aggregate property values from all felonies exceed the \$950 value amount and arise from a common scheme or plan.

This measure would also provide that any person who acts in concert with two or more persons to take, attempt to take, damage, or destroy any property, in the commission or attempted commission of a felony, shall be punished by an additional consecutive term of imprisonment of one, two or three years.

Background:

Retail Theft

Proposition 47

In 2014, Proposition 47 was passed by the California voters by a vote of 59%. Proposition 47 reduced sentencing penalties for certain drug and property crimes including: commercial burglary, forgery, grand theft, receipt of stolen property, petty theft with a prior, and drug possession. Proposition 47 eliminated the ability to charge repeat offenders with a felony and allowed certain offenders previously convicted of these crimes to apply for reduced sentences. Under Proposition 47, theft of property valued at \$950 or below, is considered "petty theft/shoplifting" and is a straight misdemeanor, regardless of the type of property

stolen (e.g., guns) or the number of prior thefts (even those occurring in the same day) engaged in by the same perpetrator.

Cal Cities was opposed to Proposition 47 along with several law enforcement organizations, Crime Victims United, and the District Attorney's. It was supported by the ACLU, SEIU, and criminal justice reform organizations.

Proposition 20

In 2020, Proposition 20 was placed on the ballot by law enforcement and was supported by Cal Cities. This measure would have broadened the definition of violent felonies to reflect a wider universe of offenses, addressed serial theft by enacting penalties for repeat offenses, addressed organized retail theft, changed the rules for granting parole to non-violent offenders, and make changes to post-release community supervision.

Voters rejected Proposition 20 on a 61% vote. It is important to note that Proposition 20 not only dealt with retail theft but also made changes to AB 109 (2011), Proposition 47 and Proposition 57 and had significant opposition from Governor Jerry Brown.

Legislative Measures

In the Legislature there have been many attempts to try and make changes to Proposition 47. However, the Legislature has not been willing to pass these measures. Here are a few of the bills that have been attempted since 2014:

- AB 1708 (Muratsuchi, 2023) Repeat offenders
This measure would have amended Proposition 47 to address petty theft and shoplifting.
Final Action: Failed in the Assembly Public Safety Committee.
- AB 1603 (Salas, 2022) Theft: shoplifting: amount
This bill would have amended Proposition 47 by reducing the threshold amount for petty theft and shoplifting from \$950 to \$400 (the pre-Proposition 47 threshold).
Final Action: Failed in the Assembly Public Safety Committee.
- AB 1599 (Kiley, 2022) Proposition 47 repeal
This bill would have repealed the changes and additions made by Proposition 47, except those related to reducing the penalty for possession of concentrated cannabis.
Final Action: Failed in the Assembly Public Safety Committee.
- AB 1772 (Chau, 2019) Theft: Aggregation
This bill would have specified that if the value of the money, labor, real property, or personal property taken exceeds \$950 over the course of distinct but related acts, whether committed against one or more victims, the value of the money, or personal property taken may be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan.
Final Action: Failed in the Assembly Public Safety Committee.
- AB 1326 (Cooper, 2017): Petty theft: subsequent convictions
This bill would have expanded enhanced petty theft penalties to a person who had a prior conviction for any serious or violent felony to a person who had a prior conviction who had 3 or more prior convictions for petty theft, grand theft, and burglary.
Final Action: Held in the Assembly Public Safety Committee.

Since the failure of Proposition 20, however, there has been a significant increase in the amount of high-profile smash and grabs, organized retail theft and often daily shoplifting at retailers, grocery stores and small businesses. This has led to a public outcry for change and a response from both the Legislature and the Governor.

Fentanyl Crisis

Fentanyl is a highly potent synthetic opioid that has contributed to a significant increase in opioid overdoses in California. According to the [Department of Public Health](#), in 2012, California suffered 82 deaths attributed to fentanyl overdoses, and in 2021 that number jumped to almost 6,000. Fentanyl deaths also accounted for more than 80 percent of all drug-related deaths among California's young people in 2021, making it the fastest-growing cause of death for young people in our state. Over 150 Americans die every day from overdoses and poisonings related to synthetic opioids. Often young victims ingest the fentanyl accidentally, thinking they are using something less dangerous.

There are two types of fentanyl: pharmaceutical fentanyl and illicitly manufactured fentanyl. However, most recent cases of fentanyl-related overdoses are linked to illicitly manufactured fentanyl, which is distributed through illegal drug markets for its heroin-like effect. It is often added to other drugs because of its extreme potency, which makes drugs cheaper, more powerful, more addictive, and more dangerous. Since there is no official oversight or quality control, these counterfeit pills can contain lethal doses of fentanyl, with none of the promised drug.

Legitimate fentanyl, also known as pharmaceutical fentanyl, is prescribed by a physician in a variety of forms, including lozenges, nasal sprays, and transdermal patches. While some pharmaceutical fentanyl is diverted, this is typically done on a small scale and often for personal use. Illicitly produced fentanyl is primarily manufactured in laboratories in China and Mexico, and then shipped to the U.S. or smuggled across the U.S.-Mexico border. It is distributed in the form of powder or as counterfeit prescription pills.

Illicitly produced fentanyl is frequently mixed with heroin, often without the knowledge of the purchaser. The Drug Enforcement Administration (DEA) reports that it is increasingly common for fentanyl to be mixed with adulterants and diluents and sold as heroin, although no heroin is present in the product.

Additionally, the passage of Proposition 47 in 2014 decriminalized simple drug possession, removing the threat of jail time or drug programming.

Fiscal Impact:

According to the Legislative Analyst's Office (LAO) this measure could increase state criminal justice system costs potentially in the hundreds of millions of dollars annually, primarily due to an increase in the state prison population. Some of these costs could be offset by reductions in state spending on local mental health and substance use services, truancy and dropout prevention, and victim services due to requirements in current law.

The LAO also notes that it could increase local criminal justice system costs potentially in the tens of millions of dollars annually, primarily due to increased court-related workload

and a net increase in the number of people in county jail and under county community supervision.

Existing Cal Cities Policy:

Fentanyl: Cal Cities supports policies that authorize law enforcement officers to administer opioid antagonist medications. Cal Cities supports additional funding and resources to address the substance use crisis through appropriate prevention and intervention efforts, educational awareness campaigns, and increased access to life-saving overdose treatment aids such as naloxone.

Repeat offenders: Cal Cities sponsored a bill in 2023 (AB 1708, Muratsuchi) which would have addressed repeat offenders and offered diversion programs.

Proposition 47: The Cal Cities Board has voted in previous years to repeal Proposition 47 and amend Proposition 47. Currently, the public safety priority states, "A spike in retail theft, violent smash-and-grab robberies, fentanyl deaths and illicit drug use, and back-to-back natural disasters, as well as strained social services are creating challenges beyond the capacity of local governments. Cal Cities will partner with the state to advance solutions that help reduce crime, increase emergency service capacity, and provide more support to those residents struggling with substance abuse. We will work with the Legislature, the Governor, and allies to craft legislation that will reform Proposition 47, while avoiding a return to the days of mass incarceration."

Addressing Crime: Cal Cities supports the promotion of public safety through stiffer penalties for violent offenders.

Comments:

This measure, by including both aggregation and penalties for repeat offenders in the code sections that were amended by Proposition 47, addresses the concern that Cal Cities has identified regarding repeat offenders.

The Governor, the Speaker and the Pro-Tem have all stated their intention to address the issues of retail theft, organized retail, shoplifting and fentanyl. Specifically related to amending Proposition 47 all of the leadership has indicated that they believe this can be done through additional statutes, and that amending Proposition 47 is not necessary.

To that end, the Legislature is planning on passing 12 retail theft bills before the Legislative summer recess (July 3rd).

The complete list of the Legislative package is available [here](#).

Ballot measure compared to the Legislative Package:

Provision	Ballot Measure	Legislative Package (No Amendments to Proposition 47)	Relevant Bill Numbers
Fentanyl			
Fentanyl Possession with Firearm	Adds to list of crimes with penalties of 2, 3 or 4 years in prison.	Not in package.	
Fentanyl Increasing penalties	Increases penalties from 2 to 20 years depending on the amount.	Not in package.	
Treatment Mandated Felony	Creates a new crime for hard drug possession with tiered penalties up to 25 years.	Not in package.	
Retail Theft			
Aggregation	Provides that any case involving one or more acts of theft or shoplifting may be aggregated into a single count or charge.	Adds to the current aggregation statute takings from multiple places or multiple victims.	AB 1794 (McCarty)
Auto Theft	Does not address this issue.	Closes the loophole under existing law regarding locked cars.	SB 905 (Wiener)
Cargo Theft	Does not address this issue.	Adds cargo theft to the Regional Property Crime Task Force operated by the CHP.	AB 1972 (Alanis)
Fencing	Does not address this issue.	Expands existing law for online marketplaces to report high-volume sellers to law enforcement.	SB 1144 (Skinner)
Fires	Does not address this issue.	Makes it a factor in aggravation if an offense was carried out in a merchant's premises to commit retail theft.	SB 1242 (Min)
Increased penalties	Increases penalty enhancements for	Increases penalty enhancements for	AB 1960 (Soria).

Provision	Ballot Measure	Legislative Package (No Amendments to Proposition 47)	Relevant Bill Numbers
	property crimes for up to 4 years and allows the court to impose enhancements with another single count.	property crimes and for the resale of property or stolen property for up to 4 years and allows the court to impose enhancements with another single count. No changes to Proposition 47.	SB 1416 (Newman)
Multi-Jurisdictional Offenses	Does not address this issue.	Allows local jurisdictions to file charges that deal with offenses across county lines.	AB 1779 (Irwin)
Organized retail theft	Several provisions related to acting in concert and increasing penalties for organized retail theft. However, it does not address the sunset date of the statute. (Does not amend the same code section as the Legislative bills).	Removes the sunset clause on the organized retail theft statute.	AB 1802 (Jones-Sawyer); SB 982 (Wahab)
Policy Ability to Arrest	Does not address this issue	Provides that under certain circumstances police can arrest without a warrant.	AB 2943 (Zbur)
Probation	Does not address this issue.	Provides that the term of probation for shoplifting or petty theft would be two years.	AB 2943 (Zbur)
Repeat offenders	An offender with 2 prior convictions can be charged with a felony regardless of value. Amends Proposition 47.	Creates a new crime for shoplifting which can be charged as a felony but does not change the threshold amount of \$950.	AB 2943 (Zbur)

Provision	Ballot Measure	Legislative Package (No Amendments to Proposition 47)	Relevant Bill Numbers
Restraining Orders	Does not address this issue.	Creates the Retail Theft Restraining Order for repeated attempts of shoplifting which can be requested by city attorneys, retailers, or district attorneys.	AB 3209 (Berman)
Retailers – Nuisance Action	Does not address this issue.	Prohibits local government and law enforcement from threatening or filing nuisance complaints against retailers for reporting crime.	AB 2943 (Zbur)

Staff Recommendation:

Staff recommends the committee discuss and determine a position.

Committee Action: The Committee recommended a support position on the ballot measure.

Board Action: The Board voted to support the ballot measure on June 11, 2024.