

CULVER CITY POLICE

TRAINING INFORMATION

DATE: November 7, 2024

NO: 2024-10

Proposition 36 Procedures

Purpose

In November 2024, California voters approved Proposition 36 which is aimed to reform laws that have dramatically increased homelessness, drug addiction, and theft throughout California; while giving judges the tools and flexibility they need to address these issues. This law goes into effect no later than December 18, 2024.

Key Changes

1. Provide drug and mental health treatment for people who are addicted to hard drugs;
2. Add fentanyl as a prohibited substance to statutes prohibiting the possession of hard drugs while armed with a loaded firearm and trafficking of large quantities of hard drugs;
3. Give judges more sentencing options – including state prison – to use their discretion when sentencing drug dealers convicted of trafficking hard drugs in large quantities or who are armed with a firearm while engaging in drug trafficking;
4. Warn convicted hard drug dealers that they can be charged with murder if they continue to traffic in hard drugs and someone dies as a result;
5. Reinstate the great bodily injury enhancement (GBI) for hard drug dealers whose trafficking kills or seriously injures someone
6. Increase penalties for people who repeatedly engage in theft; and
7. Add enhancements for “smash and grab” thefts that result in significant losses and damage, or that are committed by multiple thieves working together

A. Controlled Substances

1. Creates a new law to require a court to warn convicted hard drug dealers and manufacturers that they can be charged with murder if they traffic in hard drugs and someone dies as a result. This is a Watson-style advisement. (Health & Saf. Code § 11369).

2. Adds fentanyl to an existing law that prohibits the possession of a hard drug while armed with a loaded firearm (Health & Saf. Code § 11370.1).
3. Adds a new subdivision for trafficking fentanyl in specified quantities (one ounce to 80 kilograms) with punishment from three to 25 years (Health & Saf. Code § 11370.4(c)).
4. Creates a Treatment-Mandated Felony that permits a felony charge for possessing a hard drug if the offender has two prior drug-related convictions. Permits offenders to choose drug and mental health treatment instead of jail/prison (Health & Saf. Code § 11395).
5. Permits judges to sentence drug dealers to state prison instead of to county jail (Pen. Code 1170(h)) when they are convicted of trafficking hard drugs in large quantities (Health & Saf. Code § 11370.4) or are armed with a firearm while engaged in drug trafficking (Pen. Code § 12022(c)).
6. Permits a “great bodily injury” enhancement (a “strike”) if someone suffers serious injury or death from using drugs that were sold, furnished, administered, or given by the offender. (Pen. Code § 12022.7).

B. Theft and Property Damage

1. Permits aggregating (combining) the value of property or merchandise stolen during multiple thefts to meet the \$950 threshold so that a felony theft may be charged instead of a series of misdemeanor petty thefts (Pen. Code § 490.3).
2. Permits a felony to be charged when an offender commits petty theft or shoplifting and has two prior convictions for a theft-related offense (Pen. Code § 666.1).
3. Re-enacts a version of the excessive takings enhancement, which provides for increased punishment for taking or damaging property worth more than \$50,000 (Pen. Code § 12022.6).
4. Creates a new enhancement (one, two, or three years) for acting in concert with two or more persons to take, damage, or destroy property in the commission or attempted commission of a felony (Pen. Code § 12022.65).

C. Health and Safety Code Section 11395 (Treatment-Mandated Felony)

Overview of Health and Safety Code Section 11395 Health and Safety Code section 11395 is the new felony crime of possessing a “hard drug” and having two or more prior felony or misdemeanor convictions for a specified drug-related crime. It is punishable in county jail pursuant to Penal Code section 1170(h) for a first conviction. It is punishable in state prison for a second or subsequent conviction. Both first and subsequent convictions are wobblers, and are also eligible for probation unless otherwise prohibited.

“Hard drugs” means a controlled substance listed in Health and Safety Code section 11054 or 11055, including fentanyl, heroin, cocaine, cocaine base, methamphetamine, phencyclidine, and their analogs. It does not include cannabis, peyote, LSD, or other psychedelic drugs such as mescaline or psilocybin (mushrooms), any other substance listed in section 11054(d) and (e), or, with the exception of methamphetamine, any other substance listed in section 11055(d).

Health and Safety Code section 11395 applies “[n]otwithstanding any other law,” meaning that it will apply even if a defendant is also eligible for a misdemeanor drug possession charge (e.g., Health & Saf. Code § 11350 or 11377), or Penal Code section 1000 drug diversion, or probation for a non-violent drug possession offense pursuant to Penal Code section 1210.1.

Prior Convictions

- a. § 11350 [simple possession]
- b. § 11351 [possession for sale]
- c. § 11351.5 [possession of cocaine base for sale]
- d. § 11352 [sales/transportation]
- e. § 11353 [solicitation of a minor]
- f. § 11353.5 [sales to a minor]
- g. § 11353.7 [sales to a minor in a park]
- h. § 11370.1 [possession while armed]
- i. § 11377 [simple possession]
- j. § 11378 [possession for sale]
- k. § 11378.5 [possession of PCP for sale]
- l. § 11379 [sales/transportation]
- m. § 11379.5 [sales/transportation of PCP]
- n. § 11379.6 [manufacturing]
- o. § 11380 [inducing a minor]
- p. § 11395 [Treatment-Mandated Felony].

* Health and Safety Code section 11395(d) provides that a defendant may choose treatment instead of jail, state prison, or a grant of probation, by pleading guilty or no contest to the violation

D. Theft and Property Damage

New Penal Code section 490.3 permits the value of property or merchandise stolen in more than one act of theft or shoplifting to be added together (aggregated) into a single count so that the total value exceeds \$950, and therefore felony theft can be charged instead of one or more misdemeanor thefts. Penal Code section 490.3 modifies the Bailey doctrine (*People v. Bailey* (1961) 55 Cal.2d 514), codified in Penal Code section 487(e), which permits aggregation only if the acts were motivated by “one intention, one general impulse, and one plan.” (Id. at 519.)

With new Penal Code section 490.3, the value of unrelated thefts and/or shoplifts for the same victim or multiple victims can be added together to reach the \$950 threshold for a felony charge, without having to prove that the various crimes were motivated by one intention, one general impulse, and one plan. NOTE: Penal Code section 490.3 applies to theft or shoplifting, including, but not limited to, violations of Penal Code sections 459.5, 484, 488, and 490.2.15

E. Penal Code Section 666.1 (Felony Crime of Theft with Two Theft-Related Priors)

Penal Code section 666.1(a)(1) is the new felony crime of committing petty theft or shoplifting and having two or more misdemeanor or felony prior convictions for a specified theft-related crime. It is punishable in county jail pursuant to Penal Code section 1170(h) for a first conviction. It is punishable in state prison for a second or subsequent conviction. Both first and subsequent convictions are wobblers, and are also eligible for probation unless otherwise prohibited.

Even though Penal Code section 666.1(a)(1) requires an underlying offense of “petty theft” or “shoplifting,” a number of crimes other than Penal Code sections 484-488 and 490.2 can qualify as a petty theft, such as Penal Code section 485 (appropriation of lost property), which is defined as a theft. Penal Code section 490a provides that wherever any law or statute mentions larceny, embezzlement, or stealing, it shall be read and interpreted as if the word “theft” were substituted therefor. And Penal Code section 514 provides that embezzlement is punishable in the same manner prescribed for theft of property of the value or kind embezzled. Therefore, a misdemeanor embezzlement (Pen. Code §§ 503–515) may qualify as a petty theft, as may other crimes using the words “larceny” and/or “stealing.”

Penal Code section 666.1 applies “[n]otwithstanding any other law,” meaning that it will apply even if a defendant is also eligible for a misdemeanor theft-related charge pursuant to another statute.

Prior Convictions

- a. Penal Code 211 (robbery)
- b. Penal Code 215 (carjacking)
- c. Penal Code 368 (theft from elder or dependant adult)
- d. Penal Code 459 (burglary)
- e. Penal Code 459.5 (shoplifting)
- f. Penal Code 487 (grand theft)
- g. Penal Code 487h (grand theft of cargo)
- h. Any grand theft described in Penal Code 484-502.9
- i. Penal Code 488 or 490.2 (petty theft)
- j. Penal Code 496 (receiving stolen property)
- k. Penal Code 530.5 (identity or mail theft)
- l. Vehicle Code 10851 (theft or unauthorized use of vehicle)

* Pursuant to existing Penal Code section 668, a conviction in another jurisdiction (e.g., in another state or a federal conviction), may qualify as a prior conviction under Penal Code section 666.1 if that prior conviction meets all of the requirements of a qualifying California conviction.

Conclusion

Officers shall consider these factors when deciding whether it is appropriate to issue the arrestee a citation or make a custodial arrest. In order to determine whether a citation or custodial arrest

is proper, Officers should make an attempt to confirm via the suspects RAPS or CCHRS by doing a query of the suspects arrest history.

A handwritten signature in black ink, appearing to read 'Troy Dunlap', written in a cursive style.

TROY DUNLAP
Assistant Chief of Police