



*Kern County*

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**TRAINING BULLETIN**

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## **California Proposition 36: The Homelessness, Drug Addiction, and Theft Reduction Act**

This training bulletin aims to provide law enforcement officers with an understanding of California Proposition 36—the Homelessness, Drug Addiction, and Theft Reduction Act. This initiative, passed by voters on November 5, 2024, focuses on addressing the intersection of homelessness, drug addiction, and theft-related offenses.

### **Overview of Proposition 36**

The initiative is designed to help reduce the state's incarceration rates, support individuals struggling with homelessness and substance use disorders, and provide more rehabilitative options for people whose criminal behavior is primarily related to addiction.

The law focuses on individuals arrested or charged with minor theft offenses, such as shoplifting or petty theft, often driven by addiction. It provides an alternative to jail time through rehabilitation and supportive services. After a consultation with the District Attorney's Office, arrests for the new violations can begin effective **DECEMBER 19, 2024**.

Note: Several of the new violations, as outlined below and in the Proposition 36 overview, will require the investigating deputies to conduct a record check for qualifying prior convictions to charge the new offenses. This will likely cause an increase in the duration of time for dispatch to obtain this information and provide it to the investigator. Please be patient when conducting record checks of personnel with dispatch.

### **Provisions Relating to Controlled Substances**

- 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.
- Adds fentanyl to an existing law that prohibits the possession of a hard drug while armed with a loaded firearm (Health & Safety Code 11370.1).
- Adds a new subdivision for trafficking fentanyl in specified quantities (one ounce to 80 kilograms) with punishment from three to twenty-five years (Health & Safety Code 11370.4(c)).

- 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 & Safety Code 11395).
- Permits judges to sentence drug dealers to state prison instead of to county jail (Penal Code 1170(h)) when they are convicted of trafficking hard drugs in large quantities (Health & Safety Code 11370.4) or are armed with a firearm while engaged in drug trafficking (Penal Code 12022(c)).
- 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 (Penal Code 12022.7).

### **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.

“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 “notwithstanding any other law,” meaning that it will apply even if a defendant is also eligible for a misdemeanor drug possession charge (e.g., Health & Safety 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.

### **Booking on Health and Safety Code 11395**

It is the **responsibility of the arresting deputy** who makes an arrest for hard drug possession to run the local and state criminal history of each arrestee so that if the arrestee has at least two drug-related prior convictions, the arrestee can be booked on a charge of section 11395. There is no “wash out” or age limit on priors that qualify a defendant for a Health and Safety Code section 11395 charge. Deputies are encouraged to document more than the two required prior convictions, if applicable, when investigating a violation of Health and Safety Code section 11395. This can assist in the prosecution of the suspect by providing additional convictions for the District Attorney’s Office to consider when filing/charging the case.

## Prior Convictions

Two or more of the following Health and Safety Code convictions specified in section 11395(c) may trigger a section 11395 charge, whether the prior conviction is for a misdemeanor or for a felony:

HS 11350	HS 11377
HS 11351	HS 11378
HS 11351.5	HS 11378.5
HS 11352	HS 11379
HS 11353	HS 11379.5
HS 11353.5	HS 11379.6
HS 11353.7	HS 11380
HS 11370.1	HS 11395

## Provision Relating to Theft and Property Damage

- 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 (Penal Code 490.3).
- Permits a felony to be charged when an offender commits petty theft or shoplifting and has two prior convictions for a theft-related offense (Penal Code 666.1).

### **Penal Code 490.3 (Aggregation the Value of Property Stolen in Separate Thefts)**

The value of unrelated thefts and/or shoplifts from 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.

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.

When combining one or more thefts into a single felony charge, it is probably best to allege a range of dates that would include each theft (e.g., “on or about and between October 1, 2024, and October 31, 2024”), mention each victim by name in the charge, and add a Penal Code section 490.3 notice allegation below the felony theft charge.

### **Penal Code 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.

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 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; therefore, 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, misdemeanor embezzlement (Penal Code 503–515) may qualify as petty theft, as may other crimes using the words “larceny” and/or “stealing.”

### **Booking on Penal Code 666.1**

It is the **responsibility of the arresting deputy** who makes an arrest for petty theft or shoplifting or any other misdemeanor theft, to run the local and state criminal history of each arrestee so that if the arrestee has at least two theft-related prior convictions, the arrestee can be booked on a charge of section 666.1. There is no “wash out” or age limit on the prior convictions that qualify a defendant for a Penal Code section 666.1 charge. Deputies are encouraged to document more than the two required prior convictions, if applicable, when investigating a violation of Penal Code section 666.1. This can assist in the prosecution of the suspect by providing additional convictions for the District Attorney’s Office to consider when filing/charging the case.

### **Prior Convictions**

Two or more of these crimes specified in Penal Code section 666.1(a)(2) may trigger a charge of Penal Code section 666.1, whether the prior conviction is for a misdemeanor or a felony:

PC 211	Any grand theft crime described in PC 484 – 502.9
PC 215	PC 488
PC 368(d) or PC 368(e)	PC 490.2
PC 459	PC 496
PC 459.5	PC 530.5
PC 487	VC 10851
PC 487h	

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 the requirements of a qualifying California felony conviction.

The following link can be used to access an additional overview of Proposition 36:

<https://kerncountysheriff.sharepoint.com/sites/PoliciesDocs/Other%20Manuals%20and%20Publications/Forms/AllItems.aspx?CT=1734376704156&OR=OWA%2DNT%2DMail&CID=1c119f11%2Da477%2Dde55%2D9cc4%2De25025942cac&id=%2Fsites%2FPoliciesDocs%2FOther%20Manuals%20and%20Publications%2FProposition%2036%20Overview%2Epdf&parent=%2Fsites%2FPoliciesDocs%2FOther%20Manuals%20and%20Publications>

All sworn staff and dispatchers are required to read and acknowledge this training bulletin by **January 10, 2025**.