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A Guide to Proposition 36: The Homelessness, Drug Addiction & Theft Reduction Act

(Passed by voters on 11/5/2024; effective no later than 12/18/2024)

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I. Introduction

The purpose of Proposition 36 is 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. The initiative will:

- provide drug and mental health treatment for people who are addicted to hard drugs;
- 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;
- 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;
- 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;
- reinstate the great bodily injury enhancement (GBI) for hard drug dealers whose trafficking kills or seriously injures someone;
- increase penalties for people who repeatedly engage in theft; and
- add enhancements for "smash and grab" thefts that result in significant losses and damage, or that are committed by multiple thieves working together.

Since the passage of Proposition 47 in 2014, homelessness in California has risen dramatically, while the legal consequences of both possession of hard drugs (fentanyl, cocaine, heroin, methamphetamine, and phencyclidine), and theft has declined. The result has been massive increases in drug addiction, mental illness, and property crimes, including retail theft, committed by addicts to support their addiction. Proposition 36 takes modest steps to address these issues by enacting a new class of crime called a "treatment-mandated felony." Under this new statute, prosecutors have the discretion to charge a felony for hard drug possession after two previous drug convictions. A defendant will be given the option of participating in drug and mental health treatment in lieu of any custodial sentence. If successful, the charge will be fully expunged. If unsuccessful or if a defendant refuses treatment, judges retain discretion to sentence the defendant to probation, jail and/or prison, as appropriate.

Similarly, Proposition 47 essentially eliminated the felony offense of repeat theft, regardless of how many times a defendant has re-offended. The result has been an explosion in retail and cargo theft throughout California. Under Proposition 36, a defendant with two prior theft-related convictions can be charged with a felony, regardless of the value of the stolen property. Diversion programs continue to exist, so an offender may not be incarcerated even for more than two theft convictions, if referred to such a program and it is completed successfully. But prosecutors have the ability to bring felony charges against hardened, repeat offenders who continue to engage in theft. And judges have the discretion to sentence a repeat offender to probation, jail and/or prison, as appropriate.

II. Title

Proposition 36[1] is known as "The Homelessness, Drug Addiction, and Theft Reduction Act." It was passed by California voters at the November 5, 2024 election.

III. Effective Date: No Later Than December 18, 2024

Article II, Section 10(a) of the California Constitution provides that an initiative approved by the voters takes effect "on the fifth day after the Secretary of State files the statement of the vote for the election at which the measure is voted on." Elections Code section 15501(b) requires the Secretary of State to prepare, certify, and file a statement of the vote no later than the 38th day after the election (November 5), which is December 13, 2024. The fifth day after December 13 is December 18. Thus, Proposition 36 will be effective no later than December 18, 2024.

Elections Code section 15501(b) requires the Secretary of State to post the certified statement of the vote on the Secretary of State's internet website.

It appears that based on ex post facto principles, all provisions except the *Watson*-style advisory[2] for drug dealers in new Health and Safety Code section 11369 will be effective for crimes occurring on and after the effective date of Proposition 36, and will likely ***not*** be effective for crimes committed before the effective date of Proposition 36. Any defendant who has a specified drug trafficking case pending when Proposition 36 becomes effective should be advised of the warning in new Health and Safety Code section 11369, which is required for every defendant convicted of a specified trafficking crime involving a "hard drug." The section 11369 advisory is a procedural requirement that has no effect on the current case, and therefore should apply to crimes that occurred before the effective date of Proposition 36.[3]

IV. Overview

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).

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1. Two other previous criminal justice-related initiatives were also designated as "Proposition 36" and are still in effect. In 2000, voters enacted the "Substance Abuse and Crime Prevention Act," which allows specified defendants to receive drug treatment instead of jail time for non-violent drug possession offenses. It added Penal Code sections 1210, 1210.1, and 3063.1, and added Health and Safety Code sections 11999.4–11999.13 related to funding. In 2012, the "Three Strikes Reform Act" amended Penal Code sections 667 and 1170.12 to eliminate life sentences for most non-serious/non-violent offenses.
2. *People v. Watson* (1981) 30 Cal.3d 290. Vehicle Code sections 23593 and 13385 require an advisory about the dangers of drinking and driving, and warn that if someone is killed, the offender can be charged with murder.
3. In interpreting the effective date of the various provisions of Proposition 115 (June 1990), the California Supreme Court held in *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 297–302 that provisions that changed the conduct of trials, i.e., procedural changes, applied to every case pending when Proposition 115 became effective.

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).

V. Provisions Relating to Controlled Substances, Including Fentanyl

A. Health and Safety Code Section 11369 (Warning to Dealers of Hard Drugs) [Section 4 of Prop. 36]

New Health and Safety Code section 11369 requires a court to advise a convicted hard drug trafficker that distributing, selling, furnishing, administering, giving away, or manufacturing any drug is extremely dangerous and deadly to human life, and that if this conduct results in the death of a human being, the trafficker can be charged with homicide, up to and including the crime of murder.

This advisory is required to be given to the defendant in writing and requires that the fact the advisory was given be specified on the record and recorded in the abstract of the conviction.

The advisory must be given when a defendant is convicted of the following offenses involving "hard drugs":

- Health & Saf. Code § 11351 [possession for sale]
- Health & Saf. Code § 11351.5 [possession of cocaine base for sale]
- Health & Saf. Code § 11352 [sales/transportation]
- Health & Saf. Code § 11378 [possession for sale]
- Health & Saf. Code § 11378.5 [possession of PCP for sale]
- Health & Saf. Code § 11379 [sales/transportation]
- Health & Saf. Code § 11379.5 [sales/transportation of PCP]
- Health & Saf. Code § 11379.6 [manufacturing]

"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).

B. Health and Safety Code Section 11370.1 (Possessing a Drug While Armed With a Firearm) [Section 5 of Prop. 36]

Proposition 36 expands the felony crime of unlawfully possessing a specified substance while armed with a loaded operable firearm, to include a substance containing fentanyl.

Health and Safety Code section 11370.1 continues to apply to a substance containing cocaine, cocaine base, heroin, methamphetamine, or phencyclidine, and continues to provide for a punishment of two, three, or four years in state prison.

C. Health and Safety Code Section 11370.4 (Controlled Substance Weight Enhancement) [Section 6 of Prop. 36]

1. Fentanyl

A new subdivision (c) is added to provide a range of enhancements for a violation of Health and Safety Code section 11351, 11352, or a conspiracy to violate either section, involving fentanyl.[4] The nine new enhancements range from one ounce (28.35 grams), a three-year enhancement to 80 kilograms (176.37 pounds), a 25-year enhancement).

Over 28.35 grams (1 oz.)	3 Years	Over 10 Kilograms	16 Years
Over 100 grams	5 Years	Over 20 Kilograms	19 Years
Over 500 grams	7 Years	Over 40 Kilograms	22 Years
Over 1 Kilogram	10 Years	Over 80 Kilograms	25 Years
Over 4 Kilograms	13 Years		

As with the quantity enhancements in subdivision (a) (for heroin, cocaine, and cocaine base) and subdivision (b) (for methamphetamine, amphetamine, and phencyclidine), a quantity

4. Effective January 1, 2024, Assembly Bill 701 added fentanyl to Health and Safety Code section 11370.4(a), which also applies to heroin, cocaine, and cocaine base. The specified quantities in subdivision (a) that trigger an enhancement range from one kilogram to 80 kilograms and have a punishment of three years to 25 years. Proposition 36 does ***not*** change the quantities or punishment for heroin, cocaine, or cocaine base. It simply puts fentanyl in its own subdivision and lowers the quantity thresholds because fentanyl is so lethal in small doses.

enhancement for conspiracy cannot be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

2. State Prison Punishment for Crimes With Weight Enhancements

Health and Safety Code section 11370.4 enhancements are now punishable in state prison instead of in jail pursuant to Penal Code section 1170(h), as they were before Realignment (Assembly Bill 109) took effect in October 2011.

New subdivision (e) provides that notwithstanding Penal Code section 1170(h)(9), a defendant convicted of an underlying violation specified in Health and Safety Code section 11370.4 (e.g., §§ 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5) who admits a weight enhancement or for whom a weight enhancement is found true, is punishable in state prison and not pursuant to Penal Code section 1170(h).[5]

By adding subdivision (e) to Health and Safety Code section 11370.4, Proposition 36 ensures that offenders who traffic in large quantities of drugs can be sentenced to state prison even if the underlying offense is punishable in county jail.

D. Health and Safety Code Section 11395 (Treatment-Mandated Felony) [Section 7 of Prop. 36]

1. 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.

5. Penal Code section 1170(h)(9) became effective in August 2020 (Senate Bill 118) and prohibits a state prison sentence when the underlying offense is a Penal Code section 1170(h) county jail offense, even when the defendant is convicted of an enhancement that is punishable by imprisonment in the state prison. The purpose of paragraph (9) was to abrogate the decision in *People v. Vega* (2014) 222 Cal.App.4th 1374.

a. 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:

§ 11350 [simple possession]
§ 11351 [possession for sale]
§ 11351.5 [possession of cocaine base for sale]
§ 11352 [sales/transportation]
§ 11353 [solicitation of a minor]
§ 11353.5 [sales to a minor]
§ 11353.7 [sales to a minor in a park]
§ 11370.1 [possession while armed]
§ 11377 [simple possession]
§ 11378 [possession for sale]
§ 11378.5 [possession of PCP for sale]
§ 11379 [sales/transportation]
§ 11379.5 [sales/transportation of PCP]
§ 11379.6 [manufacturing]
§ 11380 [inducing a minor]
§ 11395 [Treatment-Mandated Felony]

There is no "wash out" or age limit on priors that qualify a defendant for a Health and Safety Code section 11395 charge. A prior conviction that brings a defendant within the provisions of section 11395 may have occurred years ago. Subdivision (c) specifically requires that prior convictions be alleged in the accusatory pleading and be admitted by the defendant or found true by the trier of fact.[6] Therefore, if a defendant rejects treatment and chooses to go to trial, the prosecution must prove the priors at the preliminary hearing so that the defendant can be held to answer on the section 11395 charge (and of course, the prior convictions would have to be proved at trial if the defendant does not admit them.)

There is no harm in alleging more than the minimum number of priors required. It is a good safeguard in case a particular prior cannot be proved because of missing documents, etc. The prosecutor could decide later which two prior convictions are the easiest to prove. Keep in mind that 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 Health and Safety Code section 11395 if that prior conviction meets all of the requirements of a qualifying California conviction. However, it appears that Penal Code section 668 applies only to priors that would qualify as a felony in California, and that those that qualify as a misdemeanor would not apply. (See *People v. Eckard* (2011) 195 Cal.App.4th 1241, 1246.)

b. Booking on a Health and Safety Code Section 11395 Charge and Judicial Review Before Release From Custody

Subdivision (f) provides that upon an arrest for Health and Safety Code section 11395, the court must require a judicial review prior to release from custody in order to make an individualized determination of the defendant's risk to public safety and the likelihood the defendant will appear in court if released. Thus, an arrestee is not eligible for release prior to appearing before a magistrate, regardless of any type of pre-trial release program that may be available.

6. See Appendix A for sample pleadings.

It is very important for a police officer 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, which triggers judicial review, rather than booking on a lesser charge and having the offender issued a citation or released administratively by a pretrial release program without review by a judge.[7]

c. Prosecution or Punishment Pursuant to Other Laws Is Permitted

Subdivision (g) provides that "prosecution or punishment" pursuant to any other law is ***not*** precluded. This means that a prosecutor has discretion to charge a crime other than Health and Safety Code section 11395 if the crime applies to the case and the prosecutor deems it appropriate (the "prosecution … pursuant to any other law" part of subdivision (g)). And it means that if a defendant has one or more strike priors, ends up not completing treatment, and the court decides to impose sentence and deny probation because the defendant is found to come within the spirit[8] of the Three Strikes Law, the defendant will be sentenced to state prison (the "punishment pursuant to any other law" part of subdivision (g)). Even if a judge dismisses all alleged strike priors, and decides to impose sentence instead of granting probation, the defendant will not be eligible for a Penal Code section 1170(h) sentence to county jail and must be sentenced to state prison, because section 1170(h)(3) makes ineligible for a jail sentence any defendant who has a serious or violent prior conviction, even if it is not alleged or it is stricken.

Even a defendant who has one or more strike priors, whether or not alleged in the charging document, ***is*** eligible for treatment because Health and Safety Code section 11395(d)(1)(A) provides that "A defendant's plea of guilty or no contest shall not constitute a conviction for any purpose unless judgment is entered …." Therefore, a defendant charged with a felony violation of section 11395 and one or more strike priors who chooses treatment, will plead guilty or no contest to section 11395 and admit all alleged prior convictions, but will not be required to be sentenced to state prison under the Three Strikes Law at that point, since the conviction does not count as a conviction until and unless judgment is imposed (i.e., the defendant is sentenced).

The creation of new Health and Safety Code section 11395 is not intended to change the way that other crimes are prosecuted. If an offender commits one or more crimes in addition to a violation of section 11395, such as robbery, burglary, domestic violence, sexual battery, etc., a prosecutor should consider charging a violation of Health and Safety Code section 11350 or 11377 instead of section 11395. Or, if appropriate, consider not charging any drug possession crime. The treatment provisions of Proposition 36 apply only to a violation of Health and Safety Code section 11395, and not to any other crime. Furthermore, subsection (g) of section 11395 provides that, "This section shall not be construed to preclude prosecution or punishment pursuant to any other law."

7. If an arresting officer does not have access to an offender's criminal history so that the offender cannot be booked for a violation of section 11395, and instead is booked for a drug possession violation such as Health and Safety Code section 11350 or 11377, the officer should review all exceptions for releasing an arrestee under Penal Code section 853.6(i) and indicate any that apply. Section 853.6(i) sets forth a number of reasons for not releasing an offender who is arrested for a misdemeanor crime.
8. *People v. Williams* (1998) 17 Cal.4th 148, 161.

2. Sequence of the Prior Conviction and Current Offense

In general, the conviction for a prior offense must occur before the commission of the new offense in order for the prior offense to qualify as a prior conviction. (*People v. McGee* (1934) 1 Cal.2d 611, 614; *People v. Flood* (2003) 108 Cal.App.4th 504; *People v. Rojas* (1988) 206 Cal.App.3d 795, 802; *People v. Huynh* (2014) 227 Cal.App.4th 1210, 1215.) However, the defendant need not be sentenced on a prior offense in order for it to qualify as a prior conviction. "Conviction" for purposes of a prior conviction, occurs upon a plea of guilty or a court or jury verdict. (Pen. Code § 689; *People v. Balderas* (1985) 41 Cal.3d 144, 203; People *v. Rhoads* (1990) 221 Cal.App.3d 56, 59; *People v. Johnson* (1989) 210 Cal.App.3d 316, 324–325.) Therefore, a conviction occurs when a defendant pleads guilty (or nolo contendere) or is convicted by a court or jury, even if sentencing (pronouncement of judgment) has not yet occurred.

3. Alleging Prior Convictions

New Health and Safety Code section 11395 requires at least two drug-related prior convictions and requires that they be pled and proved.[9] These prior convictions are not elements of the offense. Instead, they are sentencing factors that make the defendant eligible for increased punishment (i.e., a section 11395 felony charge instead of a misdemeanor Health and Safety Code section 11377 or 11350 simple possession charge).

Section 11395 is similar to Penal Code section 666 (petty theft with a prior theft), Vehicle Code section 23550 (driving under the influence with three priors), and new Penal Code section 666.1 (petty theft or shoplifting with two prior theft-related convictions).[10] All four sections increase punishment based on prior convictions. And if the defendant does not have the requisite prior convictions, the defendant is guilty of only the underlying misdemeanor conduct, such as misdemeanor drug possession, misdemeanor theft, or misdemeanor DUI.

4. Treatment (Health & Saf. Code § 11395(d)(1) & (d)(2))

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, by admitting the alleged prior convictions, by waiving time for sentencing and the pronouncement of judgment, and by agreeing to participate in, and complete, a detailed treatment program developed by a drug addiction expert and approved by the court. Section 11395 is a deferred entry of judgment program, in which the defendant must plead guilty or no contest up front. It is not a diversion program that would require a trial if the defendant fails the program. However, a plea of guilty or no contest to a violation of section 11395 does not constitute a conviction for any purpose unless and until judgment is entered after a defendant fails treatment or refuses treatment.

A defendant may elect treatment at or after arraignment. If a defendant chooses treatment, the court must order a drug addiction expert to conduct a substance abuse and mental health

9. See Appendix A for sample pleadings.
10. In *People v. Bouzas* (1991) 53 Cal.3d 467, the California Supreme Court found that the prior conviction in a Penal Code section 666 case was ***not*** an element of the offense and instead was a sentencing factor. In *People v. Weathington* (1991) 231 Cal.App.3d 69 (a felony driving under the influence case where the defendant's three prior DUI convictions elevated the underlying offense from a misdemeanor DUI to a felony DUI), the court held that the prior DUIs were sentencing factors and not elements of the offense.

evaluation of the defendant. The expert must author a report that will be submitted to the court and both parties. The evaluation may be based upon an interview of the defendant and other individuals with relevant knowledge and upon a review of records the expert deems appropriate, such as medical records, criminal history, prior treatment history, and records pertaining to the current offense. An interview of the defendant and any evidence derived from it cannot be used against the defendant at trial except for purposes of impeachment. This would rarely, if ever, be a problem since a defendant who chooses treatment would most likely have already pled guilty or no contest before participating in the interview, thereby eliminating the need for a trial if the defendant later fails treatment or refuses treatment. There would be no reason to refer a defendant for an evaluation and development of a treatment program until after the defendant chooses treatment and pleads guilty or no contest. However, if contrary to Health and Safety Code section 11395(d)(1)(A) a judge permits a defendant to "see" what the treatment program would look like before agreeing to it and pleading guilty or no contest, the defendant is protected from their statements being used at a later trial unless the defendant testifies at trial inconsistently with statements made during the interview.

If a defendant elects treatment, the court is also required to order that a case worker or other qualified individual determine whether the defendant is eligible to receive Medi-Cal, Medicare, or any other relevant benefits.

A treatment program may include, but is not limited to, 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." Therefore, judges can be creative in making sure that a treatment program fits the individual needs of each offender.

5. Successful Completion of Treatment (Health & Saf. Code § 11395(d)(3))

Upon the successful completion of the treatment program, the positive recommendation of the treatment program, and the motion of the defendant, the prosecuting attorney, the court, or the probation department,[11] the court shall dismiss the Health and Safety Code section 11395 charge against the defendant. The arrest shall be deemed to have never occurred and the defendant's plea of guilty or no contest to the charge will not count as a conviction for any purpose.

6. Treatment Failure (Health & Saf. Code § 11395(d)(4))

The prosecuting attorney, the court, or the probation department[12] may make a motion for entry of judgment and sentencing when a defendant is performing unsatisfactorily in the program, or is not benefiting from treatment, or is not amenable to treatment, or has refused treatment, or has been convicted of a crime that was committed after starting treatment. If after a hearing the court finds that the defendant has been convicted of a crime that was committed after starting treatment, the court is required to impose judgment and sentence the defendant. If the court finds any other circumstance(s) true (unsatisfactory performance, not benefiting from treatment, not amenable to treatment, or refusing treatment), the court may re-refer the defendant to treatment if the court also finds that (1) it is in the interest of justice to do so; (2) the defendant

11. A probation department is not required to be, or prohibited from being, involved in the treatment aspect of Health and Safety Code section 11395. Each county is free to establish treatment protocols and processes that work for that county.
12. See fn. 11, above.

is currently amenable to treatment; and (3) the defendant agrees to participate in, and complete, a treatment program.

7. Custody Credits (Health & Saf. Code § 11395(d)(5))

Subdivision (d)(5) provides that a defendant may earn actual credits pursuant to Penal Code section 2900.5 for time spent in residential treatment, but not Penal Code section 4019 conduct credits. Time spent in any other type of program, such as an outpatient program or counseling, is not eligible for any credits. Therefore, if a defendant ends up failing treatment, there may be few, if any, credits to award towards a jail or prison sentence when judgment is imposed.

Actual credits are available for time spent in a residential program if the program is sufficiently restrictive. (*People v. Rodgers* (1978) 79 Cal.App.3d 26; *People v. Ambrose* (1992) 7 Cal.App.4th 1917, 1921–1922.)

Proposition 36 does not change any laws about a defendant's ability to waive past and/or future credits. Therefore, a court that re-refers a defendant to treatment after a failure may properly require a credit waiver. A defendant may waive credits already accrued or credits not yet earned (future credits) (*People v. Johnson* (2002) 28 Cal.4th 1050, 1054–1055; *People v. Ambrose* (1992) 7 Cal.App.4th 1917.)

8. Funding

Section 14 of Proposition 36 creates new Government Code section 7599.200, which authorizes the Board of State and Community Corrections (BSCC) to allocate funds to counties and local governments for Health and Safety Code section 11395 programs. Funding from any other source is ***not*** prohibited.

Government Code section 7599.200 makes defendants eligible for any appropriate Medi-Cal or Medicare programs or services, and permits counties and local governments to contract directly with the State Department of Healthcare Services or any other applicable state agency to provide for the provision or administration of any applicable Medi-Cal or Medicare treatment programs.

E. Penal Code Section 12022(c) (Enhancement for Drug Trafficking While Personally Armed With a Firearm) [Section 10 of Prop. 36]

Penal Code section 12022(c) is an enhancement for being personally armed with a firearm in the commission or attempted commission of the following drug trafficking crimes: Health and Safety Code section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6. Proposition 36 keeps the punishment at three, four, or five years for this enhancement but changes the punishment from Penal Code section 1170(h) jail to state prison. As with Health and Safety Code section 11370.4 (described above), a new paragraph is added to Penal Code section 12022(c) to provide that, notwithstanding Penal Code section 1170(h)(9), a defendant convicted of a specified underlying violation who admits a Penal Code section 12022(c) firearm enhancement or has such an enhancement found true, is punishable in state prison even if the underlying offense is a section 1170(h) jail offense.

F. Penal Code Section 12022.7 (Great Bodily Injury Enhancement) [Section 13 of Prop. 36]

Proposition 36 adds a new paragraph (2) to Penal Code section 12022.7(f) to explicitly provide that "a person who sells, furnishes, administers, 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, administered, or given suffers a significant or substantial physical injury from using the substance." This language ensures that a great bodily injury enhancement can be charged when the person to whom an offender supplies a drug suffers a serious injury from using the drug, including death.[13] This new language abrogates the California Supreme Court's decision in *People v. Ollo* (2021) 11 Cal.5th 682, which finds that the act of furnishing a drug is not by itself sufficient to establish personal infliction and that the voluntariness of the victim's ingestion of the supplied drug is a key consideration in determining whether a defendant personally inflicted great bodily injury in a drug furnishing context. Since the vast majority of victims in a drug furnishing context (or in a selling or giving context) use the supplied drug voluntarily, the *Ollo* case effectively shut down the use of Penal Code section 12022.7 enhancements in the context of supplying drugs.

This provision holds drug dealers and suppliers accountable for the injury that their drugs cause, regardless of whether the victim voluntary uses the controlled substance. The act of selling, furnishing, administering, or giving away a controlled substance ***is deemed*** to constitute personal infliction if the person using the substance suffers a significant or substantial physical injury.

VI. Provisions Relating to Theft and Property Damage

A. Penal Code Section 490.3 (Aggregation–Combining the Value of Property Stolen in Separate Thefts) [Section 8 of Prop. 36]

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.)[14]

With new Penal Code section 490.3, 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. *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]

13. Death is the ultimate form of significant or substantial physical injury. In *People v. Cook* (2015) 60 Cal.4th 922, 925–926, the California Supreme Court states that GBI includes death: "Here, during the commission of manslaughter as to one of the victims, defendant killed (and thus inflicted great bodily injury on) two other victims and inflicted great bodily injury on another victim, who survived."
14. AB 2943 amended Penal Code section 487(e) (effective Jan. 1, 2025) to clarify the *Bailey* doctrine on aggregation, but did not eliminate it.
15. Penal Code section 496 (receiving/concealing/buying/selling stolen property) is not an enumerated offense in Penal Code section 490.3 even though the value of such property must exceed $950 in order to have a felony charge, because aggregation is essentially permitted for violations of Penal Code section 496 under existing law. The possession at one time of stolen goods–even multiple goods stolen from different victims–is but one violation of Penal Code section 496. A defendant cannot be convicted of multiple violations of section 496 unless it can be shown that the stolen property was received on different occasions. (*People v. Mitchell* (2008) 164 Cal.App.4th 442, 461–463; *People v. Roberts* (1960) 182 Cal.App.2d 431, 436–437; *People v. Lyons* (1958) 50 Cal.2d 245, 275.)

Because new section 490.3 applies "notwithstanding any other law," it will prevail over laws such as Penal Code section 487(e) and new Penal Code section 12022.10, which permit aggregation only if the acts were motivated by one intention, one general impulse, and one plan (Pen. Code § 487(e)), or only if there was a common scheme or plan (Pen. Code § 12022.10). Penal Code section 12022.10 is a new enhancement created by Senate Bill 1416, effective January 1 2025, for selling, exchanging, or returning for value, property acquired through one or more acts of shoplifting, theft, or burglary from a retail business.

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.[16]

B. Penal Code Section 666.1 (Felony Crime of Theft with Two Theft-Related Priors) [Section 9 of Prop. 36]

1. Overview of Penal Code Section 666.1

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.

a. 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:

- Pen. Code § 211 (robbery)
- Pen. Code § 215 (carjacking)
- Pen. Code § 368 (theft from an elder or dependent adult)
- Pen. Code § 459 (burglary)

16. See Appendix A for sample pleadings.

- Pen. Code § 459.5 (shoplifting)
- Pen. Code § 487 (grand theft)
- Pen. Code § 487h (grand theft of cargo)
- Any grand theft crime described in Pen. Code §§ 484–502.9
- Pen. Code § 488 or 490.2 (petty theft)
- Pen. Code § 496 (receiving stolen property)
- Pen. Code § 530.5 (identity theft or mail theft)
- Veh. Code § 10851 (theft or unauthorized use of a vehicle).

Keep in mind that 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. However, it appears that section 668 applies only to priors that would qualify as a felony in California and that those that qualify as a misdemeanor would not apply. (See *People v. Eckard* (2011) 195 Cal.App.4th 1241, 1246.)

There is no "wash out" or age limit on the prior convictions that qualify a defendant for a Penal Code section 666.1 charge. A prior conviction that brings a defendant within the provisions of section 666.1 may have occurred years ago. Unlike the previous and current versions of section 666, there is ***no*** requirement that the defendant served any kind of jail or prison term, or jail as a condition of probation, for any theft-related prior conviction.

b. Deferred Entry of Judgment or Diversion

Subdivision (b) provides that a defendant subject to Penal Code section 666.1 may be referred by a prosecutor to a theft diversion or theft deferred entry of judgment program pursuant to Penal Code section 1001.81, and to a substance abuse treatment program if appropriate. Existing section 1001.81 continues to permit a city or county prosecutor or a county probation department to create and operate a diversion (pre-guilty plea) or deferred entry of judgment (post-guilty plea) program for offenders who commit one or more theft offenses. It is a prosecutor, and not the court, who makes the referral. Penal Code section 1001.81(e) provides that the prosecuting attorney may enter into a written agreement with a defendant to defer prosecution on the condition that the defendant complete the program required by the prosecutor and make adequate restitution or an appropriate substitute for restitution, if required by the program. Assembly Bill 2943 (effective January 1, 2025) extends the sunset date on Penal Code section 1001.81 by five years, from January 1, 2026 to January 1, 2031.

A defendant who has one or more strike priors alleged may not be eligible for a Penal Code section 1001.81 program unless the court dismisses all of the strikes and/or reduces the section 666.1 to a misdemeanor. The Three Strikes Law prohibits diversion for specified offenders (Pen. Code §§ 667(c)(4) and 1170.12(a)(4)), and any defendant convicted of a felony with one or more strike priors admitted or found true must be sentenced to state prison.

c. Booking on a Penal Code Section 666.1 Charge and Judicial Review Before Release From Custody

Subdivision (c) requires that upon an arrest for Penal Code section 666.1, the court must require a judicial review prior to release from custody in order to make an individualized determination of the defendant's risk to public safety and the likelihood the defendant will appear in court if released. It is very important for a police officer 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 Penal Code section 666.1, which triggers judicial review, rather than booking on a lesser charge and having the offender issued a citation or released administratively by a pretrial release program without review by a judge.[17]

d. Prosecution or Punishment Pursuant to Other Laws Is Permitted

Subdivision (d) provides that prosecution or punishment pursuant to any other law is not precluded. This means that a prosecutor has discretion to charge a crime other than Penal Code section 666.1 if the crime applies to the case and the prosecutor deems it appropriate.

As with any felony crime, the Three Strikes Law applies to new Penal Code section 666.1. And section 666.1(d) specifically provides that "This section shall not be construed to preclude … punishment pursuant to any other law." The sentencing judge may choose to dismiss some or all of the alleged strike priors. If all strikes are dismissed, the judge may grant probation with or without imposing jail time as a condition of probation. If at least one proved or admitted strike prior remains, the defendant must be sentenced to state prison pursuant to the strike law.

Even if a judge dismisses all alleged strike priors, and decides to impose sentence instead of granting probation, the defendant will not be eligible for a Penal Code section 1170(h) sentence to county jail and must be sentenced to state prison, because section 1170(h)(3) makes ineligible for a jail sentence any defendant who has a serious or violent prior conviction, even if it is not alleged or it is stricken.

2. Sequence of the Prior Conviction and Current Offense

In general, the conviction for a prior offense must occur before the commission of the new offense in order for the prior offense to qualify as a prior conviction. (*People v. McGee* (1934) 1 Cal.2d 611, 614; *People v. Flood* (2003) 108 Cal.App.4th 504; *People v. Rojas* (1988) 206 Cal.App.3d 795, 802; *People v. Huynh* (2014) 227 Cal.App.4th 1210, 1215.) However, the defendant need not be sentenced on a prior offense in order for it to qualify as a prior conviction. "Conviction" for purposes of a prior conviction, occurs upon a plea of guilty or a court or jury

17. If an arresting officer does not have access to an offender's criminal history so that the offender cannot be booked for a violation of section 666.1, and instead is booked for a violation such as Penal Code section 484 (petty theft) or 459.5 (shoplifting), the officer should review all exceptions for releasing an arrestee under Penal Code section 853.6(i) and indicate any that apply. Section 853.6(i) sets forth a number of reasons for not releasing an offender who is arrested for a misdemeanor crime.

verdict. (Pen. Code § 689; *People v. Balderas* (1985) 41 Cal.3d 144, 203; *People v. Rhoads* (1990) 221 Cal.App.3d 56, 59; *People v. Johnson* (1989) 210 Cal.App.3d 316, 324–325.) Therefore, a conviction occurs when a defendant pleads guilty (or nolo contendere) or is convicted by a court or jury, even if sentencing (pronouncement of judgment) has not yet occurred.

3. Alleging Prior Convictions

New Penal Code section 666.1 is modeled after a former version of section 666 ("petty theft with a prior") and therefore does not specifically mandate that the two or more specified prior convictions be alleged in the accusatory pleading. However, the prior convictions are sentencing factors that make the defendant eligible for increased punishment under a Penal Code section 666.1 charge, and therefore must be alleged.[18]

There is no harm in alleging more than the minimum number of priors required. It is a good safeguard in case a particular prior cannot be proved because of missing documents, etc. The prosecutor could decide later which two prior convictions are the easiest to prove.

Two priors will need to be proved at a preliminary hearing and at trial. Without the priors, the judge conducting the preliminary hearing will not be able to hold the defendant to answer on the Penal Code section 666.1 charge. A 666.1 without prior convictions is a misdemeanor petty theft or shoplifting.

C. Penal Code Section 12022.6 (Enhancement for Excessive Takings) [Section 11 of Prop. 36]

Proposition 36 re-enacts, with modified threshold values, the version of the excessive takings enhancement that was repealed at the end of 2017 because of an overlooked sunset date. Penal Code section 12022.6 applies when an offender takes, damages, or destroys property in the commission or attempted commission of a felony, or commits a felony violation of Penal Code section 496 (possessing/receiving/selling stolen property). It contains five enhancement options:

- One-year enhancement for a loss or property value of over $50,000
- Two-year enhancement for a loss or property value of over $200,000
- Three-year enhancement for a loss or property value of over $1 million
- Four-year enhancement for a loss or property value of over $3 million
- One-year enhancement for every additional loss or property value of $3 million (imposed in addition to the four-year, $3 million enhancement)

Because section 12022.6 applies to acts of taking, damage, destruction, and to Penal Code section 496, it will apply to a variety of crimes, including the various grand thefts in the Penal

18. See Appendix A for sample pleadings. In *People v. Bouzas* (1991) 53 Cal.3d 467, the California Supreme Court found that the prior conviction in a Penal Code section 666 case was ***not*** an element of the offense and instead was a sentencing factor. In *People v. Weathington* (1991) 231 Cal.App.3d 69 (a felony driving under the influence Vehicle Code section 23550 case where the defendant's three prior DUI convictions elevated the underlying offense from a misdemeanor DUI to a felony DUI), the court held that the prior DUIs were sentencing factors and not elements of the offense. The court in *People v. Casillas* (2001) 92 Cal.App.4th 171 acknowledges that Vehicle Code section 23550 does not expressly require pleading or proof at the preliminary hearing, but that such a requirement should be implied as a matter of statutory interpretation and must be implied as a matter of due process. It seems reasonable that courts will treat Penal Code section 666.1 cases like this.

Code, Penal Code section 594 vandalism, Penal Code section 459 burglary where property is taken or damaged, and Penal Code section 496.[19]

Subdivision (b) of Penal Code section 12022.6 provides that where there are multiple charges of taking, damage, or destruction, or multiple violations of Penal Code section 496, the enhancements in section 12022.6 may be imposed if the combined (aggregate) losses to the victims or the combined property values from all felonies exceed the threshold amounts in section 12022.6 and arise from a common scheme or plan. This language was in the version of Penal Code section 12022.6 that was in effect before 2018. This provision would permit, for example, charging a one-year $50,000 Penal Code section 12022.6 enhancement where a defendant is charged with a $25,000 grand theft from Victim #1 and a $30,000 grand theft from Victim #2, if the thefts arise from a common scheme or plan. *NOTE*: Penal Code section 12022.6 is different from Penal Code section 490.3, which does not require any common scheme or plan in order to aggregate the value of separate thefts so that a felony theft can be charged.

Subdivision (c) requires that a Penal Code section 12022.6 enhancement must be pled and proved.[20] And if aggregation is used to reach a Penal Code section 12022.6 threshold amount, it should be included in the particular enhancement that applies to the case that the crimes used to aggregate property value arise from a common scheme or plan. The trier of fact will need to make a finding that a common scheme or plan was involved, or the defendant must admit the allegation if settling the case before trial.

Notwithstanding any other law, subdivision (d) permits a court to impose a Penal Code section 12022.6 enhancement and another enhancement on a single count, including an enhancement pursuant to new Penal Code section 12022.65 (acting in concert to take, damage, or destroy property—see below.) Thus, a defendant may be punished for both acting in concert (Pen. Code § 12022.65) and for taking or damaging property valued at more than $50,000 (Pen. Code § 12022.6). Because subdivision (d) of Penal Code section 12022.6 specifically permits multiple enhancements on a single count, it prevails over Penal Code section 1385(c)(2)(B), which encourages judges to dismiss all but one enhancement when multiple enhancements are alleged in a single case, unless dismissal would endanger public safety.

Assembly Bill 1960 (2024 laws, Chapter 220) is effective on January 1, 2025. It adds a Penal Code section 12022.6 excessive taking enhancement that is almost identical to that in Proposition 36.[21]

The new enhancement in Penal Code section 12022.10 (SB 1416, Chapter 174), which will be effective on January 1, 2025, adopts most of the language in Penal Code section 12022.6 and all of its threshold amounts, except that new section 12022.10 applies to selling, exchanging, or returning

19. The previous versions of Penal Code section 12022.6 did not specifically include Penal Code section 496 as an applicable underlying offense. However, case law held that Penal Code section 12022.6 did indeed apply to section 496 crimes. (*People v Loera* (1984) 159 Cal.App.3d 992). Proposition 36 specifically adds Penal Code section 496 so that it is not overlooked as an underlying offense.
20. See Appendix A for sample pleadings.
21. There are some minor, non-substantive language differences. The substantive difference between the two is that AB 1960 contains a sunset date of January 1, 2030, so that the Legislature can review the effects of inflation on the threshold amounts (and most likely increase them, which is what happened in the past when Penal Code section 12022.6 was in effect.) Proposition 36 does ***not*** contain a sunset date. It is likely that both versions of Penal Code section 12022.6 will be in effect at the same time, which would mean that there will be essentially identical versions in effect for the next five years.

for value property that was acquired by one or more acts of shoplifting, theft, or burglary from a retail business. It also applies to ***attempted*** selling, exchanging, or returning, and has a sunset date of January 1, 2030. Because Penal Code section 12022.6 is broader, it does not appear that section 12022.10 will be very useful to prosecutors.

Existing Penal Code section 186.11 is California's Aggravated White Collar Crime enhancement. It continued to cross-reference punishment provisions in Penal Code section 12022.6, even after section 12022.6 was repealed because of a January 1, 2018 sunset date. The punishment specified in Penal Code section 12022.6(a)(1) and (a)(2) (in both Proposition 36 and AB 1960) will continue to apply to a Penal Code section 186.11 case, as it previously did.[22]

D. Penal Code Section 12022.65 (Enhancement for Acting in Concert to Steal or Damage Property) [Section 12 of Prop. 36]

Proposition 36 creates this new enhancement that applies when an offender acts in concert with two or more persons to take, attempt to take, damage, or destroy property, in the commission or attempted commission of a felony. It has a range of punishment of one, two, or three years, and must be pled and proved.[23]

Notwithstanding any other law, subdivision (c) permits a court to impose this enhancement and another enhancement on the same single count, including an excessive taking enhancement pursuant to Penal Code section 12022.6. Thus, a defendant may be punished for both acting in concert (Pen. Code § 12022.65) and for taking or damaging property valued at more than $50,000 (Pen. Code § 12022.6). Because subdivision (c) specifically permits multiple enhancements on a single count, it prevails over Penal Code section 1385(c)(2)(B), which encourages judges to dismiss all but one enhancement when multiple enhancements are alleged in a single case, unless dismissal would endanger public safety.

This new enhancement will be very useful for smash and grab thefts and attempted thefts, and can attach to felony crimes such as Penal Code section 459 burglary, Penal Code section 487 grand theft, Penal Code section 594 vandalism, or such attempted crimes.

VII. Future Amendments to Proposition 36

Section 15 of Proposition 36 provides that the Legislature may, by majority vote:

1. Amend Health and Safety Code section 11369 to expand the list of drugs that qualify as a "hard drug" and to expand the list of convictions that qualify for a warning.

22. Existing Penal Code section 186.11(a)(3) provides that "[i]f the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than one hundred thousand dollars ($100,000), but not more than five hundred thousand dollars ($500,000), the additional term of punishment shall be the term specified in paragraph (1) or (2) of subdivision (a) of Section 12022.6." When Penal Code section 12022.6 was repealed, subdivision (a)(1) had a $65,000 loss threshold and a punishment of one year, and subdivision (a)(2) had a $200,000 loss threshold and a punishment of two years. Because Penal Code section 186.11(a)(3) has a loss range of $100,000 to $500,000, the punishment specified in Penal Code section 12022.6(a)(1) and (a)(2) (in both Proposition 36 and AB 1960) will continue to apply to a section 186.11 case, as it previously did. A loss of over $100,000 but not over $200,000 is punishable as specified in Penal Code section 12022.6(a)(1) (one year) and a loss of over $200,000 but not over $500,000 is punishable as specified in section 12022.6(a)(2) (two years).
23. See Appendix A for sample pleadings.

2. Amend Health and Safety Code section 11395 (the treatment-mandated felony) to expand the list of drugs that qualify as a "hard drug" and to expand the list of prior convictions that trigger a violation.

3. Amend Penal Code section 666.1 to expand the list of prior convictions that may trigger a felony charge for a third theft.

All other amendments must be by a two-thirds vote of the Legislature and must further the purposes, intent, findings, and declarations of Proposition 36, or must be approved by the voters.

Appendix A

Suggested Pleading Language

PENAL CODE SECTION 666.1 – PETTY THEFT WITH TWO PRIORS[24]

COUNT [COUNT_#]: On or about [DATE_OF_VIOLATION], in violation of Sections [ATTEMPT_CODE] 666.1/488 of the Penal Code ([ATTEMPT-]PETTY THEFT WITH TWO PRIOR CONVICTIONS), a FELONY, [NAME_OF_DEFENDANT] did unlawfully [ATTEMPT_TO] steal, take, carry, lead, and drive away the personal property of [NAME_OF_VICTIM], with the specific intent to permanently deprive [NAME_OF_VICTIM] of the personal property.

It is further alleged that [DEFENDANT] was previously [SELECT_CONVICTION_INFO] a violation of [SPECIFY_CHARGE] on or about [CONVICTED_DATE] in the [TYPE_OF_COURT] Court of the State of [STATE], in and for the County of [COUNTY] [ASSOCIATED_CASE_NUMBER].

It is further alleged that [DEFENDANT] was previously [SELECT_CONVICTION_INFO] a violation of [SPECIFY_CHARGE] on or about [CONVICTED_DATE] in the [TYPE_OF_COURT] Court of the State of [STATE], in and for the County of [COUNTY] [ASSOCIATED_CASE_NUMBER].

[ALLEGE ADDITIONAL PRIORS AS APPLICABLE AS BACKUP]

[SELECT_CONVICTION_INFO]

- convicted of
- convicted in another state or in the United States District Court of a public offense which, if committed in California, would constitute

[SPECIFY_CHARGE]

- Petty theft, as described in Penal Code Section 488 or 490.2.
- Grand theft, as described in Penal Code Section 487, 487h, and in Chapter 5 of Title 13 of Part 1 of the Penal Code (commencing with Section 484).
- Theft from an elder or dependent adult, as described in Penal Code Section 368.
- The theft or unauthorized use of a vehicle, as described in Vehicle Code Section 10851.
- Burglary, as described in Penal Code Section 459.
- Carjacking, as described in Penal Code Section 215.
- Robbery, as described in Penal Code Section 211.
- Receiving stolen property, as described in Penal Code Section 496.
- Shoplifting, as described in Penal Code Section 459.5.
- Identity theft and mail theft, as described in Penal Code Section 530.5.

24. This pleading template would also apply to other forms of larceny, including embezzlement. (See Pen. Code §§ 490a, 514.)

PENAL CODE SECTION 666.1 – SHOPLIFTING WITH TWO PRIORS

COUNT [COUNT_#]: On or about [DATE_OF_VIOLATION], in violation of Sections [ATTEMPT_CODE] 666.1/459.5 of the Penal Code ([ATTEMPT-]SHOPLIFTING WITH TWO PRIOR CONVICTIONS), a FELONY, [NAME_OF_DEFENDANT] did unlawfully [ATTEMPT_TO] enter [DESCRIBE_STRUCTURE], a commercial establishment, with the intent to commit larceny while that establishment was open during regular business hours and the value of the property taken and intended to be taken did not exceed Nine Hundred Fifty Dollars ($950.00).

It is further alleged that [DEFENDANT] was previously [SELECT_CONVICTION_INFO] a violation of [SPECIFY_CHARGE] on or about [CONVICTED_DATE] in the [TYPE_OF_COURT] Court of the State of [STATE], in and for the County of [COUNTY] [ASSOCIATED_CASE_NUMBER].

It is further alleged that [DEFENDANT] was previously [SELECT_CONVICTION_INFO] a violation of [SPECIFY_CHARGE] on or about [CONVICTED_DATE] in the [TYPE_OF_COURT] Court of the State of [STATE], in and for the County of [COUNTY] [ASSOCIATED_CASE_NUMBER].

[ALLEGE ADDITIONAL PRIORS AS APPLICABLE AS BACKUP]

[SELECT_CONVICTION_INFO]

- convicted of
- convicted in another state or in the United States District Court of a public offense which, if committed in California, would constitute

[SPECIFY_CHARGE]

- Petty theft, as described in Penal Code Section 488 or 490.2.
- Grand theft, as described in Penal Code Section 487, 487h, and in Chapter 5 of Title 13 of Part 1 of the Penal Code (commencing with Section 484).
- Theft from an elder or dependent adult, as described in Penal Code Section 368.
- The theft or unauthorized use of a vehicle, as described in Vehicle Code Section 10851.
- Burglary, as described in Penal Code Section 459.
- Carjacking, as described in Penal Code Section 215.
- Robbery, as described in Penal Code Section 211.
- Receiving stolen property, as described in Penal Code Section 496.
- Shoplifting, as described in Penal Code Section 459.5.
- Identity theft and mail theft, as described in Penal Code Section 530.5.

HEALTH & SAFETY CODE SECTION 11395 – POSSESSION OF HARD DRUG WITH TWO PRIORS / TREATMENT-MANDATED FELONY

COUNT [COUNT_#]: On or about [DATE_OF_VIOLATION], in violation of Section [ATTEMPT_CODE]11395 of the Health and Safety Code ([ATTEMPT-]POSSESSION OF HARD DRUG WITH TWO PRIOR CONVICTIONS/TREATMENT-MANDATED FELONY), a FELONY, [NAME_OF_DEFENDANT] did unlawfully [ATTEMPT_TO] possess [NAME_CONTROLLED_SUBSTANCE], a controlled substance, or its analogs.

It is further alleged that [DEFENDANT] was previously [SELECT_CONVICTION_INFO] a violation of Section [SPECIFY_CHARGE] of the Health and Safety Code on or about [CONVICTED_DATE] in the [TYPE_OF_COURT] Court of the State of [STATE], in and for the County of [COUNTY] [ASSOCIATED_CASE_NUMBER].

It is further alleged that [DEFENDANT] was previously [SELECT_CONVICTION_INFO] a violation of Section [SPECIFY_CHARGE] of the Health and Safety Code on or about [CONVICTED_DATE] in the [TYPE_OF_COURT] Court of the State of [STATE], in and for the County of [COUNTY] [ASSOCIATED_CASE_NUMBER].

[ALLEGE ADDITIONAL PRIORS AS APPLICABLE AS BACKUP]

[NAME_CONTROLLED_SUBSTANCE]

- Fentanyl
- Heroin
- Cocaine
- Cocaine base
- Methamphetamine
- Phencyclidine (PCP)
- [specify] [other qualifying substance listed in Health & Saf. Code §§ 11054(a), (b), (c), (f), or 11055(a), (b), (c), (e), (f)]

[SELECT_CONVICTION_INFO]

- convicted of
- convicted in another state or in the United States District Court of a public offense which, if committed in California, would constitute

[SPECIFY_CHARGE]

- 11350
- 11351
- 11351.5
- 11352
- 11353
- 11353.5
- 11353. 7
- 11370.1
- 11377
- 11378
- 11378.5
- 11379
- 11379.5
- 11379.6
- 11380
- 11395

PENAL CODE SECTION 490.3 – THEFT AGGREGATION

Notice: The above charge includes more than one act of theft and shoplifting and the aggregate value of the stolen property and/or merchandise exceeds $950, within the meaning of Section 490.3 of the Penal Code.

PENAL CODE SECTION 12022.6 – EXCESSIVE TAKINGS ENHANCEMENT

It is further alleged pursuant to Penal Code section 12022.6(a)[SUBSECTION] (EXCESSIVE TAKINGS/LOSS/DAMAGE), that [DEFENDANT] took, damaged, and destroyed property valued in excess of [LOSS/DAMAGE_AMOUNT] during the commission and attempted commission of the above offense.

For a Penal Code section 496 offense:

It is further alleged pursuant to Penal Code section 12022.6(a)[SUBSECTION] (EXCESSIVE TAKINGS/LOSS), that the value of the property that [DEFENDANT] did buy, receive, conceal, sell, withhold, and aid in concealing, selling, and withholding, was in excess of [LOSS/DAMAGE_AMOUNT] during the commission and attempted commission of the above offense.

[SUBSECTION]

- 1
- 2
- 3
- 4
- 5

[LOSS/DAMAGE_AMOUNT]

- fifty thousand dollars ($50,000)
- two hundred thousand dollars ($200,000)
- one million dollars ($1,000,000)
- three million dollars ($3,000,000)
- [other] [specify amount if over $6,000,000]

PENAL CODE SECTION 12022.65 – IN-CONCERT ENHANCEMENT FOR THEFT OR DAMAGE

It is further alleged pursuant to Penal Code section 12022.65(a) (IN CONCERT CRIME), that [DEFENDANT] acted in concert with two or more persons to take, attempt to take, damage, and destroy any property, during the commission and attempted commission of the above offense.

Appendix B

Prior Convictions: Proof, Stipulations & Bifurcation (Penal Code Section 666.1 and Health and Safety Code Section 11395 Cases)

A. Proving Prior Convictions

Introducing into evidence the defendant's rap sheet showing the convictions is the easiest way to prove the priors at the preliminary hearing. At trial, a combination of the rap sheets and court documents showing the convictions is advisable since proof must be beyond a reasonable doubt. Criminal histories, such as local and state rap sheets, and court documents, are admissible pursuant to Evidence Code sections 1280 (official records) and 664 (the presumption that official duty has been regularly performed). A court may also take judicial notice of court records. (Evid. Code § 452(d).)

Rap sheets can be used to connect a defendant to a prior conviction (i.e., to prove identity) and/or to prove the actual fact of the prior conviction. (*People v. Martinez* (2000) 22 Cal.4th 106; *People v. Morris* (2008) 166 Cal.App.4th 363; *People v. Dunlap* (1993) 18 Cal.App.4th 1468.) In *Martinez*, an ***uncertified*** printout of the defendant's local criminal history from the Los Angeles County Sheriff's Department computer system and an ***uncertified*** CLETS (California Law Enforcement Telecommunications System) printout of the defendant's state criminal history from the Department of Justice computer system were admissible to prove that the defendant had served prior prison terms for purposes of Penal Code section 667.7 habitual offender status. A paralegal in the Los Angeles County District Attorney's Office testified about the criminal histories, which he had generated the day he testified. The court found that the criminal history printouts met the requirements of admissibility pursuant to Evidence Code section 1280 because of the paralegal's testimony and the presumption under Evidence Code section 664 that official duty was regularly performed (i.e., the various statutes relating to compiling and reporting criminal history information were complied with). In *Dunlap* and in *Morris*, a ***certified*** CLETS computer printout was admissible to prove the defendant's two prison priors, without any foundational testimony from a witness about the printout's identity, method of preparation, or trustworthiness.

In a typical case where a jury is deciding the truth of the prior convictions, it is the court, and not the jury, that decides the issue of identity (Pen. Code § 1025(c)). However, when the prior convictions are an element of the charged offense, the jury decides the question of whether the defendant is the person who has suffered the prior conviction (Pen. Code § 1025(d)). In a Penal Code section 666.1 case or in a Health and Safety Code section 11395 case, the prior convictions are sentencing factors, not elements of the offense, so the court will decide the issue of identity for the prior convictions. In *People v. Bouzas* (1991) 53 Cal.3d 467, 473, the California Supreme Court found that the prior conviction in a Penal Code section 666 case (petty theft with a prior) was ***not*** an element of the offense and instead was "a sentencing factor for the court." Penal Code section 29800 (felon with a gun) is an example of a crime in which the required prior felony conviction is an element of the offense. Without the prior felony conviction, the defendant's possession of a firearm is not a crime. In a Penal Code section 666.1 case, if there are no priors, the defendant is still guilty of petty theft or shoplifting. In a Health and Safety Code section 11395 case, if there are no priors, the defendant is still guilty of a misdemeanor possession crime such as Health and Safety Code section 11350 or 11377.

In a jury trial where the defendant has not admitted the priors, consider having a fingerprint expert testify that the fingerprints on the booking sheet for each prior conviction match the fingerprints on the defendant's booking sheet for the current offense. Or a fingerprint expert can take the defendant's fingerprints in court, out of the presence of the jury, and then do the comparison before testifying. The defendant's photograph on the booking sheets, if there is a photo, will also aid in proving identity. And the defendant's identifiers on the booking sheets should match those on the defendant's rap sheet and on the charging document for the current case. Court documents that show the defendant was convicted and for what, such as a minute order and/or an abstract of judgment, can be obtained to corroborate the rap sheet. If the judge requires major redaction of the rap sheet because it will be seen by the jury, going with court documents might be simpler. In addition, consider calling to the stand a prosecutor in your office who is an expert on prior convictions and rap sheets, in order to explain what the rap sheet and court documents mean. Evidence Code section 720(a) provides that a person is qualified to testify as an expert if the person has special knowledge, skill, experience, training, or education sufficient to qualify the person as an expert on the subject to which the testimony relates. Evidence Code section 720(b) provides that this special knowledge, skill, experience, training, or education, may be shown by any admissible evidence, including the expert witness' own testimony. There are probably a number of prosecutors in every county who can qualify as such as expert. [This writer testified numerous times about prior convictions in her county before moving out of state.]

Certified rap sheets are also admissible pursuant to Evidence Code section 452.5(b), which provides that an official record of conviction certified in accordance with Evidence Code section 1530(a), or an electronically digitized copy thereof, is admissible pursuant to section 1280 to prove a prior conviction.

The admission of rap sheets does not violate a defendant's right to confrontation under the Sixth Amendment as interpreted in *Crawford v. Washington* (2004) 541 U.S. 36. (*People v. Morris* (2008) 166 Cal.App.4th 363.) They are not the type of hearsay the U.S. Supreme Court envisioned when it spoke of "testimonial hearsay" in the *Crawford* case. (*Morris, supra,* at 373.)

B. Stipulating to/Admitting Prior Convictions

The courts will most likely treat new Penal Code section 666.1 and new Health and Safety Code section 11395 similarly to former and current versions of Penal Code section 666 ("petty theft with a prior theft") with regard to permitting a defendant to stipulate to (admit) the priors and thereby prevent a jury from learning about them. In *People v. Bouzas* (1991) 53 Cal.3d 467, the California Supreme Court held that it was error for the trial judge in a Penal Code section 666 case to prohibit the defendant from stipulating to the prior conviction (a robbery conviction) and to permit the prosecution to prove the prior robbery to the jury. The *Bouzas* court found that the prior conviction in a Penal Code section 666 case was ***not*** an element of the offense and instead was "a sentencing factor for the court." (*Id.* at 473.) In former versions of Penal Code section 666, a theft-related prior conviction increased punishment by elevating a misdemeanor petty theft to a felony theft. The current version of section 666 increases punishment by elevating a misdemeanor petty theft to a felony theft if the defendant has a theft-related prior conviction and either has a prior conviction for a "super strike" (Pen. Code § 667(e)(2)(C)(iv)) or is required to register as a sex offender pursuant to Penal Code section 290. New section 666.1 increases punishment for the misdemeanor crimes of petty theft and shoplifting by permitting a felony charge if the defendant has at least two theft-related prior convictions. New Health and Safety Code section 11395 increases punishment for misdemeanor drug possession by permitting a felony charge if the defendant has at least two drug-related prior convictions.

If a defendant stipulates to the prior convictions in a Penal Code section 666.1 case or in a Health and Safety Code section 11395 case to prevent the jury from learning about the priors, the court should provide full *Boykin-Tahl* advisements, take waivers from the defendant, and make sure the defendant understands the consequences of admitting the priors, i.e., that the priors make the defendant eligible for felony punishment instead of for only a misdemeanor petty theft or shoplifting (in a Penal Code section 666.1 case), or misdemeanor drug possession (in a Health and Safety Code section 11395 case). (*People v Cross* (2015) 61 Cal.4th 164.) "*Boykin-Tahl*" rights refer to the right to a jury trial, the right to confront and cross-examine witnesses, and the right against self-incrimination. (*Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.) Whether referred to as a stipulation or an admission of the prior convictions, the procedure and result should be the same: A full advisement about constitutional rights and penal consequences, with waivers and acknowledgement from the defendant.

[*Some History*: In *People v. Newman* (1999) 21 Cal.4th 413 and in *People v. Adams* (1993) 6 Cal.4th 570 the California Supreme Court held that when a defendant stipulates to a prior conviction that is an element of the offense (former Pen. Code § 12021—now Pen. Code § 29800, in *Newman*) or stipulates to bail/own recognizance status pursuant to Penal Code section 12022.1 (*Adams*), *a Boykin-Tahl* advisement is not required because the defendant is not admitting every evidentiary fact necessary to impose the additional penalty. In the case of Penal Code section 29800, the prosecution still needs to prove that the defendant was in possession of a firearm. In the case of Penal Code section 12022.1, the prosecution needs to prove the primary and secondary offenses. In *People v. Witcher* (1995) 41 Cal.App.4th 223 (disapproved in *People v. Cross* (2015) 61 Cal.4th 164) the court applied *Newman* and *Adams* to Penal Code section 666 charges, and held that a stipulation to the prior conviction alleged for a section 666 charge did not require *Boykin-Tahl* advisements. However, *People v. Cross* disapproved *Witcher* and discussed it at length. *Cross* is a case involving a felony Penal Code section 273.5(a) domestic violence charge with a domestic violence prior conviction alleged, which increased the punishment from two, three or four years in state prison to two, four, or five years in state prison pursuant to Penal Code section 273.5(f)(1). Defendant Cross stipulated to the domestic violence prior conviction without the trial court advising him of any trial rights or taking any waivers or explaining that the admission of the prior conviction exposed him to increased punishment. The California Supreme Court found that the stipulation established every fact necessary to expose the defendant to a penalty beyond the four-year maximum of Penal Code section 273.5(a), except conviction of the underlying offense. The *Cross* court declined to decide exactly what advisement the defendant should have been given or what additional advisements are constitutionally required, but did say that at a minimum, the defendant was "entitled to be advised of his right to a fair determination of the truth of the prior conviction allegation." (*Cross, supra,* at 179.) In *In re Yurko* (1974) 10 Cal.3d 857, a Penal Code section 459 burglary case with three prior convictions alleged that qualified the defendant as a habitual offender, the California Supreme Court applied *Boykin-Tahl* to the admission of prior felony convictions.]

The best practice, when a defendant stipulates to (admits) prior convictions in any context, is for the court to provide *Boykin-Tahl* advisements, take waivers of these rights, and make sure the defendant understands that the prior convictions make the defendant eligible for increased punishment.

C. Bifurcation of Prior Convictions at Trial

If a defendant refuses to admit the prior convictions, the defendant may ask the court to bifurcate the priors and have a separate trial on the priors after conviction on the underlying offense. In most jury trials, bifurcation will be granted, unless the prior convictions are admissible for some other reason

during the trial on the underlying offense. There would be no logical reason to bifurcate priors in a court trial, since the judge will already know about the prior convictions.

In a situation analogous to Penal Code section 666.1 and Health and Safety Code section 11395, the court in *People v. Weathington* (1991) 231 Cal.App.3d 69 held (in a case involving a felony driving under the influence charge, where the defendant's three prior DUI convictions elevated the underlying offense from a misdemeanor DUI to a felony DUI), that the prior DUIs were sentencing factors and not elements of the offense, and should have been bifurcated at the defendant's request. The *Weathington* case discusses similarities to Penal Code section 666 crimes and cites *People v. Bouzas* (1991) 53 Cal.3d 467 at length. (In *Bouzas,* the California Supreme Court held that it was error for the trial judge in a Penal Code section 666 case to prohibit the defendant from stipulating to the prior conviction and to permit the prosecution to prove the prior robbery to the jury.) *Weathington* sets forth the *Bouzas* discussion on the difference between a prior conviction that is an element of the offense (e.g., Pen. Code § 29800, formerly Pen. Code § 12021) and a prior conviction that is a sentencing factor: a jury in a Penal Code section 666 case does not need to know whether the defendant has previously been convicted of a theft-related offense in order to decide whether the defendant has committed a new theft crime, but a jury in a Penal Code section 29800 case that does not hear about ex-felon status might acquit because it might not believe that simply possessing a firearm should be a crime. (*Weathington, supra*, at 87.)

Weathington also cites *People v. Bracamonte* (1981) 119 Cal.App.3d 644, which overturned California's unitary trial procedures and held that a defendant is entitled to bifurcation of prior convictions at a jury trial. However, *Bracamonte* was disapproved in 1994 (after *Weathington* was decided) by the California Supreme Court in *People v. Calderon* (1994) 9 Cal.4th 69. *Bracamonte* was a Penal Code section 459 burglary case with five Penal Code section 667.5(b) prison priors alleged. *Calderon* holds that a trial court has the discretion in a jury trial to bifurcate the determination of the truth of prior convictions from the determination of the defendant's guilt on the charged offenses, but it is not required to do so if the defendant will not be unduly prejudiced by a unitary trial (*Calderon*, *supra,* at 72, 78). The California Supreme Court in *Calderon* declined to create a rule requiring bifurcation of priors in all trials and disapproved *Bracamonte* to the extent it conflicts with *Calderon*. (*Calderon, supra,* at 79–80.) Examples that favor a unitary trial are when the defendant testifies at trial and is impeached with the prior conviction, or the prior conviction is relevant to prove the defendant's identity, intent, or plan (*Calderon*, *supra,* at 78.) *Calderon* also involved a charge of Penal Code section 459 burglary and a Penal Code section 667.5(b) prison prior. Factors that affect the potential for prejudice will vary with each case and may include the degree to which the prior offense and is similar to the charged offense, how recently the prior conviction occurred, and the relative seriousness or inflammatory nature of the prior conviction as compared with the charged offense. (*Calderon*, *supra,* at 79.) A trial court may grant conditionally a defendant's bifurcation motion and re-visit the issue after the prosecution's case-in-chief and then again at the close of the defense case. (*Id.*) The *Calderon* court went on to say this:

> The determination whether the risk of undue prejudice to the defendant requires that the trial be bifurcated rests within the sound discretion of the trial court, and that determination will be reversed on appeal only if the trial court abuses its discretion. We observe, however, that the risk of undue prejudice posed by the admission of evidence of a prior conviction, considered against the minimal inconvenience generally caused by bifurcating the trial, frequently will militate in favor of granting a defendant's timely request for bifurcation.

(*Calderon, supra,* at 79.)

Therefore, unless a defendant takes the stand and is impeached with the alleged prior convictions, or they are admitted for another reason during the trial on the charged offense such as pursuant to Evidence Code Section 1101 (evidence of other acts), a trial court will most likely grant the defendant's bifurcation motion and the priors will be tried after the trial on the charged offense. If the defendant has not waived a jury trial on the priors, make sure the jury is ***not*** discharged if it renders a guilty verdict.

Appendix C

Text of Proposition 36

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Health and Safety Code and the Penal Code, and adds a section to the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

THE HOMELESSNESS, DRUG ADDICTION, AND THEFT REDUCTION ACT

SECTION 1. Title.

This act shall be known as The Homelessness, Drug Addiction, and Theft Reduction Act.

SEC. 2. Purposes and Intent.

This measure will reform laws that have dramatically increased homelessness, drug addiction, and theft throughout California.

This measure will:

(a) Provide drug and mental health treatment for people who are addicted to hard drugs, including fentanyl, cocaine, heroin, and methamphetamine.

(b) Add fentanyl to existing laws that prohibit the possession of hard drugs while armed with a loaded firearm.

(c) Add fentanyl to existing laws that prohibit the trafficking of large quantities of hard drugs.

(d) Permit judges to use their discretion to sentence drug dealers to state prison instead of county jail when they are convicted of trafficking hard drugs in large quantities or are armed with a firearm while engaging in drug trafficking.

(e) Warn convicted hard drug dealers and manufacturers that they can be charged with murder if they continue to traffic in hard drugs and someone dies as a result.

(f) Reinstate penalties for hard drug dealers whose trafficking kills or seriously injures a drug user.

(g) Increase penalties for people who repeatedly engage in theft.

(h) Add new laws to address the increasing problem of "smash and grab" thefts that result in significant losses and damage, or that are committed by multiple thieves working together.

SEC. 3. Findings and Declarations.

The people of the State of California find and declare as follows:

(a) Reducing Homelessness Through Drug and Mental Health Treatment

(1) California has reached a tipping point in its homelessness, drug, mental health, and theft crises. Our state has the highest rate of homelessness per capita of any state in the country. And drug overdoses now kill two to three times the number of people in California as car accidents.

(2) Since the passage of Proposition 47 in 2014, homelessness in California has increased by 51 percent, while during the same time period in the rest of the country, it has declined by 11 percent. Proposition 47 reduced the legal consequences of both possession of hard drugs (fentanyl, cocaine, heroin, methamphetamine, and phencyclidine), and theft. The result has been massive increases in drug addiction, mental illness, and property crimes, including retail theft, committed by addicts to support their addiction. At the same time, California has seen a dramatic decrease in mental health and drug treatment for homeless people due to reduced incentives to participate in treatment. Our homelessness problem is directly connected to these unintended consequences of Proposition 47, which the voters now desire to correct.

(3) Progressive states, including New Jersey, Maryland, Illinois, and Michigan, have significantly stronger hard drug laws than California, and their homeless rate is 4 to 5 times lower than California's.

(4) This proposal takes a modest step in the direction of these states by enacting a new class of crime called a "treatment-mandated felony." Under this new "treatment-mandated felony," prosecutors would have the discretion to charge a felony for hard drug possession after two previous drug convictions. If charged with this "treatment-mandated felony" for a third or subsequent drug offense, the offender would be given the option of participating in drug and mental health treatment. If the offender successfully completes drug and mental health treatment, the charge would be fully expunged, and the offender would receive no jail time. If the offender refuses drug and mental health treatment, they would serve jail time for hard drug possession. For a second conviction of the treatment-mandated felony (the fourth total conviction for hard drug possession), a judge would have the option of imposing time in jail or state prison. Along with hard drug and mental health treatment, offenders charged with a treatment-mandated felony would be offered shelter, job training, and other services designed to break the cycle of addiction and homelessness.

(b) Cracking Down on Hard Drug Dealers

(1) Fentanyl is the most dangerous drug that our nation has ever seen. Because it is largely produced synthetically, fentanyl is typically cheaper than other hard drugs. As a result, drug dealers now regularly include fentanyl in other drugs, including diet, anxiety, and sleeping pills, cocaine, and heroin. Further, fentanyl is up to 50 times stronger than heroin. Therefore, a very tiny amount of fentanyl can prove deadly. One kilogram (2.2 pounds) of fentanyl provides enough of the drug to manufacture four to ten million doses, or enough to kill 500,000 people. Finally, because such a small amount of fentanyl is necessary to create addiction, it is easier to smuggle across the border in smaller, yet much more deadly quantities.

(2) This act would authorize greater consequences for hard drug dealers whose trafficking kills or seriously injures a person who uses those drugs, and it would provide a mechanism to warn convicted hard drug dealers and manufacturers that they can be charged with murder if they continue to traffic in hard drugs and someone dies as a result.

(3) This act would add nonprescription fentanyl to an existing list of hard drugs, including heroin, cocaine, and methamphetamine, for which it is illegal to possess the drug while armed with a loaded firearm.

(4) This act would also add nonprescription fentanyl to an existing list of hard drugs, including heroin, cocaine, and methamphetamine, that authorizes greater consequences for drug dealers who sell large quantities of hard drugs.

(5) This act also permits judges to sentence drug dealers who traffic in large quantities of hard drugs or who are armed with a firearm while trafficking in hard drugs to state prison instead of local county jails. Only our state prisons are equipped to manage security for hardened drug dealers and to provide them the rehabilitation services they need to safely reenter society.

(c) Accountability for Repeat Theft and Smash and Grab Thefts

(1) Prior to Proposition 47, individuals who repeatedly engaged in theft could be charged with a felony. Prop. 47 eliminated this repeat offender felony and instead provided that any theft up to $950 in value is now a misdemeanor—regardless of how many times the offender has committed theft. In practice, this means that an offender who repeatedly steals up to $950 in value faces virtually no legal consequences.

(2) The result has been an explosion in retail and cargo theft causing stores throughout California to close to protect employees and customers from criminal activity that disrupts the efficient delivery of products directly to consumers and creates billions of dollars in economic losses to our local communities and state. This rapid increase in retail and cargo theft has also contributed to rising inflation, as businesses have been forced to raise prices to account for their economic losses. This retail and cargo theft explosion has collided with the fentanyl epidemic, as hard drug users have engaged in brazen theft to support their drug habits, knowing that there will be no consequences for either their theft or their hard drug use.

(3) Under this act, an offender with two prior convictions for theft can be charged with a felony, regardless of the value of the stolen property. Diversion programs will continue to exist, meaning that judges will retain discretion not to incarcerate an offender even for more than two theft convictions. But prosecutors will have the ability to bring felony charges against hardened, repeat offenders who continue to engage in theft. Judges will have the discretion to sentence a repeat offender to jail in appropriate cases, or to state prison if an offender is convicted four or more times of theft.

(4) This act also authorizes judges to exercise their discretion to impose an enhanced penalty when an offender steals, damages, or destroys property by acting together with two or more offenders or by causing losses of $50,000 or more. By permitting discretion in these scenarios, judges will be able to fashion sentences that are appropriate for the crime committed, including so-called "smash and grabs" committed by mobs or large groups of people working together.

(5) The value of property stolen in multiple thefts will be permitted to be added together so that in appropriate cases an offender may be charged with felony theft instead of petty theft. This provision addresses the problem of offenders who commit a series of thefts in which the property stolen during each theft has a value under the $950 felony theft threshold, in order to insulate themselves from felony charges.

(6) Along with the hard drug provisions in this act, these theft law changes will stop the vicious cycle of hard drug users stealing to support their habits without legal consequences for their actions.

SEC. 4. Section 11369 is added to the Health and Safety Code, to read:

11369. (a) This section shall be known, and may be cited, as Alexandra's Law.

(b) The court shall advise a person who is convicted of, or who pleads guilty or no contest to, a violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 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 this 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."

(c) The advisory statement shall be provided to the defendant in writing, either on a plea form, if used, as an addendum to a plea form, or at sentencing, and the fact that the advisory was given shall be specified on the record and recorded in the abstract of the conviction.

(d) (1) Except as provided in paragraph (2), as used in this section, "hard drug" means a substance listed in Section 11054 or 11055, including a substance containing fentanyl, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine, and the analogs of any of these substances as defined in Sections 11400 and 11401.

(2) As used in this section, "hard drug" does not include cannabis, cannabis products, peyote, lysergic acid diethylamide (LSD), other psychedelic drugs, including mescaline and psilocybin (mushrooms), any other substance listed in subdivisions (d) and (e) of Section 11054, or, with the exception of methamphetamine, any other substance listed in subdivision (d) of Section 11055.

SEC. 5. Section 11370.1 of the Health and Safety Code is amended to read:

11370.1. (a) Notwithstanding Section 11350 or 11377 or any other provision of law, every person who unlawfully possesses any amount of a substance containing cocaine base, a substance containing cocaine, a substance containing heroin, a substance containing methamphetamine, *a substance containing fentanyl,* a crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

(b) Subdivision (a) does not apply to any person lawfully possessing fentanyl, including with a valid prescription.

(c) As used in ~~this~~ subdivision *(a)*, "armed with" means having available for immediate offensive or defensive use.

~~(b)~~ *(d)* Any person who is convicted under this section shall be ineligible for diversion or deferred entry of judgment under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code.

SEC. 6. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a)(1) A person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 with respect to a substance containing heroin, ~~fentanyl,~~ cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine as specified in paragraph (6) of subdivision (b) of Section 11055~~, when the person knew of the substance's nature or character as a controlled substance,~~ shall receive an additional *state prison* term as follows:

(A) If the substance exceeds one kilogram by weight, the person shall receive an additional term of three years.

(B) If the substance exceeds four kilograms by weight, the person shall receive an additional term of five years.

(C) If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years.

(D) If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years.

(E) If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years.

(F) If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

(2) The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(b) (1) A person convicted of a violation of, or of conspiracy to violate, Section 11378, 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine, amphetamine, phencyclidine (PCP) and its analogs shall receive an additional *state prison* term as follows:

(A) If the substance exceeds one kilogram by weight, or 30 liters by liquid volume, the person shall receive an additional term of three years.

(B) If the substance exceeds four kilograms by weight, or 100 liters by liquid volume, the person shall receive an additional term of five years.

(C) If the substance exceeds 10 kilograms by weight, or 200 liters by liquid volume, the person shall receive an additional term of 10 years.

(D) If the substance exceeds 20 kilograms by weight, or 400 liters by liquid volume, the person shall receive an additional term of 15 years.

(2) In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

(3) The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(c) (1) A person convicted of a violation of, or of a conspiracy to violate, Section 11351 or 11352 with respect to a substance containing fentanyl shall receive an additional state prison term as follows:

(A) If the substance exceeds 28.35 grams (one ounce) by weight, the person shall receive an additional term of three years.

(B) If the substance exceeds 100 grams by weight, the person shall receive an additional term of five years.

(C) If the substance exceeds 500 grams by weight, the person shall receive an additional term of seven years.

(D) If the substance exceeds one kilogram by weight, the person shall receive an additional term of 10 years.

(E) If the substance exceeds four kilograms by weight, the person shall receive an additional term of 13 years.

(F) If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 16 years.

(G) If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 19 years.

(H) If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 22 years.

(I) If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

(2) The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

~~(c)~~ *(d)* The additional terms provided in this section shall not be imposed unless the allegation that the weight of the substance containing heroin, fentanyl, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, methamphetamine, amphetamine, or phencyclidine (PCP) and its analogs exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) Notwithstanding paragraph (9) of subdivision (h) of Section 1170 of the Penal Code, a defendant convicted of an underlying violation specified in this section who admits an enhancement pursuant to this section or for whom an enhancement pursuant to this section is found true, is punishable by imprisonment in the state prison and not pursuant to subdivision (h) of Section 1170 of the Penal Code.

~~(d)~~ *(f)* The additional terms provided in this section shall be in addition to any other punishment provided by law.

~~(e)~~ *(g)* Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section if the court determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

SEC. 7. Article 8 (commencing with Section 11395) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 8. Treatment-Mandated Felony

11395. (a) This article shall be known and cited as the Treatment-Mandated Felony Act.

(b) (1) Notwithstanding any other law, and except as provided in subdivision (d), a person described in subdivision (c) who possesses a hard drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code. A second or subsequent conviction of this section, is punishable by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

(2) A person shall not be sentenced to jail or prison pursuant to this section unless a court determines that the person is not eligible or suitable for treatment or that any other circumstance described in paragraph (4) of subdivision (d) applies to that person.

(c) Subdivision (b) applies to a person who has two or more prior convictions for a felony or misdemeanor violation of Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11370.1, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11395, including a conviction that occurred before the effective date of this section. Prior convictions shall be alleged in the accusatory pleading, and either admitted by the defendant in open court or found to be true by the trier of fact.

(d) (1) (A) In lieu of a jail or prison sentence, or a grant of probation with jail as a condition of probation, a defendant charged with a violation of this section may elect treatment by pleading guilty or no contest to a violation of this section and admitting the alleged prior convictions, waiving time for sentencing and the pronouncement of judgment, and 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 shall not constitute a conviction for any purpose unless judgment is entered pursuant to paragraph (4) for a violation of this section.

(B) Upon or subsequent to arraignment for a violation of this section, and at the request or with the consent of the defendant or their attorney, the court shall order a drug addiction expert to conduct a substance abuse and mental health evaluation of the defendant. The expert shall submit a report of the evaluation to the court and parties. The evaluation may be based on an interview of the defendant or other individuals with relevant knowledge and review of records the expert deems appropriate, including medical records, criminal history, prior treatment history, and records pertaining to the current offense. If the defendant participates in the interview, neither the defendant's interview nor evidence derived from the interview may be used against the defendant at any subsequent trial for the instant offense except for the purposes of impeachment should the defendant testify inconsistently. The evaluation shall detail the defendant's drug abuse or mental health issues, if any, so the court and parties may better determine appropriate handling of the defendant's case.

(C) Concurrent with the order for a substance abuse and mental health evaluation of the defendant, and with the defendant's consent, the court shall also order that a case worker or other qualified individual determine whether the defendant is eligible to receive Medi-Cal, Medicare, or any other relevant benefits for any programs or evaluations under this section. If the defendant did not previously consent to an eligibility determination at arraignment, the court shall order the eligibility determination upon and as a condition of the defendant's agreement to participate in and complete a treatment program as described in this subdivision.

(2) A treatment program may include, but is not limited to, 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. The court must hold regular hearings to review the progress of the defendant. The court shall make referrals to programs that provide services at no cost to the participant and have been deemed by the court, the drug addiction expert, and the parties to be credible and effective. A defendant may also choose to pay for a program that is approved by the court.

(3) Upon the defendant's successful completion of the treatment program as specified in paragraph (2), the positive recommendation of the treatment program, and the motion of the defendant, prosecuting attorney, the court, or the probation department, the court shall dismiss this charge against the defendant and the provisions of Section 1000.4 of the Penal Code, as it read on the effective date of this section, shall apply, including the provision that the arrest upon which the defendant was deferred shall be deemed to have never occurred. A dismissal based on the successful completion of treatment shall not count as a conviction for any purpose, including for determining punishment pursuant to subdivision (b).

(4) If at any time it appears that the defendant is performing unsatisfactorily in the program, is not benefiting from treatment, is not amenable to treatment, has refused treatment, or has been convicted of a crime that was committed since starting treatment, the prosecuting attorney, the court on its own, or the probation department may make a motion for entry of judgment and sentencing. After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered and the defendant sentenced. Judgment shall be imposed and the defendant sentenced if the court finds true one or more of the foregoing circumstances. However, except when the defendant has been found to have been convicted of a crime that was committed since starting treatment, the court may refer the defendant to treatment if the court finds that it is in the interest of justice to do so, that the defendant is currently amenable to treatment, and if the defendant agrees to participate in, and complete, a treatment program as described in this section.

(5) For time spent in residential treatment, a defendant may earn only actual credits pursuant to Section 2900.5 of the Penal Code and shall not earn conduct credits pursuant to Section 4019 of the Penal Code or any other provision. Time spent in any other type of program or counseling is not eligible for any credits.

(e) (1) Except as provided in paragraph (2), as used in this section, "hard drug" means a substance listed in Section 11054 or 11055, including a substance containing fentanyl, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine, and the analogs of any of these substances as defined in Sections 11400 and 11401.

(2) As used in this section, "hard drug" does not include cannabis, cannabis products, peyote, lysergic acid diethylamide (LSD), other psychedelic drugs, including mescaline and psilocybin (mushrooms), any other substance listed in subdivisions (d) and (e) of Section 11054, or, with the exception of methamphetamine, any other substance listed in subdivision (d) of Section 11055.

(f) Upon an arrest for a violation of this section, the court shall require judicial review prior to release to make an individualized determination of risk to public safety and likelihood to return to court.

(g) This section shall not be construed to preclude prosecution or punishment pursuant to any other law.

SEC. 8. Section 490.3 is added to the Penal Code, to read:

490.3. Notwithstanding any other law, in any case involving one or more acts of theft or shoplifting, including, but not limited to, violations of Sections 459.5, 484, 488, and 490.2, the value of property or merchandise stolen may be aggregated into a single count or charge, with the sum of the value of all property or merchandise being the values considered in determining the degree of theft.

SEC. 9. Section 666.1 is added to the Penal Code, to read:

666.1. (a) (1) Notwithstanding any other law, a person who has two or more prior convictions for any of the offenses listed in paragraph (2), and who is convicted of petty theft or shoplifting, is punishable by imprisonment in the county jail not exceeding one year or pursuant to subdivision (h) of Section 1170. A second or subsequent conviction of this section is punishable by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

(2) This section applies to the following offenses, including a conviction that occurred before the effective date of this section:

(A) Petty theft, as described in Section 488 or 490.2.

(B) Grand theft, as described in Sections 487, 487h, and in Chapter 5 (commencing with Section 484) of Title 13 of Part 1.

(C) Theft from an elder or dependent adult, as described in Section 368.

(D) The theft or unauthorized use of a vehicle, as described in Section 10851 of the Vehicle Code.

(E) Burglary, as described in Section 459.

(F) Carjacking, as described in Section 215.

(G) Robbery, as described in Section 211.

(H) Receiving stolen property, as described in Section 496.

(I) Shoplifting, as described in Section 459.5.

(J) Identity theft and mail theft, as described in Section 530.5.

(b) A person subject to charging under this section or actually charged with this section may be referred by a prosecuting attorney's office or by a county probation department to a theft diversion or deferred entry of judgment program pursuant to Section 1001.81. lf appropriate, a person admitted to such a program may also be referred to a substance abuse treatment program.

(c) Upon an arrest for a violation of this section, the court shall require judicial review prior to release to make an individualized determination of risk to public safety and likelihood to return to court.

(d) This section shall not be construed to preclude prosecution or punishment pursuant to any other law.

SEC. 10. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), a person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for one year, unless the arming is an element of that offense. This additional term shall apply to a person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 30510 or 30515, or a machinegun, as defined in Section 16880, or a .50 BMG rifle, as defined in Section 30530, the additional and consecutive term described in this subdivision shall be three years imprisonment pursuant to subdivision (h) of Section 1170 whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon, machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon, machinegun, or a .50 BMG rifle.

(b) (1) A person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be in the state prison for one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(c) *(1)* Notwithstanding the enhancement set forth in subdivision (a), a person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code shall be punished by an additional and consecutive term of imprisonment *in the state prison* ~~pursuant to subdivision (h) of Section 1170~~ for three, four, or five years.

(2) Notwithstanding paragraph (9) of subdivision (h) of Section 1170 of the Penal Code, a defendant convicted of an underlying violation specified in this subdivision who admits an enhancement pursuant to this subdivision or for whom an enhancement pursuant to this subdivision is found true, is punishable by imprisonment in the state prison and not pursuant to subdivision (h) of Section 1170 of the Penal Code.

(d) Notwithstanding the enhancement set forth in subdivision (a), a person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as a single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 11. Section 12022.6 is added to the Penal Code, to read:

12022.6. (a) When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, or commits a felony violation of Section 496, the court shall impose a term in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, as follows:

(1) If the loss or property value exceeds fifty thousand dollars ($50,000), the court shall impose an additional term of one year.

(2) If the loss or property value exceeds two hundred thousand dollars ($200,000), the court shall impose an additional term of two years.

(3) If the loss or property value exceeds one million dollars ($1,000,000), the court shall impose an additional term of three years.

(4) If the loss or property value exceeds three million dollars ($3,000,000), the court shall impose an additional term of four years.

(5) For every additional loss or property value of three million dollars ($3,000,000), the court shall impose a term of one year in addition to the term specified in paragraph (4).

(b) In any accusatory pleading involving multiple charges of taking, damage, or destruction, or multiple violations of Section 496, the additional terms provided in this section may be imposed if the aggregate losses to the victims or aggregate property values from all felonies exceed the amounts specified in this section and arise from a common scheme or plan. All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

(c) The additional terms provided in this section shall not be imposed unless the facts relating to the amounts provided in this section are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(d) Notwithstanding any other law, the court may impose an enhancement pursuant to this section and another section on a single count, including an enhancement pursuant to Section 12022.65.

SEC. 12. Section 12022.65 is added to the Penal Code, to read:

12022.65. (a) 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 and consecutive term of imprisonment of one, two, or three years.

(b) The additional term provided in this section shall not be imposed unless the existence of the facts required in subdivision (a) are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) Notwithstanding any other law, the court may impose an enhancement pursuant to this section and another section on a single count, including an enhancement pursuant to Section 12022.6.

SEC. 13. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years.

(b) Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony which causes the victim to become comatose due to brain injury or to suffer paralysis of a permanent nature shall be punished by an additional and consecutive term of imprisonment in the state prison for five years. As used in this subdivision, "paralysis" means a major or complete loss of motor function resulting from injury to the nervous system or to a muscular mechanism.

(c) Any person who personally inflicts great bodily injury on a person who is 70 years of age or older, other than an accomplice, in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

(d) Any person who personally inflicts great bodily injury on a child under the age of five years in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for four, five, or six years.

(e) Any person who personally inflicts great bodily injury under circumstances involving domestic violence in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three, four, or five years. As used in this subdivision, "domestic violence" has the meaning provided in subdivision (b) of Section 13700.

(f) *(1)* As used in this section, "great bodily injury" means a significant or substantial physical injury.

(2) As used in this section, a person who sells, furnishes, administers, 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, administered, or given suffers a significant or substantial physical injury from using the substance.

(g) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. Subdivisions (a), (b), (c), and (d) shall not apply if infliction of great bodily injury is an element of the offense.

(h) The court shall impose the additional terms of imprisonment under ~~either~~ subdivision (a), (b), (c), or (d), but may not impose more than one of those terms for the same offense.

SEC. 14. Chapter 36 (commencing with Section 7599.200) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 36. FUNDING FOR THE HOMELESSNESS, DRUG ADDICTION, AND THEFT REDUCTION ACT

7599.200. (a) This chapter shall be known as the Funding for the Homelessness, Drug Addiction, and Theft Reduction Act.

(b) From moneys disbursed to the Board of State and Community Corrections pursuant to paragraph (3) of subdivision (a) of Section 7599.2 and Section 6046.2 of the Penal Code, the Board of State and Community Corrections may allocate appropriate funds to counties and local governments for programs specified in Section 11395 of the Health and Safety Code. This provision shall not preclude funding for this act from any other source,

including, but not limited to, the Local Revenue Fund 2011 established under Section 30025 and other funds designated for substance abuse and mental health treatment.

(c) A defendant charged with a treatment-mandated felony is eligible for any appropriate Medi-Cal or Medicare programs or services, including, but not limited to, those described in clauses (iii) to (v), inclusive, of subparagraph (B) of paragraph (16) of subdivision (f) of Section 30025, for the defendant's programs specified in Section 11395 of the Health and Safety Code. A county or local government may contract directly with the State Department of Health Care Services or any other applicable state agency to provide for the provision or administration of any applicable Medi-Cal or Medicare treatment programs.

SEC. 15. Amendments.

(a) Except as provided in subdivision (b), this act shall not be amended by the Legislature except by a statute that furthers the purposes, intent, findings, and declarations of the act and is passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

(b) The Legislature may, by majority vote, amend Section 11369 of the Health and Safety Code only to expand the list of drugs that qualify as a "hard drug" and to expand the list of convictions to which it applies, and may, by majority vote, amend Section 11395 of the Health and Safety Code only to expand the list of drugs that qualify as a "hard drug" and to expand the list of applicable prior convictions, and may, by majority vote, amend Section 666.1 of the Penal Code only to expand the list of applicable prior convictions.

SEC. 16. Severability.

If any provision of this act, or any part of any provision, or the application of any provision or part to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications of provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 17. Conflicting Initiatives.

(a) This act creates a new drug treatment statute and changes the penalties for career and serial thieves. In the event that this act and another initiative measure or measures relating to the same subject appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by the voters but superseded by law by any other conflicting measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.