



SAN JOSÉ STATE UNIVERSITY

Record Clearance Project

“Changing lives...one petition at a time.”

Update regarding drug possession and theft-related cases

-- Prop 36 from November 2024

In November 2024 a new law passed which increases the penalties for a person who has two or more prior convictions for drug possession, **or** two or more prior convictions for theft. The change was from Proposition 36 on the November ballot; it amended the former Proposition 47 law (Penal Code section 1170.18).

This law goes in effect in December 2024. The courts have yet to interpret some of its terms. Here is what it says.

Drug possession cases

Under the new law, a person who has two or more prior convictions for **possession** of “hard drugs” (including heroin, meth, fentanyl, and cocaine) can be charged with a “Treatment Mandated Felony” (see description below). (This is the new Health and Safety Code section 11395.)

Treatment Mandated Felonies:

“Treatment mandated felonies” allow the court to require someone with two or more prior possession cases to complete a drug treatment program for any new possession case. The treatment program can include “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.”

If a person successfully completes the treatment program, the charge may be dismissed and sealed.

If a person does not successfully complete the treatment program, the judge may issue jail or prison sentences, depending on how many prior convictions a person has.

- If someone has **two prior convictions for possession of drugs**, a new conviction for drug possession may result in mandated treatment or in a sentence to county jail or imprisonment under Penal Code section 1170(h) (“realignment”).
- If someone has **three or more prior convictions for drug possession**, a new conviction may result in mandated treatment or in a sentence to jail or to state prison.

Theft-related offenses

Under the new law, a person who has two or more prior convictions for **theft** -- including petty theft or grand theft -- can be sentenced on any new theft case to a felony, with jail or prison sentence. (This is the new Penal Code section 666.1.)

- If someone has **two prior convictions for theft** (petty theft or grand theft), they can be sentenced on a new theft charge to county jail or imprisonment under Penal Code section 1170(h) (“realignment”).
- If someone has **three or more prior convictions for theft** (petty theft or grand theft), a new theft conviction may result in a sentence to county jail or to state prison.

Judges continue to have the choice of using their discretion to sentence a person to a diversion program, or for a misdemeanor, instead of a felony conviction.