

SEPTEMBER 2024

INVEST IN HEALTH NOT HARM

SUMMARY / KEY TAKEAWAYS:

- **California is experiencing an unprecedented overdose crisis that can only be addressed through health-based solutions.** Decades of failed punitive approaches to drug use have shown that harsh sentencing and increased criminalization only make outcomes worse for people struggling with addiction.
- **Prop 36 is a false solution that would divert funding from treatment, homeless services, and other vital programs.** It would provide no new funding to expand substance use disorder (SUD) treatment. Instead it would expand criminal penalties and increase the length of sentences. This would divert funds from substance use disorder (SUD) treatment and services, homeless services, and programs that enhance community safety. Prop 36 would cost taxpayers hundreds of millions of dollars by increasing the number of people incarcerated for drug use.
- **Drug treatment in the state is already difficult to access for many who need and want it. Prop 36 would make the situation worse.** The problem is not that criminal penalties are not high enough, but that treatment is unavailable in many parts of the state and often there are too many barriers to obtaining it. Prop 36 will not expand capacity for treatment. Instead, forcing drug treatment on some will reduce availability of treatment for those who are ready and seeking it. Mandating drug treatment does not reduce drug use or substance use disorders. In fact, those who have experienced involuntary treatment often have worse overdose rates.
- **Prop 36 would result in far more Californians incarcerated for simple drug possession. Detention and incarceration of people who use drugs increases overdose risk,** reduces connections to care and creates many other health, economic, and public safety harms for individuals and communities.
- **Labeling more people who use drugs as "felons" will create new, lasting barriers for many individuals** to obtain employment, housing and public benefits such as food assistance. These are vital services that people need to aid in their recovery. Our laws should make these services easier to obtain, not more difficult.
- **Prop 36 would harm individuals and communities instead of investing in the evidence-based solutions that are proven to reduce overdose, public use, and homelessness and maintain public safety.** Real solutions must include: Expanding and funding more overdose prevention and harm reduction services, ensuring universal, low-barrier access to voluntary addiction treatment, removing barriers to care caused by criminalizing people who use drugs, expanding community response services to address mental health, substance use, and homelessness service needs, and increasing access to low-barrier, affordable and supportive housing.

PROP 36 WOULD REBOOT THE WAR ON DRUGS IN CALIFORNIA

Prop 36 (2024) is an initiative backed by District Attorneys, correctional officers and large corporations that would “re-felonize” simple possession of drugs and increase penalties for other drug offenses. Increasing criminal penalties would not solve public drug use or homelessness. It would further destabilize community members in need, increase overdose risk, and divert funding from health services and treatment.

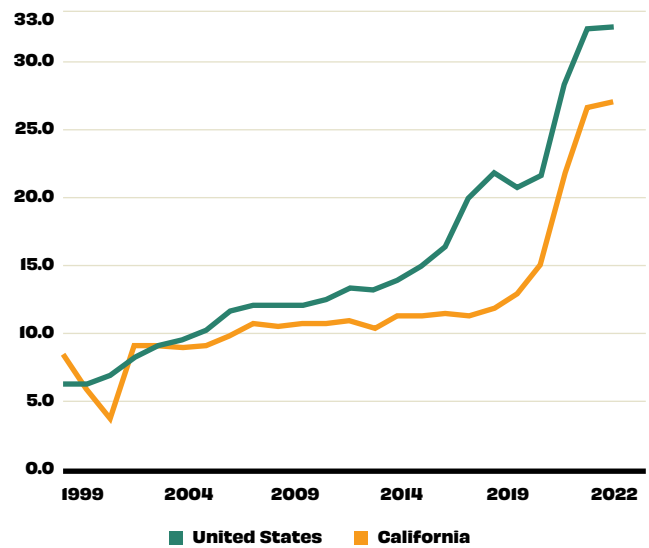
The initiative would allow anyone arrested for possessing low-level amounts of a drug and who has two or more prior convictions for drug crimes to be charged with a felony. This new “treatment mandated felony” would provide an option for the person to participate in a court-approved drug treatment program, putting judges and prosecutors without expertise in substance use treatment in power to determine who is eligible, which programs individuals must utilize, and what it means to “successfully” complete mandated programs. Those who do not successfully complete the program could be sentenced to up to three years in county jail or state prison, depending on their criminal history, or required to complete additional treatment.

Additionally, the initiative would increase sentences for some individuals convicted of drug sales, up to 25 years in some cases, and require that many of those convicted of drug sales serve their sentences in state prison rather than county jail. Instead of providing any new resources for health-based systems of care, Prop. 36 would return California to policies that drive mass incarceration.

CALIFORNIA'S OVERDOSE CRISIS DEMANDS HEALTH-CENTERED SOLUTIONS

California has experienced a rise in **overdose deaths**, which have grown at rates similar to the United States, rising significantly starting in 2019. In 2023, there were 11,899 drug overdose-related deaths.¹ While California's per-capita overdose fatality rate is lower than the majority of states, the crisis continues at near record levels.²

DRUG OVERDOSE DEATH RATE (PER 100,000 POPULATION): 1999-2022



Source: KFF's State Health Facts.

California's elevated overdose deaths are part of a national trend driven by cheaper and more powerful drugs, particularly fentanyl, permeating the drug supply. This transformation of the drug supply to include fentanyl has occurred nationally, not just in California.³

However, contrary to the rhetoric of some supporters of Prop 36, California has not experienced substantial increases in drug use and substance use disorder in recent years. Studies show that rates of drug use in California are similar to those of many other U.S. states and have remained steady in recent years or even trended down.⁴ Additionally, the percentage of Californians meeting the criteria for a substance use disorder is similar to the national average.

After decades of research, addiction is now widely understood to be a health issue.⁵ Social determinants of health, including safe and affordable housing, employment, food security, quality education, health care, race, income, and geography – have a major influence on individual and community health.⁶

We know that drug prohibition only leads to stronger, more potent, more available illicit drugs.⁷ And evidence shows that investments in “harm reduction” services focused on saving lives, reducing infectious disease, and providing needed connections to care are effective. Additionally, addressing basic needs such as housing and food security, helps individuals and their communities achieve greater levels of health, wellbeing and stability.

Criminalization exacerbates, rather than improves, public health and social problems – and disproportionately harms people and communities of color – while consuming public resources that could be used more effectively to address root causes.⁸

PROP. 36 WOULD UNDERMINE ACCESS TO TREATMENT AND HEALTH SERVICES.

California already has insufficient substance use disorder treatment capacity for those who need and want it. Prop. 36 offers no new funding to expand its availability and would reduce resources for substance use disorder treatment. A RAND analysis published in Jan 2024 found that substance use disorder and psychiatric treatment bed shortages occur in all parts of the state to meet the needs of people referred for such care.⁹

Researchers found that many substance use disorder treatment facilities exclude “high-need populations that might otherwise overwhelm their systems;” decline to take patients with types of insurance that do not offer strong reimbursement rates, or do not accept patients with prior involvement in the criminal justice system, those with co-occurring health issues, and those enrolled in Medicaid.¹⁰ According to the California Statewide Study of People Experiencing Homelessness (2023)

“TWENTY PERCENT OF THOSE (STUDY PARTICIPANTS) WHO REPORT CURRENT REGULAR USE OF ILLICIT DRUGS OR HEAVY EPISODIC ALCOHOL USE REPORTED THAT THEY WANTED TREATMENT, BUT WERE UNABLE TO RECEIVE IT.”

Experts indicate that most treatment centers are routinely full or have long wait lists. In September 2023 the San Francisco Chronicle also found that from 2021 to 2023 the number of residential substance use disorder treatment facility beds declined by over 12 percent.¹² Another California Department of Health Care Services (DHCS) study found that in 2021, among Medi-Cal members, about 95 percent did not receive follow up care within seven days after an emergency department visit for alcohol and other drug use or dependence and about 91 percent did not receive follow up within thirty days.¹³

California also faces a substantial behavioral health workforce shortage contributing to the lack of readily accessible treatment. A 2022 report found that “roughly eight million Californians, the majority of whom are Latino, Black, and Native American, live in Mental Health Professional Shortage Areas.”¹⁴

Prop. 36 offers nothing for expanding voluntary access to drug treatment. It would direct no new funding for localities that presently are “treatment deserts;” it would do nothing to expand the number of physicians qualified and available to administer treatment medications, and nothing to train and deploy more behavioral health professionals. Rather, it would divert existing resources presently supporting local projects to expand access to drug and mental health treatment, and instead it would force the state and localities to spend more on courts, jails and prisons. Given that it costs \$133,000 to imprison one person for a year in California, the proposition’s approach will undermine ongoing efforts to improve treatment access.¹⁵

PROP 36 WOULD INCREASE OVERDOSE RISK, UNDERMINE STABILITY, AND FAIL TO REDUCE DRUG USE

Research shows that incarcerating people does not make them safer or more likely to cease using drugs. Most people do not receive treatment or counseling during incarceration and the risk of overdose for those who have recently been incarcerated is significantly higher following a period of abstinence in jail. Two weeks after release from prison, people are more than 27 times more likely, on average, to die of opioid overdose than the general population.¹⁶

There are also extremely high rates of overdoses in prisons and jails. Between 2001 and 2018, deaths from drug and alcohol intoxications in prisons and jails rose 600 percent and 400 percent, respectively.¹⁷

For many whose substance use may have connections to trauma, victimization and other social determinants of health, the psychological harms arising from arrests and incarceration undermine the circumstances necessary to promote health and recovery.

Involvement in the criminal legal system also makes life more difficult for people and their families even after they are released. Even spending just a few days in jail can cause someone to lose their housing, job, or transportation.¹⁸ Felony convictions create significant, lifelong barriers to employment, housing, professional licenses, and connections with community, and criminal records are often very difficult and time-consuming to remove even if an individual is successful in obtaining dismissal of a case. Housing and employment are understood as key factors for reducing problematic drug use.¹⁹

FORCING PEOPLE INTO TREATMENT THROUGH THE CRIMINAL SYSTEM DOES MORE HARM THAN GOOD

Many addiction medicine experts caution against the use of forced drug treatment, as evidence shows that it does not improve outcomes over voluntary treatment and may lead to higher rates of relapse, overdose, and infectious disease and future avoidance of healthcare services, when compared to voluntary treatment.²⁰

For people who use drugs, a return to drug use is common following a period of involuntary commitment or mandated treatment²¹.

PEOPLE WHO ATTEND MANDATORY ABSTINENCE PROGRAMS ARE ALSO TWO TIMES MORE LIKELY TO EXPERIENCE AN OVERDOSE, COMPARED TO THOSE WHO HAVEN'T BEEN EXPOSED TO FORCED ABSTINENCE PROGRAMS.²²

Patients describe involuntary interventions as distressing, traumatizing, and damaging to therapeutic relationships, leading many to avoid seeking services altogether.²³ When people avoid healthcare and treatment systems it leads to worse outcomes for individuals and taxpayers, including increased health system costs, increased disease and death, and loss of productivity.²⁴

PROP 36 PROPONENTS ARE MISLEADING VOTERS ON REAL IMPACTS OF THE INITIATIVE

Like every state in the nation, California criminalizes simple possession of drugs. A person possessing a controlled substance (with the exception of cannabis) can be imprisoned for up to one year and issued a \$1,000 fine. And despite misleading rhetoric by backers of Prop 36, enforcement of drug possession laws continue to be a significant priority for law enforcement across the state. In 2022, over one quarter of misdemeanor arrests made in the state were for drug offenses, a percentage that has remained steady (since 2017).²⁵

Proponents have argued that the state does not criminalize fentanyl, which is not true. Opiates, including fentanyl, are classified in Schedule II of the state's equivalent of the Controlled Substances Act, and a person possessing fentanyl for sale or purchasing to sell fentanyl can be imprisoned for 2-4 years. Legislation enacted in 2023 increased the penalties for selling or distributing more than one kilogram of fentanyl by adding a sentencing enhancement of three years.²⁶

The truth is that Prop. 36 will push many people suffering from a substance use disorder into incarceration. California's disastrous history of imposing felony drug sentences led to some of the worst prison conditions in the country in the early 2000s. In 2007 over 173,000 adults were incarcerated in the state, with prisons crowded to roughly double their capacity. State prisons were so overcrowded that the United States Supreme Court determined that the conditions violated the constitution and the state was required to reduce prison populations.

Despite its marketing, the initiative will do nothing to help homeless individuals move indoors. Again, the initiative provides absolutely no funding for housing or enhancement of services for those who are unhoused, and incarceration is not a solution to the affordable housing and homelessness crisis.

CALIFORNIANS DESERVE EVIDENCE-BASED HEALTH SOLUTIONS

Communities in California are facing serious challenges that demand thoughtful responses grounded in science, not stigma. Increasing criminal penalties will exacerbate and worsen many of the issues it purports to address and drain the state of needed funding that could be better allocated on health solutions that are proven to work. To save lives, California leaders must focus on providing actual solutions to the problems their constituents face. A thoughtful, health-centered approach to drug use does not rely on the false hope of criminal penalties as a pathway to treatment. Rather, policymakers must strive to ensure a wide variety of services and supports are available, accessible, affordable, and appealing. Such approaches benefit both individuals and communities.

Prop 36 harms individuals and communities instead of investing in the evidence-based solutions and root causes that are proven to reduce overdose, public use, and homelessness and maintain public safety. Lawmakers should instead focus on policies that include the following:

EXPAND AND FUND MORE OVERDOSE PREVENTION AND HARM REDUCTION SERVICES.

Increasing the availability of harm reduction services throughout the state, including both “brick-and-mortar” programs and mobile outreach programs. Evidence shows that drug checking services, syringe exchange services, distribution of naloxone and educational information can save lives and help participants connect with needed services. Additionally, overdose prevention centers prevent overdoses from becoming fatal, bring drug use indoors, and are increasingly being embraced by states and localities.

ENSURE UNIVERSAL, LOW-BARRIER ACCESS TO VOLUNTARY ADDICTION TREATMENT.

We must make treatment available immediately for anyone who wants it. Policymakers should work to increase resources to incentivize more treatment sites, eliminate barriers to treatment, expand the number of points of entry to treatment, and support the hiring of addiction medication prescribers. Treatment must include the options for methadone and buprenorphine, two medications for opioid use disorder which cut the risk of overdose in half.

REMOVE BARRIERS TO CARE CAUSED BY CRIMINALIZING PEOPLE WHO USE DRUGS.

Increasing criminal penalties for people who use drugs drives more people into hiding and prevents more people from engaging with programs and professionals who provide support and care. Instead of new felony punishments, California must send a clear signal that it prioritizes saving lives, thus incentivizing more individuals to participate and connect with those who can help. By ensuring that people are not subject to arrest when engaging in drug checking and other overdose-prevention services we can improve access to more extensive care and support.

EXPAND COMMUNITY RESPONSE SERVICES TO ADDRESS MENTAL HEALTH, SUBSTANCE USE, AND HOMELESSNESS SERVICE NEEDS THROUGHOUT THE STATE.

People experiencing a behavioral health crisis throughout the state have limited access to immediate, properly-trained care. In many jurisdictions police officers continue to be the default first responders for 911 calls, although they often lack the training to meet the needs of those needing assistance. While many jurisdictions in California have launched civilian mobile crisis-response programs and the state has been approved to receive additional Medicaid reimbursement to support such services, many communities lack 24 hour staffing of such teams and plans for adequate, sustainable funding.²⁷

Such programs have been shown to save resources otherwise spent on law-enforcement and arrests and maintain public safety.²⁸ Additionally, communities need comprehensive response systems – including call centers, non-law enforcement outreach teams to engage people on the street in services, and community crisis stabilization centers – as well as strategies and systems to connect people to ongoing care based on the assessed needs of the individual.

INCREASE ACCESS TO LOW-BARRIER, AFFORDABLE AND SUPPORTIVE HOUSING.

Meaningful solutions must include increasing supports that help people stay housed and create more pathways to move unhoused individuals into housing with any necessary supportive services, while respecting their safety, dignity, and agency. To address the needs of the most vulnerable, many of whom currently live unsheltered on the streets, California must significantly expand permanent supportive housing using a Housing First approach, which offers housing without preconditions like abstinence or treatment participation.

END NOTES

1. Ahmad, F. B, Cisewski, J. A, Rossen, L. M, & Sutton, P. (2024). Provisional drug overdose death counts. National Center for Health Statistics. <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data>
2. [KFF analysis of Centers for Disease Control and Prevention \(CDC\), National Center for Health Statistics. Multiple Cause of Death 1999-2022 on CDC WONDER Online Database. Data are from the Multiple Cause of Death Files, 1999-2022, as compiled from data provided by the 57 vital statistics jurisdictions through the Vital Statistics Cooperative Program.](#)
3. [Ciccarone, Daniel. 2021. "The Rise of Illicit Fentanyl, Stimulants and the Fourth Wave of the Opioid Overdose Crisis." Current Opinion in Psychiatry 34 \(4\): 344–50. doi: 10.1097/YCO.0000000000000717](#)
4. 2021-2022 SAMHSA National Survey on Drug Use and Health: Model-Based Prevalence Estimates (50 States and the District of Columbia), Table 6; Prevalence and Trends in Self-Reported Drug Use in California, 2017-2021. California Health Interview Survey (CHIS), Substance and Addiction Prevention Branch, California Department of Public Health.
5. [National Institute on Drugs and Addiction \(NIDA\) IC Fact Sheet: American Society of Addiction Medicine, Definition of Addiction, https://www.asam.org/quality-care/definition-of-addiction](#) (Accessed Sept. 18, 2024).
6. [Cohen A, Vakharia SP, Netherland J, Frederique K. How the war on drugs impacts social determinants of health beyond the criminal legal system. Ann Med. 2022 Dec;54\(1\):2024-2038. doi: 10.1080/07853890.2022.2100926.](#)
7. [Beletsky L, Davis CS. Today's fentanyl crisis: prohibition's iron law revisited. Int J Drug Policy. 2017;46:156–159.](#)
8. Drug Policy Alliance fact sheets: [The Impact of the Overdose Crisis on Black Communities in the United States; The Impact of the Overdose Crisis on Latinx Communities in the United States; The Impact of the Overdose Crisis on Native American Communities in the United States.](#)
9. [Jonathan S. Levin, Ryan K. McBain, Jonathan H. Cantor, Priya Gandhi, Christina Crowley, Ingrid Estrada-Darley, Wendy Hawkins, Shreya S. Huilgol, Samantha Matthews, Nicole K. Eberhart, Solving Psychiatric and Substance Use Disorder Treatment Bed Shortages: How Many Beds to Build and Where to Build Them, RAND \(January 2024\)](#)
10. Id.
11. [Kushel, M., Moore, T. et al. \(2023\). Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness. UCSF Benioff Homelessness and Housing Initiative](#)
12. [California is hemorrhaging drug treatment facilities. No one knows why \(September 2, 2023\)](#)
13. [DHCS, Medi-Cal Managed Care External Quality Review Technical Report, 2021-2022, pg 57](#)
14. [Addressing California's Behavioral Health Workforce Shortage, Simon Vue, California State University, Sacramento \(Spring 2022\).](#)
15. Kristen Hwang and Nigel Duara, [As California closes prisons, the cost of locking someone up hits new record at \\$132,860, CalMatters \(January 23, 2024\).](#)
16. Cooper, JA, Onyeka, I, Cardwell, C. et al. Record linkage studies of drug-related deaths among adults who were released from prison to the community: a scoping review. BMC Public Health 23, 826 (2023). <https://doi.org/10.1186/s12889-023-15673-0>

17. [Mortality in State and Federal Prisons, 2001–2019 – Statistical Tables](#). Bureau of Justice Statistics (December 2021); [Mortality in Local Jails, 2000–2019 – Statistical Tables](#). Bureau of Justice Statistics (December 2021).
18. [Research roundup: Evidence that a single day in jail causes immediate and long-lasting harms](#). Prison Policy Institute (August 2024).
19. Kendall, S., Redshaw, S., Ward, S. et al. [Systematic review of qualitative evaluations of reentry programs addressing problematic drug use and mental health disorders amongst people transitioning from prison to communities](#). Health Justice 6, 4 (2018). <https://doi.org/10.1186/s40352-018-0063-8>; Richardson L., Wood E., Kerr T. (2013). [The impact of social, structural and physical environmental factors on transitions into employment among people who inject drugs](#). Social Science & Medicine, 76, 126–133. doi:10.1016/j.socscimed.2012.10.015
20. [Why involuntary treatment for addiction is a dangerous idea](#). Sarah E. Wakeman, MD, STAT, April 25, 2023. [Involuntary treatment for substance use disorder: A misguided response to the opioid crisis](#). Leo Beletsky, JD, MPH, Elisabeth J. Ryan, JD, MPH, Wendy E. Parmet, JD, Harvard Health Blog (January 28, 2018)
21. [Christopher P.B. Anderson B. Stein MD. Civil commitment experiences among opioid users](#). Drug Alcohol Depend. 2018 Dec 1;193:137-141. doi: 10.1016/j.drugalcdep.2018.10.001.
22. [A.T. Vo, C. Magana, M. Hickman, et al. Assessing HIV and overdose risks for people who use drugs exposed to compulsory drug abstinence programs \(CDAP\): a systematic review and meta-analysis](#). Int J Drug Policy, 96 (2021), Article 103401
23. [Sashidharan SP, Mezzina R, Puras D. Reducing coercion in mental healthcare](#). Epidemiol Psychiatr Sci. 2019 Dec;28(6):605–612. doi: 10.1017/S20457960190000350; [Barbui, C, Purgato, M, Abdulmalik, J, Caldas-de-almeida, JM, Eaton, J, Gureje, O, Hanlon, C, Nosè, M, Ostuzzi, G, Saraceno, B, Saxena, S, Tedesch, F and Thornicroft, G \(2021\) Efficacy of interventions to reduce coercive treatment in mental health services: Umbrella review of randomised evidence](#). British Journal of Psychiatry 218, 185–195.
24. [Byrne, Sharon K. MSN, RN, APN, C, AOCNP. Healthcare Avoidance: A Critical Review](#). Holistic Nursing Practice 22(5):p 280-292, September 2008. | DOI: 10.1097/01.HNP.0000334921.31433.c6; [Starfield B. and Shi L. Commentary: primary care and health outcomes: a health services research challenge](#). Health Services Research. (2007) 42, no. 6pl, 2252–2256, <https://doi.org/10.1111/j.1475-6773.2007.00739.x>
25. [Public Policy Institute of California. Crime in California 2022](#). Crime in CA 2022.
26. [California new laws for 2024: Longer prison sentences for fentanyl trafficking](#). Nigel Duara. CalMatters. December 29, 2023
27. [A Look at State Take-Up of ARPA Mobile Crisis Services in Medicaid](#). KFF, Nov. 30, 2023
28. [Dee TS, Pyne J. A community response approach to mental health and substance abuse crises reduced crime](#). Sci Adv. 2022 Jun 10;8(23):eabm2106. doi: 10.1126/sciadv.abm2106. Epub 2022 Jun 8. PMID: 35675395; PMCID: PMC9176742.