OFFICE OF OPERATIONS

OPERATIONS ORDER NO. 1 **FEBRUARY 18, 2025**

SUBJECT: PROPOSITION 36 – THE HOMELESSNESS, DRUG ADDICTION, AND THEFT REDUCTION ACT – ESTABLISHED

PURPOSE: On November 5, 2024, Californians voted to enact Proposition 36 – *Allows Felony Charges and Increases Sentences for Certain Drug and Theft Crimes*, in response to concerns over rising crime, drug addiction, and homelessness.

Operations Order No. 2, *Proposition 47 – Procedure for Classifying Theft, Certain Theft-Related Crimes and Certain Drug Offenses*, dated June 10, 2015, provided officers guidance when Proposition 47 reclassified several theft and drug-related crimes as misdemeanors.

However, the passing of Proposition 36 established new crime categories introducing new sections and amendments into the Penal Code (PC) and the Health and Safety Code (H&S). A key provision of these changes allows officers to use an arrestee's criminal history to determine the degree of the violation and allows for the elevation of misdemeanors into felonies. These enhancements will impose stricter consequences for repeat offenders.

This Operations Order informs Department personnel of the legal and procedural changes established by the passing of Proposition 36, which went into effect on December 18, 2024.

> **Note:** Proposition 36 also added Section 11369 H&S, 12022 PC and its related subdivisions, as well as Section 7599.200 of the Government Code. These sections are intended for the courts and sentencing and do not directly affect patrol officers or watch commander responsibilities. For more information regarding these codes, officers should refer to the Chief of Detectives Notice, *Proposition 36 – The Homelessness, Drug Addiction and Theft Reduction Act*, dated January 6, 2025.

PROCEDURES: Effective December 18, 2024, Proposition 36 reclassified the following drug and theft-related crimes and are summarized as follows:

Section 490.3 PC – Larceny

Notwithstanding any other law, in any case involving one more act of theft or shoplifting, including, but not limited to, violations of Sections 459.5, 484, 488 490.2 PC, **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.

Section 666.1 (a)(1) PC – Theft with Priors

When an officer arrests a person for any of the below listed offenses who has **two or more prior convictions** for any of the below listed offenses, the court shall require a judicial review. There is **no time limitation** on the prior convictions for the purpose of this section.

This section applies to the following offenses, including a conviction occurring before the effective date of this section:

- Petty Theft, as described in Section 488 or 490.2 PC;
- Grand Theft, as described in Sections 487, 487h PC, and in Chapter 5 (commencing with Section 484 PC) of Title 13 of Part 1;
- Theft from an Elder or Dependent Adult, as described in Section 368 PC;
- Vehicle Theft or Unauthorized Use, as described in Section 10851 of the Vehicle Code;
- Burglary, as described in Section 459 PC;
- Carjacking, as described in Section 215 PC;
- Robbery, as described in Section 211 PC;
- Receiving Stolen Property, as described in Section 496 PC;
- Shoplifting, as described in Section 459.5 PC; and,
- Identity Theft and Mail Theft, as described in Section 530.5 PC.

An offender with any two listed theft convictions above can be charged with a felony, **regardless of the stolen property's value**.

Note: Under Proposition 47, the only time a suspect with priors could be arrested is if the suspect met the criteria of being a Section 290(c) PC registrant (Sex Offender Registrant) or was convicted for serious violent offenses (see Section 667(e)(2)(C)(iv) PC). This provision remains unchanged and can be utilized as an enforcement tool if the suspect does not meet the criteria of two prior convictions.

Section 11395 H&S – Treatment Mandated Felony

When an officer arrests a person in possession of a "hard drug" without a written prescription by a licensed medical professional and that individual has **two or more prior convictions** for a felony or misdemeanor violation of Sections: 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11370.1, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380 or 11395 H&S; Upon arrest for a violation of 11395 H&S, the court shall require a judicial review. There is **no time limitation** on the prior convictions for the purpose of this section.

Note: This section only applies to "hard drugs," as classified by Section 11054 and 11055 H&S. There are some exceptions listed in subdivision (d) and (e) of 11054 and subdivision (d) of 11055 H&S (with the exception of methamphetamine).

Officer's Responsibilities. Officers shall become familiar with the reclassification of thefts and drug crimes brought about by Proposition 36. Prior to completing the booking process of arrestees in violations of such crimes, officers and detective personnel shall:

- Review the criminal history of all arrestees, as the individual arrestee's history may impact the application of Proposition 36, as well as notate any involvement in group crimes or controlled substance usage;
- Ensure that the appropriate PC and H&S Code sections are referenced in the crime and/or arrest report(s);

- Review Sections 666.1 and 490.3 PC, for an exhaustive list of crimes that meet the threshold for felony theft. Additionally, review if any of the drug-related charges are listed in Sections 11395 (b) and (c) H&S; and,
- If criteria are met during the criminal history review of the booking process, arresting officers should notate the bail amount as "Magistrate Review" (MR), as well as elevate a misdemeanor to a felony on the Booking Approval, Form 12.31.00, when appropriate.

Watch Commander's Responsibilities. When reviewing reports related to the above-mentioned sections, the watch commander must verify:

- The correct PC and H&S Code sections are referenced in the arrest reports and accompanying documents;
- Reports are titled correctly and include all the elements of the corresponding crime(s);
- Review Sections 666.1 and 490.3 PC for an exhaustive list of crimes that meet the threshold for felony theft. In addition, review if any of the drug-related charges are listed in Sections 11395 (b) and (c) H&S; and,
- If criteria are met during the booking process, confirm that arresting officers notated the bail amount as "MR" on the Booking Approval, Form 12.31.00.

Audit Responsibility. The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.

Should you have any questions regarding this matter, please contact the Office of Operations, Evaluation and Administration Unit, at (213) 486-6050.

DOMINIC H. CHOI, Assistant Chief
Director, Office of Operations

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