

Proposition 36 A Sign of a Return to Mass Incarceration

[Proposition 36](#), the “California Drug and Theft Crime Penalties and Treatment-Mandated Felonies Initiative” proposes to make several changes to punishment for theft and drug-related crimes. Specifically, it would:

1. increase punishment, mostly through longer sentences to incarceration.
2. create a new treatment-focused court for some drug possession crimes,
3. require courts to warn people convicted of selling illegal substances that they can be charged with murder if someone they sold substances to dies.



The gymnasium at San Quentin State Prison, shown in this June 14, 2007, photo, was filled with nearly 400 double-bunked inmates because of crowded conditions.

Historical Context of Proposition 36

The historical context of Proposition 36 is deeply rooted in California's experience with the "Three Strikes and You're Out" law and subsequent efforts to reform the criminal justice system. When it comes to criminal-legal policy, we tend to have a short memory. Thirty years ago, California enacted the "[Three Strikes and You're Out](#)" law, in response to high-profile crimes, which substantially increased prison sentences of people convicted of prior felonies. The implementation of the Three Strikes law widened racial disparities in California's incarcerated population, with Black inmates comprising over [45% of inmates](#) serving life sentences at the time. During this time, California's prison populations swelled, with some prisons exceeding 200% of their capacity.

As the negative impacts of the Three Strikes law became apparent, a series of reforms were implemented. In 2012, California voters recognized that mass incarceration wasn't the solution and passed the [Three Strikes Reform Act](#) (ironically, also Proposition 36). In 2014, when voters went further and approved Proposition 47, California had already been forced – by court order – to massively reduce its state prison population. Three years earlier, California's state legislature passed the Public Safety Realignment Act (Assembly Bill 109) in the wake of the Supreme Court's decision in *Brown v. Plata* that same year.

The Plata Decision

In *Plata*, the Supreme Court found that, due to rampant prison overcrowding, California state prisoners' lack of access to adequate health care violated the Eighth Amendment's ban on cruel and unusual punishment. The *Plata* ruling upheld a district court order that the state prison population be brought down to 137% of design capacity, or reduced by about 40,000 prisoners, within two years. Building on this momentum, California voters took another significant step towards criminal justice reform with the passage of Proposition 47 in 2014.

Proposition 47: A Turning Point

Proposition 47 marked a shift in California's approach to criminal justice, moving away from the punitive measures of the past towards a more community-based and rehabilitative model. Proposition 47 reclassified six drug and property crimes from felonies to misdemeanors. Felonies, the most serious crime classification, are punishable by incarceration in state prison or local jail, depending on factors such as the crime and the individual's criminal history. Misdemeanors, on the other hand, are less serious offences, punished through

briefers, local incarceration and often allowing for community supervision, alternative programs or the assessment of fines instead of incarceration.

Additionally, Proposition 47 redistributed money saved by the State of California through reduced incarceration and directed it to support:

- Dropout prevention programming in schools
- Victim services
- Community-based mental health and drug abuse treatment
- Additional programming to prevent involvement in the criminal-legal system

Since the passage of Proposition 47 and the implementation of Public Safety Realignment, prison and jail populations across California have fallen dramatically. A reduced reliance on incarceration has led to some \$800 million in savings so far, and these savings have funded treatment and diversion programs. Both [violent and property crime rates are far below](#) their peaks in the 1980s and 1990s.

Preventing Violent Crime in California

[Incarceration prevents far less violent crime](#) than we are led to believe in popular [media and culture](#). Further, decades of rigorous research shows that mass incarceration harms communities more than it keeps them safe, from the deterioration of community and [family](#) networks to individual physical and mental health effects, [economic](#) and social disenfranchisement, etc. Also, the effects of incarceration are not evenly distributed, but felt most severely in poor communities and communities of color: near the peak of our prior infatuation with incarceration, [one in every 100 Americans](#) was behind bars, with a staggering one in nine Black men ages 20 to 34 incarcerated in prison or jail.

Over the past decade, the U.S. has made strides in moving away from what we know does not work in our criminal-legal system, and California has been a leader in this movement. The U.S. [no longer](#) has the highest incarceration rate in the world, a distinction it held for many years, although every U.S. state still incarcerates more people per capita than most nations.

It is also morally and fiscally irresponsible to return to mass incarceration when we have more effective and cost-efficient tools. Recent estimates indicate that it costs [\\$132,860](#) annually to incarcerate one individual in California, when alternatives ranging from [community violence interventions](#) to community-based rehabilitation and mental health and substance abuse treatment can address crime concerns at much lower cost. If Proposition 36 passes, it would mean funding cuts to community-based programs across California that have been supported by [funds through the savings generated by Proposition 47](#).

The Impact of Proposition 36

A [yes vote](#) on Proposition 36 means support for more Californians behind bars for longer sentences and cuts to funding to community-based crime prevention and drug treatment programs, while a no vote means support for continued investment in community-based alternatives to punishment and rehabilitation.