



COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

NORA VARGAS
First District

JOEL ANDERSON
Second District

TERRA LAWSON-REMER
Third District

MONICA MONTGOMERY STEPPE
Fourth District

JIM DESMOND
Fifth District

DATE: October 8, 2024

11

TO: Board of Supervisors

SUBJECT

RECEIVE THE ANALYSIS OF HOW CHANGES TO PROPOSITION 47, THROUGH THE POTENTIAL PASSAGE OF PROPOSITION 36, COULD IMPACT FUNDING FOR SERVICES OFFERED BY THE COUNTY OF SAN DIEGO; BOARD TO CONSIDER TAKING A POSITION ON PROPOSITION 36 (DISTRICTS: ALL)

OVERVIEW

On August 27, 2024 (5), the San Diego County Board of Supervisors (Board) directed the County of San Diego (County) Chief Administrative Officer to work with relevant groups and departments to provide an analysis of how changes to Proposition 47 of 2014, through the potential passage of Proposition 36, may impact funding for County services, with a specific focus on behavioral health services, housing and development services, and homelessness-related program so the Board can consider taking a position on Proposition 36. Proposition 36, *The Homelessness, Drug Addiction, and Theft Reduction Act*, will be included on the November 5, 2024, statewide ballot.

In 2014, voters passed Proposition 47, *The Safe Neighborhoods and School Act*, which reclassified some crimes from felonies to misdemeanors, including certain drug possession offenses, crimes when the amount involved was \$950 or less, unless the individual had previous convictions for violent crimes, and required resentencing for individuals serving felony sentences for these offenses, unless court found unreasonable safety risk. The savings generated from the implementation of Proposition 47 were to be applied to mental health and drug treatment programs, K-12 schools, and victim services, all of which were intended to reduce criminal justice system involvement and recidivism in California. According to the California Legislative Analyst's Office (LAO), Proposition 47 reduced the number of crimes punishable as felonies, thereby reducing the number of people that could be sentenced to state prison. LAO estimates statewide savings realized from Proposition 47 at approximately \$100 million annually, which were redirected to local jurisdictions implementing mental health and substance use services, truancy and dropout prevention programs, and victim services.

According to the LAO, if Proposition 36 is passed, it would reverse some of the felony-to-misdemeanor classifications imposed by Proposition 47. Proposition 36 would make several key changes related to punishments for theft and drug crimes, including increase punishment for some of these crimes, create a new court process for certain drug possession crimes that is treatment-focused, and require courts to warn individuals convicted of selling or providing illegal drugs that

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they may be charged with murder if someone dies from the drugs they provided or sold. The LAO analysis also indicates that Proposition 36 would have various fiscal effects on the state and local governments, although the overall impact would be dependent upon factors including but not limited to police and law enforcement actions, jail programming, and actions of local prosecutors.

Today's item provides an analysis of anticipated funding and service impacts of changes to Proposition 47 through the potential passage of Proposition 36, with a specific focus on behavioral health services, housing and development services, and homelessness-related programs. In addition, potential impacts have been included related to law enforcement and detention services, prosecution and defense of crimes, and supervision and support of clients in the community.

RECOMMENDATION(S)

A. CHIEF ADMINISTRATIVE OFFICER

Receive the analysis of how changes to Proposition 47, through the potential passage of Proposition 36, could impact funding for services offered by the County of San Diego.

B. BASED ON BOARD'S ACTION ON AUGUST 27, 2024

Board to consider whether to take a position on Proposition 36.

EQUITY IMPACT STATEMENT

Funding from Proposition 47 has assisted in addressing racial disparities by supporting several behavioral health, housing, and reentry programs which serve those at high risk of recidivism. This analysis is aligned with the County of San Diego commitment to equity, as it considers potential impacts that may result from the passage of Proposition 36.

SUSTAINABILITY IMPACT STATEMENT

Proposition 47 funding aligns with the County of San Diego (County) Sustainability Goal #2 to provide just and equitable access to County services and programs that protect the health and well-being of justice-involved individuals and the community. Additionally, Proposition 47 funding supports Sustainability Goal #4 to protect health and well-being of communities.

FISCAL IMPACT

There is no immediate fiscal impact associated with today's item. However, if Proposition 36 is passed by voters in November 2024, Proposition 47 funding for existing programs could be reduced or eliminated although the specificity and extent of the impact is unknown at this time. Currently, the County of San Diego (County) is using one-time Proposition 47 grant monies to support two distinct programs, each of which includes aspects of behavioral health care, housing and development, and/or support to people experiencing, or at-risk of homelessness.

The passage of Proposition 36 may eliminate future Proposition 47 grant opportunities that would support these types of programs into the future. Additionally, there could be additional costs for increased law enforcement and detention services, prosecution and defense of crimes, and supervision and support of clients in the community if Proposition 36 passes. At this time, there

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will be no immediate change in net General Fund cost and no additional staff years. Any future fiscal impacts based on results of the November 2024 election would need to be identified, and staff return to the San Diego County Board of Supervisors for any further action and consideration.

BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

This Board Letter was shared with the Behavioral Health Advisory Board as an informational item on October 3, 2024.

BACKGROUND

On August 27, 2024 (5), the San Diego County Board of Supervisors (Board) directed the County of San Diego (County) Chief Administrative Officer to work with relevant groups and departments to provide an analysis of how changes to Proposition 47, through the potential passage of Proposition 36, may impact funding for County services, with a specific focus on behavioral health services, housing and development services, and homelessness-related programs, and return to the Board on October 8, 2024 so the Board can consider taking a position on Proposition 36. Proposition 36, *The Homelessness, Drug Addiction, and Theft Reduction Act*, will be included on the November 5, 2024, statewide ballot. Today's item provides such an analysis. In addition, potential impacts have been included as it relates to law enforcement and detention services, prosecution and defense of crimes, and supervision and support of clients in the community.

Overview of Proposition 47

In 2014, voters passed Proposition 47, *The Safe Neighborhoods and Schools Act*, which reclassified some crimes from felonies to misdemeanors, including certain drug possession offenses, crimes when the amount involved was \$950 or less, unless the individual had previous convictions for violent crimes, and required resentencing for individuals serving felony sentences for these offenses, unless court found unreasonable safety risk. The savings resulting from Proposition 47 were then redirected to mental health and drug treatment programs, K-12 schools, and victim services.

According to the California Legislative Analyst's Office (LAO), Proposition 47 reduced the number of crimes punishable as felonies, thereby reducing the number of people that could be sentenced to State prison. LAO indicates savings estimated at approximately \$100 million annually across the state, which is redirected for mental health and substance use services, truancy and dropout prevention, and victim services.

An initial assessment of recidivism outcomes among Proposition 47-funded program participants by the San Diego Association of Governments (SANDAG) also point to the programs' impact on reducing further criminal justice system involvement. Approximately one-third of people participating in Proposition 47-funded programs as of December 31, 2023, had an arrest or conviction on their record after program enrollment. This is below statewide estimates that place

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the average recidivism rate for California at around 50%, according to the California Department of Corrections and Rehabilitation. Program partners also continue to report success linking program participants to permanent housing and supportive services such as behavioral health treatment and employment services.

Overview of Proposition 47-Funded Programs

Locally, the County currently utilizes \$6.0 million of one-time Proposition 47 grant funding across two distinct programs, Community Care Coordination Reentry Support (C3RES) and Peer Reentry Leadership Academy, which also leverages \$4.7 million of County funding for a total of \$10.7 million. Each program includes aspects of behavioral health care, housing and development, and/or support to people experiencing, or at-risk of homelessness.

Community Care Coordination Reentry Support

C3RES program provides comprehensive care coordination, service navigation, and housing assistance to justice-involved individuals with a history of behavioral health needs and at risk of or experiencing homelessness as they leave custody from local jails to return to their communities. This program was made possible by Proposition 47, an initiative that also enacted the *Safe Neighborhoods and Schools Act*, which designates that 65% of the State corrections savings from Proposition 47 to be used to fund housing support and connections to mental health and substance use disorder treatment programs to reduce recidivism. The County was awarded funds for Cohort III of the Proposition 47 Grant Program based on a project proposal developed in partnership with a Local Advisory Committee and with stakeholder and community input.

The C3RES contract term is projected for \$15,178,890 over five years with the last two option years currently unfunded. Total budgeted amount for the first three years of C3RES is \$5,190,000 from the State *Safe Neighborhoods and Schools Act* grant and \$4,226,490 from 2011 Local Revenue Fund, Community Corrections Subaccount, which is being utilized until the grant term expires in January 2026. Additional funding of \$6,071,556 will need to be identified to fund the last two option years of the program. While the County plans to apply for additional grant funding through Proposition 47 Cohort V, this may not be an option should Proposition 36 pass. If funding is not made available through Proposition 47, or if another source is not identified, this contract is set to expire at the end of the grant term.

This program is contracted to serve at any given time 100 individuals who are released from local jails and would otherwise experience homelessness. The services are provided for up to a year and include peer support and connecting each person, based on their individual needs, to behavioral health treatment, housing support, medical care, employment services, and other supportive services. Since becoming operational in May 2023, and up to July 31, 2024, the program has served 141 unique individuals and, of those released from custody, it has immediately housed 98% of them, connected 82% to medical care, 78% to mental health (MH) treatment and 76% to substance use disorder (SUD) treatment (for MH and SUD, the % is based only on those who needed it). Additionally, 74% of participants were connected to social services, including self-sufficiency benefits. This program was designed locally using evidence-based practices to address the cycle

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of incarceration and homelessness. SANDAG is performing an independent evaluation of this program.

Peer Reentry Leadership Academy

The Peer Reentry Leadership Academy provides expanded services offered by a community-based provider in which justice-involved individuals receive training on barriers to reentry, resources, and effective communication. This program trains individuals with criminal justice lived experience to deliver information related to the importance of accessing community supportive services, including substance use disorder and mental health treatment, as well as educational and employment resources, and overcoming reentry barriers to individuals in Sheriff's Office detention and reentry facilities. Participants also receive a stipend to share information gained, including their own inspirational story, with incarcerated people to help them build confidence, skills, networking prospects for employment, and access to income and community resources. The Peer Reentry Leadership Academy hosts two cohorts of up to 20 individuals each year.

Since its first Proposition 47-funded cohort launched in September 2023, 30 participants have graduated from the Peer Reentry Leadership Academy across two cohorts. Graduates of former cohorts continue to remain engaged by leading speaking engagements in carceral settings to educate people about reentry resources and help them strengthen community ties post-release to reduce recidivism. This total budget for the Peer Reentry Leadership Academy is \$510,000 of one-time funding, which is being utilized over a three-year period until the grant term expires in June 2026.

Forensic Assertive Community Treatment Services (FACT) - Pending Award of Proposition 47 Grant Funding

In Spring 2024, County Behavioral Health Services (BHS) applied for additional Proposition 47 Grant Program, Cohort 4 funding for the FACT program, and on September 17, 2024, BHS received a notice from the Board of State and Community Corrections (BSCC) indicating the application was recommended for funding, pending final approval by BSCC on October 3, 2024. The Cohort 4 grant funds will be utilized to expand the evidence-based Assertive Community Treatment (ACT) approach to create the Forensic ACT or FACT model. FACT serves people with serious mental illness who are involved with the criminal justice system. The needs of this population are complex and exacerbated by their involvement with the criminal justice system.

The FACT model provides customized adaptations based on criminogenic needs and risks while bridging the behavioral health and criminal justice systems. The program will expand available housing interventions and ancillary housing supports, embed criminal justice staff, provide substance use services and flexible funding for customized supports. It is anticipated these enhanced forensic services will reduce time spent in detention, avoid psychiatric visits to emergency rooms, reduce admissions to psychiatric hospitals, increase engagement with treatment, and increase public safety.

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The Proposition 47 grant funding would serve approximately 330 adult individuals, 18-59 years of age, who have serious mental illness and who are involved with the criminal justice system with medium to high criminogenic risk. These individuals may also have co-occurring substance use, physical health disorders, chronic homelessness, and a history of non-compliance with criminal justice mandates. Proposition 47 funding would be utilized for housing payments, deposit assistance, flexible funding based on criminogenic needs, peer support specialists, and substance use counselors.

If approved for full funding by the BSCC on October 3, 2024, the Cohort 4 grant will provide up to \$8.0 million of one-time grant funding for the FACT services from October 1, 2024, through June 30, 2028. BHS will return to the Board at a future date to seek additional authority to accept these funds. The enhancements to FACT services are anticipated to reduce time spent in detention, unnecessary emergency rooms visits, admissions to psychiatric hospitals, along with increasing engagement into mental health and substance abuse treatment and each participant's ability to function in the community.

Overview of Anticipated Proposition 36 Impacts to Proposition 47-Funded Services

LAO anticipates that Proposition 36 would reduce funding by tens of millions of dollars for mental health and substance use treatment, school truancy and dropout prevention, and victim services, for which funding is generated through savings from Proposition 47. Total statewide funding for these services is nearly \$100 million annually. The LAO also anticipates other fiscal impacts on state and local governments, if increased punishments or mandated treatment reduce crime, resulting in a potential reduction of state and local criminal justice costs.

Locally, if Proposition 36 is passed, Proposition 47-funded programs, including C3RES and the Peer Reentry Leadership Academy program, would likely see reduced or eliminated funding if criminal justice system costs significantly increase due to the implementation of Proposition 36. Consequently, justice-involved individuals receiving care and support through these programs risk losing access to key reentry supports and may face negative impacts as a result. It could also include reduced or eliminated funding for future Proposition 47 funding for Cohort V, which would shorten the C3RES program by two years. The Cohort V grant funding was anticipated to fund the last two years of this program.

Additionally, if Proposition 36 is passed, the \$8.0 million of Proposition 47 Cohort 4 grant funding that has been conditionally awarded could be potentially reduced or eliminated, resulting in the inability to expand housing options and services tailored to the justice involved population within FACT programs.

Overview of Anticipated Proposition 36 Impacts to the Criminal Justice System

According to the LAO, Proposition 36, if passed, seeks to reverse some felony-to-misdemeanor classifications imposed by Proposition 47 by making several key changes related to punishments for theft and drug crimes, as follows:

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- Increase punishment for some crimes by turning some misdemeanors into felonies, lengthening some felony sentences, and requiring some felonies be served in prison.
- Create a new court process for certain drug possession crimes that is treatment focused.
- Require courts to warn individuals convicted of selling or providing illegal drugs that they may be charged with murder if someone dies from the drugs they provided or sold.

The LAO's analysis also indicates that the implementation of Proposition 36 would have various fiscal effects on the state and local governments, although the size of these effects would be dependent on factors, which may include decisions made by local prosecutors.

Anticipated Impacts to the State Criminal Justice System

The LAO anticipates that Proposition 36 would increase State criminal justice costs ranging from several tens of millions of dollars to the low hundreds of millions of dollars each annually. This is due to the requirement for some people currently serving sentences at the county level to serve them at the state level and potentially lengthening some prison sentences.

LAO estimates around 90,000 people currently in prison, which would likely increase by a few thousand people should Proposition 36 pass. Additionally, there would be an increase in State Court workloads because felonies take additional time to resolve when compared with misdemeanors and due to additional treatment-mandated felonies.

Anticipated Impacts to the Local Criminal Justice System

The LAO anticipates Proposition 36 would increase local criminal justice costs by tens of millions of dollars annually. This is due to the net increase of the county jail and community supervision population. Proposition 36 would likely reduce the jail and community supervision population because some individuals would go to state prison; however, would increase this population in other ways because individuals would spend more time in county jail or on community supervision.

LAO estimates around 250,000 people statewide are currently in custody at the county level, which would likely increase by a few thousand people should Proposition 36 pass. Additionally, there would be an increase in Court-related work for local prosecutors and public defenders since felonies generally require more time to resolve than misdemeanors, and for local county agencies, including but not limited to BHS and Probation, associated with treatment-mandated felonies.

Locally, the County may experience a minimum increase of approximately \$58 million annually in criminal justice system costs due to Proposition 36-related impacts to law enforcement and detention services, prosecution and defense of crimes, and supervision and support of clients in the community.

Law Enforcement and Detention

The Sheriff's Office anticipates an estimated initial influx of arrests for the offenses articulated by Proposition 36, which may result in more than 5,000-8,000 additional new field arrests and court

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remands/warrant bookings annually. Over time, these arrests may taper off as repeat offenders receive longer sentences, but the future impact of that is currently unknown. During the pandemic, the Sheriff's Office reduced the number of crimes that were deemed bookable. This was to reduce the health threat to individuals in our custody, while ensuring public safety. In addition, penalties for some crime types were reduced which made them a lesser offense and not bookable under local booking acceptance criteria. The Sheriff's Office has evaluated the current criteria and believes it strikes the right balance between keeping our communities safe, constitutionality and jail safety.

The current average daily population for the County's jails is about 4,000 people. The Sheriff's Office receives approximately 50,000 individual bookings per year. Proposition 36, if it passes, could increase the number of non-violent offenders being booked into custody and staying in jail, potentially pushing the incarcerated population beyond current system capacity. The ability to serve a larger population will be tested. More individuals in custody will translate to higher levels of medical needs, hospital/court/clinic transports, increased food, behavioral needs and a reduction of bed space and safe housing.

Increasing the incarcerated population will have three major effects on our detentions operations: 1) it will require Mandatory Overtime to be reinstated to meet necessary staffing levels until existing authorized positions can be filled, 2) all Detention Services Bureau divisions would need additional authorized staffing to support current and future programs and services associated with this population, and 3) it will exacerbate the existing infrastructure and facility deterioration. Mandatory Overtime and additional authorized staffing would need to occur to best house and care for those booked into custody and specifically those designated as treatment-mandated felons under Proposition 36. Existing pilot programs and understaffed units such as the Medication Assisted Treatment Program, Americans with Disabilities Act (ADA) Unit, and Contraband Narcotics Interdiction Team would need to become fully funded units with full-time operational staffing. With constant occupancy and use, detention facilities have exceeded their useful life and are due for major renovations or replacement. The facilities have not only physically deteriorated, but require programmatic updates, additional staffing, and extensive ADA infrastructure accessibility accommodations to provide sufficient space for contemporary medical and mental health treatment, programming, and educational/vocational services for those in custody. An increase to the Supplemental Fund would be necessary to meet increased population demands on the infrastructure and facilities.

In addition, it is anticipated the Sheriff's Court Services Bureau will see an increase in individuals for court appearances. This, coupled with an already anticipated end to video arraignments, will severely impact current staffing levels. More court rooms will need to be opened, staffed, and operated.

Proposition 36, if it passes, will move some individuals from local custody to state prison. This will require more transports to prison facilities which are already closing, short staffed and relying on local jails to facilitate some of their operations. It is likely with the increased criminal justice system interactions defendants would face, that they will spend more time in local custody during

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the court process. This will be due to increased motion hearings, longer jury trials, and evaluations and sentencing reviews. In addition, the transportation unit will see an increase in runs to court, prisons, hospitals, clinics, and other daily operations. Based on this, the Sheriff's Office has calculated initial annual costs of approximately \$52.5 million for 230 additional staff should Proposition 36 pass. Although future annual costs may decrease over time due to potential arrests of repeat offenders tapering off as well as some individuals moving from local to state custody, that impact is currently unknown.

Prosecution and Defense of Crimes

The District Attorney's Office anticipates annual staffing cost increases ranging from \$1,000,000 to \$1,500,000 should Proposition 36 pass. This estimate is based on a minimum increase of approximately 600 additional criminal cases per year if Proposition 36 is enacted. The District Attorney's Office identified 583 misdemeanor theft and drug cases prosecuted by the City Attorney in Fiscal Year 2023-2024 that would be eligible for felony prosecution by the District Attorney under Proposition 36. This number represents non-unique defendants. Defendants with multiple cases would further reduce the demand on resources as these cases are consolidated. These are low-level, non-complex felonies that have a high rate of disposition.

The Public Defender's Office anticipates Proposition 36 will require additional staffing. Since the passage of Proposition 47, the Class 3 cases handled by Primary Public Defender (PPD) have decreased by 57% (14,387 Class 3 felonies in 2013 to 6,084 Class 3 felonies in 2023). Although the actual caseload impact is unknown, it is anticipated that for every 1,000 additional cases that would be handled by the PPD, the office would need to increase staff by 16.5 attorneys and 9 support staff. Due to this uncertainty, the estimated annual cost increase is based on a range of 1,000 to 8,000 individuals requiring felony representation. For every 1,000 additional cases the cost would be \$4.5 million annually.

Community Supervision

The Probation Department anticipates annual staffing cost increases ranging from \$230,000 to \$1,328,000 should Proposition 36 pass. This is based on an estimated increase of two to seven full time Supervising Probation Officer, Deputy Probation Officer, and/or Probation Aide positions to provide regionalized community supervision to 500 or more clients for those crimes that will now qualify as felonies under Proposition 36.

In addition, due to Proposition 36 designating these felonies as treatment-mandated felonies, the department anticipates increased costs for residential drug treatment, drug testing, and interim housing services for these clients. Current contracts exist for these services but there will be an increase in the number of referrals at an average cost between \$5,800 to \$10,500 per client.

General Summary of Proposition 36 Impacts

The passage of Proposition 36 will likely result in court-mandated mental health and drug treatment workload, along with a reduction to funding for existing Proposition 47-funded services; increased State criminal justice costs due mainly to an increase in the prison population; and

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increased local criminal justice costs primarily due to county jail population increases, additional court-related work for local prosecutors and public defenders, and increased community supervision. Today's item requests the Board receive the analysis of how changes to Proposition 47, through the potential passage of Proposition 36, could impact funding for services offered by the County of San Diego.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's action supports the Equity (Health), Community (Quality of Life), and Justice (Safety) Initiatives in the County of San Diego's (County) 2024-2029 Strategic Plan, and the regional *Live Well San Diego* vision by supporting all County departments that provide services for people who are involved with the justice system.

Respectfully submitted,



FOR

EBONY N. SHELTON
Chief Administrative Officer

ATTACHMENT(S)

N/A