Comparison

The Homeless, Drug Addiction and Theft Reduction Act of 2024

Vs.

Legislature's Proposed Alternative Initiative

Homelessness, Drug Addiction and Theft Reduction Act of 2024	Legislature's New Alternative
Section 1 ***Title***	N/A
Section 2 ***Purposes and Intent***	N/A
Section 3 ***Findings and Declarations***	**Section 1** ***Findings and Declarations***
Section 4 ***Fentanyl Advisement - new H&S § 11369*** Creates an advisement that must be given to defendants convicted of illegal sales/trafficking of hard drugs, warning them that if a person dies as a result of their actions they may be charged with murder. • This is similar to an existing advisement given to defendants in DUI cases.	**Section 4** ***Fentanyl Advisement - new H&S § 11369*** • This is language from SB 21 (Umberg). • Limited to convictions for H&S 11351, 11352 and 11379.6 involving fentanyl. Qualified initiative applies to all drug convictions and involving all hard drugs. • For 11352, further limited to transporting, importing, selling, or administering. Does not apply to furnishing or giving away. Qualified initiative applies to any 11352 conviction. This is problematic (will cause logistical and proof issues in trial courts) and does not make sense from a public policy standpoint (this advisement is preventative, and furnishing or giving away fentanyl is just as dangerous as selling or importing). And, furnishing and giving away are included in Section 3 (HS 11352(b)), so this is inconsistent with other provisions in the proposal. • Inserts a knowledge requirement into the advisement ("knew or should have known" substance contained fentanyl). This is problematic and completely unnecessary. While any implied malice murder prosecution must prove subjective knowledge (i.e., knew or should have known), it does not make sense to include this language in the advisement. It will just cause confusion and unnecessary litigation.

Section 5 ***Fentanyl w/ Firearm*** Adds fentanyl to H&S § 11370.1, the crime of possessing hard drugs while armed with a loaded and operable firearm. • The punishment for this crime remains the same: 2-3-4 years in state prison.	N/A
Section 6 ***Hard Drug Weight Enhancements*** Adds fentanyl to H&S § 11370.4, an enhancement for trafficking in large quantities of hard drugs, and changes the confinement for an offense from county jail to state prison.	N/A
Section 7 ***Treatment-Mandated Felony – new H&S § 11395*** Creates an alternative felony/misdemeanor crime punishable by up to one (1) year in jail or by 16-2-3 in jail pursuant to PC § 1170(h). • Permits prosecutors to charge possession of hard drugs as a felony if the defendant has two or more prior convictions for qualifying drug offenses. • Defendants who choose drug and mental health treatment serve no jail time. • Those who successfully complete treatment will have their records expunged. • A second or subsequent violation of new H&S § 11395 is punishable as a state prison wobbler.	N/A
Section 8 ***Aggregate Theft Value*** Allows aggregation of the value of multiple theft offenses.	**Sections 5 & 6** ***Aggregation*** • Sec. 3 - Deletes current codification of *Bailey* doctrine in PC 487(e). Not a problem with enactment of Section 4. • Sec. 4 - Similar in allowing aggregation, but specifies that "acts occurred within 3 years of each other." This is problematic and unnecessary. The statute of limitation adequately protects defendants to ensure that old conduct is not being included in any offense using aggregation. But this language will be a windfall for some defendants, such as those that are charged with theft or shoplifting and then abscond (e.g., an offense charged and pending for 3 years while a defendant absconds and continues to commit thefts could not be aggregated).

Section 9 ***Repeat Theft – new PC § 666.1*** Creates a new serial theft offense to permit prosecutors to charge repeated theft (petty theft or shoplifting) as a felony, regardless of the value of the items stolen, if the defendant has two or more prior convictions for a theft-related offense. • No requirement that defendant must have served jail time on the priors. • Diversion and substance abuse treatment are still available. • Wobbler offense: punishable by up to one year in jail or 16-2-3 in state prison. • A second or subsequent violation is punishable as a state prison wobbler.	**Section 7** ***Repeat Theft – new PC § 666.1*** • Similar, but requires prior convictions to have occurred within 3 years of the current offense. • The 3 year washout protects offenders – including serious and violent offenders -- who were convicted and sentenced to jail or prison for a significant time (e.g., defendant who is convicted and sentenced to state prison for robbery and/or carjacking in 2018, and then serves that term and is paroled in, say, 2023, would not be subject to P.C. 666.1 for thefts committed in 2023 and later). • Requires that the value of the property taken in the prior cases is more than $50 (the threshold in PC 490.1). <u>This is a highly problematic provision. It is impossible to prove because the amount of the theft is not an element of the offense in most theft crimes, and will result in the entire section being moot because prosecutors will never be able to prove that the value of the property in a prior conviction was more than $50 (except in grand theft).</u> It's also completely unnecessary because PC 490.1 is not a qualifying prior conviction. • <u>The inclusion of the $50 threshold is especially problematic for small businesses who will continue to bear the cost of repeated thefts.</u> Many items worth less than $50 are locked up now to prevent frequent thefts, forcing businesses to bear the costs of securing items. • Specifies that a subsequent conviction within 3 years of PC 666.1 is a straight felony 1170(h) offense. Qualified initiative states that subsequent conviction for 666.1 is a state prison wobbler. So this is a trade-off: 1170(h) straight felony vs. state prison wobbler. • Contains language that requires that a defendant be "sentenced" for the subsequent conviction provision to apply, so excludes those placed on probation (technically not "sentenced" under California sentencing law).
Section 10 ***Armed While Drug Dealing*** Makes the enhancement for being personally armed with a firearm while engaged in drug trafficking (PC § 12022(c)) punishable in state prison. • In 2011, Realignment (AB 109) reduced punishment from state prison to county jail.	N/A

Section 11 ***Excessive Taking Enhancement – new PC § 12022.6*** Reenacts statute that provides for extra punishment for theft or loss in excess of $50,000, $200,000, $1,000,000 and $3,000,000 or more.	N/A
Section 12 ***Smash & Grab Enhancement – new PC 12022.65*** Provides for extra punishment if anyone acts in concert with two or more persons in the commission of a felony to commit theft or destroy property.	N/A
Section 13 ***GBI For Drug Dealing*** Restores ability to allege an enhancement (PC§12022.7) when a defendant sells or furnishes drugs to someone and that person dies or is seriously injured. • This abrogates the holding in *People v. Ollo* (2021) 11 Cal.5th 682, which limited prosecutors' ability to allege such an enhancement.	N/A
Section 14 ***Funding***	N/A
Section 15 ***Amendments***	N/A
Section 16 ***Severability***	**Section 8** Similar
Section 17 ***Conflicting Initiatives***	**Section 9** Includes a poison-pill provision to "void" certain provisions of the qualified initiative [e.g. smash and grab] that do NOT conflict with provisions of the Legislature's proposed amendment of Proposition 47.
N/A	**Section 2** ***Distribution of Moneys from the Safe Neighborhoods and Schools Fund*** • Reduces from 25% to 15% funding for schools. • Increases from 65% to 75% funding for mental health treatment, substance abuse treatment, and diversion programs.
N/A	**Section 3** ***Increased Punishment For Fentanyl Sales*** • Amends H&S 11352 • Increases penalty for selling, furnishing, administering, or giving away any controlled

	substances containing fentanyl from 3-4-5 to 4-5-6 (still local jail per 1170(h)). • But, defendant must know that the substance contains fentanyl. This is a major change from decades of jurisprudence (for all other drugs it is not required to prove knowledge of the specific drug, just that it is some controlled substance). This is nearly impossible to prove in most cases. And would establish a bad precedent. • Also requires prosecutors to prove that purchaser/recipient did not know fentanyl was present. Again, there is no precedent for this (not required for any other drug sales offense) and will be difficult to prove. Also, what is the purpose? It raises questions whether it is permissible to sell fentanyl if the buyer knows the substance contains fentanyl. • Also, language requires a "mixture of controlled substances containing fentanyl," which presumably would require at least two substances and would not apply to fentanyl by itself. • Unlike original statute (sub (a)), does not apply to transportation or importation. • Will do harm. Under the rule that a specific statute prevails over a general statute (the *Williamson* rule[1]), prosecutors may be prohibited from charging fentanyl sales under sub. (a). Because of the problems noted above with new sub. (b),, it will be nearly impossible to prove such a charge, and thus fentanyl drug dealers will escape any consequences. • This is a cynical attempt to claim the initiative increases punishment for fentanyl drug dealers while in reality this provision will have little, if any, impact, and may actually do more harm.
N/A	**Section 10** **Effective dates.**

[1] *In re Williamson* (1954) 43 Cal.2d 651.