Proposition 36:
What Voters Ordered, What They Got, and Where do We Go from Here

I. Introduction

In November 2024, California voters approved Proposition 36.[1] The measure's proponents promised a carefully balanced approach to drug addiction, homelessness, and retail theft: enhanced penalties paired with mandated treatment programs.[2]

But the measure did not deliver on its promise: Proposition 36 is an implementation fiasco. The treatment programs that secured voter support remain largely nonexistent. The enhanced penalties, which require no new infrastructure, are being enforced immediately. Californians who thought they voted for comprehensive reform received only half the bargain—the harsher punishment without the promised rehabilitation.

Polling data from UC Berkeley's Criminal Law & Justice Center reveals that voters understand what happened to them and they are not happy about it. A majority disapprove of how Prop 36 is being implemented. Their funding priorities overwhelmingly favor treatment, not incarceration. And a plurality believes the measure should be repealed entirely.

II. The Implementation Fiasco

The Promise

Proposition 36 created what it called a "treatment-mandated felony"—a new category of offense for repeat drug possession that gave defendants the option to choose treatment over incarceration. The ballot materials foregrounded this innovation. As Senator Wiener recounted at a February 2025 legislative hearing, the proponents' entire campaign message was treatment: *"It was all, this isn't about incarceration, this is about treatment. We don't want to put anyone in prison. We just want to get people treated. It was all treatment, treatment, treatment, treatment, treatment."*[3]

1 Proposition 36 passed with 68% of the statewide vote, carrying all 58 counties. Cal. Sec'y of State, Statement of Vote, Nov. 5, 2024.

2 Cal. Proposition 36, "The Homelessness, Drug Addiction, and Theft Reduction Act" (2024). Full text available at https://vig.cdn.sos.ca.gov/2024/general/pdf/prop36-text-proposed-laws.pdf

3 Joint Informational Hearing, Cal. Senate Public Safety Comm. & Budget Subcomm. No. 5, Feb. 25, 2025 (statement of Sen. Wiener) (https://calmatters.digitaldemocracy.org/hearings/258542).

The Reality

The measure contained what turned out to be a fatal design flaw: while mandating new treatment programs, it provided zero new funding to build or operate them. Because the initiative lacked a dedicated funding mechanism, local governments were left scrambling to finance these mandates using finite, already-committed resources. Compounding the issue, Prop 36 shrank Proposition 47's Safe Neighborhoods and Schools Fund; by increasing prison populations, the measure reduced the state incarceration savings that historically financed those local treatment grants.[4]

In Yolo County, early Prop 36 implementation was bottlenecked by court and assessment delays, leaving the vast majority of cases pending rather than actively placing defendants in programs.[5] In Los Angeles County, only 1% of residential treatment facilities had open beds. Twenty-two counties have zero residential treatment facilities. Ten counties lack adult drug courts entirely.[6]

In North County, 90% of the clients represented by the Public Defender's Office charged with Prop 36 felonies were Black. Countywide, 84% of the clients the Public Defender's Office represent charged with Prop 36 felonies were people of color.

A Patchwork of Failure

Without resources or statewide direction, counties have been left to improvise. The result is a patchwork system where outcomes depend on geography and prosecutorial discretion. Some prosecutors, like Napa County DA Allison Haley, adopted informal "washout periods," declining to charge cases where prior offenses occurred more than ten years ago—a limitation found nowhere in the law's text.[7] Other prosecutors are counting decades-old convictions. Some counties emphasize the treatment pathway; others default to incarceration.

This inconsistency is not neutral. In North County 90% of the clients represented by the Public Defender's Office charged with Prop 36 felonies were Black. Countywide, 84% of the clients the Public Defender's Office represent charged with Prop 36 felonies were people of color.[8]

The Funding Gap

The Legislative Analyst's Office projected Prop 36 would cost tens of millions to the low hundreds of millions annually.[9] The actual funding picture tells a story of structural inadequacy:

- Courts estimated needing at least $25 million for additional felony caseloads
- Public defenders requested $120 million over three years for holistic defense services
- County behavioral health agencies estimated needing $95 to $213 million annually for evaluations and treatment

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4 See Legislative Analyst's Office, Proposition 36: Allows Felony Charges and Increases Sentences for Certain Drug and Theft Crimes (2024) (noting that the measure provides no state funding for mandated treatment and reduces state savings that fund existing mental health and drug treatment grants).

5 Yolo County District Attorney , "PROP 36 CHARGES FOR DRUGS AND THEFT IN YOLO COUNTY – SIX MONTH PROGRESS REPORT" https://yoloda.org/prop-36-charges-for-drugs-and-theft-in-yolo-county-six-month-progress-report/.

6 Joint Informational Hearing, Feb. 25, 2025 (testimony of county representatives from Yolo, Los Angeles, and other counties).

7 Id. (statement of Napa County DA Allison Haley, describing locally adopted 10-year washout period for prior offenses).

8 Id. (statement of Brendon Woods, Alameda County Public Defender, reporting 90% of petty theft charges filed against Black defendants in a county that is 10% Black).

9 Cal. Legis. Analyst's Office, Proposition 36 Fiscal Analysis (2024), estimating tens of millions to low hundreds of millions in annual costs.

- **Total state allocation in the 2025-26 budget: $88.5 million — projected to dwindle to $17.4 million by 2027–28**[1011]

As Alameda County Public Defender Brendon Woods put it at the February hearing: *"If it was about treatment, they would have been more deliberate... If it was about treatment, there would have been funding provided for treatment. If it was about treatment, there wouldn't be someone charged with a felony for stealing a $16 bottle of wine."*[12]

III. What Voters Actually Want

Headlines following Prop 36's passage rushed to declare the death of California's progressive criminal justice reform movement. Survey data collected by UC Berkeley's Criminal Law & Justice Center in collaboration with the Berkeley IGS Poll tells a very different story.[13]

Disapproval of Unfunded Implementation

When informed that Prop 36 mandated treatment but provided no dedicated funding, 53% of California voters disapprove of implementing the initiative without funding for its treatment programs—including 26% who disapprove strongly. Only 34% approve. This finding holds across nearly every demographic subgroup. Disapproval is highest in the San Francisco Bay Area (56%) and among Democrats (60%), but even among Republicans, 38% disapprove. Among voters who approve of Trump's job performance, 45% still disapprove of the unfunded implementation. This is outrage at a bait-and-switch.

Do you approve or disapprove of implementing Prop 36 without funding for treatment programs?

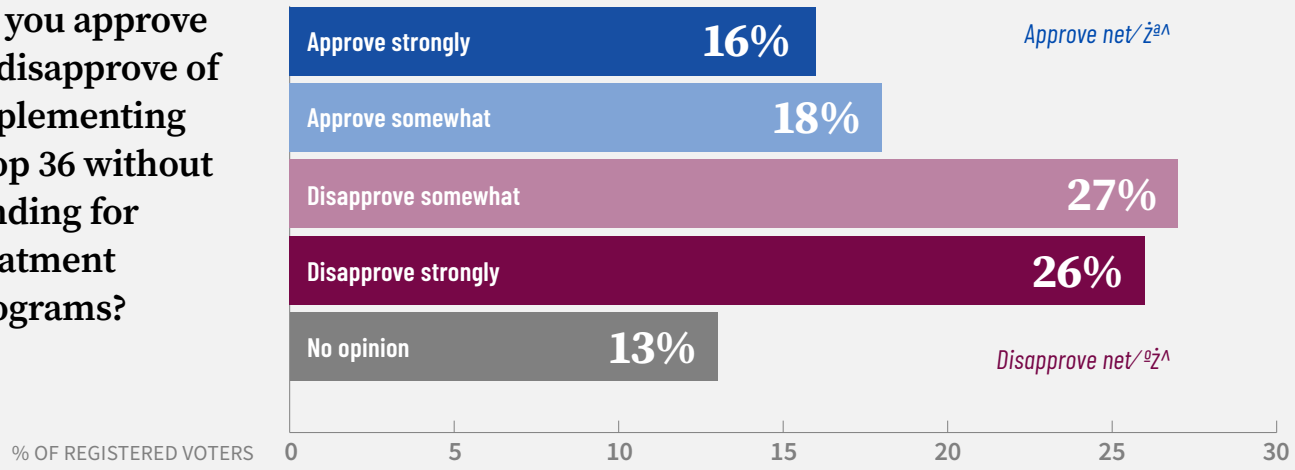

Figure ź **Voter approval/disapproval of implementing Prop 36 without treatment funding** Source: June 2025 Berkeley IGS Poll (n=4,950)

10 Joint Hearing, Cal. Senate Budget Subcomm. No. 5 & Public Safety Comm., May 15, 2025 (Judicial Council estimate of $25 million; public defender request of $120 million over three years; behavioral health estimate of $95–$213 million annually).

11 Cal. Assembly Floor Report of the 2025–26 Budget, June 24, 2025 (allocating $88.5 million, including $29.3 million for prison costs and $59.2 million from Prop. 47 savings). LAO projects these Prop. 47 savings dwindling to approximately $17.4 million by 2027–28.

12 Feb. 25, 2025 Hearing, supra note 3 (statement of Brendon Woods, Alameda County Public Defender).

13 August 2025 Berkeley IGS Poll, statewide sample of 4,950 registered voters. Survey conducted by the UC Berkeley Institute of Governmental Studies in partnership with the Criminal Law & Justice Center. https://igs.berkeley.edu/research/berkeley-igs-poll/2025-berkeley-igs-poll-releases

Voters' Funding Priorities

When asked what areas the state should prioritize funding to support Prop 36's goals, voters make their true intentions clear:

- 59% want drug treatment and rehabilitation programs funded
- 56% support transitional housing, job training, and placement after treatment
- 37% favor probation and supervision for individuals in treatment
- 22% prioritize county jails and state prisons

The treatment preference cuts across party lines: 67% of Democrats, 57% of NPP/other registrants, and 43% of Republicans prioritize drug treatment funding. Even among conservatives, treatment (40%) outranks jails and prisons (39%).

Which areas should the state prioritize for funding to support Prop 36's goals?

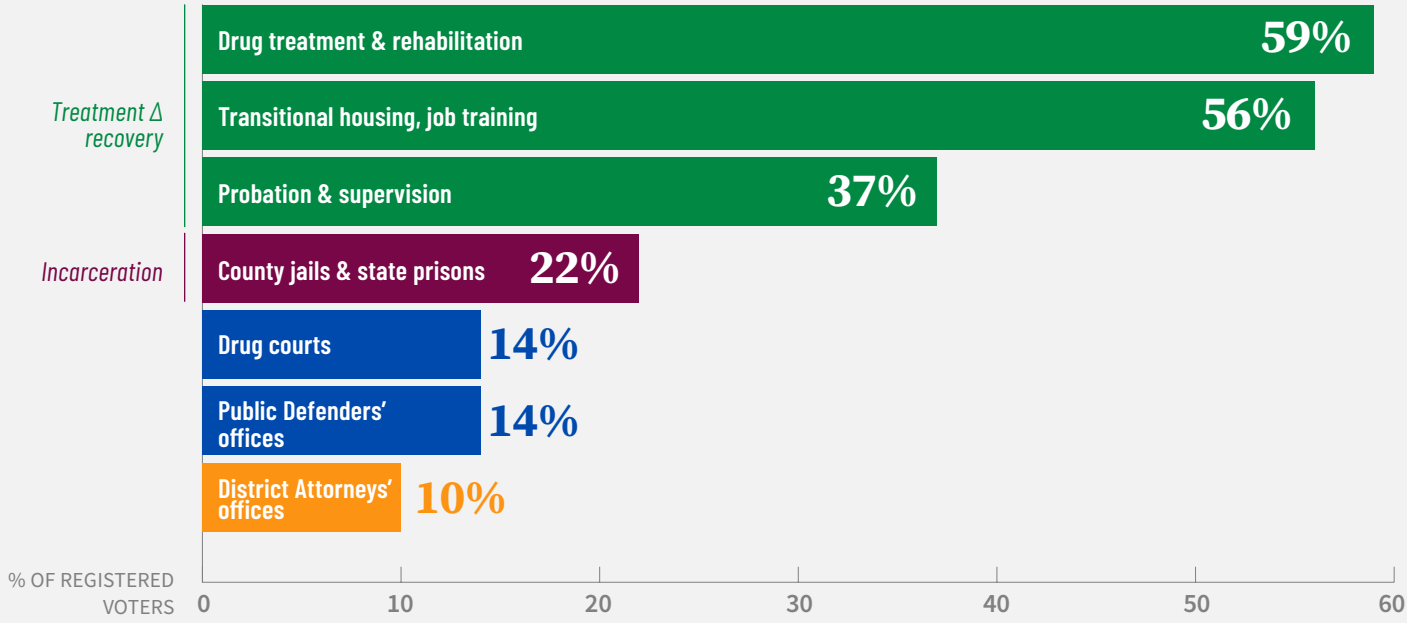

Figure ž. Voter funding priorities to support Prop 36's goals

Consensus on Treatment

Faced with the unfunded mandate, voters are divided on remedies—but the signal is unmistakable:

- 25% believe the state should repeal Prop 36 entirely and develop a new approach[14]
- 22% want the state to fully fund treatment programs, even at the cost of raising taxes or cutting other services
- 21% would leave it to counties to decide
- 15% favor delaying implementation until funding is available

14 Including 27% of Republicans.

That the single largest bloc of voters favors outright repeal—exceeding those who would fully fund the measure—is remarkable for a law that passed with 68% support less than a year earlier. It is a signal that a substantial share of the electorate feels the fundamental bargain has been broken. Notably, voters who favor "fully fund" and those who favor "repeal" both overwhelmingly prioritize treatment in their funding preferences (75% and 56% respectively), while "leave it to counties" voters show the strongest preference for jail and prison funding (32%). The disagreement is not about whether California needs treatment—it is about whether Prop 36 can deliver it.

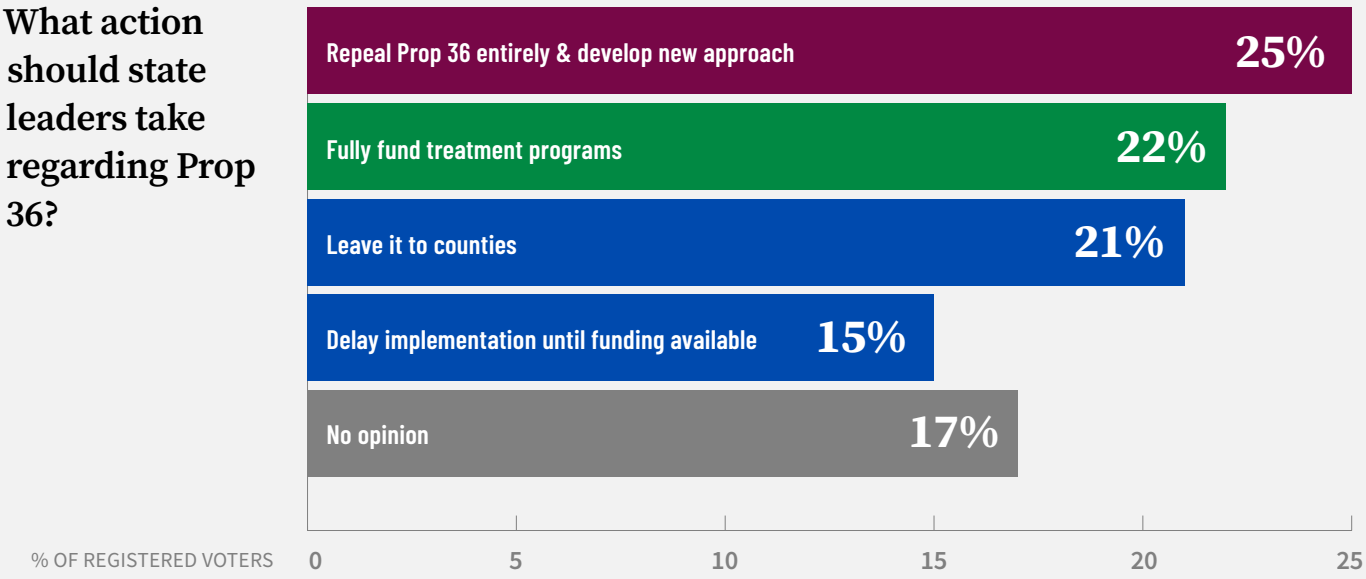

Figure ż. Preferred state action regarding Prop 36 Source: June 2025 Berkeley IGS Poll (n=4,950)

The Bait and Switch—and the Trust It Destroyed

Voters were told this was a balanced reform and received a one-sided punishment machine. Now, asked what to do about it, they cannot agree—not because they disagree about values, but because the bait and switch eroded trust that any option will deliver.

A central finding is that 59% of voters want treatment funded. But only 22% are willing to raise taxes to pay for it. The gap between those two numbers is the wreckage of a broken promise. When voters were asked what they want (an aspirational, low-stakes question), they chose treatment overwhelmingly. When forced to pick a single path forward—each option carrying real costs—no single choice could assemble a majority. The coalition exists on values. It fractures on strategy. Among the 53% who disapprove of the unfunded implementation, the plurality choice is to scrap the law.[15] The disapproval coalition leans more toward tearing the law down than salvaging it.[16]

15 Thirty-one percent of disapprovers favor outright repeal, compared to just 26% who would fully fund the treatment programs. Only 16% would leave the decision to counties.

16 Among those who approve of the unfunded implementation, the top choice is "leave it to counties" (32%), a consistent hands-off posture that amounts to letting the status quo continue by default.

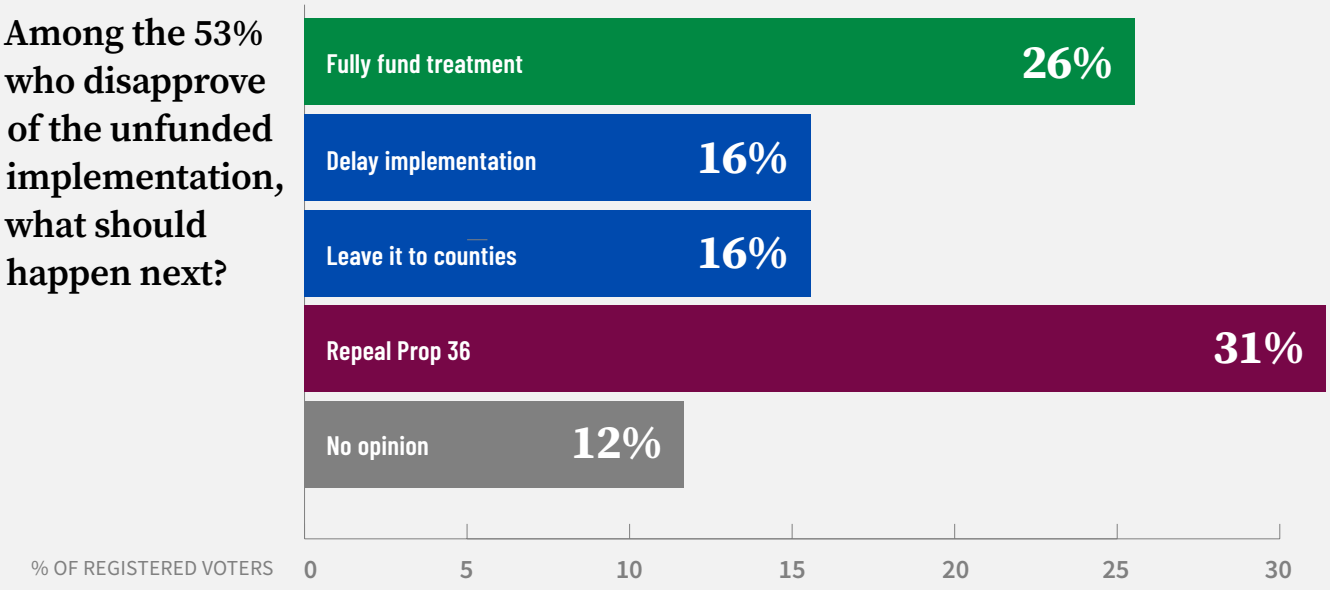

Figure ª. From disapproval to action: what voters want done about Prop 36

Consider the voters who should be the easiest to organize: those who both disapprove of the unfunded implementation and selected drug treatment as a funding priority. Even among them, only 31% back full funding. Twenty-eight percent want to repeal the law. They want treatment, but they are not convinced that Proposition 36 is a credible vehicle.

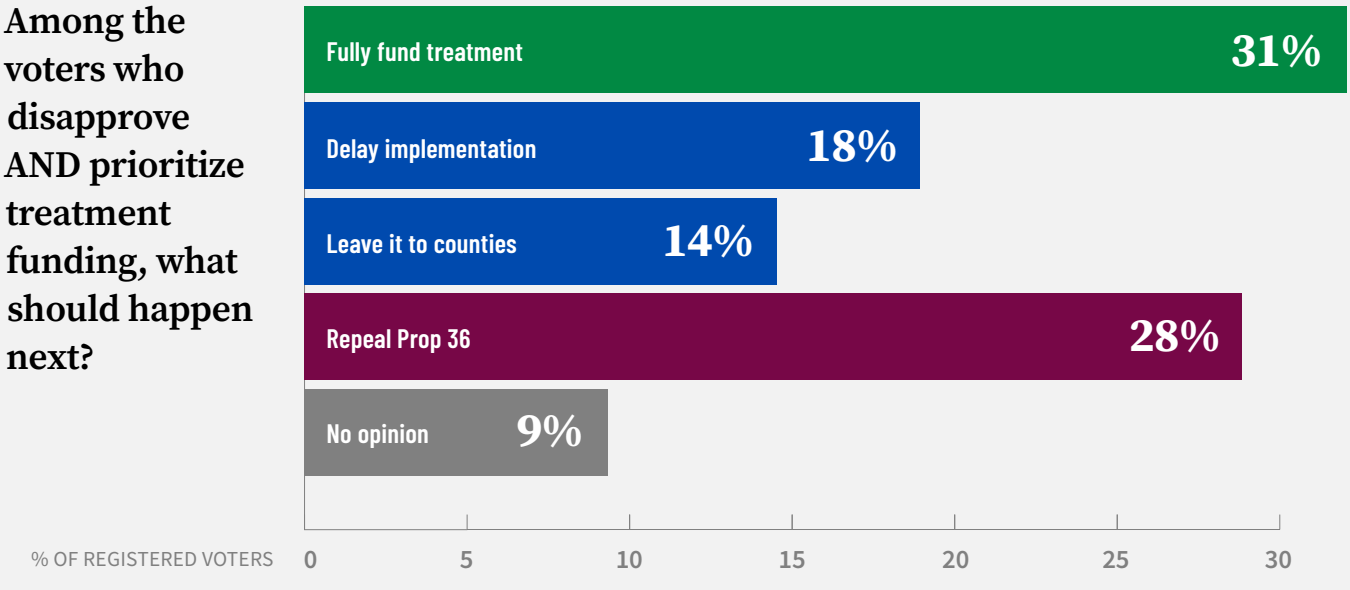

Figure º. The "committed treatment" bloc: even treatment supporters split on the path forward

This brings us to the finding that matters most: repeal voters are not anti-treatment. Among the 25% of voters who favor scrapping Prop 36 entirely, 56% still selected drug treatment and rehabilitation as a funding priority, and 57% selected transitional housing and job training. These numbers are only modestly below the "fully fund" group (75% and 73%) and well above the "leave it to counties" group. Repeal support and treatment support are not in tension. They are, for a large share of the electorate, the same impulse: voters want treatment so badly that they would rather start over than continue with a law that promised it and failed to deliver.

Repeal voters still want treatment: Funding priorities by preferred state action

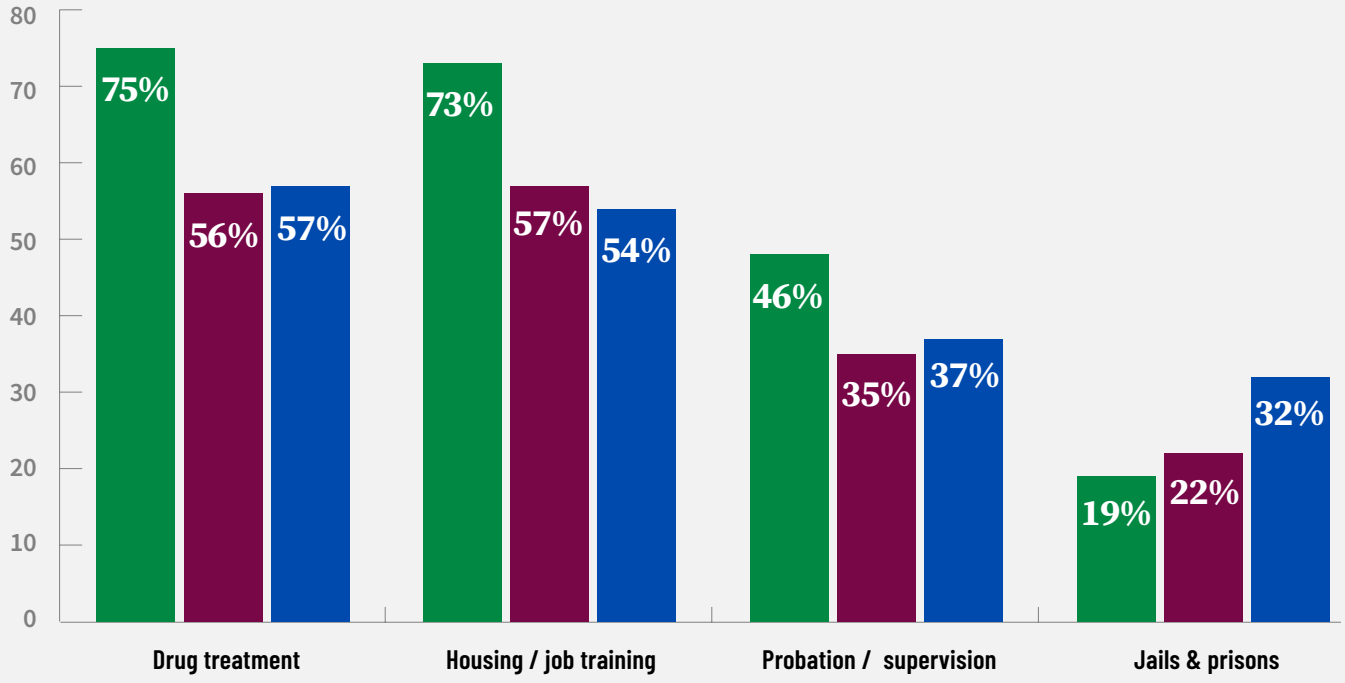

Figure Δ Funding priorities by preferred state action: Fully fund Repeal Leave to counties

What the Data Mean for Advocates

The argument that voters want treatment has already been won. Fifty-nine percent of the electorate says so explicitly, and that preference holds across party lines, across racial groups, and across age cohorts.

What voters lack is a credible vehicle. The initiative process sold them a reform that was structurally incapable of delivering on one of its central promises, and the result is a fractured electorate that agrees on the destination but cannot agree on the route.

For advocates, the strategic imperative is not to re-litigate whether treatment works. It is to propose a specific, fundable mechanism—legislative, budgetary, or through a new ballot measure—that gives the values coalition somewhere to go. Most voters are already there on the substance. They are waiting for a vehicle they can trust.

VI. Conclusion

Proposition 36 is not just a failed policy. It is a case study in how the initiative process can convert voter preferences into their opposite. Voters were promised treatment and accountability together. What they got was enhanced incarceration with a treatment system that exists mostly on paper. The polling data show that voters see this clearly: 53% disapprove of the unfunded implementation, and a plurality would rather repeal the law than continue with what they received.

Voters were told their vote would produce treatment programs. It did not. Even voters who favor repeal overwhelmingly support treatment funding. Voters have not soured on treatment; they have soured on a process that promises one thing and delivers another.

For advocates, this is both a problem and an opportunity. The problem: there is no single solution voters agree on. The opportunity: the treatment coalition—spanning party lines, racial groups, and ideological camps—is waiting for a credible path forward. The argument for treatment has been won. What remains is to build a vehicle worthy of the trust voters are still willing to extend.

Data Source: August 2025 Berkeley IGS Poll, statewide sample of 4,950 registered voters. Survey conducted by the UC Berkeley Institute of Governmental Studies in partnership with the Criminal Law & Justice Center.

Legislative Sources: California Senate Public Safety Committee and Budget Subcommittee joint hearings on Proposition 36 implementation, February 25, 2025, and May 15, 2025.