



To: CBHDA Members

From: Tom Renfree, Deputy Director, Substance Use Disorder Services

Date: November 14, 2014

Re: Proposition 47 – What Does It Mean for Counties?

Cc: Robert Oakes, Executive Director, CBHDA  
Kelly Brooks Lindsey & Elizabeth Howard Espinosa, CSAC

On November 4<sup>th</sup> California voters approved Proposition 47 (the “Safe Neighborhoods and Schools Act”), which passed with 58.5% of the vote. This initiative amends the Penal Code to reclassify seven categories of nonviolent drug and property crimes as misdemeanors, unless the offender has a prior conviction for a serious and/or violent offense, or for any registerable sex offense. This reclassification will result in more people convicted of these crimes being sentenced to county interventions such as jail terms and/or community-based supervision, rather than to incarceration in state prison. As such, it will also reduce the collateral consequences that individuals often face with a felony conviction on their records after they complete their sentences, such as difficulty in securing employment, housing, etc.

Proposition 47 will also allow individuals currently serving felony sentences for crimes that fall under the seven categories to request resentencing. If approved by the trial court, eligible individuals who are resentenced will have their sentences reduced to misdemeanor terms and will be supervised by state parole officers upon release. Although the precise number of individuals whose cases will be affected is uncertain, the Legislative Analyst’s Office (LAO) estimates that about 40,000 people annually are convicted of crimes that will be reclassified by Prop. 47.

The LAO projects state savings from Prop. 47 in the low hundreds of millions of dollars annually, partially offset in the first few years by increased court and parole costs

## **How will the funds be allocated?**

Allocating funds by ballot initiative limits the ability of the Legislature to redirect dollars in response to shifting economic, budget, and demographic trends. Prop. 47 requires that the corrections savings from implementation of the measure be deposited into a newly-created "Safe Neighborhoods and Schools Fund," and be disbursed for the three purposes specified above. The 65% of the funds allocated for MH/SUD treatment will be disbursed by the Board of State and Community Corrections (BSCC), which will administer a grant program to public agencies aimed at providing mental health, substance abuse, and similar diversion programs, with an emphasis on reducing recidivism.

Given counties' current role as provider of behavioral health services, the grants provided under Prop. 47 could be used to augment local treatment services to criminally-involved individuals, expand MH/SUD services that counties are providing to the AB 109 population, or be used as match to leverage federal funds for these programs, thereby increasing treatment opportunities. The BSCC has extensive experience administering similar grant programs, and presumably will bring together a representative body of stakeholders charged with creating a competitive grant process.

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## FREQUENTLY ASKED QUESTIONS

### What is the stated purpose of Proposition 47?

The stated purpose of the proposition is to “ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from [the proposition] into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment” and to ensure “that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.” The proposition states that it “shall be liberally construed to effectuate its purposes.”

### What is the effective date of Proposition 47?

Proposition 47 became effective on November 5, 2014.

### In short, what does Proposition 47 do?

Proposition 47 added and amended various statutory provisions to implement the following three changes to felony sentencing laws:

- **Theft and Drug Possession Offenses:** Changes certain theft and drug possession offenses from felonies to misdemeanors, except for persons with certain prior convictions.
- **Resentencing:** Authorizes defendants currently serving sentences for felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions.
- **Reclassification:** Authorizes defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reclassify those convictions to misdemeanors.

### Who is *not* eligible for the changes under Proposition 47?

Persons with one or more prior convictions for offenses specified under Penal Code section 667(e)(2)(C)(iv) or for a sex offense that requires registration under Penal Code section 290(c) are *not* eligible for the new misdemeanor, resentencing, or reclassification provisions of Proposition 47. Instead, those persons generally remain subject to punishment under Penal Code section 1170(h).

Proposition 47 only excludes persons with prior convictions for a sex offense that requires registration under Penal Code section 290(c), which enumerates several sex offenses that mandate registration upon conviction. This disqualifier appears to be limited to the offenses enumerated in Penal Code section 290(c) and not to include persons required to register under other statutory provisions that vest courts with discretionary authority to impose sex offender registration under specified circumstances. (See, e.g., Pen. Code, § 290.006 [Authorizing courts to impose registration for *any* offenses not listed in section 290(c) “if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for the purpose of sexual gratification”].)

### **How does Proposition 47 change theft and drug possession offenses?**

The following theft and drug possession offenses have been reclassified as misdemeanors as specified below. As noted above, these new misdemeanor provisions do *not* apply to persons with one or more prior convictions for offenses specified under Penal Code section 667(e)(2)(C)(iv) or for a sex offense that requires registration under Penal Code section 290(c).

- ***Shoplifting.*** The proposition added Penal Code section 459a to create a new misdemeanor offense called “shoplifting,” punishable by up to 6 months in county jail. Shoplifting is defined as “entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours” where the value of the property does not exceed \$950. Any other entry into a commercial establishment with intent to commit larceny is burglary. Any act of shoplifting as defined above must be charged as shoplifting. No person charged with shoplifting may also be charged with burglary or theft of the same property.
- ***Forgery.*** The proposition reclassified forgery of specified instruments under Penal Code section 473 involving an amount that does not exceed \$950 from a felony or wobbler to exclusively a misdemeanor. The instruments are “a check, bond, bank bill, note, cashier’s check, traveler’s check, or money order.” To qualify as a felony, the proposition appears to require a value over \$950 per forged instrument as opposed to a total value with multiple instruments combined, as specified, for example, under Penal Code section 476a(b): “If the *total* amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed nine hundred fifty dollars (\$950), the offense is punishable only by imprisonment in the county jail...”].) (Emphasis added.) The misdemeanor provision does not apply to any person convicted both of forgery and identity theft under Penal Code section 530.5.
- ***Insufficient Funds.*** Before Proposition 47, a violation of Penal Code section 476a was a wobbler offense, except that the offense was strictly a misdemeanor if the total underlying amount did not exceed \$450, unless the person was previously convicted of one of several specified theft offenses. The disqualifying prior violations are “... Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant’s offense was a violation also of Section 470, 475, or 476 or of this section...”

*completed* the sentence. Persons currently serving the sentence can petition the court to be “resentenced” as a misdemeanor offender under the procedures prescribed in Penal Code section 1170.18(a)–(e). Persons who have completed their sentences can apply to the court to “reclassify” their felony convictions as misdemeanors under the procedures prescribed in Penal Code section 1170.18(f)–(h).

### **Is there a deadline for petitions for resentencing and applications for reclassification?**

Yes. Petitions for resentencing and applications for reclassification must be filed within three years of the effective date of the proposition or at a later date upon a showing of “good cause.” (Pen. Code, § 1170.18(j).) Proposition 47 does not define what constitutes “good cause” for this purpose.

### **Who is eligible to petition for resentencing?**

Persons “currently serving a sentence” for a felony conviction, whether by trial or plea, who would have been guilty of a misdemeanor under Proposition 47 had it been in effect at the time of the offense are eligible to petition for resentencing. (Pen. Code, § 1170.18(a).) As noted above, persons with one or more prior convictions for offenses listed under section 667(e)(2)(C)(iv) or for a sex offense that requires registration under section 290(c) are *not* eligible for resentencing. (Pen. Code, § 1170.18(i).)

### **Could the petitions of persons otherwise eligible for resentencing be denied for some reason?**

Yes, but only on a very narrow basis. Courts may deny a petition for resentencing when the person is otherwise eligible if the court, in its discretion, determines that resentencing the petitioner would pose “an unreasonable risk of danger to public safety.” (Pen. Code, § 1170.18(b).)

### **What is the definition of the phrase “unreasonable risk of danger to public safety”?**

Under Penal Code section 1170.18(c), the phrase “unreasonable risk of danger to public safety” is narrowly defined as “an unreasonable risk that the petitioner will commit a new violent felony within the meaning of [Penal Code section 667(e)(2)(C)(iv)].” Proposition 47 extends this definition to all uses of the phrase *throughout* the Penal Code.

### **What will the court consider when determining whether a petitioner is an “unreasonable risk of danger to public safety”?**

In determining whether a petitioner poses an unreasonable risk of danger to public safety, the court may consider:

- The petitioner’s criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes;

persons on parole or PRCS are not considered “currently serving a sentence,” those persons would be eligible to apply for reclassification of their eligible felony offenses as misdemeanors under sections 1170.18(f)–(h), which would not include a determination of the issue of dangerousness.

**Who is eligible to apply for reclassification of their felony convictions?**

Persons who have “completed” their sentences for a felony conviction, whether by trial or plea, who would have been guilty of a misdemeanor under Proposition 47 had it been in effect at the time of the offense are eligible to apply for reclassification of their felony convictions. (Pen. Code, § 1170.18(f).) As noted above, persons with one or more prior convictions for offenses listed under section 667(e)(2)(C)(iv) or for a sex offense that requires registration under section 290(c) are *not* eligible for reclassification. (Pen. Code, § 1170.18(i).)