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### Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

### INFORMATION RE: PROPOSITION 47 March 2015

This information is sent in reply to your request for information or help concerning Proposition 47. We apologize for sending this form letter, but we can't give individual responses to everyone who seeks our help. We hope that this information answers your questions.

On November 4, 2014, the voters passed Proposition 47, which changes many property and drug-possession offenses from felonies or "wobblers" (crimes that can be punished as either felonies or misdemeanors) to regular misdemeanors; the crimes covered are listed on page 2 of this letter. The changes apply to criminal cases in the future, but convictions and sentences received in the past also can be changed. Under Proposition 47, CDCR prisoners who were convicted and sentenced for felonies under the old version of the laws can ask the superior court that sentenced them to reduce their crimes to misdemeanors and resentent them. A prisoner who gets resentenced will get credit for time already served, and in some cases prisoners may be eligible for immediate release from prison. As of early March 2015, it is reported that almost 3,000 prisoners have been released from the CDCR under Proposition 47.

Proposition 47 does NOT automatically reduce the property or drug-possession crimes of people who have already been convicted and sentenced. A person who was previously convicted of a felony must file a petition asking the court for resentencing to a misdemeanor term. If the person is still serving the felony sentence, the court can choose to deny the petition and keep the conviction as a felony if it finds that resentencing would pose an unreasonable risk of danger to public safety.

Most counties have developed forms and procedures for filing and hearing Proposition 47 cases, and public defender offices have filed tens of thousands of petitions. **The best thing for most prisoners who might be affected by Proposition 47 to do is to write to their criminal trial and/or appellate attorneys, asking for more information or help.**

Californians for Safety and Justice has very good Proposition 47 resources on its website at [www.myprop47.org](http://www.myprop47.org). The information includes links to the specific forms and processes used in some counties. Some of the information is in Spanish.

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## How Did Proposition 47 Change the Law?

The purpose of Proposition 47 is to reduce the number of people who are sent to prison for non-serious, non-violent crimes and use the money saved to support crime-prevention programs. The Proposition changes the law so that some property and drug-possession crimes are misdemeanors instead of being felonies or "wobblers" (crimes that can be punished as either felonies or misdemeanors, at the discretion of the prosecutor and court). Misdemeanors are punishable by imprisonment in a county jail for one year or less.

The crimes that now are misdemeanors under Proposition 47 (unless the person has any of the prior convictions discussed below) are:

- **shoplifting**, by entering a business during regular business hours with intent to commit theft, where the property taken or intended to be taken is not worth more than \$950; an act of shoplifting cannot be charged as a burglary or other theft crime (new Penal Code § 459.5)
- **forgery** of a check, money order, etc. for not more than \$950, but the crime is still a wobbler if the person is also convicted of identity theft per Penal Code § 530.5 (amended Penal Code § 473(b))
- passing a **check or checks with insufficient funds** where the total amount is not more than \$950, but the crime is still a wobbler if the person has three or more prior convictions for Penal Code §§ 470, 473, 475, 476, or certain related crimes (amended Penal Code § 476a(b))
- any type of **theft** if the value of the property is not over \$950 (new Penal Code § 490.2)
- **receiving stolen property** if the value of the property is not over \$950 (amended Penal Code § 496(a))
- **petty theft with a prior**, but the crime is still a wobbler if the person has a prior conviction for a theft-type offense or abusing an elder or dependent adult and served a term or probation condition in custody for the prior and is required to register as a sex offender for any reason (amended Penal Code § 666)
- **simple possession** of many types of drugs, including **cocaine** and **heroin** (amended Health & Safety Code § 11350)
- **possession of concentrated cannabis** (Health & Safety Code § 11357(a))
- **simple possession** of many types of drugs, including **methamphetamine** (amended Health & Safety Code § 11377)

!! However, the crimes listed in the preceding paragraph are still punishable as either straight felonies or wobbler felonies (depending on the crime) if the defendant has any prior conviction for certain violent, serious or sex offenses. Such a defendant can get felony probation or be sent to state

prison, but cannot be sentenced to a felony jail term. (See Penal Code § 1170(f) and (h)(3).) The disqualifying crimes are:

- a prior conviction for any offense listed in Penal Code § 667(e)(2)(C)(iv)<sup>1</sup>
- OR**
- a prior conviction requiring registration as a sex offender under Penal Code § 290(c).<sup>2</sup>

### **Who Gets the Benefit of Proposition 47?**

Proposition 47 will apply to all charges filed on or after November 5, 2014. People who have charges pending on November 5, 2014, but who had not yet been convicted or sentenced as of that date, should also get the benefit of Proposition 47. There may be disputes about whether people are entitled to re-sentencing if their convictions were not yet final or if they were on probation with imposition of sentence suspended as of November 5, 2014.

Anyone who was convicted in the past for a felony crime that is now a misdemeanor under Proposition 47 can ask the courts to reduce the crime to a misdemeanor. People who are still serving sentences for the crimes covered by Proposition 47 can ask for re-sentencing. Even a person who is serving a second-strike or three-strikes term for a crime affected by Proposition 47 can ask for re-sentencing to a misdemeanor under Proposition 47. People who have already finished serving their sentences for Proposition 47 crimes can ask for a re-classification or record change.

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<sup>1</sup> Not all prior serious and violent felonies disqualify a person from the reduced penalties under Proposition 47. The disqualifying crimes listed in Penal Code § 667(e)(2)(C)(iv) are:

- A "sexually violent offense" per Welf. & Inst. Code § 6600(b). "Sexually violent offense" means the following crimes when committed by force, violence, duress, menace, fear bodily injury, or threat of retaliation: Pen. Code §§ 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 or Pen. Code §§ 207, 209, or 220 committed with the intent to violate §§ 261, 262, 264.1, 286, 288, 288a, or 289
- Oral copulation, sodomy, or sexual penetration with a child under age 14 and more than 10 years younger than the defendant (Pen. Code §§ 286, 288a, 289)
- Lewd or lascivious act with a child under age 14 years (Pen. Code § 288)
- Murder or gross vehicular manslaughter while intoxicated (Pen. Code §§ 187-191.5)
- Solicitation to commit murder (Pen. Code § 653f).
- Assault with a machine gun on peace officer or firefighter (Pen. Code § 245(d)(3))
- Possession of a weapon of mass destruction (Pen. Code § 11418)
- Any serious or violent felony punishable by life imprisonment or death.

<sup>2</sup> Section 290(c) requires registration for many California sex offense convictions, so most people who are required to register as sex offenders are disqualified from the reductions under Proposition 47. However, some sex offenders are required to register under other laws and thus do not appear to be disqualified under Proposition 47. For example, a person who is required to register because of an out-of-state sex offense per § 290.005 or because a court exercised its discretion to order registration per § 290.006 is apparently not disqualified. Likewise, juvenile adjudications that require sex offender registration seemingly do not disqualify a defendant from a misdemeanor term under Proposition 47, because registration for juvenile adjudications is covered by a different statute (§ 290.008).

## **What Are the Procedures for Seeking Re-sentencing or a Record Change Under Proposition 47?**

The rules for re-sentencing and record changes under Proposition 47 are in Penal Code § 1170.18. To be eligible for re-sentencing or a record change, a person must have been convicted and sentenced for a property or drug-possession felony that is now only a misdemeanor. The person must not have a prior conviction that would raise the property or drug-possession crime to a straight felony or wobbler. (See pages 2 and 3 for the eligible and disqualifying crimes.)

Re-sentencing or record change is not automatic – a person must file a petition to be considered for re-sentencing or a record change. The petition must be filed in the superior court where the property or drug conviction took place. There is a three-year deadline, so the petition should be filed on or before November 4, 2017; a court can consider a later petition only if the petitioner can show good cause for not meeting the deadline.

The court will screen the petition to determine whether the case meets the criteria for reduction to a misdemeanor. What the court will do next depends on whether or not the person is still serving a sentence for the property or drug crime:

- **If a person is currently serving a sentence for the qualifying property or drug-possession crime,**<sup>3</sup> the court must re-sentence the person to a misdemeanor term unless the court decides that re-sentencing would pose an unreasonable risk of danger to public safety. There should be an opportunity for a hearing before the court makes its decision.

"Unreasonable risk of danger to public safety" means an unreasonable risk that the person will commit a "super-strike" felony listed in footnote 1 of this information.<sup>4</sup> In deciding if the person is dangerous, a court may consider the prisoner's criminal history, (including the types of crimes committed, the extent of injury to victims, the length of prior prison terms, and the remoteness of the prior crimes), the prisoner's disciplinary record and record of rehabilitation while incarcerated, and any other evidence the court decides is relevant to public safety concerns.

If the court grants re-sentencing, then the person shall be given credit for time served. The person may be subject to parole for one year unless the court exercises discretion not to impose parole.

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<sup>3</sup> People on probation, parole or post-release community supervision are considered to be currently serving a sentence.

<sup>4</sup> The statute states that this definition of "danger to public safety" applies "throughout this Code." The California Supreme Court is considering whether this means that the Proposition 47 dangerousness standard applies to third-strikers who sought or are seeking re-sentencing pursuant to the Three Strikes Reform Act of 2012 (Proposition 36). (*People v. Valencia*, No. S223825; *People v. Chaney*, No. S223676.)

- **If a person is NOT currently serving a sentence for the qualifying property or drug-possession crime**, the court must designate the crime to be a misdemeanor. The court does not have to hold a hearing before granting or denying a petition by a person who is not currently serving a sentence, unless the petitioner requests a hearing.

A crime that is re-sentenced or reclassified under Proposition 47 is considered a misdemeanor “for all purposes” except that it does not permit a person to possess a firearm and the person may still be convicted of being a felon in possession of a firearm. (Penal Code § 1170.18(k).)

### **Are There Disputes About Re-sentencings or Record Changes Under Proposition 47?**

There are some disputes about how Proposition 47 is to be applied. According to criminal defense attorneys from around the state, different counties are taking different approaches to these issues, and some of the issues are being appealed to higher courts. Among the disputed questions are:

- Can a person get a Proposition 47 resentencing or record change if the conviction was by a no contest or guilty plea and the prosecutor dismissed other felony charges as part of the plea bargain?
- Can a person with a juvenile adjudication for a Proposition 47 offense seek resentencing or reduction?
- If there is uncertainty about the value of property involved in the crime, which side has the burden of showing that the property was worth more or less than \$950 and what types of evidence may be relied upon?
- If a person is currently serving a sentence that includes an enhancement for a prior prison term (e.g., per Penal Code § 667.5(b)), does reclassification of that prior crime to a misdemeanor eliminate the enhancement?
- Can a court require a person to serve parole if he or she has already served more than a year excess time in custody? Can a court impose parole on an inmate being released from a county jail? Can a court impose some other type of supervision such as Post-Release Community Supervision (PRCS)? Can a person released under Proposition 47 be sent back to jail for a violation of parole or PRCS?
- Does a sentencing court have the authority to hear a Proposition 47 petition for a person currently serving a sentence if the person also has a pending direct appeal challenging the conviction or sentence? What if the person has a pending appeal from a denial of Proposition 36 re-sentencing in a Three-Strikes case?

### **What Should I Do if I Might Be Eligible for Resentencing Under Proposition 47?**

**The best thing for most people who might be affected by Proposition 47 to do is to write to their criminal trial and/or appellate attorneys, asking for more information or help.** Filing a petition on your own, or using a jailhouse lawyer to file a petition, may not provide the best chance of getting your crime re-sentenced or re-classified.

Californians for Safety and Justice has very good Proposition 47 resources on its website at [www.myprop47.org](http://www.myprop47.org). The information includes links to the specific forms and processes used in some counties and contact information for local courts and attorneys. Some of the information is in Spanish.