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

When putting this material together, we did our best to give you useful and accurate information because we know that incarcerated people often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. 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 still applies to your situation. Most of the materials you need should be available in your prison law library.

## PROPOSITION 47

### Petitioning for Resentencing or Record Change to a Misdemeanor

(revised November 2019)

On November 4, 2014, California voters passed Proposition 47, which changed some property and drug-possession offenses from felonies or “wobblers” (crimes that can be punished as either felonies or misdemeanors) to plain misdemeanors. Misdemeanors are punishable by a county jail term of one year or less.

People who currently are serving sentences (are in custody or on probation, parole, or PRCs) for felony crimes that are now misdemeanors under Proposition 47 can ask a court to resentence them to misdemeanor terms. People who have already finished serving sentences for past felonies that are now misdemeanors under Proposition 47 can ask to have the old cases reduced to misdemeanors (called a request for a “record change” or “reclassification”), so they have fewer felonies on their rap sheets.

The statute that allows people to petition for resentencing or reduction is Penal Code § 1170.18. The deadline for filing a Proposition 47 petition is November 4, 2022, unless you can show good cause for not filing earlier.

This letter is a brief overview of who is eligible to petition for resentencing or reduction under Proposition 47, and the processes for bringing and deciding Proposition 47 cases. Proposition 47 issues can be complicated; there have been many court cases on specific issues that are not included in this letter, and issues are being considered by the California Supreme Court. If you are wondering whether you might get resentenced or get a record change, you should write to your criminal trial and/or appellate attorney or the public defender’s office in the county where you were convicted to ask for information and help filing a Proposition 47 petition.

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## ELIGIBILITY FOR PROPOSITION 47 RESENTENCING OR RECORD CHANGE

To be eligible for resentencing or record change, you must have been convicted of a felony that is a misdemeanor under Proposition 47 AND you must not have certain types of prior convictions. You can petition for resentencing or a record change even if your conviction was by a plea bargain and even if the state tried to make you give up your rights to benefit from future changes in the law. (*Harris v. Superior Court* (2016) 1 Cal.5th 984; Penal Code § 1016.8.)

### (1) Crimes that Are Eligible for Proposition 47 Resentencing or Record Change

The crimes that are misdemeanors under Proposition 47 are of two general types:

- ***Theft and theft-related crimes involving property worth no more than \$950:***  
These crimes include **shoplifting** (which might in the past have been charged as a burglary), **forgery, insufficient funds, theft, petty theft with a prior, and receiving stolen property**. Some of these offenses are still felonies in limited circumstances where the theft is of a certain type of object, when a person has an additional conviction of a certain type, or when the person has certain types or amounts of prior convictions.
- ***Drug Possession Offenses:***  
These crimes include **simple possession** of many narcotics, including **cocaine and heroin, possession of concentrated cannabis, and simple possession** of many drugs, including **methamphetamine**. (Note: Another law, Proposition 64, reduced or legalized many types of cannabis possession. Write to the Prison Law Office to request more information.)

Offenses that are not under a specific code section that was amended by Proposition 47 are eligible for resentencing or record change *if* the person “would have been guilty of a misdemeanor” if Proposition 47 had “been in effect at the time of the offense.” (Compare *People v. Page* (2017) 3 Cal. 5th 1175 [obtaining automobile worth \$950 or less by theft is a misdemeanor] with *People v. Martinez* (2018) 4 Cal.5th 647 [transportation of drugs for personal use is not eligible for reduction to a misdemeanor].)

You have the burden of showing that your offense is eligible, including that a theft crime involved property worth no more than \$950. (*People v. Romanowski* (2017) 2 Cal.5th 903.) Valuation issues can be complicated, especially when the crime involves a bank access card, credit card, or blank check. Also, there are inconsistencies in the court cases as to what types of evidence a court can consider when deciding the value of property.

### (2) Priors That Make You Ineligible for Proposition 47 Resentencing or Record Change

The crimes listed in section (1) above are still felonies or “wobblers” when a person has some types of prior convictions. If you have a prior conviction (from before the date of your Proposition 47 crime) for any of these crimes, you are *not* eligible for resentencing or record change:

- a **“super strike” offense** listed in Penal Code § 667(e)(2)(C)(iv). “Super strikes” include “sexually violent offenses;” oral copulation, sodomy, or sexual penetration with a child under age 14 and more than 10 years younger than the defendant; lewd or lascivious act with a

child under age 14 years; murder or gross vehicular manslaughter while intoxicated; solicitation to commit murder, assault with a machine gun on peace officer or firefighter, possession of a weapon of mass destruction, and any serious or violent felony punishable by life imprisonment or death.

- ***a conviction requiring registration as a sex offender under Penal Code § 290(c).*** A person who is required to register because a court exercised its discretion to order registration for other offenses per Penal Code § 290.006 apparently is not disqualified.
- ***(in some but not all cases) a juvenile adjudication for a “super strike” offense or a juvenile adjudication that requires sex offender registration*** under Penal Code § 290.008. It will depend on how old you were, whether you were made a ward of the court, and the specific type of offenses involved.

## **THE PROPOSITION 47 RESENTENCING OR RECORD CHANGE PROCESS**

These are the basic steps for a Proposition 47 case:

- ***You gather information about your criminal record.*** Information about the details of your convictions is on your abstracts of judgment, probation reports, and rap sheet. If you don't have these documents, ask your correctional counselor to provide you with copies from your CDCR c-file or contact your criminal trial and/or appellate attorneys or the public defender's office. Information that will be helpful includes court case numbers, the name and number of the statutes you were convicted under, whether the convictions were felonies or misdemeanors, the dates of the convictions and sentencings, and information about circumstances like the type or amount of property that was taken.
- ***You or your attorney files a Proposition 47 petition*** asking for resentencing or record change. The petition must be filed in the county superior court where you were convicted. If you have Proposition 47-eligible crimes from more than one county, you must file a petition in each of those superior courts. There is no statewide form for a petition, but many counties have created petition forms that are available from the court clerk, the public defender's office, or their websites.
- ***The court screens your case to see if you are eligible for resentencing or record change*** based on the eligibility and ineligibility criteria summarized on pages 2 and 3, above. The court can deny your petition if it finds that your conviction doesn't qualify as a misdemeanor under Proposition 47 or that you have disqualifying prior convictions. The court may or may not appoint you an attorney or hold a hearing, depending on whether your eligibility is clear or in dispute and, if in dispute, the type of issues involved.
- ***IF you are eligible AND you are seeking only a record change for a prior offense, the court must grant the record change.***

- ***IF you are eligible AND you are seeking resentencing on a current offense, the court will hold a hearing to decide whether resentencing would pose an unreasonable risk of danger to public safety.*** You have a right to an attorney at the hearing, and one will be appointed if you do not have money to hire one. (*People v. Rouse* (2016) 245 Cal.App.4th 292.) If the court decides that resentencing would pose an unreasonable risk of danger, it will deny your petition; otherwise, the court must grant your petition and resentence you. The prosecution has the burden of proving dangerousness by a preponderance of the evidence. (*People v. Jefferson* (2016) 1 Cal.App.5th 235.) “Unreasonable risk of danger to public safety” means an unreasonable risk that you will commit a “super-strike” felony (see page 3 above). A court may consider your criminal history, your disciplinary record, your record of rehabilitation while incarcerated, and any other evidence the court decides is relevant.
- ***If the court denies your petition, you or your attorney can file an appeal.*** The notice of appeal must be filed within 60 days of the order granting or denying your petition. The appeal process is similar to the direct appeal process in regular criminal cases. You can request more information on direct appeals by writing to the Prison Law Office.

## **WHAT HAPPENS WHEN YOU GET A RECORD CHANGE OR RESENTENCING?**

If the court grants a record change for a prior offense, the court documents for your case will be changed to show that the crime is only a misdemeanor.

If the court grants resentencing on a current offense, your sentence for the Proposition 47 crime will be changed to be no more than one year, and the court must give you credit for time already served. If you have other charges not affected by Proposition 47, the court can resentence you to longer terms on the other counts; however, your sentence as a whole cannot be longer than your original sentence. (*People v. Buycs* (2018) 5 Cal.5th 857.) The court might also reduce your fines and fees or strike a drug offender registration requirement. If your new total sentence is shorter than your original total sentence, your release date or parole eligibility date will move forward, possibly enough for immediate release from prison. If you are due for immediate release, the court can (but is not required to) order you to serve a one-year parole period; credit for extra time you have already served does not count toward the parole term. (*People v. Morales* (2016) 63 Cal.4th 399.)

A crime that is resented or reclassified under Proposition 47 is considered a misdemeanor “for all purposes” *but* it does not permit you to possess a firearm and you may still be convicted of being a felon in possession of a firearm. (Penal Code § 1170.18(k).) What it means for a crime to be a misdemeanor “for all purposes” can be a complicated question when other felony convictions or enhancements are based on the Proposition 47 felony. Sometimes the other convictions or enhancements must be reduced or stricken, but in other circumstances they will not be affected. (See *People v. Buycs* (2018) 5 Cal.5th 857 [discussing out-on-bail enhancements, prior prison term enhancements, and failure to appear convictions]; *People v. Warren* (2018) 24 Cal.App.5th 899 [discussing prior prison term enhancement washout periods]; *People v. Valenzuela* (2019) 7 Cal.5th 415 [discussing gang participation convictions for felony conduct].) You should contact your criminal trial or appeal attorney or the public defender’s office for advice on specific issues.