

# MEMORANDUM

(Rev. 11/5/14)

**FROM:** J. Richard Couzens  
Placer County Superior Court (Ret.)

**DATED:** November 5, 2014

**RE:** Proposition 47, "The Safe Neighborhoods and Schools Act"

## I. Introduction

Voters have enacted Proposition 47, "The Safe Neighborhoods and Schools Act." Passage of the initiative reduces most possessory drug offenses and thefts of property valued under \$950 to straight misdemeanors. In addition, the proposition adds Penal Code, section 1170.18<sup>1</sup>, which creates a process for persons previously convicted of these theft and drug offenses as a felony to petition the court for resentencing as a misdemeanor.

In anticipation of the potential passage of Proposition 47, a small working group of judges and court administrators was convened with input from the chairs of the Trial Court Presiding Judges and Court Executives Advisory Committee to review some of the critical issues raised by section 1170.18. The following discussion identifies a number of issues that courts will now face.

**The memorandum reflects the opinion of this commentator, as discussed with the working group. It should not be considered legal advice, or the opinion of the Judicial Council.**

As a matter of general observation, the basic structure of Proposition 47 is strikingly similar to Proposition 36, "The Three Strikes Reform Act of 2012." Both of the initiatives contain a reduction in penalty for certain crimes and a resentencing process for people who would be entitled to lesser punishment had the crime been committed after the enactment of the new law. Some of the language of section 1170.18 is taken directly from Proposition 36. Accordingly, much of the appellate interpretation of Proposition 36 may be relevant in the interpretation of Proposition 47. It should be emphasized, however, that until courts weigh in on the specifics of Proposition 47, much will be left to the courts and counsel to work out a practical solution to the anticipated additional workload.

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

## II. Will the reduced punishment of specified crimes apply to crimes committed prior to November 5, 2014?

Proposition 47 reduces the following drug violations to a straight misdemeanor: Health and Safety Code, sections 11350(a), 11357(a), 11377(a). The following theft related offenses are made a straight misdemeanor: sections 459a (a new crime called “shoplifting”), 473(a), 476a(b), 490.2 (a new section defining grand theft), 496(a), and 666. Unquestionably the new penalties specified by Proposition 47 will apply to any of the designated crimes committed on or after November 5, 2014. The more difficult question is whether the new penalties will apply to cases not yet final as of the effective date of the initiative. Whether Proposition 47 will be retroactive will depend on the application of the seminal case of *In re Estrada* (1965) 63 Cal.2d 740. Four published cases have addressed this issue in the context of Proposition 36, with three different results.

*Estrada* teaches that “[w]hen the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final. This intent seems obvious, because to hold otherwise would be to conclude that the Legislature was motivated by a desire for vengeance, a conclusion not permitted in view of modern theories of penology.” (*Estrada*, at p. 745.) Accordingly, the general rule is that acts reducing punishment will be applied to all cases not yet final, unless the act contains a “savings clause” which establishes a different effective date.

*People v. Yearwood* (2013) 213 Cal.App.4<sup>th</sup> 161, holds the new sentencing rules of Proposition 36 will not apply to crimes committed and sentenced prior to the effective date of the proposition on November 7<sup>th</sup>, even if the case is not then final. The case states, however that had the defendant been sentenced after the effective date, the new rules would apply: “It is undisputed that if appellant had been sentenced for the marijuana possession conviction after the effective date of the Act, an indeterminate life sentence would not have been imposed.” (*Id.* at p. 168.) *Yearwood* acknowledges the initiative does not contain an express savings clause, but determines that section 1170.126, the provision governing requests for resentencing, operates as an implied savings clause. Accordingly, if the defendant’s case is not final as of November 7, 2011, and the defendant believes he is entitled to be sentenced under the new law, the only remedy is to apply for resentencing under section 1170.126. In that context, the defendant must demonstrate not only that he is statutorily entitled to resentencing, but also must address the additional issue of dangerousness. The court expressly declined to apply the rule of statutory interpretation stated in *Estrada*. *Yearwood* is now final. *People v. Lester* (2013) 220 Cal.App.4<sup>th</sup> 291, generally in accord with *Yearwood*, has been granted review.

*People v. Conley* (2013) 215 Cal.App.4<sup>th</sup> 1482, holds the new sentencing rules of Proposition 36 do not apply to cases where the defendant has been sentenced and has commenced service of the prison term, whether or not the case is final as of November 7, 2012. However, the new provisions do apply to cases where the defendant was not convicted or was not sentenced as of the effective date. The appellate court declined to apply *Estrada*: “The rule in *Estrada* does not apply ‘where the Legislature clearly signals its intent to make the amendment prospective, by the inclusion of either an express savings clause or its equivalent.’ (*People v. Nasalga* (1996) 12 Cal.4<sup>th</sup> 784, 793, fn. omitted.)” (*Conley* at p. 1489.) *Conley* acknowledges Proposition 36 has no express savings clause, but, like *Yearwood*, determines the resentencing provisions of section 1170.126 constitute an implied savings clause which defeats the *Estrada* presumption of retroactivity. *Conley* has been granted review by the Supreme Court.

*People v. Lewis* (2013) 216 Cal.App.4<sup>th</sup> 468, concludes the *Estrada* rule applies: the new sentencing provisions of Proposition 36 are applicable to all cases not final as of November 7, 2012. “The [*Estrada*] rule and its continued vitality were most recently discussed by the California Supreme Court in *People v. Brown* (2012) 54 Cal.4<sup>th</sup> 314 (*Brown*.) In *Brown*, the court reiterated that *Estrada* ‘is today properly understood, not as weakening or modifying the default rule of prospective operation codified in section 3, but rather as informing the rule’s application in a specific context by *articulating the reasonable presumption that a legislative act mitigating the punishment for a particular criminal offense is intended to apply to all nonfinal judgments.*’ (*Id.* at p. 324, italics added.)” (*Lewis*, at p. 475.) *Lewis* held the absence of an express savings clause indicated the intent of the electorate to apply the *Estrada* rule. (Citing *People v. Nasalga* (1996) 12 Cal.4<sup>th</sup> 784, 793, and *Estrada*, p. 747; *Lewis* at p. 476.) *Lewis* also found their interpretation was fully consistent with the stated purpose of Proposition 36 to reserve the third strike sentences only for violent offenders, and to reduce prison overcrowding and costs of incarceration. *Lewis* disagrees with *Yearwood* and *Conley* to the extent those cases interpret section 1170.126 as an implied savings clause. The case also questioned *Yearwood*’s conclusion that section 1170.126 could apply to sentences not yet final. *Lewis* has been granted review by the Supreme Court.

For the purposes of determining the retroactive application of a statute that mitigates the consequences of a crime, a case is not final until the expiration of the time for petitioning for a writ of certiorari in the United States Supreme Court. “‘In *Pedro T.* we cited with approval a case holding that, for the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed. (*In re Pedro T.*, 8 Cal. 4<sup>th</sup> 1041, 1046, 36 Cal. Rptr.2d 74, 884 P.2d 1022 (1994), reh’g denied, (Feb.16,1995), citing *In re Pine*, 66 Cal. App. 3d 593, 594, 136 Cal. Rptr.718 (3d Dist. 1977); see also *Bell v. State of Md.*, 378 U.S. 226, 230, 84 S.Ct.1814, 12 L. Ed. 2d 822 (1964), on remand to, 236 Md. 356, 204 A.2d 54 (1964) [“The rule applies to any such [criminal] proceeding which, at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it”].)’(*People v. Nasalga*, 12Cal. 4<sup>th</sup> 784, 789 n. 5, 50 Cal. Rptr. 2d 88, 910 P.2d 1380 (1996), motion to recall remittitur denied, (May 20, 1996).)” (*People v. Vieira* (2005) 35 Cal.4<sup>th</sup> 264, 305–306.) A petition

for writ of certiorari is considered timely if filed with the court within 90 days after entry of judgment of the state court of last resort. (Rules of the U.S. Supreme Court, Rule 13.1.)

If *Yearwood* applies to Proposition 47, the following sentencing rules would appear to apply:

- If the case has been sentenced prior to November 5<sup>th</sup>, any request for sentencing as a misdemeanor must occur through a petition for resentencing under section 1170.18, even though the conviction is not final.
- If the crime was committed prior to November 5<sup>th</sup>, but sentenced after that date, the new sentencing rules would apply to the case.
- If the crime is committed on or after November 5<sup>th</sup>, the new sentencing rules apply to the case.

Much of the foregoing discussion likely will be relevant to the interpretation of Proposition 47. Since many courts have agreed to continuing final disposition of potentially qualified cases until after November 4<sup>th</sup>, the issue of retroactivity is squarely before the court. While *Yearwood* is final and may apply to Proposition 47, the Supreme Court has taken up the issue of retroactivity. Given the uncertain state of the law, it may be most practical for the court and counsel to negotiate the application of the new penalties to cases not yet final, unless there is a particular issue over the qualification of the defendant to benefit from Proposition 47.

### **III. Who may petition for relief under section 1170.18?**

Section 1170.18(a) provides: “A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this Act had this Act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Sections 459a, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended by this Act.” Whether a particular defendant is entitled to petition for relief may depend on their status in the legal process.

Although a crime will be a misdemeanor after the passage of Proposition 47, the court may deny resentencing if “the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (§ 1170.18(b); see full discussion of dangerousness, *infra*.)

*Persons currently serving a term in state prison.* There can be no dispute that section 1170.18 will be available to any qualified inmate now in state prison serving a felony sentence for a crime Proposition 47 declares a misdemeanor, including persons sentenced as a second or third striker under the Three Strikes law.

Persons on parole or Postrelease Community Supervision (PRCS). It is clear that persons on parole or PRCS will be entitled to relief under Proposition 47 – the only issue is what portion of section 1170.18 will provide the relief. If being on parole or PRCS is considered “currently serving a sentence,” the person will be required to petition for relief under sections 1170.18(a) – (e), which will include a determination of the issue of dangerousness. If being on parole or PRCS is not a part of the sentence, the sentence having been completed, the person may request a reduction to a misdemeanor under sections 1170.18(f) – (h), which does not include the issue of dangerousness. A recent case from the California Supreme Court seems to address this issue in a different context. *People v. Nuckles* (2013) 56 Cal.4<sup>th</sup> 601, 609 (*Nuckles*) observes that the prison *term* is the actual time served in prison before release on parole, and the day of release marks the end of the prison term. (*Nuckles* at p. 608.) It goes on to say, however, that “[a]lthough parole constitutes a distinct phase from the underlying prison sentence, a period of parole following a prison term has generally been acknowledged as a form of punishment. ‘[P]arolees are on the “continuum” of state-imposed punishments.’ (*Samson v. California* (2006) 547 U.S. 843, 850 (*Samson*)). Further, parole is a form of punishment accruing directly from the underlying conviction. As the Attorney General observes, parole is a mandatory component of any prison sentence. ‘A sentence resulting in imprisonment in the state prison . . . shall include a period of parole supervision or postrelease community supervision, unless waived . . . .’ (§ 3000, subd. (a)(1).) Thus, a prison sentence ‘contemplates a period of parole, which in that respect is related to the sentence.’ [citation omitted]” (*Nuckles* at p. 609.) *Nuckles* would suggest, therefore, that persons on parole or PRCS are still serving their sentence and would be required to petition for relief under sections 1170.18(a) – (e), which will include a determination of dangerousness.

Persons sentenced under Penal Code, section 1170(h). It is likely the resentencing provisions of section 1170.18(a) – (e) will apply to persons currently serving a sentence to county jail imposed under the provisions of section 1170(h), whether the sentence is a straight term or a split sentence containing mandatory supervision. To be sentenced under section 1170(h), the court must first deny probation. These sentences are considered prison terms for the purposes of enhancement under section 667.5(b). Nothing in Proposition 47 directly limits the application of section 1170.18 to persons serving prison terms.

Persons on probation. It is likely the resentencing provisions of Proposition 47 apply to persons on probation for qualified offenses. Whether these persons can petition for relief may turn on the meaning of being “sentenced.” Some may contend that to be “sentenced” for the purposes of section 1170.18, probation must be denied and a term of imprisonment imposed. (“As used in this code, ‘probation’ means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer.”) Such an interpretation, however, seems overly restrictive. Nothing in the express language of Proposition 47 suggests it should be applied only to persons who are denied probation and formally sentenced. The plain language of the statute is unambiguous in that the provisions of section 1170.18 apply to all persons “sentenced” as that term is commonly understood. “We interpret voter initiatives using the same principles that govern construction of legislative enactments. (*Professional Engineers in California Government v.*

*Kempton* (2007) 40 Cal.4th 1016, 1037, 56 Cal.Rptr.3d 814, 155 P.3d 226.) Thus, we begin with the text as the first and best indicator of intent. (*Ibid.*; *Elsner v. Uveges* (2005) 34 Cal.4th 915, 927, 22 Cal.Rptr.3d 530, 102 P.3d 915.)” (*People v. Mentch* (2008) 45 Cal.4th 274, 282.)

Cases on appeal. It is unlikely that Proposition 47 will apply to cases on appeal. *People v. Yearwood* (2013) 213 Cal.App.4th 161, in the context of Proposition 36, holds that the resentencing process cannot be utilized while a case is on appeal. “The trial court does not have jurisdiction over a cause during the pendency of an appeal. (*People v. Flores* (2003) 30 Cal.4th 1059, 1064, 135 Cal.Rptr.2d 63, 69 P.3d 979.) A section 1170.126 petition must be filed once the judgment is final and jurisdiction over the cause has been returned to the trial court. Appellant’s eligibility for recall of sentence will be determined at that point in time. Section 1170.126(b) contains a ‘good cause’ exception to the two year filing period. The pendency of appellate proceedings and consequent lack of jurisdiction over the cause in the trial court would necessarily constitute good cause for a filing delay. Thus, the length of the appellate process will not foreclose prisoners whose judgments were not final on the Act’s effective date from obtaining relief to which they may be entitled pursuant to section 1170.126.” (*Yearwood* at p. 177.)

Persons who have completed their sentence. Section 1170.18(f) provides: “A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this Act had this Act been in effect at the time of the offense may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.” The plain meaning of the statute would indicate that all persons who have completed their sentence on a qualified offense may petition for relief, whether they served the sentence in prison, in county jail under section 1170(h), or on probation, unless they are disqualified because of a prior conviction listed in section 1170.18(i).

#### **IV. Does Proposition 47 apply to juvenile cases?**

Every juvenile court delinquency disposition that occurs on or after November 5<sup>th</sup> must comply with the maximum confinement limitations set by Proposition 47. The more difficult question is whether the resentencing provisions of section 1170.18 will be available to juvenile offenders. The answer is not clear. There is no express provision in Proposition 47 that makes it applicable to juvenile proceedings. The initiative makes references to “convictions” and “sentencing” – such phrases are inconsistent with juvenile “adjudications” and “dispositions.” Nevertheless, it is well understood that juvenile offenders are to be treated no more harshly than adult offenders. (Welf. & Inst. § 726(d): “If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.”)

As a matter of equal protection, juvenile offenders may have the right to petition for relief. Even though the juvenile system focus on the rehabilitation of the minor and the adult system focuses on punishment, it does not seem likely that minors would be required to serve longer periods of confinement than adults for the same crime. At least for juveniles currently under the jurisdiction of the court, a petition under the provisions of Welfare and Institutions Code, section 778 may provide an adequate statutory vehicle for the request. It is not clear what statutory provision can be used to address adjudications of qualified offenses where the dispositional orders have been fully satisfied and the case has been closed.

**V. If a conviction is resentenced as a misdemeanor, must the court refund any fees or fines based on the prior felony conviction?**

The answer is not clear, and may depend on the nature of the assessment and whether the person is currently serving the sentence. With respect to persons who have completed their sentence, the remedy afforded under section 1170.18 is not unlike relief granted under section 17(b)(3) (“[The crime] is a misdemeanor for all purposes under the following circumstances: . . . (3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.”) When such relief is granted, felony fees and fines are not refunded. Indeed, the court has collected the money and has distributed it to various entities according to a complex formula – there is no money to refund. Furthermore, there is nothing in the express language of Proposition 47 that compels such a refund. A request for refund of fees and fines under these circumstances should be denied.

The court may have a different obligation to persons who are currently serving a sentence. There may be a duty, upon request of the defendant, to recompute the fees and fines based on a misdemeanor disposition. It does not seem likely that the court will be able to continue collection of fees and fines based on a felony conviction after the conviction has been reduced to a misdemeanor. If recomputation is required, the determination of the correct fee likely will depend on the nature of the assessment. If the assessment is a “fine,” such as with section 1203.4(b), it should be computed at the rate set at the time the crime was committed. If the assessment is an “administrative cost,” such as the court operations assessment under section 1465.8, then the current fee would be the current assessment. The complexities of the recalculation process may encourage courts, counsel, and county administration to agree to a different method of calculation.

Whether the court has the duty to refund any fees and fines already collected from the persons is an open question without any clear answer. Again, drawing on the analogy to motions under section 17(b)(3), these persons likely will not be entitled to any refund.

In determining whether a recomputation of fees and fines is necessary, it is also important for the court to understand that unless a particular fee is only with a felony conviction, any fee or fine may be within the range otherwise authorized by statute. For example, section 1203.4(b) provides for a restitution fine for any felony or misdemeanor conviction. If the offense is a

felony, the minimum assessment is currently \$300; if it is a misdemeanor, the minimum assessment is currently \$150, but may be up to \$1,000. An assessment of \$300, therefore, is well within the court's discretion; it is not an *unauthorized* sentence.

**VI. Must all resentenced persons be placed on parole under the provisions of section 3000.08?**

The court has discretion to place resentenced persons on parole. Section 1170.18(d) provides that “[a] person who is resentenced pursuant to subdivision (b) [as a misdemeanor] shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole.” Likely the provision for a period of parole was included in Proposition 47 as a response to some of the criticisms of Proposition 36 that no transition period was required for persons suddenly released from a 25-life sentence after many years in custody. Interestingly, *People v. Tubbs* (2014) \_\_\_ Cal.App.4<sup>th</sup> \_\_\_; 178 Cal.Rptr.3d 678 [2014 D.A.R. 13889], holds that every person coming out of prison, including those persons resentenced under Proposition 36, must serve a three-year period of PRCS pursuant to section 3451.

If *Tubbs* is applicable to persons resentenced from state prison under Proposition 47, there will be a requirement to serve three years on PRCS – section 3451 applies “notwithstanding any other law.” If the defendant is required to be supervised on PRCS, it is likely the court will determine parole is duplicative and unnecessary and will release him from the parole requirement.

It is unlikely the sponsors of Proposition 47 ever contemplated persons resentenced for a crime punished under section 1170(h) or granted probation would be sent to state parole. For such persons, the court may conclude that some form of structured misdemeanor probation would be appropriate, either formal or informal, assuming there is jurisdictional time remaining after giving the defendant all of his custody credits. Since the defendant is before the court for resentencing, it seems likely the court would have discretion to order some form of probation supervision if considered necessary in the particular case.

**VII. What is the procedure for resentencing?**

Section 1170.18 has two resentencing provisions, one to be used if the petitioner is currently serving a sentence, and the other for persons who have completed their sentence.

*A. Persons currently serving a sentence*

For persons currently serving a sentence, the resentencing process is primarily defined in sections 1170.18(a) – (e). Like the resentencing of third strike offenders under section 1170.126, Proposition 47 contemplates a three-step process:

- The first step is the filing of a petition requesting resentencing. No particular form of petition is specified by the initiative.

The petition must be filed prior to November 5, 2017, unless good cause is shown for a later filing. (§ 1170.18(j).)

- The second step is an initial screening of the petition for eligibility. Likely the court will be able to summarily deny relief based on any petition that is facially deficient. If the petition states a prima facie basis for relief, however, the matter should be set for a full hearing on the merits of the petition. At this level of review, the court should not consider any aspect of dangerousness.

Resentencing may be denied based solely on *the fact of* a prior conviction of a designated violent felony or any offense requiring registration as a sex offender under section 290(c). (§ 1170.18(i).) The designated violent felonies are: a “sexually violent offense” as defined in Welfare and Institutions Code, section 6600(b) (the Sexually Violent Predator Law); oral copulation, sodomy or sexual penetration of a child under 14 and more than 10 years younger than the defendant; a lewd act on a child under 14; any homicide offense, including attempted homicide as defined in sections 187 – 191.5; solicitation to commit murder; assault with a machine gun on a peace officer; possession of a weapon of mass destruction; or any serious or violent offense punishable by life imprisonment or death.

The petition must be heard by the judge who did the original sentencing, unless the judge is not available. (§ 1170.18(a).) If the original judge is not available, the presiding judge must designate another judge to hear the petition. (§ 1170.18(l).) As with Proposition 36, likely this requirement can be waived by the parties and the matter heard by another judge, such as a judge designated to hear all of these petitions for the court. The waiver must occur prior to any judicial involvement. (See *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4<sup>th</sup> 1279.)

- The final step is the qualification and resentencing hearing where the court will consider the merits of the petition. The first phase of the qualification hearing will be to confirm that the petitioner meets the statutory requirements for relief in terms of having committed a qualified offense and whether there is any statutory disqualification under section 1170.18(i).

The second phase of the hearing, assuming the petitioner is statutorily qualified to petition for relief, is to determine whether he presents an unreasonable risk of danger to public safety if resentenced. “‘Unreasonable risk of danger to public safety’ means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of” section 667(e)(2)(C)(iv). (§ 1170.18(c).)

In determining whether a petitioner will pose an unreasonable risk of danger to public safety, the court may consider (1) 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; (2) the petitioner's disciplinary record and record of rehabilitation while incarcerated; and (3) any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. (§ 1170.18(b).)

These hearings are considered a "post-conviction release proceeding" under Article I, section 28(b)(17) of the California constitution ("Marcy's Law"). (§ 1170.18(o).) Accordingly, victims of these offenses are entitled to participate in the resentencing process if they request. Although it is unlikely that the victims of theft of property of less than \$950 will very often want to be involved in these proceedings, the court must assure that the rights of the victims will be acknowledged in appropriate cases.

If the petition is granted, the court should resentence the crime as a misdemeanor. In no case may the sentence be longer than originally imposed. (§ 1170.18(e).) The petitioner must be given credit for any time served under the original sentence. The person shall be subject to a one-year period of parole, unless the court, in its discretion, releases the person from the requirement. (§ 1170.18(d); see full discussion of parole, *supra*.) If the person is placed on parole, it will be under section 3000.08. Jurisdiction over the adjudication of parole violations will be in the county where the petitioner is released or resides, or in the county where the violation occurs. (§ 1170.18(d).)

If resentencing occurs, the conviction shall be treated as a misdemeanor for all purposes, except for the right to own or possess firearms. (§ 1170.18(k).)

Although the procedure contemplated for persons currently serving a term includes the right to a hearing on the merits if requested by either the petitioner or the prosecution, there is no express requirement to hold a hearing. The court and counsel should be free to design a resentencing process through stipulations presented to the court without hearing, except as may be required by the parties if there is a particular issue over qualification or dangerousness, or where it may be required to comply with Marcy's Law.

#### *B. Persons who have completed their sentence*

Section 1170.18(f) – (h) are the primary provisions governing the resentencing of persons who have completed their sentences. Section 1170.18(f) provides: "A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this Act had this Act been in effect at the time of the offense may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors."

There is no time limit on when the qualified conviction occurred; presumably the court may be

asked to resentence offenses that occurred decades ago. If the applicant has a qualified conviction, the person is entitled to relief. (§ 1170.18(g).) There is no requirement to determine dangerousness. No hearing is necessary to grant or deny relief, unless requested by the applicant. (§ 1170.18(h).) In no case may the sentence be longer than originally imposed. (§ 1170.18(e).) Relief may be denied, however, if the applicant has any of the designated prior convictions. (§ 1170.18(i); see the full list, *supra*.)

As with persons who are currently serving a sentence, the application must be made by November 5, 2017, unless good cause is shown. (§ 1170.18(j).) The application must be heard by the original sentencing judge unless that judge is unavailable or the requirement is waived. (§ 1170.18(f) and (l).) If resentencing occurs, the conviction shall be treated as a misdemeanor for all purposes, except for the right to own or possess firearms. (§ 1170.18(k).)

Courts will have a strong desire to handle these applications summarily whenever possible. Some of the attached forms are designed to facilitate this process and avoid any unnecessary hearings. Although the relief may be granted without hearing, courts should proceed with caution and with full notice to the district attorney and any counsel of record for the applicant.