



OFFICE OF THE
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SACRAMENTO COUNTY

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Re: Proposition 47

To All Local Law Enforcement Partners:

As you know, Proposition 47, entitled “The Safe Neighborhoods and Schools Act,” was approved by the voters Tuesday. While there has been some dispute as to the effective date (immediately) and operative date (upon certification by the Secretary of State) of the law, for all practical purposes it took effect Wednesday morning. (Cal. Const., Art. II, section 10.) In addition to governing all of the crimes that it encompasses from this day forward, it will be retroactive to all crimes committed before the election that haven’t been fully adjudicated and for which felony probation has not yet terminated.

Proposition 47 amends multiple straight felonies and wobblers, and it renders them straight misdemeanors unless the defendant has suffered certain prior convictions. Please note and advise your officers that these crimes now will be subject to the laws regarding misdemeanors, e.g., warrantless arrests require that the misdemeanors be committed in the officers’ presence (Penal Code section 836), or be based upon a citizen’s arrest (Penal Code section 847). The reduction of some crimes to misdemeanors also will narrow the scope of crimes where search warrants may be obtained. (Penal Code section 1524).

THREE BROAD CHANGES

1. **Reclassification:** Prop 47 has reclassified many theft and drug offenses from felonies to misdemeanors.
2. **Resentence:** Prop 47 authorizes defendants serving felony sentences that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions.
 - This will likely apply to State Prisoners, County Jail Prisoners, and Felony Probationers.
3. **Reduction:** Prop 47 authorizes defendants who have completed their sentences for these same felony convictions to apply for a reduction of their convictions to misdemeanors.

DISQUALIFIERS

Those individuals with prior convictions for offenses listed in 667(e)(2)(c)(iv) or sex offenses that require mandatory registration (P.C. 290(c)) would not qualify for the misdemeanor provisions of the new law. Defendants who are disqualified would be sentenced pursuant to 1170(h).

These disqualifiers are quite narrow. They are mandatory 290 registration sex offenses and “super strike” offenses such as murder (and attempted murder), gross vehicular with alcohol (but not other manslaughters), solicitation to commit murder, assault with a machine gun on a peace officer, possession of a weapon of mass destruction, and life imprisonment offenses.

Additionally, Section 368 (elder abuse) priors will disqualify repeat petty theft offenders from the misdemeanor provisions of the proposition under Penal Code section 666. Forgery priors are also applicable to forgery counts. These priors make these otherwise straight misdemeanors into wobblers.

RECLASSIFIED CRIMES

- Penal Code section 459.5 (Shoplifting): This new statute adds the crime of “shoplifting” to the Penal Code. “Notwithstanding Section 459, 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 that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary.” This section is not limited to typical retail stores but it applies to other businesses as well. Section 459.5 is a straight (six month) misdemeanor, unless the defendant has a “super strike” prior or is a P.C. 290(c) registrant, in which case it is a wobbler.
- Penal Code section 473 is amended to make forgery a straight (one year) misdemeanor, “where the value of the check, bond, bank bill, note, cashier’s check, traveler’s check, or money order does not exceed” \$950, unless the defendant has a “super strike” prior or is a P.C. 290(c) registrant, in which case it is a wobbler. This amendment does not apply “to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5.”
- Penal code section 476a (NSF Checks): Where the total amount of the NSF check(s) does not exceed \$950, the crime is amended to become a straight (one year) misdemeanor, unless the defendant has a “super strike” prior, a P.C. 290(c) registrant, or has three prior convictions of Penal Code sections 470, 475, 476 or 476a, in which case it is a wobbler.
- Penal Code section 490.2 has been added to render Penal Code section 487 “and any other statute defining grand theft where the total value of the property stolen does not exceed” \$950 a straight (six month) misdemeanor (“considered petty theft”), unless the

defendant has a “super strike” prior, or is a P.C. 290(c) registrant, in which case it is a wobbler. This change will affect thefts of firearms of a value of \$950 or less (such thefts are currently a straight felony), and theft of an automobile of a value of \$950 or less (which is currently a wobbler). It also eliminates the previous lower dollar threshold (\$250) for avocados and other crops. We now must charge any theft where the total value of the property stolen does not exceed \$950 under Penal Code section 484(a), unless the defendant has a “super strike” prior or is a P.C. 290(c) registrant.

- Penal Code section 496(a) is amended to render the receiving, possessing, concealing, etc., of stolen property a straight (one year) misdemeanor, where the total value of the property stolen does not exceed \$950, unless the defendant has a “super strike” prior or is a P.C. 290(c) registrant, in which case it is a wobbler.
- Penal Code section 666 is amended. The current section 666(a) is deleted. The current section 666(b) becomes section 666(a) and it’s amended to the effect that petty theft with one prior theft AND a “super strike” prior, is a P.C. 290(c) registrant, or a Penal Code section 368 prior is a wobbler.
- Health & Safety Code section 11350 is amended. Section 11350(a) becomes a straight (one year) misdemeanor, unless the defendant has a “super strike” prior or is a P.C. 290(c) registrant, in which case it is a wobbler. Penal Code section 11350(b) is deleted (and the following subdivisions re-lettered). The drugs previously referred to in 11350(b) (mecloqualone, methaqualone, and gamma hydroxybutyric acid [GBH]) are added to 11350(a).
- Health & Safety Code section 11357(a) is amended to make possession of concentrated cannabis a straight (one year) misdemeanor, unless the defendant has a “super strike” prior or is a P.C. 290(c) registrant, in which case it is a wobbler.
- Health & Safety Code section 11377 is amended. Section 11377(a) becomes a straight (one year) misdemeanor, unless the defendant has a “super strike” prior or is a P.C. 290(c) registrant, in which case it is a wobbler. Section 11377(b) is deleted and 11377(c) re-lettered to (b).

RESENTENCING

Penal Code section 1170.18 is added to the Penal Code. Subdivisions (a) through (e) deal with defendants who are currently serving a sentence for a felony violation of a statute amended to be a misdemeanor by Proposition 47. These defendants may petition the court which imposed their sentence “for a recall of their sentence . . . to request resentencing” as a misdemeanor. The court shall determine whether the defendant is eligible for resentencing under these provisions.

The same disqualifiers described above (super strikers and P.C. 290(c) registrants) are applicable to the resentencing aspect of this law.

The standard for resentencing is notable. The court must resentence the defendant unless “a new sentence would result in an unreasonable risk of danger to public safety.” Prop 47 has defined this risk in the following manner: “As used throughout this Code ‘unreasonable risk of danger to public safety’ means an unreasonable risk that the petitioner will commit a new violent felony [as defined in 667(e)(2)(C)(iv) (Super Strike)].”

This new definition will now apply to the entire Penal Code, including resentencing of three strikers under former Proposition 36 (November 2012).

REDUCTION

Penal Code section 1170.18(f) through (h) deal with defendants convicted of a felony violation of a statute amended to be a misdemeanor by Proposition 47 and who have completed their sentences. These defendants may file an “application” with their sentencing court “to have their felony conviction or convictions designated as misdemeanors.” Unless requested by the applicant, no hearing is necessary to grant or deny an application.

Again, the super striker/sex offender disqualifiers are applicable to this section of the law. However, there is no provision for consideration of “unreasonable risk to public safety” in this section of the law.

OTHER CONSIDERATIONS

- **Felons with firearms**

Any person whose felony conviction is resentenced or recalled as a result of this initiative under Section 1170.18, subdivisions (b) and (g), shall not be permitted to own or possess a firearm. Even after a person’s prior felony conviction is reclassified as a misdemeanor, he/she will still be in violation of Penal Code section 29800, et. seq., if found in possession of a firearm.

- **Vehicle Code Section 10851**

Although Proposition 47 reclassifies many theft-related crimes from wobblers to misdemeanors, it does not apply to Vehicle Code section 10851. On the other hand, Penal Code section 487(d)(1) has been reclassified to a misdemeanor by this proposition under certain circumstances.

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I recognize this summary does not answer all of your questions related to Proposition 47. My office will continue to evaluate the existing nuances of the new law as well as those that will inevitably arise in the upcoming weeks and months. We will do our very best to keep you informed on the law and application of its provisions as, together, we strive to ensure public safety is not diminished by its passing.

Sincerely,



JAN SCULLY
DISTRICT ATTORNEY

JS:cv