Commission on Peace Officer Standards and Training
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Date: November 14, 2014

Bulletin: No. 2014-22

Subject: **Proposition 47 – The Safe Neighborhoods and Schools Act – Impact on Law Enforcement**

On November 4, 2014, the voters of California passed Proposition 47 – The Safe Neighborhoods and Schools Act. This initiative added sections to the Government Code, amended and added sections to the Penal Code, and amended sections of the Health and Safety Code. These changes will have an impact on enforcement decisions by California peace officers and prosecutors.

POST has gathered information from several sources throughout California to assist agencies to review and assess the proposition. This material was compiled and is intended for use by POST participating agencies and academies, to assist in understanding and applying the provisions of Proposition 47. POST would like to thank the below-referenced entities that have provided consent (either directly or through the California District Attorneys Association) to distribute their advisory materials. POST encourages agencies to check with their respective prosecutor's office(s) for additional guidance in interpreting and applying the new law.

Because Proposition 47 took effect immediately upon approval by the voters, law enforcement agencies, basic academy presenters, and other presenters of POST training should take steps to develop and provide in-house training for staff. Academy and other training presenters of basic courses (reference Commission Procedure D-1 and D-10), should ensure the current law is taught in their classes. POST has updated the affected knowledge tests ("written" or "LD" exams) to ensure questions affected by the new laws are removed. POST has also begun work on updates to the related materials (i.e., the Training and Testing Specifications for Peace Officer Basic Courses and the appropriate student workbooks).

Listed below are documents attached to this bulletin that offer agencies and training personnel insight related to Proposition 47:

- Los Angeles County District Attorney "One Minute Brief"
- Sacramento County District Attorney memorandum
- Santa Clara County District Attorney memorandum
- Ventura County District Attorney memorandum

For assistance in the development of in-service training to address Proposition 47, agencies may contact their respective POST Regional Consultant. The contact information may be located on the POST Website, www.post.ca.gov or by calling (916) 227-4863.

Questions regarding Basic Course content changes to address Proposition 47 may be directed to Senior Law Enforcement Consultant Mike Barnes, Basic Training Bureau, at (916) 227-3454, Mike.Barnes@post.ca.gov; or Senior Law Enforcement Consultant Ralph Brown, Basic Training Bureau, at (916) 227-3467, Ralph.Brown@post.ca.gov.

ROBERT A. STRESAK
Executive Director

Attachments

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

THE CRIMINAL JUSTICE INSTITUTE
LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

JACKIE LACEY
DISTRICT ATTORNEY

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NUMBER: 2014-22 **DATE: 11-05-14** **BY: Devallis Rutledge** **TOPIC: Proposition 47 Changes**

ISSUE: What changes to criminal law and procedure did Proposition 47 bring about?

Yesterday, California voters approved Proposition 47. The changes enacted by this measure are **effective today**. (Cal. Const. Art. 2, sec. 10.) Numerous drug and theft-related crimes that were previously felonies or "wobblers" are now **misdemeanors**, unless committed by "Prop 47 Ineligible" criminals—namely, 290(c) registrants, and those with a prior for the very serious crimes listed in PC § 667(e)(2)(c)(iv)—such as homicide offenses and crimes punishable by death or by life in prison.

Except as to "Prop 47 Ineligible" individuals, **the following are now misdemeanors:**

- PC § 459.5—the new misdemeanor crime of "shoplifting" is **entering** a commercial establishment, **during** business hours, **with the intent to steal**, where value does not exceed $950. "Shoplifting" as defined **may not be charged as theft or burglary**.
- PC § 473(b)—forgery of checks and related instruments of not more than $950.
- PC § 476a—NSF checks totaling not more than $950 (unless 3 or more specified priors).
- PC § 490.2—theft **(any form)** not more than $950.
- PC § 496(a)—receiving/concealing stolen property not more than $950.
- PC § 666—"wobbler" "petty theft with a prior" applies **only** to "Prop 47 Ineligible" defendants with specified priors, and certain elder abusers. For all other defendants, petty thefts are **misdemeanors, regardless of the number of priors.**
- H&S § 11350—simple possession of heroin, cocaine, GHB, listed substances.
- H&S § 11357(a)—simple possession of concentrated cannabis.
- H&S § 11377—simple possession of methamphetamine, ecstasy, listed substances.

• In addition to these reductions, Prop 47 also enacted new PC § 1170.18, which sets forth procedures for those previously convicted and sentenced for a felony that is now a misdemeanor under this proposition to **petition for resentencing** under the misdemeanor provisions. Unless a court determines that the person poses an "unreasonable risk" of committing one of the crimes listed in PC § 667(e)(2)(c)(iv), the petitioner will get resentenced, and his/her conviction will be deemed a misdemeanor for all purposes, except possessing firearms. The provisions of "Marsy's Law" will apply to the resentencing.

• Whereas many of the previous felonies carried 3-year statutes of limitation and resulted in arrests, bookings, higher bail, in-custody filing deadlines, DA prosecution, preliminary hearings and felony sentences, the new misdemeanor classifications will generally mean 1-year statutes of limitation, citation and release per PC § 853.6, city attorney prosecution in some jurisdictions, shorter trial deadlines, and lighter maximum sentences.

• In those cases where a loss above $950 makes the crime a felony, value will need to be established and **included** in crime and arrest reports, and must be **pled and proved** at prelim and trial, and included in the **factual basis** for a guilty plea. Officers should especially remember to obtain evidence of value from victims (or other sources) in cases where amount of loss was not previously relevant, such as theft of **firearms** and **vehicles**, and thefts **from the person.**

A series of comprehensive GOMs and a new SD provide additional guidelines for LADA prosecutors and investigators, who may also wish to attend the Saturday Seminar on November 15 (law enforcement officers also welcome). Link to a video on crime-charging issues for complaint deputies and interested DA staff is attached to the GOM/SD. The Los Angeles County District Attorney's Office has produced and distributed a short DVD presentation for local law enforcement officers discussing Prop 47 highlights, suitable for roll-call or briefing training. As always, questions as to application and procedure may be addressed to local supervisors.

BOTTOM LINE: Proposition 47 reduced specified offenses to misdemeanors, created a new "shoplifting" crime, and allows resentencing of certain convicted felons as misdemeanants.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.

Attachment 2

OFFICE OF THE

DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
District Attorney

STEPHEN J. GRIPPI
Chief Deputy

LORI GREENE
Assistant District Attorney

November 6, 2014

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.

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

PROPOSITION 47

By

Kathryn B. Storton
Santa Clara County District Attorney's Office
11/5/2014

I. EFFECTIVE DATE

A proposition is typically effective the day after the election, unless otherwise specified in the measure. Since the election took place on November 4, 2014, Proposition 47 is effective on November 5, 2014. (See Section 10(a) of Article II of the California Constitution.)

II. RETROACTIVITY

Because it lessens punishment, Proposition 47 applies to all pending cases regardless of when the crime was committed, and all convictions not yet final as of 11/5/2014 (e.g., cases in which defendants were sentenced during the 60-day period preceding 11/5/2014 or cases with appeals pending). (See *In re* Estrada (1965) 63 Cal.2d 740.)

Proposition 47 also creates, in new P.C. 1170.18, a procedure for any defendant currently serving a sentence for a felony that would be a misdemeanor under Prop. 47, to petition for recall of the sentence and request resentencing "in accordance with Sections 11350, 11357, or 11377 of the Health & Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act." P.C. 1170.18 also provides a procedure for a defendant who has completed his or her sentence to file an application to have a felony conviction designated a misdemeanor. [See Section XII in this publication for more about resentencing.]

III. OVERVIEW

A. Misdemeanor Offenses

Proposition 47 provides that a number of forgery, theft, grand theft, and drug crimes

that were chargeable as misdemeanors or felonies (commonly known as "wobblers"), can now be charged only as misdemeanors, unless the defendant has a specified prior conviction or the value of the property (in theft cases) is over $950. The list of specified prior convictions that take a defendant out of Proposition 47 is very narrow (P.C. 667(e)(2)(C)(iv) and P.C. 290(c)). Many people in the legal community refer to these priors as "superstrikes."
(See Storton's List of Proposition 47 Prior Convictions, a separate document.)

B. Serious &/Or Violent Offenders

Many repeat offenders and serious/violent offenders can no longer be charged with a felony when they commit forgery, theft, or drug crimes. For example, a defendant who has a prior misdemeanor conviction for indecent exposure (P.C. 314.1) from thirty years ago and no other criminal history, can be charged with a felony for stealing $950 worth of merchandise, or less, from a small business. However, a career criminal or violent offender who was released from state prison last week after serving a lengthy sentence for multiple armed robberies, multiple residential burglaries, arson or gang crimes, human trafficking, assault with a deadly weapon, witness intimidation, or even voluntary manslaughter can only be charged with a misdemeanor crime. Theft of a gun has been a long-time non-alternative felony and a strike, but Prop. 47 provides that unless the value of the gun is over $950, or the defendant has a specified prior conviction from Prop. 47's very narrow list, the theft of a gun is only a misdemeanor. Possession of dangerous and illegal drugs, such as cocaine, heroin, PCP, and methamphetamine is only a misdemeanor under Prop. 47, unless the defendant has a specified prior conviction from Prop. 47's very narrow list.

C. Punishment Pursuant to P.C. 1170(h) (Realignment)

Throughout Prop. 47, it is provided that a defendant who has a prior conviction specified in P.C. 667(e)(2)(C)(iv) or P.C. 290(c) may be punished pursuant to P.C. 1170(h) (Realignment) even if the value of the property involved is $950 or less. In other words, the defendant may be charged with a felony crime regardless of the value of the item involved in the crime. However, punishment pursuant to P.C. 1170(h) is limited by paragraph (3) of P.C. 1170(h), which provides a list of Realignment disqualifiers (prior or current serious felony (P.C. 1192.7(c)), prior or current violent felony (P.C. 667.5(c)), required to register as a P.C. 290 sex offender, or a P.C. 186.11 aggravated white collar crime enhancement is imposed.)

Therefore, a defendant charged with a felony who has a Prop. 47 prior will not qualify for Realignment sentencing in most cases because all but two of the specified Prop. 47 priors are also Realignment disqualifiers. All crimes that subject a defendant to P.C. 290 registration as a sex offender are Realignment disqualifiers.

And, all of the crimes listed in P.C. 667(e)(2)(C)(iv) are serious and/or violent felonies, and thus strikes and Realignment disqualifiers, except P.C. 653f solicitation to commit murder and P.C. 11418(a)(1) possession of a weapon of mass destruction. A felon who is disqualified from P.C. 1170(h) Realignment sentencing is eligible for a state prison sentence.

Hundreds of felonies were specifically redesignated in October 2011 by AB 109 as felonies that are punishable pursuant to P.C. 1170(h), and the disqualification provisions of P.C. 1170(h)(3) apply to all of these felonies. It is no different for Proposition 47.

IV. THEFT

Proposition 47 creates new P.C. 490.2, which provides, in its entirety:

"(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law."

New P.C. 490.2 does several things:

(1) It provides that any theft that is not over $950 is considered petty theft and only a misdemeanor (unless the defendant has a specified prior).

(2) It creates an over- $950 threshold for grand theft crimes that currently have a lesser threshold or no threshold; without the threshold being met, the crime is considered petty theft.

Examples of crimes that had a lesser threshold: P.C. 487(b)(1) & (b)(2) farm crop or animal/fish thefts had a $250 threshold; P.C. 487b conversion by severance of real property had a $250 threshold; P.C. 487i defrauding a housing program had a $400 threshold.

Examples of crimes that had no threshold: P.C. 487(c) grand theft person; P.C. 487(d)(1) grand theft automobile; P.C. 487(d)(2) grand theft firearm; P.C. 487a grand theft of a specified animal; P.C. 484e grand theft involving access cards. Therefore,

the theft of a gun that is worth $950 or less is a misdemeanor. A grand theft person where the property's value does not exceed $950 is a misdemeanor.

(3) It authorizes charging any theft misdemeanor as a felony if the defendant has a prior conviction for a crime specified in P.C. 667(e)(2)(C)(iv) or P.C. 290(c). For example, the theft of a $300 bicycle by a defendant who has a Prop. 47 prior, can be charged as a felony rather than misdemeanor petty theft.

P.C. 490.2 provides that it does not apply to any theft that may be charged as an infraction. P.C. 490.1 (theft of $50 value or less) is an example of this type of infraction.

Because P.C. 490.2 merely says "shall be considered petty theft" and "shall be punished as a misdemeanor " and does not provide for a particular range of jail sentence, such as "county jail not exceeding one year", existing P.C. 19 and P.C. 490 limit misdemeanor petty theft crime punishment to six months in jail. P.C 19 provides that except in cases where a different punishment is prescribed, every offense declared to be a misdemeanor is punishable by up to six months in jail and/or by a fine of up to $1,000. P.C. 490 provides that petty theft is punishable by up to six months in jail and/or by a fine of up to $1,000.

A Note About Charging:

It is preferable to charge the most specific theft section possible, so that the charging document, at a glance, and the defendant's rap sheet, indicate what type of property or conduct the theft involves. The language of P.C. 490.2 supports this: "Notwithstanding Section 487 or any other provision of law defining grand theft. . . ." For example, in a P.C. 487(c) (theft from the person) or P.C. 487(d)(2) (theft of a firearm) case involving property worth $950 or less, charge P.C. 487(c) or P.C. 487(d)(2) as a misdemeanor, rather than generic petty theft (P.C. 484-488). An allegation within the meaning of P.C. 490.2 could be considered, or the property value could be specified as $950 or less. In a P.C. 487j case (theft of copper exceeding $950 value) involving $300 worth of property where the defendant has a Prop. 47 prior and thus is chargeable with a felony, charge P.C. 487j copper theft as a felony and allege the Prop. 47 prior. Based on the language of P.C. 490.2, it also appears that P.C. 484-488 could be charged as a felony with the Prop. 47 prior alleged, but the code section itself would not provide any information as to the type of theft.

Theft Chart

Value of Property is $950 or Less & Defendant Has *No* Specified Prior:
A misdemeanor theft violation is chargeable.

Value of Property is $950 or Less & Defendant *Has* a Specified Prior:
A felony theft violation is chargeable.

Value of Property is Over $950, Regardless of Priors:
A felony grand theft violation is chargeable.

V. SHOPLIFTING: P.C. 459.5

Proposition 47 creates new P.C. 459.5, the crime of shoplifting. 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)." (emphasis added) Any other entry into a commercial establishment with the intent to commit larceny is burglary (e.g., when the establishment is closed). P.C. 459.5 is a misdemeanor, unless the defendant has a specified prior conviction, in which case the defendant can be charged and convicted of a felony violation of P.C. 459.5.

Note that it would be extremely difficult to prove the dollar value of what a shoplifter intended to steal, unless the shoplifter actually steals something. Therefore, if the defendant actually takes property of a value of $950 or less it is simpler to charge misdemeanor petty theft (P.C 484-488) and avoid having to prove entry with intent to commit larceny and/or intent to take a specific dollar value of property.

P.C. 459.5 also prohibits charging burglary or theft if the defendant is also charged with shoplifting.

Since the misdemeanor punishment language in P.C. 459.5 is "shall be punished as a misdemeanor," punishment for shoplifting as a misdemeanor carries a maximum of six months in jail pursuant to existing P.C. 19, which provides that every offense declared to be a misdemeanor is punishable by up to six months in jail unless a different punishment is prescribed. P.C. 484-488 petty theft also carries a maximum jail sentence of six months.

P.C. 459.5 Chart:

Value of Property is $950 or Less & Defendant Has *No* Specified Prior:

A misdemeanor violation of P.C. 459.5 is chargeable, but P.C. 484-488 petty theft is easier to prove and carries the same maximum 6-month jail punishment. With new P.C. 459.5, entry with the intent to commit larceny must be proved, but there is no such requirement for P.C. 484-488. As long as P.C. 459.5 is not charged, theft can be charged.

Value of Property is $950 or Less & Defendant *Has* a Specified Prior:

A felony violation of P.C. 459.5 is chargeable.

Value of Property is Over $950, Regardless of Priors:

By definition, the crime is not shoplifting since the value is greater than $950. Possible charges include felony grand theft (P.C. 487(a)), felony burglary (P.C. 459-460(b): 2nd degree burglary)), etc.

VI. FORGERY

Before Proposition 47, P.C. 473 provided that forgery crimes were wobblers (felony/misdemeanor crimes) punishable by up to one year in jail or 16 months, two years, or three years pursuant to P.C. 1170(h) Realignment. There was no threshold value required. Proposition 47 creates a new subdivision (b) pertaining only to seven items and adding a $950 threshold value in order to be able to charge forgery as a felony. New subdivision (b) provides that any person guilty of forgery relating to one of seven specified items (check, bond, bank bill, note, cashier's check, traveler's check, or money order) where the value of the item is $950 or less, is punishable by up to one year in jail (i.e., is guilty of a misdemeanor). However, if the defendant has a prior conviction specified in P.C. 667(e)(2)(C)(iv) or P.C. 290(c), he or she may be punished pursuant to P.C. 1170(h) Realignment (i.e., a felony may be charged).

Note that existing P.C. 470(d) specifies many more items than the seven items specified in P.C 473(b). And, other forgery sections, such as P.C. 484f(a), apply only to items, such as access cards, that are not one of the seven items that Prop. 47 addresses. It appears that these are the main forgery statutes that are affected by Prop. 47, but only if one of the seven specified items is involved:

P.C. 470(a)
P.C. 470(d)
P.C. 475(a)
P.C. 475(b)
P.C. 475(c)
P.C. 476

It appears that these forgery statutes are *not* affected by Prop. 47, because they do not involve any one of the seven specified items in P.C. 473(b) (i.e., check, bond, bank bill, note, cashier's check, traveler's check, or money order):
P.C. 470(b) (the seal or handwriting of another)
P.C. 470(c) (will, codicil, conveyance, judgment of court)
P.C. 484f(a) (access card)
P.C. 484f(b) (access card, sales slip, sales draft)
P.C. 484i (access cards and card making equipment)
(These lists are not exhaustive.)

Forgery Chart:
One of Seven Specified Items is Involved & Value of Property is $950 or Less & Defendant Has *No* Specified Prior:
A misdemeanor forgery violation is chargeable.

One of Seven Specified Items is Involved & Value of Property is $950 or Less & Defendant *Has* a Specified Prior:
A felony forgery violation is chargeable.

One of Seven Specified Items is Involved & Value of Property is Over $950, Regardless of Priors: A felony forgery violation is chargeable.

An Item **Other** Then One of the Seven is Involved & Value is Any Amount, Regardless of Priors:
A felony forgery violation may be charged.

VII. BAD CHECKS: P.C. 476a

Proposition 47 amends P.C. 476a(b) to increase, from $450 or less, to $950 or less, the threshold amount of all checks, drafts, or orders a defendant has made, drawn, or uttered that must be charged as a misdemeanor P.C. 476a, unless an exception applies. If the total amount does not exceed $950, a felony can be charged only if:
(1) Def has a prior conviction for a P.C. 667(e)(2)(C)(iv) offense or a P.C. 290(c) offense; or
(2) Def has three or more California or foreign prior convictions of P.C. 470, P.C. 475, P.C. 476, P.C. 476a, or petty theft in a case in which def's offense was a violation also of P.C. 470, P.C. 475, P.C. 476, or P.C 476a. [Previously, when the threshold amount was $450, only one prior conviction was required in order to be able to charge a felony. Prop. 47 requires three.]

P.C. 476a Chart

Value is $950 or Less & Defendant Has *No* Specified Prior:
A misdemeanor violation of P.C. 476a is chargeable

Value is $950 or Less & Defendant *Has* a Specified Prop. 47 Prior:
A felony violation of P.C. 476a is chargeable.

Value is $950 or Less & Defendant *Has* Three Specified Forgery Priors:
A felony violation of P.C. 476a is chargeable.

Value is Over $950, Regardless of Priors:
A felony violation of P.C. 476a is chargeable.

VIII. POSSESSING, BUYING, RECEIVING STOLEN PROPERTY: P.C. 496

Proposition 47 eliminates the specific provision in subdivision (a) that had permitted the district attorney or grand jury to specify that a violation of P.C. 496 is a misdemeanor if the value of the property is not over $950, and instead requires a misdemeanor charge of P.C. 496(a) if the value is not over $950 and the defendant does not have a specified prior. In other words, a felony violation of P.C. 496(a) may be charged if the value of the property is over $950 or if the defendant has a prior conviction specified in P.C. 667(e)(2)(C)(iv) or P.C. 290(c).

P.C. 496(b) remains as is. It pertains to swap meet vendors and second hand dealers and permits a felony charge if the value of the property is over $950.

Keep in mind that the ability to reduce a P.C. 459 1st degree residential burglary to a felony P.C. 496 is affected by Proposition 47. If the value of the property is not over $950 and the defendant does not have a specified Prop. 47 prior, the defendant is subject to a misdemeanor P.C. 496 only. However, the defendant may wish to stipulate that the value of the property exceeds $950 so that he/she can be convicted of felony P.C. 496 rather than a P.C. 459 1st, which is a serious felony strike.

P.C. 496 Chart

Value is $950 or Less & Defendant Has *No* Specified Prior:
A misdemeanor violation of P.C. 496 is chargeable

Value is $950 or Less & Defendant *Has* a Specified Prior:
A felony violation of P.C. 496 is chargeable.

Value is Over $950, Regardless of Priors:
A felony violation of P.C. 496 is chargeable.

IX. PETTY THEFT WITH A PRIOR: P.C. 666

Subdivision (a) of P.C. 666 is eliminated by Proposition 47. It was the felony/ misdemeanor crime of petty theft with three specified theft priors. Former subdivision (b) is now subdivision (a) and remains the crime of petty theft with one specified theft prior and one more serious, specified prior. It remains a felony/misdemeanor punishable in state prison, but narrows the types of serious priors that will make a defendant eligible for prosecution under P.C. 666. Previously, any serious (P.C. 1192.7(c)) or violent (P.C. 667.5(c)) prior felony conviction or any offense requiring P.C. 290 sex registration would qualify a defendant for a felony charge of P.C. 666 and a potential prison sentence. Now, for P.C. 666 to apply, the defendant must have a prior conviction specified in P.C. 667(e)(2)(C)(iv) or be required to register as a sex offender, or have a misdemeanor or or felony conviction pursuant to P.C. 368(d) or P.C. 368(e) (elder or dependent adult fraud). And, of course, the defendant must still have one specified theft prior. Prop. 47 adds P.C. 368(d) and P.C. 368(e) as applicable priors, but only for P.C. 666.

Note that for P.C. 666 to apply, a defendant must have a specified theft prior and a prior conviction specified in P.C. 667(e)(2)(C)(iv) or in P.C. 290(c), UNLESS the prior is a P.C. 368(d) or P.C. 368(e) elder fraud. Both P.C. 368(d) and P.C. 368(e) qualify as the required theft prior and as the required, more serious prior, since both are listed in P.C. 666(a) and P.C. 666(b). So, a defendant with a single prior misdemeanor or felony conviction of P.C. 368(d) or P.C. 368(e) for which a term of imprisonment was served is chargeable with a violation of P.C. 666 as a felony or a misdemeanor.

P.C. 666 Chart

Defendant Has a Specified Theft Prior For Which a Term of Imprisonment was Served **And** a Prior Specified in P.C. 667(e)(2)(C)(iv) or Must Register as a Sex Offender or Has a Misd or Felony Prior for P.C. 368(d) or P.C. 368(e):

A felony or misdemeanor violation of P.C. 666 is chargeable.

Defendant Has One Misd. or Felony Prior for P.C. 368(d) or P.C. 368(e) and Served a Term of Imprisonment: :

A felony or misdemeanor violation of P.C. 666 is chargeable.

X. DRUG POSSESSION: H&S 11350, H&S 11357, & H&S 11377

A. H&S 11350

H&S 11350(b) is deleted and it provisions cross-referencing H&S 11054(e), are added to H&S 11350(a). H&S 11350(b) had been the felony/misdemeanor crime of possessing a controlled substance specified in H&S 11054(e) (mecloqualone, methaqualone, or gamma hydroxybutyric acid (GHB). GHB, a date rape drug, is now a misdemeanor only, unless the defendant has a Prop. 47 prior.

H&S 11350(a) (possession of a controlled substance such as cocaine, cocaine base, heroin, codeine, and oxycodone) is amended to change it from a non-alternative felony to a misdemeanor, unless the defendant has a prior conviction for an offense specified in P.C. 667(e)(2)(C)(iv) or P.C. 290(c). If the defendant has such a prior, the offense is a non-alternative felony.

Note that the other provisions of Prop. 47 (P.C. 459.5, P.C. 473, P.C. 476a(b), P.C. 490.2, H&S 11357(a), and P.C. 11377(a)) use the phrase "may instead be punished" or "may be punished" pursuant to P.C 1170(h) if the defendant has a specified prior. However, H&S 11350 provides that a person with a specified prior "shall instead be punished" pursuant to P.C. 1170(h). This appears to make H&S 11350 with a specified prior a non-alternative felony rather than a wobbler.

H&S 11350 Chart

Defendant Has *No* Specified Prior

The H&S 11350 violation is a misdemeanor.

Defendant *Has* a Specified Prior

The H&S 11350 violation is a non-alternative felony.

B. H&S 11357

H&S 11357(a) (possession of concentrated cannabis) is amended from a felony/misdemeanor crime (a "wobbler") to a misdemeanor only, unless the defendant has a Prop. 47 prior, in which case the crime is a wobbler. H&S 11357(b), (c), (d), and (e) are unchanged.

H&S 11357(a) Chart

Defendant Has *No* Specified Prior

A misdemeanor violation of H&S 11357(a) is chargeable.

Defendant *Has* a Specified Prior

A felony violation of H&S 11357(a) is chargeable.

C. H&S 11377

H&S 11377(a) (possession of a controlled substance such as methamphetamine or phencyclidine (PCP)) is amended from a felony/misdemeanor ("wobbler") crime to a misdemeanor only, unless the defendant has a prior conviction for an offense specified in P.C. 667(e)(2)(C)(iv) or P.C. 290(c), in which case the crime is a wobbler.

H&S 11377(b) is deleted. It had provided that the possession of these substances constituted a misdemeanor crime only: anabolic steroids and chorionic gonadotropin (H&S 11056(f)); ketamine (H&S 11056(g)); khat and cathinone (H&S 11055(d)(7) & (d)(8)); and cathine (H&S 11057(f)(8)). Now, all of these substances are covered in existing cross-references in H&S 11377(a).

Khat and cathinone are covered in H&S 11377(a) because there is an existing cross-reference to H&S 11055(d).

Cathine, ketamine, anabolic steroids, and chorionic gonadotropin are covered in H&S 11377(a) in the following existing cross-reference: " . . . any controlled substance which is (1) classified in Schedule III, IV, or V, and which is *not* a narcotic drug . . . " H&S 11056 is Schedule III and H&S 11057 is Schedule IV.
[Note that if any of these drugs is a narcotic, possession without a prescription would still be illegal pursuant to H&S 11350(a): " . . . any controlled substance classified in Schedule III, IV, or V which *is* a narcotic drug . . . " Whether these substances are narcotic or non-narcotic drugs, their possession without a prescription is still a

crime.]

H&S 11377 Chart

Defendant Has *No* Specified Prior

A misdemeanor violation of H&S 11377 is chargeable.

Defendant *Has* a Specified Prior

A felony violation of H&S 11377 is chargeable.

XI. CHARGING A PROP. 47 PRIOR CONVICTION

Since a specified prior conviction pursuant to P.C. 667(e)(2)(C)(iv) or P.C. 290(c) elevates to a felony what would otherwise be a misdemeanor crime, it appears to be an element of the felony offense and therefore should be pled and proved. And, it should be proved at a preliminary hearing. Similar to a V.C. 23550 "super deuce" case where three misdemeanor driving under the influence offenses elevate to a felony a DUI that would otherwise be a misdemeanor, these elevating priors should be proved at a preliminary hearing. (Of course, the burden of proof is only a preponderance of the evidence at a preliminary hearing.) The case of *People v. Casillas* (2001) 92 Cal.App.4th 171, held that misdemeanor DUI priors in a V.C. 23550 case must be proved at a preliminary hearing.

This is a sample allegation that can be added to a charging document directly below the allegation of the felony crime:

"It is further alleged that prior to the commission of the foregoing offense, the defendant was convicted of an offense specified in P.C. 667(e)(2)(C)(iv) and/or in P.C. 290(c), to wit: a violation of _____(*code section*) of the _____Code, _____(*insert common name of the crime),* in _____County under Docket #_____ and is therefore charged with a felony violation pursuant to Proposition 47."

XII. RESENTENCING: P.C 1170.18

[This overview of P.C. 1170.18 points out some problems and issues, but it is not a detailed analysis of all of the issues and problems created by this new section.]

A. Defendants Currently Serving a Sentence for a Felony ConvictionThat Would Be a Misdemeanor Pursuant to Proposition 47 May File A Petition for Resentencing

New P.C. 1170.18 permits a defendant who is currently serving a sentence for a felony or felonies, and would have been guilty of a misdemeanor under Prop. 47 had it been in effect when the crime was committed, to petition for recall and resentencing before the original sentencing judge "that entered the judgment of conviction." It requires the court to determine if the defendant is eligible for resentencing (which will obviously necessitate a thorough review of all of the defendant's rap sheets). If the defendant is eligible for resentencing, the court is required to resentence the defendant to a misdemeanor "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." [This is the same language used in P.C. 1170.126, the Three Strikes resentencing provision created by Proposition 36, which was on the ballot in November 2012.]

Note that as P.C. 1170.18 is actually worded, these recall and resentencing provisions apply to defendants serving a sentence pursuant to P.C. 1170(h) Realignment or serving a state prison sentence. They do not apply to a probationer who is serving a felony sentence subject to Prop. 47, because subdivision P.C. 1170.18(a) requires that judgment of conviction have been entered. In cases where probation is granted, judgment is not imposed. Rather, the imposition of sentence is suspended (see definition of probation in P.C. 1203(a)). This may present an equal protection issue.

Note also that because the actual language of the resentencing and recall provisions is worded in terms of a defendant who is currently serving a sentence for a *conviction* of a felony, juvenile adjudications are technically not included. Pursuant to W&I 203, a juvenile adjudication is not a conviction. This may present an equal protection issue.

P.C. 1170.18(b)(1) – (3) sets forth three things the court may consider (same language as P.C. 1170.126): (1) the defendant's criminal history, including the types of crimes committed, the extent of the injury to victims, the length of prior prison commitments, and the remoteness of the crimes; (2) the defendant'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.

P.C. 1170.18(c) provides a narrow definition of "unreasonable risk of danger to public safety." It means "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of" P.C. 667(e)(2)(C)(iv). In other words if there is a risk that the defendant will commit armed robbery or human trafficking or arson or assault with a firearm, or domestic violence, or assault with great bodily injury, those crimes do not come within this restrictive definition.

P.C. 1170.18(d) provides that a defendant who is resentenced pursuant to Prop. 47 shall be subject to parole supervision for one year by the California Dep't of Corrections & Rehabilitation (CDCR). However, the court can choose to not place a resentenced defendant on parole: ". . . unless the court, in its discretion, as part of its resentencing order, releases the person from parole." [Note: under Realignment (effective October 2011), defendants released from state prison after serving a term for a serious or violent felony are placed on parole (P.C. 3000.08) while defendants released from state prison after serving a term for a non-serious/non-violent felony are placed onto postrelease community supervision (PRCS) (P.C. 3451) and supervised by the local probation department. Yet, Prop 47 provides for parole supervision for defendants who were convicted of non-serious felonies later reduced to misdemeanors.]

P.C. 1170.18(o) provides that a resentencing hearing constitutes a "post-conviction release proceeding" pursuant to Marsy's Law (Section 28(b)(7) of Article One of the California Constitution) which means the victim is entitled to notice of the resentencing hearing and to be present. Sec. 28(b)(7) of Article 1 provides that a victim is entitled "to reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings."

Note that if a defendant has other convictions that are not affected by Prop. 47, resentencing may not reduce the defendant's overall sentence. Note also that P.C. 1170.18 does not provide for resentencing on a misdemeanor conviction. Therefore, as it is actually worded, P.C. 1170.18 does not provide an avenue for resentencing for a defendant who is currently serving a sentence for a misdemeanor P.C. 666 with three theft priors (which no longer exists after Prop. 47 unless one of the theft priors is for P.C. 368(d) or P.C. 368(e) elder fraud.) This may present an equal protection issue.

B. Defendants Who Have Completed Their Sentences For a Felony Conviction May Apply to Have It Designated a Misdemeanor Without a Hearing

P.C. 1170.18(f) permits a defendant who has completed his or her sentence for a felony that would have been a misdemeanor had Prop. 47 been in effect at the time of the offense, to file an application "before the trial court that entered the judgment of conviction," in order to have the felony designated a misdemeanor. Because subdivision (f) requires that judgment have been imposed, defendants who were granted probation technically do not qualify for redesignation to a misdemeanor because the imposition of sentence was suspended (definition of probation in P.C.1203(a)) rather than judgment being imposed, as it is when a defendant is sentenced to state prison or to jail pursuant to P.C. 1170(h). This may present an equal protection issue.

Note that because the actual language of the redesignation provision is worded in terms of a defendant who has completed a sentence for a felony *conviction*, juvenile adjudications are technically not included. Pursuant to W&I 203, a juvenile adjudication is not a conviction. This may present an equal protection issue.

Subdivision (g) provides that if the application satisfies the criteria in subdivision (f), "the court shall designate the felony offense or offenses as a misdemeanor." Subdivision (h) specifically provides "unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (f)." [In other words, there apparently won't be any hearings, unless a defendant is denied relief and asks for a hearing in order to complain about the denial.] Note that there is no restriction on the age of a felony conviction that could be the subject of an application for designation to a misdemeanor.

C. Miscellaneous Provisions

P.C. 1170.18(e) provides that "under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence."

P.C. 1170.18(i) provides that P.C. 1170.18 does not apply to anyone who has a prior conviction for an offense specified in P.C. 667(e)(2)(C)(iv) or P.C. 290(c).

P.C. 1170.18(j) provides that any petition or application must be filed within three years after the effective date of Prop. 47 (thus, before November 5, 2017), unless the defendant can show good cause for not doing so.

P.C 1170.18(k) provides that any felony conviction that is recalled and resentenced under subdivision (b) or designated a misdemeanor under subdivision (g) shall be

considered a misdemeanor for all purposes, except that the defendant is still subject to P.C. 29800 – 29875 and is not permitted to own, possess, or have in his or her custody or control any firearm: "shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part.6" Therefore, even though a felony has been reduced to a misdemeanor, it still operates, apparently indefinitely, to subject a defendant to prosecution for being a felon in possession, control, or ownership of a firearm, even though an element of the crime is a felony conviction. In cases involving the possession, ownership, or control of a firearm, rap sheets should be carefully reviewed to determine whether a misdemeanor conviction was reduced from a felony pursuant to Prop. 47.

P.C. 1170.18(*l*) provides that if the original sentencing judge is not available, the presiding judge shall designate another judge to rule on the petition for resentencing or the application for a misdemeanor designation.

THE END

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA

MEMORANDUM

November 3, 2014
(Revised to Correct Code Section References)

TO: ALL VENTURA COUNTY LAW ENFORCEMENT AGENCIES

FROM: GREGORY D. TOTTEN
DISTRICT ATTORNEY

SUBJECT: ARRESTS FOLLOWING PASSAGE OF PROPOSITION 47

As you know, Proposition 47, on the general election ballot of November 4, 2014, is entitled "The Safe Neighborhoods and Schools Act."[1] If approved by the voters, it will take effect the following day. (Cal. Const., art. II, §10.) It will also be retroactive to crimes committed before the election.

This initiative amends several straight felonies and alternative felony/misdemeanors (wobblers) to make them straight misdemeanors unless the defendant has certain priors. Please note and advise your officers that these crimes will now be subject to the laws regarding misdemeanors, e.g., warrantless arrest requires that the misdemeanor be committed in the officer's presence (Penal Code § 836), or be based upon a citizen's arrest (Penal Code § 847). The reduction of some crimes to misdemeanors will also narrow the scope of crimes where search warrants may be obtained. (Penal Code § 1524)

[1] To read the full text of Proposition 47, see the Official Voter Information Guide or visit the California Secretary of State website: http://www.voterguide.sos.ca.gov/en/propositions/47/ .

SPECIFIC STATUTES ADDED OR AMENDED BY PROPOSITION 47

- Penal Code section 459.5 (Shoplifting) This new statute adds the crime of shoplifting. "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 would apply to other businesses as well. Section 459.5 is a straight (six month) misdemeanor, unless the defendant has a Super Strike prior or a 290(c) prior, in which case it is a wobbler.

- Penal Code section 473 is amended to make forgery "where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed" $950, a straight (one year) misdemeanor, unless the defendant has a Super Strike prior or a 290(c) prior, 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 is amended to become a straight (one year) misdemeanor, unless the defendant has a Super Strike prior, 290(c) prior, or three prior convictions of Penal Code sections 470, 475, 476, or 476a, in which case it is a wobbler.

- Penal Code section 490.2 is added to make 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 a 290(c) prior, in which case it is a wobbler. This change will most notably affect theft of firearms of a value of

$950 or less (which is 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 will now 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 a 290(c) prior.

- Penal Code section 496(a) is amended to make receiving, possessing, etc., 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 a 290(c) prior, in which case it is a wobbler.

- Penal Code section 666 is amended. The current 666(a) is deleted. The current 666(b) becomes 666(a) and is amended to the effect that petty theft with one prior theft AND a Super Strike prior, a 290(c) prior, or a 368 prior is a wobbler.

- Health and Safety Code section 11350 is amended. Section 11350(a) becomes a straight (one year) misdemeanor, unless the defendant has a Super Strike prior or a 290(c) prior, in which case it is a wobbler. Health and Safety 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 [GHB]) are added to 11350(a).

- Health and 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 a 290(c) prior, in which case it is a wobbler.

- Health and Safety Code section 11377 is amended. 11377(a) becomes a straight (one year) misdemeanor, unless the defendant has a Super Strike prior or a 290(c) prior, 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. 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. If so, the court must resentence the defendant unless "a new sentence would result in an unreasonable risk of danger to public safety." "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)]."

Subdivisions (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 the court that sentenced them "to have their felony conviction or convictions designated as misdemeanors." The same criteria as above are to be applied to these applications. "Unless requested by the applicant, no hearing is necessary to grant or deny an application. . . ."

The provision to retain felony convictions for persons who pose an unreasonable risk to public safety applies only to defendants who have previously been sentenced. A public safety risk does not allow elevating a new or pending crime to a felony.

PRIOR CONVICTIONS

The prior convictions which allow the new misdemeanors to be felonies are referred to as "Super Strikes," Penal Code section 290(c) priors, and Penal Code section 368 (elder abuse) priors. Super Strikes and 290(c) priors apply to all of the statutes added or amended by this initiative. Section 368 priors apply only to repeat petty theft convictions

under Penal Code section 666. Forgery priors are also applicable to forgery counts. These priors make these otherwise straight misdemeanors into wobblers.

"Super Strikes" are the crimes listed in Penal Code section 667(e)(2)(C)(iv):

> (I) A "sexually violent offense" as defined in subdivision (b) of section 6600 of the Welfare and Institutions Code. "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person . . . and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a): a felony violation of sections 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code, or any felony violation of section 207, 290, or 220 of the Penal Code, committed with the intent to commit a violation of section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.
>
> (II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by section 288a of the Penal Code, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by section 286 of the Penal Code, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by section 289 of the Penal Code.
>
> (III) A lewd or lascivious act involving a child under 14 years of age, in violation of section 288 of the Penal Code.
>
> (IV) Any homicide offense, including any attempted homicide offense, defined in Penal Code sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in section 653f of the Penal Code.

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245 of the Penal Code.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418 of the Penal Code.

(VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death.

An Offense Requiring Registration Pursuant to Penal Code section 290(c)

Felony charging is limited to those with convictions for which section 290(c) *mandates* sex offender registration. It does not appear to apply to other sections that vest courts with *discretionary* authority to impose sex offender registration (e.g., Penal Code § 290.006).

Elder Abuse Priors

A prior conviction for elder abuse under Penal Code section 368(d) or (e) applies to repeat petty theft convictions under Penal Code section 666.

GDT:jd