



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
October 24, 2014	For your information
To	Deadline
Presiding Judges of the Superior Courts Executive Officers of the Superior Courts	N/A
From	Contacts
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Subject	
Proposition 47: The Safe Neighborhoods and Schools Act	

On November 4, 2014, the people of the state of California will vote on Proposition 47, “The Safe Neighborhoods and Schools Act” (Proposition 47).¹ If enacted, Proposition 47 would become effective on November 5, 2014,² and would have immediate and considerable implications for criminal courts. In short, the proposition would reclassify certain theft and drug

¹ The complete text of Proposition 47 is attached. Additional information about Proposition 47 may be found on the Secretary of State’s website at <http://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm>.

² See California Constitution, Article 2, Section 10(a): “An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”

possession offenses as misdemeanors and authorize persons who would have been eligible for the new misdemeanor provisions to petition courts for resentencing and to apply for reductions of felony convictions to misdemeanors.

The purpose of this memorandum is to provide an overview of the proposition and identify the most salient implications for criminal court proceedings. This memorandum is intended for informational purposes only and is not intended to advocate for or against Proposition 47.

Overview

Proposition 47 would add and amend various code sections to accomplish three broad changes to felony sentencing laws. First, the proposition would reclassify certain theft and drug possession offenses from felonies to misdemeanors. Notably, the new misdemeanor provisions would *not* be available to persons with one or more prior convictions for offenses specified under Penal Code section 667(e)(2)(C)(iv)³ or for a sex offense that requires registration under Penal Code section 290(c).⁴ Instead, those defendants would remain subject to punishment under Penal Code section 1170(h).

Second, the proposition would authorize defendants currently serving sentences for felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions.

³ Penal Code section 667(e)(2)(c)(iv) states in full: “The defendant suffered a prior serious and/or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:
(I) A ‘sexually violent offense’ as defined in subdivision (b) of Section 6600 of the Welfare and Institutions 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, 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, 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.
(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.
(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.
(V) Solicitation to commit murder as defined in Section 653f.
(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.
(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.
(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.”

⁴ Section 290(c) enumerates several sex offenses that *mandate* sex offender registration upon conviction. This disqualifier would appear to be limited to the offenses enumerated in that section, i.e., *not* to include persons required to register under other statutory provisions that vest courts with *discretionary* authority to impose sex offender registration under specified circumstances. (See, e.g., Pen. Code, § 290.006 [Authorizing courts to impose registration for *any* offenses not listed in section 290(c) “if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for the purpose of sexual gratification”].)

Third, the proposition would authorize defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reduce those convictions to misdemeanors.⁵

Each major change is summarized below.

Reclassification of Theft and Drug Possession Offenses

Theft Offenses

Proposition 47 would create new misdemeanors and modify the classification of several felony offenses involving theft as follows:

- ***Shoplifting***. The proposition would add Penal Code section 459a to create a new misdemeanor offense called “shoplifting,” punishable by up to 6 months in county jail. Shoplifting would be 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 does not exceed \$950. Any other entry into a commercial establishment with intent to commit larceny would be burglary. Any act of shoplifting as defined above must be charged as shoplifting. No person charged with shoplifting may also be charged with burglary or theft of the same property.
- ***Forgery***. Under current law, forgery under Penal Code section 473 is a wobbler offense. Proposition 47 would reclassify forgery of specified instruments⁶ involving an amount that does not exceed \$950 as exclusively a misdemeanor. The misdemeanor provision, however, would not be applicable to any person convicted both of forgery and identity theft under Penal Code section 530.5.
- ***Insufficient Funds***. Under current law, a violation of Penal Code section 476a is a wobbler offense, except that the offense is strictly a misdemeanor if the total underlying

⁵ In addition, the proposition would create the “Safe Neighborhood and Schools Fund.” (See Gov. Code, §§ 7599 et seq.) Savings accrued to the state from the implementation of Proposition 47 would be transferred to the fund from the General Fund on a yearly basis for distribution to the State Department of Education, the California Victim Compensation and Government Claims Board, and the Board of State and Community Corrections for specified purposes.

⁶ The instruments would be “a check, bond, bank bill, note, cashier’s check, traveler’s check, or money order.” To qualify as a felony, the proposition appears to require a value over \$950 *per forged instrument* as opposed to a *total* value with multiple instruments combined, as specified, for example, under Penal Code section 476a(b): “If the *total* amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed nine hundred fifty dollars (\$950), the offense is punishable only by imprisonment in the county jail...”].) (Emphasis added.)

amount does not exceed \$450, unless the person was previously convicted of one of several specified theft offenses.⁷ Proposition 47 would increase the total threshold amount for misdemeanors from \$450 to \$950 and increase the number of disqualifying prior convictions from one to “three or more.”

- **Petty Theft.** Proposition 47 would add Penal Code section 490.2 to expressly define petty theft as “obtaining any property by theft where the value of the money, labor, real or personal property taken” does not exceed \$950. Under the proposition, this new definition of petty theft would apply notwithstanding Section 487 “or *any other provision of law* defining grand theft.” (Pen. Code, § 490.2(a).) As such, the new definition of petty theft appears designed to apply *regardless* of how specific categories of property are treated under separate statutes.⁸ This new provision would not be applicable to any theft that may be charged as an infraction “pursuant to any other provision of law.”
- **Receiving Stolen Property.** Under current law, a violation of Penal Code section 496 is a wobbler offense, except that if the value of the property does not exceed \$950, the district attorney or grand jury may specify the offense as exclusively a misdemeanor “in the interests of justice.” Proposition 47 would render *all* violations of section 496 that do not exceed \$950 as strictly misdemeanors, eliminating prosecutorial discretion to charge those offenses as felonies.
- **Petty Theft with a Prior.** For most defendants, Proposition 47 would eliminate the offense of petty theft with a prior under Penal Code section 666 by narrowing the category of persons subject to punishment under that section to *only* include persons required to register under the Sex Offender Registration Act,⁹ persons with prior violent or serious felony convictions under section 667.5(e)(2)(C)(iv), and persons convicted of Penal Code section 368(d) or (e) [specified theft crimes involving elder or dependent adults].

⁷ The disqualifying prior violations are “... Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant’s offense was a violation also of Section 470, 475, or 476 or of this section...” (Pen. Code, § 476a(b).)

⁸ Penal Code section 487(b)(1)(A), for example, characterizes theft of certain farm crops valuing over \$250 as “grand theft.” Under the proposition’s new definition of petty theft, however, such offenses would appear to be misdemeanors if not valued over \$950.

⁹ Unlike other references to sex offender registration throughout Proposition 47 (see footnote 3), this reference appears to include *all* persons required to register, regardless of whether the basis for registration was Penal Code section 290(c) or some other provision under the Sex Offender Registration Act.

Drug Possession Offenses

Proposition 47 would reclassify drug possession offenses under Health and Safety Code sections 11350, 11357(a) [concentrated cannabis], and 11377 as strictly misdemeanors punishable by up to one year in county jail. As with the theft offenses, these new misdemeanor provisions would *not* apply to persons with one or more prior convictions for offenses specified under Penal Code section 667(e)(2)(C)(iv) or for a sex offense that requires registration under Penal Code section 290(c).

Resentencing

Eligibility

Proposition 47 would add Penal Code section 1170.18¹⁰ to authorize persons currently serving sentences for felony convictions that would be misdemeanors under the proposition to petition courts for recalls of sentences and to request resentencing under the new laws (§ 1170.18(a)), except that persons with one or more prior convictions for offenses listed under section 667(e)(2)(C)(iv)¹¹ or for a sex offense that requires registration under section 290(c)¹² are not eligible for resentencing. (§ 1170.18(i).)

Although the drafters of the proposition appear to have contemplated that application of the resentencing provisions would be limited to persons serving prison sentences,¹³ the plain language of the phrase “person currently serving a sentence” appears to apply equally to persons serving terms of imprisonment in county jail under section 1170(h), which may include persons on mandatory supervision. Uncertainties will likely arise about whether other forms of supervision constitute “serving” the sentence for purposes of the resentencing provisions.¹⁴

¹⁰ All further statutory references are to the Penal Code.

¹¹ See footnote 2 for the full text of section 667(e)(2)(C)(iv).

¹² See footnote 3 for discussion of section 290(c).

¹³ See, e.g., section 1170.18(d), which *requires* courts to impose a period of parole upon all persons currently serving sentences who are resentenced under the proposition (unless the court “releases the person from parole”), despite apparent eligibility of felony offenders currently serving non-prison sentences, for example, terms of imprisonment in county jail under section 1170(h).

¹⁴ It is unclear, for example, whether persons on parole and postrelease community supervision will be considered to have completed their sentences or considered “currently serving a sentence” for purposes of eligibility for resentencing (under section 1170.18(a)) or reduction of the conviction to a misdemeanor (under section 1170.18(f)). In addition, although terms of probation are commonly considered “sentences” in the criminal context, probation is statutorily defined as the *suspension* of the imposition or execution of a sentence. (Pen. Code, § 1203(a).)

Petitions

Petitions for resentencing must be filed within three years after the effective date of the new laws “or at a later date upon a showing of good cause.”¹⁵ (§ 1170.18(j).) Petitions must be filed with the trial court that entered the original judgment unless that judge is unavailable, in which case the presiding judge must designate another judge to rule on the petition. (§ 1170.18(a), (l).)¹⁶

Resentencing Considerations

If the court determines that the petitioner is eligible for resentencing, the court must recall the sentence and resentence the petitioner under the new misdemeanor provisions “unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (§ 1170.18(b).)

The phrase “unreasonable risk of danger to public safety” would be defined narrowly as 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).) Notably, the proposition would extend the new definition to all uses of the phrase *throughout* the Penal Code. (§ 1170.18(c).)¹⁷

In determining the risk to public safety, the court may consider:

- 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;
- The petitioner’s disciplinary record and record of rehabilitation while incarcerated; and
- 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.

Persons who are resentenced must be given credit for time served and are subject to a period of parole for one year under section 3000.08 “unless the court, in its discretion, as part of its resentencing order, releases the person from parole.” (§ 1170.18(d).) As noted above, because

¹⁵ The proposition does not provide any guidance regarding what circumstances would constitute “good cause.”

¹⁶ The proposition does not include guidance regarding what constitutes “unavailable.” Note, however, that under the comparable resentencing provisions of Proposition 36 (The Three Strikes Reform Act of 2012), the defendant may waive the right for the resentencing petition to be considered by a particular judge, but the waiver should be obtained before any “judicial decisionmaking.” (*People v. Kaulick* (2013) 215 Cal.App.4th 1279, 1300–1301.)

¹⁷ See section below for implications of this definition on resentencing proceedings under Proposition 36, the Three Strikes Reform Act of 2012.

application of the resentencing provisions appears to extend beyond just to persons in prison, courts would presumably not impose periods of parole in certain instances.

Under no circumstances may resentencing result in the imposition of a term that is longer than the original sentence. (§ 1170.18(e).) A resentencing hearing would be considered a “post-conviction release proceeding” under Article I, Section 28(b)(7) of the California Constitution (Marsy’s Law).¹⁸

Reducing Convictions

Proposition 47 would also authorize persons who have completed their sentences for felony offenses that would have qualified as misdemeanors under the new laws to apply for a reduction of their felony conviction to a misdemeanor. (§ 1170.18(f).) Persons with one or more prior convictions for offenses listed under section 667(e)(2)(C)(iv) or for a sex offense that requires registration under section 290(c) are not eligible for the reductions. (§ 1170.18(i).)

As with the resentencing provisions explained above, applications must be made with the trial court that entered the original judgment unless that judge is unavailable, in which case the presiding judge must designate another judge to rule on the petition. (§ 1170.18(f), (l).) All applications must be filed within three years of the effective date of the new laws “or at a later date upon a showing of good cause.” (§ 1170.18(j).)

If the court determines that the person is eligible for reduction, the court must designate the felony offense as a misdemeanor. (§ 1170.18(g).) Unlike the resentencing provisions under section 1170.18(a), reductions to misdemeanors do *not* hinge on considerations of an “unreasonable risk of danger to public safety.” Presumably, a person denied resentencing while currently serving a sentence may still apply for reduction once the sentence is deemed served.

Unless requested by the applicant, no hearing would be necessary to grant or deny an application. (§ 1170.18(f).)

Any felony conviction that would be resentenced or designated as a misdemeanor “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

¹⁸ Article I, section 28(b)(7) entitles crime victims to “reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the 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.” Section 28(b)(8) additionally entitles victims to “be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.”

conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.” (§ 1170.18(k).)

Implications for Delinquency Proceedings

The extent of the application of Proposition 47 to juvenile offenders is uncertain. The changes included in the proposition related to sentencing for new crimes likely apply equally to adults and minors since the maximum time of confinement for a minor cannot exceed that of an adult offender. (Welf. & Inst. Code, § 726(d).) As to the right of resentencing, the answer is not clear and may be resolved through appellate review. The Judicial Council’s Center for Families Children & Courts will continue to research issues related to adjudication, disposition, and modification of prior court orders and will provide information and resources to the courts if implementation becomes necessary.

Implications for Resentencing Proceedings under Proposition 36

Under Proposition 36, the Three Strikes Reform Act of 2012, certain third strike offenders are eligible to petition for resentencing as a second striker. (§ 1170.126(a).) Assuming the petitioner is eligible, the court must resentence the petitioner “unless the court, in its discretion, determines that resentencing the petitioner would pose an *unreasonable risk of danger to public safety*.” (§ 1170.126(f); emphasis added). This is the same consideration courts would perform during resentencing under Proposition 47, which also prescribes the same set of criteria for consideration. (§ 1170.128(g).)

Unlike Proposition 36, however, Proposition 47 narrowly defines the phrase “unreasonable risk of danger to public safety” as “an unreasonable risk that the petitioner will commit a new violent felony within the meaning of section 667(e)(2)(C)(iv).” As noted above, Proposition 47 would apply this new definition of the phrase “unreasonable risk of danger to public safety” as used *throughout* the Penal Code (§ 1170.18(c)), including the identical provisions under Proposition 36. As such, Proposition 47 may be interpreted to significantly expand the category of petitioners eligible for resentencing under Proposition 36, limiting ineligibility to only those petitioners deemed at risk to commit crimes enumerated under section 667(e)(2)(C)(iv). The implications of the new definition would likely raise uncertainties for all pending and past Proposition 36 petitions.

In addition, some petitioners resented as second strikers under Proposition 36 may now be eligible to petition for resentencing to a misdemeanor under Proposition 47.

Conclusion

As a practical matter, Proposition 47 raises considerable implementation challenges for courts, and the precise legal effect of many of the proposition’s procedural provisions will likely require further clarification by reviewing courts or the adoption of new laws by the Legislature. In the meantime, Criminal Justice Services will collaborate with representatives of the Trial Court

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Presiding Judges and Court Executives Advisory Committees to explore ways to assist courts with implementation efforts. Additional information will be provided as it becomes available.

For questions or comments related to adult criminal cases, please contact Arturo Castro at Arturo.Castro@jud.ca.gov. For questions or comments related to juvenile matters, please contact Audrey Fancy at Audrey.Fancy@jud.ca.gov.

Attachment

The full text of Proposition 47 is attached.

SC/AC/AF/bjw

Attachment

cc: Martin Hoshino, Administrative Director
Curtis Child, Chief Operating Officer
Deborah Brown, Chief Counsel
Diane Nunn, Director, Center for Families, Children, and the Courts

THE SAFE NEIGHBORHOODS AND SCHOOLS ACT

SECTION ONE. Title.

This Act shall be known as “the Safe Neighborhoods and Schools Act.”

SECTION TWO. Findings and Declarations.

The people of the State of California find and declare as follows:

The People enact the Safe Neighborhoods and Schools Act to ensure that prison spending is focused on violent and serious offenses, maximize alternatives for non-serious, nonviolent crime, and invest the savings generated from this Act into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment. This Act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.

SECTION THREE. Purpose and Intent.

In enacting this Act, it is the purpose and intent of the people of the State of California to:

- (1) Ensure that people convicted of murder, rape, and child molestation will not benefit from this Act.
- (2) Create the Safe Neighborhoods and Schools Fund with 25% of the funds to be provided to the Department of Education for crime prevention and support programs in K-12 schools, 10% of the funds for trauma recovery services for crime victims, and 65% of the funds for mental health and substance abuse treatment programs to reduce recidivism of people in the justice system.
- (3) Require misdemeanors instead of felonies for non-serious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.
- (4) Authorize consideration of resentencing for anyone who is currently serving a sentence for any of the offenses listed herein that are now misdemeanors.
- (5) Require a thorough review of criminal history and risk assessment of any individuals before resentencing to ensure that they do not pose a risk to public safety.
- (6) This measure will save significant state corrections dollars on an annual basis.

Preliminary estimates range from \$150 million to \$250 million per year. This measure will increase investments in programs that reduce crime and improve public safety, such as prevention programs in K-12 schools, victim services, and mental health and drug treatment, which will reduce future expenditures for corrections.

SECTION FOUR.

Chapter 33 (commencing with Section 7599) is added to Division 7 of Title 1 of the Government Code, to read:

Chapter 33. Creation of Safe Neighborhoods and Schools Fund

7599. (a) A fund to be known as the “Safe Neighborhoods and Schools Fund” is hereby created within the State Treasury and, notwithstanding Government Code section 13340, is continuously appropriated without regard for fiscal year for carrying out the purposes of this chapter.

(b) For purposes of the calculations required by Section 8 of Article XVI of the California Constitution, funds transferred to the Safe Neighborhoods and Schools Fund shall be considered General Fund revenues which may be appropriated pursuant to Article XIII B.

7599.1. Funding Appropriation

(a) On or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, the Director of Finance shall calculate the savings that accrued to the state from the implementation of this Act during the fiscal year ending June 30, as compared to the fiscal year preceding the enactment of this Act. In making the calculation required by this subdivision, the Director of Finance shall use actual data or best available estimates where actual data is not available. The calculation shall be final and shall not be adjusted for any subsequent changes in the underlying data. The Director of Finance shall certify the results of the calculation to the Controller no later than August 1 of each fiscal year.

(b) Before August 15, 2016, and before August 15 of each fiscal year thereafter, the Controller shall transfer from the General Fund to the Safe Neighborhoods and Schools Fund the total amount calculated pursuant to subdivision (a).

(c) Monies in the Safe Neighborhoods and Schools Fund shall be continuously appropriated for the purposes of this Act. Funds transferred to the Safe Neighborhoods and Schools Fund shall be used exclusively for the purposes of this Act and shall not be subject to appropriation or transfer by the Legislature for any other purpose. The funds in the Safe Neighborhoods and Schools Fund may be used without regard to fiscal year.

7599.2. Distribution of Monies from the Safe Neighborhoods and Schools Fund

(a) By August 15 of each fiscal year beginning in 2016, the Controller shall disburse monies deposited in the Safe Neighborhoods and Schools Fund as follows:

(1) 25 percent to the State Department of Education, to administer a grant program to public agencies aimed at improving outcomes for public school pupils in kindergarten through 12th grade by reducing truancy and/or supporting students who are at-risk of dropping out of school or are victims of crime.

(2) 10 percent to the Victim Compensation and Government Claims Board, to make grants to trauma recovery centers to provide services to victims of crime pursuant to Government Code section 13963.1.

(3) 65 percent to the Board of State and Community Corrections, to administer a grant program to public agencies aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system, with an emphasis on programs that reduce recidivism of people convicted of less serious crimes, such as those covered by this measure, and those who have substance abuse and mental health problems.

(b) For each program set forth in paragraphs (1) through (3) above, the agency responsible for administering the programs shall not spend more than five percent of the total funds it receives from the Safe Neighborhoods and Schools Fund on an annual basis for administrative costs.

(c) Every two years, the Controller shall conduct an audit of the grant programs operated by the agencies specified in paragraphs (1) through (3) to ensure the funds are disbursed and expended solely according to this chapter and shall report his or her findings to the Legislature and the public.

(d) Any costs incurred by the Controller and the Director of Finance in connection with the administration of the Safe Neighborhoods and Schools Fund, including the costs of the calculation required by section 7599.1 and the audit required by subsection (c), as determined by the Director of Finance, shall be deducted from the Safe Neighborhoods and Schools Fund before the funds are disbursed pursuant to subsection (a).

(e) The funding established pursuant to this Act shall be used to expand programs for public school pupils in kindergarten through 12th grade, victims of crime, and mental health and substance abuse treatment and diversion programs for people in the criminal justice system. These funds shall not be used to supplant existing state or local funds utilized for these purposes.

(f) Local agencies shall not be obligated to provide programs or levels of service described in this chapter above the level for which funding has been provided.

SECTION FIVE.

Section 459a is added to the Penal Code, to read:

459a. (a) 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. Shoplifting shall be punished as a misdemeanor, except that a person with 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 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

SECTION SIX.

Section 473 of the Penal Code is hereby amended to read:

473. (a) Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(b) Notwithstanding subdivision (a), any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed nine hundred fifty dollars (\$950), shall be punishable by imprisonment in a county jail for not more than one year, 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. This subdivision shall not be applicable to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5.

SECTION SEVEN.

Section 476a of the Penal Code is hereby amended to read:

476a. (a) Any person who, for himself or herself, as the agent or representative of another, or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depository, a person, a firm, or a corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with the bank or depository, person, firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170.

(b) However, if the total amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed ~~four hundred fifty dollars (\$450)~~ nine hundred fifty dollars (\$950), the offense is punishable only by imprisonment in the county jail for not more than one year, 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. This subdivision shall not be applicable if the defendant has previously been convicted of a three or more violations of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if he has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.

(c) Where the check, draft, or order is protested on the ground of insufficiency of funds or credit, the notice of protest shall be admissible as proof of presentation, nonpayment, and protest and shall be presumptive evidence of knowledge of insufficiency of funds or credit with the bank or depository, person, firm, or corporation.

(d) In any prosecution under this section involving two or more checks, drafts, or orders, it shall constitute prima facie evidence of the identity of the drawer of a check, draft, or order if both of the following occur:

(1) When the payee accepts the check, draft, or order from the drawer, he or she obtains from the drawer the following information: name and residence of the drawer, business or mailing address, either a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. That information may be recorded on the check, draft, or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means.

(2) The person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.

(e) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository, person, firm, or corporation for the payment of a check, draft, or order.

(f) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.

(g) A sheriff's department, police department, or other law enforcement agency may collect a fee from the defendant for investigation, collection, and processing of checks referred to their agency for investigation of alleged violations of this section or Section 476.

(h) The amount of the fee shall not exceed twenty-five dollars (\$25) for each bad check, in addition to the amount of any bank charges incurred by the victim as a result of the alleged offense. If the sheriff's department, police department, or other law enforcement agency collects a fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees the victim may have been assessed. In no event shall reimbursement of the bank charge to the victim pursuant to this section exceed ten dollars (\$10) per check.

SECTION EIGHT.

Section 490.2 is added to the Penal Code, to read:

490.2. (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.

SECTION NINE.

Section 496 of the Penal Code is hereby amended to read:

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, ~~if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may,~~ if the value of the property does not exceed nine hundred fifty dollars (\$950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no 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.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of nine hundred fifty dollars (\$950) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who

buys or receives any property of a value of nine hundred fifty dollars (\$950) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

SECTION TEN.

Section 666 of the Penal Code is hereby amended to read:

~~666. (a) Notwithstanding Section 490, every person who, having been convicted three or more times of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in a county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.~~

~~(b)~~(a) Notwithstanding Section 490, any person described in subdivision (b) paragraph (1) who, having been convicted of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

~~(1)~~(b) This s Subdivision (a) shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in subdivision (e) of Section 667.5 or subdivision (e) of Section 1192.7 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667, or has a conviction pursuant to subdivision (d) or (e) of Section 368.

~~(2)(c)~~ This ~~subdivision~~ section shall not be construed to preclude prosecution or punishment pursuant to subdivisions (b) to (i), inclusive, of Section 667, or Section 1170.12.

SECTION ELEVEN.

Section 11350 of the Health and Safety Code is hereby amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), ~~or (c), (e)~~, or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code 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 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

~~(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

~~(e)(b)~~ Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) ~~or (b)~~, the judge may, in addition to any punishment provided for pursuant to subdivision (a) ~~or (b)~~, assess against that person a fine not to exceed seventy dollars (\$70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

~~(d)(c)~~ Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars (\$1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars (\$2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

SECTION TWELVE.

Section 11357 of the Health and Safety Code is hereby amended to read:

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, ~~or shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code~~ except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code 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 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100).

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in a county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

SECTION THIRTEEN.

Section 11377 of the Health and Safety Code is hereby amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year ~~or pursuant to subdivision (h) of Section 1170 of the Penal Code,~~ except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code 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 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

~~(b)(1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.~~

~~(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.~~

~~(3) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (7) or (8) of subdivision (d) of Section 11055 is guilty of a misdemeanor.~~

~~(4) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (8) of subdivision (f) of Section 11057 is guilty of a misdemeanor.~~

~~(e)(b) In addition to any fine assessed under subdivision (b),~~ The judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SECTION FOURTEEN.

Section 1170.18 is added to the Penal Code, to read:

1170.18. (a) 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.

(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resentedenced to a misdemeanor pursuant to 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, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, 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.

(c) 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 within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.

(d) A person who is resentenced pursuant to subdivision (b) 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. Such person is subject to Section 3000.08 parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county in which the parolee is released, resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

(e) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence.

(f) 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.

(g) If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor.

(h) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (f).

(i) The provisions of this section shall not apply to persons who have 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.

(j) Any petition or application under this section must be filed within three years after the effective date of the Act that added this section or at a later date upon a showing of good cause.

(k) Any felony conviction that is recalled and resentenced under subsection (b) or designated as a misdemeanor under subsection (g) 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.

(l) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(m) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(n) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this Act.

(o) A resentencing hearing ordered under this Act shall constitute a “post-conviction release proceeding” under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s Law).

SECTION FIFTEEN. Amendment.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this Act.

SECTION SIXTEEN. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SECTION SEVENTEEN. Conflicting Initiatives.

(a) This Act changes the penalties associated with certain non-serious, nonviolent crimes. In the event that this measure and another initiative measure or measures relating to the same subject appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void. However, in the event that this measure and another measure or measures containing provisions that eliminate penalties for the possession of concentrated cannabis are approved at the same election, the voters intend such provisions relating to concentrated cannabis in the other measure or measures to prevail, regardless of which measure receives a greater number of affirmative votes. The voters also intend to give

full force and effect to all other applications and provisions of this measure, and such other measure or measures, but only to the extent such other measure or measures are not inconsistent with the provisions of this Act.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SECTION EIGHTEEN. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.