

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