

2014

## Criminal Sentences. Misdemeanor Penalties.

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**Criminal Sentences. Misdemeanor Penalties. Initiative Statute.**

- Requires misdemeanor sentence instead of felony for certain drug possession offenses.
- Requires misdemeanor sentence instead of felony for the following crimes when amount involved is \$950 or less: petty theft, receiving stolen property, and forging/writing bad checks.
- Allows felony sentence for these offenses if person has previous conviction for crimes such as rape, murder, or child molestation or is registered sex offender.
- Requires resentencing for persons serving felony sentences for these offenses unless court finds unreasonable public safety risk.
- Applies savings to mental health and drug treatment programs, K–12 schools, and crime victims.

**Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:**

- Net state criminal justice system savings that could reach the low hundreds of millions of dollars annually. These savings would be spent on school truancy and dropout prevention, mental health and substance abuse treatment, and victim services.
- Net county criminal justice system savings that could reach several hundred million dollars annually.

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**Analysis by the Legislative Analyst**

**Background**

There are three types of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. Existing law classifies some felonies as “violent” or “serious,” or both. Examples of felonies currently defined as both violent and serious include murder, robbery, and rape. Felonies that are not classified as violent or serious include grand theft (not involving a gun) and possession of illegal drugs. A misdemeanor is a less serious crime. Misdemeanors include crimes such as assault and public drunkenness. An infraction is the least serious crime and is usually punished with a fine. For example, possession of less than one ounce of marijuana for personal use is an infraction.

**Felony Sentencing.** In recent years, there has been an average of about 220,000 annual felony convictions in California. Offenders convicted of felonies can be sentenced as follows:

- **State Prison.** Felony offenders who have current or prior convictions for serious, violent, or sex crimes can be sentenced to state prison. Offenders who are released from prison after serving a sentence for a serious or violent crime are supervised in the community by state parole agents. Offenders who are released from prison

after serving a sentence for a crime that is not a serious or violent crime are usually supervised in the community by county probation officers. Offenders who break the rules that they are required to follow while supervised in the community can be sent to county jail or state prison, depending on their criminal history and the seriousness of the violation.

- **County Jail and Community Supervision.** Felony offenders who have no current or prior convictions for serious, violent, or sex offenses are typically sentenced to county jail or the supervision of a county probation officer in the community, or both. In addition, depending on the discretion of the judge and what crime was committed, some offenders who have current or prior convictions for serious, violent, or sex offenses can receive similar sentences. Offenders who break the rules that they are required to follow while supervised in the community can be sent to county jail or state prison, depending on their criminal history and the seriousness of the violation.

**Misdemeanor Sentencing.** Under current law, offenders convicted of misdemeanors may be sentenced to county jail, county community

## Analysis by the Legislative Analyst

Continued

supervision, a fine, or some combination of the three. Offenders on county community supervision for a misdemeanor crime may be placed in jail if they break the rules that they are required to follow while supervised in the community.

In general, offenders convicted of misdemeanor crimes are punished less severely than felony offenders. For example, misdemeanor crimes carry a maximum sentence of up to one year in jail while felony offenders can spend much longer periods in prison or jail. In addition, offenders who are convicted of a misdemeanor are usually supervised in the community for fewer years and may not be supervised as closely by probation officers.

**Wobbler Sentencing.** Under current law, some crimes—such as check forgery and being found in possession of stolen property—can be charged as either a felony or a misdemeanor. These crimes are known as “wobblers.” Courts decide how to charge wobbler crimes based on the details of the crime and the criminal history of the offender.

## Proposal

This measure reduces penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes. The measure also allows certain offenders who have been previously convicted of such crimes to apply for reduced sentences. In addition, the measure requires any state savings that result from the measure be spent to support truancy (unexcused absences) prevention, mental health and substance abuse treatment, and victim services. These changes are described in more detail below.

### Reduction of Existing Penalties

This measure reduces certain nonserious and nonviolent property and drug offenses from wobblers or felonies to misdemeanors. The measure limits these reduced penalties to offenders who have not committed certain severe crimes listed in the measure—including murder and certain sex and gun crimes. Specifically, the measure reduces the penalties for the following crimes:

- **Grand Theft.** Under current law, theft of property worth \$950 or less is often charged as petty theft, which is a misdemeanor or an infraction. However, such crimes can sometimes be charged as grand theft, which is generally a wobbler. For example, a wobbler

charge can occur if the crime involves the theft of certain property (such as cars) or if the offender has previously committed certain theft-related crimes. This measure would limit when theft of property of \$950 or less can be charged as grand theft. Specifically, such crimes would no longer be charged as grand theft solely because of the type of property involved or because the defendant had previously committed certain theft-related crimes.

- **Shoplifting.** Under current law, shoplifting property worth \$950 or less (a type of petty theft) is often a misdemeanor. However, such crimes can also be charged as burglary, which is a wobbler. Under this measure, shoplifting property worth \$950 or less would always be a misdemeanor and could not be charged as burglary.
- **Receiving Stolen Property.** Under current law, individuals found with stolen property may be charged with receiving stolen property, which is a wobbler crime. Under this measure, receiving stolen property worth \$950 or less would always be a misdemeanor.
- **Writing Bad Checks.** Under current law, writing a bad check is generally a misdemeanor. However, if the check is worth more than \$450, or if the offender has previously committed a crime related to forgery, it is a wobbler crime. Under this measure, it would be a misdemeanor to write a bad check unless the check is worth more than \$950 or the offender had previously committed three forgery related crimes, in which case it would remain a wobbler crime.
- **Check Forgery.** Under current law, it is a wobbler crime to forge a check of any amount. Under this measure, forging a check worth \$950 or less would always be a misdemeanor, except that it would remain a wobbler crime if the offender commits identity theft in connection with forging a check.
- **Drug Possession.** Under current law, possession for personal use of most illegal drugs (such as cocaine or heroin) is a misdemeanor, a wobbler, or a felony—depending on the amount and type of drug. Under this measure, such crimes would always be misdemeanors. The measure would not change the penalty for possession of

## Analysis by the Legislative Analyst

Continued

marijuana, which is currently either an infraction or a misdemeanor.

We estimate that about 40,000 offenders annually are convicted of the above crimes and would be affected by the measure. However, this estimate is based on the limited available data and the actual number could be thousands of offenders higher or lower.

***Change in Penalties for These Offenders.*** As the above crimes are nonserious and nonviolent, most offenders are currently being handled at the county level. Under this measure, that would continue to be the case. However, the length of sentences—jail time and/or community supervision—would be less. A relatively small portion—about one-tenth—of offenders of the above crimes are currently sent to state prison (generally, because they had a prior serious or violent conviction). Under this measure, none of these offenders would be sent to state prison. Instead, they would serve lesser sentences at the county level.

### Resentencing of Previously Convicted Offenders

This measure allows offenders currently serving felony sentences for the above crimes to apply to have their felony sentences reduced to misdemeanor sentences. In addition, certain offenders who have already completed a sentence for a felony that the measure changes could apply to the court to have their felony conviction changed to a misdemeanor. However, no offender who has committed a specified severe crime could be resentenced or have their conviction changed. In addition, the measure states that a court is not required to resentence an offender currently serving a felony sentence if the court finds it likely that the offender will commit a specified severe crime. Offenders who are resentenced would be required to be on state parole for one year, unless the judge chooses to remove that requirement.

### Funding for Truancy Prevention, Treatment, and Victim Services

The measure requires that the annual savings to the state from the measure, as estimated by the Governor's administration, be annually transferred from the General Fund into a new state fund, the Safe Neighborhoods and Schools Fund. Under the measure, monies in the fund would be divided as follows:

- 25 percent for grants aimed at reducing truancy and drop-outs among K–12 students in public schools.
- 10 percent for victim services grants.
- 65 percent to support mental health and drug abuse treatment services that are designed to help keep individuals out of prison and jail.

### Fiscal Effects

This measure would have a number of fiscal effects on the state and local governments. The size of these effects would depend on several key factors. In particular, it would depend on the way individuals are currently being sentenced for the felony crimes changed by this measure. Currently, there is limited data available on this, particularly at the county level. The fiscal effects would also depend on how certain provisions in the measure are implemented, including how offenders would be sentenced for crimes changed by the measure. For example, it is uncertain whether such offenders would be sentenced to jail or community supervision and for how long. In addition, the fiscal effects would depend heavily on the number of crimes affected by the measure that are committed in the future. Thus, the fiscal effects of the measure described below are subject to significant uncertainty.

### State Effects of Reduced Penalties

The proposed reduction in penalties would affect state prison, parole, and court costs.

***State Prison and Parole.*** This measure makes two changes that would reduce the state prison population and associated costs. First, changing future crimes from felonies and wobblers to misdemeanors would make fewer offenders eligible for state prison sentences. We estimate that this could result in an ongoing reduction to the state prison population of several thousand inmates within a few years. Second, the resentencing of inmates currently in state prison could result in the release of several thousand inmates, temporarily reducing the state prison population for a few years after the measure becomes law.

In addition, the resentencing of individuals currently serving sentences for felonies that are changed to misdemeanors would temporarily increase the state parole population by a couple thousand parolees over a three-year period. The costs associated with this

**Analysis by the Legislative Analyst**

**Continued**

increase in the parole population would temporarily offset a portion of the above prison savings.

**State Courts.** Under the measure, the courts would experience a one-time increase in costs resulting from the resentencing of offenders and from changing the sentences of those who have already completed their sentences. However, the above costs to the courts would be partly offset by savings in other areas. First, because misdemeanors generally take less court time to process than felonies, the proposed reduction in penalties would reduce the amount of resources needed for such cases. Second, the measure would reduce the amount of time offenders spend on county community supervision, resulting in fewer offenders being supervised at any given time. This would likely reduce the number of court hearings for offenders who break the rules that they are required to follow while supervised in the community. Overall, we estimate that the measure could result in a net increase in court costs for a few years with net annual savings thereafter.

**Summary of State Fiscal Effects.** In total, we estimate that the effects described above could eventually result in net state criminal justice system savings in the low hundreds of millions of dollars annually, primarily from an ongoing reduction in the prison population of several thousand inmates. As noted earlier, any state savings would be deposited in the Safe Neighborhoods and Schools Fund to support various purposes.

**County Effects of Reduced Penalties**

The proposed reduction in penalties would also affect county jail and community supervision operations, as well as those of various other county agencies (such as public defenders and district attorneys' offices).

**County Jail and Community Supervision.** The proposed reduction in penalties would have various effects on the number of individuals in county jails. Most significantly, the measure would reduce the jail population as most offenders whose sentence currently includes a jail term would stay in jail for a shorter time period. In addition, some offenders currently serving sentences in jail for certain felonies could be eligible for release. These reductions would be slightly offset by an increase in the jail population as offenders who would otherwise have been sentenced to state prison would now be placed in jail. On balance, we estimate that the total number of statewide county jail beds

freed up by these changes could reach into the low tens of thousands annually within a few years. We note, however, that this would not necessarily result in a reduction in the county jail population of a similar size. This is because many county jails are currently overcrowded and, therefore, release inmates early. Such jails could use the available jail space created by the measure to reduce such early releases.

We also estimate that county community supervision populations would decline. This is because offenders would likely spend less time under such supervision if they were sentenced for a misdemeanor instead of a felony. Thus, county probation departments could experience a reduction in their caseloads of tens of thousands of offenders within a few years after the measure becomes law.

**Other County Criminal Justice System Effects.** As discussed above, the reduction in penalties would increase workload associated with resentencing in the short run. However, the changes would reduce workload associated with both felony filings and other court hearings (such as for offenders who break the rules of their community supervision) in the long run. As a result, while county district attorneys' and public defenders' offices (who participate in these hearings) and county sheriffs (who provide court security) could experience an increase in workload in the first few years, their workload would be reduced on an ongoing basis in the long run.

**Summary of County Fiscal Effects.** We estimate that the effects described above could result in net criminal justice system savings to the counties of several hundred million dollars annually, primarily from freeing jail capacity.

**Effects of Increased Services Funded by the Measure**

Under the measure, the above savings would be used to provide additional funding for truancy prevention, mental health and drug abuse treatment, and other programs designed to keep offenders out of prison and jail. If such funding increased participation in these programs and made participants less likely to commit future crimes, the measure could result in future additional savings to the state and counties.

Visit <http://cal-access.sos.ca.gov> for details about money contributed in this contest.

## ★ Argument in Favor of Proposition 47 ★

## PROPOSITION 47 IS SUPPORTED BY LAW ENFORCEMENT, CRIME VICTIMS AND TEACHERS.

We in the law enforcement community have come together in support of Proposition 47 because it will:

- Improve public safety.
- Reduce prison spending and government waste.
- Dedicate hundreds of millions of dollars to K–12 schools, crime victim assistance, mental health treatment and drug treatment.

Proposition 47 is sensible. It focuses law enforcement dollars on violent and serious crime while providing new funding for education and crime prevention programs that will make us all safer.

Here's how Proposition 47 works:

- *Prioritizes Serious and Violent Crime:* Stops wasting prison space on petty crimes and focuses law enforcement resources on violent and serious crime by changing low-level nonviolent crimes such as simple drug possession and petty theft from felonies to misdemeanors.
- *Keeps Dangerous Criminals Locked Up:* Authorizes felonies for registered sex offenders and anyone with a prior conviction for rape, murder or child molestation.
- *Saves Hundreds of Millions of Dollars:* Stops wasting money on warehousing people in prisons for nonviolent petty crimes, saving hundreds of millions of taxpayer funds every year.
- *Funds Schools and Crime Prevention:* Dedicates the massive savings to crime prevention strategies in K–12 schools, assistance for victims of crime, and mental health treatment and drug treatment to stop the cycle of crime.

For too long, California's overcrowded prisons have been disproportionately draining taxpayer dollars and law enforcement resources, and incarcerating too many people convicted of low-level, nonviolent offenses.

The objective, nonpartisan Legislative Analyst's Office

carefully studied Proposition 47 and concluded that it could save “hundreds of millions of dollars annually, which would be spent on truancy prevention, mental health and substance abuse treatment, and victim services.”

The state spends more than \$9,000,000,000 per year on the prison system. In the last 30 years California has built 22 new prisons but only one university.

Proposition 47 invests in solutions supported by the best criminal justice science, which will increase safety and make better use of taxpayer dollars.

We are:

- The District Attorney of San Francisco, former Assistant Police Chief for the Los Angeles Police Department, and former Chief of Police for San Francisco.
- The former Chief of Police for the cities of San Diego, San Jose, and Richmond.
- A crime survivor, crime victims' advocate, and widow of a San Leandro police officer killed in the line of duty.

*We support Proposition 47 because it means safer schools and neighborhoods.*

Joining us in our support of Proposition 47 are other law enforcement leaders and crime victims, teachers, rehabilitation experts, business leaders, civil rights organizations, faith leaders, conservatives and liberals, Democrats, Republicans and independents.

Please join us, and VOTE YES ON PROPOSITION 47.

For more information or to ask questions about Proposition 47 we invite you to visit [VoteYes47.com](http://VoteYes47.com).

**George Gascon**, District Attorney  
City and County of San Francisco  
**William Lansdowne**, Former Chief of Police  
San Diego, San Jose, Richmond  
**Dionne Wilson**, Victims' Advocate  
Crime Survivors for Safety & Justice

## ★ Rebuttal to Argument in Favor of Proposition 47 ★

This isn't just a poorly written initiative. It is an invitation for disaster. Prosecutors and those concerned about protecting the innocent from violent sexual abuse, identity theft and other serious crimes overwhelmingly oppose Prop. 47. Some opponents include:

- California Coalition Against Sexual Assault
- California District Attorneys Association
- California Fraternal Order of Police
- California Peace Officers Association
- California Police Chiefs Association
- California Retailers Association
- California State Sheriffs' Association
- Crime Victim Action Alliance
- Crime Victims United of California

*Regardless of what Prop. 47 supporters intend or say, these respected law enforcement and victims' rights groups want you to know these hard, cold facts:*

1. Prop. 47 supporters admit that 10,000 inmates will be eligible for early release. They wrote this measure so that judges will not be able to block the early release of these

- prison inmates, many of whom have prior convictions for serious crimes, such as assault, robbery and home burglary.
  2. It's so poorly drafted that illegal possession of “date-rape” drugs will be reduced to a “slap on the wrist.”
  3. Stealing any handgun valued at less than \$950 will no longer be a felony.
  4. California Retailers Association President Bill Dombrowski says “reducing penalties for theft, receiving stolen property and forgery could cost retailers and consumers millions of dollars.”
  5. There are no “petty” criminals in our prisons any more. First-time, low-level drug offenders are already sent to diversion programs, not prison.
- Protect our communities. Vote NO on Prop. 47.

**Sandra Henriquez**, Executive Director  
California Coalition Against Sexual Assault  
**Adam Christianson**, President  
California State Sheriffs' Association  
**Roger Mayberry**, President  
California Fraternal Order of Police

★ **Argument Against Proposition 47** ★

California law enforcement, business leaders, and crime-victim advocates all urge you to vote NO on Proposition 47.

Proposition 47 is a dangerous and radical package of ill-conceived policies wrapped in a poorly drafted initiative, which will endanger Californians.

The proponents of this dangerous measure have already admitted that Proposition 47 will make 10,000 felons eligible for early release. *According to independent analysis, many of those 10,000 felons have violent criminal histories.*

Here is what Prop. 47's backers aren't telling you:

- *Prop. 47 will require the release of thousands of dangerous inmates.* Felons with prior convictions for armed robbery, kidnapping, carjacking, child abuse, residential burglary, arson, assault with a deadly weapon, and many other serious crimes will be eligible for early release under Proposition 47. These early releases will be virtually mandated by Proposition 47. While Prop. 47's backers say judges will be able to keep dangerous offenders from being released early, this is simply not true. Prop. 47 prevents judges from blocking the early release of prisoners except in very rare cases. For example, even if the judge finds that the inmate poses a risk of committing crimes like kidnapping, robbery, assault, spousal abuse, torture of small animals, carjacking or felonies committed on behalf of a criminal street gang, Proposition 47 requires their release.
- *Prop. 47 would eliminate automatic felony prosecution for stealing a gun.* Under current law, stealing a gun is a felony, period. Prop. 47 would redefine grand theft in such a way that theft of a firearm could only be considered a felony if the value of the gun is greater than \$950. Almost all handguns (which are the most stolen kind of firearm) retail

for well below \$950. People don't steal guns just so they can add to their gun collection. They steal guns to commit another crime. People stealing guns are protected under Proposition 47.

- *Prop. 47 undermines laws against sex-crimes.* Proposition 47 will reduce the penalty for possession of drugs used to facilitate date-rape to a simple misdemeanor. *No matter how many times the suspected sexual predator has been charged with possession of date-rape drugs, it will only be a misdemeanor, and the judge will be forced to sentence them as if it were their very first time in court.*
- *Prop. 47 will burden our criminal justice system.* This measure will overcrowd jails with dangerous felons who should be in state prison and jam California's courts with hearings to provide "Get Out of Prison Free" cards.

California has plenty of laws and programs that allow judges and prosecutors to keep first-time, low-level offenders out of jail if it is appropriate. Prop. 47 would strip judges and prosecutors of that discretion. When a career criminal steals a firearm, or a suspected sexual predator possesses date rape drugs, or a carjacker steals yet another vehicle, there needs to be an option besides a misdemeanor slap on the wrist.

Proposition 47 is bad for public safety. Please vote NO.

**Christopher W. Boyd**, President  
California Police Chiefs Association

**Harriet Salarno**, President  
Crime Victims United

**Gilbert G. Otero**, President  
California District Attorneys Association

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★ **Rebuttal to Argument Against Proposition 47** ★

Don't be fooled by the opposition's deceptive scare tactics:

*Proposition 47 does not require automatic release of anyone.* There is no automatic release. It includes strict protections to protect public safety and make sure rapists, murderers, molesters and the most dangerous criminals cannot benefit.

*Proposition 47 maintains penalties for gun crimes.* Under Prop. 47, possessing a stolen concealed gun remains a felony. Additional felony penalties to prevent felons and gang members from obtaining guns also apply.

*Proposition 47 does not reduce penalties for any sex crime.* Under Prop. 47, using or attempting to use any kind of drug to commit date rape or other felony crimes remains a felony.

We have been on the frontlines fighting crime, as police chiefs of major cities, a top prosecutor, and a victims' advocate working with thousands of victims across California. We support Proposition 47 because it will:

- Improve public safety.
- Reduce prison spending and government waste.
- Dedicate hundreds of millions of dollars to K-12 schools, victims and mental health treatment.

Don't believe the scare tactics. Proposition 47:

- *Keeps Dangerous Criminals Locked Up.* Authorizes felonies for sex offenders and anyone with a prior conviction for rape, murder or child molestation.
- *Prioritizes Serious and Violent Crime.* Stops wasting prison space on petty crimes and focuses resources on violent and serious crime.
- *Provides new funding for education and crime prevention.*

*Proposition 47 is sensible.* That is why it is supported by law enforcement, crime victims, teachers, rehabilitation experts, business leaders, and faith leaders.

**George Gascon**, District Attorney  
City and County of San Francisco

**William Lansdowne**, Former Chief of Police  
San Diego, San Jose, Richmond

**Dionne Wilson**, Victims' Advocate  
Crime Survivors for Safety & Justice