

Proposition 47:
The Safe Neighborhoods and School Act

Initiative Statute

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I. EXECUTIVE SUMMARY

Proposition 47 would (1) reduce a number of non-violent and non-serious property and drug crimes that are currently felonies¹ or wobblers² to misdemeanors, (2) reduce a number of theft-related wobblers to misdemeanors, (3) allow people convicted of felonies addressed by the initiative to petition for resentencing or reclassification of their conviction as a misdemeanor, whether they are currently serving their felony sentence or have already completed it, and lastly, (4) split the cost savings generated by the initiative between trauma recovery services for victims, K-12 schools, and mental health and substance abuse treatment programs.

A “yes” vote on initiative 47 would mean that six offenses would be lowered to mandatory misdemeanors, reducing prison sentences and saving \$150,000 a year which would then go into truancy and prevention programs.³ In addition it would likely release close to 10,000 prisoners who would qualify for shorter sentences.

A “no” vote would mean that those same six offenses would keep their current charging standards, ranging from misdemeanors to felonies.

II. THE LAW

A. Existing Law

Proposition 47 is proposing to change the penalties and classifications for six non-violent property and drug offenses. Some of the offenses are felonies, some misdemeanors, and others are considered wobblers. Proposition 47 would make them all mandatory misdemeanors.⁴

1. *Petty Theft*

Theft of money or property can be charged as either a misdemeanor or a felony based on the circumstances, but is generally a misdemeanor when the value is between \$50 and \$950.⁵ However, it can be charged as a felony based on the circumstances.⁶

¹ Felonies are the most serious offenses. In California they are punishable by death or imprisonment in the California state prison system. Many felony offenses are straight felonies. A straight felony can only be charged and sentenced as a felony, including but not limited to rape and murder. CAL. PENAL CODE § 17.

² A wobbler is a crime that the prosecutor may elect to file as either a California misdemeanor or a felony based on the facts of the case and a person’s criminal history. CAL. PENAL CODE § 17.

³ CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY, NOVEMBER 4, 2014, at 72, available at <http://vig.cdn.sos.ca.gov/2014/general/pdf/complete-vig.pdf#page=74> [“NOVEMBER 2014 VOTER GUIDE”].

⁴ MAC TAYLOR & MICHAEL COHEN, OFFICE OF ATTORNEY GENERAL, FISCAL IMPACT ESTIMATE REPORT (2014), available at <https://oag.ca.gov/system/files/initiatives/pdfs/fiscal-impact-estimate-report%2813-0060%29.pdf?> [“FISCAL IMPACT ESTIMATE REPORT (2014)”].

⁵ CAL. PENAL CODE § 490-490.1.

⁶ FISCAL IMPACT ESTIMATE REPORT (2014), *supra* note 4.

Under current law, the theft of certain property can be considered a felony. In addition, petty theft can be charged as a felony if certain circumstances are met. For example, a defendant may be charged with a felony if they have at least three prior convictions for theft related crimes. A felony may also be found if there is only one prior theft conviction combined with a conviction for a serious, violent, or sex offense.⁷

2. *Shoplifting*

A misdemeanor is usually found for shoplifting when the property is valued at \$950 or less. However, shoplifting may be charged as the more serious crime of felony burglary.⁸ A defendant may be charged with burglary instead of shoplifting, which is a more serious offense.⁹

3. *Receiving Stolen Property*

It is considered a wobbler crime if someone receives stolen property.¹⁰ Being charged with possession of stolen property may be charged as receiving stolen property as well.¹¹

4. *Writing Bad Checks*

A person may be convicted of either a misdemeanor or felony for writing bad checks in two circumstances.¹² The first is when a bad check is written in the amount of more than \$450. The second is when a check is written for less than \$450, but the person writing the check already has convictions on their record for forgery related crimes.¹³

5. *Check Forgery*

Forging a check, no matter for what amount of money, is a crime.¹⁴

6. *Drug Possession*

Possession of most controlled substances is a wobbler.¹⁵ The most notable exception is marijuana, which is not charged as a felony.

B. Proposed Law

Proposition 47 aims to make all six offenses mandatory misdemeanors, but there would be exceptions. Offenders who have committed particular severe crimes such as murder, and

⁷ *Id.*

⁸ *Id.*

⁹ CAL. PENAL CODE § 459.

¹⁰ FISCAL IMPACT ESTIMATE REPORT (2014), *supra* note 4.

¹¹ *Id.*

¹² CAL. PENAL CODE § 476(a).

¹³ FISCAL IMPACT ESTIMATE REPORT (2014), *supra* note 4.

¹⁴ *Id.* § 473 (Deering 2014).

¹⁵ CAL. HEALTH & SAFETY CODE §§ 11350, 11357, 11377.

certain sex and gun felonies, will not be eligible to take advantage of the reduced charges and sentences.¹⁶

1. *Petty Theft*

Under Proposition 47, petty theft would be a mandatory misdemeanor. However, there would be exceptions. Based on the defendant's criminal history, they may still be charged with a felony.¹⁷ Proposition 47 would add section 490.2 to the California Penal Code.¹⁸ The additional section mandates that theft of property where the value does not exceed \$950 would be considered petty theft and would be charged as a misdemeanor. The initiative focuses on the dollar amount rather than the type of property.

Penal Code Section 666 creates a petty theft enhancement so that any person convicted of three or more theft-related crimes¹⁹ and who is subsequently convicted of petty theft can be charged with a felony as opposed to a misdemeanor. The initiative removes this enhancement. Instead of the enhancement, which mandates a felony, a person with three or more prior theft related crimes will be charged with a misdemeanor.

The proposition does make an exception, leaving the original language and effect of the statute in place in certain situations. People who are required to register pursuant to the Sex Offender Registration Act²⁰ or who have a prior violent or serious felony conviction under California Penal Code 667(e)(2)(C)(iv) and who have a prior theft-related conviction remain unaffected by the proposition.

2. *Shoplifting*

Shoplifting property valued at less than \$950 under this initiative would always be considered shoplifting and never considered burglary.²¹ It would become a mandatory misdemeanor.

¹⁶ FISCAL IMPACT ESTIMATE REPORT (2014), *supra* note 4.

¹⁷ NOVEMBER 2014 VOTER GUIDE, *supra* note 3.

¹⁸ *Id.* at 72.

¹⁹ Theft-related crimes are defined as “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.” *California Petty Theft & Shoplifting Laws*, SHOUSE CALIFORNIA LAW GROUP (2014), <http://www.shouselaw.com/petty-theft.html>.

²⁰ A person convicted of any of the following California sex offenses must register under the Sex Offender Registration Act, Penal Code 290: most acts involving California rape under the Penal Code 261 sections and Penal Code 243.4 sexual battery; most acts involving minors, such as Penal Code 288 lewd acts with a minor, Penal Code 272 contributing to the delinquency of a minor, acts relating to Penal Code 311 child pornography, Penal Codes 266h and 266i pimping and pandering with a minor, Penal Codes 269 and 288.5 aggravated and/or continuous sexual assault of a child, and Penal Code 285 incest; forced acts involving Penal Code 288a oral copulation, Penal Code 286 sodomy, and Penal Code 289 acts of penetration with a foreign object; and Penal Code 314 indecent exposure.

²¹ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 71.

Section five of the initiative addresses California Penal Code Section 459. Currently Penal Code Section 459 treats burglary²² of property from any building the same, be it a garage, home, or commercial building. Section five creates section 459.5 of the Penal Code, which redefines entering a commercial establishment where the total value of property taken or intended to be taken is less than \$950 as shoplifting instead of burglary. It further requires that on these facts the person be charged with shoplifting, and may not be charged with burglary or theft of the same property.

Proposition 47 mandates that shoplifting be charged as a misdemeanor unless the person being charged has one or more prior convictions under section 667(e)(2)(C)(iv) of the Penal Code.²³ There are no enhancements for repeat offenses.²⁴

3. *Receiving Stolen Property*

The proposition would change the charge for receiving stolen property valued under \$950 to a mandatory misdemeanor instead of a wobbler.²⁵

Section nine of the initiative amends Penal Code section 496, which addresses buying or receiving stolen property.²⁶ Currently, when a person buys or receives stolen property, anything with a value of less than \$950 is a wobbler. It can be charged as a misdemeanor or a felony, while anything over \$950 must be charged as a felony. The initiative amends section 496 to remove the wobbler so that anything under \$950 must be charged as a misdemeanor unless the person being charged has one or more prior convictions under Penal Code Section 667(e)(2)(C)(iv). There are no enhancements for repeat offenses.

4. *Writing Bad Checks*

This proposal would increase the maximum amount of money that defines a misdemeanor for writing bad checks. It would change from a wobbler to a mandatory misdemeanor for those who write a bad check worth less than \$950.²⁷ However, a defendant could still be charged with a felony if he or she has three or more convictions for certain crimes related to forgery.²⁸

²² At common law, burglary was defined as breaking and entering into another's dwelling at night with the intent to commit a felony. The modern definition is breaking and entering into any building with the intent to commit a felony.

²³ The "Super Strike" offenses in section 667(e)(2)(C)(iv) of the Penal Code are sexually violent offenses, child molestation, homicide or attempted homicide, solicitation to commit murder, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, and any serious or violent felony punishable by life imprisonment for death.

²⁴ The enhancement of a criminal penalty means the increase of punishment, such as by increasing a jail sentence. An enhancement for repeat offenses means the increase of punishment based on the fact that the person has committed the same offense again. Black's Law Dictionary (9th ed. 2009).

²⁵ FISCAL IMPACT ESTIMATE REPORT (2014), *supra* note 4.

²⁶ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 72.

²⁷ FISCAL IMPACT ESTIMATE REPORT (2014), *supra* note 4.

²⁸ *Id.* at 71.

Section seven of the initiative amends section 476(a) of the Penal Code, which currently outlines the sentencing guidelines for a person who, with the intent to defraud, delivers a check for payment knowing that there are not sufficient funds to support the transaction. Currently, using a bad check with a value below \$450 is a misdemeanor, unless the person has a prior conviction for a similar offense.²⁹ The initiative would amend Penal Code section 476(a) so that using a bad check with a value below \$950 would be a misdemeanor, unless a person has three priors for similar offenses.

5. *Check Forgery*

Section six of the initiative amends section 473 of the Penal Code so that “forgery³⁰ would be punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.”³¹

Currently, forgery is a wobbler, but under the initiative’s amendments it would be a straight misdemeanor, so long as the amount being forged was less than \$950.³² There would be one exception. An offender could still be charged with a felony if he or she commits identity theft in connection with forging a check.³³ There are no enhancements for repeat offenses.

6. *Drug Possession*

Possession of a controlled substance would become a mandatory misdemeanor. The initiative does not propose changes to marijuana possession as it is currently charged as a misdemeanor or an infraction depending on the amount possessed.³⁴

Sections 11-13 of the initiative would amend section 11350 of the Health and Safety Code.³⁵ The initiative makes simple drug possession a misdemeanor.³⁶

²⁹ CAL. PENAL CODE § 476(a).

³⁰ When people hear the word “forgery,” they think of faking someone else’s signature or handwriting. But the legal definition of California forgery is much broader than that. The legal definition of forgery is the creation of a new, false document for your own benefit and gain. *California “Forgery” Laws Penal Code 470 PC*, SHOUSE CALIFORNIA LAW GROUP (2014), <http://www.shouselaw.com/forgery.html>.

³¹ Section 1170(h) of the Penal Code would be amended to read: “If the sentence is not recalled, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant’s sentence.”; NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 72–73.

³² THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.

³³ LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 47 CRIMINAL SENTENCES. MISDEMEANOR PENALTIES. INITIATIVE STATUTE., (July 17, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>.

³⁴ *Id.*

³⁵ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 72–73.

Proposition 47 also amends section 11357 of the Health and Safety Code, which is the marijuana counterpart of section 11350 of the Health and Safety Code as discussed above. Additionally, the initiative makes some format changes so that the sections will read with parallel structure should the initiative be passed.

C. Exceptions

Proposition 47 will not apply to “sex offenders or anyone with a prior violent felony conviction for crimes such as rape, murder, and child molestation.”³⁷ Inmates may only be released if they are no longer a threat to public safety.³⁸

D. Retroactive Application

In addition, Proposition 47 is retroactive, which would mean that some convicted felons could be resentenced and others could have their records reclassified if they petition the court.³⁹ An offender currently serving a sentence for one of the crimes that the initiative reclassifies as a misdemeanor may apply to be resentenced by the court. They would have three years to apply for resentencing.⁴⁰

Section 14 of the initiative adds section 1170.18 to the California Penal Code.⁴¹ Section 1170.18 creates a resentencing petition process for persons who are currently serving or have finished serving sentences on any of the charges addressed in the initiative.

Persons currently serving sentences on a conviction addressed by the initiative can petition to have their charge reduced to a misdemeanor and their sentence amended to match the guidelines set by the initiative.⁴² Persons who have completed a sentence on a conviction addressed by the initiative can petition to have their conviction reclassified as a misdemeanor.⁴³

The initiative gives the power to review petitions for resentencing to judges and creates an “unreasonable risk of danger”⁴⁴ standard of review.⁴⁵ People petitioning for resentencing who pose an unreasonable risk of danger to the public should be denied resentencing, while persons who are not a threat should have their resentencing request granted.

³⁶ Drug possession refers to any controlled substance or narcotics that are used without a written prescription. *Id.*

³⁷ *Id.* at 70.

³⁸ *Yes on 47 Fact Sheet*, CAL. FOR SAFE NEIGHBORHOODS AND SCHOOLS (July 1, 2014), available at <http://www.safetyandschools.com>.

³⁹ Cal. Proposition 47 at § 14(j) (2014).

⁴⁰ *Id.*

⁴¹ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 73.

⁴² Cal. Proposition 47 at § 14 (f) (2014).

⁴³ *Id.*

⁴⁴ See drafting issue section of this paper for more information.

⁴⁵ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 73.

“The court does not have to grant the resentencing if it believes that the applicant will likely commit one of the severe crimes specified in the measure. This option would not be available to those who have committed severe crimes, which include murder and certain sex and gun felonies. Those that are resentenced would be subject to a year of supervision on state parole.”⁴⁶

E. Other Changes Proposed by Proposition 47

Proposition 47 has been titled “The Safe Neighborhoods and Schools Act,”⁴⁷ selected to highlight the way the initiative mandates that the money saved through implementation of the initiative will be put towards K-12 schools, as well as prevention and treatment programs.⁴⁸ The initiative has three distinct and identifiable goals. First, it aims to ensure that prison spending is focused on violent and serious offenses. Second, the initiative aims to maximize alternatives⁴⁹ for non-serious and nonviolent crimes. Lastly, a goal of the initiative is to invest money in prevention and support programs in K-12 schools, invest in victim services programs, and invest in mental health and drug treatment programs.⁵⁰

Though not specifically listed as a goal of the statute, the Findings and Declaration Clause does ensure that sentencing requirements for dangerous crimes like rape, murder, and child molestation are not changed.⁵¹

F. Funding Appropriation

Proposition 47 creates the Safe Neighborhoods and Schools Fund. The initiative directs the Director Department of Finance to calculate the amount of money saved by Proposition 47.⁵² That sum would then be moved from the General Fund to the Safe Neighborhoods and Schools Fund where it would be apportioned out to three different entities for grant programs.

Ten percent of the fund would be given to the Victims Compensation and Government Claims Board⁵³ to be spent on trauma recovery centers that provide services to victims of crime.

⁴⁶ LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 47 CRIMINAL SENTENCES. MISDEMEANOR PENALTIES. INITIATIVE STATUTE., (July 17, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>.

⁴⁷ THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.

⁴⁸ See Section 4 of The Safe Neighborhoods and Schools Act for more information.

⁴⁹ Probation, fines, community service, work training, education courses and rehabilitation classes are some examples of alternatives to prison sentences.

⁵⁰ See Section 4 of The Safe Neighborhoods and Schools Act for more information.

⁵¹ *Id.*

⁵² Estimates show that enacting the initiative should save \$150-\$250 million annually, after adjustment period. LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 47 CRIMINAL SENTENCES. MISDEMEANOR PENALTIES. INITIATIVE STATUTE., (July 17, 2014), available at <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>.

⁵³ The Victims Compensation and Government Claims board runs the California Victim Compensation Program (CalVCP) which provides compensation for victims of violent crime. CalVCP provides eligible victims with reimbursement for many crime-related expenses. CalVCP funding comes from restitution

Twenty-five percent of the funds would go to the State Department of Education. Those funds would be used by public agencies that work to decrease truancy and improve graduation rates of students in K-12 schools by supporting students who are at risk of dropping out and/or students who are victims of crime. The remaining 65 percent would go to the Board of State and Community Corrections⁵⁴ to support mental health treatment and substance abuse treatment programs.

Proposition 47 also requires an audit of the grant programs that are established as a result of the initiative every two years.

Any costs that the Department of Finance may incur calculating the funds saved by the initiative, or running audits of the programs, would be taken out of the Safe Neighborhoods and Schools fund prior to it being distributed.⁵⁵ Finally, the initiative mandates that no more than five percent of the funds awarded to any entity may be used for administrative costs.⁵⁶

G. Standard Sections in an Initiative

Sections 15-18 in the Proposition are standard for most propositions.⁵⁷ They allow the legislature to amend the measure so long as the amendments remain consistent with the purpose of the initiative.⁵⁸ If one section is found to be invalid, the rest of the proposition would still be given effect. These sections also direct courts to look at the initiative in a broad way. Should a provision be challenged in court, judges are instructed to read and interpret the initiative broadly, in a way that makes the changes actually create the intended effect.

III. UNINTENDED CONSEQUENCES AND DRAFTING ISSUES

A. Sends new people to prison, while goal is to reduce prison population

Proposition 47 is written in a way that creates a small subset of people who could go to prison on misdemeanor convictions where they would not go to prison under the current law. This is probably a drafting error or oversight given that a likely goal of the initiative is to reduce prison populations.

Under current law, petty theft with no prior theft related convictions is a misdemeanor.⁵⁹ It is only when you have three or more theft related convictions that petty theft becomes a

paid by criminal offenders through fines, orders, penalty assessments and federal matching funds. *See generally About the Board*, CAL. VICTIM COMPENSATION PROGRAM, <http://www.vcgc.ca.gov/board/> (last visited Oct. 26, 2014).

⁵⁴ *See generally Home*, BOARD OF ST. & COMMUNITY CORRECTIONS CAL., <http://www.bscc.ca.gov/> (last visited Oct. 26, 2014).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ CAL. PENAL CODE § 476(a).

felony.⁶⁰ The initiative will increase the value limit in the definition of petty theft to \$950 so more thefts will be classified as petty thefts. Additionally the initiative gets rid of the theft-related convictions consideration, so no matter how many theft-related priors a person has, their new theft will still be a misdemeanor. These actions function to make penalties for theft less severe and to reduce prison time on theft convictions.

However, the initiative only makes these changes for people without a “super strike”⁶¹ prior under Penal Code 667(e)(2)(C)(iv). For anyone with a “super strike” prior the petty theft will be a wobbler, meaning it could be charged as a felony. Then under section 1170(h)(3), a person who has a “super strike” must serve their felony sentence in prison. This has the effect of automatically sending anyone with a “super strike” prior to prison, for a misdemeanor crime.

For example, imagine a person has only one prior for murder. That person is convicted of shoplifting \$100 in clothes from Target. Under the current law, this would be petty theft without any theft related prior and it would be charged as a misdemeanor. Under Proposition 47, because the prior is a “super strike,” the petty theft can be charged as a felony for which the person will have to serve mandatory time in prison. Thus, the initiative would have sent someone to prison who would not have had to go otherwise, counter to its objectives.

Proposition 47 has the same effect for certain controlled substance crimes. Currently, possession of controlled substances is a misdemeanor, regardless of a prior conviction. The initiative, however, amends the current law to make possession of controlled substances a wobbler if the person has a “super strike” prior conviction. Again, since section 1170(h)(3) requires that people with “super strike” priors have to serve their felony sentence in prison, this will have the effect of sending a new group of people to prison.

B. Excludes some people from resentencing

The initiative includes provisions on resentencing that will allow people who are currently serving prison sentences on convictions of crimes affected by the initiative to petition the court to change their felony convictions to misdemeanor convictions.⁶² This will have the effect of reducing their prison sentence.

Since the language that accomplishes this only applies to a person who is, “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,”⁶³ it excludes anyone who is on probation because a grant of probation is not a sentence.⁶⁴ This is most likely a drafting error or oversight

⁶⁰ Russell Cooper & Erica Scott, *Proposition 36: Three Strikes Law, Repeat Felony, Offenders, Penalties*, CAL. INIT. REV., (Fall 2012), available at <http://www.mcgeorge.edu/Documents/Publications/californiaInitiativeReviewNov2012.pdf>.

⁶¹ *Supra* note 23

⁶² THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.

⁶³ *Id.*

⁶⁴ *Id.*

because a person who received a grant of probation instead of a felony sentence on the same crime is likely less of a threat than someone who received a prison sentence.

That said, if this issue was brought into court by a felon on probation, it is likely that a judge would construe the initiative broadly pursuant to section 18, which says that the “act shall be liberally construed to effectuate its purpose.”⁶⁵ Interpreting the initiative broadly may allow for a reclassification of the crime so long as the person in question meets the criteria but it remains unstated in any clear way by the text of the statute.⁶⁶

C. Broad use of the word “code”

The initiative, in its resentencing guidelines, says, “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.”⁶⁷ The issue here is that it says “as used throughout this Code.” Instead of applying the definition of unreasonable risk to just this new section, the initiative applies that language to the entire California Penal Code.

The language, “unreasonable risk of danger to public safety” is used in the code in section 1170.126 of the Penal Code, which sets the standards for reviewing resentencing petitions under Proposition 36⁶⁸ (another California initiative passed in 2012). This means that the standard for review of Proposition 36 petitions for resentencing and the standard for reviewing petitions for resentencing under this initiative would become the same.⁶⁹

This is likely a drafting error or oversight. Because Proposition 36 addresses the resentencing of “super strikes” whereas this initiative addresses the resentencing of nonviolent, non-serious felonies specifically excluding “Super Strike” crimes had no intention of making changes to Prop 36, it is likely that the drafters did not intent to make changes to the Proposition 36 standard.

It is unknown at this time how this drafting error might be addressed. A likely solution may be legislation to amend the language and differentiate the standards for reviewing petitions for resentencing between Proposition 36 and Proposition 47. Another may be asking a court to interpret the statute in a way that makes these different pursuant to Section 18 of Proposition 47.⁷⁰

⁶⁵ *Id.* at 15

⁶⁶ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 74.

⁶⁷ THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.

⁶⁸ Proposition 36 modifies elements of California's "Three Strikes" Law, which was approved by the state's voters in 1994. In 2004, voters rejected Proposition 66, which like the 2012 measure was an attempt to change some aspects of the original "Three Strikes" Law. *California Proposition 36, Changes in the “Three Strikes” Law (2012)*, BALLOTEDIA [http://ballotpedia.org/California_Proposition_36_Changes_in_the_Three_Strikes_Law_\(2012\)](http://ballotpedia.org/California_Proposition_36_Changes_in_the_Three_Strikes_Law_(2012)) (last visted Sept. 10, 2014).

⁶⁹ Cal. Penal Code § 1170.126; NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 74.

⁷⁰ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 74.

IV. CONSTITUTIONAL ANALYSIS

An initiative may be challenged on constitutional grounds. Some potential problems with Proposition 47 would be the effect it may have on state power, following the single-subject rule, and the effect on search and seizure practices. Specifically, the potential for police to make a warrantless arrest for crimes they did not witness and searches incident to arrest.

A. State Power

The Supreme Court interprets the United States Constitution as providing the federal government with enumerated powers.⁷¹ This means that the power has to be spelled out and explicitly given to the federal government. If it is not directly spelled out in the Constitution, then the power resides with the states.⁷² This interpretation is codified in the Tenth Amendment, which reads, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, and to the people.”⁷³

As such, the states retain what is referred to as “police power,” which means that the states have the power to make laws regarding the health, safety, and welfare of their citizens. This initiative is well within the police power of the states and so, should not pose a constitutional conflict.⁷⁴ The Supreme Court expressly explained that “Selecting the sentencing rationale is generally a policy choice to be made by state legislatures, not federal courts.”⁷⁵

B. Single-Subject Rule

Initiatives are allowed on the ballot so long as they follow certain rules and requirements. One of those requirements is that an initiative may only cover a single subject.⁷⁶ All of its parts must be reasonably germane to each other, and to the general purpose or object of the initiative.⁷⁷

Proposition 47 covers six different sections of the penal code, but each section that is affected by the initiative shares the common thread of addressing sentencing of a nonviolent crime. As such, the initiative may be read to cover one single subject, comprehensive criminal justice reform. Furthermore, the California Supreme Court has allowed comprehensive criminal justice initiatives in the past. These initiatives have addressed comprehensive reform of gang sentencing and juvenile sentencing.⁷⁸

Similarly, Proposition 47 addresses the single subject of reforming sentencing for some minor offenses so it would meet the single subject rule standard.

⁷¹ *Marbury v. Madison*, 5 U.S. 137 (1803).

⁷² *Id.*

⁷³ U.S. CONST. amend. X.

⁷⁴ *Barbier v. Connolly*, 113 U.S. 27 (1884).

⁷⁵ *Ewing v. California*, 538 U.S. 11, 25 (2003).

⁷⁶ CAL. CONST. art. II, § 8(d).

⁷⁷ *Raven v. Deukmejian*, 52 Cal. 3d 336 (1990); *Manduley v. Superior Court*, 27 Cal. 4th 537 (2002).

⁷⁸ *Id.*

C. Effect on Search and Seizure Practices

1. Warrantless Arrest Under the Fourth Amendment

While there is likely no constitutional conflict with the initiative, there might be constitutional implications in terms of lawful/constitutional searches and seizures. The Fourth Amendment protects citizens from unreasonable search and seizures.⁷⁹ An arrest of a person is considered a seizure under the Fourth Amendment. Every time someone is arrested, in any state, the conduct of that arrest must meet constitutional standards – it must be reasonable.⁸⁰

The Supreme Court has considered and ruled on a series of cases that have created rules that govern when an arrest is reasonable versus when it is unreasonable.⁸¹ In general, an arrest is always reasonable if the arresting officer has obtained an arrest warrant. If the officer does not have an arrest warrant then the officer may only arrest in certain situations.

An officer may make a warrantless arrest if the officer has probable cause⁸² to believe that the person has committed a felony and the arrest occurs in public. The officer does not have to witness the crime being committed.⁸³ If the officer wishes to make a warrantless arrest of an individual they believe has committed a misdemeanor, they may not do so unless the officer has actually witnessed the misdemeanor occur and makes the arrest at that same time.⁸⁴

Since the initiative changes certain felonies to misdemeanors, there are constitutional implications for when officers will be able to perform warrantless arrests. While Proposition 47 itself, would not change U.S. criminal procedure, the standard for seizure is broader when the crime is a felony versus when the crime is a misdemeanor.⁸⁵ As such, recategorizing crimes from felonies to misdemeanors has an effect on U.S. criminal procedure even though one is explicitly stated in the proposition's language. For example, under the current law an officer can arrest a person without a warrant for theft or drug possession.⁸⁶ Under the initiative the officer would have to actually see the person stealing or see the person holding drugs to make a warrantless arrest because those crimes will be recategorized as misdemeanors.⁸⁷

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⁷⁹ U.S. CONST. amend. IV.

⁸⁰ The Fourth Amendment only prohibits unreasonable searches and seizures, so as long as the seizure is reasonable there is no constitutional violation.

⁸¹ *Whren v. United States*, 517 U.S. 806 (1996); *Atwater v. City of Lago Vista* 532 U.S. 318 (2001).

⁸² An officer has probable cause if, “whether considering the totality of the circumstances there is a fair probability of finding evidence of a crime at a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

⁸³ *Whren v. United States*, 517 U.S. 806 (1996).

⁸⁴ *Atwater v. City of Lago Vista* 532 U.S. 318 (2001).

⁸⁵ *Whren v. United States*, 517 U.S. 806 (1996).

⁸⁶ *Id.*

⁸⁷ *Atwater v. City of Lago Vista* 532 US 318 (2001).

2. Search Incident to Arrest Under the Fourth Amendment

Additionally, the Supreme Court has ruled that an officer can search a person “incident to arrest.”⁸⁸ This means that if a person is arrested, the officer can search that person without a search warrant simply because they are arrested. In the Supreme Court’s view, the fact that the person is arrested gives the Officer probable cause, which makes the search reasonable, and therefore not a violation of the Fourth Amendment.⁸⁹

With more misdemeanors there will be less warrantless arrests, which in turn will mean fewer searches incident to arrest. For example, under the current law, in a situation where someone is reported for stealing a gun, an officer can arrest an individual who fits the description of the thief and is near the scene of the theft because the officer has probable cause to believe that person has committed a felony and the arrest is occurring in public.⁹⁰ Once arrested, the officer can search the person. During the search the officer may find the gun, or drugs, or other illegal items. Everything recovered would be the product of a lawful and constitutional search and could be used as evidence in court.⁹¹

The way Proposition 47 would work with the Supreme Court’s search and seizure jurisprudence could mean that the reported gun theft, in the example above, is a misdemeanor, so the officer could only make the warrantless arrest if he actually saw the person steal it, as opposed to it being reported. Since there could be no lawful arrest there could also be no search. The initiative categorizes the crime as a misdemeanor, so now the officer would need to request an arrest warrant, or search warrant, or both, depending on the situation – and a judge has to review and grant that request in order for the action to be constitutional.

V. PUBLIC POLICY CONSIDERATIONS

A. Supporting Arguments

1. Consistent With Other Initiatives Recently Passed by California Voters

In 2000, California voters passed the Substance Abuse and Crime Prevention Act through the initiative process.⁹² The act permanently changed state law to allow qualifying defendants convicted of non-violent drug possession offenses to receive a probationary sentence in lieu of going to prison. As a condition of probation, defendants are required to participate in and complete a licensed and/or certified community drug treatment program⁹³. If the defendant fails

⁸⁸ *Arizona v. Gant*, 556 U.S. 332, 343 (2009).

⁸⁹ *Id.* at 346.

⁹⁰ *Whren v. United States*, 517 U.S. 806 (1996).

⁹¹ *Arizona v. Gant*, 556 U.S. 332, 346 (2009).

⁹² *Proposition 36 Official Title: Drugs. Probation and Treatment Program*, CAL. VOTER FOUND., <http://www.calvoter.org/voter/elections/archive/2000/general/propositions/36.html> (last visited Oct. 4, 2014).

⁹³ *California Proposition 36, Probation and Treatment for Related Offences (2000)*, BALLOTEDIA, http://ballotpedia.org/California_Proposition_36,_Probation_and_Treatment_for_Drug-Related_Offenses_%282000%29 (last visited Sept. 10, 2014).

to complete this program or violates any other term or condition of their probation, then probation can be revoked and the defendant may be required to serve an additional sentence which may include going to prison.⁹⁴ The focus of the act is putting rehabilitation over prison.

The current initiative shares the same goals; it focuses on decriminalizing drug possession and sentencing people found in possession of illegal substances in a way that promotes rehabilitation. In addition, it funnels money to mental health and substance abuse rehabilitation programs.⁹⁵

In the last cycle of propositions in 2012, the voters of California also passed Proposition 36, which was an initiative to amend the three strikes law.⁹⁶ This was separate and different from the Proposition 36 passed in 2000.

The initiative, which passed with almost 70 percent of the vote, focused on revising the three strikes law to impose life sentences only when the new felony conviction is serious or violent. It also authorized re-sentencing for offenders currently serving life sentences if their third strike was not serious or violent and the judge determined that the re-sentencing would not pose an unreasonable risk to public safety.⁹⁷

In this way, this initiative is complementary to Proposition 36 of 2012. Both focus on reducing prison sentences and have resentencing provisions. Additionally, both are focused on maintaining sentences for felons with convictions for murder, rape, or child molestation, ensuring that it is only nonviolent and non-serious crimes that are affected.

2. *Will Help California Meet the United States Supreme Court Ruling to Reduce Prison Populations*

In 2009, a three-judge panel issued an injunction mandating that California reduce its prison population.⁹⁸ The panel ruled that the prisons were operating with unconstitutionally poor care for mental and physically ill inmates.⁹⁹ At the time of the ruling, the problem was not new. The original case actually grew out of a series of lawsuits on the same subject, prison conditions, dating back twenty years.¹⁰⁰

⁹⁴ *Id.*

⁹⁵ THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.

⁹⁶ Russell Cooper & Erica Scott, *Proposition 36: Three Strikes Law, Repeat Felony, Offenders, Penalties*, CAL. INT. REV., (Fall 2012), available at <http://www.mcgeorge.edu/Documents/Publications/californiaInitiativeReviewNov2012.pdf>.

⁹⁷ *California Proposition 36, Probation and Treatment for Related Offences (2000)*, BALLOTPEdia, http://ballotpedia.org/California_Proposition_36_Probation_and_Treatment_for_Drug-Related_Offenses_%282000%29 (last visited Sept. 10, 2014).

⁹⁸ *Brown v. Plata*, 131 S.Ct. 1910 (2011).

⁹⁹ *Id.*

¹⁰⁰ Some of the conditions overcrowding at more than 144%, suicidal inmates being held in telephone-booth sized cages with no toilets, inmates living in makeshift housing in gymnasiums and other common areas, inmates sleeping on bunk beds stacked three people high, prison doctors conducting examination in shower or bathroom stalls, lack of running water, and medical examinations in full view of other inmates.

The case was appealed all the way to the Supreme Court. In 2011, in a 5-4 decision, the Supreme Court declared “A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.”^{101,102}

Since then, California has worked to reduce its prison population by moving inmates from prison to county jails, or putting them in private for profit prisons in other states.¹⁰³ These efforts have helped to meet the Supreme Court’s mandate but have not fully accomplished it.¹⁰⁴ Just this year, another three-judge panel reviewed California’s efforts and agreed to extend the deadline for meeting the Supreme Court’s mandate to 2016.¹⁰⁵

Proposition 47 will allow people currently serving sentences in prisons to apply for resentencing making their prison sentence shorter.¹⁰⁶ Additionally, it changes the way we sentence nonviolent, non-serious crimes so that people who are committing thefts or are charged with drug possession are not taking up beds in our prison system, where the most dangerous of criminals belong.

3. Will Save Taxpayers Money

California is currently spending about \$235 million dollars to house prisoners out of state.¹⁰⁷ The initiative will reduce the amount of people in prison by approximately 10,000 within the first three years,¹⁰⁸ meaning the state will have less need to house prisoners in for profit out of state prisons.

The Legislative Analyst’s Office (LAO) has reviewed the state’s plan to meet the Supreme Court’s mandate, which includes contracting for out of state prison beds, and has found

See generally Heather MacDonald, *California’s Prison-Litigation Nightmare*, CITY JOURNAL (Autumn 2013), http://www.city-journal.org/2013/23_4_california-prisons.html.

¹⁰¹ *Brown v. Plata* 131 S.Ct. 1910, 1928 (2011).

¹⁰² Justice Anthony Kennedy wrote the opinion for the majority while Justice Antonin Scalia wrote the dissent. Both opinions used passionate language, revealing a sharp divide between the Justices. Scalia called the ruling “perhaps the most radical injunction issued by a court in our nation’s history” and argued that it would lead to the release of a “staggering number “of felons. *Brown v. Plata* 131 S.Ct. 1910, 1950 (2011).

¹⁰³ *Capacity Challenges in California’s Jails*, PUB. POL’Y INST. CAL. (Sept. 2012), http://www.ppic.org/main/publication_quick.asp?i=1034.

¹⁰⁴ Associated Press, *California Gets Two More Years to Cut Prison Numbers*, USA TODAY, Feb. 10, 2014, <http://www.usatoday.com/story/news/nation/2014/02/10/california-prison-numbers/5369333/>.

¹⁰⁵ THE 2014–2015 BUDGET: ADMINISTRATION’S RESPONSE TO PRISON OVERCROWDING ORDER, LEGISLATIVE ANALYST’S OFFICE (February 28, 2014), *available at* <http://www.lao.ca.gov/reports/2014/budget/three-judge-panel/three-judge-panel-022814.aspx>.

¹⁰⁶ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 73.

¹⁰⁷ *Id.*

¹⁰⁸ *California Proposition 47, Safe Neighborhoods and Schools Act*, BALLOTPEdia, [http://ballotpedia.org/California_Proposition_47_Reduced_Penalties_for_Some_Crimes_Initiative_\(2014\)](http://ballotpedia.org/California_Proposition_47_Reduced_Penalties_for_Some_Crimes_Initiative_(2014)) (last visited Oct. 5, 2014).

that it will likely “achieve compliance in the short run, but is costly and less certain in the long run.”¹⁰⁹ This initiative is a step towards actually addressing the issue, in a long term and sustainable way, as oppose to paying to move the issue out of state.

The initiative is in line with the LAO’s suggestion to increase rehabilitation programs, to incentivize the state and counties to reduce prison population, and to focus on long-term compliance. In fact, the LAO recommends reclassifying certain misdemeanors, felonies, and wobblers as misdemeanors, which is exactly what the initiative does.¹¹⁰

In addition, lawsuits over prison conditions cost the taxpayers money. The California Department for Corrections and Rehabilitation’s (CDCR) legal team is funded by tax dollars. When prisoners challenge prison conditions and bring lawsuits against CDCR they have a right to counsel.¹¹¹ In most cases private counsel represent them and are paid for their work by tax dollars, not by the prisoners themselves. In practice, taxpayers are funding both sides of the lawsuit.

In the case of the redistricting, the expense is astronomical.¹¹² The law suits spread out over twenty years, culminating in a Supreme Court ruling in 2011. Even after the ruling, legal bills did not cease because each order was preceded by a furious exchange of motions and was followed by more motions over compliance. From 1997 to 2009 alone, excluding payments to experts, prison-overcrowding litigation cost taxpayers \$38 million.¹¹³

The initiative puts fewer people in prison, meaning the state is more likely to stay compliant with the injunction. Therefore the state can expect to see a reduction in prison condition based lawsuits all together.

4. *Dedicates Hundreds of Millions of Dollars to Good Causes*

The objective and nonpartisan LAO studied the initiative and concluded that it would save “hundreds of millions of dollars annually.”¹¹⁴ The money that is saved by the initiative will be spent in three areas.

¹⁰⁹ THE 2014–2015 BUDGET: ADMINISTRATION’S RESPONSE TO PRISON OVERCROWDING ORDER, LEGISLATIVE ANALYST’S OFFICE (February 28, 2014), *available at* <http://www.lao.ca.gov/reports/2014/budget/three-judge-panel/three-judge-panel-022814.aspx>.

¹¹⁰ *Id.*

¹¹¹ Don Thompson, *California Inmate Lawsuits Cost State \$200 Million*, HUFFINGTON POST (Feb. 11, 2013), http://www.huffingtonpost.com/2013/02/11/california-inmate-lawsuits_n_2661250.html.

¹¹² In a review of California’s prison litigation history, investigative journalist, Heather Mac Donald wrote for the City Journal, “California has long been the epicenter of prison litigation, but for cataclysmic force and sheer staying power, nothing beats two massive and now inextricably intertwined class-action lawsuits.” Heather MacDonald, *California’s Prison-Litigation Nightmare*, CITY JOURNAL (Autumn 2013), http://www.city-journal.org/2013/23_4_california-prisons.html.

¹¹³ *See generally id.*

¹¹⁴ THE 2014–2015 BUDGET: ADMINISTRATION’S RESPONSE TO PRISON OVERCROWDING ORDER, LEGISLATIVE ANALYST’S OFFICE (February 28, 2014), *available at* <http://www.lao.ca.gov/reports/2014/budget/three-judge-panel/three-judge-panel-022814.aspx>.

First, 65 percent of funds will go to mental health and substance abuse rehabilitation programs through the Board of State and Community Corrections.¹¹⁵ Then 25 percent of funds will be used for grants targeting reducing truancy, dropping out of school, and making sure that children who are victims of crimes receive the help and attention they need.¹¹⁶ The funds will go through the California Department of Education. Lastly, the Victims Compensation and Government Claims Board will receive the remaining ten percent to be spent on improving victim services.¹¹⁷

The money is allocated in a way that is focused on preventing criminal activity at different stages. The money will be used to help students stay in school because education reduces crime, to help people who have mental health or drug problems so that they can live crime free lives, and to support victims of crime.

5. *Works With Proposition 98 to Increase Funding to Schools Beyond the Allocated 25% of Saved Funds to the California Department of Education*

California Proposition 98, also called the "Classroom Instructional Improvement and Accountability Act," passed in 1988, requires a minimum percentage of the state budget to be spent on K-12 education and guarantees an annual increase in funding for K-12 education in the California budget. The proposition amended the California Constitution to mandate a minimum level of education spending based on three tests.¹¹⁸

Test one, used only from 1988 to 1989, requires spending on education to make up at least 39% of the state budget. The second test, used in years of strong economic growth, requires spending on education to equal the previous years spending plus per capita growth and student enrollment adjustment. The final test, used in years of weak economic growth guarantees prior years spending plus adjustment for enrollment growth, increases for any changes in per capita general fund revenues, and an increase by 0.5 percent in state general funds.¹¹⁹

Proposition 47 takes all of the funds saved by its implementation and directs them to the general fund.¹²⁰ This means that the total amount of money saved, which is estimated to be in the hundreds of millions of dollars,¹²¹ will be considered as part of the general fund when the legislature conducts the Proposition 98 tests and awards funds, increasing the amount of money awarded to K-12 education through Proposition 98.

¹¹⁵ PROPOSITION 98 SETS MINIMUM FUNDING GUARANTEE FOR EDUCATION, EDUC. SOURCE, POLICY BRIEF (March 2009), *available at* <http://www.cta.org/~media/Documents/Issues%20%20Action/School%20Funding/EdSource%20Prop%2098%20Primer%20Updated%20309.pdf?dmc=1&ts=20141026T1752520188>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ FISCAL IMPACT ESTIMATE REPORT (2014), *supra* note 4.

Then after these calculations are made, 25 percent of the funds are sent directly to the California Department of Education for grants as outlined in the initiative. Essentially, Proposition 47 gives two increases of funds to K-12 education.

Increasing spending on education and decreasing spending on prisons is consistent with budget recommendations from the LAO.

6. Increases Eligibility for Government Assistance Programs

Access to various government assistance programs can be limited based on prior felony convictions or drug convictions. Should Proposition 47 pass, more people would be convicted of misdemeanors instead of felonies, making them eligible to receive state aid for food and work programs. Although exact numbers at this time are not known, any increase in eligible population could mean an increase in costs to these programs.¹²² This could be seen as an argument for either side depending on political beliefs of the voter.

B. Opposing Arguments

1. Allows Criminals to Own Guns

When a person is convicted of a felony, his or her sentence includes a prohibition on owning a gun.¹²³ Misdemeanors do not have the same requirement. The initiative makes several crimes that were charged as felonies into misdemeanors. This has the effect of allowing people, who under current law would be prohibited from gun ownership, to legally own guns.

2. Stealing a Gun Becomes a Misdemeanor

Currently, under section 478(d)(2) of the Penal Code stealing a gun is a felony because of the nature of the item being stolen.¹²⁴ Anytime a gun is stolen no matter what the value of the gun, it is automatically charged as a felony.¹²⁵ The initiative refocuses the line between theft misdemeanors and theft felonies¹²⁶ on the value of the item rather than the type of item stolen. Under the initiative anything, or combination of things, stolen with a value of less than \$950 would be charged as a misdemeanor.¹²⁷

Because most handguns cost less than \$950, stealing a gun would be a misdemeanor and classified as a petty theft as oppose to a grand theft.¹²⁸

¹²² *Id.*

¹²³ CAL. PENAL CODE, Ch. 12 – Punishments.

¹²⁴ CAL. PENAL CODE § 478

¹²⁵ *Id.*

¹²⁶ A misdemeanor theft is also called petty theft, while a felony theft is also called grand theft. Michael Vitiello, *Three Strikes: Can We Return to Rationality*, 87 J. CRIM. L. & CRIMINOLOGY 395 (1996-1997).

¹²⁷ THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.

¹²⁸ Op-Ed Jan Scully, Scott Jones & Chris Boyd. *Prop 47 Would Turn Criminals Loose*, SACRAMENTO BEE (Oct. 3, 2014), <http://www.sacbee.com/2014/10/03/6753330/viewpoints-prop-47-would-turn.html>.

To this end, opponents have said, “Current law provides that stealing a firearm is a felony. Every handgun is worth less than \$950. This measure opens the door for people who are going to steal a firearm for crime. If I’m going to steal a gun, I’m not going to steal it for my collection. I’m going to steal it to commit a crime.”¹²⁹ Additionally, because there is no enhancement for repeat offenses under the initiative a person could steal guns repeatedly and still be consistently charged with a misdemeanor.

Opponents argue that this result is counter to the initiative’s promise to “ensure that prison spending is focused on violent and serious offenses,”¹³⁰ since gun theft is likely to result in violent and serious offenses.

3. Negative Effect for Counties With Agricultural Communities

Currently, under 487(b)(1) of the Penal Code, stealing agricultural crops and livestock is a wobbler. This means that the court can consider what the items stolen are, what their value is, and the conditions under which they were taken.

If the crops are valued at more than \$250 then the crime can be charged as grand theft instead of petty theft. The current law makes this exception because of the type of item, similar to how the current law makes an exception for guns as discussed above.

Since the initiative fails to consider the type of item stolen and focuses only on the value of the item, the initiative could have a negative effect for agriculturally heavy counties. The initiative would change the law so that any theft of agriculturally related items would have to have a value of \$950 before it could be charged a grand theft.

Similarly, 487a makes theft of horses, cows, pigs and sheep grand theft regardless of the value of the animals, but under the initiative it would become petty theft unless the value exceeded \$950.

4. Potential Problems for Victims of Sexual Assault

Under current law, possession of most controlled substances can be charged either as a misdemeanor or a felony. Proposition 47 makes it a mandatory misdemeanor if someone is found in possession of drugs, including GHB and Rohypnol, common date rape drugs.¹³¹

According to John Lovell, the Government Relations Manager for the California Police Chiefs Association who is the opposition to the proposition, “There is a cavalier disregard for sexual assault victims. It takes possession of drugs used to facilitate sexual assault, date rape

¹²⁹ Interview with John Lovell, Government Relations Manager, California Police Chiefs Association (Sept. 9, 2014) (Notes on file with California Initiative Review).

¹³⁰ THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.

¹³¹ NOVEMBER 2014 VOTER GUIDE, *supra* note 3, at 72–73.

drugs, and it makes it a misdemeanor no matter how many times the criminal is caught with the drugs in his possession.”¹³²

5. *There is a Disincentive to Seek Drug Treatment*

Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, was passed by a majority of voters in the state.¹³³ It changed state law to allow those convicted of non-violent drug possession to choose to participate in a drug treatment program instead of serving a prison sentence.¹³⁴ Any felony conviction that they had would fall away upon completion of the treatment program.

Opponents believe that Proposition 47 will encourage those who are charged to plead out and never seek treatment because they will not be eligible to serve serious prison time.¹³⁵ “It disincentivizes anybody convicted of a drug offense from even wanting to seek treatment,” said Lovell.¹³⁶

C. Funding Information

Funding for the initiative has come from two main sources. Charles Feeney, a businessman who made a \$7.5 billion fortune establishing duty free shops in airports and B. Wayne Hughes, another businessman who made his \$3.5 billion fortune as the CEO of Public Storage. Feeney has contributed \$600,000 to the initiative while Hughes has donated \$250,000.

As of October 1, 2014, proponents of the initiative have raised \$3.5 million in support which included the donations from Feeney and Hughes.¹³⁷ Of the amount raised, \$938,000 was spent on collecting signatures.¹³⁸

As of July of this year the registered supporters for the initiative were the San Francisco District Attorney George Gascon, the Humboldt County District Attorney Paul Gallegos, San Diego Police Chief (Retired) Bill Landsdowne, and the Crime Survivors for Safety and Justice group.¹³⁹

¹³² Interview with John Lovell, Government Relations Manager, California Police Chiefs Association (Sept. 9, 2014) (Notes on file with California Initiative Review).

¹³³ *Proposition 36 Official Title: Drugs, Probation and Treatment Program*, CAL. VOTER FOUND., <http://www.calvoter.org/voter/elections/archive/2000/general/propositions/36.html> (last visited Oct. 4, 2014).

¹³⁴ CAL. PENAL CODE §§ 1210, 3063.1.

¹³⁵ Interview with John Lovell, Government Relations Manager, California Police Chiefs Association (Sept. 9, 2014) (Notes on file with California Initiative Review).

¹³⁶ *Id.*

¹³⁷ *California Proposition 47, Safe Neighborhoods and Schools Act*, BALLOTPEdia, [http://ballotpedia.org/California_Proposition_47,_Reduced_Penalties_for_Some_Crimes_Initiative_\(2014\)](http://ballotpedia.org/California_Proposition_47,_Reduced_Penalties_for_Some_Crimes_Initiative_(2014)) (last visited Oct. 5, 2014).

¹³⁸ *Id.*

¹³⁹ Rapper Jay-Z (real name Shawn Carter) is also a supporter of Proposition 47. Jay Z is no stranger to the politics game. In fact, he’s quite skilled in blurring the lines and using hip-hop as a vehicle to spread political messages. From his widely public support of President Obama to using his On The Run Tour

Funding for the opposition of the initiative has come from one main source and has been supplemented by a few additional sources. The funding for opposition has overwhelmingly come from the California State Lodge of Fraternal Order of Police Issues Committee.¹⁴⁰ In addition, the California Police Chiefs Association and LACPPOA Special Issues Committee have each donated \$5,000 while the California Peace Officers Association has donated \$4,500 and the California Correctional Supervisors Organization has donated \$3,000.¹⁴¹ In total, the opposition has raised \$43,500 under the Californians Against Prop. 47, Sponsored by California Public Safety Institute.¹⁴²

As of the same time the registered opposition included California Coalition Against Sexual Assault, California District Attorney Association, California Fraternal Order of Police, California Grocers Association, California Narcotics Officers Association, California Peace Officers Association, California Police Chiefs Association, California Retailers Association, California State Sheriffs Association, Crime Victims Action Alliance, and Crime Victims United.

VI. CONCLUSION

Proposition 47 would change six offenses from crimes that could be felonies to crimes that are mandatory misdemeanors. Those with a criminal history of serious or violent offenses would not be eligible to take advantage of the change in law.¹⁴³ The change would likely release 10,000 current inmates due to resentencing.¹⁴⁴ Due to this release, costs would increase for the courts and parole system for the next few years.¹⁴⁵ However, after the initial three years, these costs would fall below the costs now being incurred. Proposition 47 would also likely decrease the prison population by a few thousand people annually in the future.¹⁴⁶ The state would save between \$150 and \$200 million a year in prison costs, which would be distributed by grant to

stage Aug 3 at the Rose Bowl in California to support Proposition 47. During his “Hard Knock Life” performance, Jay took a moment to voice his support for building “more schools, less prisons.” (See generally Nicole Hardesty, *Jay Z Champions “Less Prisons, More Schools” On Stage In California*, URBAN DAILY (Aug. 5, 2014), <http://theurbandaily.com/2014/08/05/jay-z-supports-proposition-47-california/>).

¹⁴⁰ *California Ballot Measures*, VOTER’S EDGE, <http://votersedge.org/california/ballot-measures/2014/november/prop-47?jurisdictions=28.1.28-upper-ca.28.28-upper-ca&state=CA#.VDHREdF0yP->, (last visited Oct. 5, 2014).

¹⁴¹ *California Proposition 47, Safe Neighborhoods and Schools Act*, BALLOTEDIA, [http://ballotpedia.org/California Proposition 47, Reduced Penalties for Some Crimes Initiative \(2014\)](http://ballotpedia.org/California Proposition 47, Reduced Penalties for Some Crimes Initiative (2014)) (last visited Oct. 5, 2014).

¹⁴² *Id.*

¹⁴³ THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.

¹⁴⁴ Interview with John Lovell, Government Relations Manager, California Police Chiefs Association (Sept. 9, 2014) (Notes on file with California Initiative Review).

¹⁴⁵ FISCAL IMPACT ESTIMATE REPORT (2014), *supra* note 4.

¹⁴⁶ *Id.*

truancy prevention (25%), victim compensation (10%), and mental health and substance abuse treatment programs (65%).¹⁴⁷

¹⁴⁷ THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ST. CAL. DEPARTMENT JUST. – OFF. ATT’Y GEN (Dec. 19, 2013), available at <https://oag.ca.gov/system/files/initiatives/pdfs>.