
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2765 **Hearing Date:** June 28, 2016
Author: Weber
Version: May 19, 2016
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Proposition 47: Sentence Reduction*

HISTORY

Source: Californians for Safety and Justice; Conference of California Bar Associations; Los Angeles County Board of Supervisors; San Diego County District Attorney

Prior Legislation: Proposition 47, 2014 November General Election

Support: Alameda County Board of Supervisors; Alameda County District Attorney; American Civil Liberties Union; California Attorneys for Criminal Justice; California Calls; California Council of Community Behavioral Health Agencies; California Catholic Conference; California Public Defenders Association; California Police Chiefs Association; California State Association of Counties; Center on Juvenile and Criminal Justice; Community Coalition; Judicial Council of California; Legal Services for Prisoners with Children; Los Angeles Area Chamber of Commerce; Los Angeles County District Attorney; Mental Health America in California; National Association of Social Workers; San Diego County Board of Supervisors; County of San Diego; Santa Clara County Board of Supervisors; Santa Cruz County Board of Supervisors; Urban Counties of California

Opposition: None known

Assembly Floor Vote: 58 - 19

PURPOSE

The purpose of this bill is to eliminate the deadline to file petitions for relief for persons seeking reductions of prior felony convictions to misdemeanors under Proposition 47.

Existing law states that a person currently serving a sentence for conviction of a felony, who would have been guilty of a misdemeanor had Proposition 47 been effect at the time of the offense may petition for a recall of sentence before the trial court that entered the conviction in his or her case to request resentencing, as specified. (Pen. Code, § 1170.18, subd. (a).)

Existing law provides that upon receiving the petition for recall and resentencing, the court shall determine whether the petitioner meets specified criteria. If the petitioner satisfies the criteria, the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor. Requires the court to deny resentencing if the petitioner has a prior disqualifying conviction, is

required to register as a sex offender under section, or if the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. (Pen. Code, § 1170.18, subd. (b).)

Existing law authorizes a court to deny a petition for a recall of sentence, if the court in the exercise of its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to the public safety. In exercising its discretion, the court may consider all of the following:

- a) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes;
- b) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and,
- c) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. (Pen Code, § 1170.18, subd. (b)(1)-(3).)

Existing law defines "unreasonable risk of danger to the public safety" to mean an unreasonable risk the petitioner will commit a new "violent" felony, as specified. (Pen. Code, § 1170.18, subd. (b).)

Existing law provides that a person that is currently serving a sentence for conviction of a felony and who is resentenced shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of the resentencing order, releases the person from parole.

Existing law allows a person who has completed his or her sentence for a conviction of a felony who would have been guilty of a misdemeanor under the provisions of Proposition 47 if it would have in effect at the time of the offense, to apply to have the felony conviction designated as a misdemeanor. (Pen. Code, § 1170.18, subd. (f).)

Existing law states that any petition filed for recall and resentencing shall be filed within three years after the effective date of Proposition 47, or at later date upon a showing of good cause. (Pen. Code, § 1170.18, subd. (j).)

Existing law provides that any felony conviction that is recalled and resentenced or designated as a misdemeanor shall be considered a misdemeanor for all purposes, except for the right to own or possess firearms. (Pen. Code, § 1170.18, subd. (k).)

Existing law provides that when the trial court reduces an offense from a felony to a misdemeanor, it is "a misdemeanor for all purposes." (Pen. Code, § 17, subd. (b).)

This bill removes the three year time limitation in which a person currently convicted of a felony, who would have been convicted of a misdemeanor if Proposition 47 were in effect, may petition the court to have the sentenced reduced in accordance with the Act.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

California voters passed the Safe Neighborhoods and Schools Act of 2014, otherwise known as Proposition 47 by over 60% on November 4, 2014. Proposition 47 reduced the criminal penalties for five non-violent, low-level property offenses and minor drug possession from felonies to misdemeanors. One provision of the measure allowed an individual who was either currently serving or who had completed his or her sentence for a Prop 47 offense and was not otherwise excluded on account of having other, violent offenses on their record, to have their sentence or record reduced to a misdemeanor. This provision called for this relief to sunset three years from the date the measure passed, on November 4, 2017.

Some have estimated that nearly one million Californians are eligible for some type of Prop 47 relief. A felony record, even for a very old offense, serves as a barrier to self-sufficiency for the formerly incarcerated. People are routinely denied employment, housing and other rights because of their felon status. For non-violent offenders, the inability to obtain self-sufficiency contributes to higher rates of recidivism, incarceration and poverty in our communities.

Law enforcement officials and courts that are working diligently to comply with the law have been inundated with petitions from individuals seeking relief. The influx of petitions has forced many agency offices scrambling to comply with the voter mandate while fulfilling other regularly assigned tasks. The imposition of the three-year deadline for filing has created a sense of urgency among eligible petitioners that can be reduced by removing the existing time limit.

In passing Proposition 47, voters called for change. To deny an eligible individual a form of relief that could help make them a contributing and self-sufficient member of our community while simultaneously imposing immense pressure on law enforcement to work within the parameters of the law would create inequitable results for many. The proper solution for all involved is to remove the time limit and ensure that law enforcement agencies and petitioners alike have adequate time to complete the process of record changing envisioned by Prop 47.

2. Proposition 47 and Reclassification of Prior Felony Convictions for Offenses Defined as Misdemeanors under the Initiative

Proposition 47 of the 2014 General Election – the Safe Neighborhoods and Schools Act - reclassified drug possession felonies and alternate felony-misdemeanors (wobblers) as misdemeanors, except for defendants with specified disqualifying circumstances and criminal records. The proposition extended changes to the classification of grand theft, as determined by the value of the property taken in the theft and made related changes to other property crimes.

Proposition 47 also authorized defendants who were serving sentences for felonies that were now misdemeanors under the proposition could petition for resentencing, with prohibitions on relief that apply to persons with specified prior sex crimes for which registration is required and especially egregious serious felonies. Persons who had completed a sentence for such an offense were authorized to petition to reduce the convictions to misdemeanors. The initiative required persons seeking relief to file a petition within three years of the effective date of the initiative. The deadline is November 5, 2017.

The Legislative Analyst's ballot summary explained this portion of the initiative:

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.

3. Additional Background from the San Diego County District Attorney – Time Limit for Filing for Relief under Proposition 47

The San Diego County District Attorney explains the problems created for prosecutors, defense attorneys and courts by the pending deadline for filing petitions for relief under Proposition 47:

Proposition 47 requires defendants to file a "petition to recall" their felony sentences by November 5, 2017. This seemingly arbitrary deadline now gives eligible defendants a slim window to file for relief. Apparently the proposition drafters simply underestimated the number of defendants who may be eligible to file for relief. AB 2765 will alleviate the problems created by the current deadline

Our office has worked with the San Diego County Office of the Public Defender to process as many petitions as possible. To date, we have processed over 25,000 Prop 47 petitions. However, we believe there is the potential for up to 150,000 more requests to be filed before the November 5, 2017 deadline. This deadline will create an unnecessary burden on eligible defendants to meet that deadline, and a needless "tsunami" of paperwork for prosecutors, public defenders and the court.

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