



Senate Committee on Public Safety
Hon. Loni Hancock, Chair

Assembly Committee on Public Safety
Hon. Tom Ammiano, Chair

Joint Informational Hearing

Proposition 47: Criminal Sentences.

Thursday, October 2, 2014
12:00 p.m. to 2:00 p.m.
State Capitol, John L. Burton Hearing Room (4203)
Sacramento, California 95814

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

Proposition 47: Criminal Sentences

October 2, 2014, 12:00 p.m. to 2:00 p.m.
State Capitol, John L. Burton Hearing Room (4203)

Agenda

I. Opening Remarks (5 minutes)

Hon. Tom Ammiano, Chair, Assembly Public Safety Committee
Hon. Loni Hancock, Chair, Senate Public Safety Committee
Other members of committees

II. Initiative Overview and Fiscal Evaluation (15 minutes)

Drew Soderborg, Managing Principal Analyst, Legislative Analyst's Office

III. Panel Discussion: Supporters (40 minutes)

George Gascón, San Francisco District Attorney
Milena Blake, Policy and Legislative Advocate, Californians for Safety and Justice
Dionne Wilson, Victims' Advocate, Crime Survivors for Safety and Justice

IV. Panel Discussion: Opponents (40 minutes)

Harriet Salarno, Chair, Crime Victims United
Shaina Brown, Public Affairs and Communications Associate, California
Coalition Against Sexual Assault
Sean Hoffman, Director of Legislation, California District Attorneys
Association
Cory Salzillo, Legislative Director, California State Sheriffs' Association

V. Public Comment (20 minutes)

California Elections Code Section 9034

Upon the certification of an initiative measure for the ballot, the Secretary of State shall transmit copies of the initiative measure, together with the circulating title and summary as prepared by the Attorney General pursuant to Section 9004, to the Senate and the Assembly. Each house shall assign the initiative measure to its appropriate committees. The appropriate committees shall hold joint public hearings on the subject of such measure prior to the date of the election at which the measure is to be voted upon. However, no hearing may be held within 30 days prior to the date of the election.

Nothing in this section shall be construed as authority for the Legislature to alter the initiative measure or prevent it from appearing on the ballot.

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

CRIMINAL SENTENCES. MISDEMEANOR PENALTIES. INITIATIVE STATUTE.

Requires misdemeanor sentence instead of felony for petty theft, receiving stolen property, and forging/writing bad checks when value or amount involved is \$950 or less. Requires misdemeanor sentence instead of felony for certain drug possession offenses. Allows felony sentence for these offenses if person has previous conviction for crimes such as rape, murder or child molestation or is a 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 estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Net state criminal justice system savings that could reach the low hundreds of millions of dollars annually, which would be spent on truancy prevention, mental health and substance abuse treatment, and victim services. Net county criminal justice system savings that could reach the low hundreds of millions of dollars annually.**

(13-0060.)

THE SAFE NEIGHBORHOODS AND SCHOOLS ACT

SECTION ONE. Title.

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

SECTION TWO. Findings and Declarations.

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

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

SECTION THREE. Purpose and Intent.

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

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

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

SECTION FOUR.

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

Chapter 33. Creation of Safe Neighborhoods and Schools Fund

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

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

7599.1. Funding Appropriation

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION FIVE.

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

459a. (a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

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

SECTION SIX.

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

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

(b) Notwithstanding subdivision (a), any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed nine hundred fifty dollars (\$950), shall be punishable by imprisonment in a county jail for not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. This subdivision shall not be applicable to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5.

SECTION SEVEN.

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

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

(b) However, if the total amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed ~~four hundred fifty dollars (\$450)~~ nine hundred fifty dollars (\$950), the offense is punishable only by imprisonment in the county jail for not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. This subdivision shall not be applicable if the defendant has previously been convicted of a three or more violations of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if he has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.

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

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

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

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

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

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

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

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

SECTION EIGHT.

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

490.2. (a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950), shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C)

of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

SECTION NINE.

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

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, ~~if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may,~~ if the value of the property does not exceed nine hundred fifty dollars (\$950), ~~specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.~~

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

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

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

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

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

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

SECTION TEN.

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

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

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

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

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

SECTION ELEVEN.

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

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), ~~or (c), (e),~~ or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

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

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

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

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

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

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

SECTION TWELVE.

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

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, ~~or shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code~~ except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

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

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

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

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

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

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

SECTION THIRTEEN.

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

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

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

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

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

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

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

SECTION FOURTEEN.

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

1170.18. (a) A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this Act had this Act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Sections 459a, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended by this Act.

(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resented to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Sections 459a, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended by this Act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider:

(1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes;

(2) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and

(3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(c) As used throughout this Code, “unreasonable risk of danger to public safety” means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.

(d) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. Such person is subject to Section 3000.08 parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county in which the parolee is released, resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

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

(f) A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this Act had this Act been in effect at the time of the offense may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.

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

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

(i) The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

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

(k) Any felony conviction that is recalled and resentenced under subsection (b) or designated as a misdemeanor under subsection (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

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

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

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

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

SECTION FIFTEEN. Amendment.

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

SECTION SIXTEEN. Severability.

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

SECTION SEVENTEEN. Conflicting Initiatives.

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

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

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

SECTION EIGHTEEN. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

VOTER
INFORMATION GUIDE

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.

47

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

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

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

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.

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 Prop. 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 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

★ **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

Proposition 47
Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

Yes/No Statement

A **YES** vote on this measure means: Criminal offenders who commit certain nonserious and nonviolent drug and property crimes would be sentenced to reduced penalties (such as shorter terms in jail). State savings resulting from the measure would be used to support school truancy and dropout prevention, victim services, mental health and drug abuse treatment, and other programs designed to keep offenders out of prison and jail.

A **NO** vote on this measure means: Penalties for offenders who commit certain nonserious and nonviolent drug and property crimes would not be reduced.

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.

Ballot Label

Fiscal Impact: State and county criminal justice savings potentially in the high hundreds of millions of dollars annually. State savings spent on school truancy and dropout prevention, mental health and substance abuse treatment, and victim services.

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 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 they would remain wobbler crimes.
- ***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 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 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.