S223825

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IN THE SPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	) Case no. S223825
Plaintiff and Respondent,	)
	) 5TH DCA
v.	) No. F067946
	)
DAVID J. VALENCIA,	) Tuolumne Co. Superior Court
	) No. CRF307014
Defendant and Appellant.	)
	)

REQUEST FOR JUDICIAL NOTICE

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

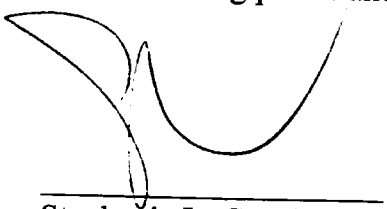
Pursuant to rule 8.252 of the California Rules of Court, and to Evidence Code sections 452 and 451, appellant, through his counsel, requests this court to take judicial notice of the following items (attached to this motion):

1. Voter Information Guide, Gen. Elec. (Nov. 6, 2012), text of proposed law
2. Voter Information Guide, Gen. Elec. (Nov. 4, 2014), text of proposed law
3. Voter Information Guide, Gen. Elec. (Nov. 6, 2012), official title and summary
4. Voter Information Guide, Gen. Elec. (Nov. 4, 2014), official title and summary
5. Voter Information Guide, Gen. Elec. (Nov. 6, 2012), argument and rebuttal for and against Prop. 36
6. Voter Information Guide, Gen. Elec. (Nov. 4, 2014), argument and rebuttal for and against Prop. 47

7. Californians Against Prop. 47 <http://californiansagainst47.com/about-proposition-47
8. David Greenwald, *Analysis: Perspective on Proposition 47,* The Davis Vanguard (October 29, 2014)
9. *Our Readers Say: Police, sheriffs say no to Prop 47* (October 24, 2014) Redland Daily Facts
10. The Alliance for a Safer California, accessed September 25, 2014 >http://www.votenoprop47.org
11. Shawn Gaynor, California represents the worst of current U.S. economic crisis (July 13, 2012) California Public Press < http://sfpublicpress.org/news/2012-07/krugman-california-represents-the-worst-of-current-us-economic-crisis>
12. Editorial Board, California's Continuing Prison Crisis (August 10, 2013) New York Times <http://www.nytimes.com/2013/08/11/opinion/sunday/californias-continuing-prison-crisis.html?_r=0> [as of January 9, 2015]
13. Stanford Law School - Three Strikes Project, "Progress Report: Three Strikes Reform (Proposition 36), 1000 Prisoners Released (2013)
14. Docket and order denying rehearing

This request for judicial notice is based on the following points and authorities.

Dated: January 13, 2015



Stephanie L. Gunther,
Attorney for appellant

MEMORANDUM OF POINTS & AUTHORITIES

California Rules of Court, rule 8.252 provides the means for judicial notice on appeal. The rule provides in subdivision (a)(2) that the motion must state:

> (A) Why the matter to be noticed is relevant to the appeal; (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; and (C) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(Cal. Rules of Court, rule 8.252(a)(2).)

The matters to be judicially noticed are relevant to the petition, because the Court of Appeal based its holding upon matters extrinsic to the record on appeal. This Court engaged in construction to determine the voter's intent in passing Propositions 36 in 2012 and 47 in 2014. The Court determined that it was necessary to look at "extrinsic aids" in determining the intent of the voters (Opinion, p. 28) and took judicial notice of the following official ballot information and other ballot arguments (not included in the record on appeal) in deciding petitioner's appeal:

1. Voter Information Guide, Gen. Elec. (Nov. 6, 2012) text of proposed law
2. Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of proposed law
3. Voter Information Guide, Gen. Elec. (Nov. 4, 2014), official title and summary
4. Voter Information Guide, Gen. Elec. (Nov. 4, 2014) argument against Prop. 47
5. Act. (St. John & Gerber, *Prop. 47 Jolts Landscape of California Justice System* (Nov. 5, 2014) Los Angeles Times <http://www.latimes.com/local/politics/la-me-ff-polproposition47- 20141106-story.html> [as of Dec. 16, 2014].)

When legislative intent is at issue, of particular value are the analyses and arguments contained in the official ballot information. (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) "Ballot arguments are (also) accepted sources from which to ascertain the voters' intent." (*In re Lance W.* (1985) 37 Cal.3d 873, 888, fn. 8; *White v. Davis* (1975) 13 Cal.3d 757, 775, fn. 11.)" (*Delaney v. Superior Court, supra*, 50 Cal.3d at p. 801-02.) Accordingly, petitioner asks this court to take judicial notice of the materials attached to this motion for this petition for review.

These materials are critical and acceptable items to demonstrate what the voters knew and intended in passing Propositions 36 and 47, which is the crux of the petition for review. These items were not presented in the trial court, but relate to proceedings occurring after the order or judgment that is the subject of the appeal

Dated:

Respectfully submitted,

Stephanie L. Gunther
Attorney for appellant

ATTACHED IS A COPY OF
Voter Information Guide, Gen. Elec. (Nov. 6, 2012), text of proposed law

determine in what ways human trafficking training may be included as a part of ongoing programs.

(e) ~~Participation in the course or courses specified in this section by peace officers or the agencies employing them is voluntary~~ *Every law enforcement officer who is assigned field or investigative duties shall complete a minimum of two hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2014, or within six months of being assigned to that position, whichever is later.*

SEC. 15. Amendments.

This act may be amended by a statute in furtherance of its objectives passed in each house of the Legislature by rollcall vote entered in the journal, a majority of the membership of each house concurring.

SEC. 16. Severability.

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

PROPOSITION 36

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THREE STRIKES REFORM ACT OF 2012

SECTION 1. Findings and Declarations:

The People enact the Three Strikes Reform Act of 2012 to restore the original intent of California's Three Strikes law—imposing life sentences for dangerous criminals like rapists, murderers, and child molesters.

This act will:

(1) Require that murderers, rapists, and child molesters serve their full sentences—they will receive life sentences, even if they are convicted of a new minor third strike crime.

(2) Restore the Three Strikes law to the public's original understanding by requiring life sentences only when a defendant's current conviction is for a violent or serious crime.

(3) Maintain that repeat offenders convicted of non-violent, non-serious crimes like shoplifting and simple drug possession will receive twice the normal sentence instead of a life sentence.

(4) Save hundreds of millions of taxpayer dollars every year for at least 10 years. The state will no longer pay for housing or long-term health care for elderly, low-risk, non-violent inmates serving life sentences for minor crimes.

(5) Prevent the early release of dangerous criminals who are currently being released early because jails and prisons are overcrowded with low-risk, non-violent inmates serving life sentences for petty crimes.

SEC. 2. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of *one or more* serious and/or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising

from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a *serious and/or violent* felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

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(2) A *prior* conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. ~~A~~ *shall constitute a* prior conviction of a particular *serious and/or violent* felony ~~shall include a~~ *if the prior* conviction in ~~another~~ *the other* jurisdiction *is* for an offense that includes all of the elements of ~~the~~ *a* particular *violent* felony as defined in subdivision (c) of Section 667.5 or *serious felony as defined in* subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a *serious and/or violent* felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has ~~a~~ *one or more* prior *serious and/or violent* felony ~~conviction~~ *convictions*:

(1) If a defendant has one prior *serious and/or violent* felony conviction *as defined in subdivision (d)* that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) ~~If~~ *Except as provided in subparagraph (C), if* a defendant has two or more prior *serious and/or violent* felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *greatest* of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e) unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 288a, Section 311.11, and Section 314.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior serious and/or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:

(I) A "sexually violent offense" as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a *one or more* prior *serious and/or violent* felony ~~conviction~~ *convictions* as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior *serious and/or violent* felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior *serious and/or violent felony* conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior *serious and/or violent* felony conviction, the court may dismiss or strike the allegation. *Nothing in this section shall be read to alter a court's authority under Section 1385.*

(g) Prior *serious and/or violent* felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony *serious and/or violent* convictions and shall not enter into any agreement to strike or seek the dismissal of any prior *serious and/or violent* felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on ~~June 30, 1993~~ *November 7, 2012.*

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 3. Section 667.1 of the Penal Code is amended to read:

667.1. Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after ~~the effective date of this act~~ *November 7, 2012*, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on ~~the effective date of this act, including amendments made to those statutes by the act enacted during the 2005–06 Regular Session that amended this section~~ *November 7, 2012.*

SEC. 4. Section 1170.12 of the Penal Code is amended to read:

1170.12. ~~(a)~~ *Aggregate and consecutive terms for multiple convictions; Prior conviction as prior felony; Commitment and other enhancements or punishment.*

(a) Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in ~~paragraph (6) of this~~ subdivision *(b)*, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

~~(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.~~

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior *serious and/or violent* conviction of a felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of this section shall be made

upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior *serious and/or violent* conviction is a ~~prior~~ *serious and/or violent* felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A *prior* conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. ~~A~~ *shall constitute a* prior conviction of a particular *serious and/or violent* felony ~~shall include a~~ *if the prior* conviction in ~~another~~ *the other* jurisdiction *is* for an offense that includes all of the elements of the particular *violent* felony as defined in subdivision (c) of Section 667.5 or *serious felony as defined in* subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for *the* purposes of sentence enhancement if:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and

(B) The prior offense is

(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or

(ii) listed in this subdivision as a *serious and/or violent* felony, and

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and

36 (D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has ~~a~~ *one or more* prior *serious and/or violent* felony ~~conviction~~ *convictions*:

(1) If a defendant has one prior *serious and/or violent* felony conviction *as defined in subdivision (b)* that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) If *Except as provided in subparagraph (C), if* a defendant has two or more prior *serious and/or violent* felony convictions, as defined in ~~paragraph (1) of~~ subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *greatest* of:

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions, or

(ii) twenty-five years or

(iii) the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a felony described in paragraph (1) of subdivision (b) of this section, the defendant shall be sentenced pursuant to paragraph (1) of subdivision (c) of this section, unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 288a, Section 314, and Section 311.11.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined in subdivision (b) of this section, for any of the following serious and/or violent felonies:

(I) A "sexually violent offense" as defined by subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286 or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined

in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has ~~a~~ *one or more* prior *serious and/or violent* felony ~~conviction~~ *convictions* as defined in this section. The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior *serious and/or violent* felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior *serious and/or violent* conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior *serious and/or violent* felony conviction, the court may dismiss or strike the allegation. *Nothing in this section shall be read to alter a court's authority under Section 1385.*

(e) Prior *serious and/or violent* felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior *serious and/or violent* felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior *serious and/or violent* felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(f) If any provision of subdivisions (a) to (e), inclusive, or of Section 1170.126, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(g) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 5. Section 1170.125 of the Penal Code is amended to read:

1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, ~~general election~~ *General Election*, for all offenses committed on or after ~~the effective date of this act~~ *November 7, 2012*, all references to existing statutes in ~~Section~~ *Sections* 1170.12 *and 1170.126* are to those ~~statutes~~ *sections* as they existed on ~~the effective date of this act, including amendments made to those statutes by the act enacted during the 2005–06 Regular Session that amended this section~~ *November 7, 2012.*

SEC. 6. Section 1170.126 is added to the Penal Code, to read:

1170.126. (a) The resentencing provisions under this section and related statutes are intended to apply exclusively to persons presently serving an indeterminate term of imprisonment pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, whose sentence under this act would not have been an indeterminate life sentence.

(b) Any person serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12 upon conviction, whether by trial or plea, of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, may file a petition for a recall of sentence, within two years after the effective date of the act that added this section or at a later date upon a showing of good cause, before the trial court that entered the judgment of conviction in his or her case, to request resentencing in accordance with the provisions of subdivision (e) of Section 667, and subdivision (c) of Section 1170.12, as those statutes have been amended by the act that added this section.

(c) No person who is presently serving a term of imprisonment for a "second strike" conviction imposed pursuant to paragraph (1) of subdivision (e) of Section 667 or paragraph (1) of subdivision (c) of Section 1170.12, shall be eligible for resentencing under the provisions of this section.

(d) The petition for a recall of sentence described in subdivision (b) shall specify all of the currently charged felonies, which resulted in the sentence under paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, or both, and shall also specify all of the prior convictions alleged and proved under subdivision (d) of Section 667 and subdivision (b) of Section 1170.12.

(e) An inmate is eligible for resentencing if:

(1) The inmate is serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12 for a conviction of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(2) The inmate's current sentence was not imposed for any of the offenses appearing in clauses (i) to (iii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clauses (i) to (iii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.

(3) The inmate has no prior convictions for any of the offenses appearing in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clause (iv) of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.

(f) Upon receiving a petition for recall of sentence under this section, the court shall determine whether the petitioner satisfies the criteria in subdivision (e). If the petitioner satisfies the criteria in subdivision (e), the petitioner shall be resentenced pursuant to paragraph (1) of subdivision (e) of Section 667 and paragraph (1) of subdivision (c) of Section 1170.12 unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.

(g) In exercising its discretion in subdivision (f), 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.

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

(i) Notwithstanding subdivision (b) of Section 977, a defendant petitioning for resentencing may waive his or her appearance in court for the resentencing, provided that the accusatory pleading is not amended at the resentencing, and that no new trial or retrial of the individual will occur. The waiver shall be in writing and signed by the defendant.

(j) If the court that originally sentenced the defendant is not available to resentence the defendant, the presiding judge shall designate another judge to rule on the defendant's petition.

(k) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(l) 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.

(m) 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).

SEC. 7. Liberal Construction:

This act is an exercise of the public power of the people of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.

SEC. 8. Severability:

36 *If any provision of this act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this act, which can be given effect without the invalid provision or application in order to effectuate the purposes of this act. To this end, the provisions of this act are severable.*

37 *SEC. 9. Conflicting Measures:*

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this act shall be given the full force of law.

SEC. 10. Effective Date:

This act shall become effective on the first day after enactment by the voters.

SEC. 11. Amendment:

Except as otherwise provided in the text of the statutes, the provisions of this act shall not be altered or amended except by one of the following:

(a) By statute passed in each house of the Legislature, by rollcall entered in the journal, with two-thirds of the membership and the Governor concurring; or

(b) By statute passed in each house of the Legislature, by rollcall vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot and approved by a majority of the electors; or

(c) By statute that becomes effective when approved by a majority of the electors.

PROPOSITION 37

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure amends and adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The people of the State of California do enact as follows:

THE CALIFORNIA RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT

SECTION 1. FINDINGS AND DECLARATIONS

(a) California consumers have the right to know whether the foods they purchase were produced using genetic engineering. Genetic engineering of plants and animals often causes unintended consequences. Manipulating genes and inserting them into organisms is an imprecise process. The results are not always predictable or controllable, and they can lead to adverse health or environmental consequences.

(b) Government scientists have stated that the artificial insertion of DNA into plants, a technique unique to genetic engineering, can cause a variety of significant problems with plant foods. Such genetic engineering can increase the levels of known toxicants in foods and introduce new toxicants and health concerns.

(c) Mandatory identification of foods produced through genetic engineering can provide a critical method for tracking the potential health effects of eating genetically engineered foods.

(d) No federal or California law requires that food producers identify whether foods were produced using genetic engineering. At the same time, the U.S. Food and Drug Administration does not require safety studies of such foods. Unless these foods contain a known allergen, the FDA does not even require developers of genetically engineered crops to consult with the agency.

(e) Polls consistently show that more than 90 percent of the public want to know if their food was produced using genetic engineering.

(f) Fifty countries—including the European Union member states, Japan and other key U.S. trading partners—have laws mandating disclosure of genetically engineered foods. No international agreements prohibit the mandatory identification of foods produced through genetic engineering.

(g) Without disclosure, consumers of genetically engineered food can unknowingly violate their own dietary and religious restrictions.

(h) The cultivation of genetically engineered crops can also cause serious impacts to the environment. For example, most genetically engineered crops are designed to withstand weed-

ATTACHED IS A COPY OF
Voter Information Guide, Gen. Elec. (Nov. 4, 2014), text of proposed law

SEC. 6. Section 1714.85 is added to the Civil Code, to read:

1714.85. There shall be a presumption of professional negligence in any action against a health care provider arising from an act or omission by a physician and surgeon who tested positive for drugs or alcohol or who refused or failed to comply with the testing requirements of Article 14 (commencing with Section 2350.10) of Chapter 5 of Division 2 of the Business and Professions Code following the act or omission and in any action arising from the failure of a licensed health care practitioner to comply with Section 11165.4 of the Health and Safety Code.

SEC. 7. Section 11165.4 is added to the Health and Safety Code, to read:

11165.4. (a) Licensed health care practitioners and pharmacists shall access and consult the electronic history maintained pursuant to this code of controlled substances dispensed to a patient under his or her care prior to prescribing or dispensing a Schedule II or Schedule III controlled substance for the first time to that patient. If the patient has an existing prescription for a Schedule II or Schedule III controlled substance, the health care practitioner shall not prescribe any additional controlled substances until the health care practitioner determines there is a legitimate need.

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(b) Failure to consult a patient's electronic history as required in subdivision (a) shall be cause for disciplinary action by the health care practitioner's licensing board. The licensing boards of all health care practitioners authorized to write or issue prescriptions for controlled substances shall notify all authorized practitioners subject to the board's jurisdiction of the requirements of this section.

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SEC. 8. Amendment.

This act may be amended only to further its purpose of improving patient safety, including ensuring that patients, their families, and others who are injured by negligent doctors are made whole for their loss, by a statute approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

SEC. 9. Conflicting Initiatives.

In the event that this measure and another initiative measure or measures that involve patient safety, including the fees charged by attorneys in medical negligence cases, shall 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.

SEC. 10. Severability.

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

Proposition 47

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Government Code, amends and adds sections to the Penal Code, and amends sections of the Health and Safety Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

Proposed Law

THE SAFE NEIGHBORHOODS AND SCHOOLS ACT

SECTION 1. Title.

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

SEC. 2. 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, to maximize alternatives for nonserious, nonviolent crime, and to 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.

SEC. 3. 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 percent of the funds to be provided to the State Department of Education for crime prevention and support programs in K–12 schools, 10 percent of the funds for trauma recovery services for crime victims, and 65 percent 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 nonserious, 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.

SEC. 4. 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 Section 13340 of the Government Code, is continuously appropriated without regard to 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 the act adding this chapter ("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) Moneys 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 Moneys from the Safe Neighborhoods and Schools Fund.

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

(1) Twenty-five 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 and grades 1 to 12, inclusive, by reducing truancy and supporting students who are at risk of dropping out of school or are victims of crime.

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

(3) Sixty-five 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) to (3), inclusive, of subdivision (a), the agency responsible for administering the programs shall not spend more than 5 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) to (3), inclusive, of subdivision (a) 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 subdivision (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 subdivision (a).

(e) The funding established pursuant to this act shall be used to expand programs for public school pupils in kindergarten and grades 1 to 12, inclusive, 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.

SEC. 5. Section 459.5 is added to the Penal Code, to read:

459.5. (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.

SEC. 6. Section 473 of the Penal Code is 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.

SEC. 7. Section 476a of the Penal Code is 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 depositary, 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 depositary, 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* ~~violation~~ *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 depositary, 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 depositary, 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.

SEC. 8. 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.

SEC. 9. Section 496 of the Penal Code is 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.

SEC. 10. Section 666 of the Penal Code is 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 subdivision~~ *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 (c) of Section 667.5 or subdivision (c) 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.

SEC. 11. Section 11350 of the Health and Safety Code is 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.~~

~~(c)~~ *(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.

SEC. 12. Section 11357 of the Health and Safety Code is 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.

SEC. 13. Section 11377 of the Health and Safety Code is 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.~~

~~(c)~~ *(b)* ~~In addition to any fine assessed under subdivision (b), the~~ *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.

SEC. 14. 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 the act that added this section ("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 Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added 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 resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, those sections have been amended or added 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 all of the following:

(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.

(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.

47 *(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 or resides, or in* 48 *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 shall 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 subdivision (b) or designated as a misdemeanor under subdivision (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).

SEC. 15. 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 the 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.

SEC. 16. 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.

SEC. 17. Conflicting Initiatives.

(a) This act changes the penalties associated with certain nonserious, 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 the other measure or measures, but only to the extent the other measure or measures are not inconsistent with the provisions of this act.

(b) If this measure is approved by the voters but superseded by law by any other conflicting measure approved by the 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.

SEC. 18. Liberal Construction.

This act shall be liberally construed to effectuate its purposes.

Proposition 48

This law proposed by Assembly Bill 277 of the 2013–2014 Regular Session (Chapter 51, Statutes of 2013) is submitted to the people of California as a referendum in accordance with the provisions of Section 9 of Article II of the California Constitution.

This proposed law adds a section to the Government Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

Proposed Law

SECTION 1. Section 12012.59 is added to the Government Code, to read:

12012.59. (a) (1) The tribal-state gaming compact entered into in accordance with the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, inclusive, and 25 U.S.C. Sec. 2701 et seq.) between the State of California and the North Fork Rancheria Band of Mono Indians, executed on August 31, 2012, is hereby ratified.

ATTACHED IS A COPY OF
Voter Information Guide, Gen. Elec. (Nov. 6, 2012), official title and summary

PROPOSITION 36 — THREE STRIKES LAW. REPEAT FELONY OFFENDERS. PENALTIES. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY — PREPARED BY THE ATTORNEY GENERAL

THREE STRIKES LAW. REPEAT FELONY OFFENDERS. PENALTIES. INITIATIVE STATUTE.

- Revises three strikes law to impose life sentence only when new felony conviction is serious or violent.
- Authorizes re-sentencing for offenders currently serving life sentences if third strike conviction was not serious or violent and judge determines sentence does not pose unreasonable risk to public safety.
- Continues to impose life sentence penalty if third strike conviction was for certain nonserious, non-violent sex or drug offenses or involved firearm possession.
- Maintains life sentence penalty for felons with nonserious, non-violent third strike if prior convictions were for rape, murder, or child molestation.

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

- State savings related to prison and parole operations of $70 million annually on an ongoing basis, with even higher savings—up to $90 million annually—over the next couple of decades. These estimates could be higher or lower by tens of millions of dollars depending on future state actions.
- One-time state and county costs of a few million dollars over the next couple of years for court activities related to the resentencing of certain offenders.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

There are three categories of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime, and an individual convicted of a felony may be sentenced to state prison under certain circumstances. Individuals convicted of felonies who are not sentenced to state prison are sentenced to county jail, supervised by the county probation department in the community, or both.

Existing law classifies some felonies as "violent" or "serious," or both. Examples of felonies currently defined as violent include murder, robbery, and rape. While almost all violent felonies are also considered serious, other felonies are defined only as serious, such as assault with intent to commit robbery. Felonies that are not classified as violent or serious include grand theft (not involving a firearm) and possession of a controlled substance.

As of May 2012, there were about 137,000 inmates in the California prison system. The state's prison system in 2012–13 is budgeted for almost $9 billion.

Three Strikes Sentencing. Proposition 184 (commonly referred to as the "three strikes" law) was adopted by voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, the law requires that a person who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies be sentenced to state prison as follows:

- ***Second Strike Offense.*** If the person has *one previous* serious or violent felony conviction, the sentence for *any new* felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders sentenced by the courts under this provision are referred to as "second strikers." As of March 2012, about 33,000 inmates were second strikers.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

- ***Third Strike Offense.*** If the person has *two or more previous* serious or violent felony convictions, the sentence for *any new* felony conviction (not just a serious or violent felony) is a life term with the earliest possible parole after 25 years. Offenders convicted under this provision are referred to as "third strikers." As of March 2012, about 9,000 inmates were third strikers.

While the law requires the sentences described above, in some instances the court may choose not to consider prior felonies during sentencing. When this occurs, an offender who would otherwise be sentenced as a second or third striker would be sentenced to a lesser term than required under the three strikes law.

Prison Release Determination. Under current law, most second strikers are automatically released from prison after completing their sentences. In contrast, third strikers are only released upon approval by the state Board of Parole Hearings (BPH). After third strikers have served the minimum number of years required by their sentence, a BPH panel conducts a parole consideration hearing to consider their possible release. For example, BPH would conduct such a hearing for a third striker sentenced to 25-years-to-life after the third striker served 25 years. If BPH decides not to release the third striker at that hearing, the board would conduct a subsequent hearing in the future. Since the three strikes law came into effect in 1994, the first third strikers will become eligible for hearings on their possible release from prison near the end of this decade.

Post Release Supervision. All second and third strikers are required under current law to be supervised in the community after release from prison. If a second striker's most recent conviction was for a nonserious, non-violent crime, he or she will generally be supervised in the community by county probation officers. Otherwise, the second striker will be supervised in the community by state parole agents. All third strikers are supervised in the community by state parole agents following their release. When second or third strikers violate the terms of their community supervision or commit a new offense, they could be placed in county jail or state prison depending on the circumstances.

PROPOSAL

This measure reduces prison sentences served under the three strikes law by certain third strikers whose current offenses are nonserious, non-violent felonies. The measure also allows resentencing of certain third strikers who are currently serving life sentences for specified nonserious, non-violent felonies. Both of these changes are described below.

Shorter Sentences for Some Third Strikers. The measure requires that an offender who has *two or more prior* serious or violent felony convictions and whose *new* offense is a nonserious, non-violent felony receive a prison sentence that is twice the usual term for the new offense, rather than a minimum sentence of 25-years-to-life as is currently required. For example, a third striker who is convicted of a crime in which the usual sentence is two to four years would instead receive a sentence of between four to eight years—twice the term that would otherwise apply—rather than a 25-years-to-life term.

The measure, however, provides for some exceptions to these shorter sentences. Specifically, the measure requires that if the offender has committed certain new or prior offenses, including some drug-, sex-, and gun-related felonies, he or she would still be subject to a life sentence under the three strikes law.

For text of Proposition 36, see page 105.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Resentencing of Some Current Third Strikers. This measure allows certain third strikers to apply to be resentenced by the courts. The measure limits eligibility for resentencing to third strikers whose current offense is nonserious, non-violent and who have not committed specified current and prior offenses, such as certain drug-, sex-, and gun-related felonies. Courts conducting these resentencing hearings would first determine whether the offender's criminal offense history makes them eligible for resentencing. The court would be required to resentence eligible offenders unless it determines that resentencing the offenders would pose an unreasonable risk to public safety. In determining whether an offender poses such a risk, the court could consider any evidence it determines is relevant, such as the offender's criminal history, behavior in prison, and participation in rehabilitation programs. The measure requires resentenced offenders to receive twice the usual term for their most recent offense instead of the sentence previously imposed. Offenders whose requests for resentencing are denied by the courts would continue to serve out their life terms as they were originally sentenced.

FISCAL EFFECTS

State Correctional Savings. This measure would have a number of fiscal impacts on the state's correctional system. Most significantly, the measure would reduce state prison costs in two ways. First, fewer inmates would be incarcerated for life sentences under the three strikes law because of the measure's provisions requiring that such sentences be applied only to third strikers whose current offense is serious or violent. This would reduce the sentences of some future felony offenders. Second, the resentencing of third strikers could result in many existing inmates receiving shorter prison terms. This would result in a reduction in the inmate population beginning in the near term.

The measure would also result in reduced state parole costs. This would occur because the offenders affected by this measure would generally be supervised by county probation—rather than state parole—following their release from prison. This is because their current offense would be nonserious and non-violent. In addition, the reduction in the third striker population would reduce the number of parole consideration hearings BPH would need to conduct in the future.

State correctional savings from the above changes would likely be around $70 million annually, with even higher savings—up to $90 million annually—over the next couple of decades. However, these annual savings could be tens of millions of dollars higher or lower depending on several factors. In particular, the actual level of savings would depend on the number of third strikers resentenced by the court and the rate at which BPH would have released third strikers in the future under current law.

Resentencing Costs. This measure would result in a one-time cost to the state and counties related to the resentencing provisions of this measure. These provisions would increase court caseloads, which would result in added costs for district attorneys, public defenders, and county sheriff's departments that would manage this workload and staff these resentencing proceedings. In addition, counties would incur jail costs to house inmates during resentencing proceedings. These costs could be a few million dollars statewide over a couple of years.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Other Fiscal Impacts. There would be some additional court-, probation-, and jail-related costs for the state and counties. This is because some offenders released from prison due to this measure would be supervised by probation departments instead of state parole, and would have court hearings and receive jail sentences if they violate the terms of their supervision or commit new crimes. We estimate that such long-term costs would not be significant.

This measure could result in a variety of other state and local government fiscal effects. For instance, governments would incur additional costs to the extent that offenders released from prison because of this measure require government services (such as government-paid health care for persons without private insurance coverage) or commit additional crimes. There also would be some additional state and local government revenue to the extent that offenders released from prison because of this measure entered the workforce. The magnitude of these impacts is unknown.

For text of Proposition 36, see page 105.

ATTACHED IS A COPY OF
Voter Information Guide, Gen. Elec. (Nov. 4, 2014), official title and summary

Proposition 47 Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

Official Title and Summary — Prepared by the Attorney General

Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

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

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

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

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Analysis by the Legislative Analyst

Background

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

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

- ***State Prison.*** Felony offenders who have current or prior convictions for serious, violent, or sex crimes can be sentenced to state prison. Offenders who are released from prison after serving a sentence for a serious or violent crime are supervised in the community by state parole agents. Offenders who are released from prison after serving a sentence for a crime that is not a serious or violent crime are usually supervised in the community by county probation officers. Offenders who break the rules that they are required to follow while supervised in the community can be sent to county jail or state prison, depending on their criminal history and the seriousness of the violation.
- ***County Jail and Community Supervision.*** Felony offenders who have no current or prior convictions for serious, violent, or sex offenses are typically sentenced to county jail or the supervision of a county probation officer in the community, or both. In addition, depending on the discretion of the judge and what crime was committed, some offenders who have current or prior convictions for serious, violent, or sex offenses can receive similar sentences. Offenders who break the rules that they are required to follow while supervised in the community can be sent to county jail or state prison, depending on their criminal history and the seriousness of the violation.

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

Analysis by the Legislative Analyst

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

For the full text of Proposition 47, see page 70.

Analysis by the Legislative Analyst

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:

Continued

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

Fiscal Effects

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

State Effects of Reduced Penalties

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

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

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

Analysis by the Legislative Analyst

Continued

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

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

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

County Effects of Reduced Penalties

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

County Jail and Community Supervision. The proposed reduction in penalties would have various effects on the number of individuals in county jails. Most significantly, the measure would reduce the jail population as most offenders whose sentence currently includes a jail term would stay in jail for a shorter time period. In addition, some offenders currently serving sentences in jail for certain felonies could be eligible for release. These reductions would be slightly offset by an increase in the jail population as offenders who would otherwise have been sentenced to state prison would now be placed in jail. On balance, we estimate that the total number of statewide county jail beds freed up by these changes could reach into the low tens of thousands annually within a few years. We note, however, that this would not necessarily result in a reduction in the county jail population of a similar size. This is because many county jails are currently overcrowded and, therefore, release inmates early. Such jails could use the available jail space created by the measure to reduce such early releases.

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

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

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

Effects of Increased Services Funded by the Measure

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

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

For the full text of Proposition 47, see page 70.

ATTACHED IS A COPY OF
Voter Information Guide, Gen. Elec. (Nov. 6, 2012), argument and rebuttal for and against Prop. 36

PROP 36 THREE STRIKES LAW. REPEAT FELONY OFFENDERS. PENALTIES. INITIATIVE STATUTE.

★ ARGUMENT IN FAVOR OF PROPOSITION 36 ★

The Three Strikes Reform Act, Proposition 36, is supported by a broad bipartisan coalition of law enforcement leaders, civil rights organizations and taxpayer advocates because it will:

• MAKE THE PUNISHMENT FIT THE CRIME

Precious financial and law enforcement resources should not be improperly diverted to impose life sentences for some non-violent offenses. Prop. 36 will assure that violent repeat offenders are punished and not released early.

• SAVE CALIFORNIA OVER $100 MILLION EVERY YEAR

Taxpayers could save over $100 million per year—money that can be used to fund schools, fight crime and reduce the state's deficit. The Three Strikes law will continue to punish dangerous career criminals who commit serious violent crimes—keeping them off the streets for 25 years to life.

• MAKE ROOM IN PRISON FOR DANGEROUS FELONS

Prop. 36 will help stop clogging overcrowded prisons with non-violent offenders, so we have room to keep violent felons off the streets.

• LAW ENFORCEMENT SUPPORT

Prosecutors, judges and police officers support Prop. 36 because Prop. 36 helps ensure that prisons can keep dangerous criminals behind bars for life. Prop. 36 will keep dangerous criminals off the streets.

• TAXPAYER SUPPORT

Prop. 36 could save $100 million every year. Grover Norquist, President of Americans for Tax Reform says, "The Three Strikes Reform Act is tough on crime without being tough on taxpayers. It will put a stop to needlessly wasting hundreds of millions in taxpayers' hard-earned money, while protecting people from violent crime." The California State Auditor projects that taxpayers will pay millions to house and pay health care costs for non-violent Three Strikes inmates if the law is not changed. Prop. 36 will save taxpayers' money.

• TOUGH AND SMART ON CRIME

Criminal justice experts and law enforcement leaders carefully crafted Prop. 36 so that truly dangerous criminals will receive no benefits whatsoever from the reform. Repeat criminals will get life in prison for serious or violent third strike crimes. Repeat offenders of non-violent crimes will get more than double the ordinary sentence. Any defendant who has ever been convicted of an extremely violent crime—such as rape, murder, or child molestation—will receive a 25 to life sentence, no matter how minor their third strike offense.

JOIN US

With the passage of Prop. 36, California will retain the toughest recidivist Three Strikes law in the country but will be fairer by emphasizing proportionality in sentencing and will provide for more evenhanded application of this important law.

Please join us by Voting Yes on Proposition 36.

Learn more at *www.FixThreeStrikes.org*

STEVE COOLEY, District Attorney
Los Angeles County
GEORGE GASCON, District Attorney
San Francisco City and County
DAVID MILLS, Professor
Stanford Law School

36

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 36 ★

HERE'S WHAT THE SUPPORTERS OF PROPOSITION 36 DON'T TELL YOU:

• A hidden provision in 36 will allow thousands of dangerous criminals to get their prison sentence REDUCED and then RELEASED FROM PRISON early. According to the Fresno Bee:

"If Proposition 36 passes, about 3,000 convicted felons serving life terms under Three Strikes could petition for a reduced sentence . . . "

• Some of these dangerous criminals will be released WITHOUT STATE PAROLE OR ANY LAW ENFORCEMENT SUPERVISION. According to the Independent Legislative Analyst:

"Third strikers who are resentenced under this measure would become eligible for county community supervision upon their release from prison, rather than state parole . . . some of them could be released from prison without community supervision."

• PROPOSITION 36 IS TOTALLY UNNECESSARY. Prosecutors and judges already have the power to implement Three Strikes fairly. Here's what the President of the District Attorneys Association says:

"Judges and Prosecutors don't need Proposition 36. In fact, it reduces our ability to use Three Strikes to target dangerous repeat felons and get them off the streets once and for all."

• 36 IS OPPOSED BY EVERY MAJOR LAW ENFORCEMENT ORGANIZATION AND VICTIM RIGHTS GROUP, including those representing California police chiefs, sheriffs, prosecutors, and police officers. Note that the supporters of 36 can't name a single law enforcement organization on their side!

• 36 WON'T REDUCE TAXES. Government doesn't spend too much fighting crime. It spends too little. More crime costs taxpayers too!

We urge you to SAVE Three Strikes. Please Vote NO on 36.

CHIEF RICK BRAZIEL, President
California Peace Officers Association
HENRY T. NICHOLAS, III, Ph.D., Author
California's Victims Bill of Rights
CHRISTINE WARD, Executive Director
Crime Victims Action Alliance

PROP 36 THREE STRIKES LAW. REPEAT FELONY OFFENDERS. PENALTIES. INITIATIVE STATUTE.

★ ARGUMENT AGAINST PROPOSITION 36 ★

In 1994 voters overwhelmingly passed the Three Strikes law—a law that increased prison sentences for repeat felons. And it worked! Almost immediately, our state's crime rate plummeted and has remained low, even during the current recession. The reason is pretty simple. The same criminals were committing most of the crime—cycling through our courts and jails—over and over again. The voters said enough—Three Strikes and You're Out!

In 2004, the ACLU and other opponents of tough criminal laws tried to change Three Strikes. The voters said NO. Now they are back again with Proposition 36. They couldn't fool us last time and they won't fool us this time.

Just like before, Proposition 36 allows dangerous criminals to get their prison sentence REDUCED and then RELEASED FROM PRISON! So who does Proposition 36 apply to?

- Criminals so dangerous to society that a District Attorney chose to charge them with a Three Strike offense;
- Criminals so dangerous that a Judge agreed with DA's decision to charge;
- Criminals so dangerous that a jury convicted them of that offense;
- Criminals so dangerous that a Judge imposed a 25-to-life prison sentence; and
- Criminals whose legal appeals were denied.

After all that, Proposition 36 would let those same criminals ask a DIFFERENT Judge to set them free. Worse yet, some of these criminals will be released from prison WITHOUT PAROLE OR ANY SUPERVISION!

Here's what the Independent Legislative Analyst says about the early release of some prisoners under Proposition 36: *"Some of them could be released from prison without community supervision."*

No wonder Proposition 36 is OPPOSED by California Police, Sheriff's and law enforcement groups, including:

California Police Chiefs Association
California State Sheriff's Association
California District Attorneys Association
Peace Officers Research Association of California
Los Angeles Police Protective League

What do you think these newly released hardened criminals will do once they get out of prison? We already know the answer to that: They will commit more crimes, harm or kill more innocent victims, and ultimately end up right where they are today—back in prison. All of this will cost taxpayers more than keeping them behind bars right where they belong.

No wonder Proposition 36 is opposed by victim rights groups, including:

Crime Victims United of California
Crime Victim Action Alliance
Citizens Against Homicide
Criminal Justice Legal Foundation

At the time Three Strikes was approved by the voters, some thought it might be too harsh or too costly. Voters rejected that view in 2004. But even if you believe that the Thee Strikes law should be reformed, Proposition 36 is not the answer. Any change to the sentencing laws should only apply to future crimes committed—it should not apply to criminals already behind bars—cutting their sentences short. It is simply not fair to the victims of crime to have to relive the pain of resentencing and early release of these dangerous criminals. We kindly ask you to VOTE NO ON PROPOSITION 36.

www.save3strikes.com

SHERIFF KEITH ROYAL, President
California State Sheriff's Association
DISTRICT ATTORNEY CARL ADAMS, President
California District Attorneys Association
HARRIET SALERNO, President
Crime Victims United of California

36

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 36 ★

Don't believe the scare tactics used by opponents of Prop. 36. Here are the facts:

- Prop. 36 requires that murderers, rapists, child molesters, and other dangerous criminals *serve their full sentences.*
- Prop. 36 *saves taxpayers hundreds of millions of dollars.*
- Prop. 36 *still punishes repeat offenders* of nonviolent crimes by doubling their state prison sentences.

Today, dangerous criminals are being released early from prison because jails are overcrowded with nonviolent offenders who pose no risk to the public. Prop. 36 prevents dangerous criminals from being released early. People convicted of shoplifting a pair of socks, stealing bread or baby formula don't deserve life sentences.

Prop. 36 is supported by law enforcement leaders, including:

- Steve Cooley, District Attorney of Los Angeles County
- Jeffrey Rosen, District Attorney of Santa Clara County
- George Gascon, District Attorney of San Francisco City and County
- Charlie Beck, Chief of Police of Los Angeles

They know that Prop. 36:

- *Requires:* Life sentences for dangerous criminals who commit serious and violent crimes.
- *Makes the Punishment Fit the Crime:* Stop wasting valuable police and prison resources on nonviolent offenders.
- *Saves Over $100 Million Every Year.*

STEVE COOLEY, District Attorney
Los Angeles County
JEFFREY F. ROSEN, District Attorney
Santa Clara County
CHARLIE BECK
Chief of Police of Los Angeles

ATTACHED IS A COPY OF
Voter Information Guide, Gen. Elec. (Nov. 4, 2014), argument and rebuttal for and against Prop. 47

Prop 47 Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

★ 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

Prop 47 Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

★ 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 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

47

★ 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

Arguments printed on this page are the opinions of the authors, and have not been checked for accuracy by any official agency.

ATTACHED IS A COPY OF Californians Against Prop. 47
<http://californiansagainst47.com/about-proposition-47

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About Proposition 47

CDAA LOOKS AT PROPOSITION 47
August 29, 2014

The California District Attorneys Association is the source of continuing legal education and legislative advocacy for its membership. In addition to offering seminars, publications, and extensive online tools, CDAA serves as forum for the exchange of information and innovation in the criminal justice field. CDAA has completed an extensive evaluation of Proposition 47 and presents its conclusions in this report.

PROPOSITION 47: A CRUEL FRAUD

Proposition 47, styled by its supporters as "The Safe Neighborhoods and Schools Act" (hereinafter "the Act"), unfairly misleads the public into believing that the Act will strengthen criminal laws to protect neighborhoods and schools. In fact, the exact opposite is true. Contrary to the claims of its supporters, the Act is crafted to weaken criminal laws, reduce a multitude of crimes to misdemeanors from felonies, release currently imprisoned felons with serious or violent criminal records, and impose an impossibly demanding standard of proof

in resentencings, including the three strikes resentencings enacted in 2012's Proposition 36. This Act also proposes that any savings will be directed into prevention and support programs in K-12 schools, victim services and treatment. However, it ignores the costs to the criminal justice system for the proposed "resentencings", costs to business owners, and costs of recidivism to the community. Nothing in this Act translates to safer neighborhoods or to safer schools.

"RE-SENTENCING" AKA EARLY RELEASE OF VIOLENT OR DANGEROUS FELONS

Proponents of Proposition 47 have admitted that its passage could result in the early release of up to 10,000 persons in state prison. Please understand that persons who are in state prison are there because their criminal record includes serious or violent offenses. Under Proposition 47, those eligible for release would include that cohort of offenders. Worse, the "re-sentencing" hearings that are the early release vehicle of Proposition 47 exclude any input from District Attorneys or crime victims.

The Standard of Dangerousness Proposed for Resentencing is Impossible to Meet

Although other statutes have provided a favorable standard for defendants applying for resentencing, none have imposed the burden on the prosecution or the court, in exercising discretion to grant or deny a petition for resentencing, to the level that Penal
Code § 1170.18 proposes.

Under the Three Strikes Reform Act of 2012 (Proposition 36), Penal Code § 1170.126 provides for resentencing petitioners previously sentenced to life terms pursuant to the Three Strikes Law (Penal Code §§ 667(b)-(i) and 1170.12) whose committing offense was non-violent and non-serious. Penal Code §1170.126 requires that when a petitioner meets the basic criteria for eligibility, the court shall resentence the offender unless the petitioner poses "an unreasonable risk of danger to public safety." (Penal Code § 1170.126(f).) The language in § 1170.126(f) strongly favors the defendant, stating that the petitioner "shall" be resentenced as a second strike offender "unless" the court determines that resentencing the petitioner is too dangerous. The burden of proof is on the prosecution and must be established by a preponderance of the evidence. (People v. Superior Court (Kaulick) (2013) 215 Cal. App. 4th 1279, 1301-1302.) Although this is a demanding standard, it provides a fair balance and allows the prosecution and court to rely on several sources and areas of risk to establish that the individual is unsuitable for resentencing.

Penal Code § 1170.18, however, changes that standard to an altogether unreachable level. The proposed language in Penal Code § 1170.18(c) would require the prosecution to prove, and the court to find, that the defendant is an unreasonable risk to society because he would likely commit one of the listed violent crimes in § 667(e)(2)(C)(iv).

Last Name *

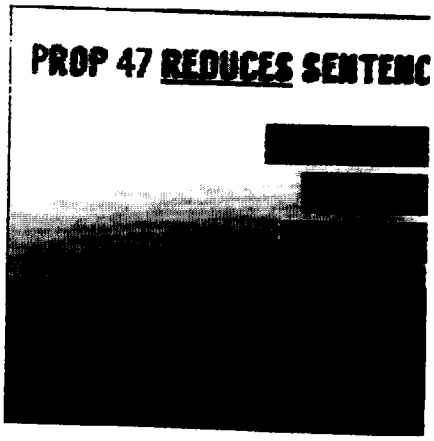
Street Address *

City *

State * **Zip ***

Email * **Phone**

Submit



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Those crimes are limited to sexually violent offenses, murder, certain sex crimes with children under 14, solicitation to commit murder, assault with a machine gun on a peace officer, possession of weapons of mass destruction or a crime punishable by death or life imprisonment, or "Super Strikes" as they are sometimes known. Put another way, those crimes do not include any of the following (and this is a partial list):

1. Carjacking
2. Armed Robbery
3. Assault on a peace officer or a firefighter with an assault weapon, a hand-gun, a shotgun or a knife.
4. Most felonies in which the defendant personally uses a firearm
5. Assault with a deadly weapon by an inmate
6. Bank robbery
7. Residential Burglary
8. Holding a hostage by a state prison inmate
9. Kidnapping
10. Drug trafficking, no matter how large the transaction
11. Shooting at an inhabited dwelling, vehicle or aircraft
12. Assault with a deadly weapon against a school employee
13. Non-fatal drive-by shootings
14. Witness intimidation
15. Throwing acid or flammable substances at a victim
16. A felony where the defendant personally inflicted great bodily injury

Moreover, to be eligible for the resentencing, the defendant must not have committed one of these "super strikes" in the past. So, the prosecution's burden is to prove that someone who has never committed one of these particular offenses before, poses an unreasonable risk of committing one in the future.

As such, Proposition 47 severely narrows the definition of "dangerousness" and the scope of what the prosecution is able to present at the hearing when asserting the inmate poses a risk to public safety. There are no tests, no assessments, no fortune-telling devices that foresee when a person is likely to commit a murder, or a rape, or possess a weapon of mass destruction. Would that there were – many victims could be saved. Even the most finely tuned assessment tool at best can say that an offender has a likelihood of violently recidivating, but not which type of crime.

These assessment tools are simply scales based on other offenders with similar characteristics and backgrounds, i.e., a criminal actuarial table. They can predict a possibility of committing a crime in the future compared to others with the same data points, but cannot predict which crime or whether the crime will occur. Nor, are they intended for this purpose, but as a guide to assist in planning the appropriate level of supervision and treatment to reduce that likelihood to recidivate.

Presumably, the hearing itself would be conducted in the same manner as an original sentencing hearing or the Proposition 36 resentencings. However, there

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No on Propositi
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Facebook Posts

No on Prop 47
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SHARE if you voted NO on Prop 47!! Let's get the word out and defeat this dangerous measure.

View on Facebook (https://www./StopDateRape/photos/a.377279519091129.10737418/394927177326363/?type=1&re

No on Prop 47

No on Prop 47
Like 2,819

is nothing in Proposition 47 indicating which rules of evidence and procedure should apply, or what evidence could be presented that might show the petitioner was likely to commit murder or one of the other specified crimes in the future. Moreover, every petitioner eligible to apply for this "resentencing" was committed to prison after conviction of one of the non-violent offenses covered by the Initiative. This makes the burden of proving they are likely to commit one of those violent crimes in the future that much more difficult.

Put simply, not only is this an impossible standard to meet, but it is disenguously disguised as giving the court discretion to deny the resentencing, when it is designed to ensure that the court has no discretion and hence provides that no defendant could be denied. And if a judge does deny a petitioner that resentencing, it creates an immediately appealable issue.

As a consequence, many potentially violent individuals will be released– not because they do not pose a violent risk to society, but because the Act has excessively limited the scope of what is considered a risk of danger to society and what the prosecution can present to counter the defendant's eligibility. The standard will far
exceed the aim of Proposition 47. Instead of simply reducing prison populations by setting non-violent misdemeanants free, sentenced inmates with violent histories will have a higher likelihood of freedom, at a substantial risk to the public.

Further, this proposed new definition of "dangerousness" is not limited to only the types of offenders serving terms for crimes affected by this Act, but applies to any resentencing permitted by the Penal Code. Proposed Penal Code § 1170.18 (c) states, "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 [§ 667(e)(2)(C)(iv)]." (§ 1170.18, subd. c [emphasis added].) By referring to "Code," § 1170.18 would alter the meaning of "unreasonable risk of danger to public safety," not only as it is applied in § 1170.18 resentencing hearings, but in all other hearings that rely on the dangerousness standard throughout the entire Code. As a result, the prosecution would face the impossible barrier when opposing resentencing for the Three Strikes defendants under Penal Code § 1170.126.

Moreover, for any of the Three Strikes defendants previously denied resentencing based upon a judicial finding of dangerousness, may appeal that ruling and request the court now apply this new standard of dangerousness, resulting in a further cost to a court system already struggling financially.

The Initiative Violates Victim's Constitutional Rights to be Present and be Heard

A resentencing hearing ordered under the Act shall be considered a post-conviction proceeding and thus must comply with Cal. Const. Art. 1 §28(b)(7). However, the Act proposes that if a petitioner has completed a sentence for a felony conviction that would have been a misdemeanor, the

petitioner may file an application to have the felony designated as a misdemeanor without a hearing. (Proposed §1170.18(f), (h).)

Marsy's Law requires that a victim have "reasonable notice of all public proceedings, at which the defendant and prosececutor are entitled to be present" and to be heard at any proceeding . . . involving sentencing, post-conviction release decision, or any proceeding in which a right of the victims is at issue. " (California Constitution, Art. 1 §28(b)(7),(8).) By deliberately crafting a procedure which would not require a hearing for a reduction post completion of a sentence, this Act not only violates the spirit and intent of Marsy's Law, but it clearly violates those newly enacted Constitutional rights. Although the Initiative would not require a hearing to resentence a convicted felon to a misdemeanor sentence, Marsy's Law would require that the victim have notice and be heard on any such resentencing. (People v. Superior Court (Kaulick) (2013) 215 Cal. App. 4th 1279, 1299.)

DRUGS: PROPOSITION 47 UNDERMINES DRUG TREATMENT AND INCREASES RISKS OF DRUG FACILITATED SEXUAL ASSAULTS

Methamphetamine, heroin and cocaine are the scourge of neighborhoods across California. The initiative limits felony consequences to only those who have a prior particular kind of violent felony or sex offense. Rather than making neighborhoods safer, this bill will not discourage possession of those drugs and will minimize the effectiveness of court-directed treatment.

Without the potential felony consequences, there is no incentive to complete treatment at court direction. The proverbial "stick" and "carrot" are diminished significantly. For instance, Drug Courts are specially designed court calendars providing alternatives to traditional criminal justice approaches for non-violent drug-related offenses. These very successful collaborative courts are designed for felony offenders who have been unsuccessful in previous legally required diversion programs. If enacted, this initiative will sound the death knell for Drug Courts, as there is no incentive to do an 18 month to 2 year intensive treatment program when the maximum consequences for a drug conviction is a six month misdemeanor term in county jail.

Proposition 47 goes way beyond reducing the penalties for drugs of addiction. Proposition 47 also reduces the penalties for unlawful possession of predatory drugs. Rohypnol, Ketamine and GHB are drugs associated with drug facilitated sexual assaults, commonly called "date-rape drugs." Under current law, persons in unlawful possession of these drugs can be charged as felons. Proposition 47, however, minimizes the scope of these types of crimes by reducing the penalty for possession of Rohypnol, Ketamine, GHB and any other drug designed to render a victim helpless to a simple misdemeanor. This de-emphasis is particularly disturbing when measured against the unhappy reality of the increasing use of these drugs by sexual predators intent on engaging in serious criminal conduct.

THEFT OF MOST HAND-GUNS WILL BECOME

MISDEMEANORS

Currently, the theft of any firearm is defined as a felony pursuant Penal Code §s 487(d)(2) and 489. A ***felony*** conviction of Penal Code § 487(d)(2) is a serious felony (or strike) pursuant to Penal Code § 1192.7(c)(26). (People v. Rodola (1998) 66 Cal.App.4th 1505.)

There are sound policy reasons for providing that theft of a firearm is a felony. Persons who steal firearms do so with the intent to use that firearm – now untraceable to the thief – in the commission of a violent crime. Unhappily, Proposition 47 de-emphasizes the seriousness of that crime by now providing that virtually all firearm thefts – and certainly all hand-gun thefts – would be reduced to misdemeanors.

Proposed Penal Code § 490.2 would require that theft of a firearm, valued at less than $950, shall be punished as a misdemeanor, unless the offender has a conviction for one of a very narrow list of prior violent felonies or is a sex offender. Thus, a conviction of theft of a firearm would only qualify as a felony if the value of the gun was valued at over $950. A conviction of a misdemeanor violation of Penal Code § 487(d)(2) would not be a strike offense, as only convictions of felonies are priorable convictions for the purposes of the Three Strikes Law, pursuant to Penal Code §s 667(b)–(i).

HARM TO RETAIL BUSINESSES, FARMS AND BANKS

The proposal to limit burglary, forgery, petty theft, grand theft, and possession of stolen property to misdemeanors, irrespective of the number of prior theft convictions, if the amount of loss remains lower than $950, is essentially decriminalizing conduct that causes great economic costs to business owners, farms, banks, and the community.
And in fact, petty theft could never be charged as a felony unless the offender had previously been convicted of one of the very few prior crimes listed in Penal Code § 1170.12(c)(2)(C)(iv), or has to register pursuant to Penal Code § 290(c). This will lead to increased property crimes and costs to businesses that will be passed on to the consumers.

This proposal ignores the fact that there are criminals whose very business is to steal. This law does nothing to discourage that conduct, and in fact, encourages it, by keeping the amount of any theft under $950, and providing no felony consequence for possession of controlled substances, absent a very narrow particular prior criminal history.
Also, it is important to note that while the preamble states that this Act will ensure that people convicted of murder, rape, and child molestation do not benefit from this Act, those previously convicted of crimes like robbery, residential burglary, assault with a deadly weapon and criminal threats, as well as those who use weapons and inflict great bodily injury, will.

A prior conviction will elevate one the crimes the Act seeks to amend only if it falls into a very limited category of prior violent crimes pursuant to Penal Code

§667(c)(2)(C)(iv), and specifically excludes all other serious and violent felonies enumerated under Penal code §§ 667(c) and 1192.7(c). This means that a person with a prior conviction for robbery and use of a firearm, who steals a gun that is worth less than $950, can be charged with only a misdemeanor. Or a person with a prior conviction for residential burglary who forges a victim's personal check for less than $950 can be charged with only a misdemeanor. Under Proposition 47, persons with prior convictions for stalking would still only be charged with a misdemeanor for possession of date-rape drugs. Under Proposition 47, persons with prior convictions for carjacking or gang-related criminal conduct could only be charged with a misdemeanor for theft of a hand-gun.

Additionally, with a limitation of six months to one year for these varied crimes, there is no inducement to seek the rehabilitation necessary to change criminal behavior.

Punishment for Felony Convictions of the Proposed Amended Crimes is Inconsistent with Penal Code § 1170(h)(3)

The Act proposes to permit charging violations of Penal Code §s 459, 473, 476a, 490.2, 496, 484, and 487, and Health and Safety Code § 11350, 11377, and 11357 as felonies only if the defendant has suffered a prior conviction for a particular type of serious or violent felony pursuant to Penal Code § 667(e)(2)(C)(iv). Even these provisions, though, are illusory.

Please understand that this list of serious or violent felonies in Proposition 47 is considerably narrower than the current statutory array of serious or violent felonies. In fact, the vast majority of serious and violent felonies are excluded from consideration by Proposition 47. Here are just some of the violent or serious crimes that are excluded, which would assure that the predicate crime could only be charged as a misdemeanor:

1. Carjacking
2. Armed Robbery
3. Assault on a peace officer or a firefighter with an assault weapon, a hand-gun, a shotgun or a knife.
4. Most felonies in which the defendant personally uses a firearm
5. Assault with a deadly weapon by an inmate
6. Bank robbery
7. Residential Burglary
8. Holding a hostage by a state prison inmate
9. Kidnapping
10. Drug trafficking, no matter how large the transaction
11. Shooting at an inhabited dwelling, vehicle or aircraft
12. Assault with a deadly weapon against a school employee
13. Non-fatal drive-by shootings
14. Witness intimidation
15. Throwing acid or flammable substances at a victim

The Act then requires that if charged and convicted the sentenced shall be served pursuant to Penal Code § 1170(h), i.e., a prison term of up to 3 years in county jail. However, pursuant to Penal Code § 1170(h)(3), any person previously convicted of a serious or violent felony cannot serve a term in county jail, but must be sentenced to serve an executed sentence in state prison.

ILLUSORY SAVINGS

This Bill proposes that the Director of Finance shall calculate the savings that accrue to the state by implementation of this bill. However, it does not indicate how those savings are to be calculated. Is this based only on savings to the California Department of Corrections and Rehabilitation? No offender convicted of the crimes that this Act proposes to reduce to misdemeanors can currently be sentenced to state prison absent a serious or violent prior conviction due to Realignment. The majority of offenders convicted of one of these covered criminal offenses are eligible for drug treatment programs already (Penal Code § 1000 or Penal Code § 1210), felony or misdemeanor probation, or a sentence to serve a prison term in county jail. This would not translate into any savings for the state, as most of those convicted of these offenses are not currently a burden on state resources, e.g. California Department of Corrections and Rehabilitation.

Moreover, the savings from eliminating a sentence to state prison for a felon convicted of one of the covered crimes is negligible because the only savings would come from those with prior serious or some violent prior convictions, and under the Act, a portion of these offenders would still be eligible for felony punishment. Additionally, it is unclear how future savings could be calculated after year one, when the state will not receive any new admissions to state prison. Currently, all of these crimes (except a violation of Health and Safety Code § 11350), even with a prior serious or violent prior history, are wobblers, and can be and often are, resolved for Diversion Programs, Misdemeanors or Felony Probation. At best, it would be a guestimate as to how many offenders charged with one of these misdemeanors ever would have been eligible for state prison or ultimately sentenced to state prison, instead of an alternative consequence at a cost only to the county.

SOME OTHER DRAFTING ANOMALIES OF PROPOSITION 47

Many initiatives drafted without critical eyes evaluating their drafting are replete with unexplainable questionable provisions, defying understanding. Proposition 47 is no exception. Here are some of those questionable, poorly drafted anomalies:

Felons cannot be Resentenced to Misdemeanors as Required by Proposed Penal Code § 1170.18.

Proposed Penal Code § 1170.18 provides for the resentencing of a felon currently serving a sentence or having completed a sentence for one of the new misdemeanor charges. This provision of proposed Penal Code § 1170.18

creates a legal absurdity when it calls for a defendant to be "resentenced to a misdemeanor." A defendant is not sentenced to a misdemeanor. A crime is punished as a felony or misdemeanor. A crime can be reduced to a misdemeanor and thus sentenced, accordingly, if not a wobbler, to a maximum of six months in county jail.

Thus, § 1170.18 would inadvertently give the judge authority to act outside the power of the judiciary. The issue lies in the sections' misuse of the term "resentence" as it relates to "resentencing" a felony to a misdemeanor. The proposed law states:

> If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to [Health and Safety Code] §s 11350, 11357, [etc.]...

In defining a criminal offense, the Legislature determines whether a crime is a felony or a misdemeanor by proscribing the sentence that may be imposed. (Pen. Code, § 17.)

Under Proposed § 1170.18's "resentence" language, the court is authorized to change the petitioner's sentence from a felony sentence to a misdemeanor sentence without changing the designation of the original offense. Reducing the proscribed sentence for a felony conviction to a misdemeanor conviction sentence is in direct conflict with the law because the court is applying a sentence applicable to a misdemeanor crime to a felony. Not only is this outside the power of the judiciary, but it has a negative effect on the petitioner who will retain a felony conviction but receive a misdemeanor sentence.

The Resentencing Provisions of Proposed Penal Code § 1170.18 Apply Only to Felons Sentenced to Prison and thus Violate Equal Protection.

Pursuant to proposed Penal Code § 1170.18(a) the resentencing provisions apply only to anyone currently serving a sentence for a conviction of one of the felonies proposed to be amended by the Act. A person granted probation is not serving a sentence. Pursuant to Penal Code § 1203, probation "means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer."

Granting of probation is qualitatively different from imprisonment. (People v. Howard, (1997) 16 Cal.4th 1081, 1092). "The imposition of sentence is equated with entry of a final judgment." (People v. Mora (2013) 214 Cal.App.4th 1477.) When a court suspends imposition of a sentence and grants probation, unless a prison sentences is suspended, judgment is not imposed and the defendant is not sentenced. (People v. Scott (2014) 58 Cal.4th 1415, 1423-1424, citing People v. Howard (1997) 16 Cal.4th 1081, 1087) Thus, this law would apply only to a person sentenced to state prison, or local prison pursuant to Penal Code §

1170(h).

When the Realignment Act was passed in 2011, the Appellate Court found that application of Realignment only to offenders whose sentences were imposed on or after the effective date of the Act, but not to defendants who were sentenced before its effective date, did not violate equal protection because the classification was supported by the rational basis of maintaining the integrity of sentences that were valid when imposed. (Mora at p. 1484.) The Court went on to state that a statutory classification must be rationally related to a legitimate state interest. (Id.) However, the Initiative proposed here would treat felons already serving a prison term more generously than those granted probation, who more likely have significantly less culpability or criminal history. Probation is an act of clemency in hopes that defendant will be rehabilitated; whereas, imprisonment is punishment. (People v. Moret (2009) 180 Cal.App.4th 839, 860). And yet, under this new Act, probationers already convicted of one of the felonies that the Act seeks to amend will be treated more harshly than those previously imprisoned for commission of the same crimes. This will likely spawn equal protection challenges to the law.

Persons Sentenced to Misdemeanors Cannot be Under the Supervision of the Department of Corrections and Rehabilitation

Proposition 47 provides that "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 . . ." Under current law, the maximum consequence for a non-wobbler misdemeanor conviction is six months in county jail, pursuant to Penal Code § 19. Upon completion of that six months, the court loses jurisdiction and the Defendant is not subject to any restraints. Pursuant to Penal Code § 19.2, a misdemeanant may be sentenced for up to one year of confinement. All of the proposed punishments for the amended felonies as misdemeanors will be between six months and one year.

Therefore, once the misdemeanant has served his sentence and has been released, the court no longer retains jurisdiction over him. If a defendant is "resentenced" under this Act, after serving more than the maximum of six months or one year, dependent upon the underlying committing offense, unlike a person convicted of a felony, he cannot be placed on parole or returned to jail for any violation thereof.

Unlike an inmate released after completing a prison term, who is subject to a period of parole or post-release community supervision, misdemeanor sentences are not included in this sentencing regime. This distinction is intentional, as misdemeanants and felons are not similarly situated. (In re Valenti (1986) 178 Cal.App.3d 470.)

"There is a significant difference in the quality and duration of punishment, as well as the resultant long term effects." (Id. at p. 475.) Upon completion of a

custodial sentence, a misdemeanant suffers no further loss of civil rights, is not subject to spending three years in the constructive custody of Department of Corrections on parole and may not be reimprisoned for a violation of the terms of parole. (Id.)

Even if the "resentencing" subjected the defendant to parole, that period of supervision would be essentially toothless. If the misdemeanant has already served the maximum custodial sanction (including all applicable good time credits), there can be no additional custody imposed. (See People v. Feagley (1974) 39 Cal.App.3d 774, vacated on other grounds, finding that the defendant for whom imposition of sentence was suspended could not be ordered to serve time for a violation of probation, because the time credit against the sentence was far more than its maximum duration of six months.) Given good time credits and actual custody, unless a defendant has served less than three to six months actual time, there would be no time left to impose any future violations. Once the maximum time has been served in custody for a misdemeanor, no future supervision is enforceable by the threat of custody.

Moreover, the Act conflicts with Penal Code § 3000.08. The Act requires that a person resentenced pursuant to proposed Penal Code § 1170.18 be subject to § 3000.08 parole supervision. Penal Code § 3000.08 defines a parolee as a person to be supervised by the Department of Corrections upon release from state prison after serving a prison term if the inmate served a term after a conviction for a serious felony pursuant to Penal Code § 1192.7(c), a violent felony pursuant to Penal Code § 667.5(c), a defendant sentenced as a third striker pursuant to Penal Code § 667(e)(2), a person classified as a high risk sex offender or a person classified as a sexually violent predator. "Notwithstanding any other law, all other offenders released from prison shall be placed on postrelease supervision pursuant to Title 20.5 (commencing with § 3450)."

The Act does not propose to amend PC 3000.08 and thus, the proposed requirement that resentenced offenders be sentenced with post release supervision under the supervision of the Department of Corrections as parolees pursuant to proposed Penal Code § 1170.18 ,is in conflict with the existing statute. By currently existing law, upon completion of a state prison sentence, a defendant is placed upon Post Release Community Supervision (Penal Code § 3000.08) or if serving local prison sentence, is released without any supervision. (Penal Code § 1170(h)(5)(A).

The Act Will Increase Costs to the State to Supervise Misdemeants on Parole who Currently Are Under the Authority of the County upon Release from State Prison

Even if the resentenced misdemeanant could be supervised on Parole, the Act does not calculate the costs to the state of supervising the offenders released from state prison on parole. This Act requires that any offender "resentenced" pursuant to proposed 1170.18(d) be supervised on parole. The Department of Corrections Division of Adult Parole is currently not responsible for the supervision of any offender convicted of the crimes affected by this Act and

sentenced to serve an executed term in state prison. Because such offenders are convicted of a non-violent, non-serious offense, they are supervised by county Probation Departments upon completion of the original state prison sentence pursuant to Penal Code §§ 3000.08 and 3450, as post-release community supervision offenders.

Moreover, this Initiative does not appear to limit the "resentencings" to state prison terms, and thus, would necessarily include any inmate currently serving an executed prison term in local county jail pursuant to Penal Code §§1170(h)(5)(A) and 1170(h)(5)(B). Such inmates are not under the supervision of parole or postrelease community supervision upon completion of the local prison term. If the term is completed in local custody with no period of mandatory supervision, then the defendant is not supervised after release. If the defendant is granted a split sentence, then the mandatory supervision portion is supervised by the county probation department. In either case, under the Public Safety Realignment Act of 2011, the Department of Corrections is not currently responsible for the supervision of any of the proposed offenders, eligible to petition for the resentencing, upon release. Under the proposed Act, these offenders would be transferred to the jurisdiction of the California Department of Corrections and Rehabilitation's Division of Adult Parole despite never serving a day in state prison. (Penal Code § 1170.18(d).) This would actually increase state costs.

For each resentenced state or local county jail inmate ordered to be supervised on parole, this adds an additional cost and burden to the already over-taxed Department of Corrections, and contravenes the intent and spirit of Assembly Bill 109 or Public Safety Realignment, and conflicts with current law.

Moreover, for those who had been serving a local prison sentence, this adds an additional term of supervision. This law, rather than decreasing the burden of conviction of a felony for a defendant, adds a parole tail that would not previously have existed and exposes the inmate to additional custodial sanctions, and by extension, increased costs not just to the Department of Corrections and Rehabilitation, but Sheriffs' Departments statewide for housing those subjected to future custodial sanctions.

⬇ DOWNLOAD CDAA ANALYSIS (pdf)

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ATTACHED IS A COPY OF David Greenwald, *Analysis: Perspective on Proposition 47*, The Davis Vanguard (October 29, 2014)

Analysis: Perspectives on Proposition 47

Posted by David Greenwald (http://www.davisvanguard.org/author/David M. Greenwald/) Date: October 29, 2014
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(10) Comments

On Monday, the *Vanguard* ran a column called "Scare Tactics and Prop. 47 (http://www.davisvanguard.org/eve-on-the-courts-scare-tactics-and-prop-47/)." We noted that, while it reduces over-incarceration for largely petty and non-violent offenses, there are concerns, particularly the elimination of Penal Code section 487(d)(2) which mandates an automatic felony for the theft of a handgun.

The column also demonstrated that, for most intents and purposes, the proposed Penal Code section 490.2 would require all thefts valued at less than $950 to be a misdemeanor, but there are gray areas that make that unlikely for the theft of a handgun.

We were fascinated to read a piece published in the *Enterprise* (http://www.davisenterprise.com/forum/opinion-columns/prop-47-a-perspective-from-the-bench/)by Placer County Judge J. Richard Couzens. One might recognize Judge Couzens as the father of Yolo County Deputy District Attorney Ryan Couzens, who has had an interesting history on the *Vanguard* (http://www.davisvanguard.org/?s=Ryan+couzens).

Judge Couzens, having served as a trial judge for over 37 years, writes, "I share in the laudable goal of Proposition 47 to reserve prisons for violent and serious offenders and to make funding available for treatment and crime prevention." However, he argues, "voters must understand that passage of Prop. 47 on the Nov. 4 ballot will have serious consequences, some of which may adversely affect public safety."

He writes, "Under current law, people who commit three or more prior theft offenses with a term of custody imposed as punishment may be prosecuted as a felon. Prop. 47 eliminates the crime of 'petty theft with a prior' except for a narrow group of people excluded from the act."

He adds, "The initiative makes simple possession of concentrated cannabis, methamphetamine, cocaine and heroin a misdemeanor. Substance abuse rarely arises overnight and certainly cannot be effectively treated overnight. The progress to recovery frequently is 'one step forward, two steps back.'"

Length of probation is an important difference in felony versus misdemeanor sentencing – five years for felonies and three years for misdemeanors. The judge writes, "The two-year reduction in probation supervision will significantly interfere with treatment of the seriously addicted. The premature release of these people from supervision only sets them up for failure."

The problem with the judge's analysis here is that there is no evidence that the current system actually works to get people off of drugs. So, it is not as though we are taking a successful but expensive program and ending it.

The judge argues, "The benefits of reduced sentencing are not available to people convicted of a registerable sex offense, a crime related to murder and a few other limited crimes. However, they are available to people who have prior convictions for dangerous crimes such as kidnapping, assault with a firearm, robbery, arson, gang activity, residential burglary and domestic violence with great bodily injury. The inability to prosecute these people as felons will reduce their accountability and increase the risk to public safety because of reduced probation supervision."

He continues, "Prop. 47 allows people already sentenced as a felon to be resentenced as a misdemeanor if they would have been eligible for misdemeanor sentencing under the new law and are not an unreasonable risk of danger to public

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safety.' Prop. 47 only allows judges to find 'dangerousness' if the person likely would commit a registerable sex crime, a crime related to murder, or a few other specified crimes. Resentencing would be required for people likely to commit many other dangerous crimes."

The latter sentence is a point in dispute, where proponents of the law argue that judges would have sufficient discretion to avoid resentencing of people who committed a variety of "dangerous crimes."

Judge Couzens continues, "Most significantly, Prop. 47 expands the resentencing provisions under the three-strikes law. Prop. 36, enacted by the voters in 2011, permits resentencing of certain strike offenders, unless to do so would create an 'unreasonable risk of danger to public safety.' Broad discretion was given to judges to determine who would pose such a danger."

He adds, "Prop. 47 imposes its more restrictive definition of dangerousness on people sentenced under the three-strikes law. People now serving a third-strike sentence will be allowed to submit a request for resentencing under the more liberal provisions of Prop. 47, even though a judge has already determined they are too dangerous to get relief under the existing law."

He continues, "The resentencing provisions of Prop. 36 apply only to people serving a 25-years-to-life third-strike sentence under the three-strikes law. Prop. 47 would extend resentencing to second-strike offenders covered by the act. Relief could be denied only if the court found the person was dangerous under the proposition's very narrow definition."

"Finally," Judge Couzens says, "the treatment and crime prevention fund created by the act is illusory. The initiative directs the director of finance to 'calculate the savings that accrued to the state from the implementation of the act from the current fiscal year as compared with the preceding fiscal year.

"Other than the requirement to use current data 'or best available estimates,' there is no specified method for calculating the savings. It is naive to believe that in these difficult financial times, state government will willingly divert significant 'savings' to this ill-defined fund."

Judge Couzens concludes, therefore, "Although the objectives of Prop. 47 are laudable, voters must determine whether this initiative is the proper way to reach those objectives."

Darrell Steinberg and Rusty Selix

Outgoing California Senate President Pro Tem Darrell Steinberg and Rusty Selix of California Council of Community Mental Health Agencies have a different perspective, arguing that "when it comes to mental illness within our criminal justice system, the facts tell a damning story – one for which we must rewrite the ending."

They argue that Prop. 47 can "help rebuild our mental health and community infrastructure by reducing waste in the very place – prisons – that has swallowed up those resources over the years."

They cite a Stanford Law School report from earlier this year, saying that "the number of mentally ill people in California prisons doubled from 2000 to 2014; currently 45 percent of prisoners have been treated for mental illness within the past year."

They continue, "The study also echoed findings by the U.S. Justice Department that mentally ill inmates in state prisons serve 15 months longer than other inmates on average. Such inmates are also stuck, without treatment, in cycles of crime and incarceration. A study in Los Angeles County found that 90 percent of jail inmates who had been incarcerated two or more times had serious mental health problems."

They argue, "All this adds up to an incredibly expensive and ineffective approach to both public safety and public health."

"So how did we arrive at this crisis?" they ask. "From the 1950s through the 1970s, California passed laws to move responsibility for mental health care from large state institutions to a model of local, community-based care. But there never was any follow-through to ensure that infrastructure was created and supported.

"As local and state leaders battled over other budgets priorities, mental health beds vanished and nothing materialized at the local level. As a recent example, California cut 21 percent ($586 million) from mental health programs from 2000 to 2012 – the most in the nation – according to the National Alliance on Mental Health.

"By failing to invest in local treatment and recovery options, it is, sadly, no surprise that people with mental health needs have ended up in our jails, courts and prisons," they argue. "And while there needs to be accountability for crimes, warehousing mentally ill people in our prisons – forcing them to live in crowded, violent and solitary conditions – does not address the underlying factors of their behavior. In fact, California is currently under a federal mandate to reduce prison crowding partly because of a lawsuit about inadequate mental health care."

They write, "If our goal is to change behavior, then accountability must take into account how to prevent future harm. In other words, treating mental illness is not simply a moral obligation but also a public safety strategy

"Growing consensus for such a strategy inspired us in 2004 to author the California Mental Health Services Act, a successful voter initiative that produced $7.4 billion for mental health needs and that served 400,000 Californians within its first five years," they continued

"We are awed by the impact, but 10 years later we still have far too many people with mental illness cycling in and out of our prisons and jails – and far too much taxpayer money locked in that same system

"That's why we support Proposition 47, along with the California Psychiatric Association, some law enforcement officials, crime victims, business leaders and many others."

Senator Steinberg and Mr. Selix argue that Prop. 47 "would provide $50 million to $100 million each year for mental health and drug treatment. It would do so through reduced prison costs, specifically by categorizing six nonviolent, low-level felonies as misdemeanors (e.g., drug possession, petty shoplifting and writing a bad check) that can be addressed with county jail terms, treatment requirements and other forms of accountability."

They conclude, "We cannot change the troubling facts about California's recent approach to mental health, but we can change course to create a more humane, effective justice system. Passing Proposition 47 is an important step in that direction."

—David M. Greenwald reporting

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About The Author

David Greenwald (http://www.davisvanguard.org/author/David M. Greenwald/)

David Greenwald is the founder, editor, and executive director of the Davis Vanguard. He founded the Vanguard in 2006. David Greenwald moved to Davis in 1996 to attend Graduate School at UC Davis in Political Science. He lives in South Davis with his wife Cecilia Escamilla Greenwald and three children.

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10 Comments

Robert Canning
October 29, 2014 at 8:56 am (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256431)

It is curious that Judge Couzens asserts that the release language from Prop 47 is more "restrictive" in its definition of dangerousness. The language of both propositions dis identical – a judge must find that the person does not pose an "unreasonable risk to public safety." The criteria that a judge may review to make that decision is identical between 47 (Sec. 14(b) and (c)) and 36 (Sec. 6(f) and (g)). Prop 36 does not define danger to public safety but the definition in Prop 47 is commonly used: "unreasonable risk that the petitioner will commit a new violent felony."

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Frankly
October 29, 2014 at 8:33 am (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256442)

Vote no on proposition 47. There are true criminals and there are people that needs treatment and counseling. Proposition 47 is a poorly constructed initiative that does not draw enough of a distinction between the two, and hence will increase the "tax" that law abiding citizens have to pay as a result of increased criminal activity.

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WTF
October 29, 2014 at 9:07 am (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256445)

Prop 47 does nothing to deal with the underlying problems that criminal courts have when dealing with mentally ill defendants which is the inability to easily compel treatment to include forced medication. When a defendant or probationer declines to participate in treatment or to take their medication the court is left with no option but incarceration when they are dangerous off of medication or self medicating with methamphetamine or marijuana. Maybe David should do a story on the current yolo county mental health court. One of the goals of that program is to reduce incarceration days for qualifying probationers. One of the challenges is that it is voluntary meaning that the probationer can opt out at any time. Mr. Steinburg has had many years to come up with legislation that empowers the criminal courts with the authority and resources to address the issue of mental illness in the criminal justice system and has not done so. A system like the conditional release program (CONREP) used for those found not guilty by reason of insanity where judges could force probationers to participate in the program could reduce the prison population. I wonder why Mr. Steinburg could not get these changes through the democratic legislature and signed by the democratic governor? The problem with a proposition of this magnitude is that it is voted on by the public who have very little knowledge concerning the system they are changing based on political spin in political ads. Referring to it as the safe schools and neighborhoods initiative is just another example of the political spin.

Prop 47 hopes to generate more revenue for the mentally ill similar to the claim regarding education funding. It makes no guarantees that one dollar more will be spent on either program

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> Davis Progressive
> October 29, 2014 at 10:57 am (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256468)
>
> "It makes no guarantees that one dollar more will be spent on either program."
>
> because it can't, all it can do is hope that by freeing up wasted money and hope that the money will be used better. maybe it wont be.
>
> "Maybe David should do a story on the current yolo county mental health court. One of the goals of that program is to reduce incarceration days for qualifying probationers. One of the challenges is that it is voluntary meaning that the probationer can opt out at any time. Mr. Steinburg has had many years to come up with legislation that empowers the criminal courts with the authority and resources to address the issue of mental illness in the criminal justice system and has not done so. A system like the conditional release program (CONREP) used for those found not guilty by reason of insanity where judges could force probationers to participate in the program could reduce the prison population "
>
> I thought he had.
>
> Log in to Reply (http://www.davisvanguard.org/wp-login.php?redirect_to=http%3A%2F%2Fwww.davisvanguard.org%2Fanalysis-perspectives-on-proposition-47%2F)
>
> Robert Canning
> October 29, 2014 at 6:32 pm (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256519)
>
> The Yolo mental health court only handles misdemeanors (typical for mental health courts) and the participants are post-adjudication.
>
> Log in to Reply (http://www.davisvanguard.org/wp-login.php?redirect_to=http%3A%2F%2Fwww.davisvanguard.org%2Fanalysis-perspectives-on-proposition-47%2F)
>
> > WTF
> > October 29, 2014 at 1:30 pm (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256547)
> >
> > Pretty sure all are felons that are post-adjudication. This erroneous comment is just another reason why David should do a story on the mental health court. Does it work?
> >
> > Log in to Reply (http://www.davisvanguard.org/wp-login.php?redirect_to=http%3A%2F%2Fwww.davisvanguard.org%2Fanalysis-perspectives-on-proposition-47%2F)

Davis Progressive
October 29, 2014 at 11:03 am (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256460)

"The problem with the judge's analysis here is that there is no evidence that the current system actually works to get people off of drugs. So, it is not as though we are taking a successful but expensive program and ending it."

this is the problem. everyone says, oh if we don't use felony convictions as the stick, no one will get better. does drug court work?

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Clem Kadiddlehopper
October 29, 2014 at 6:20 pm (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256515)

Prop 47 would reduce felonies to misdemeanors. By doing so, this would allow meth and heroin users who would otherwise be prohibited from possessing a firearm to being allowed to legally own firearms.
Thus, the passage of Prop 47 would simply lead to an uptick in criminal activity.
This would also swing open the floodgates for tweakers, heroin addicts and a host of other scumbags to potentially become police officers, firemen, ambulance attendants and of course teachers of YOUR children.
Only in the land of fruits and nuts would something like this even be on our radar screens.

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> Davis Progressive
> October 29, 2014 at 6:28 pm (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256517)
>
> because the law right now is preventing tweakers from possessing fire arms?
>
> Log in to Reply (http://www.davisvanguard.org/wp-login.php?redirect_to=http%3A%2F%2Fwww.davisvanguard.org%2Fanalysis-perspectives-on-proposition-47%2F)

DavisBurns
October 30, 2014 at 10:44 am (http://www.davisvanguard.org/analysis-perspectives-on-proposition-47/comment-page-1/#comment-256598)

Legislation via voter propositions results in some serious unintended consequences. We have overcrowded prisons in large part because of prop. 186, the three strikes law which we tried to fix with prop 36. I am not opposed to prop 47 but it would be nice if our legislators could/would write the laws instead of this crazy process.

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ATTACHED IS A COPY OF *Our Readers Say: Police, sheriffs say no to Prop 47* (October 24, 2014) Redland Daily Facts

Our Readers Say: Police, sheriffs say no to Prop 47

Posted: 10/24/14, 12:15 PM PDT

RedlandsDailyFacts.com

Police, sheriffs say no to Prop 47

On Nov. 4, Californians will be voting on several important Propositions. You might have seen a television ad lately praising the benefits of Proposition 47, known as the "Safe Neighborhoods and Schools Act." Like many recent propositions and legislative bills, this one is misleading and dangerously named, for several reasons.

Prop 47 will mandate misdemeanors instead of felonies for "non-serious, nonviolent crimes," unless the defendant has prior convictions for murder, rape, certain sex offenses or certain gun crimes. It will also permit re-sentencing for anyone currently serving a prison sentence for any of the offenses that the initiative reduces to misdemeanors, which will likely result in the release of thousands of criminals.

AB 109, better known as the "Public Safety Realignment" shifted the responsibility of housing inmates to the county. This resulted in the overcrowding of jails and the early release of thousands of criminals. Prop 47 will follow suit. Proponents of the Proposition say that letting 10,000 felons out of prison, and lessening penalties for crimes like gun theft, possession of date rape drugs, and identity theft, will benefit California's law-abiding citizens. This thinking is critically wrong.

One of the stark facts staring us in the face when it comes to Prop 47 is that some of the most dangerous and disruptive crimes imaginable are not necessarily violent in nature.

At times, lawmakers and other politicians make the mistake of thinking that if they keep violent offenders in jail, and release nonviolent ones, there will be no appreciable increase in serious criminal activity. This is obviously and demonstrably wrong. Do you really believe that a person who writes bad checks on your account, who forges your name, steals hundreds of dollars from you, and ruins your credit, should not face felony charges when caught?

When it comes to the sort of nonviolent crimes addressed by Prop 47, we're not talking about possession or use of marijuana—we're talking about hardcore drugs like cocaine, heroin, and the date rape drug GHB. Prop 47 waters down the penalty for stealing firearms, and by converting felonies to misdemeanors, criminals who would otherwise be prohibited from possessing a firearm would now, under this new law, be allowed to own guns. Misdemeanors generally do not carry the same gun ownership restrictions that felonies do, so the passage of Prop 47 will lead to the increased arming of convicted criminals.

This deceptive proposition also rewrites our laws to make it easier for violent Three Strikes inmates to gain early release. The Alliance for a Safer California says, "The Three Strikes reform law (Proposition 36) allowed certain Three Strikes prisoners to petition for early release, as long as they did not pose 'an unreasonable risk of danger to public safety.'"

Prop 47 would rewrite California law, including the Three Strikes Reform law, to give the term "unreasonable risk of danger to public safety" a very narrow definition. Under the Prop 47 definition, only an inmate likely to commit murder, rape, or a handful of other rare crimes (like possession of a weapon of mass destruction) can be kept behind bars as a danger to public safety.

If Prop 47 passes, violent Three Strikes inmates who commit robbery, assault with a deadly weapon, felony child abuse, arson, kidnapping, spousal abuse, child abduction, carjacking, and scores of other serious felonies will no longer be defined as "dangerous" under California law.

Additionally, the National Association of Drug Court Professionals warns that "Proposition 47 provides for virtually no accountability, supervision or treatment for addicted offenders.... Proposition 47 removes the legal incentive for seriously addicted offenders to seek treatment. Proposition 47 turns a blind eye to over two decades of research and practice that demonstrates addicted offenders need structure and accountability in addition to treatment to become sober...."

There is no end to the dangerous, unintended consequences of this proposed law. It changes crimes like purse and phone snatching—expensive items in which we keep much of our private information—into petty theft, the same as stealing a candy bar. Do the citizens of our county who live in rural areas really want the courts to handle the theft of horses and other livestock as mere misdemeanors (in many cases)? There are provisions in the proposed law that do not make much sense: burglars who strike businesses are treated as misdemeanor offenders if they strike during work hours, but as felons if they burgle during off-work hours; yet it is during work time that employees are present and most vulnerable. Have we really thought out the ramifications of altering our laws so that stealing a handgun—often to be used in a violent crime—is handled as a misdemeanor, in almost all cases?

The backers of Prop 47 would like you to believe that the new law will save millions of dollars, and that those dollars will be spent on a wide variety of very good social services. The truth is, the savings generated by Prop 47 are questionable and a bet against public safety: a cheap political trick designed to con voters into thinking schools and students will be showered with all the money saved by releasing felons into our neighborhoods. This philosophy is flawed, and for that reason the San Bernardino County Chiefs of Police and Sheriff's Association opposes Proposition 47, along with every major law enforcement and victim advocate organization in California, including the California District Attorneys Association, California Coalition Against Sexual Assault, California Police Chiefs Association, California State Sheriffs Association, and Crime Victims United. Please vote no on Proposition 47.

— San Bernardino County Police Chiefs and Sheriff Association: President Chief Mark Garcia, Redlands Police Department; Vice President Chief Tony Farrar, Rialto Police Department; Chief Jarrod Burguan, San Bernardino Police Department; Chief Mike deMoet, Montclair Police Department; Chief Eric Hopley, Ontario Police Department; Chief Rod Jones, Fontana Police Department; Sheriff John McMahon, San Bernardino County Sheriff, Chief Jeff Mendenhall, Upland Police Department; Chief Miles Pruitt, Chino Police Department; and Chief Albert Ramirez, Barstow Police Department.

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The Alliance for a Safer California, accessed September 25, 2014
>http://www.votenoprop47.org

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Prop 47 Facts

Prop 47 will release dangerous Three Strikes inmates. Prop 47 goes far beyond petty crimes. It rewrites our laws to make it easier for violent Three Strikes felons to gain early release.

The Three Strikes reform law (Proposition 36) allowed certain Three Strikes prisoners to petition for early release, as long as they did not pose "an unreasonable risk of danger to public safety."

Prop 47 would rewrite California law, including the Three Strikes Reform law, to give the term "unreasonable risk of danger to public safety" a very narrow definition. Under the Prop 47 definition, only an inmate likely to commit murder, rape, or a handful of other rare crimes (like possession of a weapon of mass destruction) can be kept behind bars as a danger to public safety.

If Prop 47 passes, violent Three Strikes inmates who might commit robbery, assault with a deadly weapon, felony child abuse, arson, kidnapping, spousal abuse, child abduction, carjacking, and scores of other serious felonies will no longer be defined as "dangerous" under California law. If the inmate is eligible for early release under either Prop 47 or the Three Strikes Reform law, the court will be powerless to stop it.

Prop 47 will make it impossible to stop many criminals from buying or possessing guns. Under current law, convicted felons can't possess firearms in California. By changing street crimes like purse-snatching and many burglaries into misdemeanors, Prop 47 makes it impossible to stop criminals convicted of these and other offenses from having guns.

Prop 47 will seriously harm efforts to help drug-addicted criminals get sober. The National Association of Drug Court

Professionals (NADCP), the nation's leading organization working to help criminal addicts break the cycle of drug abuse, strongly opposes Prop 47. The NADCP warns that "Proposition 47 provides for virtually no accountability, supervision or treatment for addicted offenders...Proposition 47 removes the legal incentive for seriously addicted offenders to seek treatment...Proposition 47 turns a blind eye to over two decades of research and practice that demonstrates addicted offenders need structure and accountability in addition to treatment to become sober..."

Prop 47 is completely unnecessary. Prop 47's backers say their goal is to keep low-level offenders out of prison. What they don't say is that California law already requires this.

In 2011, California passed a major sentencing realignment that prevents sending anyone to prison in California unless they have had convictions at some point for violent crimes, sex offenses, or other serious felonies.

With a few exceptions, these are the prison inmates Prop 47 will free.

The 2011 realignment has already resulted in the early release of many violent or habitual criminals, including child abusers, spousal abusers, and professional thieves. Property crime is already up 8%, and things will only get worse under Prop 47.

Prop 47 rewrites our laws to benefit criminals. Prop 47 is a lengthy piece of legislation with many hidden provisions. Some of the not-so-obvious things Prop 47 will do are:

- Change crimes like purse and phone snatching -- where thieves grab expensive property right off your body -- into petty theft, the same as stealing a candy bar.
- Make possession of "date rape" drugs a misdemeanor.
- Protect many commercial burglars from being charged with a felony as long as they strike during work hours -- when it's most dangerous for employees.
- Make stealing a handgun -- which is often done to commit violent crimes -- a misdemeanor in almost all cases.
- Reduce sentences for muggers, burglars, cocaine and heroin dealers, and other dangerous criminals who pled guilty to lesser offenses like grand theft or possession.
- Make receiving property obtained through extortion a misdemeanor

(up to $950).

- Make stealing horses and other animals a misdemeanor in many cases.

Prop 47 will hurt consumers. Professional retail thieves, commercial burglars, and identity thieves cost California consumers and businesses millions of dollars every year. Prop 47 slashes penalties for these crimes.

Law enforcement leaders and crime victim advocates overwhelmingly oppose Prop 47. Prop 47 is opposed by every major law enforcement and victim advocate organization in California, including the California District Attorneys Association, California Coalition Against Sexual Assault, California Police Chiefs Association, California State Sheriffs Association, and Crime Victims United.

They oppose Prop 47 because it will do nothing to help true low-level offenders. Because it will release thousands of felons into our streets. And because it is a serious danger to California.

Please vote no.

Alliance for a Safer California

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Vote No on Proposition 47

Prop 47 is opposed by every major law enforcement and crime victims organization in California. Here's why:

- Prop 47 goes far beyond petty crimes. It rewrites our laws to make it easier for violent Three Strikes felons to gain early release.

- Prop 47 will make it impossible to stop many criminals from legally purchasing firearms.

- Prop 47 will seriously harm efforts to help drug-addicted criminals get sober.

- Prop 47 prevents judges from blocking the early release of dangerous inmates, including offenders with prior convictions for armed robbery, assault with a deadly weapon, residential burglary, carjacking, arson, and child abuse.

- Under Prop 47, it will no longer be a felony to steal most handguns. It will no longer be a felony to possess date rape drugs. Snatching your purse or phone right out of your hand will be considered "petty theft" -- the same as stealing a candy bar.

Visit our Facts page to learn more.

Alliance for a Safer California is a voter-run independent expenditure committee opposing California Proposition 47. Prop 47 is a 2014 California ballot measure called the Reduced Penalties for Some Crimes Initiative, or the "Safe Neighborhoods and Schools Act." This committee does not accept donations and has expenditures of less than $1,000 per calendar year.

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Shawn Gaynor, California represents the worst of current U.S. economic crisis (July 13, 2012) California Public Press < http://sfpublicpress.org/news/2012-07/krugman-california-represents-the-worst-of-current-us-economic-crisis

SAN FRANCISCO PUBLIC PRESS
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LOCAL NEWS

Krugman: California represents the worst of current U.S. economic crisis

By
Shawn Gaynor
SF Public Press
— Jul 13 2012 - 11:37am

The budget pain facing California this year is not California's fault, said Paul Krugman, the Nobel Prize-winning economist who has been among the most outspoken writers critiquing the government's response to what he calls an economic "depression."

The state budget Gov. Jerry Brown signed Wednesday at least on the surface bridges a $15.7 billion potential deficit — by far the highest shortfall faced by any state this year. As tax revenues continued to fall below expectations in a suffering economy, California state and municipal governments continue to slash spending. The state's $91.3 billion budget represents the lowest state spending level since 1999.

"Gov. Brown faces political constraints that, if anything, are even worse than those faced by President Obama, because of the craziness of California's constitutional setup," Krugman said at a recent appearance at the Commonwealth Club of California. He said Proposition 13, the state's requirement of a legislative supermajority to pass tax increases, was the main culprit.

More than tax hikes are needed to help ailing states, he said. Federal aid to state and municipal governments to rehire workers is paramount to ending the crisis.

Across California, 44,300 government positions have been lost in the past year, and since the May 2008 peak in government employment the state has lost 155,000 public-sector employees. The new budget largely preserves public employees' jobs but relies on more than $9 billion in increased tax revenue will be before the voters in the fall.

Even in San Francisco, which has recently seen a large rebound in private-sector hiring, a loss of 2,000 government positions in the past year has created a drag on the local economy and taken away stable middle-class jobs.

Krugman's solution is Keynesian, relying on massive public investment to pull state and local governments out of their fiscal holes. "I would put the number at 300 billion dollars a year of aid," said Krugman, who is an economic professor at Princeton and a New York Times columnist, who is on a national tour to hawk his book, "End This Depression Now."

"It should be open-ended," he said. "It shouldn't have a definite expiration date, because the right time to end it is when the economy is recovered and does not need it anymore."

Nationally the shortfall in state budgets since the beginning of the economic crisis has been more than half a billion dollars, largely due to municipal shortfalls. Continuing cuts in state and local budgets across the country continue to be a drag on the economy, and even reduce private-sector job creation that otherwise would be expected.

According to the Center on Budget and Policy Priorities, revenue growth probably won't come close to what states need to restore the programs that they cut during the recession — until 2019. Unless states raise taxes, at least temporarily, or receive additional federal aid while the economy slowly recovers, states will continue to face steep shortfalls and hard choices.

Krugman said these trends argue in favor of a policy reversal: "What we have actual been doing is the reverse of stimulus. What we actual have been doing is cutting back. Normally state and local government work grows roughly with population. We should have added 700,000 jobs in state and local government just keeping up. In fact, we laid off 600,000, so right there we are 1.3 million jobs down from where we should have been in the public sector."

Earlier this month, the Obama administration began to press for additional federal money to help the most numerous of all government workers — public school teachers. Obama used his June 9 weekly address to push for federal action to start rehiring the 250,000 public school teachers lost during the crisis.

More than 40,000 educators have been laid off in California since 2008 and teacher layoffs are expected to continue in the coming year.

"It should concern everyone that right now — all across America — tens of thousands of teachers are getting laid off," Obama said. "I realize that every governor is dealing with limited resources and many face stark choices when it comes to their budgets. But that doesn't mean we should just stand by and do nothing. When states struggle, it's up to Congress to step in and help out."

But with a recalcitrant Congress, and a looming presidential election, it is unclear if new federal relief for states can be addressed this year.

"It sounds wise and sophisticated and serious to stroke your chin and say there are no quick fixes," Krugman said at his mid-June San Francisco appearance. "But that's all wrong. There are quick fixes. This is a moral issue. What's happening now is not just bad management, not just something we should be doing better. What's happening is terrible."

- See more at: http://sfpublicpress.org/news/2012-07/krugman-california-represents-the-worst-of-current-us-economic-crisis#sthash.N9m9P9M8.dpuf

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Editorial Board, California's Continuing Prison Crisis (August 10, 2013) New York Times<http://www.nytimes.com/2013/08/11/opinion/sunday/californias-continuing-prison-crisis.html?_r=0> [as of January 9, 2015]

The New York Times

August 10, 2013

California's Continuing Prison Crisis

By THE EDITORIAL BOARD

California has long been held up as the land of innovation and fresh starts, but on criminal justice and incarceration, the Golden State remains stubbornly behind the curve.

Over the past quarter-century, multiple lawsuits have challenged California's state prisons as dangerously overcrowded. In 2011, the United States Supreme Court found that the overcrowding had gotten so bad — close to double the prisons' designed capacity — that inmates' health and safety were unconstitutionally compromised. The court ordered the state to reduce its prison population by tens of thousands of inmates, to 110,000, or to 137.5 percent of capacity.

In January, the number of inmates was down to about 120,000, and Gov. Jerry Brown declared that "the prison emergency is over in California." He implored the Supreme Court to delay a federal court order to release nearly 10,000 more inmates. On Aug. 2, the court said no. Over the furious dissent of Justice Antonin Scalia, who reiterated his warning two years ago of "the terrible things sure to happen as a consequence of this outrageous order," six members of the court stood by its earlier ruling. California has to meet its goal by the end of 2013.

The state claims that releasing any more inmates would be a threat to public safety, as if the problem were too little prison space. In fact, California's problem is not excessive crime, but excessive punishment.

This was obvious years before the Supreme Court weighed in. Since the mid-1970s, California's prison population has grown by 750 percent, driven by sentencing laws based largely on fear, ignorance and vengeance. The state's notorious three-strikes law, passed in 1994, is only the most well-known example. Because of it, 9,000 offenders are serving life in prison, including many whose "third strike" was a nonserious, nonviolent offense — in one case, attempting to steal a pair of work gloves from a Home Depot.

Californians have made clear that they no longer accept traditional justifications for extreme sentencing. Last November, voters overwhelmingly passed Proposition 36, which restricted the use of the three-strikes law for nonviolent offenses, even for current prisoners. It wasn't just about saving money; exit polls showed that nearly three-quarters of those who supported the proposition said they felt the law was too harsh.

The measure has already resulted in the release of around 900 prisoners whose third strike was neither serious nor violent, and it could lead to the release of up to 2,500 more. A risk assessment by California's corrections department suggests that these three-strikes inmates are among the least likely to re-offend. Preliminary research on those who have been released under Proposition 36 is bearing that out.

In addition, the state has begun to take steps to repair what former Gov. Arnold Schwarzenegger described as a prison system "collapsing under its own weight." A two-year-old package of reforms, enacted into law and known as "realignment," is changing the type of sentences prisoners receive, where they are housed and the sort of post-release supervision they get. While this has led to some important improvements, such as eliminating prison terms for technical parole violations, it does not adequately address many entrenched problems, like disproportionately long sentences, that add to prison overcrowding. (Nor does it deal with the widespread use of long-term solitary confinement, which has led hundreds of state prisoners to go on hunger strikes in recent months.)

If California wants to avoid another legal battle over its overcrowded prisons, there are two things it can do right away.

First, it should establish a sentencing commission to bring consistency, proportionality and data-based assessments to its laws. Twenty-one states, the District of Columbia and the federal government already have such commissions, and they make a difference. In Virginia and North Carolina, both of which had prison overcrowding, sentencing commissions helped focus scarce resources on housing the most violent offenders, limiting prison growth without jeopardizing public safety.

Criminal justice reform advocates have unsuccessfully pushed for such a commission in California. If the state is to get away from its irrational and complicated sentencing, it needs a commission, and it needs to insulate it as much as possible from the political actors who have contributed so much to the state's current crisis.

Second, the state must do more to help released prisoners get the re-entry and rehabilitation services that already exist across California. Inmates are often released with no warning to friends or family, with no money, no means of transportation and no clothes other than the jumpsuits on their backs. It is no wonder a 2012 report showed that 47 percent of California prisoners returned to prison within a year of their release, a significantly higher rate than the national average.

People coming out of prison need many things, but the critical ones are safe housing, drug treatment and job opportunities. Theoretically, the $2 billion being spent over the first two

years of realignment was to provide more resources toward such re-entry and rehabilitation programs; in reality, much of that money has gone to county jails, which have seen their own overcrowding only get worse as they have absorbed thousands of inmates from state prisons. So far, counties have allocated an average of just 12 percent of their realignment funds to re-entry programs.

California's prison population is consistently among the largest in the country. While it presents an extreme case, its problems are representative of what is happening in prisons and jails in other states. If California would redirect its energy from battling the federal courts to making the needed long-term reforms, it could once again call itself a leader.

Meet The New York Times's Editorial Board »

ATTACHED IS A COPY OF
Stanford Law School - Three Strikes Project, "Progress Report: Three Strikes Reform (Proposition 36), 1000 Prisoners Released (2013)

Stanford Law School
Three Strikes Project

LDF
DEFEND EDUCATE EMPOWER

Progress Report: Three Strikes Reform (Proposition 36)

1,000 Prisoners Released

Co-published by the Stanford Law School Three Strikes Project and NAACP Legal Defense and Education Fund

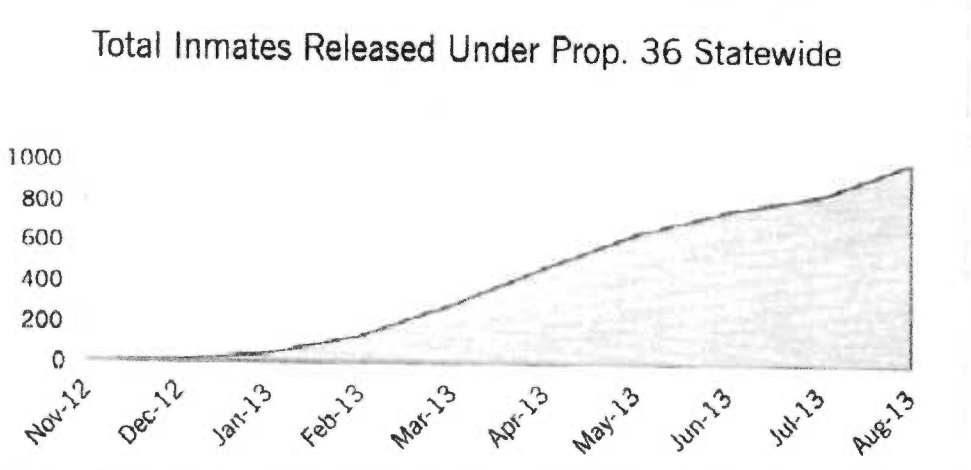
Introduction

California is in the midst of a prison crisis. The United States Supreme Court has ruled that California prisons are unconstitutionally overcrowded. As a result, the State must reduce its prison population by thousands of inmates by the end of the year. Despite multiple federal court orders, the State refuses to release prisoners, arguing that doing so will compromise public safety. At the same time, counties throughout California have been implementing the Three Strikes Reform Act of 2012 ("Proposition 36"), which voters overwhelmingly approved in November. Proposition 36 shortens the sentences of prisoners who are serving life terms for non-serious, non-violent crimes and who no longer pose a threat to public safety.

To date, over 1,000 prisoners have been released from custody under Proposition 36, according to data provided by the California Department of Corrections. Each of these prisoners had been sentenced to life under the Three Strikes law for a minor crime, such as petty theft or simple drug possession, and demonstrated to a judge that they are not an "unreasonable risk of danger to public safety," under new procedures established by Proposition 36. (See new Penal Code Section 1170.126.) So far, judges have found that the vast majority of inmates eligible for relief under Proposition 36 deserve shorter sentences and have granted these inmates early release.

Over 2,000 additional prisoners who are eligible for relief under Proposition 36 are still waiting to have their cases reviewed in county courts. In Los Angeles County alone, over 800 cases of inmates eligible for relief under Proposition 36 have yet to be resolved.

The recidivism rate of prisoners released under Proposition 36 to date is well below state and national averages. Fewer than 2 percent of the prisoners released under Proposition 36 have been charged with new crimes, according to state and county records. By comparison, the average recidivism rate over a similar time period for non-Proposition 36 inmates leaving California prisons is 16 percent. Nationwide,



Source: California Department of Corrections and Rehabilitation (Sept. 2013).

30 percent of inmates released from state prisons are arrested for a new crime within six months of release.

Critical issues remain. Prisoners released under Proposition 36 are returning home to a dire lack of resources. Unlike all other prisoners released from California prisons, inmates released under Proposition 36 are not eligible for state and county support services, leaving them without housing, jobs, or drug treatment. In many cases, prisoners freed under Proposition 36 are released from custody without warning, clothing, money for transportation, or notice to their families or attorneys.

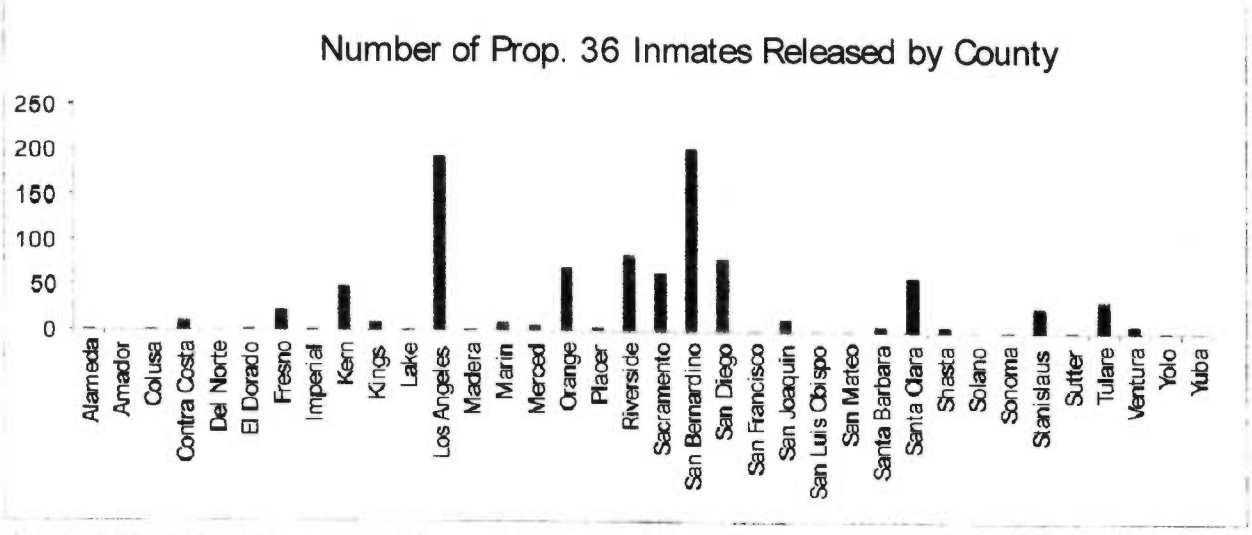
A disproportionate number of inmates sentenced to life in prison for petty offenses suffer from mild to severe mental illness. While all inmates released under Proposition 36 should have access to support services, it is especially vital that mentally ill inmates, who are particularly vulnerable, have access to a level of care that adequately addresses their needs.

In the cases pending review under Proposition 36, administrative and procedural obstacles are preventing timely dispositions. In some counties, lack of prosecutorial resources has significantly slowed the process. In other counties, public defender offices have been deprived adequate means to investigate and prepare these cases.

Proposition 36 has already generated significant financial savings and freed prison capacity for dangerous and violent prisoners. Since the law took effect in November 2012, Proposition 36 has saved the California prison system between $10 and $13 million. If courts fully implemented the initiative by reducing the sentences of all eligible inmates, the State would realize almost $1 billion in savings over the next ten years.

In light of the federal court order to reduce the prison population, the overwhelming public support for Proposition 36, and the success of those inmates who have already been released under the initiative, this report makes the following recommendations:

- The State should commit more resources to expedite review and end unnecessary delay of over 2,000 cases currently pending under Proposition 36. Prosecutors must have adequate resources to expeditiously review petitions and recommend new sentences in appropriate cases without compromising public safety; and defense counsel must be given comparable resources to thoroughly investigate cases and prepare comprehensive reentry plans for their clients to maintain the low recidivism rate of inmates released under the initiative.
- Courts should ensure consistent application of Proposition 36 throughout the state. Uniform standards of review and procedural protections should be implemented to provide accurate assessments of inmate risk.
- More public and private resources should be committed to provide services to inmates released under Proposition 36 to ensure their successful reentry into the community. Every prisoner released under Proposition 36 should have access to temporary housing, sobriety support, and employment assistance services equal to those services provided to all other inmates leaving prison.



Source: California Department of Corrections and Rehabilitation (Sept. 2013).

Key Findings

- Over 1,000 inmates have been released from custody under Proposition 36 to date, according the Department of Corrections. Each of these prisoners was released following an individualized review and finding by a Superior Court judge that they no longer pose an "unreasonable risk of danger to public safety."
- The recidivism rate of inmates released under Proposition 36 is far below state and national averages. Less than 2 percent of the inmates released so far under Proposition 36 have been charged with a new crime.
- Proposition 36 has already saved California taxpayers between $10 and $13 million. If the reform were applied to all eligible inmates, Californians would save almost $1 billion over the next ten years.
- Over 2,000 cases brought under Proposition 36 are still waiting to be heard. In Los Angeles County, more than 800 prisoners eligible for relief under Proposition 36 are waiting for their cases to be resolved. Hundreds of prisoners, some with serious health issues, have been waiting months for their cases to be reviewed by prosecutors and judges.
- Of the 1,000 inmates released under Proposition 36 thus far, many have been unable to obtain the same critical reentry support that is available to other inmates leaving the state prison system. The continued success of those released under Proposition 36 is dependent upon access to these vital services. There is no reason to exclude prisoners released under Proposition 36 from the services provided to all others released from custody in California.

Background

When it was enacted in 1994, California's "Three Strikes and You're Out" law was the harshest sentencing law in the country. Thousands of inmates were sentenced to life in prison for minor crimes, including petty theft and simple drug possession.

In 2012, Proposition 36 passed with over 69 percent of the statewide vote, representing a shift in public attitude toward criminal sentencing. A majority of voters in every county in California voted for the initiative. Proposition 36 made history as the country's first voter initiative to shorten prison sentences of people currently behind bars.

The path to reforming California's Three Strikes law began with a failed reform initiative in 2004. That measure ("Proposition 66") identified a problem with California's recidivist sentencing scheme but was viewed as not providing adequate safeguards to protect public safety. Proposition 66 was narrowly defeated by voters. Despite its failure at the polls, however, Proposition 66 played a key role in raising public consciousness of the harsh, unintended consequences of the Three Strikes law.

Two years ago, the NAACP Legal Defense and Education Fund ("LDF") launched the ballot campaign for Proposition 36. The Stanford Three Strikes Project served as local counsel for LDF. Unlike the reform campaign in 2004, statewide leaders in law enforcement were official proponents of Proposition 36. Among the initiative's most outspoken supporters were then-Los Angeles District Attorney Steve Cooley, San Francisco District Attorney and former Police Chief George Gascón, and Los Angeles Chief of Police Charlie Beck. A diverse coalition of national leaders also endorsed the campaign, from Grover Norquist, George Shultz, and Bill Bratton to Corey Booker and Bill Bradley.

As Steve Cooley recently said, "During my 12 years as a Los Angeles County District Attorney, I worked to see that the state's Three Strikes law was fairly applied. A critical element of Three Strikes reform includes the review of 25-year to life sentences for relatively minor offenses."

THE NAACP LEGAL DEFENSE FUND

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is the country's premier legal organization fighting for racial justice. Founded in 1940 by Thurgood Marshall, LDF pursues litigation, advocacy, and public education, to expand democracy, eliminate disparities, and achieve racial justice in America. President Obama recently described LDF as "simply the best civil rights law firm in American history."

LDF was the principal organization behind the campaign for Proposition 36. LDF championed the cause for reforming California's Three Strikes law, which stood as one of the country's harshest and most infamous criminal sentencing statutes, and was applied disproportionately against African-Americans.

Shortly before his untimely death, John Payton, then-President and Director-Counsel of LDF, explained that "The Three Strikes Reform Act helps restore fairness and justice to the Three Strikes law. As the voters originally intended, it reserves the harshest sentences for those convicted of serious or violent crimes. We should not waste precious resources sending people to prison for life for shoplifting."

For more information about LDF visit naacpldf.org.

Stanford Law School

Three Strikes Project

THE STANFORD THREE STRIKES PROJECT

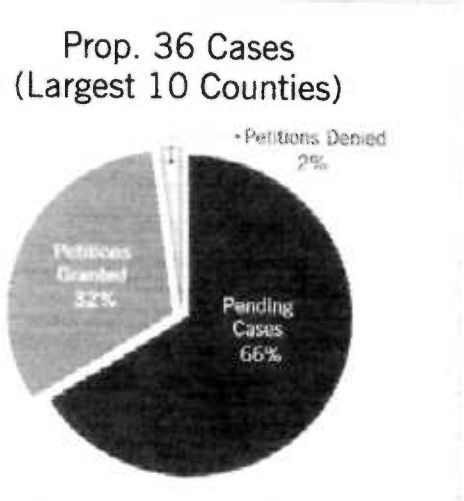
The Stanford Three Strikes Project represents individuals sentenced to life for minor crimes under California's Three Strikes law. The Three Strikes Project is based at Stanford Law School and relies on law students to conduct the organization's work, including policy advocacy and litigation in state and federal court on behalf of institutional and individual clients.

The Three Strikes Project served as counsel to the NAACP Legal Defense Fund in its campaign for Proposition 36. Since the enactment of Proposition 36, the Project has worked with courts, public defenders, community service providers, law enforcement, and other public agencies to coordinate and ensure effective implementation of the reform. The Project continues to represent individual prisoners seeking release under Proposition 36.

For more information about the Stanford Three Strikes Project visit **threestrikesproject.org**.

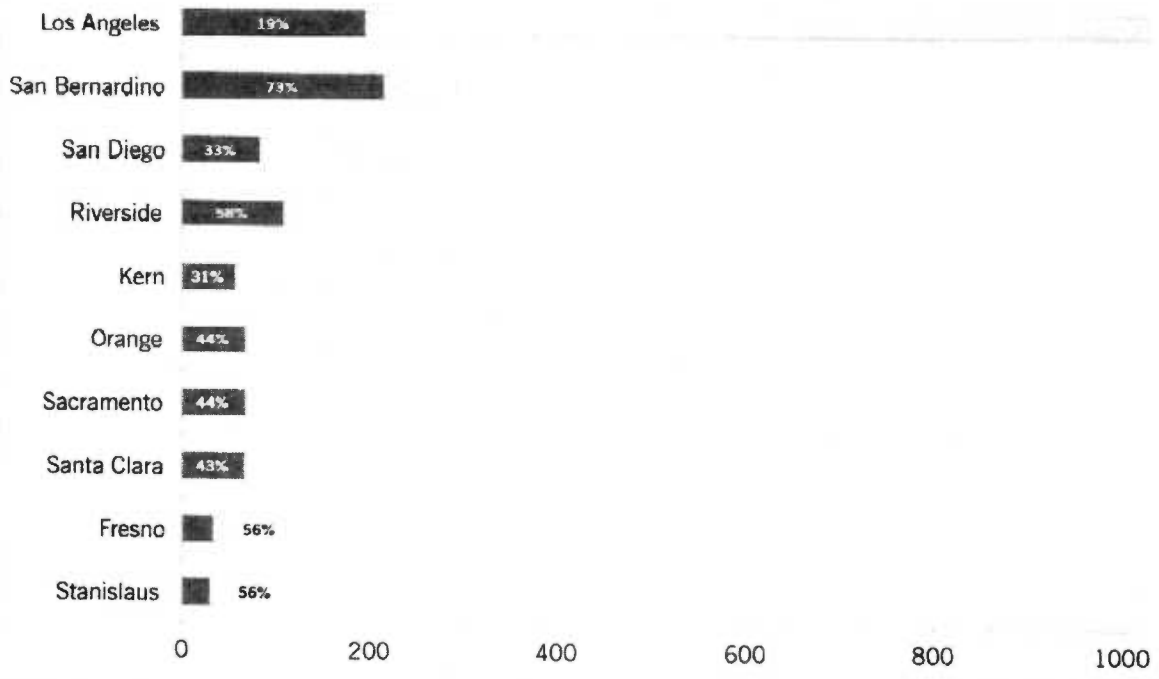
Proposition 36 Implementation

Proposition 36 establishes a procedure for inmates sentenced to life in prison for a non-serious or non-violent third strike crime to petition in court for a reduced sentence. A judge may grant the inmate's petition and reduce his or her sentence only if the judge determines that the prisoner's release would not create "an unreasonable risk of danger to public safety." The petition must be filed in the same county where the prisoner committed his or her most recent offense. (*See* new Cal. Penal Code Section 1170.126.) District attorneys must review each case and have the burden to contest an inmate's suitability for release. When a district attorney challenges the safety of releasing an inmate under Proposition 36, the Superior Court must hold a hearing at which evidence may be presented by both sides.



Source: County Records (Aug. 2013).

Number of Prop. 36 Cases Pending and Processed (Top Ten Counties)



Source: California Department of Corrections and Rehabilitation (Sept. 2013).

According to the Department of Corrections, Superior Courts throughout California have processed a total of 1,092 petitions under Proposition 36. Over 95 percent of these petitions have been granted, and a total of 1,011 prisoners have been released from custody to date.

Statewide, more than 2,000 cases filed under Proposition 36 have yet to be processed by the courts. In Los Angeles County, more than 800 prisoners eligible for relief under Proposition 36 are waiting for their cases to be resolved.

Real Life Success Stories

EDDIE GRIFFIN was sentenced to life under the Three Strikes law in 2000 for possession of crack cocaine. In prison, Eddie founded the "Hope For Strikers" peer support group and became a "model inmate," according to testimony of several prison experts and staff members, including the former warden of San Quentin State Prison where Eddie was housed. This July, after 13 years in prison, a Superior Court judge found that Eddie's rehabilitation in prison was "exemplary" and ordered him released from prison based on the time he had already served. Eddie was reunited with his family and now lives in a residential reentry facility for veterans in San Jose. Eddie is enrolled in an intensive employment program called "The Last Mile," which connects former inmates with jobs in California's technology sector.

CURTIS PENN was sentenced to life under the Three Strikes law in 1998 for shoplifting a pair of tennis shoes from a sporting goods store. While in prison, Curtis furthered his education through the Prison University Project. After 15 years in custody, Curtis was released in April. Immediately upon his release, Curtis enrolled in Options Recovery Services, a wrap-around residential drug treatment and job preparedness program in Berkeley. At Options, Curtis participates in a daily, intensive counseling program to maintain his sobriety. He also attends San Francisco State University, where he has nearly completed his Bachelor's degree in social psychology. He works part-time as a landscaper and carpenter.

Eddie Griffin, released after serving 13 years for drug possession.

LARRY WILLIAMS was sentenced to life under the Three Strikes law in 1997 for possession of a stolen cell phone. In prison, Larry participated in extensive vocational, educational, and rehabilitation programming, earning praise and support of vocational counselors and correctional officers. After 16 years in prison, Larry was released from custody in April. Larry immediately entered the Salvation Army Adult Rehabilitation Program in Santa Ana, where he remains today. The Salvation Army Program is a comprehensive residential rehabilitation and job-training program. As a resident in the program, Larry participates in daily counseling and works in the Salvation Army warehouse.

DAVID GOMEZ was sentenced to life under the Three Strikes law in 1995 for joyriding. While in prison, David garnered the praise of supervisors and correctional officers and was selected for membership on the Men's Advisory Council due to his leadership and the positive influence he had on other inmates. After 18 years in prison, David was released from custody in July with nothing but a used t-shirt and shorts that were far too small. David now lives at The Name of The Loving Father, a group home in San Jose. He works on general repairs, maintenance, and landscaping.

Recidivism

Less than 2 percent of prisoners released so far under Proposition 36 have been charged with a new crime, according to data provided by the Department of Corrections and counties throughout the state. Although these released prisoners have been out of custody for a relatively short period of time (4.4 months on average), their recidivism rate is well below state and national averages over similar time periods.

California has one of the highest recidivism rates in the country. Over 16 percent of inmates released from California prisons between 2003 and 2004 violated the terms of their parole due to new criminal charges within the first 90 days of their release. Within a year, over 40 percent were returned to custody. These inmates all received post-release support and parole supervision, unlike inmates released under Proposition 36. (Petersilia, et al. "Assessing Parole Violations" (2009).) Nationwide, on average, 44 percent of inmates leaving state prisons are re-arrested within one year. (Langen & Levin, "Bureau of Justice Statistics Special Report," U.S. Department of Justice (June 2002).)

The low recidivism rate of inmates released under Proposition 36 confirms the Department of Corrections' static risk projections that inmates sentenced to life under the Three Strikes law for non-serious, non-violent crimes are among the safest to release from custody.

Recidivism Rates

	90 days from release	6 months from release	1 year from release
California Average	16%	27%	40%
National Average		30%	44%

	Since Nov. 2012 (Average 4.4 months from release)
Proposition 36	Less than 2%

Sources: Petersilia, et al. (2009); Langen & Levin (2002); California Department of Corrections and Rehabilitation and county records (2013).

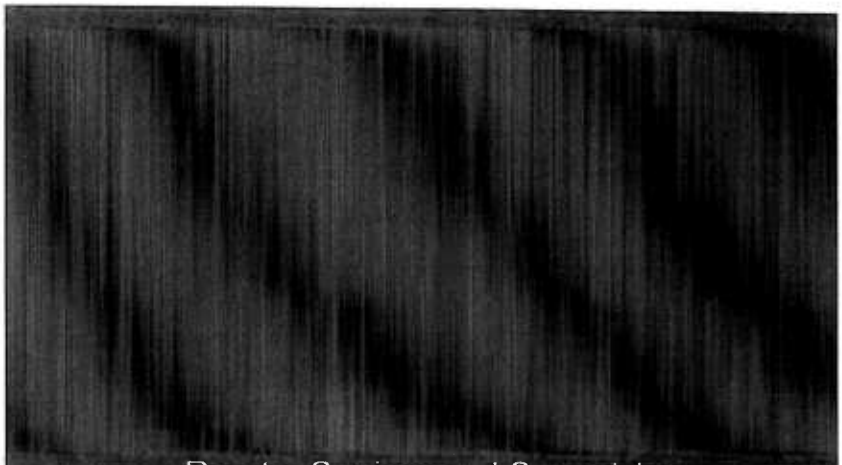
Reentering the Community After a Life Sentence

Perhaps the best predictor of whether a prisoner reentering the community will return to a life of crime is whether he has a stable, supportive, and sober living environment upon his release from custody.

Unlike all other prisoners released from state custody, no public resources are available to inmates released under Proposition 36. Inmates granted relief under Proposition 36 are released from custody without warning or money, and frequently without adequate clothing—sometimes nothing more than a disposable plastic jumpsuit. Mentally and physically disabled inmates released under Proposition 36 are especially vulnerable and suffer disproportionately from the lack of reentry resources.

Due to the state's failure to provide services, reentry service organizations across California are struggling to find the resources to meet the gap and help maintain the low recidivism rate of inmates released under Proposition 36. These organizations provide temporary housing, mental health services, sobriety maintenance, and job training at no cost. Leaders in this effort include the Delancey Street Foundation, Amity Foundation, the Anti-Recidivism Coalition, The Last Mile, and Californians for Safety and Justice. In

addition, the Los Angeles Regional Reentry Partnership has taken the lead in attempting to secure free housing, employment and rehabilitative services for the more than 1,000 inmates that are likely to return to Southern California under Proposition 36. Over one hundred additional organizations in the counties most impacted by the initiative are willing to help provide reentry services to inmates released from custody under Proposition 36.



Reentry Services and Supervision
(per released inmate)

Post-Release Community Supervision	$6,350
Parole	$6,000
Prop. 36 ("gate money")	$200

Source: Legislative Analyst's Office (Aug. 2013).

These volunteer efforts are laudable. However, few of funding and support, and there are frequently service gaps in critical areas such as housing, employment and drug treatment and rehabilitation.

SANTA CLARA COUNTY REENTRY RESOURCE CENTER

Santa Clara County is the only county in California that has a comprehensive reentry center, which provides free services and support to inmates released under Proposition 36. Released inmates are eligible to receive the same services provided to inmates released under county supervision, including housing, drug and alcohol counseling, employment and health services, clothing, and other support through the County Reentry Resource Center in San Jose.

Santa Clara County Reentry Resource Center

Under leadership from the County Probation Department, the Santa Clara Board of Supervisors approved a plan for inmates released under Proposition 36 to receive resources provided under California's Post-Release Community Supervision program. Although all counties in California receive financial support for this program, Santa Clara County and Marin County are the only counties to extend these services to inmates released under Proposition 36.

For more information about the Santa Clara Reentry Resource Center visit scogov.org/sites/reentry.

Challenges & Recommendations

Despite the early success of Proposition 36, more work must be done in order to realize maximum benefit from the reform.

More resources need to be directed to processing petitions in county court systems. District Attorneys and Public Defenders alike must ensure that adequate resources are committed to processing Proposition 36 petitions in the county courts. For example, in Los Angeles County, which has the largest number of pending cases, one of the chief constraints in processing Proposition 36 cases is the relatively small number of prosecutors assigned to address them. Prosecutors are the first line in reviewing an inmate's petition for release, and they must evaluate each case to determine whether the petitioner is a genuine risk to public safety. In Los Angeles, hundreds of inmates have waited more than six months for prosecutors to respond to their petitions.

At the same time, public defender offices must also ensure that sufficient resources are devoted to Proposition 36 cases. In Kern County, for example, only one Deputy Public Defender has been assigned responsibility for handling over 180 Proposition 36 cases. Providing sufficient resources for counsel representing inmates under Proposition 36 is critical to the effective administration of the reform. In order to provide adequate representation, defense attorneys must have access to their clients to conduct thorough investigations of their criminal histories and records of rehabilitation in prison. Attorneys should consult with prison and mental health experts, develop risk analyses, and secure robust reentry plans to ensure that their clients have professional housing, drug treatment, and employment support services available upon release. An inmate with a comprehensive, professional reentry plan is far less of a risk to public safety and more likely to win relief under the initiative.

Judges must ensure that Proposition 36 is applied consistently throughout the state. Superior Court judges must follow consistent legal standards and burdens of proof. For example, under the Proposition 36 petition process, prosecutors bear the burden of proving that an eligible inmate poses an unreasonable risk to public safety. This rule has been upheld by the California Court of Appeal in *People v. Superior Court (Kaulick)*. However some Superior Court judges have ruled that the burden is on prisoners to prove that they are not a public safety threat. Proposition 36 has no such legal requirement, and shifting the burden to prisoners is contrary to controlling case law. In any legal proceeding, the burden of proof is a bedrock procedural requirement that should be strictly and consistently enforced. Judges should also monitor prosecutors and public defenders to ensure that they are processing cases in a fair and effective manner.

More resources must be devoted to prisoner reentry services. The low recidivism rate of inmates released under Proposition 36 is all the more remarkable given that inmates released under Proposition 36 receive virtually no state or county support or supervision for their transition from custody to the community. All other inmates leaving prison receive significant financial support, reentry services, and public safety supervision under either the state parole system or county probation departments. The vast majority of inmates released under Proposition 36 are not eligible for parole or probation, and state and county agencies have refused to extend to Proposition 36 inmates the same resources provided to all other inmates leaving custody. To ensure the continued success of those released under Proposition 36, these released inmates should be afforded parity of resources. Currently, Santa Clara and Marin are the only counties to extend the services provided under California's Post-Release Community Supervision program to Proposition 36 inmates. All counties should consider adopting this model.

Curtis Wilkerson, released after serving 16 years for shoplifting.

ATTACHED IS A COPY OF
Docket and order denying rehearing

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JOHN VALENCIA,

Defendant and Appellant.

F067946

(Super. Ct. No. CRF30714)

ORDER

Appellant's request for judicial notice filed on January 6, 2015, in the above entitled case is hereby granted.

Appellant's petition for rehearing filed on January 7, 2015, in the above entitled case is denied.

DETJEN, J.

WE CONCUR:

LEVY, Acting P.J.

PEÑA, J.

[redacted]

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

5th Appellate District

Change court

Court data last updated: 01/08/2015 01:59 PM

Docket (Register of Actions)

The People v. Valencia
Case Number F067946

Date	Description	Notes
09/11/2013	Notice of appeal lodged/received (criminal).	applt. Valencia appeals from order held on 8/9/13 denial of petition; request for appointment of counsel in notice of appeal; copy to CCAP
09/11/2013	Notice to reporter to prepare transcript.	sent to ctrrs Capuccini, Wilson, Grimm & Wood by superior court on 8/27/13
09/26/2013	Received:	RAF - record corrections requested - documents needed w/original signatures for: Certificate of Court Clerk (with court seal), Notice of Completion of Transcript(s) on Appeal, Clerk's Certificate or Service by Mail, cover sheet for c/tx showing correct party role description for each party and serve CCAP with the record; from superior court clerk.
10/10/2013	Appointment/recommendation req. for counsel filed.	atty Gunther retained for applt
10/16/2013	Received corrected transcript.	Certification page, Notice of Completion, Clerk's Certificate of Mailing, Cover sheet for c/tx and service on CCAP for the record
10/16/2013	Record on appeal filed.	C1/209 pages; R2/504 pages; letter sent to all parties re aob due in 40 days.
11/25/2013	Change of address filed for:	David John Valencia old address 2: P.O. Box 3471 new address 2: P.O. Box 8800 per AOB by Atty: Gunther obo applt.; address screen modified
11/25/2013	Appellant's opening brief.	Defendant and Appellant: David John Valencia Attorney: Stephanie L Gunther

12/09/2013	Request filed to:	for Leave to file a supplemental brief submitted by atty Gunther obo applt (CSMGR)
12/09/2013	Received:	applt's supplemental brief submitted by atty Gunther (CSMGR)
12/11/2013	Order filed.	Appellant's request to file a supplemental opening brief is granted. Respondent is granted an additional 15 days to file their respondent's brief. Respondent's brief is now due for filing on January 10, 2014. (CSMGR)
12/11/2013	Supplemental brief filed by:	Defendant and Appellant: David John Valencia Attorney: Stephanie L Gunther Pursuant to the order of 12/11/13
01/09/2014	Granted - extension of time.	Respondent's brief. Due on 02/10/2014 By 31 Day(s) 1st request
01/21/2014	Request filed to:	for Leave to file a supplemental brief submitted by atty Gunther obo applt (CSMGR)
01/21/2014	Received:	applt's second supplemental brief submitted by atty Gunther (CSMGR)
01/22/2014	Order filed.	Appellant's request for leave to file a supplemental brief is granted. Respondent's brief is due for filing 30 days from the date of this order. (CSMGR)
01/22/2014	Supplemental brief filed by:	Defendant and Appellant: David John Valencia Attorney: Stephanie L Gunther (2nd) Pursuant to the order filed 1/22/14
02/20/2014	Respondent's brief.	Plaintiff and Respondent: The People Attorney: Peter Thompson
03/11/2014	Appellant's reply brief filed.	Defendant and Appellant: David John Valencia Attorney: Stephanie L Gunther
03/11/2014	Case fully briefed.	
09/17/2014	10 day letter sent (B.T.C. case).	jad
09/22/2014	B.T.C.	JAD
09/25/2014	Conditional waiver filed by:	atty Stephanie L.

11/13/2014	Letter brief filed.	Defendant and Appellant: David John Valencia Attorney: Stephanie L Gunther Pursuant to the order filed 11/7/14; Respondent's brief is due 10 days after appellant's brief is filed. Appellant may file a reply brief, due 5 days after respondent's brief is filed **No EOT's will be granted** (JAD)
11/20/2014	Letter brief filed.	Plaintiff and Respondent: The People Attorney: Peter Thompson Pursuant to the order filed 11/7/14; Appellant may file a reply brief, due 5 days after respondent's brief is filed **No EOT's will be granted** (JAD)
11/26/2014	Telephone conversation with:	Atty: Gunther mailed out letter brief yesterday by priority mail.
12/01/2014	Letter brief filed.	Defendant and Appellant: David John Valencia Attorney: Stephanie L Gunther (reply) Pursuant to the order filed 11/7/14 **No EOT's will be granted** (JAD)
12/01/2014	Cause submitted.	The matter will be deemed submitted upon filing of the reply brief or expiration of the time within such brief may be filed pursuant to the order filed 11/7/14
12/08/2014	Received:	Request for Judicial Notice by appellant in pro pre - forwarded to appellant counsel w/letter re: correspond w/client
12/16/2014	Opinion filed.	(Signed Partial Published) Affirmed; Detjen, Levy (37 pages) See Concurring Opinion ; Pena (8 pages)
12/17/2014	Filed letter from:	atty Gunther dated 12/13/14; has been in contact with appellant
01/02/2015	Telephone conversation with:	atty Gunther indicated overnighted the petition for rehearing on 12/29/14, however fed ex is showing it was refused on 12/31/14 at 8:27 am; advised if they do not attempt again and it is returned to resubmit and include initial post stamped envelope
01/06/2015	Filed letter from:	Attorney Stephanie Gunther explaining why rehearing petition is untimely and

		request the court to accept petition for rehearing. (JAD)
01/06/2015	Received:	Rehearing Petition by Atty Gunther (Due 12/31/14) (JAD)
01/06/2015	Request for judicial notice filed.	by Atty Gunther. (to JAD)
01/07/2015	Rehearing petition filed.	atty Gunther obo applt; ok to file per JAD (JAD)
01/08/2015	Order denying rehearing petition filed.	Appellant's request for judicial notice filed on January 6, 2015, in the above entitled case is hereby granted. Appellant's petition for rehearing filed on January 7, 2015, in the above entitled case is denied. (JAD)
01/08/2015	Request for judicial notice granted.	Not a separate order, included in order for petition for rehearing (JAD)

Click here to request automatic e-mail notifications about this case.

DECLARATION OF SERVICE BY MAIL

I declare that I am a citizen of the United States and a resident of the County of Kern, California; I am over the age of eighteen years; my business address is the Law Office of Stephanie L. Gunther, 841 Mohawk Street, Bakersfield, California, 93309; and I am not a party to the cause: *PEOPLE V. VALENCIA*, case number F067946. On January 13, 2015, I served a copy of the attached REQUEST FOR JUDICIAL NOTICE in said cause by placing a true copy thereof enclosed in a sealed envelope with first-class postage thereon fully prepaid, in the United States mail at Bakersfield, California, addressed as follows:

Attorney General, State of California 1300 I Street, 125 Sacramento, CA 95814	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on January 13, 2015, at Bakersfield, California.

Declarant