



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Department Name:** County Executive  
**Department No.:** 012  
**For Agenda Of:** April 19, 2016  
**Placement:** Departmental  
**Estimated Time:** 45 minutes  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors

**FROM:** Department           Mona Miyasato, County Executive Officer, 568-3400  
Director(s)  
Contact Info:           Joseph Toney, Interim Deputy County Executive Officer, 568-3400

**SUBJECT:** Update on Proposition 47 – The Safe Neighborhoods and Schools Act

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**County Counsel Concurrence**

As to form: Yes

Other Concurrence: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

- a) Receive and file an update on impacts to departments of Proposition 47 – The Safe Neighborhoods and Schools Act; and
- b) Determine pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(5) that the above action is not a project subject to CEQA review, because the action consists of organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

**Summary Text:**

This item provides an update on the data and impacts of Proposition 47 (Prop 47), The Safe Neighborhoods and Schools Act, pursuant to Board direction from March 3, 2015, to have the County Executive Officer update the Board as appropriate. The measure went into effect November 2014.

The State has experienced a jail population reduction of over 6,300 Prop 47 specific inmates in the first year and is expected to have 3,300 fewer incarcerations per year as a result of Prop 47. The Governor's January Budget Proposal estimates the initial Prop 47 savings to be \$29.3 million, but the Legislative Analyst's Office (LAO) believes this may be underestimated by \$100 million. The final savings amount will be deposited for eventual grant program disbursement by July 31, 2016.

Public Safety, Justice and Behavioral Wellness departments have provided information on trends observed during the first year of Prop 47 implementation, summarized as follows:

- Alcohol and other Drug treatment programs have had increased services provided. Inpatient and Incompetent to Stand Trial clients continue to rise, but a clear correlation to Prop 47 cannot be determined.
- There has been a decline in Prop 47 petitions in the courts, but a rise in treatment court participants is occurring.
- Felony filings and referrals have decreased, and misdemeanor warrants (failure to appear) are increasing.
- Adult offenders under probation supervision have reduced.
- An increase in Public Defender caseload has occurred, but petitions are declining.
- There was an initial decline in jail Average Daily Population, but it is back on the rise.

The consensus is that there is no clear causal relationship of current trends and Prop 47 that can be stated at this time. Continued monitoring and tracking of trends is needed. The County will look to apply for grants that may assist local programs once available by the State.

### **Background:**

Proposition 47 (Prop 47), the Safe Neighborhoods and Schools Act, was approved by voters in November 2014. The act reduces and modifies certain felonies (non-serious, non-violent crimes) to misdemeanors, and creates a fund called the Safe Neighborhoods and Schools Fund (SNSF) from anticipated State savings to assist with prevention and support programs in schools, victim services and mental health and drug treatment. Revenues from the Fund will be disbursed through competitive grant programs to counties beginning in 2016, and the process is still being established.

Anticipated State savings in reductions to corrections costs from conviction changes are to be deposited into the SNSF on July 31, 2016, for expenditure in 2016-17, and calculated from savings created in 2015-16. Funding will not be distributed to the agencies below until August of 2016. The intended distribution of savings is as follows:

- 65% to the Board of State and Community Corrections for mental health and substance abuse treatment programs to reduce recidivism of people in the justice system,
- 25% to be provided to the State Department of Education for crime prevention and support programs in K-12 schools,
- 10% to the California Victim Compensation and Government Claims Board for trauma recovery services for crime victims.

These agencies will administer grant programs to counties, but the amount Santa Barbara County may be eligible for is unknown. The County will need to apply for grants for which it is qualified once the grants are established.

### **State Impacts**

In May 2011, the United States Supreme Court affirmed an order requiring California to reduce its prisoner population to 137.5% of design capacity (estimated to be 113,720 inmates).<sup>i</sup> The local criminal justice system in California began a change process in 2011 with the passage of Realignment (Assembly Bill 109). The legislative change put the responsibility and resources for low-level drug possession and theft offenses with the counties instead of the State. Prop 47 did not change the responsibilities, but now petty offenses do not carry long sentences or lifelong consequences associated with a felony conviction.<sup>ii</sup>

As of March 23, 2016, the California Jail population was 113,100 inmates, slightly below the targeted population.

A study of total jail Average Daily Population, based on a sample of counties, estimates a decline of 4,767, or 9%, in the first year of implementation. The impact of Prop 47 appeared to be bigger as Prop 47 specific Average Daily Population declined 6,334 inmates over the same year (50% decline of Prop 47 specific sentences). The discrepancy illustrates differences in local practices and overcrowding issues.<sup>iii</sup> In addition, hundreds of thousands of people have filed petitions to reduce felonies to misdemeanors, and local agencies have been reviewing these, but many are still in waiting. An estimated 3,300 fewer prisoners will be incarcerated per year due to Prop 47.<sup>iv</sup>

The American Civil Liberties Union of California (ACLU) conducted an analysis of all 58 counties in California for the first year of Prop 47 called, “Changing Gears, California’s Shift to Smart Justice.” The ACLU came to six major findings:

1. Thousands are waiting for their Prop 47 resentencing/reclassification petitions to be reviewed;
2. Jail populations fell after Prop 47, but they are rising again;
3. Some in law enforcement have prioritized low-level arrests while others de-prioritized them;
4. Some county jails are making room for people charged with low-level offenses;
5. A majority of counties already require supervision for some people convicted of a low-level offense;
6. Agencies have been focused on individual agency roles, rather than collaborative planning.<sup>v</sup>

The ACLU report found that local practices have varied across the state for policing and rehabilitation, stating that Prop 47 is now the law but not yet the new normal. The state and local jurisdictions are still adjusting after the first year of implementation. The intention is to connect the low level offenders with needed services to prevent recidivism, such as mental health care, substance use disorder treatment and supportive housing.

### **State Fiscal Impacts**

The Department of Finance is required to estimate the savings to the State as a result of Prop 47 in the preceding fiscal year. An equivalent amount of State General Fund is then required to be deposited in the SNSF. The first year of savings to be estimated is FY 2015-16, and the first deposit made by July 31, 2016. The Governor released the State budget proposal in January 2016, and has estimated the savings to be \$29.3 million. The Governor’s estimate is far less than the original ballot measure estimates of \$100-\$200 million.

In February 2016, the LAO released, “The 2016-17 Budget: Fiscal Impacts of Proposition 47.” The LAO finds that the Governor’s proposal likely underestimated the savings and overestimated the costs resulting from the measure. Based on these assumptions, the LAO believes that the Governor’s proposal may be \$100 million less than actual savings.<sup>vi</sup> Part of the issue with properly estimating the savings and funding the SNSF, is Prop 47 did not clearly define how the state will estimate the savings nor how the savings will be deposited into the SNSF. The LAO provides a recommendation on the framework for estimating the savings and depositing the funds that the legislature would have to incorporate into the process. The calculations and savings from the first year of the measure will not be finalized until the Legislature adopts the FY 2016-17 Budget. County governments could save additional funds if local caseloads and workloads reduce. Prop 47 did not provide estimates for county-level savings, but counties can reallocate resources or shift workload due to Prop 47 reductions.

**Local Impacts Projected by LAO**

Early indications from the LAO in February of 2015 were that Prop 47 would reduce the criminal justice workload due to the less intense nature of workload related to misdemeanors and shorter jail terms for offenders of misdemeanors. Overcrowded jails could experience some relief by freeing up jail beds, but those beds could then be used to reduce early releases due to overcrowding which may not reduce the jail population. Probation would conceivably see freed up resources as misdemeanor offenders generally receive less intensive and less time under supervision; thereby resulting in a reduction of thousands of offenders in County Probation caseloads annually. The LAO predicted that Court workload associated with resentencing and reclassification of offenders was expected to increase in the short term before tapering off. The same was projected for the District Attorneys’ and Public Defenders’ offices with petitions in the short term but ongoing workload should reduce as felony filings and other court hearings are minimized.

**Santa Barbara County Impacts**

In Santa Barbara County, changes are occurring in various judicial and law enforcement activities. Some impacts are directly related to Prop 47 (i.e., number of Prop 47 petitions filed); while other impacts may be related in varying degrees to Prop 47 but a causal relationship cannot be determined at this time.

The initial assessments of the LAO appear to be happening and will be discussed in more detail below. In summary, the jails experienced an immediate drop in average daily population but the levels have risen to start 2016, which could be due to overcrowding. Probation has seen a decline in adult offenders under supervision. The petitions filed across the judicial departments are declining since a peak in March of 2015, and felony filings have decreased; although, the overall caseload and workload is greater as misdemeanors have increased.

The chart below summarizes these changes, which are described in the following section by the relevant departments.

**Summary Chart – Activities and Changes**

<b>Proposition 47 Statistical Changes During First Year (2014 to 2015)</b>			
<b>Department/Source</b>	<b>Activity</b>	<b>Change</b>	<b>Data</b>
Courts Public Defender District Attorney	Petitions filed for resentencing/reclassification	Declining from peak of March 2015	<b>Totals</b>
			1,750
			1,600
Behavioral Wellness	Alcohol and other Drug treatment programs (ADP) services	↑	13,497 to 15,622
Probation	Adult offenders on Probation	↓	4,654 to 4,268
Public Defender	Caseload	↑	21,675 to 23,996
	Misdemeanors	↑	11,441 to 12,869
	Felonies	↓	5,704 to 4,150
District Attorney	Caseload	↑	20,572 to 22,468
	Misdemeanors	↑	12,301 to 13,145
	Felonies	↓	3,335 to 2,314
Sheriff	Jail average daily population	↓	967 to 891 (rising in 2016)

### Behavioral Wellness

The Department of Behavioral Wellness is not able to directly track system impact as result of Prop 47, however, there are departmental impacts and trends which could potentially be related. Impacts are seen within the Alcohol and other Drug (ADP) treatment programs. Although contracted ADP providers report low referrals from the Courts and from Probation, review of all ADP services provided show a different trend. Even though a slight decline in the volume of billed services was seen immediately after the initiation of Prop 47, a consistent upward trend in services is evident between November of 2014 and November of 2015. While data does not indicate which services have been provided as result of a court order for treatment and which have been provided as voluntary drug treatment, data on Aegis systems opiate treatment programs shows a consistent trend upward of 15.7% (13,497 to 15,622) between November of 2014 and November of 2015. Aegis services are customarily voluntary.

Another trend in the department is within the inpatient utilization trends of the Department of Behavioral Wellness that could have Prop 47 related clients, but there is no clear correlation to Prop 47. The Psychiatric Health Facility is experiencing longer lengths of stay and an increase in patients remaining on administrative day status while they await proper discharge housing. Contributing factors to this trend include increasingly more complex patients with more substance abuse problems, coupled with an inadequate number of outpatient referral sites. In addition, the department has experienced an increase in persons determined by the courts as Incompetent to Stand Trial. As a result, beds remain full increasing the use of out of county inpatient psychiatric acute hospital beds for county residents experiencing psychiatric emergencies.

### Courts

As previously reported, the Court continues to see a decline in the number of Prop 47 petitions for resentencing and reclassifications filed. In quarters three and four of 2015, the Court had a total of 235 and 113 respectively, petitions filed.

While funding was not available at the passing of Prop 47 in 2014, the legislature set aside funding for FY 2015-16 and 2016-17 to help offset the additional workload. The Courts' allocation represents 1.14% of the total funding for Prop 47 in these years.

At the passing of Prop 47, treatment courts originally showed a decline in the number of participants. Recently, the Court has begun to see a rise in treatment court participants and will continue to track these numbers.

### District Attorney

The Office of the District Attorney handled at least 1,750 petitions requesting Prop 47 related resentencing or reclassification between November 5, 2014 and November 4, 2015, of which approximately 1,500 were granted. As of March 2016, the number of petitions has reached approximately 2,000, with approximately 1,700 being granted.

The chart below shows trends in key data going back five years. Most significant is the large increase in failure to appear (warrants issued on misdemeanor cases), a 42% increase year-over-year with 62% (4,814) being issued at the arraignment stage of criminal proceedings. This trend appears to be continuing at the same pace; as of March 15, 2016, there were at least 2,867 misdemeanor warrants issued since November 5, 2015.

Period	Filed Felony	Filed Misdemeanor	Total Reviewed Cases	Felony Referrals	Failure to Appear (Misd. Warrants)	Misdemeanor Referrals
11/05/10 - 11/04/11	2,673	13,257	19,184	4,611	5,110	14,573
11/05/11 - 11/04/12	2,877	12,179	18,811	4,663	4,817	14,148
11/05/12 - 11/04/13	3,143	11,557	19,575	5,168	4,736	14,407
11/05/13 - 11/04/14	3,335	12,301	20,572	5,425	5,418	15,147
11/05/14 - 11/04/15	2,314	13,145	22,468*	4,313	7,697	15,865

(\*Total reviewed cases include 1,750 P-47 Petitions. This is a conservative estimate due to the large number of initial oral petitions immediately after P-47 passed on November 4, 2014)

A review of those individuals who received Prop 47 relief during the first year showed that 483 of them were subsequently referred to the District Attorney for 1,132 new theft or drug related offenses during that same period of time.

Since 2010-11, cases charging a violation of one of the enumerated Prop 47 drug offenses, [i.e., methamphetamines, cocaine, marijuana, and heroin (HS 11377, 11350, 11357), or other non-Prop 47 but related charges such as under the influence (HS 11550) or possessing drug injection or certain drug smoking devices (HS 11364)] have increased in every year. In 2014-15 those charges reached 4,410, an increase over the 4,140 cases filed in 2013-14.

Domestic violence cases, which were flat from 2010 to 2012 (avg. 697 cases), decreased by 24% to 529 cases just prior to enactment of Prop 47 in November 2014. In the first year of Prop 47, 771 domestic violence cases were filed, representing an increase of 45% year-over-year. While it is difficult to attribute this increase to any one particular factor, it is our experience that drug and alcohol abuse are involved in most domestic violence incidents.

Other trends noted in the five year look-back include a marked rise in vehicle theft cases filed. Those offenses have also shown a steady increase since FY 2010-11 (92), and accounted for 180 filed cases in the first year of Prop 47, an increase of 95% over the last five years, and 15% year-over-year (180 vs. 157 in 2013-14).

It is important to note that cases referred to the District Attorney’s Office typically represent only a percentage of crimes actually committed or reported to law enforcement throughout the community. To determine the long-term impacts to public safety and criminal justice efficiency, additional information and resources dedicated to data analysis will be needed.

Probation

Since the passage of Prop 47, November 2014 through November 2015 had a reduction of 386 adult offenders (4,654 to 4,268) under Probation’s supervision; and through February 2016 the number has come up to 4,304 or a total reduction of approximately 350 since the passage of Prop 47. This number appears to have largely stabilized, although there are some slight monthly increases in the caseload. Individual Collaborative Courts have seen some variances but when taken as a whole, the impact of Prop 47 on the Collaborative Courts has been minimal, with the overall numbers remaining flat. The significant impact has occurred within the Prop 36 (Substance Abuse and Crime Prevention Act of

2000) program. The program went from an enrollment of approximately 1,378 to a low of 1,119 in November 2015 and has been relatively flat since then.

**Public Defender**

For the period November 4, 2014 to November 4, 2015, the Public Defender’s Office filed 1,590 Petitions for Prop 47 Reduction. An additional smaller number of applications were reviewed and rejected. During that same time frame, the Public Defender separately handled 4,150 Felonies and appointed 12,869 misdemeanors, and a total caseload of 23,996. For the period November 4, 2013 to November 4, 2014, the year before Proposition 47 passed, the Public Defender handled 5,704 Felonies and appointed 11,441 Misdemeanors, with a total caseload of 21,675.

Period	New Felony Cases Appointed	All Felony Cases Handled[1]	New Misdemeanor Cases Appointed	All Misdemeanor Cases Handled[2]	All Cases[3]
11/05/10 - 11/04/11	2,232	4,330	9,105	12,733	22,350
11/05/11 - 11/04/12	2,478	4,698	8,338	11,907	21,413
11/05/12 - 11/04/13	2,650	5,390	7,363	11,067	20,981
11/05/13 - 11/04/14	2,878	5,704	7,681	11,441	21,675
11/05/14 - 11/04/15	1,998	4,150	9,208	12,869	23,996

[1] Includes Violations of Felony Probation.

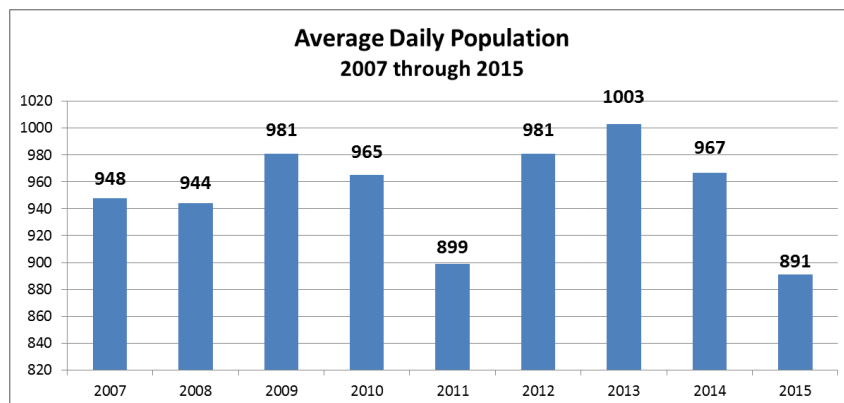
[2] Includes Violations of Misdemeanor Probation.

[3] “All Cases” include Probation violations, Parole violations, Post Release Community Supervision violations, Post Sentence Supervision violations, all Juvenile cases, Probate, LPS, Expungements, Contempts, Domestic Violence Reviews, DUI Reviews, Treatment Court Reviews (Proposition 36 Treatment Court, Substance Abuse Treatment Court, Dual Diagnosis Treatment Court, Mental Health Treatment Court, Veteran’s Treatment Court), etc.

The additional 1,590 Prop 47 petitions represent at least a 7% increase in Public Defender caseload comparing the first year of Prop 47 inception to the preceding year. Overall, caseload is up more than 10% covering the same period. Although the number of Petitions filed has been declining since a peak in March 2015, petitions may increase if staffing allows the Public Defender to review its database and engage in Community Outreach. Overall, caseload is up over 10% over the same period.

**Sheriff**

Prop 47’s impact on the jail population appears to have been short lived. The initial decline in Average Daily Population post implementation of Prop 47, was quickly met with an overall increase in ADP over the subsequent months. In 2016, the monthly Average Daily Population in January and February was approximately 20% higher (20.6% and 19.4% respectively) than the previous year.



The trends described above by the affected County Departments are from the best available data. The trends highlight what is occurring but are not necessarily directly tied to a causal relationship with Prop 47.

### **Conclusion and Next Steps**

The Center on Juvenile and Criminal Justice (CJCJ) attempted to determine if the reduction of jail populations had a direct correlation to increases in crime. The CJCJ hypothesized that cities in counties with the largest reductions in jail populations should then be showing the largest increases in crime. The CJCJ found that this is not the case, and actually many cities in counties with the largest decreases in jail populations had favorable crime trends.<sup>vii</sup> This finding illustrates that there is no clear or apparent effect of Prop 47 to date. One year into implementation, a conclusive statement on the merits of Prop 47 is not readily available to be communicated.

This broad conclusion is also evident in Santa Barbara County. As was originally expected, the legal departments have had increased workloads over the first year with increased petitions and caseloads at the outset that are starting to wane. Also expected was a decrease in felony filings and referrals (more labor intensive than misdemeanors) and increase in misdemeanors as has been observed by the justice departments, but other areas such as domestic violence have also increased. The Probation Department has seen a reduction in adult offenders under supervision which may result in savings and a shift in resources. Alternatively, the Behavioral Wellness Department is seeing increased service trends in Alcohol and other Drug treatment programs and increases in Inpatient and Incompetent to Stand Trial patients; and the Sheriff is seeing an increase in average daily jail populations after initial decreases. Other than the Prop 47 petitions, the observed trends are not clearly a causal relationship with Prop 47. Further monitoring and analysis will be needed in the coming years.

The next step will be to see what the adopted state savings will be and what grants Santa Barbara may be eligible to receive. Focusing efforts on increasing utilization of services, such as substance abuse treatment and mental health programs, may help reduce recidivism. Departments will need to work together on these programs, and identify available grants to support these programs in order for Proposition 47 to have positive results locally.

### **Authored by:**

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### **cc:**

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Guadalupe Rabago, Chief Probation Officer



**Endnotes:**

<sup>i</sup> *Brown v Plata* (2011) 563 U.S. 493, 539.

<sup>ii</sup> American Civil Liberties Union of California, *Changing Gears: California's Shift to Smart Justice* (November 2015). Available at: <https://www.acluca.org/prop47/>

<sup>iii</sup> Public Policy Institute of California, *How Has Proposition 47 Affected California's Jail Population?* (March 2016) Available at : <http://www.ppic.org/main/publication.asp?i=1187>.

<sup>iv</sup> Stanford Law School, Stanford Justice Advocacy Project, *Proposition 47 Progress Report: Year One Implementation* (October 2015) Available at: <https://law.stanford.edu/publications/proposition-47-progress-report-year-one-implementation/>.

<sup>v</sup> See FN ii

<sup>vi</sup> Legislative Analyst's Office, *Fiscal Impacts of Proposition 47*, (March 2016) Available at: <http://www.lao.ca.gov/Publications/Detail/3387>

<sup>vii</sup> Center on Juvenile and Criminal Justice, *Is Proposition 47 to Blame For California's 2015 Increase in Urban Crime?* (March 2016) Available at: <http://www.cjcj.org/news/10205>