Memorandum

Date: December 11, 2014

To: Honorable Steve Lavagnino, Chair, and
Members of the Board of Supervisors

From: Mona Miyasato, County Executive Officer
Joseph Toney, Fiscal and Policy Analyst

Subject: Proposition 47 – The Safe Neighborhoods and Schools Act

CC: Joyce Dudley, District Attorney
Bill Brown, Sheriff
Alice Gleghorn, Ph.D., Director, ADMHS
Takashi Wada, MD, Interim-Director, ADMHS
Raimundo Montes de Oca, Public Defender
Beverly Taylor, Chief Officer, Probation
Michael Ghizzoni, County Counsel
Terri Maus-Nisich, Assistant County Executive Officer

Proposition 47 (Prop 47), The Safe Neighborhoods and Schools Act, passed November 4th, is intended 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."

The act reduces and modifies certain felonies that are nonserious, nonviolent crimes to misdemeanors. These crimes primarily include: shoplifting not exceeding $950, forgery less than $950, grand theft below $950 shall be petty theft, buying or selling known stolen property not exceeding $950, possession of certain controlled substances (specified in section 11054), and specific marijuana related crimes.

The act also creates the Safe Neighborhoods and Schools Fund (Fund) that will be funded from the anticipated State savings in reductions to corrections costs from the conviction changes. Estimates range from $150 million to $250 million per year, but such savings will not be initially calculated until July 31, 2016. The savings will be distributed in the following manner:

- 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.

The funds will be distributed on August 15th of each fiscal year beginning in 2016 to these agencies. An audit will be conducted by the Controller every two years of the grant programs operated by the agencies above. The agencies cannot spend more than five percent of the total funds they receive on administrative costs. The agencies will be charged with administering grant programs to counties. The process is still being established and not all details are known at this time.

The actual savings and the impact to counties are not certain at this point. There are many unknowns as to what the impacts will be to Santa Barbara and the departments that interact with the law's intended population. With what is known now and what is anticipated, summaries from each affected department are below. It is believed that the District Attorney and the Public Defender will be the most impacted by the Act.

District Attorney

The District Attorney's Office has reset the internal crime charging procedures and estimates an approximate 50% increase in filing of misdemeanor complaints. The increase will be coupled with commensurate decrease in felony case filings. The Office has been notified by the Department of Corrections and Rehabilitation of about 45 current state prison inmates that may be subject to resentencing, and upwards of 226 inmates that may seek relief under Prop 47. The Office will have to review all petitions to determine eligibility, and significant staffing will be needed if petitions approach 226.

The County has 130 jail inmates that may be eligible for resentencing and petitions have been filed. The inmates file must individually be reviewed by the either the Assistant or Chief Deputy District Attorney, or the Deputy District Attorney, along with support staff assistance. In addition, each petition will require an attorney to represent the Office in court. Furthermore, it is unknown at this time the number of current treatment court defendants that are subject to Prop 47, and the Office is concerned that the lack of potential felony consequences for treatment court probation may be a disincentive to treatment.

The District Attorney is unclear on the number of current felony probationers that may qualify for resentencing, but the office will have to review each case

individually once petitioned and a Deputy District Attorney will attend the hearings.

Public Defender

The full effect of Prop 47 on the operations of the Public Defender's Office is yet to be felt. The most immediate effect is a surge of out of custody clients, or clients in the county jail, requesting the filing of resentencing petitions to reduce the status of offenses currently listed as felonies to misdemeanors. Early indications suggest there will be an increased workload for support staff because of the "paperwork" these petitions will generate, though attorney staff is still able to cope with the number of petitions that are currently being filed. However, because inmates now in state prison are also eligible to request that resentencing petitions be filed on their behalf, and these petitions will lead to a reduction of the sentence being currently served, the Public Defender expects a substantial number of these type of petitions. These petitions may present complex legal and/or factual issues and will increase the workload of both attorney and support staff. The extent of this increase will not be known until the Public Defender's Office has more experience with what is required to litigate these petitions. The Office will monitor this workload and advise county administration if increased resources are needed. The long term effect of Prop 47 with respect to new case filings also remains to be seen, and will depend on the filing practices of the District Attorney and law enforcement. The expectation is that the number of case filings will remain about the same, though the type and severity of these cases may re-configure the workload. Time will tell whether this is a correct assessment.

Alcohol, Drug and Mental Health Services (ADMHS)

Prop 47 in and of itself is not thought of as a mental health related proposition. However, future savings diverted into the Fund may be used to provide additional funding for mental health and drug abuse treatment, and other programs designed to keep offenders out of incarceration that may pertain to ADMHS. Dialogue at the State level has been minimal in regards to mental health organizations or associations. Much is unknown as to the impact to ADMHS or what level of funding may be received. The department will continue to monitor going forward.

Probation

The juvenile and adult divisions have conducted a review of all probation cases to ascertain how many may have impacts related to the passing of Proposition 47. The Juvenile Division has approximately 550 youth under supervision and as many as 80 will be potentially impacted by Prop 47. Of those 80, three have since resulted in termination of probation. The impact to workload is not anticipated to be notable.

In the adult division, there are approximately 5,900 offenders under supervision; and of those approximately 1,500 offenders appear to have Prop 47 eligible cases. As of December 5th, 27 offenders have had their cases closed to probation due to Prop 47. There were another six offenders who had at least one case closed, but remained open to Probation on a least one other case. Thus far, an additional 49 petitions for reductions under Prop 47 have been filed and are pending hearings. Determining the impact on the adult division is complex. There is not enough information currently available to determine what percentage of the 1,500 offenders will remain on Probation, even if they are successful in reducing one of their cases by way of Prop 47. The Adult Division will continue to monitor the impacts on workload, and shift resources as workload demands. The adult division is also working with the Collaborative Court partners to determine what impacts there may be to programs under the drug court umbrella which have served felony offenders primarily. An additional impact that is unique to the adult division is related to funding. Currently the division is supported by $1.8 million in Senate Bill 678 (SB678) funds. These funds are impacted by the total number of felony offenders under supervision. It is likely that the Department's SB678 allocation will be reduced as a result of the reduction in felony offenders pursuant to Prop 47.

Sheriff

The largest immediate impact has been a changing arrest methodology. Peace officers can arrest for a felony if they have reasonable cause to believe one was committed. To make a misdemeanor arrest the crime generally must have been committed in their presence, otherwise a citizen's arrest is needed or they must go by way of complaint through the District Attorney's Office. There are also differences in regard to obtaining search warrants.

The overall impact is difficult to estimate and is still being evaluated. The Sheriff's Office has an antiquated records management system and can't easily extract a dollar value from previous theft, possession of stolen property, or fraud and forgery cases to try to predict what percentage will now be misdemeanors, under the new prop 47 guidelines, going forward. The Office has been able to determine that each year for the last several years there has been an average of about 750-800 drug possession cases that are now misdemeanors in the South Jurisdiction. Although it is not clear, the Office estimates it is about 1500-2000 cases countywide.

There has been some impact in the jail, with a few related releases, but most of the pre-Prop 47 drug-related cases were already being diverted and/or misdemeanors have been booked and Released on OR, or Booked and Released.

The greatest short-term possible impact could occur if large numbers of drug offenders plead out to misdemeanor charges and are sentenced to county jail instead of going through diversion and drug treatment programs. Such a scenario would overwhelm Custody Operations in the Sheriff's Office, possibly even after the new jail is open. It is too early to make a long-term prediction of the impacts.

The other potential impact to the County will be an increase in crime, particularly property crime, as a result of offenders not being held as accountable as they were pre-Prop 47. Overall crime is currently at a 36 year low.

If you have any questions, please contact Joseph Toney, Fiscal and Policy Analyst, County Executive Office, at (805) 568-2060.

Attachments:

Memo: District Attorney, Proposition 47, December 9, 2014.
Memo: Public Defender, Anticipated Departmental Effects of Proposition 47, December 10, 2014.
Text of Proposed Laws, Proposition 47, Voter Guide, August 13, 2014.
The BSCC's Prop 47 Responsibilities are Unfolding, Board of State and Community Corrections, Summary, retrieved December 9, 2014, from http://www.bscc.ca.gov/downloads/Prop%2047.pdf.

Memorandum

Date: December 9, 2014

To: Mona Miyasato, County Executive Officer

From: Joyce E. Dudley, District Attorney

Subject: Proposition 47

Proposition 47, "The Safe Neighborhoods and Schools Act," reduces the punishment for certain specified felony crimes committed on or after November 5, 2014. The initiative reduces the following drug violations to a straight misdemeanor: Health and Safety Code sections 11350(a), 11357(a), and 11377(a). The following theft-related offenses are reduced to misdemeanor status: Penal Code section 459a (shoplifting), 473(a), 476(a)(b), 490.2 (newly defined grand theft), 496(a), and 666.

The initiative further provides a mechanism for defendants to petition the court to recall a previously imposed felony sentence and request resentencing as a misdemeanor for crimes committed prior to November 5, 2014. A court may deny resentencing if a petitioner is deemed ineligible based upon his/her prior convictions for certain "super strike" offenses or is subject to registration for certain prior sex offense convictions. The court may also deny resentencing if a petitioner is determined to pose an unreasonable risk of danger to "public safety."

A petition for reduction to a misdemeanor may be filed by qualifying persons who are currently serving a sentence in state prison, including inmates sentenced as a second or third striker under the Three Strikes law. An inmate resentenced from state prison will be subject to a three year PRCS requirement per Penal Code section 3451. A petition for resentencing may be filed by eligible persons on parole or Post Release Community Supervision (PRCS), and case law suggests that persons on parole or PRCS are still serving their sentence and thus a determination of "dangerousness" is implicit in any judicial order of relief. If resentenced, a petitioner may be subject to a period of parole for one year unless the court, in its discretion, releases the person from parole.

Similarly, persons previously sentenced under Penal Code section 1170(h) are eligible to petition the court for resentencing as the court would have previously denied probation and sentenced a defendant to a "straight" or "split" sentence containing mandatory supervision. The court may order some form of structured misdemeanor probation, supervised or unsupervised, assuming that there is jurisdictional time available after awarding custody credits. Persons currently on probation for qualified felony offenses would be entitled to petition the court for resentencing on those cases as misdemeanors. Persons who have completed their sentence for a crime which would now be classified as a misdemeanor offense, may make application to the trial court to have the conviction designated as a misdemeanor, absent a disqualifying "super strike" prior offense.

Juvenile court dispositions which occur after November 5, 2014, must comply with the directives of Proposition 47 concerning misdemeanor/felony charging and maximum confinement limitations. The petitioning process applicable to adult convictions may not be available to juvenile offenders and the provisions of Welfare and Institutions Code section 778 may adequately address the issues presented; that issue is unclear.

District Attorney Response:

The District Attorney has re-set our internal crime charging procedures to reflect the current state of the law post-Proposition 47 and provided advice to law enforcement agencies regarding their changing felony/misdemeanor arrest standards. We estimate an approximate fifty percent increase in our filing of misdemeanor complaints coupled with a commensurate decrease in felony case filings.

The District Attorney's Office was originally notified by the Department of Corrections and Rehabilitation that there were approximately 45 current state prison inmates who may be subject to resentencing by the Santa Barbara Superior Court. We are awaiting those petitions. Subsequent information from CDCR indicates that there may be upward of 226 inmates for which Proposition 47 relief may be available. This office will review these petitions as received to determine if the inmate is actually eligible for relief, or if he/she has a disqualifying "super strike" prior conviction, is subject to registration as a sex offender per Penal Code section 290, or "poses an unreasonable risk of danger to public safety." This eligibility review may require an additional review of an inmate's CDCR Central File, as issues of potential "dangerousness" may be disclosed and possible Penal Code section 290 requirements noted. If the actual number of petitions approach 226 there may be significant staffing issues presented to this office.

There are currently approximately 130 county jail inmates potentially eligible for Proposition 47 resentencing, and petitions have been filed on behalf of some of these inmates. Once a petition is filed, the inmate's file is individually reviewed by the Assistant or Chief Deputy District Attorney, or in some cases by an assigned Deputy District Attorney, for eligibility and disqualifying prior convictions. The office's internal process involves support staff in case-file location and petition processing, in addition to the attorney involvement. Also, each petition requires an attorney to appear in court and represent the position of the office regarding eligibility and resentencing issues. "Marsy's Law" victim notifications require Victim-Witness involvement, as certain types of cases (theft related) further obligate this office. Many of the current treatment court defendants are subject to Proposition 47 felony conviction reduction to misdemeanor but the actual number is unknown at this time. The reductions are an ongoing process as ongoing cases are calendared in court. The treatment court therapeutic services are not dependent on the level of the underlying conviction (misdemeanor versus felony) but we are concerned that the lack of potential felony consequences for treatment court probation violations may be a disincentive to treatment compliance.

We have no reliable way of estimating the number of current felony probationers who may qualify to request their case be reduced to misdemeanor status; that information is with the Probation Department. However, as those petitions are filed and calendared in the court, this office will review them individually as described above for disqualifying "super strike" prior convictions and "unreasonable risk of danger to public safety" concerns. A Deputy District Attorney will appear at each of these hearings. The resentencing proceedings should result in fewer supervised probationers as their charges are reduced and the probation grants become informal. Staffing issues may be present but they are difficult to establish.

Memorandum
Office of the Public Defender
County of Santa Barbara

Date: December 10, 2014
To: Ms. Mona Miyasato, County Executive Officer
From: Raimundo Montes De Oca, Public Defender
Re: Anticipated Departmental Effects of Proposition 47
Cc: Mr. Joseph Toney, Administrative Analyst

SUMMARY:

The full effect of Proposition 47 on the operations of the Public Defender's Office is yet to be felt. The most immediate effect is a surge of out of custody clients, or clients in the county jail, requesting the filing of resentencing petitions to reduce the status of offenses currently listed as felonies to misdemeanors. Early indications suggest there will be an increased workload for our support staff because of the "paperwork" these petitions will generate, though our attorney staff is still able to cope with the number of petitions that are currently being filed. However, because inmates now in state prison are also eligible to request that resentencing petitions be filed on their behalf, and these petitions will lead to a reduction of the sentence being currently served, we expect a substantial number of these type of petitions. These petitions may present complex legal and/or factual issues and will increase the workload of both attorney and support staff. We will not know the extent of this increase until we have more experience with what is required to litigate these petitions. We will monitor this workload and advise county administration if increased resources are needed. The long term effect of Proposition 47 with respect to new case filings also remains to be seen, and will depend on the filing practices of the District Attorney and law enforcement. Our expectation is that the number of case filings will remain about the same, though the type and severity of these cases may re-configure our workload. Time will tell whether this is a correct assessment.

ANALYSIS:

Proposition 47's stated goals are straightforward: to incarcerate only violent and serious offenders, thereby saving Californians the cost of incarcerating non-violent offenders, and to invest these savings in our schools and in mental health and substance abuse treatment. *("The Safe Neighborhoods and Schools Act", Section 2, Findings and Declarations*) Prospectively, the Initiative seeks to limit the incarceration of non-violent offenders by re-defining certain theft and drug offenses so that these offenses are no longer classified as felony offenses. *("The Safe Neighborhoods and Schools Act", Sec. 3 subsec. (3), Purpose and Intent*) But, the Initiative also has retrospective implications, since it provides that currently incarcerated felons whose committing offenses are now defined as misdemeanors may petition the Superior Court for a recall of their sentence. Similarly, offenders who have been convicted of these re-defined offenses but have already served their sentences may also apply to have their

convictions reduced to misdemeanors. (*"The Safe Neighborhoods and Schools Act"Sec. 3, subsec. (4) & (5), Purpose and Intent*) Some of Proposition 47's effects can be anticipated; others cannot.

For the Public Defender's Office, the anticipated retrospective effects require us to estimate the number of clients with cases whose offenses have been re-defined as misdemeanors and:

- Who have cases that are pending and unadjudicated;
- Who though sentenced have returned to court for adjudication of probation or parole violations;
- Who are serving custodial sentences in the county jail;
- Who are serving custodial sentences in state prison;
- Who are currently on probation/parole and whose committing offenses have been re-defined as misdemeanors; and
- Those who have already served their sentences whose committing offense has been re-defined as a misdemeanor and who no longer have active pending cases.

This workload has the potential of being limited, but intense because of the volume of clients who might be expected to request the filing of resentencing petitions.

Clients With Cases Currently In The Superior Court

The workload for clients whose cases are pending and unadjudicated, whether the matter requires initial adjudication or whether adjudication comes as a result of a violation of probation is the easiest to quantify. These clients are already part of our existing workload and require no further resources for their representation. As each case comes to court, the involved parties can determine whether the client qualifies for a reduction of the charge to a misdemeanor and proceed accordingly.

Clients In The County Jail

Clients serving a custodial sentence in the county jail after their case has been adjudicated have been more difficult to quantify, but with the help of the Sheriff's Custodial Division we were able to distribute a flyer advising inmates of Proposition 47's passage and its resentencing requirements. Though not all responding inmates qualify for resentencing, the flyers were returned by 120 inmates with cases pending in each of our Superior Courts and the information provided to the attorneys in our office who originally represented the inmate, and who presumably are the most knowledgeable about the case. These attorneys will follow up on these inmate's cases. If the inmate had been represented by conflict counsel or a privately retained counsel, that attorney was contacted to advise them of the inmate's request for further action. The workload generated by this group of clients is being handled as part of our existing caseload.

Clients In State Prison

The most difficult workload to quantify, and one for which we may not be appropriately staffed, are those inmates currently serving custodial sentences in state prison or on parole who may be eligible for Proposition 47 relief. We have been provided a provisional list of possibly qualifying inmates. This group contains four subgroups:

- inmates whose only committing offense is one possibly subject to resentencing (44 inmates);
- inmates with multiple committing offenses, with one such offense possibly subject to resentencing (126 inmates);
- inmates on parole with a single committing offense possibly qualifying for resentencing (12 parolees); and
- inmates on parole with multiple committing offenses, one of which possibly qualifies for resentencing (44 parolees).

This group of 226 offenders represents a workload this office did not anticipate and was unable to quantify until the necessary information was provided to us by the California Department of Corrections and Rehabilitation (CDCR). It is unclear how extensive this workload will be. Unlike offenders in local custody or whose case is proceeding through our courts, neither the courts, District Attorney, nor defense counsel will have readily available information to assess whether an inmate qualifies for resentencing. (See: Penal Code § 1170.18 (b))The required information will be in the hands of CDCR. In each case, CDCR regulations permit access to this information only by subpoena/court order, and CDCR will require up to 30 days to respond and process the information for the court. In many cases there will be several hundred pages of information provided by CDCR (the "C File"), from which all parties will need to glean information appropriate to their respective presentation. At this time it is impossible to quantify the workload necessary to represent these inmates. We are in the process of contacting the inmates on the list provided by CDCR to inquire whether they would like us to file a petition on their behalf. [1]

Clients Who Have Finished Serving Their Sentence

The final group that may apply for Proposition 47 relief will be those persons who have already served their sentences and who will be applying for a reduction of their felony convictions to misdemeanors. Potentially, this is the largest group of persons applying for relief, but fortunately the recall of sentencing process has been simplified for this group. Our case management system is unable to provide reliable information about the number of felony offenders who have been convicted of potentially reducible

[1] Resentenced petitioners may potentially create an additional parole violation caseload for our courts, since the judge resentencing a petitioner may require the petitioner to be subject to parole for up to 1 year after being resentenced. However, if our experience since July 2013 with other parolees applies to this group of parolees, it is unlikely that the workload from parole revocation petitions will present an undue burden on either the courts or the prosecution and defense.

Proposition 47 offenses. A quick review of information that is available shows we represented at least 667 clients with possible Proposition 47 offenses in the last two years; there are potentially many more. [2] Because the Initiative does not limit the age of an applicant's conviction, the potential pool of applicants can range into the thousands. The only limitation contained in the Initiative with regard to the filing of any petition or application for relief is that the application be filed within 3 years of the Initiative's effective date. This 3 year window limits, to some extent, the length of time the Initiative's workload will affect the courts and counsel.

Summary And Conclusion

It is too early to accurately assess the impact of Proposition 47 on the Courts and our office. Prospectively, since a large number of the cases going through our courts involve thefts and drug possession offenses, reducing these offenses to misdemeanors might lead to clients simply pleading guilty to these charges instead of either litigating the charge or engaging in alternative sentencing programs. On the other hand, the prosecution might choose to review the factual circumstances of the offense and charge the defendant with offenses that are not reducible, leading to possibly greater litigation, at least in the short term. Law enforcement's reaction to the changes wrought by Proposition 47, or the reaction of defendants to the perceived change in the law cannot be predicted, though it may be possible to notice a trend within the next 60 to 90 days, and see if that trend holds over the next 6 to 12 months.

The number of resentencing petitions that will be adjudicated under Proposition 47 defies easy quantification. Countywide, our office has filed over 100 petitions for resentencing to date, mostly for clients who have finished serving their sentences and who have contacted our office asking for assistance. There are many more petitions that will be filed in the coming months. Other public defender offices statewide report filing hundreds of such petitions. The majority of the petitions our office has filed have been relatively straight forward, but the quantity and time frame to file these petitions is beginning to tax our resources. The impact on our LOP staff is particularly acute; each petition generates a considerable amount of LOP staff work: determining whether we have a closed client file for background information, opening a new case file, obtaining information from the district attorney's office, and processing the paperwork to file in the courts. The attorney work in these cases is manageable at this time, but the work generated for our LOP staff may require us to provide them with staff assistance.

The petitions from inmates currently in state prison present an altogether different set of issues. We have at least 34 inmates whose expected release date falls between December 2014 and December 2015 and whose only committing offense appears to be one reducible under Proposition 47. I would not expect inmates whose only committing offense is one reducible under Proposition 47 to present many legal issues requiring

[2] We currently have no fixed protocol to enter charge information in our current case management system, so a felony forgery offense could be entered as 470 PC, or PC 470, or as any variant of the Penal Code section plus an applicable subsection. It would be very difficult to extract precise charge information given these limitations.

litigation, since the committing offense is fairly minor and the inmate's prior record will either disqualify him or her, or not. But these inmates' petitions require priority because of the time deadline involved and present, at least in the short term, an increased workload for our office.

However, inmates with non-Proposition 47 offenses as well as reducible offenses have the potential to raise problematic scenarios. Our experience litigating 3 Strike resentencing cases may provide some indication of what to expect when litigating at least the most difficult of these cases. Two attorneys in our office litigated most of the 3 Strike cases over a 24 month period. The litigation proceeded slowly for several reasons. These cases presented significant legal and factual issues, some of which were novel to this type of litigation; and secondly, the Superior Court provided limited judicial resources for these hearings. In Santa Barbara one court heard most of these cases on Tuesday afternoons. If the Superior Court is able to devote greater resources to the Proposition 47 hearings, the prosecution and defense will also be required to devote greater resources to these hearings. While it is hard to predict the type of legal and factual issues that might be involved in the Proposition 47 cases, the volume of cases is nevertheless daunting. It might very well be that even if these inmates' prior record does not disqualify them from Prop. 47 relief, the prosecution may still view the petitioner as especially dangerous and will argue vigorously against any modification of their sentence. There are over 100 such inmates and the potential for litigation (at least at the moment) may be quite high. If that is the case, I would suggest we would need two additional two extra-help attorneys and an LOP staff member to devote full-time effort to these cases for approximately 6 to 8 months of litigation. [3] The time frame could be less, though without examining these cases more closely one cannot provide a more accurate assessment of the work involved.

[3] Some counties have provided short-term extra-help staff to public defender offices so these offices can file resentencing petitions for clients who may qualify for resentencing.

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 punishable 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

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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

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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.

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(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

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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.

The BSCC's Prop 47 Responsibilities are Unfolding

On Nov. 4, 2014, California voters approved Proposition 47, which reduced from felonies to misdemeanors the penalties for certain non-serious and non-violent drug and property crimes. http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47

The state savings from reduced incarceration rates is to be used to support truancy prevention, mental health and substance abuse treatment, and victim services. The proposition provides that 65 percent of those savings will go to the Board of State and Community Corrections, which will allocate the funds as grants to the counties for rehabilitative programming and mental health and substance abuse treatment for offenders, as follows:

> Govt. code 7559.2 (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.
>
> Govt. code 7599.2 (a)(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.

The BSCC is beginning its early planning for carrying out these grant-making responsibilities. Already the BSCC administers state and federal grants for a variety of adult and juvenile rehabilitative and crime-prevention programs.

The state Department of Finance is required to estimate and then calculate the savings over the coming year. Funds will become available in August 2016:

Govt. code 7599.1 (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. ***

(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).

At its next Board meeting on Feb. 12, 2015, the BSCC will discuss its responsibilities under Proposition 47.

Source: http://www.bscc.ca.gov/downloads/Prop%2047.pdf