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ONE MINUTE BRIEF

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NUMBER: 2014-22 **DATE:** 11-05-14 **BY:** Devallis Rutledge **TOPIC:** Proposition 47 Changes

ISSUE: What changes to criminal law and procedure did Proposition 47 bring about?

Yesterday, California voters approved Proposition 47. The changes enacted by this measure are **effective today**. (Cal. Const. Art. 2, sec. 10.) Numerous drug and theft-related crimes that were previously felonies or “wobblers” are now **misdemeanors**, unless committed by “Prop 47 Ineligible” criminals—namely, 290(c) registrants, and those with a prior for the very serious crimes listed in PC § 667(e)(2)(c)(iv)—such as homicide offenses and crimes punishable by death or by life in prison.

Except as to “Prop 47 Ineligible” individuals, **the following are now misdemeanors:**

- PC § 459.5—the new misdemeanor crime of “shoplifting” is **entering** a commercial establishment, **during** business hours, **with the intent to steal**, where value does not exceed \$950. “Shoplifting” as defined **may not be charged as theft or burglary**.
- PC § 473(b)—forgery of checks and related instruments of not more than \$950.
- PC § 476a—NSF checks totaling not more than \$950 (unless 3 or more specified priors).
- PC § 490.2—grand theft (**any form**) not more than \$950.
- PC § 496(a)—receiving/concealing stolen property not more than \$950.
- PC § 666—“wobbler” “petty theft with a prior” applies **only** to “Prop 47 Ineligible” defendants with specified priors, and certain elder abusers. For all other defendants, petty thefts are **misdemeanors, regardless of the number of priors**.
- H&S § 11350—simple possession of heroin, cocaine, listed controlled substances.
- H&S § 11357(a)—simple possession of concentrated cannabis.
- H&S § 11377—simple possession of methamphetamine, ecstasy, GHB, listed substances.

- In addition to these reductions, Prop 47 also enacted new PC § 1170.18, which sets forth procedures for those previously convicted and sentenced for a felony that is now a misdemeanor under this proposition to **petition for resentencing** under the misdemeanor provisions. Unless a court determines that the person poses an “unreasonable risk” of committing one of the crimes listed in PC § 667(e)(2)(c)(iv), the petitioner will get resentenced, and his/her conviction will be deemed a misdemeanor for all purposes, except possessing firearms. The provisions of “Marsy’s Law” will apply to the resentencing.

- Whereas many of the previous felonies carried 3-year statutes of limitation and resulted in arrests, bookings, higher bail, in-custody filing deadlines, DA prosecution, preliminary hearings and felony sentences, the new misdemeanor classifications will generally mean 1-year statutes of limitation, citation and release per PC § 853.6, city attorney prosecution in some jurisdictions, shorter trial deadlines, and lighter maximum sentences.

- In those cases where a loss above \$950 makes the crime a felony, value will need to be established and **included** in crime and arrest reports, and must be **pled and proved** at prelim and trial, and included in the **factual basis** for a guilty plea. Officers should especially remember to obtain evidence of value from victims (or other sources) in cases where amount of loss was not previously relevant, such as theft of **firearms** and **vehicles**, and thefts **from the person**.

A series of comprehensive GOMs and a new SD provide additional guidelines for LADA prosecutors and investigators, who may also wish to attend the Saturday Seminar on November 15 (law enforcement officers also welcome). Link to a video on crime-charging issues for complaint deputies and interested DA staff is attached to the GOM/SD. The Los Angeles County District Attorney’s Office has produced and distributed a short DVD presentation for local law enforcement officers discussing Prop 47 highlights, suitable for roll-call or briefing training. As always, questions as to application and procedure may be addressed to local supervisors.

BOTTOM LINE: Proposition 47 reduced specified offenses to misdemeanors, created a new “shoplifting” crime, and allows resentencing of certain convicted felons as misdemeanants.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.