County of Santa Clara

Office of the District Attorney

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Jeffrey F. Rosen
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MEMORANDUM

To: County Police Chiefs and Sheriff

From: Jeff Rosen, District Attorney

Date: November 4, 2014

Re: Proposition 47

If Proposition 47 prevails in today's election, it will become effective on November 5, 2014, and will have immediate and considerable implications for criminal courts. In short, the proposition would reclassify certain theft and drug possession offenses as misdemeanors and authorize persons to petition the courts for resentencing and to apply for reductions of felony convictions to misdemeanors.

The following types of crimes are affected:

- Shoplifting

- Forgery

- Insufficient Funds

- Grand Theft

- Receiving Stolen Property

- Petty Theft with a Prior

- Drug Possession Offenses

Proposition 47 changes several charges into misdemeanors unless the suspect is a sexual registrant or has a prior conviction for a limited number of serious or violent felonies. In most cases, an officer, at the time of arrest, will not know whether or not a suspect has a disqualifying prior conviction. The DA's Office will review the relevant criminal history at the time of issuing and file the appropriate charge. Therefore, some of your Proposition 47 misdemeanor arrestees will face felony charges because they are a 290 registrant or they have a disqualifying prior conviction.

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The following is a brief synopsis of the new charging available under Proposition 47, assuming that the suspect has none of the disqualifiers.

Shoplifting

Proposition 47 would add Penal Code section 459a to create a new misdemeanor offense called "shoplifting," punishable by up to 6 months in county jail. Shoplifting is defined as "entering a commercial establishment with intent to commit larceny while the establishment is open during regular business hours" where the value of the property does not exceed $950. *The suspect can be arrested for a felony 459/460(b) if the offense occurred at a business during open business hours and the amount taken is over $950.00.*

Forgery

Under current law, forgery under Penal Code § 473 is a wobbler offense [may be charged as a felony or misdemeanor], but exclusively a misdemeanor if the amount does not exceed $450. This crime will now be exclusively a misdemeanor unless the amount exceeds $950. *The suspect can be arrested for a felony in those cases where the amount is over $950.*

Insufficient Funds

Under current law, a violation of penal Code § 476a is a wobbler offense, but strictly a misdemeanor if the total underlying amount does not exceed $450. This crime will now be exclusively a misdemeanor unless the amount exceeds $950. *The suspect can be arrested for a felony in those cases where the amount is over $950.*

Grand Theft

In all grand theft (Penal Code §484/487) cases officers will now need to establish the amount of loss. This includes the cost of stolen cars, guns, and personal property taken from the victim's person. The amount of loss will need to be included in the police report. *The suspect can be arrested for a felony in those cases where the value of the property stolen is over $950.00.*

Receiving Stolen Property

Under current law, a violation of Penal Code §496 is a wobbler offense with the DA having the discretion to file a misdemeanor 496 where the value of the property does not exceed $950. Proposition 47 would render all violations of section 496 that do not exceed $950 as strictly misdemeanors, eliminating prosecutorial discretion to charge those offenses as felonies. Officers will now need to establish the value of the recovered stolen property. The amount will need to be included in the police report. *The suspect can be arrested for a felony in those cases where the value of the property recovered is over $950.00.*

Petty Theft with a Prior

Under current law, a person charged petty theft who has at least three prior thefts may be charged with a felony 666. Proposition 47 effectively eliminates this offense by narrowing the category of persons subject to punishment under that section to only include sex registrants, persons with prior violent or serious felony convictions, and persons convicted of specified theft crimes involving elder or dependent adults (Penal Code §§ 368(d) or 368(e)). ***Suspects should not be arrested for a violation of Penal Code § 666.*** The validity of a section 666 charge will be determined by the District Attorney's Office at time of issuing, after reviewing the suspect's criminal history.

Drug Possession Offenses

Proposition 47 would reclassify drug possession offenses under Health and Safety Code §§ 11350, 11357(a) [concentrated cannabis], and 11377 as strictly misdemeanors punishable by up to one year in county jail. As with the theft offenses, these new misdemeanor provisions would not apply to persons who are sex registrants or who have any of the disqualifying prior convictions.

The following charts are a general guideline for cases involving values under $950 and drug possession offenses where the suspect has no Proposition 47 disqualifying priors:

IF THE VALUE OF THE PROPERTY/AMOUNT OF LOSS IS $950 OR LESS

Prior Charge	New Charge	Classification [M/F]
666(a)	484/488 (regardless of number of prior theft convictions)	Misdemeanor
459/460(b) (commercial burg)	459.5 (shoplifting)	Misdemeanor
484/487(c) (grand theft person)	484/488	Misdemeanor
484/487(d) (theft of vehicle)	484/487(d)(1)	Misdemeanor
484/487(d) (theft of gun)	484/487(d)(2)	Misdemeanor
470 (forgery)	470	Misdemeanor
476	476	Misdemeanor
476a	476a	Misdemeanor
496(a)	496(a)	Misdemeanor

It is extremely important that the officers determine the amount of loss and note it in the report, so that the appropriate charge may be filed.

DRUG POSSESSION OFFENSES

Health and Safety Code Section	Former Classification	New Classification
11350	Felony	Misdemeanor
11357(a)	Wobbler	Misdemeanor
11377	Wobbler	Misdemeanor