

Proposition 47: Background and Basic Facts

Overview

For decades, California has wasted billions on bloated prisons with high recidivism rates. In the last five years, reforms have emerged to reduce prison waste and prioritize smarter local approaches. The public strongly supports these changes. The most recent example is Proposition 47, which voters overwhelmingly passed into law in 2014 to change six low-level crimes from felonies to misdemeanors, applying the changes retroactively and reallocating the cost-savings from reduced incarceration to treatment, prevention and victim services.

Proposition 47 is working: The measure has reduced the prison population, saved the state more than \$70 million thus far, and given tens of thousands of Californians an opportunity to remove old, nonviolent felonies from their records in order to reduce barriers to jobs, education, housing and stability.

Some in criminal justice are linking Proposition 47 to shifts in crime rates. All changes in crime rates must be taken seriously – there is no greater responsibility of local government than public safety – but it is misguided to link Proposition 47 to crime changes without a thoughtful consideration of the various factors at play. The measure’s impact has also been misrepresented in some media coverage, misleading the public about what the measure did and did not do. Below follows some basic background information to clarify the law.

Six Nonviolent Drug Possession and Petty Theft Crimes

Proposition 47 changed the following crimes from felonies to misdemeanors: simple drug possession, petty theft under \$950, writing or forging a bad check under \$950, receipt of stolen property and shoplifting under \$950. The measure maintained all laws related to robbery, assault, residential burglary, theft of vehicles, possession of drugs for sale, the use of any substance to attempt sexual assault, and possession of stolen firearms.

Misdemeanor Penalties Include Jail Time, Multiple Counts Face Multiple Years

There are three categories of crime in California: infractions, misdemeanors and felonies. Infractions are essentially tickets, while felonies are more serious and violent crimes. Misdemeanors are lower-level crimes that come with a maximum penalty of one year in county jail (for each misdemeanor), with 18-month to three years of probation as the typical sanctions. Felonies usually face sanctions of three to five years of probation, jail time or prison.

To further clarify law enforcement options for misdemeanors (including Prop. 47 offenses):

- Police have authority to arrest and detain people suspected of committing misdemeanor crimes.
- Sheriffs have authority to hold misdemeanants in county jail pending trial.

- Judges have authority to sentence misdemeanants to one year in county jail per misdemeanor count. If a person is facing three misdemeanor counts, judges can sentence the person up to three years in the county jail.
- If an individual has a criminal record of repeat offending, a prior record of failures to appear in court, or a prior record of engaging in violence, this individual can be incarcerated on misdemeanors.

Myriad Options Exist to Stop Chronic Repeat Offending

Chronic repeat offending is an important public safety issue that must be addressed. State law offers multiple avenues to stop repeat cycles of crime regardless of severity:

1. If anyone is issued a misdemeanor citation and fails to later appear in court, the court can issue a bench warrant and police can arrest and detain the individual.
2. If a person is on probation (even unsupervised court probation for a misdemeanor) and then commits a new crime, that individual has violated the terms of probation and can be immediately incarcerated.
3. If an individual commits multiple acts of theft, those separate incidents can be combined into one charging document such that they can either be charged with felony grand theft (because the cumulative amounts total more than \$950) or multiple misdemeanor counts all at once such that the sanction can be multiple years in jail.
4. State law allows for misdemeanor probation to be supervised, and misdemeanants on probation can be required to participate in treatment, drug testing and adhere to curfews.
5. The following gun crimes are felonies in California: a gang member in possession of a firearm, possession of a concealed or loaded stolen firearm, the use of a firearm to commit any other crime, among others.

Crime Rates

Some criminal justice officials are linking Prop. 47 to crime shifts. This is not based on research and therefore not appropriate.

- Crime is not uniformly up in California, and there are upticks in crime in cities across the country (where Prop. 47 does not exist).
- Criminologists have consistently stated that it is impossible to link Prop. 47 to crime changes. It takes thorough analysis of local practices, community trends and years of data to identify likely causes of crime changes. Jumping to conclusions misleads the public and inappropriately foments hysteria.
- Other states (Maryland, Washington, Rhode Island and Georgia) have changed the penalties for petty theft-related crimes and/or drug possession crimes and saw subsequent reductions in crime, showing that there is no correlation between reforms like these and crime upticks. Notably, these states that changed penalties for low-level

crimes did not come have a transfer of state dollars for implementation. The crime penalties simply changed.

The Elephant in the Room: Decades of Dysfunction in Local Justice Systems

Prop. 47, and other state law changes that aim to reduce prison waste, have brought to light the decades-old dysfunctional practices in local justice systems that fail to break the cycle of crime – or use local justice resources effectively. As the emphasis on local justice systems increases in an era of state prison changes, these old practices are preventing the smart use of resources. When our state overly relied on prisons, these dysfunctional practices continued without much intervention or concern. Now that our state is changing its priorities, these practices stand in the way of our ability to advance the public's desire to stop prison waste and emphasize local rehabilitation.

- For decades, law enforcement practices have too often treated misdemeanor crimes as infractions. State law authorizes police to arrest and detain misdemeanants if there is a risk to public safety, a risk of continuing criminal activity or a risk of flight. However, many local agencies are accustomed to citing and releasing misdemeanor suspects, without using basic criminal history information to evaluate the risk of the person to the community. Police should implement smart practices to evaluate risk and arrest and detain those who are harming communities.
- For decades, many of California's county jails have been crowded, facing lawsuits and managed poorly. Too few jail systems are managed through the use of risk assessment to determine who is a danger and must be incarcerated and who is not a danger and can be safely managed in a community setting. The majority of people in California county jails are pretrial detainees – they are waiting for their trials. For most of these individuals, bail has been set but they cannot afford to pay. Pretrial detention reform allows local jurisdictions to monitor individuals in a community setting without bail, freeing up jail space. As well, many crowded jails have "automatic release" policies that do not use risk assessment to determine who should be in the jail and who should not. Some jails automatically release misdemeanants, automatically release people for whom bail has been set under \$25,000 and automatically release people sentenced to less than 60 days in jail. All of these automatic release policies are not mandated by state law but rather a matter of local practice. None of these are informed by risk assessment.
- For decades, judges have dismissed misdemeanors with little to no risk information to allow for appropriate sentencing. In part as a result of a criminal justice system overrun by felonies, too few courts take misdemeanor sanctions seriously. This is a matter of local practice, not mandated by state law. Judges can and should use tools such as bench warrants for failures to appear, pretrial detention for high-risk individuals, motions to revoke probation for individuals repeated committing crime, supervised misdemeanor probation with treatment conditions, or multiple misdemeanor counts for multiple years in jail when appropriate. Judges can also expand the criteria for drug courts to allow misdemeanants to participate and other non-drug possession felonies.