



Using Proposition 47 to Reduce Convictions and Restore Rights

(January 2015)

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I. WHAT IS PROP 47?

On November 4, 2014, California voters passed Proposition 47 (“Prop 47”). When this law became effective on November 5, 2014, it reclassified several categories of theft and drug-possession crimes from felonies or “wobblers” (crimes that may be charged as either felonies or misdemeanors) to straight misdemeanors. Prop 47 will benefit those who have yet to be charged with these crimes, those with pending charges, and those who are currently serving sentences. It will also benefit those who have already completed their sentences but who would like to change their records.

This guide is intended to provide introductory information about who is impacted by Prop 47, as well as procedural information to

assist attorneys and formerly incarcerated people in reclassifying the felonies of formerly incarcerated people as misdemeanors so they may seal their records. For additional information on Prop 47, especially on resentencing for people currently serving qualifying felony sentences, see the Prison Law Office’s November 2014 publication *Information Re: Proposition 47*. Copies may be obtained from LSPC or downloaded from the PLO website at www.prisonlaw.com.

Important reminders:

1. Prop 47 *does not automatically* convert existing felony convictions to misdemeanors. People with qualifying felonies must petition the sentencing court for relief.
2. Petitions for resentencing or reclassification must be submitted *by November 4, 2017*.

Subject to the exceptions below, the following is a list of the crimes which are now misdemeanors as a result of Prop 47:

Theft Crimes:

1. **Any type of property theft** – including shoplifting by entering a business during regular business hours with intent to commit theft – if the value of the property is **\$950 or less**. [Cal. Penal Code §§ 490.2 and 459.5.]
2. **Receiving stolen property**, if the value of the property is **\$950 or less**. [Cal. Penal Code § 496(a).]
3. **Forgery** of a check, money order, etc. for **\$950 or less**, unless the person is also convicted of identity theft under Penal Code section 530.5 (then it is a wobbler). [Cal. Penal Code § 473(b).]
4. **Passing bad check(s)** for **\$950 or less**, unless the person has three or more prior convictions for Penal Code sections 470, 473, 475, or 476. [Cal. Penal Code § 476a(b).]
5. **Petty theft with a prior**, unless the person has a prior conviction for a theft offense or elder abuse, served a term for the prior, *and* is required to register as a sex offender (then it is a wobbler). [Cal. Penal Code § 666.]

Drug-Possession Crimes:

1. **Possession of various controlled substances**, including cocaine and heroin. [Cal. Health & Safety Code § 11350.]
2. **Possession of concentrated cannabis**. [Cal. Health & Safety Code § 11357(a).]
3. **Possession of methamphetamine**. [Cal. Health & Safety Code § 11377.]

Though the crimes listed above will now usually only be punishable as misdemeanors, the following individuals with “disqualifying priors” are excluded from relief under Prop 47 and may not convert the above felonies to misdemeanors.

Exclusions:

1. Those with any **prior convictions for “serious or violent” offenses** under Penal Code section 667(e)(2)(C)(iv), *or*¹
2. Those with any **prior convictions which require sex offender registration** under Penal Code section 290(c). This includes many, but not all, sex offense convictions.

¹ The offenses listed under Penal Code § 667(e)(2)(C)(iv) are:

- a. “Sexually violent offenses” committed by force, violence, duress, menace, fear bodily injury, or threat of retaliation.
- b. Oral copulation, sodomy, or sexual penetration with a child under age 14 and more than 10 years younger than the defendant.
- c. Lewd or lascivious acts with a child under age 14 years.
- d. Murder or gross vehicular manslaughter while intoxicated.
- e. Solicitation to commit murder.
- f. Assault with a machine gun on a peace officer or firefighter.
- g. Possession of a weapon of mass destruction.
- h. Any serious or violent felony punishable by life imprisonment or death.

The following sections explain the process for eligible individuals to receive relief under Prop 47 based on the status of the individual's charge or conviction, as well as potentially important considerations about when to apply for relief (if required). Remember that those who are currently serving or have completed eligible felony sentences **will not automatically be resentenced**. Those individuals **must apply to their sentencing court for relief within 3 years** of the law's enactment (i.e., **by November 4, 2017**).

II. WHAT ARE THE PROCEDURES FOR RECEIVING PROP 47 RELIEF?

A. For Individuals with Pending Charges

Anyone charged after November 4, 2014 with one of the qualifying crimes above, and who does not have disqualifying prior, will automatically be charged with a misdemeanor. Similarly, any individuals who have pending charges for the qualifying crimes above, and who do not have disqualifying priors, should not have to take any action for their felony charges to be converted to misdemeanor charges. It is advisable, however, for individuals with pending charges to confirm that the district attorney and the judge are aware of the changes created by Prop 47.

B. For Individuals Currently Serving Sentences

Individuals who are currently serving sentences in prison or county jail for any of the qualifying crimes listed above, and who do not have any disqualifying priors, may petition the superior court in which they were sentenced to have their felony convictions converted to misdemeanors. [Cal. Penal Code § 1170.18(a).] Though there is some debate about whether Prop 47 relief is available to individuals currently on felony probation, as of the writing of this guide, several counties are treating petitions from these individuals the same as they treat petitions from incarcerated individuals.

Since the passage of Prop 47, county superior courts have adopted different procedures for resentencing those currently incarcerated or serving felony probation. In general, such an individual should submit a Petition for Resentencing to the court in which he or she was sentenced. Some counties also require that applicants serve a copy of the same Petition to the District Attorney's office, and submit a Proof of Service to the sentencing court. Further, many counties have developed standard forms, so check with your county superior court about its preferred procedure before submitting your petition. If that county is not using a standard form, you may use the template at the end of this document as a guide. The public defender or appeals attorney who represented the applicant in his or her original case may be able to assist that individual in filing his or her petition.

Currently incarcerated people who are resentenced under Prop 47 will receive credit for time served and may be eligible for immediate release. These individuals must nonetheless serve one year of parole upon their release. [Cal. Penal Code § 1170.18(d).]

While the possibility of shortening one’s sentence – even potentially earning immediate release – carries a strong appeal, there may be an element of strategy to deciding when to seek resentencing. Individuals who are currently incarcerated or serving probation for a qualifying crime should be aware that this is the most difficult stage at which to seek resentencing. For these individuals, the court *must* resentence the person with a qualifying felony to a misdemeanor, *unless* the court determines that such a resentencing would present an unreasonable risk of danger to the public.² Because this is the only stage at which resentencing could be impacted by the discretion of a judge, qualifying individuals who are nearing their release dates, but who have prior violent convictions or who have extensive disciplinary records in prison may wish to wait until their release to change their records. (See “Completed Sentences” section below.)

C. For Individuals with Completed Sentences

Individuals who have completed their sentences for any of the qualifying crimes listed above, and who do not have any disqualifying priors, may also petition the superior court in which they were sentenced to have their felony convictions converted to misdemeanors. [Cal. Penal Code § 1170.18(f).] This is often known as a Petition for Reduction to Misdemeanor and *must* be granted if the applicant fits the eligibility requirements listed above. Unlike the resentencing of currently incarcerated applicants, the court has no discretion to withhold relief here.

As described in the previous section, an eligible individual who has completed his or her sentence should submit a Petition for Reduction to Misdemeanor to the court in which he or she was sentenced. Some counties also require that applicants serve a copy of the same Petition to the District Attorney’s office, and submit a Proof of Service to the sentencing court. Check with the county superior court about its preferred procedure before submitting your petition. Also, if that county is not using a standard form, you may use the template at the end of this document as a guide.

Though a hearing is not required for a person with a completed sentence to have his or her felony reduced to a misdemeanor under Prop 47, it may nonetheless be advantageous to request one. Having a hearing will ensure that the judge’s reduction of a felony will be recorded in a court order.³ A hearing also provides an opportunity to request that the judge reduces any court-ordered fines, restitution, etc. Requesting a hearing will not reduce an applicant’s likelihood of being granted relief under Prop 47.

² Specifically, the court may refuse to resentence such a person if it finds that the person presents an “unreasonable risk” of committing one of the “serious or violent” offenses defined in footnote 1. The court may consider essentially the same factors as would a parole board, including the prisoner’s criminal history, disciplinary record and record of rehabilitation while incarcerated, etc.

³ Once such a court order is issued, the affected individual should retain a copy for his or her records.

COLLATERAL CONSEQUENCES AND REDUCTION TO A MISDEMEANOR:

A felony conviction history, unfortunately, carries with it many potential obstacles to full reentry into society that can last long after incarceration has ended. Tens of thousands of Californians face barriers to employment, housing, and civic engagement as a result of their felony convictions. Because of these “collateral consequences,” individuals with old convictions for the offenses reclassified by Prop 47 may find it to their benefit to petition for a reduction to a misdemeanor.

Having a felony conviction converted to a misdemeanor in California may have the benefit of restoring access to certain professional licenses, to some public benefits, and to the right to serve on a jury.⁴ Converting a felony to a misdemeanor can also make many individuals eligible to have their offenses “set-aside and dismissed.” (See “*Clearing a Misdemeanor Record*” section below.) Whether an individual only reduces his or her felony convictions to misdemeanor ones using Prop 47, or also has their convictions set-aside and dismissed, these people should ensure that their records are accurately reported in subsequent applications for employment, housing, etc.

Immigration Consequences of Prop 47:

Prop 47 may also have a significant impact on the rights of immigrants. For example, The Deferred Action for Parental Accountability (DAPA) and the Deferred Action for Childhood Arrivals (DACA) plans expanded by President Obama in November 2014 provide temporary relief from deportation, as well as work authorization, for certain immigrants, but are barred to any individual with a felony conviction or “significant misdemeanor.” Because a misdemeanor conviction for simple drug possession is not considered “significant,” reducing a possession felony to a misdemeanor under Prop 47 can allow many individuals to newly access DAPA or DACA protection.

Similarly, federal immigration law allows for deportation of residents who have been convicted of “crimes of moral turpitude” punishable by sentence of a year or more (i.e., felonies). With the passage of SB 1320 in November 2014, the maximum misdemeanor sentence in California is now 364 days. [Cal. Penal Code § 18.5.] This one-day difference between a misdemeanor and a felony sentence, combined with Prop 47 relief, can now help many California residents avoid deportation. The Immigrant Legal Resource Center has published more detailed information on the immigration consequences of Prop 47.

⁴ While a reducing a felony to a misdemeanor under Prop 47 will cause that conviction to be considered a misdemeanor for most purposes, Prop 47 does not restore an individual’s right to possess a gun. If it is important for the individual to be able to possess a gun (such as in order to work as a security guard), that individual should consider instead reducing his or her felony to a misdemeanor using Penal Code § 17(b). A reduction under § 17(b) allows the individual to honestly state on applications that he or she has not been convicted of a felony, to obtain professional licenses, to serve on a jury, *and* to own and use a gun. In order to be eligible for a reduction to a misdemeanor under § 17(b), an applicant must:

1. Have been convicted of a felony that could have instead been punished as a misdemeanor (i.e., a “wobbler”), *and*
2. Have been granted probation.

Copies of these publications may be obtained from LSPC or downloaded from the ILRC website at www.ilrc.org.

We strongly advise that non-citizens retain legal counsel before seeking relief under Prop 47. The intersection between immigration law and criminal law can be extremely complex and consulting an attorney will help ensure that an applicant is pursuing the most appropriate form of relief.

CLEARING A MISDEMEANOR RECORD:

Despite the many collateral consequences that can come with a criminal conviction, California does provide some mechanisms for the restoration of rights for formerly incarcerated or convicted people. One of these mechanisms is the “set-aside and dismissal” procedure. [Cal. Penal Code §§ 1203.4, 1203.4a, and 1203.41.] These petitions allow an individual to withdraw a guilty or no contest plea and enter a plea of not guilty, or to set aside a guilty verdict from a trial. While this process is often called “expungement,” in California, it does not remove convictions from a person’s record entirely.⁵ It can, however, prevent some employers from asking about dismissed convictions or allow an individual to legally answer “no” when asked if he or she has been convicted of certain crimes. [Cal. Lab. Code § 432.7.]

The process of clearing a record through one of the Penal Code sections mentioned above is initiated by filing a Petition for Dismissal with the sentencing court. A sample Petition for Dismissal (CR180) is available at the end of this document. When completing a form CR180, whether a person checks boxes 2, 3, or 4 depends on what type of conviction and sentence that person received. Specifically, a person who was sentenced to either felony or misdemeanor probation should check box 2 (according to section 1203.4), a person who was given a straight misdemeanor sentence without probation should check box 3 (according to 1203.4a), and a person who was sentenced to county jail for a felony should check box 4 (according to 1203.41).

Because relief under Penal Code section 1203.4a (box 3 of the CR180 form) is only available for misdemeanor convictions, converting a non-probation felony conviction to a misdemeanor one under Prop 47 will now allow many individuals who were previously unable to clear their records access to additional relief.⁶

⁵ Several felonies and misdemeanors are not eligible for set-aside and dismissal relief. Being granted relief also does not fully relieve an individual of disclosure duties to certain government agencies, restore driving privileges or gun rights, or excuse sex registration. For a full list of exclusions and exceptions, see the text of Penal Code §§ 1203.4, 1203.4a, and 1203.41.

⁶ In order to qualify for section 1203.4a relief, an applicant must:

1. Have been convicted of a misdemeanor [or have had a Prop 47-eligible felony converted to a misdemeanor],
2. Have been sentenced at least one year ago,
3. Not have been granted probation,
4. Have fully complied with and performed the sentence for any offense,
5. Not currently be on probation for any other offense,
6. Not currently be charged with another offense, *and*
7. Have paid all court ordered restitution or fines.

Information on where to find assistance with record-clearing procedures by county is available from the East Bay Community Law Center at www.ebclc.org, or from LSPC.

III. CONCLUSION

While Prop 47 is by no means a total solution to California's problem of mass incarceration, it does have the potential to help tens of thousands of Californians gain their freedom and work towards rebuilding their lives. The sooner individuals with qualifying convictions take action to reduce their sentences, the greater the impact of this law will be.

LSPC organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights and to reunify families and communities. We build public awareness of structural racism in policing, the courts and prison system and we advance racial and gender justice in all our work. Our strategies include legal support, trainings, advocacy, public education, grassroots mobilization and developing community partnerships.

For additional resources on Prop 47 and clearing records, including referrals for legal assistance, please contact:

Legal Services for Prisoners with Children

1540 Market St., Suite 490
San Francisco, CA 94102
(415) 255-7036
www.prisonerswithchildren.org

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ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address)</i> TELEPHONE NO: _____ FAX NO: _____ ATTORNEY FOR <i>(NAME)</i> : _____ SUPERIOR COURT OF CALIFORNIA COUNTY OF _____	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: _____	CASE NUMBER: _____
PETITION <input type="checkbox"/> FOR RESENTENCING (Pen. Code, § 1170.18(a)) <input type="checkbox"/> FOR REDUCTION TO MISDEMEANOR (Pen. Code, § 1170.18(f))	
<p style="text-align: center;">INSTRUCTIONS</p> <ul style="list-style-type: none"> Petitioner must complete Petition and indicate whether a request is made for Resentencing <u>or</u> Reduction to Misdemeanor. Upon filing, petitioner is required to immediately provide notice by providing a copy of the Petition to the District Attorney. The District Attorney is required to complete the Response, file with the court, and provide notice by providing a copy to the Petitioner. If the petitioner is currently in County Jail or State Prison related to this case, District Attorney indicates the petitioner is ineligible, or if either the petitioner or District Attorney requests a hearing as provided below, the court will set a hearing and provide notice of the date, time, and location to the petitioner and District Attorney. 	

PETITIONER/CONVICTION INFORMATION

On *(date)* _____, Petitioner, the defendant in the above-entitled criminal action, was convicted of the following felony offenses that have now been reclassified as misdemeanors *(specify code(s) and section(s))*: _____

and was sentenced to *(specify sentence imposed)*: _____

Petitioner has no prior convictions for offenses under Penal Code §667(e)(2)(C)(iv) or for an offense requiring registration pursuant to Penal Code §290(c). Petitioner does not pose an unreasonable risk of danger to public safety as defined in Penal Code §1170.18(c).

1. RESENTENCING

Petitioner is currently serving the above sentence. Petitioner requests that the felony sentence be recalled and that Petitioner be resentenced to a misdemeanor under Penal Code § 1170.18(b), (d).

Petitioner is currently being held in County Jail or State Prison

2. REDUCTION TO MISDEMEANOR

Petitioner has completed the above sentence. Petitioner requests that the eligible felony convictions listed above be reduced to misdemeanors under Penal Code § 1170.18(f), (g).

Although a hearing is not necessary, I request a hearing for this determination. *(check only if you want a hearing for this determination.)*

I declare under penalty of perjury and to the best of my information and belief that the foregoing is true and correct.

Executed on: _____ (DATE) _____ (SIGNATURE OF PETITIONER OR ATTORNEY)

PETITION

- FOR RESENTENCING (Pen. Code, § 1170.18(a))**
 FOR REDUCTION TO MISDEMEANOR (Pen. Code, § 1170.18(f))

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	
PETITION FOR DISMISSAL (Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41)	CASE NUMBER: _____ FOR COURT USE ONLY Date: _____ Time: _____ Department: _____

1. On (date): _____, the petitioner (*the defendant in the above-entitled criminal action*) was convicted of a violation of the following:

Offense <i>(Specify each offense in the case noted above.)</i>	Code	Section	Type of offense: (<i>Felony; Misdemeanor; Infraction</i>)	Eligible for reduction to misdemeanor under Penal Code § 17(b) (<i>Yes or No</i>)

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2. **Felony or misdemeanor with probation granted (Pen. Code, § 1203.4)**

Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (*check all that apply*):

- a. has fulfilled the conditions of probation for the entire period thereof;
- b. has been discharged from probation prior to the termination of the period thereof;
- c. should be granted relief in the interests of justice. (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.*)

3. **Misdemeanor or infraction with sentence other than probation (Pen. Code, § 1203.4a)**

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner (*check one*):

- a. has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; **or**
- b. should be granted relief in the interests of justice. (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.*)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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4. **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**

The petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on probation for, or charged with the commission of any offense, and should be granted relief in the interests of justice, and *(check one:)*

- a. more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); **or**
- b. more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b).

Petitioner requests that he/she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: _____ (DATE) ▶ _____ (SIGNATURE OF PETITIONER OR ATTORNEY)

(ADDRESS, PETITIONER) (CITY) (STATE) (ZIP CODE)