IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. LAURA REYNOSO VALENZUELA, Defendant and Appellant.	S232900

Fourth Appeliate District, Division One, Case No. D066907
Imperial County Superior Court No. JCF32712
Honorable Christopher J. Plourd, Judge

APPLICATION FROM THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION FOR PERMISSION TO FILE A TIMELY AMICUS CURIAE BRIEF IN SUPPORT OF LAURA R. VALENZUELA, APPELLANT

AND

AMICUS CURIAE BRIEF OF THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION

THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

STATE STATUTES

STATE RULES

CALIFORNIA CONSTITUTION

OTHER REFERENCES

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PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent v. LAURA REYNOSO VALENZUELA, Defendant and Appellant.	S232900 Fourth Appellate District Court No. D066907 Imperial Superior Court Case No. JCF32712 **Application by the *CALIFORNIA PUBLIC DEFENDERS ASSOCIATION* for permission to file an amicus curiae brief in support of Appellant**

TO: CHIEF JUSTICE TANI CANTIL-SAKAUYE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT

The CALIFORNIA PUBLIC DEFENDERS ASSOCIATION (CPDA) applies, under California Rules of Court, Rule 8.520(f), for permission to file the accompanying amicus curiae brief in support of appellant. This application summarizes the nature and history of CPDA, and our interest in the issues presented in this case. It also demonstrates that our proposed brief will assist the court in the analysis and consideration of the merits.

A

Identification of CPDA[1]

The California Public Defenders Association is the largest and most influential association of criminal defense attorneys and public defenders in the State of California. CPDA's membership of approximately 4,000 public defenders and attorneys in private practice exceeds that of our comparable sister association, California Attorneys for Criminal Justice. Because our voting members are public defenders, rather than private counsel, CPDA has been the primary resource for collective experience in county government in nearly all of California's counties. CPDA provides management training and assistance to counties that are experiencing difficulty in providing indigent defense services.

CPDA has been a leader in continuing legal education for defense attorneys for almost 40 years and is recognized by the California State Bar as an approved provider of Mandatory Continuing Legal Education,

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[1] As required by Rule 8.520(f)(4), the undersigned, William Arzbaecher, on behalf of CPDA, certifies to this Court that no party involved in this litigation has authored any part of the attached amicus brief, tendered any form of compensation, monetary or otherwise, for legal services related to the writing or production of the amicus brief, and additionally certifies that no person or entity, other than amicus curiae, its members or its counsel has contributed any monies, services, or other form of donation to assist in the production of the amicus brief.

Criminal Law Specialization Education, and Appellate Law Specialization Education. CPDA is one of only two organizations deemed by the Legislature to be an "automatically" approved legal education provider. (Bus. & Prof. Code, §6070, subd. (b).)

The courts have granted CPDA leave to appear as amicus curiae in well over 30 California cases which culminated in published opinions. We believe that our participation was helpful in many important cases. (See, e.g., *People v. Albillar* (2010) 51 Cal.4th 47 [sufficiency of the evidence in a gang-related prosecution]; *Barnett v. Superior Court* (2010) 50 Cal.4th 890 [post-trial discovery]; *Galindo v. Superior Court* (2010) 50 Cal.4th 1 [pre-prelim discovery]; *People v. Lenix* (2008) 44 Cal.4th 602 [comparative juror analysis for first time on appeal], *People v. Nelson* (2008) 43 Cal.4th 1242 [DNA evidence in a cold-hit case]; *Chambers v. Superior Court* (2007) 42 Cal.4th 673 [*Pitchess* procedures]; *People v. Sanders* (2003) 31 Cal.4th 318 [search could not be a reasonable "parole search" without knowledge of the suspect's parole status]; *Mandalay v. Superior Court* (2002) 27 Cal.4th 537 [no separation of powers violation by the direct filing of juvenile cases in the criminal court]; *Morse v. Municipal Court* (1974) 13 Cal.3d 149 [mandate issued to compel consideration of diversion].) CPDA has also served as amicus curiae in the United States Court in numerous

cases. (See, e.g., *California v. Trombetta* (1984) 467 U.S. 479 [the duty to preserve evidence is limited to evidence that might be expected to play a significant role in the suspect's defense]; *Monge v. California* (1998) 524 U.S. 721 [double jeopardy clause does not bar retrial of a prior conviction allegation after an appellate finding of evidentiary insufficiency].)

The author of this amicus brief has authored (or helped author) briefs and argued before the Court in *People v. French* (2008) 43 Cal.4th 36; *People v. Sloan* (2007) 42 Cal.4th 110; *People v. Navarro* (2007) 40 Cal.4th 668; *People v. Britt* (2004) 32 Cal.4th 944; *People v. Toney* (2004) 32 Cal.4th 228; and *People v. Reyes* (1998) 19 Cal.4th 747. He also authored the amicus brief submitted by CPDA in *People v. Sasser* (2014) 61 Cal.4th 1, and has assisted appointed counsel in a number of other cases decided by this Court.

CPDA is also involved in legislative solutions. Members of the CPDA Legislative Committee and our paid lobbyist attend key state Senate and Assembly committee meetings on a weekly basis and take positions on hundreds of bills relating to the administration of justice.

In summary, CPDA and its legal representatives have the necessary experience, collective wisdom, and interest in matters of court policy to serve this court as amicus curiae. Our statewide perspective can be helpful

when the court is confronted by a controversy that effects practitioners statewide.

B

Statement of Interest of CPDA

The legal question that is the subject of this case is whether a defendant who is currently serving a prison term is eligible for resentencing on a penalty enhancement for serving a prior prison term on a felony conviction (Pen. Code § 667.5, subd. (b)) after the superior court has reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47. The Court of Appeal resolved this question in the negative, as have all published Court of Appeal opinions to date on the issue.[2] This Court has granted review of all of these cases, with briefing deferred pending the Court's resolution of this case. CPDA is interested in this issue because it believes, for the reasons set forth in the accompanying amicus brief, that the Court of Appeal's decision in this case was incorrect (as are the other published or formerly published cases addressing the issue), because it is contrary to the express provisions and express intent of

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[2] *People v. Carrea* (2016) 244 Cal.App.4th 966, rev. granted Apr. 27, 2016, No. S233011; *People v. Ruff* (2016) 244 Cal.App.4th 935, rev. granted May 11, 2016, No. S233201; *People v. Williams* (2016) 245 Cal.App.4th 458, rev. granted May 11, 2016, No. S233539; and *People v. Jones* (2016) 1 Cal.App.5th 221, rev. granted Sept. 14, 2016, No. S235901.

Proposition 47.

As this Court recently recognized, "One of Proposition 47's primary purposes is to reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative." (*Harris v. Superior Court* (Nov. 10, 2016, No. S231489) ___Cal.5th___ [2016 Cal. LEXIS 9040, at *13].)

As explained in the accompanying amicus brief, Proposition 47 expressly allows defendants to get prior felony convictions in final judgments re-designated as misdemeanors (§ 1170.18, subds. (f), (g)) and provides that, once such relief has been obtained, the conviction "*shall* be considered a misdemeanor *for all purposes*" except firearm possession and ownership. (§ 1170.18, subd. (k), italics added.) The plain language of these provisions, their statutory context, and the voter intent they were created to effectuate all make clear that, once a defendant has obtained relief pursuant section 1170.18, subdivisions (f), (g) and (k), she should be able to ask the trial court to reduce her sentence so that she no longer spends time (at the taxpayers' expense) being incarcerated in state prison for what is no longer a felony.

CPDA believes that the accompanying brief will assist the Court in its resolution of this case, because it explains how the reasoning in support

of the Court of Appeal's ruling is flawed, because it is based on case law pertaining to statutes that are inapposite to the construction of the statutory scheme Proposition 47 created to enable imprisoned defendants to obtain retroactive application of the ameliorative changes in the law effected by Proposition 47 to the prison sentences they are currently serving.

CPDA believes that a ruling affirming the decision of the Court of Appeal will have a substantial adverse effect on the rights of numerous indigent criminal defendants in this state, an effect that is contrary to the intent of California voters.

C

The brief is timely

This application is timely pursuant to Rule 8.520(f)(2) of the California Rules of Court.

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D

Prayer

Based upon this Application and the accompanying brief, the California Public Defenders Association applies for an order granting permission to file an amicus curiae brief in support of Appellant. That brief is combined with this Application.

Dated: November 16, 2016

WILLIAM J. ARZBAECHER III

On Behalf of California Public Defenders Association, Applicant for amicus status in support of Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. LAURA REYNOSO VALENZUELA, Defendant and Appellant.	S232900 AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT

Pursuant to Rule 8.520(f) of the California Rules of Court, the California Public Defender's Association ("CPDA") submits the following argument in support of defendant/appellant Laura Reynoso Valenzuela.

ISSUE PRESENTED

The Court has granted review of the following question: Is defendant eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court had reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?

ARGUMENT

I. Under Proposition 47, a Defendant Who Is Currently Serving a Sentence That Includes a "Prison Prior" That Is Based on a Felony Conviction Which Has Been Reclassified as a Misdemeanor Pursuant to Proposition 47 May Petition to Have Her Current Sentence Reduced on the Basis of That Reclassification.

A. Introduction.

1. Relevant provisions of Proposition 47.

On November 4, 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) ("Prop. 47")), which became effective on November 5, 2014. (See Cal. Const., art II, § 10, subd. (a).) The initiative prospectively amends various statutes for minor theft and drug-possession offenses, by providing that such offenses (which previously were eligible for punishment as felonies) are now misdemeanors punishable by no more than a year in county jail, unless the defendant has one or more prior convictions for an offense specified in Penal Code section 667, subdivision (e)(2)(C)(iv) or for an offense requiring registration as a sex offender (Pen. Code[3] § 290, subd. (c)). (Prop. 47 §§ 5-13, pp. 71-73.)

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[3] Undesignated statutory references in this brief are to the California Penal Code.

Proposition 47 also created Penal Code section 1170.18, which provides a vehicle for persons previously convicted of a Proposition-47-eligible offense to seek retroactive application of the ameliorative effects of the voter initiative to prior felony convictions for Proposition-47-eligible offenses. (Prop. 47 § 14, pp. 73-74.) Subdivision (a) of section 1170.18 (quoted in footnote 4, below) allows defendants to petition for resentencing if they are currently serving a sentence for a felony conviction for a Proposition-47-eligible offense.[4] And subdivision (f) of section 1170.18 (quoted in footnote 5, below) allows defendants to apply to have prior felony convictions for Proposition-47-eligible offenses as to which they have already completed their sentence designated misdemeanors.[5] (See *People v. Diaz* (2015) 238 Cal.App.4th 1323, 1328-1329.)

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[4] "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 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." (§ 1170.18, subd. (a).)

[5] "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." (§ 1170.18, subd. (f).)

Unlike a petition pursuant to subdivision (a) of section 1170.18, which gives the trial court discretion to deny the petition if it determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety (see § 1170.18, subd. (b)), an application pursuant to subdivision (f) of section 1170.18 as to a Prop.-47-eligible conviction and applicant must be granted. (See § 1170.18, subd. (g).) Subdivision (k) of section 1170.18 provides that, once such relief has been obtained, the conviction "shall be considered a misdemeanor for all purposes" except firearm possession and ownership. (§ 1170.18, subd. (k).)[6]

2. Relevant procedural history of this case.

As CPDA understands it, this case concerns a defendant (Ms. Valenzuela) who is currently serving a prison sentence, pursuant to a judgment that is not yet final on appeal, that includes a one-year "prison prior" enhancement for a prior felony conviction for which she served a prison term (§ 667.5, subd. (b)). The felony conviction underlying her prison prior has been designated a misdemeanor pursuant to section

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[6] Subdivision (k) of section 1170.18 states: "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."

1170.18, subdivisions (f) and (g).[7]

Both Ms. Valenzuela and the Attorney General asked the Court of Appeal to remand the case (Imperial Co. case no. JCF32712) to the superior court so that she may ask that court to resentence her pursuant to the retroactive provisions of Proposition 47 applicable to convictions as to which the defendant is *currently* serving a sentence, *viz.*, Penal Code section 1170.18, subdivision (a). (See Slip Opn., pp. 20-21.)[8] The Court of Appeal refused to do so, holding that no further relief as to the prison prior was available under Proposition 47. (See Slip Opn., pp. 21-24.)

The Court of Appeal reasoned that "Section 1170.18 provides a mechanism for reducing felony convictions to misdemeanors, but contains no procedure for striking a prison prior if the felony underlying the enhancement has subsequently been reduced to a misdemeanor." (Slip

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[7] The Court of Appeal's opinion in this case states that Ms. Valenzuela obtained a misdemeanor-reclassification of the felony conviction underlying her "prison prior" in the case in which it was entered (Imperial Co. case no. JCF28616) pursuant to a petition filed under subdivision (a) of section 1170.18. (Slip Opn., pp. 19-20.) However, subdivision (f) of section 1170.18 would have been the proper statutory basis for seeking such relief.

[8] These were the ultimate positions of the parties in the Court of Appeal. Earlier, before they had become aware that the felony conviction underlying the prison prior had been reduced to a misdemeanor in Superior Court case no. JCF28616, the parties had both taken different views about what the Court of Appeal should do regarding the prison prior pursuant to Proposition 47. (*Ibid.*)

Opn., p. 21.) The Court of Appeal also rejected Ms. Valenzuela's argument that the "for all purposes" language of subdivision (k) of section 1170.18 supports a resentencing at which her prison prior may be stricken on the basis of the reduction of the felony underlying it to a misdemeanor. "Nothing in this language or the ballot materials for Proposition 47 indicates that this provision was intended to have the retroactive collateral consequences that Valenzuela advances." (Slip Opn., p. 22.)

The Court of Appeal also distinguished the cases Ms. Valenzuela cited in support of her resentencing request (*People v. Park* (2013) 56 Cal.4th 782; *People v. Flores* (1979) Cal.App.3d 461), concluding that those cases hold that a sentence enhancement for a prior felony conviction is not available when the prior conviction that forms basis for the enhancement is reduced *before* the new offense is committed. (Slip Opn., pp. 22-24.) The Court of Appeal also agreed with the Attorney General that further relief as to Ms. Valenzuela's prison prior was not available under Proposition 47, because "a section 667.5 enhancement is based on the defendant's status as a recidivist, not on the underlying criminal conduct. (See *People v. Gokey* (1998) 62 Cal.App.4th 932, 936 ['Sentence enhancements for prior prison terms are based on the defendant's status as a recidivist, and not on the underlying criminal conduct, or the act or

omission, giving rise to the current conviction'].)" (Slip Opn., p. 24.)

In her Answer Brief on the Merits, the Attorney General echoes the reasoning of the Court of Appeal and contends that case law regarding the reduction of felonies to misdemeanors pursuant to Penal Code section 17, subdivision (b), supports the Attorney General's (and Court of Appeal's) view that a prison prior that is reduced "for all purposes" pursuant to Proposition 47 (§ 1170.18, subds. (f), (g) and (k)) is reduced only prospectively; its reduction does not support a retroactive modification of a judgment in which the prison prior constitutes part of a sentence that the defendant is currently serving. (Answer Brief, pp. 4-25.)

3. The analysis of Judge Couzens and Justice Bigelow and its inconsistency with the express provisions and purposes of Proposition 47.

CPDA suspects that a likely source of the position of the Attorney General and Court of Appeal (and of the views expressed in the other review-granted opinions on the matter)[9] is the treatise on Proposition 47 of Judge Couzens and Justice Bigelow, which reaches the same conclusion as the Court of Appeal in this case on the basis of similar reasoning. Judge Couzens and Justice Bigelow reason as follows:

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[9] See footnote 2, *ante*.

> The fact that the underlying offense resulting in a prior prison term is now a misdemeanor under Proposition 47 likely does not change the validity of the enhancement because section 667.5(b) is accounting for recidivist conduct. "Sentence enhancements for prior prison terms are based on the defendant's status as a recidivist, and not on the underlying criminal conduct, or the act or omission, giving rise to the current conviction." (*People v. Gokey* (1998) 62 Cal.App.4th 932, 936.) "The purpose of the section 667.5(b) enhancement is 'to punish individuals' who have shown that they are 'hardened criminal[s] who [are] undeterred by the fear of prison.' (*People v. Jones* (1993) 5 Cal.4th 1142, 1148, 22 Cal.Rptr.2d 753, 857 P.2d 1163.) 'Imposition of a sentence enhancement under Penal Code section 667.5[(b)] requires proof that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction. [Citation.]' (*People v. Tenner* (1993) 6 Cal.4th 559, 563, 24 Cal.Rptr.2d 840, 862 P.2d 840.)" (*In re Preston* (2009) 176 Cal.App.4th 1109, 1115.) An offense originally sentenced to state prison as a felony meets all of the requirements of *Tenner*, notwithstanding its new misdemeanor status. As observed by the Supreme Court, a reduction to a misdemeanor "for all purposes" under section 17(b) does not apply retroactively. (*People v. Feyrer* (2010) 48 Cal.4th 426, 438-439; *People v. Banks* (1959) 53 Cal.3d 370, 381-382; see also *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1094-1095.)

(Couzens & Bigelow, Proposition 47, "The Safe Neighborhoods and Schools Act," (Barrister Press, May 2016), at pp. 87-88.)[10]

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[10] The Couzens & Bigelow treatise on Proposition 47 is available at www.courts.ca.gov/documents/Prop-47-Information.pdf. Although the edition of the treatise cited is relatively recent and post-dates the Court of Appeal's opinion in this case, the initial edition of the Treatise, which contained substantially similar analysis of the issue, was published shortly after Proposition 47 became law. (See Couzens & Bigelow, Proposition 47, "The Safe Neighborhoods and Schools Act," (Barrister Press, Dec. 12,

Appellant respectfully submits that Judge Couzens' and Justice Bigelow's analysis, the Attorney General's arguments, and the Court of Appeal's opinion on this issue are all incorrect because they are inconsistent with the express provisions and clear intent of Proposition 47.

The express purposes of Proposition 47 include "ensur[ing] that prison spending is focused on violent and serious offenses, ... maximiz[ing] alternatives for nonserious, nonviolent crime[, and] [r]equir[ing] 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." (Prop. 47, §§2 and 3, p. 70.) Proposition 47 dictates that its provisions "shall be broadly" and "liberally construed to effectuate its purposes." (Prop. 47, §§ 15, 18, p. 74.)

The official argument in favor of Proposition 47 repeatedly stated that the measure would stop "wasting" prison space and taxpayers' money punishing petty offenses. (See Prop. 47. [argument in favor], p. 38 ["Proposition 47 will .. [r]educe prison spending and government waste."]; *ibid.* ["Stops wasting prison space on petty crimes ..."]; *ibid.* ["Stops wasting money on warehousing people in prisons for nonviolent crimes ... ."]; *ibid.* ["For too long, California's overcrowded prisons have been

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2014), at p. 76.)

disproportionately draining taxpayer dollars and law enforcement resources, and incarcerating too many people convicted of low-level, nonviolent offenses."].)

Consistent with these purposes, Proposition 47 includes a new statutory mechanism – section 1170.18 – that allows defendants previously convicted of felonies for petty offenses that Proposition 47 has reclassified as misdemeanors to obtain retroactive application of the ameliorative effects of the initiative even as to judgments that are already final on appeal. The obvious purpose of this statute is to reduce the time that defendants spend in prison for offenses that are now deemed misdemeanors under Proposition 47, and to thereby reduce the money taxpayers spend in imprisoning defendants for petty offenses, whenever they are – or were – committed.

Proposition 47 expressly allows defendants to get prior felony convictions in final judgments re-designated as misdemeanors (§ 1170.18, subds. (f), (g)) and provides that, once such relief has been obtained, the conviction "*shall* be considered a misdemeanor *for all purposes*" except firearm possession and ownership. (§ 1170.18, subd. (k), italics added.) The plain language of these provisions, their statutory context, and the voter intent they were created to effectuate all make clear that, once a defendant

has obtained relief pursuant section 1170.18, subdivisions (f), (g) and (k), she should be able to ask the trial court to reduce her sentence so that she no longer spends time (at the taxpayers' considerable expense) being punished for that conviction as though it were still a felony.

The case law upon which Judge Couzens and Justice Bigelow, the Attorney General, and the Court of Appeal rely concern statutory purposes related to *felony* recidivism (*People v. Jones*, *supra*, 5 Cal.4th 1142, 1148; *People v. Gokey*, *supra*) and to the *prospective* reduction of wobblers to misdemeanors pursuant to section 17, subdivision (b) (*People v. Feyrer*, *supra*, 48 Cal.4th 426, 438-439; *People v. Banks*, *supra*, 53 Cal.3d 370, 381-382; *People v. Park*, *supra*). This case law has nothing to do with the objectives of Proposition 47 and hence is inapposite to the statutory construction issue in this case.

B. Standard of Review and Principles of Statutory Construction.

Issues of statutory interpretation are reviewed de novo. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.) The interpretation of a ballot initiative is governed by the same rules that apply in construing a statute enacted by the Legislature. (*People v. Morales* (2016) 63 Cal.4th 399, 406; *People v. Park*, supra, 56 Cal.4th 782, 796.)

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When interpreting a statute, the court's "goal is '"'to ascertain the intent of the enacting legislative body so that [it] may adopt the construction that best effectuates the purpose of the law.'"'" (*People v. Albillar* (2010) 51 Cal.4th 47, 54-55.) A construction that most closely comports with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, should be selected, and an interpretation that would lead to absurd results should be avoided. (*People v. Rubalcava* (2000) 23 Cal.4th 322, 328.)

The court first examines the words of the statutory language added or amended by the ballot initiative, '"'"giving them their ordinary and usual meaning and viewing them in their statutory context, because the statutory language is usually the most reliable indicator of legislative intent."'"' (*Albillar*, *supra*, at p. 55.) If the language is ambiguous, the court examines other indicators of the voters' intent, particularly the analyses and arguments contained in the official voter information guide. (*People v. Briceno* (2004) 34 Cal.4th 451, 459.) If, however, the language is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the electorate's intent is unnecessary. (*Albillar*, *supra*, at p. 55.) "Once the electorate's intent has been ascertained, the provisions must be construed to conform to that intent." (*Park*, *supra*, at p. 796.)

C. Neither the presumption in Penal Code section 3 nor the *Estrada* exception to that presumption controls the retroactive application of Proposition 47; section 1170.18 affords eligible defendants the benefit of Proposition 47's ameliorative changes to the law retroactively, even as to judgments that are already final on appeal.

One of the normal rules in construing criminal statutes is that new penal statutes apply prospectively only, "unless expressly so declared." (Pen. Code § 3; *People v. Brown* (2012) 54 Cal.4th 314, 319.) However, this Court has recognized an exception to this rule for statutes that lessen punishment. (*In re Estrada* (1965) 63 Cal.2d 740, 744-745.) *Estrada* held that a "legislative amendment that lessens criminal punishment is presumed to apply to all cases not yet final (the [enacting legislative body] deeming its former penalty too severe), unless there is a 'saving clause' providing for prospective application." (*People v. Smith* (2015) 234 Cal.App.4th 1460, 1465, italics omitted; and see *People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1195-1196 [courts assume, absent contrary evidence, the legislative body intended that an amended statute reducing punishment for a particular offense apply to all defendants whose judgments are not yet final on the operative date of the amended statute].)

Unlike Ms. Valenzuela, whose current judgment is not yet final, many people who seek retroactive relief under Proposition 47 have no basis for arguing that *Estrada*'s exception to Penal Code section 3 enables them

to seek such relief, because the relief they seek will involve a judgment that *is* final on appeal. However, applicants for retroactive relief under Proposition 47 need not rely on *Estrada*, because the express provisions of the Proposition make clear that its ameliorative changes in the law apply fully retroactively to all judgments, even those already final on appeal, if a person seeking the benefit of those changes avails herself of the expressly-retroactive provisions of the new statute that voters created for that purpose – Penal Code section 1170.18.

It must be remembered that the prospective-only rule of construction in Penal Code section 3 is, itself, a presumption that applies only if the Legislature or Electorate doesn't expressly declare otherwise. (Pen. Code § 3; and see *Estrada*, *supra*, at p. 746.) Settled case law recognizes that the Legislature has the power to make ameliorative changes in penal statutes fully retroactive, even as to judgments already final on appeal, if its express intent is that the changes be so applied. (See *Way v. Superior Court of San Diego County* (1977) 74 Cal.App.3d 165, 177-178; *id.* at p. 181, conc. opn. of Friedman, J. ["There is nothing sacred about a final judgment of imprisonment which immunizes it from the Legislature's power to achieve equality among past and new offenders."]; *People v. Community Release Bd.* (1979) 96 Cal.App.3d 792, 800 ["*Way* was recently cited with approval

in a unanimous decision by our Supreme Court. ... We therefore take it as settled that legislation reducing punishment for crime may constitutionally be applied to prisoners whose judgments have become final."], citing *Younger v. Superior Court* (1978) 21 Cal.3d 102, 117-118; *In re Chavez* (2004) 114 Cal.App.4th 989, 1000 ["It thus appears settled that a final judgment is not immune from the Legislature's power to adjust prison sentences for a legitimate public purpose. We conclude that the purpose of achieving equality and uniformity in felony sentencing is a legitimate public purpose to which the finality of the judgment must yield."], internal citations omitted.)

In passing Prop. 47, the voters created Penal Code section 1170.18, whose sole purpose is to provide a vehicle by which persons previously convicted of a crime that Prop. 47 has since redefined as a misdemeanor may seek to change a *prior* judgment, so as to have the prior conviction treated as a misdemeanor rather than a felony. The retrospective provisions of Penal Code section 1170.18 are not limited to judgments that are not yet final on appeal.[11]

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[11] Subdivision (n) of section 1170.18 provides: "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.*" (Italics added.) This subdivision cannot be construed as precluding 1170.18 from affecting the finality of judgments that *do* fall within the purview of the act; otherwise,

As previously noted, subdivision (a) of section 1170.18 allows defendants to seek a resentencing in the trial court, if they are currently serving a sentence for a prior felony conviction for a Proposition-47-eligible offense. Nothing in subdivision (a) suggests that its provisions are available only as to judgments not yet final on appeal. To the contrary, its provisions apply to all eligible petitioners "currently serving a sentence for a conviction" of felony that has since been redefined as a misdemeanor by Proposition 47. (§ 1170.18, subd. (a).) Proposition 47 "expressly, specifically and clearly address[es] the application of the reduced punishment provisions to convicted felons who were sentenced or placed on probation prior to Proposition 47's effective date. And it does so without regard to the finality of the judgment." (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 313; see also *People v. Scarbrough* (2015) 240 Cal.App.4th 916, 926 [holding that a defendant who wants both to appeal and to seek Prop. 47 relief as to a judgment may pursue the appeal first, and *then* pursue Prop. 47 relief in the superior court].)

This Court's recent opinion in *People v. Conley* (2016) 63 Cal.4th 646, also supports the conclusion that section 1170.18 enables eligible

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section 1170.18 as a whole, and subdivision (n) itself, would make no sense. (See *Rubalcava*, *supra*, 23 Cal.4th at p. 328.)

defendants to seek retroactive application of Proposition 47 even as to final judgments. *Conley* involved construction of a very similar statute (§ 1170.126) contained in the Three Strikes Reform Act of 2012 (Prop. 36, as approved by voters, Gen. Elec. (Nov. 6, 2012).

> [U]nlike the statute at issue in *Estrada*, *supra*, 63 Cal.2d 740, the Reform Act is not silent on the question of retroactivity. Rather, the Act expressly addresses the question in section 1170.126, the sole purpose of which is to extend the benefits of the Act retroactively. Section 1170.126 creates a special mechanism that entitles all persons "presently serving" indeterminate life terms imposed under the prior law to seek resentencing under the new law. By its terms, the provision draws no distinction between persons serving final sentences and those serving nonfinal sentences, entitling both categories of prisoners to petition courts for recall of sentence under the Act.
>
> The *Estrada* rule rests on an inference that, in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not. (See *Estrada*, *supra*, 63 Cal.2d at p. 745.) In enacting the recall provision, the voters adopted a different approach. They took the extraordinary step of extending the retroactive benefits of the Act beyond the bounds contemplated by *Estrada*—including even prisoners serving *final* sentences within the Act's ameliorative reach—but subject to a special procedural mechanism for the recall of sentences already imposed. In prescribing the scope and manner of the Act's retroactive application, the voters did not distinguish between final and nonfinal sentences, as *Estrada* would presume, but instead drew the relevant line between prisoners "presently serving" indeterminate life terms—whether final or not—and defendants yet to be sentenced.

(*People v. Conley* (2016) 63 Cal.4th 646, 657-658, emphasis in original.)

This passage from *Conley* applies equally to the very similar retrospective-relief mechanism created by Prop. 47 – section 1170.18.

In short, the plain language of section 1170.18 makes clear that subdivision (a) is available to seek retroactive modifications to judgments that are already final on appeal. That is its manifest purpose.

And it is even clearer that the combined purpose of subdivisions (f), (g) and (k) of section 1170.18 is also to allow fully retroactive application of Prop. 47's ameliorative effects to prior convictions used as enhancements in judgments that are already final on appeal. As previously explained, subdivisions (f) and (g) allow defendants to get prior felony convictions for Proposition-47-eligible offenses as to which they have already completed their sentence reduced to misdemeanors. Judgments involving sentences that have already been completed rarely are not final on appeal.

D. From its express language, the express the purposes of Proposition 47, and the full-retroactivity mechanisms of the statute (§ 1170.18) of which it is a part, it is clear that subdivision (k)'s "for all purposes" language applies both prospectively and retrospectively.

As discussed above, section 1170.18 was created to allow defendants to obtain *retroactive* Proposition 47 relief as to prior convictions, even when those convictions are already final on appeal. In conjunction with Prop. 47's *prospective* changes to the law, it is clear that the central objective of Proposition 47 is to make sure that defendants no longer serve

prison time for criminal conduct that is no longer considered felonious – whenever that conduct results, or resulted, in conviction.

In this context, the obvious purpose of subdivisions (f), (g) and (k) of section 1170.18 is to enable a defendant to get a felony conviction whose sentence she has already served reduced to a misdemeanor, so that she can then petition (pursuant to section 1170.18, subdivision (a) or via a habeas petition) for a reduction of a sentence that she is *currently serving* in which that prior conviction has been used as a prior-felony-conviction enhancement. This purpose is copacetic with both the express purpose of Proposition 47—to stop wasting prison space and taxpayers' money imprisoning people for petty crimes—and with "the extraordinary step [the voters took] of extending the retroactive benefits of [Prop. 47] beyond the bounds contemplated by *Estrada*—including even prisoners serving *final* sentences within [Prop. 47's] ameliorative reach ...." (*Conley*, *supra*, 63 Cal.4th at p. 657-658, emphasis in original.)

To contend that this is *not* the purpose of subdivisions (f), (g) and (k) is to beg the question as to what *is* the intended purpose of those subdivisions? Although there may be conceivable reasons – other than seeking the reduction of a current sentence – for seeking relief under subdivisions (f), (g) and (k) of section 1170.18 (e.g., to reduce the

defendant's exposure to future penal consequences should he recidivate), such purposes are not among the express purposes of Proposition 47, "primary" among which "is to reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative." (*Harris v. Superior Court* (Nov. 10, 2016, No. S231489) ___Cal.5th___ [2016 Cal. LEXIS 9040, at *13], citing Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70; *People v. Montgomery* (2016) 247 Cal.App.4th 1385, 1389-1390.)

It must be remembered that a defendant who is serving a year in prison pursuant to Penal Code section 667.5, for a prior conviction that is now (post-Prop. 47) a misdemeanor, has already served a prison sentence for that now-misdemeanor crime; otherwise she would not have been eligible for a "prison prior" enhancement on the basis of that prior. Of course, the voters cannot make a time machine to give the defendant back the prison time she served for that now-misdemeanor. But they could create a mechanism to ensure that the defendant doesn't continue to serve prison time–yet again–for that now-misdemeanor. There is no dispute that subdivision (a) creates a vehicle to prevent defendants from continuing to serve prison time for a crime that is now a misdemeanor. There is nothing

in Prop. 47 that suggests that the voters didn't have the same intent for subdivision (f) as to prior convictions for which a defendant is currently serving a prior-prison-term enhancement. Interpreting Prop. 47 in a way that prospectively treats misdemeanants as felons if and only if they have *already* previously been punished as a felon for their misdemeanor conduct is to ascribe to voters an absurd intent. (See *Rubalcava*, *supra*, 23 Cal.4th at 328.)

For these reasons, analyses (like the Court of Appeal's and Judge Couzens' and Justice Bigelow's) which focus on the purpose of section 667.5 (i.e., "'to punish individuals' who have shown that they are 'hardened criminal[s] who [are] undeterred by the fear of prison'" (*People v. Jones*, *supra*, 5 Cal.4th at 1148)) rather the purposes of Proposition 47, misses the mark. Through Proposition 47, the voters made a decision about whom they consider to be "hardened criminals" and "felony" recidivists. And, according to the voters, those categories of criminals do *not* include defendants who commit "nonserious, nonviolent crimes like petty theft and drug possession, unless [they have] prior convictions for specified violent or serious crimes." (Prop. 47, § 3, subd. (3), p. 70.)

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E. Analogizing section 1170.18, subdivision (k) to section 17(b) is inapt; both the express language and purposes of the two statutes show that they are not analogous with respect to the retroactivity of the relief to which they pertain.

Like Judge Couzens and Justice Bigelow, the Attorney General argues that Proposition 47's "misdemeanor for all purposes" language is not retroactive because it is "identical" to language in section 17, subdivision (b) ("section 17(b)") which this Court has repeatedly held is not retroactive. (See Answer Brief, pp. 23-25; Couzens & Bigelow, *supra*, at p. 88, citing, inter alia, *People v. Feyrer*, *supra*, 48 Cal.4th 426, 438-439; and *People v. Banks*, *supra*, 53 Cal.3d 370, 381-382.)[12] That analysis is flawed. While

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[12] In *People v. Abdallah* (2016) 246 Cal.App.4th 736, 746, the Court of Appeal held that a trial court may not impose a prior-prison-term enhancement (§ 667.5, subd. (b)) on the basis of a prior felony conviction that, at the time of the defendant's sentencing, had been reduced to a misdemeanor pursuant to Prop. 47. The *Abdallah* court applied the "for all purposes" language in section 1170.18, subdivision (k), prospectively and, in doing so, stated: "Because section 1170.18, subdivision (k), and section 17 both address the effect of recalling and resentencing of a felony (or a wobbler that could be a felony) as a misdemeanor, we construe the phrase 'misdemeanor for all purposes' in section 1170.18, subdivision (k), to mean the same as it does in section 17." (*Abdallah*, *supra*, at p. 745.) For several reasons, this statement in *Abdallah* is not persuasive authority for the conclusion that subdivision (k)'s "for all purposes" language does not apply retroactively. First, *Abdallah*'s discussion of 17(b) is unnecessary to its holding and therefore is dictum. Second, this Court has granted review of the case *Abdallah* cites in support of the proposition that the phrase "'misdemeanor for all purposes" in section 1170.18, subdivision (k), has the same meaning as it does in section 17 (*People v. Williams*, *supra*, 245 Cal.App.4th 458, rev. granted May 11, 2016, No. S233539). Finally, as

both section 17(b) and Proposition 47 contain the same "misdemeanor for all purposes" language, the words following that language are materially different. Section 17(b) specifically states that the felony is to be treated as a "misdemeanor for all purposes" only "after" or "when" a particular act or event occurs reducing the felony to a misdemeanor. There is no such limitation in Prop. 47. (Compare § 17, subd. (b), with § 1170.18, subd. (k).)

The "after" and "when" language in section 17(b) was essential to this Court's conclusion that the "misdemeanor for all purposes" language was not retroactive. (See *Doble v. Superior Court* (1925) 197 Cal. 556, 576-577.) In *Doble*, the court considered whether the misdemeanor for all purposes language in section 17(b) was retroactive for statute-of-limitations purposes. (*Ibid.*) The court began its analysis by acknowledging that it had applied the language retroactively in a decision 23 years earlier in *People v. Gray* (1902) 137 Cal. 267. However, the court overruled *Gray*, criticizing it for "ignor[ing] the language – 'after a judgment imposing a punishment other than imprisonment in the state prison' – following the phrase 'shall be deemed a misdemeanor for all purposes.'" (*Id.* at p. 576.)

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explained herein, analogizing section 1170.18, subdivision (k) to section 17(b) is inapt because section 17(b), by its own terms, provides only prospective relief, whereas section 1170.18 is a statute whose sole purpose is to apply Proposition 47's ameliorative changes in the law retroactively.

The court reasoned, "A fair construction of section 17, in order to give effect to every part thereof, requires us to hold, and we do so hold, that in prosecutions within the contemplation of that section, the charge stands as a felony for every purpose up to judgment, and if the judgment be felonious in that event it is a felony after as well as before judgment; but if the judgment is for a misdemeanor it is deemed a misdemeanor for all purposes thereafter – the judgment not to have a retroactive effect so far as the statute of limitations is concerned." (*Id.* at p. 576-577.)

Since Proposition 47's "misdemeanor for all purposes" language is not modified by the words "after" or "when," a conclusion of retroactivity is inescapable. (See *Doble*, *supra*, 197 Cal. at pp. 576-577.) A felony that, under Proposition 47, is now a misdemeanor for "all" purposes necessarily includes both retroactive and prospective purposes. "All" means all. (See *Rubin v. Western Mutual Ins. Co.* (1999) 71 Cal.App.4th 1539, 1547.)

Furthermore, the construction of Proposition 47 coupled with its purpose reflects a clear intent that the "misdemeanor for all purposes" language be applied to permit retroactive striking of prior-prison-term enhancements. The first ten subdivisions of section 1170.18 deal with allowing individuals to obtain retroactive reduction of old felony convictions. It would be anomalous if the eleventh subdivision – (k) – and

it's "misdemeanor for all purposes" language were not also retroactive. As previously explained, the whole purpose of section 1170.18 is to afford retroactive relief to defendants currently serving time in prison for offenses that are now misdemeanors. *Subdivisions (f) and (g), in and of themselves, expressly allow retroactive relief that section 17(b) does not allow.* The fact that section 17(b) does not allow retroactive relief while section 1170.18 clearly does is not a basis for concluding that some provisions of section 1170.18 (e.g., subd. (k)) should be ignored or interpreted incongruously with each other, but for concluding that section 17(b) and the cases interpreting it are inapposite in construing Proposition 47.

Moreover, the voters articulated only a single exception to the "misdemeanor for all purposes" language: firearm ownership. (See § 1170.18, subd. (k).) This reflects that the voters did not intend any other limits. "[W]hen a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded." (*People v. Cardenas* (1982) 31 Cal.3d 897, 914.) Since the voters expressed an exception to the "misdemeanor for all purposes" language for firearm ownership, but not for previously imposed prior-prison-term enhancements, the rule of statutory construction compels the conclusion that the voters necessarily intended that there be no such additional exception.

A retroactive construction of the "misdemeanor for all purposes" language is also the only construction that is consistent with the express purposes of Proposition 47. As previously discussed, the purpose of Proposition 47 is to "[s]top[] wasting money on warehousing people in prisons for nonviolent petty crimes, saving hundreds of millions of taxpayer funds every year" that can be spent on schools and other programs instead. (Prop. 47 [argument in favor] p. 38; *id.*, §§ 2-3, p. 70.) Applying the "misdemeanor for all purposes" language retroactively to strike prior-prison-term enhancements effectuates that intent by reducing the amount of time individuals spend in prison which will save the taxpayers money that can be invested in our state's schools. Applying the language prospectively only results in individuals like Ms. Valenzuela spending time in prison not once, but twice, for an offense the electorate no longer considers felonious.

F. Proposition 47 provides a procedure for seeking the reduction of a sentence a defendant is currently serving for a prison prior that has been reduced to a misdemeanor pursuant to section 1170.18, subdivisions (f) and (g) – a petition under subdivision (a) of section 1170.18. Alternatively, habeas corpus is a proper vehicle for seeking correction of a sentence that is no longer authorized for a prison prior that has been reduced to a misdemeanor for all purposes under Proposition 47.

In rejecting Ms. Valenzuela's request for a remand in which she could seek resntencing as to her now-misdemeanor prison prior under

Proposition 47, the Court of Appeal reasoned that "Section 1170.18 ... contains no procedure for striking a prison prior if the felony underlying the enhancement has subsequently been reduced to a misdemeanor." (Slip Opn., p. 21; see also *People v. Jones* (2016) 1 Cal.App.5th 221, 230, rev. granted Sept. 14, 2016, S235901 ["no provision allows offenders to request or court to order retroactively striking or otherwise altering an enhancement based on such a redesignated prior offense. Absent such an express provision, we cannot apply the statute retroactively."].)

CPDA disagrees, on two grounds. First, Proposition 47 *does* contain express provisions for obtaining retroactive relief as to prison priors. Subdivision (a), in conjunction with subdivisions (f) and (g), of section 1170.18 provides such a procedure. As previously explained, subdivision (f) of section 1170.18 allows a defendant to get a conviction as to which she has completed her sentence reduced to a misdemeanor in the court in which the conviction was entered. (See footnote 5, *ante*.) And subdivision (a) of section 1170.18 allows a defendant who is currently serving a sentence for a Prop.-47-eligible conviction to petition for resentencing in the court in which the conviction for which he is currently serving a sentence was entered. (See footnote 4, *ante*.) Reading these two subdivisions in conjunction with each other (and with section 1170.18's other provisions)

shows that the purpose of section 1170.18 is to provide retroactive Prop.-47 relief as to *all* otherwise eligible convictions, provided that the person who suffered the conviction seeks relief the proper way, in the proper court.[13]

Of course, if a defendant has a conviction that is being used as a prison prior in a sentence that the defendant is currently serving, that conviction falls within the rubric of *both* subdivision (a) *and* subdivision (f). Hence, as to such convictions, Proposition 47 would appear to require a two-step process for a defendant seeking retroactive Prop.-47 relief. First, the defendant should file an application pursuant to subdivision (f) in the court in which the prior conviction was originally entered. Then, if that court determines that the prior conviction is eligible for relief and designates the conviction a misdemeanor pursuant to subdivision (g) of section 1170.18, the defendant can petition the court in which the conviction was entered as a prison prior for resentencing pursuant to subdivision (a) as to the sentence, enhanced by that prior, that the defendant is currently serving. In the petition for resentencing, the defendant can ask the court to strike the prison prior on the basis of its reclassification as a

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[13] Requiring defendants to seek Proposition-47 relief in the court in which the conviction that is the subject of the requested relief was entered makes sense, because that court is in the best position to determine whether the conviction is eligible for relief under Proposition 47.

misdemeanor.

The Attorney General may argue that a prison prior is not a "conviction" within the meaning of subdivision (a), and that it is only a "conviction" within the meaning of subdivision (f), because it is a prior-conviction-based enhancement, not a conviction for which the defendant is "currently serving a sentence" within the meaning of subdivision (a). CPDA would disagree with any such contention, because it would read the term "currently serving a sentence for a conviction" in subdivision (a) too narrowly. As previously noted, Proposition 47 dictates that its provisions "shall be broadly" and "liberally construed to effectuate its purposes." (Prop. 47, §§ 15, 18, p. 74.) And, although a prison prior is an enhancement, it is an enhancement whose "primary" element is a prior felony *conviction*. (*People v. Prather* (1990) 50 Cal.3d 428, 440; and see *People v. Park*, *supra*, 56 Cal.4th 782, 799 ["the terms 'convicted' and 'conviction' are ambiguous and susceptible of different meanings depending on context"].)

Second, the premise that one may not infer legislative (or voter) intent that an ameliorative change in the law be given retroactive effect unless the legislature (or electorate) creates a special procedure for obtaining retroactive relief is incorrect. "If there is a right there must be a

remedy." (*Wilson v. Wilson* (1868) 36 Cal. 447, 454; *Blumberg v. Birch* (1893) 99 Cal. 416, 418.) And the manifestation of legislative (or voter) intent of full retroactivity does not require the creation of such a procedure. CPDA is aware of a number of cases that recognize full retroactivity of an ameliorative change in the law. (See, e.g., *People v. Flores*, *supra*, 92 Cal.App.3d 461, 471-474 [finding legislative intent of full retroactivity of ameliorative change of a penal statute as to a prison prior, in part on the basis of "for any purposes" language];[14] *Way v. Superior Court*, *supra*, 74 Cal.App.3d 165, 177-178; *People v. Community Release Bd.*, *supra*, 96 Cal.App.3d 792, 800; *In re Chavez*, *supra*, 114 Cal.App.4th 989, 1000.) But it is aware of no authority holding that the Legislature's (or electorate's) creation of a procedure for obtaining retroactive relief is a prerequisite of a finding of full retroactivity. The above-sited cases support

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[14] Both the Court of Appeal and Attorney General posit that the *Flores* case does not support Ms. Valenzuela's position in this case, because, unlike Ms. Valenzuela's situation, the ameliorative change in the law that benefitted Mr. Flores occurred before he had committed his current offense. (See Slip Opn., pp. 22-24; Answer Brief, p. 11.) Although the Court of Appeal and Attorney General are correct that the ameliorative change in the law that benefitted Mr. Flores occurred before he had committed his current offense (see *Flores*, *supra*, 92 Cal.App.3d at pp. 464, 470), that fact played no role in the *Flores* court's decision. (See *id.*, at pp. 470-474; and see *People v. Heitzman* (1994) 9 Cal.4th 189, 209 ["It is well settled that a decision is not authority for an issue not considered in the court's opinion."].)

the opposite conclusion.

Since voters, through subdivision (k) of section 1170.18, created the right that a conviction that has been reduced to a misdemeanor pursuant to subdivisions (f) and (g) of section 1170.18 "shall be considered a misdemeanor for all purposes" (other than gun possession or ownership), incarcerated defendants to whom such a right has been granted have a remedy – a petition for writ of habeas corpus – to seek correction of a sentence that they are currently serving that includes a period of imprisonment for a prior conviction that is no longer authorized as a result of Proposition 47.

Prison priors are not authorized unless the conviction for which the defendant was previously sentenced to state prison is a felony. (See *People v. Tenner* (1993) 6 Cal.4th 559, 563.) An unauthorized sentence may be corrected at any time. (*People v. Scott* (1994) 9 Cal.4th 331, 354-355.) And habeas corpus is a proper vehicle for challenging a sentence that is no longer authorized as a result of a subsequent, retroactive change in the law. (See *In re Chavez, supra*; *In re Berg* (2016) 247 Cal.App.4th 418.)

Hence, even if subdivision (a) of section 1170.18 is not deemed to provide a procedure by which a defendant who has gotten a conviction underlying a prison prior reduced to a misdemeanor "for all purposes" to

seek resentencing in the case in which the prison prior is part of a sentence the defendant is currently serving, habeas is a vehicle by which a defendant who is still in custody for a prison prior should able to enforce his right to have that prison prior stricken as unauthorized. (See *People v. Villa* (2009) 45 Cal.4th 1063, 1069 ["The key prerequisite to gaining relief on habeas corpus is a petitioner's custody."]; *People v. Diaz*, *supra*, 238 Cal.App.4th 1323, 1337 [ostensibly recognizing that habeas is an available vehicle for seeking an order striking a prison prior whose underlying felony conviction has been reduced to a misdemeanor under section 1170.18, subdivision (f)]; and see § 1170.18, subd. (m) [section 1170.18 does not "diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant."])

CONCLUSION

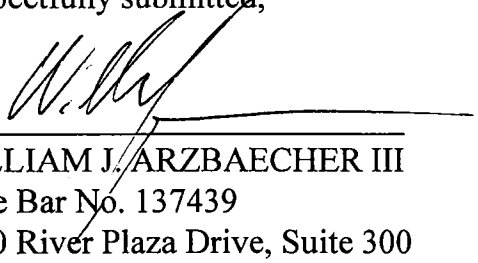
The express provisions and legislative intent of Proposition 47 make clear that its ameliorative changes in the law are not just prospective, but should result in fully retroactive relief for eligible, incarcerated defendants who seek it. Proposition 47 provides no basis for interpreting the "for all purposes" language in section 1170.18, subdivision (k), as applying only prospectively. "All" means all. Both backwards and forwards. Interpreting the statute otherwise on the basis of inapposite case law is contrary to the

express provisions and intent of Proposition 47.

Wherefore, the California Public Defender's Association, amicus curiae in support of defendant and appellant Laura Valenzuela, respectfully submits that the opinion of the Court of Appeal holding that a defendant may not seek resentencing in a case in which he or she is currently serving a sentence for an enhancement under section 667.5, subdivision (b), whose underlying felony conviction has been reduced to a misdemeanor under Proposition 47, be reversed.

Dated: November 16, 2016

Respectfully submitted,



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On behalf of
CALIFORNIA PUBLIC
DEFENDERS ASSOCIATION

Amicus Curiae in Support of
Defendant and Appellant

Certificate of Appellate Counsel Pursuant to rule 8.204(c)(1) and rule 8.360(b) of the California Rules of Court

I, William J. Arzbaecher, III, counsel for Amicus Curiae, California Public Defender's Association, declare under penalty of perjury, under the laws of the State of California, that I prepared the attached combined Amicus Brief and Application to File Amicus Brief, and that the word count for this brief and application is 9,797 words.

I certify that I prepared this document in WordPerfect and that this is the word count generated for this document.

Dated: November 16, 2016

William J. Arzbaecher, III

Re: *The People v. Valenzuela,* Case No. S232900
Fourth Dist. Court of Appeal No. D066907

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY PLACEMENT AT PLACE OF BUSINESS FOR COLLECTION AND DEPOSIT IN MAIL
(Code Civ. Proc., § 1013a, subd. (3); Cal. Rules of Court, rules 8.71(f) and 8.77)

I, *William J. Arzbaecher, III*, declare as follows:

I am, and was at the time of the service mentioned in this declaration, over the age of 18 years and am not a party to this cause. My my business address is 2150 River Plaza Dr., Ste. 300, Sacramento, CA 95833 in Sacramento County, California.

On **November 16, 2016**, I served the persons and/or entities listed below by the method checked. For those marked "Served Electronically," I transmitted a PDF version of **Application From the California Public Defender's Association for Permission to File a Timely Amicus Curiae Brief in Support of Laura R. Valenzuela, Appellant and Amicus Curiae of the California Public Defender's Association** by TrueFiling electronic service or by e-mail to the e-mail service address(es) provided below. Transmission occurred at approximately **4:00 PM** For those marked "Served by Mail," I enclosed a copy of the document identified above in an envelope or envelopes, addressed as provided below, and placed the envelope(s) for collection and mailing on the date and at the place shown below, following the Central California Appellate Program's ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelope(s) with postage fully prepaid.

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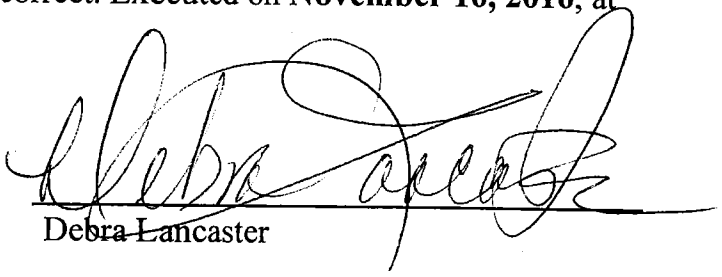
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **November 16, 2016**, at Sacramento, California.



Debra Lancaster