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Early Impacts of Proposition 47 on the Courts

Voters passed Proposition 47, “The Safe Neighborhood and Schools Act,” on November 4, 2014, and it went into effect the following day. The initiative implemented three broad changes to felony sentencing laws. First, it reclassified certain theft and drug possession offenses from felonies to misdemeanors. Second, it authorized defendants already serving sentences for those felony offenses to petition courts for resentencing under the new misdemeanor provisions. Third, it authorized defendants who had completed their sentences for felony convictions on those offenses to apply for reclassifying the convictions to misdemeanors.

As of December 31, 2015, California superior courts had received over 200,000 petitions for resentencing or applications for reclassification. In addition to the workload associated with handling these petitions and applications, courts report that the proposition has increased the complexity of felony and misdemeanor case processing and that, at least initially, there are some efficiencies associated with the Proposition 47 changes. Some courts indicate that the reclassification has enabled them to focus more attention on serious cases, resulting in “better justice” for the public.

This document provides an overview of Proposition 47’s effects on court operations. It draws on the following data sources:

- Online surveys, administered by Judicial Council staff, that solicited information on the number of petitions for Proposition 47 relief and the workload associated with implementation of the initiative.
- Phone interviews conducted with nine counties to gather in-depth qualitative information regarding Proposition 47 implementation.
- Site visits to the Superior Courts of Kern, San Bernardino, San Diego, Shasta, and Santa Clara Counties, which included interviews with judicial officers, court staff, and justice system partners.

Background

The stated intent of Proposition 47 is to “ensure that prison spending is focused on violent and serious offenses, maximize alternatives for nonserious, nonviolent crimes, and invest savings generated from this Act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment.” To accomplish these goals, the initiative made three broad changes to felony sentencing laws:

1. It reduced most possessory drug offenses and thefts of property valued under \$950 from potential felonies to misdemeanors. (Prior to Proposition 47, several of these offenses were considered “wobbler” crimes, meaning they could be charged as either a felony or a misdemeanor.)
2. It authorized defendants currently serving sentences for felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions.
3. It authorized defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reclassify those convictions to misdemeanors.

Petitions for resentencing and applications for reclassification must be filed within three years of the effective date of Proposition 47 (November 5, 2014), or may be filed at a later date upon a showing of “good cause.”¹

Proposition 47 Relief Petitions and Court Workload

Many courts reported immediate and significant impacts on their operations.

Next-day implementation

The courts were at varying levels of readiness on the day Proposition 47 took effect. Some courts had begun meeting with justice system partners well before the initiative passed to identify procedures for implementation and had already prepared forms and created procedures for processing Proposition 47 petitions, while other courts began their implementation activities after the act was in place.

Before courts could begin processing resentencing petitions and applications for reclassification, they needed to take measures such as:

- Holding implementation meetings with justice system partners
- Creating new petition forms
- Developing new case processing procedures
- Modifying case management systems to include new event codes
- Developing tracking mechanisms
- Improving data collection and reporting processes
- Training staff on new forms, case processing, data collection and reporting, and case management procedures

¹ Assembly Bill 2765, introduced February 19, 2016, would remove the time limitation for petitioning or applying for a reduction of sentence.

Resentencing petitions and applications for reclassification

In the first two months after Proposition 47 took effect, the courts received nearly 60,000 petitions for resentencing or applications for reclassification. A year later, by December 31, 2015, the courts had received more than 200,000 petitions or applications.² Courts vary in their procedures for initiating and processing relief petitions and their management of the work associated with this initiative. Some courts require a petition to be filed for every Proposition 47 relief request, whereas others allow Proposition 47 requests to be brought before the court through oral motions when the defendant appears on another matter, such as a probation violation or review hearing. Based on their reports, the majority of courts have dedicated calendars and counsel for handling Proposition 47 matters; however, others, particularly smaller-sized courts, do not.

Most courts adopted similar criteria for organizing the processing of Proposition 47 petitions: they prioritized resentencing petitions for individuals in custody (state prison and county jail), followed by petitions for those on community supervision. After most of those petitions were processed, they began to address applications for reclassification. Some of these courts reported that they began by handling the simpler, more straightforward cases within each category.

Courts across the state are at varied stages of processing their Proposition 47 petitions. This could reflect differences in the volumes of requests for relief, amounts of preparation prior to the passage of Proposition 47, outreach efforts, manners of identifying eligible cases, case processing procedures, and available staffing and resources. Several courts indicated they have processed nearly all resentencing petitions for those in custody and are now beginning to address the more complex petitions as well as the more time-intensive reclassifications.

Courts reported that most of the work associated with Proposition 47 matters typically occurs before the court hearing, and that many Proposition 47 matters are settled in pre-hearing conferences. This approach may change as courts begin to process more complex petitions.

Proposition 47–related workload

Although many Proposition 47 matters are processed without significant in-person court hearing time, a substantial amount of court work is associated with preparing and processing Proposition 47 petitions. This includes tasks such as calendaring Proposition 47 matters, preparing abstracts for resentencing, notifying jails and transferring individuals from custody, creating records, pulling old hard-copy case files from storage for reclassification hearings, processing Department of Justice (DOJ) forms, and ensuring effective data tracking.

Courts identified certain tasks as requiring far more time than initially anticipated. These include:

- Determining the value of property for an older case

² This statistic reflects the number of petitions and applications received by the courts and does not reflect the number of people granted relief under Proposition 47 nor the number of Proposition 47 hearings.

http://www.courts.ca.gov/documents/for-publication_prop-47.pdf (as of March 22, 2016)

- Handling appeals of decisions on Proposition 47 petitions
- Processing an increased number of petitions for relief under PC 1203.4 (dismissal of charges)
- Notifying the registrar of voters when felonies are resentenced to misdemeanors
- Calculating time served in prison for individuals serving consecutive prison terms if one or more of these qualify under Proposition 47

Every jurisdiction has addressed its Proposition 47 workload differently, and many courts reported that it has been challenging to absorb the increased caseload. The FY 2015-2016 Budget Act provided \$26.9 million to assist the courts in addressing the workload associated with Proposition 47. Courts applied the funding differently based on the local need. Courts redirected staff, hired additional employees and/or allowed overtime to absorb the additional workload. Due to the complex knowledge required to process Proposition 47 petitions and applications, some courts hired retired staff to temporarily assist with case processing. Some courts used the courtroom and staff from their drug courts, since these programs experienced an initial decrease in caseload as a result of Proposition 47. One court placed an informal cap on the number of Proposition 47 petitions that could be filed per day due to limited resources.

Many courts redirected resources to absorb the increased workload, and several noted that this redirection of resources led to the closing of public service windows, correspondence backlogs, delays in case initiation, the issuance of warrants, the processing of other petitions, and deferrals of various criminal matters including non-compliance processing, abstracts of judgements, and DOJ and Department of Motor Vehicles reporting.

Proposition 47 appeals

A significant factor in the courts' implementation of Proposition 47 concerns pending appellate court review to clarify aspects of the initiative. For example, the application of the initiative to juveniles was not settled for almost a year after it passed. Appellate or Supreme Court decisions clarifying pending issues would affect the resolution of thousands of cases and could result in many additional hearings.

Processing of New Cases

Once the Judicial Branch receives its annual budget, the majority of court funding for the trial courts is allocated through the Workload Allocation Funding Model (WAFM) and is based on the amount of time needed to process different types of cases. The case weights incorporated into the model are currently being updated, and any changes in case processing times after the passage of Proposition 47 will be reflected in the new analysis.

Only after the updating is completed will we fully understand the impact of Proposition 47 on court workload. The following summaries reflect trial courts' and local justice system partners'

reports on the ways in which Proposition 47 increased the workload associated with the handling of both felonies and misdemeanors.

Arrests and charging practices

Proposition 47 affected case processing practices for both felonies and misdemeanors from the point of arrest through case disposition. Courts or justice system partners in several counties perceived a decrease in arrests when Proposition 47 was initially implemented, and preliminary figures from the California Department of Justice support these claims.

Counties also reported perceived changes in post-Proposition 47 prosecution charging trends, leading to increased filing of felony drug sales cases, HSC 11366 charges (opening or maintaining a place for the purpose of unlawfully selling, giving away, or using specified controlled substances), identity theft, and robbery. Additional research is needed to determine whether these perceived changes in arrests and charging patterns will be supported by data over time.

Misdemeanor case processing

Based on the 40 courts reporting complete data, during the first six months of 2015 there were 15% additional misdemeanor filings statewide (approximately 22,000) compared to the first six months of 2014.³ This is significant given that the 10-year trend in filings would lead to an expected 3.5–7% *decrease* in the number of misdemeanor filings.

Several courts expressed concern about their current capacity to process misdemeanor filings. Most courts indicated a need for additional resources to address the increase in these cases. Some courts redirected resources from felony or other calendars to misdemeanor courts.

Judges, court staff, and justice system partners reported several changes related to misdemeanor case processing, as identified below.

- Three of the site visit counties reported an increase in the number of misdemeanor trials post-Proposition 47. Judges in one county suggested that without the “hammer” of felony supervision or jail time there is less incentive for a defendant to accept a plea bargain, and that this could cause an increase in misdemeanor trials.
- Several judicial officers indicated that defendants with misdemeanor charges post-Proposition 47 appear to have lengthier criminal histories than those charged with misdemeanors before the proposition, and thus their cases are often more complex. Other courts reported that time to disposition for misdemeanor cases post-Proposition 47 appears to be longer than before, which may be related to an increase in misdemeanor case complexity.

³ Although Proposition 47 focused on drug and property crime, preliminary data indicate that the initiative resulted in changes in charging trends beyond those two categories. To identify the proposition’s potential systemwide effects, these analyses were conducted on all felony and misdemeanor filings.

- Historically, newer judges have been assigned to handle misdemeanor cases; however, post-Proposition 47, the increased volume of complex misdemeanor cases may require more experienced judges.
- Multiple courts reported that as a result of Proposition 47 they experienced an increase in failures to appear (FTAs) for misdemeanor arraignments. Courts indicated that there is an increased court workload associated with these FTAs and issuing bench warrants.

Felony case processing

While misdemeanor filings increased during the first six months of 2015, felony filings decreased nearly 34% or approximately 32,000 filings. Courts report that this decrease in felony filings may not necessarily result in decreased court workload across the state. One court reported that they have not decreased staff in the felony department post-Proposition 47 and that it is challenging for the presiding judge to find enough courtrooms for felony jury trials. Although judges in this court perceived fewer felony cases were *set* for trial, they reported an estimated 20% increase in felony trials that were held in 2015 as compared to 2014. The judges attributed this increase in trials to a focus on reducing the felony trial calendar back-up, and an apparent increase in the length of felony trials.

Similarly, the district attorney in another county indicated that some of the felony offenses increasingly charged post-Proposition 47 are more difficult to prove and thus may go to trial more often. Judges in another county anticipate that plea bargains may decrease because those who previously may have pled out early are now going to trial in an attempt to avoid a felony conviction.

Justice system partners in one county reported a reduction in felony trials, although they estimated that felony trials may have become more complex. Trial data from another court showed that although felony filings have decreased by 37% since Proposition 47 the number of felony trials has decreased by only 12%. This implies that although felony filings are decreasing, felony trials and the workload associated with felony case processing are not decreasing at the same rate.

Juvenile court

Following the passage of Proposition 47 it was initially unclear whether the initiative's provisions applied to juvenile adjudications because the language in the proposition reflected the terminology used for adult criminal court as opposed to the statutory language used in juvenile court (e.g. the proposition refers to those *sentenced* whereas in juvenile court defendants are *adjudicated*). However, in *Alejandro N. v. Superior Court of San Diego County* (2015) 238 Cal.App.4th 1209, (review denied Oct. 14, 2015), the court found that both the sentence reduction provisions and offense reclassification provisions of the proposition apply to juvenile offenders. Courts differed in their readiness to apply Proposition 47 to juvenile cases. As of December 31, 2015, 760 juvenile petitions for Proposition 47 relief were reported statewide, though some courts anticipate receiving significantly more cases now that it has been determined that Proposition 47 applies to juvenile adjudications.

Collaborative courts

Results from the online Proposition 47 survey administered shortly after the initiative passed indicate that 33 courts anticipated that their drug court or Proposition 36 court (California's Substance Abuse and Crime Prevention Act of 2000) caseloads would either somewhat or significantly decline as participants petitioned to have their offenses reduced to misdemeanors. Courts reported decreases in referrals as many defendants chose not to commit to a lengthy drug court program for a misdemeanor offense that would result in minimal incarceration time. However, several courts reported through the online survey that the majority of drug court participants who were already active in the program and were eligible for Proposition 47 relief opted to stay in the program in order to continue to receive services.

Many courts have changed their eligibility requirements to include misdemeanor offenses or more serious felony offenses, and have reported that caseloads are beginning to rise again. A new survey of drug courts to determine the impact of Proposition 47 on caseload size will be administered in the spring of 2016.

Moving Forward

The total number of resentencing petitions and applications for reclassification has steadily decreased since the Proposition 47 took effect. While the initial surge of resentencing petitions has been addressed in most courts, many courts are now beginning to process the more complex petitions and time-intensive reclassifications. The Administration's FY 2016-2017 budget proposal includes \$21.4 million for the courts to address the continued Proposition 47 workload. Assembly Bill 2765, introduced February 19, 2016, would remove the three-year time limitation for petitioning or applying for a reduction of sentence, thereby extending the courts' increased workload.

A common theme throughout the site visits was that post-Proposition 47 case classifications are not initially reducing courts' overall workloads but are allowing courts to shift the application of their resources. Several courts noted that Proposition 47 helped them focus more resources on trials for serious and violent felony cases and to process a backlog of trials that existed prior to Proposition 47. During the site visits many of those interviewed reflected that they were able to ensure "better justice" as result of Proposition 47.

This report reflects the initial impacts of Proposition 47 on the courts. Ongoing research and data collection will be needed to evaluate the longer term effects of the initiative on court operations.