



San Francisco Sheriff's Department

INTER-OFFICE CORRESPONDENCE

November 10, 2014
Reference: 2014-224

TO: All Personnel
FROM: SHERIFF Ross Mirkarimi
RE: PROP 47 UPDATE

A handwritten signature in blue ink, appearing to read "Ross Mirkarimi", is written over the printed name in the "FROM:" field.

California Proposition 47 was passed on November 4, 2014, and it is effective immediately. Prop 47 changes the classification of numerous drug and theft related offenses that were previously felonies or wobblers to misdemeanors ("Prop 47 Offenses"), except those offenses committed by offenders who are required to register as a sex offender per PC 290(c), and those who have a prior conviction for an offense described in PC 667(e)(2)(C)(iv) ("Prop 47 ineligible offenders"). San Francisco Sheriff's Department (SFSD) arrest and citation policy and procedure is immediately affected as previous felony offenses, now designated as misdemeanors, will be subject to PC 853.6 and SFSD citation policy.

Prop 47 provides the procedure for individuals who are serving a sentence for one of the felonies that is now a misdemeanor to be resentenced and for those convicted of one of the felonies that is now a misdemeanor to have the felony designated as a misdemeanor.

This update is provided as a general introduction into the immediate changes required by Prop 47. The changes made by Prop 47 will affect different SFSD policies and procedures. Additional updates and training will be provided as the issues are identified and resolved.

I. PROP 47 Resentencing Procedure

PC 1170.18 New Penal Code Section providing for the procedure for individuals serving a sentence for one of the felonies that is now a misdemeanor to be resentenced in accordance with Prop 47 changes, and for those individuals who have been convicted of one of the felonies that is now a misdemeanor to designate the felony conviction as a misdemeanor conviction. This process requires a court ruling upon defendant's motion for resentencing or reduction of charge.

II. PROP 47 Arrest / Citation Issues

SFSD arrest and citation policy and procedure is immediately affected. Previous felonies, that are now misdemeanors, are subject to citation and release per PC 853.6 and SFSD policy and procedure. If "ineligible offender" status cannot be determined at the scene for Prop 47 offenses, transport the individual to an SFSD sub-station at 425 7th Street for determination of cites eligibility.

III. PROP 47 Offenses

The following offenses, previously felonies, are now misdemeanors, unless committed by a Prop 47 ineligible offender:

- PC 495.5** **SHOPLIFTING** New Penal Code Section defining shoplifting as entering commercial establishment with intent to commit larceny, while that establishment is open during regular business hours, where the value of the property taken or intended to be taken does not exceed \$950.00. Shoplifting may not also be charged as burglary or theft of the same property.
- PC 473** **FORGERY** value not exceeding \$950.00, with specific exceptions.
- PC 476a** **PASSING BAD CHECK / FRAUD** value not exceeding \$950.00. This charge will remain a felony if the person has three or more prior convictions for violating PC 470, PC 475, PC 476, or PC 476a, and other related exceptions.
- PC 490.2** **PETTY THEFT** New Penal Code Section defining petty theft as any theft where the value of the property taken does not exceed \$950.00, except infraction offenses.
- PC 496** **RECEIVING STOLEN PROPERTY** where the value of the property does not exceed \$950.00.
- PC 666** **PETTY THEFT WITH PRIOR** is a misdemeanor. This charge will remain a felony for Prop 47 ineligible offenders with specified priors.
- H&S 11350** **POSSESSION OF CONTROLLED SUBSTANCE** (heroin, cocaine, others) is now a misdemeanor.
- H&S 11357** **POSSESSION OF CONCENTRATED CANNABIS** is now a misdemeanor.
- H&S 11377** **POSSESSION OF CONTROLLED SUBSTANCE** (meth, ecstasy, others) is now a misdemeanor.

IV. PROP 47 Ineligible Offenders

Prop 47 offenses shall remain felonies if committed by a Prop 47 ineligible offender; those offenders who are required to register as a sex offender per PC 290(c), and those who have a prior conviction for an offense described in PC 667(e)(2)(c)(iv), described below:

PC 290(c), sex offender registrant;

Prior conviction for offense defined in PC 667(e)(2)(C)(iv):

- (I) "Sexually violent offense" as defined by W&I 6600(b);
- (II) Specified sex offenses as defined in PC 288a (oral copulation), PC 286 (sodomy) and PC 289 (sexual penetration); all with child under 14 years old and 10 years younger than offender;
- (III) PC 288 (lewd or lascivious act with child under 14);
- (IV) PC 187 and PC 191.5, including attempted homicides;
- (V) PC 653f (solicitation to commit murder);
- (VI) PC 245(d)(3) (assault with a machine gun on a peace officer or firefighter);
- (VII) PC 11418(a)(1) (possession of weapon of mass destruction);
- (VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.