

PROPOSITION 47: SHOULD CALIFORNIA REDUCE PENALTIES FOR DRUG AND PROPERTY CRIMES AND INVEST IN TREATMENT?

Proposition 47, which will appear on the November 4, 2014 statewide ballot, would amend the state Penal Code to reclassify certain drug and property crimes as misdemeanors and allow people previously convicted of these crimes to be resentenced. Additionally, Proposition 47 would invest state criminal justice savings resulting from these sentencing changes in drug and mental health treatment, as well as in victim services and programs designed to improve outcomes for K-12 public school students. This *Budget Brief* provides an overview of this measure and the policy issues it raises. The California Budget Project (CBP) neither supports nor opposes Proposition 47.

What Would Proposition 47 Do?

Proposition 47, “The Safe Neighborhoods and Schools Act,” would reclassify seven categories of nonviolent drug and property crimes as misdemeanors, thereby reducing the penalties for these crimes unless the person convicted has a prior conviction for (1) a serious and/or violent offense, as specified by the measure, or (2) any registerable sex offense.¹ Proposition 47 also would generally permit resentencing of people previously convicted of crimes that fall under the seven reclassified categories. In addition, Proposition 47 would create a special fund that would allocate estimated state savings attributable to the measure to programs that are intended to reduce crime and support crime victims.

Proposition 47 Would Reclassify Certain Drug and Property Crimes as Misdemeanors

Currently in California, crimes are classified into three broad types – felonies, misdemeanors, and infractions – according to the seriousness of the offense, with corresponding penalties. Felonies are the most serious offenses and can result in state prison sentences. Misdemeanors are less serious and have a maximum sentence of one year in county jail. Infractions are the least serious and are not punishable by imprisonment. Certain

crimes can be charged as *either* a felony or a misdemeanor at the discretion of the prosecutor and the court.² These crimes are commonly known as “wobblers.”

Proposition 47 would amend the state Penal Code to reclassify seven categories of nonviolent drug and property crimes as misdemeanors unless the individual has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense. These seven categories are:

- **Check fraud.** Currently, check fraud when the value of the fraudulent instrument (check, draft, or order) exceeds \$450 is classified as a wobbler. If the value of the fraudulent instrument is \$450 or less, check fraud is classified as a misdemeanor unless the person has a prior specific forgery-related conviction, in which case the offense is a wobbler. Proposition 47 would reclassify check fraud of up to \$950 as a misdemeanor unless the individual has three or more convictions for specific forgery-related crimes or has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.
- **Drug possession.** Currently, California law classifies possession of controlled substances for personal use – without a prescription – as a felony, wobbler, or

misdemeanor, depending on the amount and type of drug. For example, possession of methamphetamine, psilocybin mushrooms, or concentrated cannabis is a wobbler, whereas possession of heroin or cocaine is a felony, and possession of ketamine or cathinone – which is often marketed as “bath salts” – is a misdemeanor. Proposition 47 would reclassify most unlawful drug possession as a misdemeanor unless the person has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.

- **Forgery.** Currently, most forgery offenses are wobblers. Proposition 47 would reclassify forgery related to a check, bond, bank bill, note, cashier’s check, traveler’s check, or money order of a value that is \$950 or less as a misdemeanor unless the defendant commits identity theft in conjunction with the forgery or has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.
- **Petty theft.** Currently, theft when the value of the property taken is greater than \$950 is considered grand theft and is generally classified as a wobbler. When the value of the property taken is greater than \$50 and does not exceed \$950, the theft is generally considered petty theft and classified as a misdemeanor.³ However, theft of certain property – such as cars, guns, and farm crops or animals – worth \$950 or less is considered grand theft and therefore generally classified as a wobbler.⁴ Under Proposition 47, theft of any property worth \$950 or less would be petty theft, classified as a misdemeanor, unless the defendant has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.
- **Petty theft with a prior theft-related conviction.** Currently, if a person has at least three prior petty theft convictions or a conviction for certain other theft-related crimes and has been imprisoned as a result, a subsequent petty theft conviction is chargeable as “petty theft with a prior,” which is classified as a wobbler.⁵ Proposition 47 would reduce the number of individuals subject to this policy by making petty theft a wobbler *only if* the person (1) has at least one prior petty theft or other theft-related conviction and has been imprisoned as a result, *and* (2) has a prior conviction for a serious and/or violent offense, as specified by the measure, for any registerable sex offense, or for embezzlement of a dependent adult or any person age 65 or over. In other words, fewer people could be charged with “petty theft with a prior” and would instead be charged with petty theft, a misdemeanor.
- **Receiving stolen property.** Currently, receiving stolen property is a wobbler. Proposition 47 would reclassify

receiving stolen property worth \$950 or less as a misdemeanor unless the person has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.

- **Shoplifting.** Currently, “shoplifting” does not have a single definition but is generally charged as petty theft – a misdemeanor – unless the prosecutor can show that the person intended to steal when entering the commercial property, in which case it can be charged as second-degree burglary – a wobbler. Proposition 47 would create a new crime category of “shoplifting,” defined as entering a commercial property during business hours with the intent to commit theft where the value of the property taken or intended to be taken is \$950 or less. Under this new definition, shoplifting could not be charged as burglary and would be classified as a misdemeanor unless the person has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.

As misdemeanors, the crimes in these seven categories would – under Proposition 47 – provide for a maximum sentence of one year in county jail. However, an individual with a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense would be ineligible for a misdemeanor sentence. In such a case, the offense would be a wobbler and thus be eligible for either a misdemeanor or a felony sentence.⁶ Although Proposition 47 would reduce penalties for a large number of low-level offenses, the measure would also result in more stringent penalties in a few cases. Specifically, first-time check fraud and petty theft, and some low-level drug possession offenses that are currently misdemeanors, could be charged as felonies under the measure if the individual has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.

Proposition 47 Would Allow People Previously Convicted of Reclassified Crimes to Be Resentenced

Proposition 47 would allow individuals currently serving felony sentences for crimes that fall under the seven amended categories – as described above – to request resentencing based on the new classification.⁷ The trial court could deny the petition for resentencing if it determines that there is an “unreasonable risk” the person will commit one of several violent felonies.⁸ Individuals who are resentenced would have their sentences reduced to a misdemeanor term and would be supervised by state parole officers upon release unless the court chooses to waive the parole requirement. Any individual who has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense would be ineligible to petition for resentencing.

Proposition 47 would also allow individuals with prior felony convictions for crimes that fall under the seven amended categories – and who have already completed their sentences – to apply to the trial court to have the conviction reduced to a misdemeanor on their criminal record.⁹ This reduction would be automatic, and the conviction would be designated as a misdemeanor for all purposes except relating to ownership or possession of a firearm, which would still be prohibited. Any individual who has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense would be ineligible for this process.

Proposition 47 Would Establish a Special Fund for Crime Prevention and Recidivism Reduction Programs

Proposition 47 would require that any state savings attributable to the measure be deposited into a special fund beginning in August 2016.¹⁰ These dollars would be allocated exclusively for three purposes:

- 65 percent for mental health treatment, drug treatment, and diversion programs in order to reduce crime.¹¹
- 25 percent for programs designed to improve outcomes for K-12 public school students by reducing truancy and supporting students who are at risk of dropping out or are victims of crime.
- 10 percent for trauma recovery centers to provide services to victims of crime.¹²

The new funding would be designated to expand or enhance these programs and could not be used to replace existing state or local funding for these purposes. Additionally, Proposition 47 would require the state Controller to audit expenditures from this special fund every two years and publish the results.¹³

Proposition 47 Could Be Amended in Three Ways

If approved by the voters, Proposition 47 could be amended in three ways. The measure provides that:

- Amendments that would further reduce penalties for any of the offenses addressed by the measure could be approved in a bill passed by a majority vote of each house of the Legislature.
- Amendments that are consistent with and further the intent of the measure could be approved in a bill passed by a two-thirds vote of each house of the Legislature.
- Other types of amendments could be approved in a bill passed by a majority vote of each house of the Legislature, but would also require approval by the voters.¹⁴

How Would Proposition 47 Affect Public Safety?

Proposition 47 would reclassify seven nonviolent categories of crime as misdemeanors, thereby limiting the length and type of sentence available for those crimes. Any resulting state savings would be invested in drug and mental health treatment, school truancy and dropout prevention, and victim services. This reclassification would result in more people convicted of these crimes being sentenced to county interventions such as jail terms and/or community-based supervision, rather than to incarceration in state prison, and would relieve stigma and legal restrictions – often referred to as “collateral consequences” – for these crimes that are associated with felony convictions.¹⁵

Proposition 47 raises several key public safety issues. Specifically, these issues pertain to: (1) making community-based sentencing options available in lieu of incarceration in jail or state prison, (2) increasing familial access to incarcerated family members as a result of local, rather than state, incarceration, and (3) reducing the collateral consequences that individuals face following completion of their sentences for reclassified crimes.

Community-Based Interventions for Nonviolent Crimes Could Lower Crime Rates and Reduce Criminal Justice Spending

Proposition 47 would significantly limit incarceration in state prisons as a possible penalty for seven categories of nonviolent offenses. Although it is uncertain how much in savings the measure would generate, the Legislative Analyst’s Office (LAO) projects state savings in the low hundreds of millions of dollars annually, partially offset in the first few years by increased court and parole costs associated with the resentencing option (described above). These savings would be directed to the three specific areas – drug and mental health treatment, school truancy and dropout prevention, and victim services – although it is uncertain how the dollars would be used at the local level. Given the prevalence of problematic drug use and mental health issues among the criminal justice population, there is likely a need for more resources to address these issues than Proposition 47 would provide.¹⁶ However, serving people convicted of low-level offenses with noncustodial interventions – such as community-based supervision and day treatment centers – can result in better public safety outcomes.

Drug and property crimes are often committed and recommitted by people with complex needs such as problematic drug use and untreated mental health issues. State correctional facilities are not equipped to serve these underlying needs and in many cases may exacerbate them. Alternatively, individuals with these needs can be served in the community while maintaining or even improving public safety. For example, mental health courts – which generally

provide judicial supervision of mental health treatment in lieu of jail time for people charged with nonviolent crimes – demonstrate participant re-arrest rates that are significantly lower than those for nonparticipants.¹⁷ From early 2003 to late 2004, San Francisco mental health court participants were 26 percent less likely to be charged with new crimes and 55 percent less likely to be charged with violent crimes after 18 months in the program, compared with nonparticipants.¹⁸ Likewise, meta-analyses indicate that drug courts – which operate similarly to mental health courts – reduce recidivism by up to 26 percent among participants compared to nonparticipants.¹⁹ These types of interventions can also result in long-term public safety savings. For example, San Francisco’s drug courts have resulted in an estimated \$48 million in savings over 13 years from lower case-processing costs and reduced recidivism among participants.²⁰

Another area in which Proposition 47 would invest estimated state savings is truancy reduction and victim services, which can have additional positive impacts on participants’ lives as well as on public safety. Across the United States, millions of children experience trauma and violence at home or in their communities, live in poverty, and have inadequate access to services to mitigate their resulting needs. Nationally, 60 percent of children were exposed to violence, crime, or abuse within a 12-month period, according to a 2009 study.²¹ These children often engage in problematic behaviors at school that can lead to disciplinary action and increase the likelihood of contact with the justice system.²² However, providing a positive environment and targeted behavioral interventions in schools for at-risk students can reduce disciplinary actions that remove students from the classroom and improve academic outcomes.²³

Similarly, being a *victim* of violence is a risk factor for future criminal behavior.²⁴ Many victims of crime are repeatedly subject to victimization, and a majority of them do not utilize victim services due to a lack of access or knowledge of such services. When chronic trauma resulting from repeat victimization goes unaddressed, individuals may rely on alcohol and other drug use and can develop problematic behaviors. Poverty, lack of employment, and inadequate housing are additional barriers to recovering from victimization. Increasing access to trauma recovery services in the communities most affected by crime might help to break intergenerational cycles of victimization.

Increasing Opportunities for Familial Visitation During Incarceration Could Help to Reduce Recidivism

Proposition 47 would generally reduce reliance on incarceration in state prisons for the low-level crimes reclassified, thereby relieving some of the strain families experience when attempting to maintain relationships with their incarcerated family members.²⁵ For individuals who might otherwise have served

a sentence in prison, the shift will relieve practical burdens on families who often find that the costs of transportation to state prisons to visit their family members are prohibitively expensive.²⁶ Incarceration in county jails would increase the opportunity for familial visitation and for other community-based support persons – such as clergy or mentors – to engage the incarcerated individual in treatment and rehabilitative programs, which could continue in the community upon release. Research suggests that maintaining connections to family and other community support systems helps to prevent incarcerated individuals from being “socialized to the life of an inmate” and to instead engage them in rehabilitation.²⁷ Several studies have shown a link between visitation and reduced recidivism.²⁸

Proposition 47 Would Reduce the Collateral Consequences of Reclassified Crimes

Individuals with felony convictions often face stigma and legal restrictions that hinder them from reintegrating back into their communities. These collateral consequences for individuals with felony convictions contribute to recidivism. In particular, growing background check requirements make obtaining housing, employment, and social services significantly harder for a person with a felony conviction.²⁹ Having a felony conviction can also impair a person’s voting rights, parental rights, and immigration status.³⁰ Moreover, felony drug convictions often lead to a greater number of collateral consequences than any other category of crime due to drug war policies that disqualify individuals with felony drug convictions from various federally funded programs.

These collateral consequences can lead to loss of opportunity for individuals with felony convictions and relegate them to a permanent underclass. Most individuals affected by these collateral consequences are already indigent and may live in communities with high risk of food insecurity, unemployment, and poverty. High rates of incarceration among potential wage earners from these communities can have negative consequences for their families that are severe and that persist when the individual returns home and faces continued problems obtaining employment.³¹ By reclassifying certain low-level crimes as misdemeanors, Proposition 47 would help reduce the collateral consequences of convictions for reclassified crimes and thereby help some people successfully integrate into the community once they have paid their debt to society.

Shorter Jail Sentences for Nonviolent Crimes Could Relieve Overcrowding in County Jails

In addition to reducing the reliance on incarceration in state prison, Proposition 47 would result in shorter jail sentences for individuals convicted of reclassified crimes. Felony sentences

for the offenses that Proposition 47 would reclassify provide a maximum of three years in county jail, whereas misdemeanors carry a maximum of one year in county jail. Shorter sentences could help to reduce overcrowding in jails. As of September 2013, California's average daily jail population exceeded the total capacity by about 9 percent, or 7,000 people.³² More than 60 percent of people in jail are not serving sentences but rather are being detained *prior to* their trials. Still, reducing the length of stay in jail for the remaining individuals – those serving sentences – could reduce overcrowding by thousands of beds annually.³³

Less Incarceration for Nonviolent Crimes Could Improve Community Health

Shorter jail sentences could reduce the harm that incarceration causes to an individual's physical and mental health.³⁴

Researchers have observed hypervigilance, social withdrawal, and post-traumatic stress among incarcerated people.³⁵ There are also higher rates of contagious diseases – such as tuberculosis and hepatitis – in correctional facilities.³⁶ These various negative health effects can be minimized by reducing the amount of time an individual spends incarcerated.

Additionally, parental incarceration often results in extreme familial instability.³⁷ Nationally, one in 28 children had a parent in jail or prison in 2008, and studies have linked parental incarceration with childhood financial instability, behavioral difficulties, lower academic test scores, and increased likelihood of delinquency.³⁸ The geographically isolated location of state prisons can exacerbate these effects, as children are often unable to maintain a relationship with their parent during incarceration.³⁹ In cases when incarceration is necessary, local facilities offer greater opportunity for parent-child communication. Studies have shown that children who maintain contact with their parent during the parent's incarceration exhibit fewer disruptive and anxious behaviors.⁴⁰

How Would Proposition 47 Affect the Court System?

Felony cases generally occupy greater court and law enforcement resources and result in longer sentences than misdemeanor cases. For example, unlike misdemeanor cases, all felony cases include a preliminary hearing unless waived, at an estimated cost of \$667 per hearing.⁴¹ Proposition 47 reclassifies seven nonviolent crimes as misdemeanors, thereby reducing court caseloads in the long term. Although the precise number of individuals whose cases would be affected is uncertain, the LAO estimates that around 40,000 people annually are convicted of crimes that would be affected by Proposition 47.⁴²

While Proposition 47 would initially increase court and parole caseloads as a result of the resentencing option, in the long term the measure has the potential to greatly improve the efficiency of local criminal justice systems by alleviating the caseload burden and allowing for limited law enforcement resources to be focused on high-priority areas like violent crime. As described above, diverting individuals convicted of low-level crimes from incarceration in state prisons, and instead applying shorter jail terms and/or community-based interventions, could reduce rates of recidivism, further alleviating the strain on court and law enforcement systems. However, local results would vary depending on each particular jurisdiction's practices and available resources.

How Would Proposition 47 Affect the State Prison Population?

As of August 13, 2014, California's prisons housed 115,972 individuals in facilities with a combined design capacity of 82,707 beds – thereby operating at 140 percent of the prison system's design capacity. As a result of a federal court ruling and subsequent federal court oversight, California must reduce its prison population to 137.5 percent of the prison system's design capacity by 2016, which currently equates to approximately 113,700 people. The ruling was made as part of a lawsuit – Plata v. Brown – in which a panel of federal judges held that overcrowding in California's prisons was the main reason the state was failing to provide incarcerated individuals medical and mental health care that met US constitutional standards.⁴³

Partly in response to the court order, the Legislature in 2011 transferred – or realigned – responsibility for supervising individuals convicted of low-level felonies from the state to counties based on a framework proposed by Governor Brown. However, while realignment has resulted in a significant decrease in the state prison population, it has not been enough to meet the population threshold mandated by the court.

In February 2014, the federal court instructed the state to adopt court-ordered measures aimed at reducing the prison population, such as early release for elderly or medically incapacitated individuals. Additionally, California's 2014-15 state budget (which took effect on July 1, 2014) allocates \$91 million from the Recidivism Reduction Fund to be spent on activities that are designed to reduce repeat offending, such as drug and mental health treatment services. As described above, addressing the problematic drug use and mental health needs of people involved in the criminal justice system reduces repeat offending and can break cycles of incarceration. Therefore, the increased funding for such services is expected to further reduce the prison population. However, if the state cannot meet the prison population threshold,

including interim benchmarks, a court-appointed independent compliance officer will release people early.

Proposition 47 would reduce prison overcrowding by two means: (1) providing a resentencing option for individuals currently serving certain felony sentences, and (2) reducing the number of people sent to state prison. Specifically:

- **Proposition 47 would allow individuals currently serving felony sentences for crimes reclassified by the measure to apply for resentencing, which would allow some individuals to be released earlier than currently projected.** The precise number of people in state prison who would be affected by the measure is uncertain. In 2013, more than 7,000 individuals were serving sentences for crimes that could be reclassified by the measure.⁴⁴ Individuals currently serving a state prison term for one of these offenses likely have a prior conviction for an offense that precluded them from serving their sentence locally under realignment.⁴⁵ Under Proposition 47, individuals serving a sentence for reclassified crimes could apply for resentencing unless they have a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.
- **Proposition 47 would limit new admissions to state prison for a reclassified crime to only individuals with a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.** New admissions for the crimes reclassified by Proposition 47 would decline. While the precise magnitude of this decline would depend on future crime trends, prison admissions data indicate that more than 4,000 individuals were admitted to prison in 2013 for crimes that could be reclassified by the measure.⁴⁶

If Proposition 47 reduced the prison population by just 2,300 individuals – through resentencing and/or reduced new admissions – the state could meet the court-ordered population threshold via the measure alone.⁴⁷ Any further decline in the prison population as a result of the measure could help to reduce the state’s reliance on private in-state and out-of-state prisons, which currently house more than 15,000 Californians.

What Would Proposition 47 Mean for State and Local Budgets?

In the near term, implementation of Proposition 47 could temporarily increase court and parole costs as a consequence of the resentencing option, while resulting in savings in the state prison system. Yet, state and local costs are likely to decline over the long term because misdemeanor cases take less time to

adjudicate, involve fewer attorney resources, and are less likely to result in long periods of incarceration. However, Proposition 47’s impact on state and local budgets would depend on how counties currently charge wobbler crimes, how the individuals convicted are currently sentenced, and how they would be sentenced following implementation of the measure. Given the wide variation in county sentencing practices, the fiscal impact of Proposition 47 is uncertain. The LAO estimates net savings to the overall criminal justice system – both state and local – in the hundreds of millions of dollars each year.

Reducing the Prison Population Would Help to Bend the State’s “Prison Cost Curve”

Over the past two decades, California has significantly increased spending on corrections even as other critical services have been cut. In particular, the per capita cost of state prisons has risen by 87 percent from the 1994-95 level, after adjusting for inflation.⁴⁸ Bending the prison cost curve – that is, curtailing the persistent trend of rising state prison spending – would free up General Fund dollars that could be redirected to other critical state priorities in the years ahead. The LAO projects that Proposition 47 would result in net state savings in the low hundreds of millions of dollars annually, primarily due to the ongoing reduction in the prison population. As noted above, these state savings would be deposited into a special fund that would support substance use and mental health treatment, school truancy and dropout prevention, and victim services.

Additionally, if the state achieves the court-ordered population reduction under *Plata v. Brown* – described above – the state could reduce its litigation costs.⁴⁹ Since 2001-02, the *Plata* litigation has cost the state more than \$31 million in court, attorney, judgment, and settlement fees (not including the cost of facility audits).⁵⁰

Reducing Recidivism and Court Caseloads Would Result in Long-Term Local Criminal Justice Savings

Another budgetary effect of Proposition 47 would be long-term local savings. The LAO projects several hundred million dollars in net local savings annually as a result of freeing up jail capacity, decreasing the number of people under community supervision, and reducing attorney and court workloads. These savings would remain with each county and would not be transferred to the state special fund.

Proposition 47 Would Limit the Legislature’s Ability to Distribute State Funds

Allocating funds by a ballot initiative – a process that some observers call “ballot box budgeting” – limits the ability of the

Legislature to redirect dollars in response to shifting economic, budget, and demographic trends. For example, child care, higher education, and safety-net services for low-income seniors and people with disabilities are operating at severely diminished levels of funding in the aftermath of the Great Recession.⁵¹ Any state savings attributable to Proposition 47 could not be used to boost funding for these programs. On the other hand, investment in the three areas targeted by Proposition 47 – drug and mental health treatment, school truancy and dropout prevention, and victim services – has been shown to improve public safety and could further reduce criminal justice spending in the long term, thereby freeing up dollars that could be invested in critical public systems and services.

What Do Proponents Argue?

Proponents of Proposition 47, including San Francisco District Attorney, George Gascón and former San Diego Police Chief William Lansdowne, argue that “for too long, California’s overcrowded prisons have been disproportionately draining taxpayer dollars and law enforcement resources, and incarcerating too many people convicted of low-level, nonviolent offenses.” Proposition 47, they argue, “focuses law enforcement dollars on violent and serious crime” and “invests in solutions supported by the best criminal justice science, which will increase safety and make better use of taxpayer dollars.”⁵²

What Do Opponents Argue?

Opponents of Proposition 47, including the California District Attorneys Association and Crime Victims United, argue that “California has plenty of laws and programs that allow judges and prosecutors to keep first-time, low-level offenders out of jail if it is appropriate. Prop. 47 would strip judges and prosecutors

of that discretion.” Proposition 47, they argue, “will overcrowd jails with dangerous felons who should be in state prison and jam California’s courts with hearings to provide ‘Get Out of Prison Free’ cards.”⁵³

Conclusion

Proposition 47 would reclassify certain nonviolent crimes as misdemeanors, thereby reducing the penalties for these crimes, unless the person convicted has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense. By reducing California’s reliance on incarceration and placing a greater emphasis on local interventions, Proposition 47 is projected to generate state and local savings in the hundreds of millions of dollars annually. Any state savings would be invested in drug and mental health treatment, support for K-12 students, and victim services.

In addition, the state prison population is likely to decline as a result of Proposition 47, thereby helping the state comply with a federal court mandate to reduce prison overcrowding. While the state has been implementing prison population reduction measures, these may not be enough to achieve the necessary reduction. Additionally, California’s prison system remains unable to provide mental health and medical care that meet constitutional standards, and the prison environment can exacerbate the complex needs of many individuals who commit nonviolent drug and property crimes.

Proposition 47 would continue California’s recent trend of moving away from state corrections for nonviolent crimes and investing in local public safety solutions. By doing so, Proposition 47 could represent a step toward improving public safety, student educational outcomes, and community health.

Selena Teji, with assistance from Scott Graves, prepared this Budget Brief. The California Budget Project (CBP) neither supports nor opposes Proposition 47. This Budget Brief is designed to help voters reach an informed decision based on the merits of the issues. The CBP was established in 1995 to provide Californians with a source of timely, objective, and accessible expertise on state fiscal and economic policy issues. The CBP engages in independent fiscal and policy analysis and public education with the goal of improving public policies affecting the economic and social well-being of low- and middle-income Californians. General operating support for the CBP is provided by foundation grants, subscriptions, and individual contributions. Please visit the CBP’s website at www.cbp.org.

ENDNOTES

- ¹ In addition to any registerable sex offense, these serious and/or violent offenses are homicide, attempted homicide, solicitation to commit murder, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, and any serious and/or violent felony punishable by life imprisonment or death. California Penal Code, Section 667(e)(2)(C)(iv).
- ² California Penal Code, Section 17(b).
- ³ Petty theft where the value of the property taken does not exceed \$50 may be charged as a misdemeanor or an infraction, at the discretion of the prosecutor, provided the person has no prior theft-related conviction. California Penal Code, Section 490.1(a).
- ⁴ Theft of a firearm is a felony. California Penal Code, Sections 487 and 489.

- ⁵ One prior conviction for petty theft will suffice if the person also has a prior conviction for a serious and/or violent offense or a registerable sex offense. California Penal Code, Section 666(b). “Theft-related” crimes are grand theft, embezzlement from a dependent adult or any person age 65 or over, auto theft, burglary, carjacking, robbery, and receiving stolen property if it qualifies as a felony. California Penal Code, Section 666(a).
- ⁶ However, with respect to possession of certain controlled substances, Proposition 47 would *require* a felony sentence if the person has a prior conviction for a serious and/or violent offense, as specified by the measure, or for any registerable sex offense.
- ⁷ Petitions for resentencing would have to be made within three years of Proposition 47’s passage unless the applicant could show good cause for the delay.
- ⁸ These violent offenses are homicide; attempted homicide; assault with a machine gun on a peace officer or firefighter; any felony punishable by life imprisonment or death; oral copulation, sodomy, or sexual penetration with a child who is under 14 years of age and who is more than 10 years younger than the defendant; a lewd or lascivious act involving a child under 14 years of age; and any sexually violent offense. California Penal Code, Section 667(e)(2)(C)(iv).
- ⁹ Applications for modifying a criminal record would have to be made within three years of Proposition 47’s passage unless the applicant could show good cause for the delay.
- ¹⁰ Specifically, the amount transferred from the state General Fund to the new special fund each fiscal year would be based on the estimated savings attributable to the measure compared to the fiscal year preceding the measure’s passage (2013-14). This estimate would be calculated by the Department of Finance.
- ¹¹ Diversion programs are alternatives to traditional court or law enforcement involvement. Criminal charges are dropped if the participant successfully completes the program requirements, such as participation in drug treatment.
- ¹² Assisting people traumatized by violence may prevent them from engaging in violence or crime.
- ¹³ This audit process would be financed through the special fund created by Proposition 47.
- ¹⁴ California Budget Project, *Requirements for Approving Key Legislative Actions in California* (June 4, 2014).
- ¹⁵ Currently, individuals convicted of offenses that would be reclassified by Proposition 47 are generally being sentenced to a jail term, community supervision, or a combination of both. Individuals convicted of a felony may receive prison sentences if they have a serious and/or violent criminal history. Prison sentences accounted for approximately 8 to 10 percent of sentences for these crimes – roughly 4,000 to 8,000 people – in 2012.
- ¹⁶ See for example, Little Hoover Commission, *For Our Health & Safety: Joining Forces to Defeat Addiction* (March 2003) and Stanford Law School Three Strikes Project, *When Did Prisons Become Acceptable Mental Healthcare Facilities?* (May 28, 2014).
- ¹⁷ Henry J. Steadman, et al., “Effect of Mental Health Courts on Arrests and Jail Days: A Multisite Study” *Archives of General Psychiatry* 68 (February 2011), p. 171.
- ¹⁸ Dale E. McNiel and Renée L. Binder, “Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence” *American Journal of Psychiatry* 164 (September 2007), p. 1401.
- ¹⁹ David B. Wilson, Ojmarrh Mitchell, and Doris L. Mackenzie, “A Systematic Review of Drug Court Effects on Recidivism” *Journal of Experimental Criminology* 2 (2006), p. 479.
- ²⁰ Shannon M. Carey and Mark Waller, *California Drug Courts: Costs and Benefits* (NPC Research: September 2008), p. 9.
- ²¹ David Finkelhor, et al., “Violence, Abuse, and Crime Exposure in a National Sample of Children and Youth,” *Pediatrics* 124 (2009), p.3.
- ²² Emily Morgan, et al., *The School Discipline Consensus Report: Strategies From the Field to Keep Students Engaged in School and Out of the Juvenile Justice System* (The Council of State Governments Justice Center: June 4, 2014), p. 114.
- ²³ A Emily Morgan, et al., *The School Discipline Consensus Report: Strategies From the Field to Keep Students Engaged in School and Out of the Juvenile Justice System* (The Council of State Governments Justice Center: June 4, 2014), p. 112.
- ²⁴ Information in this paragraph on victims of crime is from Heather Warnken, *Untold Stories of California Crime Victims: Research and Recommendations on Repeat Victimization and Rebuilding Lives* (Chief Justice Earl Warren Institute on Law and Social Policy: April 2014), pp. 9 and 17.
- ²⁵ However, some of these gains would be offset by a new possibility that a small category of first-time check fraud, petty theft, and low-level drug possession offenses that are currently misdemeanors could be charged as felonies under the measure and therefore result in a prison term. It is unknown how many people this would affect.
- ²⁶ See for example, Grant Duwe and Valerie Clark, “Blessed Be the Social Tie That Binds: The Effects of Prison Visitation on Offender Recidivism” *Criminal Justice Policy Review* 24 (2013).
- ²⁷ Shymeka L. Hunter, “More Than Just a Private Affair: Is the Practice of Incarcerating Alaska Prisoners in Private Out-of-State Prisons Unconstitutional?” *Alaska Law Review* 17 (2000), p. 339 and Grant Duwe and Valerie Clark, “Blessed Be the Social Tie That Binds: The Effects of Prison Visitation on Offender Recidivism” *Criminal Justice Policy Review* 24 (2013).
- ²⁸ See for example, Grant Duwe and Valerie Clark, “Blessed Be the Social Tie That Binds: The Effects of Prison Visitation on Offender Recidivism” *Criminal Justice Policy Review* 24 (2013).
- ²⁹ Information on the collateral consequences of criminal convictions is from Michael Pinard and Anthony C. Thompson, “Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction” *New York University Review of Law & Social Change* 30 (2006), pp. 588-590 and 592, and National Association of Criminal Defense Lawyers, *Collateral Damage: America’s Failure to Forgive or Forget in the War on Crime* (May 2014), pp. 9 and 22-25. In 2013, California enacted AB 218, which bars public sector employers from asking for information about a job applicant’s criminal background until after the initial application stage of the hiring process.
- ³⁰ Several collateral consequences may also apply to misdemeanor convictions. For example, some misdemeanor crimes can still be considered “aggravated felonies” under federal immigration law, which can result in deportation.
- ³¹ Bruce Western and Becky Pettit, *Collateral Costs: Incarceration’s Effect on Economic Mobility* (The Pew Charitable Trusts: 2010), p. 16.
- ³² Board of State and Community Corrections, Average Daily Population, Rated Capacity, and Bookings data, last updated May 14, 2014.
- ³³ Legislative Analyst’s Office, “Proposition 47: Criminal Sentences. Misdemeanor Penalties. Initiative Statute,” in Secretary of State’s Office, *California General Election Tuesday, November 4, 2014: Official Voter Information Guide*, p. 37.
- ³⁴ Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* (December 2001), p. 4.
- ³⁵ Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* (December 2001), pp. 7-12.
- ³⁶ Committee on Causes and Consequences of High Rates of Incarceration, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (National Research Council of the National Academies: 2014), p. 208.

- ³⁷ Randall Shelden and Selena Teji, *Collateral Consequences of Interstate Transfer of Prisoners* (Center on Juvenile and Criminal Justice: July 2012), pp. 5-6.
- ³⁸ Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility* (The Pew Charitable Trusts: 2010), p. 18. This publication uses the most recent data available.
- ³⁹ Randall Shelden and Selena Teji, *Collateral Consequences of Interstate Transfer of Prisoners* (Center on Juvenile and Criminal Justice: July 2012), pp. 5-6.
- ⁴⁰ Nancy La Vigne, Elizabeth Davies, and Diana Brazzell, *Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents* (Urban Institute Justice Policy Center: 2008), p. 10.
- ⁴¹ California Penal Code, Section 859b and Senate Appropriations Committee Fiscal Summary of SB 968 (May 14, 2012), p. 2.
- ⁴² Legislative Analyst's Office, "Proposition 47: Criminal Sentences. Misdemeanor Penalties. Initiative Statute," in Secretary of State's Office, *California General Election Tuesday, November 4, 2014: Official Voter Information Guide*, p. 36.
- ⁴³ US Supreme Court, *Brown v. Plata*, 563 US ____ (2011), downloaded from <http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf> on August 28, 2014. The page number for this case citation is left blank because the US Supreme Court has not yet printed the bound volume of the *United States Reporter*.
- ⁴⁴ Unpublished California Department of Corrections and Rehabilitation data. This estimate assumes that one-third of second-degree burglary convictions reported in the CDCR data were related to shoplifting, which is a type of second-degree burglary that would be affected by Proposition 47. The other two-thirds of second-degree burglary convictions reported in the CDCR data were excluded from the CBP's analysis.
- ⁴⁵ For a list of crimes see California Department of Corrections and Rehabilitation, *AB 109 Final Crime Exclusion List* (August 18, 2011).
- ⁴⁶ Unpublished California Department of Corrections and Rehabilitation data. This estimate assumes that one-third of second-degree burglary convictions reported in the CDCR data were related to shoplifting, which is a type of second-degree burglary that would be affected by Proposition 47. The other two-thirds of second-degree burglary convictions reported in the CDCR data were excluded from the CBP's analysis.
- ⁴⁷ Complying with the population-reduction order may not end the *Plata* litigation. California prisons will remain under federal receivership until the court determines that the provision of medical and mental health care meets constitutional standards, which could occur before or after the population-reduction order is met.
- ⁴⁸ California Budget Project, *State Corrections in the Governor's Proposed 2014-15 Budget: Spending Would Be More Than \$1 Billion Above the 2012-13 Level* (February 13, 2014), p. 2.
- ⁴⁹ Complying with the population-reduction order may not end the *Plata* litigation. California prisons will remain under federal receivership until the court determines that the provision of medical and mental health care meets constitutional standards, which could occur before or after the population-reduction order is met.
- ⁵⁰ Personal communication with the California Department of Finance (June 27, 2014).
- ⁵¹ California Budget Project, *2014-15 Budget Agreement Prioritizes Fiscal Austerity, Takes Only a Small Step Toward Reinvesting in Shared Prosperity* (June 26, 2014), p. 1.
- ⁵² "Argument in Favor of Proposition 47," in Secretary of State's Office, *California General Election Tuesday, November 4, 2014: Official Voter Information Guide*, p. 38.
- ⁵³ "Argument Against Proposition 47," in Secretary of State's Office, *California General Election Tuesday, November 4, 2014: Official Voter Information Guide*, p. 39.