

Analyst Name Jenny Tse

Today's Date 5/7/2020

Advocacy Area Social Policy

League Position 1 Sentencing Policy (National)

League Position 3 Choose an item.

Subject Change some misdemeanors to felonies, restrict parole, expand DNA collection

Bill Amendment Assessment Choose an item.

Initiative No. & Author 1804. (17-0044) & Proponents: Nina Salarno

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Date Received by Initiative Coordinator 11/28/2017

Measure Became Eligible 7/9/2018

League Position 2 Individual Liberties (National)

League Position 4 Choose an item.

Secondary Position Analysis Recommended

Secondary Position Area Choose an item.

LA Recommendation: Support  Oppose  Support if Amended  Take No Position

PD Recommendation: Support Level given significance to League Position Choose an item.

AD Recommendation: Support Level given significance to Advocacy Area Choose an item.

### CURRENT LAW SUMMARIZED

#### Criminal penalties

- **Felony sentencing:** people with felony convictions can be sentenced as follows:
  - people with felony convictions who have current or prior convictions for serious, violent, or sex crimes can be sentenced to state prison.
  - people with felony convictions who have no current or prior convictions for serious, violent, or sex offenses are typically sentenced to county jail or the supervision of a county probation officer in the community, or both. Depending on the discretion of the judge and what crime was committed, some people convicted of a felony who do have such convictions can receive similar sentences.
- **Misdemeanor sentencing:** people with misdemeanor convictions may be sentenced to jail, county community supervision, a fine, or some combination of these. People with misdemeanor convictions are generally sentenced to shorter periods of incarceration and lower levels of community supervision.
- **Wobbler sentencing:** some crimes—such as unauthorized taking of a vehicle—can be charged as either a felony or a misdemeanor. These crimes are known as “wobblers.”

#### Proposition 57 Release Consideration Process

- Proposition 57 (2016)<sup>1</sup> amended the State Constitution to specify that any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for release consideration after completing the full term for their primary offense.
- The CDCR<sup>2</sup> adopted regulations that limit eligibility for the process to incarcerated people who are not sentenced to death or life in prison without the possibility of parole, are not serving a term for a violent felony, and are not required to register as a person convicted of sexual offense.
- Board of Parole Hearings (BPH) staff review information about eligible incarcerated people—such as their criminal history and information submitted by prosecutors and survivors/victims—to determine if they do not pose an unreasonable risk to public safety and are suitable for release. Incarcerated people who are denied release are reconsidered the following year.

#### Community supervision practices

- **State Parole:** people with felony convictions, who are released from prison after serving a sentence for a serious or violent crime, are supervised for a period of time in the community by state parole agents.
- **Post-Release Community Supervision (PRCS):** people who are released from prison after serving a sentence for other (not serious or violent) crimes are usually supervised in the community by county probation officers under PRCS.
- **Revocation of Parole or PRCS:** when people on parole or PRCS break the rules that they are required to follow while supervised in the community (the “terms of their supervision”), parole and probation departments can ask a judge to change the terms of their supervision, potentially resulting in harsher terms or placement in county jail.

<sup>1</sup> <https://lwvc.org/vote/elections/ballot-measures/proposition-57-criminal-sentences-parole-juvenile-criminal>

<sup>2</sup> California Department of Corrections and Rehabilitation

**DNA Collection**

- Under current state law, any adult arrested or charged with a felony offense, any juvenile found to have committed a felony offense, or any individual required to register as a person convicted of sexual offense or convicted of arson is required to provide DNA samples for law enforcement purposes.

**THE BILL'S CHANGES TO CURRENT LAW**

**Increase criminal penalties for certain theft-related crimes**

- Allows some existing theft-related offenses that are generally punished as misdemeanors to be punished as felonies.<sup>3</sup>
- Creates two new wobbler crimes, punishable by up to three years in jail, including in cases where the person has a prior serious, violent, or sex offense:
  - **Serial Theft:** any person with two or more past convictions for certain theft-related crimes (such as burglary) who is found guilty of shoplifting or petty theft involving property that is worth more than \$250 could be charged with serial theft.<sup>4</sup>
  - **Organized Retail Theft:** any person, acting with others who commits petty theft or shoplifting two or more times where the total value of property stolen within 180 days exceeds \$250 could be charged with organized retail theft.<sup>5</sup>

**Change to Proposition 57 release consideration process.** The major changes are:

- Expanding what is considered a violent felony for parole consideration, which then excludes certain incarcerated people who would otherwise qualify for the release consideration process. For example, incarcerated people sentenced to life with the possibility of parole or convicted of certain types of assault would no longer be eligible.<sup>6</sup>
- Requiring BPH to deny release to incarcerated people who pose an unreasonable risk of creating victims as a result of future felony activity, rather than only those who pose an unreasonable risk to public safety.<sup>7</sup>
- Requiring CDCR to make reasonable efforts to locate victims, regardless of whether they are registered with the state, and notify them of the review. Allowing prosecuting agencies to appeal a release decision made by BPH. Incarcerated people denied release under Prop 57, shall not be eligible for release consideration for two calendar years from the date of the final decision of the previous denial.<sup>8</sup>

**Change to community supervision practices that affect how state parole and county probation departments supervise people on parole/probation in the community.** The major changes are:

- Requiring state parole and county probation departments to exchange more information about the people on parole/probation they supervise.<sup>9</sup>
- Requiring probation departments to ask a judge to change the terms of the supervision of a person on PRCS if they have violated them for a third time.<sup>10</sup>

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<sup>3</sup> See Sec.6 Shoplifting in [Legal Text](#).

<sup>4</sup> See Sec.7 Serial Theft in [Legal Text](#).

<sup>5</sup> See Sec. 8 Organized Retail Theft in [Legal Text](#). Also, a similar existing state law currently exists in the same section the measure intends to add onto in the Penal Code ([Section 490.4 on the Penal Code](#)). The current Section 490.4 became effective June 27, 2019 after this measure had been eligible and will sunset July 1, 2021, so there isn't much conflict here. Though I would argue the current Section 490.4 is more nuanced than the measure's Section 490.4.

<sup>6</sup> Amended in Section 3003 of the Penal Code. Section 3040.1 added to the Penal Code. See page 4, and pages 5-7 in the legal text.

<sup>7</sup> Section 3040.2 added to the Penal Code. See page 7 in the legal text.

<sup>8</sup> Section 3040.4 added to the Penal Code. See page 9 in the legal text.

<sup>9</sup> Amended in paragraph (1) of subdivision (e) of Section 3003 of the Penal Code and paragraph (1) of subdivision (k) of Section 3003 of the Penal Code. See page 4-5 in the legal text.

<sup>10</sup> Amended in Section 3455 of the Penal Code. See page 12 in the legal text.

**Expand DNA Collection<sup>11</sup>**

- Expands the types of offenses that would require state and local law enforcement to collect DNA samples from people.
- Specifically, it requires them to collect DNA samples from adults convicted of certain misdemeanors.

**ARGUMENT(S) THAT JUSTIFY LEAGUE ACTION**

I strongly recommend LWVC oppose the ballot measure. The measure assumes that keeping people incarcerated and longer in prison keeps the community safer, but it does not. Longer sentences do not lower recidivism rates<sup>12</sup> and Prop 47 did not increase violent crime.<sup>13</sup> It is trying to weaken the previous measures that LWVC had supported:

- [Prop 47 Criminal Sentences. Misdemeanor Penalties \(Nov 2014\)](#)
- [Prop 57 Public Safety and Rehabilitation Act \(Nov 2016\)](#)

Both measures we supported using the national position on Sentencing Policy (“believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime. The LWVUS opposes mandatory minimum sentences for drug offenses.”), and the position is valid here as we should oppose such a measure as it would make it more difficult for incarcerated people to get Prop 57 releases and it reverses some of the changes from Prop 47 where previous wobbler offenses were changed to misdemeanors, this measure changes some misdemeanors to felonies.

The measure also expands [DNA Collection that came from Prop 69](#), which LWVC opposed back in 2004 based on our national position on Individual Liberties (“belief in the individual liberties guaranteed by the Constitution of the United States. The League is convinced that individual rights now protected by the Constitution should not be weakened or abridged”). The measure would further erode our individual rights. Also, even if a person is proven innocent, the onus for DNA expungement is on the person, and their DNA will not be expunged until they submit an application with attached legal documentation.<sup>14</sup>

Furthermore, some of the DNA expansion in the measure, expands to Prop 47 misdemeanors such as shoplifting, check forgeries under \$950, and petty theft. So while these previous wobbler offenses became misdemeanors with Prop 47, in some way the penalty is higher in the sense that if one is suspected of such offenses, your DNA will be collected by law enforcement.

The measure aims to roll-back the reforms that not only the League supported, but reforms that have contributed to equitable public safety.

**COMMENTS:**

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<sup>11</sup> See Sec.5. DNA Collection (p.13) in Legal Text.

<sup>12</sup> [Recidivism of Felony Offenders in California](#) (June 2019 Public Policy Institute of California) states “Individuals released from prison had the highest reconviction rates. This group also served the longest and most costly incarceration terms. This finding is consistent with previous research that has found little evidence linking more severe sanctions to lower recidivism.”

<sup>13</sup> [The Effect of Sentencing Reform on Crime Rates: Evidence from California's Proposition 47](#) Patricio Dominguez-Rivera (UC Berkeley Goldman School of Public Policy, Patricio Dominguez-Rivera, Magnus Lofstrom, and Steven Raphael, July, 2019) states “To summarize the results of our empirical analysis, we find little evidence that the changes in correctional populations, arrests, and convictions reclassifications ushered in by California’s proposition 47 impacted violent crime rates in the state. Once changes in offense definitions and reporting practices in key agencies are accounted for, violent crime in California are roughly at pre-proposition levels and generally lower than the levels that existed in 2010 prior to major reforms to the state’s criminal justice system.”

<sup>14</sup> California Penal Code section 299. See [DNA Expungement Application Form](#)

Summary of estimate by Legislative Analyst and Director of Finance of **fiscal impact on state and local government**:<sup>15</sup>

- Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily related to increases in penalties for certain theft-related crimes and the changes to the nonviolent offender release consideration process.
- Increased state and local court-related costs of around a few million dollars annually related to processing probation revocations and additional felony theft filings.
- Increased state and local law enforcement costs not likely to exceed a couple million dollars annually related to collecting and processing DNA samples from additional offenders.

While this measure is titled “Reducing Crime and Keeping California Safe Act of 2018,” they was a senate bill early this year that was practically the same exact bill that failed in the Senate Public Safety committee: [SB-710 Crimes: parole, theft, and DNA collection](#).

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<sup>15</sup> [17-0044A1 Fiscal Analysis](#)