
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 1178 **Hearing Date:** April 19, 2022
Author: Bradford
Version: February 17, 2022
Urgency: Yes **Fiscal:** No
Consultant: SC

Subject: *Criminal procedure: sentencing*

HISTORY

Source: Californians for Safety and Justice
Los Angeles County

Prior Legislation: AB 2765 (Weber), Ch. 767, Stats. 2016

Support: ACLU California Action; Alliance for Safety and Justice; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; Catron Academy Learning Institute; Communities United for Restorative Youth Justice; County of Los Angeles Board of Supervisors; County of Santa Clara; Courage California; Dee Hill Foundation; Drug Policy Alliance; Faith in the Valley; Initiate Justice; Rubicon Programs; Santa Cruz Barrios Unidos; Time Done; Underground Scholars Initiative at UC Berkeley; Underground Scholars Initiative at UC Santa Barbara; Underground Scholars Initiative at UCLA; UC San Diego; Urban Counties of California

Opposition: California Association of Highway Patrolmen

PURPOSE

The purpose of this bill is to remove the deadline to file petitions for relief for persons seeking reductions of prior felony convictions to misdemeanors as authorized by Proposition 47.

Existing law authorizes a person who, on November 5, 2014, was 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 Proposition 47 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 their case to request resentencing of the offense to a misdemeanor. (Pen. Code, § 1170.18, subd. (a).)

Existing law provides that upon receiving the petition for recall and resentencing, the court shall determine whether the petitioner meets specified criteria. If the petitioner satisfies the criteria, the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor. Requires the court to deny resentencing if the petitioner has a prior disqualifying conviction, is required to register as a sex offender under section, or if the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. (Pen.

Code, § 1170.18, subd. (b).)

Existing law authorizes a court to deny a petition for a recall of sentence, if the court in the exercise of its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to the public safety. In exercising its discretion, the court may consider all of the following:

- The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes;
- The petitioner's disciplinary record and record of rehabilitation while incarcerated; and,
- Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. (Pen Code, § 1170.18, subd. (b)(1)-(3).)

Existing law defines "unreasonable risk of danger to the public safety" to mean an unreasonable risk the petitioner will commit a new "violent" felony, as specified. (Pen. Code, § 1170.18, subd. (b).)

Existing law provides that a person that is currently serving a sentence for conviction of a felony and who is resentenced shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of the resentencing order, releases the person from parole.

Existing law allows a person who has completed his or her sentence for a conviction of a felony who would have been guilty of a misdemeanor under the provisions of Proposition 47 if it would have in effect at the time of the offense, to apply to have the felony conviction designated as a misdemeanor. (Pen. Code, § 1170.18, subd. (f).)

Existing law states that any petition filed for recall and resentencing shall be filed within three years after the effective date of Proposition 47, or at later date upon a showing of good cause. (Pen. Code, § 1170.18, subd. (j).)

Existing law provides that any felony conviction that is recalled and resentenced or designated as a misdemeanor shall be considered a misdemeanor for all purposes, except for the right to own or possess firearms. (Pen. Code, § 1170.18, subd. (k).)

Existing law requires a petition for recall and resentencing to be filed before November 4, 2022, or at a later date upon a showing of good cause, except as specified. (Pen. Code, § 1170.18, subd. (j).)

This bill removes the deadline for filing a petition for recall and resentencing for offenses reduced to a misdemeanor by Proposition 47.

This bill contains an urgency clause.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Prop. 47, passed by the voters in 2014, reclassified six low-level, non-violent felonies as misdemeanors and authorized individuals convicted of qualifying felonies to petition the court to resentence their previous convictions as misdemeanors.

Prop. 47 established an initial three-year window—through November 4, 2017—during which eligible individuals could petition the court for records changes; after the deadline, the opportunity for records reclassification is available with a showing of good cause. Recognizing the massive numbers of individuals eligible for records relief, the Legislature passed and Governor Brown signed AB 2765 (Weber, 2016), which extended the deadline to November 4, 2022, or later upon a showing of good cause.

Prop. 47 does not allow offenses to go unprosecuted; instead, it modifies the sentencing level of offenses considered low-level crimes only for case dispositions finalized prior to the 2014 enactment of the ballot measure.

SB 1178 would eliminate the November 2022 time limitation for retrospective cases in which a person convicted of a qualifying felony may petition the court to have the sentence reduced to a misdemeanor and avoid a more time and resource-intensive process if otherwise qualified individuals are required to show good cause. By amending current law and eliminating the deadline altogether, all Californians who otherwise qualify for record redress for old felonies will have equitable access to the intended benefits provided by Prop. 47, regardless of their access to resources.

2. Proposition 47

Proposition 47, approved by voters on November 4, 2014, reduced the penalties for certain drug and property crimes and required that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Proposition 47 contained specific language reflecting the purpose and intent of the proposition:

“In enacting this act, it is the purpose and intent of the people of the State of California to: “. . . (3) Require 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. . . ”

<http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47>)

“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* (2016) 1 Cal.5th 984, 992, citing Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.)

Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also directed that theft crimes of \$950 or less shall be considered petty theft and be punished as a misdemeanor, with limited exceptions for individuals with specified prior convictions.

3. Time Limit for Filing for Relief under Proposition 47

Proposition 47 also authorized defendants who were serving sentences for felonies that were now misdemeanors under the proposition could petition for resentencing, with prohibitions on relief that apply to persons with specified prior sex crimes for which registration is required and especially egregious serious felonies. Persons who had completed a sentence for such an offense were authorized to petition to reduce the convictions to misdemeanors. Felony convictions resentenced or reclassified as misdemeanors under the proposition are considered misdemeanors for all purposes, except that such relief does not permit the person to own, possess, or have in his or her custody or control any firearm. The initiative required persons seeking relief to file a petition within three years of the effective date of the initiative. The deadline specified in the initiative is November 5, 2017.

The Legislative Analyst's ballot summary explained this portion of the initiative:

This measure allows offenders currently serving felony sentences for the above crimes to apply to have their felony sentences reduced to misdemeanor sentences. In addition, certain offenders who have already completed a sentence for a felony that the measure changes could apply to the court to have their felony conviction changed to a misdemeanor. However, no offender who has committed a specified severe crime could be resentenced or have their conviction changed. In addition, the measure states that a court is not required to resentence an offender currently serving a felony sentence if the court finds it likely that the offender will commit a specified severe crime. Offenders who are resentenced would be required to be on state parole for one year, unless the judge chooses to remove that requirement.

In 2016, this filing deadline was amended by AB 2765 (Weber), Chapter 767, Statutes of 2016. AB 2765 provided an extended deadline of November 4, 2022, or at a later date upon showing of good cause.

This bill eliminates the deadline to file a petition for sentence reduction of the offenses reclassified as misdemeanors pursuant to Proposition 47 and contains an urgency clause so that it may go into effect before the November 4, 2022 deadline lapses.

4. California Constitutional Limitations on Amending a Voter Initiative

Because Proposition 47 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power and, hence, to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.)

As to the Legislature's authority to amend the initiative, Proposition 47 states:

This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act. (<<http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47>>.)

This bill makes amendments to provisions of law enacted by Proposition 47 that are consistent with and further the intent of this act, specifically allowing people to reduce prior felony convictions to misdemeanors, thus this bill is keyed as requiring a 2/3 vote.

5. Argument in Support

According to Los Angeles County, a co-sponsor of this bill:

As you know, Proposition 47 changed the penalty for simple drug possession and five petty theft-related crimes from a felony to a misdemeanor. Resulting State correctional savings are redirected to three distinct local investments aimed at reducing crime and increasing community health and wellness through enhancing diversion opportunities, reducing recidivism, promoting improved outcomes for K-12 students, and supporting crime victims. Reclassifying old felonies to misdemeanors opens many doors that otherwise would remain off-limits – doors to jobs, housing, educational and other opportunities to provide family stability, economic security and self-sufficiency.

By eliminating the November 2022 sunset date, SB 1178 would ensure that all Californians with eligible low level, non-violent felonies on their record could move past the thousands of permanent restrictions placed on the lives of people living with an old felony conviction. If the sunset expires, otherwise eligible individuals would continue to have redress for record changes but only upon a showing of good cause – a process that would result in additional court workload and additional state costs as compared to the petition process currently in place.

CSJ [Californians for Safety and Justice], one of the original co-authors of Proposition 47, and the County of Los Angeles continue to proactively promote the opportunity for records reclassification and continue working to advance the larger principles of diversion and reentry. By permanently extending resentencing and record change opportunities under Proposition 47, SB 1178 advances greater

efficiency for the already overburdened courts and ensures that eligible individuals will continue to benefit from reclassifying their convictions.

6. Argument in Opposition

According to the California Association of Highway Patrolmen:

Current law, the Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, reduced the penalties for various crimes. Under the provisions of the act, a person who, on November 5, 2014, was serving a sentence for a conviction of a felony or felonies who would have been guilty of a misdemeanor under the act if the act had been in effect at the time of the conviction may petition or apply to have the sentence reduced in accordance with the act. Current law requires those petitions to be filed on or before November 4, 2022, or at a later date upon showing of good cause. This bill would amend Proposition 47 to remove that deadline for the filing of those petitions.

We believe the current deadline allowed for ample time for violators to petition for resentencing. It does not need to be extended, let alone removed.

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