
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 749 **Hearing Date:** April 11, 2023
Author: Smallwood-Cuevas
Version: February 17, 2023
Urgency: Yes **Fiscal:** Yes
Consultant: SC

Subject: *Criminal procedure: sentencing*

HISTORY

Source: Californians for Safety and Justice

Prior Legislation: SB 1178 (Bradford), failed Assem. Floor, 2022
AB 972 (Bonta), held Assem. Approps., 2019
AB 2765 (Weber), Ch. 767, Stats. 2016

Support: A New Way of Life Reentry Project; All of Us or None Orange County; Bend the Arc; Jewish Action; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; California Religious Action Center; Caravan for Justice; Chrysalis; Communities United for Restorative Youth Justice; Courage California; Faith in Action East Bay; Initiate Justice; Los Angeles Regional Reentry Partnership; National Association of Social Workers – California Chapter; Prosecutors Alliance California; Rubicon Programs; Sacramento Youth Advocacy Fellowship Pipeline; San Francisco Public Defender’s Office; Seeds for Youth Development; Smart Justice California; Starting Over Inc.; United Core Alliance

Opposition: California State Sheriffs Association

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 (2014).

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:

One of the central goals of Prop. 47 was “to maximize alternatives for non-serious, nonviolent crime.” However, low-level felony records, even for very old convictions, create barriers to housing, employment, educational opportunities and governmental benefits. These obstacles deprive individuals of self-sufficiency, perpetuate cycles of incarceration, and disproportionately impact communities of color. We should be removing barriers to the formerly incarcerated reentering society, not erect new ones that create additional work for our overburdened court system. SB 749 would restore the process a person convicted of a qualifying felony who has served their sentence may use to petition the court and have their sentence reduced to a misdemeanor. By 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 Californians for Safety and Justice, the sponsor of this bill:

Prop. 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 749 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. We estimate there are still thousands of individuals that have eligible felony records that could benefit from reclassification. Since the deadline has now passed, otherwise eligible individuals do have redress for record changes only upon a showing of good cause, which was not defined in Prop. 47. Each county will now need to determine what constitutes “good cause.” The new process will require additional court workload and additional state costs as compared to the petition process that was in place for the last eight years.

6. Argument in Opposition

According to the California State Sheriffs Association:

Prop 47 originally gave affected persons three years to seek resentencing on offenses that were reclassified. That three-year window was extended by an additional five years, meaning people had eight years to address qualifying offenses. Additionally, the measure provided that a petition could be brought at any time upon a showing of good cause.

Offenders have had plenty of time to seek the relief provided by Prop 47, and in fact, are not time limited from continuing to do so assuming they can demonstrate good cause. We should not exacerbate the problems caused by Prop 47 by further limiting consequences for breaking the law.

-- END --