

PROPOSITION 47 INFORMATION FOR CLIENTS by Appellate Defenders, Inc., Nov. 2014

PROPOSITION 47: This handout is for persons who were convicted of an offense affected by Proposition 47 and sentenced before November 5, 2014. The affected offenses have been changed from a felony or wobbler down to a misdemeanor. A “felony” is a serious crime, which possibly may be punished by state prison. A “misdemeanor” is a less serious crime, to be punished by local custody, a fine, probation, or a combination of those. A “wobbler” can be either a felony or misdemeanor, depending on what the trial court orders.

Affected offenses: The offenses whose classifications have been changed by Proposition 47 include:

- New crime of shoplifting (instead of burglary or theft) of no more than \$950 from commercial establishment during business hours.
- Forgery, no more than \$950.
- Insufficient funds check, no more than \$950.
- Petty theft of no more than \$950.
- Receiving stolen property, no more than \$950 value.
- Simple possession of a narcotic, marijuana, or non-narcotic controlled substance.
- Petty theft with priors: The “priors” required by Penal Code section 666 have been changed drastically, so that virtually no persons will come under this statute.

Exception for defendant with a “super strike” prior: These changes do not apply if the defendant has a “super strike” prior conviction – one listed in Penal Code section 667(e)(2)(C)(iv) or one that requires sex offender registration under Penal Code section 290(c).

- **Offenses listed in section 667(e)(2)(C)(iv)** include oral copulation or sodomy or penetration of child under 14 and more than 10 years younger than defendant, lewd or lascivious act with child under 14, homicide or attempted or solicited homicide (Pen. Code, § 187-191.5 [excluding manslaughter], 653f), assault by machine gun on officer, possession of weapons of mass destruction, any offense punishable by life or death, or a sexually violent offense as defined in Welf. & Inst. Code, § 6600.

RESENTENCING UNDER PENAL CODE SECTION 1170.18: Proposition 47 created a new procedure, a petition under new Penal Code section 1170.18, for eligible persons who had already been sentenced when the proposition passed. If still serving the heavier sentence, the person may ask for *resentencing*. If the full sentence has already been served, the person may ask the *record* be changed to conviction of a misdemeanor. Other procedures may be available, too. If you are still in touch with your trial or appellate lawyer, ask what would be best for your situation.

Petition: File a petition for misdemeanor resentencing or reduction to a misdemeanor under section 1170.18 in the court that sentenced you.

Time limit: You have three years from November 5, 2014. Penal Code section 1170.18 does allow late petitions, but only for “good cause.”

Who files: It is best if this petition is filed by counsel. But if that is not possible, you can use the sample.

Contents of petition:

- List all of your convictions that have been changed by Proposition 47.
- State that you have no “super strikes.”
- Ask for counsel.

Trial court’s decision and “unreasonable risk of danger to public safety”: If you are eligible for resentencing, the court must give you the new misdemeanor sentence under Proposition 47, *unless* the court finds your release would be “an unreasonable risk of danger to public safety,” based on factors like criminal history and prison behavior. That risk is defined to mean a danger of committing one of the offenses listed in Penal Code section 667(e)(2)(C)(iv).

Important: A section 1170.18 petition may not be the best option for you. Consult your lawyer. (See last section of this handout, on CHOOSING AMONG ALTERNATIVES.)

ACTIONS TO CONSIDER: If you had already been sentenced when Proposition 47 went into effect on November 5, 2014, you should consider these actions:

Decide whether you qualify and consult your lawyer: Try to decide whether you are eligible for resentencing or reduction under Proposition 47. Consult your trial and/or appeals lawyer, to make sure you do the most beneficial thing and do not run any risks. Also, your lawyer may be taking action, and it is important not to do something that could interfere.

Identify the available procedures. The procedures available depend on where in the legal process your case was on Nov. 5, 2014, and where it is now.

Case “not final” on Nov. 5, 2014 – *In re Estrada*: If you were sentenced before Nov. 5, 2014, and your case was “not final” on that date, you can argue you have a *right* to Proposition 47 resentencing under the case of *In re Estrada* (1965) 63 Cal.2d 740. *Estrada* said cases “not final” when a new law is passed reducing the penalty should get the benefit of the lower sentence. The California Supreme Court is now considering whether *Estrada* applies to a law very similar to Proposition 47.

What is “not final”? Your case was “not final” under *Estrada* on Nov. 5, 2014, if you then still had time left in the 60-day period after sentencing to file an appeal. It was also “not final” if it was being considered by the Court of Appeal or the California Supreme Court. Even if your case was no longer in the California courts, if the California Supreme Court denied review *on or after* August 7, 2014, it was “not final.” There are other possible situations; ask your trial or appellate lawyer, if you are still in touch.

If your case was “not final” on Nov. 5, 2014, how do you ask for *Estrada* resentencing?

Now on appeal: If your case is now on appeal, it was “not final” on Nov. 5, 2014. Your appeals lawyer will decide how to argue you should get the benefit of the new law.

California appeal is no longer available: If your case was “not final” on Nov. 5, 2014, but a California appeal is *now* no longer available, you may claim the right to resentencing under *Estrada* by filing a habeas corpus petition in the trial court. ([Judicial Council form MC-275.](#)) A California appeal is no longer available, if, for example: (a) you did not appeal and the time to appeal is now past; or (b) you appealed but did not petition for review and the time for the Cal. Supreme Court to grant review is now past; or (c) the Cal. Supreme Court denied review. Besides habeas corpus based on *Estrada*, a section 1170.18 petition would also be available. But that may be less favorable – see CHOOSING AMONG ALTERNATIVES, below.

Case already “final” on Nov. 5, 2014: *Estrada* is not available. You can file a petition under Penal Code section 1170.18.

CHOOSING AMONG ALTERNATIVES: You can argue you can file a section 1170.18 petition even if other procedures are available. But that question still must be decided by the courts.

Disadvantages of section 1170.18 petition: The trial court can refuse to resentence under section 1170.18 if it finds your release would create an unreasonable risk of danger to the public, while the same is not true of cases eligible for *Estrada* resentencing on appeal or on habeas corpus. (The “risk” issue does not apply if you have already served the whole sentence and are merely asking for a reduction of the conviction.)

Advantages of section 1170.18 petition: A section 1170.18 petition may be *faster* than some other remedies. That would be important if you would be entitled to release on or near the time of the resentencing. Discuss this with your trial or appellate lawyer, if you are still in touch. There may be alternatives to a section 1170.18 petition.

Timing of section 1170.18 petition: You and your attorney should consider what evidence might be introduced on risk to public safety and how the judge might interpret that risk as defined in section 1170.18(c). If you have had recent disciplinary problems or need some time to show rehabilitation, it may be to your advantage to delay the petition for a while and work on building a record of good behavior in prison.