Note: **These materials were prepared by the Judicial Council's Criminal Justice Services staff and Richard Couzens, Judge of the Superior Court, County of Placer (Ret.), and are for informational purposes only. The responses are not to be construed as legal opinion or advice. Staff will update questions and responses on a regular basis. Please check for most recent version.**

FREQUENTLY ASKED QUESTIONS

Updated November 2015

What is the stated purpose of Proposition 47?

The stated purpose of the proposition is to "ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for non-serious, nonviolent crime, and to invest the savings generated from [the proposition] into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment" and to ensure "that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed." The proposition states that it "shall be liberally construed to effectuate its purposes."

What is the effective date of Proposition 47?

Proposition 47 became effective on November 5, 2014.

In short, what does Proposition 47 do?

Proposition 47 added and amended various statutory provisions to implement the following three changes to felony sentencing laws:

- **Theft and Drug Possession Offenses**: Changes certain theft and drug possession offenses from felonies to misdemeanors, except for persons with certain prior convictions.

- **Resentencing:** Authorizes defendants currently serving sentences for felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions.

- **Reclassification:** Authorizes defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reclassify those convictions to misdemeanors.

Who is *not* eligible for the changes under Proposition 47?

Persons with one or more prior convictions for offenses specified under Penal Code section 667(e)(2)(C)(iv)[1] or for a sex offense that requires registration under section 290(c) are ***not*** eligible for the new misdemeanor, resentencing, or reclassification provisions of Proposition 47. Instead, those persons generally remain subject to punishment under traditional sentencing rules.

What are the offenses specified under Penal Code section 667(e)(2)(c)(iv) that render someone ineligible for Proposition 47?

Section 667(e)(2)(c)(iv) states: "The defendant suffered a prior serious and/or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies: (I) A 'sexually violent offense' as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code. (II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289. (III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288. (IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive. (V) Solicitation to commit murder as defined in Section 653f. (VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245. (VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418. (VIII) Any serious or violent felony offense punishable in California by life imprisonment or death." These offenses are sometimes referred to a "super strikes."

What are the offenses that require registration as a sex offender under Penal Code section 290(c)?

Under section 290(c), the following persons are required to register: "Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that

[1] Unless otherwise indicated, all statutory references are to the Penal Code.

date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses."

Is *every* person who is required to register as a sex offender ineligible for Proposition 47?

Proposition 47 only excludes persons with prior convictions for a sex offense that requires registration under section 290(c), which enumerates several sex offenses that mandate registration upon conviction. This disqualifier appears to be limited to the offenses enumerated in section 290(c) and not to include persons required to register under other statutory provisions that vest courts with discretionary authority to impose sex offender registration under specified circumstances. (See, e.g., Pen. Code, § 290.006 [Authorizing courts to impose registration for *any* offenses not listed in section 290(c) "if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for the purpose of sexual gratification"].)

Do the exclusions include out-of-state convictions and juvenile adjudications?

It appears so. Proposition 47 excludes persons with a prior conviction for any of the offenses listed in section 667(e)(2)(C)(iv). Section 667(e)(2)(C)(iv) applies if "[t]he defendant suffered a prior serious and/or violent *felony conviction, as defined in subdivision (d) of this section*, for any of the following felonies. . . " – the "super strikes." (Emphasis added.) The reference to "subdivision (d) of this section" presumably means section 667(d). Section 667(d) provides that "[n]ot withstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a serious and/or violent felony shall be defined as" (1) an adult California conviction under sections 667.5(c) and 1192.7(c) [§ 667(d)(1)]; (2) an out-of-state conviction "for an offense that, if committed in California is punishable by imprisonment in the state prison . . . if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of" a California serious or violent felony [§ 667(d)(2)]; and (3) designated juvenile adjudications [§ 667(d)(3)].

Since the definition of "conviction of a serious and/or violent felony" contained in section 667(d) is incorporated by reference in section 1170.18(i), and since that definition specifically includes designated juvenile adjudications, it appears likely that a person who has been adjudicated for an offense listed in section 667(d)(3) will be excluded from the benefits of Proposition 47. While juvenile "adjudications" and adult "convictions" are distinguished in many other contexts, for the purposes of the exclusion under section 1170.18(i), it appears likely that they will be treated the same.

How does Proposition 47 change theft and drug possession offenses?

The following theft and drug possession offenses have been reclassified as misdemeanors as specified below. As noted above, these new misdemeanor provisions do *not* apply to persons with one or more prior convictions for offenses specified under section 667(e)(2)(C)(iv) or for a sex offense that requires registration under section 290(c).

- ***Shoplifting***. The proposition added section 459.5 to create a new misdemeanor offense called "shoplifting," punishable by up to 6 months in county jail. Shoplifting is defined as "entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours" where the value of the property does not exceed $950. Any other entry into a commercial establishment with intent to commit larceny is burglary. Any act of shoplifting as defined above must be charged as shoplifting. No person charged with shoplifting may also be charged with burglary or theft of the same property.

- ***Forgery.*** The proposition reclassified forgery of specified instruments under section 473 involving an amount that does not exceed $950 from a felony or wobbler to exclusively a misdemeanor. The instruments are "a check, bond, bank bill, note, cashier's check, traveler's check, or money order." To qualify as a felony, the proposition appears to require a value over $950 per forged instrument as opposed to a total value with multiple instruments combined, as specified, for example, under section 476a(b): "If the *total* amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed nine hundred fifty dollars (950), the offense is punishable only by imprisonment in the county jail…"].) (Emphasis added.) The misdemeanor provision does not apply to any person convicted both of forgery and identity theft under section 530.5.

- ***Insufficient Funds.*** Before Proposition 47, a violation of section 476a was a wobbler offense, except that the offense was strictly a misdemeanor if the total underlying amount did not exceed $450, unless the person was previously convicted of one of several specified theft offenses. The disqualifying prior violations are "… Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section…" (Pen. Code, § 476a(b).) Proposition 47 increased the total threshold amount for misdemeanors from $450 to $950 and increased the number of disqualifying prior convictions from one to "three or more."

- ***Petty Theft.*** Proposition 47 added section 490.2 to define "petty theft" as "obtaining any property by theft where the value of the money, labor, real or personal property taken" does not exceed $950. Under the proposition, this new definition of petty theft applies notwithstanding section 487 "or any other provision of law defining grand theft." (Pen. Code, § 490.2(a).) The new definition of petty theft appears designed to apply regardless of how specific categories of property are treated under separate statutes. Section 487(b)(1)(A), for example, characterizes theft of certain farm crops valuing over $250 as "grand theft." Under the proposition's new definition of petty theft, such offenses appear to be misdemeanors if not valued over $950. This new misdemeanor provision is not applicable to any theft that may be charged as an infraction "pursuant to any other provision of law."

- ***Receiving Stolen Property.*** Before Proposition 47, a violation of section 496 was a wobbler offense, except that if the value of the property did not exceed $950, the district attorney or grand jury may specify the offense as exclusively a misdemeanor "in the interests of justice." Proposition 47 rendered all violations of section 496 that do not exceed $950 as strictly misdemeanors, eliminating prosecutorial discretion to charge those offenses as felonies.

- ***Petty Theft with a Prior.*** Proposition 47 eliminated the offense of petty theft with a prior under section 666 for most defendants by narrowing the category of persons subject to punishment under that section to only include persons required to register under the Sex Offender Registration Act, persons with prior violent or serious felony convictions under section 667.5(e)(2)(C)(iv), and persons convicted of section 368(d) or (e) [specified theft crimes involving elder or dependent adults]. Unlike other references to sex offender registration throughout Proposition 47 (see above), this reference appears to include *all* persons required to register, regardless of whether the basis for registration was section 290(c) or some other provision under the Sex Offender Registration Act.

- ***Drug Possession Offenses*.** Proposition 47 reclassified drug possession offenses under Health and Safety Code sections 11350, 11357(a) [concentrated cannabis], and 11377 from a felony or wobbler to strictly misdemeanors punishable by up to one year in county jail.

What is the difference between petitioning for resentencing and applying for reclassification?

Proposition 47 added section 1170.18, which has two distinct procedures for eligible persons seeking relief that hinges on whether the person is *currently serving* the sentence or has *completed* the sentence. Persons currently serving the sentence can petition the court to be "resentenced" as a misdemeanor offender under the procedures prescribed in section 1170.18(a)–(e), (i)–(o). Persons who have completed their sentences can apply to the court to "reclassify" their felony convictions as misdemeanors under the procedures prescribed in section 1170.18(f)–(h).

Is there a deadline for petitions for resentencing and applications for reclassification?

Yes. Petitions for resentencing and applications for reclassification must be filed on or before November 4, 2022, or at a later date upon [a] showing of good cause."(AB 2765, Stats. 2016, ch. 767). Proposition 47 does not define what constitutes "good cause" for this purpose.

Does a person seeking relief under section 1170.18 have the right to counsel?

The proposition does not address the right to counsel. Thus, the answer may depend on the stage of the proceedings. For petitioners who are currently serving their sentences, the right to counsel

issue may be similar to proceedings for a writ of habeas corpus, where the petitioner has no right to counsel in the preparation of the petition, nor during the initial screening by the court. There would likely be a right to counsel, however, during the resentencing stage of the proceedings. Since no custodial sanction is involved with applications for reclassification, it is likely that there is no right to the assistance of counsel, except, perhaps in contested hearings where the application is opposed by the district attorney.

What should happen if a person is serving a sentence based on a mixture of eligible and ineligible offenses?

Many individuals may have been convicted of a mixture of Proposition 47 eligible and non-eligible offenses. As long as the defendant does not have a disqualifying "super strike" prior conviction and is not required to register as a sex offender under section 290(c), there is nothing in Proposition 47 that would prohibit the defendant from petitioning or applying for relief under section 1170.18 as to crimes that are qualified. If relief is granted, the court would likely re-compute any remaining sentence to be served with the qualified crime now specified as a misdemeanor.

RESENTENCING OF CRIMES FOR PERSONS CURRENTLY SERVING SENTENCE

Who is eligible to petition for resentencing?

Persons "currently serving a sentence" for a felony conviction, whether by trial or plea, who would have been guilty of a misdemeanor under Proposition 47 had it been in effect at the time of the offense are eligible to petition for resentencing. (Pen. Code, § 1170.18(a).) As noted above, persons with one or more prior convictions for offenses listed under section 667(e)(2)(C)(iv) or for a sex offense that requires registration under section 290(c) are *not* eligible for resentencing. (Pen. Code, § 1170.18(i).)

What does the court decide in order to grant a petition for resentencing?

The court must confirm that the petitioner is eligible for resentencing and whether the resentencing of the petitioner would create an unreasonable risk of danger to public safety. Specifically, section 1170.18(b) provides, in relevant part: "If the petitioner satisfies the criteria [for resentencing] . . . , the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor . . . , unless the court, in its discretion, determines that resentencing petitioner would pose an unreasonable risk of danger to public safety."

What are the filing requirements for a petition for resentencing?

Proposition 47 does not specify any particular form of petition for resentencing. Some courts have developed local forms that may be used. Unless a superior court adopts a mandatory form as a local court rule, the petitioner may petition the court for relief in any manner that meets

general pleading requirements. Some courts are permitting oral motions for relief under section 1170.18. Petitions must be filed by November 4, 2022, to be considered by the court, unless the person shows "good cause" for a later filing. (Pen. Code, § 1170.18(j).)

What evidence is admissible to determine whether a particular crime qualifies under Proposition 47?

It is unclear what evidence may be considered in determining eligibility for resentencing. In similar circumstances, courts have limited the parties to offering the "record of conviction": documents such as the complaint, plea forms, factual basis for the plea as stated on the record, and transcripts.

Who has the burden to establish eligibility for relief?

The petitioner has the burden of establishing eligibility for the relief being sought. In the context of section 1170.18, the petitioner will have the burden of establishing that he or she committed a crime which, had Proposition 47 been in effect when committed, would be a misdemeanor. (Pen. Code, § 1170.18(a).) For example, if the crime at issue is a theft offense, the petitioner must establish that the value of the property taken did not exceed $950. The prosecution, however, likely has the burden of proving that the petitioner is disqualified because of the conviction of a "super strike," or because of a requirement to register as a sex offender.

Could the petitions of persons otherwise eligible for resentencing be denied for some reason?

Yes, but only on a very narrow basis. Courts may deny a petition for resentencing when the person is otherwise eligible 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(b).)

What is the definition of the phrase "unreasonable risk of danger to public safety"?

Under section 1170.18(c), the phrase "unreasonable risk of danger to public safety" is narrowly defined as "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of [Penal Code section 667(e)(2)(C)(iv)]." By its express terms, Proposition 47 extends this definition to all uses of the phrase *throughout* the Penal Code. A divided panel of the Court of Appeal held that the definition of dangerousness in section 1170.18(c) has no application to petitions for resentencing brought under Proposition 36. (*People v. Valencia* (2014) 232 Cal.App.4th 514, *review granted*, [Feb. 18, 2015] 183 Cal.Rptr.3d 516.)

What will the court consider when determining whether a petitioner is an "unreasonable risk of danger to public safety?"

In determining whether a petitioner poses an unreasonable risk of danger to public safety, the court may consider:

- 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(b)(1)–(3).)

Is "dangerousness" considered when imposing a misdemeanor sentence for a new crime?

No. Whether or not the defendant possesses "an unreasonable risk of danger to public safety" only concerns petitions for resentencing under section 1170.18(a). The defendant is entitled to a misdemeanor sentence for a Proposition 47-eligible crime unless he or she has a prior disqualifying conviction, is required to register as a sex offender under section 290(c), or is otherwise excluded by the particular penal statute.

What does "currently serving a sentence" mean for purposes of eligibility to petition for resentencing?

Proposition 47 does not expressly define what constitutes "currently serving a sentence" for purposes of eligibility to petition for resentencing. The plain language of the phrase "currently serving a sentence" appears to apply to eligible persons serving prison sentences and terms of imprisonment in county jail under section 1170(h), including periods of mandatory supervision, which are "suspended" portions of the terms imposed. Whether courts will consider persons on other categories of supervision to be "currently serving a sentence" is less clear. Courts will likely have different interpretations based on the circumstances of the case and legal arguments presented by the parties.

Is a person on formal probation considered "currently serving a sentence" for purposes of eligibility to petition for resentencing?

Proposition 47 does not address whether a person on formal probation for a qualifying offense should be considered "currently serving a sentence" for purposes of eligibility to petition for resentencing. Until further guidance is provided by an appellate court, individual sentencing courts will likely have different interpretations based on the circumstances of the case and legal arguments presented by the parties. On one hand, formal probation, which is often characterized as an act of leniency, is statutorily defined as the suspension of the imposition or execution of a sentence. (Pen. Code, § 1203(a).) Grants of probation, on the other hand, are commonly understood to constitute "sentences" in criminal matters, and probationers are often required to

serve terms in county jail as a condition of probation. Based on early indications, it appears that many courts consider probationers to be "currently serving a sentence" for purposes of eligibility for resentencing, while some consider probationers to not *yet* be sentenced and thus entitled to have the qualifying offenses redesignated as misdemeanors without the formal resentencing process prescribed by section 1170.18(a)–(e).

Are persons on parole or postrelease community supervision (PRCS) considered "currently serving a sentence" for purposes of eligibility for resentencing?

Although persons on parole or PRCS for qualified felony offenses are entitled to relief under Proposition 47, there are uncertainties about whether they are eligible to petition for resentencing (as a person "currently serving a sentence") or to apply for reclassification (as a person who has completed the sentence). If courts consider persons on parole or PRCS as "currently serving a sentence," those persons will be required to petition for resentencing under sections 1170.18(a)–(e), which will include a determination of the issue of dangerousness under section 1170.18(b). If persons on parole or PRCS are not considered "currently serving a sentence," those persons would be eligible to apply for reclassification of their eligible felony offenses as misdemeanors under sections 1170.18(f)–(h), which would not include a determination of the issue of dangerousness.

What is the court's discretion in resentencing the petitioner?

Proposition 47 imposes the following limitations:

- The petitioner must be given credit for any time he or she has already served. (Pen. Code §1170.18(d).) Credit must likely be given for custody time and any periods of supervision. The statute likely does not mean that the person is to automatically be released with "credit for time served" – meaning that the sentence has been satisfied.
- The sentence may not be longer than the original sentence. (Pen. Code § 1170.18(e).)
- The petitioner must be placed on parole for a one-year period, unless the court releases the person from that requirement. (Pen. Code § 1170.18(d).)

Note, however, that it is unlikely the sponsors of Proposition 47 contemplated persons resentenced for a crime punished under section 1170(h) or granted probation would be sent to state parole. But the statutory language is broad enough to include all sentenced individuals, including those persons previously handled locally.

Subject to the foregoing limitations, the court is free to impose any form of misdemeanor sentence considered appropriate for the petitioner's circumstances. If the petitioner has been sentenced on any felony not altered by Proposition 47, all terms and conditions of the original sentence presumably will remain, except for the re-designation of a Proposition 47 crime as a misdemeanor. Assuming the petitioner has been convicted only of a crime changed by the initiative, potential sentencing options may include:

- Straight custody term, without any supervision.
- Formal or informal probation of up to three years.
- Parole or Postrelease Community Supervision, particularly for persons being released from prison.

Who presides over resentencing proceedings?

The original sentencing judge is required to preside over the petition for resentencing if that judge is available. If the original judge is unavailable, the presiding judge of the court will appoint a judge to review the petition. The parties may also agree that a different judge can conduct the review. What constitutes "unavailability" of a judge may be open to interpretation.

Is a hearing always required for petitions for resentencing?

Nothing in Proposition 47 specifically requires a court hearing on every petition for resentencing, particularly when there is no opposition to the granting of the petition. Hearings may be necessary if the prosecution challenges the petitioner's eligibility, such as when a theft may involve more than $950, when a victim asks to participate in the process, or concerning challenges to the dangerousness determination

Is there a specific time within which the hearing on a petition for resentencing must be held?

No. Section 1170.18 does not require the hearing to be held within a particular number of days. The hearing should be held within a reasonable time.

Does the victim have a right to attend the hearing on a petition for resentencing?

Likely, yes, if the victim has made such a request. A resentencing proceeding is likely considered a "post-conviction release proceeding" under Marsy's Law. If the victim so requests, he or she may be entitled to notice of and participation at the hearing.

Does the petitioner have a right to a jury determination of eligibility for resentencing?

Probably not. Petitioners likely have no right to a jury determination of their eligibility for resentencing. Other courts have determined, in the Proposition 36 context, that *Apprendi v. New Jersey* (2000) 530 U.S. 466, has no application due to the retrospective nature of the petition for resentencing. (See *People v. Elder* (2014) 227 Cal.App.4th 1308, 1315; *People v. Bradford* (2014) 227 Cal.App.4th 1322, 1331-1336; *People v. Guilford* (2014) 228 Cal.App.4th 651, 662-663.)

What is the effect of the order granting resentencing?

If the court grants the request to resentence the offense as a misdemeanor, the crime will thereafter be treated as a misdemeanor for all purposes except for the right to own or possess firearms. (Pen. Code § 1170.18(k).)

RECLASSIFICATION OF CRIMES FOR PERSONS WHO HAVE COMPLETED A SENTENCE

Who is eligible to apply for reclassification of their felony convictions?

Persons who have "completed" their sentences for a felony conviction, whether by trial or plea, who would have been guilty of a misdemeanor under Proposition 47 had it been in effect at the time of the offense are eligible to apply for reclassification of their felony convictions. (Pen. Code, § 1170.18(f).) As noted above, persons with one or more prior convictions for offenses listed under section 667(e)(2)(C)(iv) or for a sex offense that requires registration under section 290(c) are *not* eligible for reclassification. (Pen. Code, § 1170.18(i).)

Who is qualified for reclassification?

Any person whose sentence, including any period of supervision, has been completed, including:

- Persons released from prison and who are off parole or PRCS;
- Persons who have completed a sentence imposed under section 1170(h), including any time ordered on mandatory supervision;
- Persons who have completed probation.

Nothing in Proposition 47 expressly grants juveniles the right to apply for reclassification of qualified felony adjudications. *Alejandro N. v. Superior Court (People)* (2015) 238 Cal.App.4th 1209 (review denied), however, has held that juveniles have the right to petition for resentencing; likely the opinion will apply to requests for reclassification.

May a person be excluded from reclassification because of a prior offense?

Yes. The same exclusions apply to both resentencing and reclassification of a crime. A person who has a prior "super strike" conviction, or who is required to register as a sex offender under section 290(c) may not petition for reclassification. (§ 1170.18(i).) The crimes that would exclude the applicant are the "super strikes" listed in section 667(e)(2)(C)(iv): a "sexually violent offense" as defined in Welfare and Institutions Code, section 6600(b) (the Sexually Violent Predator Law); oral copulation, sodomy or sexual penetration of a child under 14 and more than 10 years younger than the defendant; a lewd act on a child under 14; any homicide offense, including attempted homicide as defined in sections 187 – 191.5; solicitation to commit murder; assault with a machine gun on a peace officer; possession of a weapon of mass destruction; or any serious or violent offense punishable by life imprisonment or death.

May the court address the issue of dangerousness when deciding whether to grant reclassification?

No. The applicant for reclassification need only show eligibility for relief; the court may not deny the petition based on dangerousness.

What is the procedure for obtaining reclassification of a crime?

The procedure potentially is the same as for resentencing, but the law specifically permits courts to grant reclassification of a crime without any hearing. (§ 1170.18(h).) The steps may include:

- The filing of an application for reclassification;
- A qualification hearing, if requested by the applicant or as may be necessary to determine the applicant's eligibility;
- Reclassification of the offense.

What are the filing requirements for an application for reclassification?

Proposition 47 does not specify any particular form of petition for resentencing. Some courts have developed local forms that may be used. Unless a superior court adopts a mandatory form as a local court rule, the petitioner may petition the court for relief in any manner that meets general pleading requirements. Some courts permit the application to be made by oral motion. Petitions must be filed by November 4, 2022, to be considered by the court, unless the person shows "good cause"

Who presides over reclassification proceedings?

As with resentencing proceedings, the original sentencing judge is required to preside over the reclassification application proceedings if that judge is available. If the original judge is unavailable, the presiding judge of the court will appoint a judge to review the petition. The parties may also agree that a different judge can conduct the review. What constitutes "unavailability" of a judge may be open to interpretation.

What evidence can be considered in determining eligibility for reclassification?

It is unclear what evidence may be considered in determining eligibility for resentencing. In similar circumstances, courts have limited the parties to offering the "record of conviction:" documents such as the complaint, plea forms, factual basis for the plea as stated on the record, and transcripts.

May the victim participate in the reclassification process?

It is unclear. It is not likely that the victim has any constitutional right to participate in the reclassification process. Section 1170.18(o) provides that "[a] *resentencing hearing* ordered under this Act shall constitute a 'post-conviction release proceeding' under paragraph (7) of subdivision (b) of Section 28 or Article I of the California Constitution (Marsy's Law)."

(Emphasis added.) The purpose of Marsy's Law is to ensure that victims have the right to participate in any decision which could result in the post-sentencing release of an offender. No one is being "released" as a result of the reclassification process. Furthermore, section 1170.18(h) expressly allows the court to grant the reclassification without any hearing – thus, there is no "resentencing hearing" that would trigger the victim's rights under Marsy's Law.

What is the effect of the order granting reclassification?

If the court grants the request to reclassify the offense as a misdemeanor, thereafter the crime will be treated as a misdemeanor for all purposes except for the right to own or possess firearms. (§ 1170.18(k).)