

OFFICE OF OPERATIONS

OPERATIONS ORDER NO. 2

June 10, 2015

SUBJECT: PROPOSITION 47 - PROCEDURES FOR CLASSIFYING THEFT, CERTAIN THEFT-RELATED CRIMES AND CERTAIN NARCOTICS OFFENSES

PURPOSE: On November 4, 2014, Californians voted into law Proposition 47 - *The Safe Neighborhoods and Schools Act*.

This legislation modified the “wobbler” (crimes that could result in either a felony or misdemeanor sentencing) language of various theft-related crimes and narcotics offenses. It also created two new California Penal Code (PC) Sections: 490.2 Petty Theft and 459.5, Shoplift.

This Order establishes the crime category Shoplift in accordance with Section 459.5 PC and renames Burglary/Shoplift-related reports to Shoplift. This Order supersedes all other correspondence related to classifying, crime coding and report titling of reports impacted by the passage of Proposition 47.

PROCEDURE: Effective November 5, 2014, Proposition 47 reclassified the following nonviolent drug and theft-related crimes from felonies or wobblers to misdemeanors.

Section 490.2 PC – Petty Theft

Notwithstanding Section 487 PC or any other provision of law defining grand theft, **obtaining any property by theft** where the value of the money, labor, real or personal property taken **does not exceed \$950**, shall be considered petty theft and shall be punished as a **misdemeanor**, except that such person may instead be punished pursuant to any of the following:

- Section 1170(h) PC - **if**
 - the person has one or more prior convictions for an offense specified in Section 667(e)(2)(C)(iv) PC; **or**,
 - Section 290(c) PC - Sex Offender Registration Act.

Note: See attachment for offenses listed in Section 667 PC.

Section 459.5 PC – Shoplifting

The new crime category of Shoplifting is defined as **entering** a commercial establishment, **during business hours, with the intent to commit larceny**, where the value of the property that is taken **does not exceed \$950**. Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting as defined **may not be charged as theft or burglary** and is a **misdemeanor**, unless the person is subject to Section 1170(h) PC by having one or more prior convictions of an offense listed in Sections 667(e)(2)(C)(iv) or 290(c) PC.

Section 473(b) PC – Forgery

Forgery of checks and related instruments of **not more than \$950** is classified as a **misdemeanor**, unless the person is subject to Section 1170(h) PC by having one or more prior convictions of an offense listed in Sections 667(e)(2)(C)(iv) or 290(c) PC.

Section 476a PC – Writing Checks with Intent to Defraud

Writing checks with the intent to defraud, where the insufficient funds or check fraud are valued at **\$950 or less** is a **misdemeanor**, unless:

- The person has three or more convictions for Sections 470, 475, 476, or 476a PC;
or,
- The person is subject to Section 1170(h) PC by having one or more prior convictions of an offense listed in Sections 667(e)(2)(C)(iv) or 290(c) PC.

Section 496(a) PC – Receiving Stolen Property

Receiving stolen property valued at **\$950 or less** is a **misdemeanor**, unless the person has a prior conviction for an offense listed in Sections 667(e)(2)(C)(iv) or 290(c) PC.

Section 666 PC – Petty Theft with a Prior Theft-Related Conviction

The crime of Petty Theft with a Prior remains a wobbler, but it **only** applies to:

- (a) Any person described in subdivision (b) who, having been convicted of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, vehicle theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.
- (b) Subdivision (a) shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in Sections 667(e)(2)(C)(iv), or has a conviction pursuant to subdivision (d) or (e) of Section 368.

Note: Section 368 PC, Elder Abuse; specifically subdivisions (d) and (e) both pertain to violating provisions of law governing theft, embezzlement, forgery or fraud. Subdivision (d) applies to non-caretakers and (e) applies to caretakers. Officers may be guided by Section 368 PC, subdivisions (g) and (i) for definitions of “Caretaker” and “Elder.”

Miscellaneous Health and Safety Code Sections

The following Health and Safety (H&S) Code sections are classified as **misdemeanors**, unless the person has a prior conviction for an offense listed in Sections 667(e)(2)(C)(iv) or 290(c) PC:

- **Section 11350 H&S**
Simple possession of heroin, cocaine, and other listed controlled substances.
- **Section 11357(a) H&S**
Simple possession of concentrated cannabis.
- **Section 11377 H&S**
Simple possession of methamphetamine, Ecstasy, Gamma Hydroxybutyrate, and other listed controlled substances.


Officer's Responsibilities. Officers shall become familiar with the reclassification of certain drug and property crimes brought about by Proposition 47. Prior to completing the booking procedures of arrestees in violation of such crimes, officers and detective personnel shall:

- Review the criminal history of all arrestees, as the individual arrestee's history may impact the application of Proposition 47;
- Ensure that the appropriate PC and H&S Code sections are referenced in the crime and/or arrest report(s); and,
- Review Sections 667 and 667.5 PC for an exhaustive list of crimes that meet the definition of "violent offense(s)" as used in the above-referenced paragraphs.

Watch Commander's Responsibilities. When reviewing reports related to the above-mentioned sections, the watch commander must verify:

- The correct PC and H&S Code sections are referenced;
- Reports are titled correctly and include all the elements of the corresponding crime(s);
- The arrestee's criminal history is reviewed for 290(c) PC registrant requirements, prior convictions for serious violent offenses including attempt murder, and murder [see 667(e)(2)(C)(iv) PC for a comprehensive list]; and,
- Advise arresting officers if the Release From Custody process applies as set forth in previously established guidelines.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.


JORGE A. VILLEGAS, Assistant Chief
Director, Office of Operations

Attachment

DISTRIBUTION "D"

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious and/or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious and/or violent felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior serious and/or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding 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) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison shall constitute a prior conviction of a particular serious and/or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of a particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior serious and/or violent felony conviction for purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a serious and/or violent felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has one or more prior serious and/or violent felony convictions:

(1) If a defendant has one prior serious and/or violent felony conviction as defined in subdivision (d) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) Except as provided in subparagraph (C), if a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious and/or violent felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e) unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 288a, Section 311.11, and Section 314.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) 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 and/or violent felony offense punishable in California by life imprisonment or death.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has one or more prior serious and/or violent felony convictions as

defined in subdivision (d). The prosecuting attorney shall plead and prove each prior serious and/or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious and/or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious and/or violent felony conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious and/or violent felony conviction, the court may dismiss or strike the allegation. Nothing in this section shall be read to alter a court's authority under Section 1385.

(g) Prior serious and/or violent felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony serious and/or violent convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious and/or violent felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on November 7, 2012.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.