

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: October 2, 2014

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations
Committee

FROM: Sharon M. Tso *SMT* Council File No: 14-0002-S99
Chief Legislative Analyst Assignment No: 14-09-0672

SUBJECT: Resolution (Price - Wesson - Cedillo) to support Proposition 47

CLA RECOMMENDATION: Adopt Resolution (Price - Wesson - Cedillo) to include in the City's 2013 – 2014 State Legislative Program SUPPORT for Proposition 47, the Safe Neighborhoods and Schools Act

SUMMARY

On September 12, 2014, a Resolution (Price - Wesson - Cedillo) was introduced in support of Proposition 47, the Safe Neighborhoods and Schools Act, a ballot initiative which would reclassify a handful of non-violent crimes from felonies or alternate felony-misdemeanors (“wobblers”) to misdemeanors. The Resolution states that emerging best practices in criminal justice focus resources on serious and violent crime and utilize community corrections for petty and non-violent offenses, and that Proposition 47 would prioritize serious and violent crime while saving millions of dollars in criminal justice costs to be used to fund schools and crime prevention efforts.

The Resolution states that Proposition 47 would change some of the lowest level non-violent crimes, such as simple drug possession and shoplifting under \$950 to misdemeanors. The Resolution further states that Proposition 47 is supported by numerous members of the law enforcement community, business and labor organizations, crime victims, teachers, rehabilitation experts, civil rights organizations and faith leaders. The Resolution, therefore, seeks an official position of the City of Los Angeles to support Proposition 47, which would reclassify six non-violent crimes from felonies or alternate felony-misdemeanors (“wobblers”) to misdemeanors.

The City Attorney's Office advises that, if Proposition 47 is approved by voters, they would need to increase staffing beginning this fiscal year to handle the increased workload. The City Attorney's Office estimates that this would result in a fiscal impact of \$1.35 million for the remainder of this fiscal year, and \$2.7 million in ongoing costs. This is because the City Attorney's Office is responsible for handling all misdemeanor cases in Los Angeles, while the County District Attorney's Office handles felony cases. Further analysis will be required to determine the City Attorney's actual funding and staffing needs if Proposition 47 passes.

BACKGROUND

Proposition 47 would make petty theft, shoplifting, receiving stolen property, writing bad checks or forgery, and simple drug possession mandatory misdemeanors. Under current law, these crimes are either charged as a felony or can be charged as a felony or a misdemeanor, which is known as a “wobbler.” Proposition 47 would make the following changes to current law:

- Petty Theft: The theft of money or property valued between \$50 and \$950 (petty theft) is generally charged as a misdemeanor under current law. However, under certain circumstances, including the theft of a firearm or an automobile, theft of property with a value of under \$950 can be charged as a felony. In addition, this crime can be charged as a felony in cases when the defendant has served time in prison or jail for three or more theft-related crimes, or has one or more theft-related convictions and a conviction for a violent, serious or sex crime. Proposition 47 eliminates these exceptions and requires that all theft of money or property valued below \$950 be charged as a misdemeanor. However, Proposition 47 does provide some exemptions under which offenders could be charged with a felony, depending on their criminal history.
- Shoplifting: Shoplifting property with a value lower than \$950 is generally charged as a misdemeanor under current law. However, current law also allows for charging individuals with burglary for shoplifting, which is a felony. Proposition 47 would prohibit charging individuals with burglary for shoplifting.
- Receiving Stolen Property: Individuals found in the possession of stolen property can be charged with receiving stolen property, which is a wobbler under current law. Proposition 47 would require that individuals who are charged with receiving stolen property with a value under \$950 be charged as a misdemeanor.
- Writing Bad Checks: Under current law, it is a wobbler to forge a check of any amount, write a bad check for more than \$450, or write a bad check for less than \$450 when a defendant has a previous conviction for a forgery crime. Proposition 47 would require that an individual charged with forging a check for less than \$950 be charged with a misdemeanor, unless the crime was committed as part of an identity theft crime. Proposition 47 would also make writing bad checks for less than \$950 a mandatory misdemeanor, unless the defendant has three or more prior convictions for crimes related to forgery.
- Drug Possession: Under current law, the possession of a controlled substance for personal use is charged as a misdemeanor, wobbler, or felony, depending on the substance. Proposition 47 would require that all simple drug possession charges, with the exception of marijuana, be charged as misdemeanors, regardless of the drug. Under current law, possession of marijuana is either an infraction or a misdemeanor, depending on the amount.

The proponents of this ballot initiative believe that it will result in significant cost savings to the state, as a result of reduced numbers of people being incarcerated for the crimes that would be reclassified. Proposition 47 requires that all cost savings be deposited into a new special fund, entitled the Safe Neighborhoods and Schools Fund. The Department of Finance would be required to calculate the annual savings after the enactment of this proposal, and deposit funding in those amounts into the special fund. These funds would be used for truancy reduction, victim services, and mental health and substance abuse programs.

Funding would be allocated as follows:

- 25 percent to the State Department of Education for grants designed to reduce truancy, drop-out rates, and victimization of K-12 students in public schools.
- 10 percent to the Victim Compensation and Government Claims Board for victim services.
- 65 percent to the Board of State and Community Corrections for grants for public agencies designed to support mental health and substance abuse treatment, as well as diversion programs.

Arguments against the Proposal

Opponents of Proposition 47 include numerous Police Associations and Victims Advocate groups, as well as numerous County Sheriffs, District Attorneys and Police Chiefs. Opponents believe that Proposition 47 would damage public safety, is poorly written, and would result in higher crime rates.

Opponents are seriously concerned with the elimination of an automatic grand theft charge for the theft of firearms with a value of less than \$950. Opponents note that most handguns cost less than \$950, which would make the theft of a handgun in California a mandatory misdemeanor under Proposition 47. Opponents believe this is a significant issue, as handguns are the most stolen types of firearm, and handguns are the most common firearm used in violent crimes.

Further, the opponents state that by reducing the penalty for drug possession of all drugs to a misdemeanor, Proposition 47 would result in individuals arrested for the possession of date rape drugs such as GHB and Rohypnol being charged with misdemeanor possession, as opposed to a felony. The California Police Chiefs Association notes that this could result in sexual predators being arrested repeatedly for possession of date rape drugs, but not spending any significant time incarcerated.

In addition, opponents argue that Proposition 47 will result in thousands of criminals being released early from prison, as they believe that Proposition 47 mandates early release for those convicted of crimes that Proposition 47 reclassifies. Opponents also argue that Proposition 47 will result in a significant increase in county jail populations, as misdemeanor offenses result in sentencing to county jails as opposed to state prisons.

Arguments for the Proposal

Supporters of Proposition 47 include San Francisco District Attorney George Gascón, former San Diego Police Chief William Landsdowne, numerous civil rights groups, labor organizations, business groups, crime victim organizations, faith-based organizations, and others. Supporters argue that the status quo has resulted in unsustainable numbers of Californians in jail, with five times as many people in jail now as there was 50 years ago, even though crime rates for the two periods are similar.

Further, supporters also believe that placing low-level offenders in prison makes them more dangerous when they are released, as their criminal record makes it difficult for them to gain employment or assistance, resulting in them re-offending and going back to jail. Supporters point to California's high recidivism rate as evidence that the current system is not working. Supporters cite changes to sentencing enacted in other states that are similar to those proposed in Proposition 47, which have resulted in reduced prison populations, significant criminal justice cost savings and more funding for mental health and drug treatment programs, while crime rates have continued to decrease.

Supporters of Proposition 47 also address concerns raised by their opponents, pointing out that possession of a stolen weapon will remain a felony, as will the use or attempted use of any kind of drug to commit date rape. Supporters also state that Proposition 47 does not require the automatic release of anyone from jail, and includes provisions to ensure that public safety is protected.

Further, supporters point out that most of the crimes being reclassified as misdemeanors from felonies are currently punishable by imprisonment in county jails, not in state prison, and that Proposition 47 will likely result in lower county jail populations, as sentences will be shorter for crimes that are reclassified.

Neither the Police Department (LAPD) nor the City Attorney's Office have taken a position in support of or in opposition to this ballot initiative.

Potential Fiscal Impacts

The California Legislative Analyst's Office (LAO) states that Proposition 47 would result in criminal justice savings of a few hundred million dollars a year. All of the savings would be reallocated to the uses specified in the proposal. However, the LAO indicates that, while this initiative would result in a lower prison population, it would increase the state parole population by several thousand people over the first three years after it is enacted. Proposition 47 could also temporarily increase state court costs, though a temporary increase in caseloads due to resentencing of offenders currently in prison or jail, and by increasing the number of parole revocation hearings for individuals sentenced to parole under this proposal who fail to meet the terms of their parole. However, the LAO believes that these increases would be offset by the lower cost of adjudicating misdemeanors as opposed to felonies, and the eventual reduction in the number of people being sentenced to community supervision. The LAO believes that this legislation would result in short-term court cost increases, but will produce cost savings for the court system in the longer term.

At the local level, the LAO estimates that Proposition 47 could result in annual cost savings for criminal justice systems in the low hundreds of millions of dollars. This is because Proposition 47 would result in fewer individuals being sentenced to serve time in county jails, and shorter sentences for those who are. In addition, individuals would likely spend less time under county supervision for misdemeanors than they do for felonies.

However, these eventual cost savings would primarily be at the county level, while it is likely that cities would see an increase in costs. This would likely be the case for the City of Los Angeles. Under this proposal, the City Attorney's workload could significantly increase, as the City Attorney's Office is responsible for the prosecution of misdemeanors. The City Attorney's Office states that if Proposition 47 is enacted, they anticipate filing approximately 13,500 new cases each year, 17% more than they currently file. The City Attorney's Office states that, to handle the increased workload, they would need eight new attorneys and seven new support staff beginning this fiscal year. The City Attorney's Office estimates that this would result in a fiscal impact of \$1.35 million for the remainder of this fiscal year, and \$2.7 million in ongoing costs after that. However, further analysis will be needed if Proposition 47 is passed to determine the actual impact on the City Attorney's workload, and to accurately determine their staffing and funding needs.

Conclusion

Proposition 47 would make significant changes to the criminal justice system, likely resulting in reduced spending on imprisonment and increased funding for drug treatment, diversion programs, K-12 education and victim's services. The majority of those affected by Proposition 47 would


benefit from rehabilitation programs, which could reduce recidivism and address substance abuse issues that often drive these crimes.

While some concerns raised by opponents are merited, in particular the removal of the automatic grand theft charge for firearms with a value of under \$950, similar legislation in other states has had positive results.

DEPARTMENTS NOTIFIED

Police Department

City Attorney's Office



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Analyst

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Attachment: Resolution (Price - Wesson - Cedillo)