

CALIFORNIA STATE ASSOCIATION OF COUNTIES
BOARD OF DIRECTORS
Thursday, September 4, 2014
10:00am - 1:30pm
CSAC Conference Center, Sacramento

A G E N D A

Times for agenda items listed herein are approximate. Matters may be considered earlier than published time.

Presiding: John Gioia, President

10:00am - **PROCEDURAL ITEMS**

- | | |
|--|--------|
| 1. Roll Call | Page 1 |
| 2. Approval of Minutes of May 15, 2014 | Page 3 |

10:10am - **SPECIAL PRESENTATION**

- | | |
|---|--------|
| 3. CSAC Corporate Partners Report | Page 7 |
| <ul style="list-style-type: none">▪ Pauline Whelan, Alkermes▪ Jim Manker, CSAC staff | |

10:30am - **ACTION ITEMS**

- | | |
|--|---------|
| 4. Consideration of November 2014 Ballot Initiatives | |
| <ul style="list-style-type: none">▪ DeAnn Baker & CSAC Advocacy Staff | |
|
<i>Proposition 1: The Water Quality, Supply, and Infrastructure Improvement Act</i> | |
| <ul style="list-style-type: none">▪ Representative from 'Yes on Prop. 1' campaign▪ Representative from 'No on Prop. 1' campaign | Page 15 |
|
<i>Proposition 2: State Reserve Policy</i> | |
| | Page 22 |
|
<i>Proposition 46: The Troy & Alana Pack Patient Safety Act of 2014</i> | |
| <ul style="list-style-type: none">▪ Bob Pack, Father & Co-author of Prop. 46▪ Brandon Castillo, 'No on Prop. 46' campaign | Page 28 |
|
<i>Proposition 47: The Safe Neighborhoods and Schools Act</i> | |
| <ul style="list-style-type: none">▪ Elizabeth Siggins, 'Yes on Prop. 47' campaign▪ Cory Salzillo, Legislative Director, CA State Sheriffs Assoc., 'No on Prop. 47' | Page 34 |
| 5. Approval of CSAC & CSAC Finance Corp. Trademark License Agreement, Organizational Update, and Finance Corp. Report | Page 52 |
| <ul style="list-style-type: none">▪ Supervisor Vito Chiesa, CSAC 1st Vice President▪ Matt Cate, CSAC Executive Director▪ Nancy Parrish, CSAC Finance Corp. Executive Director | |

11:45am - **INFORMATION ITEM**

- | | |
|--|---------|
| 6. Realignment Allocation Committee (RAC) Report | Page 62 |
| <ul style="list-style-type: none">▪ David Twa, CAOAC President▪ Elizabeth Howard Espinosa, CSAC staff | |

12:00pm - **LUNCH**



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August 12, 2014

To: CSAC Board of Directors

From: Elizabeth Howard Espinosa, Senior Legislative Representative
Administration of Justice

Kelly Brooks-Lindsey, Senior Legislative Representative
Health and Human Services

**RE: CSAC Executive Committee Action on Proposition 47 – OPPOSE position
(Action Item)**

Recommended Action: The CSAC Executive Committee recommends that the Board of Directors adopt an OPPOSE position on Proposition 47, the Safe Neighborhoods and Schools Act.

Background. As detailed in the attached analyses, the CSAC Administration of Justice policy committee recommended **no position** on Proposition 47 to the CSAC Executive Committee. The CSAC Health and Human Services Policy Committee recommended a **neutral** position. At its August 7 meeting, the Executive Committee discussed Proposition 47 at length and for the reasons summarized below have advanced a recommended oppose position to the Board of Directors.

- There is significant uncertainty over the local workload/caseload impacts and discomfort with how a new set of sentencing changes will affect counties' ongoing efforts to implement AB 109.
- There is significant skepticism over the estimated level of savings (state and local) that the initiative would yield.
- While some support was expressed for the general objective behind the bill – further exploring sentencing reforms for lower-level crimes – the initiative process severely limits any future amendment to the statutory changes.
- The initiative does nothing to offset the imposition of workload on the criminal justice system, but instead redirects funds to other parts of the system. Most importantly, the non-supplantation clause means that counties will have to build new programs with the assumed savings.
- Current jail conditions mean that the many counties operating under a cap would not see any meaningful benefit to the reduction in penalties.

The yes and no campaigns for Proposition 47 have been invited to the Board of Directors to present their respective arguments.

A full discussion of the provisions of Proposition 47, the leading proponents and opponents, and details on assumed workload, cost estimates, and impact of system investments are covered in the attached memos to the AOJ and HHS policy committees.



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July 24, 2014

TO: CSAC Administration of Justice Policy Committee

FROM: Elizabeth Howard Espinosa, Senior Legislative Representative
CSAC Administration of Justice Policy Committee

Re: **Recommended Position on Proposition 47, *The Safe Neighborhoods and Schools Act* – ACTION ITEM**

Recommended Action: Staff recommends that the Administration of Justice Policy Committee take **NO POSITION** on Proposition 47, the Safe Neighborhoods and Schools Act.

CSAC POLICY COMMITTEE REVIEW

In broad terms, Proposition 47 is a sentencing reform initiative, which would reduce penalties for specified crimes. It also would reinvest assumed savings into three categories of treatment and intervention. The CSAC Officers referred Proposition 47 to the Health and Human Services (HHS) and the Administration of Justice (AOJ) Policy Committees for joint review to permit analysis of both sentencing changes and proposed system investments. The HHS policy committee will meet on July 28 to discuss the measure; its analysis will focus on how the proposed system investments of assumed savings associated with Proposition 47's implementation will impact counties. The AOJ committee will review and analyze the impacts of changes on the criminal justice system.

The recommendation of both committees will be forwarded to the CSAC Executive Committee for review at its August 7 meeting. The CSAC Board of Directors will review and take final action on this and other ballot measures at its September 4 meeting.

BACKGROUND

Crimes generally are classified into one of three categories, from the most to least serious: felonies, misdemeanors, and infractions. There are important subcategories within these classifications, especially in the felony class. Sentencing changes enacted pursuant to 2011 Public Safety Realignment (AB 109) mean that offenders convicted of certain lower-level felonies (non-serious, non-violent, non-sex offenses) now serve their sentences in county jail. Prior to 2011 Realignment, felony sentences generally were served in state prison.

If approved by the voters at the November 2014 General Election, Proposition 47 would make all of the following changes:

1. Reduce penalties for certain offenders convicted of non-serious and non-violent drug and property crimes;

2. Allow persons currently incarcerated for these specified non-serious and non-violent crimes to seek resentencing;
3. Create a mechanism by which state correction system savings associated with these sentencing changes would be calculated;
4. Redirect identified state savings to three categories of prevention and treatment.

We explore each of these four main components in more detail below.

PENALTY CHANGES

Proposition 47 would reduce existing penalties for six specific non-serious, non-violent crimes: petty theft, commercial burglary (creating a new carve-out for shoplifting), receiving stolen property, writing bad checks, forgery, and drug possession. The changes generally reduce these crimes from felonies or wobblers (crimes for which either a felony or a misdemeanor can be charged) to misdemeanors. However, convictions for these crimes could still be charged as felonies if the person is required to register as a sex offender or has a prior conviction of a “super strike” as defined in Penal Code Section 667(e)(2)(C)(iv).¹

RESENTENCING PROVISIONS

Persons serving a prison sentence for a felony conviction for crimes that, under the provisions of the initiative, are reclassified as misdemeanors would be permitted to seek court review for purposes of resentencing. The initiative gives the court guidance for considering how to exercise its discretion in determining whether a person seeking resentencing poses “an unreasonable risk of danger to public safety².” Among the factors the court may consider: 1. The person’s conviction history – including types of crimes committed, extent of victim injuries, and length of prior prison commitments; 2. The petitioner’s disciplinary and rehabilitative records; and 3. Any other evidence the court deems to be relevant in making the determination of risk.

Successful petitioners would be given credit for time served and subject to parole supervision for one year following completion of their sentence, although the court may waive parole as part of its resentencing determination. The initiative prohibits a person from receiving a longer sentence by virtue of resentencing than he or she otherwise would have had. Persons with “super strike” convictions or who are subject to sex

¹ This section enumerates eight specific offenses or categories of offenses that are serious or serious *and* violent, including, among others, murder, sexually violent offenses, possessing a weapon of mass destruction, child sexual abuse, and any other felony offense punishable by life imprisonment or capital punishment. Section 667 (e)(2)(C)(iv) was enacted by Proposition 36 (2012), the three-strikes reform. Under the latter initiative, persons seeking resentencing (if their third strike was neither serious nor violent) are ineligible if they have a previous “super strike.”

² For purposes of the initiative, “unreasonable risk of danger to public safety” is defined as the risk that the petitioner will commit a new violent felony (i.e., “super strike”) enumerated in Penal Code Section 667(2)(C)(iv), as described in the footnote 1.

offender registration requirements are not eligible to seek resentencing. Petitioners must file for resentencing within three years of the initiative's effective date or, upon showing of good cause, at a later date. Successful petitioners would still be barred from possessing or owning a firearm.

PROCESS FOR CALCULATING STATE CORRECTIONS SYSTEM SAVINGS

The initiative would create a "Safe Neighborhoods and Schools Fund" (Fund) within the state treasury and would establish a process by which the Department of Finance would calculate the annual state-level correctional system savings associated with implementation of the initiative's provisions. The measure specifies the timing of the savings calculation (before July 31, 2016 and on or before July 31 of every subsequent year) as well as the transfer of any savings (before August 15 of each year beginning in 2016) into the Fund. The measure further specifies that expenditures from the Fund must be made exclusively on the purposes outlined in the Act³ and may be made without regard to fiscal year. Further, the Act bars the Legislature from transferring or appropriating resources from the Fund for purposes other than those outlined within.

REDIRECTION OF STATE SAVINGS

The provisions of Proposition 47 direct the State Controller by August 15 of each year, beginning in 2016, to distribute the state savings in the Fund as follows:

- 65 percent to the Board of State and Community Corrections for grants to public agencies aimed at supporting **mental health and substance use disorder (SUD) treatment as well as diversion programs** for people in the criminal justice system – with a particular focus on recidivism reduction for those convicted of less serious crimes (such as those reclassified by the measure) and for those with mental health or SUD treatment needs.
- 25 percent to the Department of Education dedicated to a grant program **supporting K-12 truancy reduction programs or assisting at-risk students or those who are victims of crime;**
- 10 percent to the Victim Compensation and Government Claims Board for grants to support **trauma recovery centers.**

Each of the three recipient state entities would be permitted to spend up to 5 percent of the total funds to cover administrative costs associated with the new programmatic responsibilities. The State Controller would be required to conduct an audit of the grant programs in the three categories outlined above to ensure expenditures are targeted to only the purposes specified in the initiative. Findings must be reported to the Legislature and the public. Non-supplantation provisions would apply.

³ The stated purpose of the Fund is to "expand programs for public school pupils in kindergarten through 12th grade, victims of crime, and mental health and substance abuse treatment and diversion programs for people in the criminal justice system."

Further, the measure specifies that local agencies – presumably those awarded a grant under the initiative – would not be required to provide programming or levels of service above what the funding provided can cover. Finally, any costs incurred by the State Controller or Department of Finance for their assigned activities associated with the Act's implementation may also be deducted from the Fund before distributions are made.

The initiative could be modified by a two-thirds vote of the Legislature, but only if the changes furthered the purpose of the original measure.

ESTIMATED FISCAL/WORKLOAD IMPACTS

The Legislative Analyst's Office (LAO) indicates that the passage of Proposition 47 would potentially result in a net savings for the state criminal justice system in the "low hundreds of millions of dollars," which would be deposited into the Fund as described previously. The state savings are estimated based on presumed reductions in the state prison population (given the reduction in prison-eligible crimes), which are in part offset by increased costs in state parole responsibilities and potential state court costs for resentencing proceedings. The LAO also assumes a similar level of county criminal justice system savings; any such savings achieved would remain locally and would not be subject to redirection. In terms of sheer numbers, the proponents assume – through their independent analysis – that 10,000 persons would benefit from either the resentencing provisions or shortened terms at the local level annually.

It is extraordinarily difficult to assess the likelihood that the state or local savings estimates offered by the LAO would be achieved. Indeed, in its analysis, the Analyst acknowledges that the fiscal impacts are subject to numerous assumptions and unknowns and, therefore, are "subject to significant uncertainty." Among the complications in attempting to derive system savings are data limitations that prevent clear identification of who – now serving a state prison sentence for one of the affected crime categories – would be subject to resentencing provisions.⁴ Future application (and resulting costs and/or savings of the new sentencing scheme) is largely speculative, including how these changes might affect local sentencing decisions. Finally, future crime trends that drive workload and how these offenders resentenced under the provisions of the Act are sentenced (based on individual judicial decisions) are difficult to predict with any certainty or specificity. CSAC does not have access either to the data or the modeling tools needed to undertake these analyses independently.

For assumed savings for both state and local correctional systems, there are two aspects: the financial benefits of prospective application of the changes and those associated with the resentencing provisions (retrospective). For the state, it will enjoy savings associated

⁴ This limitation largely relates to the way in which the initiative would divide misdemeanor and felony convictions (by setting a new value [\$950] below which a theft or forgery or shoplifting, for example, would be considered only a misdemeanor). Offender-level data do not include this level of case-/crime-specific detail in electronic records.

with fewer offenders being eligible for prison, given the reductions to existing penalties. The LAO assumes that the savings associated with driving down future prison population may translate to several thousand fewer inmates annually on an ongoing basis. Further, the Analyst estimates a temporary prison population reduction resulting from those who leave prison early as a result of resentencing proceedings. As mentioned previously, the state would also experience a likely bump in the state parole population that would offset a portion of the prison savings.

The state trial court system would experience some measurable increase in costs associated with the resentencing workload. Presumably workload reductions (owing to fewer felony trials and less time-intensive court processes for misdemeanor cases) would offset those increases. To the extent that counties' supervision responsibilities drop, there could be a resulting decrease in the number of revocation proceedings.

The table below attempts to summarize the various potential state and local effects. It is important to note that any given county's operational or financial impact is difficult to predict, given the uncertainty about the numbers of offenders in each of these potential cost and workload impact categories. Further, implementation of the initiative's provisions is subject to significant subjective decision-making along the way, and it's difficult to foretell how the system and the persons employed within will adapt and adjust. For example, whether a given county may benefit from reduced jail workload (again, without being able to precisely quantify how concurrent jail workload increases may offset or outstrip workload relief) will largely depend on a county's current capacity. Many counties continue to experience overcrowded jail conditions, so changes in jail population – even if a given jurisdiction were to face a net reduction in custody demand – may only help on the margin. By the same token, each county will experience overall workload increases of potentially varying magnitudes depending on the types of the offenders in each jurisdiction's system.

State Impacts	Local Impacts
<p>↓ in prison population associated with fewer prison-eligible felonies</p> <p>↑ in state parole population for those ordered to state supervision following release or resentencing</p> <p>↑/↓ increase in state court costs associated with resentencing proceedings, but potentially offsetting reduction in workload associated with fewer felony (but potentially more misdemeanor trials)</p> <p>↓ in revocation hearings depending on net numbers of persons on supervision locally</p> <p>↓ in overall prison/parole costs assuming</p>	<p>↑ increase in county jail sentences to the extent that successful petitioners are remanded to the county jail to fulfill the remainder of a misdemeanor term locally</p> <p>↑ increase in county jail sentences for those sentenced to local term who otherwise would have gone to prison</p> <p>↓ in county jail population associated with those offenders who successfully petition for resentencing or who would have previously been subject to a county felony term for crimes now defined as misdemeanors (release, shorter terms, or</p>

State Impacts	Local Impacts
<p>that targeted interventions and treatment funded by the savings are successful in reducing future victimization and improved offender outcomes</p> <p>✦ The state may also benefit in reaching and maintaining the federal court-ordered population cap, assuming that prison inmate numbers (one-time and ongoing) drop.</p>	<p>perhaps heavier reliance on alternatives to incarceration)</p> <p>↓ in pre-trial jail population given fewer felonies and more misdemeanors</p> <p>↓ in post-release community supervision population for those who would otherwise have exited prison on a county probation caseload but who, under resentencing orders, would be supervised by state parole</p> <p>↓ in other local supervision workload associated with fewer felony offenders / more misdemeanants</p> <p>↑/↓ in workload (district attorney, public defender, court security, probation) associated with court proceedings overall (fewer felony and more misdemeanor proceedings overall and potentially some reduction in revocations)</p> <p>↓ in overall system costs assuming that targeted interventions and treatment funded by the savings are successful in reducing future victimization and improved offender outcomes</p>

POTENTIAL COUNTY IMPACTS

Criminal Justice System Impacts. One of the more difficult aspects of this analysis relates to how these proposed new sentencing changes would impact county criminal justice system workload. In the previous section, we outline both the potential that certain aspects of the initiative contemplate new county criminal justice system workload, but other aspects may have offsetting benefits. The difficulty is that data available today cannot predict with certainty how the retrospective application of the proposed sentencing changes may work (i.e., impacts of resentencing), and analysis of how the prospective application of the sentencing changes is highly speculative and subject to significant local discretion.

It is important to acknowledge, however, that counties remain deeply engaged in implementation of the largest correctional system reform in a generation. AB 109 fundamentally altered criminal justice system responsibilities with far-reaching impacts most acutely experienced in the local custody and supervision functions. The initiative's opponents correctly raise concerns about the impact of another wave of sentencing reforms following too quickly on the heels of 2011 Public Safety Realignment. The specific effects of these changes are difficult to quantify, as discussed. Regardless, another round

of changes is likely to shock a system still in flux. Further, to the extent that the changes contemplated by Proposition 47 result in net criminal justice system costs, the state savings are directed to other program priorities and would not be available to local law enforcement partners.

Behavioral Health Investments. There is a clear nexus between investment in behavioral health treatment services and recidivism reduction. Research has shown that treatment investment is likely to reduce future costs associated with crime, policing, and incarceration of offenders. Previous evaluations from the Mentally Ill Offender Crime Reduction Grant Program demonstrate the effectiveness of evidence-based mental health treatment on reducing jail bookings and jail stays.

Given counties' current role as provider of behavioral health services, the grants provided under Proposition 47 could be used to augment local efforts to provide mental health and substance use disorder treatment services to criminally involved individuals. The recidivism reduction efforts could benefit county jails, as well as state prisons. The proposed reinvestments in behavioral health programs and recidivism reduction align with the budget augmentations that CSAC proposed and supported during the 2014-15 state budget discussions.

Counties would presumably be a primary beneficiary of the grant programming targeting offenders with mental health or substance use disorder treatment needs – which would receive the majority (65%) of the state savings.

Truancy Reduction Investments. In addition to investments in behavioral health programs, Proposition 47 includes investments in truancy reduction. There is a body of research that indicates a strong correlation between truancy and future criminal justice system involvement.

Truancy, especially among elementary school students, has long-term negative effects. Students who miss school at an early age are more likely to struggle academically and, in later years, to drop out entirely. One study found that for low-income elementary students who have already missed five days of school, each additional school day missed decreased by seven percent the student's chance of graduating. Lacking an education, these children are more likely to end up unemployed and at risk of becoming involved in crime, both as victims and as offenders. To the extent that the presumed savings are invested in K-12 crime prevention programs, there would likely be some shared benefits across a number of systems – education, social services, health care, and criminal justice – if these efforts reduce future criminal activity of the at-risk youth population.

Trauma Recovery Centers Investments. Trauma recovery centers provide mental health and medical services to individuals who have suffered from violence, trauma and loss. Populations served include victims of domestic violence, survivors of physical assault,

family members of homicide victims, sexual assault victims, individuals who have suffered brain injury as the result of trauma, survivors of torture and gender-based violence for refugees, as well as asylee and asylum-seekers. Initial studies of the trauma recovery center services indicate that the centers increase access to mental health and SUD treatment and decrease homelessness. To the extent that the centers improve outcomes for individuals counties may already be serving, additional funding may be beneficial.

SUPPORT / OPPOSITION

The named proponents of Proposition 47 are George Gascón, District Attorney for the City and County of San Francisco, and William Lansdowne, former police chief in the cities of San Diego, San Jose and Richmond. Other groups that have endorsed the initiative include the California Teachers Association, the California Democratic Party, and AFSCME.

Leading points of support among proponents:

- The sentencing changes are smart on crime, targeted to the lowest level offenders, and built with strict protections in mind to maintain public safety.
- Proposition 47's reforms prioritize serious and violent criminals, freeing up savings to invest in treatment and services that will prevent crime and reduce victimization.
- The initiative would reduce barriers to re-entry for nonviolent offenders, improving the likelihood of success upon community reentry.

Opponents of Proposition 47 include the key statewide law enforcement associations and victims' advocates in California: the California District Attorneys Association, the California State Sheriffs' Association, the California Police Chiefs Association, the California Peace Officers Association, Crime Victims United of California, Crime Victim Action Alliance, the California Coalition Against Sexual Assault, and others.

Leading points of opposition among opponents:

- Sentencing changes threaten public safety and inappropriately reduce criminal penalties, resulting in additional early prison releases.
- Significant new changes to California's sentencing structure and to how responsibilities are split between the state and local criminal justice systems come too soon on the heels of AB 109 implementation. The system remains in a state of flux and a new layer of reforms will destabilize important implementation efforts underway.
- Proposed changes would increase criminal justice system workload, but resulting savings would not benefit local law enforcement.

The ballot arguments – pro, con, and rebuttals to each – recently were made available. Those materials are included in the attachments.

COUNTY POLICY CONSIDERATIONS

At its core, Proposition 47 is a sentencing reform measure. Generally speaking, CSAC does not weigh in on legislative or ballot measures that strictly create a new crime or enhance a penalty for crimes. We did not, for example, weigh in on the original Three Strikes initiative in the 1990s nor did we take a position on the Three Strikes reform measure of 2012 (Proposition 36). However, CSAC opposed the 2000 initiative (Proposition 21) that changed the treatment of juvenile offenders – making it easier to charge juveniles in the adult court – on the basis of increased costs.

Every legislative year, there are dozens if not hundreds of bills that propose to create a new crime or enhance a penalty. Again, CSAC stays out of these bills for two primary reasons. First, there is an inherent conflict in the county criminal justice structure, with county responsibilities spanning both the prosecution and defense functions. The very nature of that structure conflicts CSAC out of these policy matters. Secondly, given the diversity of perspectives among counties about the relative benefits of a more strict vs. more lenient penalty structure, arriving at a consensus across counties on the appropriateness of punishment is unlikely.

Although AB 109 has certainly made all criminal justice partners – including CSAC – more sensitive to the workload dynamics associated with changing penalties and potentially increasing or decreasing those who are eligible for a county jail term vs. a prison term, we have no specific policy related to sentencing reforms. Some could argue that if additional sentencing reforms are called for, a more comprehensive system analysis is warranted.

Perhaps most importantly, we anticipate that the CSAC membership will be evenly divided on this measure. While we are not aware of counties that have weighed in on Proposition 47 to date, there are boards of supervisors that would likely be inclined to support the goals and objectives of the initiative. Conversely, other county boards likely would be sufficiently concerned about the potential overall public safety impacts of the measure that they would be prone to oppose. Reasonable minds can – and do – differ on the relative merits of these policy changes.

CSAC takes very seriously both the strength and substance of the opposition of our local law enforcement partners to this initiative. They are rightly concerned about specific public safety impacts of the initiative's changes. In a broader sense, how would the new responsibilities and workload affect a local correctional system still in flux? At a time when counties continue to adjust to AB 109 implementation and are still working to resolve existing challenges, what will be the effects of a new set of substantive changes? Are our facilities and systems too fatigued to adequately adapt?

Finally, it is important to acknowledge that the initiative will likely help the state to some degree in further driving down its prison population.⁵ Depending on the magnitude of the population impact, the initiative could improve the state's likelihood that it will be able to comply with the population milestones ordered by the federal court. Counties and local criminal justice system remain somewhat vulnerable to other impacts (e.g., other changes imposed by the courts or early releases ordered by the Compliance Officer) until the state is able to reach and maintain the reduced prison population level.

STAFF COMMENTS

Although the specific provisions of Proposition 47 on their face are clear, an analysis of the local criminal justice system impacts is extraordinarily complex. The initiative could impose both increases and partially offsetting decreases in county criminal justice system workload responsibilities. Proposition 47 may produce local system savings that would be available to invest in the criminal justice system. Further, it affirmatively invests state system savings in specified programs and services that could have beneficial effects by addressing mental health and substance use disorder issues among those in the offender population. CSAC actively promoted behavioral health system investments in 2014 as a means to augmenting counties' capacity to improve offender outcomes – which could drive down future criminal justice system impacts. Importantly, however, the initiative causes considerable concern among our public safety system partners, both with the specific implications of the proposed law changes and with respect to an additional layer of responsibilities in an already strained system.

REQUESTED ACTION

Given the difficulty of quantifying specific workload and cost impacts and CSAC's likely lack of organizational consensus on the relative benefits of this measure, staff recommends that the Administration of Justice Policy Committee take **NO POSITION** on Proposition 47.

STAFF CONTACT

For questions on this matter, please contact Elizabeth Howard Espinosa at 916-650-8131 or eespinosa@counties.org.

Attachments:

- Proposition 47 Initiative text
- Legislative Analyst's Office analysis of Proposition 47 – July 14, 2014
- Ballot arguments FOR and AGAINST Proposition 47 and rebuttals (to for argument / to against argument)

⁵ Recall that the state is required to arrive at the court-ordered prison population cap of 137.5% of design capacity (approximately 113,700 inmates) by February 2016. As of July 9, 2014, the state inmate population level was roughly 116,000.



July 14, 2014

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TO: Supervisor Kathy Long, Chair, CSAC Health & Human Services Policy Committee
Supervisor Ken Yeager, Vice Chair, CSAC Health & Human Services Policy Committee
Members, CSAC Health & Human Services Policy Committee

FROM: Kelly Brooks-Lindsey, Senior Legislative Representative
Farrah McDaid Ting, Legislative Representative
Michelle Gibbons, Legislative Analyst

Re: Proposition 47: "The Safe Neighborhoods and Schools Act"

Recommended Action: CSAC staff recommends that the Health and Human Services Policy Committee adopt a NEUTRAL position on Proposition 47, The Safe Neighborhoods and Schools Act.

Background: The CSAC Officers referred Proposition 47 to both the Health and Human Services and the Administration of Justice Policy Committees. The Administration of Justice Policy Committee will be meeting on July 31 to discuss this measure and recommend a position to the Executive Committee. The Health and Human Services Policy Committee will focus its discussion and analysis on how the potential investments in Proposition 47 will impact county health and human services and programs. The Administration of Justice Policy Committee will focus its discussion and analysis on the sentencing changes proposed by Proposition 47 and how those changes will impact counties, including any possible interactions with 2011 public safety realignment.

Governor Brown and the Legislature have made recidivism reduction a policy focus, particularly with the state's continuing efforts to reduce the prison population (as ordered by the three judge panel overseeing the *Coleman* and *Plata* lawsuits). Additionally, the 2014-15 state budget includes \$90 million for state and local recidivism reduction efforts. Programs focusing on treatment for persons with mental illness along with substance use disorder treatment are both key components of the recidivism reduction funding.

In California, it is estimated that at least 30 percent of state prison inmates – or 33,000 – have a mental illness. A national estimate of the prevalence of serious mental illness among prison inmates breaks down as follows: 14 percent of male inmates and 31 percent of female inmates. Approximately 70 to 80 percent of California inmates have used illegal drugs. The National Institute of Justice, the research division of the US Department of Justice, has estimated that as many as 80 percent of prisoners, probationers and parolees nationwide have drug- or alcohol-related problems. Thirty one

percent of adult males and 52 percent of adult females need intensive treatment services. Additionally, approximately 50 percent of juvenile inmates need substance use disorder treatment services.

Initiative Summary: Proposition 47, The Safe Neighborhoods and Schools Act, seeks to reduce incarceration in state prisons, while providing funding for programs focused on prevention, trauma recovery, mental health and substance abuse treatment and reducing recidivism. Specifically, Proposition 47 would:

- Reclassify certain nonviolent offenses (commercial burglary, forgery, writing bad checks, petty theft, receiving stolen property, and controlled substance possession) that are currently wobblers or felonies to misdemeanors with a maximum penalty of less than one year in county jail.
- Allow a person serving a felony sentence for any of the above crimes, who would be guilty of a misdemeanor under this measure, to petition for resentencing.
- Require a court to grant a qualifying petition for resentencing unless the court finds that resentencing would pose an unreasonable risk that the petitioner will commit one of a limited set of specified violent felonies (e.g., murder, sexually violent crimes).
- Provide that a person resentenced under the measure shall be given credit for time served and shall be subject to parole for one year, but gives the court discretion to release a person from state prison without parole. Revocations of parole would be served in county jail.
- Prohibit resentencing from resulting in the imposition of a longer sentence.
- Allow a person who has already completed a sentence for a felony that would have been a misdemeanor under this measure to apply to the sentencing court to have the felony designated a misdemeanor, and requires such an application to be granted.
- Presume the reclassification of certain crimes will result in state General Fund savings on corrections.
- Create "The Safe Neighborhood and Schools Fund," into which the corrections savings from implementation of this measure are deposited.
- Provide that monies transferred into the Fund are to be considered General Fund revenues for the purpose of the Proposition 98 calculation.
- Prohibit the Legislature from appropriating the funds described in the measure to any purpose other than those below.
- Specifies the funds to be disbursed as follows:
 - a) 25% to the Department of Education to administer a grant program to public agencies to reduce truancy and support students who are at risk of dropping out or are crime victims.
 - b) 10% to the Victim Compensation and Government Claims Board, for grants to trauma recovery centers to provide services to victims of crime.
 - c) 65% to the Board of State and Community Corrections, to administer a grant program to public agencies aimed at supporting mental health treatment,

substance abuse treatment, and diversion programs for people in the criminal justice system, with an emphasis on programs to reduce recidivism.

- Requires the Controller to perform biennial audits of the programs described above and to report to the Legislature and the public on his/her findings.
- Includes non-supplant language for the funds described by the measure.
- Allows modification of the initiative through a 2/3 vote by the Legislature and only if the modification furthers the intent of the initiative.

Fiscal Impacts: The Legislative Analyst's Office (LAO) indicates that the passage of Proposition 47 would potentially result in a net savings for the state criminal justice systems of a few hundred million dollars annually, which would be deposited into the Safe Neighborhoods and Schools Fund. This savings is derived from a reduction in the prison population, which is then offset by increased costs related to a potential increase in the parole population and a potential increase in state court costs for resentencing.

Potential County Impacts:

Behavioral Health Investments. There is a clear nexus between investment in behavioral health treatment services and recidivism reduction. A study by the California Department of Alcohol and Drug Programs suggests that spending on treatment is likely to reduce future costs associated with crime, policing and incarceration of offenders. For every dollar spent on treatment, according to the study, taxpayers may save seven dollars in future crime- and health-related costs. Additionally, the evaluations from the Mentally Ill Offender Crime Reduction Grant Program demonstrate the effectiveness of evidence-based mental health treatment on reducing jail bookings and jail stays.

Given counties' current role as provider of behavioral health services, the grants provided under Proposition 47 could be used to augment local efforts to provide mental health and substance use disorder treatment services to criminally involved individuals. The recidivism reduction efforts could benefit county jails, as well as state prisons. The proposed reinvestments in behavioral health programs and recidivism reduction align with the budget augmentations that CSAC proposed and supported during the 2014-15 state budget discussions. The Proposition 47 grant funding could be used to expand behavioral health services that counties are providing to the AB 109 population. Additionally, the grant funds could also be used as match to leverage federal funds or other matching programs, which would maximize the impact of Proposition 47 and increase treatment opportunities.

The proposition would direct the majority of the state correctional savings to the Board of State and Community Corrections (BSCC). That agency would then administer a grant program to solicit public agency applications for the behavioral health and diversion grants. The BSCC has extensive experience administering similar grant programs, and staff presumes that the Board would bring together a representative body of stakeholders – an Executive Steering Committee (ESC) – charged with creating a competitive grant process, establishing application criteria, and evaluating proposals. CSAC historically has had a strong working relationship with the BSCC. The current chair, Linda Penner, is a former chief probation officer from Fresno County. Susan Mauriello, the CAO of Santa Cruz County, is a member of the BSCC. CSAC will have

multiple avenues to ensure that county voices contribute to the development of the application and grant program, including likely representation on the ESC.

Truancy Reduction Investments. In addition to investments in behavioral health programs, Proposition 47 includes investments in truancy reduction. There is a body of research that clearly indicates a strong correlation between truancy and future criminal justice system involvement.

Truancy, especially among elementary school students, has long-term negative effects. Students who miss school at an early age are more likely to struggle academically and, in later years, to drop out entirely. One study found that for low-income elementary students who have already missed five days of school, each additional school day missed decreased the student's chance of graduating by seven percent. Lacking an education, these children are more likely to end up unemployed and at risk of becoming involved in crime, both as victims and as offenders.

To the extent that the presumed savings are invested in K-12 crime prevention programs, there would likely be some shared benefits across a number of systems – education, social services, health care, and criminal justice – if these efforts reduce future criminal activity of the at-risk youth population.

Trauma Recovery Centers Investments. Trauma recovery centers provide services to individuals who have suffered from violence, trauma and loss. They provide mental health and medical services. Populations served include victims of domestic violence, survivors of physical assault, family members of homicide victims, sexual assault victims, individuals who have suffered brain injury as the result of trauma, survivors of torture and gender based violence for refugees, asylee and asylum-seekers. Initial studies of the trauma recovery center services indicate that the centers increase access to mental health treatment, substance use disorder treatment, and decreased homelessness. To the extent that the centers improve outcomes for individuals counties may already be serving, additional funding may be beneficial.

Staff Comments: Although Proposition 47 would provide additional resources to counties – for mental health, substance use disorder treatment services and diversion programs – several law enforcement groups are raising public safety concerns with the measure. Proposition 47 is being opposed by the California State Sheriffs' Association, the California District Attorneys' Association, and the California Police Chiefs Association. Opposition concerns include:

- By reducing felonies to misdemeanors, Proposition 47 will impact the county jail population by shifting offenders from state prison. Law enforcement opponents are concerned Proposition 47 will exacerbate existing problems with aged, overcrowded and inadequate jails.
- The new shift of sanctions and responsibilities comes as 2011 Realignment is still in its infancy. The criminal justice system is beginning to settle from the massive

changes of the last three years. Another change to the criminal justice system comes at the wrong time.

- The measure provides no direct funding to law enforcement for reducing crime and victimization – all of the presumed savings are directed toward programs outside of core law enforcement functions.
- Proposition 47 may result in the early release of 10,000 inmates.
- Proposition 47 makes the theft of most handguns a misdemeanor (under the measure, theft of items valued under \$950 are misdemeanors).

Staff Recommendation: Despite the investments that Proposition 47 would make into programs that would benefit counties, the strength of the opposition by key public safety officials warrants that CSAC staff recommends that the Health and Human Services Policy Committee adopt a NEUTRAL position on Proposition 47, The Safe Neighborhood and Schools Act.

The Administration of Justice Policy Committee will be meeting on July 31 to consider a position on Proposition 47. As of the drafting of this memorandum, staff was in the midst of analyzing Proposition 47, and a recommended position was not yet available.

Both the CSAC Health and Human Services and the Administration of Justice Policy Committees will forward their respective recommendation(s) to the CSAC Executive Committee for consideration during that body's August 7, 2014 meeting. The policy committees may recommend different positions to the Executive Committee. The Executive Committee's recommendation will then be forwarded to the full CSAC Board of Directors for consideration of the Association's formal position on Proposition 47 on September 4.

The California statewide General Election will be held on Tuesday, November 4, 2014.

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Attachments:

Proposition 47 Initiative text as filed with the state Attorney General's office on December 19, 2013

Legislative Analyst's Office analysis of Proposition 47 – January 30, 2014

Prop **47** Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

★ Argument in Favor of Proposition 47 ★

PROPOSITION 47 IS SUPPORTED BY LAW ENFORCEMENT, CRIME VICTIMS AND TEACHERS.

We in the law enforcement community have come together in support of Proposition 47 because it will:

- Improve public safety.
- Reduce prison spending and government waste.
- Dedicate hundreds of millions of dollars to K-12 schools, crime victim assistance, mental health treatment and drug treatment.

Proposition 47 is sensible. It focuses law enforcement dollars on violent and serious crime while providing new funding for education and crime prevention programs that will make us all safer.

Here's how Proposition 47 works:

- **Prioritizes Serious and Violent Crime:** Stops wasting prison space on petty crimes and focuses law enforcement resources on violent and serious crime by changing low-level nonviolent crimes such as simple drug possession and petty theft from felonies to misdemeanors.
- **Keeps Dangerous Criminals Locked Up:** Authorizes felonies for registered sex offenders and anyone with a prior conviction for rape, murder or child molestation.
- **Saves Hundreds of Millions of Dollars:** Stops wasting money on warehousing people in prisons for nonviolent petty crimes, saving hundreds of millions of taxpayer funds every year.
- **Funds Schools and Crime Prevention:** Dedicates the massive savings to crime prevention strategies in K-12 schools, assistance for victims of crime, and mental health treatment and drug treatment to stop the cycle of crime.

For too long, California's overcrowded prisons have been disproportionately draining taxpayer dollars and law enforcement resources, and incarcerating too many people convicted of low-level, nonviolent offenses.

The objective, nonpartisan Legislative Analyst's Office

carefully studied Proposition 47 and concluded that it could save "hundreds of millions of dollars annually, which would be spent on truancy prevention, mental health and substance abuse treatment, and victim services."

The state spends more than \$9,000,000,000 per year on the prison system. In the last 30 years California has built 22 new prisons but only one university.

Proposition 47 invests in solutions supported by the best criminal justice science, which will increase safety and make better use of taxpayer dollars.

We are:

- The District Attorney of San Francisco, former Assistant Police Chief for the Los Angeles Police Department, and former Chief of Police for San Francisco.
- The former Chief of Police for the cities of San Diego, San Jose, and Richmond.
- A crime survivor, crime victims' advocate, and widow of a San Leandro police officer killed in the line of duty.

We support Proposition 47 because it means safer schools and neighborhoods.

Joining us in our support of Proposition 47 are other law enforcement leaders and crime victims, teachers, rehabilitation experts, business leaders, civil rights organizations, faith leaders, conservatives and liberals, Democrats, Republicans and independents.

Please join us, and VOTE YES ON PROPOSITION 47.

For more information or to ask questions about Proposition 47 we invite you to visit VoteYes47.com.

George Gascon, District Attorney
City and County of San Francisco
William Lansdowne, Former Chief of Police
San Diego, San Jose, Richmond
Dionne Wilson, Victims' Advocate
Crime Survivors for Safety & Justice

★ Rebuttal to Argument in Favor of Proposition 47 ★

This isn't just a poorly written initiative. It is an invitation for disaster. Prosecutors and those concerned about protecting the innocent from violent sexual abuse, identity theft and other serious crimes overwhelmingly oppose Prop. 47. Some opponents include:

- California Coalition Against Sexual Assault
- California District Attorneys Association
- California Fraternal Order of Police
- California Peace Officers Association
- California Police Chiefs Association
- California Retailers Association
- California State Sheriffs' Association
- Crime Victim Action Alliance
- Crime Victims United of California

Regardless of what Prop. 47 supporters intend or say, these respected law enforcement and victims' rights groups want you to know these hard, cold facts:

1. Prop. 47 supporters admit that 10,000 inmates will be eligible for early release. They wrote this measure so that judges will not be able to block the early release of these

prison inmates, many of whom have prior convictions for serious crimes, such as assault, robbery and home burglary.

2. It's so poorly drafted that illegal possession of "date-rape" drugs will be reduced to a "slap on the wrist."
3. Stealing any handgun valued at less than \$950 will no longer be a felony.
4. California Retailers Association President Bill Dombrowski says "reducing penalties for theft, receiving stolen property and forgery could cost retailers and consumers millions of dollars."
5. There are no "petty" criminals in our prisons any more. First-time, low-level drug offenders are already sent to diversion programs, not prison.

Protect our communities. Vote NO on Prop. 47.

Sandra Henriquez, Executive Director
California Coalition Against Sexual Assault
Adam Christianson, President
California State Sheriffs' Association
Roger Mayberry, President
California Fraternal Order of Police

Prop 47 Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

★ Argument Against Proposition 47 ★

California law enforcement, business leaders, and crime-victim advocates all urge you to vote NO on Proposition 47.

Proposition 47 is a dangerous and radical package of ill-conceived policies wrapped in a poorly drafted initiative, which will endanger Californians.

The proponents of this dangerous measure have already admitted that Proposition 47 will make 10,000 felons eligible for early release. *According to independent analysis, many of those 10,000 felons have violent criminal histories.*

Here is what Prop. 47's backers aren't telling you:

- *Prop. 47 will require the release of thousands of dangerous inmates.* Felons with prior convictions for armed robbery, kidnapping, carjacking, child abuse, residential burglary, arson, assault with a deadly weapon, and many other serious crimes will be eligible for early release under Prop. 47. These early releases will be virtually mandated by Proposition 47. While Prop. 47's backers say judges will be able to keep dangerous offenders from being released early, this is simply not true. Prop. 47 prevents judges from blocking the early release of prisoners except in very rare cases. For example, even if the judge finds that the inmate poses a risk of committing crimes like kidnapping, robbery, assault, spousal abuse, torture of small animals, carjacking or felonies committed on behalf of a criminal street gang, Proposition 47 requires their release.
- *Prop. 47 would eliminate automatic felony prosecution for stealing a gun.* Under current law, stealing a gun is a felony, period. Prop. 47 would redefine grand theft in such a way that theft of a firearm could only be considered a felony if the value of the gun is greater than \$950. Almost all handguns (which are the most stolen kind of firearm) retail

for well below \$950. People don't steal guns just so they can add to their gun collection. They steal guns to commit another crime. People stealing guns are protected under Proposition 47.

- *Prop. 47 undermines laws against sex-crimes.* Proposition 47 will reduce the penalty for possession of drugs used to facilitate date-rape to a simple misdemeanor. *No matter how many times the suspected sexual predator has been charged with possession of date-rape drugs, it will only be a misdemeanor, and the judge will be forced to sentence them as if it were their very first time in court.*
- *Prop. 47 will burden our criminal justice system.* This measure will overcrowd jails with dangerous felons who should be in state prison and jam California's courts with hearings to provide "Get Out of Prison Free" cards.

California has plenty of laws and programs that allow judges and prosecutors to keep first-time, low-level offenders out of jail if it is appropriate. Prop. 47 would strip judges and prosecutors of that discretion. When a career criminal steals a firearm, or a suspected sexual predator possesses date rape drugs, or a carjacker steals yet another vehicle, there needs to be an option besides a misdemeanor slap on the wrist.

Proposition 47 is bad for public safety. Please vote NO.

Christopher W. Boyd, President
California Police Chiefs Association
Harriet Salarno, President
Crime Victims United
Gilbert G. Otero, President
California District Attorneys Association

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★ Rebuttal to Argument Against Proposition 47 ★

Don't be fooled by the opposition's deceptive scare tactics:

Proposition 47 does not require automatic release of anyone. There is no automatic release. It includes strict protections to protect public safety and make sure rapists, murderers, molesters and the most dangerous criminals cannot benefit.

Proposition 47 maintains penalties for gun crimes. Under Prop. 47, possessing a stolen concealed gun remains a felony. Additional felony penalties to prevent felons and gang members from obtaining guns also apply.

Proposition 47 does not reduce penalties for any sex crime. Under Prop. 47, using or attempting to use any kind of drug to commit date rape or other felony crimes remains a felony.

We have been on the frontlines fighting crime, as police chiefs of major cities, a top prosecutor, and a victims' advocate working with thousands of victims across California. We support Proposition 47 because it will:

- Improve public safety.
- Reduce prison spending and government waste.
- Dedicate hundreds of millions of dollars to K-12 schools, victims and mental health treatment.

Don't believe the scare tactics. Proposition 47:

- *Keeps Dangerous Criminals Locked Up.* Authorizes felonies for sex offenders and anyone with a prior conviction for rape, murder or child molestation.
- *Prioritizes Serious and Violent Crime.* Stops wasting prison space on petty crimes and focuses resources on violent and serious crime.
- *Provides new funding for education and crime prevention.*

Proposition 47 is sensible. That is why it is supported by law enforcement, crime victims, teachers, rehabilitation experts, business leaders, and faith leaders.

George Gascon, District Attorney
City and County of San Francisco
William Lansdowne, Former Chief of Police
San Diego, San Jose, Richmond
Dionne Wilson, Victims' Advocate
Crime Survivors for Safety & Justice