

FIRST DISTRICT APPELLATE PROJECT
TRAINING SEMINAR
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CURRENT ISSUES IN PROPOSITION 47
LITIGATION

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1 **Current Issues in Prop 47 Litigation**

2016 First District Appellate Project Annual Training and Update Seminar

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2 **"The Safe Neighborhoods and Schools Act"**

- Stated Purpose:
- to "ensure that prison spending is focused on violent and serious offenses;"
- to invest savings into prevention and support programs in schools, victim services and mental health and drug treatment;
- to ensure sentences for dangerous crimes (rape, murder, child molest) are not changed.
- Effective November 5, 2014.

3 **Implemented 3 Key Changes to Felony Sentencing Laws**

- Reduces certain theft and drug possession offenses to misdemeanors;
- Permits those currently serving felony sentences to petition for resentencing as misdemeanors;
- Permits those who have completed their sentences to apply for reclassification of prior convictions to misdemeanors.

4 **Theft Offenses Reclassified as Misdemeanors**

- Petty Theft and Shoplifting:
 - - Any type of property theft if value of property is \$950 or less (PC §490.2)
 - New crime of Shoplifting by entering a business during regular business hours with intent to commit larceny (PC §459.5)
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 - Receiving Stolen Property where value is \$950 or less (PC § 496)
 - - Forgery where the check/instrument is \$950 or less [unless person also convicted of identity theft] (PC § 473)
 -
 - Insufficient Funds/Passing Bad Checks where total amount is \$950 or less and person does not have 3 or more disqualifying priors (PC § 476a)
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 - Petty Theft with a Prior eliminated except for narrow category of sex offenders and those convicted of theft from elders or adult dependents (PC § 666)

5 **Drug Offenses Reclassified as Misdemeanors**

- Possession of a controlled substance (HS § 11350)
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- Possession of concentrated cannabis (HS § 11357(a))
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- Possession of methamphetamine (HS § 11377)

6 **Exclusion from Eligibility: The Super Strikes**

- Persons with PC § 667(e)(2)(C)(iv) "Super Strike" Priors:
 - Sexually violent offenses
 - Oral cop, sodomy, rape of minor under 14 and more than 10 yrs younger than the defendant
 - Lewd and lascivious act on minor under 14 (PC § 288)
 - Any homicide, including attempted homicide as defined in PC § 187--191.5 (note voluntary and involuntary manslaughter, vehicular manslaughter, not excluded)
 - Solicitation to commit murder (PC § 653f)
 - Assault with a machine gun on police or firefighter (PC § 245(d)(3))
 - Possession of weapon of mass destruction (PC § 11418(a)(1))
 - Any serious or violent offense punishable by life imprisonment or death

7 **Exclusion from Eligibility: Mandatory Sex Offender Registration**

- Convicted sex offenders required to register under PC § 290(c)
- Exclusion does not appear to apply to those ordered to register pursuant to trial court's discretionary authority (e.g., PC § 290.006 permitting imposition of registration requirement where court finds crime committed as a result of sexual compulsion or for purpose of sexual gratification)

8 **Mechanisms for Reduction – Petition for Resentencing**

- Petition for Resentencing to the superior court (PC § 1170.18(a))
 - Petitioner currently serving the imposed sentence
 - No prior exclusionary sentences (no prior super strikes or mandatory sex offender registration)
 - Petitioner does not pose an "unreasonable risk of danger to public safety"
 - Petition filed in "the trial court that entered the judgment of conviction"
- Petition shall be granted unless person poses an "unreasonable risk of danger to public safety" ^{def}
 - Person will commit a new super strike (PC 1170.18(c))
 - Trial court exercises its discretion to determine
 - Trial court may consider prior record, history of violent crimes, length of prior sentences, remoteness of prior crimes, prison disciplinary record, prison rehabilitation efforts, and any other relevant evidence (remorse, post-prison housing, job, treatment?)

9 **Petition for Reclassification (Pen. Code, §1170.18(f))**

- For those who have completed their sentences for a felony conviction which would now be a misdemeanor under Prop. 47
- Petition must be granted if person meets the eligibility requirements (offense now a misdemeanor, no prior super strike or mandatory sex offender registration priors)
- Petition may not be denied based on dangerousness
- Trial courts may grant the petition without a hearing unless requested by the petitioner or deemed necessary by the court (PC § 1170.18(h))
- Sunset in 3 years: all petitions (resentencing & reclassification) must be filed by November 5, 2017 (or later only on a showing of good cause) (PC § 1170.18(j))
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10 **Reclassification: for those who have "completed his or her sentence"**

- Those clearly eligible:
 - Persons released from prison and no longer on parole or PRCS

- Persons who have completed a county jail sentence under §1170(h), including any time on mandatory supervision
- Persons who have completed a term of probation
- Unclear whether those currently on parole, PRCS, mandatory supervision or probation should move for resentencing or reclassification
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- Note that reclassification is better option if any risk a court might find petitioner poses a danger to public safety
- But see *People v. Morales* (2015) 238 Cal.App.4th 42, rev granted, S228030, petitioner released on PRCS not entitled to reclassification, was subject to one-year parole period of PC§ 1170.18(d) [fully briefed, no date for oral arg yet set]

11 **Effect of Resentencing or Reclassification**

- Conviction shall be a misdemeanor for all purposes
- EXCEPT
 - person still cannot own or possess a firearm
 - Person still can be convicted for felon in possession of firearm under Penal Code § 29800 (PC § 1170.18(k))

12 **Scope of Prop 47: Eligibility for Relief**

- Not eligible if prior super strike or mandatory sex offender registration per §290(c)
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- Juvenile offenders are eligible if meet all other criteria
 - *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1224-1226 [rev. denied 10-14-15] – Prop 47 necessarily reclassified offenses for juveniles by virtue of WI § 602's correlation of wardship jurisdiction with violations of criminal laws; voters deemed aware that changes in substantive offenses would apply to juveniles; use of adult criminal terminology did not reflect intent to exclude juveniles; see also *T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 650 [re juvenile plea agreements]
 - Followed by *In re Alejandro R.*, First Dist., Div. Two (A144492); *In re J.L.* (2015) 242 Cal.App.4th 1108; *In re D.S.* (Fourth Dist., Div. One (D067269) [all unpublished, no contrary authority]

13 **Scope of Prop 47 – Applies to Plea Bargains**

- *T.W. v. Superior Court* (2015) 236 Cal.App.4th 646 [pet for review not filed], First Dist., Div. One (Margulies, J.)
 - Express language of statute says for convictions “whether by trial or plea”
 - No “plea agreement disqualifier” in the language of the statute
 - General rule is that plea agreements deemed to incorporate future amendments in law. Plea agreements do not shield parties from changes in the law

14 **Beware Overturning a Plea Agreement : *Harris v. Superior Court* (2015) 242 Cal.App.4th 244**

- D pleads guilty to Grand Theft and admits strike for 6 year term in exchange for dismissal of robbery count
- Trial court grants Prop 47 and resentences to misdemeanor G/T, but allows DA to reinstate dismissed robbery count

- Court of Appeal agrees w/ T.W. that Prop 47 applies to plea bargains
 - Notes that a petitioner must seek Prop 47 relief: there is no sua sponte reduction by the trial court without the petition first seeking resentencing or reclassification
- 15 **Harris: misdemeanor reduction deprives prosecution the benefit of its bargain**
- Court of Appeal holds that a Prop 47 petition repudiates the plea agreement, fundamentally alters character of the bargain
 - Where DA deprived of benefit of the bargain, DA permitted to withdraw from bargain, reinstate dismissed charges and return parties to status quo
 - D chooses whether to keep benefit of his bargain or not, agreement is voidable only at D's option
 - Since agreement voided at D's request, no double jeopardy bar to imposition of greater sentence if later convicted of greater charge
 -
- 16 **Plea bargains: Alejandro R., First. Dist., Div. Two, (11-20-15) (unpublished)**
- Minor alleged in WI § 602 petition w/ attempted robbery 2nd and attempted grand theft
 - Minor admits att. grand theft as felony, max confinement time of 18 mos.
 - Petitions for Prop 47 relief, DA opposes noting earlier agreement and dismissal of the att. robbery
 - Trial court (Contra Costa) denies the petition finding
 - Implied agreement that core issues in the contract (felony, max confinement time) would remain regardless of any future changes in law
- 17 **Alejandro R. – no agreement that future changes in law would not apply to D**
- Court of Appeal finds no indication in plea agreement that future changes in law would not apply to D
 - Nothing in the agreement suggesting future changes would not apply
 - Court of Appeal vacates trial court order denying the petition
 - Case remanded for hearing on whether D poses unreasonable risk of danger to public safety and thus whether petition should be granted or denied
 - No mention of Harris or the reinstatement of charges
- 18 **Other Districts Appear to be Siding with T.W.**
- People v. Frausto, 2nd Dist., Div. 2, B264147, Dec. 22, 2015 (unpublished)
 - Recognizes Harris but finds it inapplicable on its facts
 - D in its case lacked prior record, DA did not move to withdraw from plea agreement at time of Prop 47 motion
 - AG conceded D's eligibility for relief on appeal
- 19 **Cases Not Final on Appeal – Eligible for Prop 47 Relief?**
- Does Prop 47 apply retroactively to a defendant sentenced before the Act's effective date (11-5-2014) but whose judgment is not yet final?
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 - Put another way: Can the Court of Appeal order a defendant's convictions be reduced to misdemeanors? Can the Court of Appeal order a remand for resentencing for trial courts to determine whether a defendant's felony convictions are eligible for misdemeanor reduction?
- 20 **People v. Shabazz (2015) 237 Cal.App.4th 303**
- If Prop 47 had merely made eligible offenses misdemeanors, then Court of Appeal would be required to reduce under traditional rules re future statutes reducing punishment get

- applied retroactively (In re Estrada)
 - But voters set forth specific procedure for securing reduction
 - No intent in the legislation to have Prop 47 applied automatically on appeal
 - D limited by statutory remedies set forth in PC § 1170.18
 - D must file an application in the trial court to have his felony convictions designated as misdemeanors
 - Case originated as a Wende brief; no petition for review filed
- 21 **First District, Div. Five Agrees with Shabazz**
- People v. Roberts, A143484, 11-30-15 [unpublished] concludes Prop 47 not retroactive. D must pursue statutory remedy and file appropriate petition in trial court.
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 - People v. Diaz (2015) 238 Cal.App.4th 1323 holds D must petition trial court for relief.
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 - No other published or unpublished authority disagreeing with Shabazz
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- 22 **Retroactivity issue is currently pending in California Supreme Court**
- Whether Prop 47 applies retroactively to defendant sentenced before Act's effective date, but whose judgment was not final until after that date currently before the Cal Supreme Court:
 - People v. Dehoyos (2015) 238 Cal.App.4th 363, review granted Sept. 30, 2015, S228230
 - People v. Lopez (2015) 238 Cal.App.4th 177, review granted Oct. 14, 2015, S228372, briefing deferred pending decision in Dehoyos
- 23 **Is Prop 47 relief available while an appeal is pending?**
- People v. Scarbrough (2015) 240 Cal.App.4th 916 – Trial court lacks jurisdiction to hear Prop 47 petition while appeal is pending. No concurrent jurisdiction.
 - No petition for review filed
 - Request for depublication denied 12-16-15
 - vs.
 - People v. Awad (2015) 238 Cal.App.4th 215 – D may petition Court of Appeal for discretionary limited remand to the trial court to adjudicate Prop 47 petition while the appeal is stayed.
 - D granted Prop 47 relief in trial court as to one count
 - Stay on appeal lifted, appeal on-going as of 11-2015
- 24 **Where to Appeal Trial Court Rulings on Petitions?**
- People v. Rivera (2015) 233 Cal.App.4th 1085 – Appeals are properly within the jurisdiction of the Court of Appeal, not the Appellate Department of the Superior Court
 -
 - No contrary authority. Alejandro N. agreed with the principle in a footnote
- 25 **Petition to the trial court yes, but must it be written?**
- People v. Amaya (2015) ___ Cal.App.4th ___ (B261189; certified for publication on 12-3-15, 2nd Dist.)
 - D entered plea to commercial burglary: three years probation
 - Violation of probation: probation reinstated w/ additional county jail time
 - Oral motion to reduce “this” to a misdemeanor. Denied. Appeal.

- Does an oral motion satisfy the statutory requirement of a petition under 1170.18?
- Court finds statute does not state petition has to be “filed” or in writing
- No legal authority to support AG’s view that “petition” necessarily means a written petition
- If D satisfies criteria of § 1170.18(a), must be resentenced
- Note: deems without discussion that probation is serving a sentence, thus requiring petition for resentencing under § 1170.18(a)
- AG’s pet for rehearing denied; no PFR filed.

26 **Eligibility of Crimes for Reduction: VC § 10851**

- The Defense Argument:
- PC § 490.2(a): “Notwithstanding section 487 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 nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor....”
- Misdemeanor reduction under § 1170.18 applies to grand theft via § 490.2 (§ 490.2 specifically enumerated as eligible offense)
- VC § 10851 is an LIO of grand theft (Kehoe (1949) 33 Cal.2d 711)
- VC § 10851 therefore eligible for misdemeanor reduction
- Auto Theft [Grand theft auto] (PC § 487(d)(1)) is eligible, no rational basis not to extend eligibility to unlawful taking of a motor vehicle

27 **People v. Page (2015) 241 Cal.App.4th 714 – Fourth Dist., Div. Two takes the lead and says no**

- Court of Appeal finds § 10851 not within the enumerated sections amended or added by Prop 47
- Prop 47 did not alter language making § 10851 a wobbler
- § 10851 does not proscribe theft – prohibits taking or driving of motor vehicle, with or without the intent to steal
- § 490.2 inapplicable to § 10851
- No equal protection problem either – within legislature’s purview to declare different punishments for different and/or similar crimes
- D’s public policy argument in favor of extending misdemeanor reduction to § 10851 “not unreasonable,” but no such intent found in the statutory language, not court’s role to insert it
- Petition for review filed 11-24-15, S230793
- Issue is pending in numerous pending First District cases, e.g., Kirkland, A145179

28 **Page followed by People v. Haywood __ Cal.App.4th __ (3rd Dist., C078609, 12-30-15)**

- VC § 10851 not eligible for relief under Prop 47

29 **But People v. Gomez __ Cal.App.4th __ (4th Dist., 12-23-15, E062867) Disagrees**

- Specifically disagrees with Page, finds trial court erred in finding no violations of VC 10851 are entitled to Prop 47 relief
- But finds that D failed to meet his *initial burden* to allege any facts that the value of the car was less than \$950.
- Record did not establish value of the car where D waived probation report and no other evidence as to value
- D not entitled to evidentiary hearing on value where D not meet his initial burden of proof
- BUT: pet for rehearing granted 1-11-16, opn vacated; stay tuned . . .
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30 **More Bad News about Cars: Receiving a Stolen Motor Vehicle, Pen. Code § 496d Not Eligible**

- People v. Garness (2015) 241 Cal.App.4th 1370 & People v. Peacock (2015) 242 Cal.App.4th 708 [both Fourth Dist., Div. Two]
- Opinion in Garness tracks the reasoning in Page:
 - Plain language of 1170.18 does not include § 496d [though § 496 receiving is eligible for reduction]
 - § 496d a wobbler both before and after Prop 47
 - Will not presume entitlement to relief merely because of similarity between § 496d receiving a stolen vehicle and § 496 receiving stolen property
- Opinion in Peacock echoes Garness
- Petition for review pending in Garness, S231031, filed 12-7-15 and Peacock, S230948, filed 12-3-15

31 **Attempted Car Burglary not Eligible for Misdemeanor Reduction**

- People v. Acosta 242 Cal.App.4th 521 (2nd Dist., 11-20-15)
- Car burglary not within enumerated list of eligible offenses
- New PC § 490.2 : misdemeanor petty theft is obtaining any property by theft where value of property is \$950 or less
- But car burglary is not a theft-related offense: theft is not an element of burglary
- No equal protection violation where Legislature can rationally make some nonviolent offenses misdemeanors but not others
- No contrary authority to date. Followed by People v. Aviles, unpublished, 2nd Dist., B262123, 1-12-16.

32 **Residential burglary also likely not eligible for reduction**

- See People v. Phoenix, 2nd Dist., B263259, 11-12-15 [unpublished]
 - Finds first degree residential burglary not eligible for reduction
 - Entry into a residence does not qualify as shoplifting
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- See also In re J.L. (2015) 242 Cal.App.4th 1108, 12-4-15
 - Theft of cell phone from school locker not eligible for reduction to misd shoplifting
 - Public high school ≠ commercial establishment and therefore 2nd degree burglary not eligible for reduction
- People v. Estrada, 2nd Dist., B263924, 12-23-15 [unpublished]
 - 2nd degree burglary conviction not eligible for reduction
 - Entry into residence not a commercial establishment open during business hours

33 **Possession of Access Card Information, PC § 484e(d) – split of authority!**

- People v. Grayson (2015) 241 Cal.App.4th 452 [2nd Dist., Div. 6] holds grand theft by possession of access card information not eligible under 1170.18
 - PC §§ 487 and 490.2 presume quantifiable monetary loss
 - Poss of access card information with intent to use it does not require monetary loss
 - Distinction indicates no intent to include 484e(d) within 490.2
- People v. Cuen (2015) 241 Cal.App.4th 1227 [4th Dist., Div. 3] agrees
 - PC § 490.2 unambiguous: applies to thefts of “money, labor, real or personal property”
 - Theft of access card information is qualitatively different than theft of tangible items

- Specific controls over general: § 484e(d) defines grand theft without reference to value, no indication of intent to permit misdemeanor reduction
 - No petition for review filed in Grayson; Cuen -- petition for rehearing denied, petition for review pending
- 34 **Possession of access card information – falls within § 490.2 introductory clause**
- People v. Romanowski (2015) 242 Cal.App.4th 151 [2nd Dist., Div. 8, 11-13-15]
 - Introductory clause to section 490.2(a) unambiguous and unqualified: “[n]otwithstanding Section 487 or *any other provision of law defining grand theft*,” theft is a misdemeanor if it involves property valued at \$950 or less
 - Nothing in enacted statutes or voter’s intent behind Prop 47 to suggest § 484e(d) should be treated any differently than any other theft offense
 - Explicitly disagrees with Grayson and Cuen
 - Remands for trial court to determine whether the theft involved property valued at \$950 or less
 - Petition for rehearing denied; petition for review pending
- 35 **Romanowski followed by People v. Thompson __ Cal.App.4th __ (2nd Dist., B261625, 12-14-15)**
- Access card = tangible property
 - § 490.2 applies to all specific grand theft provisions
 - Value of the access card info necessarily less than \$950 because value is minimal unless card used
 - If used to obtain \$950 or more, then subject to punishment for grand theft under § 484g
- 36 **Forgery of Checks, Pen. Code, §473 eligible for reduction, no aggregation**
- People v. Hoffman (2015) 241 Cal.App.4th 1304 [2nd Dist.]
 - Multiple individual forged checks, each less than \$950
 - Plea agreement, defendant placed on probation, petitions for resentencing following passage of Prop 47, denied based on total amount of bad checks exceeded \$950
 - Forgery of checks is eligible for Prop 47 reduction, even if aggregate value of checks exceeds \$950
 - Trial court could not deny petition for resentencing based on finding that defendant “outside the spirit” of Prop 47
 - Only relevant criteria are eligibility of offense and whether defendant poses unreasonable risk of committing super strike offense
 - No petition for review filed
- 37 **Note that Passing Bad Checks requires amount of check to be \$950 or less**
- Penal Code § 476a is one of the six specified theft offenses eligible for misdemeanor reduction under Prop 47
 - But pursuant to § 476a(b), eligible only if aggregate value of all passed bad checks is \$950 or less and cannot have 3 or more prior convictions of specified theft offenses
 - No case law on this to date
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- 38 **The \$950 limit – who bears the burden of proof regarding eligibility?**
- Petitioner bears the burden of proving eligibility for Prop 47 relief:
 - People v. Cuen (2015) 241 Cal.App.4th 1227
 - People v. Rivas-Colon (2015) 241 Cal.App.4th 444 [First Dist., Div. Five] – PFR denied 1-

13-16

– People v. Sherow (2015) 239 Cal.App.4th 875

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- Satisfying the burden of proof:
 - Limited to record of conviction [pleadings, transcripts, opinion] – Cuen
 - Parties permitted to present facts via declaration – Sherow
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- Trial court makes the decision – no right to jury trial on eligibility for resentencing – Rivas-Colon
-
- But maybe D must only make an initial allegation that value is under \$950 and then is entitled to an evidentiary hearing? -- Gomez
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39 **DNA Expungement for Minors – In re Alejandro N. (2015) 238 Cal.App.4th 1209, review denied**

- Court of Appeal holds that minors whose offenses are reclassified as misdemeanors under Prop 47 are entitled to have their DNA expunged from the state databank
 - DNA only collected upon felony adjudication of a minor, no collection authorized based solely on commission of a misdemeanor (PC § 296)
 - PC § 1170.18(K) says reclassified misdemeanors “shall be considered a misdemeanor for all purposes [except still can’t own or possess a firearm]”
 - Expungement under PC § 299 – offense still qualifies for DNA collection, but expungement warranted because person not guilty of that offense
 - For Prop 47, offense itself no longer qualifies as offense permitting collection because is now a misdemeanor for all purposes
 - Offenses now classified as misdemeanors have been permanently removed from felony category and are no longer subject to DNA collection
 - Trial court directed to reconsider D’s expungement request and order his DNA removed unless there is another basis for its retention apart from the reclassified misdemeanor offense

40 **DNA Expungement for Adults? Unclear at this Point**

- DNA collection for adults upon conviction of any felony (PC § 296(a))
- But DNA collection also permitted of any adult arrested or charged with a felony (PC § 296(b))
- If Cal Supremes hold in Buza, S223698, that compulsory collection of DNA from all adult arrestees violates the 4th Amendment, then may be able to argue akin to Alejandro N. that retention based solely on reclassified misdemeanors is unauthorized and defendants entitled to expungement if no other basis for retention (other felony convictions)

41 **But Wait: Will there be DNA Expungement for Anyone After AB 1492?**

- AB 1492, signed by Gov. Brown, effective January 1, 2016
- No DNA expungement for any offenses reduced to misdemeanors pursuant to Prop 47
- Appellate challenges to that new law will be forthcoming
- Consider People v. Armogeda (2015) 233 Cal.App.4th 428, holding that Prop 36 drug treatment cannot be denied to those who violate PRCS for drug-related reasons. Denying Prop 36 drug treatment to PRCS violators is an unconstitutional amendment of Prop 36. Any application to Prop 47 and AB 1492?
- Numerous First District pending juvenile appeals hang in the balance (of note In re J.C.,

A146103, Div. 1, where issue explicitly briefed). Stay tuned.

42 **Time Already Spent in Prison or CJ – Does it Reduce the One-Year Misdemeanor Parole Period?**

- PC § 1170.18(d): petitioners shall be given credit for time served and are subject to one-year period of parole following resentencing
- Split of Authority as to whether Excess Custody Credits (Sosa credits) can be applied to reduce the one-year parole period
 - Yes, excess credits can be so used and also can use any excess to reduce fines at the rate of \$30/day under PC § 2900.5 – People v. Morales (2015) 238 Cal.App.4th 42, rev granted, S228030; People v. Pinon (2015) 238 Cal.App.4th 1232
 - No, excess credits cannot be used to reduce parole period or fines – People v. McCoy (2015) 239 Cal.App.4th 431, rev granted, S229296; People v. Hickman (2015) 237 Cal.App.4th 984, rev granted S227964
- Morales is the lead case, watch for the opinion from the Cal Supreme Court

43 **Effect of Prop 47 Reduction on Priors and Enhancements**

- Can a Prop 47 reclassified misdemeanor be used to support a PC § 667.5(b) prior prison term enhancement?
 - Probably not once the offense has been reclassified – offense then becomes a “misdemeanor for all purposes” [no known cases on this issue]
- People v. King, 3rd Dist., 10-28-15 [unpublished] -- D cannot use a reclassified misdemeanor to challenge a previously-imposed 667.5(b) prior. Request for publication denied by Court of Appeal; petition for review and request for publication currently pending, S230904
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- People v. Marks __ Cal.App.4th __ (4th Dist., Div.2, E063516, 12-23-15) – attempt to knock out 667.5(b) priors because those offenses now Prop 47 eligible cannot be done in current case. Requires D to file pet for reclassification in the original cases. Does not opine on whether post-Prop 47 reduction, D can move to strike priors based on reclassified offenses
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44 **Failure to Appear where underlying felony is reduced to misdemeanor under Prop 47**

- Where underlying felony reduced to misdemeanor, felony failure to appear under PC § 1320(b) or 1320.5 remains a felony
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- People v. Eandi (2015) 239 Cal.App.4th 801, rev granted S229305
 - D charged w/ FTA based on pending felony poss of methamphetamine
 - Trial court amended charge to FTA on a misdemeanor
 - Court of Appeal holds trial court lacked authority to redesignate the offense as FTA on a misdemeanor

45 **On-Bail Enhancements – Relief! People v. Buycks (2015) 241 Cal.App.4th 519**

- Court cannot impose a felony out-on-bail enhancement on an offense which is reduced to a misdemeanor under Prop 47
- Eligible for on-bail enhancement under PC § 12022.1 where commits a new felony offense (the secondary offense) while out on bail on a separate felony offense (the primary

- offense) and is later convicted of both
- Where first offense (the primary offense) is reduced to a misdemeanor, is a misdemeanor for all purposes
 - Trial court could not impose on-bail enhancement where primary offense was reduced to a misdemeanor by the time D sentenced on the new (secondary) offense
 - Petition for rehearing denied, petition for review not yet filed