

Pursuant to discussions with the SF District Attorney, the Public Defender, SF Probation Department, BASF and court staff, the Superior Court has endorsed a procedure to streamline Prop. 47 filings and litigation so that petitions for relief under Prop. 47 can be handled as quickly and efficiently as possible. The Superior Court is dedicated to ensuring that appropriate Prop. 47 relief be provided to all eligible petitioners within three years from the effective date of the act in accordance with the statute. (Penal Code section 1170.18(j)).

The Superior Court has indicated that any attorney who was previously appointed to represent a defendant who is now potentially eligible for Prop. 47 relief will be appointed nunc pro tunc to represent such a client for any petition submitted/filed based on a good faith belief that the client is entitled to the relief sought. The court will assume that all lawyers have familiarized themselves with the eligibility criteria for Prop.47 relief generally and that compensation sought will be **for reasonable work** performed in connection with the particular eligibility of any individual defendant for such relief. Similarly, compensation will also be available for lawyers who determine after file review that the interests of the client are better served by a motion pursuant to Penal Code section 17(b).

California Penal Code section 1170.18 (a) et. seq. references two categories of cases that are eligible for Prop. 47 relief. The first category is those cases in which a person is currently serving a sentence for a conviction for a felony that would have been guilty of a misdemeanor had Prop 47 been in effect at the time of the offense. The San Francisco Superior Court considers such eligible cases to be subject to “resentencing”. (Penal Code section 1170.18(b)) The second category consists of those cases in which a person has completed their sentence for the conviction and seeks to have their case designated as a misdemeanor. (Penal Code section 1170.18(g)) The San Francisco Superior court considers such eligible case to be subject to “reclassification”. Procedures for each of these types of cases are discussed below.

I. “RE-SENTENCING” CASES

This term is used to refer to cases in which the defendant is still serving a sentence and/or on some sort of supervision, formal or informal probation or mandatory supervision, i.e. those cases where all the terms and conditions of the conviction have not been concluded.

The Probation Department undertook a preliminary determination, by searching electronic data, of all individuals potentially eligible for relief who are currently supervised by the Probation Department for any of the eligible offenses pursuant to California Penal Code section 1170.18 et. seq. The Probation Department’s list, however, does not analyze if a defendant is **actually eligible** for relief. For example, all P.C. 459 convictions are listed, including residential burglaries, auto burglaries, after hours commercial burglaries and burglaries involving property valued at over \$950.00- convictions which are not eligible for relief. At the current time, these lists do not identify who was the attorney of record.

Three primary categories of re-sentencing cases are noted below.

A. CASES INVOLVING A CONVICTION FOR HEALTH AND SAFETY CODE SECTION 11350

With respect to the great majority of individuals convicted of a violation of Health and Safety Code **section 11350** who are currently on probation, the Public Defender's Office has entered into stipulations with the District Attorney's office to reduce all such offenses for all eligible defendants to misdemeanors. Prop.47 requires such a reduction and there is no possible negative ramification to any defendant inherent in such a reduction. **Please contact Sharon Woo (Sharon.woo@sfgov.org)** before undertaking any Prop. 47 legal work on any petition for relief for an individual currently on probation for an 11350 so as to determine whether relief has already been obtained.

B. PROP. 47 CASES IN WHICH SUPERVISION IS ONGOING and WHICH HAVE FUTURE COURT DATES

With respect to these cases, the Superior Court encourages counsel to file a **two page petition** in Room 101 (**See attachment #1** – petition, order and proof of service). While 15 days' notice is required, the clerk's office will calendar the petition for the next scheduled court day, even if it is less than 15 days away. If the next court date is less than 15 days away, the court hearing the pending matter will re-schedule the date for re-sentencing under Prop. 47 to a future date which affords proper notice for all parties. The court, the District Attorney, the defendant and the Probation Department will all have sufficient time to familiarize themselves with the facts and circumstances of each defendant's criminal history, performance on supervision, the length of probationary period already served the need for formal supervision, and all collateral consequences. Counsel should familiarize themselves with the many potential sentence adjustments that may occur as indicated in the attached order and/or any other sentencing adjustments appropriate to the individual case.

C. PROP.47 CASES IN WHICH DEFENDANT IS STILL ON SUPERVISION BUT THERE IS NO FUTURE COURT DATE

These cases will typically arise when counsel is contacted by a prior client seeking Prop. 47 relief. The court acknowledges that it is difficult for appointed counsel to identify these cases independently and is working on a method to identify eligible cases electronically. When and if this information becomes available, BASF will make it available to counsel.

1. The Superior Court suggests that in these cases, counsel research eligibility (including but not limited to the value of property taken in a theft related case). If counsel is satisfied that the case is eligible for re-sentencing, counsel should then submit the top portion of the one page petition (**See attachment #2**) to the District Attorney's office in an effort to see if these matters can be resolved by stipulation between defense counsel and the District Attorney's Office
2. The Superior Court believes that cases can be reviewed more quickly and with less expense if the parties can stipulate to the terms of the re-sentencing order. Many cases will not be subject to controversy.

3. Counsel should drop the petition off (with the top portion filled out!) at the front desk of the DA's office. Sharon Woo is in charge of the review process. If an agreement is reached after conversation with **Sharon Woo**, she will fill out the order as per the agreement, sign it and she will submit the order to Judge Chan for his signature. Please be aware that any stipulation must address the issue(s) of a reduction in fines and fees.
4. When the court signs the order, it will be delivered to Room 101 for filing. Room 101 will make copies of the original signed order; deliver copies to the District Attorney, the Probation Dept. and the Collections Bureau. Three copies of the order will be left in the outbox in Dept. 22 for pick up by defense counsel.
5. With respect to any case in which a stipulation cannot be reached or in the unusual case where proceeding by stipulation appears to be inappropriate, counsel should file a formal petition/motion which reflects the unique circumstances of their case. These petitions/motions should be filed in Room 101 and calendared, with 15 days' notice for a date in **Dept. 22**.
6. Some clients will seek relief through the Public Defender's Clean Slate Program and the Public Defender will undertake their representation but will of necessity have to contact counsel to secure the file.
7. If counsel is unable to represent a former client, counsel should refer the client to the Public Defender's Clean Slate program. Drop in hours are from 9-11 on Tuesday mornings at the Office of the San Francisco Public Defender's Office.

ii. **"RE-CLASSIFICATION CASES"**

These are cases in which a person has completed their sentence. At this time there is very little reliable information about the number of cases which may be eligible for re-classification under Prop.47.

With respect to these cases, the Superior Court suggests that counsel follow the procedures outlined above in Part C (cases without future court dates). In many of these cases, the file may be difficult to locate, so these cases may take longer to process. However, once the file is located, the only task is to confirm eligibility. There are no release/supervision conditions that require modification or termination. The legal action is merely the reduction of the conviction from a felony to a misdemeanor.

If these cases cannot be resolved with a stipulation between defense counsel and the District Attorney's Office, reclassification motions/petitions should be calendared with 15 days' notice in Dept. 18.

At the present time, these cases are being reviewed by Sharon Woo as well, however, it is anticipated that another district attorney will be assigned to the re-classification cases.

