

## **Statutory Summary: Amendments Made by Prop. 47 Nov. 2014 Ballot**

### **Shoplifting: Added**

**P.C. §459.5:** added new crime of “shoplifting”—it’s any theft, including a burglary, of a commercial establishment for items worth *less than \$950* when the business is *open*.

Misdemeanor P.C. §459.5 Charge if: (6 month misdemeanor)

- a) commercial establishment, and
- b) open for business, and
- c) value of items taken or intended to be taken is less than \$950

Felony P.C. §459.5 Charge if:

- a) commercial establishment, and
- b) open for business, and
- c) value of items taken or intended to be taken is less than \$950
- d) defendant has P.C. 290 registration or P.C. 667(e)(2)(C)(iv) prior  
= felony P.C. §459.5 “shoplifting”

#### **NOTE:**

P.C. §459.5(b) says that if you charge shoplifting (i.e. under \$950 in actual or intended value of items to be stolen), you may *not* be charged with burglary (P.C. 460) or theft (P.C. 484) of that same property. Also could not charge P.C. §487 and then §459.5 as a lesser, if you were worried about ability to prove dollar value of the loss.

Felony P.C. 460(b) Charge if:

- a) commercial establishment, and
- b) closed for business and entered with intent or
- c) open for business but items taken, or intended to be taken, exceed \$950 value

NOTE: if someone has the P.C. §290 registration or P.C. §667(e)(2)(C)(iv) prior, then we can file a felony even for shoplifting items valued less than \$950, and we can also still use all applicable prior allegations per P.C. §1170.12

### **Text of Prop 47 Adding New P.C. §459.5**

SEC. 5, Section 459.5 is added to the Penal Code, to read:

459.5. (a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

## **Forgery: Amended**

**P.C. §473 amended:** punishment provision for forgery

Forgery: If worth \$950 or less, it's a *1 year* misdemeanor

Felony charge for forgery for item valued under \$950 IF the defendant has a prior per P.C. §667(e)(2)(C)(iv), or they have to register per P.C. §290(c), in which case it is a felony punishable per provisions of P.C. §1170(h).

BUT if the defendant is convicted of BOTH the forgery AND identity theft per P.C. 530.5, the \$950 limit is not applicable—any dollar amount will qualify for filing as a felony.

### **Text of Prop 47 Amendment to P.C. §473, Defining Forgery Punishment**

SEC. 6, Section 473 of the Penal Code is amended to read:

473. (a) Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(b) *Notwithstanding subdivision (a), any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed nine hundred fifty dollars (\$950), shall be punishable by imprisonment in a county jail for not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. This subdivision shall not be applicable to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5.*

## NSF Checks: Amended

**P.C. 476a:** amended so that if the TOTAL of all instruments defendant is convicted of making is less than \$950, then it's a *1 year* misdemeanor

UNLESS the defendant has prior per P.C. §667(e)(2)(C)(iv), or they have to register per P.C. §290(c), in which case it's a felony 1170(h) felony.

BUT if defendant has 3 or more prior convictions for P.C. §§470, 475, 476, or 476a, or of petty theft which was also a violation of P.C. §§470/475/476/476a, then the charges can be filed as felonies—i.e. no \$950 threshold to meet.

### Text of Prop 47 Amendment to P.C. §476a

SEC. 7. Section 476a of the Penal Code is amended to read: (changes in italics)

476a. (a) Any person who, for himself or herself, as the agent or representative of another, or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depositary, a person, a firm, or a corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with the bank or depositary, person, firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170.

(b) However, if the total amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed ~~four hundred fifty dollars~~ (\$450) *nine hundred fifty dollars* (\$950), the offense is punishable only by imprisonment in the county jail for not more than one year, *except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.* This subdivision shall not be applicable if the defendant has previously been convicted of a *three or more violation violations* of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if he has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.

(c) through (h) = no changes/amendments

### **P.C. §490.2: New Petty Theft Definition**

Previously, petty theft was defined more by the absence of what the statute said—P.C. §484 does not specify a dollar value within its text. However, reference to grand theft and the dollar value stated there (\$400 in past, \$950 now) gave the parameters showing the range for a petty theft.

Further, we had discretion if there were no prior theft or theft-related convictions and the dollar value of the loss was less than \$50 to file the case as an infraction, per P.C. §490.1.

**P.C. §490.2: added** new crime saying any property taken valued less than \$950 is petty theft—straight misdemeanor.

UNLESS the defendant has a prior per P.C. §667(e)(2)(C)(iv), or they have to register per P.C. §290(c), in which case it can be charged as a felony punishable per the provisions of P.C. §1170(h).

Presumably this is to be read in conjunction with P.C. §666, unless it is read to mean a new felony of P.C. §490.2 petty theft is created, if you have the requisite prior convictions listed in P.C. §290(c) or P.C. §667(e)(2)(C)(iv).

NOTE: forms of grand theft that did not previously encompass the grand theft dollar threshold, like P.C. §487(b) (for agricultural products), **§487(c)** (grand theft from the person), **P.C. §487(d)** (for automobiles and firearms) now must also meet the \$950 threshold to apply.

NOTE: more obscure or less-used grand theft charges, in P.C. §487a through §487j, also must now include the \$950 threshold to be charged as grand theft.

#### Text of Prop 47 for new P.C. §490.2

SEC. 8. Section 490.2 is added to the Penal Code, to read:

*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, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.*

*(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.*

### **P.C. §496: Amended**

**P.C. §496** amended: if value of property is less than \$950, it's a 1 year misdemeanor

UNLESS the defendant has a prior per P.C. §667(e)(2)(C)(iv), or they have to register per P.C. §290(c), in which case it can be charged as a felony punishable per the provisions of P.C. §1170(h).

Key Points:

- See supervisor regarding 496 charges in informations where we did not put on evidence showing value of the stolen goods.
- From now on, put on evidence of value of property at the preliminary hearing. If that evidence is missing in a submitted police report, ask for follow-up investigation that will yield evidence of value of the stolen property.
- Does not amend P.C. 496d, auto theft RSP

### **Text of Prop 47 Amendment to P.C. §496**

SEC. 9. Section 496 of the Penal Code is amended to read:

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, ~~if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars (\$950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.~~

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(remainder of statutory text omitted—not amended by Prop 47)

## P.C. §666: Amended

If you are convicted of the types of theft that have always been listed in §666, you can be charged with this (wobbler) ONLY if:

- The defendant has a prior per P.C. §667(e)(2)(C)(iv), or they have to register per P.C. §290(c). Or prior P.C. §368(d) or (e).
- Eliminates the requirement of three prior qualifying theft-related convictions—now only one is needed.
- NOTE: also says in new §666(c) that defendant can still be subject to 3 Strikes for a violation of §666.

### Text of Prop 47 re: P.C. §666

SEC. 10. Section 666 of the Penal Code is amended to read: 666. ~~(a) Notwithstanding Section 490, every person who,~~

~~having been convicted three or more times of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in a county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.~~

~~(b)~~ (a) Notwithstanding Section 490, any person described in *subdivision (b) paragraph (1)* who, having been convicted of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

~~(1)~~ (b) ~~This subdivision Subdivision (a) shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in subdivision (c) of Section 667.5 or subdivision (e) of Section 1192.7 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667, or has a conviction pursuant to subdivision (d) or (e) of Section 368.~~

~~(2)~~ (c) This ~~subdivision section~~ shall not be construed to preclude prosecution or punishment pursuant to subdivisions (b) to (i), inclusive, of Section 667, or Section 1170.12.

## H&S 11350 amended

Violation now a one year misdemeanor.

UNLESS the defendant has a prior per P.C. §667(e)(2)(C)(iv), or they have to register per P.C. §290(c), in which case it can be charged as a felony punishable per the provisions of P.C. §1170(h).

**ADDS:** GHB (the date rape drug) is now a misdemeanor—does this by adding into the definition of prohibited drugs under §11350 the section that lists GHB—i.e. H&S §11054(e). (Previously, under Re-alignment, GHB had been an 1170(h) felony)

### Prop 47 text re: H&S 11350

SEC. 11. Section 11350 of the Health and Safety Code is amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), ~~or (c), (e), or paragraph (1) of subdivision (f) of~~ Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment *in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.*

~~(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

~~(e)~~ (b) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) ~~or (b)~~, the judge may, in addition to any punishment provided for pursuant to subdivision (a) ~~or (b)~~, assess against that person a fine not to exceed seventy dollars (\$70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

~~(e)~~ (c) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars (\$1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars (\$2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

### **H&S 11357(a): Amended**

H&S §11357(a) amended:

For concentrated cannabis, changes it from a wobbling 1170(h) felony to a misdemeanor

UNLESS the defendant has a prior per P.C. §667(e)(2)(C)(iv), or they have to register per P.C. §290(c), , in which case it can be charged as a felony punishable per the provisions of P.C. §1170(h).

#### **Text of Prop 47 re: H&S 11357(a)**

SEC. 12. Section 11357 of the Health and Safety Code is amended to read:

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be

punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, ~~or shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.~~

(rest of statutory text omitted because it is unchanged)

## H&S 11377: Amended

H&S §11377 amended:

Violation is now a one year misdemeanor

UNLESS the defendant has a prior per P.C. §667(e)(2)(C)(iv), or they have to register per P.C. §290(c), in which case it can be charged as a felony punishable per the provisions of P.C. §1170(h).

### Text of Prop 47 re: H&S 11377

SEC. 13. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year ~~or pursuant to subdivision (h) of Section 1170 of the Penal Code, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.~~

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(3) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (7) or (8) of subdivision (d) of Section 11055 is guilty of a misdemeanor.

(4) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (8) of subdivision (f) of Section 11057 is guilty of a misdemeanor.

(e) (b) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this

subdivision.

### **Applicability Provisions: Retroactivity, Re-sentencing, Etc.**

P.C. §1170.18 is added:

Defendants are entitled to retroactive application of the new laws, so that their prior felonies can be reduced to misdemeanors, even if they are no longer on any kind of supervision, etc. These are the requirements and order of the steps to be taken, per new §1170.18:

Requirements For Defendant: subsection (a)

- i) If a person is *presently serving a sentence*
- ii) For a felony that is now under this Act a **misdemeanor**
- iii) May petition for recall of the sentence
- iv) To the court that pronounced sentence
- v) To **request** re-sentencing pursuant to this Act

**NOTE:** if the defendant is someone who has one of the P.C. §667(e)(2)(C)(iv) priors or has P.C. §290(c) registration, this resentencing does not apply.

Requirements for the Court Once Application Made by Defendant is Received:  
pursuant to subsection (b)

- i) Shall determine if Defendant meets criteria in subsection (a)
- ii) Shall recall Defendant's sentence if Defendant fits sub.(a) criteria
- iii) Re-sentence to a misdemeanor for any of the crimes amended in this Act (H&S SS11350, 11357, 11377, P.C. §§459.5, 473, 476a, 490.2, 496, or 666)
- iv) UNLESS "the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety."

Criteria that may be used in exercising its discretion:

- (1) conviction history-including types of crimes, injury to victims, length of prior prison commitments [no mention of jail commitments], and the remoteness of the crimes,
- (2) disciplinary record, and rehab record, while incarcerated,
- (3) any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

**NOTE:** "unreasonable risk of danger to public safety" means something very specific, per sub. (c): it means committing a new violation of a P.C. §667(e)(2)(C)(iv): (see attached list)

NOTE: these resentencing criteria for assessing dangerousness is exact same as the Prop 36/3K reform act's amendment to add P.C. §1170.126(g).

- v) per (d), resentence the defendant to “credit for time served” and put defendant on parole for one year. But court can also, in its discretion, decide to release the person from parole.
- vi) per (d), defendant is then on parole with the CDCR (note: unclear exactly what this means or how it would work, as it seems to indicate someone whose released on now-misdemeanor convictions would be on parole—but parole has never before been used for someone convicted of a misdemeanor)
- vii) under no circumstances can someone re-sentenced per this section be given more time than they were sentenced to before.

NOTE: bad phrasing, “credit for time served”—sounds like a defendant gets out immediately, as opposed to just picking a new amount of jail time and then calculating how much of that the defendant has already served. Ambiguous drafting that could be bad.

#### P.C. 1170.18(f) Re-sentencing Result if Sentence Already Served:

If a defendant is done serving his sentence for one of the newly-amended sections, defendant can petition the court under (f), if at the time of their offense it would have been a misdemeanor, can apply to court to have the convictions designated as misdemeanors.

**NOTE: application by the defendant is mandatory—the DA, court, nor the victim has a right to initiate such a motion for re-sentencing.**

If an applicant meets the criteria in (f), the court SHALL grant the petition.

NOTE: “who has completed his or her sentence for a conviction” means completed all periods of supervision of any kind?

These post-sentence applications under (f) do not require a court hearing, unless the defendant/applicant requests one. See: (h).

P.C. 1170.18(i): provisions of this section (which governs re-sentencing) shall not apply if defendant has the 290/667 priors.

#### P.C. §1170.18(j) Time Limit:

Must file a petition under §1170.18 within three years of the date of the Act, unless good cause is shown.

Any resentencing *hearing* under this Act will be considered a “post-conviction release proceeding” under Art. 1 §28(b)(7), Marsy’s Law

-meaning: victims have rights for those hearings

NOTE: how to square victims' rights under Marsy's Law if no hearing is done/summarily changed, as allowed for in (f) & (h).

## Referenced Sections from Prop 47

### P.C. §667(e)(2)(C)(iv)

- (I) A “**sexually violent offense**” as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.
- (II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section **288a**, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section **286**, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section **289**.
- (III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section **288**.
- (IV) Any homicide offense, including any attempted homicide offense, defined in Sections **187 to 191.5**, inclusive.
- (V) Solicitation to commit murder as defined in Section **653f**.
- (VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph **(3) of subdivision (d) of Section 245**.
- (VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section **11418**.
- (VIII) Any serious and/or violent felony offense punishable in California **by life imprisonment or death**. [examples: PC 205, 209, 12022.53(d), 273ab, etc.]

### W&I 6600(b) list of “**sexually violent offense**” crimes

(b) “Sexually violent offense” means the following acts *when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person*, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a):

a felony violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.

### P.C. §290(c)

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section **187** committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section **286, 288, 288a, or 289**, Section **207** or **209** committed with intent to violate Section **261, 286, 288, 288a, or 289**, Section **220**, except assault to commit mayhem, subdivision (b) and (c) of Section **236.1**, Section **243.4**,

paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section **261**, paragraph (1) of subdivision (a) of Section **262** involving the use of force or violence for which the person is sentenced to the state prison, Section **264.1, 266, or 266c**, subdivision (b) of Section **266h**, subdivision (b) of Section **266i**, Section **266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289**, or **311.1**, subdivision (b), **(c)**, or **(d)** of Section **311.2**, Section **311.3, 311.4, 311.10, 311.11**, or **647.6**, former Section **647a**, subdivision (c) of Section **653f**, subdivision 1 or 2 of Section **314**, any offense involving lewd or lascivious conduct under Section **272**, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

*(Amended November 6, 2012, by initiative Proposition 35, Sec. 9.)*

**P.C. §1170(h)**

**(h) (1)** Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

**(2)** Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

**(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.**

**(4)** Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

**(5) (A)** Unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

**(B)** The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and shall begin upon release from custody. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(7) The sentencing changes made to paragraph (5) by the act that added this paragraph shall become effective and operative on January 1, 2015, and shall be applied prospectively to any person sentenced on or after January 1, 2015.