14-26 - Prior Convictions Required for Proposition 47 Felony Charges- Attachment List of Specific Prior Convictions Required for Prop 47 Felony Charges

Los Angeles County Sheriff's Department

NEWSLETTER

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Prior Convictions Required for Proposition 47 Felony Charges

Proposition 47 reduced penalties for certain drug and theft crimes from felonies to misdemeanors. All Proposition 47 charges are misdemeanors unless the suspect has had prior convictions for various specific crimes. This newsletter describes the required conditions that must be met in order to charge the suspect with a felony for these Proposition 47 crimes. For additional information on the Proposition 47 charges see Newsletter 14-25, Proposition 47 – Revised.

The suspect may be charged with a felony level charge if the suspect has a prior conviction occurred within either section 667(e)(2)(c)(iv) or 290(c) of the Penal Code (PC), unless the Proposition 47 crime is 666(a) PC, which requires additional prior convictions. Sections 473(b) PC and 476a PC may be charged as felonies without having a previous conviction within sections 667(e)(2)(c)(iv) or 290(c) PC as long as other specific priors are present. These are listed at the end of this Newsletter.

The violations within 667(e)(2)(c)(iv) and 290(c) PC include very serious crimes such as homicide, rape, murder, child molestation, sex offenses, and crimes punishable by death or imprisonment for life.

Section 667(e)(2)(c)(iv) PC includes the following:

Violent offenses listed within Welfare and Institutions Code (WIC) section 6600(b), (includes the following Penal Code sections):

261 (Rape), 262 (Spousal Rape), 264.1 (Rape in concert, aiding or abetting another), 269 (Aggravated Sexual Assault of a Child), 286 (Unlawful Sodomy), 288 (Lewd Acts upon a Child), 288a (Unlawful Oral Copulation), 288.5 (Continuous Sexual Abuse of a Child), 289 (Unlawful Sexual Penetration),

207 (Kidnapping), 209 (Kidnapping with a Specific Intent), or 220 (Assault with intent to commit a sex crime or mayhem) with intent to commit 261, 262, 264.1, 286, 288, 288a, or 289.

288a PC: Oral Copulation with a victim who is more than 10 years younger than the suspect [this would also include 288a(c)(1) PC].

286 PC: Sodomy with a victim who is under 14 years of age [this would also include sections 286(c)(1), 286(c)(2)(B), and 286(d)(2) PC].

289 PC: Sexual penetration of a victim who is under 14 years of age and more than 10 years younger than the suspect [this would also include 289(a)(1)(B)PC].

288 PC: with a victim under 14 years of age [this would also include 288(a), 288(b)(1), and 288(b)(2) PC.]

187 through 191.5 PC: Homicide, attempted homicide, gross vehicular manslaughter.

653f PC: Solicitation to commit murder [specific section is 653f(b) PC]

245(d)(3) PC: Assault with a machine gun on a peace officer or firefighter [machinegun is defined in 16880 PC (any weapon that shoots, automatically more than one shot by a single function of the trigger)].

11418(A)(1) PC: Possession of a Weapon of Mass Destruction ["Weapon of mass destruction" includes chemical warfare agents, weaponized biological or biologic warfare agents, restricted biological agents, nuclear agents, radiological agents, or the intentional release of industrial agents as a weapon, or an aircraft, vessel, or vehicle, as described in Section 34500 of the Vehicle Code (mainly trucks, buses, trailers) which is used as a destructive weapon.]

Any of the following serious and/or violent felonies which are punishable in California by life imprisonment or death:

37 PC	Treason
128 PC	Perjury causing execution of an innocent person
136.1 PC	Intimidation of a witness with gang enhancement
182 PC	Conspiracy to commit any life in prison or death penalty offense or 290 registration offense
205 PC	Aggravated mayhem
209.5 PC	Aggravated carjacking
213(a)(1)(A) PC	Home invasion robbery with gang enhancement
217.1 PC	Attempted murder of a government official
218 PC	Train wrecking
219 PC	Train derailing
246 PC	Shooting at an inhabited dwelling/occupied car, with gang enhancement
273ab PC	Assault on a child, resulting in death
451.5 PC	Aggravated arson
519 PC	Extortion with gang enhancement

667.61 PC	Sex crime with aggravated factor (“one strike” offense)
667.7 PC	Habitual offender causing GBI
667.71 PC	Habitual sex offender
4500 PC	Assault by a life prisoner on a non-inmate
11418(b)(1) PC	Using a weapon of mass destruction
11418(b)(2) PC	Using a weapon of mass destruction
12022.55 PC	Shooting from a car, causing GBI, with gang enhancement
18745 PC	Exploding a destructive device with intent to murder (formerly 12308 PC)
12308 PC	Exploding a destructive device with intent to murder (former section)
18755 PC	Exploding a destructive device causing GBI (formerly 12310 PC)
12310 PC	Exploding a destructive device causing GBI (former section)
1672(a) MV (Military and Veteran’s Code)	Military Sabotage

<u>Section 290(c) of the Penal Code</u> includes convictions for the attempt, conspiracy to commit, or commission of the following violations of the Penal Code:

182	Conspiracy to commit 290 PC registration offense
187	Murder in the attempt or commission of rape, 286, 288, 288a, or 289.

207 or 209	Kidnapping with the intent to commit 261, 286, 288, 288a, 289.
220	Assault with intent, except assault to commit mayhem.
236.1(b) and (c)	Human trafficking.
243.4	Sexual battery.
261 (a)(1)(2)(3)(4)(6)	Rape.
262(a)(1)	Spousal rape, suspect must have used force or violence and been sentenced to state prison.
264.1	Rape in concert, aiding or abetting rape.
266 or 266c	Entice a female minor into prostitution, sex acts under duress.
266h(b)	Pimping of a minor.
266i(b)	Pandering a minor.
266j	Facilitate lewd acts with a child.
267	Take a minor for the purpose of prostitution.
269	Aggravated sexual assault of a child.
285	Bigamy
286	Unlawful sodomy
288	Lewd acts upon a child
288a	Unlawful oral copulation
288.3	Communicate with a minor with intent to commit a sex crime
288.4	Arrange meeting with minor for purpose of 314 PC

288.5	Continuous sexual abuse of a child
288.7	Oral copulation, sex, penetration, sodomy with victim under 10 years old
289	Unlawful sexual penetration
311.1	Possess child pornography with intent to distribute
311.2(b)(c)(d)	Possess child pornography with intent to distribute
311.3	Sexual exploitation of a child
311.4	Knowingly sexually exploiting a child
311.10	Advertising for sale child pornography
311.11	Possession of child pornography
647.6	Annoying or molesting a child under 18
647a (Former section)	Lewd conduct in public
653f(c)	Solicit rape or oral copulation
314(1) or 314(2)	Lewd conduct in public
272	Contribute to delinquency of a minor involving lewd or lascivious conduct
288.2 (felony)	Giving explicit material to a minor with intent to arouse etc.

Sections 473(b) PC, 476a PC and 666(a) PC:

These Proposition 47 violations have different requirements that will allow a felony level charge if the corresponding priors have been committed:

473**(b)** PC (Forgery): prior convictions of both forgery and identity theft (530.5 PC).

476a PC (NSF): prior conviction of petty theft along with a conviction of 470, 475, 476, or 476a for the same incident or have 3 prior convictions for 470, 475, 476 or 476a. Convictions in other states also count as long as the elements of that crime are the same as the above listed sections.

666(a) PC (Petty theft with a prior) must have both 1 and 2:

1. Conviction for 368(d), 368(e) (Fiduciary Elder Abuse) or a violation within Section 667(e)(2)(c)(iv) PC or 290(c) PC
2. A prior conviction of: petty theft, grand theft, 10851 VC, burglary, carjacking, robbery, or 496 PC felony
    a. Prison time served for the above conviction.

Questions regarding the content of this newsletter may be directed to Field Operations Support Services.

Attachment:

List of Specific Prior Convictions Required for Proposition 47 Felony Charges

(Contains Life Imprisonment, Death Penalty, Section 667(e)(2)(c)(iv), 290(c) Penal Code and other Charges that will allow a felony charge for Proposition 47 violations.)

References:

1. LASD Newsletter 14-25 Proposition 47 – Revised
2. California Legislative Information http://leginfo.legislature.ca.gov/faces/codes.xhtml
3. California Secretary of State, Text of Proposed Laws http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47
4. Los Angeles County District Attorney's General Office Memorandum 14-099, including Appendixes A, B, and C.

ATTACHMENT

List of Life Imprisonment, Death Penalty, Section 667(e)(2)(c)(iv), 290(c) Penal Code Charges that will allow a felony charge for Proposition 47 violations [except 666(a)PC]:

37	266h(b)	311.2(b)
128	266i(b)	311.2(c)
136.1	266j	311.2(d)
187(a)	267	311.3
191.5(a)	269	311.4
191.5(b)	273ab	314(1)
205	285	314(2)
209.5	286	451.5
213(a)(1)(A)	286(c)(1)	519
217.1	286(c)(2)(B)	647.6
218	286(d)(2)	653f(b)
219	288	653f(c)
236.1(b)	288(a)	667.61
236.1(c)	288(b)(1)	667.7
243.4	288(b)(2)	667.71
246	288a	4500

261	288a(c)(1)	11418(A)(1)
261(a)(1)	288.3	11418(b)(1)
261(a)(2)	288.4	11418(b)(2)
261(a)(3)	288.5	12022.55
261(a)(4)	288.7	12308
261(a)(6)	289	12310
262	289(a)(1)(B)	18745
264.1	311.1	18755
266	311.10	
266c	311.11	

1672(a) MV (Military and Veterans Code) Military Sabotage

Additional Sections that may allow the violation to qualify as a felony:

182 PC: Conspiracy to commit any life in prison, death penalty or 290 registration offense

Former section 647a PC: Lewd conduct in public

272 PC: Contribute to delinquency of a minor involving lewd or lascivious conduct

288.2 felony: giving explicit material to a minor with intent to arouse etc

207, 209, or 220 PC: with specific intent to commit 261, 262, 264.1, 286, 288, 288a, or 289

245(d)(3) PC: Assault with a machine gun on a peace officer or firefighter (not assault weapon nor .50 BMG rifle)

Other Prior Convictions that will allow felony charges based on specific violations:

473(b) PC (Forgery) must have both 1 and 2:

1. prior conviction of forgery [Sections 112, 113, 114, 115(a), 115.1(b), 115.3, 115.5(a), 470(a), 470(b), 470(c), 470(d), 470a, 471, 471.5, 472, 473(a), 473(b), 474, 475(a), 475(b), 475(c), 476, 480(a), 481, 481.1(a) PC]
2. conviction of identity theft (530.5 PC)

476a PC (NSF) must have either 1 or 2:

1. prior conviction of petty theft [Sections 484(a), 484.1(a), 484b, 484g, 484h(a), 484h(b), 485, 487c, 487f, 488, 490.1(a) PC]
    a. along with a conviction of 470, 475, 476, or 476a for the same incident

2. 3 prior convictions of 470, 475, 476 or 476a.

Note: Convictions in other states also count as long as the elements of that crime are the same as the above listed sections.

666(a) PC (Petty theft with a prior) must have both 1 and 2:

1. Conviction for 368(d), 368(e) (Fiduciary Elder Abuse) or a violation within Section 667(e)(2)(c)(iv) PC or 290(c) PC (see listed violations above)

2. A prior conviction and prison time served for one of the following:

    a. petty theft [484(a), 484.1(a), 484b, 484g, 484h(a), 484h(b), 485, 487c, 487f, 488, 490.1(a)],
    b. grand theft [484(a), 484b, 484e(a), 484e(b), 484e(d), 484g, 484h(a), 484h(b), 487(a), 487(b)(1)A, 487(b)(1)B, 487(b)(2), 487(b)(3), 487c, 487d(1), 487d(2), 487a(a), 487a(b), 487a(c), 487b, 487e, 487g, 487i, 487j]
    c. 10851 VC
    d. burglary (459 PC)
    e. carjacking [215(a) PC]
    f. robbery (211 PC)
    g. felony 496 PC [496(a), 496(b), 496a(a), 496c, 496d(a)]