

Stop Blaming The Smash And Grabs On Prop 47

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State legislators approved a bill in 2020 shortening the length of probation in most misdemeanor cases. It is this law – not Prop 47 – that is chiefly responsible for transforming misdemeanor charges from highly effective tools for enforcing substance abuse programs and recidivism to little more than a slight bump in the road for offenders.



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Proposition 47 has become an easy scapegoat for the dramatic rise in the state's smash-and-grab robberies. Ironically, many of the people I've seen laying the blame on voters for approving the measure are primarily responsible for the problem - and it's quite literally their job to fix it.

For starters, it's outright ludicrous to put fault for these smash-and-grabs on Prop 47 (which raised the threshold for petty theft in California from \$400 to \$950) because to smash and grab, you'll need something with which to smash. Hammers, hatchets, and other instruments are weapons that would qualify the crime as armed robbery, a felony charge unaffected by Prop 47. We are not, in fact, powerless to stop these looters, and pinning the blame on Prop 47 for this failure is correlation without causation.

Even if the changes implemented under Prop 47 disappeared tomorrow, this problem would persist largely unabated as it's primarily been caused by the actions (and inactions) of the creators and enforcers of our laws in the days since its passage. Local and state officials who overstepped their bounds as well as police, prosecutors, and judges who increasingly treat misdemeanor crimes as if they're no longer offenses.

State legislators approved a bill in 2020 shortening the length of probation in most misdemeanor cases to one year and most felonies to two years. The former standard was a maximum of three years for misdemeanors and five for felonies. It is this law – not Prop 47 – that is chiefly responsible for transforming misdemeanor charges from highly effective tools for enforcing substance abuse programs and recidivism to little more than a slight bump in the road for offenders.

It was already difficult to coax defendants into making court appearances and completing drug treatment programs under the previous standard. It's significantly more difficult – if not near impossible - to ensure that the average drug treatment program candidate will come out the other side sober in only one year.

Prop 47 was overwhelmingly passed by California voters, and while I have my own issues with it, I understand that getting the electorate of a state with a higher population than most countries to agree on something is difficult. Voters did not make this decision in a vacuum. How quick we are to forget the crisis with the state's out-of-control inmate population, given it remains an ongoing problem. Faced with the prospect of either footing the bill for the construction of more prisons or taking some action to flatten the curve, voters reasonably opted for the latter.

It's not perfect, but few ballot measures have ever been passed without errors and oversights. Take for example the 1978 passage of Prop 13, which was nobly aimed at protecting homeowners by placing a cap on property taxes. The law was written with overly broad language that unintentionally extended these protections to commercial property owners – even global conglomerates – to benefit as well. The millions – if not billions – these companies have saved over the years as a result of this oversight has undoubtedly cost taxpayers more than the smash and grabs now being unfairly attributed to Prop 47. Still, that doesn't invalidate the law's original intent to protect homeowners from eviction.

This dysfunction has led to a belief held strongly throughout the chain of law enforcement that when it comes to misdemeanors, the juice is no longer worth the squeeze. While I'm somewhat sympathetic to this position, we cannot accept this defeatist attitude from judges, prosecutors, police, and others who have taken a constitutional oath to remain faithful to the law.

Misdemeanors matter, and they need to be treated as such, even if their effectiveness has been dramatically diminished.

Yet up and down the chain of law enforcement the belief that they don't have been increasingly normalized, spurred not just by the aforementioned 2020 law but the events of 2020 itself; namely, the onset of the COVID-19 epidemic and all the uncertainties that came with it. While the danger of the pandemic has largely passed, the relaxed standards implemented at the time to prioritize the saving of lives haven't.

If a beat cop reports a misdemeanor crime, it's all but a certainty that it won't end up investigated by the detective's division absent an immediately obvious suspect. I imagine these detectives blame the prosecutors for that, who in turn point the finger at the courts. After all, why bother pursuing a misdemeanor charge for a probation violation or a failure to appear if it will almost certainly end up waved off by a judge? The judges, already grappling with incredibly deep backlogs, see shrugging off a misdemeanor as a form of triage.

Rather than passing the blame up the chain, these people should be leading the charge to fix the problem. They should be advocating for programs keeping track of statistics about the number of arrests that end up being made, the number of prosecutions that end up being pursued, the number of bails set, and criminals convicted. Statistics hold people accountable, and with statistics in hand from these various agencies, we could get a clear picture of the problem and enact a plan to address it.

We should also demand statistics from criminal defense attorneys in general. As the effectiveness of misdemeanors diminishes, criminal defense attorneys have less incentive than ever to pressure their clients into respecting them. These lawyers can play a more critical role than anyone when it comes to convincing the accused on the importance of adhering to probationary terms, particularly when it comes to drug treatment programs. There should be some system for holding them to account, even something as simple as data tracking.

Any aberrance will quickly become evident from this data and would provide a rock-solid argument to the public that change is necessary. Most of the criticism I've seen of Prop 47 has wholly lacked anything resembling statistical support, and without it, these complaints amount to little more than fearmongering and disingenuous rhetoric.

No matter what changes are taken to address this issue, we must also disincentivize defendants suffering from substance abuse problems from refusing probation terms tied to drug treatment programs. As misdemeanors have diminished in effectiveness, it's become increasingly difficult to get defendants to agree to and adhere to these requirements, and criminal defense attorneys are more than happy to inform their clients that the consequences of non-compliance are negligible. If prosecutors held these defendants to account and courts issued appropriate sentences in turn, this would be a non-issue.

Again, misdemeanors need to matter. They are the critical intervention point for low-level criminals on track to commit more severe crimes, the point where lives wasted through treatable addiction can most likely be saved. No matter how tough times are, they must be treated as such. This responsibility first falls to our judicial branch – courts need to ensure that failures to appear or recidivism will not be treated lightly and that a reasonable bail is set. Prosecutors and police, in turn, would be obligated to follow this new standard.

Criticizing Prop 47 allows important criminal justice actors a way to avoid responsibility for their own failure to act responsibly, and it is past time for the public to hold each accountable as we should criminal defendants.

If that still isn't enough, that is where legislators should intervene. Rather than rushing to undermine the voters who approved Prop 47, they should start by taking another look at their 2020 law.

And if all else fails, voters will have to intervene, if not through further ballot measures, then through pressure on their local representatives. And the loudest voices among them should be the police, prosecutors, and judges who say the state's legal framework has made it impossible for them to do their job.

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