

EDITORIAL: Poorly drawn Prop. 47's criminal consequences



Proposition 47 was the brainchild of San Francisco District Attorney George Gascon.

ERIC RISBERG — Associated Press

When California voters approved Proposition 47, they no doubt had the sincere goal of helping nonviolent offenders by diverting them from prisons into drug treatment, mental health care and educational programs. What they probably didn't want was to make it more difficult for police to catch murderers and rapists by helping criminals evade DNA-collection requirements.

The Safe Neighborhoods and Schools Act passed with nearly 60% of the vote in November. Many top elected officials, such as Lt. Gov. Gavin Newsom and including likely Republican presidential candidate Sen. Rand Paul of Kentucky, supported it, as did organized labor, church groups and civil libertarians.

But now, it has become clear that, at least in one way, our neighborhoods and schools were made less safe by Proposition 47. The initiative, the brainchild of San Francisco District Attorney George Gascón, reduced penalties for a range of nonviolent crimes, reclassifying numerous felonies as misdemeanors.

But here's what voters didn't know: Because state law requires that only people who are arrested on suspicion of felonies have their DNA collected, thousands of people who commit less serious crimes no longer must provide DNA.

Sacramento County District Attorney Anne Marie Schubert is taking the lead on fixing that loophole. San Bernardino County District Attorney Mike Ramos, a likely candidate for California attorney general in 2018, has joined her.

Schubert has sent a letter to Assembly Member Jim Cooper, D-Elk Grove, a former captain for the Sacramento County Sheriff's Department, asking him to introduce legislation to amend the state's DNA Databank Act. Schubert

wants to include misdemeanors to the DNA collection list: assault and battery, burglary, petty theft with a prior conviction, grand theft, receiving stolen property, identity theft and fraud crimes, forgery, drug offenses, indecent exposure, spousal abuse, annoying children, animal cruelty and lewd conduct.

“Many rapists, murderers and other serious and violent offenders have been linked to their crimes because of their DNA being entered into the database due to their commission of drug possession, fraud, forgery, and certain theft crime offense,” Schubert said in the letter.

To drive that point home, Schubert cited cases in which the collection of DNA from low-level criminals led to prosecutions in much more serious crimes.

Folks in Sacramento may recall one cold case in particular, the killing of 80-year-old Sophie McAllister in 1989. Twenty years after McAllister was raped and beaten to death in her home, a man named Donald Carter was arrested for the crime after police collected his DNA during a drug arrest.

Cooper, who knows many serious criminals are caught when arrested for low-level crimes, plans to introduce a bill to change the database law as soon as this week. It’s hard to say how this bill will fare in the Assembly and Senate Public Safety committees.

Fortunately for all concerned about public safety, Cooper can point to 38 other states that require people arrested for certain misdemeanors to provide DNA.

Proposition 47 focused on drug possession and crimes associated with drug addiction, like writing bad checks, forging checks and shoplifting. The cost of incarcerating them is, indeed, high. Many of them no doubt could be handled better in programs designed to close the revolving prison door.

But the initiative included some “petty” crimes that we thought were pretty serious, including possession of date-rape drugs and stolen firearms worth less than \$950, which is to say most handguns. There are few reasons to have a hot Smith & Wesson or a vial of Rohypnol in your pocket other than causing mischief and mayhem.

Attorney General Kamala Harris never took a stand on the measure. But many other law enforcement officials opposed Proposition 47 for a variety of reasons, not the least of which was the concern of unintended consequences from releasing potentially thousands of people from prison. One thing even opponents did not foresee was that the measure would restrict authorities’ power to collect DNA.

This editorial board opposed Proposition 47 precisely because of the prospect for dangerous unintended consequences such as this. Except in rare instances, the blunt instrument of initiatives should not be used to alter highly complex criminal codes. This one flaw, thankfully, has an easy legislative fix, if lawmakers are willing to focus on it.

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