



## Proposition 47: a bad idea's unintended consequence; it restricts DNA collection

By the Editorial Board

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*Criminalist Nikki Sewell works to extract DNA from a jacket in the Sacramento County violent crime lab in 2013. By reclassifying many felonies as misdemeanors, California's Proposition 47 reduces the number of suspects from whom police agencies can collect DNA for a state database.*

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 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 percent of the vote in November. Many top elected officials, such as Lt. Gov. Gavin Newsom and 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. Voters knew that; backers made that key to their campaign.

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 their DNA.

What that means in hard numbers so far is staggering: More than 250,000 DNA samples collected since November can no longer be analyzed. That number grows daily. Several hundred thousand more that were collected in felony arrests before Proposition 47 passed may be expunged from the database because those crimes have since been reclassified as misdemeanors. We shudder to think of the serious crimes that will go unsolved as a result.

Sacramento County District Attorney Anne Marie Schubert, as is befitting the top prosecutor in the state's capital, is taking the lead on fixing this 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 Assemblyman 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," 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 plans to introduce a bill to change the database law as soon as this week. It will be his first bill as an assemblyman, and it's one for which he deserves accolades.

It's hard to say how this bill will fare in the Assembly and Senate Public Safety committees, where such bills sometimes die. But Cooper can point to 38 other states that require people arrested for certain misdemeanor arrests 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. One thing even opponents did not foresee was that the measure would restrict authorities' power to collect DNA.

The Sacramento Bee 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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