

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # B-10

Urgent

Routine

AGENDA DATE January 12, 2016

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Accept a Report on the Initial Implementation and Impact of Proposition 47 on Law Enforcement Services in Stanislaus County

STAFF RECOMMENDATIONS:

Accept the report on the initial implementation and impact of Proposition 47 on law enforcement services in Stanislaus County.

FISCAL IMPACT:

There is no fiscal impact associated with accepting this report on the initial implementation of Proposition 47 in Stanislaus County. Although it is too early to predict the long-term financial implications of Proposition 47 within the local community, there have been some short-term fiscal impacts to public safety departments since passage of the law in November 2014.

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BOARD ACTION AS FOLLOWS:

No. 2016-38

THIS ITEM WAS CONTINUED TO THE JANUARY 26, 2016 BOARD MEETING. NO ACTION TAKEN.

FISCAL IMPACT: (Continued)

One direct and immediate fiscal impact of Proposition 47 has been the increased workload of the Public Defender, District Attorney and Probation Department as a result of new petitions filed by individuals seeking reductions of prior felony convictions to misdemeanors. Approximately 3,700 adult and 50 juvenile cases have been reduced or considered for reduction to misdemeanor status since passage of the new law. Although this additional workload has been partially offset by a decrease in overall cases entering the criminal justice system during that same time, the increase did require the Public Defender to hire one contracted Attorney to support processing Proposition 47 petitions in a timely manner.

Data from the Sheriff and Probation suggests that it is premature to draw any conclusions regarding the financial impacts of Proposition 47 on adult and juvenile detention operations. Although the law contemplates cost savings at the State level resulting from a reduction in the State prison population, financial impacts to local jail systems will vary from community to community. Local impacts will be dependent upon a number of factors, some of which include the existing operational capacity of local jail systems, sentencing strategies adopted by the Courts and adjustments in local detention policies when possible.

No State funds have been made available to local jurisdictions as a result of Proposition 47, although the law requires savings from reductions in the State's prison population to be directed to programs at the local level. The State Controller is responsible for calculating the net cost savings of Proposition 47 on an annual basis, with funds to be distributed as follows:

- 65% of savings to the Board of State and Community Corrections, to administer grant programs aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system.
- 25% of savings to the Department of Education for reducing truancy, supporting students at-risk of dropping out of school or victims of crime.
- 10% of savings to the California Victim Compensation and Government Claims Board for trauma recovery centers to provide services to victims of crime.

The initial analysis of State cost savings is underway, as well as initial development of the procedures to be used by State agencies to distribute funding at the local level. It is anticipated that local funding opportunities will not emerge until Budget Year 2016-2017 and will take additional time for start-up and implementation in the community.

DISCUSSION:

Local public safety programs have experienced numerous changes over the last five years, including the implementation of AB 109 in 2011 which implemented a major realignment of public safety programs from the State to local governments. Although AB 109 has been in place for several years, the total impacts of this major change in public safety services (including crime rates and related financial impacts) continues to evolve. While local public safety programs have modified to support the implementation of AB 109, implementation of an additional change in statewide public safety policy was initiated in November 2014 with the passage of Proposition 47.

Proposition 47 became effective immediately upon passage in November 2014. The Initiative reduced the classification of most “nonserious and nonviolent property and drug crimes” from felonies to misdemeanors. These offenses include shoplifting, writing bad checks and drug possession. The new law included exceptions for offenses involving more than \$950, registered sex offenders and criminals with prior convictions for murder, rape and certain weapons offenses. The measure also allows those who had previously been convicted of nonserious and nonviolent property and drug crimes to petition the court for a reduction of the offense to a misdemeanor with resentencing to follow if the petition is granted. The petition for reduction would be denied only if the prosecutor is able to show that the reduction would create an unreasonable risk of danger to public safety. Proposition 47 also allows offenders convicted of those felonies to have their convictions reclassified and to be released from custody.

Proposition 47 was billed as the Safe Neighborhoods and Schools Act. As stated in the proposition, its purpose is as follows:

The people enact the Safe Neighborhoods and Schools Act to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.

Data from the California Department of Corrections and Rehabilitation shows the State-wide prison population has been reduced by approximately 4,400 inmates as a result of Proposition 47. This reduction in State prison costs will be evaluated by the State Controller to determine what level of savings will be available for the programs to be funded under the new law.

This report is intended to provide the Board of Supervisors a summary of the initial implementation and impacts of Proposition 47 in Stanislaus County, with information and analysis provided by each of the public safety departments most impacted by the

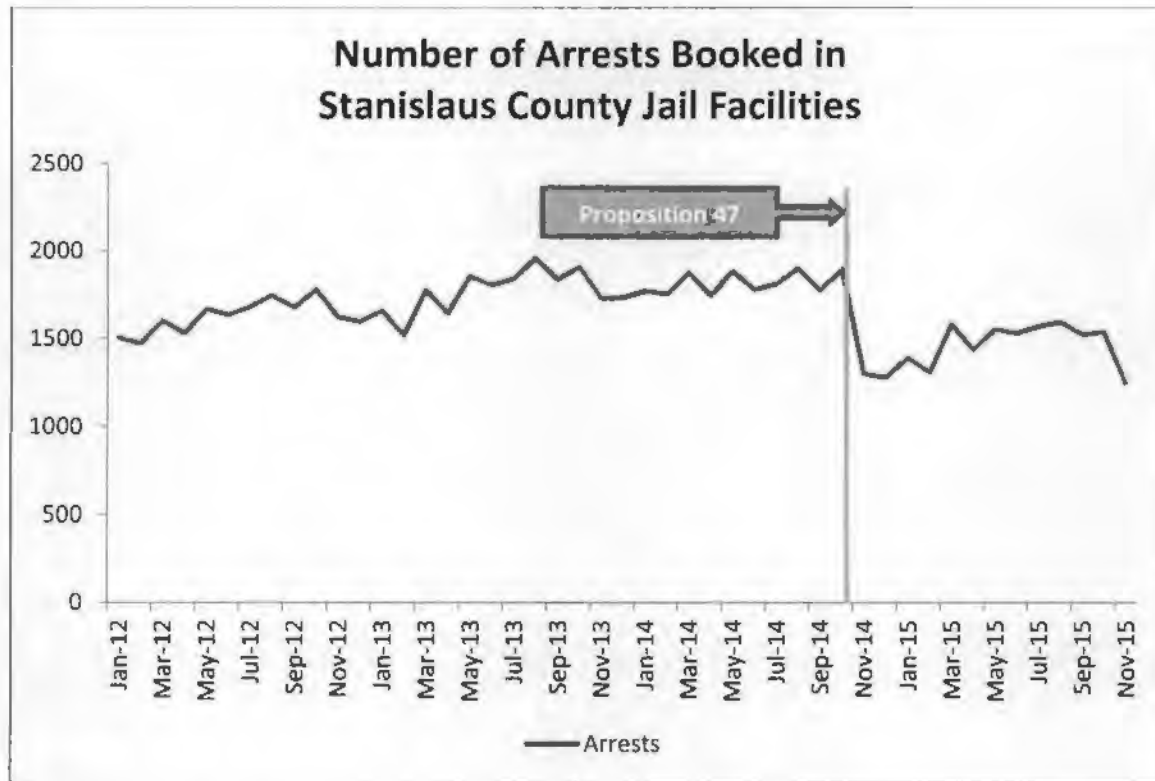
law, including the Sheriff, Probation, District Attorney, and Public Defender. In developing this report, each of these departments were requested to share the following:

1. Overview of the Impacts of Proposition 47 on Stanislaus County;
2. Operational Impacts and Challenges; and
3. Perspectives on the Short-term and Long-term Impacts of Proposition 47.

Additional information was gathered from other non-public safety partners in the local community and statewide reports as available. The following is a summary of the information available at this time to evaluate the initial implementation of Proposition 47, including information on the potential impacts of how this change in statewide public safety policy may impact our local community going forward.

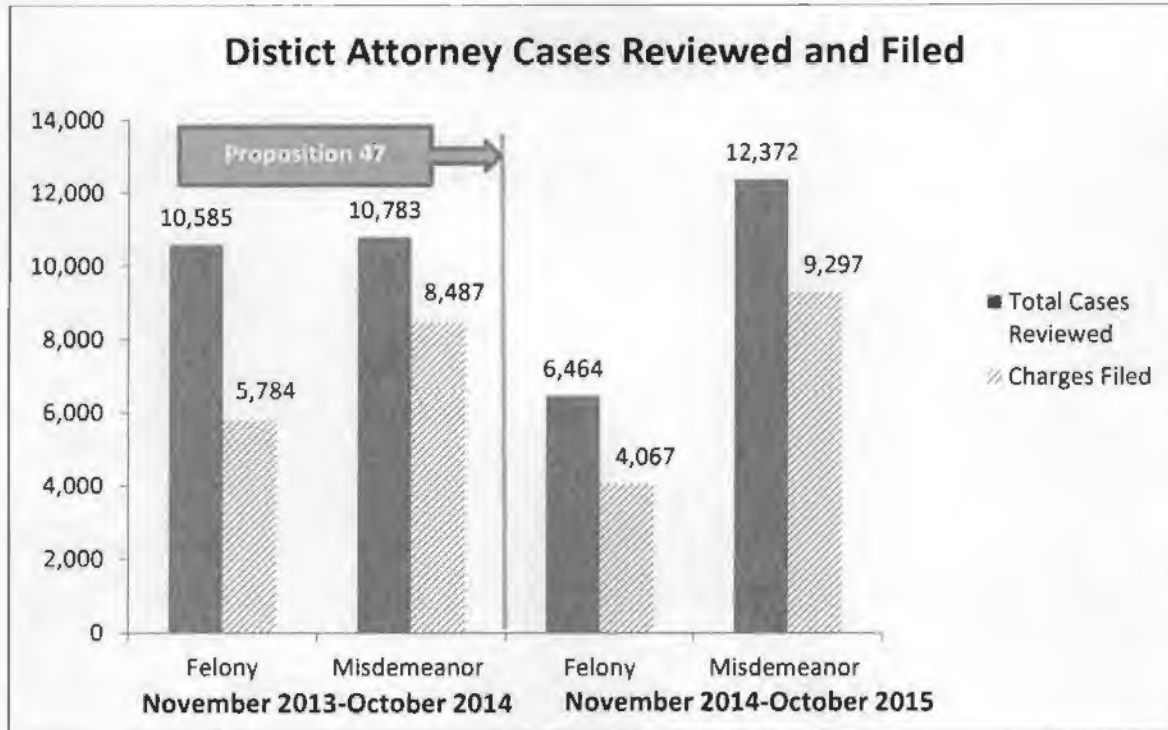
Overview of the Impacts of Proposition 47 on Stanislaus County

The most immediate impact of Proposition 47 was demonstrated by a significant reduction in arrests by local law enforcement starting in November 2014. Many crimes that may have previously resulted in arrest were now being addressed with a citation issued by law enforcement in the field. Overall, average arrests in Stanislaus County are down 16% when comparing the time periods of January 2012 – October 2014 to November 2014 – November 2015. The following chart displays arrests in Stanislaus County before and after the passage of Proposition 47. Although there are many other factors which may influence arrest statistics over a period of time (crime trends, law enforcement staffing, etc.), it is clear that the initial implementation of Proposition 47 in Stanislaus County has resulted in a reduction in arrests by local law enforcement. The data also shows that arrests are now steadily increasing on an overall basis since the original decline following Proposition 47.

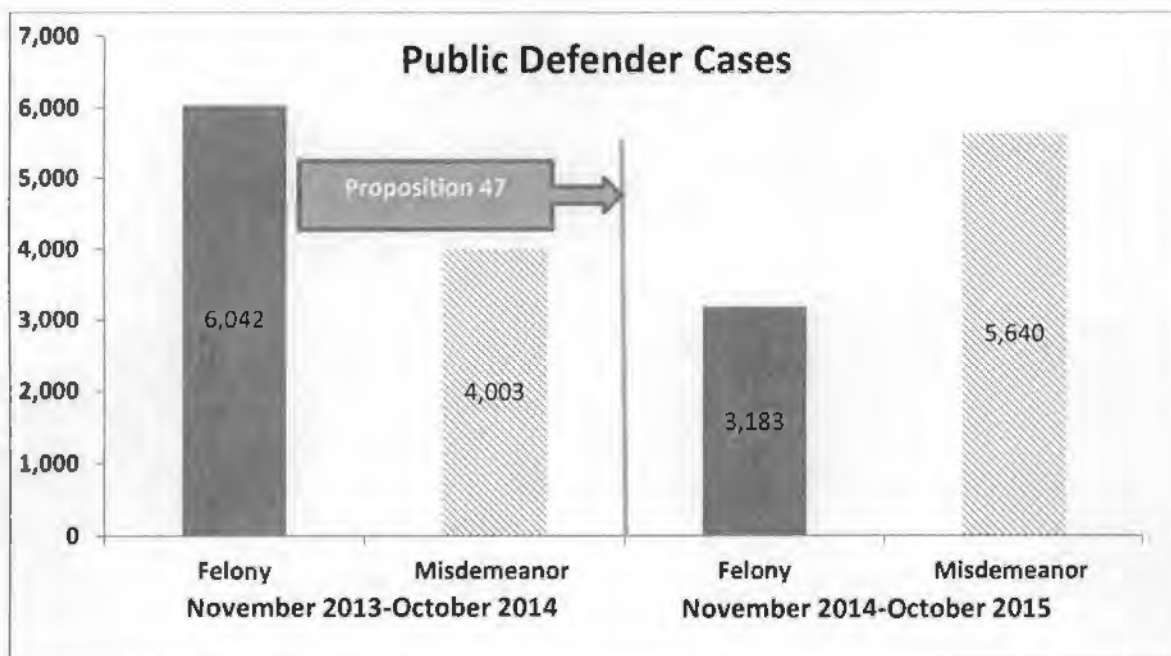


Data shared by both the District Attorney and Public Defender demonstrates the corresponding impact of reductions in local law enforcement arrests as a result of Proposition 47. Data provided by both departments shows an overall reduction in the number of cases entering the criminal justice system upon the initial implementation of Proposition 47, as well as a significant shift in the balance of misdemeanor cases versus felonies. It should be noted that as a result of the reduced classification of most nonserious and nonviolent property and drug crimes, there may be crimes that now go unreported.

The District Attorney receives cases from law enforcement agencies to review in order to determine if appropriate to file criminal charges. If so determined, the District Attorney files the case with Superior Court. The following chart shows that overall cases reviewed by the District Attorney are down approximately 12%, while total cases filed are down approximately 6%. Felony case filings from the District Attorney are down approximately 30%, while misdemeanor filings are up 10%.

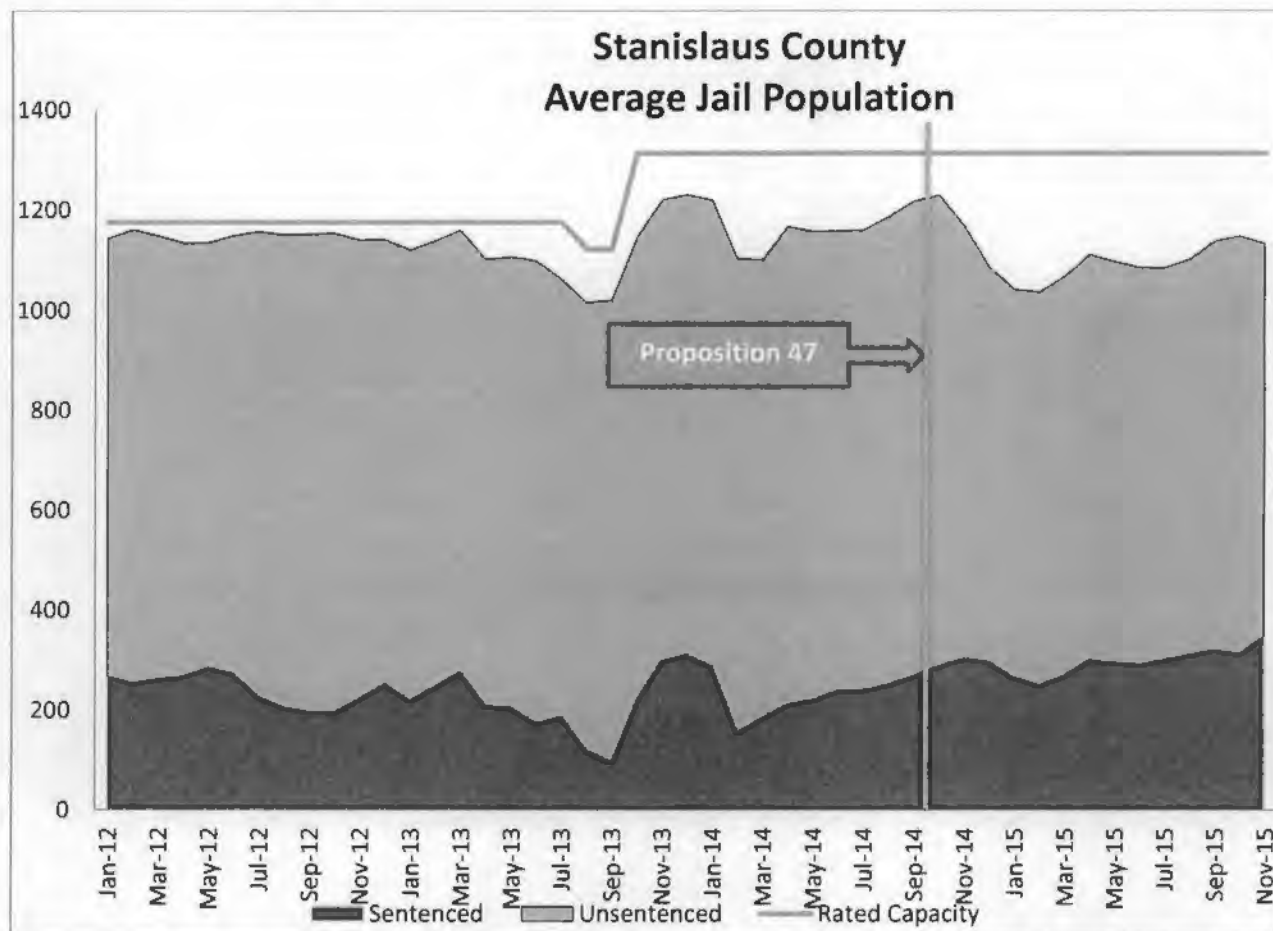


Trends in the Public Defender's Office are similar to those of the District Attorney. Overall, new cases assigned to the Public Defender are down approximately 12% since the passage of Proposition 47, while new felony cases are down approximately 47% and misdemeanors are up 41%. Not all cases processed through the District Attorney's Office are represented through the Public Defender, which contributes to the difference in statistics provided by both departments.



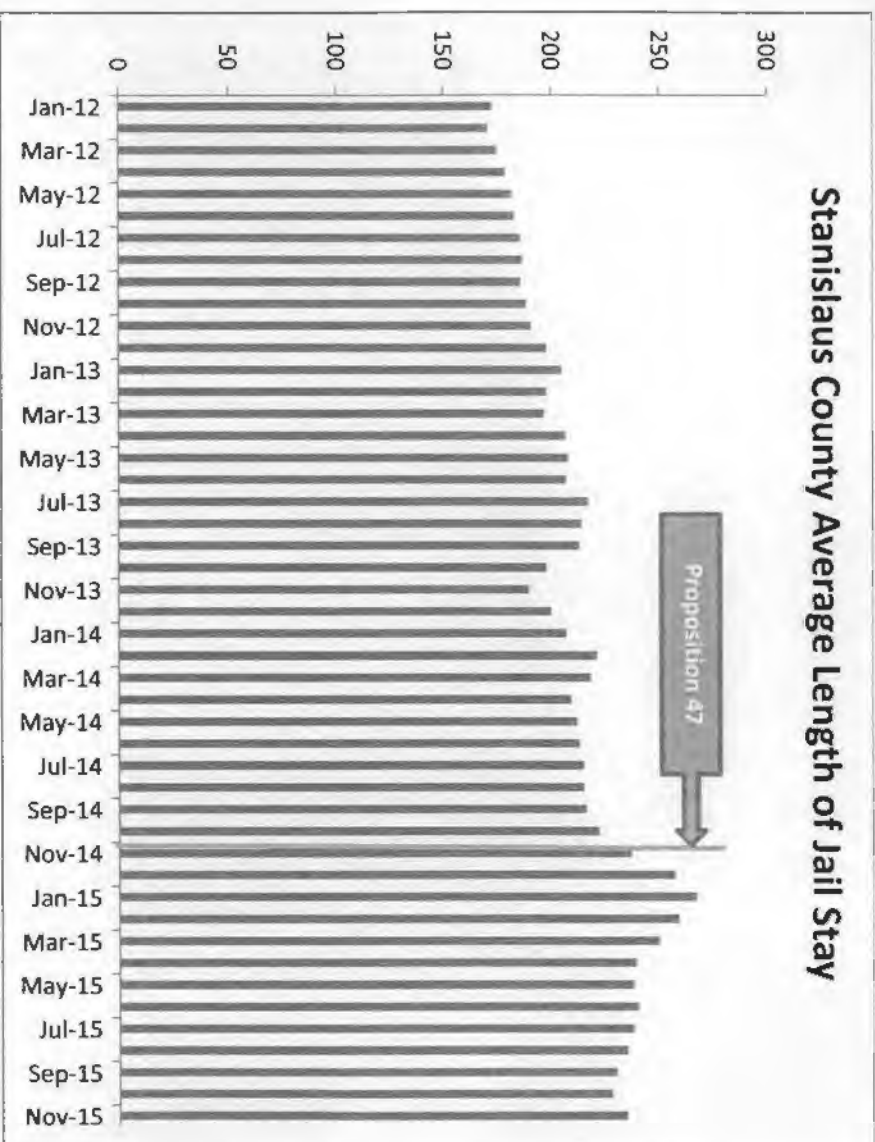
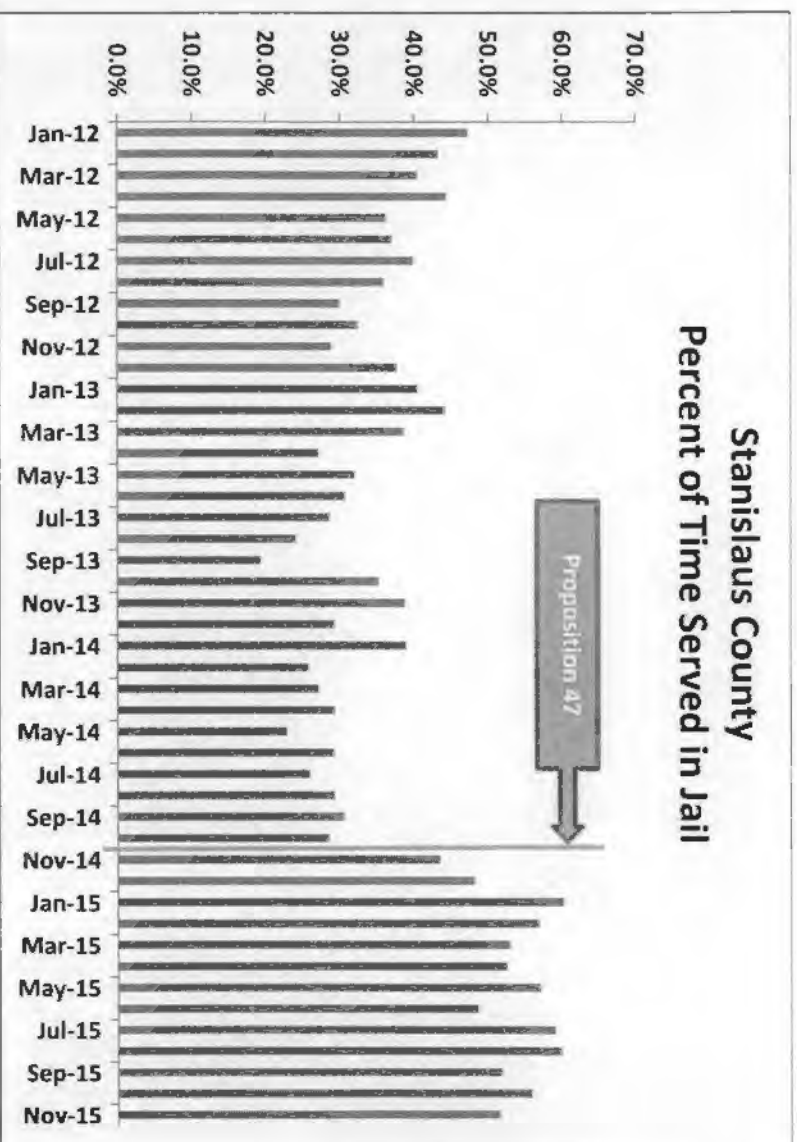
Another significant impact to the District Attorney and Public Defender is the distribution of misdemeanor and felony cases entering the system. Prior to Proposition 47, cases filed by the District Attorney were approximately 59% misdemeanors and 41% felonies, while cases filed after Proposition 47 averaged 70% misdemeanors and 30% felonies. This change in the distribution of cases entering the system will likely result in changes to some Court operations and corresponding impacts to each of the supporting partners in the criminal justice system.

Changes in arrests and case filings have also had a direct impact on the local jail population, resulting in corresponding changes to local policies for managing inmate population counts to maintain legal mandates for custodial operations. The Sheriff's Department has historically been required to implement early release programs as a result of prior lawsuits related to conditions of jail over-crowding. Maintaining compliance with these legal mandates, while also accommodating the fluctuating demands of new inmates entering the system, requires a very delicate balance of policies related to inmate classification and the availability of jail beds. There are simply not enough jail beds to retain all individuals arrested in the community while awaiting trial, and to retain all sentenced inmates in custody for 100% of their sentenced jail time. As a result of this, the Sheriff's Department works diligently to maintain as many offenders in custody as possible given their individual risks to public safety and the available resources of the department. While trends in jail population over this last year are clearly impacted by Proposition 47, other factors such as the replacement of outdated facilities and ongoing staffing challenges have also presented significant impacts to jail operations over the last several years. The following chart displays jail population statistics prior to, and after Proposition 47.

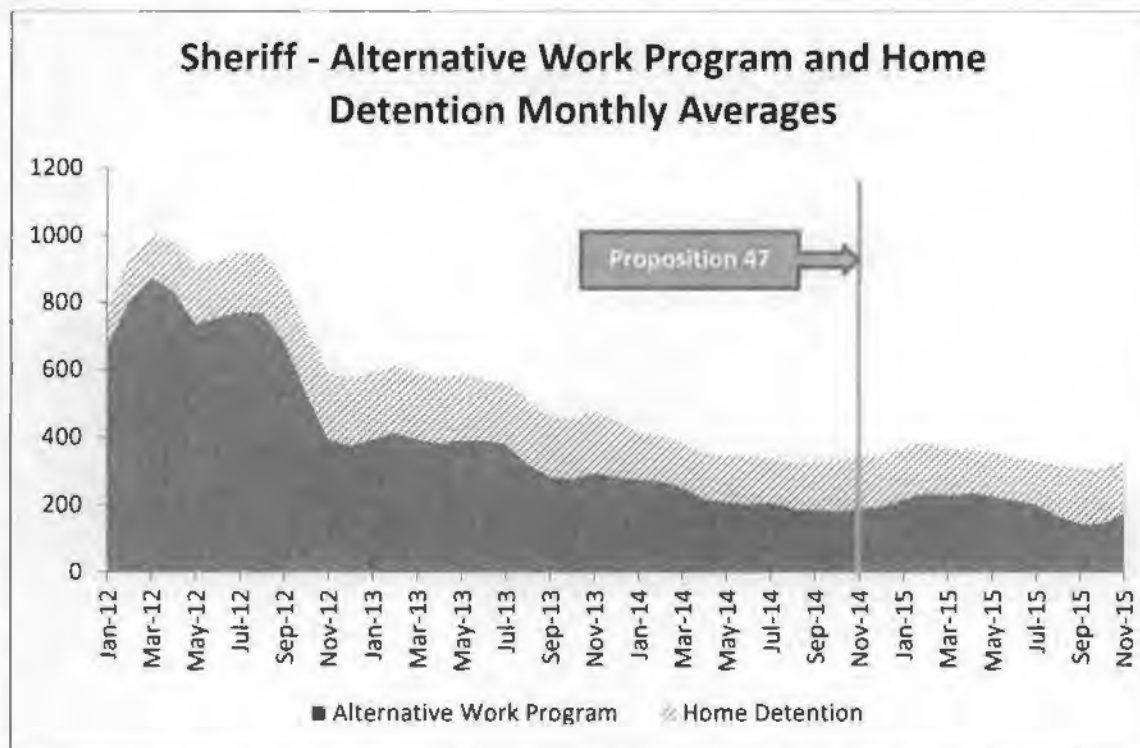


Changes in jail capacity in 2013 reflect final closure of remaining beds at the Honor Farm facility and the opening of two new units at the Public Safety Center.

With a reduction in new arrests and bookings at the jail, the Sheriff's Department was able to adjust policies for misdemeanor bookings and decrease the number of inmates qualifying for early release. The following two charts demonstrate the impact of these changes on the inmate population. The first chart displays the total percentage of time actually served, based on the number of days an inmate was sentenced by the Court, and the actual number of days served in jail. The second chart displays the average number of days in custody for sentenced and unsentenced inmates. Both charts include individuals in custody for probation or parole holds, warrants and out of county warrants.

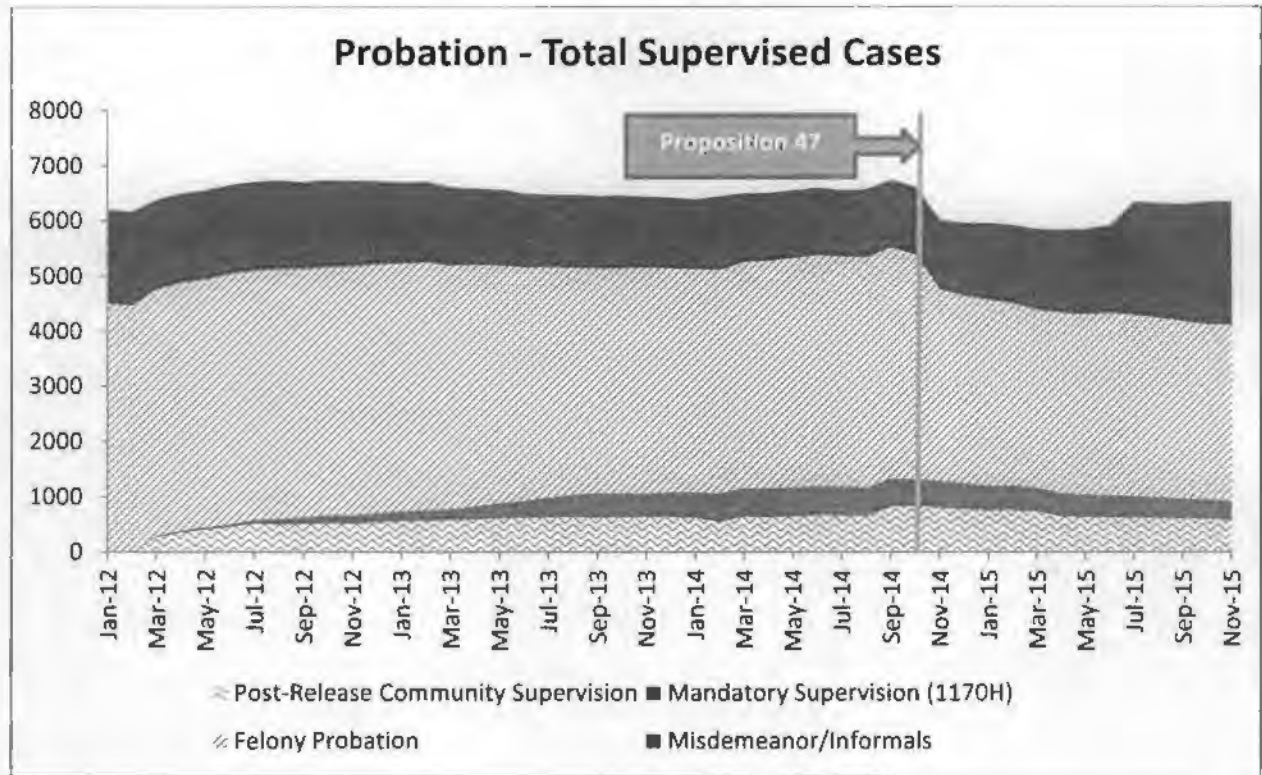


The average percentage of time served has increased from 33% to 54% when comparing the period of January 2012 – October 2014 and November 2014 – November 2015. With the impact of fewer arrests and the change in early release procedures, the average length of jail stay increased from 200 days to 243 days during this same period of time. This increase in jail stay has assisted the Sheriff's Department in their efforts to enroll inmates into more classes and treatment programs which may otherwise not have been possible. Once an inmate has been released, there aren't as many programming opportunities.



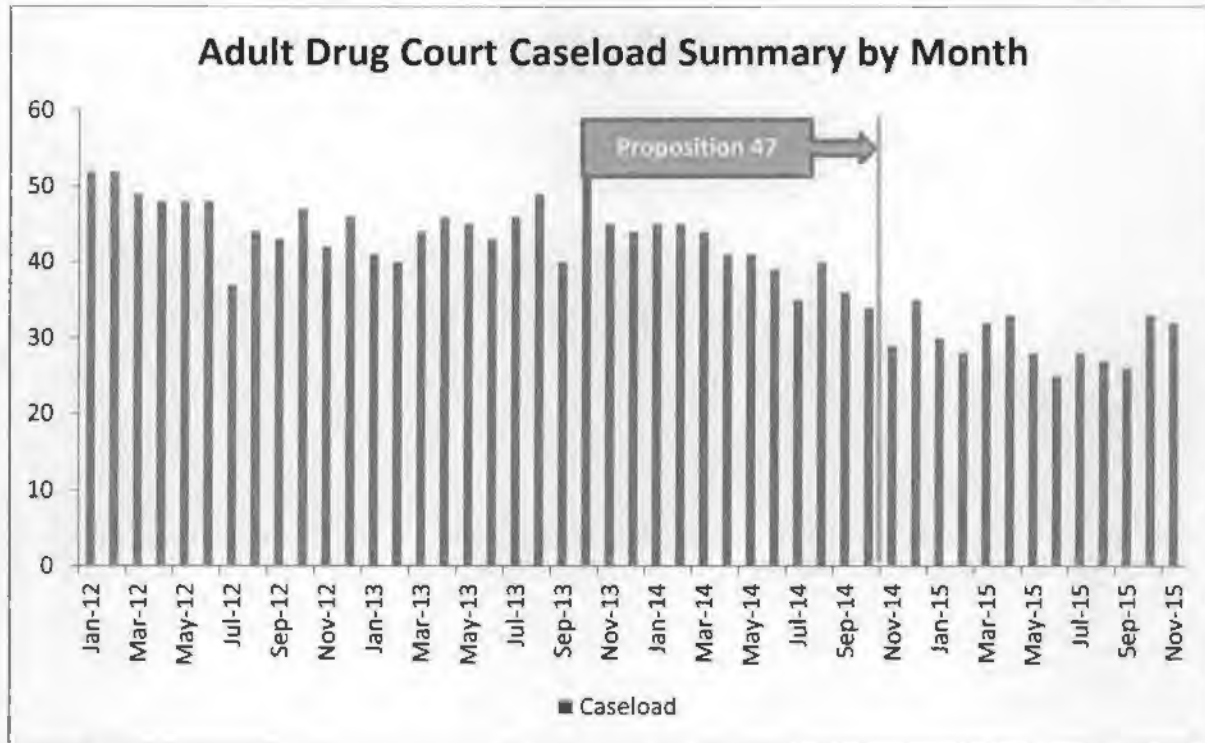
The Sheriff's Alternative Work Program (AWP) and Home Detention program numbers have dropped significantly with the passage of AB 109 which was implemented October 2011, and continue to decline with the implementation of Proposition 47. The Sheriff's Department is not receiving the same numbers in the programs as a result of inmates being released, receiving reduced sentences or not appearing to assigned work locations. In many cases both felony and misdemeanor inmates will refuse AWP since they can serve minimal time or no time and get an early release.

In addition to the impact on the number of inmates in the jails and work programs, there has also been an effect that Proposition 47 has had on Probation's supervised population. In the following chart, cases are divided into the different types of cases that Probation supervises.



Felony Probation Cases as well as Post-Release Community Supervision are trending downward after the implementation of Proposition 47. Mandatory Supervision cases (AB 109 local prison) are also trending downward, but are somewhat stable. Probation anticipates to continue a drop in Mandatory Supervision cases over time. As anticipated Misdemeanors/Informals are trending upward due to Proposition 47. Many of these cases are Proposition 36 drug cases that are now misdemeanors. The overall decrease in incoming cases has allowed Probation to supervise a greater percentage of cases and thereby decreasing the need to administratively supervise, or “bank” cases.

An additional impact of Proposition 47 has been on the Adult Drug Court program. Data provided by Probation and Behavioral Health & Recovery Services shows a reduction in the number of drug offenders enrolling in the Adult Drug Court programs as displayed in the following chart.



Previous to AB 109 and Proposition 47, Adult Drug Court only allowed individuals with felonies to participate, and was used primarily as an alternative sentencing to prison time. The program had an average of 44 attendants in the program prior to the passage of Proposition 47. Since Proposition 47 was passed, the average number of attendants is 30, a decrease of 32%.

The success of Adult Drug Court relies upon collaboration among drug offenders, attorneys, prosecutors, and judges. What has previously made such programs effective and efficient is the Court's ability to legally encourage drug offenders into the program with the potential threat of a felony sentence if participants drop out. Many of the qualifying charges for Drug Court are now misdemeanors and individuals are sentenced with reduced local time, providing much less incentive to engage offenders in substance abuse treatment programs. The trend in reduced participation in Drug Court programs presents a significant new threat to supporting community efforts to reduce substance abuse and related criminal activities.

Operational Impacts and Challenges of Proposition 47

The initial operational impacts for the *District Attorney* and *Public Defender* are related to the work associated with re-opening, reviewing and assessing previously closed cases. As soon as the law took effect, the Public Defender's Office and other defense attorneys placed any client facing charges subject to reduction or anyone serving a sentence for one of these charges before the Court so that the charges could be immediately reduced. Following the passage of Proposition 47 the Public Defender

hired a contract attorney to prepare for and file petitions for reduction and resentencing. More of these petitions for reduction and resentencing will be filed within the next three years. At this point in time, most of the matters now being filed are for clients who have completed any sentence in their case and are now seeking the reduction to clear up their record and improve their prospects for future employment.

Probation shared that the decrease in the number of incoming cases has resulted in mandatory supervision offenders serving a greater amount of their jail sentences. This results in the Department being able to supervise nearly all of the offenders who were sentenced to mandatory supervision. Prior to the passage of Proposition 47, the Probation Department was effectively triaging offenders into subgroups. Those offenders who were compliant for a period of time were placed on a "banked" caseload and received minimal supervision services from the Department. Adjustments to caseloads have allowed Probation to supervise a greater percentage of cases and thereby decreasing the need to "bank" cases.

Proposition 47 has also greatly lowered the number of new law violations which Probation is handling. In the field, the effects of the law are substantial. Probation Officers rarely makes arrests for new law violations for the possession of controlled substances and instead either admonish, or follow-up with a violation, or flash incarceration when they find offenders in possession of controlled substances. A new law violation has greater "teeth" and holds a greater amount of punishment compared to a simple violation or admonishment. These issues will continue to evolve as Probation develops new procedures for issuing misdemeanor citations in the field.

Specifically in the Probation Juvenile Division there had not yet been uniformity among California counties on whether to apply Proposition 47 to juveniles until recently, as the original law did not clarify how juveniles were to be treated. In July 2015, the State 4th District Court of Appeal ruled that the entire law, including retroactive changes, would apply to juveniles in the same manner as it applies to adults. There are now approximately 50-60 petitions for resentencing and response to the District Attorney for review. A review of juvenile detention data does not show any initial impacts to juvenile detention operations with the initial implementation of Proposition 47.

The **Sheriff** shared the overall operational impact of Proposition 47 has been negligible in jail operations. Procedural changes were made in the various count management tools available to the Adult Detention Division, allowing more arrested individuals to remain in custody pending trial, and allowing sentenced individuals to serve more of their sentences. The Adult Detention Division continues to evaluate and make incremental changes to these count management tools, balancing the need for individuals to serve their sentences with the need to comply with Federal mandates.

Sheriff Patrol Operations have been impacted with a decline in the number of arrests for drug possession and shoplifting since the implementation of Proposition 47, similar to the countywide trends identified with other agencies.

Perspectives on the Short-term and Long-term Impacts of Proposition 47

In preparing this report, the Chief Executive Office asked each of the public safety departments to comment on their perception of the short-term and long-term impacts of Proposition 47 in the local community.

According to the ***District Attorney***, there are several major flaws built into Proposition 47, including new challenges to using DNA from criminal offenders to support the successful investigation and prosecution of crimes throughout the State. Crimes that previously would have resulted in DNA collection for adults and juveniles, because they are no longer felonies now do not result in collection of DNA samples and therefore reduce the overall availability of this evidence to investigate unsolved crimes. Many of these crimes may be for serious or violent offenses, which may now go unsolved in the absence of this critical evidence.

The long-term impact of reducing so many drug and theft offenses to mere misdemeanor status is difficult for the District Attorney to gauge. It would appear that, with the lack of serious sanctions to encourage rehabilitation of offenders or to deter their continuing criminal behavior, the community will see an increase in recidivism for theft and drug crimes. Additionally, since violent crime and domestic violence is so often the product of substance abuse, it is anticipated that the community should anticipate seeing an increase in the reported numbers of these crimes as well.

The impact of changing trends in District Attorney caseloads, including the distribution of misdemeanors and felonies will continue to be evaluated by the Department. While overall cases experienced an immediate reduction upon the implementation of Proposition 47, cases are now trending upward and the actual impact to the number of cases proceeding to trial remains unknown.

As reported by the ***Probation Department***, the new legislation has both short-term and long-term impacts on offenders, jails and the workload at the Probation Department. The Department's two main goals are to protect the community and to assist convicted people to become productive law abiding individuals. The Department accomplishes this through a balance of providing assistance and consequences. Probation provides evidence based assistance to help those who are willing to improve their situation. In contrast, the Department provides consequences for two main reasons. First, consequences serve as a method of motivating those who do not feel enough intrinsic motivation for change. Secondly, consequences serve to protect the community, at least temporarily from those who are choosing to continue to victimize society.

Proposition 47 is very concerning to the Probation Department for several reasons. First, it removes a significant level of consequence. Without consequence, it is difficult to protect society or motivate those who are difficult to motivate towards change. Secondly, Proposition 47's focus is on drug offenders. The Department recognizes that

drug offenders require a different approach in rehabilitation toward reaching the status of a productive citizen. However, the Department also understands that drug offenders make up a large percentage of those conducting criminal behavior in society. Their criminal behavior is related to their drug use but extends into areas of child endangerment/neglect, domestic violence, assaults, thefts, commercial burglaries, residential burglaries, and robberies. Their crimes are either committed to gain the means to purchase more drugs or as the result of their deteriorated mental situation after using the drug.

The Department acknowledges that the field of drug treatment/rehabilitation is tricky and likely has room for improvement as evidence based services emerge and recommendations are made to change current practices. It seems the answer to addressing drug problems in the community is to work on strengthening means of recovery rather than removing consequences from behaviors directly feeding into the serious criminal behavior they are fighting to alleviate from this community. Arrest creates an avenue for change in those who would otherwise continue with self-destructive and community destroying behavior.

Information provided by the **Sheriff** indicates that although Proposition 47 has temporarily reduced the inmate population, it has not reduced it enough to allow for all sentenced inmates to serve their full sentences. While in custody, inmates receive more programming opportunities than once they are out of custody. Proposition 47 has not reduced the population enough to allow more arrestees to stay in custody after booking, often resulting in the disparagement by the individuals arrested, and the valid concerns of the public who see the arrested individual returning to the street just hours after arrest.

The Sheriff also acknowledges that a noticeable paradigm shift has occurred in statewide public safety policies, which creates new challenges for law enforcement. Tough on crime attitudes, three-strikes, "lock people up and throw away the key" has been replaced with "let criminals go and place them into programming opportunities." While programs will not be entirely successful if stripped of accountability and consequence, the move away from incarceration as a deterrent to crime forces law enforcement to become more adaptable in its delivery of services and how to protect the community. Expanding program opportunities in partnership with community-based organizations and constructing public safety facilities with a specific focus on housing, supervision and treatment remains a high priority for improving the safety of the community. The Sheriff's goal, regardless of challenges created by changes in societal values and belief systems, is to break cycles of addiction and violence, provide necessary services and deliver justice to those who are victims of crime.

The **Public Defender** shared that in the short-term Proposition 47 shortened the time in custody that several hundred people who were serving time for felony drug and theft cases had to do. The sudden reduction of these cases from felonies to misdemeanors has freed up resources within the criminal justice system. Those resources in the

Public Defender's Office were then redirected to begin the process of re-sentencing more than a thousand felony matters which under the new law can be reduced to misdemeanors. In the long-term there should be less time spent in custody within the county criminal justice system and more opportunity for directing defendants to alternatives to incarceration such as treatment and training.

Conclusion

Information developed in preparing this report suggests it is premature to make any conclusive findings related to local impacts due to the initial implementation of Proposition 47 in Stanislaus County. The impacts of Proposition 47 throughout the State will remain difficult to quantify based on other unrelated changes occurring in public safety policies, most notably the impact of public safety realignment on local communities in California and the absence of any initial funding to support the impacts related to Proposition 47. Although this report finds no conclusive impacts to the local community, the analysis of initial data before and after the passage of Proposition 47 does reveal a few important observations:

- Arrests throughout Stanislaus County dropped immediately upon the implementation of Proposition 47, but have increased steadily since that time.
- A reduction in arrests has resulted in fewer new cases forwarded to the District Attorney and Public Defender.
- New cases entering the criminal court system are now predominantly misdemeanors instead of felonies.
- Approximately 3,700 adult and 50 juvenile cases have been reduced or considered for reduction to misdemeanor status since passage of the new law.
- The Sheriff's jail population immediately dropped as a result of reduced arrests in the community, allowing the Sheriff to adjust inmate population policies and increase the amount of time served by sentenced inmates.
- The Adult Drug Court program has experienced declining participation as a result of reduced sanctions for drug offenders.
- The decrease in incoming cases has allowed Probation to supervise a greater percentage of cases and thereby decreasing the need to administratively supervise, or "bank" cases.

The Chief Executive Office will continue to work with public safety departments to evaluate the direct and indirect impacts of Proposition 47 in Stanislaus County,

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including any associated fiscal impacts identified as part of the standard budget reporting process.

POLICY IMPACT:

This report on the impact of Proposition 47 on Law Enforcement Services in Stanislaus County is informational. Acceptance of this report is consistent with the Board's priority of A Safe Community and Effective Partnerships.

STAFFING IMPACT:

There is no staffing impact associated with acceptance of the Report on the Initial Implementation and Impact of Proposition 47 on Law Enforcement Services in Stanislaus County.

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