



How Proposition 47 Can Help Immigrant Communities

What is Proposition 47?

In November 2014, California voters passed the Safe Neighborhoods and Schools Act, also called "Proposition 47." Prop 47 changes California law so that some low-level, non-violent offenses will be punished as misdemeanors instead of felonies. These offenses are drug possession and "property crimes" like theft, shoplifting, receipt of stolen property, passing bad checks, and forgery, as long as the amount taken is \$950 or less. By reducing the penalties for these crimes, Prop 47 makes the law more fair and saves counties money by reducing jail populations. It also can help people avoid some immigration problems.

How can a criminal conviction harm an immigrant?

Anyone who is not a U.S. citizen, including lawful permanent residents and refugees, can be deported if he or she has been convicted of certain crimes -- including low level non-violent offenses like theft or possessing a small amount of drugs. Even lawful permanent residents ("green card" holders) who have lived in the U.S. for many years and have all their family here can lose their legal status and be deported for such a conviction, even if the offense happened many years ago.

- *Michelle has lived in the U.S. for 15 years, part of that time as a lawful permanent resident (green card-holder). She has three U.S. citizen children. During a very hard time for the family she stole some items, and was convicted of felony theft. Now she can be put in deportation proceedings. Depending on her circumstances, she might not be allowed to even ask an immigration judge to consider giving her a second chance, based on the terrible hardship her children would face if she were deported.*

Certain convictions can prevent undocumented immigrants from ever getting legal status, such as through a family member. Certain convictions also can prevent immigrants from getting temporary protection from deportation, through the new immigration policies, DACA (Deferred Action for Childhood Arrivals) and DAPA (Deferred Action for Parents of U.S. citizens and Lawful Permanent Residents), recently announced by President Obama.

- *Mark, a dreamer and college graduate, was arrested five years ago after a college party for possession of cocaine, which was a felony under California law. Although Mark has lived in the U.S. since he was a baby and meets all other requirements for DACA, he cannot apply because anyone convicted of a felony is not eligible for DACA (or DAPA).*

How do the changes made by Proposition 47 benefit immigrants?

By changing some felonies to misdemeanors, Prop 47 can help more immigrants be eligible to get legal status or temporary protection from deportation, or to avoid losing the status they have. Immigrants

will also be less likely to be targeted for arrest, detention, and deportation by ICE keeping fewer families from being separated. For example:

- **More immigrants are eligible to qualify for the DACA and DAPA programs.** Immigrants convicted of a felony are barred from applying for DACA and DAPA. By causing some felonies to become misdemeanors, Prop 47 can make people eligible for these programs. With Prop 47, immigrants like Mark will be eligible to apply for DACA or DAPA after the criminal court changes his felony conviction into a misdemeanor.

Warning: Immigration law treats drug convictions more harshly than offenses like theft. Outside of DAPA, DACA, and a few other programs, even a misdemeanor drug conviction, even with treatment under a state rehabilitative program, will cause an immigrant to be deportable and barred from applying for status. Always get expert advice where drugs are involved.

- **Immigrants with Prop 47 convictions may no longer be the federal government's top enforcement priority and may be able to apply for a more lenient exception to deportation.** Conviction of any felony makes a noncitizen a primary target for arrest by ICE.
- **More immigrants will be eligible to obtain legal status.** For example, it will be easier for U.S. citizens and lawful permanent residents to help their family members obtain legal status in the U.S., despite the fact that the person has a theft conviction.
- **Some lawful permanent residents will no longer be found deportable for a conviction of just one of the property offenses covered by Prop 47.** Here Prop 47 may be combined with another new law, Penal Code § 18.5, which makes a misdemeanor have a 364-day sentence rather than 365 days.
- **An undocumented person who lived in the U.S. for ten years, and who can show great hardship to U.S. citizen or permanent resident family, may be able to avoid deportation despite conviction of a property offense covered by Prop 47.** Again Prop 47 may be combined with the new Penal Code § 18.5, so the person may apply for a type of defense to deportation called "cancellation of removal."

What can immigrants do to obtain the benefits of Prop 47?

Immigrants should consult with expert immigration advocates or criminal defenders to get complete information about how their criminal record may affect their immigration case, including eligibility for the DACA and DAPA programs, and whether Prop 47 can help. Sometimes Prop 47 will be combined with Penal Code § 18.5. Because these laws are brand new, and applying them to immigration laws can be complicated, it is important to get advice from an advocate who really understands the area.

People can get help with past convictions. A qualifying prior felony conviction can be re-designated as a misdemeanor. Also, people who still are serving time in jail may be able to get their sentence reduced and be released early under Prop 47.

For more information, go to www.myprop47.org and www.ilrc.org/crimes.