


GENERAL OFFICE MEMORANDUM 17-045

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE   
Chief Deputy District Attorney

SUBJECT: PROPOSITION 47: PC 490.2 APPLIES TO PC 484e –  
GOM 15-035 RETRACTED

DATE: APRIL 13, 2017

In ultimately resolving issues related to the application of Proposition 47 (Prop 47) misdemeanor reduction requirements, the California Supreme Court has taken an expansive view—that trend continues with its decision in *People v. Romanowski* (March 27, 2017, S231405) 1 Cal.5th \_\_\_\_ [2017 Cal. LEXIS 2326; 2017 WL1131882] (*Romanowski*). *Romanowski* held that Penal Code section 490.2 (PC 490.2)—deeming theft under \$950 to be petty theft—applies to access card theft in violation of Penal Code section 484e (PC 484e).

In April 2015, General Office Memorandum (GOM) 15-035 indicated that the application of PC 490.2 to PC 484e was an open question, and provided suggested arguments along with a sample brief supporting the position that PC 490.2 did not apply to PC 484e. In light of *Romanowski*, GOM 15-035 and the attendant brief are retracted.

In finding that PC 490.2 applies to PC 484e, *Romanowski* addressed the issue of proving the value of access card information. The value of access card information may be determined using the “reasonable and fair market value” test, or by evidence of the value of the information if offered for “illicit” sale. (*Romanowski*, Slip Opn. pp. 1-2.) Notably, the high court rejected the argument that the value is de minimis by law, or limited to the value of the physical object on which the access card information is imprinted—e.g., the plastic credit card. (*Id.* at p. 15.)

Deputies should be prepared to prove the value of access card information. **(For post-preliminary hearing cases, deputies are referred to GOM 14-099, “Anticipated 995 Motions,” for suggestions on preserving felony status.)** Practically speaking, such proof might include evidence of the funds available or available credit limit, for the account linked to the access card information on the day the information was discovered to be in the defendant’s possession.<sup>1</sup> Alternatively, law enforcement officers with the requisite training and experience might offer an opinion on the value of the information on illicit markets.

In regards to Penal Code section 1170.18 petitions for misdemeanor reduction, defendants bear the burden to establish sentence-recall eligibility. (*Romanowski*, Slip Opn. p. 17.) When valuation is an issue, deputies should be prepared to object to eligibility and litigate the issue.

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1. If the access card information was used for any unlawful purpose, felony identity theft under Penal Code section 530.5, subdivision (a) may still be charged—regardless of value.