

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 452

Introduced by Senator Galgiani
(Coauthor: Senator Anderson)

February 25, 2015

An act to amend ~~Sections 490.2 and 496~~ *Section 490.2* of the Penal Code, relating to theft.

LEGISLATIVE COUNSEL'S DIGEST

SB 452, as amended, Galgiani. Theft: firearms.

(1) Existing law, the Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, requires the theft of property that does not exceed \$950 to be considered petty theft, and makes the crime punishable as a misdemeanor, except in cases when the defendant has previously been convicted of one or more specified serious or violent felonies or an offense requiring registration as a sex offender.

This bill would, upon approval by the voters, make the theft of a firearm grand theft in all cases, punishable by imprisonment in the state prison for 16 months, or 2 or 3 years. ~~This bill would, upon approval by the voters, make the theft of property taken from the person of another grand theft in all cases, punishable by imprisonment in a county jail not exceeding one year or by imprisonment in a county jail for 16 months, or 2 or 3 years.~~

~~(2) Under existing law, every person who buys or receives any property that has been stolen, knowing the property to be stolen, is guilty of a misdemeanor or a felony, except that if the value of the property does not exceed \$950, Proposition 47 makes the offense punishable as a misdemeanor if the defendant has not previously been~~

~~convicted of one or more specified serious or violent felonies or an offense requiring registration as a sex offender.~~

~~This bill would, upon approval by the voters, make buying or receiving a stolen firearm a misdemeanor or a felony.~~

(3)

(2) The California Constitution authorizes the Legislature to amend or repeal an initiative statute by another statute that becomes effective when approved by the electors.

This bill would provide that it would become effective only upon approval of the voters, and would provide for the submission of this measure to the voters for approval at the next statewide general election.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature in submitting this act to the
2 electors finds and declares all of the following:

3 (1) ~~The theft of firearms, the receipt of stolen firearms, and the~~
4 ~~theft of property when the property is taken from the person of~~
5 ~~another, pose dangers to public safety that are different in kind~~
6 ~~from other types of theft or the receipt of other types of stolen~~
7 ~~property. firearms pose a danger to public safety that is different~~
8 ~~in kind from other types of theft.~~

9 (2) Many handguns have a value of less than nine hundred fifty
10 dollars (\$950). The threat to public safety in regard to stolen
11 firearms goes above and beyond the monetary value of the firearm.

12 (3) Given the significant and particular threat to public safety
13 in regard to ~~stolen firearms and the theft of property when the~~
14 ~~property is taken from the person of another, firearms,~~ it is
15 appropriate to restore the penalties that existed prior to the passage
16 of the Safe Neighborhoods and Schools Act in regard to stolen
17 firearms.

18 (b) It is not the intent of the Legislature in submitting this act
19 to the electors to undermine the voter's decision to decrease
20 penalties for low-level theft and receiving stolen property, only to
21 give the voters the opportunity to decide whether firearm ~~thefts,~~
22 ~~the receipt of stolen firearms, and the theft of property when the~~
23 ~~property is taken from the person of another~~ *thefts* should be subject

1 to penalties that existed prior to the passage of the Safe
2 Neighborhoods and Schools Act.

3 SEC. 2. Section 490.2 of the Penal Code is amended to read:

4 490.2. (a) Notwithstanding Section 487 or any other law
5 defining grand theft, except as provided in subdivisions (e) and
6 ~~(d)~~, in subdivision (c), obtaining any property by theft where the
7 value of the money, labor, real property, or personal property taken
8 does not exceed nine hundred fifty dollars (\$950) shall be
9 considered petty theft and shall be punished as a misdemeanor,
10 except that the person may instead be punished pursuant to
11 subdivision (h) of Section 1170 if that person has one or more
12 prior convictions for an offense specified in clause (iv) of
13 subparagraph (C) of paragraph (2) of subdivision (e) of Section
14 667 or for an offense requiring registration pursuant to subdivision
15 (c) of Section 290.

16 (b) This section ~~shall not be applicable~~ *does not apply* to any
17 theft that may be charged as an infraction pursuant to any other
18 provision of law.

19 (c) If the property taken is a firearm as specified in paragraph
20 (2) of subdivision (d) of Section 487, the theft is grand theft in all
21 cases, and is punishable pursuant to subdivision (a) of Section 489.

22 ~~(d) If the property taken is taken from the person of another as~~
23 ~~specified in subdivision (e) of Section 487, the theft is grand theft~~
24 ~~in all cases, and is punishable pursuant to subdivision (c) of Section~~
25 ~~489~~

26 SEC. 3. ~~Section 496 of the Penal Code is amended to read:~~

27 ~~496. (a) Every person who buys or receives any property that~~
28 ~~has been stolen or that has been obtained in any manner~~
29 ~~constituting theft or extortion, knowing the property to be so stolen~~
30 ~~or obtained, or who conceals, sells, withholds, or aids in~~
31 ~~concealing, selling, or withholding any property from the owner,~~
32 ~~knowing the property to be so stolen or obtained, shall be punished~~
33 ~~by imprisonment in a county jail for not more than one year, or~~
34 ~~imprisonment pursuant to subdivision (h) of Section 1170.~~
35 ~~However, except as provided in subdivision (e), if the value of the~~
36 ~~property does not exceed nine hundred fifty dollars (\$950), the~~
37 ~~offense shall be a misdemeanor, punishable only by imprisonment~~
38 ~~in a county jail not exceeding one year, if the person has no prior~~
39 ~~convictions for an offense specified in clause (iv) of subparagraph~~
40 ~~(C) of paragraph (2) of subdivision (e) of Section 667 or for an~~

1 offense requiring registration pursuant to subdivision (c) of Section
2 290.

3 A principal in the actual theft of the property may be convicted
4 pursuant to this section. However, no person may be convicted
5 both pursuant to this section and of the theft of the same property.

6 ~~(b) Every swap meet vendor, as defined in Section 21661 of the
7 Business and Professions Code, and every person whose principal
8 business is dealing in, or collecting, merchandise or personal
9 property, and every agent, employee, or representative of that
10 person, who buys or receives any property of a value in excess of
11 nine hundred fifty dollars (\$950) that has been stolen or obtained
12 in any manner constituting theft or extortion, under circumstances
13 that should cause the person, agent, employee, or representative
14 to make reasonable inquiry to ascertain that the person from whom
15 the property was bought or received had the legal right to sell or
16 deliver it, without making a reasonable inquiry, shall be punished
17 by imprisonment in a county jail for not more than one year, or
18 imprisonment pursuant to subdivision (h) of Section 1170.~~

19 ~~Every swap meet vendor, as defined in Section 21661 of the
20 Business and Professions Code, and every person whose principal
21 business is dealing in, or collecting, merchandise or personal
22 property, and every agent, employee, or representative of that
23 person, who buys or receives any property of a value of nine
24 hundred fifty dollars (\$950) or less that has been stolen or obtained
25 in any manner constituting theft or extortion, under circumstances
26 that should cause the person, agent, employee, or representative
27 to make reasonable inquiry to ascertain that the person from whom
28 the property was bought or received had the legal right to sell or
29 deliver it, without making a reasonable inquiry, shall be guilty of
30 a misdemeanor.~~

31 ~~(c) Any person who has been injured by a violation of
32 subdivision (a) or (b) may bring an action for three times the
33 amount of actual damages, if any, sustained by the plaintiff, costs
34 of suit, and reasonable attorney's fees.~~

35 ~~(d) Notwithstanding Section 664, any attempt to commit any
36 act prohibited by this section, except an offense specified in the
37 accusatory pleading as a misdemeanor, is punishable by
38 imprisonment in a county jail for not more than one year, or by
39 imprisonment pursuant to subdivision (h) of Section 1170.~~

1 ~~(e) Notwithstanding subdivision (a), every person who buys or~~
2 ~~receives a firearm that has been stolen or that has been obtained~~
3 ~~in any manner constituting theft or extortion, knowing the property~~
4 ~~to be so stolen or obtained, or who conceals, sells, withholds, or~~
5 ~~aids in concealing, selling, or withholding any property from the~~
6 ~~owner, knowing the property to be so stolen or obtained, shall be~~
7 ~~punished by imprisonment in a county jail for not more than one~~
8 ~~year, or imprisonment pursuant to subdivision (h) of Section 1170.~~

9 ~~SEC. 4. Sections 2 and 3~~

10 ~~SEC. 3. Section 2 of this act amend amends the Safe~~
11 ~~Neighborhoods and Schools Act, Proposition 47, an initiative~~
12 ~~statute, and shall become effective only when submitted to and~~
13 ~~approved by the voters. The Secretary of State shall submit~~
14 ~~Sections 1, 2, and 3 1 and 2 of this act for approval by the voters~~
15 ~~at a statewide election in accordance with Section 9040 of the~~
16 ~~Elections Code.~~