

ASSEMBLY BILL

No. 150

Introduced by Assembly Member Melendez

January 15, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 150, as introduced, Melendez. Theft: firearms.

(1) Existing law states that the theft of a firearm is grand theft, punishable as a felony by imprisonment in the state prison for 16 months, or 2 or 3 years. The Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, notwithstanding these provisions, instead 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 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. By increasing the penalty for a crime, this bill would impose a state-mandated local program.

(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 make buying or receiving a stolen firearm a misdemeanor or a felony. By increasing the penalty for a crime, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) 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: yes.

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 and receipt of stolen firearms pose
4 dangers to public safety that are different in kind from other types
5 of theft or the receipt of other types of stolen property.

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

9 (3) Given the significant and particular threat to public safety
10 in regard to stolen firearms, it is appropriate to restore the penalties
11 that existed prior to the passage of the Safe Neighborhoods and
12 Schools Act in regard to stolen firearms.

13 (b) It is not the intent of the Legislature in submitting this act
14 to the electors to undermine the voter's decision to decrease
15 penalties for low-level theft and receiving stolen property, only to
16 give the voters the opportunity to decide whether firearm thefts
17 and the receipt of stolen firearms should be subject to penalties
18 that existed prior to the passage of the Safe Neighborhoods and
19 Schools Act.

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

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

13 (b) This section shall not be applicable to any theft that may be
14 charged as an infraction pursuant to any other provision of law.

15 (c) *If the property taken is a firearm, the theft is grand theft in*
16 *all cases, as specified in paragraph (2) of subdivision (d) of Section*
17 *487, and is punishable pursuant to subdivision (a) of Section 489.*

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

19 496. (a) Every person who buys or receives any property that
20 has been stolen or that has been obtained in any manner
21 constituting theft or extortion, knowing the property to be so stolen
22 or obtained, or who conceals, sells, withholds, or aids in
23 concealing, selling, or withholding any property from the owner,
24 knowing the property to be so stolen or obtained, shall be punished
25 by imprisonment in a county jail for not more than one year, or
26 imprisonment pursuant to subdivision (h) of Section 1170.
27 However, *except as provided in subdivision (e)*, if the value of the
28 property does not exceed nine hundred fifty dollars (\$950), the
29 offense shall be a misdemeanor, punishable only by imprisonment
30 in a county jail not exceeding one year, if ~~such the~~ person has no
31 prior convictions for an offense specified in clause (iv) of
32 subparagraph (C) of paragraph (2) of subdivision (e) of Section
33 667 or for an offense requiring registration pursuant to subdivision
34 (c) of Section 290.

35 A principal in the actual theft of the property may be convicted
36 pursuant to this section. However, no person may be convicted
37 both pursuant to this section and of the theft of the same property.

38 (b) Every swap meet vendor, as defined in Section 21661 of the
39 Business and Professions Code, and every person whose principal
40 business is dealing in, or collecting, merchandise or personal

1 property, and every agent, employee, or representative of that
2 person, who buys or receives any property of a value in excess of
3 nine hundred fifty dollars (\$950) that has been stolen or obtained
4 in any manner constituting theft or extortion, under circumstances
5 that should cause the person, agent, employee, or representative
6 to make reasonable inquiry to ascertain that the person from whom
7 the property was bought or received had the legal right to sell or
8 deliver it, without making a reasonable inquiry, shall be punished
9 by imprisonment in a county jail for not more than one year, or
10 imprisonment pursuant to subdivision (h) of Section 1170.

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

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

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

32 (e) *Notwithstanding subdivision (a), every person who buys or*
33 *receives a firearm that has been stolen or that has been obtained*
34 *in any manner constituting theft or extortion, knowing the property*
35 *to be so stolen or obtained, or who conceals, sells, withholds, or*
36 *aids in concealing, selling, or withholding any property from the*
37 *owner, knowing the property to be so stolen or obtained, shall be*
38 *punished by imprisonment in a county jail for not more than one*
39 *year, or imprisonment pursuant to subdivision (h) of Section 1170.*

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

10 SEC. 5. Sections 2 and 3 of this act amend 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 of this act for approval by the voters at a
15 statewide election in accordance with Section 9040 of the Elections
16 Code.