

Assembly Bill No. 1176

Passed the Assembly June 30, 2016

Chief Clerk of the Assembly

Passed the Senate June 30, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 490.2, 496, and 29805 of the Penal Code, relating to theft, and calling an election, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1176, Cooper. Theft: firearms.

(1) The existing Safe Neighborhoods and Schools Act, enacted as an initiative statute by Proposition 47, as approved by the electors at the November 4, 2014, statewide general election, makes the theft of property that does not exceed \$950 in value petty theft, and makes that crime punishable as a misdemeanor, with certain exceptions.

The California Constitution authorizes the Legislature to amend an initiative statute by another statute that becomes effective only when approved by the electors.

This bill would amend that initiative statute by making the theft of a firearm grand theft in all cases and punishable by imprisonment in the state prison for 16 months, or 2 or 3 years.

(2) Under existing law, a person who buys or receives property that has been stolen, knowing the property to be stolen, or who conceals, sells, withholds, or aids in concealing, selling, or withholding property from the owner, 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 amend that initiative statute by making the buying or receiving of a stolen firearm, with knowledge that the property was stolen, or the concealing, selling, withholding, or aiding in concealing, selling, or withholding of a firearm, with knowledge that the property was stolen, a misdemeanor or a felony.

(3) Existing law generally prohibits a person who has been convicted of certain misdemeanors from possessing a firearm within 10 years of the conviction. Under existing law, a violation

of this prohibition is a crime, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill would add to the list of misdemeanors, the conviction for which is subject to the above prohibition on possessing a firearm within 10 years of the conviction, the petty theft of a firearm and the buying, receiving, concealing, selling, withholding, or aiding in concealing, selling, or withholding, of stolen property consisting of a firearm, as specified. Because a violation of this provision would be a crime, this bill would impose a state-mandated local program.

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) This bill would call a special election to be consolidated with the November 8, 2016, statewide general election. This bill would require the Secretary of State to submit the provisions of the bill that amend the initiative statute, as described in (1) and (2) above, to the electors for their approval at the November 8, 2016, consolidated election.

This bill would declare that it is to take effect immediately as an act calling an election.

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

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

(1) The theft of firearms and receipt of stolen firearms pose dangers to public safety that are different in kind from other types of theft or the receipt of other types of stolen property.

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

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

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

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

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

(b) This section does not apply to a theft that may be charged as an infraction pursuant to any other law.

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

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

496. (a) (1) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, except as provided in subdivision (e), if the value of the property does not exceed nine hundred fifty dollars (\$950), the offense is a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if the person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an

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

(2) A principal in the actual theft of the property may be convicted pursuant to this section. However, a person may not be convicted both pursuant to this section and of the theft of the same property.

(b) (1) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives property of a value in excess of nine hundred fifty dollars (\$950) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

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

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

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

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

SEC. 4. Section 29805 of the Penal Code is amended to read:

29805. Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 490.2 if the property taken was a firearm, 496 if the property consists of a firearm, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 6. (a) Sections 2 and 3 of this act amend the Safe Neighborhoods and Schools Act, Proposition 47, an initiative statute, and shall become effective only when submitted to and approved by the voters at a statewide election.

(b) A special election is hereby called, to be held throughout the state on November 8, 2016, for approval by the voters of Sections 2 and 3 of this act. The special election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used.

(c) Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, 9082, and 9094 of the Elections Code, or any other law, the Secretary of State shall submit Sections 2 and 3 of this act to the voters for their approval at the November 8, 2016, statewide general election.

SEC. 7. This act calls an election within the meaning of Article IV of the Constitution and shall go into immediate effect.

Approved _____, 2016

Governor