

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2369**

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**Introduced by Assembly Member Patterson  
(Coauthors: Assembly Members Baker, Brough, Lackey, Waldron,  
and Wilk)**

February 18, 2016

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An act to amend Section 490.2 of, and to add Section 666.1 to, the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2369, as amended, Patterson. Proposition 47: repeat offenses within 12 months.

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, reduced certain felonies to misdemeanors, including possession of specified controlled substances and theft of a firearm with a value under \$950.

This bill would authorize the prosecution to charge a person with a felony if the person has been *previously* convicted 2 or more times ~~in the 12-month period~~ of the crimes reduced to a misdemeanor by Proposition 47 or, if the crime being prosecuted is petty theft, when the person had been convicted of specified other crimes, including grand theft and carjacking, ~~at least twice in the past 12 months. The bill would specify that, for purposes of determining the 12-month period, the date the crimes were committed is used, not the date of conviction. and the date that 2 or more of the prior crimes were committed was within 36 months of the date of the commission of the crime for which the person is being punished.~~ The bill would also make it ~~a felony~~ grand theft,

*punishable in state prison as a felony, when any of the items taken include is a firearm.*

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

3 490.2. (a) Notwithstanding Section 487 or any other ~~provision~~  
4 ~~of law~~ defining grand theft, obtaining any property by theft where  
5 the value of the money, labor, real or personal property taken does  
6 not exceed nine hundred fifty dollars (\$950) shall be considered  
7 petty theft and shall be punished as a misdemeanor, with the  
8 following exceptions:

9 (1) A person may instead be punished pursuant to subdivision  
10 (h) of Section 1170 if that person has one or more prior convictions  
11 for an offense specified in clause (iv) of subparagraph (C) of  
12 paragraph (2) of subdivision (e) of Section 667 or for an offense  
13 requiring registration pursuant to subdivision (c) of Section 290.

14 ~~(2) When the items taken include a firearm, the person shall be~~  
15 ~~punished pursuant to subdivision (h) of Section 1170.~~

16 (2) *It is grand theft, as described in paragraph (2) of subdivision*  
17 *(d) of Section 487, when any of the items taken is a firearm and*  
18 *the person shall be punished pursuant to subdivision (a) of Section*  
19 *489.*

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

22 SEC. 2. Section 666.1 is added to the Penal Code, to read:

23 666.1. (a) Notwithstanding any other law, a person who has  
24 been convicted of a misdemeanor violation of any of the crimes  
25 listed in subdivision (b) ~~two or more times in 12 months may be~~  
26 ~~punished, upon a third conviction for one of the enumerated crimes~~  
27 ~~that he or she commits within the same 12-month period, may be~~

1 *punished* either by imprisonment for not more than a year in a  
2 county jail or by imprisonment pursuant to subdivision (h) of  
3 ~~Section 1170~~. *1170 if the following criteria are met:*

4 (1) *The person has previously been convicted of the crimes listed*  
5 *in subdivision (b) two or more times.*

6 (2) *The date that two or more of the prior crimes were committed*  
7 *was within 36 months of the date of the commission of the crime*  
8 *for which the person is being punished under this subdivision.*

9 (b) (1) Shoplifting of an item with a value of more than nine  
10 hundred fifty dollars (\$950).

11 (2) Forgery relating to a check, bond, bank bill, note, cashier's  
12 check, traveler's check, or money order, where the value of the  
13 check, bond, bank bill, note, cashier's check, traveler's check, or  
14 money order does not exceed nine hundred fifty dollars (\$950).

15 (3) A violation of Section 476a where the amount of all checks,  
16 drafts, or orders is more than four hundred fifty dollars (\$450) but  
17 less than nine hundred fifty dollars (\$950).

18 (4) Petty theft of any of the following:

19 (A) Domestic fowls, avocados, olives, citrus or deciduous fruits,  
20 other fruits, vegetables, nuts, artichokes, or other farm crops with  
21 a value exceeding two hundred fifty dollars (\$250) but less than  
22 nine hundred fifty dollars (\$950).

23 (B) Fish, shellfish, mollusks, crustaceans, kelp, algae, or other  
24 aquacultural products are taken from a commercial or research  
25 operation with a value exceeding two hundred fifty dollars (\$250)  
26 but less than nine hundred fifty dollars (\$950).

27 (C) Property taken from the person of another with a value of  
28 less than nine hundred fifty dollars (\$950).

29 (D) An automobile with a value of less than nine hundred fifty  
30 dollars (\$950).

31 (5) A violation of Section 496 where the property has a value  
32 of less than nine hundred fifty dollars (\$950).

33 (6) Unless upon the written prescription of a physician, dentist,  
34 podiatrist, or veterinarian licensed to practice in this state,  
35 possession of a controlled substance that is any of the following:

36 (A) Specified in subdivision (b) or (c) or paragraph (1) of  
37 subdivision (f) of Section 11054 of the Health and Safety Code.

38 (B) Specified in paragraph (14), (15), or (20) of subdivision (d)  
39 of Section 11054 of the Health and Safety Code.

1 (C) Specified in subdivision (b) or (c) of Section 11055 of the  
2 Health and Safety Code.

3 (D) Specified in subdivision (h) of Section 11056 of the Health  
4 and Safety Code.

5 (E) A controlled substance classified in Schedule III, IV, or V  
6 that is a narcotic drug.

7 (7) Violation of Section 11357 or 11377 of the Health and Safety  
8 Code.

9 (c) In addition to the provisions of subdivision (a), a person who  
10 ~~has been convicted~~ *is convicted* of a crime of petty theft, grand  
11 theft, auto theft pursuant to subdivision (d) or (e) of Section 10851  
12 of the Vehicle Code, burglary, carjacking, robbery, or a felony  
13 violation of Section 496 two or more times in 12 months, *theft*  
14 *may be punished upon a conviction for petty theft that he or she*  
15 *commits in the same 12-month period*, either by imprisonment for  
16 not more than a year in a county jail or by imprisonment pursuant  
17 to subdivision (h) of Section ~~1170~~. *1170 if the following criteria*  
18 *are met:*

19 (1) *The person has been convicted two or more times of petty*  
20 *theft, grand theft, auto theft pursuant to subdivisions (d) or (e) of*  
21 *Section 10851 of the Vehicle Code, burglary, carjacking, robbery,*  
22 *or a felony violation of Section 496, or a combination of those*  
23 *crimes.*

24 (2) *The date that two or more of the prior crimes were committed*  
25 *was within 36 months of the date of the commission of the crime*  
26 *for which the person is being punished under this subdivision.*

27 ~~(d) For purposes of determining the 12-month period required~~  
28 ~~by subdivisions (a) and (c), the date the crimes were committed~~  
29 ~~shall be used, not the date of the conviction.~~

30 SEC. 3. Section 1 of this act amends the Safe Neighborhoods  
31 and Schools Act, Proposition 47, an initiative statute, and shall  
32 become effective only when submitted to and approved by the  
33 voters. The Secretary of State shall submit Section 1 of this act for  
34 approval by the voters at a statewide election in accordance with  
35 Section 9040 of the Elections Code.