

ASSEMBLY BILL

No. 2854

Introduced by Assembly Member Cooper
(Coauthor: Senator Galgiani)

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2854, as introduced, 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) This bill would call a special election to be consolidated with the June 7, 2016, statewide primary election. This bill would require the Secretary of State to submit the provisions of the bill that amend the initiative statute to the electors for their approval at the June 7, 2016, consolidated election.

This bill would declare that it is to take effect immediately as an act calling an 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) In submitting this act to the electors, the
2 Legislature 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 \$950. The threat
7 to public safety in regard to stolen firearms goes above and beyond
8 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.

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

1 490.2. (a) Notwithstanding Section 487 or any other provision
 2 of law defining grand theft, *except as provided in subdivision (c)*,
 3 obtaining any property by theft where the value of the money,
 4 labor, real *property*, or personal property taken does not exceed
 5 nine hundred fifty dollars (\$950) ~~shall be considered~~ *is* petty theft
 6 and shall be punished as a misdemeanor, except that ~~such the~~
 7 person may instead be punished pursuant to subdivision (h) of
 8 Section 1170 if that person has one or more prior convictions for
 9 an offense specified in clause (iv) of subparagraph (C) of paragraph
 10 (2) of subdivision (e) of Section 667 or for an offense requiring
 11 registration pursuant to subdivision (c) of Section 290.

12 (b) This section ~~shall does not be applicable~~ *apply to any a* theft
 13 that may be charged as an infraction pursuant to any other provision
 14 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) (1) Every person who buys or receives any property
 20 that 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~~ *is* a misdemeanor, punishable only by
 30 imprisonment in a county jail not exceeding one year, if ~~such the~~
 31 person has no prior convictions for an offense specified in clause
 32 (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of
 33 Section 667 or for an offense requiring registration pursuant to
 34 subdivision (c) of Section 290.

35 A

36 (2) A principal in the actual theft of the property may be
 37 convicted pursuant to this section. However, ~~no~~ *a* person may *not*
 38 be convicted both pursuant to this section and of the theft of the
 39 same property.

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

15 ~~Every~~

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

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

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

37 (e) *Notwithstanding subdivision (a), a person who buys or*
 38 *receives a firearm that has been stolen or that has been obtained*
 39 *in any manner constituting theft or extortion, knowing the property*
 40 *to be so stolen or obtained, or who conceals, sells, withholds, or*

1 *aids in concealing, selling, or withholding a firearm from the*
2 *owner, knowing the property to be so stolen or obtained, shall be*
3 *punished by imprisonment in a county jail for not more than one*
4 *year, or imprisonment pursuant to subdivision (h) of Section 1170.*

5 SEC. 4. (a) Sections 2 and 3 of this act amend the Safe
6 Neighborhoods and Schools Act, Proposition 47, an initiative
7 statute, and shall become effective only when submitted to and
8 approved by the voters at a statewide election.

9 (b) A special election is hereby called, to be held throughout
10 the state on June 7, 2016, for approval by the voters of Sections 2
11 and 3 of this act. The special election shall be consolidated with
12 the statewide primary election to be held on that date. The
13 consolidated election shall be held and conducted in all respects
14 as if there were only one election, and only one form of ballot shall
15 be used.

16 (c) Notwithstanding the requirements of Sections 9040, 9043,
17 9044, 9061, 9082, and 9094 of the Elections Code, or any other
18 law, the Secretary of State shall submit Sections 2 and 3 of this
19 act to the voters for their approval at the June 7, 2016, statewide
20 primary election.

21 SEC. 5. This act calls an election within the meaning of Article
22 IV of the Constitution and shall go into immediate effect.