

AMENDED IN ASSEMBLY APRIL 13, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2854**

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**Introduced by Assembly Member Cooper**  
(Coauthor: Senator Galgiani)

February 19, 2016

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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 amended, 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 *of* 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, November 8, 2016, statewide primary~~ *general* 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, November 8, 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 *of 2014* 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~~ *voters'* 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 law  
2 defining grand theft, except as provided in subdivision (c),  
3 obtaining property by theft where the value of the money, labor,  
4 real property, or personal property taken does not exceed nine  
5 hundred fifty dollars (\$950) is petty theft and shall be punished as  
6 a misdemeanor, except that the person may instead be punished  
7 pursuant to subdivision (h) of Section 1170 if that person has one  
8 or more prior convictions for an offense specified in clause (iv) of  
9 subparagraph (C) of paragraph (2) of subdivision (e) of Section  
10 667 or for an offense requiring registration pursuant to subdivision  
11 (c) of Section 290.

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

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

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

18 496. (a) (1) Every person who buys or receives any property  
19 that has been stolen or that has been obtained in any manner  
20 constituting theft or extortion, knowing the property to be so stolen  
21 or obtained, or who conceals, sells, withholds, or aids in  
22 concealing, selling, or withholding any property from the owner,  
23 knowing the property to be so stolen or obtained, shall be punished  
24 by imprisonment in a county jail for not more than one year, or  
25 imprisonment pursuant to subdivision (h) of Section 1170.  
26 However, except as provided in subdivision (e), if the value of the  
27 property does not exceed nine hundred fifty dollars (\$950), the  
28 offense is a misdemeanor, punishable only by imprisonment in a  
29 county jail not exceeding one year, if the person has no prior  
30 convictions for an offense specified in clause (iv) of subparagraph  
31 (C) of paragraph (2) of subdivision (e) of Section 667 or for an  
32 offense requiring registration pursuant to subdivision (c) of Section  
33 290.

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

38 (b) (1) Every swap meet vendor, as defined in Section 21661  
39 of the Business and Professions Code, and every person whose  
40 principal business is dealing in, or collecting, merchandise or

1 personal property, and every agent, employee, or representative  
2 of that person, who buys or receives property of a value in excess  
3 of 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 (2) 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 property of a value of nine hundred  
16 fifty dollars (\$950) or less that has been stolen or obtained in any  
17 manner constituting theft or extortion, under circumstances that  
18 should cause the person, agent, employee, or representative to  
19 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) A person who has been injured by a violation of subdivision  
24 (a) or (b) may bring an action for three times the amount of actual  
25 damages, if any, sustained by the plaintiff, costs of suit, and  
26 reasonable attorney's fees.

27 (d) Notwithstanding Section 664, an attempt to commit any act  
28 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), a 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 a firearm 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. (a) Sections 2 and 3 of this act amend the Safe  
2 Neighborhoods and Schools Act, Proposition 47, an initiative  
3 statute, and shall become effective only when submitted to and  
4 approved by the voters at a statewide election.

5 (b) A special election is hereby called, to be held throughout  
6 the state on ~~June 7, November 8, 2016~~, for approval by the voters  
7 of Sections 2 and 3 of this act. The special election shall be  
8 consolidated with the statewide ~~primary~~ *general* election to be  
9 held on that date. The consolidated election shall be held and  
10 conducted in all respects as if there were only one election, and  
11 only one form of ballot shall be used.

12 (c) Notwithstanding the requirements of Sections 9040, 9043,  
13 9044, 9061, 9082, and 9094 of the Elections Code, or any other  
14 law, the Secretary of State shall submit Sections 2 and 3 of this  
15 act to the voters for their approval at the ~~June 7, November 8, 2016~~,  
16 statewide ~~primary~~ *general* election.

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