

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 1869 (Melendez) – As Introduced February 10, 2016

SUBJECT: Theft: firearms.

SUMMARY: Calls for a special election to amend Proposition 47, the Safe Neighborhoods and Schools Act, an initiative statute that was approved by the voters at the November 4, 2014 statewide general election. Makes the theft of a firearm grand theft in all cases and punishable by a state prison term, as specified. Specifically, **this bill:**

- 1) Contains the following Legislature findings and declarations:
 - a) 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.
 - b) Many handguns have value of less than \$950. The threat to public safety in regard to stolen firearms goes above and beyond the monetary value of the firearm.
 - c) 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 School Act of 2014 in regard to stolen firearms.
 - d) It is not the intent of the Legislature in submitting this act to the electors to undermine the voters' decision to decrease penalties for low-level theft and receiving stolen property, only to give voters the opportunity to decide whether firearm thefts and the receipt of stolen firearms should be subject to penalties that existed prior to the passage of the Safe Neighborhood and School Act.
- 2) Provides that the theft of a firearm is grand theft in all cases, punishable by imprisonment in state prison for 16 months, or two or three years.
- 3) Provides that every person who buys or receives a stolen firearm, as specified, is guilty of an alternate felony/misdemeanor offense punishable by imprisonment in the county jail for a period of not more than one year, or imprisonment in the county jail pursuant to the Criminal Justice Realignment Act of 2011.
- 4) Provides for this bill to become effective only when submitted to and approved by the voters at a statewide election.
- 5) Calls for a statewide special election to be held on November 8, 2016, for voter approval of these provisions and requires the special election to be consolidated with the statewide general election to be held on that date. Requires the special election to be held and conducted in all respects as if there were only one election, and provides that only one form

of ballot shall be used.

EXISTING LAW:

- 1) Divides theft into two degrees, petty theft and grand theft.
- 2) Defines grand theft to mean when money, labor, or real or personal property taken is of a value exceeding \$950 dollars, except as specified.
- 3) Provides that notwithstanding any provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed \$950 shall be considered petty theft and shall be punished as a misdemeanor, except in the case where a person has prior serious, violent, or sex convictions, in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment.
- 4) Prohibits carrying a concealed firearm on the person or in a vehicle, and punishes that crime as a felony under certain circumstances, including if the person is an ex-felon or a gang member, or if the firearm was stolen.
- 5) Prohibits carrying a loaded firearm on the person or in a vehicle while in any public place or on any public street and punishes that crime as a felony under certain circumstances, including if the person is an ex-felon or a gang member, or if the firearm was stolen.
- 6) Prohibits any person previously convicted of a felony from owning, purchasing, receiving, possessing, or having in his or her custody a firearm, and punishes that offense as a felony.
- 7) Deems grand theft involving a firearm to be a serious felony.
- 8) Provides that a felony is a crime that is punishable with death, imprisonment in the state prison, or in the county jail in accordance with existing law. Provides that all other crimes are misdemeanors, except those classified as infractions.
- 9) Provides that statutes calling elections to go into effect immediately upon their enactment.
- 10) Permits the Legislature to amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without voter approval.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

The vast majority of handguns, rifles, and shotguns are valued under \$950. By reducing penalties, this would make current law ineffective in curtailing gun theft and gun trafficking. This change in law has put the safety of our constituents at risk. Not only will it be harder to prosecute gun theft, we are essentially giving

criminals the green light by lessening the penalty. A criminal doesn't steal a gun to go duck hunting, they steal a gun to commit crimes.

It is important that California continues to enforce a strong stance against the illegal acquisition and use of firearms.

- 2) **Proposition 47:** Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by voters at the November 4, 2014 statewide general election. Proposition 47 reduced the penalties for certain drug and property crimes and provided that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. Additionally, the initiative reduced the penalties for theft, shoplifting, receiving stolen property, writing bad checks, and check forgery valued at \$950 or less from felonies to misdemeanors. The measure, however, limited the reduced penalties to offenders who do not have prior convictions for serious or violent felonies and who are not required registered sex offenders.
- 3) **Proposition 47 As it Relates to the Theft of a Gun:** Proposition 47 added Penal Code Section 490.2 which provides a new definition for grand theft: "*Notwithstanding Section 487 or any other provision of law defining grand theft*, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor" (Pen. Code, § 490.2, subd. (a), emphasis added.) In other words, Proposition 47 put in a blanket \$950 threshold for conduct to be grand theft. Previously, there were a number of carve-outs, which made conduct grand theft based on the conduct involved or the manner in which the crime is committed or based on the value being less than \$950.

Because the new statute specifically states "notwithstanding Section 487," it trumps all of Penal Code Section 487, including subdivision (d)(2), which says that grand theft occurs when the property taken is a firearm. The question becomes whether notwithstanding newly-created Penal Code Section 490.2, another provision of law deems this conduct to be a felony.

Penal Code Section 1192.7, states that grand theft involving a firearm is a serious felony. Some argue that this is a "provision of law defining grand theft" because of how it characterizes the crime. But not every description in Section 1192.7 is coextensive with the statutory definition of a specific crime. The general purpose of Section 1192.7 is to prohibit plea bargaining in cases arising out of the listed offenses, and to enumerate crimes for sentence enhancements under other statutory schemes.

The drafters of Proposition 47 stated that they did not intend to reduce the penalty for the theft of a firearm. The rebuttal to the argument against Proposition 47 contained in the ballot arguments stated: "Proposition 47 maintains penalties for gun crimes. Under Prop. 47, possessing a stolen concealed gun remains a felony. Additional felony penalties to prevent felons and gang members from obtaining guns also apply." The ballot argument by itself does not mean that they did not inadvertently do so.

Notably, a recent appellate court decision concluded otherwise in dicta. (*People v. Perkins* (2016) 244 Cal.App.4th 129.) In *People v. Perkins, supra*, the defendant was convicted of

burglary, receiving stolen property, three counts of grand theft of a firearm, and several other offenses. He was sentenced to state prison. After California voters passed Proposition 47, the defendant filed a petition for resentencing to convert some of his offenses to misdemeanors. (*Id.* at p. 132-133.) The petition was denied and he appealed. The Court of Appeal did not squarely address the issue of whether Proposition 47 reduced the theft of a firearm to a misdemeanor when its value is less than \$950. Rather, what was at issue in the case was the adequacy of the petition. The defendant actually had petitioned only for resentencing on the receiving stolen property count because the form provided by the superior court excluded the option of petitioning for resentencing grand theft offenses. (*Id.* at p. 136.) In affirming denial of the petition without prejudice, the court noted, "Proposition 47 added a new provision, section 490.2, subdivision (a), which reclassifies felony section 487, subdivision (d)(2) grand theft violations into misdemeanors. Thus, petitioner would be entitled to resentencing on each conviction, provided he can meet his burden of showing, separately for each firearm, that its value does not exceed \$950." (*Id.* at p. 141.)

- 4) **California Constitutional Limitations on Amending a Voter Initiative:** Article II, Section 10 of the California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." In other words, unless an initiative expressly authorizes the Legislature to amend an initiative, only the voters may alter statutes created by initiative.

Consequently, because Proposition 47 was a voter initiative, the Legislature does not have the authority to amend the statute without subsequent voter approval unless the initiative specifically permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).)

The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power and, hence, to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.)

Proposition 47 states, "This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act."

If Proposition 47 is deemed not to have changed the punishment for the theft of a firearm, then the provisions of this bill do not amend the initiative, but rather would be consistent with the language and intent of the initiative. On the other hand, if Proposition 47 is interpreted as having reduced the punishment for the theft of a firearm valued at \$950 or less, as well as the receipt or purchase of a stolen firearm with the same value, then the change will have to go before the voters for ratification.

- 5) **Legislative Deadlines for Placing a Measure on the Ballot:** Current law requires every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature to appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature. The statutory deadline to place a measure on the ballot for the November 8, 2016 statewide election is June 30, 2016.

This bill calls for a statewide special election to be held on November 8, 2016, for voter approval of the provisions of this bill. Additionally, this bill requires the special election to be consolidated with the statewide general election to be held on that date and requires the special election to be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used. If this bill is approved by the Legislature and signed by the Governor by June 30, it will be placed on the November 8, 2016 ballot.

- 6) **Bill Calling an Election:** Because this bill calls an election within the meaning of Article IV of the Constitution, it would go into immediate effect if signed by the Governor.
- 7) **Arguments in Support:** One of the sponsors of this bill, California State Sheriffs' Association writes:

As we have seen many times over the last year, and as it was very plainly put by the 4th District Court of Appeal earlier this year, Proposition 47 "converted receipt of stolen property and grand theft or a firearm into misdemeanors where the value of the stolen property does not exceed \$950." *People v Perkins* (2015) 241 Cal.App.4th_(E062878). Despite assertions to the contrary from the proponents of Proposition 47, it has become quite clear that this was one of the greatest unintended consequences of that initiative.

Stolen firearms are often used in other serious and violent crimes because they are difficult to trace back to the perpetrator. The Legislature recognized this inherent threat posed by firearms in the hands of criminals, which is why prior to Prop 47, theft of a firearm was always treated as grand theft...

- 8) **Arguments in Opposition:** In opposition, the American Civil Liberties Union of California, writes:

The changes proposed in AB 1869 are both unnecessary and contrary to the will of California voters.

On November 4, 2014, in our statewide general election, California voters approved Proposition 47, which, among other things, reduced the classification of certain nonviolent felonies and wobblers to misdemeanors. The voters made their decision after being fully apprised of the arguments now being raised in support of AB 1869...

After reviewing arguments both in favor and against the ballot initiative, the majority of California voters chose to approve Proposition 47. The arguments in favor of the initiative were true in 2014 and remain true today: there are already numerous state and federal laws that impose felony penalties on those who steal

guns or use stolen guns to commit crimes. Proposition 47 did nothing to change those laws. California voters understood the decision they made when they approved Proposition 47, and there is no justification for nullifying their decision...

- 9) **Related Legislation:** AB 2369 (Patterson), authorizes the prosecutor to charge a defendant with a felony if the person has been convicted twice or more in a 12-month period of the crimes reduced to a misdemeanor by Proposition 47. AB 2369 also makes it a felony when stolen items include a firearm. AB 2369 failed passage in the Assembly Public Safety Committee on a vote of 2-4.

AB 2854 (Cooper), is substantially similar to this bill, except that it calls for a special election to be held on June 7, 2016, as specified. AB 2854 is pending in the Assembly Public Safety Committee.

- 10) **Prior Legislation:** AB 150 (Melendez) of 2015, was substantially similar to this bill. AB 150 was held on the Assembly Appropriations Committee's suspense file.

- 11) **Double-Referral:** This bill passed out of the Assembly Public Safety Committee on a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (co-sponsor)
 California Peace Officers' Association (co-sponsor)
 California State Sheriffs' Association (co-sponsor)
 Association for Los Angeles Deputy Sheriffs
 California Association of Code Enforcement Officers
 California College and University Police Chiefs Association
 California Narcotic Officers Association
 California Police Chiefs Association
 California Sportsman's Lobby
 California Statewide Law Enforcement Association
 City of Burbank
 City of Canyon Lake
 City of Indian Wells
 City of Lodi
 Criminal Justice Legal Foundation
 Fraternal Order of Police
 Gun Owners of California
 League of California Cities
 Los Angeles County Professional Officers Association
 Los Angeles Deputy Sheriffs
 Los Angeles Police Protective League
 Los Angeles Professional Peace Officers Association
 Mayor of the City of Murrieta
 National Rifle Association

National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Riverside County Board of Supervisors
Riverside Sheriffs' Association
Rural County Representatives of California
Sacramento County Sheriff Scott Jones
Safari Club International
Safari Club International Foundation
San Bernardino County Sheriff-Coroner
San Diego County Office of the District Attorney

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
Legal Services for Prisoners with Children

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