
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 452 **Hearing Date:** April 28, 2015
Author: Galgiani
Version: February 25, 2015 (As Proposed to be Amended)
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Theft: Firearms*

HISTORY

Source: Author

Prior Legislation: None known

Support: California District Attorneys Association; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotics Officers Association; California Police Chiefs Association; California Rifle and Pistol Association; California Sportsman's Lobby; California State Sheriffs' Association; Golden State Bail Association; Sacramento County Deputy Sheriffs' Association; Long Beach Police Officers Association; Los Angeles Deputy Sheriffs; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; California State Lodge, Fraternal Order of Police; National Rifle Association of America; National Shooting Sports Foundation; Outdoor Sportsmen's Coalition of California; Peace Officers Research Association of California; Riverside Sheriffs Association; Santa Ana Police Officers Association; San Bernardino County Sheriff; Safari Club International

Opposition: California Attorneys for Criminal Justice; Californians for Safety and Justice; Legal Services for Prisoners with Children

PURPOSE

The purpose of this legislation is to clarify that theft of a firearm is grand theft and is punishable as a felony, as specified.

Existing law provides that every person who feloniously steals, takes, carries, leads, or drives away the personal property of another is guilty of theft, as specified. (Penal Code § 484.)

Existing law defines "grand theft" as any theft where the money, labor, or real or personal property taken or when the property is taken from the person of another is of a value exceeding \$950. (Penal Code §§ 487(a) and (c).)

Existing law provides that grand theft is committed when the money, labor, or real or personal property taken is of a value in excess of \$950, except as specified. (Penal Code § 487(a).)

Existing law provides that, notwithstanding the default value of \$950 to establish grand theft, grand theft is committed in any of the following cases:

- When domestic fowls, avocados, or other farm crops are taken of a value exceeding \$250;
- When fish or other aqua-cultural products are taken from a commercial or research operation that is producing that product of a value exceeding \$250;
- Where money, labor or property is taken by a servant or employee from his or her principal and aggregates \$950 or more in any consecutive 12-month period;
- When the property is taken from the person of another;
- When the property taken is an automobile, firearm, horse, mare, gelding, bovine animal, caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig;
- When the property is taken from the person of another; or
- When the property taken is an automobile and firearm.

(Penal Code § 487(b) through (d).)

Existing law states that if the grand theft involves the theft of a firearm, punishable by imprisonment in the state prison for 16 months, or two or three years. (Penal Code § 489(a).)

Existing law provides that grand theft is an alternate felony-misdemeanor, punishable by imprisonment in the county jail for up to one year, a fine of up to \$1,000, or both, or by a felony jail sentence of 16 months, two years or three years pursuant to Penal Code Section 1170, subdivision (h), and a fine of up to \$10,000. (Penal Code § 489(b).)

Existing law provides that, 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, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has a prior conviction for a serious or violent felony or an offense requiring registration pursuant to 290, as specified. (Penal Code § 490.2(a).)

This bill would, upon approval by the voters, make the theft of a firearm grand theft in all cases, punishable by imprisonment in the state prison for 16 months, or 2 or 3 years.

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 the next statewide general election.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee

has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the Author:

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, requires the theft of property that does not exceed \$950 to be considered petty theft, and makes the crime punishable as a misdemeanor, except in cases when the defendant has previously been convicted of one or more specified serious or violent felonies or an offense requiring registration as a sex offender. . .

This bill would, upon approval by the voters, make the theft of a firearm grand theft in all cases, punishable by imprisonment in the state prison for 16 months, or 2 or 3 years.

2. Proposition 47: Effect of this Legislation

Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. 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 limited the reduced penalties to offenders who do not have prior convictions for serious or violent felonies and who are not required to registered sex offenders. (See Legislative Analyst's Office analysis of Proposition 47, <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>.)

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 supersedes 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, theft of a firearm remains a felony.

When Proposition 47 was pending before the voters, the California District Attorneys Association (CDA) released an analysis of the proposition, "CDA Looks at Proposition 47." In this analysis CDA states:

Currently, the theft of any firearm is defined as a felony pursuant Penal Code §§ 487(d)(2) and 489. A *felony* conviction of Penal Code § 487(d)(2) is a serious felony (or strike) pursuant to Penal Code § 1192.7(c)(26). (*People v. Rodola* (1998) 66 Cal.App.4th 1505.)

There are sound policy reasons for providing that theft of a firearm is a felony. Persons who steal firearms do so with the intent to use that firearm – now untraceable to the thief – in the commission of a violent crime. Unhappily, Proposition 47 de-emphasizes the seriousness of that crime by now providing that virtually all firearm thefts – and certainly all hand-gun thefts – would be reduced to misdemeanors.

Proposed Penal Code § 490.2 would require that theft of a firearm, valued at less than \$950, shall be punished as a misdemeanor, unless the offender has a conviction for one of a very narrow list of prior violent felonies or is a sex

offender. Thus, a conviction of theft of a firearm would only qualify as a felony if the value of the gun was valued at over \$950.

(<http://californiansagainst47.com/about-proposition-47/>.)

The California Police Chiefs Association, who support this legislation, state:

Proposition 47, as approved by voters in the November 4, 2014, statewide general election, requires theft of property including the theft of a firearm that does not exceed \$950 to be considered petty theft, and makes the crime punishable as a misdemeanor except in cases when the defendant has previously been convicted of one or more specified serious or violent felonies or an offense requiring registration as a sex offender.

The drafters of Proposition 47, however, state that they did not intend to reduce the penalty for theft of a firearm. Specifically, 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.

(<http://vig.cdn.sos.ca.gov/2014/general/pdf/proposition-47-arguments-rebuttals.pdf>.)

Californians for Safety and Justice, who are opposed to this legislation, additionally state:

We urge your opposition for SB 452, which is unnecessary and may cause confusion with current felony prosecutions for gun theft. Gun theft, is by definition, a serious crime, and Proposition 47 was exclusively limited to non-serious and nonviolent crimes. Additionally, there are numerous felony code sections, maintained by Proposition 47, that allow for felony prosecution for anyone stealing or in possession of a stolen firearm.

Whether Proposition 47 made theft of a firearm a misdemeanor is clearly subject to debate. Given that the proponents contend that Proposition 47 did not change the penalties for gun theft, clarifying the intent of the proponents by stating that theft of a firearm remains a felony is seemingly innocuous.

SHOULD THE LAW BE CLARIFIED TO EXPLICITLY STATE THAT THEFT OF A FIREARM IS A FELONY?

3. California Constitutional Limitations on Amending a Voter Initiative

Because Proposition 47 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative 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 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.” (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

As to the Legislature’s authority to amend the initiative, 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.” ([http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47.](http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47))

Given that the proponents argue that it was their intent to keep theft of a firearm, regardless of the value, grand theft, it can certainly be argued that this legislation is “consistent with and further the intent of this act.”

4. Amendments

The author will offer the following amendments in committee: (1) strike subdivision (d) of Penal Code section 490.2; (2) strike references to subdivision (d); (3) strike section three; and, (4) amend the intent language to reflect these changes.

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