

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: June 17, 2015

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations
Committee

FROM: Sharon M. Tso *Sharon Tso*
Chief Legislative Analyst

Council File No: 15-0002-S7
Assignment No: 15-01-0076

SUBJECT: Resolution (Krekorian-Englander-Buscaino) to SUPPORT AB 150 (Melendez)

CLA RECOMMENDATION: Adopt Resolution (Krekorian-Englander-Buscaino) to include in the City's 2015 – 2016 State Legislative Program, SUPPORT for AB 150 (Melendez), which would make theft of a firearm grand theft in all cases, regardless of the value of the firearm stolen, upon approval of the voters.

SUMMARY

Resolution (Krekorian-Englander-Buscaino), introduced on January 28, 2015, concerns AB 150 (Melendez), which would make the theft of a firearm grand theft in all cases, regardless of the value of the firearm stolen. The Resolution states that after Proposition 47¹ was passed in November 2014, the penalties for certain drug and property crimes were reduced. Currently, the law states that theft of all property with a value under \$950, including firearms, are to be charged as petty theft that is punishable as a misdemeanor. The Resolution states that many handguns are worth less than \$950. The bill would make theft of any firearm grand theft, which is punishable as a felony. Increasing the penalty may deter individuals from stealing firearms and then illicitly selling them. The Resolution seeks an official position of the City of Los Angeles to support AB 150 (Melendez). This bill's provisions would be placed on the ballot and would only become effective if approved by the voters.

BACKGROUND

Existing law divides theft into two degrees, petty theft and grand theft. The law also states that every person who buys or receives any property that has been stolen, knowing the property to be stolen, is guilty of a misdemeanor or felony. Proposition 47 requires that theft of property that is valued at \$950 or less, including firearms, be considered petty theft, which is punishable as a misdemeanor. This is applicable only when 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. Theft of a firearm that is worth more than \$950 is grand theft, which is punishable as a felony by imprisonment for 16 months or two to three years. AB 150 would make the theft of a firearm, regardless of its value, grand theft in all cases and therefore punishable as a felony.

Since Proposition 47 was a voter initiative, the Legislature cannot amend the statute without voter approval, unless otherwise stated in the initiative. The California Constitution authorizes the Legislature to amend or repeal an initiative statute by another statute that becomes effective when

¹ Proposition 47 is also known as the Safe Neighborhoods and Schools Act, and was passed by the voters in the November 2014 general election.

approved by the electors. This bill, therefore, would become effective only upon the approval of voters. The Assembly Appropriations Committee indicated that there would be a one-time General Fund cost of at least \$220,000 to include a measure on the statewide ballot.

Supporters of the bill indicate that stolen firearms are often used to carry out other crimes, such as robbery or assault. They indicate that AB 150 would aid in reducing the occurrences of these crimes because it would deter individuals from selling stolen firearms. Conversely, those opposed to the bill indicate that even with the reduced penalties provided for by Proposition 47, prosecutors have other avenues to bring felony prosecution against those who steal firearms. For example, an individual could be charged with possession of a loaded stolen firearm, which is a felony.

DEPARTMENTS NOTIFIED

Los Angeles Police Department

BILL STATUS

1/15/2015	Introduced
2/02/2015	Referred to the Assembly Committee on Public Safety
2/10/2015	Amended and re-referred to Committee on Public Safety
3/18/2015	Amended and re-referred to Committee on Public Safety
3/24/2015	Passed Committee on Public Safety; referred to Committee on Appropriations
4/15/2015	In Committee: Referred to suspense file
5/28/2015	In Committee: Held under submission


Cheryl A. Banares
Analyst

SMT:cab

Attachment: 1. Resolution (Krekorian-Englander-Buscaino)
2. AB 150 (Melendez)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, on November 4, 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act; and

WHEREAS, Proposition 47 made significant changes to California law, including changes to the definition of what constitutes grand theft; and

WHEREAS, previously, the theft of a firearm constituted grand theft in all circumstances, punishable by imprisonment in the state prison for sixteen months, two years or three years; and

WHEREAS, Proposition 47 requires that theft of all property with a value under \$950 be charged as petty theft, including firearms; and

WHEREAS, many handguns, the type of firearm favored by criminals, are worth less than \$950; and

WHEREAS, it is important that theft of a firearm be charged as grand theft, to serve as disincentive to individuals who may steal firearms to sell illicitly; and

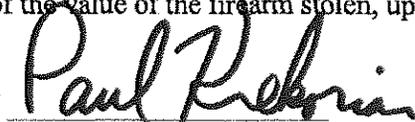
WHEREAS, AB 150 (Melendez) would make the theft of a firearm grand theft in all cases, regardless of the value of the firearm stolen; and

WHEREAS, AB 150 would ensure that individuals who steal firearms in California are appropriately charged, regardless of the value of the firearm they stole; and

WHEREAS, AB 150's provisions would be placed on the ballot and only become effective if approved by the voters;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015 - 2016 State Legislative Program SUPPORT for AB 150 (Melendez), which would make the theft of a firearm grand theft in all cases, regardless of the value of the firearm stolen, upon approval of the voters.

PRESENTED BY



PAUL KREKORIAN
Councilmember, 2nd District

PRESENTED BY



MITCHELL ENGLANDER
Councilmember, 12th District

SECONDED BY



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JAN 28 2015

ORIGINAL

AMENDED IN ASSEMBLY MARCH 18, 2015
AMENDED IN ASSEMBLY FEBRUARY 10, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 150

Introduced by Assembly Members Melendez and Gray
*(Coauthors: Assembly Members Travis Allen, Baker, Brown, Chávez,
Dodd, Beth Gaines, Gallagher, Gonzalez, Jones, Lackey, Linder,
Mayes, Olsen, Waldron, and Wilk)*
(Coauthors: Senators Anderson, Bates, Huff, Nielsen, and Stone)

January 15, 2015

An act to amend Sections 490.2 and 496 of the Penal Code, relating to theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 150, as amended, Melendez. Theft: firearms.

(1) Existing law states that the theft of a firearm is grand theft, punishable as a felony by imprisonment in the state prison for 16 months, or 2 or 3 years. The Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, notwithstanding these provisions, instead 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 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) Under existing law, every person who buys or receives any property that has been stolen, 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 make buying or receiving a stolen firearm a misdemeanor or a felony.

(3) 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 the next 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. (a) The Legislature in submitting this act to the
2 electors 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 nine hundred fifty
7 dollars (\$950). The threat to public safety in regard to stolen
8 firearms goes above and beyond 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 law
 2 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 the person
 7 may instead be punished pursuant to subdivision (h) of Section
 8 1170 if that person has one or more prior convictions for an offense
 9 specified in clause (iv) of subparagraph (C) of paragraph (2) of
 10 subdivision (e) of Section 667 or for an offense requiring
 11 registration pursuant to subdivision (c) of Section 290.

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

34 ~~A~~

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

39 (b) ~~(1)~~ Every swap meet vendor, as defined in Section 21661
 40 of the Business and Professions Code, and every person whose

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

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

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

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

35 (e) Notwithstanding subdivision (a), every person who buys or
36 receives a firearm that has been stolen or that has been obtained
37 in any manner constituting theft or extortion, knowing the property
38 to be so stolen or obtained, or who conceals, sells, withholds, or
39 aids in concealing, selling, or withholding any property from the
40 owner, knowing the property to be so stolen or obtained, shall be

1 punished by imprisonment in a county jail for not more than one
2 year, or imprisonment pursuant to subdivision (h) of Section 1170.

3 SEC. 4. Sections 2 and 3 of this act amend the Safe
4 Neighborhoods and Schools Act, Proposition 47, an initiative
5 statute, and shall become effective only when submitted to and
6 approved by the voters. The Secretary of State shall submit
7 Sections 1, 2, and 3 of this act for approval by the voters at a
8 statewide election in accordance with Section 9040 of the Elections
9 Code.

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