

Introduced by Senator BatesFebruary 16, 2022

An act to amend Sections 459.5, 490.2, and 666 of the Penal Code, relating to crime, and calling an election, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1108, as introduced, Bates. Shoplifting: increased penalties for prior crimes.

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 initiative statute defines shoplifting as entering a commercial establishment with the intent to commit larceny while that establishment is open during regular hours, where the value of the property that is taken or intended to be taken does not exceed \$950. The initiative statute requires that shoplifting be punished as a misdemeanor.

Existing law, as amended by Proposition 47, provides that a registered sex offender or a person with a prior conviction for certain serious or violent felonies, such as a sexually violent offense, who commits petty theft, is subject to imprisonment in the county jail for up to one year or in the state prison for 16 months, or 2 or 3 years.

This bill would reinstate a provision of law that was repealed by Proposition 47 that provides that a person who has been convicted 3 or more times of petty theft, grand theft, or other specified crimes and who is subsequently convicted of petty theft is subject to imprisonment in a county jail not exceeding one year or in a county jail for 16 months or 2 or 3 years. The bill would also make this provision and the provision

relating to a person with serious, violent, or sexual prior offenses applicable to a person whose prior or current conviction is for shoplifting.

This bill would call a special election to be consolidated with the November 8, 2022, statewide 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 November 8, 2022, 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. Section 459.5 of the Penal Code is amended to
2 read:

3 459.5. (a) Notwithstanding Section 459, shoplifting is defined
4 as entering a commercial establishment with intent to commit
5 larceny while that establishment is open during regular business
6 hours, where the value of the property that is taken or intended to
7 be taken does not exceed nine hundred fifty dollars (\$950). Any
8 other entry into a commercial establishment with intent to commit
9 larceny is burglary. Shoplifting shall be punished as a
10 misdemeanor, ~~except that a person with one or more prior~~
11 ~~convictions for an offense specified in clause (iv) of subparagraph~~
12 ~~(C) of paragraph (2) of subdivision (e) of Section 667 or for an~~
13 ~~offense requiring registration pursuant to subdivision (c) of Section~~
14 ~~290 may be punished pursuant to subdivision (h) of Section 1170.~~
15 *as follows:*

16 *(1) A person with one or more prior convictions for an offense*
17 *specified in clause (iv) of subparagraph (C) of paragraph (2) of*
18 *subdivision (e) of Section 667 or for an offense requiring*
19 *registration pursuant to subdivision (c) of Section 290 may be*
20 *punished pursuant to subdivision (h) of Section 1170.*

21 *(2) A person who meets the requirements of subdivision (a) or*
22 *(b) of Section 666 may be punished pursuant to that section.*

23 (b) Any act of shoplifting as defined in subdivision (a) shall be
24 charged as shoplifting. ~~Not~~ A person who is charged with shoplifting

1 may *not* also be charged with burglary or theft of the same
2 property.

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

4 490.2. (a) *Notwithstanding Section 487 or any other provision*
5 *of law defining grand theft, obtaining any property by theft where*
6 *the value of the money, labor, real or personal property taken does*
7 *not exceed nine hundred fifty dollars (\$950) shall be considered*
8 *petty theft and shall be punished as a misdemeanor, except as*
9 *follows:*

10 ~~(a) Notwithstanding Section 487 or any other provision of law~~
11 ~~defining grand theft, obtaining any property by theft where the~~
12 ~~value of the money, labor, real or personal property taken does not~~
13 ~~exceed nine hundred fifty dollars (\$950) shall be considered petty~~
14 ~~theft and shall be punished as a misdemeanor, except that such~~

15 (1) A person may instead be punished pursuant to subdivision
16 (h) of Section 1170 if that person has one or more prior convictions
17 for an offense specified in clause (iv) of subparagraph (C) of
18 paragraph (2) of subdivision (e) of Section 667 or for an offense
19 requiring registration pursuant to subdivision (c) of Section 290.

20 (2) A person who meets the requirements of subdivision (a) or
21 (b) of Section 666 may be punished pursuant to that section.

22 (b) This section ~~shall does not be applicable~~ apply to any theft
23 that may be charged as an infraction pursuant to any other ~~provision~~
24 ~~of law.~~

25 (c) This section ~~shall does not apply~~ to theft of a firearm.

26 SEC. 3. Section 666 of the Penal Code is amended to read:

27 666. (a) *Notwithstanding Section 490, every person who,*
28 *having been convicted three or more times of petty theft,*
29 *shoplifting, grand theft, a conviction pursuant to subdivision (d)*
30 *or (e) of Section 368, auto theft under Section 10851 of the Vehicle*
31 *Code, burglary, carjacking, robbery, or a felony conviction of*
32 *Section 496 and having served a term thereof in any penal*
33 *institution or having been imprisoned therein as a condition of*
34 *probation for that offense, and who is subsequently convicted of*
35 *petty theft or shoplifting is punishable by imprisonment in a county*
36 *jail not exceeding one year, or imprisonment pursuant to*
37 *subdivision (h) of Section 1170.*

38 (a)

39 (b) (1) Notwithstanding Section 490, any person described in
40 ~~subdivision (b) paragraph (2)~~ who, having been convicted of petty

1 theft, *shoplifting*, grand theft, a conviction pursuant to subdivision
 2 (d) or (e) of Section 368, auto theft under Section 10851 of the
 3 Vehicle Code, burglary, carjacking, robbery, or a felony violation
 4 of Section 496, and having served a term of imprisonment therefor
 5 in any penal institution or having been imprisoned therein as a
 6 condition of probation for that offense, and who is subsequently
 7 convicted of petty ~~theft~~, *theft or shoplifting*, is punishable by
 8 imprisonment in the county jail not exceeding one year, or in the
 9 state prison.

10 ~~(b)~~
 11 (2) ~~Subdivision (a) Paragraph (1)~~ shall apply to any person
 12 who is required to register pursuant to the Sex Offender
 13 Registration Act, or who has a prior violent or serious felony
 14 conviction, as specified in clause (iv) of subparagraph (C) of
 15 paragraph (2) of subdivision (e) of Section 667, or has a conviction
 16 pursuant to subdivision (d) or (e) of Section 368.

17 (c) This section shall not be construed to preclude prosecution
 18 or punishment pursuant to subdivisions (b) to (i), inclusive, of
 19 Section 667, or Section 1170.12.

20 SEC. 4. (a) Sections 1, 2, and 3 of this act amend the Safe
 21 Neighborhoods and Schools Act, Proposition 47, an initiative
 22 statute, and shall become effective only when submitted to and
 23 approved by the voters at a statewide election.

24 (b) A special election is hereby called, to be held throughout
 25 the state on November 8, 2022, for approval by the voters of
 26 Sections 1, 2, and 3 of this act. The special election shall be
 27 consolidated with the statewide general election to be held on that
 28 date. The consolidated election shall be held and conducted in all
 29 respects as if there were only one election, and only one form of
 30 ballot shall be used.

31 (c) Notwithstanding the requirements of Sections 9040, 9043,
 32 9044, 9061, 9082, and 9094 of the Elections Code, or any other
 33 law, the Secretary of State shall submit Sections 1, 2, and 3 of this
 34 act to the voters for their approval at the November 8, 2022,
 35 statewide general election.

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