

AMENDED IN ASSEMBLY MARCH 9, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1708

Introduced by Assembly Member Muratsuchi

February 17, 2023

An act ~~relating to corrections~~, to amend Sections 459.5 and 490.2 of, to add Section 666.1 to, and to add Chapter 2.97 (commencing with Section 1001.98) to Title 6 of Part 2 of, the Penal Code, relating to theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, as amended, Muratsuchi. ~~Corrections:—rehabilitative programming—Theft.~~

(1) 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, defines and prohibits an act of shoplifting and prohibits prosecution for an act of shoplifting under any other law.

This bill would refine the definition of shoplifting and would specifically exclude certain offenses from prosecution as shoplifting, including, among others, the theft of a firearm or vehicle, identity theft, and credit card fraud.

(2) Existing law requires, except as excluded, the theft of any property valued below \$950 to be charged as petty theft, a misdemeanor.

This bill would similarly exclude certain offenses from this provision, including, among others, the theft of a vehicle, identity theft, and credit card fraud.

(3) Existing law provides that a person with a prior conviction for specified sex offenses may be charged with a felony for shoplifting or for theft of property not exceeding \$950 in value.

This bill would require a person convicted of petty theft or shoplifting, if the person has 2 or more prior convictions for specified theft-related offenses, to be punished by imprisonment in the county jail for up to one year, or for 16 months, or 2 or 3 years.

(4) Existing law, until January 1, 2026, authorizes a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program pursuant to this section for persons who commit a theft offense or repeat theft offenses, as specified.

This bill would authorize a city or county prosecuting authority or county probation department to create a diversion program for persons who commit theft or repeat theft offenses, as specified.

(5) This bill would provide that the provisions of the bill that amend Proposition 47 would become effective only upon approval of the voters, and would provide for the submission of those provisions to the voters for approval at the next statewide general election.

~~Existing law requires the Department of Corrections and Rehabilitation to conduct rehabilitative programming in a manner that meets specified requirements, including minimizing program wait times and offering a variety of program opportunities to inmates regardless of security level or sentence length.~~

~~This bill would express the intent of the Legislature to enact legislation that would increase accountability for repeat offenders through participation in rehabilitative services.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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, *with the intent to steal retail property or merchandise*, where
7 the value of the property that is taken or intended to be taken does
8 not exceed nine hundred fifty dollars (\$950). Any other entry into
9 a commercial establishment with intent to commit larceny is
10 burglary. Shoplifting shall be punished as a misdemeanor, except
11 that a person with one or more prior convictions for an offense

specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

(c) *This section does not apply to theft of a firearm; forgery, as described in Chapter 4 (commencing with Section 470); the unlawful sale, transfer, or conveyance of an access card in violation of Section 484e; forgery of an access card in violation of Section 484f; the unlawful use of an access card in violation of Section 484g; theft from an elder or dependent adult in violation of subdivision (e) of Section 368; receiving stolen property in violation of Section 496; embezzlement, as described in Chapter 6 (commencing with Section 503); identity theft in violation of Section 530.5; or the theft or unauthorized use of a vehicle in violation of Section 10851 of the Vehicle Code.*

(d) *As used in this section, the following terms have the following meanings:*

(1) *“Retail property or merchandise” means any article, product, commodity, item, or component intended to be sold in retail commerce.*

(2) *“Value” means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.*

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

490.2. (a) 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 one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

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

(c) ~~This section shall~~ *does not apply to theft of a ~~firearm~~.
firearm; forgery, as described in Chapter 4 (commencing with*

1 Section 470); the unlawful sale, transfer, or conveyance of an
2 access card in violation of Section 484e; forgery of an access card
3 in violation of Section 484f; the unlawful use of an access card in
4 violation of Section 484g; theft from an elder or dependent adult
5 in violation of subdivision (e) of Section 368; receiving stolen
6 property in violation of Section 496; embezzlement, as described
7 in Chapter 6 (commencing with Section 503); identity theft in
8 violation of Section 530.5; or the theft or unauthorized use of a
9 vehicle in violation of Section 10851 of the Vehicle Code.

10 SEC. 3. Section 666.1 is added to the Penal Code, to read:

11 666.1. (a) (1) Notwithstanding any other law, a person who,
12 having two or more convictions for any of the offenses listed in
13 paragraph (2), and who is subsequently convicted of petty theft or
14 shoplifting, is punishable by imprisonment in the county jail not
15 exceeding one year, or pursuant to subdivision (h) of Section 1170.

16 (2) This section applies to the following offenses:

17 (A) Petty theft, as described in Section 488.

18 (B) Grand theft, as described in Section 487.

19 (C) Theft from an elder or dependent adult in violation of
20 subdivision (e) of Section 368.

21 (D) The theft or unauthorized use of a vehicle, as described in
22 Section 10851 of the Vehicle Code.

23 (E) Burglary, as described in Section 459.

24 (F) Carjacking, as described in Section 215.

25 (G) Robbery, as described in Section 211.

26 (H) Receiving stolen property, as described in Section 496.

27 (I) Shoplifting, as described in Section 459.5.

28 (J) Mail theft, as described in subdivision (e) of Section 530.5.

29 (b) This section shall not be construed to preclude prosecution
30 or punishment pursuant to any other law.

31 SEC. 4. Chapter 2.97 (commencing with Section 1001.98) is
32 added to Title 6 of Part 2 of the Penal Code, to read:

33
34 CHAPTER 2.97. THEFT CRIMES DIVERSION
35

36 1001.98. (a) The city or county prosecuting attorney or county
37 probation department may create a diversion program pursuant
38 to this section for persons who commit a theft offense or repeat
39 theft offenses. The program may be conducted by the prosecuting
40 attorney's office or the county probation department.

1 ***(b) Except as provided in subdivision (e), this chapter does not***
2 ***limit the power of the prosecuting attorney to prosecute theft or***
3 ***repeat theft.***

4 ***(c) If a county creates a diversion or deferred entry of judgment***
5 ***program for individuals committing theft or repeat theft offenses,***
6 ***on receipt of a case or at arraignment, the prosecuting attorney***
7 ***shall either refer the case to the county probation department to***
8 ***conduct a prefiling investigation report to assess the***
9 ***appropriateness of program placement or, if the prosecuting***
10 ***attorney's office operates the program, determine if the case is***
11 ***one that is appropriate to be referred to the program. In***
12 ***determining whether to refer a case to the program, the probation***
13 ***department or prosecuting attorney shall consider, but is not***
14 ***limited to, all of the following factors:***

15 ***(1) Any prefiling investigation report conducted by the county***
16 ***probation department or nonprofit contract agency operating the***
17 ***program that evaluates the individual's risk and needs and the***
18 ***appropriateness of program placement.***

19 ***(2) If the person demonstrates a willingness to engage in***
20 ***community service, restitution, or other mechanisms to repair the***
21 ***harm caused by the criminal activity and address the underlying***
22 ***drivers of the criminal activity.***

23 ***(3) If a risk and needs assessment identifies underlying***
24 ***substance abuse or mental health needs or other drivers of criminal***
25 ***activity that can be addressed through the diversion or deferred***
26 ***entry of judgment program.***

27 ***(4) If the person has a violent or serious prior criminal record***
28 ***or has previously been referred to a diversion program and failed***
29 ***that program.***

30 ***(5) Any relevant information concerning the efficacy of the***
31 ***program in reducing the likelihood of participants committing***
32 ***future offenses.***

33 ***(d) On referral of a case to the program, a notice shall be***
34 ***provided to the person alleged to have committed the offense with***
35 ***both of the following information:***

36 ***(1) The date by which the person must contact the diversion***
37 ***program or deferred entry of judgment program in the manner***
38 ***designated by the supervising agency.***

39 ***(2) A statement of the penalty for the offense or offenses with***
40 ***which that person has been charged.***

1 (e) *The prosecuting attorney may enter into a written agreement*
2 *with the person to refrain from, or defer, prosecution on the offense*
3 *or offenses on the following conditions:*

4 (1) *Completion of the program requirements such as community*
5 *service or courses reasonably required by the prosecuting attorney.*

6 (2) *Making adequate restitution or an appropriate substitute*
7 *for restitution to the victim or victims.*

8 SEC. 5. *This act amends the Safe Neighborhoods and Schools*
9 *Act, an initiative statute approved by the voters at the November*
10 *4, 2014, statewide general election as Proposition 47, and shall*
11 *become effective only when submitted to and approved by the*
12 *voters. The Secretary of State shall submit Sections 1, 2, and 3 of*
13 *this act for approval by the voters at a statewide election in*
14 *accordance with Section 9040 of the Elections Code.*

15 ~~SECTION 1. It is the intent of the Legislature to enact~~
16 ~~legislation that would increase accountability for repeat offenders~~
17 ~~through participation in rehabilitative services.~~