

Date of Hearing: March 8, 2022

Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1603 (Salas) – As Introduced January 3, 2022

SUMMARY: Decreases the threshold amount that constitutes grand theft and shoplifting from \$950 to \$400. Specifically, **this bill:**

- 1) Decreases the threshold amount for the crime of shoplifting from \$950 to \$400.
- 2) Decreases the threshold amount for the crime of grand theft from \$950 to \$400.
- 3) Makes a conforming change to the statute defining the crime of petty theft.
- 4) Provides that the provisions of this bill shall only become effective when submitted to, and approved by, the voters of California.

EXISTING LAW:

- 1) Divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)
- 2) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding \$950 dollars, except as specified. (Pen. Code, § 487.)
- 3) States that theft of a firearm or of a vehicle is always considered grand theft. (Pen. Code, § 487, subd. (d).)
- 4) Provides that if the grand theft involves the theft of a firearm, it is punishable by imprisonment in state prison for 16 months, two or three years. In most other cases, grand theft is punishable by imprisonment in county jail for not more than one year, or as a felony with the sentence to be served in county jail pursuant to criminal justice realignment. (Pen. Code § 489, subds. (a) & (c)(1).)
- 5) 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 where a person has a prior “super strike,” or a registerable sex conviction, as specified, in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 490.2, subd. (a).)
- 8) States that petty theft is punishable by a fine not exceeding \$1,000; by imprisonment in the county jail not exceeding six months; or both. (Pen. Code § 490.)

- 9) Defines “shoplifting” as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed \$950 dollars. (Pen. Code, § 459.5, subd. (a).)
- 10) States that any act of shoplifting must be charged as such, and that a person charged with shoplifting cannot also be charged with burglary or theft of the same property. (Pen. Code, § 459.5, subd. (b).)
- 11) Punishes shoplifting as a misdemeanor, except where a person has a prior “super strike” or a registrable sex conviction in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 459.5, subd. (a).)
- 12) Provides that any person who enters specified buildings, including a vehicle, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, with intent to commit grand or petty larceny, or any felony, is guilty of a burglary. (Penal Code § 459.)
- 13) Provides that receiving stolen property where the value of the property is \$950 or less is a misdemeanor, except for cases in which the defendant has suffered a prior conviction for a “super strike,” enumerated in Penal Code section 667, subdivision (e)(2)(C)(iv) or which requires sex offender registration; in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 496, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “With the increase in shoplifting and organized retail theft, also known as ‘smash and grabs,’ we need to fight back against the criminals who are stealing from our communities. We have seen the unintended consequences of Prop 47’s weakening of our theft laws and I believe California voters are ready to make their voices heard on this issue again. AB 1603 provides that opportunity and will allow us to take a stand against the theft and criminal gangs who are plaguing our state.”
- 2) **Threshold Value for Grand Theft Was Raised Before Proposition 47:** It is a common misconception that the current threshold amount to constitute grand theft (a taking or loss in excess of \$950) was established by Prop. 47. In fact, the current threshold amount to constitute grand theft was established by AB 2372 (Ammiano), Chapter 693, Statutes of 2010, which raised the amount from \$400. The impetus for that bill was the change in the value of goods.

The Assembly Public Safety Committee analysis for AB 2372 noted, “The previous amount of \$200 was established in 1923; up to that time, the threshold amount was \$50. As measured by the change in the Consumer Price Index, goods or services with a value of \$400 today were worth only \$184 in 1983. Expressed another way, goods with a value of \$400 in 1983 are worth \$870 today. Thus, many crimes that qualify as grand theft today would not have been grand theft in 1983.” (Asm. Comm. on Public Safety, Analysis of AB 2372 (2009-2010 Reg. Sess.) as amended Mar. 11, 2010, p. 2.)

This bill seeks to return the threshold amount to constitute grand theft to 1982 levels. And yet, the consumer price index rose 7% in December 2021 from a year earlier, the fastest pace since June 1982. (see *U.S. Inflation Hits 39-Year High of 7%, Sets Stage for Fed Hike*, Pickret. R, Bloomberg, January 12, 2022 <<https://www.bloomberg.com/news/articles/2022-01-12/inflation-in-u-s-registers-biggest-annual-gain-since-1982>>.) As measured by the Consumer Price Index (CPI), goods or services with a value of \$950 dollars in 2010 are worth \$1222 today based on the CPI inflation calculator of the U.S. Bureau of Labor Statistics.

Moreover, it should be noted that California has a low threshold for what constitutes felony theft compared to other states nationwide. As noted in the table below¹, there are only 11 states which have lower value thresholds:

State	Amount	State	Amount
New Jersey	\$200	Oklahoma	\$1,000
Illinois	\$500	Oregon	\$1,000
New Mexico	\$500	South Dakota	\$1,000
Florida	\$750	Tennessee	\$1,000
Hawaii	\$750	Virginia	\$1,000
Indiana	\$750	West Virginia	\$1,000
Missouri	\$750	Wyoming	\$1,000
Washington	\$750	Massachusetts	\$1,200
Vermont	\$900	Nevada	\$1,200
California	\$950	Alabama	\$1,500
Alaska	\$1,000	Delaware	\$1,500
Arizona	\$1,000	Georgia	\$1,500
Arkansas	\$1,000	Iowa	\$1,500
Idaho	\$1,000	Kansas	\$1,500
Kentucky	\$1,000	Maryland	\$1,500
Louisiana	\$1,000	Montana	\$1,500
Maine	\$1,000	Nebraska	\$1,500
Michigan	\$1,000	Rhode Island	\$1,500
Minnesota	\$1,000	Utah	\$1,500
Mississippi	\$1,000	Colorado	\$2,000
New Hampshire	\$1,000	Connecticut	\$2,000
New York	\$1,000	Pennsylvania	\$2,000
North Carolina	\$1,000	South Carolina	\$2,000
North Dakota	\$1,000+	Texas	\$2,500
Ohio	\$1,000	Wisconsin	\$2,500

This bill proposes to reduce the threshold amount for grand theft to \$400. If enacted, California would have the second lowest felony threshold for theft in the nation, following only New Jersey, which has not updated their threshold amount since 1978. Arguably, California should be considering whether to raise the current amount to factor in the rise in the CPI.

¹ This table was built from the map on Raise the Threshold (2022), <https://raisethethreshold.org/home>, a project by Campaign Zero, as well as information from States Can Safely Raise Their Felony Theft Thresholds, Research Shows (2018) by Pew Charitable Trusts <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/05/22/states-can-safely-raise-their-felony-theft-thresholds-research-shows>.)

- 3) **Proposition 47 (Prop. 47) and Theft:** Prop. 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Prop. 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. In pertinent part, the initiative reduced the penalties for certain theft-related offenses valued at \$950 or less from felonies to misdemeanors. The initiative also created the new misdemeanor crime of shoplifting. However, the measure limited these reduced penalties to offenders who do not have designated prior convictions for specified serious or violent felonies (super strikes) and who are not required to register as sex offenders. (See Legislative Analyst's Office analysis of Proposition 47 (<http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>))

Prop. 47 created the new crime of shoplifting, which is defined as "entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950)." (Pen. Code, § 459.5. subd. (a).) Any other entry into a commercial establishment with intent to commit larceny is burglary. (*Ibid.*)

Prop. 47 also added Penal Code section 490.2 to expressly define petty theft as "obtaining any property by theft where the value of the money, labor, real or personal property taken" does not exceed \$950. Prop. 47 states that this new definition of petty theft applies notwithstanding "any other provision of law defining grand theft." (Pen. Code, § 490.2, subd. (a).)

Among the theft crimes made misdemeanors by Prop. 47, where the value of the property is \$950 or less, are: forgery (Pen. Code, § 473); making or delivering a check with insufficient funds (Pen. Code, § 476a); petty theft (Pen. Code, § 490.2); and receiving stolen property (Pen. Code, § 496). (See *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.)

While this bill reduces the threshold amount for the crimes of shoplifting, grand theft, and petty theft, it does not do so for the crimes of forgery, making or delivering a check with insufficient funds, or receiving stolen property.

- 4) **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.

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.) Yet, despite the strict bar on the Legislature's authority to amend initiative statutes, judicial decisions have recognized that the Legislature is not thereby precluded from enacting laws addressing the general subject matter of an initiative. The Legislature remains free to address a "related but distinct area" or a matter that an initiative measure "does not specifically authorize or prohibit." (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025-1026.)

As to the Legislature's authority to amend the initiative, Prop. 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>>.)

Because the provisions of this bill affecting the crime of shoplifting are inconsistent with Prop. 47, the bill provides that it shall become effective only when submitted to, and approved by, the voters of California.

- 5) **Argument in Support:** According to the *California District Attorneys Association*, "California is suffering from an unprecedented increase in all types of thefts, including organized retail theft, smash and grabs, and vehicle theft, which negatively affects all Californians, including crime victims, consumers, and business owners. Lowering the threshold amount so that felony grand theft may be charged for thefts that exceed \$400, instead of misdemeanor petty theft, will permit convicted thieves, especially repeat offenders, to be held properly accountable by authorizing judges to impose appropriate punishment."
- 6) **Argument in Opposition:** According to the *Californians for Safety and Justice*, "Prop. 47 does not prevent prosecutors from charging those who participate in organized retail theft with felonies. Political rhetoric notwithstanding, California's current theft laws are in fact harsher than those in many other states. In at least 25 states, the threshold for charging a felony shoplifting is \$1000 or higher. In South Carolina and Texas, states not known for being "soft on crime", theft cannot be charged as a felony unless the amount of loss is at least \$2,000 or \$2,500 respectively. It is also important to note that less than 10% of all thefts are cleared by the arrest and conviction of the suspect.

"Significantly, rolling California's felony theft threshold back to \$400 would once again dramatically increase incarceration rates, leaving the state vulnerable to falling out of compliance with the prison system's population cap mandated by the federal judiciary. Increasing incarceration rates would also eliminate the more than \$1 billion Prop. 47 is expected to save each decade in perpetuity, savings that are required to be reallocated back to local, community-based programs proven to more effectively prevent crime and harm, like drug treatment, mental health services, re-entry services and programs that help crime victims heal.

"AB 1603 nonetheless proposes to impose long prison sentences by reducing the amount

needed to charge a felony to \$400. Such an attempt is not justified by actual crime data, flies in the face of sensible criminal justice reform, and would force counties to shoulder the cost of imprisoning more people for years, at great human and fiscal expense.”

7) **Related Legislation:**

- a) AB 1597 (Waldron), would reinstate the offense of petty theft with a prior as it existed before it was eliminated by Prop. 47, subject to approval by the voters. AB 1597 is pending hearing in this committee.
- b) AB 1599 (Kiley) would repeal the changes made by Prop. 47, except those related to reducing the penalty for possession of concentrated cannabis, subject to approval of the voters. AB 1599 is pending hearing in this committee.
- c) AB 1613 (Irwin), would establish the jurisdiction of a criminal action for theft, organized retail theft, or receipt of stolen property as including the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense. AB 1613 is pending hearing in this committee.
- d) AB 1698 (Maienschein), would create the crime of organized package theft, an alternate felony-misdemeanor. AB 1698 is pending hearing in this committee.
- e) AB 2294 (Jones-Sawyer), would, among other provisions, allow a person to be arrested on a misdemeanor if the person has been cited, arrested, or convicted of theft from a store in the past 6 months or if there is probable cause to believe that the person is guilty of committing organized retail theft. AB 2294 is pending referral in the Assembly Rules Committee.
- f) AB 2356 (Rodriguez) would provide that grand theft occurs where money, labor, or real or personal property in an aggregate amount exceeding \$950 is taken as a result of an agreement or prior arrangement to take and the taking is made in concert with one or more other individuals. AB 2356 is pending referral in the Assembly Rules Committee.
- g) AB 2543 (Fong) would amend Proposition 47 by authorizing acts of shoplifting that occur on two or more separate occasions within a 12-month period, and the aggregated value of the property taken exceeds \$950, to be punished as an alternate felony-misdemeanor, a “wobbler.” AB 2543 is pending referral in the Assembly Rules Committee.
- h) AB 2718 (Cooper) would redefine the offense of shoplifting and create the crime of serial theft for the theft of property valued over \$500 where the offender has two or more prior convictions for specified theft offenses. AB 2718 is pending referral in the Assembly Rules Committee.
- i) SB 1108 (Bates) would reinstate a provision of law that was repealed by Proposition 47 that provides that a person who has been convicted three or more times of petty theft, grand theft, or other specified crimes and who is subsequently convicted of petty theft

may be punished as an alternate felony-misdemeanor, a “wobbler.” SB 1108 is pending in the Senate Public Safety Committee.

8) Prior Legislation:

- a) Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced the penalties for certain drug and property crimes, including reducing petty theft with a prior theft conviction to a misdemeanor, except in the case where the person has a prior super strike conviction, a conviction for a sex offense requiring registration, or a conviction for a specified theft-related offense against an elder or dependent adult.
- b) AB 2372 (Ammiano), Chapter 693, Statutes of 2010, increased the threshold amount for grand theft from \$400 to \$950.
- c) SBx3 18 (Ducheny), Chapter 28, Statutes of 2009, increased the threshold amount for thefts of specified agricultural goods and specified aquacultural products from \$100 to \$250. SBx3 18 also increased the threshold amount of thefts of money, labor, or real or personal property taken by an agent, servant, or employee from \$400 to \$950.
- d) AB 2705 (Goldberg), of the 2003-04 Legislative Session, would have increased the threshold for grand theft from \$400 to \$1,000 and the threshold amount for specified thefts from \$100 to \$250. AB 2705 was vetoed.

REGISTERED SUPPORT / OPPOSITION:**Support**

Arcadia Police Officers Association
Association for Los Angeles Deputy Sheriffs
Burbank Police Officers' Association
California District Attorneys Association
California Retailers Association
California State Sheriffs' Association
City of Camarillo
City of Santa Clarita
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officer Association
Riverside County Sheriff's Office
Riverside Police Officers Association

Riverside Sheriffs' Association
Santa Ana Police Officers Political Action Committee
Upland Police Officers Association

Opposition

A New Way of Life Re-entry Project
ACLU California Action (UNREG)
All of Us or None Los Angeles
Alliance San Diego
Anti Recidivism Coalition
Aouon Orange County
Bend the Arc: Jewish Action
Blameless and Forever Free Ministries
California Attorneys for Criminal Justice
California Calls
California Coalition for Women Prisoners
California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Center for Living and Learning
Central Coast Alliance United for A Sustainable Economy
Chrysalis Center, the
Communities United for Restorative Youth Justice (CURYJ)
Congregations Organized for Prophetic Engagement (COPE)
Courage California
Dolores Huerta Foundation
Ella Baker Center for Human Rights
Faith in The Valley
Friends Committee on Legislation of California
Initiate Justice
Legal Services for Prisoners With Children
Milpa (motivating Individual Leadership for Public Advancement)
National Institute for Criminal Justice Reform
Oakland Rising
Pico California
Root & Rebound
Rubicon Programs
San Francisco Public Defender
Starting Over, INC.
Strategic Concepts in Organizing and Policy Education
Underground Scholars Initiative (USI) At UC San Diego
Underground Scholars Initiative At UC Riverside
Underground Scholars Initiative UC Santa Barbara
Underground Scholars Initiative, University of California Davis
Underground Scholars Initiative, University of California Los Angeles
Urban Peace Movement
Wlcac Re-entry

Working Partnerships USA

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