

AMENDMENTS TO ASSEMBLY BILL NO. 1726
AS AMENDED IN SENATE JULY 3, 2023

Amendment 1

In the title, in line 1, after “Sections” insert:

459.5, 490.2,

Amendment 2

In the title, in line 1, after “653.29,” insert:

666,

Amendment 3

On page 3, between lines 8 and 9, insert:

SEC. 2. Section 459.5 of the Penal Code is amended to read:

459.5. (a) Notwithstanding Section 459, shoplifting 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). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, ~~except that a~~ as follows:

(1) 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.

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

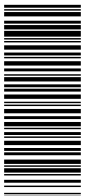
(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. ~~No~~ A person who is charged with shoplifting may not also be charged with burglary or theft of the same property.

SEC. 3. 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, or 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~~ as follows:

(1) A 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.

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



(b) This section ~~shall not be applicable~~ does not apply 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.

Amendment 4

On page 3, in line 10, strike out "SEC. 2." and insert:

SEC. 4.

Amendment 5

On page 5, between lines 9 and 10, insert:

SEC. 5. Section 666 of the Penal Code is amended to read:

666. (a) Notwithstanding Section 490, any a person who has been convicted three or more times of petty theft, shoplifting, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony conviction of Section 496, and has served a term for that crime in any penal institution or has been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft or shoplifting, shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(b) (1) Notwithstanding Section 490, a person described in subdivision (b) who, having paragraph (2) who has been convicted of petty theft, shoplifting, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having has served a term of imprisonment therefor in any penal institution or having has been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable theft or shoplifting, shall be punished by imprisonment in the county jail not exceeding one year, year or in the state prison.

~~(b) Subdivision (a) shall~~

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

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

Amendment 6

On page 5, in line 11, strike out "SEC. 3." and insert:

SEC. 6.

Amendment 7

On page 5, in line 27, strike out "SEC. 4." and insert:

SEC. 7.

Amendment 8

On page 7, below line 3, insert:

SEC. 8. (a) Sections 2, 3, and 5 of this act amend the Safe Neighborhoods and Schools Act, an initiative statute approved by the voters as Proposition 47 at the November 4, 2014, statewide general election, and shall become effective only when submitted to and approved by the voters at a statewide election.

(b) Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, 9082, and 9094 of the Elections Code, or any other law, the Secretary of State shall submit Sections 1, 2, and 3 of this act to the voters for their approval at the November 5, 2024, statewide general election.

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 1726

AMENDED IN SENATE JULY 3, 2023

AMENDED IN ASSEMBLY APRIL 13, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1726

Introduced by Assembly Member Kalra

February 17, 2023



RN2321622

An act to amend Sections 459.5, 490.2, 653.29, 666, 1170.21, and 1170.22 of the Penal Code, relating to crimes.

Amendments 1 & 2

LEGISLATIVE COUNSEL'S DIGEST

AB 1726, as amended, Kalra. ~~Crimes: sentences.~~ *Crimes.*

(1) Existing law, the Safe Neighborhoods and Schools Act, enacted as an initiative statute by Proposition 47, as approved by the electors in 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 18 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.

~~Existing~~

(2) Existing law, until January 1, 2023, made it a crime to loiter with the intent to commit prostitution. Existing law authorizes a person who has been convicted of loitering with intent to commit prostitution to petition the court for a recall or dismissal of sentence, as specified.

This bill would state that those convictions are presumed legally invalid because the conviction was sought, obtained, or imposed for, among other reasons, race, ethnicity, or national origin.

~~Existing~~

(3) Existing law, until January 1, 2018, made a defendant guilty of a felony if they are convicted of prostitution and had been previously convicted of prostitution or of another specified sexual offense, and in connection with the conviction a blood test was administered, as specified, with positive test results for AIDS, of which the defendant was informed. Existing law authorizes a person convicted under those provisions to petition the court for recall and dismissal of sentence, as specified.

This bill would state that those convictions are presumed legally invalid because the conviction was sought, obtained, or imposed for, among other reasons, race, ethnicity, or national origin.

This bill would also make related findings and declarations.

(4) *This bill would require the Secretary of State to place specified provisions of the bill that amend an initiative statute on the ballot for the November 5, 2024, statewide general election.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

Page 2 1 SECTION 1. The Legislature finds and declares all of the
2 following:

Page 2 3 (a) Former Section 653.22 of the Penal Code was enforced in
 4 an arbitrary and discriminatory manner.
 5 (b) For example, in the City of Los Angeles, Black adults
 6 comprised 56.1 percent of the charges, despite making up only 8.9
 7 percent of the city’s population. Women accounted for 67.1 percent
 8 of all former Section 653.22 of the Penal Code charges.
 9 (c) Likewise, vagueness of former Section 653.22 of the Penal
 10 Code also led to a dismissal rate in the County of Los Angeles
 11 almost three times higher than other Penal Code sections that
 12 criminalize sex work. Nearly one in three former Section 653.22
 13 of the Penal Code cases referred to prosecutors by police were
 14 rejected for filing for lack of sufficient evidence.
 15 (d) Former Section 647f of the Penal Code, which created a
 16 felony crime that only applied to HIV-positive individuals, was
 17 also enforced in an arbitrary and discriminatory manner.
 18 (e) For example, women made up 45 percent of those who came
 19 into contact with the criminal justice system under former Section
 20 647f of the Penal Code, but women are only 12 percent of the
 21 HIV-positive population in California.
 22 (f) Likewise, Black and Latino people comprised over two-thirds
 23 (68 percent) of the people who came into contact with the criminal
 24 justice system under former Section 647f of the Penal Code,
 25 although just over one-half (56 percent) of people living with HIV
 26 in California are Black and Latino.
 27 (g) White men were also significantly more likely to be released
 28 and not charged under former Section 647f of the Penal Code.
 29 White men who were arrested for violating former Section 647f
 30 of the Penal code were not charged in 70 percent of cases, while
 Page 3 1 all other racial/ethnic groups were not charged in 39 to 47 percent
 2 of solicitation incidents.
 3 (h) Dedicated to the integrity of convictions free from racial
 4 bias, the Legislature passed the California Racial Justice Act of
 5 2020 (Ch. 317, Stats. 2020) to require that “[t]he state . . . not seek
 6 or obtain a criminal conviction or seek, obtain, or impose a
 7 sentence on the basis of race, ethnicity, or national origin.” (subd.
 8 (a), Sec. 745, Pen. Code).
 + SEC. 2. Section 459.5 of the Penal Code is amended to read:
 + 459.5. (a) Notwithstanding Section 459, shoplifting is defined
 + as entering a commercial establishment with intent to commit
 + larceny while that establishment is open during regular business

| Amendment 3

+ hours, where the value of the property that is taken or intended to
+ be taken does not exceed nine hundred fifty dollars (\$950). Any
+ other entry into a commercial establishment with intent to commit
+ larceny is burglary. Shoplifting shall be punished as a
+ misdemeanor, except that ~~as follows:~~

+ (1) 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.

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

+ (b) Any act of shoplifting as defined in subdivision (a) shall be
+ charged as shoplifting. ~~No~~ A person who is charged with shoplifting
+ may *not* also be charged with burglary or theft of the same
+ property.

+ SEC. 3. 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, or 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~~ as follows:

+ (1) A 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.

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

+ (b) This section ~~shall not be applicable~~ does not apply 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.

+ ~~SEC. 2.~~

+ SEC. 4. Section 653.29 of the Penal Code is amended to read:
11 653.29. (a) (1) A person currently serving a sentence for a
12 conviction of violating former Section 653.22, whether by trial or
13 by open or negotiated plea, may petition for a recall or dismissal
14 of sentence before the trial court that entered the judgment of



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Page 3 15 conviction in the case to request resentencing or dismissal, and
 16 sealing, as applicable.
 17 (2) All convictions of former Section 653.22 are presumed
 19 legally invalid because the conviction was sought, obtained, or
 20 imposed for any of the following reasons:
 21 (A) On the basis of race, ethnicity, or national origin in violation
 22 of subdivision (a) of Section 745.
 23 (B) Because it was imposed against a defendant who was acting
 24 under duress.
 25 (C) Due to prejudicial error damaging the moving party’s ability
 26 to meaningfully understand, defend against, or knowingly accept
 27 the actual or potential adverse immigration consequences of a
 28 conviction or sentence. A finding of legal invalidity may, but need
 29 not, include a finding of ineffective assistance of counsel. A court
 30 may only issue a specific finding of ineffective assistance of
 31 counsel as a result of a motion brought under paragraph (1) of
 32 subdivision (a) if the attorney found to be ineffective was given
 33 timely advance notice of the motion hearing by the moving party
 34 or the prosecutor, pursuant to Section 416.90 of the Code of Civil
 + Procedure.

36 (3) Upon receiving a petition under paragraph (1), the court
 37 shall presume the petitioner satisfies the criteria in paragraph (1)
 38 unless the party opposing the petition proves by clear and
 39 convincing evidence that the petitioner does not satisfy the criteria.
 40 If the petitioner satisfies the criteria in paragraph (1), the court
 Page 4 1 shall grant the petition to recall the sentence or dismiss the sentence
 2 because it is legally invalid and shall seal the conviction as legally
 4 invalid.

5 (b) (1) A person who has completed their sentence for a
 6 conviction of violating Section 653.22, whether by trial or open
 7 or negotiated plea, may file an application before the trial court
 8 that entered the judgment of conviction in their case to have the
 9 conviction dismissed and sealed.

12 (2) All convictions of former Section 653.22 are presumed
 13 legally invalid because the conviction was sought, obtained, or
 14 imposed for any of the following reasons:

15 (A) On the basis of race, ethnicity, or national origin in violation
 16 of subdivision (a) of Section 745.

17 (B) Because it was imposed against a defendant who was acting
 18 under duress.

Page 4 19 (C) Due to prejudicial error damaging the moving party’s ability
 20 to meaningfully understand, defend against, or knowingly accept
 21 the actual or potential adverse immigration consequences of a
 22 conviction or sentence. A finding of legal invalidity may, but need
 23 not, include a finding of ineffective assistance of counsel. A court
 24 may only issue a specific finding of ineffective assistance of
 25 counsel as a result of a motion brought under paragraph (1) of
 26 subdivision (b) if the attorney found to be ineffective was given
 27 timely advance notice of the motion hearing by the moving party
 28 or the prosecutor, pursuant to Section 416.90 of the Code of Civil
 + Procedure.

30 (3) The court shall presume the petitioner satisfies the criteria
 31 in paragraph (1) unless the party opposing the application proves
 32 by clear and convincing evidence that the petitioner does not satisfy
 33 the criteria in paragraph (1). Once the applicant satisfies the criteria
 34 in paragraph (1), the court shall dismiss and seal the conviction as
 35 legally invalid.

37 (c) Unless requested by the applicant, no hearing is necessary
 38 to grant or deny an application filed under subdivision (b).

Page 5 1 (d) If the court that originally sentenced the petitioner is not
 2 available, the presiding judge shall designate another judge to rule
 3 on the petition or application.

4 (e) Nothing in this section is intended to diminish or abrogate
 5 any rights or remedies otherwise available to the petitioner or
 6 applicant.

7 (f) The Judicial Council shall promulgate and make available
 8 all necessary forms to enable the filing of the petitions and
 9 applications provided in this section.

+ *SEC. 5. Section 666 of the Penal Code is amended to read:*
 + 666. (a) Notwithstanding Section 490, ~~any~~ a person who has
 + been convicted three or more times of petty theft, shoplifting, grand
 + theft, a conviction pursuant to subdivision (d) or (e) of Section
 + 368, auto theft under Section 10851 of the Vehicle Code, burglary,
 + carjacking, robbery, or a felony conviction of Section 496, and
 + has served a term for that crime in any penal institution or has
 + been imprisoned therein as a condition of probation for that
 + offense, and who is subsequently convicted of petty theft or
 + shoplifting, shall be punished by imprisonment in the county jail
 + not exceeding one year, or imprisonment pursuant to subdivision
 + (h) of Section 1170.

Amendment 5

+ (b) (1) Notwithstanding Section 490, a person described in
+ ~~subdivision (b) who, having~~ paragraph (2) who has been convicted
+ of petty theft, *shoplifting*, grand theft, a conviction pursuant to
+ subdivision (d) or (e) of Section 368, auto theft under Section
+ 10851 of the Vehicle Code, burglary, carjacking, robbery, or a
+ felony violation of Section 496, and ~~having~~ has served a term of
+ imprisonment therefor in any penal institution or ~~having~~ has been
+ imprisoned therein as a condition of probation for that offense,
+ and who is subsequently convicted of petty ~~theft~~, is punishable
+ *theft or shoplifting*, shall be punished by imprisonment in the
+ county jail not exceeding one year, year or in the state prison.

+ ~~(b) Subdivision (a) shall~~

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

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

Page 5

11 ~~SEC. 3.~~

+ SEC. 6. Section 1170.21 of the Penal Code is amended to read:
12 1170.21. A conviction for a violation of Section 647f as it read
13 on December 31, 2017, is legally invalid and vacated. All charges
14 alleging violation of Section 647f are dismissed and all arrests for
15 violation of Section 647f are deemed to have never occurred. An
16 individual who was arrested, charged, or convicted for a violation
17 of Section 647f may indicate in response to any question
18 concerning their prior arrest, charge, or conviction under Section
19 647f that they were not arrested, charged, or convicted for a
20 violation of Section 647f. Notwithstanding any other law,
21 information pertaining to an individual's arrest, charge, or
22 conviction for violation of Section 647f shall not, without the
23 individual's consent, be used in any way adverse to their interests,
24 including, but not limited to, denial of any employment, benefit,
25 license, or certificate.

27 ~~SEC. 4.~~

+ SEC. 7. Section 1170.22 of the Penal Code is amended to read:

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Page 5 28 1170.22. (a) (1) A person who is serving a sentence as a result
 29 of a violation of Section 647f as it read on December 31, 2017,
 30 whether by trial or by open or negotiated plea, may petition for a
 31 recall or dismissal of sentence before the trial court that entered
 32 the judgment of conviction in their case.
 33 (2) All convictions of Section 647f as it read on December 31,
 34 2017, are presumed legally invalid because the conviction was
 35 sought, obtained, or imposed for any of the following reasons:
 37 (A) On the basis of race, ethnicity, or national origin in violation
 38 of subdivision (a) of Section 745.
 39 (B) Because it was imposed against a defendant who was acting
 40 under duress.

Page 6 1 (C) Due to prejudicial error damaging the moving party’s ability
 2 to meaningfully understand, defend against, or knowingly accept
 3 the actual or potential adverse immigration consequences of a
 4 conviction or sentence. A finding of legal invalidity may, but need
 5 not, include a finding of ineffective assistance of counsel. A court
 6 may only issue a specific finding of ineffective assistance of
 7 counsel as a result of a motion brought under paragraph (1) of
 8 subdivision (a) if the attorney found to be ineffective was given
 9 timely advance notice of the motion hearing by the moving party
 10 or the prosecutor, pursuant to Section 416.90 of the Code of Civil
 + Procedure.
 11 (b) If the court’s records show that the petitioner was convicted
 12 for a violation of Section 647f as it read on December 31, 2017,
 13 the court shall vacate the conviction and the conviction is therefore
 14 legally invalid. The court shall resentence the person for any
 15 remaining counts.
 16 (c) A person who is serving a sentence and resentenced pursuant
 17 to subdivision (b) shall be given credit for any time already served
 18 and shall be subject to whatever supervision time they would have
 19 otherwise been subject to after release, whichever is shorter, unless
 20 the court, in its discretion, as part of its resentencing order, releases
 21 the person from supervision.
 22 (d) Under no circumstances may resentencing under this section
 23 result in the imposition of a term longer than the original sentence,
 24 or the reinstatement of charges dismissed pursuant to a negotiated
 25 plea agreement.

Page 6 26 (e) Upon completion of sentence for a conviction under Section
27 647f as it read on December 31, 2017, the provisions of Section
28 1170.21 shall apply.

29 (f) Nothing in this and related sections is intended to diminish
30 or abrogate the finality of judgments in any case not falling within
31 the purview of this section.

32 (g) A resentencing hearing ordered under this section shall
33 constitute a “post-conviction release proceeding” under paragraph
34 (7) of subdivision (b) of Section 28 of Article I of the California
35 Constitution.

36 (h) The provisions of this section apply to juvenile delinquency
37 adjudications and dispositions under Section 602 of the Welfare
38 and Institutions Code if the juvenile would not have been guilty
39 of an offense or would not have been guilty of an offense governed
40 by this section.

Page 7 1 (i) The Judicial Council shall promulgate and make available
2 all necessary forms to enable the filing of petitions and applications
3 provided in this section.

+ SEC. 8. (a) Sections 2, 3, and 5 of this act amend the Safe
+ Neighborhoods and Schools Act, an initiative statute approved by
+ the voters as Proposition 47 at the November 4, 2014, statewide
+ general election, and shall become effective only when submitted
+ to and approved by the voters at a statewide election.

+ (b) Notwithstanding the requirements of Sections 9040, 9043,
+ 9044, 9061, 9082, and 9094 of the Elections Code, or any other
+ law, the Secretary of State shall submit Sections 1, 2, and 3 of this
+ act to the voters for their approval at the November 5, 2024,
+ statewide general election.

Amendment 8

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