

RESOLUTION 02-09-2013

DIGEST

Criminal Law: Raises Value for Thefts Charged as Infractions.

Amends Penal Code section 490.1 to raise the dollar amount for petty theft and section 19.8 to give the court discretion to reduce a petty theft charge to an infraction.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code sections 490.1 to raise the dollar amount for petty theft and section 19.8 to give the court discretion to reduce a petty theft charge to an infraction. This resolution should be approved in principle because the statute was enacted in 1991 and the value of a dollar compared to the goods stolen has decreased markedly in the ensuing twenty years.

This resolution also amends Penal Code section 19.8 to allow the court to reduce a complaint charging petty theft as a misdemeanor to an infraction “where the amount of the theft is less than \$250.00 and the defendant has no other theft or theft-related conviction.” This resolution should be approved in principle because an earlier Appellate Department decision giving prosecutors the sole option to decide whether the charge should be reduced infringes upon the judicial discretion of the trial court. The resolution limits the trial court’s discretion by restricting the amount of the theft to \$250.00 and the defendant having no other theft-related convictions. Thus, the only defendants affected would be those charged with a true petty theft for the first time.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 490.1 and 19.8 as follows:

1 § 490.1

2 (a) Petty theft, where the value of the money, labor, real or personal property taken is of a
3 value which does not exceed ~~fifty dollars (\$50)~~ two hundred and fifty dollars (\$250), may be
4 charged as a misdemeanor or an infraction, at the discretion of the prosecutor, provided that the
5 person charged with the offense has no other theft or theft-related conviction.

6 (b) Any offense charged as an infraction under this section shall be subject to the
7 provisions of subdivision (d) of Section 17 and Sections 19.6 and 19.7. A violation which is an
8 infraction under this section is punishable by a fine not exceeding two hundred fifty dollars
9 (\$250).

1 § 19.8

2 (a) The following offenses are subject to subdivision (d) of Section 17: Sections 193.8,
3 330, 415, 485, petty theft where the amount of the theft is less than \$250 and the defendant has
4 no other theft or theft-related conviction, 490.7, 555, 602.13, and 853.7 of this code; subdivision
5 (c) of Section 532b, and subdivision (o) of Section 602 of this code; subdivision (b) of Section
6 25658 and Sections 21672, 25661, and 25662 of the Business and Professions Code; Section
7 27204 of the Government Code; subdivision (c) of Section 23109 and Sections 5201.1, 12500,
8 14601.1, 27150.1, 40508, and 42005 of the Vehicle Code, and any other offense that the
9 Legislature makes subject to subdivision (d) of Section 17. Except where a lesser maximum fine
10 is expressly provided for a violation of those sections, a violation that is an infraction is
11 punishable by a fine not exceeding two hundred fifty dollars (\$250).

12 (b) Except for the violations enumerated in subdivision (d) of Section 13202.5 of the
13 Vehicle Code, and Section 14601.1 of the Vehicle Code based upon failure to appear, a
14 conviction for an offense made an infraction under subdivision (d) of Section 17 is not grounds
15 for the suspension, revocation, or denial of a license, or for the revocation of probation or parole
16 of the person convicted.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: For a long time, theft was “petty theft” when the value did not exceed \$400 for most items. That valuation, changed in 2009, is currently \$950. Petty theft without priors is a misdemeanor. Grand theft for crimes above that valuation may be charged as a felony. Since 1991, prosecutors have the discretion to file petty theft charges as infractions when the value of the stolen property does not exceed \$50 and the defendant has no theft-related convictions. Judges, who have discretion to reduce specified misdemeanors, and discretion to reduce all alternate-felony/misdemeanor crimes from felony to misdemeanor, do not have discretion to reduce a first-time, low-value petty theft to an infraction. The problem is that the threshold for petty theft infraction has never been raised and judges should have the power to reduce a misdemeanor theft to an infraction.

This Solution: This resolution makes two changes to existing law. The first change increases the valuation demarcation for petty theft infractions from \$50 to \$250. Because the Legislature now considers that petty theft is now \$950 or less for most items, and it used to be \$400, \$250 is a reasonable amount.

The second change gives judges the power to reduce first time petty thefts where the loss is \$250 or less and the defendant has no other theft or theft-related convictions, to an infraction. It is somewhat anomalous that judges have the power to reduce all wobbler felony charges (including a felony grand theft charge) to misdemeanors and at least 22 specified misdemeanors to infractions in appropriate circumstances yet do not have the power to reduce a very minor petty theft to an infraction. The Appellate Division in *People v. Campbell* (2002) 104 Cal.App.4th Supp. 1 suggested changing Penal Code section 19.8 to add language giving judges the power to reduce a minor petty theft to an infraction. This resolution incorporates that language.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Mark Harvis, Los Angeles County Deputy Public Defender, 320 West Temple Street Suite 590, Los Angeles, CA 90012; (213) 974-3066; mharvis@pubdef.lacounty.gov.

RESPONSIBLE FLOOR DELEGATE: Mark Harvis