
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1595 **Hearing Date:** June 27, 2017
Author: Gallagher
Version: May 1, 2017
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Theft: Burglary: Natural or Manmade Disasters*

HISTORY

Source: Peace Officers Research Association of California

Prior Legislation: AB 2820 (Chiu), Ch. 671, Stats. 2016
SB 1363 (Ducheny), Ch. 492, Stats. 2004

Support: Unknown

Opposition: California Public Defenders Association

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to expand the crime of looting to encompass when the conduct occurs during an evacuation order, as defined.

Existing law defines "burglary" as entering a residential or commercial building with the intent to commit a felony or a theft once inside. (Pen. Code, § 459.)

Existing law divides burglary into two degrees. First degree burglary is burglary of an inhabited dwelling. All other burglaries are second degree burglary. (Pen. Code, § 460.)

Existing law divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

Existing law 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.)

Existing law provides that every person who commits second-degree burglary during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster is guilty of looting, punishable as a misdemeanor, or as a county jail-eligible felony. (Pen. Code § 463, subd. (a).)

Existing law states that in addition to whatever custody is ordered for a violation of subdivision (a) of Penal Code section 463, the court, in its discretion, may require any person granted probation to serve up to 240 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community. (*Ibid.*)

Existing law provides that every person who commits the crime of grand theft, as defined in Section 487 or subdivision (a) of Section 487a, except grand theft of a firearm, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster is guilty of looting, punishable as a misdemeanor, or as a county jail-eligible felony. (Pen. Code § 463, subd. (b).)

Existing law provides that every person who commits the crime of grand theft of a firearm, as defined in Section 487, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in the state prison. (*Ibid.*)

Existing law provides that every person who commits the crime of petty theft during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster is guilty of a misdemeanor, punishable by imprisonment in a county jail for six months. (Pen. Code, § 463, subd. (c).)

Existing law defines "state of emergency" as "conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat." A state of emergency exists from the time of the proclamation of the condition of the emergency until terminated by proclamation of the Governor or by concurrent resolution of the Legislature declaring it at an end. (Pen. Code § 463, subd. (d).)

Existing law defines "local emergency" as "conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat." A local emergency exists from the time of the proclamation of the condition of the emergency by the local governing body until terminated, as specified. (Pen. Code § 463, subd. (d).)

This bill expands the crime of looting to encompass when the conduct occurs during an evacuation order.

This bill defines "evacuation order" as "an order from the Governor, or a county sheriff, chief of police, or fire marshal, under which persons subject to the order are required to relocate outside of the geographic area covered by the order due to an imminent danger resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster."

COMMENTS

1. Need for This Bill

According to the author:

During the Oroville Dam incident, local law enforcement issued a state of emergency and mandatory evacuation orders for communities near Lake Oroville.

. . . . There was a significant 6 – hour delay between when the evacuation was ordered and when Governor Brown proclaimed Oroville a State of Emergency. Crimes committed during this time gap would not receive any additional reprimand and many would be considered misdemeanors.

AB 1595 seeks to discourage this type of activity for those who commit second-degree burglary during and in an affected county in a “state of emergency” or under an “evacuation order”.

2. Evacuation and Emergency Orders

State and local governments have police powers which is the inherent power to enact laws that protect the order, safety, and health of society. These powers include the power to regulate movement of people and property, such as mandatory evacuations during an emergency. The California Emergency Services Act defines an “emergency” as “. . . conditions of disaster or of extreme peril to the safety of persons and property . . . caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, . . . or an earthquake, or other conditions. . . .” (Gov. Code, § 8550 *et seq.*)

According to the California Office of Emergency Services, there are four different means for imposing a mandatory evacuation:

- Law enforcement-led evacuation:

Penal Code section 409.5 authorizes officers of the highway patrol, police departments, marshal’s office or sheriff’s office and certain other statutorily designated law enforcement officers to close an area whenever there is a menace to public health or safety.

Although section 409.5 is often utilized during emergencies, it is not clear whether it authorizes law enforcement to remove persons who were within the area prior to its closure. Further, only those officers specifically named in the statute may enforce it.

Penal Code section 409.6 authorizes officers of the highway patrol, police departments, marshal’s office or sheriff’s office and certain other statutorily designated law enforcement officers to close an area whenever there is a menace to public health or safety caused by an avalanche or the potential for an avalanche.

Section 409.6 expressly provides for the use of reasonable force to remove persons from an area that has been ordered closed pursuant to section 409.6.

- Proclaim a state of local emergency:

Even though a local governing body has inherent policy powers to protect the health and safety of its people, Government Code § 8558(c) and § 8630 authorize the local governing body to proclaim a “state of local emergency” pursuant to the Emergency Services Act.

When a “state of local emergency” has been proclaimed, the local governing body may issue orders and regulations “necessary to provide for the protection of life and property.”⁸⁸ An order for mandatory evacuation would be authorized under that section. Failure to comply with such an order is a misdemeanor providing imprisonment for up to six months and/ or a fine of up to \$1,000.

The advantage of this approach is that local control and coordination are maintained.

- Enact local ordinances:

Although the police power are primarily legislative, a governing body of a political subdivision is not required to promulgate specific rules or ordinances to be enacted prior to a particular incident. The reason for this is twofold: First, it is neither practical or possible to envision every type of incident that would require a restriction on the movement of people or property. Second, the proclamation of an emergency by the local governing body allows for flexibility in enacting rules. For example, an official designated by the governing body may proclaim a local emergency, after which it does not need to be ratified by the governing body for seven days.

If the local governing body wishes to empower a particular official with the authority to proclaim an emergency, this should be done by ordinance prior to a potential emergency. This provides for a smoother transition than would otherwise normally exist under emergency circumstances.

In preparation for an emergency response, a governing body could adopt, by ordinance, emergency standby orders for evacuations, quarantines, curfews and other restrictions on the right to travel. These ordinances may be drafted to become effective upon the proclamation of a local emergency.

One advantage offered by this method is that the appropriate authorities will immediately be empowered to act upon the proclamation of a local emergency, reducing response time, and allowing for preplanning of an emergency response.

- Proclaim a state of emergency:

The Governor may proclaim a “state of emergency.” During a “state of emergency” the Governor has complete authority over all state agencies and the right to exercise all police powers vested in the State, including the issuance of such orders and regulations as deemed necessary.”

The Governor may also amend or rescind existing orders and regulations. The Governor may suspend any regulatory statute, any statute prescribing the procedure for conducting state business, or the orders, rules, or regulations of any state agency.

Local public officials and employees are required to render all possible assistance to the Governor during a “state of emergency.” The ordinances, orders, and regulations of a political subdivision continue in effect during a state of emergency unless suspended or superseded by an order issued by the Governor.

Thus, the Governor may choose to either assume responsibility for the issuance of mandatory evacuation orders or abide by the mandatory evacuation orders issued by the affected political subdivision.

If a governing body issues a local proclamation of emergency, it is preferable to issue the proclamation at the earliest possible time since this will authorize the local governing body to issue “orders and regulations necessary to provide for the protection of life and property.”

Local ordinances remain in effect even if a “State of Emergency” is proclaimed by the Governor unless the Governor orders the local ordinance suspended or superseded.⁹⁸ The Governor may permit local governing bodies to continue to exercise their emergency powers and to issue orders and regulations even though a “State of Emergency” is proclaimed.

(Footnotes omitted; *Legal Guidelines for Controlling Movement of People and Property During an Emergency*, California Office of Emergency Services (July 1999), pp. 33-35.)

3. Burglary in General

A burglary takes place when a person enters a building or other enclosure, including a vehicle, with the intent to commit larceny. (Pen. Code, § 459.) Existing law defines burglary of a residence or inhabited dwelling as first degree burglary; all other types of burglary are second degree. (Pen. Code, § 460.) First degree burglary is punishable by imprisonment in the state prison for two, four or six years; second degree burglary is punishable as either a misdemeanor with up to one year imprisonment in county jail, or as a felony with imprisonment in the county jail for 16 months, or 2 or 3 years. (Pen. Code, § 461.) Looting is when burglary occurs during a declared state of emergency or local emergency such as times of earthquake, fire, flood, riot, or other natural or manmade disaster. (Pen. Code, § 463.) The punishment for looting is an alternate felony-misdemeanor. (*Ibid.*) When looting does not involve entering a building or other enclosure with the intent to commit larceny, it can be either petty theft looting (property taken is valued at \$950 or less) or grand theft looting (property taken is valued at more than \$950 or the property taken is a firearm). (Pen. Code, § 463, subs. (b) and (c).)

4. Argument in Support

The Peace Officers Research Association of California, the sponsor of this bill, states:

Current law makes a person who commits 2nd-degree burglary or grand theft, as defined, during and within an affected county in a state of emergency or a local emergency, as defined, resulting from an earthquake, fire, flood, riot, or other

natural or manmade disaster guilty of the crime of looting, punishable by imprisonment in a county jail, as specified, except in the case of grand theft of a firearm, where the crime of looting is punishable by imprisonment in state prison. This bill would make an order resulting from one of the above-described disasters guilty of the crime of looting or a misdemeanor respectively.

This bill is crucial in protecting the property and residences of citizens living in the state of California. AB 1595 will make it possible for local law-enforcement to charge criminals who prey on citizens who have to leave their homes due to a natural disaster or an evacuation order which is issued by local government with an enhancement for committing criminal acts such as stealing from others during such a disaster. Current law indicates enhancements like these cannot be charged until the governor declares a state of emergency for the city or region.

4. Argument in Opposition

According to the California Public Defender's Association:

AB 463 amends Penal Code sections 463 regarding burglaries and certain thefts. Current law defines 'looting' as second-degree burglary during states or emergency or local emergency caused by 'earthquake, fire, flood, riot, or other manmade disaster....' AB 1595 would expand that definition to include areas under evacuation order from the 'Governor, or a county sheriff, chief of police, or fire marshal, under which persons subject to the order are required to relocate outside the geographic area....'

Current law adequately deals with the criminal conduct in question.

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