
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 979 **Hearing Date:** May 20, 2020
Author: Jones
Version: March 16, 2020
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Property Crimes: Unlawful Entry Onto Property*

HISTORY

Source: Author

Prior Legislation: AB 1210 (Low), held in Assm. Approps. Comm. (2020)
AB 1772 (Chau), failed passage in Assm. Public Safety Comm. (2019)
SB 1266 (Portantino), failed passage Assem. Public Safety Comm. (2018)
AB 875 (Cooper), held in Assm. Public Safety Comm. (2018)
AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018

Support: California Retailers Association; California State Sheriffs' Association; PORAC;
Riverside Sheriffs' Association

Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice;
Californians for Safety and Justice; Ella Baker Center for Human Rights; Initiate
Justice

As Proposed to be Amended in Committee

PURPOSE

The purpose of this bill is to create a new misdemeanor with penalties graduating to an alternate felony/misdemeanor to enter the property adjacent to a dwelling with the intent to steal a package that has been shipped to the dwelling.

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

Existing law states that grand theft is committed when the money, labor, or real or personal property taken is of a value exceeding \$950, except in specified cases of theft authorizing a lower threshold. (Pen. Code, § 487.)

Existing law states that any other case of theft is petty theft. (Pen. Code, § 488.)

Existing law states that petty theft is a misdemeanor punishable by a fine not exceeding \$1000 or by imprisonment in the county jail not exceeding 6 months. (Pen. Code, § 490.)

Existing law states that grand theft is generally punishable as an alternate felony-misdemeanor. (Pen. Code, § 489, subd. (c).)

Existing law generally provides that 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 when a person has one or more prior qualifying convictions, such person may be subject to a felony. (Pen. Code, § 490.2; Proposition 47, approved by California voters on Nov. 4, 2014.)

Existing law specifies that a burglary of an inhabited dwelling or vessel which is inhabited and designed for habitation, floating home, or trailer coach, or the inhabited portion of any other building, is burglary of the first degree. (Pen. Code, § 460, subd. (a).)

Existing law provides that all other types of burglary is burglary in the second degree. (Pen. Code, § 460, subd. (b).)

Existing law provides the following penalties for burglary:

- Burglary in the first degree is punishable by imprisonment in the state prison for 2, 4 or 6 years; and,
- Burglary in the second degree is punishable as an alternate felony/misdemeanor by imprisonment in the county jail not exceeding one year or imprisonment in county jail for 18 months, 2 or 3 years. (Pen. Code, § 461.)

Existing law states that every person who commits mail theft, as defined, is guilty of a crime, and shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. (Pen. Code, § 530.5, subd. (e).)

This bill creates a crime for a person to enter the curtilage of a residential dwelling with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier.

This bill defines “curtilage” as “an area adjacent to or in the immediate area of the residential dwelling, and to which the activity of residential life extends, including, but not limited to, a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard.”

This bill provides that a violation of the provisions of this bill are punishable as a misdemeanor by imprisonment in a county jail not exceeding one year.

This bill specifies that a third or subsequent violation of the provisions of this bill within a 36-month period is punishable as either a misdemeanor by imprisonment in county jail not exceeding one year or as a realigned felony in county jail.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Under federal law, the theft of packages delivered by the United States Postal Service can be prosecuted as a felony. Under state law, however, unless the items contained in the stolen package are valued at more than \$950, theft of a privately delivered package may only be prosecuted as a misdemeanor. Thus, a thief could steal 10 packages from 10 different porches on the same day – on the same street – and will only be charged with a misdemeanor, so long as none of the packages contained items worth more than \$950. However, the perpetrator does not know the value of what is inside the box when they steal the package. Entry onto the curtilage of a residential dwelling with the intent to steal comes with elevated dangers (to both the perpetrator and victim), and involves a breach of personal privacy and security much greater than the typical theft.

Cities are inundated with increases in property crime, especially when there are few consequences to deter thieves. For example, the San Diego Police Department is overwhelmed with property crime reports, and, even if the crime victim has a picture or video of the thief stealing, very little can be done to apprehend the perpetrator, because of recent changes in the law.

SB 979 makes it a crime to enter the curtilage of a residential dwelling with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier. This bill will also give judges a wider range of options to ensure that punishment fits the crime for a thief's third subsequent package theft charge within a three year period.

2. \$950 Threshold Value for Grand Theft

Existing law separates theft into two degrees: petty theft and grand theft. Unless otherwise specified, grand theft is committed when the money, labor, or real or personal property taken is of a value exceeding \$950. (Pen. Code, § 487.) All other theft is petty theft. (Pen. Code, § 488.)

The current threshold amount to constitute grand theft requires a taking or loss in excess of \$950 which was established through legislation in 2010. (AB 2373 (Ammiano) Chapter 693, Statutes of 2010.) Prior to that change in the law, the amount was \$400 or more which was established in the 1982-83 Legislative Session. (Chapter 375, Statutes of 1982.) The previous amount of \$200 was established in 1923; up to that time, the threshold amount was \$50. As pointed out by the committee analysis for AB 2372, "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. Theft of property worth \$870 in 2010 dollars (for example, a leather coat) could not have been grand theft in 1983 when the current theft thresholds took effect." (Assem. Comm. on Public Safety, Analysis of Assem. Bill No. 2372 (2009-2010 Reg. Sess.) as amended Mar. 11, 2010, p. 2.)

Grand theft is punishable as a “wobbler,” meaning that it may be punished as either a felony or misdemeanor. (Pen. Code, § 489, subd. (c).) Petty theft is punishable as a misdemeanor. (Pen. Code, § 490.) Thus, under existing law, a person may be charged with a felony for stealing packages if the value of items taken exceeds \$950.

This bill creates elevated penalties for the crime of packages from “an area adjacent to or in the immediate area of the dwelling” such as “a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard” regardless of the value of the items taken. On a first or second violation, the person may face increased misdemeanor penalties of up to one year imprisonment in county jail. On a third or subsequent violation, the person may be charged with either a felony or a misdemeanor.

3. Proposition 47 and Theft Offenses

Proposition 47, approved by voters on November 4, 2014, directed that theft crimes of \$950 or less shall be considered petty theft and be punished as a misdemeanor, with limited exceptions for individuals with specified prior convictions. Among the theft crimes made misdemeanors by Proposition 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.)

The offenses made misdemeanors by Proposition 47 also include: the new offense of commercial burglary where the value of the property taken or intended to be taken is \$950 or less (Pen. Code, § 459.5; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879); and petty theft with a prior theft conviction. (Pen. Code, § 666; *People v. Rivera, supra*, 233 Cal.App.4th at p. 1091.) Proposition 47 contained specific language reflecting the purpose and intent of the proposition:

“In enacting this act, it is the purpose and intent of the people of the State of California to: “. . . (3) Require misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes. . . .” (<http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47>)

“One of Proposition 47’s primary purposes is to reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative.” (*Harris v. Superior Court* (2016) 1 Cal.5th 984, 992, citing Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.)

Generally, when the Legislature attempts to amend a law enacted through a voter initiative, the California Constitution provides, “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.

As to the Legislature's authority to amend the initiative, Proposition 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." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 74.)

This bill would make it a crime to enter the curtilage of a home with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier. The crime defined by this bill is not dependent on the value of the property intended to be stolen. This bill would make conduct that would currently constitute misdemeanor petty theft (property value under \$950), punishable as a felony. It also creates enhanced penalties based on prior thefts which is similar to a provision deleted by Proposition 47. (Prior Pen. Code § 666.) Although the \$950 threshold for grand theft was enacted through legislation in 2010 (see Note 3), this bill still frustrates the intent of Proposition 47 which is require misdemeanor penalties for nonserious, nonviolent crimes like theft of \$950 or less.

The drafters of the bill's language have interpreted the bill as creating an expanded definition of trespass rather than making changes to theft provisions affected by Proposition 47, thus the bill requires a majority vote to pass the Legislature instead of having to go before the voters. However, because the Proposition's text is to be construed liberally to give effect to the intended purpose of its provisions (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 933), the interpretation that this bill does not amend Proposition 47 may be subject to legal challenges.

4. Overview of Relevant Laws

a. Burglary

Burglary of an inhabited dwelling house or structure is first degree burglary and punishable as a felony. (Pen. Code, § 461.) An inhabited dwelling house has been interpreted by case law to mean ". . . a structure where people ordinarily live and which is currently being used for dwelling purposes. A place is an inhabited dwelling if a person with possessory rights uses the place as sleeping quarters intending to continue doing so in the future. There may be more than one dwelling under the same roof. Apartments and hotel rooms may be the dwelling house of persons living in them." (*People v. Fleetwood* (1985) 171 Cal.App.3d. 982, 987-988.) Inhabited houses and apartments are included in this definition. It also can include hospital rooms, motel rooms, and campers.

"Courts have broadly interpreted the term "inhabited dwelling house" to include a variety of structures and places in order to effect the legislative purpose of the burglary statutes—to protect the peaceful occupation of one's residence against intrusion and violence. In determining whether a structure is part of an inhabited dwelling, the essential inquiry is whether the structure is functionally interconnected with and immediately contiguous to other portions of the house. "Functionally interconnected" means used in related or complementary ways. "Contiguous" means adjacent, adjoining, nearby, or close." (*People v. Thorn* (2009) 176 Cal.App.4th 255, 261-262.) Courts have also included in certain cases garages, carports, and balconies as a dwelling structure for purposes of residential burglary. (*People v. Gilbert* (1961) 188 Cal.App.2d 723; *People v. Thorn, supra*, 176 Cal.App.4th 255; *People v. Yarborough* (2012) 54 Cal.4th 889.)

The burglary laws are primarily designed, not to deter trespass and the intended crime, which are prohibited by other laws, but rather to protect against dangerous situations to personal safety created by a violation of the occupant's possessory interest in the building. (*People v. Thorn, supra*, 176 Cal.App.4th at 264.)

This bill creates a new crime for a person to enter the curtilage of a residential dwelling with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier. "Curtilage" is defined as "an area adjacent to or in the immediate area of the residential dwelling, and to which the activity of residential life extends, including, but not limited to, a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard." Depending on the facts of the case, a person who violates the provisions in this bill could be charged with burglary of a residential building or structure which is punishable as a felony.

b. Trespass

Trespass laws prohibit against entering real property or structures of any kind without the consent of the owner. Statutorily defined circumstances that may constitute trespass are numerous and specifically includes trespass of real property or structures without the consent of the owner. (Pen. Code, § 602, subd. (m).) Trespass of real property requires unlawful entry as well as occupation or intent to occupy which means the person usually stays on the property until removed. A person who intends to commit package theft would not have intent to occupy, so this type of trespass would not apply, but another form may, such as returning to private property once a person is told to leave. (Pen. Code, § 602, subd. (o).)

c. Mail Theft

There is a specific law for mail theft, however, that crime does not quite fit the situation addressed by this bill. California's mail theft law refers to federal mail theft which requires that the package or letter was in the U.S. Postal Services possession or in a mail receptacle at the time of the theft. (Pen. Code, § 530.5, subd. (e) and 18 U.S.C.S. 1708.) Mail theft is punishable as a misdemeanor punishable by imprisonment for up to one year in jail, or if charged as a federal offense, imprisonment for up to 5 years.

d. Loitering

Loitering to commit a crime is a misdemeanor. According to subdivision (h) of Penal Code section 647, a person who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. For purposes of subdivision (h) "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered. A person who goes on to the private property of another person to ascertain if anyone is home and to takes a package on the property appears to violate this code section.

Ultimately, the crimes that a person is charged with depends on the facts of each case and the discretion of district attorneys. However, it appears that there are several code sections that already exist in the Penal Code to address the crime in this bill, in addition to existing theft provisions.

5. Increasing Penalties Has Minimal Deterrent Effect

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished.

(National Research Council (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences* Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.)

In regard to deterrence, the authors note that in “the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy.” (National Research Council, *supra*, *The Growth of Incarceration in the United States*, p. 132.)

Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.

(*Id.* at p. 133.) The report concludes: The incremental deterrent effect of increases in lengthy prison sentences is modest at best. “Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.” (*Id.* at p. 5.)

This bill increases the potential sentence for a person who commits package theft on or near a person’s residence. Generally, the crime the person would be charged with depends on the value of the property stolen (\$950 or less is a misdemeanor and punishable by imprisonment of up to 6 months). This bill would make it a misdemeanor punishable by imprisonment for up to one year for the first two violations of the new offense, and an alternate felony-misdemeanor for a third or subsequent violation.

Enhancing penalties for this crime does not change the circumstances that makes the law difficult to enforce. Thus, such an increase is unlikely to lead to more arrests or prosecutions or deter this

conduct. Package theft faces enforcement issues because identifying and apprehending the person committing the offense is difficult. Often times, the crimes happen at a time of day when most people are away at work or school. If an outdoor camera is installed, the theft may be caught on camera but that doesn't mean that the person committing the theft can be identified or later found by police.

6. Proposed Amendment

The committee amendment would remove the alternate felony-misdemeanor provision of the bill:

540. (a) A person shall not enter the curtilage of a residential dwelling with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier.

(b) For purposes of this section, "curtilage" means an area adjacent to or in the immediate area of the residential dwelling, and to which the activity of residential life extends, including, but not limited to, a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard.

(c) ~~(1) Except as specified in paragraph (2), a~~ **1** violation of this section is punishable by imprisonment in a county jail for a term not exceeding one year.

~~(2) A third or subsequent violation of this section within a 36-month period is punishable by imprisonment in a county jail for a term not to exceed one year or pursuant to subdivision (h) of Section 1170.~~

7. Argument in Support

According to the California State Sheriffs' Association:

As retail entities see their customers' transition from shopping at brick-and-mortar stores to shopping online, retailers are delivering more of their products directly to their customers' residences. Increasingly, criminals have been stealing packages delivered at the doorsteps of homes. Because these package contents are often valued under the \$950 grand theft threshold or the offender may not actually enter the dwelling to complete the act, individuals engaging in this criminal activity are generally not subject to significant punishment that could deter them from engaging in this activity.

7. Argument in Opposition

According to the American Civil Liberties Union:

Under existing law, a person can already be prosecuted for entering the curtilage of a home with the intent to commit theft. Indeed, depending on the circumstances, a person could be convicted of trespassing; attempted grand theft; attempted petty theft; or attempted receipt of stolen property. If the person actually takes the package, they can be convicted of a slew of other crimes, including grand theft; petty theft; and mail theft. As former Governor Jerry Brown

said, “[t]his multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.” Given the availability of existing laws, we do not believe a separate crime is necessary.

We are also concerned that SB 979 could be applied in a discriminatory manner. In particular, we fear that the bill could be used as a pretext for arresting people against whom law enforcement or property owners are explicitly or implicitly biased. It is not difficult to imagine a situation where homeowners in a predominantly white and wealthy community notice – either through their own observations, or their neighbors’ posts on a site like Nextdoor – that a small group of Black teenagers in hooded sweatshirts is walking from house to house, up paths and onto front porches where they pause briefly and then leave. The homeowners become suspicious and call the police who then arrest the boys. As it turns out, the boys were leaving flyers for a local fundraiser, not intending to steal packages. Likewise, a situation could arise in which police officers arrest or detain a homeless person who is sitting on the front steps of a home simply because the officers notice a package on the stoop. Needless to say, had the group of teenagers been white, or the homeless person had been a businessman dressed in a suit and tie, their presence near the homes would likely have garnered different reactions from the homeowners and the officers. Although these issues of discrimination and bias already occur today, the creation of a new crime will only exacerbate these problems.

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