



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

CONSENT REPORT
March 16, 2010

Honorable Members of the
Law and Legislation Committee

Title: Legislative Position: Support A. B. 1661 – An act to amend Section 459 of the Penal Code, relating to burglary

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee adopt a support position on California Assembly Bill 1661. The purpose of the legislation is to expand the scope of existing law regarding burglary offenses (Section 459 of the Penal Code) to include entry into specified buildings with intent to willfully delay, resist or obstruct a peace officer in the discharge of their duties.

Contact: Katherine Lester, Lieutenant, 566-6446

Presenters: Katherine Lester, Lieutenant

Department: Police

Division: Office of Operations

Department ID: 11001111

Description/Analysis

Issue: Staff is recommending that the Committee adopt a support position on California Assembly Bill 1661. This bill would amend Section 459 of the Penal Code. The existing law establishes the offense of burglary, which consists of entering specified buildings, places, or vehicles with the intent to commit grand or petit larceny, or any felony.

The bill would expand the scope of that offense to include entry to those buildings, places or vehicles with the intent to willfully resist, delay, or obstruct any public officer or peace officer in the discharge or attempted discharge of any duty of his or her office or employment.

The bill will include a friendly amendment to exclude juveniles from a potential strike offense for a violation of this statute unless they are to be tried as an adult.

A.B. 1661 has been sponsored by J. Nielsen (R- Gerber) and was introduced on January 19, 2010. On February 10, 2010, A.B. 1661 was referred to the Committee on Public Safety for hearings and testimony.

Policy Considerations: Currently, entry into a building, place or vehicle with the intent to willfully resist, delay, or obstruct any public officer or peace officer in the discharge or attempted discharge of any duty of his or her office or employment is punishable only by a misdemeanor trespass and a misdemeanor resisting arrest offense. The passage of this Act would result in a potential felony, and a potential strike entry, for this offense.

Environmental Considerations: None.

Rationale for Recommendation: A.B. 1661 would make it possible to charge, prosecute, and institute harsher punishment of criminals who endanger innocent people by entering homes, businesses, and protected properties in an attempt to evade capture by law enforcement. These actions pose a great risk to both our communities and officers attempting to affect an arrest of wanted persons. The passage of this legislation would levy a penalty commensurate with criminal behavior which presents a greater risk to our community.

Financial Considerations: There are no General Fund impacts or financial considerations associated with this report at the local level. No reimbursement is required by this Act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency will be incurred because this act changes the definition and penalty for a crime within the meaning of Section 17556 of the Government Code. This bill must be reviewed at the State level by the Fiscal Committee and as a State-mandated local program.

Emerging Small Business Development (ESBD): None.

Respectfully Submitted by: Katherine Lester #4101
Katherine Lester, Lieutenant

Approved by: Alexander Brazil (Pal)
Rick Brazil, Chief of Police

Recommendation Approved:

Gustavo F. Vina
GUSTAVO F. VINA
Assistant City Manager

Table of Contents:

Report pg. 1

Attachments

1 Background pg. 4
2 Draft Support Letter A.B. 1661 pg. 9
3 A.B. 1661 Text pg. 10

Attachment 1**Background**

A.B. 1661, as introduced on January 19, 2010, is an act to amend Section 459 of the Penal Code relating to burglary. The existing law establishes the offense of burglary, which consists of entering specified buildings, places, or vehicles with the intent to commit grand or petit larceny (any theft) or any felony.

This bill, if passed in its current form, would expand the scope of that offense to include entry into those buildings, places, or vehicles with the intent to willfully resist, delay, or obstruct any public officer or peace officer in the discharge or attempted discharge of any duty of his or her office of employment.

Currently, if a criminal enters a building, place or vehicle, with the intent to avoid capture and arrest by law enforcement, he can only be charged with a violation of the trespass statute¹, a misdemeanor with a minor penalty and a misdemeanor violation of resisting arrest². The punishment for trespassing is equitable to the punishment given to persons who violate the statute of crossing lands illegally, remaining on property without the owner's permission, or even illegal camping. Yet, the danger to our community and the threat to our officers is far greater than these lesser violations of the statute.

A person evading police is actively resisting armed law enforcement in an attempt to avoid capture. In their desperate attempts to escape, these criminals illegally enter homes, offices, and detached buildings, posing an elevated risk to our communities. Police tactics used to capture fleeing criminals include establishing containment perimeters. These tactics are effective in locating suspects within a geographical area, however, the counter tactic used by fleeing criminals is to attempt to hide within that perimeter. Ultimately, prosecution of these suspects is generally limited to the original crime and this additional criminal activity goes unpunished despite the threat it poses to law abiding persons.

Examples

The Sacramento Police Department and other local agencies have been involved in numerous incidents where, if the law were stronger, criminals who engage in this behavior could have been charged with more serious crimes and possibly have received greater penalties. This type of criminal behavior occurs everywhere in the state and passing of this act would give all California law enforcement agencies an additional prosecutorial option.

¹ 602(K) PC- Trespass: Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

² 148(a)(1) PC- Resist, Obstruct, or Delay Arrest: Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

Here is a sampling of incidents that have occurred in our region over the past year:

1. A known suspect with a felony warrant and history of firearms possession ran from Sacramento County probation officers. He was observed going over backyard fences in a residential area. A perimeter was established and a K9 search started. The suspect was observed by a CHP airplane jumping over a fence and running into a building. The building was a large single story structure with doors/windows that had been transformed into an art studio for the homeowner. There was a single family home adjacent to the art studio. The suspect was located by K9 hiding in a bathroom of the studio. The female resident stated she regularly went back and forth from her home to her art studio through out the day and didn't lock the door for that reason.³
2. Sacramento Sheriff's deputies responded to a call of a burglary of an unoccupied apartment. Upon arrival, the suspect jumped out the window and fled. Deputies pursued the suspect, eventually setting up a perimeter. A fully loaded Mac-10 was found left behind in the apartment. The suspect was seen by a perimeter officer climbing out of a window of another unoccupied apartment. The suspect had gained access to another unoccupied apartment and was climbing out the back window when he saw officers out front. He surrendered to K9 at that time.⁴
3. Sacramento police officers responded to a call about a suspicious vehicle in a neighborhood. An officer spotted the vehicle and the driver fled. The vehicle was a reported stolen vehicle. A perimeter was established and a K9 search started. The K9 showed alerts in the area of a garage of an inhabited residence, but the door was locked. The officer searched the neighboring yard and was then advised by a homeowner that the suspect had run out of her garage door, where the K9 officer had just been. The suspect was eventually located in a backyard hiding in bushes.⁵
4. A robbery suspect escaped from an officer after being checked out at a hospital. The suspect fled into a residential area and a perimeter was established. A K9 located the suspect hiding in an enclosed garage of an inhabited home and bit him.⁶
5. Two suspects attempted to steal an ATM machine in downtown Sacramento. As officers arrived, they fled in a stolen truck and a pursuit ensued. The truck crashed in West Sacramento and the two suspects fled. The driver fired shots at officers allowing him to escape into a residential area. The second suspect was caught quickly. A perimeter was set for the shooter suspect. A K9 search with SWAT led to the suspect who was found hiding in an enclosed garage of an inhabited home. He eventually surrendered and was taken into custody.⁷
6. Sacramento Sheriff's deputies responded to a home invasion in progress. As they arrived, the suspects fled. The first two suspects were found quickly, however the third was outstanding. A resident in the area alerted deputies that he

³ Sacramento Police Department Report Number 10-15931. January 15, 2010. 1254 hours.

⁴ Sacramento Sheriff's Department Report Number 100190429. January 19, 2010. 1043 hours.

⁵ Sacramento Police Department Report Number 10-15631. January 15, 2010. 0253 hours.

⁶ Sacramento Police Department Report Number 09-388090. December 27, 2009. 0600 hours.

⁷ Sacramento Police Department Report Number 09-3391222. December 30, 2009. 0451 hours

had just arrived home and found a chair propped up against the back of a door inside his home. The chair had not been there when he left. The third suspect was found hiding in the attic of this house by K9.⁸

7. During a burglary, a suspect fled from officers. The suspect forced entry into a garage of another residence nearby and attempted to steal a car to escape. The homeowner chased him out of the garage and the suspect was located by a K9 officer.⁹
8. Sacramento Sheriff's deputies responded to a burglary in progress. Upon arrival, several suspects fled on foot. As K9's were conducting a search, they were advised by a homeowner that he had confronted one of the suspects inside his house and that the suspect had run off. The suspect was eventually apprehended by K9 hiding in a storage room next to a house.¹⁰
9. Sacramento Sheriff's deputies responded to a bank robbery in progress. Two suspects fled. One suspect was taken into custody and a K9 search was conducted for the second suspect in a nearby residential neighborhood. During the search, it was learned the suspect had entered an elderly woman's home and had threatened her in an attempt to get her car. The suspect eventually fled the house and was captured by deputies.¹¹
10. CHP auto theft detectives engaged in pursuit of a stolen vehicle. The suspect abandoned the car and fled on foot. A K9 search was conducted, leading officers to a private home. Officers did not locate the suspect because he was able to enter the house, change his clothing using clothing found in the house, and steal the resident's car keys. He then stole their vehicle and escaped by driving out of the perimeter.¹²
11. A wanted Parolee led officers on a high speed chase. The Parolee crashed the car and fled on foot. He jumped fences through two back yards and entered an unlocked door of a residence, telling the residents not to say anything. One resident ran out of the house screaming. The suspect then ran out the back door and was apprehended by K9.¹³
12. A suspect attempted to burglarize a house and was chased away by neighbors. During the search for the suspect, a K9 alerted on a side door of an attached garage. Officers tried to enter with K9 but the suspect tried to hold the door shut. Once K9 entered, the suspect tried to choke the dog and fought with officers before being taken into custody. There was access to an interior house door from the garage.¹⁴
13. At the end of a vehicle pursuit, three suspects fled from the car on foot. A rifle was located in the car. One suspect was located by a K9 in bushes and a second suspect surrendered. The third suspect found an open kitchen window of a house nearby and crawled inside the home through the window, where a single female resident lived. The police activity in the area had awoken the female

⁸ Sacramento Sheriff's Department Report Number 093041191. November 1, 2009. 0033 hours.

⁹ Sacramento Police Department Report Number 09-349770. November 18, 2009. 1051 hours.

¹⁰ Sacramento Sheriff's Department Report Number 09018742. April 14, 2009. 1115 hours.

¹¹ Sacramento Sheriff's Department Report Number 093170482. November 13, 2009. 1152 hours.

¹² Sacramento Police Department Report Number 09-327897. October 28, 2009. 1130 hours.

¹³ Sacramento Police Department Report Number 09-298506. September 30, 2009. 1822 hours.

¹⁴ Sacramento Police Department Report Number 09-283037. September 16, 2009. 1259 hours.

resident. Before she was able to go outside, she found the suspect lying on her floor holding her phone, preventing her from calling for help. She was able to run out the front door and alert the police. The suspect refused to come out and was apprehended by a K9 inside.¹⁵

14. Officers responded to a burglary alarm call. Upon arrival, three suspects who had tried to burglarize the market ran from officers. A K9 search was conducted and the suspects were located hiding inside an enclosed patio attached to a house. The enclosed patio room was an extension of the house being utilized as a play room.¹⁶
15. A wanted suspect fled from gang units during a traffic stop. K9 tracked the suspect to a house. Officers contacted a limited English speaking subject at the door and went inside to clear the house. The K9 alerted on a locked bedroom door and when the officer forced the door open, the suspect jumped out of the back window. He was later apprehended in another yard by K9.¹⁷
16. An officer responded to a ringing burglary alarm and contacted a subject on the back patio of a nearby apartment. The suspect fled and escaped into the neighborhood. The officer was able to confirm the suspect's identity and that he had a prior burglary warrant. A K9 alerted on the side garage door of an inhabited home, but the door was locked. Officers contacted residents and tried to gain entry to garage from interior door, but the suspect held onto door. Officers were able to open the door and a K9 apprehended the suspect.¹⁸
17. Auto theft detectives were following a stolen car when it pulled over and the two suspects fled on foot running through a house. A K9 located one of the suspects hiding in a backyard. The search was continued for the second suspect. The suspect was then seen running into a house where the resident ran out with her infant in her arms. The suspect was apprehended inside the house by K9.¹⁹

Fiscal Impact

There are no impacts to the General Fund or fiscal considerations at the local level. By expanding the scope of an existing offense, this bill would impose a state-mandated local program. A state-mandated local program is one in which state legislative enactment or administrative regulation mandates a new program or higher level of service on the part of a local government. Costs associated with a state-mandated local program are which are generally required by the California Constitution to be reimbursed. However, in this case, no reimbursement is required pursuant to Article 6 of the California Constitution because the costs incurred are due to changes to the definition of an existing crime.

¹⁵ Sacramento Police Department Report Number 09-269093. September 3, 2009. 0422 hours.

¹⁶ Sacramento Police Department Report Number 09-249126. August 16, 2009. 0241 hours.

¹⁷ Sacramento Police Department Report Number 09-97586. April 1, 2009. 1617 hours.

¹⁸ Sacramento Police Department Report Number 09-97586. March 21, 2009. 0524 hours.

¹⁹ Sacramento Police Department Report Number 09-47569. October 14, 2009. 0955 hours.

Legislative Progress

On February 10, 2009, the act was referred to the Committee on Public Safety chaired by Assembly Member Tom Ammiano (D-San Francisco). Assembly Member Jim Nielsen will present the bill to the committee and testimony in opposition to or in favor of the act will be heard. The bill must pass both houses by the end of the year and due to the potential impact it will be reviewed by the fiscal committee and appropriations from both houses.

Opposition

The expansion of the law may result in a potential strike offense, and therefore this act may face legislative opposition at both houses. The act is subject to amendment and it has been suggested to the sponsor to amend the act to exclude juveniles from being subject to a potential strike entry.

The act is expected to receive full support from law enforcement agencies and law enforcement based organizations.

Pending Issues

Expansion of this bill could impact both 460 PC²⁰ and 1192.7(c) PC²¹, both of which may need to be amended should the act pass. These changes would be administrative and be made as part of the legislative process.

²⁰ 460 PC-Burglary, Degrees: (a) Every burglary of an inhabited dwelling house, vessel, as defined in the Harbors and Navigation Code, which is inhabited and designed for habitation, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, or trailer coach, as defined by the Vehicle Code, or the inhabited portion of any other building, is burglary of the first degree. (b) All other kinds of burglary are of the second degree. (c) This section shall not be construed to supersede or affect Section 464 of the Penal Code.

²¹ 1192.7(c) PC- Serious Felonies, Strike Offenses: (c) As used in this section, "serious felony" means any of the following: (18) any burglary of the first degree.

Attachment 2

March 16, 2010

Assembly Member Jim Nielsen
2nd Assembly District
State Capitol
State Capitol Room #6031
Sacramento, CA 95814

Subject: Support AB 1661- An Act to amend Section 459 of the Penal Code, relating to Burglary

Dear Assembly Member Nielsen,

On behalf of the City of Sacramento, I am pleased to write in support of A.B. 1661. This legislation would expand the existing law of burglary, which consists of entering specified buildings, places, or vehicles, with the intent to commit petit or grand larceny or any felony, to include entry to willfully resist, delay, or obstruct any public or peace officer in the discharge of any duty of his or her office or employment. Currently, violent and dangerous criminals who enter specified buildings, places or vehicles in their attempt to evade capture by law enforcement are subject only to misdemeanor charges of the penal code- trespass and resisting arrest.

Over the past year in the City of Sacramento, our community has experienced numerous incidents where this tactic has been used by fleeing criminals. This puts innocent members of our community at needless risk and endangers our officers in their attempts to affect arrests.

If the law were stronger, criminals who engage in this behavior could be charged with more serious crimes and possibly receive greater penalties. This type of criminal behavior occurs everywhere in the state and passing of this act would give all California law enforcement agencies an additional prosecutorial option.

Thank you for supporting this important legislation.

Sincerely,

Lauren Hammond, Chair
Law and Legislation Committee

cc: Assembly Member Tom Ammiano, 13th Assembly District
Assembly Member Dave Jones, 9th Assembly District
Assembly Member Roger Niello, 5th Assembly District
Assembly Member Alyson Huber, 10th Assembly District
Assembly Member Joan Buchanan, 15th Assembly District
Mayor Kevin Johnson and Council

AB 1661

California Legislature—2009–10 Regular Session

ASSEMBLY BILL No. 1661

Introduced by Assembly Member Nielsen

January 19, 2010

An act to amend Section 459 of the Penal Code, relating to burglary.

LEGISLATIVE COUNSEL'S DIGEST

AB 1661, as introduced, Nielsen. Burglary.

Existing law establishes the offense of burglary, which consists of entering specified buildings, places, or vehicles with the intent to commit grand or petit larceny, or any felony. This bill would expand the scope of that offense to include entry to those buildings, places, or vehicles with the intent to willfully resist, delay, or obstruct any public officer or peace officer in the discharge or attempted discharge of any duty of his or her office or employment.

By expanding the scope of an existing offense, this bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority.

Appropriation: no.

Fiscal committee: yes.

State-mandated local program: yes.

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

SECTION 1. Section 459 of the Penal Code is amended to read:

459. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, as defined in Section 21 of the Harbors and Navigation Code, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code, vehicle as defined by the Vehicle Code, when the doors are locked, aircraft as defined by Section 21012 of the Public Utilities Code, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony, *or to willfully resist, delay, or obstruct any public officer or peace officer in the discharge or attempted discharge of any duty of his or her office or employment* is guilty of burglary. As used in this chapter,

“inhabited” means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.