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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 3078                      **Hearing Date:** June 12, 2018  
**Author:** Gallagher  
**Version:** April 2, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

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

### HISTORY

Source: Author

Prior Legislation: SB 1595 (Gallagher), 2017, held in Senate Appropriations Comm.  
AB 2820 (Chiu), Ch. 671, Stats. 2016  
SB 1363 (Ducheny), Ch. 492, Stats. 2004

Support: California District Attorneys Association; California State Sheriffs' Association

Opposition: None known

Assembly Floor Vote: 71 - 0

### PURPOSE

*The purpose of this bill is to expand the crime of looting to include theft that occurs while an area is under an evacuation order.*

*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 any person convicted of looting by second-degree burglary who is eligible for probation and is granted probation, shall as a condition of probation, be confined in county jail for at least 180 days, except when the interest of justice is best served by eliminating or reducing the mandatory minimum term of confinement. (*Ibid.*)

*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* states that any person convicted of looting by grand theft who is eligible for probation and is granted probation, shall as a condition of probation, be confined in county jail for at least 180 days, except when the interest of justice is best served by eliminating or reducing the mandatory minimum term of confinement. (*Ibid.*)

*Existing law* states that in addition to whatever custody is ordered for a violation of subdivision (b) of Penal Code section 463, the court, in its discretion, may require any person granted probation to serve up to 160 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 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* states that any person convicted of looting by petty theft who is eligible for probation and is granted probation, shall as a condition of probation, be confined in county jail for at least 90 days, except when the interest of justice is best served by eliminating or reducing the mandatory minimum term of confinement. (*Ibid.*)

*Existing law* states that in addition to whatever custody is ordered for a violation of subdivision (c) of Penal Code section 463, the court, in its discretion, may require any person granted probation to serve up to 80 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community. (*Ibid.*)

*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 theft 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 of this bill:

During the February 2017 Oroville Dam situation and the 2017 fire season, many residents were ordered to leave their homes under a mandatory evacuation of the area. During this time, the affected neighborhoods saw an increase in property crime, specifically burglaries of evacuated houses and stores. In one instance, a Vietnam veteran had nearly two dozen military medals stolen from his Yuba City home. AB 3078 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." 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 is 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. 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 Compared to Looting**

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 theft, not including first-degree 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 generally 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, subds. (b) and (c).)

This bill expands the crime of looting to include theft that occurs while an area is under an evacuation order. Currently, a person who commits theft under circumstances that do not fall under the definition of looting would be subject to the general burglary provisions. The maximum penalties provided for in the general burglary provisions (not including first degree burglary) are the same as those specified for looting, however, a person convicted of looting is required to serve a minimum mandatory term of confinement except when the interest of justice is best served by eliminating or reducing the mandatory minimum term. The looting provisions also specify that the court may, in addition to whatever confinement is ordered, require a person to serve a specified number of hours of community service.

#### **4. Prior Legislation**

AB 1595 (Gallagher), 2017, was identical to this bill and was held in the Senate Committee on Appropriations.

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