
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: AB 750 **Hearing Date:** June 6, 2023
Author: Rodriguez
Version: April 6, 2023
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Menace to public health: closure by law enforcement*

HISTORY

Source: California State Sheriffs' Association

Prior Legislation: SB 98 (McGuire) Chapter 759, Stats. 2021
SB 629 (McGuire) Vetoed 2020
AB 3212 (Beaver) Chapter 1402, Stats. 1957

Support: Unknown

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is clarify that an authorized media representative, as specified, cannot facilitate the entry of a person into, or facilitate the transport of a person within an area closed due to a menace to the public safety or health, if that person is not also an authorized media representative, unless for the purposes of safety of the person.

Existing federal law secures the right to freedom of speech, of the press, and the right of the people peaceably to assemble. (U.S. Const., 1st Amend.)

Existing law provides that a law may not restrain or abridge liberty of speech or press. (Cal. Const., art. I, § 2.)

Existing law states that, whenever a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster, specified peace officers and public safety officials may close the area where the menace exists for the duration of the menace by means of ropes, markers, or guards to any and all persons not authorized to enter or remain within the enclosed area. If the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists. (Penal Code § 409.5 (a).)

Existing law provides that specified public safety officials may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity or any riot or other civil disturbance to any and all unauthorized

persons. (Penal Code § 409.5 (b).)

Existing law allows a duly authorized representative of a news service, newspaper, or radio or television station or network to enter the closed areas. (Penal Code § 409.5 (d).)

Existing law provides that an unauthorized person who willfully and knowingly enters a closed area and who willfully remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor. (Penal Code § 409.5 (c).)

Existing law provides that a person who, after receiving notice to evacuate or leave, willfully and knowingly directs an employee to remain in, or enter, a closed area shall be guilty of a misdemeanor. (Labor Code § 6311.5.)

Existing law makes it a misdemeanor for a person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined, in the discharge or attempt to discharge any duty of their office or employment. (Penal Code § 148 (a).)

Existing law provides that any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. (Penal Code § 835a.)

Existing law provides that every person who participates in any riot or unlawful assembly is guilty of a misdemeanor. (Penal Code § 408.)

Existing law makes it a misdemeanor for any person to remain present at the place of any riot or unlawful assembly, after being lawfully warned to disperse. (Penal Code § 409.)

Existing law provides that, if two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor. (Penal Code § 416.)

Existing law provides that every person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of emergency personnel, and thereby impedes emergency personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor. (Penal Code § 402.)

Existing law provides that every person who willfully commits a trespass, as specified, is guilty of a misdemeanor. (Penal Code § 602.)

Existing law provides that it is trespass to drive any vehicle upon real property belonging to another and known not to be open to the general public, without the consent of the person in lawful possession. (Penal Code § 602(n).)

Existing law provides that it is trespass to refuse or to fail to leave any property belonging to another and not open to the general public upon being requested to leave by a peace officer, as specified. (Penal Code § 602 (o).)

Existing law provides that it is trespass to enter any land declared closed because of a hazard, as specified, if the closed areas have been posed with notices declaring the closure. (Penal Code § 602 (p).)

Existing law provides that any person concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, have advised and encouraged its commission, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed. A person who aids and abets a crime faces the same punishment as the one who directly commits the crime. (Penal Code § 31.)

Existing law provides that when two or more people conspire to commit any crime they are guilty of a felony. (Penal Code § 182.)

Existing law provides that a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network may enter any area closed by public safety officers or peace officers where individuals are engaged in protected first amendment activity, including a demonstration, march, protests or rally. (Penal Code § 409.7.)

This bill clarifies that the law does not authorize a duly authorized representative of a news service, newspaper, or radio or television station or network to facilitate the entry of a person into, or facilitate the transport of a person within, an area closed, unless for the safety of the person, pursuant to this section if that person is not a duly authorized representative of a news service, newspaper, or radio or television station or network.

COMMENTS

1. Need for This Bill

According to the author:

As a first responder for over 30 years, I know disaster zones can be very dangerous. Law enforcement is critical in evacuating residents and ensuring safety for those around a disaster. Journalists also provide a critical role, helping the public to understand the risks and situation facing them. In an instance where an area has been evacuated, no one should unnecessarily put the lives of anyone else in danger. AB 750 moves us towards that goal.

Last year, there were reports of media personnel transporting non-authorized persons into closed areas. For example, the Siskiyou County Sheriff's Office [reported](#) they were investigating reports that the media brought civilians into evacuation zones during the McKinney Fire in 2022. While members of the press are critical to evaluating emergencies and informing the public on the events impacting our communities, transporting individuals into closed areas places residents at unnecessary risk. AB 750 would clarify that a representative of a press organization shall not transport a civilian into a closed area. This bill would allow press members to continue their duty of keeping the public informed while keeping the public safe.

2. Press Access to “disaster area”

Under Penal Code section 409.5, law enforcement officers and other designated officials may cordon off and close a disaster area to the general public where the disaster has created “a menace to the public health or safety.” A person is guilty of a misdemeanor if they willfully and knowingly enter a closed area and willfully remain within the area after receiving notice to evacuate. (Pen. Code, § 405, subd. (c).) However, law enforcement may not prevent “duly authorized” newsmen from entering an area otherwise closed to the general public. (Pen. Code, § 405, subd. (d).)

The phrase “duly authorized” refers to the news station, newspaper, or radio or television station or network having “duly authorized” the individual to be its representative at the site. The “duly authorized” news media exception does not refer to someone authorized to be in the area by the law enforcement officer. Otherwise, the entire exception would be superfluous. (66 Ops.Cal.Atty.Gen. (1983) 497, 498-499.)

The exception does not prevent law enforcement officers from taking appropriate action to prevent the news media representatives at a disaster site from violating any specific laws. (See e.g. Pen. Code, §§ 402, 409; 66 Ops.Cal.Atty.Gen. 497, supra, 499, fn. 2.) For example, press representatives access may be restricted if police personnel at the scene reasonably determine that their unrestricted access will interfere with emergency operations. (See, e.g., *Los Angeles Free Press, Inc. v. City of Los Angeles* (1970) 9 Cal.App.3d 448, 456.) If such a determination is made, the restrictions on media access may be imposed for only so long and only to such an extent as is necessary to prevent actual interference. (*Ibid.*)

However, officers cannot exclude the press on the sole basis of there being a safety hazard. The power to exclude the general public from a disaster site only arises where the disaster creates “a menace to the public health or safety.” Thus, the press access exception “assumes the existence of an already-determined safety hazard. Notwithstanding such a safety hazard, the Legislature has concluded that the public’s right to know is more important.” (*Leiserson v. City of San Diego* (1986) 184 Cal.App.3d 41, 50-51 [legislative goal that the maximum possible press access be provided].)

3. Media bring others into disaster zone.

According to background materials provided by the Author, the Siskiyou County Sheriff’s Office reported they were investigating incidents in which the media brought civilians into evacuation zones during the McKinney Fire in 2022. (Record Searchlight, *Siskiyou sheriff investigating media conduct during McKinney Fire* (Aug. 8, 2022) <<https://www.redding.com/story/news/local/2022/08/08/siskiyou-sheriff-investigating-media-conduct-during-mckinney-fire/10268419002/>> [as of March 30, 2023].) While members of the press are critical to evaluating emergencies and informing the public, transporting individuals into closed areas could pose an unnecessary safety risk.

The First Amendment explicitly protects the freedom of the press. (U.S. Const. 1st Amend.) “That the First Amendment speaks separately of freedom of speech and freedom of the press is no constitutional accident, but an acknowledgment of the critical role played by the press in American society. The Constitution requires sensitivity to that role, and to the special needs of the press in performing it effectively.” (*Houchins v. KQED* (1978) 438 U.S. 1, 17.) However, “it has generally been held that the First Amendment does not guarantee the press a constitutional

right of special access to information not available to the public generally.” (*Pell v. Procunier* (1974) 417 U.S. 817, 833.) As the U.S. Supreme Court observed: “newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded.” (*Branzburg v. Hayes* (1971) 408 U.S. 664, 684-685.)

The First Amendment does not give the media a right of access to the scenes of crimes and disasters superior to that of the general public. (*Los Angeles Free Press, Inc. v. City of Los Angeles* (1970) 9 Cal.App.3d 448, 455.) “Restrictions on the right of access to particular places at particular times are consistent with other reasonable restrictions on liberty based upon the police power, and these restrictions remain valid even though the ability of the press to gather news and express views on a particular subject may be incidentally hampered.” (*Ibid.*)

A special statutory right of access, however, may be given by state legislatures to news media representatives. (*Branzburg v. Hayes* (1971) 408 U.S. 664, 706.) This is what the Legislature has done in Section 409.5. “The statute represents the Legislature’s considered judgment that members of the news media must be afforded special access to disaster sites in order that they may properly perform their function of informing the public. (*Leiserson v. City of San Diego* (1986) 184 Cal.App.3d 41, 51.) This right of special access, however, does not give members of the press the ability to lure unauthorized individuals into potentially dangerous disaster areas. Thus, consistent with the First Amendment, this bill would clarify that an authorized media representative cannot facilitate the entry of a person into a closed emergency area if that person is not also an authorized media representative.

4. Argument in Support

The sponsor of this bill, the California State Sheriffs Association states in support of this bill:

Existing law generally provides that whenever a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster, state and local peace officers may close the area where the menace exists for the duration of the menace by means of ropes, markers, or guards to any and all persons not authorized by the officer to enter or remain within the enclosed area. Any unauthorized person who willfully and knowingly enters such a closed area and who willfully remains within the area after receiving notice to evacuate or leave is guilty of a misdemeanor. Existing law provides that these provisions shall not prevent a duly authorized representative of a news service, newspaper, or radio or television station or network from entering a closed area.

While bona fide members of the press have access to closed areas, this access does not extend to transporting non-press civilians into or within areas that have been deemed dangerous and subsequently closed. Existing law is less than clear though, as failing to leave upon being instructed to do so is prohibited but the act of facilitating the entry or movement of a person who is not a member of the press into or within a closed area is not clearly forbidden.

This bill would retain the media’s ability to access closed areas as appropriate but clarifies that this access is not transferable to people who are not bona fide members of the press. For this reason, CSSA is pleased to sponsor AB 750.