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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** SB 1110                      **Hearing Date:** April 26, 2022  
**Author:** Melendez  
**Version:** March 8, 2022  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** AB

**Subject:** *Trespass*

## HISTORY

**Source:** Wildomar City Councilmember Joseph Morabito

**Prior Legislation:** AB 1686 (Medina), Ch. 473 Stats. of 2014  
SB 1295 (Block), Ch. 373, Stats. of 2013  
AB 668 (Lieu) Ch. 531, Stats. 2010  
SB 1486 (Schiff) Ch. 563, Stats. 2000

**Support:** California State Sheriffs' Association; Riverside County Sheriff's Office;  
San Bernardino County Sheriff's Department

**Opposition:** California Attorneys for Criminal Justice; Ella Baker Center for Human Rights;  
Initiate Justice

## PURPOSE

***The purpose of this bill is to extend the operative timeframe for trespass authorization letters from 12 months to 5 years, and to require that such letters be submitted in a notarized writing on a form provided by law enforcement. Additionally, this bill authorizes trespass authorization letters to be submitted electronically.***

*Existing law* includes numerous provisions defining various forms of trespass and applicable penalties. Crime definitions and penalties typically turn on whether any damage has been done to property and whether the trespasser refuses a valid request to leave the land. (Pen. Code § 602-607.)

*Existing law* provides that any person is guilty of a misdemeanor, punishable by a county jail term of up to 6 months, a fine of up to \$1000 or both, who enters any other person's cultivated or fenced land, or who enters uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along exterior boundaries and at all roads and trails entering the lands without written permission, and does any of the following:

- Refuses or fails to leave immediately upon being requested to do so by the owner, owner's agent or by the person in lawful possession;
- Tears down, mutilates, or destroys any sign or notice forbidding trespass or hunting;
- Removes or tampers with any lock on any gate on or leading into the lands; or

- Discharges a firearm. (Pen. Code § 602, subd. (l).)

*Existing law* provides that any person is guilty of misdemeanor trespass who enters and occupies real property or structures of any kind without the consent of the owner, the owner's agent or the person in lawful possession. (Pen. Code § 602, subd. (m).)

*Existing law* generally provides that a person commits one form of trespass to cultivated, fenced or posted land, where he or she, without the written permission of the landowner, the owner's agent or of the person in lawful possession of the land:

- Willfully enters any lands under cultivation or enclosed by fence, belonging to, or occupied by another person; or,
- Willfully enters upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands. (Pen. Code § 602.8, subd. (a).)

*Existing law* provides that a person is guilty of trespass where the person enters private property, whether or not the property is open to the public, and the following circumstances apply:

- The person has been previously convicted of a violent felony on the property, as defined, and;
- The owner, the owner's agent, or lawful possessor, has requested a peace officer to inform the person that the property is not open to him or her;
- The peace officer has informed the person that he or she may not enter the property and informs the person that the notice has been given at the request of the owner or other authorized person;
- A single specified notification shall be valid and enforceable unless and until rescinded by the owner or other specified authorized person; and,
- This form of trespass is also committed where the person fails to leave the property upon being asked to do so as provided in the subdivision defining the crime. (Pen. Code § 602, subd. (t).)

*Existing law* allows for prosecution against those who refuse or fail to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that the officer is acting with such authority. (Pen. Code § 602, subd. (o).)

*Existing law* requires an owner, the owner's agent or person in lawful possession of real property to make a separate request to a peace officer on each occasion when a peace officer's assistance in dealing with trespass is request, although a single request for assistance may be made to cover a maximum of 30 days when there is a fire hazard to the property or the owner is absent. (Pen. Code § 602, subd. (o).)

*Existing law* authorizes an owner, owner's agent or person in lawful possession of real property to make a single request for law enforcement assistance for a period not to exceed 12 months when the premises or property is closed to the public and posted as being closed, and shall inform law enforcement when assistance is no longer desired. (Pen. Code § 602, subd. (o).)

*Existing law* provides that requests for law enforcement assistance under Penal Code §602(o) expire upon transfer of ownership of the property or upon a change in the person in lawful possession. (Pen. Code § 602, subd. (o).)

*This bill* authorizes an owner, owner's agent or person in possession of real property to make a single request for law enforcement assistance for a period not to exceed 5 years when the premises or property is closed to the public and posted as being closed.

*This bill* authorizes requests for law enforcement assistance in ejecting trespassers to be made electronically.

*This bill* requires that all requests for law enforcement assistance in ejecting trespassers be made in a notarized writing on a form provided by law enforcement.

## COMMENTS

### 1. Need for This Bill

According to the author:

“A Trespass Letter of Authority, or 602 letter, is a formal request by a business or property owner to local authorities in order to prosecute anyone who is loitering or engaging in any unlawful activity (ex., homeless encampments, illegal off-roading, etc.) on their premises. [...] Current law requires that a 602 letter be renewed annually. This takes a significant amount of time and resources both from property owners and law enforcement and disincentives stakeholders from filing the letters, reducing the efficiency and efficacy of trespassing enforcement. Riverside County alone issues between 1,200 and 1,500 602 letters annually, while the City of Lake Elsinore currently has 332 active 602 letters on file. SB 1110 would increase the time period that a 602 letter is active from 12 months to 5 years, alleviating some of the burden this process poses on the community.”

### 2. Trespass Laws Generally

The trespass laws include twelve separate sections, each with different crimes with separate elements. The major trespass section – 602 – has nearly an entire alphabet of subdivisions. Most of the subdivisions in Section 602 define separate crimes, typically each with slightly different elements than the other subdivisions. Trespassing is generally punished as a misdemeanor, though California law does include a felony for aggravated trespass.<sup>1</sup> Of the more than 30 discrete acts that constitute criminal trespassing, the most common are:

- Entering someone else's property with the intent to damage that property.
- Entering someone else's property with the intent to interfere with or obstruct the business activities conducted thereon.
- Entering and "occupying" another's property without permission.
- Refusing to leave private property after being asked to do so.<sup>2</sup>

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<sup>1</sup> Penal Code §601.

<sup>2</sup> Penal Code §602 (k), (l).

Criminal trespass laws have drawn some scrutiny in recent years as some jurisdictions began using them to address homelessness. An analysis conducted by ABC news found that in Okaloosa County, Florida, police charged hundreds of homeless people with thousands of trespassing counts in the past decade.<sup>3</sup> In Bakersfield, California, county officials proposed a program to fight homelessness by more aggressively prosecuting and incarcerating trespassers.<sup>4</sup> Critics of these approaches argue that strict enforcement of trespass laws create a cycle of arrests, hearings and fines that make emerging from homelessness all the more difficult. Responding to this criticism, Los Angeles District Attorney George Gascon in 2020 announced a new policy under which his office would decline to prosecute trespass except in specific cases of repeat offense on the same property and imminent safety risks.<sup>5</sup>

### 3. Trespass Letters of Authorization

Existing law allows owners of private property to request law enforcement assistance in ejecting trespassers from their property, but includes limits on when and how assistance may be requested based on whether the property is posted as being closed to the public. Specifically, existing law provides that when property is not posted as being closed to the public and the property owner<sup>6</sup> requests that law enforcement demand that a trespasser leave the property, the owner or agent must make a separate request each time he or she seeks law enforcement assistance. However, there is an exception under which a single request may be valid for 30 days, during which a fire hazard exists and the owner or owner's agent is absent from the property.<sup>7</sup> If the property is posted as being closed to the public, a single request for law enforcement assistance in ejecting trespassers is effective for twelve months. This is the provision of law at issue in this bill.

The request for law enforcement assistance in enforcing trespass laws at properties posted as closed to the public is generally made via a "Trespass Letter of Authority." These letters – also known as "602 Letters" – authorize local authorities to enter the premises to enforce trespass laws in the owner's absence. According to the Author, this process "reduces pressure on and increases safety for employees and property owners as they are not required to be on site to report a trespasser."

Critics, however, argue that trespass letters of authorization exacerbate homelessness by unfairly punishing homeless individuals. According to a report by the ACLU, "trespass letters of authorization enable police, local businesses, public services, and even homelessness service providers to work together to control the movements of unhoused people and exclude them from both public and private spaces."<sup>8</sup> In a case study conducted in Laguna Beach, the ACLU found that of the 97 citations issued to unhoused people during the study period, 67 resulted from

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<sup>3</sup> Little, Ryan, et al. "Cities Try to Arrest Their Way Out of Homeless Problems." *ABC News*. 29 June 2020.

<https://abcnews.go.com/US/wireStory/cities-arrest-homeless-problems-71511969>

<sup>4</sup> Throwing people in jail on drug charges? That's Bakersfield's idea to fight homelessness." *LA Times*. 27 September 2019. <https://www.latimes.com/california/story/2019-09-26/homeless-bakersfield-jail-misdemeanor-drug-trespassing>

<sup>5</sup> Special Directive 20-07 by District Attorney George Gascon. Issued on 7 December 2020.

<sup>6</sup> The owner's agent or person in lawful possession of the property, such as a lessee, also may request law enforcement assistance in preventing trespass or ejecting trespassers.

<sup>7</sup> Penal Code §602(o).

<sup>8</sup> "Outside the Law: The Legal War against Unhoused People." *ACLU California*. Published October 2021. <https://www.aclusocal.org/sites/default/files/outsidethelaw-aclufdnscareport.pdf>

trespass letters of authorization.<sup>9</sup> The report also noted that at least one police agency examined, the Newport Beach Police Department, did not have a specific 602 letter template. According to the report, a department representative told ACLU researchers that, “you can use any letter or letterhead and make it your own. As long as you mention Section 602, you should be golden.”<sup>10</sup>

#### **4. Effect of this Bill**

As stated previously, existing law provides that trespass letters of authorization submitted to law enforcement remain effective for twelve months. This bill extends the operative timeframe for 602 letters to 5 years. From the ACLU report referenced above, it is clear that some jurisdictions have very informal 602 letter processes, potentially rendering the legal effect of such letters dubious. This bill requires that trespass letters of authorization be submitted in a notarized writing on a form provided by law enforcement. Additionally, this bill allows all requests for assistance, whether related to properties posted as closed to the public or not, to be submitted electronically.

#### **5. Author’s Amendments to be Taken in Committee**

In an attempt to respond to concerns expressed by the California Public Defender’s Association and others, the author plans to take several amendments in committee, per the following:

- Reducing the operative timeframe for 602 letters from five years to three years.
- Providing that a 602 letter expires upon transfer of ownership unless the new owner notifies the relevant law enforcement agency of the change.
- Authorizing local governments to accept electronic submissions of 602 letters and related requests.

#### **6. Argument in Support**

According to the Riverside County Sheriff:

For reference, my department processes between 1,200-1,500 trespass letters annually. More specifically, my largest station (Moreno Valley Station) processed 473 letters last year, and the station that provides police services to the business owners that initiated this bill (Lake Elsinore Station) processed a total of 332 letters last year.

The amendments to Penal Code §602 that this bill proposes relieves business owners or their agents of the burdens of renewing their request once a year. It essentially reduces the number of hours my employees spend in accepting, processing, and filing these letters, enabling them to dedicate more of their time to public safety matters. This bill adds additional safeguards to prevent fraudulent requests by requiring the requests to do the following; 1) be done in writing, and 2) be notarized. It also enables law enforcement agencies to accept these letters electronically, rather than requiring business owners to physically come to the station during normal business hours to file their letters.

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<sup>9</sup> *Ibid* at 51

<sup>10</sup> *Ibid* at 47.

**7. Argument in Opposition**

According to the Ella Baker Center for Human Rights:

“SB 1110 is bad public policy which will result in innocent hikers being arrested and increased costs to the taxpayer. While the bill seeks to ease the requirements on land and/or business owners by allowing their letters to be effective for five years as opposed to one year, SB 1110 fails to acknowledge the increasingly frequent turnover in land ownership and the realities of the business of land ownership in larger counties. SB 1110’s proposed extension would do little to ease landowner responsibilities but would have an unintended effect on individuals innocently crossing land in unincorporated areas. For example, hikers on the Pacific Crest Trail traversing the Mojave Desert could easily go off course in the high desert and innocently be ensnared pursuant to a stale 602 letter in a five-year effective period. Likewise, hikers, trail runners and cyclists in West Marin would be placed in similar peril, as would backcountry skiers in the Tahoe basin.”

**-- END --**