
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 281 **Hearing Date:** March 21, 2023
Author: McGuire
Version: February 1, 2023
Urgency: No **Fiscal:** Yes
Consultant: HM

Subject: *Crimes: aggravated arson*

HISTORY

Source: Author

Prior Legislation: SB 896 (McGuire), Ch. 619, Stats. 2018
SB 930 (Berryhill), Ch. 96, Stats. 2014
AB 27 (Jeffries), Ch. 71, Stats. 2009
SB 1907 (Pacheco), Ch. 135, Stats. 2004
SB 555 (Karnette), Ch. 518, Stats. 1999
SB 1309 (Craven), Ch. 421, Stats. 1994

Support: California District Attorneys Association; California State Sheriffs' Association;
Lake County District Attorney's Office; Lake County Sheriff's Office; Cal Fire
Local 2881; Sonoma County Board of Supervisors; Sonoma County District
Attorney

Opposition: None known

PURPOSE

The purpose of this bill is to extend the operation on the aggravated arson offense factor where a fire causes property damage and losses in excess of \$8,300,000 until January 1, 2029. This bill also delays the operation of the offense that deletes the threshold dollar amount of property damages and losses as an aggravating factor until January 1, 2029.

Existing law states that a person who willfully, maliciously, deliberately, with premeditation, and with intent to cause injury to one or more persons, or to cause damage to property under circumstances likely to produce injury to one or more persons, or to cause damage to one or more structures or inhabited dwellings, sets fire to, burns, or causes to be burned, or aids, counsels, or procures the burning of any residence, structure, forest land, or property, is guilty of aggravated arson if one or more of the following aggravating factors exists (Pen. Code § 451.5, subd. (a).):

- The defendant has been previously convicted of arson on one or more occasions within the past 10 years.

- The fire caused property damage and other losses in excess of eight million three hundred thousand dollars (\$8,300,000).
- The fire caused damage, or the destruction of, five or more inhabited structures. (Pen. Code, § 451.5, subd. (a).)

Existing law provides that the courts shall consider the cost of fire suppression in calculating the total amount of property damage and other losses. (Pen. Code, § 451.5, subd. (a)(2)(B).)

Existing law states that it is the legislature's intent to review the monetary threshold amount within five years to consider the effects of inflation. (Pen. Code, § 451.5, subd. (a)(2)(B).)

Existing law states that a person who is convicted under the aggravating arson factors shall be punished by imprisonment in the state prison for 10 years to life. (Pen. Code, § 451.5, subd. (b).)

Existing law states that a person who is sentenced under the aggravating arson factors shall not be eligible for release on parole until 10 calendar years have elapsed. (Pen. Code, § 451.5, subd. (c).)

Existing law providing the monetary threshold factor shall remain in effect only until January 1, 2024, and as of that date is repealed. (Pen. Code, § 451.5, subd. (d).)

Existing law states that the deletion of the threshold of property damage and other losses shall become operative on January 1, 2024. (Pen. Code, § 451.5, subd. (d).)

This bill extends the former aggravating arson offenses until January 1, 2029, and delays the operation of the latter aggravating arson offense that deletes the threshold dollar amount of property damage and other losses as an aggravating factor until January 1, 2029.

COMMENTS

1. Need for This Bill

The author states:

The alarm couldn't be louder. Our state is facing unprecedented, destructive wildfires – 14 of the largest 20 wildfires in California history have occurred just in the last decade. Megafires have threatened the way of life for millions of Californians. Some of these horribly destructive wildfires have been set by arsonists. Such as:

- The Clayton Fire in Lake County in 2016 burned tens of thousands of acres near Lower Lake and destroyed 300 structures, including 189 homes.
- The massive five-alarm fire that destroyed a Home Depot in San Jose, causing more than \$17 million in damages.
- The July 2021 fire set by a Clearlake Oaks resident in Lake County that destroyed or damaged 11 buildings.

- The Hopkins Fire in Mendocino County that destroyed 30 homes and burned 257 acres.

SB 281 will ensure law enforcement maintain a valuable deterrent and a necessary penalty to arson-caused fires.

2. Aggravated Arson Monetary Threshold

At the time of the aggravated arson offense's implementation in 1995, the total monetary amount of property damage and other losses was set at \$5 million. The original statute, Penal Code § 451.5, provided that:

It is the intent of the Legislature that this paragraph be reviewed within five years to consider the effects of inflation on the dollar amount stated herein. For that reason, this paragraph shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

Because of this, the cost of inflation is to be considered by the legislature within five years when extending the sunset on the statute and/or making changes to the monetary threshold. The statute's sunset and monetary threshold has increased four times since 1995. The most recent sunset extension saw the threshold increase in 2014 from \$7 million to \$8.3 million in 2018 to account for inflation.

However, this bill provides no changes to the monetary threshold and maintains the \$8.3 million standard. According to the U.S. Bureau of Labor Statistics, \$8.3 million in 2018 equates to roughly \$10 million in 2023¹. The author may need to consider altering the existing threshold number to account for increased inflation since 2018.

3. Fires in California

Cal Fire Law Enforcement maintains statistics relating to the number of arson arrests from 2016 to 2022². The arson chart provided by Cal Fire displays that arson has significantly increased during these years, with 73 arrests in 2016 to 163 arrests in 2022, or about a 222% increase. Among these arrests, the author has recognized several notable cases that resulted in an aggravated arson charge:

1. In April 2022 in San Jose, Dyllin Jaycruz Gogue faced ten felony counts including aggravated arson, arson of an inhabited structure or property, and grand theft, plus three petty theft misdemeanors, for starting a five-alarm fire at a Home Depot, charging documents show³.
2. In August 2022 in Clear Lake Oaks, the defendant faced charges of aggravated arson, arson of an inhabited structure, causing a fire of an inhabited structure, possessing material for arson, and threatening to commit a crime. Causing the destruction or damage of 11 buildings. The defendant are also being charged with

¹ "CPI Inflation Calculator," accessed February 21, 2023, https://www.bls.gov/data/inflation_calculator.htm

² "Statistics," accessed March 14, 2023, <https://www.fire.ca.gov/our-impact/statistics>

³ "San Jose Home Depot fire: Man charged with arson in connection with massive fire," accessed February 22, 2023, <https://www.cnn.com/2022/04/20/us/san-jose-arson-theft-home-depot/index.html>

being under the influence of a controlled substance and carrying a concealed dirk/dagger in another matter⁴.

3. In 2016, Lake County suffered through the Clayton Fire that burned tens of thousands of acres near Lower Lake and destroyed 320 structures, including 188 homes. Clearlake resident Damin Pashilk was arrested and is in jail for igniting the destructive Clayton Fire, which devastated the lives of hundreds of Californians. The estimated cost of the fire was \$19,743,079.79⁵.
4. In November 2017, Jeffery Cameron Schmid was sentenced to the maximum penalty for an aggravated arson charge and four other counts of felony arson of forest land⁶. The Minerva Fire, Toll Fire, Squirrel Fire, Rhinehart Meadows Fire, and 89'er Fire encompassed these charges. The Minerva Fire itself burned 4,310 acres and took 163 days to contain; contributing to the third most destructive wildfire season in California⁷.

The author and supporters assert that by extending the sunset of this statute, law enforcement and prosecutors will continue to have the necessary and valuable tools to handle the most dangerous arsonists in California that risk lives and cause a strain on local governments and first responders.

4. Argument in Support:

According to the California's District Attorneys Association:

Aggravated arson requires a defendant to act with premeditation and is limited to repeat and serial arsonists. It is also limited to the most serious and devastating arsons – those that damage or destroy multiple homes or that cause more than \$8.3 million in property damage and fire suppression costs. The current version of P.C. 451.5 is scheduled to sunset on January 1, 2024, which means that the part of aggravated arson that applies to fires that cause extensive property damage and require major costs to suppress will be eliminated from the statute. Deliberately set fires continue to be a major problem in California, and therefore it is vital that prosecutors and judges continue to have the ability to address aggravated arson conduct.

In Plumas County in 2017, an offender was convicted of aggravated arson and four other arson counts for the Minerva fire, the Toll fire, the Squirrel fire, the Rhinehart Meadows fire, and the 89'er fire, and was ordered to pay over \$25 million in restitution.

⁴ “Judge holds Clearlake Oaks woman to answer arson charges,” accessed February 23, 2023, <https://www.record-bee.com/2022/08/25/judge-holds-clearlake-oaks-woman-to-answer-arson-charges/>

⁵ “Cal Fire officials discuss firefighting costs, testing of potential ignition sources in Clayton fire preliminary hearing,” accessed February 2023, 2023, <https://www.lakeconews.com/news/60204-cal-fire-officials-discuss-firefighting-cost-testing-of-potential-ignition-sources-in-clayton-fire-preliminary-hearing>

⁶ “Man who set five Plumas forest fires sentenced to prison,” accessed March 9, 2023, <https://www.sacbee.com/news/local/crime/article182640946.html>

⁷ “Minerva Fire Incident Report,” accessed February 23, 2023, <https://www.fire.ca.gov/incidents/2017/7/29/minerva-fire/>

In Monterey County, an offender was convicted in 2022 for the 2020 Big Sur Dolan fire that seriously injured a firefighter, destroyed multiple structures, including ten residences, burned over 124,000 acres, and killed a dozen endangered California condors.

Cal Fire Law Enforcement statistics also show that arson arrests have increased significantly from 2016 to 2022. (<https://www.fire.ca.gov>)

These examples highlight the continued need to be able to target individuals who start fires that cause extensive property damage and require major costs to suppress.

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