
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 602 **Hearing Date:** April 11, 2023
Author: Archuleta
Version: March 20, 2023
Urgency: No **Fiscal:** No
Consultant: AB

Subject: *Trespass*

HISTORY

Source: City of Bellflower

Prior Legislation: SB 1110 (Melendez, 2022), failed on Assembly Floor
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 Apartment Association; California Contract Cities Association;
California State Sheriffs' Association; City of Banning; City of Colton; City of
Corona; City of Downey; City of Eastvale; City of Hawaiian Gardens; City of
Lakewood; City of Menifee; City of Norwalk; City of Perris; City of Paramount;
City of Pico Rivera; City of Riverside; City of Whittier; City of Wildomar; League
of California Cities; Los Angeles County Division, League of California Cities;
Riverside County Sheriff's Office; Riverside County Supervisor Karen Spiegel

Opposition: None known

PURPOSE

The purpose of this bill is to extend the operative timeframe for trespass letters of authorization from 30 days to the shorter of 12 months or a time period determined by local ordinance for properties where there is a fire hazard or the owner is absent, and from 12 months to 3 years for properties closed to the public and posted as being closed to the public. Additionally, this bill requires trespass letters of authorization to be submitted in a notarized writing on a form provided by law enforcement, and authorizes 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, and the property is not posted as closed to the public. (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 lawful possession to make a single request for law enforcement assistance, in a notarized writing on a form provided by the law enforcement agency, to cover a limited period of time not to exceed a time period determined by local ordinance or 12 months, whichever is shorter, during which there is a fire hazard at the subject property or the owner, owner's agent, or person in lawful possession will be absent from the property, and when the property is not posted as closed to the public.

This bill authorizes an owner, owner's agent, or person in lawful possession to make a single request for law enforcement assistance, in a notarized writing on a form provided by the law enforcement agency, to cover a period not to exceed 3 years when the premises is closed to the public and posted as being closed.

This bill requires the requestor, in the event that assistance is no longer required before the period not exceeding 3 years expires, to inform the law enforcement agency in writing.

This bill provides that a request for law enforcement assistance shall expire upon the transfer of ownership of the property or upon a change in the person in lawful possession unless the transferee or new person in lawful possession notifies the relevant law enforcement agency or city of the change.

This bill authorizes requests for law enforcement assistance to be submitted and accepted electronically.

COMMENTS

1. Need for This Bill

According to the Author:

SB 602 will help local governments deal with public nuisance and graffiti issues by extending the timeframe for Letters of Agency from 30 days up to 12 months based on local ordinances and extends the operative timeframe for trespass authorization letters from 12 months to 3 years if the property is closed to the public and posted as being closed. The bill also will allow for electronic filing of these letters.

Currently, in order for cities to complete such abatement, cities and their respective law enforcement agencies are required to obtain an updated letter every 30 days from property owners. It can be extremely difficult for local governments to obtain Letters of Agency in an expeditious manner from unresponsive absentee owners.

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.¹ 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.²

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.³ In Bakersfield, California, county officials proposed a program to fight homelessness by more aggressively prosecuting and incarcerating trespassers.⁴ 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

¹ Penal Code §601.

² Penal Code §602 (k), (l).

³ 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>

⁴ 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>

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.⁵

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 owner⁶ 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. 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.⁷ These are the provisions of law at issue in this bill.

The request for law enforcement assistance in enforcing trespass laws at properties posted and not posted as closed to the public is generally made via a "Trespass Letter of Authority."⁸ 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, obtaining these letters can be a laborious process, which "results in local governments and their law enforcement agencies having to use valuable staff resources and time for administrative purposes when they could be using their time more productively to serve their communities."

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."⁹ 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 trespass letters of authorization.¹⁰ 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."¹¹ However, research conducted by committee staff shows that an increasing number of local jurisdictions are using standardized trespass letters provided on their internet websites.¹²

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

⁶ 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.

⁷ Penal Code §602(o).

⁸ These letters are also known as "Letters of Consent" and "Letters of Agency."

⁹ "Outside the Law: The Legal War against Unhoused People." *ACLU California*. Published October 2021.

<https://www.aclusocal.org/sites/default/files/outsidethelaw-aclufdnsca-report.pdf>

¹⁰ *Ibid* at 51

¹¹ *Ibid* at 47.

¹² For example, see <https://www.placer.ca.gov/DocumentCenter/View/36521/Trespassing-Signs?bidld=>, and <https://www.malibucity.org/letterofagency>

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 for properties posted as closed to the public, and for 30 days for unposted properties where there is a fire hazard or the owner or owner's agent is not present. This bill extends the operative timeframe 602 letters to 3 years for posted properties, and to the shorter of 12 months or a duration set by local ordinance for unposted properties. This bill requires that all 602 letters be submitted in a notarized writing on a form provided by law enforcement, and authorizes letters to be submitted and excepted electronically. Additionally, whereas existing law provides that 602 letters automatically expire upon the transfer of ownership or in the lawful possession of a property, this bill would instead provide that active 602 letters expire upon transfer of the property unless the transferee or new person in lawful possession notifies the relevant law enforcement agency or city of the change.

5. SB 1110 (Melendez, 2022)

This bill is substantially similar to Senate Bill 1110 from 2022, except that that bill did not extend the operative timeframe for 602 letters submitted for properties not posted as closed to the public, i.e. those currently effective for a maximum of 30 days. SB 1110 passed this committee by a vote of 5-0.

6. Argument in Support

According to the bill's sponsor, the City of Bellflower:

By extending the effective duration of Letters of Agency from 30 days to 12 months and the operative timeframe of trespass authorization letters from 12 months to 3 years, SB 602 would significantly improve local peace officer response capabilities, help mitigate the impacts of underlying nuisances, and provide a more convenient and accessible mechanism for property owners to participate in these proactive efforts.

Currently, in order for local governments to complete graffiti removal and other public nuisance abatement on private property, cities and their respective law enforcement agencies are required to obtain an updated letter every 30 days from private property owners. However, it can be extremely difficult for local governments to obtain updated letters expeditiously from unresponsive, absentee property owners for essential public nuisance abatement. As such, local governments cannot appropriately abate graffiti and public nuisances promptly – which results in blight throughout the City.

-- END --