
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair
2025 - 2026 Regular Session

AB 468 (Gabriel) - Crimes: looting

Version: July 16, 2025

Urgency: No

Hearing Date: August 18, 2025

Policy Vote: PUB. S. 6 - 0

Mandate: Yes

Consultant: Liah Burnley

Bill Summary: AB 468 increases the punishment for theft during a state of emergency or in an evacuation zone.

Fiscal Impact:

- Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate the increased criminal penalties in this bill. Defendants are constitutionally guaranteed certain rights during criminal proceedings, including the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation). Increasing penalties leads to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the numbers of people charged with an offense and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. This is a conservative estimate, based on the hourly rate of court personnel including at minimum the judge, clerk, bailiff, court reporter, jury administrator, administrative staff, and jury per-diems. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.
- Unknown, potentially significant cost pressures (local funds, General Fund) to county probation departments of an unknown, but potentially significant amount, if individuals convicted under this bill are sentenced to probation and ordered to community service, as specified in this bill. In each criminal case, county probation departments conduct investigations to provide presentencing reports to the courts after a conviction, supervise people in the community to ensure they comply with the terms of their supervision, and refer people to programs intended to help them avoid committing new crimes and improve their lives. This bill could create additional workload and costs pressures for probation departments, namely ensuring the defendant attends the required community service. Actual supervision costs will vary by each county probation department and how many individuals sentenced to probation. It is not clear whether the county probation duties imposed by this bill constitute a reimbursable state mandate or whether they may be subject to Proposition 30 (2012). Proposition 30 provides that legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by realignment applies

to local agencies only to the extent the state provides annual funding for the cost increase.

- Unknown, potentially significant costs (local funds, General Fund) to the counties to incarcerate people for the crimes created by this bill and to incarcerate individuals sentenced to probation to mandatory minimum jail sentences specified in this bill. The average annual cost to incarcerate one person in county jail varies by county, but likely ranges from \$70,000 to \$90,000 per year. For example, in 2021, Los Angeles County budgeted \$1.3 billion for jail spending, including \$89,580 per incarcerated person. Actual incarceration costs to counties will depend on the number of convictions and the length of each sentence. Generally, county incarceration costs are not reimbursable state mandates pursuant to Proposition 30 (2012).
- Unknown, potentially significant costs (General Fund) to the Department of Corrections and Rehabilitation (CDCR) to incarcerate people for the crimes created by this bill. The Legislative Analyst's Office (LAO) estimates the average annual cost to incarcerate one person in state prison is \$133,000. The Governor's budget estimates that Proposition 36 (2024), which increased punishment for various theft and drug crimes, will increase the average daily prison population, creating additional costs pressures for the state. Further, given the prevalence of mental health needs among incarcerated people, legislation that sends more people to state prison adds significant costs to CDCR for the delivery of mental health care. About one-third of the prison population has a diagnosed mental health need. The annual cost of operating a mental health crisis bed at CDCR is around \$400,000. As part of the ongoing Coleman court case, CDCR has been incurring fines monthly since April 2023 for failing to reduce vacancy rates for five mental health classifications. The state has paid over \$200 million in fines to date, and is still accruing fines. While some individuals incarcerated under this bill will serve their felony sentences in county jail, this bill specifies that violations are punishable "pursuant to subdivision (h) of Section 1170." Under subdivision (h) of Section 1170 of the Penal Code, if the defendant has specified prior felony convictions, the sentence for a felony shall be served in the state prison. Thus, if even if just one person is sentenced to state prison for one year under this bill, it will add significant costs pressures to CDCR.
- Potential cost pressures (General Fund) to the Department of State Hospitals (DSH), in order to adequately house, treat, and care for persons committed to DSH that otherwise would not. Cost pressures to DSH are connected with an increase in state prison sentences. Expanding criminal penalties, especially state prison felonies, will increase the number of defendants declared incompetent to stand trial (IST), or committed to DSH due to their being not guilty by reason of insanity. DSH's proposed budget for fiscal year 2025-26 totals \$3.4 billion – an increase of \$3.4 million from the 2024 Budget Act. An increase the DSH population would result in the need for additional funding.

Background: Existing law defines looting as the commission of specified crimes during a state or local emergency, or in a county that is under an evacuation, and creates penalties in addition to the underlying offense for looting. Specifically, where the underlying offense is burglary or grand theft, the punishment for looting is an alternate

felony-misdemeanor punishable by imprisonment in county jail for up to one year or by imprisonment for 16 months, two years, or three years. (Pen. Code, § 463.)

Proposed Law:

- Clarifies, for the purposes of burglary, the fact that the structure entered has been damaged by a natural or other disaster, or the extent of that damage, does not preclude conviction.
- Repeals Penal Code section 463 relating to theft during a state of emergency, and recasts the provisions as follows:
 - 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.
 - Defines “Evacuation zone” as an evacuation area or an area subject to an evacuation warning, as defined in Section 2470.1 of Title 19 of the California Code of Regulations. An evacuation zone includes one or more residential dwelling units while it is undergoing reconstruction following damage or destruction caused by an earthquake, fire, flood, riot, or other natural or manmade disaster, after an evacuation order or warning has been lifted, for up to four years from the date an evacuation order or warning went into effect, but does not include detached structures on the same property that are not dwelling units or are not otherwise usable for human habitation.
 - Defines “Local emergency” as conditions that, 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” shall exist from the time of the proclamation of the condition of the emergency by the local governing body until terminated pursuant to Section 8630 of the Government Code.
 - Provides that, “Reconstruction” includes, but is not limited to, the time from initial debris removal through the issuance of the certificate of occupancy.
 - Defines “State of emergency” as conditions that, 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” shall exist from the time of the proclamation of the condition of the emergency until terminated pursuant to Section 8629 of the Government Code.
 - Provides that all of the following offenses when committed during and within an affected county in a “state of emergency” or a “local emergency,” or under an “evacuation order,” resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster are looting and are punishable as follows:

- A violation of Section 459, punishable as a second-degree burglary pursuant to subdivision (b) of Section 461, is punishable by imprisonment in a county jail for one year or pursuant to subdivision (h) of Section 1170.
 - A violation of Section 487 or subdivision (a) of Section 487a, except grand theft of a firearm, is punishable by imprisonment in a county jail for one year or pursuant to subdivision (h) of Section 1170.
 - Grand theft of a firearm, as defined in Section 487, is punishable by imprisonment in the state prison, as set forth in subdivision (a) of Section 489.
 - A violation of Section 488 is punishable by imprisonment in a county jail for six months.
- Provides that all of the following offenses when committed during and within an evacuation zone are looting and are punishable as follows:
 - A violation of Section 459, punishable as a first-degree burglary pursuant to subdivision (a) of Section 461, is punishable by imprisonment in the state prison for a term of two, four, or seven years.
 - A violation of Section 459, punishable as a second-degree burglary pursuant to subdivision (b) of Section 461, is punishable pursuant to subdivision (h) of Section 1170.
 - A violation of Section 487 or subdivision (a) of Section 487a, except grand theft of a firearm, is punishable pursuant to subdivision (h) of Section 1170.
 - A violation of Section 602, with the intent to commit larceny, punishable by imprisonment in a county jail for one year or pursuant to subdivision (h) of Section 1170.
 - Notwithstanding Section 490.2, theft from an unlocked vehicle is punishable by imprisonment in a county jail for one year or pursuant to subdivision (h) of Section 1170. This paragraph shall not preclude prosecution under any other provision of law.
 - Provides that these provisions shall become operative only if Senate Bill 571 of the 2025–26 Regular Session is enacted and becomes effective on or before January 1, 2026.

Related Legislation: SB 571 (Archuleta) provides for increased penalties for impersonating a first responder in an area subject to an evacuation order and provides that the fact that a person convicted of looting committed the offense while impersonating emergency personnel is a factor in aggravation at sentencing. SB 571 is pending in the Assembly Appropriations Committee.

Staff Comments: Instead of responding to the expressed needs of people impacted by the fires, this bill prioritizes, at substantial state and local costs, an ineffective criminal response. There is no evidence that the prosecutors have not been able to prosecute looting under current law. Research shows that lengthy criminal sentences, which are costly to state and local governments, do not effectively deter crime. In general, the certainty that someone will be punished for an offense plays a larger role in deterring criminal activity, rather than the length of potential punishment. Even worse, by creating new felony offenses this bill will lead to devastating immigration consequences for noncitizens. A theft offense is an aggravated felony for immigration purposes under federal law. (8 USC § 1101(a)(43)(G) & (U).)

Further, mass incarceration in California did not occur in a vacuum; it was the result of decades of cumulative policy decisions, that while well-intentioned, collectively expanded the scope and severity of the criminal justice system. Although individual pieces of legislation like this bill, and many others introduced this legislative session, may appear narrow or incremental, their combined effect will significantly increase incarceration rates. California has a well-documented history of prison overcrowding, which culminated in federal court intervention and a U.S. Supreme Court ruling in *Brown v. Plata* (2011) that found the state's prison conditions unconstitutional due to severe overcrowding. Returning to such conditions would undermine fiscal sustainability, public safety, and rehabilitation goals.

The state strives to have a balanced system that preserves public safety while remaining fiscally responsible. Given the state's fiscal situation, the May Revision to the Governor's 2025-26 Budget proposes to close one additional prison by October 2026. Upon full closure, the state will achieve an estimated savings of about \$150 million General Fund annually. Measures that increase the incarcerated population threaten the state's ability to continue making progress in right-sizing California's prison system.

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