

RESOLUTION 06-07-2017 (APPROVED AS AMENDED)

DIGEST

Burglary: To Include Recreational Vehicles And Inhabited Cars

Amends Penal Code section 460 to include the burglary of an inhabited recreational vehicle or house car as first degree burglary.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 460 to include the burglary of an inhabited recreational vehicle or house car as first degree burglary. This resolution should be approved in principle because it recognizes the severity and intrusiveness of a burglary to a residence, regardless of whether the residence is a vehicle or a more traditional dwelling.

Residential burglaries are punished more severely than other burglaries, because of the danger and intrusiveness of the act. There is a strong public policy that people should feel secure in their homes. Penal Code section 460, subdivision (a) states that a residential burglary is of “an inhabited dwelling house, vessel . . . which is inhabited and designed for habitation, floating home, . . . or trailer coach... or the inhabited portion of any other building. . . .” It recognizes that a person’s “home” is not necessarily a conventional brick-and-mortar dwelling. People live in a variety of unconventional homes, but they are homes nonetheless.

Although Penal Code section 460, subdivision (a) does not specifically include an inhabited recreational vehicle or house car, case law has consistently applied this statute to dwellings other than those specifically listed in the statute. “[I]t is the element of habitation, not the nature of the structure that elevates the crime of burglary to first degree.” (*People v. Wilson* (1992) 11 Cal.App.4th 1483, 1489). In *People v. Trevino* (2016) 1 Cal.App.5th 120, the court applied this logic to an inhabited recreational vehicle. This interpretation has been adopted in the CALCRIM jury instructions. (See CALCRIM No. 1702, bench note.) This resolution should be approved in principle to codify and clarify that recreational vehicles or house cars are embraced within the definition of inhabited dwelling for purposes of the crime of first degree burglary.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 460 to read as follows:

- 1 § 460.
- 2 (a) Every burglary of an inhabited dwelling house, vessel, as defined in the Harbors and
- 3 Navigation Code, which is inhabited and designed for habitation, floating home, as defined in
- 4 subdivision (d) of Section 18075.55 of the Health and Safety Code, inhabited recreational
- 5 vehicle or house car, or trailer coach, as defined by the Vehicle Code, or the inhabited portion of

- 6 any other building, is burglary of the first degree.
7 (b) All other kinds of burglary are of the second degree.
8 (c) This section shall not be construed to supersede or affect Section 464 of the Penal
9 Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Currently, the definition of first degree burglary in Penal Code section 460 does not include inhabited recreational vehicles or house cars. This omission required the Second District Court of Appeal in *People v. Trevino* (2016) 1 Cal.App.5th 120, to imply the inclusion of such inhabited dwellings within the definition of first degree burglary in section 460.

The Solution: This resolution would add the language inferred by the *Trevino* court to clarify the issue and obviate the necessity of resorting to case law such as *Trevino* for clarification of this element of the crime.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

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