

RESOLUTION 03-01-2018

DIGEST

Vandalism While Incarcerated: Making it a “Wobbler” Offense

Amends Penal Code section 4600 to make vandalism to property in a jail or prison, where damage exceeds \$950, chargeable as either a felony or a misdemeanor.

STATEMENT OF REASONS

The Problem: Under current law, vandalism over \$400 occurring outside of county jail is a wobbler, meaning it can be charged as a misdemeanor or a felony. However, under current law vandalism in a county jail is always a felony, unless the damage is less than \$950. Many vandalism offenses in county jail involve mentally ill defendants who break a window or other item while off their medications. Refusing to allow a court to consider the individual circumstances of the case for these defendants makes little sense, especially when such determinations are made as a matter of course for vandalism cases that occur on the street.

The Solution: This resolution would make vandalism in county jail chargeable as either a felony or a misdemeanor at the discretion of the prosecution or the court, after consideration of the nature of the offense and the defendant’s criminal history.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 4600 to read as follows:

- 1 § 4600
- 2 (a) Every person who willfully and intentionally breaks down, pulls down, or otherwise
- 3 destroys or injures any jail, prison, or any public property in any jail or prison, is punishable by a
- 4 fine not exceeding ten thousand dollars (\$10,000), and by imprisonment in a county jail not
- 5 exceeding one year, or pursuant to subdivision (h) of Section 1170, except that where the
- 6 damage or injury to any city, city and county, or county jail property or prison property is
- 7 determined to be nine hundred fifty dollars (\$950) or less, that person is guilty of a misdemeanor.
- 8 (b) In any case in which a person is convicted of violating this section, the court may
- 9 order the defendant to make restitution to the public entity that owns the property damaged by
- 10 the defendant. The court shall specify in the order that the public entity that owns the property
- 11 damaged by the defendant shall not enforce the order until the defendant satisfies all outstanding
- 12 fines, penalties, assessments, restitution fines, and restitution orders.

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

PROPONENT: Los Angeles County Bar Association

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 4600 to make vandalism to property in a jail or prison, where damage exceeds \$950, chargeable as either a felony or a misdemeanor. This resolution should be approved in principle because the court should be able to consider the individual circumstances of the case and decide whether justice is best served by punishing the offense as a misdemeanor or a felony, instead of being required to punish such occurrences as a felony.

Vandalism resulting in damage of over \$400 to property outside of a jail or prison is treated as a wobbler, that is, it may be treated as a misdemeanor or felony. (Pen. Code, § 594, subd. (b).) Under Penal Code section 4600, vandalism to property in a jail or a prison is a felony, unless the damage is less than \$950.

Property damage occurring in a county jail can occur for a number of reasons. For example, a mentally ill arrestee may break a window or cause other damage while off medication or not properly stabilized. Then there is the vengeful prisoner who willfully destroys prison property. In general, prisoners should be deterred from damaging property while in confinement, but as with other vandalism crimes, in cases of damage or injury to jail or prison property, the prosecution and the court should have discretion to charge and/or punish the act either as a felony or a misdemeanor based on the individual circumstances of the case, regardless of the value of the damage.