

ENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1991 (Gabriel)
Version: June 13, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Motels and hotels: publicly funded shelter programs

DIGEST

This bill provides that hotels and motels can evict a guest who is a participant in a shelter program without the need to go through the unlawful detainer process in the courts even if the guest has stayed longer than 30 days, provided that the shelter program operates with specified characteristics.

EXECUTIVE SUMMARY

Under existing California law, hotel and motel guests can ordinarily be kicked out by the innkeeper without resorting to any special process. However, once a guest has stayed for longer than 30 consecutive days, the guest becomes a tenant. From that point forward, if the hotel or motel wishes to kick the person out, the hotel or motel must go to court and obtain an order for eviction from a judge through the unlawful detainer process. The court process helps to protect important tenant rights, but it is longer, more costly, and more complicated than simply kicking someone out. For that reason, many hotel and motel owners prefer not to let guests to stay longer than 30 days. This is a problem for housing programs that use hotels and motels as sources of medium and long-term shelter for people who would otherwise be homeless. In an attempt to address that problem, this bill provides that a hotel or motel guest who is part of a shelter program with specified characteristics does not become a tenant after living at the hotel or motel for 30 consecutive days. The required characteristics of the shelter program are intended to ensure the participant some protection against losing all options for shelter even when the hotel or motel will no longer allow the guest to stay.

The bill is sponsored by the Los Angeles Homeless Services Authority and LA Family Housing. Support comes from several re-housing support service organizations. Opposition comes from a lodging trade association which asserts that the bill's requirements for removal of a long-term guest will still discourage hotel and motel owners from accepting such guests. The bill passed off of the Assembly Floor 75-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that general landlord-tenant law does not apply to transient occupancy in a hotel or motel lasting 30 days or less. (Civ. Code § 1940; Rev. & Tax Code § 7280(a).)
- 2) Exempts the removal of a hotel or motel guest staying 30 days or less from the unlawful detainer statutes requiring court proceedings and a judicial order to evict a tenant. (Code Civ. Proc. § 1161(6).)
- 3) States that every person is guilty of a misdemeanor who willfully commits a trespass by refusing or failing 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 (1) 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 peace officer is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. (Pen. Code § 602(o).)

This bill:

- 1) Defines "motel or hotel" to mean a dwelling unit that an innkeeper retains a right of access to and control of, and that provides or offers all of the following services to all of the residents:
 - a) facilities for the safeguarding of personal property, as specified;
 - b) central telephone service, as specified; and
 - c) maid, mail, and room services.
- 2) Defines "shelter program" to mean a city-, county-, continuum of care-, state-, or federally funded shelter, interim housing, motel voucher, or emergency shelter program.
- 3) Defines "shelter program participant" to mean an occupant of a motel or a hotel whose occupancy is due to their participation in a shelter program.
- 4) Provides that a hotel or motel shall not be designated as a non-transient motel or hotel solely because the shelter program participant occupies the hotel or motel for longer than 30 days.
- 5) Specifies that the bill must not be interpreted to either confer or deny any tenant rights or protections for persons who rent or any rights that a tenant may otherwise be entitled to under any applicable federal, state, or local law.

- 6) Provides that shelter program participants shall not have their continued occupancy in a motel or hotel constitute a new tenancy and shall not be considered a tenant if the shelter program meets all of the following requirements:
 - a) it adheres to the core components of Housing First;
 - b) it has established, adopted, and clearly documented rules governing how and for what reasons a shelter program participant's enrollment may be terminated which are disclosed in writing, in plain language, at the commencement of the program participant's occupancy;
 - c) permissible reasons for termination include: possession of weapons, sexual misconduct or assault, behaviors that are a danger to others, verbally or physically threatening behaviors which arise to a "direct threat" as specified, physical violence to staff or other program participants, direct observation of participant engaging in illegal activity on site, time limits established by the shelter program, or violations of hotel and motel policies;
 - d) it requires terminations for reasons not stated above in c) or terminations for reasons not stated in the motel or hotel policies, must be approved by the city, county, or continuum of care entity that is administering the shelter program and shared with their shelter program participants in a clearly labeled document;
 - e) it has established procedures that are disclosed to occupants in writing at the beginning of their occupancy regarding how a shelter program participant will be provided a written termination notice if a termination occurs;
 - f) it provides an exit plan upon termination of a shelter program participant that includes referrals to any available local shelter service. In exigent circumstances that necessitate the presence of first responders, police, or fire department and render it infeasible to provide a termination letter at that time or coordinate a post exit plan, the shelter program operator shall create a termination letter that satisfies the above-described requirements and make that documentation available to participants within 24 hours of their request; and
 - g) it has a grievance process that complies with due process, which is disclosed to shelter program participants in writing, in plain language, at the commencement of their occupancy, that gives shelter program participants a right to due process appeal through the administrator of the shelter program if the shelter program participant believes they were or are being wrongfully terminated from the program, and informed shelter program participants on how to access and initiate the grievance process.
- 7) Provides that properties which are being converted from use as a motel or hotel, or from use as a shelter, interim housing, emergency shelter, or other interim facility to a permanent housing site are not required to comply with the process for eviction of occupants from the date that the site receives a certificate of occupancy as a permanent housing site.
- 8) Prohibits a hotel or motel from doing either of the following:

- a) adopting termination policies specifically for motel or hotel occupants who are shelter program participants that do not apply to other motel or hotel occupants who are not participating in a shelter program, impose restrictions on the ability of program participants to freely enter or exit the property or access certain areas or amenities of the property that do not apply to other motel or hotel occupants, or levy charges and fees, including fees for room card replacements, that do not apply to other motel or hotel occupants; and
- b) require shelter program participants to check out and reregister, move out of rooms or between rooms, or from the hotel or motel while actively enrolled in the shelter program unless their continued occupancy of the unit of the motel or hotel constitutes a clear and imminent threat to health and safety of the occupant.

COMMENTS

1. California's epidemic of homelessness

California's well-documented housing affordability crisis has caused a significant increase in the state's homeless population in recent years.¹ A majority of California tenant households qualify as "rent-burdened," meaning that 30 percent or more of their income goes to the rent. Over a quarter of California tenant households are "severely rent-burdened" meaning that they spend over half their income on rent alone. Prior to the imposition of COVID-19 pandemic-related protections against eviction, approximately 165,000 tenants faced eviction in California courts each year.² A 2020 point-in-time count found that around 161,500 Californians were homeless on any given night.³ Of those, about 113,000 fell under the definition of "unsheltered" meaning that they were living outdoors as opposed to in temporary shelters; 26,000 were part of families with children; and another 13,000 are young adults living on their own.⁴

2. Hotels and motels as part of the solution

One promising way to get at least some people off of the streets and into shelter is to put them up in hotels and motels. This policy approach made particular sense during the early part of the COVID-19 pandemic when many hotels and motels stood mostly vacant and there was a concern that homeless people in congregate settings might be particularly susceptible to infection and illness. Two signature Newsom Administration

¹ Cuellar Mejia and Hsieh, *A Snapshot of Homelessness in California* (Feb. 19, 2019) Public Policy Institute of California <https://www.ppic.org/blog/a-snapshot-of-homelessness-in-california/> (as of Jun. 10, 2022).

² Inglis and Preston. *California Evictions are Fast and Frequent* (May 2018) Tenants Together http://www.tenants-together.org/sites/tenants-together.org/files/CA_Evictions_are_Fast_and_Frequent.pdf (as of Jun. 10, 2022) at p. 2.

³ Nichols, *California's Homeless Population Rose 7% to 161,000 Ahead of the Pandemic* (Mar. 19, 2021) Capitol Public Radio <https://www.capradio.org/articles/2021/03/19/californias-homeless-population-rose-7-to-161000-ahead-of-the-pandemic-new-report-finds/> (as of Jun. 28, 2021).

⁴ *The 2022-23 Budget: The Governor's Homelessness Plan* (Feb. 9, 2022) Legislative Analyst's Office <https://lao.ca.gov/Publications/Report/4521> (as of Jun. 10, 2022).

programs designed to reduce homelessness – Project RoomKey and Project HomeKey – both relied heavily on the use of hotel and motel rooms as a source of either interim or long-term housing for people who would otherwise be homeless.

3. Existing law regarding removal of guests from hotels and motels

While hotels and motels offer a potential path to shelter for at least some of California's homeless population, existing landlord-tenant law presents a complication. Under current law, most landlord-tenant law does not apply to transient hotel and motel guests. (Civ. Code § 1940.) Specifically, the law treats people staying at hotels and motels for 30 days or less as guests, not tenants. (Civ. Code § 1940; Rev. & Tax Code § 7280(a).) As a result, hotels and motels are free to demand that people staying for short periods of time leave at any time. If the guests will not leave voluntarily, the hotel or motel can summon law enforcement to enforce the demand. (Pen. Code §602(o).)

Once a guest has stayed at a hotel or motel for more than 30 days, however, the guest becomes a tenant in the eyes of the law. As a tenant, someone staying at a hotel or motel for more than 30 days gains certain additional rights. Of greatest relevance to this bill, a tenant can no longer be forced to leave at the whim of the hotel or motel management. Instead, in order to evict a tenant from a hotel or motel room, the hotel or motel would have to obtain a judicial order for eviction through the unlawful detainer process in the courts.

4. Benefits and drawbacks of the unlawful detainer process in this context

The unlawful detainer process protects people's housing rights. It prevents them from being kicked out suddenly, arbitrarily, or unlawfully by making the person trying to evict persuade a judge that such a drastic step is legally justified. In theory, at least, the unlawful detainer process also ensures that the person getting kicked out of their home has the opportunity to tell the judge their side of the story. It is, in essence, a fast-moving civil legal proceeding.

While unlawful detainer actions typically proceed very quickly by comparison with most other legal matters, they obviously take much longer than simply telling someone to get out and, if necessary, enlisting the assistance of law enforcement to accomplish that. Additionally, the unlawful detainer process costs a lot more and is far more complex. For these reasons, many landlords chafe at having to go through the unlawful detainer process in order to retake possession of their property.

5. The shuffle

For hotel and motel owners, there is a relatively easy way to avoid the unlawful detainer process: never let a guest stay longer than 30 days. Technically, this strategy for trying to avoid the unlawful detainer process can violate the law. (See Civ. Code § 1940.1.) Nonetheless, according to the proponents of this bill, it is commonplace and a

significant problem for efforts to keep homeless people housed in hotels and motels for longer periods of time. Some hotels and motels simply refuse to participate in shelter programs which include long-term stays. This limits the amount of shelter that a program can provide. Other hotels and motels apparently participate, but they require the shelter participants to shuffle between rooms or locations every 30 days. This is highly disruptive to the lives of the program participants.

6. Compromise solution proposed by this bill

To incentivize hotels and motels to allow people who would otherwise be homeless to stay longer than 30 days while still ensuring that they have some protection against the arbitrary loss of their shelter, this bill strikes something of a compromise. Under the bill, hotel and motel guests who are participants in government shelter programs will not become tenants after staying for more than 30 days and their removal will not be subject to the unlawful detainer process, but only if the rules of the shelter program itself provide for certain alternative protections. Key components of those alternative protections include that the shelter program agrees to:

- adhere to Housing First principles;
- have and follow written protocols, given to participants in advance, explaining the grounds on which they may be terminated from the program and what procedures will be used;
- terminate participants from the program only for serious and specified offenses;
- have a grievance procedure; and
- provide an exit plan to participants who are terminated from the program.

In essence, what all of this means is that hotels and motels would be able to kick out shelter program participants at any time, but such removals could only be undertaken pursuant to previously agreed upon rules, and physical removal from the hotel or motel would not automatically mean that the participant would get thrown out of the shelter program too. Instead, unless the participant did something bad enough to warrant removal from the program as well as the hotel or motel, then the participant would remain in the shelter program and the shelter program would be obligated to make a good faith effort to find the participant an alternative option for shelter. The participant has no guarantee that alternative shelter can be found.

Even this compromise may not be enough to convince some hotel and motel owners to participate in the programs and to allow guests to stay for more than 30 days. Writing in opposition to the bill unless amended, the California Hotel and Lodging Association (CHLA) states that:

Based on feedback from hoteliers that currently host shelter program participants, the non-tenancy provisions of this measure [...] would be an effective tool to encourage hoteliers to participate

in homeless support programs. However, the subsequent restrictions on program operations, lack of clear standards for program servicing, absent definitions, restrictions on hotel policies, and narrow removal limitations are significant disincentives for hotels – particularly when they are locked in statute. Each housing situation is unique, and each hotel property already needs to overcome a range of barriers in order to participate in these programs. CHLA urges the author to amend this measure to allow hotels the flexibility to contract with service providers, as they currently do, rather than restrict the elements of the process to those which a hotel and service provider will not have the power to amend.

CHLA's concerns may partially derive from confusion about when a hotel or motel could kick out a shelter program participant. The bill in print makes clear that the duty of hotels and motels with respect to shelter program participants is to treat them as they do all other guests. In other words, the hotel or motel cannot kick out a shelter program participant for doing something unless they remove any other guest for the same behavior.

It is less clear what else, if anything, the bill asks of hotel and motel operators in exchange for the authority to kick out long-term guests without using the unlawful detainer process. When the terms "termination" and "removal" are used in the bill, is it referring to termination from occupancy at the hotel or motel? Or termination from participation in the program? Does it mean removal from the hotel or motel? Or removal from the shelter program? It is also sometimes unclear whether there is necessarily a difference between those two things. In other words, if the shelter program consists entirely of staying in a particular hotel or motel, is there really a distinction between being removed from the hotel or motel and being removed from the program? The author proposes to offer amendments in Committee that are intended to clarify these issues.

7. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would, among other things:

- revise and recast the text for greater clarity;
- insert a definition of "shelter program administrator";
- include threats to property as a potential basis for termination from a shelter program;
- clarify the permissible reasons for termination from shelter programs and terminations from motels, hotels, and other sites and make clear that these rules must be disclosed to shelter participants in advance, in writing;

- clarify that additional termination and operation policies can be adopted, so long as they are negotiated prior to the commencement of the program and approved;
- adds the following responsibilities to the shelter program administrator (not the motels or hotels): establishing an exit plan that provides a grievance process, reasonable/good faith efforts to find alternative accommodation and transportation for participants who are removed from a property;
- clarify that shelter programs may adopt more protective policies than those required by the bill; and
- make other technical and conforming changes.

8. Arguments in support of the bill

According to the author:

Currently, thousands of people experiencing homelessness in California are participating in shelter programs and residing temporarily in hotels, motels, and other sites. Unfortunately, many hotels and motels shuffle people from rooms or other motel locations out of concern of creating an unwanted landlord-tenant relationship. AB 1991 provides those experiencing homelessness who participate in shelter programs from needlessly moving from motel to motel every 30 days by granting them the ability to stay longer without triggering tenancy. This bill also creates protections for individuals participating in these programs by ensuring they are not withdrawn from service shelter programs without fair due process by service providers.

As sponsor of the bill, Los Angeles Homeless Services Authority writes:

At the moment, thousands of people experiencing homelessness in the State of California are taking part in shelter programs and living temporarily in hotels, motels, and other sites. More specifically, LAHSA is currently housing over 400 unhoused families in these spaces. However, a lack of clarity in state law regarding their occupancy creates several challenges for these programs and their participants. Ambiguity in state law, hotels, and motels resort to 'shuffling' people between motel rooms or exiting people from their rooms every four weeks to avoid potentially creating a landlord-tenant relationship. This 'shuffling' practice disrupts families participating in these programs and consumes resources of case managers and service providers who must work to quickly find accommodations for these families. In other cases, motels and hotels do not take part in shelter programs

out of concern that they will establish unwanted landlord-tenant relationships, thus limiting the availability of these properties for local homeless services systems. AB 1991 would deliver much needed clarity and guidance to motels, hotels, and shelter providers who offer shelter for homelessness programs regarding tenancy and termination of occupants.

9. Arguments in opposition to the bill

For example, in opposition to the bill unless it is amended, the California Hotel and Lodging Association writes:

[...] [T]he hotel and lodging industry has been an ardent supporter and active participant in homeless housing programs. We believe in the potential for shelter programs to have a positive impact on communities and the people participating in the programs. Unfortunately, as currently written, Assembly Bill 1991 would likely deter hotel and lodging properties from participating in shelter programs, which we feel is contrary to the overall intent of the bill.

SUPPORT

LA Family Housing (sponsor)
Los Angeles Homeless Services Authority (sponsor)
California Catholic Conference
Corporation for Supportive Housing
East Bay Housing Organizations
Downtown Women's Center
Housing California
National Health Foundation
People Assisting the Homeless
People's Self-Help Housing Corporation
Safe Place for Youth
San Diego Regional Task Force on Homelessness
Sycamores
United Way of Greater Los Angeles

OPPOSITION

California Hotel and Lodging Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 1188 (Gabriel, Ch. 339, Stats. 2019) allowed a tenant, with the written approval of the landlord, to take in a person who is at risk of homelessness, as defined, pursuant to written agreements that would, among other things, enable the tenant to remove the person at risk of homelessness on short notice with the assistance of the police.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Housing and Community Development Committee (Ayes 7, Noes 0)
