SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No:	SB 23	**Hearing Date:**	March 26, 2019
Author:	Wiener		
Version:	March 4, 2019		
Urgency:	No	**Fiscal:**	Yes
Consultant:	GC		

Subject: ***Unlawful Entry of a Vehicle***

HISTORY

Source: San Francisco District Attorney's Office

Prior Legislation: SB 916 (Wiener), 2018 failed passage in Senate Appropriations
AB 476 (Kukykendall), 1997 failed passage in Assembly Public Safety

Support: California Academy of Sciences; California Downtown Association; California Hotel and Lodging Association; California Police Chiefs Association; California State Sheriffs' Association; California Statewide Law Enforcement Association; California Travel Association; Cole Valley Improvement Association; Enterprise Holdings; Golden Gate Restaurant Association; League of California Cities; Los Angeles County Sheriff's Department; Miraloma Park Improvement Club; National Insurance Crime Bureau; Riverside Sheriffs' Association; San Francisco Board of Supervisors; San Francisco Travel Association

Opposition: California Public Defenders Association; San Francisco Public Defender's Office

PURPOSE

The purpose of this bill is to create a new crime for forcibly entering a vehicle with the intent to commit a theft therein.

Existing law provides that every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, any house car, inhabited camper, vehicle when the doors are locked, aircraft, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. (Pen. Code § 459.)

Existing law specifies that "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises. (Pen. Code § 459.)

Existing law specifies that burglary of an inhabited dwelling house, vessel, floating home, or trailer coach is classified as first degree burglary and is punishable by two, four, or six years in state prison. (Pen. Code § 460 & 461, subd. (a).)

Existing law specifies that all other forms of burglary that are not first degree burglary, including burglary of a vehicle, are second degree burglary and punishable as an alternate felony/misdemeanor as either up to one year in the county jail, or 16 months, two or three years in the county jail. (Pen. Code § 460 & 461, subd. (b).)

This bill creates a new crime for forcibly entering a vehicle with the intent to commit a theft therein.

This bill specifies the punishment for forcibly entering a vehicle with the intent to commit a theft is either a misdemeanor or a felony. The punishment for the misdemeanor is specified as confinement in the county jail not exceeding one year. The punishment for the felony is specified as confinement in the county jail for 16 months, 2 years, or 3 years.

This bill does not preclude punishment under any other provision of law.

COMMENTS

1. Need for This Bill

According to the author:

> SB 23 closes a loophole that makes it difficult for District Attorneys to take car break-in cases to trial. Current law requires proof that the car was locked, even if proof exists that the defandant smashed the car windows. This bill simply creates a new code section that clarifies that "forcible, unlawful entry" of a vehicle is also auto burglary. This means that prosecutors can prove an auto burglary occurred by either showing that the car was locked or, alternatively, that a window was broken.
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> The explosion in auto break-ins we're experiencing in San Francisco and elsewhere is unacceptable, and we need to ensure our police and district attorneys have all the tools they need to address it. When residents or visitors park their cars on the streets, they should have confidence that the car and its contents will be there when they return. SB 23 closes a loophole in the Penal Code that can lead to cases being dropped or charges reduced even when the evidence of auto burglary is clear.
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> Senate Bill 23 allows prosecutors to prove that a defendant committed an auto burglary by showing that they broke a car window to get into the car. Currently, proving that the defendant broke a window can be deemed insufficient. Rather, judges sometimes require the District Attorney to show that the car door was locked, which is difficult to do since a burglar can simply unlock the car door after breaking the glass. Moreover, when a rental car is burglarized the tourist is often gone and cannot testify that he or she locked the car door. Allowing proof that the defendant shattered a car window to substitute for proving that the car door was locked will make it easier to enforce the law.

2. Auto Burglary Requires Locked Doors

Burglary is codified specifically in California Penal Code § 459, this section specifically states:

> [E]very person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, any house car, inhabited camper, ***vehicle when the doors are locked***, aircraft, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. (Pen. Code § 459.)

a) Burglary Generally

Since common law England, burglary has been a hybrid crime that protects persons from danger to their persons within buildings and the protection of possessor rights. (*People v. Themes* (1991) 235 Cal App 3d 899, 906.) Burglary laws are designed to protect persons within places from an escalation of violence from a premeditated entry. In California, the crime of burglary involves the entry of designated premises (including a room) with the intent to commit a felony or theft therein. No trespass or non-consensual entry is required to commit the offense. One may be convicted of burglary, even if the person enters with consent. (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 577-579.) The crime is complete once the entry occurs with the specified intent. (*People v. Morelock* (1956) 46 Cal.2d 141, 146.) This is true whether or not the intended offense is actually committed. (*People v. Walters* (1967) 249 Cal.App.2d 547, 550.)

As enacted in 1872, the burglary statute covered entries into houses, rooms, apartments, tenements, shops, warehouses, stores, mills, barns, stables, tents, vessels, or railroad cars. In 1913, mines were added to the protected list.

In 1947, the Legislature expanded the burglary statute to cover entries into trailer coaches, aircraft and *locked* vehicles. In 1977, entries into house cars and inhabited campers were covered as well. In 1984, locked or sealed cargo containers were added to the statute.

In the case of an ordinary vehicle, the doors of the vehicle must be locked which requires proof of a forced entry or the use of a tool to open the door. (*In re Lamont R,* (1988) 200 Cal.App.3d 244, 246-249.) Proof that the vehicle is locked is not required for forms of vehicles which are used for business or dwelling type arrangement, as was noted in *People v. Trimble*, (1993) 16 Cal.App.4th 1255, 1258-1261.

b) Meaning of "Locked"

Burglary of a vehicle is the only burglary section that specifically articulates that the doors to enter are locked at the time of entry. These provisions have been upheld by appellate courts. "The common law element of breaking has never been an essential element of statutory burglary in California. Burglary from a vehicle is the lone exception, requiring that the doors of a vehicle be locked. Yet, 'neither forced entry in the usual sense of the word nor use of burglar tools are elements of automobile burglary.' The key element of auto burglary is that the doors be locked." (*In re James B*. (2003) 109 Cal. App. 4th 862, 868 [*citing In re Charles G.* (1979) 95 Cal. App. 3d 62, 67].) Courts have defined "locked" as a vehicle's state of

security that requires force in order to gain entry. "The requirement of locking as an element of vehicular burglary has been interpreted to mean 'that where a defendant 'used no pressure,' 'broke no seal,' *and* 'disengaged no mechanism that could reasonably be called a lock,' he is not guilty of auto burglary.'" (*Id*. [*citing In re Young K.*, *supra*, 49 Cal.App.4th at p. 864.) Case law emphasizes that when the vehicle is secured such that entry must occur by force, the vehicle is locked within the meaning of the statute. "Therefore, '[auto burglary] is only accomplished by altering the vehicle's physical condition; at worst, by smashing a window, at best, by illegally unlocking it. These extremes, as well as other possible types of forcible entries, necessarily involve unlawfully altering the vehicle's locked state.'" (*Id*. [*citing People v. Mooney* (1983) 145 Cal. App. 3d 502, 505.) Courts have emphasized that a vehicle's secured status which requires forced entry is the heart of the auto burglary statute. The court in *People v. Massie* emphasized forced entry was key in jury instructions given to the jury in trial: "[i]f you find…that all the doors of the semi-trailer were secured with metal seals…and *that the application of some force was required* to break the seal to permit entry to the interior of the vehicle through the door, then such vehicle was locked within the meaning of the law." (*People v. Massie* (1966) 241 Cal. App. 2d 812, 817. Emphasis added.)

c) Circumstantial Evidence May be Used to Show a Vehicle was Locked

Circumstantial evidence can be used to prove that a vehicle was locked at the time that an alleged burglary occurred. Convictions have been upheld in cases where there was evidence of forced entry even though there was no evidence that the doors were locked or sealed. In *People v. Rivera*, the court found there was substantial circumstantial evidence that the car's doors were locked solely based on the car's windows being broken. (*People v. Rivera* (2003) 109 Cal. App. 4th 1241, 1245.) However, this is a question of fact for a jury that the prosecution must prove. In *People v. Malcolm*, the court found that a locked car with an *unlocked* front wing lock satisfied the statute where there were signs of forced entry. (*People v. Malcom* (1975) 47 Cal. App. 3d 217, 223.)

Inversely, the courts have affirmed dismissals of cases where the car *was* locked but no force was used. The *Woods* court concluded that "a reasonable interpretation of the statute where the entry occurs through a window deliberately left open, requires some evidence of forced entry before the prosecution's burden of proof is satisfied." (*People v. Woods* (1980) 112 Cal. App. 3d 226, 230.)

3. The Creation of a New Crime is to Differentiate the New Crime from the Existing Crime of Auto Burglary which has Been Classified as a Strike and an Inherently Dangerous Felony

The bill, as originally introduced in the form of SB 916 (Wiener) in 2018, modified the elements of burglary of a vehicle to no longer require the prosecution show that the vehicle was locked at the time the alleged burglary occurred. The original bill specified that the prosecution need only show that entry was forced. However, as articulated above, courts have ruled that the crime of burglary of a vehicle may be used as a basis for both the felony murder doctrine, as well as special circumstances that trigger the death penalty. Furthermore, the California Penal Code in section 190.2 specifically articulates that second degree burglary of a vehicle can be used as a basis for special circumstances.

The amendments instead create a new crime of unlawful entry of a vehicle for the purpose of not expanding the crime of second degree burglary of a vehicle. This new crime has not been ruled inherently dangerous by appellate courts, and has not been listed as the crime of burglary that can trigger both the felony murder doctrine and special circumstances. By creating an entirely new offense, this new crime (which includes the element of "forcibly") is not considered burglary and therefore the Legislature is expressly indicating that it should not be used as the basis for strike enhancements, felony murder or special circumstances.

4. Argument in Support

According to the San Francisco District Attorney:

> When a vehicle's window has been broken into and items have been stolen, it's evident that another auto burglary has occurred…the fact that a window was broken was broken to gain access and steal items inside the vehicle does not establish that the car door was locked. Therefore, if prosecutors cannot prove that the vehicle was locked at the time the car window was broken, it is less likely that a defendant will be held accountable for a felony auto burglary.
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> Prosecutors often establish the required locked element in court through testimony from the victim that they locked their vehicle when they left their car. However, with over 55 percent of all auto burglaries in San Francisco targeting tourists, getting victims to return to court from out of town is difficult.

5. Argument in Opposition

According to the California Public Defenders Association:

> Existing law makes it a misdemeanor to enter a vehicle when the doors are locked if the entry is made with the intent to commit a theft from the car or to commit a felony in the car.
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> This bill would make it a felony or a misdemeanor to "forcibly" enter a vehicle with the intent to commit theft. Changing the operative language to "forcibly" entering the vehicle without requiring proof that the vehicle was locked at the time of entry would drastically expand the definition of vehicle burglary. It would also expand the punishment for this behavior.
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> There currently exists a criminal law and penalties that addresses the behavior of breaking into a car when the doors are locked. Inserting the word "force" into the statute instead of requiring that vehicle locks have been overcome to gain entry would expanding the prosecution and punishment to include people who simply open a car door and who are alleged to have done so with the intent to commit theft.
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> In an era where our streets are filled with homeless people looking for shelter form the elements this expansion of the prosecution and incarceration time for individuals who have not damaged a locking mechanism of the vehicle to gain entry could negatively impact those with the least of means.

CPDA opposes this bill for the reasons stated above and seeks to remind this body that criminal penalties are not the solution to every problem. Not every incident of improper behavior needs to be addressed by a new legal prohibition and increased punishment. Although there may be a problem of increased vehicle theft in our urban areas it is not a problem needed to be solved by a new state law.

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