
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 905 **Hearing Date:** April 2, 2024
Author: Wiener
Version: March 18, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: theft from a vehicle*

HISTORY

Source: San Francisco Mayor London Breed

Prior Legislation: AB 395 (Lackey), held in Assem. Approps., 2022
SB 23 (Wiener), held in Assem. Approps., 2019
SB 916 (Wiener), held in Sen. Approps., 2018
AB 476 (Kukykendall), failed Assem. Public Safety, 1997

Support: Arcadia Police Officers Assoc.; Bay Area Council; Board of Supervisors of the City and County of San Francisco; Burbank Police Officers Assoc.; California Assoc. of Highway Patrolmen; California Coalition of School Safety Professionals; California District Attorneys Association; California Hispanic Chamber of Commerce; California Narcotics Officers' Assoc.; California Police Chiefs Assoc.; California Reserve Police Officers Assoc.; California Retailers Association; California State Sheriffs' Assoc.; California Statewide Law Enforcement Association; California Travel Assoc.; City of Carlsbad; City of Santa Clarita; Claremont Police Officers Assoc.; Corona Police Officers Assoc.; Culver City Police Officers Assoc.; Deputy Sheriffs' Association of Tri-Cities of Dublin, Livermore, Pleasanton, and Town of Danville; Fullerton Police Officers Assoc.; League of California Cities; Los Angeles School Police Management Assoc.; Los Angeles Schools Police Assoc.; Monterey County Deputy Sheriffs Assoc.; Murrieta Police Officers Assoc.; Newport Beach Police Assoc.; Novato Police Officers Assoc.; Palos Verdes Police Officers Assoc.; Peace Officers Research Assoc. of California; Placer County Deputy Sheriffs Assoc.; Pomona Police Officers Assoc.; Riverside Police Officers Assoc.; Riverside Sheriffs' Assoc.; Santa Ana Police Officers Assoc.; Tri-Valley Cities Coalition; Upland Police Officers Assoc.

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to: (1) create the new crime of forcibly entering a vehicle with the intent to commit theft and (2) create the new crime of unlawfully possessing property acquired through theft from a vehicle with intent to sell where the value of the property possessed exceeds \$950.

Existing law states that that any person who enters any house, room, apartment,...shop, warehouse, store,... outhouse or other building, tent, vessel, ... *vehicle ...when the doors are locked*, aircraft ... or mine ... with the intent to commit grand or petit larceny or any other felony is guilty of burglary. (Pen. Code, § 459, emphasis added.)

Existing law states that burglary of an inhabited dwelling is first degree burglary, and that all other kinds of burglary are of the second degree. (Pen. Code, § 460.)

Existing law provides that the punishment for first degree burglary is imprisonment in the state prison for two, four, or six years. (Pen. Code, § 461, subd. (a).)

Existing law provides that the punishment for second degree burglary is either confinement of up to one year in the county jail, or confinement in the county jail for 16 months, two, or three years pursuant to criminal justice realignment. (Pen. Code, §§ 18, subd. (a), 461, subd. (b), 1170, subd. (h).)

Existing law prohibits the possession or receipt of stolen property knowing the property to be stolen and punishes a person guilty of this offense by imprisonment in county jail for not more than one year, or 16 months, or 2 or 3 years. If the value of the property does not exceed \$950, the person shall be punished by imprisonment in county jail not exceeding one year, except as specified. (Pen. Code, § 496.)

Existing law provides that no person shall willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner. (Veh. Code, § 10852.)

Existing law provides that the punishment for vehicle tampering is confinement of up to six months in the county jail, a fine not to exceed \$1,000, or both. (Veh. Code, §§ 42002, 40000.9.)

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 provides that a person may not be convicted of both unlawful entry of a vehicle and burglary.

This bill creates a new crime for unlawfully possessing property that was acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering, whether or not the person committed the act of theft, burglary or vehicle tampering.

This bill specifies that the person is guilty of the offense when all of the following apply:

- The property is not possessed for personal use and the person has the intent to sell or exchange the property for value, or the intent to act in concert with one or more persons to sell or exchange the property for value;
- The value of the possessed property exceeds \$950.

This bill provides that for purposes of determining the value of the property, the property currently possessed can be considered in the aggregate with any of the following:

- Any other such property possessed by the person with such intent within the last unspecified amount of years;
- Any property possessed by another person acting in concert with the first person to sell or exchange the property for value, when that property was acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering, regardless of the identity of the person committing the acts of theft, burglary, or vehicle tampering.

This bill states that for the purpose of determining, in any proceeding, whether the defendant had the intent to sell or exchange the property for value, the trier of fact may consider any competent evidence, including, but not limited to, the following:

- Whether the defendant has in the past unspecified amount of years sold or exchanged for value any property acquired through the theft from a vehicle, burglary of a locked vehicle, or vehicle tampering, or through any related offenses, including any conduct that occurred in other jurisdictions, if relevant to demonstrate a fact other than the defendant's disposition to commit the act as provided in Section 1101 of the Evidence Code; and,
- Whether the property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption, including use or consumption by one's immediate family.

This bill specifies that a violation of unlawfully possessing property acquired through theft of a vehicle is punishable by imprisonment in the county jail for up to one year or 16 months, or 2 or 3 years in county jail.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Senate Bill 905 closes the “locked door loophole”, a nonsensical barrier to holding auto burglars accountable. Under current law, the fact that a car window was broken is insufficient to convict a suspect of auto burglary—prosecutors must prove that the door was locked, which requires victims to be physically present in court to testify as such. This requirement can sabotage clear cases of guilt, particularly for situations where someone is visiting a city for tourism and is unable to return just to testify that they locked their car door. SB 905 instead

eliminates this gratuitous hurdle, this legislation makes forcible entry sufficient to prove the crime of auto burglary and makes California safer for everyone.

As amended, the bill will also address the problem of organized resale of goods stolen from cars. Auto burglars seek valuable items such as laptops, cameras, and cell phones and then resell them. Under the bill, individuals could be prosecuted for holding more than \$950 of stolen goods intended for resale, whether those goods were stolen in one or multiple incidents, and whether the individual played the role of thief, middleman, or seller.

2. Proof of Locked Vehicle for Auto Burglary Prosecutions

Enacted in 1872, the burglary statute initially 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 vehicles *when the doors are locked*. “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.’” (*In re James B.* (2003) 109 Cal. App. 4th 862, 868, *citing In re Young K.* (1996) 49 Cal.App.4th 861, 864 864.) 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.)

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 direct 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 based on the car’s windows being broken and testimony that the window was not broken 6-8 hours prior. (*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. Creation of Unlawful Entry of Vehicle as Separate Crime from Burglary to Avoid Felony Murder and Death Penalty Implications

Penal Code section 189 provides, in pertinent part: "All murder...which is committed *in the perpetration of*, or attempt to perpetrate, arson, rape, robbery, *burglary*, mayhem, or [lewd acts with a minor], is murder of the first degree..." (Italics added.) This statute imposes strict liability for deaths committed in the course of one of the enumerated felonies whether the killing was caused intentionally, negligently, or merely accidentally. (*People v. Cantrell* (1973) 8 Cal.3d 672, 688.) Courts have ruled that the crime of burglary of a vehicle may be used as a basis for the felony murder doctrine. (*People v. Fuller* (1978) 86 Cal. App. 3d 619; *People v. Thongvilay* (1998) 62 Cal. App. 4th 71.)

Furthermore, Penal Code section 190.2 specifically articulates that second degree burglary of a vehicle can be used as a basis for special circumstances that trigger the death penalty.

This bill would create a new crime of forcibly entering a vehicle instead of 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 is not 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. Specific Intent Element

This bill creates two new specific intent crimes. The first is forcible entry into a vehicle with intent to commit theft. Intent to commit theft could be proven by a variety of circumstances including opening and searching through the glove box.

The second is possession of property obtained through theft from a vehicle with intent to sell or exchange the property for value. Intent to sell could be proven by having multiple items in one's possession or packaged in a manner that indicates that the items are not for personal use. This bill specifies that intent to sell could be proven in specified ways including whether the defendant has in the past sold or exchanged for value any property acquired through theft of a vehicle, including conduct that occurred in other jurisdictions, if relevant to demonstrate a fact other than the defendant's disposition to commit the act, and whether the property involved is a type or quantity that would not normally be purchased for personal use or consumption, including use or consumption by one's immediate family.

Generally, a person's prior conduct is not admissible to prove that the person had the propensity to commit the crime charged. (Evid. Code, § 1101, sub. (a).) The rationale for this rule is that such evidence could unfairly prejudice the defendant by pushing jurors to accepting guilt in the present case when the evidence does not prove this beyond a reasonable doubt. The exception to the rule is that prior conduct may be admissible when relevant to prove a fact other than the defendant's disposition to commit such an act, such as motive, opportunity, intent, knowledge, etc. (Evid. Code, § 1101, subd. (b).)

As discussed above, this bill expressly authorizes the use of the defendant's past conduct to prove intent to sell for the crime of possession of property obtained through theft from a vehicle with intent to sell. The bill, as currently amended on March 18, 2024, contains a blank on the

past number of years during which the past conduct must have occurred that could be considered under its provisions. While prior bad conduct may be admissible under subdivision (b) of Evidence Code section 1101, the court may still choose to exclude this evidence as being more prejudicial than probative pursuant to Evidence Code section 352. A consideration in determining whether prior conduct has high probative value is temporal proximity, with recent acts having greater probative value while distant acts generally have less probative value.

5. Prohibition on Dual Convictions

Under existing law, a person may be not convicted for both possession or sale or stolen property and theft of the same property. (Pen. Code, §496, subd. (a).) This rule is based on the notion that a person who has stolen property cannot buy or receive that property from himself. (*People v. Ceja* (2010) 49 Cal.4th 1, 4-5, citing *People v. Allen* (1999) 21 Cal.4th 846, 850.)

When two statutes involving similar conduct presents the possibility of double convictions for a single act, convictions under both sections raises fairness concerns. For example, when there is evidence that a person breaks into a locked car in a forcible manner, (i.e. smashing a window), if this bill is enacted, the prosecutor really has established the elements for both crimes. This bill specifies that for the crime of unlawful entry into a vehicle, the defendant may not be convicted of both the new crime and burglary. A prosecutor will have discretion to charge a defendant with both crimes and will be able to present alternative theories of liability; however, the defendant may only be convicted of one crime or the other.

This bill also creates a new crime of unlawfully possessing property acquired through theft and other related offenses. This crime is similar to receiving stolen property and thus may need to specify that a person convicted of the new offense may not also be convicted of the underlying theft or of receiving stolen property of the same property.

6. Potential Immigration Consequences

A criminal conviction can have adverse immigration consequences for noncitizens, such as inadmissibility, ineligibility for citizenship, deportation, or detention. Federal laws provide grounds for inadmissibility with include crimes involving moral turpitude (CIMT), controlled substance offenses, prostitution, among other offenses. (8 U.S.C. § 1227(a)(2).) Grounds for deportability include CIMT, aggravated felonies, controlled substance offenses, domestic violence, among other offenses. (8 U.S.C. § 1227 (a)(2).) Additionally, for purposes of the Deferred Action on Childhood Arrivals, a single felony offense is a bar to eligibility, as well as any misdemeanor that involves domestic violence, sexual abuse, burglary, unlawful possession of a firearm, drug trafficking or driving under the influence, regardless of the sentence imposed. (8 C.F.R. § 236.22.)

Generally, a CIMT involves deceit, intent to defraud, intent to commit theft or inflicting great bodily harm. An aggravated felony includes crimes such as murder, rape, sexual abuse of a minor, trafficking of a controlled substance, firearms offenses, money laundering, a crime of violence where the term of imprisonment imposed is 1 year or more, a theft offense or burglary offense for which the term of imprisonment imposed is 1 year or more. (8 USC § 1101(a)(43).) The term aggravated felony does not necessarily only apply to felonies; a crime that is punishable by a term of 365 days or more may qualify as an aggravated felony. In 2013,

California changed the maximum term of imprisonment for misdemeanor offenses to 364 days in order to avoid misdemeanors from being classified as an aggravated felony. (SB 1310 (Lara), Ch. 174, Stats. 2013.)

Receipt of stolen property is an aggravated felony if the sentence imposed is a term of imprisonment of at least one year. (*Alvarez-Barajas v. Gonzalez* (9th Cir. 2005) 418 F.3d 1050.) Burglary, as defined in Penal Code section 459, is not an aggravated felony because the elements of the state crime do not match the elements of the federal crime of burglary which requires an unlicensed entry. (*Descamps v. U.S.* (2013) 570 U.S. 254.) Additionally, because Penal Code section 459 states that the requisite intent is the intent to commit larceny or any felony, burglary under state law does not meet the definition of a CIMT because a conviction would not show which intent applies.

This bill creates two new theft-related crimes with penalties that can result in more than a one year term of imprisonment. The crime of automotive theft for resale is similar to the existing crime of being in receipt of stolen property and the crime of unlawful entry of a vehicle is similar to auto burglary. Any potential immigration consequences that result from a conviction under any of these new crimes will depend on the class of crime, the sentence imposed as well as any specific information included in the record, and whether the defendant's criminal history.

7. Renewed Efforts to Combat Property Crimes

“The Homelessness, Drug Addition, and Theft Reduction Act” is a new initiative that would make specific changes to laws enacted by Proposition 47. Specifically, the initiative would reenact felony sentencing for petty theft with two prior thefts, allow multiple petty thefts to be aggregated to meet the \$950 threshold without a showing that the acts were connected, and create new enhancements depending on the amount of property stolen or damaged. The initiative would also increase penalties for certain drug crimes, mandate treatment for certain offenders, and require courts to warn people convicted of drug distribution that they may be charged with murder in the future if someone dies after taking an illegal drug provided by that person. ([https://ballotpedia.org/California_Drug_and_Theft_Crime_Penalties_and_Treatment-Mandated_Felonies_Initiative_\(2024\)](https://ballotpedia.org/California_Drug_and_Theft_Crime_Penalties_and_Treatment-Mandated_Felonies_Initiative_(2024)) [as of Mar. 21, 2024].) The initiative is supported by various law enforcement, public officials, district attorneys, and retail corporations. (*Id.*) To qualify for the November 2024 ballot, the law requires 546,651 valid signatures by June 27, 2024; as of January 25, 2024, the campaign had notified the Secretary of State that 25% of the required signatures had been collected. (*Id.*)

On January 9, 2024, Governor Newsom called for legislation to crack down on large scale property crimes committed by organized groups who profit from resale of stolen goods. (<https://www.gov.ca.gov/2024/01/09/property-crime-framework/> [as of Mar. 21, 2024].) The proposals include: 1) creating new penalties targeting those engaged in retail theft to resell, and those that resell the stolen property; 2) clarifying existing arrest authority so that police can arrest suspects of retail theft, even if they didn't witness the crime in progress; 3) clarifying that theft amounts may be aggregated to reach the grand theft threshold; 4) creating new penalties for professional auto burglary, increasing penalties for the possession of items stolen from a vehicle with intent to resell, regardless of whether the vehicle was locked; 5) eliminating the sunset date for the organized retail crime statute; and 6) increasing penalties for large-scale resellers of stolen goods.

Both houses of the Legislature have announced legislative packages that include parts of the Governor's proposals. (See <https://www.latimes.com/california/story/2024-02-26/senate-leaders-respond-to-states-fentanyl-crisis-and-organized-retail-theft-problem-with-new-legislation> [as of Mar. 1, 2024] and <https://www.latimes.com/california/story/2024-02-15/democratic-lawmakers-introduce-legislation-to-target-organized-retail-theft-online-resellers#:~:text=If%20passed%2C%20the%20bill%20would,if%20there%20were%20separate%20victims> [as of Mar. 21, 2024].)

8. Argument in Support

According to Bay Area Council:

Under current law, convicting someone suspected of an auto break-in involves a multitude of steps. One of the most cumbersome burdens-of-proof is known as the “locked door loophole.” This requires prosecutors to prove that the vehicle was locked prior to the invasion, not just that the person entered the vehicle without permission. Victims therefore have to physically testify in court to prove that their car was locked at the time of the break-in. Many victims of auto break-ins are visitors and are not able to travel to appear in court. This requirement is also redundant considering that proof of invasion such as a broken window and a damaged car is more than sufficient evidence of an auto break-in. SB 905 would eliminate this loophole and make cases of auto break-ins far easier to prosecute, resulting in safer cities.

Auto break-ins have been a long-standing issue throughout the Bay Area, which experiences this crime at a disproportionately high rate as compared to many of its peer cities. SFPD reported nearly 20,000 incidents involving auto break-ins in 2023 alone. Similarly, 2023 auto-break-ins in Oakland were the highest they have been in more than a decade, with nearly 15,000 incidents reported in 2023 – a 44% increase compared to 2022. A fraction of these break-ins resulted in convictions. Despite recent efforts to combat auto break-ins, many improvements are still necessary to promote safety. SB 905 would make prosecuting these criminals much easier and therefore help prevent future and repeat offenses.

9. Argument in Opposition

According to the California Public Defenders Association:

Whether or not a car is locked for the burglary statute to apply is most often proven by the direct testimony of a victim or witness who testifies that the person locked the car when they left it. Vehicle locking, however, can also be proven through circumstantial evidence. Indeed, the very issue this section is intended to rectify, the fact a forcible entry was made, is circumstantial proof that a vehicle was locked, evidence that can lead to an auto burglary conviction.

SB 905 creates the new crime of forcible entry of a vehicle. One has to note, though, that if a person simply opens an unlocked car door or enters through an open window, then this crime would not apply – just as the crime of auto burglary would not apply if the car were not locked. Thus, this bill does not eliminate the locking “loophole.”

In addition, under current law if a person damages a vehicle (locked or not) then the person could be guilty of vandalism (Penal Code section 594), which is a felony if the amount of damage is \$400 or more. Or the person could be guilty of auto tampering in violation of Vehicle Code section 10852, a misdemeanor.

The element that a vehicle be “locked” in Penal Code section 459 is necessary to distinguish the less serious offense of simple theft from the more serious offense of burglary. Existing law adequately punishes those who steal from or damage cars, even though those cars be unlocked. The punishment is equivalent to the punishment found in this bill. New section 496.5 has the same punishment as the existing crime of receiving stolen property in violation of Penal Code section 496.

The new crime adds more elements than 496 and will be more difficult to prove, ultimately ending up with the same punishment as exists under current law. It appears a main purpose of the new law is to allow aggregation of prior instances to come up with a value of stolen property greater than \$950. As presently drafted, this look-back does not contain a time limit. A person who has been charged, convicted and punished for prior crimes should not once again have to face those prior charges in a new case.

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