SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 916	**Hearing Date:**	March 20, 2018
Author:	Wiener		
Version:	March 14, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	GC		

Subject: ***Burglary of a Vehicle***

HISTORY

Source: San Francisco District Attorney's Office

Prior Legislation: AB 476 (Kukykendall), 1997 failed passage in Assembly Public Safety

Support: California Hotel and Lodging Association; California Travel Association; Cole Valley Improvement Association; Riverside Sheriffs' Association; San Francisco Travel

Opposition: American Civil Liberties Union (as introduced)

PURPOSE

The purpose of this bill is create a new crime which specifies that any person who enters a vehicle with the intent to commit a theft therein is guilty of unlawful entry of a vehicle

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 specifies that any person who enters a vehicle with the intent to commit a theft therein is guilty of unlawful entry of a vehicle.

This bill states that unlawful entry of a vehicle is punishable by imprisonment in the county jail as a misdemeanor or a felony. A misdemeanor conviction shall be punished for up to one year in the county jail, and a felony shall be punished as 16 month, two or three years in county jail.

This bill specifies that the provisions of this legislation do not restrict the application of any other law.

COMMENTS

1. Need for This Bill:

According to the author:

> SB 916 closes a loophole that makes it difficult for District Attorneys to take car break-in cases to trial. This bill simply adds the words "or when forced entry is used" to the locked-door requirement of the auto burglary statute. 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.
>
> The explosion in auto break-ins we're experiencing 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 916 closes a loophole in the Penal Code that can lead to cases being dropped or charges reduced even when the evidence of burglary is clear.
>
> Senate Bill 916 allows prosecutors to prove that a defendant committed an auto burglary by showing that he or she 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. Burglary of a Vehicle Requires that the Doors are Locked at the Time of Entry

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 Amendments to this Bill are Intended to Exempt the New Crime of Unlawful Entry of a Vehicle from the Felony Murder Doctrine and any Attached Special Circumstances Implications

The bill, as originally introduced, 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 "forced entry") is not considered burglary and therefore the Legislature is expressly indicating that it should not be used as the basis for felony murder or special circumstances.

4. Felony Murder and Death Penalty Implications of Burglary of an Automobile

As originally drafted, this bill expanded the elements of second degree burglary of a vehicle to include forced entry, eliminating the need for the prosecution to show that the vehicle was locked. The elimination of the requirement that the vehicle is locked as at the time of the burglary of a vehicle by expanding the element to include "forced entry" would expand the potential use of the felony murder rule to incidents that the prosecution will no longer have to prove the vehicle was locked at the time of entry. Likewise, defendants convicted under those provisions could become subject to special circumstances and the death penalty under Pen. Code § 190.2.

a. Application of the Felony Murder Doctrine to Second Degree Burglary of a Vehicle

Penal Code § 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 [105 Cal.Rptr. 792, 504 P.2d 1256]; *People* v.*Coefield* (1951) 37 Cal.2d 865, 868 [236 P.2d 570].) Malice is imputed and need not be shown. (*People* v. *Burton* (1971) 6 Cal.3d 375, 384-385 [99 Cal.Rptr. 1, 491 P.2d 793]; *People* v. *Ireland* (1969) 70 Cal.2d 522, 538 [75 Cal.Rptr. 188, 450 P.2d 580, 40 A.L.R. 3d 1323].) The purpose of the felony-murder rule is to deter felons from killing negligently or accidentally. (*People* v. *Washington* (1965) 62 Cal.2d 777, 781 [44 Cal.Rptr. 442, 402 P.2d 130]; see Holmes, The Common Law, pp. 56-57.)

Burglary falls expressly within the purview of California's first degree felony-murder rule. Any burglary within Penal Code § 459 is sufficient to invoke the rule. (*People* v. *Talbot* (1966) 64 Cal.2d 691, 705 [51 Cal.Rptr. 417, 414 P.2d 633]; *People* v. *Thomas* (1975) 44 Cal.App.3d 573, 575 [117 Cal.Rptr. 855]; *People* v. *Earl* (1973) 29 Cal.App.3d 894, 900 [105 Cal.Rptr. 831].) Whether or not the particular burglary was dangerous to human life is of no legal import. *(Earl, supra.)*

In *People v. Fuller* (1978) 86 Cal. App. 3d 619, the Fifth District Court of Appeal admitted there were concerns with the "irrationality of apply[ing] the felony-murder rule" to a case involving auto burglary. (*Id*. at 624). The *Fuller* court stated "[i]f were writing on a clean slate, we would hold that respondents should not be prosecuted for felony murder since viewed in the abstract, an automobile burglary is not dangerous to human life." (*Id*. at 626). "Nevertheless…the force of precedent requires the application of the first degree felony-murder rule in the instant case." (*Id*. at 628.) Later appellate court rulings have also concluded that second degree car burglary can be used as the basis for a first degree felony-murder conviction. *People v. Thongvilay* (1998) 62 Cal. App. 4th 71

b. The Felony Murder Doctrine can Result in a Death Penalty Conviction

Special circumstances that can trigger the death penalty include when the murder was committed while the defendant was "engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing or attempting to commit…burglary in the first or second degree." (Pen Code § 190.2, subd. (a)(17)(G).) The

provisions of this bill amend the elements of burglary of a vehicle in the second degree. Under the provisions of the introduced version of this bill bill, if a defendant commited burglary of a vehicle and a death occured (for instance in a chase that follows) he or she could be convicted of first degree felony murder with special circumstances without the prosecution showing that the burglary of the vehicle was committed upon a locked car.

c. The Most Recent Amendments to the Bill are Intended to Avoid Application of the Felony Murder Doctrine to this New Offense as well as Special Circumstances

By creating a new offense with similar punishment to second degree burglary of a vehicle, this bill seeks to avoid the application of the felony murder doctrine to this new offense. As articulated above, the *Fuller* court stated that "[i]f were writing on a clean slate, we would hold that respondents should not be prosecuted for felony murder since viewed in the abstract, an automobile burglary is not dangerous to human life… Nevertheless…the force of precedent requires the application of the first degree felony-murder rule in the instant case." (*Id*. at 626 & 628). By creating this new section, with an expanded element regarding entry into the vehicle, the Legislature is not tying the hands of the judiciary as to the precedent of applying the felony murder doctrine that applies to second degree burglary of an automobile to the new offense of unlawful entry of a vehicle.

5. Argument in Support

According to the Cole Valley Improvement Association:

> [P]rosecutors often prove a vehicle was locked at the time it was broken into through testimony from a victim that they had left their vehicle locked. With auto burglars in San Francisco and beyond targeting tourists in particular, however, getting victims to return to court from out of town (and sometimes local victims, too) can be difficult. Ultimately, the state's current auto burglary statute does not account for basic common sense and enables defenses that violate the spirit and intent of the law.

6. Argument in Opposition

The American Civil Liberties Union is opposed to the bill, as originally introduced, and states the following:

> SB 916…would remove from the definition of vehicle burglary the requirement that the vehicle's doors be locked, instead requiring that the doors be locked or that forced entry is used. Although this change is a small one as to the targeted offense of auto burglary, because it is made in Penal Code 459, which defines all types of burglary, the broadened definition of vehicle burglary would also broaden the application of the felony murder rule. Thus the bill could result in allowing first degree murder prosecutions in cases where they would not be possible now.

The amendments to SB 916 directly address the concerns of the opposition.

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