

SB 23: Closing the Car Burglary Legal Loophole

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Code Section Affected

Penal Code § 465 (new).

SB 23 (Wiener); held in Assembly Appropriations.

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I. INTRODUCTION

In 1952, two Pasadena police officers arrested two teenagers who had broken into a parked car near the Rose Bowl Stadium.¹ One teenager sat inside a car with a broken window as the officers approached.² While the trial court found the teenagers guilty of burglary, the Court of Appeals reversed this decision because the prosecution failed to admit evidence which proved the doors of the vehicle were locked prior to their entry.³ Although the police officers found the broken window, there was no testimony if the window broke before or after the defendants entered the car.⁴ California Penal Code Section 459, the traditional burglary statute, requires that the perpetrator break into a locked vehicle.⁵ Therefore, the teenagers were not guilty of burglary.⁶ The court's analysis is consistent with California's burglary statute because it emphasizes the locked element for a vehicle break in.⁷

The term "legal loophole" refers to the laxity the traditional burglary statute's locked requirement has created in car burglary cases.⁸ This loophole has impeded the fight against the car burglary epidemic that has swept over California.⁹ California Senator Scott Weiner of San Francisco wrote SB 23, and San Francisco District Attorney George Gascón sponsored SB 23 with the aim to close this loophole.¹⁰ SB 23 creates an alternative to the traditional burglary statute that includes forcible entry of a car to show a vehicle break-in.¹¹

Currently only 2% of car break-ins lead to an arrest, which has led to public safety concerns—especially as the rate of property crimes has increased.¹² Prosecutors are concerned that perpetrators have turned car break-ins into a

1. *People v. Burns*, 114 Cal. App. 2d 566, 567 (Cal. Ct. App. 1952).

2. *Id.*

3. *Id.* at 569–71.

4. *See id.* at 569 (“In order to prove said charge of burglary it was necessary to prove that the doors of the Buick were locked, immediately prior to the time Burns entered the Buick.”).

5. CAL. PENAL CODE § 459 (West 2019).

6. *Burns*, 114 Cal. App. 2d at 571.

7. PENAL § 459; *Burns*, 114 Cal. App. 2d at 569.

8. Heather Knight, *Attorney in San Francisco's DA's Office is the Queen of Car Break-ins. Someone Has to Do it*, S.F. CHRON. (Mar. 31, 2019), <https://www.sfchronicle.com/bayarea/heatherknight/article/Attorney-in-San-Francisco-DA-s-office-is-the-13725448.php> (on file with *The University of the Pacific Law Review*).

9. *Id.*; SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 23, at 2 (Mar. 26, 2019) (stating SB 23 closes the loophole which exists under the traditional burglary statute by allowing prosecutors to use evidence that the vehicle was locked or a window was broken to charge a defendant under this new car theft law) [hereinafter SENATE COMMITTEE].

10. *Legislation: Bills Authored During 2019 Session*, SCOTT WIENER: REPRESENTING CALIFORNIA SENATE DISTRICT 11 (2019), <https://sd11.senate.ca.gov/legislation> (on file with *The University of the Pacific Law Review*).

11. *See generally* S.B. 23, 2019 Leg., 2018-2019 Sess. (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted) (proposing legislation which closes the gap regarding forcible entry in the California vehicle burglary statute).

12. Knight, *supra* note 8.

career.¹³ SB 23 gives prosecutors the tools necessary to address the car break-in epidemic by allowing evidence of forcible entry to show car burglary.¹⁴ Under SB 23, the broken window from that night in Pasadena would be enough evidence of forcible entry for unlawful entry to a vehicle.¹⁵ On appeal, the Court would find that the evidence proved beyond a reasonable doubt the elements of SB 23.¹⁶ SB 23 closes the legal loophole that exists under the traditional burglary statute.¹⁷

II. LEGAL BACKGROUND

SB 23 comes after a long history of car burglaries and a lack of legislation to combat the problem.¹⁸ First, Section A discusses the traditional burglary statute, its implementation, and the high rate of car burglaries in California.¹⁹ Next, Section B describes the current car epidemic that has created the push for SB 23.²⁰ Finally, Section C considers the Legislature's unsuccessful efforts to combat the high rate of car burglaries throughout the state.²¹

A. The Treatment of the Locked Requirement Under the Traditional Burglary Statute

California codified common law breaking and entering when it enacted its traditional burglary statute.²² The traditional burglary statute has evolved

13. *Id.*

14. SENATE COMMITTEE, *supra* note 9, at 2.

15. *See generally* S.B. 23 at 2 (describing a broken window as sufficient force to constitute forcible entry and charge car burglary).

16. *See id.* (“Force that damages the exterior of the vehicle, including, but not limited to, breaking a window”).

17. SENATE COMMITTEE, *supra* note 9, at 2.

18. *See* Complete Bill Status of AB 1326, http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB1326 (last visited June 16, 2019) (on file with *The University of the Pacific Law Review*) (showing that AB 1326 died); *alongside* Complete Bill Status of SB 916, http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180SB916 (last visited July 8, 2019) (on file with *The University of the Pacific Law Review*) (showing that SB 916 died); *see also* *Hearing on S.B. 23 Before the Senate Comm. on Appropriations*, 2019 Leg., 2019–2020 Sess. (Cal. 2019) (on file with *The University of the Pacific Law Review*) (referencing to related legislation that failed).

19. *Infra* Section II.A.; *see generally* CAL. PENAL CODE § 459 (West 2019) (describing the traditional burglary statute); *see also* City and County of San Francisco Resolution, *Supporting California State Senate Bill No. 23 (Wiener) – Unlawful Entry of a Vehicle*, Res. No. 80–19 (Feb. 26, 2019) (on file with *The University of the Pacific Law Review*) (noting the rise in auto break ins occurring in San Francisco).

20. *Infra* Section II.B.

21. *Infra* Section II.C.; *see generally* Complete Bill Status of AB 1326, *supra* note 18 (showing that AB 1326 died); Complete Bill Status of SB 916, *supra* note 18 (showing that SB 916 died); *Hearing on S.B. 23 Before the Senate Comm. on Appropriations*, *supra* note 18 (referencing to related legislation that failed).

22. CAL. PENAL CODE § 459.

considerably since 1872.²³ The amendment of 1947 expanded the law to include locked vehicles.²⁴ California's current burglary statute states that any person who enters a locked vehicle with the intent to commit a crime therein is guilty of burglary.²⁵ Although the statute is expansive, vehicle burglary is the only charge that specifically articulates the locked element at the time of entry.²⁶

The locked requirement has often been a point of contention for courts.²⁷ Although courts have tried to deduce what "locked" entails, there is no clear answer.²⁸ As previously stated, the element of "breaking" has never been essential under the burglary statute in California; however, the exception is vehicle burglary.²⁹ For example, in the case of *In re James B.*, the defendant made two arguments asking the court to examine the locked requirement.³⁰ The defendant asserted that there was no force for car burglary; and since the windows were partially down, the car was not locked as the statute requires.³¹ The court disagreed and noted that forced entry is not an element of car burglary; however, such evidence can lead to an inference to meet the locked requirement.³² However, as seen in *People v. Burns*, evidence of forcible entry by itself may not be enough to sustain a conviction of car burglary.³³

In the case of *In re James B.*, the court emphasized the importance of the locked requirement:

If [the] minor would have reached into the vehicle through the open window and removed the cell phone, without unlocking the door, there would have been no burglary. Or if the vehicle had been unlocked and [the] minor opened the door, there would have been no burglary. The pertinent issue is whether the locked state of the vehicle was altered.³⁴

23. *Id.*; SENATE COMMITTEE, *supra* note 9, at 3.

24. *Id.*

25. See PENAL § 459 ("vehicle as defined by the Vehicle Code, when the doors are locked").

26. SENATE COMMITTEE, *supra* note 9, at 3.

27. Compare *People v. Massie*, 241 Cal. App. 2d 812, 818 (1966) (showing that the truck cab and truck were two separate enclosed spaces and the truck cab being left unlocked did not affect whether or not the truck itself being locked would meet the locked requirement, but also stating that the truck cab being "sealed" was enough to meet the locked requirement under the statute), with *In re Lamont R.*, 200 Cal. App. 3d 244, 247 (1988) ("But the Legislature specifically required locking as an essential element of common vehicular burglary. We would do violence to this relatively clear statutory directive if we were to find that the chain and hook contraption improvised by Officer Melara constituted a lock.").

28. See *id.* at 248 (discussing possible interpretations of locked).

29. *In re James B.*, 109 Cal. App. 4th 862, 868 (Cal. Ct. App. 2003).

30. *Id.* at 867–71.

31. *Id.*

32. See *id.* at 867–68 ("Therefore, 'because auto burglary can be committed only by entering a *locked* vehicle without the owner's consent, it 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.' [Citation Omitted]").

33. See *id.* at 868 ("In *Burns*, on the other hand, there was evidence of forced entry (broken glass), but no evidence that the car had been locked; therefore there was no burglary [Citation Omitted].").

34. *Id.* at 870.

The court illustrates the legal loophole that concerns SB 23 supporters.³⁵ The anxiety has roots in the challenge of charging perpetrators with car burglary because of the locked requirement.³⁶

B. The Crime Rates that Inspired SB 23

SB 23 will allow prosecutors to fight the epidemic of car break-ins more effectively.³⁷ This epidemic has been spreading throughout California, and is exemplified by the high property crimes rate San Francisco has experienced.³⁸ San Francisco has the highest property crimes rate of the twenty largest cities in the U.S.—fifty-five car burglaries occur every day.³⁹ Although overall rate of car break-ins has recently decreased, areas of high tourism continue to experience an increase in these crimes.⁴⁰

The rate of vehicle break-ins inspired District Attorney Gascón's sponsorship of SB 916 in 2018 and the current sponsorship of SB 23.⁴¹ Gascón implemented other measures to combat the problem in San Francisco.⁴² However, SB 23 is a long-term solution to the epidemic and an effective way to close this loophole at the state level.⁴³ Statewide fear and anxiety over the inability to convict a defendant of vehicular burglary because of the locked requirement led to SB 23.⁴⁴

35. See Knight, *supra* note 8 (describing how Shirin Oloumi works with “neighborhood groups fed up with incessant property crime.”).

36. SENATE COMMITTEE, *supra* note 9, at 2.

37. *Id.*

38. Chris Reed, *Response to San Francisco Car Break-in Epidemic Faulted*, PUBLIC CEO (Jan. 3, 2019), <https://www.publicceo.com/2019/01/response-to-san-francisco-car-break-in-epidemic-faulted/> (on file with *The University of the Pacific Law Review*).

39. *Id.*; Joe Kukura, *SF Car Break-Ins Decline to Slightly Less Than Epidemic Levels*, SFIST (Mar. 29, 2019), <https://sfist.com/2019/03/29/sf-car-break-ins-decline-to-slightly-less-than-epidemic-levels/> (on file with *The University of the Pacific Law Review*).

40. Reed, *supra* note 38.

41. Telephone Interview with Victor Ruiz-Cornejo, Office of Senator Wiener, Senate District 11 of California (June 19, 2019) (notes on file with *The University of the Pacific Law Review*) [hereinafter Ruiz-Cornejo].

42. See Knight, *supra* note 8 (explaining that District Attorney Gascón created an auto burglary unit in 2015, and that increased prosecution and heightened media coverage has helped decrease the number of car burglaries).

43. SENATE COMMITTEE, *supra* note 9, at 2.

44. See Doug Johnson, *Land Park Neighbors Report Rise in Break-Ins*, FOX 40 (Apr. 18, 2019 7:00 PM), <https://fox40.com/2019/04/18/land-park-neighbors-reporting-rise-in-break-ins/> (on file with *The University of the Pacific Law Review*) (explaining that a group of Land Park neighbors had worries about car break ins after sixteen cars were reportedly broken into in a span of a week), and Patrick McGreevy, *'Epidemic' of Car Break-ins Prompts California Bill to Assist Prosecutions*, L.A. TIMES (Nov. 26, 2018), <https://www.latimes.com/politics/essential/la-pol-ca-essential-politics-may-2018-epidemic-of-car-break-ins-draws-1543271867-htmlstory.html> (on file with *The University of the Pacific Law Review*) (writing that Los Angeles has also seen a rise of car break ins); *Stop Crime SF Backs State Law to Fight Vehicle Break-In Epidemic*, STOP CRIME SF: NEIGHBORHOODS FOR CRIMINAL JUSTICE ACCOUNTABILITY (Nov. 27, 2018), <https://stopcrimesf.com/blog/2018/11/27/stop-crime-sf-backs-state-law-to-fight-vehicle-break-in-epidemic> (on file with *The University of the Pacific Law Review*) [hereinafter Stop Crime SF].

C. Attempted Legislation Before SB 23

Assembly Member Steven T. Kuykendall introduced AB 476 in 1997.⁴⁵ AB 476 tried to resolve the loophole in the current burglary statute by proposing to expand the current definition.⁴⁶ This bill would have expanded the definition of vehicle burglary to include break-ins of unlocked vehicles.⁴⁷ However, AB 476 failed to pass the Assembly, and no further legislation relating to this issue occurred until AB 1326 in 2017.⁴⁸

The Legislature introduced AB 1326 in the 2017–18 legislative session to provide stricter punishments for repeat violent offenders.⁴⁹ Specifically, AB 1326 targeted repeat offenders who have stolen property with a value under \$950.⁵⁰ AB 1326 addressed the concern over a rise in property crime rates after Proposition 47 passed.⁵¹ AB 1326 did not receive widespread support, and it did not pass the Legislature.⁵²

Senator Wiener introduced SB 916—an identical predecessor to SB 23—in late January of 2018.⁵³ The Senate’s Public Safety Committee passed SB 916.⁵⁴ However, the Senate Committee on Appropriations chose not to forward the bill to the Assembly.⁵⁵ Although the exact reason as to why SB 916 failed is unknown, it is common for bills to die in the Appropriations Committee.⁵⁶

The San Francisco District Attorney’s office sponsored both SB 916 and SB 23 in response to the public demand for more effective laws against vehicle burglary.⁵⁷ Although the two bills are identical, SB 23 received more support

45. *Hearing on S.B. 23 Before the Senate Comm. on Appropriations*, *supra* note 18.

46. *Id.*

47. *Id.*

48. Complete Bill History of AB 1326, http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201720180AB1326 (last visited June 16, 2019) (on file with *The University of the Pacific Law Review*).

49. *Id.*; AB 1326, 2017–2018 Sess. (Cal. 2017) (as amended Apr. 2017, but not enacted).

50. See Mia Bird, Magnus Lofstrom, Brandon Martin, Steven Raphael & Viet Nguyen with research support from Justin Goss, *The Impact of Proposition 47 on Crime and Recidivism*, PUBLIC POL’Y INST. 10 (June 2018), https://www.ppic.org/wp-content/uploads/r_0618mbr.pdf (“Legislative proposals, such as AB 1326, aim to address repeat offenders’ thefts of property valued under \$950 per incident, which are currently considered misdemeanors under Prop. 47.”).

51. See *id.* (explaining that under Proposition 47 thefts valued under \$950 are misdemeanors).

52. See Complete Bill Status of AB 1326, *supra* note 18 (inferring a lack of support based on its status).

53. Complete Bill History of SB 916, http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201720180SB916 (last visited June 15, 2019) (on file with *The University of the Pacific Law Review*); *Hearing on S.B. 23 Before the Senate Comm. on Appropriations*, *supra* note 18.

54. See Ruiz-Cornejo, *supra* note 41 (stating that SB 916 died in the Appropriations Committee and it is not uncommon for bills to die in this process).

55. See *id.* (stating that SB-916 died in the Appropriations Committee and it is not uncommon for bills to die in this process).

56. *Id.*

57. Heather Knight, *Car Break-in Crackdown Bill Made Perfect Sense. California Lawmakers Killed It*, S.F. CHRON. (June 15, 2018), <https://www.sfchronicle.com/news/article/Car-break-in-crackdown-bill-made->

than its predecessor.⁵⁸ According to the Senate report, only five organizations publicly backed SB 916, whereas eighteen endorsed SB 23.⁵⁹ Overall, SB 23 found more success than its earlier counterpart.⁶⁰

III. SB 23

SB 23 is an alternative to California Penal Code Section 459, the traditional burglary statute.⁶¹ SB 23 added a new statute to the California Penal Code, now making it a crime to forcibly enter a vehicle with the “intent to commit a theft therein.”⁶² The new law departs from the locked element under the traditional burglary statute, creating an alternative to the locked language.⁶³ SB 23 allows prosecutors to use evidence of forcible entry to prove the defendant burglarized the vehicle—evidence that otherwise might have been insufficient.⁶⁴ SB 23 aligns the elements of vehicle break-ins with elements for other types of burglary.⁶⁵

SB 23 addresses typical techniques burglars use during vehicle break-ins by defining “forcible.”⁶⁶ Under SB 23, forcible means any action during the unlawful entry of a vehicle that damages the exterior of the car.⁶⁷ Forcible includes acts such as, “breaking a window, cutting a convertible top, punching a lock, or prying a door open.”⁶⁸ SB 23 also expands forcible to include any use of a tool or device that manipulates a lock.⁶⁹

The need to modify the elements of vehicle burglary to include force and manipulation of a lock suggests prosecutors are able to charge only a small

perfect-sense-12995551.php (on file with *The University of the Pacific Law Review*); *Legislation: Bills Authored During 2019 Session*, *supra* note 10.

58. Compare SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 916, at 1 (Mar. 26, 2019) [hereinafter COMMITTEE ANALYSIS OF SB 916], with SENATE COMMITTEE, *supra* note 9, at 1.

59. Compare COMMITTEE ANALYSIS OF SB 916, *supra* note 58, at 1, with SENATE COMMITTEE, *supra* note 9, at 1.

60. Compare Complete Bill Status of SB 916, *supra* note 18 (showing that SB 916 died without passing on to the Assembly), with Complete Bill Status of SB 23, http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200SB23 (last visited Aug. 5, 2019) (on file with *The University of the Pacific Law Review*) (showing that SB 23 passed the Senate).

61. See S.B. 23, 2019 Leg., 2018-2019 Sess., at 2 (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted) (“No person may be convicted pursuant to this section and pursuant to Section 459.”).

62. *Id.*

63. *Id.*

64. SENATE COMMITTEE, *supra* note 9, at 2.

65. See *id.* at 3 (“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.”).

66. S.B. 23, 2019 Leg., 2018-2019 Sess., at 2 (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted).

67. *Id.*

68. *Id.*

69. See *id.* (“Use of a tool or device that manipulates the locking mechanism, including, without limitation, a slim jim or other lockout tool, a shaved key, jiggle key, or lock pick, or an electronic device such as a signal extender.”).

percentage of perpetrators under the traditional statute.⁷⁰ SB 23 gives examples but does not limit what constitutes force, enabling it to close the legal loophole that exists under the traditional burglary statute.⁷¹

SB 23 creates a “wobbler offense:” a charge that can either be a misdemeanor or a felony, depending on the circumstances.⁷² As a misdemeanor, SB 23 calls for confinement in a county jail not to exceed one year.⁷³ As a felony, SB 23 calls for confinement in a county jail for sixteen months, two years, or three years.⁷⁴ The range of sentencing with the wobbler statute results in less severe punishment for less serious or first-time offenders.⁷⁵ Additionally, the various sentencing options give prosecutors the necessary tools to address the concern over the legal loophole.⁷⁶

IV. ANALYSIS

SB 23 addresses the legal loophole existing under the traditional burglary statute which has created difficulties for prosecutors to charge perpetrators.⁷⁷ Section A discusses the advantages that SB 23 provides by focusing on addressing public concerns, and how SB 23 targets serial perpetrators.⁷⁸ Section B compares SB 23 with the traditional burglary statute; specifically, the application of the felony murder rule and the need for circumstantial evidence.⁷⁹ Section C considers whether SB 23 adequately addresses the problem with California’s current burglary statute, or if its proposed enactment creates more problems.⁸⁰ Section D considers whether SB 23 fully closes the legal loophole.⁸¹ Section E discusses SB 23 as the Legislative approach to codify the court’s attempts to remedy the legal loophole.⁸²

70. *Id.*; see Knight, *supra* note 8 (“If you break into a car in San Francisco and, in a small miracle, police arrest you – this happens less than 2 percent of the time”).

71. S.B. 23 at 2; SENATE COMMITTEE, *supra* note 9, at 2.

72. *Id.*

73. *Id.*

74. *Id.*

75. See *id.* (describing the range which encourages proportional punishment, deters perpetrators, and gives prosecutors more flexibility in charging car burglary).

76. *Id.*

77. *Id.*

78. *Infra* Section IV.A; see SENATE COMMITTEE, *supra* note 9, at 2 (“When residents or visitors park their cars on the street, they should have confidence that the car and its contents will be there when they return.”); Knight, *supra* note 8; Ruiz-Cornejo, *supra* note 41.

79. *Infra* Section IV.B.

80. *Infra* Section IV.C.

81. *Infra* Section IV.D.

82. *Infra* Section IV.E.

A. SB 23 Addresses the High Rate of Vehicle Break-Ins Throughout California

SB 23 attempts to alleviate California residents' fears over increasing vehicle break-in rates.⁸³ By closing the loophole that exists under the traditional burglary statute, SB 23 fights against the high rates of car burglaries where victims experience damaged or stolen property.⁸⁴ Protecting property interests is a fundamental goal of common law burglary statutes, and SB 23 enacts a new criminal code to align car break-ins with these common law goals.⁸⁵ SB 23 assures California residents that protecting their property is at the forefront of public safety concerns.⁸⁶

The drafters of SB 23 recognized that perpetrators have turned vehicle break-ins into a career, which has created an epidemic.⁸⁷ Thieves utilize efficient methods and tactics to break in to cars.⁸⁸ Often, a small group of people act together and target multiple cars in one act.⁸⁹ For example, one gang member will break all the car windows along a street while the others loot the car for valuables.⁹⁰ The loophole in California's traditional burglary statute contributed to the high rates of career criminals—and low rates of arrests and convictions—because prosecutors did not have the necessary tools to address the problem.⁹¹ SB 23 focuses on targeting career criminals that have become methodical and tactical in their approach to vehicle break-ins.⁹²

B. SB 23 as it Compares to the Traditional Burglary Statute: Felony Murder Doctrine and the Need for Circumstantial Evidence

Prosecutors prefer SB 23's expanded definition of unlawful entry of a vehicle

83. See Johnson, *supra* note 44 (highlighting anxieties that Land Park neighbors are experiencing as a string of car burglaries occurred in their neighborhood); see also McGreevy, *supra* note 44 (explaining that Southern California has seen a rise in car burglaries).

84. City and County of San Francisco Resolution, *supra* note 19; SENATE COMMITTEE, *supra* note 9, at 2.

85. See 4 Witkin, Cal. Criminal Law, §140 (“Although modern burglary statutes have been greatly expanded, historically they were designed to protect an occupant’s possessory interests in a building.”).

86. SENATE COMMITTEE, *supra* note 9, at 2; Knight, *supra* note 8.

87. *Id.*

88. See *id.* (“She knows all the repeat offenders, who tend to work in organized gangs”); Ruiz-Cornejo, *supra* note 41.

89. *Id.*; see Hannah Darden, *Arrest Made in Sacramento State Car Break-ins, Three Suspects Still Wanted by Police*, THE SACRAMENTO BEE (Oct. 3, 2018 4:47 PM), <https://www.sacbee.com/news/local/crime/article219462155.html> (on file with *The University of the Pacific Law Review*) (writing about an incident where a group of four women acting as a unit broke into a large number of cars in one night).

90. Ruiz-Cornejo, *supra* note 41.

91. SENATE COMMITTEE, *supra* note 9, at 2; Knight, *supra* note 8.

92. Ruiz-Cornejo, *supra* note 41; see *People v. Malcolm*, 47 Cal. App. 3d 217, 219 (Cal. Ct. App. 1975) (describing how the defendants went around a parking lot examining cars before breaking into victim’s car).

compared to the traditional burglary statute.⁹³ For example, the felony murder doctrine explicitly mentions the traditional burglary statute.⁹⁴ In contrast, SB 23 creates a new statute that the felony murder doctrine does not explicitly mention.⁹⁵ SB 23 drafters recognized that expanding the current burglary statute would also mean possibly expanding felony murder.⁹⁶ Instead, the drafters opted for SB 23 as an alternative, avoiding this dilemma.⁹⁷ The felony murder doctrine is highly controversial, and the drafters intentionally created a new crime—unlawful entry of a vehicle—instead of expanding the traditional burglary statute to include forcible entry.⁹⁸ However, because SB 23 is an alternative to the traditional burglary statute, it does not preclude prosecutors from using the traditional burglary statute if they want to pursue a felony murder charge.⁹⁹

SB 23 reduces the need for circumstantial evidence in car burglary cases because the forcible entry becomes direct evidence of the crime.¹⁰⁰ Circumstantial evidence may be convincing on its own and may persuade a court to find a vehicle break-in.¹⁰¹ However, compelling circumstantial evidence does not deny the legal loophole's existence and repercussions.¹⁰² Under the traditional burglary statute, prosecutors may use forcible entry merely as circumstantial evidence to prove the locked requirement.¹⁰³ Although evidence of

93. See Ruiz-Cornejo, *supra* note 41 (noting that SB 23 is preferable to simply expanding the traditional burglary statute as it would prevent the expansion of felony murder).

94. See CAL. PENAL CODE § 189(a) (West 2019) (“All murder . . . that is committed in the perpetration of, or attempt to perpetrated . . . burglary . . . is murder of the first degree.”).

95. Compare *id.* (noting that burglary is an enumerated felony), and S.B. 23, 2019 Leg., 2018-2019 Sess., at 2 (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted) (showing that SB 23 is an alternative to the traditional burglary statute and creates a separate criminal statute).

96. Ruiz-Cornejo, *supra* note 41.

97. See generally S.B. 23 at 2 (stating that SB 23 may not apply concurrently with the traditional burglary statute); see also Ruiz-Cornejo, *supra* note 41 (stating that SB 23 is preferable to the traditional burglary statute because it does not expand felony murder).

98. See Clayton T. Tanaka & Larry M. Lawrence, II, Comment, *VI. The Felony-Murder Doctrine*, 36 Loy. L.A. L. Rev. 1479, 1480–82 (2003) (referring to the Supreme Court of California's statement in *People v. Dillon* characterizing felony murder as a disfavored judge made rule that has no basis in the California Penal Code); see also Ruiz-Cornejo, *supra* note 41 (discussing that the traditional burglary statute is enumerated for felony murder).

99. S.B. 23 at 2 (“No person may be convicted both pursuant to this section and pursuant to [the traditional burglary statute].”); CAL. PENAL CODE § 189(a) (enumerating burglary in the felony murder statute).

100. See City and County of San Francisco Resolution, *supra* note 19 (stating forcible entry evidence is a common sense change that will show vehicle burglary was committed); SENATE COMMITTEE, *supra* note 9, at 4.

101. See Paul Callan, *Can Circumstantial Evidence Convict Aaron Hernandez?*, CNN (Feb. 23, 2015 4:46PM), <https://www.cnn.com/2015/02/20/opinion/callan-hernandez-circumstantial-evidence/index.html> (on file with *The University of the Pacific Law Review*) (reflecting on an unrelated case, but discussing the efficiency of circumstantial evidence); see generally *People v. Burns*, 114 Cal. App. 2d 566, 569 (Cal. Ct. App. 1952) (describing the need to know when the breaking of the car window occurred to infer whether or not the vehicle was locked).

102. Knight, *supra* note 8; see *Burns*, 114 Cal. App. 2d at 570 (“The fact that the [side vent window] was broken and glass was on the front seat was not proof that the doors of the Buick were locked, and an inference could not be drawn from that fact that the doors were locked.”).

103. See *In re Charles G.*, 95 Cal. App. 3d 62, 68 (Cal. Ct. App. 1979) (Franson, J., dissenting) (“This means that absent direct evidence that the doors were locked there must be some evidence of a forced entry into

force can help the trier-of-fact infer that the victim locked the car doors, this evidence alone does not always sustain a car burglary conviction.¹⁰⁴ Under SB 23, evidence of forcible entry is direct—not circumstantial—evidence of a car burglary.¹⁰⁵

The locked requirement under the traditional burglary statute created a need for direct testimony.¹⁰⁶ The locked element can be hard to prove, and it often heavily relies on victim testimony.¹⁰⁷ Victims must testify that they locked the car doors prior to the burglary occurring.¹⁰⁸ Problems arise when victims unlock the doors before providing a police report, or when a perpetrator unlocks the door when leaving the scene.¹⁰⁹ Testimony of the victim’s habitual locking of a car door is admissible, but such testimony relies heavily on witness credibility.¹¹⁰ If a victim is overly confident he or she locked the car, juries may interpret that confidence as being untrustworthy.¹¹¹ In contrast, a victim’s hesitation can also cast doubts that hurt the prosecution’s case.¹¹² Testimony may also be unavailable because the victims live far away, which is especially problematic in San Francisco because perpetrators target tourist areas.¹¹³ By shifting the focus to forcible entry, rather than locked car doors, SB 23 eliminates the need for victim testimony and the associated problems.¹¹⁴

SB 23 shifts the focus from victim to perpetrator in car burglary cases.¹¹⁵ SB 23’s forcible entry language means the perpetrator’s actions are the central evidence.¹¹⁶ This perspective aligns with criminal justice goals, where courts do

the vehicle to satisfy the prosecution’s burden of proof”); SENATE COMMITTEE, *supra* note 9, at 2 (“Currently proving that a defendant broke a window can be deemed insufficient.”).

104. *Id.*

105. *Id.*

106. *Id.* at 5.

107. *See id.* (“Prosecutors often establish the required locked element in court through testimony from the victim that they locked their vehicle when they left their car.”); Stop Crime SF, *supra* note 44.

108. SENATE COMMITTEE, *supra* note 9, at 5.

109. Stop Crime SF, *supra* note 44.

110. *See In re Charles G.*, 95 Cal. App. 3d 62, 66 (Cal. Ct. App. 1979) (citing and applying California Evidence Code Section 1105).

111. *See id.* at 67 (“In fact, a more positive answer might in many situations be suspect.”).

112. *See id.* at 65–66 (illustrating the cross-examination of the victim where there was some hesitancy in regards to whether the habitual locking should constitute substantial evidence to meet the locked requirement).

113. *See* SENATE COMMITTEE, *supra* note 9, at 2 (“Moreover, when a rental car is burglarized the tourist is often gone and cannot testify that he or she locked the car door”); *see also* Reed, *supra* note 38 (explaining that areas of high tourism have been heavily impacted by car burglars).

114. *Compare* S.B. 23, 2019 Leg., 2018-2019 Sess., at 2 (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted) (showing that proof of forcible entry or manipulating a lock is enough evidence to constitute car burglary), *with* CAL. PENAL CODE § 459 (West 2019) (stating that a vehicle must be locked to charge car burglary); *and* SENATE COMMITTEE, *supra* note 9, at 2 (describing that it is sometimes difficult to obtain victim testimony to have sufficient proof to meet the locked requirement).

115. *See id.* at 2–5 (noting the need for victim testimony to establish vehicle burglary under the traditional burglary statute).

116. *See id.* at 2 (describing that “prosecutors can prove an auto burglary occurred by either showing that the car was locked, or alternatively, that a window was broken.”).

not call into question the victim's actions.¹¹⁷ Instead, under SB 23, the defendant's own actions determine whether an unlawful entry of a vehicle occurred.¹¹⁸

C. Does the Enactment of SB 23 Create More Problems? Is SB 23 the Solution California Needs?

By expanding the California Penal Code with the enactment of SB 23, there is a risk that the prison population will increase.¹¹⁹ Although the consequences of SB 23 are indeterminate at this early stage, there are potential fiscal impacts associated with expanding the Penal Code.¹²⁰ The Senate Committee addressed these concerns:

If [SB 23] results in 18 new admissions to state prison annually, or roughly 1 percent of the number of convictions for second-degree burglary recorded last year that included a prison sentence, state incarceration costs of [SB 23] would reach into the millions of dollars annually.¹²¹

However, whether SB 23 actually results in more incarcerations is yet to be determined.¹²² SB 23's impact depends on sentencing discretion and the prosecutor's discretion to utilize SB 23 over the traditional burglary statute.¹²³ Similarly, the impact of SB 23 is also based on "the criminal history of the defendant, and the factors unique to each case."¹²⁴

Expanding criminal penalties in SB 23 conflicts with the federal court order to reduce California's inmate population.¹²⁵ There is a question as to whether the proposed enactment of SB 23 aligns with the current spirit regarding incarceration.¹²⁶ California has made various strides to comply with the federal

117. See American Bar Association, *Criminal Justice Standards for the Prosecution Function*, ABA (Nov. 2018), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/ (on file with *The University of the Pacific Law Review*) ("The prosecutor . . . must take care not to imply guilt or otherwise prejudice the interests of the victims . . ."); and *In re James B.*, 109 Cal. App. 4th 862, 870 (Cal. Ct. App. 2003) ("[Victim's] state of mind regarding the security of his cell phone, however, is not at issue.").

118. SENATE COMMITTEE, *supra* note 9, at 2.

119. *Hearing on S.B. 23 Before the Senate Comm. on Appropriations*, 2019 Leg., 2019–2020 Sess. (Cal. 2019).

120. *Id.*

121. *Id.*

122. See generally *id.* (describing prison populations as constantly shifting with the rise and fall of adult inmate populations as inmates are brought in and also released).

123. *Id.*

124. *Id.*

125. See Bird, *supra* note 50, at 4 (discussing the 2009 court order from the Federal Government to cut inmate population by tens of thousands by June 2013); see also SENATE COMMITTEE, *supra* note 9, at 5 (discussing how SB 23 create a new crime of unlawful entry of a vehicle).

126. See *Hearing on S.B. 23 Before the Senate Comm. on Appropriations*, *supra* note 18 ("By potentially increasing the inmate population in in-state institutions, this bill could make it more difficult for the state to comply with the court order.").

court order and reduce its prison population.¹²⁷ However, the legal loophole under the traditional burglary statute creates an unavoidable dilemma for prosecutors and vehicle break-in victims throughout California.¹²⁸ SB 23 expands the Penal Code to consciously target a problem that has swept throughout California by addressing the legal loophole under the traditional burglary statute.¹²⁹

Another critique of SB 23 questions whether the law's expansion of criminal penalties actually addresses the underlying problems contributing to higher crime rates.¹³⁰ Although possible shortcomings of social policies contribute to the high rate of property crimes, SB 23 tackles the impact on victims.¹³¹ SB 23 is the first step toward a solution.¹³² SB 23 enforces consequences when a perpetrator commits car burglary, which the traditional burglary statute is unable to fully enforce.¹³³

D. Does SB 23 Fully Address the Legal Loophole?

SB 23 is the Legislature's approach to close the legal loophole.¹³⁴ However, although its enactment expands the definition of burglary, it may not address all the possible problems with car break-ins.¹³⁵ A problem neither SB 23 nor the traditional burglary statute explicitly address is where a perpetrator steals items from an unlocked vehicle, or where the windows are down.¹³⁶ These scenarios would not constitute forcible entry under SB 23, which requires entry that damages the car's exterior or manipulates the car lock.¹³⁷ These scenarios would also not constitute entry of a locked vehicle under the traditional burglary

127. *See id.* ("The state has undertaken efforts to implement a durable remedy to reduce and avoid prison overcrowding.")

128. SENATE COMMITTEE, *supra* note 9, at 2.

129. *Id.*

130. *See generally* Hearing on S.B. 23 Before the Senate Comm. on Appropriations, *supra* note 18 ("The state has undertaken efforts to implement a durable remedy to reduce and avoid prison overcrowding.")

131. *See* Ruiz-Cornejo, *supra* note 41 (describing that other measures can be taken to combat the car epidemic, such as addressing the lack of housing availability).

132. *Id.*

133. *See* Knight, *supra* note 8 (pointing out the inability by police to enforce the traditional car burglary statute); SENATE COMMITTEE, *supra* note 9, at 2.

134. SENATE COMMITTEE, *supra* note 9, at 2.

135. Compare S.B. 23, 2019 Leg., 2018-2019 Sess., at 2 (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted) (showing that either manipulating a lock or damaging the exterior of a car is necessary to charge a defendant with a car break-in), with CAL. PENAL CODE § 459 (West 2019) (requiring that a vehicle must be locked to charge a defendant with a car break-in), and *In re James B.*, 109 Cal. App. 4th 862, 870 (Cal. Ct. App. 2003) (describing a minor who reaches in through a rolled down window to unlock a car door and steals a cell phone).

136. *See generally* S.B. 23 at 2 (describing forcible entry and manipulating a lock but allowing for the statute to encompass other unlawful entries that are not explicitly described within SB 23); CAL. PENAL CODE § 459 (stating that a vehicle must be locked to charge car burglary).

137. S.B. 23 at 2.

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statute.¹³⁸ These problems persisting despite the proposed enactment of SB 23 is foreseeable because they fall outside the range of forcible vehicle break-ins SB 23 specifically targets.¹³⁹

E. SB 23 is the Legislative Approach to Codify Judicial Interpretations of the Traditional Burglary Statute

Although the burglary statute emphasizes the locked requirement for vehicle burglary, it is unclear whether SB 23 is necessary to close the loophole.¹⁴⁰ Courts have already utilized evidence of forcible entry to meet the locked requirement under the traditional burglary statute.¹⁴¹ “Absent direct evidence that the doors were locked there must be some evidence of a forced entry into the vehicle to satisfy the prosecution’s burden of proof.”¹⁴² The statement demonstrates the judicial system’s understanding of the traditional burglary statute.¹⁴³ Because courts have taken the initiative to use evidence of force as a replacement to meeting the locked requirement, SB 23 may seem unnecessary.¹⁴⁴ However, when examining the irregularity in case decisions regarding the locked requirement, it becomes clear SB 23 is necessary to promote consistency throughout California courts.¹⁴⁵

SB 23 covers a wider range of burglary break-ins, yet the interpretation of the statute is still discretionary.¹⁴⁶ In the past, courts have inconsistently applied the traditional burglary statute and the locked requirement.¹⁴⁷ For example, the

138. See generally PENAL § 459 (stating that a vehicle must be locked to charge car burglary); *People v. Allen* 86 Cal. App. 4th 909, 917 (Cal. Ct. App. 2001) (describing that simply opening an unlocked car door does not constitute car burglary under the traditional burglary statute).

139. See SENATE COMMITTEE, *supra* note 9, at 2 (discussing the author’s view that the bill seeks to prevent the number of auto break-ins in San Francisco and beyond).

140. See PENAL § 459 (emphasizing that a vehicle must be locked for it to constitute as a car burglary under the statute); see generally *In re Charles G.*, 95 Cal. App. 3d 62, 68 (Cal. Ct. App. 1979) (Franson, J., dissenting) (referencing to prior case decisions that have utilized forced entry as circumstantial evidence that the vehicle was locked).

141. *Id.* (Franson, J., dissenting); see *People v. Allen*, 86 Cal. App. 4th 909, 917–18 (Cal. Ct. App. 2001) (stating that because Appellant did not use any force or alter any locking mechanism he did not commit car burglary).

142. *In re Charles G.*, 95 Cal. App. 3d at 68 (Franson, J., dissenting).

143. See *id.* (Franson, J., dissenting) (noting that the locked requirement to the burglary statute is essential, but stating that forced entry can satisfy the burden of proof).

144. Compare *id.* (Franson, J., dissenting) (noting that the locked requirement to the burglary statute is essential, but stating that forced entry can satisfy the burden of proof), with SENATE COMMITTEE, *supra* note 9, at 2 (“Current law requires proof that the car was locked, even if proof exists that the [defendant] smashed the car windows.”).

145. Compare *In re James B.*, 109 Cal. App. 4th 862, 868 (Cal. Ct. App. 2003) (encouraging a purposive reading and application of the locked requirement), with *In re Lamont R.*, 200 Cal. App. 3d 244, 248 (Cal. Ct. App. 1988) (rejecting a purposive reading of the locked requirement).

146. See generally S.B. 23, 2019 Leg., 2018-2019 Sess., at 2 (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted) (describing forcible entry and manipulating a lock but allowing for the statute to encompass other unlawful entries that are not explicitly described within SB 23).

147. Compare *In re James B.*, 109 Cal. App. 4th at 868 (encouraging a purposive reading and application

court in *In re James B.* found a minor guilty when he stole a cell phone by reaching through a window and unlocking the door.¹⁴⁸ The lowered car window triggered the court's discussion of whether the car was truly locked for purposes of the traditional burglary statute.¹⁴⁹ Ultimately, the court implemented the legislative intent behind the traditional burglary statute.¹⁵⁰ The result of *In re James B.*, which encouraged the court to look for the purpose behind the traditional burglary statute, is at odds with other vehicle break-in cases.¹⁵¹ Other courts have rejected a purposive reading of the traditional burglary statute.¹⁵² For example, in *In Re Lamont R.* the defendant broke into a truck closed with chains—no force was used and “no seals were broken.”¹⁵³ Here, the Attorney General suggested a purposive reading of the traditional burglary statute—to combat the “social evil which the statute was designed to prevent.”¹⁵⁴ Instead, the court used a textualist approach to the locked requirement.¹⁵⁵ The inconsistency between the two decisions lays the foundation for SB 23's forcible entry language.¹⁵⁶

V. CONCLUSION

SB 23's goal is to give prosecutors proper tools to close the legal loophole that exists under the traditional burglary statute.¹⁵⁷ This law comes at a time when public anxiety runs high due to the large number of car burglaries that are

of the locked requirement), *with In re Lamont R.*, 200 Cal. App. 3d at 248 (rejecting a purposive reading of the locked requirement).

148. *In re James B.*, 109 Cal. App. 4th at 870.

149. *Id.* at 868.

150. *See id.* (“In considering the legislative intent underlying the ‘locked doors’ element of auto burglary, the *Toomes* court found ‘the purpose . . . is to make it a more serious offense to break into the interior of a car than to merely steal something from it.’ [Citation Omitted].”).

151. *Compare id.* (encouraging a purposive reading and application of the locked requirement), *with In re Lamont R.*, 200 Cal. App. 3d at 248–49 (rejecting a purposive reading of the locked requirement); *see generally A Guide to Reading, Interpreting and Applying Statutes*, THE WRITING CENTER AT GULC (2017), <https://www.law.georgetown.edu/wp-content/uploads/2018/12/A-Guide-to-Reading-Interpreting-and-Applying-Statutes-1.pdf> (on file with *The University of the Pacific Law Review*) (explaining intentionalism as an interpretation that considers not just the text of the statute, but also considers the history to determine what the Legislature had in mind when they enacted the statute) [hereinafter The Writing Center].

152. *Compare In re James B.*, 109 Cal. App. 4th at 868 (encouraging a purposive reading and application of the locked requirement), *with In re Lamont R.*, 200 Cal. App. 3d at 248–49 (rejecting a purposive reading of the locked requirement).

153. *Id.* at 247.

154. *Id.* at 248.

155. *Id.* at 248–49; *see generally* The Writing Center, *supra* note 151 (defining textualist as a statutory interpretation approach that only considers the text of the statute).

156. S.B. 23, 2019 Leg., 2018–2019 Sess., at 2 (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted); *compare In re James B.*, 109 Cal. App. 4th at 868 (encouraging a purposive reading and application of the locked requirement), *with In re Lamont R.*, 200 Cal. App. 3d at 248–249 (rejecting a purposive reading of the locked requirement).

157. SENATE COMMITTEE, *supra* note 9, at 2.

occurring throughout California.¹⁵⁸ SB 23 comes directly from prosecutors who are dealing with the high rates of car burglaries.¹⁵⁹ With SB 23, prosecutors are finally able to properly charge perpetrators and address the car burglary epidemic.¹⁶⁰ SB 23 helps prosecutors by creating an alternative statute expanding car burglary to include forcible entry.¹⁶¹

SB 23 is a necessary step to address the legal loophole that exists under the traditional burglary statute.¹⁶² Although there may be some hesitation because SB 23 creates a new criminal statute for unlawful entry of a vehicle, the traditional burglary statute has seen many changes throughout its lifetime.¹⁶³ The creation of SB 23 as an alternative to the traditional burglary statute is the next step to reflect modern trends.¹⁶⁴ The locked requirement is outdated and does not consider modern property crime issues like the car epidemic.¹⁶⁵ Although future steps may address the social causes of high property crime rates, SB 23 addresses the legal loophole and may help alleviate the public's concern about vehicle break-ins.¹⁶⁶ SB 23 takes a common-sense approach to burglary, one which addresses the legal loophole and its corresponding issues.¹⁶⁷

The inconsistencies in case law and the disagreements regarding what constitutes a locked vehicle under the traditional burglary statute laid the foundation for SB 23.¹⁶⁸ Under SB 23, the teenage boys in Pasadena would be guilty of car burglary if the broken window was sufficient proof of the locked requirement.¹⁶⁹ With such clear evidence of forcible entry, the case would not have turned on whether the victim had locked the car doors.¹⁷⁰ By providing

158. See Johnson, *supra* note 44 (discussing the increase in car break-ins at night in Land Park); Patrick McGreevy, *supra* note 44.

159. Knight, *supra* note 8; *Legislation: Bills Authored During 2019 Session*, *supra* note 10.

160. See Knight, *supra* note 8 (pointing out the previous inability of police officers to enforce the traditional burglary statute); SENATE COMMITTEE, *supra* note 9, at 2.

161. S.B. 23, 2019 Leg., 2018-2019 Sess., at 2 (Cal. 2019) (as passed on Aug. 30, 2019, but not enacted).

162. SENATE COMMITTEE, *supra* note 9, at 2.

163. See *id.* at 3 (discussing the various changes the burglary statute has seen since its enactment in 1872).

164. See generally S.B. 23 at 2 (expanding the current understanding of car burglary to include forcible entry or unlawful entry where the perpetrator manipulates a car lock); see SENATE COMMITTEE, *supra* note 9, at 2 (describing that the traditional burglary statute does not properly address the high rate of car burglaries because of the locked requirement).

165. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 23, at 4 (June 25, 2019) (“Ultimately, the state’s current auto burglary statute does not account for basic common sense and it enables defenses that violate the spirit and intent of the law. . .”).

166. See Ruiz-Cornejo, *supra* note 41 (discussing the possible alternatives that can be used to combat the car epidemic, such as addressing the lack of housing availability); SENATE COMMITTEE, *supra* note 9, at 2.

167. Knight, *supra* note 8; SENATE COMMITTEE, *supra* note 9 at 2.

168. See *In re James B.*, 109 Cal. App. 4th 862, 867 (Cal. Ct. App. 2003) (comparing the way prior Appellate cases have treated the locked requirement).

169. SENATE COMMITTEE, *supra* note 9, at 2; *People v. Burns*, 114 Cal. App. 2d 566, 570 (Cal. Ct. App. 1952).

170. See *id.* at 569 (“No one testified that the doors were locked at the time the Buick was left at the parking place or that they were locked at any time.”).

prosecutors the ability to charge car burglary under SB 23, the law would reassure California residents that their property interests are at the forefront of justice.¹⁷¹

171. SENATE COMMITTEE, *supra* note 9, at 2.