

Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 395 (Lackey) – As Introduced February 3, 2021

Policy Committee: Public Safety Vote: 6 - 2

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

**SUMMARY:**

This bill creates an alternate felony-misdemeanor for forcibly entering a vehicle with the intent to commit a theft therein.

**FISCAL EFFECT:**

- 1) Possible cost pressures (General Fund (GF)/Trial Court Trust Fund) in the hundreds of thousands of dollars annually to the trial courts in increased workload, given this bill creates a new crime. A defendant charged with a misdemeanor or felony is entitled to no-cost legal representation and a jury trial. If 15 new crimes are filed annually statewide and proceed to trial resulting in two days of court time, at an estimated cost of approximately \$7,644 for an eight-hour court day, the approximate annual cost to the trial courts would be \$229,320.
- 2) Costs (GF) in the millions of dollars annually to the Department of Corrections and Rehabilitation (CDCR) in increased incarceration costs. This bill creates an alternate felony-misdemeanor punishable by up to three years in the county jail or, if a person has a specific criminal history, in state prison. The cost of housing an inmate in state prison per year is approximately \$84,000. If 10 defendants are sentenced statewide to an average of two years in state prison for forcibly entering a vehicle, as defined by this bill, and under circumstances not considered auto burglary or grand theft, the cost would total approximately \$1,680,000.
- 3) Likely significant non-reimbursable annual costs in the hundreds of thousands of dollars to low millions of dollars to counties for increased incarceration costs. County jails are increasingly overcrowded since the enactment of the Public Safety Realignment Act of 2011 (Realignment Act). Jail overcrowding has resulted in additional state funding for new jail space, court-mandated population caps and increased rates of inmate violence and death. Although new crimes are not considered reimbursable state mandates, overcrowding in county jails creates cost pressure on the GF because the state has historically granted new funding to counties to offset overcrowding caused by the Realignment Act.

**COMMENTS:**

- 1) **Purpose.** According to the author,

Vehicle burglaries or ‘smash-and-grabs’ have increased since more drivers are not using or checking their vehicles for longer periods

of time due to the pandemic, according to the Automobile Club of Southern California. In addition, the latest statistics from the California Department of Justice's dataset show that vehicle burglaries have been on the rise.

- 2) **Auto Burglary.** Burglary is generally defined as entry into a structure or container (i.e., home, boat, business, vehicle, etc.) with the intent to commit theft or a felony therein. Auto burglary, however, requires proof the vehicle was locked. If a trier of fact does not find sufficient evidence the owner or user of a vehicle locked the door, the defendant may not be convicted of auto burglary. However, a conviction for auto burglary does not require direct testimony from the owner or user of the vehicle to prove the vehicle was locked. A trier of fact may convict on circumstantial evidence such as a broken window or damaged lock to prove a vehicle was, in fact, locked. If a suspect broke the window, it is reasonable to assume the suspect did so because the door was locked and the suspect could not otherwise gain entry without breaking the window. Auto burglary is not considered a serious or violent felony pursuant to Penal Code section 1192.7, subdivision (c) or 667.5, subdivision (c) and is not sentenced as a strike. However, homicide committed during the commission of a first- or second-degree auto burglary is a special circumstance for which a defendant may be sentenced to life without parole or death. (Pen. Code, § 190.2, subd. (a)(17)(g).) Auto burglary is defined as second degree burglary. (Pen. Code, § 460, subd. (b).)
- 3) **CDCR and County Jail Populations.** Both CDCR and county jails have struggled with overcrowding. CDCR has been under federal receivership for more than twenty years due to its historic failure to provide a constitutional level of physical and mental healthcare because of overcrowding. As a result, the federal courts ordered CDCR to reduce its population. CDCR is required to maintain a population of no more than 137.5% of design capacity (approximately 100,000 inmates). The Realignment Act moved low-level felons from state prison to county jail. Any defendant convicted of a felony who was not a sex offender and did not have a prior conviction for a serious or violent felony was sentenced to county jail for up to three years. As a result, several county jails, including Fresno and Los Angeles, are overcrowded.

The California State Auditor (CSA) recently reviewed Realignment Act funding in Alameda, Los Angeles and Fresno counties, and identified several deficiencies, including failure to provide sufficient mental health treatment or any recidivism reduction programs. The CSA explained the counties' failures are largely due to overcrowding after enactment of the Realignment Act. The CSA recommended, in part, returning defendants serving more than three years back to state prison. If the Legislature agrees, this will increase the prison population. The Governor's 2021-2022 Proposed Budget still anticipates closing two state prisons before the end of the year. New crimes may delay prison closures and further exacerbate overcrowding at the county and state levels.

- 4) **Deterrence.** Several statistical studies conducted over the past ten years have shown there is little connection between a threat of prosecution and incarceration and a decrease in crime. (See Steve Aos and Elizabeth Drake, Washington Institute for Public Policy, November 2013, *Prison, Police and Programs: Evidence-Based Options that Reduce Crime and Save Money*; National Research Council (2014), *The Growth of Incarceration in the United States*:

*Exploring Causes and Consequences Committee on Causes and Consequences of High Rates of Incarceration*, J. Travis, B. Western, and S. Redburn.) In a February 2014 report, the Little Hoover Commission (LHC) determined incarceration rates did not reduce crime. Rather, the LHC proposed several evidence based options to reduce crime including addressing underlying criminogenic needs such as poverty, homeless, mental health issues and substance and alcohol abuse disorders. As stated above, none of the counties the CSA audited had sufficient mental health services or recidivism reduction programs despite retaining \$1.9 billion dollars in Realignment Act surplus. It may make more sense to direct counties to use existing funds to focus on recidivism reduction programs rather than creating new crimes that may further exacerbate jail overcrowding.

5) **Arguments in Support.** According to the California Police Chiefs Association:

AB 395 avoids the locked door designation and defines forcible entry of a vehicle as entry accomplished through force that damages the vehicle's exterior, or through use of a tool that manipulates the locking mechanism of the vehicle.

6) **Arguments in Opposition.** According to the Immigrant Legal Resource Center:

[A]n offense with the elements of an unpermitted entry into a vehicle with intent to commit theft has at least two serious immigration consequences. It is a "crime involving moral turpitude" for immigration consequences. Conviction can make a noncitizen deportable or inadmissible, and cause other penalties, depending on the circumstances. Worse, if a year or more sentence is imposed on this new offense, it would be an aggravated felony as 'attempted theft.' Aggravated felonies carry some of the worst possible immigration consequences.

7) **Prior Legislation.**

- a) AB 1921 (Diep), of the 2019-2020 Legislature, was substantially identical to this bill and was never heard in the Assembly Committee on Public Safety.
- b) SB 23 (Weiner) of the 2019-2020 Legislative Session, was substantially identical to this bill and was held on this committee's Suspense File.

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