

RESOLUTION 11-02-2002

DIGEST

Vehicle Burglary: When Vehicle Doors Unlocked

Amends Penal Code section 459 to provide that entry into a vehicle with the requisite intent is a burglary whether or not the doors of the vehicle are locked.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Same as 6-02-2001, which was disapproved.

Reasons:

This resolution amends Penal Code section 459 to provide that entry into a vehicle with the requisite intent is a burglary whether or not the doors of the vehicle are locked. This resolution should be approved in principle because there is no reason to require that the doors be locked.

Currently, Penal Code section 459 provides that entry into a vehicle with the intent to commit grand or petit larceny or any felony is a burglary only if the doors of the vehicle are locked. Of the numerous other types of enclosures mentioned by the statute -- house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, floating home, railroad car, house car, inhabited camper, aircraft, or mine -- the "locked" requirement is imposed only regarding vehicles and cargo containers.

This creates the absurd result of finding persons guilty of burglary if the car doors are locked but windows are open while finding not guilty parties who break into a car when three of the four doors are locked. The intent of the perpetrator is the same in either case. There should be no distinction between a car and any of the other enclosures mentioned in the statute as long as the intent is to commit larceny or any felony.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Penal Code section 459 to read as follows:

- 1 §459
- 2 Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill,
- 3 barn, stable, outhouse or other building, tent, vessel, as defined in Section 21 of the Harbors and
- 4 Navigation Code, floating home, as defined in subdivision (d) of Section 18075.55 of the Health
- 5 and Safety Code, railroad car, locked or sealed cargo container, whether or not mounted on a
- 6 vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in
- 7 Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code,
- 8 vehicle as defined by the Vehicle Code, ~~when the doors are locked~~, aircraft as defined by Section
- 9 21012 of the Public Utilities Code, or mine or any underground portion thereof, with intent to

10 commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited"
11 means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel
12 designed for habitation, or portion of a building is currently being used for dwelling purposes if, at
13 the time of the burglary, it was not occupied solely because a natural or other disaster caused the
14 occupants to leave the premises.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Provides that a person is guilty of a burglary of a vehicle if the person enters the vehicle with the intent to commit larceny or any felony, but only if the doors of the vehicle are locked.

This Resolution: Amends Penal Code section 459 to strike the language making it an element of vehicular burglary that the doors of the vehicle must be locked at the time of entry.

The Problem: The existing law results in absurd and unintended results when applied. The fundamental concept of burglary is an unlawful entry with the intent to steal or commit a felony. The same concept and statute applies to all types of structures--even barns, outhouses, and tents--as well as railroad cars and aircraft. Only non-specified vehicles are subject to the additional specific proviso that the vehicle's doors must be locked. This requirement leaves us with arbitrary and wildly varying outcomes for similar offenses. For example, an auto thief who enters a sedan in a parking lot with three of four doors locked, an armed alarm, and a club on the steering wheel is not guilty of auto burglary, while if all four doors had been locked and all four windows were cracked open, he would be guilty. Such circumstances occur regularly, leaving victims of auto thefts to ask why it should matter whether they locked the doors when someone else intentionally entered their vehicle to steal. This injustice is demonstrated by a juvenile adjudication that was overturned when the court held that an auto trailer was not adequately locked where only latches and chains, but not locks, were used to secure it. (*In re Lamont R. (1988, 1st Dist) 200 Cal. App. 3d 244.*) By removing this requirement, the arbitrary distinctions between locked and unlocked vehicles will be avoided. The specific intent requirement of the statute will ensure that those without the intent to commit larceny or another felony are not swept up unjustifiably by the statute.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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COUNTERARGUMENTS

ORANGE COUNTY BAR ASSOCIATION

Vehicle burglary is defined by Penal Code section 459. In order to be convicted of vehicle burglary as defined by Penal Code section 459 a person must enter an automobile when the doors are locked with the specific intent to permanently take the owners property. The proponents want to change the language of Penal Code section 459. Specifically, they want to eliminate the locked requirement of the statute because its application creates “absurd and unintended results when applied.”

There are three main arguments against amending the current language of Penal Code section 459.

First, the factual analysis used by the legislature in 1947, when Penal Code section 459 was amended to include “locked” as an element, has not changed. When this element was included in the Penal Code section 459, it was the legislatures intention to make the entry into a locked vehicle a more serious offense than entering into the interior of a unlocked vehicle. In doing this the legislature recognized that the seriousness and level of sophistication associated with entering into a locked vehicle was greater than that of entering into an unlocked vehicle. The past 54 years has not changed this rational.

Second, there are Penal statutes which currently cover the conduct described by the proponents. For instance, Penal Code section 487(a) makes it a felony or misdemeanor to take property from another in excess of \$400. Furthermore, Penal Code section 484-488 make it a crime to steal property from another and lastly, Vehicle Code section 10852 makes it a misdemeanor to tamper with another’s vehicle. These three statutes could be used to prosecute someone who enters into an unlocked vehicle and takes something out of it. Changing the language of Penal Code section 459 would only duplicate what is covered by other Penal statutes.

Third, there has been no change in circumstance to warrant the deletion of the locked requirement. The concept and technology used to lock a vehicle has generally been unchanged for the past half century. What still remains is the idea that persons should feel secure in knowing that there property is safe when the doors to their vehicle are locked. Until this changes there is no reason to change the language of Penal Code section 459.

SANTA CLARA COUNTY BAR ASSOCIATION

This resolution is identical to Resolution 6-02-2001 which was recommended for Disapproval by the Resolutions Committee. Both the Orange County Bar Association and the San Diego County Bar Association wrote compelling counterarguments opposing this resolution. They analyzed the history of the statute, pointed out the various other charges which could be brought against the offender and explained why cars are different than dwellings for purposes of the burglary statutes. In the face of this, the proponent offers nothing new but has submitted the same Statement of Reasons as last year. Accordingly, this resolution should be disapproved.