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The common law burglary was defined by Sir Matthew Hale as:

The breaking and entering the house of another in the night time, with intent to commit a felony therein, whether the felony be actually committed or not.

[4][5][6] Breaking can be either actual, such as by forcing open a door, or constructive, such as by fraud or threats.[4] Breaking does not require that anything be “ broken” in terms of physical damage occurring. A person who has permission to enter part of a house, but not another part, commits a breaking and entering when they use any means to enter a room where they are not permitted, so long as the room was not open to enter. Entering can involve either physical entry by a person or the insertion of an instrument with which to remove property. Insertion of a tool to gain entry may not constitute entering by itself.[4] Note that there must be a breaking and an entering for common law burglary.

Breaking without entry or entry without breaking is not sufficient for common law burglary. Although rarely listed as an element, the common law required that “ entry occur as a consequence of the breaking”.[7] For example, if a wrongdoer partially opened a window by using a pry bar and then noticed an open door through which he entered the dwelling, there is no burglary at common law.[7][Note 1] The use of the pry bar would not constitute an entry even if a portion of the prybar “ entered” the residence. Under the instrumentality rule the use of an instrument to effect a breaking would not constitute an entry. However, if any part of the perpetrator’s body entered the residence in an attempt to gain entry, the instrumentality rule did not apply. Thus, if the perpetrator uses the prybar to pry open the window and then used his hands to lift the partially opened window, an “ entry” would

have taken place when he grasped the bottom of the window with his hands.  
[7][8] House includes a temporarily unoccupied dwelling, but not a building used only occasionally as a habitation[4] Night time is defined as hours between half an hour after sunset and half an hour before sunrise[4] Typically this element is expressed as the intent to commit a felony “ therein”.

The use of the word “ therein” adds nothing and certainly does not limit the scope of burglary to those wrongdoers who break and enter a dwelling intending to commit a felony on the premises.[7] The situs of the felony does not matter, and burglary occurs if the wrongdoer intended to commit a felony at the time he broke and entered.[7] The common law elements of burglary often vary between jurisdictions. The common law definition has been expanded in most jurisdictions, such that the building need not be a dwelling or even a building in the conventional sense, physical breaking is not necessary, the entry does not need to occur at night, and the intent may be to commit any felony or theft.

The etymology originates from Anglo-Saxon or Old English, one of the Germanic languages. According to one textbook, “ The word burglar comes from the two German words berg, meaning “ house”, and laron, meaning “ thief” (literally “ house thief”).[9] Another suggested etymology is from the later Latin word burgare, “ to break open” or “ to commit burglary”, from burgus, meaning “ fortress” or “ castle”, with the word then passing through French and Middle English, with influence from the Latin latro, “ thief”.[10] The British verb “ burgle” is a late back-formation.[11] Canada

Burglars Tools Found in the Bank, printed in 1875 in the Canadian Illustrated News In Canada, breaking and entering is prohibited by section 348 of the Criminal Code and is a hybrid offence. Breaking and entering is defined as trespassing with intent to commit an indictable offence. The crime is commonly referred to in Canada as break and enter which in turn is often shortened to B and E.[12][13] Finland

There is no crime of burglary as such in Finland. In the case of breaking and entering, the Finnish penal code states that A person who unlawfully (1) enters domestic premises by force, stealth or deception, or hides or stays in such premises [...] shall be sentenced for invasion of domestic premises to a fine or to imprisonment for at most six months.[14] However, if theft is committed during unlawful entering, then a person is guilty of theft or aggravated theft depending on the circumstances of the felony. Aggravated theft: (1) If in the theft (5) the offender breaks into an occupied residence, and the theft is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated theft to imprisonment for at least four months and at most four years.[14] Sweden

In Sweden, burglary does not exist as an offence in itself; instead, there are two available offences. If a person simply breaks into any premise, they are technically guilty of either unlawful intrusion or breach of domiciliary peace (olaga intrång or hemfridsbrott, respectively), depending on the premise in question. Breach of domiciliary peace is only applicable when a person “ unlawfully intrudes or remains where another has his living quarters”.[15]

The only punishment available for any of these offences are fines, unless the offences are considered gross. In such cases, the maximum punishment is <https://assignbuster.com/criminal-law-and-arson-blackmail-burglary-essay-sample/>

two years imprisonment. However, if the person who has forced themselves into a house steals anything (“takes what belongs to another with intent to acquire it”), they are guilty of (ordinary) theft (stöld). However, the section regarding gross theft (Chapter 6, 4s of the Penal Code, grov stöld) states “in assessing whether the crime is gross, special consideration shall be given to whether the unlawful appropriation took place after intrusion into a dwelling.”[15] For theft, the punishment is imprisonment of at most two years, while gross theft carries a punishment of between six months and six years. United Kingdom

England and Wales

Main article: Burglary in English law

Burglary is defined by section 9 of the Theft Act 1968 which created two variants:[16] A person is guilty of burglary if he enters any building or part of a building as a trespasser with intent to steal, inflict grievous bodily harm or do unlawful damage to the building or anything in it.[Note 2] A person is guilty of burglary if, having entered a building or part of a building as a trespasser, he steals or attempts to steal anything in the building, or inflicts or attempts to inflict grievous bodily harm on any person in the building.

Northern Ireland

The offence is defined in similar terms to England and Wales by the Theft Act (Northern Ireland) 1969.[19] Scotland

Under Scots law, the crime of burglary does not exist. Instead theft by housebreaking covers theft where the security of the building is overcome.

[20] It does not include any other aspect of burglary found in England and Wales. It is a crime usually prosecuted under solemn procedure in a <https://assignbuster.com/criminal-law-and-arson-blackmail-burglary-essay-sample/>

superior court. Another common law crime still used is Hamesukin which covers forced entry into a building where a serious assault on the occupant takes place. Common law crimes in Scotland are gradually being replaced by statutes. United States

Burglary is prosecuted as a felony or misdemeanor and involves trespassing and theft, entering a building or automobile, or remaining unlawfully with intent to commit any crime, not necessarily a theft - for example, vandalism. Even if nothing is stolen in a burglary, the act is a statutory offense.

Buildings can include sheds, barns, and coops; burglary of boats, aircraft, and railway cars is possible. Burglary may be an element in crimes involving rape, arson, kidnapping, identity theft, or violation of civil rights; indeed the "plumbers" of the Watergate scandal were technically burglars. As with all legal definitions in the U. S., the foregoing description may not be applicable in every jurisdiction, since there are 50 separate state criminal codes, plus Federal and territorial codes in force. Nighttime burglaries

In some states, a burglary committed during the hours of daylight is technically not burglary, but housebreaking.[21] In many jurisdictions in the U. S., burglary is punished more severely than housebreaking. In California, for example, burglary was punished as burglary in the first degree, while housebreaking was punished as burglary in the second degree. California now distinguishes between entry into a residence and into a commercial building, with the burglary into a residence with heavier punishment. In states that continue to punish burglary more severely than housebreaking twilight, night is traditionally defined as hours between 30 minutes after sunset and 30 minutes before sunrise. Inchoate crime  
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Some academics consider burglary as an inchoate crime.[22] Others say that because the intrusion itself is harmful, this justifies punishment even when no further crime is committed. Burglary, as a preliminary step to another crime, can be seen as an inchoate, or incomplete, offense. As it disrupts the security of persons in their homes and in regard to their personal property, however, it is complete as soon as the intrusion is made. This dual nature is at the heart of a debate about whether the crime of burglary ought to be abolished, leaving its elements to be covered by attempt or as aggravating circumstances to other crimes, or retained and the grading schemes reformed to reflect the seriousness of the individual offense. —McCord and McCord.[23]

Possession of burglar's tools, in jurisdictions that make this an offense, has also been viewed as an inchoate crime:[24] In effect piling an inchoate crime onto an inchoate crime, the possession of burglary tools with the intent to use them in a burglary is a serious offense, a felony in some jurisdictions. Gloves that a defendant was trying to shake off as he ran from the site of a burglary were identified as burglar's tools in *Green v. State* (Fla. App. 1991). —McCord and McCord.[23]

## Florida

Under Florida State Statutes, " burglary" occurs when a person " enter[s] a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter.[25] Depending on the circumstances of the crime, burglary can be classified as third, second, or

first-degree felonies, with maximum sentences of five years, fifteen years, and life, respectively.[26] Georgia

A person commits the offense of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains within the dwelling house of another or any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another or enters or remains within any other building, railroad car, aircraft, or any room or any part thereof. A person convicted of the offense of burglary, for the first such offense, shall be punished by imprisonment for not less than one nor more than 20 years. For the purposes of this Code section, the term “ railroad car” shall also include trailers on flatcars, containers on flatcars, trailers on railroad property, or containers on railroad property. O. C. G. A. § 16-7-1 Kentucky

Burglary and the intended crime, if carried out, are treated as separate offenses. Burglary is a felony, even when the intended crime is a misdemeanor, and the intent to commit the crime can occur when one “ enters or remains unlawfully” in the building, expanding the common law definition. It has three degrees. Third-degree burglary is the broadest, and applies to any building or other premises. Second-degree burglary retains the common-law element of a dwelling, and first-degree burglary requires one to be in a dwelling and to be armed with a weapon or to cause injury. [27] A related offense, criminal trespass, covers unlawful entry to buildings or premises without the intent to commit a crime, and is a misdemeanor or, in the third degree, a violation.[28] Possession of burglar’s tools, with the

intent to use them to commit burglary or theft, is a misdemeanor.[29]

### Massachusetts

The Commonwealth of Massachusetts uses the term “ burglary” to refer to a night-time breaking and entering of a dwelling with the intent to commit a felony. Burglary is a felony punishable by not more than twenty years; should the burglar enter with a dangerous weapon, they may be imprisoned for life.[30] Unlawful entries of a structure other than a dwelling are labeled “ breaking and entering” and punishments vary according to structure.[31]

### Maryland

In Maryland, under title 6, subtitle 2 of the criminal law code, the crime of burglary is divided into four degrees. The first three degrees are felonies, while fourth-degree burglary is a misdemeanor. Breaking and entering into a dwelling with intent to commit theft or a crime of violence is first-degree burglary. Breaking and entering into a “ storehouse” (a structure other than a dwelling, also including watercraft, aircraft, railroad cars, and vessels) with intent to commit theft, arson, or a crime of violence is second-degree burglary. Third-degree burglary is defined as breaking and entering into a dwelling with intent to commit a crime. Simple breaking and entering into a dwelling or storehouse without specific intent to commit an additional crime is fourth-degree burglary. This degree also includes two other offenses that do not have breaking and entering as an element: Being in or on the yard, garden, or other property of a storehouse or dwelling with the intent to commit theft, or possession of burglar’s tools with the intent to use them in a burglary offense. New Hampshire

In the criminal code of New Hampshire, “ A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied section thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.”[32] New York

Under the penal law in New York, burglary is always a felony, even in third degree.[33] It is more serious if the perpetrator uses what appears to be a dangerous weapon, or if he or she enters a dwelling.[34][35] Pennsylvania

In Pennsylvania, it is a defense to prosecution if the building or structure in question is rendered abandoned.[36] Virginia

In Virginia, there are degrees of burglary, described as “ Common Law Burglary” and “ Statutory Burglary.” Common Law Burglary is defined as: if any person breaks and enters the dwelling of another, in the nighttime, with intent to commit a felony or any larceny (Theft < 200\$) therein, shall be guilty of burglary, punishable as a class 3 felony; provided, however, that if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a class 2 felony.

Statutory Burglary is defined as: If any person in the nighttime enters without breaking, or in the daytime breaks and enters or enters and conceals himself in a dwelling house or an adjoining, occupied outhouse, or, in the nighttime enters without breaking or at any time breaks and enters or enters and conceals himself in any office, shop, manufactured home, storehouse, warehouse, banking house, church or other house, or any ship, vessel or river craft, or any railroad car, or any automobile, truck, or trailer, if such

automobile, truck or trailer is used as a dwelling or place of human habitation, with intent to commit murder, rape, robbery or arson in violation of Virginia State code section 18. 2-77, 18. 2-79, or 18. 2-80, shall be deemed guilty of statutory burglary, which offense shall be a class 3 felony.

However, if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a class 2 felony. Additionally, if any person commits any of the acts mentioned in the VA state code section 18. 2-90 with intent to commit larceny, or any felony other than murder, rape, robbery or arson in violation of VA state code section 18. 2-77, 18. 2-79, or 18. 2-80, or if any person commits any acts mentioned in 18. 2-89 or 18. 2-90 with intent to commit assault and battery, shall be guilty of statutory burglary, punishable by confinement in a state correctional facility for not less than one or more than twenty years, or, in the discretion of the jury or the court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than \$2, 500, either or both.

However, if the person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony. Finally, if any person break and enter a dwelling house while said dwelling is occupied, either in the day or nighttime, with intent to commit any misdemeanor except assault and battery or trespass (which falls under the previous paragraph), shall be guilty of a class 6 felony. However, if the person was armed with a deadly weapon at the time of such entry, he shall be guilty of a class 2 felony. Wisconsin

In Wisconsin, burglary is committed by one who enters a building without consent and with intent to steal or to commit another felony. Burglary may also be committed by entry to a locked truck, car or trailer or a ship.[37] The <https://assignbuster.com/criminal-law-and-arson-blackmail-burglary-essay-sample/>

crime of burglary is treated as being more serious if the burglar is armed with a dangerous weapon when the burglary is committed or arms himself/herself during the commission of the burglary.[38] Protection against burglars

Protection of a household against burglars can include defences from anti-burglar paint through safety and security window film to burglar-proof doors and windows and burglar alarms. Dogs of any size can warn residents through loud barking and pose a threat of severe injury to an intruder. The victim may also rightfully use self-defence in many jurisdictions. After a crime has been committed, tactics such as cocooning have been shown to dramatically reduce the incidence of repeat offences. Cocooning involves notifying neighbours in the street that a break and enter has occurred, thereby encouraging a form of natural surveillance. Studies show this may decrease the rate of property crime by up to 50% in the local area.[39] Notes

^ Common law burglary requires both a breaking and entry. Some statutory offences are phrased in terms of a breaking or entry. The use of the disjunctive is intended to expand the scope of the offence.[citation needed]

^ Although as originally passed, the Theft Act 1968 also prohibited "raping any woman therein", [17] the Sexual Offences Act 2003 repealed this prohibition and substituted the offence known as trespass with intent to commit a sexual offence.

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