

# Crime and law policies of the british colonies

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## INTRODUCTION

Before the unification of the four British colonies, each of these colonies had its own statutory forms of the housebreaking crime. These statutory forms of the crime was not to overturn the common law crime but rather to improve or to add on to it. These different crimes were in use until the year 1993 where the legislature introduced the General Law Third Amendment Act. In Roman-Dutch law housebreaking with intent to steal and theft was treated as an aggravated form of theft, and that the offence as such was unknown in Roman-Dutch law. The most fundamental which precedes the pre-Union statutes was the Larceny Act 1861 of the English legislation .

The enactment of the General Law Third Amendment Act replaced the provincial housebreaking offences relating to the legislation of housebreaking and thus creating a uniform national crime. Section 82 of the General Law Third Amendment Act 129 of 1993 provides as follows : “ Any person who possesses any implement or object in respect of which there is a reasonable suspicion that it was used or is intended to be used to commit housebreaking, or to break open a motor-vehicle or to gain unlawful entry into a motor-vehicle, and who is unable to give a satisfactory account of such possession, shall be guilty of an offence.”

## THE ESSENTIAL ELEMENTS OF FOUR COLONIES

### NATAL

Section 6(2) of the Criminal Law Amendment Act of 1910 is where the statutory provisions for the offence of housebreaking and intrusion were contained, the offences were listed as

(a) Housebreaking with intent to commit some crime, whether the particular crime be known or not, basically meaning that if the person had intent to commit a crime it is not necessary to know as to whether you know the crime or not but rather that intent to commit it is enough

(b) Entering a house or premises with intent to commit some crime, whether the particular crime be known or not;

(c) Being in possession without lawful excuse (the proof of which excuse shall be upon the accused), this is similar to that of Cape Colony where you had to be in lawful possession of an object and have a reasonable reason as to why it is in your possession; and between the hours of sunset and sunrise, of a picklock, key, crow, or other implement of housebreaking;

(d) Being without lawful excuse (the proof of which excuse shall be upon the accused), and between the hours of sunset and sunrise, in or upon any dwelling house, warehouse, coach house, stable, cellar, or outhouse, or in any enclosed yard, garden or area; and

(e) (In the case of a male person) being found dressed as a woman in circumstances indicating a probable intention of availing himself of such disguise in order to commit a crime, whether such intended crime be known or not

## TRANSVAAL

Part A of the Crimes Ordinance 26 of 1904 created the following forms of statutory housebreaking: (i) breaking and entering any premises in the night with intent to commit an offence in such premises; (ii) breaking and entering a dwelling at night with that intent; (iii) entering dwelling or premises at night with that intent; (iv) being found by night armed with any dangerous or offensive weapon or instrument with intent to commit any offence mentioned in (i), (ii) or (iii); having in possession without lawful excuse any pick lock, key, crow, jack, jemmy, or other implement of housebreaking; or having the face or person disguised with intent to commit any offence mentioned in (i), (ii) or (iii); (v) breaking and entering any premises or dwelling in the day-time with that intent; (vi) entering upon any premises or dwelling or enclosed piece of land attached to or used in connection therewith, and wrongfully and unlawfully refusing to leave; and (vii) putting anyone in bodily fear by the use of threats or conduct in or upon premises, or its ground, unlawfully broken, entered or remained upon.

## CAPE, TRANSKEI, ORANGE FREE STATE

There were similarities in the provisions of section 8 of the Police Offences Act 27 of 1882 (C), section 129 of the Transkeian Penal Code of 1886 (Act 24 of 1886 (C)) and section 26 of the Police Offences Ordinance 21 of 1902 (O) in which the following statutory offences were established

(a) Having custody or possession without lawful excuse (the proof of which is on the accused) of “ any pick-lock, key, crow or other implement of housebreaking”;

(b) Being found by night with blackened face or wearing felt or other slippers, or being dressed or otherwise disguised with criminal intent;

(c) Being found by night without lawful excuse (proof of which is on the accused) “ in or upon any dwelling-house, warehouse, coach-house, stable, cellar, or outhouse, or in any enclosed yard, garden, or area, or in or on board any ship or other vessel when lying or being in any port, harbour, or place”; and

(d) Being found by night armed with a criminal intent or, being thereto required, being unable to assign a satisfactory reason for being so armed.