

**BEFORE THE  
UNITED STATES SENTENCING COMMISSION  
WASHINGTON, D.C. 20002**

<b>IN THE MATTER OF</b>	)	
	)	
<b>NOTICE OF PROPOSED AMENDMENT</b>	)	
<b>TO THE SENTENCING GUIDELINES;</b>	)	
	)	
<b>RE.</b>	)	<b>FR DOC 2015-20107</b>
	)	
<b>OFFENSES AGAINST PROPERTY, AND</b>	)	<b>80 FR 49314</b>
<b>THE EXTENT TO WHICH THEY</b>	)	
<b>SHOULD BE INCLUDED IN THE</b>	)	
<b>GUIDELINES DEFINITION OF</b>	)	
<b>“CRIME OF VIOLENCE.”</b>	)	

**COMMENTS OF HANNAH C. THOMAS  
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## COMMENTS OF HANNAH C. THOMAS<sup>1</sup>

### **1. Introduction**

The United States Sentencing Commission (USSC) has requested comments regarding the above captioned Notice of Proposed Amendment to the Sentencing Guidelines (Notice) to determine, “How, if at all, should the guidelines definition of ‘crime of violence’ apply to property offenses?”<sup>2</sup> This comment will apply to either burglary definition provided, whether it describes offenses against a “dwelling,” or simply offenses against any “building.” The USSC has also requested comments on several other topics relating to the Notice. However, for matters of efficiency, and due to the breadth of the topics related to the Notice, this commenter will defer to the wisdom of the USSC and other commenters regarding those topics.

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<sup>2</sup> 80 FR 49314 (published August 17, 2015).

## 2. Background

### 2.1 Brief History of the USSC

The USSC was created pursuant to 28 U.S.C. Pt. III, Ch. 58, §§ 991-98. “Its principal purposes are: (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.”<sup>3</sup>

### 2.2 U.S. Sentencing Guidelines §4B1.2

(a) The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that --

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

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<sup>3</sup> About: United States Sentencing Commission, <http://www.ussc.gov/about> (last visited Nov. 3, 2015).

(2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

(b) The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

(c) The term "two prior felony convictions" means (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (i.e., two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of §4A1.1(a), (b), or (c). The date that a defendant sustained a conviction shall be the date that the guilt of

the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.<sup>4</sup>

### 2.3 Proposed Amendment (proposed changes in **bold**.)

(a) The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, **and classified at the time the defendant was initially sentenced as a felony (or comparable classification) under the laws of the jurisdiction in which the defendant was convicted**, that --

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) **is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, [burglary of a dwelling][burglary]<sup>5</sup>, arson, or extortion, or involves the use of explosives.**

(b) The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding

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<sup>4</sup> United States Sentencing Commission, 2015 Guidelines Manual §4B1.2 (2015).

<sup>5</sup> The USSC is inviting comment on whether burglary of a dwelling, burglary, or both should be included in the amendment. The USSC has invited comment on the implications of using one over the other, but this comment will not cover such issues. For the purposes of this comment, burglary of a dwelling is defined as "an unlawful or unprivileged entry into or remaining in a dwelling with intent to commit a [crime][felony]." The proposed amendment defines burglary as "an unlawful or unprivileged entry into or remaining in a building or other structure with intent to commit a [crime][felony]." Whether felony or crime is more suitable will not be discussed here.

one year, **and classified at the time the defendant was initially sentenced as a felony (or comparable classification) under the laws of the jurisdiction in which the defendant was convicted,** that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

(c) The term "two prior felony convictions" means (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (i.e., two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of §4A1.1(a), (b), or (c). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.

## 2.4 Application

“The Federal Sentencing Guidelines are non-binding rules that set out a uniform sentencing policy for defendants convicted in the United States federal court system that became effective in 1987. The Guidelines provide for very precise calibration of sentences, depending upon a number of factors. These factors relate both to the subjective guilt of the defendant and to the harm caused by his facts. The Guidelines are not mandatory, because they may result in a sentence based on facts not proven beyond a reasonable doubt to a jury, in violation of the Sixth Amendment. However, judges must consider them when determining a criminal defendant's sentence. When a judge determines within his or her discretion to depart from the Guidelines, the judge must explain what factors warranted the increased or decreased sentence. When a Court of Appeals reviews a sentence imposed through a proper application the Guidelines, it may presume the sentence is reasonable.”<sup>6</sup>

“The Comprehensive Crime Control Act [Chapter 4 of the Guidelines] sets forth four purposes of sentencing. A defendant's

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<sup>6</sup> Federal Sentencing Guidelines: Legal Information Institute, [https://www.law.cornell.edu/wex/federal\\_sentencing\\_guidelines](https://www.law.cornell.edu/wex/federal_sentencing_guidelines) (last visited Nov. 3, 2015).



record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment. General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence. To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered. Repeated criminal behavior is an indicator of a limited likelihood of successful rehabilitation.”<sup>7</sup>

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<sup>7</sup> United States Sentencing Commission, 2015 Guidelines Manual Ch. 4 Introductory Comment (2015).

### 3. Discussion

#### 3.1 Comparative Analysis of Statutes

In order to properly address the issue of whether burglary is a crime of violence, and, thus, should be included in the enumerated offenses of a crime of violence in the sentencing guidelines, it is appropriate to look at the statutes of the states and territories of the United States. In a survey of the several states of the United States of America (survey), all but seven (7) of fifty (50) states include some sort of statutory distinction between burglary and a burglary that includes violence.<sup>8</sup> Moreover, three (3) of five (5) U.S. territories also had a separate distinction that included violence.<sup>9</sup> For the purposes of the survey, a statute was considered to include violence if, at the minimum, it required (1) a weapon of some sort, (2) a threat of injury to an individual who was not partaking in the burglary, or (3) an actual injury to an individual who was not partaking in the burglary.

Many states differentiate between burglary and burglary committed using explosives. Also, many states differentiate, either by

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<sup>8</sup> See Appendix. States that did not distinguish between burglary and burglary including violence: California, Idaho, Kansas, Nebraska, Pennsylvania, Texas, and West Virginia. Also, note that there was no federal burglary statute, and the District of Columbia did not distinguish between burglary and burglary including violence.

<sup>9</sup> See Appendix. Territories that did not distinguish: Guam and Puerto Rico. Territories that did: American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands.

use of degrees or by use of a different crime (e.g. Home Invasion), between burglary and (1) burglary committed while defendant was armed with a dangerous weapon, (2) burglary committed, and during (or in flight immediately following) the crime, an individual not participating in the commission of the crime was physically injured, and/or (3) burglary committed, and during (or in flight immediately following) the crime, the defendant threatened to or attempted to physically harm an individual not participating in the commission of the crime. Some states list violent offenses (e.g. rape, battery, assault, etc.) that, when committed during the burglary, increase the seriousness of the burglary.

This survey makes clear that the majority opinion in the United States is that burglary (i.e. the entering or remaining unlawfully in a building) is a different, less-serious, offense than burglary that includes some form of violence.

### 3.2 Statistics

The U.S. Department of Justice commissioned a study of the occurrence of violence with burglary in the United States. The study utilized data from both the National Crime Victim's Survey (NCVS)

and the National Incident Based Reporting System (NIBRS). The study collected data from the year 1998 to the year 2007.

According to the study, the NCVS reported the following crimes co-occurred with the reported burglaries at the following rates: Rape or Sexual Assault co-occurred in 0.64%, Robbery co-occurred in 1.62%, Aggravated Assault co-occurred in 1.48%, and Simple Assault co-occurred in 3.87%.<sup>10</sup> In total, only 7.6% of the reported burglaries co-occurred with another violent offense.<sup>11</sup> In addition, the NCVS reported the presence of a weapon in 32% of the violent crimes, 2.4% of the non-violent crimes, and in 85.3% of the total burglaries it was unknown whether the offender had a weapon.<sup>12</sup> Further, while injury was reported in 36% of the violent crimes, no injuries were reported in the non-violent crimes.<sup>13</sup>

The NIBRS reported the following crimes co-occurred with the reported burglaries at the following rates: Murder co-occurred in 0.01%, Rape co-occurred in 0.08%, Robbery co-occurred in 0.2%,

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<sup>10</sup> Richard F. Culp,, Phillip M. Kopp, and Candace McCoy, *Is Burglary a Crime of Violence? An Analysis of National Data 1998-2007*, 29 (2015).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 30.

<sup>13</sup> *Id.*

and Aggravated Assault co-occurred in 0.6%.<sup>14</sup> In total, these violent offenses only appeared in 0.9% of the reported burglaries.<sup>15</sup>

According to either reporting entity, violent crimes co-occurred with less than ten percent (10%) of the reported burglaries in the United States over a nine (9) year period. These statistics vividly refute the apparent theory in American Criminal Justice that burglary tends to include violence and/or that burglary is a violent crime.

### 3.3 Policy

In considering whether it is appropriate to include burglary as a crime of violence, it is prudent to also consider policy matters relating to such an inclusion. Policy, in this instance, is most relevant as it relates to the negative consequences that the inclusion of burglary would have on criminal defendants. Including burglary as a crime of violence would cause undue hardship on criminal defendants whose crimes do not, in fact, involve violence. “As one court explained, the career offender provision is “irreconcilable” with the rest of the Guidelines because “[s]tatutorily mandated sentences . . . impose severe punishments at sudden and arbitrary junctures, in contrast to

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<sup>14</sup> *Id.* at 31.

<sup>15</sup> *Id.*

the carefully constructed, graduated scheme of sentencing reflected in the Guidelines.”<sup>16</sup>

Take, for example, the hypothetical situation of Defendant X and Defendant Y. Defendant X is convicted of burglary because he entered into a building, unlawfully, with the intent to commit a non-violent crime (i.e. fraud). Defendant Y, however, is convicted of burglary because he entered into a building, unlawfully, with the intent to commit a violent crime (i.e. murder), and did commit that violent crime. An analysis, using the proposed amendment to the sentencing guidelines would conclude that both Defendant X and Defendant Y had committed crimes of violence. Therefore, in theory, Defendant X could receive just as severe a punishment for the crime of burglary as Defendant Y.

Because the USSC has “identified as one of its crucial tasks the goal of balancing ‘uniformity’ in sentencing with ‘proportionality,’”<sup>17</sup> it is important to note that an increase sentence based on the violence of a crime is not proportional to a crime that has not actually included violence at all. In discussing the issue of burglary, even the United

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<sup>16</sup> John Patrick Crossett, *The United States Sentencing Commission and The Problem of Non-Residential Burglary under the Career Offender Provision of the Federal Sentencing Guidelines*, 6 Geo. Mason L. Rev. 675, 682 (1998).

<sup>17</sup> *Id.*

States Supreme Court has, though potentially unknowingly, added speculation about the crime of burglary in order to find that it includes violence:

Critically, picturing the criminal's behavior is *not enough*; as we have already discussed, assessing "potential risk" seemingly requires the judge to imagine how the idealized ordinary case of the crime subsequently plays out. [*James v. United States*, 550 U.S. 192] illustrates *how speculative* (and how detached from statutory elements) this enterprise can become. Explaining why attempted burglary poses a serious potential risk of physical injury, the Court said: "An *armed* would-be burglar may be spotted by a police officer, a private security guard, or a participant in a neighborhood watch program. Or a homeowner . . . may give chase, and a violent encounter may ensue."<sup>18</sup>

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<sup>18</sup> *Johnson v. United States*, 576 U.S. \_\_\_, 6 (2015) (emphasis added). Justice Scalia, giving the opinion of the court, super-imposes on the hypothetical burglar that he is armed.

## **4. Recommended Solutions**

### 4.1 Complete Removal of Offenses Against Property

One potential solution to the issues addressed in this comment is to exclude burglary completely from the definition of crime of violence. This solution would ensure that no defendant charged and convicted with burglary would endure the undue hardship of an intensified sentence. However, the negative aspect of this alternative is that some criminal defendants, whose crimes included an aspect of violence, will not be sentenced appropriately because their only conviction is burglary – and, thus, will not fall under the analysis of a crime of violence.

### 4.2 Addition of Requirement of Violence

The more appropriate alternative, however, is for the USSC to take an approach similar to that of many states and change the definition of burglary (at least, for the purposes of defining crimes of violence). This would pose as a difficult task for the USSC, as it would now be required to carefully determine what elements should be added to the definition of burglary in regards to a crime of violence. However, it would not be an impossible task, as so many of the states have already done so. One possible way to ensure that



burglary, as defined for a crime of violence, actually included violence would be to simply require that an injury occur. Another alternative would be to approach the issue in a way that seems to be common among many states, which would be to include an enumerated list of ways that violence could be included. Burglary could be defined, then, as “an unlawful or unprivileged entry into or remaining in a [dwelling][building or other structure] with intent to commit a [crime][felony]; and: (1) the offender [or any accomplice to the crime] was armed with a [dangerous][deadly] [weapon][or firearm]; (2) during the commission of the crime, or in flight immediately after the commission of the crime, an individual, who was not participating in the commission of the crime, was actually physically injured; or (3) during the commission of the crime, or in flight immediately after the commission of the crime, the offender [or any accomplice to the crime] [threatened to][attempted to] injure an individual, who was not participating in the commission of the crime.”

## Appendix

This table compiles the burglary statutes available in the United States. For the purposes of this table, a burglary statute is one that describes a criminal offense, which includes elements of unlawful or non-privileged presence in a building. The statutes that involve an element of violence have been highlighted for the reader's convenience. Please note that, for the sake of brevity, some parts of a statute may have been removed from this table.

Jurisdiction	Burglary Statute	Citation
Federal	N/A	18 U.S.C. 103
Washington D.C.	<p>(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break and carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than 5 years nor more than 30 years.</p> <p>(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building or any apartment or room, whether at the time occupied or not, or any steamboat, canalboat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than 2 years nor more than 15 years.</p>	DC ST § 22-801
American Samoa	<p>46.4030</p> <p>(a) A person commits the crime of burglary in the first degree if he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime there, and when in</p>	<p>A.S.C.A. § 46.4030, A.S.C.A. § 46.4031</p>

	<p>effecting entry or while in the building or inhabitable structure or in immediate flight from there, he or another participant in the crime:</p> <p>(1) is armed with explosives or a deadly weapon;</p> <p>(2) causes or threatens immediate physical injury to any person who is not a participant in the crime; or</p> <p>(3) commits the crime at night.</p> <p>(b) Burglary in the first degree is a class B felony.</p> <p>46.4031</p> <p>(a) A person commits the crime of burglary in the second degree when he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime there.</p>	
Guam	<p>§ 37.20. Burglary: Defined, Punishment Classified.</p> <p>(a) A person is guilty of burglary if he enters or surreptitiously remains in any habitable property, building, or a separately secured or occupied portion thereof, or if he enters or surreptitiously remains in any School as defined in § 37.10(e) of this Chapter, with intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter, or a person is guilty of burglary if he enters or surreptitiously remains in any motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motor bus, motor truck, or vehicle, with intent to commit a crime therein. It is an affirmative defense to prosecution for burglary that the property, or building, or motor</p>	9 GCA § 37.20
Northern Mariana Islands	<p>§ 1801. Burglary.</p> <p>(a) A person commits the offense of burglary if he or she enters a building or occupied structure, or separately occupied or secured portion thereof, or a vehicle with the purpose to commit any felony or crime against property or person, unless the premises are at the time open to the public or the person is licensed, authorized or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.</p> <p>(b) A person convicted under this section may be punished:</p> <p>(1) By imprisonment for not more than five years; or (2) By imprisonment for not more than 10 years if:</p> <p>(A) The dwelling is entered during the period between 30 minutes past sunset and 30 minutes before sunrise; or</p> <p>(B) If the defendant or an accomplice inflicts bodily injury on anyone or is armed with a dangerous weapon.</p>	Northern Mariana Islands Commonwealth Code: Title 6, Division 1, § 1801
Puerto Rico	<p>§ 4831. Burglary</p> <p>Any person who enters a dwelling, building or other construction or structure or its dependencies or annexes</p>	33 L.P.R.A. § 4831, 33 L.P.R.A. § 4832

	<p>with the purpose of committing any crime involving an unlawful taking or a felony shall incur a misdemeanor.  § 4832. Aggravated burglary  If the burglary crime described in § 4831 of this title, is committed in an inhabited building, the offender shall incur a third degree felony.</p>	
<p>U.S. Virgin Islands</p>	<p><b>§ 442. Burglary in the first degree</b>  Whoever, with intent to commit an offense therein, breaks and enters the building or structure of another, in which there is at the time a human being--</p> <ol style="list-style-type: none"> <li>(1) being armed with a dangerous weapon; or</li> <li>(2) arming himself therein with such a weapon; or</li> <li>(3) being assisted by a confederate actually present; or</li> <li>(4) while engaged in effecting such entrance, or in committing any offense therein, or in escaping therefrom, assaults any person--is guilty of burglary in the first degree and shall be imprisoned not less than 10 years nor more than 20 years, provided that if in the commission of said crime a dangerous weapon of any kind is used, then the penalty shall be not less than 30 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407 of the Virgin Islands Code, or any other provision of law, no portion of the minimum period of imprisonment established by this section shall be suspended and no person convicted under this section shall be placed on probation or be eligible for parole or good conduct credit of any kind until he shall have been imprisoned for at least 5 years, or 10 years if a dangerous weapon was used in committing the crime. <p><b>§ 443. Burglary in the second degree</b>  Whoever, with intent to commit some offense therein breaks and enters the dwelling house, building, or structure of another, under circumstances not amounting to burglary in the first degree, is guilty of burglary in the second degree and shall be imprisoned not more than 15 years and if the conviction is a second or subsequent conviction under this chapter, then not less than 2 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, no portion of the minimum period of imprisonment established by this section shall be suspended, and no person convicted under this section which conviction is a second or subsequent conviction under this chapter shall be placed on probation or be eligible for parole until he shall have been imprisoned for at least 2 years.</p> <p><b>§ 444. Burglary in the third degree</b>  Whoever--</p> </li></ol>	<p>14 V.I.C. §§  442-44</p>

	<p>(1) with intent to commit an offense therein, breaks and enters a building or structure or any part thereof; or</p> <p>(2) being in any building or structure or any part thereof, commits an offense therein and breaks out of the same-- is guilty of burglary in the third degree and shall be imprisoned not more than five years and if the conviction is a second or subsequent conviction under this chapter, then not less than one year. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, no portion of the minimum period of imprisonment established by this section shall be suspended, and no person convicted under this section which conviction is a second or subsequent conviction under this chapter shall be placed on probation or be eligible for parole until he shall have been imprisoned for at least one year.</p>	
Alabama	<p><b>§ 13A-7-5. Burglary in the first degree.</b>  (a) A person commits the crime of burglary in the first degree if he or she knowingly and unlawfully enters or remains unlawfully in a dwelling with intent to commit a crime therein, and, if, in effecting entry or while in dwelling or in immediate flight therefrom, the person or another participant in the crime:</p> <p>(1) Is armed with explosives; or</p> <p>(2) Causes physical injury to any person who is not a participant in the crime; or</p> <p>(3) In effecting entry, is armed with a deadly weapon or dangerous instrument or, while in the dwelling or immediate flight from the dwelling, uses or threatens the immediate use of a deadly weapon or dangerous instrument against another person. The use of or threatened use of a deadly weapon or dangerous instrument does not include the mere acquisition of a deadly weapon or dangerous instrument during the burglary.</p> <p><b>§ 13A-7-6. Burglary in the second degree.</b>  (a) A person commits the crime of burglary in the second degree if he or she knowingly enters or remains unlawfully in a building with intent to commit theft or a felony therein and, if in effecting entry or while in the building or in immediate flight therefrom, the person or another participant in the crime:</p> <p>(1) Is armed with explosives; or</p> <p>(2) Causes physical injury to any person who is not a participant in the crime; or</p> <p>(3) In effecting entry, is armed with a deadly weapon or dangerous instrument or, while in the building or in</p>	Ala. Code 1975 § 13A-7-5,6,7 (2006).

	<p>immediate flight from the building, uses or threatens the immediate use of a deadly weapon or dangerous instrument against another person. The use of or threatened use of a deadly weapon or dangerous instrument does not include the mere acquisition of a deadly weapon or dangerous instrument during the burglary.</p> <p>(b) In the alternative to subsection (a) of this section, a person commits the crime of burglary in the second degree if he or she unlawfully enters a lawfully occupied dwelling-house with intent to commit a theft or a felony therein.</p> <p><b>§ 13A-7-7. (Effective until January 30, 2016, subject to funding contingency) Burglary in the third degree.</b></p> <p>(a) A person commits the crime of burglary in the third degree if he knowingly enters or remains unlawfully in a building with intent to commit a crime therein.</p>	
Alaska	<p><b>§ 11.46.300. Burglary in the first degree</b></p> <p>(a) A person commits the crime of burglary in the first degree if the person violates AS 11.46.310 and</p> <p>(1) the building is a dwelling; or</p> <p>(2) in effecting entry or while in the building or immediate flight from the building, the person</p> <p>(A) is armed with a firearm;</p> <p>(B) causes or attempts to cause physical injury to a person; or</p> <p>(C) uses or threatens to use a dangerous instrument.</p> <p>(b) Burglary in the first degree is a class B felony.</p> <p><b>§ 11.46.310. Burglary in the second degree</b></p> <p>(a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.</p> <p>(b) Burglary in the second degree is a class C felony.</p>	AS § 11.46.300, AS § 11.46.310
Arizona	<p><b>§ 13-1506. Burglary in the third degree; classification</b></p> <p><b>A.</b> A person commits burglary in the third degree by:</p> <p>1. Entering or remaining unlawfully in or on a nonresidential structure or in a fenced commercial or residential yard with the intent to commit any theft or any felony therein.</p> <p>2. Making entry into any part of a motor vehicle by means of a manipulation key or master key, with the intent to commit any theft or felony in the motor vehicle.</p> <p><b>B.</b> Burglary in the third degree is a class 4 felony.</p> <p><b>§ 13-1507. Burglary in the second degree; classification</b></p> <p><b>A.</b> A person commits burglary in the second degree by entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any felony therein.</p>	A.R.S. § 13-1506, A.R.S. § 13-1507, A.R.S. § 13-1508

	<p><b>B.</b> Burglary in the second degree is a class 3 felony.</p> <p><b>§ 13-1508. Burglary in the first degree; classification</b></p> <p><b>A.</b> A person commits burglary in the first degree if such person or an accomplice violates the provisions of either § 13-1506 or 13-1507 and knowingly possesses explosives, a deadly weapon or a dangerous instrument in the course of committing any theft or any felony.</p> <p><b>B.</b> Burglary in the first degree of a nonresidential structure or a fenced commercial or residential yard is a class 3 felony. It is a class 2 felony if committed in a residential structure.</p>	
Arkansas	<p><b>§ 5-39-202. Breaking or entering</b></p> <p>(a) A person commits the offense of breaking or entering if for the purpose of committing a theft or felony he or she breaks or enters into any:</p> <ol style="list-style-type: none"> <li>(1) Building, structure, or vehicle;</li> <li>(2) Vault, safe, cash register, safety deposit box, or money depository;</li> <li>(3) Money vending machine, coin-operated amusement machine, vending machine, or product dispenser;</li> <li>(4) Coin telephone or coin box;</li> <li>(5) Fare box on a bus; or</li> <li>(6) Other similar container, apparatus, or equipment.</li> </ol> <p>(b) It constitutes a separate offense under this section for the breaking or entering into of each separate:</p> <ol style="list-style-type: none"> <li>(1) Building, structure, or vehicle;</li> <li>(2) Vault, safe, cash register, safety deposit box, or money depository;</li> <li>(3) Money vending machine, coin-operated amusement machine, vending machine, or product dispenser;</li> <li>(4) Coin telephone or coin box;</li> <li>(5) Fare box on a bus; or</li> <li>(6) Other similar container, apparatus, or equipment.</li> </ol> <p>(c) Breaking or entering is a Class D felony.</p> <p><b>§ 5-39-203. Criminal trespass</b></p> <p>(a) A person commits criminal trespass if he or she purposely enters or remains unlawfully in or upon:</p> <ol style="list-style-type: none"> <li>(1) A vehicle; or</li> <li>(2) The premises of another person.</li> </ol> <p>(b) Criminal trespass is a:</p> <ol style="list-style-type: none"> <li>(1) Class B misdemeanor if: <ol style="list-style-type: none"> <li>(A) The vehicle or premises involved is an occupiable structure; or</li> <li>(B) The conduct involves the removal of a posted sign, a fence, or a portion of a fence as defined in § 2-39-102; or</li> </ol> </li> <li>(2) Class C misdemeanor if otherwise committed.</li> </ol>	<p>A.C.A. § 5-39-202, A.C.A. § 5-39-203, A.C.A. § 5-39-204</p>

	<p><b>§ 5-39-204. Aggravated residential burglary</b></p> <p>(a) A person commits aggravated residential burglary if he or she commits residential burglary as defined in § 5-39-201 of a residential occupiable structure occupied by any person, and he or she:</p> <p>(1) Is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon; or</p> <p>(2) Inflicts or attempts to inflict death or serious physical injury upon another person.</p> <p>(b) Aggravated residential burglary is a Class Y felony.</p>	
California	<p><b>§ 459. Definition</b></p> <p>Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, as defined in Section 21 of the Harbors and Navigation Code, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code, vehicle as defined by the Vehicle Code, when the doors are locked, aircraft as defined by Section 21012 of the Public Utilities Code, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, “inhabited” means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.</p> <p><b>§ 460. Degrees; construction of section</b></p> <p>(a) Every burglary of an inhabited dwelling house, vessel, as defined in the Harbors and Navigation Code, which is inhabited and designed for habitation, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, or trailer coach, as defined by the Vehicle Code, or the inhabited portion of any other building, is burglary of the first degree.</p> <p>(b) All other kinds of burglary are of the second degree.</p> <p>(c) This section shall not be construed to supersede or affect Section 464 of the Penal Code.</p>	CA PENAL § 459, CA PENAL § 460
Colorado	<b>§ 18-4-202. First degree burglary</b>	CO ST § 18-4-



	<p>(1) A person commits first degree burglary if the person knowingly enters unlawfully, or remains unlawfully after a lawful or unlawful entry, in a building or occupied structure with intent to commit therein a crime, other than trespass as defined in this article, against another person or property, and if in effecting entry or while in the building or occupied structure or in immediate flight therefrom, the person or another participant in the crime assaults or menaces any person, the person or another participant is armed with explosives, or the person or another participant uses a deadly weapon or possesses and threatens the use of a deadly weapon.</p> <p>(2) First degree burglary is a class 3 felony.</p> <p>(3) If under the circumstances stated in subsection (1) of this section the property involved is a controlled substance, as defined in section 18-18-102(5), within a pharmacy or other place having lawful possession thereof, such person commits first degree burglary of controlled substances, which is a class 2 felony.</p> <p><b>§ 18-4-203. Second degree burglary</b></p> <p>(1) A person commits second degree burglary, if the person knowingly breaks an entrance into, enters unlawfully in, or remains unlawfully after a lawful or unlawful entry in a building or occupied structure with intent to commit therein a crime against another person or property.</p> <p>(2) Second degree burglary is a class 4 felony, but it is a class 3 felony if:</p> <p>(a) It is a burglary of a dwelling; or</p> <p>(b) It is a burglary, the objective of which is the theft of a controlled substance, as defined in section 18-18-102(5), lawfully kept within any building or occupied structure.</p> <p><b>§ 18-4-204. Third degree burglary</b></p> <p>(1) A person commits third degree burglary if with intent to commit a crime he enters or breaks into any vault, safe, cash register, coin vending machine, product dispenser, money depository, safety deposit box, coin telephone, coin box, or other apparatus or equipment whether or not coin operated.</p> <p>(2) Third degree burglary is a class 5 felony, but it is a class 4 felony if it is a burglary, the objective of which is the theft of a controlled substance, as defined in section 18-18-102(5), lawfully kept in or upon the property burglarized.</p>	<p>202, CO ST § 18-4-203, CO ST § 18-4-204</p>
Connecticut	<p><b>§ 53a-100aa. Home invasion: Class A felony</b></p> <p>(a) A person is guilty of home invasion when such person enters or remains unlawfully in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with intent to commit a crime therein, and,</p>	<p>CT ST § 53a-100aa, CT ST § 53a-101, CT ST § 53a-102, CT ST § 53a-102a,</p>

	<p>in the course of committing the offense: (1) Acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a felony against the person of another person other than a participant in the crime who is actually present in such dwelling, or (2) such person is armed with explosives or a deadly weapon or dangerous instrument.</p> <p>(b) An act shall be deemed “in the course of committing” the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.</p> <p>(c) Home invasion is a class A felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which ten years may not be suspended or reduced by the court.</p> <p><b>§ 53a-101. Burglary in the first degree: Class B felony</b></p> <p>(a) A person is guilty of burglary in the first degree when (1) such person enters or remains unlawfully in a building with intent to commit a crime therein and is armed with explosives or a deadly weapon or dangerous instrument, or (2) such person enters or remains unlawfully in a building with intent to commit a crime therein and, in the course of committing the offense, intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone, or (3) such person enters or remains unlawfully in a dwelling at night with intent to commit a crime therein.</p> <p>(b) An act shall be deemed “in the course of committing” the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.</p> <p>(c) Burglary in the first degree is a class B felony provided any person found guilty under subdivision (1) of subsection (a) shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.</p> <p><b>§ 53a-102. Burglary in the second degree: Class C felony</b></p> <p>(a) A person is guilty of burglary in the second degree when such person enters or remains unlawfully in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with intent to commit a crime therein.</p> <p>(b) Burglary in the second degree is a class C felony.</p> <p><b>§ 53a-102a. Burglary in the second degree with a firearm: Class C felony: One year not suspendable</b></p> <p>(a) A person is guilty of burglary in the second degree with a firearm when he commits burglary in the second degree as provided in section 53a-102, and in the commission of such offense he uses or is armed with and threatens the use of or</p>	<p>CT ST § 53a-103, CT ST § 53a-103a</p>
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	<p>displays or represents by his words or conduct that he possesses a pistol, revolver, rifle, shotgun, machine gun or other firearm. No person shall be convicted of burglary in the second degree and burglary in the second degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.</p> <p>(b) Burglary in the second degree with a firearm is a class C felony for which one year of the sentence imposed shall not be suspended or reduced by the court.</p> <p>(a) A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein.</p> <p>(b) Burglary in the third degree is a class D felony.</p> <p><b>§ 53a-103a. Burglary in the third degree with a firearm: Class D felony: One year not suspendable</b></p> <p>(a) A person is guilty of burglary in the third degree with a firearm when he commits burglary in the third degree as provided in section 53a-103, and in the commission of such offense, he uses or is armed with and threatens the use of or displays or represents by his words or conduct that he possesses a pistol, revolver, shotgun, rifle, machine gun or other firearm. No person shall be convicted of burglary in the third degree and burglary in the third degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.</p> <p>(b) Burglary in the third degree with a firearm is a class D felony for which one year of the sentence imposed shall not be suspended or reduced by the court.</p>	
Delaware	<p><b>§ 824. Burglary in the third degree; class F felony</b> A person is guilty of burglary in the third degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein. Burglary in the third degree is a class F felony.</p> <p><b>§ 825. Burglary in the second degree; class D felony</b> (a) A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully: (1) In a dwelling with intent to commit a crime therein; or (2) In a building and when, in effecting entry or while in the building or in immediate flight therefrom, the person or another participant in the crime: a. Is armed with explosives or a deadly weapon; or b. Causes physical injury to any person who is not a participant in the crime.</p> <p>Burglary in the second degree is class D felony, except</p>	<p>11 Del.C. § 824, 11 Del.C. § 825, 11 Del.C. § 826, 11 Del.C. § 826A</p>

	<p>where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class C felony.</p> <p><b>§ 826. Burglary in the first degree; class C felony</b></p> <p>(a) A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in a dwelling at night with intent to commit a crime therein, and when, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:</p> <p>(1) Is armed with explosives or a deadly weapon; or</p> <p>(2) Causes physical injury to any person who is not a participant in the crime.</p> <p>Burglary in the first degree is a class C felony, except where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class B felony.</p> <p><b>§ 826A. Home invasion; class B felony</b></p> <p>(a) A person is guilty of home invasion when the person knowingly enters or remains unlawfully in a dwelling with intent to commit a violent felony therein, and:</p> <p>(1) That dwelling is occupied by another person who is not a participant in the crime; and</p> <p>(2) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime engages in the commission of, or attempts to commit, any of the following felonies:</p> <p>a. Robbery in any degree;</p> <p>b. Assault in the first or second degree;</p> <p>c. Murder in any degree;</p> <p>d. Manslaughter;</p> <p>e. Rape in any degree;</p> <p>f. Kidnapping in any degree; and</p> <p>(3) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:</p> <p>a. Is armed with explosives or a deadly weapon; or</p> <p>b. Causes physical injury to any person who is not a participant in the crime.</p> <p>Home invasion is a class B felony.</p>	
<p>Florida</p>	<p><b>810.02. Burglary</b></p> <p>(1)(a) For offenses committed on or before July 1, 2001, “burglary” means entering or remaining in 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 or</p>	<p>FL ST § 810.02</p>

	<p>remain.</p> <p>(b) For offenses committed after July 1, 2001, “burglary” means:</p> <ol style="list-style-type: none"> <li>1. Entering 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; or</li> <li>2. Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance: <ol style="list-style-type: none"> <li>a. Surreptitiously, with the intent to commit an offense therein;</li> <li>b. After permission to remain therein has been withdrawn, with the intent to commit an offense therein; or</li> <li>c. To commit or attempt to commit a forcible felony, as defined in s. 776.08.</li> </ol> </li> </ol> <p>(2) Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender:</p> <ol style="list-style-type: none"> <li>(a) Makes an assault or battery upon any person; or</li> <li>(b) Is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon; or</li> <li>(c) Enters an occupied or unoccupied dwelling or structure, and: <ol style="list-style-type: none"> <li>1. Uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense, and thereby damages the dwelling or structure; or</li> <li>2. Causes damage to the dwelling or structure, or to property within the dwelling or structure in excess of \$1,000.</li> </ol> </li> </ol>	
Georgia	<p><b>§ 16-7-1. Burglary</b></p> <p>(b) A person commits the offense of burglary in the first degree when, without authority and with the intent to commit a felony or theft therein, he or she enters or remains within an occupied, unoccupied, or vacant dwelling house of another or any building, vehicle, railroad car, watercraft, aircraft, or other such structure designed for use as the dwelling of another. (c) A person commits the offense of burglary in the second degree when, without authority and with the intent to commit a felony or theft therein, he or she enters or remains within an occupied, unoccupied, or vacant building, structure, vehicle, railroad car, watercraft, or aircraft.</p> <p><b>§ 16-7-2. Smash and grab burglary</b></p> <p>(b) A person commits the offense of smash and grab</p>	GA ST § 16-7-1, GA ST § 16-7-2, GA ST § 16-7-5

	<p>burglary when he or she intentionally and without authority enters a retail establishment with the intent to commit a theft and causes damage in excess of \$500.00 to such establishment without the owner's consent.</p> <p><b>§ 16-7-5. Home invasion; degrees</b></p> <p>(b) A person commits the offense of home invasion in the first degree when, without authority and with intent to commit a forcible felony therein and while in possession of a deadly weapon or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury, he or she enters the dwelling house of another while such dwelling house is occupied by any person with authority to be present therein.</p> <p>(c) A person commits the offense of home invasion in the second degree when, without authority and with intent to commit a forcible misdemeanor therein and while in possession of a deadly weapon or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury, he or she enters the dwelling house of another while such dwelling house is occupied by any person with authority to be present therein.</p>	
Hawaii	<p><b>§ 708-810. Burglary in the first degree</b></p> <p>(1) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:</p> <p>(a) The person is armed with a dangerous instrument in the course of committing the offense;</p> <p>(b) The person intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense; or</p> <p>(c) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.</p> <p><b>§ 708-811. Burglary in the second degree</b></p> <p>(1) A person commits the offense of burglary in the second degree if the person intentionally enters or remains unlawfully in a building with intent to commit therein a crime against a person or against property rights.</p> <p><b>[§ 708-812.55]. Unauthorized entry in a dwelling in the first degree</b></p> <p>(1) A person commits the offense of unauthorized entry in a dwelling in the first degree if the person intentionally or knowingly enters unlawfully into a dwelling and another person was, at the time of the entry, lawfully present in the dwelling who:</p>	<p>HRS § 708-810, HRS § 708-811, HRS § 708-812.55, HRS § 708-812.6</p>

	<p>(a) Was sixty-two years of age or older;</p> <p>(b) Was an incapacitated person; or</p> <p>(c) Had a developmental disability.</p> <p>(2) For the purposes of this section:  “Developmental disability” shall have the same meaning as in section 333E-2.  “Incapacitated person” shall have the same meaning as in section 560:5-102.</p> <p>(3) Unauthorized entry in a dwelling in the first degree is a class B felony.</p> <p>(4) It shall be an affirmative defense that reduces this offense to a misdemeanor that, at the time of the unlawful entry:</p> <p>(a) There was a social gathering of invited guests at the dwelling the defendant entered;</p> <p>(b) The defendant intended to join the social gathering as an invited guest; and</p> <p>(c) The defendant had no intent to commit any unlawful act other than the entry.</p> <p><b>§ 708-812.6. Unauthorized entry in a dwelling in the second degree</b></p> <p>(1) A person commits the offense of unauthorized entry in a dwelling in the second degree if the person intentionally or knowingly enters unlawfully into a dwelling and another person was lawfully present in the dwelling.</p> <p>(2) Unauthorized entry in a dwelling in the second degree is a class C felony.</p> <p>(3) It shall be an affirmative defense that reduces this offense to a misdemeanor that, at the time of the unlawful entry:</p> <p>(a) There was a social gathering of invited guests at the dwelling the defendant entered;</p> <p>(b) The defendant intended to join the social gathering; and</p> <p>(c) The defendant had no intent to commit any unlawful act other than the entry.</p>	
Idaho	<p><b>§ 18-7034. Unlawful entry a misdemeanor</b></p> <p>Every person, except under landlord-tenant relationship, who enters any dwelling house, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, closed vehicle, closed trailer, airplane, railroad car or outbuilding without the consent of the owner of such property or his agent or any person in lawful possession thereof, is guilty of a misdemeanor</p>	I.C. § 18-7034
Illinois	<p>Sec. 19-1. Burglary.</p> <p>(a) A person commits burglary when without authority he or she knowingly enters or without authority remains within a building, house trailer, watercraft, aircraft, motor vehicle, railroad car, or any part</p>	720 ILCS 5/Art. 19

	<p>thereof, with intent to commit therein a felony or theft. This offense shall not include the offenses set out in Section 4-102 of the Illinois Vehicle Code.</p> <p>Sec. 19-3. Residential burglary.</p> <p>(a) A person commits residential burglary when he or she knowingly and without authority enters or knowingly and without authority remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft. This offense includes the offense of burglary as defined in Section 19-1.</p> <p>(a-5) A person commits residential burglary when he or she falsely represents himself or herself, including but not limited to falsely representing himself or herself to be a representative of any unit of government or a construction, telecommunications, or utility company, for the purpose of gaining entry to the dwelling place of another, with the intent to commit therein a felony or theft or to facilitate the commission therein of a felony or theft by another.</p> <p>Sec. 19-6. Home Invasion.</p> <p>(a) A person who is not a peace officer acting in the line of duty commits home invasion when without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present or he or she knowingly enters the dwelling place of another and remains in the dwelling place until he or she knows or has reason to know that one or more persons is present or who falsely represents himself or herself, including but not limited to, falsely representing himself or herself to be a representative of any unit of government or a construction, telecommunications, or utility company, for the purpose of gaining entry to the dwelling place of another when he or she knows or has reason to know that one or more persons are present and</p> <p>(1) While armed with a dangerous weapon, other than a firearm, uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs, or</p> <p>(2) Intentionally causes any injury, except as provided in subsection (a)(5), to any person or persons within the dwelling place, or</p> <p>(3) While armed with a firearm uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs, or</p> <p>(4) Uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs and during the commission of the offense personally discharges a firearm, or</p> <p>(5) Personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person within the dwelling place, or</p> <p>(6) Commits, against any person or persons within that dwelling place, a violation of Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code.</p>	
Indiana	<b>35-43-2-1 Burglary</b>	IC 35-43-2-1, IC



	<p>Sec. 1. A person who breaks and enters the building or structure of another person, with intent to commit a felony or theft in it, commits burglary, a Level 5 felony. However, the offense is:</p> <p>(1) a Level 4 felony if the building or structure is a dwelling;</p> <p>(2) a Level 3 felony if it results in bodily injury to any person other than a defendant;</p> <p>(3) a Level 2 felony if it:</p> <p>(A) is committed while armed with a deadly weapon; or</p> <p>(B) results in serious bodily injury to any person other than a defendant; and</p> <p>(4) a Level 1 felony if:</p> <p>(A) the building or structure is a dwelling; and</p> <p>(B) it results in serious bodily injury to any person other than a defendant.</p> <p><b>35-43-2-1.5 Residential entry</b></p> <p>Sec. 1.5. A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Level 6 felony.</p>	35-43-2-1.5
Iowa	<p><b>713.1. Burglary defined</b></p> <p>Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure, such occupied structure not being open to the public, or who remains therein after it is closed to the public or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure, commits burglary.</p> <p><b>713.3. Burglary in the first degree</b></p> <p>1. A person commits burglary in the first degree if, while perpetrating a burglary in or upon an occupied structure in which one or more persons are present, any of the following circumstances apply:</p> <p>a. The person has possession of an explosive or incendiary device or material.</p> <p>b. The person has possession of a dangerous weapon.</p> <p>c. The person intentionally or recklessly inflicts bodily injury on any person.</p> <p>d. The person performs or participates in a sex act with any person which would constitute sexual abuse under <a href="#">section 709.1</a>.</p> <p><b>713.5. Burglary in the second degree</b></p> <p>1. A person commits burglary in the second degree in either of the following circumstances:</p> <p>a. While perpetrating a burglary in or upon an occupied structure in which no persons are present, the person has</p>	IA ST § 713.1, IA ST § 713.3, IA ST § 713.5, IA ST § 713.6A

	<p>possession of an explosive or incendiary device or material, or a dangerous weapon, or a bodily injury results to any person.</p> <p>b. While perpetrating a burglary in or upon an occupied structure in which one or more persons are present, the person does not have possession of an explosive or incendiary device or material, nor a dangerous weapon, and no bodily injury is caused to any person.</p> <p><b>713.6A. Burglary in the third degree</b></p> <p>1. All burglary which is not burglary in the first degree or burglary in the second degree is burglary in the third degree. Burglary in the third degree is a class “D” felony, except as provided in subsection 2.</p>	
<p>Kansas</p>	<p><b>21-5807. Burglary; aggravated burglary</b></p> <p>(a) Burglary is, without authority, entering into or remaining within any:</p> <p>(1) Dwelling, with intent to commit a felony, theft or sexually motivated crime therein;</p> <p>(2) building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexually motivated crime therein;</p> <p>or</p> <p>(3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony, theft or sexually motivated crime therein.</p> <p>(b) Aggravated burglary is, without authority, entering into or remaining within any building, manufactured home, mobile home, tent or other structure, or any vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is a human being with intent to commit a felony, theft or sexually motivated crime therein.</p> <p>(c)(1) Burglary as defined in:</p> <p>(A) Subsection (a)(1) is a severity level 7, person felony, except as provided in subsection (c)(2);</p> <p>(B) subsection (a)(2) is a severity level 7, nonperson felony, except as provided in subsection (c)(2);</p> <p>(C) subsection (a)(3) is a severity level 9, nonperson felony, except as provided in subsection (c)(2); and</p> <p>(2) subsection (a)(1), (a)(2) or (a)(3) with the intent to commit the theft of a firearm is a severity level 5, nonperson felony.</p> <p>(3) Aggravated burglary is a severity level 5, person felony.</p> <p>(d) As used in this section, “sexually motivated” means that one of the purposes for which the defendant committed the</p>	<p>KS ST 21-5807</p>

	crime was for the purpose of the defendant's sexual gratification.	
Kentucky	<p><b>511.020 Burglary in the first degree</b>  (1) A person is guilty of burglary in the first degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building, and when in effecting entry or while in the building or in the immediate flight therefrom, he or another participant in the crime:  (a) Is armed with explosives or a deadly weapon; or  (b) Causes physical injury to any person who is not a participant in the crime; or  (c) Uses or threatens the use of a dangerous instrument against any person who is not a participant in the crime.  (2) Burglary in the first degree is a Class B felony.</p> <p><b>511.030 Burglary in the second degree</b>  (1) A person is guilty of burglary in the second degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a dwelling.  (2) Burglary in the second degree is a Class C felony.</p> <p><b>511.040 Burglary in the third degree</b>  (1) A person is guilty of burglary in the third degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building.  (2) Burglary in the third degree is a Class D felony.</p>	KRS § 511.020, KRS § 511.030, KRS § 511.040
Louisiana	<p><b>§ 60. Aggravated burglary</b>  A. Aggravated burglary is the unauthorized entering of any inhabited dwelling, or of any structure, water craft, or movable where a person is present, with the intent to commit a felony or any theft therein, under any of the following circumstances:  (1) If the offender is armed with a dangerous weapon.  (2) If, after entering, the offender arms himself with a dangerous weapon.  (3) If the offender commits a battery upon any person while in such place, or in entering or leaving such place.</p> <p><b>§ 62. Simple burglary</b>  A. Simple burglary is the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein, other than as set forth in R.S. 14:60.</p> <p><b>§ 62.2. Simple burglary of an inhabited dwelling</b>  A. Simple burglary of an inhabited home is the unauthorized entry of any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by a person or persons with the</p>	LA R.S. 14:60, LA R.S. 14:62, LA R.S. 14:62.2, LA R.S. 14:62.3, LA R.S. 14:62.8

	<p>intent to commit a felony or any theft therein, other than as set forth in R.S. 14:60.</p> <p><b>§ 62.3. Unauthorized entry of an inhabited dwelling</b></p> <p>A. Unauthorized entry of an inhabited dwelling is the intentional entry by a person without authorization into any inhabited dwelling or other structure belonging to another and used in whole or in part as a home or place of abode by a person.</p> <p>B. Whoever commits the crime of unauthorized entry of an inhabited dwelling shall be fined not more than one thousand dollars or imprisoned with or without hard labor for not more than six years, or both.</p> <p><b>§ 62.8. Home invasion</b></p> <p>A. Home invasion is the unauthorized entering of any inhabited dwelling, or other structure belonging to another and used in whole or in part as a home or place of abode by a person, where a person is present, with the intent to use force or violence upon the person of another or to vandalize, deface, or damage the property of another.</p> <p>B. (1) Except as provided in Paragraphs (2) and (3) of this Subsection, whoever commits the crime of home invasion shall be fined not more than five thousand dollars and shall be imprisoned at hard labor for not more than twenty-five years.</p> <p>(2) Whoever commits the crime of home invasion while armed with a dangerous weapon shall be fined not more than seven thousand dollars and shall be imprisoned at hard labor for not less than five years nor more than thirty years.</p> <p>(3) Whoever commits the crime of home invasion when, at the time of the unauthorized entering, there is present in the dwelling or structure any person who is under the age of twelve years, is sixty-five years of age or older, or who has a developmental disability as defined in R.S. 28:451.2, shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than ten nor more than twenty-five years. At least ten years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.</p>	
Maine	<p><b>1.</b> A person is guilty of burglary if:</p> <p><b>A.</b> The person enters or surreptitiously remains in a structure knowing that that person is not licensed or privileged to do so, with the intent to commit a crime therein. Violation of this paragraph is a Class C crime; or</p> <p><b>B.</b> The person violates paragraph A and:</p> <p><b>(1)</b> The person is armed with a firearm, or knows that an accomplice is so armed. Violation of this subparagraph is a</p>	ME ST T. 17-A § 401

	<p>Class A crime;</p> <p>(2) The person intentionally or recklessly inflicts or attempts to inflict bodily injury on anyone during the commission of the burglary or an attempt to commit the burglary or in immediate flight after the commission or attempt. Violation of this subparagraph is a Class B crime;</p> <p>(3) The person is armed with a dangerous weapon other than a firearm or knows that an accomplice is so armed. Violation of this subparagraph is a Class B crime;</p> <p>(4) The violation is against a structure that is a dwelling place. Violation of this subparagraph is a Class B crime; or</p> <p>(5) At the time of the burglary, the person has 2 or more prior convictions for any combination of the Maine Class A, B or C offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction. The Maine offenses are: theft; any violation of this section or section 651, 702 or 703; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class B crime.</p>	
Maryland	<p><b>§ 6-202. Burglary in the first degree or home invasion Intent to commit theft</b></p> <p>(a) A person may not break and enter the dwelling of another with the intent to commit theft.</p> <p><b>Intent to commit crime of violence</b></p> <p>(b) A person may not break and enter the dwelling of another with the intent to commit a crime of violence.</p> <p><b>Burglary in the first degree</b></p> <p>(c) A person who violates subsection (a) of this section is guilty of the felony of burglary in the first degree and on conviction is subject to imprisonment not exceeding 20 years.</p> <p><b>Felony of home invasion</b></p> <p>(d) A person who violates subsection (b) of this section is guilty of the felony of home invasion and on conviction is subject to imprisonment not exceeding 25 years.</p> <p><b>§ 6-203. Burglary in the second degree Prohibited--Breaking and entering with intent to commit theft, violence, or arson</b></p> <p>(a) A person may not break and enter the storehouse of another with the intent to commit theft, a crime of violence, or arson in the second degree.</p> <p><b>Prohibited--Breaking and entering with intent to steal firearm</b></p> <p>(b) A person may not break and enter the storehouse of</p>	<p>MD Code, Criminal Law, § 6-202; MD Code, Criminal Law, § 6-203; MD Code, Criminal Law, § 6-204; MD Code, Criminal Law, § 6-205</p>

	<p>another with the intent to steal, take, or carry away a firearm.</p> <p><b>§ 6-204. Burglary in the third degree Prohibited</b></p> <p>(a) A person may not break and enter the dwelling of another with the intent to commit a crime.</p> <p><b>§ 6-205. Burglary in the fourth degree Prohibited--Breaking and entering dwelling</b></p> <p>(a) A person may not break and enter the dwelling of another.</p> <p><b>Prohibited--Breaking and entering storehouse</b></p> <p>(b) A person may not break and enter the storehouse of another.</p> <p><b>Prohibited--Being in or on dwelling, storehouse, or environs</b></p> <p>(c) A person, with the intent to commit theft, may not be in or on:</p> <p>(1) the dwelling or storehouse of another; or</p> <p>(2) a yard, garden, or other area belonging to the dwelling or storehouse of another.</p> <p><b>Prohibited--Possession of burglar's tool</b></p> <p>(d) A person may not possess a burglar's tool with the intent to use or allow the use of the burglar's tool in the commission of a violation of this subtitle.</p>	
Massachusetts	<p><b>§ 14. Burglary; armed; assault on occupants; weapons; punishment</b></p> <p>Whoever breaks and enters a dwelling house in the night time, with intent to commit a felony, or whoever, after having entered with such intent, breaks such dwelling house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entry, or so arming himself in such house, or making an actual assault on a person lawfully therein, shall be punished by imprisonment in the state prison for life or for any term of not less than ten years.</p> <p>Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.</p> <p><b>§ 15. Burglary; unarmed</b></p> <p>Whoever breaks and enters a dwelling house in the night time, with the intent mentioned in the preceding section, or, having entered with such intent, breaks such dwelling house in the night time, the offender not being armed, nor arming</p>	<p>MA ST 266 § 14, MA ST 266 § 15, MA ST 266 § 16, MA ST 266 § 16A, MA ST 266 § 17, MA ST 266 § 18, MA ST 266 § 18A</p>

himself in such house, with a dangerous weapon, nor making an assault upon a person lawfully therein, shall be punished by imprisonment in the state prison for not more than twenty years and, if he shall have been previously convicted of any crime named in this or the preceding section, for not less than five years.

**§ 16. Breaking and entering at night**

Whoever, in the night time, breaks and enters a building, ship, vessel or vehicle, with intent to commit a felony, or who attempts to or does break, burn, blow up or otherwise injures or destroys a safe, vault or other depository of money, bonds or other valuables in any building, vehicle or place, with intent to commit a larceny or felony, whether he succeeds or fails in the perpetration of such larceny or felony, shall be punished by imprisonment in the state prison for not more than twenty years or in a jail or house of correction for not more than two and one-half years.

**§ 16A. Building, vessel or vehicle; breaking and entering with intent to commit misdemeanor**

Whoever in the nighttime or daytime breaks and enters a building, ship, vessel or vehicle with intent to commit a misdemeanor shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or both.

**§ 17. Entering without breaking at night; breaking and entering in day time; weapons; punishment**

Whoever, in the night time, enters without breaking, or breaks and enters in the day time, a building, ship, vessel, or vehicle, with intent to commit a felony, the owner or any other person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years. Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than 7 years or in the house of correction for not less than 2 years nor more than 2 ½ years.

**§ 18. Dwelling house; entry at night; breaking and entering in day time; weapons; punishment**

Whoever, in the night time, enters a dwelling house without breaking, or breaks and enters in the day time a building, ship or motor vehicle or vessel, with intent to commit a felony, no person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five hundred dollars and imprisonment in jail for not more than two

	<p>years. <b>Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon</b> shall be punished by imprisonment in the state prison for not less than 7 years or by imprisonment in the house of correction for not less than 2 years nor more than 2 ½ years.</p> <p><b>§ 18A. Entering dwelling house by false pretenses; intent to commit felony; larceny; punishment</b></p> <p>Whoever enters a dwelling house by false pretenses, without breaking and with the intent to commit a felony, no person lawfully therein being put in fear, or whoever enters a dwelling house by false pretenses, without breaking and, after having entered, commits a larceny, as defined by section 30, no person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than \$5,000 and imprisonment in a house of correction for not more than two years, or by both such fine and imprisonment.</p>	
Michigan	<p><b>750.110. Breaking and entering</b></p> <p>Sec. 110. (1) A person who breaks and enters, with intent to commit a felony or a larceny therein, a tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, structure, boat, ship, shipping container, or railroad car is guilty of a felony punishable by imprisonment for not more than 10 years.</p> <p>(2) As used in this section and section 111, <sup>1</sup>“shipping container” means a standardized, reusable container for transporting cargo that is capable of integrating with a railcar flatbed or a flatbed semitrailer.</p> <p><b>750.111. Entering without breaking</b></p> <p>Sec. 111. Any person who, without breaking, enters any dwelling, house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, boat, ship, shipping container, railroad car or structure used or kept for public or private use, or any private apartment therein, with intent to commit a felony or any larceny therein, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00.</p> <p><b>750.112. Burglary with explosives</b></p> <p>Sec. 112. <b>Burglary with explosives--Any person who enters any building, and for the purpose of committing any crime therein, uses or attempts to use nitro-glycerine, dynamite, gunpowder or any other high explosive,</b> shall be guilty of a felony, punishable by imprisonment in the state prison not less than 15 years nor more than 30 years.</p> <p><b>750.115. Breaking and entering or entering without</b></p>	MI ST 750.110, MI ST 750.111, MI ST 750.112, MI ST 750.115



	<p><b>breaking; buildings, tents, boats, railroad cars; entering public buildings when expressly denied</b></p> <p>Sec. 115. (1) Any person who breaks and enters or enters without breaking, any dwelling, house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, boat, ship, railroad car or structure used or kept for public or private use, or any private apartment therein, or any cottage, clubhouse, boat house, hunting or fishing lodge, garage or the out-buildings belonging thereto, any ice shanty with a value of \$100.00 or more, or any other structure, whether occupied or unoccupied, without first obtaining permission to enter from the owner or occupant, agent, or person having immediate control thereof, is guilty of a misdemeanor.</p> <p>(2) Subsection (1) does not apply to entering without breaking, any place which at the time of the entry was open to the public, unless the entry was expressly denied. Subsection (1) does not apply if the breaking and entering or entering without breaking was committed by a peace officer or an individual under the peace officer's direction in the lawful performance of his or her duties as a peace officer.</p>	
Minnesota	<p><b>609.582. Burglary</b></p> <p><b>Subdivision 1. Burglary in the first degree.</b> Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the first degree and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both, if:</p> <p>(a) the building is a dwelling and another person, not an accomplice, is present in it when the burglar enters or at any time while the burglar is in the building;</p> <p>(b) the burglar possesses, when entering or at any time while in the building, any of the following: a dangerous weapon, any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or an explosive; or</p> <p>(c) the burglar assaults a person within the building or on the building's appurtenant property.</p> <p><b>Subd. 1a. Mandatory minimum sentence for burglary of occupied dwelling.</b> A person convicted of committing burglary of an occupied dwelling, as defined in subdivision 1, clause (a), must be committed to the commissioner of corrections or county workhouse for not less than six months.</p>	MN ST § 609.582

	<p><b>Subd. 2. Burglary in the second degree.</b> (a) Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the second degree and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if:</p> <p>(1) the building is a dwelling;</p> <p>(2) the portion of the building entered contains a banking business or other business of receiving securities or other valuable papers for deposit or safekeeping and the entry is with force or threat of force;</p> <p>(3) the portion of the building entered contains a pharmacy or other lawful business or practice in which controlled substances are routinely held or stored, and the entry is forcible; or</p> <p>(4) when entering or while in the building, the burglar possesses a tool to gain access to money or property.</p> <p><b>Subd. 3. Burglary in the third degree.</b> Whoever enters a building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building, or enters a building without consent and steals or commits a felony or gross misdemeanor while in the building, either directly or as an accomplice, commits burglary in the third degree and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.</p> <p><b>Subd. 4. Burglary in the fourth degree.</b> Whoever enters a building without consent and with intent to commit a misdemeanor other than to steal, or enters a building without consent and commits a misdemeanor other than to steal while in the building, either directly or as an accomplice, commits burglary in the fourth degree and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.</p>	
Mississippi	<p><b>§ 97-17-23. Burglary; breaking and entering; home invasion; penalties</b></p> <p>(1) Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, <b>whether armed with a deadly weapon or not</b>, and whether there shall be at the time some human being in such dwelling house or not, with intent to commit some crime therein, shall be punished by commitment to the custody of the Department of Corrections for not less than three (3) years nor more than twenty-five (25) years.</p>	<p>MS ST § 97-17-23, MS ST § 97-17-25, MS ST § 97-17-29, MS ST § 97-17-33, MS ST § 97-17-37</p>

(2) Every person who shall be convicted of violating subsection (1) under circumstances likely to terrorize any person who is actually occupying the house at the time of the criminal invasion of the premises shall be punished by imprisonment in the custody of the Department of Corrections for not less than ten (10) years nor more than twenty-five (25) years.

**§ 97-17-25. Burglary; breaking out of dwelling**

Every person who, being in the dwelling house of another, shall commit a crime, and shall break any outer door, or any other part of said house, to get out of the same, shall be guilty of burglary, and be imprisoned in the penitentiary not more than ten years.

**§ 97-17-29. Burglary; breaking of inner door by one lawfully present**

Every person who, being lawfully in the dwelling house of another, shall break an inner door of the same house, with intent to commit a crime, shall be guilty of burglary, and imprisoned in the penitentiary not more than ten years.

**§ 97-17-33. Burglary; other buildings, motor vehicles and vessels**

(1) Every person who shall be convicted of breaking and entering, in the day or night, any shop, store, booth, tent, warehouse, or other building or private room or office therein, water vessel, commercial or pleasure craft, ship, steamboat, flatboat, railroad car, automobile, truck or trailer in which any goods, merchandise, equipment or valuable thing shall be kept for use, sale, deposit, or transportation, with intent to steal therein, or to commit any felony, or who shall be convicted of breaking and entering in the day or night time, any building within the curtilage of a dwelling house, not joined to, immediately connected with or forming a part thereof, shall be guilty of burglary, and imprisoned in the penitentiary not more than seven (7) years.

(2) Any person who shall be convicted of breaking and entering a church, synagogue, temple or other established place of worship with intent to commit some crime therein shall be punished by imprisonment in the penitentiary not more than fourteen (14) years.

**§ 97-17-37. Burglary with explosives**

Any person, who, with intent to commit crime, breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe or other secure place by the use of nitroglycerine, dynamite, gunpowder or any other explosive, shall be

	<p>deemed guilty of burglary with explosives. Any person duly convicted of burglary with explosives shall be punished by imprisonment in the state penitentiary for a term of not less than five (5) years nor more than forty (40) years.</p>	
Missouri	<p><b>569.160. Burglary in the first degree</b> &lt;Text of section eff. until Jan. 1, 2017. See, also, section eff. Jan. 1, 2017.&gt; 1. A person commits the crime of burglary in the first degree if he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime therein, and when in effecting entry or while in the building or inhabitable structure or in immediate flight therefrom, he or another participant in the crime: (1) Is armed with explosives or a deadly weapon or; (2) Causes or threatens immediate physical injury to any person who is not a participant in the crime; or (3) There is present in the structure another person who is not a participant in the crime. 2. Burglary in the first degree is a class B felony. <b>569.170. Burglary in the second degree</b> &lt;Text of section eff. until Jan. 1, 2017. See, also, section eff. Jan. 1, 2017.&gt; 1. A person commits the crime of burglary in the second degree when he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime therein. 2. Burglary in the second degree is a class C felony.</p>	R.S.Mo. 569.160, R.S.Mo. 569.170
Montana	<p><b>45-6-204. Burglary</b> (1) A person commits the offense of burglary if the person knowingly enters or remains unlawfully in an occupied structure and: (a) the person has the purpose to commit an offense in the occupied structure; or (b) the person knowingly or purposely commits any other offense within that structure. (2) A person commits the offense of aggravated burglary if the person knowingly enters or remains unlawfully in an occupied structure and: (a)(i) the person has the purpose to commit an offense in the occupied structure; or (ii) the person knowingly or purposely commits any other offense within that structure; and (b) in effecting entry or in the course of committing the offense or in immediate flight after effecting entry or</p>	MT ST 45-6-204

	<p>committing the offense:</p> <p>(i) the person or another participant in the offense is armed with explosives or a weapon; or</p> <p>(ii) the person purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.</p> <p>(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed \$50,000, or both.</p>	
Nebraska	<p><b>28-507. Burglary; penalty</b></p> <p>(1) A person commits burglary if such person willfully, maliciously, and forcibly breaks and enters any real estate or any improvements erected thereon with intent to commit any felony or with intent to steal property of any value.</p> <p>(2) Burglary is a Class IIA felony.</p>	Neb.Rev.St. § 28-507
Nevada	<p><b>205.060. Burglary: Definition; penalties; venue; exception</b></p> <p>1. Except as otherwise provided in subsection 5, a person who, by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, is guilty of burglary.</p> <p>2. Except as otherwise provided in this section, a person convicted of burglary is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000. A person who is convicted of burglary and who has previously been convicted of burglary or another crime involving the forcible entry or invasion of a dwelling must not be released on probation or granted a suspension of sentence.</p> <p>3. Whenever a burglary is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county the crime was committed, the offender may be arrested and tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane,</p>	N.R.S. 205.060, N.R.S. 205.065, N.R.S. 205.067, N.R.S. 205.075

	<p>glider, boat or railroad car traveled during the time the burglary was committed.</p> <p>4. A person convicted of burglary who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure or upon leaving the structure, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$10,000.</p> <p>5. The crime of burglary does not include the act of entering a commercial establishment during business hours with the intent to commit petit larceny unless the person has previously been convicted:</p> <p>(a) Two or more times for committing petit larceny within the immediately preceding 7 years; or</p> <p>(b) Of a felony.</p> <p><b>205.065. Inference of burglarious intent</b></p> <p>Every person who unlawfully breaks and enters or unlawfully enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car may reasonably be inferred to have broken and entered or entered it with intent to commit grand or petit larceny, assault or battery on any person or a felony therein, unless the unlawful breaking and entering or unlawful entry is explained by evidence satisfactory to the jury to have been made without criminal intent.</p> <p><b>205.067. Invasion of the home: Definition; penalties; venue</b></p> <p>1. A person who, by day or night, forcibly enters an inhabited dwelling without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty of invasion of the home.</p> <p>2. A person convicted of invasion of the home is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000. A person who is convicted of invasion of the home and who has previously been convicted of burglary or invasion of the home must not be released on probation or granted a suspension of sentence.</p>	
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	<p>3. Whenever an invasion of the home is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county the crime was committed, the offender may be arrested and tried in any county through which the conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car traveled during the time the invasion was committed.</p> <p>4. A person convicted of invasion of the home who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure or upon leaving the structure, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$10,000.</p> <p>5. As used in this section:  (a) "Forcibly enters" means the entry of an inhabited dwelling involving any act of physical force resulting in damage to the structure.  (b) "Inhabited dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car in which the owner or other lawful occupant resides.</p> <p><b>205.075. Burglary with explosives; penalty</b></p> <p>1. A person who, with the intent to commit a crime, breaks and enters, either by day or by night, any building whether inhabited or not, and opens or attempts to open any vault, safe or other secure place by use of nitroglycerine, dynamite, gunpowder or any other explosive, is guilty of burglary with explosives.</p> <p>2. A person convicted of burglary with explosives is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years.</p>	
<p>New Hampshire</p>	<p><b>635:1 Burglary.</b>  I. A person is guilty of burglary if he or she enters or remains unlawfully in 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</p>	<p>N.H. Rev. Stat.  § 635:1</p>

	<p>to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.</p> <p>II. Burglary is a class B felony unless it is perpetrated in the dwelling of another at night, or if, in the commission of the offense, attempt at commission or in flight immediately after attempt or commission, the actor is armed with a deadly weapon or explosives or he purposely, knowingly or recklessly inflicts bodily injury on anyone; in which case it is a class A felony; except that if the person is armed with a deadly weapon and the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.</p> <p>III. "Occupied structure" shall mean any structure, vehicle, boat or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. "Night" shall mean the period between 30 minutes past sunset and 30 minutes before sunrise.</p> <p>IV. A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a class A felony.</p> <p>V. A person is guilty of a misdemeanor if he makes or mends, or begins to make or mend, or knowingly has in his possession, an engine, machine, tool, or implement adapted and designed for cutting through, forcing or breaking open a building, room, vault, safe, or other depository, in order to steal therefrom money or other property, or to commit any other crime, knowing the same to be adapted and designed for the purpose aforesaid, with intent to use or employ or allow the same to be used or employed for such purpose.</p>	
New Jersey	<p><b>2C:18-2. Burglary</b></p> <p>Burglary. a. Burglary defined. A person is guilty of burglary if, with purpose to commit an offense therein or thereon he:</p> <p>(1) Enters a research facility, structure, or a separately secured or occupied portion thereof unless the structure was at the time open to the public or the actor is licensed or privileged to enter;</p> <p>(2) Surreptitiously remains in a research facility, structure, or a separately secured or occupied portion thereof knowing that he is not licensed or privileged to do so; or</p> <p>(3) Trespasses in or upon utility company property where public notice prohibiting trespass is given by conspicuous posting, or fencing or other enclosure manifestly designed to exclude intruders.</p> <p>b. Grading. Burglary is a crime of the second degree if in</p>	NJ ST 2C:18-2



	<p>the course of committing the offense, the actor:</p> <p>(1) Purposely, knowingly or recklessly inflicts, attempts to inflict or threatens to inflict bodily injury on anyone; or</p> <p>(2) Is armed with or displays what appear to be explosives or a deadly weapon.</p> <p>Otherwise burglary is a crime of the third degree. An act shall be deemed “in the course of committing” an offense if it occurs in an attempt to commit an offense or in immediate flight after the attempt or commission.</p>	
New Mexico	<p><b>§ 30-16-3. Burglary</b>  <u>Currentness</u>  Burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein.</p> <p>A. Any person who, without authorization, enters a dwelling house with intent to commit any felony or theft therein is guilty of a third degree felony.</p> <p>B. Any person who, without authorization, enters any vehicle, watercraft, aircraft or other structure, movable or immovable, with intent to commit any felony or theft therein is guilty of a fourth degree felony.</p> <p><b>§ 30-16-4. Aggravated burglary</b>  <u>Currentness</u>  Aggravated burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with intent to commit any felony or theft therein and the person either:</p> <p>A. is armed with a deadly weapon;</p> <p>B. after entering, arms himself with a deadly weapon;</p> <p>C. commits a battery upon any person while in such place, or in entering or leaving such place.</p> <p>Whoever commits aggravated burglary is guilty of a second degree felony.</p>	NM ST § 30-16-3, NM ST § 30-16-4
New York	<p><b>§ 140.20 Burglary in the third degree</b>  A person is guilty of burglary in the third degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein.</p> <p>Burglary in the third degree is a class D felony.</p> <p><b>§ 140.25 Burglary in the second degree</b>  A person is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when:</p> <p>1. In effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:</p> <p>(a) Is armed with explosives or a deadly weapon; or</p>	NY PENAL § 140.20, NY PENAL § 140.25, NY PENAL § 140.30

	<p>(b) Causes physical injury to any person who is not a participant in the crime; or</p> <p>(c) Uses or threatens the immediate use of a dangerous instrument; or</p> <p>(d) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or</p> <p>2. The building is a dwelling.</p> <p>Burglary in the second degree is a class C felony.</p> <p><b>§ 140.30 Burglary in the first degree</b></p> <p>A person is guilty of burglary in the first degree when he knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime:</p> <ol style="list-style-type: none"> <li>1. Is armed with explosives or a deadly weapon; or</li> <li>2. Causes physical injury to any person who is not a participant in the crime; or</li> <li>3. Uses or threatens the immediate use of a dangerous instrument; or</li> <li>4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged. Nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, burglary in the second degree, burglary in the third degree or any other crime.</li> </ol> <p>Burglary in the first degree is a class B felony.</p>	
North Carolina	<p><b>§ 14-51. First and second degree burglary</b></p> <p>There shall be two degrees in the crime of burglary as defined at the common law. If the crime be committed in a dwelling house, or in a room used as a sleeping apartment in any building, and any person is in the actual occupation of any part of said dwelling house or sleeping apartment at the time of the commission of such crime, it shall be burglary in the first degree. If such crime be committed in a dwelling house or sleeping apartment not actually occupied by anyone at the time of the commission of the crime, or if it be committed in any house within the curtilage of a dwelling house or in any building not a dwelling house, but in which is a room used as a sleeping apartment and not actually occupied as such at the time of the commission of the crime, it shall be burglary in the second degree. For the purposes of defining the crime of burglary, larceny shall be</p>	<p>NC ST § 14-51,  NC ST § 14-54,  NC ST § 14-57</p>

	<p>deemed a felony without regard to the value of the property in question.</p> <p><b>§ 14-54. Breaking or entering buildings generally</b>  (a) Any person who breaks or enters any building with intent to commit any felony or larceny therein shall be punished as a Class H felon.  (a1) Any person who breaks or enters any building with intent to terrorize or injure an occupant of the building is guilty of a Class H felony.  (b) Any person who wrongfully breaks or enters any building is guilty of a Class 1 misdemeanor.  (c) As used in this section, “building” shall be construed to include any dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property.</p> <p><b>§ 14-57. Burglary with explosives</b>  Any person who, with intent to commit any felony or larceny therein, breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by use of nitroglycerine, dynamite, gunpowder, or any other explosive, or acetylene torch, shall be deemed guilty of burglary with explosives. Any person convicted under this section shall be punished as a Class D felon.</p>	
North Dakota	<p><b>§ 12.1-22-02. Burglary</b>  1. A person is guilty of burglary if he willfully enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the premises are not open to the public and the actor is not licensed, invited, or otherwise privileged to enter or remain as the case may be, with intent to commit a crime therein.  2. Burglary is a class B felony if:  a. The offense is committed at night and is knowingly perpetrated in the dwelling of another; or  b. In effecting entry or while in the premises or in immediate flight therefrom, the actor inflicts or attempts to inflict bodily injury or physical restraint on another, or menaces another with imminent serious bodily injury, or is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.  Otherwise burglary is a class C felony.</p>	NDCC, 12.1-22-02
Ohio	<p><b>2911.11 Aggravated burglary</b>  (A) No person, by force, stealth, or deception, shall</p>	OH ST § 2911.11, OH ST

	<p>trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply:</p> <p>(1) The offender inflicts, or attempts or threatens to inflict physical harm on another;</p> <p>(2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.</p> <p>(B) Whoever violates this section is guilty of aggravated burglary, a felony of the first degree.</p> <p><b>2911.12 Burglary; trespass in a habitation when a person is present or likely to be present</b></p> <p>(A) No person, by force, stealth, or deception, shall do any of the following:</p> <p>(1) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense;</p> <p>(2) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense;</p> <p>(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense.</p> <p>(B) No person, by force, stealth, or deception, shall trespass in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present.</p> <p><b>2911.13 Breaking and entering</b></p> <p>(A) No person by force, stealth, or deception, shall trespass in an unoccupied structure, with purpose to commit therein any theft offense, as defined in section 2913.01 of the Revised Code, or any felony.</p> <p>(B) No person shall trespass on the land or premises of another, with purpose to commit a felony.</p>	<p>§ 2911.12, OH ST § 2911.13,</p>
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	(C) Whoever violates this section is guilty of breaking and entering, a felony of the fifth degree.	
Oklahoma	<p><b>§ 1431. Burglary in first degree</b>  Every person who breaks into and enters the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either:</p> <ol style="list-style-type: none"> <li>1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of such house or the lock or bolts of such door, or the fastening of such window or shutter; or</li> <li>2. By breaking in any other manner, being armed with a dangerous weapon or being assisted or aided by one or more confederates then actually present; or</li> <li>3. By unlocking an outer door by means of false keys or by picking the lock thereof, or by lifting a latch or opening a window, is guilty of burglary in the first degree.</li> </ol> <p><b>§ 1435. Burglary in second degree--Acts constituting</b>  Every person who breaks and enters any building or any part of any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection, in which any property is kept, or breaks into or forcibly opens, any coin-operated or vending machine or device with intent to steal any property therein or to commit any felony, is guilty of burglary in the second degree.</p> <p><b>§ 1441. Burglary with explosives</b>  Any person who enters any building, railway car, vehicle, or structure and there opens or attempts to open any vault, safe, or receptacle used or kept for the secure keeping of money, securities, books of accounts, or other valuable property, papers or documents, without the consent of the owner, by the use of or aid of dynamite, nitroglycerine, gunpowder, or other explosives, or who enters any such building, railway car, vehicle, or structure in which is kept any vault, safe or other receptacle for the safe keeping of money or other valuable property, papers, books or documents, with intent and without the consent of the owner, to open or crack such vault, safe or receptacle by the aid or use of any explosive, upon conviction, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the State Penitentiary for a term of not less than twenty (20) years nor more than fifty (50) years.</p>	<p>OK ST T. 21 § 1431, OK ST T. 21 § 1435, OK ST T. 21 § 1441</p>
Oregon	<p><b>164.215. Burglary in the second degree</b>  (1) Except as otherwise provided in ORS 164.255, a person commits the crime of burglary in the second degree if the</p>	<p>O.R.S. § 164.215, O.R.S. § 164.225</p>

	<p>person enters or remains unlawfully in a building with intent to commit a crime therein.</p> <p>(2) Burglary in the second degree is a Class C felony.</p> <p><b>164.225. Burglary in the first degree</b></p> <p>(1) A person commits the crime of burglary in the first degree if the person violates ORS 164.215 and the building is a dwelling, or if in effecting entry or while in a building or in immediate flight therefrom the person:</p> <p>(a) Is armed with a burglary tool or theft device as defined in ORS 164.235 or a deadly weapon;</p> <p>(b) Causes or attempts to cause physical injury to any person; or</p> <p>(c) Uses or threatens to use a dangerous weapon.</p> <p>(2) Burglary in the first degree is a Class A felony.</p>	
<p>Pennsylvania</p>	<p><b>§ 3502. Burglary</b></p> <p><b>(a) Offense defined.--</b>A person commits the offense of burglary if, with the intent to commit a crime therein, the person:</p> <p>(1) enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense any person is present;</p> <p>(2) enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense no person is present;</p> <p>(3) enters a building or occupied structure, or separately secured or occupied portion thereof that is not adapted for overnight accommodations in which at the time of the offense any person is present; or</p> <p>(4) enters a building or occupied structure, or separately secured or occupied portion thereof that is not adapted for overnight accommodations in which at the time of the offense no person is present.</p> <p><b>(b) Defense.--</b>It is a defense to prosecution for burglary if any of the following exists at the time of the commission of the offense:</p> <p>(1) The building or structure was abandoned.</p> <p>(2) The premises are open to the public.</p> <p>(3) The actor is licensed or privileged to enter.</p> <p><b>(c) Grading.--</b></p> <p>(1) Except as provided in paragraph (2), burglary is a felony of the first degree.</p> <p>(2) As follows:</p> <p>(i) Except under subparagraph (ii), an offense under subsection (a)(4) is a felony of the second degree.</p>	<p>PA ST 18 Pa.C.S.A. § 3502</p>

	<p>(ii) If the actor's intent upon entering the building, structure or portion under subparagraph (i) is to commit theft of a controlled substance or designer drug as those terms are defined in section 2 of the act of April 14, 1972 (P.L. 233, No. 64),<sup>1</sup> known as The Controlled Substance, Drug, Device and Cosmetic Act, burglary is a felony of the first degree.</p> <p><b>(d) Multiple convictions.</b>--A person may not be sentenced both for burglary and for the offense which it was his intent to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a felony of the first or second degree.</p>	
Rhode Island	<p><b>§ 11-8-1. Burglary</b> Every person who shall commit burglary shall be imprisoned for life or for any term not less than five (5) years.</p> <p><b>§ 11-8-2. Unlawful breaking and entering of dwelling house</b> (a) Every person who shall break and enter at any time of the day or night any dwelling house or apartment, whether the dwelling house or apartment is occupied or not, or any outbuilding or garage attached to or adjoining any dwelling house, without the consent of the owner or tenant of the dwelling house, apartment, building, or garage, shall be imprisoned for not less than two (2) years and not more than ten (10) years for the first conviction, and for the second and subsequent conviction shall be imprisoned for not less than four (4) years and not more than fifteen (15) years, or fined not more than ten thousand dollars (\$10,000), or both. (b) Every person convicted pursuant to subsection (a) of this section shall be ordered to make restitution to the victim of the offense or to perform up to five hundred (500) hours of public community restitution work, or both, or any combination of them approved by the sentencing judge. The court may not waive the obligation to make restitution and/or public community restitution work. The restitution and/or public community restitution work shall be in addition to any fine or sentence which may be imposed and not in lieu of the fine or sentence.</p> <p><b>§ 11-8-2.1. Unlawful breaking and entering of dwelling with possession of instruments relating to wrongful setting of fires</b> Every person who shall break and enter, at any time of the day or night, any dwelling house or apartment, whether it is occupied or not, or any outbuilding or garage attached to or</p>	<p>Gen.Laws 1956, § 11-8-1, Gen.Laws 1956, § 11-8-2, Gen.Laws 1956, § 11-8-2.1, Gen.Laws 1956, § 11-8-2.2, Gen.Laws 1956, § 11-8-2.3, Gen.Laws 1956, § 11-8-2.4</p>

adjoining any dwelling house or apartment, without the consent of the owner or tenant of the dwelling house, apartment, building, or garage, and who shall have in his or her possession any instrument or instrumentality or equipment of any kind that is reasonably related to the wrongful setting of fires shall be punished by imprisonment for not less than three (3) years and not more than fifteen (15) years. "Possession" means in the actual or constructive control or custody of the person while in the dwelling. "Wrongful" excludes those items which are ordinarily used for the lighting of smoking paraphernalia.

**§ 11-8-2.2. Breaking and entering of a dwelling when resident on premises**

(a) Every person who shall break and enter into any dwelling house or apartment without the consent of the owner or tenant at a time when the resident or residents of the dwelling house or apartment are on the premises, after having been previously convicted of such an offense, shall be imprisoned for not less than one year and not more than ten (10) years and shall not be afforded the provisions of suspension or deferment of sentence nor probation and may in addition be fined not more than five thousand dollars (\$5,000).

(b) Every person convicted pursuant to subsection (a) of this section shall be ordered to make restitution to the victim of the offense, or to perform up to five hundred (500) hours of public community restitution work, or both, or any combination of them approved by the sentencing judge. The court may not waive the obligation to make restitution and/or public community restitution work. Restitution and/or public community restitution work shall be in addition to any fine or sentence which may be imposed and not in lieu of the fine or sentence; provided, that nothing contained in this section shall be construed to require the payment of restitution while the convicted person is imprisoned.

**§ 11-8-2.3. Breaking and entering of dwelling house of persons 60 years of age or older when resident on premises**

(a) Every person who shall break and enter any dwelling house or apartment, without the consent of the owner or tenant at a time when a resident of the dwelling house or apartment who is sixty (60) years of age or older is on the premises, shall be imprisoned for not less than four (4) years and not more than twenty (20) years for the first conviction, and for the second and subsequent convictions



	<p>shall be imprisoned for not less than six (6) years and not more than twenty (20) years, and may in addition be fined not more than fifteen thousand dollars (\$15,000) for a first conviction and not more than twenty thousand dollars (\$20,000) for second and subsequent convictions.</p> <p>(b) Every person convicted pursuant to subsection (a) of this section shall be ordered to make restitution to the victim of the offense, or to perform up to five hundred (500) hours of public community restitution work, or both, or any combination of them imposed by the sentencing judge. The court may not waive the obligation to make restitution and/or public community restitution work. Restitution and/or public community restitution work shall be in addition to any fine or sentence which may be imposed and not in lieu of the fine or sentence; provided, that nothing contained in this section shall be construed to require the payment of restitution while the convicted person is imprisoned.</p> <p><b>§ 11-8-2.4. Breaking and entering of dwelling house of a person who is severely impaired</b></p> <p>(a) Every person who shall break and enter any dwelling house or apartment, without the consent of the owner or tenant at a time when a resident of the dwelling house or apartment who is a person who is severely impaired as defined by the provisions of § 11-5-11 is on the premises, shall be imprisoned for not less than five (5) years and not more than twenty-five (25) years and may in addition be fined not more than fifteen thousand dollars (\$15,000) for a first conviction and not more than twenty thousand dollars (\$20,000) for second and subsequent convictions.</p> <p>(b) Every person convicted pursuant to subsection (a) of this section shall be ordered to make restitution to the victim of the offense, or to perform up to five hundred (500) hours of public community restitution work, or both, or any combination of them imposed by the sentencing judge. The court may not waive the obligation to make restitution and/or public community restitution work. Restitution and/or public community restitution work shall be in addition to any fine or sentence which may be imposed and not in lieu of the fine or sentence; provided, that nothing contained in this section shall be construed to require the payment of restitution while the convicted person is imprisoned.</p>	
South Carolina	<p><b>§ 16-11-311. Burglary; first degree.</b></p> <p>(A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to</p>	Code 1976 § 16-11-311, Code 1976 § 16-11-

	<p>commit a crime in the dwelling, and either:</p> <p>(1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:</p> <p>(a) is armed with a deadly weapon or explosive; or</p> <p>(b) causes physical injury to a person who is not a participant in the crime; or</p> <p>(c) uses or threatens the use of a dangerous instrument; or</p> <p>(d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or</p> <p>(2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or</p> <p>(3) the entering or remaining occurs in the nighttime.</p> <p>(B) Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, “life” means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years.</p> <p><b>§ 16-11-312. Burglary; second degree.</b></p> <p>(A) A person is guilty of burglary in the second degree if the person enters a dwelling without consent and with intent to commit a crime therein.</p> <p>(B) A person is guilty of burglary in the second degree if the person enters a building without consent and with intent to commit a crime therein, and either:</p> <p>(1) When, in effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:</p> <p>(a) Is armed with a deadly weapon or explosive; or</p> <p>(b) Causes physical injury to any person who is not a participant in the crime; or</p> <p>(c) Uses or threatens the use of a dangerous instrument; or</p> <p>(d) Displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or</p> <p>(2) The burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or</p> <p>(3) The entering or remaining occurs in the nighttime.</p> <p>(C)(1) Burglary in the second degree pursuant to subsection (A) is a felony punishable by imprisonment for not more than ten years.</p> <p>(2) Burglary in the second degree pursuant to subsection (B) is a felony punishable by imprisonment for not more than fifteen years, provided, that no person convicted of burglary in the second degree pursuant to subsection (B) shall be eligible for parole except upon service of not less than one-third of the term of the sentence.</p>	<p>312, Code 1976 § 16-11-313</p>
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	<p><b>§ 16-11-313. Burglary; third degree.</b></p> <p>(A) A person is guilty of burglary in the third degree if the person enters a building without consent and with intent to commit a crime therein.</p> <p>(B) Burglary in the third degree is a felony punishable by imprisonment for not more than five years for conviction on a first offense and for not more than ten years for conviction of a second offense according to the discretion of the Court.</p>	
South Dakota	<p><b>22-32-1. First degree burglary--Felony</b></p> <p>Any person who enters or remains in an occupied structure, with intent to commit any crime, unless the premises are, at the time, open to the public or the person is licensed or privileged to enter or remain, is guilty of first degree burglary if:</p> <p>(1) The offender inflicts, or attempts or threatens to inflict, physical harm on another;</p> <p>(2) The offender is armed with a dangerous weapon; or</p> <p>(3) The offense is committed in the nighttime.</p> <p>First degree burglary is a Class 2 felony.</p> <p><b>22-32-3. Second degree burglary--Felony</b></p> <p>Any person who enters or remains in an occupied structure with intent to commit any crime, unless the premises are, at the time, open to the public or the person is licensed or privileged to enter or remain, under circumstances not amounting to first degree burglary, is guilty of second degree burglary. Second degree burglary is a Class 3 felony.</p> <p><b>22-32-8. Third degree burglary--Felony</b></p> <p>Any person who enters or remains in an unoccupied structure, other than a motor vehicle, with intent to commit any crime, unless the premises are, at the time, open to the public or the person is licensed or privileged to enter or remain, is guilty of third degree burglary. Third degree burglary is a Class 5 felony.</p>	SDCL § 22-32-1, SDCL § 22-32-3, SDCL § 22-32-8
Tennessee	<p><b>§ 39-14-402. Burglary</b></p> <p>(a) A person commits burglary who, without the effective consent of the property owner:</p> <p>(1) Enters a building other than a habitation (or any portion thereof) not open to the public, with intent to commit a felony, theft or assault;</p> <p>(2) Remains concealed, with the intent to commit a felony, theft or assault, in a building;</p> <p>(3) Enters a building and commits or attempts to commit a felony, theft or assault; or</p> <p>(4) Enters any freight or passenger car, automobile, truck, trailer, boat, airplane or other motor vehicle with intent to commit a felony, theft or assault or commits or attempts to</p>	TN ST § 39-14-402, TN ST § 39-14-403, TN ST § 39-14-404

	<p>commit a felony, theft or assault.</p> <p>(b) As used in this section, “enter” means:</p> <p>(1) Intrusion of any part of the body; or</p> <p>(2) Intrusion of any object in physical contact with the body or any object controlled by remote control, electronic or otherwise.</p> <p>(c) Burglary under subdivision (a)(1), (2) or (3) is a Class D felony.</p> <p>(d) Burglary under subdivision (a)(4) is a Class E felony.</p> <p><b>§ 39-14-403. Aggravated burglary</b></p> <p>(a) Aggravated burglary is burglary of a habitation as defined in §§ 39-14-401 and 39-14-402.</p> <p>(b) Aggravated burglary is a Class C felony.</p> <p><b>§ 39-14-404. Especially aggravated burglary</b></p> <p>(a) Especially aggravated burglary is:</p> <p>(1) Burglary of a habitation or building other than a habitation; and</p> <p>(2) Where the victim suffers serious bodily injury.</p> <p>(b) For the purposes of this section, “victim” means any person lawfully on the premises.</p> <p>(c) Especially aggravated burglary is a Class B felony.</p> <p>(d) Acts which constitute an offense under this section may be prosecuted under this section or any other applicable section, but not both.</p>	
Texas	<p><b>§ 30.02. Burglary</b></p> <p>(a) A person commits an offense if, without the effective consent of the owner, the person:</p> <p>(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or</p> <p>(2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or</p> <p>(3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.</p> <p>(b) For purposes of this section, “enter” means to intrude:</p> <p>(1) any part of the body; or</p> <p>(2) any physical object connected with the body.</p> <p>(c) Except as provided in Subsection (d), an offense under this section is a:</p> <p>(1) state jail felony if committed in a building other than a habitation; or</p> <p>(2) felony of the second degree if committed in a habitation.</p> <p>(d) An offense under this section is a felony of the first degree if:</p> <p>(1) the premises are a habitation; and</p>	TX PENAL § 30.02

	(2) any party to the offense entered the habitation with intent to commit a felony other than felony theft or committed or attempted to commit a felony other than felony theft.	
Utah	<p><b>§ 76-6-202. Burglary</b>  (1) An actor is guilty of burglary who enters or remains unlawfully in a building or any portion of a building with intent to commit:  (a) a felony;  (b) theft;  (c) an assault on any person;  (d) lewdness, a violation of Section 76-9-702;  (e) sexual battery, a violation of Section 76-9-702.1;  (f) lewdness involving a child, in violation of Section 76-9-702.5; or  (g) voyeurism under Section 76-9-702.7.  (2) Burglary is a third degree felony unless it was committed in a dwelling, in which event it is a second degree felony.  (3) A violation of this section is a separate offense from any of the offenses listed in Subsections (1)(a) through (g), and which may be committed by the actor while in the building.</p> <p><b>§ 76-6-203. Aggravated burglary</b>  (1) A person is guilty of aggravated burglary if in attempting, committing, or fleeing from a burglary the actor or another participant in the crime:  (a) causes bodily injury to any person who is not a participant in the crime;  (b) uses or threatens the immediate use of a dangerous weapon against any person who is not a participant in the crime; or  (c) possesses or attempts to use any explosive or dangerous weapon.  (2) Aggravated burglary is a first degree felony.  (3) As used in this section, “dangerous weapon” has the same definition as under Section 76-1-601.</p>	UT ST § 76-6-202, UT ST § 76-6-203
Vermont	<p><b>§ 1201. Burglary</b>  (a) A person is guilty of burglary if he or she enters any building or structure knowing that he or she is not licensed or privileged to do so, with the intent to commit a felony, petit larceny, simple assault, or unlawful mischief. This provision shall not apply to a licensed or privileged entry, or to an entry that takes place while the premises are open to the public, unless the person, with the intent to commit a crime specified in this subsection, surreptitiously remains in</p>	VT ST T. 13 § 1201

	<p>the building or structure after the license or privilege expires or after the premises no longer are open to the public.</p> <p>(b) As used in this section:</p> <p>(1) “Building,” “premises,” and “structure” shall, in addition to their common meanings, include and mean any portion of a building, structure, or premises which differs from one or more other portions of such building, structure, or premises with respect to license or privilege to enter, or to being open to the public.</p> <p>(2) “Occupied dwelling” means a building used as a residence, either full-time or part-time, regardless of whether someone is actually present in the building at the time of entry.</p> <p>(c)(1) A person convicted of burglary shall be imprisoned not more than 15 years or fined not more than \$1,000.00, or both.</p> <p>(2) A person convicted of burglary and who carries a dangerous or deadly weapon, openly or concealed, shall be imprisoned not more than 20 years or fined not more than \$10,000.00, or both.</p> <p>(3) A person convicted of burglary into an occupied dwelling:</p> <p>(A) shall be imprisoned not more than 25 years or fined not more than \$1,000.00, or both; or</p> <p>(B) shall be imprisoned not more than 30 years or fined not more than \$10,000.00, or both, if the person carried a dangerous or deadly weapon, openly or concealed, during commission of the offense.</p> <p>(4) When imposing a sentence under this section, the Court shall consider as an aggravating factor whether, during commission of the offense, the person entered the building when someone was actually present or used or threatened to use force against the occupant.</p>	
Virginia	<p><b>§ 18.2-89. Burglary; how punished</b>  If any person break and enter the dwelling house of another in the nighttime with intent to commit a felony or any larceny therein, he 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.</p> <p><b>§ 18.2-90. Entering dwelling house, etc., with intent to commit murder, rape, robbery or arson; penalty</b>  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</p>	<p>VA ST § 18.2-89, VA ST § 18.2-90, VA ST § 18.2-91, VA ST § 18.2-92</p>

	<p>outhouse or in the nighttime enters without breaking or at any time breaks and enters or enters and conceals himself in any building permanently affixed to realty, 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 §§ 18.2-77, 18.2-79 or § 18.2-80, he 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.</p> <p><b>§ 18.2-91. Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony</b>  If any person commits any of the acts mentioned in § 18.2-90 with intent to commit larceny, or any felony other than murder, rape, robbery or arson in violation of §§ 18.2-77, 18.2-79 or § 18.2-80, or if any person commits any of the acts mentioned in § 18.2-89 or § 18.2-90 with intent to commit assault and battery, he 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.</p> <p><b>§ 18.2-92. Breaking and entering dwelling house with intent to commit other misdemeanor</b>  If any person break and enter a dwelling house while said dwelling is occupied, either in the day or nighttime, with the intent to commit any misdemeanor except assault and battery or trespass, he 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.</p>	
Washington	<p><b>9A.52.020. Burglary in the first degree</b>  (1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.  (2) Burglary in the first degree is a class A felony.</p> <p><b>9A.52.025. Residential burglary</b></p>	<p>WA ST  9A.52.020, WA  ST 9A.52.025,  WA ST  9A.52.030</p>

	<p>(1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.</p> <p>(2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, residential burglary is to be considered a more serious offense than second degree burglary.</p> <p><b>9A.52.030. Burglary in the second degree</b></p> <p>(1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling.</p> <p>(2) Burglary in the second degree is a class B felony.</p>	
West Virginia	<p><b>§ 61-3-11. Burglary; entry of dwelling or outhouse; penalties</b></p> <p>(a) Burglary shall be a felony and any person convicted thereof shall be confined in the penitentiary not less than one nor more than fifteen years. If any person shall, in the nighttime, break and enter, or enter without breaking, or shall, in the daytime, break and enter, the dwelling house, or an outhouse adjoining thereto or occupied therewith, of another, with intent to commit a crime therein, he shall be deemed guilty of burglary.</p> <p>(b) If any person shall, in the daytime, enter without breaking a dwelling house, or an outhouse adjoining thereto or occupied therewith, of another, with intent to commit a crime therein, he shall be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years.</p> <p>(c) The term “dwelling house,” as used in subsections (a) and (b) of this section, shall include, but not be limited to, a mobile home, house trailer, modular home, factory-built home or self-propelled motor home, used as a dwelling regularly or only from time to time, or any other nonmotive vehicle primarily designed for human habitation and occupancy and used as a dwelling regularly or only from time to time.</p> <p><b>§ 61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment</b></p> <p>If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, underground coal mine, storehouse, warehouse, banking house or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or</p>	W. Va. Code, § 61-3-11, W. Va. Code, § 61-3-12



	<p>traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than ten years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than twelve months and be fined not exceeding \$100.</p> <p>An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and section eleven of this article.</p>	
Wisconsin	<p><b>943.10. Burglary</b>  (1g) In this section:  (a) "Boat" means any ship or vessel that has sleeping quarters.  (b) "Motor home" has the meaning given in s. 340.01(33m).  (1m) Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class F felony:  (a) Any building or dwelling; or  (b) An enclosed railroad car; or  (c) An enclosed portion of any ship or vessel; or  (d) A locked enclosed cargo portion of a truck or trailer; or  (e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or  (f) A room within any of the above.  (2) Whoever violates sub. (1m) under any of the following circumstances is guilty of a Class E felony:  (a) The person is armed with a dangerous weapon or a device or container described under s. 941.26(4)(a).  (b) The person is unarmed, but arms himself with a dangerous weapon or a device or container described under s. 941.26(4)(a) while still in the burglarized enclosure.</p>	WI ST 943.10

	<p>(c) While the person is in the burglarized enclosure, he or she opens, or attempts to open, any depository by use of an explosive.</p> <p>(d) While the person is in the burglarized enclosure, he or she commits a battery upon a person lawfully therein.</p> <p>(e) The burglarized enclosure is a dwelling, boat, or motor home and another person is lawfully present in the dwelling, boat, or motor home at the time of the violation.</p> <p>(3) For the purpose of this section, entry into a place during the time when it is open to the general public is with consent.</p>	
Wyoming	<p><b>§ 6-3-301. Burglary; aggravated burglary; penalties</b></p> <p>(a) A person is guilty of burglary if, without authority, he enters or remains in a building, occupied structure or vehicle, or separately secured or occupied portion thereof, with intent to commit theft or a felony therein.</p> <p>(b) Except as provided in subsection (c) of this section, burglary is a felony punishable by imprisonment for not more than ten (10) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.</p> <p>(c) Aggravated burglary is a felony punishable by imprisonment for not less than five (5) years nor more than twenty-five (25) years, a fine of not more than fifty thousand dollars (\$50,000.00), or both, if, in the course of committing the crime of burglary, the person:</p> <p>(i) Is or becomes armed with or uses a deadly weapon or a simulated deadly weapon;</p> <p>(ii) Knowingly or recklessly inflicts bodily injury on anyone; or</p> <p>(iii) Attempts to inflict bodily injury on anyone.</p> <p>(d) As used in this section “in the course of committing the crime” includes the time during which an attempt to commit the crime or in which flight after the attempt or commission occurred.</p> <p><b>§ 6-3-302. Criminal entry; penalties; affirmative defenses</b></p> <p>(a) A person is guilty of criminal entry if, without authority, he knowingly enters a building, occupied structure, vehicle or cargo portion of a truck or trailer, or a separately secured or occupied portion of those enclosures.</p> <p>(b) It is an affirmative defense to prosecution under this section that:</p> <p>(i) The entry was made because of a mistake of fact or to preserve life or property in an emergency;</p> <p>(ii) The enclosure was abandoned;</p> <p>(iii) The enclosure was at the time open to the public and</p>	<p>W.S.1977 § 6-3-301, W.S.1977 § 6-3-302, W.S.1977 § 6-3-306</p>

	<p>the person complied with all lawful conditions imposed on access to or remaining in the enclosure; or</p> <p>(iv) The person reasonably believed that the owner of the enclosure, or other person empowered to license access to the enclosure, would have authorized him to enter.</p> <p>(c) Criminal entry is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.</p> <p><b>§ 6-3-306. Forcible entry or detainer; penalty</b></p> <p>A person is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), if he violently takes or keeps possession of land without authority of law.</p>	
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