

THE LAW

The crime of **burglary** generally consists of the following elements: (1) breaking and (2) entering (3) a dwelling house or other building (4) belonging to another, (5) with the intent to commit a crime therein. The common-law crime of burglary necessitates that the act be committed in the nighttime. This element has been deleted in a number of state statutes.

Burglary and related offenses are classified as crimes against the habitation, dwelling, or building itself; no force need be directed against a person. The breaking element may be satisfied through acts that constitute a breaking into, a breaking out of, or a breaking within. Generally, the slightest force used to remove or put aside something material that makes up a part of the building and is relied on to prevent intrusion, for example, doors or windows, constitutes breaking. This element can be satisfied whether accomplished at the hands of the perpetrator, through the use of some inanimate object like a brick, or by the participation of an innocent third party. Similarly, the element of entry is satisfied once the slightest intrusion has taken place by the perpetrator, an inanimate object, an animal, or an innocent third person.

The character of the building at which the breaking and entering takes place largely determines the type of offense committed. The most serious offense is often breaking and entering of a dwelling house, that is, a place used by another person as a residence. The nature of the dwelling itself is not determinative but, rather, the manner in which it is used. Hence, a hotel room can be considered a dwelling house.

The other major ingredient controlling the nature of the crime is the intent with which the perpetrator unlawfully breaks and enters the building. The more serious the crime intended to be committed after entry, the more serious becomes the breaking and entering itself. Thus, breaking-and-entering which is done with the intent to commit a felony carries a higher sentence in many states.

APPROACHING THE SCENE AND INITIAL ACTIONS

When responding to a burglary-in-progress call, uniformed officers should drive rapidly while avoiding excessive noise, such as the dramatic but unnecessary use of the siren. The last several blocks to the scene should be driven at lower speeds for two reasons. Doing so eliminates the possibility that the squealing tires of the police vehicle will give the perpetrators, if still on the scene, the advantage of crucial seconds of warning. Additionally, lower speeds allow opportunity for observation. A vehicle driving away from the vicinity of the scene may be seen and its description and license plate number noted as a possible investigative lead. Under such conditions,

late-model, expensive cars, such as Cadillacs and Lincolns, should not be discounted. Burglars often select these, not only because of the large amounts of equipment and stolen property such cars can hold but also because they recognize that the police often behave respectfully to the occupants of these vehicles, because of the implied social status.

When dispatched to a burglary-in-progress call, the uniformed officer working alone should attempt to coordinate his/her arrival time and position with the backup unit. This will enable the officers to secure the building immediately. One unit can arrive positioned so it can watch two sides of the building—for example, the north and east sides—while the other unit can observe the west and south sides. When a two-officer unit is dispatched to a burglary-in-progress call, the operator of the police vehicle should drop his or her partner off in a position to view two sides of the building and position the vehicle to allow observation of the remaining two sides. When working alone, if it is necessary to begin checking the exterior of the building immediately, the uniformed officer should drive around it to determine whether there is a readily observable break. If this is not possible, the officer should check rapidly, but cautiously, on foot. When a flashlight is used during hours of darkness, it should be held away from the body, because the suspect is most likely to aim at the light source if firing at the officer. If a point of entry is established, under no circumstances should an officer attempt to enter, as entering would needlessly expose him or her to extreme danger. Most burglars prefer to be unarmed because, in many states, breaking and entering while armed is a more serious offense than an unarmed breaking and entering. However, occasionally burglars are armed and willing to use their weapons to avoid apprehension:

A woman whose home overlooked the back of a shopping center saw two people break into a dress shop through the rear door. She called 911, who gave the call out as a burglary in progress, subjects on the premises. A motorcycle officer who was returning to the station at the end of his shift heard the call, which was assigned to a patrol unit, and swung by to back them up because he was close to the scene. The woman, still connected to 911, gave a running account of what happened. The motorcycle officer arrived first and pointed his motorcycle lights at the rear door. Instead of maintaining his position and waiting for assistance, he walked up to the door—fully silhouetted by his own lights. As he stood in the doorway, he was shot three times and collapsed. As the officer lay dying, one of the perpetrators stood over him and emptied his pistol into him. This death should not have occurred. It was caused because the officer used a tactically unsound

procedure and because he encountered armed subjects willing to shoot it out with the police. Both subjects were arrested at the scene. Follow-up investigation revealed that they had a major incentive to use deadly force against the police—they were wanted on murder charges in two other states.

The fact that no point of entry is determined by riding or walking around the building does not mean that a forcible entry has not occurred. Whenever possible, the roof should be checked, particularly vents and skylights. Even if there is an alarm sounding, there may not be a burglary. Alarms frequently malfunction, particularly during inclement weather. However, officers must never become complacent about checking premises with a reputation for false alarms. If a breaking and entering has occurred, additional cars, if available, should be brought into the general area. Burglars often park their vehicles some blocks from the building to be attacked, and the perpetrator may not yet have had time to flee the area. "Lovers" parked in the general area should not go overlooked by the police. Burglars often use couples as lookouts or have their girlfriends remain in the car while they commit the offense. The perpetrator may have reached the car but have been unable to flee the immediate area; the use of a "just parked lovers" story may allow him to escape detection.

If a burglary has been committed and the police department has a canine unit, the uniformed officer at the scene should request its presence before entering the building. The alarm servicing company ordinarily sends a representative to the scene fairly rapidly to provide officers with access to the building. If there is no alarm, then the owner must be contacted either from information usually posted on the door or from other sources. Before beginning the crime scene search, officers must thoroughly check the building to ensure that the burglar is not hiding on the premises. To achieve the proper degree of caution, the building check should be conducted as though it were known that the burglar was still there.

Figure 14-2 is a **burglary investigation checklist**; it makes no distinction between the tasks associated with initiating the incident report and those associated with the follow-up investigation, so that the entire scope of investigative tasks can be seen at once.

INVESTIGATIVE CONSIDERATIONS AT THE SCENE

Caution must be exercised to avoid the accidental destruction of physical evidence while attempting to make a determination of whether the burglar is still in

the building. Officers should be sensitive to the possible presence of physical evidence but not act in a manner that might jeopardize the most important thing—the officer's safety. If gross physical force has been used in gaining entry, the point of attack is easily established (Figure 14-3). However, one cannot assume that it is also the point of exit. Often burglars will break into a building at a particular point and then leave by opening a door. Where gross physical force is used, the point of attack is of particular importance because examination of it may yield the types of physical evidence discussed in Chapter 4, "Physical Evidence." In combination, the determination of the points of attack and exit will suggest the avenues of approach and flight traveled by the perpetrator, which also must be explored for the possible presence of physical evidence. Officers must be particularly attentive for unusual signs that may be of investigative value. Juvenile burglars commonly commit destructive acts of vandalism (Figure 14-4). Also, age may be suggested from the choices of what is taken and what is left behind:

When I started hustling . . . didn't know much, like what crap be really worth and how to get bills for it . . . at first alotta stuff I just leave back . . . just grabbed things for me . . . like a nice coat or small crap you can just walk with and sell quick for cash . . . like a gun . . . main thing for me was getting some bills so I could high-cat around and get stuff . . . Nike shoes. I couldn't walk around with no stereo or TV . . . had to leave the big stuff.

The sudden removal of trophies or other prized possessions by their owner from a business or residence, followed by a burglary for the purpose of committing arson, should raise certain questions in the investigator's mind. Further, the weight or dimensions of property taken in a burglary may suggest, if only roughly, the number of people involved in the offense. Articles or tools left behind, combined with other specifics of the crime, may be useful in the identification of an MO.

Many commercial establishments keep check imprinters on their premises. A not uncommon occurrence is for a burglar to gain entry to a commercial building, tear several checks from the company checkbook, imprint them, and cash them the next day. Thus, it is of particular importance to have the proprietor ensure that no checks have been taken. Normally, when a burglar employs this practice the checks will be taken from the very rear of the book or from several different series in order to lessen the likelihood of detection.

FIGURE 14-2
Burglary investigation checklist*

| Completed | Tasks |
|-----------|---|
| _____ | Determine use of premises (e.g., residence versus commercial), point of entry and if different, point of exit. Was entry forced or unforced? What is missing? |
| _____ | Who discovered the burglary? When? What was he/she doing when discovered? Did he/she touch or move anything? What? Why? |
| _____ | Is the victim the complainant versus a neighbor or employee? Victim assistance? Are there independent witnesses? |
| _____ | Is there any significant time gap between when discovered and when reported? Why? |
| _____ | Who knows when the last time the premises was secure? When? |
| _____ | Was any alarm set or not set? Who is responsible? |
| _____ | What physical evidence is there? Entry tool(s) left behind? Is crime scene processing warranted under department policies/procedures? |
| _____ | Are there exterior/interior surveillance cameras? Working? Why not? Get videos if available. |
| _____ | Review past tapes to identify suspect casing the premises. |
| _____ | Is there evidence the crime was staged (e.g., possible insurance fraud)? |
| _____ | What actions did the suspect(s) take in entering, while inside, and leaving? |
| _____ | Does the item(s) taken suggest more than one suspect and vehicle (e.g., 50" HDTV taken)? |
| _____ | Does the scene suggest some inside knowledge of the premises (e.g., perpetrator went right to where item stolen was versus the scene being "tossed")? |
| _____ | Were any acts of sexual deviancy committed (e.g., masturbated in victim's underwear, defecated on bed or elsewhere, or cut crotches out of victim's underwear)? |
| _____ | Does the type of entry and articles stolen suggest juveniles are involved (e.g., change, condoms, alcohol, Nintendo games, costume jewelry taken, real jewelry left behind, only small articles taken for which a vehicle is not needed to transport)? Was school out? Were known juvenile offenders in the area absent from school? |
| _____ | Does the method of entry and articles stolen suggest unusual skills or special knowledge (e.g., safe successfully attacked using a single method versus several different types of unsuccessful attacks, good jewelry taken, costume items left behind)? |
| _____ | What precautions did the suspect(s) take to avoid detection? Were alarms and cameras disabled? Does the neighborhood check reveal possible lookouts? Were telephones or walkie-talkies left behind? Was phone on premises used? What number(s) was called? |
| _____ | Have residential victims determine if checks are missing; have commercial owners determine if checks are missing from rear of business checkbook. Was checkwriter taken, or does its present position suggest its use while suspect(s) was on the premises? |
| _____ | View evidence/enter identifiable stolen items in database. |
| _____ | Check intelligence, field interview reports, and other databases. Check with crime analysts to determine if the MO is identifiable to an individual. Check with other investigators to see if cases they are working on may be related. Also contact other area agencies for the same reason. Read follow-on reports from lab examining evidence. |
| _____ | Check pawnshop records (Figure 14-10). |
| _____ | Visit flea markets and swap meets. Check newspaper for sale ads, and also eBay. |
| _____ | Check suspect information (e.g., verify name, aliases used, criminal history, address, employment, associates). Obtain current photo, prepare photo pack, check for warrants, and issue BOLD. |
| _____ | Check jail records and interview/interrogate suspect in custody. |
| _____ | Schedule polygraph/Computer Voice Stress Analyzer (CVSA) examinations. |
| _____ | Obtain arrest and search warrants as needed; file returns. |
| _____ | Respond to information requests from District/State Attorney. |

Source: Authors' experience, with some elements added from Universal Case Checklist, Assistance Chief of Police (Retired) Bill Proffitt, and Sergeant Karen Eichler, St. Petersburg, Florida, Police Department.

*This list does not distinguish between steps taken gathering information for the incident report and the follow-up.

RECOGNITION OF BURGLARY TOOLS

Most often, when tools used in the commission of a burglary are recovered at the scene, they are not very different from those found in many households. A partial list of **burglary tools** includes knives, screwdrivers, crowbars,

tire irons, pipe wrenches, chisels, sledgehammers, hacksaws, bolt cutters, axes, and glass cutters. In the crude smash-and-grab burglary, where the display window of a jewelry store is broken and articles immediately available are taken, the "tool" may be as unsophisticated as a



◀ **FIGURE 14-3 Broken front door**

The burglary of this residence was accomplished by prying the front door open. The burglar first made an unsuccessful attempt to remove the deadbolt lock. When this failed, he simply pried the door open, as evidenced by the marks along the door's right edge. (Courtesy Chief Rick Boren and Sgt. Doug Shafer, Columbus (Georgia) Police Department)

brick in a paper sack. However, tools left at the scene may have been subject to certain adaptations to facilitate their use in a burglary. Screwdrivers or crowbars may be carefully sharpened or shaped to increase their effectiveness in attacking doors and windows; nippers can be transformed into lock pullers if they are honed in a manner that permits firmer biting ability on exposed lock edges. Burglars will also apply masking tape in the shape of a cone to the end of a flashlight so that it emits only a very thin light beam.

Apprehension of a suspect not in the act of burglary but in possession of lock picks (Figure 14-5), specially modified tools (Figure 14-6), or standard tools that can be used in burglaries may permit a felony charge of possession of burglary tools. Some states require that a person have a prior conviction for burglary in order for this charge to be placed. Even where this requirement does not exist, proof of intent to commit burglary is essential for conviction.



◀ **FIGURE 14-4 "Tossed" home office**

A heavily "tossed" home office. The chaotic scene suggests amateur burglars and, more particularly, juvenile perpetrators who became frustrated looking for things they could easily carry away. More seasoned offenders, for example, would have methodically searched the filing cabinet at the left of the picture from top to bottom or bottom to top. The open drawer in the middle of the cabinet suggests a more random approach. (Courtesy Chief Dwayne Orrick, Cordele (Georgia) Police Department)