

Common Law Burglary and Modern Law Burglary

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Introduction

Burglary is a useful example of how criminal law has evolved from a narrow common-law formula into a family of modern statutory offenses. At common law, burglary was traditionally defined as the breaking and entering of the dwelling house of another at night with intent to commit a felony inside. Each element served to limit the offense and reflected the historic concern with dangerous nighttime invasions of homes. Modern U.S. statutes are broader and differ substantially by jurisdiction. Many remove the nighttime requirement, expand protected places beyond dwellings, eliminate a separate requirement of “breaking,” and recognize situations in which a person enters lawfully but later remains without permission while possessing the required criminal intent. The internal comparison of [burglary and theft elements](#) is therefore useful only when tied to the controlling statute. Burglary should also be distinguished from trespass, robbery, and larceny because unlawful presence alone does not establish every element. Any real case requires analysis of the specific jurisdiction, facts, and applicable judicial interpretations.

The Common-Law Elements

The historic common-law offense contained several technical requirements. “Breaking” did not necessarily mean damaging a structure; opening a closed but unlocked door or window could be sufficient, and constructive breaking could sometimes occur through fraud, threat, or misuse of authority. “Entry” was generally satisfied when any part of the body crossed the protected boundary and could sometimes include inserting an instrument for the purpose of committing the intended felony. The location had to be the dwelling house of another, emphasizing possessory security rather than formal title. Nighttime was an express requirement because sleeping occupants were considered especially vulnerable to violent confrontation. Finally, the defendant needed the intent to commit a felony inside at the time of the breaking and entry. If that intent formed only later, classic common-law burglary might not be complete. These technical elements explain why conduct that would ordinarily be called burglary today could fall outside the old definition. Statutory reform expanded the offense because modern communities sought protection for commercial premises, daytime intrusions, and other dangerous unauthorized entries.

Modern Statutes and Unlawful Entry

Most contemporary burglary law is statutory, and the wording varies from state to state. Many statutes focus on entering or remaining unlawfully in a building, occupied structure, dwelling, vehicle adapted for lodging, or another specifically protected place. This approach prevents criminal liability from turning on whether an intruder happened to find a door already open. It also allows legislatures to distinguish residential burglary from commercial intrusion or other forms of unlawful entry. Permission becomes especially important in premises open to the public. A customer may be licensed to enter a store during business hours but not an employee-only office, locked storage area, or premises after closing. Jurisdictions differ on whether secret criminal intent at the moment of entering a public place automatically exceeds the scope of permission. Courts also interpret “building,” “occupied structure,” “entry,” and “remaining unlawfully” differently. Cornell’s legal overview therefore emphasizes that burglary definitions depend on jurisdiction rather than one nationwide formula. A careful analysis begins with statutory text before applying general common-law concepts to the facts.

Intent and the Difference from Trespass or Theft

Burglary ordinarily requires a specified criminal intent in addition to unauthorized entry or remaining. Depending on the jurisdiction, the intended offense may need to be a felony, theft, assault, or any crime defined by statute. Intent is usually proved circumstantially through conduct such as concealment, tools, forced access, timing, statements, selection of a target, movement of property, or flight. This requirement separates burglary from simple trespass. A person who accidentally enters the wrong apartment and immediately leaves may lack the criminal intent necessary for burglary even if the entry technically becomes unauthorized. Burglary also differs from larceny because the intended theft does not necessarily need to be completed; qualifying entry with the required intent can finish the burglary offense before any property is taken. Robbery is different again because it involves taking property from a person or presence through force or threat. A single event may support several charges when separate statutory elements are proven, but everyday labels should not substitute for element-by-element legal analysis.

Remaining Unlawfully and the Timing of Intent

Modern statutes often address conduct that the traditional formula handled awkwardly: a person enters with permission but later remains after that permission ends. A museum visitor who hides until closing and then attempts to steal an artifact is a common example. The initial entry may be lawful, but continued presence after closing can become unlawful. The timing of criminal intent then becomes important. Some modern statutes permit conviction when the required intent forms while the person remains unlawfully, whereas common law traditionally focused on intent existing at the

time of breaking and entry. In *Quarles v. United States*, the U.S. Supreme Court held, for purposes of the federal Armed Career Criminal Act's generic-burglary analysis, that remaining-in burglary can include intent formed at any time while the person remains unlawfully. That decision concerns a federal sentencing definition rather than creating a national burglary statute, but it illustrates the broader modern concept. State courts may interpret their own statutes differently, so federal "generic burglary" cases must not be treated as direct substitutes for local criminal law.

Degrees, Protected Places, and Aggravating Factors

Many jurisdictions divide burglary into degrees or create separate offenses based on the location and risk created. An occupied home is often treated more seriously than an empty commercial structure because intrusion into a residence creates a greater possibility of confrontation, fear, and physical harm. Other aggravating factors may include nighttime entry, possession of a weapon, injury, threat, repeat offending, or entry into specially protected facilities. Some statutes also reach vehicles, vessels, or structures adapted for overnight accommodation. The U.S. Supreme Court's decisions in cases such as *Taylor v. United States* and *United States v. Stitt* address the meaning of "generic burglary" for federal sentence enhancement and recognize that modern burglary extends beyond the narrow common-law dwelling. Those cases are important for understanding doctrine, but they do not eliminate differences among state offenses. Grading also affects sentencing exposure, so a legally precise analysis must identify not only whether burglary occurred but which statutory degree, enhancement, or alternative offense the proven facts support.

Evidence, Defenses, and Proportionality

Burglary investigations may rely on surveillance video, fingerprints, DNA, tool marks, alarm records, access logs, location data, possession of stolen property, witness testimony, communications, and admissions. Each type of evidence has limits. A fingerprint may establish contact with a surface without proving when it occurred or why the person was present, while possession of property may require context before it supports an inference about entry and intent. Potential defenses can include lawful permission, lack of criminal intent, mistake about authorization, misidentification, insufficient proof that the place fits the statute, or challenges to a claimed aggravating circumstance. Policy debates also concern proportionality. Broad statutes can protect homes, businesses, occupants, and property, but expansive theories can risk turning relatively minor trespass into a serious felony. Legislatures and courts therefore distinguish conduct by location, occupancy, weapons, actual danger, and intended crime. Precision serves both public safety and fair punishment because the label "burglary" should reflect the degree of intrusion and risk that the law is designed to address.

Conclusion

Common-law burglary and modern statutory burglary share a concern with unlawful intrusion accompanied by criminal intent, but they differ substantially in scope. The historic offense required breaking and entering the dwelling house of another at night with intent to commit a felony inside. Modern statutes often remove nighttime, broaden protected places, eliminate a separate breaking requirement, and recognize unlawful remaining after an initially permitted entry. They also vary in the intended crime required, treatment of public premises, degrees, defenses, and sentencing consequences. These differences explain why burglary cannot be identified simply by asking whether someone entered property without permission. Trespass, theft, robbery, and burglary contain different elements and may overlap only when the evidence supports each offense. Common-law doctrine remains valuable for understanding how the offense developed, while current liability depends on the exact statutory language and controlling cases in the relevant jurisdiction. This general overview is educational rather than legal advice, and a real criminal matter should be evaluated under the law that governs the specific location and facts.

References

Cornell Legal Information Institute. (n.d.). *Burglary*. Wex.

Quarles v. United States, 587 U.S. 645 (2019).

Taylor v. United States, 495 U.S. 575 (1990).

United States v. Stitt, 586 U.S. 27 (2018).