Burglary and Related Offenses

Basic School for Magistrates

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First-Degree Burglary



- (1) breaks
- (2) AND enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein
 - ★ Class D felony (Attempted 1st Degree Burglary is Class E felony)

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 - × Class D felony

• Making of some kind of opening, however slight • Destructive force (but not necessary) • Opening an unlocked window • Opening a partly opened door • Go down chimney with open flu • Opening an inner door • Induce another to open with trickery, force or intimidation • Get accomplice or co-conspirator to open • Going through an open door or window

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(1) breaks (2) AND enters (3) without consent (4) dwelling house or sleeping apartment (5) of another (6) while it is actually occupied (7) at night (8) with the intent to commit any felony or larceny therein • Class D felony

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Enters Burglary requires breaks AND enters Inserting any part of body Inserting tool for purpose of committing felony e.g., put gun in to shoot occupant Inserting tool for purpose of breaking e.g., use gun barrel to smash window

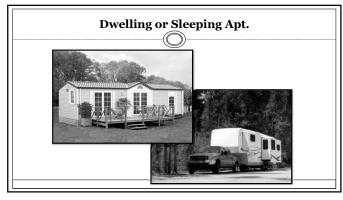
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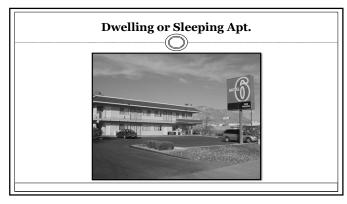
Without Consent

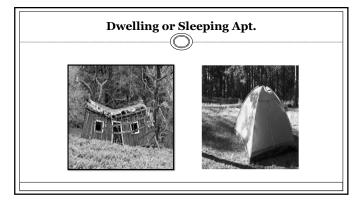
- Owner or person entitled to possession consents to entry
 Owner/possessor/occupant induced to allow entry with trickery, force or intimidation

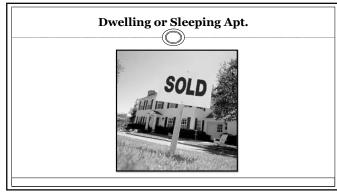
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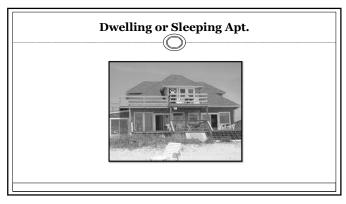
First-Degree Burglary (1) breaks (2) AND enters (3) without consent (4) dwelling house or sleeping apartment (5) of another (6) while it is actually occupied (7) at night (8) with the intent to commit any felony or larceny therein

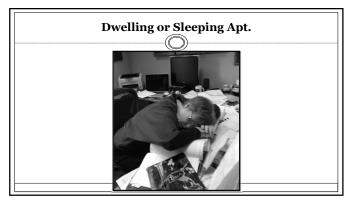




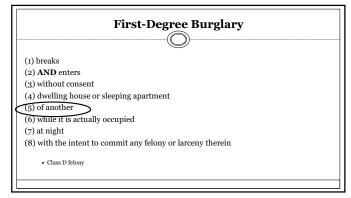








Dwelling or Sleeping Apt. A dwelling is a structure regularly used by a person for sleeping. Mobile home or house trailer Room in a hotel, motel or rooming house Crude habitation with walls and a roof Commercial space with sleeping apt. Regularly used: use occurs in ordinary course of events Abandoned home Sold home where new owner has not moved in Summer cottage if has been used regularly for sleeping and intent to use it again



Property must be legally possessed by someone other than D. Possession, not ownership, is the key. Landlord enters tenant's room without consent One spouse has legal and exclusive possession of marital home, and other enters without consent

(1) breaks (2) AND enters (3) without consent (4) dwelling house or sleeping apartment (5) of another (6) while it is actually occupied (7) at night (8) with the intent to commit any felony or larceny therein • Class D felony

Actually Occupied Someone must be inside when the B&E occurs. D does not need to know someone was there.

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(1) breaks (2) AND enters (3) without consent (4) dwelling house or sleeping apartment (5) of another (6) while it is actually occupied (7) at night (8) with the intent to commit any felony or larceny therein * Class D felony

At Night

Time after sunset and before sunrise, when it is so dark that a man's face cannot be identified except by artificial light or moonlight.





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Intent to Commit Felony or Larceny



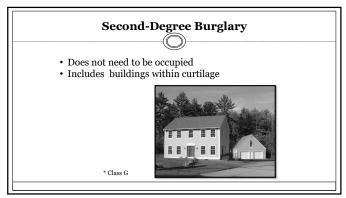
- D must have the requisite intent WHEN the breaking and entering occurs.
- D need not succeed in committing larceny or felony.

Proof:

- Committed felony
- Preparation
- · Inference of intent to steal
- · Doctrine of recent poss.



Γ	Burglary						
l			1st Degree	2d Degree			
l			breaks	breaks			
ı			and enters	and enters			
l			w/o consent	w/o consent			
ı			dwelling	dwelling/curtilage			
ı							
ı							
ı							
ı			of another				
ı				of another			
ı			while occupied				
ı			at night	at night			
l			w/intent	w/intent			
L		l			1		



(1) breaks OR enters (2) without consent (3) any building (4) with intent to commit any felony/larceny therein

	1st Degree	2d Degree	Felony
II 1	Burglary	Burglary	B or E
	breaks	breaks	breaks
	and enters	and enters	Or)-nters
	w/o consent	w/o consent	w/o consent
	dwelling	dwelling/	any building
I		curtilage	
I			01
I			Store
			Trailer used for storage
			Warehouse
			• Bank
			Bldg under construction
	of another	of another	of another
	while occupied	,	
	_		
	at night	at night	
	w/intent	w/intent	w/intent
I 📖			

L

	Misd.
B or E	B or E
breaks	breaks
or enters	or enters
w/o consent	w/o consent
any building	any building
of another	of another
w/intent C	
	breaks or enters w/o consent any building of another

1st Degree	2d Degree	Felony	Misd.	
Burglary	Burglary	B or E	B or E	
breaks	breaks	breaks	breaks	
and enters	and enters	or enters	or enters	
w/o consent	w/o consent	w/o consent	w/o consent	
dwelling	dwelling/	any building	any building	
	curtilage			
of another	of another	of another	of another	
while occupied			-	
at night	at night			
w/intent	w/intent	w/intent		