



Date: September 10, 2007

To: Barb Tombs

Subject: Burglary Research for Connecticut

From: Courtni Y. Burleson

You asked me to conduct research on burglary statutes and report on observations about how these statutes are structured. Special emphasis was paid to the whether the statutes differentiated between residences and other types of buildings, made distinctions between offenses committed during the day or at night, and offenses that involved violence or force. I chose the following states in order to represent various regions of the country and an array of different statutory configurations:

- New England: Massachusetts, New Hampshire, Rhode Island, Vermont, Maine
- East Coast and South: New York, Pennsylvania, Georgia, Florida
- Mid-West: Michigan, Illinois, Minnesota
- West Coast and Southwest: California, Colorado, Arizona, Washington

I examined the statutes based on the most common and distinctive elements that emerged: (1) breaking; (2) entering or remaining unlawfully; (3) whether the statute made a distinction for “dwelling,” most commonly defined as a residential structure where people have and use overnight accommodations; (4) the status of the offense at the time its committed, such as whether there is a provision for night time activity or the presence of an occupant; (5) what type of offense committed therein makes it a burglary (i.e., felony, theft, crime); (6) special circumstances that distinguish or enhance an offense (weapons, assault, physical force during the commission of the burglary); (7) the classification and/or sentence (generally, the statute specified one or the other).

I also examined several states that have separate home invasion laws distinct from the state’s burglary laws. There are several criminal trespass statutes included in the examination as well.

Also attached is a summary of each state’s burglary statutes and a chart reflecting the above elements that I used for this analysis.

It was challenging to make generalizations about the structure of the statutes because they varied widely amongst the states chosen. Some states chose to use grades of degree to capture the array of burglarious behaviors. Others chose to categorize their statutes by the nature of offense, such “breaking and entering in a dwelling” or “burglary with a firearm.” Still other states simply created one category for burglary, with either a separate statute or a classification enhancement for residential burglary. However, there were several distinctions to note.

Breaking and Entering

As burglary statutes have strayed from strict common law definitions, many states have opted to eliminate the element of breaking from their construction of burglary in favor of delineating entering or remaining unlawfully.¹

Dwelling or Residence Element

All of the states surveyed made some form of distinction for burglaries committed in a dwelling, residence or occupied structure made for overnight accommodations. All of these structures were commonly referred to by most states as “dwellings.”

Connecticut, Maine and Washington are the only states surveyed that do not make burglary of a dwelling the harshest grade or classification of their burglary offenses. In Maine, burglary using a firearm is a Class A felony while all others are Class B and C felonies. In Washington, first-degree burglary involves a firearm or assault and is a Class A felony, while residential burglary is a Class B felony.²

The structure of the statutes took several different forms. States such as Rhode Island, Massachusetts and Michigan, use a categorical approach that separates out the dwelling element of common law burglary. Rhode Island’s statutory scheme defines, for example, an “unlawful breaking and entering of a dwelling house” and “breaking and entering of a dwelling when resident on premises.” Massachusetts defines “burglary; armed; assault on occupants; weapons; punishment,” and “dwelling house at night; breaking and entering in the daytime; weapons, punishment.” Michigan defines, “breaking and entering” and “entering without breaking” but also uses degree levels to categorize home invasions.

Most states reflect the dwelling element through tiers of degree in their burglary statutes, reserving burglary of a dwelling to either first- or second-degree burglary. Usually the highest degrees will involve either a dwelling or the use of a weapon/assault. But New York makes first-degree burglary one that involves a dwelling and the use of weapons/assault while the presence of either element without the other constitutes second-degree burglary.

States such as New Hampshire, Vermont, Georgia and Illinois have only one or two categories of burglary, one of which involves that of a dwelling. California and Washington functionally fall into this category as well, although they tier their offenses by degree.

The following states all incorporate provisions for burglaries that occur while a dwelling or structure is occupied: Massachusetts, Rhode Island, Pennsylvania (overnight accommodation), Florida, Michigan, Illinois (for criminal trespass), California and Colorado along with Connecticut. However, only Connecticut, Massachusetts, New Hampshire, Rhode Island and California made distinctions for burglaries occurring at night.

¹ Common law burglary is defined as breaking and entering into another’s dwelling at nighttime with the intent to commit a felony therein.

² In Colorado, second-degree burglary, which includes burglary of a dwelling, and first-degree burglary that deals with burglary using weapons or assault in an “occupied structure.” are both Class 3 offenses.

Status

Surprisingly, only a few of the states surveyed made distinctions about whether the offense was committed at night versus during the day. Further, those states that make such a distinction, with Connecticut amongst them, are overwhelmingly in New England and include Massachusetts, New Hampshire, Rhode Island and California.

The states surveyed showed more interest in whether a dwelling or residential building was occupied at the time the offense was committed. Those states include Connecticut, Massachusetts, Rhode Island, Pennsylvania (overnight accommodation), Florida, Michigan, Illinois (for criminal trespass), California and Colorado. Burglary of an occupied dwelling generally increased the grade of the offense, however, some statutes appeared to address occupancy in order to take away the distinction (e.g., Rhode Island's statute for breaking and entering of a dwelling house providing for a minimum two to ten year sentence whether the dwelling is occupied or not).

Offense

The common law definition of burglary specifies that the offender commit a felony when breaking and entering. However, most of the states surveyed use a more broad definition of "felony." Only two states restrict burglaries to felonies—Massachusetts and Rhode Island, which has a provision for common law burglary. But even these states expand the definition for certain offenses.

Most states simply state that a "crime," or "offense" must be committed in the structure or building for it to be a burglary (New Hampshire, Maine, New York, Pennsylvania, Florida, Michigan, Minnesota, Colorado and Washington). The remaining states specifically name the types of offenses that trigger a conviction, usually a combination of felony, theft and larceny. In Rhode Island, felonious breaking and entering only involves murder, sexual assault, robbery and larceny while breaking and entering with criminal intent includes larceny, felonies and misdemeanors.

Special Circumstances

There were several special circumstances that are almost always used to define a more serious category of burglary.

Firearms, deadly weapons, dangerous instruments: Connecticut, Massachusetts, Maine, New York, Florida, Michigan, Minnesota, Colorado, Arizona and Washington all have special provisions for burglarious acts that involve one of these enhancers. In most states, having a weapon or firearm will increase the grade or degree of the offense while other states specifically delineate burglary involving some sort of weapon. Rhode Island, Pennsylvania, Georgia and Illinois do not specifically mention weapons in their statutes.

Bodily injury and physical force: Massachusetts, Maine, New York, Florida, Minnesota, Washington and Colorado all make special provisions for burglaries that involve inflicting bodily injury, inflicting force or assaulting a non-participant occupant of the structure entered.

Explosives: Almost all of the states surveyed made specific provisions for offenses involving explosives. These statutes generally increase the grade of the offense or indicate a separate category of burglary.

Fear: Three Massachusetts breaking and entering statutes distinguish the element of putting a non-participant occupant or owner in fear.

Previous conviction: Rhode Island and Maine increase the grade of offense if the offender has been previously convicted of a similar burglary or theft offense.

Controlled Substances: Minnesota created a provision to encompass burglaries of pharmacies and other places that controlled substances are lawfully kept. Colorado increases the classification severity by one level for offenses that involve controlled substances.

Vaults and safes: Minnesota, California and Colorado all have statutes that specifically address burglaries committed to get access to vaults, safes or other places where money or valuables are stored.

Classification

Not all of the states surveyed had a classification system or indicated the classification within the statute. Several interesting distinctions arose from three of the states' classification systems:

In Colorado, classification severity is increased if the burglary involves either entering to gain access to controlled substances or entering a dwelling.

In Arizona, the classification is increased if it involves a residential structure rather than a non-residential one.

Florida increases the classification severity by one level for certain burglaries committed during states of emergency.

Sentence

The sentences assigned to the various degrees and categories of burglary varied widely and because there was no uniformity in how burglary statutes are structured it is difficult to make generalizations along these lines.³ However, the most severe sentences were reserved either for offenses that involved a deadly weapon or firearm, or burglaries of a dwelling.

Several states, including Connecticut, incorporate some form of mandatory sentencing provision into their statute. These states are Massachusetts (for repeat burglary offenders), Rhode Island (for burglary of a dwelling), Minnesota (6 months for first-degree burglary if the dwelling is occupied), California, Georgia.

New Hampshire and Florida have special sentencing for offenses involving a firearm, the latter making the offense eligible for a life sentence. Both California and Florida make special

³ Also, the information collected does not have complete sentencing information for those offenses that did not list the sentence allocation in the statute.

provisions for burglaries committed during a state of emergency, the latter increasing the classification severity by one level.

Massachusetts, Michigan, Rhode Island, Vermont, and Minnesota all provide jail and fine alternatives for burglary offenses.

Rhode Island requires that burglary offenders pay restitution or perform community service in addition to their sentence. The judge is not allowed to waive this provision. Rhode Island also set up different sentencing ranges depending on whether the offense is a first, second or subsequent burglary conviction. Maine has a similar designation built into its statute regarding previous convictions.

Home Invasion

Home invasion statutes specifically address robberies and other felonies committed in an occupied structure or dwelling. Most states' burglary statutes incorporate the concept of a home invasion law. However, at least three states surveyed make distinct provisions for these kinds of burglaries and several other states have statutes that essentially function as home invasion statutes.

Massachusetts has an offense called "entry of dwelling place; persons present within; weapons; punishment," that is categorized under crimes against person rather than the crimes against property category that houses the burglary statutes. This home invasion law carries a sentence of 20 to life for knowingly entering the dwelling place of another knowing or having reason to know of persons present within; or does this while armed with a weapon, using or threatening to use force or intentionally causing injury to a person within the dwelling. Massachusetts has similar provisions in its burglary statutes for dwellings and for burglaries committed while a dwelling is occupied, indicating some overlap.

Florida's home invasion robbery law is categorized under Theft, Robbery and Related Crimes rather than with the burglary statutes. This home invasion law only involves robberies and applies when an offender enters a dwelling with the intent to commit a robbery and actually commits a robbery of the occupants therein. This is a first-degree felony that is life eligible if it involves a firearm or other deadly weapon.

Michigan's burglary statutes include home invasion in the first-, second- and third degree. These offenses are graded by whether there are occupants present or the offender is armed (first-degree); a felony, larceny or assault is committed therein (second-degree); or a misdemeanor or violation of parole, probation, protective order, bond, bail, or pre-release condition occurs (third-degree). The sentences range accordingly from a 5 year maximum or \$2,000 fine up to a 20 year maximum and \$5,000 fine (or both).

Rhode Island has a series of burglary statutes that involve only occupied dwellings.⁴ Vermont's statutes parse out burglaries of occupied dwellings into separate statutes as does Pennsylvania, Minnesota, California and Arizona. Both Washington and Illinois have statutes specifically

⁴ Six of Rhode Island's breaking and entering statutes do not involve committing any crime inside the dwelling or structure.

reserved for residential burglaries. New Hampshire reserves its highest classification of burglary for those committed in a dwelling at night.

Of Interest for Connecticut

The statutes that might be of particular interest to Connecticut given its current political climate are Rhode Island and Massachusetts that have several categories of offenses related to burglaries committed in dwellings. Maine may also be useful in that there is a subsection that explicitly deals with burglaries committed for offenders with 2 or more prior such theft or burglary convictions. Rhode Island and Georgia specifically increase the severity of burglary sentences depending on the number of such prior convictions. Michigan has a separate home invasion grade for burglaries committed while violating a supervision condition, although it is punished at the same level as breaking and entering to commit a misdemeanor.