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**IS BURGLARY A CRIME OF VIOLENCE? AN ANALYSIS OF
NATIONAL DATA 1998-2007***

FINAL TECHNICAL REPORT

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Abstract

Traditionally considered an offense committed against the property of another, burglary is nevertheless often regarded as a violent crime. For purposes of statistical description, both the Uniform Crime Reports (UCR) and the National Crime Victimization Survey (NCVS) list it as a property crime. But burglary is prosecuted as a violent crime under the federal Armed Career Criminal Act, is sentenced in accord with violent crimes under the United States Sentencing Guidelines, and is regarded as violent in state law depending on varied circumstances. The United States Supreme Court has treated burglary as either violent or non-violent in different cases. This study explored the circumstances of crimes of burglary and matched them to state and federal laws. Analyzing UCR, NCVS, and the National Incident Based Reporting System (NIBRS) data collections for the ten year period 1998-2007, it became clear that the majority of burglaries do not involve physical violence and scarcely even present the possibility of physical violence. Overall, the incidence of actual violence or threats of violence during burglary ranged from a low of .9% in rural areas based upon NIBRS data, to a high of 7.6% in highly urban areas based upon NCVS data. At most, 2.7% involved actual acts of violence. A comprehensive content analysis of the provisions of state burglary and habitual offender statutes showed that burglary is often treated as a violent crime instead of prosecuting and punishing it as a property crime while separately charging and punishing for any violent acts that occasionally co-occur with it. Legislative reform of current statutes that do not comport with empirical descriptions of the characteristics of burglaries is contemplated, primarily by requiring at the minimum that the burglary involved an occupied building if it is to be regarded as a serious crime, and preferably requiring that an actual act of violence or threatened violence occurred in order for a burglary to be prosecuted as a violent crime.

Dedication

This study is dedicated to the memory of Rick Culp: a dear friend, consummate colleague, and eminent scholar whose research on prison escapes and prison privatization has been widely cited as the most comprehensive and up-to-date information available. Rick helped conceptualize the present study of the incidence of violence in burglary, and he fostered its development until his unexpected passing in 2011. As one of Rick's final projects, it serves as a tribute to the impact of his work and a small piece of the legacy of scholarship he has left. Candace McCoy and I are gratified to complete the work Rick began and we hope it can honor the memory of this fine colleague and revered professor. In the Doctoral Program in Criminal Justice at CUNY's Graduate Center/John Jay College, Rick is fondly remembered and deeply missed.

Phillip M. Kopp

Candace McCoy

January 2015

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Executive Summary

Traditionally considered an offense committed against the property of another, the crime of burglary is classified inconsistently. Burglary for purposes of statistical description is counted as a property crime under the Uniform Crime Reports (UCR) program and the National Crime Victimization Survey (NCVS). But for purposes of federal prosecutions, it is counted as a violent crime under the Sentencing Guidelines of the United States (United States Sentencing Commission [USSC], 2013) and the federal Armed Career Criminal Act (ACCA; 1986). Additionally, decisions from the United States Supreme Court have regarded burglary as either violent (*James v. United States*, 2007; *Taylor v. United States*, 1990) or non-violent (*Solem v. Helm*, 1983; *Tennessee v. Garner*, 1985) in different cases.

Crime severity research has consistently found that the offense of burglary is viewed as equivalent to other serious property crimes and is perceived by the public as a crime of relatively low severity compared to violent crimes such as rape, robbery, assault, or homicide (Heller & McEwen, 1973; Wolfgang, Figlio, Tracy, & Singer, 1985). When violence occurs during a burglary, the burglary is often viewed as subsumed under the more serious crime for purposes of prosecution (ACCA, 1986; USSC, 2013) and also in terms of public perception.

Ethnographic research based on offender interviews indicates that burglars seek targets that offer the greatest reward with the least risk. Burglars go to great lengths to learn the routines of their targets, and one of the reasons is to avoid contact with them (Maguire & Bennett, 1982; Reppetto, 1974; Wright & Decker, 1994). The few empirical studies which examine the incidence of violence during burglary have supported this conclusion (Catalano, 2010; Rand, 1985). Most recently Catalano (2010) found that a person is present during roughly 30% of all

burglaries, but when victim and offender do meet, only 7.3% of all burglaries result in physical violence or threats of physical violence. Nevertheless, even if a victim did not know that a burglar was in the building until property is found to be missing, it is said that burglaries should be regarded as violent because the potential for violence was present. Yet a law that would punish for what might happen in the future, rather than what did actually happen, would clearly be unconstitutional. The legislative and prosecutorial result is that law enforcement will tend towards punishing as much as possible for this serious property crime, an “inflation” of severity that is said to be justified because victims feel invaded when burglarized, even though no physical harm occurred.

Both Congress (Armed Career Criminal Act: Hearing, 1986; Armed Career Criminal Acts Amendment, 1986), and the judiciary (*Taylor v. United States*, 1990; *United States v. Hill*, 1989) have noted a lack of consensus between state codes and the federal Code as to what constitutes the offense of burglary. The federal definition of the crime in various provisions of federal law goes considerably further than most states do in regarding burglary as a violent crime (ACCA, 1986; USSC, 2013, §4B1.1).

Under common law, burglary consisted of “a breaking and entering of a dwelling house of another in the nighttime with the intent to commit a felony therein” (Black, 1990). Although the elements that comprise burglary have changed over time, constant is that in its simplest form the definition of burglary does not indicate that the illegal act involves violence against a person. Usually, the crime committed inside the structure is theft, but sometimes it is also violent assault if one or more people are present. Upon arrest, the offender is charged with both burglary and the separate crime committed during the burglary. Perhaps it is the fact that other crimes might occur after a burglar enters a building, and that those crimes might be violent, that has resulted in

categorization of burglary as a violent offense when the law requires that criminal record be used for sentencing enhancement. For instance, for purposes of determining which prior convictions will count for applying habitual offender enhancements, many state laws require that the previous crime was a crime of violence. Whether burglary is regarded as a violent crime or a property crime will therefore make a significant difference in length of prison sentences; it could be the factor that dictates whether a Three Strikes law will apply or not.

These inconsistencies raise two threshold questions. First, is burglary itself, as opposed to the acts committed once the offender has entered the structure, inherently a violent crime? Second, what constitutes the crime of burglary in current statutory law and does it comport with empirical observations of what the typical characteristics of acts of burglary are?

Methodology and Research Questions

This study updates and expands prior research on violence involved in the crime of burglary, analyzing UCR, the NCVS, and the National Incident Based Reporting System (NIBRS) data collections for the ten year period 1998-2007. It also presents a comprehensive overview of the provisions of state burglary and habitual offender statutes and discusses the lack of a “simple” federal burglary statute. Finally, it discusses how federal sentencing guidelines address burglary.

To explore the two threshold questions, respectively, this study poses specific research questions related to them:

Is burglary a violent crime?

1. How frequently does violence occur in the commission of a burglary?

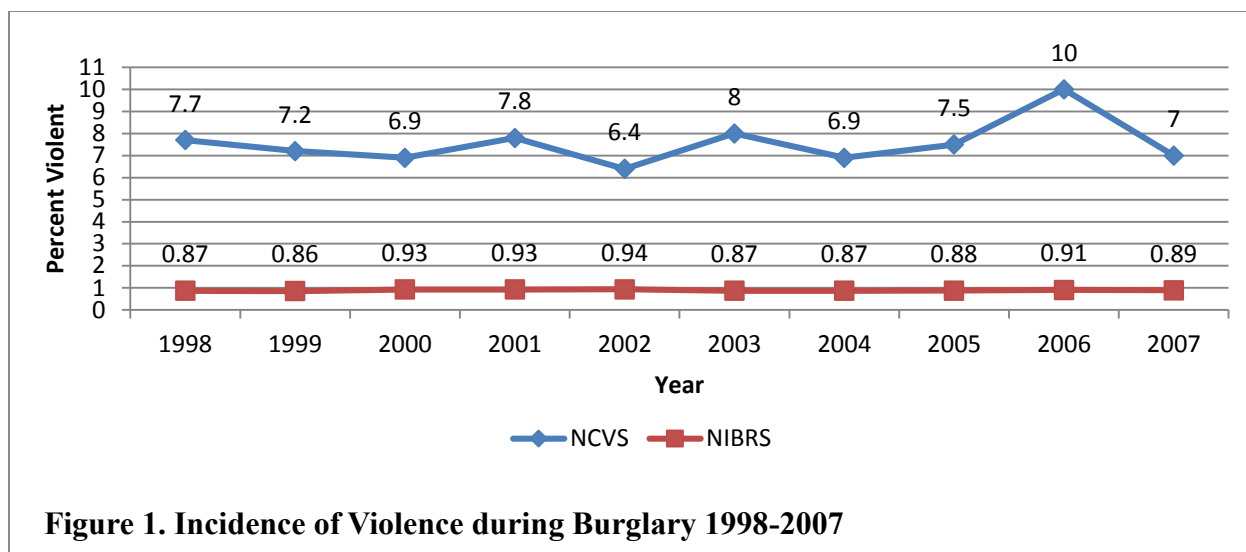
2. When burglary co-occurs with violence, what forms of violence occur?
3. Are there differences in rates of violence between attempted and completed burglaries?
4. How frequently is a household member present during a residential burglary?
5. Are different levels of violence associated with residential versus nonresidential burglaries?

What constitutes the crime of burglary in current statutory law?

6. How do the federal government and the various states define burglary (grades and elements)?
7. Does statutory law comport with empirical observations of what the typical characteristics of acts of burglary are?

Findings

- NCVS data show that 7.6% of burglaries that occurred during the ten period 1998-2007 resulted in physical violence or threats of physical violence. By contrast, NIBRS data report that only .9% of burglaries included violence or threats of physical violence. This range is perhaps attributable to the fact that NIBRS primarily reports crimes from rural jurisdictions, while the NCVS captures reports directly from victims primarily in cities. Expressed graphically:



- Although NIBRS and NCVS estimates of violence in burglaries, as analyzed here, vary, even the highest estimate of actual violence (as indicated by physical injury to a victim) occurring during burglaries is only 2.7%, while in 4.9% the offender threatened violence or harm but no injuries resulted. In general, burglary co-occurs with five violent offenses. These offenses in order from least to most severe are: simple assault, aggravated assault, robbery, rape/sexual assault, and murder.
- Completed burglaries were significantly¹ more likely to be violent than attempted burglaries are (8.4% to 3.4% in the NCVS; and .9% to .6% in NIBRS).
- A victim was present (though not necessarily cognizant of the offender's presence) during 26% of all burglaries recorded in the NCVS. Victims reported that the offender had a weapon in 9% of incidents, or 2.4% of all burglaries. In burglaries which occurred in occupied buildings as opposed to unoccupied ones, 29% of the cases involved violence or threats of violence.

¹ NCVS ($\chi^2 (1) = 2115950.23, p < .05$); NIBRS ($\chi^2 (1) = 25078.42, p < .05$).

- Residential burglaries were significantly² more likely to be violent than were non-residential burglaries (1.2% compared to .17%, in NIBRS data). The majority of violent burglaries (91%) were committed against a residential structure, of the remaining incident 5% were against a non-residential structure, and 4% the structure type was unknown.
- According to the laws in a majority of states, the most basic or simple burglary occurs when the actor enters or remains in a structure with the intent to commit any crime therein. There is no federal statute specifically defining the crime of burglary.
- All but three states recognize two severities of burglary: simple (non-violent) and aggravated (violent); they differentiate between these types using the elements of structure type/occupancy, presence of a weapon, and injury to a victim.
- In the states that recognize only simple burglary, the offense has no elements of violence, and can occur in either a residence or non-residence regardless of occupancy status.
- When burglary does co-occur with a violent crime, offenders are charged not only with the violent offense but also with burglary, or sometimes “aggravated” burglary.
- Current laws do not comport with empirical descriptions of burglary characteristics.

Discussion of State and Federal Laws Regarding Burglary

Should lawmakers choose to reform burglary statutes, a sensible starting place is the classification and punishment of offenses based on an empirical understanding of their actual circumstances.

² ($\chi^2(1) = 44434.36, p < .05$)

- **Many state statutes heighten the severity level of common burglaries not involving violence if the burglary is committed in a residence or when the building was occupied.**

Apparently in agreement with the common law understanding that residences are where people are most likely to be present and to become victimized, many statutes require heavier punishment of burglars who break into homes. A few states impose increased punishments if the burglaries occurred in any occupied versus non-occupied structure (whether a residence or not), but the majority of state legislatures provide increased penalties for burglary of a residence. Additionally, the content analysis of the laws of each state showed that the difference between “simple” burglary and “aggravated” burglary is often linked to whether the target was a domicile.

- **Presence of a weapon and injury is an aggravating element.**

Burglary is elevated from simple to aggravated when an offender is armed with a deadly or dangerous weapon or attempts or actually injures a victim. In these incidents, the offender has committed and is charged not only with aggravated burglary but the additional more severe violent offense (such as robbery or sexual assault)³. Thus, it is possible to say that the violent act is doubly punished: it increased the level of severity at which the underlying burglary is regarded, and it triggers a separate criminal charge in addition to the burglary charge.

Table 1 presents an overview of the content analysis of all current state laws. It shows what circumstances state statutes require as elements of the crime for purposes of prosecuting burglary

³ In the UCR rape is defined as “the carnal knowledge of a female forcibly and against her will” (UCR Handbook, 2004, 19), police agencies are specifically instructed to not count sodomy, sexual assault with an object, fondling etc. as rape. Because the present study matches NIBRS to the UCR, the UCR offense definition is used and these offenses are not included in NIBRS estimates. In contrast the NCVS counts these offense as rape. The present study uses the term “sexual assault” to describe these offenses and uses it with the NCVS estimate (rape/ sexual assault) to denote the inclusion of offense not included in the UCR or NIBRS estimate (rape).

as a serious felony at the level of violent crime against persons. (The “aggravated” category here is equivalent to regarding the burglary as a violent crime.)

Table. 1
Simple and Aggravated Burglary by Type of Structure/Occupancy

Structure Type/ Occupancy	Burglary Type	
	Simple	Aggravated
Any Type of Structure	8 GA ID NE NV NJ OH VA WY	5 NV NJ OH VA WY
Any Non-Dwelling	34 AL AK AZ AR CO CT DE DC HI IL IN KY ME MD MA MI MN MS NH NM NY NC ND OK OR PA RI SC TN TX UT WA WV WI	
Any Dwelling		34 AL AK AZ AR CO CT DE DC HI IL IN KY ME MD MA MI MN MS NH NM NY NC ND OK OR PA RI SC TN TX UT WA WV WI
Any Non-Occupied Structure	2 KS MO	
Any Occupied Structure	1 MT	3 KS MO MT
Non-Occupied Non- Dwelling	1 FL	
Any Non-Dwelling or Non-Occupied Dwelling	2 CA VT	
Any Non-Occupied Dwelling	3 IA LA SD	
Any Occupied Dwelling		5 CA IA LA SD VT
Any Dwelling or Occupied Non- Dwelling		1 FL
Total	51	48 ^a

^aThe states of GA, ID, NE do not have an aggravated burglary statute.

- **Burglary is often regarded as a violent crime for purposes of applying habitual offender statutes, and sentencing laws often punish burglars at the level of violent crimes.**

Under the federal ACCA, all burglaries attempted or completed are classified as violent felonies and counted as predicate offenses under a "three strikes" type sentencing enhancement. The U.S. Sentencing Guidelines (USSC, 2013) are somewhat narrower, classifying both attempted and completed burglary of a residence – but not of a non-residence – as a violent felony. Considering that over 96.4% of all burglaries do not result in actual violence, the federal statutory structure appears overly punitive.

Recommendations and Implications

At the federal level, statutory reform would be conceptually simple: remove the word “burglary” from the existing ACCA statute, remove the phrase “burglary of a dwelling” from the existing US Sentencing Guidelines career offender provisions, and amend the Sentencing Guidelines so that all burglaries are punished at the offense score level of a non-violent felony (approximately 7 – 10 points.) Of course, this would not preclude judges from adding additional sentencing enhancement “points” for each proven factor involving violence (presence or use of a weapon, vulnerability of the victim, threats, etc.) as is regularly the practice in federal sentencing, and these additional points would raise the seriousness level to that of other violent felonies (for instance, robbery at a base offense score level of 20).

State statutes could be reviewed for over-criminalization. A potential model for state statutory reform utilizes the *Model Penal Code (MPC)* as a starting point. The *MPC* regards burglary as a third-degree felony on a level with serious property crimes. But if any violence or

threats occur, the severity level is raised to second-degree felony.⁴ The *MPC* also raises the severity level if the crime occurred in a residence at night – two elements that are both necessary to prove the higher level of seriousness, which is roughly in accord with the minority of states that regard burglary as “aggravated” if committed under those two circumstances. The *MPC* does “double count” acts of violence, though, because violence not only raises the severity level from third to second degree, but the act of violence is also charged as a separate crime that is added to the burglary charge. If burglary is truly to be regarded as a property crime unless violence is involved, all burglaries would be treated as property offenses equivalent to the *MPC* felony level 3. Any acts of violence, in the minority of cases in which they actually occur, would be charged and prosecuted as separate crimes in addition to the burglary charge.

A second model for potential state statutory reform, consistent with the statistical findings and also the content analysis of this report, produces a model statute that categorizes almost all burglaries as property crimes *except* those committed in an occupied home. Recall that violence or threats of it occurred in only 1.2% of residential burglaries overall, but when the home was occupied, 29% of the cases in this subset included violence or threats. State statutory content analysis showed that a majority of states (34) provide for some kind of aggravated seriousness level if the burglary involved a dwelling, while five others narrow this category somewhat by requiring that the dwelling actually have been occupied at the time of the crime. We propose that state legislators adopt the latter standard.

A proposed revision of the *MPC* currently under discussion by American Law Institute expands the levels (degrees) of crime seriousness for all types of crimes from three to five. If

⁴ First-degree (level 1) felonies are violent crimes such as assault, aggravated assault, rape, or homicide. There is no such thing as a first-degree burglary.

that proposal were to be followed, the crime of “breaking and entering” any structure, whether occupied or a residence, would be pegged at the level of a crime of low/medium seriousness level 4. This level would be appropriate for offenders who break into buildings but do not intend to commit a crime there. The next level up would cover simple burglaries: level 3. Level 2 would include burglaries committed in occupied residences. Any crime committed in the building, including any crime of violence or carrying of a weapon, would be charged and sentenced separately. This statutory structure is consistent with our empirical findings about how often burglars target particular types of buildings and how often violence actually occurs in them.

A model burglary statute taking account of the findings in this report, and using the proposed five-category scale in the preliminary draft of a revised Model Penal Code, would read:

Breaking and Entering.

Grading. Breaking and entering is a felony of the fourth degree if the actor:
Enters a building without lawful reason to be there,
By force.

Burglary.

Grading. Burglary is a felony of the third degree if the actor:
Enters a building without lawful reason to be there,
By force,
With intent to commit a crime therein.

Aggravated Burglary.

Grading. Aggravated burglary is a felony of the second degree if the actor:
Enters an occupied home without lawful reason to be there,
By force,
With intent to commit a crime therein.

Possible narrowing: Common law required that the burglary against the home occurred at night.

Note: If the actor is armed with any deadly weapon, or if any crime actually is committed in the home, additional separate crimes will be charged for those acts.

Legislative changes such as this model statute would match the punishment more closely to the actual crime. They would also have the effect of reducing prison populations as the modal felons served shorter sentences. But burglaries which involved acts or threats of violence would always be treated very seriously indeed.

The research reported here demonstrates how important it is to differentiate between property crimes and violent crimes not only to prevent over-criminalization, but to address public and victims' concerns carefully and fairly. By regarding burglary as a crime against property unless violence was actually involved, these concerns are met. And by not including burglary in the group of offenses to which sentencing enhancements for violent offenses will attach – unless actual violence or weapons-carrying indeed occurred in addition to the burglary – over-punishment is also avoided. The policy implications of reforming the laws of burglary are powerful: public concerns to punish violent offenders would still be addressed, victims frightened in the sanctity of their homes will receive special attention, but offenders who have committed crimes against property will not serve long, expensive prison terms.

Reforms will not be quick, since state laws vary widely and state legislatures may be reluctant to spend time reforming their laws on such a mundane-sounding topic as burglary. However, it is its very ordinariness – the modal crime – that presents to legislators a non-controversial way of reviewing current prison population levels and considering whether a different approach would be useful.

TECHNICAL REPORT

IS BURGLARY A CRIME OF VIOLENCE? AN ANALYSIS OF NATIONAL DATA 1998-2007

Burglary affects the lives of more people – victims and offenders alike – than does homicide, rape, robbery, aggravated assault, or grand theft, an experience that is more quantitatively, though not as qualitatively, traumatizing as those other serious felonies. The prevailing view is that burglary is a crime committed against the property of another, involving entry into the home or workplace, with intent to commit another, separate crime therein. Usually, the crime committed inside the structure is theft, but sometimes it is also violent assault if one or more people are present. Upon arrest, the offender is charged with both burglary and the crime committed during the burglary. Perhaps it is the fact that other crimes might occur after a burglar enters a building, and that those crimes might be violent, that often results in categorization of burglary as a violent offense even when no violence occurs.

Burglary is defined somewhat differently among the various states and the federal jurisdiction. Congress and the individual state legislatures all classify it as a felony, but the circumstances under which it will be so classified and the operation of other criminal charges associated with the act vary among the states. The sentencing statutes and case law also have presented a somewhat inconsistent analysis of burglary statutes and how their elements affect sentencing. Decisions from the United States Supreme Court, for example, have treated burglary as either violent or non-violent in different cases. (See *James v. United States*, 2007; *Taylor v. United States*, 1990 for violent, and *Solem v. Helm*, 1983; *Tennessee v. Garner*, 1985, for non-violent).

Under common law, the crime of burglary consisted of “a breaking and entering of a dwelling house of another in the nighttime with the intent to commit a felony therein” (Black, 1990). Content analysis of American states’ burglary statutes (discussed in detail below) shows that modern burglary statutes are generally broader than the common law definition --usually dropping the requirement that entry into the house must have been forced, expanding the definition of target beyond residential property, and not limiting the time in which the crime is said to occur to the nighttime hours (See also the American Law Institute’s [A.L.I], *Model Penal Code* [MPC] definition of burglary discussed below). Although the behavioral (*actus reus*) elements of burglary vary among jurisdictions, the cognitive (*mens rea*) element of “intent to commit a felony therein” is constant. The A.L.I. MPC, which very often serves as a model for state legislatures in revising their statutes, defines burglary as “entering a building or occupied structure, or separately secured or occupied portion thereof, with the purpose to commit a crime therein” (American Law Institute [A.L.I], 1985, Sec. 221.1).

Although the elements that comprise burglary have changed over time, in its simplest form the definition of burglary has not indicated that the illegal act must involve violence against a person. The A.L.I. MPC definition, for example, states that it is the act of entering which constitutes a burglary, so if “the intent to commit a crime therein” ripens into an act such as theft or assault, that act constitutes a separate crime which itself might or might not be violent. Thus, for example, an offender who breaks a window, enters the house, steals jewelry, and rapes the occupant would be charged with burglary, theft, and rape. If this crime were committed with a gun, most jurisdictions would add a charge (and perhaps mandatory sentencing enhancement) of use of a firearm. Thus, the question of whether burglary is a violent crime is conflated with the possibility that other unarguably violent crimes tend to be associated with it.

For purposes of statistical description, burglary is counted as a property crime under the Uniform Crime Reports (UCR) program and the National Crime Victimization Survey (NCVS). But for purposes of federal prosecutions, burglary is counted as a violent crime under the federal Sentencing Guidelines and the Armed Career Criminal Act (ACCA). All thirty-two states which divide their criminal codes into categories of crimes against persons, property etc., classify burglary as a crime against property (the other states divide their statutes by specific offense such as homicide, rape, theft, etc. rather than category). Both Congress (Armed Career Criminal Act: Hearing. 1986; Armed Career Criminal Acts Amendment, 1986), and the judiciary (*Taylor v. United States*, 1990; *United States v. Hill*, 1989) have noted a lack of consensus between state codes and the federal Code as to what constitutes the offense of burglary; the federal definition of the crime in the ACCA (1986) and the U.S. Sentencing Commission (USSC) Guidelines (2013) goes considerably further than most states do in regarding burglary as a violent crime. Nevertheless, there is no federal statute defining burglary precisely; rather, federal prosecutors are directed to use the definition of the crime operative in the state jurisdiction in which the crime occurred. Thus, disparity in charging the crime as violent or non-violent will emerge because the states themselves disagree.

Burglary is often regarded as violent because of the possibility that the felony the burglar commits once inside the structure might be violent. When this occurs, the severity and in turn the potential penalty associated with the crime rises above simple burglary to aggravated burglary. The *MPC* sets out severity levels -- or gradations -- of burglary. Under the *MPC*, simple burglary is a third degree felony (see 221.1 (2)(b) below). But if the burglary occurs at night, and/or if the actor purposely, knowingly, or recklessly inflicts bodily injury upon another, and/or is armed with explosives or a deadly weapon, it rises to the level of a second degree

felony (See 221.1 (2) below).¹ Such incidents are also charged as separate violent felonies depending on what happened during the course of the crime. Section 221.1 (2) of the *MPC* states:

(2) *Grading*. Burglary is a felony of the second degree if it is perpetrated in the dwelling of another at night, or if in the course of committing the offense, the actor:

- (a) purposely, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone; or
- (b) is armed with explosives or a deadly weapon.

Otherwise burglary is a felony of the third degree.

A proposed revision of the *MPC* currently under discussion by the A.L.I expands the levels (degrees) of crime seriousness for all types of crimes from three to five. If that proposal were to be followed, the crime of “breaking and entering” any structure, whether occupied or a residence, would be pegged at the level of a crime of low/medium seriousness: level 4. This level would be appropriate for offenders who break into buildings but do not intend to commit a crime there. The next level up would cover simple burglaries: level three. Level 2 would include burglaries committed in occupied residences (or perhaps occupied buildings of any type.) Any crime committed in the building, including any crime of violence or carrying of a weapon, would be charged and sentenced separately. This statutory structure is consistent with our empirical findings about how often burglars target particular types of buildings and how often violence actually occurs in them.

Thus, the model statute regards the act of breaking and entering a building to be inherently more serious if the structure was a dwelling *or* if the additional crime committed after entry is a crime of violence as opposed to a property crime, such as theft (note the narrowed

¹ First-degree (level 1) felonies are violent crimes such as assault, aggravated assault, rape, or homicide. There is no such thing as a first-degree burglary.

applicability of the “dwelling” requirement and that the crime must have occurred at night in order to raise the seriousness level). Convicting the defendant in the more severe category has consequences for sentencing, such that punishment would increase incrementally depending on the punishment severity difference in the particular state’s statute covering the difference between crimes of second and third degree burglary.

The *MPC* continues, adding another provision which would operate to increase punishment even more. Section 221.1 (3) addresses the question of whether a burglary charge at the higher level (2nd degree) would subsume any charge for the separate crime committed while in the dwelling. It states:

(3) *Multiple Convictions*. 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 felony of the first or second degree.

Therefore, if the separate crime was a property crime, the theft “washes out” and the offender is sentenced only for a burglary (at the level of second-degree if the theft was from a home, otherwise at third-degree.) But if the separate crime was a violent felony ranging from homicide down to assault, the additional charge will be brought, and punishment following conviction for it will be added to the punishment at the level of 2nd degree for the burglary charge. Clearly, under the model statute there is a big difference in punishment severity between a burglary ending in theft and a burglary ending in violence. But it is also clear that the *MPC* does not regard all burglaries as violent.

The *MPC* is exactly that: a model, not an actual statute. Laws about burglary in the fifty states, the District of Columbia, and the United States Code vary, and many do not use the severity grading system set out in this model. Two questions arise. First, is burglary itself, as

opposed to the acts committed once the offender has entered the structure, inherently a violent crime? Second, what constitutes the crime of burglary in current statutory law and does it comport with empirical observations of what the typical characteristics of acts of burglary are?

To answer these questions, this report provides a comprehensive study updating and expanding prior research on violence involved in the crime of burglary, analyzing multiple data collections including the UCR, the NCVS, and the National Incident Based Reporting System (NIBRS). The report covers data describing burglaries committed in the ten year period from 1998-2007. The study also presents a comprehensive overview of the provisions of state burglary and habitual offender statutes and discusses the lack of a “simple” federal burglary statute. How federal sentencing guidelines regard burglary is also discussed. Finally, the report presents policy implications of the empirical findings.

To explore the two threshold questions, respectively, this study poses specific research questions related to them:

Is burglary a violent crime?

1. How frequently does violence occur in the commission of a burglary?
2. When burglary co-occurs with violence, what forms of violence occur?
3. Are there differences in rates of violence between attempted and completed burglaries?
4. How frequently is a household member present during a residential burglary?
5. Are different levels of violence associated with residential versus nonresidential burglaries?

What constitutes the crime of burglary in current statutory law?

6. How do the federal government and the various states define burglary (grades and elements)?

7. Does statutory law comport with empirical observations of what the typical characteristics of acts of burglary are?

To answer the first five questions, UCR, NCVS, and NIBRS data are examined. The final two questions involve content analysis of federal and state burglary statutes. Research findings and discussion for each of these questions is set out below. This report begins with a review of empirical and legal literature about burglary, which then leads to the statistical and legal analysis.

Review of Previous Empirical Studies about Burglary

There are three general areas in the literature that guide an understanding of the crime of burglary and contribute to the design of this research. These are: 1) literature on the incidence of burglary and burglary-related violence; 2) research examining the severity of burglary and other crimes in relation to each other; and, 3) burglary victimization research.

Incidence of burglary

According to the NCVS, burglary is second only to theft among the nine crimes most commonly reported by victims -- i.e., rape, sexual assault,² robbery, aggravated assault, simple assault, personal theft, household burglary, motor vehicle theft, and theft (Klaus, 2007). Peaking in 1980, when the UCR recorded 3.8 million burglaries, the burglary rate has trended steadily downward since then to about 2.19 million in 2011 -- a decline of approximately 50% (United States Department of Justice [USDOJ], 2011) in absolute terms and even more steeply per capita.

² The UCR defines rape as “the carnal knowledge of a female forcibly and against her will” (UCR Handbook, 2004, 19), police agencies are specifically instructed to not count sodomy, sexual assault with an object, fondling etc. as rape. Because the present study matches NIBRS to the UCR, the UCR offense definition is used and these offenses are not included in NIBRS estimates. In contrast, the NCVS counts these offense as rape. The present study uses the term “sexual assault” to describe these offenses and uses it with the NCVS estimate (rape/ sexual assault) to denote the inclusion of offenses not included in the UCR or NIBRS estimate (rape).

In 2005, the NCVS estimated that 2.97 million household burglaries occurred in the US, affecting about 2.5% of all households. The UCR, which takes its numbers from crimes reported to the police as opposed to survey responses from victims (NCVS), reported about 2.15 million burglaries in the same year, a difference of about 800,000 compared to the NCVS. This suggests that 72.4% of burglaries are reported to police (Klaus, 2007). This high reporting rate is generally regarded as the result of the need to produce a police report in order to make an insurance claim for property loss, indicating that UCR data are robust for this offense type.

Possible reasons for the decrease in burglaries reported (UCR data) to the police since 1980 have not been explored much in the academic literature; they seem to be overshadowed by analyses of the overall drop in violent crime which began during the 1990s. But a number of hypotheses have been offered for why burglary has declined, including the preference of crack cocaine users for robbery rather than burglary as a means of access to cash (Baumer, Lauritsen, Rosenfeld, & Wright, 1998). Other possible reasons include drug trafficking replacing burglary as a more attractive source of illegal income and the “hardening” of potential burglary targets through improved security devices and alarms (Titus, 1999). Economic factors, such as rising levels of consumer confidence in the 1990s, may have also played a role (Rosenfeld & Messner, 2009), accounting for as much as one-third of the drop in burglary rates during the 1990s (Rosenfeld & Fornango, 2007).

A recent investigative report by Sullivan (2008) included insight from a career burglar who suggested that burglary is declining simply because it is no longer worth the effort. He pointed out a declining market for used electronics because “everybody has everything now”

(Sullivan, 2008³). Consumer electronics items, once a mainstay of the burglary trade, are now so inexpensive and readily available that the second-hand market for these items has been evaporating. Additionally, the growth in private security patrols of residential properties is cited as contributing to the overall burglary decline (Sullivan, 2008). Probably, a combination of many factors is responsible for the decline. The drop in burglaries is similar to the steep drop in crimes of all types experienced since the early 1990s in the United States, Canada, most European nations, and other developed countries.

A few studies have explored the frequency of contact between burglars and residents and attendant levels of violent incidents. Conklin and Bittner (1973) examined 945 suspected, attempted, and completed burglaries in a single incorporated suburb in the Northeastern US over a one year period. They found that 63.7% of the burglaries occurred at a home or residence, and 64.1% happened between 7 pm and 6 am. Thirty-nine percent occurred on the weekend (Friday, Saturday, and Sunday) between 7 pm to 10 pm when most residents were away. Conklin and Bittner also found that across all types of burglary, only 2.5% involved contact between victim and offender.

The burglary-violence connection was studied in the UK using data from the 1998 British Crime Survey covering all of England and Wales (Budd, 1999). Examining residential burglaries only, the study found that victims reported “violent or threatening behavior” occurring in 11% of them. Unfortunately, the study does not disaggregate the “violent” from the “threatening” aspects of burglar behavior. Interestingly, given the argument that attempted burglaries have a higher risk of turning violent than completed burglaries (as noted in the *James*

³ Sullivan’s (2008) report was commissioned and broadcast by National Public Radio.

v. United States case cited below), Budd (1999) found the opposite to be the case: while violent or threatening behavior occurred in 13% of residential burglaries, it occurred in 7% of attempts.

In the USA, statisticians at the Bureau of Justice Statistics have twice examined how often violence occurs in burglaries. The first study covered the years 1973-1982 and utilized data from the National Crime Survey (the predecessor of the NCVS) which included about 73 million incidents of household burglary (Rand, 1985). One of its most noteworthy findings was that only 3.8% of household burglaries involved violence. This finding was cited the same year in the influential Supreme Court case of *Tennessee v. Garner* (1985), in which the Court ruled that it was unconstitutional for police to use deadly force in trying to stop an unarmed, non-dangerous, fleeing burglary suspect. The Court cited the low incidence of violence in crimes of burglary as evidence that the fleeing felon in this case was nonviolent. The study (Rand, 1985) upon which the Court had relied, disaggregated types of burglary (e.g., forcible entry, attempted forcible entry, and unlawful entry) and various household types (owned or rented), income levels, races, and locations (urban, suburban, rural, etc.). Forcible entry was used in only a third of the burglaries. Nearly 40% of household burglaries were committed by someone related to or known by the victims, and a theft occurred in 60% of the incidents. Rand (1985) noted that only 12.7% of incidents occurred while a person was home, suggesting that most burglars seek to avoid contact with their potential victims. However roughly 30% or one in three burglaries that occurred while a household member was present resulted in violence, or threat of violence.

Notwithstanding the low level of overall violence and forced entry, the 3.8% violence rate amounted to 2.8 million incidents over the 10-year study period; 39% of these total incidents (i.e., 39% of the 3.8% of cases that involved violence) were simple assaults, 23% aggravated assault, 28% robbery, and 10% rape. Rand further noted that burglaries in which someone was

home or violence had occurred are reported more often than either victim-absent or non-violent burglaries, suggesting that the true percentage of cases in which burglaries involve no violence may be even higher than statistics record. Put another way, the percentages might be overestimates of the occurrence of violent burglary. Rand's study provided the inspiration and the model for the current research being reported here.

More recently, Catalano (2010) replicated Rand's (1985) study, using NCVS data from 2003-2007. Catalano found that an estimated 3.7 million burglaries occurred each year during that period. Violence or threats of violence occurred during 7.2% of all burglaries, while a household member was present during 27.6% of all burglaries. When a household member was present 26% or one in four burglaries resulted in violence, or threat of violence. Comparing the findings of the Rand and Catalano studies finds that while the percent of burglaries that occurred while a household member was present increased from 12.7% to 27.6%, and the incidence of violence that occurred during all burglaries rose to 7.2% from 3.8% in 1985. The incidence of violence that occurred during household member present burglaries decreased roughly 4%, from 30% to 26%.

The present study expands upon the Rand (1985) and Catalano (2010) studies in three ways. First, while both the Rand and Catalano's studies were limited to residential burglaries, the present study will also look at non-residential (this includes both commercial and public buildings) burglaries using data from NIBRS. Second, the present study will use the 2010 study by Catalano to validate its NCVS estimation procedure, but the present study looks at a ten year time span (1998-2007) as opposed to the Catalano's study's five year time span. Third, both Rand and Catalano's studies are based upon surveys that, while empirically sound, derive their estimate of the number of incidents by weighted survey responses. The present study extends

this approach by deriving an estimate using police incident data reported under the NIBRS which is part of the UCR program. NIBRS has not been used previously in reported studies about burglary.

Severity of burglary

Ranking crimes according to their severity has been done at least since 1764, when Cesare Beccaria published the classic *Dei delitti e delle pene* (*On Crimes and Punishments*). Beccaria articulated a key principle underpinning sentencing guidelines systems – that a schedule of punishments should be codified by legislators and that it correspond, proportionately, to the level of crime severity. Beccaria identified two basic criteria for judging severity – the extent of harm it causes and the intent of the perpetrator – criteria which continue to inform modern criminological debate. In Beccaria’s view, the degree of harm done by crime was the only true measure of its severity:

The foregoing reflections authorize me to assert that crimes are only to be measured by the injury done to society. They err, therefore, who imagine that a crime is greater or less according to the intention of the person by whom it is committed (Beccaria, 1775/1992, p. 28).

Beccaria argued that intent was so personal a matter that overreliance on it as an element of crime would necessitate “not only a particular code for each citizen, but a new law for every crime” (Beccaria, 1775/1992, p. 28). Notwithstanding Beccaria’s argument, the intent of the perpetrator has survived to be included, along with the perceived harm to the victim, in modern notions of crime severity.⁴

⁴ Using the element of intent to rank the seriousness of a crime is different from the legal requirement that intent (*mens rea*) be proven for every offense committed in order to assign criminal responsibility.

In the modern era, the seminal work in developing a scale of crime seriousness was Sellin and Wolfgang's (1964) *The Measurement of Delinquency*. The Sellin-Wolfgang index measures three components of a criminal event: the level of personal injury, the presence of threat or intimidation, and the value of property damaged, stolen, or destroyed (Sellin & Wolfgang, 1964; See Blumstein, (1974) for a critique of the Sellin-Wolfgang index). Their work was based on a series of surveys of judges, police, and college students in Philadelphia. Beginning with a list of 141 offenses, respondents ranked offenses according to an 11-point seriousness scale and estimated the magnitude of 15 crime scenarios. Based on the ratings and magnitude estimates, the authors developed differential weights of seriousness that ranged from a low of 1 (a minor injury accompanying an assault) to a high of 26 (when someone is killed during a criminal incident). It is noteworthy that Sellin and Wolfgang found remarkably high levels of consensus on crime seriousness regardless of group membership: cops and college students, for example, were in general agreement when scaling crime severity. Addressing the assumption that burglary will be codified as a violent crime because the public regards it as potentially so, it is also important to note that crime severity indexes are derived from surveys of justice professionals and members of the public and that these respondents do not rank burglary as a violent crime.

Heller and McEwan (1973) used the Sellin-Wolfgang index to score approximately 10,000 individual crimes committed in St. Louis during two months in 1971. Their aggregated scores, tabulated by offense type, were as follows:

<i>Offense</i>	<i>Severity Ranking</i>
Homicide	33.29
Rape	15.33
Aggravated assault	9.74
Robbery	6.43
Burglary	2.64
Auto theft	2.29
Larceny (of over \$50)	2.26

This scale gives some indication of a hierarchy of crime seriousness and the proportional relationship among serious crimes, e.g., homicide is viewed as roughly twice as serious as rape and a robbery as two-and-a-half times as serious as a burglary (Heller & McEwan, 1973).

In 1972, Rossi, Waite, Bose, and Berk (1974) queried a sample of households in Baltimore regarding perceived seriousness of 140 different crime types. Each of the crimes was described on a card, and each respondent was asked to group a set of 80 selected cards into nine slots, ranked from least to most serious. An interesting finding was that there was a high degree of overall agreement regarding crime severity among the respondents, even when comparing sub-groups by educational attainment, age, sex, race, and whether the respondent had been victimized in the past. Consistently, across all respondents, “crimes against persons and illegal drug selling are seen as especially serious offenses, compared to crimes against property” (Rossi, et al., 1974, p. 233).

Sellin and Wolfgang’s (1964) index guided the development of the comprehensive National Survey of Crime Severity (Wolfgang, Figlio, Tracy, & Singer 1985). In 1977, Census interviewers asked more than 50,000 participants from a representative national sample to rate the seriousness of 204 offense descriptions. These anecdotal descriptions ranged from the mild

(“a person steals property worth \$10 from outside a building”) to the heinous (“a man forcibly rapes a woman; as a result of physical injuries, she dies”). The results of the survey were scaled to represent mean scores for each crime and a ratio score that, like the Heller and McEwan (1973) scale, suggests the perceived seriousness of any given type of crime relative to any other. Mean scores (and ratio scores) ranged from a low of 5.39 (0.25) for a person under 16 playing hooky to a high of 1577.53 (72.10) for the bombing of a public building that kills 20 people. The midpoint of severity in the survey was represented by an offense in which a victim is intentionally injured to the extent of needing to be treated by a doctor but not hospitalized - a mean score of 186.039 (8.5). How respondents scored burglarizing a residence depended on the value of goods taken, with a range from a low of 68.742 (3.2) (\$100 in value taken - \$350 in 2009 dollars) to high of 210.012 (9.6) (\$1000 in value taken - \$3,540 in 2009 dollars). Burglary scored generally lower than crimes involving either threat of or actual injury. But in those scenarios in which violence occurred during the burglary, the extent of violence moved the index value up exponentially. For example, threatening with a weapon but not injuring scored 160.077 (7.3), a crime resulting in a hospitalization scored 261.435 (12.0), rape raised the score to 565.658 (25.8), and death of a victim was scored highest at 778.374 (35.6).

For our purposes, it is important to note that through all this research, the crime of burglary was viewed as being equivalent with other property crimes and is perceived by the public as a crime of relatively low severity. When presented with vignette scenarios and asked to respond to them, people’s perceptions of burglaries are that the crime becomes more serious as the value of property damaged, stolen, or destroyed increases, not because of perception that it is a violent crime. When violence occurs it is viewed as an element of a more serious crime – such as robbery or assault. Moreover, the body of research suggests a high level of normative

agreement across all social groups on crime seriousness. As Hansel (1987) observes, among diverse groups sampled, be it prosecutors (Roth, 1978), non-American peoples (Hsu, 1973; Valez-Diaz & Megargee, 1970), or prison inmates (Figlio, 1975), there is general agreement on the scaling of crime seriousness.

Debate continues on the point of just how wide this consensus may be, or on how accurate the measures may be, but disagreement focuses mostly on methodological issues and not public policy implications of the scales. There is concern, for example, over the extent to which vignettes and scenarios in crime severity surveys contain wording that generates attribution bias. For example, words such as “sex,” “drugs,” and “church” affect different people differently and may trigger respondent assessments of severity independent of the actual crime involved (See, for example, Kwan, Ip, & Kwan, 2000; Parton, Hansel, & Stratton, 1991).

A more recent trend in scaling the severity of crimes emerged from economic analysis and the popularity of cost-benefit analysis (CBA) as an evaluative tool in public policy. Cost-benefit algorithms have been applied to the study of criminal justice as a way of quantifying the monetary impact of crime on its victims and measuring the relative efficiencies of different programs aimed at preventing and controlling its occurrence (Cohen, 1998; Roman, 2004). As crime and its consequences are obviously not market-traded commodities, CBA valuation methods involve the adoption of proxy measures that can serve as stand-ins for non-market goods. CBA establishes the costs of crime by examining both tangible and intangible expenses associated with criminal offenses. The benefits of a crime control measure are then determined by using this cost estimate and stating that if a crime control measure is known to have prevented the crime, the cost was averted and therefore does not appear in the “costs of crime” column when comparing measurable costs and benefits of crime reduction measures.

For instance, Cohen's (2005) recent work in assessing the monetary consequences of crime presents a new way of measuring crime severity. Cohen estimated victim costs related to lost productivity, medical expenses, ambulance fees, mental health costs, property loss and damage, the costs of police and fire services, and quality of life changes across a range of crimes. Cohen's scale includes the victim costs associated with ten types of crime: fatal crime, child abuse, rape and sexual assault, other assault or attempt, robbery or attempt, drunk driving, arson, larceny, burglary or attempt, and motor vehicle theft or attempt. Only larceny, with an average victim cost of \$370, has a lower monetary cost than burglary (average cost of \$1,400). The cost-benefit methodology is not without its critics (See Roman & Farrell, 2002), but overall it is important to note that this alternative method for measuring crime severity produces a scale order very similar to that of surveys using scenarios and vignettes. At the bottom of the severity indexes, burglary is above auto theft on the scale of severity produced by public surveys, but from the cost-benefit perspective it is considered less serious than auto theft and thus the least serious of all the felonies ranked according to severity.

All these methods of determining the severity of crimes rely on public opinion and all rank the severity of crimes relative to each other. All rank burglary at the low end of the felony severity scale, clearly as a crime against property. However, as seen in the *MPC* as an example, if actual violence occurs, that fact will aggravate the perceived seriousness of the particular crime. The problem here is that the criminal law will nevertheless treat burglary without violence as a violent crime. Legislators writing these laws and law enforcement officials applying them may "inflate" the seriousness of this crime, perhaps because they concentrate on individual cases that tend to present the most sensational facts rather than fitting the typical circumstances of this offense onto a scale comparing them with many other circumstances of

crimes of all types. Furthermore, it is often said that even non-violent burglars are particularly frightening to homeowners, that the potential for violent encounters in occupied buildings is very high, and that victim fear should thus be taken into account by placing burglary in the violent crime category. Public opinion and crime scaling exercises, however, contradict these notions.

Burglar behavior research

Previous burglary victimization research can be divided into three broad categories: risk of being burglarized (Ashton, Brown, Senior, & Pease, 1998; Cromwell, Olson, & Avary, 1991; Lynch & Cantor, 1992; Roundtree & Land, 1996; Wright, Decker, Redfern, & Smith, 1992), impact of burglary (Dugan, 1999; Maguire, 1980; Mawby & Walklate, 1997), and responses to burglary (Coupe & Griffiths, 1997; Gay, Holton, & Thomas, 1975; Mawby, Ostrianska, & Wojcik, 1997; Nation & Arnott, 1991; Rosenbaum, 1987). Most relevant to the present study is research investigating the risk of burglary victimization, specifically findings regarding offender selection of targets, because the vulnerability of the victim may have some connection to the likelihood that violence will occur.

Ethnographic research based on offender self-reports suggests that burglars offend for profit, select their targets with care, plan their crimes, and take into account multiple variables in deciding when and where to offend (Bennet & Wright, 1984; Nee & Taylor, 2000; Reppetto, 1974; Wright & Decker, 1994). Apparently, burglars perform a criminal calculus in line with the rational choice theory of crime, which holds that offenders weigh the costs and benefits of their illicit acts before taking action (Cohen & Felson, 1979). However, Cromwell et al. (1991) found that burglars tended to be opportunistic rather than rational and easily deterred or displaced from one target site to another. Leading them to posit that “a completely rational model of decision

making in residential burglary cannot be supported” (43). Johnson and Bowers (2004), borrowing from behavioral ecology, described burglars as “optimal foragers” who, like scavengers, seek “to increase the rate of reward while minimizing both the amount of time searching for food and the risk of being attacked” (p. 242). Bernasco and Nieuwbeerta, (2005) added that burglars seek to maximize rewards by selecting targets “that require little effort to enter, that appear to contain valued items, and that give the impression that the likelihood of being disturbed or apprehended there is low” (p. 297). Indeed several studies have highlighted the decision process of burglars (Brantingham & Brantingham, 1978, 1991; Brown & Altman, 1981; Cornish & Clarke, 1986; Kleeman, 1996; Bernasco & Nieuwbeerta, 2005). Burglars are apt to strike targets of opportunity impulsively when they arise (Bernasco & Nieuwbeerta, 2005). Accordingly, a burglar’s target selections are probably, to varying degrees depending on the individual offender, the result of both rational choice and impulse.

Bernasco and colleagues (Bernasco & Luykx, 2003; Bernasco & Nieuwbeerta, 2005; Bernasco, 2006) argue that offender target selection is best understood through an integration of the rational choice and routine activities (Cohen & Felson, 1979) theories of crime. The routine activities theory states that the minimum requirement for crime to occur is the convergence of a motivated offender, a suitable target, and the absence of a capable guardian. Bernasco’s model assumes the presence of a motivated offender who rationally seeks out suitable targets lacking guardianship using four general criteria (affluence of the target, expected likelihood of success, proximity, number of residential units) to determine when to strike. The model posits that offenders seek targets that appear to offer them the most profit (Bennet & Wright, 1984; Reppetto, 1974), while presenting the least risk from potential witnesses (Brown & Altman 1981; Bennet & Wright, 1984; Cromwell et al., 1991). Ideal targets are familiar to the offender

because they fit the offender's knowledge of the community and the daily routines of its inhabitants (Brantingham & Brantingham, 1981). Offenders frequently live in or near the area (Bernasco & Luykx, 2003; Rengert & Wasilchick, 2000) or select it because they researched the area after identifying suitable targets. Wright and Decker (1994) found their sample of active offenders to have spent considerable time (days and weeks) learning the geographic layout and temporal routines of their intended targets.

Finally, given the effort exerted in selecting and learning a target area, offenders seek to maximize their profits by concentrating on areas that contain many potential targets. Indeed, several studies have found that there is an increased risk of repeat victimization of previously burglarized residences (Aston et al., 1998; Budd, 1999; Ericsson, 1995; Hearnden & Magill, 2004) and nearby properties in the community as a whole (Bernasco, 2008; Bowers & Johnson, 2005; Everson, 2003; Johnson et al., 2007; Morgan, 2001; Shaw & Pease, 2000).

Exploration of the three empirical questions (incidence of burglary, severity of burglary, and typical burglar behavior) leads to the research questions about how well state and federal law matches what we know empirically about the crime. The most comprehensive studies of burglary either do not address or only briefly discuss the incidence of violence (Rand, 1985; Catalano, 2010). Here, we update and expand upon those studies and match the findings to current statutes in order to inform future law-making.

Estimation of the Incidence of Violence in Burglary: 1998-2007

This study updates the previous work and matches the findings to statutory definitions of burglary and sentencing outcomes of them. Restating the research questions associated with this part of the inquiry:

1. How frequently does violence occur in the commission of a burglary?
2. When burglary co-occurs with violence, what forms of violence occur?
3. Are there differences in rates of violence between attempted and completed burglaries?
4. How frequently is a household member present during a residential burglary?
5. Are different levels of violence associated with residential versus nonresidential burglaries?

Methods

Data. The study's estimation of the incidence of violence utilizes existing data from three sources: NCVS, UCR, and NIBRS.

NCVS. Administered by the U.S. Census Bureau, U.S. Department of Commerce (on behalf of the Bureau of Justice Statistics, U.S. Department of Justice), the NCVS and its forerunner the National Crime Survey have been ongoing since 1972. The NCVS surveys a nationally representative rotating sample of U.S. households with four primary objectives: 1) develop detailed information about the victims and consequences of crime; 2) estimate the numbers and types of crime not reported to the police; 3) provide uniform measures of selected types of crime; and 4) permit comparisons over time and types of geographic areas. Using a combination of lead and follow-up questions, NCVS interviewers gather detailed information regarding the crimes of rape/sexual assault, robbery, aggravated and simple assault, purse-

snatching/pocket-picking, burglary, theft, and motor vehicle theft, as well as demographic information that facilitates the weighting of respondents' answers, in order to estimate national victimization trends.

The advantages of the NCVS are twofold. First, the database provides highly detailed information about criminal incidents; second, the NCVS contains information about crimes not reported to the police and therefore not contained in the Federal Bureau of Investigation's UCR or the NIBRS. Because of this, the NCVS and UCR are often used in concert to measure crime.

The NCVS is not without its limitations, however. First, as a survey the NCVS is subject to criticisms traditionally leveled at any survey (truthfulness of respondents, representativeness of sample). Second, the NCVS only contains information on residential offenses, preventing investigation of commercial or non-residential crime trends. Third, the NCVS does not collect information about the offense of murder. Finally, the NCVS utilizes a hierarchical offense classification system which hinders analysis of co-occurring offenses. The hierarchy rule requires that, if several crimes occurred during one event, only the most serious is recorded. For example, an incident involving both a rape and a robbery would be recorded as a rape. However, the detailed information contained in the NCVS allows researchers to reclassify offenses to overcome this limitation.

UCR and NIBRS. Since 1930, the FBI has compiled counts of criminal incidents from information provided by state and local police agencies. The UCR provides offense and arrest counts for eight index crimes (murder, rape, robbery, aggravated assault, burglary, larceny, auto theft, and arson) reported to the police. While the UCR is national in its coverage, its utility is limited in three ways. First, the UCR only counts crimes that have been reported to the police;

however, a substantial amount of criminal activity goes unreported as noted earlier, about 72% of burglaries are reported to police, which is nevertheless a high percentage compared to other felony crimes. For this reason, the UCR is often used in conjunction with the NCVS to account for crimes not reported in the UCR. Second, like the NCVS, the UCR utilizes a hierarchical counting rule in classifying criminal incidents in which multiple crimes occurred. Finally, the UCR provides summary totals of crimes and does not contain any detailed information about individual offenses, only the frequency with which each crime occurred. The present study overcomes these limitations by using the NIBRS in conjunction with the UCR to derive estimates of the co-occurrence of offenses.

Formulated in the 1970s and implemented in 1989, the NIBRS was established to expand and enhance the existing UCR program in order to meet the changing needs of law enforcement. Under NIBRS, agencies that report to the UCR can also voluntarily report additional information about incidents reported to the UCR. In contrast to the UCR, NIBRS like the NCVS contains very detailed information on the nature and type of offense and characteristics of both victim and offender. In contrast to the NCVS, NIBRS reports both residential and non-residential offenses. Additionally, while NIBRS utilizes the same hierarchical crime classification system as the UCR, it includes variables measuring the occurrence of multiple offenses within the same incident and contains a concatenated all-offense variable listing up to ten separate offenses for each incident, thus avoiding the “hierarchy rule” problem (the UCR counts only the most serious charge even if several crimes co-occurred.) The detailed information in NIBRS, like the NCVS, also allows for the reclassification of incidents based upon their attributes.

Notwithstanding its advantages, NIBRS must contend with a major limitation. Although reporting to the UCR is mandatory, reporting to NIBRS remains optional. By 2002, only 45% of

law enforcement agencies reported to NIBRS. Addington (2008) notes that NIBRS agencies covered only 17% of the U.S. population in 2002, and none of the roughly fifty two largest law enforcement agencies (serving populations greater than one million) reported to NIBRS. Addington assessed this perceived bias, finding “that the amount of bias in NIBRS is not so small as to be ignorable but is not so considerable as to warrant abandoning the data altogether” (Addington, 2008, p. 32), and that “the utility of NIBRS for analytical modeling has some initial support, especially for drawing inferences within population groups (250,000 or smaller), if not nationally” (p. 45). Possibly, violent crime occurs more often in densely populated urban areas represented by agencies that do not report to NIBRS; if so, NIBRS’s small-agency bias might translate to lower levels of reported crime and lower estimates of violence in this database than in others.

Given the limitations of NIBRS data, specifically the low percentage of the population covered and disparities in reporting agencies, the use of NIBRS rates to project UCR rates is problematic. However, Addington (2008) suggest that the difference may be small, at least for estimation purposes. Since the UCR and NIBRS contain different points of information that can complement each other, and are not based on population samples, the findings reported here are “best estimates” and an improvement on previously-available national estimates of burglary and violent crime.

Identifying violent burglaries. The hierarchical classification of offenses in national datasets is the highest roadblock to the estimation of the extent of violence in burglary. As previously discussed, offenses are classified as the most serious or severe crime that occurred during an incident. However, it is common for crimes such as burglary to co-occur with other more severe crimes. In incidents where burglary has co-occurred with a more serious violent

offense, the burglary is concealed and goes uncounted in favor of reporting the more serious offense. This leads to a threshold question to consider as a preface to the research questions posed above: *what is the true incidence of burglary in the United States?* In order to answer the research questions of this study, we must first untangle the hierarchical classification of offenses and identify burglary incidents hidden by more serious co-occurring offenses, and only then will we have an accurate picture of the full number of burglary incidents from which we can classify how many were violent, at what level of violence, whether household members were present at the time, etc.

The present study solves the hierarchy problem by using information already contained in the respective datasets. The procedures detailing how this was done are explained fully below. However, a summary explanation is that NCVS responses were used to create a type of crime variable that identified any incident in which a burglary occurred. A pre-existing variable listing the offense codes for the ten most serious offenses that occurred during an incident was used in conjunction with extensive manual calculation to identify hidden burglaries in NIBRS. NIBRS estimates are then applied to the UCR's summary counts of offenses.

NCVS. As a survey, the NCVS asks respondents a series of questions about what kind of victimization had occurred over the last year, if any. Using the responses to these questions, the NCVS classifies incidents by type of crime. Burglary is comprised of three crime subtypes: attempted forcible entry, unlawful entry, and forcible entry. The NCVS defines unlawful entry as "a form of burglary in which the offender has no legal right to be on the premises, even though no force was used to gain entrance" (ICPSR, 2008, p. 394); and forcible entry as "a form of burglary in which force is used to gain entrance; e.g., by breaking a window or slashing a screen" (ICPSR, 2008, p. 364).

Three questions in the NCVS are central to the classification of an incident as any of these three crime types: 1) "did offender have a right to be there" (*V4025*); 2) "did offender get inside" (*V4026*); and 3) "evidence of forcible entry" (*V4028*). The present study recodes the responses to these questions and uses them to create an additive scale variable (*TBurg*) that identifies any incident in which a burglary occurred. Next, the variable "type of crime" (*V4529*) used in the NCVS is recoded into a new variable (*TOCRec*), transforming sub-offenses into the broad crime types of rape/sexual assault, robbery, aggravated assault, simple assault, and burglary. Finally, the variables *TBurg* and *TOCRec* are combined into the additive variable *VBurg*, which identifies the type of offense that occurred by burglary type. The variable *VBurg* is used to derive the estimates reported here.

This procedure was validated against the estimates reported by the Catalano in her (2010) study of household burglary using a subset of NCVS data (2003-2007). Catalano found that between 2003-2007, 27.6% of all burglaries occurred while a household member was present, while 7.2% of all burglaries resulted in violence. In comparison, our estimation procedure found that 26% of all burglaries occurred while a household member was present, while 7.6% of all burglaries resulted in violence – a very similar finding. While our estimation procedure produced slightly higher estimates of violence than those of Catalano, for the current study a conservative approach that may overestimate violence rather than underestimate it is prudent.

NIBRS to the UCR. The NIBRS dataset contains detailed information on crimes reported to the police; within the dataset is a concatenated all-offense variable (*ALLOFNS*) listing the UCR offense codes for the ten most serious offenses that occurred during the incident, as reported by the police. The *ALLOFNS* variable is used in conjunction with grouping variables, like *V20071* (offense attempted/completed) and *V20111* (location type) to identify the levels of

violent and non-violent burglary that occurred both overall and between subgroups (i.e. attempted vs. completed). After running frequency and contingency tables, the researchers manually identify and calculate the present studies' violence estimates. These estimates will then be applied to the summary counts reported in the UCR to derive an estimate of the number of incidents that occurred nationally. For example, if 3% of robberies reported to NIBRS co-occurred with a burglary, and there were 10,000 robberies reported in the UCR, we would estimate that 300 of the UCR robberies were also burglaries and count them accordingly.

Results

Threshold question: What is the true incidence of burglary in the United States?

Between 1998 and 2007, police reported 21,569,863 burglaries to the UCR, while the NCVS estimated that 34,949,787 burglaries occurred in the U.S. during the same period. Using procedures previously discussed to overcome the hierarchical classification system, we identified additional burglaries hidden because they co-occurred with a more severe violent offense. The present study, based upon NIBRS data, estimates that an additional 224,204 burglaries involving violence (murder, rape, robbery, and aggravated assault) occurred, increasing the UCR's total incidence of burglary during the study period to 21,794,069 (Tables 3 and 4). After creating this new type of crime variable in the NCVS, the present study identified an additional 2,880,735 incidents involving the co-occurrence of burglary and a violent crime (rape/sexual assault, robbery, aggravated assault, and simple assault) involving physical violence, or threats of physical violence (Table 1). The addition of these incidents increases the total number of burglaries estimated by the NCVS to have occurred during the study period to 37,816,059.

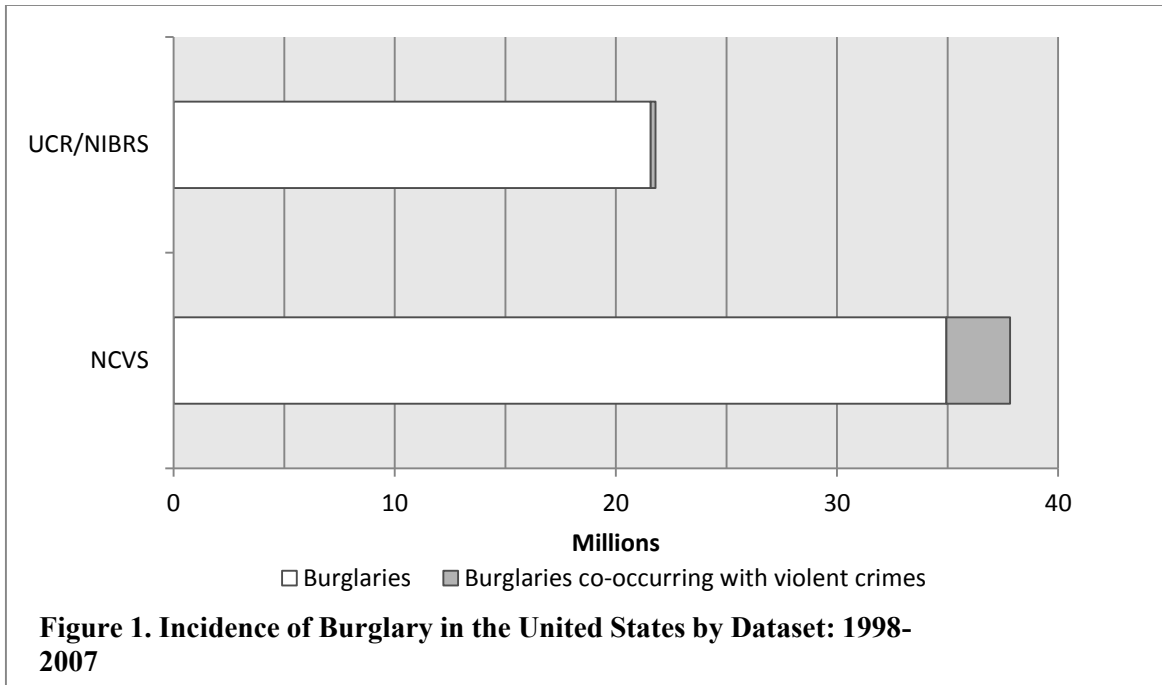


Figure 1 illustrates the total incidents of burglary which occurred during the study period, adding those recorded by the respective data collections and those identified and added to the total number of incidents by the present study. In addition, figure 1 depicts the dark figure of crime: the difference in number of burglary incidents recorded in the UCR via reports made to the police versus the number of offenses estimated by the NCVS to have occurred. The NCVS by design is intended to measure criminal incidents not reported to the police. As a result the NCVS produces estimates higher than those of the UCR. To answer the research questions posed here, burglaries reported to the NCVS plus the number of burglaries which co-occurred with more serious crimes form the baseline volume of burglary cases from which analysis will proceed.

Research Question 1: How frequently does violence occur in the commission of a burglary?

The present study identified an additional 2,880,735 burglary incidents in the NCVS involving the co-occurrence of burglary and a violent crime. These violent burglaries comprised 7.6% of all burglaries estimated to have occurred between 1998 and 2007 in the US (Table 1). Over the study period, the incidence of violence remained relatively stable, varying between 6.5% and 8% (with a spike to 10% in 2006 attributed to methodological changes to the NCVS⁵). (See Figure 2.)

Table. 1
Estimate of the Co-Occurrence of Burglary and Violence in NCVS: 1998 – 2007

<i>Offense type</i>	<i>Total offenses</i>	<i>Co-occurred with burglary</i>	<i>% Violent</i>
<i>Rape/Sexual Assault</i>	2,755,641	241,102	.64
<i>Robbery</i>	6,805,093	612,437	1.62
<i>Aggravated Assault</i>	12,425,169	561,543	1.48
<i>Simple Assault</i>	40,613,367	1,465,653	3.87
<i>Sub Total</i>	62,599,270	2,880,735	7.6
<i>Burglary</i>	34,949,786	34,949,786	0
<i>Total</i>	97,549,056	37,830,521	7.6

Utilizing additional information in the NCVS the present study disaggregates violence into incidents of actual physical violence, and threatened violence. Over the study period, actual physical injury was reported in 2.7% (N = 1,035,933) of all burglaries. Subtracting the incidence of injury (2.7%) from the incidence of co-occurrence (7.6%) leaves 1,844,802 (4.9%) burglaries

⁵ The methodological changes to the NCVS are more fully discussed in Rand and Catalano (2007). They included introduction of a new sample, incorporation of households not previously in the survey, and use of computer-assisted personal interviewing.

during which victims were threatened with violence, or otherwise placed in fear but not physically injured. Additionally, in 2.4% (N = 917,804) of all burglaries victims reported the offender was armed with a weapon (Table. 2)⁶.

Table. 2
Reported Presence of a Weapon or Injury during Burglaries in NCVS : 1998-2007
Did Offender have a Weapon

	<i>Yes</i>	<i>No</i>	<i>Unknown</i>	<i>Total</i>
<i>Violent</i>	917,804 (32%)	1,659,503 (58%)	303,428 (10%)	2,880,735 (100%)
<i>Non-violent</i>	0 (0%)	2,979,611 (9%)	31,970,175 ^a (91%)	34,949,786 (100%)
<i>Total</i>	917,804 (2.4%)	4,639,114 (12.3%)	32,273,603 (85.3%)	37,830,521 (100%)

Was Injury Reported

	<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Violent</i>	1,035,933 (36%)	1,844,802 (64%)	2,880,735 (100%)
<i>Non-violent</i>	0 (0%)	34,949,786 ^b (100%)	34,949,786 (100%)
<i>Total</i>	1,035,933 (2.7%)	36,794,588 (97.3%)	37,830,521 (100%)

Note. Incident totals adjusted to include all burglaries (see footnote 4)

^a Before adjustment N = 3,205,177

^b Before adjustment N = 0

During the period 1998 to 2007, law enforcement agencies reported 3,432,356 burglaries to NIBRS. The present study identified an additional 31,094 burglary offenses classified as either a murder, rape, robbery, or aggravated assault by NIBRS because they resulted in physical violence, or threats of physical violence. Incidents in which burglary co-occurred with a violent

⁶ NCVS interviews consist of a screening question, and a series of subsequent follow up questions based upon respondent's answers. Once a criminal incident has been identified to have occurred, subsequent questions are asked in the following order: 1) was a household member present, 2) did they see the offender, 3) did the offender attack you, and 4) were any injuries suffered. Respondents must answer in the affirmative to continue to the next question in the series. Accordingly, if a household member was not present, or they were not attacked, they could not have been injured, and are not queried about injury. Likewise respondents that did not actually see the offender are not asked if the offender had a weapon (US Department of Commerce, 2012, pp. B4-49-78). It follows logically that the NCVS not asking if a respondent saw a weapon or was injured indicates that they did not (though one might have been concealed), and were not. To provide the best estimates possible the present study added these non-violent burglary incidents into Table 2 so that percentages include all burglaries and not just those that qualified to be asked the question.

crime constituted .9% of all burglary offenses during the study period (Table 3). Consistent with stability observed in NCVS trends, the incidence of violence in NIBRS remained stable over the study period, varying between .86% and .94% (Figure 2).

Table. 3
Estimate of the Co-Occurrence of Burglary and Violence in NIBRS: 1998 – 2007

<i>Offense type</i>	<i>Total offenses</i>	<i>Co-occurred with burglary</i>	<i>% within offense</i>	<i>% Violent</i>
<i>Murder</i>	20,809	351	1.7	.01
<i>Rape</i>	179,096	3,002	1.7	.08
<i>Robbery</i>	485,551	7,736	1.5	.2
<i>Aggravated Assault</i>	1,219,024	20,005	1.6	.6
<i>Sub Total</i>	1,904,480	31,094		
<i>Burglary</i>	3,432,356	3,432,356	100	0%
<i>Total</i>	5,323,388	3,463,450		.9

Table. 4
Applying NIBRS Proportions to Estimate UCR Incidents : 1998-2007

<i>Offense type</i>	<i>Total offenses</i>	<i>NIBRS % within Offense^a</i>	<i>Incidents estimated to have co-occurred with burglary</i>
<i>Murder</i>	163,723	1.7	2,783
<i>Rape</i>	925,334	1.7	15,730
<i>Robbery</i>	4,234,607	1.5	63,519
<i>Aggravated Assault</i>	8,885,799	1.6	142,172
<i>Subtotal</i>	14,062,463		224,204
<i>Burglary</i>	21,569,863	100	21,569,863
<i>Total</i>	35,632,326		21,794,069

^a NIBRS percentages taken from Table 3.

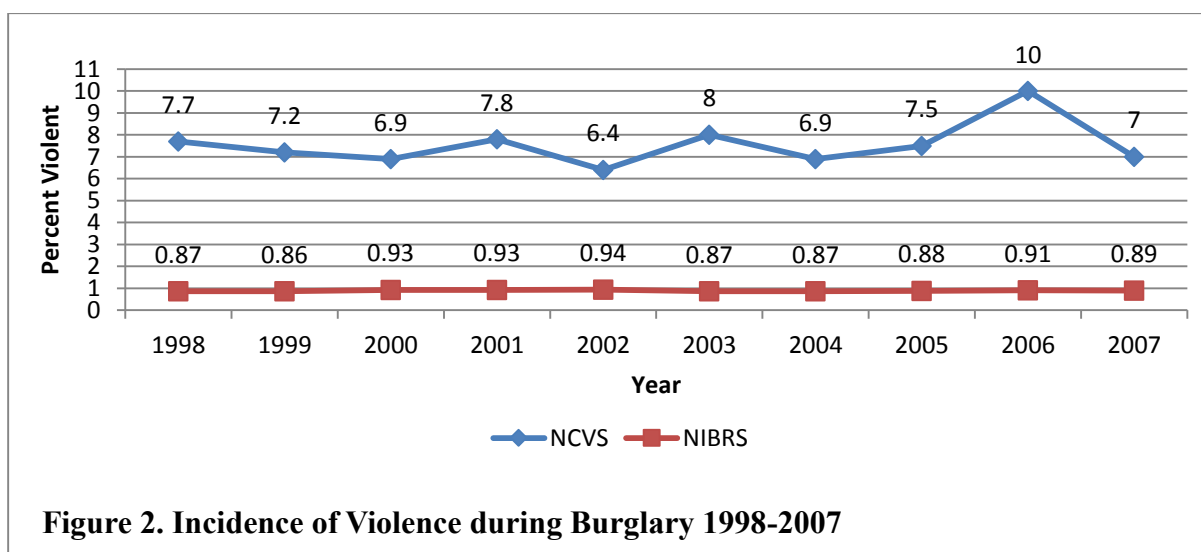
Both the NCVS and NIBRS estimates are low in relation to the overall extent of violence that occurs during burglary, although there is a significant difference between the overall estimates themselves. Specifically, the NCVS estimate is 6.71% higher than the NIBRS estimate. The small-agency bias might explain this departure. In contrast to the NCVS which is nationally representative, NIBRS by virtue of the police agencies that elect to report to it is only representative of cities and rural areas with populations of 250,000 or less. More crime per capita and more violent crimes occur in larger, more urban areas which do not report to NIBRS.

The difference in crimes per capita in rural and suburban jurisdictions compared to urban ones is observable and widens the more rural the jurisdiction is. In 2011, the UCR reported a rate of 819.8 violent crimes per 100,000 inhabitants in jurisdictions with a population between 500,000 and 999,999, and a rate of 773.1 in jurisdictions with a population between 250,000 and 499,999. In contrast, the violent crime rate in jurisdictions between 100,000 and 249,999 inhabitants was 498.5, and steadily decreased as population decreased to 297.9 in jurisdictions with 10,000 or fewer inhabitants (USDOJ, 2012).

In 2013, Turman, Langton, and Planty (2013) using NCVS data estimated that urban households experienced a property crime victimization rate of 187.0 per 1,000 households. Property victimization rates were lower in suburban (138.9) and rural (142.9) areas. In regard to violent crime, urban residents were victimized at a rate of 32.4 per 1,000 persons, higher than the rate experienced by their suburban (23.8) and rural (20.9) counterparts (Truman, Langton, & Planty, 2013). Considering that jurisdictions of 250,000 or less in population report to NIBRS, it is clear that the NIBRS statistics will somewhat under-report both burglary and violent crime.

Because of the significant departure between estimates the NIBRS estimates of violence was validated against an NCVS estimate derived from a subset of data scaled to match the

NIBRS data set as closely as possible in both coverage (249,999 or less), and scope (definitions of offenses).⁷ Over the study period 0.9% of burglaries reported to NIBRS co-occurred with a violent offense; over the same period 2.9% of burglaries estimated to have occurred by the NCVS co-occurred with a violent offense. Some departure between estimates is expected, as the NCVS by design includes incidents not reported to the police, resulting in estimates of crime higher than datasets based solely on reported incidents (UCR and NIBRS). The small difference between the two estimates in the expected direction lends support to the NIBRS estimates. Also while highly speculative the closeness of the scaled NCVS estimate and NIBRS estimates would indicate that were NIBRS nationally representative its estimate would exhibit the same correspondence to the national NCVS estimate of violence. Illustrating the the difference between reported (NIBRS) and un-reported (NCVS) offenses.



Given the disparity between the NCVS and NIBRS estimates caused by their respective designs and limitations, the respective estimates are best conceptualized as the boundaries of an

⁷ As previously mentioned the NCVS and NIBRS define offenses differently, the NCVS including more offenses than NIBRS. To validate the NIBRS estimate NCVS offense types were conformed to NIBRS offense definitions.

interval estimate of the incidence of violence during burglary (Figure 2). The NCVS by design estimates more crime in comparison to the UCR and NIBRS, and is therefore at the upper boundary. Because of its small agency bias, the NIBRS underestimates crime nationally, so it is at the lower boundary. Expressed as a range, an average of between .9% and 7.6% of burglaries between 1998 and 2007 resulted in actual physical violence, or threats of violence. In rural areas and small to medium sized cities (population of 250,000 or less), fewer than .9% (NIBRS estimate) of burglaries involve violence. As city size increases and areas become increasingly more urban, the incidence of violence in burglary increases to a maximum of 7.6% (NCVS estimate).

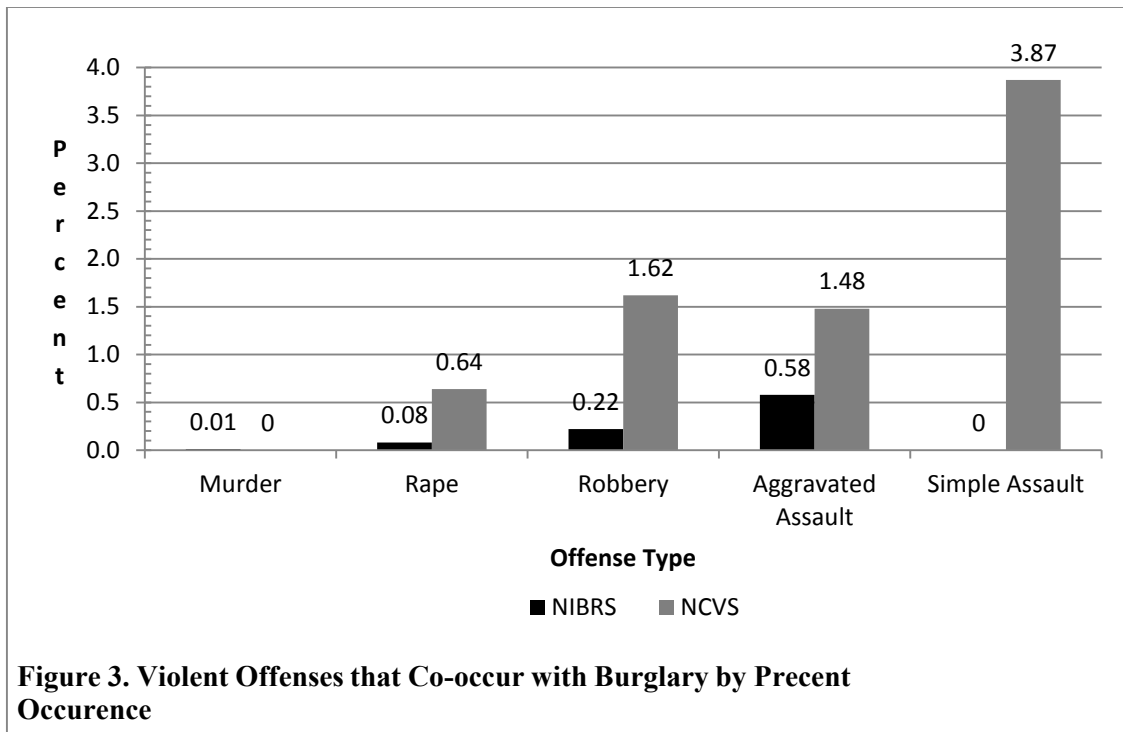
Research Question 2: When burglary co-occurs with violence, what forms of violence occur?

When violence occurs during the course of a burglary, it constitutes a new and separate offense in addition to burglary. In these incidents, burglary co-occurs with another offense in which severity is assessed based upon the nature and extent of the offender's actions. In both the NCVS and NIBRS, the least violent offenses (simple assault; aggravated assault) have the highest incidence of co-occurrence with burglary, while the most violent (rape/sexual assault; murder) have the lowest. In general, burglary co-occurs with five violent offenses; these offenses in order from least to most severe are:

- Simple Assault - Not included in the UCR, simple assault accounts for half of all violent burglaries in the NCVS. A simple assault is a physical attack without a weapon which results in minor injury (bruises, scratches, cuts) requiring less than two days of hospitalization.

- Aggravated Assault - Included in the UCR, NIBRS, and the NCVS. Aggravated assault accounts for over half of all violent burglaries in NIBRS, and almost a fourth of all violent burglaries in the NCVS. Aggravated assault is a physical attack with a weapon, or any attack which results in serious injury (loss of conscious, broken bones, internal injuries) requiring two or more days of hospitalization.
- Robbery - Accounting for almost a fourth of all violent burglaries in both NIBRS and the NCVS, robbery is theft (attempted or completed) from a person accomplished through force (assault) or threat of force.
- Rape/Sexual Assault - The most severe offense included in the NCVS, rape/sexual assault includes intercourse forced either through psychological or physical means and physical assaults of a sexual nature or intent. In the UCR and NIBRS, the definition of “rape” is limited to “attempted or completed forcible rape of a woman,” while other types of sexual assaults and sexual assaults against men are not included.
- Murder - The most severe offense included in the UCR and NIBRS, but not the NCVS, murder is the willful killing of a human being by another.

Figure 3 depicts the types of violence which occurred during burglaries during the study period. Using only the .9% of burglary crimes in which violence was identified (NIBRS) and the 7.6% identified in the NCVS, the figure shows the various types of violence involved.



Research Question 3: Are there differences in rates of violence between attempted and completed burglaries?

In 2007, the Supreme Court ruled that attempted burglary, because its definition and elements are so similar to completed burglary, also qualifies as a violent felony for purposes of federal sentencing (*James v. United States*, 2007). The Court stated that "attempted burglary poses the same kind of risk [as completed burglary, and] the risk posed by an attempted burglary . . . may be even greater than the risk posed by a typical completed burglary." This raises the issue of whether statistics describing the characteristics of these different crimes demonstrate that attempted and completed burglaries are equally violent. Put another way: do violent crimes such as murder, rape, or assault occur as often in attempted burglaries as they do in completed burglaries?

Table. 5
Incidence of Violence during Attempted and Completed Burglary in NCVS, and NIBRS:
1998-2007

NCVS	<i>Attempted Burglary</i>	<i>Completed Burglary</i>	<i>Total</i>	<i>Chi-Square</i>
<i>Violent</i>	205,915 (7%)	2,674,820 (93%)	2,880,735 (100%)	$\chi^2 = 2,115,950$
<i>Non-violent</i>	5,804,527 (17%)	29,145,259 (83%)	34,949,786 (100%)	
<i>Total</i>	6,010,442 (16%)	31,820,079 (84%)	37,830,521 (100%)	

NIBRS	<i>Attempted Burglary</i>	<i>Completed Burglary</i>	<i>Total</i>	
<i>Violent</i>	1583 (5%)	29,505 (95%)	31,088 (100%)	$\chi^2 = 25,078$
<i>Non-violent</i>	250,042 (7%)	3,179,241 (93%)	3,429,283 (100%)	
<i>Total</i>	251,625 (7%)	3,208,746 (93%)	3,460,371 (100%)	

Between 1998 and 2007, data from the NCVS indicate that 84% (N = 31,820,079) of burglaries were completed, versus 16% (N = 6,010,442) attempted. Our analysis found that completed burglaries were significantly more likely to result in violence ($\chi^2(1) = 211595$, $p < .05$)⁸ than would be expected by chance. Violence occurred in 8.4% (N = 2,674,820) of all completed burglaries, but in only 3.4% (205,915) of all attempted burglaries (Table 5). Analysis of NIBRS data showed that 93% (N = 3,208,740) of reported burglaries were completed versus 7% (N = 251,625) attempted. Completed burglaries reported to NIBRS were more likely to result in violence than were attempted burglaries, by a small but significant margin ($\chi^2(1) = 25078.42$, $p < .05$)⁹. Violence occurred in .6% (N = 1583) of attempted burglaries, but in .9% (N = 29,505) of completed burglaries. Contrary to judicial reasoning in *James v. United States* (2007) analysis of NCVS and NIBRS data support the finding that completed burglaries are

⁸ Reports results from a chi-square test of goodness of fit comparing incidence of violence between attempted and completed burglaries

⁹ Reports results from a chi-square test of goodness of fit comparing incidence of violence between attempted and completed burglaries

significantly more violent than attempted burglaries. Attempted burglaries are on an approximate severity level of property crime.

Research Question 4: How frequently is a household member present during a residential burglary¹⁰?

The review of burglar behavior research indicated that burglars go to great lengths to avoid occupied targets. (Wright & Decker, 1994) For burglary to be violent, a victim must be present in order for violence to occur or be threatened. How often is someone present during a burglary?

Table. 6
Incidence of Violence During Household
Member Present Burglaries in NCVS
:1998-2007

	<i>Yes</i>
<i>Violent</i>	2,880,735 (29%)
<i>Non-violent</i>	7,093,893 (71%)
<i>Total</i>	9,974,627 (100%)

Analysis of NCVS data indicates that a household member was home or came home in about a fourth of all burglaries between 1998 and 2007 -- i.e., 26%, N = 9,974,627 -- while the majority of these crimes (74%, N = 27,855,984)¹¹ were committed against an unoccupied structure (Table 6). Non-violent burglaries were overwhelmingly (80%, N = 27,885,894)¹² committed against

¹⁰ NIBRS does not contain a comparable measure that can be used to answer this question.

¹¹ Combination of information from tables 6 and 1, total incident household member present (N = 9,974,627) minus total incidence of burglary (N = 37,830,521).

¹² Combination of information from tables 6 and 1, incident non-violent household member present (N = 7,093,893) minus incidence of burglary (N = 34,949,787).

non-occupied structures. Violence was threatened in 18.5%¹³ and occurred in 10.4%¹⁴ of all burglaries of an occupied structures. In 9%¹⁵ of burglaries of an occupied structure, the offender was reported to have had a weapon.

Research Question 5: Do residential and nonresidential burglaries present different levels of violence?

While previous studies have examined the incidence of violence that occurs during residential burglary, none have analyzed the incidence of violence in non-residential offenses. The content analysis of state burglary statutes (discussed in the next section) shows that states increase the severity of burglaries when they are committed against a residence because of the likelihood that someone might be home or on their way home.

Table. 7
Incidence of Violence during Residential and Non-residential Burglaries in NIBRS: 1998-2007

	Residential	Non-residential	Unknown	Total	Chi-square
Violent	27,293 (91%)	1,559 (5%)	1,281 (4%)	30,133 (100%)	$\chi^2 = 44433$
Non-violent	2,277,096 (67%)	871,420 (26%)	253,043 (7%)	3,401,559 (100%)	
Total	2,304,389 (67%)	872,979 (26%)	254,324 (7%)	3,431,692 (100%)	

Over the study period, 2,304,389 (67%) residential and 872,979 (26%) non-residential burglaries were reported by police to NIBRS. Our analysis found that residential burglaries were significantly more likely to result in violence than were non-residential burglaries

¹³ Combination of information from tables 2 and 6, incidence of reported injury (yes, N = 1,844,802) and total incident household member present (N = 9,974,627).

¹⁴ Combination of information from tables 2 and 6, incidence of reported injury (no, N = 1,033,933) and total incident household member present (N = 9,974,627).

¹⁵ Combination of information from tables 2 and 6, incidence of offender reported to have a weapon (yes, N = 917,804) and total incident household member present (N = 9,974,627)

($\chi^2(1) = 44886.52, p < .05$)¹⁶. 91% (N = 27,293) of violent burglaries occurred in residences. Violence occurred in only 1.2% (N = 27,293) of residential burglaries, compared to an even lower number of .17% in non-residential (N = 1,559) offenses. Finally, violent residential burglaries accounted for only .8% (N = 27,293) of all burglaries that occurred over the study period (Table 7).

Considering these findings, what form should laws about burglary take? To tackle this question, we begin with an understanding of what the state and federal statutes currently provide for prosecution and sentencing of burglars.

Legislative History of Federal Law on Burglary

Burglary is generally viewed as a property crime, not a violent crime. The labeling of burglary as a violent crime is a recent phenomenon, traceable to hardened public opinion about crime prevention in the 1970s and fear of drug-related crime in the 1980s (Musto 1999). In 1971 President Richard Nixon declared a national war on drugs, framing drug users as “criminals attacking the moral fiber of the nation, (and) people who deserved only incarceration and punishment” (Dufton, 2012). Though drug use was and had previously been a public concern, as had crime in general, it was not until Nixon’s declaration of war that “the drug-user-as-culpable-source-of-crime” (Dufton, 2012) image that continues to drive drug policy exploded into view (Bertholomew, 2014).

During the 1980s, public fear of drug-related crimes increased, resulting in major legislative efforts to toughen crime control (Musto, 1999; Tonry 2006). Public fear intensified after Acquired Immune Deficiency Syndrome (AIDS) was first described in 1981 and connected

¹⁶ Reports results from a chi-square test of goodness of fit comparing incidence of violence between attempted and completed burglaries

with transmission through the use contaminated needles by drug users. Then reached a fever pitch with the appearance of crack cocaine in many areas of the US in 1985, fueling “a wave of fear that resulted in enormous media and public attention to the drug problem” (Musto, 2006, p. 268). As a result of public fear, drug-related crime expanded to include any type of felony crime. Soon legislation increasing the punishments for committing a felony was passed in some form in most American jurisdictions.

But hardline legislation aimed at reducing the high crime rates of the 1970s, coupled with legal and political moves to roll back expansive interpretations of 4th, 5th, and 8th Amendment rights from the 1960s and 1970s, had emerged prior to the “moral panic” over crack cocaine (McCoy, 1992; Tonry, 2004). For example, in 1984, President Ronald Reagan signed the federal Comprehensive Crime Control Act of 1984 into law. One of its sections was the ACCA. The ACCA provided a mandatory minimum sentence of fifteen years to life in prison, in addition to a fine not to exceed \$25,000, for individuals convicted of any felony crime while in possession of a firearm and who had three previous convictions for robbery or burglary. The House and Senate Reports provide some insight into the reasoning underpinning the Act’s inclusion and classification of burglary. The House report states that a “large percentage” of crimes of theft and violence “are committed by a very small percentage of repeat offenders,” robbery and burglary being the most prominent (H.R. Rep. No. 98-1073, 1984, p. 1).¹⁷ The House Report quoted the bill’s sponsor, Sen. Arlen Specter (R-PA), who viewed burglary as one of the “most damaging crimes to society” involving the “invasion of [victim’s] homes and workplaces, violation of their privacy, and loss of their most personal and valued possessions” (p. 3). The Senate Report went further, stating that burglary was one of “the most common violent street

¹⁷ Selective incapacitation based on prediction of future offending was the goal. See Wilson (1975, Chapter 7).

crimes” and that while it “is sometimes viewed as a non-violent crime, its character can change rapidly, depending on the fortuitous presence of the occupants of the home when the burglar enters, or their arrival while he is still on the premises” (S. Rep. No. 98-190, 1983, p. 4-5)

Another section of the Comprehensive Crime Control Act of 1984 established the USSC, which wrote the United States Sentencing Guidelines eventually approved by Congress in 1987. Federal law directs prosecutors to refer to the law of the state in which a burglary occurred for purposes of federal prosecution (for instance, if the burglary occurred on an Indian reservation under federal jurisdiction, the federal prosecutor would decide whether the elements of burglary were present by referring to the law of the state (18 U.S.C. § 13(a)) in which the reservation was located.) If the burglary charges are proven, the U.S. Sentencing Guidelines then assigns a base “score” of 17 points if the burglary was of a residence and 12 points for other structures (USSC, 2013, § 2B2.1). Putting this into context of “crime type severity scales,” note that the Guidelines assess seven points for a minor assault if the offense involved physical contact, and seven points for simple theft, while robbery is considered only slightly more serious than burglary at 20 base offense level points. Arguably, the Sentencing Guidelines punish burglary as a crime of violence (USSC, 2013).

The Guidelines further operate to take account of any aggravating circumstances such as use of a weapon or victimizing a particularly vulnerable person, giving prosecutors the option of adding more additional points for each proven aggravating factor. Judges then sentence the offender based on the total Guidelines points of the case. The operation of burglary provisions in federal law thus regards any burglary as equivalent to a violent crime and then adds more punishment if actual violence occurred.

The idea that burglary was a violent crime ran counter to the empirical evidence available at the time of passage of the Comprehensive Crime Control Act (e.g., Conklin & Bittner, 1973) and to contemporary jurisprudence. The previous year, the Supreme Court had decided *Solem v. Helm*, ruling on the proportionality of the sentence Helm received after being convicted as a habitual offender in South Dakota. Helms had been convicted of passing a bad \$100 dollar check, and sentenced to life without parole under South Dakota's habitual offender statute based upon his prior criminal record. Helm's s prior convictions were for, obtaining money under false pretense, grand larceny, third-offense driving while intoxicated, and three convictions for third degree burglary. The Court ruled that the proportionality of punishment should be based upon "i) the gravity of the offense and harshness of the penalty; ii) the sentences imposed on other criminals in the same jurisdiction, that is whether more serious crimes are subject to the same or less serious penalties; and iii) the sentences imposed for commission of the same crime in other jurisdictions" (*Solem v. Helm*, 1983, 2(a)). In assess the severity of Helms instant and prior convictions The Court found that "all [of Helm's convictions] were nonviolent and none was crime against a person" (3 (a)).

Only a year after passage of the ACCA, the Supreme Court again stated that burglary should not be regarded as a violent crime as long as it did not involve threats. In *Tennessee v. Garner* (1985), the Court analyzed burglary in reaching its decision regarding the use of deadly force against fleeing suspects. Garner, who had committed a nighttime residential burglary, was unarmed. While fleeing the scene, he was shot and killed by the police. The majority in *Garner* stated that:

While we agree that burglary is a serious crime, we cannot agree that it is so dangerous as automatically to justify the use of deadly force. The FBI classifies burglary as a "property" rather than a "violent" crime. Although the armed burglar

would present a different situation, the fact that an unarmed suspect has broken into a dwelling at night does not automatically mean he is physically dangerous. This case demonstrates as much. In fact, the available statistics demonstrate that burglaries only rarely involve physical violence. During the 10-year period from 1973-1982, only 3.8% of all burglaries involved violent crime (*Tennessee v. Garner*, 1985, section IV).

The Court supported its opinion citing the studies by Conklin and Bittner (1973), Reppetto (1974), and Rand (1985), while also relying on the precedent of *Solem v. Helm* (1983).

Despite the empirical evidence and the Supreme Court's statement that burglary should be regarded as a property crime, unless weapons are involved, a year later the ACCA was re-codified and amended into its present form as §924(e) under Title 18 of the United States Code, and titled the Anti-Drug Abuse Act of 1986. President Reagan signed the Anti-Drug Abuse Act of 1986 into law shortly before the national elections in November 1986. The law authorized approximately \$4 billion in funding to fight drug trafficking in the U.S. and included the controversial 100-to-1 disparity¹⁸ in crack/powder cocaine sentencing (Musto, 1999).

Despite the new title "Anti-Drug Abuse," the amended law still addressed violent crimes. It states that any crime that includes "the use, attempted use, or threatened use of physical force against the person of another or involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another" is considered a violent felony. Additionally, the crimes of burglary, arson, or extortion were categorically listed as violent felonies (Anti-Drug Abuse Act of 1986). Simultaneously, the predicate offenses that initiated a sentence enhancement (i.e., heavier punishment) were expanded by replacing the words "robbery and burglary" with a more general "a violent felony or serious drug offense" -- and burglary had specifically been listed as a violent crime. The meaning of the term "serious potential risk of

¹⁸ The US Senate passed a bill in March 2010 reducing that disparity to 18-to-1

physical injury” was not defined in the legislation; presumably, empirical work would explore to what extent burglary poses a “serious potential risk of physical injury.” These classifications are important because, if an offense falls under them, a conviction for that offense may be used as a “strike” for purposes of applying the “three-strikes” type habitual offender provisions of the Act.

The political climate in 1986 and the debates about the wisdom of expanding the categories of violent crime produced overwhelming sentiment in favor of passing this legislation. But debate about high crime rates departed from the evidence presented in research and judicial findings regarding burglary. Rep. Wyden (D-OR) hoped “that at least *some violent felonies against property* could be included,” as some “people...make a full-time career and commit hundreds of burglaries” (ACCA: Hearing, 1986, 49-53; italics added). When asked why burglary should be retained as a predicate offence for enhancing the severity of sentencing, Deputy Assistant Attorney General James Knapp responded:

Your typical career criminal is most likely to be a burglar ... even though injury is not an element of the offense, it is a potentially very dangerous offense, because when you take your very typical residential burglary or even your professional commercial burglary, there is a very serious danger to people who might be inadvertently found on the premises (ACCA Hearing, 1986, 26).

Thus, it is clear that the goal of incapacitating recidivists, whether their crimes were traditionally regarded as violent or not, was important to lawmakers’ support for the amendment. Additionally, Rep. Hughes (D-NJ) argued that:

We are talking about burglaries that probably are being carried out by an armed criminal because the triggering mechanism is that they possess a weapon So we are not talking about the average run-of-the-mill burglar necessarily, we are talking about somebody who also illegally possesses or has been transferred a firearm (ACCA Hearing, 1986, 41)

But the law that passed did not draw this distinction. Burglary itself, even without evidence of violence, counted as a violent crime for purposes of sentencing enhancement. In short, in the ‘tough on crime’ politics of the era, unfounded assumptions about the nature of burglary prevailed and simple burglary was conflated with crimes that federal law had traditionally listed as violent.

The Supreme Court subsequently upheld the new law in *Taylor v. United States* (1990). Taylor’s sentence had been enhanced under the ACCA based upon a criminal history including two prior convictions in Missouri for second-degree burglary. He argued that these did not qualify as violent felonies under the ACCA because they did not “involve conduct that presented a serious or potential risk of physical injury to another.” But the Court held that Taylor’s prior convictions did qualify, finding that the broadest definition of burglary must be used because of wide variation in definitions among the individual states. Generically, burglary is any crime whose basic elements are the unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime -- a standard included in all state statutes. The Court ruled that by specifically stating in the new federal statute that burglary was violent, Congress meant to regard all burglaries committed in the states as also violent and not simply refer to the subset of burglaries in which the offender’s actual violent conduct or possession of a weapon increased the risk of physical injury (*Taylor v. United States*, 1990).

Seventeen years later, in April of 2007, the Court revisited the question of whether burglary is a violent crime. In *James v. United States* (2007), James argued that his prior convictions for *attempted* burglary did not qualify as violent crimes and should not have triggered an enhancement of his sentence. The Court found that while James’s previous Florida convictions for attempted burglary did not meet the generic definition of burglary explicated in

Taylor, attempted burglary did satisfy the ACCA’s provision for crimes that “otherwise involve conduct that presents a serious potential risk of physical injury to another” (ACCA, 18 U.S.C.S. § 924(e)(2)(B)). The Court went on to state that attempted burglary, while sustaining the same risks as completed burglary, may indeed pose a risk even greater than that of a completed burglary since many completed burglaries do not involve confrontations, whereas attempted burglaries often do.

In summary, during a tough-on-crime era, burglary was presumed to be a violent crime under all circumstances. Arguably, this resulted in overcriminalization and/or excessive punishment for convicted offenders. Empirical descriptive research affords a careful consideration of the various factors that comprise the crime of burglary, and the law can take account of them. Drawing the distinction between a violent burglary and a non-violent one is not simple and determining how a statute would make this distinction would be a task for lawmakers. A look at how states have drawn the distinction in their laws may help. Also instructive is the *MPC* and a *MPC* proposal currently under discussion.

Content Analysis of State Burglary and Habitual Offender Statutes

This content analysis of state burglary and habitual offender statutes answers the final two research questions:

6. *How do the federal law and state laws define burglary (grades and elements)?*
7. *Does statutory law comport with empirical observations of what the typical characteristics of acts of burglary are?*

This section begins with a discussion of methodology, then presents the results of the content analysis of statutes nationwide.

Methods

The content analysis is based on a search of the criminal codes of all fifty states and the District of Columbia local statute, as well as federal statutes, using *Lexis Nexis*.¹⁹ Because the U.S. Supreme Court cases *Taylor v. United States* (1990) and *James v. United States* (2007) approved of using burglary convictions from the states to enhance punishment severity under recidivist statutes, we also searched for each jurisdiction's habitual offender laws.²⁰

Once identified, the burglary and habitual offender statutes were categorized according to the various elements they included, producing a comprehensive listing of each type of statute and variations by state. For instance, definitions of key terms used in the statutes, e.g., what type of structure is eligible for being counted as a target of burglary, or how serious the crime committed once inside the structure must be, vary among the states. Once all the statutes had been identified and compiled, they were coded according to the following variables:

- Burglary statutes were coded for state, statute number, and the elements that constitute the offense. Variations in how severe one offense is regarded compared to another is presented using the following schema:
 - What constitutes the offense of burglary?
 - Act
 - Intent

¹⁹ The search for burglary statutes was conducted November 5th through 7th, 2010, using the search terms "burglary", "breaking and entering", and "home invasion", in addition to searches of the respective codes' table of contents.

²⁰ The search for habitual offender statutes was conducted April 29th through May 1st 2011, using the search terms "habitual offender", "repeat offender", "career offender", "persistent offender", in addition searching each states' criminal code's table of contents. Also at issue in habitual offender statutes was whether the recidivism had to be "serious, dangerous, or violent" in order to qualify as a punishment enhancer. Most often, one or more of these words were used in the respective habitual offender statutes, but in instances where they were not, additional searches were conducted using the keywords "crime of violence", and "serious felony", along with searches of the tables of contents of the sentencing codes.

- What elements alter the severity of the offense?
 - Grade (severity of offense in comparison to all other crimes)
 - Degree (severity of offense the offender intended to commit once inside the structure)
 - Dwelling/Occupancy (whether the targeted structure must be a dwelling to constitute an element of burglary and its occupancy status)
 - Time of Day
 - Injury (did offender injure or attempt to injure anyone?)
 - Weapons (did offender threaten, become armed, was armed, or use any weapons -- classified as dangerous, deadly, or explosive?)
- Habitual offender statutes were coded for the following information:
 - Does the state have a statute regarding repeat or habitual offenders?
 - Is the offense of burglary included under this statute?
 - What types (severity levels) of burglary are included?
 - To be included for purposes of tolling an habitual offender statute, does the burglary type have to be regarded as aggravated?
 - How are “aggravated” burglaries designated? (where “aggravated” is defined as “serious,” or “dangerous” or “violent”)
 - What is the federal definition of burglary and what federal habitual offender statute may apply?

Results

Defining burglary. A crime is comprised of an action in conjunction with the offender’s mental intent to commit the action.²¹ Also known as burglary, breaking and entering, entering without breaking, housebreaking and in some jurisdictions home invasion, there is a good deal of consensus among the states in how they define the act of burglary. Looking first at the “physical presence and intent” elements (Table 8), it becomes apparent that in half the states (N=25), simply entering or remaining in a structure satisfied the behavioral requirement of burglary. Thirteen states (N=13) add that the actor must have entered or remained in the structure unlawfully, while an additional ten states (N=10) required the actor to have entered, and/or entered and remained, both unlawfully and knowing that this act was unlawful.

Table. 8
Physical Presence and Intent Elements of Burglary Statutes

<i>Act</i>	<i>f</i>	<i>States</i>
<i>Enter/Remain</i>	25	CT DC FL ID IN MD MA MI MS NV NH NJ NC ND OH OK PA RI SC SD TN TX VA WV WI
<i>Unlawfully Enter/Remain</i>	13	AK AZ AR GA HI LA MN MT NM OR UT WA WY
<i>Knowingly and Unlawfully Enter/Remain</i>	10	CO DE IL IA KS KY ME MO NY VT
<i>Knowingly Enter/Remain</i>	3	AL CA NE
<i>Total</i>	51	

Regarding the element of intent in burglary statutes (Table 9), in over half of the states (N=27), the requirement is met when the actor entered or remained with the intent to commit *any* crime once inside. Seventeen states (N=17) narrow the applicable offenses by requiring that the actor intended to commit either a theft or a felony after entering.

²¹ This is the classic statement of *actus reus* and *mens rea*.

Table. 9
Intent Elements of Burglary Statutes

<i>Intent</i>	<i>f</i>	<i>State</i>
<i>To commit any crime</i>	27	AL AK CO CT DE DC FL HI KY ME MN MS MO MT NH NJ NY ND OH OK OR PA RI SC SD WA WV
<i>To commit a felony or theft larceny</i>	17	AZ CA GA ID IL KS LA NE NV NM TN TX UT VT VA WI WY
<i>To commit any felony</i>	5	AR IN IA MA MI
<i>To commit theft/larceny</i>	2	MD NC
<i>Total</i>	51	

Breadth of statutory classifications. Combining the behavioral and intent elements of the various definitions of burglary, it is apparent that, generally, the most basic or simple burglary occurs when the actor *enters or remains in a structure with the intent to commit any crime therein*. This general definition of the offense then varies among the states depending on what additional elements the state may add. In discussing the content of the provisions of burglary laws in all the states, one way to present the wide variety of provisions is to ask the reader to conceptualize the population of potential offenders who might be classified as burglars and then imagine narrowing that population by adding additional factors which must be proven in order for the act to constitute a burglary. Thus, the broadest definition, as stated here, would be narrowed by adding factors such as “the crime committed must be a felony” or “the structure must be occupied.” In the content analysis presented below, we have arranged the laws of each state on a rough scale of “broadest to narrowest” depending on factors listed in the laws.

Grades of burglary. Three states (Georgia, Idaho, and Nebraska) recognize only simple non-violent burglary in their criminal codes, while the remaining forty-seven states and the District of Columbia (N=48) use additional elements to differentiate between non-violent

(simple) and serious (aggravated by some type of violence or risk factor) burglary. Factors which could render the act “aggravated” include the type of the structure, whether it was occupied, the presence of a weapon, and injury to a victim.

The criteria most often used to differentiate simple from aggravated burglary is the type of target structure and whether it was occupied (Table 10). Specifically, whether the structure must be a dwelling/residence -- a “dwelling” being any structure traditionally or actually used for lodging -- is the first narrowing element. In the majority of states (N=34) burglary of a non-dwelling, whether occupied or not, constitutes simple burglary, while entering a dwelling (again, whether occupied or not,) increases the severity of the offense from simple to aggravated.

In contrast, the states of Kansas and Missouri (N=2), limit simple burglary to non-occupied structures and aggravated burglary to occupied structures whether dwellings or other buildings. Other states (N=6) use varied combinations of structure type and occupancy to differentiate simple and aggravated burglaries. Finally, six states (N=6) do not use structure type/occupancy to discern burglary type at all, instead regarding elements of violence that increase the risk of injury or potential injury to victims as the aggravating factor no matter the structure type or its occupancy status.

Table. 10
Simple and Aggravated Burglary by Type of Structure/Occupancy

<i>Structure Type/ Occupancy</i>	<i>Burglary Type</i>	
	<i>Simple</i>	<i>Aggravated</i>
<i>Any Type of Structure</i>	8 GA ID NE NV NJ OH VA WY	5 NV NJ OH VA WY
<i>Any Non-Dwelling</i>	34 AL AK AZ AR CO CT DE DC HI IL IN KY ME MD MA MI MN MS NH NM NY NC ND OK OR PA RI SC TN TX UT WA WV WI	
<i>Any Dwelling</i>		34 AL AK AZ AR CO CT DE DC HI IL IN KY ME MD MA MI MN MS NH NM NY NC ND OK OR PA RI SC TN TX UT WA WV WI
<i>Any Non-Occupied Structure</i>	1 KS MO	
<i>Any Occupied Structure</i>	1 MT	3 KS MO MT
<i>Non-Occupied Non- Dwelling</i>	1 FL	
<i>Any Non-Dwelling or Non-Occupied Dwelling</i>	2 CA VT	
<i>Any Non-Occupied Dwelling</i>	3 IA LA SD	
<i>Any Occupied Dwelling</i>		5 CA IA LA SD VT
<i>Any Dwelling or Occupied Non- Dwelling</i>		1 FL
<i>Total</i>	51	48

The clearest divider between simple and aggravated burglary, however, is not between type of structure or its occupancy status, but whether physical violence occurred or was threatened. In no state or in the District of Columbia does simple burglary include an element of violence, while all but thirteen states include one or more elements of violence in their aggravated burglary statutes. Among state statutes providing for an aggravated severity level if the burglary was violent, definitions of what constitutes violence vary (Table 11). In many states, the presence of a dangerous and/or deadly weapon -- whether the actor was actually armed (N=28), or simply threatened its use (N=6) -- elevated the offense to aggravated burglary. In seventeen states possessing explosives at the time of the offense also increased the severity from simple to aggravated. In 11 states, causing injury to another through any means increased the severity of burglary, while twenty (N=20) widen the number of cases to be regarded as severe by including the attempted injury of another as well as an actual injury as the divider between simple and aggravated burglary. Harkening back to the common law definition of burglary, three states increase the severity of the offense when it occurs at night. Finally, three states utilize the offender intent to increase the severity of burglary. In Maryland offense severity increases when the offender intends to commit a felony, while Texas elevates the offense when the offender seeks to commit an assaultive offense instead of simply theft. Lastly, Virginia increases the severity of burglary when the offenders' objective is to commit either murder or rape.

Table. 11
Element of Violence that Increases Burglary from Simple to Aggravated by State and Element

<i>Elements</i>	<i>States</i>
<i>Weapons</i>	
<i>Threaten use of Dangerous or Deadly Weapon</i>	6 AR KY NY OR SC UT
<i>Armed or become Armed with Dangerous or Deadly Weapon</i>	28 AL AK AZ CO CT DE FL HI IN IA LA ME MA MI MN MO MT NV NH NJ NM ND OH SD VA WA WI WY
<i>Explosives</i>	
<i>Possession of Explosives</i>	17 AL AZ CO CT DE FL KY MI MN MO MT NH NJ NY ND UT WI
<i>Injury</i>	
<i>Attempted Injury to Another</i>	20 AK AR CO CT FL HI LA ME MA MN MO MT NJ NM ND OH OR SD WI WY
<i>Injury to Another</i>	11 AL DE IN IA KY NH NY SC TN UT WA
<i>Time of Day</i>	
<i>Night</i>	4 ND NH SC VA
<i>Intent</i>	
<i>Any Crime to Felony</i>	1 MD
<i>Theft to Assault</i>	1 TX
<i>Felony to Murder or Rape</i>	1 VA

Seventeen states classify at least one type of burglary as a serious (N=4), dangerous (N=1), or violent (N=12) offense (Table 12). While the majority of states reserve these classifications for aggravated types of burglary that occur in dwellings and/or involve injury to a victim and/or involve weapons, three states - California, North Carolina, and Pennsylvania - apply these classifications to aggravated burglaries based not on injury or the presence of a weapon but solely on structure type/occupancy. California classifies first-degree burglary

(defined as targeting an occupied dwelling) as a serious offense, while North Carolina and Pennsylvania classify first-degree burglary (again, an occupied dwelling as the target) as a violent offense even in the absence of any reported violence or weapons.

Table. 12
Classification of Burglary as Serious, Dangerous or Violent

<i>Classification</i>	<i>Aggravating Factor(s)</i>	<i>States</i>
<i>Serious</i>	Occupied Dwelling	CA
	Dwelling, Weapon, Injury	SC
	Weapon, Injury	AZ WI
<i>Dangerous</i>	Dwelling, Weapon, Injury	CT
<i>Violent</i>	Occupied Dwelling	NC PA
	Dwelling, Weapon, Injury	AZ AR MN UT
	Occupied, Weapon, Injury	CO LA SD
	Weapon, Injury	NJ WY
	Dwelling, Injury	TN

When is burglary regarded as a serious enough to include in habitual offender statutes?

Forty-six states have statutes outlining a system of increased penalties for recidivists, of which forty-five specifically state that burglary is eligible for counting as an “habitual offense.” In forty states, all felonies and therefore all types of burglary are included under the habitual offender statute, while of the remaining states, only four, state that only aggravated types of burglary will count for application of a habitual offender law. (Table 13).

Finally, note that the federal jurisdiction was not presented on these tables. This is because there is no federal statute specifically defining the crime of burglary. Instead, federal prosecutors in each state are directed to apply the definition of burglary in use under the statute of the state in which the federal crime was committed.²² Thus, the degree to which state statutes are broad or narrow in applying various elements of the crime to the question of whether a

²² Burglary of a federally-regulated bank, for instance, might be a “federal” burglary, and all burglaries on Native American reservations are included.

burglary was “aggravated” will determine how broadly the federal courts will also apply burglary law. Evidently, this arrangement introduces some element of prosecutorial disparity linked to geography in the federal system.

At the federal level there are two habitual offender statutes: the Armed Career Criminal Act (18 U.S.C. § 924(e)), which counts any burglary conviction achieved using reference to any of the state laws as “armed” for purposes of counting prior offenses, and the career offender provisions of the US Sentencing Guidelines (USSC, 2013, §4B1.1), which count any burglary of a residence as a crime of violence using statutory language almost identical to that of the ACCA.

Table 13
Inclusion of Burglary in State Habitual Offender Statutes
States with Career/Habitual Offender Statute

	f	States
<i>Yes</i>	46	AL AK AZ AR CA CO CT DE DC FL GA HI ID IN IA KS KY LA MD MA MI MN MS MO MT NE NV NH NJ NM NY NC ND OK PA RI SC SD TN TX UT VT WA WV WI WY
<i>No</i>	5	IL ME OH OR VA
<i>Total</i>	51	

Types of Burglary Included Under Career/Habitual Offender Statute

<i>All</i>	41	AL AK AZ AR CA DC FL GA HI ID IN IA KY LA MD MA MI MN MS MO MT NE NV NH NJ NM NY NC ND OK PA RI SC SD TX UT VT WA WV WI WY
<i>Aggravated Only</i>	4	CO CT DE TN
<i>None</i>	1	KS
<i>Total</i>	46 ^a	

^a The states of IL ME OH OR VA do not have habitual offender statutes

Discussion

Is burglary a crime of violence? In short: no. Except in a small minority of cases, burglary is not a violent offense. The majority of burglaries occur when human victims are not even present, roughly 74%. Burglars go to great lengths to learn the patterns of their victims, ostensibly to avoid them (Bennet & Wright, 1984; Wright & Decker, 1994). This study as well as past empirical research (Catalano, 2010; Rand, 1985) support these findings. Although NIBRS and NCVS estimates of violence in burglaries as analyzed here vary somewhat, all the databases indicate a low incidence of violence occurring during burglaries (between .9% and 7.6% on average). Disaggregating the NCVS estimate, 2.7% of incidents resulted in actual violence as indicated by injury to a victim, while offenders threatened violence in 4.9% of incidents, but no injuries resulted.

As the lyrics of the old Beatles song explain about the mindset of most burglars: “she could steal but she could not rob.”²³ Nevertheless, the offender “came in through the bathroom window,” as the song says, and many victims will feel violated. They will very seldom be physically harmed, though, and to regard burglary as a violent crime – especially when separate charges for the violent acts are prosecuted in addition to the burglary charge – is to inflate the severity of this offense.

To say that burglary is seldom a crime of violence is not to denigrate the experience of burglary victimization. Lawmakers often state that burglary of a dwelling may render a victim fearful because an offender had been in personal space and crossed a psychological line of privacy and intimacy by manhandling personal possessions in the victim’s home, whether the

²³ John Lennon and Paul McCartney, “She Came In Through the Bathroom Window,” © Sony/ATV Music Publishing LLC, EMI Music Publishing.

victim was physically present or not. But not all victims respond in this way; a great many regard the offense as quite unfortunate in property loss terms and unsettling because they wonder why the burglar chose them for a target. But they are not necessarily fearful or vengeful. The law can take account of the victim's perception of violation without regarding the offense as violent. If the offender is apprehended, the recommended approach to victims' psychological concerns is for victim advocates to "put a face" on the offender for the victim. That is, victims are often reassured when they learn who the offender is, why they committed the crime, why they chose that target, and to know that they will not be able to return. Considering that in approximately 40% of these cases, it turns out that the victim was personally acquainted with the offender in some way, this approach is more helpful to victims than simply assuring them that punishment will be severe.

"Offense severity inflation" is apparent in the content analysis of state burglary statutes. State laws generally differentiate between two types of burglary: simple and aggravated. Universally, simple burglary is, empirically, a non-violent offense, while aggravated burglaries involve physical violence or threats of violence. Despite the fact that 3/4 of burglaries involve unoccupied buildings, these simple burglaries are included in state statutes as serious felonies. In the 1/4 of burglaries involving occupied buildings, the likelihood of violence is very small -- and if physical violence occurs, additional crimes of violence are also prosecuted and criminal charges for possessing and/or using a weapon are also added on, if applicable. For example, in an incident where an offender enters a structure, commits theft, encounters a victim, and causes injury that results in four days hospitalization, the offender is charged not only with burglary (for entering with intent to commit felony), but also robbery (for the theft and causing fear and/or injury), and aggravated assault (for the extent of injury to the victim). Additionally, the burglary

charge is elevated from simple to aggravated in the majority of states because a victim was injured, further increasing punishment. In this chain of events, the fact of injury to the victim is counted twice; it elevates the burglary charge to a more severe felony and provides the basis for an additional yet more severe charge (robbery). Some might also argue that the violent act is triple-counted because of the charge relating to the extent of injury suffered (aggravated assault). Victims of those crimes thus see that punishment is severe for those offenders who have actually engaged in violent acts or who clearly were willing to do so, as evidenced by possession of a deadly weapon. Regarding simple burglary as a property crime, but regarding burglaries in which violence occurred as serious violent crimes, takes account of the experiences of victimization without inflating the entire scale of offense severity.

The small subset of burglary cases in which violence actually occurred or was threatened are important and, if punished as violent crimes, would not over-criminalize the offense because they would be regarded essentially as what they are: assaults, rapes, and aggravated assaults, in addition to burglaries. This study finds that, among the 50 states' and the District of Columbia's laws, three factors elevate simple burglary to aggravated burglary: occurs in a residence (whether occupied or not), attempted or actual injury to a victim, and the offender being or becoming armed with a dangerous or deadly weapon. Exploring these aggravating circumstances can help legislators and analysts better understand the logic behind the perception that burglary is a violent crime even though empirical observation suggests otherwise.

Residences Versus Occupied

Logically, for violence to occur during a burglary, victim and offender must come together at the same time, in the same place. It follows that this is more likely to occur in some

places, and that burglary of these places therefore poses more risk. Legislatures provide increased penalties for burglaries that in their opinion pose increased risk of contact between victim and offender, apparently in agreement with the common law understanding that residences are where people are most likely to be and to become victimized. The majority of state legislatures provide increased penalties for any burglary of a residence. Yet, if less than 1.2% of all residential burglaries result in actual violence or threats of violence, as this study demonstrates, the question arises: should the fact that the target was in residence justify an increase in punishment, considering that residential burglaries almost never involve violence? Arguably, increased punishments should be levied for what an offender has in fact done, not what it is feared they could have done – risk of violence is not actually violence, and in any case this study demonstrates that the risk is in fact extremely low. Furthermore, the status of “domicile” as a place deserving special protection might be an atavistic remnant of common law concerns about homes being “castles.” People in commercial buildings can experience burglary victimization as well as those in homes, and are surely no less deserving of protection.

In contrast, a few states sensibly impose increased punishments only if the burglary occurred in an occupied versus a non-occupied structure, whether a residence or not. While violence can and does occur in both residences and non-residences, a structure must be occupied and therefore a victim present for violence to occur or be threatened. Our analysis found that 29% of burglaries of occupied structures involved actual violence or threatened violence to the human victim. However, the large number of burglaries in which the target building was occupied, but in which no violence was threatened or occurred (about 18% of the total number of burglaries) constitute the “grey area” which often inflates burglary severity due to victims’ feelings of violation even if no violence occurred. Legislators can concentrate on only this group

of cases and consult their state’s sentencing laws, asking: do victim compensation requirements specifically attend to victims’ perceptions of fear after being burglarized, and is counseling required? Will restorative measures be helpful?²⁴ In states with sentencing guidelines, might the burglary cases in which offender and victim actually met, but in which violence did not occur, trigger application of a “vulnerable victim” enhancement? Such legislative and program approaches are possible without elevating simple burglary to aggravated burglary simply because a target building was occupied. Thus, it seems that the actual or threatened use of violence, regardless of the status of the target building, should be the only defining factor that lifts a simple burglary into the “aggravated” category.

Weapons and Injury

Unlike the “buildings as victims” aggravating factor, surely the presence of a weapon whether in a house or a warehouse increases the risk of victim injury. Legislatures elevate burglary from simple to aggravated when an offender is armed with a deadly or dangerous weapon or attempts or actually injures a victim. In these, the offender has committed and is charged not only with aggravated burglary but an additional more severe violent offense (such as robbery or sexual assault). The present study’s measure of the incidence of violence that occurs in burglaries, it turned out, is fundamentally a measure of the co-occurrence of burglary and these more severe violent offenses.

In that quite small subset of burglaries in which violence does in fact occur, the harm can be extreme. Homicides, rapes, and assaults do sometimes co-occur with burglaries, and it is perhaps the popular overestimation of the frequency of these terrible events that causes burglary

²⁴ Administrators of restorative justice programs report that victims often report lower fear levels after communicating with the offender and realizing that they will not be victimized again.

to be erroneously regarded as a violent crime. Yet the acts are conceptually quite distinct: a burglary is unlawful entry into a domicile or commercial building with intent to commit a crime, and whatever criminal act may in fact eventually be committed is a separate crime.

Legally, state and federal statutes universally make this distinction, but the degree to which they increase the severity levels of the crime of burglary when violence does co-occur or when burglary itself is habitually repeated varies significantly among the jurisdictions. Perhaps one way to summarize these variations is to begin with reference to the *MPC* definition of the crime and the severity levels the *MPC* assigns to it. Recall that, under the *MPC*, the crime of burglary alone, without any indication of violence, is a level-three crime. But if the offender is armed while committing it, or if a violent act occurs, the level increases to level-two and the crime of violence (and/or the use of a weapon) is charged separately in addition to the burglary. Thus, it is possible to say that the violent act is doubly prosecuted: it increased the level of severity at which the underlying burglary is charged, and it triggers a separate criminal charge in addition to the burglary charge. It is this “double charging” that serves to inflate the seriousness of punishment.

But the *MPC* does indeed recognize that burglary is seldom violent by providing that simple burglary alone (without any aggravating factor) is ranked at a level of severity with other property crimes, not violent crimes. States with laws roughly in line with the *MPC* can examine whether they are over-criminalizing the offense of burglary by narrowly defining simple burglary (for instance, unlawfully breaking and entering into an occupied building with the intent to commit a crime there) and ranking this simple burglary on a scale equivalent to property crimes. Of course, if any actual violence (or threats of violence, or possession of a weapon likely to be

used violently) occurs, a separate crime of violence would be charged and upon conviction the punishment would be severe in accord with punishment for that violent crime.

The existing *MPC* has three levels of severity for felony crimes. A proposed revision would expand that number to five. Such a scheme would apply well when matching the empirical findings, above, to appropriately proportional gradations of burglary types.

Finally, note that inflation of the severity level ascribed to burglary is quite evident in statutes which count simple burglaries as violent crimes for purposes of applying habitual offender statutes. The federal law is the most extreme example. Under the ACCA, all burglaries attempted or completed are classified as violent felonies and counted as predicate offenses under a "three strikes" -type sentencing enhancement. The content analysis of state habitual offender statutes found that the overwhelming majority of states include completed burglary of a residence and more severe types of burglary under their habitual offender statutes, with some also classifying simple burglary as a violent offense.

The present research and previous literature question both of these classifications, demonstrating that over 97.3% of burglaries that occurred between 1998 and 2007 did not result in actual violence. The goal of the ACCA was to expand federal sentencing law to capture violent offenders that legislators felt had gone un-punished, but the law covers non-violent burglars as well.

Conclusion

We conclude that current statutes do not comport with empirical descriptions of the characteristics of burglaries. Matching each state's statutes to the updated empirical findings, of

course, requires judgment calls as to how influential these descriptions will be in affecting legal reform, if any. That is not a task for researchers, but for state lawmakers.

Reform of the federal ACCA might prove to be quite simple. All attempted and completed burglaries were included and classified as violent felonies under the Act, as a result of the U.S. Supreme Court interpreting Congressional intent in passing the Act (see discussion of *Taylor* and *James*, above.) A very simple amendment would make a big difference: removing the word "burglary" from 18 U.S.C § 924(e)(2)(B)(ii) could definitively signal that the Congressional intent is *not* to regard the crime as violent. Similarly, the career offender provisions of the US Sentencing Guidelines could be amended, removing "burglary of a dwelling" from §4B1.2.(a)(2). These basic alterations would remove non-violent offenders from the reach of the ACCA and career offender guidelines, while the statute's enhancements would continue to be applied to violent burglars through subsection (i), and (1) of the Act.

At the federal level, statutory reform would be conceptually simple: amend the Sentencing Guidelines so that all burglaries are punished at the offense score level of a non-violent felony (approximately 7 – 10 points). Of course, this would not preclude judges from adding additional sentencing enhancement points for each proven factor involving violence (presence or use of a weapon, vulnerability of the victim, threats, etc.) as is regularly the practice in federal sentencing, and these additional points would raise the seriousness level to that of other violent felonies (for instance, robbery at a base offense score level of 20).

The great majority of burglaries, however, occur in the states. Should state lawmakers choose to reform burglary statutes, a sensible starting place is the classification and punishment of offenses based on an empirical understanding of their actual circumstances. Simple burglaries

very seldom involve violence, and when violence does indeed occur, separate criminal charges for those acts are added onto the burglary charges. These are the findings from statistical descriptors and state statutes, but their actual impact in application is a matter for legislators to consider.

State statutes could be reviewed for over-criminalization. A potential model for state statutory reform utilizes the *MPC* as a starting point. The *MPC* regards burglary as a third-degree felony on a level with serious property crimes. But if any violence or threats occur, the severity level is raised to second-degree felony. The *MPC* also raises the severity level if the crime occurred in a residence at night – two elements that are both necessary to prove the higher level of seriousness, which is roughly in accord with the minority of states that regard burglary as “aggravated” if committed under those two circumstances. The *MPC* does “double count” acts of violence, though, because violence not only raises the severity level from third to second degree, the act of violence is also charged as a separate crime that is added to the burglary charge.

If burglary is truly to be regarded as a property crime unless violence is involved, all burglaries would be categorized as third-degree felonies. Any acts of violence, in the minority of cases in which they actually occur, would be charged and prosecuted as separate crimes in addition to the burglary charge. This suggested statutory model is the strictest in terms of holding burglary to a property crime model and reducing the number of offenders categorized as violent.

One concern with this simple model is that prosecutors state that they need discretion in obtaining guilty pleas. If all burglaries are third-degree felonies, which are the lowest degree of

felony seriousness, there is no lesser-included charge to “plead down to.” Most states have “breaking and entering” laws (B&E) which is a lesser-included crime under burglary.²⁵ But B&E crimes are usually regarded as property crimes at a felony level. If all burglaries are charged at the third-degree level, which is the lowest of felony crime, any guilty plea to B&E would be to a first-degree misdemeanor. Prosecutors resist such a statutory change because they prefer a felony conviction. State legislators should debate whether B&E should be a misdemeanor of the first degree and burglary a felony of the third degree.

A proposal that takes account of the prosecutors’ objections is the current *MPC* preliminary draft of felony scale reforms. The current *MPC* provides three levels of felony seriousness. In the current model, burglary is at the lowest level, the third, unless the crime involved violence or was committed in a home at night. The preliminary proposal to change the *MPC* felony grades, which is being discussed among the American Law Institute members now, is that felonies will have five levels of seriousness rather than three. If this model were adopted, all burglaries could be charged at the level of a third-degree felony (with perhaps “aggravated” factors raising the severity level to second-degree) but could be dropped to B&E at the fourth-degree felony level. States vary widely in the number of felony categories provided in their criminal codes. Legislatures in each state could consider whether their current codes fit the *MPC* recommendations. But the starting point would be that all burglaries would be categorized on a severity scale as non-violent, with any acts of violence charged and added to the case separately.

A second model for potential state statutory reform, consistent with our empirical findings, follows the example of the minority of states which grade burglaries by a building’s occupancy

²⁵ The elements of breaking and entering are identical except there is no requirement of proof that the defendant intended to commit a crime inside the building

status and/or structure type (residential). This model is broader, regarding some burglaries as inherently violent and permitting “double counting” by aggravating the severity level and also charging the violent act as a separate crime. A state which adopts it will incarcerate more burglars for longer periods of time than a state which adopts the “burglary is a property crime” standard set out above.

Recall that violence or threats of it occurred in only 1.2% of residential burglaries overall, but when the home was occupied, 29% of the cases in this subset included violence or threats. Furthermore, residential burglaries are more likely to end in violence than are burglaries in non-residential buildings, though violence can and does occur in either structure type. Perhaps the critical point is that the building was occupied, not whether it was a home or not; by contrast, some commentators insist that the common law “home as castle” doctrine still describes how victims perceive burglary today, i.e. as a special violation of privacy if against one’s home. The content analysis of state statutes shows that the majority of states (34) raise the severity level of a burglary if it involved a dwelling.²⁶ Five others narrow this exception to the general rule that burglary is regarded as a property crime, by requiring that the dwelling must have been occupied at the time of the burglary act. These states have provided in their laws for the unusual circumstances in which violence actually occurs in burglaries, and they allow prosecutors to “double-punish” by charging the burglary of a dwelling as a second-degree felony akin to a violent felony and also charge the separate violent crime (e.g., having a weapon, assault on a homeowner, rape of an occupant)

²⁶Only 5 states allow aggravation of the severity level for “any type of structure,” and only 3 aggravate the severity for “any occupied structure.” These minority stances are not consistent with a goal of requiring burglary to be regarded as a property crime, which is the policy outcome indicated by both our statistical analysis and the statutory content analysis. Therefore, the minority approaches are not included in this discussion of potential policy outcomes. The policy question here is whether a statute should hold all burglaries, even those committed in homes, in the severity level of property crime, or whether the statute should regard almost all burglaries as property crimes with the exception of those committed in homes – or, as a narrower exception, in occupied homes.

The statistical findings presented in this report clearly indicate that the preferred policy outcome is to regard burglary as a property crime. The first option, presented above, is to regard all burglaries at that level of felony severity and charge any violent acts separately in addition to the burglary. However, the statutory content analysis presented in this report also indicates that a majority of states regard burglary against a residence as a felony of higher seriousness than a property crime. Taken together, the statistical analysis and the content analysis produce the policy prescription that burglary should be charged as a felony crime against property unless it was committed in a home occupied at the time of the breaking and entering. This standard takes account of the special fear victims experience when their private homes are targeted, whether violence occurred or not. It also takes account of the potential for violence to which many legislators refer when considering whether to categorize all burglaries as property crimes.

A victim must be present in a building of any type for violence to occur or be threatened, making a structure's occupancy status a better indicator of increased risk of violence than structure type is. Using this approach, burglary of an unoccupied structure would be a third-degree felony on the level of serious property crimes. The offense would increase to a second-degree felony only if it was perpetrated against an occupied structure, specifically a home. To eliminate double counting, the presence of a weapon or injury to a victim – which constitute separate, more serious actually violent offenses – would not elevate the severity of the burglary itself. In the small portion of cases in which burglary co-occurs with a violent crime, offenders would be charged with the appropriate degree of burglary (based upon occupancy status), and also the violent offense they committed after entering the structure.

A model burglary statute taking account of the findings in this report, and using the proposed five-category scale in the preliminary draft of a revised *MPC*, would read:

Breaking and Entering.

Grading. Breaking and entering is a felony of the fourth degree if the actor:
Enters a building without lawful reason to be there,
By force.

Burglary.

Grading. Burglary is a felony of the third degree if the actor:
Enters a building without lawful reason to be there,
By force,
With intent to commit a crime therein.

Aggravated Burglary.

Grading. Aggravated burglary is a felony of the second degree if the actor:
Enters an occupied home without lawful reason to be there,
By force,
With intent to commit a crime therein.

Possible narrowing: Common law required that the burglary against the home occurred at night.

Note: If the actor is armed with any deadly weapon, or if any crime actually is committed in the home, additional separate crimes will be charged for those acts.

Legislative changes such as this model statute would match the punishment more closely to the actual crime. They would also have the effect of reducing prison populations as the modal felons served shorter sentences. But burglaries which involved acts or threats of violence would always be treated very seriously indeed.

The research reported here demonstrates how important it is to differentiate between property crimes and violent crimes not only to prevent over-criminalization, but to address public and victims' concerns carefully and fairly. By regarding burglary as a crime against property unless violence was actually involved, these concerns are met. And by not including burglary in the group of offenses to which sentencing enhancements for violent offenses will attach – unless

actual violence or weapons-carrying indeed occurred in addition to the burglary – over-punishment is also avoided. The policy implications of reforming the laws of burglary are powerful: public concerns to punish violent offenders would still be addressed, victims frightened in the sanctity of their homes will receive special attention, but offenders who have committed crimes against property will not serve long, expensive prison terms.

Reforms will not be quick, since the state laws vary widely and state legislatures may be reluctant to spend time reforming their laws on such a mundane-sounding topic as burglary. However, it is its very ordinariness – the modal crime – that presents to legislators a non-controversial way of reviewing current prison population levels and considering whether a different approach would be useful.

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