

Burglary

Breaking and Entering • Residential Burglary Commercial Burglary • Felony Strike

Burglary

The definition of burglary varies according to where you live, but in most states, it is a **felony**. Generally speaking, burglary is the act of **entering into a building with the intention of stealing property or committing another felony**. A burglary conviction can result in incarceration, significant fines, and a permanent criminal record.

California Burglary Law

Under California law (Penal Code Section 459), entering into a building with the intent to commit a theft or some other felony is classified as **Burglary**. **First Degree Burglary** is often referred to as **Residential Burglary**. First Degree burglary includes a home, attached garage, boat, floating home, trailer, railroad car, aircraft, warehouse or the inhabited portion of a building. The theft or other felony does not have to be actually committed; only the entry with **intent** to commit the theft or the felony has to be proved. First Degree Burglary is considered a **serious** felony and a **“Strike”** in California. All other burglaries of cars and businesses are classified as **Second Degree Burglary**. These auto or commercial burglaries of a store or auto are charged as **misdemeanors** but can be charged as a **felony**. **Second Degree Burglary** is often charged in connection with shoplifting charges. Second Degree Commercial Burglary can be charged if a shoplifter is caught with scissors or some cutting tool used to remove price tags.

Burglary Penalties

- **First Degree Burglary** is punishable by 2, 4 or 6 years in a state prison except in very unusual cases where probation and county jail are ordered. First Degree Burglary is also a **“Strike”** under California’s **“Three Strikes and You’re Out” Law**. What this means is that if you commit any other felony (including some minor drug offenses and felony petty theft) in the future, your sentence on the new case is **doubled**.
- **Second Degree Burglary** is punishable in county jail or state prison depending on how it is filed.
Second Degree Burglary is a **wobbler**, meaning that it can be charged as either a misdemeanor or a felony. If it is a misdemeanor then the maximum sentence is a year in county jail. If filed as a felony then the maximum sentence is 3 years in state prison. However, Second Degree Burglary is not a **“Strike”** under California law.

Defending Burglary Charges

- The key to burglary is **intent** of the person entering the residence or other occupied structure. If the person intends to steal or commit a felony when entering, then burglary has occurred. The prosecutor does not have to prove that the theft or felony occurred; only that it was intended at entry. Proving intent may be tricky especially if the theft or felony was not committed. If the requisite intent cannot be proved then the Defense has a chance of defeating the charges.
- Another common defense to burglary is that the accused had a legitimate reason for being on the premises in the past. If fingerprints were lifted at the crime scene then the prints could be explained by a previous visit to the location.
- The defense of mistaken identity could be raised in certain cases. Having a strong and believable alibi would be critical in this situation. Any home or store surveillance videos could help validate the defendant's alibi.

Experienced and Aggressive Attorney

Burglary charges are serious and an experienced and skilled criminal defense lawyer should be consulted. The Law Offices of Jerry Nicholson, APC, has extensive experience in successfully defending those accused of first and second degree burglaries. We understand the laws and procedures required to defend those accused of burglary. We advocate zealously for our clients. We always keep in mind that our most important goal is obtaining the best results for our clients. Jerry Nicholson is an expert criminal trial lawyer and excels at preparing your defense and going to trial to obtain a "Not Guilty" verdict.