

Classification of a Clery Burglary

Burglary: unlawful entry of a structure to commit a felony or a theft.

There are three categories of Clery Burglary.

Forcible Entry: all offenses where force of any kind is used to unlawfully enter a structure for the purpose of committing a theft or felony. Entry using tools; breaking or forcing windows, doors, transoms, or ventilators; cutting screens, walls or roofs, or use of master keys, picks unauthorized keys, includes concealment inside a building following by exiting the structure.

Unlawful Entry-No Force: Entry by use of an unlocked door or window. Include thefts from open garages, open warehouses, open or unlocked dwellings, and open or unlocked common basement areas where entry is someone other than the lawful tenant.

Attempted Forcible Entry: Forcible entry is attempted but not completed.

An incident must meet three conditions to be classified as a Clery Burglary:

1. There must be evidence of {unlawful entry (trespass)-(HAVE THEY BROKEN THE PLANE AND ARE THEY SUPPOSE TO BE IN THE LOCATION)} Both forcible and unlawful entry-no force are included and counted
2. Unlawful entry must occur within a structure, which is defined as having four walls, a roof, and a door.
3. Unlawful entry into a structure must show evidence that the entry was made in order to commit a felony or theft.

FBI clarified that “EVIDENCE” in prongs 1 & 2 above does NOT mean physical evidence. They are the facts of the case as described by the victim and any information obtained from preliminary and follow-up investigations.

Therefore, it's important to look for forced entry and essence of trespass. Ask if the location was locked? Then document the complainant's response and your observations appropriately in your report.

Example verbiage below.

- a. Officer evaluated the door, door jam, locking mechanism, and door portal for any signs of forced entry or tool marks consistent with gaining unlawful access with negative results.
- b. Complainant indicated that the office was left unlocked which occurred during normal business hours of the facility, constituting open access to the area resulting in the classification of this incident as a larceny.

Example Scenarios:

1. NOVA faculty reports that money was taken from her desk while she was out of her office for 15 min. Police investigate and determine that neither of the other two people who have access to the office took the money.

- a. DOE Clery would count this as a Burglary since the faculty office is a structure (four walls, roof, and door) and the investigation clarified only 3 people had lawful access to the office
2. A perpetrator enters into five campus faculty offices without permission on the same night looking to steal money. He takes a wallet from on offices but takes nothing from the other four offices.
 - a. DOE Clery would count this as 5 individual Burglaries.
3. A perpetrator enters into the office suite in CG on the 2nd floor where many are housed in cubicles. He takes items from a few of the desk in the cubicle areas during normal business hours when the campus is considered open.
 - a. DOE Clery would NOT count this as burglary since the cubicles are not structures and the building was open to the public (no trespass)
4. NOVA faculty reports that he left his office and locked the door, he returned to find the office door unlocked and items missing. He left at approximately 1:15pm and returned at 2:17pm to find items missing and the door unsecured. There are no signs of forced entry and it is unknown who entered the room. PD cannot establish whether anyone who had lawful access was in the room or not.
 - a. DOE Clery would want this counted as a Burglary because the victim reported the door was locked and the investigation did not provide any additional details.
5. A faculty member left their office door unlocked and went to use the restroom at 1:00pm and returned at 1:05pm to discover items missing from her desk. The investigation reveals there is no “evidence” of unlawful entry. PD cannot establish whether anyone who had lawful access was in the room or not.
 - a. DOE Clery would classify this as a Larceny
6. A student placed her cell phone in the common area of the library during normal business hours. She felt tired and fell asleep. Upon waking up discovered her cell phone was missing from her book bag.
 - a. DOE Clery would classify this as a Larceny
7. A cleaning staff person reports that various cleaning supplies were stolen from a locked storage closet. There are no leads in the case and PD cannot determine who stole the property.
 - a. DOE Clery would classify this as a Burglary since the Storage room has four walls, roof, and a door.

Possible Examples of Virginia Statues Below:
18.2-121 Entering property of another for purpose of damaging it, etc.
18.2-95 or 18-2.96 Larceny & 18.2.102 Destruction of Property (Vandalism)
18.2-89 Burglary
18.2-90 Entering dwelling house, etc., with intent to commit murder, rape, robbery or arson; penalty.
18.2-91 Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony
18.2-92. Breaking and entering dwelling house with intent to commit other misdemeanor