

One Minute Brief

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TOPIC: Residential Burglary

ISSUE: What evidence will support a charge of residential burglary?

[One Minute Brief 2025-07](#) (July 30, 2025) discussed the proof required to support a charge of first-degree burglary, *person-present*. This One-Minute Brief is intended to be a corollary, reviewing authorities that discuss evidence that may support a charge of a completed residential (first-degree) burglary.

ENTRY MAY BE SLIGHT

First degree burglary occurs when a person enters an inhabited dwelling with the intent to commit a felony. (Pen. Code, §§ 459, 460.) “[A] burglary is complete upon the slightest partial entry of any kind, with the requisite intent.” *People v. Hendrix* (2022) 13 Cal.5th 933, fn. 1 (quoting *People v. Valencia* (2002) 28 Cal.4th 1, 8, disapproved on other grounds in *People v. Yarbrough* (2012) 54 Cal.4th 889, 894.) Entry need not be made by a part of the body; entry may be made by an instrument. *People v. Moore* (1994) 31 Cal.App.4th 489, 491-492.

Pulling back an exterior window screen of a residence, with no penetration of the interior window, constitutes entry within the meaning of residential burglary. *People v. Nible* (1988) 200 Cal.App.3d 838, 843-846. Attempting to open a sliding glass door that was behind a partially open sliding screen door also supports a residential burglary charge. *People v. McEntire* (2016) 247 Cal.App.4th 484, 491-494.

Whenever a private, residential apartment and its balcony are on the second or a higher floor of a building, and the balcony is designed to be entered only from inside the apartment – thus extending the apartment's living space – the balcony is part of the apartment (or condominium unit). The railing of such a balcony marks the apartment's “outer boundary,” any slight crossing of which is an entry for purposes of the burglary statute. *People v. Yarbrough* (2012) 54 Cal.4th 889, 894-895.

Entry occurs for purposes of residential burglary when a person inserts a tire iron between a screen and a door, thus violating the airspace between the two. *People v. Moore* (1994) 31 Cal.App.4th 489, 492. Kicking in the door of a residence also satisfies the entry element of a residential burglary charge. *People v. Calderon* (2007) 158 Cal.App.4th 137, 143-145.

However, opening a garage door with a remote control but without entry into any part of a residence will *not* support a residential burglary charge. *Magness v. Superior Court (Sacramento)* (2012) 54 Cal.4th 270.

INHABITED DWELLING BROADLY DEFINED

A residential burglary may be committed even if the specific room that the burglar unlawfully enters is “not a space where people live.” *In re M.A.* (2012) 209 Cal.App.4th 317, 323. In assessing whether an area that is not used as a living space should be considered part of the inhabited dwelling house, we ask only if the area is “functionally interconnected” and “contiguous” to the residence. *People v. Thorn* (2009) 176 Cal.App.4th 255, 262. For these purposes, “[f]unctionally interconnected” means used in related or complimentary ways [and] “[c]ontiguous” means adjacent, adjoining, and in actual close contact.” (*People v. Jackson* (2010) 190 Cal.App.4th 918, 924.) *People v. Kasrawi* (2021) 65 Cal.App.5th 751, 764 (*Kasrawi*). It is not necessary that there be interconnecting doors between the inhabited dwelling house and the area of the residence that is burglarized. *People v. Debouver* (2016) 1 Cal.App.5th 972, 982.

Garages and similar structures generally meet these criteria. See *People v. Cook* (1982) 135 Cal.App.3d 785, 796 [an attached garage was an “integral part of the house” and “simply one room of several which together compose the dwelling”]; *People v. Moreno* (1984) 158 Cal.App.3d 109, 112, disapproved on other grounds in *People v. Dotson* (1997) 16 Cal.4th 560, fn. 8 [detached garage connected by the roof was “functionally interconnected with, and immediately contiguous to other portions of the house”]; *In re Edwardo V.* (1999) 70 Cal.App.4th 591 [garage attached to a duplex with only an exterior entry door was a part of the inhabited dwelling]. Garages intended for guest use and open to the public may be subject to prosecution for residential burglary if the garages are connected to each other and residential buildings are above them. *Kasrawi, supra*, 65 Cal.App.5th at p. 765.

Other common use areas within apartments have also generally been considered contiguous and interconnected to the residences. *People v. Woods* (1998) 65 Cal.App.4th 345, 350 [finding an apartment complex laundry room was part of the dwelling because the safety and privacy concerns present in residences extend to the common laundry area]; *People v. Zelaya* (1987) 194 Cal.App.3d 73 [an apartment basement and garage used for storage was part of the dwelling].

CULPABILITY OF INVITED GUESTS

A person who enters a residence with the permission of the homeowner may be convicted of residential burglary if the person enters a room in the residence with the requisite intent. *People v. Sparks* (2002) 28 Cal.4th 71. See *People v. Tessman* (2014) 223 Cal.App.4th 1293 [a person who steals property during an open house from a home listed for sale and open to the public may properly be convicted of residential burglary]. Similarly, an overnight guest in a home may be found to have committed a residential burglary of the room in the home in which the guest was staying. *People v. Garcia* (2017) 17 Cal.App.5th 211, 225.

An invited guest who steals guns from an entryway closet in a home the guest initially entered without the intent to commit a crime may be convicted of the residential burglary of that closet, which qualifies as a room for purposes of residential burglary. *In re M.A.* (2012) 209 Cal.App.4th 317.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.