

ROBBERY

Robbery is a serious felony with greater punishment than other “property” crimes.

A person commits robbery when they unlawfully take personal property from another “in their presence,” “against their will by the use or threatened use of immediate force, violence, or fear of injury to that person or their property or the person or property of anyone.” RCW 9A.56.190

You do not have to threaten or wrestle with the property owner, just anyone at the scene

The “degree or force is immaterial” as long as it accomplishes the task.

You can even rob someone when they don’t realize it, as long as “the knowledge was prevented by the use of force or fear.”

Nothing Like the Classic Robbery

This “immediate force” can be limited to the escape or to the act of “keeping” the property. You don’t have to use force as you’re taking it. State v. Manchester, 57 Wn.Ap. 765 (1990). The legal definition is nothing like the train robber.

Early Intervention Can be Crucial

Unlike theft, prosecutors do not like to let these cases resolve civilly and will not let someone go or offer a reduction simply because they have paid back the property. The exception is when the force is minimal or unique or the victim was never aware. Good defense counsel and early intervention while the case is still in investigation can often convince them that the act was a theft and not one of “violence” This can save huge jail or prison time. It can also help to lower the crime to Robbery Two saving large amounts of punishment.

Robbery First Degree

A person is guilty of robbery in the first degree if they are armed with a “deadly weapon,” display “what appears to be” a firearm or deadly weapon, inflicts bodily injury, or the victim is a “financial institution.”

It’s ironic that the financial institutions, the one’s robbing us, get the best protection

Like the Force, the Weapon can be Minimal

The “weapon” only needs to be involved during the taking or “the immediate flight” from the scene. The courts have actually held that a **plastic knife** can be a deadly weapon under the statute. State v. Mahoney. 40 Wn.App 514 (1985).

This crime is a Class A Felony with a minimum prison time of thirty-one months

Robbery Second Degree

Robbery Second is for all other circumstances.

It is a Class B felony, and has significantly less “prison time” with a minimum sentence of three months.

BURGLARY

Under the Fourth Amendment, the home is such a “sacred” place by law, even the government needs special permission to enter. It’s no surprise that they added special rules and special punishment for people accused of crimes in and around them. From “domestic” violence to burglary, these statutes carry unique rules and consequences. Burglary however involves much more property than the place you live.

Burglary in the First Degree

This is the most serious form. A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, they enter or remain unlawfully in a building and if, in entering or while in the building or in immediate flight the actor or **any other** participant in the crime is armed with a deadly weapon, **or assaults** any person. RCW 9A.52.020.

Burglary First degree is serious crime, a Class A felony, within minimum prison time starting at fifteen months.

A “Building” Can Be a Lot of Things, Even a Yard

Notice it can be any building not just a home. It includes any dwelling, railway car, cargo container or any structure used mainly for lodging, business or the sale, sue or deposit of goods. It even includes a “fenced area.” The law is all over the map in this area. A car, even if someone sleeps in it, is not a building, but a semitrailer truck, used for business, can be. A fenced yard will not count unless it is permanent housing or a business. RCW 9A.04.100(5).

Deadly Weapons & the Second Amendment

Notice the common thread, being armed with a weapon, whether you use it or not, whether it's involved at all, whether you have the "right" to carry it or not, always bumps the crime up significantly. This reflects the ever present battle between criminal law and the second amendment. Criminal law usually wins. See our section on **firearms**.

The Assault

Like the weapon, many crimes have enhancements if an assault occurs during the event. The assault, like here, can be absolutely minimal - one shove, push or even a threatening gesture. See the definition of misdemeanor Assault 4. These types of enhancements play a big part in the negotiation process. Some prosecutors hold off "amending" a crime to the higher level, some charge it upfront then take it off to look like they're giving a deal.

Enter or Remaining Unlawfully is a Very Minimal Act

Under the law, a person "enters" by inserting any part of their body or any instrument or weapon used or intended to threaten or to remove property. It is not "attempted burglary" if they catch someone at the window once they cross the sill. Likewise, there is no minimum time that you must remain.

A Burglar can be Invited In

A person "enters or remains unlawfully" when they are "not then licensed, invited, or otherwise privileged to so enter or remain." An individual can go to a party get into an argument, be told to leave but wait around and then punch someone. They can then be charged with Burglary First.

You can also burglarize just part of a building your "legally" in as long as the other part was not open to you or the public.

The **Law Office of David C. Mason** was recently successful in a multi-defendant charge of Burglary First. There were seven co-defendants and all of them joined together to break into a fraternity as revenge for an earlier fight. The result was chaos, some armed with fire extinguishers others throwing punches. Our office was the only defendant who received a misdemeanor no jail resolution as we revealed significant errors in police procedure. <http://www.seattlepi.com/local/article/Seven-charged-in-University-of-Washington-frat-brawl-3739013.php>

Residential Burglary

A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a “dwelling” other than a vehicle. RCW 9A.52.025

It is a class B felony and minimum punishment starts significantly lower at three months.

A “**dwelling**” is any building or structure used for “lodging.” It does not need to be a classic home. RCW 9A.04.110(7)

Burglary in the Second Degree.

This is the catch all and occurs when a person, with intent to commit a crime against a person or property therein, enters or remains unlawfully in a building other than a vehicle or a dwelling. RCW 9A.52.030. It is still a class B felony. The crime must be something other than trespass otherwise anyone who commits trespass in a building would also be a burglar.

Criminal Trespass in the First Degree

This is where the law draws the line between felonies and misdemeanors. Trespass in the First Degree is a gross misdemeanor. RCW 9A.52.070

Trespass First occurs when a person enters or remains unlawfully in a building. Because it is the misdemeanor, no weapons, assaults, or criminal intentions are necessary. If someone is asked to leave and they do not, they are trespassing. If they return to a place that told them they are not welcome, they also commit the crime.

A common scenario in **retail theft** is when a store issues a one year no contact order separate from any court and has the suspect sign it. If they return to that store for any reason, they are trespassing. Legal questions arise when an **entire shopping mall** issues an order for an event in one store or the public parking lot.

This crime is a **lesser included offense** of Burglary First. This means if a jury does not find an assault or weapon, they can convict someone of this “lesser.”

Criminal Trespass in the Second Degree

When an individual enters or remains unlawfully on the “premises” of another, they commit Trespass Second. RCW 9A.52.080

“Premises” includes any building, dwelling, structure used for commercial aquaculture, or any real property. RCW 9A.52.010(6).

A “premise” is much more restricted than the properties in Burglary in the Second Degree. This crime is not a lesser included offense of Burglary 2nd.

Computer Trespass in the First Degree

As the rest of our lives get pulled into these machines, so our government has created new crimes for going in when we shouldn't.

A person is guilty of computer trespass in the first degree if they, without authorization, intentionally gain access to a computer system or electronic database of another; and the access is made with the intent to commit another crime or it is a government computer or database. Unlike normal trespass, computer trespass 1st is a felony. RCW 9A.52.070

Computer Trespass Second Degree

A person is guilty of computer trespass in the second degree if the person, without authorization, intentionally gains access to a computer system or electronic database of another under circumstances not constituting the offense in the first degree. No separate intent to commit a crime is required. This crime is a gross misdemeanor.

If you have been arrested or charged with this crime or believe you are under investigation, **PLEASE CONTACT OUR OFFICE FOR A FREE CONSULTATION.**