

112. Burglary: s 419; Entering: s 421

112.1 Legislation

[Last reviewed: September 2024]

Criminal Code

[Section 418](#) – Definitions

[Section 419](#) – Burglary

[Section 421](#) – Entering or being in premises and committing indictable offences

112.2 Commentary

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Burglary, ss 419(1) and (2)

The defendant must have:

- (1) Entered, or been in;
- (2) The dwelling of another;
- (3) With an intent to commit an indictable offence in the dwelling.

Or

- (1) Entered, or been in;
- (2) The dwelling of another; and
- (3) Committed an indictable offence in the dwelling.

The offence is aggravated if the defendant:

- (1) Committed the offence at night;
- (2) Used or threatened to use actual violence;
- (3) Was or pretended to be armed with a dangerous or offensive weapon, instrument or noxious substance;
- (4) Was in company with 1 or more persons;
- (5) Damaged, or threatened or attempted to damage, any property.

The offence is a prescribed offence under s 161Q of the *Penalties and Sentences Act 1992* (Qld), so a serious organised crime circumstance of aggravation may be averred.

Entering or being in premises and committing indictable offences, s 421(1)

The defendant must have:

- (1) Entered, or been in;

- (2) Any premises;
- (3) With an intent to commit an indictable offence in the premises.

The offence is aggravated if the defendant

- (1) Committed an indictable offence in the premises; or
- (2) Gained entry by means of a break and committed an indictable offence in the premises.

Definitions

For notes on intention, see **Chapter 59 – Intention**.

The prosecution need not plead the specific indictable offence or offences that the defendant intended to commit, but must plead the specific indictable offence or offences that he or she actually committed: *R v Borland* (1907) 10 GLR 241; *Johnson v Western Australia* (2009) 40 WAR 116, 122-123 [24]-[27]; [Criminal Practice Rules 1999 \(Qld\), Schedule 2, Forms 251-254](#).

For notes on ‘armed’, ‘in company’, and ‘actual violence’, see **Chapter 124 – Circumstances of Aggravation (Robbery, Assault, Burglary)**.

Section 418 sets out several definitions relevant to the offences in ss 419 and 421.

Entering

A person is said to ‘enter’ a dwelling as soon as any part of the person’s body or any part of any instrument used by the person is in the dwelling: s 418(2).

Dwelling and premises

A ‘dwelling’ includes any building or structure which is being kept by the owner or occupier for the residence of himself or herself or his or her family: s 1 of the *Criminal Code*. ‘Premises’ includes a building or structure or part thereof, a tent, caravan, vehicle or similar place: s 418(4). It is a narrower definition than that contained in s 1, and does not include the land or water on which a building or other structure is situated: *R v Smith* [2009] 1 Qd R 239, 244 [26].

Break

A person can ‘break’ a dwelling or premises by unlocking, pulling, pushing, lifting or using any means whatever to open any door, window, shutter, cellar, flap or other thing that is intended either to close an opening to the dwelling or premises or give passage from one part of the dwelling or premises to another. See definition in s 418(1). In *R v Gibb* [2019] 1 Qd R 315, 330-331 [92]-[96], the further opening of an already partly opened garage door did not constitute a ‘breaking’.

Night

An offence is committed in the night if it is committed between 9pm and 6am: s 1 *Criminal Code*.

112.3 Suggested Direction

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The prosecution must prove that:

- 1. The defendant entered the dwelling [or, for the offence under s 421, premises] of [the complainant];**
- 2. At the time the defendant entered the dwelling house [or premises] [he/she] intended to commit an indictable offence, namely [name indictable offence].**

[The named offence] **is an indictable offence.**

(Direct on any relevant circumstances of aggravation):

1. ‘Break’.

A person who breaks any part, whether external or internal of a dwelling or any premises or opens by unlocking, pulling, pushing, lifting or any other means whatever, any door, window, shutter, cellar, flap or other thing, intended to close an opening in a dwelling or premises, or an opening giving passage from one part of the dwelling or premises to another, is said to break the dwelling or premises.

2. ‘In the night’ means between 9 pm and 6 am.

3. ‘Uses or threatens to use actual violence’.

Actual violence means no more than physical force which is real and not merely threatened or contemplated.

4. ‘Armed’.

To be armed with a weapon means that the defendant must be in possession of a weapon and the weapon must be available for immediate use as a weapon.

5. ‘In company’.

Being ‘in company’ requires proof that the defendant and one or more other person or persons be physically present for the common purpose of entering the dwelling or premises.

6. 'Damages, or threatens or attempts to damage, any property'.