

## Method, Intent Shape Illegal-Entry Charges

Q:

I got in trouble for going into a friend's home without his permission while he was away. What's the difference among burglary, housebreaking and unlawful entry?

A:

Even government prosecutors have a hard time differentiating these offenses. In fact, the U.S. Court of Appeals for the Armed Forces in 2010 delivered two important rulings clarifying the differences between burglary and housebreaking (U.S. v. Arriaga) and housebreaking and unlawful entry (U.S. v. Conliffe).

Burglary, housebreaking and unlawful entry involve a service member going into a place where he should not be. What differentiates them is the type of structure, when and how he got into it, and his intent.

Burglary, the most severe of these offenses, violates Article 129 of the Uniform Code of Military Justice. To commit this offense, a service member must, at night, unlawfully break into a dwelling, such as a house, apartment, hotel room or barracks room. Breaking and entering can include opening a door or window or creating a hole through which to enter.

A service member who breaks into a dwelling and so much as sets a foot into the premises with the intent of committing any of the criminal offenses covered under Articles 118 through 128 (except 123a, which covers writing bad checks) would be committing burglary, according to the Manual for Courts-Martial.

Housebreaking, a violation under Article 130, is a lesser but broader offense. It involves the unlawful entry into a building or structure at any time with the intent to commit any criminal offense, except purely military offenses.

An entry is unlawful when it is done without the building owner's permission.

Essentially, burglary always involves housebreaking, but housebreaking does not always involve burglary.

Unlawful entry lacks the criminal intent of housebreaking. A service member commits this offense, which violates Article 134, when he enters someone else's real property or personal property without the owner's permission. The offender's conduct must also be prejudicial to good order and discipline or of a nature that brings discredit upon the armed forces.

These three offenses share the maximum punishments of bad-conduct discharges and forfeiture of all pay and allowances.

What distinguishes them is jail time: Burglars face up to 10 years' confinement, housebreakers five years and those who enter unlawfully six months.

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