

**9 GCA CRIMES AND CORRECTIONS
CH. 37 BURGLARY AND HOME INVASION**

**CHAPTER 37
BURGLARY AND HOME INVASION**

2014 NOTE: Unless otherwise indicated, the Notes and Comments are the original annotations from the Criminal and Correctional Code (1977), enacted by P.L. 32-185 (Sept. 2, 1976). These annotations were included when the Criminal and Correctional Code (1977) was “recodified” as Title 9 of the Guam Code Annotated pursuant to P.L. 15-104:8 (Mar. 5, 1980). These original annotations were retained in past print publications of the GCA, and are included herein for historical purposes. The Source notes, however, have been updated to reflect subsequent changes to each provision.

**ARTICLE 1
BURGLARY**

- § 37.10. Definitions: Ref. to § 16.10.
- § 37.20. Burglary: Defined. Punishment Classified.
- § 37.30. Criminal Trespass: Defined, Punished, Defenses.
- § 37.40. The Breaking of Window Glass to Gain Access to Vehicles.

COMMENT: The crime of “burglary” has been continued by this Title. However, the degree of burglary has been abolished, with only a difference in punishment remaining. It no longer makes any difference to the crime charged, i.e. burglary of the first degree or burglary of the second degree, whether the burglary enters a store or a dwelling. “Habitable property” has been sufficiently broadly defined, as in § 34.10, to include not only dwellings, but schools, churches, stores and workshops, and other similar buildings. Thus, burglary is a felony of the second degree if perpetrated at night in an occupied structure, vehicle or vessel, or where the burglary is committed and an injury is inflicted or attempted upon anyone during the burglary, or the burglar is armed or displays explosives or weapons, or what appears to be explosives or weapons, regardless of the occupied status of the thing burglarized. Otherwise, burglary is a third degree felony.

A second offense, “criminal trespass,” has been created as a lesser included offense than burglary. The main difference is that no intent to commit a crime is required for conviction of “criminal trespass.” This has been made possible by the expansion of the “attempts” law (§§ 13.10 and 13.60). The offense is classified as a petty misdemeanor if he remains in any habitable property or any building knowing that he is not supposed to be there. Likewise, an offense is created prohibiting persons from entering or remaining in any place where trespassing is not allowed. This latter crime is classified as a petty misdemeanor if the offender defies an order to leave. If no actual order is given it is a violation. The available defenses are set forth.

§ 37.10. Definitions: Ref. to § 16.10.

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As used in this Chapter:

(a) Habitable Property has the meaning provided by § 34.10 and includes any such property whether or not a person is actually present therein.

(b) Night means the period between thirty (30) minutes past sunset and thirty (30) minutes before sunrise.

(c) Deadly Weapon has the meaning provided by §16.10, Title 9, Guam Code Annotated.

(d) Motor Vehicle, Semi-Trailer, Trailer, Truck, Truck-Tractor, Vehicle, and Vehicle Combination are defined by § 5101, Title 16, Guam Code Annotated; and Motor Vehicle, Motor Bus, Motor Truck, Semi-Trailer, Trailer, and Vehicle are also defined by § 1102, Title 16, Guam Code Annotated.

(e) School means any public or private educational facility, including institutions of higher learning, which shall encompass all instructional, non-instructional, sports and extra curricular buildings and facilities.

SOURCE: *M.P.C. § 221.0; Cal. § 1050 (1971); Mass. ch. 266, § 1; N.J. § 2C:18-1. Amended by P.L. 30-121:1 (Apr. 1, 2010). Subsection (e) added by P.L. 32-162:3 (May 23, 2014).

CROSS-REFERENCES: §§ 34.10 and 34.20.

§ 37.20. Burglary: Defined, Punishment Classified.

(a) A person is guilty of burglary if he enters or surreptitiously remains in any habitable property, building, or a separately secured or occupied portion thereof, or if he enters or surreptitiously remains in any School as defined in § 37.10(e) of this Chapter, with intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter, or a person is guilty of burglary if he enters or surreptitiously remains in any motor vehicle, semi-trailer, trailer, truck tractor, vehicle combination, motor bus, motor truck, or vehicle, with intent to commit a crime therein. It is an affirmative defense to prosecution for burglary that the property, or building, or motor vehicle was abandoned.

(b) Burglary is a felony of the second degree. In the case of burglary as a felony of the second degree, the court shall impose a sentence of

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imprisonment of a minimum term of five (5) years, and may impose a maximum term of up to ten (10) years; the minimum term imposed shall not be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years, in addition to such term of imprisonment. Provided, however, that in the case of an offender not previously convicted of a felony, the court may sentence the offender to not more than five (5) years imprisonment as a third degree felony conviction, and the provisions of this Subsection prohibiting probation, suspension, parole or work release shall not be applicable to such offender.

(c) A second or subsequent offense of burglary to a school shall be a felony of the first degree. In the case of a second or subsequent conviction of burglary committed to a school as a felony of the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years, and may impose a maximum term of up to twenty (20) years; the minimum term imposed shall not be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment. However, if the offender is under the age of eighteen years the court shall have the discretion to suspend all or a portion of the minimum sentence, and may encourage the Balanced Approach Restorative Justice Process.

SOURCE: G.P.C. §§ 459-464; *M.P.C. § 221.1; Cal. §§ 1050-1056 (1971); Mass. ch. 266, §§ 9-12; N.J. § 2C:18-2. Enacted 1977; Subsection (b) was repealed and reenacted by P.L. 14-143, eff. 10/01/78. Amended by P.L. 30-121:2 (Apr. 1, 2010). P.L. 32-162:4 (May 23, 2014) amended subsections (a) and (b) and added subsection (c).

CROSS-REFERENCES: §§ 13.10 and 13.60; § 1.22.

COMMENT: The Model Penal Code included a § 37.20(c) which has been excluded in this law. The exclusion is significant. That excluded Subsection (c) provided that a person may not be convicted for both burglary and for the offense which it was his intent to commit upon entry to the premises, nor for an attempt to commit that offense. § 1.22 of this Code does not appear to prohibit such multiple conviction where burglary is not included within such other offense, whatever it may be, nor is burglary a form of conspiracy to commit this other offense nor is burglary defined to prohibit a designated conduct generally while the other offense is specific, nor is burglary a continuing course of conduct related to the other offense. Further, the Legislature has a distinct interest in prohibiting both burglary and whatever other offense the burglar may have in mind. There is an equally great public interest in the deterrence of rape,

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regardless of whether it is committed in or out of a dwelling or other habitable building, and the crime of burglary. Similarly, it is equally in the public interest to prevent burglary and thefts.

Therefore, it is not incongruous to convict a person of both burglary and the offense he came to commit, assuming the facts exist to prove those offenses.

§ 37.30. Criminal Trespass: Defined, Punished, Defenses.

(a) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any habitable property or any building or any motor vehicle. An offense under this Subsection is a misdemeanor if it is committed in a dwelling or motor vehicle. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

- (1) actual communication to the defendant;
- (2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
- (3) fencing or other enclosure manifestly designed to exclude intruders. An offense under this Subsection constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person or a peace officer. Otherwise it is a violation.

(c) It is an affirmative defense to prosecution under this Section that:

- (1) the property or building involved in an offense under Subsection (a) was abandoned;
- (2) the premises were at the time open to members of the public and the defendant complied with all lawful conditions imposed on access to or remaining in the premises; or
- (3) the defendant reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

SOURCE: G.P.C. §§ 602, 647 (portions); *M.P.C. § 221.2; Cal. § 1058 (1971); Mass. ch. 266, §§ 13 and 14; N.J. § 2C:18-3. Amended by P.L. 30-121:3 (Apr. 1, 2010).

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CROSS-REFERENCES: "Burglary" - § 37.20.

§ 37.40. The Breaking of Window Glass to Gain Access to Vehicles.

(a) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, is guilty of an additional offense as a third degree felony.

(b) Any person who breaks a glass window of a vehicle, as defined in § 37.10(d) of this Chapter, in the process of committing, or attempting to commit, burglary or criminal trespass, in which the broken glass causes bodily injury to an innocent person is guilty of an additional offense as a second degree felony.

SOURCE: Added by P.L. 30-121:4 (Apr. 1, 2010).

ARTICLE 2
HOME INVASION

SOURCE: P.L. 32-047:2 (July 5, 2013) added this entire Article 2, §§ 37.201-37.204. Codified by the Compiler as §§ 37.310-37.360 to maintain the Compiler's general codification scheme in accordance with the authority granted by 1 GCA § 1606.

§ 37.210. Home Invasion.

§ 37.220. In the Course of Committing Home Invasion.

§ 37.230. Knowledge of Occupancy is Not a Defense.

§ 37.240. Home Invasion Punished.

§ 37.210. Home Invasion.

A person is guilty of home invasion when such person commits a crime of burglary, as defined by this Chapter, in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with the intent to commit a crime therein, and, in the course of committing the offense:

(a) acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a violent crime against the person of another person other than a participant in the crime who is actually present in such dwelling;

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(b) such person is armed with explosives or a deadly weapon or dangerous instrument; or

(c) if any of the acts of a participant at any time during the burglary, or while attempting a burglary, or while fleeing from a burglary/attempted burglary, directly or indirectly, cause mental or emotional trauma, bodily injury, serious bodily injury, or the death of an occupant of the dwelling who is not a participant in the burglary.

SOURCE: Added as § 37.201 by P.L. 32-047:2 (July 5, 2013), codified by the Compiler as § 37.210.

2014 NOTE: This provision was codified as § 37.210 to maintain the Compiler's general codification scheme in accordance with the authority granted by 1 GCA § 1606.

37.220. In the Course of Committing Home Invasion.

An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense, or flight after the attempt or commission.

SOURCE: Added as § 37.202 by P.L. 32-047:2 (July 5, 2013), codified by the Compiler as § 37.220.

2014 NOTE: This provision was codified as § 37.220 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606.

§ 37.230. Knowledge of Occupancy is Not a Defense.

It is no defense that the defendant reasonably believed that the dwelling was unoccupied, by a person who was not a participant in the crime, at the time the home invasion occurred.

SOURCE: Added as § 37.203 by P.L. 32-047:2 (July 5, 2013), codified by the Compiler as § 37.230.

2013 NOTE: This provision was codified as § 37.230 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606.

§ 37.240. Home Invasion Punished.

(a) Home invasion is a first degree felony, and any person found guilty under this Section shall be sentenced to a term of imprisonment of which at least ten years may not be suspended or reduced by the court.

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(b) The sentence imposed for home invasion shall run consecutively to any sentence for other crimes committed in conjunction with the home invasion.

SOURCE: Added as § 37.204 by P.L. 32-047:2 (July 5, 2013) , codified by the Compiler as § 37.240.

2014 NOTE: This provision was codified as § 37.240 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606.

ARTICLE 3
CARJACKING

SOURCE: P.L. 32-116:1 (Feb. 10, 2014) added §§ 37.50-37.55 to 9 GCA, Chapter 37. Codified by the Compiler as Article 3, §§ 37.310-37.360, pursuant to authority granted by 1 GCA § 1606.

- § 37.310. Carjacking.
- § 37.320. Armed Carjacking.
- § 37.330. In the Course of Committing Carjacking or Armed Carjacking.
- § 37.340. Knowledge of Occupancy is not a Defense.
- § 37.350. Carjacking Punished.
- § 37.360. Armed Carjacking Punished.

§ 37.310. Carjacking.

A person is guilty of carjacking when such person commits a crime of burglary, as defined by this Chapter, in a vehicle, while a person other than a participant in the crime is actually present in such vehicle, with intent to commit a crime therein, and, in the course of committing the offense:

(a) acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a violent crime against the person of another person other than a participant in the crime who is actually present in such vehicle; or

(b) if any of the acts of a participant at any time during the burglary, or while attempting a burglary or while fleeing from a burglary/attempted burglary, directly or indirectly, cause the mental or emotional trauma, bodily injury, serious bodily injury or the death of an occupant of the vehicle who is not a participant in the burglary.

SOURCE: Added as § 37.50 by P.L. 32-116:1 (Feb. 10, 2014), codified by the Compiler as § 37.310.

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2014 NOTE: This provision was codified as § 37.310 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606.

§ 37.320. Armed Carjacking.

Whoever commits the offense of carjacking while armed with, or having readily available, any pistol, or other firearm or imitation thereof, or other dangerous or deadly weapon, including a firearm, dirk, knife, switchblade, razor, blackjack, billy, or metallic or other false knuckles, or any object capable of inflicting death or serious bodily injury, shall be guilty of armed carjacking.

SOURCE: Added as § 37.51 by P.L. 32-116:1 (Feb. 10, 2014), codified by the Compiler as § 37.320.

2014 NOTE: This provision was codified as § 37.320 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606.

§ 37.330. In the Course of Committing Carjacking or Armed Carjacking.

An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.

SOURCE: Added as § 37.52 by P.L. 32-116:1 (Feb. 10, 2014), codified by the Compiler as § 37.330.

2014 NOTE: This provision was codified as § 37.330 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606. **§ 37.340. Knowledge of Occupancy is Not a Defense.**

It is no defense the defendant reasonably believed that the vehicle was unoccupied, by a person who was not a participant in the crime, at the time the carjacking or armed carjacking occurred.

SOURCE: Added as § 37.53 by P.L. 32-116:1 (Feb. 10, 2014), codified by the Compiler as § 37.310.

2014 NOTE: This provision was codified as § 37.340 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606.

§ 37.350. Carjacking Punished.

(a) Carjacking is a first degree felony and any person found guilty under § 37.310 shall be sentenced to a term of imprisonment of which at least ten (10) years may not be suspended or reduced by the court.

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(b) The sentence imposed for carjacking shall run consecutively to any sentence for other crimes committed in conjunction with the carjacking.

SOURCE: Added as § 37.54 by P.L. 32-116:1 (Feb. 10, 2014), codified by the Compiler as § 37.310.

2014 NOTE: This provision was codified as § 37.350 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606.

§ 37.360. Armed Carjacking Punished.

(a) Armed carjacking is a first degree felony and any person found guilty under § 37.320 shall be sentenced to a term of imprisonment of which at least fifteen (15) years may not be suspended or reduced by the court.

(b) The sentence imposed for armed carjacking shall run consecutively to any sentence for other crimes committed in conjunction with the carjacking.

SOURCE: Added as § 37.55 by P.L. 32-116:1 (Feb. 10, 2014), codified by the Compiler as § 37.310.

2014 NOTE: This provision was codified as § 37.360 to maintain the Compiler's general codification scheme in accordance with 1 GCA § 1606.
