

BURGLARY CLASSIFICATION ASSESSMENT

*Aid for Colleges and Universities
to Properly Classify and Count
Burglary Reports*

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- KYLE GORDON

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Educational institutions are required to report burglary crime statistics based on the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) definition of burglaries. This paper is designed to aid educational institutions in properly classifying and counting burglaries which are required to be disclosed in the institution's Annual Security Report per the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (i.e., the Clery Act).

In recent audits conducted by the U.S. Department of Education, several institutions have been found to be in violation of the Clery Act due to inaccurate or missing burglary statistics. For example:

- Dominican College – Fined \$20,000 (\$10,000 each) for 2 missing burglary statistics (U.S. Department of Education, 2013)
- University of Vermont – Fined \$27,500 for inaccurate coding of the crime log with 18 larcenies in the crime log counted as burglary statistics (U.S. Department of Education, 2012)



- Tarleton State University – Fined \$27,500 for 35 missing burglary statistics (U.S. Department of Education, 2009)
- University of Nebraska – Kearney – Fine amount to be determined. During a recent Department of Education audit it was determined that they were missing one (1) burglary statistic (U.S. Department of Education, 2014).

The UCR Program Handbook (Federal Bureau of Investigation, 2004) defines burglary as follows:

Burglary: unlawful entry of a structure to commit a felony or a theft. There are three categories of burglary.

- **FORCIBLE ENTRY:** All offenses where **force of any kind** is used to unlawfully enter a structure for the purpose of committing a theft or felony. This rule applies when a thief gains entry by using tools; breaking windows; forcing windows, doors, transoms or ventilators; cutting screens, walls or roofs; and where known, using master keys, picks, unauthorized keys, celluloid, a mechanical contrivance of any kind (e.g., a passkey or skeleton key) or other devices that leave no outward mark but are used to force a lock. This includes burglary by concealment inside a building followed by exiting the structure.
- **UNLAWFUL ENTRY-NO FORCE:** The entry of a structure in this situation is achieved by use of an **unlocked door or window**. The element of trespass to the structure is essential in this category, which includes thefts from open garages, open warehouses, open or unlocked dwellings (such as dorm rooms), and open or unlocked common basement areas in apartment houses where entry is achieved by someone other than the tenant who has lawful access.
- **ATTEMPTED FORCIBLE ENTRY:** A situation where a forcible entry into a locked structure is **attempted but not completed**.

In July 2010, the Department of Education distributed a letter to campuses with the following changes to the previous guidance outlined in the 2005 version of their *Handbook for Campus Crime Reporting*.

The 2005 *Handbook for Campus Crime Reporting* (pages 34-36) contained FBI guidance on classifying burglaries that was in effect at that time. The guidance specified that: *“Generally, if an item is missing from a structure, and if the individual who took the item is unknown, and if the investigating officer has exhausted all avenues leading toward the offense of larceny-theft, the proper classification is burglary.”*

FBI representatives have reconsidered this guidance and replaced it with the following, which is now published in the 2011 *Handbook for Campus Safety and Security Reporting* (Westat, Ward, & Mann, 2011, pp. 46-47):

An incident must meet three conditions to be classified as a Burglary.

1. There must be evidence of unlawful entry (trespass). Both forcible entry and unlawful entry-no force are counted.
2. The unlawful entry must occur within a structure, which is defined as having four walls, a roof, and a door.
3. The unlawful entry into a structure must show evidence that the entry was made in order to commit a felony or theft. If the intent was not to commit a felony or theft, or if the intent cannot be determined, the proper classification is larceny.

This new guidance went into effect for the crime statistics reported for 2009 calendar year, and all subsequent years.

The FBI UCR Office clarified what they mean by “conditions” 1 and 3 above regarding the word “evidence” when they responded to individual questions about classifying incidents as burglary versus larceny. The clarification is a critical element in terms of properly classifying these two crime categories. They stated that they do NOT mean PHYSICAL evidence. “EVIDENCE” to the FBI UCR Office means “THE FACTS OF THE CASE”—agencies are required to consider the facts of the case as described by the victim and the information obtained in the subsequent preliminary investigation or full investigation, if there is one.

STRUCTURES

A structure has four walls, a roof, and a door. The structure definition includes but is not limited to apartments, barns, cabins, churches, condominiums, dwelling houses, factories, garages, house trailers or houseboats (used as permanent dwellings), mills, offices, out buildings, public buildings, railroad cars, rooms, schools, stables, storage facilities, vessels (ships), and warehouses. This includes mobile units permanently fixed and used as an office, residence, or storehouse.



Vehicles, lockers, cabinets, and trophy cases do not qualify as structures so thefts from these types of areas/containers should not be counted for inclusion as burglaries in the annual crime statistic disclosure, unless someone unlawfully enters an actual structure and commits a theft from one of these areas/containers.

The UCR and Department of Education handbooks also state that “Offenses that are classified by local law enforcement agencies as burglary (any degree); unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts at these offenses” should be counted as Burglaries under the UCR definition. Thus, this concept pulls in any Burglaries that fit state code definitions, as long as they are from a structure as defined by UCR. If your state codes or local ordinances include burglaries from locations other than a structure as defined by UCR, these burglaries should not be included in your annual statistical disclosures as they do not conform to the UCR definition of a burglary.

For example, your state code may contain a “Burglary from Motor Vehicle” statute, but under the UCR definition of a structure, a vehicle is not considered a structure, and therefore a theft from a motor vehicle should not be included in your annual burglary statistics.

CLASSIFYING CASES

Many institutions are struggling with properly classifying burglary versus larceny cases due to a lack of information initially collected by the responding officer or Campus Security Authority who documents the incident. The Clery Compliance Officer is often forced to make a Clery classification determination using limited or partial information. Campus Public Safety and Police Departments should take the opportunity to train and educate responding officers about the key questions that need to be



asked, from the UCR perspective, when they are taking reports involving larceny from a structure. If a student or employee reports to a CSA that items were taken from his/her room or office (or other structure, as defined above), the CSAs should be trained to report the incident to Public Safety/Campus Police for an assessment of whether or not the incident meets all of the elements of a burglary.

The FBI UCR Office has indicated that if the victim reports that he/she left his/her door locked versus leaving his/her door unlocked, that is part of the “evidence” that should be used to determine whether or not a burglary occurred if all other investigative efforts are exhausted.

The following list of questions should be asked by responding officers so the Clery Compliance Officer has the necessary level of information to determine whether or not the incident is a countable burglary for Clery Act purposes. Additionally, on-duty supervisors should be trained to review incident reports completed by officers during their shift to verify that the answers to the questions are contained within the report

so that the Clery Compliance Officer is provided with all of the key elements of the case.

KEY QUESTIONS TO CONSIDER FOR CLASSIFYING BURGLARIES

- Were there signs of forcible entry?
- Was the victim's space (room/office) locked (ask the victim)?
- Was the building in a locked or secured mode when the theft occurred?
- Does it appear that someone defeated the locking mechanism or unlawfully used a master key to enter the space?
- In a suite in a residential facility, how many rooms were entered?
- When is the last time the victim saw the property?
- When did the victim notice the property missing?
- Was anyone known to have lawful access between the period of time in which the victim last saw the property and the time in which the victim noticed the property was missing?

Let's assess this clarification through the Q&A we engaged in with the FBI to further highlight the key concepts.

EXAMPLE SITUATION #1

A student in a residential facility reported that he left the room and locked the door. He returned to find his door unlocked and items missing. He left at approximately 1:15 p.m. and returned at 2:17 p.m. to find items missing and the door unsecured. There are no signs of forced entry and it is unknown who entered the room. Under their procedures, various people, such as maintenance, security, and housing staff, have lawful access to these residential rooms if they have a reason to enter, without a work order or maintenance schedule. The investigation reveals that there is no "evidence" of unlawful entry and no "evidence" of the intent of the perpetrator. The investigation was inconclusive as to whether or not any individuals who might have had lawful access (roommates, facilities management, police, security, resident assistants, etc.) to the student's room were in the room at the time of the incident. We cannot establish whether anyone who had lawful access was in the room or not.

CLASSIFICATION: BURGLARY

According to the FBI UCR Office Staff, "evidence" to the FBI UCR Office means the "facts of the case, not physical evidence." The doors were locked and the perpetrator got in through a locked door by either causing the door lock to fail through some means or method (defeating the action of the lock) or using a master key. The FBI falls back to the verbiage in the UCR Handbook and views the facts of the case based on what the victim reported. If the agency proves that the perpetrator was there lawfully and have a reason to be in the room and then decided to take something, the classification should be changed to larceny.

EXAMPLE SITUATION #2

A student in a residential facility left his door unlocked and returned to find items missing. He left at approximately 2:00 p.m. and returned at 1:00 a.m. to find items missing and the door unsecured. It is unknown who entered the room. The investigation reveals that there is no “evidence” of unlawful entry and no “evidence” of the intent of the perpetrator. The investigation was inconclusive as to whether or not any individuals who might have had lawful access (roommates, facilities management, police, security, resident assistants, etc.) to the student’s room were in the room at the time of the incident. We cannot establish whether anyone who had lawful access was in the room or not.

CLASSIFICATION: LARCENY

According to the FBI UCR Office staff, this case would be classified as larceny because the room was unlocked, and they would err on the side of larceny as students come and go from unlocked doors in this type of facility and there is no evidence of unlawful entry. If the agency proves through investigation that the perpetrator did not have lawful access or entered with the intent to steal, change the classification to burglary.

EXAMPLE SITUATION #3

A local police surveillance team arrested a suspect and during the search incident to arrest, it was found that the subject was in possession of stolen items from a local college campus (the equipment was marked with the campus logo). The subject subsequently admitted to stealing the items from the college. The thefts occurred at 3 p.m. on a business day, and the room was unlocked.

CLASSIFICATION: LARCENY

According to the FBI UCR Office Staff, the element of trespass is essential to the classification of burglary in UCR. If rooms were open to [members of the] the general public at the time of the thefts, then larceny should be scored rather than burglary.

These same conditions should be applied to academic/administrative buildings that are open and accessible during normal business hours. However, if a theft occurs from an area of the academic/administrative building that is not accessible to the public, err on the side of burglary if all other investigative leads are exhausted.

EXAMPLE SITUATION #4

A staff member reports that she left her office to go to the bathroom. She had just come back from the garage and placed her purse/wallet in the second drawer of her file cabinet. She left the door to her office open while she was out of the office. During this time, her wallet was stolen. The academic building is on campus and is unlocked from 7 a.m. to 11 p.m. every day. It is unknown who took the property, and there are no leads in the case.

CLASSIFICATION: LARCENY*

Count it as a larceny because the building is open and accessible to the public.

EXAMPLE SITUATION #5

A staff member reports that he left his office at 12 noon to go to get lunch and left the door to his office locked while he was out. During this time, his laptop was stolen. The academic building is on campus and is unlocked from 7 a.m. to 11 p.m. every day. It is unknown who took the property, and there are no leads in the case.

CLASSIFICATION: BURGLARY

Count it as a burglary because the victim reported that the door was locked, and according the FBI, the reporting agency must believe the victim.

*On the other hand, an example from the 2011 version of the Department of Education Handbook clarifies that if the perpetrator did not have lawful access to an area where a theft was committed, it should be classified as a Burglary (ED Handbook Scenario #10 on Page 49: The registrar reports that money was taken from her desk while she was out of her office for 15 minutes. Campus police investigate and determine that neither of the other two individuals who have lawful access to the office took the money. The perpetrator is unknown; however, because the investigation has determined that no one with lawful access took the money, classify the incident as one on-campus Burglary).

A critical element of the burglary classification is the “**unlawful entry of a structure...**” so for example, if a theft occurs in an accessible area of a building while that building is open, such as an academic building, or the lobby area of a residence hall, the element of “unlawful entry” does not exist since students, staff, and visitors alike have lawful access to be in the structure. According to the 2011 version of the Department of Education Handbook, there must be evidence of unlawful entry (trespass). This means that the person did not have the right to be in the structure at the time the incident occurred.

COUNTING RULES:

It is important for the Clery Compliance Officer to properly count the burglary offenses and to pay attention to the varying counting rules applicable to academic/administrative burglaries versus the residential burglaries. There are different counting rules that need to be applied based upon where the burglary occurred.



The FBI UCR Handbook describes a Separation of Time and Place Rule, which is described in the UCR Handbook as follows:

“Occasionally, an individual or a group will perpetrate a number of offenses over a short period of time. If there is a separation of time and place between the commission of several crimes, the reporting agency must handle each crime as a separate incident and must classify and score each offense individually.

Same time and place means that the time interval between the offenses and the distance between locations where they occurred are insignificant. Normally, the offenses must have occurred during an unbroken time duration and at the same or adjoining location(s). However, incidents can also be comprised of offenses which, by their nature, involve continuing criminal activity by the same offender(s) at different times and places, as long as investigation deems the activity to constitute a single criminal transaction” (Federal Bureau of Investigation, 2004, p. 12).

Count

- One offense per distinct operation.
- Only count crimes meeting UCR definitions and guidelines.
- One offense for each residence, dorm room, or structure if more than one was entered.
- Burglaries in suites: each bedroom in a student housing facility suite is considered a separate dwelling. Count the burglary of four bedrooms and the common room in a suite during a single incident as five (5) burglaries.

Do Not Count

- More than one offense per academic/administrative building regardless of the number of classrooms or offices entered, unless the offenses are not committed at the same time and place or the time interval and distance between offenses is significant. The Hotel Rule¹ should be used when counting burglary statistics for the academic/administrative buildings.
- Do not count offenses based on institutional policy definitions.

¹The UCR Handbook describes the Hotel Rule as follows: “Burglaries of hotels, motels, lodging houses, or other places where lodging of transients is the main purpose can present reporting problems to law enforcement. If a number of units under a single manager are burglarized and the offenses are most likely to be reported to the police by the manager rather than the individual tenants, the burglary must be reported as a single offense. Examples are burglaries of a number of rental hotel rooms, rooms in flop houses, rooms in youth hostels, and units in a motel. If the individual living areas in a building are rented or leased to the occupants for a period of time that would preclude the tenancy from being classified as transient, then the burglaries would most likely be reported separately by the occupants. Such burglaries must be reported as separate offenses. Examples of this latter type of multiple burglary would be the burglaries of a number of apartments in an apartment house, of the offices of a number of commercial firms in a business building, of the offices of separate professionals within one building, or of a number of rooms in a college dormitory” (Federal Bureau of Investigations, 2004, p. 28).

BURGLARY COUNTING RULES SUMMARY

RESIDENTIAL FACILITIES

Count:

One offense per residential room or structure if more than one room was entered

ACADEMIC/ADMINISTRATIVE BUILDINGS

Count:

Use the Hotel Rule if the burglaries occurred as part of the commission of one crime (typically under the control of a single manager)

The examples provided in this document were submitted to the FBI UCR Office for review. While FBI guidance is case specific, the responses provided by the FBI are helpful in understanding the rationale used by that office in making classification decisions.

The unique facts and circumstances of each offense should be considered carefully by campuses in deciding the proper classification and count. Institutions are encouraged to consult directly with the FBI UCR Office and/or the Department of Education (DOE) Help Desk for technical assistance.

There is a Burglary Cheat Sheet with questions and answers that have been directed to the Department of Education and/or the FBI UCR Office. These can be viewed in the Clery Act Compliance Resources section of the Resources tab on the D. Stafford & Associates website at www.dstaffordandassociates.com.

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