

# Burglary and allied offences

## Policy statement and principles

### What

Burglary is an offence under section 231 of the Crimes Act 1961 and is punishable by imprisonment for a term not exceeding 10 years. Allied to burglary are the following offences included in this chapter:

- aggravated burglary
- attempted burglary
- possession of instrument for burglary
- being disguised for burglary
- providing explosive to commit a crime (e.g. safe breaking)
- possession of burglary tools
- unlawful carriage possession of firearms
- found in public place preparing to commit imprisonable offence
- found on property without reasonable excuse
- peeping/peering into dwelling house
- loitering on any land.

### Why

Burglary is a hugely invasive crime that has a negative impact on communities. Attending dwelling burglaries provides an opportunity to:

- support and reassure victims
- fulfil the Police purpose of making people be and feel safe
- give prevention advice.

Key functions of the Police are law enforcement with targeting and catching offenders, crime and victimisation prevention, the maintenance of public safety and delivering a responsive Police service with attending burglaries. The Police vision is to gain trust and confidence of all.

## How

To meet public expectations of being and feeling safe, Police will:

- treat dwelling burglaries as a high priority by attending offence locations for crime scene examination
- provide victims with support and prevention advice
- gather intelligence to understand patterns of offending and victimisation in an effort to reduce incidents through early intervention
- conduct investigations into burglary and allied offences
- where offences and suspects are identified, pursue appropriate enforcement action and case resolution
- where instruments, tools and weapons involved in burglaries and allied offences are seized, seek their forfeiture or lawful disposal.

## Overview

### Introduction

This chapter details the legislation on burglary and all offences relating to it. It specifically lists the ingredients of the offence and provides examples of situations that might occur which will assist in the determination of what is or is not a burglary. This knowledge will enhance the accuracy of NIA coding, which in turn supports case management, investigations and helps build the broader intelligence picture.

The burglary process includes:

Offence reported > Offence recorded > Offence investigated > Action > Close.

The procedures section details good practice for all burglary investigations, and specialised information for safe-breaking investigations.

## Health and safety duties

### Maximising safety and minimising risk

Maximising safety and eliminating or minimising risk at work is the responsibility of all Police employees and persons engaged by Police to provide a service including contractors and their employees, trainees, interns and volunteers. It is delivered through meeting the obligations under the Health and Safety at Work Act 2015 and Police safety policies.

A key enabler is the application of the TENR-Operational threat assessment in the workplace.

The expectation of the Commissioner and the Act is that persons in the workplace will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of other persons, comply as far as they are reasonably able to with any reasonable instruction that is given in order to comply with the Health and Safety at Work Act 2015 or regulations under that Act. They will co-operate with any reasonable policy or procedure relating to health or safety at the workplace that has been notified to them and take immediate action to stop any perceived or potential breach of the act or if impractical, immediately report the matter to a supervisor.

## **Health and safety should be an everyday conversation**

Relevant Police instructions include:

- Hazard management
- Health and safety
- Wellness and safety
- this chapter in relation to the safe investigation of burglaries and allied offences.

## **Related information**

See also these chapters:

- 'Case management'
- 'Crime scene examination'
- 'Homicide and serious crime investigations', 'Part 1 Initial response to homicide or serious crime'
- 'Intelligence'
- 'Interviewing'
- 'Investigating offences'

- 'Legislative Reference Table (LRT - Code Book)'
- 'National Recording Standard'
- 'NZ Insurance Council MOU'
- 'Robbery'
- 'Search'
- 'Theft'.

## **Definition of burglary**

### **Burglary definition**

Every one commits burglary, who:

- **enters** any **building** or ship, or part of a building or ship
- **without authority**
- with **intent** to commit **an imprisonable offence** in the building or ship

(s231(1)(a))

**or**

- having entered any building or ship
- remains in it, without authority, and with intent to commit an imprisonable offence in the building or ship.

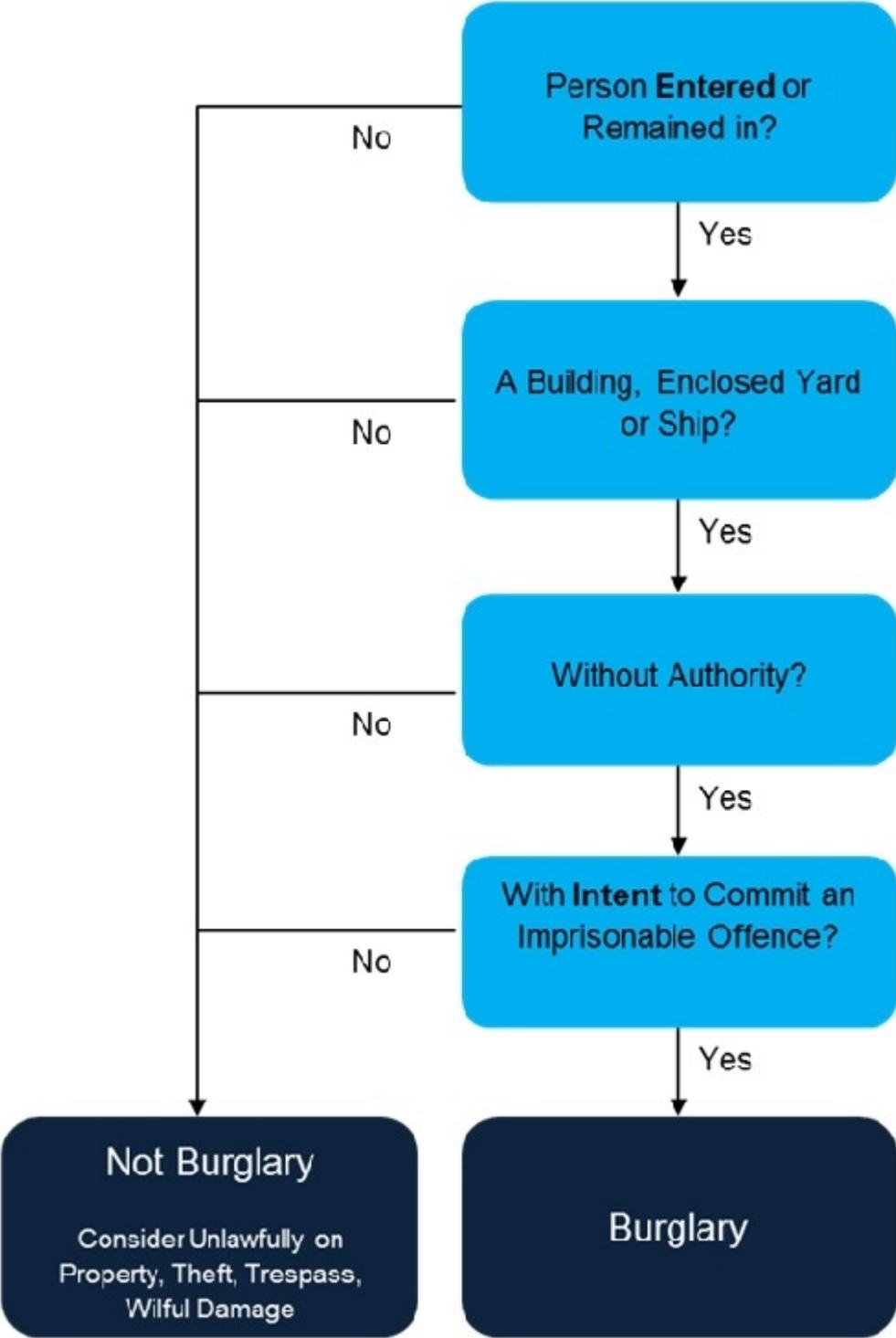
(s231(1)(b))

See 'Other definitions relevant to burglary' in this chapter for further explanation on the ingredients to burglary.

### **Burglary ingredients: flow chart**

# Burglary - Flow Chart 1

## Burglary Ingredients



### Other definitions relevant to burglary

This table shows definitions of terms under the Crimes Act 1961 or as interpreted

and relevant to the offence of burglary and this chapter.

<b>Term</b>	<b>Definition</b>
<b>Armed</b>	To be 'armed' is to have physical possession of the weapon or instrument. See ' <u>Possession</u> '.
<b>Artifice</b>	<p>'Artifice' involves being "cunning, skilled, artful"; for example:</p> <ul style="list-style-type: none"> <li>• making up fake Telecommunications company identification and then pretending you need to enter the house to check the phones</li> <li>• promising a young child sweets if he or she opens the door.</li> </ul>
<p><b>Building / Ship / Enclosed Yard</b></p> <p>For examples and recording tips, see <u>NRS Burglary Coding Guide</u></p>	<p>For a person to commit the offence of burglary they must have entered a building, ship or enclosed yard.</p> <hr/> <p>'Building' means any building or structure of any description, whether permanent or temporary, and includes:</p> <ul style="list-style-type: none"> <li>• tent</li> <li>• caravan</li> <li>• campervan</li> <li>• open sheds or shelters</li> <li>• carports</li> <li>• any closed cave or closed tunnel</li> <li>• any parts of these buildings.</li> </ul> <p>(s231(2))</p> <p><b>Note:</b> This definition applies only to sections <u>231</u> and <u>232</u>.</p>

'Ship' means every description of vessel used in navigation, however propelled, and includes any:

- barge
- lighter
- dinghy
- raft
- or like vessel
- any ship belonging to or used as a ship of the armed forces of any country.

(s2)

**Note:** 'Ship' also includes a:

- boat
- houseboat
- motorboat
- yacht
- jet boat
- row boat
- kayak

**'Enclosed yard':**

- does not have to be fully enclosed
- can have open driveways and paths
- must be appurtenant to a building (contain or be adjacent to or associated with)
- must appear private, not public to a reasonable person
- must have a physical delineation (even if not continuous)
- height or material built from is irrelevant
- e.g. chain, low brick wall, simple timber rail
- **Note:** An open front of a property that is not clearly delineated is not likely to be regarded by the Courts as enclosed. Therefore, offences such as stealing items from an open front part of a property or from a car parked in a driveway in the front of an open property are thefts rather than burglaries

**Includes:**

- fenced yards of all kinds
- back yards surrounded by private property
- front yards with planting or fence along much of the front of the property.

**Excludes:**

- area adjacent to a public space with no delineation, where it would reasonably be mistaken for public land
- enclosed grounds that do not contain or are adjacent to a building.

The Concise Oxford Dictionary defines 'yard' as "Piece of enclosed ground, especially one surrounded by or attached to building(s)...".

The High Court case of *Hewson v Police* HC Whangarei AP25/97, 14 October 1997, Justice Laurenson stated:

“the word ‘enclosed’ has now, for all practical purposes, come to be regarded as describing constructions or plantings, or any other form of physical delineation including, for example, concrete edgings, not necessarily continuous, which are sufficient to convey to a reasonable person that members of the public as such were intended to be excluded and the space reserved for the use of the occupier and persons authorised by him to enter or having some other special authority to do so.”

Although the yard does not have to be fully enclosed to fit the definition of an enclosed yard, an open front of a property that is not clearly delineated is not likely to be regarded by the Courts as enclosed. Therefore, offences such as thefts of items from an open front part of a property or from a car parked in an open driveway in the front of the property are thefts rather than burglaries.

#### ‘Part of building or ship’

A person enters a building or ship lawfully. At the time of entry, that person has no intent to commit an imprisonable offence. However, while in the building or ship, the person forms an intent to commit an imprisonable offence and enters another part of the building or ship without authority to commit that offence. This would amount to a burglary.

For a person to commit the offence of burglary they must have entered a building, ship or enclosed yard.

For the purposes of sections 231 and 232:

- entrance into a building or ship is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by that person, is within the building or ship, and
- every one who gains entrance to a building or ship by any threat or artifice used for that purpose is to be treated as having entered without authority.

(s231(3))

Entry by threat or artifice could include:

- threatening to set fire to a building unless entry is permitted
- promising a child sweets in exchange for being allowed to enter
- conspiring with an employee to leave a door insecure.

**Note:** 'Entry' also applies to enclosed yards, so even if there has been an unsuccessful attempt to enter a building this ingredient may still be met if the person responsible entered an enclosed yard area surrounding the building.

- Where there are signs of an unsuccessful attempt to enter a building, such as clear tool marks on a door or window, or a padlock or chain is cut, and the person or their tool *did not* enter an enclosed yard or any part of the building to do that, consider attempted burglary.

	<p>'Found in a place' means to be found on, or discovered at the place, or seen entering or leaving that place, by some person, at the time of the incident. In <i>Braxton v Sugrue</i> (1929) GLR 31, the suspect admitted to being on the property, but as he had not been found or even seen on the property the Judge ruled that the admission was not sufficient evidence.</p>
<b>Instrument</b>	<p>'Instrument' means any object that could be used by a burglar to enter or leave a building. For example:</p> <ul style="list-style-type: none"><li>• jemmy bars</li><li>• bolt cutters</li><li>• gloves</li><li>• keys</li><li>• two-way radios</li><li>• masking tape</li><li>• explosives.</li></ul>

**Intent to commit an imprisonable offence**

For examples and recording tips, see [NRS Burglary Coding Guide](#)

To act with intent is to think about a particular goal, then carry out an action in an attempt to achieve that goal. Evidence of intent may be found in the:

- commission, or attempted commission, of the offence
- suspect's words, conduct or demeanour.

For a person to commit the offence of burglary they must have intended to commit a burglary, you need to be able to prove that they intended to commit an offence punishable by imprisonment at the time of entry.

There is no requirement that the offence intended (e.g. theft or damage) at the time of entry (or after being present without authority) be actually committed.

The best evidence of intent to commit an imprisonable offence will be proof that an offence was committed at the premises/location entered, but the intent may be established by any other relevant evidence. For example, a person who enters a house to steal property but is then frightened off by the owner before stealing the property has committed the offence of burglary.

**Note:** If the imprisonable offence is committed, it can be the subject of a separate charge. There must be intent to commit an imprisonable offence but it is not material which imprisonable offence is intended.

**Possession**

In relation to burglary, 'possession' means physical possession of an instrument capable of being used for burglary with intent to use it for such a purpose. This includes having:

- the instrument on one's person, or being on a joint enterprise with a second person who has possession (where several people are pursuing a common purpose, possession by one is possession by all)
- almost immediate access to the instrument.

**Note:** The suspect must have knowledge of the common enterprise and of the instrument's existence. Such knowledge may be inferred from the circumstances.

**Without authority**

For examples and recording tips, see [NRS Burglary Coding Guide](#)

For a person to commit the offence of burglary they must have entered a 'building' or a part of a 'building/ship' or enclosed yard without authority. 'Without authority' includes:

- a person entering an area they do not have legitimate access to, or would reasonably expect, under the circumstances, not to have permission even if they did know the owner/occupier, for example:
  - the home of a stranger
  - the back of a shop
- a person enters a place that they have been trespassed from
- a person who legitimately enters a building but then remains after the authority to be there has been revoked, for example:
  - by being trespassed
  - remaining after hours (perhaps hiding).
  - entry gained by threat or artifice.

**Places that are owned, but have a 'public' aspect to them (e.g. schools, parks, playgrounds)**

If most reasonable people would consider that members of the public have an implied right to be in a particular place at a particular time, then this indicates people are there with authority. Typical examples are school grounds, public parks, public car parks and sports grounds. Each situation needs to be taken on its merits as some of these places may have specific circumstances or places within their grounds that mean there is no implied right.

Clear indications that there is no implied right at a given location include places that are locked or have signage specifically indicating an area as being private, making it clear

that members of the general public do not have authority to be there. Also generally, it is understood that only certain people have authority to be in the buildings at these places.

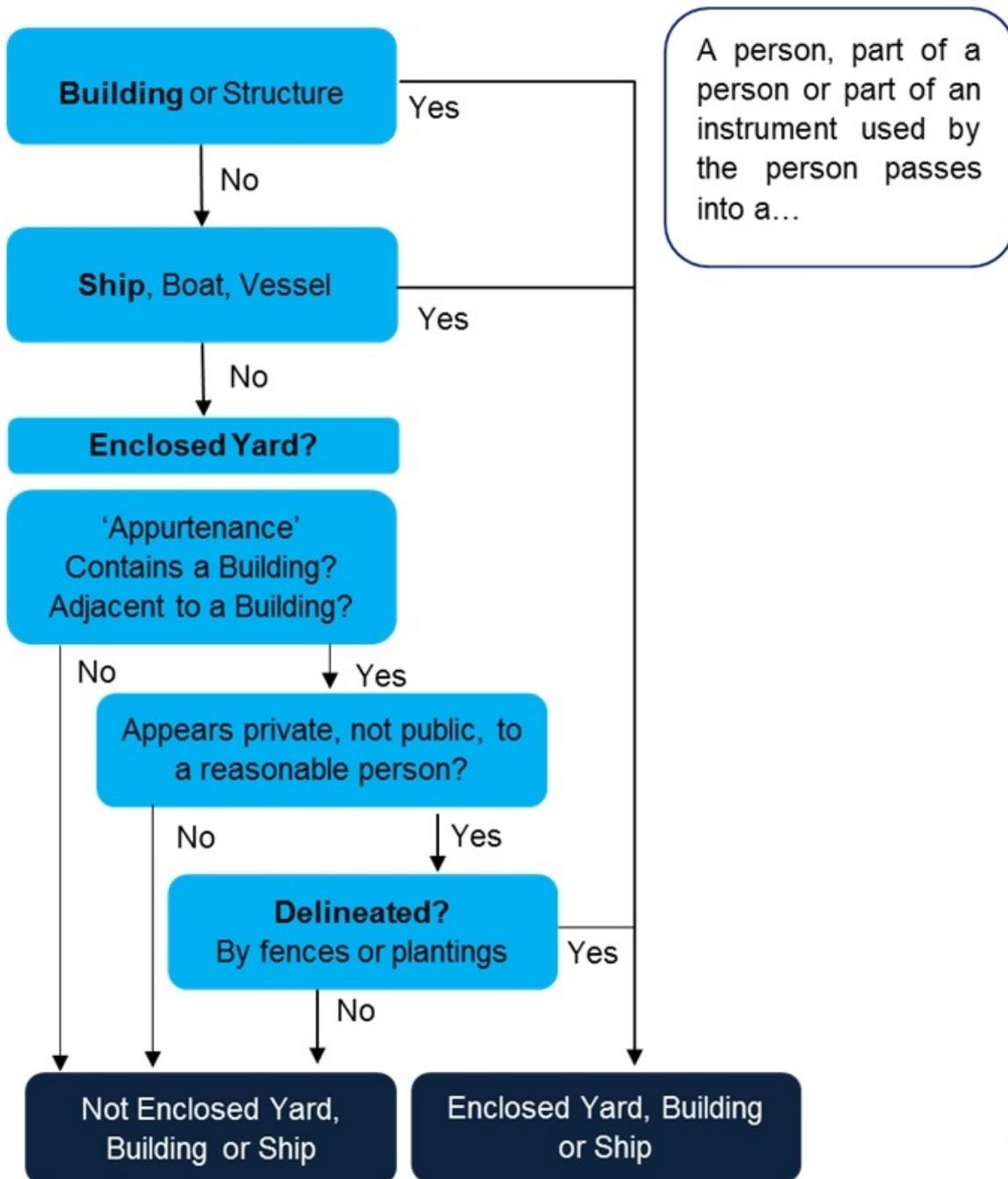
**Note: See:**

- for charging purposes, the 'burglary commentary' in Westlaw NZ for further information relating to:
  - entry
  - building or ship
  - without authority
  - mental element as to lack of authority
  - with intent to commit an imprisonable offence.
- For recording purposes, the 'Burglary Coding Guide' in the National Recording Standard for examples and scenarios related to the ingredients of burglary.

**Building, ship, enclosed yard: flow chart**

# Burglary - Flow Chart 2

Building, Ship, Enclosed Yard



## Dwelling burglary

All dwelling burglaries must be treated as a high priority for attendance at the offence locations for crime scene examination.

### What is a dwelling burglary?

A dwelling burglary is where:

- someone lives or it is a house or home

- someone entered it, or tried to enter it
- without authority and with intent to commit an imprisonable offence.

Dwelling includes:

- home
- house
- vacant dwelling
- motel
- hotel
- backpackers
- holiday park
- caravan
- campervan
- tent
- institution, long term hostel.

## **What is not a dwelling burglary?**

A dwelling burglary is not:

- a construction site
- an outbuilding not lived in
- detached garages
- garden shed
- milking shed
- hay shed
- implement shed.

## **Burglary involving ‘hate crime’: ensuring victims are put first**

When responding to a burglary that may also be considered a ‘hate crime’ (e.g. a family home damaged by offenders painting racist and derogatory slogans and symbols), it is important to reassure victims and let them know that legislation provides the means to deal appropriately with hate-motivated offending. Most importantly, ensure bringing the ‘aggravating factors’ to the Court’s attention. Police focus must be on providing a victim-centred service to individuals or groups who experience ‘hate crimes’.

**Note:** There is no general law that allows Police to record 'hate crime'. However, options exist to deal with those committing offences seemingly motivated by prejudice under the [Human Rights Act 1993](#), but the penalties are far less than those under the [Crimes Act 1961](#).

Behind the scenes, it is also important to capture words, symbols or other features of the offending effectively so that Police (and other agencies) can recognise an incident appropriately as a 'hate crime. This includes adding specific commentary in the NIA narrative which explains why the victim (or Police) believe the matter should be treated as a 'hate crime', so this can be used either for intelligence purposes, or as part of the proceedings if the case results in later prosecution action.

## **Support for victims**

### **Victims of burglary**

Victims of burglary are highly vulnerable and prone to re-victimisation, particularly in the first week after the offence. Police should consider providing prevention advice immediately to "target harden" the scene as well as other nearby properties. Victims may find evidence relating to the burglary after initial Police attendance such as tools, moved/hidden items, things belonging to the offender etc. These items can be useful to link the offender to the scene and may lead to their identity. Police should re-engage with the victim and have items examined and recorded on the case file. This also presents an opportunity to reassure the victim and provide any case update.

### **Repeat victims**

Repeat victims, e.g. those that have reported a burglary on more than one occasion, should be spoken to by Police to ascertain why they are being targeted. This can indicate that the same offender has returned to commit further offences or too many or unnecessary opportunities exist that has made the victim more susceptible or an attractive target for this type of offence. Prevention advice or referral to persons able to provide credible assistance to reduce opportunities for further crime, should be given.

### **Victim Support**

Victims of burglary should also be referred to [Victim Support](#) for support as soon as possible after the offence is reported.

### **Burglary prevention advice**

See the [burglary prevention advice](#) for advice to the public and victims of burglary.

## Offences reported and recorded

### Offences reported to, or discovered by Police must be recorded

The National Recording Standard (NRS Section 1.3) contains rules and principles governing recording of offences.

Recording offences intranet page provides an overview of these rules and contains links to training and resources.

### Code book – charge wording, penalties and more

The Legislative Reference Table (LRT - Code Book) is a search tool that links to information about all offence, incident and task codes. The code book provides the following information for each offence code:

- legislative reference details, for example:
  - offence code description
  - offence category
  - charge type
  - legislative reference
  - specimen charge narrative
  - minimum charge age
  - statutory limit
  - DNA relevance
- penalties and fines
- information requirements relating to:
  - victim
  - family violence
  - traffic
  - file retention
  - classification.

## Offences

This table details the offences relevant to this chapter.

<b>Offence and categorisation</b>	<b>Legislation and penalty</b>
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<p><u>Burglary</u> - entered with intent.</p> <p>Category 3 offence</p>	<p>Section <u>231</u> (1)(a) - Crimes Act 1961.</p> <p>Liable to imprisonment for a term not exceeding 10 years.</p>
<p><u>Burglary</u> - having entered remained without authority with intent.</p> <p>Category 3 offence.</p>	<p>Section <u>231</u> (1)(b) - Crimes Act 1961.</p> <p>Liable to imprisonment for a term not exceeding 10 years.</p>
<p><u>Attempted burglary.</u></p> <p>Category 3 offence.</p>	<p>Sections <u>72</u> and <u>231</u>(1)(a) or (b) – Crimes Act 1961.</p> <p>Liable to imprisonment for a term not exceeding 5 years.</p>
<p><u>Aggravated burglary</u> – entered with intent and with weapon.</p> <p>Category 3 offence.</p>	<p>Section <u>232</u> (1)(a) - Crimes Act 1961.</p> <p>Liable to imprisonment for a term not exceeding 14 years.</p>
<p><u>Aggravated burglary</u> – remained with intent and with weapon.</p> <p>Category 3 offence.</p>	<p>Section <u>232</u> (1)(b) - Crimes Act 1961.</p> <p>Liable to imprisonment for a term not exceeding 14 years.</p>
<p><u>Aggravated burglary</u> – remained after burglary and with weapon.</p> <p>Category 3 offence.</p>	<p>Section <u>232</u> (1)(b) - Crimes Act 1961.</p> <p>Liable to imprisonment for a term not exceeding 14 years.</p>

<p><u>Aggravated burglary</u> – armed with intent. Category 3 offence.</p>	<p>Section <u>232</u> (2) - Crimes Act 1961. Liable to imprisonment for a term not exceeding 5 years.</p>
<p><u>Possession of instrument for burglary.</u> Category 3 offence.</p>	<p>Section <u>233</u>(1)(a) - Crimes Act 1961. Liable to imprisonment for a term not exceeding 3 years.</p>
<p><u>Being disguised for burglary.</u> Category 3 offence.</p>	<p>Section <u>233</u>(1)(b) - Crimes Act 1961. Liable to imprisonment for a term not exceeding 3 years.</p>
<p>Providing explosive to commit a crime. Category 3 offence.</p>	<p>Section <u>272</u> - Crimes Act 1961. Liable to imprisonment for a term not exceeding 2 years.</p>
<p><u>Possession of burglary tools.</u> Category 2 offence.</p>	<p>Section <u>14</u> - Summary Offences Act 1981. Liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.</p>
<p>Carrying or possessing firearms without lawful purpose. Category 3 offence.</p>	<p>Section <u>45</u>(1) - Arms Act 1983. Liable on conviction to imprisonment for a term not exceeding 4 years or to a fine not exceeding \$5,000, or to both.</p>

<p>Unlawful carriage or possession of firearm in public place.</p> <p>Category 3 offence.</p>	<p>Section <u>51</u>(1) - Arms Act 1983.</p> <p>Liable on conviction to imprisonment for a term not exceeding 3 years or a fine not exceeding \$4,000 or to both.</p>
<p>Carrying firearm with criminal intent.</p> <p>Category 3 offence.</p>	<p>Section <u>55</u>(1) - Arms Act 1983.</p> <p>Liable on conviction to imprisonment for a term not exceeding 5 years.</p>
<p>Found in a public place preparing to commit an imprisonable offence.</p> <p>Category 1 offence;</p> <p>Category 2 offence.</p>	<p>Section <u>28</u> - Summary Offences Act 1981.</p> <p>Liable:</p> <ul style="list-style-type: none"> <li>• to a fine not exceeding \$2,000; or</li> <li>• for a second or subsequent offence within a period of 12 months, to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.</li> </ul>
<p>Found on property without reasonable excuse.</p> <p>Category 2 offence.</p>	<p>Section <u>29</u> - Summary Offences Act 1981.</p> <p>Liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000. If warned to leave and if refuses or fails to do so, liable to a fine not exceeding \$500.</p>
<p>Peeping or peering into dwelling house.</p> <p>Loitering on any land.</p> <p>Category 1 offence.</p>	<p>Section <u>30</u> - Summary Offences Act 1981.</p> <p>Liable to a fine not exceeding \$500.</p>

## **Ingredients of burglary related offences**

### **Aggravated burglary (s232 CA)**

Ingredients:

- while committing burglary
- had a weapon with them or used any thing as a weapon

**or**

- having committed burglary
- had a weapon with them or used anything as a weapon
- while still in the building or ship.

**Note:** 'Had a weapon with them' does not require physical possession. Ready access to the weapon is sufficient.

### **Armed with intent to commit burglary (s232(2) CA)**

Ingredients:

- were armed with a weapon
- with intent to commit burglary.

**Note:** It is not necessary to identify the particular building entered, or intended to be entered. In practice, a charge of being armed with intent is used when a suspect is found armed and:

- is apprehended attempting to commit a burglary
- makes a verbal admission of intent to commit burglary or entering without authority, when found at the scene.

You may want to use this charge in addition to a charge of burglary or attempted burglary.

### **Attempted burglary (s72 and s231)**

Ingredients:

- intent to commit burglary
- does or omits an act for the purpose of accomplishing their object to commit the burglary intended.

**Note:** Where there are signs of an unsuccessful attempt to enter a building, such as clear tool marks on a door or window, or a padlock or chain is cut, and the person or their tool did not enter an enclosed yard or any part of the building to do that, consider a charge of attempted burglary.

### **Being in possession of instrument for burglary (s233(1)(a) CA)**

Ingredients:

- without lawful authority or excuse had in their possession
- any instrument capable of being used for burglary with intent to use it for such a purpose.

**Note:** The offence relates only to burglary. You need to prove that the suspect actually intended to use the instrument for burglary.

It is a defence to prove that the suspect had a lawful authority or excuse for possessing the instrument.

### **Being disguised for burglary (s233(1)(b) CA)**

Ingredients:

- without lawful authority or excuse
- had their face covered or were otherwise disguised
- with intent to commit any imprisonable offence.

**Note:** The onus of proving the lawful authority or excuse lies on the defendant.

### **Possession of burglary tools (s14 SOA)**

Ingredients:

- without reasonable excuse
- possessed
- any instrument capable of being used for burglary
- in circumstances that prima facie showed an intention to use it for burglary.

Even when the offence contains a defence previously falling within repealed section 67(8) of the Summary Proceedings Act 1981, the removal of the reverse onus will not require the prosecution to exclude the application of the defence in every case. In accordance with general evidential principles, the defendant will bear the evidential onus of making the defence a triable issue. That requires him or her to point to some evidence (by way of either cross-examination of prosecution witnesses or direct evidence) that makes it a reasonable possibility. The mere assertion by the

defendant that the prosecution has not proved beyond reasonable doubt that a defence does not apply will not suffice. In most cases, therefore, the change from a legal to an evidential burden will make no difference to the way in which the trial is conducted or its outcome.

However, if the defence produces evidence showing that the suspect had a reasonable excuse, the burden of proving that this excuse is not valid shifts to the prosecution.

It would be prudent from an investigative point of view to explore possible “excuses” thoroughly in the interview phase with a view to discounting these where applicable.

As detailed in the commentary in Westlaw, “whenever ‘reasonable excuse’ is negated, the ‘prima facie intention’ rule means that, if it is satisfied, the defendant may be properly convicted of this offence even though it may be established that use for burglary was not in truth intended by the defendant”.

See the [possession of burglary tools commentary](#) in Westlaw NZ for further information relating to:

- possession
- any instrument capable of being used for burglary
- circumstances that prima facie show an intention to use it for burglary
- reasonable excuse.

## Forfeiture

<b>If a person is convicted...</b>	<b>then...</b>
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<p>of possessing burglary tools under section <u>14</u> of the Summary Offences Act 1981,</p>	<p>the court may order the instrument(s) be forfeited to the Crown or disposed of as the Court directs at the expense of the person convicted and may also order the person to pay any reasonable costs incurred by the Commissioner of Police in holding the instrument(s) (section <u>44A</u> of the Summary Offences Act 1981 refers).</p> <p><b>Note:</b> These forfeitures are automatic statutory consequences of conviction. There is no need to request an order for destruction.</p>
<p>under section <u>233</u> of the Crimes Act 1961,</p>	<p>there is no provision for automatic forfeiture. <b>Note:</b> You must apply to the court for an order to have the instruments destroyed.</p>
<p>of using, carrying or possessing a firearm, airgun, pistol, restricted weapon, imitation firearm, ammunition or explosive in breach of the Arms Act 1983,</p>	<p>the court may order that the weapon be seized and disposed of as the Commissioner of Police directs (section <u>69</u> of the Arms Act 1983 refers).</p>

of being in possession of an instrument for burglary, under Section <u>233</u> (1)(a) of the Crimes Act 1961,	the court may, if it thinks fit, order the instrument to be forfeited to the crown or disposed of as the court directs at the expense of the convicted person, and may order the person to pay any reasonable cost incurred by the Commissioner of Police in retaining the instrument (section <u>233</u> (2) of the Crimes Act 1961 refers). Note that section 233 is to be read in conjunction with section <u>377</u> of the Criminal Procedure Act 2011 which provides for the restitution of property in the possession of an accused where some other person can establish ownership of the items in question
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## **Burglary procedures**

### **Initial action**

When you receive a report of a burglary, follow, where appropriate, the procedures in the Homicide and serious crime investigations chapter, 'Part 1 Initial response to homicide or serious crime' and the 'Crime Scene Examination' chapter of the Police Manual.

### **Interviewing the victim**

After clearing and containing the scene, interview the victim to establish:

- when the premises were last secured
- who last secured them
- the date and time that the offence was discovered
- who discovered it
- brief details of the offence
- brief details of the property stolen
- details of suspects
- whether anything has been moved or touched by the victim or anyone else
- whether the premises had been burgled before.

### **Examining the scene**

A scene of crime officer (SOCO) should be used to examine any burglary scene wherever possible. If no SOCO is available follow these steps when examining the scene.

<b>Step</b>	<b>Action</b>
1	Identify all possible points of entry and exit and: <ul style="list-style-type: none"><li>• note the size, depth and nature of any force marks</li><li>• preserve any impressions with rubber moulding compound from the SOCO.</li></ul>
2	Take control samples, for example: <ul style="list-style-type: none"><li>• glass chips where a window has been broken</li><li>• paint flakes where an instrument has caused paint damage.</li></ul>
3	Ensure the scene and any significant evidence within it has been photographed by a Police photographer (if possible) or by attending constable prior to any evidence disturbance or collection.

## **Forensic examination**

Follow these steps when conducting a forensic scene examination.

<b>Step</b>	<b>Action</b>
1	Start fingerprinting after the point(s) of entry and exit have been determined and examined.
2	To ensure that no fingerprints are missed, try to find any parts of the window, door and surrounding surfaces that may have been touched by the suspect.

3	Ensure sites identified as suitable for swabbing for DNA are identified such as blood left at points of entry (e.g.: broken windows).
4	Secure any evidence such as tools and instruments used to force entry, cigarette butts and blood.

See also: '[Crime Scene Examination](#)'.

## **No forced entry**

If there is no sign of a forced entry, examine the door locks. Consider whether:

- a hidden key was found
- a skeleton key was used (if necessary, obtain the services of a locksmith)
- anyone is known to have keys to the address
- there was collusion with employees to leave a door or window unsecured
- a family member or close associate may have a key to the address and therefore may be responsible for accessing the premises.

## **Collusion with an employee**

While examining the interior of the building, consider whether the offence indicates that an employee provided information about:

- the alarm system
- the location of the safe, keys, valuables or expensive property
- the presence or absence of security staff
- when the maximum takings would be available
- the identity of the cleaners
- alarm codes used by various employees including cleaners and/or delivery people.

Then obtain computer records of all alarm monitored activity and secure any available video footage.

## **Insurance**

Consider whether there is evidence that the complaint has been made for the purposes of deceiving an insurance company, or to cover misappropriation of money. Where appropriate, make enquiries with the complainant's insurer or access the [NZ Insurance Council](#) database for more information.

## Preparing the case file

Follow these steps to conduct the listed interviews and complete the associated correspondence.

<b>Step</b>	<b>Action</b>
1	Interview the person who secured the building, ship or enclosed yard if fully enclosed and the person who discovered the offence. Record the details on a job sheet or in a written statement, whichever is appropriate. Obtain elimination fingerprints.
2	Conduct a preliminary interview of the victim and clarify aspects of the offence. Consider and evaluate the evidence and information to make a reconstruction for an offence report.
3	Establish these points for the offence report: <ul style="list-style-type: none"><li>• full particulars of the victim</li><li>• full description of the property stolen and how it can be identified</li><li>• any additional information that the victim has omitted in the interview</li><li>• insurance details</li><li>• who does the owner/occupier think may be responsible for the burglary and why.</li></ul>
4	If applicable, obtain and include: <ul style="list-style-type: none"><li>• a list of the staff</li><li>• a list of the occupants of the dwelling or apartment house</li><li>• elimination fingerprints.</li></ul>

5	<p>Also include:</p> <ul style="list-style-type: none"> <li>• the results of the scene examination</li> <li>• the name of the attending Police employee who may be needed for further information such as the identity of the suspect, or details of other property stolen</li> <li>• details of intended Police action.</li> </ul>
6	<p>Advise the victim what further actions will be carried out, and issue a Complaint Acknowledgement Form (CAF) to the victim.</p> <p><b>Important:</b> Include the file number and/or event number.</p>
7	<p>Before leaving the scene, conduct local enquiries, interview witnesses and record the details in a job sheet or written statement, whichever is appropriate.</p>

See also '[Case management](#)'.

## Making further enquiries

Follow these steps to make further inquiries.

Step	Action
1	Complete POL23 (offence report) and POL23B (supplementary burglary report).
2	Ensure your supervisor is advised of the offending.
3	Plan further enquiries and record these on the job sheet or for more detailed investigations prepare an investigation plan.

4	<p>Consider broadening the scope of local enquiries by questioning:</p> <ul style="list-style-type: none"> <li>• neighbours</li> <li>• vendors</li> <li>• transport operators</li> <li>• shift workers</li> <li>• distributors of mail, circulars and newspapers.</li> </ul>
5	<p>Ensure the POL23 and 23B reports are submitted through your supervisor prior to the end of your shift.</p>
6	<p>Ensure all identifiable property is recorded accurately for entry into NIA. Make sure you arrange follow-up enquiries with the victim to obtain serial numbers when they are not readily available.</p>
7	<p>Consider:</p> <ul style="list-style-type: none"> <li>• obtaining a written statement from the victim</li> <li>• contacting the media</li> <li>• issuing a special notice</li> <li>• whether similar complaints have been made, and whether the victim has a criminal history.</li> </ul>
8	<p>Arrange for the exhibits to be examined by appropriate experts.</p>

See also: '[Crime Scene Examination](#)'.

## **Role of the Intelligence section**

The effectiveness of Police depends on its ability to obtain, process and effectively use intelligence. Intelligence is information that has had value added to it by the intelligence process. All Police employees should therefore have an understanding of the intelligence process, be aware of their role in collecting information and intelligence, and be aware of their obligations in relation to intelligence noting's under the National Recording Standards.

An efficient intelligence process leads to the effective use of resources and greater success against criminals, resulting in reduced criminal activity. Burglary is an offence where offender/s are likely to be recidivist and will use specific M.O's. Offenders can quickly accelerate offending levels if left unchecked. Intelligence offices have only limited collection capabilities and are therefore largely dependent on all Police employees for gathering information (and/or intelligence) on their behalf. The intelligence office is responsible for collating, storing and analysing information collected from all sources in order to produce intelligence product to support operations and decision-makers. They are also responsible for providing general crime and crime trend analysis for tactical purposes.

Intelligence staff must follow these steps.

Step	Action
1	Receive copies of POL23 and 23B offence reports.
2	Apply rigorous methodology around data collection and M.O. analysis.
3	<p>Coordinate dissemination of further information as required across areas and districts to inform others of the burglary, giving details of the stolen property and a description of the suspect to groups including:</p> <ul style="list-style-type: none"> <li>• law enforcement teams, crime control units and burglary squads</li> <li>• second-hand dealers</li> <li>• other stations, by either e-mail alerts or bully board messages posted locally, by area or nationally</li> <li>• the NIC (Modus Operandi section) at PNHQ when an offender has a distinctive modus operandi or a serious crime is also involved</li> <li>• human sources.</li> </ul>

Intelligence sections provide a viable product back to relevant decision-makers via the tasking and coordination process. That information could include:

- hot offenders, victims and locations
- identified offending linked to burglary
- suspicious activity reported around the time of this offending

- known dishonesty offenders who are residing in the same area as the identified offending.

## Role of the decision-maker

The decision-maker:

- prepares and implements deployment plans when required which utilises a 'whole of policing' approach in an effort to identify person(s) responsible for the burglary offending and any other associated crimes including:
  - Community Policing Teams
  - Community constables
  - Youth Services
  - Targeting squads (LET / CPT'S / burglary squads)
  - Media
  - Neighbourhood Support Groups (NSG)
  - Community Patrol groups
- uses various tools including press releases, e-alerts, letter-box flyers dependent on the severity and/or frequency of the offending and/or other criminal activity linked or occurring in the area around this time
- identifies other coordinated activity such as:
  - ensuring bail checks are completed especially those involving known dishonesty offenders
  - cold calls on identified suspects
  - directed high visibility policing activity including foot and mobile patrols at identified 'high risk' times.

## Evidential categories for suspect

There are three evidential stages of suspect.

Stage	Description/action
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No evidence	<p><b>Description:</b></p> <ul style="list-style-type: none"> <li>• Person named as a suspect, no tangible evidence linking them. Examples, victim nominates them, Police staff nominate them based on local knowledge / modus operandi.</li> </ul> <p><b>Action:</b></p> <ul style="list-style-type: none"> <li>• link person as suspect on the occurrence in NIA</li> <li>• consider speaking to the suspect for their explanation.</li> </ul>
Some evidence	<p><b>Description:</b></p> <ul style="list-style-type: none"> <li>• Some evidence linking person as a suspect (e.g. fits description, motive, forensic, named and ID by victim). Examples, fingerprint hit – but explanation needed, nominated from CCTV footage, but want warrant to identify clothing / alibi information.</li> </ul> <p><b>Action:</b></p> <ul style="list-style-type: none"> <li>• link person as suspect on the occurrence in NIA</li> <li>• locate and interview suspect: <ul style="list-style-type: none"> <li>◦ if not located, enter wanted to interview (WTI) alert in NIA.</li> </ul> </li> </ul>
Evidential sufficiency	<p><b>Description:</b></p> <ul style="list-style-type: none"> <li>• There is evidential sufficiency, could arrest and charge suspect with no further information, but they have not yet been located / spoken to in regard to the offence.</li> </ul> <p><b>Action:</b></p> <ul style="list-style-type: none"> <li>• link person as suspect on the occurrence in NIA</li> <li>• locate and interview suspect: <ul style="list-style-type: none"> <li>◦ if not located, enter wanted to arrest (WTA) alert in NIA.</li> </ul> </li> </ul>

## Investigating the suspect

Follow these steps to investigate the suspect.

<b>Step</b>	<b>Action</b>
1	Ensure the suspect (this is a requirement of NRS, see <a href="#">1.8.2 Recording of Suspects</a> ) is entered as an entity into the occurrence with the role of suspect and linked to the offence in the visual linker in NIA as 'suspect'.
2	Investigate the suspect or suspects who may be indicated by: <ul style="list-style-type: none"><li>• fingerprints</li><li>• DNA</li><li>• clothing</li><li>• modus operandi</li><li>• vehicle(s)</li><li>• victim and witnesses</li><li>• staff lists</li><li>• human sources</li><li>• accomplices</li><li>• media response</li><li>• patrol groups and other Police squads</li><li>• second-hand dealers</li><li>• computer auction sites such as Trade-Me</li><li>• graffiti left at the scene or in the surrounding environs</li><li>• identifying graffiti or, 'claims' on electronic social networking sites such as Facebook or Twitter.</li></ul>
3	Consider making enquiries via other information sources including: <ul style="list-style-type: none"><li>• Community Probation Service (Department of Corrections)</li><li>• other government agencies including the Ministry for Vulnerable Children, Oranga Tamariki and Housing NZ</li><li>• licensed premises</li><li>• amusement arcades.</li></ul>

4	<p>Consider interviewing people:</p> <ul style="list-style-type: none"> <li>• arrested on other charges (cell block interviews)</li> <li>• who were seen in suspicious circumstances or attracting attention at the time of the crime</li> <li>• whose names appear on Intelligence noting sheets.</li> </ul>
5	<p>Assess whether there are sufficient grounds to obtain a search warrant to search a suspect's dwelling and/or vehicle.</p>
6	<p>Consider seeking advice from the Police Technical Support Unit about using:</p> <ul style="list-style-type: none"> <li>• electronic alarms</li> <li>• surveillance cameras</li> <li>• video equipment</li> <li>• tracking devices.</li> </ul>
7	<p>If there is a large-scale or series of burglary (and other related criminal) offending and suspect(s) are identified and other methods have failed, consider the use of call data warrants to support the activity in step 5 above.</p>
8	<p>Maintain contact with the victim(s) during the course of enquiries to gain further information.</p>

## After identifying the suspect

Follow these steps after you have identified the suspect.

Step	Action
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1	<p>Collect information, including the suspect's:</p> <ul style="list-style-type: none"> <li>• name and aliases</li> <li>• physical description</li> <li>• residential address</li> <li>• occupation and employment details</li> <li>• marital status</li> <li>• photograph</li> <li>• criminal history</li> <li>• vehicle details</li> <li>• whether the suspect has previously supplied a DNA sample.</li> </ul> <p>Also, find out whether the suspect's fingerprints were identified at the scene or on evidence found.</p>
2	<p>Record and link the suspect (this is a requirement of NRS (see <a href="#">1.8.2 Recording of Suspects</a>))</p> <ul style="list-style-type: none"> <li>• enter them as an entity into the occurrence with the role of suspect</li> <li>• link them to the offence in the visual linker in NIA as 'suspect'.</li> </ul>
3	<p>Locate the suspect. If there is more than one suspect, separate them and appoint an O/C suspect for each. Search suspects if you have their consent.</p>
4	<p>Where the suspect cannot be located:</p> <ul style="list-style-type: none"> <li>• enter an alert into NIA</li> <li>• ensure area/district employees are alerted via tactical assessments and area/district alerts</li> <li>• notify other partner agencies including WINZ, Housing NZ, Community Probation Service</li> <li>• consider filing a charging document for the offending then seeking a warrant to arrest in lieu of summons (assuming reasonable attempts to serve the summons are made)</li> <li>• ensure any alerts are entered into NIA including file numbers of any warrant files.</li> </ul>

5	<p>Execute a search warrant if necessary and:</p> <ul style="list-style-type: none"> <li>• appoint an O/C exhibits</li> <li>• where possible always ensure that the suspect is present during the search</li> <li>• search the suspect's property and vehicles</li> <li>• seize all evidence, including stolen property, the suspect's clothing and footwear and any other property that will connect the suspect to the burglary</li> <li>• obtain the suspect's explanation for the exhibits found and issue a receipt on a Police 268.</li> </ul>
6	<p>Interview the suspect by means of electronic recording (DVD or VHS) if possible otherwise seek to record a written statement. Ensure the provisions of section <u>30(6)</u> of the Evidence Act 2006 are complied with in all cases, and, where a young person is interviewed, section 215 of the Children, Young Persons and Their Families Act 1989. See the relevant '<u>Interviewing</u>' chapter.</p> <ul style="list-style-type: none"> <li>• Question re their current offending.</li> <li>• Question re their previous offending.</li> <li>• Ask questions which may identify their modus operandi or routine methods of activity.</li> <li>• Seek information which may identify others involved in this or related offending.</li> </ul>
7	<p>Note and photograph any injuries. Seek an explanation of how they were caused. Where evidence was found at the scene that the suspect was injured, such as blood at the point of entry, consider seeking consent of the suspect to allow a Police doctor to examine any injuries.</p>
8	<p>Consider obtaining a voluntary DNA sample under the provisions of Criminal Investigations (Bodily Samples) Act 1995, <u>Part 2</u> - Obtaining [bodily] samples from suspects.</p>

9	Obtain the suspect's fingerprints, palm-prints and photograph.
10	Obtain your supervisor's authority to prosecute and their assessment of appropriate charges.
11	Ensure proper arrest procedures are adhered to including proper assessment of any risks identified.
12	Ensure both, the watch house keeper and your supervisor, are notified of the arrest.
13	Ensure all known and applicable information is entered into NIA and links completed.
14	Clear or modify any alerts within NIA.
15	Ensure all resolutions are entered into NIA.  See: <u>Part 5 – Apprehension and Clearance Requirements</u> in the National Recording Standard (NRS).

## Final action

Follow these steps.

Step	Action
1	Complete enquiries to: <ul style="list-style-type: none"> <li>• corroborate the suspect's statement</li> <li>• recover all stolen property</li> <li>• identify recovered property.</li> </ul>

2	<ul style="list-style-type: none"> <li>• Arrange for the ESR to examine the exhibits seized from the suspect where required.</li> <li>• Ensure any exhibits forwarded to the ESR for examination are prioritised and 'authority to examine' signed-off by an authorised officer. The suspect's clothing and footwear should be examined for trace evidence which could link the offender to the scene of the burglary or victim(s).</li> <li>• The Fingerprint Section or SOCO should examine fingerprints on any recovered stolen property. SOCO should also identify any items considered suitable for swabbing which may identify the victim's DNA (e.g.: bottles of alcohol).</li> </ul>
3	<p>Prosecute or carry out alternative action dependent on the age of the suspect. Ensure YAS are notified early if the suspect is aged under 17 years and that the provisions of the Children, Young Persons and Their Families Act 1989 are adhered to. Then:</p> <ul style="list-style-type: none"> <li>• consider whether to oppose bail</li> <li>• seek appropriate bail conditions such as curfews, non-association orders, reporting and residential clauses</li> <li>• prepare Summary of Facts, any reparation schedules and Victim Impact Statement(s)</li> <li>• notify Prosecutions or YAS of any other matters which require their consideration.</li> </ul>
4	<p>Complete the file by:</p> <ul style="list-style-type: none"> <li>• advising the victim of the outcome</li> <li>• returning property under receipt after the appeal period has expired</li> <li>• cancelling or modifying any alerts and/or special notices</li> <li>• advising any insurance company who has a registered interest in the offending.</li> </ul>
5	<p>Acknowledge any assistance given by public and staff.</p>

## Safe breaking

## Rationale

Safes come in many forms ranging from vaults or storage boxes in banks and business premises, to ATMs and personal safes located on private premises. The latter have become increasingly popular for the storage of personal valuable items and once removed are highly portable.

## Before you start

Photograph the scene before it is disturbed, so that it can be compared with similar offences.

## Blown safes

Where explosives have been used follow these steps.

Step	Action
1	<p>Examine the safe for:</p> <ul style="list-style-type: none"><li>• traces of explosive (usually found on the bottom plate, inside the door)</li><li>• packing such as plasticine, pastry, putty or moist clay</li><li>• evidence of the type of detonator used; for example, was it a Nobel's no. 6 (which is plain aluminium), or electric (which would have two wires attached)</li><li>• evidence of the type of fuse used; for example, was it a safety fuse, or Cordex (which is instantaneous and used with a primer)</li><li>• igniters, such as:<ul style="list-style-type: none"><li>◦ safety match</li><li>◦ match fuse (a large-headed match especially for starting a fuse)</li><li>◦ batteries for an electric detonator</li></ul></li><li>• a weight that was attached to the safe door handle, to hold it open during the explosion.</li></ul>
2	<p>Consider using the services of experts such as the ESR, the Inspector of Explosives from the Ministry of Business, Innovation and Employment, or a locksmith.</p>

3	Carefully preserve anything taken from the blown safe that can be traced back to the suspect. Have it examined by the ESR for burning or traces of gelignite.
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## Broken safes

Where the safe has been opened by instruments, follow these steps.

Step	Action
1	<p>Consider the offender's methods and focus on these questions:</p> <ul style="list-style-type: none"> <li>• Were the hinges cut off and a jemmy used on the door?</li> <li>• Were the walls cut open?</li> <li>• Was an entire wall jemmied off?</li> </ul>
2	<p>Consider whether anything that has been cut reveals any peculiarities that can be compared with the instrument used. These peculiarities can be used to identify the instrument if it is not recovered at the scene. Arrange for ESR examination.</p>
3	<p>If the safe was cut open with a cutting torch, consider:</p> <ul style="list-style-type: none"> <li>• how it was cut; for example: <ul style="list-style-type: none"> <li>◦ around the lock, giving access to the locking tumblers</li> <li>◦ through a wall and inside lining</li> </ul> </li> <li>• whether the offender was skilled at using the torch</li> <li>• whether any covering was placed over a window to hide the glare.</li> </ul>
4	<p>Examine any equipment left at the scene. This may be traced through serial numbers on gauges and glass bottles.</p>

5	Where the safe is an ATM, obtain any relevant surveillance footage provided by nearby CCTV. Check for other similar MOs (gas attack, ram raid etc.) and liaise with the ATM company/bank or guarding company associated with the ATM.
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## Control samples

Take control samples for later comparison with traces from the suspect's clothing. These samples include:

- safe packing (looks similar to sawdust)
- fibres and dust from sacks or other padding placed around the safe before the explosion
- paint chips, particularly when a safe is hacked open
- metal bubbles, where a safe is cut with a torch.

## Possession of burglary instruments

### Searching for instruments

When anyone is apprehended at the scene of an offence, found loitering under suspicious circumstances, or suspected of committing a burglary offence, consider searching for instruments:

- in the vicinity of the offence
- on the suspect's person, if you have consent
- in the suspect's vehicle and at his or her home. If you do not have consent and you have sufficient grounds to do so, consider obtaining a search warrant.

**Further information:** See the '[Search](#)' chapter of the Police Manual.

When instruments are found, follow these steps.

Step	Action
1	Carefully preserve them for: <ul style="list-style-type: none"> <li>• comparison with marks left at other burglaries</li> <li>• production in court.</li> </ul>

2	Issue a receipt on a Police 268 for property seized.
3	Interview the suspect by means of electronic recording (DVD) if possible otherwise seek to record a written statement. Ensure the provisions of section <u>30(6)</u> of the Evidence Act 2006 are complied with in all cases. See the ' <u>Interviewing</u> ' chapters.
4	You can file a charge of possessing burglary instruments along with other charges arising from the same incident.