

SIMPLE BURGLARY OF AN INHABITED DWELLING, A CRIME OF VIOLENCE?
BY Morgyn Young

Introduction

Act 419, which makes simple burglary of an inhabited dwelling when a person is present in the dwelling, house, apartment, or other structure a crime of violence, became effective on August 8th, 2023.¹ Despite the passage of the bill, there was heavy debate on whether or not the Legislature of Louisiana should enact the bill.²

The overwhelming majority of the Louisiana House of Representatives and senate decided that simple burglary of an inhabited dwelling when a person is present should be a crime of violence. During the debate to decide whether to enact the bill into law, several congress members expressed their belief that the crime should be a crime of violence based on the fear and apprehension of harm one experiences as a victim.³

While the majority concluded the crime should be classified as a crime of violence, a plausible explanation as to why was lacking. It is important to note that before the hearing on House Bill 65, representative Villo, in compromise with another representative, amended the act the morning of the congressional debate.⁴ The amendment to the act required presence of victim for the crime of simple burglary of an inhabited dwelling to be a crime of violence.⁵ Villa repeatedly expressed her belief that simple burglary of an inhabited dwelling without the requirement of a victim's presence

¹ *Id.*

² *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the H. Comm. on Admin. of Crim. Just., 2023 Leg., 2023 Sess. (La. 2023).*

³ *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the Sen. Comm. on Admin. of Crim. Just., 2023 Leg., 2023 Sess. (La. 2023); see also CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the H. Comm. on Admin. of Crim. Just., 2023 Leg., 2023 Sess. (La. 2023).*

⁴ *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the H. Comm. on Admin. of Crim. Just., 2023 Leg., 2023 Sess. (La. 2023).*

⁵ *Id.*

was also a crime of violence.⁶ However, had the bill become law without requiring a victim presence, the bill would have directly conflicted with United States Supreme Court jurisprudence.⁷ However, the fact that the act had to be amended to become law demonstrates the differing beliefs on what actual violence is. These differing beliefs has contributed to the legislature overreaching in classifying crimes and creating meaningless laws.

Most opponents to the bill's passage expressed their opposition based on the bill's effect on rehabilitative efforts for offenders or the cost of implementing the bill.⁸ However, two opponents to the bill reasoned that simple burglary was not an inherently violent crime and, therefore, did not fit in the definition of a crime of violence.

This article will dive into the statute covering simple burglary of an inhabited dwelling and discuss how the statute does not encompass an inherently violent element. In doing so, it is clear the law does not fit inside the bounds of a "crime of violence." This article also addresses the challenges of not only defining violence but also trying to categorize crimes as violent. In doing so, it is clear that the Louisiana Legislature struggles to define violence by pointing out the irregularities in the Louisiana Code and classifies crimes as violent without much consideration. Lastly, this article will discuss the consequences of labeling a non-violent crime as violent regarding sentencing guidelines and its effect on public welfare.

I. Is Simple Burglary of an Inhabited Dwelling a Crime of Violence?

⁶ *Id.*

⁷ *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (The United States Supreme Court held that Simple Burglary of an Inhabited Dwelling was not a crime of violence when the victim was not present.)

⁸ *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the Sen. Comm. on Admin. of Crim. Just.*, 2023 Leg., 2023 Sess. (La. 2023); see also *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the H. Comm. on Admin. of Crim. Just.*, 2023 Leg., 2023 Sess. (La. 2023).

At first thought, defining violence would seem to be a relatively easy task. However, the following sections will demonstrate how difficult it is to define an abstract concept concretely. This section will explore the customary definition of violence, the Louisiana Legislature's attempt to define and categorize violence, and the Judicial interpretation of violence. Simultaneously, incorporating and comparing simple burglary of an inhabited dwelling when a person is present to each interpretation of violence to demonstrate the classification does not adequately coincide with the crime. In doing so it becomes clear that the Louisiana legislature has strayed away from the traditional definition of violence and overstepped in classifying crimes as violent – which has detrimental effects on offenders and society at large.

A. Customary Definition Of Violence

When you think of a violent act, what comes to mind? Does your mind instantly think of aggressive physical contact or, perhaps, such mental anguish that any reasonable person would experience severe trauma? The answer to this question varies. Experience shapes beliefs and perceptions; therefore, what one considers violent may not be regarded as violent to another.⁹ While many have a basic understanding of what violence is, a definite definition of violence varies among different areas of study.¹⁰ While a certain degree of heightened abuse can be classified as violent, there is a distinction between abuse and violence.¹¹ Not all crimes that involve some form of abuse, such as simple battery or simple assault, are considered violent or, at minimum, meet the threshold to be classified as a crime of violence.¹² This notion demonstrates that abuse is a

⁹ Philip Dwyer & Joy Damousi, *General Introduction: Violence in World History*, 1 in *The Cambridge World History of Violence* p. 3 (Garrett G. Fagan et al. eds., 2020).

¹⁰ Connor Sunderman, *Violence against Property: The Breaking Point of Federal Crime of Violence Classifications*, 122 *colum. L. Rev.* 755 (2022).

¹¹ Karakurt G, Silver KE, *EMOTIONAL ABUSE IN INTIMATE RELATIONSHIPS: THE ROLE OF GENDER AND AGE*, (*Violence Vict.* 2013).

¹² LA. REV. STAT. § 14:2.

spectrum, with nonviolent forms of abuse on one end and violent forms of abuse on the other. While placing certain crimes on the spectrum is easy, there is a grey area. This idea leads us to question what factors elevate an act from nonviolent to violent? Where does simple burglary of an inhabited dwelling when a person is present fit on such a spectrum?

Historically, the notion of violence has centered around "human victims and targets."¹³ More recently, the definition of violence in the law has expanded to include property as a target.¹⁴ The Crime of Violence statute in Louisiana depicts this by listing certain property crimes as a crime of violence.¹⁵ Over time, the definition of a crime of violence has continuously expanded through the passage of bills deeming crimes violent.¹⁶ However, the ever-expanding definition has diluted the traditional meaning of violence and shows little limitation on part of the Legislature to deem crimes as violent. The fact that the definition continues to expand leads us to question whether an offense against property is inherently "violent"? Or has the Louisiana Legislature overreached in defining violence? In other words, the select few who are a part of the Legislature ultimately dictate what violence is in the law; however, as discussed above, the members themselves disagree.¹⁷ This section begins by addressing the ever-evolving definition of violence.

The definition of violence is unique because the meaning constantly evolves and depends on the "cultural beliefs and attitudes...in any given society at any given time."¹⁸ Many different sources offer a variety of definitions for violence. However, throughout history, there has been a

¹³ Dwyer, *supra* note 15, at

¹⁴ Sunderman, *supra* note 15, at 757.

¹⁵ LA. REV. STAT. § 14:2.

¹⁶ *Id.*

¹⁷ *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the H. Comm. on Admin. of Crim. Just.*, 2023 Leg., 2023 Sess. (La. 2023). (The morning of the debate, the bill to enact simple burglary of an inhabited dwelling as a crime of violence was amended to require victim presence.)

¹⁸ Dwyer, *supra* note 15, at 3.

common element in all meanings of violence, and that is the intent to harm a person.¹⁹ "That is why accidents, which may be very violent, are not classified as an act of violence."²⁰ This emphasizes the distinction between "causing harm and violence."²¹ Peter Spierenburg, a renowned criminologist, defined violence as the "intentional encroachment upon a person's physical integrity."²² More recently, The World Health Organization defines violence (2) as:

"The intentional use of physical force or power threatened or actual against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation."²³

A similar definition defines violence as the use of physical force by one or more against another as well as a "psychological social and emotional dimension, to encompass any coercive or exploitative relationship."²⁴ While these definitions vary, all of these definitions center around the idea that the offender must have had the intent to do the act that caused harm or injury to a human, and the act committed was inherently dangerous. Additionally, the rhetoric of the definitions implies a serious injury or damage to another, not a mere touch.²⁵ Most importantly, the definitions center around a human victim being a target of the act, and none consider the likelihood of the offender being injured due to his act. From this, a violent crime requires intended harm or potential

¹⁹ *Id.* at 3-4.

²⁰ *Id.* at 3.

²¹ *Id.* at 4.

²² Pieter Spierenburg, "VIOLENCE: REFLECTIONS ABOUT A WORD", IN S. BODY-GENDROT AND P. SPIERENBURG (EDS.), *VIOLENCE IN EUROPE: HISTORICAL AND CONTEMPORARY PERSPECTIVES* (New York: Springer, 2008), p. 13.

²³ Krug EG et al., eds. *World report on violence and health*. Geneva, World Health Organization, 2002.

²⁴ Wessells, Michael G, and Kathleen Kostelny. "The Psychosocial Impacts of Intimate Partner Violence against Women in LMIC Contexts: Toward a Holistic Approach." *International journal of environmental research and public health* vol. 19,21 14488. 4 Nov. 2022.

²⁵ Krug, *supra* note 29, at 5.

harm to a victim target. In terms of public opinion as whole, offenses against persons are typically regarded as more serious, and more prone to violence compared to property crimes.²⁶

While an offense against property may be stretched to fall under one of these definitions, such as arson, where it is highly likely that someone would be injured, or a property crime motivated by hatred of another human, it is clear that the definitions hone in on violent acts that involve physical contact or threatened physical contact to one's person. However, The Louisiana Code labels these acts or crimes as "offenses against a person."

In Louisiana, Simple burglary of an Inhabited dwelling is classified as an "offense against property."²⁷ Simple burglary of an Inhabited dwelling is rightfully classified as an "offense against property" because the motive behind the crime is not to harm a person but rather to obtain possessions.²⁸ In other words, the target of this crime is not to injure a human physically or mentally.²⁹ Simple burglary of an inhabited dwelling, by its plain language, does not fit within any definition of violence discussed previously without some nexus to human injury. In the debate over the bill, one of the arguments made in support of the bill was the victim's fear or apprehension of physical contact was enough to elevate the crime to a crime of violence.³⁰ However, this idea stays from the traditional definitions of violence in that it does not require the offender to have the mindset, the intent, or the will to harm the victim.³¹ Additionally, the statute does not require the

²⁶ Rossie, P., Waite, E., Bose, C., & Berk, P. The seriousness of crimes: Normative structure and individual differences, *American Sociological Review*, 39(2), p. 233 (1974) (quoting "Crimes against person and illegal drug selling are seen as especially serious offenses, compared to crimes against property.").

²⁷ LA. REV. STAT. § 14:62.2.

²⁸ Kuhns, Joseph, *Understanding Decisions to Burglarize from the Offender's Perspective*, (2012).

²⁹ *Id.*

³⁰ *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the Sen. Comm. on Admin. of Crim. Just.*, 2023 Leg., 2023 Sess. (La. 2023); see also *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the H. Comm. on Admin. of Crim. Just.*, 2023 Leg., 2023 Sess. (La. 2023).

³¹ *State v. Stock*, 212 So.3d 1268, 1277 (La. App. 5th Cir. 2/22/17) (citing "[t]he three essential elements for a crime of simple burglary of an inhabited dwelling are: (1) unauthorized entry, (2) of an inhabited dwelling, (3) with the intent to commit a felony or theft.")

offender be aware that a person is present before entering.³² Research has shown that most burglars go to great lengths to avoid contact with homeowners.³³ Therefore, it is more probable than not that majority of offenders are unaware someone is home when faced with a victim. It is also important to note that if the victim of the burglary were, in fact, physically injured, the charge for the crime would be escalated to another offense, such as aggravated burglary, which was already classified as a crime of violence³⁴ Thus, at the most, a human victim would experience negative emotions during an act that constituted simple burglary of an inhabited dwelling.

While instilling negative emotions, regardless of the offender's intention, may be considered a disagreeable, it is unreasonable to say this alone is enough to escalate a nonviolent crime to a crime of violence.³⁵ For one, the offender lacks the intention to physically harm the victim. Additionally, simple assault – which is an attempt to commit a battery, or the intentional placing another in reasonable apprehension of receiving a battery - is not considered a crime of violence, and that is the most the victim would experience while being present during an act that could only be charged under simple burglary of an inhabited dwelling. When referring to more recent definitions, such as the one provided by the World Health Organization, causing mental turmoil could be classified as violent or, at minimum, some form of physiological or mental abuse.³⁶ However, to say the act is violent, or the abuse endured by the victim is so severe to escalate the crime to a crime of

³² LA. REV. STAT. § 14:62.2.

³³ Richard F. Culp, Ph.D., Phillip M. Kopp, Ph.D., Candance McCoy, J.D., Ph.D., IS BURGLARY A CRIME OF VIOLENCE? AN ANALYSIS OF NATIONAL DATA 1998-2007, p. vii (2015).

³⁴ LA. REV. STAT. § 14:60.

³⁵ Richard F. Culp, Ph.D., Phillip M. Kopp, Ph.D., Candance McCoy, J.D., Ph.D., IS BURGLARY A CRIME OF VIOLENCE? AN ANALYSIS OF NATIONAL DATA 1998-2007, p. 58 (2015) (citing ““Lawmakers often state that burglary of a dwelling may render a victim fearful because an offense had been in personal space and crossed a psychological line of privacy and intimacy by manhandling personal possession in the victim’s home, whether the victim was physically present or not. But not all victims respond in this way; a great many regard the offense as quite unfortunate in property loss terms and unsettling because they wonder why the burglar chose them for a target. But they are not necessarily fearful or vengeful”).

³⁶ Krug, *supra* note 29, at 5.

violence when the offender did not have the malicious intent to harm the victim mentally is unreasonable.³⁷

Public opinion supports this idea, as "crime severity research has consistently found that the offense of burglary is viewed as equivalent to other serious property crimes and is perceived by the public as a crime of relatively low severity compared to violent crimes such as rape, robbery..."³⁸ It can be argued that a crime even with low severity is still violent however, the "crime severity indexes are derived from surveys of justice professionals and members of the public, and these respondents do not rank burglary as a violent crime."³⁹

Furthermore, simple burglary of an inhabited dwelling, even when a person is present, is not a violent crime based on the traditional definition of violence. Even under a more modern approach to defining violence, the crime arguably does not fit within the meaning. The crime does not entail physical harm to the victim or even require that the offender wish to harm the victim.⁴⁰ While fear plays a factor, public opinion regarding the crime refutes the idea that fear or apprehension of a violent act that fears alone is enough to push the crime from nonviolent to violent.⁴¹ In considering the spectrum discussed previously, the crime is somewhat ranked higher than a nonviolent crime, such as simple burglary committed without the victim present, because the victim potentially experiences some mental anguish when faced with the offender. However, this inflicted detriment

³⁷ Richard, *supra* note 39, at 18 (citing "it is often said that even non-violent burglars are particularly frightening to homeowners, that the potential for violent encounters unoccupied buildings is very high and that victim fear should thus be taken into account by placing burglary in the violent crime category. Public opinion and crime scaling exercises, however, contradict these notions.)

³⁸ *Id.* at. vii.

³⁹ *Id.* at 13.

⁴⁰ LA. REV. STAT. § 14:2.

⁴¹ Richard, *supra* note 39, at 18.

is not so substantial to, in return, deem the crime should be placed further on the spectrum, labeling the crime as violent.⁴²⁴³

B. The Louisiana Legislature Interpretation of Violence

In analyzing the broad range of crimes listed as a crime of violence, it is evident the Louisiana Legislature has overreached in classifying crimes as violent. Ultimately, they made it difficult to pinpoint what factors enhance an act from violent to non-violent. The Louisiana legislature provides a list of sixty crimes that, if committed or attempted, will automatically be considered a crime of violence without any judicial interpretation.⁴⁴ Of the sixty crimes, ten offenses against property are crimes of violence.⁴⁵

The Legislature has plenary power to classify any crime as a crime of violence without determining the constitutional requirement the judiciary must consider.⁴⁶ Therefore, the Louisiana legislature is not bound to the definition of crime of violence in the Louisiana Code.⁴⁷ However, considering the Legislature drafted the definition, it is fair to assume the Legislature's definition of violence or the thought process behind classifying a crime of violence should mirror the definition of the code or at least resemble the definition. However, during the debates, not one bill supporter directly referenced the definition; they spoke of their own beliefs and views on what is

⁴² See also Richard, *supra* note 39, at 15 (citing “When presented with vignette scenarios and asked to respond to them, peoples perceptions of burglaries are that the crime becomes more serious and asked to respond to them, people perceptions of burglaries are that crime becomes more serious as the value of property damaged, stolen or destroyed increases, not because of perception that it is a violent crime. When violence occurs it is viewed as an element of a more serious crime...”)

⁴³ See also, Franklin E. Zimring & Gordon Hawkins, IS AMERICAN VIOLENCE A CRIME PROBLEM? 46 DUKE LJ. 43, 43 (1996) (citing “Criminal Violence is the intentional and unjustified infliction of physical injury to a human being.”).

⁴⁴ LA. REV. STAT. § 14:2.

⁴⁵ LA. REV. STAT. § 14:2.

⁴⁶ State v. Oliphant, 113 So. 3d 165, 170 (La. 2013).

⁴⁷ *Id.*

violent.⁴⁸ Accordingly, if the Louisiana Legislature has the power to classify crimes as a crime of violence without following a designed framework, do they have a definite definition for a crime of violence?

This section will compare the elements of enumerated crimes listed as a crime of violence in the Louisiana code in an effort to determine the Legislature's definition of a crime of violence regarding offenses against property. In doing so, it is evident that there is a large discrepancy between not only the crimes listed as a crime of violence but also between the listed crimes and the simple burglary of an inhabited dwelling when a person is present—making it almost impossible to give a concrete definition Crime of Violence. It is clear that the Legislature, as a whole, cannot define violence effectively, nor does the enumerated list under a crime of violence reveal a consistent determination. As in, the Legislature has not plausibly categorized violent crimes.

Louisiana Revised Statutes Title 14, Chapter 1, is comprised of eight parts. Specifically, Part III designates offenses against property, consisting of four subparts. Which include:

1. By Violence to Buildings and Other Property
2. By Misappropriation without Violence to the Person
3. By Misappropriation Without Violence
4. Computer Crime

The language used to define the subparts alone demonstrates that not all crimes against property are violent. The fact that not all crimes listed under "By Violence to Buildings and Other Property" are crimes of violence further depicts the idea that there is a spectrum or a scope of violence that must be satisfied to be deemed a crime of violence. However, a deep dive into the

⁴⁸ *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the Sen. Comm. on Admin. of Crim. Just., 2023 Leg., 2023 Sess. (La. 2023); see also CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the H. Comm. on Admin. of Crim. Just., 2023 Leg., 2023 Sess. (La. 2023).*

subparts, specifically Subpart (A), portrays the inconsistencies in crimes listed as "violent" compared to crimes listed as a crime of violence by statute.

Under Subpart (A), the Louisiana legislature lists 33 crimes that fit under "By Violence to Buildings and Other Property." Four of the crimes listed under Subpart A are classified as a crime of violence, which include (1) Aggravated Arson, (2) Aggravated criminal damage to property, (3) Aggravated burglary, and (4) Home invasion.⁴⁹ Under Louisiana Revised Statutes 14:2, Simple Burglary of an inhabited dwelling is only a crime of violence when a person is present. This distinction alone demonstrates the Legislature's belief that a person's presence elevates the crime to a crime of violence. However, it does little to clarify what the Legislature as a whole believes is violent. To further explain, injury by arson, where a person is present and injured, also falls under this Subpart, yet it is not a crime of violence.⁵⁰ A very similar definition, aggravated arson is a crime of violence.⁵¹ The only difference between Aggravated Arson and Injury by Arson is an element of Aggravated Arson is the foreseeability of human life being endangered which is also an element of aggravated arson.⁵² In other words, it is possible to be charged and convicted of Aggravated Arson, a crime of violence, without actually injuring anyone.⁵³ Additionally, aggravated arson doesn't require human presence; it simply requires the foreseeability that a person will be hurt.⁵⁴ From comparing injury by arson and aggravated arson, it appears that the Legislature is focusing on the fact that the defendant knew or should have known a victim would be seriously injured and not the actual act.⁵⁵ - Making the mindset of the offender a factor to elevate the crime to a crime of violence because if injury alone was the deciding factor, injury by arson would appear

⁴⁹ LA. REV. STAT. § 14:2.

⁵⁰ LA. REV. STAT. § 14:2.

⁵¹ LA. REV. STAT. § 14:50.

⁵² LA. REV. STAT. § 14:51.1; *see also* LA. REV. STAT. § 14:50.

⁵³ LA. REV. STAT. § 14:50.

⁵⁴ LA. REV. STAT. § 14:51.1

⁵⁵ LA. REV. STAT. § 14:51.1

to be a better fit because injury to the victim is an element of the statute. Furthermore, the idea that simple burglary of an inhabited dwelling when a person is present is a crime of violence is inconsistent with aggravated arson because none of the elements of the statute require foreseeability that a victim may be injured while committing the act.⁵⁶ If anything, it is more similar to Injury by Arson in that a person is present yet still does not closely resemble the statute because victim injury is not an element of simple burglary of an inhabited dwelling.⁵⁷

As stated above, a victim succumbing to the injury itself cannot be determinative of enhancing a "violent" crime to a crime of violence. These distinctions lead to the question of the offender's belief that human life may be endangered coupled with an act that is inherently violent as the basis for defining an offense, a crime of violence. It is reasonable to assume that the use of explosives or fire is intrinsically violent, as both could cause an immense amount of damage or bodily injury if an individual is exposed. Analyzing injury by arson and aggravated arson supports this theory as the offender's mindset in one crime coupled with a violent act appears to be the difference between the two.

Yet, comparing Aggravated Criminal Damage to Property, a crime of violence, to Simple Criminal Damage to Property leads us to assume that the violent nature of the act alone does not elevate a crime to a crime of violence.⁵⁸ This leads us to question whether the classification of a crime of violence depends on whether the offender could have reasonably foreseen victim injury. The idea that an offense could be classified as a crime of violence based on the possibility that a person may be injured alone when injury alone is not determinative of the classification is

⁵⁶ LA. REV. STAT. § 14:62.2.

⁵⁷ LA. REV. STAT. § 14:51.1; *see also* LA. REV. STAT. § 14:50.

⁵⁸ See LA. REV. STAT. § 14:55; LA. REV. STAT. § 14:56 (The only difference between Aggravated Criminal Damage to Property, a crime of Violence, and Simple Criminal Damage to Property is the foreseeability of human life being endangered. How the offense is committed can be the same, but the deciding factor depends on the endangerment of human life).

unplausible. In other words, the Louisiana Legislature would be classifying, Simple Burglary of an Inhabited Dwelling when a person is present, a crime of violence for the mere possibility that a person may be injured in the future, rather than what actually happened.

From comparing the crimes that are a crime of violence to their similar counterparts, it is hard to determine what factors elevate a crime to a crime of violence in the minds of the Louisiana Legislature. In other words, comparing these statutes to the other listed crimes of violence only further proves the inconsistency of the Louisiana Legislature. As discussed above, it appears the Legislature focuses heavily on the intent of the offender, in that the offender knew or should have known victim injury was likely to occur when committing a crime. However, there are other crimes listed as a crime of violence that do not require this element, such as vehicular homicide or manslaughter. The irregularities in the crimes listed as crimes of violence demonstrate that the Louisiana Legislature has failed to effectively categorize crimes of violence.

When comparing simple burglary of an inhabited dwelling when a person is present to these factors, it is clear that simple burglary of an Inhabited dwelling does not mirror the other crimes listed as a crime of violence. Foreseeability of victim injury is not an element of Simple burglary of an Inhabited dwelling; the offender is not armed with any instrument likely to cause physical harm, such as aggravated arson, nor is physical damage to property required to satisfy the crime.⁵⁹

At most, simple burglary resembles Home Invasion or Aggravated Burglary.⁶⁰ Home Invasion and Aggravated Burglary, by its plain language, is classified as a crime of violence, while simple burglary of an inhabited dwelling is not.⁶¹ Simple burglary of an inhabited dwelling is only

⁵⁹LA. REV. STAT. § 14:62.2.

⁶⁰LA. REV. STAT. § 14:62.2, *see also*, LA. REV. STAT. § 14:62.8.

⁶¹ LA. REV. STAT. § 14:2, *see also*, LA. REV. STAT. § 14:62.2.

classified as a crime of violence when a person is present, even though human presence is not an element of the statute itself.⁶² This subsection will explore the differences between the statutes to demonstrate that simple burglary of an inhabited dwelling is not a crime of violence even when a person is present.

When comparing the elements of simple burglary of an inhabited dwelling to home invasion and Aggravated Burglary, it is clear that the statutes resemble one another.⁶³ All three statutes require unauthorized entry into a place of abode. An unauthorized entry is not inherently violent, as the element is easily established.⁶⁴ All that is needed to satisfy the burden of an unauthorized entry is the offender "did not have [valid] permission to enter the premises."⁶⁵

However, the difference between the La. R.S. 14:62.2 and Home Invasion, human presence is an element of home invasion, whereas human presence is not an element of simple burglary of an inhabited dwelling. Simple burglary of an inhabited dwelling is only a crime of violence when a person is present. However, human presence alone should not elevate the crime to a crime of violence. In the breakdown of the statute, there is an unauthorized entry, and as discussed above, it is not an inherently violent element because the element's scope is broad in range. In other words, a violent act such as breaking down the door with force is not required to establish an unauthorized entry. The scenario of a person being present during the interaction changes the situation's dynamic but does not elevate the crime to "violence ." In *State v. Oplihant*, the Supreme Court of Louisiana reasoned that burglary was a crime of violence because of the "substantial risk that the burglar will

⁶² LA. REV. STAT. § 14:62.2.

⁶³ LA. REV. STAT. § 14:62.2; La. R.S. 14:62.4; La. R.S. 14:60.

⁶⁴ *State v. Kirby*, 309 So.3d 946 (2021) (citing, "Entry," for purposes of committing crime of unauthorized entry of inhabited dwelling, is accomplished whenever any part of person intrudes, even momentarily, into the structure.).

⁶⁵ *State v. Warner*, 318 So.3d 956, 962 (2020) (citing, "For purposes of offense of burglary, even if person has lawful access to enter premises himself, he is not empowered to grant lawful authority to another to enter for purpose of committing a felony.).

use force against the victim in completing the crime."⁶⁶ As discussed in more detail later in the article, substantial risk is an abstract concept that the United States Supreme Court ruled as unconstitutionally vague, and Louisiana courts still need to give a definite meaning to substantial risk or the scope of substantial risk. However, if the person was physically injured, the offender would be or, at minimum, could be charged with aggravated burglary.⁶⁷ Even if the victim was not injured but the offender had the intent or attempted to harm the victim physically, the offender would or could be charged with Home Invasion or Aggravated Burglary.⁶⁸ From this, it is safe to assume that simple burglary of an inhabited dwelling when a person is present is crafted to cover the scenarios when a person is present during the unauthorized entry but does not experience any bodily harm. Thus, the apprehension of harm when a person is present is what would push the crime from a non-violent category to a violent category.

However, what amount of harm must the victim fear to turn a non-violent crime violent? It's safe to assume that a reasonable person standard should be utilized in this determination. A person would undoubtedly feel some negative emotion if an offender entered their home without permission, but in the case of simple burglary of an inhabited dwelling, the offender would not be armed before or after entering because the criminal charge would then be upgraded to aggravated burglary.⁶⁹ Additionally, home invasion requires the offender to have "the intent to use force or violence upon" a person "or to vandalize, deface, or damage the property of another."⁷⁰ Simple burglary, however, requires the offender to have "the intent to commit a felony or any theft." Thus, the intent required of the offender in these statutes is remarkably different. In a home invasion, the

⁶⁶ State v. Oliphant, 113 So. 3d 165, 171 (La. 2013).

⁶⁷ LA. REV. STAT. § 14:60.

⁶⁸ LA. REV. STAT. § 14:62.8, see also, LA. REV. STAT. § 14:60.

⁶⁹ LA. REV. STAT. § 14:60.

⁷⁰ LA. REV. STAT. § 14:62.8.

offender must wish to cause harm to the person or property. Where the offender does not have such ill-intent to harm the person or property in La. R.S. 14:62.2. Home invasion seemingly fits more closely with the other property crimes listed as a crime of violence as it requires the offender to have ill-intent to harm or destruct.

Additionally, a keyword in Home Invasion is "force or violence."⁷¹ While Home invasion does not include the foreseeability of victim injury, the language of the statute considerably implies that a victim will be injured because force or violence upon a person is an element of the crime. In the case of Aggravated Burglary, victim injury or possessing an instrument that could cause severe injury to a human are elements. However, these elements are not present in simple burglary of an inhabited dwelling when a person is present; victim injury is not an element, nor is the offender's intent to harm a victim or destroy the victim's property an element.⁷²

Furthermore, Simple Burglary of an Inhabited Dwelling does not fit within any property crimes currently listed as a crime of violence and demonstrates the idea the Louisiana Legislature is classifying crimes as violent without limitation and has failed to define and categorize crimes appropriately. Additionally, the fact that home invasion and aggravated burglary exist in the Louisiana code shows that simple burglary of an inhabited dwelling was designed to be a non-violent crime.⁷³

C. Judicial Interpretation

As discussed above, there are many irregularities in the crimes listed as a crime of violence, which makes it difficult to pinpoint a clear and concise definition. However, the fact remains that

⁷¹ LA. REV. STAT. § 14:62.8.

⁷² LA. REV. STAT. § 14:62.2.

⁷³ Richard, *supra* note 39, at xii (citing all but three states recognize two severities of burglary: Simple (non-violent) and aggravated (violent); they differentiate these types...”).

La. R.S. 14:62.2 does not share language or implications similar to those of the other crimes listed. This section will explore the definition of crime of violence provided in La. R.S. 14:2, while comparing 18 U.S.C. § 16, to demonstrate that La. R.S. 14:62.2 also does not fit under the definition of a crime of violence.

a. La. R.S. 14:2 v. 18 U.S.C. § 16

Under the Louisiana Revised Statutes, a crime of violence is defined as

an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon.⁷⁴

At first glance, the statute appears straightforward. However, the definition compared to the crimes listed underneath the definition implicates many questions in the decision to classify a crime as a crime of violence. For example, what is the scope of "physical force" and "substantial risk"? The answers to these questions will be addressed later in the article.

To start, Louisiana's definition of a crime of violence greatly resembles the definition provided in the United States code.⁷⁵ As written, 18 U.S.C. § 16 is comprised of two clauses.⁷⁶ "Any offense that is a felony and that, by its nature, involved a substantial risk that physical force against the person or property of another may be used in the course of committing the offense" is commonly referred to as the residual clause.⁷⁷ The residual clause was deemed unconstitutional in

⁷⁴ LA. REV. STAT. § 14:2.

⁷⁵ Under 18 U.S.C §16, a crime of violence is defined as "any offense that has an element the use, attempted use or threatened use of physical force against the person or property of another, or any offense that is a felony and that, by its nature, involved a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

⁷⁶ Sessions v. Dimaya, 138 S. Ct. 1204, 1207 (2018).

⁷⁷ *Id.*

Sessions v. Morales.⁷⁸ The similarity between the United States legislature's and Louisiana legislature's definition makes evident that Louisiana's definition of the crime of violence is modeled after the United States Code. However, there is a critical distinction between the two statutes. The United States definition comprises two scenarios where a crime could be classified as a crime of violence. If one of the prongs were satisfied, the crime would be deemed a crime of violence. The Louisiana legislature combined the two elements, which must be met to classify a crime of violence.

The "and" in the Louisiana Statute, rather than "or" in the United States Code, demonstrates this distinction. Arguably, this alone should make Louisiana's definition defective. However, the Louisiana Legislature has not taken steps to reconstruct the definition. Therefore, this article will focus on breaking down the definition into elements and analyzing each element to determine if La. R.S. 14:62.2 fits within the definition. In sum, La. R.S. 14:2 consists of a two-prong test: (1) "an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense" or (2) "an offense that involves the possession or use of a dangerous weapon."⁷⁹

When determining whether an offense satisfies the first element, the analysis becomes more difficult because the first scenario is comprised of two components that the Legislature has combined – making it seemingly difficult to understand their intent. For one, the definition calls for an offense that has as an element - the keyword is an element- the use, attempted use, or

⁷⁸ *Id.* at 1223.

⁷⁹ LA. REV. STAT. § 14:2.

threatened use of physical force against the person or property of another.⁸⁰ For two, it requires the offense to "involve a substantial risk that physical force against the person or property of another may be used in committing the offense."⁸¹

Addressing the second element, simple burglary of an inhabited dwelling does not fit within "an offense that involves the possession or use of a dangerous weapon."⁸² If the offender had a weapon or became armed while committing the act, the offense would no longer be simple burglary of an inhabited dwelling but rather aggravated burglary or home invasion.⁸³

i. Physical force

The definition required the offense to have an element that entails "the use, attempted use, or threatened use of physical force against the person or property."⁸⁴ While the definition allows for offenses that stray away from the traditional understanding of violence – by incorporating physical force against property- simple burglary of an inhabited dwelling when a person is present is not comprised of such element.⁸⁵ It is important to note the language of the definition requires “physical force” or an attempt to inflict physical force.⁸⁶ Arguably, the definition does not provide for any other form of abuse, such as fear or apprehension of assault when the victim is not the

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ LA. REV. STAT. § 14:62.8 defines Home Invasion as “the unauthorized entering of any inhabited dwelling, or other structure in whole or in part as a home or place of abode by a person, where a person is present, with the intent to use force or violence upon the person of another or to vandalize, deface, or damage the property of another.” See also, LA. REV. STAT. 14:60 defines aggravated burglary as “the unauthorized entering of any inhabited dwelling, or of any structure, water craft, or movable where a person is present, with the intent to commit a felony or any theft therein, under any of the following circumstances: (1) if the offender is armed with a dangerous weapon, (2) if, after entering, the offender arms himself with a dangerous weapon, [and/or] (3) If the offender commits a battery upon any person while in such place, or in entering or leaving such place.”

⁸⁴ LA. REV. STAT. § 14:2.

⁸⁵ Alice Ristroph, *Criminal Law in the Shadow of Violence*, 62 ALA. L. REV. 571, 604 (2011) (citing “In contrast to the traditional understandings of violent crime, the definition expands the concept of violence ... (because) it counts force against property as violence.”)

⁸⁶ LA. REV. STAT. § 14:2.

target of the offense. As discussed previously, La. R.S. 14:62.2 was deemed a crime of violence when a person was present. However, the additional element of the victim's persons does not require physical force to the victim. Also, an unauthorized entry in Louisiana is when the offender “crosses the plane of the threshold” belonging to another without permission.⁸⁷ A unauthorized entry does not require force and if force was used, the act would fall under Home Invasion.⁸⁸ Additionally, in *Johnson v. United States*, the Supreme Court rejected the idea that ““physical force” encompasses “the slightest offensive touching.”⁸⁹ Furthermore, simple burglary of an inhabited dwelling does not fit underneath this elemental approach because the statute does not have an element that requires force to person or property.

ii. Substantial risk

While the elements of La. R.S. 14:62.2 does not present the factor of physical force. There is a standing notion that there is a substantial risk that once the offender comes in contact with the victim, there is a substantial risk the offender will physically harm the victim in completing the offense. However, as discussed below, determining an offense's "substantial risk" has proven to be quite challenging.

In classifying a crime of violence, courts assess whether the crime "by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."⁹⁰ However, what constitutes a "substantial" risk? While the United States Supreme Court has held this clause of the United States Code unconstitutional, this language is still used in Louisiana's definition of a crime of violence.

⁸⁷ State v. Bryant, 101 So.3d 429, 433 (2012).

⁸⁸ LA. REV. STAT. § 14:62.8

⁸⁹ Johnson v. United States, 576 U.S. 591 (2015).

⁹⁰ Sessions v. Dimaya, 138 S. Ct. 1204, 1207 (2018).

Therefore, this article addresses the issue of categorizing crimes as crimes of violence through this framework while discussing La. R.S. 14:62.2.

In *State v. Oliphant*, the Louisiana Supreme Court reasoned that vehicular homicide was a crime of violence because of the substantial risk that an offender may injure someone in a vehicular homicide.⁹¹ Here, the Louisiana Supreme Court conducted an element approach, reasoning that force and injury were elements of vehicular homicide, and "the offense of vehicular homicide clearly entails the use of physical force and the substantial risk that force will be used against the person of another."⁹² While an element approach is a part of the Louisiana definition, reading the statute as a whole when comparing it to 18 U.S.C § 16, it is reasonable to assume that the Louisiana definition is comprised of two separate tests. In their opinion, the Louisiana Supreme Court did not thoroughly analyze whether this crime fits the definition of a crime of violence by its plain reading. While they included specific "substantial risk" terminology, they did not elaborate on what constituted it. Instead, they based their judgment on the elements of the statute. Again, in *Washington v. State*, The Louisiana Supreme Court held that racketeering activity was not a crime of violence based on the statute's language, even though committing the crime could lead to the commission of a crime of violence.⁹³ This demonstrates that the Louisiana Supreme Court heavily emphasizes the statute's specific language. Again, the Louisiana Supreme Court did not assess the "substantial risk" to property or persons because they reasoned that there was not an element that involved physical force. Therefore, a substantial risk was not evident.⁹⁴ This further portrays that the Louisiana Supreme Court sees the definition as a two-pronged test and fails to assess whether there is a "substantial risk" in participating in an activity. It is possible that the Louisiana legislature

⁹¹ *State v. Oliphant*, 113 So. 3d 165 (La. 2013).

⁹² *Id.* at 173.

⁹³ *Washington v. State*, 315 So. 3d 198 (La. 2021).

⁹⁴ *Id.* at 200.

solely intended on an elemental analysis, such that the offense must contain an element of physical force, and the completion of the element must incorporate a substantial risk of harm to the victim or property. However, there is ambiguity since the language is greatly modeled after the United States Code, which differentiates between the two.

Additionally, if that was the intent of the Legislature, why even include a substantial risk of physical force as an element since physical force is required to begin with? Is the Louisiana Supreme Court simply misinterpreting the statute, or is the statute poorly constructed? Either way, the Louisiana Supreme has yet to provide much insight into the scope of substantial risk. Important to note, La. R.S. 14:62.2 does not classify as a crime of violence if analyzed through this framework because the statute does not contain an element of physical force.

Unlike the Louisiana Supreme Court, the United States Supreme Court made many rulings in determining the scope of "substantial risk" before declaring the verbiage unconstitutional.⁹⁵ In determining the scope of "substantial risk," courts apply a categorical approach on "whether the conduct encompassed by the elements of the offense, in the ordinary case, presents a serious potential risk of injury to another."⁹⁶ The Supreme Court has made clear that courts should not determine the scope of a "substantial risk" on whether the elements of a crime create such a risk in every possible scenario or on a case-by-case basis.⁹⁷ In determining the scope of substantial risk, the Court has repeatedly held that the question is whether the nature of the offense or ordinary case "of an offense poses the requisite risk."⁹⁸ However, the problem with such language and in determining the scope of "substantial risk" is the "uncertainty about the level of risk that makes a

⁹⁵ The United States Supreme Court ruled 18 U.S.C §16(b), which included the definition of substantial risk, was unconstitutional in terms of Judicial interpretation. *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018).

⁹⁶ *James v. United States*, 550 U.S.192, 200 (2007).

⁹⁷ *Lecoal v. Ashcroft* 125 S.Ct. 377; *James v. United States*, 550 U.S. 192 (2007).

⁹⁸ *Sessions v. Dimaya*, 138 S. Ct. 1204, 1211 (2018).

crime "violent." The Supreme Court noted that the degree of risk required an analysis into whether the offense incorporated "some not-well-specified-yet-sufficiently-large degree of risk."⁹⁹ While the United States Supreme Court held that the U.S.C. 16(b) was unconstitutional because of the ambiguity concerning "substantial risk," Justice Gorsuch, in his concurring opinion, stated that the Legislature could fix this problem by enacting specific crimes to the list of the crime of violence instead of judges relying on a statute that violates a citizen's due process rights.¹⁰⁰

Furthermore, as discussed above, "substantial risk" is another abstract concept that even the Supreme Court could not fit into a definitive definition. While Justice Gorsuch proposed a solution by having the Legislature enact the crime as a crime of violence, what stops the Legislature from classifying any crime as a crime of violence or in respect to Louisiana, having a court interpret substantial risk and then the Legislature passing a bill by the Court's interpretation of substantial risk?¹⁰¹ The answer is nothing.

iii. Ordinary case

As discussed above, there is still much ambiguity around substantial risk and the degree of risk required for a crime to be considered violent. With the information above and the plain definition of substantial, this article will further analyze whether simple burglary of an inhabited dwelling when a person is present enhances the possibility of physical force or threatened use of physical force against a human target.

⁹⁹ *Id.* at 1216.

¹⁰⁰ *Id.* at 1224.

¹⁰¹ In *State v. Ophilant*, the Louisiana Supreme Court held that Vehicular Homicide was a crime of violence in March of 2013. The following year, Senator Bob Kostelka introduced a bill that added vehicular homicide to the list of crimes of violence, which was signed by the governor and became effective on 5/28/2014. These actions took place after the United States Supreme Court ruled Vehicular Homicide was not a crime of violence in *Leocal v. Ashcroft*, 125 S. Ct. 377 (2004).

As mentioned above, The United States Supreme Court, in determining substantial risk, placed a heavy emphasis on whether the ordinary case of the offense poses a risk of injury to another. Black's Law Dictionary defines substantial as "[c]onsiderable in extent, amount, or value; large in volume or number."¹⁰² In other words, for an offense to pose a substantial risk, the offense, at the minimum, must be comprised of or threatened use, more times than not, physical force against a person or property. However, that is not the case in simple burglary of an inhabited dwelling.¹⁰³ The Louisiana Legislature even recognized this by requiring a person's presence before the crime was elevated to a crime of violence.¹⁰⁴ However, the mere fact that a person is home during the simple burglary does not promote the associated risk to a degree to classify a crime as a crime of violence because the offender rarely harms the victim in the commission of the crime.

"[M]ajority of burglaries do not involve physical violence and scarcely even present the possibility of physical violence."¹⁰⁵ While burglaries in urban areas are more likely to involve violence compared to rural areas, statistics show that "actual violence or threats of violence" occur in less than 3% of all burglaries.¹⁰⁶ The numbers do change slightly when a person is present; however, not to the extent where it can be said that the majority of burglaries or even half of burglaries performed in a victim's presence result in "physical violence or threats of violence."¹⁰⁷

¹⁰² *Substantial*, BLACK'S LAW DICTIONARY (11th ed. 2019).

¹⁰³ *Tennessee v. Garner*, 105 S.Ct. 1694, 1706 (1985) (quoting, "[w]hile we agree that burglary is a serious crime we cannot agree that is so dangerous automatically to justify the use of a deadly force. The FBI Classified burglary as a "property" rather than a violent crime. Although the armed burglar would present a different situation, the fact that an unarmed suspect has broken into a dwelling at night does not automatically mean he is physically dangerous. This case demonstrates as much. In fact, the available statistics demonstrate that burglaries only rarely involve physical violence. During the 10-year period from 1973-1982, only 3.8% of all burglaries involved violent crime."

¹⁰⁴ *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the Sen. Comm. on Admin. of Crim. Just.*, 2023 Leg., 2023 Sess. (La. 2023); see also *CRIME: Designates the crime of burglary of an inhabited dwelling as a crime of violence: Hearing on H.B. 65 before the H. Comm. on Admin. of Crim. Just.*, 2023 Leg., 2023 Sess. (La. 2023).

¹⁰⁵ Richard, *supra* note 39, at II.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at xi.

Most recently, in 2015, Richard F. Culp, Ph.D., and others used federal funds provided by the U.S. Department of Justice to issue a report to determine whether burglary was a crime of violence.¹⁰⁸ Culp, along with other contributors, compared national data from 1998-2007 and found "while the percent of burglaries that occurred while a household member was present increased from 12.7% to 27.6%, and the incidence of violence that occurred during all burglaries rose to 7.2% from 3.8% in 1985. The incidence of violence that occurred during household member present burglaries decreased roughly 4% from 30% to 26%."¹⁰⁹ However, "burglaries in which someone was home, or violence had occurred are reported more often than either victim-absent or non-violent burglaries suggesting, that the true percentage of cases in which burglaries involve no violence may be even higher than statistics record."¹¹⁰ In referencing Louisiana specifically, burglary has been continually decreasing since June 2017, while an actual report for burglaries committed in Louisiana has not been issued; comparing the statistics given by the United States Justice Department, it is reasonable to assume that violent encounters with burglaries have also decreased.¹¹¹

Furthermore, the ordinary simple burglary of an inhabited dwelling when a person is present does not involve violence. Violence occurs in less than half of all burglaries committed. Therefore, the risk of violence cannot be so substantial as to make the offense a crime of violence.

II. Conclusion

¹⁰⁸ Richard F. Culp, Ph.D., Phillip M. Kopp, Ph.D., Candance McCoy, J.D., Ph.D., IS BURGLARY A CRIME OF VIOLENCE? AN ANALYSIS OF NATIONAL DATA 1998-2007, p. 58 (2015)

¹⁰⁹ *Id.* at 11.

¹¹⁰ *Id.* at 10-11.

¹¹¹ *A Winning Message – and Winning Strategy - from Crime in Louisiana*, PELICAN POLICY, [https://pelicanpolicy.org/opportunity-policy/a-winning-message-and-winning-strategy-for-crime-in-louisiana/#:~:text=For%20background%2C%20crime%20in%20Louisiana,during%20the%20post%2DCOVID%20pandemic.\(last visted Mar. 11, 2024\).](https://pelicanpolicy.org/opportunity-policy/a-winning-message-and-winning-strategy-for-crime-in-louisiana/#:~:text=For%20background%2C%20crime%20in%20Louisiana,during%20the%20post%2DCOVID%20pandemic.(last%20visted%20Mar.%2011,%202024).)

While the Louisiana Legislature has continually expanded the definition of violence by enacting property crimes as a crime of violence, it's overreaching in listing Simple Burglary of an Inhabited Dwelling when a person as a crime of violence is evident. This overreaching can lead to grave consequences for offenders, which in turn has a detrimental effect on society.¹¹² "To regard burglary as a violent offense- especially when separate charges for the violent acts are prosecuted in addition to the burglary charge- is to inflate the severity of [the] offense."¹¹³ Which, in return, results "in over-criminalization and excessive punishment for convicted offenders."¹¹⁴ Regarding the harm converted to society, overcriminalization "backlogs our judiciary, overflows our prisons, and forces innocent individuals to plead guilty not because they actually are, but because exercising their constitutional right to a trial is prohibitively expensive and too much a risk. This inefficient and ineffective system is, of course, a tremendous taxpayer burden."¹¹⁵

While other branches of government can contribute to this problem, The National Association For Defense Lawyers (NACDL) credits a state's Legislature as the root of the problem.¹¹⁶ The NACDL lists multiple forms of this overreaching, but the first one is "[a]mbiguous criminalization of conduct without meaningful definition or limitation."¹¹⁷ The overreaching of the Legislature to enact simple burglary of inhabited dwelling when a person is present, when they are not the target of the offense, nor injured during the offense, nor is the risk of harm to the victim substantial shows the Legislature has enacted this law without a concise definition or much consideration. Additionally, it shows the Legislature acts without limitation by passing Simple

¹¹² See LA. REV. STAT. § 15:574.4.

¹¹³ Richard, *supra* note 39, at 58.

¹¹⁴ *Id.* at 47.

¹¹⁵ *Overcriminalization*, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, <https://www.nacdl.org/Landing/Overcriminalization#:~:text=With%20over%204%2C450%20crimes%20scattered,they%20actually%20are%2C%20but%20because> (last visited Dec. 27, 2023).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

Burglary of an Inhabited Dwelling when a person is present a crime of violence when the offense does not have a nexus to physical injury to a victim, the offense cannot be correlated with the existing property crimes labeled a crime of violence, and the offense cannot be classified a crime of violence under the definition provided in LA. REV. STAT. § 14:2.