

court of the county or city wherein such offense may be committed, be fined at the discretion of the court a sum not exceeding five hundred dollars, and suffer such imprisonment as the court may adjudge, not exceeding six months and such other penalties as are prescribed by the constitution; one-half of the fine to go to the informer.

### **Burglary.**

An. Code, sec. 32. 1904, sec. 30. 1888, sec. 27. 1809, ch. 138, sec. 5. 1924, ch. 150.

**35.** Every person convicted of the crime of burglary or accessory thereto before the fact shall restore the thing taken to the owner thereof, or shall pay him the full value thereof, and be sentenced to imprisonment in jail or in the Maryland House of Correction or in the Maryland Penitentiary for not more than twenty years.

Since one of the elements of burglary is a felonious intent, it is material to show for what purpose traverser entered the house; hence it may be shown that he entered for the purpose of having carnal intercourse with the owner. *Robinson v. State*, 53 Md. 151.

An. Code, sec. 33. 1904, sec. 31. 1888, sec. 28. 1809, ch. 138, sec. 5.

**36.** Every person, his aiders, abettors and counsellors, who shall be convicted of the crime of breaking a dwelling-house in the day time with intent to commit murder or felony therein, or breaking a storehouse, warehouse or other out-house in the day or night with an intent to commit murder or felony therein shall be sentenced to the penitentiary for not less than two nor more than ten years.

This section does not make the offense burglary or a felony; the fact that it appears in the Code under the sub-division "Burglary," is not material. What crimes are felonies. Indictment upheld. *Bowser v. State*, 136 Md. 344.

An. Code, sec. 34. 1904, sec. 32. 1888, sec. 29. 1737, ch. 2, sec. 2. 1809, ch. 138, sec. 5.

**37.** Every person convicted of the crime of breaking into any shop, storehouse, tobacco house or warehouse, although the same be not contiguous to or used with any mansion house, and stealing from thence any money, goods or chattels to the value of one dollar or upwards, or as being accessory thereto, shall restore the thing taken to the owner thereof, or shall pay him the full value thereof, and shall be sentenced to the penitentiary for not less than two nor more than ten years.

An. Code, sec. 35. 1906, ch. 476. 1908, ch. 45.

**38.** Any person who breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe or other secure place by the use of nitroglycerine, dynamite, gunpowder or other explosive, shall be deemed guilty of burglary with explosives.

The granting of a motion to sever is within discretion of trial court. It is sufficient if an indictment charges an offense in the language of a statute. This section is constitutional and valid. Burglary is a felony. Object of this section. *Smith v. State*, 106 Md. 39 (decided prior to act, 1908, ch. 45); *Bowser v. State*, 136 Md. 345.