

IF A BUILDING OR STRUCTURE IS DIVIDED INTO SEPARATELY OWNED OR LEASED UNITS, EACH UNIT MAY NOT BE CONSIDERED A SEPARATE DWELLING OR STOREHOUSE FOR PURPOSES OF A PROSECUTION UNDER THIS SUBHEADING UNLESS IT IS OBJECTIVELY APPARENT THAT EACH UNIT CONSTITUTES A SEPARATE DWELLING OR STOREHOUSE.

COMMITTEE NOTE:

The use of the words "a prosecution under this subheading" in this section does not imply that the Committee believes that a person may be prosecuted for numerous attempts, based solely on one breaking, if the person breaks into a structure containing multiple dwellings or storehouses. A single breaking, on its own, will not support a prosecution for numerous attempts. For example, breaking into the vestibule of a multiple unit building does not, on its own, constitute an attempt to break into all of the units in the building.

The Committee has used the words "objectively apparent" in this section because these same words were used by the Court of Appeals in Bane v. State, 327 Md. 305, 316 (1992). The Committee believes that these words should be given the meaning ascribed to them in that case.

35B.

(A) IN ANY INDICTMENT, INFORMATION, WARRANT, OR OTHER CHARGING DOCUMENT FOR BURGLARY OR ANY OTHER OFFENSE UNDER THIS SUBHEADING, IT IS SUFFICIENT TO USE A FORMULA SUBSTANTIALLY TO THE FOLLOWING EFFECT: "THAT A-B ON THE ... DAY OF, .., IN THE COUNTY (CITY) AFORESAID, DID UNLAWFULLY BREAK AND ENTER (DESCRIBE DWELLING OR STOREHOUSE) OR DID (DESCRIBE OTHER VIOLATION OF THIS SUBHEADING) IN VIOLATION OF ARTICLE 27, SECTION (HERE STATE SECTION VIOLATED) OF THE ANNOTATED CODE OF MARYLAND; CONTRARY TO THE FORM OF THE ACT OF ASSEMBLY IN SUCH CASE MADE AND PROVIDED AND AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE."

(B) IN ANY CASE IN THE CIRCUIT COURT IN WHICH THIS GENERAL FORM OF INDICTMENT OR INFORMATION IS USED TO CHARGE AN OFFENSE UNDER THIS SUBHEADING, THE DEFENDANT ON TIMELY DEMAND IS ENTITLED TO A BILL OF PARTICULARS.

(C) A PERSON CHARGED WITH A VIOLATION OF § 29 OF THIS ARTICLE MAY BE CONVICTED OF A VIOLATION OF § 31 OR § 32(A)(1) OF THIS ARTICLE.

(D) A PERSON CHARGED WITH A VIOLATION OF § 30 OF THIS ARTICLE MAY BE CONVICTED OF A VIOLATION OF § 32(A)(2) OF THIS ARTICLE.

(E) A PERSON CHARGED WITH A VIOLATION OF § 31 OF THIS ARTICLE MAY BE CONVICTED OF A VIOLATION OF § 32(A)(1) OF THIS ARTICLE.

COMMITTEE NOTE:

The Committee intends that the provisions of the Maryland Rules be followed as to the applicable time limits and other requirements concerning a bill of particulars.