

Summary

On the road to housebreaking?

A study of preparatory acts in housebreaking

Peter Kruize & Paul Gruter (2015). *Op inbrekerspad? Over de aanpak van woninginbraak door inzet op voorbereidingshandelingen*. Ateno/WODC.

In January 2014 a Member of Parliament has proposed to criminalize possession of professional tools for housebreaking. The Minister of Security and Justice answered that preparatory acts already are criminalized (article 46 Penal Law) and that this article may be utilized in regard to burglary (article 311 Penal Law) during the night time. The Minister is, however, willing to consider criminalization of preparatory acts in housebreaking during day times.

As input for the consideration whether an adjustment of Penal Law is useful, the Minister has ordered research to shed light on the existing use of article 46/311 of Penal Law. The research has been focused on the experience with (possible) burglars caught during preparation of a burglary with special attention for possible complications, if the legislation also should include the day times and the evening. In total seven research questions are answered in this study:

1. How often do the police arrest supposed burglars in preparing a burglary?
2. At what time during the day/night are they caught?
3. How are acts of preparation defined?
4. To what extent do mistakes (false arrests) occur?
5. Is it to be expected that mistakes more often will take place in the daytime and in the evening than during the night? If so, what is the reason for this expectation?
6. What are the experiences of public prosecutors and judges with these kind of cases; positive or negative?
7. Are there actually convicted persons for preparing a burglary? If not, why not?

The research questions have been answered by consulting several (police) systems and by interviewing seven representatives of the police and public prosecution in three police districts (Amsterdam, The Hague and around Utrecht).

Detecting supposed burglars in preparing a burglary (research question 1)

The police only make a limited number of arrests by utilizing the Penal Law articles 46/311. In this research two years have been studied (2013 and 2014) and 2013 may be considered as start-up year (article 46/311 is first used in 2013 by a few police districts). We have found 23 cases, corresponding with 45 suspects, in the criminal record system of the police in 2014. It is possible that not all cases have been identified, but the interviews with police and public prosecution representatives support the notion that article 46/311 is used limited in practice.

The police, however, also detect assumed burglars in preparing a burglary *without* arresting the person for article 46/311. In such cases the police use a municipal regulation. In the Netherlands a municipality may have some public order regulations and nearly all municipalities have a regulation in regard to 'Carrying Burglary Tools'. In some municipalities this regulation is valid from 22-06 o'clock, while other municipalities do not have a time limitation (24/7). This regulation may be applied in situations where the conditions for preparation of a burglary are not met. Only possession of burglary tools is sufficient for applying the municipal regulation, as opposed to the use of the penal law article in regard to preparation; here it has to be proved that the suspect prepares a *housebreaking*.

In 2013 there are 1,609 registered cases, with 1,874 suspects, in regard to the municipal regulation 'Carrying Burglary Tools'. In 2014 the number of cases is 1,857, corresponding with 2,138 suspects. However, this regulation may also be applied in case of carrying burglary tools for a break-in in a business or forcing a lock in case of bicycle or moped theft. The conclusion after studying the violations of the municipal regulation is, that around 800-900 cases are related to burglary.

Besides the article 46/311 construction and the municipal regulation, acts of preparation may be hidden under other kinds of registration in the police administration. However, this is not often the case, according to the study; on a yearly basis probability around 75 cases a hidden in this way.

The answer to the first research question is, that the police catch in approximately one thousand cases assumed burglars in acts of preparation. It is not possible to say for sure which share of these cases is applicable for the article 46/311 route, but this share is probably closer to 10 than to 50 percent. At the same time, it is clear that more cases could have been tackled by using the 46/311 construction.

Time of detection (research question 2)

The second research question is about when (point of time) potential burglars are detected. It is clear that the answer to this question is influenced by the legal possibilities of the police. The penal law route (article 46/311) may only be applied during the night time. The municipal regulation is 24/7 applicable in some municipalities, while in other municipalities the regulation is only applicable during the time period 22:00-06:00.

Around 30 percent of the burglaries take place in between 22:00-06:00. On the contrary, two out of three cases of detecting burglary tools, take place in this time frame. It is not entirely clear how this difference should be explained; the time limitation of the municipal regulation only explains this difference partly. In the police district of The Hague the regulation is applicable 24/7, but also here 60 percent of the burglary tools are detected in the time frame 22:00-06:00. The most likely explanation is that police officers are more aware of this phenomenon during the night and that potential burglars are more visible in the silence of the night.

Acts of preparation defined (research question 3)

The use of penal law article 46 demands that two elements of preparation are alive. Firstly the person involved needs to be carrying burglary tools with him. These might be specific tools, but not necessarily; also a screwdriver may already be seen as a burglary tool. However, it is easier to prove that the tools are meant for a burglary, if it are more specific tools. Also the combination of tools contributes to the prove: only possession of a screwdriver is another story than for instance carrying a screwdriver, crowbar and gloves. Secondly preparation has to become clear out of the suspect's behavior. This might be driving around in a residential area, paying specific attention to a certain house, but also moving towards the dwelling in focus. When the suspect is closer to the dwelling – closer to an attempted burglary – the legal proof for an act of preparation will be stronger. This implies that the police officer – if he wants to apply article 46/311 with success – has to delay the arrest and first has to observe the suspect for a while. Proof may further more be found in witness testimonies.

Mistakes (research questions 4 and 5)

The answer to the questions about possible mistakes (false arrests) in case of preparatory acts may be short: this risk is very limited. We have not found any examples, and moreover it is also not very likely that such a mistake will occur, because only carrying tools is not sufficient for arresting someone for preparing a burglary.

The risk for mistakes is – in theory – more alive in case the municipal regulation is applied, because then only carrying burglary tools is a sufficient proof. However, we do not know any examples of penalizing professionals (for instance a locksmith) or regular citizens for carrying supposed burglary tools. Though many fines for the municipal regulation are waived, but this is explained by the poor documentation of the police officer and not by the fact that a mistake has taken place.

Settlement (research questions 6 and 7)

There is not much experience with prosecuting preparatory acts of housebreaking (article 46/311), but the first experiences are positive. The interviewed public prosecutors tell that they sometimes waive the case because of a lack of proof, but relevant cases are prosecuted and brought to court. It seems that both the police and the public prosecution are not fully aware of this 'new' way to tackle preparatory acts of housebreaking.

We did not interview judges, but on the basis of court records, judges are willing to punish suspects for preparatory acts of housebreaking (article 46/311). There have been several court cases. The sentence for preparatory acts of housebreaking is usually six to nine weeks' imprisonment. This sentence is in accordance with the instruction of the National Public Prosecution Office: the sentence for preparation of burglary give a reduction of 50 percent compared to a completed burglary.

Final remarks

Utilizing the 46/311 route is still relatively unknown and the already existing legal possibilities are not used to the full extent. Applying article 46/311 is limited by the proof of the burden: it has to be

proved that the suspect had a burglary in mind. Preparatory acts of housebreaking are nearly an attempted burglary. The municipal regulation offers much more opportunity to act proactive.