

**CRIMINAL TRESPASS  
THIRD DEGREE  
(B Misdemeanor)  
(Fenced or Enclosed Building or Property)  
PENAL LAW 140.10(a)  
(Committed on or after Nov. 1,1987)**

The \_\_\_\_ count is Criminal Trespass in the Third Degree.

Under our law, a person is guilty of Criminal Trespass in the Third Degree when that person knowingly enters [remains]<sup>1</sup> unlawfully in a building [or upon real property] which is fenced or otherwise enclosed in a manner designed to exclude intruders.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: ["building,]" "unlawfully," and "knowingly."

*[NOTE: Add, where appropriate:*

In addition to its ordinary meaning, the term BUILDING includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein, or used as an elementary or secondary school, or an inclosed motor truck, or an inclosed motor truck trailer.<sup>2]</sup>

*[NOTE: Add, where appropriate:*

Where a building consists of two or more units separately secured or occupied, each unit shall be deemed both a separate building in itself and a part of the main building.<sup>3]</sup>

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<sup>1</sup> When the evidence is that the defendant entered lawfully upon the premises but remained unlawfully after license and privilege to be on the premises terminated, substitute the word "remains" for the word "enters" as indicated by the use of brackets. See *People v Gaines*, 74 NY2d 358 (1989).

<sup>2</sup> See Penal Law § 140.00(2).

<sup>3</sup> See Penal Law § 140.00(2).

A person enters [remains] UNLAWFULLY in a building [or upon real property] which is fenced or otherwise enclosed in a manner designed to exclude intruders when that person has no license or privilege to enter [remain] in such building [or upon such real property].<sup>4</sup> To have no license or privilege to enter [remain] means to have no right, permission or authority to do so.

*[NOTE: Add, where appropriate:*

A person who, regardless of his or her intent, enters [remains] in or upon premises which are at the time open to the public does so with license and privilege unless he or she defies a lawful order not to enter [remain], personally communicated to him or her by the owner of such premises or other authorized person.<sup>5]</sup>

*[NOTE: Add, where appropriate:*

A license or privilege to enter [remain] in a building which is only partly open to the public is not a license or privilege to enter [remain], in that part of the building which is not open to the public.<sup>6]</sup>

A person KNOWINGLY enters [remains] unlawfully in a building [or upon real property] which is fenced or otherwise enclosed in a manner designed to exclude intruders when that person is aware that he or she is entering [remaining] in such building [or upon such real property] without license or privilege to do so.<sup>7</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove from all the evidence in the case beyond a reasonable doubt both of the following two elements:

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<sup>4</sup> See Penal Law § 140.00(5).

<sup>5</sup> See Penal Law § 140.00(5).

<sup>6</sup> See Penal Law § 140.00(5).

<sup>7</sup> See Penal Law § 15.05(2).

1. That on or about (date), in the county of (county), the defendant, (defendant's name), unlawfully entered [remained] in a building [or upon real property] located at (specify) which was fenced or otherwise enclosed in a manner designed to exclude intruders; and
2. That the defendant did so knowingly.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Trespass in the Third Degree as charged in the \_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminal Trespass in the Third Degree as charged in the \_\_\_ count.