

**CRIMINAL TRESPASS
FIRST DEGREE
(D Felony)
(Deadly Weapon or Explosive)
PENAL LAW 140.17(1)
(Committed on or after Sept. 1, 1969)**

The ____ count is Criminal Trespass in the First Degree.

Under our law, a person is guilty of Criminal Trespass in the First Degree when that person knowingly enters [remains]¹ unlawfully in a building, and when, in the course of committing such crime, that person possesses [or knows that another participant in the crime possesses] a deadly weapon [or an explosive].

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," "knowingly," "possess," and "deadly weapon."²

[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.³]

¹ 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).

² Where appropriate, the Court may choose to give a separate definition for the term "explosive." Such a definition is provided in the "Additional Charges" section at the end of the charges for this article.

³ See Penal Law § 140.00(2).

[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.^{4]}

A person enters [remains] UNLAWFULLY in a building when that person has no license or privilege to enter [remain] in that building.⁵ 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.^{6]}

[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.^{7]}

A person KNOWINGLY enters [remains] unlawfully in a building when that person is aware that he or she is entering [remaining] in such building without license or privilege to do so.⁸

⁴ See Penal Law § 140.00(2).

⁵ See Penal Law § 140.00(5).

⁶ See Penal Law § 140.00(5).

⁷ See Penal Law § 140.00(5).

⁸ See Penal Law § 15.05(2).

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁹

DEADLY WEAPON means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

[or a switchblade knife defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife]

[or a gravity knife defined as any knife having a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device]

[or a pilum ballistic knife defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife]

[or a metal knuckle knife]

[or a dagger]

[or a billy]

[or a blackjack]

[or metal knuckles].¹⁰

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 each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), unlawfully entered [remained] in a building located at (specify);

⁹ See Penal Law §10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the “Additional Charges” section at the end of this article.

¹⁰ See, Penal Law § 10.00(12); Penal Law § 265.00(4) (switchblade knife); Penal Law § 265.00(5) (gravity knife); Penal Law § 265.00(5-a) (pilum ballistic knife); Penal Law § 265.00(5-b)(metal knuckle knife, added November 1, 1995).

2. That the defendant did so knowingly; and
3. That, in the course of committing that crime, the defendant possessed [or knew that another participant in the crime possessed] a deadly weapon [or an explosive].

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

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Trespass in the First Degree as charged in the ____ count.