

CRIMINAL TRESPASS IN THE THIRD DEGREE
(Fenced or Enclosed Building or Property)
Penal Law § 140.10(a)
(Committed on or after Nov. 1,1987)
(Revised January 2013)¹

The (*specify*) 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]² unlawfully in a building [or upon real property] which is fenced or otherwise enclosed in a manner designed to exclude intruders.

The following terms used in that definition have a special meaning:

[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]}

[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

¹ The January, 2013, revision was for the purpose of expanding the definition of “unlawfully” when the trespass is premised on a violation of an order of protection in order to accord with the dictates of *People v Cajigas*, 19 NY3d 697 (2012).

² When the accusation 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).

³ See Penal Law § 140.00(2).

building in itself and a part of the main building.^{4]}

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].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 is subject to and knows of an order of protection directing him/her to stay away from a building which he/she knowingly enters, even by invitation or permission, UNLAWFULLY enters that building.^{6]}

[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.^{7]}

[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.^{8]}

⁴ See Penal Law § 140.00(2).

⁵ See Penal Law § 140.00(5).

⁶ See footnote 1.

⁷ See Penal Law § 140.00(5).

⁸ See Penal Law § 140.00(5).

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.⁹

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:

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.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

⁹ See Penal Law § 15.05(2).