

**CRIMINAL TRESPASS IN THE THIRD DEGREE**  
**(Right of Way; Railroad Yard)**  
**Penal Law § 140.10 (g)**  
**(Committed on or after January 16, 2012)<sup>1</sup>**

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 [or remains]<sup>2</sup> unlawfully upon real property, where the property consists of a right-of-way or yard of a railroad or rapid transit railroad which has been designated and conspicuously posted as a no-trespass railroad zone.

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

A person enters [remains] UNLAWFULLY on real property which consists of a right-of-way or yard of a railroad or rapid transit railroad, when that person has no license or privilege to enter [remain] on such real property. To have no license or privilege to enter [remain] means to have no right, permission or authority to do so.

Under our law, a person enters [remains on] real property without license or privilege, when such person does so without

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<sup>1</sup> The Laws of 2011, chapter 176, effective January 16, 2012, amended this statute to delete the following language after the words "railroad zone": "pursuant to section eighty-three-b of the railroad law, by the city or county in which such property is located." For a crime committed on or after October 4, 2000 and prior to the January 16, 2012 amendment, this charge may be utilized, with the addition of the language "pursuant to section eighty-three-b of the railroad law, by the city or county in which such property is located" at the end of the definition and the applicable element.

<sup>2</sup> When the accusation is that the defendant entered lawfully 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].)

permission from someone authorized to issue such permission, or without a legitimate reason or a purpose relating to the operation of the railroad or rapid transit railroad.<sup>3</sup>

*[NOTE: Add, where appropriate:*

A license or privilege to enter [remain] on real property which is only partly open to the public is not a license or privilege to enter [remain] on that part of the property which is not open to the public.<sup>4</sup>

A person KNOWINGLY enters [remains] unlawfully upon real property which consists of a right-of-way or yard of a railroad or rapid transit railroad in violation of conspicuously posted signs designating it as a no-trespass railroad zone, when that person is aware that he or she is entering [remaining] on such property without license or privilege to do so, and in violation of the designation.<sup>5</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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), in violation of conspicuously posted signs designating the area a no-trespass railroad zone, unlawfully entered [remained] unlawfully upon real property located at (specify), which consisted of a right of way or yard of a railroad or rapid transit railroad; and

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<sup>3</sup> See Penal Law § 140.00 (5).

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

<sup>5</sup> See Penal Law § 15.05 (2).

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.