CRIMINAL TRESPASS
THIRD DEGREE
(B Misdemeanor)
(Elementary or Secondary School
Outside of a City With Population
in Excess of One Million)
PENAL LAW 140.10(d)
(Committed on or after Nov. 1, 1987)
(Revised January 2013)[1]

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][2] unlawfully in a building [*or* upon real property] located outside of a city with a population in excess of one million, and where the building [*or* real property] is utilized as an elementary or secondary school, and where that person enters [remains] in violation of a personally communicated request to leave the premises from a principal, custodian, school board member or trustee, or other person in charge thereof.

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:

The term BUILDING has its ordinary meaning and includes any structure, vehicle or watercraft used as an elementary or

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[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).

secondary school. 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.[3]]

A person enters [remains] UNLAWFULLY in a building [*or* upon real property] located outside of a city with a population in excess of one million and utilized as an elementary or secondary school when that person has no license or privilege to enter [remain] in such building [*or* upon such real property].[4] To have no license or privilege to enter [remain] means to have no right, permission or authority to do so.

A person enters [remains in or about] a school building without license or privilege when such person does so without written permission from someone authorized to issue such permission, or without a legitimate reason which includes a relationship involving custody of, or responsibility for, a pupil or student enrolled in the school, or without legitimate business or a purpose relating to the operation of the school.[5]

[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

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[3] *See* Penal Law § 140.00(2).

[4] *See* Penal Law § 140.00(5).

[5] *See* Penal Law § 140.00(5).

[6] *See* footnote 1.

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]]

A person KNOWINGLY enters [remains] unlawfully in a building [*or* upon real property], which is located outside of a city with a population in excess of one million and is utilized as an elementary or secondary school, in violation of a personally communicated request to leave the premises from a principal, custodian, school board member or trustee, or other person in charge thereof, 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 and in violation of such a request to leave.[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)*, in violation of a personally communicated request to leave the premises from a principal, custodian, school board member or trustee, or other person in charge thereof, unlawfully entered [remained] in a building [*or* upon real property], located at *(specify)*, which was outside of a city with a population in excess of one million and

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[7] *See* Penal Law § 140.00(5).

[8] *See* Penal Law § 140.00(5).

[9] *See* Penal Law § 15.05(2).

which was utilized as an elementary or secondary school; 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.