

CRIMINAL TRESPASS IN THE SECOND DEGREE
Penal Law § 140.15(1)
(Committed on or after Sept. 1, 1969)
(Revised Jan. 2013, June 2019)¹

The (*specify*) count is Criminal Trespass in the Second Degree.

Under our law, a person is guilty of Criminal Trespass in the Second Degree when that person knowingly enters [remains]² unlawfully in a dwelling.

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

A DWELLING is a building which is usually occupied by a person lodging therein at night.³

[Note: Add, where appropriate:

Normally, if a building contains a dwelling, a burglary committed in any part of that building is the burglary of a dwelling

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).

The June 2019 revision was for the purpose of providing the jury with an instruction, when in issue, for determining whether an exception applies to the general rule that any part of a building with residential and non-residential portions is considered a dwelling. See *People v McCray*, 23 NY3d 621, 624 (2014); *People v. Joseph*, 28 NY3d 1003 (2016).

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(3).

However, a building would not be a dwelling if a burglary was committed in an area so remote and inaccessible from the living quarters that the burglar neither came near, nor readily could have come near, to anyone's living quarters.^{4]}

[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.^{5]}

[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.^{6]}

A person enters [remains] UNLAWFULLY in a dwelling when that person has no license or privilege to enter [remain] in such dwelling.⁷ 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

⁴ See *People v McCray*, 23 NY3d 621, 624 (2014); *People v. Joseph*, 28 NY3d 1003 (2016).

⁴ See Penal Law § 140.00(2).

⁵ See Penal Law § 140.00(2).

⁶ See Penal Law § 140.00(5).

he/she knowingly enters, even by invitation or permission, UNLAWFULLY enters that building.^{8]}

[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.^{9]}

[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.^{10]}

A person KNOWINGLY enters [remains] unlawfully in a dwelling when that person is aware that he or she is entering [remaining] in such dwelling without license or privilege to do so.¹¹

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 dwelling located at (specify); and
2. That the defendant did so knowingly.

⁷ See footnote 1.

⁸ See Penal Law § 140.00(5).

⁹ See Penal Law § 140.00(5).

¹⁰ See Penal Law § 15.05(2).

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.