

CRIMINAL TRESPASS IN THE SECOND DEGREE
(Sex Offender in a School)
Penal Law § 140.15 (2)
(Committed on or after Nov.1, 2010)

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, being a person required to maintain registration as a sex offender and designated a level (*specify*: two / three) sex offender¹ he or she enters [or remains] in a public or private elementary, parochial, intermediate, junior high, vocational or high school, knowing that the victim of the offense for which such registration is required attends or formerly attended such school.

Under our law, a person who is designated a level (two/three) sex offender is required to register as a sex offender and maintain that registration during the period of his or her life.²

¹ The statute here reads: “[b]eing a person required to maintain registration under article six-C of the correction law and designated a level two or level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law.” The charge substitutes the words “sex offender” for the statute’s references to the Correction Law.

² See Correction Law § 168-h (2). In its current form, the life-time registration provision for level two and level three sex offenders applies only to sex offenders designated on or after March 11, 2002. Sex offenders designated before that date might be subject to different registration periods, depending on their particular designation. In addition, under the current provision, certain level two sex offenders are eligible to be relieved from the duty to register. Corr. L. § 168-h (2).

Add as may be required by law:³

It shall not be a violation of this law if:

Select appropriate alternative:

the person is a lawfully registered student at such school;

the person is a lawful student participant in a school sponsored event;

the person is a parent or a legal guardian of a lawfully registered student at such school and enters the school for the purpose of attending his or her child's or dependent's event or activity;

such school is the person's designated polling place and he or she enters such school building for the limited purpose of voting; or

³ The statute here reads that "it shall not be an offense subject to prosecution under this subdivision if" one of circumstances listed above applies. It is not settled whether these circumstances constitute elements of the crime to be pleaded and disproved by the People in every case, or whether each constitutes a defense to be raised by the defendant in an individual case before the People are required to disprove same. See, e.g., *People v Rodriguez*, 68 NY 2d 674 (1986), *reversing for reasons stated in the dissenting opinion at the Appellate Division*, 113 A.D.2d 337 (the government was required to plead and prove that the defendant possessed a firearm in a place that was not the defendant's home or place of business); *People v Santana*, 7 NY3d 234, 237 (2006) (the exception reference in the definition of the crime of criminal contempt [Penal Law § 215.50 (3)] constituted a "proviso that the accused may raise in defense of the charge rather than an exception that must be pleaded by the People in the accusatory instrument"); *People v Davis*, 13 NY3d 17, 31 (2009) ("The main goal of the interpretative rules governing exceptions and provisos is to discover the intention of the enacting body," and that intent may be divined by "common sense and [the rules of] reasonable pleading").

if the person enters such school building for the limited purposes authorized by the superintendent or chief administrator of such school.

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 each of the following (three/four) elements:

1. That on or about (date), in the county of (County), the defendant, (defendant's name), entered [or remained] in a public or private elementary, parochial, intermediate, junior high, vocational or high school;
2. That, at that time, the defendant was designated a level (specify: two / three) sex offender and was required to maintain his/her registration as a sex offender; [and]
3. That the defendant entered [or remained] in the school knowing that the victim of the offense for which he or she was required to register attended [or formerly attended] such school; [and]
- [4] Select appropriate alternative(s), as may be required by law:⁴

That the defendant was not a lawfully registered student at such school;

That the defendant was not a lawful student participant in a school sponsored event;

That the defendant was not a parent or a legal guardian of a lawfully registered student at such school who entered the school for the purpose of attending his or her child's or dependent's event or activity;

⁴ See footnote 3, *supra*.

That such school was not the defendant's designated polling place or that he or she did not enter such school building for the limited purpose of voting; or

That the defendant did not enter such school building for the limited purposes authorized by the superintendent or chief administrator of such school.

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

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