

CRIMINAL TRESPASS IN THE FIRST DEGREE
(Deadly Weapon or Explosive)
Penal Law § 140.17(1)
(Committed on or after Sept. 1, 1969)
(Revised January 2013 and May 2018)¹

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

Under our law, a person is guilty of Criminal Trespass in the First Degree when that person knowingly enters [remains]² unlawfully in a building, and when, in the course of committing such crime, that person possesses [or knows that another participant in the crime possesses] a deadly weapon [or an explosive³].

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 2018 revision was for the purpose of including definitions of weapons set forth in decisional law (see footnote 12) and including two weapons added by the Legislature. November 1, 1995, was the effective date of an amendment to the definition of "deadly weapon" to add a "metal knuckle knife." L. 1995, ch. 219. November 1, 2008, was the effective date of an amendment to that definition to add "plastic knuckles." L. 2008, ch. 257. As to each of those weapons, this charge applies on or after those effective dates.

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 In 1974, the Court of Appeals stated that “the statutory terms—‘incendiary’, ‘bomb’ and ‘explosive substance’ -- are susceptible of reasonable application in accordance with the common understanding of men.” *People v. Cruz*, 34 NY2d 362 (1974).

In 1975, the Appellate Division, First Department, opined that a 1970 definition of “explosive” in Labor Law § 451 applied to the Penal Law in the adjudication of that term in an arson statute. *People v McCrawford*, 47 AD2d 318 (1st Dept. 1975). (That Labor Law definition was amended after the *McCrawford* decision. L. 2009, c. 57.) *But see Matter of Perry*, 232 A.D.2d 225 (1st Dept., 1996) (in sustaining a Family Court petition for possession of an explosive, the Court cited *Cruz* for the proposition that the language of the petition “apprise[d] respondent of the conduct of which he stood accused, giving the term ‘explosive’ or ‘incendiary’ device, which is not specifically defined in the Penal Law, its everyday meaning.”)

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.^{4]}

[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.^{5]}

A person enters [remains] UNLAWFULLY in a building when that person has no license or privilege to enter [remain] in that building.⁶ 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.^{7]}

[NOTE: Add, where appropriate:

A person who, regardless of his or her intent, enters

In 2001, the Appellate Division, Third Department, citing *Cruz*, stated that "the term 'explosive substance' retains its everyday common sense meaning since it is undefined in the Penal Law." *People v. Ward*, 282 A.D.2d 819 (3rd Dept., 2001). See also *People v. Getman*, 188 Misc.2d 809 (County Court, 2001) ("this court finds that the essence of the term 'explosive substance' is something which is capable of exploding and causing death or injury to person or property").

⁴ See Penal Law § 140.00(2).

⁵ See Penal Law § 140.00(2).

⁶ See Penal Law § 140.00(5).

⁷ See footnote 1.

[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.^{8]}

[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.^{9]}

A person KNOWINGLY enters [remains] unlawfully in a building when that person is aware that he or she is entering [remaining] in such building without license or privilege to do so.¹⁰

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.¹¹

[DEADLY WEAPON means:

Select appropriate alternative:

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

a switchblade knife defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

a pilum ballistic knife defined as any knife having a blade which can be projected from the handle by hand pressure applied to a

⁸ See Penal Law § 140.00(5).

⁹ See Penal Law § 140.00(5).

¹⁰ See Penal Law § 15.05(2).

¹¹ See Penal Law §10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the “Additional Charges” section at the end of this article.

button, lever, spring or other device in the handle of the knife.

a metal knuckle knife, defined as a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.

metal knuckles, defined as a metal object with multiple holes, through which individual places his or her fingers so that a metal bar rests atop the individual's knuckles.

a billy, defined as a cylindrical or rounded, rigid, club or baton with a handle grip which, from its appearance and inherent characteristics, is designed to be used as a striking weapon and not for other lawful purposes.

a dagger.

a blackjack.

plastic knuckles.^{12]}

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 each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), unlawfully entered [remained] in a building located at (specify);
2. That the defendant did so knowingly; and

¹² Penal Law § 10.00(12) defines "deadly weapon." See Penal Law § 265.00 for the definitions of "switchblade knife," "gravity knife," "pilum ballistic knife" and "metal knuckle knife"; *People v. Aragon*, 28 N.Y.3d 125 (2016) (for the definition of "metal knuckles"); *People v. Ocasio*, 28 N.Y.3d 178 (2016) (for the definition of "billy").

There is no controlling statutory or decisional law definition of "plastic knuckles" albeit the legislative memorandum in support of adding that term equated it with "brass [metal] knuckles"; thus, for the definition of "plastic knuckles," a court may wish to consider using the definition of "metal knuckles," substituting "plastic object" for "metal object" and "plastic bar" for "metal bar."

3. That, in the course of committing that crime, the defendant possessed [or knew that another participant in the crime possessed] a deadly weapon [or an explosive].

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.