

**CRIMINAL TRESPASS IN THE FIRST DEGREE**  
**(D Felony)**  
**PENAL LAW 140.17(2)**  
**(Committed on or after Sept. 1,1969)**  
**(Revised January 2013)<sup>1</sup>**

The \_\_\_\_\_ count is (*specify*).

Under our law, a person is guilty of Criminal Trespass in the First Degree when he or she knowingly enters [*or remains*<sup>2</sup>] unlawfully in a building, and when, in the course of committing such crime, that person knowingly possesses a firearm, [*or rifle*] [*or shotgun*<sup>3</sup>], and also knowingly possesses or has readily accessible a quantity of ammunition which is capable of being discharged from such firearm, [*or rifle*] [*or shotgun*].<sup>4</sup>

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," "possess," "knowingly," and "firearm" [*or "rifle"*] [*or "shotgun"*].

*[NOTE: Add, where appropriate:*

In addition to its ordinary meaning, the term BUILDING

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<sup>1</sup> 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).

<sup>2</sup> When the evidence 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." See *People v Gaines*, 74 NY2d 358 (1989).

<sup>3</sup> At this point, the statute continues: "as those terms are defined in section 265.00 [of the Penal Law]."

<sup>4</sup> The word "knowingly" has been added in two places in this definition to modify "possesses" in order to comport with statutory and case law. Penal Law §§ 15.00(2); 15.05(2); *People v Ford*, 66 NY2d 428, 440 (1985); *People v Marino*, 212 AD2d 735, 736 (2d Dept. 1995). *People v Cohen*, 57 AD2d 790 (1st Dept. 1977).

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.<sup>5]</sup>

*[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.<sup>6]</sup>

A person enters [remains] UNLAWFULLY in a building when that person has no license or privilege to enter [remain] in that building.<sup>7</sup> 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.<sup>8]</sup>

*[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.<sup>9</sup>

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<sup>5</sup>See Penal Law § 140.00(2).

<sup>6</sup>See Penal Law § 140.00(2).

<sup>7</sup>See Penal Law § 140.00(5).

<sup>8</sup> See footnote 1.

<sup>9</sup>See Penal Law § 140.00(5).

*[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.<sup>10</sup>

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

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.<sup>12</sup> A person knowingly possesses a firearm, [rifle] [or shotgun], when that person is aware that he or she is in possession of a firearm, [rifle] [or shotgun].

FIREARM means any pistol or revolver.<sup>13</sup>

[RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.<sup>14</sup>]

[SHOTGUN means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy

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<sup>10</sup> See Penal Law § 140.00(5).

<sup>11</sup> 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 chapter.

<sup>12</sup> See Penal Law § 15.05(2).

<sup>13</sup> See Penal Law §§ 140.17 and 265.00(3).

<sup>14</sup> See Penal Law §§ 140.17 and 265.00(11).

of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.<sup>15]</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, 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
3. That, in the course of committing that crime, the defendant knowingly possessed a firearm [or a rifle] [or a shotgun] and also knowingly possessed or had readily accessible a quantity of ammunition which was capable of being discharged from such firearm [or rifle] [or shotgun].

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Trespass in the First Degree as charged in the \_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Trespass in the First Degree as charged in the \_\_\_ count.

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<sup>15</sup> See Penal Law §§ 140.17 and 265.00(12).