**BURGLARY**
**SECOND DEGREE**
**(C felony)**
**(Physical Injury to Non-participant)**
**PENAL LAW 140.25(1)(b)**
**(Committed on or after Sept. 1, 1967)**
**(Revised January 2013)**[1]

The _____ count is Burglary in the Second Degree.

Under our law, a person is guilty of Burglary in the Second Degree when that person knowingly enters [remains][2] unlawfully in a building with the intent to commit a crime therein, and when, in effecting entry or while in the building or in immediate flight therefrom, that person [*or* another participant in the crime] causes physical injury to any person who is not a participant in the crime.

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," "knowingly," "intent," and "physical injury."

*[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

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[1] The January, 2013, revision was for the purpose of expanding the definition of "unlawfully" and of "intent" when the burglary is premised on a violation of an order of protection in order to accord with the dictates of *People v Lewis*, 5 N.3d 546 (2005) and *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).

inclosed motor truck, or an inclosed motor truck trailer.[3]]

*[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.[4]]

A person enters [remains] UNLAWFULLY in a building when that person has no license or privilege to enter [remain] in that building.[5] 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.[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 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

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[3] Penal Law § 140.00(2).

[4] Penal Law § 140.00(2).

[5] Penal Law § 140.00(5).

[6] *See* footnote 1.

[7] Penal Law § 140.00(5).

[remain], in that part of the building which is not open to the public.[8]]

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.[9]

INTENT means conscious objective or purpose.[10] Thus, a person has the intent to commit a crime in a building when that person's conscious objective or purpose is to commit a crime in that building.

*[NOTE: Add, where appropriate:*

It is not enough that a person, who is subject to and knows of an order of protection prohibiting entry into a dwelling, intended to violate the order by entering the building. That person must have intended to violate some other provision of the order or to commit a separate crime therein.[11]]

The crime of burglary is separate and distinct from any crime which a person may commit within the building. The crime of burglary is complete when a person knowingly enters [remains] in a building unlawfully and does so with the intent to commit a crime in the building, regardless of whether that person ever commits, or even attempts to commit, any crime in the building.

PHYSICAL INJURY means impairment of physical condition or substantial pain.[12]

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[8] Penal Law § 140.00(5).

[9] *See* Penal Law § 15.05(2).

[10] *See* Penal Law § 15.05(1).

[11] *See* footnote 1.

[12] Penal Law § 10.00(9); *See People v. Chiddick*, 8 NY3d 445 (2007).

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 four 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;

3. That the defendant did so with the intent to commit a crime inside the building;[13] and

4. That, in effecting entry or while in the building or in immediate flight therefrom, the defendant [*or* another participant in the crime] caused physical injury to a person who was not a participant in the crime.

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 Burglary in the Second 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 Burglary in the Second Degree as charged in the ___ count.

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[13] If, in the indictment or bill of particulars, the People allege that the defendant intended a specific crime, that crime must be specified [*People v Barnes,* 50 NY2d 375, 379 n 3 (1980)] and the third element should then be:

> "**3. That the defendant did so with the intent to commit the crime of *(specify)* inside the building.**"