

## 14.10

### Issues In Burglary--Authorized Entry But Unauthorized Remaining Within

To sustain the charge of burglary by remaining within a[n] [ (building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) ], the State must prove the following propositions:

*First Proposition:* That the defendant knowingly entered a[n] [ (building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) ] [or any part thereof]; and

*Second Proposition:* That the defendant did so with authority; and

*Third Proposition:* That the defendant thereafter, without authority, knowingly remained within that [ (building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) ]; and

*Fourth Proposition:* That the defendant remained within that [ (building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) ] with the intent to commit therein the offense of \_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/19-1 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §19-1 (1991)).

Give Instruction 14.09.

This instruction and Instructions 14.07, 14.08, and 14.09 are based upon *People v. Tinkler*, 85 Ill.App.3d 528, 407 N.E.2d 985, 41 Ill.Dec. 487 (3d Dist.1980); *People v. Green*, 83 Ill.App.3d 982, 404 N.E.2d 930, 39 Ill.Dec. 339 (3d Dist.1980); and *People v. Vallero*, 61 Ill.App.3d 413, 378 N.E.2d 549, 19 Ill.Dec. 48 (3d Dist.1978). They hold that a burglary conviction based on remaining within will not stand upon proof that the defendant entered without authority, whether the defendant formed his intent to steal before or after his entry. See also *People v. Boone*, 217 Ill.App.3d 532, 577 N.E.2d 788, 160 Ill.Dec. 463 (3d Dist.1991).

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.