

14.09

Definition Of Burglary—Authorized Entry But Unauthorized Remaining Within

A person commits the offense of burglary when he knowingly enters with authority a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof] and thereafter without authority remains within that [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof] with intent to commit therein the offense of _____.

Committee Note

720 ILCS 5/19-1 (West 2022).

Give Instruction 14.10.

Give Instruction 23.43B, defining the term “motor vehicle”, if the charging instrument alleges that the object entered was a motor vehicle and if there is an issue as to whether the object of entry was a motor vehicle.

An individual commits burglary by remaining in a public place only where he exceeds his physical authority to be on the premises. *People v. Bradford*, 2016 IL 118674, ¶ 31; 50 N.E.3d 1112, 1120 (2016). The *Bradford* court explained:

Under this definition, burglary by remaining includes situations in which an individual enters a public building lawfully, but, in order to commit a theft or felony, (1) hides and waits for the building to close, (2) enters unauthorized areas within the building, or (3) continues to remain on the premises after his authority is explicitly revoked. Conversely, an individual who enters a building lawfully, shoplifts merchandise within areas which are open to the public, then leaves during business hours, is guilty of ordinary retail theft.

Bradford, 2016 IL 118674, ¶ 31; 50 N.E.3d at 1120.

Where an entry is unauthorized, it is error to use the “remains within” alternative in burglary instructions. *People v. Tinkler*, 85 Ill. App. 3d 528, 531 (3rd Dist. 1980).

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.