

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)] [or any part thereof] and thereafter without authority remains within that [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle)] [or any part thereof] with intent to commit therein the offense of ____.

Committee Note

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

Give Instruction 14.10.

Give Instruction 23.43B, defining the term “motor vehicle”, if the information or indictment 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.

This instruction and Instructions 14.07, 14.08, and 14.10 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).

The Committee recommends that, at the request of either party, or *sua sponte*, the court define the offense (theft or the specified felony) alleged as the objective of the burglary.

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

Use applicable bracketed material.