\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the defendant in this case, has been charged with the crime of criminal trespass in the first degree.

To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt (each of) the following element(s):

1. the defendant knowingly [entered unlawfully][remained unlawfully] on land; and
2. at the time the defendant did so, the defendant intended to commit the crime(s) of [(identify crime(s))] on the land.

or

(1) the defendant knowingly [entered unlawfully into][remained unlawfully in] a dwelling.

## USE NOTE

The following terms are defined in other instructions:

"dwelling" – 11.81.900(b)

"enter or remain unlawfully" – 11.46.350(a)

"knowingly" – 11.81.900(a)(2)

Burglary requires that at the time that the defendant's presence first becomes unlawful, the defendant have the intent to commit an additional crime. Pushruk v. State, 780 P.2d 1044, 1048 (Alaska App. 1989). The Alaska Court of Appeals applied the same requirement to this theory of criminal trespass in Beecher v. State, 2003 WL 21398908 \*4 (Alaska App., June 18, 2003). Note that memorandum decisions such as Beecher do not create legal precedent and cannot be cited as binding precedent for any proposition of law.

In a burglary prosecution, the state is required to identify the specific crime(s) that the defendant intended to commit in the building and the same is likely true for criminal trespass in the first degree. See State v. Semancik, 99 P.3d 538 (Alaska 2004). However, the state may not be required to designate a specific degree within that class of crimes so long as there is no improper amendment to the complaint or information. SeeState v. Van Brocklin, 598 P.2d 938 (Alaska 1979) (decided under the previous criminal code); Alaska R. Crim. P. 7(e); Bowers v. State, 2 P.3d 1215 (Alaska 2000). The state may charge alternative intended crimes. SeeState v. Semancik, 99 P.3d 538 (Alaska 2004).

For a discussion of what constitutes unlawful entry see Sears v. State, 713 P.2d 1218 (Alaska App. 1986) and State v. Ison, 744 P.2d 416 (Alaska App. 1987).

For a discussion of what constitutes a "dwelling" seeShoemaker v. State, 716 P.2d 391 (Alaska App. 1986).

This instruction may be modified if the defendant is charged with more than one intended crime. Pattern Instruction 1.35E, which explains that the jury need not be unanimous as to which theory the state has proved, must be given whenever a defendant is charged under multiple theories.