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UNAUTHORIZED ENTIRE

DRAFT

RSA 635:1 Burglary (Class A Felony; Nighttime Entry Of A Dwelling)

The defendant is charged with the crime of burglary. The definition of this offense has five parts or elements. The State must prove each element beyond a reasonable doubt.¹ Thus, the State must prove that:

1. The defendant entered the dwelling of another; and
2. The entry was at night; and
3. The dwelling was not open to the public at the time; and
4. The defendant was neither licensed nor privileged to enter; and
5. The defendant acted with the purpose to commit a crime therein.

These are the elements of the crime of burglary. Certain words in the definition need to be defined.

“License or privilege” means to have permission to enter. A person has permission to enter if he/she would naturally be expected to be in the dwelling in the normal course of his/her duties or habits. The permission to enter need not be explicit. The permission may be limited to a time when the defendant would reasonably be expected to be in the dwelling. The permission may also be limited to part of the dwelling²

“Night” means the period between 30 minutes past sunset and 30 minutes before sunrise.

“Occupied structure” means [see definition of RSA 635:1 III.]

“Purposely” means [see definition of purposely].

¹ If applicable, instruct on the affirmative defense provisions set forth in RSA 635:1, I.

² *State v Thaxton*, 120 N.H. 526 (1980)