

CRIMINAL TRESPASS:
UNLICENSED ENTRY OF CERTAIN AIRPORT AREAS
(N.J.S.A. 2C:18-3(a))

Count ____ of the indictment charges the defendant with:

(Read indictment)

The statute upon which this charge is based provides:

A person commits an offense if, knowing that he is not licensed or privileged to do so, he **(enters/surreptitiously remains)** in the **(sterile area/operational area)** of an airport.

In order for defendant to be convicted of this offense, the State must prove the following elements beyond a reasonable doubt:

- (1) That the defendant **(entered/surreptitiously remained)** in the **(sterile area/operational area)** of an airport; and
- (2) That the defendant did so knowing that he/she had no right to enter or to be there at that time.

The first element that the State must prove beyond a reasonable doubt is that the defendant **(entered/surreptitiously remained)** in the **(sterile area/operational area)** of the airport.

[Charge if appropriate:] “Surreptitiously remained” means that the defendant remained secretly, stealthily, or fraudulently for some duration in the **(sterile area/operational area)** knowing that he/she was not licensed or privileged to do so.¹

[Charge one of the following:]

“Sterile area” under this statute means a portion of an airport, as set forth in an airport security program approved by the Transportation Security Administration, that provides passengers access to boarding aircraft and to which the access generally is controlled by the Transportation Security Administration, an aircraft operator² or an air carrier³ through the screening of persons and property.⁴

¹ See Cannel, Criminal Code Annotated, Comment 4, N.J.S.A. 2C:18-2; Kaplowitz v. State Farm Mutual Automobile Ins. Co., 201 N.J. Super. 593, 600 (Law Div. 1985); Black’s Law Dictionary at p. 1445 (6th ed. 1990) (defining “surreptitious”).

² If at issue, define “aircraft operator” as “a person who uses, causes to be used, or authorizes to be used an aircraft, with or without the right of legal control (as owner, lessee, or otherwise), for the purpose of air navigation including the piloting of aircraft, or on any part of the surface of an airport.” 49 C.F.R. § 1540.5.

³ If at issue, define “air carrier” as “an entity which provides air transportation.” See ABC Charters, Inc. v. Bronson, 591 F. Supp. 2d 1272, 1298 n. 25 (S. D. Fla. 2008) (citing 49 U.S.C. § 40102(a)(2)).

⁴ N.J.S.A. 2C:18-1.

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[OR]

“Operational area” under this statute means any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft.⁵

The second element the State must prove beyond a reasonable doubt is that the defendant did so knowing that he/she had no right to enter or to be there at that time.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowledge is a condition of the mind that cannot be seen and that can be determined only from inferences from conduct, words or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that he/she acted with a particular state of mind. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

[Charge if no affirmative defenses are alleged:] If you find that the State has proven to you all of these elements beyond a reasonable doubt, then you must find defendant guilty of criminal trespass. If the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

[Charge any applicable affirmative defense(s)]

[(A)] Defendant, as part of his/her denial of guilt, asserts that the **(sterile area/operational area)** of the airport was abandoned.⁶ A **(sterile area/operational area)** of an airport is “abandoned” when its legal owner has vacated it with no intention of returning or

⁵ N.J.S.A. 2C:18-1.

⁶ N.J.S.A. 2C:18-3d(1).

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reclaiming it.⁷ It is the burden of the State to prove beyond a reasonable doubt that the **(sterile area/operational area)** of the airport was not abandoned. Therefore, if you conclude that the State has proven all of the elements of the criminal trespass beyond a reasonable doubt, but you are still not satisfied beyond a reasonable doubt that the State has disproved the defendant's claim that the **(sterile area/operational area)** of the airport was abandoned, you must find defendant not guilty. However, if you find that the State has proven all of the elements of the criminal trespass and has also proven beyond a reasonable doubt that the **(sterile area/operational area)** of the airport was not abandoned, then you must find defendant guilty of criminal trespass.

[AND/OR]

[(B)] Defendant, as part of his/her denial of guilt, asserts that the **(sterile area/operational area)** of the airport was open to members of the public and he/she complied with all lawful conditions imposed on access to or remaining in the **(sterile area/operational area)** of the airport at the time that he/she **(entered/remained in)** it. It is the burden of the State to prove beyond a reasonable doubt that the **(sterile area/operational area)** of the airport was not open to members of the public and/or that defendant did not comply with all lawful conditions imposed on access to or remaining in the **(sterile area/operational area)** of the airport at the time that he/she **(entered/remained in)** it. Therefore, if you conclude that the State has proven all of the elements of the criminal trespass beyond a reasonable doubt, but you are still not satisfied beyond a reasonable doubt that the State has disproved defendant's claim that the **(sterile area/operational area)** of the airport was open to members of the public and defendant complied with all lawful conditions imposed on access to or remaining in the **(sterile area/operational area)** of the airport at the time that he/she **(entered/remained in)** it, then you must find defendant not guilty. However, if you find that the State has proven all of the elements of the criminal trespass and has also proven beyond a reasonable doubt that the **(sterile area/operational area)** of the airport was not open to members of the public and/or that defendant did not comply with all lawful conditions imposed on access to or remaining in the **(sterile area/operational area)** of the airport at the time that he/she **(entered/remained in)** it, then you must find defendant guilty of criminal trespass.

⁷ Black's Law Dictionary at p.2 (6th ed. 1990); State v. Bailey, 97 N.J. Super. 396, 400-401 (App. Div. 1967).

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[AND/OR]

[(C)] Defendant, as part of his/her denial of guilt, asserts that he/she reasonably believed that the **(owner of the premises/other person authorized to give permission)**, would have permitted him/her to enter or remain.⁸ It is the burden of the State to prove beyond a reasonable doubt that defendant did not reasonably believe that he/she would have been permitted by the **(owner/other person empowered to permit access)** to **(enter/remain)**. Therefore, if you conclude that the State has proven all of the elements of the criminal trespass beyond a reasonable doubt, but you are still not satisfied beyond a reasonable doubt that the State has disproved defendant's claim that he/she did have a reasonable belief that he/she would have been permitted or privileged to **(enter/remain)**, then you must find defendant not guilty. However, if you find that the State has proven all of the elements of the criminal trespass and has also proven beyond a reasonable doubt that defendant could not have reasonably believed that he/she would be permitted or privileged to **(enter/remain)**, then you must find defendant guilty of criminal trespass.

⁸ N.J.S.A. 2C:18-3d(3).