

INJURING A SERVICE ANIMAL OR GUIDE DOG¹
N.J.S.A. 2C:29-3.2
(eff. 1/17/14)

If you find the defendant not guilty of killing a service animal or guide dog, you must consider the lesser-included offense of injuring a service animal or guide dog. The law requires that the Court instruct the jury with respect to possible (lesser) included offenses, even if they are not contained in the indictment. Just because the Court is instructing you concerning these offenses does not mean that the Court has any opinion one way or another about whether the defendant committed these, or any, offenses. You should consider these offenses along with those for which the defendant is indicted. However, you are not to render a verdict on these offenses or answer the questions on the verdict sheet unless you find that the State has failed to meet its burden with regard to the offense(s) in the indictment.

Injuring a service animal or guide dog is a lesser-included offense to count _____ of this indictment.

The applicable statute provides, in pertinent part, that:

(a)ny person who recklessly injures a service animal or guide dog, or recklessly permits a dog that the person owns or over which the person has immediate control, to injure a service animal or guide dog

commits an offense.

In order for you to find the defendant guilty, the State must prove the following elements beyond a reasonable doubt:

1. that the animal was a service animal or guide dog;
2. that the defendant [**CHOOSE APPLICABLE ALTERNATIVE**] injured the animal **OR** permitted a dog he/she owned or over which he/she had immediate control to injure the animal; and
3. that the defendant acted recklessly.

The first element that the State must prove beyond a reasonable doubt is that the animal was a

¹ This charge is intended for use in those situations in which this disorderly persons offense is a lesser-included offense of a crime charged in the indictment.

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service animal or guide dog.

“Service animal”² means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

“Guide dog”³ means a dog which has been or is being raised or trained to provide assistance to a blind or deaf person, including but not limited to a dog that has been or is being raised or trained by a volunteer puppy raiser or staff member of an organization generally recognized as being involved in the rehabilitation of the blind or deaf and reputable and competent to provide dogs with specialized training.

The second element that the State must prove beyond a reasonable doubt is that the defendant **[CHOOSE APPLICABLE ALTERNATIVE]** injured the animal **OR** permitted a dog he/she owned or over which he/she had immediate control to injure the animal.

The third element that the State must prove beyond a reasonable doubt is that the defendant

² N.J.S.A. 2C:29-3.2e defines “service animal” with the same meaning as set forth in the federal “Americans with Disabilities Act of 1990,” 42 U.S.C. § 12101 et seq., and any regulations under the act. See also 28 C.F.R. § 36.104 (2013).

³ See N.J.S.A. 2C:29-3.2e.

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acted recklessly.

A person acts recklessly with respect to the result of his/her conduct if he/she consciously disregards a substantial and unjustifiable risk that the result will occur from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. One is said to act recklessly if one acts with recklessness, with scorn for the consequences, heedlessly, fool-hardily.

In other words, you must find that the defendant was aware of and consciously disregarded the risk of causing injury to a service animal or guide dog. If you find that the defendant was aware of and disregarded the risk of causing injury to a service animal or guide dog, you must determine whether the risk that he/she disregarded was substantial and unjustifiable. In doing so, you must consider the nature and purpose of the defendant's conduct, and the circumstances known to the defendant, and you must determine whether, in light of those factors, the defendant's disregard of that risk was a gross deviation from the conduct a reasonable person would have observed in the defendant's situation.

If you find that the State has proven every element of this offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the State has failed to prove any element of this offense beyond a reasonable doubt, then you must find the defendant not guilty.