

CRIMINAL TRESPASS
(N.J.S.A. 2C:18-3(a))

The indictment in this case charges the defendant with:

(Read indictment)

The statute on which the indictment is based reads in pertinent part as follows:

A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any research facility,¹ structure² or separately secured or occupied portion thereof.

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)³ in any (research facility) (structure) (or a separately secured or occupied portion thereof), and
- (2) That the defendant did so knowing that (he/she) had no right to enter or to be there at that time.

"Knowing" under this statute means that defendant was aware that he/she was not licensed or privileged to (enter) (surreptitiously remain) in _____ or that defendant was aware of the high probability that he/she was not so licensed or privileged.

(NO AFFIRMATIVE DEFENSE) ADD

¹ "Research facility" means any building, laboratory, institution, organization, or school engaged in research, testing, educational or experimental activities, or any commercial or academic enterprise that uses warm-blooded or cold-blooded animals for food or fiber production, agriculture, research, testing, experimentation, or education. A research facility includes but is not limited to, any enclosure, separately secured yard, pad, pond, vehicle, building, structure or premises, or separately secured portion thereof. N.J.S.A. 2C:1-14p.

² Definition of "structure": N.J.S.A. 2C:18-1. In this chapter unless a different meaning plainly is required, "structure" means any building, room, ship, vessel, car, vehicle or airplane, and also means any place adapted to overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

³ If "surreptitiously remained" is in your case, charge "that the defendant remained secretly, stealthily, or fraudulently for some duration in the (research facility) (structure), or a separately secured or occupied portion thereof knowing that (he/she) was not licensed or privileged to do so." [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) [definition of "surreptitious"].

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If you find that the State has proven to you all of these elements beyond a reasonable doubt, then you must find defendant guilty. If the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

(AFFIRMATIVE DEFENSES) ADD

Defendant _____ as part of his/her denial of guilt asserts that [**CHOOSE APPLICABLE AFFIRMATIVE DEFENSE(S) FROM ALTERNATIVES BELOW**]:

(A) the (structure) (research facility) was abandoned.⁴ A (structure) (research facility) is “abandoned” when its legal owner has vacated it with no intention of returning or reclaiming it.⁵ It is the burden of the State to prove beyond a reasonable doubt that the (structure) (research facility) 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 (structure) (research facility) 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 (structure) (research facility) was not abandoned, then you must find defendant guilty of criminal trespass.

OR

(B) the (structure) (research facility) was open to members of the public and he/she complied with all lawful conditions imposed on access to or remaining in the (structure) (research facility) at the time that he/she entered (or remained in) it. It is the burden of the State to prove beyond a reasonable doubt that the (structure) (research facility) 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 (structure) (research facility) at the time that he/she entered (or 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

⁴ N.J.S.A. 2C:18-3d(1).

⁵ 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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doubt that the State has disproved defendant's claim that the (structure) (research facility) was open to members of the public and defendant complied with all lawful conditions imposed on access to or remaining in the (structure) (research facility) at the time that he/she entered (or 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 (structure) (research facility) 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 (structure) (research facility) at the time that he/she entered (or remained in) it, then you must find defendant guilty of criminal trespass.

OR

(C) He/She reasonably believed that the owner of the premises, (or other person authorized to give permission thereto), would have permitted him/her to enter or remain.⁶ 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 (or other person empowered to permit access thereto) to enter (or 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.

DEGREE [CHOOSE ALTERNATIVE(S), IF APPLICABLE]⁷

If and only if you find defendant guilty of criminal trespass, you must also determine whether the State has proven beyond a reasonable doubt that the offense was committed:

⁶ N.J.S.A. 2C:18-3d(3).

⁷ 2C:18-3a makes the offense a crime of the fourth degree if it is committed in a dwelling, a research facility, in a school, or on school property. Otherwise it is a disorderly persons offense.

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(1) in a dwelling. A dwelling is any structure where individuals reside and sleep, or other structure that is dedicated to or intended for residential use.⁸ Here, the State alleges _____; the defense contends _____. Furthermore, a structure is a dwelling, whether occupied, unoccupied, or vacant, so long as the State has proven beyond a reasonable doubt that it is suitable for residential use.⁹

(2) in a research facility. [See footnote 1 supra for definition of “research facility”].

(3) on school property. School property is property used for school purposes that is owned or leased to any elementary or secondary school board or a school bus.¹⁰ [**CHARGE WHERE APPLICABLE:** Property that is permissively used for school purposes but is neither owned nor leased by the school board of any school is not “school property” within the meaning of this statute.]¹¹

If the State has proven beyond a reasonable doubt that the offense was committed in/on **(insert appropriate alternative[s])**, you must find defendant guilty of criminal trespass. If the State has not proven beyond a reasonable doubt that the offense was committed in/on **(insert appropriate alternative[s])**, you must find defendant guilty of criminal trespass, a disorderly persons offense.

⁸ State v. Scott, 169 N.J. 94, 104 (2001). Examples of a dwelling include, but are not limited to, a home, townhouse, apartment, condominium, motel or hotel. Ibid.

⁹ As to an unoccupied rental structure, see Scott, 169 N.J. at 102-04. Compare State v. Crutcher, 313 N.J. Super. 203, 205 and 211 (App. Div. 1998), discussed at Scott, 169 N.J. at 102, in which the unoccupied house was “essentially uninhabitable” not only because it was unoccupied for nearly a year, but also because it did not have working utilities and was not in any way being maintained in anticipation of sale or rental.

¹⁰ N.J.S.A. 2C:35-7.

¹¹ State v. Belnavis, 311 N.J. Super. 195, 198-199 (App. Div. 1998).