

**OBSTRUCTING ADMINISTRATION OF LAW OR OTHER
GOVERNMENTAL FUNCTION**

(N.J.S.A. 2C:29-1)

[Where crime occurred before April 28, 2000]

[Count _____ of] [T]he indictment charges the defendant with obstructing the administration of law or other governmental function. That section of our statutes provides that

A person commits an offense if he purposely obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act. In order to find the defendant guilty of this offense, the State must prove each of the following elements beyond a reasonable doubt:

(1) that the defendant

(a) committed an act of intimidation, force, violence, or physical interference or obstacle

OR

(b) committed an unlawful act [**WHERE APPLICABLE: as charged in count _____ of the indictment**];

(2) that the act was committed for the purpose of

(a) obstructing, impairing, or perverting the administration of law or other governmental function

OR

(b) preventing a public servant from lawfully performing an official function; and

(3) that in committing the act, the defendant did [OR attempted to]

(a) obstruct, impair, or pervert the administration of law or other governmental function

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OR

(b) prevent a public servant from lawfully performing an official function.

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

(a) an act of intimidation, force, violence, or physical interference or obstacle. In other words, the State must prove that the defendant affirmatively did something to interfere or place an obstacle to prevent the public servant from performing an official function.¹ Specifically, the State alleges that the defendant committed the act of _____.

OR

(b) an unlawful act: in other words, an act that is, without regard to its purpose to obstruct justice, already declared illegal.² In this case, the State alleges that the defendant committed the unlawful act of _____. I have already defined the elements of that crime (or will define the elements of that crime) in my instructions concerning count _____.³] You cannot find the defendant guilty of obstructing the administration of law or other governmental function unless you find him/her guilty beyond a reasonable doubt of having committed this unlawful act [OR the crime charged in count _____].

The second element that the State must prove beyond a reasonable doubt is that the defendant committed the unlawful act(s) for the purpose of [obstructing, impairing, or perverting the administration of law or other governmental function] OR [preventing a public servant from

¹ State v. Berlow, 284 N.J. Super. 356, 360 (Law Div. 1995).

² II Commentary, Final Report of the New Jersey Criminal Law Revision Commission, N.J.S.A. 2C:29-1, comment 4, page 282 (1971). See also State v. Perlstein, 206 N.J. Super. 215, 222 (App. Div. 1980).

³ This alternative instruction is included for use in those cases in which the State's theory is that the only act of obstruction or interference the defendant is alleged to have committed is also a crime that is the subject of a separate count in the indictment on which the defendant is being tried. See, for instance, State v. Branch, 155 N.J. 317, 328 (1998) (referring to Model Criminal Jury Charge on "Felony Murder – Slayer Participant" [January 27, 1997]); State v. Grey, 147 N.J. 4, 17 (1996).

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lawfully performing an official function].

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist.

Purpose is a condition of the mind that cannot be seen and that can be determined only by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

The third element that the State must prove beyond a reasonable doubt is that in committing the act, the defendant did (OR attempted to⁴)

(a) obstruct, impair, or pervert the administration of law or the official governmental function of _____.

OR

(b) prevent a public servant from lawfully performing an official function. A public servant means any officer or employee of government. In this case, the State alleges that the defendant prevented (or attempted to prevent) a ____ [choose applicable title set forth in N.J.S.A. 2C:27-1g] from lawfully performing the official function of _____.

[CHARGE WHEN APPLICABLE: You cannot find the defendant guilty of this charge if he/she and a public servant engaged in a private altercation that happens to

⁴ When an attempt to prevent a public servant from lawfully performing an official function is alleged, or when attempt to commit the obstructing act is charged pursuant to N.J.S.A. 2C:5-1, include the Model Jury Charge on the definition of attempt.

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occur at a time when the victim is engaged in official duties.^{5]}

[CHARGE WHEN APPLICABLE: You cannot find the defendant guilty of this charge if he/she fled or refused to submit to arrest.^{6]}

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

[WHEN GRADING OF THE OFFENSE IS AT ISSUE, CHARGE AS FOLLOWS]

If you find the defendant guilty of obstructing the administration of law or other governmental function, you must go on and determine whether the State has proven beyond a reasonable doubt that the defendant has obstructed the investigation or detection of a crime, or prosecution of a person for a crime. In this case, the State alleges that the defendant obstructed the identification, detection, or prosecution of _____ for the crime of _____. If you find that the State has proven this allegation beyond a reasonable doubt, then you must find the defendant guilty of obstruction of the investigation or detection of a crime, or prosecution of a person for a crime. If the State has failed to prove this allegation beyond a reasonable doubt, you must find the defendant not guilty of obstructing the investigation or detection of a crime, or prosecution of a person for a crime, but guilty of obstructing the administration of law or other governmental function.

⁵ 1971 Commentary, *supra*, comment 3, pages 281-282.

⁶ State v. Garrison, 230 N.J. Super. 609, 615 (App. Div. 1989). But see Perlstein, 206 N.J. Super. at 254-255, which held that this exception does not apply to an investigative detention short of an arrest, *i.e.*, “a stop for a motor vehicle violation [that] does not necessarily constitute an arrest.” A similar instruction should be given if the case raises the issue of whether the defendant failed “to perform a legal duty other than an official duty, or [committed] any other means of avoiding compliance with law without affirmative interference with governmental functions,” which are specifically excluded from the scope of N.J.S.A. 2C:29-1.