

Criminal Trespass

1. What types of criminal trespass are filed in Municipal Court?

There are many trespass cases filed in the Municipal Court. Even though it is a basic charge, it could still give a person a criminal record. A trespass is frequently filed in many ordinary life situations. First, a prosecutor will often use a disorderly persons trespass as a downgraded charge to burglary. Second, the police and store owners will charge this offense to prevent loitering and other types of disorderly conduct in the town. Finally, trespass is often charged when neighbors have their own wars.

It is important to note that trespass cases often involve important constitutional issues when defendants are charged with trespass as a result of protest activities that involve protected speech.

2. What is the current law for criminal trespass?

The statute for criminal trespass is as follows;

N.J.S.A. 2C:18-3. Unlicensed entry of structures; defiant trespasser; peering into dwelling places; defenses

a. Unlicensed entry of structures. 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, structure, or separately secured or occupied a portion thereof. An offense under this subsection is a crime of the fourth degree if it is committed in a school or on school property. The offense is a crime of the fourth degree if it is committed in a dwelling. An offense under this section is a crime of the fourth degree if it is committed in a research facility. Otherwise it is a disorderly persons offense.

b. Defiant trespasser. A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

- (1) Actual communication to the actor; or
- (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
- (3) Fencing or other enclosure manifestly designed to exclude intruders.

c. Peering into windows or other openings of dwelling places. A person commits a crime of the fourth degree if, knowing that he

is not licensed or privileged to do so, he peers into a window or other opening of a dwelling or other structure adapted for overnight accommodation for the purpose of invading the privacy of another person and under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed.

d. Defenses. It is an affirmative defense to prosecution under this section that:

(1) A structure involved in an offense under subsection a. was abandoned;

(2) The structure was at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the structure; or

(3) The actor reasonably believed that the owner of the structure, or other person empowered to license access thereto, would have licensed him to enter or remain, or, in the case of subsection c. of this section, to peer.

3. What are the different types of trespassing offenses?

There are basically four different types of trespassing and they are:

A. The Unlicensed Entry of a Structure(s), N.J.S.A. 2C:18-3(a)

In New Jersey an unlicensed entry is considered a crime, and it is committed when someone enters or surreptitiously remains in any structure when they are not permitted to do so. It is a fourth degree offense if it is committed in a school, on school property, a dwelling, research facility, power generation facility, waste treatment facility, public sewage facility, water treatment facility, public water facility, nuclear electric generating plant or any facility which stores, generates or handles any hazardous chemical or chemical compounds. Otherwise it is a disorderly persons offense.

B. Defiant trespass, N.J.S.A. 2C:18-3(b)

In New Jersey this offense is committed when someone enters or remains in any place as to which notice against trespass is given by actual communication to the person, a posting or fencing. The key difference between this offense and the unlicensed entry of structures is the notice requirement. This is a petty disorderly persons offense. This offense usually occurs when someone has been banned from a store or mall and then returns.

C. Unlawful Peering, N.J.S.A. 2C:18-3(c)

In New Jersey the crime of peering into windows or other openings of dwelling places is considered to be a fourth degree offense. It is committed when someone peers into a window or other opening of a dwelling or other structure adapted for overnight accommodation for the purpose of invading the privacy of another person. Unlawful peering is often referred to as peeping. The victims in these "*Peeping Tom*" cases usually demand that their cases be prosecuted to the fullest extent of the law. They often feel violated because of the invasion of their privacy rights.

D. Indictable Trespass Charge

If you trespass in another person's home, school property, or a public utilities facility then you would be charged with a fourth degree crime.

4. What are the elements of a trespass offense?

In New Jersey a trespass is the unlawful entry onto a property or into a structure. No one likes having their privacy invaded and for this reason it is my experience that victims will usually ask for these cases to be prosecuted to the fullest extent of the law.

The trespassing statute also requires that the State must prove beyond a reasonable doubt that the defendant acted knowingly. In simpler terms the State must prove that the defendant knew that he had no legal right to trespass or to remain on the property.

For a deviant trespass case, the State must prove that the defendant committed an illegal entry onto a structure. A structure is defined under N.J.S.A. 2C:18-1 to include any building, room, ship, vessel, car, vehicle or airplane.

5. How is a trespass charge graded?

Criminal trespass under N.J.S.A. 2C:18-3(a) is graded as a disorderly persons offense. Defiant trespassing under N.J.S.A. 2C:18-3(b) is considered to be a petty disorderly person's offense. A criminal trespass is graded as a fourth degree crime when the structure in question is a school or on school property. It is also a fourth degree crime when it is committed in a research facility or a dwelling.

6. What are the penalties for trespassing?

A trespassing charge is serious and can expose you to a multitude of penalties including fines, probation, community service, and up to 18 months in jail.

Trespassing is a crime in the fourth degree if it is in a home or dwelling, a school, or a research facility. You can also be

charged with a fourth degree crime for peering into the windows of a home or dwelling. A fourth degree crime conviction carries a maximum penalty of 18 months in prison.

Trespassing (defiant trespasser) is a petty disorderly persons offense in all other cases. The statute fits if the property is marked or fenced/enclosed, or notice against trespass is otherwise given. The maximum penalty for a petty disorderly persons trespassing offense is 30 days in jail and a \$1000 fine.

In summary the possible punishment for a disorderly criminal trespass is as follows:

- a. Fine range 0 to \$1000
- b. VCCB Assessment \$50
- c. Safe Neighborhood Assessment \$75
- d. Jail term 0 to six months.
- e. Restitution to victim
- f. Probation
- g. Loss of driving privileges.

7. When is trespass charged in a domestic violence case?

A criminal or a defiant trespass can constitute an act of domestic violence when it is committed upon the property of spouse, former spouse, It also includes a victim who has been in a dating relationship with the defendant.

8. What are some possible defenses to a trespass charge?

There are a lot of possible defenses that can be raised against a criminal trespass charge. For instance, you could prove that the structure was either abandoned, open to the public or that the individual believed that they had permission to enter the premises or peer into the window.

N.J.S.A. 2C:18-3(d) provides certain defenses to the charge of trespassing. It is an affirmation defense for the defendant to show that the structure was abandoned. The defendant may also raise the defense that the structure was opened to the public at the time and that he has complied with all lawful conditions of access to or remaining in the structure. Finally, it is an affirmative defense that the actor reasonably believed that the owner would have allowed him or her access to the property or permission to remain on the property.

9. What is the best strategy to defend against trespassing?

Some possible defenses against trespassing include:

- a. The defendant reasonably and legitimately believed he had a right to be there.
- b. The place was open to the public, and the defendant acted lawfully in gaining access.
- c. The property involved is abandoned.

In cases where you are charged with a 4th degree criminal offense, you should try to negotiate the charges down to a disorderly persons offense.