

2C:1-14

LEGISLATIVE HISTORY CHECKLIST
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(Research facilities--criminal
facilities--breaking or entering)

NJSA: 2C:1-14 et al

LAWS OF: 1995 **CHAPTER:** 20

BILL NO: S807

SPONSOR(S): Martin

DATE INTRODUCED: March 10, 1994

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Judiciary

AMENDED DURING PASSAGE: No Assembly Committee
substitute enacted

DATE OF PASSAGE: **ASSEMBLY:** November 14, 1994
SENATE: June 20, 1994

DATE OF APPROVAL: January 25, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

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FOLLOWING WERE PRINTED:

REPORTS: No

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ASSEMBLY COMMITTEE SUBSTITUTE FOR

SENATE, No. 807

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 19, 1994

Sponsored by Senators MARTIN and O'CONNOR

1 AN ACT concerning criminal offenses related to research
2 facilities and amending N.J.S.2C:1-14, N.J.S.2C:17-3,
3 N.J.S.2C:18-2, N.J.S.2C:18-3, N.J.S.2C:20-2 and N.J.S.2C:43-3.

4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. N.J.S.2C:1-14 is amended to read as follows:

8 2C:1-14. In this code, unless a different meaning plainly is
9 required:

10 a. "Statute" includes the Constitution and a local law or
11 ordinance of a political subdivision of the State;

12 b. "Act" or "action" means a bodily movement whether
13 voluntary or involuntary;

14 c. "Omission" means a failure to act;

15 d. "Conduct" means an action or omission and its
16 accompanying state of mind, or, where relevant, a series of acts
17 and omissions;

18 e. "Actor" includes, where relevant, a person, guilty of an
19 omission;

20 f. "Acted" includes, where relevant, "omitted to act";

21 g. "Person," "he," and "actor" include any natural person and,
22 where relevant, a corporation or an unincorporated association;

23 h. "Element of an offense" means (1) such conduct or (2) such
24 attendant circumstances or (3) such a result of conduct as

25 (a) Is included in the description of the forbidden conduct in
26 the definition of the offense;

27 (b) Establishes the required kind of culpability;

28 (c) Negatives an excuse or justification for such conduct;

29 (d) Negatives a defense under the statute of limitations; or

30 (e) Establishes jurisdiction or venue;

31 i. "Material element of an offense" means an element that
32 does not relate exclusively to the statute of limitations,
33 jurisdiction, venue or to any other matter similarly unconnected
34 with (1) the harm or evil, incident to conduct, sought to be
35 prevented by the law defining the offense, or (2) the existence of
36 a justification or excuse for such conduct;

37 j. "Reasonably believes" or "reasonable belief" designates a
38 belief the holding of which does not make the actor reckless or
39 criminally negligent;

40 k. "Offense" means a crime, a disorderly persons offense or a
41 petty disorderly persons offense unless a particular section in this
42 code is intended to apply to less than all three;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 l. (Deleted by amendment, P.L.1991, c.91).

2 m. "Amount involved," "benefit," and other terms of value.
3 Where it is necessary in this act to determine value, for purposes
4 of fixing the degree of an offense, that value shall be the fair
5 market value at the time and place of the operative act.

6 n. "Motor vehicle" shall have the meaning provided in
7 R.S.39:1-1.

8 o. "Unlawful taking of a motor vehicle" means conduct
9 prohibited under N.J.S.2C:20-10 when the means of conveyance
10 taken, operated or controlled is a motor vehicle.

11 p. "Research facility" means any building, laboratory,
12 institution, organization, school, or person engaged in research,
13 testing, educational or experimental activities, or any
14 commercial or academic enterprise that uses warm-blooded or
15 cold-blooded animals for food or fiber production, agriculture,
16 research, testing, experimentation or education. A research
17 facility includes, but is not limited to, any enclosure, separately
18 secured yard, pad, pond, vehicle, building structure or premises or
19 separately secured portion thereof.

20 (cf: P.L.1993, c.219, s.1)

21 2. N.J.S.2C:17-3 is amended to read as follows:

22 2C:17-3. Criminal mischief a. Offense defined. A person is
23 guilty of criminal mischief if he:

24 (1) Purposely or knowingly damages tangible property of
25 another or damages tangible property of another recklessly or
26 negligently in the employment of fire, explosives or other
27 dangerous means listed in section 2C:17-2a; or

28 (2) Purposely or recklessly tampers with tangible property of
29 another so as to endanger person or property.

30 b. Grading. (1) Criminal mischief is a crime of the third
31 degree if the actor purposely causes pecuniary loss of \$2,000.00
32 or more, or a substantial interruption or impairment of public
33 communication, transportation (including, but not limited to, the
34 defacement, injury or removal of an official traffic sign or
35 signal), supply of water, gas or power, or other public service. [It]
36 (2) Criminal mischief is a crime of the fourth degree if the actor
37 causes pecuniary loss in excess of \$500.00 but less than \$2,000.00,
38 or a disorderly persons offense if he causes pecuniary loss of
39 \$500.00 or less.

40 (3) Criminal mischief is a crime of the third degree if the
41 actor damages, defaces, eradicates, alters, receives, releases or
42 causes the loss of any research property used by the research
43 facility, or otherwise causes physical disruption to the
44 functioning of the research facility.

45 The term "physical disruption" does not include any lawful
46 activity that results from public, governmental, or research
47 facility employee reaction to the disclosure of information about
48 the research facility.

49 (cf: P.L.1991, c.336, s.1)

50 3. N.J.S.2C:18-2 is amended to read as follos:

51 2C:18-2. Burglary. a. Burglary defined. A person is guilty of
52 burglary if, with purpose to commit an offense therein he:

53 (1) Enters a research facility, structure, or a separately
54 secured or occupied portion thereof unless the structure was at

1 the time open to the public or the actor is licensed or privileged
2 to enter; or

3 (2) Surreptitiously remains in a research facility, structure, or
4 a separately secured or occupied portion thereof knowing that he
5 is not licensed or privileged to do so.

6 b. Grading. Burglary is a crime of the second degree if in the
7 course of committing the offense, the actor:

8 (1) Purposely, knowingly or recklessly inflicts, attempts to
9 inflict or threatens to inflict bodily injury on anyone; or

10 (2) Is armed with or displays what appear to be explosives or a
11 deadly weapon.

12 Otherwise burglary is a crime of the third degree. An act shall
13 be deemed "in the course of committing" an offense if it occurs
14 in an attempt to commit an offense or in immediate flight after
15 the attempt or commission.

16 (cf: P.L.1981, c.290, s.18)

17 4. N.J.S.2C:18-3 is amended to read as follows:

18 2C:18-3. a. Unlicensed entry of structures. A person commits
19 an offense if, knowing that he is not licensed or privileged to do
20 so, he enters or surreptitiously remains in any research facility,
21 structure, or separately secured or occupied portion thereof. An
22 offense under this subsection is a crime of the fourth degree if it
23 is committed in a school or on school property. The offense is a
24 crime of the fourth degree if it is committed in a dwelling. An
25 offense under this section is a crime of the fourth degree if it is
26 committed in a research facility. Otherwise it is a disorderly
27 persons offense.

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

32 (1) Actual communication to the actor; or

33 (2) Posting in a manner prescribed by law or reasonably likely
34 to come to the attention of intruders; or

35 (3) Fencing or other enclosure manifestly designed to exclude
36 intruders.

37 c. Defenses. It is an affirmative defense to prosecution under
38 this section that:

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

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

44 (3) The actor reasonably believed that the owner of the
45 structure, or other person empowered to license access thereto,
46 would have licensed him to enter or remain.

47 (cf: P.L.1994, c.90, s.1)

48 5. N.J.S.2C:20-2 is amended to read as follows:

49 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions
50 Applicable to Theft Generally. a. Consolidation of Theft
51 Offenses. Conduct denominated theft in this chapter constitutes
52 a single offense, but each episode or transaction may be the
53 subject of a separate prosecution and conviction. A charge of
54 theft may be supported by evidence that it was committed in any

1 manner that would be theft under this chapter, notwithstanding
2 the specification of a different manner in the indictment or
3 accusation, subject only to the power of the court to ensure fair
4 trial by granting a bill of particulars, discovery, a continuance, or
5 other appropriate relief where the conduct of the defense would
6 be prejudiced by lack of fair notice or by surprise.

7 b. Grading of theft offenses.

8 (1) Theft constitutes a crime of the second degree if:

9 (a) The amount involved is \$75,000.00 or more;

10 (b) The property is taken by extortion;

11 (c) The property stolen is a controlled dangerous substance or
12 controlled substance analog as defined in N.J.S.2C:35-2 and the
13 quantity is in excess of one kilogram; or

14 (d) The property stolen is a person's benefits under federal or
15 State law, or from any other source, which the Department of
16 Human Services or an agency acting on its behalf has budgeted
17 for the person's health care and the amount involved is \$75,000
18 or more.

19 (2) Theft constitutes a crime of the third degree if:

20 (a) The amount involved exceeds \$500.00 but is less than
21 \$75,000.00;

22 (b) The property stolen is a firearm, motor vehicle, vessel,
23 boat, horse or airplane;

24 (c) The property stolen is a controlled dangerous substance or
25 controlled substance analog as defined in N.J.S.2C:35-2 and the
26 amount involved is less than \$75,000.00 or is undetermined and
27 the quantity is one kilogram or less;

28 (d) It is from the person of the victim;

29 (e) It is in breach of an obligation by a person in his capacity
30 as a fiduciary;

31 (f) It is by threat not amounting to extortion;

32 (g) It is of a public record, writing or instrument kept, filed or
33 deposited according to law with or in the keeping of any public
34 office or public servant; or

35 (h) The property stolen is a person's benefits under federal or
36 State law, or from any other source, which the Department of
37 Human Services or an agency acting on its behalf has budgeted
38 for the person's health care and the amount involved is less than
39 \$75,000.

40 (i) The property stolen is any real or personal property related
41 to, necessary for, or derived from research, regardless of value,
42 including, but not limited to, any sample, specimens and
43 components thereof, research subject, including any
44 warm-blooded or cold-blooded animals being used for research or
45 intended for use in research, supplies, records, data or test
46 results, prototypes or equipment, as well as any proprietary
47 information or other type of information related to research.

48 (3) Theft constitutes a crime of the fourth degree if the
49 amount involved is at least \$200.00 but does not exceed \$500.00.
50 If the amount involved was less than \$200.00 the offense
51 constitutes a disorderly persons offense.

52 (4) The amount involved in a theft shall be determined by the
53 trier of fact. The amount shall include, but shall not be limited
54 to, the amount of any State tax avoided, evaded or otherwise

1 unpaid, improperly retained or disposed of. Amounts involved in
2 thefts committed pursuant to one scheme or course of conduct,
3 whether from the same person or several persons, may be
4 aggregated in determining the grade of the offense.

5 c. Claim of right. It is an affirmative defense to prosecution
6 for theft that the actor:

7 (1) Was unaware that the property or service was that of
8 another;

9 (2) Acted under an honest claim of right to the property or
10 service involved or that he had a right to acquire or dispose of it
11 as he did; or

12 (3) Took property exposed for sale, intending to purchase and
13 pay for it promptly, or reasonably believing that the owner, if
14 present, would have consented.

15 d. Theft from spouse. It is no defense that theft was from the
16 actor's spouse, except that misappropriation of household and
17 personal effects, or other property normally accessible to both
18 spouses, is theft only if it occurs after the parties have ceased
19 living together.

20 (cf: P.L.1993, c.363, s.1)

21 6. N.J.S.2C:43-3 is amended to read as follows:

22 2C:43-3. Fines and Restitutions. A person who has been
23 convicted of an offense may be sentenced to pay a fine, to make
24 restitution, or both, such fine not to exceed:

25 a. \$100,000.00, when the conviction is of a crime of the first
26 or second degree;

27 b. \$7,500.00, when the conviction is of a crime of the third or
28 fourth degree;

29 c. \$1,000.00, when the conviction is of a disorderly persons
30 offense;

31 d. \$500.00, when the conviction is of a petty disorderly persons
32 offense;

33 e. Any higher amount equal to double the pecuniary gain to the
34 offender or loss to the victim caused by the conduct constituting
35 the offense by the offender. In such case the court shall make a
36 finding as to the amount of the gain or loss, and if the record
37 does not contain sufficient evidence to support such a finding the
38 court may conduct a hearing upon the issue. For purposes of this
39 section the terms "gain" means the amount of money or the value
40 of property derived by the offender and "loss" means the amount
41 of value separated from the victim and includes any reasonable
42 and necessary expense incurred by the owner in recovering or
43 replacing lost, stolen or damaged property, and, with respect to
44 property of a research facility, includes the cost of repeating an
45 interrupted or invalidated experiment or loss of profits. The
46 term "victim" shall mean a person who suffers a personal
47 physical or psychological injury or death or incurs loss of or injury
48 to personal or real property as a result of a crime committed
49 against that person, or in the case of a homicide, the nearest
50 relative of the victim. The term "gain" shall also mean, where
51 appropriate, the amount of any tax, fee, penalty and interest
52 avoided, evaded, or otherwise unpaid or improperly retained or
53 disposed of;

54 f. Any higher amount specifically authorized by another

1 section of this code or any other statute;

2 g. Up to twice the amounts authorized in subsection a., b., c.
3 or d. of this section, in the case of a second or subsequent
4 conviction of any tax offense defined in Title 54 of the Revised
5 Statutes or Title 54A of the New Jersey Statutes, as amended and
6 supplemented, or of any offense defined in chapter 20 or 21 of
7 this code.

8 h. In the case of violations of chapter 35, any higher amount
9 equal to three times the street value of the controlled dangerous
10 substance or controlled substance analog. The street value for
11 purposes of this section shall be determined pursuant to
12 subsection e. of N.J.S.2C:44-2.

13 The restitution ordered paid to the victim shall not exceed [his]
14 the victim's loss, except that in any case involving the failure to
15 pay any State tax, the amount of restitution to the State shall be
16 the full amount of the tax avoided or evaded, including full civil
17 penalties and interest as provided by law. In any case where the
18 victim of the offense is any department or division of State
19 government, the court shall order restitution to the victim. Any
20 restitution imposed on a person shall be in addition to any fine
21 which may be imposed pursuant to this section.

22 (cf: P.L.1991, c.329, s.2)

23 7. This act shall take effect immediately.

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28 Amends criminal statutes pertaining to certain offenses involving
29 research facilities.

SENATE, No. 807

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1994

By Senator MARTIN

1 AN ACT establishing criminal penalties for breaking and entering
2 or physically disturbing research facilities and supplementing
3 Title 2C of the New Jersey Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. As used in this act:

8 a. "Research facility" means any building, laboratory,
9 institution, organization, school, or person engaged in research,
10 testing, educational or experimental activities, or any
11 commercial or academic enterprise that uses warm-blooded or
12 cold-blooded animals for food or fiber production, agriculture,
13 research, testing, experimentation or education. A research
14 facility includes, but is not limited to, any enclosure, separately
15 secured yard, pad, pond, vehicle, building structure or premises.

16 b. "Economic damage" means the replacement costs of lost,
17 stolen or damaged property or records, the cost of repeating an
18 interrupted or invalidated experiment or the loss of profits.

19 c. "Property" means any real or personal property related to,
20 necessary for, or derived from research, regardless of value,
21 including, but not limited to, any sample, specimens and
22 components thereof, research subject, including any
23 warm-blooded or cold-blooded animals being used for research or
24 intended for use in research, supplies, records, data or test
25 results, prototypes or equipment, as well as any proprietary
26 information or other type of information related to research.

27 2. Any person who breaks and enters, or makes an
28 unauthorized entry into a research facility or intentionally steals,
29 conceals, moves or removes, damages, defaces, eradicates,
30 alters, receives, releases or causes the loss of any research
31 property used by the research facility, or otherwise causes
32 physical disruption to the functioning of the research facility and
33 thereby causes economic damage, or attempts to do so, shall be
34 guilty of a crime of the third degree.

35 The term "physical disruption" does not include any lawful
36 activity that results from public, governmental, or research
37 facility employee reaction to the disclosure of information about
38 the research facility.

39 3. A person who plans, participates or assists in the
40 development of plan by which an offense is attempted or
41 committed under section 2 of this act shall be guilty of a crime
42 of the third degree.

43 4. Any person who commits an offense under section 2 of this
44 act shall be guilty of a crime of the second degree if in the
45 course of committing the offense, the actor:

46 (1) Purposely and knowingly inflicts bodily injury on anyone; or

1 (2) Is armed with or displays what appears to be explosives or a
2 deadly weapon.

3 An act shall be "in the course of committing the offense" if it
4 occurs before, during or after the actual commission of the
5 offense.

6 5. A person found guilty under this act shall be ordered to pay
7 restitution, including costs of economic damages.

8 6. This act shall take effect immediately.

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STATEMENT

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Establishes criminal penalties for the breaking and entering or physical disturbance of a research facility.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
SENATE, No. 807

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1994

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Committee Substitute for Senate Bill No. 807.

This substitute amends various sections to specifically prohibit certain offenses concerning a research facility. Specifically, the substitute amends N.J.S.2C:17-3, criminal mischief, to grade the crime of criminal mischief as a crime of the third degree if a person damages, defaces, eradicates, alters, receives, releases or causes the loss of any research property used by the research facility or otherwise disrupts the functioning of a research facility. N.J.S.2C:18-2 is amended concerning burglary to make it a crime for a person, with the purpose to commit an offense therein, to enter or surreptitiously remain in a research facility knowing that he is not licensed to do so. N.J.S.2C:18-3, unlicensed entry of structures, is amended to make it a crime of the fourth degree for any person, not licensed or privileged to do so, to knowingly enter or surreptitiously remain in any research facility. The substitute also amends N.J.S.2C:20-2 concerning theft to make it a crime of the third degree for any person to steal property from any research facility.

In addition, the substitute amends N.J.S.2C:43-3 to authorize the court to impose a fine or restitution to reimburse a research facility for any costs of repeating an interrupted or invalidated experiment or loss or profits as a result of any trespass.

As used in the substitute research facility means any building, laboratory, institution, organization, school, or person 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. It includes but is not limited to any enclosure, separately secured yard, pad, pond, vehicle, building structure or premises or separately secured portion thereof.

This substitute is identical to the Assembly Committee Substitute for Assembly Bill No. 1499.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 807

STATE OF NEW JERSEY

DATED: JUNE 2, 1994

The Senate Judiciary Committee reports favorably Senate Bill No. 807.

This bill would classify any of the following actions as a crime of the third degree: breaking and entering or making an unauthorized entry into a research facility; intentionally stealing, concealing, moving or removing, damaging, defacing, eradicating, altering, receiving, releasing or causing the loss of any research property used by a research facility; or otherwise disrupting the physical functioning of a research facility and thereby causes economic damages. As used in the bill, "research facility" means any building, laboratory, institution, organization, school, or person 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. If the person purposely and knowingly inflicts bodily injury on anyone or is armed with or displays explosives or a deadly weapon, the offense under the bill would be graded as a crime of the second degree.