

**CRIMINAL MISCHIEF – DAMAGE/REMOVAL/IMPAIRMENT OF
AIR TRAFFIC DEVICE
(N.J.S.A. 2C:17-3b(4))**

Count _____ of the indictment charges defendant with committing the offense of criminal mischief by (**insert allegation of indictment**). In pertinent part, the indictment alleges that

(Read material part of Count _____ to jury)

Defendant is charged with violating a provision of our law that provides that a person is guilty of criminal mischief if he/she damages, removes or impairs the operation of any device which serves to regulate or ensure the safety of air traffic at any airport, landing field, landing strip, heliport, helistop or any other aviation facility.

In order to convict defendant of this offense, you must find that the State has proved beyond a reasonable doubt each of the following three elements:¹

1. That (**name of affected location**) is an airport/landing field/landing strip/heliport/helistop or other aviation facility;
2. That defendant damaged/removed/impaired the operation of a device which serves to regulate or ensure the safety of air traffic at (**name of affected location**); and
3. That defendant acted knowingly when he damaged/removed/impaired the (**air traffic device**).²

The first element that the State must prove beyond a reasonable doubt is that (**name of affected location**) is an airport/landing field/landing strip/heliport/helistop/or other aviation facility.

¹ The form of the offense defined here is a fourth degree crime. Second and third degree versions of the offense contain additional elements and are considered within.

² N.J.S.A. 2C:17-3b(4) does not set forth any culpability standard for the offense. The statute should therefore be construed to require proof that defendant acted knowingly. See N.J.S.A. 2C:2-2c(3).

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The second element that the State must prove beyond a reasonable doubt is that defendant damaged/removed/impaired the operation of a device which serves to regulate or ensure the safety of air traffic at **(name of affected location)**. Objects encompassed by the statute include but are not limited to a sign, a signal, a light or any other equipment utilized at **(name of affected location)** to regulate or ensure the safety of air traffic.³

The third element that the State must prove beyond a reasonable doubt is that defendant acted knowingly when he damaged/removed/impaired the **(air traffic device)**. A defendant acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if defendant is aware that his/her conduct is of that nature, or that such circumstances exist, or defendant is aware of a high probability of their existence. A defendant acts knowingly with respect to a result of his/her conduct if defendant is aware that it is practically certain that his/her conduct will cause such a result.⁴

You should understand that knowledge is a condition of the mind. It cannot be seen. It can only be determined by inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that defendant stated, for example, that he/she acted with knowledge when he/she did a particular thing. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances. The place where the acts occurred and all that was done or said by defendant preceding, connected with, and immediately succeeding the events in question are among the circumstances to be considered. Thus, for you to find that the defendant acted knowingly, you must be satisfied beyond a reasonable doubt that defendant knew what he/she

³ See N.J.S.A. 2C:17-3b(4).

⁴ See N.J.S.A. 2C:2-2b(2).

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was doing, and that defendant was aware that the nature of his/her conduct and the attendant circumstances were such as to make it practically certain that defendant's conduct would damage/remove/impair the operation of a device which served to regulate or ensure the safety of air traffic at **(name of airport, etc.)**.

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

[CHARGE AS FOLLOWS IF SUBMITTING ONLY 4TH DEGREE OFFENSE TO JURY]

On the other hand, if you find that the State has proven beyond a reasonable doubt every element of the offense, you must find defendant guilty.

**[CHARGE AS FOLLOWS IF SUBMITTING TO JURY THE 3RD DEGREE OFFENSE OF
AIR TRAFFIC DEVICE CRIMINAL MISCHIEF WITH BODILY INJURY/DAMAGE
TO PROPERTY AS WELL AS THE 4TH DEGREE OFFENSE]**

If you find that the State has proved beyond a reasonable doubt all three of the elements of criminal mischief that I have defined for you, you must then go on in your deliberations to consider two additional elements: You must determine whether the State has proved beyond a reasonable doubt:

4. That defendant's damage/removal/impairment of the operation of the air traffic device caused bodily injury to **(name of person)**. Bodily injury means physical pain, illness or any impairment of the physical condition,⁵

[or, in the alternative]

⁵ See N.J.S.A. 2C:11-1a.

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4. That defendant's damage/removal/impairment of the operation of the air traffic device caused damage to property. Any damage to property, no matter how nominal, satisfies this element of the statute, and

5. That defendant acted recklessly with respect to the infliction of this bodily injury/damage to property.⁶

A person acts recklessly when he/she consciously disregards a substantial and unjustifiable risk. A conscious disregard requires that defendant actually be aware of the risk, but that he/she ignores it anyway. The risk must be of such a nature and degree that, considering the nature and purpose of defendant's conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the same situation.⁷ In other words, for you to find that defendant acted recklessly, you must be satisfied beyond a reasonable doubt that defendant was aware of and disregarded a substantial and unjustifiable risk that his/her conduct would cause bodily injury/damage to property.

If you find that the State has proved beyond a reasonable doubt all five of the elements of criminal mischief with bodily injury/damage to property, you must find defendant guilty of that offense. If, however, you find that the State has failed to prove beyond a reasonable doubt either element four (bodily injury/damage to property) or element five (recklessness) but that the State has proved beyond a reasonable doubt the first three elements of the offense, you must find defendant not guilty of criminal mischief with bodily injury/damage to property but must find defendant guilty

⁶ If the infliction of bodily injury had been defendant's purpose or intention when damaging/removing/impairing the operation of the air traffic device, defendant would also be exposed to prosecution under assault statutes. Reckless conduct which causes bodily injury is also prosecutable as an assault. See N.J.S.A. 2C:12-1a(1).

⁷ See N.J.S.A. 2C:2-2b(3).

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of criminal mischief. Finally, if you find that the State has failed to prove beyond a reasonable doubt any of the first three elements that were explained to you, you must find defendant not guilty of any form of criminal mischief.

**[CHARGE AS FOLLOWS IF SUBMITTING TO JURY THE 2ND DEGREE OFFENSE
OF AIR TRAFFIC DEVICE CRIMINAL MISCHIEF CAUSING A
DEATH AS WELL AS THE 4TH DEGREE OFFENSE]**

If you find that the State has proved beyond a reasonable doubt all three of the elements of criminal mischief that I have defined for you, you must then go on in your deliberations to consider two additional elements. You must determine whether the State has proved beyond a reasonable doubt that:

4. That defendant's damage/removal/impairment of the operation of the air traffic device caused the death of (**name of deceased**); and
5. That defendant acted recklessly with respect to causing this death.

A defendant acts recklessly when he/she consciously disregards a substantial and unjustifiable risk. A conscious disregard requires that defendant actually be aware of the risk, but that he/she ignores it anyway. The risk must be of such a nature and degree that, considering the nature and purpose of defendant's conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the same situation.⁸ In other words, for you to find that defendant acted recklessly, you must be

⁸ If causing death had been defendant's purpose or intention when damaging/removing/impairing with the air traffic device, defendant would also be exposed to prosecution under homicide statutes. Reckless conduct which causes death is also prosecutable as a homicide (manslaughter). See N.J.S.A. 2C:11-3 and 4.

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satisfied beyond a reasonable doubt that defendant was aware of and disregarded a substantial and unjustifiable risk that his/her conduct would cause the death of another person.

If you find that the State has proved beyond a reasonable doubt all five of the elements of criminal mischief causing a death, you must find defendant guilty of that offense. If, however, you find that the State has failed to prove beyond a reasonable doubt either element four (death of another person) or element five (recklessness) but that the State has proved beyond a reasonable doubt the first three elements of the offense, you must find defendant not guilty of criminal mischief causing a death but must find defendant guilty of criminal mischief. Finally, if you find that the State has failed to prove beyond a reasonable doubt any of the first three elements that were explained to you, you must find defendant not guilty of any form of criminal mischief.