

Submitted: 08/21/98
Reviewed by committee 08/21/98
Reporter's draft 10/16/98

DRAFT

OBSTRUCTING GOVERNMENTAL OPERATIONS

RSA 642:1: Obstructing governmental operations

The defendant is charged with the crime of obstructing governmental operations. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant used force, violence, intimidation, or engaged in any other unlawful act¹; and
2. The defendant did so with a purpose to interfere with a public servant [performing][purporting to perform] an official function; and

These are the elements of the crime of obstructing governmental operations. Certain words in the definition need to be defined.

[Under the laws of this State, it is unlawful to [insert description of alleged *actus reus*]. So, if a person engages in this conduct, he has committed an “unlawful act” within the meaning of the first part of this definition.]

A “public servant” means any officer or employee of the State or any political subdivision of the State [which includes [judges][legislators][consultants][jurors][persons otherwise performing a governmental function]. [A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.][A person is a candidate for elective office upon his public announcement of his candidacy.]²

“Purposely” means [see definition of purposely.]

¹ The final provision of this section, enumerating conduct excluded from the scope of this section, is not included in this instruction, on the grounds that any issue under this provision is properly addressed to the court and not to the jury.

² RSA 640:2, II(a)

Submitted: 08/21/98
Reviewed by committee 08/21/98
Reporter's draft 10/16/98

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RSA 642:2: Resisting arrest or detention

The defendant is charged with the crime of resisting arrest or detention. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant physically interfered with another person; and
2. The defendant knew¹ the other person was a law enforcement official; and
3. The official was trying to arrest or detain the [defendant] [another person]; and
4. The defendant acted [knowingly][purposefully].

These are the elements of the crime of resisting arrest or detention. Certain words in the definition need to be defined.

As indicated, the interference must be physical. Verbal protests alone do not constitute resisting arrest or detention.

[A "law enforcement official" includes a probation or parole officer.]

It does not matter whether the arrest or detention was illegal. The State does not have to prove that there was a valid legal basis for the arrest.

"Knowingly" means [see definition of knowingly.]

"Purposely" means [definition of purposely.]

¹*State v. Reid*, 134 N.H. 418 (1991)

Submitted: 08/21/98
Reviewed by committee 08/21/98
Reporter's draft 10/16/98

DRAFT

RSA 642:3, I(a)-(e): Hindering apprehension or prosecution

The defendant is charged with the crime of hindering apprehension or prosecution. The definition of this crime has [two] [three] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [harbored or concealed another person][provided another person with a weapon, transportation, disguise or other means for avoiding arrest or apprehension][warned another person of impending discovery or apprehension][concealed, destroyed or altered any physical evidence that might have aided in the discovery, apprehension or conviction of another person][used force, intimidation or deception to obstruct anyone else from performing an act which might have aided in the discovery, apprehension, prosecution or conviction of another person]; and
2. The defendant acted with the purpose to¹ hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of that person for the commission of a crime. The State need not show that this was the defendant's sole intention; it need only show that this purpose was present; and
- [3. The defendant knew that the charge made or liable to be made against the other person was [murder] [a class A felony].]²

These are the elements of the crime of hindering apprehension or prosecution. Certain words in the definition need to be defined.

“Purposely” means [see definition of purposely.]

“Knowingly” means [see definition of knowingly.]

¹ It is not necessary for the State to elect or prove which variant of purpose applied in this case, unless the State has specified one of the variants. In that case, only the specified variant should be included in the instruction. *State v. Cote*, 129 N.H. 515 (1987) (discussing “purpose to deprive” in theft cases.)

² The defendant need not know the legal classification for the underlying offense. *State v. Williams*, 143, N.H. 559 (1999).

Submitted: 08/21/98
Reviewed by committee 08/21/98
Reporter's draft 10/16/98

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RSA 642:3, I (f): Hindering apprehension or prosecution (wiretap)

The defendant is charged with the crime of hindering apprehension or prosecution. The definition of this crime has [three][four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant knew that an investigative or law enforcement officer had been authorized or had applied for authorization under the laws of this State [to intercept a telephone conversation or other oral communication][to install and use a pen register or trap and trace device]¹; and
 2. The defendant told or notified another person of this information; and
 3. The defendant acted with the purpose to² hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of that person for the commission of a crime. The State need not show that this was the defendant's sole intention; it need only show that this purpose was present; and
- [4. The defendant knew that the charge made or liable to be made against the other person was [murder][a class A felony]³.

These are the elements of the crime of hindering apprehension or prosecution. Certain words in the definition need to be defined.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

¹ RSA 570-A, 570-B

² It is not necessary for the State to elect or prove which variant of purpose applied in this case, unless the State has specified one of the variants. In that case, only the specified variant should be included in the instruction. *State v. Cote*, 129 N.H. 515 (1987) (discussing “purpose to deprive” in theft cases.)

³ The defendant need not know the legal classification for the underlying offense. *State v. Williams*, 143, N.H. 559 (1999).

Submitted 3/18/05

Approved 10/21/05

RSA 642:4 Aiding Criminal Activity
DRAFT

The defendant is charged with the crime of aiding criminal activity. The definition of this crime has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant aided another who has committed a crime; and
2. The aid provided by the defendant helped the other to profit or benefit from the crime; and ¹
3. The defendant acted purposely.

These are the elements of the crime of aiding criminal activity. Certain words need to be further defined:

“Purposely” means: see definition of purposely

¹ The statute itself gives an example of the type of aid that is prohibited. In a case where the aid provided is of this type, it may be appropriate to include this example in the jury instruction. There might be other types of aid rendered after the commission of a crime that are covered by this statute however, this statute is not intended to apply to the type of conduct covered by the hindering apprehension statute., See Report of the Commission to recommend Codification of Criminal Laws 587:4, at 94 (1969).

Submitted 3/18/05
Approved 10/21/05

DRAFT

RSA 642:5 Compounding

The defendant is charged with the crime of compounding. The definition of this crime has 2 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

[1. The defendant solicited, accepted, or agreed to accept any benefit as consideration for refraining from initiating or aiding in a criminal prosecution; and]

[1. The defendant conferred, agreed to confer, or offered any benefit to another as consideration for such person refraining from initiating or aiding in a criminal prosecution; and]

2. The defendant acted knowingly.

It is an affirmative defense that the value of the benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for the loss caused, or to be caused by the offense.

This is the definition of the crime of compounding. Certain words need to be further defined.

“Knowingly” means: see definition of knowingly

Approved 10/21/05

DRAFT

RSA 642:6 Escape

The defendant is charged with the crime of escape. The definition of this crime has [3][4][5] parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was in official custody; and
2. The defendant escaped or got away; and
- [3.] To effect his/her escape, the defendant employed force against any person or threatened any person with a deadly weapon; and
- [4.] The deadly weapon was a firearm; and
- [5.] The defendant did so knowingly.

These are the elements of the crime of escape. Certain words need to be further defined:

“Official custody” means arrest, custody in a penal institution, an institution for confinement of juvenile offenders or any other confinement pursuant to an order of a court.

“Deadly weapon” – see definition of deadly weapon.

“Firearm” – means a weapon designed to or capable of discharging a shot by means of gunpowder.¹

“Knowingly” – see definition of knowingly.

¹ See *State v Beaudette* 124 N.H. 579, 581 (1984)
State v Taylor 136 N.H. 131,133 (1992)

Submitted 3/18/05
Approved 10/21/05

RSA 642:7 I Providing Implements For Escape Or Contraband

DRAFT

The defendant is charged with the crime of providing implements of escape [contraband] to a person in official custody. The definition of this crime has 2 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant [facilitated escape of a person in official custody][provided a person in official custody with anything that might facilitate that person's escape] [provided a person in official custody with anything that person was prohibited by law or reg. from possessing]; and
2. The defendant did so knowingly.

These are the elements of the crime of providing implements of escape or contraband. Certain words need to be further defined:

“Official custody” means arrest, custody in a penal institution, an institution for confinement of juvenile offenders or any other confinement pursuant to an order of the court.

“Knowingly” see definition of knowingly.

Submitted: 1/14/00

Reviewed by committee: 3/17/00

Approved by committee: 3/17/00

DRAFT
RSA 642:8: Bail Jumping

The defendant is charged with the crime known as bail jumping. The definition of the crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was released with or without bail; and
2. The defendant was [required, by the conditions of [his][her] release to appear before the court] [required by court order to surrender to serve a sentence]; and
3. The defendant failed to appear as required; and
4. The defendant was released in connection with a charge [punishable by death, life imprisonment, or imprisonment of a maximum term of 15 years or more][punishable by imprisonment for a term of more than one year, but less than 15 years][a class A or class B misdemeanor][a violation]; and
5. The defendant acted knowingly.

[Affirmative Defense

There is an affirmative defense to the crime of bail jumping which has been raised in this case. The defendant has the burden of proving this affirmative defense to you by a preponderance of the evidence. The definition of this affirmative defense has three parts, or elements. Thus, to establish this defense, the defendant must prove that:

1. Uncontrollable circumstances prevented [him][her] from appearing before the court as required; and
2. The defendant did not contribute to the creation of such circumstances in reckless disregard of the requirement that [he][she] appear; and
3. The defendant appeared before the court as soon as the uncontrollable circumstances ceased to exist.

Proof by a preponderance of the evidence means that the evidence presented by the defendant in support of the affirmative defense has greater weight or is more credible or convincing than the evidence to the contrary.]

These are the elements of the crime of bail jumping. Certain words in the definition need to be defined.

“Knowingly” means [see definition of knowingly.]

Submitted 3/18/05
Approved 10/21/05

~~RSA 642:9, I Assault By Prisoner~~

DRAFT

The defendant is charged with the crime of assault while being held as a prisoner. The definition of this crime has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was being held in official custody; and
2. The defendant committed the crime of [first degree assault] [second degree assault] [simple assault] [simple assault during a fight entered into by mutual consent]; and
3. The defendant did so [purposely] [knowingly] [recklessly] [negligently].

These are the elements of the crime of assault by a prisoner. However, to find the defendant guilty of this offense, you must also find, beyond a reasonable doubt, that [he] [she] committed the elements of the crime of [first degree assault] [second degree assault] [simple assault] [simple assault during a fight entered into by mutual consent].

Certain words need to be further defined.

To act [purposely] [knowingly] [recklessly] [negligently] means: see appropriate instruction).

“Official custody” means custody in a penal institution or other confinement by an order of the court.

Submitted 3/18/05
Approved 10/21/05

RSA 642:9, II Aggravated Assault By A Prisoner

DRAFT

The defendant is charged with the crime of aggravated assault by a prisoner. The definition of this crime has 5 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was an inmate; and
2. The defendant caused or attempted to cause an employee of [the department of corrections] [a facility operated by the department of corrections] [any law enforcement agency] to come into contact with [blood] [seminal fluid] [urine] [feces]; and
3. The defendant did so by throwing or expelling such fluid or material; and
4. The defendant knew or reasonably should have known that the person he/she caused to come into contact with such fluid or material was an employee of [the department of corrections] [a facility operated by the department of corrections] [any law enforcement agency]; and
5. The defendant acted with the purpose to harass, threaten, or alarm.

There are the elements of the crime of aggravated assault by a prisoner. Certain words need to be further defined.

An inmate is any adult committed by law to the custody of the commissioner of corrections; a person in pretrial confinement, or any person incarcerated in a local detention facility.¹

“Purposely” means: see definition of purposely

“Knowingly” means: see definition of knowingly

¹ See RSA 642:9, III(b) and RSA 21-H:2, VII

Submitted 3/18/05
Approved 10/21/05

RSA 642:10 - Obstructing Report Of Crime Or Injury

DRAFT

The defendant is charged with the crime of obstructing a report of a crime or injury. The definition of this crime has 3 parts of elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant [disconnected, damaged, disabled, or removed] [used physical force or intimidation to block access to] a telephone, radio, or other electronic communication device and
2. The defendant did so to obstruct, prevent, or interfere with [the report of a criminal offense, or bodily injury or property damage to any law enforcement agency] [a request for ambulance or emergency assistance to any governmental agency or hospital, doctor, or medial service provider]; and
3. The defendant acted purposely.

It is an affirmative defense to prosecution under this section that the defendant reasonably believed his conduct to be necessary to prevent a criminal false alarm.

These are the elements of the crime of obstructing a report of a crime or injury. Certain words need to be further defined:

“Purposely” means see definition of purposely.