



THE ADVOCATE

A Publication of Gambone Law – PA (215) 755-9000 - NJ (856) 793-7429

Newsletter



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Can you Shoot Down a Drone If It Is Over Your Property?

The Holidays are here and so are the drones! The reports of drones across New Jersey and even some parts of Pennsylvania continue to make national headlines. At this point, there is no information regarding their owners, their purpose or their place of origin. While many have speculated that this is a military operation, some test of State emergency readiness, or perhaps a test of a new Amazon delivery service there is no clear answer.

Federal, State, and Local leaders continue to demand information as their offices receive phone calls, email and text messages from concerned citizens. Many have asked about their legal rights regarding drones—specifically if they can shoot it down or attempt to disable it if it over their property.

The short answer is NO. Under Federal Law, drones are considered aircraft and shooting it down or otherwise attempting to destroy/disable it is a federal crime under Title 18 of the United States Code Section 32. It doesn't matter if the drone is flying over your property or not. Homeowners do not own the airspace over

his or her property. All space over land is considered National Airspace. If person is found guilty of shooting down a drone, he/she would face the following

- Prison time could be up to 20 years.
- Fines could be up to \$250,000.
- Shooters could also be on the hook for civil liabilities for property or personal damage, which could be in the millions depending on the extent of damage.

Is it a Crime to shoot down a drone under New Jersey State Law?

Unlike the Federal System, New Jersey doesn't have a law specifically targeting aircraft or drones. A person, however, could face state prosecution for the following in the Garden State

- **Possession of a Firearm for unlawful purposes – 2C:39-4**
- **Criminal Mischief- 2C:17-3**

What is Possession of a Firearm for an Unlawful Purposes in New Jersey?

In New Jersey, any person who possesses a gun or firearm with a purpose to use it unlawfully against the person or property (like a drone) of another is guilty of a crime of the second degree. Crimes of the

Second Degree in New Jersey carry with them a presumption of State Prison of up to 10 years! Further, there is a 42 month mandatory minimum sentences associated with this felony crime.

In addition, a person could also face prosecution for unlawful possession of a handgun or firearm if he or she did not have a permit to legally possession the gun under 2C:39-5(b). This crime, like possession for an unlawful purposes falls under New Jersey's Graves Act. If you're convicted under New Jersey statute 2C:39-5(b), you are guilty of a second degree crime.

A New Jersey Judge has no discretion

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The Real Reason Former Philadelphia Eagle Jason Kelce Wasn't Charged with a Crime in Pennsylvania following a Penn State Incident

Recently, Penn State University Police announced that it would not pursue criminal charges against former Philadelphia Eagle and now sports Podcaster Jason Kelce. This news came despite a video which show Kelce destroying the phone of an alleged unidentified person prior to a Penn State Football game. Further, Kelce even admitted his actions were wrong on national TV, when he stated "I chose to greet hate with hate."

Police had more than enough to charge Kelce with the crime of criminal mischief and perhaps disorderly conduct in Pennsylvania. These offenses are normally graded as misdemeanor crimes but they can be graded as felony offenses depending on the circumstances. If the police had enough, why wasn't Kelce charged?

Here is the Real Answer

The answer has nothing to do with the alleged facts here but the ability for the prosecution to establish them. The person in the video that went viral on social media could not be identified, and no one came forward to police to file a complaint about damage to personal property. Without this alleged victim, the prosecution (District Attorney) could not ever secure a conviction.

While I doubt the case would have ever gone this far, this was the reason why police ended the investigation into Kelce's behav-

ior. There is also the possibility that Kelce, perhaps through a third party, came to some financial agreement with the alleged victim. While the DA could have still brought the case and subpoenaed the victim to testify against Kelce, this would be highly unlikely given the alleged damages here.

How is Criminal Mischief Defined in Pennsylvania

Criminal Mischief is a very broad criminal charge. It is the defacing, destroying, or damaging of real or personal property of another like a cell phone. Our law firm has represented juvenile and adult clients for these charges in Pennsylvania and New Jersey

Criminal Mischief under Section 3304 (Title 18) can be graded as a felony of the 3rd degree if the loss is in excess of \$5,000 or causes an interruption or impairment of some public communication, transportation or other public utility.

It is a misdemeanor of the 2nd degree if the loss is in excess of \$1,000 and a misdemeanor of the 3rd degree if the loss is in excess of \$500, but less than \$1,000. If the damage is less than \$150, criminal mischief is a summary offense in Pennsylvania. Given the wide range of criminality sentences can range from a fine to State prison.

How is Criminal Mischief Defined in New Jersey?

Criminal mischief under New Jersey's Crimes Code is very similar to Pennsylvania under section Section 2C:17-3. The crime is a 3rd degree offense if the person charged and convicted causes a loss of \$2,000 or more. It is a crime of the 4th degree if the loss is between \$500 and \$2,000 and in all other cases criminal mischief in the Garden State is a disorderly person's offense if the loss is \$500 or less. Again, it is very important to understand that your criminal defense lawyer in New Jersey must evaluate all possible and non-trial options in these cases.

Criminal mischief in New Jersey, like Pennsylvania, is a crime of the 3rd degree if the actor causes or interrupts a public communication, transportation or utility. Unlike

Pennsylvania, New Jersey does not classify crimes as felony and misdemeanor offenses, but rather crimes and offenses. Offenses are handled in New Jersey's Municipal Court while crimes are handled in New Jersey's Superior Court (crimes of the 1st, 2nd, 3rd, and 4th degrees).

What should you do if you're arrested for criminal mischief?

If you're charged with criminal mischief in Pennsylvania or New Jersey, you should not plead guilty to the charge because in most situations your attorney can negotiate a non-trial disposition for a much favorable result if you have no prior criminal history. Even if you have prior criminal history, if it is unrelated to the current charge your attorney, in many cases, can negotiate a non-trial disposition (plea) which is usually substantially less than what the prosecution initially charged.



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Our law firm is committed to achieving outstanding results for you and your family despite what may appear to be a difficult situation. Call us today and learn what we can do to help you through one of life's challenges.

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U.S. Supreme Court Hears Arguments on Manufacturers' Denied FDA Application for Flavored Vapes—*What Parents Need to Know About Vaping in New Jersey and Pennsylvania*

Flavored Vape products are everywhere! This use, however, is a real problem according to the Food and Drug Administration (FDA) which is specifically concerned about these vaping products enticing youths to take up the habit and or smoke.

The Current Vape Case Before the U.S. Supreme Court – *Food and Drug Administration v. Wages and White Lion Investments, LLC*,

The current issue before the Court is whether the FDA failed to correctly consider Vape companies' application, in violation of a Administrative Procedure Act. Triton Distribution, which makes e-liquids for vape pens with named flavors, has sought approval for Iced Pineapple Express, Killer Kustard Blueberry and other flavors. The FDA, however, denied approval of the flavored vapes, stating they pose a health risk and encourage young people to use tobacco. While these products remain widely available, companies face potential civil and criminal penalties for marketing products without approval.

The FDA started regulating vape products in 2016. At that time, it said that it would not take enforcement actions while companies sought approval. Once these companies sought approval, the FDA concluded that the potential benefits of helping adult smokers quit failed to outweigh the health risks to young people. This case, *Food and Drug Administration v. Wages and White Lion Investments, LLC*, is expected to be decided before the end of the Supreme Court's term in June 2025.

Our criminal defense law firm strives to provide value based content to help our friends and families. The purpose of this short blog is to provide a quick overview of vaping laws in Pennsylvania and New Jersey.

What you need to know about Vaping in Pennsylvania and New Jersey

Our law firm represents persons charged with crimes and offenses in Pennsylvania and New Jersey; sometimes these cases involve minors. These matter range in severity from school fights (assault) to illegal drug possession. While vaping isn't necessarily something that will lead to a criminal charge but rather a school sanction, it is an important issue for many of our clients and their families.

Vaping in Pennsylvania

Vaping, otherwise known as electronic cigarettes or E-cigarettes, are defined in Pennsylvania as any electronic oral device which provides a vapor of nicotine or any substance and the use or inhaling of which simulates smoking. The term includes a device described as an electronic cigarette as well as any device manufactured, distributed, or marketed as e-cigar as an e-pipe or any other product for which a liquid or substance is placed; this definition includes vaping!

Pennsylvania strictly prohibits the sale of electronic cigarettes or vapors or vapes to persons under the age of 21 or under the age of 18 if the person is in the military or a veteran. Self-Service displays of vapes are restricted to tobacco stores. The Commonwealth does not allow vending machines for electronic cigarettes or vapes in locations accessible to persons under the age of 21.

Stores in Pennsylvania actually need retail licenses to sell e-cigarettes and e-cigarettes which include vapors (vapes) are prohibited in Pennsylvania schools, school vehicles and on school property owned or leased under the control of a School District.

Currently, Pennsylvania's Clean Indoor Air Act has not been amended to prohibit the use of vapor products where smoking is prohibited. Philadelphia, however, prohibits vaping where smoking is prohibited pursuant to City Ordinance. Philadelphia also restricts non-tobacco flavored and high nicotine vapor products to adults only stores.

Vaping in New Jersey

New Jersey is very similar to Pennsylvania in that the sale/distribution of electronic cigarettes and or vapors is prohibited to anyone under the age of 21. E-liquids

may only be sold at retail establishments licensed with the State. Further, any business that sells vapor products must also stock at least one type of nicotine replacement therapy drug or device. New Jersey, like Pennsylvania, requires a special retail license or permit to sell e-cigarettes. The use of electronic smoking devices or vape is prohibited on all school grounds in New Jersey and any other place where smoking is prohibited under New Jersey's Smoke Free Air Act.

Does Vaping actually cause health problems?

A 2019 study showed that the long-term health effects of vaping put people at a higher risk for respiratory disease than people who never smoked. Neither smoking nor vaping is beneficial to human health. Secondhand smoke contains more than 7,000 chemicals, hundreds of which are toxic, 70 of which cause cancer.

Vaping often contains large doses of nicotine, a substance known to slow the development of brains in children and teens. The liquid that creates vapors is dangerous to adults and children if they swallow it, inhale it, or it gets on their skin. According to the CDC, in 2021 alone, over 2,800 people were hospitalized with complications related to vaping.

Vaping, obviously, presents a severe health problem for young people in Pennsylvania and New Jersey. While it is technically a violation of State and federal law, the effects of it on people are far worse than potential fines and court costs.



Schedule Your Appointment with Dr. Carabello Today



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factor in your longevity. 150 minutes of moderate exercise should be your target regardless of the time of the year. There are a number of ways to get in those minutes by walking, taking the stairs and even parking further away from that store. Getting even 20 minutes of HIIT (high-intensity interval training) 4 or 5 days a week will keep your metabolism elevated. Combine these 20 minutes with daily walks, taking the stair, bike rides and even things decorating or cleaning your house will help you maintain or even lose weight.

Don't Deprive Yourself but be Mindful

The Christmas and the Holidays are a time to enjoy different food with family but indulge mindfully! Eat a controlled portion and avoid grazing over that large dish or bowl. Know how much you are eating and don't randomly pick or snack.

Avoid taking home that extra slice of pie or piece cake. Extra turkey or other meats and vegetables are great additions to your next day salads rather than sandwiches. These little adjustments can make a huge difference!

Avoiding the Holiday Bulge – How to Enjoy Your Holidays and Achieve Your Healthy Lifestyle Goals

People often say that they tend to gain weight during the holidays and often have trouble losing it or getting back into shape long after the decorations are put away. This is very common but there are things you can do during the Holiday Season to avoid this battle of the bulge. You can enjoy this time of year and even indulge in some food traditions as long as you follow some simple rules

Keep Your Routine

The key to a healthy lifestyle is consistency! This means that you should keep up your meal prepping during the holidays and your exercise program. If you aren't doing it now, start today! This doesn't mean that you have to show up to Thanksgiving or Christmas Eve with your own Tupperware but there is no reason deviate from your routine the other days in November or December. Lack of structure

often increases the tendency to overeat high sugar and high fat food during the holidays.

Prioritize Lean Protein & Green Vegetables

Eat your lean protein and green vegetables first because it will cause you to feel fuller faster. Protein will also keep blood sugar and "hunger hormones"

more stable throughout the day, which can help control appetite. Fill up on lean protein and vegetables before you reach for that high carb choice. You will likely find that you don't want to eat as much of it

Limit Alcohol

You can enjoy few drinks over the holidays but understand that a significant increase in alcohol—especially mixed drinks with high-sugar content can lead to increased caloric intake. Remember that these calories count! There is no "diet alcohol" despite what alleged health experts try to claim. The key is moderation and not excessive consumption regardless if you are drinking clear liquors with club soda, beer, or wine, and mixed drinks. It all counts and studies show that alcohol does negatively affect hormone levels in men and women. Limit your consumption to one or two drinks. There is nothing wrong with avoiding alcohol completely as they are empty calories which offer zero nutrition benefit. Alcohol really has no place in a healthy lifestyle and it will make it harder to achieve your fitness goals

Exercise Early and Often

The Holiday season isn't a reason to stop exercising and moving! Movement is a good and a critical

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3 Ways to Ruin Your Hoidays (Cont.)

and must sentence you to a term of 5-10 years in New Jersey state prison. You are ineligible for parole for at least three years and so you will have to serve the minimum of three years of this sentence. If it is your second attempt you are looking at a 5-10 year mandatory minimum sentence with no parole eligibility until that 5 year minimum.

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Jersey must evaluate all possible and non-trial options in these cases.

Criminal mischief in New Jersey, like Pennsylvania, is a felony if the actor causes or interrupts a public communication, transportation or utility. This could occur if one shot down a drone and it caused interruption of public services like knocking out power in an area.

Unlike Pennsylvania, New Jersey does not classify crimes as felony and misdemeanor, but rather crimes and offenses. Offenses are handled in New Jersey's Municipal Court while crimes are handled in New Jersey's Superior Court (crimes of the 1st, 2nd, 3rd, and 4th degrees).

Our law wishes you and your family a Happy Holiday Season!

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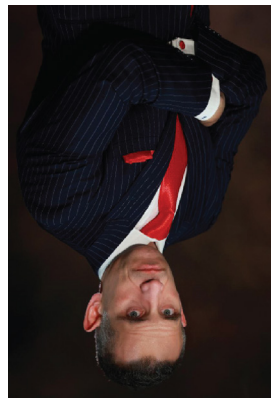


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Question of the Month
What is Probable Cause and Why is it important?
Probable cause exists when the facts and circumstances within the police officer's (or another law enforcement official's) knowledge are sufficient enough that a reasonable person would believe that the person arrested or searched was committing or had committed a crime. Pennsylvania and New Jersey maintain protections against illegal search and seizure within their own Constitutions. Before obtaining a warrant or arresting someone, police must have probable cause
While police need probable cause to arrest, police and other law enforcement-ment need only reasonable suspicion to start an investigation. Reasonable suspicion is just a lower form of probable cause. Police also only need reasonable suspicion to conduct a canine search (drug dog) of persons and or property (luggage, vehicles)

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