
**INFORMAL STAFF REPORT
TO MAYOR AND CITY COUNCIL**

SUBJECT:

Criminal Trespass

EXECUTIVE SUMMARY:

On February 26, 2021, Council Member Armintor requested information on the Denton Police Department's policy in criminal trespass situations. This Informal Staff Report provides Mayor Hudspeth and Council information on laws regarding Criminal Trespass on private and public property. Texas Penal Code Section 30.05. CRIMINAL TRESPASS is attached.

DISCUSSION:

There are certain situations where the law doesn't have a black-and-white answer to the possession of property, and whether a situation constitutes criminal trespass. One such example is when a person has allowed a person they are dating to stay at their home for an amount of time, the relationship then sours, and the person now wants the other to leave, but violence has not occurred. Officers will respond and complete a report. Officers will attempt to determine the extent of the arrangement, knowing the information gained from each party will differ. Any written formal agreement between the parties, such as a lease, would lessen the officer's ability to make one party leave the home. Other details – such as splitting of bills, change of address on identification, and receipt of mail at the home by either party – that can be proven at the time will be considered by the officers. These details are not often able to be proven in the moment, on scene. Officers should ask the visitor to leave when formal documentation cannot be produced that would prove their claim to residency. If the visitor does not leave after being given notice, they *could* be arrested for criminal trespass. Some situations become more complicated when formal documentation cannot be produced but both parties agree that they have lived together for a long period of time (i.e. years).

Officers' decisions should always be made with the sanctity of life and safety of the victim first in mind. In circumstances where two or more parties have any legal interest in the property, it is extremely doubtful that officers would issue a criminal trespass notice to either, since the department would consider the situation a civil matter.

ATTACHMENTS:

Texas Penal Code Section 30.05. CRIMINAL TRESPASS

STAFF CONTACT:

Frank Dixon, Chief of Police / Interim Assistant City Manager
940-349-7925

Frank.dixon@cityofdenton.com

REQUESTOR:

Council Member Deb Armintor

STAFF TIME TO COMPLETE REPORT:

2 hours

Texas Penal Code Section 30.05. CRIMINAL TRESPASS.

(a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person:

- (1) had notice that the entry was forbidden; or
- (2) received notice to depart but failed to do so.

(b) For purposes of this section:

- (1) "Entry" means the intrusion of the entire body.
- (2) "Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;

(D) the placement of identifying purple paint marks on trees or posts on the property, provided that the marks are:

(i) vertical lines of not less than eight inches in length and not less than one inch in width;

(ii) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and

(iii) placed at locations that are readily visible to any person approaching the property and no more than:

(a) 100 feet apart on forest land; or

(b) 1,000 feet apart on land other than forest land; or

(E) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.

(3) "Shelter center" has the meaning assigned by Section [51.002](#), Human Resources Code.

(4) "Forest land" means land on which the trees are potentially valuable for timber products.

(5) "Agricultural land" has the meaning assigned by Section [75.001](#), Civil Practice and Remedies Code.

(6) "Superfund site" means a facility that:

(A) is on the National Priorities List established under Section 105 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9605); or

(B) is listed on the state registry established under Section [361.181](#), Health and Safety Code.

(7) "Critical infrastructure facility" means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:

(A) a chemical manufacturing facility;

(B) a refinery;

(C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E) a natural gas transmission compressor station;

(F) a liquid natural gas terminal or storage facility;

(G) a telecommunications central switching office;

(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas; or

(J) a transmission facility used by a federally licensed radio or television station.

(8) "Protected freshwater area" has the meaning assigned by Section [90.001](#), Parks and Wildlife Code.

(9) "Recognized state" means another state with which the attorney general of this state, with the approval of the governor of this state, negotiated an agreement after determining that the other state:

(A) has firearm proficiency requirements for peace officers; and

(B) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state.

(10) "Recreational vehicle park" has the meaning assigned by Section [13.087](#), Water Code.

(11) "Residential land" means real property improved by a dwelling and zoned for or otherwise authorized for single-family or multifamily use.

(12) "Institution of higher education" has the meaning assigned by Section [61.003](#), Education Code.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1138, Sec. 4, eff. September 1, 2009.

(d) An offense under this section is:

- (1) a Class B misdemeanor, except as provided by Subdivisions (2) and (3);
- (2) a Class C misdemeanor, except as provided by Subdivision (3), if the offense is

committed:

(A) on agricultural land and within 100 feet of the boundary of the land; or

(B) on residential land and within 100 feet of a protected freshwater area; and

(3) a Class A misdemeanor if:

(A) the offense is committed:

(i) in a habitation or a shelter center;

(ii) on a Superfund site; or

(iii) on or in a critical infrastructure facility;

(B) the offense is committed on or in property of an institution of higher education and it is shown on the trial of the offense that the person has previously been convicted of:

(i) an offense under this section relating to entering or remaining on or in property of an institution of higher education; or

(ii) an offense under Section [51.204\(b\)\(1\)](#), Education Code, relating to trespassing on the grounds of an institution of higher education; or

(C) the person carries a deadly weapon during the commission of the offense.

(d-1) For the purposes of Subsection (d)(3)(B), a person has previously been convicted of an offense described by that paragraph if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication community supervision, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from deferred adjudication community supervision.

(d-2) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(B), the defendant may raise the issue as to whether, at the time of the instant offense or the previous offense, the defendant was engaging in speech or expressive conduct protected by the First Amendment to the United States Constitution or Section [8](#), Article I, Texas Constitution. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(3)(B) does not apply.

(e) It is a defense to prosecution under this section that the actor at the time of the offense was:

(1) a firefighter or emergency medical services personnel, as defined by Section [773.003](#), Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances;

(2) a person who was:

(A) an employee or agent of:

- (i) an electric utility, as defined by Section [31.002](#), Utilities Code;
 - (ii) a telecommunications provider, as defined by Section [51.002](#), Utilities Code;
 - (iii) a video service provider or cable service provider, as defined by Section [66.002](#), Utilities Code;
 - (iv) a gas utility, as defined by Section [101.003](#), Utilities Code, which for the purposes of this subsection includes a municipally owned utility as defined by that section;
 - (v) a gas utility, as defined by Section [121.001](#), Utilities Code;
 - (vi) a pipeline used for the transportation or sale of oil, gas, or related products; or
 - (vii) an electric cooperative or municipally owned utility, as defined by Section [11.003](#), Utilities Code; and
- (B) performing a duty within the scope of that employment or agency; or
- (3) a person who was:
 - (A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and
 - (B) performing a duty within the scope of that employment or agency.
- (f) It is a defense to prosecution under this section that:
 - (1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden; and
 - (2) the person was carrying:
 - (A) a license issued under Subchapter H, Chapter [411](#), Government Code, to carry a handgun; and
 - (B) a handgun:
 - (i) in a concealed manner; or
 - (ii) in a shoulder or belt holster.
- (f-1) It is a defense to prosecution under this section that:
 - (1) the basis on which entry on the property was forbidden is that entry with a firearm or firearm ammunition was forbidden;
 - (2) the actor is:
 - (A) an owner of an apartment in a condominium regime governed by Chapter [81](#), Property Code;
 - (B) an owner of a condominium unit governed by Chapter [82](#), Property Code;
 - (C) a tenant or guest of an owner described by Paragraph (A) or (B); or
 - (D) a guest of a tenant of an owner described by Paragraph (A) or (B);
 - (3) the actor:

(A) carries or stores a firearm or firearm ammunition in the condominium apartment or unit owner's apartment or unit;

(B) carries a firearm or firearm ammunition directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for residents or guests of the condominium property; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(f-2) It is a defense to prosecution under this section that:

(1) the basis on which entry on a leased premises governed by Chapter [92](#), Property Code, was forbidden is that entry with a firearm or firearm ammunition was forbidden;

(2) the actor is a tenant of the leased premises or the tenant's guest;

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the tenant's rental unit;

(B) carries a firearm or firearm ammunition directly en route to or from the tenant's rental unit;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(f-3) It is a defense to prosecution under this section that:

(1) the basis on which entry on a leased premises governed by Chapter [94](#), Property Code, was forbidden is that entry with a firearm or firearm ammunition was forbidden;

(2) the actor is a tenant of a manufactured home lot or the tenant's guest;

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the tenant's manufactured home;

(B) carries a firearm or firearm ammunition directly en route to or from the tenant's manufactured home;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(g) It is a defense to prosecution under this section that the actor entered a railroad switching yard or any part of a railroad switching yard and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

(h) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(A)(iii), the defendant may raise the issue as to whether the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly, including an attempt to exercise rights guaranteed by state or federal labor laws. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(3)(A)(iii) does not apply.

(i) This section does not apply if:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun or other weapon was forbidden; and

(2) the actor at the time of the offense was a peace officer, including a commissioned peace officer of a recognized state, or a special investigator under Article [2.122](#), Code of Criminal Procedure, regardless of whether the peace officer or special investigator was engaged in the actual discharge of an official duty while carrying the weapon.