

CRIMINAL TRESPASS

(revised Sept. 1, 1999)

As part of the navigation right, one may use the bed and, to a limited degree, the banks of a navigable stream. However, the use of the private property adjacent to a stream can be a criminal trespass.

Under Texas Penal Code § 30.05 (see below), the definition of criminal trespass is more complex than the simple notion of being on someone else's land. One way to commit the offense is to enter upon another's property even though one has notice that the entry is forbidden. Another way is to remain on another's property, refusing to leave after receiving notice to depart.

Notice can be given in any one of five forms. First, it can be an oral or written communication by the owner or someone acting for the owner. Second, it can be a fence or other enclosure obviously designed to exclude intruders or to contain livestock. Third, notice can be in the form of sign(s) posted on the property or at the entrance to the building, reasonably likely to be noticed, indicating that entry is forbidden. Fourth, notice can be in the form of readily visible purple paint marks of proper size and placement on trees or posts spaced no more than 100 feet apart on forest land or 1,000 feet apart on non-forest land. Fifth, notice can be 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.

Criminal trespass is normally a Class B misdemeanor with a fine up to \$2,000 and a jail term up to 180 days. If the trespass is on agricultural land, and the trespasser is apprehended within 100 feet of the boundary of the land, the offense is a Class C misdemeanor with a fine up to \$500. Agricultural land is broadly defined and includes land suitable for growing plants (for food, feed, fiber, seed, etc.) or trees or for keeping farm or ranch animals. However, under certain conditions--including if one has a deadly weapon on or about one's person--the offense is a Class A misdemeanor with a fine up to \$4,000 and a jail term up to one year.

PENAL CODE § 30.05. Criminal Trespass [effective Sept. 1, 1999].

(a) A person commits an offense if he enters or remains on property, including an aircraft, of another without effective consent or he enters or remains in a building of another without effective consent and he:

- (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(1), Human Resources Code.
- (4) “Forest land” means land on which the trees are potentially valuable for timber products. *[subsection (5) as added by HB 1265, effective Sept. 1, 1999:]*
- (5) “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. *[subsection (5) as added by HB 436, effective Sept. 1, 1999:]*
- (5) “Agricultural land” has the meaning assigned by Section 75.001, Civil Practice and Remedies Code.

(c) It is a defense to prosecution under this section that the actor at the time of the offense was a fire fighter or emergency medical services personnel, as that term is defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances.

(d) An offense under Subsection (a) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:

- (1) the offense is committed:
 - (A) in a habitation or a shelter center; or
 - (B) on a Superfund site; or
- (2) the actor carries a deadly weapon on or about his person during the commission of the offense.

An offense under Subsection (e) is a Class C misdemeanor unless it is committed in a habitation or unless the actor carries a deadly weapon on or about the actor’s person during the commission of the offense, in which event it is a Class A misdemeanor.

(e) A person commits an offense if without express consent or if without authorization provided by any law, whether in writing or other form, the person:

- (1) enters or remains on agricultural land of another;
- (2) is on the agricultural land and within 100 feet of the boundary of the land when apprehended; and
- (3) had notice that the entry was forbidden or received notice to depart but failed to do so.