

Colorado Revised Statutes

TITLE 18 CRIMINAL CODE
ARTICLE 4 OFFENSES AGAINST PROPERTY
PART 5 TRESPASS, TAMPERING, AND CRIMINAL
MISCHIEF

18-4-502. First degree criminal trespass.

A person commits the crime of first degree criminal trespass if such person knowingly and unlawfully enters or remains in a dwelling of another or if such person enters any motor vehicle with intent to commit a crime therein. First degree criminal trespass is a class 5 felony.

Source: L. 71: R&RE, p. 431, § 1. C.R.S. 1963: § 40-4-502. L. 77: Entire section amended, p. 963, § 26, effective July 1. L. 92: Entire section amended, p. 404, § 16, effective June 3. L. 93: Entire section amended, p. 1732, § 17, effective July 1. L. 98: Entire section amended, p. 1443, § 31, effective July 1.

ANNOTATION

Am. Jur.2d. See 75 Am. Jur.2d, Trespass, §§ 162-164, 181-183.

C.J.S. See 87 C.J.S., Trespass, §§ 174-177, 185.

Annotator's note. Since § 18-4-502 is similar to former § 40-3-8 C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

For the treatment of breaking and entering under previous statute, see *Howard v. People*, 173 Colo. 209, 477 P.2d 378 (1970); *Garcia v. People*, 174 Colo. 372, 483 P.2d 1347 (1971); *People v. Major*, 179 Colo. 204, 499 P.2d 1200 (1972).

Under previous statute, entering motor vehicle included box part of pickup. *People v. Romero*, 179 Colo. 159, 499 P.2d 604 (1972).

Proof of dwelling crucial for first degree trespass. The crucial distinction between first degree criminal trespass and second and third degree is that the prosecution must prove the additional element that the property which was unlawfully entered is a dwelling for first degree trespass. *People v. Marshall*, 196 Colo. 381, 586 P.2d 41 (1978).

"Dwelling" encompasses the entire residential structure, including an attached garage. *People v. Hanna*, 981 P.2d 627 (Colo. App. 1998).

That the dwelling is "of another" is an essential element of first degree criminal trespass. Pattern jury instruction was incorrect because it omitted that element. *People v. Peoples*, 8 P.3d 577 (Colo. App. 2000).

"With intent to commit a crime therein" is only an element to first degree criminal trespass of a motor vehicle. It does not apply to first degree criminal trespass of a dwelling. *People v. Rodriguez*, 43 P.3d 641 (Colo. App. 2001).

Criminal trespass charge is defective if the count failed to identify an ulterior crime. *People v. Williams*, 961 P.2d 533 (Colo. App. 1997), *aff'd*, 984 P.2d 56 (Colo. 1999).

Criminal trespass charge is defective in form but not in substance if the count fails to identify an ulterior crime. *People v. Williams*, 984 P.2d 56 (Colo. 1999).

18-4-503. Second degree criminal trespass.

(1) A person commits the crime of second degree criminal trespass if such person:

(a) Unlawfully enters or remains in or upon the premises of another which are enclosed in a manner designed to exclude intruders or are fenced; or

(b) Knowingly and unlawfully enters or remains in or upon the common areas of a hotel, motel, condominium, or apartment building; or

(c) Knowingly and unlawfully enters or remains in a motor vehicle of another.

(2) Second degree criminal trespass is a class 3 misdemeanor, but:

(a) It is a class 2 misdemeanor if the premises have been classified by the county assessor for the county in which the land is situated as agricultural land pursuant to section 39-1-102 (1.6), C.R.S.; and

(b) It is a class 4 felony if the person trespasses on premises so classified as agricultural land with the intent to commit a felony thereon.

(3) Whenever a person is convicted of, pleads guilty or nolo contendere to, receives a deferred judgment or sentence for, or is adjudicated a juvenile delinquent for, a violation of paragraph (c) of subsection (1) of this section, the offender's driver's license shall be revoked as provided in section 42-2-125, C.R.S.

Source: L. 71: R&RE, p. 431, § 1. C.R.S. 1963: § 40-4-503. L. 81: Entire section amended, p. 990, § 1, effective June 4. L. 83: Entire section amended, p. 666, § 8, effective July 1. L. 84: (2)(a) amended, p. 1119, § 14, effective June 7. L. 93: (1) amended, p. 1732, § 18, effective July 1. L. 94: (1) amended, p. 1718, § 11, effective July 1. L. 2002: (1) amended, p. 1582, § 11, effective July 1. L. 2003: (3) added, p. 1846, § 4, effective July 1.

ANNOTATION

Am. Jur.2d. See 75 Am. Jur.2d, Trespass, §§ 162-164, 181-183.

C.J.S. See 87 C.J.S., Trespass, §§ 174-177, 182.

Proof of dwelling crucial for first degree trespass. The crucial distinction between first degree criminal trespass and second and third degree is that the prosecution must prove the additional element that the property which was unlawfully entered is a dwelling for first degree trespass. *People v. Marshall*, 196 Colo. 381, 586 P.2d 41 (1978).

Second degree criminal trespass is a lesser included offense of second degree burglary (§18-4-203). Second degree criminal trespass requires the defendant to unlawfully enter or remain on the premises of another that are enclosed in a manner designed to exclude intruders. By definition, if a building or structure exists, entry of which is required for second degree burglary, the building or structure is designed to exclude intruders. Thus, all of the elements of second degree criminal trespass are included in the offense of second degree burglary. *People v. MacBlane*, 952 P.2d 824 (Colo. App. 1997).

Applied in *People in Interest of D.G.P.*, 194 Colo. 238, 570 P.2d 1293 (1977); *People v. Smith*, 638 P.2d 1 (Colo. 1981).

18-4-504. Third degree criminal trespass.

(1) A person commits the crime of third degree criminal trespass if such person unlawfully enters or remains in or upon premises of another.

(2) Third degree criminal trespass is a class 1 petty offense, but:

(a) It is a class 3 misdemeanor if the premises have been classified by the county assessor for the county in which the land is situated as agricultural land pursuant to section 39-1-102 (1.6), C.R.S.; and

(b) It is a class 5 felony if the person trespasses on premises so classified as agricultural land with the intent to commit a felony thereon.

Source: L. 71: R&RE, p. 431, § 1. C.R.S. 1963: § 40-4-504. L. 83: Entire section amended, p. 666, § 9, effective July 1. L. 84: (2)(a) amended, p. 1119, § 15, effective June 7. L. 89: (2)(b) amended, p. 834, § 48, effective July 1. L. 93: (1) amended, p. 1732, § 19, effective July 1.

ANNOTATION

Am. Jur.2d. See 75 Am. Jur.2d, Trespass, §§ 162-164, 181-183.

C.J.S. See 87 C.J.S., Trespass, §§ 174-177, 185.

Law reviews. For comment, "People v. Emmert: A Step Backward for Recreational Water Use in Colorado", see 52 U. Colo. L. Rev. 247 (1981).

Public has no right to use of water overlying private lands for recreational purposes without the consent of the owner. *People v. Emmert*, 198 Colo. 137, 597 P.2d 1025 (1979).

"Breaking the close" is trespass. Whoever "breaks the close" -- intrudes upon the space above the surface of the land -- without the permission of the owner, whether it be for fishing or for other recreational purposes, such as floating, commits a trespass. *People v. Emmert*, 198 Colo. 137, 597 P.2d 1025 (1979).

Proof of dwelling crucial for first degree trespass. The crucial distinction between first degree criminal trespass and second and third degree is that the prosecution must prove the additional element that the property which was unlawfully entered is a dwelling for first degree trespass. *People v. Marshall*, 196 Colo. 381, 586 P.2d 41 (1978).

But third degree criminal trespass is not a lesser included offense of attempted first degree criminal trespass. *People v. Griffith*, 58 P.3d 1111 (Colo. App. 2002).

Officers who enter under a warrant and rightfully seize certain property but wrongfully seize other property are liable as trespassers ab initio as to the property wrongfully seized. *Walker v. City of Denver*, 720 P.2d 619 (Colo. App. 1986).

Applied in *People v. Huston*, 197 Colo. 125, 589 P.2d 1367 (1979); *People v. Hight*, 198 Colo. 299, 599 P.2d 885 (1979).