

**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, §§ 132-134, 151-153.

**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, §§ 132-134, 151-153.

**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).

**18-4-504.5. Definition of premises.**

As used in sections 18-4-503 and 18-4-504, "premises" means real property, buildings, and other improvements thereon, and the stream banks and beds of any nonnavigable fresh water streams flowing through such real property.

**Source:** L. 77: Entire section added, p. 977, § 1, effective June 10.

**ANNOTATION**

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

**Applied** in People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979); Bollier v. People, 635 P.2d 543 (Colo. 1981).

**18-9-107. Obstructing highway or other passageway.**

(1) An individual or corporation commits an offense if without legal privilege such individual or corporation intentionally, knowingly, or recklessly:

(a) Obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles, or conveyances, whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(b) Disobeys a reasonable request or order to move issued by a person the individual or corporation knows to be a peace officer, a firefighter, or a person with authority to control the use of the premises, to prevent obstruction of a highway or passageway or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(2) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(3) An offense under this section is a class 3 misdemeanor; except that knowingly obstructing the entrance into, or exit from, a funeral or funeral site, or knowingly obstructing a highway or other passageway where a funeral procession is taking place is a class 2 misdemeanor.

**Source:** L. 71: R&RE, p. 468, § 1. C.R.S. 1963: § 40-9-107. L. 97: IP(1) and (1)(b) amended, p. 1012, § 17, effective August 6. L. 2006: (3) amended, p. 1198, § 4, effective May 26.

**Cross references:** (1) For obstructing highways, see § 43-5-301.

(2) For the title of and legislative declaration contained in the 2006 act amending subsection (3), see section 1 of chapter 262, Session Laws of Colorado 2006.

**ANNOTATION**

**C.J.S.** See 40 C.J.S., Highways, §§ 248-250; 61A C.J.S., Motor Vehicles, § 1542.

**Law reviews.** For article, "Mass Picketing and the Constitutional Guarantee of Freedom of Speech", see 22 Rocky Mt. L. Rev. 28 (1949).