

Chapter 30 - Criminal Offenses

ARTICLE 14 Trespass

30-14-1. Criminal trespass.

A. Criminal trespass consists of knowingly entering or remaining upon posted private property without possessing written permission from the owner or person in control of the land. The provisions of this subsection do not apply if:

(1) the owner or person in control of the land has entered into an agreement with the department of game and fish granting access to the land to the general public for the purpose of taking any game animals, birds or fish by hunting or fishing; or

(2) a person is in possession of a landowner license given to him by the owner or person in control of the land that grants access to that particular private land for the purpose of taking any game animals, birds or fish by hunting or fishing.

B. Criminal trespass also consists of knowingly entering or remaining upon the unposted lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof. Notice of no consent to enter shall be deemed sufficient notice to the public and evidence to the courts, by the posting of the property at all vehicular access entry ways.

C. Criminal trespass also consists of knowingly entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.

D. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor, and he shall be liable to the owner, lessee or person in lawful possession for civil damages in an amount equal to double the value of the damage to the property injured or destroyed.

E. Whoever commits criminal trespass is guilty of a misdemeanor. Additionally, any person who violates the provisions of Subsection A, B or C of this section, when in connection with hunting, fishing or trapping activity, shall have his hunting or fishing license revoked by the state game commission for a period of not less than three years, pursuant to the provisions of Section [17-3-34](#) NMSA 1978.

F. Whoever knowingly removes, tampers with or destroys any "no trespass" sign is guilty of a petty misdemeanor; except when the damage to the sign amounts to more than one thousand dollars (\$1,000), he or she is guilty of a misdemeanor and shall be subject to imprisonment in the county jail for a definite term less than one year or a fine not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.

G. This section, as amended, shall be published in all issues of "Big Game Hunt Proclamation" as published by the department of game and fish.

History: 1953 Comp., § 40A-14-1, enacted by Laws 1963, ch. 303, § 14-1; 1975, ch. 52, § 1; 1979, ch. 186, § 1; 1981, ch. 34, § 1; 1983, ch. 27, § 2; 1991, ch. 58, § 1; [1995, ch. 164, § 1](#).

ANNOTATIONS

Cross references. — For authority of conservation officers to enforce these provisions under emergency circumstances, see 17-2-19 NMSA 1978.

For trespass on state lands, see 19-6-3 NMSA 1978 et seq.

For criminal damage to property, see 30-15-1 NMSA 1978.

For detention or arrest of trespassers upon restricted areas, see 30-21-3 NMSA 1978.

For removal or destruction of plants near highway, see 76-8-1 NMSA 1978 et seq.

For livestock trespass, see 77-14-3 NMSA 1978 et seq.

The 1995 amendment, effective June 1, 1995, added the second sentence in Subsection B and added Subsections F and G.

The 1991 amendment, effective July 1, 1991, added Subsection A; redesignated the subsequent subsections accordingly; in Subsection B inserted "also" and "unposted"; in Subsection D added the language beginning with "and he shall be liable"; and added the second sentence in Subsection E.

The 1983 amendment deleted "petty" preceding "misdemeanor" in Subsections C and D.

Crime defined. — Trespassing, both at common law and by statute, is the entry onto another's property without permission of the owner. *State v. Tower*, 2002-NMCA-109, 133 N.M. 32, 59 P.3d 1264.

Unauthorized entry. — Where an unauthorized entry merely consists of climbing over a fence, businesses and other open property are protected under the criminal trespass statute. *State v. Foulfont*, 1995-NMCA-028, 119 N.M. 788, 895 P.2d 1329.

Elements of offense. — For a conviction, Section 30-14-1D NMSA 1978 requires that the defendant both "entered" property "without permission" and "damaged" an improvement on the property. *State v. Contreras*, 2007-NMCA-119, 142 N.M. 518, 167 P.3d 966.

Instruction on lesser included offense. — When criminal trespass is factually based solely on unlawful entry, not on unlawfully remaining without consent, then criminal trespass is necessarily included within the offense of aggravated burglary of a dwelling house and a defendant is entitled to an instruction on the lesser included offense. *State v. Romero*, 1998-NMCA-057, 125 N.M. 161, 958 P.2d 119,

Knowledge requirement. — While criminal trespass can, under some circumstances, require knowledge that the trespasser does not have permission to be on the land, New Mexico law also defines other trespass-type offenses that require knowledge only of the trespasser's actions, not of their illegality. *Tanberg v. Shlotis*, 401 F.3d 1151 (10th Cir. 2005).

Private land not properly posted. — If private land is not properly posted under the statutory requirements, then a person can only commit criminal trespass by entering or remaining upon the property knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof. *State v. Merhege*, 2017-NMSC-016, rev'g 2016-NMCA-059, 376 P.3d 867.

Proof of knowledge element of criminal trespass. — Where defendant was charged with criminal trespass for running through the front yard of a private residence that was enclosed by a three foot high wall and for attempting to jump over an adjoining fence into the back yard of the residence while fleeing from a police officer at 3:40 a.m., there was sufficient circumstantial evidence for the jury to find that defendant knew that he did not have consent to enter the property based on the wall surrounding the property's front yard, the purpose of defendant's entry, and the time of his entry on the property. *State v. Merhege*, 2017-NMSC-016, rev'g 2016-NMCA-059, 376 P.3d 867.

Knowledge of lack of consent to enter land required. — In defendant's trial for criminal trespass, there was insufficient evidence to support defendant's conviction where the private land did not have a "no trespassing" sign, and the landowner did not place defendant on notice that he was not permitted on his property by denying or withdrawing consent to enter his land. *State v. Merhege*, 2016-NMCA-059, cert. granted.

This section requires general criminal intent. *State v. McCormack*, 1984-NMCA-042, 101 N.M. 349, 682 P.2d 742.

When one commits burglary of dwelling house one commits criminal trespass based on that entry. *State v. Ruiz*, 1980-NMCA-123, 94 N.M. 771, 617 P.2d 160.

Unlawfully entering lands of another. — The only "act" involved in criminal trespass, as a lesser offense included within burglary of a dwelling house, is entry upon the lands of another, which requires a "malicious intent." *State v. Ruiz*, 1980-NMCA-123, 94 N.M. 771, 617 P.2d 160 (decided under prior law).

Unlawful entry is entry not authorized by law, without excuse or justification. *State v. Ruiz*, 1980-NMCA-123, 94 N.M. 771, 617 P.2d 160.

"Lands," in Subsection B, includes buildings and fixtures and is synonymous with real property. *State v. Ruiz*, 1980-NMCA-123, 94 N.M. 771, 617 P.2d 160.

Subsection B applies to federal government land. — Where land is owned and operated by the federal government as a proprietor, the state has sovereignty over the land, provided it does not interfere with the use of the federal government, and Subsection A applies. *State v. McCormack*, 1984-NMSC-006, 100 N.M. 657, 674 P.2d 1117.

Damage to property not required to show malicious intent. — While damage to property would be evidence of malicious intent, such is not required inasmuch as malicious intent may be established by evidence of an intent to vex or annoy or do a wrongful act. *State v. Ruiz*, 1980-NMCA-123, 94 N.M. 771, 617 P.2d 160 (decided under prior law).

Trespass in watermelon patch. — Trespass of group of boys on land occupied by another and stealing of watermelons thereon, with minor injury to fence, did not constitute a violation of former 40-47-12, 1953 Comp., relating to unlawful injury of fence and crops, a felony, but rather, of former 40-47-5, 1953 Comp., relating to trespassing on improved land with intent to cut, take, etc., trees or crops growing there, a misdemeanor. *Brown v. Martinez*, 1961-NMSC-040, 68 N.M. 271, 361 P.2d 152.

Injuring house. — An opening of four inches was sufficient to complete the offense of injuring house for purpose of entering and molesting occupant under Laws 1875-1876, ch. 9, § 2, former 40-47-19, 1953 Comp. *Territory v. Gallegos*, 1913-NMSC-002, 17 N.M. 409, 130 P. 245 (decided under prior law).

Civil liability to injured trespasser. — As a matter of law the use of a gun by owner while stopping trespass or theft of watermelons by group of boys was not permissible, and when owner fired gun he became liable to injured boy. *Brown v. Martinez*, 1961-NMSC-040, 68 N.M. 271, 361 P.2d 152 (decided under prior law).

Application to journalist not abridgement of rights. — Application of this section to a journalist who crossed a barricade at a federal government nuclear waste disposal plant did not abridge the first amendment right to peaceably assemble or the right of the press to gather and report news. *State v. McCormack*, 1984-NMCA-042, 101 N.M. 349, 682 P.2d 742.

Criminal trespass not a lesser included offense of breaking and entering. — Trial court did not err in refusing to give lesser included-offense instructions on criminal trespass and breaking and entering. *State v. Andrade*, 1998-NMCA-031, 124 N.M. 690, 954 P.2d 755, cert. denied, 124 N.M. 589, 953 P.2d 1087.

Evidence sufficient. — Evidence that defendant repeatedly trespassed onto victim's property and that defendant was the party who looked into victim's windows and followed her was sufficient to support convictions for stalking, harassment and criminal trespass. *State v. Duran*, 1998-NMCA-153, 126 N.M. 60, 966 P.2d 768, cert. denied, 126 N.M. 533, 972 P.2d 352, overruled on other grounds by *State v. Laguna*, 1999-NMCA-152, 128 N.M. 345, 992 P.2d 896, cert. denied, 128 N.M. 149, 990 P.2d 823.

Access to public waters. — A private landowner cannot prevent persons from fishing in a public stream that flows across the landowner's property, provided the public stream is accessible without trespass across privately owned adjacent lands. 2014 Op. Att'y Gen. 14-04.

Law reviews. — For annual survey of New Mexico criminal law, see 16 N.M.L. Rev. 9 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 75 Am. Jur. 2d Trespass §§ 162, 163, 167, 181, 182, 185.

Right to enter land to remove timber cut before revocation of license, 26 A.L.R.2d 1194.

Students: participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly or similar offense, 32 A.L.R.3d 551.

Liability of private citizen, calling on police for assistance after disturbance or trespass, for false arrest by officer, 98 A.L.R.3d 542.

Trespass: state prosecution for unauthorized entry or occupation, for public demonstration purposes, of business, industrial, or utility premises, 41 A.L.R.4th 773.

Entry on private lands in pursuit of wounded game as criminal trespass, 41 A.L.R.4th 805.

87 C.J.S. Trespass §§ 144 to 147.

<https://laws.nmonesource.com/w/nmos/Chapter-30-NMSA-1978#!fragment/zoupio-Toc30499213/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgGYAGA FgE4+AJgCMHAJQAaZNIKEIARUSFcAT2gBydRliEwuBluVrN23fpABIPKQBCagEoBRADKOAagEE AcgGFHE0jAAI2hSdjExIA>

30-14-1.1. Types of trespass; injury to realty; civil damages.

A. Any person who enters and remains on the lands of another after having been requested to leave is guilty of a misdemeanor.

B. Any person who enters upon the lands of another when such lands are posted against trespass at every roadway or apparent way of access is guilty of a misdemeanor.

C. Any person who drives a vehicle upon the lands of another except through a roadway or other apparent way of access, when such lands are fenced in any manner, is guilty of a misdemeanor.

D. In the event any person enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, he shall be liable to the owner, lessee or person in lawful possession for damages in an amount equal to double the amount of the appraised value of the damage of the property injured or destroyed.

History: Laws 1979, ch. 186, § 2; 1983, ch. 27, § 3.

ANNOTATIONS

The 1983 amendment deleted "petty" preceding "misdemeanor" in Subsections A to C.

Surface lessee of land had no standing to sue for trespass and unjust enrichment. — Where plaintiff leased land for purposes of ranching and defendants pumped salt water from beyond the boundaries of the land into a disposal well on the land without the knowledge or consent of plaintiff, plaintiff did not have standing to sue defendants for trespass or unjust enrichment. *McNeill v. Rice Eng. & Operating, Inc.*, 2010-NMSC-015, 148 N.M. 16, 229 P.3d 489.

Owner of land had no standing to sue for trespass for use of land prior to owner's acquisition of the land. — Where defendants pumped salt water from beyond the boundaries of plaintiff's land into a disposal well on plaintiff's land without the knowledge or consent of plaintiff or plaintiff's predecessor in interest, plaintiff did not have standing to sue defendants for trespass for acts that occurred prior to the time plaintiff owned the land. *McNeill v. Rice Eng. & Operating, Inc.*, 2010-NMSC-015, 148 N.M. 16, 229 P.3d 489.

Subsection D does not apply to trespass by substances beneath the surface of the land. *Hartman v. Texaco, Inc.*, 1997-NMCA-032, 123 N.M. 220, 937 P.2d 979.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Trespass: state prosecution for unauthorized entry or occupation, for public demonstration purposes, of business, industrial, or utility premises, 41 A.L.R.4th 773.

Entry on private lands in pursuit of wounded game as criminal trespass, 41 A.L.R.4th 805.

Tree or limb falls onto adjoining private property: personal injury and property damage liability, 54 A.L.R.4th 530.

Encroachment of trees, shrubbery, or other vegetation across boundary line, 65 A.L.R.4th 603.

Business interruption, without physical damage, as actionable, 65 A.L.R.4th 1126.

30-20-13. Interference with members of staff, public officials or the general public; trespass; damage to property; misdemeanors; penalties.

A. No person shall, at or in any building or other facility or property owned, operated or controlled by the state or any of its political subdivisions, willfully deny to staff, public officials or the general public:

- (1) lawful freedom of movement within the building or facility or the land on which it is situated;
- (2) lawful use of the building or facility or the land on which it is situated; or
- (3) the right of lawful ingress and egress to the building or facility or the land on which it is situated.

B. No person shall, at or in any building or other facility or property owned, operated or controlled by the state or any of its political subdivision [subdivisions], willfully impede the staff or a public official or a member of the general public through the use of restraint, abduction, coercion or intimidation or when force and violence are present or threatened.

C. No person shall willfully refuse or fail to leave the property of or any building or other facility owned, operated or controlled by the state or any of its political subdivisions when requested to do so by a lawful custodian of the building, facility or property if the person is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of the property, building or facility.

D. No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school.

E. Nothing in this section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute.

F. Any person who violates any of the provisions of this section shall be deemed guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-20-10, enacted by Laws 1970, ch. 86, § 2; 1975, ch. 52, § 2; 1981, ch. 32, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Statutory standard to sustain a conviction under Subsection D. — Section 30-20-13(D) NMSA 1978 refers to a defendant's intent to do some further act or achieve some additional consequence, interference with the educational process, and therefore 30-20-13(D) NMSA 1978 is a specific intent crime; the actus reas of the offense is threatening to commit any act which would disrupt, impair,

interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school. *State v. Quintin C.*, 2019-NMCA-069.

Insufficient evidence to support conviction for willful interference with the educational process. — Where, based on evidence presented by the state that child stated that he was creating a “kill list”, the trial judge erred in finding that child committed the delinquent act of willfully interfering with the educational process by threatening to commit an act that would disrupt the lawful mission, processes, procedures or functions of the school, because the trial court applied an incorrect legal standard to an essential element of the offense. There was insufficient evidence to support child’s conviction. *State v. Quintin C.*, 2019-NMCA-069.

Criminal trespass charges not a means to enforce rule until filing. — Criminal trespass charges under Section 30-20-13 NMSA 1978 are not a means to enforce a rule available to the state until the rule is properly filed in compliance with State Rules Act (Section 14-4-1 NMSA 1978). *State v. Joyce*, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30.

Flexibility not vagueness. — Subsection C of this section, referring prior to 1975 amendment specifically to institutions of higher education, allowed control of campus disturbances in terms marked by flexibility and reasonable breadth, rather than meticulous specificity, and was not void for vagueness. *State v. Silva*, 1974-NMCA-072, 86 N.M. 543, 525 P.2d 903, cert. denied, 86 N.M. 528, 525 P.2d 888 (decided under prior law).

Campus restrictions not overbroad. — Since this section, referring in Subsection C, prior to 1975 amendment, specifically to institutions of higher education, vindicated significant government interest in the control of campus disturbances, reasonable “time, place and manner” regulations were valid even though they incidentally suppressed otherwise protected conduct. *State v. Silva*, 1974-NMCA-072, 86 N.M. 543, 525 P.2d 903, cert. denied, 86 N.M. 528, 525 P.2d 888 (decided under prior law).

No invalid delegation of power. — Subsection C of this section specifies adequate standards and guidelines to be followed, in that criminality is based first on a refusal to leave after requests, and second on a determination by the judge or jury that the person committed the specified disruptive acts. *State v. Silva*, 1974-NMCA-072, 86 N.M. 543, 525 P.2d 903, cert. denied, 86 N.M. 528, 525 P.2d 888 (decided under prior law).

Nor unbridled discretion. — Subsection C of this section does not put unbridled discretion in the hands of the administrator or police officer because the decision of each must be checked by the decision of the other, and the discretion of both is limited by the reasonably precise directive of the statute. *State v. Silva*, 1974-NMCA-072, 86 N.M. 543, 525 P.2d 903, cert. denied, 86 N.M. 528, 525 P.2d 888 (decided under prior law).

Meaning of “impair”. — The term “impair” in Subsection C means, in context, a substantial physical diminution or damage and not just any diminution in quality. *State v. Silva*, 1974-NMCA-072, 86 N.M. 543, 525 P.2d 903, cert. denied, 86 N.M. 528, 525 P.2d 888 (decided under prior law).

Substantial physical invasion required. — The word “impair,” along with the other operative verbs of present Subsection C (which subsection prior to 1975 amendment referred specifically to institutions of higher education), denotes a substantial physical invasion, and requires interference with the actual functioning of the university. *State v. Silva*, 1974-NMCA-072, 86 N.M. 543, 525 P.2d 903, cert. denied, 86 N.M. 528, 525 P.2d 888 (decided under prior law).

Willfulness and intent essential. — Not only must the refusal contemplated by Subsection C of this section be willful but the disruption must also be accompanied by general intent. *State v. Silva*, 1974-NMCA-072, 86 N.M. 543, 525 P.2d 903, cert. denied, 86 N.M. 528, 525 P.2d 888 (decided under prior law).

Application constitutional. — Defendants’ refusal to honor the request of the university president to leave his office although he had appointments to keep, substantially interfered with the functioning of

the president's business, and hence Subsection C of this section (referring prior to 1975 amendment specifically to institutions of higher education) was constitutionally applied to warrant their convictions. *State v. Silva*, 1974-NMCA-072, 86 N.M. 543, 525 P.2d 903, cert. denied, 86 N.M. 528, 525 P.2d 888 (decided under prior law).

Limitations on sales of handicrafts on state property. — Since the legislature intended that those who set the lawful mission, processes, procedures or functions of state property are to be able to avail themselves of Subsection C's provisions in furtherance of those policies and functions, the board of regents of the museum of New Mexico may properly rely on the provisions of this section to effectuate the provisions of a resolution which permits only Indians to sell handicrafts under the portals of the governor's palace. *Livingston v. Ewing*, 1982-NMSC-110, 98 N.M. 685, 652 P.2d 235.

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense, 32 A.L.R.3d 551.

"Choice of evils," necessity, duress, or similar defense to state or local criminal charges based on acts of public protest, 3 A.L.R.5th 521.

[Rule Set 13 - Uniform Jury Instructions — Civil](#)

CHAPTER 13 Owners and Occupiers of Land; Tort Liability

13-1301. Trespasser; definition.

A trespasser is a person who enters or remains upon the premises of another without the [express] [or] [implied] permission of the [owner] [occupant] of the premises.

[A person who is on the premises of another with the permission of the [owner] [occupant] is a trespasser to the extent the person goes outside the area in which the [owner] [occupant] might reasonably expect the person to be.]

[A person who is on the premises of another with the permission of the [owner] [occupant] is a trespasser to the extent the person uses the premises in a manner different from that which the [owner] [occupant] might reasonably expect.]

USE NOTES

This instruction is to be used if there is an issue as to whether the plaintiff was a trespasser. The bracketed sections should be selected as applicable to the evidence presented at trial.

[As amended, effective January 1, 1987; March 1, 1996.]

Committee commentary. — For a discussion of New Mexico's analysis of premises liability claims depending on whether the plaintiff was a trespasser or a visitor, see *Ford v. Board of County Commissioners*, [118 N.M. 134](#), [879 P.2d 766](#) (1994).

ANNOTATIONS

The 1996 amendment, effective March 1, 1996, rewrote the instruction, which read: "A trespasser is a person who goes upon the premises of another without permission or invitation", and added the second sentence in the Use Note.

Areas reasonably expected to be used. — The parking lot adjacent to defendant's bar would be an area defendant might reasonably expect plaintiff to use. *Valdez v. Warner*, 1987-NMCA-076, 106 N.M. 305, 742 P.2d 517.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 Am. Jur. 2d Premises Liability §§ 114 to 117.

Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser, 22 A.L.R.4th 294.

87 C.J.S. Trespass § 1.

<https://laws.nmonesource.com/w/nmos/Rule-Set-13-NMRA#!fragment/zoupio-Toc28621298/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgCYAOANg4EYOATi4BKADTJspQhACKiQrgCe0AORrxEQmFwIFS1Rq069IAMp5SAIVUALAKIAZBwDUAggDkAwg-GkwACNoUnZRUSA>

Rule Set 14 - Uniform Jury Instructions — Criminal

CHAPTER 14 Trespass

Part A Criminal Trespass

14-1401. Criminal trespass; public property; essential elements.

For you to find the defendant guilty of criminal trespass [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant entered _____ (*identify lands or structure entered*); [the least intrusion constitutes an entry;]²
2. This property was not open to the public at that time;
3. The defendant knew or should have known that he did not have permission to enter;
4. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. Insert the count number if more than one count is charged.
2. Use bracketed phrase if entry is in issue.

Committee commentary. — UJI 14-1401 is limited to criminal trespass of public property.

UJI 14-1402 and UJI 14-1403 apply to criminal trespass of private or state or local government property.

In *State v. Cutnose*, [87 N.M. 300](#), [532 P.2d 889](#) (Ct. App. 1975), Chief Judge Wood carefully traced the history of New Mexico's criminal trespass statutes. It is helpful to review this decision, and subsequent statutory enactments in deciding which statute is applicable to public and private property criminal trespasses. In *Cutnose*, Judge Wood concluded that former Section 40A-14-1 NMSA 1953 (now Section [30-14-1](#) NMSA 1978) did not apply to remaining upon public property and that since Paragraph (2) of Subsection A of Section 40A-14-5 NMSA 1953 (now Section [30-14-4](#) NMSA 1978) had previously been declared unconstitutional in *State v. Jaramillo*, [83 N.M. 800](#), [498 P.2d 687](#) (Ct. App. 1972) there was no statute dealing with remaining on public property without consent.

In 1975, presumably following Judge Wood's opinion in *State v. Cutnose*, the New Mexico legislature enacted Chapter 52, Laws 1975. Section 1 of this 1975 act enacted a new Subsection B to Section 40A-14-1 NMSA 1953 (now Subsection B of [30-14-1](#) NMSA 1978). As amended by the 1981 legislature, present Section [30-14-1](#) NMSA 1978 provides that criminal trespass also includes unlawfully entering or remaining upon lands owned by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian of the lands.

In addition to adding a new Subsection B to present Section [30-14-1](#) NMSA 1978, Chapter 52, Laws 1975 also amended former Section 40A-20-10 NMSA 1953 (now Section [30-20-13](#) NMSA 1978)

prohibiting interference with the lawful use of public property. Subsection C of present Section [30-20-13](#) NMSA 1978 also provides that it is criminal trespass for a person to willfully refuse or fail to leave the property of, or any building owned by, the state or its political subdivisions. This would seem to apply to the same unlawful conduct covered by Subsection B of Section [30-14-1](#) NMSA 1978; however, Section 30-20-13 adds a further element that the trespasser must also threaten to commit or incite others to commit any act which would disrupt the lawful mission, processes, procedures or function of the property, building or facility involved.

Prior to the 1975 amendment to Section [30-20-13](#) NMSA 1978 this section applied only to institutions of higher education and was enacted in 1970 as a part of a bill appropriating \$1.00 to district attorneys.

It is assumed that the 1975 session of the legislature was responding to the court of appeals decision in *Cutnose*, supra, when it amended both Sections [30-14-1](#) and [30-20-13](#) NMSA 1978 to make both sections of the law applicable to property owned or under the control of the state or its political subdivisions. The legislature is also presumed to have been aware that Section [30-20-13](#) NMSA 1978 had been found to be constitutional in *State v. Silva*, [86 N.M. 543, 525 P.2d 903](#) (Ct. App.), cert. denied, 86 N.M. 528, 525 P.2d 888 (1974). These two sections have been construed together as creating separate offenses. See UJI 14-1401.

Section [30-14-4](#) NMSA 1978 also governs unlawfully entering a public building. The provisions of this section which were not ruled unconstitutional in *Cutnose*, supra, are deemed by the committee to have been superseded by Sections [30-14-1](#) and [30-20-13](#) NMSA 1978 insofar as they relate to buildings owned or under the control of governmental entities. Section [30-14-4](#) NMSA 1978 is thought to be the applicable law for "wrongful use" of property owned or controlled by private educational institutions, religious organizations, charitable organizations and recreational associations, even though the elements of the crime are identical to Section [30-14-1](#) NMSA 1978.

Section 30-14-6 governs trespass cases when the property is not owned or controlled by the state or a political subdivision, but is posted or fenced.

"Lands" as used in Section [30-14-1](#) NMSA 1978 includes buildings and fixtures. *State v. Ruiz*, [94 N.M. 771, 617 P.2d 160](#) (Ct. App. 1980).

A criminal trespass is a lesser included offense of the crime of burglary. See *State v. Ruiz*, supra.

ANNOTATIONS

Cross references. — See Section 30-14-4A(1) NMSA 1978.

Defendant's belief that warnings did not apply to press is no defense. — Where defendant journalist purposely entered barricaded area even after he had heard the warnings, it was no defense that defendant did not believe warnings applied to press. *State v. McCormack*, 1984-NMCA-042, 101 N.M. 349, 682 P.2d 742.

14-1402. Criminal trespass; private or state or local government property; essential elements.

For you to find the defendant guilty of criminal trespass [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant entered or remained _____ (*identify lands or structure entered*) without permission from the [owner]² [occupant] [custodian] of that property; [the least intrusion constitutes an entry;]³

2. The defendant knew or should have known that permission to enter or remain had been [denied]² [withdrawn];

3. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternative. If custodian is used, give UJI 14-1420, Custodian; definition.
3. Use bracketed phrase if entry is in issue.

Committee commentary. — UJI 14-1402 is a general criminal trespass instruction. It applies to trespass of lands or buildings owned or controlled by a state agency or political subdivision of the state when the person has been denied permission to enter the premises or where previous permission has been withdrawn. It also applies to trespass onto private property.

UJI 14-2001 should be used instead of UJI 14-1402 if there is sufficient evidence that the failure or refusal to leave a state or local government building is accompanied by the impairment or interference with or obstruction of the lawful processes, procedures or functions of the property.

Whether the property is owned or controlled by the state or any of its political subdivisions is a question of law. See Section [12-6-2](#) NMSA 1978 for a definition of "political subdivisions." "State" generally includes all three branches of government.

ANNOTATIONS

Cross references. — See Section 30-14-1A and B and 30-14-1.1 NMSA 1978.

Private land not properly posted. — If private land is not properly posted under the statutory requirements, then a person can only commit criminal trespass by entering or remaining upon the property knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof. *State v. Merhege*, 2017-NMSC-016, rev'g 2016-NMCA-059, 376 P.3d 867.

Proof of knowledge element of criminal trespass. — Where defendant was charged with criminal trespass for running through the front yard of a private residence that was enclosed by a three foot high wall and for attempting to jump over an adjoining fence into the back yard of the residence while fleeing from a police officer at 3:40 a.m., there was sufficient circumstantial evidence for the jury to find that defendant knew that he did not have consent to enter the property based on the wall surrounding the property's front yard, the purpose of defendant's entry, and the time of his entry on the property. *State v. Merhege*, 2017-NMSC-016, rev'g 2016-NMCA-059, 376 P.3d 867.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Trespass: state prosecution for unauthorized entry or occupation, for public demonstration purposes, of business, industrial, or utility premises, 41 A.L.R.4th 773.

Entry on private lands in pursuit of wounded game as criminal trespass, 41 A.L.R.4th 805.

<https://laws.nmonesource.com/w/nmos/Rule-Set-14-NMRA#!fragment/zoupio-Toc30498241/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgGYAGAFgE4AHACYeARgCUAGmTZShCAEVEhXAE9oAcg2SIhMLgRKV6rTr0GQAZTykAQuoBKAUQAYtgGoBBAHIBhJ5KkYABG0Kts4uJAA>