

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: SUBSTANTIVE CRIMINAL LAW 2.11

SUBJECT:	Substantive Criminal Law
AZ POST DESIGNATION:	2.11 Chapter 15
HOURS:	1.5
COURSE CONTENT:	An analysis of the most frequently used statutes in this chapter.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will: <ul style="list-style-type: none">2.11.15.1 Identify examples of the following property-related crimes:<ul style="list-style-type: none">A. Possession of burglary tools (A.R.S. §13-1505).2.11.15.2 Given a written, verbal or visual description depicting the possible commission of one (1) of the following crimes, identify if a crime occurred and, if so, the common crime name and classification:<ul style="list-style-type: none">A. Burglary (A.R.S. §§13-1506 through 13-1508).B. Criminal trespass (A.R.S. §§13-1502 through 13-1504).

DATE FIRST PREPARED: November 2000

PREPARED BY: SME Committee

REVIEWED – REVISED:	SME Committee	DATE: May 2002
REVIEWED – REVISED:	SME Committee	DATE: April 2003
REVIEWED – REVISED :	Sgt. George Sloane 13817, TPD	DATE: January 2004
REVIEWED – REVISED:	SME Committee	DATE: January 2009
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INSTRUCTOR REFERENCES: A.R.S. Title 13

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2-11 Ch 15 Criminal Trespass & Burglary

DATE RELEASED TO SHARE FILE: August 2023

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives. **INSTRUCTOR NOTE:** *Use is taught as a “stand alone” lesson plan.*

II. §13-1501 DEFINITIONS

- A. Please note that the definitions on this lesson plan will not be in the same order as presented in Title 13. The order presented here lends itself to a better understanding and an easier flow.

Implied by **P. O. 2.11.15.1A**

P. O. 2.11.15.2A & B

- B. All of the definitions presented here and in this chapter of Title 13, are important for statute understanding, interpretation and use.
 - 1. Enter or remain unlawfully – this means an act of a person who enters or remains on the premises when such person's intent for so entering or remaining is not licensed, authorized or otherwise privileged except when the entry is to commit theft of merchandise displayed for sale during normal business hours, when the premises are open to the public and the person does not enter any unauthorized areas of the premises. **INSTRUCTOR NOTE:** *Instructors should discuss ARS §33-1378 and the rights of landlords, tenants and guests, and direct students to follow agency policy.*
 - a. It is obvious that if I walk into your house uninvited at 0300 hours, my entry is unlawful.
 - b. If I worked as a clerk at Sears and my hours of employment were from 0700 hours until 1500 hours, my entry into that store at 0300 hours could be unlawful if my intent was to steal, appropriate goods, etc.
 - 2. Entry – means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property. (State v. Decker, 1 CA-CR-14-0238 (01/16) includes entry of a bullet into a residence.)
 - a. This would cover the "smash and grabs" where the suspect throws a rock through a store window, reaches inside and takes goods from the display – he/she has "entered" the structure.
 - b. This would also cover someone using a device like a fishing rod to reach into a store from the outside to retrieve goods.
 - 3. In the course of committing – this means any act performed by an intruder from THE MOMENT OF ENTRY TO, AND INCLUDING FLIGHT FROM, THE SCENE OF A CRIME.

4. Structure – means any device that accepts electronic or physical currency and that is used to conduct commercial transactions, any vending machine, or any building, object, vehicle, railroad car or any place with sides and a floor that is separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage. **INSTRUCTOR NOTE:** *Structures are separated into residential and nonresidential structures.*
5. Residential structure – means any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not (this could include tents, travel trailers, etc., under some circumstances).
6. For example, if you own a camper shell and have it stored off the truck in your backyard then it would not be a residential structure, but if you put it on your truck and take it camping then it, at that time, becomes a residential structure. **INSTRUCTOR NOTE:** *State v. Gill, 235 Ariz. 418, 333 P.3d 36 (Ariz. App 2014) A mailbox meets the definition of “nonresidential structure” for the purposes of burglary statute.*
7. Nonresidential structure – means any structure other than a residential structure.
 - a. Business.
 - b. Storage facilities.
 - c. Church, school, etc. **INSTRUCTOR NOTE:** *State v. Bon, 236 Ariz 249, 338 p.3d 989 (Ariz app 2014) Removing property from the bed of a pickup constitutes “entry of a nonresidential structure” for the purposes of the burglary statute.*
8. Fenced residential yard – means a unit of real property immediately surrounding, or adjacent to, a residential structure and enclosed by a fence, wall, building or similar barrier or any combination thereof.
9. Fenced commercial yard – means a unit of real property surrounded completely by either fences, walls, buildings or similar barriers or any combination thereof, and zoned for business operations or where livestock, produce or other commercial items are located. **INSTRUCTOR NOTE:** *The “or” after operations essentially negates the need to show the property is zoned for business operations. It is very important that you do not use the term “residence” when you mean residential structure”. A residence is only one (1) type, or an example, of a residential structure.*
10. Critical Public Service Facility means:
 - a. A structure or fenced yard that is posted with signage indicating it is a felony to trespass or signage indicating high voltage or high pressure and is used by a rail, bus, air or other mass transit provider, a public or private utility, any municipal corporation, city town or other political subdivision that is organized under state

law and that generates, transmits, distributes or otherwise provides natural gas, liquefied petroleum gas, electricity or a combustible substance for a delivery system that is not a retail-only facility, a telecommunications carrier or telephone company, a municipal provider as defined in Section §45-561, a law enforcement agency, a public or private fire department or an emergency medical service provider; or

b. A structure or fenced yard or any equipment or apparatus that is posted with signage indicating it is a felony to trespass or signage indicating high voltage or high pressure and is used to manufacture, extract, transport, distribute or store gas, including natural gas or liquefied petroleum gas, oil, electricity, water or hazardous materials, unless it is a retail-only facility.

11. Manipulation Key – means a key, device or instrument, other than a key that is designed to operate a specific lock, that can be variably positioned and manipulated in a vehicle keyway to operate a lock or cylinder, including a wiggle key, jiggle key or rocker key.
12. Master Key – means a key that operates all the keyed locks or cylinders in a similar type or group of locks.
13. Vending Machine: Means a machine that dispenses merchandise or service through the means of currency, coin, token, credit card or other non-personal means of accepting payment for merchandise or service received.

III. §13-1502 – CRIMINAL TRESPASS IN THE THIRD DEGREE

P. O. 2.11.15.2B

- A. A person commits criminal trespass in the third degree by:
1. Knowingly entering, or remaining unlawfully on any REAL PROPERTY after a reasonable request to leave has been given by a law enforcement officer, the owner or any person having lawful control over such property, or reasonable notice prohibiting entry; or by
 2. Knowingly entering, or remaining unlawfully on the right of way for tracks, the storage or switching yards or rolling stock (cars) of a railroad company.
- B. Pursuant to subsection A, paragraph 1 of this Section, a request to leave by a law enforcement officer acting at the request of the owner of the property or any other person having lawful control over the property has the same legal effect as a request made by the property owner or other person having lawful control of the property.
- C. This is a misdemeanor
- D. A person then commits this crime by trespassing upon either of these two (2) types of property:
1. Real property.

2. Railroad property.
- E. Notice that under A. 1., as described above, when trespassing upon real property, there are two (2) provisions.
1. If a person trespasses upon real property (an open field, parking lot, etc.), he/she does NOT automatically commit this crime.
 2. Someone must inform him/her that he/she is trespassing and he/she must either refuse to leave or, having been notified in the past, return upon the property. Person can be a police officer per sub section B.
 3. However, if there is reasonable notice prohibiting entry (signs), then a person would commit this crime simply by going onto the property and disregarding the signs.
- F. Under A. 2. above, no notice or warning need be given.
- G. Cases from other jurisdictions:
1. "No prosecution may be brought for trespass on unimproved and apparently unused land unless the prosecution can show that notice against trespass was given by posting in a conspicuous manner." (People v. Basch, 1975, 36 N. Y. 2d 154, 365 N.Y.S. 2d 836, 325 N.E. 2d 156.)
 2. "Where the defendant had been personally served with written notice barring him from the race track, the defendant, though he purchased an admission ticket, was guilty of criminal trespass when he entered the track premises with the knowledge that he was not licensed or privileged to do so." (People v. Licata, 1971, 28 N.Y. 2d 113, 320 N.E.S. 2d 53, 268 N.E. 2d 787)

IV. §13-1503 – CRIMINAL TRESPASS IN THE SECOND DEGREE

P. O. 2.11.15.2B

- A. A person commits criminal trespass in the second degree by:
1. Knowingly entering, or remaining unlawfully in or on, a non-residential structure; or
 2. Knowingly entering, or remaining unlawfully in any fenced commercial yard.
- B. Criminal trespass in the second degree is a misdemeanor.
- C. A person commits this crime by trespassing upon two (2) types of property:
1. Non-residential structures (do not say businesses because a business is only one (1) type of an example of a non-residential structure).

2. Fenced commercial yard.
- D. Make sure you understand the two (2) important definitions used here: Non-residential structure and fenced commercial yard.
- E. "Facts that the defendant had received prior warning that entry to the tenth floor of a department store was forbidden during non-business hours, and that the defendant was again apprehended on the tenth floor during non-business hours 27 days after receipt of such warning constituted proof beyond a reasonable doubt that the defendant had committed the offense of criminal trespass (in the 2nd degree)." (People v. Morgan, 195, 33 Ill App. 3d 41, N.E. 2d 400)

V. §13-1504 – CRIMINAL TRESPASS IN THE FIRST (1ST) DEGREE

P. O. 2.11.15.2B

- A. A person commits criminal trespass in the first (1st) degree by:
 1. Entering, or remaining unlawfully in or on, a residential structure; or
 2. Entering, or remaining unlawfully in, a fenced residential yard; or
 3. Entering any residential yard (fenced or not) and without lawful authority looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy; or
 4. Entering unlawfully on real property subject to a valid mineral claim or lease with the intent to hold, work, take or explore for minerals on such claim or lease (claim jumping); or
 5. Entering, or remaining unlawfully on, the property of another and burning, defacing, mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.
 6. Entering or remaining unlawfully in or on a critical public service facility.
- B. NOTE THAT THERE ARE THREE (3) FELONY CRIMINAL TRESPASS PARAGRAPHS:
 1. Under A. 1. above, trespassing in or on a residential structure is a felony. Note that a prowler ON a residential structure has committed a felony.
 2. Under A. 5. above, trespassing upon the property of another and without permission damaging a religious symbol, is a felony offense.
 3. Under A.6 above, trespass in or on a critical public service facility would be a felony offense.

4. Violation of paragraphs 2, 3 and 4 are misdemeanors. **INSTRUCTOR NOTE:** *The yard does not have to be fenced and it is not necessary that anyone actually be home when this occurs.*

VI. §13-1505 – POSSESSION OF BURGLARY TOOLS; MASTER KEYS; MANIPULATION KEYS

P. O. 2.11.15.1A

- A. A person commits possession of a burglary tool by possessing any explosive, tool, instrument or other article adapted or commonly used for committing any form of burglary as defined in the burglary statutes and intending to use, or permit the use of, such an item in the commission of a burglary.
- B. A person also commits this crime by buying, selling, transferring, possessing or using a motor vehicle manipulation key or master key.
- C. Possession of burglary tools is always considered a felony offense.
- D. Note that in order to arrest someone for violating this statute, you would have to be able to show two (2) circumstances:
1. That the person actually possessed the tool, instrument, device, etc., and
 2. That the person intended to use, or permit the use of, that tool, device, etc., **IN THE COMMISSION OF A BURGLARY.**
- E. Note that the prohibition against possession, use, etc., of manipulation or master keys does not apply to a person who uses the key in the course of the person's lawful business or occupation or to the transfer, possession or use of no more than one (1) manipulation key, unless the key is transferred, possessed or used with the intent to commit any theft or felony.

VII. §13-1506 – BURGLARY IN THE THIRD (3RD) DEGREE

P. O. 2.11.15.2A

- A. A person commits burglary in the third (3rd) degree by entering, or remaining unlawfully in or on, A **NON-RESIDENTIAL STRUCTURE** or in a **FENCED COMMERCIAL OR RESIDENTIAL YARD** with the intent to commit **ANY THEFT OR ANY FELONY THEREIN**; or by making entry into any part of a motor vehicle by means of a manipulation key or master key, with the intent to commit any theft or felony in the motor vehicle.
- B. This is a felony.
- C. It is important to note the three (3) structures or types of property involved here:
1. Non-residential structure.
 2. Fenced commercial yard.

3. Fenced residential yard (the term fenced is applied to both commercial and residential).
- D. Also, it is important to note that the difference between trespass and burglary is the phrase "with the intent to commit any theft or felony therein."
 1. This term also leaves a lot open as far as charges go.
 2. For example, if a person goes into a business with the intent to commit arson, then he/she has at least committed burglary because he/she entered with the intent to commit a felony.
- E. Since a motor vehicle fits the definition of a "non residential structure," a person who goes into a vehicle and steals the stereo from the dash has committed burglary in the third (3rd) degree.
- F. Burglary does not require a "breaking" in, all it requires is an unlawful entry or remaining; therefore, burglary could be committed by the suspect entering an unlocked or even open door or window.

VIII. §13-1507 – BURGLARY IN THE SECOND (2ND) DEGREE

P. O. 2.11.15.2A

- A. A person commits burglary in the second (2nd) degree by entering, or remaining unlawfully in or on, a residential structure with the intent to commit any theft or any felony therein.
- B. This is a felony.
- C. The only type of property we are concerned with here is a residential structure.
- D. "Theft of any article is unnecessary to complete the offense of burglary." Ealey v. Georgia, 139 Ga. App. 604 229 S.E.2d 86 (1976).
- E. This is important because it says that all we have to show is the INTENT to commit a theft or felony; we do not have to show that the suspect actually took property.

IX. §13-1508 – BURGLARY IN THE FIRST (1ST) DEGREE

P. O. 2.11.15.2A

- A. A person commits burglary in the first (1st) degree if he/she OR AN ACCOMPLICE commits any burglary and knowingly possesses any EXPLOSIVES, A DEADLY WEAPON OR DANGEROUS INSTRUMENT in the course of committing any theft or any felony.
- B. This is the most serious burglary and is considered a felony if the burglary is committed in or on a non-residential structure or fenced commercial yard and a felony if committed in or on a residential structure.
- C. Note that we must show that the suspect or an accomplice was armed with any of three (3)

things:

1. Explosives.
2. Deadly weapon.
3. Dangerous instruments.

D. Since this applies to both the person who actually goes into the structure or property to commit the burglary and the person who is the accomplice, then the following could apply:

1. An unarmed burglar goes into a house and steals a gun – first (1st)-degree burglary.
2. A burglar has a gun in his/her car.
 - a. The burglar parks the car outside the house and leaves the gun inside the car.
 - b. The burglar burglarizes the house.
 - c. When the burglar re-enters his/her car and becomes in possession of the gun, he/she has committed first (1st)-degree burglary.
 - d. The reason for this is the term "in the course of committing" as presented in A.R.S. §13-1501.
 - e. This means any time from entry to, and including flight from, the scene.
3. Two (2) men are going to burglarize a house.
 - a. The unarmed man goes into the house while the armed man stays in the getaway car.
 - b. As soon as the first man enters the home, both of them have committed first (1st)-degree burglary.

X. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).