

## **CHAPTER 12: BURGLARY, TRESPASS, ARSON, AND MISCHIEF**

### **INTRODUCTION**

This chapter deals with offenses against property, especially the home. All of these offenses are found in Texas Penal Code (TPC) ch. 28 “Arson, Criminal Mischief, and Other Property Damage or Destruction,” and ch. 30 “Burglary and Criminal Trespass.” These are two of the chapters in Title 7 “Offenses Against Property,” These chapters are available at <http://www.capitol.state.tx.us/statutes/pe.toc.htm>

### **BURGLARY**

Texas, like every state, has departed markedly from the common law definition of burglary. The TPC provides three ways to commit a burglary:

- § 30.02. BURGLARY. (a) A person commits an offense if, without the effective consent of the owner, the person:
- (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or
  - (2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or
  - (3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

A number of terms in this statute are defined in the TPC. “Effective consent” basically means voluntary consent by a competent person. Sec. 1.07 provides

- (19) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:
- (A) induced by force, threat, or fraud;
  - (B) given by a person the actor knows is not legally authorized to act for the owner;
  - (C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or
  - (D) given solely to detect the commission of an offense.

Sec. 30.02 (b) provides:; "'enter' means to intrude: (1) any part of the body; or (2) any physical object connected with the body" (e.g., crowbar). Notice that the common law requirement of a “breaking” is not included, and the person does not have to get completely inside the habitation or building. The second form of burglary, requires no entry with intent. It requires “remaining concealed” with intent after entering, even if the initial entry was with consent. Note that the intent to commit the other crime,(a) (1) and (2), must occur at the same time as the entry or remaining.

Other terms are defined in sec. 30.01:

## Burglary, Trespass, Arson, and Mischief

§ 30.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

- (A) each separately secured or occupied portion of the structure or vehicle; and
- (B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

At common law, only the dwelling of another could be the object of a burglary, and the crime could only be committed at night. Texas rejects these limitations. Also note that there are three *mens rea* possibilities as compared to the single common law requirement of intent to commit a felony therein at the time of entry.

Depending upon the type of building involved, the punishment can range from a felony of the first degree (habitation) to a state jail felony (building other than habitation). First degree felonies are punishable by imprisonment for life or for any term of not more than 99 years nor less than 5 years. In addition, punishment can include a fine of not more than \$10,000. In general, a person convicted of a state jail felony can be confined in a state jail for not more than two years nor less than 180 days. In addition, a fine of not more than \$10,000 may be assessed.

### **SPECIAL BURGLARY STATUTES**

The TPC also includes two other burglary offenses:

§ 30.03. BURGLARY OF COIN-OPERATED OR COIN COLLECTION

MACHINES. (a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine, coin collection machine, or other coin-operated or coin collection receptacle, contrivance, apparatus, or equipment used for the purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

(b) For purposes of this section, "entry" includes every kind of entry except one made with the effective consent of the owner.

(c) An offense under this section is a Class A misdemeanor.

§ 30.04. BURGLARY OF VEHICLES. (a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

(b) For purposes of this section, "enter" means to intrude:

- (1) any part of the body; or

(2) any physical object connected with the body.

(c) For purposes of this section, a container or trailer carried on a rail car is a part of the rail car.

Pickup trucks with open and uncovered beds are common in Texas. Is it a burglary of a vehicle to take something from the open bed of a pickup? The Texas Court of Criminal Appeals dealt with this issue in *Richardson v. State*, 888 S.W.2d 822 (Tex.Crim.App. 1994)

The evidence at trial established that appellant reached into the open bed of a pickup truck and removed four fishing rods and reels valued at \$800. Appellant did not contest the fact that he intended to commit theft when he reached into the truck bed and removed the fishing equipment. Relying on this Court's decision in *Coleman v. State*, 608 S.W.2d 923 (Tex.Crim.App. [Panel Op.] 1980), the Court of Appeals concluded that when appellant intruded his hand into the open bed of the pickup truck, his actions amounted to a "breaking of the close" of the truck sufficient to demonstrate his guilt of burglary of a vehicle. . . .

In his sole ground for review, appellant contends that a person who reaches into the open bed of a pickup truck does not "enter" part of the vehicle as a matter of law. Because entry into the vehicle is an element of burglary under § 30.04, appellant argues that the State failed to prove all of the elements of the indicted crime, and as such the Court of Appeals erred in affirming his conviction. The State, in response, contends that a person who reaches into the open bed of a pickup truck does enter part of the vehicle for purposes of § 30.04. 888 S.W.2d at 823.

The CCA upheld the conviction:

. . . we held in *Griffin* that there must be an entry into an enclosed or interior portion of the vehicle. Although it may be open to the elements, the bed of a pickup is clearly an interior portion of the truck itself. There is no need for the bed to be enclosed by a tarpaulin or camper shell or some other structure for it to be protected under § 30.04.

This interpretation of § 30.04 is consistent with the purpose of burglary statutes generally. Our burglary statutes are intended to protect the sanctity of private areas, be they habitations, buildings not open to the public, or vehicles. When a burglary is committed, the harm results from the entry itself, because the intrusion violates the occupant's reasonable expectation of privacy. Indeed, once unlawful entry is made, the crime is complete, regardless of whether the intended theft or felony is actually completed. 888 S.W.2d at 824.

## **CRIMINAL TRESPASS**

§ 30.05. CRIMINAL TRESPASS. (a) A person commits an offense if he enters or remains on or in property, including an aircraft or other vehicle, of another without effective consent or he enters or remains in a building of another without effective consent and he:

## Burglary, Trespass, Arson, and Mischief

- (1) had notice that the entry was forbidden; or
- (2) received notice to depart but failed to do so.

Note that unlike burglary, there is no requirement of any intent to commit another crime. Some of the key terms are defined in the section:

- (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.

Note the difference in the definitions of 'entry' between burglary and criminal trespass. "Effective consent" is defined as in the offense of burglary. Depending upon the type of area entered and certain other circumstances, the offense ranges from a Class C Misdemeanor (fine only) to a Class A misdemeanor.

Criminal trespass statutes generally serve two purposes. The first is to protect privacy and the right to control the property and the items in or on it. Second, criminal trespass charges can be used when there is insufficient evidence of criminal intent (*e.g.*, intent to commit a felony, theft or assault) as necessary for burglary charges.

## ARSON

At common law, arson was the willful and malicious burning of the dwelling house of another. Texas, like all states, has expanded the definition of this offense beyond the common law version.

§ 28.02. ARSON. (a) A person commits an offense if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with intent to destroy or damage:

- (1) any vegetation, fence, or structure on open-space land; or
- (2) any building, habitation, or vehicle:
  - (A) knowing that it is within the limits of an incorporated city or town;
  - (B) knowing that it is insured against damage or destruction;
  - (C) knowing that it is subject to a mortgage or other security interest;
  - (D) knowing that it is located on property belonging to another;
  - (E) knowing that it has located within it property belonging to another; or
  - (F) when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(a-1) A person commits an offense if the person recklessly starts a fire or causes an explosion while manufacturing or attempting to manufacture a controlled substance and the fire or explosion damages any building, habitation, or vehicle.

Note that unlike the common law definition, a wide variety of structures or items are covered, no burning is required, and recklessness will suffice in some instances. Subsec. (a-1) was added to deal with unlawful methamphetamine laboratories)

Depending upon the circumstances, the offense can range from a state jail felony to a felony of the first degree. There is also an exception and a defense:

- (b) It is an exception to the application of Subsection (a)(1) that the fire or explosion was a part of the controlled burning of open-space land.
- (c) It is a defense to prosecution under Subsection (a)(2)(A) that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

## **CRIMINAL MISCHIEF**

There are 3 ways to commit Criminal Mischief in Texas:

§ 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

- (1) he intentionally or knowingly damages or destroys the tangible property of the owner;
- (2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or

## Burglary, Trespass, Arson, and Mischief

- (3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

Depending upon the circumstances, the offense can range from a class C Misdemeanor (fine only) to a Felony of the First Degree.

### OTHER OFFENSES IN TPC CH. 28

TPC ch. 28 also contains three other offenses involving damage to property:

Sec. 28.04. Reckless damage or destruction (other offenses involve intentionally or knowingly, this allows for prosecution of recklessness);

Sec. 28.07. Interference with railroad property (depending upon the amount of damage inflicted, this offense can range from a Class C Misdemeanor to a First Degree Felony);

Sec. 28.08. Graffiti (depending upon the amount of damage inflicted, this offense can range from a Class B Misdemeanor to a First Degree Felony).

### REVIEW QUESTIONS

Multiple Choice (Answers are found at the end of this chapter)

1. The two basic ways of committing a burglary in Texas are by entering and
  - a. breaking.
  - b. ignoring “no trespassing” signs.
  - c. remaining concealed.
  - d. burning.
  - e. transmuting.
  
2. In addition to ordinary burglary of buildings or habitations, Texas also has a special burglary statute for
  - a. vehicles.
  - b. railroad property.
  - c. public property.
  - d. range land.
  - e. farm land.
  
3. Texas Penal Code ch. 28 has a special separate offense for interfering with \_\_\_\_\_ property.
  - a. public service
  - b. irrigation
  - c. farming
  - d. ranching

## Chapter 12

- e. railroad
4. Criminal Mischief requires that the defendant act.
    - a. intentionally or knowingly.
    - b. intentionally, knowingly or recklessly.
    - c. intentionally, knowingly, recklessly or with criminal negligence.
    - d. recklessly.
    - e. recklessly or with criminal negligence.
  5. Texas' criminal trespass statute also specifically includes
    - a. boats and ships.
    - b. aircraft or other vehicles.
    - c. carnival rides.
    - d. bridges and passageways.
    - e. local and interstate highways.
  6. In Texas, arson requires
    - a. burning or damage of some building or habitation.
    - b. intent to inflict serious bodily injury.
    - c. starting a fire or causing an explosion.
    - d. attempting to defraud insurance companies.
    - e. that the building be inhabited at the time of the fire.

### REFERENCES AND RESOURCES

Belbow, B. A. (2005). *Guide to Criminal Law for Texas*,. 3<sup>rd</sup> ed. Belmont, CA: Thomson-Wadsworth, ch 11.

Teague, M.O. & Helft, B. P. (2006). *Texas Criminal Practice Guide*. San Francisco: Matthew Bender. ch. 126.

Texas Jurisprudence 3rd (2006). *Criminal Law*, sec. 819-965

**ANSWER KEY - CH. 12: BURGLARY, TRESPASS, ARSON, AND MISCHIEF**

1. c
2. a
3. e
4. a
5. b
6. c