



# Idaho Trespass Laws: What are your rights and obligations?



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In 2018, the Idaho Legislature significantly revised and strengthened Idaho trespass law.

Below is a summary of the updated law. This pamphlet is not legal advice. It is intended as a general overview and a guideline for landowner use. Please consult the Idaho Code for precise information.

## **CRIMINAL TRESPASS (IC 18-7008)**

**Criminal Trespass** occurs when any person “enters or remains on the real property of another without permission, knowing or with reason to know his presence is not permitted.”

The county Sheriff investigates, and the county prosecutor will press charges in criminal trespass cases when there is enough evidence to do so. All fines are paid to the state.

### **Posting Requirements:**

A person knows or has reason to know property is privately owned based upon either the physical characteristics of the land or through posting where required.

The following property types require no posting to indicate private ownership:

1. property **reasonably associated with a residence or place of business**,
2. **cultivated land**,
3. property that is **fenced or otherwise enclosed** and is not adjacent to public land.

Other property types require posting to indicate private ownership and prevent trespass:

1. **unfenced, uncultivated land**;
2. for property that **is fenced** and **adjoins public lands**, the fence line adjacent to public land must be posted.

**Where posting is required, it must be done with conspicuous “no trespassing” signs or bright orange or fluorescent paint** in a manner that a reasonable person would be put on notice that he is entering private land. At a minimum, this includes where the property line intersects navigable streams, roads, gates and other rights-of-way entering the land and at property corners.

A person should be able to reasonably see the posting no matter where they approach the property, otherwise they will not know or have reason to know they are entering private property.

**Penalties:** 1st conviction is an infraction with a \$300 fine if no damage is caused; if damage of \$1,000 or less is caused, it is a misdemeanor, up to 6 months in jail with \$500 - \$1,000 fine; 2nd conviction within 5 years is a misdemeanor, up to 6 months in jail with \$1,500-3,000 fine. If trespassing while hunting, fishing or trapping, loss of license for one year. 3rd conviction within 10 years is a misdemeanor, up to 1 year in jail, fine \$5,000-10,000, loss of license for no more than 5 years if hunting, fishing or trapping. Restitution to the landowner is mandatory.

**Criminal Trespass with Damage** occurs when any person who commits a criminal trespass also causes damage to real or personal property in excess of \$1,000 while trespassing.

**Penalties:** 1st conviction is a misdemeanor, up to 6 months in jail, \$1,500-5,000 fine. 2nd conviction in 5 years is a misdemeanor, up to 6 months in jail, \$5,000– 10,000 fine. If hunting, fishing or trapping loss of license for one year. 3rd conviction in 10 years is a felony, 1-5 years in jail, \$15,000 - 50,000 fine and loss of license for no less than 5 years if hunting, fishing or trapping. Landowner restitution is mandatory.

#### **CIVIL TRESPASS (IC 6-202)**

If the county Sheriff and/or county prosecutor decline to investigate or press charges against the trespasser, a landowner may file a civil suit against the trespasser. All damages and penalties are awarded to the landowner.

**Civil Trespass** occurs when a person enters or remains on the real property of another without permission.

**Penalties** include the greater of a \$500 damage award or actual damages caused by the trespass, reasonable attorney's fees and investigative costs.

**Civil Trespass with Damage** occurs when a person enters or remains on the real property of another without permission, knowing or with reason to know his presence is not permitted and causes damage to real or personal property more than \$1,000.

**Penalties** include treble damages, reasonable attorney's fees and investigative costs.

#### **EXCLUSIONS**

**Exclusions** to both criminal and civil trespass include those entering with an invitation, license, lease, easement or "other legal right to enter;" or with an established legal authority such as law enforcement, EMTs, firefighters and others in the course of their lawful duties. See IC 18-7008(6), and IC 6-202(7).

#### **RECREATIONAL TRESPASS (IC 36-1603)**

**Trespass while Hunting, Fishing or Trapping:** No person shall enter the real property of another and shoot any weapon or enter such property for the purposes of hunting, retrieving wildlife, fishing or trapping in violation of section 18-7008, Idaho Code. This is enforced by Idaho F&G officers as well as county Sheriffs.

**Penalties** are numerous and are outlined in IC 36-1401 and IC 36-1402.

**DEFINITIONS FOR IDAHO TRESPASS LAW:**

**“Cultivated land”** means land used for the raising of crops; and pasturage that is artificially irrigated.

**“Crops”** means field crops including, but not limited to, grains, feed crops, legumes, fruits and vegetables.

**“Damage”** means any injury or damage to real or personal property when conducted without lawful authority.

**“Permission”** means written authorization from the owner or his agent to enter upon private land which shall include the signature of the owner or his agent, name of the person given permission, appropriate dates that the permission is valid and a general description of the property; **OR** another form of permission or invitation recognized by law (see exclusions).

**“Remains”** means to fail to depart from the real property of another immediately when notified to do so by the owner or his agent. This is primarily related to properties that are normally open to the public, such as a business. When a person remains after business hours, or after being asked to leave, they commit a trespass.

<b>Notes:</b>
<b>Date/Time:</b> _____
<b>Location:</b> _____
<b>Vehicle/License No.:</b> _____
_____ <b>Trespass</b>
<b>ser(s) Description:</b> _____
_____
_____
<b>Witness(es):</b> _____
_____
_____
<b>What was said by both parties:</b> _____
_____
_____
_____
_____
<b>Authorities Contacted: Yes</b> _____ <b>No</b> _____
<b>Information for Authorities:</b> _____
_____
_____

**WHAT TO DO**

- Post fenced land that adjoins public land
- Post unfenced, uncultivated land
- Be aware of unfamiliar vehicles, people and other things out of the ordinary
- Make notes of incidents
- If possible, take photos of vehicles, license plates, damages, etc., with your phone
- If you speak to the trespasser, remain polite and ask them to leave. Note the physical description of the vehicle, individual(s), license plate number(s), date and time
- DO NOT physically or verbally threaten the trespasser
- DO NOT point or brandish a firearm at the trespasser. You will have committed a far more serious crime than trespass.
- You CANNOT protect real or personal property with lethal force
- If the trespasser(s) will not leave or you are threatened, withdraw and call the Sheriff. Let law enforcement deal with the issue.
- Contact the IFBF Governmental Affairs Office who can assist with follow up