

# Making a Citizen's Arrest

These are the actual laws on making an arrest, especially a citizen's arrest, for trespass. Sections 837, 839 and 841 are the main points to follow. You don't need a badge, gun, uniform, or job title to do this. What might otherwise be assault, battery, or other crimes, is made legal as a citizen's arrest.

Penal Code §834. An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

Penal Code §834a. If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

Penal Code §835. An arrest is made by an actual restraint of the person, *or* by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

Penal Code §837. A private person may arrest another:

1. For a public offense committed or attempted in his presence.
2. When the person arrested has committed a felony, although not in his presence.
3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Penal Code §839. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

Penal Code §840. An arrest for the commission of a felony may be made on any day and at any time of the day or night. An arrest for the commission of a misdemeanor or an infraction cannot be made between the hours of 10 o'clock p. m. of any day and 6 o'clock a. m. of the succeeding day, unless:

- (1) The arrest is made without a warrant pursuant to Section 836 or 837. [Domestic violence]
- (2) The arrest is made in a public place.
- (3) The arrest is made when the person is in custody pursuant to another lawful arrest.
- (4) The arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

Penal Code §841. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.

The person making the arrest must, on request of the person he is arresting, inform the latter of the offense for which he is being arrested.

Penal Code §844. To make an arrest, a private person, if the offense is a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing the person to be, after having demanded

admittance and explained the purpose for which admittance is desired.

Penal Code §845. Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

Penal Code §846. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

Penal Code §847. (a) A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, *or* deliver him or her to a peace officer.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer or federal criminal investigator or law enforcement officer described in subdivision (a) or (d) of Section 830.8, acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest under any of the following circumstances:

(1) The arrest was lawful, or the peace officer, at the time of the arrest, had reasonable cause to believe the arrest was lawful.

(2) The arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested.

(3) The arrest was made pursuant to the requirements of Section 142, 837, 838, or 839.  
[Amended 2002 ch. 526, 2003 ch. 468.]

Penal Code §848. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

Penal Code §849. (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.

(b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:

(1) He or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.

(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.

(3) The person was arrested only for being under the influence of a controlled substance or drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.

(c) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only.

Penal Code §849.5. In any case in which a person is arrested and released and no accusatory pleading

is filed charging him with an offense, any record of arrest of the person shall include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only.

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## What is a Trespass?

As a tenant, you own the right to possession. The landlord has only a “reversionary” right to possession after you leave. He can’t complain, because it was his idea to sell you that possession for rent money. Trespass is a violation of the right to possession, not ownership, which is why the landlord coming into your home is a trespasser. Here are the laws about it. [Apologizing in advance for the long and boring list, but at least you got the complete statutes.]

### Criminal Trespass:

#### Penal Code § 601

(a) Any person is guilty of trespass who makes a credible threat to cause serious bodily injury, as defined in subdivision (a) of Section 417.6, to another person with the intent to place that other person in reasonable fear for his or her safety, or the safety of his or her immediate family, as defined in subdivision (l) of Section 646.9, and who does any of the following:

(1) Within 30 days of the threat, unlawfully enters into the residence or real property contiguous to the residence of the person threatened without lawful purpose, and with the intent to execute the threat against the target of the threat.

(2) Within 30 days of the threat, knowing that the place is the threatened person’s workplace, unlawfully enters into the workplace of the person threatened and carries out an act or acts to locate the threatened person within the workplace premises without lawful purpose, and with the intent to execute the threat against the target of the threat.

(b) Subdivision (a) shall not apply if the residence, real property, or workplace described in paragraph (1) or (2) that is entered is the residence, real property, or workplace of the person making the threat.

(c) This section shall not apply to any person who is engaged in labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act.

(d) A violation of this section shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

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#### Penal Code § 602

Except as provided in subdivisions (u), (v), and (x), and Section 602.8, a person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from a lot situated within the limits of an incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in a city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying a sign, signboard, or notice placed upon, or affixed to, a property belonging to the state, or to a city, county, city and county, town, or village, or upon the property of a person, by the state or by an automobile association, which sign, signboard, or notice is intended to indicate or designate a road or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon the property of a person, without license from the owner, a notice, advertisement, or designation of, or a name for a commodity, whether for sale or otherwise, or a picture, sign, or device intended to call attention to it.

(g) Entering upon lands owned by another person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of those lands.

(h) (1) Entering upon lands or buildings owned by another person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) shall be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision does not preclude prosecution or punishment under any other law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying a fence on the enclosed land of another, or opening a gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying a sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering lands, whether unenclosed or enclosed by fence, for the purpose of injuring property or property rights or with the intention of interfering with, obstructing, or injuring a lawful business or occupation carried on by the owner of the land, the owner's agent, or the person in lawful possession.

(l) Entering lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent, or the person in lawful possession, and any of the following:

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent, or by the person in lawful possession to leave the lands.

(2) Tearing down, mutilating, or destroying a sign, signboard, or notice forbidding trespass or hunting on the lands.

(3) Removing, injuring, unlocking, or tampering with a lock on a gate on or leading into the lands.

(4) Discharging a firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving a vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision does not apply to a person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) (1) Refusing or failing to leave land, real property, or structures belonging to, or lawfully occupied by, another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that they are acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance, made in a notarized writing on a form provided by the law enforcement agency, may be made to cover a limited period of time not to exceed a time period determined by local ordinance or 12 months, whichever is shorter, and identified by specific dates, during which there is a fire hazard or the owner, owner's agent, or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance, made in a notarized writing on a form provided by the law enforcement agency, may be made for a period not to exceed 12 months when the premises or property is closed to the public and posted as being closed. The requestor shall inform the law enforcement agency to which the request was made, in writing, when the assistance is no longer desired, before the period not exceeding 12 months expires. However, this subdivision does not apply to persons engaged in lawful labor union activities that are permitted to be carried out on the property by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code) or by the federal National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by a housing authority for tenants, as defined in Section 34213.5 of the Health and Safety Code, constitutes property not open to the general public; however, this subdivision does not apply to persons on the premises

who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating a law or ordinance.

(2) A request for a peace officer's assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession.

(3) A request for a peace officer's assistance in dealing with a trespass may be submitted electronically. A local government may accept electronic submissions of requests pursuant to this subdivision.

(p) Entering upon lands declared closed to entry, as provided in Section 4256 of the Public Resources Code, if the closed areas have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchperson, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail that is closed to the public and that has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where the person has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) (1) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that the peace officer is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

(2) This subdivision applies only to a person who has been convicted of a crime committed upon the particular private property.

(3) A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(4) Where the person has been convicted of a violent felony, as described in subdivision (c) of Section 667.5, this subdivision applies without time limitation. Where the person has been convicted of any other felony, this subdivision applies for no more than five years from the date of conviction. Where the person has been convicted of a misdemeanor, this subdivision applies for no more than two years from the date of conviction. Where the person was convicted for an infraction pursuant to Section 490.1, this subdivision applies for no more than one year from the date of conviction. This

subdivision does not apply to convictions for any other infraction.

- (u) (1) Knowingly entering, by an unauthorized person, upon an airport operations area, passenger vessel terminal, or public transit facility if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary, to the extent, in the case of a passenger vessel terminal, as defined in subparagraph (B) of paragraph (3), that the exterior boundary extends shoreside. To the extent that the exterior boundary of a passenger vessel terminal operations area extends waterside, this prohibition applies if notices have been posted in a manner consistent with the requirements for the shoreside exterior boundary, or in any other manner approved by the captain of the port.
- (2) A person convicted of a violation of paragraph (1) shall be punished as follows:
- (A) By a fine not exceeding one hundred dollars (\$100).
  - (B) By imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment, if the person refuses to leave the airport or passenger vessel terminal after being requested to leave by a peace officer or authorized personnel.
  - (C) By imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment, for a second or subsequent offense.
- (3) As used in this subdivision, the following definitions shall control:
- (A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.
  - (B) "Passenger vessel terminal" means only that portion of a harbor or port facility, as described in Section 105.105(a)(2) of Title 33 of the Code of Federal Regulations, with a secured area that regularly serves scheduled commuter or passenger operations. For the purposes of this section, "passenger vessel terminal" does not include any area designated a public access area pursuant to Section 105.106 of Title 33 of the Code of Federal Regulations.
  - (C) "Public transit facility" has the same meaning as specified in Section 171.7.
  - (D)
    - (i) "Authorized personnel" means a person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.
    - (ii) "Authorized personnel" also means a person who has a valid port identification card issued by the harbor operator, or who has a valid company identification card issued by a commercial maritime enterprise recognized by the harbor operator, or any other person who is being escorted for legitimate purposes by a person with a valid port or qualifying company identification card.
    - (iii) "Authorized personnel" also means a person who has a valid public transit employee identification card.
  - (E) "Airport" means a facility whose function is to support commercial aviation.

- (v) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, passenger vessel terminal, as defined in subdivision (u), or public transit facility, as defined in Section 171.7, if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision, is a violation of this subdivision, punishable by a fine of not more than five hundred dollars (\$500) for the first offense. A second and subsequent violation is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.
  - (2) Notwithstanding paragraph (1), if a first violation of this subdivision is responsible for the evacuation of an airport terminal, passenger vessel terminal, or public transit facility and is responsible in any part for delays or cancellations of scheduled flights or departures, it is punishable by imprisonment of not more than one year in a county jail.
- (w) Refusing or failing to leave the location of a domestic violence shelter-based program at any time after being requested to leave by a managing authority of the shelter.
  - (1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.
  - (2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a victim of domestic violence in an amount equal to the relocation expenses of the victim of domestic violence and the victim's children if those expenses are incurred as a result of trespass by the defendant at the location of a domestic violence shelter-based program.
- (x) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that the person has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.
  - (2) A person convicted of a violation of paragraph (1) shall be punished as follows:
    - (A) As an infraction, by a fine not exceeding one hundred dollars (\$100).
    - (B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.
    - (C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, for a second or subsequent offense.
    - (D) If probation is granted or the execution or imposition of sentencing is suspended for a person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

(y) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a courthouse or a city, county, city and county, or state building if entrances to the courthouse or the city, county, city and county, or state building have been posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

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## **Civil Trespass:**

Unlike Criminal Trespass, you can sue a landlord or people coming into your rented home or onto your rented property, in addition to their criminal punishment, for money to compensate you for that trespass and get an injunction, which is a court order for the person to stop doing it, or stay X yards away from your property. Also, unlike the criminal trespass, a civil trespass was created by court cases over the years, and is not found in a specific statute.

Civil Trespass is defined broadly as an "unlawful interference with possession." It can be intentional, reckless or negligent action, intending to enter. It doesn't necessarily include an invasion of privacy, but it probably does. Since you as the tenant have the exclusive right to possession and the right to quiet enjoyment of your place, trespass is that unlawful interference by violating those rights.

It is NOT trespass if the person completely followed Civil Code 1954, but if they missed a step, it is. For example, if they texted you that they were coming over, that probably is a trespass when they come in. If they only gave you an hour's notice that they were coming in, that is a trespass. If they said they were coming over to make repairs, but really came to snoop around, it was a trespass.