

Criminal trespass in Massachusetts exists under more than one Massachusetts statute.

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We have blogged about what would be referred to as the “general” criminal trespass statute, but there is one specifically addressing those “willfully and maliciously” entering a garden or the like, and destroying or stealing. It can be found in section 115 of chapter 266 of the Massachusetts General Laws; the general criminal trespass statute in Massachusetts can be found at section 120 of chapter 266.

The law found in section 115 has distinct differences to the general criminal trespass statute. It has an enhanced penalty compared to the general criminal trespass statute. Instead of a maximum fine of \$100 and/or 30 days in jail found in the general criminal trespass statute, this section allows a judge to sentence a convicted defendant up to \$500 or six months in jail. Another key difference is that it does not require a notice element like the general statute, which many times takes the form of a letter that can be referred to by police as a “No trespass notice (or letter)” or sometimes by lawyers as a “Letter of Disinvite.” Next are the elements of “willful and malicious.” “Willful and malicious” are terms used in other Massachusetts statutes and have long-established legal definitions that to explain properly would exceed the scope of this blog, but suffice to say, use your common sense. Don’t assume because you think that it is clear that you were acting with a pure heart because you were simply picking some roses for your friend; someone else may not see it that way. The last difference is obvious and is the subject matter. Instead of the (arguably) simple and broad definition for the physical land or space contained in the general criminal trespass statute in Massachusetts, with this statute you must enter an “orchard, nursery, garden, or cranberry meadow.” And mutilate or destroy a “tree, shrub, or vine,” or steal or take and carry away “any fruit or flower.” These terms may not enjoy long-established legal definitions in Massachusetts law, but just the same, it is best not to test their definition in court. But if this blog has not found you before an incident has occurred, you may have to.

If you want to know more about the criminal trespass statutes in Massachusetts or just received a No trespass notice/letter (of Letter of disinvite) or are thinking about sending one, feel free to contact us.

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Criminal trespass statute/Massachusetts law trespass/no trespass letter/no trespass notice/letter of disinvite/stop someone from coming on land in Massachusetts/Massachusetts land rights