



TRESPASS AND PRIVATE PROPERTY PROTECTION IN IDAHO 2026

AGENDA

Criminal Trespass vs. Civil Trespass and
it's application to government agents

Private Property Protection Act

Implications for County Employees



THE 4TH AMENDMENT AND CRIMINAL TRESPASS

Separate but important private property right

Open Fields – are they persons, houses, papers, or effects? 8 States say... yes

The 4th Amendment has always applied to the “curtilage” surrounding a home, but not open fields or land outside the home

Fourth Amendment

*The right of the people to be secure in
their persons, houses, papers & effects,
against unreasonable searches & seizures,
shall not be violated, & no Warrants
shall issue, but upon probable cause,
supported by Oath or affirmation,
& particularly describing
the place to be
searched, and the
persons or things to
be seized.*



CRIMINAL TRESPASS - I.C. 18 - 7008

- Refuse to leave or return within a year of being told to leave
- Residence, Business, Cultivated Field, Church, or *Properly Marked* private property adjoining public land
- No damage and leave when told, \$300 Infraction
- Damage under \$1000 is a misdemeanor: \$500/ 6 months jail
- Damage over \$1000 is a Misdemeanor - but only for the first two times you do it (3rd time is a felony).
- Enhanced penalties for multiple violations



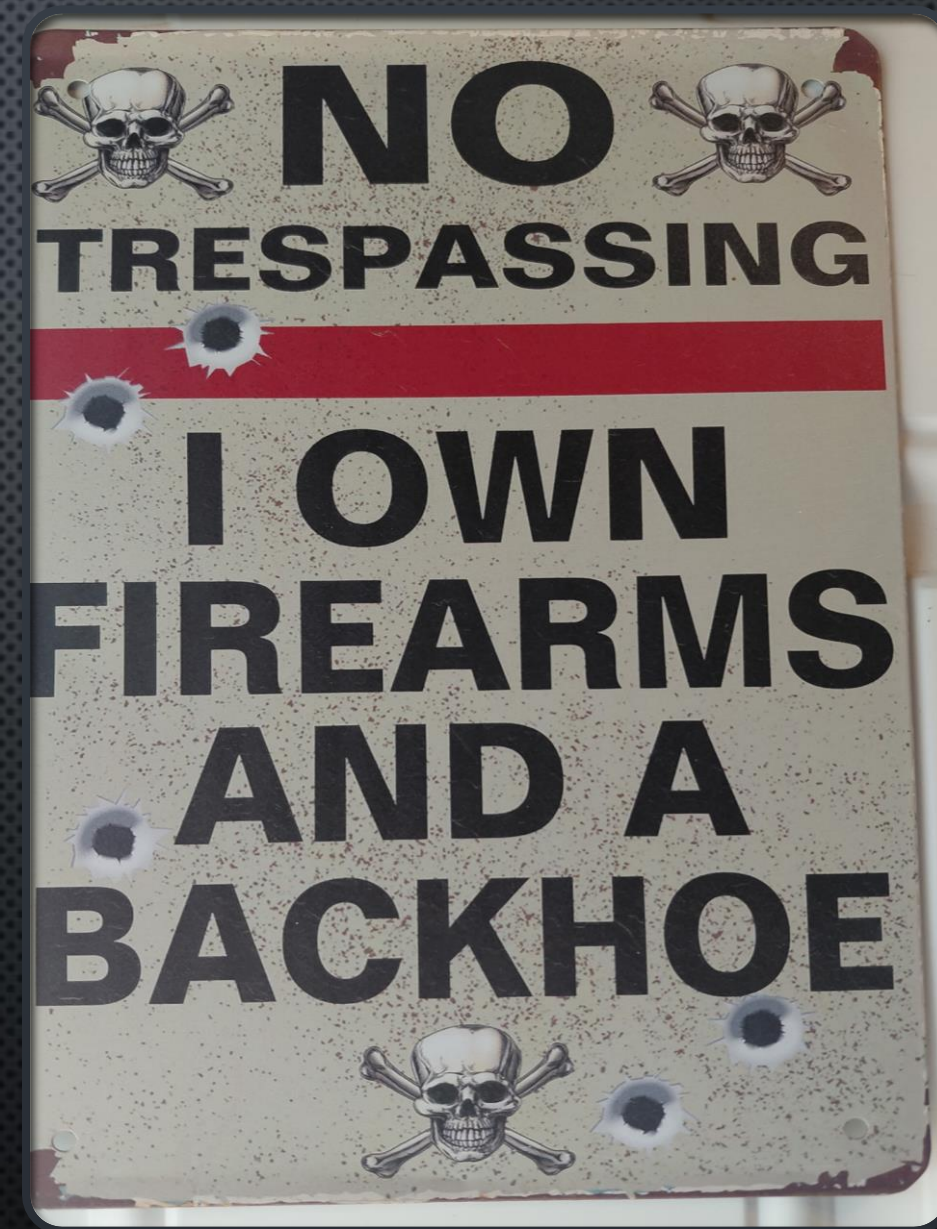


EXCEPTIONS TO CRIMINAL TRESPASS

- Navigable streams below the high-water mark
- Entry pursuant to express or implied invitation
 - Examples include “private” subdivision roads, driveways not posted, unfenced and unposted land adjoining public land, etc.
- A license, lease, easement, contract, permission, or other legal right
- Law enforcement during course and scope of duties
- Paramedics and Firefighters during course/scope of duties
- Any licensed professional authorized in course/scope
 - I believe this would include county building inspectors

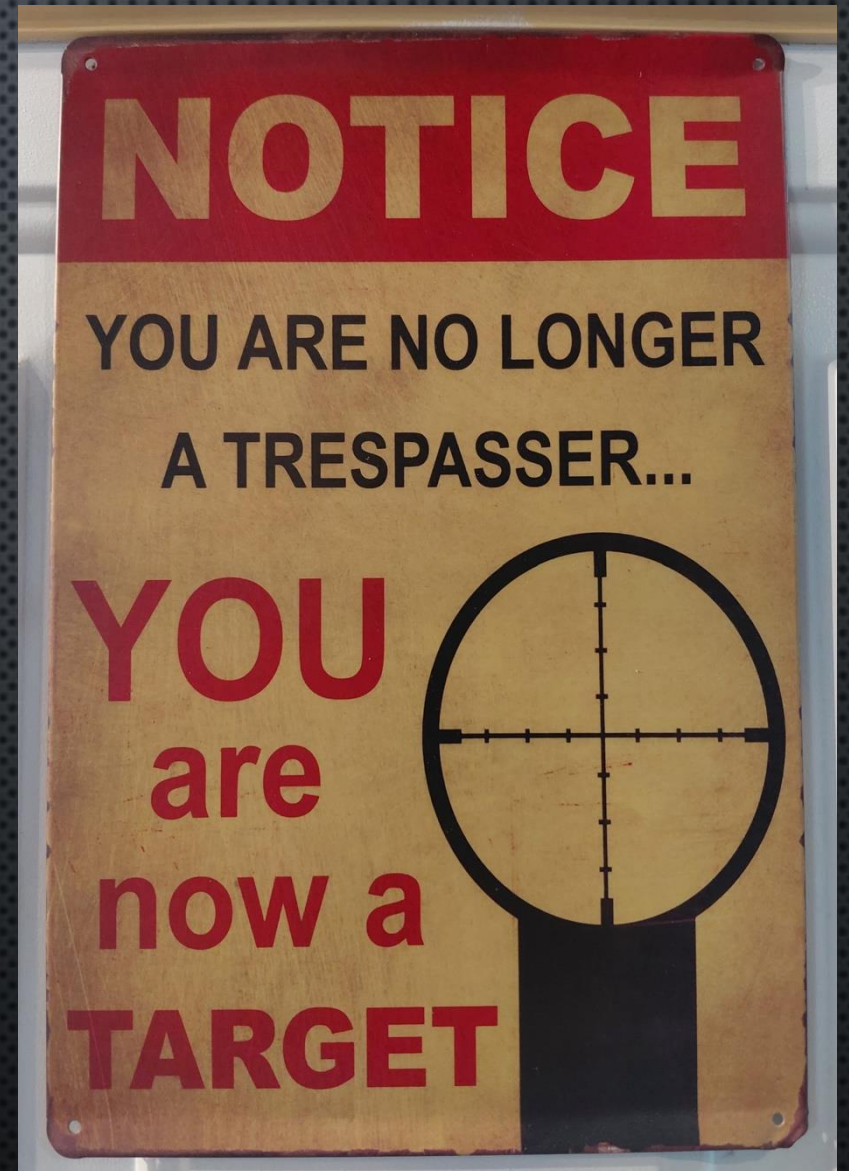
RECREATIONAL TRESPASS – I.C. 36 - 1603

- Basically makes it a crime to trespass for hunting, fishing, and recreation purposes
- Punishment structure is essentially the same as regular criminal trespass with some slight variations
 - Infraction penalty is either \$72 or \$300
 - Includes possible 1 year hunting license revocation
- Also includes landowner provision, making it a crime to post public land as private property when it is not



CIVIL TRESPASS – I.C. 6 - 202

- Mirrors Criminal Trespass Statute
- Provides Civil Remedies to Trespass, Including
 - \$500 award to land-owner for trespass alone
 - Actual damages if damage done to property
 - Attorneys fees
 - Costs associated with investigating the trespass
 - If trespass with damage over \$1k, damages 3x the amount of actual in addition to attorneys fees and investigation costs



PROPERTY RIGHTS PROTECTION ACT I.C. 18-7101-09

- New law passed by the Legislature in 2026
- Applies only to Gov. Agents *acting in official capacity*
- Not a Criminal Statute – Creates only civil remedies
- Remedy is a \$1000 fine, enforceable by either the private property owner or the prosecutor
- Intended to do away with the open fields doctrine
- Entry still okay as a normal visitor
 - Use walkway, knock on front door, etc.



PROPERTY RIGHTS PROTECTION ACT I.C. 18-7101-09

- New law passed by the Legislature in 2026
- Applies specifically to Gov. Agents

(2) "Government agent" means any employee or representative of the state of Idaho, any political subdivision thereof, or the federal government, acting in an official capacity.

18-7103. PRIVATE LAND PROTECTION -- PROTECTION FROM WARRANTLESS SEARCH. Government agents shall not, in the course and scope of their lawful duty, enter private land not open to the public without a valid search warrant, exigent circumstances, or lawful consent of the owner or lessee.



PROPERTY RIGHTS PROTECTION ACT I.C. 18-7101-09

- Remedy is a \$1000 fine, enforceable by either the private property owner or the prosecutor

18-7106. CIVIL LIABILITY. (1) Any government agent who knowingly violates the provisions of this chapter shall be subject to a civil penalty of one thousand dollars (\$1,000) per occurrence, payable to the property owner or lessee.

(2) A person aggrieved by a violation of this section may bring a civil action for actual damages and injunctive relief. The prevailing party shall be entitled to reasonable attorney's fees and costs.

(3) The civil penalty provided in this section may be enforced by the county prosecuting attorney or by an aggrieved person through a civil action in the magistrate division of the district court. The court shall enter judgment for one thousand dollars (\$1,000) per violation, together with any costs and attorney's fees as provided in subsection (2) of this section.



PROPERTY RIGHTS PROTECTION ACT I.C. 18-7101-09

➤ Entry still okay as a normal visitor

18-7105. LIMITED ACCESS FOR GOVERNMENT AGENTS. Notwithstanding section 18-7103, Idaho Code, a government agent may approach a residence's front entrance using a driveway, walkway, or similar pathway in a manner consistent with that of a private citizen. However, such government agent:

(1) Shall not conduct an investigatory search, inspection, or surveillance beyond what is visible from a lawful public vantage point, nor shall the agent enter other areas of the property not open to the public; and

(2) Shall promptly leave such private land upon the request of the owner or occupant, unless otherwise authorized by law to remain.



PROPERTY RIGHTS PROTECTION ACT EXCEPTIONS

- Exigent Circumstances (Applies only to Law Enforcement)
- Public Vantage Points
- Civil Process and Welfare Checks
- Administration of Water Rights
- Aerial Observation compliant with I.C. 21-213
- Noxious weed control
- Abatement District employees



PROPERTY RIGHTS PROTECTION ACT

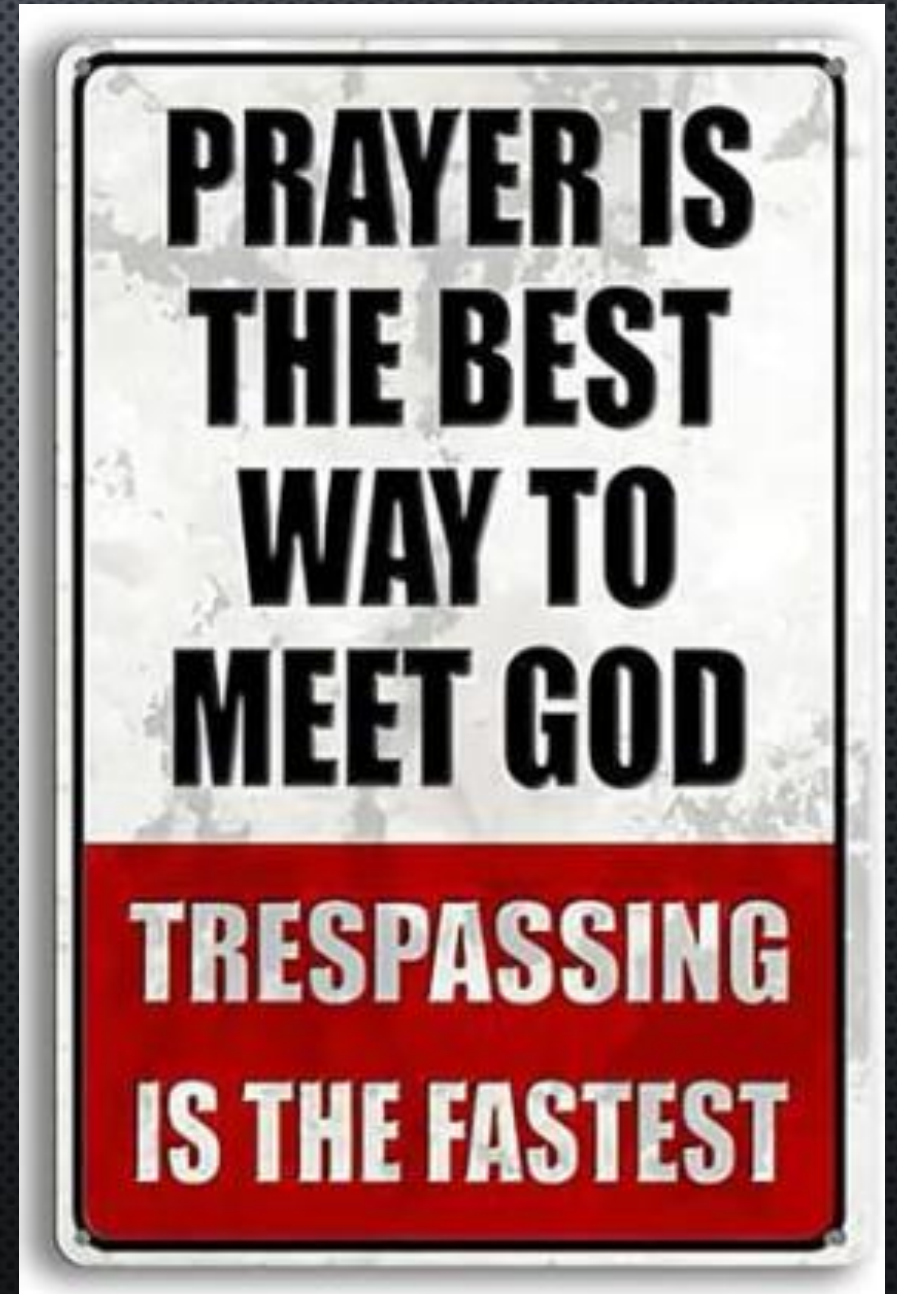
What's a government Agent to Do?

You can still walk up to the front door and knock on it like any other citizen

You can still take photographs from public vantage points

You can get permission – You can even require it. (Written Permission is best!)

County Sheriff and deputies are exempt...



PROPERTY RIGHTS PROTECTION ACT

If you decide to require permission in order to provide the service be sure to include the following:...

Name of the person or entity being given permission to access private property



The appropriate dates for which the permission is valid and a clear description of the property



A description of the scope of permission (time of day, parts of property, etc.)



Name and signature of the owner or agent authorized to provide the permission



PERMISSION TO ENTER PRIVATE PROPERTY FOR INSPECTION PURPOSES

Owner/Agent hereby grants the _____ County Building Department and each of its employees permission to access the private property located at _____ for the purpose of facilitating periodic building code compliance inspections of the build and build site located at the aforementioned parcel/property and associated with building permit #_____.

Such inspections may occur between the hours of 8 a.m. and 6 p.m. on regular week days and may encompass the entirety of the property located at _____.
Owner/Agent understands that failure to allow such inspections during the hours provided by this form can result in revocation of the building permit, denial of an occupancy permit upon completion of the build, or any other remedy allowed by law.

Date: _____

Name of Owner/Agent: _____

Signature of Owner/Agent: _____

The background of the slide features a large, semi-transparent logo of the Idaho Prosecuting Attorneys Association. The logo is circular, with a laurel wreath border. Inside the circle, the words "IDaho" are prominently displayed in a large, stylized font. Above "IDaho", the word "PROSECUTING" is written in a smaller, curved font. Below "IDaho", the word "ASSOCIATION" is written in a larger, curved font. The background of the logo depicts a landscape with a mountain range and a river.

QUESTIONS?

Brian Naugle

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