

AFFIRMATIVE DEFENSE

In accordance with CRS 18-1-901 process servers performing their work for the Colorado Court System are defined as **Public Servants**.

Accordingly, if you are charged with a criminal offense such as trespass in particular, a plausible affirmative defense is defined in CRS 18-1-710 titled AFFIRMATIVE DEFENCE, and CRS 18-1-701 Titled Execution of public duty, all section except paragraph (d). Please review the following statutes.

CRS 18-1-901. Definitions. (1) Definitions set forth in any section of this title apply wherever the same term is used in the same sense in another section of this title unless the definition is specifically limited or the context indicates that it is inapplicable.

(2) The terms defined in section 18-1-104 and in section 18-1-501, as well as the terms defined in subsection (3) of this section, are terms, which appear in various articles of this code. Other terms which need definition but which are used only in a limited number of sections of this code are defined in the particular section or article in which the terms appear.

(3) (o) "Public servant" means any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, **process server**, or otherwise in performing a governmental function, but the term does not include witnesses.

18-1-701. Execution of public duty. (1) Unless inconsistent with other provisions of sections 18-1-702 to 8-I 710. defining justifiable use of physical force, or with some other provision of law, **conduct which would otherwise constitute an offense is justifiable And not criminal when it is required or authorized by a provision of law or a Judicial decree binding in Colorado.**

(2) A "provision of law" and a "judicial decree" in subsection (1) of this section mean:

- (a) Laws defining duties and function of public servants;
- (b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;
- (c) **Laws governing the execution of legal process;**
- (d) Laws governing the military service and conduct of war;
- (e) Judgments and orders of court.

18-1-710. Affirmative defense. The issues of justification or exemption from criminal liability under sections 18-5-701 to 18-1-709 are affirmative defenses.

18-1-407. Affirmative defense. (1) --Affirmative defense” means that unless the state’s evidence raises the issue involving the alleged defense, the defendant. to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense. When an affirmative defense is raised by the defendant, the prosecution must prove each element of the crime beyond a reasonable doubt in addition to disproving beyond a reasonable doubt the affirmative defense. People v. Fincham. 799 P.2d 419 (Cob. App. 1990); Vega v. People, 893 P2d 107 (Cob. 1995).

18-4-503. Second degree criminal trespass. (1) A person commits the crime of second degree criminal trespass if such person unlawfully enters or remains in or upon premises of another which are enclosed in a manner designed to exclude intruders or are fenced or if such person knowingly and unlawfully enters or remains in or upon the common areas of a hotel, motel, condominium, or apartment building.

(2) Second degree criminal trespass is a class 3 misdemeanor. but;

(a) It is a class 2 misdemeanor if the premises have been classified by the county assessor for the county in which the land is situated as agricultural land pursuant to section 39-1-102 (56). C.R.S.; and

(b) It is a class 4 felony if the person trespasses on premises so classified as agricultural land with the intent to commit a felony thereon.

18-4-504 Third degree criminal trespass. (1) A person commits the crime of third degree criminal trespass if such person unlawfully enters or remains in or upon premise of another

(2) Third degree criminal trespass is a class 1 petty offense, but:

It is a class 3 misdemeanor if the premises have been classified by the county assessor for the county in which land is situated as agricultural land pursuant to section 39-1-102 (1.6).

AFFIRMATIVE DEFENCE

CRS 18-1-901(3)(o) (Definitions) Classifies Process Servers as Public Servants

CRS 18-1-701 sections (1) and (2)(a)(c)(e) (Execution of Public Duty)

infers affirmative defense for what would otherwise be a criminal offence, justification for alleged criminal act is spelled out in section (2)(a), (c), and (e) specifically.

CRS 18-1-710 Affirmative Defense

Cross reference in regards to justification for a criminal offence.

CRS 18-1-407 sections (1) and (2) Affirmative Defense

Stipulates that if Affirmative Defense is raised (by Defendant) as an exemption to a criminal violation, that it is the prosecutions responsibility to not only prove beyond a reasonable doubt all elements of the original charge (example: 2nd degree trespass by a process server in Execution of Public Duty, CRS 18-1-407) the prosecution must also disprove beyond a reasonable doubt the Affirmative Defense to criminal charges.

CRS 18-4-503 Second Degree Trespass (Full Title)

Defines Second Degree Trespass and all elements to the offence. This would be the second most common criminal charge against a process server

CRS 18-4-504 Third Degree Trespass (Full Title)

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The above information is the most up to date source material available, and is current as of the year 2000 legislative session.

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Right Behind Your Driver's License or I.D.**

**JUSTIFICATION AND EXEMPTIONS FROM
CRIMINAL RESPONSIBILITY**

18-1-701. Execution of public duty. (1) Unless inconsistent with other provisions of sections 18-1-702 to 18-1-710, defining justifiable use of physical force, or with some other provision of law, **conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by a provision of law or a judicial decree binding in Colorado.**

(2) A "provision of law" and a "judicial decree" in subsection (1) of this section mean:

- (a) Laws defining duties and functions of public servants;
- (b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;
- (c) **Laws governing the execution of legal process;**
- (d) Laws governing the military service and conduct of war;
- (e) Judgments and orders of court.

Source: R&RE,L.71,p.407,§1; C.R.S. 1963 §40-1-801