

Law Bulletin



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Intentional Harm to Farm Property: Legal Options and Strategies for Farm Owners

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Rural crime is a reality that farm owners always face. Unfortunately, current social and political conditions have added new dimensions to that reality. Increased population in rural areas can also increase trespassing and vandalism problems. Animal activists, opponents of farm practices, or unhappy employees may interfere with farming activities or damage property and animals. Illegal drug activity might lead to unauthorized use of the property and theft of chemicals and equipment. What should a farmer do when a farm security incident occurs, and what laws apply to these types of harm? In this bulletin, we explain strategies for dealing with farm security issues that result in harm to farm property, laws that apply to these types of problems, and measures for preventing future occurrences.

What to do when an incident occurs

We don't always think clearly in the midst of an emergency or a traumatic event, so have a prepared plan for responding to a farm security occurrence. Put the plan in writing and review it with others who may be in charge during a

Common farm security threats today

- Releasing or harming livestock
- Theft of anhydrous or chemicals
- Damage to crops by trespassers
- Contamination of well or water source
- Deliberate release of chemicals or nutrients
- Destruction of bioengineered products
- Introduction of contagious diseases
- Theft of animals or equipment
- Theft or destruction of timber and crops
- Setting fire to structures, equipment or land

Who are the potential offenders?

- Thieves
- Trespassers
- Competitors
- Illegal drug makers
- Activists or protestors
- Unhappy employees
- Extremists or terrorists

security event. Include these three immediate actions to take when there is a security problem:

- 1. Call local law enforcement.** If a crime or emergency is in progress, it's appropriate to call or text 911 to report the event. Be prepared to quickly tell why you're calling, then let the dispatcher ask you questions and direct the information flow. For non-emergency situations and incidents not in progress, call the sheriff or local police. Some law enforcement offices also have online options for reporting occurrences and suspicious activities, and will ask for a

description of who or what you saw, when you saw it, and where it occurred.

2. Secure the property and preserve the evidence.

Close gates, windows and doors, and lock up the location, being sure to keep people and animals away from the site. Immediately record what you saw or heard, including the time and relevant information such as the items missing, condition of the property, previous suspicious activity, and people who were in the area previous to and after the incident. Without touching or moving anything, take photos or videos to document the situation. Don't repair or remove any property damage before investigations begin, unless it's absolutely necessary to do so to secure the area.

3. Contact your insurance provider.

Your insurance policy likely requires you to give "prompt notification" of property damage that might be covered by the policy, such as theft or vandalism damages. This allows the company to investigate the situation immediately, while evidence is fresh. Failing to give prompt notice might be considered a violation of your contractual obligations under your insurance policy and could lead to a loss of your insurance coverage.

Options for legal action

Conferring with law enforcement and reviewing with an attorney is necessary to determining whether criminal, civil or both types of actions may result from the occurrence. Table 1 reviews the many types of criminal and civil actions that could apply to property harm situations in Ohio.

Criminal action. Local law enforcement may choose to pursue a criminal action. Where there is a criminal conviction, a crime victim might

receive "restitution," which is compensation for the harm resulting from the crime. Some criminal laws require an order of restitution, while others allow the prosecutor to determine whether to seek restitution.

Here are the most common criminal actions that might apply to a farm security episode, explained further in Table 1:

- Agricultural product or equipment terrorism
- Animal or ecological terrorism based on corrupt activity
- Arson
- Aggravated arson
- Breaking and entering
- Criminal damaging or endangering
- Criminal mischief
- Criminal trespass
- Injuring animals
- Poisoning animals
- Reckless destruction of crops or timber
- Theft
- Vandalism
- Attempt, complicity and conspiracy regarding any of the above crimes

Civil action. A civil action might also result from a farm security situation. A harmed party can initiate a civil action separate from and without law enforcement involvement. Sometimes an incident might not rise to the level of a crime or law enforcement may not be willing to prosecute a crime due to insufficient evidence, so a civil action is the route for redressing harm. Additionally, a civil action might be necessary if the prosecution could not convince the jury "beyond a reasonable doubt" that the offender committed the crime. A civil action requires a lower "preponderance of the evidence" standard of proof—that it is "more likely than not" that the offender was responsible for the act. For this reason, it's not unusual for a civil action to follow

a criminal action that did not result in a conviction.

Even if there is a criminal conviction, it's also possible to pursue a civil action if the criminal case doesn't include or adequately address property damages. Ohio Revised Code § 2307.60 states that a person injured by a criminal act may recover full damages in a civil law suit unless excepted by law, and may also recover costs and attorney fees and punitive damages if authorized.

Here are most common civil actions in Ohio that might apply to a farm security incident, explained further in Table 1:

- Civil action for damages for criminal act
- Civil theft and willful damage
- Civil trespass to personal property, such as animals and equipment
- Civil trespass to real property
- Civil vandalism
- Civil action for animal or ecological terrorism
- Destruction of crops or timber

Table 1. Criminal and Civil Laws Addressing Harm to Farm Property from Security Events

<p>Agricultural product or equipment terrorism</p>	<p>To commit a specified offense involving any agriculture product or equipment with the intent to: (1) intimidate or coerce a civilian population; (2) influence the policy of any government by intimidation or coercion; (3) affect the conduct of any government; or (4) interrupt or interfere with agricultural production, agricultural research, or equipment in order to disrupt or influence consumer confidence or agricultural production methods. “Specified offense” includes aggravated arson, arson, vandalism, criminal damaging or endangering, criminal mischief, breaking and entering, criminal trespass, or theft. ORC § 901.511</p>
<p>Corrupt activity – animal or ecological terrorism</p>	<p>As a person employed by or associated with an enterprise, (1) to conduct or participate in the affairs of the enterprise through a pattern of corrupt activity or (2) to acquire or maintain any interest in or control of any enterprise or real property through a pattern of corrupt activity. “Enterprise” means any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, other legal entity, or any organization, association, or group of people not technically a legal entity. “Corrupt activity” includes, among other things, animal or ecological terrorism, which means the commission of any felony that involves (1) causing or creating a substantial risk of physical harm to any property of another; (2) the use of dangerous or deadly weaponry; or (3) purposely, knowingly, or recklessly causing physical harm to property with the intent to obstruct, impede, or deter any person from participating in a lawful animal activity, from mining, foresting, harvesting, gathering or processing natural resources, or from being lawfully present in or on an animal facility or research facility. ORC §§ 2923.31 and 2923.32</p>
<p>Civil action for animal or ecological terrorism</p>	<p>Any person who is injured or threatened with injury as a result of Animal or Ecological Terrorism may institute a civil proceeding seeking relief from any person whose conduct constitutes or allegedly constitutes a corrupt activity, or who conspired or allegedly conspired to engage in a corrupt activity. ORC § 2923.34</p>
<p>Injuring animals</p>	<p>To maliciously or willfully, without consent of the owner, kill or injure a horse, mare, foal, filly, jack, mule, sheep, goat, cow, steer, bull, heifer, ass, ox, swine, dog, cat or other domestic animals that is the property of another. ORC § 959.02</p>
<p>Poisoning animals</p>	<p>To maliciously or willfully, without consent of the owner, administer poison or give or place poisoned food to or near a horse, mare, foal, filly, jack, mule, sheep, goat, cow, steer, bull, heifer, ass, ox, swine, dog, cat or other domestic animals that is the property of another. ORC § 959.03</p>
<p>Arson</p>	<p>Using fire or causing an explosion to knowingly cause or create a substantial risk of physical harm to (1) any property of another, (2) any lands such as timberland or green lands, or (3) any government buildings. ORC § 2909.03</p>

Aggravated arson	Using fire or causing an explosion to knowingly (1) cause physical harm to an occupied structure or (2) create a substantial risk of physical harm to an occupied structure or a person. ORC § 2909.02
Breaking and entering	To use force, stealth, or deception to trespass on land or premises of another or in an unoccupied structure with the purpose of committing a theft offense or felony. ORC § 2911.13
Civil theft or willful damage	To commit willful damage or a theft offense that causes harm to a person or property. ORC § 2307.61.
Criminal theft	To knowingly obtain or exert control over property or services of another by deception, threat or intimidation and without or beyond the scope of consent of the owner. ORC § 2913.02 (Note that there are other types of theft that could apply to a situation, based on value of stolen property.)
Civil trespass to personal property	(1) Dispossessing movable personal property such as livestock or vehicles from its owner, (2) damaging the personal property so as to impair its condition, quality or value, or (3) depriving the owner of the use of personal property for a substantial time. (Common law)
Civil trespass to real property	Without permission or authority, to physically or unlawfully invade another's real property in a way that results in damage to the property. (Common law)
Criminal trespass	To (1) knowingly enter or remain on another's land or premises, (2) recklessly enter or remain on another's land or premises without authorized access, or (3) negligently fail or refuse to leave land or premises after being notified of unauthorized access by signage or by the owner or occupant. ORC § 2911.21
Criminal damaging or endangering	To (1) knowingly cause or create a substantial risk of physical harm to property of another, or (2) recklessly cause or create a substantial risk of harm to any property of another by fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other dangerous substances. ORC § 2909.06
Criminal mischief	To (1) knowingly move, deface, damage, destroy, or improperly tamper with another's property; (2) interfere with use or enjoyment of another's property by employing a tear gas device, stink bomb, smoke generator or other device releasing a harmful or offensive substance, or (3) purposely interfere with use or enjoyment of another's property by setting fire to land or placing personal property that has been set on another's land. ORC § 2909.07
Destruction of crops or timber	To recklessly cut down, destroy, girdle or injure a vine, bush, shrub, sapling, tree or crop standing or growing on the land of another or upon public land. ORC § 901.51
Civil action for damages for criminal act	Anyone injured in person or property by a criminal act may recover full damages in a civil action unless specifically excepted by law. The amount of recovery may include the costs of maintaining the civil action, attorney's fees, and/or punitive damages. ORC § 2307.60
Criminal vandalism	To knowingly cause serious physical harm to (1) an occupied structure or its contents, (2) property owned or possessed by another when the property is necessary for the owner or possessor's profession, trade or occupation, (3) property owned by a governmental entity, or (4) any structure or monument used as a memorial or enclosure for the dead. ORC § 2909.05
Civil action for damages for vandalism	Any person who suffers injury or loss to person or property as a result of vandalism, may pursue a civil action against the offender and may recover full compensatory damages, including, but not limited to, damages for emotional distress, punitive damages, court costs, other reasonable expenses incurred in maintaining the civil action, and attorney's fees. ORC § 2307.70
Attempt	To purposely or knowingly engage in conduct that, if successful, would result in a crime. ORC § 2923.02

Complicity	To (1) solicit or procure another to commit a crime, (2) aid another in committing a crime, (3) conspire with another to commit a crime, or (4) cause an innocent or irresponsible person to commit a crime. ORC § 2923.03
Conspiracy	To commit or promote or facilitate the commission of offenses such as aggravated arson, arson, engaging in a pattern of corrupt activity, or to trespass in a habitation when a person is or is likely to be present. ORC § 2923.01

Strategies for the future: managing farm security risk

There are many ways to reduce risks and impacts of harm to the farm from a security incident:

1. **Think deterrence, detection and delay.**

Deter intruders by enclosing and locking buildings, equipment and supplies, installing bright lighting and motion detectors, and using gates at property access points. A camera or security system serves the dual purposes of deterrence and detection of an intruder's presence or identity. A dog or routine surveillance by owners, employees and neighbors can also alert of an intrusion. Delay tactics can create time necessary for apprehending an intruder—consider barriers and automatic closures, and distance livestock, structures and equipment away from roads and easy access points.

2. **Ensure that emergency responders can locate your property quickly.**

Make the farm address readily observable to law enforcement and other responders. Obtain a reflective address number sign from the emergency management agency and display it near the entrance, without blockage by vegetation or structures. Use lighting if necessary, and check that the address is visible from all directions.

3. **Mark and post property boundaries.**

Keep in mind that local law enforcement might not be willing to prosecute someone for criminal trespass if the property is **not** posted and

marked. That's because prosecution of many criminal laws requires proving that the intruder "knowingly" or "recklessly" entered the property without authorization or failed to leave after being notified by signage or by the owner. Make sure boundaries of the property are obvious and post "no trespassing," "no entry," or "private property" signs that clarify that someone may not enter or remain on the property without your permission. Inspect boundaries and signs regularly.

4. **Manage who has permission to be on the property.**

Someone who has permission to be on the property can turn into a security threat with little notice. Be cautious about who you allow on the property and be aware that permission can be "implied" by behaviors such as advertising goods for sale, allowing a trespass to keep occurring, letting a terminated employee keep keys or access, and accepting on-site solicitations from sales or repair people. Create a "check point" for visitors—have them sign in at a specific place with an identified parking area, and limit their access to buildings and vulnerable areas. When possible, schedule deliveries, meetings and repair work and let employees know when to expect the visitors.

5. **Don't be too predictable.**

Can someone observe the farm's patterns and determine an opportune time to intrude? Avoid or disguise easily detectable routines that help someone know what's happening on the property and when few people are around.

6. Track incidents of suspicious activity. Train employees and family to recognize when someone is watching the farm, asking questions about the property, showing up with unexpected deliveries, or leaving evidence of a trespass or illegal activity. Maintain records of suspicious activities and report them to local law enforcement.

7. Know your employees and what they're doing. Investigate potential employees carefully. Follow up on references and conduct background checks. Consider employee surveillance cameras for barns and critical areas. Be especially careful to keep an eye on disgruntled employees.

8. Inspect incoming deliveries. Monitor who is delivering supplies. Ensure that feed, seed, chemicals and other incoming supplies are from known suppliers and show no signs of tampering.

9. Secure the farm's utility services and storage site. Restrict access to your water, electric and gas supply lines and tanks, lagoons or other storage areas.

10. Review insurance coverage. Review your security concerns with your insurance professional to tailor the policy to your needs. Familiarize yourself with obligations under the policy to ensure compliance for claims.

11. Maintain property identification records. Keep records, photos and videos of personal property, including serial numbers and animal identification.

12. Consider using an independent professional security consultant. Request a physical protection evaluation and characterization of your property and assets. Ask the professional

consultant to design a physical protection system based on your risk assessment.

References and additional resources

"Farm Security Awareness Form," OHIO DEP'T OF AGRICULTURE,

<https://agri.ohio.gov/wps/portal/gov/oda/divisions/dairy/forms/Farm-Security-Awareness>.

"Farm Security Course," EXTENSION DISASTER EDUCATION NETWORK, COOPERATIVE EXTENSION SYSTEM, <https://campus.extension.org/course/view.php?id=54>.

"Rural Security Planning, Protecting Family, Friends, and Farm," PURDUE UNIVERSITY, <https://extension.purdue.edu/eden/ruralsecurity/>

Where to find Ohio laws

The Ohio Revised Code (ORC) is available online at <http://codes.ohio.gov/orc>.

- Most of the criminal laws we mention are in Title 29 at <http://codes.ohio.gov/orc/29>.
- Most of the civil laws we mention are in Title 23 at <http://codes.ohio.gov/orc/23>

FOR MORE INFORMATION FROM OSU EXTENSION'S AGRICULTURAL & RESOURCE LAW PROGRAM:

- Visit our website at <http://farmoffice.osu.edu>.
- Sign up at <http://farmoffice.osu.edu/blog> to receive our blog postings on legal issues of importance to Ohio agriculture.
- Contact us by e-mail at aglaw@osu.edu.



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