

76-2-303 Entrapment.

- (1) It is a defense that the actor was entrapped into committing the offense. Entrapment occurs when a peace officer or a person directed by or acting in cooperation with the officer induces the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.
- (2) The defense of entrapment shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening the injury to a person other than the person perpetrating the entrapment.
- (3) The defense provided by this section is available even though the actor denies commission of the conduct charged to constitute the offense.
- (4) Upon written motion of the defendant, the court shall hear evidence on the issue and shall determine as a matter of fact and law whether the defendant was entrapped to commit the offense. Defendant's motion shall be made at least 10 days before trial except the court for good cause shown may permit a later filing.
- (5) Should the court determine that the defendant was entrapped, it shall dismiss the case with prejudice, but if the court determines the defendant was not entrapped, such issue may be presented by the defendant to the jury at trial. Any order by the court dismissing a case based on entrapment shall be appealable by the state.
- (6) In any hearing before a judge or jury where the defense of entrapment is an issue, past offenses of the defendant shall not be admitted except that in a trial where the defendant testifies he may be asked of his past convictions for felonies and any testimony given by the defendant at a hearing on entrapment may be used to impeach his testimony at trial.

Amended by Chapter 282, 1998 General Session