

## DAMAGE AND TRESPASS TO PROPERTY

### **716.1 Criminal mischief defined.**

Any damage, defacing, alteration, or destruction of property is criminal mischief when done intentionally by one who has no right to so act.

[C51, § 2679, 26812683, 26862688, 2690, 2715, 2753; R60, § 1766, 4319, 43214323, 43264328, 43304332, 4357, 4403; C73, § 1564, 38973899, 3978, 39803982, 39853987, 39893992, 4021, 4082; C97, § 588, 2466, 48004806, 4808, 4809, 4812, 48224828, 5054; S13, § 1989-a15, 4808, 4822, 4823, 4830-a, -b, -c; SS15, § 2900-e; C24, 27, 31, 35, 39, § **13080, 13082, 13083, 13085, 1308813091, 1309313099, 13102, 13107, 1311213117, 13122, 13124**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 714.1, 714.3714.5, 714.8714.11, 714.14714.20, 714.23, 714.28, 716.1716.6, 716.9, 716.12; C79, 81, § 716.1]

2002 Acts, ch 1049, §1

### **716.2 Multiple acts.**

Whenever criminal mischief is committed upon more than one item of property at approximately the same location or time period, so that all of these acts of mischief can be attributed to a single scheme, plan or conspiracy, such acts shall be considered as a single act of criminal mischief.

[C79, 81, § 716.2]

### **716.3 Criminal mischief in the first degree.**

Criminal mischief is criminal mischief in the first degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed is more than ten thousand dollars, or if such acts are intended to or do in fact cause a substantial interruption or impairment of service rendered to the public by a gas, electric, steam or waterworks corporation, telephone or telegraph corporation, common carrier, or a public utility operated by a municipality. Criminal mischief in the first degree is a class "C" felony.

[C51, § 2680; R60, § 4320; C73, § 3979; C97, § 4807; S13, § 4807; C24, 27, 31, 35, 39, § **13120**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 716.7; C79, 81, § 716.3]

92 Acts, ch 1060, § 8

### **716.4 Criminal mischief in the second degree.**

Criminal mischief is criminal mischief in the second degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds one thousand dollars but does not exceed ten thousand dollars. Criminal mischief in the second degree is a class "D" felony.

[C79, 81, § 716.4]

92 Acts, ch 1060, § 9

### **716.5 Criminal mischief in the third degree.**

Criminal mischief is criminal mischief in the third degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds five hundred dollars, but does not exceed one thousand dollars, or if the property is a deed, will, commercial paper or any civil or criminal process or other instrument having legal effect, or if the act consists of rendering substantially less effective than before any

light, signal, obstruction, barricade, or guard which has been placed or erected for the purpose of enclosing any unsafe or dangerous place or of alerting persons to an unsafe or dangerous condition. Criminal mischief in the third degree is an aggravated misdemeanor.

A person commits criminal mischief in the third degree who does either of the following:

1. Intentionally disinters human remains from a burial site without lawful authority.
2. Intentionally disinters human remains that have state and national significance from an historical or scientific standpoint for the inspiration and benefit of the United States without the permission of the state archaeologist.

[C51, § 2638, 2714, 2746; R60, § 4265, 4356, 4396; C73, § 3929, 4017, 4075; C97, § 4865, 4945, 5043; C24, 27, 31, 35, 39, § **13050, 13100, 13148**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 713.5, 714.21, 718.10; C79, 81, § 716.5]

83 Acts, ch 99, § 1; 92 Acts, ch 1060, § 10

### **716.6 Criminal mischief in the fourth and fifth degrees.**

Criminal mischief is criminal mischief in the fourth degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds two hundred dollars, but does not exceed five hundred dollars. Criminal mischief in the fourth degree is a serious misdemeanor. All criminal mischief which is not criminal mischief in the first degree, second degree, third degree, or fourth degree is criminal mischief in the fifth degree. Criminal mischief in the fifth degree is a simple misdemeanor.

[C79, 81, § 716.6]

83 Acts, ch 99, § 2; 92 Acts, ch 1060, § 11; 99 Acts, ch 153, §14

### **716.6A Criminal mischief in violation of individual rights.**

A violation of sections 716.5 and 716.6, which is also a hate crime as defined in section 729A.2, shall be classified and punished as an offense one degree higher than the underlying offense.

92 Acts, ch 1157, § 5

### **716.6B Unauthorized computer access penalties civil cause of action.**

1. A person who knowingly and without authorization accesses a computer, computer system, or computer network commits the following:

*a.* An aggravated misdemeanor if computer data is accessed that contains a confidential record, as defined in section 22.7, operational or support data of a public utility, as defined in section 476.1, operational or support data of a rural water district incorporated pursuant to chapter 357A or 504, operational or support data of a municipal utility organized pursuant to chapter 388 or 389, operational or support data of a public airport, or a trade secret, as defined in section 550.2.

*b.* A serious misdemeanor if computer data is copied, altered, or deleted.

*c.* A simple misdemeanor for any access which is not an aggravated or serious misdemeanor.

2. The prosecuting attorney or an aggrieved person may institute civil proceedings against any person in

district court seeking relief from conduct constituting a violation of this section or to prevent, restrain, or remedy such a violation.

2000 Acts, ch 1201, §11; 2002 Acts, ch 1049, §2; 2003 Acts, ch 75, §1; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394

## Footnotes

Computer terminology, see §702.1A

### **716.7 Trespass defined.**

1. The term "*property*" shall include any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure whether publicly or privately owned.

2. The term "*trespass*" shall mean one or more of the following acts:

*a.* Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate, or to hunt, fish or trap on or in the property. This paragraph does not prohibit the unarmed pursuit of game or furbearing animals lawfully injured or killed which come to rest on or escape to the property of another.

*b.* Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

*c.* Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

*d.* Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

*e.* Entering or remaining upon or in railway property without lawful authority or without the consent of the railway corporation which owns, leases, or operates the railway property. This paragraph does not apply to passage over a railroad right-of-way, other than a track, railroad roadbed, viaduct, bridge, trestle, or railroad yard, by an unarmed person if the person has not been notified or requested to abstain from entering on to the right-of-way or to vacate the right-of-way and the passage over the right-of-way does not interfere with the operation of the railroad.

3. The term "*trespass*" shall not mean entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property.

4. The term "*trespass*" does not mean the entering upon the right-of-way of a public road or highway.

5. For purposes of this section, "*railway property*" means all tangible real and personal property owned, leased, or operated by a railway corporation with the exception of any administrative building or offices of the railway corporation.

For purposes of this section, "*railway corporation*" means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within this state.

6. This section shall not apply to the following persons:

a. Representatives of the state department of transportation, the federal railroad administration, or the national transportation safety board who enter or remain upon or in railway property while engaged in the performance of official duties.

b. Employees of a railway corporation who enter or remain upon or in railway property while acting in the course of employment.

c. Any person who is engaged in the operation of a lawful business on railway station grounds or in the railway depot.

[C51, § 2684; R60, § 4324; C73, § 3983; C97, § 4793, 4829; C24, 27, 31, 35, 39, § **13086, 13374**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 714.6, 729.1; C79, 81, § 716.7; 81 Acts, ch 205, § 1]

88 Acts, ch 1212, §1; 98 Acts, ch 1067, § 1, 2

### **716.8 Penalties.**

1. Any person who knowingly trespasses upon the property of another commits a simple misdemeanor.

2. Any person committing a trespass as defined in section 716.7 which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits a serious misdemeanor.

3. A person who knowingly trespasses on the property of another with the intent to commit a hate crime, as defined in section 729A.2, commits a serious misdemeanor.

4. A person committing a trespass as defined in section 716.7 with the intent to commit a hate crime which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits an aggravated misdemeanor.

[C73, 75, 77, § 729.2, 729.3; C79, 81, § 716.8]

92 Acts, ch 1157, § 6; 99 Acts, ch 153, §15, 16

### **716.9 Stowing away.**

A person commits the simple misdemeanor offense of stowing away when, without lawful authority or the consent of a railway corporation, the person does either of the following:

1. Rides on the outside of a train or train component.

2. Rides on the inside of a train or train component which is not a passenger car.

98 Acts, ch 1067, §3

### **716.10 Railroad vandalism.**

1. A person commits railroad vandalism when the person does any of the following:

*a.* Shoots, fires, or otherwise discharges a firearm or other device at a train or train component.

*b.* Launches, releases, propels, casts, or directs a projectile, missile, or other device at a train or train component.

*c.* Intentionally throws or drops an object on or onto a train or train component.

*d.* Intentionally places or drops an object on or onto a railroad track.

*e.* Without the consent of the railway corporation, takes, removes, defaces, alters, or obscures any of the following:

(1) A railroad signal.

(2) A train control system.

(3) A train dispatching system.

(4) A warning signal.

(5) A highway-railroad grade crossing signal or gate.

(6) A railroad sign, placard, or marker.

*f.* Without the consent of the railway corporation, removes parts or appurtenances from, damages, impairs, disables, interferes with the operation of, or renders inoperable any of the following:

(1) A railroad signal.

(2) A train control system.

(3) A train dispatching system.

(4) A warning signal.

(5) A highway-railroad grade crossing signal or gate.

(6) A railroad sign, placard, or marker.

*g.* Without the consent of the railway corporation, taking, removing, disabling, tampering, changing, or altering a part or component of any operating mechanism or safety device of any train or train component.

*h.* Without the consent of the railway corporation, takes, removes, tampers, changes, alters, or interferes with any of the following:

(1) A railroad roadbed.

(2) A railroad rail.

(3) A railroad tie.

(4) A railroad frog.

- (5) A railroad sleeper.
- (6) A railroad switch.
- (7) A railroad viaduct.
- (8) A railroad bridge.
- (9) A railroad trestle.
- (10) A railroad culvert.
- (11) A railroad embankment.
- (12) Any other structure or appliance which pertains or is appurtenant to a railroad.

2. *a.* A person commits railroad vandalism in the first degree if the person intentionally commits railroad vandalism which results in the death of any person. Railroad vandalism in the first degree is a class "B" felony. However, notwithstanding section 902.9, subsection 2, the maximum sentence for a person convicted under this section shall be a period of confinement of not more than fifty years.

*b.* A person commits railroad vandalism in the second degree if the person intentionally commits railroad vandalism which results in serious injury to any person. Railroad vandalism in the second degree is a class "B" felony.

*c.* A person commits railroad vandalism in the third degree if the person intentionally commits railroad vandalism which results in bodily injury to any person or results in property damage which costs more than ten thousand dollars to replace, repair, or restore. Railroad vandalism in the third degree is a class "C" felony.

*d.* A person commits railroad vandalism in the fourth degree if the person intentionally commits railroad vandalism which results in property damage which costs ten thousand dollars or less but more than one thousand dollars to replace, repair, or restore. Railroad vandalism in the fourth degree is a class "D" felony.

*e.* A person commits railroad vandalism in the fifth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than five hundred dollars but does not exceed one thousand dollars to replace, repair, or restore. Railroad vandalism in the fifth degree is an aggravated misdemeanor.

*f.* A person commits railroad vandalism in the sixth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than one hundred dollars but does not exceed five hundred dollars to replace, repair, or restore. Railroad vandalism in the sixth degree is a serious misdemeanor.

*g.* A person commits railroad vandalism in the seventh degree if the person intentionally commits railroad vandalism which results in property damage which costs one hundred dollars or less to replace, repair, or restore. Railroad vandalism in the seventh degree is a simple misdemeanor.

3. For purposes of this section, "*railway corporation*" means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within the state.

For purposes of this section, "*train component*" means any locomotive, engine, tender, railroad car, passenger car, freight car, box car, tank car, hopper car, flatbed, container, work equipment, rail-mounted equipment, or any other railroad rolling stock.

For purposes of this section, "*train*" means a series of two or more train components which are coupled together in a line.

98 Acts, ch 1067, §4