

# DAVENPORT IOWA NUISANCES



## Chapter 8.12 NUISANCES

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## I. GENERAL PROVISIONS

**8.12.010 Definitions.** For use in this chapter, the following terms are defined as follows:

- A. "Abate" means to permanently eliminate.
- B. "City administrator" means the city administrator and his designees including, but not limited to, attorneys within the legal department, the police department, and the fire department.
- C. "Dangerous driving" means driving which results in a crash or other property damage, reckless driving as defined in Section 10.68.170, or careless driving as defined in Section 10.68.175 within one thousand five hundred feet of the property at issue.
- D. "Environmental or solid waste violation" means a violation of Chapter 8.08, Chapter 8.14, or Chapter 10.76 of the Davenport Municipal Code.
- E. "Nuisance" means whatever: poses an unreasonable threat to health or safety; interferes with the comfortable enjoyment of life or property in an unreasonable manner; or causes annoyance or distress to a reasonable person of normal sensitivities. In addition to the above definition and to nuisances as designated by other provisions of the Davenport Municipal Code and state law, the following are declared to be nuisances:
  - 1. The erecting, continuing, or using of any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public;
  - 2. The storage, placing, keeping, or leaving of building materials, appliances, furniture, machinery, equipment, or other similar personal property or fixtures outside of a dwelling or accessory building on residential lots so as to impair the residential character and/or property value of the surrounding lots or neighborhood. This definition shall not apply to boats, camping trailers, or similar recreational vehicles which are not otherwise junk vehicles under Chapter 10.76; nor shall it apply to building materials, machinery, and equipment on a residential lot when, and only when, an active and valid building permit has been issued for that residential lot.
- F. "Permittee" means a person whose presence on the property in issue the interested party suffers, allows, or consents to, or acquiesces to by failing to remove or prevent.
- G. "Property owner" means the record holder of legal title as shown by the records of the county auditor, unless there exists a contract purchaser of record, in which case it means the contract purchaser.
- H. "Residential lot" means any lot of record within the city that has been zoned to be included within an R-1, R-2, R-3D, R-4D, R-5M, R-6M, or R-7 district pursuant to Title 17 of this code.

- I. "Building materials" means any material, including but not limited to, lumber, brick, concrete, plaster, plaster board, gutters, floor coverings, or other similar substances accumulated as a result of repairs, remodeling, or additions to existing buildings, or construction of new buildings, or demolition of existing structures.
- J. "Property" means any property, including land and that which is affixed, incidental, or appurtenant to land, including, but not limited to, any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit, or portion thereof. For property consisting of more than one unit, property may be limited to the unit or the portion of the property on which any nuisance activity has occurred or is occurring, but includes areas of the property used in common by all units of the property, including without limitation, other structures erected on the property and areas used for parking, loading, and landscaping.
- K. "Founded" means that a call for service resulted in the verification that nuisance activity had occurred. Incidents of domestic violence may be categorized as founded, if warranted. Founded domestic violence incidents shall not be a factor when determining whether a property has met the criteria for a problem property nuisance designation, or when a penalty for failing to abate a nuisance is imposed, absent additional circumstances or crimes affecting other unrelated third parties. (Ord. 2010-356 § 1: Ord. 2006-264 § 1: Ord. 2002-31 § 3: Ord. 99-267 § 1: Ord. 95-634 §§ 1-4: Ord. 82-267 § 1: Ord. 78-1097 (part): prior code § 23-03-1).

**8.12.015 Problem area nuisance.** A problem area nuisance exists:

- A. When one or more of the following acts are committed within a period of twelve consecutive months upon a property, or within one thousand five hundred feet of the property, by an interested party or their permittee(s):
1. Manufacture or delivery of a controlled substance in violation of Iowa Code Chapter 124;
  2. Kidnapping as defined in Iowa Code Chapter 710;
  3. Arson as defined in Iowa Code Chapter 712;
  4. Burglary as defined in Iowa Code Chapter 713;
  5. Robbery as defined in Iowa Code Chapter 711;
  6. Sex abuse as defined in Iowa Code Chapter 709;
  7. Terrorism as defined in Iowa Code Section 708.6;
  8. Willful injury as defined in Iowa Code Section 708.4;
  9. Sexual exploitation of a minor in violation of Iowa Code Section 728.12;
  10. Felony gambling in violation of Iowa Code Chapter 725;
  11. Felony criminal mischief as defined in Iowa Code Chapter 716;
  12. Animal fighting in violation of Iowa Code Section 717B.7; and
  13. A health code, environmental, or solid waste violation that falls within the definition of a nuisance under Section 8.12.010F of the Davenport Municipal Code.

- B. When two or more of the following acts are committed within a period of twelve consecutive months upon a property, or within one thousand five hundred feet of the property, by an interested party or their permittee(s):
1. Possession of a controlled substance in violation of Iowa Code Chapter 124;
  2. Carrying a dangerous weapon as defined in Iowa Code Section 724.4;
  3. Riot as defined in Iowa Code Section 723.1;
  4. Serious or aggravated misdemeanor criminal mischief as defined in Iowa Code Chapter 716;
  5. Prostitution as defined in Iowa Code Section 725.1;
  6. Serious or aggravated misdemeanor assault as defined in Iowa Code Chapter 708;
  7. Serious or aggravated misdemeanor theft as defined in Iowa Code Chapter 714;
  8. Misdemeanor gambling as defined in Iowa Code Chapter 725;
  9. False imprisonment as defined in Iowa Code Section 710.7;
  10. Failing to secure or keep secure a structure in accordance with Chapter 8.16 of the Davenport Municipal Code;
  11. An unpermitted or illegal use under Title 17 of the Davenport Municipal Code;
  12. Unlawful discharge of a firearm in violation of Section 9.44.010 of the Davenport Municipal Code; and
  13. A social gathering constituting a disorderly premises or nuisance gathering as defined in Section 9.08.080 of the Davenport Municipal Code.

- C. When three or more of the following acts are committed within a period of twelve consecutive months upon a property, or within one thousand five hundred feet of the property, by an interested party or their permittee(s):
1. Health code violations.
  2. Environmental or solid waste violations;
  3. Unlawful assembly in violation of Chapter 9.16 of the Davenport Municipal Code;
  4. Simple misdemeanor criminal mischief in violation of Section 9.20.010 of the Davenport Municipal Code;
  5. Simple misdemeanor assault in violation of Section 9.20.060 of the Davenport Municipal Code;
  6. Disorderly conduct in violation of Chapter 9.08 of the Davenport Municipal Code;
  7. Criminal Trespass in violation of Section 9.20.030 of the Davenport Municipal Code; and
  8. Loafing, loitering, or annoying in violation of Section 9.08.020 of the Davenport Municipal Code.

The above references to provisions of the Iowa Code or the Davenport Municipal Code should not be interpreted to mean that a prosecution of the specific charge is a necessary prerequisite to an action under this chapter nor shall it be interpreted to mean that proof of the action beyond a reasonable doubt is required. (Ord. 2010-356 § 2; Ord. 2002-32 (part); Ord. 99-267 § 2).

**8.12.020 Prohibition and enforcement.**

The creation or maintenance of a nuisance is prohibited, and a nuisance, public or private, may be abated in the manner provided in Sections 8.12.040 through 8.12.120. (Ord. 78-1097 (part); prior code § 23.03-2).

**8.12.030 Inspection of premises.**

The city administrator or designee is authorized to enter and remain upon private property to the extent reasonably necessary for the purpose of locating, identifying, and documenting any nuisances as defined in Section 8.12.010C, or for the purpose of investigating allegations of such nuisances. (New: Ord. 82-267 § 2; Ord. 78-1097 (part); prior code § 23.03-3).

**8.12.040 Notice to abate - Service.**

The city administrator may cause to be served a written notice to abate the nuisance. (Ord. 99-267 § 3; Ord. 82-267 § 3; Ord. 78-1097 (part); prior code § 23.03-4).

**8.12.050 Notice to abate—Contents.**

A. The notice to abate shall contain:

1. A description of what constitutes the nuisance;
2. The location of the nuisance;
3. An order to abate the nuisance and either (i) a statement of the act or acts to be taken to abate it. The order may also include a statement giving the recipient an opportunity to submit an alternative abatement plan satisfactory to the city; or (ii) a statement requiring the recipient to submit an abatement plan satisfactory to the city within fifteen days from the date of the notice to abate.
4. A reasonable time within which to complete the abatement or implement the abatement plan.
5. A statement of the terms of Section 8.12.070 regarding hearings;
6. A statement that if the nuisance is not abated as ordered and no request for hearing is made within the designated abatement period, the city will abate the nuisance and assess the costs against such person.

B. The notice to abate may contain:

1. A statement that the property owner shall be assessed the cost of police response for all founded nuisance incidents that occur during the following one year period beginning with the date of the notice to abate. Upon demonstration by the property owner, within the time stated in the assessment notice, that all reasonable and warranted steps to prevent or resolve the issue(s) giving rise to the nuisance had been taken in good faith, the assessment for the cost of police response for any incident so proven may be withdrawn. The assessment for the cost of police response shall terminate at the end of one year if the founded nuisance incidents during that year do not meet or exceed the criteria for a problem area nuisance as defined above in Section 8.12.015. If applicable, when the criteria for a problem area nuisance is met or exceeded for two consecutive years following an abatement notice, the rental license shall be revoked for a period not to exceed one year.
2. For nuisances pertaining to debris or environmental violations, a statement that the city of Davenport will no longer issue further written warnings and all violations must be corrected within twenty-four hours otherwise the city will clean up any solid waste at the property owner's cost. (Ord. 2010-356 § 3: Ord. No. 2007-164 § 1: Ord. 99-267 § 4: Ord. 78-1097 (part): prior code § 23.03-5).

**8.12.060 Notice to abate-Form.**

The notice shall be in the form of certified mail sent to the property owner or by personal service. (Ord. 82-267 § 4: Ord. 78-1097 (part): prior code § 23.03-6).

**8.12.070 Abatement hearing—Decision— Appeal.**

- A. Any person ordered to abate a nuisance may have a hearing before the public safety committee of the city council, or such other person or hearing body as it may designate, as to whether a nuisance exists. A request for a hearing must be made in writing and delivered to the city clerk ordering the abatement within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered.
  
- B. Any penalty imposed for failure to abate a nuisance, other than a municipal infraction and simple misdemeanor citation, shall provide for an opportunity to request a hearing before the public safety committee of the city council, or such other person or hearing body as it may designate, as to whether the violation occurred. A request for hearing must be made in writing and delivered to the city clerk ordering the abatement within the time stated in the notice, or it will be conclusively presumed that the violation occurred, and the penalty imposed shall stand.
  
- C. After the hearing held pursuant to a timely appeal, the public safety committee or its designee should render a written decision as to whether, by clear and convincing evidence, a nuisance exists or a violation occurred, and shall notify the parties of the decision by certified mail. The committee or its designee shall decide the matter within thirty days after the conclusion of the hearing. If the committee or its designee finds that a nuisance exists, it shall include in the notification and order how the nuisance shall be abated and within what timeframe the abatement shall occur. If the committee or its designee shall find that a violation occurred, it shall include in the notification and order the penalty to be imposed. The committee or its designee is not bound by the plan contained in the original abatement order appealed from and may set forth its own remedy or penalty. In the case of rental property, the property owner's rental license for that property may be revoked for a period of up to one year.
  
- D. The following factors may be considered by the committee or its designee when determining the corrective action warranted or imposing a penalty pursuant to this chapter:
  - 1. The repeated or continuous nature of the problem.
  - 2. The magnitude or gravity of the problem.
  - 3. The action or inaction of the owner that contributed to the problem.
  - 4. The actions taken by the owner to mitigate or correct the nuisance activities.
  - 5. How cooperative the owner is with the city.
  - 6. The cost to the city of investigating, correcting, or attempting to correct the nuisance activity.
  - 7. Any other factor deemed relevant to the hearing officer. Evidence of a property's general reputation shall be admissible. (Ord. 2010-356 § 4; Ord. 2007-164 § 2; Ord. 99-267 § 5; New: Ord. 82-267 § 5; Ord. 78-1097 (part); prior code § 23.03-7).

**8.12.080 Emergency.**

If it is determined by the city administrator that an emergency exists by reason of the continuing presence of a nuisance, the city may perform any action which may be required under this chapter without prior notice or hearing. The city shall assess the costs as provided in Section 8.12.090 and 8.12.100 and subject to the provisions of Section 8.12.110, after notice to the property owner under the applicable provisions of Sections 8.12.040, 8.12.050 and 8.12.060, and opportunity for hearing as provided in Section 8.12.070. (Ord. 82-267 § 6: Ord. 78-1097 (part): prior code § 23.03-8).

**8.12.090 Abatement by city.**

If the person notified to abate a nuisance neglects or fails to abate as ordered, the city may perform the required action to abate, keeping an accurate account of the costs incurred in the abatement of the nuisance. The itemized account of the costs shall be filed with the finance director or his designee who may pay any outside expenses on behalf of the city. The salvage value, if any, of any item or items constituting a nuisance which is so abated by the city, shall be retained by the city to be applied against costs. In the event the salvage proceeds exceed the costs, any such excess shall be paid to the former owner of the property, upon proof of such ownership. If ownership is not proved within sixty days of the disposal of the property, then the excess portion of the payment shall be applied to the city's general fund. (Ord. 99-267 § 6: New: Ord. 78-1097 (part): prior code § 23.03-9).

**8.12.100 Expenses-Collection.**

The clerk shall mail a statement of the total expense incurred, minus any salvage value, to the person who has failed to abide by the notice to abate, demanding payment of the expense. Subject to the provisions of Section 8.12.110, if the amount shown by the statement has not been paid by the person within thirty days, it shall then be collected with, and in the same manner, as special taxes. (New: Ord. 78-1097 (part): prior code § 23.03.10).

**8.12.110 Expenses—Hearing.**

Any person notified pursuant to Section 8.12.100 who objects to the amount of expense demanded from him may have a hearing before the finance committee of the city council, or such other person or hearing body as it may designate. The hearing shall be limited to the question of the reasonability of the amount of expense demanded. A request for hearing must be in writing and filed with the city clerk within ten days after the date of the finance director or designee's demand for payment. The determination of the committee shall be conclusive, and shall be communicated in writing to the objector. The city clerk shall then proceed in the manner set forth in Section 8.12.100, taking into account any modifications by the committee in the amount of expense due. (New: Ord. 78-1097 (part): prior code § 23.03-11).

**8.12.120 Violations.** It is unlawful for any person to:

- A. Create or maintain a nuisance as defined in this chapter;
- B. Fail to abate within the originally prescribed time period, or such additional time period as may be designated pursuant to the appeal process outlined in Section 8.12.070, any nuisance as herein defined after having been ordered to do so by a written notice to abate in compliance with Sections 8.12.040 through 8.12.060;
- C. Resume or allow the resumption of a nuisance after having been ordered to abate the nuisance by a written notice to abate in compliance with Sections 8.12.040 through 8.12.070;
- D. Otherwise hinder, delay, or interfere with the city administrator in the enforcement of the provisions of this chapter.
- E. Terminate a lease agreement with or otherwise retaliate against a tenant because that tenant complained or otherwise notified the police or city official about nuisance activities at the owner's premises. (Ord. 2010-356 § 5; Ord. 2007-164 § 3; Ord. 99-267 § 7-11; Ord. 82-267 § 7-9; Ord. 78-1097 (part); prior code § 23.03-12).

**8.12.125 Penalties.**

- A. The following are penalties that may be imposed for violating this chapter. These possible penalties may be imposed in addition to, and not in lieu of, any sanctions specified in an abatement plan.
  - 1. A violation of this chapter may be punished as a simple misdemeanor in accordance with the penalties set forth in the Iowa Code.
  - 2. A violation of this chapter may be punished as a municipal infraction with a scheduled fine of two hundred fifty dollars for a first offense, five hundred dollars for a second offense, and seven hundred fifty dollars for a third or subsequent offense.
  - 3. A violation of this chapter may be punished by revocation of a rental license for a period up to one year. Each day a violation persists shall constitute a separate offense. (Ord. 2010-356 § 6; Ord. 2007-164 § 4).

## II. ANIMALS, OFFENSIVE SMELLS, LIQUIDS AND STAGNANT WATER

### **8.12.130 Slaughtering of animals restricted.**

No slaughtering of animals of any kind, except fowls, shall be permitted in any meat market, or on any premises adjoining any meat market, or elsewhere (except at regular slaughterhouses) within the city limits. (Prior code § 16-108).

### **8.12.140 Offensive odors.**

No person shall steam, boil or in any way cook or render any food or animal substance in such manner as to occasion any offensive smell, or which will be steaming, boiling, cooking or rendering so taint the air as to render it unwholesome or offensive by the smell, within the limits of the city. And every owner, operator or manager of a hotel, restaurant, cafe, cafeteria, boardinghouse, or any other place where food is cooked or prepared within the limits of the city shall so dispose of the fumes from such cooking as not to permit the fumes to so taint the air as to render it unwholesome or offensive by the smell. No person shall be prosecuted for a violation of this section whose arrangement for the disposition of fumes from cooking has been approved in writing by the chairman of the board of health and the building official. (New: prior code § 16-109).

### **8.12.150 Keeping of animals and fowl restricted.**

- A. No person shall collect or keep any horses, mules, cattle, swine, sheep, goats, rabbits or any other animals in any pen, yard or enclosure or place within the built-up portion of the city, or elsewhere so as to create a nuisance.
- B. No person shall collect or keep any chickens, ducks, geese or any other fowls within the built-up portion of the city; nor shall the same be kept by any person elsewhere in the city unless the same are kept in a proper pen or enclosure. Such pen or enclosure shall at all times be kept clean and free from noisome or offensive odors and such fowls shall be kept in such a manner so as not to create a nuisance of any kind. (Prior code § 16-110).

**Editor's Note:** Sections 8.12.160 and 8.12.170, previously contained herein, have been deleted in their entirety by the recodification of the 1990 Code.

### **8.12.180 Stagnant water.**

No person shall permit any waterspout, eave troughs or eaves to discharge water upon any lot, land or street, where the same may become stagnant. (Prior code § 16-113).

### **8.12.190 Toilet facility requirements and regulations.**

- A. It is unlawful for the owner of any building or any person, firm or corporation employing or in charge of any person(s), to begin the construction, alteration or repair of any building or the construction of any public or private works without having provided proper and sufficient toilet facilities, namely, water closets, chemical closets, privies, or incinerators of a type approved by the board of health for the use of all employees engaged in the construction, alteration or repair of such building, or the construction of any public or private works.
- B. There shall be at least one such water closet, chemical closet, privy or incinerator for every thirty employees or a fraction thereof.

- C. It is unlawful to install such water closets, chemical closets, privies or incinerators without having first applied for and obtained a permit issued by the board of health, and they shall be installed and maintained in accordance with the provisions of such permit.
- D. A chemical closet shall be construed to be any closet or privy or septic tank in which human excreta and urine are deposited.
  - 1. The capacity of such receptacles shall be as follows:
    - a. For ten persons or less, sixty gallons;
    - b. For twenty persons or less, one hundred gallons;
    - c. For forty persons or less, three hundred gallons.
  - 2. A solution containing at least sixteen and forty-two hundredths percent crude caustic hydrates (one and two-thirds pounds to one gallon of water) shall be used in such receptacles, and such chemical closets charged with such a solution.
  - 3. The contents of such chemical closets shall be removed and disposed of pursuant to health department regulations. Every such closet shall be cleaned before being removed from one premises to another and as often otherwise as may be deemed necessary by the board of health. (New: prior code § 16-114).

### **III. BREEDING PIGEONS, SEWERS AND DRAINS, AND PRIVIES**

#### **8.12.200 Pigeons - Breeding and at large.**

The breeding within the limits of the city of any pigeons, without providing a suitable enclosure in which to keep them, and the permitting or allowing pigeons to fly about and congregate upon the roof or about any public or private buildings, is declared a nuisance, and such pigeons, when at large and off the premises of the owner or breeder of the same, shall be destroyed pursuant to order by the health department; and any such owner or breeder violating the provisions of this section shall be deemed guilty of a simple misdemeanor. (New: prior code § 16-117).

#### **8.12.210 Sewers or drains - Discharge.**

The contents of any sewer or drain discharged into any street, lane, alley, watercourse, drain for surface water, hollow or ravine, or upon any public or private grounds within the city, are declared to be a nuisance; provided nothing in this section shall be construed to prevent any person from draining their cellars or their premises for surface water, or from making use of an efficient septic tank, provided the discharges therefrom are not offensive or injurious to health. Any person causing or permitting any such nuisance shall be deemed guilty of a simple misdemeanor. (Prior code § 16-118).

#### **8.12.230 - 8.12.260 Repealed.**

(by Ord. 82-267 §§ 9-12.)

## **CHAPTER 716 DAMAGE AND TRESPASS TO PROPERTY**

### [716.1 CRIMINAL MISCHIEF DEFINED.](#)

### [716.2 MULTIPLE ACTS.](#)

### [716.3 CRIMINAL MISCHIEF IN THE FIRST DEGREE.](#)

### [716.4 CRIMINAL MISCHIEF IN THE SECOND DEGREE.](#)

### [716.5 CRIMINAL MISCHIEF IN THE THIRD DEGREE.](#)

### [716.6 CRIMINAL MISCHIEF IN THE FOURTH AND FIFTH DEGREES.](#)

### [716.6A CRIMINAL MISCHIEF IN VIOLATION OF INDIVIDUAL RIGHTS.](#)

### [716.6B UNAUTHORIZED COMPUTER ACCESS -- PENALTIES -- CIVIL CAUSE OF ACTION.](#)

### [716.7 TRESPASS DEFINED.](#)

### [716.8 PENALTIES.](#)

### [716.9 STOWING AWAY.](#)

### [716.10 RAILROAD VANDALISM.](#)

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#### **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.

#### **Section History: Early Form**

[C51, § 2679, 2681--2683, 2686--2688, 2690, 2715, 2753; R60, § 1766, 4319, 4321--4323, 4326--4328, 4330--4332, 4357, 4403; C73, § 1564, 3897--3899, 3978, 3980--3982, 3985--3987, 3989--3992, 4021, 4082; C97, § 588, 2466, 4800--4806, 4808, 4809, 4812, 4822--4828, 5054; S13, § 1989-a15, 4808, 4822, 4823, 4830-a, -b, -c; SS15, § 2900-e; C24, 27, 31, 35, 39, § **13080, 13082, 13083, 13085, 13088--13091, 13093--13099, 13102, 13107, 13112--13117, 13122, 13124**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 714.1, 714.3--714.5, 714.8--714.11, 714.14--714.20, 714.23, 714.28, 716.1--716.6, 716.9, 716.12; C79, 81, § 716.1]

#### **Section History: Recent Form**

2002 Acts, ch 1049, §1  
Referred to in § 717A.3

#### **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.

#### **Section History: Early Form**

[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.

#### **Section History: Early Form**

[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]

#### **Section History: Recent Form**

92 Acts, ch 1060, § 8  
Referred to in § 717A.3

### **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.

#### **Section History: Early Form**

[C79, 81, § 716.4]

#### **Section History: Recent Form**

92 Acts, ch 1060, § 9  
Referred to in § 717A.3

### **716.5 CRIMINAL MISCHIEF IN THE THIRD DEGREE.**

1. Criminal mischief is criminal mischief in the third degree if any of the following apply:

- a. The cost of replacing, repairing, or restoring the property that is damaged, defaced, altered, or destroyed exceeds five hundred dollars, but does not exceed one thousand dollars.
- b. The property is a deed, will, commercial paper or any civil or criminal process or other instrument having legal effect.
- c. 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.

d. The person intentionally disinters human remains from a burial site without lawful authority.

e. The person 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.

2. Criminal mischief in the third degree is an aggravated misdemeanor.

### **Section History: Early Form**

[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]

### **Section History: Recent Form**

83 Acts, ch 99, § 1; 92 Acts, ch 1060, § 10; 2009 Acts, ch 41, §169

Referred to in § 716.6A, 717A.3

### **716.6 CRIMINAL MISCHIEF IN THE FOURTH AND FIFTH DEGREES.**

1. 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.

2. 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.

### **Section History: Early Form**

[C79, 81, § 716.6]

### **Section History: Recent Form**

83 Acts, ch 99, § 2; 92 Acts, ch 1060, § 11; 99 Acts, ch 153, §14; 2009 Acts, ch 41, §260

Referred to in § 123.138, 716.6A, 717A.3

### **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.

### **Section History: Recent Form**

92 Acts, ch 1157, § 5  
Referred to in § 729A.2

**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.

**Section History: Recent Form**

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  
Referred to in § 702.1A  
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, including the act of taking or attempting to take a deer, other than a farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, which is on or in the property by a person who is outside the property. This paragraph does not prohibit the unarmed pursuit of game or fur-bearing animals by a person who lawfully injured or killed the game or fur-bearing animal which comes to rest on or escapes 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.

### **Section History: Early Form**

[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]

### **Section History: Recent Form**

88 Acts, ch 1212, §1; 98 Acts, ch 1067, § 1, 2; 2007 Acts, ch 28,

§20

Referred to in § 309.57, 481A.134, 481A.135, 716.8

### **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.

5. A person who commits a trespass while hunting deer, other than a farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, commits a simple misdemeanor. The person shall also be subject to civil penalties as provided in sections 481A.130 and 481A.131. A deer taken by a person while committing such a trespass shall be subject to seizure as provided in section 481A.12.

### **Section History: Early Form**

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

### **Section History: Recent Form**

92 Acts, ch 1157, § 6; 99 Acts, ch 153, §15, 16; 2007 Acts, ch 28, §21; 2008 Acts, ch 1161, §21  
Referred to in § 29A.42, 648.1A, 729A.2

### **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.

### **Section History: Recent Form**

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.

## Section History: Recent Form

98 Acts, ch 1067, §4

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Previous Chapter [715C](#) Next Chapter [716A](#)

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## Flow Chart

A problem area nuisance exists:

One or more acts are committed  
nuisance abatement order sent

Recipient does what they must do in order to abate (eliminate) the nuisance.

Recipient may request a hearing if he or she disagrees that a nuisance exists.

If recipient does nothing, then the city may abate the nuisance and assess the costs of the abatement to the property plus:

- \$120.00 Administrative fee
- \$250 for a first offense,
- \$500 for a second offense,
- \$750 for a third or subsequent offense.
- Revocation of a rental license up to to one year.