



U.S. Department
of Transportation

**Federal Railroad
Administration**

always expect a train

MODEL LEGISLATION

for

RAILROAD TRESPASS

and

RAILROAD VANDALISM

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U.S. Department
of Transportation

**Federal Railroad
Administration**

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Office of the Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

Dear Colleague:

On April 30, 1997, Secretary Rodney E. Slater wrote to inform Congress that the Department of Transportation had transmitted to State and local governments model State railroad trespass and railroad vandalism bills which the Department prepared pursuant to section 219 of the Federal Railroad Safety Authorization Act of 1994, 49 U.S.C. § 20151(c). This copy of the model State railroad trespass and vandalism package is presented for your use.

Since 1988, railroad-related trespass deaths have averaged more than 500 per year nationwide. While highway-rail crossing fatalities have been decreasing, despite increasing rail volume, trespasser deaths have increased. For the first time since the Federal Railroad Administration has been collecting this type of data, the 1997 trespasser fatalities exceeded the number of deaths at highway-rail crossings. In addition, the annual trespasser and highway-rail crossing deaths together account for more than 90 percent of all fatalities reported by the railroads each year.

The few State laws which apply specifically to trespassing on railroad property or to vandalism of railroad property vary widely. This creates problems for the law enforcement community and results in uneven and irregular enforcement and penalties. Thus, there is a public perception that trespassing on railroad property and vandalizing railroad property is a minor concern. Nothing could be further from the truth.

The Federal Railroad Administration hopes you will join our effort to put an end to railroad trespassing and vandalism. We encourage you to work with your State and local governments to improve existing laws or enact railroad trespassing and vandalism statutes which meet the standards set by these model State railroad trespass and vandalism bills. With your help, we can reduce trespassing and vandalism and save lives.

Jolene M. Molitoris
Administrator

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

The Honorable Ernest F. Hollings
Ranking Democratic Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

I am writing to inform the Congress that the Department of Transportation has transmitted to State and local governments model State railroad trespass and railroad vandalism bills which the Department has prepared pursuant to section 219 of the Federal Railroad Safety Authorization Act of 1994 (Safety Act), 49 U.S.C. § 20151(c). Identical letters are being sent to Senators McCain, Hutchison, and Inouye and to Representatives Shuster, Oberstar, Molinari, and Wise.

According to preliminary figures, in the first ten months of 1996, the Nation experienced an 18.6 percent reduction in the number of rail-highway grade crossing injuries and fatalities, and fatalities and injuries among trespassers other than at rail-highway grade crossings are down 6.6 percent and up .7 percent, respectively, when compared to the same period in 1995. Although these statistics represent the single largest one-year increase in grade crossing safety since records have been kept, we recognize that we must continue and enhance our initiatives in this area.

Supporting this continuing effort, the Department of Transportation's Rail-Highway Crossing Safety Action Plan included initiatives to work with rail industry police and legal staff to synthesize existing State and Federal statutes regarding trespass and vandalism prevention and to develop model legislation for consideration by State legislatures. Congress affirmed the validity of these initiatives by passing the Safety Act, which requires the Secretary of Transportation, in consultation with State and local governments and railroad carriers, to develop and make available to State and local governments model State legislation covering trespassing and vandalism on railroad property.

In response, the Department, through a collaborative process with interested parties, has developed model State legislation that, if adopted, should help curb the serious problem of trespassing and vandalism on railroad property. A summary of steps the Federal Railroad Administration (FRA) took to develop the model legislation, and highlights of the two model bills are enclosed for your review (Enclosure 1). Enclosure 2 is a copy of the model State bill on railroad trespass and the model State bill on railroad vandalism, along with their respective section-by-section analyses, and Enclosure 3 is a compilation of existing State laws. A copy of the attendee or guest lists from FRA's four regional conferences on trespassing and vandalism, which underscores the broad outreach effort undertaken in support of this initiative, is available for your review upon request.

I recommend that State and local governments enact the model State bills in order to reduce deaths, injuries, and property damage caused by trespassers and vandals on railroad property. I appreciate your continuing interest in and support of transportation safety.

If you need further assistance, please contact me or Steven Palmer, Assistant Secretary for Governmental Affairs at (202) 366-4573.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney E. Slater". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rodney E. Slater

Enclosures

**CONGRESS MAILING LIST FOR
MODEL RAILROAD TRESPASS/VANDALISM LEGISLATION:**

The Honorable John S. McCain
Chairman, Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Honorable Ernest F. Hollings
Ranking Democratic Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Senator Hollings:

The Honorable Kay Bailey Hutchison
Chairman, Subcommittee on Surface Transportation and Merchant Marine
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Madam Chairperson:

The Honorable Daniel K. Inouye
Ranking Democratic Member
Subcommittee on Surface Transportation and Merchant Marine
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Senator Inouye:

The Honorable Bud Shuster
Chairman, Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Honorable James L. Oberstar
Ranking Minority Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Oberstar:

The Honorable Susan Molinari
Chairwoman, Subcommittee on Railroads
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Molinari:

The Honorable Bob Wise
Ranking Minority Member, Subcommittee on Railroads
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Wise:



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

The Honorable Bob Miller
Chairman
National Governors' Association
444 North Capitol Street, N.W., Suite 250
Washington, D.C. 20001

Dear Mr. Chairman:

I am writing to make available to you and your members model State railroad trespass and railroad vandalism bills which the Department has prepared pursuant to section 219 of the Federal Railroad Safety Authorization Act of 1994 (Safety Act), 49 U.S.C. § 20151(c).

According to preliminary figures, in the first ten months of 1996, the Nation experienced an 18.6 percent reduction in the number of rail-highway grade crossing injuries and fatalities, and fatalities and injuries among trespassers other than at rail-highway grade crossings are down 6.6 percent and up .7 percent, respectively, when compared to the same period in 1995. Although these statistics represent the single largest one-year increase in grade crossing safety since records have been kept, we recognize that we must continue and enhance our initiatives in this area.

Supporting this continuing effort, the Department of Transportation's Rail-Highway Crossing Safety Action Plan included initiatives to work with rail industry police and legal staff to synthesize existing State and Federal statutes regarding trespass and vandalism prevention and to develop model legislation for consideration by State legislatures. Congress affirmed the validity of these initiatives by passing the Safety Act, which requires the Secretary of Transportation, in consultation with State and local governments and railroad carriers, to develop and make available to State and local governments model State legislation covering trespassing and vandalism on railroad property.

In response, the Department, through a collaborative process with interested parties, has developed model State legislation that, if adopted, should help curb the serious problem of trespassing and vandalism on railroad property. A summary of steps the Federal Railroad Administration (FRA) took to develop the model legislation, and highlights of the two model bills are enclosed for your review (Enclosure 1). Enclosure 2 is a copy of the model State bill on railroad trespass and the model State bill on railroad vandalism, along with their respective section-by-section analyses, and Enclosure 3 is a compilation of existing State laws. A copy of the attendee or guest lists from FRA's four regional conferences on trespassing and vandalism, which underscores the broad outreach effort undertaken in support of this initiative, is available for your review upon request.

I recommend that State and local governments enact the model State bills in order to reduce deaths, injuries, and property damage caused by trespassers and vandals on railroad property. I appreciate your continuing interest in and support of transportation safety.

If you need further assistance, please contact me or Steven Palmer, Assistant Secretary for Governmental Affairs at (202) 366-4573.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney E. Slater". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Rodney E. Slater

Enclosures

**STATE AND LOCAL GOVERNMENT ORGANIZATIONS MAILING LIST FOR
MODEL RAILROAD TRESPASS/VANDALISM LEGISLATION:**

The Honorable Bob Miller
Chairman
National Governors' Association
444 North Capitol Street, N.W., Suite 250
Washington, DC 20001

Dear Mr. Chairman:

The Honorable Mel Carnahan
President and Committee Co-Chairman
The Council of State Governments
444 N. Capitol Street, N.W., Suite 401
Washington, DC 20510

Dear Mr. Carnahan:

The Honorable James Lack
President
National Conference of State Legislatures
444 N. Capitol Street, N.W.
Washington, DC 20510

Dear Mr. President:

The Honorable Richard Daley
President
U.S. Conference of Mayors
1620 Eye Street, N.W., 4th Floor
Washington, DC 20006

Dear Mayor Daley:

The Honorable Gregory Lashutka
President
National League of Cities
1301 Pennsylvania Ave., N.W., 6th Floor
Washington, DC 20004

Dear Mayor Lashutka:

The Honorable Douglas R. Bovin
President
National Association of Counties
444 First Street, N.W.
Washington, DC 20510

Dear Mr. President:

The Honorable Bob Hampton
President
National Association of Regional Councils
1700 K Street, NW, Suite 1300
Washington, DC 20006

Dear Mr. President:

ENCLOSURE 1

**DEPARTMENT OF TRANSPORTATION
SUMMARY OF DEVELOPMENT OF THE
MODEL STATE RAILROAD TRESPASS AND VANDALISM BILLS
AND
HIGHLIGHTS OF THE BILLS**

COOPERATIVE EFFORT TO DEVELOP THE MODEL STATE BILLS
AND
HIGHLIGHTS OF THE BILLS

BACKGROUND

By 1994, the Nation had experienced four consecutive years in which more than 1,000 people were either killed or seriously injured while trespassing on railroad property other than at rail-highway crossings. In 1995, 494 people were killed and 461 people were seriously injured while trespassing on railroad property other than at rail-highway grade crossings. According to preliminary figures, in the first six months of 1996, the Nation has experienced a 30-percent reduction in the number of rail-highway grade crossing injuries and fatalities, and fatalities and injuries among trespassers other than at rail-highway grade crossings are down 6.7 percent and 17 percent respectively, when compared to the same period in 1995. As part of the continuing effort to reduce the number of injuries and fatalities occurring while trespassing on railroad property, the Department of Transportation's Rail-Highway Crossing Safety Action Plan includes initiatives to develop model railroad trespass and vandalism legislation for consideration by State legislatures.¹ Congress affirmed the validity of these initiatives by passing the Federal Railroad Safety Authorization Act of 1994 (49 U.S.C. § 20151) (Safety Act), which requires the Secretary of Transportation, in consultation with State and local governments and railroad carriers, to develop and make available to State and local governments model State legislation covering trespassing and vandalism on railroad property. The following is a summary of the development of the model State railroad trespass and vandalism bills and highlights of the bills.

Review of Existing Laws

As required by the Safety Act, the Department reviewed and evaluated current local, State, and Federal laws regarding trespassing on railroad property and vandalism affecting railroad safety.² An independent firm was hired to conduct the necessary preliminary legal research. Its findings on the existence of relevant State railroad laws were compiled into various chapters pertaining to different railroad subject matters. Chapters 10 and 11 (Enclosure 3) specifically address laws related to trespassing and vandalism on railroad property.

As you will note from the findings, 20 States and the District of Columbia lack any codified law that applies specifically to trespassing on railroad property.³ Nine States lack any codified law

¹ See U.S. Department of Transportation Rail-Highway Crossing Safety Action Plan Summary, June 13, 1994.

² To date, no Federal railroad trespass law exists, although a Federal statute against wrecking trains is found at 18 U.S.C. § 1992.

³ These States are Alaska, Hawaii, Idaho, Iowa, Kansas, Maryland, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon,

that applies specifically to vandalism of railroad property.⁴ For the States that do have codified laws related to trespassing and vandalism of railroad property, the Department believes most of them need to be strengthened. The most pervasive deficiencies in the laws are weak penalties. For example, one State prescribes a fine of not less than \$10 but not more than \$100 for a first offense of vandalism. Another pervasive weakness in the State laws is categorizing the offenses of trespassing and vandalism as relatively innocuous crimes. For example, in one State, vandalism of any railroad sign or signal is a Class B traffic infraction. The model State bills would remedy these deficiencies.

Consultation in the Development of the Model State Bills

The Department, through its Federal Railroad Administration (FRA), held four regional conferences with State and local governments, railroad and labor representatives, and others during the process of developing the model State bills. A copy of the attendee or guest lists from these conferences is available from FRA upon request. These conferences and workshops were held jointly with Operation Lifesaver, Inc., an independent organization dedicated to educating the public on ways to reduce the number of grade crossing and trespass fatalities. The conferences were held in the following locations: Atlanta, Georgia; Sacramento, California; El Paso, Texas; and Uniondale, New York. FRA's strategy was to meet with people throughout the country to discuss general railroad trespass and vandalism problems, as well as to focus on issues specific to their particular part of the country. This was accomplished through several days of formal presentations, followed by informal question, answer, and comment sessions.

By listening to people's points of view on the issues of railroad trespassing and vandalism, FRA learned what people wanted, and conversely, what they did not need or find acceptable, in a railroad trespass and vandalism law. Specifically, the Atlanta conference emphasized the need for stronger vandalism and graffiti laws, while the El Paso conference focused more on seeking solutions to the problems of train robberies and other cross-border issues, particularly the smuggling of undocumented aliens into the United States. In Sacramento, as well as Atlanta, representatives from larger railroads expressed strong concerns that a model civil law requiring fencing or expansion of land owner liability to trespassers might be acceptable to railroads with few track miles, particularly those in the eastern States, but would prove to be unduly burdensome and therefore unacceptable to those railroads with many track miles, particularly in the western States. Taking these and related ideas into account, FRA shaped the model State bills to reflect a consensus among the diverse and sometimes conflicting views people expressed

Pennsylvania, South Dakota, Tennessee, Utah, Washington, Wyoming, and the District of Columbia.

⁴ These States are Alabama, Indiana, Kentucky, Mississippi, Missouri, Montana, New Mexico, Ohio, and Utah.

and shared with each other at these conferences, using existing State statutory provisions to the extent possible.

MODEL STATE RAILROAD TRESPASS PREVENTION BILL

Much of the language in the model State railroad trespass prevention bill was borrowed from Rhode Island and Indiana statutes. The two statutes combined seem to touch upon most of the issues related to trespassing on railroad property. Moreover, Rhode Island law focuses on more urban issues while Indiana provides a good model for trespassing on railroad property in rural areas. The penalty provision in the model bill reflects a compromise between the strongest and weakest penalties that currently exist for trespassing on railroad property.

The model State railroad trespass prevention bill accomplishes the following:

- **Makes entering or remaining upon a railroad right-of-way or other railroad property a misdemeanor subject to not more than \$100 fine, imprisonment for not more than 30 days, or both.** The trespass bill prohibits trespassing, whether by walking, jogging, snowmobiling, or other activities. Aside from the right-of-way, railroad property also includes structures, appurtenances, and equipment used in the operation of any railroad.
- **Makes stowing away on trains a misdemeanor subject to not more than a \$1,000 fine, imprisonment for not more than six months, or both.** Such illegal activity includes riding on the outside of a train, popularly called “train surfing,” and riding in freight cars and containers.
- **Enumerates certain persons authorized by law to be on railroad property and excludes certain railroad property from coverage.** The trespass bill does not apply to railroad passengers, railroad employees, police officers, firefighters, rescuers, owners of adjacent land crossing at railroad carrier-approved private crossings, State and Federal transportation department or National Transportation Safety Board personnel in the performance of their official duties, and persons with written permission from the railroad carrier. The bill does not apply to trespass on railroad administrative offices or urban rapid transit property.

MODEL STATE RAILROAD VANDALISM PREVENTION BILL

Much of the language in the model State railroad vandalism law was borrowed from Texas, Idaho, and Washington statutes. Combined, these laws seem to touch upon most of the issues related to vandalism of railroad property.

The model State railroad vandalism prevention bill accomplishes the following:

- **Makes reckless acts of vandalism that do not cause bodily injury or railroad property damage that exceeds \$500 a misdemeanor, subject to restitution, and if available, subject to not more than 120 hours of community service. If community service is not available, the person shall be subject to not more than a \$500 fine, imprisonment for not more than six months, or both. The bill proscribes acts of vandalism including putting coins on a rail, marking areas with graffiti, or throwing eggs at trains.**
- **Makes reckless acts of vandalism that cause bodily injury or railroad property damage that exceeds \$500 a felony, subject to restitution, and not more than a fine of \$10,000, imprisonment for 10 years, or both. If serious bodily harm, or death results from the vandalism, the person shall be subject to not more than a \$20,000 fine, imprisonment for not more than 20 years, or both. The bill proscribes acts of vandalism including dropping a brick from a bridge, or throwing rocks at locomotives.**
- **Makes willful acts of vandalism or attempts to damage railroad property or to endanger the safety of another a felony, subject to enhanced penalties. The bill proscribes acts of vandalism such as throwing rocks, dropping bricks, shooting a firearm, destroying signal systems, tampering with switches, or tampering with freight cars. If no bodily injury occurs or railroad property damage does not exceed \$500, such acts are punishable by a fine of not more than \$10,000, imprisonment for not more than ten years, or both. If the vandalism results in bodily injury or railroad property damage exceeds \$500, the person shall be subject to not more than a \$20,000 fine, imprisonment for not more than 20 years, or both. Where serious bodily injury results from the vandalism, the person shall be punished by a fine of not more than \$25,000, any term of years or for life, or both. If death results from the vandalism, the person shall be subject to not more than a \$100,000 fine, any term of years or for life, or both, or, if State law permits, the death penalty.**
- **Makes stealing railroad freight and receiving such stolen freight a felony. These acts are punishable by a fine of not more than \$5,000, imprisonment for not more than five years, or both.**

ENCLOSURE 2

MODEL STATE RAILROAD TRESPASS AND VANDALISM BILLS

AND SECTION-BY-SECTION ANALYSES

A BILL

To amend [State Code], and for other purposes.

Be it enacted by [] legislature [State of] assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Railroad Trespass Prevention Act".

SEC. 2. PURPOSE.

The purpose of this Act is to prevent accidents and casualties to persons who unlawfully enter upon railroad property, and otherwise to enhance the safety of transportation by railroad.

SEC. 3. AMENDMENTS TO CRIMINAL TRESPASSING LAWS.

Section [] of Chapter [], [State General Laws], is amended [to read as follows:][by adding at the end thereof the following new section:]

"§[]. TRESPASSING ON RAILROAD PROPERTY.

"(a) **Trespassing on railroad property.** Whoever, without lawful authority or the railroad carrier's consent, knowingly enters or remains upon railroad property, by an act including, but not limited to--

"(1) standing, sitting, resting, walking, jogging, running, driving, or operating a recreational or non-recreational vehicle including, but not limited to, a bicycle, motorcycle, snowmobile, car, or truck; or

"(2) engaging in recreational activity, including, but not limited to, bicycling, hiking, fishing, camping, cross-country skiing, or hunting--
except for the purpose of crossing such property at a public highway or other authorized crossing, shall be guilty of a misdemeanor. Upon conviction of such act, the person shall be fined not more than \$100, imprisoned for not more than 30 days, or both.

"(b) **Stowaways prohibited.** Whoever, without lawful authority or the railroad carrier's consent, rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a box car, flatbed, or container, shall be guilty of a misdemeanor. Upon conviction of such act, the person shall be fined not more than \$1,000, imprisoned for not more than six months, or both.

“(c) Persons with lawful authority to be on specified railroad property.

Subsections (a) and (b) do not apply to--

“(1) Passengers on trains, or employees of a railroad carrier while engaged in the performance of their official duties;

“(2) Police officers, firefighters, peace officers, and emergency response personnel, while engaged in the performance of their official duties;

“(3) A person going upon railroad property in an emergency to rescue a person or animal such as livestock, pets, or wildlife from harm’s way, or to remove an object that the person reasonably believes to pose an imminent threat to life or limb;

“(4) A person on the station grounds or in the depot of the railroad carrier as a passenger, or for the purpose of transacting lawful business;

“(5) A person, or the person’s family or invitee, or the person’s employee or independent contractor going upon a railroad’s right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land [a farm] [a ranch] that the person owns, leases, or operates;

“(6) A person having written permission from the railroad carrier to go upon the railroad property in question;

“(7) Representatives of the [State Utility Department][Transportation Department] while engaged in the performance of their official duties;

“(8) Representatives of the Federal Railroad Administration while engaged in the performance of their official duties; or

“(9) Representatives of the National Transportation Safety Board while engaged in the performance of their official duties.

“(d) Definitions. For purposes of this section--

“(1) ‘passengers’ means persons who are traveling by train with lawful authority and who do not participate in the train’s operation. The term ‘passengers’ does not include stowaways.

“(2) ‘railroad’ means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including--

“(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

“(ii) high-speed ground transportation systems that connect metropolitan areas--

but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

“(3) ‘railroad carrier’ means a person providing railroad transportation;

“(4) ‘railroad property’ means all tangible property owned, leased, or operated by a railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device. ‘Railroad property’ does not include a railroad carrier’s administrative building or offices, office equipment, or intangible property such as computer software or other information;

“(5) ‘right-of-way’ means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs; and

“(6) ‘yard’ means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives, and other rolling stock are kept when not in use or when awaiting repairs.”.

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SECTION-BY-SECTION ANALYSIS OF MODEL STATE RAILROAD TRESPASS PREVENTION ACT

Section 1. Section one provides that the Act may be cited as the “Railroad Trespass Prevention Act.”

Section 2. Section two provides that the purpose of the Act is to prevent accidents and casualties to persons who unlawfully enter upon railroad property, and generally, to enhance the safety of transportation by railroad. The purpose of “to enhance the safety of transportation by railroad” reflects the fact that trespassers not only present a danger to themselves, but also put train crews, other railroad employees, and the local community at risk. For example, in an attempt to avoid striking a trespasser, a locomotive engineer may initiate an emergency brake application. This emergency action of slamming on the brake of a train can cause a derailment. Not only can a derailment threaten the lives of the train crew, but should a hazardous materials release occur in the process, an entire neighboring community could also be put in jeopardy.

Section 3. Section three would permit, under stated conditions, prosecution of a broad range of trespassing activities on railroad rights-of-way, yards, and other defined railroad property. Section three divides section [] of Chapter [], [State General Laws], into four subsections, (a) through (d).

Subsection (a) covers all acts of trespassing on railroad property including rights-of-way and yards. The subsection lists, by way of illustration, examples of trespass activities that people have been known to engage in on such property and that are prohibited. Specifically subsection (a) is intended to discourage people from using railroad rights-of-way and yards as supplemental pathways to walk, jog, bicycle, or otherwise travel on such property, rather than using designated safer authorized routes. “Knowingly” describes the state of mind or “*mens rea*” a defendant must have in order to be convicted of engaging in the activities specified in subsection (a). “Knowingly” is intended to apply to the act or “*actus reus*,” and the circumstance of the crime. In other words, a person must *know* he or she is engaged in the activity and must *know* that the property upon which he or she is engaged in the activity is a railroad right-of-way, yard, or other railroad property, in order to be convicted of trespassing. Accordingly, “I was sleepwalking” would be a defense to a charge of trespassing because the individual could not be said to have “known” he or she was engaged in the activity of walking at the time the crime was

committed. In addition, “I did not know that the land upon which I entered was railroad property” would also be a defense to a charge of trespassing.

Subsection (a) also describes a number of recreational activities which people have been known to engage in on railroad rights-of-way and yards. As enumerated, these activities include hiking, fishing, and hunting on such property. No distinction is made with respect to hunting from such property or hunting from another location but shooting onto such property. In either case, for purposes of this Act, both activities would be considered a trespass. The rationale behind abolishing this distinction in the hunting context is that presumably the hunter would cause to enter or remain upon the land a bullet or other projectile, thereby creating the trespass. In addition, should the hunter be so lucky as to successfully shoot a prey from a safe and lawful location, he or she would then probably have to enter upon the railroad property to get the carcass. Finally, shooting from the railroad right-of-way as opposed to shooting onto the railroad right-of-way creates a different yet no less unacceptable safety risk. Despite the fact that most States have recreational use statutes passed for the purpose of encouraging landowners to hold open to the public their lands for recreational use, railroad rights-of-way and yards should not be included in this category of land to be held open to the public. Through education, outreach, and law enforcement, people will come to understand that railroad rights-of-way and yards are not recreational playgrounds.

Subsection (a) provides a penalty of a fine of not more than \$100, imprisonment for not more than 30 days, or both, for a conviction of trespassing on a railroad right-of-way or yard. This penalty reflects a compromise between the strongest and weakest penalties which currently exist under State law for committing this crime. See Louisiana law (punishment of a \$500 fine, imprisonment for not more than 90 days, or both) and Maine law (punishment of not less than five dollars nor more than twenty dollars for trespassing onto railroad tracks). LA. REV. STAT. ANN. § 14:63.6 (West 1993) and ME. REV. STAT. ANN. Tit. 23, § 7007 (West 1994), respectively. The phrase “not more than” is intended to allow, within the set maximum, a range of fines commensurate with the relative seriousness of the trespass.

Subsection (b) prohibits stowing away on trains. Railroad carriers indicate that there is a growing trend, especially among teenagers, college students, and transients to try to travel by

train either by riding on top of, inside, or in between freight cars. Moreover, southern border States such as Texas and California face the growing problem of illegal aliens trying to enter the United States by hiding inside box cars. Persons who engage in the illegal activity described in this subsection are not “passengers” but are “stowaways.” “Passengers” are defined in subsection (d). The penalty provision for stowing away, reflects the serious nature of this crime, but also reflects the reality that the majority of people who commit this crime will not be able to pay stiff penalties, but should nevertheless, in appropriate cases, be subject to punishment.

Subsection (c) enumerates nine categories of persons who may with lawful authority enter and remain upon railroad property. These categories of persons supplement existing privileges to trespass which may already exist under law. Paragraphs (1) and (2) are self-explanatory. Paragraph (3) allows a person to enter upon railroad property in emergency rescue situations for the purpose of trying to save lives. The word “animal” is limited to avoid an absurdly broad interpretation of that term. For example, insects, which arguably are “animals,” are not intended to be covered. Paragraph (3) does not allow a person to enter upon railroad property for the purpose of rescuing inanimate objects such as a wristwatch. Such objects cannot be said to pose a safety hazard to passengers and crew traveling on a right-of-way. However, large or otherwise dangerous objects, such as a tree limb, shopping cart, or small explosive device, may be removed from the right-of-way if the person reasonably believes that the object poses an imminent threat to life or limb. The rest of the enumerated categories of persons who may with lawful authority enter and remain upon railroad property, paragraphs (4) through (9), are self-explanatory.

Subsection (d) defines certain statutory terms. For example, the definition of “railroad” excludes urban rapid transit operations by rail, such as trolleys and subways not connected to the general railroad system of transportation. “Railroad” is defined as it is defined in the Federal railroad safety laws “does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.” 49 U.S.C. § 20102 (B). Therefore, this Act does not cover trespass on such rapid transit property. The definition of “railroad property” excludes administrative offices, office equipment, and intangible property such as computer software. Including this type of property would not have directly furthered the

Legislature's intent to enhance safety by preventing railroad trespass injuries and fatalities. Also, such acts of trespass may be covered by other local, State, and Federal laws.

A BILL

To amend [State Code], and for other purposes.

Be it enacted by [] legislature [State of] assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Railroad Vandalism Prevention Act".

SEC. 2. PURPOSE.

The purpose of this Act is to prevent acts of vandalism to railroad property which affect the health, safety, and welfare of the traveling public, the neighboring community, and railroad employees; to protect railroad property and freight in transportation by railroad; and otherwise to enhance the safety of transportation by railroad.

SEC. 3. AMENDMENTS TO VANDALISM LAWS.

Section [] of Chapter [], [State General Laws], is amended [to read as follows:][by adding at the end thereof the following new section:]

"§[] VANDALISM OF RAILROAD PROPERTY.

"(a) Reckless disregard for railroad property or the safety of another.

Whoever, with reckless disregard for railroad property or the safety of another, commits an act which may cause damage to railroad property or bodily injury to another by an act including, but not limited to--

"(1) placing a small object, such as a coin, token, bottle cap, bottle, or can, on a railroad track or rail or dropping or throwing an object, such as an egg or water balloon, at a locomotive or train;

"(2) taking, removing, defacing, altering, marking with graffiti, or otherwise vandalizing a railroad sign, placard, or marker;

"(3) throwing a rock, baseball, or other dangerous object at a locomotive, railroad car, or train;

"(4) dropping a brick or other dangerous object from a bridge or other overpass onto a railroad right-of-way;

"(5) shooting a firearm or other dangerous weapon at a locomotive, railroad car, or train;

“(6) removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal on a railroad owned, leased, or operated by any railroad carrier, without consent of the railroad carrier involved;

“(7) interfering or tampering with, or obstructing in any way, any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier, without consent of the railroad carrier involved; or

“(8) taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier in this State without consent of the railroad carrier--

shall be guilty of an offense. If railroad property damage does not exceed \$500 and no bodily injury occurs to another as a result of any of the aforesaid acts, the person shall be guilty of a misdemeanor. Upon conviction of such act, the person shall be subject to pay the railroad carrier involved the cost to repair any railroad property damaged, and to perform community service for not more than 120 hours, if community service is available in the jurisdiction where the offense was committed. If community service is not available in the jurisdiction where the offense was committed, the person shall be subject to pay the railroad carrier involved the cost to repair any railroad property damaged, and be fined not more than \$500, imprisoned for not more than six months, or both. If railroad property damage exceeds \$500 or bodily injury occurs to another as a result of any of the aforesaid acts, the person shall be guilty of a felony. Upon conviction of such act, the person may be subject to pay the railroad carrier involved for the cost to repair any railroad property damaged, and shall be fined not more than \$10,000, imprisoned for not more than ten years, or both. If serious bodily injury or death occurs

to another as a result of any of the aforesaid acts, the person shall be guilty of a felony. Upon conviction of such act, the person may be subject to pay the railroad carrier involved the cost to repair any railroad property damaged, and shall be fined not more than \$20,000, imprisoned for not more than 20 years, or both.

“(b) Intent to damage railroad property or to endanger the safety of another.

Whoever willfully damages or attempts to damage railroad property or willfully endangers or attempts to endanger the safety of another, by an act including, but not limited to--

“(1) taking, removing, defacing, altering, or otherwise vandalizing a railroad sign, placard, or marker;

“(2) throwing a rock, baseball, or other dangerous object at a locomotive, railroad car, or train;

“(3) dropping a brick or other dangerous object from a bridge or other overpass onto a railroad right-of-way;

“(4) shooting a firearm or other dangerous weapon at a locomotive, railroad car, or train;

“(5) removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, on a railroad owned, leased, or operated by any railroad carrier, and without consent of the railroad carrier involved;

“(6) interfering or tampering with, or obstructing in any way, any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier without consent of the railroad carrier involved; or

“(7) taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable

of being used by any railroad carrier in this State without consent of the railroad carrier--

shall be guilty of a felony. If railroad property damage does not exceed \$500 and no bodily injury occurs to another as a result of any of the aforesaid acts, upon conviction of such act, the person shall be subject to pay the railroad carrier involved the cost to repair any railroad property damaged, and shall be fined not more than \$10,000, imprisoned for not more than ten years, or both. If railroad property damage exceeds \$500 or bodily injury occurs to another as a result of any of the aforesaid acts, upon conviction of such act, the person may be subject to pay the railroad carrier involved the cost to repair any railroad property damaged, and shall be fined not more than \$20,000, imprisoned for not more than 20 years, or both. If serious bodily injury occurs to another as a result of any of the aforesaid acts, upon conviction of such act, the person may be subject to pay the railroad carrier involved the cost to repair any railroad property damaged, and shall be fined not more than \$25,000, imprisoned for any term of years or for life, or both. If death occurs to another as a result of any of the aforesaid acts in this subsection, upon conviction of such act, the person may be subject to pay the railroad carrier involved for the cost to repair any railroad property damaged, and shall be fined not more than \$100,000, imprisoned for any term of years or for life, or both.

“(c) **Theft of railroad freight.** Whoever, willfully and with intent to permanently deprive the owner thereof, takes or removes railroad freight from any freight car, including a boxcar, container, or flatbed, shall be guilty of a felony. Upon conviction of such act, the person shall be fined not more than \$5,000, imprisoned for not more than five years, or both.

“(d) **Receiving stolen railroad freight.** Whoever buys or receives any of the railroad freight described in subsection (c), having reason to know that such freight has been stolen, shall be guilty of a felony. Upon conviction of such act, the person shall be fined not more than \$5,000, imprisoned for not more than five years, or both.

“(e) **Definitions**-- For purposes of this section--

“(1) ‘bodily injury’ means--

“(i) a cut, abrasion, bruise, burn, or disfigurement;

“(ii) physical pain;

“(iii) illness;

“(iv) impairment of the function of a bodily member, organ, or mental faculty; or

“(v) any other injury to the body, no matter how temporary;

“(2) ‘railroad’ means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including--

“(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

“(ii) high-speed ground transportation systems that connect metropolitan areas--

but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

“(3) ‘railroad carrier’ means a person providing railroad transportation;

“(4) ‘railroad property’ means all property owned, leased, or operated by a railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device. ‘Railroad property’ does not include administrative buildings, administrative offices, or administrative office equipment;

“(5) ‘right-of-way’ means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs;

“(6) ‘serious bodily injury’ means bodily injury which involves--

“(i) a substantial risk of death;

“(ii) extreme physical pain;

“(iii) protracted and obvious disfigurement; or

“(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

“(7) ‘yard’ means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives, and other rolling stock are kept when not in use or when awaiting repairs.”.

SECTION-BY-SECTION ANALYSIS OF MODEL STATE RAILROAD VANDALISM PREVENTION ACT

Section 1. Section one provides that the Act may be cited as the “Railroad Vandalism Prevention Act.”

Section 2. Section two provides that the purpose of the Act is to prevent acts of vandalism to railroad property which affect the health, safety, and welfare of the traveling public, the neighboring community, and railroad employees; to protect railroad property and freight in transportation by railroad; and otherwise to enhance the safety of transportation by railroad.

Section 3. Section three would permit, under stated conditions, prosecution of a broad range of acts of vandalism of railroad property. Section three is divided into five subsections, (a) through (e). Subsection (a) covers reckless acts of vandalism. Violations of subsection (a) that do not cause railroad property damage exceeding \$500 or bodily injury to another are misdemeanors punishable within the range of penalties provided. A violation of subsection (a) that causes railroad property damage exceeding \$500 or cause bodily injury to another is a felony subject to enhanced maximum penalties. The language “to another” makes it clear that if the only person injured as a result of the vandalism is the vandal himself or herself, such a circumstance, in the absence of causing railroad property damage in excess of \$500, would not subject the injured vandal to an enhanced penalty. Subsection (b) covers willful acts of vandalism. All violations of subsection (b) are felonies punishable within the range of penalties provided. A violation of subsection (b) that causes railroad property damage exceeding \$500 or causes bodily injury to another is subject to enhanced maximum penalties. All of the enumerated acts in subsection (a) are duplicated in subsection (b) except for paragraph (1) of subsection (a). Paragraph (1) of subsection (a) is omitted from subsection (b) because acts such as placing a coin on a track or throwing an egg at a train are unlikely to be committed with the intent to cause railroad property damage in excess of \$500 or to cause bodily injury to another. Unlike paragraph (1), the remaining enumerated acts described in subsection (a), paragraphs (2) through (8), may be committed recklessly or willfully. Accordingly, those acts are described in both subsections. Subsection (c) covers theft of railroad freight, and subsection (d) covers the corollary crime of receiving such stolen railroad freight. Subsection (e) provides definitions.

Paragraph (1) of subsection (a) prohibits usually harmless yet nevertheless reckless behavior often described as indiscretions of youth. These acts include taping a coin to a rail to watch it get flattened by an oncoming train, placing other small objects on the railway to create similar mementos, and dropping an egg from a bridge or throwing it at a passing train. Since such behavior generally poses more of a risk to the individual who commits the act than to another, such acts should be subject to the least amount of punishment prescribed in the range of punishment provided. The maximum punishment of 120 hours of community service where available, or a \$500 fine, or both, is not harsh in these circumstances. For example, even a seemingly innocuous act such as taping a coin to a track can result in the person being struck by a train, or can cause an engineer to make an emergency brake application to try to prevent such tragedy.

Paragraph (2) of subsection (a) prohibits reckless activities such as “tagging.” This is a slang term used by gangs to describe the act of marking gang territories with graffiti. If, for example, a person paints his or her gang name on a sign thereby defacing it, the crime may be prosecuted under subsection (a). The second paragraph also covers taking placards or other railroad signs which have been known to turn up in college dormitories or other similar places. If, for example, the person was trying to collect signs, the crime may be prosecuted under subsection (a) rather than subsection (b).

Paragraph (3) of subsection (a) prohibits reckless activities such as throwing rocks, baseballs, or other objects at trains. If, for example, a person uses a moving box car for target practice, but does not intend to damage it, such a crime may be prosecuted under subsection (a) rather than subsection (b).

Paragraph (4) of subsection (a) prohibits the reckless act of dropping a brick or other dangerous object from bridges. If, for example, a person drops a shopping cart from a bridge onto the middle of a moving freight train to see what would happen to the shopping cart, such a crime may be prosecuted under subsection (a).

Paragraph (5) prohibits the reckless act of shooting a firearm or other dangerous weapon at a locomotive or train. If, for example, a person pretending to rob a train, fires blanks at an oncoming locomotive, such a crime may be prosecuted under subsection (a).

Paragraph (6) prohibits reckless acts involving damage to railroad signal systems. If, for example, a railroad buff, who wants to collect a railroad grade crossing sign with flashing lights, and thought the track was not used much anyway, steals such a warning signal, such a crime may be prosecuted under subsection (a).

Paragraph (7) prohibits a wide range of reckless acts which generally interfere or tamper with or obstruct parts of a railroad right-of-way or other railroad property. If, for example, a group of demonstrators obstructs a track by handcuffing themselves to the rail, such a crime may be prosecuted under subsection (a).

Paragraph (8) prohibits a wide range of acts of vandalism which damage railroad moving equipment, particularly the locomotive or cars. If, for example, a railroad buff who is trying to collect railroad paraphernalia, steals a triple valve, such a crime may be prosecuted under subsection (a).

Subsection (b) covers willful and attempted acts of vandalism to railroad property and willful and attempted acts of vandalism intended to endanger the safety of another.

Paragraphs (1) prohibits vandalism of railroad signs, placards, or markers. If, for example, a person removes a hazardous materials placard to confuse emergency responders as to the contents of the tank car, such a crime may be prosecuted under subsection (b).

Paragraph (2) prohibits throwing rocks, baseballs, or other dangerous objects at locomotives, railroad cars, or trains. If, for example, a person throws a rock at close range at an obviously occupied train, such a crime may be prosecuted under subsection (b).

Paragraph (3) prohibits dropping a brick or other dangerous object from a bridge or other overpass. If, for example, a person drops a brick to coincide with the arrival of a locomotive engineer below, such a crime may be prosecuted under subsection (b).

Paragraph (4) prohibits shooting a firearm or other dangerous weapon at a locomotive or train. If, for example, a person fires a loaded shotgun at close range at an obviously occupied train, such a crime may be prosecuted under subsection (b).

Paragraph (5) prohibits willful acts involving damage or attempt to damage railroad signal systems. If, for example, a person willfully enters incorrect data into a computer to create

a false signal, in order to cause a head-on collision, such a crime may be prosecuted under subsection (b).

Paragraph (6) prohibits acts of vandalism to willfully damage or attempt to interfere with, tamper with, or obstruct a railroad right-of-way. If, for example, a person removes bolts from a rail in order to derail the train, such a crime may be prosecuted under subsection (b).

Paragraph (7) prohibits vandalism to a wide range of railroad equipment. If, for example, a disgruntled employee cuts an air hose in order to render a train's air brakes ineffective, in order to cause a train wreck, such a crime may be prosecuted under subsection (b).

Subsection (c) covers acts of theft of freight in transportation by railroad. This is a serious problem in southern border states where bandits will tamper with a signal system to intentionally cause a train to make an emergency brake application. Once the train is stopped, usually in a deserted area, the bandits will approach the train, break open a box car, and steal freight such as televisions and other goods.

Subsection (d) is the corollary provision to subsection (c), and proscribes the receiving of stolen railroad freight.

Subsection (e) defines certain terms. For example, the definition of "railroad" excludes urban rapid transit operations by rail, such as trolleys and subways. "Railroad" is defined as it is in the Federal railroad safety laws and "does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. § 20102(B). Therefore, the vandalism bill does not cover vandalism of rapid transit property. The definition of "railroad property" excludes from coverage, a railroad's administrative buildings, offices, and administrative office equipment such as furniture, files, and typewriters. Inclusion of this type of property would not further the [legislature's] primary intent, which is to prevent vandalism that affects safety. Although it is possible that vandalism of this type of property could affect the safety of the public or railroad employees, in most instances it would not do so in a direct way. Also, such acts of vandalism may be covered by existing local, State and Federal laws. Finally, to update railroad vandalism statutes, "railroad property" does include computers and software used in the direct operation of trains or signal systems. Vandalism of such railroad property is proscribed in subsections (a)(6) and (b) (5).

ENCLOSURE 3

RAILROAD TRESPASS AND VANDALISM LAWS

Chapters 10 and 11 from the study sponsored by the Federal Railroad Administration,
“Compilation of State Laws and Regulations Affecting Highway-Rail Grade Crossings”
(August 1995)

CHAPTER 10: TRESPASSING

CHAPTER OVERVIEW

Trespassing on railroad property and facilities has become a more serious problem in recent years. Current statistics provided by the Federal Railroad Administration indicate a total of 529 people killed and 452 people injured during the 1994 calendar year. It is against the law in every state to trespass on private property without permission of the owner or without having an official reason. As such, all states list unlawful trespass as a crime with minimal punishments.

One recent example of what is being done about trespassing on railroad property in other parts of the world comes from Canada. The Canadian House of Commons enacted an amendment to the Railway Safety Act in May of 1994 making trespassing on railroad property a federal law and added a stiff punishment. If a corporation is found guilty of violating the Canadian trespass law, it will be subject to a fine not exceeding two hundred thousand dollars. In the case of an individual, the punishment may be a fine not exceeding ten thousand dollars, a term of imprisonment not to exceed one year or both.

This chapter provides a state-by-state listing of trespassing laws as they pertain to railroad property and equipment only. In the majority of states, trespassing is found in sections of the codes concerned with property crimes and general offenses. Twenty-three states expressly forbid trespassing on railroad property-and-facilities, and codify it in sections concerned with railroads or utilities. As in other chapters, the relevant code sections are included.

STATE LAWS AND REGULATIONS AND PENALTIES

ALABAMA

Alabama has no trespass regulations or laws specifically targeted to railroad property or equipment.

ALASKA

Alaska has no trespass regulations or laws specifically targeted to railroad property or equipment.

ARIZONA

State law in Arizona makes it a third degree crime for a person to knowingly enter or remain unlawfully on the railroad right-of-way, the storage or switching yards or rolling stock of a railroad company. The section does not specify a range of punishment. See ARIZ REV. STAT. ANN. § 13-1502 (1994).

ARKANSAS

Arkansas law prohibits any person from using any railroad track as a common highway for horses, cattle or vehicles. Upon conviction, the person may be fined a sum of not more than twenty-five dollars for each offense and may be imprisoned for a period not exceeding 30 days. See ARK. CODE ANN. § 23-12-803 (1994).

CALIFORNIA

It is unlawful in California for anyone to enter or remain upon the property of any railroad where entry, presence or conduct upon the property interferes with or interrupts the safe and efficient operation of any locomotive. A violation of this section is a misdemeanor under California law. See CAL. [PENAL] CODE § 369i (West 1994).

COLORADO

Colorado has no trespass regulations or laws specifically targeted to railroad property or equipment.

CONNECTICUT

Connecticut has no trespass regulations or laws specifically targeted to railroad property or equipment.

DELAWARE

It is unlawful for any person, other than those connected with the railroad, to walk along the tracks, except when the tracks are laid along a public road or street. No person may lead or drive any horse or other animal upon railroad property within the fences and guards other than at farm crossings. Violation results in a ten dollar penalty in addition to all damages which are sustained thereby to the aggrieved party. See DEL. CODE ANN. tit. 2, § 1811 (1994).

DISTRICT OF COLUMBIA

The District of Columbia has no trespass regulations or laws specifically targeted to railroad property or equipment.

FLORIDA

Florida has no trespass regulations or laws specifically targeted to railroad property or equipment.

GEORGIA

Georgia law states that any person intruding unlawfully upon the tracks of a railroad without consent is guilty of a misdemeanor. See GA. CODE ANN. § 46-8-380 (1994).

A person is guilty of criminal trespassing when he knowingly and without authority:

- 1) Enters upon the land or premises of a railroad or into a railroad car.
- 2) Enters a railroad car after being notified by the owner that such entry is forbidden.
- 3) Remains upon the land after being told to leave.

Violation of this section is a misdemeanor. See GA. CODE ANN. § 16-7-21 (1994).

HAWAII

Hawaii has no trespass regulations or laws specifically targeted to railroad property or equipment.

IDAHO

Idaho has no trespass regulations or laws specifically targeted to railroad property or equipment.

ILLINOIS

Illinois has a prohibition against trespassing on railroad property but outlines several exceptions when unlawful trespass may not apply. It is prohibited for anyone to walk, drive or ride along the right-of-way or rail yard of any railroad. Unlawful trespass does not apply to passengers on trains, persons entering the property to protect human life, persons crossing at farm crossings and anyone having written permission. See 625 ILCS 5/18c-7503 (1994).

INDIANA

Indiana code provides that it is a Class B misdemeanor for anyone to drive, walk or ride along the right-of-way or yard of a railroad company at a place other than a public crossing. The code section also defines the terms used and outlines the differences between the various classes of misdemeanors and felonies. See IND. CODE § 8-3-15-3 (1994).

IOWA

Iowa has no trespass regulations or laws specifically targeted to railroad property or equipment.

KANSAS

Kansas has no trespass regulations or laws specifically targeted to railroad property or equipment.

KENTUCKY

A person is guilty of criminal trespass in the third degree if they are on the track, property or right-of-way, other than while passing over the track or right-of-way at a public or private crossing. Anyone doing so is subject to a maximum fine of twenty-five dollars for the first violation, fifty dollars for the second and a maximum fine of one hundred dollars for third and subsequent violations. See KY. REV. STAT. ANN. § 277.350 (Baldwin (1994)).

LOUISIANA

Louisiana prohibits unauthorized entry to railroad property. An initial conviction under the section brings a fine of not more than five hundred dollars, imprisonment of not more than ninety days or both. A second and any subsequent convictions are punishable by a fine not to exceed five hundred dollars or imprisonment for a term not to exceed six months. See LA. REV. STAT. ANN. § 14:63.6 (West 1993).

MAINE

The State of Maine prescribes a fine of not less than five or more than twenty dollars for anyone who, without right, stands or walks on a railroad track or bridge, or passes over such a bridge. See ME. REV. STAT. ANN. tit. 23, § 7007 (West 1994).

MARYLAND

Maryland has no trespass regulations or laws specifically targeted to railroad property or equipment.

MASSACHUSETTS

Massachusetts prohibits a person from being present, standing, walking or riding a bicycle, snow vehicle, recreational or other vehicle on the right-of-way of a railroad or other property used or controlled by that railroad except at a highway or other authorized grade crossing. Violation brings a fine of one hundred dollars. Any person who violates this section can be arrested without a warrant by law enforcement authorities. See MASS. ANN. LAWS ch. 160. § 218 (Law. Co-op. 1994).

MICHIGAN

Michigan law prohibits walking, riding, driving or being present on the right-of-way of a railroad or a railroad yard. The law lists a number of exceptions, such as legitimate

passengers, railroad employees and authorized representatives of the railroad. A violation of this section is considered a misdemeanor and is punishable by imprisonment for not more than thirty days, a fine of not more than one hundred dollars or both. See MICH. STAT. ANN. § 22.1263 (273) (Law. Co-op. 1993). Also see § 257.1515 for a right-of-way exception for a demonstration snowmobile trail.

MINNESOTA

Although it makes no specific mention of railroad property or equipment, Minnesota law does proscribe trespass on the premises of another without permission. See generally, MINN. STAT. § 609-605 (Trespass Law).

MISSISSIPPI

Mississippi has no trespass regulations or laws specifically targeted to railroad property or equipment.

MISSOURI

It is unlawful for anyone to walk upon the track of railroad, except at a crossing. Violation of this section is considered a trespass. See MO. REV. STAT. § 389.650(6) (1993).

MONTANA

Montana has no trespass regulations or laws specifically targeted to railroad property or equipment.

NEBRASKA

Nebraska has no trespass regulations or laws specifically targeted to railroad property or equipment.

NEVADA

Nevada has no trespass regulations or laws specifically targeted to railroad property or equipment.

NEW HAMPSHIRE

Any person in the state who enters upon any railroad property without license or privilege to do so shall be guilty of criminal trespass. See N.H. REV. STAT. ANN. § 381:14 (1993). Also see § 635:2 for a definition of criminal trespass.

NEW JERSEY

It is unlawful in New Jersey for anyone to walk upon the tracks of any railroad. Any person so doing will be deemed to have contributed to any injury sustained and may not recover damages. See N.J. REV. STAT. § 48:12-152 (1993). Also see § 39:3C-19 for prohibition against the operation of a snowmobile upon a railroad right-of-way.

NEW MEXICO

New Mexico has no trespass regulations or laws specifically targeted to railroad property or equipment.

NEW YORK

New York prohibits the operation of snowmobiles on railroad property except at the crossing of streets or highways, or at farm or forest crossings. See N.Y. [R.R.] § 83-a (McKinney 1994).

NORTH CAROLINA

North Carolina has no trespass regulations or laws specifically targeted to railroad property or equipment.

NORTH DAKOTA

North Dakota has no trespass regulations or laws specifically targeted to railroad property or equipment.

OHIO

It is unlawful for any person to draw, drive or cause to be moved any vehicle on or between the rails or tracks of a railroad. Violation of this section is a minor misdemeanor.

No person may climb, jump, step or stand upon a locomotive, engine or car upon the track of a railroad without permission. Violation is a minor misdemeanor. See OHIO REV. CODE ANN. §§ 4999.01 -.02 (Baldwin 1994).

OKLAHOMA

It is unlawful for anyone without authority to ride upon a train in Oklahoma. Violation of this section is a misdemeanor. See OKLA. STAT. tit. 21, § 1365 (1994).

OREGON

Oregon has no trespass regulations or laws specifically targeted to railroad property or equipment.

PENNSYLVANIA

Pennsylvania has no regulations or laws specifically targeted to railroad property or equipment.

RHODE ISLAND

Rhode Island forbids any person to stand or walk on a railroad right-of-way without authorization, except for when crossing at a highway or other authorized crossing. Violation may bring a fine of not more than one thousand dollars, imprisonment for not more than one year or both. Any person violating this section may be arrested without a warrant by a law enforcement officer. See R.I. GEN. LAWS § 11-36-6 (1994).

SOUTH CAROLINA

South Carolina has no trespass regulations or laws specifically targeted to railroad property or equipment.

SOUTH DAKOTA

South Dakota has no trespass regulations or laws specifically targeted to railroad property or equipment.

TENNESSEE

Tennessee has no trespass regulations or laws specifically targeted to railroad property or equipment.

TEXAS

Texas law forbids anyone to enter or remain on railroad property, knowing that it is railroad property, without the effective consent of the owner (railroad). See TEX. PENAL CODE ANN. § 28.07 (West 1994).

UTAH

Utah has no trespass regulations or laws specifically targeted to railroad property or equipment.

VERMONT

Vermont has no trespass regulations or laws specifically targeted to railroad property or equipment.

VIRGINIA

It is unlawful in Virginia for anyone to go upon the track of a railroad other than to pass over the track at a public or private crossing without the consent of the railroad company, or person operating the railroad.

It shall be a Class 4 misdemeanor for the first violation. If a second violation occurs within two years of the first violation, it is punishable as a Class 3 misdemeanor. A third violation within two years of a second, is punishable as a Class 1 misdemeanor. See Va. Code Ann. § 18.2-159 (Michie 1994).

WASHINGTON

Washington has no trespass regulations or laws specifically targeted to railroad property or equipment.

WEST VIRGINIA

It is unlawful in West Virginia for anyone to trespass upon any railroad property in the state, except when driving across a public, private or farm crossing. Violation of this section is a misdemeanor and punishment shall be a fine not to exceed twenty-five dollars or imprisonment in the county jail for a period of time not to exceed thirty days. See W. VA. CODE § 61-3-43 (1994).

WISCONSIN

- "1) No person, other than a licensee or authorized newspaper reporters or those connected with or employed upon the railroad, shall walk, loiter or be upon or along the track of any railroad"; and,
- 2) Each railroad corporation shall post notices containing substantially the provisions and penalties of this section, in one or more conspicuous places in or about each railroad station." See WIS. STAT. § 192.32 (1993).

WYOMING

Wyoming has no trespass regulations or laws specifically targeted to railroad property or equipment.

CHAPTER 11: VANDALISM

CHAPTER OVERVIEW

Every state has a law against the defacing and destruction of private property. Not every state lists a law or regulation specifically concerning railroad property. This chapter presents a state-by-state survey of the laws and regulations concerning acts of vandalism against railroad property, warning devices and equipment, along with any prescribed punishments. Each state regulation is accompanied by the appropriate citation.

STATE LAWS AND REGULATIONS

ALABAMA

Alabama law lists no applicable statute.

ARIZONA

No person shall, without lawful authority, attempt to alter, deface, injure, knock down or remove any official traffic control device, any railroad sign or signal, or any inscription, shield or insignia thereon, or any part thereof. See ARIZ. REV. STAT. ANN. § 28-649 (1994).

ARKANSAS

It is a misdemeanor for any person who, without lawful authority, alters, defaces, mutilates, destroys or knocks down a railroad crossing sign or signal. A first violation brings a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment for not more than ten days. See ARK. CODE ANN. § 27-52-101 (1994).

It is unlawful in Arkansas for any person to willfully perpetrate an act whereby any building, construction, or work of any railroad corporation in the state, or any engine, machine, structure, or any matter or thing appertaining to the corporation shall be stopped, obstructed, injured, impaired, weakened, or destroyed. Upon a finding of guilty of this misdemeanor a person shall be required to forfeit and pay to the affected railroad, treble the amount of damages sustained as a result of the offense. See ARK. STAT. ANN. § 23-12-805(a) (1994).

It is unlawful for anyone in Arkansas to wantonly, maliciously, or mischievously discharge a firearm or throw stones, sticks, clubs, or other missiles at, into, or against any locomotive, railroad car, or street car on any railroad. Upon a finding of guilty, a person may be punished by a fine of not less than twenty-five dollars or more than two-hundred fifty dollars, or by imprisonment in the county jail for not more than three months, or by the imposition of both. See ARK. STAT. ANN. § 23-12-804 (1994).

CALIFORNIA

The California Penal Code makes it a misdemeanor for any person who, absent any authority from the owner, manipulates or in any way tampers or interferes with any air brake or other device, appliance or apparatus in or upon any car or locomotive upon such railroad, or with any switch, signal or other appliance or apparatus used or provided for use in the operation of a railroad. See CAL. [PENAL] CODE § 587a (West 1994).

COLORADO

In Colorado, it is a Class B traffic infraction to alter, deface, injure, knock down, remove or interfere with the effective operation of any official traffic control device, any railroad sign or signal, or any inscription, shield or insignia thereon, or any part thereof. See COLO. REV. STAT. § 42-4-607 (1994).

CONNECTICUT

In Connecticut, a person is guilty of criminal mischief in the second degree for damaging or tampering with the tangible property of a public utility or mode of public transportation, power or communication. Criminal mischief in the second degree is a Class A misdemeanor. See CONN. GEN. STAT. § 53a-116 (1992).

Connecticut law imposes a fine of not more than ten dollars or imprisonment of not more than thirty days or both for any person who without right, removes, throws down, damages or defaces any active or passive warning signs at highway-rail crossings. See CONN. GEN. STAT. § 13b-346 (1992).

DELAWARE

In Delaware, if a person willfully impairs, injures, destroys or obstructs the use of any railroad or any of its works, wharves, bridges, carriages, engines, cars, machines or other property, he must pay to the railroad fifty dollars and be liable for all damages sustained. See DEL. CODE ANN. tit. 21, § 1812 (1992).

It is illegal for anyone to attempt to alter, or alter, damage, deface, injure, twist, knock down, interfere with the operation of, or remove a railroad signal or sign. Violation of this offense will result in a fine of not less than fifty-seven dollars and fifty cents nor more than two hundred-thirty dollars, or imprisonment for not more than ten days or both. Each subsequent offense committed within two years will bring a fine of not less than one hundred-fifteen nor more than four hundred-sixty dollars or imprisonment for a maximum of thirty days. A person found guilty of this offense is also responsible to the state for actual costs incurred in replacing the sign or device. See DEL. CODE ANN. tit. 21, § 4112 (1992).

DISTRICT OF COLUMBIA

It is a crime for anyone in the District of Columbia to maliciously place an obstruction on or near the track of any steam or street railway, or for anyone to displace or injure anything

appertaining to such track, with the intent to endanger the passage of any locomotive or car. A finding of guilt of an offense under this section may subject the person to a term of imprisonment for not more than ten years. See D.C. CODE ANN. § 22-3119 (1994).

If the act or acts described in section 22-3119 cause the death of another, the responsible person is guilty of murder in the first degree. See D.C. CODE ANN. § 22-2402 (1994).

FLORIDA

Florida has a couple of statutes related to vandalism of railroad signals or traffic control devices. A person is guilty of a felony of the third degree for knowingly or willfully interfering with or removing any railroad system used to control railroad operations, any railroad crossing warning devices, or any lantern, light, lamp, torch, flag, fuse, torpedo or other signal used in connection with railroad operations. See FLA. STAT. ANN. § 860.08 (West 1994).

Florida law prohibits anyone from wantonly or maliciously injuring any bridge, trestle, culvert, cattle guard, or other superstructure of any railroad company or salts the track of any railroad for purpose of attracting cattle onto the track, or who actually drives cattle onto the track. A violation is a felony under Florida law. See FLA. STAT. ANN § 860.11 (1994).

No person shall, unless by lawful authority, attempt to alter, deface, injure, knock down or remove any railroad sign or signal, any inscription, shield or insignia on the sign or signal, or any other part thereof. See FLA. STAT. ANN. § 316.0775 (West 1994).

It is unlawful to shoot at, throw any object capable of causing death or great bodily harm, or place any object capable of causing death or great bodily harm in the path of any railroad train, locomotive, car, caboose or other railroad vehicle. The statute lists particular penalties based on specific circumstances. See FLA. STAT. ANN. § 860-121 (West 1994).

GEORGIA

In Georgia, it is unlawful for any person to mutilate, destroy or deface any crossing sign. Violation is a misdemeanor punishable under Georgia law by a fine not exceeding fifty dollars, imprisonment for not more than twelve months, or both. See GA. CODE ANN. § 46-8-196 (1994).

HAWAII

It is unlawful for any person to attempt to alter, deface, injure, knock down or remove any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof. See HAW. REV. STAT. § 291C-37 (1994). Also see § 291C-161 as to penalty for violation.

IDAHO

It is a felony in Idaho for any person to maliciously remove, displace, injure or in any way interfere with, change or destroy any part of any railroad property, any track of any railroad, branch or branchway, switch, block or other signal or signaling device, turnout, bridge, viaduct, culvert, embankment, station house or other structure or fixture connected to the railroad. Punishment may be imprisonment for a period of time not exceeding ten years, a fine not exceeding fifty thousand dollars, or both. See IDAHO CODE § 18-6006 (1994).

A person may not attempt to alter, twist, deface, injure, knock down, remove or interfere with the effective operation of any traffic control device, any railroad sign or signal, any inscription, shield or insignia, or any other part of the device or signal. See IDAHO CODE § 49-1420 (1994).

Idaho makes it unlawful to place an obstruction on the rails or track of any railroad or to obstruct any switch, branch, branchway or turnout connected with any railroad. Violation is punishable by imprisonment not exceeding five years in the state prison or not less than six months in the county jail. See IDAHO CODE § 18-6009 (1994).

If such acts result in a death, the offense is a felony and punishment may be imprisonment for a term of not less than five years, but may extend to the natural life of the person responsible. The wrongdoer may also be tried and punished for murder. See IDAHO CODE §§ 18-6010 -6011 (1994).

ILLINOIS

Any person in Illinois found to have removed, taken, stolen, changed, added to, taken from or in any manner interfered with any of the parts or attachments of any locomotive or car, or any plant or property used in or connected with the operation of any locomotive or car is guilty of a Class 4 felony. If any of the actions described above results in death, the person found guilty shall be liable for first degree murder. See 625 ILCS 5/18c-7502 (1994).

Anyone found to have interfered with a railroad sign or signal or who in any way attempts to alter, deface, injure, knock down or remove any railroad sign or signal, any inscription, shield or insignia thereon or any other part thereof shall be guilty of a Class A misdemeanor punishable by a fine of not less than two hundred-fifty dollars in addition to any other penalties imposed. See 625 ILCS 5/11-311 (1994).

INDIANA

Indiana law lists no applicable statute.

IOWA

It is unlawful in Iowa to attempt to alter, alter, deface, injure, knock down or remove a railroad sign or signal. A person convicted of such an act is guilty of a serious misdemeanor and can be required to make restitution to the affected jurisdiction. See IOWA CODE § 321.260 (1993).

KANSAS

Kansas law makes it a Class C misdemeanor to tamper with a traffic signal, railroad switching device or other signal device erected or installed for the purpose of controlling or diverting the movement of railroad trains. Tampering is defined as intentionally manipulating, altering, destroying or removing such signals or devices. See KAN. STAT. ANN. §§ 21-3725 - 8-1513 (1993).

KENTUCKY

Kentucky law lists no applicable statute.

LOUISIANA

Louisiana law defines throwing stones, missiles or other objects at any train, railway car, or locomotive as criminal mischief and makes the punishment a fine of not more than five hundred dollars, imprisonment for not more than six months in jail or both. It prescribes the same penalty for discharging a firearm at a train, locomotive or railway car. See LA. REV. STAT. § 14:59 (1993).

It is also against the law in Louisiana to give false signals to a person(s) in charge of a locomotive with intent to cause the stopping of the locomotive, train or cars. Violation brings a fine of not less than ten nor more than two hundred dollars, or imprisonment for not more than three months. See LA. REV. STAT. § 14:321 (1993).

MAINE

It is unlawful for anyone to willfully, mischievously or maliciously break the seal upon any freight car, or break and enter into any railroad car, locomotive or work equipment, or to destroy, injure, defile or deface any of the same. If found guilty, punishment may be a fine of not more than five hundred dollars or imprisonment for not more than two years. See ME. REV. STAT. ANN. tit. 17, § 2401 (West 1994).

It is unlawful in Maine to destroy or molest any signal of a railroad corporation or any line, wire, post, lamp or other structure or mechanism used in connection with any signal on a railroad. If found guilty, a person may be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than two years.

No one may alter, change, or in any manner interfere with any safety switch or switch lights on any railroad. This type of offense is a Class E crime. See ME. REV. STAT. ANN. tit. 23, §§ 7010 -7011 (West 1994).

MARYLAND

It is against the law in Maryland to alter, deface, injure, knock down, change the direction of, twist or remove parts of any traffic control device or railroad sign or signal. The statute contains no mention of a penalty. See MD. ANN. CODE art. 21, § 206 (1994).

MASSACHUSETTS

No person may lawfully remove, throw down, injure or deface any grade crossing sign. Violation of this section may result in a fine of not more than ten dollars to be paid to the county, city or town that maintains the sign, or to the commonwealth if the sign is placed and maintained by the Department of Highways. See MASS. GEN. LAWS ANN. ch. 160, § 146 (West 1994).

It is unlawful to intentionally injure, molest or destroy any railroad signal or any line, wire, post or other structure or mechanism used in connection with the signal, or in any way interfere with the proper functioning of the signal. The law also prohibits meddling or tampering with a track or car, or the mechanisms, or apparatus used in the operation of a railroad car. Violation will result in a fine of not more than five hundred dollars, or imprisonment for not more than two years, or both. See MASS. GEN. LAWS ANN. ch. 159, § 103 (West 1994).

It is unlawful to maliciously injure a railroad, or anything pertaining to a railroad, or any material or implements for the construction or use thereof. If found guilty, punishment may be a fine of not more than five thousand dollars, imprisonment for not more than one year, or both. See MASS. ANN. LAWS ch. 160, § 225 (Law. Co-op. 1994).

Massachusetts law prohibits anyone from willfully and maliciously stopping a train or causing a train to stop for the purpose of entering, leaving or delaying the train shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one month. See MASS. ANN. LAWS ch. 160, § 227 (Law. Co-op. 1994).

It is unlawful for anyone in Massachusetts to use, remove, or tamper with any tools or appliances carried on railroad cars. Punishment shall be a fine of not more than one hundred dollars or by imprisonment for not more than three months, or both. See MASS. ANN. LAWS ch. 160, § 228 (Law. Co-op. 1994).

It shall be against the law in Massachusetts for anyone to willfully obstruct, or aid or abet in obstructing the passage of a railroad engine or car, or to willfully endanger, or aid or abet in endangering, or cause an act with the intent to endanger the safety of persons on a railroad engine or car. Punishment shall be a fine of not more than one thousand dollars or imprisonment for not more than twenty years, or both, and for each offense, a forfeit of treble the amount of damages to the railroad. See MASS. ANN. LAWS ch. 160, § 226 (Law, Co-op. 1994).

MICHIGAN

Michigan prohibits the altering, defacing, knocking down or removal of any railroad signal or any inscription, shield or insignia on the sign or signal, or any other part thereof. A penalty for violation is not described. See MICH. STAT. ANN. § 9.2316 (Law. Co-op. 1993).

Michigan also prohibits tampering with a light or banner attached to or connected with any switch or derauling device. Violation is a misdemeanor punishable by a fine of at least one hundred but not more than five hundred dollars, or by imprisonment of at least ten but not more than sixty days. See MICH. STAT. ANN. § 22.1263 (267) (Law. Co-op. 1993).

It is against the law in Michigan for any person to cause or attempt to cause the derailment of a railroad engine or cars, or track vehicle used on railroad tracks, whether the engine, cars or vehicle are thrown from the track or not, or by any other means, to willfully endanger or attempt to endanger the lives of persons traveling or working on the railroad. A violation is a felony and subject to imprisonment for life, or at the discretion of the court, any number of years. See MICH. STAT. ANN. § 22.1263(257) (Law. Co-op, 1993).

Michigan law forbids the throwing of a stone, brick, or other missile at a train or track vehicle. A violation of this offense is a misdemeanor punishable by a fine of not less than one hundred dollars, or more than five hundred dollars, or imprisonment for not less than ten nor more than ninety days, or both. See MICH. STAT. ANN. § 22.1263(257)(2) (Law. Co-op. 1993). See also section 28.779 of MSA. See also section 28.611 MSA, concerning malicious destruction of any railroad.

MINNESOTA

It is unlawful for anyone in Minnesota to maliciously injure, remove, displace, deface or destroy the signs or signals that are regulated and mandated by statute at railroad crossings with roads. See MINN. STAT. § 219.30 (1993).

It is a misdemeanor for a person to exhibit a false light or signal or to interfere with a light, signal or sign controlling or guiding traffic on a railroad track. If the person doing same knows that they are risking lives or serious injury or property damage, the violation could be a felony. See MINN. STAT. § 609.851 (1993).

Minnesota law lists a number of crimes against the railroad in one section: Intent to cause derailment by throwing debris on the track or tampering with switches, tracks, etc., is punishable as a felony. Crimes such as creating a foreseeable risk, shooting at a train and throwing objects at a train are punishable as gross misdemeanors. Additional crimes such as placing obstructions on the track or allowing animals on the tracks are punishable as misdemeanors. See MINN. STAT. § 609.85 (1-2-3-4-5-6) (1993).

MISSISSIPPI

Mississippi law lists no applicable statute.

MISSOURI

Missouri law lists no applicable statute.

MONTANA

Montana law lists no applicable statute.

NEBRASKA

Nebraska law prohibits anyone without lawful authority from altering, defacing, injuring, knocking down, or removing any traffic sign, railroad sign or signal, or any part of any such device. See NEB. REV. STAT. § 60-6,129 (1994).

NEVADA

It is unlawful for anyone to attempt to, or alter, deface, knock down or remove any official railroad sign or signal or any inscription thereon. See NEV. REV. STAT. ANN. § 484.289 (Michie 1993).

It is unlawful for anyone in Nevada to willfully obstruct, hinder or delay the passage of any railroad car. The offender is guilty of a misdemeanor. See NEV. REV. STAT. ANN. § 705.450 (Michie 1993).

It is unlawful for anyone in Nevada to tamper with railroad property. "Tampering" is defined as willfully uncoupling or detaching any locomotive, tender or any car of the railroad train, either when standing or in motion on any track, or the releasing of the brake of any railroad car or train, or the putting in motion of any car or train. See NEV. REV. STAT. § 705.480(1a-c) (Michie 1993).

The law in Nevada prohibits anyone from throwing a stone, or rock, or missile, or any substance at any railroad train, car, locomotive or tender, or any part of a train, or to injure or deface or damage the same or any part thereof. See NEV. REV. STAT. ANN. § 705-480(2a-b) (Michie 1993).

Any person violating any provision of section 705-480 is guilty of a public offense, as prescribed in NRS 193.155, proportionate to the value of the property damaged, but in no event less than a misdemeanor. See NEV. REV. STAT. ANN. § 193.155 (Michie 1993).

It is unlawful for anyone in Nevada to willfully and maliciously place any obstruction on railroad tracks, or tear up or remove any part or portion of a railroad, or destroy, derange, misplace or injure any rail, switch, block or signaling device, culvert, viaduct, bridge, car tender or engine, or any such thing, or any other act whereby the life and limb of any person may be endangered. Punishment shall be imprisonment for a period of not less than two years or more than twenty years. See NEV. REV. STAT. ANN. § 705.460 (Michie 1993).

NEW HAMPSHIRE

It is unlawful in New Hampshire for a person to purposely damage the property of another. The offender is guilty of criminal mischief. Criminal mischief is a Class B felony if the person causes or attempts to cause a substantial interruption or impairment to transportation. See N.H. REV. STAT. ANN. § 634:2 (1994).

NEW JERSEY

It is unlawful in New Jersey for anyone to impair, injure, destroy or obstruct either the use of a railroad or the property of a railroad. Anyone violating this section shall forfeit to the affected railroad the sum of fifty dollars to be recovered in an action at law in any court having jurisdiction. See N.J. REV. STAT. § 48:12-167 (1993).

New Jersey law prohibits anyone from obstructing a railroad track or injuring, destroying, taking possession of, or removing the rolling stock, or other property of a railroad company, in connection with strike activity. Such an offense is a misdemeanor and punishable by a fine not exceeding five hundred dollars, and possible imprisonment for a period of time not exceeding one year, at the discretion of the court. See N.J. REV. STAT. § 48:12-165(b-c) (1993).

Any person who vandalizes railroad signals or protection devices in New Jersey shall be guilty of a disorderly persons offense. For any subsequent violations, the offender is guilty of a crime of the fourth degree. See N.J. REV. STAT. § 2C:33-14.1 (1993).

NEW MEXICO

New Mexico law lists no applicable statute.

NEW YORK

It is unlawful in New York for a person to throw, shoot or propel a rock, stone, brick, or piece of iron, steel or other metal, or any deadly or dangerous missile or fire bomb at any locomotive or car of a train which is occupied by any person or persons, with intent to cause personal injury or property damage. An offense under this section is a violation unless an offense carrying a higher classification is charged. See N.Y. [R.R.] Law § 53-d (Consol. 1994).

New York law prohibits anyone from interfering with a railroad train by willfully intending to disrupt, delay, or disturb service, by placing any object or objects of any kind on, under or upon the tracks, which does or could cause physical damage to railroad equipment or property, or passengers, or both. An offense under this section is considered a Class D felony unless an offense carrying a higher classification is charged. See N.Y. [R.R.] Law § 53-e (Consol. 1994).

NORTH CAROLINA

North Carolina prohibits the placing of any matter or thing upon, over or near any railroad track, or destroying or tampering with the roadbed, rail or fixtures.

Effective October 1, 1994, the law in North Carolina makes a distinction as to whether the act was done with or without intent to cause injury and punishment is fixed accordingly. If there was intent to cause injury, the violation is a Class 1 felony. If there was no intent, the violation is a Class 2 misdemeanor. See N.C. GEN. STAT. §§ 14-278 -279 (1994).

NORTH DAKOTA

It is unlawful for anyone in North Dakota to tamper with, alter, or damage railroad property, or to exhibit any false lights or signals. Violation is a Class C felony. See N.D. CENT. CODE § 49-10.1-08 (1993).

It is unlawful in North Dakota for any person to cause a substantial interruption of or impairment to any transportation system by:

- a. Tampering with or damaging property;
- b. Incapacitating an operator of such service;
- c. Negligently damaging the tangible property of another by fire, explosives, or other dangerous means.

An offense under this section is considered a Class C felony if the conduct is intentional, and a Class A misdemeanor if the act was done knowingly or recklessly. Otherwise, an offense is considered a Class B misdemeanor. See N.D. CENT. CODE 12.1-21-06 (1993).

OHIO

Ohio law lists no applicable statute.

OKLAHOMA

Oklahoma law prohibits anyone from removing, displacing, injuring or destroying any part of any railroad or railroad equipment, including switches, bridges, viaducts, culverts, station houses and other structures.

Any person convicted of placing an obstruction on the rails or tracks may be imprisoned in the penitentiary for a period of time not to exceed four months or in a county jail for not less than six months. See OKLA. STAT. tit. 21, § 1751 (1)-(2) (1994).

It is unlawful in Oklahoma to mask, alter or remove any light or signal, or willfully exhibit any false light or signal with intent to bring a train into danger. Punishment shall be imprisonment for not less than three nor more than ten years. See OKLA. STAT. tit. 21, § 1778 (1994).

It is a violation of Oklahoma law to, without lawful authority, attempt to or actually alter, deface, injure, knock down or remove any official traffic control device, any railroad sign or signal, or any part thereof. See OKLA. STAT. tit. 47, § 11-207 (1994).

OREGON

It is a crime of criminal mischief in the first degree for any person in Oregon to damage property of a railroad, or to intentionally interfere with the service of a railroad, and to manipulate or rearrange any property of a railroad. Criminal mischief in the first degree is a Class C felony. See OR. REV. STAT. § 164.365 (1994).

It is unlawful for anyone to interfere with a railroad sign without lawful authority by trying to alter, deface, injure, knock down or remove the sign. The offense is a Class B traffic infraction. See OR. REV. STAT. § 810.240 (1994).

PENNSYLVANIA

A person is guilty of felonious criminal mischief in Pennsylvania if he or she intentionally causes pecuniary loss in excess of five thousand dollars, or substantially interrupts public transportation. If the loss is in excess of one thousand dollars, the offense is charged as a misdemeanor of the second degree and, if the loss is in excess of five hundred, the offense is charged as a misdemeanor of the third degree. Otherwise criminal mischief is a summary offense.

Criminal mischief is defined in the statute as the intentional reckless, or negligent damaging of tangible property by fire, explosives or other dangerous means, or tampering with tangible property so as to endanger persons or property, or by causing another to suffer pecuniary loss by deception or threat. See 18 PA. CONS. STAT. § 3304 (1994).

It is unlawful for anyone in Pennsylvania to intentionally or recklessly obstruct a railroad track. The offense is considered a summary offense, or could be considered a misdemeanor of the third degree if the offender fails to move on after warning by a law enforcement officer. See 18 PA. CONS. STAT. § 5507 (1994).

RHODE ISLAND

Any person who unlawfully and intentionally injures, molests or destroys any electric or other signal of a railroad or any part used in connection with that signal may be punished by a fine of up to five hundred dollars or by imprisonment for a period not to exceed two years.

There is another section of the code that deals with the tampering of railroad switches. Violation of the section brings a fine of up to one thousand dollars, by imprisonment for as much as three years or both. See R.I. GEN. LAWS §§ 11-36-4 -13 (1994).

"Every person who shall willfully place upon any railroad track any substance or thing with intent to hinder or impede the passage of any locomotive engine or car over the railroad, or shall willfully do any other act, matter, or thing, with intent to hinder, impede, or interrupt the passage of the locomotive engine or car, or whoever willfully throws into, against, or upon, or puts, places, or explodes, or causes to be exploded, in, upon or near a public highway, building, monument, bridge, railroad track, or car thereon, or vessel, any gunpowder or other explosive substance, or a bombshell, torpedo, or any instrument or package filled or loaded with an explosive substance, with intent unlawfully to destroy or injure such highway, building, monument, bridge, railroad track, car, or vessel, on any person or property, in, on or near such highway, building, monument, bridge, railroad track, car, or vessel, shall be imprisoned not less than two years nor more than twenty years, or be fined not exceeding ten thousand dollars, or both". See R.I. GEN. LAWS § 11-36-1 (1994).

SOUTH CAROLINA

South Carolina law forbids the injuring, molesting or destroying of railroad signals or any part of the signals. If found guilty of this misdemeanor, the punishment is a fine of up to five hundred dollars, imprisonment for a period not to exceed two years or both. See S.C. CODE ANN. § 58-15-860 (Law. Co-op. 1993).

It is unlawful for any unauthorized person in South Carolina to place any explosive substance whatever upon the rail of any railroad. Whoever aids or assists shall be guilty of a misdemeanor and, if convicted, shall be sentenced to pay a fine of not more than one hundred dollars or to imprisonment for a period of time not to exceed thirty days, at the discretion of the court or magistrate. See S.C. CODE ANN. § 58-15-830 (S.C. 1993).

South Carolina law prohibits anyone from willfully participating in or causing an action with intent to obstruct any engine, carriage, or car passing upon a railroad or with the intent to endanger the safety of persons within these vehicles. This offense is a felony, punishable by imprisonment for not more than five years or a fine of not more than five hundred dollars, and a forfeit of treble damages proved to have been sustained to the affected railroad for each offense. See S.C. CODE ANN. § 58-15-820 (S.C. 1993).

SOUTH DAKOTA

In South Dakota, anyone convicted of removing, displacing, injuring or destroying any railroad property is guilty of a Class 6 felony. In addition to railroad property, this section also mentions the track of any railroad, any branch, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture connected with the railroad. See S.D. CODIFIED LAWS ANN. § 49-16A-107 (S.D. 1994).

Anyone who masks, alters or removes a light or signal belonging to a railroad, or who exhibits a false light or signal with the intent of stopping the train is guilty of a Class 4 felony. See S.D. CODIFIED LAWS ANN. § 49-16A-90 (S.D. 1994).

It is a class 6 felony in South Dakota to place an obstruction on the rails or track of a railroad. See S.D. CODIFIED LAWS ANN. § 49-16A-108 (S.D. 1994).

If any person deposits, throws or propels any substance upon a railroad track, or at any vehicles while vehicle is either in motion or stationary, with intent to cause damage, such person is guilty of a class 1 misdemeanor. See S.D. CODIFIED LAWS ANN. § 22-34-27 (S.D. 1994).

TENNESSEE

Tennessee law makes it a class E felony to destroy or interfere with any railroad property. See TENN. CODE ANN. § 39-14-411 (Tenn. 1994).

Tennessee law makes it a class C misdemeanor for any person to obstruct a railway. See TENN. CODE ANN. § 39-17-307a(1) (Tenn. 1994)

TEXAS

It is unlawful for anyone in Texas to dismantle a warning signal at a grade crossing if that warning signal was originally paid for from public funds. The statute defines "warning signal" as a "traffic control device that is activated by the approach or presence of a train, including a flashing light signal, an automatic gate, or a similar device that displays to motorists a warning of the approach or presence of a train." An offense is a Class C misdemeanor. See TEX. REV. CIV. STAT. art. 6370d (West 1995).

"No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof". See TEX. REV. CIV. STAT. art. 6701d, § 37 (West 1995).

It is unlawful in Texas for anyone to throw an object or discharge a firearm or weapon at a train or rail-mounted work equipment, or to tamper with railroad property, or to place an obstruction on a track or right-of-way, or cause in any way the derailment of a train, car, or other railroad property that moves on tracks.

Offenses under this section shall be considered a Class B or C misdemeanor unless a person causes bodily injury to another, in which event the offense is a felony of the third degree. If any offense under this sections causes pecuniary loss, the classification and punishments run as follows: If the amount of loss is fifteen hundred to twenty thousand dollars, the offense is a state jail felony. If the amount of the loss exceeds twenty thousand, but remains less than one hundred thousand dollars, the offense is considered a felony of the third degree. When the loss exceeds one hundred thousand, but less than two hundred thousand dollars, the offense is considered a felony of the second degree. Should the loss be to two hundred thousand dollars or more, the offense is considered a felony of the first degree. See TEX. PENAL CODE ANN. § 28.07 (West 1994). Also see TEX. PENAL CODE § 28.03. (West 1994), concerning disruption to public transportation.

UTAH

Utah law lists no applicable statute.

VERMONT

It is unlawful in Vermont to interfere with, alter, deface, injure, knock down or remove any railroad sign or signal, or any part of that sign or signal. See VT. STAT. ANN. tit. 23, § 1028 (1994).

Any person who tampers with any safety appurtenance or device of a locomotive, passenger train car, freight train car, caboose or other train car may be imprisoned for not more than two years, fined not more than five hundred dollars or both. See VT. STAT. ANN. tit. 13, § 3104 (1994).

VIRGINIA

Virginia makes it a Class 1 misdemeanor to set in motion a locomotive or other rolling stock of a railroad with the intent to commit any crime, malicious mischief or injury. See VA. CODE ANN. § 18.2-147 (Michie 1994).

It is unlawful in Virginia for anyone to maliciously injure, destroy, molest or remove any switch lamp, flag or other signal used by any railroad, or destroy or interfere with the proper working of any signal. If the life of any person is put in peril by such action, the person responsible shall be deemed guilty of a Class 4 felony. In the event of the death of any person because of such action, the responsible person shall be deemed guilty of murder. If such act is done unlawfully but not maliciously, the offender shall be deemed guilty of a Class 1 misdemeanor. See VA. CODE ANN. § 18.2-155 (Michie 1994).

Virginia law makes it a class 4 felony to maliciously obstruct, remove or injure any part of railroad, or urban, suburban or interurban electric railway, or maliciously obstruct, tamper with, injure or remove any machinery, engine, car, trolley, or maliciously open, close, displace, tamper with or injure any switch, switch point, switch lever, signal lever or signal of any such railroad company, whereby the life of any person is placed in peril. If any such act should cause the death of any person, the offender shall be deemed guilty of murder, the degree of which will be determined by a jury or the court. If any such act is committed unlawfully, but without maliciousness, the offender shall be deemed guilty of a Class 6 felony; and if a death results, the offender is deemed guilty of involuntary manslaughter. See VA. CODE ANN. § 18.2-153 (Michie 1994).

It is unlawful in Virginia for anyone to maliciously shoot at, or throw any missile at or against any train or cars of any railroad train, whereby the life of any person on the train or car is put in peril. Any such offense is considered a Class 4 felony. If such shooting or throwing results in the death of any person, the offender shall be deemed guilty of murder, the degree of which shall be determined by a jury or court. If any act under this section is committed unlawfully, but not maliciously, the offender shall be deemed guilty of a Class 6 felony and, in the event a death results from any such act, the offender shall be deemed guilty of involuntary manslaughter. See VA. CODE ANN. 18.2-154 (Michie 1994).

WASHINGTON

"Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway, and every person who shall discharge any firearm or throw any dangerous missile at any train, engine, motor, or car on any railway, shall be punished by imprisonment in a state correctional facility for not more than twenty-five years." See WASH. REV. CODE ANN. § 81.60.070 (West 1994).

It is unlawful for any person, without lawful authority, to attempt to or actually deface, alter, knock down, injure or remove any official traffic control device, railroad sign or signal, or any part thereof. See WASH. REV. CODE ANN. §§ 46.61.080 and 47.36.130 (West 1994).

WEST VIRGINIA

West Virginia law forbids anyone from interfering with any railroad sign or signal. It does not list a penalty. See W. VA. CODE § 17C-3-9 (1994).

WISCONSIN

It is a Class A misdemeanor for any person to intentionally cause damage to a railroad switch, bridge, trestle or tunnel. See WIS. STAT. § 943.07 (1993).

WYOMING

It is unlawful for anyone to cause destruction to, remove or in any way injure any part of a railroad track or its fixtures, or for anyone to tamper with any signal or part of a signal. This includes any bridge, viaduct, culvert, trestle-work, embankment, parapet or other fixture. Violation of any part of this section could result in imprisonment for at least one but not more than twenty years. If any such mischief results in the death of any person, the offender would be deemed guilty of murder in the first or second degree or manslaughter, depending on the nature of the offense. See WYO. STAT. § 37-12-103 (1994).

