

# State Litter / Illegal Dumping Citation Guide

## Law Enforcement Community

**BACKGROUND:** Litter and illegal dumping costs Iowan's over \$30 million dollars per year. In addition it is negative to the environment and impacts the beauty and quality of our landscape and lowers pride in our State. Studies and supporting research indicate that if littering / illegal dumping aren't dealt with and behaviors changed, there is an increased potential for the disregard for the law. The following is a guide developed by Alisha Stach-Lorang, Dubuque County Assistant Attorney and reviewed by Jon Tack - Legal Services for the Iowa Department of Natural Resources. It is provided courtesy of Keep Iowa Beautiful to assist the law enforcement community in citing litter / illegal dumping violators.

### **Where did the illegal dumping / littering take place?**

1. Public Property or Water
  - a. Call the Illegal Dumping Enforcement Officer (to be named) for an illegal dumping charge under 455B.307A. (Requires a civil citation).
  - b. Charge them with the non-scheduled simple misdemeanor charge of "Littering" under 455B.363 (can be on citation or complaint / affidavit).
2. Roadway / Ditch
  - c. Charge them with "Putting debris on highway" under 321.369. – Scheduled fine – on traffic citation (in compendium).
3. Dumpsters / trash receptacles
  - d. If it's publicly owned: Call the Illegal Dumping Enforcement Officer (to be named) for a illegal dumping charge under 455B.307A(2). (Requires a civil citation).
  - e. If on private property: 716.7. Theft
4. Private Property
  - f. Charge them with "Trespass" (placing inanimate objects on property without permission of the owner) under either 716.7(2) (a) or (b) &/or
  - g. "Criminal Mischief" under 716.1 (See below).



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## A. Illegal Dumping

### 455B.307. Dumping--where prohibited—penalty

1. A private agency or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director unless the agency has been granted a permit ...
2. The director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this part 1 of division IV or the rules adopted pursuant to the part. The attorney general shall, on request of the department [DNR], institute any legal proceedings necessary in obtaining compliance with an order of the commission or the director or prosecuting any person for a violation of the provisions of the part or rules issued pursuant to the part. [But see [First Iowa State Bank v. Iowa Dept. of Natural Resources](#) 502 N.W.2d 164 (Iowa 1993).]
3. Any person who violates any provision of part 1 of this division or any rule or any order adopted or the conditions of any permit or order issued pursuant to part 1 of this division shall be subject to a civil penalty, not to exceed five thousand dollars for each day of such violation.

### 455B.307B. **Illegal dumping enforcement officer**

1. For purposes of this section, “officer” means the **illegal dumping enforcement officer in a county**.
2. The board of supervisors of each county may annually appoint an **illegal dumping enforcement officer** for the county. The board of supervisors may appoint the officer from recommendations by the county board of health or may select a person outside the recommendations made by the county board of health. The board of supervisors shall appoint a person who is a citizen of the United States, is of good moral character, and has not previously been convicted of a felony.
3. An **illegal dumping enforcement officer** shall take an oath of office prescribed by the board of supervisors. An officer's appointment shall be effective March 1 and shall continue for a term at the discretion of the board of supervisors.
4. An **illegal dumping enforcement officer**, subject to direction and control by the county board of supervisors, shall only be empowered to enforce the provisions of [sections 455B.307A](#) and [455B.363](#) and local littering ordinances. An officer shall not have the duty to enforce any other traffic or criminal laws of the state, county, or a municipality. An officer may enter upon any public land in the county, excluding land within the limits of cities, unless otherwise authorized by a city, and any private property with the permission of the landowner at any time for the performance of the officer's duties, and may hire the labor and equipment necessary subject to the approval of the board of supervisors.
5. A person shall not willfully obstruct, resist, impede, or interfere with an **illegal dumping enforcement officer** in connection with the officer's enforcement of [sections 455B.307A](#) and [455B.363](#) and local littering ordinances. A person shall not willfully retaliate or discriminate in any manner against an officer as a reprisal for any act or omission of the officer. A person violating this subsection is guilty of a simple misdemeanor.

### 455B.307A. Discarding of solid waste--prohibitions—penalty

1. For the purposes of this section, “discard” means to place, cause to be placed, throw, deposit, or drop.
2. A person shall not discard solid waste onto or in any water or land of the state, or into areas or receptacles provided for such purposes which are under the control of or used by a person who has not authorized the use of the receptacle by the person discarding the solid waste.
3. A person who violates this section is subject to a civil penalty not to exceed one thousand dollars for each violation. The revenue from the penalty provided in this subsection shall be remitted to the treasurer of state for deposit in the general fund of the state. Fifty percent of such moneys are appropriated to the state department of transportation for purposes of the cleanup of litter and illegally discarded solid waste. The remaining fifty percent of such moneys shall be deposited in the general fund of the county in which the violation occurred to be used exclusively for the cleanup and prevention of illegal dumping.

## **B. Littering**

### **455B.363. Litter**

No person shall discard any litter onto or in any water or land of this state, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose.

### **455B.364. Penalty (for Littering)**

Any person violating the provisions of [section 455B.363](#), upon conviction, shall be guilty of a simple misdemeanor. The court, in lieu of or in addition to any other sentence imposed, may direct and supervise a labor of litter gathering.

## **C. Criminal Mischief**

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

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

### **716.2. Multiple acts**

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

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

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

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

Criminal mischief is criminal mischief in the second degree if the cost ... exceeds one thousand dollars but does not exceed ten thousand dollars. Criminal mischief in the second degree is a class "D" felony.

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

Criminal mischief is criminal mischief in the third degree if ... the cost ... exceeds five hundred dollars, but does not exceed one thousand dollars. ... Criminal mischief in the third degree is an aggravated misdemeanor.

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

1. a. Criminal mischief is criminal mischief in the fourth degree if ... The cost ... exceeds two hundred dollars, but does not exceed five hundred dollars...Criminal mischief in the fourth degree is a serious misdemeanor.
2. All criminal mischief which is not criminal mischief in the first degree, second degree, third degree, or fourth degree is criminal mischief in the fifth degree. Criminal mischief in the fifth degree is a simple misdemeanor.

#### **D. 321.369. Putting debris on highway**

A person shall not throw or deposit upon a highway any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris. A person shall not throw or deposit upon a highway a substance likely to injure any person, animal, or vehicle upon the highway. A person who violates this section or [section 321.370](#) commits a misdemeanor punishable as a scheduled violation under [section 805.8A, subsection 14](#), paragraph “d”. (the scheduled fine is seventy dollars.)

I.C.A. § 321.1

78. “Street” or “highway” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

As thus defined a street includes all parts of the right-of-way, including the portion used for parking, sidewalks and pedestrian travel. *Kearney v. Ahmann*, **264 N.W.2d 768, 770 (Iowa 1978)**.

IA ADC 761-40.2(321) “**Highway**” means any segment of the primary road system or a municipal extension and **includes** but is not limited to the pavement surface, shoulder, median, earth fill, **ditches** and vegetation.

#### **E. 321.89. Abandoned vehicles**

(Scheduled fine is two hundred dollars).

#### **F. Theft**

**716.7. Theft defined** (For using someone else’s dumpster)

3. Obtains the . . .beneficial use of property of another, by deception. Where compensation for goods and services is ordinarily paid immediately upon the obtaining of such goods or the rendering of such services, the refusal to pay or leaving the premises without payment or offer to pay or without having obtained from the owner or operator the right to pay subsequent to leaving the premises gives rise to an inference that the goods or services were obtained by deception.

#### **F. Trespass**

**716.7. Trespass defined**

1. The term “property” shall include any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure whether publicly or privately owned.
2. The term “trespass” shall mean one or more of the following acts:
  - a. Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to use, remove therefrom, alter, damage, harass, *or place thereon or therein anything animate or inanimate...*
  - ...
  - d. Being upon or in property and wrongfully . . . altering, damaging ,... *or placing thereon or therein anything animate or inanimate*, without the implied or actual permission of the owner, lessee, or person in lawful possession.

**716.8. Penalties**

1. Any person who knowingly trespasses upon the property of another commits a simple misdemeanor.
2. Any person committing a trespass as defined in [section 716.7](#) which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits a serious misdemeanor.