

2015 ROW & Trespass Workshop

A black steam locomotive is pulling a freight train through a field. The locomotive is emitting a large plume of dark smoke. The scene is set against a blue sky with white clouds. There are trees with yellow and green leaves in the background, suggesting an autumn setting. The foreground is filled with tall, dry grass. The text "2015 ROW & Trespass Workshop" is overlaid at the top in a red, bold font.

**Session #4: Enforcement
Strategies & Difficulties with Prosecution**



John Reiser
Ass't Pros Atty, Washtenaw County
Ann Arbor, MI

Railroad Activity in Washtenaw County

- Amtrak (passenger route & station)
- Norfolk Southern (2 different freight lines, 1 yard)
- CSX (freight)
- Ann Arbor Railroad (freight & small yard)
- Great Lakes Central (freight & small yard)
- ArtTrain
- Mich Dept of Transportation (track ownership)









<https://www.youtube.com/watch?v=ovL8EeYAl8k>

If link does not work, query “Ann Arbor Jumps Bridge Wylde Vyrals” for the YouTube video which shows three young adult males jumping from the Ann Arbor Rail Road bridge into the Huron River, just north of the Argo Dam, at 43 seconds, 58 seconds, and 1:03.



LOOK, LISTEN, & LIVE

HOME ABOUT PRESENTER STATS CONTACT

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Curtis Stewart - Asst. State Coordinator

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Michigan Operation Lifesaver is a nonprofit
501 (c) (3) Organization.

About

Operation Lifesaver is an active, continuous public information and education program designed to help prevent crashes at highway/rail grade-crossings. In addition, the goal is to eliminate trespasser incidents along the railroad rights-of-way.

The 3 "E"s of Operation Lifesaver are: Education, Engineering, and Enforcement. Each has a role in our attempt to reduce the over 500 fatal crashes and over 600 trespassers fatalities that occur each year.

All 50 states and 13 foreign countries have OL programs with volunteer presenters at the grassroots level who will come to your organization to make an interesting presentation.

Mission Statement

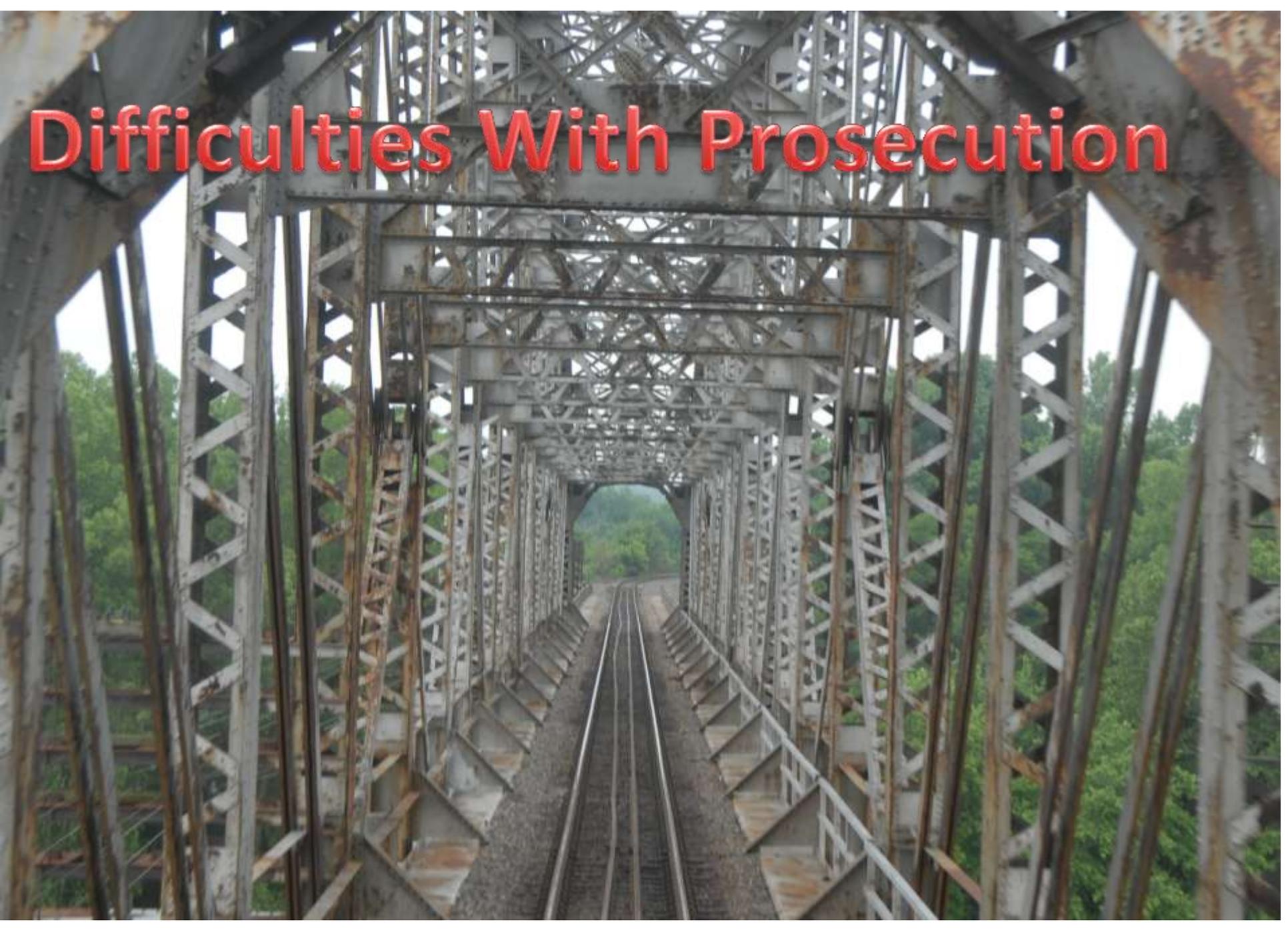
To achieve reductions in Michigan Highway-Rail Intersection crashes and pedestrian trespassing incidents along the railways through "Education, Engineering, and Enforcement."

"The undersigned has attended a class held by the Michigan Operation Lifesaver. The class included examples of incidents that have occurred on the railroad rights-of-way regarding trespassing on the railroad property. The class included education, enforcement and engineering topics."

Resources

- Michigan Operation Lifesaver
- Michigan Department of Transportation
- Federal Railroad Admin—Chicago Office
- Ann Arbor Police Department
- University of Michigan Police Department
- Washtenaw County Sherriff Department
- Norfolk Southern Police Department
- CSX Police Department
- Amtrak Police Department
- District Court Judge
- Ann Arbor Railroad and Amtrak Engineers

Difficulties With Prosecution



Railroad Trespass is a Disparate Problem

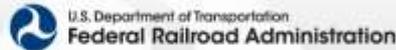
- Pedestrians taking shortcuts
- Recreational users
 - Joggers, walkers, and bicyclists
 - Hunters
 - Snowmobilers and ATV operators
- Rail fans
- Photo Ops (wedding parties, album covers, photographers, videos & movies)
- Homeless communities
- Parking (festivals & sporting events)
- Stowaways and fee jumpers
- Drug and alcohol users
- Graffiti
- Scrap metal theft
- Intermodal container theft
- Thrill seekers (bridge jumpers, playing chicken, boarding in motion, etc)
- People attempting to commit suicide

Difficulties with Prosecution—Law Enforcement

- Whose responsibility is it: local police, RR police, owner of tracks, operator of RR, etc
- Unfamiliarity with RR statutes, RR contacts, & procedures for enforcement
- Local law enforcement have higher priorities
- Local officers unaware they have jurisdiction
- Ownership of tracks not always easy to determine, especially for officers with multiple jurisdiction or railroads
- RR police have limited resources
- RR police have to deal with several states' laws and the criminal procedures of several counties

Difficulties with Prosecution

- Public unawareness of laws & importance of preventing RR trespass
- Judicial unawareness of laws & importance...
- Sense of entitlement by some for recreation, and crossing, especially if they've long been using it
- Hostility toward RRs by some members of the public



- About FRA
- Railroad Safety
- Rail Network Development
- Research & Development
- Legislations & Regulations
- Grants & Loans
- Communication & Government Affairs
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TECHNICAL REPORTS

Compilation of State Laws and Regulations Affecting Highway-Rail Grade Crossings 5th Edition

31
OCT
2009

AUTHOR: Office of Railroad Safety

OFFICE: IRS

REPORT NUMBER:

SUBJECT: Highway-Rail Grade Crossing Warning Systems, Highway-Rail Grade Crossings, Trespasser Programs

KEYWORDS: crossing consolidation; crossing closure; warning devices; passive; active; driver; trespassing; vandalism

ABSTRACT: This Compilation of State Laws and Regulations on Matters Affecting Highway-Rail Crossings, Fifth Edition is intended to provide an up-to-date and more expansive look at the various state laws and regulations concerning every aspect of the regulation of highway-rail grade crossings, and driver behavior at those crossings. Compiled here are all of the laws and regulations of the 50 states and the District of Columbia into one comprehensive, easy-to-use document. It is intended to provide a one-stop reference for researchers, engineers, students, legal practitioners, and those individuals who make their living working in the field of highway-rail grade crossing safety. The reader will find this Fifth Edition useful when assessing differences and similarities in the laws among states, seeking distinctions between desirable and undesirable laws, and when conducting legal research. The source material collected for this book was obtained from individual state legislative Web sites which contain the laws and regulations published by each state and the District of Columbia. The style of legal citation used in the Fifth Edition is obtained from The Bluebook: A Uniform System of Citation, Seventeenth Edition, Cambridge, Mass. (Harvard Law Review Association, 2000.)

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Three Types of Statutes



- **Civil Infractions**

- Tickets

- Fines and costs only, no possibility of jail

- **Misdemeanors**

- Tickets, or Warrant & Complaint

- Sanctions include fines & costs, and the possibility of probation or jail

- **Felonies**

- Warrant & Complaint

- Sanctions include fines & costs, and the possibility of probation, jail, prison, and parole



Examples of Civil Infractions

Stopping at RR Grade Crossing

- Driver shall stop car not more than 50 feet but not less than 15 from nearest rail of RR, if:
 - A clearly visible electric or mechanical signal device...,
 - Crossing gate is lowered or flagman signals,
 - RR train approaching w/in 1500 feet of crossing & gives audible signal...
 - Approaching train is plainly visible and is in hazardous proximity to the crossing (MCL 257.667)

Avoiding Lowered Gates

- A person shall not drive a vehicle through, around, or under a crossing gate or barrier at a RR crossing while the gate or barrier is closed or is being opened or closed or against the direction of a police officer (MCL 257.667)

School Bus at RR Crossing

- Driver of school bus, before crossing a railroad track at grade, shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail, activate hazard warning lights, turn off all interior switches... and radios, open the passenger and driver-side window, and while stopped shall listen and look in both directions... (MCL 257.1857)

Parking Near RR Crossings

- A vehicle shall not be parked within 50 feet of the nearest rail of a railroad crossing (MCL 257.624)
- Pedestrians shall not pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being open or closed (*R28.1711 Uniform Traffic Code or Cities, Townships and Villages*)

Misdemeanors



Misdemeanors

- Carry the possibility of jail (up to 1 year in Michigan)
- Fines, costs, probation, community service, restitution, drug & alcohol testing, counseling, classes can also be ordered by the judge
- In Michigan, 93-day misdemeanors require fingerprints and entry into the LEIN system
- Cases can be brought via ticket or warrant/complaint
- Can be prosecuted by county prosecutor or city or township attorney (if they have an ordinance)
- Can be pled down to civil infractions or deferred

Railroad Trespass



Railroad Trespass—Specific RR Statute

- **462.273 Walking, riding, driving, or being upon or along right-of-way or yard; permission required; “right-of-way” defined; being upon, entering, or damaging buildings, rolling stock, or equipment; applicability of section; violation as misdemeanor; penalty.**
- (1) Except in the case of a right-of-way designated as a demonstration snowmobile trail in section 82126 of part 821 (snowmobiles) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.82126 of the Michigan Compiled Laws, **a person shall not walk, ride, drive, or be upon or along the right-of-way or yard of a railroad company operating its lines within this state**, or go upon or cross the right-of-way or yard at a place other than a public or private crossing, unless having first obtained written permission from the owner or occupant railroad, its agent or servant.
- (2) For purposes of this section, **“right-of-way” means the track or roadbed owned by a railroad and that property owned by a railroad 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, the existence of railroad tracks, or appropriate signs.**
- (3) A person **shall not be upon, enter, or damage any buildings, rolling stock, or equipment of any railway company** operating its lines within this state...
- (5) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than **30 days, or by a fine of not more than \$100.00, or both.**

Specific RR Trespass Statute vs General Criminal Statute



Misdemeanors--Trespass

- **750.552 Trespass upon lands or premises of another; exception; violation; penalty; "process server" defined.**
- (1) Except as otherwise provided in subsection (2), a person shall not do any of the following:
- (a) Enter the lands or premises of another without lawful authority **after having been forbidden to do so** by the owner or occupant or the agent of the owner or occupant.
- (b) Remain without lawful authority on the land or premises of another **after being notified to depart** by the owner or occupant or the agent of the owner or occupant.
- (c) Enter or remain without lawful authority on **fenced** or posted farm property of another person without the consent of the owner or his or her lessee or agent. A request to leave the premises is not a necessary element for a violation of this subdivision. This subdivision does not apply to a person who is in the process of attempting, by the most direct route, to contact the owner or his or her lessee or agent to request consent...
- (3) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 30 days or by a fine of not more than \$250.00, or both.

Misdemeanors—Throwing Objects at Trains

- **750.394 Train, car, or vehicle, throwing, propelling, or dropping stone or object; violation; penalty; “serious impairment” defined.**
- (1) A person shall not throw, propel, or drop a stone, brick, or other dangerous object at a passenger train, sleeping car, passenger coach, express car, mail car, baggage car, locomotive, caboose, or freight train or at a street car, trolley car, or motor vehicle.
- (2) A person who violates this section is guilty of a crime as follows:
 - (a) Except as provided in subdivisions (b), (c), and (d), the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.
 - (b) Except as provided in subdivision (c), (d), or (e), if the violation causes property damage, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$500.00, or both.

Misdemeanors—Operation of ORV on RR Property

- **324.81133 Operation of ORV; prohibited acts; crash helmet and protective eyewear required; exception; assumption of risk.**
- (1) An individual shall not operate an ORV
- On an operating or nonabandoned railroad or railroad right-of-way, or public utility right-of-way, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, except railroad, public utility, or law enforcement personnel while in performance of their duties, and except if the right-of-way is designated as provided for in section 81127.

Misdemeanors—Boarding a Train in Motion

- **750.518 Boarding railroad train while in motion.**
- Boarding railroad train while in motion—Any person who shall jump or step on board of any railroad train, locomotive or car when in motion except employees and passengers at railway stations shall be guilty of a misdemeanor.
- 90 days and/or \$500



COACH



PYRAMIC PEAK

#7

Misdemeanors—Tampering w/ RR Switches

- **462.267 Light or banner attached to switch or derailing device; prohibited conduct; violation as misdemeanor; penalty.**
- (1) A person not authorized by a railroad company shall not destroy, remove, change, extinguish, or tamper with in any manner, any light or banner attached to or connected with any switch or derailing device maintained by a railroad company.
- (2) A person who violates this section is guilty of a misdemeanor, punishable by a fine of not less than \$100.00, or more than \$500.00, or by imprisonment for not less than 10 days or more than 60 days.



Misdemeanor—MDOP markers, lamp posts, milestones

- **750.383 Malicious destruction of property; boundary markers; defacing inscriptions, buildings and sign boards; light bulbs.**
- Maliciously injuring or destroying boundary markers, guide posts, etc.—Any person who shall wilfully or maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of this state or any municipality thereof, or of any tract or lot of land, or any tree marked for that purpose, or shall so break down, injure, remove or destroy any milestone, **mileboard, guidepost or guide board, lawfully erected upon any highway, or other public way or railroad**, or shall wilfully or maliciously deface, or alter the inscription on any such stone, post or board, or shall wilfully or maliciously mar or deface any building or sign board, or extinguish any lamp, or break, injure, destroy or remove any gas lamp, oil lamp, electric light globe or bulb, or any railing or lamp post, erected on any bridge, sidewalk, street, highway, court or passage, or shall wilfully or maliciously injure, remove, deface or destroy any board or structure lawfully erected or used for the posting of bills, posters, or other notices, or shall wilfully or maliciously mutilate, deface or destroy any bill, poster, or other printed or written notice lawfully posted on any board or structure used for that purpose, without the consent of the owner or occupant thereof, shall be guilty of a misdemeanor. (90 days and/or \$500)

Misdemeanors—Cutting/destroying RR property

- **750.546 Wilful trespass; by cutting or destroying property.**
- Any person who shall wilfully commit any trespass, by cutting down or destroying any timber or wood, standing or growing on the land of another, or by carrying away any kind of timber or wood, cut down or lying on such land, or by digging up or carrying away any stone, ore, gravel, clay, sand, turf or mould from such land, or any roots, fruit or plant there being, or by cutting down or carrying away any grass, hay, or any kind of grain standing, growing or being on such land, or by carrying away from any wharf or landing place, **railroad depot** or warehouse, any goods whatever in which he has no interest or property, without the license of the owner, of the value of 5 dollars or more, shall be guilty of a misdemeanor. (90 days and/or \$500)



Misdemeanors—Sale or Purchase of RR Nonferrous Metal

- **445.429 Article containing nonferrous metal; tagging and holding by dealer required; circumstances; creation and maintenance of records; certain sales prohibited.**
- 4) Except in the case where the seller has specific written documentation that the seller is the owner, agent, or person with authority to possess and sell certain articles, a seller shall not sell or offer for sale, and a dealer shall not purchase, any article containing nonferrous metal that is marked with any form of the name, initials, markings, or logo of a governmental entity, utility, cemetery, or **railroad**; any beer kegs; or any public fixtures. Any sale is subject to the provisions of this act. (93 days and/or \$500)

Examples of Felonies



Felony—Throwing Objects at Trains

- **750.394 Train, car, or vehicle, throwing, propelling, or dropping stone or object; violation; penalty; “serious impairment” defined.**
- (c) If the violation causes injury to any person, other than serious impairment or death, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.
- (d) If the violation causes serious impairment to any person, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.
- (e) If the violation causes death to any person, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

Felonies—Stealing/Removing Parts

- **750.361 Larceny or maliciously removing journal bearings or brasses.**
- Larceny or maliciously removing journal bearings or brasses—Any person who shall steal or maliciously remove, take, change, add to, take from or in any manner interfere with any journal bearings or brasses or **any parts or attachments of any locomotive, tender or car, or any fixture or attachment belonging to, connecting with or used by any railway, railroad** or transportation company in this state shall be guilty of a misdemeanor, punishable by imprisonment in the state prison for not less than 1 year nor more than 2 years: Provided, That if the stealing or removal of such journal bearings or brasses, or any parts or attachments of any locomotive, tender or car, or any fixture or attachment belonging to, connected with, or used on any locomotive, tender or car as aforesaid shall be the cause of wrecking any train, locomotive or other car in this state, whereby the life of any person or persons shall be lost as a result of the felonious or malicious stealing, nothing in this section shall be construed as preventing prosecution for such crime.
- Possession of any journal bearings or brasses or any parts or attachments of any **locomotive, tender or car, or any fixture or attachment belonging to, connected with, or used in operating any locomotive, tender or car owned, leased or used by any railroad, railway** or transportation company in this state, without the authority of the railroad company owning or leasing the same, shall be prima facie evidence that the same has been stolen or maliciously taken or removed by the person in whose possession the same is found or proved to have been.



Felonies—Uncoupling Cars

- **750.512 Uncoupling locomotive or cars.**
- Uncoupling locomotive or cars—Any person, not being employed on any railroad, who shall wilfully and maliciously uncouple or detach the locomotive or tender, or any of the cars of any railroad train, or shall in any way aid, abet, or procure the doing of the same, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years, or by fine of not more than 5,000 dollars.

Felonies—Destruction of RR Bridges

- **750.379 Malicious destruction of property; bridges.**
- Maliciously injuring or destroying bridges, etc.—Any person who shall wilfully and maliciously break down, injure, remove or destroy any public or toll bridge, or any **railroad**, or any lock in any dam, or any lock, culvert or embankment of any canal, or who shall wilfully and maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be guilty of a felony.
- 4 Years and/or \$5,000

Felonies—Blocking or Wrecking Track

- **750.511 Attempt to wreck or endanger safety of passengers.**
- Any person who shall place upon any railroad any timber, stone, iron or other obstruction, or who shall change any switch or track, or who shall loosen or displace any rail of the track of such railroad, or who shall change the brakes upon any car or cars standing on any railroad track in this state or who shall break down or displace, destroy or injure any bridge, culvert or embankment of any railroad, or do any other act with intent to endanger the safety of any person traveling or being upon such railroad, or to throw from such railroad any locomotive, tender, or car moving along the track of such railroad, on which shall be any person or property liable to be injured thereby, shall be guilty of a felony, punishable by imprisonment in the state prison for life or for any term of years.



Felonies—Breaking & Entering RR Car

- **750.110 Breaking and entering; "shipping container" defined.**
- (1) A person who breaks and enters, with intent to commit a felony or a larceny therein, a tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, structure, boat, ship, **shipping container**, or **railroad car** is guilty of a felony punishable by imprisonment for not more than 10 years.
- (2) As used in this section and section 111, "shipping container" means a standardized, reusable container for transporting cargo that is capable of integrating with a railcar flatbed or a flatbed semitrailer.
- 10 year felony

Felonies—Entry w/o Breaking, With Intent

- **750.111 Entering without breaking**
- Any person who, without breaking, enters any dwelling, house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, boat, ship, shipping container, **railroad car** or structure used or kept for public or private use, or any private apartment therein, with intent to commit a felony or any larceny therein, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00.

Felonies—Surveillance of Vulnerable Target

- **750.543r Obtaining or possessing certain information about vulnerable target; intent; felony; penalty; “vulnerable target” defined.**
- (1) A person shall not obtain or possess a blueprint, an architectural or engineering diagram, security plan, or other similar information of a vulnerable target, with the intent to commit an offense prohibited under this chapter.
- (2) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.
- (3) As used in this section, “vulnerable target” includes:
 - (h) A transportation structure or facility open to the public, including, but not limited to, a bridge, a tunnel, a public highway, or a railroad.
 - (m) A vehicle, locomotive or railroad car, aircraft, or watercraft used to provide transportation services to the public or to provide for the movement of goods in commerce.

Strategies For Prosecution



Possible Strategies for Prosecution

- Law enforcement
 - Agency agreements between RRs and local law enforcement
 - Presentations at Police Academies
 - Presentations at CLEs & annual legal refreshers
 - Provide RR Trespass info to Field Training Officers
 - Cop on a Train programs
 - Partner with Operation Lifesaver
 - Specialized RR Trespass details/blitzes
 - Utilize *Compilation of State Law and Regs...* RR app
 - Consider taking larger cases to U.S. Attorney

Possible Strategies for Prosecution

- Judiciary
 - Ask to present at new judges school
 - Ask to present at CLEs & annual refreshers
 - Invite judges on the Officer on a Train programs
 - Set up booth at state bar or ABA annual meetings
 - Invite to Operation Lifesaver meetings
 - Along with prosecutor and Operation Lifesaver, set up a First Offender/Deferred Sentence program

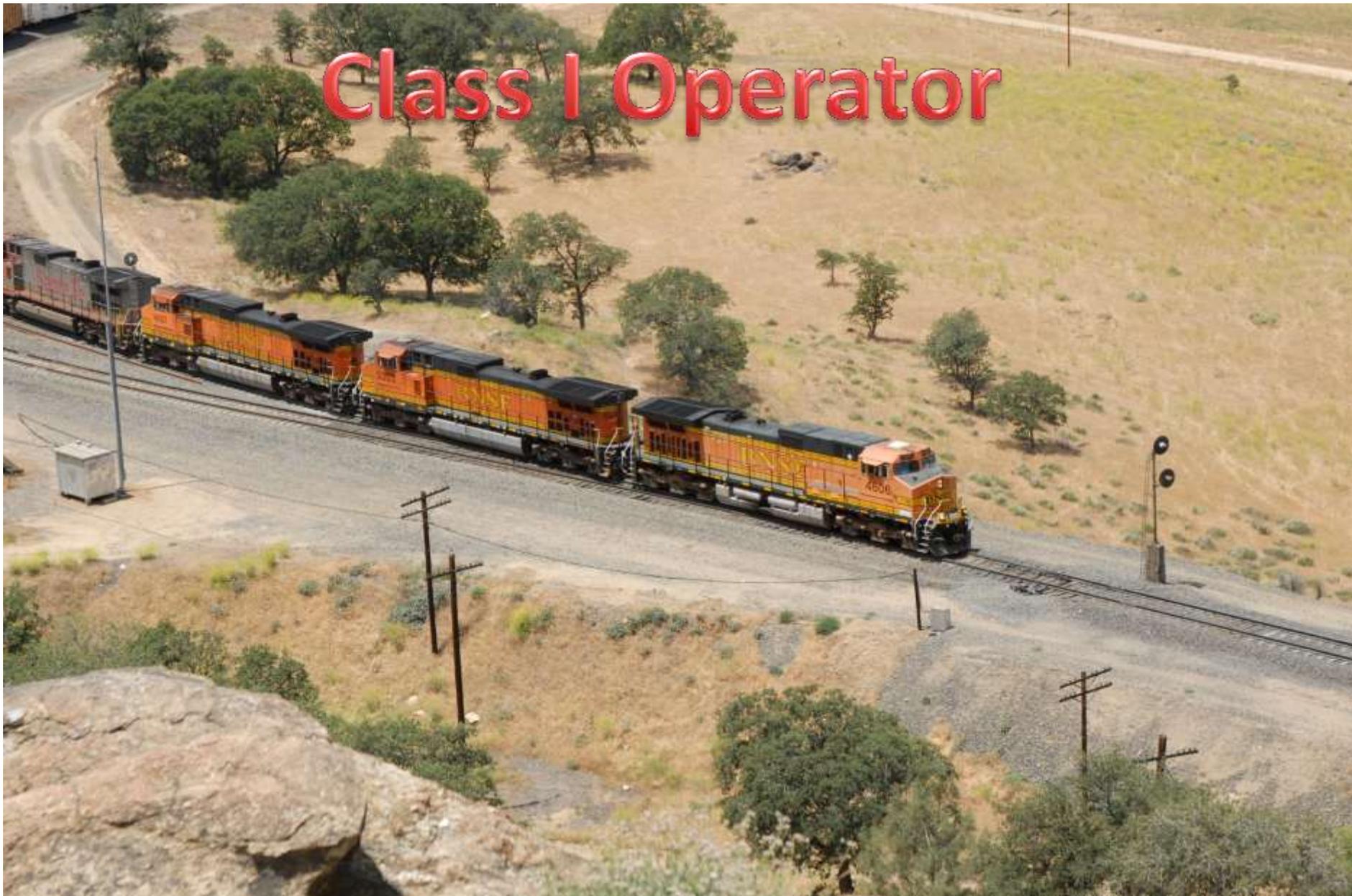
Possible Strategies for Prosecution

- Media
 - Press release in advance of RR Trespass blitzes
 - Invite media on Officer on a Train programs
 - Ask them to write story about tickets and warnings issued
- Prosecution
 - Reach out to local law enforcement for training and court procedures
 - Set up First Offender/deferral programs
 - Consider asking cities and townships to adopt RR laws

So, whether you're a...



Class I Operator











2695

2695

EF-6441





Amtrak



Commuter Rail



Short Line



Very Short Line



...you all have a role to play!



John Reiser

Ass't Pros Atty

Ann Arbor, MI

W: 734-222-6639

C: 734-478-6103

reiserj@ewashtenaw.org

