

**HOUSE . . . . . No. 1422**

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By Mr. Hill of Ipswich, a petition (accompanied by bill, House, No. 1422) of Bradford R. Hill and Bruce E. Tarr for legislation to further regulate graffiti. The Judiciary.

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Bradford R. Hill**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to graffiti.

PETITION OF:

NAME:

Bradford R. Hill  
Bruce E. Tarr

DISTRICT/ADDRESS:

4th Essex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO GRAFFITI.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 266 of the General Laws is hereby amended by inserting after section  
2 126B the following section:-

3 Section 126C. Any person who carries on his person a graffiti implement with the intent to  
4 vandalize, place graffiti on or otherwise deface public or private property, real or personal, of another:

- 5 (a) While on or under any overpass or bridge or in any flood channel;  
6 (b) At Any public or private facility, community center, park, playground, swimming pool,  
7 transportation facility, beach or recreation area or  
8 (c) In a public transportation vehicle is guilty of a misdemeanor unless he has first received valid  
9 authorization from the governmental entity which has jurisdiction over the public area or  
10 other person who is designated to provide such authorization.  
11 2. As used in this section:

- 12 (a) "Broad-tipped indelible marker" means any felt-tipped marker or similar implement which  
13 contains a fluid that is not soluble in water and which has a flat or angled writing surface of a  
14 width of one-half inch or greater.  
15 (b) "Graffiti implement" means any broad-tipped indelible marker or aerosol paint container or  
16 other item that may be used to properly or apply fluid that is not soluble in water and shall  
17 include stickers, decals and other adhesive coverings.  
18 (c) "Public transportation vehicle" means a bus, train or other vehicle or instrumentality used to  
19 transport persons from a transportation facility to another location.  
20 (d) "Transportation facility" means an airport, marina, bus terminal, train station, bus stop or  
21 other facility where a person may get to obtain transportation.

22 If a court orders a person who violates this section to pay restitution the person shall pay the  
23 restitution to:

- 24 1. The owner of the property which was affected by the violation; or  
25 2. If the violation involved the placing of graffiti on any public property, the governmental  
26 entity that incurred expenses for removing, covering or cleaning up the graffiti.

- 27 1. Unless a grater penalty is provided by law, a person who knowingly vandalizes, places  
28 graffiti on, defaces or otherwise damage:  
29 (d) Any privately owned building structure
- 30 (e) The grounds adjacent to and owned or rented by any institution, facility, building structure or  
31 place described in paragraph (a), (b), (c) or (d) or
- 32 (f) Any personal property contained in any institution, facility, building structure or place  
33 described in paragraph (a), (b), (c) or (d) is guilty of a gross misdemeanor.
- 34 2. In addition to any other penalty, the court shall order a person found guilty of a gross  
35 misdemeanor pursuant to subsection 1 to pay restitution for the damage and:  
36 (a) For the first offense, to pay a fine of not less than \$400 but not more than \$1,000, and to  
37 perform 100 hours of community service.  
38 (b) For the second offense, pay a fine of not less than \$750, but not more than 1,000, and to  
39 perform 200 hours of community service.  
40 (c) For a third or subsequent offense, to pay a fine of \$1,000, and to perform 200 hours of  
41 community service.
- 42 3. A person who is paid money for restitution pursuant to subsection 1 shall use the money to  
43 repair or restore the property that was damaged.
- 44 1. Unless a greater criminal penalty is provided by a specific statute, a person who places  
45 graffiti on or otherwise defaces the public or private property, real or personal, of another,  
46 without the permission of the owner:  
47 (a) Where the value of the loss is less than \$250, is guilty of a misdemeanor.  
48 (b) Where the value of the loss is \$250 or more but less than \$5,000, is guilty of a gross  
49 misdemeanor.  
50 (c) Where the value of the loss is \$5,000 or more or where the damage results in the impairment  
51 of public communication transportation or police and fire protection is guilty of a felony. If  
52 the court grants probation to such a person, the court shall require as a condition of probation  
53 that the person serve at least 10 days in the county jail.
- 54 2. If a person commits more than one offense pursuant to a scheme or continuing course of  
55 conduct, the value of all property damaged or destroyed by that person in the commission of  
56 those offenses must be aggregated for the purpose of determining the penalty prescribed in  
57 subsection 1, but only if the value of the loss when aggregated is \$5,000 or more.
- 58 3. A person who violates subsection 1 shall, in addition to any other fine or penalty imposed:  
59 (a) For the first offense, pay fine of not less than \$400 but not more than \$1,000 and perform 100  
60 hours of community service.  
61 (b) For the second offense, pay a fine of not less than \$750 but not more than \$1,000 and perform  
62 200 hours of community service.  
63 (c) For the third and each subsequent offense, pay a fine of \$1,000 and perform  
64 200 hours of community service. The community service assigned pursuant to this  
65 subsection must, if possible, be related to the abatement of graffiti.
- 66 4. The parent or legal guardian of a person under the age of 18 years who violates this section  
67 is liable for all fines and penalties imposed against the person. If the parent or legal  
68 guardian is unable to pay the fine and penalties resulting from a violation of this section  
69 because of financial hardship, the court may require the parent or legal guardian to perform  
70 community service.
- 71 5. If a person who is 18 years of age or older is found guilty of violating this section, the court  
72 shall, in addition to any other penalty imposed, issue an order suspending the driver's  
73 license of the person for not less than 6 months but not more than 2 years. The court shall

74 require the person to surrender all driver's licenses then held by the person. If the person  
75 does not possess a driver's license, the court shall issue an order prohibiting the person  
76 from applying for a driver's license for not less than 6 months but not more than 2 years.  
77 The court shall within 5 days after issuing the order, forward to the Registry of Motor  
78 Vehicles any licenses together with a copy of the order.

79 6. The Registry of Motor Vehicles:

- 80 (a) Shall not treat a violation of this section in the manner statutorily required for a moving  
81 traffic violation.  
82 (b) Shall report the suspension of a driver's license pursuant to this section to an insurance  
83 company or its agent inquiring about the person's driving record. An insurance company  
84 shall not use any information obtained pursuant to this paragraph for purposes related to  
85 establishing premium rates or determining whether to underwrite the insurance.

86 7. A criminal penalty imposed pursuant to this section is in addition to any civil penalty or  
87 other remedy available pursuant to another statute for the same conduct.

88 8. As used in this section

- 89 (a) "Impairment" means the disruption of ordinary and incidental services. The temporary loss  
90 of use or the removal of the property from service for repair of damage.  
91 (b) "Value of the loss" means the cost of repairing, restoring or replacing the property,  
92 including, without limitation, the cost of any materials and labor necessary to repair,  
93 restore or replace the item.

94 1. The Graffiti Reward Fund is hereby created in the General fund.

95 2. When a defendant pleads or is found guilty of violating NRS 206,125 or 206,330 or  
96 section 2 of this act, the court shall include an administrative assessment of \$250 for  
97 each violation in addition to any other fine or penalty. The money collected must be  
98 paid by the clerk of the court to the State Controller on or before the fifth day of each  
99 month for the preceding month for credit to the Graffiti Reward fund.

100 3. All money received pursuant to subsection 2 must be deposited with the State  
101 Controller for credit to the Graffiti Reward Fund. The money in the Fund must be used  
102 to pay a reward to a person who, in response to the offer of a reward, provides  
103 information which results in the identification, apprehension and conviction of a  
104 person who violates this section.

105 4. If sufficient money is available in the Graffiti Reward Fund, a state law enforcement  
106 agency may offer a reward, not to exceed \$1,000, for information leading to the  
107 identification, apprehension and conviction of a person who violates this section.

108 The reward shall be paid out of the Graffiti Reward Fund.

109 Except or otherwise provided no action may be brought against an officer or  
110 employee of the commonwealth or any of its agencies or political subdivisions for injury,  
111 wrongful death or other damage sustained in or on a public building or public vehicle by  
112 a person engaged in a violation of this section at the time the injury, wrongful death or  
113 damage was caused.

114 The above shall not apply to any action for injury, wrongful death or other  
115 damage.

116 (a) Intentionally caused or contributed by an officer of the commonwealth or any of its  
117 agencies or political subdivisions; or

118 (b) Resulting from the deprivation of any rights, privileges or immunities secured by  
119 the United States constitution or the constitution of the commonwealth.

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4. As used in this section:

- (a) "Public building" includes every house, shed, tent or booth, whether or not completed, suitable for affording shelter for any human being or as a place where any property is or will be kept for use, sale or deposit, and the grounds appurtenant thereto; and
- (b) "Public vehicle" includes every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, waterway or airway, owned in whole or part, possessed, used by or leased the commonwealth or any of its agencies or political subdivisions.

Except or otherwise provided herein, if a child is adjudicated delinquent for the unlawful act of placing graffiti or otherwise defacing public or private property owned or possessed by another person or for the unlawful act of carrying a graffiti implement in certain places without valid authorization the juvenile court shall

- (a) If the child possesses a driver's license, issue an order suspending the driver's license of the child for at least 1 year but not more than 2 years; or
- (b) If the child does not possess a driver's license and the child is or will be eligible to receive a driver's license within the 2 years immediately following the date of the order, issue an order prohibiting the child from receiving a driver's license for a period specified by the juvenile court which must be at least 1 year but not more than 2 years:
- (1) Immediately following the date of the order, if the child is eligible to receive a driver's license; or
- (2) After the date the child will be eligible to receive a driver's license, if the child is not eligible to receive a license on the date of the order.

2. If the child is already the subject of a court order suspending or delaying the issuance of his driver's license, the juvenile court shall order the additional suspension or delay, as appropriate, to apply consecutively with the previous order.