

HOUSE No.

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 grafitti.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradford R. Hill	4th Essex
Bruce E. Tarr	

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO GRAFITTI.

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 126B
2 the following section:-

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

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7 (a) While on or under any overpass or bridge or in any flood channel;

8 (b) At Any public or private facility, community center, park, playground, swimming pool,
9 transportation facility, beach or recreation area or

10 (c) In a public transportation vehicle is guilty of a misdemeanor unless he has first received
11 valid authorization from the governmental entity which has jurisdiction over the public area
12 or other person who is designated to provide such authorization.

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14 2. As used in this section:

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16 (a) "Broad-tipped indelible marker" means any felt-tipped marker or similar implement which
17 contains a fluid that is not soluble in water and which has a flat or angled writing surface of
18 a width of one-half inch or greater.

19 (b) "Graffiti implement" means any broad-tipped indelible marker or aerosol paint container or
20 other item that may be used to properly or apply fluid that is not soluble in water and shall
21 include stickers, decals and other adhesive coverings.

22 (c) "Public transportation vehicle" means a bus, train or other vehicle or instrumentality used
23 to transport persons from a transportation facility to another location.

24 (d) "Transportation facility" means an airport, marina, bus terminal, train station, bus stop or
25 other facility where a person may go to obtain transportation.

26 If a court orders a person who violates this section to pay restitution the person shall pay the
27 restitution to:

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- 29 1. The owner of the property which was affected by the violation: or
30 2. If the violation involved the placing of graffiti on any public property, the governmental
31 entity that incurred expenses for removing, covering or cleaning up the graffiti.
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- 33 1. Unless a greater penalty is provided by law, a person who knowingly vandalizes, places
34 graffiti on, defaces or otherwise damage:
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37 (d) Any privately owned building structure

38 (e) The grounds adjacent to and owned or rented by any institution, facility, building structure
39 or place described in paragraph (a), (b), (c) or (d) or

40 (f) Any personal property contained in any institution, facility, building structure or place
41 described in paragraph (a), (b), (c) or (d) is guilty of a gross misdemeanor.

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43 2. In addition to any other penalty, the court shall order a person found guilty of a gross
44 misdemeanor pursuant to subsection 1 to pay restitution for the damage and:

45 (a) For the first offense, to pay a fine of not less than \$400 but not more than \$1,000, and to
46 perform 100 hours of community service.

47 (b) For the second offense, pay a fine of not less than \$750, but not more than 1,000, and to
48 perform 200 hours of community service.

49 (c) For a third or subsequent offense, to pay a fine of \$1,000, and to perform 200 hours of
50 community service.
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52 3. A person who is paid money for restitution pursuant to subsection 1 shall use the money to
53 repair or restore the property that was damaged.

54 1. Unless a greater criminal penalty is provided by a specific statute, a person who places
55 graffiti on or otherwise defaces the public or private property, real or personal, of another,
56 without the permission of the owner:

57 (a) Where the value of the loss is less than \$250, is guilty of a misdemeanor.

58 (b) Where the value of the loss is \$250 or more but less than \$5,000, is guilty of a gross
59 misdemeanor.

- 60 (c) Where the value of the loss is \$5,000 or more or where the damage results in the
61 impairment of public communication transportation or police and fire protection is guilty of
62 a felony. If the court grants probation to such a person, the court shall require as a
63 condition of probation that the person serve at least 10 days in the county jail.
- 64 2. If a person commits more than one offense pursuant to a scheme or continuing course of
65 conduct, the value of all property damaged or destroyed by that person in the commission
66 of those offenses must be aggregated for the purpose of determining the penalty prescribed
67 in subsection 1, but only if the value of the loss when aggregated is \$5,000 or more.
- 68 3. A person who violates subsection 1 shall, in addition to any other fine or penalty imposed:
69 (a) For the first offense, pay fine of not less than \$400 but not more than \$1,000 and perform
70 100 hours of community service.
71 (b) For the second offense, pay a fine of not less than \$750 but not more than \$1,000 and
72 perform 200 hours of community service.
73 (c) For the third and each subsequent offense, pay a fine of \$1,000 and perform
74 200 hours of community service. The community service assigned pursuant to this
75 subsection must, if possible, be related to the abatement of graffiti.
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- 78 4. The parent or legal guardian of a person under the age of 18 years who violates this section
79 is liable for all fines and penalties imposed against the person. If the parent or legal
80 guardian is unable to pay the fine and penalties resulting from a violation of this section
81 because of financial hardship, the court may require the parent or legal guardian to perform
82 community service.
- 83 5. If a person who is 18 years of age or older is found guilty of violating this section, the court
84 shall, in addition to any other penalty imposed, issue an order suspending the driver's
85 license of the person for not less than 6 months but not more than 2 years. The court shall
86 require the person to surrender all driver's licenses then held by the person. If the person
87 does not possess a driver's license, the court shall issue an order prohibiting the person
88 from applying for a driver's license for not less than 6 months but not more than 2 years.
89 The court shall within 5 days after issuing the order, forward to the Registry of Motor
90 Vehicles any licenses together with a copy of the order.
- 91 6. The Registry of Motor Vehicles:
92 (a) Shall not treat a violation of this section in the manner statutorily required for a moving
93 traffic violation.
94 (b) Shall report the suspension of a driver's license pursuant to this section to an insurance
95 company or its agent inquiring about the person's driving record. An insurance company
96 shall not use any information obtained pursuant to this paragraph for purposes related to
97 establishing premium rates or determining whether to underwrite the insurance.
- 98 7. A criminal penalty imposed pursuant to this section is in addition to any civil penalty or
99 other remedy available pursuant to another statute for the same conduct.
- 100 8. As used in this section
101 (a) "Impairment" means the disruption of ordinary and incidental services. The temporary loss
102 of use or the removal of the property from service for repair of damage.
103 (b) "Value of the loss" means the cost of repairing, restoring or replacing the property,
104 including, without limitation, the cost of any materials and labor necessary to repair,
105 restore or replace the item.

- 106 1. The Graffiti Reward Fund is hereby crated in the General fund.
107 2. When a defendant pleads or is found guilty of violating NRS 206,125 or 206.330 or
108 section 2 of this act, the court shall include an administrative assessment of \$250 for
109 each violation in addition to any other fine or penalty. The money collected must be
110 paid by the clerk of the court to the State Controller on or before the fifth day of each
111 month for the preceding month for credit to the Graffiti Reward fund.
112 3. All money received pursuant to subsection 2 must be deposited with the State
113 Controller for credit to the Graffiti Reward Fund. The money in the Fund must be used
114 to pay a reward to a person who, in response to the offer of a reward, provides
115 information which results in the identification, apprehension and conviction of a
116 person who violates this section.
117 4. If sufficient money is available in the Graffiti Reward Fund, a state law enforcement
118 agency may offer a reward, not to exceed \$1,000, for information leading to the
119 identification, apprehension and conviction of a person who violates this section.

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

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

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

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

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

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137 4. As used in this section:

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139 (a) "Public building" includes every house, shed, tent or booth, whether or not
140 completed, suitable for affording shelter for any human being or as a place where any
141 property is or will be kept for use, sale or deposit, and the grounds appurtenant
142 thereto; and

143 (b) "Public vehicle" includes every device in, upon or by which any person or property is
144 or may be transported or drawn upon a public highway, waterway or airway, owned
145 in whole or part, possessed, used by or leased the commonwealth or any of its
146 agencies or political subdivisions.

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

152 (a) If the child possesses a driver's license, issue an order suspending the
153 driver's license of the child for at least 1 year but not more than 2 years; or

154 (b) If the child does not possess a driver's license and the child is or will be
155 eligible to receive a driver's license within the 2 years immediately
156 following the date of the order, issue an order prohibiting the child from
157 receiving a driver's license for a period specified by the juvenile court
158 which must be at least 1 year but not more than 2 years:

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160 (1) Immediately following the date of the order, if the child is eligible to
161 receive a driver's license; or

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163 (2) After the date the child will be eligible to receive a driver's license, if
164 the child is not eligible to receive a license on the date of the order.

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