

# HOUSE . . . . . No. 1422

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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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  
2   section 126B the following section:-

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

6           While on or under any overpass or bridge or in any flood channel;

7           At Any public or private facility, community center, park, playground, swimming pool,  
8   transportation facility, beach or recreation area or

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

12          2. As used in this section:

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

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

“Public transportation vehicle” means a bus, train or other vehicle or instrumentality used to transport persons from a transportation facility to another location.

“Transportation facility” means an airport, marina, bus terminal, train station, bus stop or other facility where a person may go to obtain transportation.

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

The owner of the property which was affected by the violation: or

If the violation involved the placing of graffiti on any public property, the governmental entity that incurred expenses for removing, covering or cleaning up the graffiti.

Unless a greater penalty is provided by law, a person who knowingly vandalizes, places graffiti on, defaces or otherwise damage:

(d) Any privately owned building structure

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

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

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

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

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

For a third or subsequent offense, to pay a fine of \$1,000, and to perform 200 hours of community service.

A person who is paid money for restitution pursuant to subsection 1 shall use the money to repair or restore the property that was damaged.

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

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

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

Where the value of the loss is \$5,000 or more or where the damage results in the impairment of public communication transportation or police and fire protection is guilty of a

felony. If the court grants probation to such a person, the court shall require as a condition of probation that the person serve at least 10 days in the county jail.

If a person commits more than one offense pursuant to a scheme or continuing course of conduct, the value of all property damaged or destroyed by that person in the commission of those offenses must be aggregated for the purpose of determining the penalty prescribed in subsection 1, but only if the value of the loss when aggregated is \$5,000 or more.

A person who violates subsection 1 shall, in addition to any other fine or penalty imposed:

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

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

(c) For the third and each subsequent offense, pay a fine of \$1,000 and perform 200 hours of community service. The community service assigned pursuant to this subsection must, if possible, be related to the abatement of graffiti.

The parent or legal guardian of a person under the age of 18 years who violates this section is liable for all fines and penalties imposed against the person. If the parent or legal guardian is unable to pay the fine and penalties resulting from a violation of this section because of financial hardship, the court may require the parent or legal guardian to perform community service.

73 If a person who is 18 years of age or older is found guilty of violating this section, the  
74 court shall, in addition to any other penalty imposed, issue an order suspending the driver's  
75 license of the person for not less than 6 months but not more than 2 years. The court shall require  
76 the person to surrender all driver's licenses then held by the person. If the person does not  
77 possess a driver's license, the court shall issue an order prohibiting the person from applying for  
78 a driver's license for not less than 6 months but not more than 2 years. The court shall within 5  
79 days after issuing the order, forward to the Registry of Motor Vehicles any licenses together with  
80 a copy of the order.

81 6. The Registry of Motor Vehicles:

82 (a) Shall not treat a violation of this section in the manner statutorily required for a  
83 moving traffic violation.

84 (b) Shall report the suspension of a driver's license pursuant to this section to an  
85 insurance company or its agent inquiring about the person's driving record. An insurance  
86 company shall not use any information obtained pursuant to this paragraph for purposes related  
87 to establishing premium rates or determining whether to underwrite the insurance.

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

90 8. As used in this section

91 (a) "Impairment" means the disruption of ordinary and incidental services. The temporary  
92 loss of use or the removal of the property from service for repair of damage.

(b) "Value of the loss" means the cost of repairing, restoring or replacing the property, including, without limitation, the cost of any materials and labor necessary to repair, restore or replace the item.

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

When a defendant pleads or is found guilty of violating NRS 206.125 or 206.330 or section 2 of this act, the court shall include an administrative assessment of \$250 for each violation in addition to any other fine or penalty. The money collected must be paid by the clerk of the court to the State Controller on or before the fifth day of each month for the preceding month for credit to the Graffiti Reward fund.

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

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

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

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

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

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

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

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

135 order prohibiting the child from receiving a driver's license for a period specified by the juvenile  
136 court which must be at least 1 year but not more than 2 years:

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

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

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