

HOUSE No. 435

The Commonwealth of Massachusetts

PRESENTED BY:

Bradford 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 adoption of the accompanying bill:

An Act relative to graffiti.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Bradford Hill</i>	<i>4th Essex</i>	<i>1/19/2011</i>

HOUSE No. 435

By Mr. Hill of Ipswich, a petition (accompanied by bill, House, No. 435) of Bradford Hill for legislation to further regulate graffiti. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1422 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

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

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

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

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

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

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

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

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

30 (d) Any privately owned building structure

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

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

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

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

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

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

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

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

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

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

51 Where the value of the loss is \$5,000 or more or where the damage results in the
52 impairment of public communication transportation or police and fire protection is guilty of a
53 felony. If the court grants probation to such a person, the court shall require as a condition of
54 probation that the person serve at least 10 days in the county jail.

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

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

61 For the first offense, pay fine of not less than \$400 but not more than \$1,000 and perform
62 100 hours of community service.

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

65 (c) For the third and each subsequent offense, pay a fine of \$1,000 and perform

66 200 hours of community service. The community service assigned pursuant to this
67 subsection must, if possible, be related to the abatement of graffiti.

68 The parent or legal guardian of a person under the age of 18 years who violates this
69 section is liable for all fines and penalties imposed against the person. If the parent or legal
70 guardian is unable to pay the fine and penalties resulting from a violation of this section because
71 of financial hardship, the court may require the parent or legal guardian to perform community
72 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.

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

96 The Graffiti Reward Fund is hereby crated in the General fund.

97 When a defendant pleads or is found guilty of violating NRS 206,125 or 206.330 or
98 section 2 of this act, the court shall include an administrative assessment of \$250 for each
99 violation in addition to any other fine or penalty. The money collected must be paid by the clerk
100 of the court to the State Controller on or before the fifth day of each month for the preceding
101 month for credit to the Graffiti Reward fund.

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

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

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

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

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

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

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

119 4. As used in this section:

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

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

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

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

133 (b) If the child does not possess a driver's license and the child is or will be eligible to
134 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.