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**CHARLES D. BAKER**  
Governor

**KARYN E. POLITO**  
Lt. Governor

**THOMAS A. TURCO, III**  
Secretary

January 3, 2019

The Honorable Michael D. Hurley  
Clerk of the Senate  
State House, Room 335  
Boston, MA 02133

The Honorable Steven T. James  
Clerk of the House  
State House, Room 145  
Boston, MA 02133

Dear Mr. Welch and Mr. James:

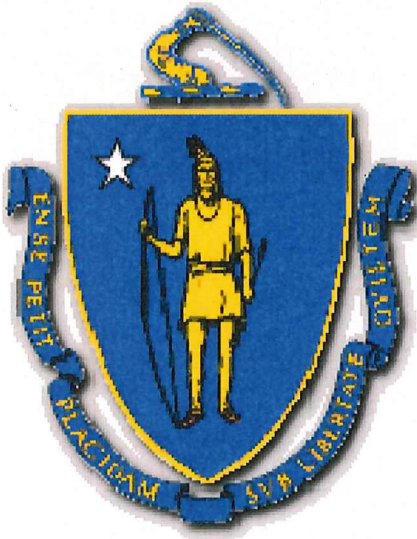
Please find enclosed Secretary Turco's report on the civil citation system in the Commonwealth of Massachusetts. This report is being submitted, pursuant to Section 61 of Chapter 55 of the Acts of 2017. Please do not hesitate to contact me with any questions or concerns. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Spencer Lord".

Spencer Lord  
Special Counsel  
Executive Office of Public Safety and Security

# The Civil Citation System in the Commonwealth of Massachusetts



The Executive Office of Public Safety and Security

## Introduction

Pursuant to Section 61 of Chapter 55 of the Acts of 2017, An Act to Ensure Safe Access to Marijuana, the Executive Office of Public Safety and Security (EOPSS) was directed by the Legislature to make recommendations regarding a statewide system and procedures for civil citations.

EOPSS concludes that while the motor vehicle citation system is efficient and effective, there is significant room for improvement in the current system for non-motor vehicle civil citations. This system is hampered by the lack of a mechanism to properly identify offenders, as well as an inability to collect fines from offenders once they are properly identified. This is due to a lack of options for enforcement, and no sufficient system to record and track offenses or payment.

What follows is a description of the current role of civil citations under Massachusetts law, a description of identified shortcomings in the current system, and recommendations for reform.

## Description of the Current System

Under Massachusetts law, in addition to their authority to make criminal arrests, police officers are authorized to issue civil citations for a wide array of misconduct: for motor vehicle violations (pursuant to G.L. c. 90C); for bicycle violations (pursuant to G.L. c. 85, §§ 11B and 11E); for a variety of municipal ordinance violations (pursuant to G.L. c. 40, § 21D and c. 40U, § 14); and, most recently, for

various violations of the marijuana laws (pursuant to G.L. c. 94G).

Civil citations carry the potential for a fine, but do not carry the risk of imprisonment. Disputed violations are handled by clerk magistrates and judges of the District Court and Boston Municipal Court.

To carry out this responsibility, police officers typically carry two separate paper ticket books. The first book contains motor vehicle citation forms, the form of which must be approved jointly by the Administrative Justice of the District Court and by the Registrar of Motor Vehicles. (See G.L. c. 90C, § 1 defining “citation” as “a notice, whether issued in handwritten form from a citation book or issued electronically and then printed on paper, upon which a police officer shall record an occurrence involving all automobile law violations by the person cited. Each citation shall be numbered and shall be in such form and such parts as determined jointly by the administrative justice of the district court and the registrar.”) These citation forms are uniform across the Commonwealth, and provide instructions for a recipient to both concede responsibility and make a payment to the Registry of Motor Vehicles, or to contest the citation.

The second citation book an officer carries is municipality-specific. Its tickets typically contain references to the most common ordinance violations in that jurisdiction, and provide instructions for a recipient to make payment to the city or town. The form of the citations in this second municipality-specific book is subject to the form preferred by the Chief Justice of the District Court and of the Boston Municipal Court, respectively. G.L. c. 40, § 21D.

## Identifying Violators of Motor Vehicle Laws

Police have long been held to have the authority to stop a motorist observed to be committing a violation of the motor vehicle laws. See *Commonwealth v. Bacon*, 381 Mass. 642, 644 (1980) ("Where police have observed a traffic violation, they are warranted in stopping a vehicle"). G.L. c. 90, § 25 requires that, once stopped, a motorist provide an inquiring officer, upon request, with the motorist's name, address, license and registration.<sup>1</sup>

Because a driver's license bears the name and photograph of the licensee (and because police officers have access, through the Registry of Motor Vehicles, to the database of licensed motorists), police have a strong system in place to identify operators who violate the Commonwealth's motor vehicle laws.

## Enforcing Violations of Motor Vehicle Laws

In addition to a robust system of identification, the Commonwealth's motor vehicle laws have strong enforcement mechanisms that encourage compliance by motorists. Motor vehicle citations which are ignored by motorists can result in license suspension. G.L. c. 90C, § 3. This is an effective deterrent that motivates operators to comply with the law in the first place and to make payment when a violation occurs.

Safeguards are also in place to protect individual rights. See *Bell v. Burson*, 402 U.S. 535, 539 (1971) ("Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees."). See also *Crawford v. Blue*, 271 F.Supp.3d 316, 322 ("It is undisputed that [the defendant] had a constitutionally protected interest in his Massachusetts operating privileges."). Recently the Legislature and the Governor have also increased the legal protections available to motor vehicle operators by taking action to reduce license loss as a collateral consequence to a criminal conviction. St. 2016, c. 64, *An Act Relative to Motor Vehicle*

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<sup>1</sup> "Any person who, while operating or in charge of a motor vehicle, shall refuse, when requested by a police officer, to give his name and address or the name and address of the owner of such motor vehicle, or who shall give a false name or address, or who shall refuse or neglect to stop when signaled to stop by any police officer who is in uniform or who displays his badge conspicuously on the outside of his outer coat or garment, or who refuses, on demand of such officer, to produce his license to operate such vehicle or his certificate of registration, or to permit such officer to take the license or certificate in hand for the purpose of examination, or who refuses, on demand

of such officer, to sign his name in the presence of such officer, and any person who on the demand of an officer of the police or other officer mentioned in section twenty-nine or authorized by the registrar, without a reasonable excuse fails to deliver his license to operate motor vehicles or the certificate of registration of any motor vehicle operated or owned by him or the number plates furnished by the registrar for said motor vehicle, or who refuses or neglects to produce his license when requested by a court or trial justice, shall be punished by a fine of one hundred dollars." G.L. c. 90, § 25.

*License Suspension*, eliminated automatic suspensions of drivers' licenses for convictions of drug crimes, except for non-marijuana trafficking crimes. Under the Act, most convictions for crimes under G.L. c. 94C no longer have the consequence of a five-year suspension of the defendant's driver's license. See <sup>1</sup> St. 2016, c. 64, § 1 (repealing G.L. c. 90, § 22(f)). Instead, only convictions for trafficking in drugs other than marijuana under G.L. c. 94C, § 32E(b), (c), or (c½) result in automatic suspension of a defendant's driver's license. G.L. c. 90, § 22 ½.

## Enforcing Parking Violations

Violations of parking regulations are civil offenses which are enforced in the same manner as motor vehicle infractions. G.L. c. 90, § 20A. Similar to citations issued for motor vehicle infractions, the failure to respond to a parking ticket within twenty-one days after the date of a violation, by either remitting payment for established fines or requesting a hearing, can result in the non-renewal of the violator's driver's license. G.L. c. 90, § 20A.

Likewise, the system for identifying violators of parking regulations is the same system used to identify violators of the motor vehicle laws. A similar system for civil municipal by-law or ordinance violations committed by

non-motorists, however, does not currently exist.

## Municipal Ordinances

Pursuant to G.L. c. 40, § 21D, cities and towns are empowered to dispose of local ordinance or by-law violations through non-criminal means.

Many municipalities have ordinances in place that have a direct nexus to public safety. For example, the City of Chelsea has an ordinance in place that prohibits the discharging of BB guns within city limits and the carrying of knives with a blade longer than four inches.<sup>2</sup> Similarly, the City of Worcester prohibits a person from panhandling within 20 feet of the entrance to, or parking area of, any automated teller machine.<sup>3</sup>

## Identification of Violators and Enforcement of Municipal Ordinances

Like motor vehicle laws and parking regulations, many local ordinances and by-laws are buttressed by statutory authority that enables municipal officers to quickly and easily identify violators. For example, G.L. c. 90, § 18A includes a provision which allows

requires the use of such a knife or in going to or returning directly from such activities).

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<sup>2</sup> Sec. 16-76. - Possession, use and sale of dangerous weapons. See [https://library.municode.com/ma/chelsea/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH16MIOFPR](https://library.municode.com/ma/chelsea/codes/code_of_ordinances?nodeId=PTIICOOR_CH16MIOFPR) Prohibition on discharging firearms within the city; or carrying any "knife having any type of blade in excess of four inches by one inch tapered to a sharpened tip (except when actually engaged in hunting, fishing or in any employment which

<sup>3</sup> Revised Ordinances of the City of Worcester of 2008 Part One, Ch. 9, § 16, *Aggressive Begging, Soliciting, and Panhandling*. Retrieved from: <http://www.worcesterma.gov/uploads/3f/29/3f295f00bb434e541d4216238db275f1/revised-ordinances-2008-1.pdf>

police to arrest jaywalkers who refuse to state their name and address upon the request of police.<sup>4</sup> Likewise, G.L. c. 270, § 16A has such a provision to enforce the proper disposal of rubbish,<sup>5</sup> and G.L. c. 85, § 11(e) contains a provision for identifying bicyclists who violate traffic laws.<sup>6</sup> The Legislature has also provided the police with enforcement options should a person “[disguise] himself with intent to obstruct the due execution of the law”<sup>7</sup> or furnish a false name to law enforcement following an arrest.<sup>8</sup>

While numerous statutory provisions exist to assist officers in identifying violators of certain municipal ordinances, these

provisions are specific to certain violations and are not as wide ranging as the provisions that exist for the identification and enforcement of the motor vehicle laws and parking regulations.

## Identification of Violators and Enforcement of Marijuana Laws

G.L. c. 94C, § 32N requires police departments to enforce citations issued for the possession of two ounces or less of marijuana, in violation of G.L. c. 94C, § 32L, in a manner that is consistent with their

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<sup>4</sup> “A police officer taking cognizance of any such violation may request the offender to state his name and address. Whoever, upon such request, refuses to state his name and address, or states a false name and address or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not less than twenty nor more than fifty dollars. Any such offender who refuses upon such request to state his name and address may be arrested without a warrant; but no person shall be arrested without a warrant for any other violation of any provision of this paragraph or for any violation of any provision of any such rule.

<sup>5</sup> “If any officer empowered to enforce section sixteen takes cognizance of a violation thereof, he may request the offender to state his name and address. Whoever, upon such request, refuses to state his name and address, may be arrested without a warrant, or if he states a false name and address or a name and address which is not his name and address in ordinary use, he shall be punished by a fine of not less than fifty nor more than one hundred dollars.”

<sup>6</sup> G.L. c. 85, § 11E. A police officer who observes a traffic law violation committed by a bicyclist may request the offender to state his true name and address. Whoever, upon such request, refuses to state his name and address or whoever states a false name and address or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not less than \$20 nor more than \$50. An

offender who refuses to state his true name and address may be arrested without a warrant for such refusal but no person shall be arrested without a warrant for any other traffic law violation committed while operating a bicycle.

<sup>7</sup> G.L. c. 268, § 34: “Whoever disguises himself with intent to obstruct the due execution of the law, or to intimidate, hinder or interrupt an officer or other person in the lawful performance of his duty, or in the exercise of his rights under the constitution or laws of the commonwealth, whether such intent is effected or not, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year and may if imprisoned also be bound to good behavior for one year after the expiration of such imprisonment.”

<sup>8</sup> G.L. c. 268, § 34A: “Whoever knowingly and willfully furnishes a false name or Social Security number to a law enforcement officer or law enforcement official following an arrest shall be punished by a fine of not more than \$1,000 or by imprisonment in a house of correction for not more than one year or by both such fine and imprisonment. Such sentence shall run from and after any sentence imposed as a result of the underlying offense. The court may order that restitution be paid to persons whose identity has been assumed and who have suffered monetary losses as a result of a violation of this section.”



enforcement of ordinance and by-law violations under G.L. c. 40, § 21D. Unlike the statutory provisions that allow for the identification and enforcement of certain by-law ordinances discussed *infra*, the marijuana provisions contain no such language to allow police to identify violators. A citation may be issued but the issuing officer has no way to confirm the identity of the violator and must rely on whatever information is provided. For example, under G.L. c. 94C, § 32L, police may issue a \$100 ordinance or bylaw ticket to a person age 18 and over for marijuana possession. There are no further sanctions under existing law. The lack of a penalty for failure to pay fines leaves government without a mechanism for collecting fees or imposing sanctions on those who ignore them, beyond relying on the honor system.

Additionally, while civil motor vehicle offenses and subsequent payments are recorded and tracked by the Registry of Motor Vehicles, individual municipalities are responsible for keeping records and collecting payment for violations of municipal ordinances. With no well-defined record-keeping system for tracking such offenses currently in place, every offense is a "first offense."

The absence of such a centralized database of violations and fees due also means that entities charged with conducting background checks have no way of determining if an applicant for employment with a law enforcement agency, or for a license to carry firearms, for example, is a scofflaw who has ignored valid citations. This also impairs the exercise of judgment as to disposition (leniency for first offenders, for instance), because it is impossible to distinguish first offenders from habitual offenders.

## Recommendations

### *Identification*

A system that provides police officers with the ability to properly identify alleged offenders is necessary. G.L. c. 90, § 18A, G.L. c. 270, § 16A, and G.L. c. 85, § 11(e), described above, offer examples of laws that provide law enforcement officials with a tool to identify violators of low-level civil offenses.

### *Enforcement*

Legislation that creates strong enforcement mechanisms under the marijuana laws is necessary to encourage compliance with those laws. Providing a false name or identification to a police officer issuing a marijuana related citation, or failing to pay the fine for an appropriately issued citation, should be penalized. Doing so is an effective deterrent that will motivate citizens to comply with the law in the first place and to make payment when violations occur.