

**HOUSE . . . . . No. 00435**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Bradford Hill*

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*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.

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PETITION OF:

NAME:

*Bradford Hill*

DISTRICT/ADDRESS:

*4th Essex*

# HOUSE . . . . . No. 00435

By Mr. Bradford Hill of Ipswich, petition (accompanied by bill, House, No. 00435) of Bradford Hill for legislation to further regulate graffiti. Joint Committee on the Judiciary.

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

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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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 valid  
10 authorization from the governmental entity which has jurisdiction over the public area or other  
11 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 which  
14 contains a fluid that is not soluble in water and which has a flat or angled writing surface of a  
15 width of one-half inch or greater.

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

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

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

23 If a court orders a person who violates this section to pay restitution the person shall pay the  
24 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 entity  
27 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 graffiti  
29 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 structure or  
32 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 perform  
38 100 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 perform  
40 200 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 to repair  
44 or restore the property that was damaged.

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

52 public communication transportation or police and fire protection is guilty of a felony. If the

53 court grants probation to such a person, the court shall require as a condition of probation that the

54 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 imposed:

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

61 hours of community service.

62 For the second offense, pay a fine of not less than \$750 but not more than \$1,000 and perform

63 200 hours of community service.

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

65 200 hours of community service. The community service assigned pursuant to this subsection

66 must, if possible, be related to the abatement of graffiti.

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

71 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 license of  
73 the person for not less than 6 months but not more than 2 years. The court shall require the  
74 person to surrender all driver's licenses then held by the person. If the person does not possess a  
75 driver's license, the court shall issue an order prohibiting the person from applying for a driver's  
76 license for not less than 6 months but not more than 2 years. The court shall within 5 days after  
77 issuing the order, forward to the Registry of Motor Vehicles any licenses together with a copy of  
78 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 shall  
84 not use any information obtained pursuant to this paragraph for purposes related to establishing  
85 premium rates or determining whether to underwrite the insurance.

86 A criminal penalty imposed pursuant to this section is in addition to any civil penalty or other  
87 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 of  
90 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, including,  
92 without limitation, the cost of any materials and labor necessary to repair, restore or replace the  
93 item.

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

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

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

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

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

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

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

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

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

117 4. As used in this section:

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

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

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



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

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

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

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

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