



Quick Reference Guide:

Filing a Criminal Complaint for Violation of the Fire Code and M.G.L. c. 148

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Department of Fire Services

Commonwealth of Massachusetts

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I. INTRODUCTION

This Quick Reference Guide is intended to provide Massachusetts fire departments with a basic overview of the process of filing a criminal complaint for fire code violations. The information presented below is for informational purposes only and does not, nor is it intended to, constitute legal advice. Use and/or reliance on this document does not create an attorney client relationship with DFS Legal. No user of this guide should act, or refrain from acting, based solely on the information in this guide, without first seeking competent legal advice.

II. BACKGROUND

As part of the Comprehensive Fire Safety Act of 2004, the legislature enacted M.G.L. c. 148A, entitled *Code Enforcement Officer*. Chapter 148A authorizes any local or state code enforcement officer, empowered to enforce violations of the state building code or the state fire code to the give an offender a written notice of a code violation as an alternative to initiating criminal proceedings. However, there may be times where criminal proceedings are appropriate where, for example, the fire department is unable to obtain compliance through the non-criminal ticketing or administrative process.

III. EXISTING AVAILABLE PENALTIES FOR VIOLATIONS OF THE FIRE CODE AND M.G.L. CHAPTER 148

M.G.L. c.148, s.10B: Violation of regulations of board

Any person who knowingly violates any rule or regulation made by the board of fire prevention regulations shall, except as otherwise provided, be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

Section 10B of Chapter 148, which was adopted in 1954 and last amended in 1978, allows for a fine of no less than \$100 and no more than \$1,000 if a person knowingly violates the rules and regulations that comprise the Fire Code, 527 CMR 1.00. While it is a requirement that the violation be “knowing”, the statute does not require that the person has been formally notified of the rule or regulation before imposing the penalty. Significantly, section 10B does not apply to orders or rules of the head of the fire department, or the State Fire Marshal. The section contains the caveat that the penalty applies “except as otherwise provided,” which thereby allows a more significant penalty to be imposed if provided for elsewhere.



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M.G.L. c. 148, s. 30: Violations; notice and enforcement of orders or regulations

Violation of any lawful rule, order or regulation of the board or of any lawful order of the marshal or lawful rule or order of the head of a fire department, punishment whereof is not otherwise provided for, shall be punished by a fine of not more than fifty dollars for

each day during which such violation continues after actual notice of the regulation, rule or order. Such notice may be given by personal service or by posting the same in a conspicuous place on the premises affected thereby. The superior court shall have jurisdiction in equity to enforce any lawful rule, order or regulation of the board, or any lawful order of the marshal or rule or order of the head of a fire department, upon application respectively of the marshal or the head of the fire department.

Section 30 of chapter 148, which was adopted in 1945 and last amended in 1996, extends the penalty provision in section 10B to include “any lawful order of the marshal or lawful rule or order of the head of a fire department,” and addresses *continuing* violations of the fire code. Section 30 prescribes a specific kind of notice that must be given prior to imposition of a penalty – namely, by “personal service or by posting the same in a conspicuous place on the premises affected thereby.”

Although Section 30 provides only the superior court with jurisdiction to enforce the rules, regulations, and orders of the State Fire Marshal or Fire Department, Section 34D of Chapter 148 grants jurisdiction to enforce the rules, regulations, and orders of the State Fire Marshal or head of the fire department” to the superior court, the district court, and the housing court.

M.G.L. c. 148, s. 34C: Subsequent violations of the state building code or state fire code

Whoever (1) commits a second or subsequent violation of the state building code or state fire code, including any incorporated specialized codes, or any lawful order of the marshal, the head of the fire department or a state or local building inspector or (2) continues to violate any such code or order after receipt of actual notice of such violation or order, shall be punished by a fine of not more than \$1,000 or by imprisonment for 1 year in the house of correction or by both such fine and imprisonment. Notice may be provided by in-hand service, by posting the same in a conspicuous place on the premises in violation, or by the lawful issuance of a citation pursuant to chapter 148 A. This section shall not apply to such violations which are under appeal pursuant to section 100 of chapter 143, if such appeal was timely filed.

Section 34C of G.L. c. 148, addresses “second or subsequent” violations of the fire code (and the building code). In this section, a repeat violation of the codes allows for a fine of \$1,000, a maximum of one year in a house of correction, or both. As noted above, notice of the violation must have been given either by in-hand service, or by issuance of a citation under Chapter 148A.



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Section 34C does not have jurisdiction language and therefore it is possible to seek enforcement in the superior court, the district court, and the housing court under section 34D.

IV. THE RIGHT TO SEEK A CRIMINAL COMPLAINT

Pursuant to G.L. c. 48, s. 88, Massachusetts law expressly prohibits firefighters from performing law enforcement duties. General Laws c. 48, §88 states that “[n]o city or town shall require a permanent member of its fire department to perform the duties of a police officer during his tour of duty.”

However, anyone may make a criminal complaint in a District Court who is competent to make oath to it. The complainant may file an application for criminal complaint acting on behalf of an agency or organization.

V. HOW TO FILE A CRIMINAL COMPLAINT

In order to file a criminal complaint, you will need to:

1. Apply in the District Court that covers your jurisdiction. You can find the list of District Court locations and the areas they cover here: <https://www.mass.gov/orgs/district-court/locations>. All District Court divisions are open from 8:30 A.M. to 4:30 P.M.
2. Complete an Application for Complaint in the Criminal Clerk’s Office of the District Court. The application can be found in the Clerk’s office. The application should be filled out completely and will need to include complete identifying information about the accused (i.e., full name, date of birth, address) and a statement of facts which can be completed on the Statement of Facts in Support of Application for Criminal Complaint and must be signed under oath or affirmation by the complainant.
3. Provide the application and statement of facts to a Clerk Magistrate who will place the applicant (or “complainant”) under oath to attest to the facts. The Statement of Facts must contain sufficient information to establish probable cause for the offense(s) alleged in order for a Clerk Magistrate to authorize a complaint. The probable cause requirement is met when there is reasonably trustworthy information sufficient to warrant a prudent person in believing that a crime has been committed and that the accused is the perpetrator.¹

¹ *Commonwealth v. DiBennadetto*, 436 Mass. 310, 314 (2002); *Paquette v. Commonwealth*, 440 Mass. 121, 132 (2003)



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VI. CLERK MAGISTRATE'S HEARING

A. Misdemeanor Charge

Under G.L. c. 218, s. 35A, the accused has a right to be heard before a complaint is authorized when the application is solely for a misdemeanor charge and the complaint has not been summarily denied. This is called a "show cause" hearing. A misdemeanor is a crime which may not be punished with a state prison sentence.

B. Felony Charge

If a complainant files an application for a felony charge, the Clerk Magistrate has discretion whether to schedule a show cause hearing to give the accused an opportunity to be heard. However, a magistrate may not schedule a hearing if there is imminent threat of bodily injury, commission of a crime, or flight from the Commonwealth by the accused.

C. Denial

It is preferable that applications by complainants other than law enforcement officials be decided after a show cause hearing unless there are public safety or other reasons for not doing so.

A magistrate has discretion to decline to authorize a criminal complaint even if the application establishes probable cause unless the Attorney General's office or the District Attorney's office has communicated to the court a decision to prosecute.

VII. ADDITIONAL INFORMATION

While the primary objective of the complaint procedure is to determine whether to authorize a criminal complaint to prosecute the accused for alleged criminal acts, the magistrate may also determine that the law allows the matter to be resolved in a different manner. It may include counseling, discussion, or threat of prosecution. However, an informal disposition cannot be imposed by the magistrate, it may only be used when the complainant voluntarily accepts it.

Even in cases where there is probable cause, if the magistrate has reason to believe that the District Attorney's office might not wish to prosecute a particular offense, the magistrate has the option of deferring its decision and inquiring of the District Attorney's office.

There may also be circumstances where a magistrate may defer action on an application and refer the complaint to the police when the magistrate believes that further investigation or



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assistance would be helpful. Every police department has a court liaison, and the magistrate may find that it is helpful to involve the police liaison in order to obtain further assistance.

In these circumstances, it may be helpful to consult with the local police department, the District Attorney's office or the Attorney General's office for assistance or direction.



APPENDIX

APPLICATION FOR CRIMINAL COMPLAINT		APPLICATION NO. (COURT USE ONLY)		PAGE of		Trial Court of Massachusetts District Court Department				
I, the undersigned complainant, request that a criminal complaint issue against the accused charging the offense(s) listed below. If the accused HAS NOT BEEN ARRESTED and the charges involve: ☐ ONLY MISDEMEANOR(S), I request a hearing ☐ WITHOUT NOTICE because of an imminent threat of ☐ BODILY INJURY ☐ COMMISSION OF A CRIME ☐ FLIGHT ☐ WITH NOTICE to accused. ☐ ONE OR MORE FELONIES, I request a hearing ☐ WITHOUT NOTICE ☐ WITH NOTICE to accused. ☐ WARRANT is requested because prosecutor represents that accused may not appear unless arrested.						ARREST STATUS OF ACCUSED ☐ HAS ☐ HAS NOT been arrested				
INFORMATION ABOUT ACCUSED										
NAME (FIRST MI LAST) AND ADDRESS 					BIRTH DATE		SOCIAL SECURITY NUMBER			
					PCF NO.		MARITAL STATUS			
					DRIVERS LICENSE NO.			STATE		
					GENDER		HEIGHT	WEIGHT	EYES	
HAIR	RACE	COMPLEXION	SCARS/MARKS/TATTOOS	INTERPRETER NEEDED (language)		BIRTH STATE OR COUNTRY		DAY PHONE		
EMPLOYER/SCHOOL			MOTHER'S MAIDEN NAME (FIRST MI LAST)			FATHER'S NAME (FIRST MI LAST)				
CASE INFORMATION										
COMPLAINANT NAME (FIRST MI LAST) 					COMPLAINANT TYPE ☐ POLICE ☐ CITIZEN ☐ OTHER		PD			
ADDRESS 					PLACE OF OFFENSE					
					INCIDENT REPORT NO.		OBTN			
					CITATION NO(S).					
1	OFFENSE CODE		DESCRIPTION				OFFENSE DATE			
	VARIABLES (e.g. victim name, controlled substance, type and value of property, other variable information; see Complaint Language Manual)									
2	OFFENSE CODE		DESCRIPTION				OFFENSE DATE			
	VARIABLES									
3	OFFENSE CODE		DESCRIPTION				OFFENSE DATE			
	VARIABLES									
REMARKS				COMPLAINANT'S SIGNATURE X			DATE FILED			
COURT USE ONLY	A HEARING UPON THIS COMPLAINT APPLICATION WILL BE HELD AT THE ABOVE COURT ADDRESS ON			DATE OF HEARING		AT		TIME OF HEARING		COURT USE ONLY
DATE	PROCESSING OF NON-ARREST APPLICATION (COURT USE ONLY)								CLERK/JUDGE	
	NOTICE SENT OF CLERK'S HEARING SCHEDULED ON:									
	NOTICE SENT OF JUDGE'S HEARING SCHEDULED ON:									
	HEARING CONTINUED TO:									
	APPLICATION DECIDED WITHOUT NOTICE TO ACCUSED BECAUSE: ☐ IMMINENT THREAT OF ☐ BODILY INJURY ☐ CRIME ☐ FLIGHT BY ACCUSED ☐ FELONY CHARGED AND POLICE DO NOT REQUEST NOTICE ☐ FELONY CHARGED BY CIVILIAN; NO NOTICE AT CLERK'S DISCRETION									
DATE	COMPLAINT TO ISSUE				COMPLAINT DENIED				CLERK/JUDGE	
	☐ PROBABLE CAUSE FOUND FOR ABOVE OFFENSE(S) NO(S). ☐ 1. ☐ 2. ☐ 3. BASED ON ☐ FACTS SET FORTH IN ATTACHED STATEMENT(S) ☐ TESTIMONY RECORDED: TAPE NO. _____ START NO. _____ END NO. _____ ☐ WARRANT ☐ SUMMONS TO ISSUE SCHEDULED ARRAIGNMENT DATE:				☐ NO PROBABLE CAUSE FOUND ☐ REQUEST OF COMPLAINANT ☐ FAILURE TO PROSECUTE ☐ AGREEMENT OF BOTH PARTIES ☐ OTHER: COMMENT					

COURT DIVISION

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

☐ LAW ENFORCEMENT OFFICER

☐ CIVILIAN COMPLAINANT OR WITNESS

DATE SIGNED