

**COMPARISON OF TEXT OF HABITUAL OFFENDER PROVISIONS IN S.2080 AND H.3818**

<b>Current Law</b>	<b>S.2080</b>	<b>H.3818</b>
<p><b>G.L.c.279, §25:</b></p> <p>Whoever has been twice convicted of crime and sentenced and committed to prison in this or another state, or once in this and once or more in another state, for terms of <b><i>not less than three years each</i></b>, and does not show that he has been pardoned for either crime on the ground that he was innocent, shall, upon conviction of a felony, be considered an habitual criminal and be punished by imprisonment in the state prison for the <b><i>maximum</i></b> term provided by law as a penalty for the felony for which he is then to be sentenced.</p>	<p><b>Section 46, amending G.L.c.279, §25:</b></p> <p><b>Subsection (a)</b> Whoever is convicted of a felony and has been previously twice convicted and sentenced to prison for a term of <b><i>not less than 3 years by the commonwealth</i></b>, another state or the United States, and who does not show that he has been pardoned for either crime on the ground that he was innocent, shall be considered a habitual criminal and be punished by imprisonment in the state prison for such felony for the <b><i>maximum</i></b> term provided by law.</p> <p><b>Subsection (b)</b> Whoever: (i) has been convicted 2 times previously of 1 or more of the following offenses: section 131M of chapter 140; section 1, 13 or 13½, subsection (b) of section 13A, section 13B, 13B½, 13B¾, 13F, <b><i>13H</i></b>, 13J, <b><i>13K</i></b>, 14 or 15, subsection (a) or (c) of section 15A, subsection (b) of section 15C, 15D, 16, 17, 18, 18A, 18B or 18C, section 21, 21A, 22, 22A, 22B, 22C, 23A, 23B, 24, 24B, 26, 26B, 26C or 28, subsection (b) of section 39 or subsection (b) or (c) of section 43 of chapter 265, section 1, 14, 17, 18, 102, 102A, 102B or 102C of chapter 266, section 10, 10E or <b><i>subsection (e) of section 12F of chapter 269</i></b> or section 3, 4A, 13, 17, 29A, 29B, 29C, 35A or subsection (b) of section 53A of chapter 272, or has been convicted 2 times previously of a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, arising out of charges separately brought and tried, and arising out of separate and distinct incidents that occurred at different times, where the second offense occurred subsequent to the first conviction; (ii) has served <b><i>at least 1 day of incarceration</i></b> for each of the prior 2 convictions; and (iii) does not show that he has been pardoned for either prior offense on the ground that he was innocent shall, upon conviction of 1 of the enumerated offenses in clause (i), if the offense occurred subsequent to the second conviction, be considered a habitual criminal and punished by imprisonment in the state prison for the <b><i>maximum</i></b> term provided by law. No sentence imposed under this section shall be reduced or suspended <b><i>nor shall such person so sentenced be eligible for probation, parole, work release or furlough or receive any deduction from such person's sentence for good conduct.</i></b></p> <p><b>Subsection (c)</b> No person shall be considered a habitual offender pursuant to subsection (b) based upon any offense for which such person was adjudicated a delinquent child, or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority for which a person was treated as a juvenile.</p>	<p><b>Section 3, amending G.L.c.279, §25:</b></p> <p><b>Subsection (a)</b> <b>(a)</b> Whoever is convicted of a felony and has been previously twice convicted and <b><i>sentenced to state prison or state correctional facility</i></b> by the commonwealth, another state or the United States, and who does not show that he has been pardoned for either crime on the ground that he was innocent, shall be considered a habitual criminal and shall be punished by imprisonment in state prison or state correctional facility for such felony for the maximum term provided by law.</p> <p><b>Subsection (b)</b> Whoever: (i) has been convicted 2 times previously of 1 or more of the following offenses: section 131M of chapter 140; section 1, 13 or 13½, subsection (b) of section 13A, section 13B, 13B½, 13B¾, 13F, 13J, <b><i>subsection (b) or (c) of section 13K</i></b>, 14 or 15, subsection (a) or (c) of section 15A, subsection (b) of section 15C, 15D, 16, 17, 18, 18A, 18B or 18C, section 21, 21A, 22, 22A, 22B, 22C, 23A, 23B, 24, 24B, 26, 26B, 26C or 28, subsection (b) of section 39 or subsection (b) or (c) of section 43 of chapter 265, section 1, 14, 102, 102A, 102B or 102C of chapter 266, section 10, 10E or chapter 269 or section 3, 4A, 13, 17, 29A, 29B, 29C, 35A or subsection (b) of section 53A of chapter 272, or has been convicted 2 times previously of a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, arising out of charges separately brought and tried, and arising out of separate and distinct incidents that occurred at different times, where the second offense occurred subsequent to the first conviction; (ii) has been sentenced to incarceration at a <b><i>state prison or state correctional facility for at least 1 day to be served</i></b> for each of the prior 2 convictions; and (iii) does not show that he has been pardoned for either prior offense on the ground that he was innocent shall, upon conviction of 1 of the enumerated offenses in clause (i), where the offense occurred subsequent to the second conviction, shall be considered a habitual offender and shall be punished by incarceration at a state prison or state correctional facility for the <b><i>maximum</i></b> term provided by law for said offense enumerated in clause (i). No sentence imposed under this section shall be reduced or suspended <b><i>nor shall such person so sentenced be eligible for probation, parole, work release or furlough or receive any deduction from such person's sentence for good conduct.</i></b> A sentence imposed on a habitual offender under this section, if said habitual offender is incarcerated at a state prison or state correctional facility, shall commence upon the conclusion of</p>

	<p><b>Subsection (d)</b>  No guilty plea shall be entered for any offense listed in subsection (b), unless a person is informed by the court, prior to entering the plea, of the penalties for a violation of said subsection: (1) imprisonment in the state prison for the maximum term provided by law; (2) that no sentence may be reduced or suspended; and (3) that no person so sentenced shall be eligible for probation, parole, work release or furlough or receive any deduction in sentence for good conduct. No otherwise valid plea or conviction shall be vacated based upon the failure to give such warnings.</p>	<p>the sentence, said habitual offender is serving at the time of sentencing.</p> <p><b>Subsection (c)</b>  No person shall be considered a habitual offender pursuant to subsection (b) based upon any offense for which such person was adjudicated a delinquent child, or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority for which a person was treated as a juvenile. (d) No guilty plea shall be entered for any offense listed in subsection (b), unless a person is informed by the court, prior to entering the plea, of the penalties for a violation of said subsection: (1) imprisonment in state prison or state correctional facility for the maximum term provided by law; (2) that no sentence may be reduced or suspended; and (3) that no person so sentenced shall be eligible for probation, parole, work release or furlough or receive any deduction in sentence for good conduct. No otherwise valid plea or conviction shall be vacated based upon the failure to give such warnings.</p>
<p><b>G.L.c.127, §133B:</b>  In the case of every prisoner sentenced under the provisions of section twenty-five of chapter two hundred and seventy-nine except for those persons sentenced to a term of imprisonment as prescribed by the sentencing guidelines established by the sentencing commission, the parole board shall, within sixty days before the expiration of <i>half of his maximum sentence</i>, and thereafter at least once in each ensuing two-year period, consider carefully and thoroughly the merits of such case on the question of releasing such person on parole....</p>	<p><b>Section 31, amending G.L.c.127, §133B:</b>  The parole board shall, within 60 days before the expiration of <i>two-thirds of the maximum sentence</i> of a prisoner sentenced under section 25 of chapter 279, and thereafter at least once in each ensuing 2-year period, consider carefully and thoroughly the merits of releasing such person on parole <i>except for a habitual offender sentenced under subsection (b) of section 25 of chapter 279</i> and a prisoner sentenced to a term of imprisonment as prescribed by the sentencing guidelines established by the sentencing commission.</p>	<p><b>Section 1, amending G.L.c.127, §133B:</b>  <i>Same language as in Section 31 of S.2080.</i></p>
<p><b>G.L.c.127, §133B:</b>  <i>See above.</i></p>	<p><b>Section 32, adding a paragraph to G.L.c.127, §133B:</b>  Habitual offenders sentenced under subsection (b) of said section 25 of said chapter 279 <i>shall not be eligible for parole, work release or furlough or receive any deduction from such person's sentence for good conduct.</i></p>	<p><b>Section 2, adding a paragraph to G.L.c.127, §133B:</b>  <i>Same language as in Section 32 of S.2080.</i></p>