

**CRIMES THAT QUALIFY AS “STRIKES” IN SUBSECTION (b) OF M.G.L. c. 279, §25  
AS PROPOSED BY S.2080 AND H.3818<sup>1</sup>**

**Brief Explanation of Common Terms:**

- ∅ **Assault and Battery** - Anyone can be convicted of assault and battery if they intentionally touch another person, however slightly, without that person’s consent. The physical contact may be made directly or indirectly. There is no injury or intent to harm required.
- ∅ **Assault** - Anyone can be convicted of assault if they attempt or threaten to commit an assault and battery, as defined above. There is no physical contact involved, no intent to harm required, and no requirement that the individual assaulted was put in fear.
- ∅ **Dangerous Weapon** - There are two categories of dangerous weapons: things that are dangerous *per se* and things that appear to be reasonably capable of inflicting bodily harm *as used*. Dangerous weapons *per se* are objects commonly understood to be weapons, such as firearms and knives. However, the second category permits virtually any ordinarily innocuous object to be considered a dangerous weapon based on the circumstances. Examples of objects considered dangerous weapons include: a shoe on a foot, a large ring on a hand, hot coffee, a phone, a stone, a hairbrush, a dog, a door, and the ground.

**Chapter 140:**

- **§131M** - Sale, transfer, or possession of assault weapon or large capacity feeding device not lawfully possessed on September 13, 1994
  - **Punishment:** First offense maximum 10 years in state prison, minimum 1 year. Second offense maximum 15 years in state prison, minimum 5 years.

**Chapter 265:**

- **§1** - Murder
  - **Punishment:** Maximum life in state prison.
- **§13** - Manslaughter
  - **Punishment:** Maximum 20 years in state prison or 2½ years in a house of correction (HOC).
- **§13½** - Manslaughter while operating a motor vehicle
  - **Punishment:** Maximum 20 years in state prison, minimum 5 years.
- **§13A(b)** - Assault and assault and battery
  - **Description:** (i) Assault and battery on another causing serious bodily injury; (ii) *Assault or assault and battery* on another knowing or having reason to know that the person is pregnant with *no touching or injury required*; or (iii) *Assault or assault and battery* knowing that the person has an active restraining order or no contact order against the defendant *with no touching or injury required*.
  - **Punishment:** Maximum 5 years in state prison or 2½ years in house of correction (HOC).
- **§13B** - Indecent assault and battery on a child under 14
  - **Description:** Intentional touching of a child under 14 years old that “the common sense of society would regard as immodest, immoral, and improper.” This can include the touching of the mouth, abdomen, buttocks, thighs, breasts, and pubic area, *whether over clothing or under clothing. There is no requisite age difference between the victim and the defendant. Consent is not a defense. Defendant’s reasonable belief that the victim was fourteen or older is immaterial. There is no physical injury required.*
  - **Punishment:** Maximum 10 years in state prison or 2½ years in HOC.

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<sup>1</sup> This list includes all of the crimes incorporated into Chapter 279, §25(b) by both the Senate (S.2080) and House (H.3818) bills. Discrepancies between the statutory provisions included in the bills are clarified by footnote. Descriptions of crimes are provided only where the nature of the crime is not apparent from its name or further information regarding the actions and results required for conviction is helpful.

- §13B<sup>1/2</sup> - Indecent assault and battery on a child under the age of 14 during commission of certain offenses or by mandated reporters
  - **Description:** Indecent assault and battery on a child under 14 years committed (a) during the commission of crimes including burglary, kidnapping, robbery, and assault and battery with a dangerous weapon; or (b) by a defendant who is a mandatory reporter.
  - **Punishment:** Maximum life in state prison, minimum 10 years.
- §13B<sup>3/4</sup> - Indecent assault and battery on a child under the age of 14 by certain previously convicted offenders
  - **Description:** Indecent assault and battery on a child under 14 years committed by a defendant previously convicted or adjudicated delinquent as a juvenile of a sexual assault.
  - **Punishment:** Maximum life in state prison, minimum 15 years.
- §13F - Assault and battery and indecent assault and battery on a person with an intellectual disability
  - **Description:** Assault and battery on a person defendant knows to have an intellectual disability with *no requirement of injury*; AND indecent assault and battery on a person defendant knows to have an intellectual disability.
  - **Punishment:** For assault and battery first offense maximum 5 years in state prison or 2½ years in HOC; subsequent offense maximum 10 years in state prison. Indecent assault and battery first offense maximum 10 years in state prison, minimum 5 years; subsequent offense minimum 10 years in state prison.
- §13H<sup>2</sup> - Indecent assault and battery on a person 14 years or older
  - **Description:** Indecent assault and battery on a person 14 years old or older. This can include the touching of the mouth, abdomen, buttocks, thighs, breasts, and pubic area, *whether over clothing or under clothing. There is no injury required.*
  - **Punishment:** Maximum 5 years in state prison, maximum 2½ in house of correction. However, if the victim is elderly or has a disability, maximum 10 years in state prison or 2½ years in HOC; subsequent offense maximum 20 years in state prison.
- §13J - Assault and battery on a child
  - **Description:** Assault and battery of a child causing bodily injury; and a defendant caring for a child “*wantonly or recklessly*” allowing bodily injury to that child. Proving the wanton or reckless conduct *does not require any proof of who actually hurt the child or how it occurred*; it can be proven *by inference* that an ordinary person would have recognized that the child was being exposed to bodily injuries by their acts or omissions.
  - **Punishment:** Assault and battery causing bodily injury maximum 5 years in state prison or 2½ years in HOC; substantial bodily injury maximum 15 years in state prison or 2½ years in HOC. Wanton or recklessly permitting bodily injury maximum 2½ years in HOC; substantial bodily injury maximum 5 years in state prison, 2½ years in HOC.
- §13K<sup>3</sup> - Assault and battery upon an elderly or disabled person
  - **Description:** Assault and battery of an elderly or disabled person: (a½) causing *no bodily injury*; (b) causing bodily injury; or (c) causing serious bodily injury; AND a caretaker of an elderly or disabled person “*wantonly or recklessly*”: (d) allowing bodily injury to that person; or (d½) committing or allowing abuse or neglect of that person; or (e) allowing serious bodily injury to that person.
  - **Punishment:** (a½) Maximum 3 years in state prison or 2½ years in HOC; (b) Maximum 5 years in state prison or 2½ years HOC; (c) Maximum 10 years in state prison or 2½ years HOC; (d) Maximum 5 years in state prison or 2½ years in HOC; (d½) Maximum 3 years in state prison or 2½ years HOC; (e) Maximum 10 years in state prison or 2½ in HOC.
- §14 - Mayhem
  - **Description:** Assault and battery that is intentional, unjustified, and committed with the reasonable appreciation by defendant that a disabling or disfiguring injury would result.
  - **Punishment:** Maximum 20 years in state prison.

<sup>2</sup> Chapter 265, §13H is included in S.2054. It is not included in H.3818.

<sup>3</sup> S. 2054 includes the entirety of Chapter 265, §13K, while H. 3818 appropriately limits inclusion to subsections (b) and (c) requiring intentional infliction of injury by the defendant.

- §15 - Assault with intent to murder or maim
  - **Description:** Attempted or completed battery committed with the intent to murder or maim.
  - **Punishment:** Maximum 10 years in state prison or 2½ years in HOC.
- §15A(a) and (c) - Assault and battery with dangerous weapon; victim 60 years or older
  - **Description:** (a) Assault and battery by means of a dangerous weapon on a person 60 years or older with *no requirement of injury or intent to injure*; (c) Assault and battery with dangerous weapon: (i) causing serious bodily injury; (ii) on a person defendant knows or has reason to know is pregnant with *no requirement of injury or intent to injure*; (iii) on a person defendant knows has a restraining or no contact order against him with *no requirement of injury or intent to injure*; (iv) by a defendant 17 years of age or older on a child under 14 years with *no requirement of injury or intent to injure*. *The broad definition of dangerous weapon applies to each subsection described above.*
  - **Punishment:** (a) First offense maximum 10 years in state prison or 2½ years in HOC, subsequent offense minimum 2 years; (c) Maximum 15 years in state prison or 2½ in HOC.
- §15C(b) - Assault and battery by means of a hypodermic needle
  - **Punishment:** (b) Maximum 15 years in state prison or 2½ years in HOC.
- §15D<sup>4</sup> - Assault and battery by means of discharging a firearm
  - **Punishment:** (a) First offense maximum 15 years in state prison or 2½ years in HOC; (b) Subsequent offense maximum 20 years in state prison, 10 years minimum.
- §16 - Attempt to murder
  - **Description:** Attempt to commit murder by poisoning, drowning, or strangling or by any means not constituting an assault with intent to commit murder.
  - **Punishment:** Maximum 20 years in state prison or 2½ years in HOC.
- §17 - Armed robbery
  - **Description:** Assaulting and robbing or taking money or other property from the person of another while armed with a dangerous weapon. *There is no requirement of actual force, physical contact, or injury. The broad definition of dangerous weapon applies. The weapon the defendant possesses need not have been used during the incident and the victim need not be aware of any weapon.*
  - **Punishment:** Maximum life in state prison. Minimum 5 years if committed while masked or while armed with a firearm. Subsequent offense minimum 10 years if masked and minimum 15 years with a firearm.
- §18 - Armed assault with intent to rob or murder
  - **Description:** Assaulting another while armed with a dangerous weapon with the intent to rob or murder them. The intended crime is not completed. *There is no requirement of actual force, physical contact, or injury. The broad definition of dangerous weapon applies. The weapon need not have been used. Intent may be proven by inference alone.*
  - **Punishment:** (a) If committed on a person over 60years old, maximum 20 years in state prison, minimum of 10 years if committed with a firearm; (b) Otherwise, maximum 20 years in state prison, minimum of 5 years if committed with a firearm.
- §18A - Assault in dwelling house with dangerous weapon
  - **Description:** Entering a dwelling house while armed with a dangerous weapon and therein assaulting another with intent to commit a felony. *There is no requirement of actual force, physical contact, or injury. The broad definition of dangerous weapon applies. The weapon need not have been used in the incident, only possessed by the defendant.*
  - **Punishment:** Maximum life in state prison, minimum 10 years.
- §18B - Use of firearm while committing a felony
  - **Description:** Commission or *attempted* commission of a crime that can, per statute, be punished by imprisonment in state prison while in possession of a firearm. *The weapon need not have been used, only possessed.*

<sup>4</sup> Chapter 265, §15D is a new crime created by S. 2054.

- **Punishment:** In addition to the punishment for the underlying offense, minimum of 5 years in state prison if in possession of a firearm and minimum of 10 years if firearm is a large capacity weapon. Subsequent offense minimum 20 years or 25 years if in possession of a large capacity weapon.
- §18C - Armed home invasion
  - **Description:** Knowingly entering or remaining in a dwelling place of another while armed with a dangerous weapon knowing or having reason to know that one or more persons are present or remaining and using force, threatening imminent use of force, or injuring any person in the dwelling. *The broad definition of dangerous weapon applies. The weapon need not have been used, only possessed.*
  - **Punishment:** Maximum life in state prison, minimum 20 years.
- §21 - Stealing by confining or putting in fear
  - **Description:** Confining, injuring, threatening to injure, or putting in fear any person for the purpose of stealing from a bank, vault, or other depository of money, bonds, or valuables. Generally, bank robbery.
  - **Punishment:** Maximum life in state prison.
- §21A - Carjacking
  - **Description:** Assaulting, confining, maiming, or putting any person in fear for the purpose of stealing a motor vehicle, whether successfully or unsuccessfully.
  - **Punishment:** If unarmed, maximum 15 years in state prison or 2½ years in HOC. If armed with dangerous weapon, maximum 20 years in state prison, minimum 1 year in HOC. If armed with firearm, minimum 5 years in state prison.
- §22 - Rape
  - **Description:** Sexual intercourse committed by means of physical force, constructive force, or threats of bodily harm and without consent.
  - **Punishment:** Maximum 20 years in state prison. If victim sustained serious bodily injury or was subjected to other felonious conduct during the same criminal episode, maximum life in state prison. If committed with a firearm, minimum 10 years. Subsequent offense minimum 15 years.
- §22A - Rape of child
  - **Description:** Sexual intercourse with a child under 16 years old committed by means of force, constructive force, or threats of bodily harm and without consent.
  - **Punishment:** Maximum life in state prison.
- §22B - Rape of child during commission of certain other offenses or by use of force
  - **Description:** (a) Rape of child committed where victim sustained serious bodily injury; committed during the commission of crimes including burglary, kidnapping, robbery, and assault and battery with a dangerous weapon; (b) Rape of child resulting in substantial bodily injury; (c)...
  - **Punishment:** Maximum life in state prison, minimum 15 years.
- §22C - Rape of a child through use of force by certain previously convicted offenders
  - **Description:** Rape of child under 16 years committed by a defendant previously convicted or adjudicated delinquent as a juvenile of a sexual assault.
  - **Punishment:** Maximum life in state prison, minimum 20 years.
- §23A - Statutory rape aggravated by age difference or when committed by mandatory reporter
  - **Description:** Sexual intercourse with a child under 16 years old committed by a mandatory reporter, when the victim is under 12 and the defendant is more than 5 years older, or when the victim is between 12 and 16 years of age and the defendant is more 10 years older.
  - **Punishment:** Maximum life in state prison, minimum 10 years.
- §23B - Statutory rape by certain previously convicted offenders
  - **Description:** Sexual intercourse with a child under 16 years old committed by a defendant previously convicted or adjudicated delinquent as a juvenile of a sexual assault.
  - **Punishment:** Maximum life in state prison, minimum 15 years.

- §24 - Assault with intent to commit rape
  - **Description:** Assault on a person with a specific intent by defendant at the time of the assault to rape that person. Rape not accomplished. *There is no requirement of actual force, physical contact, or injury. Intent can be proven by inference alone.*
  - **Punishment:** Maximum 20 years in state prison or 2½ years in HOC, with a subsequent offense maximum of life. If committed with a firearm minimum 5 years, with a subsequent offense minimum of 20 years.
- §24B - Assault of child with intent to commit rape
  - **Description:** Assault on a child under 16 years old with the specific intent to rape the child.
  - **Punishment:** Maximum life in state prison, subsequent offense by defendant over 18 years old minimum 5 years. If committed with a firearm minimum 10 years, subsequent offense by defendant over 18 years old minimum 15 years.
- §26 - Kidnapping
  - **Description:** Forcibly or secretly confining another person against his will or forcibly carrying or sending a person out of this commonwealth with the specific intent to do so, or attempting to do so.
  - **Punishment:** Maximum 10 years in state prison or 2 years in HOC. If committed on a child under 16 years old, maximum 15 years. If committed with the intent to extort money, maximum life in prison. If committed with a firearm minimum 10 years in state prison, and with the intent to extort money minimum 20 years....
- §26B - Drugging persons for kidnapping
  - **Description:** Administering or causing to be taken any drug, matter or thing with intent to stupefy or overpower by a person with the intent to kidnap the person.
  - **Punishment:** Maximum life in state prison, minimum 10 years. If committed with the intent to extort money, minimum 15 years.
- §26C - Enticement of a child under 16 years
  - **Description:** Luring, inducing, or soliciting a child under 16 years old, or someone defendant believes to be under 16 years, to enter, exit, or remain within a vehicle, building, or outdoor space with the intent to sexually assault or use force on the child.
  - **Punishment:** Maximum 5 years in state prison or 2½ years in HOC.
- §28 - Use of poison with intent to injury
  - **Description:** Mingling poison with food, drink or medicine with intent to kill or injure another person, or willfully poisoning any spring, well or reservoir of water with such intent.
  - **Punishment:** Maximum life in state prison.
- §39(b) - Assault and battery for the purpose of intimidation
  - **Description:** (b) Assault or battery resulting in bodily injury committed with the intent to intimidate because of a person's race, color, religion, or national origin.
  - **Punishment:** Maximum 5 years in state prison. If committed with a firearm, maximum 10 years or 2½ years in HOC.
- §43(b) or (c) - Stalking
  - **Description:** (b) Stalking in violation of a restraining or no contact order; (c) Subsequent offense.
  - **Punishment:** (b) Maximum 5 years in state prison, minimum 1 year; (c) Maximum 10 years in state prison, minimum 2 years.

## Chapter 266

- §1 - Burning a dwelling house
  - **Description:** Willfully and maliciously setting fire to, burning, or causing to be burned a dwelling house or an adjacent building or aiding in the burning, regardless of whether the dwelling house is occupied or is the property of the defendant.
  - **Punishment:** Maximum 20 years in state prison or 2½ years in HOC.

- §14 - Armed burglary
  - **Description:** Breaking and entering a dwelling house of another in the nighttime with the intent to commit a felony, a person being lawfully therein, while armed with a dangerous weapon *or* making an actual assault on a person lawfully therein. *The broad definition of dangerous weapon applies.*
  - **Punishment:** Maximum life in state prison, minimum 10 years. If committed with a firearm, minimum 15 years. Subsequent offense minimum 20 years.
- §17<sup>5</sup> - Entering without breaking in the night, breaking and entering in the daytime
  - **Description:** Entering in the nighttime or breaking and entering in the daytime a building, ship, vessel, or vehicle, with intent to commit a felony, the owner or any other person lawfully therein being put in fear.
  - **Punishment:** Maximum 10 years. If committed with a firearm, minimum 5 years.
- §18<sup>6</sup> - Entering in the nighttime a dwelling house or breaking and entering in the daytime
  - **Description:** Entering in the nighttime a dwelling house or breaking and entering in the daytime a building, ship or motor vehicle or vessel, with intent to commit a felony, no person lawfully therein being put in fear.
  - **Punishment:** Maximum 10 years in state prison or 2 years in HOC.
- §102 - Possession of incendiary device or hoax device
  - **Description:** (a) Possession of any substance or material that, alone or in combination, could be used to make an explosive or incendiary device or a chemical, biological, or nuclear weapon with the intent to make such a device; (b) Possessing or causing another to possess or place any hoax explosive or destructive device with the intent that such hoax weapon will be used to cause anxiety, unrest, fear or personal discomfort to any person; (c) Possession of an explosive or any destructive or incendiary device or substance.
  - **Punishment:** (a) Maximum 10 years in state prison, minimum 5 years or maximum 2½ years in HOC; (b) Maximum 5 years in state prison or 2½ years in HOC; (c) Maximum 20 years in state prison, minimum 10 years or maximum 2½ years in HOC.
- §102A - Throwing, launching, or placing incendiary device
  - **Description:** Throwing, launching, or otherwise placing an explosive or a destructive or incendiary device or substance with the intent to cause fear, panic or apprehension in any person; or to ignite, explode or discharge such explosive or such destructive or incendiary device or substance; or to release or discharge a chemical, biological or nuclear weapon.
  - **Punishment:** Maximum 25 years in state prison, minimum 10 years or maximum 2½ years in HOC.
- §102B - Malicious explosion
  - **Description:** Willfully discharging or igniting a destructive or incendiary device or substance.
  - **Punishment:** Maximum 25 years in state prison, minimum 15 years.
- §102C - Biological, chemical, or nuclear weapon or delivery system
  - **Description:** Knowingly developing, producing, acquiring, transporting, possessing, placing, or using any biological, chemical or nuclear weapon or delivery system, with the intent to cause death, bodily injury or property damage.
  - **Punishment:** Maximum 25 years in state prison or 2½ years in HOC.

## Chapter 269

- §10 - Carrying dangerous weapons
  - **Description:** Knowingly possessing or having under control in a vehicle (a) a firearm without a license to carry firearms in that manner in effect; (b) a knife having any automatic spring release, a switch blade, brass knuckles, nunchaku, a throwing star, etc; (c) a machinegun or a sawed-off shotgun; (d) subsequent offenses....
  - **Punishment:** (a) Maximum 5 years in state prison, minimum 2½ years or maximum 2½ years in HOC, minimum 18 months; (b) Maximum 5 years in state prison, minimum 2½ years or maximum 2½ years in HOC, minimum 6 months; (c) Maximum life in state prison, minimum 2½ years;

<sup>5</sup> Chapter 266, §17 is included in S.2054. It is not included in H.3818.

<sup>6</sup> Chapter 266, §18 is included in S.2054. It is not included in H.3818.

(d) Second offense maximum 7 years in state prison, minimum 5 years, third offense maximum 10 years, minimum 7 years, fourth offense maximum 15 years, minimum 10 years....

- §10E - Firearms sales, distribution, and transfers
  - **Description:** Knowingly or intentionally distributing, selling, or transferring possession of a quantity of firearms, except as provided by law.
  - **Punishment:** (1) From 3 to 10 firearms maximum 10 years in state prison, minimum 3 years; (2) From 10 to 20 firearms maximum 10 years, minimum 5 years; (3) 20 or more firearms maximum life, minimum 10 years.
- §12F(e)<sup>7</sup> - Possession or placement of cutting device, prohibited weapon in airport secure areas
  - **Description:** (b) Occupying or attempting to occupy a secure area of an airport or airplane cabin knowingly in possession of and concealing a cutting device or prohibited weapon without a license; (c) entering or occupying or attempting to enter or occupy said area with said weapon with the intent to commit a felony; (d) placing or attempting to place said weapons in said areas; (e) violating subsection (b), (c) or (d) willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life.
  - **Punishment:** (e) Maximum 20 years in state prison.

## Chapter 272

- §3 - Drugging person for sexual intercourse
  - **Description:** Administering or causing to be taken by a person any drug with the intent to stupefy or overpower such person in order to have sexual intercourse.
  - **Punishment:** Maximum life in state prison, minimum 10 years.
- §4A - Inducing minor into prostitution
  - **Description:** Inducing or knowingly aiding in the inducement of a minor into prostitution.
  - **Punishment:** Maximum 5 years in state prison, minimum 3 years.
- §13 - Detaining or drugging to detain a person in place for prostitution or aiding therein
  - **Description:** Illegally detaining, attempting to detain, or aiding in detaining or providing or aiding in providing any drug or liquor in order to detain a person in a place of prostitution.
  - **Punishment:** Maximum 5 years in state prison or maximum 2½ years in HOC, minimum 1 year.
- §17 - Incest
  - **Description:** Marriage, sexual intercourse, or sexual activities between persons with degrees of consanguinity.
  - **Punishment:** Maximum 20 years in state prison, 2½ years in HOC.
- §29A - Posing or exhibiting child under 18 in state of nudity or sexual conduct
  - **Punishment:** Maximum 20 years in state prison, minimum 10 years.
- §29B - Knowingly disseminating pornography depicting child under 18
  - **Punishment:** Maximum 20 years in state prison, minimum 10 years.
- §29C - Knowingly possessing pornography depicting child under 18
  - **Punishment:** First offense maximum 5 years in state prison or 2½ years in HOC. Second offense minimum 5 years. Third offense minimum 10 years.
- §35A - Unnatural and lascivious acts with child under 16
  - **Punishment:** Maximum 5 years in state prison or 2½ years in HOC. Subsequent offense by a defendant over 18 years old minimum 5 years.
- §53A(b) – Soliciting child prostitute under the age of 14 with the intent to engage in sexual conduct
  - **Punishment:** Maximum 10 years in state prison or 2½ years in HOC

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<sup>7</sup> Chapter 269, §12F(e) is included in S.2054. It is not included in H.3818.