

Legal Update

New Law: Chapter 205 of the Acts of 2008

Crimes: sexual assaults against children; subpoenas for internet subscriber information

Effective Date: October 22, 2008

Summary of new child sexual assault laws:

- Current Massachusetts law delineates three core child sexual assault charges: rape of child by force (c. 265, s. 22A), rape and abuse of child (c. 265 s. 23), and indecent assault and battery on a child under 14 (c. 265 s. 13B). This new law builds upon these three statutes by:
- leaving the core crime intact with its current, non-minimum mandatory penalty (the maximum penalty for both rape of child by force and rape of child without force is life in prison; the maximum penalty for indecent assault on a child is ten years in prison);
- adding a new section to each core crime that articulates aggravating factors and provides a minimum mandatory term (fifteen years for rape of child by force, ten years for rape of child without force, ten years for indecent assault); and
- adding a new section to each core crime that provides a minimum mandatory term for those who commit second/subsequent sexual crimes against children (twenty years for rape of child by force, fifteen years for rape of child without force, fifteen years for indecent assault and battery.)

Outline of new Child Sexual Assault Statutory Scheme:

c. 265 s.22A Rape of child; use of force (Modified)

Life, or any term of years

c. 265 s.22B Aggravated Rape; use of force; weapons (New)

Aggravating factors:

- (a) during the commission or attempted commission of another enumerated felony
- (b) substantial bodily injury results
- (c) victim is bound or gagged
- (d) defendant drugs victim or administers alcohol
- (e) committed by joint enterprise
- (f) defendant has sexually transmitted infection and committed crime in manner that transmission was possible

15 year minimum mandatory

c. 265 s.22C Rape of child; use of force; 2nd or subsequent offense; punishment (New)

Qualifying previous conviction/adjudication as delinquent or as a youthful offender for:

- indecent A&B on child under 14 (c.265 s.13B)
- aggravated indecent A&B under 14 (c.265 s.13B ½)
- indecent A&B on person fourteen or older (c.265 s.13H)
- assault of child with intent to commit rape (c.265 s.24B)
- rape of child with force (c.265 s.22A)
- aggravated rape of child with force (c.265 s.22B)
- rape and abuse of child (c.265 s.23)
- aggravated rape and abuse of child (c.265 s.23A)
- rape (c.265 s.22)
- like violation from another state/jurisdiction

Proof of prior convictions: self-authenticating documents constitute prima facie evidence.

20 year minimum mandatory

c. 265 s.23 Rape and abuse of child (Modified)

Life, or any term of years – HOC or SP

c.265 s.23A Aggravated rape and abuse of child (New)

Aggravating factors:

- (a) more than a 5 year difference in age and the victim is under 12, or
- (b) more than 10 year difference in age and victim is between 12 and 16, or
- (c) the defendant occupies a position of mandated reporter, as defined in c.119 s.51A

10 year minimum mandatory

c.265 s.23B Rape and abuse of child, 2nd or subsequent (New)

Qualifying previous conviction/adjudication as delinquent or as a youthful offender for:

- indecent A&B on child under 14 (c.265 s.13B)
- aggravated indecent A&B under 14 (c.265 s.13B ½)
- indecent A&B on person fourteen or older (c.265 s.13H)
- assault of child with intent to commit rape (c.265 s.24B)
- rape of child with force (c.265 s.22A)
- aggravated rape of child with force (c.265 s.22B)
- rape and abuse of child (c.265 s.23)
- aggravated rape and abuse of child (c.265 s.23A)
- rape (c.265 s.22)
- like violation from another state/jurisdiction

Proof of prior convictions: self-authenticating documents constitute prima facie evidence.

15 year minimum mandatory

c.265 s.13B Indecent A&B on child under 14; penalties, etc. (Modified)

Not more than 10 yrs SP; Not more than 2 ½ HOC

c.265 s.13B ½ Aggravated indecent A&B on child under 14; penalties, etc. (New)

Aggravating factors:

- (a) during commission of another enumerated felony
- (b) the defendant occupies a position of mandated reporter, as defined in c.119 s.51A

10 year minimum mandatory

c.265 s.13 ¾ Indecent A&B on child under 14; 2nd or subsequent offense, etc. (New)

Qualifying previous conviction/adjudication as delinquent or as a youthful offender for:

- indecent A&B on child under 14 (c.265 s.13B)
- aggravated indecent A&B under 14 (c.265 s.13B ½)
- indecent A&B on a person fourteen or older (c.265 s.13H)
- assault and battery on a child with intent to commit rape (c.265 s.24B)
- rape of child with force (c.265 s.22A)
- aggravated rape of child with force (c.265 s.22B)
- rape and abuse of child (c.265 s.23)
- aggravated rape and abuse of child (c.265 s.23A)
- rape (c.265 s.22)
- like violation from another state/jurisdiction

Proof of prior convictions: self-authenticating documents constitute prima facie evidence.

15 year minimum mandatory

Summary of new administrative subpoena law:

- Amends c. 271 s. 17B to allow prosecutors to obtain the name and address of an internet subscriber, just as can now be obtained for telephone subscribers, when there is “reasonable grounds to believe” that the information is “relevant and material to an ongoing criminal investigation”. Such subpoena cannot be used to obtain websites visited or email content.
- Amends c. 276 to authorize Massachusetts judges to issue out-of-state search warrants to internet service providers to obtain the identity of the customer, data stored on behalf of the customer, records of customer’s usage, the source of communications sent to such customer as well as the recipient of communications sent from the customer, and the content of such communications.

For more information, see the attached language of Chapter 205 of the Acts of 2008

