



The Commonwealth of Massachusetts
Disabled Persons Protection Commission



State Police Detective Unit
CRIMINAL STATUTES

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1. ASSAULT & BATTERY ON A PERSON WITH A DISABILITY (265-13K)

Committed by ANYONE

THREE YEAR FELONY

- Defendant committed an A&B
- Victim is elderly or disabled
- No physical injury required
- **Effective 4/13/2005**

TEN YEAR FELONY

- Defendant committed an A&B
- Victim is elderly or disabled
- A&B caused **serious bodily injury**
 - *Permanent disfigurement*
 - *Protracted loss/impairment of function/limb/organ*
 - *Substantial risk of death*

FIVE YEAR FELONY

- Defendant committed an A&B
- Victim is elderly or disabled
- A&B caused **bodily injury**
 - *Substantial impairment of physical condition*
 - *Burn, bone fracture, subdural hematoma, injury to internal organ*
 - *A result of repeated harm to any bodily function/organ/skin*

Committed by a CARETAKER

- Whoever, being a **caretaker** of a person with a disability
 - * *Responsibility for care (voluntary or contractual)*
 - * *Failure to fulfill responsibility would adversely affect person's physical health*

THREE YEAR FELONY

- Wantonly/recklessly commits or permits another to commit abuse, neglect or mistreatment
 - * **Abuse**—*physical contact which harms or creates a substantial likelihood of harm*
 - * **Neglect**—*failure to provide treatment or services necessary to maintain health and safety and which either harms or creates a substantial likelihood of harm*
 - * **Mistreatment**—*the use of medications or treatments, isolation or physical or chemical restraints which harms or creates a substantial likelihood of harm*
- * **Effective 4/13/2005**

FIVE YEAR FELONY

- Wantonly/recklessly commits **bodily injury**, or permits another to commit an A & B that causes **bodily injury**

TEN YEAR FELONY

- Wantonly/recklessly commits **serious bodily injury**, or permits another to commit A&B, which causes **serious bodily injury**

2. INDECENT ASSAULT AND BATTERY ON A PERSON 14 YEARS OR OLDER (Includes Elders and Persons with Disabilities) (265-13H)

- **All prosecutions under this section not to be filed or continued without a finding**
- Whoever commits an indecent A&B
- On an elder or a person with a disability (Defined in c. 265, § 13K)
- Unlike 265-13F:
 - No need to show that the perpetrator had knowledge that the victim has an intellectual disability.
 - Can charge a perpetrator with an intellectual disability with indecent assault and battery on person with an intellectual disability.
- Maximum penalty 10 years in state prison/2.5 years in House of Correction
- Subsequent Offense: Maximum penalty 20 years in state prison
- **Effective 4/13/2005**—*more effective and doesn't have the limitations of 13F*

3. INDECENT A&B/A&B ON A PERSON WITH AN INTELLECTUAL DISABILITY (265-13F)

FIVE-TEN YEAR FELONY

- Whoever, commits and A&B/Indecent A&B
 - On a person with an intellectual disability
 - Knowing such persons to have an intellectual disability
 - * *Shall not apply to an A&B by a person with an intellectual disability upon another person with an intellectual disability*
 - Subsequent offense—minimum ten year felony

4. LARCENY—PERSON WITH A DISABILITY (266-30 {5})

TEN YEAR FELONY

- Whoever steals, or with intent to defraud, obtains by false pretense or
- Whoever, with intent to steal or embezzle, converts, or secretes with intent to convert
 - The property of another
 - 60 years, or older, or a person with a disability (Defined in c. 265, § 13K)
- Whether said property is in his possession at the time of conversion/secreting
- Value of property under \$250
 - 2 ½ years House of Correction or fine of not more than \$1,000 or both
- **PLUS** restitution of value of property
- Value of property exceeds \$250
 - State prison not more than 10 years or
 - House of Correction not more than 2^{1/2} years or
 - Fine of not more than \$50,000 or both such fine & imprisonment
- **PLUS** restitution of value of property

5. G.L. c. 233 §23E ALTERNATIVE PROCEDURE FOR DETERMINING COMPETENCY OF WITNESSES WITH AN INTELLECTUAL DIASBILITY

- Court may order on its own motion or motion of the proponent of a witness with an intellectual disability the use of alternative procedures for determining competency to testify or for taking testimony of the witness
- Provided that the court finds
 - **In a criminal case by clear and convincing evidence,** and
 - In a non-criminal case by a preponderance of evidence that the witness with an intellectual disability is likely as a result of submitting to usual procedures for determining competency or as a result of testifying in open court:
 1. to suffer severe psychological or emotional trauma, or
 2. to suffer a temporary loss of or regression in cognitive or behavioral functioning or communicative abilities as to significantly impair the witness's ability to testify.