



LEGAL UPDATE

UPDATES TO SEXUAL ASSAULT LAWS

The Governor signed chapter 137 of the Acts of 2026 which, in addition to several other provisions, made changes to certain laws involving sexual assault. The act created a new crime aimed at punishing mandated reporters who engage in sexual conduct with 16 – 18 year olds, it added language to the statute of limitations with respect to sexual assaults and updated language regarding the collection and testing of sexual assault kits. All changes are now in effect.

M.G.L. c. 265, § 23A ½

M.G.L. c. 265, § 23A ½ makes it a crime for a mandated reporter to engage in indecent activity with a child between the ages of 16-18 over whom they exercise or at any time exercised custodial or supervisory authority. The child cannot consent to such activity. The new statute states:

- (a) Whoever has sexual intercourse or unnatural sexual intercourse with a child who has attained the age of 16 but is under the age of 18, and who exercises or has at any time exercised custodial or supervisory authority over such child as a mandated reporter as defined in section 21 of chapter 119, shall be punished by imprisonment in the state prison for not more than 20 years; provided, however, that this subsection shall not apply if the defendant was not more than 4 years older than the child at the time of the alleged offense. A prosecution commenced under this subsection shall not be continued without a finding or placed on file.
- (b) Whoever commits an indecent assault and battery on a child who has attained the age of 14 but is under the age of 18, and who exercises or has at any time exercised custodial or supervisory authority over such child as a mandated reporter as defined in section 21 of chapter 119, shall be punished by imprisonment in the state prison for not more than 10 years, or by imprisonment in a jail or house of correction for not more than 2 ½ years; provided,

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however, that this subsection shall not apply if the defendant was not more than 4 years older than the child at the time of the alleged offense.

- (c) In a prosecution under this section, a child under the age of 18 shall be deemed incapable of consenting to any conduct of the defendant for which such defendant is being prosecuted.
- (d) It shall not be a defense to a prosecution under this section that the defendant's custodial or supervisory authority over the child has ended, if the child is under the age of 18 at the time of the offense.

Statute of Limitations

M.G.L. c. 277, § 63 sets forth time limits for how long after a crime a person can be prosecuted. This is known as the statute of limitations. The statute was amended to add a paragraph that abolishes the time limitations for bringing rape charges in situations where:

1. the perpetrator was identified after the statute of limitations had expired; **and**
2. the perpetrator was identified through DNA analysis based upon evidence that was collected at the time the crime was committed.

The new paragraph reads (with parentheticals for clarity):

Notwithstanding the preceding paragraph, an indictment or complaint for an offense set forth in sections 22 (rape), 22A (forcible rape of a child), 22B (aggravated forcible rape of a child), 22C (forcible rape of child, subsequent offense), 22D (rape by false pretenses by health care provider or clergy), 23 (rape and abuse of a child), 23A (aggravated rape and abuse of child) or 23B (rape and abuse of a child, subsequent offense) of chapter 265 may be found and filed at any time after the date of the commission of such offense if the identity of the person who allegedly committed the offense: (i) was identified after the limitation period set forth in this section; and (ii) has been established through a DNA analysis, as defined in section 1 of chapter 22E, using evidence collected at the time of the commission of the offense.

The statute of limitations is complex and nuanced. Investigators dealing with cases that may be impacted by the statute of limitations should reach out to the appropriate prosecutor's office for guidance prior to bringing any charges.

Sexual Assault Kits

M.G.L. c. 41, § 97B ½ sets forth timelines with respect to collecting, testing and retaining sexual assault evidence kits. This section was re-written to require that all kits be tested within 30 days and retained for at least 15 years.

The language of M.G.L. c. 41, § 97B ½, with new language bolded, now states:

- (a) A hospital licensed pursuant to chapter 111 and all other medical facilities that conduct medical forensic examinations shall notify a local law enforcement agency at the time the evidence of a sexual assault is obtained and not later than 24 hours after using a new kit for the collection of sexual assault evidence.

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(b) Local law enforcement agencies shall:

(1) take possession of the sexual assault evidence kit from hospitals and other medical facilities that conduct medical forensic examinations within 3 business days of notification; and

(2) submit new sexual assault evidence kits to the crime laboratory within the department of state police or the police department of a municipality that operates a crime laboratory and has a population of more than 150,000, in the case of a sexual assault alleged to have taken place in that municipality, within 7 business days of taking possession; provided, however, that noninvestigatory sexual assault evidence kits associated with a victim who has not yet filed a report with a law enforcement agency shall not be subject to the 7-day requirement; provided further, that noninvestigatory sexual assault evidence kits shall be safely stored by law enforcement in a manner that preserves evidence for the duration of the statute of limitations for all sexual assault and rape cases; **and provided further, that all sexual assault evidence kits shall be retained for at least 15 years.**

(c) The crime laboratory within the department of state police or the police department of a municipality that operates a crime laboratory and has a population of more than 150,000, in the case of a sexual assault alleged to have taken place in that municipality, shall test all sexual assault evidence kits within 30 days of receipt from a local law enforcement agency, **notwithstanding the statute of limitations on the underlying offense.**

(d) In cases where testing results in a DNA profile, the crime laboratory shall enter the full profile into CODIS and the state DNA database.

(e) Each sexual assault evidence kit shall be entered into the statewide sexual assault evidence kit tracking system pursuant to section 18X of chapter 6A.

(distributed: 9/9/26)

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