



Legal Update

Spring 2018 Criminal Justice Reform Bill

On April 13, 2018, Governor Baker signed **S. 2371**, “*An Act Relative to Criminal Justice Reform* into law.” The majority of the legislation will take effect immediately, but there are portions that have staggered implementation dates.

How does the new legislation affect policing?

The new legislation impacts the following areas: Juvenile Justice, CORI reform, creates a DNA database, develops a sexual assault evidence kit and methods for tracking, expands restorative justice and diversion programs, enhances penalties for OUI, decriminalizes certain low level offenses, increases the threshold for felony theft and property offenses, establishes new crimes and much more.

Juvenile Justice Changes

- **Raises the Minimum Age of Delinquency (G.L. c. 4, § 7) (Effective 4-13-18):** The new law increases the minimum age a juvenile can be charged with a delinquent complaint from age 7 to age 12. The current law allows delinquent complaints to be issued for juveniles between the ages of 12-18.
- **Juvenile Court Jurisdiction:** Depending when a case is resolved, the Juvenile Court can retain jurisdiction on person under the age of 22.

- **Decriminalization (Effective 4-13-18):**
 - ❖ *Disturbance of a School Assembly*: Police cannot arrest or file charges against a juvenile for Disturbance of an Assembly or for any such conduct within school buildings or on school grounds or in the course of school-related events.
 - ❖ *Disturbing the Peace*: Police also cannot arrest or file charges against a juvenile for a disturbing the peace within school buildings or on school grounds or in the course of school-related events.
 - ❖ The Bill decriminalizes first-offense misdemeanors for which punishment is no more than six months' incarceration or a fine.
- **Notification process when a Juvenile is arrested: (Effective 7-13-18):** The procedures regarding juvenile arrests will be updated in consultation with probation, the bail commissioner, DYS, and Juvenile Court. Further information will be circulated once finalized.
- **Limits use of restraints on juveniles (G.L. c. 119, § 86):** Shackles and leg irons can only be used if the Juvenile Court judge finds that: (1) the juvenile presents an immediate and credible risk of escape that cannot be curtailed by other means; (2) the juvenile poses a threat to his or her own safety or to the safety of others; or (3) restraints are reasonably necessary to maintain order in the courtroom. Juvenile court officers cannot use a blanket procedure requiring restraints for juveniles because they have been charged with committing certain offenses.
- **Parental privilege (G.L. c. 233, § 20) (fourth clause):** A parent shall not testify against the parent's minor child and the minor child shall not testify against the child's parent in trial, grand jury or any proceeding which the victim is not a family member and does not reside in the family household. The term "parent," shall mean biological, adoptive parent, stepparent, legal guardian or any person acting in loco parentis.
- **Expands role of school resource officer (G.L. c. 71, § 37P):** The new law mirrors some of the requirements that were included in *An Act to Reduce Gun Violence*. The Chief of Police shall assign an officer that the chief believes would strive to foster an optimal learning environment and educational community. The chief shall give preference to candidates who demonstrate the requisite personality and character to work with children and educators in a school environment and who have received specialized training related to working with adolescents and children, including cognitive development, de-escalation techniques and alternatives to arrest and diversion strategies. The critical portion is that an

officer selected to work as the SRO shall not be based solely on seniority. The performance of the SRO shall be reviewed annually by the superintendent and chief.

- ❖ MOU should be put in place that states the role of SRO is not to be school disciplinarians, as enforcers of school regulations or in place of licensed school psychologists, psychiatrists or counselors and that SROs shall not use police powers to address traditional school discipline issues, including non-violent disruptive behavior.
- ❖ Chief should develop standard operating procedures, “SOP,” to provide SRO’s with guidance on:

- (1) SRO uniform;
- (2) use of police force, arrest, citation and court referral on school property;
- (3) a statement and description of students’ legal rights, including the process for searching and questioning students and when parents and administrators shall be notified and present;
- (4) chain of command, including delineating to whom the SRO reports and how school administrators and the SRO work together;
- (5) performance evaluation standards, which shall incorporate monitoring compliance with the memorandum of understanding and use of arrest, citation, and police force in school;
- (6) protocols for diverting and referring at-risk students to school- and community based supports and providers; and
- (7) information sharing between the SRO, school staff, and parents or guardians

- **Expungement of Juvenile Records:** Any order that dismisses, seals, or expunges juvenile records shall be transmitted to the FBI.
- **Juvenile Justice Policy and Data Board (G.L. c. 119, § 89):** Board will evaluate policies and procedures related to the juvenile justice system. The board shall consist of 21 members and should submit a report annually any recommendations related to statutory changes concerning juvenile justice.

DNA Database (G.L. c. 22E, § 3): (Effective 4-13-19)

Any person who is convicted of an offense punishable by state prison or any person adjudicated as a youthful offender must submit a DNA sample within ten (10) days of the intake.

If the sample is not taken, the sample must be provided prior to the release from a correctional facility.

Penalty: \$2000 fine or additional 6 months in state prison or HOC or both.

Inservice Training: (Effective 7-13-18)

The Municipal Police Training Committee will work with EOPSS to develop training programs in the follow topics for in-service:

- Bias-free policing;
- Procedural justice that includes de-escalation and disengagement tactics;
- Mental health emergencies.

Sexual Assault Evidence Kit (G.L. c. 6A, §§ 18X & 18Y): (Effective 4-13-19)

The Executive Office of Public Safety and Security (EOPSS) shall create and maintain a statewide **sexual assault evidence kit tracking system**. The statewide sexual assault evidence kit for tracking shall include:

- ❖ Location of the kit;
- ❖ Initial collection in examinations performed at hospitals or medical facilities;
- ❖ Receipt verifying storage of kit at a government entity (Police Dept., DA's Office, or other political subdivision);
- ❖ Track hospital or medical facility that possessed the kits;
- ❖ Provide a receipt when kit is analyzed at labs;
- ❖ Storage and any destruction after the kit is analyzed;
- ❖ Victims can anonymously track and receive updates regarding the location of their kits;
- ❖ No civil liability for release of information or failure to release as long as there was no gross negligence;
- ❖ Local law enforcement, crime labs, hospital or medical facilities and District Attorney's offices shall participate in statewide sexual assault evidence tracking kit system for chain of custody purposes.

- ❖ **Annual reporting to EOPSS by September 1:** The reports shall contain: (i) the total number of all kits containing forensic samples collected or received; (ii) the date of collection or receipt of each kit; (iii) the category of each kit; (iv) the sexual assault that was reported to law enforcement; (v) whether or not the victim chose not to file a report with law enforcement (non-investigatory); (vi) the status of the kit; (vii) the total number of all kits remaining in possession of the medical facility, law enforcement or laboratory

and all reasons for any kit in possession for more than 30 days; (viii) the total number of kits destroyed by medical facilities, law enforcement or laboratories, and reason for destruction. The date a kit transferred custody should be recorded.

❖ **Time Constraints for Kits: (Effective 7-13-18):**

- ❖ Police must be notified within 24 hours when a kit is used to collect sexual assault evidence;
- ❖ Police must take possession of the SAEK from hospitals or medical facilities within 3 days of being notified;
- ❖ SAEK must be submitted within 7 days of taking possession of the kit and while an investigation is ongoing. The 7 day time frame does not apply if there is no investigation.

Municipal Police Training Fund (G.L. c. 10, § 35EEE): (Effective 7-13-18)

State treasurer will oversee the fund and will hold monies in a trust. The funds should include (i) funds transferred from the Marijuana Regulation Fund chapter 94G; (ii) revenue from appropriations or other money authorized by the general court and specifically designated to be credited to the fund; (iii) interest earned on money in the fund; and (iv) funds from private sources including, but not limited to, gifts, grants and donations received by the commonwealth that are specifically designated to be credited to the fund. Amounts credited to the fund shall not be subject to further appropriation and any money remaining in the fund at the end of a fiscal year shall not revert to the General Fund. The secretary shall annually report the activity of the fund to the clerks of the senate and the House of Representatives and the senate and house committees on ways and means not later than December 31.

Funds must be used for: (i) the operating expenses of the municipal police training committee; (ii) basic recruit training for new police officers; (iii) mandatory in-service training for veteran police officers; (iv) specialized training for veteran police officers and reserve and intermittent police officers; and (v) the basic training program for reserve and intermittent police officers.

Criminal Offender Record Information (CORI) (Effective 4-13-18):

- ❖ **Sealing:** Reduces the waiting time to seal a conviction from 10 to 7 years for a felony and from 5 to 3 years for a misdemeanor. Additionally, allows the charge of resisting arrest to be eligible for sealing.

- ❖ **Expungement:** Permits expungement of criminal records (rather than just sealing) for some criminal records, such as those of juveniles and those aged 18-21.
 - Offense ineligible for expungement: Any offense resulting in serious bodily injury or death, any offense committed while armed with a dangerous weapon, any offense in violation of (G.L. c. 90, § 24), or any sexual offense listed in G.L. c. 123A, § 1;
 - Felony: 7 year time frame before petition was filed;
 - Misdemeanor: 3 year time frame before the petition was filed;
 - No other criminal offenses on file except motor vehicle offenses with a fine less than \$50.

- ❖ **Employment Issues:** Permits those with a sealed record to answer “no record” when applying for employment, housing, or occupational or professional licenses. It also prevents employers from inquiring about records sealed or expunged. Licensing authorities additionally must disclose in advance what offenses are disqualifying.

- ❖ If statewide criminal records are sealed or expunged, requires that national fingerprint records are also similarly treated and the FBI is requested to seal or expunge its records in tandem with the commonwealth.

- ❖ Bars third-party companies or groups who mine databases and then sell criminal records from circulating expunged or sealed records.

- ❖ **Public Logs:** Prevents any entry in the public police log concerning the arrest of a person who has not yet reached 18 years of age. (G.L. c. 41, § 98F)

Bail Reform: (Effective: 4-13-18)

- ❖ Essentially, this legislation serves to codify the recent *Branagan* case requiring that judges consider a defendant’s ability to pay and not set the bail at an amount higher than reasonably necessary to assure the person’s appearance in court.

- ❖ If the judge sets the amount of bail at an amount higher than necessary to ensure the return of the accused person, and it is likely to cause a lengthy period of pre-trial detention, the judge must make written findings that the commonwealth’s interest in incarceration prior to trial outweighs that of the defendant.

- ❖ It permits judges to use community corrections programs for pre-trial release.

- ❖ Dangerousness hearings are available for charges of OUI-third offense where the previous conviction was within ten years. (G. L. c. 276, §58A)

Diversion (G.L. c. 276A): (Effective: 4-13-18)

- ❖ **Age Limits:** Diversion has been expanded to include adults.
- ❖ **Eligibility:** To qualify for diversion at the adult level, the defendant must be 18 years old and cannot have any convictions, warrants, continuances, appeals or criminal cases pending in the Massachusetts, any other state or the United States.
- ❖ **Offenses Excluded from Diversion:**
 - Any offense in G.L. c. 265, except assault and battery pursuant to G.L. c. 265, § 13A(a);
 - Any offense in G.L. c. 119 or c. 268A;
 - Any offense for which a penalty of incarceration greater than five years may be imposed;
 - Any offense for which there is a minimum term penalty of incarceration or which may not be continued without a finding or placed on file;
 - Any offense which is ineligible for decriminalization pursuant to G.L. c. 277, § 70C, except for assault and battery in violation of G.L. c. 265, § 13A(a).

Restorative Justice (G.L. c. 276B): (Effective: 4-13-18)

- ❖ Diversion has been expanded to for a defendant to participate in community based program pre-arraignment or at any stage of the case with the consent of the defendant, district attorney and victim.
- ❖ **Excludes:**
 - sexual offenses described in G.L. c. 123A, § 1;
 - offenses against a family or household member per G.L. c. 265, § 13M;
 - **OR** any offenses resulting in serious bodily injury or death.

OUI Enforcement (G.L. c. 90, § 24): (Effective: 4-13-18)

- **Definition Change:** Redefines vapors of glue to “smelling or inhaling the fumes of any substance having the property of releasing toxic vapors.”
- **Enhanced Penalties for OUI:** If defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a Massachusetts court or any other jurisdiction with like offense listed below:
 - ❖ **OUI – 5th and 6th offense:** Fine of \$2,000 but not more than \$50,000 and by imprisonment not less than 2 ½ years but not more than 5 years. No sentence can be reduced to less than 24 months, nor suspended, nor the person is eligible for parole, probation or furlough;
 - ❖ **OUI - 7th and 8th offenses:** Fine of \$2,000 but not more than \$50,000 and by imprisonment in state prison for not less than 3 ½ years nor more than 8 years. No sentence can be reduced to less than 36 months, nor suspended, nor the person is eligible for parole, probation or furlough;
 - ❖ **OUI - 9th offense:** Fine of \$2,000 but not more than \$50,000 and by imprisonment in state prison for not less than 4 ½ years and not more than 10 years. No sentence can be reduced to less than 48 months, nor suspended, nor is the person eligible for parole, probation or furlough.
 - ❖ **NOTE:** District Court has jurisdiction for up to OUI 6th offense, but not for OUI 7th or subsequent offenses.

MV Homicide (OUI and OTE) (G.L. c. 90, § 24(G)): (Effective: 4-13-18)

Elements:

1. Operates a motor vehicle on a public way;
2. with .08 BAC or greater or under the influence of marijuana, narcotic drugs, depressants or stimulant substances or from smelling or inhaling fumes of any substance having released toxic vapors;

3. recklessly or negligently so that the lives or safety of the public might be endangered;
and
4. causes the death of another person,

NOTE: A person operates recklessly when that person consciously disregards a substantial and unjustifiable risk that the lives of the public may be endangered.

Right of Arrest: Felony

Penalty: Imprisonment in state prison for not less than 2½ years, nor more than 15 years, and by a fine of not more than \$5,000 dollars, or for not less than 1 year, nor more than 2 ½ years, and by a fine of not more than \$5,000 dollars. The sentence cannot be reduced to less than 1 year, nor suspended nor shall any person convicted be eligible for probation, parole or furlough or any deduction until person has served 1 year.

MV Homicide (either OUI or OTE) G.L. c. 90, § 24(G)(b): (Effective 4-13-18)

Elements:

1. Operates a motor vehicle on a public way;
2. (a) with a .08 BAC or greater or under the influence of marijuana, narcotic drugs, depressants or stimulant substances or from smelling or inhaling fumes of any substance having released toxic vapors, **or**

(b) negligently so that the lives or safety of the public might be endangered; **and**
3. causes the death of another person.

Right of Arrest: Statutory right of arrest per G.L. c. 90, § 21.

Penalty: Imprisonment not less than 30 days, nor more than 2 ½ years, or by a fine of not less than \$300 dollars, but not more than \$3,000, or both.

NOTE: Identical license implications for all sections: 10 year license loss after date of conviction for first offense; subsequent offense results in loss for life. Neither motions for new trials nor appeals will stay the revocation of the license.

Drug Offenses G.L. c. 94C:

CLASSES OF CONTROLLED SUBSTANCES - G.L. c. 94C, § 31: (Effective to any offense committed after 4-13-18)

- ❖ Adds to Class A fentanyl and any synthetic opioid controlled in Schedule I of 21 C.F.R. 1308.11 or Schedule II of 21 C.F.R. 1308.12.

CLASS B – DISTRIBUTION, POSSESSION W/ INTENT - G.L. c. 94C, § 32A: (Effective to any offense occurring on or after 4-13-18)

(a) First offense – any Class B:

Penalty: Imprisonment in the State prison for not more than 10 years, or in a jail or HOC for not more than 2 ½ years, or by a fine of not less than \$1,000 nor more than \$10,000, or by both such fine and imprisonment.

(b) Subsequent offense – any Class B:

Penalty: Imprisonment in the state prison for not more than 10 years, by a term of imprisonment in the state prison for not more than 10 years and by a fine of not less than \$2,500 and not more than \$25,000, or by a fine of not more than \$25,000.

(c) First offense - phencyclidine, cocaine, or methamphetamine – enhanced penalty:

Penalty: Imprisonment in the state prison for not more than 10 years; a term of imprisonment in the state prison for not more than 10 years and a fine of not less than \$1,000 and not more than \$10,000; by imprisonment in a jail or house of correction for not more than 2 ½ years; by imprisonment in a jail or house of correction for not more than 2 ½ years and a fine of not less than \$1,000 and not more than \$10,000; or by a fine of not more than \$10,000.

(d) Subsequent offense - phencyclidine, cocaine, or methamphetamine:

Penalty: Any person convicted of violating the provisions of subsection (c) after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute, or dispense a controlled substance, as defined in section 31 or of any offense of any other jurisdiction, either federal, state or territorial, which is the same as or necessarily includes, the elements of said offense, shall be punished by a term of imprisonment in the state prison for not more than 15 years, a term of imprisonment in the state prison for not more than 15 years and a fine of not less than \$2,500 nor more than \$25,000 or a fine of not more than \$25,000.

CLASS C – DISTRIBUTION, POSSESSION W/INTENT - G.L. c. 94C, § 32B:

- (a) **First offense:** Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute, or dispense a controlled substance in Class C of section 31 shall be imprisoned in state prison for not more than 5 years or in a jail or house of correction for not more than 2 ½ years, or by a fine of not less than \$500 nor more than \$5,000, or both such fine and imprisonment.
- (b) **Subsequent offense:** Any person convicted of violating this section after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section 31 under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not more than 10 years, a term of imprisonment in the state prison for not more than 10 years and a fine of not less than \$1,000 nor more than \$10,000, a term of imprisonment in a jail or house of correction for not more than 2 ½ years, a term of imprisonment in a jail or house of correction for not more than 2 ½ years and a fine of not less than \$1,000 nor more than \$10,000, or a fine of not more than \$10,000.

TRAFFICKING IN CLASS A - G.L. c. 94C, § 32E(c): (Effective to any offense occurring after 4-13-18)

- ❖ Added controlled substances defined in paragraph (d) of Class A of section 31 to heroin, morphine, etc. G.L. c. 94C, § 31(d) substances include fentanyl.

TRAFFICKING IN FENTANYL – G.L. c. 94C, § 32E (c½): (Effective to any offense occurring after 4-13-18)

- ❖ The new law imposes the mandatory minimum sentence for Trafficking in Fentanyl under G.L. c. 94C, § 32E (c½) of not less than **3 ½ years**.
- ❖ The new law includes any substance with a net weight of 10 grams or more of any mixture containing fentanyl or any derivative of fentanyl:

Elements:

1. Any person who trafficks;
2. in fentanyl or any derivative of fentanyl;
3. by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth;
4. a net weight of 10 grams or more of fentanyl or any derivative of fentanyl, or a net weight of 10 grams or more of any mixture containing fentanyl or any derivative of fentanyl.

Penalty: Imprisonment in State prison for not less than 3 ½ years nor more than 20 years. No sentence imposed under the provisions of this subsection shall be for less than a mandatory minimum term of imprisonment of 3 ½ years.

TRAFFICKING IN CARFENTANIL – G.L. c. 94C, § 32E(c^{3/4}) (new crime):

Elements:

1. any person who trafficks;
- 2. in any amount;**
3. in carfentanil, including any derivative of carfentanil;
4. by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth carfentanil or any derivative of carfentanil, any mixture containing carfentanil or a derivative of carfentanil;
5. provided, that such person had specific knowledge that such mixture contained carfentanil or any derivative of carfentanil.

Right of Arrest: Felony

Penalty: Shall be punished by a term of imprisonment in state prison for not less than 3 ½ years nor more than 20 years. No sentence imposed pursuant to this subsection shall be for less than a mandatory minimum term of imprisonment of 3 ½ years.

School Zone Violations, G.L. c. 94C, § 32J: (Completely Revised)

- ❖ The new statute maintains the clause that the lack of knowledge of school boundaries is not a defense to this violation.

Elements:

1. violation of §§ 32, 32A – 32F, or 32I;
2. [a] while in, on or within 300 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational or secondary school between 5:00 a.m. and midnight, whether or not in session,
or
[b] within 100 feet of a public park or playground; **and**
3. during the commission of the offense:
 - i. used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so during the commission of the offense;
 - ii. engaged in a course of conduct whereby the person directed the activities of another person who committed any felony in violation of this chapter;
or
 - iii. committed or attempted to commit a violation of section 32F (distributing Class A, Class B or Class C to a minor) or section 32K (inducing or abetting minor to distribute or sell controlled substances).

Right of Arrest: Felony

Penalty: Minimum mandatory of 2 years prison. State prison not less than 2 ½ years nor more than 15 years; House of correction not less than 2 years nor more than 2 ½ years. A fine may also

imposed of not less than \$1,000 and not more than \$10,000, but not in lieu of the mandatory minimum 2 yr. jail sentence.

Forfeiture (G.L. c. 94C, § 47): (Effective 7-13-18)

Imposes a duty upon the Attorney General, District Attorneys, and police departments to report to the treasurer all assets, monies, and proceeds from assets seized pursuant to G.L. c. 94C, § 47. The report must be made annually and provide an accounting for all assets seized that itemizes the assets in the following categories: cash, personal property, conveyances, and real property including any property disposed of by the office of seized property management.

Deadline for filing the report: January 31st

Alcoholic Beverages – G.L. c. 138, § 34E (new section): (Effective: 4-13-18)

- (a) Any person under the age of 21 who, in good faith, seeks medical assistance for a person who is experiencing an alcohol-related incapacitated will not face criminal charges under §§ 34, 34A, or 34C, if the evidence for the charge of purchase or possession of alcohol was gained as the result of seeking medical assistance.

- (b) Any person under the age of 21 who is experiencing an alcohol-related incapacitated and is in need of medical assistance and, in good faith, seeks medical assistance or is the subject of such a good faith request for medical assistance will not face criminal charges under §§ 34, 34A, or 34C, if the evidence for the charge of purchase or possession of alcohol was gained as the result of seeking medical assistance.

Witness Intimidation (G.L. c. 268, § 13B) (revised): (Effective 4-13-18)

The bill added “**corrections officers**” and “**family members of a person described in the statute**” to the category of persons protected by the statute; and it added the words “at any stage” after “a criminal investigation” to expand the scope of the statute.

Definitions - § 13B (a):

- ❖ “**Investigator**”, an individual or group of individuals lawfully authorized by a department or agency of the federal government, or any political subdivision thereof, or a department or agency of the commonwealth or any political subdivision thereof, to conduct or engage in an investigation of, prosecution

for, or defense of a violation of the laws of the United States or of the commonwealth in the course of such individual's or group's official duties.

- ❖ **“Harass”**, to engage in an act directed at a specific person or **group of** persons that seriously alarms or annoys such person or group of persons and would cause a reasonable person or group of persons to suffer substantial emotional distress including, but not limited to, an act conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, a device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature, transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system including, but not limited to, electronic mail, internet communications, instant messages and facsimile communications.

Elements - § 13B(b):

Whoever willfully, either directly or indirectly:

- i. threatens, attempts or causes physical, emotional or economic injury or property damage to;
- ii. conveys a gift, offer or promise of anything of value to; **or**
- iii. misleads, intimidates or harasses another person who is a:
 - A. witness or potential witness;
 - B. person who is or was aware of information, records, documents or objects that relate to a violation of a criminal law or a violation of conditions of probation, parole, bail or other court order;
 - C. judge, juror, grand juror, attorney, victim witness advocate, police officer, **correction officer**, federal agent, investigator, clerk, court officer, court reporter, court interpreter, probation officer or parole officer;
 - D. person who is or was attending or a person who had made known an intention to attend a proceeding described in this section; **or**

E. family member of a person described in this section,

with the intent to or with reckless disregard for the fact that it may:

- (1) impede, obstruct, delay, prevent or otherwise interfere with: a criminal investigation **at any stage**, a grand jury proceeding, a dangerousness hearing, a motion hearing, a trial or other criminal proceeding of any type or a parole hearing, parole violation proceeding or probation violation proceeding; or an administrative hearing or a probate or family court proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation or any other civil proceeding of any type; **or**
- (2) punish, harm or otherwise retaliate against any such person described in this section for such person or such person's family member's participation in any of the proceedings described in this section.

Right of Arrest: Felony

Penalty: State prison for not more than 10 years or HOC for not more than 2½ years, or by a fine of not less than \$1,000 nor more than \$5,000, or by both such fine and imprisonment.

- ❖ If the proceeding in which the misconduct is directed at is the investigation or prosecution of a crime punishable by life imprisonment or the parole of a person convicted of a crime punishable by life imprisonment, such person shall be punished by imprisonment in the state prison for not more than 20 years or by imprisonment in the house of corrections for not more than 2½ years or by a fine of not more than \$10,000 or by both such fine and imprisonment.
- ❖ Jurisdiction for this charge in the county where there is criminal investigation, trial or other proceeding or in county in where the alleged conduct constituting the offense occurred.

Manslaughter (G.L. c. 265, § 13): (Effective 4-13-18)

The bill added a second paragraph to the statute that creates **corporate liability** for manslaughter.

“Any business organization including, without limitation, a corporation, association, partnership or other legal entity that commits manslaughter.”

Penalty: A fine of not more than \$250,000; and the corporation can be dismantled for a period not to exceed 10 years.

Assault and Battery on a Police Officer Causing Serious Bodily Injury
(G. L. c. 265, § 13D): (Effective 4-13-18)

The bill added a fourth paragraph to the statute that imposes an enhanced penalty for causing serious bodily injury to a police officer.

Elements:

1. Whoever commits an assault and battery;
2. upon a police officer;
3. when such officer is engaged in the performance of the officer’s duties at the time of such assault and battery; and
4. by such assault and battery causes **serious bodily injury** to the officer.
 - ❖ “**serious bodily injury**” means bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ or substantial risk of death.

Right of Arrest: Felony

Penalty: State prison for not less than 1 year nor more than 10 years, or HOC for not less than 1 year, nor more than 2 ½ years. No sentence imposed pursuant to this section shall be for less than a mandatory minimum term of imprisonment of 1 year and a fine of not less than \$500 nor more than \$10,000. The fine cannot be imposed in lieu of the 1 year minimum. This charge cannot be placed on file, given a CWOFF, suspended or reduce and the person cannot be eligible for probation, parole, work release or furlough as a substitute for 1 year.

Additional Protections for Victims of Human Trafficking: (Effective 7-13-18)

The bill added § 59(a) to G.L. c. 265:

(a) At any time after the entry of a judgment of disposition on an indictment or criminal or delinquency complaint for an offense under section 26, subsection (a) of section 53 [common night walkers, common street walkers, etc.] or subsection (a) of section 53A of chapter 272 [engaging or offers to engage in sexual conduct with another person for a fee] or under section 34 of chapter 94C for simple possession of a controlled substance, the court in which it was entered shall, upon motion of the defendant, **vacate any conviction**, adjudication of delinquency or continuance without a finding and permit the defendant to withdraw any plea of guilty, plea of nolo contendere, plea of delinquent or factual admission tendered in association therewith **upon a finding by the court of a reasonable probability that the defendant's participation in the offense was a result of having been a human trafficking victim** as defined by section 20M of chapter 233 or a victim of trafficking in persons under 22 U.S.C. 7102; provided, however, that:

- (1) except as provided in paragraphs (2) and (3) of this subsection, the defendant shall have the burden to establish a reasonable probability that the defendant's participation in the offense was the result of having been a victim of human trafficking;
- (2) where **a child under the age of 18** was adjudicated delinquent for an offense under section 26, subsection (a) of section 53 or subsection (a) of section 53A of chapter 272, based on allegations of prostitution, **there shall be a rebuttable presumption that the child's participation in the offense was a result of having been a victim of human trafficking or trafficking in persons**;
- (3) where the conviction, adjudication of delinquency or continuance without a finding was for an offense under section 26, subsection (a) of section 53 or subsection (a) of section 53A of chapter 272 committed when **the defendant was 18 years of age or older, official documentation** from any local, state or federal government agency **of the defendant's status as a victim of human trafficking or trafficking in persons at the time of the offense shall create a rebuttable presumption** that the defendant's participation in the offense was a result of having been a victim of human trafficking or trafficking in persons, but shall not be required for granting a motion under this subsection;
- (4) for purposes of paragraph (3) of this subsection, "official documentation" shall be defined as any document issued by a local,

state or federal government agency in the agency's official capacity;

- (b) Upon vacatur of a conviction, adjudication of delinquency or continuance without a finding, the court shall enter a plea of not guilty. It shall be an affirmative defense to the charges against the defendant that, while a human trafficking victim, such person was under duress or coerced into committing the offenses for which such person is being prosecuted or against whom juvenile delinquency proceedings have commenced

Property Crimes: (Effective 4-13-18)

Larceny - G.L. c. 266, § 30, and Shoplifting - G.L. c. 266, § 30A

- Threshold for felony larceny (“larceny over”) has increased from \$250 to \$1,200;
- Felony larceny from an elder or person with a disability remains at \$250;
- Shoplifting distinguishes between amounts under and over \$250:
 - Under \$250 - No jail until 3rd offense (HOC NMT 2 yrs.);
 - If retail value of the item is under \$250, can only be charged as shoplifting;
 - Over \$250 – Any offense: HOC NMT 2 ½ yrs.
- An officer’s right of arrest for the above mentioned property crimes **has not changed**. If an officer has probable cause to believe a person has committed one of the above offenses and the value of the property stolen is more than \$250, the officer has the right of arrest without a warrant – G.L. c. 266, § 60.

Misuse of Credit Cards - G.L. c. 266, § 37B: (Effective 4-13-18)

- Increases dollar amounts from \$250 to \$1,200.
- Increases the punishable fine amount from \$500 to \$2500

Credit Card Fraud- G.L. c. 266, § 37C: (Effective 4-13-18)

- Increases dollar amounts from \$2000 to \$10,000

- Increases the punishable fine amount from \$500 to \$2500

Receiving Stolen Property - G.L. c. 266, § 30: (Effective 4-13-18)

- Increases dollar amounts from \$250 to \$1,200.
- Increases the punishable fine amount from \$1,000 to \$3000 where property value is less than \$1200

Malicious or Wanton Destruction of Property - G.L. c. 266, § 127 (Effective 4-13-18):

- Increases dollar amounts from \$250 to \$1,200.
- Increases penalty for property valued less than \$1200 from not more than 2 ½ months to 2 ½ years.

Skimmers/Identity Theft - G.L. c. 266, § 37E(c ½): (new subsection) (Effective 4-13-18):

Elements:

1. Whoever possesses
2. a tool, instrument or other article
3. adapted, designed or commonly used
4. for accessing a person's financial services account number or code, savings account number or code, checking account number or code, brokerage account number or code, credit card account number or code, debit card number or code, automated teller machine number or code, personal identification number, mother's maiden name, computer system password, electronic signature or unique biometric data that is a fingerprint, voice print, retinal image or iris image
5. of another person
6. under circumstances evincing an intent to use or knowledge that some person intends to use the same in the commission of larceny

Right of Arrest - A law enforcement officer may arrest without warrant any person he has probable cause to believe has committed the offense of identity fraud.

Penalty: Fine of not more than 5,000, or imprisonment in a HOC for not more than 2½ years, or by both such fine and imprisonment.

Furnishing False Name or Social Security Number – G.L. c. 268, § 34A: (Effective 4-13-18)

Elements:

1. Whoever knowingly and willfully
2. furnishes
3. a false
 - a. name,
 - b. Social Security number,
 - c. date of birth,
 - d. home address,
 - e. mailing address or
 - f. phone number,
 - g. or other information as may be requested for the purposes of establishing the person's identity,
4. to a law enforcement officer or law enforcement official
5. following an arrest

Right of arrest: By definition, the person is already under arrest.

Penalty: Shall be punished by a fine of not more than \$1,000 or by imprisonment in a house of correction for not more than 1 year or by both such fine and imprisonment.

Public Disorder Offenses / Penalties for certain offenses – (G.L. c. 272 § 53(b)):
(Effective 4-13-18):

The bill rewrote subsection (b) that penalizes disorderly persons and disturbers of the peace:

Penalty: 1st offense: fine of not more than \$150;
2nd offense/subsequent: imprisonment not more than 6 months or by a fine of not more than \$200 or by both such fine and imprisonment;

❖ **NOTE:** Elementary or secondary school student shall not be adjudged a delinquent child for a violation of this subsection for such conduct within school buildings or on school grounds or in the course of school-related events.

Solicitation of a Felony – G.L. c. 274, § 8 (new subsection): (Effective 4-13-18)

Elements:

1. Whoever solicits, counsels, advises, or otherwise entices
2. another
3. to commit a crime that may be punished by imprisonment in the state prison,
4. with the intent that the person, in fact, commit or procure the commitment of such crime, shall be punished as follows:

Penalties:

- First, by imprisonment for not more than 20 years in the state prison or for not more than 2½ years in a jail or house of correction, or by a fine of not more than \$10,000, or by both such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement was for the person to commit a crime punishable by imprisonment for life.
- Second, by imprisonment for not more than 10 years in the state prison or for not more than 2½ years in a jail or house of correction, or by a fine of not more than \$10,000, or by both such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement was for the person to commit a crime punishable by imprisonment in the state prison for 10 years or more.
- Third, by imprisonment for not more than 5 years in the state prison or for not more than 2½ years in a jail or house of correction, or by a fine of not more than \$5,000, or by both such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement was for the person to commit a crime punishable by imprisonment in the state prison for 5 years or more.
- Fourth, by imprisonment for not more 2½ years in a jail or house of correction, or by a fine of not more than \$2,000, or by both such fine and imprisonment, if the intent of the solicitation, counsel, advice or enticement was for the person to commit a crime punishable by imprisonment in the state prison for less than 5 years.

Right of Arrest: Paragraphs 1, 2, and 3 are felonies with the right of arrest without a warrant; paragraph 4 is a misdemeanor without right of warrantless arrest.

Miscellaneous Provisions

Knowingly being present at a place where heroin is kept - G.L. c. 94C, § 35:
(Effective date 4-13-18)

This statute is **repealed** and police can no longer charge.

Changes with Loss of Licenses: No loss of license if a person is convicted for vandalism, tagging or malicious destruction of property and no licenses suspension for default or arrest warrant.

	Changes	Effective Date
Juvenile Justice Changes	<p><u>Age of Criminal Responsibility:</u></p> <ul style="list-style-type: none"> Increased from age 7 to 12. Delinquent complaints can now be issued for juveniles between the ages of 12-18 years of age. <p><u>Definition Change of Delinquent Child:</u></p> <ul style="list-style-type: none"> G.L. c. 119, § 52 Any juvenile found violating bylaw, ordinance or charged with a misdemeanor that has less than 6 months of jail time, shall not be labeled <u>delinquent child</u>. 	<ul style="list-style-type: none"> 7-13-18
Changes with Lockup for Juvenile and Notification Procedures	<ul style="list-style-type: none"> The changes related to lockup and notification procedures are currently under review and will be rolled out by July 13, 2018. 	<ul style="list-style-type: none"> 7-13-18
Parental Privilege	<ul style="list-style-type: none"> Parents cannot testify against minor child and vice versus. (G.L. c. 233, § 20) 	<ul style="list-style-type: none"> 4-13-18
Decriminalizes	<p><u>Changes with School Assembly and Disorderly Conduct within school setting:</u></p> <ul style="list-style-type: none"> <i>Disturbing a school assembly</i> (G.L. c. 265, § 40) = police cannot arrest or charge a juvenile. <i>1st offense for youth disorderly and school disorderly</i> (G.L. c. 272, § 53) = police can no longer arrest or charge a juvenile. Misuse of prescription meds = no violation of probation <p><u>Underage Alcohol Possession:</u></p> <ul style="list-style-type: none"> Person under age of 21 seeking help in good faith for alcohol related incapacitation will not be charged with purchasing or attempting to purchase alcohol or minor in possession of alcohol within a mv. (G.L. c. 138, § 34E) <p><u>Repealed</u></p>	<ul style="list-style-type: none"> 4-13-18

	<ul style="list-style-type: none"> • <u>Knowingly being present where heroin is kept</u> (G.L. c. 94C, § 35) 	
New Crimes	<ul style="list-style-type: none"> • <i>Assault and Battery on a police officer with serious injury</i> (G.L. c. 265, § 13D) • <i>Intimidation of a witness, Jurors</i> (G.L. c. 268, § 13B) • <i>Solicitation of a felony</i> (G.L. c. 274, § 8) • <i>Identity Fraud</i> (G.L. c. 266, § 37E(c ½)) • <i>Furnishing false information to police officer after arrest</i> (G.L. c. 268, § 34A) 	<ul style="list-style-type: none"> • 4-13-18
CORI Reform	<p><u>Sealing Records:</u></p> <ul style="list-style-type: none"> • Misdemeanor = after 3 years instead of 5 years. • Felony = after 7 years instead of 10 years. • Resisting arrest = seal <p><u>Expungement</u></p> <ul style="list-style-type: none"> • Creates new requirements for expungement of records • Reduced time frame that an employer can request records for misdemeanors from 5 to 3 years • Defines what offense are ineligible for expungement 	<ul style="list-style-type: none"> • 10-14-18
Public Log	<ul style="list-style-type: none"> • Juvenile arrests are not included on public logs 	<ul style="list-style-type: none"> • 4-13-18
Diversion	<ul style="list-style-type: none"> • No age limits on diversion • Limits specified offenses for diversion • No limits on DAs or police to divert • Excludes the following offenses from diversion: G. L. c. 265, c. 119, c. 209, c. 209A or c. 268A • Allows diversion for assault and battery (G. L. c. 265, § 13A (a)) 	<ul style="list-style-type: none"> • 4-13-18

	<ul style="list-style-type: none"> • DAs must establish pre-arraignment diversion for veterans, person with mental illness and substance abuse issues • New procedure for juvenile diversion 	
School Resource Officer Training	<ul style="list-style-type: none"> • Subject to annual evaluation • Standard Operating Procedures (SPOs) will define role of SRO in schools • Memorandums of Understanding should exist with school and police at a minimum 	<ul style="list-style-type: none"> • 7-13-18
Sexual Assault Kits	<ul style="list-style-type: none"> • Establishes a new tracking system that verifies chain of custody when kits are transferred. • Creates new protocols for the kits • Implements procedure with time constraints for picking up the kits 	<ul style="list-style-type: none"> • 4-13-19
Human Trafficking Victim	<ul style="list-style-type: none"> • Additional Protections for victims of Human Trafficking (G.L. c. 265, § 59) 	<ul style="list-style-type: none"> • 7-13-18
Changes with Property Crimes	<ul style="list-style-type: none"> • Increases threshold for larceny from \$250 to \$1200 (G.L. c. 266, § 30) • Increases threshold for shoplifting from \$100 to \$250 (G.L. c. 266, § 30A) • Increases threshold for misuse of credit cards from \$250 to \$1200 (G.L. c. 266, § 37B and § 37C) • Increases threshold for receiving stolen property from \$250 to \$1200 (G.L. c. 266, § 60) • Increases threshold for malicious destruction of property \$250 to \$1200 (G.L. c. 266, § 127) • Right of Arrest: If police has PC and value is over \$250 	<ul style="list-style-type: none"> • 4-13-18
Enhanced Penalties for Miscellaneous Offenses	<ul style="list-style-type: none"> • Increases penalty for corporate manslaughter and possible debarment for a period of 10 years. (G.L. c. 265, § 13) 	<ul style="list-style-type: none"> • 4-13-18

<p>Changes with Controlled Substance Crimes</p>	<p><u>Enhanced Penalties for Drugs</u></p> <ul style="list-style-type: none"> • Trafficking for fentanyl (G. L. c. 94C, § 32E) • Trafficking for carfentanil (G. L. c. 94C, § 32E) <p><u>School Zone Violation</u> (G. L. c. 94C, § 32J): Added</p> <p>(i.). used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so during the commission of the offense;</p> <p>(ii). directed another person to commit a felony drug offense; or</p> <p>(iii). Offense consisted of unlawfully manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute, dispense or cultivate a controlled substance to minors (G. L. c. 94C, § 32F), or inducing a minor to distribute or sell a controlled substance (G. L. c. 94C, § 3 2K)</p> <p><u>Reclassification of Class A and Class B drugs</u></p>	<ul style="list-style-type: none"> • 4-13-18
<p>DNA Database</p>	<ul style="list-style-type: none"> • New protocols for collecting DNA samples • Certain offenses mandate that a DNA sample be provided • Probation officers can use force to collect DNA sample 	<ul style="list-style-type: none"> • 4-13-19
<p>Impact on RMV</p>	<p><u>No Loss of Licenses for convictions:</u></p> <ul style="list-style-type: none"> • Vandalism (G. L. c. 266, § 126A) • Tagging(G. L. c. 266, § 126B) • Malicious MV Damage (G. L. c. 266, § 28) • Arrest and Default warrants (G. L. c. 90, § 22) 	<ul style="list-style-type: none"> • 7-13-18

<p>OUI Enforcement</p>	<p><u>Definition Change of vapors of glue to smelling or inhaling the fumes of any substance having the property or releasing toxic vapors.</u> (G.L. c. 270, § 18)</p> <ul style="list-style-type: none"> • G. L. c. 90, § 8A • G. L. c. 90, § 21 • G. L. c. 90, § 24 • G. L. c. 90, § 24D • G. L. c. 90, § 24L <p><u>Definition Change to OUI Fumes when operating a bus and snow recreation vehicles</u></p> <ul style="list-style-type: none"> • G. L. c. 90B, § 26A • G. L. c. 90B, § 8B <p><u>Adding OUI fumes to carrying a firearm while intoxicated</u></p> <ul style="list-style-type: none"> • G. L. c. 269, §10H 	<ul style="list-style-type: none"> • 7-13-18
<p>Enhanced Penalties for OUI</p>	<p><u>OUI Sentencing</u> (G. L. c. 90, § 24)</p> <ul style="list-style-type: none"> • 5th-6th: not less than 2 ½ years in HOC or in state prison nor more than 5 years and a fine of not less \$2,000 not more than \$50,000. • 7th- 8th: not less than 3 ½ years nor more than 8 years in state prison and a fine not less \$2,000 not more than \$50,000. • 9th not less than 4 ½ years nor more than 10 years in state prison and a fine not less \$2,000 not more than \$50,000. 	<ul style="list-style-type: none"> • 7-13-18
<p>Enhanced Penalties for MV homicide</p>	<p><u>Reckless MV homicide</u> G. L. c. 90, §24G)(c)</p> <ul style="list-style-type: none"> • Reckless operation of MV resulting in death is now a felony with a state prison alternative up to 5 years. <p><u>Negligent MV homicide</u> G. L. c. 90, § 24G(b)</p>	<ul style="list-style-type: none"> • 4-13-18
<p>Asset Forfeiture</p>	<p>G. L. c. 94C, § 47</p>	<ul style="list-style-type: none"> • 7-13-18