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An Act to further protect children

[Text changes through amendments are highlighted in yellow, and brief explanations of the source of the amendment follow in brackets and in italics in this copy only. Ed.]

SECTION 1.

Chapter 265 of the General Laws is hereby amended by striking out section 13B, as appearing in the 2006 Official Edition, and inserting in place thereof the following 3 sections:-

Section 13B.

Whoever commits an indecent assault and battery on a child under the age of 14 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, however, that a prosecution commenced under the provisions of this section shall not be placed on file or continued without a finding.

In a prosecution under this section, a child under the age of 14 years shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.

Section 13B ½

Whoever commits an indecent assault and battery on a child under the age of 14 and:

(a) ~~the indecent assault and battery was committed while the defendant was in possession of a dangerous weapon including, but not limited to, those dangerous weapons set forth in section 10 of chapter 269; or~~ *[This foregoing language stricken is as a result of a floor amendment offered by Rep. James Fagin (D., Taunton). The official language of this amendment is still not available on the mass.gov website as of 6/11/08.]*

(b) the indecent assault and battery is committed during the commission or attempted commission of the following offenses:-

- (1) armed burglary as set forth in section 14 of chapter 266;
 - (2) unarmed burglary as set forth in section 15 of said chapter 266;
 - (3) breaking and entering as set forth in section 16 said chapter 266;
 - (4) entering without breaking as set forth in section 17 of said chapter 266;
 - (5) breaking and entering into a dwelling house as set forth in section 18 of said chapter 266;
 - (6) kidnapping as set forth in section 26 of chapter 265;
 - (7) armed robbery as set forth in section 17 of said chapter 265;
 - (8) unarmed robbery as set forth in section 19 of said chapter 265;
 - (9) assault and battery with a dangerous weapon and assault with a dangerous weapon, as set forth in sections 15A and 15B of said chapter 265;
 - (10) home invasion as set forth in section 18C of said chapter 265; and
 - (11) posing or exhibiting child in state of nudity or sexual conduct as set forth in section 29A of chapter 272; or
- (c) at the time of said indecent assault and battery, occupies the position of a mandated reporter as that term is defined in section 51A of chapter 119,

shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file. In a prosecution under this section, a child under the age of 14 years shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.

Section 13B ³/₄.

Whoever commits an indecent assault and battery on a child under the age of 14 and the defendant has been previously convicted or adjudicated delinquent or as a youthful offender for one of the following offenses: indecent assault and battery on a child under 14 under section 13B or; aggravated indecent assault and battery on a child under 14 under section 13B ¹/₂ or; indecent assault and battery on a person fourteen or older under section 13H assault of a child with intent to commit rape under section 24B ; rape of a child with force under section 22A or; aggravated rape of a child with force under section 22B or; rape and abuse of a child under section 23 or; aggravated rape and abuse of a

child under section 23A or; rape under section 22 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of corrections, or the department of correction shall be prima facie evidence that the defendant before the court had been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein. The commonwealth shall not be required to introduce any additional corroborating evidence, nor live witness testimony to establish the validity of such prior convictions.

SECTION 2.

Said chapter 265 is hereby further amended by striking out sections 22A and 23, as so appearing, and inserting in place thereof the following 6 sections:-

Section 22A.

Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels said child to submit by force and against his will or compels said child to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for life or for any term of years, provided, however, that a prosecution commenced under this section shall neither be continued without a finding nor placed on file.

Section 22B.

Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels said child to submit by force and against his will or compels said child to submit by threat of bodily injury, and:

(a) ~~the sexual intercourse or unnatural sexual intercourse is committed while the defendant is in possession of a dangerous weapon, including but not limited to those set forth in section 10 of chapter 269; or~~ the sexual intercourse or unnatural sexual intercourse is committed during the commission or attempted commission of any of the following offenses:

[This foregoing language stricken is as a result of a floor amendment by Rep. Fagan; the official text of this amendment is still not available on the mass.gov website as of 6/11/08]

- (1) armed burglary (266 § 14);
- (2) unarmed burglary(266 § 15);
- (3) breaking and entering(266 § 16);
- (4) entering without breaking (266 § 17);
- (5) breaking and entering into a dwelling house (266 § 18);
- (6) kidnapping (265 § 26);
- (7) armed robbery (265 § 17);
- (8) unarmed robbery (265 § 19);
- (9) assault and battery with a dangerous weapon and assault with a dangerous weapon (265 s.15A and 15B);
- (10) Home invasion (c.265 s.18C);
- (11) Posing or exhibiting child in state of nudity or sexual conduct (c.272 s.29A);

(b) the sexual intercourse or unnatural sexual intercourse results in, or is committed with acts resulting in, substantial bodily injury as that term is defined in section 13J ; or

(c) the sexual intercourse or unnatural sexual intercourse is committed while the victim is tied, bound, or gagged;

(d) the sexual intercourse or unnatural sexual intercourse is committed after the defendant administers alcohol or a controlled substance by injection, inhalation, ingestion, or any other means to the victim without the victim's consent; or

(e) the sexual intercourse or unnatural sexual intercourse is committed by a joint enterprise; or

the sexual intercourse or unnatural sexual intercourse was committed in a manner in which the victim could contract a sexually transmitted disease or infection of which the defendant knew or should have known he was a carrier, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have

served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

Section 22C.

Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels said child to submit by force and against his will or compels said child to submit by threat of bodily injury, and the defendant has been previously convicted of, or adjudicated delinquent or as a youthful offender for: indecent assault and battery on a child under 14 under section 13B or; aggravated indecent assault and battery on a child under 14 under section 13B ½; indecent assault and battery on a person fourteen or older under section 13H; assault of a child with intent to commit rape under section 24B; rape of a child with force under section 22A or; aggravated rape of a child with force under section 22B or; rape and abuse of a child under section 23 or; aggravated rape and abuse of a child under section 23A or; rape under section 22 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years. The sentence imposed on such person shall not be reduced to less than 20 years, nor suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 20 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction, or the department of correction, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein. The commonwealth shall not be required to introduce any additional corroborating evidence, nor live witness testimony to establish the validity of such prior convictions.

Section 23.

Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under sixteen years of age, shall be punished by imprisonment in the state prison for life or for any term of years, or, except as otherwise provided, for any term in a jail or house of correction, provided, however, that a prosecution commenced under this section shall neither be continued without a finding nor placed on file.

Section 23A.

Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under sixteen years of age; and

(a) there exists more than a 5 year age difference between the defendant and the victim where the victim is under 12 years of age; or

(b) there exists more than a 10 year age difference between the defendant and the victim where the victim is between the age of 12 and 16 years of age; or

(c) at the time of said intercourse, occupies the position of a mandated reporter as that term is defined in section 51A of chapter 119 of the General Laws,

shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, nor suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

Section 23B.

Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under 16 years of age and the defendant has been previously convicted of or adjudicated delinquent or as a youthful offender for: indecent assault and battery on a child under 14 under section 13B or; aggravated indecent assault and battery on a child under 14 under section 13B ½; indecent assault and battery on a person fourteen or older under section 13H; assault of a child with intent to commit rape under section 24B; rape of a child with force under section 22A or; aggravated rape of a child with force under section 22B or; rape and abuse of a child under section 23 or; aggravated rape and abuse of a child under section 23A or; rape under section 22 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction, or the department of correction, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein. The commonwealth shall not be required to introduce any additional corroborating evidence, nor live witness testimony to establish the validity of such prior convictions.

SECTION 3.

Chapter 271 of the General Laws is hereby amended by striking out section 17B, as so appearing, and inserting in place thereof following section:-

Section 17B.

Except as otherwise prohibited under section 2703 of Title 18 of the United States Code, whenever the attorney general or a district attorney has reasonable grounds to believe that records in the possession of (i) a common carrier subject to the jurisdiction of the department of telecommunications and energy, as defined in paragraph (d) of section 12 of chapter 159; or (ii) a provider of electronic communication service as defined in subparagraph (15) of section 2510 of Title 18 of the United States Code; or (iii) a provider of remote computing service as defined in section 2711 of Title 18 of the United States Code, are relevant and material to an ongoing criminal investigation, the attorney general or district attorney may issue an administrative subpoena demanding all such records in the possession of such common carrier or service, and such records shall be delivered to the attorney general or district attorney within 14 days of receipt of the subpoena. No such common carrier or service, or employee thereof shall be civilly or criminally responsible for furnishing any records or information in compliance with such demand. Nothing in this section shall limit the right of the attorney general or a district attorney otherwise to obtain records from such a common carrier or service pursuant to a search warrant, a court order or a grand jury or trial subpoena.

Notwithstanding the provisions of this section, a subpoena issued pursuant to this section shall not be used to obtain records disclosing the content of electronic communications, or subscriber account records disclosing Internet locations which have been accessed including, but not limited to, websites, chat channels and newsgroups, but excluding servers used to initially access the Internet. Nor shall the recipient of such a subpoena provide any such records accessed in response to such a subpoena.

SECTION 4.

Chapter 276 of the General Laws is hereby amended by inserting after section 1A, the following section:-

Section 1B. (a) As used in this section, the following words shall have the following meanings:-

“Adverse result”, occurs when notification of the existence of a search warrant results in:-

- (1) danger to the life or physical safety of an individual;
- (2) a flight from prosecution;
- (3) the destruction of or tampering with evidence;
- (4) the intimidation of a potential witness or witnesses; or
- (5) serious jeopardy to an investigation or undue delay of a trial.

“Electronic communication services”, shall be construed in accordance with Title 18, sections 2701 to 2711 of the United States Code. This definition shall not apply to corporations that do not provide those services to the general public.

“Foreign corporation”, any corporation or other entity that makes a contract or engages in a terms of service agreement with a resident of the commonwealth to be performed in whole or in part by either party in the commonwealth. The making of the contract or terms of service agreement is considered to be the agreement of the foreign corporation that a search warrant or subpoena properly served on it has the same legal force and effect as if served personally within the commonwealth.

“Massachusetts corporation”, any corporation or other entity that is subject to chapter 155 or chapter 156B.

“Properly served”, that a search warrant or subpoena has been delivered by hand, by United States mail, by commercial delivery service, by facsimile or by any other manner to any officer of the corporation or its general manager in the commonwealth, to any natural person designated by it as agent for the service of process, or if the corporation has designated a corporate agent, to any person named in the latest certificate filed pursuant to section 4 of chapter 181.

“Remote computing services”, shall be construed in accordance with Title 18, sections 2701 to 2711, inclusive, of the United States Code. This definition shall not apply to corporations that do not provide those services to the general public.

“Subpoena”, a grand jury or trial subpoena issued in the course of a criminal proceeding or an administrative subpoena issued pursuant to section 17B of chapter 271.

(b) A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the records hereinafter named are actually or constructively possessed by a foreign corporation that provides electronic communication services or remote computing services, if satisfied that probable cause has been established for such belief, issue a warrant identifying those records to be searched for and commanding the person seeking such warrant to properly serve the warrant upon the foreign corporation:-

- (1) those records which would reveal the identity of a customer using those services;
- (2) data stored by or on behalf of a customer;
- (3) records of a customer's usage of those services;
- (4) records of the source of communications sent to or the recipient or destination of communications sent from a customer; or
- (5) the content of those communications stored by an electronic communication or remote commuting service.

(c) The following provisions shall apply to any search warrant issued pursuant to this section and to any subpoena issued in the course of a criminal investigation or proceeding directed to a foreign corporation that provides electronic communication services or remote computing services:

(1) When properly served with a search warrant issued by any court of the commonwealth or justice pursuant to this section or a subpoena, a foreign corporation subject to this section shall provide all records sought pursuant to that warrant or subpoena within 14 days of receipt, including those records maintained or located outside the commonwealth.

(2) If an the applicant makes a showing and the court or justice finds that failure to produce records within less than 14 days would cause an adverse result, a warrant may require production of records within less than 14 days;

(3) A court or justice may reasonably extend the time required for production of the records upon finding that the foreign corporation has shown good cause for that extension and that an extension of time would not cause an adverse result;

(4) A foreign corporation seeking to quash a warrant or subpoena served on it pursuant to this section must seek relief from the court that issued the warrant or the court which has jurisdiction over the subpoena within the time required for production of records pursuant to this section. The court shall hear and decide that motion no later than 14 days after the motion is filed;

(5) In the case of an administrative subpoena issued by the attorney general, the superior court of Suffolk county shall have jurisdiction; in the case of an administrative subpoena issued by a district attorney, the superior court in any county in which the district attorney maintains an office shall have jurisdiction; and

(6) The foreign corporation shall verify the authenticity of records that it produces by providing an affidavit from the person in custody of those records certifying that they are true and complete.

(d) A Massachusetts corporation that provides electronic communication services or remote computing services, when served with a warrant or subpoena issued by another state to produce records that would reveal the identity of the customers using those services, data stored by, or on behalf of the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant or subpoena had been issued under Massachusetts law.

(e) No cause of action shall lie against any foreign or Massachusetts corporation subject to this section, its officers, employees, agents or other specified persons for providing records, information, facilities or assistance in accordance with the terms of a warrant or subpoena issued pursuant to this section.

SECTION 5.

Notwithstanding any general or special law to the contrary, on or before January 30 of each year the district attorney in each district shall file an annual report detailing the prosecution and disposition of cases within such district during the preceding year which involved a defendant charged with having committed a sex offense, a sex offense involving a child, or a sexually violent offense, as the same are defined by section 178C

of chapter 6 of the general laws; provided, that for each such offense, the report shall describe the nature of the offense, the punishment recommended by the prosecution and the punishment, if any, entered against the defendant; provided further, that such report shall not include sufficient information to permit the personal identification of any defendant, victim or witness in any case; and provided further, that copies of such reports shall be submitted to the chairs of the joint committee on the judiciary and the clerks of the house of representatives and the senate. *[Section 5 is from an amendment offered by Rep. Karyn Polito(R. Shrewsbury). The official text of this amendment is still not available on the Mass.gov website as of 6/11/08]*