

WHAT ARE CONSIDERED SEXUAL OFFENSES?

Indecent Assault and Battery on a Child Under 14 (M.G.L. c. 265, s. 13B)

Elements:

1. The child was not yet 14 years of age at the time of the offense; and
2. The suspect committed an A&B which was “indecent.”

NOTE: A child under the age of 14 is deemed incapable of consenting.

***NOTE:** An A&B becomes “indecent” if it involves touching the person’s genitals, buttocks or the female breasts, touching someone’s stomach or thigh, inserting one’s tongue into another’s mouth (so called “*French kissing*”)...

Indecent Assault and Battery (M.G.L. c. 265, s. 13H)

Elements:

1. The victim was at least 14 years of age at the time of the offense; and
2. The suspect committed an A&B which was “indecent”; and
3. Which the victim did not consent to.

Rape of a Child Under the Age of Sixteen “Statutory Rape” (M.G.L. c. 265, s. 23)

This offense exists when a person has unlawful sexual intercourse with a child under 16. “The law conclusively presumes that those under sixteen years of age are not sufficiently mature to understand fully the physical, mental, and emotional consequences of sexual intercourse and are therefore incapable of making a rational decision about whether to consent to such conduct”.

Elements:

1. The suspect unlawfully;
2. Engaged in natural or unnatural sexual intercourse with the victim;
3. Who was under 16 years of age at the time of the offense.

NOTE: *Unlawful Intercourse.* The intercourse must be “unlawful” in this

offense. In the other forms of rape – rape and aggravated rape – proving that the intercourse was unlawful is not an element because, by definition, forced sex is always forbidden.

Rape of a Child Under the Age of Sixteen by Force or Threat (M.G.L. c 265, s. 22A)

Elements: I. The suspect unlawfully;

1. Engaged in natural or unnatural sexual intercourse with the victim;
2. Who was under 16 years of age at the time of the offense.

II. By Force or Threat.

The second element is that intercourse occurred as a result of force or threat of bodily injury. The force to commit rape does not need to be strong. It merely must be sufficient to overcome the victim's will. The phrase, "against the victim's will" simply means "without the victim's consent".

Rape and Aggravated Rape (M.G.L. c. 265, s. 22)

Elements: I. Rape

1. The suspect engaged in natural or unnatural intercourse;
2. By compelling the victim to submit by force or threat of bodily injury;

II. Aggravated Rape. In addition to the above two elements, aggravated rape requires that the natural or unnatural intercourse:

1. Caused the victim serious bodily injury; or
2. Constituted a joint enterprise; or
3. Occurred during the commission or attempted commission of one of the following offenses – Assault or Assault & Battery with a Dangerous Weapon, Armed or Unarmed Robbery, Kidnapping, Armed B&E of Dwelling, Unarmed B&E, B&E w/Intent to Commit a Felony, B&E Daytime, Night Entry of a Dwelling or Carrying a Dangerous Weapon.

Dissemination of visual material of child in state of nudity or sexual conduct; punishment

(M.G.L. c. 272, s. 29B)

Elements: I. Whoever,
with lascivious intent,

1. disseminates any visual material that contains a representation or reproduction of

a. any posture or exhibition in a state of nudity involving the use of a child who is under eighteen years of age, or

b.. any act that depicts, describes, or represents sexual conduct participated or engaged in by a child who is under eighteen years of age, and

c.. knowing the contents of such visual material or having sufficient facts in his possession to have knowledge of the contents thereof, or

d.. whoever has in his possession any such visual material knowing the contents or

e.. having sufficient facts in his possession to have knowledge of the contents thereof, with the intent to disseminate the same.

NOTE: In a prosecution under this section, a minor shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.

M.G.L. c. 272 105b

Photographs, videotapes, surveillance

Whoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstance would have a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, and without that person's knowledge and consent, shall be punished by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$5,000, or by both such fine and

imprisonment.