



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

February 15, 1990

Mr. Robert MacQueen
House Clerk
Massachusetts House of Representatives
Room 145
The State House
Boston, MA 02133

Dear Mr. MacQueen:

Pursuant to the request of the City Council, I am forwarding to you for filing with the Massachusetts House of Representatives, the enclosed order adopted by the City Council on Monday, February 12, 1990 approving the filing of the attached legislation entitled **"AN ACT RELATIVE TO ASSAULT AND BATTERY UPON CERTAIN PUBLIC SERVANTS"**.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Joseph E. Connarton".

Joseph E. Connarton
City Clerk

JEC/dl

Encs.



City of Cambridge

Agenda # 3

IN CITY COUNCIL

February 12, 1990

COUNCILLOR TOOMEY

ORDERED: The City Council of the City of Cambridge goes on record favoring the filing of Home Rule Legislation to further amend M.G.L. Chapter 265, Section 13D regarding assault and battery against certain public servants.

In City Council February 12, 1990.
Adopted by the affirmative vote of eight members.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in dark ink, reading "Joseph E. Connarton".

Joseph E. Connarton, City Clerk.

To the Honorable Senate and House of Representatives of The Commonwealth of Massachusetts
in General Court assembled.

The undersigned, citizens of Cambridge, respectfully
petition for the passage of the accompanying bill or resolve, and/or for legislation

RELATIVE TO ASSAULT AND BATTERY UPON CERTAIN PUBLIC SERVANTS.

Petitioners are requested to sign names and addresses legibly.

Walter J. Sullivan
Joseph E. Reames
Wm H. Walsh
Edward J. Soames Jr.
Edward W. Myers
Jonathan S. Myers
Alice K. Wolf

28 Putnam Ave. Cambridge
11 Everett St., Cambridge
26 Lowell Street Cambridge
26 Hurlbut St Comb
88 Sixth St., Cambridge
106 Dudley St. Cambridge 02140
5 Hollis St. Cambridge 02140
48 Heman Ave Cambridge 02138



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY

AN ACT

RELATIVE TO ASSAULT AND BATTERY UPON CERTAIN
PUBLIC SERVANTS

Whereas, the deferred operation of this amendment to Section 13D of Chapter 265 of the General Laws would tend to defeat its purpose, which is to immediately ensure the safety and well being of all traffic maintenance personnel assigned to install and/or remove immobilizing devices to motor vehicles, therefore it is hereby declared to be emergency law, necessary for the immediate preservation of the public peace.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Section 13D of Chapter 265 of the General Laws as appearing in the 1989 Official Edition, is hereby amended by inserting after the word "constable" in line 2, the words: - traffic maintenance personnel assigned to install and/or remove immobilizing devices to motor vehicles.



City of Cambridge

Agenda # 3

IN CITY COUNCIL

February 12, 1990

COUNCILLOR TOOMEY

ORDERED: The City Council of the City of Cambridge goes on record favoring the filing of Home Rule Legislation to further amend M.G.L. Chapter 265, Section 13D regarding assault and battery against certain public servants.

In City Council February 12, 1990.
Adopted by the affirmative vote of eight members.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in dark ink, appearing to read "Joseph E. Connarton".

Joseph E. Connarton, City Clerk.

To the Honorable Senate and House of Representatives of The Commonwealth of Massachusetts
in General Court assembled.

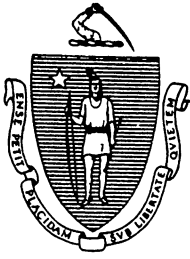
The undersigned, citizens of Cambridge, respectfully
petition for the passage of the accompanying bill or resolve, and/or for legislation

RELATIVE TO ASSAULT AND BATTERY UPON CERTAIN PUBLIC SERVANTS.

Petitioners are requested to sign names and addresses legibly.

Walter J. Sullivan
Frederick E. Pease
Wm H. Walsh
Edward J. Somers J.
Edward W. Myers
Jonathon S. Myers
Alice K. Wolf

28 Putnam Ave. Cambridge
11 Everett St., Cambridge
26 Lowell Street Cambridge
26 Hurlbut St Camb
88 Sixth St., Cambridge
106 Dudley St. Cambridge 02140
5 Hollis St. Cambridge 02140
48 Heman Ave Cambridge 02138



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY

AN ACT

RELATIVE TO ASSAULT AND BATTERY UPON CERTAIN PUBLIC SERVANTS

Whereas, the deferred operation of this amendment to Section 13D of Chapter 265 of the General Laws would tend to defeat its purpose, which is to immediately ensure the safety and well being of all traffic maintenance personnel assigned to install and/or remove immobilizing devices to motor vehicles, therefore it is hereby declared to be emergency law, necessary for the immediate preservation of the public peace.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Section 13D of Chapter 265 of the General Laws as appearing in the 1989 Official Edition, is hereby amended by inserting after the word "constable" in line 2, the words: - traffic maintenance personnel assigned to install and/or remove immobilizing devices to motor vehicles.



CITY OF CAMBRIDGE

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Birge Albright
Legal Counsel

Office of the City Solicitor
City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

(617) 498-9020

Gail S. Gabriel
Legal Counsel

Joseph M. Kaigler
Legal Counsel

Diane Wynshaw-Boris
Legal Counsel

Edward J. O'Connell
Legal Counsel

February 8, 1990

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Dear Mr. Healy:

In response to Council Order #32, dated January 29, 1990, please find a proposed amendment to M.G.L. c. 265, s. 13D relative to assault and battery upon certain public servants and a copy of the most recent statute.

It appears that there is no specific category of city personnel designated to install and/or remove immobilizing devices, which devices are also known as "boots."

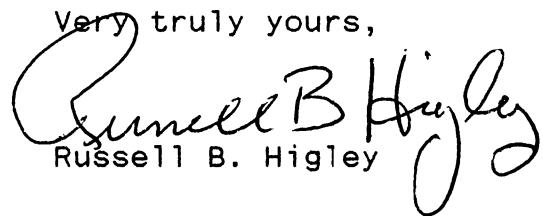
There is, rather, a general category of personnel employed at the Traffic and Parking Department whose civil service title is "traffic maintenance men." These employees are assigned to work on particular crews, which perform a variety of functions for the department, including the installation and removal of "boots." It is when traffic maintenance employees are assigned to the specific crew which installs or removes the "boot" that the protections of c. 265, s. 13D are necessary.

We have therefore specifically defined the traffic maintenance

personnel who are intended to be protected by the amendment as those assigned to install and/or remove immobilizing devices to motor vehicles. This appeared to best address the concerns raised by the Council Order and to meet the needs of those city employees on the front lines of traffic and parking control who are not otherwise afforded similar statutory protection.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, reading "Russell B. Higley". The signature is written in dark ink and is positioned above the printed name.

Russell B. Higley

RBH/jab
Enclosure

Corr.#3

CRIMES AGAINST THE PERSON

265 & 13D

note 2.5

is question of fact and not of law. *Com. v. Lamory* (1962) 436 N.E.2d 992, 14 Mass.App. 925, review denied 440 N.E.2d 21, 387 Mass. 1101. *Com. v. Burke* (1988) 457 N.E.2d 622, 390 Mass. 480, 14 Mass.App. 925, review denied 440 N.E.2d 21, 387 Mass. 1101.

Verdict. Where the Appeals Court could not be certain upon record whether trial judge was imposing a sentence for simple assault under section 18A of this chapter prescribing penalty for an assault or an assault and battery, or for some other offense trial judge thought was comprehended within this section providing for punishment of person who commits an indecent assault and battery on a child under age of 14, defendant was entitled to be sentenced again. *Com. v. Eaton* (1974) 309 N.E.2d 504, 2 Mass.App. 118, 388 Mass. 1103.

New trial. Trial court did not abuse its discretion in denying new trial motion of defendant, who was convicted of rape, assault and battery by means of dangerous weapon, indecent assault and battery on female under 14 years of age, and kidnapping. *Com. v. O'Loughlin* (1984) 458 N.E.2d 667, 17 Mass.App. 972.

Sentence and punishment. Sentence of nine to ten years on charge of indecent assault and battery on a child under 14 was in excess of the statutory maximum in effect at time defendant committed crime, requiring remand. *Com. v. Coull* (1985) 480 N.E.2d 23, 20 Mass.App. 955, review denied 484 N.E.2d 102, 396 Mass. 1101.

Orders of single justice. Denying defendant's motion for execution of sentence for indecent assault upon minor child were well within his discretion. *Com. v. Brenner* (1984) 465 N.E.2d 229, 18 Mass.App. 930.

Where sentences imposed on indictments were in excess of those permitted under this section, defendant would be resentenced on those indictments.

13C. Assault and battery in order to collect loan; penalty.

Notes of Decisions.

In general. Defendant who was indicted for assault in a dwelling house while armed, use of firearm in the commission of a felony, and assault for the purpose of collecting a loan was entitled only to dismissal of indictment for assault for purpose of collecting a loan where victim perjured himself before grand jury which returned the indictments by stating that the attackers were trying to collect a loan, but later admitted that the assault related to a drug transaction and not a loan, absent any suggestion that Commonwealth knew that the loansharking testimony was false when the indictments were returned. *Com. v. Ward* (1984) 459 N.E.2d 122, 17 Mass.App. 985.

13D. Assault and battery upon certain public servants.

Whoever commits an assault and battery upon a police officer, firefighter, correction officer, sheriff, deputy sheriff, parole officer, parole supervisor, constable, an employee of the department of social services, an employee of the registry of motor vehicles having police powers, an employee in the department of youth services with the care and custody of a juvenile offender, a public school teacher, a public school adminis-

trator or any person in a public school system having duties similar to a teacher or administrator when such person is engaged in the performance of his duty at the time of such assault and battery, or a bus, trackless trolley, rail, or rapid transit motorman, operator, gateman, guard, or collector when such person is engaged in the performance of his duties at the time of such assault and battery, shall be punished by imprisonment for not less than ninety days nor more than two and one-half years in a house of correction or by a fine of not less than five hundred nor more than five thousand dollars.

Amended by St.1973, c. 839; St.1975, c. 680; St.1983, c. 100; St.1985, c. 153; St.1985, c. 555; St.1988, c. 285.

Historical Note
1973 Amendment. St.1973, c. 839, approved Sept. 26, 1973, inserted "a correction officer", increased minimum imprisonment from 10 to 90 days, and increased the fine from \$100 and \$500 to \$1,000 and \$5,000.

1975 Amendment. St.1975, c. 680, approved Nov. 6, 1975, inserted "an employee of the registry of motor vehicles having police powers, or a public school teacher or administrator, or any person in a public school system having similar duties, or a sheriff, a deputy sheriff, a court officer or a constable", and substituted "five hundred" for "one thousand" dollars.

1983 Amendment. St.1983, c. 100, approved May 17, 1983, substituted "firefighter, correction officer, sheriff, deputy sheriff, court officer, parole officer, parole supervisor, constable, and employee of the registry of motor vehicles having police powers, a public school teacher, a public school administrator or any person in a public school system having duties similar to a teacher or administrator when any such person is engaged in the performance of his duty at the time of such assault and battery," for "a firefighter, a correction officer or an employee of the registry of motor vehicles having police powers, or a public school teacher or administrator, or any person in a public school system having similar duties, or a sheriff, a deputy sheriff, a court officer or a constable engaged in the performance of his duty".

1985 Amendments. St.1985, c. 153, an emergency act, approved July 17, 1985, deleted "any" following "administrator when", and inserted "or a bus, trackless trolley, rail, or rapid transit motorman, operator, gateman, guard, or collector when such person is engaged in the performance of his duties at the time of such assault and battery,".

St.1985, c. 555, approved Dec. 4, 1985, inserted "department of social services, an employee of the"

1988 Legislation

St.1988, c. 285, approved Nov. 15, 1988, inserted "an employee in the department of youth services with the care and custody of a juvenile offender".

Notes of Decisions
In general 1

Argument of counsel 2.7

Evidence 2.1

Instructions 2.5

Record 3

Resisting arrest 1.5

1. In general

Where defendant was tried and convicted under the wrong statute, to wit, assault and battery on a correctional officer, c. 127, § 38B

crime of assault and battery was substantially charged, as it was a lesser included offense, and the lesser offense was fully considered in the trial court, proper remedy was to order defendant remanded for resentencing on lesser included offense of assault and battery. Com. v. Ford (1984) 468 N.E.2d 663, 18 Mass.App. 556, review denied 470 N.E.2d 798, 393 Mass. 1103.

Consul of the Dominican Republic who became involved in altercation with police officer after leaving his office building where he had picked up his national flag and literature in preparation for attending a cultural function was engaged in exercise of his consular function at time of the alleged altercation and; therefore, was immune under Article 43 of the Vienna Convention from prosecution for assault and battery. Com. v. Jerez (1983) 457 N.E.2d 1105, 390 Mass. 456.

Where inmates' petition alleged that under proper application of statutory good-time credit and other earned credits she should have been discharged from executed portion of her sentence for assault and battery on police officer, but when relief was granted, inmate was subject to outstanding consecutive sentence of 30 days and was therefore not eligible for immediate release from custody, inmate failed to state claim for writ of habeas corpus. Hennessy, Superintendent, Massachusetts Correctional Inst., Framingham (1982) 438 N.E.2d 323, 384 Mass. 848.

In prosecution for, among other things, assaulting police officer by means of a revolver arising out of high speed automobile chase in which numerous shots were fired by passenger in fleeing automobile driven by defendant whether defendant had acquiesced in intentionally assisting in firing of gun and was therefore guilty of offense as a principal under a common enterprise theory was question for jury. Com. v. Nardi (1978) 374 N.E.2d 323, 6 Mass.App. 392.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

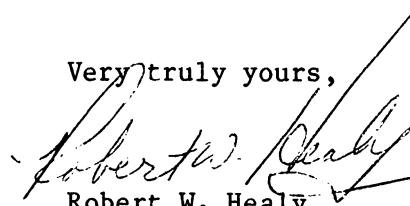
RICHARD C. ROSSI
Deputy City Manager

February 12, 1990

To The Honorable, The City Council:

In response to Council Order No. 32, dated January 29, 1990, enclosed, please find a proposed amendment to M.G.L. c. 265, s. 13D relative to assault and battery upon certain public servants and a copy of the most recent statute.

Very truly yours,


Robert W. Healy
City Manager

RWH/mev
enclosure

Agenda # 3

S-140

Legislation relative to Council Order # 32,
dated January 29, 1990 regarding assault and
battery upon certain public servants.

In City Council,

Feb. 12, 1990

*Order adopted by
8 members to file
legislation*