

COMPARISON OF SIGNIFICANCE OF HABITUAL OFFENDER PROVISIONS IN S.2080 AND H.3818

Question #1: Who is Considered a Habitual Offender?

Current Law	S.2080	H.3818
<p>G.L.c.279, §25:</p> <ul style="list-style-type: none"> • A person who has previously been <i>twice</i> convicted of any of the 688 felonies that exist under Massachusetts law and sentenced to <i>three years or more in state prison</i> and is convicted of a <i>third</i> felony. • Such person will be sentenced to state prison for the <i>maximum</i> term allowed for the third felony conviction. 	<p>SECTION 46, amending G.L.c.279, §25:</p> <p>Subsection (a)</p> <ul style="list-style-type: none"> • A person who has previously been <i>twice</i> convicted of any of the existing 688 felonies and sentenced to <i>three years or more in state prison</i> and is convicted of a <i>third</i> felony. • Upon the third conviction, the person must be sentenced to state prison for the <i>maximum</i> term allowed for the third felony. <p>Subsection (b)</p> <ul style="list-style-type: none"> • A person who has been previously been <i>twice</i> convicted of any of the <i>specified 59</i> offenses; and • For both of those convictions has served <i>one day or more in any facility</i>, whether a county correctional facility or state prison; and • Is convicted for a third time of one of the 59 offenses. • Upon the third conviction, the person must be sentenced to state prison for the <i>maximum term of incarceration permitted by law for that third offense</i>; and • He or she is <i>not eligible for parole</i>, work release or any deduction from his or her sentence for good conduct while serving the maximum term of incarceration for the third offense. • The maximum term for 22 of the 59 crimes is life. Therefore, anyone sentenced as a habitual offender for any of those 22 crimes will serve life without parole. Under current law, the only crime carrying this penalty is 1st degree murder. <p>Subsections (c) and (d)</p> <ul style="list-style-type: none"> • Juvenile adjudications of delinquency do not count as prior convictions. • Anyone pleading guilty to any of the 59 offenses must be informed by the court of the penalties for violating Subsection (b). • However, no otherwise valid plea or conviction can be vacated because the court failed to give that information. 	<p>SECTION 3, amending G.L.c.279, §25:</p> <p>Subsection (a)</p> <ul style="list-style-type: none"> • A person who has previously been <i>twice</i> convicted of any of the existing 688 felonies and sentenced to <i>one day or more in state prison</i> and is convicted of a <i>third</i> felony. • Upon the third conviction, the person must be sentenced to state prison for the <i>maximum</i> term allowed for the third felony. <p>Subsection (b)</p> <ul style="list-style-type: none"> • A person who has previously been <i>twice</i> convicted of any of the <i>specified 55*</i> offenses; and • For both of those convictions has served <i>one day or more in state prison</i>; and • Is convicted for a third time of one of the 55 offenses. • Upon the third conviction, the person must be sentenced to state prison for the <i>maximum term of incarceration permitted by law for that third offense</i>; and • He or she is <i>not eligible for parole</i>, work release or any deduction from his or her sentence for good conduct while serving the maximum term of incarceration for the third offense. • The maximum term for 22 of the 55 crimes is life. Therefore, anyone sentenced as a habitual offender for any of those 22 crimes will serve life without parole. Under current law, the only crime carrying this penalty is 1st degree murder. <p>* <i>H.3818 appropriately eliminates from the list of crimes in S.2080: G.L.c.265, §13H; G.L.c.265, §13K(a1/2) and (d)-(f); G.L.c.266, §17; G.L.c.266, §18; G.L.c.269, and §12F(e).</i></p> <p>Subsection (c)</p> <ul style="list-style-type: none"> • Juvenile adjudications of delinquency do not count as prior convictions. • Anyone pleading guilty to any of the 55 offenses must be informed by the court of the penalties for violating Subsection (b). • However, no otherwise valid plea or conviction can be vacated because the court failed to give that information.

Question #2: Are Habitual Offenders Eligible for Parole?

Current Law	S.2080	H.3818
<p>G.L.c.127, §133B: A habitual offender is <i>eligible for parole after serving 1/2</i> of the maximum sentence allowed for the third felony.</p>	<p>SECTION 31, amending G.L.c.127, §133B: A habitual offender under <i>Subsection (a)</i> is <i>eligible for parole after serving 2/3</i> of the maximum sentence allowed for the third felony.</p>	<p>SECTION 1, amending G.L.c.127, §133B: <i>Same as in Section 31 of S.2080.</i></p>
<p>G.L.c.127, §133B: <i>See above.</i></p>	<p>SECTION 32, adding a paragraph to G.L.c.127, §133B: A habitual offender under <i>Subsection (b)</i> is <i>not eligible</i> for parole, work release or deductions from their sentences for good conduct.</p>	<p>SECTION 2, adding a paragraph to G.L.c.127, §133B: <i>Same as in Section 32 of S.2080.</i></p>

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