



PART IV CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
(Chapters 263 through 280)

TITLE I CRIMES AND PUNISHMENTS

CHAPTER 265 CRIMES AGAINST THE PERSON

Section 39 Assault or battery for purpose of intimidation; weapons; punishment

[Subsection (a) effective until July 1, 2012. For text effective July 1, 2012, see below.]

Section 39. (a) Whoever commits an assault or a battery upon a person or damages the real or personal property of a person with the intent to intimidate such person because of such person's race, color, religion, national origin, sexual orientation, or disability shall be punished by a fine of not more than five thousand dollars or by imprisonment in a house of correction for not more than two and one-half years, or by both such fine and imprisonment. The court may also order restitution to the victim in any amount up to three times the value of property damage sustained by the owners of such property. For the purposes of this section, the term "disability" shall have the same meaning as "handicap" as defined in subsection 17 of section one of chapter one hundred and fifty-one B; provided, however, that for purposes of this section, the term "disability" shall not include any condition primarily resulting from the use of alcohol or a controlled substance as defined in section one of chapter ninety-four C.

[Subsection (a) as amended by 2011, 199, Sec. 8 effective July 1, 2012. See 2011, 199, Sec. 9. For text effective until July 1, 2012, see above.]

(a) Whoever commits an assault or a battery upon a person or damages the real or personal property of a person with the intent to intimidate such person because of such person's race, color, religion, national origin, sexual orientation, gender identity, or disability shall be punished by a fine of not more than five thousand dollars or by imprisonment in a house of correction for not more than two and one-half years, or by both such fine and imprisonment. The court may also order restitution to the victim in any amount up to three times the value of property damage sustained by the owners of such property. For the purposes of this section, the term "disability" shall have the same meaning as "handicap" as defined in subsection 17 of section one of chapter one hundred and fifty-one B; provided, however, that for purposes of this section, the term "disability" shall not include any condition primarily resulting from the use of alcohol or a controlled substance as defined in section one of chapter ninety-four C.

(b) Whoever commits a battery in violation of this section and which results in bodily injury shall be

punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than five years, or by both such fine and imprisonment. Whoever commits any offense described in this subsection while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than two and one-half years. For purposes of this section, "bodily injury" shall mean substantial impairment of the physical condition, including, but not limited to, any burn, fracture of any bone, subdural hematoma, injury to any internal organ, or any injury which occurs as the result of repeated harm to any bodily function or organ, including human skin.

There shall be a surcharge of one hundred dollars on a fine assessed against a defendant convicted of a violation of this section; provided, however, that moneys from such surcharge shall be delivered forthwith to the treasurer of the commonwealth and deposited in the Diversity Awareness Education Trust Fund established under the provisions of section thirty-nine Q of chapter ten. In the case of convictions for multiple offenses, said surcharge shall be assessed for each such conviction.

[Third paragraph of subsection (b) effective until July 1, 2012. For text effective July 1, 2012, see below.]

A person convicted under the provisions of this section shall complete a diversity awareness program designed by the secretary of the executive office of public safety in consultation with the Massachusetts commission against discrimination and approved by the chief justice for administration and management of the trial court. A person so convicted shall complete such program prior to release from incarceration or prior to completion of the terms of probation, whichever is applicable.

[Third paragraph of subsection (b) as amended by 2011, 93, Sec. 117 effective July 1, 2012. See 2011, 93, Sec. 137. For text effective until July 1, 2012, see above.]

A person convicted under the provisions of this section shall complete a diversity awareness program designed by the secretary of the executive office of public safety in consultation with the Massachusetts commission against discrimination and approved by the chief justice of the trial court. A person so convicted shall complete such program prior to release from incarceration or prior to completion of the terms of probation, whichever is applicable.