

ASSAULT AND BATTERY ON A PREGNANT WOMAN

The defendant is charged with having committed (an intentional) (or) (a reckless) assault and battery causing serious upon [the alleged victim] when [the alleged victim] was pregnant and the defendant knew, or had reason to know, that she was pregnant.

G.L. c. 265, § 13A(b)(ii).

If the Commonwealth relies solely upon a theory of intentional assault and battery, continue with "I" below. If the Commonwealth relies upon both intentional and reckless theories, continue with both "I" and "II.A" below. If the Commonwealth relies solely upon a theory of reckless assault and battery, skip to "II.B" below.

I. INTENTIONAL ASSAULT AND BATTERY ON A PREGNANT WOMAN

In order to prove an intentional assault and battery upon a pregnant woman, the Commonwealth must prove five things beyond a reasonable doubt:

- First:** That the defendant touched the person of [the alleged victim] without having any right or excuse for doing so;
- Second:** That the defendant intended to touch [the alleged victim] ;
- Third:** That the touching was either likely to cause bodily harm to [the alleged victim] or was done without her consent;

Fourth: That [the alleged victim] was pregnant at the time of the alleged assault and battery; and

Fifth: That the defendant knew, or had reason to know, that [the alleged victim] was pregnant.

You should consider all the circumstances and any reasonable inferences which you draw from the evidence to determine whether the Commonwealth has proved beyond a reasonable doubt that the defendant knew or had reason to know that [the alleged victim] was pregnant.

If additional language on intent is appropriate.

As I just mentioned, to prove an intentional assault and battery, the Commonwealth must prove beyond a reasonable doubt that the defendant *intended* to touch [the alleged victim] , in the sense that the defendant consciously and deliberately intended the touching to occur, and that the touching was not merely accidental or negligent. The Commonwealth is not required to prove that the defendant specifically intended to cause injury to [the alleged victim] .

II. RECKLESS ASSAULT AND BATTERY ON A PREGNANT WOMAN

A. Continue here if the jury is charged on both intentional and reckless assault and battery. **There**

is a second way in which a person may commit the crime of assault and battery on a pregnant woman. Instead of intentional conduct, it involves a reckless touching that results in bodily injury.

B. Begin here if the jury is charged solely on reckless assault and battery. **The defendant is**

(also) charged with having committed an assault and battery upon a pregnant woman, [the alleged victim], by reckless conduct, thereby causing bodily injury.

In order to prove the defendant guilty of this offense, the Commonwealth must prove the following four things beyond a reasonable doubt:

***First:* That the defendant acted recklessly;**

***Second:* That the defendant's reckless conduct included an intentional act which resulted in serious bodily injury to**

[the alleged victim] .

***Third:* That [the alleged victim] was pregnant at the time of the alleged assault and battery; and**

***Fourth:* That the defendant knew, or had reason to know, that she**

was pregnant.

The Commonwealth must prove the injury was sufficiently serious to interfere with the alleged victim's health or comfort. It need not be permanent, but it must be more than trifling. For example, an act that only shakes up a person or causes only momentary discomfort would not be sufficient.

It is not enough for the Commonwealth to prove that the defendant acted negligently — that is, acted in a way that a reasonably careful person would not. It must be shown that the defendant's actions went beyond mere negligence and amounted to recklessness. The defendant acted recklessly if he (she) knew, or should have known, that such actions were very likely to cause substantial harm to someone, but he (she) ran that risk and went ahead anyway.

The defendant must have intended his (her) acts which resulted in the touching, in the sense that those acts did not happen accidentally. But it is not necessary that he (she) intended to injure or strike the alleged victim, or that he (she) foresaw the harm that resulted. If the defendant actually realized in advance that his (her) conduct was very likely to cause substantial harm and decided to run that risk, such conduct would of

course be reckless. But even if he (she) was not conscious of the serious danger that was inherent in such conduct, it is still reckless conduct if a reasonable person, under the circumstances as they were known to the defendant, would have recognized that such actions were so dangerous that it was very likely that they would result in substantial injury.

Commonwealth v. Burno, 396 Mass. 622, 627, 487 N.E.2d 1366 (1986).

SUPPLEMENTAL INSTRUCTION

Victim injured while escaping. As I mentioned earlier, the defendant's touching must have directly caused the [alleged victim's] injury or must have directly and substantially set in motion a chain of events that produced the injury in a natural and continuous sequence. Here you have heard some evidence suggesting that [alleged victim] was injured while escaping from [place] . To establish that element of the offense — that the defendant caused the injury which occurred as a result of the escape — the Commonwealth must prove beyond a reasonable doubt: (1) that [the alleged victim] was pregnant at the time; (2) that the defendant caused [the alleged victim] reasonably to fear an

immediate attack from the defendant; (3) that this fear led her to try to (escape) (or) (defend herself) from the defendant; and (4) that [the alleged victim] received more than a trifling bodily injury from or during that attempt to (escape) (or) (defend).

Commonwealth v. Parker, 25 Mass. App. Ct. 727, 522 N.E.2d 2 (1988).

Here the jury must be instructed on "Accident" (Instruction 9.100) if the issue of accident is supported by the evidence.