

**ASSAULT AND BATTERY WITH A DANGEROUS WEAPON
ON A CHILD UNDER 14**

**The defendant is charged with having committed (an intentional) (or)
(a reckless) assault and battery with a dangerous weapon upon
 [the alleged victim] at the time when [the alleged victim] was a child under the age
of 14 years.**

G.L. c. 265, § 15A(c)(iv).

If the Commonwealth relies solely upon a theory of intentional assault and battery, continue with "I" below. If the Commonwealth relies on both 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 WITH A DANGEROUS WEAPON
ON A CHILD UNDER 14**

**In order to prove an intentional assault and battery by means of a
dangerous weapon on a child under age 14, the Commonwealth must prove
four things beyond a reasonable doubt:**

***First:* That the defendant touched the person of [the alleged victim] ,
however slightly, without having any right or excuse for doing so;**

***Second:* That the defendant intended to touch [the alleged victim] ;**

Third: That the touching was done with a dangerous weapon; and

Fourth: That [the alleged victim] was a child under the age of 14 years.

Here the jury must be instructed on the definition of dangerous weapon from Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon).

If additional language on intent is appropriate.

The Commonwealth

must prove beyond a reasonable doubt that the defendant intended to touch [the alleged victim] with the dangerous weapon, 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] .

If no injury was sustained.

It is not necessary for the Common-

wealth to prove that the defendant actually caused injury to [the alleged victim] with a dangerous weapon. Any slight touching is sufficient, if it was done with a dangerous weapon.

II. RECKLESS ASSAULT AND BATTERY WITH A DANGEROUS WEAPON ON A CHILD UNDER 14

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

second way in which a person may commit an assault and battery by means of a dangerous weapon on a child under 14. Instead of intentional conduct, it requires that there be reckless conduct by the defendant causing injury.

B. Begin here if jury is charged solely on reckless conduct. **This defendant is (also)**

charged with having recklessly committed an assault and battery by means of a dangerous weapon upon [the alleged victim] when [the alleged victim] was under 14 years of age.

In order to prove the defendant guilty of having committed this offense, the Commonwealth must prove 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 bodily injury to [the alleged victim];**

***Third:* That the injury was inflicted by a dangerous weapon; and**

Fourth: That the [the alleged victim] was under 14 years of age at the time.

It is not enough for the Commonwealth to prove that the defendant acted negligently — that is, in a manner 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.

G.L. c. 265, § 15A(b). *Ford*, 424 Mass. at 711, 677 N.E.2d at 1151 (the recklessness branch of assault and battery with a dangerous weapon requires proof of an “intentional commission of a wanton or reckless act (something more than gross negligence) causing physical or bodily injury to another” by means of a dangerous weapon)

The injury must be 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.

Here, if not previously done, the jury must be instructed on the definition of dangerous weapon from Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon).

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 a child under the age of 14; (2) that the defendant, armed with a dangerous weapon, caused [the alleged victim] reasonably to fear an immediate attack from the defendant; (3) that this fear led [the alleged victim] to try to (escape) (or) defend (himself) (herself) from the defendant; and (4) that [the alleged victim] received more than a trifling bodily injury from that dangerous weapon 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 raised by the evidence.

See Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon) for additional notes.