

CIVIL RIGHTS VIOLATIONS

The defendant is charged with having violated the Massachusetts Civil Rights Act, which is found as section 37 of chapter 265 of our General Laws. It provides that:

“No person . . . shall
by force or threat of force,
willfully injure, intimidate or interfere with,
or attempt to injure, intimidate or interfere with,
or oppress or threaten
any other person
in the free exercise or enjoyment of any right or privilege
secured to him [or her]
by the constitution or laws of the commonwealth or by the
constitution or laws of the United States.”

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

First: That [alleged victim] was exercising a right or privilege protected by the Constitution or laws of the Commonwealth of

Massachusetts or of the United States;

Second: That the defendant either injured, intimidated, interfered with, oppressed or threatened the exercise or enjoyment of that legally protected right by [alleged victim] , or attempted to do so;

Third: That the defendant did so by using force or by threatening to use force; and

Fourth: That the defendant did so wilfully.

The foregoing instruction, and the notes below, are based upon a model instruction developed by the Department of the Attorney General. See also A. Sager, "Rights Protected by the Massachusetts Civil Rights Act Against Interference on Account of Race or Color," 17 Suffolk U. L. Rev. 53 (1983); Sherman & Goldman, "The Development of the Massachusetts Civil Rights Act," 29 Boston Bar. J. 10 (No. 4 Sept./Oct. 1985).

General Laws c. 265, § 37 offers a scope of protection that is similar in many respects to 42 U.S.C. § 242 (the Federal criminal statute governing civil rights violations), and to 42 U.S.C. § 1983 (the Federal civil statute governing civil rights violations). General Laws c. 265, § 37 differs from both Federal statutes in two significant ways: (1) It applies whether or not a defendant was acting under color of law, and therefore encompasses not only private rights secured against the government but also relations between private parties. *O'Connell v. Chasdi*, 400 Mass. 686, 692, 511 N.E.2d 349, 352 (1987); *Bell v. Mazza*, 394 Mass. 176, 182, 474 N.E.2d 1111, 1115 (1985) (statutory phrase "whether or not acting under color of law" is superfluous); *Batchelder v. Allied Stores Corp.*, 393 Mass. 819, 822-823, 473 N.E.2d 1128, 1131 (1985); *United States Jaycees v. Massachusetts Comm'n Against Discrimination*, 391 Mass. 594, 609 n.9, 463 N.E.2d 1151, 1160 n.9 (1984). (2) It requires proof of force or threat of force, and is limited to certain specific prohibited acts (e.g., "injure," "intimidate," etc.). *Commonwealth v. Stephens*, 25 Mass. App. Ct. 117, 122 n.5, 515 N.E.2d 606, 609 n.5 (1987). In addition, the Massachusetts statute, unlike 42 U.S.C. § 1983, requires that the violation have been "willful," *Redgrave v. Boston Symphony Orchestra, Inc.*, 399 Mass. 93, 99-100, 502 N.E.2d 1375, 1379, S.C., 831 F.2d 339 (1st Cir. 1987), 855 F.2d 888 (1st Cir. 1988) (en banc).

The Massachusetts Civil Rights Act (St. 1979, c. 801) also contains civil provisions, which are codified at G.L. c. 12, §§ 11H-11I.

SUPPLEMENTAL INSTRUCTIONS

1. *“Exercise or enjoyment” of rights.*

A person is exercising or enjoying a right or privilege secured by the Constitution or laws of the Commonwealth or of the United States whenever that person’s behavior or interest is protected by any provision of the Massachusetts or the Federal Constitution, or any Federal or state statute. I instruct you that [constitutional or statutory provision] guarantees to [specify persons protected] the right to [specify right].

Such a person exercises or enjoys that legal right whether or not he knows that the law guarantees him that right.

Bell, supra (“secured” means “created by, arising under or dependent upon” rather than “fully protected”; right can be “secured” against private party although Constitution or statute only prohibits governmental interference).

See G.L. c. 233, §§ 70 (judicial notice of Federal law) and 75 (proof of Massachusetts and Federal statutes by printed copy).

2. *“Injure, intimidate or interfere with . . . or oppress or threaten”.*

To injure, intimidate, interfere with, oppress or threaten another person in the free exercise or enjoyment of a right or privilege means in general to impede or prevent the full and free benefit of that right. The alleged victim need not be completely prevented from

exercising the right, just hampered in exercising it. To “intimidate” means to put in fear. To “interfere” means to hinder or meddle in the affairs of another. To “oppress” means to use authority or power abusively or excessively. To “threaten” means to express an intention to harm another’s person or property. This element is satisfied if it is proven beyond a reasonable doubt that the defendant negatively affected the alleged victim’s rights in any one of these ways.

Delaney v. Chief of Police of Wareham, 27 Mass. App. Ct. 398, 409, 539 N.E.2d 65, 72 (1989) (“threat” is “acts or language by which another is placed in fear of injury or damage”).

3. *“Attempt to injure, intimidate or interfere with.”*

To prove that the defendant attempted to injure, intimidate or interfere with another person’s rights, the Commonwealth must prove two things: that the defendant took a step toward interfering with the alleged victim’s rights, and that he (she) did so with the specific intention of interfering with those rights. Neither intent alone nor making preparations is enough by itself to constitute an attempt. You must also find that the defendant took an overt act designed to interfere with the alleged victim’s right and came

reasonably close to doing so.

See Instruction 4.120 (Attempt).

Commonwealth v. Ware, 375 Mass. 118, 120, 375 N.E.2d 1183, 1184 (1978);
Commonwealth v. Gosselin, 365 Mass. 116, 121, 309 N.E.2d 884, 888 (1974);
Commonwealth v. Peaslee, 177 Mass. 267, 271-274, 69 N.E. 55, 56 (1901);
Commonwealth v. Burns, 8 Mass. App. Ct. 194, 196, 392 N.E.2d 865, 867-868 (1979).

4. "Force." **"Force" means physical force, directed either**

against a person or against property. But the amount of physical force used does not matter. Even a minimal amount of force is sufficient.

Commonwealth v. Richards, 363 Mass. 299, 302, 293 N.E.2d 854, 857 (1973) (force against person); *Commonwealth v. Jones*, 362 Mass. 83, 87-90, 283 N.E.2d 840, 843 (1972) (even swift purse snatching involves use of "force").

5. "Threat of force." **A threat of force is an expression of an**

intention to use force which is communicated to the person threatened. It must also seem to any reasonable person standing in the place of the threatened person that the person making the threat actually had the ability to carry it out.

Commonwealth v. Chalifoux, 362 Mass. 811, 816, 291 N.E.2d 635, 638 (1973) (definition of threat); *Commonwealth v. Corcoran*, 252 Mass. 465, 483-484, 148 N.E. 123, 127 (1925) (apprehension to be determined objectively).

6. “Wilfully.” The defendant’s act must have been done wilfully. The defendant’s act was wilful if it was done either with the specific purpose of interfering with the alleged victim’s enjoyment of the interests protected by the right to [specify right] , or it was done because the alleged victim had exercised that right.

It is *not* necessary for the Commonwealth to prove that the defendant knew that he (she) was violating the law, or that he (she) knew that the right to [specify right] is specifically protected by the Constitution or laws of Massachusetts or the United States. The Commonwealth is only required to prove that the defendant acted with the particular purpose of interfering with the alleged victim’s enjoyment of the interests that are protected by that right. If he (she) did so, then he (she) acted wilfully.

See Instruction 3.120 (Intent).

This is a specific intent crime, which involves two determinations:

“The first is a purely legal determination. Is the . . . right at issue clearly delineated and plainly applicable under the circumstances of the case? If the trial judge concludes that it is, then the jury must make the second, factual, determination. Did the defendant commit the act in question with the particular purpose of depriving the victim of his enjoyment of the interests protected by that . . . right?”

“If both requirements are met, even if the defendant did not in fact recognize the [unlawfulness] of his act, he will be adjudged as a matter of law to have acted ‘willfully’—i.e. ‘in reckless disregard of constitutional [or statutory] prohibitions or guarantees.’” *Stephens*, 25 Mass. App. Ct. at 121 n.4, 515 N.E.2d at 609 n.4, quoting from and adopting the rule of *United States v. Ehrlichman*, 546 F.2d 910, 921 (D.C. Cir. 1976), cert. denied, 429 U.S. 1120 (1977).

It is not necessary to prove that the victim knew that he or she was exercising a right protected by § 37, that the defendant knew that he or she was depriving the victim of a specific right protected by § 37, or that the defendant had “a particularly evil or wicked purpose.” It is only necessary to prove that the defendant “engaged in activity which interferes with rights which as . . . matter of law are clearly and specifically protected.” *Stephens*, 25 Mass. App. Ct. at 124-125, 515 N.E.2d at 610-611, quoting from *Ehrlichman*, 546 F.2d at 928. See *United States v. Guest*, 383 U.S. 745, 760, 86 S.Ct. 1170 (1966) (private purpose—e.g. robbery—unrelated to deprivation of legal right insufficient); *Screws v. United States*, 325 U.S. 91, 101-107, 65 S.Ct. 1031, 1035-1038 (1945) (“wilfully” means acting with purpose of depriving victim of enjoyment of protected interest or in reckless disregard of legal guarantee). Generally, negligent acts will not rise to level of coercion required to convict under this statute. See *Deas v. Dempsey*, 403 Mass. 468, 470-472, 530 N.E.2d 1239, 1241 (1988).

NOTES ON SELECTED SECURED RIGHTS:

1. **Fourteenth Amendment.** “. . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

2. **Art. 1 of Massachusetts Declaration of Rights.** “All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” Massachusetts Declaration of Rights, art. 1, as amended by art. 106 of the Amendments.

3. **Education rights.** Under Federal and state law, public school students have a right to attend school and to be educated without discrimination or segregation on account of race. U.S. Const., Amend. 14. *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686 (1954). Mass. Const., Pt. 1, art. 1. G.L. c. 76, § 5.

4. **Employment rights.** All persons are guaranteed the same right to make and perform employment contracts as is enjoyed by white citizens. 42 U.S.C. § 1981. *Johnson v. Railway Express Agency*, 421 U.S. 454, 95 S.Ct. 1716 (1975). The right to work without discrimination because of race, color, religious creed, national origin or ancestry is a right and privilege of all inhabitants of the Commonwealth. St. 1946, c. 368. It is an unlawful discriminatory practice for any employer or his agent to discriminate against an applicant or employee in compensation, terms, conditions or privileges of employment because of race, color, religious creed, national origin, sex, age or ancestry, or for any person to aid, abet, incite, compel or coerce such discrimination. G.L. c. 151B, § 4. See *Radvilas v. Stop & Shop, Inc.*, 18 Mass. App. Ct. 431, 466 N.E.2d 832 (1984) (employment discrimination because of sex and age).

Sexual harassment in the workplace violates both art. 1 of the Massachusetts Declaration of Rights, *O’Connell*, 400 Mass. at 693, 511 N.E.2d at 353, and G.L. c. 151B, § 4(1), *College-Town, Div. of Interco, Inc. v. Massachusetts Comm’n Against Discrimination*, 400 Mass. 156, 162, 508 N.E.2d 587, 591 (1987).

5. **Housing rights.** The right to own, rent and occupy housing without discrimination because of race, color, religion, sex, or national origin is guaranteed by the federal Fair Housing Act of 1968. 42 U.S.C. § 3601 et seq. *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 93 S.Ct. 364 (1972). The right to occupy and enjoy housing is protected against racially motivated interference, whether by the property owners or by third persons unconnected to the property owner. *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1294 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978). Black citizens have the same right to inherit, purchase, lease, sell, hold and convey residential property that white citizens have. 42 U.S.C. § 1982. This means that black persons have the right to live wherever white persons have the right to live, and cannot lawfully be prevented from exercising this right on the grounds of race. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S.Ct. 2186 (1968). White persons have the right to associate with black persons and have black guests in their homes without discrimination or interference. *Tillman v. Wheaton-Haven Recreation Ass'n, Inc.*, 410 U.S. 431, 93 S.Ct. 1090 (1973).

6. **Mental patients' rights.** A mental patient has a constitutional right to basically safe and humane living conditions, which includes protection from assaults. *Harper v. Cser*, 544 F.2d 1121, 1123 (1st Cir. 1976). See *Goodman v. Parwatikar*, 570 F.2d 801, 804 (8th Cir. 1978).

7. **Personal security rights.** All persons have the same right to the full and equal benefit of all laws and proceedings for the security of persons and property that is enjoyed by white citizens. 42 U.S.C. § 1981. This right is violated by racially motivated violence. *Mahone v. Waddle*, 564 F.2d 1018 (3d Cir. 1977), cert. denied, 438 U.S. 904 (1978).

8. **Prisoners' rights.** While officials such as police or corrections officers may use reasonable force to overcome resistance by a person whom they are taking into custody or holding in custody, the constitutional right to due process includes the right not to be subjected to unreasonable, unnecessary or unprovoked force by such officers. Arresting officers may use only such force as is reasonably necessary to effect an arrest or to defend themselves. It is a violation of the Fourteenth Amendment to hold and physically punish a person and thereby deprive him of liberty without due process of law. *Ingraham v. Wright*, 430 U.S. 651, 674, 97 S.Ct. 1401, 1414 (1977); *Screws*, 325 U.S. at 106, 111, 65 S.Ct. at 1038, 1040; *United States v. McQueeney*, 674 F.2d 109, 113 (1st Cir. 1982); *Landrigan v. Warwick*, 628 F.2d 736, 741-742 (1st Cir. 1980); *United States v. Villarín Gerena*, 553 F.2d 723, 724 (1st Cir. 1977); *Human Rights Comm'n of Worcester v. Assad*, 370 Mass. 482, 487, 349 N.E.2d 341, 344-345 (1976). G.L. c. 111B, § 8, sixth par. (protective custody statute); G.L. c. 124, § 1(b), (g). 103 Code Mass. Regs. §§ 505.05(5), 505.06. Reasonable force is that which an ordinary prudent person would deem necessary under the circumstances. *Powers v. Sturtevant*, 199 Mass. 265, 266, 85 N.E. 84, 84 (1908). This is a jury question. *Commonwealth v. Young*, 326 Mass. 597, 603, 96 N.E.2d 133, 136 (1950).

The right to inform authorities of a violation of Federal law is a "right or privilege" secured by the Federal Constitution. *Motes v. United States*, 178 U.S. 458, 462-463, 20 S.Ct. 993, 995 (1900).

9. **Private establishments open to the public.** Privately-owned facilities (such as stores, restaurants, taverns, gas stations, theaters and arcades) which are open to the public and which solicit or accept the patronage of the general public are also places of public accommodation covered by the Massachusetts Public Accommodations Law, *supra*. See also 804 Code Mass. Regs. § 5.01.

10. **Public accommodations rights.** The Massachusetts Public Accommodations Law guarantees to all persons the full and equal use of all places of public accommodation free from any distinction, discrimination or restriction on account of race, color, religious creed, national origin, sex, deafness, blindness, ancestry, or any physical or mental disability. Public facilities such as parks, playgrounds, government buildings, public beaches, highways, streets and sidewalks are all places of public accommodation covered by the law. G.L. c. 272, §§ 92A, 98.

11. **Religious exercise rights.** The right to free exercise of religion is guaranteed by Articles 2 and 3 of the Declaration of Rights of the Massachusetts Constitution and by the First Amendment to the United States Constitution. This right protects religious worship, religious practices, meetings for those purposes, and ownership and use of buildings and other property for religious purposes. It protects the religious activities of individuals, congregations, and their spiritual leaders. Mass. Const., Pt. 1, arts. 2, 3; U.S. Const., Amends. 1, 14.

12. **Travel rights.** Under the United States Constitution, all persons have a right to travel freely between the states, and to use the highways and other avenues of interstate commerce in doing so. *Griffin v. Breckenridge*, 403 U.S. 88, 91 S.Ct. 1790 (1971); *Guest, supra*. Public transportation vehicles (such as MBTA buses, subway cars, and streetcars), bus stops, and subway stations and platforms are all places of public accommodation under the Massachusetts Public Accommodations Law, *supra*.

13. **Voting rights.** The right to elect public officials and to be elected to public office is guaranteed by the Federal Constitution, *United States v. Classic*, 313 U.S. 299, 314, 61 S.Ct. 1031, 1035 (1941), and by Article 9 of the Massachusetts Declaration of Rights, *Batchelder v. Allied Stores Int'l*, 388 Mass. 83, 445 N.E.2d 590 (1983).