

CARRYING A DANGEROUS WEAPON WHEN ARRESTED

The defendant is charged with carrying a dangerous weapon (on his [her] person) (under his [her] control in a vehicle) when he (she) was arrested (on a warrant) (for a breach of the peace).

Section 10(b) of chapter 269 of our General Laws provides as follows:

“[W]hoever,
when arrested (upon a warrant for an alleged crime) (while
committing a breach or disturbance of the public peace)
(is armed with) (has on his person) (has on his person or under
his control in a vehicle)
a . . . dangerous weapon . . .
shall be punished”

To prove that the defendant is guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

First: That the defendant was (arrested on a warrant) (arrested without a warrant for committing a breach of the peace);

Second: That at the time of his (her) arrest the defendant (was armed with [alleged weapon]) (had [alleged weapon] on his [her] person) (had

_____ *[alleged weapon]* under his [her] control in a vehicle);

Third: That the defendant knew that he (she) was carrying the

_____ *[alleged weapon]* (on his [her] person) (under his [her] control in a vehicle);

and

Fourth: That the _____ *[alleged weapon]* was a dangerous weapon.

A. *If the alleged weapon is dangerous per se.* A dangerous weapon is an item

which, by its nature, is capable of causing serious injury or death. I

instruct you that, as a matter of law, a _____ is a dangerous weapon.

B. *If the alleged weapon is not dangerous per se.* An item is a dangerous weapon if

it is used in a way that it reasonably appears to be capable of causing

serious injury or death to another person. In deciding whether an item is a

dangerous weapon, you may consider the circumstances under which it

was possessed, the nature, size and shape of the item, and the manner in

which it was handled or controlled.

Commonwealth v. O'Connor, 7 Allen 583, 584 (1963) (statutory purpose is to ensure safety of arresting officers); *Commonwealth v. Blavackas*, 11 Mass. App. Ct. 746, 752-753, 419 N.E.2d 856, 859-860 (1981) (complaint that does not charge first element charges no crime). For cases on what constitutes a "dangerous weapon," see the notes to Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon).

This model instruction covers the offense set out in the second clause of G.L. c. 269, § 10(b). Note that this offense is inapplicable to firearms, rifles and shotguns (which are covered by § 10[a]) and to the per se dangerous weapons which are listed in the first clause of § 10(b). See Instruction 7.680

(Carrying Certain Dangerous Weapons) for the offense set out in the first clause of § 10(b). See the notes to Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon) as to what constitutes a dangerous weapon.

SUPPLEMENTAL INSTRUCTION

Breach of the peace. In this case you have heard testimony suggesting that the defendant was arrested without a warrant for committing the offense of [alleged offense for which arrested]. If it is proved to you beyond a reasonable doubt that the defendant committed that offense, I instruct you that as a matter of law such an offense constitutes a breach of the public peace.

Not every crime is a breach of the peace. An affray, assault, or disorderly conduct is a typical breach of the peace. *Commonwealth v. Gorman*, 288 Mass. 294, 298-299, 192 N.E. 618, 620 (1934) (OUI is a breach of the peace). See *Commonwealth v. Cavanaugh*, 366 Mass. 277, 280-281, 317 N.E.2d 480, 482-483 (1974) (high speed traffic chase is a breach of the peace); *Commonwealth v. Wright*, 158 Mass. 149, 158-159, 33 N.E. 82, 86 (1893) (possession of short lobsters is not a breach of the peace); *Lennon v. Richardson*, 15 Gray 74, 77 (1860) (illegal sale of alcohol is not a breach of the peace). See also Instruction 7.200 (Disturbing the Peace).

NOTES:

1. **Possession of billy.** The statute also specifically punishes possession of a “billy” when the defendant is arrested under one of the two specified circumstances. If the alleged weapon is a billyclub, the model instruction should be adapted appropriately.
2. **Knives as dangerous weapons.** Straight knives typically are regarded as dangerous per se while folding knives, at least those without a locking device, typically are not. Possession of a closed folding knife is a dangerous weapon for purposes of this offense only if used or handled in a manner that made it a dangerous weapon. *Commonwealth v. Turner*, 59 Mass. App. Ct. 825, 798 N.E.2d 315 (2003). See also the notes to Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon).