

INTOXICATION WITH ALCOHOL OR DRUGS

You have heard evidence suggesting that the defendant may have been intoxicated (with alcohol) (on drugs) at the time of the offense with which he (she) is charged.

I. SPECIFIC INTENT CRIMES

Intoxication (or drunkenness) (on drugs) is never by itself an excuse or justification for a crime, if you find that one was committed. However, it may be relevant to your deliberations on the issue of whether the defendant had the criminal intent that is required for conviction of this offense.

I have told you that one of the elements of [offense charged] which the Commonwealth must prove beyond a reasonable doubt is that the defendant specifically intended to [describe required specific intent] . The defendant cannot be guilty of this offense without that intent. When you consider whether or not the Commonwealth has proved that the defendant had the necessary intent, you may take into account any evidence of intoxication.

Sometimes a person may be so intoxicated (with alcohol) (on drugs)

that he is not capable of having the required intent to commit the crime.

Such a defendant must be acquitted. In other cases, even if a person is intoxicated to some degree, he may still be able to form the necessary intent. In those cases, the person may be convicted, since intoxication is not an excuse for a crime if the defendant had the necessary intent.

You may consider any evidence of intoxication (with liquor) (on drugs), along with all the other evidence in the case, in deciding whether the Commonwealth has proved beyond a reasonable doubt that the defendant acted with the intent to _____ .

“[W]here proof of a crime requires proof of a specific criminal intent and there is evidence tending to show that the defendant was under the influence of alcohol or some other drug at the time of the crime, the judge should instruct the jury, if requested, that they may consider evidence of the defendant’s intoxication at the time of the crime in deciding whether the Commonwealth has proved that specific intent beyond a reasonable doubt. If the judge gives such an instruction, he should further instruct the jury that, if they find beyond a reasonable doubt that the defendant had the required specific intent, the defendant’s intoxication, if any, is not an excuse or justification for his actions.” *Commonwealth v. Henson*, 394 Mass. 584, 592-594, 476 N.E.2d 947, 953-954 (1985). See *Commonwealth v. Sires*, 413 Mass. 292, 300-301, 596 N.E.2d 1018, 1024 (1992); *Commonwealth v. Lawrence*, 404 Mass. 378, 395, 536 N.E.2d 571, 582 (1989) (Commonwealth not required to prove beyond a reasonable doubt the absence of intoxication); *Commonwealth v. Jones*, 400 Mass. 544, 548, 511 N.E.2d 17, 19-20 (1987); *Commonwealth v. Sylvester*, 400 Mass. 334, 336-337, 509 N.E.2d 275, 278 (1987). See also *Commonwealth v. Grey*, 399 Mass. 469, 474, 505 N.E.2d 171, 175 (1987) (where raised by evidence, reversible error to refuse on request to charge that mental impairment may negate specific intent).

Intoxication may also be a defense to a statute requiring specific “knowledge” rather than “intent.” The model instruction may be appropriately adapted if there is evidence of intoxication that may have negated a knowledge requirement. *Commonwealth v. Sama*, 411 Mass. 293, 299, 582 N.E.2d 498, 491 (1991).

Intoxication may also negate premeditation, *Commonwealth v. Farrell*, 322 Mass. 606, 621, 78 N.E.2d 697, 705-706 (1948), or extreme atrocity or cruelty, *Commonwealth v. Perry*, 385 Mass. 639, 648-649, 433 N.E.2d 446, 452-453 (1982), or the “third prong” of malice, *Sama*, *supra*, but in the District Court such elements are relevant only to a charge of delinquency by reason of murder.

As to whether intoxication or addiction alone will support an insanity defense, see the third supplemental instruction to Instruction 9.200 (Lack of Criminal Responsibility).

II. GENERAL INTENT CRIMES

Intoxication (or drunkenness) (on drugs) is not a legal defense to a criminal charge. The law takes the view that even if (alcohol has) (drugs have) to some extent blinded a person's intellect and passions, nevertheless it is not an excuse for a crime, since a person brings it upon himself. A person who is intoxicated (with liquor) (on drugs) has the same responsibility to obey the law as a person who is sober.

Commonwealth v. Blake, 409 Mass. 146, 155, 564 N.E.2d 1006, 1012 (1991); *Commonwealth v. Troy*, 405 Mass. 253, 260, 540 N.E.2d 162, 166 (1989); *Commonwealth v. Fano*, 400 Mass. 296, 305 n.14, 508 N.E.2d 859, 865 n.14 (1987); *Henson*, 394 Mass. at 592, 476 N.E.2d at 953; *Commonwealth v. Lanoue*, 392 Mass. 583, 592 n.6, 467 N.E.2d 159, 165 n.6 (1984); *Commonwealth v. Doucette*, 391 Mass. 443, 455, 462 N.E.2d 1084, 1094 (1984); *Commonwealth v. Sheehan*, 376 Mass. 765, 768, 383 N.E.2d 1115, 1118 (1978); *Commonwealth v. Wallace*, 14 Mass. App. Ct. 358, 361 n.7, 439 N.E.2d 848, 850 n.7 (1982) (effects of liquor or voluntarily-consumed drugs "are well known to everybody").