

PRIMA FACIE EVIDENCE

I. WHERE THE EVIDENCE IS DOCUMENTARY

Among the evidence before you is a certificate that indicates that it was signed by _____, and which certifies that _____.

If appropriate: **You may accept it as an authentic copy of an official record kept in this Commonwealth, if it is attested by the officer who has legal custody of that record, or by his or her deputy.**

Massachusetts R. Crim. P. 40[a][1].

If you find that this certificate is authentic, you are permitted to accept it as sufficient proof that _____, if there is no evidence to the contrary. You are not required to accept that as proven, but you may. If there *is* contrary evidence on that issue, you are to treat this certificate like any other piece of evidence, and you should weigh it along with all the rest of the evidence on that issue.

If the fact to be proved establishes guilt, or is an element of the offense, or negates a defense: **In the end, you must be satisfied that, on all the evidence, it has been proven beyond a reasonable doubt that _____.**

Among the statutory provisions giving prima facie effect to public documents are G.L. c. 22C, § 39 (State Police chemist's certificate of drug analysis); G.L. c. 46, § 19 (town clerk's certificate of birth, marriage or death certificate); G.L. c. 111, § 13 (D.P.H. or U.Mass. Medical School chemist's certificate of drug analysis); G.L. c. 140, § 121A (D.P.S. or Boston ballistics expert's certificate of ballistics analysis); G.L. c. 233, § 79F (official's certificate of public way).

II. WHERE THE EVIDENCE IS TESTIMONIAL

You have heard some evidence in this case suggesting that _____. If you find that fact to be proven, you are permitted to accept it also as sufficient proof that _____, if there is no evidence to the contrary. You are not required to accept that as proven, but you may. If there *is* contrary evidence on that issue, you are to treat this testimony like any other piece of evidence, and you should weigh it along with all the rest of the evidence on that issue.

If the fact to be proved establishes guilt, or is an element of the offense, or negates a defense: **In the end, you must be satisfied that, on all the evidence, it has been proven beyond a reasonable doubt that _____.**

NOTES:

1. **Prima facie evidence in civil cases.** In civil cases, when one fact is denominated prima facie evidence of another fact, proof of the first fact mandates a finding of the second fact unless sufficient contrary evidence is introduced to create an issue of fact for the jury. *Commonwealth v. Pauley*, 368 Mass. 286, 290, 331 N.E.2d 901, 904, appeal dismissed, 423 U.S. 887 (1975) (vehicle owner is prima facie violator of tunnel regulation). After contrary evidence is introduced, it remains evidence throughout the trial and is to be weighed like any other evidence on relevant questions of fact. *Commonwealth v. Chappee*, 397 Mass. 508, 520, 492 N.E.2d 719, 726 (1986), habeas corpus granted on other grounds, 659 F. Supp. 1220 (D. Mass. 1987), rev'd sub nom. *Chappee v. Vose*, 843 F.2d 25 (1st Cir. 1988) (chemical analysis certificate under former G.L. c. 147, § 4D [present G.L. c. 22C, § 39]); *Hobart-Farrel Plumbing & Heating Co. v. Klayman*, 302 Mass. 508, 509, 19 N.E.2d 805, 807 (1930).

2. **Prima facie evidence in criminal cases.** In a criminal case, the effect of un rebutted prima facie evidence cannot be as strong as in civil cases because the jury cannot be compelled to find against the defendant as to any element of the crime. In a criminal case, prima facie evidence means that proof of the first fact permits, but does not require, the jury, in the absence of competing evidence, to find that the second fact is true beyond a reasonable doubt. *Commonwealth v. Pauley*, 368 Mass. at 291-292, 331 N.E.2d at 904-906; *Commonwealth v. Crosscup*, 369 Mass. 228, 239-240, 339 N.E.2d 731, 738-739 (1975) (proper mailing of letter as prima facie evidence of receipt). “[P]rima facie evidence . . . [has] no special force in a criminal case.” *Commonwealth v. Leinbach*, 29 Mass. App. Ct. 943, 944, 558 N.E.2d 1003 (1990). It must be weighted equally with all other evidence in the case.

3. **Permissible and impermissible formulations.** It is proper to instruct the jury in a criminal case that prima facie evidence is “evidence which if unexplained or uncontradicted is deemed sufficient in the trial of a case to sustain a finding on that particular issue.” *Commonwealth v. Lykus*, 406 Mass. 135, 144, 546 N.E.2d 159, 165 (1989). It is error to instruct the jury that prima facie evidence has “a compelling effect, until and only until evidence appears that warrants a finding to the contrary,” since this in effect establishes a mandatory (though rebuttable) presumption. *Commonwealth v. Johnson*, 405 Mass. 433, 542 N.E.2d 248 (1989); *Commonwealth v. Claudio*, 405 Mass. 481, 541 N.E.2d 993 (1989); *Commonwealth v. Crawford*, 18 Mass. App. Ct. 911, 912, 463 N.E.2d 1193, 1194 (1984).

4. **The Teixeira decision.** *Commonwealth v. Teixeira*, 396 Mass. 746, 749-750, 488 N.E.2d 775, 778-779 (1986), is difficult to reconcile with the above line of cases. *Teixeira* disapproved an instruction in a prosecution for non-support of an illegitimate child (G.L. c. 273, § 15) that “proof of the failure to make reasonable provisions for support is prima facie evidence that the neglect is willful and without cause. Prima facie evidence mean[s] that if . . . [there] was a failure to make reasonable provision for support, then you may find that the neglect was willful and without cause, unless you find other evidence in this case that would indicate the contrary.” The court characterized the instruction as “entirely inconsistent with the Commonwealth’s burden of proving the element of neglect or willful refusal reasonably to support,” even apart from Federal constitutional principles. The court did not discuss the matter, but the charge was apparently based on the prima facie provision of G.L. c. 273, § 7, which has been assumed to apply to § 15 prosecutions. See G.L. c. 273, § 16; *Commonwealth v. Bird*, 264 Mass. 485, 489, 162 N.E. 900, 902 (1928); *Commonwealth v. Callaghan*, 223 Mass. 150, 111 N.E. 773 (1916). The opinion did not elaborate on whether the § 7 prima facie provision was inapplicable, or it was invalid as an insufficiently probative inference, or whether it was the phrasing or the substance of the instruction that was flawed. Subsequent cases discussing prima facie effect for offenses other than non-support (such as *Johnson* and *Lykus*, *supra*) have not cited *Teixeira* and have reaffirmed the validity of charging the jury in terms similar to the model instruction’s.

See also the note to Instruction 3.240 (Presumption).