

## **OPERATING RECKLESSLY**

G.L. c. 90, § 24(2)(a)

**The defendant is charged with operating a motor vehicle recklessly.**

**To prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:**

***First:* That the defendant operated a motor vehicle;**

***Second:* That the defendant did so (on a way) (or) (in a place where the public has a right of access) (or) (in a place where members of the public have access as invitees or licensees); and**

***Third:* That the defendant did so in a reckless manner.**

*At this point, the jury must be instructed on the definitions of "Operation of a Motor Vehicle" (Instruction 3.200) and "Public Way" (Instruction 3.280).*

If there is a stipulation to certain elements: **[Because the parties have stipulated (that the defendant was operating a motor vehicle) (and) (that the location was a public way) (that the location was one to which the public had a right of access) the only element(s) the Commonwealth must prove beyond a reasonable doubt (is) (are) that the defendant list element(s).]**

The third thing the Commonwealth must prove beyond a reasonable doubt is that the defendant drove recklessly. A person drives recklessly when they ignore the fact that their manner of driving is very likely to result in death or serious injury to someone, or they are indifferent to whether someone is killed or seriously injured.

It is not enough for the Commonwealth to prove that the defendant acted negligently — that is, acted in a way 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 was reckless if they knew, or should have known, that such actions would pose a grave danger of death or serious injury to others, but they chose, nevertheless, to run the risk and go ahead.

A. *If there was no accident.* A person can be found to have driven recklessly even if no accident resulted, and even if there was no one else actually on the road near them. A person is reckless if they consciously disregard,

**or are indifferent to, a significant possibility of serious injury to anyone else who might be on the road.**

*B.* *If there was an accident.* **The fact that an accident occurred is not by itself evidence that the defendant was reckless. You must examine all the evidence about how the accident happened in order to determine whether the defendant was at fault, and if so, whether the defendant's actions rose to the level of recklessness.**

**In determining whether the defendant drove recklessly, you should take into account all the facts of the situation: the defendant's rate of speed and manner of operation, the defendant's physical condition and how well the defendant could see and could control their vehicle, the condition of the defendant's vehicle, what kind of a road it was and who else was on the road, what the time of day, the weather and the condition of the road were, what any other vehicles or pedestrians were doing, and any other factors that you think are relevant.**

The defendant must have intended his (her) acts, in the sense that they were not accidental. But it is not necessary that the defendant intended or foresaw the consequences of those acts, as long as a reasonable person would know that they were so dangerous that death or serious injury would probably result. This is in that category of cases where public safety requires each driver, once they know what the situation is, to determine and to adhere to an objective standard of behavior.

### CONCLUSION

*If there are stipulations.* Because the parties have stipulated (that the defendant was operating a motor vehicle) (and) (that the location was a public way) (that the location was one to which the public had a right of access), the only element(s) the Commonwealth must prove beyond a reasonable doubt is (are) that the defendant (state elements). If the Commonwealth has proved (that) (those) element(s) beyond a reasonable doubt, you should return a verdict of guilty. If it has not, you must find the defendant not guilty.

*If there are no stipulations.* So there are three things that the

**Commonwealth must prove beyond a reasonable doubt:**

***First:*** That the defendant operated a motor vehicle;

***Second:*** That the defendant did so (on a public way) (or) (in a place where the public has a right of access) (or) (in a place where members of the public have access as invitees or licensees); and

***Third:*** That the defendant did so recklessly.

**If the Commonwealth has proven all three elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of these elements beyond a reasonable doubt, you must return a verdict of not guilty.**

“[B]y custom and usage the element of ‘recklessness’ has been of little or no significance in the application of the operating to endanger statute,” *Commonwealth v. Jones*, 382 Mass. 387, 392, 416 N.E.2d 502, 506 (1981), because of the availability of the negligence branch of the statute, see *Commonwealth v. Guillemette*, 243 Mass. 346, 346, 137 N.E. 700, 701 (1923). See Instruction 5.240 (Operating Negligently so as to Endanger).

*Commonwealth v. Catalina*, 407 Mass. 779, 789 (1990) (subjective awareness of reckless nature of conduct unnecessary; conduct which a reasonable person in similar circumstances would recognize as reckless suffices); *Commonwealth v. Olivo*, 369 Mass. 62, 67 (1975) (recklessness depends on facts of case); *Commonwealth v. Horsfall*, 213 Mass. 232, 235 (1913) (reckless operation can occur even on deserted street); *Commonwealth v. Welansky*, 316 Mass. 383, 397-401 (1944) (definition of recklessness); *Commonwealth v. Sullivan*, 29 Mass. App. Ct. 93, 96 (1990) (same); *Commonwealth v. Papadinis*, 23 Mass. App. Ct. 570, 574-575 (1987), *aff’d*, 402 Mass. 73 (1988) (same).