

**ENDANGERING A CHILD WHILE OPERATING WITH A BLOOD
ALCOHOL LEVEL OF .08% OR GREATER**
(when OUI per se is also charged)

G.L. c. 90, § 24V

The defendant is also charged with endangering a child while operating a motor vehicle while having a blood alcohol level of .08 percent or greater (and with endangering a child while operating a motor vehicle while under the influence of alcohol).

In order to prove the defendant guilty of this offense, the Commonwealth must prove the same three elements that I have described to you on the charge of operating a motor vehicle while having a blood alcohol level of .08 percent or greater. It must also prove beyond a reasonable doubt that while the defendant was operating the vehicle, there was a child who was fourteen years of age or younger present in the vehicle.

I instruct you that you cannot return a verdict of guilty on this offense unless you first find the defendant guilty on the charge of operating a motor vehicle while under the influence of alcohol.

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) (and) (that the percentage of alcohol in the defendant's blood was .08 or greater) (that a child fourteen years of age or younger was present in the vehicle), the only element(s) the Commonwealth must prove beyond a reasonable doubt is (are) that the defendant 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. **There are four things that the Commonwealth must prove beyond a reasonable doubt to obtain a conviction on this charge:**

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 at the time (he) (she) operated the vehicle, the percentage of alcohol in the defendant's blood was .08 or greater, and

Fourth: That while the defendant was operating the vehicle, there was a child present in the vehicle who was fourteen years of age or younger.

If the Commonwealth has proven all four 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.

NOTES:

1. **Estimation of age.** A witness may estimate a person's age where "marked extremes of old age and youth are involved." *Commonwealth v. Stevens*, 93 Mass. App. Ct. 1123 (2018) (unpublished).

2. **Knowledge of Age.** The Commonwealth must present evidence of the child's' age, but is not required to prove the defendant knew the child's age. *Commonwealth v. Montalvo*, 50 Mass. App. Ct. 85, 88 (2000).