

**ENDANGERING A CHILD BY OPERATING A VEHICLE WHILE UNDER
THE INFLUENCE OF INTOXICATING LIQUOR¹**
(when OUI is also charged)

G.L. c. 90, § 24V

**The defendant is charged with endangering a child while
operating a motor vehicle while under the influence of intoxicating
liquor.**

**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
under the influence of alcohol. 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.**

¹ If the Commonwealth intends to proceed both upon a charge of OUI-alcohol and OUI-drugs, the Court should order that sobriety tests be referred to in both cases as roadside assessments.

If there are stipulations. Because the parties have stipulated (that the defendant was operating a motor vehicle) (that the location was a public way) (that the location was one to which the public had a right of access) (that the defendant was under the influence of intoxicating liquor) (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) 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 while the defendant was operating the vehicle, he (she) was under the influence of intoxicating liquor, 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 (1:28) (2018).
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).