

## ASSAULT AND BATTERY BY MEANS OF A DANGEROUS WEAPON CAUSING SERIOUS INJURY

The defendant is charged with having committed (an intentional) (or) (a reckless) assault and battery with a dangerous weapon upon, and thereby caused serious bodily injury to, [the alleged victim].

G.L. c. 265, §15A(c)(i).

*If the Commonwealth relies solely upon a theory of intentional assault and battery, continue with "I" below. If the Commonwealth relies on both theories, continue with both "I" and "II.A" below. If the Commonwealth relies solely upon a theory of reckless assault and battery, skip to "II.B" below.*

<b>I. INTENTIONAL ASSAULT AND BATTERY WITH A DANGEROUS WEAPON CAUSING SERIOUS INJURY</b>
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In order to prove the defendant guilty of an intentional assault and battery by means of a dangerous weapon causing serious bodily injury, the Commonwealth must prove four things beyond a reasonable doubt:

**First:** That the defendant touched the person of [the alleged victim], however slightly, without having any right or excuse for doing so;

**Second:** That the defendant intended to touch [the alleged victim] ;

**Third:** That the touching was done with a dangerous weapon; and

**Fourth:** That the defendant's actions caused serious bodily injury to

[the alleged victim]   .

**A bodily injury is “serious” if it results in (permanent disfigurement) (a loss or impairment of a bodily function, limb or organ) (or) (a substantial risk of death).**

*Here the jury must be instructed on the definition of dangerous weapon from Instruction 5.401 (Assault and Battery by Means of a Dangerous Weapon).*

*If additional language on intent is appropriate.*

**The Commonwealth**

**must prove beyond a reasonable doubt that the defendant *intended* to touch   [the alleged victim]   with the dangerous weapon, in the sense that the defendant consciously and deliberately intended the touching to occur, and that the touching was not merely accidental or negligent. The Commonwealth is *not* required to prove that the defendant specifically intended to cause injury to   [the alleged victim]   , although the Commonwealth must prove beyond a reasonable doubt that serious bodily harm resulted.**

**II. RECKLESS ASSAULT AND BATTERY WITH A DANGEROUS WEAPON  
CAUSING SERIOUS INJURY**

*A. Continue here if the jury is charged on both intentional and reckless conduct.*

**There is a second way in which a person may commit the crime of assault and battery by means of a dangerous weapon causing serious physical injury. Instead of intentional conduct, it involves a reckless touching with a dangerous weapon that results in serious bodily injury.**

*B. Begin here if the jury is charged solely on reckless conduct.*

**The defendant is (also) charged with having committed an assault and battery by reckless conduct, with a dangerous weapon, upon [the alleged victim] , thereby causing serious bodily injury to [the alleged victim] .**

**In order to prove the defendant guilty of having committed this offense, the Commonwealth must prove three things beyond a reasonable doubt:**

***First:* That the defendant acted recklessly;**

***Second:* That the defendant's reckless conduct included an intentional act which resulted in serious bodily injury to [the alleged victim] ;**

**and *Third:* That the injury was inflicted by a dangerous weapon.**

**It is not enough for the Commonwealth to prove that the defendant**

**acted negligently — that is, in a manner 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 acted recklessly if (he) (she) knew, or should have known, that such actions were very likely to cause substantial harm to someone, but (he) (she) ran that risk and went ahead anyway.**

**The defendant must have intended (his) (her) acts which resulted in the touching, in the sense that those acts did not happen accidentally. But it is not necessary that (he) (she) intended to injure or strike the alleged victim, or that (he) (she) foresaw the harm that resulted. If the defendant actually realized in advance that (his) (her) conduct was very likely to cause substantial harm and decided to run that risk, such conduct would of course be reckless. But even if (he) (she) was not conscious of the serious danger that was inherent in such conduct, it is still reckless conduct if a reasonable person, under the circumstances as they were known to the defendant, would have recognized that such actions were so dangerous that it was very likely that they would result in substantial injury.**

wanton or reckless act (something more than gross negligence) causing physical or bodily injury to another” by means of a dangerous weapon).

**A serious bodily injury is one that involves (permanent disfigurement) (a loss or impairment of a bodily function, limb or organ) (or) (a substantial risk of death).**

*Here, if not previously done, the jury must be instructed on the definition of dangerous weapon from Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon)*

In a prosecution for reckless assault and battery by means of a dangerous weapon, the Commonwealth need prove only “a bodily injury . . . sufficiently serious to interfere with the alleged victim’s health or comfort.” *Commonwealth v. Burno*, 396 Mass. 622, 625-627, 487 N.E.2d 1366, 1368-1370 (1986). But in a prosecution for intentional or reckless assault and battery by means of a dangerous weapon with serious injury, the statute requires proof of a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death. Therefore, this instruction differs from that for the crime of reckless assault and battery by means of a dangerous weapon causing injury found in Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon).

SUPPLEMENTAL INSTRUCTION

Victim injured while escaping.

**As I mentioned earlier, the defendant’s touching must have directly caused the [alleged victim’s] injury or must have directly and substantially set in motion a chain of events that produced the injury in a natural and continuous sequence. Here you have heard some evidence suggesting that [alleged victim] was injured while escaping from [place] . To establish that element of the offense — that the**

**defendant caused the injury which occurred as a result of the escape, the Commonwealth must prove beyond a reasonable doubt: (1) that the defendant caused [the alleged victim] reasonably to fear an immediate attack from the defendant; (2) that this fear led (him) (her) to try to (escape) (or) (defend) (himself) (herself) from the defendant; and (3) that [the alleged victim] received a serious bodily injury from or during that attempt to (escape) (or) (defend).**

*Commonwealth v. Parker*, 25 Mass. App. Ct. 727, 522 N.E.2d 2 (1988).

*Here the jury must be instructed on "Accident" (Instruction 9.100) if the issue of accident is supported by the evidence.*

See Instruction 6.300 (Assault and Battery by means of a Dangerous Weapon) for additional notes.