

SUFFOCATION

G.L. c. 265, § 15D

The defendant is charged with suffocation. In order to prove that the defendant is guilty of suffocation, the Commonwealth must prove three things beyond a reasonable doubt:

First, that the defendant blocked the nose or mouth of [alleged victim] ;

Second, that (he) (she) interfered with the (normal breathing) (circulation of blood) of [alleged victim] , without having any right or excuse for doing so; and

Third. that (he) (she) did so intentionally.

NOTES:

1. **Aggravated versions.** Strangulation or suffocation may be aggravated by (i) causing serious bodily injury; (ii) knowing or having reason to know that the victim is pregnant; (iii) knowing that there is an abuse prevention or restraining order in effect against the defendant; or (iv) having a prior conviction for strangulation or suffocation. G.L. c. 265, § 15D(c). Although the maximum penalty for the aggravated crime is ten years in state prison, the aggravated crime remains within the final jurisdiction of the District Court. G.L. c. 218, § 26. Applicable jury instructions for the aggravating factors can be found in Instruction 6.160 (assault and battery causing serious injury), Instruction 6.180 (assault and battery on a person protected by an abuse prevention order), Instruction 6.200 (assault and battery on a pregnant woman).

2. **Certified batterer's intervention program.** Any sentence or continuance without a finding for strangulation or suffocation must include a condition that the defendant complete a certified batterer's intervention program unless "the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention." G.L. c. 265, § 15D(d).