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CARRYING A DANGEROUS WEAPON WHEN ARRESTED

The defendant is charged with carrying a dangerous weapon (on his [her] person) (under his [her] control in a vehicle) when he (she) was arrested (on a warrant) (for a breach of the peace).

Section 10(b) of chapter 269 of our General Laws provides as follows: "[W]hoever,

when arrested (upon a warrant for an alleged crime) (while committing a breach or disturbance of the public peace) (is armed with) (has on his person) (has on his person or under his control in a vehicle)

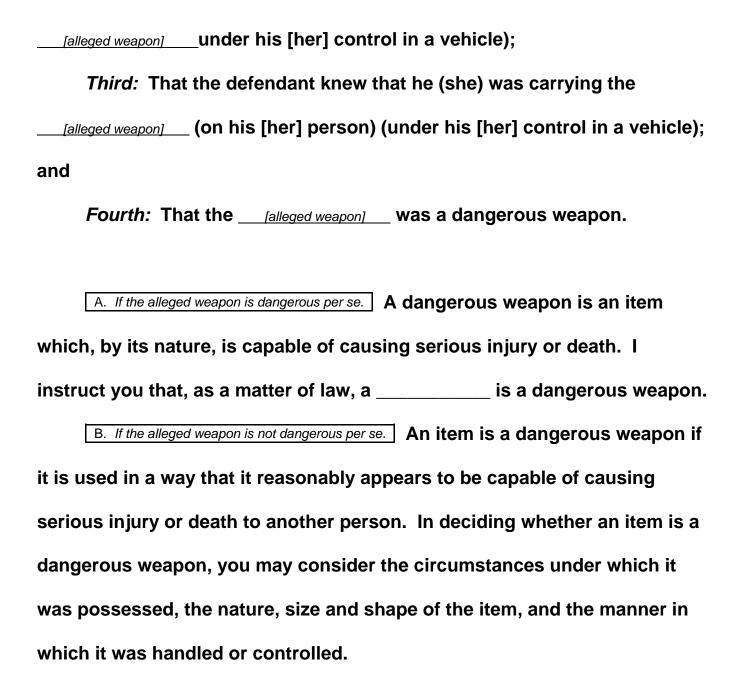
a . . . dangerous weapon . . . shall be punished "

To prove that the defendant is guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

First: That the defendant was (arrested on a warrant) (arrested without a warrant for committing a breach of the peace);

Second: That at the time of his (her) arrest the defendant (was armed with _____ [alleged weapon] ____) (had ____ [alleged weapon] ____ on his [her] person) (had

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Commonwealth v. O'Connor, 7 Allen 583, 584 (1963) (statutory purpose is to ensure safety of arresting officers); Commonwealth v. Blavackas, 11 Mass. App. Ct. 746, 752-753, 419 N.E.2d 856, 859-860 (1981) (complaint that does not charge first element charges no crime). For cases on what constitutes a "dangerous weapon," see the notes to Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon).

This model instruction covers the offense set out in the second clause of G.L. c. 269, § 10(b). Note that this offense is inapplicable to firearms, rifles and shotguns (which are covered by § 10[a]) and to the per se dangerous weapons which are listed in the first clause of § 10(b). See Instruction 7.680

(Carrying Certain Dangerous Weapons) for the offense set out in the first clause of § 10(b). See the notes to Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon) as to what constitutes a dangerous weapon.

SUPPLEMENTAL INSTRUCTION

Breach of the peace. In this case you have heard testimony suggesting that the defendant was arrested without a warrant for committing the offense of __[alleged offense for which arrested]_. If it is proved to you beyond a reasonable doubt that the defendant committed that offense, I instruct you that as a matter of law such an offense constitutes a breach of the public peace.

Not every crime is a breach of the peace. An affray, assault, or disorderly conduct is a typical breach of the peace. *Commonwealth v. Gorman,* 288 Mass. 294, 298-299, 192 N.E. 618, 620 (1934) (OUI is a breach of the peace). See *Commonwealth v. Cavanaugh,* 366 Mass. 277, 280-281, 317 N.E.2d 480, 482-483 (1974) (high speed traffic chase is a breach of the peace); *Commonwealth v. Wright,* 158 Mass. 149, 158-159, 33 N.E. 82, 86 (1893) (possession of short lobsters is not a breach of the peace); *Lennon v. Richardson,* 15 Gray 74, 77 (1860) (illegal sale of alcohol is not a breach of the peace). See also Instruction 7.200 (Disturbing the Peace).

NOTES:

- 1. **Possession of billy.** The statute also specifically punishes possession of a "billy" when the defendant is arrested under one of the two specified circumstances. If the alleged weapon is a billyclub, the model instruction should be adapted appropriately.
- 2. **Knives as dangerous weapons.** Straight knives typically are regarded as dangerous per se while folding knives, at least those without a locking device, typically are not. Possession of a closed folding knife is a dangerous weapon for purposes of this offense only if used or handled in a manner that made it a dangerous weapon. *Commonwealth v. Turner*, 59 Mass. App. Ct. 825, 798 N.E.2d 315 (2003). See also the notes to Instruction 6.300 (Assault and Battery by Means of a Dangerous Weapon).