

PARENTAL DISCIPLINE

A (parent) (stepparent) (guardian) may use reasonable force against a minor child under (his) (her) care if it is reasonable and reasonably related to a legitimate purpose.

If there is evidence that the defendant was the (parent) (stepparent) (guardian) of the alleged victim and that the alleged victim was under the age of 18, the Commonwealth bears the additional burden of proving beyond a reasonable doubt at least one of three things: (1) that the force used was unreasonable; or (2) that the force used was not reasonably related to the purpose of safeguarding or promoting the welfare of the child, or (3) that the force used caused or created a substantial risk of causing physical harm, gross degradation, or severe mental distress.

In evaluating the reasonableness of the force used and its relation to safeguarding or promoting the welfare of the child, you may consider evidence, if any, of the child's age, the physical and mental condition of the child, the nature of the child's alleged misconduct, the child's ability to understand or appreciate the correction, and any other evidence you believe relevant.

In deciding whether the force used or a risk of injury it created was so extreme as to be inherently impermissible, you may consider the child's age, the child's physical and mental condition, any physical or mental injury the discipline caused, and any other evidence you believe relevant. I instruct you that an injury that is limited to fleeting pain, or marks which are only temporary, is not so extreme as to be inherently impermissible.

If the defendant claims to be a stepparent:

A stepparent is a person who is part of a stable family unit and serves as (mother) (father) and coparent. That person must have assumed all the duties and obligations of a parent toward the child.

Commonwealth v. Dorvil, 472 Mass. 1, 12-13 (2015)

Notes

- 1. Stepparent may assert parental discipline defense.** A stepparent who serves an *in loco parentis* role is entitled to raise the affirmative defense of parental discipline. *Commonwealth v. Packer*, 88 Mass. App. Ct. 585, 590-91 (2015), *rev. denied*, 473 Mass. 1109 (2016). The burden is on the defendant to prove he or she stands in loco parentis to the child. *Commonwealth v. O'Connor*, 407 Mass. 663, 668 (1990).
- 2. Judge should make preliminary determination.** If a parental discipline defense is raised by one who is not a biological or adoptive parent, a judge may consider making a preliminary determination whether there is sufficient evidence for the issue to go to the jury. See note 2 on Instruction 9.260 for self-defense.
- 3. Factors relating to the role of stepparent.** Factors that may be considered on a defendant's status as a stepparent include (1) the nature and length of the relationship between the defendant and the biological parent or legal guardian; (2) the extent to which a biological parent remains actively involved in the child's rearing; (3) whether the child resides with the defendant; (4) the extent and nature of the defendant's role in rearing the child; (5) whether the defendant contributes financially to the household; (6) whether the other parent and/or the child view the defendant as a co-parent; and (7) whether there is a formal or implicit understanding between the defendant and a parent as to the defendant's role in rearing the child. *Commonwealth v. Packer*, 88 Mass. App. Ct. 585, 590-93 (2015), *rev. denied*, 473 Mass. 1109 (2016).