

## OPERATING RECKLESSLY

The defendant is charged with operating a motor vehicle recklessly.

Section 24(2)(a) of chapter 90 of our General Laws provides as follows:

“Whoever,

upon any way

or in any place to which the public has a right of access,

or [in] any place to which members of the public have

access as invitees or licensees,

operates a motor vehicle recklessly . . .

shall be punished . . . .”

In order to prove the defendant guilty of this offense, the

Commonwealth must prove three things beyond a reasonable doubt:

*First:* That the defendant operated a motor vehicle;

*Second:* That he (she) did so (on a 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 he (she) did so in a reckless manner.

*At this point, the jury must be instructed on the definitions of "Operation of a Motor Vehicle" (Instruction 3.200) and "Public Way" (Instruction 3.280)*

**The third thing the Commonwealth must prove beyond a reasonable doubt is that the defendant drove recklessly. A person drives recklessly when he ignores the fact that his manner of driving is very likely to result in death or serious injury to someone, or he is indifferent to whether someone is killed or seriously injured.**

**It is not enough for the Commonwealth to prove that the defendant acted negligently — that is, acted in a way 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 was reckless if he (she) knew, or should have known, that such actions would pose a grave danger of death or serious injury to others, but he (she) chose, nevertheless, to run the risk and go ahead.**

**A. *If there was no accident.* A person can be found to have driven recklessly even if no accident resulted, and even if there was no one else actually on the road near him. A person is reckless if he consciously disregards, or is indifferent to, a significant**

**possibility of serious injury to anyone else who might be on the road.**

***If there was an accident.* The fact that an accident occurred is not by itself evidence that the defendant was reckless. You must examine all the evidence about how the accident happened in order to determine whether the defendant was at fault, and if so, whether the defendant's actions rose to the level of recklessness.**

**In determining whether the defendant drove recklessly, you should take into account all the facts of the situation: the defendant's rate of speed and manner of operation, the defendant's physical condition and how well he (she) could see and could control his (her) vehicle, the condition of the defendant's vehicle, what kind of a road it was and who else was on the road, what the time of day, the weather and the condition of the road were, what any other vehicles or pedestrians were doing, and any other factors that you think are relevant.**

**The defendant must have intended his (her) acts, in the sense that they were not accidental. But it is not necessary that the defendant**

**intended or foresaw the consequences of those acts, as long as a reasonable person would know that they were so dangerous that death or serious injury would probably result. This is in that category of cases where public safety requires each driver, once he knows what the situation is, to determine and to adhere to an objective standard of behavior.**

“[B]y custom and usage the element of ‘recklessness’ has been of little or no significance in the application of the operating to endanger statute,” *Commonwealth v. Jones*, 382 Mass. 387, 392, 416 N.E.2d 502, 506 (1981), because of the availability of the negligence branch of the statute, see *Commonwealth v. Guillemette*, 243 Mass. 346, 346, 137 N.E. 700, 701 (1923). See Instruction 5.240 (Operating Negligently so as to Endanger).

*Commonwealth v. Catalina*, 407 Mass. 779, 789, 556 N.E.2d 973, 979 (1990) (subjective awareness of reckless nature of conduct unnecessary; conduct which a reasonable person in similar circumstances would recognize as reckless suffices); *Commonwealth v. Olivo*, 369 Mass. 62, 67, 337 N.E.2d 904, 908 (1975) (recklessness depends on facts of case); *Commonwealth v. Horsfall*, 213 Mass. 232, 235, 100 N.E. 362, 363 (1913) (reckless operation can occur even on deserted street); *Commonwealth v. Welansky*, 316 Mass. 383, 397-401, 55 N.E.2d 902, 909-912 (1944) (definition of recklessness); *Commonwealth v. Sullivan*, 29 Mass. App. Ct. 93, 96, 557 N.E.2d 762, 764 (1990) (same); *Commonwealth v. Papadinis*, 23 Mass. App. Ct. 570, 574-575, 503 N.E.2d 1334, 1336 (1987), *aff’d*, 402 Mass. 73, 520 N.E.2d 1300 (1988) (same); Proposed Criminal Code of Massachusetts c. 263, § 16(d) (1972) (same).