

MENTAL IMPAIRMENT SHORT OF INSANITY

(for specific intent crimes only)

You have heard evidence about the defendant's mental condition at the time of the alleged offense.

Where the jury was also instructed on lack of criminal responsibility. **If you find that the Commonwealth has proved beyond a reasonable doubt that the defendant was sane at the time of the offense, such evidence may still be relevant to your deliberations on another issue.**

A mental impairment that does not rise to the level of lack of criminal responsibility (what is sometimes referred to as insanity) is not an excuse or justification for a criminal act. However, the defendant's mental condition may be relevant to your deliberations on the issue of whether the defendant had the criminal intent that is required for conviction of this offense.

I have told you that one of the elements of *[offense charged]* which the

Commonwealth must prove beyond a reasonable doubt is that the defendant specifically intended to _____ *[describe required specific intent]* _____. The defendant cannot be guilty of this offense without that intent. When you consider whether or not the Commonwealth has proved that the defendant had the necessary intent, you may take into account any evidence about the defendant's mental condition.

Sometimes a person's mental condition may be such that he or she is not capable of having the necessary intent to commit the crime. Such a defendant must be acquitted. In other cases, a person may have some mental impairment, but may still be able to form the necessary intent. Such a defendant may be convicted, since mental impairment short of insanity is not an excuse for a crime if the defendant was able to, and did, form the required intent.

You may consider any evidence of the defendant's mental condition, along with all the other evidence in the case, in deciding whether the Commonwealth has proved beyond a reasonable doubt that the defendant acted with the intent to _____ .

The jury should be permitted to consider any evidence of the defendant's mental impairment at the time of the crime, but which does not rise to the level of an insanity defense, in determining whether the Commonwealth has proved a specific intent that is required for the crime. If there is such

evidence, failure to give such a charge on request is reversible error. *Commonwealth v. Grey*, 399 Mass. 469, 470-472, 505 N.E.2d 171, 173-174 (1987); *Commonwealth v. Gassett*, 30 Mass. App. Ct. 57, 565 N.E.2d 1226 (1991). See McMahon, "Recognizing Diminished Capacity," 78 Mass. L. Rev. 41 (1993).

NOTE:

Individual voir dire of prospective jurors not required. Individual voir dire of prospective jurors is in the judge's discretion, and not automatically required, when there will be evidence of mental illness or impairment but no claim of lack of criminal responsibility.

In such a case, a judge appropriately indicated to the entire venire that evidence might be introduced about the defendant's mental condition and its impact on his ability to commit the crime, and asked if any prospective juror had "any opinions about mental illness or about evidence concerning mental illness on the part of a defendant that you think might interfere with your ability to listen to the evidence and to be a fair and an impartial juror, deciding the case based only on the evidence and the instructions of law that I will give to you." Jurors who responded affirmatively were then questioned individually as to whether they could listen to the evidence with an open mind and consider fairly whether the defendant did or did not have the capacity to form the necessary specific intent to commit the crime. If any prospective juror had difficulty understanding the question or hesitated in answering, the judge inquired further. *Commonwealth v. Ashman*, 430 Mass. 736, 738-740, 723 N.E.2d 510, 513-514 (2000).