WANTONLY OR RECKLESSLY PERMITTING BODILY INJURY TO A CHILD UNDER 14

G.L. c. 265, § 13J(b ¶ 3) (first part)

The defendant is charged under G.L. c. 265, § 13J, with being a person having the care and custody of a child under 14 years of age when the child received a bodily injury which the defendant wantonly or recklessly permitted to occur.

In order to prove the defendant guilty of having committed this offense, the Commonwealth must prove four things beyond a reasonable doubt:

First: **That the defendant had the care and custody of** *[the alleged victim]* **;**

Second: **That** *[the alleged victim]* **was a person under 14 years of age;**

Third: **That** *[the alleged victim]* **suffered bodily injury; and**

Fourth**: That the defendant wantonly or recklessly permitted that injury to occur.**

To prove the first element, the Commonwealth must prove the defendant had care and custody of *[the alleged victim]* **. Persons who have care and custody may include a parent, guardian, employee of a home or**

institution or any other person with equivalent supervision or care of a child, whether the supervision temporary or permanent.

To prove the second element, the Commonwealth must prove *[the alleged victim]* **was a child who had not reached his (her) fourteenth birthday.**

To prove the third element, (as I previously explained) the Commonwealth must prove that *[the alleged victim]* **suffered a bodily injury. Under the law, a bodily injury is a substantial impairment of the physical condition. Included among such impairments:**

(a burn)

(a fracture of any bone)

(a subdural hematoma)[1]

(any injury to any internal organ)

(any injury which occurs as the result of repeated harm to any bodily function or organ including human skin)

(any physical condition which substantially imperils a child's health or welfare).

[1] Note: Generally speaking, a subdural hematoma refers to bleeding on the brain.

To prove the fourth element, the Commonwealth must prove that the defendant acted wantonly or recklessly. It is not enough for the Commonwealth to prove that the defendant acted negligently — that is, in a manner 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 acted recklessly if he (she) knew, or should have known, that his (her) [actions were] [failure to act was] very likely to result in bodily harm to *[the alleged victim]* **but he (she) ran that risk and [went ahead anyway] [failed to act anyway].**

It is not necessary that the defendant intended that *[the alleged victim]* **be harmed or that he (she) foresaw the harm that resulted. If the defendant actually realized in advance that his (her) conduct was very likely to result in bodily injury to** *[the alleged victim]* **and decided to run that risk, such conduct would of course be reckless. But even if he (she) was not conscious of the serious danger that was inherent in such conduct, it is still reckless conduct if a reasonable person, under the circumstances as they were known to the defendant, would have recognized that such actions were so dangerous that it was very likely that they would result in bodily harm to**

[the alleged victim] **.**

G.L. c. 265, § 15A(b). *Commonwealth v. Ford*, 424 Mass. 709, 711, 677 N.E.2d 1149, 1151 (1997) (the recklessness branch of assault and battery with a dangerous weapon requires proof of an "intentional commission of a wanton or reckless act (something more than gross negligence) causing physical or bodily injury to another" by means of a dangerous weapon).