

MOTOR VEHICLE

G.L. c. 90, § 1

Use the following instruction for any offense that regulates the way in which a vehicle is operated (see Note 3 below), including but not limited to:

- All offenses involving operation under the influence of alcohol or drugs
- Failure to have an ignition interlock device (G.L. c. 90, § 24S(a))
- Leaving the scene of an accident (G.L. c. 90, § 24(2)(a) & (a $\frac{1}{2}$))
- Motor vehicle homicide (G.L. c. 90, § 24G)
- Negligent operation (G.L. c. 90, § 24(2)(a))
- Racing (G.L. c. 90, §§ 17B & 24(2)(a))
- Reckless operation (G.L. c. 90, § 24(2)(a))
- Refusing to obey a police officer (G.L. c. 90, § 25)

A “motor vehicle” is any vehicle constructed and designed for propulsion by some form of power other than muscular power. The term “motor vehicle” includes an automobile, bus, motorcycle, truck, and van.

[For purposes of (offense), the term “motor vehicle” includes a motorized bicycle and a motorized scooter. The term “motor vehicle” does not include an electric bicycle.]

[Here the jury may be provided with the applicable supplemental instructions on electric bicycles, motorcycles, motorized bicycles, or motorized scooters.]

[For purposes of (offense), the term “motor vehicle” includes a recreation and a snow vehicle when operated on a public way.]

[Here the jury may be provided with the applicable supplemental instructions on recreation vehicles or snow vehicles.]

Use the following instruction for any offense that does not regulate the way in which a vehicle is operated (see Note 3 below), including but not limited to:

- Attaching wrong plates to conceal identity (G.L. c. 90, § 23)
- Disabling an ignition interlock device (G.L. c. 90, § 24T(a))
- Operation after suspension (G.L. c. 90, § 23)
- Operation of an uninsured motor vehicle (G.L. c. 90, § 34J)
- Operation without being licensed (G.L. c. 90, § 10)
- Use without authority (G.L. c. 90, § 24(2)(a))

A “motor vehicle” is any vehicle constructed and designed for propulsion by some form of power other than muscular power. The term “motor vehicle” includes an automobile, bus, motorcycle, truck, and van.

[For purposes of (offense), the term “motor vehicle” does not include a motorized bicycle, a motorized scooter, or an electric bicycle.]

[Here the jury may be provided with the applicable supplemental instructions on electric bicycles, motorcycles, motorized bicycles, or motorized scooters.]

[For purposes of (offense), the term “motor vehicle” includes a recreation and snow vehicle when operated on a public way.]

[Here the jury may be provided with the applicable supplemental instructions on recreation vehicles or snow vehicles.]

Supplemental Instruction: Electric bicycle.

An “electric bicycle” is any bicycle or tricycle:

- (1) That has fully operable pedals; and**
- (2) That has an electric motor of 750 watts or less, and that electric motor either:**
 - a. Provides assistance only when the rider is pedaling and stops providing assistance when the bicycle reaches the speed of 20 miles per hour; or**
 - b. May be used exclusively to propel the bicycle and is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.**

G.L. c. 90, § 1. A vehicle that meets the definition of “electric bicycle” is not a motor vehicle, and the operator of an electric bicycle is not subject to laws governing motor vehicles. G.L. c. 90, § 1; see G.L. c. 85, § 11B¾ (regulating electric bicycles).

A “class 1 electric bicycle” has “a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.” G.L. c. 90, § 1. A “class 2 electric bicycle” has “a motor that may be used exclusively to propel the bicycle and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.” *Id.*

Supplemental Instruction: Motorcycle.

A “motorcycle” is any motor vehicle that:

- (1) Has a seat or saddle for the rider; and**
- (2) Is designed to travel with one, two, or three wheels in contact with the ground.**

[This definition of “motorcycle” includes any bicycle with a motor or driving wheel attached, but does not include: (a tractor or a motor vehicle designed to carry golf clubs and not more than four people) (an industrial three-wheel truck) (a motor vehicle on which the operator and passenger ride within an enclosed cab) (or) (a motorized bicycle).]

[Here the jury may be provided with the supplemental instruction on motorized bicycles.]

G.L. c. 90, § 1. The definition of “motorcycle” explicitly excludes a motorized bicycle and implicitly excludes both an electric bicycle and a motorized scooter. See G.L. 90, § 1 (a motorcycle is a motor vehicle, and an electric bicycle is not a motor vehicle); *id.* (“motorized scooter” defined to exclude a motorcycle).

The operator of a motorcycle is subject to the laws governing motor vehicles. G.L. c. 90, § 1 (defining “motorcycle” as a motor vehicle).

Supplemental Instruction: Motorized bicycle.

A “motorized bicycle” is either:

(1) A pedal bicycle that has a helper motor; or

(2) A non-pedal bicycle that has:

a. A motor with a cylinder capacity of not more than fifty cubic centimeters;

b. An automatic transmission; and

c. A maximum speed of no more than thirty miles per hour.

G.L. c. 90, § 1. The definition of “motorized bicycle” does not include an electric bicycle. *Id.*

A motorized bicycle is excluded from the definition of “motor vehicle.” G.L. c. 90, § 1. However, motorized bicycles are also governed by G.L. c. 90, § 1B, which subjects the operator of a motorized bicycle “to the traffic laws and regulations of the commonwealth.” This means that a

person operating a motorized bicycle can violate a statute that “governs how vehicles are operated,” notwithstanding that the motorized bicycle is not a motor vehicle under G.L. c. 90, § 1. *Commonwealth v. Lopez*, 91 Mass. App. Ct. 485, 488 (2017). Furthermore, a motorized bicycle is a motor vehicle for purposes of G.L. c. 90C, which establishes the citation process for a violation of any law “relating to the operation or control of motor vehicles” (except for municipal parking laws and laws governing common carriers).

Thus, a motorized bicycle operator is subject to G.L. c. 90, § 24(1)(a)—operating a motor vehicle under the influence of alcohol—because it regulates the way in which a vehicle is operated. *Commonwealth v. Griswold*, 17 Mass. App. Ct. 461, 462 (1984). In contrast, a motorized bicycle operator is not subject to G.L. c. 90, § 23—operating a motor vehicle with a suspended license—because “it addresses the threshold question whether the driver can operate a vehicle at all” rather than “directly implicat[ing] the operation of the vehicle.” *Lopez*, 91 Mass. App. Ct. at 488 & n.6; see *id.* at 489 (acknowledging that operating after suspension is plausibly a traffic law regulating the manner of operation but applying the rule of lenity in favor of the defendant).

The operator of a motorized bicycle must have a valid driver’s license, but the unlicensed operation of a motorized bicycle must be charged under G.L. c. 90, § 1B, as opposed to G.L. c. 90, § 10 (prohibiting unlicensed operation of a motor vehicle).

A motorized bicycle is not a “motor vehicle” for purposes of receiving a stolen motor vehicle under G.L. c. 266, § 28. *Commonwealth v. Aponte*, 71 Mass. App. Ct. 758, 760-762 (2008).

Supplemental Instruction: Motorized scooter.

A “motorized scooter” is any two-wheeled tandem (one behind the other) or three-wheeled device that:

- (1) Has handlebars;**
- (2) Is designed to be stood on or sat upon by the operator; and**
- (3) Is powered by an electric or gas motor that can propel the device with or without human assistance.**

G.L. c. 90, § 1. The definition of “motorized scooter” does not include a motorcycle, a motorized bicycle, an electric bicycle, or a three-wheeled motorized wheelchair. *Id.*

The definition of “motor vehicle” neither explicitly includes nor explicitly excludes a motorized scooter. See G.L. c. 90, § 1. However, the operator of a motorized scooter is subject to traffic laws and regulations that “govern[] how vehicles are operated.” G.L. c. 90, § 1E; see *Commonwealth v. Lopez*, 91 Mass. App. Ct. 485, 488 (2017) (interpreting nearly verbatim language in statute governing motorized bicycles, G.L. c. 123, § 1B). Furthermore, a motorized scooter is a motor vehicle for purposes of G.L. c. 90C, which establishes the citation process for a violation of any law “relating to the operation or control of motor vehicles” (except for municipal parking laws and laws governing common carriers).

Accordingly, by analogy to cases governing motorized bicycles, the operator of a motorized scooter can likely violate the statute prohibiting operating a motor vehicle under the influence of alcohol because the statute regulates the way in which the vehicle is operated. See *Commonwealth v. Griswold*, 17 Mass. App. Ct. 461, 462 (1984). But the operator of a motorized scooter cannot violate the statute prohibiting operating a motor vehicle after suspension because “it addresses the threshold question whether the driver can operate a vehicle at all” rather than “directly implicat[ing] the operation of the vehicle.” See *Lopez*, 91 Mass. App. Ct. at 488 & n.6; *id.* at 489 (acknowledging that operating after suspension is plausibly a traffic law regulating the manner of operation but applying the rule of lenity in favor of the defendant).

The operator of a motorized scooter must have a valid driver’s license, but the unlicensed operation of a motorized scooter is a civil motor vehicle infraction under G.L. c. 90, § 1E, and cannot be charged under G.L. c. 90, § 10 (prohibiting unlicensed operation of a motor vehicle).

Supplemental Instruction: Recreation vehicle.

A “recreation vehicle” or an “off-highway vehicle” is any motor vehicle designed or modified for use over unimproved terrain for recreation or pleasure while not being operated on a public way. This includes all-terrain vehicles, off-highway motorcycles, dirt bikes, recreation utility vehicles, and all registered motor vehicles while not being operated on a public way.

G.L. c. 90B, § 1.

If applicable, the jury may be instructed on the definition of all-terrain vehicle.

An “all-terrain vehicle” is a motorized recreational vehicle that:

- (1) Is designed or modified for travel on 4 low-pressure tires;**
- (2) Has a seat designed to be straddled by the operator; and**
- (3) Has handlebars for steering control.**

G.L. c. 90B, § 1.

If applicable, the jury may be instructed on the definition of recreation utility vehicle.

A “recreation utility vehicle” or “utility vehicle” is a motorized flotation tire vehicle that:

- (1) Has between four and six low-pressure tires;**
- (2) Is limited in engine displacement to less than 1,500 cubic centimeters;**
- (3) Is limited in total dry weight to not more than 1,800 pounds;**
- (4) Has a bench seat that is not intended to be straddled by the operator; and**
- (5) Has a steering wheel for control.**

G.L. c. 90B, § 1.

Supplemental Instruction: Snow vehicle.

A “snow vehicle” is a motor vehicle that:

- (1) Is designed to travel over ice or snow;**
- (2) Has a curb weight of not more than 1,000 pounds or 453 kilograms;**
- (3) Is driven by track or tracks in contact with the snow or ice; and**
- (4) Is steered by a ski or skis in contact with the snow or ice.**

G.L. c. 90B, § 1.

NOTES

1. Definition of “motor vehicle.” The definition of “motor vehicle” includes automobiles, buses, motorcycles, trucks, and vans. G.L. c. 90, § 1. It also includes any vehicle designated as a “motor vehicle” by the Registrar of Motor Vehicles prior to the commission of the offense. *Id.* A motor vehicle is still a motor vehicle when it is being pulled or towed by another motor vehicle. *Id.*

2. Excluded vehicles. General Laws c. 90, § 1 excludes certain vehicles from the definition of “motor vehicle”:

- Railroad cars and other vehicles that run only on rails or tracks
- Wheelchairs owned and operated by disabled persons
- Vehicles operated or guided by a person on foot
- Vehicles that are used for purposes other than transporting property, incapable of exceeding twelve miles per hour, and exclusively used for building or maintaining highways or designed especially to be used other than on the travelled part of ways.

While a trackless trolley is excluded from the general definition of “motor vehicle,” a trackless trolley is a motor vehicle for purposes of G.L. c. 90, §§ 17, 21, 24, 24I, 25, & 26. G.L. c. 90, § 1; *see id.* (defining “trackless trolley” as a rubber-wheeled vehicle that is electrically powered by a trolley mechanism from a fixed overhead electrical source).

3. Motorized bicycles & motorized scooters. A motorized bicycle is excluded from the definition of “motor vehicle” in G.L. c. 90, § 1. The definition of “motor vehicle” neither explicitly includes nor explicitly excludes a motorized scooter. *See* G.L. c. 90, § 1.

However, motorized bicycles and motorized scooters are also separately regulated by G.L. c. 90, § 1B and G.L. c. 90 § 1E, respectively. Those statutes subject the operators of motorized bicycles and motorized scooters “to the traffic laws and regulations of the commonwealth.” Furthermore, both motorized bicycles and motorized scooters are motor vehicles for purposes of G.L. c. 90C, which establishes the citation process for a violation of any law “relating to the operation or control of motor vehicles” (except for municipal parking laws and laws governing common carriers).

The Appeals Court has held that a person operating a motorized bicycle may violate a statute that “governs how vehicles are operated,” notwithstanding that the motorized bicycle is not a “motor vehicle” under G.L. c. 90, § 1. *Commonwealth v. Lopez*, 91 Mass. App. Ct. 485, 488 (2017). That logic would seem to apply with equal force to the operator of a motorized scooter.

Accordingly, the operator of a motorized bicycle (and, by analogy, the operator of a motorized scooter) may violate the statute prohibiting operating a motor vehicle under the influence of alcohol because the statute regulates the way in which the vehicle is operated. *Commonwealth v. Griswold*, 17 Mass. App. Ct. 461, 462 (1984). But those operators do not violate the statute prohibiting operating a motor vehicle after suspension because “it addresses the threshold question whether the driver can operate a vehicle at all” rather than “directly implicat[ing] the operation of the vehicle.” *Lopez*, 91 Mass. App. Ct. at 488 & n.6; *see id.* at 489 (acknowledging that operating after suspension is plausibly a traffic law regulating the manner of operation but applying the rule of lenity in favor of the defendant).

4. Recreation and snow vehicles. General Laws c. 90B, §§ 20–35 regulate both recreation and snow vehicles. However, G.L. c. 90B only applies to these vehicles when they are not being operated on a public way. *Commonwealth v. Soldega*, 80 Mass. App. Ct. 853, 854 (2011) (interpreting prior but substantially similar version of G.L. c. 90B, § 20).

Accordingly, if a vehicle that meets the definition of a “recreation vehicle” or “snow vehicle” is not operated on a public way, then G.L. c. 90B applies, rather than G.L. c. 90. If such a vehicle is operated

on a public way, then the G.L. c. 90 definition of “motor vehicle” should be applied to the vehicle to determine whether the operator is subject to a violation of that chapter.

Recreation and off-highway vehicles “operated exclusively for agricultural, forestry, lumbering or construction purposes” are not subject to G.L. c. 90B, and “it shall be an affirmative defense that such vehicle was being operated for such purposes at the time of an alleged violation” of c. 90B. G.L. c. 90B, § 20.