

LEAVING THE SCENE OF AN ACCIDENT INVOLVING PROPERTY DAMAGE

G.L. c. 90, § 24(2)(a)

The defendant is charged with knowingly leaving the scene of an accident involving property damage. In order to prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

First: That the defendant operated a motor vehicle;

Second: That while the defendant was operating the vehicle, (he) (she) caused damage to another vehicle or property either by colliding with it or in some other way;

Third: That the defendant *knew* (he) (she) (had collided with another's property) (or) (had in some way caused damage to another's property); and

Fourth: That after causing such damage, the defendant did not stop and make known (his) (her) name, home address, and the registration number of (his) (her) motor vehicle.

A person “operates” a motor vehicle not only while doing all of the well-known things that drivers do as they travel on a street or highway, but

also when doing any act which directly tends to set the vehicle in motion.

The law is that a person is “operating” a motor vehicle whenever he or she is in the vehicle and intentionally manipulates some mechanical or electrical part of the vehicle — like the gear shift or the ignition — which, alone or in sequence, will set the vehicle in motion.

For the complete definitions of “Operation of a Motor Vehicle,” see instruction 3.200.

A driver has a duty to immediately stop at the scene and offer the specific information required: name, home address and motor vehicle registration number. This duty is not satisfied by stopping at some remote place or by being passively willing to answer inquiries.

Commonwealth v. Martinez, 87 Mass. App. Ct. 582, 584-86 (2015);
Commonwealth v. Horsfall, 213 Mass. 232, 236 (1913).

SUPPLEMENTAL INSTRUCTIONS

1. “Motor vehicle.”

The law defines what a “motor vehicle” is as follows: “all vehicles constructed and designed for propulsion by power other than muscular power.”

(See G.L. c. 90, § 1 for the statutory definition of a “motor vehicle.”)

2. Stopped engine.

To “operate” a motor vehicle within the meaning of the law, it is not necessary that the engine be running. A driver continues to operate his or her motor vehicle

when it is stopped in the ordinary course of its operation for some reason that is fairly incidental to the vehicle's operation. A person is also considered to be "operating" a stationary vehicle when he or she manipulates some part of it, like the gear shift, so that it moves forward of its own weight.

3. *Circumstantial evidence of operation.*

You may find that the defendant was the operator of the motor vehicle even if no witness saw him (her) driving the vehicle, if there is enough circumstantial evidence to prove to you beyond a reasonable doubt that the vehicle was operated and that the defendant, and no one else, was the operator of that vehicle.

4. *To whom information must be given.*

The statute requires that the specified information must be given to the person whose property has been damaged, if reasonably possible, and if not, to someone acting in their interest or to some public officer or other person at or near the place at the time of the injury.

Commonwealth v. Horsfall, 213 Mass. 232, 236 (1913);
Commonwealth v. Donohue, 41 Mass. App. Ct. 91, 94 (1996).

5. *Extent of damage.*

The extent of the damage is not relevant except to the extent that it may be circumstantial evidence of whether or not the defendant knew that there had been a collision.

NOTES:

1. **Circumstantial evidence.** Circumstantial evidence may support an inference that the defendant did not make himself known, *Commonwealth v. LaVoie*, 9 Mass. App. Ct. 918, 918-19 (1980), or that the defendant was the operator, *Commonwealth v. Smith*, 368 Mass. 126, 128 (1975); *Commonwealth v. Rand*, 363 Mass. 554, 561-62 (1973); *Commonwealth v. Swartz*, 343 Mass. 709, 712 (1962); *Commonwealth v. Henry*, 338 Mass. 786 (1958). *But see Commonwealth v. Shea*, 324 Mass. 710, 712-14 (1949) (defendant not shown to be driver where unknown person had been driving vehicle three hours earlier, and no evidence that defendant operated vehicle on that date).
2. **Collision.** “Collide” means to strike together. The statute applies whenever the defendant is in some way an actor, a partial cause in the collision, but not where the defendant is merely a passive participant (e.g., where a pedestrian falls or walks into the defendant’s stopped vehicle). *Commonwealth v. Bleakney*, 278 Mass. 198, 201-02 (1932). An owner-passenger can be found guilty if he or she retained control over his chauffeur’s operation of the vehicle. *Saltman, petitioner*, 289 Mass. 554, 561 (1935).
3. **Constitutionality.** The statutory obligation does not violate the privilege against self-incrimination. *California v. Byers*, 402 U.S. 424 (1971); *Commonwealth v. Joyce*, 326 Mass. 751, 753-57 (1951).
4. **Fault.** The statute applies whether or not the defendant was at fault, since the statute “focuses on causation, not fault.” *Commonwealth v. Robbins*, 414 Mass. 444, 446-48 (1993).
5. **Good faith mistake.** It is not a defense that the defendant believed that he or she was known to persons at the scene. *Commonwealth v. Joyce*, 326 Mass. 751, 752-53 (1951); *Commonwealth v. Lewis*, 286 Mass. 256 (1934). *Commonwealth v. Horsfall*, 213 Mass. 232, 237 (1913), held that the defendant’s good faith belief that he had taken the necessary steps to make himself known was a defense, but the statute was subsequently amended and that defense is no longer available, *Commonwealth v. Coleman*, 252 Mass. 241, 243-44 (1925).
6. **Not a continuing offense.** For purposes of the statute of limitations, the crime of leaving the scene of an accident is not a continuing offense. *Commonwealth v. Valchuis*, 40 Mass. App. Ct. 556, 561-62 (1996) (offense involving personal injury).
7. **Causal Relationship.** The Commonwealth must prove that the accident caused property damage. *Commonwealth v. Velasquez*, 76 Mass. App. Ct. 697, 699-701 (2010).
8. **Offering information without more violates statute.** A motorist must actually provide the required information. Merely offering to provide it is not sufficient to avoid liability under G.L. c. 90, § 24(2)(a). It remains undecided whether an emergency or event such as road rage would excuse a motorist from compliance. *Commonwealth v. Martinez*, 87 Mass. App. Ct. 582, 585-86 & n.12, *rev. denied*, 473 Mass. 1101 (2015).
9. **Unit of prosecution is incident-based.** The offense is defined by the act of leaving the scene of the accident, not by the number of people injured. *See Commonwealth v. Constantino*, 443 Mass. 521, 524-27 (2005); *see also Commonwealth v. Henderson*, 89 Mass. App. Ct. 205, 209-11 (2016) (leaving scene of multi-vehicle crash

constitutes a single offense).

10. **Only one penalty may be assessed.** “Only one penalty may be assessed . . . for a single act of leaving the scene . . . because ‘the proscribed act is scene related, not victim related.’” *Commonwealth v. Henderson*, 89 Mass. App. Ct. 205, 210 (2016) (quoting *Commonwealth v. Constantino*, 443 Mass. 521, 524 (2005)).