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LED BULLETIN

Important Update for Massachusetts Law Enforcement — December 31, 2021

G.L. c. 90, § 25 — Still a Crime, Still Arrestable!

The problem. In a December 20 memorandum issued by the Chief Justice of the District Court in the Administrative Office of the Trial Court (AOTC), officers were surprised to read: “The scheduled assessment for c. 90 §25, refusal to submit to police officer, has changed from a criminal penalty to a \$100 fine.”

The solution. I contacted the AOTC on December 24 and confirmed at 11:30 a.m. today that AOTC will issue a retraction on Monday.¹ The original directive was issued in error. As a result:

The legal application of 90, § 25 is unchanged. It remains a crime. And police officers continue to be empowered by 90, § 21 to arrest § 25 violators in their presence.

The law. If this turn of events inspires you to review 90, 25, my four-page breakdown — from *Chapter 2* of my *MV Manual* — is attached.

Happy New Year! Stay safe. Thank you,
John Sofis Scheft, Esq.

¹ Of course, the policy problem with changing 90, § 25 to a \$100 CMVI is that it deals with motorists who fail to stop for the police in the first place or, having pulled over to the side of the road, refuse to produce their license and registration. In short, the nature of the § 25 transgression makes issuing a citation, in response, a non-starter — since officers need the motorist to stop and, once stopped, to turn over their information in order to complete the citation! This is the reason why all § 25 violations have been arrestable via 90, 21 for decades. See *Comm. v. Coleman*, 64 Mass. App. Ct. 558 (2005) (“The statutory requirement that a motorist stop for police [has] no exception — even for a driver who reasonably believes the police detention is unjustified. If there is no legitimate basis for the stop, the driver’s recourse is not through flight . . . but through the orderly judicial process”).

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2

Emergency Vehicles

Citizen Responsibilities

Citizen motorists have two basic responsibilities when encountering emergency vehicles, especially police cruisers. First, when directed by a police officer, citizens must pull over, stop, and then provide their license and registration. Second, citizens must never interfere with emergency vehicles that are responding to an incident with lights and/or siren activated.

FAILURE TO STOP OR OBEY A POLICE OFFICER 90, § 25

Elements

- **Operating or in charge of vehicle.** The suspect was operating or in charge of a motor vehicle; and
- **Uniformed or conspicuous officer.** The police officer was either in uniform or had his badge conspicuously displayed on the outside of his clothing; and
- **Failure to stop or obey.** The suspect:
 - **Refused name and address.** Refused, upon the officer's request, to give his or the vehicle owner's name and address; or
 - **False name and address.** Gave the officer a false name and address; or
 - **Refused or neglected to stop.** Refused or neglected to stop when signaled to do so by the officer; or
 - **Refused license and registration.** Refused to produce his license and registration and allow the officer to examine them in hand; or
 - **Refused sign name.** Refused to sign his name when requested by an officer; or
 - **Refused surrender license, registration or plates.** Refused to surrender his license, registration, or number plates without reasonable excuse to an officer or authorized RMV agent; or
 - **Refused surrender license in court.** Refused or neglected to produce his license to a judge or court upon request.

Penalty

Criminal Fine \$100.

RMV Action: Suspension for 60 days pursuant to 540 CMR 2.06.

Comm. v. Latimore, 2016 WL 3460606 (Appeals Court) (even though the fine is only \$100, a judge cannot dismiss a case on the basis that it is not worth the time and judicial resources involved; this decision belongs only to the prosecutor).

Right of Arrest

90, § 21 warrantless arrest in presence regardless of whether the offense occurs on a public way.

Notes

Failure to stop for police officer sufficient to justify fresh pursuit into neighboring municipality. *Comm. v. Gray*, 423 Mass. 293 (1996) (detective justified in leaving Watertown and stopping defendant in Waltham). *Comm. v. Timothy*, 2016 WL 280266 (Appeals Court) (after the Wilmington officer signaled for him to stop, the defendant slowly pulled to the right, but took an unusually long time to come to a stop; it was proper for the officer to follow him three to four feet over the Tewksbury line even though the “failure to stop” was not egregious).

Motorist must be operating or in control of vehicle. A motorist may be out of the vehicle (e.g., at an accident scene) and still be subject to an officer’s investigative authority. In *Comm. v. Brantley*, 90 Mass. App. Ct. 901 (2016), police stopped Sean Brantley for a stop sign violation. After pulling over, Brantley backed up his vehicle five feet in the direction of the officer while staring at him in the rearview mirror. The officer had to activate two bursts from his air horn to get Brantley to fully stop. Brantley then leapt out of the vehicle. The officer ordered him back in, but Brantley ran from the scene.

Brantley argued that he was no longer inside the vehicle when ordered to stop, but 90, § 25 also applies to a driver outside his vehicle. The phrase “operating or in charge of a motor vehicle” refers to the driver’s active control, whether he is inside the vehicle or close enough that he might drive away. In any case, Brantley had violated § 25 initially when he drove backward toward the officer.

Compare *Brantley* to *Comm. v. Schiller*, 377 Mass. 10 (1979): The next day, following an incident in which the defendant had driven away dangerously from a supermarket parking lot, a uniformed officer visited the defendant’s house, put his foot in the door when the defendant opened it, and asked to see his license and registration. The defendant refused to produce these items. Even though his car was in the driveway, the defendant was not “operating or in charge of a motor vehicle” at the time of the officer’s demand, so § 25 did not apply.

In uniform or with badge conspicuously displayed. The purpose of the uniform or displayed badge is to inform the driver that the person making the demand has the legal authority to do so. *Comm. v. Gray*, 423 Mass. 293 (1996).

- In *Comm. v. Ross*, 73 Mass. App. Ct. 181 (2008): Detective Walsh was on patrol in an unmarked car when he saw a drug buy. The dealers drove away in a car with a broken brake light. Walsh activated his siren, blue lights, and strobe lights. The driver did not stop, and when Walsh tried to pull alongside him, he deliberately swerved toward Walsh, forcing the detective to brake and fall back. This happened three times.

The Appeals Court rebuffed the driver's technical argument and held, for a 90, § 25 violation, "there is no bright line rule requiring the display of a badge." It would have been "absurd" to require Walsh to hold his badge with one hand while simultaneously trying not to get hit with the other. Through his siren and lights, Walsh effectively notified the driver that he was being stopped.

- Compare *Comm. v. Desir*, 2020 WL 6114564 (Appeals Court): The plainclothes officers exited their unmarked vehicle with badges displayed and began walking towards the defendant's vehicle. When the defendant drove away, probable cause for failure to stop did not exist because there was no evidence that officers had signaled the defendant. The defendant did stop later when those same officers pulled up beside his vehicle at an intersection and showed their badges. Their unmarked vehicle was not equipped with emergency lights.

Normal driving can amount to failure to stop. *Comm. v. Osinski*, 2019 WL 237371 (Appeals Court) (defendant continued driving for a few hundred feet after the officer turned on his cruiser lights, then continued to drive at a normal speed for 3/10 of a mile after the officer turned on his siren; this was the crime of failure to stop).

Duty to stop absolute. In *Comm. v. Coleman*, 64 Mass. App. Ct. 558 (2005), the defendant and another driver separately called police after being in an altercation on the highway. Initially, officers spent five minutes speaking with the truck driver. At that point, the defendant got out of his car and approached officers. Trooper Johnson directed the defendant to stay in his car and said that he would be with him shortly, to which the defendant responded, "I don't have all day. I'll leave and go home." The trooper then told the defendant, "Don't leave because we are investigating." Although the defendant had yet to be interviewed, Trooper Johnson was considering giving him a citation. The defendant took off and was later apprehended.

The conflicting reports of a serious incident on the highway created a reasonable suspicion for the responding officer to conduct a threshold inquiry of both the defendant and the truck driver. The defendant violated § 25 when, despite the fact that the inquiry was not complete and contrary to the trooper's direction, he started to leave the scene. The police had probable cause to arrest him at this point. The Appeals Court declared: "The statutory requirement that a motorist stop for police [has] no exception — even for a driver who reasonably believes the police detention is unjustified. If there is no legitimate basis for the stop, the driver's recourse is not through flight . . . but through the orderly judicial process."

Officers should not ask passengers for ID during a “routine” traffic stop. *Comm. v. Alvarez*, 44 Mass. App. Ct. 531 (1998) rejected an officer’s normal practice of asking passengers for identification during nighttime stops, saying that this sort of “dragnet . . . is uncomfortably associated with authoritarian societies and most commonly made of persons belonging to a racial or ethnic minority.”¹

Officers may legitimately ask for ID when they reasonably believe a passenger is:

- A safety risk (i.e., possibly armed and dangerous), or
- Involved in a vehicle violation (e.g., not wearing a seat belt), or
- Necessary to resolve the vehicle violation (e.g., sitting next to a Learner’s Permit Operator), or
- Involved in criminal conduct, or
- Involved in unsafe/improper conduct (e.g., underage and impaired by alcohol, truant or a runaway), or
- A witness to crime (e.g., driver under arrest for OUI or operating to endanger).

However, passengers may not be arrested or charged under 90, § 25. Since passengers are not driving or “in charge” of the vehicle, they are not covered, except for the owner.

1 Even though 85, § 16 requires that any vehicle occupant provide “his true name and address” to a police officer at night, the Appeals Court insisted that this statute could not override Article 14. The court said, at most, 85, § 16 allows officers to ask an occupant his name and address, but a request for ID is forbidden without sufficient legal justification.