

1031 CONDITIONAL PRIVILEGE OF AUTHORIZED EMERGENCY VEHICLE OPERATOR

Under some circumstances, the operator of an authorized emergency vehicle has a privilege to disregard rules governing the operation of other vehicles. This can include a privilege to (insert here the rule or rules of the road delineated in Wis. Stat. § 346.03(2) which the evidence show(s) (was) (were) disregarded, *e.g.*, exceed the posted speed limit.)

In this case, you should find (operator) was entitled to exercise the privilege if you find all of the following:

1. At the time of the accident, (operator) was operating an authorized emergency vehicle (responding to an emergency call) (in pursuit of an actual or suspected violator of the law) (responding to [but not returning from] a fire alarm). A (describe vehicle) is an authorized emergency vehicle.¹

2. At the time of the accident, (operator) was:

X [*if § 346.03(2)(a) applies: giving a visual signal by means of operating emergency lights.*]

X [*if § 346.03(2)(b), (c), or (d) applies: giving visual and audio signals by means of operating emergency lights and siren.*²]

X [*if § 346.03(4) applies where the only rule violated is exceeding the speed limit:*

x obtaining evidence of a speed violation (or)

x responding to a call which (operator) reasonably believed involved a felony in progress and (operator) further reasonably believed (*choose one or more of the following*):

- (knowledge of (operator)'s presence may have endangered the safety of a victim or other person)
- (knowledge of (operator)'s presence may have caused the suspected violator to evade apprehension)
- (knowledge of (operator)'s presence may have caused the suspected violator to destroy evidence of a suspected felony or may otherwise have resulted in the loss of evidence of a suspected felony)
- (knowledge of (operator)'s presence may have caused the suspected violator to cease the commission of a suspected felony before (operator) obtained sufficient evidence to establish grounds for arrest)].

3. (Operator) operated the authorized emergency vehicle with due care under the circumstances for the safety of all persons.³

If you are satisfied that these three conditions are met, you should find that (operator) was not negligent.

COMMENT

This instruction was approved in 2008 and reformatted in 2016. The notes were updated in 2016.

NOTES:

1. If there is a dispute as to whether the vehicle was an "authorized emergency vehicle," give instruction using one of the definitions in § 340.01(3).

2. The instruction uses the terms "emergency lights" and "siren" as the most common means of providing visual and audio signals. The instruction would have to be modified if other acceptable means of providing visual or audio signals, as described in § 346.03(3), are given.

3. See Legue v. City of Racine, 2014 WI 92, 357 Wis.2d 250, 849 N.W.2d 837; Estate of Cavanaugh v. Andrade, 202 Wis.2d 290, 319 (S. Ct. 1996) holds that governmental immunity will not protect the operator who fails to drive with due regard under the circumstances for the safety of others by virtue of § 346.03(5). § 346.03(5) further provides that the exemptions of § 346.03 do not "protect such operator from the consequences of his or her reckless disregard for the safety of others. " Generally, any operator who operates with reckless disregard for the safety of others also violates a duty to drive with due regard for the safety of all persons.