

1300 NEGLIGENT OPERATION OF A VEHICLE — § 941.01**Statutory Definition of the Crime**

Negligent operation of a vehicle, as defined in § 941.01 of the Criminal Code of Wisconsin, is committed by one who endangers another's safety by a high degree of negligence in the operation of a vehicle, not upon a highway.¹

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant operated² a vehicle,³ not upon a highway.⁴
2. The defendant operated a vehicle in a manner constituting a high degree of negligence.
3. The defendant's high degree of negligence endangered the safety of another person.

The Meaning of "High Degree of Negligence"

"High degree of negligence" means:⁵

- the defendant's operation of a vehicle created a risk of death or great bodily harm; and
- the risk of death or great bodily harm was unreasonable and substantial; and

- the defendant should have been aware that (his) (her) operation of a vehicle created the unreasonable and substantial risk of death or great bodily harm.

IF REFERENCE TO ORDINARY NEGLIGENCE IS BELIEVED TO BE HELPFUL OR NECESSARY SEE WIS JI-CRIMINAL 925.⁶

IF EVIDENCE OF VIOLATION OF A SAFETY STATUTE THAT APPLIES TO VEHICLES "NOT ON A HIGHWAY" HAS BEEN RECEIVED, ADD THE FOLLOWING:⁷

[Evidence has been received that the defendant violated section _____ of the Wisconsin Statutes, which provides that (summarize the statute). Violating this statute does not necessarily constitute a high degree of negligence. You may consider this along with all the other evidence in determining whether the defendant's conduct constituted a high degree of negligence.]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1300 was originally published in 1969 and revised in 1986, 1988, and 1995. This revision was approved by the Committee in December 2006 and involved adoption of a new format and nonsubstantive changes to the text.

Section 941.01 was modified by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. Former subsection (2) was repealed. It had defined the term "high degree of negligence." It was apparently intended that the definition of "criminal negligence" in § 939.25, also created by the homicide revision, apply to violations of § 941.01, although no specific cross-reference was included. The Judicial Council Note to § 941.01 in 1987 Senate Bill 191 provided: "See s. 939.25, stats., and the NOTE thereto." Section 939.25 is the statute defining "criminal negligence."

Since the statute continues to use "high degree of negligence," the instruction follows the statutory language. The definition of the term is essentially the same as the definition used for "criminal negligence," since it appears clear that the use of the definition was intended. In any event, the change is not believed to be a substantively significant one. The only difference between the definition for "criminal negligence" under the revised statute and "high degree of negligence" under prior law is the substitution of "substantial" for "high probability of" in the phrase, "substantial and unreasonable risk of death or great bodily harm."

Related offenses are defined in § 346.62, Reckless Driving. They apply to offenses committed on a highway. See Wis JI-Criminal 2650-2654.

1. Section 941.01 applies to "the operation of a vehicle, not upon a highway as defined in § 340.01." This distinguishes the offense from reckless driving under § 346.62, which requires that the vehicle be operated "on a highway" or on "premises held out to the public for use of their vehicles. . . ." See § 346.61 and Wis JI-Criminal 2600, Sec. I.

"Highway" includes the entire platted or dedicated right-of-way of a public road; it is not limited to the paved portion or the paved portion plus the shoulder. E.J.H. v. State, 112 Wis.2d 439, 234 N.W.2d 77 (1983).

2. The Criminal Code does not define "operate." If a definition is needed, the one provided in § 346.63(3)(b) may be appropriate: "Operate means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put in motion." See Milwaukee County v. Proegler, 95 Wis.2d 614, 291 N.W.2d 608 (Ct. App. 1980), which interprets § 346.63(3)(b). Also see Milwaukee v. Richards, 269 Wis. 570, 69 N.W.2d 445 (1955); State v. Hall, 271 Wis. 450, 73 N.W.2d 585 (1955); and Monroe County v. Kruse, 76 Wis.2d 126, 250 N.W.2d 375 (1977), which provide a definition of "operate" used before the § 346.63 definition was enacted.

Also see "What Constitutes Driving, Operating, Or Being In Control Of Motor Vehicle For Purposes Of Driving While Intoxicated Statute Or Ordinance," 93 A.L.R.3d 7 (1979).

3. If there is a question whether a device is a "vehicle," add the following which is adapted from § 939.22(44):

"Vehicle" means any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air.

4. Regarding the "not upon a highway" requirement, see note 1, supra.

5. The definition of "high degree of negligence" uses the definition of "criminal negligence" provided in § 939.25. See the Comment preceding note 1, supra.

The Committee concluded that this definition, which highlights the three significant components of the statutory definition, is preferable to the one formerly used, which began by defining "ordinary negligence." See Wis JI-Criminal 925 for a complete discussion of the Committee's rationale for adopting this definition and for optional material that may be added if believed to be necessary.

6. Wis JI-Criminal 925 includes two additional paragraphs: one describing "ordinary negligence" and one explaining how "criminal negligence" differs.

7. The suggested instruction on the effect of violation of a safety statute is intended to comply with the decision of the Wisconsin Supreme Court in State v. Dyess, 124 Wis.2d 525, 370 N.W.2d 222 (1985). See note 6, Wis JI-Criminal 1170. To be applicable to this offense, it must be established that the safety statute does apply to operating "not on a highway."