

**2610 OPERATING A MOTOR VEHICLE WITHOUT A VALID  
OPERATOR'S LICENSE — CRIMINAL OFFENSE — § 343.05(3)(a)**

**Statutory Definition of the Crime**

Section 343.05(3)(a) of the Wisconsin Statutes is violated by any person who operates a motor vehicle<sup>1</sup> upon a highway of this state when that person does not hold a valid operator's license.

**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 two elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant operated a motor vehicle<sup>2</sup> upon a highway.<sup>3</sup>

A motor vehicle is operated when it is set in motion.<sup>4</sup>

2. The defendant did not hold a valid operator's license at the time the defendant operated the motor vehicle.

[(A cancelled) (An expired) license is not a valid license. It makes no difference whether the defendant knew the license (had been cancelled) (had expired).]<sup>5</sup>

**Jury's Decision**

If you are satisfied beyond a reasonable doubt that both 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 2610 was originally published in 1980 and revised in 1986, 1995, and 2007. This revision was approved by the Committee in March 2012; it made minor changes in the text and updated the Comment.

This instruction is for second or subsequent violations of § 343.05(3)(a), which are crimes. See § 343.05(5)(b)1. As with operating under the influence offenses, the fact of a prior conviction is not an element of the criminal offense. "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) (emphasis added).

This instruction applies only to operating without a valid license. Subsection (6) of § 343.05 provides that § 343.44 applies to any person operating a motor vehicle upon a highway when the person's license has been revoked or suspended. See Wis JI-Criminal 2620 through 2623. Felony penalties apply to violations of § 343.05 causing great bodily harm or death. See Wis JI-Criminal 2612. The felony penalties were created by 2011 Wisconsin Act 113 [effective date: March 1, 2012]. Act 113 did not affect the penalties for this offense.

A first offense under § 343.05 is a civil forfeiture. To use this instruction for the forfeiture offense, modify the instruction by substituting "to a reasonable certainty by evidence which is clear, satisfactory, and convincing" for "beyond a reasonable doubt." It may also be necessary to change the reference from "the state" to the unit of government that is prosecuting the case. See Wis JI-Criminal 2680 for a model.

Operating a motorcycle without a motorcycle endorsement or operating a moped or motor bicycle without a license is always a forfeiture. Neither ever becomes a criminal violation. See § 343.05(3)(b) and (5)(c).

Section 343.05(4) provides for a number of exemptions to the licensing requirements of Chapter 343.

1. Section 343.05(3)(a) applies to a person who operates "a motor vehicle which is not a commercial motor vehicle." The exclusion for non-commercial vehicles is not included in the instruction because the Committee concluded that the vehicle's status would rarely be an issue in the case. Offenses involving commercial motor vehicles are covered by sub. (2) of § 343.05.

2. Section 340.01(35) defines "motor vehicle." Also see Wis JI-Criminal 2600, Sec. II.

3. Section 340.01(22) defines "highway." Also see Wis JI-Criminal 2600, Sec. I.

4. For the purposes of cases involving operating under the influence, § 346.63(3)(b) defines "operate" as follows: "the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion." Also see Wis JI-Criminal 2600, Sec. III.

5. Use material in brackets only when the issue of a cancelled or expired license is in the case.