

**2612 OPERATING A MOTOR VEHICLE WITHOUT A VALID
OPERATOR'S LICENSE: CAUSING GREAT BODILY HARM OR
DEATH — 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 vehicle¹ upon a highway of this state when that person knows that (he) (she) does not hold a valid operator's license and causes (great bodily harm) (death).

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 operated a motor vehicle² upon a highway.³

A motor vehicle is operated when it is set in motion.⁴

2. The defendant knew that (he) (she) did not hold a valid operator's license at the time the defendant operated the motor vehicle.⁵

[(A cancelled) (An expired) license is not a valid license.]⁶

3. The defendant's operation of the vehicle caused (great bodily harm) (death) to (name of victim).

"Cause" means that the defendant's act was a substantial factor in producing the (great bodily harm) (death).⁷

["Great bodily harm" means injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily injury.]⁸

Deciding About Knowledge

You cannot look into a person's mind to find knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

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 2612 was originally published in 2007. This revision was approved by the Committee in March 2012; it updated the Comment to reflect changes made by 2011 Wisconsin Act 113.

This instruction is for violations of §343.05(3)(a) causing great bodily harm or death, which are punished as felonies. See Wis JI-Criminal 2610 for violations of § 343.05 that are criminal because they are second or subsequent violations. The felony penalties were created by 2011 Wisconsin Act 113 [effective date: March 1, 2012]. Causing great bodily harm is a Class I felony; causing death is a Class H felony. See § 343.05(5)(b)4. and 5. Both offenses require that the "person knows at the time of operation that he or she does not possess a valid operator's license." If the person does not have the required knowledge, the offenses are punished as forfeitures.

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.

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. Knowledge that the person does not possess a valid license is required by § 343.05(5)(b)4. and 5. In the absence of the required knowledge, the violations are punished as forfeitures.

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

7. The Committee has concluded that the simple "substantial factor" definition of cause should be sufficient for most cases. Where there is evidence of more than one possible cause, something like the following might be added:

There may be more than one cause of death. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

Also see Wis JI-Criminal 901, Cause.

8. See § 939.22(14) and Wis JI-Criminal 914.