

**2621A OPERATING WHILE REVOKED: CIVIL FORFEITURE<sup>1</sup> —  
§ 343.44(1)(b) and (2)(ar)1.**

**Statutory Definition of the Crime**

Section 343.44 of the Wisconsin Statutes is violated by one who operates a motor vehicle upon any highway in this state while that person's operating privilege is duly revoked.

**Burden of Proof**

Before you may find the defendant guilty of this offense, the (identify prosecuting agency)<sup>2</sup> must prove by evidence which satisfies you to a reasonable certainty by evidence which is clear, satisfactory, and convincing that the following two elements were present.

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

1. The defendant operated a motor vehicle<sup>3</sup> on a highway.<sup>4</sup>

A motor vehicle is operated when it is set in motion.<sup>5</sup>

2. The defendant's operating privilege<sup>6</sup> was duly revoked at the time the defendant operated a motor vehicle.

[A person's operating privilege remains revoked until it is reinstated.]<sup>7</sup>

**Jury's Decision**

If you are satisfied to a reasonable certainty by evidence which is clear, satisfactory, and convincing 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 2621A was originally published in 2001 and revised in 2006 and 2010. This revision was approved by the Committee in April 2018.

The 2018 revision modified the instruction to be used for offenses committed on or after December 10, 2017. That date is the effective date for 2017 Wisconsin Act 127, which deleted the knowledge requirement from § 343.44(1)(b).

1. This instruction applies to first offense operating while revoked offenses committed after July 27, 2005, if the revocation was not based on an operating while intoxicated-related offense.

2. The instruction has been revised to include a blank where the identity of the prosecuting agency can be provided: the State, the county, the municipality, etc.

3. Regarding the definition of "motor vehicle," see § 340.01(35) and Wis JI-Criminal 2600, Introductory Comment, Sec. II.

4. "Highway" is defined by subsec. 340.01(22):

(22) "Highway" means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the state, county or municipal parks and in state forests which have been opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in § 115.01(1), and institutions under the jurisdiction of the county board of supervisors, but does not include private roads or driveways as defined in sub. (46).

"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).

5. This instruction has always used "set in motion" as the definition of "operated." This is the same definition that was used in operating under the influence cases before 1977. 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).

In 1977, the definition of "operate" for operating under the influence cases was changed. Subsection 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." Because § 346.63(3)(b) definition is prefaced by the phrase "in this section," it can be argued that it applies only to under the influence cases. The Committee reached no conclusion on this issue but left the definition of "operate" unchanged in this instruction.

Subsection 340.01(41), applicable to all motor vehicle code offenses, does define "operator" as "a person who drives or is in actual physical control of a vehicle."

Also see Wis JI-Criminal 2600 Introductory Comment, Sec. III.

6. Section 340.01(40) defines "operating privilege" as follows:

"Operating privilege" means, in the case of a person who is licensed under ch. 343, the license, including every endorsement and authorization to operate vehicles of specific vehicle classes or types, instruction permit, and temporary, restricted or occupational license granted to such person; in the case of a resident of this state who is not so licensed, it means the privilege to secure a license under ch. 343; in the case of a nonresident, it means the operating privilege granted by § 343.05(2)(a)2 or (4)(b)1.

7. Section 343.44(1g) provides:

Notwithstanding any specified term of suspension, revocation, cancellation or disqualification, the period of any suspension, revocation, cancellation or disqualification of an operator's license issued under this chapter or of an operating privilege continues until the operator's license or operating privilege is reinstated.

Sections 343.38 and 343.39 provide the requirements for reinstatement. Also see Best v. State, 99 Wis.2d 495, 299 N.W.2d 604 (Ct. App. 1980), regarding the department's duty to promulgate rules relating to determining the length of suspension periods.