

**2632 RESISTING A TRAFFIC OFFICER BY FAILING TO STOP — §
346.04(2t)****Statutory Definition of the Crime**

Section 346.04(2t) of the Wisconsin Statutes is violated by a person who operates a motor vehicle¹ on a highway,² and after receiving a visual or audible signal to stop his or her vehicle from a (traffic officer) (federal law enforcement officer) (marked police vehicle) (unmarked police vehicle that the person knows or reasonably should know is being operated by a law enforcement officer), knowingly resists the officer by failing to stop his or her vehicle as promptly as safety reasonably permits.

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 vehicle on a highway.³
2. The defendant received a visual or audible signal to stop (his) (her) vehicle from a (traffic officer) (federal law enforcement officer) (marked police vehicle) (unmarked police vehicle that the defendant knew or reasonably should have known was being operated by a law enforcement officer).

(“Traffic officer” means every officer authorized by law to direct or regulate traffic or to make arrests for violation of traffic regulations.)⁴

3. The defendant knowingly resisted an officer by failing to stop (his) (her) vehicle as promptly as safety reasonably permits.

Deciding About Knowledge

You cannot look into a person's mind to find knowledge. What a person knows or has reason to know 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 2632 was originally published in 2003. This revision was approved by the Committee in December 2018; it revised the instruction to reflect changes in the statute made by 2017 Wisconsin Act 347.

2017 Wisconsin Act 347 [effective date: April 18, 2018, revised § 346.04(2t) to add reference to "federal law enforcement officer" and further revised the offense definition to refer to "marked or unmarked police vehicle that the operator knows or reasonably should know is being operated by a law enforcement officer."

Section 346.04(2t) was created by 2001 Wisconsin Act 109 which changed the penalties and created a misdemeanor offense. For offenses under § 346.04(3), see Wis JI-Criminal 2630.

This offense was created by the legislation that implemented the recommendations of the Criminal Penalties Study Committee. That Committee recommended that a misdemeanor fleeing offense be restored "for use in those cases when the defendant's behavior is appropriately addressed with a conviction other than at the felony level." Criminal Penalties Study Committee Final Report, p. 57 (Wisconsin Department of Administration, August 31, 1999.) [This report is available online at <http://www.doa.state.wi.us/secy/index.asp>.]

Section 346.04(4) provides: “Subsection (2t) is not an included offense of sub. (3), but a person may not be convicted of violating both subs. (2t) and (3) for acts arising out of the same incident or occurrence.”

1. Section 346.04 applies to all vehicles and is not restricted to “motor” vehicles. [“Vehicle” is defined in § 340.01(74); “motor vehicle” is defined in § 340.01(35).] Since the majority of cases will involve motor vehicles, the instruction has been drafted for those cases. “Motor” should be omitted where a motor vehicle is not involved.

2. Offenses defined in chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. Sec. 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in secs. 346.62 and 346.63; sec. 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

“Highway” is defined in sec. 340.01(22) as:

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 s. 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).

This definition of “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, 334 N.W.2d 77 (1983).

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element

3. See note 2, supra.

4. This is the definition provided in § 340.01(70).