

2650 RECKLESS DRIVING: ENDANGERING SAFETY (CRIMINAL OFFENSE) — § 346.62(2)**Statutory Definition of the Crime**

Reckless driving, as defined in § 346.62(2) of the Wisconsin Statutes, is committed by one who endangers the safety of any person or property by the negligent operation of a vehicle on 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 vehicle³ on a highway⁴.
2. The defendant operated a vehicle in a manner constituting criminal negligence.⁵

“Criminal negligence” means:⁶

- 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 925.⁷

IF EVIDENCE OF VIOLATION OF A SAFETY STATUTE HAS BEEN RECEIVED, ADD THE FOLLOWING:⁸

[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 criminal negligence. You may consider this along with all the other evidence in determining whether the defendant's conduct constituted criminal negligence.]

3. The defendant's criminal negligence endangered the safety of any person or property.

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.

If you find the defendant guilty, you must answer the following questions "yes" or "no":⁹

Did the violation result in bodily harm to another?

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.¹⁰

Did the violation occur in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) where workers are at risk from

traffic?

[“Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]¹¹

[“Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.]¹²

[“Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]¹³

COMMENT

Wis JI-Criminal 2650 was originally published in 1967 and revised in 1978, 1985, 1988, 1995, and 2010. This revision was approved by the Committee in August 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

Section 346.62(2) was modified by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. It was affected by the homicide revision because the same definition of “criminal negligence” is used for this offense as for homicide under the revision. The effective date of the change is January 1, 1989, and this instruction is to be used in place of Wis JI-Criminal 2650 (© 1986) for offenses committed on or after that date. The revised statute reads as follows:

(2) No person may endanger the safety of any person or property by the negligent operation of a vehicle.

The Judicial Council explained the change as follows:

The revisions contained in subs. (2) and (3) are intended as editorial, not substantive, as is the substitution of a cross reference to s. 939.25(2), stats., for the prior definition of a high degree of negligence. New sub. (4) carries forward the crime created by 1985 Wisconsin Act 293.

Judicial Council Note to § 346.62, 1987 Senate Bill 181.

The first offense under § 346.62(2) is punishable only by forfeiture of not less than \$25 nor more than \$200 [see § 346.65(1)(a)]; therefore, the burden of proof is to a reasonable certainty by evidence which is “clear, satisfactory, and convincing,” (see § 345.45). The second and subsequent violations within four years are punishable as crimes: fine of \$50 to \$500 or one year in the county jail or both [see § 346.65(1)(b)]. Therefore, for second and subsequent offenses, the burden of proof must be beyond a reasonable doubt.

The instruction is drafted for the criminal offense. To adapt it for a forfeiture case, substitute “satisfy you to a reasonable certainty by evidence which is clear, satisfactory, and convincing” for “prove by evidence which satisfies you beyond a reasonable doubt.” If the “clear, satisfactory, and convincing” standard of proof applies, an instruction for a 5/6 verdict should also be given. See Wis JI-Criminal 2055, Five Sixths Verdict: Forfeiture Actions.

Section 346.62(5m)(a) provides for doubling the forfeiture or fine for certain violations:

Except as provided in par. (b), if an operator of a vehicle violates s. 346.62 (2) to (4) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m), or (5) for the violation shall be doubled.

Section 346.65 (5m)(b) was created pursuant to 2021 Wisconsin Act 115. This section further increases penalties for violations of § 346.62 (2) to (3) that occur in a highway maintenance or construction area, utility work area, or emergency or roadside response area where workers are at risk from traffic, and bodily harm occurs. Upon conviction, a driver is subject to a fine of up to \$10,000 or imprisonment of up to nine months, or both, an order to perform between 100 and 200 hours of community service work, and an order to attend traffic safety school.

A similar offense is defined in § 941.01, which prohibits “endangering another’s safety by a high

degree of negligence in the operation of a vehicle, not upon a highway.” (Emphasis added.) See Wis JI-Criminal 1300.

1. Section 346.61 provides that § 346.62 applies to “highways” and to “all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.” The instruction is drafted for a case involving operating on a highway. If a case involves operating on “premises held out to the public. . . ,” the instruction must be modified. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. 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.” See Wis JI-Criminal 2600 Introductory Comment, Sec. III.

3. The definition of “vehicle” provided in § 939.22(44), applies to violations of § 346.62. See § 346.62(1)(d). It provides:

“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. If a case involves operating on “premises held out for the public” rather than on a “highway,” see discussion in note 2, above. Also see, Wis JI-Criminal 2600 Introductory Comment, Sec. I. and Wis JI-Criminal 2605.

5. Section 346.62(1) provides: “‘Negligent’ has the meaning designated in s. 939.25(2).” This is a reference to the Criminal Code definition of “criminal negligence.”

6. The definition of “criminal negligence” is the one provided in § 939.25, which applies to this offense. See § 346.62(1)(c).

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

8. 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.

9. The Committee determined that facts which increase the range of penalties be submitted to the jury in the form of two questions concerning whether the violation resulted in bodily harm to another, and whether the violation occurred in a highway maintenance or construction area, utility work area, or emergency or roadside response area where workers are at risk from traffic.

10. This is the definition of “bodily harm” provided in § 939.22(4).

11. The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

12. The definition of “Utility work area” is the one provided in § 340.01(73m), which applies

to this offense.

13. The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.