

2652 RECKLESS DRIVING: CAUSING BODILY HARM — § 346.62(3)**Statutory Definition of the Crime**

Reckless driving, as defined in § 346.62(3) of the Wisconsin Statutes, is committed by one who causes bodily harm to another 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 highway.⁴
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 caused bodily harm to (name of victim).

This requires that the defendant's conduct was a substantial factor in producing bodily harm.⁹

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

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 2652 was originally published in 1967 and revised in 1978, 1985, 1988, and 1995. This revision was approved by the Committee in June 2009 and involved adoption of a new format and nonsubstantive changes to the text.

Section 346.62(3) 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 2652 (8 1986) for offenses committed on or after that date. The revised statute reads as follows:

- (2) No person may cause bodily harm to another by the negligent operation of a vehicle.

The Judicial Council explanation of the change is provided in the Comment to Wis JI-Criminal 2650.

A violation of § 346.62(3) is a crime, punishable by a fine of not less than \$300 nor more than \$2,000 or imprisonment of not less than 30 days or more than one year in the county jail. § 346.65(3).

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

If an operator of a vehicle violates s. 346.62(2) to (4) where persons engage in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m) or (5) for the violation shall be doubled.

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 1, 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 has concluded that the simple "substantial factor" definition of cause should be sufficient in most cases. Where there is evidence of more than one possible cause, something like the following might be added immediately preceding the sentence in the instruction beginning with "before":

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

See Wis JI-Criminal 910 for a more complete discussion of "cause."

10. This is the definition of "bodily harm" provided by § 939.22(4), which applies to reckless driving offenses. § 346.62(1)(a).