

2680 NONCRIMINAL TRAFFIC VIOLATIONS: PROHIBITED BY STATE LAW OR AN ORDINANCE ADOPTING STATE LAW

[THE FOLLOWING IS A MODEL TO BE USED IN DEVELOPING AN INSTRUCTION FOR A NONCRIMINAL TRAFFIC VIOLATION FOR WHICH THERE IS NO UNIFORM INSTRUCTION]

Statutory Definition of the Offense

[Ordinance _____, adopting]¹ Section _____ of the Wisconsin Statutes, provides that (read the statute or ordinance).

Burden of Proof

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

Elements That the State Must Prove

1. LIST EACH ELEMENT, INCLUDING DEFINITIONS WHEN NECESSARY
- 2.

Jury's Decision

If you are satisfied to a reasonable certainty by evidence which is clear, satisfactory, and convincing that _____ 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 2680 was originally published in 1985 and revised in 1994 and 2010. This revision involved a nonsubstantive correction to a caption in the text.

This instruction is intended to serve as a model for the many noncriminal traffic violations that may occasionally be tried to a jury but which arise too infrequently to warrant the publication of a separate uniform instruction.

There are two general instructions for forfeiture actions: Wis JI-Criminal 140.1, Burden of Proof: Forfeiture Actions; and Wis JI-Criminal 515.1, Five-Sixths Verdict and Selection of Presiding Juror: Forfeiture Actions.

There are uniform criminal instructions for some of the common noncriminal violations, see 2620A Operating After Revocation (Forfeiture), 2650 Reckless Driving, 2660A Operating With 10% Or More BAC (Forfeiture), 2663A Operating Under The Influence (Forfeiture), and 2672-78 Speeding.

For some violations, there are uniform civil jury instructions which may be helpfully incorporated into the model.

	<u>Offense</u>	<u>Wis JI-Civil</u>
346.13(1)	Deviating In Traffic	1355
346.14(1)	Distance Between Vehicles (Tailgating)	1112
346.37(1)	Vehicle Passing Through Red Or Yellow Signal	1192, 1193
346.46(1)	Stopping At Stop Signs	1325, 1325A
346.59	Minimum Speed Regulations	1300, 1305

Offenses defined in Chapter 346 apply exclusively to operation upon "highways" unless otherwise expressly provided. Sec. 346.02(1). (There are two such provisions: § 346.61 which applies to reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; and § 346.66 which applies to offenses defined in §§ 346.67 to 346.70. Both § 346.61 and § 346.66 provide that those statutes listed are applicable to "all premises held out to the public for use of their motor vehicles.")

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 a motor vehicle 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. 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. Regarding the "on a highway" requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

1. Since ordinances may be adopted by a variety of governmental entities – county, city, town, etc. – the instruction refers only to "ordinance." Identifying the type of ordinance as, for example, a city ordinance may be helpful to the jury.

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.