

**2682B FAILING TO INSTALL AN IGNITION INTERLOCK DEVICE OR VIOLATING A COURT ORDER RESTRICTING OPERATING PRIVILEGE — § 347.413**

**Statutory Definition of the Crime**

Section 347.413(1) of the Wisconsin Statutes is violated by one who (fails to install an ignition interlock device on a motor vehicle as ordered by a court) (violates a court order restricting their operating privilege by operating a motor vehicle not equipped with an ignition interlock device)<sup>1</sup> and that motor vehicle is operated on or occupies a highway.

**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 was subject to (a court order under § 343.301 requiring the installation of an ignition interlock device on a motor vehicle) (a court order under § 343.301(1g)<sup>2</sup> restricting their operating privilege).<sup>3</sup>
2. The defendant (failed to install the ignition interlock device as ordered) (violated a court order restricting their operating privilege).<sup>4</sup>
3. The motor vehicle (was operated on) (occupied) a highway.<sup>5</sup>

### 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 2682B was originally published in 2010 and revised in 2012 and 2014. The 2014 revision amended the third element. This revision was approved by the Committee in June 2021; it amended the first element to reflect changes made by 2017 Wisconsin Act 98.

This instruction is drafted for one of the two types of criminal violations under § 347.413, Ignition interlock device tampering; failure to install. This instruction addresses failing to have the ignition interlock device installed as ordered by the court under § 346.65 (6), 1999 stats., or § 343.301(1), 2007 stats., or § 343.301(1g), and violating a court order under § 343.301 (1g) restricting the person's operating privilege. Penalties are set forth in § 347.50.

See Wis JI Criminal 2682A for the other type of violation: removing, disconnecting, tampering with, or otherwise circumventing the operation of an ignition interlock device installed in response to the court order.

2017 Wisconsin Act 98 [effective date: December 10, 2017] amended § 347.413(1) to include individuals who “violate a court order under § 343.301 (1g) restricting the person's operating privilege.”

Note: The violation addressed by this instruction only applies to vehicles registered in the convicted person's name. This is because the authority to issue an order under § 343.301(1g) applies only to “each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration.” If, for example, a person subject to an order is found operating a vehicle registered to his girlfriend and no interlock device has been installed on that vehicle, there is no violation of § 347.413.

1. Section 343.30(1g)(am) provides that “A court shall order one or more of the following:

1. That the person's operating privilege for the operation of “Class D” vehicles be restricted to operating vehicles that are equipped with an ignition interlock device and, except as provided in sub. (1m), shall order that each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration be equipped with an ignition interlock device.
2. That the person participate in a program described in s. 165.957 or that meets the definition of a 24-7 sobriety program under 23 USC 405 (d) (7) (A) and regulations adopted thereunder. If the court enters an order under this subdivision, when the person completes or otherwise does not participate in the program, the court shall order that the person's operating privilege for the operation of “Class D” vehicles be restricted to operating vehicles

that are equipped with an ignition interlock device, shall specify the duration of the order, shall, except as provided in sub. (1m), order that each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration be equipped with an ignition interlock device, and shall notify the department of such order.”

2. Wis. Stat § 343.301(1g)(am)1. requires a court to order that a person's operating privilege be restricted to operating motor vehicles that are equipped with an ignition interlock device if that person commits particular operating while intoxicated offenses. The court may specify the date by which the device must be installed, and the operating privilege restriction takes effect immediately upon the issuance of the order. The operating privilege restriction remains in place for not less than one year after the Department of Transportation issues an operator's license nor more than the maximum operating privilege revocation period after the Department issues an operator's license.

3. Section 347.413 applies to ignition interlock installation ordered under three different statutes. Section 343.301 (1g) is the authority under current [2019-20] statutes. Also covered are orders issued under § 346.65(6), 1999 stats., and § 343.301(1), 2007 stats. The statute under which the order was issued should be accurately identified in the instruction. The Committee concluded that a reference to “§ 343.301” is sufficient for orders under current statutes and the 2007 statutes; for the other option, the reference should be to “§ 346.65 of the 1999 Wisconsin Statutes.”

4. The Committee did not include a mental element in the instruction – such as “intentionally” or “knowingly” failed to install the device – because the statute defining the offense does not expressly provide for a mental element. The Committee's approach, for both Criminal Code offense and offenses found outside the Criminal Code, is to include a mental element only where the statute uses one of the intent-indicating words as set forth in sec. 939.23(1). Wisconsin courts generally follow the same rule, with one notable exception. See *State v. Collova*, 79 Wis.2d 473, 255 N.W.2d 581 (1977), where the Wisconsin Supreme Court added a mental element for operating after revocation offenses where the statute did not include it. [Note: The statute has since been amended to add “knowingly” to the offense definition. See 1997 Wisconsin Act 84.]

5. This element was added to the instruction as part of the 2012 based on § 347.02(2) which provides: “No provision of this chapter requiring or prohibiting certain types of equipment on a vehicle is applicable when such vehicle is not operated upon or occupying a highway.” As originally published, the element required that “the defendant operated that motor vehicle on a highway.” The 2014 revision changed the element to require that the vehicle must be operated on or occupy the highway. The Committee concluded that the defendant need not be the individual who operated it.

Section 340.01(22) defines “highway.” Also see Wis JI-Criminal 2600, Sec. I.