

OPERATING MOTOR VEHICLE DURING PERIOD OF LICENSE SUSPENSION¹
(N.J.S.A. 2C:40-26)

Count ____ of the indictment charges the defendant with the crime of Operating a Motor Vehicle During a Period of License Suspension. The indictment alleges:

(Read indictment)

The statute upon which this charge is based provides:

It shall be a crime to operate a motor vehicle during a period of license suspension if the actor's license was suspended or revoked for

[CHOOSE AS APPROPRIATE]

(a) a first² violation of (driving while intoxicated³/refusal to submit to a chemical breath test)⁴ and the actor had previously been convicted of operating a motor vehicle during the period of license suspension while under suspension for that first offense;

[OR]

(b) a second⁵ or subsequent violation of (driving while intoxicated/refusal to submit to a chemical breath test).

In order for you to find defendant guilty of this crime, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant knowingly operated a motor vehicle;
2. That the operation occurred during a period of driver's license suspension or revocation imposed as the result of a violation of the statute prohibiting (driving while intoxicated/refusal to submit to a chemical breath test);
3. That the defendant knew their driver's license was suspended or revoked; and

¹ If the defendant is charged with other offenses, such as eluding or assault by auto or vessel, consider bifurcation if such evidence is not otherwise admissible under N.J.R.E. 404(b). See State v. Ragland, 105 N.J. 189, 193-94 (1986). (The charge of Certain Persons Previously Convicted of a Crime Not to Possess a Weapon, N.J.S.A. 2C:39-7, to be bifurcated from any substantive weapons possessions charge).

² N.J.S.A. 2C:40-26a.

³ N.J.S.A. 39:4-50.

⁴ N.J.S.A. 39:4-50.4a.

⁵ N.J.S.A. 2C:40-26b.

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4. That the defendant had previously been found guilty of operating a vehicle during a period of suspension or revocation imposed as the result of a first violation of the statute prohibiting (driving while intoxicated/refusal to submit to a chemical breath test).

OR

4. That the suspension or revocation was imposed as the result of a second or subsequent violation of the statute prohibiting (driving while intoxicated/refusal to submit to a chemical breath test).

The first element the State must prove beyond a reasonable doubt is that the defendant knowingly⁶ operated a motor vehicle.

A motor vehicle is any vehicle propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.⁷

A person acts knowingly with respect to the nature of their conduct or the attendant circumstances if they are aware that their conduct is of that nature or that such circumstances exist or if they are aware of a high probability of their existence. Knowledge is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, words, or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that they had a certain state of mind when they engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of the defendant's acts and conduct, from all that they said and did at the particular time and place, and from all surrounding circumstances.

Operation of a motor vehicle requires proof beyond a reasonable doubt that all of the following circumstances exist: the defendant had control of the motor vehicle⁸; the defendant had

⁶ When the statute is silent as to *mens rea*, knowledge is required. N.J.S.A. 2C:2-2c(3).

⁷ N.J.S.A. 39:1-1.

⁸ State v. Mulcahy, 107 N.J. 467 (1987)

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an intent to drive or move the vehicle at the time⁹; the defendant took some action to place the motor vehicle in motion¹⁰; and there existed the possibility of motion by the vehicle.¹¹ Actual motion is not required to satisfy this element.¹²

The second element that the State must prove beyond a reasonable doubt is that the operation occurred during a period of driver's license suspension or revocation imposed as the result of a violation of the statute prohibiting (driving while intoxicated/refusal to submit to a chemical breath test).

The period of driver's license suspension begins the day that a court imposes the suspension or revocation, and ends when the period imposed by the court ends.¹³

Normally, evidence of a defendant's prior motor vehicle violations is not permitted under our rules of evidence. This is because our rules specifically exclude evidence that a defendant has committed prior motor vehicle violations when it is offered only to show that they have a disposition or tendency to do wrong and therefore must be guilty of the present offense. However, our rules do permit such evidence when the evidence is used for some other purpose.

In this case, the evidence has been introduced for the specific purpose of establishing an element of the present offense: the reason for a suspension. You may not use this evidence to decide that defendant has a tendency to commit crimes, or that defendant is a bad person. That is, you may not decide that, just because the defendant has committed prior motor vehicle violations, they must be guilty of the present crime. The evidence produced by the State concerning prior motor vehicle convictions for [driving while intoxicated] or [refusal to submit to a chemical breath test] is to be considered only in determining whether the State has established that element of the offense beyond a reasonable doubt.

The third element that the State must prove beyond a reasonable doubt is that the defendant knew that their license was suspended or revoked. I have already defined knowing for you.

The fourth element that the State must prove beyond a reasonable doubt is

[CHOOSE AS APPROPRIATE]

⁹ State v. Daly, 64 N.J. 122 (1973);

¹⁰ State v. Sweeney, 40 N.J. 359 (1963)

¹¹ State v. Thompson, 462 N.J. Super. 370 (App. Div. 2020)

¹² Ibid.

¹³ State v. Perry, 439 N.J. Super. 514 (App. Div.), certif. denied, 222 N.J. 306 (2015).

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That the defendant had previously been found guilty of operating a vehicle during a period of suspension or revocation imposed as the result of a first violation of the statute prohibiting (driving while intoxicated/refusal to submit to a chemical breath test).

Again I remind you that evidence of a defendant's prior motor vehicle violations is not permitted under our rules of evidence when it is offered only to show that they have a disposition or tendency to do wrong. That is, you may not decide that, just because the defendant has committed prior motor vehicle violations, they must be guilty of the present crime. The evidence produced by the State concerning driving while suspended on a prior occasion, is not to be considered in determining whether they drove while suspended on this occasion, but rather may be considered only in determining whether the State has established beyond a reasonable doubt that the prior violation occurred, as that is an element of the offense charged.

[OR]

That the suspension or revocation was imposed as the result of a second or subsequent violation of the statute prohibiting (driving while intoxicated/refusal to submit to a chemical breath test).

Again I remind you that evidence of a defendant's prior motor vehicle violations is not permitted under our rules of evidence when it is offered only to show that they have a disposition or tendency to do wrong. That is, you may not decide that, just because the defendant has committed prior motor vehicle violations, they must be guilty of the present crime. The evidence produced by the State concerning multiple motor vehicle violations for (driving while intoxicated/refusal to submit to a chemical breath test) is to be considered only in determining whether the State has established beyond a reasonable doubt that the defendant was serving a suspension for second or subsequent violation, as that is an element of the present offense.

[CHARGE IN ALL CASES]

If you find that the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty. If, however, the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty.

[CHARGE IF APPROPRIATE]

As I have previously mentioned, you have also heard testimony that (a) motor vehicle summons(es) (was/were) issued in this case. Whether the defendant is guilty or not guilty of those

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offenses will be determined by the Court after you return your verdict. In other words, it is not your job to decide whether the defendant is guilty or not guilty of these motor vehicle offenses.