

**DRIVING WHILE LICENSE IS SUSPENDED OR REVOKED FOR  
DWI OR REFUSAL TO SUBMIT TO A CHEMICAL BREATH TEST<sup>1</sup>**  
**(N.J.S.A. 2C:40-26)**

Count \_\_\_\_ of the indictment charges the defendant with:

**(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:

- (a) suspended or revoked for a first<sup>2</sup> violation of [driving while intoxicated]<sup>3</sup> or [refusal to submit to a chemical breath test]<sup>4</sup> 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) suspended or revoked for a second<sup>5</sup> or subsequent violation of [driving while intoxicated] or [refusal to submit to a chemical breath test].

In order for defendant to be convicted of this offense, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant knowingly operated a motor vehicle;
2. That the defendant's license was suspended or revoked for his/her
  - (a) first violation of [driving while intoxicated] or [refusal to submit to a chemical breath test] 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;

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<sup>1</sup> 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).

<sup>2</sup> N.J.S.A. 2C:40-26a.

<sup>3</sup> N.J.S.A. 39:4-50.

<sup>4</sup> N.J.S.A. 39:4-50.4a.

<sup>5</sup> N.J.S.A. 2C:40-26b.

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**OR**

(b) second or subsequent violation of [driving while intoxicated] or [refusal to submit to a chemical breath test]; and

3. That the defendant knew that his/her license was suspended or revoked.

The first element the State must prove beyond a reasonable doubt is that the defendant knowingly operated a motor vehicle. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature or that such circumstances exist or if he/she is 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 he/she had a certain state of mind when he/she 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 he/she said and did at the particular time and place, and from all surrounding circumstances.<sup>6</sup>

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

The second element that the State must prove beyond a reasonable doubt is that the defendant's license was suspended or revoked for a:

- (a) first violation of [driving while intoxicated] or [refusal to submit to a chemical breath test] 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**

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<sup>6</sup> Though the statute does not specifically say so, knowingly is the required mental state. See N.J.S.A. 2C:2-2c(3). If attempted operation of a motor vehicle is at issue in your case, the jury must be instructed, consistent with the Model Criminal Jury Charge on Attempt, see N.J.S.A. 2C:5-1, that the mental state is purposeful.

<sup>7</sup> N.J.S.A. 39:1-1.

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(b) second or subsequent violation of [driving while intoxicated] or [refusal to submit to a chemical breath test].

A driver's license is suspended or revoked from the day that a court imposes the suspension or revocation, until the court-imposed period of suspension ends.<sup>8</sup>

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 he/she has 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. You may not use this evidence to decide that defendant has a tendency to commit crimes, or that he/she is a bad person. That is, you may not decide that, just because the defendant has committed prior motor vehicle violations, he/she 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 its burden of proof beyond a reasonable doubt of the present offense.

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

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] [several] motor vehicle summons[es] [was] [were] issued in this case. Whether the defendant is guilty or not guilty of those 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

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<sup>8</sup> State v. Perry, 439 N.J. Super. 514 (App. Div.), certif. denied, 222 N.J. 306 (2015).

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vehicle offenses.