

**AGGRAVATED UNLICENSED OPERATION
OF A MOTOR VEHICLE SECOND DEGREE
(Misdemeanor)
VEHICLE AND TRAFFIC LAW 511(2)(a)(ii)
(Committed on or after Oct. 14, 1989)
(Revised January, 2008)¹
(Revised August, 2008)²**

The ____ count is Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree.

Under our law a person is guilty of Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree when such person operates a motor vehicle upon a public highway while knowing or having reason to know that his or her license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner³

[and the suspension or revocation was based upon

Select appropriate alternative(s):

¹ The purpose of the revision was to provide a clearer definition of “operates” by removing the language “for the purpose of placing it in operation” and replacing such language with “for the purpose of placing the vehicle in motion.” See *People v Alamo*, 34 NY2d 453, 458 (1974); *People v Marriott*, 37 AD2d 868 (3d Dept. 1971); *People v. O’Connor*, 159 Misc.2d 1072, 1074-1075 (Dist.Ct., Suffolk, 1994). See also *People v. Prescott*, 95 NY2d 655, 662 (2001).

² The purpose of the revision was to provide an appropriate instruction for instances when the defendant admits to the reason for the suspension. If the defendant has so admitted, the bracketed section is omitted. (See footnote number 5).

³ “Commissioner” is defined as “the commissioner of motor vehicles of this state.” VTL § 108.

a refusal to submit to a chemical test;⁴

a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of the Vehicle and Traffic Law; or

a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the Vehicle and Traffic Law.^{5]}

Some of the terms used in this definition have their own special meaning. I will now give you the meaning of the following terms: “motor vehicle,” and “operating.”

MOTOR VEHICLE means every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power.⁶

To OPERATE a motor vehicle means to drive it.

[NOTE: Add the following if there is an issue as to

⁴ The statutory language here reads: “chemical test pursuant to section eleven hundred ninety-four of this chapter.” If it is in issue as to whether the test was requested pursuant to that provision, the Court will need to fashion an appropriate charge.

⁵ The prior conviction element may also be satisfied by means of a special information pursuant to CPL § 200.60. If the defendant admits to the reason for the suspension set forth in the special information, such element would not be presented to the jury for its consideration. See *People v. Flanagan*, 247 A.D.2d 899 (4th Dept. 1998); *People v. Boyles*, 210 A.D.2d 732 (3rd Dept. 1994); *People v. Sawyer*, 188 A.D.2d 939 (3rd Dept. 1992); *People v. Miller*, 142 A.D.2d 760 (3rd Dept. 1988).

⁶ The term “motor vehicle” is defined in VTL § 125. That definition contains exceptions which are not set forth in the text of this charge. The term “public highway” appearing the definition of “motor vehicle” is itself separately defined in VTL § 134 and the terms within that definition are also separately defined in article 1 of the VTL. If an exception or definition is in issue, then the charge should be amplified accordingly.

operation:

A person also OPERATES a motor vehicle when such person is sitting behind the wheel of a motor vehicle for the purpose of placing the vehicle in motion, and when either the motor vehicle is moving, or even if it is not moving, the engine is running.⁷]

In order for your to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case beyond a reasonable doubt, each of the following three elements:

1. That on or about (*date*), in the county of (*county*), the defendant (*defendant's name*) operated a motor vehicle on a public highway; and
2. That the defendant did so while knowing or having reason to know that his/her license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner. and
3. That the suspension or revocation had been based upon⁸

select appropriate alternative(s):

a refusal to submit to a chemical test

a finding of driving after having consumed alcohol in violation of section eleven hundred

⁷ See cases in note 1, which define the term “operate” a motor vehicle in the statutes defining “operating a motor vehicle while under the influence of alcohol or drugs” [VTL § 1192].

⁸ See footnote number 4.

ninety-two-a of the Vehicle and Traffic Law

a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the Vehicle and Traffic Law.

Therefore, if you find that the People have proven beyond a reasonable doubt all three of those elements, you must find the defendant guilty of Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree as charged in the _____ count.