

**AGGRAVATED UNLICENSED OPERATION
OF A MOTOR VEHICLE FIRST DEGREE
(At Least Ten Suspensions)
(E Felony)
VEHICLE & TRAFFIC LAW 511(3)(a)(ii)
(Committed on or after Nov. 1, 1993)
(Revised January, 2008)¹**

The _____ count is Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree.

Under our law a person is guilty of Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree when such person is operating a motor vehicle while knowing or having reason to know² that he or she has in effect ten or more suspensions, imposed on at least ten separate dates for failure to answer, appear or pay a fine, in connection with an administrative or judicial proceeding.³

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 words “while knowing or having reason to know” have been added to comport with Court of Appeals case law which requires the incorporation of the mental culpability element set forth in the definition of aggravated unlicensed driving in Vehicle and Traffic Law § 511(1)(a). *People v. Pacer*, 6 N.Y.3d 504 (2006).

³ The words “in connection with an administrative or judicial proceeding” have been substituted for the following statutory language that appears at this point: “pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.” If it is in issue as to whether the suspensions were for failure to answer, appear or pay a fine pursuant to one of those provisions, the Court will need to fashion an appropriate charge.

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.⁴

To OPERATE a motor vehicle means to drive it.

[NOTE: Add the following if there is an issue as to 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.^{5]}

In order for you 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 two elements:

1. That on or about (*date*), in the county of (*county*), the defendant (*defendant's name*) operated a motor vehicle; and

⁴ The term “motor vehicle” is defined in Vehicle and Traffic Law § 125. That definition contains exceptions which are not set forth in the text of this charge. The term “public highway” appearing in the definition of “motor vehicle” is itself separately defined in Vehicle and Traffic Law § 134 and the terms within that definition are also separately defined in article one of the Vehicle and Traffic Law. If an exception or definition is in issue, then the charge should be amplified accordingly.

⁵ 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].

2. That the defendant did so while knowing or having reason to know that he/she had in effect ten or more suspensions imposed on at least ten separate dates for failure to answer, appear or pay a fine, in connection with an administrative or judicial proceeding.

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

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