

**UNAUTHORIZED USE OF A VEHICLE  
IN THE SECOND DEGREE  
(Joyriding; Prior Joyriding Conviction)  
Penal Law § 165.06  
(Committed on or after Sept. 1, 1982)**

The (*specify*) count is Unauthorized Use of a Vehicle in the Second Degree.

Under our law, a person is guilty of Unauthorized Use of a Vehicle in the Second Degree when,<sup>1</sup> knowing that he or she does not have the consent of the owner, that person takes, operates, exercises control over, rides in or otherwise uses a vehicle.<sup>2</sup>

The following terms used in that definition have a special meaning:<sup>3</sup>

KNOWING that one does not have the consent of the owner means being aware that one does not have the consent of the

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<sup>1</sup>At this point, Penal Law § 165.06 reads: he/she "commits the crime of unauthorized use of a vehicle in the third degree as defined in subdivision one of section 165.05." The charge substitutes the language of that section.

<sup>2</sup>An additional element of this crime is that the defendant:

"has been previously convicted of the crime of unauthorized use of a vehicle in the third degree as defined in subdivision one of section 165.05 or second degree within the preceding ten years."

The defendant must be arraigned upon a special information alleging the previous conviction, in accordance with the procedure set forth in CPL § 200.60(3). If, upon such arraignment, the defendant admits the previous conviction, the court **must not make any reference to it in the definition of the crime or in listing its elements**. But if the defendant denies the previous conviction or remains mute, the court must add this element to the definition of the crime and the list of elements. See, *People v. Cooper*, 78 NY2d 476 (1991).

<sup>3</sup>If the term "vehicle" is in issue, see Penal Law § 10.00(14).

owner.<sup>4</sup>

Under our law, a person who takes, operates, exercises control over, rides in or otherwise uses a vehicle without the owner's consent is presumed to know that he or she does not have such consent.<sup>5</sup> This means that, if the People have proven beyond a reasonable doubt that the defendant took, operated, exercised control over, rode in or otherwise used a vehicle without the owner's consent, you may, but you are not required to, infer from that fact that the defendant knew that he/she did not have the owner's consent to do so.

An OWNER means a person who has a right to possess the vehicle which is superior to that of the person who takes, operates, exercises control over, rides in or otherwise uses it.<sup>6</sup>

To OPERATE a vehicle means to drive it.

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

A person also OPERATES a vehicle when that person sits behind the wheel of a vehicle for the purpose of placing it in operation, and when either the vehicle is moving or the engine is running.<sup>7]</sup>

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<sup>4</sup>See Penal Law § 15.05(2).

<sup>5</sup>See Penal Law § 165.05(1).

<sup>6</sup>See Penal Law § 155.00(5), which has been modified for this crime. Also see that section for special definitions of "owner" to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

<sup>7</sup>See *People v Alamo*, 34 NY2d 453, 458 (1974); *People v Marriott*, 37 AD2d 868 (3d Dept 1971).

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

1. That on or about (date), in the county of (county), the defendant, (defendant's name), took, operated, exercised control over, rode in or otherwise used a vehicle without the owner's consent; and
2. That the defendant did so knowing that he/she did not have the owner's consent.<sup>8</sup>

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

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<sup>8</sup>If the defendant has admitted the previous conviction, then list *only* the first two elements for the jury.

If the defendant has denied the previous conviction or has remained mute, add the following:

**"and 3. That the defendant had been convicted of the crime of Unauthorized Use of a Motor Vehicle in the Third [or Second] Degree within the preceding ten years."**