

**UNAUTHORIZED USE OF A VEHICLE  
FIRST DEGREE  
(D Felony)  
(Use of Vehicle in  
Course of Felony)  
PENAL LAW 165.08  
(Committed on or after Sept. 1, 1982)**

The \_\_\_\_\_ count is Unauthorized Use of a Vehicle in the First Degree.

Under our law, a person is guilty of Unauthorized Use of a Vehicle in the First Degree when, 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 with the intent to use the vehicle in the course of or the commission of (specify Class A, B, C or D felony) [or in the immediate flight therefrom].<sup>1</sup>

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms:<sup>2</sup> "knowing," "owner," "operate," "(name of intended Class A, B, C, or D felony)," and "intent."

KNOWING that one does not have the consent of the owner means being aware that one does not have the consent of the owner.<sup>3</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

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<sup>1</sup>Penal Law § 165.08 specifies that the intent must be to use the vehicle in the course of or commission of "a class A, B, C or D felony."

<sup>2</sup>If the term "vehicle" is in issue, see Penal Law § 10.00(14).

<sup>3</sup>See Penal Law § 15.05(2).

have such consent.<sup>4</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>5</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>6</sup>]

*(Add definition of intended Class A, B, C or D felony.)*

INTENT means conscious objective or purpose.<sup>7</sup> Thus, a person acts with the intent to use a vehicle in the course of or the commission of (name of intended Class A, B, C or D felony) [or in the

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<sup>4</sup>See Penal Law § 165.05(1).

<sup>5</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>6</sup>See *People v Alamo*, 34 NY2d 453, 458 (1974); *People v Marriott*, 37 AD2d 868 (3d Dept 1971).

<sup>7</sup>See Penal Law § 15.05(1).

immediate flight therefrom] when that person's conscious objective or purpose is to do so.

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, each of the following three 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;
2. That the defendant knew that he/she did not have the owner's consent; and
3. That the defendant did so with the intent to use the vehicle in the course of or the commission of (specify Class A, B, C or D felony) [or in the immediate flight therefrom].

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Unauthorized Use of a 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 any one or more of those elements, you must find the defendant not guilty of the crime of Unauthorized Use of a Vehicle in the First Degree as charged in the \_\_\_\_\_ count.