

**UNLAWFUL FLEEING A POLICE OFFICER
IN A MOTOR VEHICLE FIRST DEGREE
Penal Law § 270.35
(Committed on or after Nov. 1, 2006)**

The (*specify*) count is Unlawful Fleeing a Police Officer in a Motor Vehicle in the First Degree.

Under our law, a person is guilty of Unlawful Fleeing a Police Officer in a Motor Vehicle in the First Degree when, knowing that he or she has been directed to stop his or her motor vehicle by a uniformed police officer or a marked police vehicle by the activation of either the lights or the lights and sirens of such vehicle, he or she thereafter attempts to flee such officer or such vehicle by

Select Appropriate Alternative(s):

driving at speeds which equal or exceed twenty-five miles per hour above the speed limit, *[or]*

engaging in reckless driving.

and as a result of such conduct a police officer or a third person is killed.¹

The following term(s) used in that definition (has / have) a special meaning:²

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

¹ The statute defining this crime, Penal Law § 270.35, begins: “A person is guilty of unlawful fleeing a police officer in a motor vehicle in the first degree when he or she commits the offense of unlawful fleeing a police officer in a motor vehicle in the third degree...” This charge incorporates the definition of unlawful fleeing a police officer in a motor vehicle in the third degree as defined in Penal Law § 270.25.

² If in issue, the definition of “police officer” is in CPL 1.20 (34).

muscular power.]³

[RECKLESS DRIVING means driving or using any motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway.⁴

The following term(s) used in that definition of “reckless driving” (has / have) a special meaning:⁵

MOTORCYCLE means a motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.⁶

PUBLIC HIGHWAY means any highway, road, street, avenue, alley, public place, public driveway or any other public way.⁷]

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 three elements:

1. That on or about (date) in the county of (county), the

³ 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.

⁴ Vehicle and Traffic Law § 1212.

⁵ Defining the terms “motorcycle” and “public highway” may not be necessary unless the type of vehicle or roadway is at issue.

⁶ Vehicle and Traffic Law § 123.

⁷ Vehicle and Traffic Law § 134. Some of the terms within the definition of “public highway” are 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.

defendant (*defendant's name*), knew that he/she had been directed to stop his/her motor vehicle by a uniformed police officer or a marked police vehicle by the activation of either the lights or the lights and sirens of such vehicle; and

2. That the defendant thereafter attempted to flee such officer or such vehicle by

Select Appropriate Alternative(s):

driving at speeds which equaled or exceeded twenty-five miles per hour above the speed limit, or

engaging in reckless driving; and

3. That as a result of such conduct [*specify*] was killed.

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

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