

**UNAUTHORIZED USE OF A VEHICLE  
THIRD DEGREE  
(A Misdemeanor)  
(Joyriding)  
PENAL LAW 165.05(1)  
(Committed on or after Sept. 1, 1982)**

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

Under our law, a person is guilty of Unauthorized Use of a Vehicle in the Third 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.

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>1</sup> "knowing," "owner," and "operate."

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>2</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>3</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 such fact that the defendant knew that he/she did not have the owner's consent to do so.

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<sup>1</sup>If the term "vehicle" is in issue, see Penal Law § 10.00(14).

<sup>2</sup>See Penal Law § 15.05(2).

<sup>3</sup>See Penal Law § 165.05(1).

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>4</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>5</sup>]

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.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Unauthorized Use of a Vehicle in the Third Degree as charged in the \_\_\_\_\_ count.

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<sup>4</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>5</sup>See *People v Alamo*, 34 NY2d 453, 458 (1974); *People v Marriott*, 37 AD2d 868 (3d Dept 1971).

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 the crime of Unauthorized Use of a Vehicle in the Third Degree as charged in the \_\_\_\_\_ count.