

**UNLICENSED OPERATION OF A MOTOR VEHICLE  
(Traffic Infraction)<sup>1</sup>  
Vehicle & Traffic Law 509 (1)  
(Committed on or after May 29, 2012)**

The \_\_\_\_\_ count is Unlicensed Operation of a Motor Vehicle.

Under our law, a person is guilty of Unlicensed Operation of a Motor Vehicle when<sup>2</sup> he or she operates or drives a motor vehicle<sup>3</sup> upon a public highway of this state [or upon any sidewalk or to or from any lot adjacent to a public garage, supermarket, shopping center or car washing establishment or to or from or into a public garage or car washing establishment<sup>4</sup>] unless he or she is duly licensed.

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: "motor vehicle" and "operate."

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<sup>1</sup> Although this offense is a traffic infraction, a charge has been prepared because it may constitute a lesser included offense of traffic crimes or be otherwise charged in a case with other offenses for which a trial by jury is required.

<sup>2</sup> The statute reads: "*Except while operating a motor vehicle during the course of a road test conducted pursuant to the provisions of this article*, no person shall operate or drive a motor vehicle upon a public highway of this state or upon any sidewalk or to or from any lot adjacent to a public garage, supermarket, shopping center or car washing establishment or to or from or into a public garage or car washing establishment unless he is duly licensed *pursuant to the provisions of this chapter.*" The italicized language, unless in issue, can be, and is here, omitted.

<sup>3</sup> The statutory language "no person shall operate or drive a motor vehicle" has been here reformulated to read: "when he or she operates or drives a motor vehicle."

<sup>4</sup> Include any alternative in issue in the case.

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

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.<sup>5</sup>]

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 or drove a motor vehicle upon a public highway [or upon any sidewalk or to or from any lot adjacent to a public garage, supermarket, shopping center or car washing establishment or to or from or into a public garage or car washing establishment]; and
2. That the defendant did so without being duly licensed.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the

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<sup>5</sup> See *People v Prescott*, 95 NY2d 655, 662 (2001); *People v Alamo*, 34 NY2d 453, 458-459 (1974); *People v Marriott*, 37 AD2d 868 (3d Dept 1971); *People v O'Connor*, 159 Misc 2d 1072, 1074-1075 (Dist Ct, Suffolk, 1994). The *Prescott*, *Marriott* and *O'Connor* cases address the term "operate" in the context of driving while intoxicated, and the *Alamo* case addresses the term "operate" in the context of grand larceny.

defendant guilty of Unlicensed Operation of a Motor Vehicle 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 Unlicensed Operation of a Motor Vehicle as charged in the \_\_\_\_\_ count.