**UNLICENSED OPERATION OF A MOTOR VEHICLE [[1]](#footnote-1)**

**Vehicle & Traffic Law 509 (1)**

**(Committed on or after May 29, 2012)**

The (*specify*) count is Unlicensed Operation of a Motor Vehicle.

Under our law, a person is guilty of Unlicensed Operation of a Motor Vehicle when[[2]](#footnote-2) he or she operates or drives a motor vehicle[[3]](#footnote-3) 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[[4]](#footnote-4)]

unless he or she is duly licensed.

The following terms used in that definition have a special meaning:

"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.[[5]](#footnote-5)]

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

That the defendant did so without being duly licensed.

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.

1. 1 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. [↑](#footnote-ref-1)
2. 2 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. [↑](#footnote-ref-2)
3. 3 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." [↑](#footnote-ref-3)
4. 4 Include any alternative in issue in the case. [↑](#footnote-ref-4)
5. 5 *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 *OConnor* 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. [↑](#footnote-ref-5)