

**AGGRAVATED UNLICENSED OPERATION
OF A MOTOR VEHICLE FIRST DEGREE
(E Felony)
(Commits VTL 511 [2] [a] [ii] & DWI)
VEHICLE AND TRAFFIC LAW 511 (3) (a) (i)
(Committed on or after Nov. 1, 2006)**

The _____ count is Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree.

Under our law, a person is guilty of Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree when such person¹ operates a motor vehicle upon a public highway while knowing or having reason to know that his or her license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner²

[and the suspension or revocation was based upon

Select appropriate alternative(s):

a refusal to submit to a chemical test;³

a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of the

¹ At this point, the statute states: “commits the offense of aggravated unlicensed operation in the second degree as provided in subparagraph (ii) . . . of paragraph (a) of subdivision two of this section . . .” This language has been omitted and the text of the instruction for subparagraph (ii) is incorporated.

² “Commissioner” is defined as “the commissioner of motor vehicles of this state” (Vehicle and Traffic Law § 108).

³ The statutory language here reads: “chemical test pursuant to section eleven hundred ninety-four of this chapter.” If it is in issue as to whether the test was requested pursuant to that provision, the Court will need to fashion an appropriate charge.

Vehicle and Traffic Law; or

a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the Vehicle and Traffic Law.]⁴

and is operating such motor vehicle while under the influence of alcohol or a drug in violation of⁵ (specify applicable Vehicle and Traffic Law § 1192 offense)

Some of the terms used in this definition have their own special meaning. I will now give you the meaning of the following terms: “motor vehicle,” and “operating.”

MOTOR VEHICLE means every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power.⁶

To OPERATE a motor vehicle means to drive it.

⁴ If the defendant has admitted to the reason for the suspension set forth in the special information pursuant to CPL 200.60, this element would not be presented to the jury for its consideration. See *People v Cooper*, 8 NY2d 476 (1991); *People v Flanagan*, 247 AD2d 899 (4th Dept 1998); *People v Boyles*, 210 AD2d 732 (3d Dept 1994); *People v Sawyer*, 188 AD2d 939 (3d Dept 1992); *People v Miller*, 142 AD2d 760 (3d Dept 1988).

⁵ At this point, the statute states, “subdivision one, two, two-a, three, four, four-a or five of section eleven hundred ninety-two of this chapter.” This language has been omitted and instead the underlying Vehicle and Traffic Law § 1192 offense should be specified and the applicable jury charge should be read where indicated if not separately charged.

⁶ 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. The term “public highway” appearing the definition of “motor vehicle” is itself separately defined in Vehicle and Traffic Law § 134 and the terms within that definition are also separately defined in article 1 of the Vehicle and Traffic Law. If an exception or definition is in issue, then the charge should be amplified accordingly.

[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.⁷]

Finally, a person operates a motor vehicle while under the influence of alcohol [or a drug] in violation of (specify applicable Vehicle and Traffic Law § 1192 offense) when that person commits:

Note: Insert name of underlying Vehicle & Traffic Law § 1192 offense and if not separately charged, insert applicable jury charge here.

In order for your 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/four) elements:

1. That on or about (date), in the county of (County), the defendant (defendant's name) operated a motor vehicle on a public highway;
2. That the defendant did so while knowing or having reason to know that his/her license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle

⁷ See *People v Alamo*, 34 NY2d 453, 458 (1974); *People v Marriott*, 37 AD2d 868 (3d Dept 1971); *People v O'Connor*, 159 Misc2d 1072, 1074-1075 (Dist Ct, Suffolk 1994). See also *People v Prescott*, 95 NY2d 655, 662 (2001).

issued by the commissioner was suspended, revoked or otherwise withdrawn by the commissioner;

[3. That the suspension or revocation was based upon

Select appropriate alternative(s):

a refusal to submit to a chemical test

a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of the Vehicle and Traffic Law

a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the Vehicle and Traffic Law;]⁸ and

(3/4). That the defendant operated the motor vehicle while under the influence of alcohol [or a drug] in violation of (*specify applicable Vehicle and Traffic Law § 1192 offense*).

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of Aggravated Unlicensed Operation of a Motor 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 Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree as charged in the _____ count.

⁸ See footnote four.