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Auto-Related Crimes

~ CHAPTER 33 ~

Topics and concepts included in this chapter:

1. Penal Law offenses pertaining to illegal possession of VIN and unauthorized use of a vehicle.
2. Penal Law offenses pertaining to auto stripping.
3. Crimes related to automobile operation.

Mandatory Patrol Guide Procedure

Arrests

P.G. 208-41 Persons Under Twenty-One Operating a Motor Vehicle after Having Consumed Alcohol



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This section describes some offenses that, at first glance, appear to be a larceny. However, these offenses either lack the elements necessary to charge larceny or are used as additional charges to the crime of larceny. To commit a larceny, it is necessary that the offender intends either to deprive the owner or to appropriate the property permanently or for so long a period that the major portion of the property's economic benefit is lost to the owner.

A person who takes a vehicle to use for a day, a week, even a couple of weeks, and does not intend to deprive the owner either permanently or for so long a period that a major part of the vehicle's economic value or benefit is lost, has committed unauthorized use of a vehicle. This is the basic difference between the two crimes. Where intent to take the vehicle permanently can be determined, the crime should be handled as a grand larceny.

ILLEGAL POSSESSION OF A VEHICLE IDENTIFICATION NUMBER – FELONY (P.L. 170.70)

A person is guilty of illegal possession of a vehicle identification number when he knowingly alters a VIN plate, or possesses such a plate that has been removed from a vehicle or vehicle part illegally.

- **Note:** When a question arises concerning the location and/or the validity of the VIN or whether assistance is needed to ascertain if the vehicle is stolen, confer with a member of your command who has been trained by the Auto Crime Division, a local Borough Auto Larceny Unit or contact the Auto Crime Division direct.

UNAUTHORIZED USE OF A VEHICLE

Unauthorized use of a vehicle is an offense commonly referred to as "joyriding." It can be either a misdemeanor or a felony. Unauthorized use of a vehicle means using a vehicle without the permission or consent of the owner; there is no intent to gain the value of the vehicle permanently.

There are three ways to commit the offense of unauthorized use of a vehicle:

1. Use of a vehicle without permission;
2. Use of a vehicle as a gross deviation from a repair contract;
3. Use of a vehicle, retained or withheld, as a gross deviation from an agreement.



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UNAUTHORIZED USE OF A VEHICLE – MISDEMEANOR (P.L. 165.05)

1. A person is guilty of unauthorized use of a vehicle (*without permission*) when, knowing that he does not have the consent of the owner; he takes, operates, exercises, control over, rides in, or otherwise uses; a vehicle.
 - **Note:** This charge would also apply in the case of the theft of an auto. Charge grand larceny for appropriating the property and unauthorized use of a vehicle for using the vehicle.
 - **Example:** A person sees his neighbor's vehicle parked in their common driveway with the keys in the ignition. He decides to use it to go to the store and returns after approximately thirty (30) minutes.
2. A person is guilty of unauthorized use of a vehicle (*gross deviation from contract*) when:
 - Having custody of a vehicle;
 - Pursuant to an agreement between himself (or another) and the owner of the vehicle;
 - That he (or another) is to perform, for compensation, a specific service for the owner involving maintenance, repair or the use of the vehicle;
 - He intentionally uses or operates the vehicle without the consent of the owner for his own purposes and in a manner constituting a gross deviation from the agreed purpose.
 - **Example:** A mechanic was given a car to repair on Friday. He was told that the owner would pick it up on Monday. The mechanic finished the repair work Friday evening and decided to use the car to go on a weekend trip. The mechanic could be charged with unauthorized use of a vehicle, because his trip was a gross deviation from the agreement to repair the car. The agreement could have included a short drive for testing purposes, but not a weekend trip.
3. A person is guilty of unauthorized use of a vehicle (*retained or withheld*) when:
 - Having custody of a vehicle;
 - Pursuant to an agreement with the owner of the vehicle (usually a rental/lease agreement);



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- That the vehicle is to be returned to the owner at a specified time;
- He intentionally retains or withholds possession of the vehicle without the consent of the owner;
- For so lengthy a period beyond the specified time as to make such retention or possession a gross deviation from the agreement.
 - **Note:** A “gross deviation” means a person has custody of the vehicle for 15 days or less pursuant to a written agreement and retains the vehicle for at least 7 days beyond the agreed upon time of return or for more than 2 days after being served with written notice demanding the return of the vehicle.
 - **Note:** If the rental contract was obtained through fraudulent means, a Complaint Report will be prepared for **Grand Larceny**, if not; the Complaint Report will be classified as **Investigation - Unauthorized Use of a Vehicle**.

UNAUTHORIZED USE OF A VEHICLE – FELONY (P.L. 165.06/.08)

A person is guilty of unauthorized use of a vehicle - felony when he commits unauthorized use of a vehicle - misdemeanor, subdivision 1 (*without permission*); **and**

- He has been previously convicted of this same offense and subdivision within the preceding ten years; or
- He has the intent to use the vehicle in the course of, or the commission of, a class A, B, C, or D felony, or in immediate flight therefrom.

AUTO STRIPPING – MISDEMEANOR (P.L. 165.09)

A person can be charged with auto stripping - misdemeanor, when he removes or intentionally destroys or defaces any part of a vehicle, *including an abandoned vehicle*, without permission of the owner, or authorization by law.

- **Example:** Mark noticed a car parked on the street that had a set of expensive rims. Being experienced in car theft, Mark quickly hot-wired the car and drove it to an out-of -the way location. He then removed the car's rims and tires. Mark could be prosecuted for auto stripping in the third degree as well as other charges, since he took a car that belong to someone else and removed parts without the permission of the car's owner.

AUTO STRIPPING – SECOND DEGREE FELONY (P.L. 165.10)

A person can be charged with auto stripping - felony when:



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- He commits auto stripping – misdemeanor, **and** has been previously convicted within the last five years of auto stripping - misdemeanor; **or**
- He or she removes or intentionally destroys, defaces, disguises, or alters any part of **two or more vehicles, other than abandoned vehicles**, without the permission of the owner, and the value of the parts removed, destroyed, defaced, disguised, or altered **exceeds an aggregate value / total value of \$1,000 dollars.**
- **Example:** Joe sees two cars parked on the street. He removes the front bumper, and rims off each car which totaled 1,010 dollars. Joe could be prosecuted for auto stripping in the second degree since he removed parts without the permission of the owners.

AUTO STRIPPING – FIRST DEGREE FELONY (P.L. 165.11)

A person can be charged with auto stripping - felony when:

- He or she removes or intentionally destroys, defaces, disguises, or alters any part of **three or more vehicles, other than abandoned vehicles**, without the permission of the owner, and the value of the parts of vehicles removed, destroyed, defaced, disguised, or altered **exceeds an aggregate value of \$3,000 dollars.**

PART II: CRIMES RELATED TO AUTOMOBILE OPERATION

A police officer may come across a variety of crimes in the course of an automobile investigation. These crimes may relate to the automobile itself (auto larceny, altered VIN) or to the person (DWI, unlicensed operation of a vehicle). This section will cover the crimes and violations related to the operator of a vehicle.

OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS (VEHICLE AND TRAFFIC LAW – SECTION 1192)

V.T.L. Section 1192, sub. 1 - Violation

Driving While Ability Impaired: no person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol. Blood alcohol concentration (BAC) is **more than .05 but less than .08.**

Note: A **third conviction** for this offense within ten years is a **misdemeanor.**

V.T.L. Section 1192, sub. 2 - Misdemeanor



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Driving While Intoxicated: no person shall operate a motor vehicle while such person has **.08 percent or more** by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine, or saliva.

V.T.L. Section 1192, sub. 2 (a) - Misdemeanor

Aggravated Driving While Intoxicated: no person shall operate a motor vehicle while such person has **.18 percent or more** by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine, or saliva.

V.T.L. Section 1192, sub. 3 - Misdemeanor

Driving While Intoxicated: no person shall operate a motor vehicle while in an intoxicated condition (based upon a police officer's observation).

V.T.L. Section 1192, sub. 4 - Misdemeanor

Driving While Ability Impaired by Drugs: no person shall operate a motor vehicle while the person's ability to operate such a vehicle is impaired by the use of drugs.

V.T.L. Section 1192, sub. 4 (a) - Misdemeanor

Driving While Ability Impaired by the Combined Influence of Drugs or of Alcohol and Any Drug or Drugs: no person shall operate a motor vehicle while the person's ability to operate such a vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs.

THE CHILD PASSENGER PROTECTION ACT (LEANDRA'S LAW)

Any person operating a vehicle while intoxicated or under the influence of drugs in violation of **V.T.L. Section 1192, sub. 2, 2a, 3, 4, or 4a** as noted above with a child 15 years of age or less in the vehicle will be charged with a **class "E" felony - Driving While Intoxicated or Driving While Ability Impaired by Drugs**. The operator's driver license will be automatically suspended.

Any person operating a vehicle while intoxicated or under the influence of drugs in violation of **V.T.L. Section 1192, sub. 2, 2a, 3, 4, or 4a** with a child 15 years of age or less in the vehicle and causes a serious physical injury to such child will be charged with either **P.L. 120.04 Vehicular Assault 1° - class "D" felony** or depending on the circumstances **P.L. 120.04(a) Aggravated Vehicular Assault – class "C" felony**.

Any person operating a vehicle while intoxicated or under the influence of drugs in violation of **V.T.L. Section 1192, sub. 2, 2a, 3, 4, or 4a** with a child 15 years of age or less in the vehicle and causes the death of such child will be charged with either **P.L. 125.13 Vehicular Manslaughter 1° class "C" felony** or depending on the circumstances **P.L. 125.14 Aggravated Vehicular Homicide – class "B" felony**.



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Individuals who are a parent, guardian, and custodian or otherwise legally responsible for a child who is charged with driving while impaired by alcohol or drugs while a child 15 years of age or less is a passenger in the vehicle would be reported to the Statewide Central Registry of Child Abuse and Maltreatment by the arresting officer or arresting agency.

When a person is arrested for driving while intoxicated as the result of an auto collision and the person has seriously injured or killed another individual, additional charges will be added as follows:

VEHICULAR ASSAULT – FELONY (P.L. 120.03, 120.04)

A person commits vehicular assault when he causes a **serious physical injury** to another by operating a **motor vehicle**, including a snowmobile or all-terrain vehicle, while in violation of NYS Vehicle and Traffic Law, section 1192, sub. 2, 2a, 3, 4 or 4a.

VEHICULAR MANSLAUGHTER – FELONY (P.L. 125.12, 125.13)

A person commits vehicular manslaughter when he causes the **death** of another by operating a **motor vehicle**, including a snowmobile or all-terrain vehicle, while in violation of NYS Vehicle and Traffic Law, section 1192, sub. 2, 2a, 3, 4, or 4a.

ZERO TOLERANCE LAW (VEHICLE AND TRAFFIC LAW SECTION 1192A)

The Zero Tolerance Law (VTL Section 1192a) requires a six-month suspension of a driver's license or privilege and payment of a civil penalty, if after an administration hearing conducted by the NYS Department of Motor Vehicles, it is determined that a person, **less than 21 years of age**, operated a motor vehicle after having consumed alcohol. Such a person must have had a chemical test reading of .02 to .05%.

If a uniformed member of the service has probable cause to believe that a person under the age of 21 is operating a motor vehicle while impaired or intoxicated, a summary arrest will be effected.

Under the authority of the Zero Tolerance Law, a police officer can temporarily detain a motorist younger than 21 years of age, for the purpose of administering a chemical test upon reasonable grounds to believe that the individual is operating a motor vehicle after having consumed alcohol. Reasonable grounds are considered as follows:

- The **totality of the circumstances** surrounding the incident which, when taken together, indicate that an operator under the age of 21 was driving a motor vehicle while impaired or intoxicated. Such circumstances may include any visible or behavioral indication of alcohol consumption by the operator, the existence of an open container containing or having



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contained an alcoholic beverage in or around the vehicle driven by the operator, or any other evidence surrounding the circumstance of the incident which indicates that the operator has been operating a motor vehicle after having consumed alcohol at the time of the incident.

A violation of the Zero Tolerance Law is not a criminal offense. It is a civil violation, which can result in a six-month license suspension and a fine. An individual who refuses a chemical test pursuant to this statute will have their license revoked for a period of one year. Even though the law allows for civil penalties only, it also allows a police officer to temporarily detain the individual for the purpose of administering a chemical test.

The procedures for administering the chemical test are virtually the same as a standard chemical test. If the subject registers between a .02 and .05 they will be notified to appear at a scheduled suspension hearing and released. If the subject registers above a .05, they will be arrested and processed accordingly.

- **Note:** The initial detention of the individual under the Zero Tolerance Law is for the purpose of administering a chemical test.

PART III: UNLAWFUL OPERATION OF A MOTOR VEHICLE

The authority to operate a motor vehicle may be suspended, revoked or otherwise withdrawn for a variety of reasons, including reckless driving, failure to take a chemical test, D.W.I., failure to pay fines, etc. Additionally, licenses are not granted to individuals who fail road tests. Individuals who unlawfully operate motor vehicles pose a danger to all other drivers and pedestrians. The following sections explain those NYS Vehicle and Traffic Law statutes that apply to unlawful operation of a motor vehicle.

UNLICENSED OPERATOR – TRAFFIC INFRACTION (VTL SECTION 509, SUB.1)

No person shall operate or drive 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 unless he or she is duly licensed pursuant to the provisions contained in Article 19 of the NYS Vehicle and Traffic Law.

- **Note:** If such motorists are properly identified, they are usually issued a Universal Traffic Summons for this infraction.



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AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE 3RD DEGREE – MISDEMEANOR (VTL 511, SUB.1)

No person shall operate a motor vehicle upon a public highway/street while knowing or having reason to know that his or her license is **suspended, revoked or otherwise withdrawn**.

- **Note:** The motorist, in this situation will be arrested, and if eligible, should be processed for a Desk Appearance Ticket (DAT).

AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE 2ND DEGREE – MISDEMEANOR (VTL 511, SUB.2)

No person shall operate a motor vehicle upon a public highway/street while knowing or having reason to know that his or her license is **suspended, revoked or otherwise withdrawn, and:**

1. The operator of such motor vehicle **has a conviction for the same offense within the preceding 18 months; or**
2. The suspension or **revocation is based upon a refusal to submit to a chemical test** pursuant to Section 1192 of the NYS Vehicle and Traffic Law; **or**
3. Such person **has in effect three or more suspensions** imposed on at least three separate dates for failure to answer, appear or pay a fine for previously issued summonses.

– **Note:** Motorists stopped for VTL 511, sub. 2 will be arrested and are **not eligible for DATs**.

– **Note:** When processing persons arrested for aggravated unlicensed operation 2nd/3rd degree – misdemeanor, ensure that the following information is recorded in the “Narrative” section of the **Online Booking System Arrest Worksheet:**

- The make, model, year and color of the vehicle operated by the defendant;
- The license plate number of the vehicle operated by the defendant and the state the vehicle is registered in;
- If the vehicle does not have a metal plate, the temporary or alternate plate will be recorded.

The above information will be recorded in the “Narrative” section of the OLBS even if the defendant was not the owner of the vehicle being operated at the time of arrest.



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The name and address (apartment number, if applicable) of the registered owner of the vehicle will be recorded in addition to the above.

AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE 1ST DEGREE - FELONY (VTL 511, SUB. 3)

No person shall **operate a motor vehicle** upon a public highway/street while knowing or having reason to know that such person's license is **suspended, revoked or otherwise withdrawn and:**

1. Commits the offense of aggravated unlicensed operation of a motor vehicle 2nd degree while under the influence of alcohol or drug.
2. Such person **has in effect ten or more suspensions** imposed on at least ten separate dates for failure to answer, appear or pay a fine for previously issued summonses.
3. Operates a motor vehicle while license is under permanent revocation.
4. Operates a motor vehicle while holding a conditional license and under the influence of alcohol or drug.
 - **Note:** This is a **felony**. The motorist must be arrested and processed through normal procedures (**NO DAT**).