

UNAUTHORIZED USE OF A VEHICLE IN THE THIRD DEGREE
(Bailment for Repairs;
Gross Deviation From Terms)
Penal Law § 165.05(2)
(Committed on or after Sept. 1, 1982)

The (*specify*) 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, having custody of a vehicle pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he intentionally uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose.

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

An OWNER means a person who has a right to possession of the vehicle which is superior to that of the person in possession of such vehicle by virtue of the agreement.¹

¹ 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.

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY uses or operates a vehicle, without the consent of the owner, for his own purposes, in a manner constituting a gross deviation from the agreed purpose when that person's conscious objective or purpose is to do so.²

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), had custody of a vehicle pursuant to an agreement between himself [or another] and the owner whereby he [or another] was to perform a specific service for the owner involving the maintenance, repair or use of the vehicle; and
2. That the defendant intentionally used or operated the vehicle without the owner's consent, for his own purposes, in a manner constituting a gross deviation from the agreed purpose.

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.

² See Penal Law § 15.05(1).

