

**UNAUTHORIZED USE OF A VEHICLE IN THE THIRD DEGREE  
(Unlawful Retention of Rented/Bailed Vehicle)  
Penal Law § 165.05(3)  
(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 with the owner thereof whereby such vehicle is to be returned to the owner at a specified time, he or she intentionally retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

The following terms used in that definition have a special meaning<sup>1</sup>:

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.<sup>2</sup>

A person acts INTENTIONALLY when that person's conscious objective or purpose is to cause a particular result or to engage in particular conduct.<sup>3</sup> Thus, a person intentionally retains or withholds possession of a vehicle, without the consent of the owner, for so lengthy a period beyond the specified time as

---

<sup>1</sup>If the term "vehicle" is in issue, see Penal Law § 10.00(14).

<sup>2</sup>See Penal Law § 155.00(5). 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.

<sup>3</sup>See Penal Law § 15.05(1).

to render such retention or possession a gross deviation from the agreement when that person's conscious objective or purpose is to do so.

A GROSS DEVIATION FROM THE AGREEMENT consists of, but is not limited to, circumstances in which a person who, having had custody of a vehicle for fifteen [15] days or less pursuant to a written agreement

retains possession of such vehicle for at least seven [7] days beyond the period specified in the agreement and

continues such possession for a period of more than two [2] days after service [*or* refusal of attempted service] of a notice in person [*or* by certified mail at an address indicated in the agreement] stating:

(i) the date and time at which the vehicle was to have been returned under the agreement;

(ii) that the owner does not consent to the continued withholding or retaining of such vehicle and demands its return; and

(iii) that continued withholding or retaining of the vehicle may constitute a class A misdemeanor punishable by a fine of up to one thousand dollars [\$1,000] or by a sentence to a term of imprisonment for a period of up to one year or by both such fine and imprisonment.<sup>4</sup>

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:

---

<sup>4</sup>See Penal Law § 165.05(3).

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 with its owner whereby it was to be returned to the owner at a specified time; and
2. That the defendant intentionally retained or withheld possession of such vehicle, without the owner's consent, for so long a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

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.