

**UNAUTHORIZED USE OF A VEHICLE  
THIRD DEGREE  
(A Misdemeanor)  
(Unlawful Retention of  
Rented/Bailed Vehicle)  
PENAL LAW 165.05(3)  
(Committed on or after Sept. 1, 1982)**

The \_\_\_\_\_ 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.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms:<sup>1</sup> "owner," "intentionally," and "gross deviation from an agreement."

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

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<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), 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.

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 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

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<sup>3</sup>See Penal Law § 15.05(1).

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:

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.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Unauthorized Use of a Vehicle in the Third Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Unauthorized Use of a Vehicle in the Third Degree as charged in the \_\_\_\_\_ count.

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