

See: Minutes of Commission
7/19/68, p. 2, Vol. VIII, Tape #9

CRIMINAL LAW REVISION COMMISSION
309 Capitol Building
Salem, Oregon

ARTICLE 14. THEFT - RELATED OFFENSES

Unauthorized Use of a Vehicle

Preliminary Draft No. 2; April 1968

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Subcommittee No. 1

CRIMINAL LAW REVISION COMMISSION
309 Capitol Building
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UNAUTHORIZED USE OF A VEHICLE

Preliminary Draft No. 2; April 1968

Section ____ . Unauthorized use of a vehicle. (1) A person commits the crime of unauthorized use of a vehicle when:

(a) He takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner; or

(b) Having custody of a vehicle, boat or aircraft 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, boat or aircraft, he intentionally uses or operates it, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or

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(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, he knowingly retains or withholds possession thereof without 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.

(2) Unauthorized use of a vehicle, boat or aircraft is a

_____.

COMMENTARY - UNAUTHORIZED USE OF A VEHICLE

A. Summary

This section covers the "joy-riding" type of offense wherein the actor makes unauthorized use of another's vehicle but without the intent to steal it or permanently deprive the owner of its use. The purpose of the language, "takes, operates, exercises control over, rides in or otherwise uses," is to prohibit not only the taking or driving of another's vehicle without permission but, also, to prohibit any unauthorized use of the vehicle.

The first draft of the section limited its coverage to "motor-propelled" vehicles only; however, the subcommittee felt that the proposal should protect owners of such things as trailers, sailboats and gliders.

B. Derivation

Subsection (1) (a) is adapted from Model Penal Code section 223.9 and New York Revised Penal Law section 165.05.

Subsections (1) (b) and (c) are taken from New York section 165.05 and define offenses that sound of embezzlement, wherein the defendant originally obtains possession or custody legally, but then misuses or withholds the vehicle wrongfully. Subsection (1) (b) would cover the case of a mechanic who unauthorizedly takes a customer's car and uses it for a personal trip. The type of situation that illustrates (c) would be that of a gratuitous bailment in which a person borrows another's car in Oregon for a few hours and then drives it to another state, keeping it there for several months. In each type of case, the conduct must be a "gross deviation" from the agreed purpose of the bailment.

C. Relationship to Existing Law

It is submitted that the scope of the draft is broad enough to include those acts covered by three separate ORS sections.

The existing "joy-riding" statute provides:

"ORS 164.670. (1) Every person who takes or uses without authority any vehicle, watercraft or aircraft without intent to steal it, or is a party to such unauthorized taking or using, shall be punished upon conviction by imprisonment in the penitentiary for not more than two years, or by a fine of not more than \$500. For the first

offense the court may reduce the punishment to imprisonment in the county jail for not more than six months, or a fine of not more than \$200.

"(2) This section applies to any person employed by the owner of a vehicle, watercraft or aircraft or anyone else who, by the nature of his employment, has the charge of or the authority to drive the vehicle, watercraft or aircraft if it is driven or used without the owner's knowledge or consent; and when so operated the owner thereof shall not be responsible."

Companion statutes, ORS 164.650 and 164.660, prohibit manipulating, starting or tampering with motor vehicles.

"ORS 164.650. With the exception of an authorized officer, marshal, constable or policeman, any person who, without the consent of the owner or person lawfully in charge of a motor vehicle, as defined in ORS 483.014, climbs upon or into such motor vehicle, whether it is at rest or in motion; or, while it is at rest or unattended, attempts to manipulate any of the levers, the starting crank or other device, brakes or mechanism, or sets the vehicle in motion, shall be punished, upon conviction, as provided in subsection (1) of ORS 483.990 for violation of the statutes listed therein."

"ORS 164.660. Any person who, individually or in association with one or more others and against the will or consent of the owner of any motor vehicle, as defined in ORS 483.014, wilfully breaks, injures, tampers with or removes any part of such vehicle for the purpose of injuring, defacing or destroying it, or temporarily or permanently preventing its useful operating for any purpose, or in any manner wilfully or maliciously interferes with or prevents the running or operation of such motor vehicle, shall be punished, upon conviction, as for a misdemeanor."

It will be noted that ORS 164.670 uses the terms "vehicle, watercraft or aircraft," while ORS 164.650 and 164.660 employ the term "motor vehicle as defined in ORS 483.014" and in defining the type of property protected by the particular sections. The statute was amended in 1965 to insert the terms "watercraft or aircraft."

ORS 483.014 (4) provides: "'Motor vehicle' means every vehicle which is self-propelled." The "taking or using" statute does not define nor incorporate by reference any other statutory definition of "vehicle."

"Vehicle" is defined in ORS 482.030 (4) as "every device in, upon or by which any person or property is or may

be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks." The term is defined in ORS 486.011 (11) as meaning "every trailer or semi-trailer, and every device which is self-propelled or propelled by electric power from overhead trolley wires but not operated upon rails."

ORS 492.010 (3) defines "aircraft" as "any contrivance used or designed for navigation of or flight in the air."

The statutes contain no definition of the term "watercraft" and the regulatory statutes all employ the word "boat." ORS 488.705 (2) provides:

"'Boat' means every description of watercraft used or capable of being used as a means of transportation on the water, but does not include aircraft equipped to land on water."

Webster's New Collegiate Dictionary (1965 ed.) defines "watercraft" as meaning a "ship or boat."

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TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

Section 223.9. Unauthorized Use of Automobiles and Other Vehicles

A person commits a misdemeanor if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to prosecution under this Section that the actor reasonably believed that the owner would have consented to the operation had he known of it.

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Text of New York Revised Penal Law

Section 165.05. Unauthorized use of a vehicle

A person is guilty of unauthorized use of a vehicle when:

1. Knowing that he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle. A person who engages in any such conduct without the consent of the owner is presumed to know that he does not have such consent; or

2. 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; or

3. 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 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.

Unauthorized use of a vehicle is a class A misdemeanor.

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