

UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE
Penal Law § 135.05
(Committed on or after Sept. 1, 1967)

The (*specify*) count is Unlawful Imprisonment in the Second Degree.

Under our law, a person is guilty of Unlawful Imprisonment in the Second Degree when he or she restrains another person.

The following term used in that definition has a special meaning:

RESTRAIN means to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his or her liberty by moving him or her from one place to another, or by confining him or her either in the place where the restriction commences or in a place to which he or she has been moved, without consent and with knowledge that the restriction is unlawful.¹

A person restricts another's movements intentionally when his or her conscious objective or purpose is to restrict that person's movements.²

A person restricts another's movements unlawfully when he or she is not authorized by law to do so.

NOTE: Select appropriate alternative:

Under our law, with certain exceptions not applicable here, a person is not authorized by law to restrict another's movements.

or

Under our law, a person is authorized by law to restrict another's movements when (read the applicable law that

¹ See Penal Law § 135.00(1).

² See Penal Law § 15.05(1).

authorizes a person to restrict another's movements.³

A person restricts another's movements with knowledge that the restriction is unlawful when he or she is aware that the restriction is not authorized by law.⁴

A person is moved or confined without consent when such is accomplished

Select appropriate alternative:

by physical force, intimidation or deception.

or

by any means whatever, including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of him or her has not acquiesced in the movement or confinement.⁵

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, the following four elements:

1. That on or about (date) , in the County of (county) , the defendant, (defendant's name) , restricted (specify) 's movements in such manner as to interfere substantially with his/ her liberty by moving him/ her from one place to another, or by confining him/her either in the place where the restriction commenced or in a place to which he/she had been moved;

³ See, e.g., CPL §§ 140.15, 140.35, Penal Law §§ 35.05, 35.10.

⁴ See *People v. Weiss*, 276 N.Y. 384 (1938). Cf. Penal Law § 15.05(2).

⁵ See, Penal Law § 135.00(1).

2. That the defendant did so without consent of _____
(specify).
3. That the defendant did so intentionally; and
4. That the restriction of (specify)'s movements was unlawful, and the defendant knew that the restriction was unlawful.

[NOTE: If affirmative defense does not apply, conclude as follows:

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.]

[NOTE: If affirmative defense applies, continue as follows:

If you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of Unlawful Imprisonment in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have proven beyond a reasonable doubt each of those elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Unlawful Imprisonment in the Second Degree, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to this charge that the person restrained was a child less than sixteen years old, and the defendant was a relative of such child, and the defendant's sole purpose was to assume control of such child.⁶ The term "relative" includes a parent [an ancestor][a brother][a sister] [an

⁶ See, Penal Law § 135.15.

uncle] [an aunt].⁷

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

Therefore, if you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven each of the elements of Unlawful Imprisonment in the Second Degree beyond a reasonable doubt, you must find the defendant guilty of that crime as charged in the _____ count.

On the other hand, if you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Unlawful Imprisonment in the Second Degree as charged in the _____ count.]

⁷ See, Penal Law § 135.00(3).