

CUSTODIAL INTERFERENCE IN THE SECOND DEGREE
(Class A misdemeanor)
(Relative of a Child)
PENAL LAW 135.45(1)
(Committed on or after September 1, 1967)

The _____ count is Custodial Interference in the Second Degree.

Under our law, a person is guilty of custodial interference in the second degree when being a relative of a child less than sixteen years old, intending to hold such child permanently or for a protracted period, and knowing that he or she has no legal right to do so, he or she takes or entices such child from his or her lawful custodian.

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: "relative," and "intending."

RELATIVE includes a:
[Select appropriate relative:
parent, ancestor, brother, sister, uncle, or aunt.^{1]}

INTENT means conscious objective or purpose.² Thus, a person INTENDING to hold a child permanently or for a protracted period is a person whose conscious objective or purpose is to do so.

Under our law, knowledge by the defendant of the age of such child is not an element of the offense and it is not therefore a defense to a prosecution for this offense that the defendant did not know the age of the child or believed such age to be the same as or greater than that specified in the statute.³

¹ Penal Law § 135.00(3).

² See Penal Law § 15.05(1).

³ Penal Law § 15.20(3).

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), in the county of (county), the defendant took or enticed (specify) from his/her lawful custodian;
2. That the defendant did so knowing that he had no legal right to do so;
3. That the defendant did so intending to hold (specify) permanently or for a protracted period; and
4. That the defendant was a relative of (specify), and (specify) was a child less than sixteen years old.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Custodial Interference In the Second Degree as charged in the _____ count.

On the other hand, 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 the crime of Custodial Interference In the Second Degree as charged in the _____ count.