

**SUBSTITUTION OF CHILDREN**  
**Penal Law § 135.55**  
**(Committed on or after September 1, 1967)**

The (specify) count is Substitution of Children.

Under our law, a person is guilty of substitution of children when, having been temporarily entrusted with a child less than one year old and intending to deceive a parent, guardian or other lawful custodian of such child, he substitutes, produces or returns to such parent, guardian or custodian a child other than the one entrusted.

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

INTENT means conscious objective or purpose.<sup>1</sup> Thus, a person who is intending to deceive a parent, guardian or other lawful custodian of a child is a person whose conscious objective or purpose is to do so.

Under our law, knowledge by the defendant of the age of the child is not an element of the offense and therefore it is not a defense to a prosecution for this offense that the defendant did not know the age of the child or believed his/her age to be one year or more.<sup>2</sup>

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), the defendant, (defendant's name), was temporarily entrusted with (specify) who was a child less than one year old;

2. That, on that date, (specify) was the child's parent,

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<sup>1</sup> See Penal Law § 15.05(1).

<sup>2</sup> Penal Law § 15.20(3).

guardian or custodian;

3. That on that date in the county of (county) the defendant substituted, produced or returned to (specify parent, guardian or custodian) a child other than (specify); and

4. That the defendant did so intending to deceive (specify parent, guardian or custodian).

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.