

**KIDNAPPING  
FIRST DEGREE  
(A-I Felony)  
(Held for more than 12 hours;  
physical injury or abuse sexually)  
PENAL LAW 135.25(2)(a)  
(Committed on or after Sept. 1, 1973)**

The \_\_\_\_\_ count is Kidnapping in the First Degree.

Under our law, a person is guilty of Kidnapping in the First Degree when he or she abducts another person and when he or she restrains the person abducted for a period of more than twelve hours with intent to inflict physical injury upon that person [or to violate or abuse that person sexually].

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: "physical injury," "intent," and "abduct."

**PHYSICAL INJURY** means the impairment of physical condition or substantial pain.<sup>1</sup>

**INTENT** means conscious objective or purpose.<sup>2</sup> Thus, a person acts with intent to inflict physical injury upon another [or violate or abuse another sexually] when his or her conscious objective or purpose is to do so.

**ABDUCT** means to restrain a person with intent to prevent that person's liberation either by secreting or holding him or her in a place where he or she is not likely to be found, or by using or threatening to use deadly physical force.<sup>3</sup>

The words "restrain," "intent," and "deadly physical force"

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<sup>1</sup> See, Penal Law § 10.00(9).

<sup>2</sup> See, Penal Law § 15.05(1).

<sup>3</sup> See, Penal Law § 135.00(2).

used in the definition of "abduct" also have their own special meanings.

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.<sup>4</sup>

A person restricts another's movements intentionally when his or her conscious objective or purpose is to restrict that person's movements.<sup>5</sup>

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 authorizes a person to restrict another's movements<sup>6</sup>).

A person restricts another's movements with knowledge that the restriction is unlawful when he or she is aware that the

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<sup>4</sup> See Penal Law § 135.00(1).

<sup>5</sup> See Penal Law § 15.05(1).

<sup>6</sup> See, e.g., CPL §§ 140.15, 140.35, Penal Law §§ 35.05, 35.10.

restriction is not authorized by law.<sup>7</sup>

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

*NOTE: 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.<sup>8</sup>

Intent means conscious objective or purpose.<sup>9</sup> Thus, a person acts with intent to prevent another's liberation either by secreting or holding him or her in a place where he or she is not likely to be found, or by using or threatening to use deadly physical force, when that person's conscious objective or purpose is to do so.

Deadly physical force means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.<sup>10</sup> Serious physical injury means impairment of a person's physical condition which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health, or

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<sup>7</sup> See *People v. Weiss*, 276 N.Y. 384 (1938). Cf. Penal Law § 15.05(2).

<sup>8</sup> See Penal Law § 135.00(1).

<sup>9</sup> See Penal Law § 15.05(1).

<sup>10</sup> See Penal Law § 10.00(11).

protracted loss or impairment of the function of any bodily organ.<sup>11</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, each of the following six 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;
2. That the defendant did so without consent of (specify).
3. That the defendant did so intentionally;
4. That the restriction of (specify)'s movements was unlawful, and the defendant knew that the restriction was unlawful.
5. That the defendant restrained (specify) with intent to prevent (specify)'s liberation either by secreting or holding him/her in a place where he/she was not likely to be found, or by using or threatening to use deadly physical force; and
6. That the defendant restrained (specify) for a period of more than twelve hours with intent to inflict physical injury upon (specify) [or violate or abuse (specify) sexually].

Therefore, if you find that the People have proven beyond a

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<sup>11</sup> See, Penal Law § 10.00(10).

reasonable doubt each of those elements, you must find the defendant guilty of the crime of Kidnapping in the First 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 Kidnapping in the First Degree as charged in the \_\_\_\_\_ count.