

CUSTODIAL INTERFERENCE IN THE FIRST DEGREE
(Person Entrusted to Another Removed from State)
Penal Law § 135.50(1)
(Committed on or after July 27, 1981)

The (*specify*) count is Custodial Interference in the First Degree.

Under our law, a person is guilty of custodial interference in the first degree when, knowing that he or she has no legal right to do so, that person takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution and, with the intent to permanently remove the victim from this state, he or she removes such person from the state.¹

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

INTENT means conscious objective or purpose.² Thus, a person acts with intent to permanently remove another from this state when that person's conscious objective or purpose is to do so.

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 five elements:

1. That on or about (date) , (*specify*) was a person entrusted by authority of law to the custody of (*specify*);

2. That on that date in the county of (county) , the

¹ The statute defining this crime, Penal Law §135.50, begins: "A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree ..." This charge incorporates the definition of custodial interference in the second degree as defined in Penal Law §135.45(2).

² See Penal Law § 15.05(1).

defendant, (*defendant's name*), enticed (*specify*) from the lawful custody of (*specify*);

3. That the defendant knew that he/she had no legal right to do;

4. That the defendant removed (*specify*) from the state; and

5. That the defendant did so with the intent to permanently remove (*specify*) from the state.

[NOTE: If the affirmative defense does not apply:

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 the affirmative defense applies:

If you find that the People have not proven beyond a reasonable doubt any one or more those elements, you must find the defendant not guilty of Custodial Interference in the First 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 Custodial Interference in the First Degree as charged in the _____ count, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to this charge of Custodial Interference in the First Degree that the victim had been abandoned or that the taking was necessary in an emergency to protect the victim because he/she has been subjected to or

threatened with mistreatment or abuse.³

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 beyond a reasonable doubt each of the elements of Custodial Interference in the First Degree, 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 Custodial Interference in the First Degree as charged in the _____ count.]

³ Penal Law 135.50