

SUBSTITUTION OF CHILDREN: IS THERE A WAY OUT?

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ABSTRACT

What is the probability of substitution of a child? In fact, history of substitution children in hospitals is about a gaffer for the entire twentieth century and less for the twenty-first. But hospitals in the country every day give birth to tens and hundreds of women. Therefore, the percentage of such an outcome just miserable - the likelihood of such a scenario events is very low. According to unofficial statistics of the world, in one capital per 10 000 births, on average, four is substitution. 6 percent substitution occurs due to negligence of medical staff in maternity wards. Why do we choose this problem? Because, Substitution in hospitals is the error of lifelong and no one is immune from this. There are a lot of reasons of substitution of a child. Despite the objective and subjective reasons for the act it entails criminal liability. In this paper medical staffs are considered as a subject of a crime substitute child. We as students of Medical University and as future doctors want to contribute to criminal act prevention.

KEYWORDS

Jurisprudence, Family, Crime Victim, Kazakhstan, Punishment

How to cite this article: Manapova M, Mazzhan Zh. Substitution of children: is there a way out? *Int Stud J Med.* 2015; 1 (4): 31-35

INTRODUCTION

What is the probability of substitution of a child? In fact, history of substitution children in hospitals is about a gaffer for the entire twentieth century and less for the twenty-first. But hospitals in the country every day give birth to tens and hundreds of women. Therefore, the percentage of such an outcome just miserable - the likelihood of such a scenario events is very low. However, from the conversations of doctors, long working in various hospitals obstetrics - this version of events cannot be excluded. Because according to unofficial statistics of the world, in one Moscow per 10 000 births, on average, four substitution. 6 percent substitution occurs due to negligence of medical staff in maternity wards [1]. Why do we choose this problem? Because, Substitution in hospitals is the error of lifelong and no one is immune from this.

MAIN BODY

The child is the meaning of life. This is a continuation of genus. But the raising of another child for several years and know that he's not your child it is hardest hit for parents. Substitution of a child is a rare, but

extremely painful crime for the injured parents. In the middle Ages, it was believed that a child is not a substitute for people, and the evil spirits, who took human form. The substitution of the child as the offense is first mentioned in the Criminal Law in 1903 [2].

This crime legislator refers to attacks against personal freedom. The paper used the term "substitution of the child". The criminal code in 1903 under the substitute child understood deliberate substitution of one mother infant baby the other [3]. By their nature, the act might have been only a relatively infants.

It was envisaged that the substitution of the baby could be made, or with the consent and at the request of his parents, or without such consent. In the first case, if the agreement was mutual, it shall be treated as an infringement on the rights of states, non an encroachment on freedom. In the second case, and if the parents of only one child consented to substitution, it is regarded as theft. Substitution and abduction were punished with hard labor.

Substitution is a typical crime committed in the sphere of social relations regulated by the norms of family law [4]. Its essence lies in the fact that the substitution of a child forcibly broken blood ties of kinship, violated filled with deep moral universal substance of the

Received: 3 November 2015/ Accepted: 5 December 2015/ Published online: 30 December 2015

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relationship between parents and children, the origin of man is falsified, and conspiracy, both parental pairs, or at least one of them and the child (and at exchange babies - both children) are misled about the origin; the actual situation of the family (or two families) is distorted. This is so contrary to the age-old rules of human relationships that is capable of exposing the fraud cause deep and lasting emotional distress, i.e. pecuniary damage to all who fall into this delusion, including adults. But the special, socially significant risk of substitution is swelling out for mental health and overall development of the child's normal.

Substitution of a child as a crime provided in the Criminal Code of the Republic of Kazakhstan dated July 3, 2014 to Article 13

There is written as:

Substitution of a child: 1. Deliberate substitution of a child is punishable by a fine of up to two thousand monthly calculation indices, or correctional labor for the same amount, or restriction of freedom for a term up to two years, or imprisonment for the same term.

2. The same act committed by mercenary or other base motives, shall be punished by imprisonment for a term of three to seven years.

The main direct object of the crime is public relations aimed at protecting family relationships between parents and children, strengthen family relationships.

Substitution of a child can be, as a rule, in the maternity ward immediately after giving birth, or in the days after birth [6]. However, based on medical parameters, it is considered a newborn child up to the age of one month, so the substitution of the child can be carried out also outside the maternity hospital (for example, unattended in a stroller around the newborn home, shop). Substitution of a child is a child's withdrawal and its replacement by another child. In certain situations, the child may be replaced by another child, not only of the same sex and the opposite sex (eg, during childbirth the woman was in a state forgetful and did not know the floor unborn child). Under the Criminal Code of the Republic of Kazakhstan the crime is directed primarily against the family [7].

Victims of crime is a child, who is *object* of substitution of a child. Although the legislation of the RK child is a person under 18 years of age, most researchers

believe that the victims with the substitution of a child can only be a child who cannot yet be identified by parents or other interested parties. Substitution, so in most cases only possible in hospitals and other medical facilities, before the mother or other relatives will be able to set unique identifying characteristics of the child.

The objective side of composition, under Art. 136 of the Criminal Code includes the offense in the form of replacement of one other child. The methods of the acts may be different, but in any case include cheating interested parties as to the identity of the child. With the consent of the child's parents or other interested parties on the implementation of the replacement part of substituting missing child and act qualifies under other articles of the Criminal Code.

The subject is a physical responsible person who has attained 16 years of age. As a rule, health workers, parents of one of the participating entities replacement surgery.

The subjective side of the fault in the form of direct intent and specific motive. As such, selfish act or other ignoble motives. Greed - the desire for unjust enrichment. Other baser motives may include, for example, place of personal hostile relations, to use a child as an organ donor or to commit another crime [8].

The offense formal. The act finished with the commission of actions aimed at the replacement of one other child.

View of scientists

Experts point out that the moment human trafficking acquired transnational organized nature, manifestation of which is the establishment of control over international travel, marriage, and modeling business. The current state of the international adoption of children characterized by the tendency of criminalization of the process, transforming it into a kind of controlled by the laws of supply and demand of the market, where the substitution of a child is one of the ways to implement this law. From the standpoint of criminology, the problems of substitution of a child is not doing many scientists. Thus, A.N. Dubrovina in 1987 developed a method of investigation of the abduction or substitution of a child [9]. E.V. Kushpel (in 1998) [10] and S.A. Kuemzhieva (2002) [11]

looked at the specifics and problems of investigation of these formulations in the study of crimes against the family and minors.

These authors raised and solved many of the problems associated with the investigation of crimes that are the object of our study. However, the range of issues is far from exhausted. Moreover, after the publication of the works of these authors have been significant changes in criminal law, criminal procedure, family and administrative law, which cannot be reflected in the method of investigation of these crimes.

According to scientists such as A.N. Ignatov, Yu. Krasikov, S.N. Nikulin and others. The offender - a special, i.e. a physical responsible person on which duties are legal registration of adoption and transfer of children under guardianship (trusteeship), to grow up in a family of citizens. The most difficult to address the issue of a criminal case of substitution of a child is a situation where information on crime comes to law enforcement authorities with a gap in time from the time of its commission or detection. Often in such cases, information on the commission of the crime is subjective, tentative, and not conclusive of the presence of a crime. In such cases, according to S.A. Kuemzhievoy, the decision to institute criminal proceedings should be taken on the results of genetic research [11]. There are a lot of reasons of substitution of a child. In the figure 1 we will show several of them.

Consequences of substitution of child

First of all, the main sequel of it is no knowing of natural parents. Also, it can lead to shock for parents and child. They can get moral damage and it can causes to psychology disease. Person, who changes a child, should entail liability by the law of Republic of Kazakhstan.

Example of substitution of a child

One of the big discussions of substitution of child in the Republic of Kazakhstan is the family of Bapaev and Ashykbaeva, which reviews in during the 6 year [12].

They were looking forward to third child. They have two sons and third should be born little sister. In any case, as reported by physicians on the basis of ultrasound examination, assuring that the fetus is developing normally. Saule is an experienced

mother and a nurse in the past. She even doubted the successful outcome of labor. In February 2008 she was admitted to the district hospital.

After surgery Bapaeva few days was almost unconscious, and then she was told that the baby girl could not be saved. Then the story took downright mystical character. The couple could not believe that their baby is not. They dreamed that she was alive. Psychics, which they turned in despair, were of the same opinion.

At the urging of family doctors conducted an exhumation followed by molecular genetics examination, the results of which shocked everyone! As follows from the conclusion of Almaty experts, the DNA fragments of the test baby's body does not match with the DNA of Saule and Nurlybaya, moreover, fragments belong to a male child!

In conclusion, prosecutors opened a criminal case under article 114 of the Criminal Code – “Improper performance of professional duties of medical and pharmaceutical workers”. Only doctors have got punishment is reprimand [12].

Solution

It is possible to include in the existing criminal law the following changes:

First, it is necessary to tight sanctions this article, as measured by the legislator is not sufficient degree of public danger of the act.

Secondly, Article 136 “Changeling child” should be supplemented by qualifying features: h. 2 and 3 next content:

Part 2: The same act committed:

- a) Against two or more persons;
- b) A group of persons by prior agreement.

It is necessary because there are signs of persistence in committing the act and the ability to commit more persons agree in advance on the joint commission of a crime, which significantly increases the level of social danger of the act.

Part 3: Actions envisaged in the first or second part of this article, committed by a person using his official position. In this case, an increased

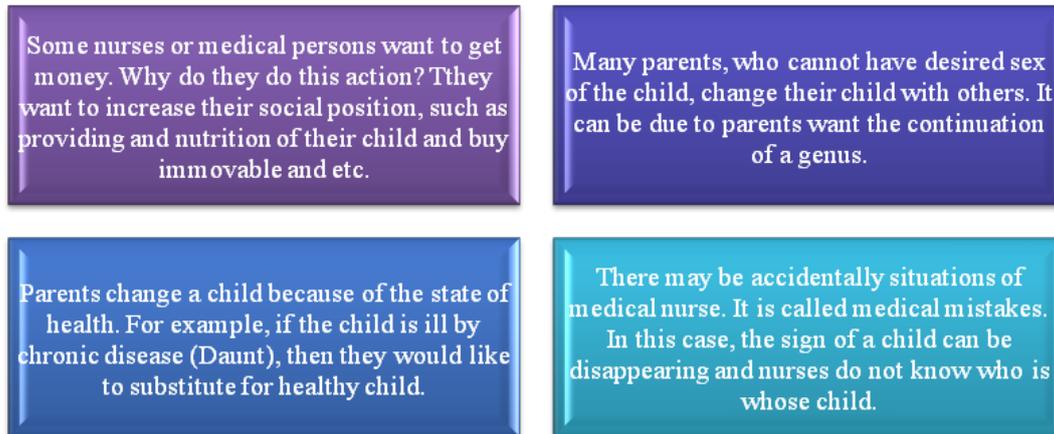


Figure 1. Reasons of substitution of children

danger comes from the person to which have been assigned specific responsibilities, which he despised and used for their own purposes.

And, thirdly, we need a clear allocation of criminal law should concept:

The substitution of newborn children (aged up to one month)

Substitution of minors (under 18 years) are not able to, due to delays in mental development to realize the value handled them [13].

CONCLUSION

In this paper, we considered one of the most specific crimes - the substitution of the child. The concept and the basic features of these types of crimes.

Criminal law protection of the family and imperfect minors, protection of their legal rights and interests is one of the main activities of the state.

The modern concept of a legal, democratic and social state based on the assumption of a maximum of rights and freedoms set out a single set of government guarantees all the subjects of the legal system. At the same time human rights must be more than just declarations and statements, and to have a clear mechanism for their actual embodiment in social reality and in the socio-political, legal relationships a priority. Along with personal rights and interests of the State guarantees the protection of the entire social structure, primary element and which is based on the family.

Analysis of legal practice shows, on the one hand,

of increased latency of crimes against the family and minors, on the other - on the facts of multiple termination or suspension of Proceedings in Criminal Matters, as well as a reduction of the investigated criminal acts.

Convention on the Rights of the Child (Art. 7, 8, 9) gives him the right to live and grow up in a family, to know his parents. Definition of its warranty may serve as the criminal law ban on substitution of a child. However, the current version of Art. 136 of the Criminal Code does not answer the question of the qualifications of a situation in which one of the parties sharing agrees to it under threat of violence or destruction or damage to property, as well as under the threat of the spread of information defamatory or otherwise, that can cause this side of the substantial harm . We believe that in its assessment should be based on the rules of emergency.

In the absence of criminal defenses, both parties should be responsible for the exchange transaction involving a minor under Art. 136 of the Criminal Code. If the threat of a strong-willed character exclude actions of a person who agreed to the exchange, it is exempt from liability under Art. 136 of the Criminal Code.

However, this raises the question of qualification of actions the person uttering threats and forced to exchange or use the same threats to coerce others to child transmission without exchanging it for another. Unfortunately, modern the Criminal Code and the Criminal Code does not give an answer. Their actions in this case do not fall under the heading of the kidnapping, nor substitution, nor on transactions involving minors. And this can be attributed to a

number of gaps of criminal law; to fill that could be, responsible for setting the compulsion to abandon the child.

The proposed amendments reflect only some of the possible ways of improving the criminal legislation of the Republic of Kazakhstan for the established art. 15 of the Constitution of the Republic of Kazakhstan of the principle of priority standards international law over national law.

Our recommendation

After hearing stories about substitution of children, many parents immediately after birth trying to put any marks on the body of a newborn. We recommend scratching a finger of the child or be tagged with green paint on the forehead. Or, when shown the child immediately after birth, a close look at him, to clarify its weight, height, remember this and subsequent meetings to compare.

ACKNOWLEDGEMENTS

The authors thank Master of Law, at the Department of Medical Law and Basics of Legislation in Healthcare, Otarbayeva A.B., for her review of the manuscript and valuable suggestions.

CONFLICT OF INTEREST

The authors confirm that this article content has no conflicts of interest.

AUTHOR CONTRIBUTION

All authors contributed to the study design, interpretation of the literature data, and the manuscript drafting. All authors read and approved the final version of the manuscript for publication.

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