

See: Minutes of Subcommittee No. 2
10/25/68, p. 1, Vol. XI
Tapes #22 and 23

CRIMINAL LAW REVISION COMMISSION
309 Capitol Building
Salem, Oregon

ARTICLE 12

KIDNAPING AND RELATED OFFENSES

Preliminary Draft No. 1; October 1968

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Subcommittee No. 2

ARTICLE 12

KIDNAPING AND RELATED OFFENSES

Preliminary Draft No. 1; October 1968

Section 1. Kidnaping and related offenses; definitions. As used in _____, except as the context may require otherwise:

(1) "Restrain" means to intentionally restrict a person's movements in such a manner as to interfere substantially with his liberty by moving him from one place to another or by confining him either in the place where the restriction commences or in a place to which he has been moved, without his consent and with knowledge that the restriction is unlawful. A restraint is without consent when it is accomplished by:

(a) Physical force, intimidation or deception; or

(b) Any means, including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and the parent, guardian or other person having lawful control or custody of him has not acquiesced in the movement or confinement.

(2) "Abduct" means to restrain a person with intent to prevent his liberation by either:

(a) Secreting or holding him in a place where he is not likely to be found; or

(b) Using or threatening to use deadly physical force.

(3) "Relative" means a parent, ancestor, sibling, uncle, or aunt including an adoptive relative of the same degree through marriage or adoption.

COMMENTARY - KIDNAPING; DEFINITIONS

This section is adapted from New York Penal Law section 135.00 and Michigan Revised Penal Code section 2201.

The terms "restrain" and "abduct", as defined in subsections (1) and (2), form the basis of the Kidnaping and

Related Offenses article. The word "restrain" is defined to include any unlawful, non-consensual, removal or confinement of a person where such removal or confinement "interfere(s) substantially with his liberty." The scope of behavior encompassed by the term "restrain" is broad. It extends to everything from the most serious cases to removals and confinements not involving a high degree of isolation, confinement or violence.

The term "abduct" is defined so as to make abduction a more serious form of restraint involving either secrecy of restraint or the actual or threatened use of life-endangering physical force.* Using this scheme restraint constitutes the crime of unlawful imprisonment and abduction constitutes the crime of kidnaping. In effect, kidnaping is an aggravated form of false imprisonment, just as it was at Common Law.

The significance of the definitions is discussed in the commentaries to the subsequent sections.

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* The definition of the term "deadly physical force" has not yet been drafted. When it is, it will be included in the general definition section preceding the substantive crimes. This section was drafted on the assumption that "deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

TEXT OF REVISIONS OF OTHER STATES

Text of New York Revised Penal Law

Section 135.00. Unlawful imprisonment, kidnapping and custodial interference; definitions of terms

The following definitions are applicable to this article:

1. "Restrain" means to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined "without consent" when such is accomplished by (a) physical force, intimidation or deception, or (b) any means whatever, including acquiescence of the victim, if he 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 has not acquiesced in the movement or confinement.

2. "Abduct" means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly physical force.

3. "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

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Text of Michigan Revised Criminal Code

Section 2201. Kidnaping, Unlawful Imprisonment, and Related Offenses; Definition of Terms

The following definitions apply in this chapter:

(a) "Restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved. Restraint is "without consent" if it is accomplished by (i) physical force, intimidation or deception, or (ii) any means, including acquiescence of the victim, if he is a child less than 16 years old or an incompetent person and the parent, guardian, or other person or institution having lawful control or custody of him has not acquiesced in the movement or confinement.

Text of Michigan Revised Criminal Code (Cont'd)

(b) "Abduct" means to restrain a person with intent to prevent his liberation by either (i) secreting or holding him in a place where he is not likely to be found, or (ii) using or threatening to use deadly physical force.

(c) "Relative" means a parent or stepparent, ancestor, sibling, uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.

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Section 2. Kidnaping in the second degree. (1) A person commits the crime of kidnaping in the second degree if he abducts another person.

(Existing
Law
ORS
163.610

[(2) A person does not commit a crime under this section if the abduction is not coupled with intent to use or to threaten to use deadly physical force, the actor is a relative of the person abducted and his sole purpose is to assume control of that person. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.]

Section 3. Kidnaping in the first degree. (1) A person commits the crime of kidnaping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purpose[s]:

(Existing
Law
ORS
163.610
163.620
163.630
163.635

(a) To compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct; or

[(b) To facilitate the commission of any felony or flight thereafter; or]

[(c) To inflict serious bodily injury or to terrorize the victim or another.]

[Optional]

(2) Kidnaping in the first degree is a _____
except that if the victim is voluntarily released alive and without
serious bodily injury in a safe place prior to trial it is a _____.

COMMENTARY - KIDNAPING IN THE FIRST AND SECOND DEGREES

A. Summary

Kidnaping is an aggravated form of false imprisonment. At Common Law it was defined as the "forcible abduction or stealing away of a man, woman, or child from his own country and sending him into another." Perkins, On Criminal Law, p. 134 (1957). The essential elements of the crime were (1) a false imprisonment and (2) the carrying of the imprisoned person out of the country. Kidnaping was a misdemeanor at Common Law and was punishable by fine, imprisonment and pillory.

In recent years modern legislation has made kidnaping one of the most severely punished criminal offenses. Prior to the kidnaping of the Charles Lindbergh baby in 1932, all the states had anti-kidnaping statutes but only six provided for the death penalty. As a result of a number of sensational kidnapings in the 1930's many states and the Federal government adopted legislation which expanded the definition of kidnaping and provided for capital punishment under some circumstances. In 1952 kidnaping for ransom, the most serious form of kidnaping, was punishable by life imprisonment or death in forty-eight states.

The goal in current legislative reform of the kidnaping area is to devise a proper system of grading to distinguish between behavior which is merely an unlawful restraint and that which constitutes the more terrifying abductions for ransom. Following the pattern of the proposed drafts for other crimes, the Kidnaping and Related Offenses draft provides for two ascending degrees of kidnaping, scaled according to the actor's purpose. Kidnaping in the second degree defines the basic offense of kidnaping. It consists of the abduction of a person with intent to prevent his liberation by either secreting or holding him in a place where he is unlikely to be found or by using or threatening to use deadly physical force. The basic offense of kidnaping becomes more serious if the actor has a further purpose than that of the abduction itself. In the event that the abduction is accompanied by one or more of the following aggravating factors the offense is raised to the stature of kidnaping in the first degree:

- (1) To hold a victim for ransom or other concession; or
- (2) To hold a victim to facilitate the commission of any felony or flight thereafter; or
- (3) To inflict serious bodily injury or to terrorize the victim or another.

The emphasis in present kidnaping law is on detention and asportation. All statutes speak in terms of an initial seizure and a detention. Almost any detention, even one of a few minutes duration, has been held sufficient to satisfy the statutory requirements. As a result the element of detention has become indistinguishable from the act of taking itself. People v. Tanner, 3 Cal. 279, 44 P2d 324 (1935); People v. Knowles, 35 Cal. 2d 175, 217 P2d 1 (1950); People v. Florio, 301 NY 46, 92 NE 2d 881 (1950).

Statutes which formulate kidnaping in terms of asportation require not only a detention but a movement of the victim outside the county or the immediate vicinity. In construing statutes which speak in terms of "carries away" or "takes away" the courts have held that almost any movement of the victim will satisfy the statute. In People v. Dugger, 5 Cal. 2d 337, 54 P2d 707 (1936), a defendant who dragged a rape victim from one room to another was properly convicted of kidnaping.

While the factors of detention and asportation are relevant they are not determinative of the dangerousness of the defendant's behavior. As a result, under present laws, the same harsh penalties may now be imposed for conduct of little seriousness as for the most heinous forms of behavior.

The Model Penal Code proposes a more useful set of criteria for measuring the culpability of a defendant's conduct: (1) the means by which control of the victim is secured (2) the duration of that control (3) the nature of the defendant's purpose.

The purpose incorporated in every kidnaping statute is the intent to hold the victim for ransom or reward. The term reward has been interpreted to include any benefit or satisfaction received by the kidnaper, including sexual satisfaction or even the sadistic satisfaction of torturing the victim. Phillips v. State, 267 P2d 167, 170 (Okla. Cr. 1954); State v. Berry, 200 Wash. 495, 93 P2d 782, 793 (1939). These decisions have almost eliminated the distinction between simple and aggravated kidnaping.

Current kidnaping statutes provide for the imposition of the extreme penalty, life imprisonment or death, where bodily harm is inflicted on the victim. Many statutes provide for mitigation of the extreme penalty where the victim is released alive or without injury. The rationale behind these clemency provisions is protection of the victim. However, the court's interpretation of "bodily harm" to mean "any touching of another against his will with intentional physical force" has destroyed the effectiveness of these clemency provisions. People v. Tanner, 3 Cal. 2d 279, 44 P2d 324 (1935). The problem with these current mitigation provisions is their failure to distinguish between intentional and accidental harm, or between grave and slight harm.

Statutes containing mitigation provisions are based on the assumption that the kidnaper is aware of the statute at the time of his action and that his behavior is influenced by it. The validity of such an assumption is questionable in light of recent studies which show that the public has little knowledge of criminal penalties and that even where such knowledge exists it does not appear to be a deterrent to criminal behavior. Crime and Penalties in California, March, 1968.

Current kidnaping statutes apply to abductions which are incidental to or an integral part of the commission of an independent crime such as robbery or rape where the victim is removed and confined for a given period to effectuate the criminal purpose. Where the detention period is brief there is no genuine kidnaping. However, cases of this nature are sometimes prosecuted as kidnaping in order to secure the death penalty or life imprisonment for behavior that amounts in substance to rape or robbery in jurisdictions where these offenses are not subject to such penalties. People v. Chessman, 238 P2d 1001 (1951). The Model Penal Code and the New York Revised Penal Law have tried to exclude this type of case from first degree kidnaping by differentiating on the basis of the movement and duration of detention of the victim. The Model Penal Code provides for kidnaping only where the kidnaper removes the victim from his place of residence or business, or a substantial distance from the vicinity where he is found, or if the kidnaper unlawfully confines the victim for a substantial period in a place of isolation. New York has selected the arbitrary figure of twelve hours to designate the point in the course of a criminal project at which the abduction becomes a major offense in itself and not merely a facet of some other crime.

Subsection (2) of the kidnaping in the second degree section has been included to cover the parental kidnaping cases. In general the courts have rather rigidly held to

the rule that a parent who abducts his child is guilty of kidnaping (child-stealing) if a custody decree has been rendered, but not guilty in the absence of such a decree. A minority of state legislatures have either (1) departed from this rule by exempting parents from the operation of the kidnaping statute or (2) they have mitigated the severity of the criminal penalties under such statutes. The Federal government also treats parental kidnapers as a preferred class to be dealt with less severely by (1) providing for parental exemption in the Federal Kidnaping Act and by (2) openly inviting parental kidnaping as a result of failure to give as between states, absolute finality to a custody decree rendered by the child's state of domicile.

Penalty sections will not be incorporated into the Kidnaping and Related Offenses draft until preliminary articles covering classes of crimes have been drafted.

B. Derivation

The section on kidnaping in the second degree is adapted from Section 2211 of the Michigan Revised Criminal Code and Section 135.00 of the New York Revised Penal Law. Section 212.1 of the Model Penal Code differs from the proposed draft and present Oregon law in that it defines only one offense of kidnaping. The proposed draft follows the recently enacted criminal codes of Michigan and New York in dividing the offense of kidnaping into two separate degrees, the higher degree being distinguished from the lower degree on the basis of the actor's purpose for the kidnaping.

The section on kidnaping in the first degree is adapted from Section 212.1 of the Model Penal Code. It differs slightly from the Model Penal Code in that the word "reward" has been deleted and the wording of New York Penal Law section 135.25 (1) has been inserted in its place. The word "serious" in subsection (1) (c) has been added by your reporter.

C. Relationship to Existing Law

The proposed draft follows Oregon law (ORS 163.610, 163.620) in dividing kidnaping into separate degrees. The kidnaping in the second degree section retains the basic provisions of ORS 163.610 and adds a new provision rendering the section inapplicable to the situation where a "relative" abducts a child less than sixteen years of age, without the use or threatened use of force, and for the sole purpose of obtaining control of the child. At present ORS 163.610 is applicable to both adults and children since it is an

offense against the person unlawfully taken. ORS 163.640, the child-stealing statute, is concerned with the right of the parent to the custody of the child so that stealing the child is primarily an offense against the parent. State v. Metcalf, 129 Or 577, 278 P. 974 (1929). The separate offense of child-stealing covered by ORS 163.640 will be incorporated into the offense of Custodial Interference in the first and second degrees and ORS 163.640 will be eliminated.

ORS 163.620 sets out kidnaping for ransom or reward as a more serious form of kidnaping and imposes a greater penalty for it. Kidnaping in the first degree in the proposed draft specifically sets out kidnaping for ransom and a number of other optional purposes as the more serious forms of kidnaping requiring greater penalties. The proposed draft differs from ORS 163.620 by adding (1) the requirement that the detention and asportation must be substantial; (2) that the victim be returned alive (ORS 163.620 says "unharmd") for the penalty to be reduced.

The proposed draft would also eliminate ORS 163.630 and ORS 163.635 as separate offenses. ORS 163.630 will be covered by the general conspiracy section and is, therefore, unnecessary. ORS 163.635 is covered by subsection (1) of the kidnaping in the first degree draft.

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Section 4. Unlawful imprisonment in the second degree. (1) A person commits the crime of unlawful imprisonment in the second degree if he restrains another person.

[(2) A person does not commit a crime under this section if:

(a) The person restrained is a child less than sixteen years of age;

(b) The actor is a relative of the child; and

(c) His sole purpose is to assume control of such child.

The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.]

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Section 5. Unlawful imprisonment in the first degree. A person is guilty of unlawful imprisonment in the first degree if he restrains another person in a condition of involuntary servitude or under circumstances which expose the person restrained to a risk of serious bodily injury.

COMMENTARY - UNLAWFUL IMPRISONMENT IN THE
FIRST AND SECOND DEGREES

A. Summary

False imprisonment is defined at common law as the unlawful confinement of a person. It is designed to cover illegal detentions which are not serious enough to constitute kidnaping in the second degree.

The proposed draft uses the term unlawful imprisonment and divides the offense into two ascending degrees. Unlawful imprisonment in the second degree defines the basic offense as the unlawful "restraint" of a person without his consent. The consent of a child less than sixteen years of age to his taking is legally irrelevant but if the child is above the age of sixteen it is relevant provided no force, intimidation or deception is used to gain his consent. The section is not applicable to situations in which a "relative" restrains a child under sixteen for the sole purpose of obtaining control of the child. If the restraint is for any other purpose or if the child is over eighteen years of age then the section applies.

The basis for aggravating unlawful imprisonment from the second to the first degree is exposure of the person restrained to a risk of serious bodily injury. This section also applies to cases of involuntary servitude. Involuntary servitude is sometimes included in kidnaping statutes. This was not done in the proposed draft for the following reasons:

- (1) A person may be held in slavery or peonage openly or in accustomed haunts;
- (2) The victim is not isolated, in danger of death, nor necessarily terrorized;
- (3) The penalty for kidnaping is too severe for such conduct.

B. Derivation

This section is adapted from Sections 2205 and 2206 of the Michigan Revised Criminal Code. Unlawful imprisonment in the first degree is comparable to Section 212.2 of the Model Penal Code. The proposed draft of unlawful imprisonment in the second degree differs from Section 212.3 of the Model Penal Code in that the Model Penal Code requires a "substantial" interference with a person's liberty.

C. Relationship to Existing Law

Oregon has no general false imprisonment statute.

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Section 6. Custodial interference in the second degree. A person commits the crime of custodial interference in the second degree if knowing that he has no legal right to do so, he takes or entices any child under the age of sixteen years from the custody of its parent, guardian or lawful custodian, or any incompetent or committed person from the lawful custody of another person or institution. Committed person means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

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Section 7. Custodial interference in the first degree. A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree under

circumstances which expose the person taken or enticed from lawful custody to a risk that his safety will be endangered or his health materially impaired.

COMMENTARY - CUSTODIAL INTERFERENCE IN THE
FIRST AND SECOND DEGREES

A. Summary

A number of states have child-stealing statutes which prohibit the taking of a child under a specified age from the custody of his lawful guardian. The age specified varies: twelve years in Illinois; fourteen years in Indiana and New Jersey; sixteen years in New York and Oregon; eighteen years under the Model Penal Code.

The proposed draft includes two ascending degrees of custodial interference. Custodial interference in the second degree defines the basic offense as the taking or enticing away of any child under sixteen or any incompetent or committed person from the custody of his lawful guardian or custodian. The offense of custodial interference is aggravated to the first degree if there is any risk to the victim's health or safety.

B. Derivation

The language of this section was adapted from Sections 135.45, 135.50 of the New York Revised Penal Law and Section 212.4 (2) of the Model Penal Code.

C. Relationship to Existing Law

Child-stealing is defined by ORS 163.640. The statute is concerned with the right of a parent to the custody of the child. Therefore, stealing a child is primarily an offense against the parents. State v. Metcalf, 129 Or 577, 278 P. 974 (1929).

The proposed draft incorporates ORS 163.640 within the offense of custodial interference. The draft goes beyond the present Oregon statute in including not only children under the age of sixteen but also any incompetent or committed person.

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Subject	Proposed Draft	Comparable ORS	Comment
A. Kidnaping	Section 2. Kidnaping in the Second Degree	163.610. Seizing, Confining or Kid- naping Another	
Model Penal Code section 212.1	Section 3. Kidnaping in the First Degree	163.610. Seizing, Confining or Kid- naping Another 163.620. Kidnap- ing for Ransom 163.630. Con- spiracy to Kidnap for Ransom 163.635. Prisoners in Penitentiary or Correctional Institution	<p>The proposed draft would make the basic offense of kidnaping more serious if the detention or asportation was substantial and the abduction was for one of the purposes enumerated. Under present Oregon law the only aggravated offense is kidnaping for ransom.</p> <p>The conspiracy to kidnap for ransom statute has been deleted from the proposed draft and will be covered under the general conspiracy section.</p> <p>ORS 163.635 has been deleted from the proposed draft and the holding and killing of hostages in the Oregon State Penitentiary or the Oregon State Correctional Institution is covered by the kidnaping in the first and second degree sections.</p>

Subject	Proposed Draft	Comparable ORS	Comment
<p>B. False Imprisonment</p> <p>Model Penal Code section 212.3</p>	<p>Section 4. Unlawful Imprisonment in the Second Degree</p>		<p>This section of the proposed draft is designed to include every type of unlawful restraint ranging from genuine kidnaping to relatively minor confinements. The principle utility of this section is its application to the less serious cases not falling within the scope of the general kidnaping sections, e.g. confining girl in a secluded cabin to prevent her marriage, confining elderly person to compel him to sign a will or deed, having a sane person confined to an insane asylum.</p>
<p>Model Penal Code section 212.2</p>	<p>Section 5. Unlawful Imprisonment in the First Degree</p>	<p>Const. Art. I, sec. 34. Slavery or Involuntary Servitude</p>	<p>The offense of unlawful imprisonment is aggravated from the second to the first degree if the person restrained is:</p> <ol style="list-style-type: none"> (1) Exposed to the risk of serious bodily injury; or (2) Held in a condition of involuntary servitude.

Subject	Proposed Draft	Comparable ORS	Comment
<p>C. Custodial Interference</p> <p>Model Penal Code section 212.4</p>	<p>Section 6. Custodial Interference in the Second Degree</p>	<p>163.640. Taking Away Child With Intent to Detain from Parent</p>	<p>This section makes it a crime for any person to take or entice any child less than sixteen years old from the custody of its lawful custodian or any incompetent or committed person from the lawful custody of another person or institution. "Taking from custody" means a substantial interference with parental or custodial control.</p>
	<p>Section 7. Custodial Interference in the First Degree</p>		<p>The offense of custodial interference is aggravated from the second to the first degree when the taking involves danger to the safety or health of the child or person removed, e.g. divorced parent removes sick child from the other parent's lawful custody.</p>

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

Section 212.1. Kidnapping.

A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

(a) to hold for ransom or reward, or as a shield or hostage; or

(b) to facilitate commission of any felony or flight thereafter; or

(c) to inflict bodily injury on or to terrorize the victim or another; or

(d) to interfere with the performance of any governmental or political function.

Kidnapping is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree. A removal or confinement is unlawful within the meaning of this Section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

Section 212.2. Felonious Restraint.

A person commits a felony of the third degree if he knowingly:

(a) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or

(b) holds another in a condition of involuntary servitude.

Section 212.3. False Imprisonment.

A person commits a misdemeanor if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

Text of Model Penal Code (Cont'd)

Section 212.4. Interference with Custody.

(1) Custody of Children. A person commits an offense if he knowingly or recklessly takes or entices any child under the age of 18 from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so. It is an affirmative defense that:

(a) the actor believed that his action was necessary to preserve the child from danger to its welfare; or

(b) the child, being at the time not less than 14 years old, was taken away at its own instigation without enticement and without purpose to commit a criminal offense with or against the child.

Proof that the child was below the critical age gives rise to a presumption that the actor knew the child's age or acted in reckless disregard thereof. The offense is a misdemeanor unless the actor, not being a parent or person in equivalent relation to the child, acted with knowledge that his conduct would cause serious alarm for the child's safety, or in reckless disregard of a likelihood of causing such alarm, in which case the offense is a felony of the third degree.

(2) Custody of Committed Persons. A person is guilty of a misdemeanor if he knowingly or recklessly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

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Text of New York Revised Penal Law (1967)

Section 135.05. Unlawful imprisonment in the second degree.

A person is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

Section 135.10. Unlawful imprisonment in the first degree

A person is guilty of unlawful imprisonment in the first degree when he restrains another person under circumstances which expose the latter to a risk of serious physical injury.

Unlawful imprisonment in the first degree is a class E felony.

Text of New York Revised Penal Law (Cont'd)

Section 135.15. Unlawful imprisonment; defense

In any prosecution for unlawful imprisonment, it is an affirmative defense that (a) the person restrained was a child less than sixteen years old, and (b) the defendant was a relative of such child, and (c) his sole purpose was to assume control of such child.

Section 135.20. Kidnapping in the second degree

A person is guilty of kidnapping in the second degree when he abducts another person.

Kidnapping in the second degree is a class B felony.

Section 135.25. Kidnapping in the first degree

A person is guilty of kidnapping in the first degree when he abducts another person and when:

1. His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct; or

2. He restrains the person abducted for a period of more than twelve hours with intent to:

(a) inflict physical injury upon him or violate or abuse him sexually; or

(b) Accomplish or advance the commission of a felony; or

(c) Terrorize him or a third person; or

(d) Interfere with the performance of a governmental or political function; or

3. The person abducted dies during the abduction or before he is able to return or to be returned to safety. Such death shall be presumed, in a case where such person was less than sixteen years old or an incompetent person at the time of the abduction, from evidence that his parents, guardians or other lawful custodians did not see or hear from him following the termination of the abduction and prior to trial and received no reliable information during such period persuasively indicating that he was alive. In all other cases, such death shall be presumed from evidence that a person whom the person abducted would have been extremely likely to visit or communicate with during the specified period were he alive and free to do so did not

Kidnaping and Related Offenses

Text of New York Revised Penal Law (Cont'd)

see or hear from him during such period and received no reliable information during such period persuasively indicating that he was alive.

Kidnapping in the first degree is a class A felony.

Section 135.30. Kidnapping; defense

In any prosecution for kidnapping, it is an affirmative defense that (a) the defendant was a relative of the person abducted, and (b) his sole purpose was to assume control of such person.

Section 135.45. Custodial interference in the second degree

A person is guilty of custodial interference in the second degree when:

1. 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 has no legal right to do so, he takes or entices such child from his lawful custodian; or

2. Knowing that he has no legal right to do so, he 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.

Custodial interference in the second degree is a class A misdemeanor.

Section 135.50. Custodial interference in the first degree

A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree under circumstances which expose the person taken or enticed from lawful custody to a risk that his safety will be endangered or his health materially impaired.

Custodial interference in the first degree is a class E felony.

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Text of Michigan Revised Criminal Code - 1967

Unlawful Imprisonment in the First Degree

Sec. 2205. (1) A person commits the crime of unlawful imprisonment in the first degree if he knowingly restrains another person under circumstances which expose the latter to risk of serious physical injury.

(2) Unlawful imprisonment in the first degree is a Class A misdemeanor.

Text of Michigan Revised Criminal Code (Cont'd)

Unlawful Imprisonment in the Second Degree

Sec. 2206. (1) A person commits the crime of unlawful imprisonment in the second degree if he knowingly restrains another person.

(2) A person does not commit a crime under this section if (a) the person restrained is a child less than 16 years old, (b) the actor is a relative of the child, and (c) his sole purpose is to assume control of the child. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

(3) Unlawful imprisonment in the second degree is a Class B misdemeanor.

Kidnaping in the First Degree

Sec. 2210. (1) A person commits the crime of kidnaping in the first degree if he intentionally abducts another person with intent to:

- (a) Hold him for ransom or reward; or
- (b) Use him as a shield or hostage; or
- (c) Facilitate the commission of any felony or flight thereafter; or
- (d) Inflict physical injury upon him, or to violate or abuse him sexually; or
- (e) Terrorize him or a third person; or
- (f) Interfere with the performance of any governmental or political function.

(2) A person does not commit a crime under subsection (1) if he voluntarily releases the victim, alive and not suffering from serious physical injury, in a safe place prior to trial. The burden of injecting the issue of voluntary safe release is on the defendant, but this does not shift the burden of proof. This subsection does not apply to a prosecution for or preclude a conviction of kidnaping in the second degree or any other crime.

(3) Kidnaping in the first degree is a Class A felony.

Text of Michigan Revised Criminal Code (Cont'd)

Kidnaping in the Second Degree

Sec. 2211. (1) A person commits the crime of kidnaping in the second degree if he intentionally abducts another person.

(2) A person does not commit a crime under this section if (a) the abduction is not coupled with intent to use or to threaten to use deadly physical force, (b) the actor is a relative of the person abducted, and (c) his sole purpose is to assume control of that person. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

(3) Kidnaping in the second degree is a Class B felony.

Custodial Interference

Sec. 2215. (1) A person commits the crime of custodial interference if knowing that he has no legal right to do so, he 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.

(2) A person does not commit a crime under this section if (a) the person taken or enticed is a child less than 16 years old, (b) the actor is a relative of the child, and (c) his sole purpose is to assume control of the child. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

(3) Custodial interference is a Class A misdemeanor.

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Text of Illinois Criminal Code of 1961

Section 10-1. Kidnaping

(a) Kidnaping occurs when a person knowingly:

(1) And secretly confines another against his will, or

(2) By force or threat of imminent force carries another from one place to another with intent secretly to confine him against his will, or

(3) By deceit or enticement induces another to go from one place to another with intent secretly to confine him against his will.

Text of Illinois Criminal Code of 1961; Kidnaping (Cont'd)

(b) Confinement of a child under the age of 13 years is against his will within the meaning of this Section if such confinement is without the consent of his parent or legal guardian.

(c) Penalty.

A person convicted of kidnaping shall be imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 5 years.

Section 10-2. Aggravated Kidnaping

(a) A kidnaper within the definition of Section 10-1 (a) is guilty of the offense of aggravated kidnaping when he:

- (1) Kidnaps for the purpose of obtaining ransom, money, benefit, or other valuable thing or concession from the person kidnaped or from any other person, or
- (2) Takes as his victim a child under the age of 13 years, or
- (3) Inflicts great bodily harm or commits another felony upon his victim, or
- (4) Wears a hood, robe or mask or conceals his identity.

(b) Penalty.

- (1) A person convicted of aggravated kidnaping for ransom shall be punished by death or imprisonment in the penitentiary for any indeterminate term with a minimum of not less than one year. If the accused is found guilty by a jury, a sentence of death shall not be imposed by the court unless the jury's verdict so provides in accordance with Section 1-7 (c) (1) of this Code.
- (2) A person convicted of aggravated kidnaping other than for ransom shall be imprisoned in the penitentiary for any indeterminate term with a minimum of not less than one year.

Section 10-3. Unlawful Restraint

(a) A person commits the offense of unlawful restraint when he knowingly without legal authority detains another.

Text of Illinois Criminal Code of 1961; Unlawful Restraint (Cont'd)

(b) Penalty.

A person convicted of unlawful restraint shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

(c) Any merchant, his agent or employee, who has probable cause to believe that a person has wrongfully taken or has actual possession of and is about to wrongfully take merchandise from a mercantile establishment, may detain such person in a reasonable manner and for a reasonable length of time for the purpose of investigating the ownership of such merchandise. Such reasonable detention shall not constitute an arrest nor an unlawful restraint nor shall it render the merchant, his agent or employee liable to the person detained.

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Text of Federal Kidnapping Act (Lindbergh Law)

Section 1201. Interstate transportation of kidnapped person.

(a) Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall be punished (1) by death if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.

(b) The failure to release the victim within twenty-four hours [70 Stat. 1043 (1956); formerly seven days] after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished as provided in subsection (a).

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