

See: Minutes of Subcommittee No. 2  
12/12/68, p. 1, Vol. XI  
Tapes #27 and 28

CRIMINAL LAW REVISION COMMISSION  
309 Capitol Building  
Salem, Oregon

ARTICLE 12.

KIDNAPING AND RELATED OFFENSES

Preliminary Draft No. 2; December 1968

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Subcommittee No. 2

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Explanatory Note:

The interest to be protected in this section is the personal liberty of each individual to move about freely. When this freedom of movement is violated and the violation is not privileged or consented to, such violation constitutes the offense of unlawful imprisonment. The elements of the offense are contained in the term "restrain" (section 1 (1)) and include: (1) an unlawful restraint, (2) knowledge that the restraint is unlawful, (3) a substantial interference with another's liberty, (4) a restraint which is not consented to. The offense of unlawful imprisonment is aggravated in cases of involuntary servitude, where the offense is a continuous one, and in instances where the person restrained is exposed to a risk of serious bodily injury.

Under the proposed draft, as at Common Law, the offense of kidnaping is simply an aggravated form of the basic offense of unlawful imprisonment. Accordingly, the definition of restrain which forms the basis of the unlawful imprisonment section is directly incorporated into the definition of abduct. Therefore, the elements comprising the offense of kidnaping include: (1) an unlawful restraint, (2) knowledge that the restraint is unlawful, (3) a substantial interference with another's liberty, (4) a restraint which is not consented to, (5) secreting or holding the victim in a place of isolation, (6) use or threatened use of deadly physical force. Elements (5) and (6) are the basis for distinguishing conduct which constitutes an unlawful imprisonment and conduct which constitutes the more serious offense of kidnaping.

In the event that a kidnaping is accompanied by one or more of the following purposes it is aggravated to the stature of kidnaping in the first degree:

- (1) Holding the victim for ransom or other concession,
- (2) Holding the victim as a shield or hostage,
- (3) Holding the victim for the purpose of inflicting serious physical injury or to terrorize the victim or another.

The rationale behind the provision for a higher degree of the crime is the increased danger to the victim when one or more of the above purposes is present.

Whereas the offenses of unlawful imprisonment and kidnaping are basically violations of the liberty of the person restrained, the offense of custodial interference is a violation of the rights of the person or institution having legal custody of the victim. Therefore, the terms "restrain" and "abduct" have not been used in defining

custodial interference. The elements of the offense of custodial interference are: (1) taking or enticing from lawful custody, (2) a child who has not reached his sixteenth birthday or an incompetent or committed person, (3) knowledge that the taking is unlawful. Custodial interference is aggravated in cases where the victim is exposed to serious bodily injury.

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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 who has not yet reached his sixteenth birthday 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

The definitions of the terms "serious physical injury" and "deadly physical force" have not yet been drafted. When drafted, the definitions of these terms will be included in the general definition section preceding the substantive crimes. This section was drafted on the assumption that the terms would have the following meanings:

(1) "Serious physical injury" means physical injury that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2) "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.

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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.

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(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.

ALTERNATE 1

(1) A person commits the crime of kidnaping in the first degree if he abducts another person with any of the following purposes:

(a) To compel any person other than the victim the victim or any other 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 hold the victim as a shield or hostage; or

(c) To inflict serious physical injury or to terrorize the victim or another person.

(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 \_\_\_\_\_.

ALTERNATE 2

(1) A person commits the crime of kidnaping in the first degree when he abducts another person and the actor holds the victim for a substantial period of time or removes the victim a substantial distance from the place where the victim was first restrained with any of the following purposes:

(a) To compel any person other than the victim the victim or any other 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

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(b) To hold the victim as a shield or hostage; or

(c) To inflict serious physical injury or to terrorize the victim or another person.

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

ALTERNATE 3

(1) A person commits the crime of kidnaping in the first degree if he confines for a substantial period of time or removes from one place to another, any person without that person's consent, for any of the following purposes:

(a) To compel any person other than the victim the victim or any other 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 hold the victim as a shield or hostage; or

(c) To inflict serious physical injury or to terrorize the victim or another person.

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

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 the person restrained has not yet reached his sixteenth birthday, the actor is a relative of the child, and the actor's 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.

Section 5. Unlawful imprisonment in the first degree.

(1) 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.

(2) Unlawful imprisonment in the first degree is a \_\_\_\_\_.

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 who has not yet reached his sixteenth birthday 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.

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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 by authority of law.

[Section 7. Custodial interference in the first degree.

(1) 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 of serious bodily injury.

(2) Custodial interference in the first degree is a \_\_\_\_\_ .]

COMMENTARY - REVISED DRAFT

This draft is an attempt to incorporate some of the suggestions made by the subcommittee members at the meeting of October 25, 1968.

The words "child less than sixteen years old" have been replaced in sections 1 (b), 4 (2), and 6, by the words "child who has not yet reached his sixteenth birthday" to make it perfectly clear that the section does not apply to a child who has not attained the age of sixteen.

Three alternate proposals of section 3 have been drafted for the subcommittee's consideration. These alternatives take cognizance of the fact that while the length of detention and the element of asportation are relevant, the nature of the defendant's purpose is the determinative element in assessing the seriousness of the defendant's conduct. Accordingly, the offense of kidnaping in the first degree is limited to the three purposes specified.

The words "risk that his safety will be endangered or his health materially impaired" in section 7 have been replaced by the words "risk of serious bodily injury." It is intended that the penalty imposed under section 7 will be equivalent to the penalty imposed under section 5. Therefore, section 7 has been designated optional in recognition that the section will be unnecessary in the event that either section 5 is adopted or a general recklessly endangering provision is adopted.

[Optional].

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