

See: Commission Minutes
3/20/69, p. 2, Vol. VIII
Tape #66

CRIMINAL LAW REVISION COMMISSION
208 State Agriculture Building
Salem, Oregon

ARTICLE 12.

KIDNAPING AND RELATED OFFENSES

Preliminary Draft No. 3; February 1969

Reporter: Jeannie Lavorato

Subcommittee No. 2

ARTICLE 12.

KIDNAPING AND RELATED OFFENSES

Preliminary Draft No. 3; February 1969

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

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 so defined 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 term "relative" as defined in subsection (3) includes both parents and close relatives.

The terms "serious physical injury" and "deadly physical force" will be defined in the preliminary definition section substantially as follows:

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

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

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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.

(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.

Section 3. Kidnaping in the first degree.

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

(1) To compel any person to pay or deliver money or property as ransom; or

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

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

COMMENTARY - KIDNAPING IN THE FIRST
AND SECOND DEGREE

A. Summary

Kidnaping was defined at Common Law 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 and was punishable by fine, imprisonment and pillory.

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In recent years modern legislation has made kidnaping one of the most severely punished criminal offenses. Kidnaping for ransom, the most serious form of kidnaping, is punishable by death or life imprisonment in almost every state.

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 behavior which constitutes the more terrifying abductions for ransom.

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.

The proposed 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 purposes, the offense is raised to the stature of kidnaping in the first degree:

- (a) To compel any person to pay or deliver money or property as ransom; 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.

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. Therefore, the nature of the defendant's

purpose is the determinative factor in assessing the degree of the offense and ultimately the penalty to be imposed.

The purpose incorporated in almost every kidnaping statute is the intent to hold the victim for ransom or reward. The term reward has been interpreted by the courts to include any benefit or satisfaction received by the kidnaper. Phillips v. State, 267 P2d 167, 170 (Okla Cr. 1954); State v. Berry, 200 Wash. 495, 93 P2d 782, 793 (1939). Because this term has such a vague meaning it was deleted from subsection (1) of section 3.

Subsection (2) of section 2, Kidnaping in the second degree, 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.

The exclusion of section 2 (2) applies only where the relative's sole purpose in abducting the child is to assume physical control over that child. If the relative abducts the child for any other purpose, e.g. extortion, terrorization of the mother, perpetration of any crime upon the child, then the exclusion does not apply and the abductor may be found guilty of kidnaping.

The justification for the preferential treatment accorded relatives in section 2 (2) is the view that relatives who abduct a child solely to gain physical custody have a genuine interest or affection for the child and their conduct is neither as culpable as that of the stranger kidnaper nor are they as likely to endanger the child's welfare or sense of security as would the stranger kidnaper.

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.

The proposed draft solves this problem by strictly limiting kidnaping in the first degree to only those instances where the actor's purpose in abducting the victim falls within subsections (1), (2) or (3) of section 3.

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.

Subsection (2) of the Kidnaping in the second degree section is adapted from Section 2211 of the Michigan Revised Criminal Code and is intended to cover the parental kidnaping cases.

The section on kidnaping in the first degree is adapted from Section 2210 of the Michigan Revised

Criminal Code and Section 135.25 of the New York Revised Penal Law. It differs slightly from these revised codes in that the word "reward" has been deleted from subsection (a). The word "serious" in subsection (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) a child less than sixteen years of age, (b) without the use or threatened use of force, and (c) 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 purposes as the most serious forms of kidnaping requiring greater penalties.

The proposed draft would 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. A person commits the crime of unlawful imprisonment if he restrains another person under circumstances which expose the person restrained to a risk of serious bodily injury.

COMMENTARY - UNLAWFUL IMPRISONMENT

A. Summary

False imprisonment was defined at Common Law as the unlawful confinement of a person. It was designed to cover illegal detentions which were not serious enough to constitute kidnaping.

Under the proposed draft the definition of "restrain" forms the basis of the unlawful imprisonment section. Therefore, the elements which comprise the offense of unlawful imprisonment include:

- (1) An intentional restriction of a person's movements;
- (2) Knowledge that the restriction is unlawful;
- (3) A restriction which substantially interferes with another's liberty;
- (4) A restriction which is not consented to;
- (5) A restriction which exposes the person restrained to a risk of serious bodily injury.

The act by which the crime is committed is a "restraint" defined in section 1 (1) of the Kidnaping and Related Offenses draft as a substantial interference with the victim's liberty by either moving him from one place to another or confining him. The restraint must be unlawful, which means that the question of the legality of the interference may be contested in the criminal courts. The restraint must also involve an element of danger to the victim, e.g. a person locked in a closet for a brief time under circumstances entailing a risk of suffocation.

B. Derivation

This section is adapted from Section 135.10 of the New York Revised Penal Law and is comparable to Felonious

Restraint, Section 212.2 of the Model Penal Code. The proposed draft differs from the New York and Michigan Codes in that it defines only one degree of the offense.

C. Relationship to Existing Law

Oregon has no criminal false imprisonment statute at the present time.

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Section 5. Custodial interference in the second degree. (1) A person commits the crime of custodial interference in the second degree if knowing or having reason to know 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 takes or entices any incompetent or committed person from the lawful custody of another person or institution.

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(2) 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 6. Custodial interference in the first degree. A person commits the crime of custodial interference in the first degree when he commits the crime of custodial interference in the second degree and:

(1) He causes the person taken or enticed from lawful custody to be removed from the confines of the state; or

(2) He exposes the person taken or enticed from lawful custody to a risk that the person's safety will be endangered or that his health will be 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.

These statutes are designed to protect the rights of the person or institution having legal custody of the child against invasion by those having no right to custody. The intervention of the courts is necessary to adequately safeguard the child's welfare and sense of security. Without the inhibiting influence of a penal statute prohibiting child-stealing, the law of custody would be reduced to a "seize and run" policy since the only deterrent to such conduct would be a contempt of court proceeding. The following comment of the Model Penal Code draftsmen sums up the prevailing view of most commentators that the criminal courts should avoid involvement in custody disputes:

"One should be especially cautious in providing penal sanctions applicable to estranged parents struggling over the custody of their children, since such situations are better regulated by custody orders enforced through contempt proceedings." (sec. 212.4 Comments)

However, the courts have a duty to protect the interests and welfare of the child in custody disputes and in cases where a removal from custody adversely affects the child's welfare. The court must have the

power to compel adherence to its decisions. Since custody orders are unenforceable as a practical matter once the offending party and the child leave the state, the criminal process is the only effective means of regaining custody and securing enforcement of the original custody decree.

Accordingly, the proposed draft includes two ascending degrees of custodial interference. Custodial interference in the second degree defines the basic offense as (1) the taking or enticing from lawful custody (2) any child who has not reached his sixteenth birthday or any incompetent or committed person. The culpability required of the actor is "knowing or having reason to know" that he has no legal right to the custody of the person taken or enticed away. The basic offense is aggravated to the first degree if: (1) the victim is taken out of the state or (2) the victim's safety is endangered or his health materially impaired.

It is contemplated that Custodial Interference in the second degree will be classified as a misdemeanor and Custodial Interference in the first degree as a felony. Therefore, since extradition is not available in misdemeanor cases, subsection (1) of section 6 was included to provide a criminal sanction in cases where a person not having lawful custody removes the person taken or enticed from the state. In such situation, while a civil remedy does exist, it was felt inadequate due to the expense and difficulty involved in locating the fleeing offender.

Custodial interference would, likewise, be raised a degree in cases where there is any risk to the victim's health or safety.

B. Derivation

This section was adapted from sections 135.45 and 135.50 of the New York Revised Penal Law and section 212.4 (2) of the Model Penal Code. Subsection (1) of section 6 was added by your reporter.

C. Relationship to Existing Law

Child-stealing is proscribed by ORS 163.640. This statute seeks to protect the rights of the parent or guardian having legal custody of the child. In State v. Metcalf, 129 Or 577, 278 P. 974 (1929) the court said that child-stealing was primarily an offense against the parents.

The proposed draft incorporates ORS 163.640 within the offense of custodial interference. The draft goes beyond

the present 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 Kid- naping	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 <u>for one of the purposes enumerated</u>. 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
B. False Imprisonment	Section 4. Unlawful Imprisonment		This section is designed to cover unlawful restraints which expose the person restrained to a risk of serious bodily harm.
Model Penal Code section 212.2 Felonious Restraint			

Subject	Proposed Draft	Comparable ORS	Comment
C. Custodial Interference	Section 6. Custodial Interference in the Second Degree	163.640. Taking Away Child With Intent to Detain from Parent	This section makes it a crime for any person to take or entice any child who has not yet reached his sixteenth birthday from the custody of its lawful custodian or to take or entice 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.
Model Penal Code section 212.4 Interference with Custody			
	Section 7. Custodial Interference in the First Degree		The offense of custodial interference is aggravated from the second to the first degree when the taking involves: (1) removal of the child or person taken or enticed from the confines of the state; or (2) danger to the safety or health of the child or person taken or enticed, e.g. divorced parent removes sick infant from the other parent's lawful custody.

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.

Kidnaping and Related Offenses

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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