

See: Minutes of Subcommittee on
Grading and Sentencing
4/5/70, p. 44, Vol. X
Tape #56

CRIMINAL LAW REVISION COMMISSION
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ARTICLE **11**. KIDNAPPING AND RELATED OFFENSES

Tentative Draft No. 1; August 1969

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Subcommittee No. 2

ARTICLE 12. KIDNAPPING AND RELATED OFFENSES

Tentative Draft No. 1; August 1969

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ARTICLE ¹²~~11~~. KIDNAPPING AND RELATED OFFENSES

Tentative Draft No. 1; August 1969

Section 1. Kidnapping and related offenses; definitions. As used in this Article, unless the context requires otherwise:

(1) "Without consent" means that the taking or confinement is accomplished by force, threat or deception, or, in the case of a person who has not reached his sixteenth birthday or who is otherwise incapable of giving consent, that the taking or confinement is accomplished without the consent of his lawful custodian.

(2) "Lawful custodian" means a parent, guardian or other person responsible by authority of law for the care, custody or control of another.

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

COMMENTARY - KIDNAPPING AND RELATED OFFENSES; DEFINITIONS

A. Summary

This section sets out definitions of three basic terms used in the Article. The definition of the term "without consent" is vital to the basic crime of kidnapping. The phrase "or who is otherwise incapable of giving consent" is intended to focus upon the issue of whether the person taken or confined is unable to effectively consent because of mental incompetency or other disability. "Incapable" is used in its generally accepted sense.

Subsection (2) "Lawful custodian" is necessary to both kidnapping and custodial interference. The definition permits a shorter statement of those crimes in sections 2 and 4 infra.

Subsection (3) "Relative" includes both parents and close relatives. The term is used in subsection (2) of section 2 in connection with the defense to Kidnapping in the second degree.

B. Derivation

Subsection (1) is derived from the definition of the term appearing in New York Revised Penal Law section 135.00.

Subsection (2) is a new definition.

Subsection (3) is taken from New York Revised Penal Law section 135.00.

Section 2. Kidnapping in the second degree.

(1) A person commits the crime of kidnapping in the second degree if, with intent to interfere substantially with another's personal liberty, and without consent or legal authority, he:

(a) Takes the person from one place to another; or

(b) Secretly confines the person in a place where he is not likely to be found.

(2) It is a defense to a prosecution under subsection (1) of this section if:

(a) The person taken or confined has not reached his sixteenth birthday; and

(b) The defendant is a relative of that person; and

(c) His sole purpose is to assume control of that person.

Existing
Law

ORS
163.610

Section 3. Kidnapping in the first degree. A person commits the crime of kidnapping in the first degree if he violates section 2 of this Article 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 cause physical injury to the victim; or
- (4) To terrorize the victim or another person.

<u>Existing Law</u>
ORS
163.610
163.620
163.630
163.635

COMMENTARY - KIDNAPPING IN THE FIRST AND SECOND DEGREE

A. Summary

Sections 2 and 3 provide for two ascending degrees of kidnapping, scaled according to the actor's purpose. Kidnapping in the second degree defines the basic offense of kidnapping. It consists of the abduction of a person with intent to prevent his liberation by either taking him from one place to another or by secreting or holding him in a place where he is unlikely to be found. The basic offense of kidnapping 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 kidnapping 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 cause physical injury to the victim; or
- (d) 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. Therefore, the nature of the defendant's purpose is the determinative factor in assessing the degree of the offense and ultimately the range of the penalty to be imposed.

The purpose incorporated in almost every kidnapping 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 kidnapper. Phillips v. State, 267 P2d 167 (Okla. Cr. 1954); State v. Berrey, 200 Wash 495, 93 P2d 782 (1939). Because this term has such a vague meaning it has been omitted from subsection (1) of section 3.

Subsection (2) of section 2, Kidnapping in the second degree, has been included to cover the parental kidnapping cases. In general the courts have rather rigidly held to the rule that a parent who abducts his child is guilty of kidnapping (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 kidnapping 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 Kidnapping Act and by (2) openly inviting parental kidnapping 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 subsection (2) of section 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 kidnapping. A relative might also be guilty of custodial interference under sections 4 or 5.

The justification for the preferential treatment accorded relatives in section 2 subsection (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 kidnapper nor are they as likely to endanger the child's welfare or sense of security as would the stranger kidnapper.

Current kidnapping 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 kidnapping. However, cases of this nature are sometimes prosecuted as kidnapping 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 kidnapping by differentiating on the basis of the movement and duration of detention of the victim. The Model Penal Code provides for kidnapping only where the kidnapper removes the victim from his place of residence or business, or a substantial distance from the vicinity where he is found, or if the kidnapper 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 kidnapping in the first degree to only those instances where the actor's purpose in abducting the victim falls within subsections (1), (2), (3) or (4) of section 3.

The noun "hostage" in subsection (2) and the verb "terrorize" are used without further definition. Both words have precise dictionary definitions and are intended to have the same meanings, as used in the Draft. The word "hostage" is used presently in ORS 163.635 which covers the crime of prisoners in the penitentiary or OCI taking or holding "hostages", and subsection (2) is intended to include that type of conduct, as well as the situation in which the actor

uses another person as a shield or for bargaining with police to facilitate the commission of another crime or to attempt to avoid arrest or escape afterwards. Webster's New Collegiate Dictionary (1961 ed.) defines hostage as meaning "state of a person given or kept as a pledge, as for the fulfillment of a treaty; hence, a person in such a state or position; as, held as hostage."

"Terrorize" is defined as "to impress with terror; to coerce by intimidation." Terror is the "state or instance of extreme fear; violent dread; fright." The word seems particularly apt to use in a kidnapping statute; and the A.L.I. indicates that the term was employed to cover "vengeful or sadistic abductions accompanied by threats of torture, death, or other severely frightening experience." (Commentary, MPC, T.D. No. 11, p. 18 (1960)). The Draft section adopts this view and is concerned with the intent of the actor and not with the subjective effect of his actions upon another.

B. Derivation

The section on kidnapping 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 kidnapping. The proposed draft follows the recently enacted criminal codes of Michigan and New York in dividing the offense of kidnapping into two separate degrees, the higher degree being distinguished from the lower degree on the basis of the actor's purpose for the kidnapping.

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

The section on kidnapping 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 from these codes in that the word "reward" has been deleted from subsection (a).

C. Relationship to Existing Law

Kidnapping 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 (1957) p. 134. The essential elements of the crime were (1) a false imprisonment and (2) the carrying of the imprisoned person out of the country. Kidnapping was a misdemeanor and was punishable by fine, imprisonment and pillory.

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

The goal in current legislative reform of the kidnapping 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.

The proposed draft follows Oregon law (ORS 163.610, 163.620) in dividing kidnapping into separate degrees. The kidnapping 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 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 kidnapping for ransom or reward as a more serious form of kidnapping and imposes a greater penalty for it. Kidnapping in the first degree in the proposed draft specifically sets out kidnapping for ransom and a number of other purposes as the most serious forms of kidnapping 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 kidnapping in the first degree draft.

NOTE ON UNLAWFUL IMPRISONMENT: Preliminary drafts included a section defining the crime of unlawful imprisonment which was designed to cover illegal detentions not serious enough to constitute kidnapping. The Commission deleted the section because the members were generally of the opinion that there are adequate civil remedies available in this area, and further, that if the detention or imprisonment were serious enough to warrant criminal sanctions the provisions of Kidnapping in the second degree should apply.

Section 4. Custodial interference in the second degree. 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, entices or keeps a person from his lawful custodian with intent to hold him permanently or for a protracted period.

Existing Law
ORS 163.640

Section 5. Custodial interference in the first degree. A person commits the crime of custodial interference in the first degree if he violates section 4 of this Article; and

Existing Law
ORS 163.640

(1) Causes the person taken, enticed or kept from his lawful custodian to be removed from the state; or

(2) Exposes that person to a substantial risk of illness or physical injury.

COMMENTARY - CUSTODIAL INTERFERENCE

A. Summary

Sections 4 and 5 are intended to cover the "child-stealing" situations and to protect the rights of a person having legal custody of another against invasion by those having no right to custody. Section 4 is intended to cover the typical child-stealing situation committed by a relative. However, the language adopted by the Commission is broad enough to encompass any interference with lawful custody rights by a person having no legal right to do so if there is an intent by the person to hold the person taken for a protracted period. It should be noted, also, that the section is meant to cover not merely child-custody situations but incompetents or others as well who are entrusted by authority of law to the custody of another person or institution.

Section 5 is an aggravated form of the basic offense the aggravating factors being:

- (1) The victim is taken out of the state; or
- (2) The victim is exposed to a substantial risk of illness or physical injury.

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 a substantial risk to the victim's health or safety. For example: The person taken is an infant who requires a special formula or medication and is deprived of it by the actions of the defendant.

B. Derivation

Section 4 is based on New York Revised Penal Law section 134.45; subsection (1) of section 5 is new; subsection (2) of section 5 is derived from section 135.50 of the New York code.

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.

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.

Section 6. Coercion. A person commits the crime of coercion when he compels or induces another person to engage in conduct from which he has a legal right to abstain, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

Existing Law
ORS
163.330
163.480
163.490
163.500

- (1) Cause physical injury to some person; or
- (2) Cause damage to property; or
- (3) Engage in other conduct constituting a crime; or
- (4) Accuse some person of a crime or cause criminal charges to be instituted against him; or
- (5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (6) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or
- (7) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (8) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (9) Inflict any other harm which would not benefit the actor.

Section 7. Coercion; defense. In any prosecution for coercion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

COMMENTARY - COERCION

A. Summary

Coercion consists of compelling a person by intimidation to commit or refrain from committing an act. Coercion as an offense embraces broad categories of threats and is, therefore, separated from the offense of terroristic threats. The offense of terroristic threats is intended to cover a narrowly defined type of threat, such as may arise from letters or anonymous phone calls threatening death, kidnapping or bombing. Coercion is also separated from the offense of theft by extortion. Extortion is basically a form of coercion in which the act compelled is the payment of money. The proposed draft defines coercion in terms similar to theft by extortion and the kinds of threats which form a basis for the offense of coercion are equated with those contained in the Theft by Extortion Draft. The following discussion of the kinds of threats which comprise the offense of theft by extortion are also applicable to the Coercion Draft:

"As recommended by the Model Penal Code, subsection (1) covers threats to injure anyone, on the theory that if the threat is in fact the effective means of compelling another (to act or refrain from acting), the nature of the relationship between the victim and the person he chooses to protect is immaterial. The issues are whether the threat is intended to intimidate and whether it is effective for that purpose.

"Subsection (2) is aimed at the threat to cause damage to someone's business, home or other property.

"The provisions of subsection (3) are taken directly from New York Revised Penal Law and are similar to the Model Penal Code which employs the language 'commit any other criminal offense.'

"Subsection (4) resembles closely the language now appearing in ORS 163.480.

"Subsection (5) amounts to a threat to defame. Unlike defamation actions, the truth of the matter threatened to be exposed would not constitute a defense to a prosecution under this subsection. It is emphasized, however, that the subsection is not intended to make it criminal to conduct legitimate negotiation or to agree to settlement of an asserted claim as consideration for a promise to forbear from civil litigation.

"The provisions of subsection (6) are aimed at racketeering, but do not in any way jeopardize the collective bargaining process, since even menaces are not criminal if the benefits are to be received by the group on behalf of which the 'bargaining' is conducted.

"Subsection (7) is self-explanatory.

"Subsection (8) is aimed at extortion committed under cover of public office and is close to the 'bribery' type of crimes now incorporated in ORS 162.230, 162.240 and 162.510."

(Theft T.D. No. 1, April 1968 p.9)

Subsection (9) is a statement of the general principle on which other threats are to be included within the coercion section. This broad provision is necessitated by the impossibility of comprehensively defining coercive conduct by a list of more specific threats of the kind contained in the first eight subdivisions. This provision penalizes conduct such as the demand for a favor upon a teacher's threat to flunk a pupil.

Coercion as defined by the proposed draft requires successful intimidation; the victim must actually act or refrain from acting. A mere threat or attempt failing of its coercive purpose would constitute attempted coercion.

The proposed draft is based on the premise that the forceful compulsion by means of a threat to act or forbear from acting, ought to be recognized as a crime even though the offense committed cannot be measured by monetary standard. The problem arises in coercion as to how to measure the gravity of the actor's misconduct since the act sought to be compelled may be of slight significance such as threatening to call the police unless the victim ceases seeing the defendant's daughter or the act may be as serious as attempting to compel the victim to leave town. The Model Penal Code, section 212.5 (2), attempts to measure the gravity of the defendant's misconduct on the basis of whether the threat is to commit a felony or the actor's purpose is felonious. New York Revised Penal Law section 135.65 raises the offense a degree on the basis of (1) the kind of threat specified and (2) the kind of conduct which he compels the victim to perform.

The proposed draft adopts neither of these measures but defines only one degree of coercion. This affords some protection against such threats but avoids imposing additional penalties on the basis of artificial distinctions. This is in accord with the Committee Commentary (section 2125) to the Michigan Revised Criminal Code which states as follows:

"The committee is not persuaded that the utility in subjecting some persons who commit coercion to extended prison terms outweighs the difficulties inherent in classifying the particular threats made."

Section 7 is the counterpart of the exemption in coverage in the Theft by Extortion Draft (Theft, T.D. No. 1, April 1968, p. 18, subsection 9 (3)). This section provides a defense to a defendant charged with coercion committed by one particular kind of threat, namely, a threat to "accuse some person of a crime or cause criminal charges to be instituted against him", and where the defendant's coercive action is undoubtedly an attempt to compel or induce the victim to take reasonable steps to make good the wrong perpetrated by him. As an example, a defendant accused of coercion for having compelled a youth, under threat of charging him with criminal mischief, to paint defendant's fence which the youth had marked up in an act of vandalism would have this defense available to him.

B. Derivation

Section 6 of the proposed draft is adopted from section 135.60 of the New York Revised Penal Law and section 212.5 (1) of the Model Penal Code.

Section 7 is adopted from section 135.75 of the New York Revised Penal Law.

C. Relationship to Existing Law

Under present Oregon law "any person...who threatens any injury to the person or property of another...or threatens to accuse another of any crime with intent thereby to extort any pecuniary advantage or property from him, or with intent to compel him to do any act against his will, shall be punished...." (ORS 163.480). The crime is committed when the threat is made and there is no requirement that property be obtained. The proposed draft follows the present law but separates the offenses of theft by extortion and coercion.

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.

Text of Model Penal Code (Cont'd)

Section 212.5. Criminal Coercion.

(1) Offense Defined. A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to his detriment, he threatens to:

- (a) commit any criminal offense; or
- (b) accuse anyone of a criminal offense; or
- (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
- (d) take or withhold action as an official, or cause an official to take or withhold action.

It is an affirmative defense to prosecution based on paragraphs (b), (c) or (d) that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(2) Grading. Criminal coercion is a misdemeanor unless the threat is to commit a felony or the actor's purpose is felonious, in which cases the offense is a felony of the third degree.

Text of Illinois Criminal Code of 1961

§ 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.

(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. 1961, July 28, Laws 1961, p. 1983, § 10-1.

§ 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.

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

§ 10-3. Unlawful Restraint

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

(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. 1961, July 28, Laws 1961, p. 1983, § 10-3.

§ 12-6. Intimidation

(a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

- (1) Inflict physical harm on the person threatened or any other person or on property; or
- (2) Subject any person to physical confinement or restraint; or
- (3) Commit any criminal offense; or
- (4) Accuse any person of an offense; or
- (5) Expose any person to hatred, contempt or ridicule; or
- (6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or
- (7) Bring about or continue a strike, boycott or other collective action.

(b) Penalty.

A person convicted of intimidation shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both. 1961, July 28, Laws 1961, p. 1983, § 12-6.

Text of New York Revised Penal Law

**§ 135.00 Unlawful imprisonment, kidnapping and custodiai
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. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 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. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 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. L.1965, c. 1030, eff. Sept. 1, 1967.

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

§ 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. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 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. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 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 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. L.1965, c. 1030; amended L.1967, c. 791, § 12, eff. Sept. 1, 1967.

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

§ 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. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 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. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 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. L.1965, c. 1030, eff. Sept. 1, 1967.

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

§ 135.60 Coercion in the second degree

A person is guilty of coercion in the second degree when he compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he has a legal right to engage, by

means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or
2. Cause damage to property; or
3. Engage in other conduct constituting a crime; or
4. Accuse some person of a crime or cause criminal charges to be instituted against him; or
5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or
7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion in the second degree is a class A misdemeanor.
L.1965, c. 1030, eff. Sept. 1, 1967.

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

§ 135.65 Coercion in the first degree

A person is guilty of coercion in the first degree when he commits the crime of coercion in the second degree, and when:

1. He commits such crime by instilling in the victim a fear that he will cause physical injury to a person or cause damage to property; or
2. He thereby compels or induces the victim to:
 - (a) Commit or attempt to commit a felony; or
 - (b) Cause or attempt to cause physical injury to a person; or
 - (c) Violate his duty as a public servant.

Coercion in the first degree is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 135.70 Coercion; no defense

The crimes of (a) coercion and attempt to commit coercion, and (b) bribe receiving by a labor official as defined in section 180.20, and bribe receiving as defined in section 200.05, are not mutually exclusive, and it is no defense to a prosecution for coercion or an attempt to commit coercion that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 135.75 Coercion; defense

In any prosecution for coercion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge. L.1965, c. 1030, eff. Sept. 1, 1967.

Text of Michigan Revised Criminal Code

[Coercion]

Sec. 2125. (1) A person commits the crime of coercion if he compels or induces a person to engage in conduct that the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he has a legal right to engage, by instilling in him through use of a threat a fear that, if the demand is not complied with, the actor or another will bring about the harm threatened.

(2) "Threat" as used in this section includes:

(a) threatening the imminent use of force against any person who is present at the time; and

(b) threats as defined in section 3201(1).

(3) The actor does not commit coercion by instilling in a person a fear that he or another person will be charged with a crime, if the actor honestly believes the threatened charge to be true and his sole purpose is to compel or induce the person to take reasonable action to correct the wrong which is the subject of the threatened charge. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

(4) Coercion is a Class A misdemeanor.

[Definition of Terms]

Sec. 2201. 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.

(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.

Text of Michigan Revised Criminal Code (cont'd)

[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.

[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.

[Definitions]

Sec. 3201. The following definitions are applicable in this chapter unless the context otherwise requires:

(a) "Deception" occurs when a person knowingly:

(i) Creates or confirms another's impression which is false and which the defendant does not believe to be true; or

(ii) Fails to correct a false impression which the defendant previously has created or confirmed; or

(iii) Prevents another from acquiring information pertinent to the disposition of the property involved; or

(iv) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

Text of Michigan Revised Criminal Code (cont'd)

(v) Promises performance which the defendant does not intend to perform or knows will not be performed.

The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.

(b) To "deprive . . . permanently" means:

(i) To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstances that the major portion of its economic value, or of the use and benefit thereof, is lost to him; or

(ii) To dispose of the property so as to make it unlikely that the owner will recover it; or

(iii) To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(iv) To sell, give, pledge, or otherwise transfer any interest in the property; or

(v) To subject the property to the claim of a person other than the owner.

(c) "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(d) "Government" means the United States, any state or any county, municipality or other political unit within territory belonging to the United States, or any department, agency, or subdivision or any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty.

As used in this definition "state" includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(e) "Obtain" means:

(i) In relation to property, to bring about a transfer or purported transfer of a legally recognized interest in the property, whether to the obtainer or another; or

(ii) In relation to labor or service, to secure performance thereof.

(f) "Obtains or exerts control" or "obtains or exerts unauthorized control" over property includes but is not necessarily limited to the

Text of Michigan Revised Criminal Code (cont'd)

taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property, and includes but is not necessarily limited to conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, larceny by conversion, embezzlement, extortion, or obtaining property by false pretenses.

(g) "Owner" means a person, other than the defendant, who has possession of or any other interest in the property involved, even though that interest or possession is unlawful, and without whose consent the defendant has no authority to exert control over the property.

A secured party as defined in section 9105(i) of the Uniform Commercial Code [C.L.1948, § 440.9105(i)] is not an owner in relation to a defendant who is a debtor, as defined in section 9105(d) of the Uniform Commercial Code [C.L.1948, § 440.9105(d)], in respect of property in which the secured party has a security interest, as defined in section 1201(37) of the Uniform Commercial Code [C.L.1948, § 440.-1201(37)].

(h) "Propelled vehicle" means any vehicle as defined in section 79 of Public Act 300 of 1949 as amended [C.L.1948, § 257.79], any vessel as defined in section 1 of Public Act 245 of 1959 as amended [C.L. 1948, § 281.651], and aircraft.

(i) "Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind.

Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

(j) "Receiving" includes but is not limited to acquiring possession, control, or title and taking a security interest in the property.

(k) "Stolen" means obtained by theft, theft by appropriating lost property, robbery, or extortion.

(l) "Threat" means a menace, however communicated, to:

(i) Cause physical harm in the future to the person threatened or to any other person; or

(ii) Cause damage to property; or

(iii) Subject the person threatened or any other person to physical confinement or restraint; or

(iv) Engage in other conduct constituting a crime; or

Text of Michigan Revised Criminal Code (cont'd)

(v) Accuse any person of a crime or cause criminal charges to be instituted against any person; or

(vi) Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule; or

(vii) Reveal any information sought to be concealed by the person threatened; or

(viii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(ix) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(x) Bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(xi) Do any other act which would not in itself substantially benefit the actor but which is calculated to harm substantially another person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(m) "Value" means the market value of the property at the time and place of the criminal act.

Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertained market value such as some public and corporate bonds and securities, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

When property has value but that value cannot be ascertained pursuant to the standards set forth above, the value shall be deemed to be an amount not exceeding 250 dollars.

Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

Text of Federal Kidnapping Act (Lindbergh Law)

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).