

9.1 KIDNAPPING

§ 787.01, Fla. Stat.

To prove the crime of Kidnapping, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[forcibly] [secretly] [by threat]**

**[confined]
[abducted]
[imprisoned]**

(victim) **against [his] [her] will.**

2. (Defendant) **had no lawful authority to do so.**

3. (Defendant) **acted with intent to:**

Give 3a, 3b, 3c, or 3d as applicable.

If 3b is given, define applicable felony.

- a. **hold (victim) for ransom or reward or as a shield or hostage.**
- b. **commit or facilitate the commission of (applicable felony).**
- c. **inflict bodily harm upon or to terrorize (victim) or another person.**
- d. **interfere with the performance of any governmental or political function.**

Give when 3b is alleged. See Faison v. State, 426 So. 2d 963 (Fla. 1983).

In order to be Kidnapping, the [confinement] [abduction] [imprisonment]

- a. **must not be slight, inconsequential, or merely incidental to the (applicable felony);**
- b. **must not be of the kind inherent in the nature of the (applicable felony); and**
- c. **must have some significance independent of the (applicable felony) in that it makes the (applicable felony) substantially easier of commission or substantially lessens the risk of detection.**

Definition. Give if applicable. Bishop v. State, 46 So. 3d 75 (Fla. 5th DCA 2010).

“Secretly” means the defendant intended to isolate or insulate (victim) from meaningful contact or meaningful communication with the public.

Read only if confinement is alleged and victim is under 13 years of age.

Confinement of a child under the age of 13 is against the child’s will if such confinement is without the consent of the child’s parent or legal guardian.

If a violation of § 787.01(3), Fla. Stat., is charged, instruct as follows:

If you find the defendant guilty of Kidnapping, you must also determine whether the State has proved the following aggravating circumstances beyond a reasonable doubt:

1. **At the time of the Kidnapping, (victim) was under 13 years of age;**

and
2. **In the course of committing the Kidnapping, (defendant) committed [an Aggravated Child Abuse] [a Sexual Battery against (victim)] [a Lewd or Lascivious Battery] [a Lewd or Lascivious Molestation] [a Lewd or Lascivious Conduct] [a Lewd or Lascivious Exhibition] [a Procuring a Child for Prostitution upon (victim)] [a Forcing, Compelling, or Coercing Another to Become a Prostitute upon (victim)] [an Exploitation of a Child upon (victim)] [Human Trafficking for Commercial Sexual Activity in which [a Child under the Age of 18] [a Mentally Defective Person] [or] [a Mentally Incapacitated Person] was Involved]. Define applicable felony unless included in other instructions.**

If the State has charged and is seeking the adult-on-minor sex offense multiplier in § 921.0024(1)(b), Fla. Stat., instruct as follows. Alleyne v. United States, 133 S. Ct. 2151 (2013).

If you find the defendant guilty of Kidnapping, you must also determine whether the State has proved the following four elements beyond a reasonable doubt:

1. **At the time of the Kidnapping, (defendant) was 18 years of age or older.**
2. **At the time of the Kidnapping, (victim) was younger than 18 years of age.**
3. **The Kidnapping was committed on or after October 1, 2014.**
4. **In the course of committing the Kidnapping, (defendant) committed [Sexual Battery] [Lewd or Lascivious Battery] [Lewd or Lascivious Molestation] [Lewd or Lascivious Conduct] [Lewd or Lascivious Exhibition] [Lewd or Lascivious Exhibition Over a Computer Service] against (same victim as in element #2).**

Define applicable felony unless included in other instructions.

Lesser Included Offenses

KIDNAPPING* — 787.01			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
False imprisonment**		787.02	9.2
	Attempt	777.04(1)	5.1
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

The Kidnapping statute does not exempt a parent from criminal liability for kidnapping his or his own child. See *Davila v. State*, 75 So. 3d 192 (Fla. 2011).

*If the State alleged the life felony of Kidnapping with aggravating circumstances in § 787.01(3), Fla. Stat., then those aggravating circumstances would be lesser-included crimes.

*If the State charged the defendant in a way to score the adult-on-minor sex offense multiplier in § 921.0024(1)(b), Fla. Stat., then those sex crimes would be lesser-included crimes.

** In *State v. Sanborn*, 533 So. 2d 1169 (Fla. 1988), the Florida Supreme Court held that False Imprisonment was a necessary lesser included offense of Kidnapping. However, in *Smith v. State*, 283 So. 3d 817 (Fla. 4th DCA 2019), the Fourth District Court of Appeal suggested that False Imprisonment is not a necessary lesser included offenses in every instance because the Kidnapping statute contains the act of confining, abducting, or imprisoning the victim while the False Imprisonment statute contains the additional option of the defendant restraining the victim.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 2014 [152 So. 3d 475], 2015 [167 So. 3d 443], 2017 [211 So. 3d 995], and April 3, 2020.