

Colorado Revised Statutes: Title 18: Criminal Proceedings:
18-3-301. First Degree Kidnapping.

TITLE 18. CRIMINAL CODE.

ARTICLE 3. OFFENSES AGAINST THE PERSON. PART 3. KIDNAPPING.

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(1) **Any person** who does any of the following acts **with the intent** thereby **to force the victim or any other person** to make any concession or **give up anything of value in order to secure a release of a person** **under the offender's actual or apparent control** **commits first degree kidnapping:**

(a) **Forcibly seizes and carries any person** from one place to another; or

(b) **Entices or persuades any person** to go from one place to another; or

(c) **Imprisons or forcibly secretes any person.**

(2) Whoever commits first degree kidnapping is guilty of a class 1 felony if the person kidnapped shall have suffered bodily injury; but no person convicted of first degree kidnapping shall suffer the death penalty if the person kidnapped was liberated alive prior to the conviction of the kidnapper.

(3) Whoever commits first degree kidnapping commits a class 2 felony if, prior to his conviction, the person kidnapped was liberated unharmed.

Case Notes, Annotation:

Annotator's note. Since § 18-3-301 is similar to former § 40-2-44, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

For a discussion of the legislative history of first-degree kidnapping, see *People v. Bridges*, 199 Colo. 520, 612 P.2d 1110 (1980).

Section not vague. The kidnapping statutes, by using words such as "seize" and "imprison" to define the offenses, are not so vague that men of common intelligence and understanding are required to guess as to their application. *People v. Cardwell*, 181 Colo. 421, 510 P.2d 317 (1973).

Essential elements of the crime of kidnapping are: (1) Wilfulness or intent to do the act; (2) the act must be done without lawful authority; (3) there must be a seizing, or imprisoning; and (4) the act must be done against the victim's will, by means of force or otherwise. *People v. Cardwell*, 181 Colo. 421, 510 P.2d 317 (1973).

All elements of crime of kidnapping must be present or the crime is not committed. *People v. Cardwell*, 181 Colo. 421, 510 P.2d 317 (1973).

Prosecution must prove movement and intent to force victim to make concession. For first degree kidnapping, the prosecution must prove, in addition to movement, that the intent of the defendant is to force the victim to make a concession or give up a thing of value in order to secure release. *People v. Bridges*, 199 Colo. 520, 612 P.2d 1110 (1980); *People v. Swanson*, 638 P.2d 45 (Colo. 1981).

Movement which is more than incidental to the commission of an underlying crime is circumstantial evidence of specific intent to kidnap, and a jury could be so instructed. *People v. Bridges*, 199 Colo. 520, 612 P.2d 1110 (1980).

Evidence of intent to sustain conviction derived from examining movement surrounding underlying crime. Circumstantial evidence of intent sufficient to sustain a conviction for first degree kidnapping may be derived from an examination of the amount and character of the movement surrounding an underlying crime, taking into account, for example, the time of detention, the distance, any changed environmental factors, whether the commission of the underlying crime and the movement were simultaneous, and the consistency of the defendant's actions with an independent intent to kidnap. *People v. Bridges*, 199 Colo. 520, 612 P.2d 1110 (Colo. 1980); *People v. Swanson*, 638 P.2d 45 (Colo. 1981).

Section imposes only a single intent requirement: Namely an intent "to force the victim or any other person to make any concession or give up anything of value in order to secure a release". First degree kidnapping does not require proof that the kidnapper intended to release the victim upon obtaining the concession sought. *People v. Weare*, 155 P.3d 527 (Colo. App. 2006).

"Any concession" includes sexual assault. The phrase "any concession" is sufficiently broad to encompass submission to a sexual assault as a basis for a verdict of guilty. *People v. Molina*, 41 Colo. App. 128, 584 P.2d 634 (1978).

Submission to sexual assault not sufficient per se. Proof of the victim's submission to a sexual assault is not sufficient per se to establish the concession required for first degree kidnapping. *People v. Bridges*, 199 Colo. 520, 612 P.2d 1110 (1980).

Assault is not a necessary element of the crime of kidnapping. *People v. Cardwell*, 181 Colo. 421, 510 P.2d 317 (1973).

Multiple punishment is not permitted where one act of forcible abduction results in kidnapping of two victims. *People v. Duran*, 183 Colo. 180, 515 P.2d 1117 (1973).

Venue in a kidnapping case may be either in the county in which the offense was committed or in any county through which the person kidnapped was taken or kept while under confinement or restraint. *Claxton v.*

People, 164 Colo. 283, 434 P.2d 407 (1967).

Information charging kidnapping held sufficient. *Mayer v. People*, 116 Colo. 284, 180 P.2d 1017 (1947).

Evidence sufficient to support conviction. *Tomsak v. People*, 166 Colo. 226, 442 P.2d 825 (1968); *People v. Morgan*, 637 P.2d 338 (Colo. 1981); *Chatfield v. Ricketts*, 673 F.2d 330 (10th Cir.), cert. denied, 459 U.S. 843, 103 S. Ct. 96, 74 L. Ed. 2D 88 (1982).

Where an individual was pursued, her car rammed, and the road blocked by defendant who got into her car, shoved her to the passenger side, and then drove away until the victim was able to break from defendant's grasp and jump from the moving car, the crime of kidnapping was clearly established. *Ortega v. People*, 178 Colo. 419, 498 P.2d 1121 (1972).

Where the assault by the defendant was a crime of physical force or violence, the victim had no choice in the matter, and the assault ended when the police arrived, the evidence was insufficient to support a first degree kidnapping charge but was sufficient to sustain a conviction for second degree kidnapping. *People v. Naranjo*, 200 Colo. 1, 612 P.2d 1099 (1980).

The evidence is insufficient to sustain a conviction on a first degree kidnapping charge where the victim of a first degree sexual assault is forced to submit without having any choice in the matter, there existing no "concession" or intent to obtain a concession within the meaning of the first degree kidnapping statute. *People v. Nunez*, 673 P.2d 53 (Colo. App. 1983).

Evidence did not require instruction on false imprisonment. When both the victim and the defendant's accomplice testify that the defendant committed acts which constitute kidnapping, the only theory of defense is alibi, and the defendant denies the commission of any act which could lead to the conviction of either false imprisonment or kidnapping and no evidence is presented from which the jury might find that the defendant is only guilty of false imprisonment, the defendant is either guilty of kidnapping or nothing at all and is not entitled to an instruction on false imprisonment even though it is a lesser included offense of kidnapping. *Ortega v. People*, 178 Colo. 419, 498 P.2d 1121 (1972).

This section is sufficiently definite to give reasonable notice of the proscribed conduct to one who would avoid its penalties, to guide the trial judge in its application, and to guide counsel in defending one charged with its violation. *People v. Hines*, 194 Colo. 284, 572 P.2d 467 (1977).

Because this section does not proscribe the same criminal conduct as § 18-3-302, it does not violate the requirements of equal protection. This section requires the kidnapper to force the victim or any other person to make any concession or give up anything of value in order to secure a release, an element not required for second degree kidnapping. *People v. Hines*, 194 Colo. 284, 572 P.2d 467 (1977).

Inclusion of the terms "entices" and "decoys" in § 18-3-302 (2) does not mean that the word "takes" necessarily prohibits only forcible seizures therefore prohibiting the same conduct defined in subsection (1)(a) of this section. A taking could occur without force, with the intent to keep or conceal the child from his or her parent or guardian or with intent to sell, trade, or barter the child for consideration, but without the child's being enticed or decoyed away. The terms "entices" and "decoys", therefore, are not rendered meaningless by an interpretation of "takes" that encompasses nonforcible seizures. *People v. Kendall*, 174 P.3d 791 (Colo. App. 2007).

The obvious distinction between subsection (1)(a) of this section and § 18-3-302 (2) is that § 18-3-302 (2) applies only to children. Subsection (1)(a) of this section and § 18-3-302 (2) do not prohibit exactly the same criminal conduct while imposing disparate penalties. *People v. Kendall*, 174 P.3d 791 (Colo. App. 2007).

The different penalties provided for in subsections (2) and (3) of this section do not violate the equal protection clause because subsection (2) requires a finding of bodily injury, an additional element of proof which justifies the imposition of different penalties. *People v. Hines*, 194 Colo. 284, 572 P.2d 467 (1977).

It is not unconstitutional to try the felony murder and first degree kidnapping charges together under the current statutory scheme. *People v. Cunningham*, 194 Colo. 198, 570 P.2d 1086 (1977).

Prohibition against double punishment for same criminal act is not violated where a defendant is found guilty of first degree kidnapping and first degree sexual assault for same criminal episode. *People v. Molina*, 41 Colo. App. 128, 584 P.2d 634 (1978).

To convict an individual of first degree kidnapping, the movement of the victim must be more than incidental to the commission of some other underlying offense. Although the defendant forced the victim into the manager's office at knifepoint and ordered the manager to retrieve cash from the safe to secure the victim's release, the movement of the victim had no purpose or effect beyond robbery. *People v. Owens*, 97 P.3d 227 (Colo. App. 2004).

Forcible sexual acts which cause extreme physical pain and a subsequent kidney infection clearly satisfy the statutory definition of bodily injury under this section. *People v. Hines*, 194 Colo. 284, 572 P.2d 467 (1977).

Case remanded to correct excessive sentence. *Abeyta v. People*, 112 Colo. 49, 145 P.2d 884 (1944); *People v. Bridges*, 199 Colo. 520, 612 P.2d 1110 (1980).

Merger doctrine inapplicable to convictions for kidnapping, assault, and robbery. The merger doctrine does not apply to a single transaction resulting in convictions under this section and § § 18-3-402 and 18-4-301 (1). *People v. Bridges*, 199 Colo. 520, 612 P.2d 110 (1980).

If victim is injured, section applies even though victim is later liberated. *Miller v. District Court*, 197 Colo. 485, 593 P.2d 1379(1979).

If the victim is forced to submit to sexual assault without having a choice in the matter, there generally is no concession within the meaning of this section. *People v. San Emerterio*, 819 P.2d 516 (Colo. App. 1991), rev'd on other grounds, 839 P.2d 1161 (Colo. 1992).

The term "concession" as used in this section need not apply only to things with objective value but is broad enough to include a promise that has sufficient subjective value to a kidnapper to be exchanged for release. *People v. San Emerterio*, 839 P.2d 1161 (Colo. 1992).

The term "concession" is not so restrictive as to impose a control requirement to make a promise sufficiently valuable. *People v. San Emerterio*, 839 P.2d 1161 (Colo. 1992).

All of the elements of first degree kidnapping are present if a defendant forcibly seizes a victim and carries her away with the intent to force her to make a promise to complete a future act in order to secure her release. Such circumstances are sufficient to constitute a "concession" within the meaning of this section. *People v. San Emerterio*, 839 P.2d 1161 (Colo. 1992).

Asportation element of second degree kidnapping not satisfied where defendant forced victim to sit next to a tree, which did not increase her risk of harm, did not make someone seeing her more difficult, and did not make her less able to escape. *People v. Bondsteel*, 2015 COA 165, -- P.3d --.

Applied in: *Raullerson v. People*, 157 Colo. 462, 404 P.2d 149 (1965); *People v. McGill*, 190 Colo. 443, 548 P.2d 600 (1976); *People v. Glenn*, 200 Colo. 416, 615 P.2d 700 (Colo. 1980); *People v. Francis*, 630 P.2d 82 (Colo. 1981); *People v. Martinez*, 634 P.2d 26 (Colo. 1981); *People v. Reynolds*, 638 P.2d 43 (Colo. 1981); *People v. Gonzales*, 631 P.2d 1170 (Colo. App. 1981); *People v. Bridges*, 662 P.2d 161 (Colo. 1983); *People ex rel. Faulk v. District Court*, 667 P.2d 1384 (Colo. 1983).