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MATRIC NUMBER ; 19/MHS01/137

COURSE; ENGLISH

KIDNAPPING

In criminal law, kidnapping is the unlawful transportation, asrtation and confinement of a person against their will. Thus, it is a composite crime. It can also be defined as false imprisonment by means of abduction, both of which are separate crimes that when committed simultaneously upon the same person merge as the single crime of kidnapping. The aspiration/abduction element is typically but not necessarily conducted by means of force or fear. That is, the perpetrator may use a weapon to force the victim into a vehicle, but it is still kidnapping if the victim is enticed to enter the vehicle willingly, e.g., in the belief it is a taxicab.

Kidnapping may be done to demand for ransom in exchange for releasing the victim, or for other illegal purposes. Kidnapping can be accompanied by bodily injury which elevates the crime to aggravated kidnapping.

Kidnapping of a child is also known as child abduction, and these are sometimes separate legal categories.

Motivations

Kidnapping of children is usually by one parent against the wishes of a parent or guardian. Kidnapping of adults is often for ransom or to force someone to withdraw money from an ATM, but may also be for the purpose of sexual assault.

In the past, and presently in some parts of the world, kidnapping is a common means used to obtain slaves and money through ransom. In less recent times, kidnapping in the form of shanghaiing men was used to supply merchant ships in the 19th century with sailors, whom the law considered unfree labour.

Criminal gangs are estimated to make up to $500 million a year in ransom payments from kidnapping.

Kidnapping has been identified as one source by which terrorist organizations have been known to obtain funding. The Perri, Lichtenwald and MacKenzie article identified "tiger" kidnapping as a specific method used by either the Real Irish Republican Army or Continuity Irish Republican Army, in which a kidnapped family member is used to force someone to steal from their employer.

Bride kidnapping is a term often applied loosely, to include any bride "abducted" against the will of her parents, even if she is willing to marry the "abductor". It still is traditional amongst certain nomadic peoples of Central Asia. It has seen a resurgence in Kyrgyzstan since the fall of the Soviet Union and the subsequent erosion of women's rights.

Express kidnapping is a method of abduction used in some countries, mainly from Latin America, where a small ransom, that a company or family can easily pay, is demanded.

Tiger kidnapping is taking a hostage to make a loved one or associate of the victim do something: e.g. a child is taken hostage to force the shopkeeper to open the safe. The term originates from the usually long preceding observation, like a tiger does on the prowl.

By jurisdiction

Australia

In Australia, kidnapping is a criminal offence, as defined by either the State crimes act, or the Commonwealth Criminal Code. It is a serious indictable offence, and is punishable by up to 14 years imprisonment.

Canada

Kidnapping that does not result in a homicide is a hybrid offence that comes with a maximum possible penalty of life imprisonment . A murder that results from kidnapping is classified as 1st-degree, with a sentence of life imprisonment that results from conviction .

Netherlands

Article 282 prohibits hostaging . Part 1 of Article 282 allows sentencing kidnappers to maximum imprisonment of 8 years or a fine of the fifth category. Part 2 allows maximum imprisonment of 9 years or a fine of the fifth category

In all cases of kidnapping of children, where it is alleged that a child has been kidnapped, it is the absence of the consent of that child which is material. This is the case regardless of the age of the child. A very small child will not have the understanding or intelligence to consent. This means that absence of consent will be a necessary inference from the age of the child. It is a question of fact for the jury whether an older child has sufficient understanding and intelligence to consent. Lord Brandon said: "I should not expect a jury to find at all frequently that a child under fourteen had sufficient understanding and intelligence to give its consent." If the child did consent to being taken or carried away, the fact that the person having custody or care and control of that child did not consent to that child being taken or carried away is immaterial. If, on the other hand, the child did not consent, the consent of the person having custody or care and control of the child may support a defence of lawful excuse.

Regarding Restriction on prosecution, no prosecution may be instituted, except by or with the consent of the Director of Public Prosecutions, for an offence of kidnapping if it was committed against a child under the age of sixteen and by a person connected with the child, within the meaning of section 1 of the Child Abduction Act 1984. Kidnapping is an indictable-only offence. Kidnapping is punishable with imprisonment or fine at the discretion of the court. There is no limit on the fine or the term of imprisonment that may be imposed provided the sentence is not inordinate.

A parent should only be prosecuted for kidnapping their own child "in exceptional cases, where the conduct of the parent concerned is so bad that an ordinary right-thinking person would immediately and without hesitation regard it as criminal in nature".

United States

Law in the United States follows from English common law. Following the highly publicized 1932 Lindbergh kidnapping, Congress passed the Federal Kidnapping Act, which authorized the FBI to investigate kidnapping at a time when the Bureau was expanding in size and authority. The fact that a kidnapped victim may have been taken across state lines brings the crime within the ambit of federal criminal law.

Most states recognize different types of kidnapping and punish accordingly. E.g. New York bases its definition of first-degree kidnapping on the duration and purpose. There are several deterrents to kidnapping in the United States of America. Among these are:

# The extreme logistical challenges involved in successfully exchanging the money for the return of the victim without being apprehended or surveiled.

# Harsh punishment. Convicted kidnappers face lengthy prison terms. If a victim is brought across state lines, federal charges can be laid as well.

# Good cooperation and information sharing between law enforcement agencies, and tools for spreading information to the public .

One notorious failed example of kidnap for ransom was the 1976 Chowchilla bus kidnapping, in which 26 children were abducted with the intention of bringing in a $5-million ransom. The children and driver escaped from an underground van without the aid of law enforcement. According to the Department of Justice, kidnapping makes up 2% of all reported violent crimes against juveniles.

According to a 2003 Domestic Violence Report in Colorado, out of a survey of 189 incidents, most people are taken from their homes or residence by a present or former spouse or significant other. They are usually taken by force, not by weapon, and usually the victims are not injured when they are freed.

In 2009, Phoenix, Arizona reported over 300 cases of kidnapping, although subsequent investigation found that the Phoenix police falsified data . If true, this would have been the highest rate of any US city and second in the world only to Mexico City. A rise in kidnappings in the southwestern United States in general has been attributed to misclassification by local police, lack of a unified standard, desire for Federal grants, or the Mexican Drug War.

In 2010 the United States was ranked sixth in the world for kidnapping for ransom, according to the available statistics .

In 2009, the Los Angeles Times named Phoenix, Arizona, as America's kidnapping capital, reporting that every year hundreds of ransom kidnappings occur there, virtually all within the underworld associated with human and drug smuggling from Mexico, and often done as a way of collecting unpaid debts. However, a later audit by the U.S. Department of Justice Inspector General found only 59 federally reportable kidnappings in 2008, compared to the over 300 claimed on grant applications.

During the year 1999 in the United States, 203,900 children were reported as the victims of family abductions and 58,200 of non-family abductions. However, only 115 were the result of "stereotypical" kidnaps .

Statistics

Countries with the highest rates

Kidnapping for ransom is a common occurrence in various parts of the world today, and certain cities and countries are often described as the "Kidnapping Capital of the World". As of 2007, that title belongs to Iraq with possibly 1,500 foreigners kidnapped. In 2004, it was Mexico, and in 2001, it was Colombia. Statistics are harder to come by. Reports suggest a world total of 12,500-25,500/year with 3,600/year in Colombia and 3,000/year in Mexico around the year 2000. However, by 2016, the number of kidnappings in Colombia had declined to 205 and it continues to decline. Mexican numbers are hard to confirm because of fears of police involvement in kidnapping.