

N.C.P.I.-Crim. 210.26
FIRST DEGREE KIDNAPPING (INVOLUNTARY SERVITUDE) COVERING
SECOND DEGREE KIDNAPPING AS A LESSER INCLUDED OFFENSE.
FELONY.
GENERAL CRIMINAL VOLUME
MARCH 2005
N.C. Gen. Stat. §§ 14-39

210.26 FIRST DEGREE KIDNAPPING (INVOLUNTARY SERVITUDE)
COVERING SECOND DEGREE KIDNAPPING AS A LESSER INCLUDED
OFFENSE. FELONY.

NOTE WELL: Use this instruction when there is evidence that the victim was not released in a safe place, or was seriously injured, or was sexually assaulted. When there is no evidence of any of those three things, use N.C.P.I.-Crim. 210.36.

The defendant has been charged with first degree kidnapping.

For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant unlawfully¹

- a. [confined a person, that is, imprisoned him within a given area.]
- b. [restrained a person, that is restricted his freedom of movement.]
- c. [removed a person from one place to another.]

Second, that [the person did not consent] [the person had not reached his sixteenth birthday and his [parent] [guardian] did not consent] to this [confinement] [restraint] [removal].² (Consent obtained or induced by fraud or fear is not consent.)

Third, that the defendant did this for the purpose of holding the person in involuntary servitude, which is the unlawful holding of a person against his will by coercion or intimidation for the performance of labor.

And Fourth, that the person [was not released by the defendant in

a safe place]³ [had been sexually assaulted] [had been seriously injured].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unlawfully

- a. [confined a person]
- b. [restrained a person]
- c. [removed a person from one place to another]

and that the person [did not consent] [had not reached his sixteenth birthday and his [parent] [guardian] did not consent] to this [confinement] [restraint] [removal] and that this was for the purpose of holding that person in involuntary servitude, and that the person [was not released in a safe place] [had been sexually assaulted] [had been seriously injured], it would be your duty to return a verdict of guilty of first degree kidnapping. If you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of first degree kidnapping, you must determine whether the defendant is guilty of second degree kidnapping.⁴

Second degree kidnapping differs from first degree kidnapping in that it is unnecessary for the State to prove that the person [confined] [restrained] [removed] [was not released by the defendant in a safe place] [had been sexually assaulted] [had been seriously injured].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unlawfully

- a. [confined a person]

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- b. [restrained a person]
- c. [removed a person from one place to another]

and that the person [did not consent] [had not reached his sixteenth birthday and his [parent] [guardian] did not consent] to this [confinement] [restraint] [removal] and that this was for the purpose of holding that person in involuntary servitude, it would be your duty to return a verdict of guilty of second degree kidnapping. If you do not so find or have a reasonable doubt as to any of these things, it would be your duty to return a verdict of not guilty.⁵

NOTE WELL: When there is evidence of restraint which may have been without any of the purposes required to constitute kidnapping, give N.C.P.I.-Crim. 210.40, Felonious Restraint and/or N.C.P.I.-Crim. 210.15, False Imprisonment, as a lesser included offense instruction.

1. There will seldom be any need to state separately or elaborate on the "unlawfully" element. It means "without justification or excuse" and in most cases any facts which would establish a justification or excuse would also negate the purposes necessary to establish kidnapping under N.C. Gen. Stat. § 14-39. However, if the facts should call for further elaboration, the "unlawfully" element should be set out as a separate element.

2. N.C. Gen. Stat. § 14-39 proscribes the confinement, restraint or removal of any ". . . person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person." Use the first bracketed alternative if the person kidnapped was 16 years of age or over, and use the second bracketed alternative if the person kidnapped was under 16.

3. Releasing a kidnap victim when the kidnapper is aware he is cornered and outnumbered by law enforcement officials is not "voluntary" and sending her out into the focal point of their weapons is not a "safe place". See *State v. Heatwole*, 333 N.C. 156, 423 S.E.2d 735 (1992). See also *State v. Corbett*, 168 N.C. App 117, 607 S.E.2d 281 (2005).

4. If no lesser included offense instructions are to be given, the last phrase should be "it would be your duty to return a verdict of not guilty."

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5. If there is to be an instruction on felonious restraint and/or false imprisonment, the last sentence should read ". . . you would not return a verdict of guilty of second degree kidnapping."