

N.C.P.I.-Crim. 210.35  
SECOND DEGREE KIDNAPPING (TO COMMIT FELONY OR SERIOUS  
INJURY). FELONY.  
GENERAL CRIMINAL VOLUME  
REPLACEMENT JUNE 2017  
N.C. Gen. Stat. § 14-39  
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210.35 SECOND DEGREE KIDNAPPING (TO COMMIT FELONY OR SERIOUS  
INJURY). FELONY.

*NOTE WELL:*

*(1) Use this instruction when the indictment alleges that a purpose of the kidnapping was to facilitate a felony or inflict serious injury.<sup>1</sup> Use N.C.P.I.—Crim. 210.30 when the indictment does not so allege.*

*(2) Use this instruction only when there is no evidence that the victim was not released in a safe place, no evidence that the victim had been seriously injured, and no evidence that the victim had been sexually assaulted. Use N.C.P.I.—Crim. 210.25 when there is such evidence.*

*(3) Where multiple crimes involving force, e.g. armed robbery and kidnapping, are alleged and all alleged crimes are part of one continuous transaction or event, then the jury should be instructed on only one offense. If the multiple crimes are separate transactions, then the jury can be charged on all crimes.*

The defendant has been charged with second 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 unlawfully<sup>2</sup>

- a) [confined a person, that is, imprisoned the person within a given area.]
- b) [restrained a person, that is restricted the person's freedom of movement.]
- c) [removed a person from one place to another.]<sup>3</sup>

Second, that the person [did not consent] [had not reached the person's sixteenth birthday and the person's [parent] [guardian] [legal custodian] did not consent] to this [confinement] [restraint] [removal].<sup>4</sup>

(Consent obtained or induced by fraud or fear is not consent.)

Third, that the defendant [confined] [restrained] [removed] the person for the purpose of

- a) [facilitating [ the defendant's] [another person's] [commission of] [flight after committing] (*name and define felony*).]<sup>5</sup>
- b) [doing serious bodily injury<sup>6</sup> to that person.]

And Fourth, that this [confinement] [restraint] [removal] was a separate, complete act, independent of and apart from the [(*name felony*)] [injury].

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],

that the person [did not consent] [had not reached the person's sixteenth birthday and the person's [parent] [guardian] [legal custodian] did not consent] to this [confinement] [restraint] [removal], and that this was done for the purpose of

- a) facilitating [the defendant's] [another person's] [commission of] [flight after committing] [(*name felony*)]
- b) [doing serious bodily injury to that person]

and that this [confinement] [restraint] [removal] was a separate, complete act, independent of and apart from the [(*name felony*)] [injury], it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.<sup>7</sup>

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*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.*

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1 In cases where the defendant is accused of both kidnapping and the felony which was the purpose of the kidnapping, see *S. v. Fulcher*, 294 N.C. 508 (1978) and *S. v. Williams*, 295 N.C. 655 (1978).

2 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.

3 See *State v. Bell*, 166 N.C. App. 261 (2004) (concluding that it was plain error for the judge to instruct jury on restraint and removal theories of kidnapping when the indictment alleged confinement and restraint theories of kidnapping.)

4 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 phrase if the person kidnapped was under 16.

5 The crime should be defined by instructing the jury on the elements of the offense set forth in the appropriate Pattern Jury instruction.

6 If a definition of serious bodily injury is needed, see N.C.P.I.—Crim. 120.11.

7 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."