

210.36 SECOND DEGREE KIDNAPPING (INVOLUNTARY SERVITUDE).
FELONY.

NOTE WELL: 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. 210.26 when there is such evidence.

The defendant has been charged with second degree kidnapping.

For you to find the defendant guilty of this offense, the State must prove three 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.)

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

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, it would be your duty to return a verdict of guilty. 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.³

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. 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. 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."