

Ala. Code 1975, § 13A-6-44

Kidnapping Second Degree

The defendant is charged with kidnapping in the second degree.

A person commits the crime of kidnapping in the second degree if he/she abducts another person.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant abducted another person, **[name]**.

Abduct means to restrain a person with intent to prevent his/her liberation by either:

1. Secreting or holding him/her in a place where he/she is not likely to be found; **(OR)**
2. Using or threatening to use deadly physical force. [13A-6-40(2)]

Restrain means to intentionally or knowingly restrict a person's movements, unlawfully and without consent, so as to interfere substantially with his/her liberty by: **[Read as appropriate]**:

1. Moving him/her from one place to another; **(OR)**
2. Confining him/her either: **[Read as appropriate]**:
 - (a) In the place where the restriction commences; **(OR)**
 - (b) In a place to which he/she has been moved.

Restraint is *without consent* if it is accomplished by: **[Read as appropriate]**:

1. Physical force, intimidation, or deception; **(OR)**
2. Any means, including acquiescence of the victim, if the victim is: **[Read as appropriate]**:
 - (a) A child less than 16 years of age; **(OR)**
 - (b) An incompetent person; **(AND)**

The parent, guardian or other person or institution having lawful control or custody of him/her has not acquiesced in the movement or confinement. [13A-6-40(1)]

[Read as appropriate]: *Deadly physical force* means physical force that is readily capable of causing either death or serious physical injury, given the circumstances in which it is used. [13A-1-2(6)]

[Read as appropriate]: *Serious physical injury* is physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ. [13A-1-2(14)]

[Read as appropriate]: *Physical injury* is impairment of physical condition or substantial pain. [13A-1-2(12)]

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)].

[Read as appropriate - See Use Note] A person does not commit kidnapping in the second degree if:

1. The abduction is not coupled with intent to use or to threaten to use deadly force;
2. The actor is a relative of the person abducted; **(AND)**
3. The actor's sole purpose is to assume lawful control of that person. [13A-6-44(b)]

[Read as appropriate]: *Relative* means a parent or stepparent, ancestor, sibling, uncle or aunt or other lawful custodian, including an adoptive relative of the same degree through marriage or adoption. [13A-6-40(3)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of kidnapping in the second degree, then you shall find the defendant guilty of kidnapping in the second degree.

If you find that the State has failed to prove any one or more of the elements of kidnapping in the second degree, then you cannot find the defendant guilty of kidnapping in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

The burden of injecting the defense is on the defendant, but this does not shift the burden of proof. [13A-6-44(b)]

[Approved 10-14-15.]