

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: SUBSTANTIVE CRIMINAL LAW 2.11

SUBJECT:	Substantive Criminal Law
AZ POST DESIGNATION:	2.11 Chapter 13 Kidnapping and Related Offenses
HOURS:	.5
COURSE CONTENT:	An analysis of the most frequently used statutes in this chapter.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will: 2.11.13.1 Given a written, verbal or visual description depicting the possible commission of the following crime(s), identify if a crime occurred and, if so, the common crime name and classification: A. Kidnapping and related offenses (A.R.S. Title 13, Chapter 13).

DATE FIRST PREPARED: November 2000

PREPARED BY: SME Committee

REVIEWED – REVISED:	SME Committee	DATE: May 2002
REVIEWED – REVISED:	AZ POST (Word)	DATE: May 2003
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AZ POST – APPROVAL:	Steve Enteman	DATE: August 2019
AZ POST – APPROVAL:	Mandy Faust	DATE: February 2021
AZ POST – APPROVAL:	Lori Wait	DATE: January 2022

INSTRUCTOR REFERENCES: A.R.S. Title 13

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2-11 Ch 13 Kidnapping and related

DATE RELEASED TO THE SHARE FILE: May 2022

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives. **INSTRUCTOR NOTE:** Use if taught as a “stand alone” lesson plan.

II. 13-1301 – DEFINITIONS

P. O. 2.11.13.1A

- A. Emphasis, once again, should be placed on the ability to understand, use and apply these definitions to the statutes that utilize them.
 - 1. Relative – means a parent or step-parent, ancestor, descendant, sibling, uncle or aunt, including an adoptive relative of the same degree through marriage or adoption, or a spouse.
 - 2. Restrain – means to restrict a person's movements without consent, without legal authority and in a manner which interferes substantially with such a person's liberty, by either moving such a person from one (1) place to another or by confining such person.
 - 3. Restraint is without consent if it is accomplished by:
 - a. Physical force, intimidation or deception; or
 - b. Any means, including acquiescence (consent) of the victim, if the victim is a child less than 18 years of age or an incompetent person and the victim's lawful custodian has not acquiesced in the movement or confinement.
- B. **Please note:** There is no case law or commentary that can be used to assist in understanding these definitions. We will, therefore, use a common sense approach when dealing with them.

III. 13-1302 – CUSTODIAL INTERFERENCE; CHILD BORN OUT OF WEDLOCK

P. O. 2.11.13.1A

- A. A person commits custodial interference if knowing, or having reason to know, that the person has no legal right to do so, the person does one (1) of the following:
 - 1. Takes, entices or keeps from lawful custody any child or incompetent and is entrusted by authority of law to the custody of another person or institution.
 - 2. Before the entry of a court order determining custodial rights, takes, entices or withholds any child from the other parent denying that parent access to any child.
 - 3. If the person is one (1) of two (2) persons who has joint legal custody of a child and takes, entices or withholds from physical custody the child from the other custodian.
 - 4. At the expiration of access rights outside this state, intentionally fails or refuses to return

or impedes the return of a child to the lawful custodian.

- B. If a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this section until paternity is established and custody is determined by the court.
- C. It is a defense to a prosecution pursuant to Subsection A, paragraph 2, if both of the following apply:
 - 1. The defendant has begun the process to obtain an Order of Protection or files a Petition for Custody within a reasonable period of time and the Order of Protection or petition states the defendant's belief that the child was at risk if left with the other parent;
 - 2. The defendant is the child's parent and has the right of custody and the defendant either:
 - a. Has a good faith and reasonable belief that the taking, enticing or withholding is necessary to protect the child from immediate danger; or
 - b. Is a victim of domestic violence by the other parent and has a good faith and reasonable belief that the child will be in immediate danger if the child is left with the other parent.
- D. It is a defense to a prosecution pursuant to subsection A,
 - 1. The person has filed an emergency petition regarding custodial rights with the superior court and has a hearing date from the court.
 - 2. The person has a good faith and reasonable belief that the child will be in immediate danger if the child is left with the other parent.
- E. Classification.
 - 1. A violation of this section is:
 - a. A felony if committed by a person other than a parent, or custodian or their agent of the custodian.
 - b. A felony if the person is taken out of this state by their parent or custodian or their agent (notwithstanding paragraph D.3.).
 - c. A felony if by a parent or custodian or their agent.
 - d. A misdemeanor if the person is voluntarily returned without physical injury by the parent or defendant within 48 hours.
 - 2. It is very important not to be confused by the term "custodial."

- a. This term would normally lead a person to believe that the suspect would have to be a relative of the victim, but this is not so.
 - b. The suspect could be a total stranger and still commit this crime.
 - c. We do find, however, that this crime does occur in family-related situations such as separations and divorces where one (1) parent does have a court order giving that parent total or partial control over a child.
3. Keep in mind that in order for this crime to occur the VICTIM must be either:
- a. A juvenile; or
 - b. An incompetent person (mentally).

IV. 13-1303 – UNLAWFUL IMPRISONMENT

P. O. 2.11.13.1A

- A. A person commits unlawful imprisonment by knowingly restraining another person.
- B. The statute provides defenses for a prosecution for this crime in that:
 - 1. The restraint was accomplished by a peace officer acting in good faith in the lawful performance of his/her duty; or
 - 2. The suspect is a relative of the person restrained (victim) and that the sole intent of the suspect was to assume lawful control or custody of the victim and the restraint was accomplished without physical injury.
- C. The crime is a Class 6 felony unless the victim is released voluntarily by the suspect without physical injury, in a safe place and prior to arrest. If this occurs, then it drops down to a Class 1 misdemeanor.
- D. "Evidence was sufficient to sustain an (unlawful) imprisonment conviction of the defendant who forced the victim to go from the victim's house to the defendant's office where the victim, who testified that he was afraid for his life, was held for a period of two (2) hours." (Washington v. State (Cr. App. 1974) 509 S.W. 2d 638.)

V. 13-1304 - KIDNAPPING

P. O. 2.11.13.1A

- A. A person commits kidnapping by knowingly restraining another person with the intent to:
 - 1. Hold the victim for ransom, as a shield or hostage; or
 - 2. Hold the victim for involuntary servitude; or

3. Inflict death, physical injury or a sexual offense on a victim, or to otherwise aid in the commission of a felony; or
 4. Place the victim or third person in a reasonable apprehension of imminent physical injury; or
 5. Interfere with the performance of a governmental or political function; or
 6. Seize or exercise control over any plane, train, bus, ship or other vehicle.
- B. Kidnapping is always considered a felony, but it can drop down under some circumstances.
1. It is considered a Class 2 felony unless the victim is released voluntarily without physical injury and prior to arrest or accomplishing any of the enumerated offenses under A. 1-6.
 2. If this occurs, the crime drops to a Class 4 felony.
 3. If the police become involved and the victim is released pursuant to an agreement with the state and without any physical injury, it becomes a Class 3 felony. (People v. Hamil, 1974, 20 Ill. App 3d 901, 314, N.E. 2d 251 and State v. Morries, 1968, 281 Minn. 119, 160 N.W. 2d 715.)
 4. According to the proposed Delaware Criminal Code, Section 452, the reason for the above-mentioned circumstances that would lead to a drop in the severity of the crime is that it would provide an incentive to the kidnapper to release his/her victim alive, substantially unharmed and in a safe place prior to the arrest. **INSTRUCTOR NOTE:** *The statute was designed with a view to saving the victim's life and assuring his/her safe return to his/her normal abode.*
- C. "The conduct of the defendant in confining the victim in an automobile while he drove through several alleys before finally parking in an alley next to a building where the victim could not open the passenger door constituted secret confinement within the meaning of this section."
- D. "Proof that the defendant confined his victim for a substantial time or moved her a substantial distance is not necessary to establish the crime of kidnapping."
- E. "Removal of the complainant a distance of only 100 to 150 feet and a detention of 5 minutes in the process of committing indecent assault constituted "kidnapping" and it was proper to charge on kidnapping as a separate offense."
1. It is a class 2 Felony if the kidnapping victim is under the age of fifteen years.

VI. 13-1305 – ACCESS INTERFERENCE

P. O. 2.11.13.1A

- A. A person commits access interference if, knowing or having reason to know that the person has no legal right to do so, the person knowingly engages in a pattern of behavior that prevents,

obstructs, or frustrates the access rights of a person who is entitled to access to a child pursuant to a court order.

- B. If the child is removed from this state, access interference is a Class 5 felony. Otherwise, it is a Class 2 misdemeanor.
- C. The enforcement of this statute is not limited to the availability of other remedies for access interference.
- D. For the purposes of this section, “access order” means a court order that allows a person to have direct access to a child or incompetent person.

VII. 13-1307 – SEX TRAFFICKING

- A. It is unlawful for a person to knowingly traffic another person who is eighteen years of age or older with either of the following:
 - 1. The intent to cause the other person to engage in any prostitution or sexually explicit performance by deception, force or coercion; or
 - 2. The knowledge that the other person will engage in any prostitution or sexually explicit performance by deception, coercion or force.
 - 3. Sex Trafficking is a class 2 Felony.
- B. For purposes of this section:
 - 1. “Coercion” includes:
 - a. Abusing or threatening to abuse the law or the legal system; or
 - b. Knowingly destroying, concealing, removing, confiscating, possessing or withholding another person's actual or purported passport or other immigration document, government issued identification document, government record or personal property; or
 - c. Extortion; or
 - d. Causing or threatening to cause financial harm to any person; or
 - e. Facilitating or controlling another person’s access to a controlled substance; or
 - 2. “Force” includes causing or threatening to cause serious harm to another person or physically restraining or threatening to physically restrain another person; or
 - 3. “Sexually explicit performance” means a live or public act or show intended to arouse or

satisfy the sexual desires or appeal to the prurient interest of patrons; or

4. "Traffic" means to entice, recruit, harbor, provide, transport or otherwise obtain another person

VIII. 13-1308 – TRAFFICKING OF PERSONS FOR FORCED LABOR OR SERVICES

A. It is unlawful for a person to either:

1. Knowingly traffic another person with the intent to or knowledge that the other person will be subject to forced labor or services.
2. Knowingly benefit, financially or by receiving anything of value, from participation in a venture that has engaged in an act in violation of section 13-1306, section 13-1307, this section or section 13-3212, subsection A, paragraph 9 or 10.

B. A violation of this section is a class 2 felony.

C. For the purposes of this section:

1. "Forced labor or services":

a. Means labor or services that are performed or provided by another person and that are obtained through a person's either:

- i. Causing or threatening to cause serious physical injury to any person.
- ii. Restraining or threatening to physically restrain another person.
- iii. Knowingly destroying, concealing, removing, confiscating, possessing or withholding another person's actual or purported passport or other immigration document, government issued identification document, government record or personal property.
- iv. Abusing or threatening to abuse the law or the legal system.
- v. Extortion.
- vi. Causing or threatening to cause financial harm to any person.
- vii. Facilitating or controlling another person's access to a controlled substance.

b. Does not include ordinary household chores and reasonable disciplinary measures between a parent or legal guardian and the parent's or legal guardian's child.

2. "Traffic" means to entice, recruit, harbor, provide, transport or otherwise obtain another person by deception, coercion or force.

IX. 13-1310 ABDUCTION OF A CHILD FROM A STATE AGENCY

- A. A person commits abduction of a child from a state agency if, knowing or having reason to know that a child is entrusted by authority of law to the custody of a state agency, the person does either of the following:
 1. Takes, entices or keeps the child from the lawful custody of the state agency.
 2. Intentionally fails or refuses to immediately return or impedes the immediate return of a child to the lawful custody of the state agency, including at the expiration of visitation or access.
- B. A violation of subsection A, paragraph 2 of this section is a class 5 felony. A violation of subsection A, paragraph 1 of this section is:
 1. A class 3 felony if the child is taken, enticed or kept from the lawful custody of the state agency and is taken outside of this state.
 2. A class 4 felony if the child is taken, enticed or kept from the lawful custody of the state agency but the child remains in this state at all times.
 3. A class 6 felony if the person voluntarily returns the child without physical injury not later than forty-eight hours after the person takes, entices or keeps the child from the lawful custody of the state agency.
- C. For the purposes of this section, "state agency" means the department of child safety or the department of juvenile corrections.

X. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).