

CHAPTER 3-3

KIDNAPPING AND RELATED OFFENSES

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The instructions in this chapter are designed to cover the offenses in §§ 18-3-301 through -305, C.R.S.

3-3:01 FIRST DEGREE KIDNAPPING

The elements of the crime of first degree kidnapping are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [knowingly and forcibly seized and carried any person from one place to another] [knowingly enticed or persuaded any person to go from one place to another] [knowingly imprisoned or forcibly secreted any person],
4. with intent to force that person or any other person to make any concession or give up anything of value,
5. in order to secure the release of the person under the defendant's actual or apparent control;
6. [without the affirmative defense in instruction number__.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of kidnapping in the first degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of kidnapping in the first degree.

NOTES ON USE

Delete inapplicable bracketed material.

SOURCE & AUTHORITY

§18-3-301, C.R.S.

COLJI-Crim. No. 11:01 and 11:03 (1983)

People v. Weare, 155 P.3d 527 (Colo. App. 2006)
(single requirement of intent—to make the victim give a concession, no intent required of releasing the victim upon receiving the concession)

CLASSIFICATION OF OFFENSE

F1, if bodily injury sustained

F2, if no bodily injury

3-3:02 INTERROGATORY - FIRST DEGREE KIDNAPPING (LIBERATED ALIVE)

If you find the defendant not guilty of first degree kidnapping, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of first degree kidnapping, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Has the prosecution proven beyond a reasonable doubt that the person who was kidnapped was not liberated alive?
(Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the person who was kidnapped was not liberated alive.

After considering all of the evidence, if you decide the prosecution has proven that the kidnapped person was not liberated alive beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable

doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

This interrogatory should be used *only* in a case in which the death penalty is at issue.

SOURCE & AUTHORITY

§18-3-301(2), C.R.S.

3-3:03 INTERROGATORY - FIRST DEGREE KIDNAPPING (BODILY INJURY)

If you find the defendant not guilty of first degree kidnapping, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of first degree kidnapping, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Did the person who was kidnapped suffer bodily injury?
(Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the person who was kidnapped suffered bodily injury.

After considering all of the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

This interrogatory should be used to determine whether the defendant is guilty of a class 1 or a class 2 felony. When it is given, the jury should also be instructed as to the definition of "bodily injury."

SOURCE & AUTHORITY

§18-3-301(2), C.R.S.

COLJI-Crim. No. 11:02 (1983).

3-3:04 SECOND DEGREE KIDNAPPING - SEIZES AND CARRIES

The elements of the crime of second degree kidnapping are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
 - a. seized and carried any person from one place to another,
 - b. without his/her consent, and
 - c. without lawful justification,
4. without the affirmative defense set forth in instruction number _____

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of kidnapping in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of kidnapping in the second degree.

NOTES ON USE

Additional jury findings with regard to the use of a deadly weapon or the commission of robbery or sexual assault may be required in order to determine the degree of felony and sentence for a conviction.

SOURCE & AUTHORITY

§18-3-302(1), C.R.S.

COLJI-Crim. No. 11:04 (1993).

People v. Harlan, 8 P.3d 448 (Colo. 2000) (sufficiency of asportation)

People v. Kendall, 174 P.3d 791 (Colo. App. 2007) (distinction between first and second degree kidnapping)

CLASSIFICATION OF OFFENSE

F2, if person kidnapped is a victim of a sexual offense or robbery

F3, if kidnapping is accomplished with the intent to sell, trade or barter the victim for consideration or a deadly weapon is used or simulated or the defendant represents that (s)he is armed with a deadly weapon

F4, if above not present

3-3:05 SECOND DEGREE KIDNAPPING - TAKE, ENTICE, OR DECOY (KEEP OR CONCEAL)

The elements of the crime of second degree kidnapping are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,

- a. took, enticed, or decoyed,
 - b. any child not his own
 - c. under the age of eighteen,
4. with the intent
 5. to keep or conceal the child from his parent or guardian,
 6. [without the affirmative defense set forth in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of kidnapping in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of kidnapping in the second degree.

NOTES ON USE

See §18-1-503.5, C.R.S. with respect to the criminality of the conduct, regarding the age of the child or the defendant's belief thereof. See also *People v. Graybeal*, 155 P.3d 614 (Colo.App. 2007).

SOURCE & AUTHORITY

§18-3-302(2), C.R.S.

COLJI-Crim. No. 11:05 (1993).

People v. Kendall, 174 P.3d 791 (Colo. App.2007)
(distinction between first and second degree kidnapping)

CLASSIFICATION OF OFFENSE

F2, if person kidnapped is a victim of a sexual offense or robbery

F3, if kidnapping is accomplished with the intent to sell, trade or barter the victim for consideration or a deadly weapon is used or simulated or the defendant represents that (s)he is armed with a deadly weapon

F4, if above not present

3-3:06 SECOND DEGREE KIDNAPPING - TAKE, ENTICE, OR DECOY (SELL, TRADE, OR BARTER)

The elements of the crime of second degree kidnapping are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
 - a. took, enticed, or decoyed,
 - b. any child not his own,
 - c. under the age of eighteen,
4. with the intent
5. to sell, trade, or barter such child for consideration,
6. [without the affirmative defense set forth in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of kidnapping in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of kidnapping in the second degree.

NOTES ON USE

See §18-1-503.5, C.R.S. with respect to the criminality of the conduct, regarding the age of the child or the defendant's belief thereof.

SOURCE & AUTHORITY

§18-3-302(2), C.R.S.

COLJI-Crim. No. 11:06 (1993).

CLASSIFICATION OF OFFENSE

F3, unless victim robbed or sexually assaulted then F2

3-3:07 INTERROGATORY (SEXUAL ASSAULT) - SECOND DEGREE KIDNAPPING

If you find the defendant not guilty of second degree kidnapping, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of second degree kidnapping, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Was the person who was kidnapped also a victim of a sexual assault? (Yes or No)

The person who was kidnapped was also a victim of sexual assault if the following elements are proven beyond a reasonable doubt:

(Enumerate here the elements of the applicable crime of sexual assault)

It is the prosecution's burden to prove beyond a reasonable doubt that the person who was kidnapped was a victim of sexual assault.

After considering all of the evidence, if you decide

the prosecution has proven each of the elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

SOURCE & AUTHORITY

§18-3-302(3)(a), C.R.S.

COLJI-Crim. No. 11:06.1 (1993).

People v. Ramirez, 140 P.3d 169 (Colo. App. 2005)
(sexual assault conviction not merge into second degree kidnapping with sexual assault)

3-3:08 INTERROGATORY (ROBBERY) - SECOND DEGREE KIDNAPPING

If you find the defendant not guilty of second degree kidnapping, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of second degree kidnapping, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Was the person who was kidnapped also a victim of a robbery? (Yes or No)

The person who was kidnapped was also a victim of a robbery if the following elements are proven beyond a reasonable doubt:

1. The defendant [or anyone else indicated by the evidence],
2. knowingly,
3. took anything of value,

4. from the person or presence of the kidnapped person,

5. by the use of force, threats, or intimidation,

6. [without the affirmative defense in instruction number _____.]

It is the prosecution's burden to prove beyond a reasonable doubt that the person who was kidnapped was a victim of a robbery.

After considering all of the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is used, the definition of "knowingly" must be given.

SOURCE & AUTHORITY

§18-3-302(4), C.R.S.

COLJI-Crim. No. 11:06.2 (1993).

People v. Hogan, 114 P.3d 42 (Colo. App. 2005)
(aggravated robbery conviction does not merge into second degree kidnapping conviction)

**3-3:09 INTERROGATORY (SELL, TRADE OR BARTER)
SECOND DEGREE KIDNAPPING**

If you find the defendant not guilty of second degree kidnapping, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of second degree kidnapping, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Was the kidnapping accomplished with the intent to sell, trade or barter the victim for consideration? (Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the kidnapping was accomplished with the intent to sell, trade or barter the victim for consideration.

After considering all of the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is given, the definition of "intent" must be given.

SOURCE & AUTHORITY

§18-3-302(4)(a)(I), C.R.S.

COLJI-Crim. No. 11:06.3 (1993).

**3-3:10 INTERROGATORY (DEADLY WEAPON) SECOND DEGREE
KIDNAPPING (PRIOR TO JULY 1, 2001)**

If you find the defendant not guilty of second degree kidnapping, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of second degree kidnapping, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Was the kidnapping accomplished by the use of a deadly weapon? (Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the kidnapping was accomplished by the use of a deadly weapon.

After considering all of the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

If this interrogatory is given, the jury should also be given the appropriate definition of "deadly weapon".

SOURCE & AUTHORITY

§18-3-302(4), C.R.S.

COLJI-Crim. No. 11:06.3 (1993).

**3-3:11 INTERROGATORY (DEADLY WEAPON) SECOND DEGREE
KIDNAPPING (ON OR AFTER JULY 1, 2001)**

If you find the defendant not guilty of second degree kidnapping, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of second degree kidnapping, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Was the kidnapping accomplished by [the use of a deadly weapon] [the use of an article used or fashioned in a manner to cause a person to reasonably believe that the article was a deadly weapon] [a representation, verbal or otherwise, by the defendant that he was armed with a deadly weapon]? (Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the kidnapping was accomplished by [the use of a deadly weapon] [the use of an article used or fashioned in a manner to cause a person to reasonably believe that the article was a deadly weapon] [a representation, verbal or otherwise, by the defendant that he was armed with a deadly weapon].

After considering all of the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

Delete inapplicable bracketed material.

If this interrogatory is given, the jury should also be given the appropriate definition of "deadly weapon".

SOURCE & AUTHORITY

§18-3-302(4), C.R.S.

3-3:12 FALSE IMPRISONMENT

The elements of the crime of false imprisonment are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
 - a. confined or detained another,
 - b. without the other's consent, and
 - c. without proper legal authority, [and]
 - d. [the person used force or threat of force to confine or detain the other person, and
 - e. the person was confined or detained for twelve hours or more]
4. [without the affirmative defense in instruction number]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false imprisonment.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false imprisonment.

NOTES ON USE

If the defendant is charged with the misdemeanor only,

omit elements d. and e. The definition of "knowingly" must be given with this instruction.

SOURCE & AUTHORITY

§18-3-303, C.R.S.

COLJI-Crim. No. 11:08 (1983).

CLASSIFICATION OF OFFENSE

F5, if d. or e. are present, otherwise M2

3-3:13 VIOLATION OF CUSTODY - TAKES OR ENTICES

The elements of the crime of violation of custody are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
 - a. took or enticed,
 - b. any child under the age of eighteen,
 - c. from the custody of its [parent] [guardian] [lawful custodian]
 - d. [removed the child from the United States]
4. knowing that he had no privilege to do so, or heedless in that regard,
5. [without the affirmative defense in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of custody.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of custody.

NOTES ON USE

See chapter on affirmative defenses to specific offenses.

See §18-1-503.5, C.R.S. with respect to the criminality of the conduct, regarding the age of the child or the defendant's belief thereof.

See §18-3-304(4), C.R.S. re venue.

Delete inapplicable bracketed material.

SOURCE & AUTHORITY

§18-3-304(1), C.R.S.

COLJI-Crim. No. 11:09 (1993).

CLASSIFICATION OF OFFENSE

F4, if third degree proven, otherwise F5

3-3:14 VIOLATION OF CUSTODY - VIOLATES COURT ORDER

The elements of the crime of violation of custody are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. violated an order of any [district] [juvenile] court of this State which granted custody or parental responsibilities with respect to a child under eighteen years to any person, agency, or institution,

4. with the intent to deprive the lawful custodian of the custody of the child or person with parental responsibilities of the care of the child,

5. and the child was then under the age of eighteen.
[and

6. knowingly removed the child from the United States]

7. [without the affirmative defense in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of custody.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of custody.

NOTES ON USE

See chapter on affirmative defenses to specific offenses.

See §18-1-503.5, C.R.S. with respect to the criminality of the conduct, regarding the age of the child or the defendant's belief thereof.

See §18-3-304(4), C.R.S. re venue.

People v. Sorrendino, 37 P.3d 501 (Colo. App. 2001) (temporary custodial orders are actionable under § 18-3-304(2), C.R.S.)

People v. Metcalf, 926 P.2d 133 (Colo. App. 1996) (knowingly element does not apply to the custody order)

Delete inapplicable bracketed material.

SOURCE & AUTHORITY

§18-3-304(2), C.R.S.
COLJI-Crim. No. 11:10 (1993).

CLASSIFICATION OF OFFENSE

F4, if child removed from the United States, otherwise
F5

3-3:15 ENTICEMENT OF A CHILD

The elements of the crime of enticement of a child are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the intent to commit sexual assault upon the child,
4. invited or persuaded or attempted to invite or persuade,
5. a child under the age of fifteen years,
6. to enter any vehicle, building, room or secluded place,
7. [without the affirmative defense in instruction number _____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of enticement of a child.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of enticement of a child.

NOTES ON USE

Delete inapplicable bracketed material.

An appropriate elemental instruction of "sexual assault on a child" must be given with this instruction.

SOURCE & AUTHORITY

§18-3-305, C.R.S.

COLJI-Crim. No. 11:11 (1993).

CLASSIFICATION OF OFFENSE

F3, if prior conviction or bodily injury

F4, otherwise

3-3:16 INTERROGATORY (PRIOR CONVICTION) ENTICEMENT OF A CHILD

If you find the defendant not guilty of enticement of a child, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of enticement of a child, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Does the defendant have a prior conviction for _____ ? (Yes or No)
(insert appropriate charge)

It is the prosecution's burden to prove beyond a reasonable doubt that the defendant has this prior conviction.

After considering all of the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable

doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

This issue may more appropriately be determined by the court.

SOURCE & AUTHORITY

§18-3-305(2), C.R.S.

3-3:17 INTERROGATORY (BODILY INJURY) - ENTICEMENT OF A CHILD

If you find the defendant not guilty of enticement of a child, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of enticement of a child, you should fill out the verdict form reflecting your guilty verdict and then answer the following questions:

Did the enticement of a child of which you found the defendant guilty result in bodily injury to that child?
(Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the enticement of a child of which you found the defendant guilty resulted in bodily injury to that child.

After considering all of the evidence, if you decide the prosecution has proven this element beyond a reasonable doubt, you should indicate "Yes" on the verdict form that has been provided. This finding must be unanimous.

After considering all the evidence, if you do not unanimously find the prosecution has proven [this element] [any one or more of these elements] beyond a reasonable doubt, you should indicate "No" on the verdict form that has been provided.

NOTES ON USE

When this instruction is given, the jury should also be instructed as to the definition of "bodily injury".

SOURCE & AUTHORITY

§18-3-305(2), C.R.S.