

9 GCA CRIMES AND CORRECTIONS
CH. 22 KIDNAPPING AND RELATED OFFENSES

CHAPTER 22
KIDNAPPING AND RELATED OFFENSES

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§ 22.10. General Definitions - Ref. § 16.10.

As used in this chapter, the terms bodily injury and serious bodily injury have the meanings provided by § 16.10.

COMMENT: Chapter 22 provides a general overhaul of the former law of kidnapping and related offenses. The major problem is the former law was over-broad and the main thrust of this chapter is to provide a scheme which more carefully delineates the offenses sought to be included. One result is the elimination of a crime of "false imprisonment." the Guam Penal Code (§§ 236 and 237) afforded substantial possibilities of abuse, although these sections have been little used in the past. Now, §§ 22.20 and 22.30 cover a substantial part of a more serious conduct prescribed by the former section. This coverage is supplemented by §§ 19.30 (assault) and 22.60 (criminal intimidation), as well as by the availability of civil remedies for those whose personal liberty has been violated, particularly by police officers.

NOTE: § 22.20 defines kidnapping and provides an incentive for the safe release of the victim by making the crime a felony of the second degree where the victim is alive and in a safe place prior to trial. Also, it is important to note that the basic definition requires a substantial removal of the victim or a substantially long time of confinement unless the victim is removed from his place of residence or business. Where the removal is for a brief period only, with the intent to commit another crime, such as robbery, the crime would fall under one of the various robbery statutes.

A lesser crime of unlawful restraint (§ 22.30) is established as a third degree felony where there is little risk to the victim of serious bodily injury or where the victim is being held under involuntary servitude. This is in addition to, and not superseded by § 22.20 and a person may be held under involuntary servitude even though he is seen openly and in his, or her, accustomed haunts, such as in certain cases of bar girls.

NOTE: § 22.40 deals with child stealing, except where a relative takes or keeps a child as protection from some physical or emotional harm.

NOTE: § 22.50 compliments § 22.40 in that the former section includes additional conduct not proscribed by the latter section. § 22.50 will be the section used when it is necessary for the attorney general to step into custody fights by parents and subsequent violations of court orders of custody.

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SOURCE: *M.P.C. § 212.0; mass. Ch. 263, § 3; N.J. § 2c:11-1.

§ 22.20. Kidnapping; Defined & Punished.

(a) A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found; or if he unlawfully confines another for a substantial period, with any of the following purposes:

- (1) to hold for ransom or reward;
- (2) to facilitate commission of any felony or flight thereafter;
- (3) to inflict bodily injury on or to terrorize the victim or another;

or

(4) to interfere with the performance of any governmental or political function.

(b) Kidnapping is a felony of the first degree unless the defendant voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree. In the case of kidnapping as a felony of the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years and may impose a maximum sentence of up to twenty-five (25) years; said minimum term shall not be suspended nor probation be imposed in lieu of such minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment.

(c) A removal or confinement is unlawful within the meaning of this section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of fourteen (14) or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

SOURCE: G.P.C. §§ 207-209, 236, 237, 265, 266a, 267; *M.P.C § 212.1; Cal. §§ 1530, 1531 (T.D. 1967); Cal. § 870 (1971); Mass. Ch. 265, § 13; N.J. § 2c:13-1. Enacted 1977; subsection (b) was amended by P.L. 14-143, eff. 10/01/78.

CROSS-REFERENCES: See 9 GCA §§ 80.32 and 80.38(b).

§ 22.30. Felonious Restraint; Defined & Punished.

A person commits a felony of the third degree if he knowingly:

(a) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or

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(b) holds another in a condition of involuntary servitude.

§ 22.35. Unlawful Restraint; Defined & Punished.

(a) A person commits the offense of unlawful restraint when he knowingly, without legal authority, detains another.

(b) Unlawful restraint, punishment for. Unlawful restraint is a misdemeanor.

SOURCE: Added by P.L. 15-116, eff. March 28, 1980.

§ 22.40. Child Stealing; Defined & Punished.

(a) A person is guilty of child stealing when he takes or keeps a child who is less than fourteen (14) years old and who is not his natural or adopted child with intent to conceal that child from his parent, legal guardian or other person having that child in his care or custody or under his control.

(b) This section shall not apply to a relative of a child who believes that taking or keeping that child is necessary to protect him from physical or emotional harm.

(c) Child stealing is a felony of the third degree.

SOURCE: Guam § 278; M.P.C. § 212.4; Cal. §§ 1531(1)(c), 1532 (T.D.1 1967); *Cal. § 878 (1971); Mass. Ch. 265, §§ 14(d), 15(b); N.J. § 2c:13-4.

COMMENT: If a taking or confinement of a child is accomplished for one of the purposes specified for kidnapping, such conduct is, of course, covered by § 22.20.

§ 22.50. Custodial Interference; Defined & Punished.

(a) A person is guilty of custodial interference in the first degree if:

(1) Being a relative of the person, he knowingly takes or entices a person less than eighteen (18) years old from his lawful custody knowing that he has no right to do so and during the taking, subjects the person to serious bodily injury.

(b) A person is guilty of custodial interference in the second degree if:

(1) not being a relative of the person, he knowingly takes or entices a person less than eighteen (18) years old from his lawful custodian, knowing that he has no right to do so; or

(2) he knowingly takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or an institution.

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(c) A person is guilty of custodial interference in the third degree if being a parent of a child and with knowledge of court order relating to the custody of that child, violates the court order and takes or keeps the child with intent to conceal him from his legal guardian or other person having that child in his care or custody or under his control.

(d) Custodial interference in the first degree is a felony of the second degree; custodial interference in the second degree is a felony of the third degree and custodial interference in the third degree is a misdemeanor.

SOURCE: Repealed and reenacted by P.L. 15-60: 4, eff. 08/31/79.

§ 22.60. Criminal Intimidation, Defined & Punished.

(a) A person is guilty of criminal intimidation if he knowingly compels or induces another to do an act which the latter has a legal privilege not to do or to refrain from doing an act which the latter has a legal privilege to do by threatening to:

(1) commit any criminal offense;

(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(4) take or withhold action as an official or to cause an official to take or withhold action.

(b) Criminal intimidation is a misdemeanor.

SOURCE: G.P.C. §§ 257, 265, 266b, 266g, 518-524; see also § 650; M.P.C. § 212.5; *Cal. § 1533 (t.d.1 1967); Mass. Ch. 265, § 12; N.J. § 2c: 13-5.

CROSS-REFERENCES: § 43.40 (Theft by Extortion). § 61.20 this title.

COMMENT: § 22.60 generalizes a type of behavior-threat which was formerly treated by various Guam Penal Code sections. This section does not attempt to completely replace these sections; for example, § 43.40 provides specifically for theft by extortion. It does, however, compliment these provisions by classifying as a misdemeanor any threat designed to force a victim to do something which he has a legal privilege not to do or to refrain from doing something which he has a legal privilege to do. Not included is threat for harassment or for threat's sake only; this is covered by § 61.20.
