

INTERFERENCE WITH FREEDOM

Submitted: 10/17/03

Reviewed and approved by Committee: 12/19/03

DRAFT
RSA 633:1, I Kidnapping (General Instruction)

The defendant is charged with the offense of kidnapping. The definition of this crime has [three][four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant confined another under his control; and
2. The defendant did so knowingly; and
3. The defendant acted with the purpose to [hold the person confined for ransom or as a hostage][avoid apprehension by a law enforcement official][terrorize the person confined or some other person][commit an offense against the person confined][.]; and
- [4. The defendant either failed voluntarily to release the person confined without serious bodily injury, or did voluntarily release the person confined, but in an unsafe place.²⁵]

These are the elements of the crime of kidnapping. Certain words in the definition need to be further defined:

[“Serious bodily injury” means any harm to the body that causes severe, permanent, or protracted loss of or impairment to the health or of the function of any part of the body.²⁶]

“Knowingly” means [see definition of knowingly].

“Purposely” means [see definition of purposely].

²⁵ *State v. LaRose*, 127 N.H. 146, 154 (1985) (describing appropriate jury instruction).

²⁶ R.S.A. 625:11, VI; see also *State v. Goodwin*, 118 N.H. 862 (1978) (“serious bodily injury,” within the terms of this section, includes within its definition, the serious psychological injuries of a rape victim; not every aggravated felonious sexual assault, however, will constitute serious bodily injury to make an accompanying kidnapping a class A felony as a matter of law).

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RSA 633:1, I-a Kidnapping (Child Under 18 Years of Age)

The defendant is charged with the offense of kidnapping. The definition of this crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [took, enticed away, detained, or concealed another person][caused another person to be taken, enticed away, detained, or concealed]; and
2. The other person was a child under 18 years of age; and
3. The defendant and the child were not related by consanguinity (i.e., they did not have a common ancestor); and
4. The defendant acted knowingly; and
5. The defendant acted with the additional intent to detain or conceal the child from a parent, guardian, or other person having lawful physical custody of the child.

These are the elements of the crime of kidnapping. Certain words in the definition need to be further defined:

“Knowingly” means [see definition of knowingly].

An “intent to detain or conceal” requires purposeful conduct. “Purposely,” in turn, means [see definition of purposely].²⁷

²⁷ R.S.A. 633:1, I-a contains two different mental states – “knowingly” and “intent to detain or conceal.” The State must prove both these mental states beyond a reasonable doubt. The statute does not, however, specify which of the four mental states enumerated in R.S.A. 626:2, II corresponds to “intent to detain or conceal.” The language does, however, suggest a specific intent. Accordingly, “purposely” constitutes the appropriate *mens rea*. *State v. Goodwin*, 140 N.H. 672, 674 (1996) (“The Criminal Code generally uses the terms “purposely” and “knowingly” in place of specific intent and general intent, respectively.”).

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RSA 633:2 Criminal Restraint
DRAFT

The defendant is charged with the offense of criminal restraint. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant confined another unlawfully; and
2. The circumstances exposed the other person to risk of serious bodily injury; and
3. The defendant acted knowingly.

To “confine another unlawfully” in turn requires three things. First, there must be a confinement or detention that restricts another person’s free movement. Second, the confinement must be unlawful, a requirement which is satisfied when the perpetrator acts without legal authority and the victim does not consent. Third, the perpetrator must have knowledge of both the confinement and its unlawfulness.²⁸ “Confining another unlawfully” includes, but is not limited to, confinement accomplished by force, threat or deception or, in the case of a person who is under the age of 16 or incompetent, if it is accomplished without the consent of his or her parent or guardian.²⁹

These are the elements of the crime of criminal restraint. Certain words in the definition need to be further defined.

“Serious bodily injury” means any harm to the body that causes severe, permanent, or protracted loss of or impairment to the health or of the function of any part of the body.”³⁰

“Knowingly” means [see definition of knowingly].

²⁸ *State v. Fecteau*, 121 N.H. 1003 (1981) (describing the three elements of “confines another unlawfully”).

²⁹ R.S.A. 633:2, II.

³⁰ R.S.A. 625:11, VI; *see also State v. Goodwin*, 118 N.H. 862 (1978) (“serious bodily injury,” within the terms of this section, includes within its definition, the serious psychological injuries of a rape victim; not every aggravated felonious sexual assault, however, will constitute serious bodily injury to make an accompanying kidnapping a class A felony as a matter of law); *State v. Dustin*, 122 N.H. 544, 547 (1982) (citing *Goodwin* as grounds for admission of evidence of psychological injury in criminal restraint prosecution).

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DRAFT

RSA 633:3 False Imprisonment

The defendant is charged with the crime of false imprisonment. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant confined another person; and
2. The confinement was unlawful; and
3. The defendant acted knowingly.

These are the elements of the crime of false imprisonment. Certain words in the definition need to be defined.

“Confinement” means a confinement or detention which restricts another person’s free movement.¹

“Unlawful confinement” means confinement accomplished without legal authority and without the consent of the other person. It includes confinement accomplished by force, threat or deception. In the case of a person under the age of 16 or incompetent, confinement of such a person is unlawful if it is accomplished without the consent of the parent or guardian.²

“Knowingly” means [see definition of knowingly].

¹ *State v Fecteau*, 121 N.H. 1003, 1007 (1981).

² RSA 633:2, II.: *id.* at 1007.

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RSA 633:3-a, I(a) - Stalking [Course of Conduct; Reasonable Person]

DRAFT

The defendant is charged with the crime of stalking. The definition of the crime of stalking has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in a course of conduct; and
2. The course of conduct was targeted at a specific individual; and
3. The course of conduct was such that it would cause a reasonable person to fear for [his][her] personal safety or the safety of [his][her] immediate family; and
4. The targeted person was actually placed in fear for his personal safety or the safety of his immediate family; and
5. The defendant acted [purposely][knowingly][recklessly].

These are the elements of stalking. Certain words in the definition need to be further defined.

“Course of conduct” means two or more acts committed over a period of time, however short, which evidences a continuity of purpose; and which may include, but is not limited to, any of the following:

Threatening the safety of the targeted person or an immediate family member;

Following, approaching, or confronting the targeted person or an immediate family member;

Appearing in close proximity to or entering the residence, place of employment, school, or other location where the targeted person or members of his immediate family can be found;

Causing damage to the residence or property of the targeted person or a member of his immediate family;

Placing or causing to be placed an object on the property of the targeted person or a member of his immediate family;

Causing injury to a pet belonging to the targeted person or a member of his immediate family;

Acts of communication with the targeted person or members of that person’s immediate family, either directly or through third persons and whether in person, by telephone, telegraph, mail, electronic communication or otherwise.

“Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

If a person engages in acts which would constitute stalking after having been previously advised by a law enforcement officer that acts of a similar character are unlawful, or after having been served with a protective order prohibiting the person from engaging in such acts, the jury may, but is not required to, presume that the person acted knowingly.¹

[“Purposely” means [see definition of purposely]].

[“Knowingly” means [see definition of knowingly]].

[“Recklessly” means [see definition of recklessly]].

¹ In 2000, the legislature amended RSA 633:3-a I-III and re-enacted the statute. (See Laws of 2000, 151:1,2 eff. Jan. 1,2001). The text of the act does not contain a new subsection III. The Lexis version of the statute also contains no new subsection III. The Thompson/West version of the statute, however, does contain the text of the old section III. This version appears to be in error in light of the legislative history.

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RSA 633:3-a, I(b) - Stalking [Intent to Cause Fear]

DRAFT

The defendant is charged with the crime of stalking. The definition of the crime of stalking has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in a course of conduct; and
2. The course of conduct was targeted at a specific individual; and
3. The course of conduct was of such a nature that the defendant knew it would cause the targeted person to fear for [his][her] personal safety of the safety of [his][her] immediate family; and
4. The defendant acted [purposely][knowingly].

These are the elements of stalking. Certain words in the definition need to be further defined.

“Course of conduct” means two or more acts committed over a period of time, however short, which evidences a continuity of purpose; and which may include, but is not limited to, any of the following:

Threatening the safety of the targeted person or an immediate family member;

Following, approaching, or confronting the targeted person or an immediate family member;

Appearing in close proximity to or entering the residence, place of employment, school, or other location where the targeted person or members of his immediate family can be found;

Causing damage to the residence or property of the targeted person or a member of his immediate family;

Placing or causing to be placed an object on the property of the targeted person or a member of his immediate family;

Causing injury to a pet belonging to the targeted person or a member of his immediate family;

Acts of communication with the targeted person or members of that person’s immediate family, either directly or through third persons and whether in person, by telephone, telegraph, mail, electronic communication or otherwise.

“Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

If a person engages in acts which would constitute stalking after having been previously advised by a law enforcement officer that acts of a similar character are unlawful, or after having been served with a protective order prohibiting the person from engaging in such acts, the jury may, but is not required to, presume that the person acted knowingly.

["Purposely" means [see definition of purposely]].

["Knowingly" means [see definition of knowingly]].

¹ In 2000, the legislature amended RSA 633:3-a I-III and re-enacted the statute. (See Laws of 2000, 151:1,2 eff. Jan. 1,2001). The text of the act does not contain a new subsection III. The Lexis version of the statute also contains no new subsection III. The Thompson/West version of the statute, however, does contain the text of the old section III. This version appears to be in error in light of the legislative history.

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RSA 633:3-a, I(c) – Stalking [Single Act Protective Order]

The defendant is charged with the crime of stalking. The definition of the crime of stalking has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant had been served with or otherwise provided notice of a protective order issued by a court, which prohibited the defendant from having contact with [the victim];³¹ and
2. After being served with notice or otherwise provided notice of the protective order, the defendant violated the order by [threatening the safety of the protected person or a member of the immediate family of the protected person] [following, approaching, or confronting the protected person or a member of the immediate family of the protected person] [appearing in close proximity to or entering the residence, place of employment, school, or other location where the protected person or members of his immediate family can be found][causing damage to the residence or property of the protected person or a member of his immediate family] [placing or causing to be placed an object on the property of the protected person or a member of his immediate family] [causing injury to a pet belonging to the protected person or a member of his immediate family] [communicating with the protected person or members of that person’s immediate family, either directly or through third persons and whether in person, by telephone, telegraph, mail, electronic communication or otherwise]; and
3. The defendant acted [purposely][knowingly][recklessly].

These are the elements of stalking. Certain words in the definition need to be further defined.

“Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

If a person engages in acts which would constitute stalking after having been previously advised by a law enforcement officer that acts of a similar character are unlawful, or after having been served with a protective order prohibiting the person from engaging in such acts, the jury may, but is not required to, presume that the person acted knowingly.²

[“Purposely” means [see definition of purposely]].

[“Knowingly” means [see definition of knowingly]].

[“Recklessly” means [see definition of recklessly]].

³¹ RSA 633:3-a provides “after being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section, or an order pursuant to RSA 597:2.”

² In 2000, the legislature amended RSA 633:3-a I-III and re-enacted the statute. (See Laws of 2000, 151:1,2 eff. Jan. 1,2001). The text of the act does not contain a new subsection III. The Lexis version of the statute also contains no new subsection III. The Thompson/West version of the statute, however, does contain the text of the old section III. This version appears to be in error in light of the legislative history.

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DRAFT
RSA 633:4, I Interference With Custody (Felony)

The defendant is charged with the crime of interference with custody. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt.¹ Thus, the State must prove that:

1. The defendant [took from this state][enticed away from this state] a child under the age of eighteen; and
2. The defendant acted with the purpose to detain or conceal the child from a parent, guardian or other person having lawful charge of the child; and
3. The defendant did not have a right of custody with respect to child; and
4. The defendant acted knowingly.

These are the elements of the crime of interference with custody. Certain words in the definition need to be defined.

“Knowingly” means [see definition of knowingly.]

¹ If applicable, instruct on the affirmative defense provisions set forth in RSA 633:4, III and IV.

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DRAFT

RSA 633:4, II Interference With Custody (Misdemeanor)

The defendant is charged with the crime of interference with custody. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt.¹ Thus, the State must prove that:

1. The defendant [took or enticed away][detained or concealed a child] under the age of eighteen [caused a child under the age of eighteen to be taken or enticed away]; and
2. The defendant acted with the purpose to detain or conceal the child from a parent, guardian or other person having lawful charge of the child; and
3. The defendant did not have a right of custody with respect to child; and
4. The defendant acted knowingly.

These are the elements of the crime of interference with custody. Certain words in the definition need to be defined.

“Knowingly” means [see definition of knowingly.]

¹ If applicable, instruct on the affirmative defense provisions set forth in RSA 633:4, III and IV.