

130. Deprivation of Liberty: s 355

130.1 Legislation

[Last reviewed: January 2025]

Criminal Code

[Section 355](#) – Deprivation of Liberty

130.2 Commentary

[Last reviewed: January 2025]

The Defendant must have:

- (1) Unlawfully;
- (2) Confined or detained the Complainant in any place;
- (3) Against the Complainant's will.

or

- (1) Unlawfully;
- (2) Deprived the Complainant of their personal liberty.

Meaning of 'confines' or 'detains'

The terms 'confines', 'detains', 'deprives' and 'liberty' should be given their ordinary and natural meaning (*R v Awang* [\[2004\] 2 Qd R 672](#), [25] (Williams JA); see also *R v East* [\[2008\] QCA 325](#), [24]-[25]).

'Deprive' includes the denial of enjoyment of something. Deprivation includes not just denial of a person's will, but may occur by fraud or where a person lacks capacity or knowledge of the deprivation, such as being asleep.

'Detain' has a variety of meanings including 'keep in confinement', 'hold back, delay, stop' or keep under restraint. Restraint can be exercised by force, physical restraints or threats.

Meaning of 'personal liberty'

'Liberty' is 'the condition of being able to act in any desired way without restraint; power to do as one likes.' Depriving of liberty means taking away the free choice of a person to move about as he or she wants. A person may be deprived of their liberty not only against their will but also where the deprivation was achieved by fraud, done without

knowledge or where the Complainant lacks capacity (*R v Awang* [\[2004\] 2 Qd R 672](#) (McMurdo P)).

130.3 Suggested Direction

[Last reviewed: October 2024]

The prosecution must prove beyond reasonable doubt that:

1. The Defendant:

- (a) Confined or detained the Complainant in [the relevant place] against the Complainant's will; or**
- (b) otherwise deprived the Complainant of [his/her] personal liberty.**

Detain means keep in confinement or under restraint. Restraint can be exercised by threats. The Defendant does not have to have used force or physical restraints. If the Defendant compelled the Complainant by threats to remain in a place against the Complainant's will, that is sufficient.

Depriving of liberty simply means taking away the free choice of a person to move about as he or she wants.

[Outline the evidence relevant]

- 2. The Defendant did so unlawfully. That is, the Defendant's conduct was not authorised, justified or excused by law.**