

Abduction of child under 16: s 363A

Legislation

363A Abduction of child under 16

- (1) Any person who unlawfully takes an unmarried child under the age of 16 years out of the custody or protection of the child's father or mother, or other person having the lawful care or charge of the child, and against the will of the father, mother or other person, is guilty of a crime, and is liable to imprisonment for 7 years.
- (2) It is immaterial that the offender believed the child to be of or above the age of 16 years.
- (3) It is immaterial that the child was taken with the consent of or at the suggestion of the child.

Commentary

To 'take' a child, the defendant must have in some way contributed to the child's leaving or arranged or actively participated in the child's leaving the custody or protection of the parent or other person: *R v Johnson* [1957] St R Qd 594; *R v Mejac* [1954] Tas SR 26. The taking may be a temporary taking only: *R v Baille* (1859) 8 Cox 238; *R v Timmins* [1860] Bell 276.

It does not matter whether the defendant believed the child to be of or above the age of 16: s 363A(2).

It is irrelevant that the child was taken with the consent of or at the suggestion of the child: s 363A(3). It does not matter that, at the moment the child is abducted, the child is in the physical possession of some other person: *R v Beble* [1979] Qd R 278.

Suggested Direction

The prosecution must prove that:

- 1. The defendant took an unmarried child under the age of 16 years.**
- 2. Out of the custody or protection of the child's father, mother or person having the lawful care or charge of the child.**
- 3. Against the will of the father, mother or other person.**
- 4. The taking was unlawful. That is, not authorised, justified or excused by law.**