

## Deprivation of Liberty: s 355

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### Legislation

#### 355 Deprivation of liberty

Any person who unlawfully confines or detains another in any place against the other person's will, or otherwise unlawfully deprives another of the other person's personal liberty, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

### Commentary

#### *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 per Williams JA.

'Deprive' includes the denial of enjoyment of something.

'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 per McMurdo P.

### Suggested Direction

**The prosecution must prove that:**

- 1. The defendant:**
  - (a) confined or detained another in any place against the other person's will; or**
  - (b) otherwise deprived another of the other person's personal liberty.**
- 2. The defendant did so unlawfully. That is, not authorised, justified or excused by law.**

**Detain means keep in confinement or under restraint. Restraint can be exercised by threats. The defendant does not have to use force or physical restraints. If the defendant compels the person by threats to remain in a place against that person'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.**