

Criminal Law--Kidnapping--Detention for Period of Hours Held Incidental to Rape (People v. Lombardi, 20 N.Y.2d 266 (1967))

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CRIMINAL LAW—KIDNAPPING—DETENTION FOR PERIOD OF HOURS HELD INCIDENTAL TO RAPE.—Defendant, a pharmacist, was charged with having drugged three young women in his employ and transporting them in this condition to a motel where he attempted intercourse on one occasion and sexual advances short of intercourse on the two others. In two instances, the women were kept at the motel for periods in excess of twelve hours. In reversing the subsequent kidnapping conviction, the New York Court of Appeals held that Section 1250 of the old Penal Law, which was then in effect, was applicable only to "true" kidnapping situations and not where the confinement or asportation occurs as a subsidiary incident to another crime. *People v. Lombardi*, 20 N.Y.2d 266, 229 N.E.2d 206, 282 N.Y.S.2d 519 (1967).

Kidnapping was defined at common law as the forceable taking of a person from his country and sending him into another. It was punished as a misdemeanor.¹ Prior to the twentieth century, kidnapping is not reported as having frequently occurred, but, presumably because of the advent of the automobile, kidnapping became more common in this country.² In the late 1920's and early 1930's, a wave of kidnappings, culminating in the Lindberg case, led Congress and the state legislatures to increase the scope and severity of punishment for this crime.³ By 1952, sixteen states punished kidnapping by life imprisonment as compared to three states in 1932.⁴ Under these revised kidnapping laws, which were usually broadly written, states were able to obtain convictions for acts that had as their motive the accomplishment of other crimes. For example, in *Cowan v. State*,⁵ the Supreme Court of Tennessee affirmed defendant's conviction for kidnapping in a situation that was actually an attempted rape. In this case, the defendant saw a car containing two teenage couples stop at an isolated lovers' lane. The defendant, armed with a pistol and threatening to use it, entered the car and confined the occupants there for several hours while he attempted to convince the two girls to have intercourse with him by threatening to hold them there until they gave in. The Tennessee Supreme Court held that this conduct fell within the meaning and intent of the kidnapping statute⁶ without considering

¹ W. CLARK & W. MARSHAL, *CRIMES* §10.23, at 742 (7th ed. 1967).

² Note, *A Rationale of the Law of Kidnapping*, 53 COLUM. L. REV. 540 (1953). The automobile and modern highways provided kidnappers with a swift, and therefore effective, means of executing the crime. It was used by criminals during the Prohibition Era to enforce the code of the underworld, and was later used to extort large sums of money from ordinary citizens. *Id.*

³ *Id.*

⁴ *Id.* n.4.

⁵ 208 Tenn. 512, 347 S.W.2d 37 (1961).

⁶ TENN. CODE ANN. §39-2601 (1955) describes a kidnapper as "[a]ny

the issue of attempted rape. In an Arizona case,⁷ the defendant, with the ultimate purpose of committing rape, forced the victim to walk, at knife point, from a trailer to a nearby cabana. Such acts were held sufficient to sustain a conviction for kidnapping.⁸

Until recently, the state of New York has been using a definition of the crime of kidnapping that is essentially the same as that used one hundred years ago. In New York's Penal Code of 1865 a kidnapper was defined as a person who without lawful authority, forcibly seized and confined another, or inveigled or kidnapped another, with intent, either:

1. To cause such other person to be secretly confined or imprisoned in this state against his will; or,
2. To cause such other person to be sent out of this state against his will; or,
3. To cause such person to be sold as a slave, or in any way held to service against his will.⁹

Section 1250(1) of the New York Penal Law, in effect until September 1, 1967, conformed almost word for word with the 1865 statute except that the more recent law did not require that the confinement be secretive in cases of simple confinement.¹⁰ With this broad statute, New York was able to obtain convictions under charges of kidnapping for criminal acts which would appear to constitute other crimes. In *People v. Hope*,¹¹ the victims entered a car parked in front of one of their homes in New York City.

person who forceably or unlawfully confines . . . another, with the intent to cause him to be secretly confined, or imprisoned against his will. . . ."

⁷ *State v. Jacobs*, 93 Ariz. 336, 380 P.2d 998, *cert. denied*, 375 U.S. 46 (1963).

⁸ ARIZ. REV. STAT. ANN. § 13-492(a) (1956): "A person . . . who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any individual by any means whatsoever with intent to hold or detain, or who holds or detains such individual for ransom, reward or otherwise . . . is guilty of a felony."

It is interesting to note that California has avoided the problem of over-broadness. CAL. PEN. CODE § 207 is a broad kidnapping statute similar to those discussed above, but carrying a maximum penalty of twenty-five years. On the other hand, CAL. PEN. CODE § 209 specifically provides for the crime of kidnapping with intent to commit extortion, robbery, or hold for ransom. Where the victim suffers bodily harm, the defendant may be punished by death or life imprisonment with no possibility of parole, but with a maximum of life imprisonment with a possibility of parole where there is no bodily harm.

⁹ N.Y. PEN. CODE ch. IV, § 272, 2 Rev. Stat. 664, § 28.

¹⁰ N.Y. PEN. LAW § 1250(1).

¹¹ 257 N.Y. 147, 177 N.E. 402 (1931).

Three men approached the car and at gunpoint ordered the victims to drive to Long Island. The car was driven for about a mile before the defendants fled. The Court found that the specific intent to secretly confine was met in this case. The necessary intent was inferred from the confinement itself. The secrecy requirement was met in that the defendants concealed their purpose from the general public by making the victims act as if they were willing participants.¹² The Court stated that "[t]he confinement and detention in the automobile for a short time, coupled with the intent, brings the case within the purview of the statute."¹³ In *People v. Florio*,¹⁴ a kidnapping conviction was sustained although the abduction and asportation were merely incidental to and facilitative of a rape. Here, the defendants lured the victim into a car in Manhattan, drove her to an isolated spot in Queens and raped her. The Court concluded that the acts of the defendants "constituted the separate and distinct crime of kidnapping. It was true kidnapping in the popular understanding as well as the legal 'spirit and intent' of the statute."¹⁵ The Court admitted that mere detention occurring during the "immediate act of commission"¹⁶ of the rape would not be the basis for a separate crime of kidnapping, but gave no indication of what was meant by the immediate act of commission, or the amount of time required. The Court did, however, discuss with approval *People v. Small*,¹⁷ wherein a kidnapping, according to the *Florio* Court, was sustained for a detention which took less than two minutes, on the basis that any "detention against one's will,¹⁸ without authority of law,¹⁹ if willful and intentional, is sufficient to constitute kidnapping."²⁰

While New York was implementing this broad definition, other jurisdictions were moving in the opposite direction with a far more narrow view.²¹ It was not, however, until 1965 that

¹² *Id.* at 153-54, 177 N.E. at 404.

¹³ *Id.* at 154, 177 N.E. at 404.

¹⁴ 301 N.Y. 46, 92 N.E.2d 881 (1950).

¹⁵ *Id.* at 49, 92 N.E.2d at 882.

¹⁶ *Id.*

¹⁷ 274 N.Y. 551, 10 N.E.2d 546 (1937).

¹⁸ See *People v. Koslow*, 6 App. Div. 2d 713, 174 N.Y.S.2d 709 (2d Dep't 1958).

¹⁹ See *People v. Weiss*, 276 N.Y. 384, 12 N.E.2d 514 (1938).

²⁰ *People v. Florio*, 301 N.Y. 46, 50-51, 92 N.E.2d 881, 883 (1950) (footnotes supplied).

²¹ See *Chatwin v. United States*, 326 U.S. 455, 464 (1946), wherein the United States Supreme Court, in reversing a conviction for inveigling, decoying and transporting a child across state lines, rejected a loose construction of statutory language since it "conceivably could lead to the punishment of anyone who induced another to leave his surroundings and do some innocent or illegal act of benefit to the former. . . ." See also *State v. Dove*, 75 S.D. 460, 67 N.W.2d 917 (1955).

New York began to follow this lead. In *People v. Levy*,²² the New York Court of Appeals overruled the *Florio* decision by limiting the application of the kidnapping statute to

'kidnapping' in the conventional sense in which that term has now come to have acquired meaning. There may well be situations in which actual kidnapping in this sense can be established in conjunction with other crimes where there has been a confinement or restraint amounting to kidnapping to consummate the other crime.²³

Unfortunately, such a situation was not delineated more clearly by the Court. Apparently the Court intended to limit the statute to what is commonly accepted as kidnapping, *i.e.*, a confinement for the purpose of extortion or ransom, without foreclosing the possibility of having a kidnapping even though another crime has been committed. The question remaining was when such a situation could be found to have occurred. The Court in *Levy* merely asserted the conclusion that "the case now before us is essentially robbery and not kidnapping."²⁴ The delineation, assuming such a situation exists, was, therefore, left to the future.

Paralleling this judicial narrowing of the applicability of New York's statute, the Temporary Committee on the Revision of the Penal Law and the Criminal Code submitted a revision of the kidnapping statute wherein the definition of

the crime of kidnapping is carefully limited to what are commonly conceived to be genuine 'kidnapping' cases involving some substantial removal or confinement together with an objective of holding for ransom or some other purpose usually associated with kidnapping. Other and lesser unlawful removals or restraints of the types mentioned are covered by newly-created lesser offences entitled 'False imprisonment' and 'Custodial interference.'²⁵

Use of the phrase "substantial confinement" and the proposal for the creation of the lesser offenses evidenced a desire to remove from the crime of kidnapping those crimes in which there is a detention but in which the crime is not in essence kidnapping. In other words, mere incidental confinement in the commission of another crime would no longer be considered kidnapping.

The Commission's proposed bill would have accomplished this result by requiring a specific intent:

²² 15 N.Y.2d 159, 204 N.E.2d 842, 256 N.Y.S.2d 793, *cert. denied*, 381 U.S. 938 (1965).

²³ *Id.* at 164-65, 204 N.E.2d at 844, 256 N.Y.S.2d at 796 (1965).

²⁴ *Id.*

²⁵ N.Y. TEMP. COMM. ON REVISION OF PEN. LAW AND CRIM. CODE, THIRD INTERIM REP., Leg. Doc. No. 14, at 23 (1964).

- (a) To hold such person for ransom; or
- (b) To use him as a shield or hostage; or
- (c) To inflict physical injury upon him, or to violate or abuse him sexually; or
- (d) To terrorize him or a third person; or
- (e) To interfere with the performance of any governmental or political function.²⁶

In other words, the requirement of a specific intent was seen as the means of insuring the limitation of the kidnapping statute to "genuine" kidnapping.

Had the proposed bill been enacted it would appear that the dictum in *Levy* to the effect that one may be convicted of kidnapping in conjunction with a conviction for another crime would have been resolved. Only in those areas specifically enumerated could a conviction for kidnapping have been sustained. However, the Revised Penal Law, as ultimately enacted, appears to leave this question open. Kidnapping, under the revised law, is divided into two degrees, kidnapping second and kidnapping first.²⁷ Kidnapping in the first degree, in addition to a genuine kidnapping situation,²⁸ provides, as did the proposed bill, that a kidnapping can occur in conjunction with other crimes, but does so more inclusively than the proposed bill would have. Instead of the limited areas referred to in the proposed bill, which, interestingly, did not include robbery, the crime of kidnapping first degree is written in terms of an intent to "[a]ccomplish or advance the commission of a felony."²⁹ It should be noted, however, that such a result is reached only when the detention is for a period of more than twelve hours. Thus, the Legislature sought to limit the harsh penalty for kidnapping first degree, *i.e.*, either life imprisonment or death, to "the most reprehensible kinds of abduction."³⁰ Thus, it appears that the prior case law rule in *Levy* that a kidnapping conviction cannot be sustained where it "is essentially robbery and not kidnapping" has now been abrogated, but only in situations where the detention is for more than twelve hours.

²⁶ S. Intro. No. 3918, A. Intro. No. 5376, Comm'n Staff Notes § 140.15.

²⁷ REV. PEN. LAW §§ 135.20, 135.25.

²⁸ REV. PEN. LAW § 135.25(1) provides for a kidnapping in the first degree where defendant abducts when "[h]is intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct. . . ."

²⁹ REV. PEN. LAW § 135.25(2)(b). It should be noted that subdivision (1) of § 135.25 provides for a conviction of kidnapping first degree when there is an abduction with the intent to compel a third person to pay ransom or engage in or refrain from some particular conduct.

³⁰ REV. PEN. LAW, Comm'n Staff Notes, art. 135.

Kidnapping in the second degree is defined more broadly and without any time limitations: "A person is guilty of kidnapping in the second degree when he abducts another person."³¹ Under this provision, the question raised in *Levy* is once again revived. When the confinement is for a period of less than twelve hours and when it occurs in furtherance of the commission of another crime, can there be a conviction for kidnapping in the second degree? In other words, with respect to kidnapping second degree, is a negative inference to be drawn from the abrogation of the *Levy* rule in the section defining kidnapping first degree? The answer to this question would seem to have to be no. Where the law was settled before a revision of the statute, a mere change in phraseology will not result in a change in law unless the legislative intent to make such a change is manifest.³² The Legislature, according to the Commission Staff Notes, did not refer to the problem dealt with in *Levy*, *i.e.*, when is the conduct essentially kidnapping or another crime. Kidnapping second degree is written in the same broad language as the old law, except for the addition of the term abduct, which is specifically defined as the intent to prevent one's liberation by either "(a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly physical force."³³ The importance of the addition of "abduct" is to provide a differentiation between kidnapping second degree and the lesser penalty of unlawful imprisonment, which merely requires a restraint.³⁴ As the Commission Staff Notes indicate, "*abduction* is a very serious form of *restraint*, savoring strongly of the substantial removal, isolation and/or violence usually associated with genuine kidnapping."³⁵ Although the word abduction is specifically defined, its definition connotes a broad application much like the prior law and, thus, necessitates the use of the *Levy* rule to limit it to genuine kidnapping situations.³⁶

³¹ REV. PEN. LAW § 135.20.

³² See REV. PEN. LAW, Comm'n Staff Notes, art. 135.

³³ REV. PEN. LAW § 135.00(2).

³⁴ REV. PEN. LAW, Comm'n Staff Notes, art. 135.

³⁵ *Id.*

³⁶ It is recognized that a contrary argument might be made to the effect that since the Legislature, in kidnapping first degree, drew an arbitrary line at twelve hours, therefore, all abductions resulting in confinement of less than twelve hours, where there is an intent to commit a felony, would ipso facto constitute kidnapping second degree. This argument is rejected because, had the Legislature intended such a result, it could have expressly so provided. Instead, the statute was written in the broadest of language. Secondly, where there is doubt, all inferences are to be drawn in favor of the criminal defendant. *People v. Broady*, 5 N.Y.2d 500, 158 N.E.2d 817, 186 N.Y.S.2d 230 (1959). Thirdly, in conjunction with the foregoing reasons, the general rules of statutory construction discussed in the text compel the conclusion that the *Levy* rule is not abrogated.

In the instant case, *People v. Lombardi*,³⁷ defendant was charged with having given barbiturates to female employees, on three separate occasions, on the pretext that they were nail hardening pills. Within twenty to thirty minutes the pills would put the victims to sleep, induce light-headedness and dizziness, and adversely affect muscular coordination. Defendant, on each occasion, drove his victim, in this condition, from his store in Manhattan to a motel in Queens where he attempted intercourse with one of the women and made sexual advances short of intercourse toward the other two. The time during which the victims were detained ranged from ten to fifteen hours. On these facts, the defendant was convicted of three charges of kidnapping, one of attempted first degree rape and three charges of assault, second degree.

The New York Court of Appeals, in reversing the kidnapping conviction, pointed out that while the conduct of the defendant came within the literal terms of the penal law in effect at the time of the crime,³⁸ it did not fall within "the direction of the criminal law . . . to limit the scope of the kidnapping statute. . . ."³⁹ The Court apparently felt that a conviction in this case would be a movement away from the existing trend toward limitation of the crime of kidnapping, back to earlier practices of finding kidnapping in acts that were essentially other crimes.⁴⁰ The Court pointed out that the asportation played no significant role in the crime and that it would have been essentially the same if committed by the defendant in his own store.⁴¹ This case, the Court stated, was essentially like *People v. Florio*,⁴² where the charge of kidnapping had been sustained but which was subsequently expressly overruled by *People v. Levy*.⁴³ In the instant case, the victims were drugged and brought from Manhattan to Queens where the intercourse was attempted but not completed. In *Florio*, the victim was taken by force from Manhattan to Queens where the rape was consummated. *Levy* held, according to the Court in the instant case, that the "detention or asportation of a victim for a relatively short time as an incident to robbery [or in this case rape] should not normally be prosecuted as kidnapping."⁴⁴ The Court noted that the legislature had made the

³⁷ 20 N.Y.2d 266, 229 N.E.2d 206, 282 N.Y.S.2d 519 (1967).

³⁸ N.Y. PEN. LAW § 1250(1).

³⁹ *People v. Lombardi*, 20 N.Y.2d 266, 270, 229 N.E.2d 206, 208, 282 N.Y.S.2d 519, 521 (1967).

⁴⁰ *E.g.*, *People v. Florio*, 301 N.Y. 46, 92 N.E.2d 881 (1950); *People v. Hope*, 257 N.Y. 147, 177 N.E. 402 (1931).

⁴¹ 20 N.Y.2d at 270-71, 229 N.E.2d at 208, 252 N.Y.S.2d at 521.

⁴² 301 N.Y. 46, 92 N.E.2d 881 (1950).

⁴³ 15 N.Y.2d 159, 204 N.E.2d 824, 256 N.Y.S.2d 793 (1965).

⁴⁴ *People v. Lombardi*, 20 N.Y.2d 266, 271, 229 N.E.2d 206, 209, 282 N.Y.S.2d 519, 522 (1967).

definition more explicit with respect to kidnapping in the first degree⁴⁵ and that this case would seem to meet that new definition, but stated that *Levy*, and not this new definition, was the applicable rule in this case.⁴⁶ Accordingly the Court concluded that Lombardi's kidnapping conviction should be reversed.

Judge Burke, dissenting, was of the opinion that the facts of the instant case were distinguishable from *Levy*, and, therefore, the *Levy* limitation did not apply. He pointed out that the *Levy* case involved a drive of a mere twenty-seven city blocks and a twenty-minute period of detention. Therefore, there was involved conduct that was *essentially* a robbery.

In developing his argument, Judge Burke first pointed out that although the *Levy* court overruled *Florio*, it did so in order to evade the rationale, which is not necessarily the same as reaching a different result on the same facts. In other words, even under the new rule as announced in *Levy*, the facts in *Florio* might still constitute a kidnapping.⁴⁷ In further support of his conclusion that *Levy* did not dictate the finding that there was not a genuine kidnapping, it was pointed out that the majority in *Levy* expressly recognized that there might well be circumstances in which another crime and kidnapping could be sustained. The fact that the motive for the asportation and detention was another crime was not seen as a problem since a kidnapping "invariably has its basis in another crime, whether it be extortion, robbery, rape, etc. . . ."⁴⁸ The substantial asportation and substantial detention present in the instant case, as compared to *Levy*, led the dissent to conclude that the defendant was guilty of kidnapping in every sense, "conventional and otherwise."⁴⁹

The Court in *Lombardi* has thus extended the *Levy* holding, *i.e.*, a defendant may not be convicted for kidnapping where the act of restraint (or abduction) is but incidental to the commission of an independent crime, to facts as presented by the instant case. Uncertainty remains as to what facts would sufficiently support the conclusion that this act of restraint or abduction was not sufficiently incidental to the other crime. Or, is it likely that no such facts exist? The rejection, by the majority, of the dissent's points of distinction between the two cases is most enlightening.

⁴⁵ REV. PEN. LAW § 135.25.

⁴⁶ 20 N.Y.2d at 271, 229 N.E.2d at 209, 282 N.Y.S.2d at 522. The Court noted that the time during which the victims were held was not factually determined at the trial. It was uncertain when the drug took effect and when it wore off in considering the length of time during which it was used as an instrument of restraint. *Id.* at 271-72, 229 N.E.2d at 209, 282 N.Y.S.2d at 522.

⁴⁷ *Id.* at 274, 229 N.E.2d at 210, 282 N.Y.S.2d at 524 (dissenting opinion).

⁴⁸ *Id.*

⁴⁹ *Id.*

The dissent was most emphatic in distinguishing *Lombardi* and *Levy* factually. That is, according to the dissent, a confinement for a period of between ten and fifteen hours, in conjunction with an asportation of a considerable distance, constituted a restraint or abduction which is not merely incidental. In other words, such chronological and geographical factors are the determinants of the distinction between a genuine and an incidental kidnapping. The majority's rejection of this argument points out that, a fortiori, neither element existing independently will be sufficient to conclude that there was a genuine kidnapping. Secondly, and more importantly, the rejection of the factual distinctions necessarily means that if there are to be any distinguishing features left for the future so that a court may find that a kidnapping second degree conviction will be sustained in conjunction with the commission of another crime, the distinction must be that the confinement evidenced an intent to confine, separate and distinct from the intent to commit the other crime. In other words, the question is whether the initial act constitutes a necessary element in the ultimate commission of the other substantive crime, or whether it exists in and of itself and not as an element of the other crime. In, for example, drugging of the victims in the commission of a rape, it is first necessary to subject the victim to the will of the attacker before the crime can be consummated. In *Lombardi*, the initial act of drugging was undertaken as the first element of the substantive crime of rape, *i.e.*, subjecting the victim to the defendant's will. All intervening acts have no other purpose than the consummation of the rape. Therefore, under such circumstances, there could not be a conviction for kidnapping in the second degree.

One possible situation, and perhaps the only situation in which a conviction for kidnapping in the second degree could be sustained within this framework, would occur when the abduction is such that in itself it satisfies its own formulated ends and the subsequent crime is one that could be seen as an afterthought. This could occur where the defendant is such that he desires the feelings of power and control that result from the abduction, and, before freeing his hostage, decides to then commit a robbery or some other substantive crime. Similarly, it could occur where the victim is abducted in order to consummate a crime against a third entity, *e.g.*, using someone to drive a getaway car against his will, and, again, before the victim is released, a crime is committed against him. Obviously, such possibilities portend a limited application.

Thus, as has been shown, the courts are now very much concerned with limiting kidnapping to what is considered a genuine kidnapping in order to have the penalty fit the crime. In such a determination, two separate intents must be found in order to

sustain a kidnapping conviction. Accordingly, the kidnapping statute will now be restrictively applied. Admittedly, there was a need for a limitation, but the question is whether the limitation has been *too* extensive. For example, the crimes of kidnapping and rape are not ones which have to merge, as assault and murder do, when they are present in the same fact pattern. The two acts violate separate rights of the person. Rape forces upon a person a sexual contact against that person's will. Kidnapping is a restraint on personal liberty which includes inherent dangers not present in other crimes. It exposes the victim to the danger of death or bodily injury, since the asportation is frequently accompanied by use of force, and it can also be the cause of psychic injury to the victim and his relatives.⁵⁰ These added dangers seem to justify the imposition of greater punishment than would be involved in other crimes. These dangers, however, are not caused by the intent of the defendant. Rather they are caused by the detention itself, regardless of whether the intent is monetary gain by extortion or personal gain from a sexual outlet. It is contended that the danger from a forced detention so that a rape may be committed is just as great, if not greater than, the danger caused by detention for the purpose of extortion. The situation seems analogous to a fact pattern in which larceny and burglary are involved. Burglary involves entering unlawfully or remaining in a building with intent to commit a crime therein,⁵¹ while larceny consists of the wrongful taking of property from its owner.⁵² Just as an intent to commit larceny would not constitute a defense to a burglary charge, so the intent to rape should not be allowed as a defense to a charge of kidnapping. If a criminal enters a house unlawfully and steals something while there, charges of burglary and larceny could be sustained because the criminal performed acts constituting separate crimes. If a criminal commits separate acts which constitute both rape and kidnapping, he should be punished for both. If a criminal intended to commit a robbery and in the course of the robbery he committed a homicide, he would be punished for both crimes because his conduct was such that two essentially different crimes were committed. So, where a person intends a rape and actually commits a kidnapping, he should be punished for that which he did commit—two different crimes. In determining when a kidnapping is actually committed, an approach similar to Judge Burke's is available. On the basis of the facts, especially the geographical and chronological factors, we simply determine

⁵⁰ Note, *A Rationale of the Law of Kidnapping*, 53 COLUM. L. REV. 540, 554-55 (1953).

⁵¹ REV. PEN. LAW § 140.20.

⁵² REV. PEN. LAW § 155.05.

whether the confinement is substantial. It should be remembered that such an approach only applies to kidnapping in the second degree, which carries a penalty of up to twenty-five years. For what the legislature considered the more serious situations, detentions for more than twelve hours with the intent to commit a felony, they have seen fit to provide for the harshest of penalties. Therefore, the disparities that existed prior to the revision will not serve as a reason for limiting the kidnapping statute when only the second degree is involved.