

Chapter 9A.40 RCW
KIDNAPPING, UNLAWFUL IMPRISONMENT, CUSTODIAL INTERFERENCE, LURING,
TRAFFICKING, AND COERCION OF INVOLUNTARY SERVITUDE

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RCW 9A.40.010 Definitions. The following definitions apply in this chapter:

(1) "Abduct" means to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force.

(2) "Commercial sex act" means any act of sexual contact or sexual intercourse for which something of value is given or received.

(3) "Forced labor" means knowingly providing or obtaining labor or services of a person by: (a) Threats of serious harm to, or physical restraint against, that person or another person; or (b) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

(4) "Involuntary servitude" means a condition of servitude in which the victim was forced to work by the use or threat of physical restraint or physical injury, by the use of threat of coercion through law or legal process, or as set forth in RCW 9A.40.110. For the purposes of this subsection, "coercion" has the same meaning as provided in RCW 9A.36.070.

(5) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

(6) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

(7) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or a commercial sex act in order to avoid incurring that harm. [2014 c 52 § 2. Prior: 2011 c 336 § 363; 2011 c 111 § 2; 1975 1st ex.s. c 260 § 9A.40.010.]

RCW 9A.40.020 Kidnapping in the first degree. (1) A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent:

(a) To hold him or her for ransom or reward, or as a shield or hostage; or

(b) To facilitate commission of any felony or flight thereafter; or

(c) To inflict bodily injury on him or her; or

(d) To inflict extreme mental distress on him, her, or a third person; or

(e) To interfere with the performance of any governmental function.

(2) Kidnapping in the first degree is a class A felony. [2011 c 336 § 364; 1975 1st ex.s. c 260 § 9A.40.020.]

RCW 9A.40.030 Kidnapping in the second degree. (1) A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(3) (a) Except as provided in (b) of this subsection, kidnapping in the second degree is a class B felony.

(b) Kidnapping in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony. [2003 c 53 § 65; 2001 2nd sp.s. c 12 § 356; 1975 1st ex.s. c 260 § 9A.40.030.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

RCW 9A.40.040 Unlawful imprisonment. (1) A person is guilty of unlawful imprisonment if he or she knowingly restrains another person. (2) Unlawful imprisonment is a class C felony. [2011 c 336 § 365; 1975 1st ex.s. c 260 § 9A.40.040.]

RCW 9A.40.060 Custodial interference in the first degree. (1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

- (a) Intends to hold the child or incompetent person permanently or for a protracted period; or
- (b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or
- (c) Causes the child or incompetent person to be removed from the state of usual residence; or
- (d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent of a child is guilty of custodial interference in the first degree if the parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court order making residential provisions for the child, and:

- (a) Intends to hold the child permanently or for a protracted period; or
- (b) Exposes the child to a substantial risk of illness or physical injury; or
- (c) Causes the child to be removed from the state of usual residence.

(3) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or order making residential provisions for the child has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(4) Custodial interference in the first degree is a class C felony. [2015 c 38 § 2; 1998 c 55 § 1; 1994 c 162 § 1; 1984 c 95 § 1.]

Intent—2015 c 38: "It is the intent of the legislature to address the Washington supreme court's decision in *State v. Veliz*, 176 Wn.2d 849 (2013). The court held that a parent cannot be charged with custodial interference under RCW 9A.40.060(2) if a parent withholds the other parent from having access to the child in violation of residential provisions of a domestic violence protection order. The legislature intends that the provisions of RCW 9A.40.060(2) and 9A.40.070(2) be applicable in cases in which a court has entered any order making residential provisions for a child including, but not limited to, domestic violence protection orders that include such residential provisions." [2015 c 38 § 1.]

Severability—1984 c 95: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 95 § 8.]

RCW 9A.40.070 Custodial interference in the second degree. (1)
A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person. This subsection shall not apply to a parent's noncompliance with a court order making residential provisions for the child.

(2) A parent of a child is guilty of custodial interference in the second degree if: (a) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court order making residential provisions for the child; or (b) the parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160(3); or (c) if the court finds that the parent has engaged in a pattern of willful violations of a court order making residential provisions for the child.

(3) Nothing in subsection (2)(b) of this section prohibits conviction of custodial interference in the second degree under subsection (2)(a) or (c) of this section in absence of findings of contempt.

(4)(a) The first conviction of custodial interference in the second degree is a gross misdemeanor.

(b) The second or subsequent conviction of custodial interference in the second degree is a class C felony. [2015 c 38 § 3; 2003 c 53 § 66; 1989 c 318 § 2; 1984 c 95 § 2.]

Intent—2015 c 38: See note following RCW 9A.40.060.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1989 c 318: See note following RCW 26.09.160.

Severability—1984 c 95: See note following RCW 9A.40.060.

RCW 9A.40.080 Custodial interference—Assessment of costs—

Defense—Consent defense, restricted. (1) Any reasonable expenses incurred in locating or returning a child or incompetent person shall be assessed against a defendant convicted under RCW 9A.40.060 or 9A.40.070.

(2) In any prosecution of custodial interference in the first or second degree, it is a complete defense, if established by the defendant by a preponderance of the evidence, that:

(a) The defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office, protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter;

(b) The complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to the child under a court-ordered parenting plan or order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person;

(c) The acts giving rise to the charges were consented to by the complainant; or

(d) The offender, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to reasons that a reasonable person would believe were directly related to the welfare of the child, and allowed access to the child in accordance with the court order within a reasonable period of time. The burden of proof that the denial of access was reasonable is upon the person denying access to the child.

(3) Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under RCW 9A.40.060 or 9A.40.070. [1989 c 318 § 5; 1984 c 95 § 3.]

Severability—1989 c 318: See note following RCW 26.09.160.

Severability—1984 c 95: See note following RCW 9A.40.060.

Child custody, action by relative: RCW 26.09.255.

RCW 9A.40.090 Luring. (1) A person commits the crime of luring if the person, with the intent to harm the health, safety, or welfare of the minor or person with a developmental disability or with the intent to facilitate the commission of any crime:

(a) Orders, lures, or attempts to lure a minor or a person with a developmental disability into any area or structure that is obscured from or inaccessible to the public, or away from any area or structure constituting a bus terminal, airport terminal, or other transportation terminal, or into a motor vehicle;

(b) Does not have the consent of the minor's parent or guardian or of the guardian of the person with a developmental disability; and

(c) Is unknown to the child or developmentally disabled person.

(2) For purposes of this section:

(a) "Minor" means a person under the age of sixteen;

(b) "Person with a developmental disability" means a person with a developmental disability as defined in RCW 71A.10.020.

(3) Luring is a class C felony. [2016 c 11 § 1; 2012 c 145 § 1; 1995 c 156 § 1; 1993 c 509 § 1.]

Effective date—2012 c 145: "This act takes effect January 1, 2013." [2012 c 145 § 2.]

RCW 9A.40.100 Trafficking. (1) A person is guilty of trafficking in the first degree when:

(a) Such person:

(i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, (A) that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in:

(I) Forced labor;

(II) Involuntary servitude;

(III) A sexually explicit act; or

(IV) A commercial sex act, or (B) that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in

(a) (i) of this subsection; and

(b) The acts or venture set forth in (a) of this subsection:

(i) Involve committing or attempting to commit kidnapping;

(ii) Involve a finding of sexual motivation under RCW 9.94A.835;

(iii) Involve the illegal harvesting or sale of human organs; or

(iv) Result in a death.

(2) Trafficking in the first degree is a class A felony.

(3) (a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in

(a) (i) of this subsection.

(b) Trafficking in the second degree is a class A felony.

(4) (a) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is not a defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be.

(b) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a ten thousand dollar fee.

(c) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(d) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(i) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(ii) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(5) If the victim of any offense identified in this section is a minor, force, fraud, or coercion are not necessary elements of an offense and consent to the sexually explicit act or commercial sex act does not constitute a defense.

(6) For purposes of this section:

(a) "Commercial sex act" means any act of sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, for which something of value is given or received by any person; and

(b) "Sexually explicit act" means a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons for which something of value is given or received. [2017 c 126 § 1; 2014 c 188 § 1; 2013 c 302 § 6. Prior: 2012 c 144 § 2; 2012 c 134 § 1; 2011 c 111 § 1; 2003 c 267 § 1.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

RCW 9A.40.102 Trafficking—Court appearance—No-contact orders—Entry of order into computer-based criminal intelligence information system. (1) A defendant who is charged by citation, complaint, or information with an offense involving trafficking, as described in RCW 9A.40.100, and is not arrested, shall appear in court for arraignment or initial appearance in person as soon as practicable, but in no event later than fourteen days after the defendant is served with the citation, complaint, or information. At that appearance, the court shall determine the necessity of imposing or extending a no-contact order, and consider the provisions of RCW 9.41.800 or other conditions of pretrial release according to the procedures established by court rule for preliminary appearance or an arraignment.

(2) Whenever a no-contact order is issued under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified

in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2017 c 230 § 1.]

RCW 9A.40.104 Trafficking—Court may prohibit defendant's contact with victim—No-contact orders—Issuance, termination, modification—Entry of order into computer-based criminal intelligence information system.

(1) Because of the likelihood of repeated harassment and intimidation directed at those who have been victims of trafficking as described in RCW 9A.40.100, before any defendant charged with or arrested, for a crime involving trafficking, is released from custody, or at any time the case remains unresolved, the court may prohibit that person from having any contact with the victim whether directly or through third parties.

At the initial preliminary appearance, the court shall determine whether to extend any existing prohibition on the defendant's contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location. The court may also consider the provisions of RCW 9.41.800 or other conditions of pretrial release according to the procedures established by court rule for preliminary appearance or an arraignment.

(2) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed.

(3) (a) Willful violation of a court order issued under this section is punishable under RCW 7.105.450.

(b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 7.105 RCW and the violator is subject to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(4) Upon a motion with notice to all parties and after a hearing, the court may terminate or modify the terms of an existing no-contact order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses.

(5) (a) A defendant's motion to terminate or modify a no-contact order must include a declaration setting forth facts supporting the requested order for termination or modification. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the

defendant established adequate cause, the court shall set a date for hearing the defendant's motion.

(b) The court may terminate or modify the terms of a no-contact order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses, if the defendant proves by a preponderance of the evidence that there has been a material change in circumstances such that the defendant is not likely to engage in or attempt to engage in physical or nonphysical contact with the victim if the order is terminated or modified. The victim bears no burden of proving that he or she has a current reasonable fear of harm by the defendant.

(c) A defendant may file a motion to terminate or modify pursuant to this section no more than once in every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewal.

(6) Whenever a no-contact order is issued, modified, or terminated under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2021 c 215 § 107; 2017 c 230 § 3.]

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

RCW 9A.40.106 Trafficking—Condition of sentence restricting contact—No-contact orders—Entry of order into computer-based criminal intelligence information system.

(1) If a defendant is found guilty of the crime of trafficking under RCW 9A.40.100 and a condition of the sentence restricts the defendant's ability to have contact with the victim, the condition must be recorded and a written certified copy of that order must be provided to the victim by the clerk of the court. Willful violation of a court order issued under this section is punishable under *RCW 26.50.110. The written order must contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under *chapter 26.50 RCW and the violator is subject to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(2) Whenever a no-contact order is issued under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into

the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2017 c 230 § 4.]

***Reviser's note:** Chapter 26.50 RCW was repealed in its entirety by 2021 c 215 § 170, effective July 1, 2022.

RCW 9A.40.110 Coercion of involuntary servitude. (1) A person is guilty of coercion of involuntary servitude if he or she coerces, as defined in RCW 9A.36.070, another person to perform labor or services by:

(a) Withholding or threatening to withhold or destroy documents relating to a person's immigration status; or

(b) Threatening to notify law enforcement officials that a person is present in the United States in violation of federal immigration laws.

(2) Coercion does not include reports to law enforcement that a person is present in the United States in violation of federal immigration laws.

(3) A person may commit coercion of involuntary servitude regardless of whether the person provides any sort of compensation or benefits to the person who is coerced.

(4) Coercion of involuntary servitude is a class C felony. [2014 c 52 § 1.]

RCW 9A.40.120 Enforcement of orders restricting contact. Any general authority Washington peace officer as defined in RCW 10.93.020 in this state may enforce this chapter as it relates to orders restricting the defendants' ability to have contact with the victim or others. [2017 c 230 § 2.]

RCW 9A.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 23.]