

LEGAL CONSIDERATIONS PERTAINING TO THE OFFENSE OF ABDUCTION

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Abstract

An individual is criminally liable only if they commit an act designated as an offense by the prevailing law at the time of the act, which also prescribes a penalty. Therefore, the offender's sanction must correspond to the law's penalty at the time of the crime. Social peace is the goal of this rule. Even when a child or minor is removed and the victim is the parent, guardian, or caregiver, criminal law protects victims' physical safety and property and guardians' rights over them. Sections 317–319 of the Criminal Code define culpability for child abduction. Some child abductors were punished, while others were not. Lack of a defined legal definition of "abduction" in criminal law may explain this disparity. Additionally, English child abduction laws clearly define the phrase as the unlawful taking of a child. The research suggests that "abduction" should be expanded to include removing a child from a responsible person, preventing a child from returning, or guiding, assisting, or motivating a child to remain away from an accountable person.

Keywords: Induce, Take away, Dissociate

Introduction

Nullum Crimen Nulla Poena Sine Lege states in Section 2 of the Thai Criminal Code that every criminal act is a crime. To be criminally liable, a person must have committed a crime with a legal penalty. Such people risk criminal liability. Legislation, requirements, and penalties sustain criminal accountability. Assessing if the perpetrator meets criminal responsibility requirements is critical. The criminal liability framework and related laws must be examined to determine an individual's criminal accountability. To protect society and promote harmony, the law defines criminal culpability in numerous ways.

The law usually protects victims in numerous ways. The victim's principal protection against homicide and bodily harm is criminal culpability. The second safeguard protects property against theft or embezzlement when the hirer secretly sells the vehicle (Meebau, 2018). Theft and burglary fall into the third category, which protects property and life. Additionally, there are charges to safeguard the victim's property and body. However, certain offenses affect the victim rather than the offender. It affects the minor's authority. When a

juvenile or child is stolen, it affects parental authority, even though the abductee is not legally protected. This category of criminal responsibility violations involves deprivation. The legislation criminalizes child abduction to protect parental authority or custody rights. Child abduction affects rape, which carries consequences for both rape and sexual assault. The physician can only determine "no tearing," "tearing or scratching," or "tearing." This may make it difficult to provide an expert opinion on rape. The autopsy report will not indicate "rape," despite the person being "newly missing." (Pisitchinda et al., 2020).

Acts that affect parents, guardians, or caretakers' parental or custodial authority constitute abduction offenses under Criminal Code § 317–319. Kidnapping involves forcing children into illegal sexual activity or stealing them. Some deprivation lawsuits have resulted in child abuse or abduction convictions. Child abduction happens when a juvenile is taken without parental, guardian, or caretaker approval. Depending on the case, conditions that ostensibly remove adolescents or children from their parents or guardians may or may not constitute abduction. The crime of abducting a juvenile under 15 as stated in Section 317 of the Criminal Code is not an abduction offense. Parental rights are protected by the law. Deprivation requires removal. The evidence shows that Victim 1 visited S., the defendant's wife, to drink beer before the incident and passed out. S. sent victim 1 home. D., the grandmother of the first victim, asked S. to return him because she was afraid he would be punished. In front of the defendant and S.'s bedroom, she put the first victim on a mat. The defendant sexually molested Victim No. 1 asleep on a mat when he returned home. The defendant did not try to separate Victim No. 1 from his caretaker. Only wanting to sexually abuse Victim No.1 was possible. After sexually assaulting Victim No. 1 at the litter, the defendant carried her into the defendant's daughter's bedroom two more times to have sex with her, but this was not an act of deprivation under the law because the defendant did not take her elsewhere. Abduction for obscene purposes is not guaranteed for the first victim, a child under 15. (SC Judgment 1174/2015) The crimes of deprivation occurred 30 meters from the child's grandmother's house, where the child was playing and trading with peers. Taking the child's arm, the defendant entered the house and raped him. The grandma may have cared for the child at the time. Depriving the grandmother of her rights to govern and care for the child was the defendant's act. Supreme Court Judgment 3419/2016 (Chanhom, 2022). The cases show instances of culpability for deprivation and instances where such liability does not exist notwithstanding separation or bodily removal. Thus, it needs investigation.

Objective

To study the acts of deprivation of Thailand compare to the law of foreign countries.

Literature Review

1. Definition of deprivation

The existing Criminal Code lacks a definition for the term deprivation. Thus, its definition originates from the 2011 version of the Royal Institute dictionary defining "deprivation" as the act of removing, withdrawing, or isolating. Consequently, deprivation denotes the act of leaving, removing, or separating. Therefore, the crime of deprivation entails the removal of a child or juvenile from their parents or guardians, or inducing separation from them. Moreover, Thai legal practitioners have defined the term deprivation in relation to the concept of deprivation as follows: Yood Sang U-Tai stated that deprivation refers to the act of entirely removing children from the custody of their parents, guardians, or caretakers, often executed with dishonesty or for profit or immoral purposes. (Sang U-Tai, 2010) Professor Jitti Tingsapat elucidates the process of removing or separating children from their guardianship

and care. Distance is disregarded. The legislation imposes no limitations. It will be on the unpaved route. Will you employ force or not? will constitute a deception Coercing a child by deception or if the youngster consents voluntarily constitutes an act of self-deprivation. (Tingsapat, 2016)

2. Child deprivation or minor deprivation: the offense under Thai law

The Thai legal system has codified the offense of child deprivation or the deprivation of a minor under the Criminal Code, specifically delineated in Sections 317, 318, and 319. The offense of child deprivation or abduction of a minor is categorized based on age. Section 317 pertains to the deprivation of a child under the age of 15. Sections 318 and 319 pertain to the circumstances involving minors aged over 15 but not exceeding 18 years. These sections differentiate between cases where the minor is reluctant to accompany them and those where the minor is willing to do so. which is the offense of child deprivation or the removal of minors Stated in the following manner:

Section 317 Whoever, without reasonable cause, takes away a child not yet over fifteen years of age from the parent, guardian or person looking after such child, shall be punished with imprisonment of three to fifteen years and fined of six thousand to thirty thousand Baht. Whoever dishonestly buys, disposes of or accepts such child to taken away according to the first paragraph, shall be liable to the same punishment as the person who takes the child away. If the offence of this Section has committed for lucre or indecent purpose, the offender shall be punished with imprisonment of five to twenty years and fined of ten thousand to forty thousand Baht. Section 318 Whoever, takes away a minor over fifteen years but not yet over eighteen years of age from the parent, guardian or person looking after such minor against a will of such minor, shall be punished with imprisonment of two to ten years and fined of four thousand to twenty thousand Baht. Whoever dishonestly buys, disposes of or accepts a minor to taken away according to the first paragraph, shall be liable to the same punishment as the person who takes such minor away. If the offence according to this Section has committed for lucre or indecent purpose, the offender shall be punished with imprisonment of three to fifteen years and fined of six thousand to thirty thousand Baht. Section 319 Whoever, takes away a minor over fifteen years of age but not yet over eighteen years of age from the parent, guardian or person looking after such minor for lucre or indecent purpose with the consent of such minor, shall be punished with imprisonment of two to ten years and fined of four thousand to twenty thousand Baht. Whoever dishonestly buys, disposes, or accepts a minor to taken away according to the first paragraph, shall be liable to the same punishment as the person who takes such minor away.

3. Case of Deprivation offense Concerning the offense of taking a child or minor, there exists a set of circumstances where the manner of the taking, separation, or removal from the parent, guardian, or caretaker renders the offender accountable for the crime of child abduction. These situations can be categorized as follows:

3.1 Case that is guilty of deprivation

3.1.1 The minor visited the defendant's cabin. The defendant made threats towards the minor and obstructed his exit from the cabin. To desire to engage in sexual assault against a minor while concealing it from the parents and preventing the minor from remaining in the cabin with the defendant. Regardless of the location, a minor remains a child, and as long as the father, mother, guardian, or caretaker continues to provide care, the child will always be under their guardianship. The defendant's unwillingness to permit the minor to exit the defendant's cabin. The separation of parental authority over a minor from the parents, even if only temporary, constitutes a deprivation of the minor. When the defendant removes a minor

from their parents and subsequently commits a sexual assault against the minor, this action is classified as the crime of child deprivation. (Supreme Court Judgment No. 4087/2019)

3.1.2 Victim 1, the son of Victim 2, is over 7 years old and resides with his grandmother, B. On the day of the incident, Victim 1 departed from home to engage in play with friends at the location where the incident took place. As friends ventured outdoors to enjoy riding their bicycles. The first victim was permitted to sit alone and watch television in the house where the crime took place. The defendant entered the house, closed the door, and bolted it to ensure the first victim could not leave. The defendant committed a sexual assault against the first victim. He committed a sexual assault against the first victim and may be seen as having infringed upon the rights of the 1st victim, thereby separating them from the parental authority of the 2nd victim, and has led to a disturbance or impact on the parental authority of the 2nd victim due to their lack of awareness and consent. This violates upon the parental rights of the first victim and the mother of the second victim. The defendant is consequently found guilty of unlawfully taking a child under the age of fifteen years from their parents, guardian, or caretaker for purposes of indecency. (Supreme Court Judgment No. 2269/2019)

3.2 Cases that do not constitute deprivation offenses

3.2.1 An acquaintance recommended the defendant to the victim. The criminal wanted sexual relations with the victim. The victim and his friend visited the defendant's home the day of the event. The victim knew she went to the defendant's house for sexual encounters. When they met while the defendant's companion rode a motorcycle away from the defendant's home. The defendant told the victim to remove the clothes, which she did herself. The victim received the money from the defendant without protest after the sexual session. After the victim's companion picked her up, the defendant didn't intervene. Additionally, the victim was 14 years old, had a high school education, and was not innocent. The victim admitted to having sex with another man during cross-examination. Thus, while at the defendant's home, the victim had freedom of movement and was not under custody. The defendant did not strip the injured parents of parental power. A child abuse violation has not occurred. The child had been given to the defendant for sexual activities. (Supreme Court Judgment No. 7855/2007)

3.2.2 The defendant just took Victim No. 1 to the temple's kitchen and restroom, where he was swinging, to commit an indecent act. When the defendant indecently treated the first victim and was summoned by another. The defendant released the first victim permanently. If a child under 15 is removed from their parents, guardian, or caretaker for indecency, detaining the first victim immediately is a felony. It requires the child's removal from guardianship, interrupting the parents' guardianship. "Take away," according to the 1999 Royal Institute Dictionary, means to leave, detach, or disassemble. The defendant's actions had not yet removed a kid from parental care, thus they did not affect the child's guardianship or the parents' rights. Thus, it does not violate child deprivation. (Supreme Court Judgment No. 4948/2012)

4. The offense of child deprivation under British law

(Abduction of Children in care) Section 49 Abduction of children in care etc. (1) A person shall be guilty of an offence if, knowingly and without lawful authority or reasonable excuse, he (a)takes a child to whom this section applies away from the responsible person; (b)keeps such a child away from the responsible person; or (c)induces, assists or incites such a child to run away or stay away from the responsible person. (2) This section applies in relation to a child who is— (a)in care; (b)the subject of an emergency protection order; or (c)in police protection, and in this section "the responsible person" means any person who for the time being has care of him by virtue of the care order, the emergency protection order, or section 46, as the case may be. (3)A person guilty of an offence under this section shall be liable on

summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both. (Children Act 1989 Section 49)

The offense of taking or kidnapping a child in England is The nature of abduction or deprivation has been established. The offense of child abduction or kidnapping in England encompasses a broader definition than that in Thailand. It delineates kidnapping by multiple ways, including the abduction of children from their guardians, the prevention of guardians from accessing their children, and the incitement, facilitation, or encouragement of children to flee or remain distant from their guardians as stipulated by law.

Methodology

This article employed qualitative analysis through the examination of textbooks, literature, electronic media, and other documents.

Results

A literature analysis revealed that Thailand has enacted laws addressing the abduction of children and minors; yet, it lacks a definition for the term deprivation. Therefore, the principles from the lexicon must be utilized for analysis. The definitions provided by legal professionals and the outcomes of cases concerning the removal of children or minors, whether deemed an offense or not, are contingent upon the specific circumstances. However, an examination of English law regarding child abduction reveals that England possesses legislation on this issue, characterized by a broader and more comprehensive definition of deprivation compared to Thailand.

Discussion

Sections 317 to 319 of the Thai Criminal Code address liability for acts of deprivation that disrupt or influence administrative authority, but all sections use the term "depart," with Section 317 specifically stating "without reasonable cause." Deprivation has no definition in the penal code, hence it must be construed from the dictionary. RI Edition, 2011. The dictionary defines it as remove, subtract, isolate. This is mentioned in the prior statement but not in the Criminal Code's definition or explanation. Cases must be reviewed using sources other than the Criminal Code's concept of deprivation. We must also assess the legal team's explanation of the deprivation. Section 49 of English law codifies deprivation, known as child abduction (Abduction of children in care), according to a literature assessment. The message specifically states that (a) removes a child to whom this section applies from the responsible individual, (b) keeps them apart, or (c) encourages, assists, or provokes them to run. Additionally, "the responsible person" refers to anyone who has custody of him under the care order, emergency protection order, or section 46. English law defines "taking" or "abducting" a child, especially in circumstances when the culprit is acquitted. In court, this may make the defendant accountable. This case involved removing children from the liable person. Keep kids away from responsible people or assist them avoid them.

Recommendations

The analysis of the term deprivation under the Criminal Code indicates that a single word may be inadequate for its application across diverse instances. It is recommended that supplementary explanations and information be provided for clarity, such as specifying that "taking away" refers to removing a child from the responsible individual. Prevent youngsters from associating with responsible individuals, or instigate, facilitate, or promote their avoidance of responsible persons.

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