

8.11A Inference Of Unlawful Purpose In Child Abduction

If you find that the defendant lured or attempted to lure a child under 16 years of age into a motor vehicle, and that he did so without the consent of a parent or lawful custodian of the child, you may infer it was for other than a lawful purpose.

You are never required to make this inference. It is for the jury to determine whether the inference should be made. You should consider all of the evidence in determining whether to make this inference.

Committee Note

720 ILCS 5/10-5(b)(10) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §10-5(b)(10) (1991)).

This instruction should be used *only* when the defendant is charged with child abduction under Section 10-5(b)(10).

In the Committee Note to Instruction 8.11 that appears in the bound volume of IPI 3d, the Committee wrote the following:

“Section 10-5(b)(10) provides that the luring or attempted luring of a child under 16 into a vehicle, building, house trailer, or dwelling place without the consent of the child's parent or lawful custodian shall be *prima facie* evidence that the defendant acted with an unlawful purpose. Dictum in *People v. Gray*, 99 Ill.App.3d 851, 426 N.E.2d 290, 55 Ill.Dec. 315 (5th Dist.1981), supports the view that the legislature's use of the term “*prima facie*” in a different but not dissimilar context is a direction to the court on when to submit the evidence to the jury and should not be translated into a jury instruction. *Gray* holds that the jury should not be instructed about the *prima facie* effect of certain evidence. The term is a legal one which, according to *Gray*, might be read by a jury as creating the type of presumption that is constitutionally impermissible in criminal cases. *Cf. People v. Embry*, 177 Ill.App.3d 96, 531 N.E.2d 1130, 126 Ill.Dec. 503 (4th Dist.1988).”

However, in *People v. Patten*, 230 Ill.App.3d 922, 927-28, 595 N.E.2d 1141, 1144-45, 172 Ill.Dec. 471, 474-75 (1st Dist.1992), the court specifically approved the above instruction. Accordingly, the Committee has deleted the above paragraph from the Committee Note to Instruction 8.11 and refers to that paragraph in this Committee Note only to provide background information on the issue of this inference.