

1 **14-2220. Unlawful rescue; felony; capital felony; essential elements.**

2 For you to find the defendant guilty of unlawful rescue [as charged in Count _____]¹,
3 the state must prove to your satisfaction beyond a reasonable doubt each of the following elements
4 of the crime:

5 1. _____ (*name of prisoner*) was in [custody of
6 _____ (*name of peace officer*)]² [confinement];

7 2. _____ (*name of prisoner*) was [under conviction of
8 _____]³ [charged with _____]³];

9 3. The defendant freed _____ (*name of prisoner*);

10 4. This happened in New Mexico on or about the _____ day of
11 _____, _____.

12 USE NOTES

13 1. Insert the count number if more than one count is charged.

14 2. Use only the applicable bracketed element established by the evidence.

15 3. Insert name of crime.

16 **Committee commentary.** — See [~~Section 30-22-7~~] NMSA 1978, Section 30-22-7 (1963). The
17 intentional element of the statutory crime is covered by the general intent instruction, UJI 14-141
18 NMRA.

19 Although the lawfulness of the custody or confinement of the prisoner is an essential element of
20 the crime of unlawful rescue, this issue is almost always a question of law to be decided by the
21 judge. (See [~~Reporter's~~] Reporter's Addendum to Chapter 22, Custody; Confinement; [~~Arrest,~~]
22 Arrest, following these instructions.)

1 Unlawful Rescue; Assisting Escape Distinguished. - The essential elements of unlawful rescue
2 [~~(Section 40A-27-7 NMSA 1953 Comp.)~~] (NMSA 1953, Section 40A-27-7) and assisting escape
3 [~~(Section 40A-27-11; UJI 14-2224)~~] (NMSA 1953, Section 40A-27-11; UJI 14-2224 NMRA), as
4 set forth in the Criminal Code, appear to be the same. The courts, when confronted with similar
5 statutory provisions, have held that the distinguishing element between the two offenses is the
6 cooperation of the prisoner. An unlawful rescue takes place where there is no effort on the part of
7 the prisoner to escape. The [~~prisoner's~~] prisoner's deliverance must be effected by the intervention
8 of others without [~~his~~] the prisoner's cooperation. The crime of assisting a prisoner to escape
9 consists of inciting, supporting, or [~~reenforcing~~] reinforcing a [~~prisoner's~~] prisoner's exertions to
10 escape. *See Merrill v. State*, [~~42 Ariz. 341,~~] 26 P.2d 110 (Ariz. 1933); *People v. Murphy*, [~~130 Cal.~~
11 ~~App. 408,~~] 20 P.2d 63 (Cal. Ct. App. 1933); *Day v. State*, [~~86 Ga. App. 757,~~] 72 S.E.2d 500 (Ga.
12 Ct. App. 1952); and *Robinson v. State*, [~~82 Ga. 535,~~] 9 S.E. 528 (Ga. 1889).

13 In New Mexico, there is one further distinguishing characteristic between the crime of unlawful
14 rescue and the crime of assisting escape: unlawful rescue is limited to confinement or custody for
15 felony offenses while assisting escape is not so limited.

16 [~~"Peace officer"~~] "Peace officer" is defined in [~~Section 30-1-12C NMSA 1978~~] NMSA 1978,
17 Section 30-1-12(C) (1963). The question of whether or not a person is a peace officer is normally
18 a question of law to be decided by the court. In the event there is a question of fact [~~as to~~] about
19 whether the person having custody of the defendant is a peace officer, a special instruction would
20 have to be drafted.

21 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]