

1 **14-2223. Escape from custody of a peace officer; essential elements.**

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

5 1. The defendant was arrested [under authority of a warrant]² [upon reasonable
6 grounds to believe that [~~he~~] the defendant had committed _____]³;

7 2. The defendant [escaped]² [attempted to escape] from the custody of a
8 _____ (*official title*);

9 3. This happened in New Mexico on or about the _____ day of
10 _____, _____.

11 USE NOTES

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

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

14 3. Insert name of felony for which the defendant had been arrested. The essential
15 elements of the felony must also be given immediately following this instruction.

16 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending
17 or filed on or after December 31, 2025.]

18 **Committee commentary.** — *See* Section 30-22-10 NMSA 1978. A charge of escape from the
19 custody of a peace officer may be shown by evidence of escape from an institution. *See State v.*
20 *Millican*, 84 N.M. 256, 501 P.2d 1076 (Ct. App. 1972).

21 An essential element of the crime of escape from custody of a peace officer is that the person
22 escaping must have been placed under lawful arrest. If the arrest is without a warrant and the jury
23 finds that the person was arrested upon reasonable grounds that the defendant committed a felony,

- 1 the person has been lawfully arrested. If the arrest is made under authority of a warrant, the
- 2 question of lawfulness will almost always be a question of law to be decided by the judge.
- 3 *See State v. Selgado*, 76 N.M. 187, 413 P.2d 469 (1966), for a discussion of when a police officer
- 4 may make an arrest for a misdemeanor without a warrant.
- 5 *See Perkins, Criminal Law* 500 (2d ed. 1969), for when an arrest takes place.