

1 **14-2228C. Escape; community custody release program; essential elements.**¹

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

5 1. The defendant was charged with a [misdemeanor] [felony]³ offense⁴;

6 2. The defendant was not on probation or parole;⁴

7 3. The defendant was committed to a judicially approved community custody release
8 program;

9 4. Under the procedures and conditions of the program, the defendant was required to
10 _____ (*describe the program*
11 *requirement(s) allegedly violated*);

12 5. The defendant [failed to comply] [attempted to avoid complying]³ with the
13 requirement to _____
14 (*describe the program requirement*) [by _____
15 (*describe the substantial step toward attempting to escape*)]⁵;

16 6. This happened in New Mexico on or about the _____ day of
17 _____, _____.

18 USE NOTES

19 1. This instruction is to be used for escape from a community custody release program
20 under NMSA 1978, Section 30-22-8.1 (1999). For escape from a county or municipal jail-initiated
21 prisoner-release program established under NMSA 1978, Section 33-3-24 (1981), use UJI 14-
22 2228A NMRA. For escape from a penitentiary inmate-release program established under NMSA
23 1978, Sections 33-2-43 to -47 (1969, as amended through 1980), use UJI 14-2228B NMRA.

- 1 2. Insert the count number if more than one count is charged.
- 2 3. Use the applicable alternative.
- 3 4. Essential element, but rarely at issue; *see* Committee commentary.
- 4 5. For attempts to escape, specify the act(s) allegedly constituting a substantial step
- 5 toward escape and give UJI 14-2801 NMRA following this instruction. For completed offenses,
- 6 UJI 14-141 NMRA must be given following this instruction.

7 [Adopted by Supreme Court Order No. 22-8300-031, effective for all cases pending or filed on or
8 after December 31, 2022.]

9 **Committee commentary.** — *See* NMSA 1978, § 30-22-8.1 (1999); *see also* NMSA 1978, § 30-
10 22-8 (1963) (escape from jail); NMSA 1978, § 33-2-46 (1980) (escape from a penitentiary inmate
11 release program); NMSA 1978, § 33-3-24 (1981) (jail operated prisoner release program).

12 The charge pending against the defendant placed in the community custody release program
13 controls the statutory punishment for escape from the program. *See* § 30-22-8.1(B), (C). Because
14 Section 30-22-8.1 does not specify the degree or punishment for misdemeanor or felony escape,
15 misdemeanor violations are punished as petty misdemeanors and felony violations are punished as
16 fourth-degree felonies. *See* NMSA 1978, § 31-18-13 (1993). The fact the defendant faced a felony
17 charge is an essential element of the offense. *State v. Sanchez*, 2019-NMCA-006, ¶ 10, 458 P.3d
18 428 (“For a defendant to be found guilty of felony escape from [a community custody release
19 program] the state must show that a felony charge led to the defendant’s commitment to the
20 program.”). *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior
21 conviction, any fact that increases the penalty for a crime beyond the prescribed statutory
22 maximum must be submitted to a jury, and proved beyond a reasonable doubt.”); *see also State v.*
23 *Radosevich*, 2018-NMSC-028, ¶¶ 15-27, 419 P.3d 176 (applying *Apprendi* and holding that New

1 Mexico’s tampering with evidence statute cannot be constitutionally applied to impose greater
2 punishment for committing tampering where the underlying crime is indeterminate than the
3 punishment for committing tampering where the underlying crime is a misdemeanor).

4 The jury should not be told the nature of the predicate charge leading to the defendant’s placement
5 in the community custody release program. *See State v. Tave*, 1996-NMCA-056, ¶¶ 13-18, 122
6 N.M. 29, 919 P.2d 1094 (concluding that the trial court erred in admitting, as proof of felon in
7 possession charge, the name and details of the prior felony), *overruled on other grounds by State*
8 *v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110; *see also State v. Rackley*, 2000-NMCA-
9 027, ¶ 19, 128 N.M. 761, 998 P.2d 1212 (“In an apparent effort to reduce the potential impact of
10 evidence revealing the nature of [~~his~~][defendant’s] prior felonies [in a felon in possession trial],
11 [the d]efendant stipulated to the fact of a prior, unidentified felony conviction.”).

12 The Committee believes the requirement that the defendant not be on probation or parole when
13 placed in a community correction release program is jurisdictional; the enabling statute specifically
14 “exclud[es] a person on probation or parole.” Section 30-22-8.1(A).

15 Section 30-22-8.1’s requirement that the defendant was “lawfully committed” appears in other
16 escape statutes. Section 30-22-8 (escape from jail); NMSA 1978, § 30-22-9 (1963) (escape from
17 penitentiary). Since adoption of corresponding UJI 14-2221 NMRA (escape from jail) and UJI 14-
18 2222 NMRA (escape from the penitentiary, UJI 14-2228 NMRA (escape; inmate-release program,
19 which has been withdrawn and reconfigured in response to *State v. Grubb*, 2020-NMCA-003, 455
20 P.3d 877, has used the term “committed.” The Committee believes that challenges to prima facie
21 proof of lawful commitment are likely to be rare and that “committed” remains the appropriate
22 term. *See Grubb*, 2020-NMCA-003, ¶ 19 (finding sufficient evidence for retrial where the state
23 had presented a certified copy of an order revoking probation committing the defendant to the

1 penitentiary and granting the defendant furlough—from which the jury “could reasonably
2 conclude that [the d]efendant was committed to the [detention center] for transport to the
3 Department of Corrections” (internal quotation marks omitted)); *see also State v. Starr*, 1917-
4 NMSC-092, ¶¶ 15-16, 24 N.M. 180, 173 P. 674 (finding no error in admitting jail records and
5 commitments showing the prisoners charged with escape had been lawfully committed to the
6 county jail).

7 Unlike a jail prisoner release program under Section 33-3-24, a community custody release
8 program under Section 30-22-8.1 does not require formal adoption by the board of county
9 commissioners; it may simply be a set of defined procedures and conditions, “judicially approved”
10 on a case-by-case basis by the judge setting terms of release. *See State v. Duhon*, 2005-NMCA-
11 120, ¶ 11, 138 N.M. 466, 122 P.3d 50.

12 Escape from a community custody release program includes but is not limited to a day detention
13 or reporting program, an electronic monitoring program, or a community tracking program. *See* §
14 30-22-8.1(A). The particular release program requirements imposed on the defendant and the
15 defendant’s alleged acts or omissions should be described in ordinary terms, with sufficient
16 specificity to preclude double jeopardy.

17 Section 30-22-8.1(A) does not contain an intent requirement: “Escape from a community custody
18 release program consists of a person . . . escaping or attempting to escape from the community
19 custody release program.” Absent explicit language negating a mental state, the Legislature is
20 presumed not to have intended strict liability. Criminal intent is presumed an essential element,
21 especially where the punishment is a third- or fourth-degree felony. *See State v. Nozie*, 2009-
22 NMSC-018, ¶¶ 25-26, 30, 146 N.M. 142, 207 P.3d 1119 (holding that third-degree aggravated
23 assault on a peace officer and fourth-degree battery on a peace officer require knowledge that the

1 victim was a peace officer); *see also State v. Valino*, 2012-NMCA-105, ¶¶ 15-16, 287 P.3d 372
2 (applying the *Nozie* requirement to battery on a health care worker where a misdemeanor battery
3 charge is elevated to a fourth-degree felony). The Committee believes that this presumption against
4 strict liability requires the jury to be instructed on general criminal intent using UJI 14-141 NMRA
5 for completed escapes and attempt to commit a felony using UJI 14-2801 NMRA for attempts to
6 escape.

7 Escape from a penitentiary inmate-release program requires that the prisoner “willfully” failed to
8 return to confinement and also had “the intent not to return.” Section 33-2-46. Neither of these
9 requirements appear in escape from the community custody release program. Section 30-22-8.1.
10 Unlike escape from a penitentiary release program, the courts have not addressed whether the
11 community custody release statute requires proving the defendant’s actions were without excuse
12 or justification. *Cf. State v. Rosaire*, 1997-NMSC-034, ¶ 7, 123 N.M. 701, 945 P.2d 66 (finding
13 that Section 33-2-46’s explicit requirement of willfully “denotes the doing of an act without just
14 cause or lawful excuse” (internal quotation marks and citation omitted)).

15 [Adopted by Supreme Court Order No. 22-8300-031~~[- effective for all cases pending or filed on~~
16 ~~or after December 31, 2022]~~; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]