

1 **14-2229. Failure to appear; bail.**

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

5 1. _____ (*name of defendant*) was released pending [trial] [an appeal]
6 [a probation revocation proceeding]² in a criminal action related to a [misdemeanor or petty
7 misdemeanor] [felony]² offense on the condition that _____ (*name of defendant*)
8 appear as required by the court;

9 2. _____ (*name of defendant*) failed to appear as required by the
10 court;

11 3. The defendant's failure to appear was willful, without sufficient justification or
12 excuse;

13 4. This happened in New Mexico on or about the _____ day of
14 _____, _____.

15 USE NOTES

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

17 2. Use applicable alternative.

18 [Adopted, effective October 1, 1976; UJI Criminal Rule 22.29 NMSA 1978; UJI 14-2229 SCRA;
19 as amended, effective January 1, 1999; as amended by Supreme Court Order No. 22-8300-035,
20 effective for all cases pending or filed on or after December 31, 2022.]

21 **Committee commentary.** — *See* NMSA 1978, § 31-3-9 (1999).

1 Section 31-3-9, provides that the defendant must willfully fail to appear. The third element of this
2 instruction was added in 1998 to comply with *State v. Rosaire*, 1997-NMSC-034, 123 N.M. 701,
3 945 P.2d 66.

4 The pending charge or conviction on which the defendant was released controls the statutory
5 punishment for failure to appear. *See* § 31-3-9(A) (fourth degree felony), (B) (petty misdemeanor).

6 Whether the defendant was released in connection with a felony proceeding or a misdemeanor or
7 petty misdemeanor proceeding is an element for the jury to determine. *See Apprendi v. New Jersey*,
8 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the
9 penalty for a crime beyond the statutory maximum must be submitted to a jury, and proved beyond
10 a reasonable doubt.”); *see also State v. Radosevich*, 2018-NMSC-028, ¶¶ 29-30, 419 P.3d 176
11 (instructing the district court to sentence for tampering with evidence of an indeterminate offense
12 because the jury did not find beyond a reasonable doubt the level of the underlying offense); *State*
13 *v. Sanchez*, 2019-NMCA-006, ¶ 10, 458 P.3d 428 (“For a defendant to be found guilty of felony
14 escape from [a community custody release program] the state must show that a felony charge led
15 to the defendant’s commitment to the program.”).

16 The jury does not need to know the specific charge or conviction connected to the defendant’s
17 failure to appear. *See State v. Tave*, 1996-NMCA-056, ¶¶ 14-17, 122 N.M. 29, 919 P.2d 1094
18 (concluding that there was error in admission of the name and details of the prior felony as proof
19 of the charge of felon in possession of a firearm), *overruled on other grounds by State v. Tollardo*,
20 2012-NMSC-008, 275 P.3d 110; *State v. Rackley*, 2000-NMCA-027, ¶¶ 18-19, 128 N.M. 761, 998
21 P.2d 1212 (“In an apparent effort to reduce the potential prejudicial impact of evidence revealing
22 the nature of [his][the defendant’s] prior felonies [in a felon in possession of a firearm trial], [the
23 d]efendant stipulated to the fact of a prior, unidentified felony conviction.”).

- 1 [Amended November 12, 1998; as amended by Supreme Court Order No. 22-8300-035[~~-, effective~~
- 2 ~~for all cases pending or filed on or after December 31, 2022~~]; as amended by Supreme Court Order
- 3 No. S-1-RCR-2025-00126.]