

1 **14-5132. Escape from jail or penitentiary; duress defined.¹**

2 An issue you must consider is whether the defendant escaped from [jail]² [the penitentiary]
3 as a result of duress. An escape is a result of duress to avoid great bodily harm if:

4 1. The defendant feared [great bodily harm [~~to (himself) (herself)~~] [to
5 (_____)] (*name of other person*)]² [~~((he) (she) would be sexually assaulted)~~] sexual
6 assault] if [~~(he) (she)~~] the defendant did not escape;

7 2. [The defendant did not have time to complain to the authorities;]²

8 [OR]

9 [Under the circumstances it would have been futile for the defendant to complain
10 to the authorities;]

11 3. The defendant did not use force or violence toward prison personnel or any other
12 person during the escape;

13 4. The defendant [intended to report]² [reported] immediately to the proper authorities
14 [~~when (he) (she) attained~~] upon attaining a position of safety from the immediate threat; and

15 5. A reasonable person would have acted in the same way under the circumstances.

16 The burden is on the state to prove beyond a reasonable doubt that the defendant did not
17 act as a result of duress. If you have a reasonable doubt as to whether the defendant acted as a
18 result of duress, you must find the defendant not guilty.

19 USE NOTES

20 1. For use when necessity is defense to crimes of escape or attempted escape from jail
21 (UJI 14-2221 NMRA) or escape or attempted escape from the penitentiary (UJI 14-2222 NMRA).
22 If this instruction is given, add to the essential elements instruction for the offense charged, ["]“The
23 defendant did not escape as a result of duress.[””

1 2. Use only applicable alternative or alternatives.

2 [As amended, effective January 1, 1997; as amended by Supreme Court Order No. 18-8300-012,
3 effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme
4 Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after
5 December 31, 2025.]

6 **Committee commentary.** — Generally, escape from confinement is unlawful and constitutes a
7 crime which is punishable, unless the confinement was illegal. In recent years, the courts have
8 begun to recognize the defense of coercion or duress when the defendant is charged with escape
9 from confinement. In *People v. Lovercamp* [~~42 Cal. App. 3d 823~~], 118 Cal. Rptr. 110, 115 [~~69~~
10 ~~A.L.R.3d 668~~] (Ct. App. 1974), the court established the following requirements which must be
11 proved in order to establish the defense of duress in an escape case:

12 [~~specific threats of death, forcible sexual attack or substantial bodily injury in the immediate future;~~
13 ~~no time for complaint to the authorities or complaint is futile based upon a history of futility of~~
14 ~~prior complaints;~~

15 ~~no time to resort to the courts;~~

16 ~~no force or violence used toward prison personnel or other innocent persons; and~~

17 ~~the prisoner immediately reports to the proper authorities [when he has attained] [upon~~
18 ~~attaining] a position of safety.]~~

19 (1) The prisoner is faced with a specific threat of death, forcible sexual attack or
20 substantial bodily injury in the immediate future; (2) There is no time for a
21 complaint to the authorities or there exists a history of futile complaints which make
22 any result from such complaints illusory; (3) There is no time or opportunity to
23 resort to the courts; (4) There is no evidence of force or violence used towards
24 prison personnel or other ‘innocent’ persons in the escape; and (5) The prisoner
25 immediately reports to the proper authorities when [they have] attained a position
26 of safety from the immediate threat.

27

1 Although some cases refuse to consider sexual threats or attack as a sufficient reason for permitting
2 the defense, the *Lovercamp* case involved [~~female~~] prisoners who complained of threats by
3 [~~lesbians that~~] other inmates to force the escapees to engage in sex acts with them, and the case
4 holds that sexual attacks are equal to death or bodily harm.

5 In *United States v. Bailey*[~~],~~ 444 U.S. 394[~~, 100 S. Ct. 624, 62 L. Ed. 2d 575~~] (1980), the United
6 States Supreme Court held that in the federal courts duress or necessity is not a defense unless it
7 is established that escape was the only reasonable alternative and there must be evidence of a bona
8 fide effort to surrender or return to custody as soon as the claimed duress has lost its coercive force.

9 In *Esquibel v. State*[~~],~~ 1978-NMSC-024, 91 N.M. 498, 576 P.2d 1129 [~~(1978), the supreme court~~],
10 the Supreme Court held that UJI 14-5130 was to be given in escape cases where the claim was fear
11 of great bodily harm.

12 UJI 14-5132 was adopted effective July 1, 1980, to set forth specific elements of the defense of
13 duress when claimed in an escape case.

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