

1 **14-7018. [~~Death penalty sentencing~~] Life imprisonment without possibility of release or**
2 **parole proceeding; aggravating circumstances; murder during attempt to escape from penal**
3 **institution; essential elements.**¹

4 The state has charged the aggravating circumstance of murder with the intent to attempt to
5 escape from a penal institution. Before you may find the aggravating circumstance of murder while
6 attempting to escape from a penal institution, you must find that the state has proved to your
7 satisfaction beyond a reasonable doubt each of the following elements:

8 1. While attempting to escape from _____ (*name of penal*
9 *institution*), the defendant committed the murder of _____ (*name of*
10 *victim*);² and

11 2. The defendant had the intent to kill.

12

13 USE NOTES

14 1. This instruction is to be used only in a [~~death penalty sentencing~~] life imprisonment
15 without possibility of release or parole proceeding.

16 2. The court shall give the applicable essential elements instruction modified in the
17 manner illustrated by UJI 14-140 NMRA, Underlying felony offense; sample instructions.
18 Instructions required to be given with the essential elements instruction, including definitions,
19 must also be given.

20 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008,
21 effective for all cases pending or filed on or after December 31, 2021.]

22 **Committee commentary.** — [~~Subsection C of Section 31-20A-5~~] NMSA 1978, Section 31-20A-
23 5(C) (1981), provides that it is an aggravating circumstance if the defendant committed the murder

1 while attempting to escape from a penal institution. [~~A penal institution includes penitentiary or~~
2 ~~jail. 31-18-9 NMSA 1978 (repealed by Laws 1977, Chapter 216, Section 17).~~]The jury may have
3 been instructed previously pursuant to UJI 14-2222 NMRA, Escape From the Penitentiary, UJI
4 14-2221 NMRA, Escape From Jail, or UJI 14-202 NMRA, Felony Murder. If not, the applicable
5 escape instruction must be given along with any other instructions required by the essential
6 elements instruction, including definitions. *See* committee commentary to UJI 14-2221 NMRA
7 and 14-2222 NMRA.

8 Escape from the penitentiary includes escape from other facilities under the department of
9 corrections. *See* committee commentary to UJI 14-2222 NMRA. This aggravating circumstance
10 requires that the defendant must have intended to kill the victim.

11 [~~*See also* committee commentary to UJI 14-7013 [withdrawn] and 14-7016.~~]

12 [As amended by Supreme Court Order No. 21-8300-008, effective for all cases pending or filed
13 on or after December 31, 2021.]