

**14-2221. Escape from jail; essential elements.<sup>1</sup>**

For you to find the defendant guilty of escape from jail [as charged in Count \_\_\_\_\_]<sup>2</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant was committed<sup>3</sup> to jail;
2. The defendant [escaped from]<sup>4</sup> [or] [attempted to escape from] jail;
3. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**USE NOTES**

1. See NMSA 1978, § 30-22-8 (1963). If the escape is from a jail initiated prisoner-release program, established under NMSA 1978, Section 33-3-24 (1981), use UJI 14-2228A NMRA. If the escape is from a community custody release program, NMSA 1978, § 30-22-8.1 (1999), use UJI 14-2228C NMRA.

2. Insert the count number if more than one count is charged.

3. ~~[The issue of lawfulness of the commitment is almost always a question of law to be decided by the judge. (See “Reporter’s Addendum to Chapter 22, Custody; Confinement; Arrest”, following these instructions.)]~~ “Committed” means being physically placed in custody, with or without an order of confinement.

4. Use only the applicable bracketed element established by the evidence.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.00 NMSA 1978; UJI 14-2221 SCRA; as amended, effective January 1, 1999; as amended by Supreme Court Order No. 22-8300-033, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — [~~See Section 30-22-8 NMSA 1978. In *State v. Weaver*, 83 N.M. 362, 492 P.2d 144 (Ct. App. 1971), the Court held that an escape from the kitchen of the jail was the same as escape from the jail. Escape from jail includes escape from a jail release program. See *State v. Najar*, 118 N.M. 230, 232, 880 P.2d 327, 329 (Ct.App. 1994) (*cert. denied* 118 N.M. 90, 879 P.2d 91).~~]

~~Escape from jail or a jail inmate release program is a fourth-degree felony. NMSA 1978, § 30-22-8 (Repl. Pamp. 1994); *State v. Coleman*, 101 N.M. 252, 253, 680 P.2d 633, 634 (Ct. App. 1984).~~

~~Section 30-22-8 NMSA 1978 requires that the defendant must have been lawfully committed for the crime of escape from jail to be committed. The issue of lawfulness of the commitment is almost always a question of law to be decided by the judge.]~~

See NMSA 1978, § 30-22-8 (1963).

Before a defendant can be charged and convicted with escape, the defendant “must first have undergone some moment of actual custody.” See *State v. Pearson*, 2000-NMCA-102, ¶ 13, 129 N.M. 762, 13 P.3d 980 (construing escape from prison under NMSA 1978, Section 30-22-9 (1963)). A defendant is “committed” when placed in custody with or without an order of confinement. See *State v. Garcia*, 1968-NMCA-007, ¶¶ 3-8, 78 N.M. 777, 438 P.2d 521. Physical confinement at the time of escape is not required; escape from constructive custody while assigned to a work detail or failure to return from furlough constitutes an escape. See *State v. Gilman*, 1981-NMCA-123, ¶ 7, 97 N.M. 67, 636 P.2d 886; *State v. Hill*, 1994-NMCA-069, ¶ 5, 117 N.M. 807, 877 P.2d 1110.

Although both offenses are fourth-degree felony violations of Section 30-22-8, the elements of escape from jail are not the same as the elements of escape from a jail initiated

1 prisoner-release program; the latter is a more specific—and limited—sub-set of the former.  
2 Compare NMSA 1978, § 33-3-24 (1981) (establishing jail release program requirements and  
3 limiting applicability to NMSA 1978, §§ 33-2-43 (1969), and 33-2-44 (1971)), with § 30-22-8  
4 (escape from jail is a fourth degree felony and has different elements), and State v. Najar, 1994-  
5 NMCA-098, ¶¶ 3, 6, 118 N.M. 230, 880 P.2d 327 (explaining that escape from a jail initiated  
6 prisoner-release program is a fourth degree felony). The Court of Appeals has held that it was  
7 fundamental error to use UJI 14-2221 NMRA (escape from jail) and (former) UJI 14-2228 NMRA  
8 (escape from an inmate release program) interchangeably. See State v. Grubb, 2020-NMCA-003,  
9 ¶¶ 10-17, 455 P.3d 877.  
10 [Amended November 12, 1998; as amended by Supreme Court Order No. 22-8300-033, effective  
11 for all cases pending or filed on or after December 31, 2022.]