

1 **14-2228A. Escape; jail release program; essential elements.<sup>1</sup>**

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

5 1. The defendant was committed to \_\_\_\_\_ (*identify institution*);

6 2. The [sheriff] [jail administrator]<sup>3</sup> of \_\_\_\_\_ (*identify institution*),  
7 with the approval of the [board of county commissioners of \_\_\_\_\_ (*name of*  
8 *county*)] [governing body of \_\_\_\_\_ (*name of municipality*)] had established a  
9 release program to allow prisoners to [attend school] [or] [be employed];

10 3. The defendant was released from \_\_\_\_\_ (*identify institution*) to  
11 \_\_\_\_\_ (*describe purpose for release*);

12 4. The defendant failed to return to confinement within the time fixed for the  
13 defendant's return;

14 5. The defendant's failure to return was willful, without sufficient justification or  
15 excuse<sup>4</sup>;

16 6. The defendant intended not to return within the time fixed<sup>4</sup>;

17 7. This happened in New Mexico on or about the \_\_\_\_\_ day of  
18 \_\_\_\_\_, \_\_\_\_\_.

19 **USE NOTES**

20 1. This instruction is to be used when a prisoner escapes from a prisoner-release  
21 program established in a county or municipal jail or detention center under NMSA 1978, Section  
22 33-3-24 (1981). For escape from a community custody release program under NMSA 1978,  
23 Section 30-22-8.1 (1999), use UJI 14-2228C NMRA. For escape from a penitentiary inmate-

release program under NMSA 1978, Sections 33-2-43 to -47 (1969, as amended through 1980),  
use UJI 14-2228B NMRA.

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

3. Use only the applicable alternatives.

4. This element is necessary to comply with *State v. Rosaire*, 1997-NMSC-034, 123  
N.M. 701, 945 P.2d 66.

[Adopted by Supreme Court Order No. 22-8300-033, effective for all cases pending or filed on or  
after December 31, 2022.]

**Committee commentary.** — See NMSA 1978, § 30-22-8 (1963); NMSA 1978, § 33-3-24  
(1981); *see also* NMSA 1978, §§ 33-2-43 (1969) and 33-2-44 (1971) (penitentiary inmate-release  
program provisions incorporated into Section 33-3-24); NMSA 1978, § 30-22-8.1 (1999) (escape  
from a community custody release program); UJI 14-2228B NMRA (escape from a penitentiary  
release program); UJI 14-2228C NMRA (escape from a community custody release program).

This instruction is to be used when a defendant is charged with escape from a prisoner-  
release program initiated in a jail or detention center; it is not to be used when the defendant is  
charged with other types of escape from jail, § 30-22-8, escape from a penitentiary inmate-release  
program, NMSA 1978, § 33-2-46, or escape from a community custody release program, § 30-22-  
8.1. *See State v. Grubb*, 2020-NMCA-003, ¶¶ 12-16, 455 P.3d 877 (stating UJI 14-2221 NMRA  
(escape from jail) and UJI 14-2228 NMRA (escape from an inmate-release program)—withdrawn  
and replaced with UJIs 14-2228A, 14-2228B, and 14-2228C NMRA in response to *Grubb*—  
cannot be used interchangeably); *see also Grubb*, 2020-NMCA-003, ¶ 16 (concluding that the  
1999 version of “UJI 14-2228 was intended to be used when a prisoner escapes from a release  
program initiated in a jail rather than a penitentiary”); *but see State v. Rosaire*, 1997-NMSC-034,

1 123 N.M. 701, 945 P.2d 66 (concluding that the 1997 version of UJI 14-2228 (escape; inmate-  
2 release program) used in a case where a defendant was committed to a state penitentiary,  
3 erroneously failed to require that the defendant's failure to return be willful in order to constitute  
4 a violation of Section 33-2-46).

5 Unlike escape from a community custody release program under Section 30-22.8.1, escape  
6 from a jail initiated prisoner-release program requires that the board of county commissioners or  
7 the governing body of a municipality approved the program established by the sheriff or jail  
8 administrator. *See* § 33-3-24; *State v. Duhon*, 2005-NMCA-120, ¶¶ 9-13, 138 N.M. 466, 122 P.3d  
9 50 (distinguishing between a county-authorized community release program and a judicially-  
10 approved community custody release program); *compare* § 33-3-24, *with* § 30-22-8.1. Section 33-  
11 3-24 explicitly incorporates the provisions of Section 33-2-44, which provides that the release  
12 program only applies to work at paid employment in a private business or in public employment  
13 or to attend school. *See Grubb*, 2020-NMCA-003, ¶ 17 (explaining that release for “furlough  
14 purposes” was not one of the specific purposes authorized by Section 33-2-44 and there was no  
15 evidence to support instructing the jury on escape from jail using UJI 14-2228 in lieu of UJI 14-  
16 2221).

17 [Adopted by Supreme Court Order No. 22-8300-033, effective for all cases pending or filed on or  
18 after December 31, 2022.]