

~~[14-2228. Escape; inmate release program; essential elements.~~

~~For you to find the defendant guilty of escape from an inmate release program [as charged in Count _____]², the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:~~

~~1. _____ The defendant was committed³ to _____ (*identify institution*);~~

~~2. _____ The defendant was released from _____ (*identify institution*) to _____ (*describe purpose for release*);~~

~~3. _____ The defendant failed to return to confinement within the time fixed for the defendant's return;~~

~~4. _____ The defendant's failure to return was willful, without sufficient justification or excuse⁴;~~

~~5. _____ The defendant intended not to return within the time fixed;~~

~~6. _____ This happened in New Mexico on or about the _____ day of _____, _____.~~

USE NOTES

~~1. _____ This instruction is also to be used for escape from jail.~~

~~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.)~~

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

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.28 NMSA 1978; UJI 14-2228 SCRA;
as amended, effective January 1, 1999; withdrawn by Supreme Court Order No. _____,
effective for all cases pending or filed on or after December 31, 2022.]

~~**Committee commentary.**— See Section 33-2-46 NMSA 1978. The inmate release
program was established by Chapter 166, Laws 1969. In 1975, Section 33-2-46 NMSA 1978 was
amended to make escape from the inmate release program the equivalent of a third degree felony.~~

~~The inmate release program is described in Sections 33-2-43 to 33-2-47 NMSA 1978.
Since this is a specific offense carrying a lesser penalty than escape from the penitentiary, the
essential elements include the specific reasons for the prisoner's release. Unless the prisoner is
released for one of the specific purposes set forth in Section 33-2-44 [or] 33-2-45 NMSA 1978, an
escape from custody by the prisoner is governed by Section 30-22-9 NMSA 1978, escape from the
penitentiary.]~~

[Withdrawn by Supreme Court Order No. 22-8300-033, effective for all cases pending or filed on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