

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

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

1. The defendant feared [great bodily harm to (himself) (herself) (_____)] (*name of other person*)² [(he) (she) would be sexually assaulted] if [he] [she] did not escape;
2. [The defendant did not have time to complain to the authorities;]²
[OR]
[Under the circumstances it would have been futile for the defendant to complain to the authorities;]
3. The defendant did not use force or violence toward prison personnel or any other person during the escape;
4. The defendant [intended to report]² [reported] immediately to the proper authorities when [he] [she] attained a position of safety from the immediate threat; and
5. A reasonable person would have acted in the same way under the circumstances.

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

USE NOTES

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

2. Use only applicable alternative or alternatives.
[As amended, effective January 1, 1997; as amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or after December 31, 2018.]