14-2228B. Escape; penitentiary release program; essential elements.[1]

For you to find the defendant guilty of escape from a penitentiary 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 committed 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 excuse[3];

    5. The defendant intended not to return within the time fixed[3];

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

USE NOTES

    1. This instruction is to be used for escape from a penitentiary inmate-release program established under NMSA 1978, Sections 33-2-43 to -47 (1969, as amended through 1980). For escape from a county or municipal jail initiated prisoner-release program established under NMSA 1978, Section 33-3-24 (1981), use UJI 14-2228A NMRA. For escape from a community custody release program under NMSA 1978, Section 30-22-8.1 (1999), use UJI 14-2228C NMRA.

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

    3. 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. 22-8300-031, effective for all cases pending or filed on or after December 31, 2022.]