

PERMITTING ESCAPE
(N.J.S.A. 2C:29-5c)

Count ____ of the indictment charges the defendant with permitting escape in violation of a statute which provides as follows:

A public servant concerned in detention commits an offense if he knowingly or recklessly permits an escape.

The indictment alleges that:

(Read relevant part of Count ____ to the jury)

In order for the defendant to be found guilty of [knowingly][recklessly] permitting an escape, the State must prove each of the following elements beyond a reasonable doubt:

1. That the defendant was a public servant concerned in detention;
2. That the defendant permitted an escape by another;
3. That the defendant acted [knowingly][recklessly] in permitting an escape by another.

The first element the State must prove beyond a reasonable doubt is that the defendant was a public servant concerned in detention. (Discuss evidence adduced by the State and by the Defendant, if any, on this element) A person is a “public servant” if (he/she) is an employee of the state, county, municipality, or other governmental subdivision of the state.¹ A public servant is regarded as being “concerned in detention” if (he/she), as part of that employment, was responsible for maintaining individuals in official detention. “Official detention” means [arrest] [detention in any facility for custody of (persons under charge or conviction of a crime or offense)(persons committed pursuant to chapter 4 of this Title),² (persons alleged or found to be delinquent) (detention for

¹ See N.J.S.A. 2C:27-1g.

² See N.J.S.A. 2C:4-1 to 2C:4-11. These provisions concern, inter alia, the insanity defense, evidence of mental disease or

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extradition or deportation)] [any other detention for law enforcement purposes.]³

The second element the State must prove beyond a reasonable doubt is that the defendant permitted an escape by another. A person is considered to have permitted an escape if, knowing about an intended escape from official confinement, (he/she) allowed it to happen. An escape is defined as (a removal of oneself from official detention) (a failure to return to official detention following temporary leave granted for a specific purpose or limited period) without lawful authority.

The third element the State must prove beyond a reasonable doubt is that the defendant acted [knowingly][recklessly].

[A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances if (he/she) is aware that (his/her) conduct is of that nature, or that such circumstances exist, or (he/she) is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if (he/she) is aware that it is practically certain that (his/her) conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.]⁴ [A person acts recklessly with respect to the nature of (his/her) conduct or a result thereof when (he/she) consciously disregards a substantial and unjustifiable risk that an escape could occur. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to (him/her), its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's

defect, competency to stand trial and commitment upon a finding that a defendant is not guilty by reason of insanity.

³ N.J.S.A. 2C:29-5(a). "Official detention" does not, however, include supervision of probation or parole, or constraint incidental to release on bail. Id.

⁴ See N.J.S.A. 2C:2-2b(2).

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situation. "Recklessness," "with recklessness" or equivalent terms have the same meaning.]⁵

[Knowledge][Recklessness] is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she had a particular mental state. It is within the power of the jury to find that the proof of [knowledge][recklessness] has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

**IF LEGAL IRREGULARITY IS RAISED, CHARGE EITHER
SECTION A OR SECTION B:**

SECTION A ⁶

The defendant contends that his/her intent in permitting the charged escape was not illegal. You are advised that legal irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, is not a defense when the escape is from a prison⁷ or other custodial facility or from detention pursuant to commitment by official proceedings.⁸

Defendant maintains that the facility from which he/she permitted the escape [was not a prison] [was not a custodial facility] [did not constitute detention pursuant to commitment by official

⁵ See N.J.S.A. 2C:2-2b(3).

⁶ Legal irregularity or lack of jurisdiction is not available as a defense when the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. N.J.S.A. 2C:29-5(d).

⁷ For the purposes of a charge under this statute, a "prison" may include state prison, county jails or correctional centers, municipal jails, juvenile detention facilities or reformatories, and the Adult Diagnostic and Treatment Center. This list of possible prisons is illustrative only, and not meant to be exhaustive.

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proceedings]. Conversely, the State maintains that the facility at issue [was a prison] [was a custodial facility] [did constitute detention pursuant to commitment by official proceedings].

The burden of proof is on the State to disprove the defense beyond a reasonable doubt.

In order for you to determine whether the State has met this burden, you must decide whether the State has proven beyond a reasonable doubt that the permitted escape was from [a prison] [a custodial facility] [detention pursuant to commitment by official proceedings]. If the State has failed to prove this fact beyond a reasonable doubt, you must find the defendant not guilty.

SECTION B⁹

The defendant contends that his/her intent in permitting the charged escape was not illegal. Where a defendant is accused of permitting another to escape from [confinement] [arrest] [detention], legal irregularity in bringing about or maintaining [confinement] [arrest] [detention], or lack of jurisdiction of the committing or detaining authority is a defense, but only if [the escape involved no substantial risk of harm to the person or property of anyone other than the escapee] [the detaining authority did not act in good faith under color of law]. In other words, even where the detaining authority has not followed proper procedures, or has acted unlawfully or improperly in effecting confinement, still there is no defense unless [the escape was conducted in a manner that involves no substantial risk of harm to the person or property of anyone else] [the detaining authority did not act in good faith under color of law]. Thus, simply put, the law provides that permitting escape from illegal [confinement] [arrest] [detention] is not criminal [where it involves no

⁸ Detention pursuant to official proceedings can include an arrest, an investigatory detention or a motor vehicle stop. See State v. Moultrie, 357 N.J. Super. 547 (App. Div. 2003). This list is not meant to be exhaustive.

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substantial risk of harm to another] [even if it involves a substantial risk of harm to another, where there has been [confinement] [arrest] [detention] by an authority who knows there is not a basis for the arrest].

The burden of proof is on the State to disprove the defense beyond a reasonable doubt.¹⁰

In order for you to determine whether the State has met this burden, you must decide whether the State has disproved beyond a reasonable doubt that [the escape involved no substantial risk of harm to the person or property of anyone other than the escapee] [the detaining authority did not act in good faith under color of law]. If the State has failed to disprove this fact beyond a reasonable doubt, you must find the defendant not guilty.

[CHARGE IN ALL CASES]

If the State has failed to prove any of the elements as I have described them to you beyond a reasonable doubt, you must find the defendant not guilty of the crime of permitting an escape. If the State has proven each element beyond a reasonable doubt, you must find the defendant guilty of the crime of permitting an escape. [Where appropriate, remind the jury that the State must disprove the legal irregularity defense beyond a reasonable doubt].

[GRADING]

If you find that the State has proven defendant guilty beyond a reasonable doubt of this crime, then you must determine whether or not the State has proven beyond a reasonable doubt that

⁹ Legal irregularity or lack of jurisdiction may be available as a defense when the escape is from a detention that is not a prison, another custodial facility or detention pursuant to commitment by official proceedings. N.J.S.A. 2C:29-5(d).

¹⁰ See State v. Moultrie, 357 N.J. Super. 547, 554-555 (App. Div. 2003). To bring this defense into play there must be some evidence, however slight, that the officer did not act in good faith under color of law. Id. at 559. Quoting the Criminal Law Revision Commission Commentary, the Moultrie court states that this involves "clear cases of abusive arrest by officers who know there is no

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the defendant employed [force] [a threat] [a deadly weapon] [a dangerous instrumentality] in the course of permitting the escape.

["Force" means any degree of physical power or strength used against another person, even though it entails no pain or bodily harm and leaves no mark.]¹¹

[A "deadly weapon" is any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury.]¹²

[A "dangerous instrumentality" is an instrument, substance or condition so inherently dangerous that it may cause serious bodily injury or death without human use or interference.]¹³

If you find that the State has proven beyond a reasonable doubt that the defendant employed [force] [a threat] [a deadly weapon] [a dangerous instrumentality] in the course of permitting the escape, then you must find him/her guilty of this form of permitting escape. If, on the other hand, you find that the State has failed to prove this element beyond a reasonable doubt, you must find him/her not guilty of this form of permitting escape.

basis for the arrest." Id. More than just an absence of probable cause is needed. Id.

¹¹ See generally State v. Brannon, 178 N.J. 500 (2004).

¹² This definition of deadly weapon is set forth at N.J.S.A. 2C:11-1(c). While N.J.S.A. 2C:11-1 limits the definition to "chapters 11 through 15," it seems appropriate to use this definition here.

¹³ Black's Law Dictionary (7th ed. 1999).