

280.20 FELONIOUS ESCAPE. FELONY.

*NOTE WELL: Effective December 1, 1997. For offenses occurring before December 1, 1997, this is a Class I felony.*

*If the defendant has been accused of felonious escape under N.C. Gen. Stat. § 14-256(1)(2), the third element should be added.*

The defendant has been charged with felonious escape.<sup>1</sup>

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant was

[in the lawful custody of the Division of Adult Correction]

[lawfully confined in a [prison] [jail] [lock-up] facility maintained by a [county] [municipality] of North Carolina]

[in the lawful custody of a(n) [superintendent] [guard] [officer] of a [prison] [jail] [lock-up] facility maintained by a [county] [municipality] of North Carolina.]

Second, that the defendant escaped from custody.<sup>2</sup>

And Third, that the defendant had been

- a) charged with the felony of (*name offense*) and the defendant had been committed to the facility pending trial; or
- b) convicted of the felony of (*name offense*) and the defendant [had been committed to the facility pending transfer to the state prison system] [was serving a sentence at the facility].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant while

[in the lawful custody of the Division of Adult Correction]

[lawfully confined in a [prison] [jail] [lock-up] facility maintained by a [county] [municipality] of North Carolina]

[in the lawful custody of a(n) [superintendent] [guard] [officer] of any [prison] [jail] [lock-up] facility maintained by a [county] [municipality] of North Carolina] did escape, and that the defendant had been [charged with] [convicted of]

a felony and the defendant [had been committed to the facility pending [trial] [transfer] to the state prison system] [was serving a sentence at the facility], it would be your duty to return a verdict of guilty.<sup>3</sup> If you do not find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

---

1 If an attempt is charged see N.C.P.I.-Crim. 201.10. Under structured sentencing, the attempt becomes a Class 1 misdemeanor.

2 If the defendant fails to return from work release or temporary parole, add the following sentence: "A willful failure of a prisoner [under the work release program] [on temporary parole] to return to an appointed place at an appointed time as ordered, would be an escape." N.C. Gen. Stat. § 148-45(g)(1); N.C. Gen. Stat. § 148-4. N.C. Gen. Stat. § 148-45(g)(2) provides that if a prisoner who would otherwise be guilty of a first violation of N.C. Gen. Stat. § 148-45(g)(1) voluntarily returns to his place of confinement within 24 hours of the time at which he was ordered to return, such person shall not be charged with an escape.

3 If there is to be a lesser included offense, then this instruction would need to be amended.