

**ESCAPE
SECOND DEGREE
(E Felony)
PENAL LAW 205.10(2)
(Escape from Custody by Defendant Arrested for, Charged
with, or Convicted of Felony)
(Committed on or after September 8, 1983)**

The _____ count is Escape in the Second Degree.

Under our law, a person is guilty of escape in the second degree when, having been arrested for [or charged with] [or convicted of] a class C [or class D] [or class E] felony, he or she escapes from custody.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "custody," and "escape."

CUSTODY means restraint by a public servant pursuant to an authorized arrest or an order of a court.¹ "Public Servant" means any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, [or any person exercising the functions of any such public officer or employee].²

[Add where appropriate:

An arrest is authorized when the public servant making the arrest has reasonable cause to believe that the person being

¹ Penal Law §205.00(2).

² See Penal Law §10.00(15).

arrested has committed a crime.³ Reasonable cause does not require proof that the crime was in fact committed.

Reasonable cause exists when the public servant has knowledge of facts and circumstances sufficient to support a reasonable belief that a crime has been or is being committed.⁴]

ESCAPE means to get away, break away, get free or get clear, with the conscious purpose to evade custody.⁵

(Specify the felony for which the defendant was arrested, charged or convicted) is a class C [or class D] [or class E] felony.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, the following element:

That on or about (date), in the county of (county), the defendant, (defendant's name), having been arrested for [or charged with] [or convicted of] a class C [or class D] [or class E] felony, escaped from custody.

Therefore, if you find that the People have proven beyond a reasonable doubt that element, you must find the defendant guilty of the crime of Escape in the Second Degree as charged in the

³ This portion of the charge assumes an arrest for a crime only as authorized by the provisions of CPL 140.10(1)(b). If the arrest was authorized pursuant to some other subdivision of CPL 140.10 or other law, substitute the applicable provision of law.

⁴ See, *People v. Maldonado*, 86 N.Y.2d 631 (1995).

⁵ See, *People v. Hutchinson*, 56 N.Y.2d 868, 870 (1982).

_____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt that element, you must find the defendant not guilty of the crime of Escape in the Second Degree as charged in the _____ count.