

**ABSCONDING FROM TEMPORARY RELEASE
IN THE FIRST DEGREE**

Penal Law § 205.17

(Committed on or after March 31, 2011)

Revised Dec. 2019¹

The (specify) count is Absconding From Temporary Release in the First Degree.

Under our law, a person is guilty of Absconding from Temporary Release in the First Degree when having been released from confinement in

Select appropriate alternative:

a correctional institution under the jurisdiction of the state department of corrections and community supervision

a facility under the jurisdiction of the state office of children and family services

to participate in a program of temporary release, he or she intentionally fails to return to the institution or facility of his or her confinement at or before the time prescribed for his or her return.

The following terms used in that definition have a special meaning:

A TEMPORARY RELEASE PROGRAM means and includes:

¹ The purpose of the December 2019 revision was to account for the statutory change in the name of the state department of correctional services and of the state division of youth. Other than the difference in the name of those two agencies, this instruction remains applicable to a violation committed on or after June 17, 1972 and before March 31, 2011. The December 2019 revision also revised the definition of “leave of absence” as explained in footnote (6).

Select appropriate alternative(s):

A WORK RELEASE PROGRAM is a program under which eligible inmates may be granted the privilege of leaving the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of on-the-job training or employment, or for any matter necessary to the furtherance of any such purposes.²

A FURLOUGH PROGRAM is a program under which eligible inmates may be granted the privilege of leaving the premises of an institution for a period not exceeding seven days for the purpose of seeking employment, maintaining family ties, solving family problems, seeking post-release housing, attending a short-term educational or vocational training course, or for any matter necessary to the furtherance of any such purposes.³

A COMMUNITY SERVICES PROGRAM is a program under which eligible inmates may be granted the privilege of leaving the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of participation in religious services, volunteer work, or athletic events, or for any matter necessary to the furtherance of any such purposes.⁴

An INDUSTRIAL TRAINING LEAVE is a privilege granted to an eligible inmate to leave the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of participating in an industrial training

² See Correction Law § 851 (3)

³ See Correction Law § 851 (4)

⁴ See Correction Law § 851 (5)

program, or for any matter necessary to the furtherance of any such purpose.

EDUCATIONAL LEAVE is a privilege granted to an eligible inmate to leave the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of education or vocational training, or for any matter necessary to the furtherance of any such purposes⁵

A LEAVE OF ABSENCE is a privilege granted to an inmate to leave the premises of an institution for a limited purpose and period of time.⁶

Intent means conscious objective or purpose.⁷ Thus, a person INTENTIONALLY fails to return to the institution [or facility] of his or her confinement at or before the time prescribed for his or her return when that person's conscious objective or purpose is to do so.

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, both of the following two elements:

1. That on or about (*date*), in the county of (*county*), the defendant, (*defendant's name*), was released from confinement in

Select appropriate alternative:

a correctional institution under the jurisdiction of the

⁵ See Correction Law § 851 (7)

⁶ The criteria and reasons for release that are set forth in the statutory definition are omitted because they are not relevant to the issue of the inmate's failure to return after release. Correction Law 851 (6).

⁷ See Penal Law § 15.05 (1)

state department of corrections and community supervision

a facility under the jurisdiction of the state office of children and family services

to participate in a program of temporary release; and

2. That the defendant intentionally failed to return to that institution [facility] at or before the time prescribed for his/her return.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.