

27.1 [ATTEMPTED] ESCAPE

§ 944.40, Fla. Stat.

(including § 945.091(4), Fla. Stat. and § 951.24(4), Fla. Stat.)

To prove the crime of [Attempted] Escape, the State must prove the following two elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant) was a prisoner

- a. under arrest.**
- b. convicted of a crime, sentenced to a term of imprisonment, and confined to a [prison] [jail] [contractor-operated correctional facility] [road camp] [penal institution].**
- c. being transported to or from a place of confinement.**
- d. released on furlough from a [prison] [jail] [contractor-operated correctional facility] [road camp] [penal institution].**
- e. in a [prison] [jail] [contractor-operated correctional facility] [road camp] [penal institution] and was [working on a public road] [participating in a work release program].**

2. (Defendant)

- a. escaped,**
- b. attempted to escape by (read overt act from charge),**
- c. willfully failed to return to [his] [her] place of confinement within the time prescribed,**
- d. willfully failed to remain within the extended limits of [his] [her] confinement,**

intending to avoid confinement.

§ 944.02, Fla. Stat.

“Prisoner” means any person who is under civil or criminal arrest and in the lawful custody of any law enforcement official, or any person committed to or detained in any municipal or county jail or state prison, prison farm, or penitentiary, or to the custody of the Department of Corrections pursuant to lawful authority.

Give if requested and applicable. See Kearse v. State, 662 So. 2d 677 (Fla. 1995), Applewhite v. State, 874 So. 2d 1276 (Fla. 5th DCA 2004), and Sweeney v. State, 633 So. 2d 66 (Fla. 4th DCA 1994).

“Transportation to a place of confinement” begins at the time an individual is placed under arrest.

An “arrest” takes place when the arresting officer intends to arrest; the arresting officer actually or constructively seizes the person to be arrested; the officer’s intent to arrest is communicated by the arresting officer to the person to be arrested; and the person to be arrested understands that communication. [The communication from the officer to the person to be arrested may be by words or actions, or both, and would lead a reasonable person or the average citizen in similar circumstances to think that he or she was under arrest.] An “arrest” does not require that the law enforcement officer complete the act of acquiring total physical control over the person to be arrested.

Give if applicable. § 944.710, Fla. Stat.

A “contractor-operated correctional facility” is any facility, which is not operated by the Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The State is not required to prove the technical correctness of the original arrest. *Marquez v. State*, 450 So. 2d 345, 345 (Fla. 2d DCA 1984). Once under legal incarceration, a defendant must avail himself of help through the court system, not self-help via an escape. *Lawson v. State*, 312 So. 2d 522, 524 (Fla. 4th DCA 1975).

This instruction was adopted in 1981 and amended in 1989, 2007 [962 So. 2d 310], 2016 [199 So. 3d 234], 2020 [290 So. 3d 864], on April 1, 2022, and on September 20, 2024.