

Ala. Code 1975, § 13A-10-32

Escape in the Second Degree

The defendant is charged with escape in the second degree.

A person commits the crime of escape in the second degree when he/she escapes or attempts to escape from a penal facility.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The Defendant escaped or attempted to escape;
- (2) The Defendant was in a penal facility, **[insert description]**, at the time;
(AND)
- (3) The Defendant acted **[insert appropriate mens rea element - See Use Notes]**.

A *penal facility* is any security correctional institution for the confinement of persons arrested for, charged with or convicted of a criminal offense, including but not limited to the following security facilities: the state penitentiary and any branch thereof or any county or city jail. [13A-10-30(b)(3)]

[Read as appropriate]: An *attempt* to commit a crime means that, with the intent to commit a specific offense, a person did an overt act towards the commission of that offense. [13A-4-2(a)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of escape in the second degree, then you shall find the defendant guilty of escape in the second degree.

If you find that the State has failed to prove any one or more of the elements of escape in the second degree, then you cannot find the defendant guilty of escape in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

The statute does not state a specific mens rea element. In *Oliver v. State*, 466 So. 2d 159 (Ala. Crim. App. 1984), the court, quoting a national treatise, noted that an escape from custody included a willful departure. Willful, of course, means deliberate, and

deliberate means premeditated or intentional. Thus, one might surmise that escape in Alabama includes the mens rea element of "intent." The facts of a particular case though might support an escape conviction on a showing of less than "intent." See, e.g., *United States v. Bailey*, 444 U.S. 394 (1980) (interpreting federal statute without mens rea requirement, intermediate appellate court imposed intent to avoid confinement element; Supreme Court reversed, holding knowledge by prisoner that he left prison without permission sufficient; prisoners had claimed necessity to leave and absence of any intent to escape).

Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

- (1) A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]
- (2) A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]
- (3) A person acts *recklessly* with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
- (4) A person acts with *criminal negligence* with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

Escape from community corrections can be charged as escape in the first degree. See *State v. Wright*, 976 So. 2d 1053, 1056 (Ala. Crim. App. 2007); *State v. Bethel*, 55 So.3d 377, 379 (Ala. Crim. App. 2010). However, it can also be escape in the second degree. See 15-18-175(d)(3)(e).

Escape while under house arrest is not escape in the second degree. See *Mays v. State*, 144 So. 3d 507, 510 (Ala. Crim. App. 2013).

[Approved 8-20-15.]