

**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 three elements beyond a reasonable doubt:**

*Give 1a or 1b as applicable. Element 1a is applicable when a defendant was under arrest, including when arrested but prior to conviction. Element 1b is applicable when a defendant was confined in a prison, jail, private correctional facility, road camp, or other penal institution after being convicted.*

- 1. (Defendant) was**
  - a. under arrest and in the lawful custody of a law enforcement official.**
  - b. convicted of a crime and sentenced to a term of imprisonment and committed to (institution alleged) by a court.**

*Give 2a, 2b, 2c, or 2d as applicable.*

- 2. While a prisoner, (defendant) was**
  - a. confined at (name of institution).**
  - b. being transported to or from a place of confinement.**
  - c. working on a public road.**
  - d. participating in a work release program and**
    - 1. willfully failed to return to [his] [her] place of confinement within the time prescribed**
    - or**
    - 2. willfully failed to remain within the extended limits of [his] [her] confinement.**
- 3. (Defendant) [escaped] [attempted to escape by (read overt act from charge)] intending to avoid lawful confinement.**

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

*Definitions.*

**“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. An “arrest” does not require that the law enforcement officer complete the act of acquiring total physical control over the person to be arrested.**

**Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

**Comment**

This instruction was adopted in 1981 and amended in 1989, 2007 [962 So. 2d 310], and 2016.