

24.6 Assisting Escape (18 U.S.C. § 752(a))

The defendant is charged in [Count _____ of] the indictment with assisting escape in violation of Section 752(a) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, [*name of escapee*] was in the custody of [*specify custodian*] by virtue of [*specify reason for or type of custody*];

Second, [*name of escapee*] [[left] [attempted to leave]] [[his] [her]] custody, without permission;

Third, the defendant knew that [*name of escapee*] did not have permission to leave; and

Fourth, the defendant assisted [*name of escapee*] in [leaving] [attempting to leave].

Comment

Section 752(a) provides a maximum punishment of one year in prison for certain types of custody, such as custody imposed by virtue of an arrest for a misdemeanor, and a maximum punishment of five years in prison for other types of custody, such as custody imposed by virtue of a felony arrest. It is therefore necessary to include the type of custody in the instruction.

Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) (other than prior conviction, any fact that increases statutory maximum must be submitted to jury).