

**DEFAULT IN REQUIRED APPEARANCE (BAIL JUMPING)<sup>1</sup>**  
**(N.J.S.A. 2C:29-7)**

The indictment charges the defendant with a violation of a statute that provides in pertinent part:

A person set at liberty by court order, with or without bail, or who has been issued a summons, upon condition that he will subsequently appear at a specified time and place in connection with any offense or any violation of law punishable by a period of incarceration, commits an offense if, without lawful excuse, he fails to appear at that time and place.

Therefore, in order to convict the defendant of the crime charged in this indictment, the State has the burden of proving each of the following elements of this offense beyond a reasonable doubt:

- (1) That the defendant was charged with an offense or violation of law punishable by a period of incarceration.

For the purpose of determining whether the State has proven this element, you are instructed that the offense known as \_\_\_\_\_ is punishable by a period of incarceration.<sup>2</sup>

- (2) That the defendant was set at liberty by court order, with or without bail, or issued a summons, upon condition that he/she would subsequently appear at a specified time and place.<sup>3</sup>
- (3) That the defendant failed to appear at that time and place.
- (4) That the defendant's failure to appear was without lawful excuse.
- (5) That the defendant knew of his/her charges, knew of the conditions of

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<sup>1</sup> By its explicit language, this statute does not apply to obligations to appear incident to release under suspended sentence or on probation or parole, nor does it interfere with or prevent a court's exercise of its power to punish for contempt.

<sup>2</sup> Under the statute, a failure to appear for a non-criminal offense could, at most, constitute a disorderly persons offense. However, the jury may need instruction as to possible lesser included offenses if there is a factual dispute in a particular case. Also, if a defendant fails to appear for more than one charged offense, it may be necessary to advise the jury of the nature and degree of each offense so that a verdict can be returned specifying the offense or offenses for which the defendant knowingly did not appear.

<sup>3</sup> The time and place for the required appearance may be at a courtroom, but it may also be something else, such as a required surrender to commence a sentence. The jury should be charged accordingly in an appropriate case.

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his/her release, knew of his/her obligation to appear at the particular time and place, knowingly failed to appear, and knew that his/her failure to appear was without lawful excuse.<sup>4</sup>

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature or that such circumstances exist or if he/she is aware of a high probability of their existence. A person acts knowingly with respect to the result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. Knowledge is a state of mind that cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that the State produce witnesses to testify that a defendant said that he/she knowingly did something. His/Her knowledge may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony [and adduced at trial].

I have already told you that the State must prove beyond a reasonable doubt that the defendant's non-appearance was without lawful excuse. A lawful excuse is one that is warranted, authorized or sanctioned by the law, and that is not contrary to or forbidden by law. An example of a lawful excuse would be confinement to a hospital or institution, preventing a defendant from appearing when required at a specific time and place. [**CHARGE WHERE APPROPRIATE:** In this case the defense asserts that the defendant did not appear at the scheduled time and place because he/she had a lawful excuse. (**Recite the defendant's asserted excuse as presented by the evidence.**)] Whether the State has proven beyond a reasonable doubt that the defendant's failure to appear was without lawful excuse is for you to decide, as all other issues, based on the evidence that has been presented for your consideration.

If you find that the State has proven all of the elements of the offense beyond a reasonable doubt, then you must find the defendant guilty. If you find that the State has failed to

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<sup>4</sup> The language of N.J.S.A. 2C:29-7 purports to make it the defendant's burden to prove by a preponderance of evidence that the defendant did not knowingly fail to appear, as an affirmative defense. However, in State v. Emmons, 397 N.J. Super. 112 (App. Div. 2007), certif. denied, 195 N.J. 421 (2008), the court held that application of this language would place an unconstitutional burden on the defendant. It forbade charging the statutory language to the jury, and it laid out the elements of the offense as set forth above.

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prove any of the elements beyond a reasonable doubt, then you must find the defendant not guilty.

**[CHARGE IF APPROPRIATE]**

This count of the indictment also alleges that the defendant's required appearance was to answer to a charge of a crime of the third degree or greater, or for disposition of any such charge, and that the defendant took flight or went into hiding to avoid apprehension, trial or punishment. If you find that the State has proven each of the elements I have previously described, and that the defendant is therefore guilty of the crime charged, and only if you make such a finding, then you must go on to determine whether the State has also proven, beyond a reasonable doubt, two additional elements:

- (1) That the defendant's required appearance was to answer to a charge of a crime of the third degree or greater, or for disposition of any such charge.
- (2) That the defendant took flight or went into hiding, with a specific purpose to avoid apprehension, trial or punishment.

For the purpose of determining whether the State has proven the first of these two elements, you are instructed that the offense known as \_\_\_\_\_ is defined by law as a crime of the \_\_\_\_\_ degree. [By legal definition, a charge of the first degree or second degree is a greater offense than a crime of the third degree.] With reference to the second element, flight is not mere departure from the defendant's residence or workplace, or from some other location, and hiding is not simply removing oneself to another place. In either case, flight or hiding must be accompanied by a specific purpose to avoid apprehension, trial or punishment.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist. "With purpose", "designed", "with design", or equivalent terms, have the same meaning. Purpose, like knowledge, is a state of mind that cannot be seen and can only be determined by inference from conduct, words or

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acts. Therefore, it is not necessary that the State produce witnesses to testify that a defendant said that he/she purposely did something. His/Her purpose may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony [and adduced at trial].

[While the State alleges that the defendant took flight or went into hiding to avoid apprehension, trial or punishment, the defense suggested an alternative explanation for the defendant's conduct:\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.]

As always, it is for you to determine whether the State has proven the additional elements alleged beyond a reasonable doubt. If you find the defendant guilty of this offense it will be necessary, when you report your verdict, that you specify whether you have or have not found that the State has proven beyond a reasonable doubt both of the additional elements, namely that the defendant was charged with a crime of the third degree or greater and that the defendant took flight or went into hiding with a specific purpose to avoid apprehension, trial or punishment.