

133. Escape from Lawful Custody: s 142

133.1 Legislation

[Last reviewed: January 2025]

Criminal Code

[Section 142](#) - Escape by persons in lawful custody

[Section 145A](#) - Sections 141 to 144 do not apply to certain types of custody

[Section 145B](#) – Evidence of lawful custody

133.2 Commentary

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The defendant must have:

- (1) Escaped;
- (2) From lawful custody.

Meaning of 'escape'

To escape is to gain freedom from the person or place that has restricted or controlled that freedom. The defendant must be aware that he or she was not free to leave. The lawfulness of a detention may fluctuate with the circumstances but if the defendant understood that he or she was under arrest in order to be taken before a court the position was the same as if he or she had been arrested (*Michaels v The Queen* (1995) 184 CLR 117, 126).

The defendant must have acted deliberately to withdraw from actual custody. To continue the crime of escape there must be a conscious and intentional act of withdrawal from actual custody (*R v Scott* [1967] VR 276).

A defence of necessity can apply to escape but there must be no reasonable opportunity of alternative, for example, protection, see *R v Rogers* (1996) 86 A Crim R 542.

Meaning of 'lawful custody'

A person is in lawful custody if he or she has been arrested and detained or imprisoned in a manner that has been authorised by law (see, for example ss 231–232 of the *Corrective Services Act 2000* (Qld)). Section 145A of the *Criminal Code* excludes certain types of custody from the application of s 142.

Section 145B of the *Criminal Code* facilitates proof of lawful custody for the purpose of the s 142 offence, as well as other offences in Chapter 17 of the *Code*. If it is alleged that the defendant was in lawful custody because he or she is detained under the authority of the Chief Executive (Corrective Services), it will be necessary to direct the jury to the evidence of the relevant witness authorised by the Chief Executive pursuant to s 145B of the *Criminal Code*.

For the distinction between a person in the Chief Executive's (Corrective Services) custody and a person in the custody of the Commissioner of Police, see ss (7)-(8) of the *Corrective Services Act 2000* (Qld).

If it is alleged that the defendant was in lawful custody whilst detained after arrest, or for investigation or questioning, or whilst being transported by police to a corrective services facility, or in a watch-house facility, it will be necessary to direct the jury to the relevant evidence and explain the legislation or court order under which the defendant was detained.

The below suggested direction can be modified if the offence is aiding to escape: s 141 (which is not otherwise addressed in the Benchbook).

133.3 Suggested Direction

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The prosecution must prove beyond reasonable doubt that the defendant:

1. Was in lawful custody.

A person is in lawful custody if [he/she] has been arrested and detained or imprisoned in a manner that has been authorised by law.

(It will be necessary to direct the jury that either):

(a) There is no other evidence to suggest that the defendant was not in lawful custody as stated. In those circumstances you must proceed on the basis that the prosecution has proved this element of the offence.

(or)

(b) There is evidence to suggest that the defendant was not in lawful custody at that time. The defendant has the responsibility of proving on the balance of probabilities that the defendant was not in lawful custody.

2. Escaped from that lawful custody.

To escape is to gain freedom from the person or place that has restricted or controlled that freedom. The prosecution must prove that the defendant was aware that [he/she] was not free to leave and that [he/she] acted deliberately to withdraw from actual custody.