**24.13 Harboring or Concealing Escaped Prisoner (18 U.S.C. § 1072)**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [harboring] [concealing] an escaped prisoner in violation of Section 1072 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 prisoner*] escaped from [the custody of [*e.g.*, a Deputy U.S. Marshal]] [a federal penal or correctional institution]; and

 Second, the defendant thereafter knowingly [[harbored] [concealed]] [*name of prisoner*].

**Comment**

 As to the first element, a defendant is in “federal custody” for the purposes of this statute if he or she is confined under the authority of the Attorney General. It does not matter that the prisoner is not physically confined in a federal institution, nor that actual federal officials supervise custody. *United States v. Eaglin*,571 F.2d 1069, 1072-73 (9th Cir. 1977); *see also United States v. Hobson*, 519 F.2d 765, 771 (9th Cir. 1975) (holding that “escape from an institution designated by the Attorney General, pursuant to a commitment to his custody, under a federal sentence, is an escape from ‘the custody of the Attorney General’ in the legal sense, even though the institution is run by the State”).

 As to the issue of whether walking away from a half-way house is an escape, *see* *United States v. Jones*, 569 F.2d 499, 500 (9th Cir. 1978) (“A federal prisoner participating in a pre-release or half-way house program by designation of the Attorney General commits an escape when he willfully violates the terms of his extended confinement.”). As to the issue of whether not returning from temporary leave is an escape, *see Eaglin*, 571 at 1073 (“The custody of the Attorney General continues despite the unsupervised nature of the temporary release from confinement granted under a social pass . . . .”).

 Any “physical act of providing assistance, including food, shelter, and other assistance to aid the fugitive in avoiding detection and apprehension will make out a violation of section 1071.”  *United States v. Hill*, 279 F.3d 731, 738 (9th Cir. 2002)(alterations in original) (quoting *United States v. Yarbrough*, 852 F.2d 1522, 1543 (9th Cir. 1988)) (holding that giving money to fugitive to shelter, feed, or hide himself is not harboring, while directly providing shelter, food, or aid is harboring).

 Regarding the second element, the government must prove that the defendant knew

the person aided was an escapee but does not need to prove that the defendant knew the escape was from federal custody. *Eaglin*, 571 F.2d at 1074 n.4; *see also United States v. Kutas*, 542 F.2d 527, 528-29 (9th Cir. 1976) (holding no error in instructing jury that “[t]he words ‘harbor’ and ‘conceal’ refer to any physical act of providing assistance, including food, shelter, and other assistance to aid the prisoner in avoiding detection and apprehension”).

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