

# HOUSE BILL REPORT

## ESHB 2231

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### As Amended by the Senate

**Title:** An act relating to bail jumping.

**Brief Description:** Concerning bail jumping.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Pellicciotti, Hudgins, Appleton, Davis, Gregerson, Santos, Frame, Pollet, Fitzgibbon, Thai, Bergquist, Ormsby, Wylie, Pettigrew, Peterson and Riccelli).

**Brief History:**

**Committee Activity:**

Public Safety: 1/14/20, 1/30/20 [DPS].

**Floor Activity:**

Passed House: 2/13/20, 54-42.

Senate Amended.

Passed Senate: 3/4/20, 26-20.

**Brief Summary of Engrossed Substitute Bill**

- Modifies the crime of Bail Jumping and limits the offense to persons held for, charged with, or convicted of violent or sex offenses.
- Creates the crime of Failure to Appear or Surrender.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Sutherland, Assistant Ranking Minority Member; Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Minority Report:** Do not pass. Signed by 1 member: Representative Klippert, Ranking Minority Member.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Graham.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Kelly Leonard (786-7147).

**Background:**

*Bail Jumping.* A person commits the crime of Bail Jumping if he or she fails to appear in court or surrender to serve a sentence after he or she was released by a court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court or the requirement to report to a correctional facility to serve a sentence.

It is an affirmative defense to Bail Jumping that uncontrollable circumstances prevented the person from appearing or surrendering, that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

Bail Jumping is classified as follows:

- class A felony and seriousness level VI offense if the person was held for, charged with, or convicted of Murder in the first degree;
- class B felony and serious level V offense if the person was held for, charged with, or convicted of a class A felony other than Murder in the first degree;
- class C felony and seriousness level III offense if the person was held for, charged with, or convicted of a class B or class C felony; or
- a misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor.

*Classification of Crimes and Fines.* Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of a crime generally determines the maximum term of confinement (prison or jail) and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

<u>Classification</u>	<u>Maximum Confinement</u>	<u>Maximum Fine</u>
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a person is convicted of a felony, the Sentencing Reform Act applies and determines a specific range of confinement within the statutory maximum. Ranges are determined by a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. Seriousness levels range from I to XVI, and offender scores can range from zero to nine or more points. A higher seriousness level or offender score results in a longer sentence.

**Summary of Engrossed Substitute Bill:**

*Bail Jumping.* The crime of Bail Jumping is modified. The offense is limited to persons held for, charged with, or convicted of violent or sex offenses, as defined in state law. A person commits the offense if he or she failed to appear or failed to surrender after receiving written notice of the related requirement, rather than when he or she had knowledge of the related requirement. In addition, the prosecutor must prove that the person either:

- the appearance for which the person was required and failed to appear was a trial;
- within 30 days of the issuance of a warrant for failure to appear or surrender, did not make a motion with the court to quash it, and if a motion to quash was made, the person did not appear before the court with respect to the motion; or
- has had a prior warrant issued based on a prior incident of failure to appear or surrender for the present cause for which he or she is being held or charged or has been convicted.

The affirmative defense for Bail Jumping is modified by providing that the person must not have negligently disregarded the requirement to appear or surrender, rather than recklessly disregarded it.

*Failure to Appear or Surrender.* The new crime of Failure to Appear or Surrender is created, which is a lesser included offense of Bail Jumping. The crime applies generally, regardless of the nature of the underlying offense for which the person is held, charged, or convicted. A person is guilty of the crime if he or she:

- is released by court order or admitted to bail;
- has received written notice of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence; and
- fails to appear or fails to surrender for service of sentence as required.

It is an affirmative defense to Failure to Appear or Surrender that uncontrollable circumstances prevented the person from appearing or surrendering, that the person did not contribute to the creation of such circumstances by negligently disregarding the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

The offense is a gross misdemeanor if the person was held for, charged with, or convicted of a felony, or a misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor.

#### **EFFECT OF SENATE AMENDMENT(S):**

Bail Jumping is modified so as to make it apply to any person who fails to appear for trial, regardless of the type of offense for which the person is held, charged, or convicted.

Failure to Appear or Surrender is modified by incorporating additional elements. In order for a person to commit the offense, one of the following must apply (in addition to the elements of the underlying bill):

- within 30 days of the issuance of a warrant for failure to appear or surrender, the person did not make a motion with the court to quash it, and if a motion to quash was made, the person did not appear before the court with respect to the motion; or

- the person had a prior warrant issued based on a prior incident of failure to appear or surrender for the present cause for which he or she is being held or charged or has been convicted.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) When the state created the crime of Bail Jumping, the intent was to target persons who skip bail and abscond. However, the crime is so broad that it applies to persons who simply miss court hearings, regardless of their intent. Dozens of hearings can be scheduled in any given case, and this can be very difficult for defendants. It is not uncommon for someone to miss a scheduled hearing. Prosecutors then rely upon the threat of a felony Bail Jumping charge for plea bargaining, even if the underlying case has evidentiary issues or the person claims innocence.

Even if the underlying case is dismissed or the person is acquitted, the person can still be charged with and convicted of Bail Jumping. The only thing a prosecutor has to prove is that the person was required to show up to court and failed to do so. Then, the resulting sentence for Bail Jumping is often longer than the underlying charge. There are numerous documented cases where persons are serving several months or even years in prison for failing to show up to court. This is not what this crime was intended for. It is being used as a tool to gain convictions, rather than a tool for justice.

For anyone charged with an underlying felony, Bail Jumping is always a felony offense. Missing a single scheduled court hearing can result in a felony conviction, based solely on the will of the prosecuting attorney. Research shows that the offense is not incentivizing people to show up to court hearings. While convictions for Bail Jumping have increased, the rate of failing to appear has not changed. This crime disproportionately affects the most vulnerable populations. This is fundamentally unfair, especially for persons managing substance abuse disorder and mental health issues. It places a significant burden on their families to try to shepherd them through the legal process without the person accumulating felony charges for missed court hearings.

Bail Jumping also disproportionately affects immigrants and persons whose first language is not English. These persons are afraid to appear to court, but also do not understand the effect of failing to do so. Even if the underlying charge is relatively inconsequential, a felony Bail Jumping charge can have severe long-term consequences. A person with a felony conviction is disqualified from seeking relief through the Deferred Action for Childhood Arrivals (DACA) program.

There are other tools to incentivize people to appear for hearings. In fact, that is the point of the bail. Adding more jail and prison time does not serve public safety or justice. There is an urgent need to solve this issue.

Making Bail Jumping a gross misdemeanor is the appropriate solution. Judges will have broad discretion to impose up to a year of confinement without the same lifetime consequences of a felony conviction. It will still be a crime to fail to show up to court.

(Opposed) There may be problems with how Bail Jumping is being charged, and it is true that it is not always used the way it should be. However, this is not the right solution. For some people, there is no difference between jumping bail and missing court. There needs to be a significant incentive to not flee and to not impede the court process. Some people miss court on purpose and do run from the law. The bill needs to be modified to recognize the dynamic nature of these cases.

**Persons Testifying:** (In support) Representative Pellicciotti, prime sponsor; Aleksandrea Johnson, Washington Defender Association; Jessica Campbell, Pierce County Department of Assigned Counsel; Alexandra Manno, Snohomish County Public Defender Association; David Montes, King County Department of Public Defense; Jason Schwarz, Snohomish County Office of Public Defense; Jorge Baron, Northwest Immigrant Rights Project; Marilyn Roberts and Allen Rodgers, National Alliance on Mental Illness; and Heather Carroll.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.