

SENATE BILL REPORT

ESHB 2231

As Reported by Senate Committee On:
Law & Justice, February 27, 2020

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

Committee Activity: Law & Justice: 2/25/20, 2/27/20 [DPA, w/oRec, DNP].

Brief Summary of Amended Bill

- Limits the crime of bail jumping to persons who fail to appear for trial or to persons held, charged, or convicted of a felony that is a violent offense or sex offense when the person fails to make any appearance or surrender to a correctional facility as required.
- Creates the misdemeanor or gross misdemeanor crime of failure to appear or surrender that applies to persons held, charged, or convicted of any crime.
- Requires a person charged with bail jumping or failure to appear or surrender to show they did not act with negligent disregard in order to qualify for an affirmative defense of uncontrollable circumstances.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Holy, Kuderer and Salomon.

Minority Report: That it be referred without recommendation.

Signed by Senator Wilson, L..

Minority Report: Do not pass.

Signed by Senator Padden, Ranking Member.

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: Shani Bauer (786-7468)

Background: Any person who has been released by court order or bail with the knowledge that they must appear in a subsequent court proceeding or report to a correctional facility in order to serve their sentence and who fails to appear or surrender as required is guilty of bail jumping.

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

Bail jumping is:

- a class A felony if the person's underlying crime is murder in the first degree;
- a class B felony if the person's underlying crime is a class A felony other than murder in the first degree;
- a class C felony if the person's underlying crime is a class B or class C felony; and
- a misdemeanor if the person's underlying crime is a gross misdemeanor or misdemeanor.

Violent offenses include any class A felony, any criminal solicitation or criminal conspiracy to commit a class A felony; manslaughter 1 and 2; indecent liberties with forcible compulsion; kidnapping 2; arson 2; assault 2, assault of a child 2, extortion 1, robbery 2, drive-by shooting, vehicular assault, and vehicular homicide.

Summary of Amended Bill: Bail Jumping. A person is guilty of bail jumping if the person:

1. Is released by court order or admitted to bail, has received written notice of the requirement to appear for trial, and fails to appear for trial as required; or
2. Is held, charged, or convicted of a violent offense or sex offense, is released by court order or admitted to bail, has received written notice of the requirement to appear or report to a correctional facility in order to serve their sentence; and
 - the appearance for which the person was required and failed to appear was a trial or within 30 days of the issuance of the warrant for failure to appear or surrender, does not make a motion with the court to quash the warrant and appear on that motion; or
 - the person has had a prior warrant issued based on a prior incident of failure to appear or surrender for the present cause for which the person is being held or charged or has been convicted.

In order to qualify for an affirmative defense, the person must show they did not contribute to the creation of the circumstances with negligent disregard for the requirement to appear or surrender, rather than reckless disregard.

Failure to Appear or Surrender. A new crime is created for the failure to appear or surrender.

A person is guilty of the failure to appear or surrender if the person:

- is released by court order or admitted to bail;
- has received written notice of the requirement to make subsequent court appearance or report to a correctional facility in order to serve his or her sentence; and

- fails to appear or surrender as required.

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

Failure to appear or surrender is:

- a gross misdemeanor if the person's underlying crime is a felony; or
- a misdemeanor if the person's underlying crime is a gross misdemeanor or misdemeanor.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S): The crime of bail jumping is modified to 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. Subsections are reorganized.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: In 1975 the Legislature created the crime of bail jumping. Prior to that time, the consequence for failing to appear was that the person would lose their bail. This statute is drafted to give prosecutors complete discretion whether to charge the crime or not and does not require a referral from law enforcement.

The charge of bail jumping is utilized as a tool to get convictions rather than to promote justice. Prosecutors frequently use the charge to coerce a plea even though evidence may be insufficient for the underlying charge. In many cases these are administrative hearings that people miss. This may be the 10-12th appearance because the prosecutor keeps moving for a continuance. For indigent or near indigent clients, these hearings result in missed work, transportation costs, day care expenses, and reliance on calendaring tools or skills that these people do not have. In many cases, the defendant is not trying to abscond, but doesn't have the resources to appear at all the court dates. The Legislature should prohibit the prosecutor from using these charges inappropriately.

This committee should be aware of what a felony represents. A felony means the inability to get housing, get a job, or show up to your child's school for events. Simply missing a court hearing can brand a person with a scarlet letter. Even an unranked felony counts as a sentence that increases a person's score and includes a maximum sentence of 365 days.

These charges do not improve court appearance rates and have a disproportionate impact on marginalized and minority populations. Conviction of any felony will make a person

ineligible for immigrant status. Persons frequently miss court dates for linguistic barriers or they are fearful of coming to court due to immigration enforcement.

In one particular circumstance, a defendant showed up in court six days after a missed appearance. At trial, the defendant was acquitted by the jury of the underlying charge of residential burglary within 1 hour. Yet the prosecutor insisted on the bail jumping charge and the person walked out of trial a convicted felon. This is fundamentally unfair. In other situations, a person has been coerced into pleading to the underlying charge even if they didn't commit the crime as the crime has a lesser jail sentence than bail jumping. There are many solutions to this problem other than charging additional crimes.

CON: The prosecutors have heard the concern that persons charged with this crime have complied within a very short period of time. The 30 day grace period in the bill is an appropriate response to that and should apply to both bail jumping and failure to appear. There is, however, an incentive for persons to flee in nonviolent/non-sex felonies. We believe for felonies, a failure to appear should be classified as an unranked felony.

In Skagit County about 21 percent of defendants do not appear for their hearing. These no-shows are a tremendous cost to the system. We agree with the 30 day grace period, but when the underlying conduct is a felony, the threat of a gross misdemeanor does not scare or disincentivize a person from failing to show.

Persons Testifying: PRO: Representative Mike Pellicciotti, Prime Sponsor; Aleksandrea Johnson, Washington Defender Association; Colin McMahon, Snohomish County Public Defender Association; Sean Downs, Grecco Downs, PLLC; David Montes, King County Department of Public Defense; Shon Bogar, citizen; Jessica Fleming, citizen; Jessica Campbell, Attorney for Department of Assigned Counsel Pierce County; Jorge Baron, Executive Director, Northwest Immigrant Rights Project; Alexandra Manno, Snohomish County Public Defender.

CON: Russell Brown, Washington Association of Prosecuting Attorneys; Rich Weyrich, Skagit County Prosecutor.

Persons Signed In To Testify But Not Testifying: No one.