

BAIL JUMPING

Litigating & Reforming the Criminal Charge for
Failing to Appear

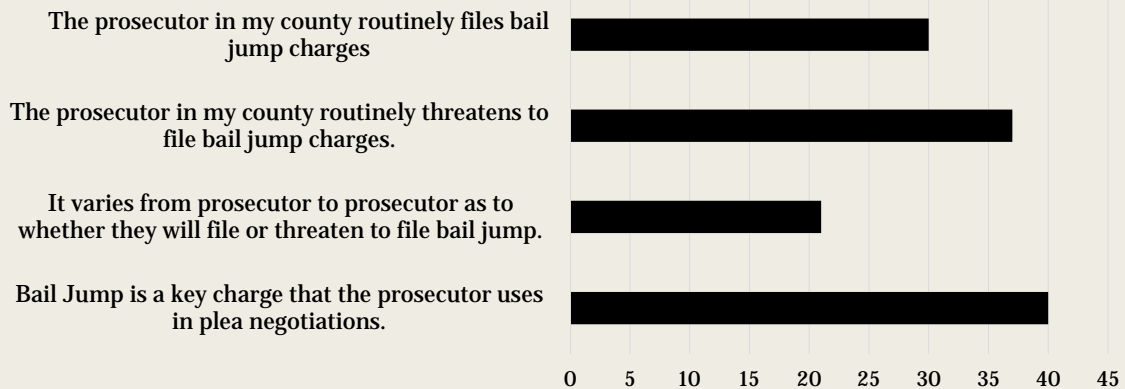
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A Brief History

- Created in 1975 and has been amended twice creating
 - *“Held for, charged with, or convicted of” language*
 - *Knowingly fail to appear*
 - *Uncontrollable Circumstances*
 - *Reckless Disregard*
 - *Classification structures*
- Legislative History
 - *Intentional failure to appear*

WDA Survey

Please check all the following that apply:



WDA Survey

“This diminishes both [the client’s] confidence in me as an attorney over a law I have no power to change and also they get a helpless feeling towards our system of justice.”

“Forced clients to give up legitimate claims of innocence, or to avoid winnable trials on other issues, out of fear of being convicted of the more serious offense (with higher penalties) of bail jumping.”

“The missed court appearance is used to coerce guilty pleas from individuals who otherwise wish to contest the underlying charges.”

Problems

- Overly broad – includes more than absconders
- Increases sentencing, often more than the underlying charge
- Coerciveness in plea negotiations
- Disproportionately impacts people who are indigent and lack access to courts
 - *Failure to appear rates based on demographics*
- Easy to prove based on the elements and sufficiency of evidence
- Mandatory court appearance under CrR 3.2
- Lacking of successful defenses

WPIC 120.41

- **To convict the defendant of the crime of bail jumping, each of the following elements of the crime must be proved beyond a reasonable doubt:**
- **(1)** That on or about (date), the defendant failed [to appear before a court] [or] [to surrender for service of sentence];
- **(2)** That the defendant [was being held for] [or] [was charged with] [or] [had been convicted of] [(fill in crime)] [a crime under RCW (fill in statute)] [a class A felony] [a class B or C felony] [a gross misdemeanor or misdemeanor];
- **(3)** That the defendant had been released by court order [or admitted to bail] with knowledge of [the requirement of a subsequent personal appearance before that court] [or] [the requirement to report to a correctional facility for service of sentence]; and
- **(4)** That any of these acts occurred in the [State of Washington] [City of] [County of].

What does the State need to prove?

- You had a court date
- You knew about it
- You didn't show up
- You weren't in custody

Trial of Documents

- State needs to show:
 - *Case charged*
 - Information
 - *Order to appear*
 - Trial Continuance
 - *Nonappearance*
 - Warrant
 - Minute Entry
 - *Not in custody*
 - Order on Release
 - Bond Posting

Self-Authenticating Court Orders

- ER 902
- "Certified court records are public records and fall within the recognized hearsay exception for such records."
 - *State v. Hubbard, 169 Wn.App. 182, 279 P.3d 521 (2012).*

No Right to Confront

- Certified records that are not prepared for use in a criminal proceeding also are not testimonial.
- Clerk's minute entry is a certified court record that was not prepared in anticipation of litigation, it is not testimonial.
 - *State v. Hubbard, 169 Wn.App. 182, 279 P.3d 521 (2012)*

Hearsay

- Assertions within the minute entries are out-of-court statements offered to prove the truth of the matter asserted and therefore are inadmissible as hearsay.
 - ER 801(c)
 - ER 802
- State needs minute entry because the can't call a witness with personal knowledge of nonappearance.

Required Appearance

- No caselaw in WA
 - *Not in CrR 3.2: only when "personal appearance is necessary."*
- County by County rules on appearances

THE DEFENDANT MUST APPEAR FOR TRIAL AND FOR ALL SCHEDULED HEARINGS. FAILURE TO APPEAR MAY RESULT IN ISSUANCE OF AN ARREST WARRANT, FORFEITURE OF BAIL, AND CRIMINAL PROSECUTION FOR BAIL JUMPING.

- Sanitize Order
 - *Don't allow information about "danger to commit violent offense" or "unlikely to appear"*

Appearance

- Advocate for court rule change
- Argue your client's presence isn't necessary
- Advocate for your client to appear telephonically
 - *Make some caselaw about this issue*

Defense

- "Uncontrollable circumstances" means an act of nature such as a flood, earthquake, or fire, or a medical condition that requires immediate hospitalization or treatment, or an act of a human being such as an automobile accident or threats of death, forcible sexual attack, or substantial bodily injury in the immediate future for which there is no time for a complaint to the authorities and no time or opportunity to resort to the courts.
 - *RCW 9.76A.010*
- Analogized to necessity defense

Severance/Joinder

- Charge of bail jumping is properly joined with underlying charge, absent strong showing of prejudice, where defendant's custody and release on bail or bond stems directly from underlying substantive charge. *State v. Bryant*, 89 Wn.App. 857 (1998)

Policy

- WDA's Bail Jumping objectives
 - *Repeal*
 - Amend – declassifying, increasing *mens rea* requirement
- Services that promote defender/client communication
- State and Local Rules on Mandatory Court Appearance
 - *Creating a less burdensome obligation on people who are unable to attend numerous court appearances*

Contact

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