



Did you know that a person who misses just one court date can be charged and convicted of a new crime based solely on their missed court date?

“Bail Jumping” (RCW 9A.76.170) is a criminal charge designed to punish anyone who misses court. The Charge of Bail Jumping can be filed against any defendant who misses court, regardless of the reason. It does not require that bail has been posted. It leads to increased convictions and incarceration for many people who are indigent and face very real barriers in getting to court and fosters unfair and coercive prosecutorial tactics in plea bargaining.

Why do people miss court?

People miss court or fail to appear (FTA) for a variety of reasons many of them having nothing to do with deliberate or dangerous intentions. For example, most people who miss a scheduled court date do so because one of the following reasons:

- They don't have transportation.
- They are unable to miss work or if they do miss work, they may lose their job.
- They don't have child-care, or they are the primary care provider for an aging or disabled family member and cannot leave them alone.
- They struggle with mental health issues, substance dependency or are experiencing homelessness.

Studies on predictors of pretrial failure to appear report that FTA is highly correlated to indigency.¹

How does someone get charged with a new crime just for missing court when judges have other tools for compelling people to come to court?

Courts and judges have many tools to ensure that individuals charged with a crime attend court appearances such as:

- Reminder systems, including text messaging, phone calls, and postcards
- Ensuring defendants receive court paperwork with upcoming court dates
- Court childcare centers
- Warrants and Quash Dockets

When someone misses court for almost any reason the prosecutor has broad discretion to charge that person with bail jumping, a whole new crime that matches the same classification misdemeanor or felony as the crime originally charged.

How does a bail jumping conviction lead to longer incarceration?

If a person is charged and convicted of bail jumping, they can be subject to more incarceration time than the original charge, even if they are found not guilty of the underlying charge.

In 2018, the Statistical Summary of Adult Felony Sentencing reported:

- Three sentences were imposed under “Bail jump with a class A Felony” (Class B Bail Jump). All three imposed a prison sentence with an average of 27.7 months.
- There were 405 “Bail Jump with a class B or C felony” sentences imposed (Class C Bail Jump). Sentences included 166 prison sentences with an average of 28.1 months and 239 non-prison sentences (including jail sentences) for 3.2 months.

¹ Haley R. Zettler & Robert G. Morris, *An Exploratory Assessment of Race and Gender-Specific Predictors of Failure to Appear in Court Among Defendants Released via a Pretrial Services Agency*, 40 CRIMINAL JUSTICE REV. 417, 419 (2015).

Does Washington's Bail Jump Statute create unfair and coercive prosecutorial practices?

Washington Defenders report in a recent statewide survey that:

- Bail Jumping is a key charge that prosecutors use to leverage plea agreements.
- Prosecutors routinely threaten to file bail jumping charges.
- The defenses available under the statute are difficult to prove in comparison to the State's minimal burden.
- Their clients are pressured to accept plea agreements for fear of longer incarceration, the consequences of having multiple felonies, and heightened LFOs.
- Their clients feel hopeless and lose faith in the court system that criminalizes them for missing court.

"The missed court appearance is used to coerce guilty pleas from individuals who otherwise wish to contest the underlying charges." – Kitsap County Defender

Why is the charge of Bail Jumping Unfair and Unnecessary?

⇒ Bail Jump pulls people further into the criminal justice system and disregards the practical realities of indigent defendants' human life experience.

An additional punitive measure for failing to appear due to reasons such as lack of transportation, caregiving responsibilities, and employment issues cause a lack of trust in our court system primarily because it fails to recognize the individual circumstances that keep individuals from accessing courts.

⇒ Bail Jump disproportionately harms people of color and people who are indigent.

Studies have found that indigency and failure to appear have positive, significant correlations. The Bureau of Justice has found that Black and Hispanic young men are more likely to be charged with failure to appear charges, such as bail jumping, compared to White defendants.

⇒ Further criminal punishment for FTA is inconsistent with effective ways to decrease FTA rates.

Many studies show that reminder systems effectively reduce failure to appear rates.

⇒ Bail Jump punishes defendants for a second time after the judge has already reconsidered bail conditions.

Even if the judge does not punish a person for missing court by revoking bail or imposing new conditions, the prosecutor can still charge bail jump.

⇒ Bail Jump sometimes prevents and punishes people from exercising their right to trial.

Defenders across WA say that Bail Jump is a charge that is often used in plea negotiations as a threat to plead guilty. Because Bail Jump is so easy to prove, defendants are put in a position where they risk being found guilty of two or more charges than the underlying charge alone.

The criminalization of failure to appear disproportionately impacts low-income communities and people of color. We must decriminalize failure to appear to support a more just criminal legal system. Instead of relying on punitive measures to deter court nonappearance, we encourage,

- Funding for community resources that have shown to improve court appearance rates such as public defender run text messaging reminder systems
- Policies that make court appearance in criminal cases mandatory only where the defendant's appearance is absolutely necessary
- The amendment or repeal of the Bail Jump Statute