

Criminal Justice & Corrections

HB 1227

Brief Description: *Changing provisions relating to escaping from custody.*

Sponsors: *Representatives Ballasiotes, Lovick and O'Brien.*

Brief Summary of Bill

- *Adds the culpability element of knowledge and creates an affirmative defense to the crime of escape.*
- *Expands and creates an affirmative defense to the crime of bail jumping.*
- *Repeals the specific failure to return- statutes.*
- *Requires a law enforcement agency to deliver a person in custody to agents of a demanding state without a warrant when certain requirements are met.*

Hearing Date: *1/29/01*

Staff: *Katy Freeman (786-7386).*

Background:

Generally, escape is committed when a person is detained pursuant to a felony or an equivalent juvenile offense and he or she escapes from custody or a detention facility. Knowledge is not explicitly mentioned in the statute as an element of escape in the first or second degree. However, case law has added the culpability element of knowledge to the statute. Thus, knowledge must be proven to convict a person under the escape statute.

Where two statutes are concurrent, the specific statute prevails over the general. General

escape statutes do not apply to a felony prisoner who fails to return from furlough or work release. Instead these prisoners are charged under specific failure to return– statutes which include the element of wilfulness.

A person may be charged with bail jumping only when the person has been released from custody and he or she knowingly fails to appear for a subsequent court hearing as required by a condition of his or her release.

Under the Uniform Criminal Extradition Act, the Governor is authorized to issue a warrant for the arrest of any person who is charged with committing a crime in another state and has fled from justice and is found in this state. A demand for the extradition of the person from the Governor of that foreign state must precede the warrant. However, the Governor may exercise his or her discretion as to whether to issue the warrant and have the fugitive arrested and delivered to the executive authority of the demanding state.

Summary of Bill:

A person must have knowledge to be charged with escape in the first or second degree. An affirmative defense to a prosecution of that charge is that:

- uncontrollable circumstances prevented the person from remaining in custody or in the detention facility, or from returning to custody or to the detention facility; and*
- the person did not contribute to the creation of the circumstances in reckless disregard of the requirement to remain or return; and*
- the person returned to custody or the detention facility as soon as the circumstances ceased to exist.*

The crime of bail jumping may be charged in two different circumstances. Bail jumping may be charged if a person has been released by court order or admitted to bail:

- with knowledge of the requirement of a subsequent personal appearance before any court of this state and they fail to appear as required; or*
- with knowledge of the requirement to report to a correctional facility for service of a sentence and they fail to surrender for service of their sentence as required.*

An affirmative defense to bail jumping is that:

- uncontrollable circumstances prevented the person from appearing or surrendering; and*
- 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 the circumstances ceased to exist.*

The crimes wilfully failing to return from furlough and wilfully failing to return from work release are repealed and removed from consideration in the offender score.

Under the Uniform Criminal Extradition Act, a law enforcement agency is required to deliver a person in custody to the accredited agent or agents of a demanding state without

the Governor's warrant when:

- *the person is alleged to have broken the terms of his or her probation, parole, bail, or any other release of the demanding state; and*
- *the law enforcement agency has received from the demanding state:*
 - *an authenticated copy of a prior waiver of extradition signed by the person as a term of his or her probation, parole, bail, or any other release of the demanding state; and*
 - *photographs or fingerprints or other evidence properly identifying the person as the person who signed the waiver.*

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

Appropriation: *None.*

Fiscal Note: *Requested on January 25, 2001.*