

# HOUSE BILL REPORT

## HB 1227

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### As Passed Legislature

**Title:** An act relating to escaping from custody.

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

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

#### **Brief History:**

##### **Committee Activity:**

Criminal Justice & Corrections: 1/29/01, 2/7/01 [DP].

##### **Floor Activity:**

Passed House: 3/9/01, 98-0.

Senate Amended.

Passed Senate: 4/11/01, 48-0.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/19/01, 47-0.

House Concurred.

Passed House: 4/20/01, 91-0.

Passed Legislature.

#### **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.
- Redefines the statute relating to escape in the second degree.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Kagi, Kirby and Morell.

**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.

**Escape in the Second Degree.** Escape in the second degree is committed when a person escapes from a detention facility or having been charged with a felony or an equivalent juvenile offense, he or she escapes from custody. The crime of escape can also be committed when a person, found to be a sexually violent predator and is under an order of conditional release, leaves Washington without prior authorization.

The crime of escape in the second degree does not include persons civilly committed under the Criminal Insanity statute for a sex, violent, or felony harassment offense who have been conditionally released on less restrictive alternatives and who leave or remain absent from the state without authorization.

Escape in the second degree is a seriousness level III, class C felony. A first time offender would receive a presumptive sentence of one to three months in jail.

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## 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:
  1. 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
  2. photographs or fingerprints or other evidence properly identifying the person as the person who signed the waiver.

**Escape in the Second Degree.** The crime of escape in the second degree excludes sexually violent predators under an order of conditional release who leave Washington without prior authorization.

In addition the crime of escape in the second degree is expanded to include those persons civilly committed under a plea of insanity for a sex, violent, or felony harassment offense, who have been conditionally released on a less restrictive alternative, and who leave and remain absent from the state without authorization.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** The bill will remove the two specific crimes of escape from the statutes. However, the general crime of escape will remain. The bill will also clarify the crime of bail jumping as well as the crime of escape. Additionally, the bill will add an affirmative defense to bail jumping so that persons who are trying to act responsibly will not be penalized.

The bill will also allow Washington to send a person in custody back to their state of origin without the Governors becoming involved. A pre-signed waiver of extradition will eliminate the current lengthy extradition process and will save the public money. Many other states recognize pre-signed waivers of extradition. The person in custody will be protected from mistaken identity because a photograph or fingerprints will be required to positively identify the person.

**Testimony Against:** None.

**Testified:** Pamela Loginsky and Tom McBride, Washington Association of Prosecuting Attorneys.