

BAIL JUMPING

The defendant is charged with failing to appear in court after being released on (bail) (personal recognizance). Section 82A of chapter 276 of our General Laws provides as follows:

“A person who is released by court order
or other lawful authority
on bail or recognizance
on condition that he will appear personally
at a specified time and place
and who fails without sufficient excuse to so appear
shall be punished”

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the defendant had been released on (bail) (personal recognizance) by a (judge) (bail magistrate);

If relevant to evidence. “Personal recognizance” means that a person is released on his own promise to appear, without having

to post any money or a bond to guarantee his appearance.

Second: That the defendant was aware of a particular date and time on which he (she) was required to appear in court, as a condition of that release; and

Third: That the defendant failed to appear in court as required.

See Instruction 3.120 (Intent).

See *Commonwealth v. Coleman*, 390 Mass. 797, 805 n.8, 461 N.E.2d 157, 162 n.8 (1984) (since failure to appear is a separate criminal offense, it may not be considered by judge sentencing on original charge); *Commonwealth v. Sitko*, 372 Mass. 305, 313, 361 N.E.2d 1258, 1263 (1977) (same); *Sclamo v. Commonwealth*, 352 Mass. 576, 577-578, 227 N.E.2d 518, 519 (1967) (§ 82A is not a regulation of the court's contempt power but a separate criminal offense, and cannot be dealt with summarily); *Commonwealth v. Love*, 26 Mass. App. Ct. 541, 544-547, 530 N.E.2d 176, 179-180 (1988) (phrase "without sufficient excuse" is not unconstitutionally vague).

SUPPLEMENTAL INSTRUCTION

"Without sufficient cause." The defendant has offered evidence suggesting that he (she) *did* have a sufficient excuse for failing to appear in court as required. Before you may find the defendant guilty of the offense as charged, the Commonwealth must prove beyond a reasonable doubt that the defendant did *not* have a sufficient excuse for his (her) failure to appear.

In order to demonstrate this, the Commonwealth must

prove beyond a reasonable doubt that the defendant's absence was deliberate or willful. If the defendant intended to be present in court, but was unable to do so, then the defendant must be found not guilty.

What might amount to a sufficient excuse? An accident, an illness, or the like would be a sufficient excuse, but the range of potential situations is very broad and you must evaluate any suggested excuse in all the circumstances. It would not be a sufficient excuse that a person was afraid of the possible outcome of a trial or sought to escape punishment.

Remember, the defendant must be found not guilty unless the Commonwealth proves beyond a reasonable doubt that the defendant had been released on (bail) (personal recognizance), knew that he (she) was required to appear in court on that date and time, failed to do so, and his (her) failure was deliberate.

Like other matters of justification, mitigation and excuse, the defendant has "the burden of producing some evidence of a 'sufficient excuse' before the Commonwealth would become obligated to shoulder the burden of negating that excuse by proof beyond a reasonable doubt Beyond the analogical force of these precedents in indicating how a proffered excuse under the bail-jumping statute should be treated at trial, we have the commonsense point that it is the defendant charged under the statute who in all likelihood knows the relevant facts, and there is no unfairness in requiring him to produce some evidence of them" before the Commonwealth must shoulder the burden of disproof. *Love, supra.*

The examples of sufficient and insufficient excuses are also drawn from the *Love* decision.