

BAIL JUMPING IN THE THIRD DEGREE
(Any Criminal Action or Proceeding)
Penal Law § 215.55
(Committed on or after Sept. 8, 1983)

The (*specify*) count is Bail Jumping in the Third Degree.

Under our law, a person is guilty of Bail Jumping in the Third Degree when by court order he or she has been released from custody or allowed to remain at liberty, either upon bail or upon his or her own recognizance, upon condition that he or she will subsequently appear personally in connection with a criminal action or proceeding¹, and when he or she does not appear personally on the required date or voluntarily within thirty days thereafter.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That the defendant, (*defendant's name*) was, by court order, released from custody or allowed to remain at liberty upon bail [or upon his/her own recognizance] upon condition that he/she would subsequently appear personally on (*date*) in (*county*) in connection with a criminal action or proceeding; and
2. That the defendant did not appear personally on the required date or voluntarily within thirty days thereafter.

Note: If the affirmative defense does not apply, conclude as follows:

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty

¹ If in issue, define criminal action or criminal proceeding in accordance with CPL 1.20(16) and (18).

of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

Note: If the affirmative defense does apply, conclude as follows:

If you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of Bail Jumping in the Third Degree.

If you find that the People have proven beyond a reasonable doubt both of the elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Bail Jumping in the Third Degree, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to bail jumping that:

1. The defendant's failure to appear on the required date or within thirty days thereafter was unavoidable and due to circumstances beyond his/her control; and
2. During the period extending from the expiration of the thirty day period to the commencement of this action on (specify),:

Select appropriate alternative:

(a) the defendant appeared voluntarily as soon as he/she was able to do so.

(b) the defendant's failure to appear was unavoidable and

due to circumstances beyond his/her control.²

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven beyond a reasonable doubt the elements of Bail Jumping in the Third Degree, you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Bail Jumping in the Third Degree.]

²See Penal Law 215.59.