

HOUSE BILL REPORT

EHB 2679

As Passed House
February 15, 1994

Title: An act relating to stay of judgment.

Brief Description: Limiting stays of judgment pending appeal for serious violent and sex offenders.

Sponsors: Representatives Morris, Long, Springer, Chappell, Campbell, Johanson, Brough, Moak, Fuhrman, Padden, Mielke, Cooke and Van Luven.

Brief History:

Reported by House Committee on:
Judiciary, February 2, 1994, DP;
Passed House, February 15, 1994, 97-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 15 members:
Representatives Appelwick, Chair; Johanson, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Eide; Forner;
J. Kohl; Long; Morris; H. Myers; Schmidt; Scott and Tate.

Staff: Pat Shelledy (786-7149).

Background: In State v. Smith, 84 Wn.2d 498 (1974), the court discussed two issues: (1) whether the right to bail and release from custody *after conviction* and pending appeal is limited or subject to specific provisions of the state constitution; and (2) whether the right to bail and release from custody after conviction and pending appeal was procedural and therefore subject to and governed by court rules, or whether it was substantive and therefore subject to and governed by legislatively enacted limitations, requirements, and standards. When the court considered the Smith case, the court rules and statutes were in conflict.

The Smith court held that the state constitution neither confers nor restricts a right to bail pending appeal. The court also held that the courts have certain limited inherent powers; among these is the power to prescribe rules for procedure and practice. Although noting that the line between procedural and substantive rules of law is not always clear, the court held that the issue of bail and

release has traditionally been a judicial branch function. The Legislature cannot abrogate or modify court rules. Consequently, the court held that to the extent the applicable statute was inconsistent with the applicable court rule, the court rule controlled. This ruling was reconfirmed in State v. Hunter, 35 Wn. App. 108 (1983).

A number of statutes and court rules exist governing the release of offenders. Currently, court rules provide that the court may establish conditions of release pending appeal subject to conditions established by the Legislature.

RCW 9.95.062 provides that an appeal shall not stay execution of a judgment if the court determines by a preponderance of the evidence that:

- (a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed;
- (b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment;
- (c) A stay of judgment will cause unreasonable trauma to the victims of the crime or their families; or
- (d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

Summary of Bill: Three different standards concerning the stay of judgment pending appeal are adopted.

First, the court may not release a defendant or set bail if the defendant is convicted of serious violent or sex offense.

Second, the court may not release a defendant or set bail if the defendant is convicted of a crime of violence or a crime of harassment which is not a serious violent or sex offense, unless the court finds by clear, cogent and convincing evidence that the defendant is unlikely to flee or unlikely to pose a danger to the safety of others, or the offender's release will not cause unreasonable trauma to the victim or to the victim's family. The court must consider the input of the crime victim or the victim's family. In any contested bail hearing, the court must enter findings of fact.

Third, the standard for all other offenses remains the same as under current law except the statute is clarified to

provide that the underlying presumption is that a convicted defendant does not have a right to release or bail.

Fiscal Note: Requested January 31, 1994.

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

Testimony For: When sex offenders have been afforded all of their constitutional rights and then have been convicted and sentenced, they should go to prison. They should not be free pending appeal. Being forced to live in the same community with the sex offender who remains unpunished after abusing a child is intolerable. Appeals may take years. In one case a year and a half has elapsed, and the offender convicted of rape of a child in the first degree is still out pending appeal.

Testimony Against: None.

Witnesses: Laurie Davis, citizen (pro); and Rene Jackson, citizen (pro).