

HOUSE BILL REPORT

HB 2679

As Reported By House Committee On:
Judiciary

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.

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: An appeal by a defendant convicted of a serious violent or sex offense shall not stay execution of the judgment of conviction.

"Serious violent" offenses are murder in the first degree, homicide by abuse, assault in the first degree, kidnapping in the first degree, rape in the first degree, assault of a child in the first degree, or an attempt to commit any one of these offenses.

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).