

FINAL BILL REPORT

ESHJR 4220

Synopsis as Enacted

Brief Description: Amending the state Constitution so that the provision relating to bailable crimes by sufficient sureties is modified.

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Hope, Kelley, Green, Conway, Parker, Hurst, Campbell, Wallace, Orcutt, Simpson, Ericks, Ericksen, Van De Wege, Morrell, Takko, Appleton, Maxwell, Orwall, Pearson, Kirby, Sells, Kenney, Johnson, Dammeier, Roberts and McCune; by request of Governor Gregoire).

House Committee on Public Safety & Emergency Preparedness
Senate Committee on Judiciary

Background:

Pretrial release is the release of the accused from detention pending trial. The state Constitution guarantees the right to bail for a person charged with a noncapital crime, and this right has been interpreted as the right to a judicial determination of either release or reasonable bail. For capital offenses where the proof of the accused's guilt is evident or the presumption of the accused's guilt is great, there is no right to bail.

The courts favor pretrial release and bail in appropriate circumstances because the accused is presumed innocent and because the state is relieved of the burden of detention. According to the courts, the purpose of bail is to secure the accused's presence in court.

Court Rules Governing Bail.

Courts have inherent power and the statutory authority to make rules regarding procedure and practice in the courtroom. Courts have ruled that setting bail and releasing individuals from custody is a traditional function of the courts. General criminal court rules, which are promulgated by the Washington Supreme Court, and local criminal court rules govern the release of an accused in superior court criminal proceedings. The criminal court rules provide the following framework for pretrial release.

In a noncapital case, there is a presumption that the accused should be released unless the court determines either: (1) release will not reasonably assure that the accused will appear; or (2) there is a likely danger that the accused will commit a violent crime or interfere with

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the administration of justice. Under these circumstances, the court may impose conditions of release. Whether the accused poses a danger to the community or is a flight risk is a factual determination within the judge's discretion.

In a capital case, the accused must not be released unless the court finds that releasing the accused with conditions will reasonably assure the accused's appearance, will not significantly interfere with the administration of justice, and will not pose a substantial danger to another or the community.

Federal Pretrial Detention.

Under the federal Bail Reform Act (Act), a judge may issue an order indefinitely detaining the accused following a detention hearing in which the judge determines that no condition or combination of conditions will reasonably assure the accused's appearance and the safety of any other person and the community.

The detention hearing is held in cases involving: a serious risk that the accused will flee or attempt to obstruct justice; a crime of violence; a crime for which the maximum sentence is life imprisonment or death; a controlled substance offense the maximum sentence for which is 10 years or more; or a felony if the accused has been convicted of two or more specified serious offenses.

The Act provides procedures for the detention hearing, as well as a list of factors to be considered in the determination whether any condition of release will reasonably assure the accused's appearance and the safety of any other person and the community. The facts relied on by a judge to issue a pretrial detention order must be proven by clear and convincing evidence. The U.S. Supreme Court has held that the Act does not violate the right to due process under the Fifth Amendment because it carefully limits the circumstances in which pretrial detention may be imposed

Sentencing.

Aggravated Murder in the first degree is a capital offense. Offenses for which the maximum sentence is the possibility of life in prison include class A felonies, third strike offenses for persistent offenders, and second strike offenses for persistent sex offenders.

Summary:

A judge may deny bail to a person charged with an offense punishable by life in prison. To deny bail, there must be a showing by clear and convincing evidence that the person has a propensity for violence that creates a substantial likelihood of danger to the community or any persons. The denial of bail under these circumstances is subject to limitations determined by the Legislature.

Votes on Final Passage:

House	80	17	
Senate	48	0	(Senate amended)

House 92 4 (House concurred)