

SENATE BILL REPORT

HB 3056

As of February 15, 2010

Title: An act relating to pretrial release or detention.

Brief Description: Concerning pretrial release or detention.

Sponsors: Representatives Pearson, Hurst, Kessler, Klippert, Kirby, Kenney and Kelley; by request of Governor Gregoire.

Brief History: Passed House: 2/05/10, 95-2.

Committee Activity: Judiciary:

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: Under Article I, Section 20 of the Washington State Constitution the right to bail is guaranteed for people charged with noncapital crimes. For capital offenses there is no right to bail. Pretrial release and bail are favored by courts in appropriate circumstances because the accused is presumed innocent and because the state is relieved of the burden of detention. The purpose of bail is to secure the accused's presence in court; bail is neither punishment nor a revenue collection vehicle. *See State v. Banuelos*, 91 Wn. App. 860, 863 (1998); *Landry v. Luscher*, 95 Wn. App. 779, 778 (1999); *United States v. Salerno*, 481 U.S. 739, 746-47 (1987) (overruled on other grounds). 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. *State v. Blilie*, 939 P.2d 691, 693, 695 (1997); *Westerman*, 125 Wn.2d at 290-91. The courts have stated that bail schedules and other procedures related to the release of an accused person are better left to the counties as long as they comport with constitutional due process.

General criminal court rules, which are promulgated by the Supreme Court, and local criminal court rules govern the release of an accused in superior court criminal proceedings. Wash. CrR 3.2, 3.2.1; 3.2. The criminal court rules provide a framework for judicial officers to follow in determining pretrial release and the conditions imposed. In capital cases, the criminal court rules provide that the accused cannot 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

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danger to another or the community. In noncapital cases there is a presumption that the accused should be released unless the court determines that either the release will not reasonably assure that the accused will appear or that there is a likely danger that the accused will commit a violent crime or interfere with the administration of justice. The court may consider a list of factors in order to determine which conditions to impose to reduce the danger that the accused poses to the community.

The Legislature enacted RCW 10.19.170 in 1996 that states, "[n]otwithstanding CrR 3.2, a court who releases a defendant arrested or charged with a violent offense as defined in RCW 9.94A.030 on the offender's personal recognizance or personal recognizance with conditions must state on the record why the court did not require the defendant to post bail."

Summary of Bill: When a person charged with an offense appears before a judge, the judge must issue an order that pending trial, the person be: (1) released on personal recognizance; (2) released on a condition or combination of conditions; (3) temporarily detained; or (4) detained.

If the release of a person would endanger the safety of any other person or the community, the judge must order the pretrial release of the person subject to the least restrictive condition or combination of conditions that will reasonably assure the safety of any other person or the community. Conditions of release include the following: (1) placing the person in the custody of a person or organization; (2) placing restrictions on travel, association, or residence; (3) imposing a curfew; (4) requiring reporting or electronic monitoring; (5) prohibiting the person from approaching or communicating with certain people; (6) prohibiting the person from going to certain places; (7) prohibiting the person from possessing dangerous weapons or firearms; (8) prohibiting the person from possessing or consuming drugs or alcohol; (9) prohibiting the person from operating a vehicle without an ignition interlock device; (10) requiring the person to regularly report to an officer of the court or other person or agency; and (11) prohibiting the person from violating criminal law.

On the prosecutor's motion, the judge must hold a hearing on whether any condition or combination of conditions will reasonably assure the safety of any other person or the community in the following cases: violent offenses as defined by law, an act of domestic violence, and an offense for which the maximum sentence is life imprisonment or death. If there is probable cause to believe that the person committed an offense for which the penalty is life imprisonment or death, there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of the community. If the person is charged with a capital offense, the person may not be released unless the judge finds that release on conditions will reasonably assure that the person will not pose a danger to another or the community.

In determining whether any conditions of release will reasonably assure the safety of any other person or the community, the judge must consider information regarding the nature and circumstances of the offense, the weight of the evidence, and the person's history and characteristics. This includes the person's character, physical and mental condition, family ties, employment, financial resources, community ties, past conduct, history of drug or alcohol abuse, criminal history, and record of appearance at court proceedings. The court

may also consider whether the person was on community supervision or other release at the time of the offense and the nature and seriousness of the danger posed by release.

At the hearing, the person has the right to an attorney, to testify, to present witnesses, to cross-examine witnesses, and to present information. The rules of evidence do not apply. The hearing must be held at the person's preliminary appearance, unless the person or the prosecutor seeks a continuance, during which time the person is detained. The continuance may not exceed five days on the motion of the person or three days on the motion of the prosecutor. The hearing may be reopened anytime before trial, if new material information becomes available.

If, based on clear and convincing evidence, the judge determines after the hearing that no condition or combination of conditions will reasonably assure the safety of others or the community, the judge must order the pretrial detention of the person. The person is entitled to expedited review of the detention order. The detention order must contain findings of fact and a written statement of the reasons for detention. The order must direct that the person be confined separately, to the extent practicable, from people serving sentences or being detained pending appeal. The order must also direct that the person be afforded reasonable opportunity for private consultation with an attorney. The judge may permit the temporary release of the person to prepare a defense or for another compelling reason.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect January 1, 2011, if the amendment to Article I, section 20 of the state Constitution proposed in House Joint Resolution 4220 is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety.