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HOUSE BILL 3056

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State of Washington

61st Legislature

2010 Regular Session

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

Read first time 01/21/10. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to pretrial release or detention; adding a new  
2 chapter to Title 10 RCW; and providing a contingent effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds there is a need to  
5 consider the safety of other persons and the community in setting  
6 nonfinancial pretrial conditions of release, and the need to permit the  
7 pretrial detention of defendants as to whom no conditions of release  
8 will assure the safety of the community or of other persons.

9 (2) It is the intent of the legislature to enact a law governing  
10 pretrial release or detention for the purpose of reasonably assuring  
11 public safety pursuant to the proposed amendment to Article I, section  
12 20 of the state Constitution set forth in House Joint Resolution No.  
13 4220. Other provisions of law address matters relating to assuring the  
14 appearance of the defendant at trial and preventing interference with  
15 the administration of justice.

16 NEW SECTION. **Sec. 2.** Upon the appearance before a judicial  
17 officer of a person charged with an offense, the judicial officer must  
18 issue an order that, pending trial, the person be:

- 1 (1) Released on personal recognizance;
- 2 (2) Released on a condition or combination of conditions ordered
- 3 under section 3 of this act or other provision of law;
- 4 (3) Temporarily detained as allowed by law; or
- 5 (4) Detained as provided under section 4 of this act.

6 NEW SECTION. **Sec. 3.** (1) If the judicial officer determines that  
7 the release of a defendant would endanger the safety of any other  
8 person or the community, such judicial officer must order the pretrial  
9 release of the person subject to the least restrictive further  
10 condition, or combination of conditions, that such judicial officer  
11 determines will reasonably assure the safety of any other person or the  
12 community. The judicial officer may at any time amend the order to  
13 impose additional or different conditions of release. The conditions  
14 imposed under this chapter supplement but do not supplant provisions of  
15 law allowing the imposition of conditions to assure the appearance of  
16 the defendant at trial or to prevent interference with the  
17 administration of justice.

18 (2) Appropriate conditions of release under this chapter include,  
19 but are not limited to, the following:

20 (a) The defendant may be placed in the custody of a designated  
21 person or organization agreeing to supervise the defendant;

22 (b) The defendant may have restrictions placed upon travel,  
23 association, or place of abode during the period of release;

24 (c) The defendant may be required to comply with a specified  
25 curfew;

26 (d) The defendant may be required to return to custody during  
27 specified hours or to be placed on electronic monitoring, if available.  
28 A defendant, if convicted, may not have the period of incarceration  
29 reduced by the number of days spent on electronic home monitoring;

30 (e) The defendant may be prohibited from approaching or  
31 communicating in any manner with particular persons or classes of  
32 persons;

33 (f) The defendant may be prohibited from going to certain  
34 geographical areas or premises;

35 (g) The defendant may be prohibited from possessing any dangerous  
36 weapons or firearms;

1 (h) The defendant may be prohibited from possessing or consuming  
2 any intoxicating liquors or drugs not prescribed to the defendant. The  
3 defendant may be required to submit to testing to determine the  
4 defendant's compliance with this condition;

5 (i) The defendant may be prohibited from operating a motor vehicle  
6 that is not equipped with an ignition interlock device;

7 (j) The defendant may be required to report regularly to and remain  
8 under the supervision of an officer of the court or other person or  
9 agency; and

10 (k) The defendant may be prohibited from committing any violations  
11 of criminal law.

12 NEW SECTION. **Sec. 4.** If, after a hearing pursuant to section 8 of  
13 this act, the judicial officer finds that no condition or combination  
14 of conditions will reasonably assure the safety of any other person and  
15 the community, such judicial officer must order the detention of the  
16 person before trial. The detainee is entitled to expedited review of  
17 the detention order by the court of appeals under the writ provided in  
18 RCW 7.36.160.

19 NEW SECTION. **Sec. 5.** The judicial officer must, in determining  
20 whether there are conditions of release that will reasonably assure the  
21 safety of any other person and the community, take into account the  
22 available information concerning:

23 (1) The nature and circumstances of the offense charged, including  
24 whether the offense is a crime of violence;

25 (2) The weight of the evidence against the defendant; and

26 (3) The history and characteristics of the defendant, including:

27 (a) The person's character, physical and mental condition, family  
28 ties, employment, financial resources, length of residence in the  
29 community, community ties, past conduct, history relating to drug or  
30 alcohol abuse, criminal history, and record concerning appearance at  
31 court proceedings;

32 (b) Whether, at the time of the current offense or arrest, the  
33 defendant was on community supervision, probation, parole, or on other  
34 release pending trial, sentencing, appeal, or completion of sentence  
35 for an offense under federal, state, or local law; and

1 (c) The nature and seriousness of the danger to any person or the  
2 community that would be posed by the defendant's release.

3 NEW SECTION. **Sec. 6.** Subject to rebuttal by the person, it is  
4 presumed that no condition or combination of conditions will reasonably  
5 assure the safety of the community if the judicial officer finds that  
6 there is probable cause to believe that the person committed an offense  
7 for which the penalty is life imprisonment or death.

8 NEW SECTION. **Sec. 7.** Any person charged with a capital offense  
9 may not be released unless the judicial officer finds that release on  
10 conditions will reasonably assure that the defendant will not pose a  
11 danger to another or the community. If a danger is believed to exist,  
12 the defendant may be ordered detained without bail.

13 NEW SECTION. **Sec. 8.** (1) The judicial officer must hold a hearing  
14 to determine whether any condition or combination of conditions will  
15 reasonably assure the safety of any other person and the community upon  
16 motion of the attorney for the government in a case that involves:

- 17 (a) Violent offenses as defined in RCW 9.94A.030;  
18 (b) Any act of domestic violence as defined in RCW 10.99.020; or  
19 (c) An offense for which the maximum sentence is life imprisonment  
20 or death.

21 (2) The hearing must be held immediately upon the defendant's first  
22 appearance before the judicial officer unless the defendant, or the  
23 attorney for the government, seeks a continuance. Except for good  
24 cause, a continuance on motion of such person may not exceed five days  
25 (not including any intermediate Saturday, Sunday, or legal holiday),  
26 and a continuance on motion of the attorney for the government may not  
27 exceed three days (not including any intermediate Saturday, Sunday, or  
28 legal holiday). During a continuance, such person must be detained.

29 (3) At the hearing, such defendant has the right to be represented  
30 by counsel, and, if financially unable to obtain representation, to  
31 have counsel appointed. The defendant must be afforded an opportunity  
32 to testify, to present witnesses, to cross-examine witnesses who appear  
33 at the hearing, and to present information by proffer or otherwise.  
34 The rules concerning admissibility of evidence in criminal trials do  
35 not apply to the presentation and consideration of information at the

1 hearing. The facts the judicial officer uses to support a finding that  
2 no condition or combination of conditions will reasonably assure the  
3 safety of any other person and the community must be supported by clear  
4 and convincing evidence.

5 (4) The defendant may be detained pending completion of the  
6 hearing. The hearing may be reopened, before or after a determination  
7 by the judicial officer, at any time before trial if the judicial  
8 officer finds that information exists that was not known to the movant  
9 at the time of the hearing and that has a material bearing on the issue  
10 whether there are conditions of release that will reasonably assure the  
11 safety of any other person and the community.

12 NEW SECTION. **Sec. 9.** In a release order issued under section 3 of  
13 this act the judicial officer must:

14 (1) Include a written statement that sets forth all the conditions  
15 to which the release is subject, in a manner sufficiently clear and  
16 specific to serve as a guide for the defendant's conduct; and

17 (2) Advise the defendant of:

18 (a) The penalties for violating a condition of release, including  
19 the penalties for committing an offense while on pretrial release; and

20 (b) The consequences of violating a condition of release, including  
21 the immediate issuance of a warrant for the defendant's arrest.

22 NEW SECTION. **Sec. 10.** (1) In a detention order issued under  
23 section 4 of this act, the judicial officer must:

24 (a) Include written findings of fact and a written statement of the  
25 reasons for the detention;

26 (b) Direct that the person be committed to the custody of the  
27 appropriate correctional authorities for confinement separate, to the  
28 extent practicable, from persons awaiting or serving sentences or being  
29 held in custody pending appeal; and

30 (c) Direct that the person be afforded reasonable opportunity for  
31 private consultation with counsel.

32 (2) The judicial officer may, by subsequent order, permit the  
33 temporary release of the person, in the custody of an appropriate law  
34 enforcement officer or other appropriate person, to the extent that the  
35 judicial officer determines such release to be necessary for  
36 preparation of the person's defense or for another compelling reason.

1        NEW SECTION.    **Sec. 11.** Nothing in this chapter may be construed as  
2 modifying or limiting the presumption of innocence.

3        NEW SECTION.    **Sec. 12.** Sections 1 through 11 of this act  
4 constitute a new chapter in Title 10 RCW.

5        NEW SECTION.    **Sec. 13.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 14.** This act takes effect January 1, 2011, if  
10 the proposed amendment to Article I, section 20 of the state  
11 Constitution proposed in House Joint Resolution No. 4220 is validly  
12 submitted to and is approved and ratified by the voters at the next  
13 general election. If the proposed amendment is not approved and  
14 ratified, this act is void in its entirety.

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