
SENATE BILL 6882

State of Washington

61st Legislature

2010 Regular Session

By Senator Carrell

Read first time 03/01/10. Referred to Committee on Judiciary.

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

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

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

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

17 NEW SECTION. **Sec. 2.** Upon the appearance before a judicial

1 officer of a person charged with an offense, the judicial officer must
2 issue an order that, pending trial, the person be:

3 (1) Released on personal recognizance;

4 (2) Released on a condition or combination of conditions ordered
5 under section 3 of this act or other provision of law;

6 (3) Temporarily detained as allowed by law; or

7 (4) Detained as provided under section 4 of this act.

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

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

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

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

26 (c) The defendant may be required to comply with a specified
27 curfew;

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

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 4.** If a person is charged pursuant to section
15 7 of this act, and after a hearing pursuant to section 8 of this act,
16 the judicial officer finds that no condition or combination of
17 conditions will reasonably assure the safety of the community, such
18 judicial officer must order the detention of the person before trial.
19 The detainee is entitled to expedited review of the detention order by
20 the court of appeals under the writ provided in RCW 7.36.160.

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

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

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

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

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

34 (b) Whether, at the time of the current offense or arrest, the
35 defendant was on community supervision, probation, parole, or on other

1 release pending trial, sentencing, appeal, or completion of sentence
2 for an offense under federal, state, or local law; and

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

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

10 NEW SECTION. **Sec. 7.** Any person charged with an offense or
11 attempted offense involving the intentional death of another,
12 intentional bodily harm of another, a choate sex offense that may
13 result in a sentence of life in prison, or an offense which may result
14 in a life sentence without the possibility of release may be ordered
15 detained without bail, unless the judicial officer finds that the
16 imposition of a condition or combination of conditions will reasonably
17 assure that the person will not pose a danger to the community.

18 NEW SECTION. **Sec. 8.** (1) The judicial officer must hold a hearing
19 to determine whether any condition or combination of conditions will
20 reasonably assure the safety of the community upon motion of the
21 attorney for the government.

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

30 (3) At the hearing, such defendant has the right to be represented
31 by counsel, and, if financially unable to obtain representation, to
32 have counsel appointed. The defendant must be afforded an opportunity
33 to testify, to present witnesses, to cross-examine witnesses who appear
34 at the hearing, and to present information by proffer or otherwise.
35 The rules concerning admissibility of evidence in criminal trials do

1 not apply to the presentation and consideration of information at the
2 hearing. The facts the judicial officer uses to support a finding that
3 no condition or combination of conditions will reasonably assure the
4 safety of any other person and the community must be supported by clear
5 and convincing evidence.

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

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

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

18 (2) Advise the defendant of:

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

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

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

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

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

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

33 (2) The judicial officer may, by subsequent order, permit the
34 temporary release of the person, in the custody of an appropriate law
35 enforcement officer or other appropriate person, to the extent that the

1 judicial officer determines such release to be necessary for
2 preparation of the person's defense or for another compelling reason.

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

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

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

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

17 NEW SECTION. **Sec. 15.** This act expires July 1, 2011.

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