

SENATE BILL REPORT

SB 5056

As of February 9, 2011

Title: An act relating to bail and pretrial release practices.

Brief Description: Concerning bail and pretrial release practices.

Sponsors: Senators Kline, Carrell, Hargrove, Pflug, Nelson, Harper, Kohl-Welles, Regala and Roach.

Brief History:

Committee Activity: Judiciary: 1/12/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: In 2010 the Legislature passed SSB 6673 (Chapter 256, Laws of 2010) which created the Bail Practices Work Group to study bail practices and procedures in a comprehensive manner, and make recommendations to the Governor, the Supreme Court, and the Legislature. The Work Group and its subcommittees met many times over the 2010 interim and provided a report and recommendations to the Legislature in December, along with the following legislation.

Summary of Bill: The Administrator for the Courts (AOC) must provide superior courts and courts of limited jurisdiction access to the risk assessment tool developed by the Washington State Institute for Public Policy (WSIPP). The Washington State Center for Court Research (WSCCR) must research, evaluate, monitor, and report on the validity of the risk assessment tool to ensure the predictive value of the tool. Every two years, starting on December 1, 2012, the WSCCR must submit a report and recommendations regarding the validity of the risk assessment tool to the Governor, the Supreme Court, and the Legislature.

A court may, in its consideration of pretrial release or detention, issue an order requesting information related to mental health services that a defendant has received. On motion of the defendant or the court, the court can exclude the public from the hearing, seal portions of the hearing record or court files, or grant other relief as may be necessary to prevent public disclosure.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

WSIPP must develop and validate a pretrial risk assessment tool to assess whether an individual is likely to fail to appear at subsequent court hearings. The tool must be ready by December 1, 2011. WSIPP must submit a report, describing the methodology for developing and validating the pretrial risk assessment tool and the predictive value of the tool, to the Governor, the Supreme Court, and the Legislature by December 1, 2011.

Courts must notify sureties of a defendant's failure to appear within 14 calendar days of the date on which the defendant failed to appear, rather than 30 days.

A surety may surrender a client in a criminal case for good cause and if accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for surrender. If the court finds that good cause does not exist for the surrender, the surety must return the premium paid as well as any recovery fee.

The presiding judge of a court must notify AOC when the court revokes the justification or certification of a bail bond agent to post bonds in the court. This notice must include the reasons for revocation. Once AOC receives the information it must notify superior courts and courts of limited jurisdiction statewide.

Police officers are required to complete a standardized form at the time of arrest that includes, to the extent that it is available, information regarding a defendant's mental health and any history of domestic violence and also includes victim input regarding the pretrial release of the defendant.

"Bond limits" are defined as the maximum amount that a bail bond agent may write on any single commercial surety bond or any single commercial property bond. A "commercial property bond" is defined as a bail bond executed for compensation, the security for which is real property, tangible property, or other assets. A "commercial surety bond" is defined as a bail bond that is guaranteed by an insurance company that has been qualified to transact surety insurance business in Washington State by the Insurance Commissioner.

Applicants who intend to obtain a bail bond agent license are required to demonstrate proof of financial responsibility, in addition to various other requirements.

Applicants who intend to post commercial surety bonds are required to file with the Department of Licensing (DOL): (1) any outstanding bonds in Washington not yet exonerated; (2) any bond forfeitures that have not yet been paid or are in dispute; (3) a declaration listing all criminal convictions, previous disciplinary action, or investigations undertaken by the department; (4) a copy of the power of attorney for each surety; (5) a copy of the applicant's license issued by the Office of the Insurance Commissioner (OIC); and (6) a copy of the corporate surety's certificate of authority issued by the OIC.

Applicants who intend to post commercial property bonds are required to file with DOL: (1) any outstanding bonds in Washington not yet exonerated; (2) any bond forfeitures that have not yet been paid or are in dispute; (3) a declaration listing all criminal convictions, previous disciplinary action, or investigations undertaken by the department; (4) a list of all real property owned by the applicant and located in Washington, including an appraisal that is not more than two years old, a title letter, and property tax statements; (5) a list of tangible

personal property in Washington owned by the applicant; and (6) a list of irrevocable letters of credit or other bank accounts that are accessible only to a court for the purpose of paying a forfeited bond.

Bail bond agent applicants are required to complete a records check through the Washington State Patrol Criminal Identification System and through the Federal Bureau of Investigation.

A bail bond agent license card is required to indicate the licensee's bond limit for commercial surety bonds and commercial property bonds.

The surety bond, that a bail bond agent is required to either file with DOL or deposit into a trust account, is increased from \$10,000 to \$100,000.

DOL is allowed to audit licensee trust accounts every two years unless the licensee annually submits a financial report to DOL that has been prepared by a certified public accountant.

It is considered unprofessional conduct for a bail bond agent to enter into a contract, including a general power of attorney, with a person that gives the bail bond agent full authority over the person's finances, assets, real property, or personal property.

DOL is responsible for determining whether an applicant for a bail bond agent license has demonstrated proof of financial responsibility. In doing so, DOL may not take into consideration a bank account other than an irrevocable letter of credit or other bank account accessible solely for the purpose of paying a forfeited bond. When an applicant is determined to be financially responsible, DOL determines the applicant's bond limit for commercial surety bonds and commercial property bonds.

Prosecuting attorneys and general court personnel are added to the list of persons who are authorized to obtain mental health information about a person who: (1) is currently in the custody of or supervised by the Department of Corrections or the Indeterminate Sentence Review Board; (2) has been convicted or found guilty by reason of insanity of a serious violent offense; or (3) was charged with a serious violent offense and such charges were dismissed under the statutes relating to mental competency.

Appropriation: The bill has multiple appropriations; please refer to the bill.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: OTHER: This bill omits how much money an individual needs to get out of jail on bail. We now know that the once common understanding that an individual had to post 10 percent is, in fact, not true. We do not have certainty when it comes to bail. The judge, as an elected official, should be the person who makes the bail decision. Individuals should not be able to shop bail agencies to determine

which one will require the least amount of money down. Further, if bail bondsmen set the bail amount, the judges are left out of the equation.

There should be a thoughtful discussion about defining bail. There can be unexpected repercussions. We should also be mindful of the impacts a definition might have on counties.

Judges want to know what it means when they set an individualized bail amount, not just because of an individual's likelihood of failure to appear but more importantly because of the danger to the community the individual might pose.

Judges should have the risk assessment tool, together with additional tools, at their disposal, but it should not be required that they use the tool. Rather, it should be made accessible to them. It may not make sense for some courts to use the tool.

The Department of Corrections risk assessment tool was created to determine recidivism. When the tool was developed, experts expressed concern about the tool being used in circumstances in which it was not intended. The risk assessment tool may disproportionately impact minorities.

Judges have plenty of discretion but not enough information and the tool, while still being improved upon, would be a good addition to the information that is already available to them. Thurston County currently uses the risk assessment tool and it has lowered its jail population. Judges can make better decisions with more information.

The risk assessment tool may cost more than was initially set out in the bill. They grossly underestimated how much it would cost to make the tool accessible statewide.

There is concern that police officers could be held liable for information included in the superform.

It is important to take a look at the sections dealing with mental health to determine whether the statute violates HIPAA. Further, there is concern about what courts will be doing with the mental health information they receive. Providing this information to the courts may be detrimental to the individuals with mental illnesses due to stigma and stereotyping. It may also overpopulate the jails with people with mental illnesses. Decisions by the court should be made based on current mental health rather than previous mental health information.

A statewide justification system is unnecessary. Bail is currently justified on a county by county basis. It should just be removed from the bill. Having bail agents prove financial responsibility is unnecessary and would be too difficult to regulate.

Persons Testifying: OTHER: Mark Roe, Washington Association of Prosecuting Attorneys; Candice Bock, Association of Washington Cities; Brian Enslow, Washington State Association of Counties; John Sinclair, Washington Association of Criminal Defense Lawyers; David Lord, Disability Rights Washington; Shankar Narayan, ACLU; Judge Marilyn Paja, District and Municipal Court Judges Association; Judge Steve Warning, Superior Court Judges Association; Mellani McAleenan, Board for Judicial Administration; Kim Shomer, Shomer Law Firm; Dylan Doty, Denny Behrend, Washington State Bail Agents Association; Holly Chisa, Aladdin Bail Bonds.