

SENATE BILL REPORT

SB 5056

As of February 25, 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, 2/08/11, 2/11/11 [DPS].
Ways & Means: 2/24/11.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5056 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles, Regala and Roach.

Staff: Juliana Roe (786-7438)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jenny Greenlee (786-7711)

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 (Recommended Substitute): Subject to the availability of funds, 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). Subject to the availability of funds, the Washington State Center for Court Research (WSCCR) must research, evaluate, monitor, and report on the validity of the

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.

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. The information that may be requested is limited to information related to violent acts. The court may delay the setting of bail pending receipt of the information, not to exceed 48 hours.

Subject to the availability of funds, 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. Good cause does not include circumstances in which the client failed to make timely payment to the surety for the bond premium.

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.

AOC is required to develop a model form that law enforcement and jails may use to collect information about persons arrested or held in custody so that courts have more information at the bail hearing. The information includes any history of domestic violence, protection orders known to law enforcement or the facility holding the person, and input from individuals reasonably believed to be a victim of the person in custody regarding pretrial release determinations.

A property bond is defined as a bail bond executed for compensation, the security for which is real property, tangible property, or other assets. A 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.

A surety agency is required to file a bond, with the Department of Licensing (DOL) or deposit into a trust account, in the amount of \$10,000. A property bond agency is required to file a bond, with DOL or deposit into a trust account, in the amount of \$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. Failing to reasonably disclose, when requested by law enforcement, information within the bail agent's possession concerning the location of a fugitive criminal defendant is also considered unprofessional conduct.

Surety insurance is subject to the rate standard set forth in the current insurance code.

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.

The bill contains a null and void clause.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): Courts will be provided access to the risk assessment tool, subject to the availability of funds.

WSSCR must monitor, research, evaluate and report on the validity of the DOC risk assessment tool, subject to the availability of funds.

WSIPP must create an FTA risk assessment tool, subject to the availability of funds.

Information, that a court is allowed to request relating to mental health services that have been provided to the defendant, is limited to violent acts. The court may delay the setting of bail pending receipt of the information, not to exceed 48 hours.

AOC is required to develop a model form that law enforcement and jails can use to collect information about persons arrested or held in custody so that courts have more information at the bail hearing. The information includes any history of domestic violence, protection orders known to law enforcement or the facility holding the person, and input from individuals reasonably believed to be a victim of the person in custody regarding pretrial release determinations.

The terms commercial property bond and commercial surety bond are changed to property bond and surety bond.

The requirement that an applicant for a bail bond agent license demonstrate proof of financial responsibility is removed.

The requirement that applicants who intend to post commercial surety bonds and commercial property bonds file information and documents with the department is removed.

The requirement that the bail bond agent license card indicate the licensee's bond limit is removed.

Qualified bail bond agents are required to file bonds of \$10,000 for surety agencies and \$100,000 for property bond agencies.

Surrendering a person without good cause is considered unprofessional conduct. Good cause to surrender a person does not include a failure to make timely payments to the surety for the bond premium. Surrender must be made to the county or city jail affiliated with the court issuing the warrant rather than to the facility in which the person was originally held in custody.

The act of a bail agent failing to disclose information about the location of a fugitive criminal defendant when requested by law enforcement is unprofessional conduct.

The requirement that DOC look at an applicant's proof of financial responsibility to set bond limits is considered unprofessional conduct is removed.

The requirement that information and records be disclosed to a court, prosecuting attorney, and defense attorney for the purpose of determining conditions of pretrial release or detention is removed.

All sections appropriating money are removed.

Surety insurance is subject to the rate standard set forth in the current insurance code.

If specific funding is not included for sections one through three, the sections are null and void.

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 on Original Bill (Judiciary): 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 (Judiciary): 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.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):
PRO: The Governor requested a taskforce to develop a bail omnibus bill. There have been many meetings on this bill and it contains 15 recommendations from the taskforce. This bill does cost money but the section related to developing the risk assessment tool is critical. If

the costs are too high, the bill could be amended to contain the risk assessment and provisions that do not cost money. Please keep the bill moving even if it is amended. The risk assessment tool will help ensure that dangerous people are not put out on bail.

OTHER: This bill allows the release of mental health information to prosecutors. Prosecutors do not currently get access to mental health data and it is likely in conflict with the federal HIPAA law and is inviting a lawsuit. There are two risk assessments in the bill. The one currently used in the Department of Corrections is not appropriate for courts and creates unnecessary expense. The second risk assessment that specifically looks at bail practices is more useful and a more appropriate investment. Having the right tool for bail risk assessments will help make the system more fair. Two separate tools dilutes the ability to have the right tool. The pre-trial risk assessment tool is the right one to work on.

Persons Testifying (Ways & Means): PRO: Senator Kline, prime sponsor.

OTHER: Bob Cooper, Washington Defenders Association, Washington Association of Criminal Defense Lawyers; Shankar Narayan, American Civil Liberties Union of Washington.