

HOUSE BILL REPORT

HB 1312

As Reported by House Committee On: Public Safety

Title: An act relating to the limited exoneration of bail forfeitures in instances where the prosecuting agency declines extradition of a defendant.

Brief Description: Concerning the limited exoneration of bail forfeitures in instances where the prosecuting agency declines extradition of a defendant.

Sponsors: Representatives Goodman and Moscoso.

Brief History:

Committee Activity:

Public Safety: 1/27/15, 2/20/15, 1/26/16, 1/29/16 [DPS].

Brief Summary of Substitute Bill

- Requires a court to vacate a bail forfeiture and return a bond to a surety when a prosecuting attorney elects not to seek extradition of a defendant who is outside of the jurisdiction.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Minority Report: Without recommendation. Signed by 1 member: Representative Hayes, Assistant Ranking Minority Member.

Staff: Kelly Leonard (786-7147).

Background:

Pretrial release is the release of a defendant from custody pending trial. A personal recognizance release is the release of the defendant from custody solely upon his promise to appear for future court proceedings. Bail allows the defendant to be released from custody

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only upon the posting of cash or other security with the court. The property is held as collateral to assure the defendant's appearance in future court proceedings. The state Constitution guarantees the right to bail for people charged with noncapital crimes, and this right has been interpreted as the right to a judicial determination of either personal recognizance release or reasonable bail.

Bail is fulfilled by the posting of a bond. The defendant may post cash, securities, or other liquid assets to satisfy the amount of the bond. Alternatively, the defendant may seek a professional bail bondsperson, also referred to as a surety or bail bond agent, to post the bond in return for payment of a premium based on a percentage of the bond amount. The surety agrees to account for the appearance of the defendant at required times or else forfeit the bond. If a defendant has been released on bail and he or she willfully fails to appear in court, then the court may order a forfeiture of the bond and issue an arrest warrant for the defendant.

After a forfeiture is ordered, the surety can still obtain a return of the bond from the court if the defendant is returned to custody or produced in court within 12 months. In such cases, the surety is entitled to the full amount of the bond, less any and all costs incurred by law enforcement in transporting, locating, apprehending, or processing the return of the defendant, if he or she was directly responsible for apprehending the defendant or producing the defendant in court.

Summary of Substitute Bill:

If a forfeiture has been entered and the defendant is located in a jurisdiction beyond the jurisdiction of the court, the court must return the bond to the surety, as long as all of the following apply:

- the defendant is in custody, or the defendant is temporarily detained in the presence of a local law enforcement officer who has positively identified the defendant;
- there is no executable warrant to extradite the defendant;
- the surety submitted a written request for an extradition warrant to the prosecuting attorney; and
- 72 hours have passed since the submission of the written request, or the surety has received a signed affidavit from the prosecuting attorney specifying that he or she is not going to seek extradition.

The full amount of the bond must be returned to the surety, less any and all costs determined by the court to have been incurred by law enforcement in transporting, locating, apprehending, or processing the return of the defendant.

Substitute Bill Compared to Original Bill:

The substitute bill requires the following additional factors to be met prior to the court remitting bail in the underlying bill: there is no executable warrant to extradite the defendant; the surety submitted a written request for an extradition warrant to the prosecuting attorney informing him or her of the location of the defendant; and the surety has received a

signed affidavit from the prosecuting attorney specifying that he or she is not seeking extradition, or 72 hours have passed since submitting the request to the prosecuting attorney.

The substitute bill specifies the bail bond agent is entitled to the full bond except for any and all costs determined by the court to have been incurred by law enforcement in transporting, locating, apprehending, or processing the return of the defendant (rather than on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release).

The substitute bill changes references to "bail agent" to "surety," and it reorganizes subsections and makes technical changes.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill addresses situations where a court has ordered a bond forfeited and a defendant is not going to be extradited to face the underlying charges. The bail bond agent does not have any recourse even if he or she finds a defendant.

Bail bond agents are very good at finding defendants who skip bail. If a defendant is in a different jurisdiction, the bail bond agent needs something to demonstrate they have the right to take the defendant into custody and bring them to the original jurisdiction. This requires the prosecuting agency to enter the warrant into the National Crime Information Center (NCIC) system. Practices vary widely across jurisdictions with respect to extradition warrants and NCIC entries. When an agency chooses not to do this, then a bail bond agent does not have the authority to bring the defendant to the original jurisdiction. Prosecutors and law enforcement have a difficult and busy job to do; however, current law allows them to do a cost benefit analysis of whether to extradite the defendant or keep the bail bond money. It creates a disincentive for extraditing a defendant.

Bail bond agents are not trying to shift costs to local governments. Bail bond agents are willing to pay extradition costs. Local governments, on the other hand, are not wanting to pay for costs of prosecution and are choosing not to extradite defendants. In such cases, the bond should not be forfeited at the expense of bail bond agents. This is an unfair money grab. The victims do not get their day in court and honest business persons are penalized. The bill prevents this from happening. If a prosecutor chooses not to extradite a defendant, then the bond should be exonerated and the bail bond agent should be released from his or her obligations.

(Opposed) A bail bond agent should not get a bond back when failing to fulfill the promise to guarantee a defendant's future appearance in court.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Dylan Doty and David Regan, Washington Bail Agents Association; and Denny Behrend, Washington Bail Association.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.