
Public Safety Committee

HB 2679

Brief Description: Concerning pretrial release programs.

Sponsors: Representative Klippert.

Brief Summary of Bill

- Specifies that pretrial release programs may include programs in superior, district, or municipal courts, and that the statutory provisions relating to conditions of release apply to felony, misdemeanor, and gross misdemeanor cases.
- Expands the statutory purposes for imposing conditions of release to include protecting the public from harm.

Hearing Date: 1/29/18

Staff: Omeara Harrington (786-7136).

Background:

Pretrial release is the release of the defendant from detention pending trial. The Washington Constitution guarantees a right to pretrial release for most criminal defendants. Under court rule, there is a presumption that an accused person should be released on personal recognizance with no conditions unless the court determines that either: (1) the release on recognizance will not reasonably assure that the accused will appear; or (2) there is a likely danger that the accused will commit a violent crime or interfere with the administration of justice. The rule provides courts with factors to consider in determining whether the accused is a flight risk or likely dangerous. If these circumstances are found, the court may impose conditions of release.

Statutes supplement the court rules governing pretrial release. Under statute, in determining whether there are conditions of release that will reasonably assure the safety of any other person and the community, the court must take into account available information concerning:

- the nature and circumstances of the offense charged, including whether the offense is a crime of violence;

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- the weight of the evidence against the defendant;
- the history and characteristics of the defendant, including, but not limited to: physical and mental condition; family and community ties; employment; financial resources; criminal and drug or alcohol abuse history; and history of appearance at court proceedings;
- whether, at the time of the current offense or arrest, the defendant was on supervision or on other release pending trial or post-conviction; and
- the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

Appropriate conditions of release that the court may impose include:

- requiring the defendant's supervision by an officer of the court or other person or agency, or placing the defendant in a pretrial release program;
- placing restrictions on the defendant's travel, association, or place of residence;
- requiring the defendant to comply with a curfew, return to custody during specified hours, or to comply with electronic monitoring or home detention;
- prohibiting the defendant from visiting certain geographical areas or premises;
- prohibiting the defendant from possessing any dangerous weapons or firearms;
- prohibiting the defendant from possessing or consuming alcohol or non-prescribed drugs, and requiring the defendant to submit to testing to determine compliance with this condition;
- requiring that the defendant not operate any motor vehicle unless equipped with an ignition interlock device; and
- prohibiting the defendant from committing any crime.

A "pretrial release program" is any program, either run directly by a county or city, or by a private or public entity through contract with a county or city, into whose custody an offender is released prior to trial for supervision. Supervision includes, but is not limited to, work release, day monitoring, electronic monitoring, or participation in a 24/7 Sobriety Program.

"Home detention" is a program of partial confinement available to offenders subject to electronic home monitoring, in which the offender is confined in a private residence 24 hours a day, unless otherwise authorized by the court or other supervising agency.

In a recent Washington Supreme Court case, *Blomstrom v. Tripp*, the court determined that a court of limited jurisdiction lacked the authority of law required to overcome constitutional privacy rights in imposing urinalysis as a pretrial condition for non-felony defendants. The court reasoned that current statutory authority is limited either to felony cases or cases involving specified circumstances and criminal history, and no authority is provided in court rule for imposing such conditions absent a nexus to risk of non-appearance, intimidation of witnesses, or likely commission of a violent crime.

Summary of Bill:

Legislative intent is stated that, while the primary function of bail is to assure an accused's reappearance in court, courts are allowed to pursue other compelling interests through pretrial release, including public safety. In addition, the Legislature intends to require an individualized determination of release for persons in custody.

Changes are made throughout the chapter on pretrial release to specify the types of cases and levels of court to which the provisions apply. It is specified that a "pretrial release program" may be a program in superior, district, or municipal court. The definition of "home detention" is specific to persons charged with a felony who are ordered to home detention. The provisions authorizing judicial officers to impose conditions of release and providing considerations for determining conditions of release apply to any felony, misdemeanor, or gross misdemeanor case.

The statutory purposes for conditions of release are expanded to include protecting the public from harm.

Appropriation: None.

Fiscal Note: Requested on January 26, 2018.

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