

# SENATE BILL REPORT

## SB 5987

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As Amended by House, February 28, 2018

**Title:** An act relating to pretrial release programs to protect the public from harm.

**Brief Description:** Concerning pretrial release programs.

**Sponsors:** Senator Padden.

**Brief History:**

**Committee Activity:** Law & Justice: 1/16/18, 1/25/18 [DP].

**Floor Activity:**

Passed Senate: 2/08/18, 47-0.

Passed House: 2/28/18, 98-0.

**Brief Summary of Bill**

- Allows the imposition of conditions of release for any felony, gross misdemeanor, or misdemeanor case.
- Requires protecting the public from harm as a purpose for imposing conditions of release.
- Clarifies that a pretrial release program is any program in superior, district, or municipal courts.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

**Staff:** Tim Ford (786-7423)

**Background:** The state Constitution guarantees the right to bail for the accused except if charged with a capital offense or an offense punishable by the possibility of life in prison. A judicial officer has discretion to release a person pending trial upon the payment of bail, or on personal recognizance, with or without certain additional conditions of release, except as described in the Constitution.

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*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.*

Conditions of release must be imposed to assure the appearance of the defendant at trial, or prevent interference with the administration of justice.

A judicial officer must consider several factors when deciding whether to impose conditions of release including:

- the nature and circumstances of the offense charged, including whether the offense is a crime of violence;
- the weight of the evidence against the defendant; and
- the history and characteristics of the defendant, including: (1) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; (2) whether, at the time of the current offense or arrest, the defendant was on community supervision, probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law; and (3) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

Conditions of release may include being placed in the custody of a pretrial release program. A pretrial release program is any program, public or private, which supervises an offender released from custody prior to trial. Supervision can refer to any of a range of programs including, but not limited to, home detention, work release, day monitoring, or electronic monitoring. Home detention is partial confinement available to offenders where the offender is confined in a private residence 24-hours a day, unless an absence from the residence is permitted in a court order, and the offender is subject to electronic monitoring.

A pretrial release program may not agree to supervise or accept into its custody an offender who is currently awaiting trial for a violent offense or sex offense, and who has been convicted of one or more violence offenses or sex offenses in the ten years before the date of the current offense, unless the offender's release before trial was secured with payment of bail.

In 2010, the Legislature enacted conditions of release for persons in custody for felony. A recent Supreme Court decision in *Blomstrom v. Tripp* ruled that certain conditions of release such as pretrial urine analysis testing in DUI cases is unconstitutional. The court stated in part that the relevant statute does not apply to any charge other than a felony charge. The defendants in the *Blomstrom* case had no prior convictions for DUI and their charges were misdemeanors, not felonies.

**Summary of Bill:** Clarifies that a pretrial release program is any program in superior, district, or municipal courts. Home detention may include a person charged with a felony offense. Conditions of release may be imposed in any felony, gross misdemeanor, or misdemeanor case. The purposes allowing conditions of release must include protecting the public from harm.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: Judges throughout the state have had the authority to order pretrial conditions of release including random tests for drug or alcohol related offenses. The supreme court overturned this authority in a 5-4 decision. This bill will restore the authority of trial court judges. This is in lieu of things that might be harsher. A judge could increase bail or impose jail pending trial instead of pretrial release with conditions. This is a public safety issue. Offenders awaiting trial could consume alcohol or other drugs and potentially harm the community. Pretrial conditions including urinalysis testing is reasonable to protect public safety. Judges are looking for the least restrictive means of detention but at the same time we want to combine that with protecting public safety. This bill is a good clear statement that judges have the tools to do their job. If all we have is cash bail then there would be inequities since the rich would afford bail and the poor would stay in jail.

CON: This bill could negatively affect pretrial and bail reform efforts by significantly increasing pretrial detention and therefore mass incarceration. It could create disproportionate enforcement among different courts. Court rule 3.2 is the primary legal framework for pretrial release and detention decisions. It ensures a presumption of innocence is maintained. This bill could conflict with rule 3.2. That rule authorizes a person to be held if there is a risk that he or she will commit violent offenses. The bill indicates that courts are allowed to compel other interests including public safety. This broadly defined term would result in many persons being detained during pretrial.

**Persons Testifying:** PRO: Senator Mike Padden, Prime Sponsor; Sam Meyer, District and Municipal Court Judges Association; Stephen Warning, Superior Court Judges Association; Jon Tunheim, WAPA, Thurston County Prosecuting Attorney; James McMahan, Washington Association of Sheriffs & Police Chiefs.

CON: Elisabeth Smith, ACLU of Washington.

**Persons Signed In To Testify But Not Testifying:** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Clarifies the authority of a municipal, district, or superior court judicial officer in a felony or non-felony case, to impose a pretrial release condition prohibiting alcohol and non-prescribed drug use, with compliance testing, if the judicial officer determines the condition is necessary to protect the public from harm.