

SENATE BILL REPORT

SB 5307

As of February 1, 2021

Title: An act relating to the uniform pretrial release and detention act.

Brief Description: Establishing the uniform pretrial release and detention act.

Sponsors: Senators Pedersen, Dhingra, Darneille, Das and Nguyen; by request of Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 2/01/21.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Creates the Uniform Pretrial Release and Detention Act.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Preliminary court proceedings for the pretrial release or detention of an accused is largely governed by court rules.

Arrest and Probable Cause. A person who is arrested must have a judicial determination of probable cause no later than 48 hours following their arrest, unless probable cause has been determined prior to such arrest. The court shall determine probable cause based on an affidavit, or sworn testimony. If the court does not find probable cause that the defendant committed the offense charged, the accused shall be released without conditions.

Pretrial Release. Pretrial release is the release of a defendant from custody pending trial. Even where a court finds probable cause that the defendant committed the offense charged, there is a presumption of pretrial release in cases other than capital offenses unless:

- there is a likelihood the defendant will fail to appear for future court proceedings;

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- the defendant is likely to intimidate witnesses or interfere with the administration of justice; or
- the defendant is likely to commit a violent crime.

There are different methods in which a court may order a pretrial release. A personal recognizance release is the release of the defendant from custody solely upon the defendant's promise to appear for future court proceedings.

Likelihood of Failure to Appear. If the court determines the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

- place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- place restrictions on the travel, association, or place of abode of the accused during the period of release;
- require the execution of an unsecured bond in a specified amount;
- require the execution of a bond or the deposit of cash;
- require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or
- impose any condition other than detention deemed reasonably necessary to assure appearance as required.

If the court determines the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

In determining which conditions of release will reasonably assure the accused's appearance, the following facts may be considered including but not limited to the accused's:

- history of response to orders to personally appear;
- employment status, educational status, participation in counseling or treatment, volunteer work in the community, and so on;
- family relationships, reputation, character and mental condition;
- residence in the community;
- criminal record and the nature of the charge if relevant to the risk of nonappearance; and
- other relationships to community or to persons willing to assist the defendant in complying with conditions of release.

Violent Crime, Intimidating Witnesses, Interference with the Administration of Justice.

Upon a showing of a substantial danger that the accused will commit a violent crime, or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following conditions:

- prohibit the defendant from approaching or communicating in any manner with particular persons;
- prohibit the accused from going to certain geographical areas or premises;
- prohibit the accused from possessing any dangerous weapons or firearms, or consuming any intoxicating liquors or drugs not prescribed to the accused;
- require the accused to report regularly to and remain under supervision of the court or agency;
- prohibit the accused from committing any crime; or
- require the accused to post a secured or unsecured bond or deposit cash only if no less restrictive condition would assure the safety of the community.

If the court determines the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

These conditions are nonexclusive and the court may also consider other conditions such as the conditions where a defendant is unlikely to appear.

The court must consider relevant facts in determining which conditions of release will apply, such as the accused's:

- criminal record;
- relations with individuals or community to assist the accused in complying with conditions of release;
- offense charged;
- reputation, character, and mental condition;
- past or present record of threats to victims or witnesses, or interference with witnesses or the administration of justice;
- record of committing offenses while on pretrial release, probation, or parole; and
- record of use of or threatened use of deadly weapons or firearms, especially to victims or witnesses.

Delay of Release. The court may delay release of a person in the following circumstances:

- if the person is intoxicated and release will jeopardize the person's safety or that of others; or
- for interview by a mental health professional for possible commitment to a mental treatment facility.

Unless other grounds exist for continued detention, a person must be released from detention not later than 24 hours after the preliminary appearance.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Arrest and Detention. A police officer who arrests an individual without a warrant shall detain the individual in a detention or custodial

facility until the individual's first post-arrest appearance only upon probable cause to believe that the individual:

- committed a crime against another individual;
- committed a crime for which a statute provides that a police officer shall arrest and take into custody;
- will commit a violent crime, including misdemeanors and gross misdemeanors that are not defined as violent offenses or will seek to intimidate witnesses, or interfere with administration of justice; or
- is unlikely to respond to legal process based upon the totality of circumstances, including but not limited to the individual's mental condition or impairment, length of residence in the community, criminal history including the existence of pending charges, the existence of arrest warrants for the individual, any pending criminal charges, the willingness of responsible members of the community to assist the individual in appearing for required hearing, and any other factors indicating the individual's ties to the community.

An individual arrested without a warrant may be administratively booked for the purpose of photographing and fingerprinting upon probable cause to believe the individual has committed a gross misdemeanor or felony.

Release Hearing. For any individual detained after arrest, the court shall hold a release hearing within 48 hours after the arrest. The release hearing may be continued to a later time by the court only on motion of the arrested individual, or in extraordinary circumstances, for not more than 48 hours.

An arrested individual has a right to be heard and a right to counsel at a release hearing. If the individual is unable to obtain counsel for the hearing, an authorized public defense services agency or provider shall provide counsel.

At a release hearing, the court shall determine by clear and convincing evidence whether the arrested individual poses a risk that the individual is likely to:

- abscond;
- not appear;
- obstruct justice;
- violate an order of protection; or
- there is substantial risk the arrested individual will commit a violent crime.

Relevant facts for a court to consider include:

- available information concerning the nature, seriousness, and circumstances of the alleged offense; the weight of the evidence against the individual; the individual's criminal history, history of absconding or nonappearance, and community ties; and whether the individual has a pending charge in another matter or is under criminal justice supervision;
- any relevant information provided by a pretrial services agency; and

- other relevant information, including information provided by the individual, the prosecuting attorney, or an alleged victim.

If the individual does not pose a risk then the court shall issue an order of pretrial release on recognizance. The order must state when and where the individual must appear and the possible consequences of violating the order or committing an offense while the charge is pending.

If the court determines an arrested individual poses a relevant risk, the court shall determine whether pretrial release with conditions is appropriate. The court may determine that practical assistance or voluntary support services are available and sufficient to address the risk. Practical assistance may include delayed release up to 24 hours for an intoxicated individual when release would be unsafe, or for transfer to a treatment facility for custody and care. Voluntary support services may include pretrial services programs, housing support programs, pretrial release programs, and other available programs for which an arrested individual qualifies. A pretrial release order may refer an individual to those programs for assistance.

If practical assistance or a voluntary support service is not sufficient to address a risk, the court shall impose the least restrictive conditions reasonably necessary to satisfactorily address the risk and issue an order of pretrial release. A restrictive condition includes:

- mandatory therapeutic treatment or social services;
- a requirement to seek to obtain or maintain employment or maintain an education commitment;
- a restriction on possession or use of a weapon;
- a restriction on travel;
- a restriction on contact with a specified person;
- a restriction on a specified activity;
- supervision by a pretrial services agency or another person;
- active or passive electronic monitoring;
- home detention;
- a secured appearance bond or unsecured appearance bond;
- a condition proposed by the arrested individual, the prosecuting attorney, or an alleged victim;
- any other non-financial condition required by law of this state other than this act; or
- any other condition to satisfactorily address the relevant risk.

The court shall state in a record the reasons the restrictive conditions imposed are the least restrictive reasonably necessary to satisfactorily address the relevant risk.

The court may not impose a restrictive condition that requires initial payment of a fee in a sum greater than the arrested individual is able to pay from personal financial resources within 24 hours after the condition is imposed. If the individual is unable to pay the fee or recurring fee, the court shall waive or modify the fee, or waive or modify the restrictive

condition that requires payment of the fee, to the extent necessary to release the individual.

Before imposing a secured or unsecured bond the court shall consider the arrested individual's personal financial resources and obligations, including income, assets, expenses, liabilities, and dependents. The court may not impose a secured appearance bond as a restrictive condition unless the court determines by clear and convincing evidence that the arrested individual is likely to abscond, not appear, obstruct justice, or violate an order of protection.

The court may issue an order to detain the arrested individual temporarily until a detention hearing, or may impose a financial condition of release in an amount greater than the individual is able to pay from personal financial resources within 24 hours after the condition is imposed, only if the individual is charged with a offense with a penalty of life in prison, or a class A or B felony, and the court determines by clear and convincing evidence that:

- it is likely the individual will abscond, obstruct justice, violate an order of protection, or there is substantial risk the arrested individual will commit a violent crime and that no less restrictive condition is sufficient to satisfactorily address the relevant risk;
- the individual has violated a condition of an order of pretrial release for a pending criminal charge; or
- it is likely the individual will not appear, and no less restrictive condition is sufficient to satisfactorily address the relevant risk.

When imposing a detention order, the court shall state its reasons in a record, including why no less restrictive conditions are sufficient.

Detention Hearing. Subsequent to a temporary pretrial detention order at a release hearing, the court shall hold a detention hearing to consider continued detention of the individual pending trial. The hearing must be held within three days, not including any intermediate Saturday, Sunday, or legal holiday, after issuance of the order. The detained individual has a right to counsel, and if indigent, a public defense services agency or provider shall provide counsel. At a detention hearing, the detained individual has a right to:

- review evidence to be introduced by the prosecuting attorney before it is introduced at the hearing;
- present evidence, call witnesses, and provide information;
- testify; and
- cross-examine witnesses.

The purpose of the detention hearing is to more thoroughly review the detention order previously issued in the release hearing. There must be clear and convincing evidence to continue a pretrial detention order based on the same factors considered in the release hearing.

Juveniles. This act does not distinguish between adults and juveniles. There is governing

authority under the Juvenile Justice Act of 1977 and the juvenile court rules for the pretrial detention and release of juveniles in the juvenile court system. This act does not amend that statutory authority for juveniles who go before a juvenile court.

Appropriation: None.

Fiscal Note: Requested on January 30, 2021.

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 On Proposed Substitute: PRO: As we think about how to reduce racial disproportionality in the criminal justice system, it is important for us to think about our use of bail for people who are accused but not convicted. There is a strong presumption of innocence and keeping someone in jail for an inability to pay bail interferes with their freedom and may cause a downward spiral for people who may lose their job, housing and family. Excessive use of pretrial detention is happening in Washington and leads to an increase of re-offense. Citations over custodial arrest will reduce costs for local government. Money bail fails by unnecessarily detaining low-risk individuals who are unable to pay, and releasing high risk individuals who can afford to pay. Pretrial services can save the state \$6-12 million a year.

CON: The practical impact on the courts of this bill with its short turn around times would stress the entire court system. Opening facilities for extended periods of time would require more jail staff, clerks, court staff, security, and more judges. It would require additional money for attorneys both public defenders and prosecutors. The criminal court rule 3.2 is one of the best in the nation. Bail reform with pretrial services is better. This bill is inconsistent with the criminal court rule 3.2.

OTHER: It is important for victims to have the opportunity to provide input about the risks to victims by the person being released. There needs to be protections during hearings. We are concerned about witness intimidation. That can happen during cross examination. Protection orders are important and if a request for a protection order is denied, then it must be on the record for why it was denied. Electronic monitoring needs to be clarified.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Carl Filler, Justice Action Network; Steven Greenhut, R Street Institute.

CON: Laura Riquelme, Superior Court Judges' Association/Judge; Karen Donohue, Superior Court Judges' Association/Judge; James McMahan, Washington Association Sheriffs and Police Chiefs; Jeffrey Clayton, American Bail Coalition; Dennis Behrend, Lacey O'Malley Bonding & Insurance; Marc Ebel, Aladdin Bail Bonds; Russell Brown, Washington Association of Prosecuting Attorneys; Juliana Roe, Washington State

Association of Counties; Jaime Hawk, ACLU of Washington; Kevin Ringus, DMCJA; Jason Schwarz, Washington Defender Association, Washington Association of Criminal Defense Lawyers.

OTHER: Mary Ellen Stone, King County Sexual Assault Resource Center.

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