
SENATE BILL 5307

State of Washington

67th Legislature

2021 Regular Session

By Senators Pedersen, Dhingra, Darneille, Das, and Nguyen; by request of Uniform Law Commission

Read first time 01/20/21. Referred to Committee on Law & Justice.

1 AN ACT Relating to the uniform pretrial release and detention
2 act; amending RCW 10.19.170 and 10.21.060; adding a new section to
3 chapter 10.31 RCW; adding a new chapter to Title 10 RCW; and
4 providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **ARTICLE 1**

7 **GENERAL PROVISIONS**

8 NEW SECTION. **Sec. 101.** SHORT TITLE. This act may be cited as
9 the uniform pretrial release and detention act.

10 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this
11 section apply throughout this chapter unless the context clearly
12 requires otherwise.

13 (1) "Abscond" means fail to appear in court as required with
14 intent to avoid or delay adjudication.

15 (2) "Charge," used as a noun, means an allegation of an offense
16 in a complaint, information, indictment, or a criminal citation
17 alleging a violation of a criminal law, ordinance, or similar record.

18 (3) "Citation" means a record issued by an arresting officer or
19 other authorized peace officer alleging an offense.

1 (4) "Covered offense" means an offense for which the penalty may
2 be life in prison, for which pretrial detention is authorized under
3 Article I, section 20 of the state Constitution. Covered offense also
4 includes a class A or class B felony, for which a judicial officer
5 must determine the financial conditions for release.

6 (5) "Detention hearing" means a hearing under section 401 of this
7 act.

8 (6) "Not appear" or "nonappearance" means to fail to appear in
9 court as required without intent to avoid or delay adjudication.

10 (7) "Obstruct justice" means interfere with the criminal process
11 with intent to influence or impede the administration of justice.
12 "Obstruct justice" includes intimidating or tampering with a witness
13 or tampering with evidence.

14 (8) "Offense" means conduct that a statute or ordinance
15 proscribes.

16 (9) "Person" means an individual, estate, partnership, business
17 or nonprofit entity, public corporation, government or governmental
18 subdivision, agency, or instrumentality, or other legal entity.

19 (10) "Record" means information that is inscribed on a tangible
20 medium or that is stored in an electronic or other medium and is
21 retrievable in perceivable form.

22 (11) "Release hearing" means a preliminary appearance hearing
23 under section 301 of this act.

24 (12) "Release on recognizance" means pretrial release of an
25 individual with no condition other than to appear in court as
26 required and to abide by generally applicable laws.

27 (13) "Secured appearance bond" means a person's promise, secured
28 by sufficient surety, deposit, lien, or proof of access to
29 collateral, to forfeit a specified sum if the individual whose
30 appearance is the subject of the bond absconds or does not appear.

31 (14) "Unsecured appearance bond" means a person's promise other
32 than through a secured appearance bond to forfeit a specified sum if
33 the individual whose appearance is the subject of the bond absconds
34 or does not appear.

35 NEW SECTION. **Sec. 103.** SCOPE. (1) This chapter governs a
36 determination to arrest, release, or detain an individual before
37 trial.

38 (2) This chapter does not affect the law of this state other than
39 this chapter regarding related matters, including: (a) Forfeiture,

1 release, or collection of a secured appearance bond or an unsecured
2 appearance bond; (b) involuntary civil commitment; (c) a right of a
3 crime victim, including a right of notification; (d) appellate
4 review; or (e) release pending appeal.

5 **ARTICLE 2**

6 **CITATION AND ARREST**

7 NEW SECTION. **Sec. 201.** A new section is added to chapter 10.31
8 RCW to read as follows:

9 (1) A police officer who arrests an individual without a warrant
10 shall detain the individual in a detention or custodial facility
11 until the individual's first postarrest appearance only upon probable
12 cause to believe that the individual:

13 (a) Committed a crime against another individual;

14 (b) Committed a crime for which a statute provides that "a police
15 officer shall arrest and take into custody," including but not
16 limited to crimes identified in RCW 10.31.100(2) and 26.50.110;

17 (c) Will commit a violent crime, including misdemeanors and gross
18 misdemeanors that are not defined as violent offenses in RCW
19 9.94A.030; or will seek to intimidate witnesses, or otherwise
20 interfere with administration of justice; or

21 (d) Is unlikely to respond to legal process based upon the
22 totality of circumstances, including but not limited to the
23 individual's mental condition or impairment, length of residence in
24 the community, criminal history including the existence of pending
25 charges, the existence of arrest warrants for the individual, any
26 pending criminal charges, the willingness of responsible members of
27 the community to assist the individual in appearing for required
28 hearing, and any other factors indicating the individual's ties to
29 the community.

30 (2)(a) Nothing in this section shall preclude an officer from
31 administratively booking an individual who is arrested without a
32 warrant upon probable cause to believe the individual has committed a
33 gross misdemeanor or felony.

34 (b) For purposes of this subsection, "administratively booking"
35 means transporting the individual to a police station or other
36 designated location for the purpose of photographing and
37 fingerprinting as required by RCW 43.43.735 or other statute
38 authorizing the collection of identification data. Once

1 identification data is collected, the individual shall be released
2 upon the individual's promise to appear in court pursuant to a
3 summons or upon the date provided by the arresting officer pursuant
4 to local court rule.

5 (3) An individual who is arrested upon probable cause to believe
6 the individual has committed a crime and who is not detained or
7 administratively booked at the time of arrest shall be photographed
8 and fingerprinted following the individual's first appearance in
9 court for proceedings arising from such arrest for any criminal
10 offense constituting a felony.

11 **ARTICLE 3**
12 **RELEASE HEARING**

13 NEW SECTION. **Sec. 301.** TIMING. (1) Unless an arrested
14 individual is released under section 203 of this act after arrest,
15 the individual is entitled to a hearing to determine release pending
16 trial. Except as otherwise provided in subsection (2) of this
17 section, the court shall hold the hearing within 48 hours after the
18 arrest.

19 (2) The court may continue a release hearing:

20 (a) On motion of the arrested individual; or

21 (b) In extraordinary circumstances, for not more than 48 hours,
22 on its own or on motion of the prosecuting attorney.

23 (3) At the conclusion of a release hearing, the court shall issue
24 an order of pretrial release or temporary pretrial detention.

25 NEW SECTION. **Sec. 302.** RIGHTS OF ARRESTED INDIVIDUAL. (1) An
26 arrested individual has a right to be heard at a release hearing.

27 (2) An arrested individual has a right to counsel at a release
28 hearing. If the individual is unable to obtain counsel for the
29 hearing, an authorized public defense services agency or provider
30 shall provide counsel.

31 NEW SECTION. **Sec. 303.** JUDICIAL DETERMINATION OF RISK. At a
32 release hearing, the court shall determine whether the arrested
33 individual poses a risk that is relevant to pretrial release. The
34 individual poses a relevant risk only if the court determines by
35 clear and convincing evidence that the individual is likely to
36 abscond, not appear, obstruct justice, violate an order of

1 protection, or there is substantial risk the arrested individual will
2 commit a violent crime. The court shall consider:

3 (1) Available information concerning:

4 (a) The nature, seriousness, and circumstances of the alleged
5 offense;

6 (b) The weight of the evidence against the individual;

7 (c) The individual's criminal history, history of absconding or
8 nonappearance, and community ties; and

9 (d) Whether the individual has a pending charge in another matter
10 or is under criminal justice supervision;

11 (2) Any relevant information provided by a pretrial services
12 agency; and

13 (3) Other relevant information, including information provided by
14 the individual, the prosecuting attorney, or an alleged victim.

15 NEW SECTION. **Sec. 304.** PRETRIAL RELEASE. (1) Except as
16 otherwise provided in subsection (2) of this section and section 308
17 of this act, at a release hearing the court shall issue an order of
18 pretrial release on recognizance. The order must state:

19 (a) When and where the individual must appear; and

20 (b) The possible consequences of violating the order or
21 committing an offense while the charge is pending.

22 (2) If the court determines under section 303 of this act that an
23 arrested individual poses a relevant risk, the court shall determine
24 under sections 305 through 307 of this act whether pretrial release
25 of the individual is appropriate.

26 (3) If the court determines under sections 305 through 307 of
27 this act that pretrial release is appropriate, the court shall issue
28 an order of pretrial release. The order must include the information
29 required under subsection (1)(a) of this section and any restrictive
30 condition imposed by the court.

31 NEW SECTION. **Sec. 305.** PRACTICAL ASSISTANCE—VOLUNTARY SUPPORT
32 SERVICES. (1) If the court determines under section 303 of this act
33 that an arrested individual poses a relevant risk, the court shall
34 determine whether practical assistance or a voluntary support
35 service, or both, are available and sufficient to satisfactorily
36 address the risk. Practical assistance may include delayed release
37 for up to 24 hours for an intoxicated individual when release would
38 be unsafe or for transfer to a treatment facility for custody and

1 care as permitted by court rule. Voluntary support services may
2 include pretrial services programs, housing support programs,
3 pretrial release programs provided in RCW 10.21.015, and other
4 available state or community programs for which an arrested
5 individual qualifies.

6 (2) If the court determines that practical assistance or a
7 voluntary support service is available and sufficient to
8 satisfactorily address a relevant risk the court identifies under
9 section 303 of this act, the court shall refer the individual to the
10 practical assistance or voluntary support service and issue an order
11 of pretrial release under section 304(3) of this act.

12 NEW SECTION. **Sec. 306.** RESTRICTIVE CONDITION OF RELEASE. (1) If
13 the court determines under section 305 of this act that practical
14 assistance or a voluntary support service is not sufficient to
15 satisfactorily address a relevant risk the court identifies under
16 section 303 of this act, the court shall impose the least restrictive
17 condition or conditions reasonably necessary to satisfactorily
18 address the risk and issue an order of pretrial release under section
19 304(3) of this act.

20 (2) A restrictive condition under subsection (1) of this section
21 includes:

22 (a) Mandatory therapeutic treatment or social services when
23 authorized pursuant to chapter 71.05 RCW or other applicable laws;

24 (b) A requirement to seek to obtain or maintain employment or
25 maintain an education commitment;

26 (c) A restriction on possession or use of a weapon;

27 (d) A restriction on travel;

28 (e) A restriction on contact with a specified person;

29 (f) A restriction on a specified activity;

30 (g) Supervision by a pretrial services agency or another person;

31 (h) Active or passive electronic monitoring;

32 (i) Home detention;

33 (j) Subject to section 307 of this act, a secured appearance bond
34 or unsecured appearance bond;

35 (k) A condition proposed by the arrested individual, the
36 prosecuting attorney, or an alleged victim;

37 (l) Any other nonfinancial condition required by law of this
38 state other than this act; or

1 (m) Another condition to address satisfactorily the relevant risk
2 the court identifies under section 303 of this act.

3 (3) The court shall state in a record the reasons the restrictive
4 condition or conditions imposed under subsection (1) of this section
5 are the least restrictive reasonably necessary means to
6 satisfactorily address the relevant risk the court identifies under
7 section 303 of this act.

8 NEW SECTION. **Sec. 307.** FINANCIAL CONDITION OF RELEASE. (1)

9 Subject to sections 308 and 403 of this act, the court may not impose
10 a restrictive condition under section 306 of this act that requires
11 initial payment of a fee in a sum greater than the arrested
12 individual is able to pay from personal financial resources within 24
13 hours after the condition is imposed. If the individual is unable to
14 pay the fee, the court shall waive or modify the fee, or waive or
15 modify the restrictive condition that requires payment of the fee, to
16 the extent necessary to release the individual. If the individual is
17 unable to pay a recurring fee, the court shall waive or modify the
18 recurring fee or the restrictive condition that requires payment of
19 the fee.

20 (2) Before imposing a secured appearance bond or unsecured
21 appearance bond under section 306 of this act, the court shall
22 consider the arrested individual's personal financial resources and
23 obligations, including income, assets, expenses, liabilities, and
24 dependents.

25 (3) Subject to sections 308 and 403 of this act, the court may
26 not impose a secured appearance bond as a restrictive condition under
27 section 306 of this act unless the court determines by clear and
28 convincing evidence that the arrested individual is likely to
29 abscond, not appear, obstruct justice, or violate an order of
30 protection.

31 (4) Subject to sections 308 and 403 of this act, the court may
32 not impose a secured appearance bond as a restrictive condition under
33 section 306 of this act:

34 (a) To keep an arrested individual detained;

35 (b) For a charge that is not a felony, unless the individual (i)
36 has absconded; or (ii) did not appear in a criminal case or
37 combination of criminal cases three or more times; or

1 (c) The cost of which is an amount greater than the individual is
2 able to pay from personal financial resources within 24 hours after
3 the condition is imposed.

4 NEW SECTION. **Sec. 308.** TEMPORARY PRETRIAL DETENTION. (1) At the
5 conclusion of a release hearing, the court may issue an order to
6 detain the arrested individual temporarily until a detention hearing,
7 or may impose a financial condition of release in an amount greater
8 than the individual is able to pay from personal financial resources
9 within 24 hours after the condition is imposed, only if the
10 individual is charged with a covered offense and the court determines
11 by clear and convincing evidence that:

12 (a) It is likely that the individual will abscond, obstruct
13 justice, violate an order of protection, or there is substantial risk
14 the arrested individual will commit a violent crime and that no less
15 restrictive condition is sufficient to satisfactorily address the
16 relevant risk the court identifies under section 303 of this act;

17 (b) The individual has violated a condition of an order of
18 pretrial release for a pending criminal charge; or

19 (c) In a case in which the individual is charged with a felony,
20 it is likely the individual will not appear, and no less restrictive
21 condition is sufficient to satisfactorily address the relevant risk
22 the court identifies under section 303 of this act.

23 (2) If under subsection (1) of this section the court issues an
24 order to detain the arrested individual temporarily or imposes a
25 financial condition of release in an amount greater than the
26 individual is able to pay from personal financial resources within 24
27 hours after the condition is imposed, the court shall state its
28 reasons in a record, including why no less restrictive condition or
29 combination of conditions is sufficient.

30 **ARTICLE 4**
31 **DETENTION HEARING**

32 NEW SECTION. **Sec. 401.** TIMING. (1) If the court issues an order
33 of temporary pretrial detention of an arrested individual under
34 section 308 of this act, or pretrial release of an arrested
35 individual under section 304 of this act subject to a restrictive
36 condition that results in continued detention of the individual, the
37 court shall hold a hearing to consider continued detention of the

1 individual pending trial. The hearing must be held within three days
2 not including any intermediate Saturday, Sunday, or legal holiday
3 after issuance of the order.

4 (2) The court on its own or on motion of the prosecuting attorney
5 may continue a detention hearing for good cause for no more than
6 three days not including any intermediate Saturday, Sunday, or legal
7 holiday.

8 (3) The court shall continue a detention hearing on motion of the
9 detained individual.

10 (4) At the conclusion of a detention hearing, the court shall
11 issue an order of pretrial release or detention.

12 NEW SECTION. **Sec. 402.** RIGHTS OF THE DETAINED INDIVIDUAL. (1)
13 At a detention hearing, the detained individual has a right to
14 counsel. If the individual is indigent, a public defense services
15 agency or provider shall provide counsel.

16 (2) At a detention hearing, the detained individual has a right
17 to:

18 (a) Review evidence to be introduced by the prosecuting attorney
19 before it is introduced at the hearing;

20 (b) Present evidence, call witnesses, and provide information;

21 (c) Testify; and

22 (d) Cross-examine witnesses.

23 NEW SECTION. **Sec. 403.** PRETRIAL DETENTION. (1) At a detention
24 hearing, the court shall consider the criteria in sections 303
25 through 307 of this act to determine whether to issue an order of
26 pretrial detention or continue, amend, or eliminate a restrictive
27 condition that has resulted in continued detention of the detained
28 individual. If failure to satisfy a secured appearance bond or pay a
29 fee is the only reason the individual continues to be detained, the
30 fact of detention is prima facie evidence that the individual is
31 unable to satisfy the bond or pay the fee.

32 (2) The court at a detention hearing may issue an order of
33 pretrial detention or continue a restrictive condition of release
34 that results in detention only if the detained individual is charged
35 with a covered offense and the court determines by clear and
36 convincing evidence that:

37 (a) It is likely that the individual will abscond, obstruct
38 justice, violate an order of protection, or there is substantial risk

1 the arrested individual will commit a violent crime and no less
2 restrictive condition is sufficient to satisfactorily address the
3 relevant risk the court identifies under section 303 of this act; or

4 (b) In a case where the individual is charged with a felony, it
5 is likely that the individual will not appear, and no less
6 restrictive condition is sufficient to satisfactorily address the
7 relevant risk the court identifies under section 303 of this act.

8 (3) If under subsection (2) of this section the court issues an
9 order of pretrial detention or continues a restrictive condition of
10 release that results in detention, the court shall state its reasons
11 in a record, including why no less restrictive condition or
12 combination of conditions is sufficient.

13 **ARTICLE 5**

14 **MODIFYING OR VACATING ORDER**

15 NEW SECTION. **Sec. 501.** MODIFYING OR VACATING BY AGREEMENT. By
16 agreement of the prosecuting attorney and an individual subject to an
17 order under Article 3 or 4 of this chapter, the court may:

18 (1) Modify an order of pretrial release;

19 (2) Vacate an order of pretrial detention and issue an order of
20 pretrial release; or

21 (3) Issue an order of pretrial detention.

22 NEW SECTION. **Sec. 502.** MOTION TO MODIFY. On its own or on
23 motion of a party, the court may modify an order of pretrial release
24 or detention using the procedures and standards in Articles 3 and 4
25 of this chapter. The court may consider new information relevant to
26 the order, including information that the individual subject to the
27 order has violated a condition of release. The court may deny the
28 motion summarily if it is not supported by new information.

29 **ARTICLE 6**

30 **MISCELLANEOUS PROVISIONS**

31 NEW SECTION. **Sec. 601.** UNIFORMITY OF APPLICATION AND
32 CONSTRUCTION. In applying and construing this chapter, consideration
33 must be given to the need to promote uniformity of the law with
34 respect to its subject matter among states that enact it.

1 **Sec. 602.** RCW 10.19.170 and 1996 c 181 s 1 are each amended to
2 read as follows:

3 (~~Notwithstanding CrR 3.2, a~~) A court (~~(who)~~) that releases a
4 defendant arrested or charged with a violent offense as defined in
5 RCW 9.94A.030 on the offender's personal recognizance or personal
6 recognizance with conditions must state (~~(on the)~~) its reasons in a
7 record (~~(the reasons why the court did not require the defendant to~~
8 ~~post bail)~~) including why no less restrictive condition or
9 combination of conditions is sufficient, consistent with section
10 308(2) of this act.

11 **Sec. 603.** RCW 10.21.060 and 2010 c 254 s 8 are each amended to
12 read as follows:

13 (1) The judicial officer must hold a hearing in cases involving
14 offenses prescribed in Article I, section 20, to determine whether
15 any condition or combination of conditions will reasonably assure the
16 safety of any other person and the community upon motion of the
17 attorney for the government.

18 (2) The hearing must be held immediately upon the defendant's
19 first appearance before the judicial officer unless the defendant, or
20 the attorney for the government, seeks a continuance. Except for good
21 cause, a continuance on motion of such person may not exceed (~~(five))~~
22 three days (not including any intermediate Saturday, Sunday, or legal
23 holiday), and a continuance on motion of the attorney for the
24 government may not exceed three days (not including any intermediate
25 Saturday, Sunday, or legal holiday). During a continuance, such
26 person must be detained.

27 (3) At the hearing, such defendant has the right to be
28 represented by counsel, and, if financially unable to obtain
29 representation, to have counsel appointed. The defendant must be
30 afforded an opportunity to testify, to present witnesses, to cross-
31 examine witnesses who appear at the hearing, and to present
32 information by proffer or otherwise. The rules concerning
33 admissibility of evidence in criminal trials do not apply to the
34 presentation and consideration of information at the hearing. The
35 facts the judicial officer uses to support a finding that no
36 condition or combination of conditions will reasonably assure the
37 safety of any other person and the community must be supported by
38 clear and convincing evidence of a propensity for violence that

1 creates a substantial likelihood of danger to the community or any
2 persons.

3 (4) The defendant may be detained pending completion of the
4 hearing. The hearing may be reopened, before or after a determination
5 by the judicial officer, at any time before trial if the judicial
6 officer finds that information exists that was not known to the
7 movant at the time of the hearing and that has a material bearing on
8 the issue whether there are conditions of release that will
9 reasonably assure the safety of any other person and the community.

10 NEW SECTION. **Sec. 604.** SEVERABILITY. If any provision of this
11 act or its application to any person or circumstance is held invalid,
12 the remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 605.** TRANSITION. This chapter applies to an
15 arrest made, a citation issued, or a release or detention hearing
16 held on or after the effective date of this section, including a
17 hearing to enforce, modify, or vacate a release or detention order
18 issued before the effective date of this section.

19 NEW SECTION. **Sec. 606.** EFFECTIVE DATE. This act takes effect
20 January 1, 2022.

21 NEW SECTION. **Sec. 607.** Sections 101 through 103, 301 through
22 601, 605, and 606 of this act constitute a new chapter in Title 10
23 RCW.

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