

FINAL BILL REPORT

HB 2625

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Synopsis as Enacted

Brief Description: Addressing bail for felony offenses.

Sponsors: Representatives Kelley, Ericks, Conway, Driscoll, O'Brien, Lias, Blake, Finn, Simpson, Orwall, Morrell and Campbell.

House Committee on Public Safety & Emergency Preparedness
Senate Committee on Judiciary
Senate Committee on Ways & Means

Background:

Pretrial release is the release of the accused from detention pending trial. The state Constitution guarantees the right to bail for a person charged with a noncapital crime, and this right has been interpreted as the right to a judicial determination of either release or reasonable bail. For capital offenses where the proof of the accused's guilt is evident or the presumption of the accused's guilt is great, there is no right to bail.

The courts favor pretrial release and bail in appropriate circumstances because the accused is presumed innocent and because the state is relieved of the burden of detention. According to the courts, the purpose of bail is to secure the accused's presence in court.

Court Rules Governing Bail.

General criminal court rules, which are promulgated by the Washington Supreme Court, and local criminal court rules govern the release of an accused in superior court criminal proceedings. The criminal court rules provide the following framework for pretrial release.

In a noncapital case, there is a presumption that the accused should be released unless the court determines either: (1) release 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. Under these circumstances, the court may impose conditions of release. Whether the accused poses a danger to the community or is a flight risk is a factual determination within the judge's discretion.

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.

In a capital case, the accused must not be released unless the court finds that releasing the accused with conditions will reasonably assure the accused's appearance, will not significantly interfere with the administration of justice, and will not pose a substantial danger to another or the community.

Booking Bail.

Booking bail, allows a person who has been arrested to post bail without a judicial officer's determination. In counties that permit booking bail, a law enforcement officer or a prosecutor may set the bail. The amount of bail set may be based on a bail schedule, which specifies the availability and amount of bail for particular offenses. Bail schedules are contained in local court rules, and an advisory statewide bail schedule is also available.

Approaches to bail schedules vary by county and type of court. The Washington Supreme Court has held that whether to promulgate a bail schedule is a question best left to the counties.

Federal Bail Reform Act.

Under the federal Bail Reform Act (Act), a judge may issue an order releasing the accused on personal recognizance or execution of an appearance bond, releasing the accused on conditions, or detaining the accused temporarily or indefinitely. The accused may be detained following a detention hearing in which the judge determines that no condition or combination of conditions will reasonably assure the accused's appearance and the safety of any other person and the community.

The detention hearing is held in cases involving: a serious risk of flight or an attempt to obstruct justice; a crime of violence; a crime for which the maximum sentence is life imprisonment or death; certain controlled substance offenses; and a felony if the accused has been convicted of two or more specified serious offenses.

The Act provides procedures for the hearing and factors relevant to whether any condition of release will reasonably assure the accused's appearance and the safety of any other person and the community. The U.S. Supreme Court has held that the Act does not violate the right to due process because it carefully limits the circumstances in which pretrial detention may be imposed.

Sentencing.

Aggravated murder in the first degree is a capital offense. Offenses for which the maximum sentence is the possibility of life in prison include class A felonies, third strike offenses for persistent offenders, and second strike offenses for persistent sex offenders.

Summary:

Booking Bail.

When a person is arrested and detained for a felony offense, a judicial officer must make a bail determination on an individualized basis. This provision expires August 1, 2011.

Procedures for Pretrial Release or Detention.

Upon the appearance before a judge of a person charged with an offense, the judge must issue an order releasing the person on personal recognizance, releasing the person on conditions, temporarily detaining the person as allowed by law, or detaining the person as provided by the act.

If the judge issues an order releasing the person on conditions, appropriate conditions include, among others, restrictions on travel and association, a curfew, electronic monitoring, placement in the custody of a person or organization, and prohibitions on the consumption of drugs and alcohol. A release order must include a written statement of the conditions of release, as well as the penalties and consequences for violation of the conditions.

Following a detention hearing, a judge must order the pretrial detention of a person charged with a capital offense or an offense punishable by life in prison if the judge finds by clear and convincing evidence that (1) the person shows a propensity for violence that creates a substantial likelihood of danger to the community or any persons and (2) no condition or combination of conditions will reasonably assure the safety of the community or any persons. In making this determination, the judge must consider information regarding the nature and circumstances of the offense, the weight of the evidence, and the person's history and characteristics.

The detention hearing must be held at the person's preliminary appearance unless the person or the government seeks a continuance. The continuance may not exceed five days on the motion of the person or three days on the motion of the government. At the hearing, the person has the rights to an attorney, to testify, to present witnesses, to cross-examine witnesses, and to present information. The rules of evidence do not apply. The hearing may be reopened anytime before trial if new material information becomes available.

A detention order must include written findings of fact and the reasons for the detention. The detention order must direct that, to the extent practicable, the person be committed to custody for confinement separate from persons serving sentences, and it must direct that the person be afforded reasonable opportunity for consultation with an attorney. A judge may later temporarily release the person for the preparation of the person's defense or another compelling reason.

Votes on Final Passage:

House	96	0	
Senate	48	0	(Senate amended)
House	96	0	(House concurred)

Effective: January 1, 2011
Contingent on voter approval (Sections 3-11)