

SENATE BILL REPORT

SSB 6673

As Amended by House, March 5, 2010

Title: An act relating to bail practices and procedures.

Brief Description: Appointing a task force to study bail practices and procedures.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin, Carrell, Kohl-Welles, Gordon, Regala, Roach, Hargrove and Tom).

Brief History:

Committee Activity: Judiciary: 2/02/10, 2/03/10 [DPS].

Passed Senate: 2/11/10, 47-0.

Passed House: 3/05/10, 97-1.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6673 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

Staff: Juliana Roe (786-7438)

Background: There has been discussion in Washington State that current bail practices, procedures, and pretrial release conditions can be improved. There are a variety of sources from which to obtain information and guidance regarding bail, including statute, case law, state and local court rules, and the Constitution.

Under Article I, Section 20 of the Washington State Constitution the right to bail is guaranteed for people charged with noncapital crimes. For capital offenses there is no right to bail. Pretrial release and bail are favored by courts in appropriate circumstances because the accused is presumed innocent and because the state is relieved of the burden of detention. The purpose of bail is to secure the accused's presence in court; bail is neither punishment nor a revenue collection vehicle. *See State v. Banuelos*, 91 Wn. App. 860, 863 (1998); *Landry v. Luscher*, 95 Wn. App. 779, 778 (1999); *United States v. Salerno*, 481 U.S. 739, 746-47 (1987) (overruled on other grounds). Courts have inherent power and the statutory authority to make rules regarding procedure and practice in the courtroom. Courts have ruled that setting bail and releasing individuals from custody is a traditional function of the courts.

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.

State v. Blilie, 939 P.2d 691, 693, 695 (1997); *Westerman*, 125 Wn.2d at 290-91. The courts have stated that bail schedules and other procedures related to the release of an accused person are better left to the counties as long as they comport with constitutional due process.

General criminal court rules, which are promulgated by the Supreme Court, and local criminal court rules govern the release of an accused in superior court criminal proceedings. Wash. CrR 3.2, 3.2.1; 3.2. The criminal court rules provide a framework for judicial officers to follow in determining pretrial release and the conditions imposed. The Legislature enacted RCW 10.19.170 in 1996 that states, "Notwithstanding CrR 3.2, a court who releases a defendant arrested or charged with a violent offense as defined in RCW 9.94A.030 on the offender's personal recognizance or personal recognizance with conditions must state on the record why the court did not require the defendant to post bail."

The Sentencing Guidelines Commission, at the request of the Senate Judiciary Committee, conducted a bail practices survey of the 39 counties in Washington State. Thirty of the 39 counties responded. Of those 39 counties, 23 reported that they had a formal or informal bail schedule. Of those 23 counties, seven reported using a bail schedule for superior court felony cases.

Summary of Substitute Bill: A legislative task force on bail is established. The task force must review all aspects of bail and pretrial release. There is no reimbursement for legislative members and nonlegislative members must seek reimbursement through their respective agencies or organizations. Either a district or municipal court judge may be appointed to the task force by the district and municipal court judges association. A bail bond enforcement agent is included as a member of the task force. A representative from an entity representing local county jail corrections officers in adult jails located within a county with a population of more than one million people is included as a member of the task force. The task force must report its findings and recommendations to the Washington State Supreme Court, the Governor, and appropriate committees of the Legislature by December 1, 2010. The expiration of the task force falls on December 31, 2010.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony on Proposed Substitute As Heard in Committee:
PRO: The purpose of this bill is to create a task force to consider every aspect of bail and any bail bill that has been introduced this session. It includes many stakeholders in an attempt to be equitable. This is an issue that should be studied and not reacted to.

It is an essential government task to promote public safety. We want to ensure that fundamental principals and values of society aren't compromised in promoting public safety. Society has limited resources which must be used carefully and prudently. Jails are currently

filled to maximum amounts and prisoners are often released early due to overcrowding. A task force is a prudent way to proceed.

The bail issue should not be responded to reactively because quick changes may lead to unintended consequences. Rather, we should take a cautious, responsible approach in analyzing the bail system.

CON: It would be unfortunate if this task force bill is the reason you do not act on a constitutional amendment. If the constitution is not amended, a study will not change the fact that bail will remain the same. You should not delay a change in the bail system in order to study the system. This issue should be dealt with now and not later.

OTHER: The Governor's office supports a study of the overall bail system and has no position on a legislative task force to do the same. Our concern is that there is no expiration date on the bill allowing the task force to live on in perpetuity. A sunset clause should be included ending the task force on December 31, 2010. The Governor's office also supports moving a constitutional amendment and trailing statute rather than a task force.

The Washington Association of Sheriff's and Police Chiefs (WASPC) believe that a representative of law enforcement management of jails should be included as a member of the task force as sheriffs are responsible for management of jails in counties and police chiefs are responsible for management in cities.

Persons Testifying: PRO: Senator Kline, prime sponsor; Salvador Mungia, Washington State Bar Association, President; Judge Steve Warning, Superior Court Judges Association.

CON: Tom McBride, Washington Association of Prosecuting Attorneys.

OTHER: Joanna Arlow, WASPC; John Lane, Governor's Office.

House Amendment(s): A work group, rather than a task force, is established to study bail practices and procedures within existing resources. The requirements that the task force request research from the Washington State Institute for Public Policy and that the task force accommodate members' varied places of residence is eliminated. The provision subjecting the task force to the Open Public Meetings Act is eliminated. The work group is required to meet in state facilities that do not charge for use. The provision regarding reimbursement of travel expenses so that legislative members are reimbursed for travel as required by law and nonlegislative members who represent an employer or an organization are not reimbursed is clarified. The membership of the work group is increased by two: the director (or designee) of the Department of Licensing and the Insurance Commissioner (or designee).