

# HOUSE BILL REPORT

## HB 1712

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### As Amended by the Senate:

**Title:** An act relating to pretrial release.

**Brief Description:** Prescribing procedures for pretrial release.

**Sponsors:** Representatives Lambert, Cooke, Padden, Crouse, Hargrove and Elliot.

### Brief History:

#### Committee Activity:

Law & Justice: 2/17/95, 2/21/95 [DP].

#### Floor Activity:

Passed House: 3/7/95, 93-0;

Passed House: 1/10/96, 95-0.

Senate Amended.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass. Signed by 17 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith; Thibaudeau and Veloria.

**Staff:** Pat Shelledy (786-7149).

**Background:** When a person is arrested or charged with a crime, the court determines whether to release the defendant on his or her personal recognizance, impose conditions of release, require the defendant to be supervised by a county pretrial release agency, or post bail. The Washington Constitution, Article 1, Section 20, provides that all persons charged with a crime must be bailable by sufficient sureties except in capital cases. Article 1, Section 14, of our state constitution prohibits imposition of excessive bail.

Washington courts have held that the purpose of pretrial bail, in recognition of the presumption of innocence, is to (1) secure the defendant's presence before court at a designated time, and (2) relieve the defendant from imprisonment prior to trial.

The courts have held that the decision whether to set bail or to release an accused is a judicial function.

Superior Court Criminal Rule 3.2 provides the grounds for release and the types of pretrial release. The rule provides that an accused should be released pending trial on personal recognizance unless the court determines that the accused will not appear as required, or is likely to commit a violent crime, intimidate witnesses, or interfere with the administration of justice. The court must evaluate a number of factors when determining whether to release an accused on personal recognizance.

When imposing conditions, the rule provides the court must impose the least restrictive of a variety of conditions. The conditions include placing the accused in the custody of a person or organization who agrees to supervise the accused, placing restrictions on travel, association, and living arrangements, requiring the execution of an unsecured bond, a deposit bond not to exceed 10 percent of the bond amount, or a surety bond, and requiring the accused to return to custody during specified hours. The court rule provides that the court may require posting of an unsecured or secured bond only if no less restrictive alternative or combination of conditions would reasonably assure the safety of the community or the defendant's appearance.

If a court rule conflicts with a statute that governs a procedural matter within the judiciary's powers, the courts may determine that the court rule controls unless the judiciary defers to the Legislature. The court rule does not specifically require the court to state reasons on the record why the court selects a particular form of pretrial release.

"Violent offenses" are defined in the adult sentencing code. Violent offenses mean any class A felony or attempt to commit a class A felony, manslaughter in the first and second degree, indecent liberties if committed by force, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide when proximately caused by the driving of any vehicle by any person while under the influence of alcohol or drugs or by operation of the vehicle in a reckless manner.

**Summary of Bill:** A court who releases a defendant arrested for a violent offense on the defendant's personal recognizance or personal recognizance with conditions must state on the record the reasons why the court did not require the defendant to post bail.

**EFFECT OF SENATE AMENDMENT(S):** The severability clause is stricken.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The bill requires the court to state its reasons on the record.

**Testimony Against:** None.

**Testified:** Tom McBride, Washington Association of Prosecuting Attorneys (pro); Gary Barrett, Director, Strike Back (pro); and Gordon Walgren, Washington State Bail Agents' Association (pro).