

SENATE BILL REPORT

SHB 1194

As Reported by Senate Committee On:
Judiciary, March 23, 2011

Title: An act relating to bail for felony offenses.

Brief Description: Concerning bail for the release of a person arrested and detained for a class A or B felony offense.

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Kelley and Ladenburg).

Brief History: Passed House: 2/26/11, 96-0.

Committee Activity: Judiciary: 3/16/11, 3/23/11 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

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

Staff: Juliana Roe (786-7438)

Background: Bail may be granted by a judge at the defendant's preliminary appearance, or it may be granted according to a bail schedule. A bail determination must be made as soon as practicable after detention begins, but in no case later than the close of business the next judicial day. When probable cause and bail are determined at the same time, the determination must be made within 48 hours of arrest.

The Washington State Supreme Court has held that whether to promulgate a bail schedule is a question best left to the counties. In counties that have a bail schedule, a defendant may post bail without a judicial officer's determination. The availability and amount of bail for the particular offense are specified in the bail schedule. Most counties have a bail schedule for misdemeanors, and prior to January 1, 2011, seven counties had a bail schedule for felonies.

In 2010 the Legislature passed HB 2625 which required a judicial officer to make a bail determination on an individualized basis for a person arrested and detained for a felony. This requirement went into effect January 1, 2011, and will expire August 1, 2011.

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.

Summary of Bill (Recommended Amendments): When a person is arrested and detained for a class A or B felony, a judicial officer must make a bail determination on an individualized basis.

Courts are required to notify sureties of a defendant's failure to appear within 14 calendar days of the date on which the defendant failed to appear, rather than 30 days.

Parties can stay the execution of the judgment for 60 days from the date of the notification by the court which provides a concrete starting date.

A surety may surrender a client in a criminal case for good cause and if accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for surrender. If the court finds that good cause does not exist for the surrender, the surety must return the premium paid as well as any recovery fee. Good cause does not include circumstances in which the client failed to make timely payment to the surety for the bond premium. A violation of this section is unprofessional conduct.

The presiding judge of a court is required to notify The Administrative Office of the Courts (AOC) when the court revokes the justification or certification of a bail bond agent to post bonds in the court. This notice must include the reasons for revocation. Once AOC receives the information it must notify superior courts and courts of limited jurisdiction statewide.

Property and surety bonds and property and surety bond agencies are defined.

Bail bond agent applicants are required to complete a records/background check through Washington State Patrol (WSP) and the Federal Bureau of Investigation (FBI).

Surety agencies are required to file a bond with the Department of Licensing (DOL), or deposit into a trust account, \$10,000. Property bond agencies must file a bond with DOL, or deposit into a trust account, \$100,000.

It is unprofessional conduct for a bail bond agent to enter into a contract, including a general power of attorney, with a person that gives the bail bond agent full authority over the person's finances, assets, real property, or personal property. Failing to reasonably disclose, when requested by law enforcement, information within the bail agent's possession concerning the location of a fugitive criminal defendant is also unprofessional conduct.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments):

- The title of the bill is changed to An Act Relating to bail.
- Courts are required to notify sureties of a defendant's failure to appear within 14 calendar days of the date on which the defendant failed to appear, rather than 30 days.
- Parties can stay the execution of the judgment for 60 days from the date of the notification by the court which provides a concrete starting date.
- A surety may surrender a client in a criminal case for good cause and if accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for surrender. If the court finds that good cause does not exist for the surrender, the surety must

- return the premium paid as well as any recovery fee. Good cause does not include circumstances in which the client failed to make timely payment to the surety for the bond premium. A violation of this section is unprofessional conduct.
- The presiding judge of a court is required to notify AOC when the court revokes the justification or certification of a bail bond agent to post bonds in the court. This notice must include the reasons for revocation. Once AOC receives the information it must notify superior courts and courts of limited jurisdiction statewide.
 - Property and surety bonds and property and surety bond agencies are defined.
 - Bail bond agent applicants are required to complete a records/background check through WSP and the FBI.
 - Surety agencies are required to file a bond with DOL, or deposit into a trust account, \$10,000. Property bond agencies must file a bond with DOL, or deposit into a trust account, \$100,000.
 - It is unprofessional conduct for a bail bond agent to enter into a contract, including a general power of attorney, with a person that gives the bail bond agent full authority over the person's finances, assets, real property, or personal property. Failing to reasonably disclose, when requested by law enforcement, information within the bail agent's possession concerning the location of a fugitive criminal defendant is also unprofessional conduct.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Substitute House Bill: PRO: This bill is a follow-up to last year's issues on bail. We have thoroughly discussed issues regarding booking bail; however, I recently discovered that booking bail is used seven days a week in some counties. This bill will limit this type of practice. This bill compliments what the Senate's bail bill does.

Persons Testifying: PRO: Representative Kelley, prime sponsor.