

1 **HB 2679 - H AMD 1064 ADOPTED 2-15-94**

2 By Representative Morris and others

3 Strike everything after the enacting clause and insert the
4 following:

5 **"Sec. 1.** RCW 9.95.062 and 1989 c 276 s 1 are each amended to
6 read as follows:

7 (1) Except as provided in subsections (2) and (3) of this
8 section and notwithstanding CrR 3.2 or RAP 7.2, an appeal by a
9 defendant in a criminal action shall not stay the execution of the
10 judgment of conviction, ((if)) unless the court determines by a
11 preponderance of the evidence that:

12 (a) The defendant is ((likely)) unlikely to flee or unlikely
13 to pose a danger to the safety of any other person or the community
14 if the judgment is stayed; or

15 (b) The delay resulting from the stay will not unduly diminish
16 the deterrent effect of the punishment; or

17 (c) A stay of the judgment will not cause unreasonable trauma
18 to the victims of the crime or their families; or

19 (d) The defendant has ((not)) undertaken to the extent of the
20 defendant's financial ability to pay the financial obligations
21 under the judgment or has ((not)) posted an adequate performance
22 bond to assure payment.

23 (2) An appeal by a defendant convicted of a serious violent or
24 sex offense as defined in RCW 9.94A.030 shall not stay execution of
25 the judgment of conviction.

26 (3) An appeal by a defendant convicted of a "crime against
27 persons" as defined in RCW 9.94A.440 or a "crime of harassment" as
28 defined in RCW 9A.46.060 which is not a serious violent or sex
29 offense shall not stay execution of the judgment of conviction
30 unless the court finds by clear, cogent, and convincing evidence
31 that:

1 (a) The defendant is unlikely to flee or unlikely to pose a
2 danger to the safety of the victim, any other person, or the
3 community if the judgment is stayed; or

4 (b) A stay of the judgment will not cause unreasonable trauma
5 to the victims of the crime or their families.

6 (4) The court shall obtain the input of the crime victims or
7 the victims' families if available when the court considers whether
8 to stay the judgment.

9 (5) In any contested bail hearing, the court shall make
10 findings of fact under this section.

11 (6) In case the defendant has been convicted of a felony, and
12 has been unable to obtain release pending the appeal by posting an
13 appeal bond, cash, adequate security, release on personal
14 recognizance, or any other conditions imposed by the court, the
15 time the defendant has been imprisoned pending the appeal shall be
16 deducted from the term for which the defendant was sentenced, if
17 the judgment is affirmed."

EFFECT: Some of the provisions of HB 2719 are merged with the underlying bill. As merged, three different standards concerning release pending appeal are adopted: First, as in the underlying bill, a court may not release an offender pending appeal if the offender is convicted of a serious violent or sex offense. Second, if the offender is convicted of a crime against persons or a crime of harassment which is not a serious violent offense or a sex offense, the court must not release the offender pending appeal unless the court finds by clear, cogent, and convincing evidence that the person will not flee or pose a danger to the community and that the victim will not suffer unreasonable trauma if the offender is released. Third, in other cases such as property crimes, the court may not release the offender pending appeal unless the court finds by a preponderance of the evidence that the offender will not flee or pose a danger to the community or cause the victim to suffer unreasonable trauma.