

# HOUSE BILL REPORT

## SHB 2207

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### As Passed House:

February 8, 1996

**Title:** An act relating to release of offenders.

**Brief Description:** Changing provisions relating to release of offenders.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Sterk, Sheahan, L. Thomas, Robertson, Honeyford, Stevens, McMahan, Crouse, Buck, Koster, Schoesler, Pennington, Mulliken, D. Sommers, Delvin, D. Schmidt, Carlson, Hickel, Thompson, Costa and Hargrove).

### Brief History:

#### Committee Activity:

Law & Justice: 1/10/96, 1/16/96 [DP];

Appropriations: 2/3/96 [DPS].

#### Floor Activity:

Passed House: 2/8/96, 97-0.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass. Signed by 14 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith and Sterk.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Dellwo, Ranking Minority Member; Murray and Veloria.

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

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Huff, Chairman; Clements, Vice Chairman; Pelesky, Vice Chairman; H. Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Beeksma; Brumsickle; Carlson; Chappell;

Cooke; Crouse; Dyer; Foreman; Grant; Hargrove; Hickel; Kessler; Lambert; Linville; McMorris; Poulsen; Reams; Rust; Sehlin; Sheahan; Talcott and Wolfe.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Dellwo.

**Staff:** Dave Johnson (786-7154).

**Background:** A number of statutes and court rules adopted by the Supreme Court govern the release of defendants convicted of crimes. Currently, court rules provide that the court may establish conditions of release pending appeal subject to conditions established by the Legislature.

One governing statute provides that when a criminal defendant is convicted of a felony and is awaiting sentencing, the court must detain the defendant pending sentencing unless the court finds by clear, cogent, and convincing evidence that the defendant is not likely to flee or pose a danger to a person or the community.

When the defendant has been sentenced and files an appeal, another governing statute provides that the court may not stay execution of the sentence if the court determines by a preponderance of the evidence that

- (a) the defendant is likely to flee or pose a danger to the safety of another person or the community;
- (b) the delay will diminish the deterrent effect of the punishment;
- (c) the stay will cause unreasonable trauma to the victim; or
- (d) the defendant has not paid his or her financial obligations.

Although existing court rules defer to current statutes governing release of defendants following conviction, prior court cases have held that the decision whether to release defendants and under what conditions, is ultimately within the judiciary's, not the Legislature's, power.

In State v. Smith, 84 Wn.2d 498 (1974), the court discussed two issues: (1) whether the right to bail and release from custody after conviction and pending appeal is granted by the state constitution; and (2) whether the right to bail and release from custody after conviction and pending appeal was procedural and therefore governed by court rules, or was substantive and therefore governed by legislatively enacted limitations. When the court considered the latter question, the existing court rules and statutes were in conflict.

The Smith court held that the state constitution neither restricts nor confers a right to bail pending appeal. The court also held that the courts have certain inherent powers; among these is the power to prescribe procedural rules. Although noting that the line between procedural and substantive rules of law is not always clear, the court held that the issue of bail and release has traditionally been a function of the judicial branch. The court held that the Legislature cannot abrogate or modify court rules. Consequently, the court held that, to the extent the applicable statute was inconsistent with the applicable court rule, the court rule controlled. This ruling was reconfirmed in State v. Hunter, 35 Wn. App. 108 (1983).

Consequently, if the Legislature attempts to change or restrict significantly the court's discretion in setting conditions of release, the courts may be less tolerant of legislative statutes.

**Summary of Bill:** A defendant who is convicted of one of several offenses must be detained following conviction while pending sentencing. In addition, if the defendant files an appeal of one of those convictions, the court may not stay execution of the judgment. The offenses are as follows:

- rape in the first or second degree;
- rape of a child in the first, second, or third degree;
- child molestation in the first, second, or third degree;
- sexual misconduct with a minor in the first or second degree;
- indecent liberties;
- incest;
- luring;
- any class A or B felony that is a sexually motivated offense;
- a felony conviction for communication with a minor for immoral purposes;
- and
- any offense that is an attempt to commit one of the above listed offenses.

If the bill is not funded in the operating budget, it will be null and void.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

**Testimony For:** (Law & Justice) Once an offender has been convicted of one of these offenses, he or she should be incarcerated. The murderer of seven-year-old Rachel Carver of Spokane had been released pending sentencing on a sex offense

when he murdered the child. Judges can detain these offenders, but they don't detain them.

(Appropriations) None.

**Testimony Against:** (Law & Justice) None.

(Appropriations) None.

**Testified:** (Law & Justice) Representative Mark Sterk, prime sponsor; and Mike Patrick, Washington State Council of Police Officers (pro).

(Appropriations) None.