

SENATE BILL REPORT

HB 1792

As Reported By Senate Committee On:
Law & Justice, February 15, 1996

Title: An act relating to the release of offenders.

Brief Description: Prescribing procedures for release of offenders.

Sponsors: Representatives Padden, Carrell, Beeksma, McMahan, Costa, Stevens, Blanton and Thompson.

Brief History:

Committee Activity: Law & Justice: 3/22/95, 3/27/95 [DP]; 2/15/96 [DP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Smith, Chair; Fairley, Vice Chair; Haugen, Johnson, Long, McCaslin, Roach and Schow.

Staff: Lidia Mori (786-7755)

Background: If a defendant is convicted of a crime, the court decides whether to detain the defendant pending sentencing and appeal.

A defendant who has been found guilty of a felony and is awaiting sentencing must be detained, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or to the community if released.

Following sentencing and pending appeal, the court may not stay execution of the judgment if the court determines by a preponderance of the evidence that: (1) the defendant is likely to flee or to pose a danger to the safety of the community or another person; (2) the stay will diminish the deterrent effect of the punishment; (3) the stay will cause unreasonable trauma to the victims of the crime or their families; or (4) the defendant has not paid the defendant's financial obligations to the extent the defendant is capable of paying them, or has not posted an adequate performance bond to assure payment.

To minimize trauma to the victim, the court may attach conditions of release of a defendant pending sentencing or appeal. Those conditions may include restricting the defendant's whereabouts, contact with the victim, or other restrictions.

The Washington State Supreme Court has held that the state Constitution does not confer a right to bail pending appeal nor does it restrict the right to bail pending appeal. The court has also held that the decision whether to set bail is a judicial function. Court rules grant deference to several legislative enactments regarding release pending sentencing and appeal.

Summary of Bill: The court must state its reasons on the record when it releases a defendant, who is appealing the judgment in a criminal case, without requiring posting of a bond, cash, or other security.

A court must consider whether releasing a defendant who has been found guilty of a felony and is awaiting sentencing will cause unreasonable trauma to the victims of the crime or their families. If the court releases the defendant and does not require posting of a bond, cash, or other security, the court must state its reasons on the record.

The requirement that the court consider whether release pending sentencing unreasonably traumatizes the victim or the victim's family is specifically added to the provisions governing release pending sentencing.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This is a public safety issue. The court should be required to state its reasons for releasing a person on their own recognizance.

Testimony Against: None.

Testified: Rep. Kathy Lambert.