

HB 2625 - S AMD 303

By Senators Kline, Hargrove and Carrell

ADOPTED 3/05/2010

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Strike everything after the enacting clause and insert the following:

NEW SECTION. **Sec. 1.** The legislature intends by this act to require an individualized determination by a judicial officer of conditions of release for persons in custody for felony. This requirement is consistent with constitutional requirements and court rules regarding the right of a detained person to a prompt determination of probable cause and judicial review of the conditions of release and the requirement that judicial determinations of bail or release be made no later than the preliminary appearance stage.

NEW SECTION. **Sec. 2.** (1) Bail for the release of a person arrested and detained for a felony offense must be determined on an individualized basis by a judicial officer.

(2) This section expires August 1, 2011.

NEW SECTION. **Sec. 3.** It is the intent of the legislature to enact a law for the purpose of reasonably assuring public safety in bail determination hearings and hearings pursuant to the proposed amendment to Article I, section 20 of the state Constitution set forth in House Joint Resolution No. 4220. Other provisions of law address matters relating to assuring the appearance of the defendant at trial and preventing interference with the administration of justice.

1 NEW SECTION. **Sec. 4.** Upon the appearance before a judicial
2 officer of a person charged with an offense, the judicial officer must
3 issue an order that, pending trial, the person be:

- 4 (1) Released on personal recognizance;
- 5 (2) Released on a condition or combination of conditions ordered
6 under section 5 of this act or other provision of law;
- 7 (3) Temporarily detained as allowed by law; or
- 8 (4) Detained as provided under this act.

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10 NEW SECTION. **Sec. 5.** (1) The judicial officer may at any time
11 amend the order to impose additional or different conditions of
12 release. The conditions imposed under this chapter supplement but do
13 not supplant provisions of law allowing the imposition of conditions
14 to assure the appearance of the defendant at trial or to prevent
15 interference with the administration of justice.

16 (2) Appropriate conditions of release under this chapter include,
17 but are not limited to, the following:

18 (a) The defendant may be placed in the custody of a designated
19 person or organization agreeing to supervise the defendant;

20 (b) The defendant may have restrictions placed upon travel,
21 association, or place of abode during the period of release;

22 (c) The defendant may be required to comply with a specified
23 curfew;

24 (d) The defendant may be required to return to custody during
25 specified hours or to be placed on electronic monitoring, if
26 available. The defendant, if convicted, may not have the period of
27 incarceration reduced by the number of days spent on electronic
28 monitoring;

29 (e) The defendant may be prohibited from approaching or
30 communicating in any manner with particular persons or classes of
31 persons;

32 (f) The defendant may be prohibited from going to certain
33 geographical areas or premises;

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1 (g) The defendant may be prohibited from possessing any dangerous
2 weapons or firearms;

3 (h) The defendant may be prohibited from possessing or consuming
4 any intoxicating liquors or drugs not prescribed to the defendant.
5 The defendant may be required to submit to testing to determine the
6 defendant's compliance with this condition;

7 (i) The defendant may be prohibited from operating a motor vehicle
8 that is not equipped with an ignition interlock device;

9 (j) The defendant may be required to report regularly to and
10 remain under the supervision of an officer of the court or other
11 person or agency; and

12 (k) The defendant may be prohibited from committing any violations
13 of criminal law.

14
15 NEW SECTION. **Sec. 6.** If, after a hearing on offenses prescribed
16 in Article I, section 20 of the state Constitution, the judicial
17 officer finds, by clear and convincing evidence, that a person shows a
18 propensity for violence that creates a substantial likelihood of
19 danger to the community or any persons, and finds that no condition or
20 combination of conditions will reasonably assure the safety of any
21 other person and the community, such judicial officer must order the
22 detention of the person before trial. The detainee is entitled to
23 expedited review of the detention order by the court of appeals under
24 the writ provided in RCW 7.36.160.

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26 NEW SECTION. **Sec. 7.** The judicial officer must, in determining
27 whether there are conditions of release that will reasonably assure
28 the safety of any other person and the community, take into account
29 the available information concerning:

30 (1) The nature and circumstances of the offense charged, including
31 whether the offense is a crime of violence;

32 (2) The weight of the evidence against the defendant; and

33 (3) The history and characteristics of the defendant, including:
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1 (a) The person's character, physical and mental condition, family
2 ties, employment, financial resources, length of residence in the
3 community, community ties, past conduct, history relating to drug or
4 alcohol abuse, criminal history, and record concerning appearance at
5 court proceedings;

6 (b) Whether, at the time of the current offense or arrest, the
7 defendant was on community supervision, probation, parole, or on other
8 release pending trial, sentencing, appeal, or completion of sentence
9 for an offense under federal, state, or local law; and

10 (c) The nature and seriousness of the danger to any person or the
11 community that would be posed by the defendant's release.

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13 NEW SECTION. **Sec. 8.** (1) The judicial officer must hold a
14 hearing in cases involving offenses prescribed in Article 1, section
15 20, to determine whether any condition or combination of conditions
16 will reasonably assure the safety of any other person and the
17 community upon motion of the attorney for the government.

18 (2) The hearing must be held immediately upon the defendant's
19 first appearance before the judicial officer unless the defendant, or
20 the attorney for the government, seeks a continuance. Except for good
21 cause, a continuance on motion of such person may not exceed five days
22 (not including any intermediate Saturday, Sunday, or legal holiday),
23 and a continuance on motion of the attorney for the government may not
24 exceed three days (not including any intermediate Saturday, Sunday, or
25 legal holiday). During a continuance, such person must be detained.

26 (3) At the hearing, such defendant has the right to be represented
27 by counsel, and, if financially unable to obtain representation, to
28 have counsel appointed. The defendant must be afforded an opportunity
29 to testify, to present witnesses, to cross-examine witnesses who
30 appear at the hearing, and to present information by proffer or
31 otherwise. The rules concerning admissibility of evidence in criminal
32 trials do not apply to the presentation and consideration of
33 information at the hearing. The facts the judicial officer uses to
34 support a finding that no condition or combination of conditions will

1 reasonably assure the safety of any other person and the community
2 must be supported by clear and convincing evidence of a propensity for
3 violence that creates a substantial likelihood of danger to the
4 community or any persons.

5 (4) The defendant may be detained pending completion of the
6 hearing. The hearing may be reopened, before or after a determination
7 by the judicial officer, at any time before trial if the judicial
8 officer finds that information exists that was not known to the movant
9 at the time of the hearing and that has a material bearing on the
10 issue whether there are conditions of release that will reasonably
11 assure the safety of any other person and the community.

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13 NEW SECTION. **Sec. 9.** In a release order issued under section 5
14 of this act the judicial officer must:

15 (1) Include a written statement that sets forth all the conditions
16 to which the release is subject, in a manner sufficiently clear and
17 specific to serve as a guide for the defendant's conduct; and

18 (2) Advise the defendant of:

19 (a) The penalties for violating a condition of release, including
20 the penalties for committing an offense while on pretrial release; and

21 (b) The consequences of violating a condition of release,
22 including the immediate issuance of a warrant for the defendant's
23 arrest.

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25 NEW SECTION. **Sec. 10.** (1) In a detention order issued under
26 section 6 of this act, the judicial officer must:

27 (a) Include written findings of fact and a written statement of
28 the reasons for the detention;

29 (b) Direct that the person be committed to the custody of the
30 appropriate correctional authorities for confinement separate, to the
31 extent practicable, from persons awaiting or serving sentences or
32 being held in custody pending appeal; and

33 (c) Direct that the person be afforded reasonable opportunity for
34 private consultation with counsel.

1 (2) The judicial officer may, by subsequent order, permit the
2 temporary release of the person, in the custody of an appropriate law
3 enforcement officer or other appropriate person, to the extent that
4 the judicial officer determines such release to be necessary for
5 preparation of the person's defense or for another compelling reason.

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7 NEW SECTION. **Sec. 11.** Nothing in this chapter may be construed
8 as modifying or limiting the presumption of innocence.

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10 NEW SECTION. **Sec. 12.** Sections 3 through 11 of this act
11 constitute a new chapter in Title 10 RCW.

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13 NEW SECTION. **Sec. 13.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

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18 NEW SECTION. **Sec. 14.** Sections 1 and 2 take effect January 1,
19 2011. Sections 3 through 10 take effect January 1, 2011, only if the
20 proposed amendment to Article I, section 20 of the state Constitution
21 proposed in House Joint Resolution No. 4220 is validly submitted to
22 and is approved and ratified by the voters at the next general
23 election. If the proposed amendment is not approved and ratified,
24 sections 3 through 11 of this act are null and void in their
25 entirety."

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30 ADOPTED 3/05/2010
31 On page 1, line 1 of the title, after "offenses;" strike the remainder
32 of the title and insert "adding a new chapter to Title 10 RCW;
33 providing a contingent effective date; and providing an expiration
34 date."

EFFECT: (1) Provides that bail for a person arrested and detained for a felony offense as set forth in Art. 1, sec. 20 of the state Constitution must be determined on an individualized basis by a judicial officer.

(2) Provides that when a person charged with an offense appears before a judicial officer, the judicial officer must issue an order that, pending trial, the person be: (a) Released on personal recognizance; (b) released on a condition or combination of conditions; (c) temporarily detained; or (d) detained. Provides a list of conditions of release.

(3) Requires a judicial officer to consider various factors and circumstances in order to determine whether there exist any condition or combination of conditions that will reasonably assure the safety of any person or the community in specified cases. Provides that if, based on clear and convincing evidence, the judicial officer determines that no condition or combination of conditions in specified cases will reasonably assure the safety of others or the community, the judicial officer must order the pretrial detention of the person.

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