

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2625

61st Legislature
2010 Regular Session

Passed by the House March 8, 2010
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 5, 2010
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2625** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2625

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

State of Washington **61st Legislature** **2010 Regular Session**

By Representatives Kelley, Ericks, Conway, Driscoll, O'Brien, Lias, Blake, Finn, Simpson, Orwall, Morrell, and Campbell

Prefiled 01/08/10. Read first time 01/11/10. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to bail for felony offenses; adding a new chapter
2 to Title 10 RCW; creating new sections; providing an effective date;
3 providing a contingent effective date; and providing an expiration
4 date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

17 (2) This section expires August 1, 2011.

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

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

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

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

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

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

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

28 (c) The defendant may be required to comply with a specified
29 curfew;

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

34 (e) The defendant may be prohibited from approaching or
35 communicating in any manner with particular persons or classes of
36 persons;

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

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

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

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

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

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

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

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

34 (a) The person's character, physical and mental condition, family
35 ties, employment, financial resources, length of residence in the

1 community, community ties, past conduct, history relating to drug or
2 alcohol abuse, criminal history, and record concerning appearance at
3 court proceedings;

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

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

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

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

23 (3) At the hearing, such defendant has the right to be represented
24 by counsel, and, if financially unable to obtain representation, to
25 have counsel appointed. The defendant must be afforded an opportunity
26 to testify, to present witnesses, to cross-examine witnesses who appear
27 at the hearing, and to present information by proffer or otherwise.
28 The rules concerning admissibility of evidence in criminal trials do
29 not apply to the presentation and consideration of information at the
30 hearing. The facts the judicial officer uses to support a finding that
31 no condition or combination of conditions will reasonably assure the
32 safety of any other person and the community must be supported by clear
33 and convincing evidence of a propensity for violence that creates a
34 substantial likelihood of danger to the community or any persons.

35 (4) The defendant may be detained pending completion of the
36 hearing. The hearing may be reopened, before or after a determination
37 by the judicial officer, at any time before trial if the judicial

1 officer finds that information exists that was not known to the movant
2 at the time of the hearing and that has a material bearing on the issue
3 whether there are conditions of release that will reasonably assure the
4 safety of any other person and the community.

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

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

10 (2) Advise the defendant of:

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

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

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

17 (a) Include written findings of fact and a written statement of the
18 reasons for the detention;

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

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

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

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

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

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

5 NEW SECTION. **Sec. 14.** Sections 1 and 2 of this act take effect
6 January 1, 2011. Sections 3 through 10 of this act take effect January
7 1, 2011, only if the proposed amendment to Article I, section 20 of the
8 state Constitution proposed in House Joint Resolution No. 4220 is
9 validly submitted to and is approved and ratified by the voters at the
10 next general election. If the proposed amendment is not approved and
11 ratified, sections 3 through 11 of this act are null and void in their
12 entirety.

--- END ---