HOUSE BILL REPORT
SB 5987

As Passed House - Amended:
February 28, 2018

Title: An act relating to pretrial release programs to protect the public from harm.

Brief Description: Concerning pretrial release programs.

Sponsors: Senator Padden.

Brief History:
Committee Activity:
Public Safety: 2/15/18, 2/22/18 [DPA].
Floor Activity:
Passed House - Amended: 2/28/18, 98-0.

Brief Summary of Bill
(As Amended by House)

- Authorizes judicial officers in felony and non-felony cases to require the defendant to refrain from using alcohol or non-prescribed drugs as a condition of pretrial release, and submit to testing to determine compliance with the condition, in order to protect the public from harm.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Omeara Harrington (786-7136).

Background:

Pretrial release is the release of the defendant from detention pending trial. The Washington Constitution guarantees a right to pretrial release for most criminal defendants. Under court rule, there is a presumption that an accused person should be released on personal

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recognizance with no conditions unless the court determines that either: (1) the release on recognizance will not reasonably assure that the accused will appear; or (2) there is a likely danger that the accused will commit a violent crime or interfere with the administration of justice. The rule provides courts with factors to consider in determining whether the accused is a flight risk or likely dangerous. If these circumstances are found, the court may impose conditions of release.

Statutes supplement the court rules governing pretrial release. Under statute, in determining whether there are conditions of release that will reasonably assure the safety of any other person and the community, the court must take into account available information concerning:

- the nature and circumstances of the offense charged, including whether the offense is a crime of violence;
- the weight of the evidence against the defendant;
- the history and characteristics of the defendant, including, but not limited to: physical and mental condition, family and community ties, employment, financial resources, criminal and drug or alcohol abuse history, and history of appearance at court proceedings;
- whether, at the time of the current offense or arrest, the defendant was on supervision or on other release pending trial or post-conviction; and
- the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

Among numerous other release conditions, a court authorizing pretrial release may prohibit the defendant from possessing or consuming alcohol or non-prescribed drugs, and require the defendant to submit to testing to determine compliance with this condition.

In a recent Washington Supreme Court case, *Blomstrom v. Tripp*, the court determined that a court of limited jurisdiction lacked the authority of law required to overcome constitutional privacy protections in imposing urinalysis as a pretrial condition for non-felony defendants. The court reasoned that current statutory authority is limited either to felony cases or cases involving specified circumstances and criminal history, and no authority is provided in court rule for imposing such conditions absent a nexus to risk of intimidation of witnesses, likely commission of a violent crime, or interference with the administration of justice.

Summary of Amended Bill:

A judicial officer in a municipal, district, or superior court imposing conditions of pretrial release for a defendant accused of a misdemeanor, gross misdemeanor, or felony offense, may prohibit the defendant from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant if the judicial officer determines that this condition is necessary to protect the public from harm. The defendant may be required to submit to testing in order to determine compliance with this condition.

Appropriation: None.

Fiscal Note: Requested on February 22, 2018.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Historically, judges have always been able to impose urinalysis on a pretrial basis. Judges balance various factors in imposing conditions, including the nature and seriousness of the danger to the person and the community. It is not unusual for a judge to impose this condition in certain types of cases, for example, in impaired driving cases. Recently a court case took this option away. Under the state Constitution, government may not intrude into privacy without authority of law. A recent court case looking at pretrial imposition of urinalysis in a gross misdemeanor impaired driving case ruled that this condition is an intrusion of privacy for which there is no authority of law. There are statutes allowing this condition, but the court found that they applied only to felony offenses. Allowing judges to impose this condition is needed for public safety, especially in impaired driving cases. As a result of this decision, judges have to consider more restrictive alternatives, like higher bail. The changes proposed will increase public safety and preserve this less restrictive alternative option for release. Judges are in support of this proposal, as they are always looking for the least restrictive alternative that maintains the safety of the public. This is in line with other bail reform efforts that are underway.

(Opposed) People are presumed innocent until proven guilty. Even aside from the title problem, this proposal will not pass constitutional muster. Urinalysis is an invasive search that is not allowed when a person is considered innocent. Pretrial defendants were found by the court to not suffer a diminution of privacy interests sufficient to justify this kind of intrusion. Also, the proposal unconstitutionally expands the bases upon which conditions may be imposed before conviction, and is not a clarification. Judges can already consider the person's likelihood to commit a violent offense. This extension could result in jailing people for non-violent crimes and impaired driving. The changes proposed are outside of the Legislature's authority because they circumvent CrR 3.2. There are other well-vetted pretrial reform proposals currently in development. The applicability to misdemeanors and the authority to impose conditions based on "protecting the public from harm" should be removed.

Persons Testifying: (In support) Senator Padden, prime sponsor; Jon Tunheim, Washington Association of Prosecuting Attorneys; and Sam Meyer, District and Municipal Court Judges Association.

(Opposed) Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Elisabeth Smith, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.