

HOUSE BILL REPORT

HB 2827

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to the release of a person arrested and detained for a crime involving domestic violence.

Brief Description: Prohibiting a person arrested and detained for a crime involving domestic violence from being released until the person has appeared before the court at the preliminary appearance or arraignment.

Sponsors: Representatives Campbell, Green, Chase, Kelley, Wallace, Moeller, Haigh and Simpson.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/27/10, 2/2/10 [DPS].

Brief Summary of Substitute Bill

- Prohibits the release on bail or personal recognizance of a person arrested and detained for a crime involving domestic violence prior to a probable cause determination pursuant to criminal court rules.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

Staff: Alexa Silver (786-7190).

Background:

Domestic Violence.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Because the Legislature has found there is a likelihood of repeated violence against domestic violence victims, when a person charged with or arrested for a crime involving domestic violence is released on bail or personal recognizance, the court may issue a no-contact order prohibiting the person from having contact with or coming within a certain distance of the victim.

Domestic violence includes the following crimes when the crimes are committed by one family or household member against another: assault, drive-by shooting, reckless endangerment, coercion, burglary, residential burglary, criminal trespass, malicious mischief, kidnapping, unlawful imprisonment, rape, stalking, violation of a restraining order or no-contact order, and interference with reporting domestic violence.

Bail and Pretrial Release.

The state Constitution guarantees the right to bail for people charged with non-capital crimes, and this right has been interpreted as the right to a judicial determination of either release or reasonable bail.

Courts have inherent power and the statutory authority to make rules regarding procedure and practice in the courtroom. Courts have ruled that setting bail and releasing individuals from custody is a traditional function of the courts. The Legislature may, however, enact statutes related to bail so long as the statutes can be harmonized with court rules; if the statute and rule cannot be harmonized, the court rule governs.

Criminal court rules govern the release of an accused in criminal proceedings. In a non-capital case, there is a presumption that the accused should be released unless the court determines either the release will not reasonably assure that the accused will appear or there is a likely danger that the accused will commit a violent crime or interfere with the administration of justice.

The court may impose conditions of release, based on the following factors: the accused's criminal record; the willingness of community members to vouch for the accused's reliability and assist with compliance with the conditions; the nature of the charges; the accused's reputation, character, and mental condition; the accused's past record of interference with the administration of justice; evidence of present intimidation of witnesses; the accused's record of committing offenses while on pretrial release, probation, or parole; and the accused's record of use or threatened use of deadly weapons, especially against victims or witnesses.

Court rules require that an accused make a preliminary appearance in court as soon as practicable after conditions of release are imposed or the accused is detained, but no later than by the close of business the next court day. The judge's determination of probable cause must take place within 48 hours of arrest.

In counties that allow booking bail, the amount of bail may be determined by reference to a bail schedule and does not require the person who has been arrested to appear before a judicial officer. Approaches to bail schedules vary by county and type of court. For example, a bail schedule may require that bail for certain offenses, including domestic violence-related felonies, be determined by a judicial officer.

Summary of Substitute Bill:

A person arrested and detained for a crime involving domestic violence may not be released on bail or personal recognizance prior to a probable cause determination pursuant to criminal court rules.

Substitute Bill Compared to Original Bill:

The original bill prohibited release on bail or personal recognizance until the person had appeared before the court at the preliminary appearance or arraignment. The substitute bill instead prohibits release prior to the probable cause determination.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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) Currently some courts delay the release of a person arrested for domestic violence until the person has spoken to a judge. This practice should become a statewide policy. It provides a cooling-off period and causes the person to realize the significance of his or her actions when the judge explains the penalties. It also increases the likelihood that the judge will have more information on the person's criminal history prior to setting bail.

(With concerns on original bill) Implementation of this bill may be a problem, because some small, part-time courts meet only twice a month. Contracts for these judges may need to be amended.

(Opposed) If a person is arrested on a Friday, the preliminary appearance may not occur until Monday or Tuesday. Sometimes domestic violence is serious, but sometimes it involves minor disputes. Domestic violence laws apply to a broad range of relationships, including roommates. The costs of this bill will be enormous, and many jails will not have the space. If the arrested person has a dependent, the person should be allowed to post bail to arrange for care of the dependent.

Persons Testifying: (In support) Representative Campbell, prime sponsor; and Carey Morris, Washington State Coalition Against Domestic Violence.

(With concerns on original bill) Melanie Stewart, District and Municipal Court Judges.

(Opposed) Wade Samuelson, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.