

HOUSE BILL REPORT

SSB 6673

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

Title: An act relating to bail practices and procedures.

Brief Description: Appointing a task force to study bail practices and procedures.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin, Carrell, Kohl-Welles, Gordon, Regala, Roach, Hargrove and Tom).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/23/10 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Establishes a work group within existing resources to study and make recommendations regarding bail practices and procedures.
- Prescribes the membership of the work group and the topics to be reviewed.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass as amended. 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:

Washington Law and Court Rules Governing Bail.

Pretrial release is the release of the accused from detention pending trial. For people charged with noncapital crimes, the state Constitution guarantees the right to bail, which has been interpreted as the right to a judicial determination of either release or reasonable bail. The purpose of bail is to secure the accused's presence in court. Pretrial release and bail are

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.

avored by courts in appropriate circumstances because the accused is presumed innocent and because the state is relieved of the burden of detention.

Courts have found that the courts have the inherent power and the statutory authority to make rules regarding procedure and practice in the courtroom, including setting bail and releasing individuals from custody. The Legislature may enact statutes related to bail so long as the statutes can be harmonized with court rules.

Criminal court rules govern the release of an accused in superior court criminal proceedings. In a noncapital case, there is a presumption that the accused should be released unless the court determines either that release will not reasonably assure that the accused will appear, or that there is a likely danger that the accused will commit a violent crime or interfere with the administration of justice. Under those circumstances, the court may impose conditions on release. For example, the court may require the accused to post a bond or deposit cash, conditioned on compliance with the conditions of release.

Bail Schedules.

Some counties permit the practice of booking bail, under which a law enforcement officer or a prosecutor sets the amount of bail based on a bail schedule. Bail schedules are contained in local court rules, and an advisory statewide bail schedule is also available. Approaches to bail schedules vary by county and type of court; the Washington Supreme Court has held that whether to promulgate a bail schedule is a question best left to the counties.

Nature of Bail Bonds.

Bail bonds are an insurance product sold by a bail bondsman, who works for the insurance company. The premium rate charged by the insurance company must be approved by the Office of the Insurance Commissioner. Generally, insurance companies charge a premium of 8 to 10 percent for bonds exceeding \$500, depending on factors such as military status and union membership.

Federal Law on Pretrial Release and Detention.

Under the federal Bail Reform Act, a judge may release the accused on personal recognizance or execution of an appearance bond, release the accused on conditions, or detain the accused. The accused may be detained in certain cases if the judge determines that no condition or combination of conditions will reasonably assure the accused's appearance and the safety of any other person and the community.

Summary of Amended Bill:

A work group on bail practices and procedures is established within existing resources. It is the Legislature's intent that a panel of experts should study the bail system in a comprehensive and well-considered manner. The work group is composed of 24 members as follows:

- two senators (one from each caucus);
- two representatives (one from each caucus);
- the Chief Justice of the Washington Supreme Court or her designee;
- one superior court judge;
- one district or municipal court judge;
- the Governor or her designee;
- the Secretary of the Department of Corrections or his designee;
- two prosecuting attorneys;
- two criminal defense attorneys;
- one police officer and one deputy sheriff;
- one representative of an association of city governments;
- one representative of an association of county governments;
- one corrections officer;
- one representative of a group representing corrections officers at a county jail in a county with a population over 1 million;
- one representative of an organization concerned with the protection of individual liberties;
- one representative of an association of victims' advocates;
- one representative of the bail bond industry;
- one representative of the bail bond enforcement industry; and
- one representative of a consumer advocacy organization.

The work group must, at a minimum, review the following:

- all aspects of bail, including bail-related legislation introduced in the 2010 session;
- the pretrial release system;
- bail practices by county and whether uniform statewide bail practices should be required;
- characteristics of the federal system;
- crime victims' interests in being notified when an offender is released on bail;
- the interests of counties and cities with municipal courts;
- whether a risk assessment tool that predicts an offender's likelihood of exhibiting violent behavior if released should be used at bail hearings;
- benefits of competitive freedom of government regulation in the pricing of bail bonds;
- legal and constitutional constraints in granting or denying bail; and
- whether the regulatory, judicial, or statutory constraints on bail should be revised.

By December 1, 2010, the work group must report its findings and recommendations to the Washington Supreme Court, the Governor, and the Legislature. Staff support for the work group must be provided by Senate Committee Services and the House Office of Program Research. The work group must meet in state facilities that do not charge for use.

Legislative members of the work group must be reimbursed for travel expenses as required by law. Non-legislative members who represent an employer or organization are not entitled to reimbursement.

The act establishing the work group expires December 31, 2010.

Amended Bill Compared to Substitute Bill:

The substitute bill established a task force and required that the task force request research from the Washington State Institute for Public Policy and accommodate members' varied places of residence for meetings. It prohibited the reimbursement of travel and other membership expenses for legislative members and required non-legislative members to seek reimbursement through their respective agencies or organizations. It stated that the task force was subject to the Open Public Meetings Act.

The amended bill establishes a work group rather than a task force. It eliminates the requirement that the work group request research, as well as the provision subjecting the work group to the Open Public Meetings Act. It requires that the work group meet in state facilities that do not charge for use and eliminates the requirement that the work group accommodate the members' places of residence. The amended bill replaces the provision on reimbursement of travel and other membership expenses with language providing that legislative members are reimbursed as required by law and non-legislative members who represent an employer or an organization are not reimbursed.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 23, 2010.

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) Examining the entire bail system is the best step to take in response to the Lakewood tragedy. It will help weigh the competing interests of the presumption of innocence and protection of the public. The purpose of the task force is to put more eyes and ears on the issue of bail, rather than just law enforcement and judges, because changing a constitutional right should not be rushed. This bill is necessary to improve relationships among different components of the system, including jails, police, the bail bonds industry, courts, prosecutors, defense attorneys, the Department of Corrections, community corrections officers, and the Department of Labor & Industries. There are many judges and prosecutors who do not understand what the bail bond business is about. A task force would provide value to citizens, and there is strong public support for this bill.

(With concerns) The Governor is generally opposed to any new task forces and commissions but may be open to this task force. The Governor would oppose this task force if it stands in the way of a constitutional amendment, because the time to act is now.

(Opposed) None.

Persons Testifying: (In support) Senator Kline, prime sponsor; Kimberly Gordon, Washington Association of Criminal Defense Lawyers and Washington Defender

Association; Denny Behrend, Washington State Bail Agents Association; and Holly Chisa, Aladdin Bail Bonds.

(With concerns) John Lane, Office of the Governor.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.