H-3806.1

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**HOUSE BILL 2569**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Wylie, Cody, Gregerson, Pollet, Tarleton, Senn, Irwin, and Davis

AN ACT Relating to authorizing pretrial detention for certain offenses involving firearms; amending RCW 10.21.010, 10.21.020, 10.21.040, 10.21.060, and 10.19.055; and providing a contingent effective date.

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

**Sec.**  RCW 10.21.010 and 2010 c 254 s 3 are each amended to read as follows:

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.

**Sec.**  RCW 10.21.020 and 2010 c 254 s 4 are each amended to read as follows:

Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer must issue an order that, pending trial, the person be:

(1) Released on personal recognizance;

(2) Released on a condition or combination of conditions ordered under RCW 10.21.030 or other provision of law;

(3) Temporarily detained as allowed by law; or

(4) Detained as provided under this chapter ((~~254, Laws of 2010~~)).

**Sec.**  RCW 10.21.040 and 2010 c 254 s 6 are each amended to read as follows:

((~~If~~)) (1) A judicial officer must order the detention of a person before trial if, after a hearing on offenses prescribed in Article I, section 20 of the state Constitution, the judicial officer ((~~finds~~)):

(a) Finds, by clear and convincing evidence, that ((~~a~~)) either:

(i) The person shows a propensity for violence that creates a substantial likelihood of danger to the community or any persons((~~, and finds~~)); or

(ii) The offense involves the possession or attempted possession of a firearm in violation of a protection order, no-contact order, restraining order, or other court order, that includes an order prohibiting the person from accessing, obtaining, or possessing firearms; and

(b) Finds that no condition or combination of conditions will reasonably assure the safety of any other person and the community((~~, such judicial officer must order the detention of the person before trial~~)).

(2) The detainee is entitled to expedited review of the detention order by the court of appeals under the writ provided in RCW 7.36.160.

**Sec.**  RCW 10.21.060 and 2010 c 254 s 8 are each amended to read as follows:

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

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

(3) At the hearing, such defendant has the right to be represented by counsel, and, if financially unable to obtain representation, to have counsel appointed. The defendant must be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The burden of proof at the hearing shall be clear and convincing evidence. If the hearing is based on an offense described in RCW 10.21.040(1)(a)(i),the facts the judicial officer uses to support a finding that no condition or combination of conditions will reasonably assure the safety of any other person and the community must be supported by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons.

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

**Sec.**  RCW 10.19.055 and 2012 c 6 s 1 are each amended to read as follows:

Bail for the release of a person arrested and detained for ((~~a~~)) the following offenses must be determined on an individualized basis by a judicial officer:

(1) Any class A or B felony offense ((~~must be determined on an individualized basis by a judicial officer~~));or

(2) Any offense involving the possession or attempted possession of a firearm in violation of a protection order, no-contact order, restraining order, or other court order, that includes an order prohibiting the person from accessing, obtaining, or possessing firearms.

NEW SECTION. **Sec.**  This act takes effect January 1, 2021, if the proposed amendment to Article I, section 20 of the state Constitution concerning denial of bail proposed in House Joint Resolution No. . . . . (H-3805/20) is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is null and void in its entirety.

**--- END ---**