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**SENATE BILL 5307**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Pedersen, Dhingra, Darneille, Das, and Nguyen; by request of Uniform Law Commission

AN ACT Relating to the uniform pretrial release and detention act; amending RCW 10.19.170 and 10.21.060; adding a new section to chapter 10.31 RCW; adding a new chapter to Title 10 RCW; and providing an effective date.

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

**ARTICLE 1**

**GENERAL PROVISIONS**

NEW SECTION. **Sec.**  SHORT TITLE. This act may be cited as the uniform pretrial release and detention act.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abscond" means fail to appear in court as required with intent to avoid or delay adjudication.

(2) "Charge," used as a noun, means an allegation of an offense in a complaint, information, indictment, or a criminal citation alleging a violation of a criminal law, ordinance, or similar record.

(3) "Citation" means a record issued by an arresting officer or other authorized peace officer alleging an offense.

(4) "Covered offense" means an offense for which the penalty may be life in prison, for which pretrial detention is authorized under Article I, section 20 of the state Constitution. Covered offense also includes a class A or class B felony, for which a judicial officer must determine the financial conditions for release.

(5) "Detention hearing" means a hearing under section 401 of this act.

(6) "Not appear" or "nonappearance" means to fail to appear in court as required without intent to avoid or delay adjudication.

(7) "Obstruct justice" means interfere with the criminal process with intent to influence or impede the administration of justice. "Obstruct justice" includes intimidating or tampering with a witness or tampering with evidence.

(8) "Offense" means conduct that a statute or ordinance proscribes.

(9) "Person" means an individual, estate, partnership, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Release hearing" means a preliminary appearance hearing under section 301 of this act.

(12) "Release on recognizance" means pretrial release of an individual with no condition other than to appear in court as required and to abide by generally applicable laws.

(13) "Secured appearance bond" means a person's promise, secured by sufficient surety, deposit, lien, or proof of access to collateral, to forfeit a specified sum if the individual whose appearance is the subject of the bond absconds or does not appear.

(14) "Unsecured appearance bond" means a person's promise other than through a secured appearance bond to forfeit a specified sum if the individual whose appearance is the subject of the bond absconds or does not appear.

NEW SECTION. **Sec.**  SCOPE. (1) This chapter governs a determination to arrest, release, or detain an individual before trial.

(2) This chapter does not affect the law of this state other than this chapter regarding related matters, including: (a) Forfeiture, release, or collection of a secured appearance bond or an unsecured appearance bond; (b) involuntary civil commitment; (c) a right of a crime victim, including a right of notification; (d) appellate review; or (e) release pending appeal.

**ARTICLE 2**

**CITATION AND ARREST**

NEW SECTION. **Sec.**  A new section is added to chapter 10.31 RCW to read as follows:

(1) A police officer who arrests an individual without a warrant shall detain the individual in a detention or custodial facility until the individual's first postarrest appearance only upon probable cause to believe that the individual:

(a) Committed a crime against another individual;

(b) Committed a crime for which a statute provides that "a police officer shall arrest and take into custody," including but not limited to crimes identified in RCW 10.31.100(2) and 26.50.110;

(c) Will commit a violent crime, including misdemeanors and gross misdemeanors that are not defined as violent offenses in RCW 9.94A.030; or will seek to intimidate witnesses, or otherwise interfere with administration of justice; or

(d) Is unlikely to respond to legal process based upon the totality of circumstances, including but not limited to the individual's mental condition or impairment, length of residence in the community, criminal history including the existence of pending charges, the existence of arrest warrants for the individual, any pending criminal charges, the willingness of responsible members of the community to assist the individual in appearing for required hearing, and any other factors indicating the individual's ties to the community.

(2)(a) Nothing in this section shall preclude an officer from administratively booking an individual who is arrested without a warrant upon probable cause to believe the individual has committed a gross misdemeanor or felony.

(b) For purposes of this subsection, "administratively booking" means transporting the individual to a police station or other designated location for the purpose of photographing and fingerprinting as required by RCW 43.43.735 or other statute authorizing the collection of identification data. Once identification data is collected, the individual shall be released upon the individual's promise to appear in court pursuant to a summons or upon the date provided by the arresting officer pursuant to local court rule.

(3) An individual who is arrested upon probable cause to believe the individual has committed a crime and who is not detained or administratively booked at the time of arrest shall be photographed and fingerprinted following the individual's first appearance in court for proceedings arising from such arrest for any criminal offense constituting a felony.

**ARTICLE 3**

**RELEASE HEARING**

NEW SECTION. **Sec.**  TIMING. (1) Unless an arrested individual is released under section 203 of this act after arrest, the individual is entitled to a hearing to determine release pending trial. Except as otherwise provided in subsection (2) of this section, the court shall hold the hearing within 48 hours after the arrest.

(2) The court may continue a release hearing:

(a) On motion of the arrested individual; or

(b) In extraordinary circumstances, for not more than 48 hours, on its own or on motion of the prosecuting attorney.

(3) At the conclusion of a release hearing, the court shall issue an order of pretrial release or temporary pretrial detention.

NEW SECTION. **Sec.**  RIGHTS OF ARRESTED INDIVIDUAL. (1) An arrested individual has a right to be heard at a release hearing.

(2) An arrested individual has a right to counsel at a release hearing. If the individual is unable to obtain counsel for the hearing, an authorized public defense services agency or provider shall provide counsel.

NEW SECTION. **Sec.**  JUDICIAL DETERMINATION OF RISK. At a release hearing, the court shall determine whether the arrested individual poses a risk that is relevant to pretrial release. The individual poses a relevant risk only if the court determines by clear and convincing evidence that the individual is likely to abscond, not appear, obstruct justice, violate an order of protection, or there is substantial risk the arrested individual will commit a violent crime. The court shall consider:

(1) Available information concerning:

(a) The nature, seriousness, and circumstances of the alleged offense;

(b) The weight of the evidence against the individual;

(c) The individual's criminal history, history of absconding or nonappearance, and community ties; and

(d) Whether the individual has a pending charge in another matter or is under criminal justice supervision;

(2) Any relevant information provided by a pretrial services agency; and

(3) Other relevant information, including information provided by the individual, the prosecuting attorney, or an alleged victim.

NEW SECTION. **Sec.**  PRETRIAL RELEASE. (1) Except as otherwise provided in subsection (2) of this section and section 308 of this act, at a release hearing the court shall issue an order of pretrial release on recognizance. The order must state:

(a) When and where the individual must appear; and

(b) The possible consequences of violating the order or committing an offense while the charge is pending.

(2) If the court determines under section 303 of this act that an arrested individual poses a relevant risk, the court shall determine under sections 305 through 307 of this act whether pretrial release of the individual is appropriate.

(3) If the court determines under sections 305 through 307 of this act that pretrial release is appropriate, the court shall issue an order of pretrial release. The order must include the information required under subsection (1)(a) of this section and any restrictive condition imposed by the court.

NEW SECTION. **Sec.**  PRACTICAL ASSISTANCE—VOLUNTARY SUPPORT SERVICES. (1) If the court determines under section 303 of this act that an arrested individual poses a relevant risk, the court shall determine whether practical assistance or a voluntary support service, or both, are available and sufficient to satisfactorily address the risk. Practical assistance may include delayed release for up to 24 hours for an intoxicated individual when release would be unsafe or for transfer to a treatment facility for custody and care as permitted by court rule. Voluntary support services may include pretrial services programs, housing support programs, pretrial release programs provided in RCW 10.21.015, and other available state or community programs for which an arrested individual qualifies.

(2) If the court determines that practical assistance or a voluntary support service is available and sufficient to satisfactorily address a relevant risk the court identifies under section 303 of this act, the court shall refer the individual to the practical assistance or voluntary support service and issue an order of pretrial release under section 304(3) of this act.

NEW SECTION. **Sec.**  RESTRICTIVE CONDITION OF RELEASE. (1) If the court determines under section 305 of this act that practical assistance or a voluntary support service is not sufficient to satisfactorily address a relevant risk the court identifies under section 303 of this act, the court shall impose the least restrictive condition or conditions reasonably necessary to satisfactorily address the risk and issue an order of pretrial release under section 304(3) of this act.

(2) A restrictive condition under subsection (1) of this section includes:

(a) Mandatory therapeutic treatment or social services when authorized pursuant to chapter 71.05 RCW or other applicable laws;

(b) A requirement to seek to obtain or maintain employment or maintain an education commitment;

(c) A restriction on possession or use of a weapon;

(d) A restriction on travel;

(e) A restriction on contact with a specified person;

(f) A restriction on a specified activity;

(g) Supervision by a pretrial services agency or another person;

(h) Active or passive electronic monitoring;

(i) Home detention;

(j) Subject to section 307 of this act, a secured appearance bond or unsecured appearance bond;

(k) A condition proposed by the arrested individual, the prosecuting attorney, or an alleged victim;

(l) Any other nonfinancial condition required by law of this state other than this act; or

(m) Another condition to address satisfactorily the relevant risk the court identifies under section 303 of this act.

(3) The court shall state in a record the reasons the restrictive condition or conditions imposed under subsection (1) of this section are the least restrictive reasonably necessary means to satisfactorily address the relevant risk the court identifies under section 303 of this act.

NEW SECTION. **Sec.**  FINANCIAL CONDITION OF RELEASE. (1) Subject to sections 308 and 403 of this act, the court may not impose a restrictive condition under section 306 of this act that requires initial payment of a fee in a sum greater than the arrested individual is able to pay from personal financial resources within 24 hours after the condition is imposed. If the individual is unable to pay the fee, the court shall waive or modify the fee, or waive or modify the restrictive condition that requires payment of the fee, to the extent necessary to release the individual. If the individual is unable to pay a recurring fee, the court shall waive or modify the recurring fee or the restrictive condition that requires payment of the fee.

(2) Before imposing a secured appearance bond or unsecured appearance bond under section 306 of this act, the court shall consider the arrested individual's personal financial resources and obligations, including income, assets, expenses, liabilities, and dependents.

(3) Subject to sections 308 and 403 of this act, the court may not impose a secured appearance bond as a restrictive condition under section 306 of this act unless the court determines by clear and convincing evidence that the arrested individual is likely to abscond, not appear, obstruct justice, or violate an order of protection.

(4) Subject to sections 308 and 403 of this act, the court may not impose a secured appearance bond as a restrictive condition under section 306 of this act:

(a) To keep an arrested individual detained;

(b) For a charge that is not a felony, unless the individual (i) has absconded; or (ii) did not appear in a criminal case or combination of criminal cases three or more times; or

(c) The cost of which is an amount greater than the individual is able to pay from personal financial resources within 24 hours after the condition is imposed.

NEW SECTION. **Sec.**  TEMPORARY PRETRIAL DETENTION. (1) At the conclusion of a release hearing, the court may issue an order to detain the arrested individual temporarily until a detention hearing, or may impose a financial condition of release in an amount greater than the individual is able to pay from personal financial resources within 24 hours after the condition is imposed, only if the individual is charged with a covered offense and the court determines by clear and convincing evidence that:

(a) It is likely that the individual will abscond, obstruct justice, violate an order of protection, or there is substantial risk the arrested individual will commit a violent crime and that no less restrictive condition is sufficient to satisfactorily address the relevant risk the court identifies under section 303 of this act;

(b) The individual has violated a condition of an order of pretrial release for a pending criminal charge; or

(c) In a case in which the individual is charged with a felony, it is likely the individual will not appear, and no less restrictive condition is sufficient to satisfactorily address the relevant risk the court identifies under section 303 of this act.

(2) If under subsection (1) of this section the court issues an order to detain the arrested individual temporarily or imposes a financial condition of release in an amount greater than the individual is able to pay from personal financial resources within 24 hours after the condition is imposed, the court shall state its reasons in a record, including why no less restrictive condition or combination of conditions is sufficient.

**ARTICLE 4**

**DETENTION HEARING**

NEW SECTION. **Sec.**  TIMING. (1) If the court issues an order of temporary pretrial detention of an arrested individual under section 308 of this act, or pretrial release of an arrested individual under section 304 of this act subject to a restrictive condition that results in continued detention of the individual, the court shall hold a hearing to consider continued detention of the individual pending trial. The hearing must be held within three days not including any intermediate Saturday, Sunday, or legal holiday after issuance of the order.

(2) The court on its own or on motion of the prosecuting attorney may continue a detention hearing for good cause for no more than three days not including any intermediate Saturday, Sunday, or legal holiday.

(3) The court shall continue a detention hearing on motion of the detained individual.

(4) At the conclusion of a detention hearing, the court shall issue an order of pretrial release or detention.

NEW SECTION. **Sec.**  RIGHTS OF THE DETAINED INDIVIDUAL. (1) At a detention hearing, the detained individual has a right to counsel. If the individual is indigent, a public defense services agency or provider shall provide counsel.

(2) At a detention hearing, the detained individual has a right to:

(a) Review evidence to be introduced by the prosecuting attorney before it is introduced at the hearing;

(b) Present evidence, call witnesses, and provide information;

(c) Testify; and

(d) Cross-examine witnesses.

NEW SECTION. **Sec.**  PRETRIAL DETENTION. (1) At a detention hearing, the court shall consider the criteria in sections 303 through 307 of this act to determine whether to issue an order of pretrial detention or continue, amend, or eliminate a restrictive condition that has resulted in continued detention of the detained individual. If failure to satisfy a secured appearance bond or pay a fee is the only reason the individual continues to be detained, the fact of detention is prima facie evidence that the individual is unable to satisfy the bond or pay the fee.

(2) The court at a detention hearing may issue an order of pretrial detention or continue a restrictive condition of release that results in detention only if the detained individual is charged with a covered offense and the court determines by clear and convincing evidence that:

(a) It is likely that the individual will abscond, obstruct justice, violate an order of protection, or there is substantial risk the arrested individual will commit a violent crime and no less restrictive condition is sufficient to satisfactorily address the relevant risk the court identifies under section 303 of this act; or

(b) In a case where the individual is charged with a felony, it is likely that the individual will not appear, and no less restrictive condition is sufficient to satisfactorily address the relevant risk the court identifies under section 303 of this act.

(3) If under subsection (2) of this section the court issues an order of pretrial detention or continues a restrictive condition of release that results in detention, the court shall state its reasons in a record, including why no less restrictive condition or combination of conditions is sufficient.

**ARTICLE 5**

**MODIFYING OR VACATING ORDER**

NEW SECTION. **Sec.**  MODIFYING OR VACATING BY AGREEMENT. By agreement of the prosecuting attorney and an individual subject to an order under Article 3 or 4 of this chapter, the court may:

(1) Modify an order of pretrial release;

(2) Vacate an order of pretrial detention and issue an order of pretrial release; or

(3) Issue an order of pretrial detention.

NEW SECTION. **Sec.**  MOTION TO MODIFY. On its own or on motion of a party, the court may modify an order of pretrial release or detention using the procedures and standards in Articles 3 and 4 of this chapter. The court may consider new information relevant to the order, including information that the individual subject to the order has violated a condition of release. The court may deny the motion summarily if it is not supported by new information.

**ARTICLE 6**

**MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec.**  UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Sec.**  RCW 10.19.170 and 1996 c 181 s 1 are each amended to read as follows:

((~~Notwithstanding CrR 3.2, a~~)) A court ((~~who~~)) that releases a defendant arrested or charged with a violent offense as defined in RCW 9.94A.030 on the offender's personal recognizance or personal recognizance with conditions must state ((~~on the~~)) its reasons in a record ((~~the reasons why the court did not require the defendant to post bail~~)) including why no less restrictive condition or combination of conditions is sufficient, consistent with section 308(2) of this act.

**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~~)) three 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 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.

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

NEW SECTION. **Sec.**  TRANSITION. This chapter applies to an arrest made, a citation issued, or a release or detention hearing held on or after the effective date of this section, including a hearing to enforce, modify, or vacate a release or detention order issued before the effective date of this section.

NEW SECTION. **Sec.**  EFFECTIVE DATE. This act takes effect January 1, 2022.

NEW SECTION. **Sec.**  Sections 101 through 103, 301 through 601, 605, and 606 of this act constitute a new chapter in Title 10 RCW.

**--- END ---**