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## Community Safety Committee

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### HB 1252

**Brief Description:** Concerning pretrial release.

**Sponsors:** Representatives Davis, Griffey and Couture.

#### Brief Summary of Bill

- Creates a rebuttable presumption at a preliminary appearance that personal recognizance will not reasonably assure a defendant's appearance, when required, if certain specified circumstances existed at the time of the current offense or arrest.
- Requires the court, in such circumstances, to specify in a written order the rationale for releasing an adult or juvenile on personal recognizance, declining to order electronic monitoring, or setting bail or a probation bond that is less than what the prosecutor recommended.

**Hearing Date:** 2/3/25

**Staff:** Lena Langer (786-7192).

#### **Background:**

##### Pretrial Release.

Pretrial release is the release of the defendant from custody pending trial. The Washington Constitution guarantees a right to pretrial release for most criminal defendants. Under court rule, there is a presumption of pretrial release on personal recognizance unless:

- the release on recognizance 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.

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

A personal recognizance release is the release of the defendant from custody solely upon the defendant's promise to appear for future court proceedings.

*Likelihood of Failure to Appear.*

If the court determines the accused is not likely to appear if released on personal recognizance, the court must impose the least restrictive of the following conditions that will reasonably assure the accused's appearance, or, if no single condition gives that assurance, any combination of the following conditions:

- place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- place restrictions on the travel, association, or place of abode of the accused during the release period;
- require the execution of an unsecured bond in a specified amount;
- require the execution of a bond or the deposit of cash;
- require the accused to return to custody during specified hours or to be placed on electronic monitoring; or
- impose any condition other than detention deemed reasonably necessary to assure appearance as required.

If the court determines the accused must post a secured or unsecured bond, the court must consider the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

In determining which conditions of release will reasonably assure the accused's appearance, the court must consider relevant facts, including but not limited to, the accused's:

- history of response to orders to personally appear;
- employment status, educational status, participation in counseling or treatment, or volunteer work in the community;
- family relationships, reputation, character, and mental condition;
- length of residence in the community;
- criminal record and the nature of the charge if relevant to the risk of nonappearance; and
- other relationships to community or to persons willing to assist the defendant in complying with 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 other persons 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; and
- 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;
- the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and
- firearm history.

*Showing of Substantial Danger.*

Under court rule, upon a showing that there is a substantial danger that the accused will commit a violent crime, seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose additional conditions. In determining which release conditions will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court must consider the relevant facts including but not limited to:

- the accused's criminal record;
- the willingness of community members to vouch for the accused's reliability and assist the accused in complying with conditions of release;
- the nature of the charge;
- the accused's reputation, character, and mental condition;
- the accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;
- whether or not there is evidence of present threats or intimidation directed to witnesses;
- the accused's past record of committing offenses while on pretrial release, probation or parole; and
- the accused's past record of use of or threatened use of deadly weapons or firearms, especially to victims or witnesses.

Juvenile Justice.

In Washington, juvenile courts are a division of the state's superior court system. Generally, a juvenile court has jurisdiction over criminal offenses alleged to have been committed before an individual's eighteenth birthday.

A juvenile may not be held in detention unless there is probable cause to believe that:

- the juvenile is a fugitive from justice;
- the juvenile's parole has been suspended or modified;
- the juvenile is a material witness; or
- the juvenile has committed an offense or has violated the terms of a disposition order; and:
  - the juvenile will likely fail to appear for further proceedings;
  - detention is required to protect the juvenile from himself or herself;
  - the juvenile is a threat to community safety;
  - the juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or
  - the juvenile has committed a crime while another case was pending.

A juvenile who has been found guilty of Rape in the first or second degree or Rape of a child in

the first degree must be detained pending disposition. Upon a finding that community members have threatened the health of a juvenile taken into custody, at the juvenile's request, the court may order continued detention pending further court order.

If detention is not necessary, the court must impose the most appropriate of the following conditions or a combination of the following conditions:

- place the juvenile in the custody of a designated person agreeing to supervise the juvenile;
- restrict the juvenile's travel during the release period;
- require the juvenile to report regularly to, and remain under, the supervision of the juvenile court;
- require that the juvenile return to detention during specified hours;
- impose any condition other than detention deemed reasonably necessary to assure appearance as required; or
- require the juvenile to post a probation bond set by the court.

A court may order a juvenile to post a bond or other collateral in lieu of a bond to enhance public safety, increase the likelihood that the juvenile will appear as required to respond to charges, and increase compliance with community supervision. This bond is called a "probation bond." The parents or guardians of the juvenile may sign for the bond. A parent or guardian, in addition to the surety, has a right to notify the probation officer, prosecuting attorney, and court, if the juvenile violates any of the terms and conditions of the bond.

### **Summary of Bill:**

#### Pretrial Release of Adults.

At the defendant's preliminary appearance, a rebuttable presumption is created that personal recognizance will not reasonably assure a defendant's appearance, when required, if at the time of the current offense or arrest:

- the defendant resisted arrest;
- the defendant attempted to elude a police vehicle; or
- substantial resources such as multiple units, canine teams, drones, or air support were required to apprehend the defendant.

In such cases, if the judicial officer issues an order for the person to either be released on personal recognizance or with conditions, the judicial officer must specify in a written order how public safety and the defendant's appearance will be ensured, and the rationale for:

- releasing the defendant on personal recognizance;
- declining to order electronic monitoring; or
- ordering less bail than what the prosecutor recommended.

The court must submit the orders with the written findings to the Administrative Office of the Courts (AOC) by the next judicial day. The AOC must maintain a database where the orders can be accessed by the public.

The AOC must publish and submit annually to the Legislature, the Washington Association of Sheriffs and Police Chiefs, and the Washington Association of Prosecuting Attorneys a report on the number of orders issued where: a person is released on personal recognizance; the judicial officer declines to order electronic monitoring; or the judicial officer orders less bail than requested by the prosecutor.

In determining conditions of release, in addition to other available information, the court must also consider whether, at the time of the current offense or arrest, the defendant resisted arrest, attempted to elude a police vehicle, or substantial resources were required to apprehend the defendant.

#### Juvenile Detention.

At a detention hearing for a juvenile, a rebuttable presumption is created that the juvenile will likely fail to appear for further proceedings if at the time of the current offense or arrest:

- the juvenile resisted arrest;
- the juvenile attempted to elude a police vehicle; or
- substantial resources such as multiple units, canine teams, drones, or air support were required to apprehend the juvenile.

In such cases, the court must provide a written order specifying how public safety and the juvenile's appearance will be ensured, and the rationale for:

- releasing the juvenile on personal recognizance;
- declining to order electronic monitoring; or
- setting a probation bond that is less than what the prosecutor recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

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