

Chapter 10.21 RCW

BAIL DETERMINATIONS UNDER ARTICLE I, SECTION 20—CONDITIONS OF RELEASE

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RCW 10.21.010 Intent. 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. [2010 c 254 s 3.]

Intent—2010 c 254: "The legislature intends by this act to require an individualized determination by a judicial officer of conditions of release for persons in custody for felony. This requirement is consistent with constitutional requirements and court rules regarding the right of a detained person to a prompt determination of probable cause and judicial review of the conditions of release and the requirement that judicial determinations of bail or release be made no later than the preliminary appearance stage." [2010 c 254 s 1.]

Contingent effective date—2010 c 254: "Sections 1 and 2 of this act take effect January 1, 2011. Sections 3 through 10 of this act take effect January 1, 2011, only if the proposed amendment to Article I, section 20 of the state Constitution proposed in House Joint Resolution No. 4220 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, sections 3 through 11 of this act are null and void in their entirety." [2010 c 254 s 14.] House Joint Resolution No. 4220 was approved and ratified by the voters November 2, 2010.

RCW 10.21.015 Pretrial release program. (1) Under this chapter, "pretrial release program" is any program in superior, district, or municipal court, either run directly by a county or city, or by a private or public entity through contract with a county or city, into whose custody an offender is released prior to trial and which agrees to supervise the offender. As used in this section, "supervision" includes, but is not limited to, work release, day monitoring, electronic monitoring, or participation in a 24/7 sobriety program.

(2) A pretrial release program may not agree to supervise, or accept into its custody, an offender who is currently awaiting trial for a violent offense or sex offense, as defined in RCW 9.94A.030, who has been convicted of one or more violent offenses or sex offenses in the ten years before the date of the current offense, unless the offender's release before trial was secured with a payment of bail. [2018 c 276 s 2; 2015 2nd sp.s. c 3 s 20; 2014 c 24 s 1.]

Findings—Intent—2018 c 276: "The legislature finds that bail and other pretrial release programs seek to alleviate the harsh consequences of pretrial detention. While the primary function of bail is to ensure an accused's appearance in court, courts are allowed to pursue other compelling interests through regulation of pretrial release. The legislature further finds that public safety is one such compelling interest and additional measures need to be taken to identify restrictions necessary to protect the public from harm through appropriate sanctions and compliance with court-ordered restrictions. The legislature further intends to require an individualized determination by a judicial officer of conditions of release for persons in custody. This requirement is consistent with constitutional requirements and court rules regarding the right of a detained person to a prompt determination of probable cause and judicial review of the conditions of release." [2018 c 276 s 1.]

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

RCW 10.21.017 Home detention. Under this chapter where a person charged with a felony offense is ordered to enter a program of home detention, "home detention" means any program meeting the definition of home detention in RCW 9.94A.030, and complying with the requirements of RCW 9.94A.736. [2018 c 276 s 3; 2015 c 287 s 6.]

Findings—Intent—2018 c 276: See note following RCW 10.21.015.

RCW 10.21.020 Appearance before judicial officer—Issuance of order. 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 chapter 254, Laws of 2010. [2010 c 254 s 4.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

RCW 10.21.030 Conditions of release—Judicial officer may amend order. (1) The judicial officer in any felony, misdemeanor, or gross misdemeanor case may at any time amend the order to impose additional or different conditions of release. The conditions imposed under this chapter supplement but do not supplant provisions of law allowing the imposition of conditions to assure the appearance of the defendant at trial or to prevent interference with the administration of justice.

(2) Appropriate conditions of release under this chapter include, but are not limited to, the following:

(a) The defendant may be placed in the custody of a pretrial release program;

(b) The defendant may have restrictions placed upon travel, association, or place of abode during the period of release;

(c) The defendant may be required to comply with a specified curfew;

(d) The defendant may be required to return to custody during specified hours or to be placed on electronic monitoring, as defined in RCW 9.94A.030, if available. The defendant, if convicted, may not have the period of incarceration reduced by the number of days spent on electronic monitoring;

(e) The defendant may be required to comply with a program of home detention. For a felony offense, home detention is defined in RCW 9.94A.030;

(f) The defendant may be prohibited from approaching or communicating in any manner with particular persons or classes of persons;

(g) The defendant may be prohibited from going to certain geographical areas or premises;

(h) The defendant may be prohibited from possessing any dangerous weapons or firearms;

(i) The defendant may be prohibited from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant. The defendant may be required to submit to testing to determine the defendant's compliance with this condition;

(j) The defendant may be prohibited from operating a motor vehicle that is not equipped with an ignition interlock device;

(k) The defendant may be required to report regularly to and remain under the supervision of an officer of the court or other person or agency; and

(l) The defendant may be prohibited from committing any violations of criminal law. [2018 c 276 s 4; 2015 c 287 s 5; 2014 c 24 s 2; 2010 c 254 s 5.]

Findings—Intent—2018 c 276: See note following RCW 10.21.015.

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

RCW 10.21.040 Detention order—Hearing—Expedited review. If, after a hearing on offenses prescribed in Article I, section 20 of the state Constitution, the judicial officer finds, by clear and

convincing evidence, that a person shows a propensity for violence that creates a substantial likelihood of danger to the community or any persons, and 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. 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. [2010 c 254 s 6.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

RCW 10.21.045 Conditions of release—Drugs and intoxicating liquors—Testing. A judicial officer in a municipal, district, or superior court imposing conditions of pretrial release for a defendant accused of a misdemeanor, gross misdemeanor, or felony offense, may prohibit the defendant from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant, and require the defendant to submit to testing to determine the defendant's compliance with this condition, when the judicial officer determines that such condition is necessary to protect the public from harm. [2018 c 276 s 6.]

Findings—Intent—2018 c 276: See note following RCW 10.21.015.

RCW 10.21.050 Conditions of release—Judicial officer to consider available information. The judicial officer in any felony, misdemeanor, or gross misdemeanor case must, in determining whether there are conditions of release that will reasonably assure the safety of any other person and the community, take into account the available information concerning:

- (1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence;
- (2) The weight of the evidence against the defendant; and
- (3) The history and characteristics of the defendant, including:
 - (a) The defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;
 - (b) Whether, at the time of the current offense or arrest, the defendant was on community supervision, probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law;
 - (c) The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and
 - (d) The defendant's firearms history, including purchase history, any concealed pistol license history, and the requirements of RCW 9.41.800 regarding issuance of an order to surrender and prohibit weapons. [2023 c 462 s 406; 2018 c 276 s 5; 2010 c 254 s 7.]

Findings—Intent—2018 c 276: See note following RCW 10.21.015.

~~Intent—Contingent effective date—2010 c 254~~: See notes following RCW 10.21.010.

RCW 10.21.055 Conditions of release—Requirements—Ignition interlock device—24/7 sobriety program monitoring—Notice by court, when—Release order. (1)(a) When any person charged with a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in which the person has a prior offense as defined in RCW 46.61.5055 and the current offense involves alcohol, is released from custody at arraignment or trial on bail or personal recognizance, the court authorizing the release shall require, as a condition of release that person comply with one of the following four requirements:

(i) Have a functioning ignition interlock device installed on all motor vehicles operated by the person, with proof of installation filed with the court by the person or the certified interlock provider within five business days of the date of release from custody or as soon thereafter as determined by the court based on availability within the jurisdiction; or

(ii) Comply with 24/7 sobriety program monitoring, as defined in RCW 36.28A.330; or

(iii) Have an ignition interlock device on all motor vehicles operated by the person pursuant to (a)(i) of this subsection and submit to 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection, if available, or alcohol monitoring, at the expense of the person, as provided in RCW 46.61.5055(5) (b) and (c); or

(iv) Have an ignition interlock device on all motor vehicles operated by the person and that such person agrees not to operate any motor vehicle without an ignition interlock device as required by the court. Under this subsection (1)(a)(iv), the person must file a sworn statement with the court upon release at arraignment that states the person will not operate any motor vehicle without an ignition interlock device while the ignition interlock restriction is imposed by the court. Such person must also submit to 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection, if available, or alcohol monitoring, at the expense of the person, as provided in RCW 46.61.5055(5) (b) and (c).

(b) The court shall immediately notify the department of licensing when an ignition interlock restriction is imposed as a condition of release or after conviction in instances where a person is charged with, or convicted of, a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. If the court imposes an ignition interlock restriction, the department of licensing shall attach or imprint a notation on the driving record of any person restricted under this section stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device.

(2)(a) Upon acquittal or dismissal of all pending or current charges relating to a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, or equivalent local ordinance, the court shall authorize removal of the ignition interlock device and lift any requirement to comply with electronic alcohol/drug monitoring imposed under subsection (1) of this section. Nothing in this section limits the authority of the court or department under RCW 46.20.720.

(b) If the court authorizes removal of an ignition interlock device imposed under this section, the court shall immediately notify the department of licensing regarding the lifting of the ignition

interlock restriction and the department of licensing shall release any attachment, imprint, or notation on such person's driving record relating to the ignition interlock requirement imposed under this section.

(3) When an ignition interlock restriction imposed as a condition of release is canceled, the court shall provide a defendant with a written order confirming release of the restriction. The written order shall serve as proof of release of the restriction until which time the department of licensing updates the driving record. [2020 c 330 s 3; 2016 c 203 s 16; 2015 2nd sp.s. c 3 s 2; 2013 2nd sp.s. c 35 s 1.]

Effective date—2020 c 330: See note following RCW 9.94A.729.

Finding—Intent—2015 2nd sp.s. c 3: "The legislature finds that impaired driving continues to be a significant cause of motor vehicle crashes and that additional measures need to be taken to identify people who are driving under the influence, provide appropriate sanctions, and ensure compliance with court-ordered restrictions. The legislature intends to increase the availability of forensic phlebotomists so that offenders can be appropriately and efficiently identified. The legislature further intends to require consecutive sentencing in certain cases to increase punishment and supervision of offenders. The legislature intends to clarify ignition interlock processes and requirements to ensure that those offenders ordered to have ignition interlock devices do not drive vehicles without the required devices." [2015 2nd sp.s. c 3 s 1.]

RCW 10.21.060 Hearing—Appearance—Defendant's right to representation—Detention of defendant. (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 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. [2010 c 254 s 8.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

RCW 10.21.070 Release order—Requirements. In a release order issued under RCW 10.21.030 the judicial officer must:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct; and

(2) Advise the defendant of:

(a) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release; and

(b) The consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest. [2010 c 254 s 9.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

RCW 10.21.080 Detention order—Requirements—Temporary release.

(1) In a detention order issued under RCW 10.21.040, the judicial officer must:

(a) Include written findings of fact and a written statement of the reasons for the detention;

(b) Direct that the person be committed to the custody of the appropriate correctional authorities for confinement separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; and

(c) Direct that the person be afforded reasonable opportunity for private consultation with counsel.

(2) The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of an appropriate law enforcement officer or other appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason. [2010 c 254 s 10.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.

RCW 10.21.090 Home detention or electronic monitoring—Conditions. A monitoring agency, as defined in RCW 9.94A.736, may not agree to monitor pursuant to home detention or electronic monitoring an offender who is currently awaiting trial for a violent or sex

offense, as defined in RCW 9.94A.030, unless the defendant's release before trial is secured with a payment of bail. If bail is revoked by the court or the bail bond agency, the court shall note the reason for the revocation in the court file. [2015 c 287 s 12.]

RCW 10.21.900 Construction of chapter. Nothing in this chapter may be construed as modifying or limiting the presumption of innocence. [2010 c 254 s 11.]

Intent—Contingent effective date—2010 c 254: See notes following RCW 10.21.010.