Report to the Legislature

Recommendations for Improving Washington State Bail Practices

Bail Practices Work Group

December 1, 2010
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Report on the Bail Practices Work Group

In 2010, SSB 6673 (Chapter 256 of the Laws of 2010) created the Bail Practices Work Group to study bail practices and procedures in a comprehensive manner and make recommendations to the Governor, the Supreme Court, and the Legislature.

Background

Pretrial release is the release of the defendant from detention pending trial. The state Constitution guarantees the right to bail for a person charged with a noncapital crime, and this right has been interpreted as the right to a judicial determination of either release or reasonable bail. For capital offenses where the proof of the defendant's guilt is evident or the presumption of the defendant's guilt is great, there is no right to bail.

The courts favor pretrial release and bail in appropriate circumstances because the defendant is presumed innocent and because the state is relieved of the burden of detention. According to the courts, the purpose of bail is to secure the defendant's presence in court.

Court Rules: Courts have inherent power and the statutory authority to make rules regarding procedure and practice in the courtroom. Courts have ruled that setting bail and releasing individuals from custody is a traditional function of the courts. General criminal court rules promulgated by the Washington Supreme Court and local criminal court rules govern the release of a defendant in superior court criminal proceedings.

In a noncapital case, the court rules establish a presumption that the defendant should be released unless the court determines that either: (1) release will not reasonably assure that the defendant will appear; or (2) there is a likely danger that the defendant will commit a violent crime or interfere with the administration of justice. Under these circumstances, the court may impose conditions of release.

Booking Bail and Bail Schedules: Booking bail allows a person who has been arrested to post bail without a judicial officer's determination of bail or pretrial release. In counties that permit booking bail, the amount of bail set may be based on a bail schedule, which specifies the availability and amount of bail for particular offenses.

Approaches to bail schedules vary by county and type of court; some counties prohibit bail schedules, some have bail schedules for misdemeanors only, and some have bail schedules for misdemeanors and felonies. The Washington Supreme Court has held that whether to promulgate a bail schedule is a question best left to the counties.

In 2010, HB 2625 (Chapter 254 of the Laws of 2010) temporarily suspended booking bail for felonies, requiring that bail for a person arrested for a felony offense be determined on an individualized basis by a judicial officer.

Constitutional Amendment: In 2010, the Legislature passed and voters approved ESHJR 4220, a constitutional amendment regarding the availability of bail. ESHJR 4220 amends the state
Constitution to allow judges to deny bail if: (1) the defendant is charged with an offense punishable by life in prison; and (2) clear and convincing evidence shows a propensity for violence that creates a substantial likelihood of danger to the community or another person.

Denial of bail under these circumstances will be subject to limitations determined by the Legislature. HB 2625 contains provisions to implement the constitutional amendment by providing procedures for courts to issue pretrial detention orders.

*Types of Bail Bonds:* Bail bonds are an insurance product sold by a bail agent. A bail agent either posts a bond backed by a surety insurance company or posts a bond backed by his or her own property as collateral. Practices related to commercial property bonds vary from county to county, and some counties do not accept commercial property bonds.

*Court Justification of Bail Bond Agents:* Some counties require that a bail bond agent obtain an order of justification from the court. Typically, the agent must provide information such as the types of bonds posted, current obligations and bond foreclosures, jurisdictions where the surety is authorized or denied authorization, and a copy of the agent's license. If the court justifies the agent, it also sets the agent's bond limit.

*Premium Rates:* Insurers must not charge premium rates that are "excessive, inadequate, or unfairly discriminatory." Before using a rate, the insurer must file it with the Office of the Insurance Commissioner (OIC). If a filing is required, the insurer must not issue an insurance contract or policy except in accordance with its filing in effect. Approved premium rates for bail bonds are 8 or 10 percent for bonds exceeding $500, depending on factors such as military status and union membership. The premium rate charged by a commercial property bond agent need not be approved by a regulatory agency.

A bail bond agent may offer financing of the premium rate, which enables the defendant or the indemnitor to pay a portion of the premium up front and pay the rest on installments. A bail bond agent may also accept credit cards as payment for the premium.

*Collateral:* Collateral and security are defined by statute as "property of any kind given as security to obtain a bail bond." Collateral is held as a security interest on both the balance of the premium owed to the bail bond agent and the contingent obligation to the court.

When a bail bond agent receives collateral, the agent must keep adequate records of the collateral for three years, and these records are open to inspection by the Department of Licensing (DOL). Money received as collateral must be deposited in a trust account. A bail bond agent must report annually to the DOL with the trust account number, balance, and institution holding the trust account. When collateral is posted to secure a bail bond and the bond is exonerated, the bail bond agent has five days to return the collateral to the person who posted it. Failure to comply with these requirements constitutes unprofessional conduct.

The amount and nature of the collateral required is determined by the contract among the defendant, the bail agent, and any co-signers.
**Forfeiture:** When a defendant released on bail fails to appear in court, the court declares the recognizance forfeited and enters a judgment against the principal and sureties. If the court fails to notify the surety within 30 days of the forfeiture, it is null and void.

The surety has a 60-day recovery period to produce the defendant in court. If the surety produces the defendant during that time period, the judge may vacate the forfeiture judgment.

If the defendant is returned within 12 months from the forfeiture and the surety was "directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement," then the full amount of the bond must be remitted to the surety, less any costs incurred by law enforcement in transporting, locating, apprehending, or processing the return of the person.

**Licensing:** The DOL issues licenses for bail bond agents, bail bond agencies, and bail recovery agents. To be licensed as a bail bond agent, an applicant must be at least 18 years old, be a citizen or resident alien, be employed by a bail bond agency, and pay a fee. In addition, the applicant must not have a conviction in the preceding ten years, subject to the DOL's discretion. A license application is $500, and a renewal license is $575.

To be licensed as a bail bond agency, the applicant must also pass an examination, have at least three years of experience as a manager, supervisor, or administrator in the bail bond business, and pay an additional fee. A bail bond agency must also file a $10,000 bond with the DOL or deposit that amount in an interest-bearing account. The definition of a "bail bond agency" includes agencies that issue corporate surety bonds and property bonds. The license application is $1200, and the renewal license is $1150.

**Unprofessional Conduct:** "Unprofessional conduct" is defined in statute. Upon receiving a complaint of unprofessional conduct, the DOL may investigate and impose sanctions.

Unprofessional conduct includes, among other things: failing to keep records, maintain a trust account, or return collateral or security; engaging in conduct in a bail bond transaction that demonstrates bad faith, dishonesty, or untrustworthiness; knowingly committing material fraud or concealment whereby another person lawfully relies on the licensee's representation or conduct; failing to return any money or evidence of title within 30 days after the owner is entitled to possession and makes demand; committing an act involving moral turpitude, dishonesty, or corruption relating to the profession; and being convicted of a gross misdemeanor or felony relating to the profession or business operation.

**Work Group and Its Duties**

The membership of the Work Group consisted of:

- One member from each of the two largest caucuses of the Senate, appointed by the President of the Senate;
- One member from each of the two largest caucuses of the House of Representatives, appointed by the Speaker of the House of Representatives;
- The designee of the Chief Justice of the Washington State Supreme Court;
- A superior court judge, appointed by the Superior Court Judges Association;
- A district court judge, appointed by the District and Municipal Court Judges Association;
- The designee of the Governor;
- The designee of the Secretary of the Washington State Department of Corrections;
- The designee of the Director of the Washington State Department of Licensing;
- The designee of the Washington State Insurance Commissioner;
- Two prosecutors, appointed by the Washington Association of Prosecuting Attorneys;
- Two attorneys selected by separate associations of attorneys whose members have practices that focus on representing criminal defendants;
- One police officer and one deputy sheriff, selected by a statewide association of such officers and deputies;
- A representative of a statewide association of city governments, selected by the association;
- A representative of a statewide association of counties, selected by the association;
- A representative employed as an adult corrections officer, selected by a statewide association of such officers;
- A representative from an entity representing corrections officers at a local county jail in which adult offenders are in custody and located in any county with a population in excess of one million persons, selected by the entity;
- A representative of a statewide organization concerned primarily with the protection of individual liberties, selected by the organization;
- A representative of a statewide association of advocates who work on behalf of victims and survivors of violent crimes, selected by the association;
- A representative of the bail bond enforcement industry, chosen by a statewide association of bail bond enforcement agents;
- A representative of the bail bond industry, selected by a statewide association of bail companies; and
- A representative of a statewide consumer advocacy organization with at least thirty thousand members, selected by the organization.

SSB 6673 charged the Work Group with reviewing the following issues, at a minimum:
- All aspects of bail, paying particular attention to legislation affecting bail and pretrial release introduced during the 2010 legislative session;
- A validated risk assessment tool that measures or predicts the likelihood that an offender will exhibit violent behavior if released and whether judges should use this tool at bail hearings;
- Bail practices by county, including the processes used to seek and grant bail as well as the standards by which bail is granted;
- Whether, or to what extent, uniformity of bail practices should be required by state law;
- The characteristics of the federal system;
- The benefits of competitive freedom of government regulation in the pricing of bail bonds;
- The interests of crime victims in being notified of a person's release on bail;
- The interests of counties and cities that maintain municipal courts;
- Legal and constitutional constraints in granting or denying bail;
• Whether the existing regulatory, judicial, or statutory constraints on bail should be revised; and
• The pretrial release system.

The Work Group was required to use staff from Senate Committee Services and the Office of Program Research.

Meetings

The full Work Group held the following meetings during the 2010 interim:
  June 1, 2010, 10:00 am to 2:00 pm – Administrative Office of the Courts, SeaTac
  July 6, 2010, 10:00 am to 2:00 pm – Administrative Office of the Courts, SeaTac
  September 8, 2010, 10:00 am to 2:00 pm – Administrative Office of the Courts, SeaTac
  October 5, 2010, 10:00 am to 2:00 pm – Administrative Office of the Courts, SeaTac

In addition, Work Group subcommittees held the following meetings:

  Bail Practices Committee
  June 29, 2010, 10:15 am to 12:15 pm – Cherberg Building, Capitol Campus, Olympia
  July 16, 2010, 10:00 am to 12:00 pm – Cherberg Building, Capitol Campus, Olympia

  Consumer Issues Committee
  June 29, 2010, 8:00 am to 10:00 am – Cherberg Building, Capitol Campus, Olympia
  August 19, 2010, 10:00 am to 12:00 pm – Cherberg Building, Capitol Campus, Olympia
  September 8, 2010, 8:00 am to 10:00 am – Administrative Office of the Courts, SeaTac

  Pretrial Release Process Committee
  June 29, 2010, 1:00 pm to 3:00 pm – Cherberg Building, Capitol Campus, Olympia
  August 16, 2010, 10:00 am to 12:00 pm – Snohomish County Campus, Everett
  September 23, 2010, 8:00 am to 12:00 pm – Administrative Office of the Courts, SeaTac

Issues Considered

• Characteristics of the federal bail system
• Legislation passed and considered during the 2010 session
• Court rules governing pretrial release
• Bail schedules and booking bail
• No-bail holds
• A validated risk assessment tool that predicts the likelihood that a defendant will exhibit violent behavior if released and whether judges should use this tool at pretrial release hearings
• A risk assessment tool to predict the likelihood that a defendant will fail to appear in court as required
• Data regarding rates of pretrial misconduct
• The pretrial release system, including electronic home monitoring and work release
• The pretrial release processes in King County and Thurston County
• Liability of pretrial services units
• Access to information affecting pretrial release, including information related to mental health
• The interests of crime victims in being notified of a person's release on bail, including notice of hearing, right to testify, and notice of bail release
• Disparate impacts on minorities
• Justification of bail bond agents by courts
• Premium rate regulation, including payment plans, in Washington and other states
• Collateral posted by defendants and indemnitors
• Regulation of commercial property bonds and agents
• Premium taxes on property bonds
• Standardized agreements and forms
• Abuse of general powers of attorney and similar contracts
• Surrender of a defendant to re-collect the premium
• The DOL's authority to increase licensing fees
• The DOL complaint process, sanctions, and penalties
• The length of the recovery period and tiered recovery periods
Work Group Recommendations for the 2011 Legislative Session

Recommendation #1 – Department of Corrections Risk Assessment Tool
Provide the Department of Corrections risk assessment tool to judges statewide during the pretrial process. Require the Washington State Center for Court Research to research, evaluate, and monitor the validity of the tool on an ongoing basis, every two to four years, to track the tool's effectiveness. Allocate $200,000 in the budget for this requirement. Include a null and void clause.

Recommendation #2 – Failure to Appear Risk Assessment Tool
Require the Washington State Institute for Public Policy to create a risk assessment tool to assess whether an individual is likely to fail to appear at subsequent court hearings. This assessment will be used in conjunction with the Department of Corrections risk assessment tool already in existence. Allocate $25,000 in the budget for this requirement. Include a null and void clause.

Recommendation #3 – Law Enforcement Superform
Require all law enforcement to use a superform that includes information, to the extent that it is available, regarding domestic violence and mental health. The form should also include information regarding the victim's input or position as to the defendant's release.

Recommendation #4 – Mental Health Records
Create an exception to allow courts confidential access to the mental health records of offenders for the purposes of bail and pretrial release.

Recommendation #5 – Definition of Bail
There should be a generally recognized definition of what bail means, subject to further discussion.

Recommendation #6 – Uniform Bail Schedule
The Legislature should not implement a uniform, statewide bail schedule. Bail schedules should be left to the discretion of the court and in the control of local jurisdictions.

Recommendation #7 – Bail Schedule Suspension
The temporary suspension of the use of felony bail schedules should be allowed to lapse, so that felony bail schedules may once again be used after section 2 of HB 2625 expires on August 1, 2011.

Recommendation #8 – Statewide Justification of Bail Bond Agents and Notification of De-Justification
A statewide justification system, as well as some form of statewide notification, would be beneficial. Under a statewide justification system, permit a bail bond agency to file all the primary paperwork with one regulatory agency without re-filing paperwork in every county. Under a statewide notification system, require that a presiding judge of a court notify the
Administrative Office of the Courts when it de-justifies a bail bond agent. Require the Administrative Office of the Courts to notify other counties of the de-justification.

**Recommendation #9 – Collateral**
For commercial property bonds, limit the definition of "collateral" to real property, tangible personal property, or a closed bank account. The definition should exclude savings accounts, for example, which can easily be accessed.

**Recommendation #10 – Department of Licensing Surety Bond**
Require a bail bond agent who issues commercial property bonds to post a $100,000 surety bond instead of a $10,000 surety bond with the Department of Licensing, or to deposit that amount in a trust account.

**Recommendation #11 – Background Checks**
Require that applicants for a bail bond agent license complete a background check.

**Recommendation #12 – General Power of Attorney**
Prohibit a general power of attorney or similar contract between the bail bond agent and the client. (Continue to permit the power of attorney between the bail bond agent and the surety insurance company.)

**Recommendation #13 – Surrender**
Require a bail bond agent who surrenders a client to court to return the premium and recovery fee. Provide exceptions for when good cause exists to surrender the client (e.g., the risk substantially increased as a result of judicial action, the client concealed or misrepresented information, or other reasonable cause). Permit the bail bond agent to recover expenses incurred under these circumstances.

**Recommendation #14 – Department of Licensing Audit Authority**
(1) Permit the Department of Licensing to audit the trust accounts of bail bond agents and agencies (both property bond agents and bail bond agents that represent a surety insurance company) once every two years. Permit a bail bond agency to avoid an audit by submitting a financial report prepared by a certified public accountant on an annual basis. (2) Grant the Department of Licensing authority to inspect the books and records of the bail bond agent or agency when there is probable cause to believe the agent or agency has engaged in impropriety.

**Recommendation #15 – Court Notification of Failure to Appear**
Require the court to notify the surety of the defendant's failure to appear within 14 calendar days of the failure to appear, instead of 30 days. Begin the 60-day period during which the surety can avoid execution of the bond on the date of notification.
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0060.1/11

ATTY/TYPIST: AI:crs

BRIEF DESCRIPTION: Concerning bail and pretrial release practices.
AN ACT Relating to bail and pretrial release practices; amending RCW 2.56.030, 10.19.090, 10.19.100, 10.19.160, 18.185.010, 18.185.020, 18.185.040, 18.185.050, 18.185.070, 18.185.100, 18.185.110, and 71.05.385; reenacting and amending RCW 42.56.360 and 71.05.390; adding a new section to chapter 2.56 RCW; adding a new section to chapter 10.16 RCW; adding new sections to chapter 10.19 RCW; adding a new section to chapter 10.31 RCW; adding a new section to chapter 18.185 RCW; creating new sections; and making appropriations.

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

Sec. 1. RCW 2.56.030 and 2009 c 479 s 2 are each amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;
(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Submit annually, as of February 1st, to the chief justice, a report of the activities of the administrator's office for the preceding calendar year including activities related to courthouse security;

(10) Administer programs and standards for the training and education of judicial personnel;

(11) Examine the need for new superior court and district court judge positions under an objective workload analysis. The results of the objective workload analysis shall be reviewed by the board for judicial administration which shall make recommendations to the legislature. It is the intent of the legislature that an objective workload analysis become the basis for creating additional district and superior court positions, and recommendations should address that objective;

(12) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;
Appendix A

(13) Attend to such other matters as may be assigned by the supreme court of this state;

(14) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers and be updated yearly to reflect changes in statutes, court rules, or case law;

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, 2008, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, domestic violence, clinical and forensic investigative and interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be made available to all superior court and court of appeals judges and to all justices of the supreme court;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts statewide;
18) Authorize the use of closed circuit television and other
electronic equipment in judicial proceedings. The administrator shall
promulgate necessary standards and procedures and shall provide
technical assistance to courts as required;
19) Develop a Washington family law handbook in accordance with
RCW 2.56.180;
20) Administer state funds for improving the operation of the
courts and provide support for court coordinating councils, under the
direction of the board for judicial administration;
21) Administer the family and juvenile court improvement grant
program;
22)(a) Administer and distribute amounts appropriated under RCW
43.08.250(2) for district court judges' and qualifying elected
municipal court judges' salary contributions. The administrator for
the courts shall develop a distribution formula for these amounts that
does not differentiate between district and elected municipal court
judges.
(b) A city qualifies for state contribution of elected municipal
court judges' salaries under (a) of this subsection if:
(i) The judge is serving in an elected position;
(ii) The city has established by ordinance that a full-time judge
is compensated at a rate equivalent to at least ninety-five percent,
but not more than one hundred percent, of a district court judge salary
or for a part-time judge on a pro rata basis the same equivalent; and
(iii) The city has certified to the office of the administrator for
the courts that the conditions in (b)(i) and (ii) of this subsection
have been met;
23) Subject to the availability of funds specifically appropriated
therefor, assist courts in the development and implementation of
language assistance plans required under RCW 2.43.090;
24) Provide superior courts and courts of limited jurisdiction
access to the risk assessment tool developed by the Washington state
institute for public policy and used by the department of corrections
to assist judges in the pretrial release and detention process.

NEW SECTION.  Sec. 2. A new section is added to chapter 2.56 RCW
to read as follows:
(1) The Washington state center for court research shall research,
evaluate, monitor, and report on the validity of the risk assessment tool developed by the Washington state institute for public policy to ensure the predictive value of the tool. Specifically, it shall:

(a) Monitor and report on the implementation of the risk assessment tool to assess the extent to which bail setting practices are responsive to risk for recidivism levels derived from the risk assessment tool;

(b) Monitor and report on the accuracy of the risk assessment tool in predicting recidivism; and

(c) Provide quality assurance and technical assistance to the courts for the implementation and use of the risk assessment tool.

(2) By December 1, 2012, and every two years thereafter, the Washington center for court research shall submit a report and recommendations regarding the validity of the risk assessment tool to the governor, the supreme court, and the legislature.

NEW SECTION. Sec. 3. A new section is added to chapter 10.16 RCW to read as follows:

At the preliminary appearance or a subsequent hearing to reconsider conditions of pretrial release or detention, the court may issue an order requesting information related to mental health services, as defined in RCW 71.05.020, that have been provided to the defendant. On motion of the defendant or on the court's own motion, the court may exclude the public from the hearing, seal portions of the hearing record or court files, or grant other relief as may be necessary to prevent disclosure to the public of information related to mental health services, as defined in RCW 71.05.020.

NEW SECTION. Sec. 4. A new section is added to chapter 10.19 RCW to read as follows:

The Washington state institute for public policy shall develop and validate a pretrial risk assessment tool to measure the likelihood that a defendant will fail to appear in court as required. The Washington state institute for public policy shall complete the development and validation of the pretrial risk assessment tool by December 1, 2011. The institute shall submit a final report to the governor, the supreme court, and the legislature by December 1, 2011. The report shall
describe the methodology for developing and validating the pretrial risk assessment tool and the predictive value of the tool.

Sec. 5. RCW 10.19.090 and 1986 c 322 s 2 are each amended to read as follows:

In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments. If the surety is not notified by the court in writing of the unexplained failure of the defendant to appear within (thirty) fourteen calendar days of the date for appearance, then the forfeiture shall be null and void and the recognizance exonerated.

Sec. 6. RCW 10.19.100 and 1891 c 28 s 86 are each amended to read as follows:

The parties, or either of them, against whom such judgment may be entered in the superior or supreme courts, may stay said execution for sixty days from the date of the notification by the court by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty days, unless the same shall be vacated before the expiration of that time.

Sec. 7. RCW 10.19.160 and 1986 c 322 s 5 are each amended to read as follows:

The surety on the bond may return a person to custody for good cause in a criminal case under the surety's bond if the surrender is accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for the surrender. If a court determines that good cause does not exist for the surety to surrender a person, the surety shall return the premium paid by, or on behalf of, the person, as well as any recovery fee. Good cause for surrender includes, but is not limited to, a substantial increase in the likelihood of the risk of flight, violation of a court order, failure
to appear, or the concealment or intentional misrepresentation of information by the person. The surrender shall be made to the facility in which the person was originally held in custody or the county or city jail affiliated with the court issuing the warrant resulting in bail.

NEW SECTION. Sec. 8. A new section is added to chapter 10.19 RCW to read as follows:

The presiding judge of a court shall notify the administrative office of the courts when the court revokes the justification or certification of a bail bond agent to post bonds in the court. The notice to the administrative office of the courts must include the reasons for the revocation. Upon receiving the notification, the administrative office of the courts shall notify superior courts and courts of limited jurisdiction statewide. No civil liability may be imposed by any court on the administrative office of the courts or its employees under this section except upon proof of bad faith or willful or wanton misconduct or gross negligence.

NEW SECTION. Sec. 9. A new section is added to chapter 10.31 RCW to read as follows:

A police officer shall complete a standardized form at the time of arrest that includes, to the extent that it is available, information regarding the defendant's mental health and any history of domestic violence. The standardized form must also include, to the extent that it is available, victim input regarding the pretrial release of the defendant.

Sec. 10. RCW 18.185.010 and 2004 c 186 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Commission" means the criminal justice training commission.

(4) "Collateral or security" means property of any kind given as security to obtain a bail bond.
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(5) "Bail bond agency" means a business that sells and issues corporate surety bail bonds or that provides security in the form of personal or real property to ensure the appearance of a criminal defendant before the courts of this state or the United States.

(6) "Qualified agent" means an owner, sole proprietor, partner, manager, officer, or chief operating officer of a corporation who meets the requirements set forth in this chapter for obtaining a bail bond agency license.

(7) "Bail bond agent" means a person who is employed by a bail bond agency and engages in the sale or issuance of bail bonds, but does not mean a clerical, secretarial, or other support person who does not participate in the sale or issuance of bail bonds.

(8) "Licensee" means a bail bond agency, a bail bond agent, a qualified agent, or a bail bond recovery agent.

(9) "Branch office" means any office physically separated from the principal place of business of the licensee from which the licensee or an employee or agent of the licensee conducts any activity meeting the criteria of a bail bond agency.

(10) "Bail bond recovery agent" means a person who is under contract with a bail bond agent to receive compensation, reward, or any other form of lawful consideration for locating, apprehending, and surrendering a fugitive criminal defendant for whom a bail bond has been posted. "Bail bond recovery agent" does not include a general authority Washington peace officer or a limited authority Washington peace officer.

(11) ("Contract" means a written agreement between a bail bond agent or qualified agent and a bail bond recovery agent for the purpose of locating, apprehending, and surrendering a fugitive criminal defendant in exchange for lawful consideration.

(12)) "Planned forced entry" means a premeditated forcible entry into a dwelling, building, or other structure without the occupant's knowledge or consent for the purpose of apprehending a fugitive criminal defendant subject to a bail bond. "Planned forced entry" does not include situations where, during an imminent or actual chase or pursuit of a fleeing fugitive criminal defendant, or during a casual or unintended encounter with the fugitive, the bail bond recovery agent forcibly enters into a dwelling, building, or other structure without advanced planning.
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(12) "Bond limit" means the maximum amount that a bail bond agent may write on any single commercial surety bond or any single commercial property bond.

(13) "Commercial property bond" means a bail bond executed for compensation the security for which is real property, tangible personal property, or other assets.

(14) "Commercial surety bond" means a bail bond that is guaranteed by an insurance company that has been qualified to transact surety insurance business in Washington state by the insurance commissioner.

Sec. 11. RCW 18.185.020 and 1993 c 260 s 3 are each amended to read as follows:

An applicant must meet the following minimum requirements to obtain a bail bond agent license:

(1) Be at least eighteen years of age;
(2) Be a citizen or resident alien of the United States;
(3) Not have been convicted of a crime in any jurisdiction in the preceding ten years, if the director determines that the applicant’s particular crime directly relates to a capacity to perform the duties of a bail bond agent and the director determines that the license should be withheld to protect the citizens of Washington state. If the director shall make a determination to withhold a license because of previous convictions, the determination shall be consistent with the restoration of employment rights act, chapter 9.96A RCW;
(4) Be employed by a bail bond agency or be licensed as a bail bond agency; (and)
(5) Pay the required fee; and
(6) Demonstrate proof of financial responsibility.

Sec. 12. RCW 18.185.040 and 2004 c 186 s 4 are each amended to read as follows:

(1) Applications for licenses required under this chapter shall be filed with the director on a form provided by the director. The director may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria, including fingerprints.
(2) An applicant who intends to post commercial surety bonds shall file the following information and documents with the department:
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(a) Any outstanding bonds in Washington not yet exonerated, including the court name, the name of the defendant, the amount of the bond, and the date issued;

(b) Any bond forfeitures that have not yet been paid or are in dispute;

(c) A declaration listing all criminal convictions and previous disciplinary action or investigations undertaken by the department;

(d) A copy of the power of attorney for each surety;

(e) A copy of the applicant's license issued by the office of the insurance commissioner; and

(f) A copy of the corporate surety's certificate of authority issued by the office of the insurance commissioner.

(3) An applicant who intends to post commercial property bonds shall file the following information and documents with the department:

(a) Any outstanding bonds in Washington not yet exonerated, including the court name, the name of the defendant, the amount of the bond, and the date issued;

(b) Any bond forfeitures that have not yet been paid or are in dispute;

(c) A declaration listing all criminal convictions and previous disciplinary action or investigations undertaken by the department;

(d) A list of all real property owned by the applicant and located in Washington, including an appraisal by a qualified real estate appraiser dated not more than two years prior to the date of application, a title letter, and property tax statements;

(e) A list of tangible personal property owned by the applicant and located in Washington; and

(f) A list of any irrevocable letters of credit or other bank accounts that are accessible only to a court for the purpose of paying a forfeited bond.

(4) Applicants for licensure or endorsement as a bail bond agent or a bail bond recovery agent must complete a records check through the Washington state patrol criminal identification system and through the federal bureau of investigation at the applicant's expense. Such record check shall include a fingerprint check using a Washington state patrol approved fingerprint card. The Washington state patrol shall forward the fingerprints of applicants to the federal bureau of investigation for a national criminal history records check. The
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director may accept proof of a recent national crime information center/III criminal background report or any national or interstate criminal background report in addition to fingerprints to accelerate the licensing and endorsement process. The director is authorized to periodically perform a background investigation of licensees to identify criminal convictions subsequent to the renewal of a license or endorsement.

Sec. 13. RCW 18.185.050 and 1993 c 260 s 6 are each amended to read as follows:

(1) The director shall issue a bail bond agent license card to each licensed bail bond agent. The bail bond agent license card must indicate the licensee's bond limit for commercial surety bonds and commercial property bonds. A bail bond agent shall carry the license card whenever he or she is performing the duties of a bail bond agent and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed bail bond agency.

(a) Within seventy-two hours after receipt of the license certificate, the licensee shall post and display the certificate in a conspicuous place in the principal office of the licensee within the state.

(b) It is unlawful for any person holding a license certificate to knowingly and willfully post the license certificate upon premises other than those described in the license certificate or to materially alter a license certificate.

(c) Every advertisement by a licensee that solicits or advertises business shall contain the name of the licensee, the address of record, and the license number as they appear in the records of the director.

(d) The licensee shall notify the director within thirty days of any change in the licensee's officers or directors or any material change in the information furnished or required to be furnished to the director.

Sec. 14. RCW 18.185.070 and 1993 c 260 s 8 are each amended to read as follows:

(1) No bail bond agency license may be issued under the provisions of this chapter unless the qualified agent files with the director a
bond, executed by a surety company authorized to do business in this state, in the sum of ((ten)) one hundred thousand dollars conditioned to recover against the agency and its servants, officers, agents, and employees by reason of its violation of the provisions of RCW 18.185.100. The bond shall be made payable to the state of Washington, and anyone so injured by the agency or its servants, officers, agents, or employees may bring suit upon the bond in any county in which jurisdiction over the licensee may be obtained. The suit must be brought not later than two years after the failure to return property in accordance with RCW 18.185.100. If valid claims against the bond exceed the amount of the bond or deposit, each claimant shall be entitled only to a pro rata amount, based on the amount of the claim as it is valid against the bond, without regard to the date of filing of any claim or action.

(2) Every licensed bail bond agency must at all times maintain on file with the director the bond required by this section in full force and effect. Upon failure by a licensee to do so, the director shall suspend the licensee's license and shall not reinstate the license until this requirement is met.

(3) In lieu of posting a bond, a qualified agent may deposit in an interest-bearing account, ((ten)) one hundred thousand dollars.

(4) The director may waive the bond requirements of this section, in his or her discretion, pursuant to adopted rules.

Sec. 15. RCW 18.185.100 and 2004 c 186 s 8 are each amended to read as follows:

(1)(a) Every qualified agent shall keep adequate records for three years of all collateral and security received, all trust accounts required by this section, and all bail bond transactions handled by the bail bond agency, as specified by rule. The records shall be open to inspection without notice by the director or authorized representatives of the director.

(b) The department may audit licensee trust accounts every two years unless the licensee submits a financial report prepared by a certified public accountant to the department on an annual basis.

(2) Every qualified agent who receives collateral or security is a fiduciary of the property and shall keep adequate records for three years of the receipt, safekeeping, and disposition of the collateral or
security. Every qualified agent shall maintain a trust account in a 
federally insured financial institution located in this state. All 
moneys, including cash, checks, money orders, wire transfers, and 
credit card sales drafts, received as collateral or security or 
otherwise held for a bail bond agency's client shall be deposited in 
the trust account not later than the third banking day following 
receipt of the funds or money. A qualified agent shall not in any way 
cumber the corpus of the trust account or commingle any other moneys 
with moneys properly maintained in the trust account. Each qualified 
agent required to maintain a trust account shall report annually under 
oath to the director the account number and balance of the trust 
account, and the name and address of the institution that holds the 
trust account, and shall report to the director within ten business 
days whenever the trust account is changed or relocated or a new trust 
account is opened.

(3) Whenever a bail bond is exonerated by the court, the qualified 
agent shall, within five business days after written notification of 
exoneration, return all collateral or security to the person entitled 
thereto.

(4) Records of contracts for fugitive apprehension must be retained 
by the bail bond agent and by the bail bond recovery agent for a period 
of three years.

Section 16. RCW 18.185.110 and 2008 c 105 s 4 are each amended to 
read as follows:

In addition to the unprofessional conduct described in RCW 
18.235.130, the following conduct, acts, or conditions constitute 
unprofessional conduct:

(1) Violating any of the provisions of this chapter or the rules 
adopted under this chapter;
(2) Failing to meet the qualifications set forth in RCW 18.185.020, 
18.185.030, and 18.185.250;
(3) Knowingly committing, or being a party to, any material fraud, 
misrepresentation, concealment, conspiracy, collusion, trick, scheme, 
or device whereby any other person lawfully relies upon the word, 
representation, or conduct of the licensee. However, this subsection 
(3) does not prevent a bail bond recovery agent from using any pretext
to locate or apprehend a fugitive criminal defendant or gain any
information regarding the fugitive;

(4) Assigning or transferring any license issued pursuant to the
provisions of this chapter, except as provided in RCW 18.185.030 or
18.185.250;

(5) Conversion of any money or contract, deed, note, mortgage, or
other evidence of title, to his or her own use or to the use of his or
her principal or of any other person, when delivered to him or her in
trust or on condition, in violation of the trust or before the
happening of the condition; and failure to return any money or
contract, deed, note, mortgage, or other evidence of title within
thirty days after the owner is entitled to possession, and makes demand
for possession, shall be prima facie evidence of conversion;

(6) Entering into a contract, including a general power of
attorney, with a person that gives the bail bond agent full authority
over the person's finances, assets, real property, or personal
property;

(7) Failing to keep records, maintain a trust account, or return
collateral or security, as required by RCW 18.185.100;

(8) Any conduct in a bail bond transaction which
demonstrates bad faith, dishonesty, or untrustworthiness;

(9) Violation of an order to cease and desist that is
issued by the director under chapter 18.235 RCW;

(10) Wearing, displaying, holding, or using badges not
approved by the department;

(11) Making any statement that would reasonably cause
another person to believe that the bail bond recovery agent is a sworn
peace officer;

(12) Failing to carry a copy of the contract or to present
a copy of the contract as required under RCW 18.185.270(1);

(13) Using the services of an unlicensed bail bond
recovery agent or using the services of a bail bond recovery agent
without issuing the proper contract;

(14) Misrepresenting or knowingly making a material
misstatement or omission in the application for a license;

(15) Using the services of a person performing the
functions of a bail bond recovery agent who has not been licensed by
the department as required by this chapter;
Performing the functions of a bail bond recovery agent without being both (a) licensed under this chapter or supervised by a licensed bail bond recovery agent under RCW 18.185.290; and (b) under contract with a bail bond agent;

Performing the functions of a bail bond recovery agent without exercising due care to protect the safety of persons other than the defendant and the property of persons other than the defendant; or

Using a dog in the apprehension of a fugitive criminal defendant.

**NEW SECTION.** Sec. 17. A new section is added to chapter 18.185 RCW to read as follows:

(1) To determine whether an applicant has demonstrated proof of financial responsibility as required by RCW 18.185.020, the department shall consider the information and documents filed under RCW 18.185.040. For purposes of determining financial responsibility, the department may not take into consideration a bank account other than an irrevocable letter of credit or other bank account that is accessible only to a court for the purpose of paying a forfeited bond.

(2) Once the department has determined that an applicant has demonstrated proof of financial responsibility, the department shall determine the applicant's bond limit for commercial surety bonds and commercial property bonds.

**NEW SECTION.** Sec. 18. The Legislature intends, in response to Koenig v. Thurston County, 155 Wn. App. 398 (2010), to clarify that public inspection of or access to information related to mental health is subject to chapter 71.05 RCW and not the public records act, chapter 42.56 RCW.

**Sec. 19.** RCW 42.56.360 and 2010 c 128 s 3 and 2010 c 52 s 6 are each reenacted and amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;
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(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);

(g) Information obtained by the department of health under chapter 70.225 RCW;

(h) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150;

(i) Cardiac and stroke system performance data submitted to
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national, state, or local data collection systems under RCW 70.168.150(2)(b); and

(j) All documents, including completed forms, received pursuant to a wellness program under RCW 41.04.362, but not statistical reports that do not identify an individual.

(2) Chapters 70.02 and 71.05 RCW ((applies)) apply to public inspection and copying of health care information ((of patients)) and information related to mental health services.

(3)(a) Documents related to infant mortality reviews conducted pursuant to RCW 70.05.170 are exempt from disclosure as provided for in RCW 70.05.170(3).

(b)(i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records remain exempt to the same extent the records were exempt in the possession of the originating entity.

(ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as "exempt" so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure.

Sec. 20. RCW 71.05.385 and 2009 c 320 s 2 are each amended to read as follows:

(1) A mental health service provider shall release to the persons authorized under subsection (2) of this section, upon request:

(a) The fact, place, and date of an involuntary commitment, the fact and date of discharge or release, and the last known address of a person who has been committed under this chapter.

(b) Information related to mental health services, in the format determined under subsection (9) of this section, concerning a person who:

(i) Is currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board under chapter 9.94A or 9.95 RCW;

(ii) Has been convicted or found not guilty by reason of insanity of a serious violent offense; or

(iii) Was charged with a serious violent offense and such charges were dismissed under RCW 10.77.086.
Legal counsel may release such information to the persons authorized under subsection (2) of this section on behalf of the mental health service provider, provided that nothing in this subsection shall require the disclosure of attorney work product or attorney-client privileged information.

(2) The information subject to release under subsection (1) of this section shall be released to law enforcement officers, personnel of a county or city jail, prosecuting attorneys, designated mental health professionals, public health officers, therapeutic court personnel, personnel of the department of corrections, or personnel of the indeterminate sentence review board, when such information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting person's office. No mental health service provider or person employed by a mental health service provider, or its legal counsel, shall be liable for information released to or used under the provisions of this section or rules adopted under this section except under RCW 71.05.440.

(3) A person who requests information under subsection (1)(b) of this section must comply with the following restrictions:

(a) Information must be requested only for the purposes permitted by this subsection and for the purpose of carrying out the responsibilities of the requesting person's office. Appropriate purposes for requesting information under this section include:

(i) Completing presentence investigations or risk assessment reports;

(ii) Assessing a person's risk to the community;

(iii) Assessing a person's risk of harm to self or others when confined in a city or county jail;

(iv) Planning for and provision of supervision of an offender, including decisions related to sanctions for violations of conditions of community supervision; and

(v) Responding to an offender's failure to report for department of corrections supervision.

(b) Information shall not be requested under this section unless the requesting person has reasonable suspicion that the individual who is the subject of the information:

(i) Has engaged in activity indicating that a crime or a violation
of community custody or parole has been committed or, based upon his or
her current or recent past behavior, is likely to be committed in the
near future; or

(ii) Is exhibiting signs of a deterioration in mental functioning
which may make the individual appropriate for civil commitment under
this chapter.

(c) Any information received under this section shall be held
confidential and subject to the limitations on disclosure outlined in
this chapter, except:

(i) Such information may be shared with other persons who have the
right to request similar information under subsection (2) of this
section, solely for the purpose of coordinating activities related to
the individual who is the subject of the information in a manner
consistent with the official responsibilities of the persons involved;

(ii) Such information may be shared with a prosecuting attorney
acting in an advisory capacity for a person who receives information
under this section. A prosecuting attorney under this subsection shall
be subject to the same restrictions and confidentiality limitations as
the person who requested the information; and

(iii) As provided in RCW 72.09.585.

(4) A request for information related to mental health services
under this section shall not require the consent of the subject of the
records. Such request shall be provided in writing, except to the
extent authorized in subsection (5) of this section. A written request
may include requests made by e-mail or facsimile so long as the
requesting person is clearly identified. The request must specify the
information being requested.

(5) In the event of an emergency situation that poses a significant
risk to the public or the offender, a mental health service provider,
or its legal counsel, shall release information related to mental
health services delivered to the offender and, if known, information
regarding where the offender is likely to be found to the department of
corrections or law enforcement upon request. The initial request may
be written or oral. All oral requests must be subsequently confirmed
in writing. Information released in response to an oral request is
limited to a statement as to whether the offender is or is not being
treated by the mental health service provider and the address or
information about the location or whereabouts of the offender.
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(6) Disclosure under this section to state or local law enforcement authorities is mandatory for the purposes of the health insurance portability and accountability act.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(9) In collaboration with interested organizations, the department shall develop a standard form for requests for information related to mental health services made under this section and a standard format for information provided in response to such requests. Consistent with the goals of the health information privacy provisions of the federal health insurance portability and accountability act, in developing the standard form for responsive information, the department shall design the form in such a way that the information disclosed is limited to the minimum necessary to serve the purpose for which the information is requested.

Sec. 21.  RCW 71.05.390 and 2009 c 320 s 3 and 2009 c 217 s 6 are each reenacted and amended to read as follows:

Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, 71.05.385, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:
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(a) Employed by the facility;
(b) Who has medical responsibility for the patient's care;
(c) Who is a designated mental health professional;
(d) Who is providing services under chapter 71.24 RCW;
(e) Who is employed by a state or local correctional facility where
the person is confined or supervised; or
(f) Who is providing evaluation, treatment, or follow-up services
under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient
and the necessary circumstances giving rise to such needs and the
disclosure is made by a facility providing services to the operator of
a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian,
designates persons to whom information or records may be released, or
if the person is a minor, when his or her parents make such
designation.

(b) A public or private agency shall release to a person's next of
kin, attorney, personal representative, guardian, or conservator, if
any:

(i) The information that the person is presently a patient in the
facility or that the person is seriously physically ill;

(ii) A statement evaluating the mental and physical condition of
the patient, and a statement of the probable duration of the patient's
confinement, if such information is requested by the next of kin, 
attorney, personal representative, guardian, or conservator; and

(iii) Such other information requested by the next of kin or
attorney as may be necessary to decide whether or not proceedings 
should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for 
a claim to be made on behalf of a recipient for aid, insurance, or 
medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both:
PROVIDED, That the secretary adopts rules for the conduct of the 
evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency,
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or person) I, . . . . . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ ........................."

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) To a court, prosecuting attorney, and defense attorney for the purpose of determining conditions of pretrial release or detention.

(d) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-
two hours of the completion of the investigation or the request from
the law enforcement or corrections representative, whichever occurs
later.

(b) Disclosure under this subsection is mandatory for the purposes
of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the
responsibilities of the office under RCW 71.05.330(2) and
71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
to records regarding the committed person's treatment and prognosis,
medication, behavior problems, and other records relevant to the issue
of whether treatment less restrictive than inpatient treatment is in
the best interest of the committed person or others. Information shall
be disclosed only after giving notice to the committed person and the
person's counsel.

(10)(a) To appropriate law enforcement agencies and to a person,
when the identity of the person is known to the public or private
agency, whose health and safety has been threatened, or who is known to
have been repeatedly harassed, by the patient. The person may
designate a representative to receive the disclosure. The disclosure
shall be made by the professional person in charge of the public or
private agency or his or her designee and shall include the dates of
commitment, admission, discharge, or release, authorized or
unauthorized absence from the agency's facility, and only such other
information that is pertinent to the threat or harassment. The
decision to disclose or not shall not result in civil liability for the
agency or its employees so long as the decision was reached in good
faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes
of the health insurance portability and accountability act.

(11)(a) To appropriate corrections and law enforcement agencies all
necessary and relevant information in the event of a crisis or emergent
situation that poses a significant and imminent risk to the public.
The decision to disclose or not shall not result in civil liability for
the mental health service provider or its employees so long as the
decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes
of the health insurance portability and accountability act.
(12) To the persons designated in RCW 71.05.425 and 71.05.385 for the purposes described in those sections.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified. Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.56 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);
(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except as provided in RCW 71.05.385, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

NEW SECTION. Sec. 22. The sum of two hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2012, from the general fund to the administrative
office of the courts for the purpose of providing access to the risk assessment tool for pretrial release and detention purposes.

NEW SECTION. Sec. 23. The sum of ninety thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2012, from the general fund to the administrative office of the courts to be distributed to the Washington state center for court research for the purpose of maintaining the validity of the risk assessment tool.

NEW SECTION. Sec. 24. The sum of twenty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2012, from the general fund to The Evergreen State College to be distributed to the Washington state institute for public policy for the purpose of developing the failure to appear risk assessment tool.

NEW SECTION. Sec. 25. 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. 26. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

--- END ---
CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6673

Chapter 256, Laws of 2010

61st Legislature
2010 Regular Session

BAIL PRACTICES AND PROCEDURES--WORK GROUP

EFFECTIVE DATE: 06/10/10

Passed by the Senate March 8, 2010
YEAS 47  NAYS 0

BRAD OWEN
President of the Senate

Passed by the House March 5, 2010
YEAS 97  NAYS 1

FRANK CHOPP
Speaker of the House of Representatives

CERTIFICATE
I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 6673 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN
Secretary

Approved March 31, 2010, 3:42 p.m.

FILED
April 1, 2010

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to bail practices and procedures; creating new sections; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature intends to appoint a panel of experts to study bail practices and procedures. The bail system must be examined in a comprehensive and well-considered manner from all aspects including, but not limited to, judicial discretion, bail amounts and procedures, public safety, variations in county practices, constitutional restraints, and cost to local government. The variety of practices and procedures requires that a panel of experts study the issue and report its recommendation to the legislature.

NEW SECTION. Sec. 2. (1)(a) A work group on bail practices is established within existing resources. The work group must consist of the following members:

   (i) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;

   (ii) One member from each of the two largest caucuses of the house
of representatives, appointed by the speaker of the house of representatives;

(iii) The chief justice of the Washington state supreme court or the chief justice's designee;

(iv) A superior court judge, appointed by the superior court judges' association;

(v) A district or municipal court judge, appointed by the district and municipal court judges' association;

(vi) The governor or the governor's designee;

(vii) The secretary of the Washington state department of corrections or the secretary's designee;

(viii) The director of the Washington state department of licensing or the director's designee;

(ix) The Washington state insurance commissioner or the commissioner's designee;

(x) Two prosecutors, appointed by the Washington association of prosecuting attorneys or designees of the prosecutors;

(xi) Two attorneys selected by separate associations of attorneys whose members have practices that focus on representing criminal defendants;

(xii) One police officer and one deputy sheriff, selected by a statewide association of such officers and deputies;

(xiii) A representative of a statewide association of city governments, selected by the association;

(xiv) A representative of a statewide association of counties, selected by the association;

(xv) A representative employed as an adult corrections officer, selected by a statewide association of such officers;

(xvi) A representative from an entity representing corrections officers at a local county jail in which adult offenders are in custody and located in any county with a population in excess of one million persons, selected by the entity;

(xvii) A representative of a statewide organization concerned primarily with the protection of individual liberties, selected by the organization;

(xviii) A representative of a statewide association of advocates who work on behalf of victims and survivors of violent crimes, selected by the association;
Appendix B

(xix) A representative of the bail bond enforcement industry, chosen by a statewide association of bail bond enforcement agents;

(xx) A representative of the bail bond industry, selected by a statewide association of bail companies; and

(xxi) A representative of a statewide consumer advocacy organization with at least thirty thousand members, selected by the organization.

(b) The work group shall choose its cochairs from among its legislative membership. The legislative cochairs shall convene the initial meeting of the work group.

(2) The work group shall review, at a minimum, the following issues:

(a) All aspects of bail, paying particular attention to legislation affecting bail and pretrial release introduced during the 2010 legislative session;

(b) A validated risk assessment tool that measures or predicts the likelihood that an offender will exhibit violent behavior if released and whether judges should use this tool at bail hearings;

(c) Bail practices by county, including the processes used to seek and grant bail as well as the standards by which bail is granted;

(d) Whether, or to what extent, uniformity of bail practices should be required by state law;

(e) The characteristics of the federal system;

(f) The benefits of competitive freedom of government regulation in the pricing of bail bonds;

(g) The interests of crime victims in being notified of a person's release on bail;

(h) The interests of counties and cities that maintain municipal courts;

(i) Legal and constitutional constraints in granting or denying bail;

(j) Whether the existing regulatory, judicial, or statutory constraints on bail should be revised; and

(k) The pretrial release system.

(3) The work group shall use staff from senate committee services and the house of representatives office of program research and meet in state facilities that do not charge for use.
(4) Legislative members of the work group must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The work group may organize itself in a manner and adopt rules of procedure that it determines are most conducive to the timely completion of its charge.

(6) The work group shall report its findings and recommendations to the Washington state supreme court, the governor, and appropriate committees of the legislature by December 1, 2010.

(7) This section expires December 31, 2010.

Passed by the Senate March 8, 2010.
Passed by the House March 5, 2010.
Approved by the Governor March 31, 2010.
Filed in Office of Secretary of State April 1, 2010.
CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE JOINT RESOLUTION 4220

61st Legislature
2010 Regular Session

Passed by the House March 8, 2010
Yeas 92  Nays 4

Speaker of the House of Representatives

Passed by the Senate March 4, 2010
Yeas 48  Nays 0

President of the Senate

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE JOINT RESOLUTION 4220 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington
BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state the secretary of state shall submit to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article I, section 20 of the Constitution of the state of Washington to read as follows:

Article I, section 20. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. Bail may be denied for offenses punishable by the possibility of life in prison upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons, subject to such limitations as shall be determined by the legislature.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four
Appendix C

1 times during the four weeks next preceding the election in every legal
2 newspaper in the state.

--- END ---
CERTIFICATION OF ENROLLMENT

HOUSE BILL 2625

Chapter 254, Laws of 2010

61st Legislature
2010 Regular Session

CONDITIONS OF RELEASE--FELONY OFFENDERS

EFFECTIVE DATE: 01/01/11

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is HOUSE BILL 2625 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

Passed by the House March 8, 2010
Yeas 96  Nays 0

Passed by the Senate March 5, 2010
Yeas 48  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

BRAD OWEN
President of the Senate

Approved March 31, 2010, 3:37 p.m.

CHRISTINE GREGOIRE
Governor of the State of Washington

FILED
April 1, 2010

SECRETARY OF STATE
State of Washington
AN ACT Relating to bail for felony offenses; adding a new chapter to Title 10 RCW; creating new sections; providing an effective date; providing a contingent effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. 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.

NEW SECTION. Sec. 2. (1) Bail for the release of a person arrested and detained for a felony offense must be determined on an individualized basis by a judicial officer.

(2) This section expires August 1, 2011.
NEW SECTION. Sec. 3. 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.

NEW SECTION. Sec. 4. 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 section 5 of this act or other provision of law;
   (3) Temporarily detained as allowed by law; or
   (4) Detained as provided under this act.

NEW SECTION. Sec. 5. (1) The judicial officer 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 designated person or organization agreeing to supervise the defendant;
      (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, 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 prohibited from approaching or communicating in any manner with particular persons or classes of persons;
The defendant may be prohibited from going to certain geographical areas or premises;

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

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;

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

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

The defendant may be prohibited from committing any violations of criminal law.

NEW SECTION. Sec. 6. 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.

NEW SECTION. Sec. 7. The judicial officer 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 person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the
community, community ties, 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; and

(c) The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

NEW SECTION. Sec. 8. (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
NEW SECTION. Sec. 9. In a release order issued under section 5 of this act 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.

NEW SECTION. Sec. 10. (1) In a detention order issued under section 6 of this act, 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.

NEW SECTION. Sec. 11. Nothing in this chapter may be construed as modifying or limiting the presumption of innocence.

NEW SECTION. Sec. 12. Sections 3 through 11 of this act constitute a new chapter in Title 10 RCW.
NEW SECTION. Sec. 13. 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. 14. 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.

Passed by the House March 8, 2010.
Passed by the Senate March 5, 2010.
Approved by the Governor March 31, 2010.
Filed in Office of Secretary of State April 1, 2010.
RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

   (a) will commit a violent crime, or

   (b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030. In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

(b) Showing of Likely Failure to Appear—Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;

(5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available
information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(c) Relevant Factors-Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of response to legal process, particularly court orders to personally appear;

(2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;

(6) The accused's criminal record;

(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(8) The nature of the charge, if relevant to the risk of nonappearance;

(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger-Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety
of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.

(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors—Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character and mental condition;

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(7) The accused's past record of committing offenses while on pretrial release, probation or parole; and

(8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victim's or witnesses.

(f) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the persons safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the persons mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a
Appendix E

capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused’s release and shall advise the accused that a warrant for the accused’s arrest may be issued upon any such violation.

(j) Review of Conditions.

(1) At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail. In connection with this motion, both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court shall promptly enter an order setting out the conditions of release in accordance with section (i). If a bail requirement is imposed or maintained, the court shall set out its reasons on the record or in writing.

(k) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing in accordance with section (j). Release may be revoked only if the violation is proved by clear and convincing evidence.

(l) Arrest for Violation of Conditions.

(1) Arrest With Warrant. Upon the court’s own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused’s release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (k).
Appendix E

(2) Arrest Without Warrant. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (k).

(m) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(n) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(o) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

Comment

Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

[Adopted amended effective September 1, 2002.]
If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) The court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) There is shown a likely danger that the accused:
   (a) will commit a violent crime, or
   (b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" may include misdemeanors and gross misdemeanors and are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

(b) Showing of Likely Failure to Appear—Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond in a specified amount and the deposit in the
registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;

(5) Require the execution of a bond with sufficient solvent sureties or the deposit of cash in lieu thereof;

(6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required.

A court of limited jurisdiction may adopt a bail schedule for persons who have been arrested on probable cause but have not yet made a preliminary appearance before a judicial officer. The adoption of such a schedule or whether to adopt a schedule, is in the discretion of each court of limited jurisdiction, and may be adopted by majority vote. Bail schedules are not subject to GR 7. The supreme court may adopt a uniform bail schedule as an appendix to these rules.

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

(c) Relevant Factors—Future Appearance. In determining which conditions of release will reasonably assure the accused’s appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of response to legal process, particularly court orders to personally appear;

(2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;
(6) The accused's criminal record;
(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;
(8) The nature of the charge, if relevant to the risk of nonappearance;
(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger—Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;
(2) Prohibit the accused from going to certain geographical areas or premises;
(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;
(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;
(5) Prohibit the accused from committing any violations of criminal law;
(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.
(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;
(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;
Appendix F

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors—Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused’s noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused’s criminal record;
(2) The willingness of responsible members of the community to vouch for the accused’s reliability and assist the accused in complying with conditions of release;
(3) The nature of the charge;
(4) The accused’s reputation, character and mental condition;
(5) The accused’s past record of threats to victims or witnesses or interference with witnesses or the administration of justice;
(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;
(7) The accused’s past record of committing offenses while on pretrial release, probation or parole; and
(8) The accused’s past record of use of or threatened use of deadly weapons or firearms, especially to victim’s or witnesses.

(f) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the person’s safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the person’s mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained
pursuant to this section must be released from detention not later than 24 hours after
the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a capital offense shall not be
released in accordance with this rule unless the court finds that release on conditions
will reasonably assure that the accused will appear for later hearings, will not
significantly interfere with the administration of justice and will not pose a substantial
danger to another or the community. If a risk of flight, interference or danger is
believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded
guilty, the court may revoke, modify, or suspend the terms of release and/or bail
previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule
shall issue an appropriate order containing a statement of the conditions imposed, if
any, shall inform the accused of the penalties applicable to violations of the conditions
of the accused's release and shall advise the accused that a warrant for the accused's
arrest may be issued upon any such violation.

(j) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this
rule may at any time on change of circumstances, new information or showing of good
cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release,
the court may revoke release and may order forfeiture of any bond. Before entering an
order revoking release or forfeiting bail, the court shall hold a hearing. Release may be
revoked only if the violation is proved by clear and convincing evidence.

(k) Arrest for Violation of Conditions.

(1) Arrest with Warrant. Upon the court's own motion or a verified application by
the prosecuting authority alleging with specificity that an accused has willfully violated a
condition of the accused's release, a court shall order the accused to appear for
immediate hearing or issue a warrant directing the arrest of the accused for immediate
hearing for reconsideration of conditions of release pursuant to section (j).

(2) Arrest without Warrant. A law enforcement officer having probable cause to
believe that an accused released pending trial for a felony is about to leave the state or
has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (j).

(l) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(m) (Reserved.)

(n) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violates conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

(o) Bail in Criminal Offense Cases--Mandatory Appearance.
   (1) When required to reasonably assure appearance in court, bail for a person arrested for a misdemeanor shall be $500 and for a gross misdemeanor shall be $1,000. In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.
   
   (2) A court may adopt a local rule requiring that persons subjected to custodial arrest for a certain class of offenses be held until they have appeared before a judge.

(p) (Reserved.)

(q) (Reserved.)

[Amended effective September 1, 2002; April 1, 2003; September 1, 2005; amended June 2, 2010 effective July 1, 2012]