

# HOUSE BILL REPORT

## HB 1792

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### As Passed House:

March 7, 1995

**Title:** An act relating to the release of offenders.

**Brief Description:** Prescribing procedures for release of offenders.

**Sponsors:** Representatives Padden, Carrell, Beeksma, McMahan, Costa, Stevens, Blanton and Thompson.

### Brief History:

#### Committee Activity:

Law & Justice: 2/17/95, 2/21/95 [DP].

#### Floor Activity:

Passed House: 3/7/95, 94-0.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass. Signed by 17 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith; Thibaudeau and Veloria.

**Staff:** Pat Shelledy (786-7149).

**Background:** If a defendant is convicted of a crime, the court decides whether to detain the defendant pending sentencing and appeal.

A defendant who has been found guilty of a felony and is awaiting sentencing must be detained, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or to the community if released. This provision does not specifically provide that the court must also consider whether the defendant's release will cause unreasonable trauma to the victim of the crime or the victim's family.

Following sentencing and pending appeal, the court may not stay execution of the judgment if the court determines by a preponderance of the evidence that: (1) the defendant is likely to flee or to pose a danger to the safety of the community or another person; (2) the stay will diminish the deterrent effect of the punishment; (3)

the stay will cause unreasonable trauma to the victims of the crime or their families; or (4) the defendant has not paid the defendant's financial obligations to the extent the defendant is capable of paying them, or has not posted an adequate performance bond to assure payment.

To minimize trauma to the victim, the court may attach conditions of release of a defendant pending sentencing or appeal regarding the defendant's whereabouts, contact with the victim, or other conditions.

The Washington State Supreme Court has held that the state constitution does not confer a right to bail pending appeal, nor does it restrict the right to bail pending appeal. The court has also held that the decision whether to set bail is a judicial function. Current court rules grant deference to several legislative enactments regarding release pending sentencing and appeal.

**Summary of Bill:** Current statutes regarding releasing defendants pending sentencing and pending appeal are amended to provide that if the court releases the defendant and does not require the defendant to post a bond, cash, or other security, the court must state its reasons on the record.

The requirement that the court consider whether release pending sentencing will unreasonably traumatize the victim or the victim's family is specifically added to the provisions governing release pending sentencing.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** If an offender is convicted, in most cases the court should not release the defendant pending appeal at all, let alone without some form of secured release. Consequently, courts should have to state reasons for not requiring secured release.

**Testimony Against:** None.

**Testified:** Tom McBride, Washington Association of Prosecuting Attorneys (pro); Gary Barrett, Director, Strike Back (pro); and Gordon Walgren, Washington State Bail Agents' Association (pro).