

# **Public Safety & Emergency Preparedness Committee**

## **SSB 6673**

**Brief Description:** Appointing a task force to study bail practices and procedures.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin, Carrell, Kohl-Welles, Gordon, Regala, Roach, Hargrove and Tom).

### **Brief Summary of Substitute Bill**

- Establishes a task force to study and make recommendations regarding bail practices and procedures.
- Prescribes the membership of the task force and the topics to be reviewed.

**Hearing Date:** 2/23/10

**Staff:** Alexa Silver (786-7190).

### **Background:**

#### Washington Law and Court Rules Governing Bail.

Pretrial release is the release of the accused from detention pending trial. For people charged with noncapital crimes, the state Constitution guarantees the right to bail, which has been interpreted as the right to a judicial determination of either release or reasonable bail. The purpose of bail is to secure the accused's presence in court. Pretrial release and bail are favored by courts in appropriate circumstances because the accused is presumed innocent and because the state is relieved of the burden of detention.

Courts have found that the courts have the inherent power and the statutory authority to make rules regarding procedure and practice in the courtroom, including setting bail and releasing individuals from custody. The Legislature may enact statutes related to bail so long as the statutes can be harmonized with court rules.

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

Criminal court rules govern the release of an accused in superior court criminal proceedings. In a noncapital case, there is a presumption that the accused should be released unless the court determines either that release will not reasonably assure that the accused will appear, or that there is a likely danger that the accused will commit a violent crime or interfere with the administration of justice. Under those circumstances, the court may impose conditions on release. For example, the court may require the accused to post a bond or deposit cash, conditioned on compliance with the conditions of release.

#### Bail Schedules.

Some counties permit the practice of booking bail, under which a law enforcement officer or a prosecutor sets the amount of bail based on a bail schedule. Bail schedules are contained in local court rules, and an advisory statewide bail schedule is also available. Approaches to bail schedules vary by county and type of court; the Washington Supreme Court has held that whether to promulgate a bail schedule is a question best left to the counties.

#### Nature of Bail Bonds.

Bail bonds are an insurance product sold by a bail bondsman, who works for the insurance company. The premium rate charged by the insurance company must be approved by the Office of the Insurance Commissioner. Generally, insurance companies charge a premium of 8 to 10 percent for bonds exceeding \$500, depending on factors such as military status and union membership.

#### Federal Law on Pretrial Release and Detention.

Under the federal Bail Reform Act, a judge may release the accused on personal recognizance or execution of an appearance bond, release the accused on conditions, or detain the accused. The accused may be detained if the judge determines that no condition or combination of conditions will reasonably assure the accused's appearance and the safety of any other person and the community. Detention is permitted in cases involving a serious risk that the accused will flee or attempt to obstruct justice, a crime of violence, a crime for which the maximum sentence is life imprisonment or death, a controlled substance offense the maximum sentence for which is ten years or more, or a felony if the accused has been convicted of two or more specified serious offenses.

#### **Summary of Bill:**

A legislative task force on bail practices and procedures is established. It is the Legislature's intent that a panel of experts should study the bail system in a comprehensive and well-considered manner. The task force is composed of 24 members as follows:

- two senators (one from each caucus);
- two representatives (one from each caucus);
- the Chief Justice of the Washington Supreme Court or her designee;
- one superior court judge;
- one district or municipal court judge;
- the Governor or her designee;

- the Secretary of the Department of Corrections or his designee;
- two prosecuting attorneys;
- two criminal defense attorneys;
- one police officer and one deputy sheriff;
- one representative of an association of city governments;
- one representative of an association of county governments;
- one corrections officer;
- one representative of a group representing corrections officers at a county jail in a county with a population over 1 million;
- one representative of an organization concerned with the protection of individual liberties;
- one representative of an association of victims' advocates;
- one representative of the bail bond industry;
- one representative of the bail bond enforcement industry; and
- one representative of a consumer advocacy organization.

The task force must, at a minimum, review the following:

- all aspects of bail, including bail-related legislation introduced in the 2010 session;
- the pretrial release system;
- bail practices by county and whether uniform statewide bail practices should be required;
- characteristics of the federal system;
- crime victims' interests in being notified when an offender is released on bail;
- the interests of counties and cities with municipal courts;
- whether a risk assessment tool that predicts an offender's likelihood of exhibiting violent behavior if released should be used at bail hearings;
- benefits of competitive freedom of government regulation in the pricing of bail bonds;
- legal and constitutional constraints in granting or denying bail; and
- whether the regulatory, judicial, or statutory constraints on bail should be revised.

The task force must request research from the Washington State Institute for Public Policy to inform the task force on issues such as: the percentage of people who reoffend while released on bail; the likelihood that the offense for which bail was granted is statistically or causally related to additional offenses; and the effect of race or economic status on the likelihood of being granted bail.

By December 1, 2010, the task force must report its findings and recommendations to the Washington Supreme Court, the Governor, and the Legislature. Staff support for the task force must be provided by Senate Committee Services and the Office of Program Research. Travel and other expenses may not be reimbursed for legislative members. Non-legislative members must seek reimbursement through their respective agencies or organizations. The task force is subject to the Open Public Meetings Act.

The act establishing the task force expires December 31, 2010.

**Appropriation:** None.

**Fiscal Note:** Available.

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