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**SENATE BILL 5307**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Pedersen and Dhingra; by request of Uniform Law Commission

1 AN ACT Relating to the uniform pretrial release and detention  
2 act; amending RCW 10.19.170 and 10.21.060; adding a new section to  
3 chapter 10.31 RCW; adding a new chapter to Title 10 RCW; and  
4 providing an effective date.

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

6 **ARTICLE 1**

7 **GENERAL PROVISIONS**

8 NEW SECTION. **Sec. 101.** SHORT TITLE. This act may be cited as  
9 the uniform pretrial release and detention act.

10 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this  
11 section apply throughout this chapter unless the context clearly  
12 requires otherwise.

13 (1) "Abscond" means fail to appear in court as required with  
14 intent to avoid or delay adjudication.

15 (2) "Charge," used as a noun, means an allegation of an offense  
16 in a complaint, information, indictment, or a criminal citation  
17 alleging a violation of a criminal law, ordinance, or similar record.

18 (3) "Citation" means a record issued by an arresting officer or  
19 other authorized peace officer alleging an offense.

1 (4) "Covered offense" means an offense for which the penalty may  
2 be life in prison, for which pretrial detention is authorized under  
3 Article I, section 20 of the state Constitution. Covered offense also  
4 includes a class A or class B felony, for which a judicial officer  
5 must determine the financial conditions for release.

6 (5) "Detention hearing" means a hearing under section 401 of this  
7 act.

8 (6) "Not appear" or "nonappearance" means to fail to appear in  
9 court as required without intent to avoid or delay adjudication.

10 (7) "Obstruct justice" means interfere with the criminal process  
11 with intent to influence or impede the administration of justice.  
12 "Obstruct justice" includes intimidating or tampering with a witness  
13 or tampering with evidence.

14 (8) "Offense" means conduct that a statute or ordinance  
15 proscribes.

16 (9) "Person" means an individual, estate, partnership, business  
17 or nonprofit entity, public corporation, government or governmental  
18 subdivision, agency, or instrumentality, or other legal entity.

19 (10) "Record" means information that is inscribed on a tangible  
20 medium or that is stored in an electronic or other medium and is  
21 retrievable in perceivable form.

22 (11) "Release hearing" means a preliminary appearance hearing  
23 under section 301 of this act.

24 (12) "Release on recognizance" means pretrial release of an  
25 individual with no condition other than to appear in court as  
26 required and to abide by generally applicable laws.

27 (13) "Secured appearance bond" means a person's promise, secured  
28 by sufficient surety, deposit, lien, or proof of access to  
29 collateral, to forfeit a specified sum if the individual whose  
30 appearance is the subject of the bond absconds or does not appear.

31 (14) "Unsecured appearance bond" means a person's promise other  
32 than through a secured appearance bond to forfeit a specified sum if  
33 the individual whose appearance is the subject of the bond absconds  
34 or does not appear.

35 NEW SECTION. **Sec. 103.** SCOPE. (1) This chapter governs a  
36 determination to arrest, release, or detain an individual before  
37 trial.

38 (2) This chapter does not affect the law of this state other than  
39 this chapter regarding related matters, including: (a) Forfeiture,

1 release, or collection of a secured appearance bond or an unsecured  
2 appearance bond; (b) involuntary civil commitment; (c) a right of a  
3 crime victim, including a right of notification; (d) appellate  
4 review; or (e) release pending appeal.

5 **ARTICLE 2**  
6 **CITATION AND ARREST**

7 NEW SECTION. **Sec. 201.** A new section is added to chapter 10.31  
8 RCW to read as follows:

9 (1) A police officer who arrests an individual without a warrant  
10 shall detain the individual in a detention or custodial facility  
11 until the individual's first postarrest appearance only upon probable  
12 cause to believe that the individual:

13 (a) Committed a crime against another individual;

14 (b) Committed a crime for which a statute provides that "a police  
15 officer shall arrest and take into custody," including but not  
16 limited to crimes identified in RCW 10.31.100(2) and 26.50.110;

17 (c) Will commit a violent crime, including misdemeanors and gross  
18 misdemeanors that are not defined as violent offenses in RCW  
19 9.94A.030; or will seek to intimidate witnesses, or otherwise  
20 interfere with administration of justice; or

21 (d) Is unlikely to respond to legal process based upon the  
22 totality of circumstances, including but not limited to the  
23 individual's mental condition or impairment, length of residence in  
24 the community, criminal history including the existence of pending  
25 charges, the existence of arrest warrants for the individual, any  
26 pending criminal charges, the willingness of responsible members of  
27 the community to assist the individual in appearing for required  
28 hearing, and any other factors indicating the individual's ties to  
29 the community.

30 (2)(a) Nothing in this section shall preclude an officer from  
31 administratively booking an individual who is arrested without a  
32 warrant upon probable cause to believe the individual has committed a  
33 gross misdemeanor or felony.

34 (b) For purposes of this subsection, "administratively booking"  
35 means transporting the individual to a police station or other  
36 designated location for the purpose of photographing and  
37 fingerprinting as required by RCW 43.43.735 or other statute  
38 authorizing the collection of identification data. Once

1 identification data is collected, the individual shall be released  
2 upon the individual's promise to appear in court pursuant to a  
3 summons or upon the date provided by the arresting officer pursuant  
4 to local court rule.

5 (3) An individual who is arrested upon probable cause to believe  
6 the individual has committed a crime and who is not detained or  
7 administratively booked at the time of arrest shall be photographed  
8 and fingerprinted following the individual's first appearance in  
9 court for proceedings arising from such arrest for any criminal  
10 offense constituting a felony.

11 **ARTICLE 3**  
12 **RELEASE HEARING**

13 NEW SECTION. **Sec. 301.** TIMING. (1) Unless an arrested  
14 individual is released under section 203 of this act after arrest,  
15 the individual is entitled to a hearing to determine release pending  
16 trial. Except as otherwise provided in subsection (2) of this  
17 section, the court shall hold the hearing within 48 hours after the  
18 arrest.

19 (2) The court may continue a release hearing:

20 (a) On motion of the arrested individual; or

21 (b) In extraordinary circumstances, for not more than 48 hours,  
22 on its own or on motion of the prosecuting attorney.

23 (3) At the conclusion of a release hearing, the court shall issue  
24 an order of pretrial release or temporary pretrial detention.

25 NEW SECTION. **Sec. 302.** RIGHTS OF ARRESTED INDIVIDUAL. (1) An  
26 arrested individual has a right to be heard at a release hearing.

27 (2) An arrested individual has a right to counsel at a release  
28 hearing. If the individual is unable to obtain counsel for the  
29 hearing, an authorized public defense services agency or provider  
30 shall provide counsel.

31 NEW SECTION. **Sec. 303.** JUDICIAL DETERMINATION OF RISK. At a  
32 release hearing, the court shall determine whether the arrested  
33 individual poses a risk that is relevant to pretrial release. The  
34 individual poses a relevant risk only if the court determines by  
35 clear and convincing evidence that the individual is likely to  
36 abscond, not appear, obstruct justice, violate an order of

1 protection, or there is substantial risk the arrested individual will  
2 commit a violent crime. The court shall consider:

3 (1) Available information concerning:

4 (a) The nature, seriousness, and circumstances of the alleged  
5 offense;

6 (b) The weight of the evidence against the individual;

7 (c) The individual's criminal history, history of absconding or  
8 nonappearance, and community ties; and

9 (d) Whether the individual has a pending charge in another matter  
10 or is under criminal justice supervision;

11 (2) Any relevant information provided by a pretrial services  
12 agency; and

13 (3) Other relevant information, including information provided by  
14 the individual, the prosecuting attorney, or an alleged victim.

15 NEW SECTION. **Sec. 304.** PRETRIAL RELEASE. (1) Except as  
16 otherwise provided in subsection (2) of this section and section 308  
17 of this act, at a release hearing the court shall issue an order of  
18 pretrial release on recognizance. The order must state:

19 (a) When and where the individual must appear; and

20 (b) The possible consequences of violating the order or  
21 committing an offense while the charge is pending.

22 (2) If the court determines under section 303 of this act that an  
23 arrested individual poses a relevant risk, the court shall determine  
24 under sections 305 through 307 of this act whether pretrial release  
25 of the individual is appropriate.

26 (3) If the court determines under sections 305 through 307 of  
27 this act that pretrial release is appropriate, the court shall issue  
28 an order of pretrial release. The order must include the information  
29 required under subsection (1)(a) of this section and any restrictive  
30 condition imposed by the court.

31 NEW SECTION. **Sec. 305.** PRACTICAL ASSISTANCE—VOLUNTARY SUPPORT  
32 SERVICES. (1) If the court determines under section 303 of this act  
33 that an arrested individual poses a relevant risk, the court shall  
34 determine whether practical assistance or a voluntary support  
35 service, or both, are available and sufficient to satisfactorily  
36 address the risk. Practical assistance may include delayed release  
37 for up to 24 hours for an intoxicated individual when release would  
38 be unsafe or for transfer to a treatment facility for custody and

1 care as permitted by court rule. Voluntary support services may  
2 include pretrial services programs, housing support programs,  
3 pretrial release programs provided in RCW 10.21.015, and other  
4 available state or community programs for which an arrested  
5 individual qualifies.

6 (2) If the court determines that practical assistance or a  
7 voluntary support service is available and sufficient to  
8 satisfactorily address a relevant risk the court identifies under  
9 section 303 of this act, the court shall refer the individual to the  
10 practical assistance or voluntary support service and issue an order  
11 of pretrial release under section 304(3) of this act.

12 NEW SECTION. **Sec. 306.** RESTRICTIVE CONDITION OF RELEASE. (1) If  
13 the court determines under section 305 of this act that practical  
14 assistance or a voluntary support service is not sufficient to  
15 satisfactorily address a relevant risk the court identifies under  
16 section 303 of this act, the court shall impose the least restrictive  
17 condition or conditions reasonably necessary to satisfactorily  
18 address the risk and issue an order of pretrial release under section  
19 304(3) of this act.

20 (2) A restrictive condition under subsection (1) of this section  
21 includes:

22 (a) Mandatory therapeutic treatment or social services when  
23 authorized pursuant to chapter 71.05 RCW or other applicable laws;

24 (b) A requirement to seek to obtain or maintain employment or  
25 maintain an education commitment;

26 (c) A restriction on possession or use of a weapon;

27 (d) A restriction on travel;

28 (e) A restriction on contact with a specified person;

29 (f) A restriction on a specified activity;

30 (g) Supervision by a pretrial services agency or another person;

31 (h) Active or passive electronic monitoring;

32 (i) Home detention;

33 (j) Subject to section 307 of this act, a secured appearance bond  
34 or unsecured appearance bond;

35 (k) A condition proposed by the arrested individual, the  
36 prosecuting attorney, or an alleged victim;

37 (l) Any other nonfinancial condition required by law of this  
38 state other than this act; or

1 (m) Another condition to address satisfactorily the relevant risk  
2 the court identifies under section 303 of this act.

3 (3) The court shall state in a record the reasons the restrictive  
4 condition or conditions imposed under subsection (1) of this section  
5 are the least restrictive reasonably necessary means to  
6 satisfactorily address the relevant risk the court identifies under  
7 section 303 of this act.

8 NEW SECTION. **Sec. 307.** FINANCIAL CONDITION OF RELEASE. (1)

9 Subject to sections 308 and 403 of this act, the court may not impose  
10 a restrictive condition under section 306 of this act that requires  
11 initial payment of a fee in a sum greater than the arrested  
12 individual is able to pay from personal financial resources within 24  
13 hours after the condition is imposed. If the individual is unable to  
14 pay the fee, the court shall waive or modify the fee, or waive or  
15 modify the restrictive condition that requires payment of the fee, to  
16 the extent necessary to release the individual. If the individual is  
17 unable to pay a recurring fee, the court shall waive or modify the  
18 recurring fee or the restrictive condition that requires payment of  
19 the fee.

20 (2) Before imposing a secured appearance bond or unsecured  
21 appearance bond under section 306 of this act, the court shall  
22 consider the arrested individual's personal financial resources and  
23 obligations, including income, assets, expenses, liabilities, and  
24 dependents.

25 (3) Subject to sections 308 and 403 of this act, the court may  
26 not impose a secured appearance bond as a restrictive condition under  
27 section 306 of this act unless the court determines by clear and  
28 convincing evidence that the arrested individual is likely to  
29 abscond, not appear, obstruct justice, or violate an order of  
30 protection.

31 (4) Subject to sections 308 and 403 of this act, the court may  
32 not impose a secured appearance bond as a restrictive condition under  
33 section 306 of this act:

34 (a) To keep an arrested individual detained;

35 (b) For a charge that is not a felony, unless the individual (i)  
36 has absconded; or (ii) did not appear in a criminal case or  
37 combination of criminal cases three or more times; or

1 (c) The cost of which is an amount greater than the individual is  
2 able to pay from personal financial resources within 24 hours after  
3 the condition is imposed.

4 NEW SECTION. **Sec. 308.** TEMPORARY PRETRIAL DETENTION. (1) At the  
5 conclusion of a release hearing, the court may issue an order to  
6 detain the arrested individual temporarily until a detention hearing,  
7 or may impose a financial condition of release in an amount greater  
8 than the individual is able to pay from personal financial resources  
9 within 24 hours after the condition is imposed, only if the  
10 individual is charged with a covered offense and the court determines  
11 by clear and convincing evidence that:

12 (a) It is likely that the individual will abscond, obstruct  
13 justice, violate an order of protection, or there is substantial risk  
14 the arrested individual will commit a violent crime and that no less  
15 restrictive condition is sufficient to satisfactorily address the  
16 relevant risk the court identifies under section 303 of this act;

17 (b) The individual has violated a condition of an order of  
18 pretrial release for a pending criminal charge; or

19 (c) In a case in which the individual is charged with a felony,  
20 it is likely the individual will not appear, and no less restrictive  
21 condition is sufficient to satisfactorily address the relevant risk  
22 the court identifies under section 303 of this act.

23 (2) If under subsection (1) of this section the court issues an  
24 order to detain the arrested individual temporarily or imposes a  
25 financial condition of release in an amount greater than the  
26 individual is able to pay from personal financial resources within 24  
27 hours after the condition is imposed, the court shall state its  
28 reasons in a record, including why no less restrictive condition or  
29 combination of conditions is sufficient.

30 **ARTICLE 4**  
31 **DETENTION HEARING**

32 NEW SECTION. **Sec. 401.** TIMING. (1) If the court issues an order  
33 of temporary pretrial detention of an arrested individual under  
34 section 308 of this act, or pretrial release of an arrested  
35 individual under section 304 of this act subject to a restrictive  
36 condition that results in continued detention of the individual, the  
37 court shall hold a hearing to consider continued detention of the

1 individual pending trial. The hearing must be held within three days  
2 not including any intermediate Saturday, Sunday, or legal holiday  
3 after issuance of the order.

4 (2) The court on its own or on motion of the prosecuting attorney  
5 may continue a detention hearing for good cause for no more than  
6 three days not including any intermediate Saturday, Sunday, or legal  
7 holiday.

8 (3) The court shall continue a detention hearing on motion of the  
9 detained individual.

10 (4) At the conclusion of a detention hearing, the court shall  
11 issue an order of pretrial release or detention.

12 NEW SECTION. **Sec. 402.** RIGHTS OF THE DETAINED INDIVIDUAL. (1)  
13 At a detention hearing, the detained individual has a right to  
14 counsel. If the individual is indigent, a public defense services  
15 agency or provider shall provide counsel.

16 (2) At a detention hearing, the detained individual has a right  
17 to:

18 (a) Review evidence to be introduced by the prosecuting attorney  
19 before it is introduced at the hearing;

20 (b) Present evidence, call witnesses, and provide information;

21 (c) Testify; and

22 (d) Cross-examine witnesses.

23 NEW SECTION. **Sec. 403.** PRETRIAL DETENTION. (1) At a detention  
24 hearing, the court shall consider the criteria in sections 303  
25 through 307 of this act to determine whether to issue an order of  
26 pretrial detention or continue, amend, or eliminate a restrictive  
27 condition that has resulted in continued detention of the detained  
28 individual. If failure to satisfy a secured appearance bond or pay a  
29 fee is the only reason the individual continues to be detained, the  
30 fact of detention is prima facie evidence that the individual is  
31 unable to satisfy the bond or pay the fee.

32 (2) The court at a detention hearing may issue an order of  
33 pretrial detention or continue a restrictive condition of release  
34 that results in detention only if the detained individual is charged  
35 with a covered offense and the court determines by clear and  
36 convincing evidence that:

37 (a) It is likely that the individual will abscond, obstruct  
38 justice, violate an order of protection, or there is substantial risk

1 the arrested individual will commit a violent crime and no less  
2 restrictive condition is sufficient to satisfactorily address the  
3 relevant risk the court identifies under section 303 of this act; or

4 (b) In a case where the individual is charged with a felony, it  
5 is likely that the individual will not appear, and no less  
6 restrictive condition is sufficient to satisfactorily address the  
7 relevant risk the court identifies under section 303 of this act.

8 (3) If under subsection (2) of this section the court issues an  
9 order of pretrial detention or continues a restrictive condition of  
10 release that results in detention, the court shall state its reasons  
11 in a record, including why no less restrictive condition or  
12 combination of conditions is sufficient.

## 13 **ARTICLE 5**

### 14 **MODIFYING OR VACATING ORDER**

15 NEW SECTION. **Sec. 501.** MODIFYING OR VACATING BY AGREEMENT. By  
16 agreement of the prosecuting attorney and an individual subject to an  
17 order under Article 3 or 4 of this chapter, the court may:

18 (1) Modify an order of pretrial release;

19 (2) Vacate an order of pretrial detention and issue an order of  
20 pretrial release; or

21 (3) Issue an order of pretrial detention.

22 NEW SECTION. **Sec. 502.** MOTION TO MODIFY. On its own or on  
23 motion of a party, the court may modify an order of pretrial release  
24 or detention using the procedures and standards in Articles 3 and 4  
25 of this chapter. The court may consider new information relevant to  
26 the order, including information that the individual subject to the  
27 order has violated a condition of release. The court may deny the  
28 motion summarily if it is not supported by new information.

## 29 **ARTICLE 6**

### 30 **MISCELLANEOUS PROVISIONS**

31 NEW SECTION. **Sec. 601.** UNIFORMITY OF APPLICATION AND  
32 CONSTRUCTION. In applying and construing this chapter, consideration  
33 must be given to the need to promote uniformity of the law with  
34 respect to its subject matter among states that enact it.

1       **Sec. 602.** RCW 10.19.170 and 1996 c 181 s 1 are each amended to  
2 read as follows:

3       (~~Notwithstanding CrR 3.2, a~~) A court (~~who~~) that releases a  
4 defendant arrested or charged with a violent offense as defined in  
5 RCW 9.94A.030 on the offender's personal recognizance or personal  
6 recognizance with conditions must state (~~on the~~) its reasons in a  
7 record (~~the reasons why the court did not require the defendant to~~  
8 ~~post bail~~) including why no less restrictive condition or  
9 combination of conditions is sufficient, consistent with section  
10 308(2) of this act.

11       **Sec. 603.** RCW 10.21.060 and 2010 c 254 s 8 are each amended to  
12 read as follows:

13       (1) The judicial officer must hold a hearing in cases involving  
14 offenses prescribed in Article I, section 20, to determine whether  
15 any condition or combination of conditions will reasonably assure the  
16 safety of any other person and the community upon motion of the  
17 attorney for the government.

18       (2) The hearing must be held immediately upon the defendant's  
19 first appearance before the judicial officer unless the defendant, or  
20 the attorney for the government, seeks a continuance. Except for good  
21 cause, a continuance on motion of such person may not exceed (~~five~~)  
22 three days (not including any intermediate Saturday, Sunday, or legal  
23 holiday), and a continuance on motion of the attorney for the  
24 government may not exceed three days (not including any intermediate  
25 Saturday, Sunday, or legal holiday). During a continuance, such  
26 person must be detained.

27       (3) At the hearing, such defendant has the right to be  
28 represented by counsel, and, if financially unable to obtain  
29 representation, to have counsel appointed. The defendant must be  
30 afforded an opportunity to testify, to present witnesses, to cross-  
31 examine witnesses who appear at the hearing, and to present  
32 information by proffer or otherwise. The rules concerning  
33 admissibility of evidence in criminal trials do not apply to the  
34 presentation and consideration of information at the hearing. The  
35 facts the judicial officer uses to support a finding that no  
36 condition or combination of conditions will reasonably assure the  
37 safety of any other person and the community must be supported by  
38 clear and convincing evidence of a propensity for violence that

1 creates a substantial likelihood of danger to the community or any  
2 persons.

3 (4) The defendant may be detained pending completion of the  
4 hearing. The hearing may be reopened, before or after a determination  
5 by the judicial officer, at any time before trial if the judicial  
6 officer finds that information exists that was not known to the  
7 movant at the time of the hearing and that has a material bearing on  
8 the issue whether there are conditions of release that will  
9 reasonably assure the safety of any other person and the community.

10 NEW SECTION. **Sec. 604.** SEVERABILITY. If any provision of this  
11 act or its application to any person or circumstance is held invalid,  
12 the remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 605.** TRANSITION. This chapter applies to an  
15 arrest made, a citation issued, or a release or detention hearing  
16 held on or after the effective date of this section, including a  
17 hearing to enforce, modify, or vacate a release or detention order  
18 issued before the effective date of this section.

19 NEW SECTION. **Sec. 606.** EFFECTIVE DATE. This act takes effect  
20 January 1, 2022.

21 NEW SECTION. **Sec. 607.** Sections 101 through 103, 301 through  
22 601, 605, and 606 of this act constitute a new chapter in Title 10  
23 RCW.

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