

# SENATE BILL REPORT

## ESHJR 4220

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As Reported by Senate Committee On:  
Judiciary, February 26, 2010

**Brief Description:** Amending the state Constitution so that the provision relating to bailable crimes by sufficient sureties is modified.

**Sponsors:** House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Hope, Kelley, Green, Conway, Parker, Hurst, Campbell, Wallace, Orcutt, Simpson, Ericks, Ericksen, Van De Wege, Morrell, Takko, Appleton, Maxwell, Orwall, Pearson, Kirby, Sells, Kenney, Johnson, Dammeier, Roberts and McCune; by request of Governor Gregoire).

**Brief History:** Passed House: 2/05/10, 80-17.

**Committee Activity:** Judiciary: 2/26/10 [DPA].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended.

Signed by Senators Kline, Chair; Regala, Vice Chair; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

**Staff:** Juliana Roe (786-7438)

**Background:** Under Article I, Sec. 20 of the Washington State Constitution, all persons charged with a crime are entitled to bail, except for those charged with a capital offense. The Washington State Supreme Court has defined a capital offense as an offense for which a sentence of death may be imposed. *In re Berry*, 198 Wash. 317, 88 P.2d 427 (1939). The court further limited this definition in *State v. Anderson*, holding that an aggravated first degree murder prosecution in which the state does not seek the death penalty is not a capital case (for the purposes of granting peremptory challenges). 108 Wn.2d 188, 736 P.2d 661 (1987).

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Amendments):** Under Article I, Sec. 20 of the Washington State Constitution, all persons charged with a crime are entitled to bail except when a person is charged with an offense involving: (1) the intentional death of another; (2) the intentional infliction of great bodily harm on another; (3) a choate sex offense for which

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the maximum sentence is the possibility of life in prison; or (4) an offense that may result in a mandatory life sentence without the possibility of release upon conviction, or an attempt to accomplish such offenses when the proof is evident or the presumption great. The Legislature determines the standards the courts must follow in making decisions on whether to grant bail for persons charged with these types of offenses.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The resolution takes effect upon ratification by the majority of voters at the next general election.

**Staff Summary of Public Testimony:** PRO: We have spent a great deal of time coming up with this legislation. The House version is a well-crafted and thought out plan. However, the striking amendment will not cover some of the most dangerous people in society. For example, the attempt to commit heinous crimes will not be covered in the striking amendment. Therefore, all class A felonies should be covered. We need the House version of this bill to keep everyone safe.

Many people have been killed by those who should have been held without bail. You should stop worrying about protecting criminals' rights and think about the public's rights; the safety of the public should be the most important issue. Not all offenders can be reformed and many should be locked away permanently.

Many citizens are under the impression that a judge can deny bail for any offender brought before the judge. The citizens are misinformed and this bill is necessary. You need to pass the strongest measure possible, without compromise. The House has already compromised in the version passed out of the House. This bill should not be further watered down.

The Governor supports a version of this bill that presents the best, widest degree of flexibility for the judicial system to take into consideration public safety when bail is being determined. We want to ensure that the court looks at the offender's flight risk and the risk to public safety. The legislation should be person focused and not categorized by crime. We need to look at the history of this portion of the Constitution to see how it has derived.

It would be a mischaracterization to say that this legislation is only about Maurice Clemmons. Rather, he exposed something in our system that was assumed by most people that needs to be fixed.

CON: The death of the four officers was a horrific tragedy. Whenever this is a tragedy, there is a desire to act swiftly and forcefully. However, in doing so there are often unintended consequences. That is why we support the task force to study the bail issues. This bill may cause more harm than good. The presumption of innocence is a citizen's right. It is available to every citizen accused in this state. In many cases, a person is held in jail for a long period of time only to have the charges dismissed. The people affected by this bill are

those whose guilt or innocence is yet to be proven. Not everyone charged with a crime is convicted of a crime.

This bill is far from the only thing that will protect the public. We believe that the Senate version of this bill as passed out of the Senate is the best way to protect public safety and individual rights. The House version and the striking amendment offered are both too broad.

**Persons Testifying:** PRO: Representative Hope, prime sponsor; Deborah Bishop, Zac Shileika, Jami-Mae Richards, Rhonda Lafraccis, citizens; Bob Lurry, King County Police Officers Guild; Jamie Daniels, Washington Council for Police and Sheriffs; John Lane, Governor's Office.

CON: Les Tolzin, Washington Association of Criminal Defense Attorneys, Washington Defenders Association; Shankar Narayan, ACLU.