

# SENATE BILL REPORT

## ESSJR 8218

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As Passed Senate, February 11, 2010

**Brief Description:** Amending the state Constitution so that offenses that may result in a mandatory life sentence upon conviction are not bailable by sufficient sureties.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Carrell, Franklin, Brandland, Becker, Schoesler, Kastama, Honeyford, Delvin, Hobbs, Parlette, Zarelli, McCaslin, Holmquist, Hargrove, Regala, Rockefeller, Marr, Hatfield, Shin, Sheldon, Kilmer, Hewitt, Stevens and Roach).

**Brief History:**

**Committee Activity:** Judiciary: 1/19/10, 1/27/10 [DPS].  
Passed Senate: 2/11/10, 43-4.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Joint Resolution No. 8218 be substituted therefor, and the substitute joint resolution do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; Carrell, Gordon, 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 Engrossed Substitute Bill:** 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 and offenses that may result in a mandatory life sentence without the possibility of release upon conviction, when the proof is evident or the presumption great. The Legislature sets the standards for release for courts to follow in making decisions on whether to grant bail for these types of offenses.

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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.*

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony:** PRO: This legislation has been drafted in response to the killing of the officers in Lakewood. The state constitution is archaic. Today, only aggravated murder in the first degree is considered a capital offense, whereas when the constitution was originally drafted, there were many offenses that were considered capital offenses. Thus, over time, more dangerous individuals have been released into the community. This bill gives judges the same discretion that they have always had, but with the ability to detain individuals without bail for crimes in addition to capital offenses. This is a responsible, not overly broad, approach to address this issue.

CON: The law as it stands today has tools to deal with bail issues. Judges are already required to look at a lengthy list of factors and can set conditions other than bail. Amending the 120-year-old Washington State Constitution is a serious business and should be done with caution. This committee should not react to one individual's actions. In the constitution there is a presumption of innocence and we cannot have preventative detention. The committee should look to alternatives such as better computer systems, more information for officers and judges, and more training and resources for officers. This issue would be better dealt with in a task force setting.

The Legislature has reacted aggressively to other issues in the past, such as drug crimes. This resulted in a disparity in jail and prison population. Judges should not be given an increased subjective power to determine whether a person is dangerous because if you put an African American next to a Caucasian, the judge will find that the African American person is more dangerous because of fear.

OTHER: The Legislature should be careful about amending a 120-year-old constitution. A constitutional amendment is more permanent than a statute. The committee should look to other states as models to avoid infringing on people's rights because this bill needs to be narrowed further.

A constitutional bail change should be made without delay. There have been many thoughtful people looking at this issue. There is no need to delay this for a year as has been suggested. The federal constitution does not guarantee a right to bail. We should use a bill that mirrors the federal bail statutes. If a constitutional amendment does go to the ballot, it is important to have a coinciding statute in place to provide the framer's intent to be used to interpret the amendment.

**Persons Testifying:** PRO: Prime Sponsor, Senator Carrell.

CON: Shankar Narayan, ACLU; LeRoi Brashears, First Amendment Social Action.

OTHER: Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; John Lane, Governor's Office.