



## EDITORIALS

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### Bail amendment a measured response to massacre

#### THE NEWS TRIBUNE

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This year's general election ballot would most certainly be one question shorter had Maurice Clemmons not killed four Lakewood police officers in cold blood last fall.

On Nov. 2, voters will decide Engrossed Substitute House Joint Resolution 4220 which proposes to give judges greater leeway in denying bail to defendants.

The measure – also known as the Remember Lakewood Constitutional Amendment – probably would have never made it out of the Legislature but for the fact that Clemmons murdered cops six days after bailing out of jail.

But its origin in the crimes' angry aftermath isn't a strike against it. Much debate and compromise went into crafting the proposed amendment, which is far more measured than proponents' opening offer.

Law enforcement and Gov. Chris Gregoire first wanted to give judges sweeping authority to deny bail whenever they deemed the public at risk – a standard similar to the federal system's. The Legislature pushed back with proposals to target only those dangerous defendants charged with the most serious crimes.

Legislators and the governor met in the middle with a proposed amendment that would apply only to those defendants charged with the most serious felonies.

Sponsors estimate the amendment could affect roughly 4,100 of the more than 53,000 criminal defendants prosecuted each year in Washington state – but only if a judge first finds “clear and convincing evidence” that the defendant has a “propensity for violence” and poses a “substantial likelihood” of danger to the community.

Judges, in other words, would still be able to make factual judgments about individual cases. Such discretion is essential; the right to bail is part of the constitutionally guaranteed presumption of innocence and should not be revoked lightly.

Giving judges more leeway to deny bail actually helps preserve the right to bail. Without additional latitude to keep violent offenders with nothing to lose off the streets, judges will be inclined – especially in a post-Clemmons era – to set exorbitantly high bails.

Bail exists to allow a defendant a chance at freedom while awaiting trial. Intentionally setting it beyond reach makes a mockery of the current system and imposes a heavier burden on poor defendants.

As the law reads now, judges can deny bail only when a defendant is charged with a crime that might land him on death row. That's a narrow standard – likely even narrower than Washington's founders likely intended. The definition of a capital crime was more expansive when they were writing the state constitution.

Would greater judicial authority to deny bail have saved the lives of four Lakewood police officers? No one can say for sure. But the proposed amendment will, if passed, give judges better ability to balance public safety with defendants' rights.

The News Tribune recommends a yes vote on Engrossed Substitute House Joint Resolution 4220.

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