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Editorial: Bail bond problem leaves public safety at risk

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Americans may not always agree about the rulings that judges make in court, but we shouldn't turn such responsibilities over to, say, bail bondsmen.

Yet, in one respect, we do just that.

And we'll continue to do it following the Washington Legislature's failure to fix a problem that escaped the criminal justice system's notice until the murder of four police officers brought it to light.

A bill introduced in this year's session in Olympia would have fixed a minimum share of court-ordered bail that the defendant would have to personally pay. That way, a judge setting the level of bail would have a clear idea of how heavy a burden it would be for the person whose ultimate appearance at trial was in question. The measure bogged down mainly because Sen. Adam Kline, D-Seattle, chairman of the Senate Judiciary Committee, feared it would be unfair to the poor.

The purpose of bail is not to keep a defendant in jail pending trial, it's to make sure he or she has an adequate incentive to show up as promised. Judges consider various factors in deciding how likely a person is to flee – work history, ties to the community, criminal record – and set bail as needed to allow the person's release without sacrificing the interests of justice.

As Kline well knows, that balancing point is going to vary for people of different means, and if the decision is questionable, lawyers have procedures for challenging whether it complies with the Eighth Amendment's prohibition against excessive bail.

Traditionally, defendants have access to bail by paying 10 percent of the court-ordered figure while a bail-bonding agency picks up the rest. Judges assumed that when they fixed

an appropriate bail level.

But after the 2009 shooting of four lawmen in Lakewood called attention to bail-posting practices, it was learned – to the surprise of many judges and prosecutors – that some bail-bonding agencies were giving defendants much more favorable terms. So all those judicial calculations about how much of a financial stake it would take to guarantee a defendant's appearance went out the window. A bail-bonding agency was substituting its judgment for the court's.

That's not acceptable.

For now, the issue has been referred for study between now and January 2012 when the Legislature reconvenes. Now that the Lakewood case brought this problem to light, lawmakers need to fix it.

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