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## Higher bails likely in courts despite deadlock in Olympia

An intense effort to reform the state's largely unregulated bail-bond industry died in the waning days of the legislative session because of an ideological dispute between law enforcement and advocates for the poor.

By Jonathan Martin

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An effort to tighten up the state's largely unregulated bail-bond industry quietly died in the waning days of the legislative session because of an ideological dispute between law enforcement and advocates for the poor.

The bail legislation, addressing one of the largest public-policy issues to arise from the 2009 slayings of four Lakewood police officers, would have for the first time set mandatory minimums for what defendants must pay to post bail bonds.

As a result of failed negotiations, bail amounts across the state are likely to rise as judges and prosecutors are left to guess how much defendants are paying to be released from jail before trial. After the murders of the four officers in a Lakewood coffee shop, The Seattle Times found that shooter Maurice Clemmons had posted just 4 percent of his \$190,000 bail to win his release six days before the attack.

That revelation surprised prosecutors and judges, who had widely assumed a defendant must pay a 10 percent premium to a bail-bonding agency for the agency to post a bond.

But an effort late in the 2011 legislative session to set a floor for bailing bonds — even at 5 percent of the bail amount — was killed after Sen. Adam Kline, D-Seattle, opposed it.

Kline, chair of the Senate Judiciary Committee, said the late proposal, floated by the state's prosecuting attorneys, would have been unfair to poor defendants, who have benefited from competition among bail-bonding agencies.

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"I don't want wealthy people getting out while poor people don't get out for lack of money," said Kline, who represents Seattle's Rainier Valley. "We rejected the idea of debtor's prison early in this game in this country, and that's a sort of debtor's prison."

Tom McBride, executive director of the Washington Association of Prosecuting Attorneys, said prosecutors wanted a floor so they — and the public — would know how much "skin in the game" a defendant had. When it became clear Kline opposed the idea, McBride's group agreed to let the bill die and negotiate further after the session.

"Our goal is not to make it so you can't make bail. We just want to know what bail means," he said.

Bail bonds are akin to an insurance policy, allowing a defendant to be released from jail in exchange for a promise to show up for the next court hearing. If a defendant flees, the bondsman must post the entire bail amount if unable to find the absconder.

A defendant pays a nonrefundable premium — either 10 percent or less — to a bail bondsman, and often must also post collateral. Because the state does not set a minimum level of premium, bonding agents are left to calculate their own level of risk, and often provide discounts for defendants using private attorneys, rather than public defenders, or those serving in the military.

A task force set up after the Clemmons shootings recommended a series of changes, including giving judges more information about a defendant's mental health and access to a risk-assessment tool before bail is set. But the group, which included law enforcement, civil libertarians and bondsmen, could not reach consensus on a mandatory minimum payment.

Bail practices vary widely across the nation, but the 10 percent premium appears to be an industry standard. Oregon, for example, prohibits bail bondsmen but requires defendants to post 10 percent of the bail amount with a county court.

In Olympia, even the details of how a 10 percent premium would work were fought over.

Rep. Troy Kelley, D-Tacoma, said there was debate about whether defendants should be allowed to use credit cards to post the 10 percent premium.

Denny Behrend, a Seattle bail bondsman and member of the task force, said legitimate bail agents want more regulation, including a 10 percent minimum. "We're not selling cars or refrigerators where you can discount the price," said Behrend, of Lacey O'Malley Bail Bonds. "We're dealing with the rights of American citizens and public safety."

"We want to see the race to the bottom stopped," said Troy Hansen, owner of Seattle's All City Bail Bonds.

Clemmons, the Lakewood shooter, posted bail three times in the months leading up to the killings. In the last instance, Clemmons was repeatedly rejected by bail bondsmen until he found a cut-rate agency willing to post his \$190,000 bail bond on a pending child-rape charge for \$8,000 and a promise to make payments.

Clemmons also put up a home as collateral, even though the property appeared to be worth less than he owed.

After the murders, the Pierce County judge who set the bail amount said he was shocked at the

cutthroat competition.

"Folk wisdom has always been that you need 10 percent in cash" to post bond, said Kitsap County Prosecutor Russ Hauge. "But then we find out there are companies that are writing bail bonds for two or three percent. That means that what we thought was a pretty reasonable bail amount in practical effect isn't a significant sum at all."

Unsure what a bail figure really means, his office has been requesting higher bail amounts when a defendant poses a risk to public safety. Last week, Hauge said, his staff asked for a \$1 million bail against men accused of eluding and shooting at police officers. In the past, Hauge said he might have requested \$500,000.

As a consequence of inaction in Olympia, another bail practice at issue in the Clemmons case — "booking bail" — will resume in the seven counties that currently allow it. Booking bail, used on weekends and more often in some rural counties, sets a bail amount based on a predetermined schedule, meaning that a defendant does not have to see a judge before being allowed to post bail.

The failed legislation does not affect a 2010 constitutional amendment giving judges more authority to deny bail if they find a defendant is a serious threat to public safety. The impact of the amendment is unclear, since the state courts administration isn't tracking judges' use of the new authority.

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