

**Engrossed Substitute House Joint Resolution****4220**

Proposed to the People by the Legislature  
Amendment to the State Constitution:

**The legislature has proposed a constitutional amendment on denying bail for persons charged with certain criminal offenses.**

**This amendment would authorize courts to deny bail for offenses punishable by the possibility of life in prison, on clear and convincing evidence of a propensity for violence that would likely endanger persons.**

**Should this constitutional amendment be:**

**Approved**

**Rejected**

**Votes cast by the 2010 Legislature on final passage:**

Senate: Yeas, 48; Nays, 0; Absent, 0; Excused, 1  
House: Yeas, 92; Nays, 4; Absent, 0; Excused, 2

The Official Ballot Title and the Explanatory Statement were written by the Attorney General as required by law. The Secretary of State is not responsible for the content of arguments or statements (WAC 434-381-180). The complete text of Engrossed Substitute House Joint Resolution 4220 begins on page 103.

## Explanatory Statement

Written by the Office of the Attorney General

### The Constitutional Provision as it Presently Exists

With the exception of one class of cases, the constitution currently provides that all persons charged with crimes are entitled to be released pending trial upon posting bail by sufficient sureties. A "surety" is an individual or institution

that agrees to guarantee that bail will be paid on behalf of a charged person if bail is forfeited. "Bail" is money or property pledged by a person charged with a criminal offense. When the charged person posts sufficient bail, he or she is released from custody pending a trial.

The constitutional provision has been implemented by court rules. Under those rules, a court may require bail to support a promise that the person charged will appear for trial. A court also may require bail to assure that the charged person complies with release conditions imposed by the court. The court may impose release conditions where there is a substantial danger that the charged person will commit a violent crime, or seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice unless the court imposes conditions on the accused person's release. If the charged person does not appear for trial, or violates release conditions secured by bail, bail may be forfeited. The trial court sets the amount of bail in a given case.

The class of cases in which bail currently may be denied under the constitution as it presently exists is capital offenses "when the proof is evident or the presumption is great." A "capital offense" is an offense for which the death penalty may be imposed if the person charged is convicted. Under court rules, a person charged with a capital offense shall not be released on bail unless the court finds that release conditions will reasonably assure that the accused will appear for trial, will not significantly interfere with the administration of justice, and will not pose a substantial danger to others. In capital cases, if a risk of flight, interference, or danger is believed to exist, the court may detain the charged person for trial, without bail.

### The Effect of the Proposed Amendment, if Approved

The proposed constitutional amendment would authorize courts to deny bail in an additional class of cases: offenses punishable by the possibility of life in prison where there is a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons. The legislature would have authority to set limitations on the denial of bail in these cases.

## Fiscal Impact Statement

Not required by law



## Argument For Engrossed Substitute House Joint Resolution 4220

**HJR 4220 Protects the Public and Washington's Civil Liberties**  
Currently our Constitution permits a judge to deny bail only if a suspect is charged with aggravated murder. This proposal broadens the criteria for denying bail to persons charged with crimes potentially punishable by life in prison, when the suspect is truly dangerous. The amendment does not take away civil liberties, such as the right to bail, speedy trial or the presumption of innocence. Voting *yes* gives judges the flexibility to keep the most dangerous offenders behind bars while awaiting trial.

### This Proposal Addresses Actual Needs

Sadly, Washington has had a number of high profile criminal tragedies in recent years. Judges currently must set bail based only upon flight risk. Some violent crimes might have been avoided if the judge could have denied bail based on the offender's dangerousness. The Washington Legislature passed this proposed change almost unanimously in the House and Senate, to give judges this ability to protect the public. Voting *yes* on this amendment will help prevent future tragedies.

### This Proposal Balances Public Safety and Individual Rights

Our Constitution balances the right of the public to safety, and the right of accused persons to a fair process. This proposal continues to allow most offenders to post bail, but takes that right away when there is a propensity for violence and a likelihood of danger to the community or any person. Voting *yes* protects us from the most violent criminals.

---

### Rebuttal of Argument Against

This measure does not alter presumption of innocence.

The opposition wrongly suggests this proposal diminishes the presumption of innocence. That is incorrect. Presumption of innocence remains the hallmark of our justice system. Defendants may be denied bail pending trial only if they are facing life in prison and a judge determines that they pose a clear danger of violence to the community.

This measured proposal is a tool to protect our citizens. Vote *yes*.

---

### Argument Prepared by

**Christopher Hurst**, State Representative and 25-year veteran police officer; **Mike Hope**, State Representative and Seattle police officer; **Adam Kline**, State Senator; **John Lovick**, Snohomish County Sheriff; **Mark Lindquist**, Pierce County Prosecutor; **Kim Renninger**, Wife of Lakewood Sgt. Mark Renninger.

**Contact:** [www.rememberlakewood.com](http://www.rememberlakewood.com)

## Argument Against Engrossed Substitute House Joint Resolution 4220

### Preserve Public Safety and Our Constitution – Reject HJR 4220

Our constitution has served our state well for 120 years, and we should not alter it without careful consideration. But HJR 4220 is hasty and ill-considered, unfairly allowing for the detention of individuals who may be innocent. We should not rush to change a fundamental constitutional protection – the right to be presumed innocent – in response to a single tragedy.

### The Amendment Undermines the Presumption of Innocence and Doesn't Make Us Safer

Individuals charged with but not convicted of crimes usually have a chance to post bail before trial. This is an important protection – mistakes happen in our system, and those charged with crimes are often found innocent or convicted of much lesser crimes. Our current system already requires judges to consider public safety, criminal activity, and flight risk in setting conditions, and we should improve our system to ensure judges receive the most complete information to prevent future tragedies. But this amendment goes too far, giving judges the power to detain more innocent people without bail – and costing precious dollars we desperately need to target real public safety threats.

### Preventive Detention is Out of Line with Washington's Values

This amendment erodes our precious freedoms. Locking innocent people up without bail and without proof of their guilt is out of line with Washington's values and doesn't make us safer.

*Please vote no on HJR 4220.*

---

### Rebuttal of Argument For

Judges can already set high bail and other conditions to protect the public from potentially violent individuals. The existing rule was carefully developed to protect public safety while preserving the presumption of innocence. Changing it won't make us safer, but will harm thousands who may well be innocent – and who needn't be jailed to protect the public. Judges need more and better information about accused persons, not an amendment that harms civil liberties. Vote *no*.

---

### Argument Prepared by

**Robert C Boruchowitz**, Professor of Law; **Neil M. Fox**, Attorney; **Colleen Kinerk**, Attorney and Mediator.

**Contact:** No information submitted

on behalf of the state pursuant to this section and the legislature shall provide by appropriation for the payment of the interest upon and installments of principal of all such debt as the same falls due, but in any event, any court of record may compel such payment.

(k) Notwithstanding the limitations contained in subsection (b) of this section, the state may issue certificates of indebtedness in such sum or sums as may be necessary to meet temporary deficiencies of the treasury, to preserve the best interests of the state in the conduct of the various state institutions, departments, bureaus, and agencies during each fiscal year; such certificates may be issued only to provide for appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of incurrence.

(l) Bonds, notes, or other obligations issued and sold by the state of Washington pursuant to and in conformity with this article shall not be invalid for any irregularity or defect in the proceedings of the issuance or sale thereof and shall be incontestable in the hands of a bona fide purchaser or holder thereof.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.

-- END --

## Complete Text

### Engrossed Substitute House Joint Resolution 4220

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state the secretary of state shall submit to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article I, section 20 of the Constitution of the state of Washington to read as follows:

Article I, section 20. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. Bail may be denied for offenses punishable by the possibility of life in prison upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons, subject to such limitations as shall be determined by the legislature.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.

-- END --



#### Political Party Contact Information

##### Washington State Democrats

PO Box 4027  
Seattle, WA 98194  
(206) 583-0664  
info@wa-democrats.org  
[www.wa-democrats.org](http://www.wa-democrats.org)

##### Washington State Republican Party

2840 Northup Way, Ste 140  
Bellevue, WA 98004  
(425) 460-0570  
wagop@wsrp.org  
[www.wsrp.org](http://www.wsrp.org)