THE BUCKEYE INSTITUTE

The Buckeye Institute Comments on Ohio Criminal Sentencing Commission: *Ad Hoc Committee on Bail and Pretrial Services Final Report*

Ohio's Criminal Sentencing Commission has proposed rule changes that will help make our communities safer, our criminal justice system more just, and our local jails less crowded.

The Buckeye Institute supports the Commission's proposed changes, but we suggest two amendments to the new rules.

First, the proposed rules unfortunately maintain outdated bail bond schedules that do not make an accurate, individual assessment of each defendant's flight risk or the risk he poses to the community. Instead, the rules should do away with bail bond schedules and require the courts to use vetted risk assessment tools to assess every defendant individually.

Second, bail bonds serve two valid purposes—protecting the community and ensuring that defendants return to court. But new information and technology have made cash bail an antiquated practice with limited utility. Risk assessment tools, like those used in Lucas County, have proven more effective than current cash bail practices by every metric. The proposed rules should recognize that cash deposits do not make defendants less dangerous, and should therefore require that cash bail be used only as a last resort.

Risk Assessment Tools

Knowledge is power, and at the risk of sounding like a pizza commercial: better information, better decision-making. Businesses have long understood this and have gone to great lengths to enhance the data and information at their disposal in order to improve profit margins, create better experiences and products for their customers, and become more effective and efficient at whatever they do. Our favorite sports teams have more recently discovered the not-so-secret benefits of data collection. Teams now routinely use "analytics" to maximize their defense or point-scoring efficiency. Baseball teams employ the infield "shift" on some opposing power hitters who statistically do not hit to the opposite field. Basketball statisticians have shown that taking an uncontested three-point shot has more value and probability of success than shooting a contested layup. Analytics.

But "big data" is not just for "big business." Ohio can use data and analytics in her criminal justice system in much the same way that the Indians and Reds know when to shift the infield. The shortstop doesn't play behind second base against every batter.

Similarly, vetted risk assessment tools allow courts to collect statistically significant information from defendants in order to better determine whether a particular defendant poses much of a risk to the community or how likely he might be to skip town. These analytical tools do not set the terms or conditions of a defendant's release, but they can provide courts with better information to help them make better decisions. Courts in Lucas County, for example, are successfully using

a risk assessment tool that, according to the Sentencing Commission Report, has already improved court appearance rates, public safety rates, and pretrial success rates—all while awarding more pretrial releases.[1] And more courts are following Lucas County's lead.

Unfortunately, the Sentencing Commission's proposed rule still refers to bail bonds schedules, the antithesis of individualized risk assessments.

Bail Schedules, Judicial Discretion, & Public Safety

Mandatory bail schedules undermine judicial discretion without enhancing public safety. Unlike individualized risk assessments, prescribed bails schedules allow some defendants to remain in jail simply because they cannot afford the bail, while also releasing other, potentially more dangerous defendants merely because they can afford the fixed bail. What bail a given defendant might afford, of course, has no reasonable bearing on the danger that he may present to the community—making it an imprudent means of securing our public safety. A dangerous defendant is dangerous regardless of the money he gives to the bail bond agent, and there are far more effective conditions of pre-trial release—such as electronic monitoring, periodic court check-ins, and required appointments with probation officers—that can help make our communities safer while dangerous defendants await trial.

There are limited circumstances when assessing cash bail makes sense. When an out-of-state defendant poses no threat to the community, for instance, but needs a financial inducement to return for his court date, a reasonable cash bond is likely to ensure his return. But ordinarily, cash bail is the least effective way to keep communities safe and should be the exception rather than the rule.

The final rule should abolish and not even refer to bail schedules. The Commission Report asks the legislature to do away with bail schedules, but the Ohio Supreme Court should exercise its constitutional authority to make this change unilaterally. Article I Section 9 of the Ohio Constitution states, in part, that "[p]rocedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio." Article IV, Section 5(b) gives rule-making authority to the Ohio Supreme Court.

Thus, although state law requires (R.C. 2937.23(A)(2)) our courts to set bail schedules, Article IV, Section 5(b) of the Ohio Constitution makes clear that an Ohio Supreme Court rule would supersede this law if the rule and the statute are inconsistent: "All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." The Supreme Court should use its constitutional authority to establish a new, unilateral rule on bail schedules for all Ohio courts to follow.

Conclusion

To maximize public safety, justice, and local jail facilities, the Sentencing Commission's proposed rules should:

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[1] The Ohio Criminal Sentencing Commission: *Ad Hoc Committee on Bail and Pretrial Services Final Report*, at 9.

1. Prohibit bail bonds schedules; and
2. Acknowledge that cash bail is the least preferred condition of release that should only be used as a last resort to ensure a defendant's appearance in court.

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Comments from the Office of the Hamilton County Public Defender to the Report and Recommendations of the Ohio Sentencing Commission's Ad Hoc Committee on Bail and Pretrial Services

I. Introduction and general statement of interest.

In March 2017, the Ohio Sentencing Commission's Ad Hoc Committee on Bail and Pretrial Services released a document entitled "Report and Recommendations" ("Report") regarding bail and pretrial services in Ohio. The Report stated that "the system of bail was intended to ensure defendant would appear in court and, eventually, ensure public safety by keeping those defendants who pose a substantial risk of committing crimes while awaiting trial in jail. **The reality, however, is that those with money, notwithstanding their danger to the community, can purchase their freedom while poor defendants remain in jail pending trial. Research shows that even short stays in jail before trial lead to an increased likelihood of missing school, job loss, family issues, increased desperation and thus an increased likelihood to reoffend."** Report, p. 1.

The reality on the ground in Hamilton County is that financial bail/bond is usually set even when there is no risk to public safety or no "flight risk." The detrimental impact of this reality falls squarely on the shoulders of poor defendants in Hamilton County. While there is no centralized, public data collection in Hamilton County that specifically tracks information about defendants at arraignment along with their resulting bail, the Office of the Hamilton County Public Defender ("HCPD") collects client and case data for all indigent defendants in Hamilton County. In addition, attorneys from HCPD staff every arraignment/initial appearance day in

Room A.[1] In Hamilton County, the bail or bond set in the initial appearance is often unrelated to ensuring the client return to court and whether the client will commit new crimes. For example, a sixty-four year old man was arrested for misuse of a credit card as a felony offense. It was alleged that he had used a church's home depot card to charge $1,800. This man's last contact with the system was a traffic ticket in 1995. The records do not show this man had missed any court dates in that case. In other words, the records show that there is no risk to public safety and no risk that the man would not return to court. However, bail was set in the amount of $1,000. When he was indicted, the court changed his bond to a recognizance bond with an electronic monitoring unit ("EMU") at an estimated cost to the county of $9.50/per day[2] and, essentially, confining the man to his residence on a non-violent felony and the man's first contact with the criminal justice system in over 20 years. Risk assessment tools and the Report indicate that the presumption in this kind of case should be that the defendant is released on their own recognizance, without financial bail or EMU. However, that presumption is absent in Hamilton County. In Hamilton County, the presumption is that financial bail should be set in all cases where a person is arrested. The case example above is not an isolated incident. A review of cases arraigned in the same month show multiple individuals arraigned on cases with identical case facts, charges, and criminal histories. The same bail was set in each case. Both data and experience show a presumption of financial bail is the standard in Hamilton County. Such a presumption of bail can decrease rather than increase public safety.

The Committee's suggested reforms will make Hamilton County safer. As this Committee noted, short stays in jail can lead to the loss of a job or other necessities essential to ground individuals in the community and decrease recidivism. Hamilton County's presumption of bail in all arrests has the greatest detrimental impact on poor defendants. This contributes to and reinforces already existing disparities in communities of color in Hamilton County.[3] As one HCPD attorney, who represents indigent clients solely on misdemeanor cases, put it: "I feel like everyday I have clients locked up on a bond they can't afford which causes them to lose their

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[1] Room A is where all initial arraignments and bail determinations are made for both misdemeanors and felonies.

[2] http://www.fox19.com/story/23088628/new-gps-ankle-monitors-alleviate-hamilton-co-jail-overcrowding (accessed May 11, 2017). Although this is the cost to the county, indigent clients incur expense when such a device is required. See p. 12 *infra*.

[3] http://www.gcul.org/wp-content/uploads/2015/08/The-State-of-Black-Cincinnati-2015_Two-Cities.pdf (accessed May 13, 2017).

jobs, SSI, housing, etc." Presumption of financial bail results in unnecessary and, often, unfairly imposed, financial bail and bail conditions in Hamilton County, resulting in a detrimental impact on the individuals that come into contact with the system as well as public safety.

Another result of the presumption of bond and the resulting unjustified pretrial incarceration, is the consistent problem of jail overcrowding in Hamilton County.[4] Jail overcrowding has remained unsolved. Not coincidentally, the issues with the misuse of bond and pretrial detention remain unaddressed in Hamilton County. Jail overcrowding results in dangerous conditions to non-violent clients (who should have been released pending trial) and guards in the jail, as well as astronomical costs to the citizens of Hamilton County for no benefit. The problem of jail overcrowding could be impacted through the reforms suggested by this Committee. For these reasons, as well as those described below, the Office of the Hamilton County Public Defender supports the committee's recommendations and offers additional suggestions on how the recommendations could be improved or implemented.[5]

II. Report Recommendation #1: Establish a risk based pretrial system, using an empirically based assessment tool, with a presumption of nonfinancial release and statutory preventative detention.

A. **Presumption of nonfinancial release**: The Report recommends that the Supreme Court of Ohio "amend Crim.R. 46 to indicate that if a defendant is eligible for release under the Ohio Constitution, and the trial court determines that the defendant should be released pretrial, the trial court should first consider nonfinancial release." Report, p. 10. The Report also recommends providing clarity in Ohio's bail statutes. *Id.* at p. 8.

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[4] http://www.wcpo.com/news/region-central-cincinnati/hamilton-county-sheriff-jim-neil-ends-arrest-and-release-practice-at-jail (accessed May 12, 2017); http://www.wlwt.com/article/jail-overcrowding-stay-request-could-determine-hunter-s-prison-term/3549582 (accessed May 12, 2017); http://www.citybeat.com/news/porkopolis/article/13017852/no-easy-answers-to-jail-overcrowding (accessed May 12, 2017); http://www.citybeat.com/news/article/13024730/news-what-jail-is-like (accessed May 12, 2017); http://www.dispatch.com/content/stories/local/2007/09/24/z-apoh_overcrowdedjails_0921.ART_ART_09-24-07_B4_6P80BB7.html (accessed May 12, 2017).

[5] HCPD supports all the recommendations in the Report. However, HCPD offers comment on those provisions most relevant to critical issues in Hamilton County and critique when necessary to fulfill recommendations suggested in the Report.

The Hamilton County Public Defender's Office ("HCPD") supports a presumption of nonfinancial release. However, HCPD also recommends greater clarity in the suggested language in the report. The change to the criminal rules should create a clear presumption of nonfinancial release. Greater clarity[6] in the Report's suggested language is required for a number of reasons.

But primarily, greater clarity is needed when a presumption of nonfinancial release is a reversal of a long-standing practice in places like Hamilton County. Here in Hamilton County, as one attorney put it, "bonds are the norm" for people who have been arrested. As this same attorney noted, the default, with few exceptions, is to "put a [financial] bond on any crime" at the initial arraignment.[7] Clarity is necessary to reverse such long standing practices and policies. In addition, as this Committee noted, clarity in the law will result in greater consistency in application. Report, p. 8.

Further evidence of the presumption of financial bail in Hamilton County are the bonds set in misdemeanor domestic violence cases, even in cases where there is no injury. In one case handled by a municipal court attorney in HCPD, following the arrest of a man on a misdemeanor domestic violence charge, the woman that made the allegations appeared at arraignment and stated that she did not fear for her safety and did not want an order of protection. The man stated that if he remained locked up, he would lose his job and both he and the woman would lose their home. Despite this, the arraignment judge set a $20,000 bond. When the case was adjourned to the trial judge, the woman again returned, told the prosecutor that she did not wish to pursue charges and did not fear for her safety. The man's counsel made another motion to reduce the bond, but the trial court refused. After 30 days, the trial court was required by law to dismiss the case. The man, after remaining incarcerated for 30 days, lost his job. Both the man and woman likely lost their housing. In another misdemeanor domestic violence case, the arraignment judge set a bond of $500,000 secured. That man's counsel set the case for trial. He remained incarcerated, but the attorney was able to get a trial date within 12 days of arraignment. The judge found the man not guilty following a bench trial.

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[6] For example, "If the defendant is eligible for release under the Ohio Constitution, they are entitled to the presumption of a nonfinancial release."

[7] In Hamilton County, all initial bonds are determined by municipal court judges.

Finally, some judges set $10,000 bond on any misdemeanor that involves heroin regardless of a defendant's prior record.[8] Because of the long standing practice in Hamilton County to the contrary, HCPD asks that the language include a clear presumption of nonfinancial release when the defendant is eligible for release under the Ohio Constitution.

B. Establish a risk based pretrial system, using an empirically based assessment tool.

This Committee made two specific recommendations here:

a. The General Assembly should mandate and fund the use of a validated, risk-assessment tool for pretrial release and detain decisions.
b. The Supreme Court of Ohio should amend Crim.R. 46 to include the results of the risk assessments as a factor to be considered in release and detain decisions.

HCPD wholeheartedly supports both specific recommendations in (a) and (b) above.

1. Criminal Rule 46 should require that the results of a validated, risk assessment tool be considered as a factor in release and detention decisions.

Although, Hamilton County is currently using the Ohio Risk Assessment System ("ORAS"), most attorneys report that the judges setting bond pay little to no attention to the ORAS score. In order to remedy this, the statute should mandate consideration of the results of an appropriately validated risk assessment tool. Moreover, it is imperative that those that use or rely on the results of the risk assessment tool receive trainings on how the tool was developed and the meaning of the scores. The trainings should come directly from the creators of the tools as well as those that have successfully used the tool to safely release those that are a low risk to reoffend and who are also a low flight risk. These trainings are crucial to ensure that the tools are factored into release and bail decisions appropriately.

2. Additional Recommendations and Comment.

The Report mentions two risk assessment tools: (1) Ohio Risk Assessment System ("ORAS"), and (2) Laura and John Arnold Foundation's ("LJAF") Public Safety Assessment ("PSA") tool. Although the Report indicates that ORAS is used in Ohio for

[8] While bonds may be justified based on prior failures-to-appear, it is difficult to fathom a basis for a $10,000 bond on a non-violent misdemeanor.

bail related risk assessments, it is important to note that ORAS has a number of different risk assessment tools and each are designed to evaluate different things. For example, ORAS's pretrial assessment tool ("PAT") considers/weighs different factors than ORAS's tool for community supervision.[9] The Report states that it does not take a position on what risk assessment tool individual jurisdictions should use. The Report simply states that a validated, risk assessment tool be used.

a. Amend Ohio Admin. Code 5120-13-01 and related code sections to repeal mandate to use ORAS.

HCPD recommends clarifying Ohio's administrative code regarding risk assessment tools to reflect this position. Hamilton County has interpreted the following code section to mandate use of ORAS as a risk assessment tool:

> (A) Section 5120.114 of the Revised Code requires the department of rehabilitation and correction to **identify a single validated risk assessment tool to be used by courts, probation departments, and other entities to assess an adult offender's risk of reoffending** and to assess the offender's rehabilitative needs.
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> (B) **The department of rehabilitation and correction hereby selects the Ohio risk assessment system (ORAS)** created by the university of cincinnati's center for criminal justice research **as the single validated risk assessment tool** to be used for the purposes described in paragraph (A) of this rule. ORAS shall remain the risk assessment tool identified by the department pursuant to section 5120.114 of the Revised Code until such time as the department amends this rule to identify a different tool.

(Emphasis added.) Ohio Admin. Code 5120-13-01 Ohio risk assessment system.

b. Further defining "validated risk assessment tool" is necessary for reliability and accuracy.

In addition, HCPD recommends further defining "validated, risk assessment tool." HCPD joins the National Association for Public Defense, Gideon's Promise, National Legal Aid & Defender Association, and the National Association of Criminal Defense Attorneys in endorsing "the use of validated pretrial risk assessment tools as means to reduce unnecessary pretrial detention and assist in eliminating racial bias."[10] HCPD

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[9] http://www.ocjs.ohio.gov/ORAS_FinalReport.pdf (May 12, 2017).

[10] http://www.publicdefenders.us/blog_home.asp?Display=563 (accessed May 11, 2017) ("Joint Statement").

agrees with the Joint Statement's recommendations for pretrial assessment tools, which are as follows:

- Data used in the development of pretrial risk assessments must be reviewed for accuracy and reliability;
- Data collection must include a transparent and periodic examination of release rates, release conditions, technical violations or revocations and performance outcomes by race to monitor for disparate impact within the system;
- Data collection should avoid interview-dependent factors (such as employment, drug use, residence, family situation, mental health) and consist solely of non-interview dependent factors (such as prior convictions, prior failures to appear) as intensive studies have shown that when sufficient objective, non-interview factors were present, none of the interview-based factors improve the predictive analytics of the pretrial risk assessment, but significantly increase the time it takes to complete the pretrial risk assessment.

Joint Statement.

These factors should be incorporated into the rule to define "validated, risk assessment tool." The importance of incorporating the above requirements into the definition can be seen by comparing PAT from ORAS with PSA from LJAF.

As noted above, Hamilton County currently uses ORAS. ORAS was developed by researchers at the University of Cincinnati. [11] The researchers completed the initial validation work in 2009 for a number of different instruments, but this discussion focuses only on the validation and study of ORAS's pretrial assessment tool ("PAT"). ORAS Report, p. 9. Researchers developed data collection instruments. These instruments were used as the method to collect data. The data collection instrument was different for each risk assessment tool—e.g. PAT, probation, etc. For PAT, the data collection tool collected information on over 35 items and also included a 4 page self-report questionnaire. *Id.* at p. 12. However, because they were not able to obtain sufficient data in the initial collection period, researchers shortened the data collection tool to only include 8 items and collected additional data with this tool. *Id.* at p. 14. The data collection for validation of PAT occurred in Butler, Cuyahoga, Summit, Franklin, Hamilton, Richland, and Warren counties. *Id.* at p. 13. In the end, only **452** offenders from across these 7 counties were utilized to validate PAT. *Id.* at p. 14. For PAT validation, outcomes were measured based on "recidivism." *Id.* at p. 15-16. For the

[11] http://www.ocjs.ohio.gov/ORAS_FinalReport.pdf (accessed May 11, 2017) ("ORAS Report").

PAT tool, "recidivism" was defined as "new arrests" and "failure-to-appear." *Id.* The results of the data collection showed that—of the over 100 potential predictors of recidivism—7 items were found to be related to recidivism. *Id.* at p. 19. Researchers also used the data to design a system to weight and score the factors in order to produce a score of low, moderate, or high risk groups. *Id.* at p. 20-22.

In the end, these are the factors assessed by ORAS's pretrial instrument:

APPENDIX A: SCORING FORMS FOR EACH ASSESSMENT

OHIO RISK ASSESSMENT SYSTEM: PRETRIAL ASSESSMENT TOOL (ORAS-PAT)

Name: _____ Date of Assessment: _____

Case#: _____ Name of Assessor: _____

Pretrial Items		Verified
1.1. Age at First Arrest 0=33 or older 1=Under 33		
1.2. Number of Failure-to-Appear Warrants Past 24 Months 0=None 1=One Warrant for FTA 2=Two or more FTA Warrants		
1.3. Three or more Prior Jail Incarcerations 0=No 1=Yes		
1.4. Employed at the Time of Arrest 0= Yes, Full-time 1= Yes, Part-time 2= Not employed		
1.5. Residential Stability 0=Lived at Current Residence Past Six Months 1=Not Lived at Same Residence		
1.6. Illegal Drug Use during Past Six Month 0=No 1=Yes		
1.7. Severe Drug Use Problem 0=No 1=Yes		
Total Score:		

Scores	Rating	% of Failures	% of Failure to Appear	% of New Arrest
0-2	Low	5%	5%	0%
3-5	Moderate	18%	12%	7%
6+	High	29%	15%	17%

It is important to remember that **ORAS noted the limitations of its initial validation study** and recommended "that revalidation studies be conducted of ORAS." *Id.* at p. 45. The ORAS Report noted that the initial validation did not use sufficient data to make a generalization about all offenders in Ohio. *Id.* The other limitation of all of ORAS's risk assessment tools, including PAT, is that the data used to "validate" ORAS lacks diversity. For example, ORAS stated that because of the short time in which they had to collect data, their data did not necessarily include more serious offenses, e.g. sex offenses. *Id.* at 45. In addition, women and Hispanics were also noted as populations that might be underrepresented in the data. *Id.* Finally, researchers had to obtain informed consent from offenders in order to evaluate them as part of the study because of the subjective nature of their data collection tool. Willingness of the offenders to participate also limited the diversity of the data collected. *Id.* The result of the lack of diversity of the data, is that the tool is less accurate and less reliable for populations that are not represented in the data.

However, the revalidation of ORAS recommended by its creators has never occurred. In fact, once counties utilize ORAS risk assessment tools, R.C. 5120.115[12] bars the release of any data, including to the creators of PAT and ORAS's other risk assessment tools. In other words, R.C. 5120.115 prevents the revalidation that ORAS creators stated was necessary. Based on the limited data collected and the lack of

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[12] 5120.115 Authorized users; confidentiality of reports.

(A) Each authorized user of the single validated risk assessment tool described in section 5120.114 of the Revised Code shall have access to all reports generated by the risk assessment tool and all data stored in the risk assessment tool. An authorized user may disclose any report generated by the risk assessment tool to law enforcement agencies, halfway houses, and medical, mental health, and substance abuse treatment providers for penological and rehabilitative purposes. The user shall make the disclosure in a manner calculated to maintain the report's confidentiality.

(B) All reports generated by or data collected in the risk assessment tool are confidential information and are not a public record. No person shall disclose any report generated by or data collected in the risk assessment tool except as provided in division (A) of this section.

(C) As used in this section, "public record" has the same meaning as in section 149.43 of the Revised Code.

diversity of that data, ORAS is not accurate or reliable beyond those included in the data collected during the initial validation.

In contrast, the Laura and John Arnold Foundation ("LJAF") developed a risk assessment tool called the Public Safety Assessment ("PSA"). LJAF created the PSA using a large and diverse sets of records—a total of 1.5 million cases from across 300 jurisdictions.[13] Because of the large size of the data set, as well as the diversity of the data set (to include offenses of violence, etc. unlike ORAS), PSA is supported by data of sufficient size and diversity to be reliably and accurately applied to those seen in initial appearances. [14] PSA also provides more guidance to a judge making a bail determination (FTA, failure-to-appear; NCA, new criminal activity; NVCA, new violent criminal activity): [15]

[13] http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf (accessed May 13, 2017).
[14] http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf (accessed May 13, 2017).
[15] http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf (accessed May 13, 2017).

RELATIONSHIP BETWEEN RISK FACTORS AND PRETRIAL OUTCOMES

Risk Factor	FTA	NCA	NVCA
1. Age at current arrest		X	
2. Current violent offense			X
Current violent offense & 20 years old or younger			X
3. Pending charge at the time of the offense	X	X	X
4. Prior misdemeanor conviction		X	
5. Prior felony conviction		X	
Prior conviction (misdemeanor or felony)	X		X
6. Prior violent conviction		X	X
7. Prior failure to appear in the past two years	X	X	
8. Prior failure to appear older than two years	X		
9. Prior sentence to incarceration		X	

Note: Boxes where an "X" occurs indicate that the presence of a risk factor increases the likelihood of that outcome for a given defendant.

After LJAF determined the variables that impacted each of the three categories, the data was then used to assign each factor a "weight" according to the strength of its relationship to the variable or factor and the specific pretrial outcome. [16] The tool then converts the weighted factors into a raw score with a scale for the arraigning judge to appropriately utilize in its bail determination. [17]

HCPD recommends statutory/rule language which requires that "validated risk assessment tool(s)" are accurate and reliable for the population being accessed by the tool. In other words, the data used to "validate" the risk assessment tool must be of sufficient size and diversity so that it can be reliably and accurately applied to the population of Ohio or the specific county utilizing the tool. Specifically, HCPD

[16] http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf (accessed May 13, 2017).
[17] http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf (accessed May 13, 2017).

recommends defining "validated risk assessment tool" to incorporate the recommendations listed on page 6, *supra*.

In addition, HCPD recommends creating an exception in R.C. 5120.115 to permit the release of non-identifying data to ORAS, LJAF, or any other organization developing a risk assessment tool. Alternatively, the exception could permit the release of non-identifying data to a specific governmental organization, and risk assessment tool developers could obtain the data from that government entity. Such an exception would be necessary in order to ensure accurate and reliable risk assessment tools and would likely be necessary to undertake the data collection recommended in this Report. HCPD supports such data collection.

III. Report Recommendation #2: Implement a performance management (data collection) system to ensure a fair, effective, and fiscally efficient process.

See p. 11-12 *supra*.

IV. Report Recommendation #3: Maximize release through alternatives to pretrial detention that ensure appearance at court hearings while enhancing public safety.

The Report lists 4 specific recommendations:

- Increase awareness and use of a continuum of alternatives to detention.
- Law enforcement should increase use of cite and release for low-level, non-violent offenses.
- Prosecutors should screen cases before initial appearance for charging decisions, diversion suitability, and other alternative disposition options.
- Prosecutors and courts should increase the availability of diversion through expanded eligibility utilizing risk assessments.

HCPD fully supports these recommendations. Hamilton County has both a diversion and pretrial services division. However, the recommendations offered by the Report show there is room for growth and improvement in these areas in Hamilton County.

A. Diversion Eligibility.

As noted above, Hamilton County uses ORAS. An ORAS risk assessment tool is utilized to assess individuals for pre-trial services and diversion. This is not the same tool as PAT, which is used for bail determinations. Although the tool is not the same, it also suffers from the same lack of revalidation and limitations as the PAT. See pp. 7-11, *supra*. As a result, the

recommendations made by HCPD to define validated risk assessment tools and amend the Ohio Administrative Code so as not to require use of ORAS tools exclusively will assist to make improvements here. This is important, as LJAF is working on improving assessments in pretrial services and diversion as well.[18] Localities should be able to choose the accurate, reliable validated risk assessment tool of their choosing. As this Report notes, the work of diversion and pretrial services needs to be supported with appropriate resources. Certainly, as jail overcrowding and related costs go down, this will assist in the availability of resources at the local level.

B. Alternatives to Detention are important, but should not be misused.

Awareness of alternatives to detention is important. However, awareness must be coupled with training. Without training as to when alternatives to pretrial detention, as well as jail alternatives, provide assistance with ensuring community safety and/or assurance that a defendant will return to court, such alternatives will be used in addition to financial bail and could be subject to misuse and abuse. For example, EMU is heavily overused in Hamilton County. In fact, it is the practice of some arraigning judges to make EMU a condition of bail on every person arrested regardless of the charge—including misdemeanors. In addition, the majority of the EMU devices in Hamilton County only work with a landline phone. Many indigent individuals do not have a landline. Sometimes it is simply because the person can only afford one phone—a cell phone.

However, for many indigent clients, they do not have a landline because they could not keep up with payments for a prior landline in their name and now their landline has been turned off. Now, if bail is imposed on this individual, they have to pay past phone bills, new phone installment fees, and a monthly bill in order to obtain an otherwise unnecessary land line—all in addition to financial bail— in order to be released from jail. Hamilton County does have units that work with cell phones. However, the number of cell phone compatible units is small and the waiting list is long. As a result, even if an indigent defendant can make bond, if they cannot afford to also install a landline (from jail), they remain in the jail awaiting a cell phone compatible EMU. Finally, there are indigent clients that do not have a phone of any kind.

[18] http://www.arnoldfoundation.org/initiative/criminal-justice/crime-prevention/piloting-and-evaluating-innovations-and-interventions/ (accessed May 14, 2017).

In Hamilton County, EMUs are not an alternative to financial bail, they are being used "in addition to" financial bail. In addition, its overuse is resulting in over incarceration. The costs of the units to the individual serves to increase financial bail. More importantly, using EMU in all cases demonstrates a blanket policy rather than individualized bail determinations. HCPD recommends, at minimum, training in addition to awareness of alternatives to detention.

It is certainly important for prosecutors to screen cases prior to an initial appearance at arraignment. In Hamilton County, there are rarely plea offers at arraignments except on traffic offenses and minor misdemeanors as prosecutors have not spoken with the officer or the complaining witness. With the exception of misdemeanors like OVI that might require additional investigation, misdemeanors where the officer is the complaining witness should be screened, evaluated, and an initial offer determined prior to arraignment in counties with large prosecutors' offices, like Hamilton County.

V. Report Recommendation #4: Mandate the presence of counsel for the defendant at the initial appearance.

In Hamilton County, HCPD and appointed counsel are present at the initial appearances for misdemeanors in Hamilton County and the City of Cincinnati. The standard in HCPD is to conduct an interview of the client prior to arraignment. HCPD agrees that this should be the model throughout Ohio. In addition, HCPD agrees with and adopts the recommendations from the Joint Statement regarding this issue:

- Pretrial risk assessments should be used as part of a deliberative, adversarial hearing that must involve defense counsel and prosecutors before a judicial officer;
- Defense counsel must have the time, training, and resources to learn important information about the client's circumstances that may not be captured in a pretrial risk assessment tool and adequate opportunity to present that information to the court;
- Requests for preventive detention by the state must require an additional hearing where the government proves by clear and convincing evidence that no condition or combination of conditions will reasonably assure the person's appearance in court or protect the safety of the community; and
- The system must provide expedited appellate review of any detention decision.

Joint Statement.

The presence of counsel at the initial appearance where bail is set is critical. Courts are reluctant to change bail decisions, even if those decisions are made without counsel present. When an indigent person is arrested, the presence of counsel is critical to appropriate determination of bail or release. Because the security of employment, housing, benefits, relationships, etc. flow from such a critical determination, counsel's presence is even more critical.

VI. Report Recommendation #5: Require education and training of court personnel, including judges, clerks of court, prosecutors, defense counsel, and others with a vested interest in pretrial process.

As noted on page 5, and 13-14 *supra*, education and training—especially on rule changes, risk assessment tools, cognitive bias, and the detrimental impact of the improper use of bail—is critical to change and reform. All parties involved in the pretrial process need education and training on these topics in order to implement the Report's recommendations.

VII. Report Recommendation #6: Continued monitoring and reporting on pretrial services and bail in Ohio.

Monitoring and reporting are important to determine whether the recommendations implemented are being followed, as well as the results and impact of implementing a recommendation. This will identify when recommended changes are not being followed and whether any additional amendments to the implemented recommendations are necessary. Monitoring and reporting is also critical to identifying where additional resources are needed.

Cline, Jo Ellen

From: Kari.Bloom@opd.ohio.gov
Sent: Monday, May 01, 2017 10:07 AM
To: Cline, Jo Ellen
Subject: Comments on Bail Document

Hi Jo Ellen,

Please find the following comments from OPD on the Bail Committee's report. I am happy to supplement this submission at your request.

1. The report contains a recommendation which requires a "validated" risk assessment tool. There must be a validation credential included in the recommendation, instead of using "validation" in a colloquial way. Credentialing options exist for counties to use/seek for their own tools, and the Committee could create a list of approved risk assessment tools for them to choose from. It is important that all of the tools that are used do not include an interview with the arrested person. While not the purpose of the interview, any tool that requires an interview necessarily implicates and, likely, violates the Fifth and Sixth Amendments. This leads to the quandary of defense counsel telling clients not to participate and the person forgoing a potential release from pretrial incarceration.

2. The Committee should add a recommendation regarding data collection, where counties should keep all of the bail assessment results and arraignment/release hearing dockets. The Committee should decide where that data should be submitted to, and the best way to transmit it. The Racial Justice Institute at OPD is happy to write the language of the Recommendation at the Committee's request. This data collected should have names and identifying information removed for arrested people and the data is a public record. ORAS data is not a public record, so we either have to address that change in the public records law, or be explicit in our recommendation.

3. The Committee should consider redrafting the report section that governs the right to counsel at initial appearance. Recommendation #4 unequivocally state that counsel should be present at initial appearance. This language should be repeated in the body of the report but it is not. The report, at section H, does not say this unequivocally. Instead, it says that counsel should be appointed prior the conclusion of the arraignment proceeding. This language suggests a person may be arraigned without counsel. In Ohio, the arraignment meets both prongs of the *Rothgery* decision that mandates counsel be present at the hearing. Appointing an attorney prior to the conclusion, who will not be there, does not comport with the United States Constitutional requirements under the Sixth Amendment.

4. Though there is a recommendation against bond schedules, it could be stronger by referencing the ABA standard 10-5-3 which states that financial conditions for release should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.

5. The Committee should consider adding procedural guidance on completing the risk assessment, namely how soon after arrest it must be completed. Further, the Committee should consider adding a recommendation allowing an arrested person to waive a bond hearing, with the traditional knowing, intelligent, and voluntary waiver language included.

From: Gary Dumm [mailto:gary@circlevillecourt.com]
Sent: Thursday, April 13, 2017 11:30 AM
To: Andrews, Sara
Cc: Gary Dumm
Subject: Public Comment Ad Hocl Committee on Bail and Pretrial Services

Good morning Sara!
I appreciate the work of the committee and the report itself. My only continuing comment on the issue of bail reform is that there would be little need for the current efforts, if all judges around the state took the time to evaluate bail issues adequately, both in setting bail initially and in reviewing bail while the case is pending. "Set it and forget it" should never be the approach. Those of us, whom I believe to be in the majority are paying a price for the smaller percentage of folks who like the idea of relying on a bond schedule as an easy and thoughtless way to set bail. Using an assessment tool once again gives those judges who like a no brainer approach to continue that practice by merely using the tool as justification for how they set bail.
I like to think that current Crim. R. 46 and the case law behind it provide all the tools judges need and that judges themselves are the assessment tools, if they take the time to consider the rule's opportunities. More discussions at conferences on bail attention would go a long way to deal with the problems articulated by the committee than rule modifications.
Our court is and always has been, very mindful of always taking the position that recognizance bonds should be the first line of bail, unless public safety or failure to appear are major concerns. As an aside, we also track our failure to appear warrants and it is noteworthy that they have increased each year since 2014 by around 50% each year. We attribute most of that to the opiate related cases, where defendants are much more concerned with getting daily fix than coming to court; however, more liberal bond setting probably also results in more failure to appear warrants.

My best, Gary Dumm

TO: Ohio Criminal Sentencing Commission, Members of the Ad Hoc Committee
FROM: Eddie Miller, President, Ohio Bail Agents Association
DATE: February 9, 2017
RE: Pre-Trial Release

1.) **What is BAIL?** (See Ohio Revised Code 2937.22) **(See Figure 1)**
   a.) To date there has been no discussion as to the importance of the word **"Appearance."**
   b.) See *State v. Hughes.* 27 Ohio St.3d 19, 20 (1986)
   State, ex rel. Baker v. Troutman, 50 Ohio SXt.3d 270, 272 (1990) **(See Figure 4)**
   [Summit Co. habeas case where Summit Co. Common Pleas Court's pretrial bond orders were found to be unconstitutional]
   c.) Victims and Society want the accused to be brought to justice. In order for justice to be served the accused first must **appear.**

2.) The Summit County Pretrial Release Program (Program) cites figures of a 77% success rate.
   a.) This means roughly that 1 in 4 defendants fail to appear. Where in this report do we recognize how and what we do when a defendant fails to appear?
   b.) The Summit County analysis fails to consider the economic effect of failure to appear. This analysis makes a faulty assumption that all those released through the Program would have otherwise been in jail. The analysis also fails to consider how many individuals were released on some form of surety (10%, Professional Surety, etc.) and the return rate of those individuals.
   c.) The Program, while claiming to create a saving of some ($133/ day?) fails to consider the fact that those who post professional surety creates a 100% saving since the surety is responsible for the problem children. i.e., the high risk person who fails to appear.

3.) Cost Savings vs Expense. As stated above in the Summit County Pretrial Presentation.
   a.) $133/ day per inmate (?)
   b.) Please see **Figure 2 & 3** for 3 other counties located in Ohio (Why is there such a disparity in cost from one jail to another?)
   c.) One would assume that the people who do not fit the matrix would remain in jail in lieu of bail for at least 48 hours. Ohio already has in place under the ORC Sections 2935.13 – 2935.14 which requires the issuing court to bring a defendant "forthwith and there let to bail" as well as the right to Counsel.

4.) Comparative Cost Analysis
   a.) DC Pretrial Release Program: Population of 658,893; Cost of Program: $62,000,000

   Columbus Ohio Pretrial Release (Probation Department): Population of 822,553; Cost of Program: $10,323,537

   {Look at the cost of the DC Stats **(See Figure 5)** and compare them to the stats of Columbus **(See Figure 6).}**

b.) One would assume that there would be an increase of $50,000,000 in the City of Columbus alone, if it implements a program like the one in D.C.

5.) The New Mexico Myth **(See Figure 7)**
   a.) At the Ad Hoc Committee Meeting on January 20th 2017, it was stated that there was no more Commercial Bail in the State of New Mexico. That happens to be **FALSE**; Commercial Bail is still practiced throughout the state. The compromise amendment to the New Mexico Constitution preserved Monetary Bail and Jail House Bond Schedules

6.) Data Collection **(See Figure 8, 9, & 10)**
   a.) There are only 3 known sources that report "Failure to Appear"
      1.) One source has a 23% Fail to Appear Rate - (Summit County, Figure 9)
      2.) The second source has a 33% Fail to Appear Rate - (Lucas County, Figure 8)
      3.) Lastly, the Ohio Supreme Court's records do not reflect a true Fail to Appear Rate (See Figure 10) – The Ohio Supreme Court's data can be found at the Case Management area of its website.

In conclusion, there is insufficient information as to the costs to implement any change to the Bail System as well as what the actual Appearance and Non-Appearance Rates truly are. In states or areas that have implemented No Money Bail (i.e. Philadelphia and Washington D.C.) has this really been worth the expense and kept crime low?

I know that this may not be popular with some on this committee but dispute where you may!

Figure 1

LAWriter® Ohio Laws and Rules

Route: Ohio Revised Code » Title [29] XXIX CRIMES - PROCEDURE » Chapter 2937: PRELIMINARY EXAMINATION; BAIL

2937.22 Form of bail.

(A) Bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave. It may take any of the following forms:

(1) The deposit of cash by the accused or by some other person for the accused;

(2) The deposit by the accused or by some other person for the accused in form of bonds of the United States, this state, or any political subdivision thereof in a face amount equal to the sum set by the court or magistrate. In case of bonds not negotiable by delivery such bonds shall be properly endorsed for transfer.

(3) The written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance.

(B) Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail, the person shall pay a surcharge of twenty-five dollars. The clerk of the court shall retain the twenty-five dollars until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the twenty-five dollars on or before the twentieth day of the month following the month in which the person was convicted, pleaded guilty, or forfeited bail to the treasurer of state, and the treasurer of state shall deposit it into the indigent defense support fund created under section 120.08 of the Revised Code. If the person is found not guilty or the charges are dismissed, the clerk shall return the twenty-five dollars to the person.

(C) All bail shall be received by the clerk of the court, deputy clerk of court, or by the magistrate, or by a special referee appointed by the supreme court pursuant to section 2937.46 of the Revised Code, and, except in cases of recognizances, receipt shall be given therefor .

(D) As used in this section, "moving violation" has the same meaning as in section 2743.70 of the Revised Code.

Amended by 128th General AssemblyFile No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 01-01-1960

Figure 2

Clermont County Jail bed cost

Scheetz, Sukie to you show details show image slideshow

Mr Miller –
The 2016 cost for operating the 326 jail beds in the Clermont County jail was $77.68/day/bed.

Sukie Scheetz
CLERMONT COUNTY
Director, Office of Management & Budget
(513)732-7986
sscheetz@clermontcountyohio.gov

Figure 3

Warren County Sheriff billed high holding costs for extra inmates

Faige Godden, pgodden@registermedia.com 11:38 a ET Jul 6

(Photo: MICHAEL ROLANDS/RECORD-HERALD)

COMMENT

The Warren County Sheriff's department is billed more than $100,000 annually from other county jails for holding overflow inmates, and that cost doesn't include the gas or deputy pay for transporting the inmates.

Sheriff Brian Vos said between Monday, July 6, and Friday, July 10, the county had 13 transports.

The trips, depending on where they're to, take at least two hours apiece, he said.

Generally, the county transports its extra inmates to the Marion County Jail, which charges a $40 daily holding fee. Or, if that's full, inmates are sent to Madison County, which charges $55 per day.

The Warren County Jail, on the top floor of the courthouse, has a maximum capacity of 18.

Vos said the number of inmates transported each week depends on how many inmates flow through the jail. Last Thursday night, four were brought in.

"On weekends, this weekend will be a nice weekend, so we may get six to 10 people in overnight," Vos said.

Within the last month, Vos said the daily number of inmate check-ins ranged from about 10 to 19.

He said with that many overflow prisoners, the county is completely at Marion County's mercy as far as having enough beds to house them all.

Two weeks ago, the jail was full and Warren County was asked to reassign its five inmates who were staying there.

Vos said Warren County does have one deputy who is assigned to transport inmates Monday through Friday.

He said the position usually goes to one of the older deputies getting closer to retirement.

Warren County has been planning to build a new jail for several years now, and the plan received more attention after two inmates escaped last month.

Shive-Hattery, a West Des Moines engineering firm, has been hired to do a feasibility study on the old jail.

Earlier this year, assistant Warren County attorney Doug Eichholz presented several options for a new facility to the Warren County Board of Supervisors. He said the old facility could either be renovated, a new jail could be built or the jail and courthouse could swap buildings with the county administration building, because there's a lot more room in the administration building.

Eichholz said another option is to do nothing with the jail facilities.

However, state jail inspector Delbert Longley released a report on the jail saying if the county stops moving forward with plans to fix up the jail he will shut it down. Longley cited several safety concerns in his report.

In addition to space needs, Vos said the report also will look at staffing needs for several new jail scenarios.

Vos said those staffing needs change depending on whether the new jail and courthouse will be attached and how big the jail would be.

A public committee has been formed to help identify the needs at the courthouse and to help review any information Shive-Hattery provides.

Figure 4

STATE EX REL. BAKER v. TROUTMAN

No. 89-2044.

50 Ohio St. 3d 270 (1990)

THE STATE, EX REL. BAKER ET AL., v. TROUTMAN, SHERIFF, ET AL.

Supreme Court of Ohio.

Submitted February 6, 1990.

Decided April 25, 1990.

Attorney(s) appearing for the Case

Gold, Rotatori, Schwartz & Gibbons Co., L.P.A., and Niki Z. Schwartz, for petitioner-relator Donald Shury.

John L. Wolfe, for petitioner-relator Kenneth Baker.

Lynn C. Slaby, prosecuting attorney, Gabrielle A. Manus and Larry G. Poulous, for respondents.

Per Curiam.

We agree that Miscellaneous Order No. 555 of the Court of Common Pleas of Summit County violates Section 9, Article I of the Ohio Constitution, [1] as implemented by Crim. R. 46, [2] and have

[50 Ohio St. 3d 272]

granted a writ of habeas corpus ordering Baker's release on the posting of a $5,000 bond and a peremptory writ of mandamus in the first instance requiring respondents to nullify Miscellaneous Order No. 555.

First we reject respondents' arguments that Baker has no action in habeas corpus. In *State* v. *Bevacqua* (1946), 147 Ohio St. 20, 33 O.O. 186, 67 N.E.2d 786, we held that habeas corpus is the proper method of securing relief for excessive pretrial bail under Section 9, Article I, Ohio Constitution.

We also reject respondents' contention that they owe no clear duty to Baker not to limit his access to a surety via Miscellaneous Order No. 555. Under Section 9, Article I, a criminal defendant, except a defendant in a capital case, has a right to nonexcessive bail on approval of sufficient sureties. We have stated that this right is absolute. *Locke* v. *Jenkins* (1969), 20 Ohio St.2d 45, 49 O.O. 2d 304, 253 N.E.2d 757.

The United States Constitution does not grant an absolute right to bail in noncapital cases. It only prohibits excessive bail. Eighth Amendment to the United States Constitution. Hence, federal law allows more exceptions to the right to bail than the capital-case exception expressly permitted by the Ohio Constitution. See *United States* v. *Salerno* (1987), 481 U.S. 739. Nevertheless, the Eleventh Circuit Court of Appeals has held that conditioning bail on its availability for payment of a fine is excessive and in violation of the Eighth Amendment. *United States* v. *Rose* (C.A.11, 1986), 791 F.2d 1477. A former justice of the United States Supreme Court reached the same conclusion. *Cohen* v. *United States* (1962), ____ U.S. ____, 7 L. Ed. 2d 518, 82 S.Ct. 526.

The rationale behind these federal opinions is that the purpose of bail is to ensure the appearance of the defendant at all stages of the criminal proceedings and that conditions that do not relate to appearance are necessarily excessive. In Ohio, that purpose is expressly stated in Crim. R. 46(A), which implements Section 9, Article I, Ohio Constitution:

"The purpose of bail is to insure that the defendant appears at all stages of the criminal proceedings. * * *"

Thus, we examine Miscellaneous Order No. 555's effect on appearance.

Bail ensures appearance. Therefore, the conditions placed on it must relate to appearance and the reasons for forfeiture to nonappearance. Miscellaneous Order No. 555 was not so structured. It conditioned the right to bail on an accused's or surety's consent to forfeit the bail for fines and costs, which respondents did not explain or justify in terms of ensuring appearance. Moreover, it provided implicitly for forfeiture upon conviction even though the obligation to appear was fully satisfied. We view its operation as excessive bail under Section 9, Article I because it placed limiting conditions on bail that were unrelated to appearance of the accused.

Respondents further argue that they owe no duty to relator Shury because R.C. 2937.40(B) states, or at least implies, that cash or security deposits may be retained with consent of the surety:

"* * * The court shall not apply any of the deposited cash or securities toward, or declare forfeited and levy or execute against property pledged for a recognizance for, the satisfaction of any penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, except upon express approval of the person who deposited the cash or securities or the surety."

It does not follow that because a statute prohibits use of cash or security deposits to pay fines and costs except with consent, a court may then *require* "consent" before permitting such deposits. Moreover, were respondents' construction of R.C. 2937.40(B) correct, it too would violate Section 9, Article I.

We also reject respondents' contentions that relators had a plain and adequate remedy in the ordinary course of law through appeal. To be adequate a remedy must be beneficial and speedy as well as complete. *State, ex rel. Liberty Mills, Inc.*, v. *Locker* (1986), 22 Ohio St.3d 102, 22 OBR 136, 488 N.E.2d 883. Resolving the issue on appeal would have come far too late to aid Baker. Since we resolve the issues on Baker's behalf immediately, we find no merit in forcing Shury to appeal only to receive the same result.

Accordingly, we affirm *State* v. *Bevacqua*, which held that habeas corpus is a proper remedy to contest excessive pretrial bail, and also hold that Miscellaneous Order No. 555 violates the prohibition of Section 9, Article I against excessive bail. So holding, we find that relator Shury has a clear right to relief from the unconstitutional order, that respondents have a clear duty to grant that right, and that neither relator has a plain and adequate remedy in the ordinary course of law. By our previous order, we have granted relators the relief sought.

Writs allowed.

MOYER, C.J., SWEENEY, HOLMES, DOUGLAS, WRIGHT, H. BROWN and RESNICK, JJ., concur.

1. Section 9, Article I, Ohio Constitution provides:

"All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted."

2. Crim. R. 46 provides in part:

"(A) Purpose of and right to bail. The purpose of bail is to insure that the defendant appears at all stages of the criminal proceedings. All persons are entitled to bail, except in capital cases where the proof is evident or the presumption great. "* * *

"(C) Pretrial release in felony cases. Any person who is entitled to release under subdivision (A), shall be released on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judge, unless the judge determines that such release will not assure the appearance of the person as required. Where a judge so determines, he shall, either in lieu of or in addition to the preferred methods of release stated above, impose any of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions: "* * *

"(4) Require the execution of a bail bond with sufficient solvent sureties, or the execution of a bond secured by real estate in the county, or the deposit of cash or the securities allowed by law in lieu thereof, or;

"(5) Impose any other constitutional condition considered reasonably necessary to assure appearance."

Figure 5

Summary of Washington D.C. Pretrial Services Budget

Fiscal Year	Budget Request	Percentage Increase (Decrease) from Prior FY	Number of New Defendant Admissions for Supervision	Carry Over Supervision Population	Total Number of Supervisions
2017	[redacted]	4.7%	18000 (summary)	N/A	18,000
2016	[redacted]	2.5%	14142	4514	18656
2015	[redacted]	3.8%	15639	4545	20184
2014	[redacted]	0.1%	17918	6745	24663
2013	[redacted]	[redacted]	22546	6206	28752
2012	[redacted]	3.8%	9000	4000	17000
2011	[redacted]	4.7%	11470	N/A	11470
2010	[redacted]	6.8%	11217	N/A	11217
2009	[redacted]	9.9%	10895	N/A	10895
2008	[redacted]	8.0%	8999	N/A	8999
2007	[redacted]	10.6%	8612	N/A	8612

	Bench Warrants Over 60 Number of Arrests for Release Violation/Fugitiv		FTE	Number of Adult Arrests
2017	N/A	N/A	374	N/A
2016	N/A	N/A	378	N/A
2015	N/A	5199 (Pg. 32)	365	33357
2014	N/A	5828 (pg. 28)	387	38224
2013	N/A	4624 (Pg. 28)	376	34570
2012	N/A	4331 (Pg. 300	378	39423
2011	6161	6718 (Pg. 28)	378	48080
2010	5948	4329 (Pg. 24)	378	48519
2009	5470	3924 (Pg. 29)	373	48789
2008	3616	4400 (Pg. 25)	335	48040
2007	2741	4108 (Pg. 25)	340	46540

Figure 6

Common Pleas

2017 Agency Overview – Approved Budget

Mission
The vision is to provide responsible, efficient, and effective government that delivers outstanding public services through innovative leadership and sound fiscal management, and improves the quality of life for the residents of Franklin County.

Strategic Initiatives
1) The Franklin County Court of Common Pleas, General Division, is dedicated to dispensing equal justice in all matters under the Court's jurisdiction, preserving the rule of law, protecting the rights and liberties guaranteed under the Constitution and laws of the United States and providing the highest quality of professional support in a prompt, efficient and cost effective manner.

Strategic Issues
1) Time to Disposition (The percentage of cases disposed or otherwise resolved within established timeframes) This measure is a fundamental management tool that assesses the length of time it takes a court to process cases. It compares a Court's performance with local state and national guidelines for timely case processing. 2) Clearance Rates (Clearance rate measures whether the court is keeping up with its incoming caseload). The number of outgoing cases as a percentage of incoming cases Courts disposes of the same number of cases that have been filed, reopened, or reactivated in a period by having a clearance rate of 100 percent or higher.

Full Time Equivalents (FTEs)

Program:	2016 Approved Budget	2017 Requested Budget	2017 Approved Budget
Justice Operations Program	113.02	113.02	113.02
Information Technology Program	7.50	7.50	7.50
Adult Probation/Community Corrections Program	126.50	126.50	126.50
Total Agency FTEs	247.02	249.02	249.02

Available Resources: Fund:	2015 Actual	2016 Approved Budget	2017 Requested Budget	2017 Approved Budget	% Change 2017 Approved vs. 2016 Approved
General Fund	$1,309,504	$1,178,880	$1,380,354	$1,298,284	10.1%
Computerization Fund	$1,858,648	$2,114,998	$2,355,768	$2,355,768	11.4%
Community Corrections Program Fund	$2,458,139	$2,511,027	$2,512,036	$2,512,036	0.0%
Probation Services Fund	$1,221,017	$1,163,887	$1,099,961	$1,099,961	-5.5%
Community Corrections Misdemeanor Fund	$402,329	$401,887	$397,670	$397,670	-1.0%
Indigent Interlock Fund	$11,541	$14,341	$19,242	$19,242	34.2%
Home Incarceration Fund	$126,288	$131,592	$53,929	$53,929	-59.0%
Justice Reinvestment Fund	$1,151,508	$1,953,098	$2,256,940	$2,256,940	15.6%
Arbitration Filing Fee Fund	$39,355	$39,355	$39,355	$39,355	0.0%
Total	$8,578,299	$9,508,871	$10,115,255	$10,033,185	5.5%

Expense Budget: Program:	2015 Actual	2016 Approved Budget	2017 Requested Budget	2017 Approved Budget	% Change 2017 Approved vs. 2016 Approved
Justice Operations Program	$12,430,533	$13,076,455	$13,779,912	$13,754,856	5.2%
Information Technology Program	$1,134,414	$1,088,985	$1,176,670	$1,175,050	7.9%
Adult Probation/Community Corrections Program	$10,323,537	$11,882,753	$12,077,525	$12,050,201	2.1%
Total	$23,908,484	$25,948,193	$27,034,107	$26,980,107	4.0%

Link to Agency web site

Figure 7

Changes in bail system beneficial

By Jeff Clayton / Executive Director, American Bail Coalition
Sunday, December 4th, 2016 at 12:02am

EMAIL

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There has been a lot information – and misinformation – written about New Mexico's new constitutional amendment on bail. Therefore, it is important to understand just what happened and what the amendment will actually mean for the state. As a person on the front line of this issue, I wanted to share my thoughts on the ramifications of this amendment.

First, the idea that bail bondsmen or monetary conditions of bail is somehow going away is not the case. Of course, it was Justice Charles Daniels' desire to implement a no-money bail system like the one in Washington, D.C. However, he was unsuccessful in his lobbying efforts with the Legislature to get it passed this year.

Ultimately, Daniels was able to negotiate the language in the compromise version of the New Mexico constitutional amendment that preserved the use of monetary bonds and jail house bond schedules.

This compromise subsequently passed the state Legislature 67-0 and was approved by an overwhelming majority of voters.

Notably, it did not implement the no-money bail system — a component that was a major reason for Daniels' original political coalition to break apart, with many groups making the choice to oppose the amendment. The compromise also had the effect of overruling his own earlier decision, which stated that no one could be held on bail they cannot afford, which practically speaking, banned all monetary bail.

Next, the amendment created a constitutional right to a hearing for individuals being held in jail to determine if their bail is beyond reach and/or without justification. That is a decided improvement in the system, making New Mexico the first state to offer an expedited bail review hearing as part of its Constitution.

Lastly, the amendment expands the use of preventative detention in serious criminal cases. This means judges and prosecutors now have greater authority to detain defendants in jail with no bail.

In abandoning Daniels' attempt to implement the Washington, D.C. system on New Mexico, the state Legislature made the denial of bail an option in more cases. But it did not specify this as the sole reason a person could be held in jail pending trial.

This was a critical point in the compromise. Under the system that Daniels wanted, prosecutors would have had to hold a mini-trial prior to every case in which a person was to be held in jail pending trial. Under the new compromise, prosecutors can select cases where they feel this is necessary. Judges are then left to set reasonable and appropriate monetary and non-monetary conditions of bail on the remaining cases.

This saves the state millions of dollars that would have been wasted on more judges, prosecutors and public defenders.

Daniels has rightfully taken a lot of heat for what seemed to be a conflict of interest. While active as sitting judge, he directly lobbied the state Legislature on a substantive matter of criminal law.

Yet, credit must be given where it is due. At the end of the day, the compromise that he helped broker (along with representatives of the bail industry and others in the criminal justice system), offered an elegant solution to a portion of the most important issues we are seeing with bail around the country. It offered some real answers to the questions concerning how to deal with dangerous defendants, who may also be poor.

At the same time, it respects the history and tradition of bail in New Mexico and our country at large.

Figure 8

Assessing PSA Impact in Lucas County, OH

» Research Results – Pretrial Bookings PSA Only

- N = 12,233 with 8,467 (69.2%) released w/PSA results

Risk Level	N	Population	Released	Any Failure (FTA and/or NCA)
1	1,864	15.2%	86.9%	19.9%
2	2,357	19.3%	83.0%	25.5%
3	1,991	16.3%	71.6%	31.8%
4	1,472	12.0%	69.6%	42.6%
5	1,258	10.3%	54.3%	44.5%
6	3,291	26.9%	53.4%	47.1%
	12,233	100.0%	Avg. 69.2%	Avg. 33.6%

33.6% Avg

- As risk level increases
  - ✓ Release rates decrease (detention rates increase)
  - ✓ Failure rates increase for released defendants

Figure 9

Summit County Pretrial Services

- Currently, we have 3 Monitors and 1 Program Coordinator who monitor clients and their compliance with supervision requirements.
- Defendants are reminded weekly of their next court appearance.
- The program supervised 1562 clients (118,000 mandays) in 2016 with a 77% success rate.
- Average daily count was 317 clients per day. Number of active placements on January 13, 2017 was 379
- Cost of placement varies by supervision level.
  - Minimum supervision: $1.32 per day
  - Medium supervision: $2.64 per day
  - Maximum supervision: $5.02 per day (approximately 50% of the clients are on maximum supervision)

Figure 10

Municipal Courts
Overall Caseloads
2015

Court	Judges	Population		New Filings, Transfers, and Reactivations			Terminations			Clearance Rate
		Total	Per Judge	Total	Per Judge	Per 1,000 Pop.	Total	Per Judge	Per 1,000 Pop.	
Akron	6	237,795	39,633	55,650	9,275	234	55,755	9,293	234	100%
Alliance	1	42,428	42,428	8,276	8,276	195	8,272	8,272	195	100%
Ashland	1	53,139	53,139	11,861	11,861	223	11,789	11,789	222	99%
Ashtabula	1	32,775	32,775	8,285	8,285	253	7,842	7,842	239	95%
Athens County	1	64,757	64,757	14,672	14,672	227	14,492	14,492	224	99%
Auglaize County	1	45,949	45,949	11,706	11,706	255	11,750	11,750	256	100%
Avon Lake	1	47,756	47,756	4,079	4,079	85	4,090	4,090	86	100%
Barberton	2	113,197	56,599	14,536	7,268	128	14,400	7,200	127	99%
Bedford	2	80,086	40,043	18,624	9,312	233	18,765	9,383	234	101%
Bellefontaine	1	45,858	45,858	9,421	9,421	205	9,632	9,632	210	102%
Bellevue [PT]	1	12,097	12,097	3,122	3,122	258	3,162	3,162	261	101%
Berea	1	121,538	121,538	13,656	13,656	112	12,806	12,806	105	94%
Bowling Green	1	63,484	63,484	12,437	12,437	196	12,322	12,322	194	99%
Brown County	1	44,846	44,846	9,378	9,378	209	9,356	9,356	209	100%
Bryan	1	37,642	37,642	8,986	8,986	238	9,112	9,112	242	102%
Cambridge	1	40,087	40,087	12,622	12,622	315	12,741	12,741	318	101%
Campbell [PT]	1	9,627	9,627	4,042	4,042	420	4,334	4,334	450	107%
Canton	4	200,708	50,177	29,097	7,274	145	29,642	7,411	148	102%
Carroll County	1	28,836	28,836	2,943	2,943	102	2,893	2,893	100	98%
Celina	1	40,814	40,814	7,939	7,939	195	8,072	8,072	198	102%
Champaign County	1	40,097	40,097	4,927	4,927	123	4,936	4,936	123	100%
Chardon	1	93,389	93,389	10,223	10,223	109	10,159	10,159	109	99%
Chillicothe	2	78,064	39,032	16,131	8,066	207	16,091	8,046	206	100%
Circleville	1	55,698	55,698	13,382	13,382	240	13,382	13,382	240	100%
Clark County	3	138,333	46,111	26,633	8,878	193	26,128	8,709	189	98%
Clermont County	3	197,363	65,788	35,499	11,833	180	35,555	11,852	180	100%
Cleveland	12	398,012	33,168	122,293	10,191	307	123,001	10,250	309	101%
Cleveland (Housing)	1	398,012	398,012	17,898	17,898	45	18,012	18,012	45	101%
Cleveland Heights	1	46,121	46,121	17,549	17,549	380	17,976	17,976	390	102%
Clinton County	1	42,040	42,040	11,395	11,395	271	11,747	11,747	279	103%
Columbiana County	2	84,642	42,321	14,233	7,117	168	14,523	7,262	172	102%
Conneaut	1	12,841	12,841	2,895	2,895	225	2,860	2,860	223	99%
Coshocton	1	36,901	36,901	3,528	3,528	96	3,526	3,526	96	100%
Crawford County	1	43,784	43,784	11,425	11,425	261	11,566	11,566	264	101%
Darke County	1	52,194	52,194	5,793	5,793	111	5,771	5,771	111	100%
Dayton	5	141,527	28,305	35,608	7,122	252	36,067	7,213	255	101%
Defiance	1	39,037	39,037	9,527	9,527	244	9,532	9,532	244	100%
Delaware	2	174,214	87,107	24,685	12,343	142	24,302	12,151	139	98%
East Cleveland	1	17,843	17,843	5,081	5,081	285	4,969	4,969	278	98%
East Liverpool	1	23,199	23,199	2,899	2,899	125	2,910	2,910	125	100%
Eaton	1	42,270	42,270	6,401	6,401	151	6,380	6,380	151	100%
Elyria	2	120,568	60,284	20,824	10,412	173	20,803	10,402	173	100%
Erie County	1	14,766	14,766	9,809	9,809	664	9,640	9,640	653	98%
Euclid	1	48,920	48,920	10,430	10,430	213	10,556	10,556	216	101%

Municipal Courts
Overall Caseloads
2015

Court	Judges	Population		New Filings, Transfers, and Reactivations			Terminations			Clearance Rate
		Total	Per Judge	Total	Per Judge	Per 1,000 Pop.	Total	Per Judge	Per 1,000 Pop.	
Fairborn	1	91,548	91,548	18,171	18,171	198	17,949	17,949	196	99%
Fairfield	1	42,510	42,510	8,938	8,938	210	9,061	9,061	213	101%
Fairfield County	2	146,156	73,078	23,823	11,912	163	23,731	11,866	162	100%
Findlay	2	70,342	35,171	17,974	8,987	256	17,991	8,996	256	100%
Franklin [PT]	1	28,076	28,076	8,587	8,587	306	8,597	8,597	306	100%
Franklin County	14	1,163,414	83,101	231,828	16,559	199	233,802	16,700	201	101%
Franklin County (Env.)	1	1,163,414	1,163,414	7,814	7,814	7	7,667	7,667	7	98%
Fremont	1	26,338	26,338	6,456	6,456	245	6,378	6,378	242	99%
Gallipolis	1	30,934	30,934	7,966	7,966	258	8,028	8,028	260	101%
Garfield Heights	2	79,896	39,948	16,364	8,182	205	16,290	8,145	204	100%
Girard	1	41,170	41,170	9,687	9,687	235	9,524	9,524	231	98%
Hamilton	1	77,850	77,850	20,718	20,718	266	20,456	20,456	263	99%
Hamilton County	14	802,374	57,312	183,567	13,112	229	183,049	13,075	228	100%
Hardin County [PT]	1	32,058	32,058	4,196	4,196	131	4,142	4,142	129	99%
Hillsboro	1	36,864	36,864	5,296	5,296	144	5,310	5,310	144	100%
Hocking County	1	29,380	29,380	5,275	5,275	180	5,259	5,259	179	100%
Holmes County	1	42,366	42,366	3,647	3,647	86	3,468	3,468	82	95%
Huron [PT]	1	10,697	10,697	3,590	3,590	336	3,507	3,507	328	98%
Ironton	1	24,582	24,582	3,500	3,500	142	3,462	3,462	141	99%
Jackson County	1	33,225	33,225	11,386	11,386	342	10,533	10,533	317	93%
Kettering	2	119,077	59,539	15,127	7,564	127	15,053	7,527	126	100%
Lakewood	1	52,131	52,131	13,007	13,007	250	13,024	13,024	250	100%
Lawrence County [PT]	1	37,868	37,868	7,548	7,548	199	7,506	7,506	198	99%
Lebanon [PT]	1	34,712	34,712	7,172	7,172	207	6,996	6,996	202	98%
Licking County	2	166,492	83,246	21,425	10,713	129	21,558	10,779	129	101%
Lima	2	106,331	53,166	21,027	10,514	198	20,901	10,451	197	99%
Lorain	2	79,573	39,787	15,445	7,723	194	15,183	7,592	191	98%
Lyndhurst	1	57,777	57,777	14,728	14,728	255	14,709	14,709	255	100%
Madison County	1	43,435	43,435	12,230	12,230	282	12,255	12,255	282	100%
Mansfield	2	105,949	52,975	28,088	14,044	265	27,849	13,925	263	99%
Marietta	1	61,778	61,778	12,552	12,552	203	12,520	12,520	203	100%
Marion	1	66,501	66,501	18,409	18,409	277	18,266	18,266	275	99%
Marysville	1	52,300	52,300	11,346	11,346	217	11,199	11,199	214	99%
Mason [PT]	1	86,771	86,771	10,192	10,192	153	10,183	10,183	153	100%
Massillon	2	132,450	66,225	14,572	7,286	110	14,519	7,260	110	100%
Maumee	1	46,011	46,011	10,617	10,617	231	10,602	10,602	230	100%
Medina	1	125,691	125,691	13,148	13,148	105	13,107	13,107	104	100%
Mentor	1	54,602	54,602	8,463	8,463	155	8,489	8,489	155	100%
Miami County	2	103,271	51,636	20,722	10,361	201	20,325	10,163	197	98%
Miamisburg	1	72,307	72,307	12,964	12,964	179	13,203	13,203	183	102%
Middletown	1	71,329	71,329	16,449	16,449	231	17,077	17,077	239	104%
Montgomery Co.	3	114,927	38,309	17,389	5,796	151	17,809	5,936	155	102%
Morrow County	1	34,827	34,827	8,058	8,058	231	8,387	8,387	241	104%
Mount Vernon	1	60,921	60,921	7,138	7,138	117	7,025	7,025	115	98%

Municipal Courts
Overall Caseloads
2015

Court	Judges	Population		New Filings, Transfers, and Reactivations			Terminations			Clearance Rate
		Total	Per Judge	Total	Per Judge	Per 1,000 Pop.	Total	Per Judge	Per 1,000 Pop.	
Napoleon	1	28,215	28,215	4,233	4,233	150	4,102	4,102	145	97%
New Philadelphia	1	86,545	86,545	12,163	12,163	183	12,238	12,238	184	101%
Newton Falls	1	29,221	29,221	7,548	7,548	258	7,521	7,521	257	100%
Niles	1	29,897	29,897	5,209	5,209	174	5,159	5,159	173	99%
Norwalk	1	54,590	54,590	13,282	13,282	243	13,277	13,277	243	100%
Oakwood [PT]	1	9,202	9,202	1,683	1,683	183	1,661	1,661	181	99%
Oberlin	1	45,841	45,841	9,248	9,248	202	9,177	9,177	200	99%
Oregon	1	23,523	23,523	6,667	6,667	283	6,571	6,571	279	99%
Ottawa County	1	41,428	41,428	7,726	7,726	186	7,943	7,943	192	103%
Painesville	1	89,304	89,304	12,458	12,458	140	12,416	12,416	139	100%
Parma	3	176,858	58,953	26,476	8,825	150	26,231	8,744	148	99%
Perrysburg	1	59,535	59,535	12,784	12,784	215	13,054	13,054	219	102%
Portage Co. (Kent)	1	80,709	80,709	9,635	9,635	119	9,629	9,629	119	100%
Portage Co. (Ravenna)	2	80,710	40,355	30,151	15,076	374	30,041	15,021	372	100%
Portsmouth	2	79,499	39,750	13,864	6,932	174	13,782	6,891	173	99%
Putnam County	1	34,499	34,499	2,846	2,846	82	2,859	2,859	83	100%
Rocky River	2	118,137	59,069	17,613	8,807	149	17,609	8,805	149	100%
Sandusky	1	39,479	39,479	14,862	14,862	376	15,543	15,543	394	105%
Shaker Heights	1	60,508	60,508	14,320	14,320	237	17,330	17,330	286	121%
Shelby [PT]	1	18,526	18,526	2,160	2,160	117	2,162	2,162	117	100%
Sidney	1	49,423	49,423	8,490	8,490	172	8,654	8,654	175	102%
South Euclid	1	22,295	22,295	6,100	6,100	274	5,661	5,661	254	93%
Steubenville	1	18,659	18,659	4,477	4,477	240	4,506	4,506	241	101%
Stow	2	190,789	95,395	21,238	10,619	111	21,158	10,579	111	100%
Struthers [PT]	1	35,159	35,159	4,407	4,407	125	4,377	4,377	124	99%
Sylvania	1	77,278	77,278	16,089	16,089	208	15,839	15,839	205	98%
Tiffin-Fostoria	1	63,654	63,654	8,967	8,967	141	8,754	8,754	138	98%
Toledo	6	295,003	49,167	117,094	19,516	397	117,787	19,631	399	101%
Toledo (Housing)	1	295,003	295,003	8,736	8,736	30	8,416	8,416	29	96%
Upper Sandusky	1	22,615	22,615	8,480	8,480	375	8,452	8,452	374	100%
Van Wert	1	28,744	28,744	8,676	8,676	302	8,276	8,276	288	95%
Vandalia	1	78,580	78,580	18,272	18,272	233	18,212	18,212	232	100%
Vermilion [PT]	1	19,753	19,753	4,858	4,858	246	4,851	4,851	246	100%
Wadsworth	1	46,641	46,641	7,483	7,483	160	7,469	7,469	160	100%
Warren*	2	75,111	37,556	14,080	7,040	187	14,063	7,032	187	100%
Washington C. H.	1	29,030	29,030	5,192	5,192	179	5,121	5,121	176	99%
Wayne County	2	114,520	57,260	19,100	9,550	167	19,064	9,532	166	100%
Willoughby	1	86,135	86,135	15,316	15,316	178	14,999	14,999	174	98%
Xenia	1	69,558	69,558	11,549	11,549	166	11,436	11,436	164	99%
Youngstown	2	66,982	33,491	12,781	6,391	191	12,351	6,176	184	97%
Zanesville	1	25,487	25,487	6,382	6,382	250	6,265	6,265	246	98%
Statewide*	214	11,536,504	49,363	2,189,652	10,232	178	2,191,584	10,241	178	100%

* Due to issues arising during a case management system conversion, Warren Municipal Court was not able to provide statistics for December 2015.

All population data from 2010 U.S. Census.

PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

Ohio Sentencing Commission

February 9, 2017

To Whom It May Concern:

The Professional Bail Agents of the United States (PBUS) is aware that the Ohio Sentencing Commission will be meeting tomorrow to further discuss proposed rule changes for the release of defendants in the Ohio criminal justice system. PBUS believes it will be a mistake to implement a blanket personal recognizance bond release system across the great state of Ohio. Such recommendation will have a direct affect on judicial discretion in the handling of misdemeanor cases and may very well cause the court system to overload their dockets, causing further delays in a resolution of cases.

The Ohio Constitution clearly states that all persons shall be bailable by "sufficient sureties." Pretrial services programs are not deemed "sufficient sureties," and release through such programs can have unintended consequences that affect public safety. A bail bond's purpose is to ensure the appearance of a defendant in court. A prior failure to appear in court should eliminate a defendant from ever being released on a personal recognizance bond. When a defendant fails to appear on a supervised own recognizance bond, he/she is no longer "sufficient" for that bond.

States across the country, such as New Jersey and Maryland, have suffered tremendously under similar proposed rule changes to their criminal justice system as the Ohio Sentencing Commission is considering. Lucas County, Ohio has a pretrial services program that has grown to cost taxpayer's over $2 million annually. This program recommended release on own recognizance for a defendant charged with vehicular homicide, a felony offense. In addition, the defendant already had a criminal history that included 15 separate charges and 12 failure to appears over a two-and-a-half year period of time. This is not the type of individual that should be recommended and released on an own recognizance bond back into the community.

Of the 88 counties in Ohio, 61 counties do not currently have a pretrial services program. The cost to these counties, who already lack resources to adequately fund jails, courts, etc., will skyrocket when required to hire additional personnel to oversee a taxpayer-funded system to recommend release mechanisms to the court and supervise defendants released through the program. These additional costs will be passed to the taxpayers to fund.

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Regarding the Ohio Sentencing Commission's proposed rule changes:
Rule 46 (8)(C)(6): we disagree with "the presumption of non-financial release"

"Financial release" has been proven to be the most efficient and effective release method and is the most secure method of pretrial release, at no cost to the taxpayer.

Rule 46 (8)(D): we disagree with "a recognizance bond shall be the preferred type of bail."

The preferred type of bail should always be that which is at no cost to the taxpayer, and most secure, which is financial release (*"sufficient sureties"*).

Criminal Rule 4: Warrant or Summons; Arrest

Question: "What if defendant has a history of failures to appear? Recommended eligibility requirements:

1. Anyone who is currently on bond for a felony would not be eligible for a personal recognizance bond.
2. Anyone currently out on a personal recognizance bond would not be eligible for a second personal recognizance bond in any county.
3. Anyone who fails to appear on a personal recognizance bond would not be eligible for another for one year.
4. Anyone who has failed to appear for a 1st class misdemeanor in the last three years would not qualify for a personal recognizance bond.
5. Anyone who has failed to appear on a felony in the last three years would not be eligible for a personal recognizance bond.
6. Anyone who has been charged with sexual assault on a child/minor causing great bodily harm would not be eligible for a personal recognizance bond.
7. Anyone who has been convicted in the last five years for the charge of escape would not be eligible for a personal recognizance bond.

Secured financial release using a surety bond is a third-party contract that strengthens the likelihood that a defendant will appear for court. The bail agent, indemnitors and the surety insurance company underwriting the bond, are all responsible for court appearance and the successful disposition of a case. Taxpayers are not burdened with this responsibility or associated costs.

PBUS respectfully requests that the Ohio Sentencing Commission take further time to review and discuss the revisions to any proposed rule changes and study the implications of such changes. We ask that common sense rules and parameters be put in place that will protect public safety and use taxpayer dollars in the most efficient and effective way.

Best Regards,

Beth Chapman
President