



THE
AMERICAN
CONSERVATIVE
UNION
FOUNDATION

Center for Criminal
Justice Reform

TESTIMONY OF PATRICK PLEIN

POLICY ANALYST AT THE AMERICAN CONSERVATIVE UNION FOUNDATION'S

CENTER FOR CRIMINAL JUSTICE REFORM

BEFORE THE HOUSE COMMITTEE ON CRIMINAL JUSTICE

HEARING ON BAIL REFORM

JANUARY 23, 2018

My name is Patrick Plein, and I am honored to work at the American Conservative Union Foundation (“ACUF”), where I serve as a policy analyst in the Center for Criminal Justice Reform. Thank you for holding this important hearing. I hope my testimony is helpful to this committee in finding ways to better hold offenders accountable for their actions, in a more fiscally responsible way that prioritizes public safety over whether or not someone is wealthy enough to make bail.

The American Conservative Union Foundation works to educate people about ways to reform the criminal justice system at both the state and federal levels. We support reforms based on *conservative* principles. We value liberty, and so we strive to ensure that there is an appropriate balance of power between prosecutors and the accused. We believe that every human life has inherent value, and thus, work to improve conditions of incarceration for all. We honor human dignity, and therefore try to identify policies that keep families connected so that crime doesn’t become an intergenerational cycle. And we support programs that reduce crime and recidivism, as well as cut spending, to lessen the burdens borne by the American taxpayers. As we have seen in many states across the country, this can all be accomplished *while improving the safety of our communities*.

Keeping the American people safe in their homes and communities is the first responsibility of government. Unnecessarily locking up those accused of criminal activities does not make Ohioans safer. Instead, we urge you to look to the impressive bail reforms enacted statewide in Kentucky, and as close to home as right up the road in Lucas County, that use individualized risk assessments to limit pretrial detention to those who pose a real threat to public safety.

Background

Ohio's system of bail is outdated and does little to focus on what should be its main goal – the safety of our communities. Criminal justice systems in most parts of Ohio continue to utilize a cash bail system that often permits those accused of violent crimes to remain free on bond after their arrest. The same system often times requires those accused of lower level and non-violent crimes to be jailed for days, weeks, or even months awaiting their trial for things like violating RTA's dress code for having sagging pants, jaywalking while intoxicated, or not being able to afford a simple traffic ticket. The only thing that matters at the end of the day is the amount of money in the accused's bank account. This leads to a system that is ripe for abuse.

Adding Fuel to the Fire

The short-term use of jails for pretrial detention has shown long term negative impacts on the defendants and their communities.

Studies have shown that being held in pretrial confinement can also mean a greater likelihood of being rearrested or recidivating down the road. In one recent study, researchers found that, when controlling for other factors, defendants who had been identified as low risk using widely accepted risk assessment tools and who were held in jail for just 2-3 days after arrest were **39% more likely** to be charged with other crimes while the first case was pending than those who were released on the first day after arrest. Similarly, low risk defendants who were held 4 to 7 days were **50% more likely** to be arrested, and those held 8 to 14 days were **56% more likely**. The same patterns held for medium risk defendants who were in jail for short periods as well.¹

The impact of this worrisome trend goes far beyond any one defendant. Anything that encourages recidivism means another crime, which is another victim, another prosecution, and another cost to be borne by the public. The current system in Ohio does just that. As a result, Ohioans are paying more in taxes for less public safety, because of the current approach to bail.

Another study also found that low risk defendants who were detained pretrial were five times more likely to get a jail sentence and four times more likely to get a prison sentence than their low risk counterparts who were released pretrial.² This shouldn't be surprising, as prosecutors have more leverage to secure a plea when it becomes tougher for the defendant to work with the defense while behind bars.

¹ Lowenkamp, C., VanNostrand, M., and Holsinger, A. (2013) The Hidden Costs of Pretrial Detention, Laura and John Arnold Foundation. <https://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf>

² Lowenkamp, C., VanNostrand, M., and Holsinger, A., (2013) Investigating the Impact of Pretrial Detention on Sentencing Outcomes, Laura and John Arnold Foundation. http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf

The Budget

Not only is there a bail approach that yields greater public safety returns, but also costs less in terms of taxpayer dollars. The truth is – jails are not cheap. Taxpayers in Cuyahoga County alone spent \$42 million to jail pretrial defendants in 2013.³

In Cuyahoga County, approximately 75% of pretrial defendants are required to post bail or bond before being released. Of those offered bail, 40% are unable to come up with the funds to secure their release.⁴ The status quo in Ohio leads to a significant amount of unnecessary pretrial detention, which fails to provide a corresponding increase in public safety returns to the taxpayers who are forced to bear this cost. By making better use of common risk assessment tools, and moving away from a one-size-fits-all bond schedule, funds can be freed up to address other more important law enforcement priorities such as targeting dangerous individuals and organized gangs.

More than just the overbearing cost to the taxpayers, there is also a heavy human toll that accompanies the current cash bail system. The government's cost fails to capture the whole picture. Many times, when someone is arrested and cannot make cash bail, they will lose their job. Without a job they will no longer pay taxes, and will lose the means of providing for their family. This increases the likelihood that Ohio families will have to go on public assistance or make other choices to avoid poverty. Aside from the financial aspects, added stress from having a parent held in pre-trial detention also contributes to increased risks of spousal divorce and emotional and behavioral issues for children. As a result, something which may seem as small as a \$200 parking ticket, can begin the intergenerational cycle of recidivism.

An Individualized Justice System

The current system of bail in Ohio, generally sets a defendant's bail using a standardized schedule. Setting bail largely based on the level of offense charged disregards many relevant factors. A system that lacks an *individualized* risk assessment often overlooks the danger a defendant may or may not pose to the community, or the accused's flight risk. These considerations should be front and center when deciding when bail should be set.

Furthermore, requiring the courts to apply a one-size-fits-all approach, regardless of the facts of the individual case, undermines basic expectations of fairness and individualized consideration we should expect in our justice system.

³ Dorn, Sara - *Bail reform could save U.S. taxpayers \$78 billion, study says*. Cleveland.com.
http://www.cleveland.com/metro/index.ssf/2017/01/bail_reform_could_save_us_taxp.html

⁴ County of Cuyahoga – Booking Process and Pretrial Service Final Report (December, 2015) –
http://prosecutor.cuyahogacounty.us/pdf_prosecutor/en-US/Cuyahoga%20Central%20Booking%20-%20Final%20Report%20Dec%202015.pdf

The goal of HB 439 is to return the discretion of the courts back to the judges and move away from the predetermined, one-size-fits-all approach. By eliminating the predetermined bail schedules, a judge would be required to consider a list of factors, including but not limited to a defendant's criminal history, individual facts of the case, flight risk, and the defendant's ability to pay.

States and Localities Searching for a Solution

Think tanks, grassroots activists, and advocacy organizations from across the ideological spectrum have called for reforms of the broken cash bail system. In Ohio, these range from the Buckeye Institute to the ACLU to the Ohio Sentencing Commission, all of which have highlighted significant problems with the current system.

Other states have undertaken reforms and seen meaningful results. Take Kentucky, for example, which adopted a statewide pretrial evidence-based risk assessment system covering all 120 counties, five years ago. According to the state's Annual Report, the cost of pretrial release per defendant was \$11.74 while the cost for pretrial incarceration was \$613.80 per defendant.⁵

Since implementing the use of evidence-based risk assessments, the number of people who have been held in pretrial custody has dropped by 3%. Meanwhile, during the same period, appearance rates have remained consistent for low and moderate risk individuals.⁶ According to Kentucky, the state saves \$4-5 million in costs for every percentage point reduction in pretrial detention.

Although Kentucky isn't too far down the road, closer to home in Lucas County, Ohio, the utilization of a data-driven pretrial risk assessment tool known as the Public Safety Assessment (PSA) has already been yielding significant results. Since 2015 when the new system was put into place, the number of people released on their own recognizance, meaning without posting bail, doubled from 14% to 28%. The percentage of pretrial defendants out on release who failed to appear, dropped 12%. And most importantly, the percentage of pretrial defendants arrested for other crimes while out on release has been cut in half.⁷

If the goal of setting bail is to ensure the public remains safe and a defendant shows up for his or her day in court, using evidence-based risk-assessment tools is far more effective than the one-size-fits-all approach Ohio currently uses. As we have seen in places like Kentucky and Lucas County,

⁵ Kentucky Pretrial Services Report:

<https://www.pretrial.org/download/infostop/Kentucky%20Pretrial%20Services%20History%20Facts%20and%20Stats.pdf>

⁶ Kentucky Department of Public Advocacy – Kentucky Bail Reform -

<http://www.pretrial.org/download/Racial%20Disparities%20and%20Bail%20Reform%20in%20Kentucky.pdf>

⁷ Arnold Foundation Press Release - New data: Pretrial risk assessment tool works to reduce crime, increase court appearances.

<http://www.arnoldfoundation.org/new-data-pretrial-risk-assessment-tool-works-reduce-crime-increase-court-appearances/>

risk-assessment tools work to ensure public safety at a fraction of the fiscal cost and human toll of over utilizing pretrial detention.

Conclusion

I'd like to take a brief moment to touch on the American Conservative Union Foundation and our efforts in the area of criminal justice reform. ACUF is one of the nation's oldest organizations representing grassroots conservatives throughout the United States. Founded more than five decades ago by William F. Buckley, ACUF works to advance our core values of liberty, personal responsibility, fiscal accountability, and human dignity – all of which are impacted by criminal justice reform.

As part of our educational mission, ACUF also compiles ratings of every federal and state legislator in the United States. These ratings help the public understand the positions of policy makers, based objectively on their individual voting records rather than their rhetoric. Criminal justice reform votes have been included in the ratings in recent years. All ACUF ratings can be found at the ACU Foundation website: <http://acuratings.conservative.org>

Thank you again for the opportunity to present testimony concerning the need for bail reform and efforts to improve the efficiency and equality of the justice system here in the Buckeye State. These are very important issues not only for conservatives, but for people of all political persuasions.

