



Testimony of Jason Pye

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Ohio House of Representatives Criminal Justice Committee

Hearing on House Bill 439

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Chairman Manning, Vice Chairman Rezabek, and Ranking Member Celebrezze -- on behalf of FreedomWorks' community of more than 5 million grassroots activists across the country, and our community of 200,000 activists here in Ohio, thank you for holding this hearing today. The issue of pretrial release and bail reform is a crucial one, and robust discussion and support of House Bill 439 is a very significant step in the right direction.

Simply put, this legislation which would reform Ohio's bail system through the use of pretrial risk assessment tools already adopted by over a dozen states. This straightforward reform results in a fairer and more cost-effective pretrial system, while simultaneously increasing public safety and improving rates of the accused appearing at their court dates.

Bail reform to ensure that the pretrial system functions as intended is a commonsense and bipartisan issue. To start with the indisputable truths about why pretrial detention exists and where it has gone wrong in our country, I look to former Attorney General Robert F. Kennedy. He testified to the Senate Judiciary Committee in 1964 on the very issue we are focused on today, more than half a century later:

“Bail has only one purpose -- to ensure that a person who is accused of a crime will appear in court for his trial. We presume a person to be innocent until he is proven guilty, and thus the purpose of bail is not punishment...It is simply to guarantee appearance in court.

This is a legitimate purpose for a system in justice. In practice, however...thousands of people are kept in jail for weeks and even months following arrest. They are not yet proven guilty. They may be no more likely to flee than you or I. But, nonetheless, most of them must stay in jail because, to be blunt, they cannot afford to pay for their freedom.”¹

Republicans and Democrats alike can agree on these principles, and recognize the unintended effects of the system, despite its good intentions. Bail as it is intended keeps communities safe by ensuring the accused to appear at court for their trial. As intended, it should not incarcerate, not only prior to conviction but prior to trial, large numbers of non-violent, non-threatening Americans who are unlikely to skip their court date anyway. Allowing this practice runs afoul of fundamental American principles -- namely, innocent until proven guilty -- not to mention that it wholly disregards fiscal responsibility.

Across the country, on an average day, an estimated 450,000 individuals are held in jails awaiting trial, with the majority held because they cannot afford to pay bail.² The price tag on holding someone in jail is conservatively estimated at \$85 per day, or over \$30,000 per year.³

¹ Attorney General Robert F. Kennedy, Department of Justice, “Testimony by the Attorney General Robert F. Kennedy on Bail Legislation,”

² Pretrial Justice Institute, “Pretrial Justice: How Much Does It Cost?” January 2017
<https://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-04-1964.pdf>

These statistics are not as dire in the state of Ohio as they are nationwide. The Department of Rehabilitation and Correction determined that 35.4 percent of individuals held in local jails in Ohio are awaiting trial, compared to about 60 percent nationally, in part due to Ohio's use of jails, post-conviction.⁴ However, they mirror the national statistics in that the majority are held because they cannot afford bail.

Again, no matter the percentage, these are Americans who have not been convicted of or even tried for crimes, and many of whom are no or low-risk to public safety or for flight. They are taken away for days, weeks, or even months, from their professions and their families, tearing their lives and other's lives apart, simply because they cannot afford their freedom. This is, quite frankly, wrong.

To align with American principles and fiscal responsibility, pretrial programs should instead allow bail to be set in accordance with the severity of the crime, together with a reliable determination of individuals' flight risk and threat to public safety and provide for non-financial release options. This simple practice allows evidence-based methods to guide judges in setting bail for an arrested individual.

The use of a pretrial risk assessment tool is the first recommendation set forth by Ohio's Criminal Sentencing Commission's Ad Hoc Committee on Bail and Pretrial Services in its recommendations in March 2017.⁵ Similar methods have proven effective in other states, most notably Kentucky.

In 2011, Kentucky took steps to pass a criminal justice bill that directed judges to release defendants with low- and moderate-risk scores without requiring they post bail. In 2013, they furthered these efforts by implementing the use of the Public Safety Assessment, a proven pretrial risk assessment tool, across the state.⁶

As a result of simply employing pretrial risk assessments akin to those recommended by the Ad Hoc Committee in your state, Kentucky has seen positive results, including lower rates of felony defendants skipping courts alongside lower percentages of people in jail awaiting trial.⁷

House Bill 439⁸ would task the Ohio Criminal Sentencing Commission with compiling an appropriate list of validated pretrial risk assessment tools like those proven in other states and

³ Ibid.

⁴ Ohio Criminal Sentencing Commission Ad Hoc Committee on Bail and Pretrial Services, "Report & Recommendations," March 2017 <https://www.supremecourt.ohio.gov/Boards/Sentencing/Materials/2017/March/finalAdHocBailReport.pdf>

⁵ Ibid.

⁶ Alysia Santo, "Kentucky's Protracted Struggle to Get Rid of Bail," *The Marshall Project*, November 12, 2015 <https://www.themarshallproject.org/2015/11/12/kentucky-s-protracted-struggle-to-get-rid-of-bail>

⁷ Ibid.

⁸ HB 439, 132nd Ohio General Assembly (2017) <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-439>

localities, and with maintaining a database with statistics on criminal cases in the state. Judges would then use these tools to determine a defendant's bail, whether that be no bail, the amount of bail, or denying bail.

Nothing about these tools restricts judges from exercising discretion in determining bail, but simply guides them in a proven, evidence-based direction. Following Kentucky's lead, over one-third of states have now authorized or expanded the use of pretrial risk assessment tools in their pretrial systems.

House Bill 439 provides a clear path for Ohio to be the next state to implement these simple reforms to its bail system. Improving public safety, saving taxpayer dollars, and retaining principles most fundamental to the American justice system are worthy goals. Righting the wrongs that have developed in the money bail system is simply done, and begins with the steps and processes outlined by this legislation.

Thank you for your committee's dedication to criminal justice issues, and thank you again for allowing me to present this testimony advocating for the reforms presented in House Bill 439 on behalf of our activist community here in Ohio and across the country.