

Testimony Substitute House Bill 439  
Mary Frances Smith  
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To Chairman Manning, Vice-Chairman Rezabek, Ranking Member Celebrezze and the entire Ohio House Criminal Justice Committee:

My name is Mary Frances Smith. I am the President of the Ohio Professional Bail Association and I serve as the Mid-America Director for the Professional Bail Agents of the United States. I have owned and operated Smith Bonds and Surety for almost 30 years.

As we know, Bail is for appearance, an assurance that the defendant will be present for all his/her court dates. The 8<sup>th</sup> Amendment to the United States Constitution states that "excessive bail shall not be required" to ensure that the federal government is not imposing too high a price for pretrial release. The individual states were then allowed to define bail independently from each other. Ohio and 27 other states have expanded on the notion of bail stating "all persons shall be bailable by sufficient sureties... Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required" .... (Article 1§09 of the Ohio Constitution Bill of Rights). It was taken a step further in Ohio with Criminal Rule 46 which expanded on the types, amounts, and conditions of bail. In 1997, 72% of the voters wanted an amendment added to the Ohio Constitution allowing "a court to deny bail to a person with a felony offense where the proof is evident or substantial risk exists of serious physical danger to others". A Judge can choose many options when Bail is determined.

The preferred method of Bail is Personal Recognizance. (Criminal Rule 46D -When summons has been issued and the defendant has appeared pursuant to the summons, absent good cause, a recognizance bond shall be the preferred type of bail.) Allow me to explain Bail:

Let's say the Bail is set at \$5000.00. The Judge could set it as Cash, Surety, Property, 10%  
The defendant's family, friends, whoever they choose to help them with bail could:

1. Put up \$5000.00 cash
2. Put up property with a lien
3. Take 10% to the court which would be \$500.00
4. Call a Bail Agent and get a payment plan for the \$500.00 and sign responsibility for the \$5000.00

H.B. 439 would lessen the options that the defendant has available to them and their family or friends. The only option will be a tool of assessment used by Pre-Trial Services to assist in determining bail. This will be taxpayer funded. Currently there are 88 counties in Ohio with 61 of those counties without any type of Pre-Trial Services. This would be an added step and expense for those counties to offer this Service. Now keep in mind that Article 1 §09 states All Persons shall be bailable by sufficient sureties.

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If a defendant fails to appear on his/her personal recognizance, they will cease to be sufficient surety for that type of bond. This is already in place in Ohio.

Some examples of Bail Agents performing their duties at no expense to the taxpayer:

**Sara Heath.** Sara is 25 years old with 3 children. Her mother has custody of the children. Sara got into a fight with her mother and was arrested for domestic violence. The judge told Sara she would have to attend and pay for an anger management class and alcohol assessment before conviction. Sara was overwhelmed by the new expense and did not complete classes. She chose to run away. A Bond Forfeiture notice was issued and show cause was set. Sara was found in another state and after speaking with her, a bus ticket was arranged for her to come back to Ohio. She was met at the bus stop, taken to breakfast and then to the agent's home for a shower before heading to court. The agent stood next to her and the judge reinstated her bond. She is currently trying to afford the classes since she got a job at a restaurant. She showed up for all of her court dates. No taxpayer has been affected by this case.

**Terrance Robinson.** We helped Terrance while out on bond to work on his GED. We worked with him on what to wear to court and how to be polite to a Judge. Yes sir, no sir. Terrance thanked me for the help. He received a sentence of 2 years instead of 4. He sent me a copy of his GED that he finished in prison. He is now studying in college to be a journalist. No taxpayer dollars.

Despite reports from Lucas County on the success rates of the Pre-Trial Services, here are some examples of when it didn't work:

**Craig Daniels.** He was in jail for Domestic Violence. His bond was \$30,000. After pleadings from his victim's family not to release him, the judge (not the bail agent) instead chose to release Daniels on a personal bond. Two days later the victim and her new boyfriend were shot dead.

**Jeffrey Diegel:** We posted a \$2500 bond for the defendant. He failed to appear and the judge forfeited our bond. We had 45-60 days to return Mr. Diegel to jail. We did so within 2 weeks' time. The docket stated that Mr. Diegel was to serve 6 days in jail upon apprehension. My team still had not left the jail area and they witnessed Mr. Diegel leaving the jail- again, but this time it was because Pre-Trial Services and given him a summons so he was released. That was in October of 2017. He still has not shown up for court.

The personal risk for us who are liable goes beyond the scope of a greedy business persona. We work endlessly to help the defendant while allowing the victim their right to have cases heard in court.

So, ladies and gentlemen, we would love to work with you on how to better this system for both of us instead of working against each other.

Thank you.

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