



TO: House Criminal Justice Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
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DATE: January 23, 2018

RE: House Bill 439

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To Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze, and members of the House Criminal Justice Committee, we are Gary Daniels, chief lobbyist, and Caitlin Hill, policy counsel, for the American Civil Liberties Union of Ohio (“ACLU of Ohio”) and we appear to present interested party testimony on House Bill 439.

Reforming the widespread use of monetary bail is a much-needed and integral development that will help depopulate our packed jails and work towards a fairer criminal justice system. Unfortunately, our current system, including bail, works one way for those with financial means and quite differently for those Ohioans with fewer resources, especially in communities of color. In recognition of the numerous and unnecessary problems perpetuated by cash bail, counties and states across the country are undergoing reform.

House Bill 439 allows (without requiring) courts to impose non-monetary conditions upon the accused, rather than relying solely on financial payment for them to be released from jail before their criminal charges are resolved. HB 439 also requires courts to use a risk assessment system when developing those conditions and setting financial bonds for defendants accused of misdemeanors.

The ACLU of Ohio believes HB 439 is a meaningful start to bail reform. We also believe HB 439 should be improved in a variety of ways to increase fairness and efficiency. A number of those suggestions are fairly specific. We are preparing those in writing for the committee and bill sponsors and we will circulate that list as soon as possible. That said, here are some broader suggestions:

1) Eliminate monetary bail for misdemeanor charges and some felony ones

Knowing the numerous negative effects monetary bail has on Ohioans’ ability to keep their jobs, maintain custody of their children, and access health care – among other concerns – monetary bail should be eliminated for misdemeanor and some felony charges. By definition, a misdemeanor is not a serious offense.

Likewise, many felony offenses do not involve violence or danger to Ohioans. Many are fueled by drug addiction.

Monetary bail for these types of criminal charges simply do not make the public safer, and instead create a system where those with financial means are released while those without resources languish in jail.

It should be noted part of HB 439 actually takes Ohio in the opposite direction in this regard. Under current law and practice, courts hold hearings, upon the request of prosecutors or if the court wishes, to decide whether to deny bail to those charged with (almost all) first and second degree felonies. HB 439 inexplicably extends these “no bail” hearings to all felonies. We believe that extension should be removed.

2) Use of risk assessments

HB 439 relies extensively on risk assessment systems, with particular emphasis on the use of risk assessments in misdemeanor bail determinations. However, HB 439 also gives courts the ability to choose among an unknown number of risk assessment systems with the only criteria in the bill being they are authorized by the Criminal Sentencing Commission. The ACLU of Ohio is concerned the use of multiple systems may result in significant differences in how accused people are treated based on which tool is used.

In addition, under HB 439, courts and the Criminal Sentencing Commission are tasked with collecting and tabulating various information to monitor the effectiveness of HB 439’s changes. The use of a multitude of tools would make meaningful analysis and accountability difficult, given that risk assessment tools may vary greatly in the information they collect and produce and their overall effectiveness.

Furthermore, the bill does not require use of a risk assessment tool when setting bail in felony level cases. HB 439’s requirement that risk assessments be used in misdemeanor cases, while not providing the same requirement in felony level cases is short-sighted. Risk assessment tools are supposed to assess risk, thus providing judges an opportunity to deviate from rigid systems that tie financial bond amounts to offense levels. The problems present with a system heavily-dependent on cash bail exist in both misdemeanor and felony cases. If a person is deemed too dangerous or a flight risk, judges have the authority to respond as they see fit, no matter the level of offense.

These issues are worthy of attention now and obviously during the implementation phase of HB 439 and when further reviews are conducted to determine the effectiveness of this legislation and the role of risk assessment tools. The ACLU of Ohio will be closely following along and participating.

3) Collection of race-based data

As mentioned, HB 439 requires courts and the Criminal Sentencing Commission to compile and report various data on Ohio's bail system in general and to track the changes HB 439 makes. At least 19 different categories are mentioned in this bill, ranging from the name of the defendant to the risk assessment tool used.

Other categories should be collected and that is one of the matters we will provide further information on in writing. At the top is our suggestion that "race or perceived race" be included. The inescapable conclusion when examining our current bail system, much like our overall criminal justice system, is its disproportionate negative impact on people of color at all stages. There is also concern risk assessment systems may exhibit varying degrees of racial bias, tilted against people of color. Many jurisdictions that have implemented validated risk assessments regularly monitor racial data to ensure that disparities are not exacerbated, and will use the data to take proactive steps to address those issues.

By tracking race of the accused, stakeholders can help determine where in Ohio, and by how much, Ohio's bail system and the changes HB 439 creates, affects people of color. Flaws can also then be addressed and successes can be expanded. Collecting race data throughout Ohio's justice system is already severely lacking. With HB 439, we can make progress in one aspect.

In conclusion, Ohio, like many other places, has a bail system in need of reform. It should not be based on whether a person has enough money to be at home as opposed to locked up, away from their family, and in danger of losing their job and kids. Overall, HB 439 is an improvement, but implementing a risk assessment tool simply will not reform the system by itself.

As always, the ACLU of Ohio is available for further discussion and to provide additional information on bail reform and House Bill 439. Reforming bail in a meaningful and thoughtful way is one of the most important steps the General Assembly can take when comes to the overall criminal justice system.