Interested Party Testimony Regarding House Bill 439 Before the House Criminal Justice Committee

Tuesday, January 23, 2018

Judge Kenneth R. Spanagel, Parma Municipal Court

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee, I thank you for the opportunity to offer Interested Party testimony on behalf of House Bill 439, which proposes to reform Ohio's bail system to provide for greater fairness and equality in our criminal justice system. I first apologize that this testimony is being submitted without my presence in Columbus. I just learned of today's hearing Friday night, and unfortunately at this moment I have a Civil Trial which I could not continue, as both witnesses and parties were flying in from out of state. That does not diminish my interest in this bill, and I submit this testimony in hopes that you will read it, and if you have questions you may feel free to contact me.

I am now in my 31st year as a Judge of the Parma Municipal Court. I have been a member of the Criminal Sentencing Commission since 2005, and currently Chair its Sentencing and Criminal Justice Subcommittee. I was the Chairman of the Ad Hoc Committee on Bail, which Sara has referred to. I offer this testimony both on behalf of the Commission along with Sara, as well as my own information I wish to present to this committee, and the whole of the General Assembly to consider.

It would be a correct statement to say that our bail system is 230 years old, as it was first established in our U.S. Constitution. At the time, it was placed in the Constitution to protect citizens against what was then improper and illegal detention, during the colonial period. It was restated in Ohio's Constitution in 1803. It was then essentially unchanged until the Modern Courts Amendment of 1970, at which time the Supreme Court in its Criminal Rules set forth Criminal Rule 46, which is the rule regarding bail. It is this rule that sets forth both requirements and options that a court must determine in setting bail on a Defendant. It does include judicial discretion for personal or unsecured bonds, or monetary bonds, whether a specific amount in cash or sufficient sureties, or by depositing 10% of the bond amount in cash, which is returned to the Depositor at the conclusion of the case. That rule also sets forth certain considerations a Judge can consider in determining what the appropriate bail should be. There has been very little, if any change to Rule 46 of our bail rules since the 70s.

The report of the Sentencing Commission's Ad Hoc Committee on Bail sets forth many proposals for improvement of Ohio's bail system. The two most important aspects are the legislative changes, which is what HB 439 is. The other half of that is a revision of the Ohio Criminal Rules to also set forth modern considerations for bail, including the use of risk assessment tools to determine bail and the conditions of release. The Supreme Court has received our proposed rule changes, and it is subject to the rulemaking process of the Supreme Court, which we believe will be favorable in the time frames of those rules amendments.

The most important aspect of HB 439 is to statutorily set forth the availability of risk assessment tools as part of bail determinations. There are already Ohio courts using such tools, whether from other sources or

development in the local courts, which has enabled those courts to improve their bail determinations. There has already been presented to this Committee, and all of us have unfortunate stories of people detained where they should not be detained for minor offenses. These tools will help judges to make better and smarter decisions to release from pretrial custody defendants who do not need to be in custody. This is shown to result in direct savings to the local governmental agencies in their operational jail costs. These tools also can be used to identify the dangerous offender, so that appropriate bail can be set on those individuals as well.

From the perspective of a misdemeanor court Judge, such tools can be valuable, as many misdemeanor Defendants are charged with lesser crimes, and whose life status makes continued incarceration without conviction difficult. It should not be the job of the Judiciary to make innocence before being proven guilty a hardship, whether personal or financial. Upon the admission or establishment of guilt, the Court that has the ability to sentence; it should not be done by interfering with people's lives prior to conviction, where possible. Although Courts vary, HB 439 will assist Judges in making bail decisions for the good of both the people and Defendant.

From the felony perspective, it is at the Municipal or County Court that initial bail is set upon arraignment. It is that that early stage that determinations can be made with the appropriate tools to release people where possible, where they pose no risk of future crimes or violence to the community, especially when the offenses are fifth and fourth degree felonies, or nonviolent third-degree felonies. It is those Defendants that this proposal would most help. Many of these low-level felony Defendants are not immediate threats to the community; however, many of them have the inability to post a financial bail due to their life circumstances, but who would appear if placed on a nonmonetary bail, which can include conditions of release, which we do frequently.

It is also for these crimes that when the cases are bound over to the Common Pleas Court, the Common Pleas Court could then step in and review previous bail determinations where people remain in custody. Some of the greatest periods of time a Defendant spends in custody are from the bind over to the Common Pleas Court and further proceedings in those Courts. The work of the Pretrial Release Programs in Lucas and Summit Counties demonstrates that many people could and should be released on low-level felonies, as opposed to remaining in custody for extended periods of time. This bill will give additional tools to Common Pleas Courts to review both those Defendants said should be released, as well as review of bails of Defendants who perhaps should remain in custody.

I believe it was the late Reginald Wilkinson, who while serving as Director of the DRC and speaking in relation to prison populations that "there are bad people, and people that we are mad at." From the DRC perspective and people in prison, there is no question that there are bad people that need to be kept in prison, but to what extent should the state commit its resources for prisons for people we are mad at. The same is true for Pretrial Release. There is no question that there are bad people who should remain in custody, and our bail system is structured that although those persons are entitled to bail, it may be a bail they may not make, but is based upon the seriousness of the offense, the record of the offender, and the possibility of future violent acts. However, on both low-level felonies and misdemeanors, we may be mad at people, but to what extent should the state and local governments commit their resources to prolonged

Pretrial Detention of these Defendants we are mad at? To use another often used analogy, that we should not be soft on crime, but smart on crime, and as it relates to this Bill, it is not being soft on Pretrial Release, but smart on Pretrial Release, which benefits both Defendants and the State of Ohio. It is for the reasons that I have set forth that I ask both the Committee and the General Assembly to approve House Bill 439. Should any of you want or need additional information from me, please feel free to contact me. I thank the committee and its members for the time taken in reading this testimony.

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