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Proponent Testimony on House Joint Resolution 2
House Criminal Justice Committee
April 5, 2022

Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee – thank you for allowing me the opportunity to offer proponent testimony on House Joint Resolution 2. This joint resolution is an important and necessary step to ensure communities across the State of Ohio are protected from violent criminals.

The Ohio Supreme Court's decision in *DuBose* and the 2020 amendment to Criminal Rule 46, up-ended generations of criminal law practice in Ohio. Prior to the amendment of Criminal Rule 46, courts were permitted to impose *any* condition of bond necessary to ensure appearance of the accused or public safety. There was no finding that the old Criminal Rule 46 was unconstitutional; it was amended voluntarily. It should have never been done.

I have spent nearly my entire adult life working on behalf of victims of crime. Before I began at the Prosecutor's Office, I could have never imagined the toll that violent crime takes on people and communities impacted by it; I could have never imagined what it would feel like to hold the hands of grieving mothers who had lost their children to gun violence; I could have never imagined the fear of a young girl having to re-tell the story of being raped by a grown man; I could have never imagined the impact these experiences would have on me.

Fortunately for most members of this committee, you have not and probably will never have to experience those things. However, without those experiences, it is impossible to understand the horrifying consequences of violence in our communities. Without those experiences, discussions of violent offenders are purely academic. Without those experiences, it is easy to be convinced that the bad guys aren't that bad or that the risk of their release is over-stated. That sadly is not true.

The best people to make risk calculations relating to the danger a defendant poses are the judges with the informed experience to evaluate the defendants in front of them. Not the court of appeals, not the Supreme Court, and, with all due respect, not the state legislature.

You will hear from many people directly impacted by the *DuBose* decision. I have spent the last year calling attention to the consequences of violent offenders being out on low bonds. But I would like to take this opportunity to address with you the opposition we have heard over the past week to this amendment.

MYTH #1: Suspects languish in jail for years because they are poor.

Prosecutors are required to bring their cases to trial within 90 days if a defendant is locked up. If we do not do that, the case is dismissed. The only way a case survives to the 91st day or beyond is because the defendant has requested it be continued. Sometimes, these continuances are reasonable requests in order to adequately prepare their defense. However, many times, cases are continued at the defendant's requests for years as a strategic matter. The longer cases are continued, the weaker the State's case gets. Defense attorneys know this, prosecutors know this, and repeat offenders know this. With time, witnesses get lost, officers retire, and victims become disillusioned and uninterested. Many times, our victims simply cannot afford to continue to take off work, pay to park, find child care, and spend an entire day, hearing after hearing, at the courthouse; they have to make a judgment call between pursuing justice and paying their rent. This is a strategy that works and regularly results in dismissals or greater leverage for defendants in plea negotiations.

MYTH #2: "No-bond" motions under 2937.222 are sufficient to protect the public.

I've heard many critics this week imply that prosecutors refuse to file no-bond motions, or are too lazy to do their jobs correctly. But the truth is, pretrial detention under 2937.222 is grossly inadequate in what charges are eligible and the hearings required by statute in many cases run the risk of endangering the lives of witnesses and the integrity of investigations.

The only eligible offenses for pretrial detention under 2937.222 are felonies of the first or second degree, felony menacing by stalking, felony OVI. Notably missing from this statute: Intimidation of Witnesses, Domestic Violence, Violation of a Protection Order, Robbery (F3/4), Burglary (F3/4), Gross Sexual Imposition, Sexual Battery, Unlawful Sexual Conduct with a Minor, Aggravated Assault, Making Terroristic Threats, Aggravated Riot, Having Weapons Under Disability, Assault on Police Officer, Escape (F3), Fleeing and Eluding, and Gross Abuse of a Corpse.

Even for the charges that are eligible for pretrial detention, the risk to witnesses and investigations is real. The statute allows for defendants to call witnesses with no limiting instruction. Nothing seems to stop them from calling the victim or State's witnesses. This would create court-sanctioned harassment of victims and witnesses who are justifiably scared for their safety. To subject our witnesses – including young rape victims and witnesses of violent crime – to potential harassment and intimidation that early in the process, just to keep a violent offender locked up is unacceptable. No doubt, this would have a chilling effect on witness

cooperation and increase the already high percentage of cases that are dismissed for lack of witness cooperation.

At the early stage where bond is debated, investigations are still very active. In requiring the State to lay out its case in enough detail to achieve clear and convincing evidence, the potential exists that evidence still being pursued by law enforcement will be destroyed or confidential witnesses could be identified. Pretrial detention hearings also give the defense an unfair advantage, by giving defendants a preview of the trial.

Jahman Akins – a murder defendant in Hamilton County – has been sitting in jail for over a year. Each and every continuance was made at his request. The trial is scheduled to begin in May. And yet just a few weeks ago, Akins filed a motion to reduce bond, specifically citing the *DuBose* decision. This required my assistant prosecutors to file a "no-bond" motion. After a two day hearing, the judge ruled the defendant should be detained. I'm certain the defendant and his attorney knew we would win this motion. The evidence against Atkins is strong (including the victim's brain matter being found on the defendant's pants). But they were willing to lose that battle, in hopes of being in a better positons to win the war. Akins has a much better understanding of our trial strategy today than he did a month ago.

These are not far-fetched concerns. These concerns are grounded in our real-life experience, and exist in many if not most of our cases. The potential of abuse and gamesmanship built-in to the statutory structure of pretrial detention hearings make the filing of such motions unacceptable in many cases.

MYTH #3: HB 315/ SB 182 would address public safety concerns.

I am always willing to explore common-sense criminal justice reforms that make our system function better. However – and I'm sure many on this committee are well aware – I am strongly opposed to HB 315/SB 182.

In response to the announcement of HJR2, I have heard the proponents of this legislation argue that these bills are the better options because they expand pretrial detention-eligible offenses. They fail to mention that expansion is only to include felony domestic violence and felony protection order violations. Even with the addition of these offenses – as I discussed previously in my testimony – the statute would still be grossly under-inclusive of charges that may warrant detention. Beyond that, domestic violence and stalking victims are particularly vulnerable to the potential abuses of these hearings. Our domestic violence victims come to us terrorized already. Many times, it is all we can ask of our victims to be required to face their abuser once – at trial.

The expansion of 2937.222 is not enough. And the other issues created by this legislation make this option unacceptable. The reasons for my opposition to this bill are well-know and well-documented. I would refer members to the materials I provided last summer if you need to be

reminded why these bills would be bad for Ohio and would exacerbate crime rates that are already skyrocketing.

MYTH #4: Cash bail punishes poverty.

Cash bail does not punish poverty. Violent crime punishes poverty.

Crime skews towards our poorer neighborhoods. This is not a comment on the character of most people in these areas, but simply a discernable fact. The vast majority of people in our high-crime communities are just good people, doing the best they can, trying to raise their families. But allowing dangerous, violent criminals out on bond continues the cycles of poverty and violence and will never allow these communities to thrive.

Mothers should not have to fear their children playing in their front yard, or playing at the park, or walking to the school bus. But they do – and for good reason. I have seen countless young men turn from victim to defendant. And that is because trauma and PTSD, coupled with watching criminals get out of jail without consequence is a recipe for creating future criminals.

Our victims will never heal if their offenders are back on the street. Overtime, this changes the fabric of a neighborhood. We cannot expect these places to solve their problems if we are not supporting them by removing the cancer.

MYTH #5: This amendment would violate the 8th Amendment of the US Constitution.

I hesitate to address this argument – because it is such nonsense. But this issue is too serious to leave any room for doubt.

As I stated previously, until 2020, Criminal Rule 46 specifically permitted public safety to be considered when determining bail. This rule was not changed because it was ruled unconstitutional.

HJR2 only allows judges to consider public safety when setting bond. It does not require a specific dollar amount or encourage anyone to set excessive bail.

MYTH #6: *DuBose* does not stop judges from considering public safety.

This may be the most astounding of all of the arguments because it is so obviously untrue. Yet, I have heard activists argue that *DuBose* does not stop a judge from considering public safety. The only conclusion I can come to is that these people did not read *DuBose*; otherwise they are purposefully misleading people.

Paragraph 24 from the *DuBose* decision: *"As the revised rule makes clear, public safety is not a consideration with respect to the financial conditions of bail... under Crim. R. 46(B)(2), public safety concerns may be addressed by imposing nonfinancial conditions, such as restrictions on travel and association, completion of alcohol and drug-abuse treatment, and orders of no contact with witnesses in the case."*

The idea that public safety is adequately protected by Electronic Monitoring Units and court orders on travel restrictions is absurd and not based in reality.

MYTH #7: This amendment will cause low-level, non-violent offenders to be held unnecessarily.

It's important to note here that, at least in Hamilton County, when we argue for a high bond because of a public safety concern, we are not talking about most cases. We aren't even talking about most felonies. My prosecutors do not ask for bonds on low-level, non-violent offenders who do not have a history of failing to appear. And you will not find an offender like that sitting in the Hamilton County Justice Center.

I have spent my career working divert non-violent people away from the criminal justice system. My office has helped to create dozens of diversionary programs to help identify and resolve causes of low-level criminality. There is simply no moral or justifiable reason to create criminals out of struggling people who just need some help.

However, to pretend as though individuals who shoot people or stick guns in people's faces and threaten their lives, "just need a little help" is nonsense. We do not eradicate violent crime by just acting as though it isn't that bad.

MYTH #8: Defendants don't re-offend while out on bail.

Nation-wide, organizations like The Bail Project are crowd-sourcing funds to bail people out of jail. On their promotional materials, they like to tell their donors that they have a 95% success rate. But a recent story by Channel 12 in Cincinnati exposed The Bail Project.

Channel 12 obtained the records for everyone The Bail Project had posted bond for in Hamilton County. And despite what they tell their donors, more than 30% of their clients had reoffended or absconded after being released.

Last summer, The Bail Project posted bail on an individual named Donique Philpot who had Weapons Under Disability and felony Domestic Violence charges pending. Despite multiple violations of his electronic monitoring unit, Philpot was permitted to remain in the community. That is until he shot two people, at point blank range, in a park.

We are not just cherry-picking random cases. Headlines from across the country show that this is a trend. Because the bottom line is, violent people will continue to perpetrate violence until they are stopped.