

Judge Megan E. Shanahan
Hamilton County Common Pleas Court
Interested Party 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. My name is Megan Shanahan, and I am a Hamilton County Common Pleas Court Judge. I've been involved in the criminal justice system for more than two decades.

Thank you for the opportunity to provide interested party testimony on House Joint Resolution 2, which seeks to amend Section 9 of Article I of the Ohio Constitution. This amendment would eliminate the current requirement that the amount and conditions of bail be established pursuant to Section 5(b) of Article IV. Instead, the Constitution as amended would allow judges like me to use factors such as public safety, a defendant's criminal record, the likelihood the defendant will return to court, and the seriousness of the offense in setting bail.

Let me be clear: eliminating public safety concerns from bail considerations is not only bad policy — it's wrong. Dead wrong.

To be blunt, let me quote Ohio Supreme Court Justice Patrick DeWine's dissent in the *Dubose* case, "Make no mistake: what the majority does today will make Ohio communities less safe." Justice DeWine was right. The General Assembly has an opportunity to right this wrong.

Among my duties as a Common Pleas Judge is the setting of bail on criminal defendants. The measure you're considering will give courts the appropriate and necessary discretion to set bail at an amount that keeps vulnerable people safe, secures the defendant's appearance at trial, and promotes public confidence in the justice system.

Justice cannot be served by a judge whose hands are tied. Voters elected us to use our discretion and, under current law, that's difficult to do — especially when we believe releasing a defendant would likely result in danger to others. We bring careful and deliberate consideration of each individual case.

In Hamilton County, we have tremendous tools to help us make this important decision. Our pretrial services division provides us with thoroughly vetted and scientifically based information. This program is readily available to be duplicated across the state of Ohio if any other county sees fit.

Here's just one example. We review the Ohio Risk Assessment System score, commonly known as the ORAS score. This is a dynamic risk and needs assessment system used to assess adult individuals at various decision points across the criminal justice system. The score includes factors such as the age of the defendant at the time of their first arrest, any prior failures to appear on completed cases that occurred in the two years prior to the case currently before the judge, whether the defendant has previously been incarcerated, whether the defendant was employed at the time of arrest, residential stability, drug use in the previous six months and whether the defendant suffers from severe drug addiction. The analysis also includes a prediction of whether the defendant will fail-to-appear and whether he or she is at risk of committing a new offense. That's a large amount of data points.

Our staff works to verify all information prior to the ORAS report being completed. These factors weigh heavily in setting bail -- as they should -- since it's a proven predictor of a defendant's likelihood of violating pretrial bail conditions. These factors allow us to put the safety of victims, witnesses, and the community into the bail decision. But the state constitution doesn't protect our ability to do this.

The judge setting bail is provided with the facts of the case and an overview of the evidence by the prosecution. Yet the current law, which fails to require judges to consider public safety in the bail equation, is illogical and downright dangerous.

When it comes to bail, there's a lot of misinformation in the media and on the internet. Some people suggest that judges should avoid requiring financial bail and simply impose bail conditions that would require the defendant to do certain things or refrain from certain activity. The notion that a defendant who is a clear danger to the community at large will obediently go along with a court's stay-away orders, home incarceration, electronic monitoring, or other nonfinancial conditions of bail is naïve. And it's a grave misjudgment of the risk.

There's no one better to make the decision about bail than an unbiased, well-informed judge who has been armed with evidence-based tools and information along with facts and arguments provided by both prosecutors and defense counsel. But the community the judge serves needs to have the confidence that someone who just wildly shot up a neighborhood, was caught on video doing it, and has a history of violently re-offending can be made to stay in jail until trial. Public safety is as important a factor as any of the other factors.

I have another important concern: *de novo* appellate review of trial court's bail. *De novo* – that's a Latin term for, essentially, a complete do-over from scratch. If some rule required another committee to hear all the testimony that you're hearing today, that would be a *de novo* legislative hearing. I'm not sure what the Latin words are for "a complete waste of time," but that's what it would be.

In the case of double hearings for bail, judicial economy will be obliterated if every bail setting can be taken to the appellate court for a new hearing. Our courts are already clogged with cases and mandated duplication of effort will only slow things down further.

I find it difficult to fathom that either the Constitution of the State of Ohio or the legislature intended this result. Certainly, the people who elected me don't want to see it. Each court has its function. Each level was created to serve its respective function. To allow each bail setting to be reviewed *de novo* by the appellate courts blurs the boundaries between the two courts and will bring the criminal justice system to a screeching halt while cases are reviewed for bail. Justice cannot and will not be served in this manner.

The safety of crime victims, witnesses, and the public at-large needs to be recognized in bail policy. This amendment gives them that recognition.

Thank you for the opportunity to provide interested party testimony. I would be happy to answer questions.