Ohio Prosecuting Attorneys Association

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House Bill 315 - Opponent Testimony

Chairman LaRe, Vice-Chair White, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to testify as an opponent of House Bill 315 on behalf of the Ohio Prosecuting Attorneys Association. My name is Jason Holdren and I am the Gallia County Prosecuting Attorney. Our Association appreciates the efforts that have been made by the advocates of this bill to improve it and in particular efforts to address concerns related to public safety. That said, the bill still falls short of promoting public safety and protecting victims, witnesses, our communities, and the criminal justice process.

Funding

The LSC Fiscal Note on HB 315 says that "Common pleas, municipal, and county courts generally will incur significant annual costs related to hearing timelines, hearing reminder notifications, pretrial supervision, and generally to comply with the provisions of the bill. These costs include the potential need to hire additional staff and to purchase technology" and that "Local prosecutors' offices may incur additional administrative and staffing expenses to be available for hearings on additional days outside of current practice."

Both the Ohio Criminal Sentencing Commission Ad Hoc Committee on Bail and Pretrial Services and the Ohio Supreme Court Task Force to Examine the Ohio Bail System recognized that funding was critical to the safe and effective implementation of changes to Ohio's bail system. The Ad Hoc Committee stated that "The General Assembly should dedicate statewide funding and support to the pretrial function."[1] The Supreme Court Task Force stated that "The Task Force recommends that the General Assembly provide adequate funding to assist courts in providing pretrial services."[2] The Task Force specifically recognized "the difficulty local courts may have in affording pretrial services, especially those that already are struggling with low staffing levels and scarce resources." The same goes for prosecutors offices.

House Bill 315 has no funding to ensure that courts and prosecutors will be able to meet the demands of the bill. Proponents of the bill have been unable to provide an assessment of what it will cost, instead making claims that bail reform will save hundreds of millions of dollars a year. Until House Bill 315 provides funding, it cannot be implemented safely or effectively and will be a risk to the public, to communities, and to the criminal justice process.

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[1] https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/commReports/bailPretrialSvcs.pdf
[2] https://www.supremecourt.ohio.gov/Publications/bailSys/report.pdf

Public Safety

While we appreciate the expansion in the bill of pretrial detention it is important to understand that detention should be viewed only as an additional option to judicial discretion to set the amount of bail. It does not, by itself, promote the public safety because it still puts victims, witnesses, our communities, and the criminal justice process at heightened risk.

The Ohio Constitution provides that "All persons shall be bailable…except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community." This is important in three respects.

First, there is no way around the fact that the pretrial detention statute allows a defendant to call and cross-examine witnesses, and could still require the prosecutor to call witnesses to meet their burden. This places victims and witnesses in the position early on of having to face the person who committed the act. It could lead to harassment of victims and witnesses who are scared for their safety and who could be less likely to cooperate. This will put investigations and prosecutions at risk.

Second, HB 315 simply does not cover every situation where a person charged with a felony might be dangerous. The bill wouldn't allow for the detention of someone caught selling an F3 amount of fentanyl, engaging in F3 sexual battery, engaging in F3/F4 unlawful transaction in weapons, or F4/F5 illegal conveyance of a weapon in a school zone – just to name a few. Dangerous is dangerous and prosecutors should be given the opportunity to argue, for any felony, that the person poses a substantial risk of serious physical harm to some person or to the community with the judge as the gatekeeper.

Third, HB 315 disallows consideration of risk of serious physical harm to the community, replacing it with risk of serious physical harm to any person "or organization." In proponent testimony on HB 315 given on April 6 of this year, the Buckeye Institute stated in relation to the expansion of pretrial detention that the "additions acknowledge the grave threat that those accused of such crimes often pose to the general public" and that the reforms "give judges broader, simpler tools, aimed squarely at reducing the risk that some accused offenders present to our neighborhoods and communities." This isn't reflected in the bill. Consideration of the risk a person presents to the communities must be restored or the bill cannot possibly promote the public's safety.

The inclusion of a "clear and convincing" evidence standard for a court to order non-financial conditions, like a condition to stay away from the victim or to not commit any new crimes, at a conditions of release hearing makes no sense. The court should be allowed to impose non-financial conditions of release in its own discretion. Setting a higher bar than that is dangerous to victims, to witnesses, and to the community.

Impractical and Unnecessary

The bill is impractical in that it relies on an ability to pay inquiry to disclose income and expenses from people, like drug dealers and thieves, whose income may be derived from a life of crime.

Under HB 315 courts will be required to release many of these offenders on their own recognizance or on some miniscule bond amount.

House Bill 315 is also unnecessary. Under Criminal Rule 46 courts are already required to release defendants on the least restrictive conditions and on the least costly financial conditions. Across the state, most people accused of a crime are already released on their own recognizance or with some non-financial conditions. But without tying the judge's hands in the way HB 315 would. Criminal Rule 46(B) provides:

> **(B) Pretrial release.** Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders financial conditions of release, those financial conditions shall be related to the defendant's risk of non-appearance, the seriousness of the offense, and the previous criminal record of the defendant. Any financial conditions shall be in an amount and type which are least costly to the defendant while also sufficient to reasonably assure the defendant's future appearance in court.

What courts can no longer do after DuBose is consider public safety related concerns like the seriousness of the offense and the previous criminal record of the defendant, even though the Rule explicitly says those factors shall be considered when ordering financial conditions of release.

Proponents of HB 315 are quick to say that this is not the disastrous bail reform that we have seen in some places like New York and Chicago. Without significant funding and significant revisions to address the problems above, HB 315 will be disastrous too. To understand what that might look like, in Chicago one study found that after more generous release procedures were put in place (1) the number of released defendants charged with committing new crimes increased by 45%, (2) the number of pretrial releasees charged with committing new violent crimes increased by an estimated 33%, and (3) that there was good reason to believe that the figures on violent crimes committed by releasees actually undercounted what really happened after reform.[3] In Houston, a study found that (1) the number of defendants who reoffended within a year rose 95% and that the number who reoffended within 90 days rose 139%, (2) that the overall bond failure rate increased by 50%, and (3) that every violent crime in Houston showed an increase in monthly offenses within 1 – 5 months of their bail reform.[4]

For these reasons, House Bill 315 should not be adopted. It puts victims, witnesses, our communities, and the criminal justice process at greater risk. A vote for HB 315 is vote against community safety and vote against law enforcement. We urge its defeat.

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[3] Cassell, Paul and Fowles, Richard, "Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois" (2020). https://dc.law.utah.edu/scholarship/194.
[4] https://app.dao.hctx.net/hcdao-bail-crime-public-safety-report-090221-0.