AMERICAN BAIL COALITION

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Ohio House Bill 315: OPPOSE

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Written Testimony of:

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Dear Chair LaRe, Vice-Chair White, and Members of the Ohio House Criminal Justice Committee:

On behalf of the American Bail Coalition, we must respectfully oppose House Bill 315. The proponents of this legislation, and the moving target endpoint to which it may arrive, does indeed represent a fundamental change in bail in Ohio that would over-write a beautiful history of common law and the right to bail that pre-dates statehood, and which is a quite simple system that has yet to cost the taxpayer a cent.

I. Summary

Much of the common law in Ohio formed the basis for the common law in the American West, where states like Washington State and others would look to the decisions of the Ohio Supreme Court as wise and capturing the essence of what it means to be a right to bail state.

While the legislation as introduced was essentially the New York system of release and restricting judicial discretion to impose bail, the proponents are now proposing a massive expansion of preventative detention, a system of denying bail altogether or releasing people on a mountain of non-monetary conditions. I will address why that is an evil system that is not a better alternative from any perspective, but particularly from a civil rights and fiscal perspective.[1]

Indeed, this change is so fundamental, that only one state has attempted it, New Jersey, and there's no reason as I detail below to believe that model better "protects public safety" at the price tag (several hundred million dollars to start) that no one wants to hit you with, in a time when government-spending driven inflation is hurting everyone. New Jersey, of course, like Ohio, I believe, required a constitutional change to eliminate bail by sufficient sureties in order to make it easier to get preventative detention in more cases, and would require hundreds of millions of dollars in state and local government spending that would require, like in New Jersey, three years to implement. Keep in mind, this will mean $0 bail for nearly all misdemeanor crimes in Ohio—no one will be held in jail pending trial on a misdemeanor in

[1] *See Detention, Release From Jail, and Computerized Bail Justice in California: Is it 1984 All Over Again? What Can California Learn From the Last 30 Years of Bail Reform?* (https://escholarship.org/uc/item/6p31t6hv)

Ohio no matter how severe, whether they never show up for court, or no matter how many times they do it. Period.

I would also point out this change is simply one more assault on the right to bail that promises hope, but when the fundamentals of the new system are fully understood, this is nothing more than a pivot away from the failed solutions proposed by many of the same proponent groups, including Arnold Ventures (formally the Arnold Foundation), who pitched for the better part of nearly a decade that their "money-balling" criminal justice methodology of pretrial risk assessment computer algorithms could replace bail and would be the new panacea. Of course, one representative on this committee sponsored legislation in 2011 which created a comprehensive program of risk assessment in Ohio, the so-called ORAS, with all phases of it in all aspects of the criminal justice system to be approved in regulation by the Ohio Department of Rehabilitation and Correction.

Here we are eleven years later, and the risk assessment has done nothing to reduce pretrial incarceration, incarceration in general, reduce racial disparities, save jail bed dollars, or make the system "safer" or "fairer." Nothing. In fact, some argue it has made the system worse.

It is the same hollow hope promised today in H.B. 315, this "new" system of release and preventative detention will cure all ills, fix all civil rights issues, reduce racial disparities, and save us money. We have thus seen this movie before. While it is indeed beyond trite to quote Upton Sinclair and posit that because bail agents are compensated for their time they could never be objective, it would be appropriate in light thereof to point out that the proponents of this legislation are themselves rent-seeking, as paid issue advocates, so that billionaires can continue to obtain tax breaks by pitching blissful solutions grounded not in reality but instead clothed in political or class-based rhetoric.

Instead, this system of preventative detention to the contrary is a lesson in recent American history that we have already learned is more costly to civil rights than a system of so-called "wealth-based detention," and as Justice Thurgood Marshall wrote such system is "consistent with the usages of tyranny and the excesses of what bitter experience teaches us to call the police state."[2]

If Ohio is going to make such monumental changes, it seems to me that when the "data-driven," billionaire-funded, organization proponents of this legislation concede there is no data to back any of it up, it may be worth a study to identify the particular problems we are looking to solve. For example, **Professor Alex Tabarrok found that in New York State the average defendant who did not post bail was twice as dangerous to the public as those who posted bail having twice as many arrests, twice as many convictions, and had on average 6 previous felony arrests and 4 previous failures to appear than those who posted bail.**[3] Thus, the idea that the jails are full of innocent people is not quite the case, especially since the presumption of innocence in the present case does not wipe away prior bad

[2] *United States v. Salerno*, 481 U.S. 739, 755 (1987)(Marshall, J., dissenting)
[3] https://www.youtube.com/watch?v=QbfGxvphI5A&t=4s

conduct, which judges are specifically required to take into account in terms of the constitutional mandate to set a bail that is of sufficient sureties and otherwise not excessive.[4]

Instead, **this legislation takes a sledgehammer to Ohio's bail tradition** under the rubric of it does not protect public safety and it trammels the liberty of the poor who are there solely because they are poor and not because they are a danger to the community or a risk of failing to appear in court or say *because they already have ten prior strikes against them and are twice as dangerous as those who post bail.* Further, **no one can present evidence that a system of conditions and preventative detention delivers up better results at a better cost to taxpayers, reduces racial disparities in the justice system, and results in actual savings, not a nickel of which materialized in New Jersey and was therefore never "reinvested."** That is pie in the sky thinking, with all due respect.

The crucial policy decisions in this legislation are nothing short of monumental, and not a mere simple fix to the indigency bail issue, which based on the work of federal and state courts over a half decade has become a due process issue not one of substantive rights. As said the ACLU last week, this legislation would end "wealth-based" pretrial incarceration, which in effect ends the system of bail by *sufficient sureties* enshrined in Ohio's constitution since the days of settlement of Ohio, which are detailed quite extensively in David McCullough's *The Pioneers: The Heroic Story of the Settlers Who Brought the American Ideal West.*

This legislation is an end run around bail by sufficient sureties, and an unconstitutional one that would require a constitutional change like in New Jersey to go to the no money bail system, but certainly regardless of legal issues, this is system is certainly not a desired one from a policy perspective. The end result, is to eliminate a system of bail by sufficient sureties that was codified in the Northwest Ordinance of 1787 which governed Ohio pre-statehood and allowed for settlement in Ohio, and of course that language that was maintained in the Ohio Constitution of 1803.[5] That language also appeared in the Judiciary Act of 1789, until it was deleted in 1984 as part of the Federal Bail Reform Act of 1984, which the Supreme Court upheld in *U.S. v. Salerno* in 1987.

The sufficient sureties clause of course was removed in favor of the system of preventative detention as part of the federal Bail Reform Act of 1984, a system that has tripled pretrial detention (24% detained in 1983, to 75% detained today) with no evidence that doing so has made us "safer." The legislation was passed despite objections of the learned Professor Daniel Freed, one of the original architects of preventative detention in the D.C. system, who feared it would go too far and had in fact already gone too far.[6]

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[4] We also note that the *DuBose* decision by the Ohio Supreme Court puts Ohio along with New York as the only two states where public safety cannot be considered for purposes of setting a bail. Contrast that with California, for example, where the constitution specifically requires that public safety is the primary consideration, a provision the California Supreme Court recently upheld despite a similar challenge as lodged in *DuBose*.

[5] "That all persons shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident or the presumption is great; and the privilege of the writ of habeas corpus shall not be suspended, unless when the case of rebellion or invasion, the public safety may require it." Ohio Constitution (1803), Section 12.

[6] In addition, this author sat on a panel at the Heritage Foundation a few years ago when the former Attorney General all but conceded this federal model of pretrial detention had gone far beyond what was ever intended.

Joining the opposition to the Bail Reform Act of 1984 were the Professional Bail Agents of the United States, and the American Civil Liberties Union,[7] a group who apparently today is now for a massive expansion of preventative detention. The ACLU explained to Congress why it opposed the bail reform act, some five years later:

> The Bail Reform Act of 1984 ("the Act") was designed to remedy a number of problems with its predecessor, the Bail Reform Act of 1966. In particular, the 1966 Act did not allow judges to order pretrial detention to protect the safety of the community. Nonetheless, judges imposed de facto preventative detention by setting excessively high bail. A central goal of the 1984 Act was to eliminate this practice; to this end, §3142(c) specifies that a judge "may not impose a financial condition that results in pretrial detention."[8] For the first time, Congress authorized pretrial detention of those defendants found to pose a danger to the community.
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> The ACLU opposed the passage of the Act in 1984 for a number of reasons:
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> 1. it stood the presumption of innocence on its head;
> 2. there was no evidence that adequate techniques existed to accurately predict who was dangerous;
> 3. there was no evidence that pretrial incarceration actually curbed crime;
> 4. the definition of dangerous crimes was overbroad;
> 5. detention hearings did not provide adequate safeguards to protect the rights of the accused; and,
> 6. the "rebuttable presumption" penalized conduct that had already been punished or punished without the benefit of trial.
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> Unfortunately, our subsequent experience with the Act has only increased our earlier concerns. It is not clear that the Act has remedied the problems of excessively high bail, one of its primary purposes. What is clear, however, is that the Act as eroded the presumption of innocence, one of the most basic principles of our criminal justice system.[9]

Yet, today, the ACLU of Ohio is for the very policies that a generation ago were so abhorrent to our system of justice as to be outrageous. Today, the ACLU of Ohio has turned this previous outrage into a

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[7] *See* Testimony of John A. Powell before congress, July 15, 1989, (https://books.google.com/books?id=e2q45VqAwIQC&pg=PA252&lpg=PA252&dq=ACLU+statement+bail+reform+act+of+1984&source=bl&ots=t3_16r9Ya9&sig=ACfU3U1BexaSa9x286ZH1666YOCMeeGW3g&hl=en&sa=X&ved=2ahUKEwjEhp7K7_X3AhW4IjQIHZL4BCc4FBDoAXoECBEQAw#v=onepage&q=ACLU%20statement%20bail%20reform%20act%20of%201984&f=false)

[8] In effect, the provision in House Bill 315 that requires a bail someone can afford, thus mandates release and is essence the codificiation of this provision in Ohio. The bill also redefines bail as a condition "of" release and not a the requirement of a third-party surety as a condition precedent required in order to be released.

[9] *Id.*

new policy solution. They preferred the system of "cash bail" in 1984 to the evils of preventative detention, and today, the political winds blowing in a different direction, they are able to convince themselves that preventative detention will now work, despite the fact that the only tool to predict riskiness itself failed. How they are able to do so is beyond this author.

Professor Daniel Freed asked in testimony before congress in the years that lead to the passage of the Bail Reform Act of 1984 a simple question that I now pose to you: **what did you know now that the drafters** of the Northwest Ordinance, the federal constitution and bill of rights, the Judiciary Act of 1789, and the various state constitutional provisions of bail by sufficient sureties, including Ohio, **didn't know then**?

The personal surety system is what the bail system in Ohio is called, we should be clear about that. Falsely labeling it the "cash bail system" is a political tactic, for even the Ohio Supreme Court has held that requiring the posting of only cash would violate the right to a personal surety codified in the Ohio Constitution and well understood since the days of 1787, a decision many other state supreme courts have joined.[10] In addition, the Supreme Court in *Leary v. United States*, in a decision written by Justice Oliver Wendell Holmes, noted that the distinction between a compensated and uncompensated personal surety had been "nearly effaced" and called the distinction "mundium" and specifically held that the common law does not prohibit compensated sureties from acting as personal sureties.[11] Bail is thus a core associational right as well, the right of third-party sureties to put up for someone, and the right to release *not on an electronic ball and chain*, but free to get one's affair in order to defend oneself against the charges and prepare for the possibility of a term of incarceration.

Bail agents are an extension of the right to bail by sufficient sureties, serving as the personal surety, a right that is one of both the People who file the charges, who seek sufficient sureties in order for a release to occur, and the defendants who seek to be released without state interference or by being supervised by the very state or local government that seeks to prosecute and incarcerate them.

As it turns out, the ACLU, Judge Amalia Kearse,[12] and Justice Thurgood Marshall, in my favorite dissent of all time, a dissent I first read in 1989, **much preferred a system of "cash bail" and "wealth-based incarceration" despite all of the alleged evils of which they very well informed**, over a system of

[10] *Smith v. Leis*, 106 Ohio St.3d 309,2005–Ohio–5125, 835 N.E.2d 5, 18 (2005) (holding an all-cash bail violated Ohio's sufficient sureties clause).

[11] *Leary v. United States*, 224 U.S. 567 (1912).

[12] Judge Amalia Kearse was the first African-American female jurist elevated to a federal court of appeals, and declared the Federal Bail Reform Act of 1984 unconstitutional in a majority opinion in 1986, later overturned by the U.S. Supreme Court in 1987. *See United States v. Salerno*, 794 F.2d 64, 72 (2d Cir. 1986)(" The system of criminal justice contemplated by the Due Process Clause — indeed, by all of the criminal justice guarantees of the Bill of Rights — is a system of announcing in statutes of adequate clarity what conduct is prohibited and then invoking the penalties of the law against those who have committed crimes. *The liberty protected under that system is premised on the accountability of free men and women for what they have done, not for what they may do. The Due Process Clause reflects the constitutional imperative that incarceration to protect society from criminals may be accomplished only as punishment of those convicted for past crimes and not as regulation of those feared likely to commit future crimes*").

preventative detention and release on conditions. In other words, they sought not to further legitimize expanded pretrial detention by creating a front door for what is supposedly an illegal and unconstitutional backdoor, if one is to believe the concept of *sub rosa* detention (what happens when bail is set by sufficient sureties but is not posted). If we truly seek to protect the presumption of innocence, we will not fall victim to such thinking, shelf this legislation, work within the existing framework of bail to protect the indigent and follow the Fourth Generation of Bail Reform,[13] and take the words of Justice Marshall to heart:

> "It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people." *United States v. Rabinowitz*, 339 U. S. 56, 339 U. S. 69 (1950) (Frankfurter, J., dissenting). Honoring the presumption of innocence is often difficult; sometimes we must pay substantial social costs as a result of our commitment to the values we espouse. **But at the end of the day, the presumption of innocence protects the innocent; the shortcuts we take with those whom we believe to be guilty injure only those wrongfully accused and, ultimately, ourselves.**
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> Throughout the world today there are men, women, and children interned indefinitely, awaiting trials which may never come or which may be a mockery of the word, because their governments believe them to be "dangerous." Our Constitution, whose construction began two centuries ago, can shelter us forever from the evils of such unchecked power. Over 200 years it has slowly, through our efforts, grown more durable, more expansive, and more just. But it cannot protect us if we lack the courage, and the self-restraint, to protect ourselves. Today a majority of the Court applies itself to an ominous exercise in demolition. **Theirs is truly a decision which will go forth without authority, and come back without respect.**[14]

And indeed, *it did*.

Please, have the self-restraint to know that at a minimum these are monumental decisions, and to have a moving target bill with thirty amendments on the table going to an unknown destination that will dramatically expand preventative detention based on deal making to dial off opposition rather than actual data is not something that should be taken lightly. We would argue, it should not be done at all. Ohio is a right to bail state—and we think it should stay that way. There are plenty of ways to deal with the indigent parties in the bail system—an issue the state and their judiciary has had to deal with since 1803.

At the end of the day, there is no evidence that the alternative system being proposed will better protect public safety, reduce racial disparities, save money, or achieve any of the goals it purports to achieve. Since 1787 Ohio has operated under a personal surety system that requires all persons by bailable by sufficient sureties. To answer Professor Freed's question, there is *nothing we have learned*

[13] https://ambailcoalition.org/download/17/4th-generation-of-bail-reform/801/the-4th-generation-of-bail-reform.pdf

[14] *Salerno*, 481 U.S. 739, 767 (1987)(Marshall, J., dissenting)(emphasis added).

since 1787 that would counsel toward departing from such a system, despite all of the criticisms. The alternative is simply worse, and the evidence is quite clear on that point.

II. Specific Analysis of the Legislation[15]

A. The legislation requires release of all misdemeanors, this will turn Ohio into the New York and Houston Bail Systems by decreasing accountability and emboldening recidivist crime at the misdemeanor level (starting on line 4527)

That the New York system of bail reform failed is not at all in doubt. That this legislation as introduced, without the preventative detention amendments, was the New York system to the extreme is also not in doubt. Even with the preventative detention amendments, misdemeanors are not detainable pursuant to the Ohio Constitution.

The New York legislature first rolled back bail reform four months after it being in existence in the year 2020, and then rolled it almost completely back a second time in April, 2022 by permitting judges to set bail in more crimes and in circumstances in nearly all crimes. The problem with the system was recidivism. The idea that a person can commit the same crime ten times and be released over and over because that crime may be labeled as "low-risk" is absurd. After multiple arrests, you are actually then dealing with a high-risk offender. Offenders then know which crimes they will get an automatic release, and it emboldens them.

Which brings me to a key point—**the crime charged by the prosecution is little indicia of riskiness, that is to commit a new crime or failure to appear in court.** In fact, misdemeanors, in general, are at higher risk to fail to appear or commit a new crime. Nonetheless, uncontroverted research for a generation stands for the proposition that basing bail or conditions of released based on the crime charged, or restricting judicial discretion based thereon, is not evidence-based or supported by any much less a rational basis. Circumstances, largely prior criminality and failing to appear in court, are largely determinative. We see many of those in the court rule and statutory provisions around the country as appropriate factors to consider.

To require released on an "unsecured bond," as this legislation does, a promise to pay a forfeiture when you don't show up to court, of all misdemeanor and many felony cases is simply going to embolden that behavior.[16] Also, it seems clear from *Salerno* that the Supreme Court would not uphold a regime of preventative detention for misdemeanor cases even if the state constitution allowed it, and thus a right to a release on an affordable bail will occur in *all misdemeanor* crimes in Ohio. No one will remain in jail pending trial regardless of criminal record, prior failures to appear, number of misdemeanor charges per criminal event, or within the discretion of the judge.

[15] This analysis applies specifically to the substitute bill, coded **I_134_1369-2.**

[16] https://bjs.ojp.gov/content/pub/pdf/prfdsc.pdf (unsecured bonds have a higher fugitive rate and higher failure to appear rate than release on own recognizance, while having a similar new crime rate—in other words, such bonds have no incentives and since defendants will learn they are never collected, they are a meaningless incentive)

Importantly, this is contrary to the sufficient sureties clause, which confers on the People the right to ask for sufficient sureties in all criminal cases. The legislature is going to deny that right by legislative edict in all misdemeanor cases even if a defendant tells a judge under oath that they are not going to appear ever and intend to commit the same crime tomorrow. Instead, the constitution presumes the exercise of judicial discretion and prosecutorial discretion, in particular by elected officials. This is an unconstitutional infringement of core judicial power pursuant to the sufficient sureties clause. Another reason why New Jersey required a constitutional change to go to the so-called no money bail system that is free of so-called "wealth-based detention," an activist label for you don't make bond, which typically is almost always posted by a third-party, and is thus more clearly understood as a test of ones ties to the community more than it is about poor or rich.

Of course, on the merits, pretrial crime increased according to the current and previous New York City Police Commissioners as a result of bail reform. That is beyond dispute. Data from the Mayor's office of criminal justice: "The data show that supervised release had the highest rate of re-arrest of any of the categories — 41%, compared to 20% for those released on their own recognizance and 19% for those who posted bail. This applies to defendants initially arrested for both misdemeanors and felonies."[17] Supervised release were also the class of persons that would have otherwise posted bail but didn't as a result of bail reform. Thus, the data showed that persons of similar risk who were released on bail had more than double the rate of new crimes while on bail as those on a surety bond.

Other testifiers will speak to the Harris County, Texas example of misdemeanor bail reform, but a 76% failure to appear rate coupled with a 72% court dismissal rate (that was a 26% dismissal rate prior to bail reform) caused by court backlogs, is all the proof you need that such a system of misdemeanor bail reform will not work.[18]

Well, they are just misdemeanors! Nothing serious to worry about. Well, they are driving while intoxicated. They are domestic violence offenses. They are organized retail thefts. They are fentanyl involved persons. They are human traffickers. They are small time organized criminals. They just happen to be charged with what we call a "low-level" crime using a methodology that as we have clearly seen (based on the charge alone) is not evidence-based or grounded in any rational basis.

Of course, the public in New York didn't buy it either, and neither did the last two Governors. Polls showed that 64% of New Yorkers thought bail reform increased crime.[19]

I do want to correct some inaccurate and misleading testimony presented by the proponents regarding trends in such bail reforms in the states. They suggested that Utah and Texas embraced bail reform legislation. In fact, Utah passed bail reform in the 2020 legislative session, which became effective October 1, 2020, and **the Utah legislature acted in January of 2021 to completely repeal the**

[17] https://www.thecity.nyc/2022/1/9/22875181/bail-reform-release-program-participants-rearrested
[18] https://ambailcoalition.org/bail-reform-in-houston-a-half-decade-of-bail-reform-malfeasance-comes-to-full-fruition%EF%BF%BC/
[19] https://nypost.com/2022/03/28/no-cash-bail-law-a-bust-ny-voters-demand-changes-poll/

bail reform law, which it did during the 2021 general session, and which legislation was signed by Governor Spencer Cox. That repealed reform is very similar to HB 315, and the repeal was championed by the Utah Sheriffs' Association.

Further, not only **has the Texas legislature rejected a constitutional amendment and move to the system of preventative detention over the last two cycles**, Texas passed SB 6[20] last summer of 2021 during a special session, which not only rejected bail reform, but instead made a long list of crimes and circumstances that prohibited own recognizance release and required a secured monetary bond, in addition to regulating charitable bail organizations. The Delaware legislature also passed similar legislation, requiring monetary bonds in a long laundry list of cases and circumstances[21]. So, let there be no doubt, that not only are other state legislatures not falling for the snake oil that is the current version of bail reform, they are going further by requiring more defendants to have to post sufficient sureties in order to be released.

Finally, there is some non-peer reviewed research that the proponents of this legislation like to point to saying unsecured bonds work. In actuality, the U.S. Department of Justice, Bureau of Justice statistics have found that unsecured bonds do not outperform releases on own recognizance.[22] In other words, they create no incentive. This makes sense because if you abscond you have nothing to lose other than an unsecured promise, and because states rarely if ever attempt to collect these bonds when forfeited, largely due to the fact that they are uncollectable. At a minimum, don't believe in the façade of unsecured bail as some replacement. It is nothing more than a promise to pay an institution when you choose not to attend that institution, leaving that institution no way to collect.

B. "Bail" is redefined as "pretrial release" in order to support the idea that all of those for whom preventative detention is not obtained must be released on a bail they can afford, according to the provisions of this bill. That amount will mostly and largely be $0.

Lines 4712-13 redefine bail from what bail actually means under the constitutional tradition of Ohio dating back to 1787. Bail is bail by sufficient sureties. There is no doubt, at least among any reasonable person in this field who has read the cases for the last generation, that sufficient sureties means money or thing of value. Second, the same drafters of the excessive bail clause also drafted the Northwest Ordinance, and the Judiciary Act of 1789, and although the sufficient sureties clause does not appear in the federal constitution, there is every reason to think that the drafters intended that analysis. There, however, is a reasonable debate upon that point, which is unnecessary to resolve here. Ohio is a bail by sufficient sureties state.

Redefining bail as "pretrial release" or only "to secure" means that a bail not posted may not serve to detain. That leaves only the mechanism of preventative detention, not widely used today under the

[20] https://legiscan.com/TX/bill/SB6/2021/X2
[21] *See* https://www.usnews.com/news/best-states/delaware/articles/2021-06-24/lawmakers-pass-bill-requiring-cash-bail-for-more-crimes
[22] https://bjs.ojp.gov/content/pub/pdf/prfdsc.pdf

existing exceptions and high burden needed, whether expanded or not. About that, there is no doubt. That is the specific intent and design of this legislation.

On its face, this provision deprives the People with the right to ask for bail by sufficient sureties. That is the constitutional standard, in addition to the fact that the doctrine of excessive bail also applies per the Ohio and federal constitutions. Yet another reason the State of New Jersey had to change its constitution to go to the no-money bail system.

C. The legislation on its face denies the defendant the right to ask for bail by sufficient sureties and the People to ask for bail by sufficient sureties at the preliminary pretrial release decision phase, which mandates setting it over for a hearing either to set the conditions of release (which could include an affordable bail) or a mandatory release on own recognizance

By restricting judicial discretion to impose bail at the preliminary release phase (starting at line 4760) violates the sufficient sureties clause. It essentially allows persons who will be mandatory released (all those for whom preventative detention is not sought) to sit in jail for four days longer until conditions are imposed without ever allowing the defendant to assert his constitutional right to bail by sufficient sureties in the first instance. Of course, it completely deprives the people's right to ask for bail by sufficient sureties, because the defendant actually must be released as a matter of law, the conditions of which to be determined later. Surely, no one can believe this is consistent with recent case law where a defendant must have a meaningful opportunity to be heard on bail within 48 hours of arrest. 48 plus another 96 before conditions must be set on a person for whom must be released on an affordable bail anyway will prove to be unconstitutionally too long in addition to the sufficient sureties clause issue.

D. A trial will have to be held to do anything but release defendants on personal recognizance—all defendants will be released on conditions, some tiny portion may have to post a bail they can for sure post using their own funds not in excess of the income cap in the bill.

A conditions of release hearing will keep defendants in jail another 96 hours who are not released 48 hours after arrest, even though if the prosecutor doesn't seek detention they will be released anyway. This is what ending "wealth-based detention" means. That period is unconstitutionally too long.

Clearly, however, any and all conditions of release will require a hearing where the burden shifts to the prosecutor to put on clear and convincing evidence to disprove the imposition of a release on $0 bail on own recognizance and to prove the need for any additional conditions, including bail. This is a huge departure from today where each side presents its case, all bail and conditions rest on a level playing field, and a party may get a review of such bail and ask for a hearing or take an appeal on the issue. This starts at line 4847, the conditions of release hearing.

Unlike other state statutes that favor the imposition of detention or conditions in certain more severe circumstances, this legislation actually creates a rebuttable presumption of a release on personal recognizance in all criminal cases in Ohio that prosecutors will first have to overcome *in order to then*

get a hearing to prove the need for the conditions. This is on lines 4863-4866. The only backstop is the expanded but still limited preventative detention that prosecutors may seek under the bill, and of course no funding is provided to hire the prosecutors, judges, and public defenders they are going to be needed to at least take advantage of the limited ability to detain currently offered under Ohio's constitution and expanded laws under this bill (which include proof evident, presumption great, substantial risk, evidentiary burdens, other procedural protections).

Of course, the purported expansion of preventative detention is going to solve the public safety problem caused by releasing everyone with low or zero bail. Here, there is no need to expand preventative detention unless we adopt the absolute right to release portion of this bill. Otherwise, judges can keep handling it like they have since 1788, when Judge Symmes moved to Cincinnati and became the first territorial judge of the then-Northwest Territories. In other words, the need for preventative detention is only occasioned by the denial of the right to bail by sufficient sureties contained in this bill. It is a problem created by the bill that demands preventative detention, not data that the legislature has demonstrating a specific need for the expansion of preventative detention in a limited number of cases. Not to mention that preventative detention was designed to be the exception, not the rule.

E. Prior criminal conduct is not allowed to be considered for purposes of considering public safety but only for purposes of appearance

Prior criminal record is one of two factors that make up the overwhelming predictive power of past conduct for purposes of pretrial failures. Prior failures to appear is the second one. This legislation does not include past criminal record for purposes of public safety, except it does have an exception for "past conduct" for purposes of assessing likelihood of appearing in court. In so doing, this deprives judges the ability to consider the past criminal record of the defendant, and deprives the People of the right to bail by sufficient sureties, the court having considered the past criminal record of offending of the defendant. You can see the omission beginning on line 4873.

Also starting on 5384, current law is deleted that specifically requires consideration of the "prior criminal record of the defendant" for purposes of fixing monetary bail.

Any clear or fair interpretation of this legislation is that the prior criminal record of the defendant is excluded from consideration for purposes of setting bail.

F. The list of conditions of release are pointed to as some significant replacement for the incentives of bail by sufficient sureties through the incentives of the personal surety system—in reality, they are basically the standard conditions of release on bail we see everywhere including in Ohio

This list of conditions of release, starting at line 4935, are largely standard conditions of release on bail we see throughout the country, despite the urging of the Ohio State Public Defender who sees this as some massive expansion of state supervision. That it is most certainly not. Crack open the Missouri Court rules on bail for example, and you will see a near carbon copy of this statute.

Of course, we don't worry about getting rid of the right to bail by sufficient sureties, because we are going to start routinely and vigorously unconstitutionally revoking bond and not re-setting bail by sufficient sureties, according to the Ohio State Public Defender. So don't worry about it. Thus, we can for example order someone to get a job, and if they don't, we can entirely revoke bond pending trial. Or, violate a curfew, no bond. Fail to commence an education program, revoke bond. None of these as-applied challenges are going to be easy to defend. But, this is what happens when we put up the façade of non-monetary conditions—we just order them to not have contact with the victim, so they won't. We tell them—no guns—and they just thereafter fail to possess them. We make them unconstitutionally be forced into treatment against their will pre-conviction under threat of bond revocation and detention pending trial with no bail in this bill. And we do it all in the name of honoring the presumption of innocence and protecting the poor. We don't think the right to bail by sufficient sureties is quite that flexible.

So, under this legislation, there two mini-trials—one if a detention motion is filed, and then a second one to try conditions of release by clear and convincing evidence as least restrictive with no other alternatives in the event detention is not obtained. Or if the crime is not detention eligible, then the prosecutor can request a conditions of release hearing. Then there has to be a third inquiry and possibly hearing on the ability to pay and over-coming the presumption against monetary conditions of bail. Contrast to today when we put all bails and conditions of release on a level-playing field and task judges with setting bail by sufficient sureties and then conditions of release all on the front end of a case without a one week delay.

Let's make no bones about it: the majority of defendants in Ohio, and nationally, even on felonies, are not required to post bail today. Said Hamilton County Common Pleas Judge Megan Shanahan on May 23, 2023: "What my fellow judges omitted in their column is that the overwhelming majority of Ohioans accused of crimes are given a bail amount of zero dollars and asked only to, essentially, promise that they'll show up for their next court date."[23] In fact, according to the U.S. Department of Justice, 62% of all felony defendants charged in state courts are released pending trial. **Of those released on felonies, 51.46% are not required to post a financial bail.**[24]

G. The legislation denies the first amendment right to speech by allowing judges to prohibit all criminal defendants from accessing a computer in general, and also to access any pornography by any means or media even when not charged with a sexual offense

There is no reason to believe a condition that a defendant not access a computer as a blanket prohibition of pretrial release would stand up to constitutional scrutiny. It so fundamentally denies the right to employment, association, banking, etc. that allow such a blanket prohibition in statute is unconstitutional on its face. Two, to prohibit all defendants from accessing pornography is also unconstitutional on its face, especially when not charged with a sexual offense. This is on lines 4980-81.

[23] https://www.dispatch.com/story/opinion/columns/guest/2022/05/23/hamilton-county-judge-public-safety-should-factor-bail-amendment-ohio-constitution-megan-shanahan/9856646002/
[24] https://bjs.ojp.gov/content/pub/pdf/prfdsc.pdf

H. The third mini trial a prosecutor can go to after filing for detention and losing, then asking for non-monetary conditions, is to then ask for a monetary bail—but it doesn't matter at the end of the day because the defendant will be released on a bail that he, alone, with his own money, *is able to post*. We refer to this is the right to release based on "how much you got on you" bail.

To get to a monetary bail, there is then another presumption in favor of non-monetary conditions first. In a sufficient sureties state, this is constitutionally problematic because a defendant has a right to bail in the first instance by a personal surety. Under this scheme, all other non-monetary conditions, no matter how liberty restricting, must be imposed regardless of whether it would be less liberty restricting to have to bail by sufficient sureties. This will set up an endless number of scenarios where non-monetary conditions will be declared excessive bail as-applied.

When I first came to Ohio now six years ago, I told the Supreme Court's commission on bail reform what I tell many reform panels: Everyone loves judicial discretion...until they lose. But, as long as I have worked on this issue, I have always been of the firm belief that the law requires and should maintain that all types of bail and conditions of release should be on a level playing field for judges to impose. Bail proves it works in a particular jurisdiction, or it doesn't. And we leave that to the judges elected to make those decisions. We see this on lines 4998-99.

I. The legislation codifies *DuBose v. McGuffey* in state statute

In the *DuBose* case,[25] the Ohio Supreme Court held that public safety could not be considered for purposes of the setting of a monetary bail. This according to the Manhattan Institute, makes Ohio only the second state to so hold. All others are to the contrary. That said, I recall having seen research that Ohio would join four other states in not considering public safety for purposes of bail, but nonetheless would be in the far, far minority of a handful of states.

While public safety cannot be the *only* factor in the setting of monetary bail, states, including Ohio, have long held that you can consider public safety as a factor in a basket of factors. In California, for example, the constitution requires that for purposes of setting bail by sufficient sureties, public safety shall be the "primary" consideration. In the recent *Humphrey* decision, the California Supreme Court declined the opportunity to declare and affordable bail and upheld the constitutional provision allowing public safety to be the primary consideration.

On line 4973, secured bonds cannot involve a consideration of public safety as a factor. It cannot be considered at all. This codifies the *DuBose* rule. There is a further codification on lines 5000-5004, where, in practice, the court may only impose a secured bond (10%, cash or surety) if there is "clear and convincing evidence" that the defendant "will not appear at a future date."

[25] *DuBose v. McGuffey*, 165 Ohio St.3d 1459 (2021).

This is a direct codification of the *DuBose* case at a time there is a contrary measure to reverse the *DuBose* case by constitutional amendment and codify the same in the State Constitution.

J. The legislation creates an absolute right to a pretrial release on a bail a defendant can afford, thus attempting to over-rule the sufficient sureties clause of the constitution in state statute

This is what the ACLU termed the end of "wealth-based detention." This is so because all persons will get out on a bail they can afford. Line 5053: "The court shall not set a secured bond amount that an accused person cannot afford."

This guarantees a right to release, for most defendants on $0 as will be shown because bail is overwhelmingly a third-party provided benefit as part of the personal surety system (we believe 80-90% of it is provided by third-parties), and thus the defendant, not being able to post himself, will have a bail set at or near zero. The income formula as well will also reduce the amount of bail that defendants will post, since most people live paycheck to paycheck, their income will qualify them for a $0 bail.

This is significant because the only mechanism that keeps someone in jail is preventative detention. Or, the false hope that we can deny bail every time someone violates a condition. Of course, we'll hear a lot about technical violations at that point.

K. All pretrial services will have to be pre-paid by the Counties, with little hope of recovery, at no expense to defendants

Meanwhile, while judges are saddling defendants with every non-monetary condition they can find since they can't do bail and prosecutors can't get detention to the degree they want under current law even with the expanded detention provisions, defendants are going to be absolved of any duty to pay for pretrial services. This is on lines 5060-5062. This includes all defendants *who can afford pretrial services*. This includes interlock and alcohol monitoring devices, drug testing, home detention, supervision fees, and all other fees charged to defendants for pretrial monitoring. Judges will impose as many conditions as they can, especially because they are free. Well, except to the local governments who must pay for them.

But, don't worry about it—you can assess the fees post-conviction. The key word there is assess—the missing key word, however, is collect. When you put pretrial fees on top of all other fines, fees, costs, restitution and surcharges, the county agencies will be left with their hands out in last priority. The idea that much if any of the costs could be recovered will be an unfunded mandate on the counties in a time where we are shifting to a model of pretrial services. This is why the state of New Jersey raising court filing fees by $248 million with ongoing pretrial supervision costs of $18 million had to the be the answer to the saddle-them with conditions model (see below).

Added to this, there is little evidence that saddling defendants with conditions works to prevent pretrial crime. If it does, the proponents should be able to cite some evidence. They cannot. That is their argument—bail doesn't protect public safety. But does an employee who lacks arrests powers

who "supervises" a defendant have a greater impact on public safety at the cost of providing such services? We think not, and on that point it turns out Arnold Ventures agrees with us.[26]

The money is better spent post-conviction or on actual pretrial *services* that are not punitive but instead try to divert defendants out of the system if they can be so diverted.

L. The ability to pay inquiry, once the presumption against monetary bail is overcome by the prosecutor, will then render most bails to be set at $0

This legislation will require a new court procedure of collecting affidavits and making an on-record inquiry that is further going to clog the courts. The reality is that the limitations are so strict not only are they an affront to the sufficient sureties clause they will make 80-90% of bails that are set in criminal cases in Ohio to be set at $0. A $200 minimum bail is *per se* unconstitutional and conflicts on its face with the sufficient sureties clause.

Bail under this legislation is based on net monthly income, which is income minus expenses. The key however is lavish living is allowable and reduces the need to post bail. For example, credit card expenses are allowed to be deducted, but there is no limitation on what those expenses can be. Example, purchasing thousands of dollars of liquor would decrease one's burden to have to post bail. Food is allowed, but there is no limit—**surely caviar and botox treatments do not lead to one to getting a lower bail, but under this model it certainly would**. Lavish trips to Vegas—go now before you assault your neighbor.

Of course, due to inflation, 64% of Americans live paycheck to paycheck, up from 61% in December.[27] That means 64% of all defendants, if they are the average American, have income in proportion to expenses, and thus the bail would be zero. It is believed defendants are over-represented as far as poverty goes, and thus that number is likely to be higher. We can assume that off the top, 75% of or so of all bails will be zero.

Now, of the 25% of defendants left, they must be able to afford it regardless. That language is above. But going down the road of they will afford the 25%, let's say a defendant makes $2000 a month and has $1500 in expenses. The maximum bail may only be 25% of the remaining $500, see lines 5097-5102. That means the maximum bail *for any charge of the highest level felony or lowest level misdemeanor* is $125. And if the prosecutor doesn't like it—he files for detention if eligible, and if not, too bad. And, if the prosecutor gets the $125 bail, and the defendant then doesn't post it, he can get a mandatory reduction because the court *cannot impose a bail the defendant cannot post.*

[26] In fact, the Arnold Foundation recently made the following statements regarding pretrial supervision: (1) "**Pretrial Monitoring Does Not Appear to Reduce Pretrial Arrests**"; (2) "There Is No Clear Association Between Location Monitoring and Improved Pretrial Outcomes"; and, (3) "There Is No Clear Association Between Drug Testing and Improved Pretrial Outcomes." *See* https://www.arnoldventures.org/stories/what-works-and-what-doesnt-in-pretrial-supervision

[27] https://www.cnbc.com/2022/03/08/as-prices-rise-64-percent-of-americans-live-paycheck-to-paycheck.html

The bail industry will collapse under this legislation. Bail agents in Ohio will only exist to return defendants to other jurisdictions who flee from other states, but will not be returning Ohio fugitives to Ohio to face justice.

Hilariously, there is an amendment floating around that would permit a judge to go to 40% when a prosecutor proves the defendant is lying about their finances. This is an unconstitutional rule punishing contempt of court through the bail system that will not stand.

But, there is more...black letter law is that assets would count in terms of determining sufficient sureties or excessive bail. This only makes sense. Under this legislation, however, illiquid assets don't count. This starts on line 5105, and I call it the illiquid rule. It makes sense to consider illiquid assets in general—if you have a house in a non-treaty country, it would be easy to flee and never be returned. But, more importantly, if you have significant illiquid assets, real property, securities, annuities, reverse mortgage, or other assets that cannot be converted within 24 hours of being lodged in jail, then they don't count for purposes of setting bail. A million-dollar gun collection cannot be sold in 24 hours, for example. This is truly they how much you can you take out from the ATM right now bail. There is no way excluding assets can pass muster under the sufficient sureties or excessive bail clauses.

M. Other prohibitors for the imposition of bail further contradict the sufficient sureties clause and will render nearly all bails at $0

There are more restrictions on the imposition of secured monetary bail. In particular, if a person has ever violated non-monetary conditions in another case, secured bail cannot be imposed. That will be quite a few since the average misconduct rate is probably in the 30-40% range at the low end if we combine failure to appear and new crimes. This also applies when a defendant violates conditions in the present case. This appears on lines 5120-5125. Most defendants have a prior crime who are charged with felonies, and thus this will be a large percentage of defendants who will have bail set at $0. Two, when you have violated conditions when on a secured bond, you are not eligible for a second one. Again, this will be a large portion of defendants.

Strangely, there is a prohibition against secured bond for non-residents of the State of Ohio if the court determines that "the accused does not have sufficient access to that jurisdiction to ensure that the accused is reasonably likely to appear for subsequent proceedings." This appears on lines 5126. This violates the sufficient sureties clause on its face because it prohibits imposition of bail by sufficient sureties on non-residents based on their access to their home jurisdiction.

N. The expansion of preventative detention to numerous other charges, starting at line 5228, is a true move toward the New Jersey system—a misguided and expensive move

In *Salerno*, the Chief Justice pointed out that the act passed constitutional muster in part because it limited preventative detention only to the most severe of charges. In addition to that, Congress had at least done some work to suggest that these particular charges were those where we could expect a high level of pretrial crime.

Here, absolutely nothing has been presented to justify the expansion of preventative detention to these particular charges or circumstances. No evidence whatsoever has been presented that even attempts to justify the line drawing that is being done here. It fails for a rational basis on its face. For if a prosecutor lodges a particular charge, you may be denied bail and wait perhaps several years to go to trial. But if a prosecutor does not lodge that charge, a person will never be held in pretrial detention on any other charges regardless of the circumstances. We think this is contrary to *Salerno*.

We also point out that New Jersey had to enact a more strict speedy trial system as part of its reforms in order to meet the procedural requirements of *Salerno* and not risk a facial challenge. Whether the current speedy trial system in Ohio will pass muster is unknown. The legislature is rolling the dice that it is.

In addition, we don't think lowering the standard for detention to a preponderance of the evidence will survive a facial challenge. This starts on line 5302. In *Salerno*, the Chief Justice wrote that one of the key procedural safeguards that allowed preventative detention to survive was the fact that the judge would have to "support his conclusion with 'clear and convincing evidence.'"[28] Perhaps Ohio law allows this, I am not aware of that, but I believe that State is on federal constitutional thin ice without clear and convincing evidence. And if due process is so important, and detention so abhorrent, why would the state make it easier to detain?

III. The Move to the New Jersey style system is costly—we estimate the State and local New Jersey Governments have spent in the neighborhood of $500 million so far since implementation January 1, 2017—there have been no "savings" identified, racial disparities are up, and there is no evidence the system was worth the costs

The New Jersey Association of Counties sued to the State of New Jersey for an unfunded mandate (a procedure allowed in New Jersey), arguing that initial costs would be $1-$2 million on average per county. If we assume an average of $1.5 million per county for initial implementation, we are looking at startup costs for the 88 counties of $132 million in Ohio to implement the New Jersey system. The total cost to New Jersey Counties to implement the law was estimated at $28.1 million in the first year, and $20.5 million annually thereafter in their filing before the Council on Local Mandates.[29]

Court filing fees for a variety of cases were raised in 2014 (three years before implementation) to generate $171.2 million to cover state-level costs for the program to be implemented, which began on January 1, 2017. Of that, $40.1 million went to Legal Services of New Jersey, the state public defender system.[30] The Court filing fees collections were then allowed to continue for some time post-implementation, and were finally stopped when

[28] *Salerno*, 481 U.S. at 742.
[29] https://www.state.nj.us/localmandates/pending/documents/12-6-16%20NJAC%20Complaint%20on%20Bail%20Reform.pdf
[30] See page 39: https://www.njcourts.gov/courts/assets/criminal/2018cjrannual.pdf?c=37N

the **courts had collected a total $240.4 million in increased court filing fees to implement bail reform.**[31]

1. The initial bail reform legislation allocated $22 million to create the necessary statewide pretrial services effort in addition to a needed $10 million in technology upgrades to implement bail reform, for a total of $32 million.
2. 267 FTE pretrial workers were permanently added to the payroll in the first two years of implementation. We believe that number is now 301 FTE.
3. Thus, based on available data, it is clear that New Jersey at the state and local level had spent at least $300.5 million by the first year of implementation, which began January 1, 2017. If counties portion and the statewide pretrial budget are accumulated, the ongoing total is $42.5 million annually, meaning the total price tag of on-going costs has been an additional $212.5 million over the last five years. **Thus, a reasonable estimate of the costs of implementation and on-going costs of implementing the program since January, 2017 would be approximately $513 million.**
4. There have been no reported savings to offset the costs. The $22 million statewide pretrial budget is to continue into perpetuity and not a single dollar has been offset by any savings nor has a single dollar of the start-up costs having been recovered.[32]
5. The jail population dramatically increased in 2020, and 82.6% of defendants are in pretrial status. Said the New Jersey State Courts: "In 2020, the jail population increased by 12.5 percent, to 8,930 inmates."[33]
6. Since the no money bail reform, the disparity of African American to defendants to white defendants has increased in New Jersey's jails. In 2012, long before bail reform, 54% of defendants being held pending trail were African-American and 28% were Caucasian. Now those numbers have changed in 2020 with **the percentage African-Americans in jail pending trial increased by 9.3%**, and now comprising 59% of the pretrial jail population. The percentage of Caucasian defendants dropped 16.8%, and now white defendants make up only 23.3% of the jail population versus 28% in 2012 and 29.6% in 2018. Thus, the racial disparities in the pretrial detention population have *substantially increased* as a result of the no money bail reform.[34]
7. **An astounding 91.4% of defendants released pending trial are supervised by the state.** Pretrial services is not cheap, especially when it is all going to be paid not using any defendant funds. In 2020, 25,270 defendants were released. Of those, 23,119 were supervised by the state.[35]
8. Prosecutors file for preventative detention in 46.4% of felony cases in New Jersey, which is an astounding number. If Chief Justice Rehnquist truly believed that preventative detention was supposed to be the exception and not the rule, and "liberty the norm," there would be no way to believe that in either of the New Jersey or federal systems since implementation. Detention is the norm.

[31] See page 39: https://www.njcourts.gov/courts/assets/criminal/2020cjrannual.pdf
[32] https://www.njcourts.gov/courts/assets/criminal/2020cjrannual.pdf
[33] https://www.njcourts.gov/courts/assets/criminal/2020cjrannual.pdf
[34] https://www.njcourts.gov/courts/assets/criminal/2020cjrannual.pdf
[35] https://www.njcourts.gov/courts/assets/criminal/2020cjrannual.pdf

IV. A brief word on the effectiveness of surety bail

You have heard that bail doesn't protect public safety. I'm not sure what that means. Nothing in the criminal justice system "protects public safety," and if does, it is a matter of degree. Instead, to the contrary, the data in New York demonstrated a higher crime rate of similar defendants released to a program versus being required to post bail.

Briefly, we can counter this argument with peer-reviewed research, which the proponents fail to cite any peer-reviewed research in support of their arguments they made last week. Here is some research to keep in mind:

- According to the U.S. Department of Justice, Bureau of Justice Statistics in a 2007 study, "Compared to release on recognizance, **defendants on financial release were more likely to make all scheduled court appearances**. Defendants released on an unsecured bond or as part of an emergency release were most likely to have a bench warrant issued because they failed to appear in court."[36]
- In a 2020 study from the University of Utah School of Law found as follows: "This article explains that, contrary to the Study's assertions, the new changes to pretrial release procedures appear to have led to a substantial increase in crimes committed by pretrial releasees in Cook County. Properly measured and estimated, after more generous release procedures were put in place, **the number of released defendants charged with committing new crimes increased by 45%**. And, more concerning, **the number of pretrial releasees charged with committing new violent crimes increased by an estimated 33%.**"[37]
- Professor Alex Tabarrok of George Mason University explained in 2019 that those who are detained on bail are twice as dangerous than those who actually post bail. Those who do not post bail "have twice as many arrests and twice as many convictions. For example, **the average defendant who doesn't make bail has six previous felony arrests and four previous failures to appear—four previous failures to appear—the average.**"[38]
- Professor Tabarrok also noted that his peer-review research made findings that bail agents play a valuable and quantifiable role in the system: "The bounty hunters are really the long arm of the law and my colleague and I find that people who are released on commercial bail are 28% more likely to show up and if they fail to show up they're 50% more likely to be caught quickly and to not be at large within a year."[39]

[36] https://bjs.ojp.gov/content/pub/pdf/prfdsc.pdf
[37] https://dc.law.utah.edu/scholarship/194/
[38] https://www.youtube.com/watch?v=QbfGxvphI5A&t=4s
[39] *Id.* (citing https://www.journals.uchicago.edu/doi/abs/10.1086/378694).

- Dr. Robert Morris studied the Dallas County system and found as follows: "As to the costs associated with FTA across each release type, model estimates suggest that commercial bond releases were the most cost-effective in Dallas County, based on the group of defendants captured by the study. This finding was corroborated by the observed data, which suggested that for the 22,000+ defendants captured by this study, assuming a public cost of $1,775 per FTA2, the use of commercial bonds saved over $7.6 million (or ~$350k per 1,000 defendants) among felony defendants and over $3.5 million (or $160k per 1,000 defendants) among misdemeanor defendants, as compared to attorney bonds, cash bonds, and pretrial services bonds."[40]

V. Conclusion

This is a major sea change in the way bail is handled in Ohio regardless of where one may come down on it as a policy issue. This counsels for further study. Everyone in Ohio (and this author outside of Ohio) agrees we have no data on the bail system in Ohio, or at least very little. We don't know what the average criminal history and failure to appear profile is of those defendants who fail to post bail in Ohio might be. At a minimum, some comprehensive study of preventative detention would it seem be warranted before making a move such as this. This legislation was the release half of the New Jersey system without the detention half—until a few weeks ago. Now it is the New Jersey system, and whether the State of Ohio wants to go down this road is crucial juxtaposition of the rights of the People to prosecute crimes and have public safety, the defendants to not have their liberties trammeled, and the taxpayer to have an efficient and low-cost system that achieves the best results possible.

When the settlers first came to Ohio, they brought with them a document that Ohioans still operate under that uttered a simple statement of rights: that all persons are bailable by sufficient sureties.

We do not, with all due respect, think the proponents have made a sufficient case to change 235 years of bail law and tradition in Ohio. Until they might, we ask for a no vote on this legislation.

Respectfully submitted,

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[40] https://ambailcoalition.org/download/172/effectiveness-of-bail/5852/morris_expert_report_buffin_july062018-2.pdf