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VIA EMAIL

RE: OPPOSITION TO HOUSE BILL 315

Chairman Jeff LaRe,

I am writing to express my opposition to House Bill 315.

As the prosecuting attorney for Clermont County, I have the pleasure, and solemn duty, to enforce the laws of Ohio in the state's 14th largest County. Like all of Ohio, we have seen an alarming increase in crime, particularly violent crime. While House Bill 315 would provide trial courts more tools to ensure the protection of the public, its provisions fall short of what is necessary to effect more immediate and pressing change. First, House Bill 315 suffers from a constitutional deficiency. Second, the bill does not equip trial judges with the proper discretion to adequately protect the public. Third, the bill does not provide the more immediate impact needed to correct an egregious legal error.

I applaud the efforts of the General Assembly to respond to what I believe to be one of the Ohio Supreme Court's worst decisions in decades, *DuBose v. McGuffey*. Bail is an important part of the judicial process, intended to provide for the due process rights of the defendant, but also the safety concerns of the community. This duality is expressed in the words of the Ohio Constitution and enshrined in the plain language of Criminal Rule 46. While the efforts of House Bill 315 to address the Ohio Supreme Court's misreading of Criminal Rule 46 are laudable, they appear to be unconstitutional.

Bail is specifically addressed in Ohio's Bill of Rights, Article 1, Section 9. Within that section, it is made clear to me that it is the judicial branch, not the legislative branch, who is authorized to establish the procedure for determining the amount and conditions of bail.

While Article 1, Section 9 of the Ohio Constitution grants the General Assembly the authority to set standards by which a defendant may be found "unbailable," the process for setting the amount and condition of bail for those who are found "bailable" belongs squarely in the hands of the judiciary. "Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(B) of the Constitution of the state of Ohio." Article 4, section 5(B) provides that the Supreme Court shall prescribe rules applicable to all courts, and that the inferior courts may establish their own local rules. While the General Assembly has the ability to adopt a concurrent resolution of disapproval, nothing in the Constitution allows for the legislature to prescribe practices and procedures.

Thus, it is clear that the authority to prescribe a procedure for establishing the amount and conditions of bail belong solely to the judiciary. House Bill 315, in creating an excessively complex and expensive system for determining bail amounts exceeds the authority granted to the General Assembly by the people of Ohio.

I share the frustration of the sponsors of House Bill 315. Bail reform is necessary. First and foremost, bail must be set in a manner that secures the defendant's appearance at trial and ensures the safety of victims, witnesses, and the community at large. House Bill 315 does not do that. It does not right the wrong of *DuBose*, which states that courts may not consider public safety when setting bond. Taking this discretion away from trial judges places the public in immediate danger. While House Bill 315 expands the list of nonbailable offenses, it does not give back to the trial courts the discretion taken away by the Supreme Court.

Additionally, while House Bill 315 takes a positive step toward reforming the bail system, by not addressing the *DuBose* deficiency directly, it does not provide the most effective relief from the wayward decision. What is needed is a permanent protection for a judge's discretion in setting bond, allowing him or her to consider public safety when setting the amount. House Bill 315 does not provide this relief.

Fortunately, there is a proposal currently before the House of Representatives to address the shortcomings of our current bail system: House Joint Resolution 2. Now is the time to place the question to Ohio's voters. Will 4 runaway justices be allowed to hijack the clear intent of Ohio's Constitution: that public safety be a factor in establishing the amount and conditions of bail?

House Bill 315 does nothing to answer this question. Instead, House Bill 315 invites the General Assembly to join the 4 justices in usurping the authority of the people of Ohio as set forth in our Constitution.

I join the Ohio Prosecuting Attorney Association's objections as well. Even ignoring the constitutional infirmities, House Bill 315 is yet another unfunded mandate burdening local courts with the cost of implementing a system designed by Rube Goldberg.

I ask the members of this Committee, and the General Assembly at large, to reject House Bill 315 and move forward with Joint Resolution 2, so that real, meaningful, and effective bail reform can take place.

Respectfully,

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