

TO: House Criminal Justice Committee
FROM: Patrick Higgins, Policy Counsel, ACLU of Ohio, phiggins@acluohio.org
DATE: June 6, 2023
RE: Senate Bill 122 Proponent Testimony

Chair Abrams, Vice Chair Williams, Ranking Member Brown, and members of the House Criminal Justice Committee:

My name is Patrick Higgins and I have the pleasure of serving as Policy Counsel at the ACLU of Ohio. Thank you for the opportunity to present testimony in support of Senate Bill 122.

The ACLU of Ohio supports Senate Bill 122 because it codifies important guidance that is housed in Criminal Rule 46. Every day that Ohio courts are conducting business, this language gives critical guidance in a process that has significant consequences in the lives of those who have been accused of crimes but have not been tried or convicted.

We understand that the Supreme Court of Ohio has proposed the elimination of Criminal Rule 46 and that this change will take effect unless the General Assembly adopts a concurrent resolution of disapproval. Unless the General Assembly is willing and able to take this step, Senate Bill 122 is a necessary stopgap, and we support it as such. The ACLU of Ohio offers the following points for consideration when codifying Criminal Rule 46:

- **Wealth is not a good proxy for public safety.**
 - It will come as no surprise to Members of this Committee during the 134th General Assembly that the ACLU of Ohio opposes the use of a person's wealth as a proxy for public safety. If courts and prosecutors wish to deny bail because of public safety concerns, there is a process for doing so that is not setting bail so high that a person accused of a crime cannot afford it.¹
- **When their alternative is pretrial detention, non-financial conditions of release that create a cost burden are effectively financial conditions of release.**
 - Currently, many jurisdictions demand that people accused of crimes pay for the conditions of release contained in Senate Bill 122. In some of these jurisdictions, charges for release conditions such as ankle monitors are not returned to the accused, even if their case is dismissed or results in an acquittal. This practice harms individuals, families, and communities and it is for this reason that we encourage



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¹ R.C. 2937.222 permits the denial of bail in certain cases after a hearing.

you to make clear that costs associated with non-financial conditions of release are not to be borne by the accused person.²

- Reliance on bond schedules is arguably unconstitutional and furthers Ohio's wealth-based detention system.
 - While bond schedules expedite the release of some individuals who can afford the bond amount listed on the schedule, it does not do so for those who cannot afford it. Such schedules do not provide individualized assessment, do not consider the weight of the evidence against a person, and they do not consider the person's ability to pay.³ The bond amount that may provide no incentive for a wealthy person to return to court may be the same amount that keeps another person detained and unable to return to their family, community, or work. For these reasons, we recommend removing the requirement that each court establish a bail bond schedule and to instead create a presumption of release.

I thank you for considering my testimony and encourage you to look to your colleagues appointed to the Task Force on Bail for data on this important issue. The ACLU of Ohio stands ready to support you in making sure that these changes benefit *all* Ohioans.

² See e.g., Melekte Melaku, *Electronic Monitoring, Pretrial Policy, and Bail Reform in Cuyahoga County*. ACLU OF OHIO (Dec. 2020). Available at <https://www.acluohio.org/en/news/electronic-monitoring-pretrial-policy-and-bail-reform-cuyahoga-county>.

³ See Greg Hurley, *The Constitutionality of Bond Schedules*. NATIONAL CENTER FOR STATE COURTS (Jan. 2016). Available at <https://ncsc.contentdm.oclc.org/digital/api/collection/criminal/id/279/download>.