



3/15/22

Chairman LaRae, Vice Chair Swearingen, and Ranking Member Leland:

On behalf of the Ohio Association of Criminal Defense Lawyers, I come before you in strong opposition to HB 607, which would expressly link an Accused's ability to pay monetary bail to the nebulous concept of "public safety;" a proposal which is currently constitutionally prohibited – and for good reason. The simple fact is an Accused's financial ability to pay has no relationship in any way, shape, or form to whether that person should be locked up pending trial.

Current law provides a completely acceptable and workable pathway to detain pretrial any person charged with a felony who poses a substantial risk of physical harm to any person or to the community at large. Therefore, any genuine public safety concerns can be addressed under existing law; there is literally no need for this change based upon that fact alone. Judges also currently have at their disposal perfectly adequate tools to allow them to establish conditions of bond to address public safety. The old adage "If it ain't broke, don't fix it" comes to mind in this case – this resolution is a solution in search of a problem.

What this bill would really do is allow judges and prosecutors to use a person's lack of financial ability to act as another way to deny a person bail, by making a monetary bail amount so high that the person cannot have a hope of making the bail. That is a cynical method of denying a person a constitutional right to bail, which of course is rooted in the presumption of innocence that is the bedrock upon which the American justice system is centered. If I know one thing, it is that our system of justice will only survive if the ability to declare a person guilty remains the sole province of the jury, and NOT by elected politicians such as prosecutors or the Attorney General. The presumption of innocence should not be subject to political expediency just because it may be occasionally inconvenient. And of course, if a person commits another crime while out on bail, current law provides additional means of punishment for that individual – not only will bail be revoked on the initial case, but in both cases increased punishments are on the table. Again, a propensity to commit crime while out on bail can be addressed under current law with the non-financial conditions of bail. But the fear of future crime is not justification to use financial means to deny a person their constitutional right to bail – we are not yet living in a fictional dystopian novel where we punish future crime by preemptively locking people up because they *might* commit a crime.

Practically, turning bail hearings into mini evidentiary hearings where the Accused's dangerousness and/or the strength of the evidence are the key issues will be extraordinarily difficult for defense counsel to effectively respond. Initial bail hearings are required to be held



expeditiously, before defense counsel has received discovery or frankly had a chance to investigate the case – many times defense counsel is appointed just for the preliminary bail determination and has barely had a minute to talk with the Accused, let alone prepare to address the relevant factors under this proposal. It would put defense lawyers in the untenable position of having to argue for bail without a chance to be prepared, which would lead to instances of the Accused being detained while the Defense Attorney prepares the case for a bail hearing. It would be unworkable in practice.

The Supreme Court's holding in *DuBose v McGuffey* is a practical, limited, and intelligent approach to bond in Ohio. It recognizes that monetary binds are not to be used in lock people up for public safety reasons, bypassing the findings needed to actually detain people without bail. The OACDL recognizes that not every defendant is going to be admitted on bail – there are good reasons in some cases to deny bail. But that must be done in accordance with the proper procedure, for the proper reasons – not simply using a person's financial ability to pay against them to condemn them to languish in jail awaiting trial. I urge this Committee to reject HB 607.

Respectfully,

Blaise Katter, Esq.

Public Policy Chair, OACDL