

THE BAIL PROJECT

Ohio House Criminal Justice Committee House Joint Resolution 2 Opponent Testimony

Jeremy Page - The Bail Project

April 6, 2022

Good afternoon, Chairman LeRe and Members of the Committee and thank you for the opportunity to testify before you today. My name is Jeremy Page and I am the Operations Manager for Cleveland and Cincinnati at The Bail Project, a charitable bail organization that operates in Ohio. I've lived in Ohio for the past 14 years and work here now. This is my home.

The Bail Project operates a national charitable bail organization where we provide free bail assistance to our clients and connect them to critical wraparound services like text message reminders, transportation, and referrals to critical social services like treatment for substance use disorders, temporary and supportive housing, employment assistance, and mental health care. Our goal is to put ourselves out of business. And we do that by seeking to reform the pretrial justice system through the elimination of cash bail and the demonstrated viability of non-cash alternatives to cash bail.

We are opposed to the use of cash bail in any form because it is a broken policy intervention that fails to achieve its aims. Our own work shows that most people return to nearly all of their court dates – in Cleveland and Cincinnati alone, the nearly one thousand clients we have served have returned to 94 percent of their court dates. Our work also shows that the provision of critical social support creates the circumstances that allow for the positive pretrial outcomes that our clients experience. Our work shows, simply, that cash bail is not effective; yet, this resolution denies that reality and instead seeks to increase our state's dependence on it.

While we share the legislature's concern about crime, we do not think this resolution provides a practical pathway to address those concerns. The answer to any of these problems is not in amending the state's constitution to require judges to consider public safety when making bail setting decisions. The Ohio State Supreme Court has already resolved this matter in the *Dubose* case, where the court stated, plainly, that setting cash bail excessively is unconstitutional and that cash bail should only be used to ensure someone's return to court. The United States Supreme Court has also ruled that cash bail should not be unaffordable and that pretrial detention should be the carefully limited exception.

What this resolution will do if adopted is open the door to the rampant misuse of cash bail. In considering public safety, judges will inevitably set bail at amounts that exceed an individual's ability to pay, and this will undoubtedly result in a *de facto* detention order, which means that more people will be denied their due process and constitutional rights. It will also undoubtedly increase the number of poor, mostly people of color, who will be detained pretrial, during a time when they are still legally innocent. It will also undoubtedly lead to lawsuits that will challenge its constitutionality.

Further, the resolution being considered will actually do little to protect public safety because it continues to rely on cash bail. Cash bail simply creates a two-tiered system of justice, where those who have the financial resources to pay bail are released and those who lack such resources stay in jail subjected to the traumatizing impacts of incarceration. The resolution being considered does nothing to protect the community from someone who has resources to buy their freedom and then goes on to commit harm. We strongly encourage the Ohio legislature to consider the use of non-financial alternatives to bail that allow for judges to set more and less restrictive conditions of release on individuals to protect public safety.

If the Ohio legislature is seriously interested in improving public safety and preventing crime, it would be wiser to look at HB 315 and SB 182, the bipartisan bills currently under consideration this session. Not only do these bills provide the due process protections that would be decimated with the adoption of this resolution, but they even go further to protect public safety by creating a robust set of hearings that would allow judges to detain people pretrial if they represent a demonstrable risk to public safety. The pathway outlined in these other bills is far more robust and comprehensive than what is being considered with this resolution, which only doubles down on cash bail, and does nothing to protect public safety.

The legislature would also be far more productive pursuing legislation that seeks to improve and optimize access to critical supportive services, instead of doubling down on the broken cash bail system. Investments in behavioral health services, workforce development, housing, community-based anti-gun violence programming — have all been shown effective at reducing justice-system involvement and improving outcomes for those who are already system-involved. Investment in these services would be far more impactful, and far less harmful, than what you are considering with HJR 2.

Finally, what HJR 2 will do if enacted is increase the likelihood that those people who become justice-involved remain that way in the future. We know this because research shows that detaining someone for even 48 hours increases the likelihood that they will

become justice-involved again at some point. We also know that people who are detained pretrial, when compared to people who are released pretrial, are less likely to take their cases to trial and so they accept guilty pleas simply to escape the traumatic conditions of jail. And as a result, they experience the catastrophic collateral consequences of a criminal conviction – denial of access to social services, job insecurity, residential instability, family instability, worsening mental health and physical health outcomes, to name a few. You are enforcing the cycle of mass incarceration with this resolution.

Protect your communities by voting no on HJR 2, a resolution that all but guarantees that more Ohioans who are legally presumed innocent are subjected to innumerable harms caused by unnecessary incarceration.