

Ohio Senate Judiciary Committee
Senate Bill 182 Proponent Testimony
Micah Derry – Arnold Ventures
June 16, 2021

Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Ohio Senate Judiciary Committee – thank you for the privilege and opportunity to testify before this committee today in support of Senate Bill 182.

My name is Micah Derry and I am the Bail Reform Campaign Director for Arnold Ventures. Arnold Ventures is a philanthropy dedicated to tackling some of the most pressing problems in the United States. We invest in sustainable change, building that change from the ground up based on research, deep thinking, and a strong foundation of evidence. We drive public conversation, craft policy, and inspire action through education and advocacy.

Few pieces of legislation, and even fewer policies, rise to the level of urgency when faced with overwhelming evidence of a need for change than the legislation before this body today. Senate Bill 182 is built with components that have been strongly vetted at a state and national level to address problems well documented here in Ohio.

As 6th and 8th Amendment cases have made their way through the Circuit Courts of the United States, states have grappled to address the looming constitutional crisis that has burgeoned its way into societal norms – the growing use of cash bail as a method of detention and making PR statements while holding defendants behind bars prior to their trial.

Through proponent testimony you will hear both data and personal stories about the human and financial toll this policy imbalance of the status quo has taken on our state. You will hear about outrageous bonds set for the pettiest of crimes, how someone who barely survives paycheck to paycheck and cannot afford that bond will spend an average of 29 days in jail before being able to offer a defense, whether the charge is minor drug possession or driving on a suspended driver's license. You will hear how Ohio stands to save hundreds of millions of dollars a year simply by correcting what was a flawed policy to start with.

As this testimony is presented, I am sure it will not be lost on you, the lack of political and ideological theme is striking. The problems of the status quo, and the solutions presented in Senate Bill 182, are not limited to a political affiliation. With dozens of organizations crossing the political spectrum having signed on with their support for this bill it should come as no surprise that the action of this committee is closely watched and anticipated.

That anticipation stems from the foundation that has already been laid by the Supreme Court Chief Justice and the task force that she commissioned several years ago to analyze and investigate the challenges of the current courtroom culture regarding cash bail, and the following Criminal Rule 46.

Additionally, the Uniform Law Commission, also known as the ULC, has put forward an excellent national template on this topic. For those unfamiliar with the ULC, it was established in 1892 and provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. The Commissioners who prepare these drafts are practicing lawyers, judges, legislators, legislative staff, and law professors who have been appointed by governments in all 50 states as well as the District of Columbia, Puerto Rico, and the US Virgin Islands to research, draft, and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

The ULC favorably passed the Uniform Pretrial Release and Detention Act in July of 2020. The key elements of this model legislation are largely embodied in SB 182. The categories within this Act could be summarized as Release, Release Conditions, Detention, Risk Assessment, and Supportive Services.

Release

Like the ULC Act, SB 182 promotes a presumption of release. This is a rebuttable presumption that the accused's release on personal recognizance will reasonably assure the accused's appearance in court and the safety of any other person or organization.

Similar to the ULC Act, SB 182 requires a court to make a decision whether or not they will release an accused individual within 24 hours of arrest.

Like the ULC Act, SB 182 protects the right to counsel for an accused individual and, if indigent, provides for appointed counsel.

Release Conditions

Like the ULC Act, SB 182 provides that a court may set conditions of release IF there is clear and convincing evidence that such conditions are necessary to assure the appearance of the accused at a future date and time.

Like the ULC Act, SB 182 promotes transparency and accountability mechanisms. When a court decides to use a secured bond as a condition of release it requires the court to issue written findings regarding what clear and convincing evidence was provided that the accused would not appear otherwise, why it is monetary conditions that will reasonably assure that appearance, and why the bond amount being set is the lowest amount necessary to reasonably assure the appearance of the accused.

Detention

Similar to the ULC Act, SB 182 requires the court to set the conditions of release at a hearing within 48 hours of the arrest.

Risk Assessment

Like the ULC Act, SB 182 does not prescribe a risk assessment tool and protects judicial discretion on their methodology for determining flight risks.

There are a few differences between SB 182 and the ULC Act. First and foremost is that SB 182 does not eliminate cash bail altogether. The very thoughtful approach of the bill sponsors rather implements an Ability to Pay Inquiry with a sworn affidavit of financial hardship to determine financial means and sets a hard cap of a maximum secured bond amount at 25% of the total after the accused's total monthly expenses are deducted from the accused's total monthly income.

In closing, as you hear the testimony of the coalition partners today and in future hearings, please remember that the price that is being paid today in financial resources and the loss of human capital is the result of a failure. The failure of our courts and justice system to live up to the ideals and principles conceived by our nation's founders. This did not happen overnight - it has taken decades for the modern use of cash bail to creep into being accepted as "normal". While the problems resulting from this breach of principle have been long in the making, do not mistake this for a signal that the solution must be equally long suffering. I ask the members of the committee to hear the stories being brought to you and to favorably report Senate Bill 182 with a sense of urgency.

Thank you, Chairman for the opportunity to share with your committee today. I am pleased to answer any questions the members of the committee may have.