



Office of the Ohio Public Defender

Timothy Young, State Public Defender

**Interested Party Testimony HB439
Risk Assessment – Bail Setting
Sponsors Representatives Dever and Ginter**

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee. My name is Niki Clum, and I'm the Legislative Liaison for the Office of the Ohio Public Defender. Thank you for the opportunity to testify regarding HB439 as an interested party.

Ohio's monetary bail system disproportionately disadvantages low-income individuals. The inability to pay a bail of \$100 may be hard to imagine for some, but it is the reality for many Ohioans. Financial hardships can force individuals to stay in jail and miss work while their case is pending. If they miss work – they get fired, and getting fired is simply not an option for most people. These individuals sometimes feel compelled to plea guilty to crimes they may not have committed in order to get out of jail. As a prosecutor, I negotiated this plea deal all the time – a defendant would receive time-served or community control and be immediately released in exchange for a guilty plea and forgoing a trial. While release from incarceration resolves that individual's immediate problem, a criminal conviction can cause severe impediments to obtaining employment, housing, financial aid, professional licenses, and social services later. This same conundrum is not felt by wealthier Ohioans who have the means to simply post bail and return to work while their case is pending. Despite the fact that the wealthy Ohioan and the poor Ohioan might have the exact same charge, criminal record, and presumption of innocence, an individual's ability to post bail can impact the outcome of their case and the rest of their life.

The Ohio Public Defender supports the elimination of bail schedules and the transition away from a monetary bail system. As this committee knows, HB439 requires courts to use a risk assessment tool when making bail determinations. Lucas County courts are currently using a risk assessments tool, and their results show that this is the direction all Ohio counties should be headed. Lucas County has seen reductions in pretrial crime and reductions in individuals failing to appear for court, all the while the number of individuals released without monetary bail has doubled.¹ Also to the credit of the Lucas County system, they found that their risk assessment tool produces gender and racially neutral results.²

These remarkable results can be repeated throughout Ohio if the proper risk assessment tool is utilized. Lucas County uses the risk assessment tool developed by the Laura and John Arnold Foundation, known as the Arnold Tool.³ But not all risk assessment tools are created equal. Some tools contain questions that lead to racially discriminatory results, like asking about the individuals' neighborhood, employment status, education, ethnic background, and income.⁴ HB439 requires the Ohio Criminal Sentencing Commission to compile a list of validated risk assessment tools from which counties can select a tool to implement in their respective courts. Under the current language of the bill, the Sentencing Commission is not required to examine the risk assessment tools and determine which are the best. They are only required to provide a list of those that are validated. OPD is

¹ New data: Pretrial risk assessment tool works to reduce crime, increase court appearance, August 8, 2018, Laura and John Arnold Foundation, <http://www.arnoldfoundation.org/new-data-pretrial-risk-assessment-tool-works-reduce-crime-increase-court-appearances/>

² *Id.*

³ Ad Hoc Committee on Bail and Pretrial Services Report and Recommendations, Ohio Criminal Sentencing Commission, <https://www.supremecourt.ohio.gov/Boards/Sentencing/Materials/2017/June/reportRecommend.pdf>

⁴ New data: Pretrial risk assessment tool works to reduce crime, increase court appearance, August 8, 2018, Laura and John Arnold Foundation, <http://www.arnoldfoundation.org/new-data-pretrial-risk-assessment-tool-works-reduce-crime-increase-court-appearances/>



concerned that some risk assessment tools may contain implicitly biased questions that result in disproportionate outcomes based on race, ethnicity, or gender.

Contributing further to OPD's concern is the fact that HB439 does not require courts to collect data regarding the race, ethnicity, or gender of the defendant. Under the bill, courts are required to collect a number of data points about cases and provide that information to Sentencing Commission, but race, ethnicity, gender, and age are among some of the data points that courts will not be required to collect. To ensure that applied risk assessment tools do not create biased results - race, ethnicity, gender, and age should be among the data collected and analyzed by the Sentencing Commission. Furthermore, in order for the data collected to be useful, it is imperative that Ohio subscribed to a limited number of risk assessments tools (if not, just one uniform assessment) so that the results across the state can be compared accurately.

HB439 should also require courts to set the least restrictive bail conditions, and monetary bail should only be set as a last resort. HB439 would allow courts to set other conditions in addition to monetary bail, but it does not require that courts only use the least restrictive conditions and only order monetary bail when absolutely necessary. This change to HB439 would make Ohio's process similar to New Jersey where the courts must set the least restrictive conditions.⁵ Additionally, in Washington, D.C., judges are only permitted to set monetary bail if the defendant can afford it.⁶ D.C. Superior Court Judge Truman Morrison stated that because of this law there is no one sitting in the Washington, D.C. jail because they do not have the money to post bail.⁷ This should also be the goal for Ohio.

⁵ New Jersey Senate, No.946

⁶ Bail, Last Week Tonight with John Oliver (HBO), June 7, 2015

⁷ Id.



The Ohio Public Defender sees HB439 as a good first step towards moving to a fair and balanced judicial system where an individual's economic status does not dictate their treatment and potentially the outcome of their case. With some adjustments to the bill, OPD believes the positive results seen in Lucas County and New Jersey can be repeated across Ohio.

Thank you for the opportunity to speak today before your committee. I am happy to answer questions at this time.

