THE BUCKEYE INSTITUTE

Ohio Should Not Expand the Dangerous Policy of Permitting Violent Offenders to Buy Their Way Out of Jail

Interested Party Testimony
Ohio House Criminal Justice Committee
House Joint Resolution 2

Robert Alt
President and CEO
The Buckeye Institute

April 6, 2022

As Prepared for Delivery

Thank you Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee, for the opportunity to testify regarding House Joint Resolution 2.

My name is Robert Alt. I am the president and chief executive officer of **The Buckeye Institute**, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

House Joint Resolution 2 does not adequately address concerns about protecting the public from violent offenders in the wake of the ***DuBose v. McGuffey*** decision. Simply put: requiring judges to consider public safety in setting cash bail—as House Joint Resolution 2 proposes to do—*does not* provide a meaningful guarantee of public safety. Rather than use poorly-calibrated financial proxies, the General Assembly should make changes to preventive detention to address public safety directly.

A defendant's financial means to post bail is not an adequate proxy for public safety nor a sufficient indicator of future good behavior. Those accused of violent offenses who pose a threat to their communities should not be released after arrest simply because they—or their friends and family—can afford the bond. Unrepentant violent offenders out on bail still pose serious risks to the community.

Several recent and tragic examples illustrate that point.

Dragan Sekulic from Canton was arrested after he tried to kill his ex-wife with his car. She survived the initial attack, and Sekulic posted bail. Released on his own recognizance, Sekulic found, stalked, and murdered his ex-wife just two weeks later.

Lonnell Anderson posted a $400 bond for a weapons-possession charge. He then jumped a patio fence at a crowded, Cincinnati-area bar, walked up behind Derek Smith—a random man Anderson did not know—and shot him in the back of the head.

In Wisconsin last year, **Darrell Brooks, Jr.** was free on a $1,000 bond despite his lengthy criminal rap-sheet. He made national headlines when he tragically drove his SUV through a Christmas parade, killing six people—including a child.

Court-ordered cash bail did not prevent any of these senseless murders. But a prudent, pre-trial detention system certainly should have.

Aggregated data support this conclusion as well. A major U.S. Department of Justice study of the 75 largest counties in the country (which includes Ohio's Franklin and Hamilton) found that two-thirds of felony defendants released pretrial in state proceedings were given financial conditions (that is, some form of cash bail) for pretrial release. Yet cash bail was an inadequate bulwark for public safety: "From 1990 through 2004, 33% of [felony] defendants were charged with committing one or more types of misconduct after being released but prior to the disposition of their case. A bench warrant for failure to appear in court was issued for 23% of released

defendants. An estimated 17% were arrested for a new offense, including 11% for a felony."[1] The facts are clear: Cash bail simply does not keep serious offenders from re-offending while loosed on society.

Bail reform in some states has been pursued without proper concern for public safety. Citizens in New York, for instance, have infamously experienced surging crime following some of the most progressive reforms that unwisely stripped judges and prosecutors of valuable crime-prevention tools—namely, the authority to detain defendants who pose genuine risk to other individuals and the community-at-large. Fortunately, two pieces of legislation pending before the General Assembly—**House Bill 315** and **Senate Bill 182**—do not repeat that mistake, offer a more responsible approach, and should prevent the otherwise predictably dire consequences.

The substitute version of Senate Bill 182 not only retains pretrial detention hearings for those accused of serious crimes, but it rightly *expands* the list of offenses eligible for pretrial detention, including felony domestic violence, felony violation of protection orders, involuntary manslaughter, reckless homicide, aggravated vehicular homicide, vehicular assault, aggravated assault, aggravated menacing, sexual conduct with a minor, and commercial sexual exploitation of a minor. These additions acknowledge the grave threat that those accused of such crimes often pose to the general public.

Senate Bill 182 also allows judges to order mental health evaluations in cases involving menacing by stalking or violating a protective order. After such an evaluation and hearing, pretrial detention may then be imposed not based on financial conditions, but rather in the interest of public safety or out of concern for individual victims.

And Senate Bill 182 lowers the evidentiary standard from *clear and convincing* to a *preponderance of the evidence*.

These are sensible reforms that give judges broader, simpler tools, aimed squarely at reducing the risk that some accused offenders present to our neighborhoods and communities.

By contrast, House Joint Resolution 2 not only fails to protect the public, but it actually promotes absurd results. By striking from the Ohio Constitution the ability of the Ohio Supreme Court to establish rules for establishing the amounts and conditions of bail, House Joint Resolution 2 undoes recent changes to bail rules, and thereby excises ANY ability to pay requirement from bail determinations, including from proceedings setting bail for low-level, non-violent, misdemeanant offenders. Ohio would be left with a system in which impecunious individuals with no criminal records, who are accused of low-level, non-violent offenses, and who pose no threat to their communities will languish in jail, utilizing scarce space and resources; meanwhile dangerous, violent offenders will be permitted to buy their way out of jail and prey on the community at large or specific victims.

---

[1] Thomas H. Cohen and Brian A. Reaves, U.S. Dept. of Justice, Bureau of Justice Statistics, *Pretrial Release of Felony Defendants in State Courts*, Nov. 2007, available online at **https://bjs.ojp.gov/content/pub/pdf/prfdsc.pdf**.

Any claim that cash bail can make to public safety is as an inaccurate proxy. If someone is a danger to society, we should detain him or her before trial, and not allow dangerous offenders to wreak havoc on the streets if the price is right. Changing the state constitution to expand cash bail in the name of public safety would be an unfortunate and tragic mistake that distracts from the serious business of keeping Ohioans safe.

Thank you for your time and attention. I would be happy to answer any questions that the Committee might have.

About The Buckeye Institute

Founded in 1989, The Buckeye Institute is an independent research and educational institution – a think tank – whose mission is to advance free-market public policy in the states.

The Buckeye Institute is a nonpartisan, nonprofit, and tax-exempt organization, as defined by section 501(c)(3) of the Internal Revenue code. As such, it relies on support from individuals, corporations, and foundations that share a commitment to individual liberty, free enterprise, personal responsibility, and limited government. The Buckeye Institute does not seek or accept government funding.