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To: House Criminal Justice Committee
From: Kevin Werner, Policy Director
Date: April 6, 2022
Re: HJR 2 and HB 607 opponent testimony

Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to provide testimony on House Joint Resolution 2 and HB 607. I am Kevin Werner, policy director for the Ohio Justice & Policy Center (OJPC), a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems.

The Ohio Justice & Policy Center shares the commitment to community safety. Safety is paramount for each of us to live the lives we choose and to prosper as a state. But public safety and release before trial are not mutually exclusive concepts as proponents of this bill would have Ohioans believe. In order for a person to be held pretrial, prosecutors must show the accused is dangerous, not poor.

OJPC opposes both HB 607 and this joint resolution because neither adds process or protections beyond including the phrase “public safety.” The resolution language incorrectly assumes that public safety can be achieved by mandating judges make this specific consideration while setting monetary conditions, or bail, in order to be released. Public safety considerations are appropriately made when determining nonfinancial conditions of release. Concepts like electronic monitoring, daytime reporting and restrictions on where an accused person can and cannot be are much more effective ways to promote safety. And in those occasions where prosecutors have concerns about an accused person being a danger to a specific person or community members, they have a process by which they request no bail for a person. The answer to make gains to public safety in the pretrial process is not tied to money bail. Our North Star with respect to the purpose of bail is to ensure the return for trial.

How we know that public safety considerations while making bail determinations are ineffective at promoting public safety? Because the size of a person’s bank account does not tell if they are a danger to society when accused of a crime. Under the system this resolution and HB 607 would create, a dangerous wealthy

person who is arrested for an offense simply pays the required bail after the judge makes safety considerations and sets that bail, say, $500,000 higher than another person accused of the same offense and same safety concerns. What happens to the notion of public safety when the dangerous wealthy defendant posts the bond and walks free before trial. The public is not safer. State Representative Brett Hillyer stated the consequence for poor defendants eloquently in a guest column published by *The Columbus Dispatch* when he wrote:

> …a rich and dangerous defendant can pay to secure their release, while poor defendants languish in jail pretrial, losing their job, their housing, and even in some cases, the custody of their children. How does such a system promote public safety and equal justice under the law?[1]

Another reason OJPC opposes changing the Ohio Constitution in the manner the resolution seeks is because proponents' rationale rests more on fearmongering rather than on sound public policy with research-backed credentials and best practice accolades. During a news conference in late March, both Hamilton County Prosecutor Joe Deters and Attorney General Dave Yost gave sensationalized examples where people had committed offenses after previously securing release on bail in some unrelated charge. In each of those examples, proponents pointed out the shortcoming of their own arguments, which is that in any of those instances, the accused people were able to afford their bail. This tells us more about the amount of money those individuals were able to pay than whether they were a risk to public safety. What we did not hear in the examples was prosecutors had requested no bond hearings, put on strong evidence clearly and convincingly suggesting a public safety risk, only to be told by courts prosecutors hadn't met the mark and so the accused person had to be released.

The fact that prosecutors are already able to request pretrial release be denied because of safety concerns is telling. It indicates that prosecutors don't like doing that part of their job and they want the court to do it for them without having to present evidence as to why a person should be held for trail. I believe the stated reason a defendant's due process rights should be tailored to the prosecution's liking was because it "gum up the works" having prosecutors prepare for the no

[1] Brett Hillyer, *The Columbus Dispatch.* Opinion: Prosecutor has it way wrong, bills would 'fix dangerous system where the rich walk free and the poor are relegated to jail.' July 23, 2021. Available at https://www.dispatch.com/story/opinion/columns/guest/2021/07/23/brett-hillyer-prosecutor-has-way-wrong-bills-would-fix-dangerous-system-where-rich-walk-free-and-poo/8069720002/

bond hearings. Attorney General Yost noted in a March news conference that he had been working closely with the Ohio prosecutor association to draft the language. The clear goal with this initiative, according to the attorney general, is to ask the people of Ohio to "please change the constitution" in service of making prosecutors' jobs easier to detain people before trial. The constitution should not be bent to the desire of prosecutors in such self-serving ways especially when their solution puts public safety at risk.

OJPC opposes House Joint Resolution 2. We believe the effect of this language will lead more people to pretrial detention who pose no safety risk. It will lead to a false sense of safety because it relies on the irrelevant factor of how wealthy a person might be and how that relates to their dangerousness.

Thank you for the opportunity to provide testimony and I would be happy to attempt to answer any questions.