



R Sheet On Ohio Bail Reform Legislation

Background

Cash bail acknowledging a presumption of innocence for persons accused of crimes has always been a feature of the judicial process in America. An amount of money is set by a court to secure release before trial and the accused pays a fraction to a surety company, [typically 10 percent](#). The fundamental fairness of this process was deemed so significant that prohibitions against “excessive bail” exist in the [U.S.](#) and [Ohio](#) constitutions. Yet the subjective standard of “excessive” exposes the accused to different systems of justice based on economic status rather than flight or public safety risk.

[HB 315](#) and [SB 182](#) were introduced in May 2021, following a years-long effort by a coalition of interests to bring current research on bail reform into alignment with [court trends](#) and Ohio Supreme Court [recommendations](#). Proponents of this legislation assert that changes in the law would be fairer to low-income people and could save the tens of millions of government dollars spent on incarceration without causing an increase in criminal activity.

With the legislation pending, in January 2022, the Ohio Supreme Court, in [DuBose v. McGuffey](#), held that the “sole purpose” of bail is to ensure an accused person’s attendance in court and that public safety cannot be a factor in setting bail. Prior to the ruling, both the likelihood of returning to court and the perceived danger to the community were regularly considered in bail decisions.

Departing from this standard led to a proposed constitutional amendment, [HJR 2](#), which adds “public safety, including the seriousness of the offense, a person’s criminal record and any other factor the general assembly may prescribe” as constitutional factors determining the amount of bail the court shall consider. Ohio voters will decide on this change during the November election, but since bail is only one part of the comprehensive legislation, enactment will improve Ohio’s pretrial system regardless.

Current Debate

The issues in bail reform are remarkably consistent from state to state: the constitutional mandates under the latest interpretations and case law; [news sources](#) that suggest a link to soaring crime rates; the success rate of return to court for proceedings; the frequency of crimes committed while out on bail; the charge of enabling repeat offenders of low-level crimes; and the [collateral effects](#) of pretrial incarceration on jobs, housing, childcare and ultimate disposition of the case all contribute to the [economic](#) and [social](#) costs of bail reform.

The scope and scale of a defendant’s inability to pay for pretrial release has been widely recognized since the early 1990s, prompting first [Washington, D.C.](#), and then [New York, New Jersey, Kentucky, California, Illinois, Maryland, Alaska and other](#)

Summary

- [HB 315](#) and [SB 182](#) do not eliminate bail, but enact a presumption for nonmonetary release.
- With the passage of [HB 315](#) and [SB 215](#), all persons accused of crimes can be released until their court dates if not deemed to be flight or public safety risks, regardless of their financial status.
- Hearings would be less cumbersome due to a change in the evidentiary standard and additional serious crimes would be eligible for preventative detention for those judged to be dangerous.
- [HB 315](#) and [SB 182](#) expand opportunities for bail agents to offer pretrial services.

states to limit commercial bail bond use. These efforts are mostly focused on the detention of nonviolent, low-level offenders who are not assessed as either public safety or flight risks, but the results differ because of additional changes to the law.

Initial research is promising. Comprehensive studies in [New Jersey](#), [Colorado](#) and [Harris County](#), Texas generally found no significant drop in court appearances under nonmonetary release regimes. [New Jersey](#), which also authorized preventative detention in a 2014 constitutional [amendment](#), further [reports](#) that only 0.2 percent of the jail population was incarcerated for an inability to pay cash bail of \$2,500 or less, and that less than 14 percent of defendants committed indictable crimes while awaiting trial. The report also shows millions of dollars in savings over five years from the consolidation of inmates and shared treatment and re-entry services.

Action Items

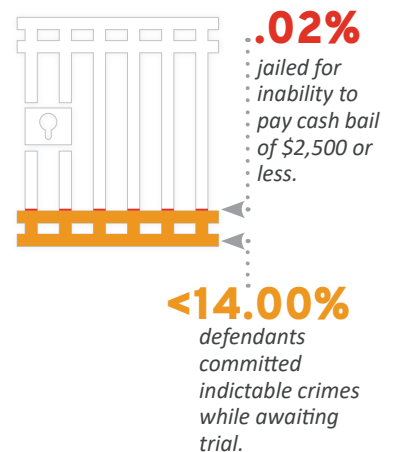
There is no established dollar amount that guarantees an accused person will return to court and/or not commit a new crime while awaiting trial. Further, cash bail systems have long been recognized as resulting in two systems of justice: one for the rich and one for the poor. Pretrial detention, no matter how short, produces a cascade of [collateral consequences](#) including physical, mental, financial and social health harms that decrease public safety and increase recidivism. That is why it is imperative that Ohioans thoughtfully consider the proposed legislation to bring the bail system back in line with the existing body of research and the fundamental presumption of innocence that is the bedrock of our judicial process.

HB 315 would create a presumption against monetary bond in favor of other conditions of pretrial release. Unlike some other states and localities moving in this direction, this bill will not prohibit courts from imposing bail, but will ensure that judges have more tools to keep potential public safety threats off the streets. HJR 2, if passed, will work with HB 315 to include threats to public safety, the seriousness of the charged offense and the accused's criminal record as factors in bail setting in addition to the likelihood that the accused will appear for trial. HB 315 also allows the accused to appeal a judicial order denying bail.

HB 315 expressly authorizes bail agents to contract for pretrial services. Agents already have notification and reminder protocols, and could act as contractual pretrial case managers. New Jersey, for example, employs 311 people in [pretrial services](#) to work with defendants to ensure compliance with court-ordered release conditions. They work six days a week and some functions deliver 24-hour monitoring alerts. These employees regularly contact defendants and make in-person visits; service home detention and electronic monitoring systems; and report conditional release violations.

Smart bail reforms that limit the use of a cash-based release system are fundamentally fairer and produce fewer detrimental outcomes for accused law-violators who are legally innocent at this stage in the judicial process. Robust pretrial services can enhance public safety and the likelihood of an individual returning to court and these services are far [less expensive](#) than pretrial detention, for taxpayers, the accused and their family, the local community and the overall economy.

Preventative Detention Shows Promising Signs (New Jersey Findings)



Contact Us

For more information on this subject, contact:
R Street Institute
1212 New York Ave. NW
Washington, D.C. 20005
(202) 525-5717

Alan Smith
Director, Midwest
Resident Senior Fellow
asmith@rstreet.org

Lisel Petis
Senior Fellow
Criminal Justice and
Civil Liberties
lpetis@rstreet.org