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## Bill Analysis

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### SUMMARY

#### Preliminary pretrial release decision

- Requires a court, if an accused person is detained after arrest, to make a preliminary pretrial release decision for the accused not later than 24 hours after the accused's arrest.
- Requires the court, in making the preliminary pretrial release decision, to order the accused's release on personal recognizance, a conditions of release hearing, or a detention hearing, depending on the circumstances.

#### Conditions of release

- Specifies that if there is a motion for a conditions of release hearing, the court may grant the motion and schedule the hearing to be held not later than 48 hours after arrest, or not later than 72 hours after arrest if the offense is misdemeanor domestic violence, or deny the motion and release the accused on personal recognizance.
- Specifies that at the conditions of release hearing the accused has the right to be represented by counsel, afforded an opportunity to testify, to present witnesses, to cross-examine witnesses, and to present information by proffer or otherwise.
- Requires the court, at the conditions of release hearing, to order the pretrial release of an accused on personal recognizance, and may set conditions of release, unless there is clear and convincing evidence that such conditions will not reasonably assure the safety of any person or organization or assure the appearance of the accused in court.
- Specifies that there 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.

- Specifies what the court can consider in determining whether additional conditions of release are necessary to assure the safety of any person or organization and to assure the appearance of the accused in court.
- Specifies what the court must do when issuing a release order imposing conditions of release on the accused.
- Allows for a modification of the conditions of release if there has been a material change in circumstances that justifies a change in the conditions of release.
- Requires the prosecutor, if the prosecutor wants to strengthen or add conditions of release, to file a motion for a new conditions of release hearing.
- Specifies the conditions of release that the court may impose on the accused.
- Specifies that there is a presumption that any condition of release the court imposes is nonmonetary.

### **Posting secured bond**

- Allows a court to order that an accused person post a secured bond only if there is clear and convincing evidence that the accused will not appear in court.
- Prohibits the court from setting a secured bond by reference to a predetermined bond amount schedule and prohibits the court from setting a secured bond amount that the accused person cannot afford.
- Requires the court to issue specific written findings when issuing an order setting a secured bond as a condition of release.

### **Ability to pay inquiry**

- Requires the court to make an ability to pay inquiry if the court intends to set a secured bond as a condition of release for the accused.
- Provides that the ability to pay inquiry includes the accused completing an affidavit of financial hardship and having the court review its contents and calculate the maximum secured bond amount the accused can pay.
- Provides that the affidavit of financial hardship can only be used to determine how much money the accused can reasonably afford to pay in a timely manner for a secured bond and that it must include the accused's monthly income, monthly expenses, and current debt.
- Specifies what is included as monthly income, monthly expenses, and current debt.
- Specifies that the court may only set a secured bond amount based on the amount the accused is able to pay and that the maximum secured bond set by the court for the accused is 25% of the total amount after the accused's total monthly expenses are deducted from the accused's total monthly income.

- Requires the court to consider the accused’s debt, where applicable, when setting a secured bond amount.
- Modifies existing law by requiring that any person charged with a misdemeanor be released on an unsecured bond or after a conditions of release hearing and any person charged with a violation of a municipal ordinance be released on an unsecured bond for the person’s appearance, instead of allowing the person to give bail.

## **Detention hearing**

- Removes misdemeanor vehicular homicide and vehicular manslaughter and includes felony domestic violence and felony violating a protection order to the offenses to which a detention hearing applies, and allows the judge to determine if the accused should be assigned conditions of release or be detained.

## **Mental health evaluation**

- Allows the court, if the court orders a mental health evaluation in any case involving an allegation of menacing by stalking or a substantially similar municipal ordinance, or violating a protection order or a substantially similar municipal ordinance, to order that evaluation after it sets bail or conditions of release.

## **Bail forfeiture**

- Specifies that the court may only forfeit a monetary bond because of the accused’s failure to appear.

## **Repeals**

- Repeals existing laws regarding the form of bail, detention where bail not granted or sufficient bail not offered, recognizance or deposit for appearance of accused, and forfeiture of bail proceedings.

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## DETAILED ANALYSIS

### Preliminary pretrial release decision

Under the bill, if the accused is detained after arrest, the court must make a preliminary pretrial release decision for the accused without unnecessary delay and not later than 24 hours after the accused's arrest.<sup>1</sup> "Accused" means a person who has been charged, but not convicted, of a crime for which criminal proceedings are ongoing.<sup>2</sup> In making the preliminary pretrial release decision, the court must order any of the following:<sup>3</sup>

- The accused's release on personal recognizance (release, without the requirement of a financial bond, based on a written promise by the accused that the accused will appear in court when required by the court);<sup>4</sup>
- A conditions of release hearing on a motion of a prosecutor seeking the hearing or on the court's own motion, to be held within 48 hours of the accused's arrest if the accused is detained;
- A detention hearing, on a motion of a prosecutor seeking a hearing or on the court's own motion, for those charged with aggravated murder when it is not a capital offense, murder, a first or second degree felony, aggravated vehicular homicide, felony vehicular homicide, felony menacing by stalking, felony domestic violence, or felony violating a protection order.

When ordering that an accused person be released on personal recognizance, the court may also order, if the judicial officer determines and makes written findings that one or more of the following conditions is the least restrictive condition necessary to assure the safety of any person or organization, any of the following:<sup>5</sup>

- That the accused not commit an offense during the period of release;
- That the accused avoid all contact with a victim of the alleged offense;

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<sup>1</sup> R.C. 2937.011(A).

<sup>2</sup> R.C. 2937.01(A).

<sup>3</sup> R.C. 2937.011(A).

<sup>4</sup> R.C. 2937.01(I).

<sup>5</sup> R.C. 2937.011(B).

- That the accused avoid all contact with witnesses who may testify concerning the offense who are named in the document authorizing the accused's release or in a subsequent court order;
- That the accused not leave a specified geographic area;
- That the accused not visit a specified location.

The court must not assess on an accused person released on personal recognizance any fee or monetary assessment related to processing the accused's release.<sup>6</sup>

When granting a motion for a conditions of release hearing, the court may impose conditions of release or detain the accused in jail until the hearing, unless the accused has already been released from custody. In that event, the court must issue a notice to appear to the accused to compel the accused's appearance at the hearing.<sup>7</sup>

If an accused person is released on personal recognizance, the court must request the accused's contact information and current address and the accused must provide it, if available. The court must provide the accused with reminders of the accused's court appearances by telephone, text message, and electronic message, if the accused provided the court with the accused's contact information.<sup>8</sup>

If the accused is charged with a sexually oriented offense or public indecency and was previously convicted of or pleaded guilty to a sexually oriented offense, public indecency, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to public indecency, or with the commission of any offense of violence where the alleged victim was a family or household member at the time of the offense, the provisions of R.C. 2907.41 and 2919.251, respectively, apply regarding the person and the setting of bail. These sections lay out separate procedures and factors for the court to consider when setting bail for these particular offenses.<sup>9</sup>

"Bail" means the pretrial release, or to secure the pretrial release, of an accused person from legal custody.<sup>10</sup> The bill also includes cross-references to "bail."<sup>11</sup>

## Conditions of release hearing

On a motion for a conditions of release hearing, the court may do any of the following:<sup>12</sup>

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<sup>6</sup> R.C. 2937.011(C).

<sup>7</sup> R.C. 2937.011(D).

<sup>8</sup> R.C. 2937.011(E).

<sup>9</sup> R.C. 2937.011(F).

<sup>10</sup> R.C. 2937.01(B).

<sup>11</sup> R.C. 2907.41, 2919.251, and 2925.01.

<sup>12</sup> R.C. 2937.012(A).

- If the offense is not misdemeanor domestic violence, grant the motion and schedule the conditions of release hearing forthwith, to be held not later than 48 hours after the accused is arrested, if the accused is detained after arrest;
- If the offense is misdemeanor domestic violence, grant the motion and schedule the conditions of release hearing forthwith, to be held not later than 72 hours after the accused is arrested, if the accused is detained after arrest;
- Deny the motion and release the accused on personal recognizance.

A scheduled conditions of release hearing must be held unless the accused or prosecutor requests a continuance. If the prosecutor requests a continuance, the court must hold the hearing in an expedited manner and not later than three calendar days after the accused's first appearance. If the accused requests a continuance, the court must hold the hearing not later than seven days after the accused's first appearance.<sup>13</sup>

At the conditions of release hearing, all of the following apply:<sup>14</sup>

- The accused has the right to be represented by counsel and, if the accused is indigent, has the right to have counsel appointed at the public's expense. The accused must be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise.
- The court must order the pretrial release of the accused on personal recognizance, and may set only the conditions of release described under "**Conditions of release,**" below, unless there is clear and convincing evidence that such conditions will not reasonably assure the safety of any person or organization or will not assure the appearance of the accused at a future date and time during which the accused is required to appear before the court.
- There 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.

In determining whether additional conditions of release are necessary to assure the safety of any person or organization and to assure the appearance of the accused at a future date and time during which the accused is required to appear before the court, the court must only consider the following:<sup>15</sup>

- Information related to the nature and circumstances of the offense charged;
- Information related to the danger to any person or organization that results from the accused's release, if applicable;

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<sup>13</sup> R.C. 2937.012(B).

<sup>14</sup> R.C. 2937.012(C).

<sup>15</sup> R.C. 2937.012(D).

- Any recommendations from pretrial services, where applicable;
- With regard to the accused's likelihood of not appearing at a future date and time during which the accused is required to appear before the court, the accused's employment, community ties, family connections and obligations, past conduct, and court appearance records.

After the conditions of release hearing, if the court finds by clear and convincing evidence that any less restrictive conditions of release would not reasonably assure the safety of any person or organization and would not assure the appearance of the accused at a future date and time during which the accused is required to appear before the court, the court may impose only the least restrictive conditions of release necessary.<sup>16</sup>

When issuing a release order imposing conditions of release on the accused, the court must do all of the following:<sup>17</sup>

- Include a written statement that sets forth all of the conditions of release in a manner that is sufficiently clear and specific to serve as a guide for the accused's conduct;
- Advise the accused of the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release, including immediate arrest or issuance of a warrant for the accused's arrest;
- Include written findings of fact and a written statement of the reasons for each condition imposed.

Once the court orders conditions of release for the accused, any party may, at any time, request a modification of the conditions of release by filing a motion alleging that there has been a material change in circumstances that justifies a change in the conditions of release. If the prosecutor seeks to strengthen or add conditions of release, the prosecutor must file a motion with the court for a new conditions of release hearing. If a party files a motion to remove any condition of release, the court may grant the motion with or without a new conditions of release hearing. If the court removes a condition of release, the court must notify the accused in writing. The court must respond to a motion to modify conditions of release within 30 calendar days of the filing of the motion.<sup>18</sup>

The bill also includes cross references to the conditions of release hearing.<sup>19</sup>

## Conditions of release

If the court finds, by clear and convincing evidence, that any less restrictive conditions would not reasonably assure the safety of any person or organization and would not assure the

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<sup>16</sup> R.C. 2937.012(E).

<sup>17</sup> R.C. 2937.012(F).

<sup>18</sup> R.C. 2937.012(G).

<sup>19</sup> R.C. 2937.08, 2937.09, 2937.15, 2937.29, and 2937.34.

appearance of the accused at a future date and time during which the accused is required to appear before the court, the court may impose the following conditions of release if they are determined to be the least restrictive means necessary:<sup>20</sup>

- A requirement that the accused not commit an offense during the period of release;
- A requirement that the accused avoid all contact with a victim of the alleged offense;
- A requirement that the accused avoid all contact with witnesses who may testify regarding the offense;
- Reasonable restrictions with respect to travel and association;
- A requirement that the accused maintain employment or, if unemployed, actively seek employment;
- A requirement that the accused commence or maintain an education program;
- A reasonable curfew, taking into account the accused's employment and educational or other lawful commitments;
- A requirement that the accused refrain from possessing a firearm, destructive device, or other deadly weapon;
- A requirement that the accused refrain from the use or possession of a narcotic drug without a prescription from a licensed health professional authorized to prescribe drugs;
- A requirement that the accused undergo available medical, psychological, or psychiatric treatment or counseling for alcohol or drug dependency at no cost to the accused, subject to the following:
  - The court may only order counseling for alcohol or drug dependency if the accused is charged with a drug-related offense or if the accused committed an offense of violence while under the influence of alcohol or drugs.
  - The court may only order medical, psychological, or psychiatric treatment if the court makes a written finding that the underlying facts of the case indicate a need for that treatment.
- Electronic monitoring at no cost to the accused;
- Periodic reporting to a designated supervisor at no cost to the accused, which the court must specify whether to be done in person or by telephone;
- Committing the accused to the custody or supervision of a designated person or organization that agrees to supervise the accused and assist in ensuring the accused's appearance in court;

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<sup>20</sup> R.C. 2937.013(A).



- Execution of a secured bond that the court may only order for the purpose of assuring the appearance of the accused at a future date and time during which the accused is required to appear before the court;
- A requirement that the accused refrain from visiting a specified location.

A “bond” is a written agreement to perform a specific duty that may or may not involve a financial obligation as part of the agreement.<sup>21</sup> A “secured bond” is a financial bond to be paid prior to the release of the accused in order to secure the accused’s pretrial release, and includes a monetary bond, percentage bond, property bond, and surety bond.<sup>22</sup> A “monetary bond” is the upfront payment in full or in part of the amount set by the court that is necessary for an accused person to secure the accused’s pretrial release from legal custody.<sup>23</sup> A “percentage bond” is a secured bond that only requires a specified percentage of the amount set by the court to be posted by the accused in order to secure the accused’s pretrial release.<sup>24</sup> “Property bond” means to pledge a title to real property as a secured bond in order to secure the pretrial release of an accused.<sup>25</sup> A “surety” is a bond given by the accused or another person that guarantees the appearance of the accused.<sup>26</sup> A “surety bond” is when a person other than the accused posts a secured bond on behalf of the accused to secure the accused’s pretrial release from legal custody.<sup>27</sup> The bill also includes cross-references to these terms.<sup>28</sup>

If an accused person is released with conditions of release, the court must request the accused’s contact information and the accused must provide it, if available. The court must provide the accused with reminders for all upcoming court dates via telephone, text message, and electronic mail, if the accused provided the court with the accused’s contact information.<sup>29</sup>

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<sup>21</sup> R.C. 2937.01(D).

<sup>22</sup> R.C. 2937.01(L).

<sup>23</sup> R.C. 2937.01(F).

<sup>24</sup> R.C. 2937.01(H).

<sup>25</sup> R.C. 2937.01(K).

<sup>26</sup> R.C. 2937.01(M).

<sup>27</sup> R.C. 2937.01(N).

<sup>28</sup> R.C. 307.51, 307.511, 307.515, 1901.26, 1901.28, 1901.31, 1907.20, 1907.32, 2329.54, 2713.05, 2713.09, 2713.10, 2713.11, 2713.13, 2713.14, 2713.15, 2713.16, 2713.17, 2713.18, 2713.19, 2713.20, 2713.21, 2713.22, 2713.23, 2713.24, 2713.25, 2713.26, 2715.25, 2743.70, 2746.02, 2907.41, 2919.251, 2925.01, 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.11, 2937.24, 2937.25, 2937.26, 2937.27, 2937.28, 2937.281, 2937.30, 2937.33, 2937.35, 2937.36, 2937.37, 2937.39, 2937.45, 2949.091, 2949.093, 2949.094, and 2963.13.

<sup>29</sup> R.C. 2937.013(B).

The bill also includes cross-references to conditions of release and monetary conditions of release.<sup>30</sup>

## Posting secured bond

Existing law specifies that bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave. It may take any of the following forms:<sup>31</sup>

- The deposit of cash by the accused or by some other person for the accused;
- The deposit by the accused or by some other person for the accused in form of bonds of the United States, Ohio, or any political subdivision in a face amount equal to the sum set by the court or magistrate. In case of bonds not negotiable by delivery such bonds must be properly endorsed for transfer.
- The written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which is known as recognizance.

The bill repeals this provision and instead specifies that there is a presumption that any condition of release the court imposes must be nonmonetary.<sup>32</sup> A court may order that an accused person post a secured bond only if there is clear and convincing evidence that the accused will not appear at a future date and time during which the accused is required to appear before the court.<sup>33</sup> The court cannot set a secured bond by reference to a predetermined bond amount schedule and cannot set a secured bond amount that an accused person cannot afford. If the court intends to set a secured bond as a condition of release, the court must make an individualized ability to pay inquiry.<sup>34</sup>

The bill requires the court, in an order setting a secured bond as a condition of release, to issue written findings regarding all of the following:<sup>35</sup>

- The clear and convincing evidence that the accused will not appear at a future date and time during which the accused is required to appear before the court;
- Why monetary conditions of release will reasonably assure the appearance of the accused at a future date and time during which the accused is required to appear before the court;

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<sup>30</sup> R.C. 2937.40, 2937.41, 2941.58, and 2953.31.

<sup>31</sup> R.C. 2937.22(A), repealed by the bill.

<sup>32</sup> R.C. 2937.014(A).

<sup>33</sup> R.C. 2937.014(B).

<sup>34</sup> R.C. 2937.014(C) and (D).

<sup>35</sup> R.C. 2937.014(E).

- Why the bond amount is the lowest amount necessary to reasonably assure the appearance of the accused at a future date and time during which the accused is required to appear before the court.

The bill maintains the existing law requirement that whenever a person is charged with any offense other than a moving violation and posts bail (secured bond under the bill), the person must pay a surcharge of \$25 until the person is convicted, pleads guilty, forfeits bail (the bail bond under the bill), is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail (the financial bail bond under the bill), the clerk must transmit the \$25 on or before the 20<sup>th</sup> day of the month following the month in which the person was convicted, pleaded guilty, or forfeited bail (the financial bail bond under the bill) to the State Treasurer and the State Treasurer must deposit it into the Indigent Defense Support Fund. If the person is found not guilty or the charges are dismissed, the clerk must return the \$25 to the person.<sup>36</sup> The bill also maintains the existing law requirement that the clerk of the court, deputy clerk, magistrate, or special referee appointed by the Ohio Supreme Court receive all forms of bail (secured bonds under the bill) and give a receipt to the person who submitted the bond.<sup>37</sup>

Under the bill, with the exception of the payment due when a secured bond is set as a condition of release, the court cannot require the accused to pay for any conditions of the accused's pretrial release unless and until the accused is found guilty. The court cannot assess any fee or other monetary assessment on the accused related to processing the accused's release.<sup>38</sup>

The bill also removes the following existing law provisions regarding the setting of bail:<sup>39</sup>

- In a case involving a felony or felonious assault, aggravated assault, or assault when a peace officer is the victim, the judge or magistrate must fix the amount of bail.
- In a case involving a misdemeanor or a municipal ordinance violation that is not a felony or felonious assault, aggravated assault, or assault when a peace officer is the victim, the judge, magistrate, or clerk of the court may fix the amount of bail and may do so in accordance with a schedule previously fixed by the judge or magistrate. If the judge, magistrate, or clerk is not readily available, the sheriff, deputy sheriff, marshal, deputy marshal, police officer, or jailer having custody of the person charged may fix the amount of bail in accordance with that schedule and must take the bail only in the county courthouse, the municipal or township building, or the county or municipal jail.

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<sup>36</sup> R.C. 2937.22(B), reenacted as R.C. 2937.014(F).

<sup>37</sup> R.C. 2937.22(C), reenacted as R.C. 2937.014(G).

<sup>38</sup> R.C. 2937.014(H).

<sup>39</sup> R.C. 2937.23(A).

- In all cases, the bail must be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case.

The bill also includes cross-references to posting a secured bond.<sup>40</sup>

## **Ability to pay inquiry**

The bill requires the court, if the court intends to set a secured bond as a condition of release for an accused, to make an ability to pay inquiry with regard to the accused. The court must make the ability to pay inquiry by requesting that the accused complete an affidavit of financial hardship and reviewing, where applicable, its contents and calculating the maximum secured bond amount the accused can pay.<sup>41</sup>

The affidavit of financial hardship must meet both of the following requirements:<sup>42</sup>

- It can only be used to determine how much money the accused can reasonably afford to pay in a timely manner for a secured bond;
- The affidavit must request information from the accused regarding the accused's monthly income, monthly expenses, and current debt, subject to the following:
  - Monthly income is limited to the accused's monthly income after taxes and the accused's spouse's monthly income after taxes, if applicable, and other sources of income, including poverty-based public assistance;
  - Monthly expenses include rent, mortgage, total utilities, health care expenses, loan payments, credit card payments, education expenses, employment expenses, transportation expenses, child care expenses, child support, spousal support, fines, court costs, and restitution;
  - Debt inquiries including outstanding credit card debt, outstanding student loans, and outstanding medical debt.

"Poverty-based public assistance" means Federal Supplemental Security Income, Ohio Works First, Temporary Assistance to Needy Families, Medicaid, Aid to Families with Dependent Children, the Supplemental Nutrition Assistance Program, Refugee Cash Assistance, Refugee Medical Assistance, poverty-related veterans' benefits, or other poverty-based governmental assistance.<sup>43</sup>

The court may only set a secured bond amount based on the amount the accused is able to pay. The maximum secured bond amount a court may set for an accused person is 25% of

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<sup>40</sup> R.C. 2743.70 and 2935.27.

<sup>41</sup> R.C. 2937.015(A)(1).

<sup>42</sup> R.C. 2937.015(A)(2).

<sup>43</sup> R.C. 2937.01(J).

the total amount after the accused's total monthly expenses are deducted from the accused's total monthly income. The court must also consider the accused's debt, where applicable, when setting a secured bond amount. The court must base the amount an accused person is able to pay for a secured bond on the amount of money the accused person has available within 24 hours of the determination. If the court sets a percentage bond, the total amount of the percentage bond must be an amount the accused person is able to pay within 24 hours of the setting of the bond.<sup>44</sup>

The bill also includes cross-references to the ability to pay hearing.<sup>45</sup>

## **Release on unsecured bond**

The bill modifies existing law by requiring that any person charged with a misdemeanor be released on an unsecured bond or after a conditions of release hearing and any person charged with a violation of a municipal ordinance be released on an unsecured bond for the person's appearance, instead of allowing the person to give bail.<sup>46</sup> An "unsecured bond" is a promise, without any upfront payment of money, to pay a specified amount of money if the accused fails to appear for future court proceedings.<sup>47</sup>

The bill also makes conforming changes regarding release on an unsecured bond.<sup>48</sup>

## **Detention hearing**

The bill modifies the existing law requirement that, on the motion of the prosecuting attorney or on the judge's own motion, the judge hold a hearing to determine whether an accused person charged with aggravated murder when it is not a capital offense, murder, a first or second degree felony, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, felony menacing by stalking, or felony OVI be denied bail by specifying that the hearing is a detention hearing, removing misdemeanor vehicular homicide and vehicular manslaughter and including felony domestic violence and felony violating a protection order to the list of offenses to which the hearing applies. The bill also allows the judge to determine if the accused should be assigned conditions of release. Under existing law, the judge is required to order that the accused be detained until the conclusion of the hearing. The bill instead gives the judge discretion to order that the accused be detained.<sup>49</sup>

Under the bill, a continuance on the motion of the accused cannot exceed five calendar days, instead of five court days under existing law, unless the motion of the accused waives in writing the five-day limit. The bill removes the existing law requirement that the motion state in

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<sup>44</sup> R.C. 2937.015(B).

<sup>45</sup> R.C. 2725.18, 2907.41, and 2919.251.

<sup>46</sup> R.C. 2935.10(D).

<sup>47</sup> R.C. 2937.01(O).

<sup>48</sup> R.C. 2935.13 and 2937.33.

<sup>49</sup> R.C. 2937.222(A).

writing a specified period for which the accused requests a continuance. A continuance granted upon the accused's motion that waives in writing the five-day limit cannot exceed five calendar days, instead of five court days under existing law, after the period of continuance requested in the motion.<sup>50</sup>

Existing law provides that at the hearing the state has the burden of proving that the accused poses a substantial risk of serious physical harm to any person or to the community, and of proving that no release conditions will reasonably assure the safety of that person and the community. The bill replaces "community" with "organization."<sup>51</sup>

Under existing law, no accused person can be denied bail unless the judge finds by clear and convincing evidence that the proof is evident or the presumption great that the accused committed one of the offenses described above. The bill instead requires that the judge find by clear and convincing evidence that the proof is evident *and* the presumption great that the accused committed the offense.<sup>52</sup>

The bill modifies the existing law requirement that the court of appeals, in an appeal of an order of the common pleas court denying bail, give the appeal priority on its calendar, decide the appeal expeditiously, and promptly enter its judgment affirming or reversing the order denying bail by instead requiring the court of appeals to enter its judgment affirming or reversing the order denying bail within 15 calendar days.<sup>53</sup>

## **Mental health evaluation**

The bill modifies the existing law provisions that require the court, in any case involving an allegation of menacing by stalking or a substantially similar municipal ordinance, or violating a protection order or a substantially similar municipal ordinance and certain specified criteria apply, to determine whether it will order an evaluation of the defendant's mental condition, and if it decides to so order, issue the order requiring the evaluation before it sets bail by also allowing the court to require the evaluation *after* it sets bail or conditions of release.<sup>54</sup> The bill also provides that if the court orders that a mental health evaluation be conducted before setting conditions of release, a conditions of release hearing must be scheduled forthwith after the submission of the mental health evaluation, notwithstanding the timing requirements of the conditions of release hearing described under "**Conditions of release hearing,**" above.<sup>55</sup>

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<sup>50</sup> R.C. 2937.222(A).

<sup>51</sup> R.C. 2937.222(A), (B), and (C).

<sup>52</sup> R.C. 2937.222(B).

<sup>53</sup> R.C. 2937.222(D).

<sup>54</sup> R.C. 2937.23(A).

<sup>55</sup> R.C. 2937.23(B).

## Bail forfeiture

The bill specifies that the court may only forfeit a monetary bond because of the accused's failure to appear.<sup>56</sup> The bill modifies existing law by providing that, upon the failure of the accused to appear (existing law includes a witness) in accordance with the accused's secured or unsecured bonds, those bonds (instead of "the bail") may in open court be adjudged forfeited if there is no evidence provided that indicates that the accused is being held by another jurisdiction.<sup>57</sup> If at any time within 90 days after the forfeiture the accused appears and provides satisfactory information to the court regarding the accused's failure to appear at the required hearing, the court must direct the forfeiture be discharged.<sup>58</sup>

Under existing law, upon the declaration of forfeiture, the magistrate or clerk of the court adjudging forfeiture must hold specific proceedings for bail, securities deposited, and recognizance. The bill requires that the magistrate or clerk must proceed after 90 days and replaces "bail" with "secured bond," "bail" in regards to securities deposited with "monetary bond," and "recognizance" with "property bond."<sup>59</sup>

"Bail forfeiture," "forfeit bail," "forfeited bail," "forfeits bail," and "forfeiture of bail" mean the forfeiture of a bond posted as a condition of release from legal custody.<sup>60</sup> The bill makes conforming changes throughout the bill regarding these terms.<sup>61</sup>

## Supreme Court rules

The bill removes from the list of rules for practice and procedure that the Ohio Supreme Court may make for the purpose of promoting prompt and efficient disposition of cases arising under Ohio Traffic Laws and related ordinances, the rule regarding the fixing of reasonable bonds, and disposition of cases in which bonds have been forfeited.<sup>62</sup>

## Access to counsel at arraignment

The bill removes the requirement that the judge or magistrate set bail for a later appearance if the accused is not represented by counsel and expresses a desire to consult with an attorney. The bill also removes the requirement that the court or magistrate, if the accused is not able to make bail, require the officer having custody of the accused immediately take a message to any attorney within the municipal corporation where the accused is detained, or

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<sup>56</sup> R.C. 2937.35(A).

<sup>57</sup> R.C. 2937.35(B).

<sup>58</sup> R.C. 2937.35(C).

<sup>59</sup> R.C. 2937.36.

<sup>60</sup> R.C. 2937.01(C).

<sup>61</sup> R.C. 2743.70, 2925.01, 2949.091, 2949.093, 2949.094, 2949.111, 2953.31, 3319.292, 3719.21, 3772.01, 3772.36, 4501.11, 4510.03, 4506.01, 4509.01, 4509.35, 4510.01, 4510.03, 4511.01, 4513.37, 4729.65, and 5503.04.

<sup>62</sup> R.C. 2937.46(A).

immediately make available to the accused use of a telephone for calling to arrange for legal counsel or bail.<sup>63</sup>

## Cross-reference, technical, and other conforming changes

The bill makes several other cross-reference, technical, and conforming changes.<sup>64</sup>

## Repeals

The bill eliminates the following provisions:

- The requirement that the court, if an offense is not bailable, if the court denies bail to the accused, or if the accused does not offer sufficient bail, order the accused to be detained.<sup>65</sup>
- The requirement that, if an accused is held to answer and offers sufficient bail, a recognizance or deposit be taken for the accused's appearance to answer the charge before a magistrate or before the court to which proceedings may be transferred, at a date certain, or from day-to-day, or in case of the common pleas court, on the first day of the next term thereof, and not depart without leave.<sup>66</sup>
- The requirement that, in any matter in which a minor is admitted to bail, the minor not be available as a defense to judgment against principal or surety, or against the sale of securities or transfer of cash bail, upon forfeiture.<sup>67</sup>

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## HISTORY

Action	Date
Introduced	05-18-21

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H0315-I-134/ar

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<sup>63</sup> R.C. 2937.03.

<sup>64</sup> R.C. 120.08, 122.014, 2935.14, 2937.16, 2937.17, 2937.34, and 4506.16.

<sup>65</sup> R.C. 2937.32.

<sup>66</sup> R.C. 2937.31.

<sup>67</sup> R.C. 2937.38.