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Bill Analysis

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Primary Sponsors: Sens. S. Huffman and Manning

Dennis M. Papp, Attorney

SUMMARY

- Provides for, and requires courts to consider, imposing conditions instead of setting monetary bail to ensure an accused person appears in court.
- Requires courts to adopt a continuum of pretrial supervision options that a judge or magistrate, when setting bail, must consider as a condition of bail.
- Requires courts to utilize existing justice system partners for pretrial supervision services to the extent possible and to consider the use, or expansion of current use, of video conferencing and other technological means in making bail decisions.
- Requires courts to use a validated risk assessment tool before setting bail.
- Reduces the authorized use of predetermined schedules for fixing the amount of bail and specifies criteria under which such schedules may be used.
- Requires that the courts in counties served by more than one municipal court, more than one county court, or a combination of municipal courts and county courts set a uniform bond schedule to be used by all of those courts under the criteria the bill sets.
- Regarding determinations as to whether a person who commits a violation of law should be charged with an offense:
 - Requires law enforcement agencies to adopt a policy encouraging the agency's officers to use cite-and-release, instead of the arrest, of a person who commits a misdemeanor or a fifth degree felony that is not an offense of violence.
 - Requires the prosecutor with jurisdiction over a charged violation to screen the case before initial appearance to determine the appropriate charge, the suitability of diversion, and whether any alternative disposition is appropriate and available.

- Requires prosecutors to determine the feasibility of expanding or increasing the availability of diversion programs, through the use of validated risk assessment tools.
- Requires municipal courts, county courts, and common pleas courts to collect data and other information regarding defendants in criminal cases and the use of bail and to provide the information to the Supreme Court to be maintained in a centralized database for the purposes described below.
- Requires the Supreme Court to form a committee to review and evaluate available qualifying risk assessment tools and, upon completion, to prepare a list of recommended “qualifying risk assessment tools” for use in the setting of bail under bail-related Revised Code provisions.
- Requires the Supreme Court to publish on its website the committee’s list of recommended qualifying risk assessment tools and that the committee periodically review and update the list of such tools.
- Designates the committee as a “criminal justice agency” to access databases administered by state and local entities for the administration of criminal justice and the maintenance of the centralized database described above, and authorizes the Supreme Court to apply for access to such databases for the same limited purposes.
- Requires that the Ohio Judicial College:
 - Expand training for judges and magistrates on proven best practices, including the use of validated risk assessment tools, and innovative ideas for alternatives to pretrial detention of alleged offenders, through webinars, in-person training, and written materials.
 - Make the training described above available to clerks of court, prosecutors, criminal defense counsel, and other stakeholders in the criminal justice system, through webinars, in-person training, and written materials.
- Requests the Supreme Court to amend certain Rules of Superintendence for the Courts of Ohio and Criminal Rules to conform to the bill’s provisions, and in other specified manners.
- Requires that courts be compliant with the provisions amended or enacted by the bill and any changes to the Rules of Superintendence and Rules of Criminal Procedure resulting from this act, not later than six months after the bill’s effective date.

DETAILED ANALYSIS

Pretrial detention and release

Introduction

The bill makes several significant changes to the procedure for setting bail: it requires the use of validated risk assessment tools, reduces the authorized use of predetermined

schedules for fixing the amount of bail, and provides for and requires courts to consider imposing conditions instead of requiring monetary security to ensure a defendant appears in court, and makes other changes regarding bail and offense-charging decisions. The bill also requires courts to report data regarding defendants released on bail to the Ohio Supreme Court for analysis and use in recommending risk assessment tools, and requests the Supreme Court to amend certain Court-adopted rules to conform to the bill's provisions, and in other specified manners.

Background

Section 9, Article I, of the Ohio Constitution provides that all persons are eligible for release on bail “by sufficient sureties,” except for two categories of defendants. The first excepted category includes persons who are “charged with a capital offense where the proof is evident or the presumption great.” The trial court makes the determination as to whether a capital defendant should be admitted to bail.¹ The second excepted category includes every person who is “charged with a felony where the proof is evident or the presumption great *and* where the person poses a substantial risk of serious physical harm to any person or to the community.” (Emphasis added.) Section 9 expressly states that the General Assembly “shall fix by law” standards to determine whether a person charged with a felony where the proof is evident or the presumption is great poses a substantial risk of serious physical harm to any person or the community. If a person is not in either of the excepted categories, the court must set bail, and, if the person satisfies the bail, he or she will be released from confinement.

Conditions of release as alternative to monetary forms of bail

Current law states 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 is continued, and not depart without leave. The bill modifies this to state that bail is “the security or conditions” required for such an appearance.

The bill provides that, as an alternative to the existing forms of bail, bail may take the form of any condition that the judge or magistrate setting bail determines is appropriate to reasonably ensure public safety and to ensure that the accused appears in court as required and does not depart without leave, based on the accused's risk level and needs, including without limitation: (1) personal recognizance, (2) pretrial supervision through a supervision method included in the continuum of pretrial supervision options adopted by the court served by the judge or magistrate making the decision (see below), (3) reminders sent by the court of upcoming court appearances, deadlines, or other activities, duties, or procedures related to the charge, which may be sent through appropriate available technology, including email or text messaging, or (4) any other release option specified in Criminal Rule 46, other than an option of a type authorized under current law, as described below.²

¹ *State ex rel. Reams v. Stuart*, 127 Ohio St. 314 (1933).

² R.C. 2937.22(A)(1); also R.C. 2941.58.

Under current law, bail may take any of the following forms: a deposit of cash, a bond equal to the sum set by the court, or a written undertaking to forfeit bail if the accused does not appear for trial, which is known as a recognizance.³ Rule 46 of the Ohio Rules of Criminal Procedure currently includes a list of conditions the court may impose, including house arrest, prohibiting contact with certain people, requiring drug or alcohol treatment, or restricting travel.

Currently, whenever a person is charged with an offense other than a traffic offense that is not a moving violation and posts bail, the person pays a \$25 surcharge. Under the bill, a person is not required to pay the \$25 surcharge for bail if it is in the form of conditions added by the bill, as described in the second preceding paragraph.⁴

The bill requires each municipal court, county court, and common pleas court to adopt a continuum of pretrial supervision options that a judge or magistrate serving the court, when setting bail, must consider as a condition of bail under the provisions the bill adds that are described in the third preceding paragraph. The continuum of options must include day reporting, electronic monitoring, drug and alcohol monitoring, mental or behavioral health treatment, and any other method of supervision the court determines to be appropriate and available. The court may divide the continuum into tiers based on the risk status of alleged offenders, with the options included within a particular tier being available for use only with respect to alleged offenders who are within the risk category to which the tier applies.⁵

The bill requires that each municipal court, county court, and common pleas court utilize existing justice system partners for pretrial supervision services, including services of a type described in the fourth preceding paragraph, to the extent possible.⁶

Validated risk assessment tool

The bill requires courts to use the results of a validated risk assessment tool in setting bail. The results of the risk assessment are to be considered in setting bail alongside factors listed in existing law, including the nature of the crime, the weight of the evidence, the accused's family ties, and whether the accused was on probation.⁷ A "validated risk assessment tool" is defined as a risk assessment tool that has been included in a list of recommended qualifying risk assessment tools published by the Supreme Court on its internet website under the bill (see "**Supreme Court and activities regarding risk assessment tools**").⁸

³ R.C. 2937.22(A)(2) to (4).

⁴ R.C. 2937.22(B).

⁵ R.C. 2937.22(D).

⁶ R.C. 2937.22(F).

⁷ R.C. 2903.212(A), 2907.41(B), 2919.251(B), 2937.222(C), and 2937.23(A)(2).

⁸ R.C. 2903.212(C)(5), 2907.41(E)(2), 2919.251(E)(3), and 2937.01(C).

Use of technological means in making bail decisions

The bill requires courts to consider the use, or expansion of current use, of video conferencing and other technological means in making bail decisions.⁹

Reduction of authorized use of bail schedules

The bill reduces the authority of courts to use predetermined schedules for determining bail.

Under current law, in a case involving only a misdemeanor or a violation of a municipal ordinance, other than an assault on a peace officer, 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 magistrate, judge, or clerk of the court is not readily available, the law enforcement officer or jailer having custody of the person charged may set the amount of bail in accordance with a previously fixed schedule.¹⁰

Current law also permits a court to rely on a bail schedule in cases involving any of the following: a state or municipal offense of “aggravated menacing,” “menacing by stalking,” “menacing,” “aggravated trespass,” or a sexually oriented offense; a sexually oriented offense or public indecency, in circumstances in which the person charged previously was convicted of or pleaded guilty to a sexually oriented offense, public indecency, or a violation of a substantially similar existing or former municipal ordinance or law of Ohio or any other state or the United States; or an offense of violence against a family or household member. However, a bail schedule must require that a judge consider a list of factors and may require judges to set bail at a certain level if the alleged offender’s history or the circumstances of the alleged offense meet certain criteria in the schedule.¹¹

The bill modifies these bail-schedule mechanisms as follows (the changes in R.C. 2935.15 are conforming changes):¹²

1. With respect to the mechanism regarding a misdemeanor or municipal ordinance violation and not a specified offense involving a peace officer victim, it specifies that if the judge, magistrate, or clerk is available, that person must set bail upon consideration of all relevant factors, including the results of a validated risk assessment tool (with respect to the other types of cases, the general rules applicable to the cases require consideration of a validated risk assessment tool).
2. For all of the mechanisms, it specifies that the schedule may be used in the specified cases only when a judicial officer is not available to make a bail determination.

⁹ R.C. 2937.22(E)(4).

¹⁰ R.C. 2937.23(A)(2).

¹¹ R.C. 2903.212(B), 2907.41(C), 2919.251(C), and 2935.15.

¹² R.C. 2903.212(B), 2907.41(C) and (D), 2919.251(C) and (D), 2935.15, and 2937.23(A)(2) to (4).

3. For all of the mechanisms, it requires that, in any county served by more than one municipal court, more than one county court, or a combination of municipal courts and county courts, the courts must set a uniform bond schedule to be used by all of those courts in cases involving the violations and offenses in the specified cases, provided that the schedule may be used only when a judicial officer is not available to make a bail determination.
4. For all of the mechanisms, it requires that the schedule must require that a person using it consider all of the factors that a court setting bail in the specified cases must consider and may require that bail be set at a certain level or that other reasonable conditions related to a release on bail or on recognizance be imposed if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule.
5. For all of the mechanisms, it requires that, in all cases, a person who sets bail under the schedule must first consider setting conditions for bail, as described above in **“Conditions of release as alternative to monetary forms of bail,”** and specifies that in no case may the decision on bail and the release of an alleged offender be predicated on the alleged offender’s ability to pay for pretrial services.
6. With respect to the mechanism regarding a sexually oriented offense or public indecency with a specified prior conviction or the mechanism regarding an offense of violence, if the court requires a person charged to appear before it for the setting of bail, but the appearance in person or by video conferencing equipment of the person charged is not practicable, the court may waive the appearance and release the person on bail in accordance with the bail schedule applicable to the court or, if there is no applicable bail schedule, on bail set after considering all of the factors specified with respect to the type of case – the court must first consider setting conditions for bail and in no case may the decision on bail and release be predicated on the alleged offender’s ability to pay for any pretrial services.

Determining charges or pretrial diversion

The bill specifies that, notwithstanding any other provision of law to the contrary, on and after the bill’s effective date:¹³

1. Each law enforcement agency must adopt a policy that encourages the agency’s officers to use cite-and-release of a person who commits a misdemeanor or a fifth degree felony, if the offense is not an offense of violence, instead of arresting the person.
2. When a person is arrested, or issued a summons or citation, for committing a violation of a law or municipal ordinance, the prosecutor with jurisdiction over the violation must screen the case before the person’s initial appearance for the purpose of determining

¹³ R.C. 2937.22(E)(1) to (3).

the appropriate charge, the suitability of the person for diversion, and whether any other alternative disposition is appropriate and available.

3. Prosecutors must determine the feasibility of expanding or increasing the availability of diversion programs for offenders, through the use of validated risk assessment tools.

Information to be collected by courts

Collection of information

The bill requires every municipal court, county court, and common pleas court to collect all of the following information about each criminal case handled by the court:¹⁴

- Whether the defendant in the case caused physical harm to persons or property while released on bail or under pretrial supervision.
- Whether the defendant in the case failed to appear before the court as required after being released on bail or under pretrial supervision.
- Whether the court accepted the recommendation of a pretrial service agency in setting bail for the defendant in the case.

In addition, it requires every municipal court, county court, and common pleas court to collect the following information about each criminal case handled by the court:¹⁵

- The dates of the defendant's arrest and, if the defendant was found not guilty in the case, the charges in the case were dismissed, or the sentence was suspended at the time of sentencing, of the defendant's final release.
- The case number and name of the court, judge handling the case, and defendant.
- All of the following for any offense that the defendant in the case is charged with committing:
 - The name of the offense, R.C. section that specifies the offense, and degree of the offense.
 - The validated risk assessment tool used to set bail, the risk score assigned to the offender, and the release recommendations.
 - The monetary bail amount set, if any, and whether a bail schedule was used.
- Any other information the Supreme Court requests for the purpose described below in **"Supreme Court and activities regarding risk assessment tools."**

¹⁴ R.C. 2937.231(A).

¹⁵ R.C. 2937.231(B).

Provision to Supreme Court

The bill requires that the information collected as described above be made available to the Supreme Court for use by the committee the Court forms under the provisions described below in **“Supreme Court and activities regarding risk assessment tools,”** for the purposes described in those provisions.¹⁶ It also requires that the Supreme Court collect the information from every court and maintain a centralized database of that information.¹⁷

Supreme Court and activities regarding risk assessment tools

Forming of committee and its duties

The bill requires the Ohio Supreme Court, not later than 30 days after the bill’s effective date, to form a committee to review and evaluate available qualifying risk assessment tools. The Court is to determine the number of members on the committee and the composition of the committee, provided that all members must be qualified in criminal justice matters by experience or education.

The committee must complete its initial review and evaluation not later than 90 days after the bill’s effective date and, upon completion of the review and evaluation, must prepare a list of recommended “qualifying risk assessment tools” (see below) for use in the setting of bail under the existing bail-related Revised Code provisions described above. In performing these duties, the committee must review and evaluate both interview-based and noninterview-based qualifying risk assessment tools, and must use all relevant and available information, including the information collected by trial courts and provided to the Supreme Court as described above.

The committee will be a permanent committee, continuing in existence for the periodic review-related purposes described below. The Court, in its discretion, may replace members of, or change the number of members of, the committee.¹⁸

Publication of list of recommended qualifying risk assessment tools

The bill specifies that, upon the committee’s preparation of the list of recommended qualifying risk assessment tools as described above, the Supreme Court must publish the list on its internet website.

The committee must periodically review the list of recommended qualifying risk assessment tools it prepares to ensure that the tools are revalidated periodically. The committee may remove a qualifying risk assessment tool that it previously had recommended from the list of recommended tools if the tool is not revalidated periodically or for any other reason. The committee must periodically review qualifying risk assessment tools that are not on the list, to determine if any such tool should be added to the list. If the committee removes a

¹⁶ R.C. 2937.231(C).

¹⁷ R.C. 2937.47(C).

¹⁸ R.C. 2937.47(B)(1).

qualifying risk assessment tool from the list, or adds a new qualifying risk assessment tool to the list, the Court must update its list accordingly.

The bill requires that the General Assembly and Supreme Court provide assistance and resources to courts, upon request, to assist the requesting court in its use of qualifying risk assessment tools included in the list prepared by the Supreme Court in the setting of bail under the existing bail-related Revised Code provisions described above.¹⁹

As used in the bill's provisions described above, a "risk assessment tool" is a tool that may be used to evaluate the likelihood of a criminal defendant's appearance at trial and the defendant's risk to public safety, and a "qualifying risk assessment tool" is a risk assessment tool that is validated using Ohio data, indicators, and predictive weights.²⁰

Designation as criminal justice agency for purposes of access to databases

The bill designates the committee formed by the Supreme Court under the provisions described above as a "criminal justice agency," and as such authorizes the committee to access computerized and other databases administered by state and local agencies or jurisdictions for the administration of criminal justice and the maintenance of a centralized database of the information collected under the bill by courts, as described above. The bill also authorizes the Supreme Court to apply for access to such databases for the same limited purposes.²¹

Ohio Judicial College duties

The bill requires that, on and after the bill's effective date, the Ohio Judicial College must do both of the following, notwithstanding any other provision of law to the contrary: (1) expand training for judges and magistrates on proven best practices, including the use of validated risk assessment tools, and innovative ideas for alternatives to pretrial detention of persons alleged to have committed a criminal offense, through webinars, in-person training, and written materials, and (2) make the training described in clause (1) available to clerks of court, prosecutors, criminal defense counsel, and other stakeholders in the criminal justice system, through webinars, in-person training, and written materials.²²

Request for modification of Supreme Court rules of procedure

The bill states that the General Assembly, in enacting the bill, respectfully requests that the Ohio Supreme Court do all of the following:²³

¹⁹ R.C. 2937.47(B)(2) to (4).

²⁰ R.C. 2937.47(A).

²¹ R.C. 2937.47(D).

²² R.C. 2937.22(E)(5).

²³ Section 3(A).

1. Amend Rule 5 of the Rules of Superintendence for the Courts of Ohio to require that, in any county served by more than one municipal court, more than one county court, or a combination of municipal courts and county courts, the courts must adopt a uniform bond schedule to be used by all of those courts for misdemeanors in those courts, with the schedule to be used only when a judicial officer is not available to make a bail determination.
2. Modify Criminal Rule 46 in the manner recommended in Appendix A of the “Report and Recommendations of The Supreme Court of Ohio Task Force to Examine the Ohio Bail System,” issued in July, 2019.
3. Amend Criminal Rule 44 to require the presence of counsel for the defendant at the initial appearance for any offense carrying the potential penalty of confinement, unless the defendant is being released on personal recognizance or an unsecured financial condition, and to specify and ensure that the Rule as modified does not impede or delay a judge’s ability to release a defendant on the defendant’s own recognizance or on an unsecured financial condition.
4. Modify the Rules of Criminal Procedure to conform the Rules to the bill’s changes to bail setting practices.

Compliance by courts

The bill requires that the state’s municipal courts, county courts, and courts of common pleas be compliant with the provisions amended or enacted by the bill and any changes to the Rules of Superintendence and Rules of Criminal Procedure resulting from the bill, not later than six months after the bill’s effective date.²⁴

HISTORY

Action	Date
Introduced	08-19-20

S0353-I-133/ar

²⁴ Section 3(B).